

IN THE DISTRICT COURT OF OKLAHOMA COUNTY
STATE OF OKLAHOMA

FILED IN THE DISTRICT COURT -
OKLAHOMA COUNTY, OKLA. -

DEC 10 2008

PATRICIA PRESLEY, COURT CLERK
by _____
DEPUTY

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

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

MOTION OF CONSERVATOR FOR CITATION FOR CONTEMPT OF COURT

Conservator, H. Thomas Moran, II, moves the Court to issue a citation for indirect contempt of Court against Gareth S. Gelinias, Jeffrey T. Gelinias, Fred Post, Barbara D. Post and James W. Jackson (referred to collectively as "Respondents"). As demonstrated below, Respondents have violated the Order of this Court staying any action, and requiring leave of Court to take any action, to interfere with the Conservator's management or possession of the Conservatorship assets.

PROCEDURAL HISTORY

On February 7, 2002, by Order of this Court, H. Thomas Moran was appointed Conservator of certain assets of the Defendant, Accelerated Benefits Corporation ("ABC"), including life insurance policies owned by ABC (the "Conservatorship Assets"):

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 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 the ABC Investors, that were purchased from the date of inception of ABC through September 30, 2000 ('Policies');
2. all assets of ABC necessary to accomplish the objectives of the Conservatorship listed below including, but not limited to, computer hardware, databases, software, ABC Investor and viator files relating to the Policies, accounting and financial records pertaining to premium payments and receipt and distribution of proceeds on the Policies, any deposit of cash, bond or guarantee, filing cabinets, office supplies, the lease to office space at 105 East Robinson Street, Suite 320, Orlando, Florida 32801, and telephone systems;
3. all premium reserve accounts and bank accounts into which ABC Investor funds or proceeds from Policies have been deposited; and
4. the right to recoup from the proceeds of the Policies all funds advanced by ABC to finance the payment of premiums on the Policies.

See, ORDER APPOINTING CONSERVATOR AND TRANSFERRING ASSETS, Ex. 1.¹

The Court further ordered:

IT IS FURTHER ORDERED that ***except by leave of Court during the pendency of this Conservatorship, all creditors and other persons seeking money, damages or other relief from ABC or its agents, including American Title Company of Orlando and David Piercefield, and all others acting on behalf of any such creditor or other persons, including sheriffs, marshals, and other officers and their deputies, and their respective attorneys, servants, agents, and employees are hereby stayed and restrained from***

¹ Due to the volume of pleadings and orders in this matter, together with the fact that older filings cannot be accessed through the Court's electronic docket, copies of the relevant Orders are attached as exhibits.

doing any act or thing whatsoever to interfere with ABC or its agents, including American Title Company of Orlando and David Piercefield, in the orderly transfer of the Conservatorship assets or the Conservator or to the possession of or management by the Conservator of the Conservatorship Assets, or to interfere in any manner during the pendency of this proceeding with the exclusive jurisdiction of this Court over ABC. This Conservatorship Order shall not stay or restrain any pending or future action whatsoever by any government agency or any representative on behalf of any government. (Emphasis added.)

Id.

On February 21, 2002, the Court entered its Order authorizing the establishment of HTM Conservator, LLC ("HTM") and granting 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, Ex. 2. In accordance with the Orders of the Court, and under the Court's authority and supervision, title to the viatical and life settlement policies were transferred to HTM in 2002.

FACTS MATERIAL TO CITATION FOR INDIRECT CONTEMPT OF COURT

1. Respondents hold Judgments against ABC, entered by the United States District Court for the Middle District of Florida on June 15, 2004, in the amount of \$281,229.71, and on September 17, 2004, in the amount of \$51,686.17 (referred to collectively as the "Florida Judgments").

2. On March 16, 2006, Respondents filed the Florida Judgments in the United States District Court for the Western of Oklahoma (the "federal court

actions"). See, CERTIFICATION OF JUDGMENT FOR REGISTRATION IN ANOTHER DISTRICT, filed in Case 5:06-FJ-00002-F and Case 5:06-FJ-00003-F, Ex. 3.

3. On August 16, 2006, Respondents commenced garnishment actions against the Conservator and HTM in the federal court actions. See, POST-JUDGMENT GENERAL GARNISHMENT SUMMONSES, Ex. 4. The garnishment summonses directed the Conservator and HTM to answer "whether you are indebted to, or have in your possession or under your control, any property belonging to such judgment debtor [ABC]...."

4. In their Answers, the Conservator and HTM stated that at the time the garnishment summonses were served they were indebted to ABC for, or had possession or control of, \$16.71 due to ABC for investment distributions. The Conservator and HTM also stated that all amounts held (\$16.71) were subject to set-off of debt owed to the Conservator and/or HTM pursuant to Judgments entered against ABC and in favor of the Conservatorship. The Conservator and HTM further stated in their Answers that the amounts held by them were held pursuant to this Court's Order. See, NON-CONTINUING AND GENERAL GARNISHEE'S ANSWER/AFFIDAVIT, Ex. 5.

5. On September 25, 2006, Respondents filed objections disputing that the Conservator and HTM were "entitled to hold the amounts claimed to be 'set-off of debt owed to Garnishee by Judgment Debtor.'" See, TRAVERSE OF ANSWER OF POSTJUDGMENT GARNISHMENT, Ex. 6.

6. At no time prior to November of 2008, did Respondents indicate that they were seeking to execute on the assets that were no longer owned by ABC, but by HTM pursuant to this Court's Orders.

7. On November 18, 2008, Judge Friot set the federal court actions for Status/Scheduling Conference on December 1, 2008. See, Order, Ex. 7.

8. In the Joint Status Reports submitted to the federal court on November 25, 2008, Respondents stated in their "CONTENTIONS" that:

Plaintiffs seek a determination with respect to the priority of claim as between a Conservator appointed under state law, or the holder of a perfected federal court judgment. Plaintiffs also seek judgment against Garnishees for the amount of the assets of Defendant, Accelerated Benefits Corporation in their hands as of the date of service of summons of garnishment, up to the amount of Plaintiffs' Judgments.

See, Joint Status Reports, Ex. 8.

9. Prior to the Status/Scheduling Conference, counsel for the Conservator and HTM made a written request of Respondents, through their counsel, to voluntarily dismiss the federal court actions. Counsel further advised Respondents' counsel that if they attempted to levy on the Conservatorship Assets without obtaining leave of this Court, the Conservator and HTM would take the appropriate action with the Court to enforce the terms of its stay and Orders. See, Letter from Shannon K. Emmons to Richard Gorden, November 25, 2008, Ex. 9.²

² The Conservator and HTM's counsel also informed Respondents' counsel that if forced to file motions to dismiss the federal court proceedings, and such motions

10. In the Joint Status Reports, and at the Status/Scheduling Conference, counsel for the Conservator and HTM informed the federal court of this Court's Orders and stay of any enforcement action against the Conservatorship Assets. Counsel also stated the Conservator and HTM's objection to the federal court asserting jurisdiction over Respondents' claims and requested that the court address these jurisdictional infirmities before proceeding further.

11. In accordance with the scheduling order of the federal court, the Conservator and HTM will file their motion for abstention and/or to dismiss for lack of jurisdiction in the federal court proceedings on or before December 19, 2008.

ARGUMENTS AND AUTHORITIES

Indirect contempt of court is the "willful disobedience of any process or order lawfully issued or made by the court." 21 OKLA. STAT. § 565. Section 566 of Title 21 states the punishment for indirect contempt as follows:

A. Unless otherwise provided for by law, punishment for direct or indirect contempt shall be by the imposition of a fine in a sum not exceeding Five Hundred Dollars (\$500.00) or by imprisonment in the county jail not exceeding six (6) months, or by both, at the discretion of the court.

are granted, the Conservator and HTM will seek attorney's fees and costs in obtaining dismissal of those actions.

See also, *Henry v. Schmidt*, 2004 Okla. 34, ¶11, 91 P.3d 651, 654 ("The legislature has provided for a fine and imprisonment as punishment for both direct contempt and indirect contempt.").

Prior to imposition of sanctions, 21 OKLA. STAT. 567 requires that "the party charged with contempt shall be notified in writing of the accusation and have a reasonable time for defense; and the party so charged shall, upon demand, have a trial by jury." In the present action, the Conservator and HTM request the Court to issue a citation of indirect contempt to Respondents for their willful disobedience of the Court's ORDER APPOINTING CONSERVATOR AND TRANSFERRING ASSETS.

The Court's Order prohibits Respondents "from doing any act or thing whatsoever to interfere with...the Conservator or to the possession of or management by the Conservator of the Conservatorship Assets, or to interfere in any manner during the pendency of this proceeding with the exclusive jurisdiction of this Court over ABC." From the outset of the federal actions, Respondents have been fully aware of the pending Conservatorship. Respondents knew, or should have known, the terms of this Court's Orders and the stay that remains in effect. Respondents also knew, or should have known, that this Court has exclusive jurisdiction over the Conservatorship Assets that are owned by HTM.

It initially appeared that Respondents were seeking to execute only on property or money that was owned by or owed to ABC when the garnishment summons issued in 2006. As stated by the Conservator and HTM in their answers, they held \$16.71 that was due to ABC as investment distribution.

Neither the Conservator nor HTM was indebted to ABC for any other sums. Furthermore, neither held any assets of ABC. Although title to certain assets of ABC was transferred to HTM in 2002 by the Court's Order, with the transfer of title these assets became the property of HTM.

After the Conservator and HTM answered the garnishments summonses, Respondents only disputed whether they were entitled to hold the amounts claimed to be a set-off of debt owed ABC. The "amounts claimed" totaled \$16.71, the amount ABC was owed as investment distribution. Respondents did not make any objection or claim that they should be allowed to execute on HTM's assets to satisfy the Florida Judgments against ABC.

However, Respondents recently asserted that they are entitled to execute on the Conservatorship Assets. When it became clear the Respondents were attempting to execute on the Conservatorship Assets, the Conservator and HTM explicitly set out for Respondents the pertinent Orders entered by this Court. The Conservator and HTM formally requested that Respondents cease any further efforts to execute on the Conservatorship Assets without obtaining leave of the Court. Despite Respondents' undisputed knowledge concerning the existence of the Conservatorship and the terms of the Court's Orders, Respondents did not respond to this request, but instead are proceeding in the federal court actions.

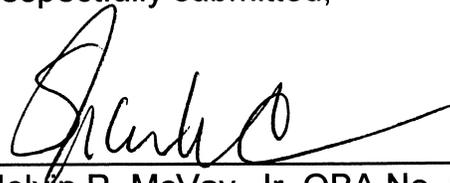
Respondents are in violation of the Court's ORDER APPOINTING CONSERVATOR AND TRANSFERRING ASSETS. In proceeding as they are in federal court, Respondents are attempting to interfere with the Conservator and HTM's

possession and management of the Conservatorship Assets. Moreover, Respondents are attempting to interfere with the Court's exclusive jurisdiction over the Conservatorship and the Conservatorship Assets. Respondents are in indirect contempt of Court, for which they should be censured.

CONCLUSION

For the reasons set forth above, the Conservator, H. Thomas Moran, II, moves the Court to issue a citation for contempt of Court to Gareth S. Gelinas, Jeffrey T. Gelinas, Fred Post, Barbara D. Post and James W. Jackson, and to direct them to show cause why they should not be held in contempt of this Court for their disobedience of the stay entered by this Court on February 7, 2002.

Respectfully submitted,



Melvin R. McVay, Jr. OBA No. 06096
Shannon K. Emmons OBA No. 14272
Kenneth A. Tillotson OBA No. 19237
PHILLIPS MURRAH, P.C.
Corporate Tower / Thirteenth Floor
101 North Robinson
Oklahoma City, Oklahoma 73102
Telephone: (405) 235-4100
Facsimile: (405) 235-4562

ATTORNEYS FOR CONSERVATOR
H. THOMAS MORAN, II

CERTIFICATE OF SERVICE

This will hereby certify that on the 11th day of December, 2008, a true and correct copy of the foregoing Motion for Citation for Contempt of Court was mailed, first-class with postage prepaid, to:

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

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



1. all life insurance policies owned or held beneficially, directly or indirectly, by or for the benefit of ABC and/or the ABC Investors, that were purchased from the date of inception of ABC through September 30, 2000 ("Policies");

2. all assets of ABC necessary to accomplish the objectives of the Conservatorship listed below including, but not limited to, computer hardware, databases, software, ABC Investor and viator files relating to the Policies, accounting and financial records pertaining to premium payments and receipt and distribution of proceeds on the Policies, any deposit of cash, bond or guarantee, filing cabinets, office supplies, the lease to office space at 105 East Robinson Street, Suite 320, Orlando, Florida 32801, and telephone systems;

3. all premium reserve accounts and bank accounts into which ABC Investor funds or proceeds from Policies have been deposited; and

4. the right to recoup from the proceeds of the Policies all funds advanced by ABC to finance the payment of premiums on the Policies.

IT IS FURTHER ORDERED that the Conservator is given directions and authority to accomplish the following:

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

2. to manage all Conservatorship Assets pending further action by this Court including, but not limited to, the evaluation of the Policies, and to take the necessary steps to protect the ABC Investors' interests including, but not limited to, the liquidation or sale of the Policies to institutional buyers and the assessment to ABC Investors of future premium payments;

3. to receive and collect any and all sums of money due or owing on the Policies to ABC or its agents whether the same are due or shall hereinafter become due and payable;
4. to seek the return of any cash, bond or guarantee on deposit with any regulatory agency or other entity on behalf of ABC or its agents;
5. to make such payments and disbursements as may be necessary and advisable for the preservation of the Conservatorship Assets and as may be necessary and advisable in discharging his duties as Conservator including, but not limited to, the timely payment of all premiums for Policies that have not yet matured;
6. to monitor the viators of the Policies by tracking the location of the viators and periodically checking the health of the viators;
7. to receive notice of the death of viators, file death claims on the viators, and collect the proceeds paid on the Policies as such mature;
8. to disburse to each ABC Investor his proportionate share of the proceeds paid on matured Policies, which amount may be reduced by the total amount of any premium payments advanced by ABC or the Conservator on behalf of such ABC Investor;
9. to establish open communication with ABC Investors with proper disclosure of available options and consequences including, but not limited to, notice to ABC Investors of this Conservatorship Order within thirty (30) days of the entry of this Order;
10. to retain and employ attorneys, accountants, computer consultants and other persons as may be advisable or necessary to the exercise of the duties of the Conservator. Conservator may immediately retain or employ such persons, and compensate such persons, all subject to application to and approval by the Court;

11. to open and inspect any and all mail and/or deliveries if same relate to the existence, location, identity and/or collection, preservation, maintenance or operation of Conservatorship Assets, and to notify any insurance company or third party administrator and the United States Postal Service to effect the forward delivery of any mail related to the Conservatorship Assets to a mail depository under the control of the Conservator;

12. to institute, prosecute, defend, intervene in or become party to such actions or proceedings in any state court, federal court or United States bankruptcy court as may in the Conservator's opinion be necessary or proper for the protection, maintenance and preservation of the Conservatorship Assets, or the carrying out of the terms of this Conservatorship Order; and

13. to exercise those powers necessary to implement his conclusions with regard to disposition of this Conservatorship pursuant to the orders and directives of this Court.

IT IS FURTHER ORDERED that ABC and its agents, including American Title Company of Orlando and David Piercefield, shall immediately begin the process of transferring the ownership and beneficial rights to the Conservatorship Assets to the Conservator until all Conservatorship Assets have been transferred. The transfer process shall conclude within ninety (90) days of the execution of this Order. If for any reason any Conservatorship Asset has not been transferred on or before end of the ninety (90) day period, ABC and/or its agents, including American Title Company of Orlando and David Piercefield, shall provide a list to the Conservator of the Conservatorship Assets that have not been transferred and the reasons therefor.

IT IS FURTHER ORDERED that this order supercedes the order of this Court dated May 10, 2001, that prohibited the assessment or collection of future premium payments from ABC Investors.

IT IS FURTHER ORDERED that ABC pay and maintain all office expenses, salaries, and other costs of the Conservatorship until at least seventy-five percent (75%) of all Conservatorship Assets have been transferred to the Conservator.

IT IS FURTHER ORDERED that all persons and entities, including ABC, its subsidiaries, affiliates, officers, directors, agents, servants, employees, attorneys, and all persons acting on their behalf, under their direction and control, and/or in active concert or participation with them, and further including any banks or financial institutions, wherever chartered or located, life insurance companies, federal and state agencies, viators, viatical settlement providers, and viatical settlement brokers who receive actual notice of this Conservatorship Order, by personal service, facsimile transmission or otherwise, shall promptly deliver and surrender to the Conservator:

1. all Conservatorship Assets in the possession of or under the control of any one or more of them; and
2. all books and records of any kind pertaining to the Conservatorship Assets, to the ABC Investors, or to the viators whose lives are insured by the Policies.

IT IS FURTHER ORDERED that all persons and entities, including ABC, its subsidiaries, affiliates, officers, directors, agents, servants, employees, attorneys, and all persons acting on their behalf, under their direction and control, and/or in active concert or participation with them, and further including any banks or financial institutions, wherever chartered or located, life insurance companies, federal and state agencies, viators, viatical settlement providers, and viatical settlement brokers who receive actual notice of this Conservatorship Order, by personal service, facsimile transmission or otherwise, fully cooperate with and assist the Conservator and that they take no action, directly or indirectly, to hinder or obstruct the

Conservator in the conduct of his duties or to interfere in any manner, directly or indirectly, with the custody, possession or control exercised by said Conservator.

IT IS FURTHER ORDERED that the Conservator is authorized, without breaching the peace, to enter and secure any premises under the control of ABC or its agents, wherever located or situated, in order to take possession, custody or control of, or to identify the location or existence of, any Conservatorship Assets.

IT IS FURTHER ORDERED that the Conservator may apply to the Court for compensation, from time to time, in a reasonable sum to be determined by the Court and from such sources as approved by the Court and for reimbursement for reasonable expenses incurred in connection with his duties as Conservator. The fees and expenses of the Conservator shall have priority over any other claims made against ABC. The Conservator shall not be required to give any bond. The Oklahoma Department of Securities shall have the authority to seek removal of the Conservator for cause and upon approval of this Court.

IT IS FURTHER ORDERED that except by leave of Court during the pendency of this Conservatorship, all creditors and other persons seeking money, damages or other relief from ABC or its agents, including American Title Company of Orlando and David Piercefield, and all others acting on behalf of any such creditor or other persons, including sheriffs, marshals, and other officers and their deputies, and their respective attorneys, servants, agents, and employees, are hereby stayed and restrained from doing any act or thing whatsoever to interfere with ABC or its agents, including American Title Company of Orlando and David Piercefield, in the orderly transfer of the Conservatorship assets or the Conservator or to the possession of or management by the Conservator of the Conservatorship Assets, or to interfere in any manner during the pendency of this proceeding with the exclusive jurisdiction of this Court over ABC. This

Conservatorship Order shall not stay or restrain any pending or future action whatsoever by any government agency or any representative on behalf of any government.

IT IS FURTHER ORDERED that any Conservatorship Assets remaining at the conclusion of the Conservatorship shall be transferred to ABC.

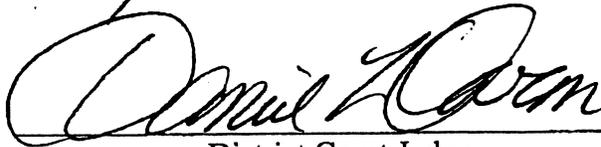
IT IS FURTHER ORDERED that ABC and its agents, including American Title Company of Orlando and David Piercefield, be held harmless from any and all liability, costs and damages arising in connection with each Conservatorship Asset after each such asset has been transferred to the Conservator.

IT IS FURTHER ORDERED that the Conservator be held harmless from any and all liability, costs and damages arising from acts of ABC and its agents, including American Title Company of Orlando and David Piercefield, before Conservatorship Assets have been transferred to the Conservator.

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

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

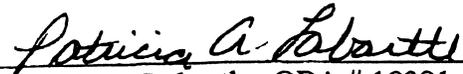
Dated this 6th day of February, 2002.

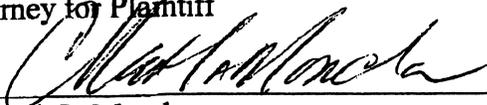


District Court Judge

I, PATRICIA PRESLEY, Court Clerk for Oklahoma County, Okla., hereby certify that the foregoing is a true, correct and complete copy of the instrument herewith set out as appears of record in the District Court Clerk's Office of Oklahoma County, Okla., this 7 day of Feb, 2002.
By [Signature] PATRICIA PRESLEY, Court Clerk Deputy

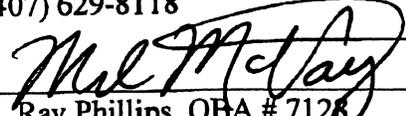
Approved as to form and substance:


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


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


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


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


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

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

Oklahoma Department of Securities,
ex rel. Irving L. Faught, Administrator,

 Plaintiff,

 vs.

 Accelerated Benefits Corporation, a Florida
 corporation, et al.,

 Defendants.

FEB 21 2002
 PATRICIA PRESLEY, COURT CLERK
 by _____
 Deputy

 Case No. CJ-99-2500-66

**ORDER AUTHORIZING ESTABLISHMENT OF LIMITED LIABILITY
 COMPANY TO HOLD TITLE TO VIATICAL AND/OR LIFE SETTLEMENT
 POLICIES BELONGING TO CONSERVATORSHIP**

NOW on this 20th day of February, 2002, the application of Conservator, Tom Moran, for entry of an Order authorizing the establishment of HTM Conservator, L.L.C., a limited liability company ("HTM"), to hold title to viatical and/or life settlement policies belonging to the Conservatorship, came on for consideration before the undersigned judge. The Court, having reviewed the application and being fully advised in the premises, finds that the Conservator's application should be granted.

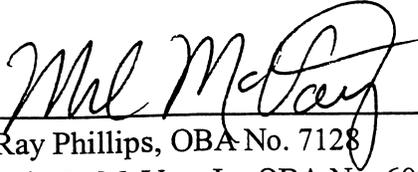
IT IS THEREFORE ORDERED ADJUDGED AND DECREED that Conservator, Tom Moran's, application for order authorizing establishment of HTM and granting authority to transfer title to viatical and/or life settlement policies belonging to the Conservatorship to HTM is hereby granted.

Tom Moran
 Judge of the District Court

I, PATRICIA PRESLEY, Court Clerk for Oklahoma County, Okla., hereby certify that the foregoing is a true, correct and complete copy of the instrument herewith set out as appears of record in the District Court Clerk's Office, Oklahoma County, Okla., this 20 day of February, 2002.
 PATRICIA PRESLEY, Court Clerk
 Deputy

EXHIBIT
2

APPROVED:



T. Ray Phillips, OBA No. 7128
Melvin R. McVay, Jr., OBA No. 6096
Fred Leibrock, OBA No. 14146
Thomas P. Manning, OBA No. 16117
PHILLIPS McFALL McCAFFREY
McVAY & MURRAH, P.C.
Twelfth Floor, One Leadership Square
211 North Robinson
Oklahoma City, Oklahoma 73102
Telephone: (405) 235-4100
Facsimile: (405) 235-4562
ATTORNEYS FOR CONSERVATOR,
TOM MORAN

CERTIFICATE OF MAILING

The undersigned certifies that on the 21st day of February, 2002, a true and correct copy of the foregoing Order was sent postage prepaid by first-class mail, to

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

David S. Piercefield
American Title Company of Orlando
230 Lookout Place, Suite 200
Maitland, FL 32751

Jess LaMonda, President
Accelerated Benefits Corporation
105 East Robinson Street, 2nd Floor
Orlando, Florida 32801

C. Keith LaMonda
Accelerated Benefits Corporation
105 East Robinson Street, 2nd Floor
Orlando, Florida 32801

A handwritten signature in cursive script, reading "Mel McKay", is written over a horizontal line. The signature is fluid and stylized, with a large loop at the end of the last name.

• AO 451 (Rev.12/93) Certification of Judgment

UNITED STATES DISTRICT COURT

MIDDLE

DISTRICT OF

FLORIDA

ORLANDO DIVISION

GARETH S. GELINAS et al

**CERTIFICATION OF JUDGMENT
FOR REGISTRATION IN
ANOTHER DISTRICT**

V.

**ACCELERATED BENEFITS CORPORATION
AND AMERICAN TITLE COMPANY OF
ORLANDO,**

Case Number: **6:03-cv-249-orl-31JGG**

SHERYL L. LOESCH

Clerk of the United States district court certify that the

attached judgment is a true and correct copy of the original judgment entered in this action

June 15, 2004

Date

appears in the records of this court, and that

**an appeal was taken from this Judgment and the Judgment was affirmed by mandate of
the Court of Appeals issued on August 3, 2005.**

IN TESTIMONY WHEREOF, I sign my name and affix the seal of this Court.

3-15-06

Date

SHERYL L. LOESCH

Clerk

(By) Deputy Clerk

Insert the appropriate language: ...“no notice of appeal from this judgment has been filed, and no motion of any kind listed in Rule 4(a) of the Federal Rules of Appellate Procedure has been filed.” ...“no notice of appeal from this judgment has been filed, and any motions of the kinds listed in Rule 4(a) of the Federal Rules of Appellate Procedure () have been disposed of, the latest order disposing of such a motion having been entered on [date].” ...“an appeal was taken from this judgment and the judgment was affirmed by mandate of the Court of Appeals issued on [date]. ...“an appeal was taken from this judgment and the appeal was dismissed by order entered on [date].”

(*Note: The motions listed in Rule 4(a), Fed. R. App. P., are motions: for judgment notwithstanding the verdict; to amend or make additional findings of fact; to alter or amend the judgment; for a new trial; and for an extension of time for filing a notice of appeal.)

EXHIBIT
3

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
ORLANDO DIVISION

15 11:14
CLERK OF DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
ORLANDO, FLORIDA

GARETH S. GELINAS, JEFFREY T.
GELTNAS, FRED POST, BARBARA D. POST,
and JAMES W. JACKSON,

Plaintiffs,

Case No. 6:03-cv-249-Orl-31JGG

-vs-

ACCELERATED BENEFITS CORPORATION,

Defendants.

JUDGMENT IN A CIVIL CASE

Decision by Court. This action came before the Court. The issues having been heard and a decision having been rendered.

IT IS ORDERED AND ADJUDGED

Judgment is entered against Defendant Accelerated Benefits Corporation in the following amounts:

- | | | |
|----|-----------------|--------------|
| 1. | Gareth Gelinas | \$116,000.00 |
| 2. | Jeffrey Gelinas | 23,000.00 |
| 3. | Fred Post | 100,000.00 |
| 4. | Barbara Post | 27,229.71 |
| 5. | James Jackson | 15,000.00 |

Date: June 15, 2004

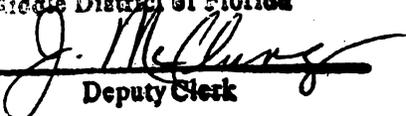
SHERYL L. LOESCH, CLERK

I certify the foregoing to be a true
and correct copy of the original.

SHERYL L. LOESCH, Clerk
United States District Court
Middle District of Florida

By: 

H. Lang, Deputy Clerk

By: 

Deputy Clerk

112

1. **Appealable Orders:** Courts of Appeals have jurisdiction conferred and strictly limited by statute:

Appeals from Final Order Pursuant to 28 U.S.C. §1291: Only final judgments (or orders) of district courts (or final orders of bankruptcy courts which have been affirmed by a district court under 28 U.S.C. § 158) usually are appealable. A "final" order is one which ends the litigation on its merits and leaves nothing for the district court to do but execute the judgment. A magistrate's report and recommendation is not usually final until judgment thereon is entered by a district court judge. Compare Fed.R.App.P. 5.1, 28 U.S.C. §636(c).

In cases involving multiple parties or multiple claims, a judgment as to fewer than all parties or all claims is not a final, appealable decision. Fed.R.Civ.P. 54(b) does permit the district court to expressly direct entry of the judgment as to fewer than all of the claims or parties. See Pitney Bowes, Inc. v. Mestre, 701 F.2d 1365, 1369 (11th Cir. 1983), cert. denied 464 U.S. 893 (1983). Certain matters, such as attorney's fees and costs, are collateral and do not affect the time for appealing from the judgment on the merits. Buchanan v. Stanships, Inc., 485 U.S. 265, 108 S.Ct. 1130, 99 L.Ed 2d 289 (1988); Budinich v. Becton, 486 U.S. 196, 108 S.Ct. 1717, 100 L.Ed 2d 178 (1988).

Appeals Pursuant to 28 U.S.C. §1292(b) and FRAP 5: The certificate specified in 28 U.S.C. §1292(b) must be obtained before an application for leave to appeal is filed in the Court of Appeals. Denial or refusal by the district court to issue the certificate is not itself applicable.

Appeals Pursuant to 28 U.S.C. §1292(a): Pursuant to this statute, appeals are permitted from orders "granting, continuing, modifying, refusing or dissolving injunctions or refusing to dissolve or modify injunctions..." and "[i]nterlocutory decrees...determining the rights and liabilities of parties to admiralty cases..." This statute does not permit appeals from temporary restraining orders.

Appeals Pursuant to Judicially Created Exceptions to the Finality Rule: These limited exceptions are discussed in many cases, including (but not limited to): Cohen v. Beneficial Industrial Loan Corp., 337 U.S. 541, 69 S.Ct. 1221, 93 L.Ed 2d 1528 (1949); Forgay v. Conrad, 6 How. (47 U.S.) 201 (1848); Gillespie v. United States Steel Corp., 379 U.S. 148, 152, 85 S.Ct. 308, 311, 13 L.Ed. 2d 199 (1964); Atlantic Federal Savings & Loan Assn. Of Ft. Lauderdale v. Blythe Eastman Paine Webber, Inc., 890 F.2d 371 (11th Cir. 1989). Compare Coopers and Lybrand v. Livesay, 437 U.S. 463, 98 S.Ct. 2454, 57 L.Ed 2d 351 (1978); Gulfstream Aerospace Corp. v. Mayacamas Corp., 485 U.S. 271, 108 S.Ct. 1133, 99 L.Ed. 2d 296 (1988).

2. **Time for Filing:** To be effective a notice of appeal must be timely filed. Timely filing is jurisdictional. In civil case FRAP 4(a) and 4(c) set the following time limits:

FRAP 4(a)(1): The notice of appeal required by FRAP 3 "must be filed with the clerk of the district court within 30 days after the date of entry of the judgment or order appealed from; but if the United States or an officer or agency thereof is a party, the notice of appeal may be filed by any party within 60 days after such entry..." (Emphasis added). To be effective, the notice of appeal generally must be filed in the district court clerk's office within the time permitted. If a notice of appeal is mailed, it must be timely received and filed by the district court to be effective. FRAP 4(c) establishes special filing provisions for notices of appeal filed by an inmate confined in an institution, as discussed below.

FRAP 4(a)(3): "If one party timely files a notice of appeal, any other party may file a notice of appeal within 14 days after the date when the first notice was filed, or within the time otherwise prescribed by this Rule 4(a), whichever period last expires." (Emphasis added).

FRAP 4(a)(4): If any party makes a timely motion in the district court under the Federal Rules of Civil Procedure of a type specified in FRAP 4(a)(4), the time for appeal for all parties runs from the entry of the order disposing of the last such timely filed motion outstanding.

FRAP 4(a)(5) and FRAP 4(a)(6): The district court has power to extend the time to file a notice of appeal. Under FRAP 4(a)(5) the time may be extended if a motion for extension is filed within 30 days after expiration of the time otherwise permitted to file a notice of appeal. Under FRAP 4(a)(6) the time may be extended if the district court finds upon motion that a party has not received notice of entry of the judgment or order and that no party would be prejudiced by extension.

FRAP 4(c): "If an inmate confined in an institution files a notice of appeal in either a civil case or a criminal case, the notice of appeal is timely if it is deposited in the institution's internal mail system on or before the last day for filing. Timely filing may be shown by a notarized statement or by a declaration (in compliance with 28 U.S.C. §1746) setting forth the date of deposit and stating that first-class postage has been prepaid."

3. **Format of Notice of Appeal:** Form 1, FRAP Appendix of Forms, is a suitable format. See also FRAP 3(c). A single notice of appeal may be filed from a (single) judgment or order by two or more persons whose "interests are such as to make joinder practicable..." [FRAP 3(b)].

4. **Effect of Notice of Appeal:** A district court loses jurisdiction (authority) to act after the filing of a timely notice of appeal, except for actions in aid of appellate jurisdiction (see Fed.R.Civ.P. 60) or to rule on a timely motion of the type specified in FRAP 4(a)(4).

F I L E C O P Y

Date Printed: 06/15/2004

Notice sent to: *WA*

— Richard A. Gordon, Esq.
Law Office of Richard A. Gordon
400 Interstate North Parkway, Suite 890
Atlanta, GA 30339

6:03-cv-00249 hsh

— Cammi R. Jones, Esq.
Law Office of Richard A. Gordon
400 Interstate North Parkway, Suite 890
Atlanta, GA 30339

6:03-cv-00249 hsh

— Thomas F. Egan, Esq.
Thomas F. Egan, P.A.
204 Park Lake St.
Orlando, FL 32803

6:03-cv-00249 hsh

— Jon L. Spargur, Esq.
Alston & Bird, LLP
1201 W. Peachtree St., N.E.
Atlanta, GA 30309-3424

6:03-cv-00249 hsh

— William T. Plybon, Esq.
Alston & Bird, LLP
1201 W. Peachtree St., N.E.
Atlanta, GA 30309-3424

6:03-cv-00249 hsh

— A. Brian Phillips, Esq.
Ruden, McClosky, Smith, Schuster & Russell, P.A.
111 N. Orange Ave., Suite 1750
Orlando, FL 32801

6:03-cv-00249 hsh

— Dino E. Viera, Esq.
Fellers, Snider, Blankenship, Bailey & Tippens
100 N. Broadway, Suite 1700
Oklahoma City, OK 73102-8820

6:03-cv-00249 hsh

— William H. Whitehill Jr., Esq.

Case 5:06-fj-00002-F Document 1-2 Filed 03/16/2006 Page 4 of 4

Case 6:03-cv-00249-GAP-IGG Document 112 Filed 06/15/2004 Page 4 of 4
Fellers, Snider, Blankenship, Bailey & Tippens
100 N. Broadway, Suite 1700
Oklahoma City, OK 73102-8820

6:03-cv-00249 hsh

Sanford C. Coats, Esq.
Fellers, Snider, Blankenship, Bailey & Tippens
100 N. Broadway, Suite 1700
Oklahoma City, OK 73102-8820

6:03-cv-00249 hsh

JS 44 (Rev. 11/04)

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM.)

(a) PLAINTIFFS
 GARETH S. GELINAS, JEFFREY T. GELINAS, FRED POST,
 BARBARA POST, and JAMES W. JACKSON,
(b) County of Residence of First Listed Plaintiff Cobb County, GA
 (EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorney's (Firm Name, Address, and Telephone Number)
 Gordon & Jones, LLP 400 Interstate N. Pkwy #890, Atlanta, GA 30339
 (770) 952-2900

DEFENDANTS
 ACCELERATED BENEFITS CORPORATION and
 AMERICAN TITLE COMPANY OF ORLANDO
County of Residence of First Listed Defendant Orange County, FL
 (IN U.S. PLAINTIFF CASES ONLY)
 NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE
 LAND INVOLVED.

Attorneys (If Known)
 not known

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)
 1 U.S. Government Plaintiff
 2 U.S. Government Defendant
 3 Federal Question (U.S. Government Not a Party)
 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)
 (For Diversity Cases Only)

	PTF	DEF		PTF	DEF
Citizen of This State	<input type="checkbox"/> 1	<input type="checkbox"/> 1	Incorporated or Principal Place of Business in This State	<input type="checkbox"/> 4	<input type="checkbox"/> 4
Citizen of Another State	<input checked="" type="checkbox"/> 2	<input type="checkbox"/> 2	Incorporated and Principal Place of Business in Another State	<input type="checkbox"/> 5	<input checked="" type="checkbox"/> 5
Citizen or Subject of a Foreign Country	<input type="checkbox"/> 3	<input type="checkbox"/> 3	Foreign Nation	<input type="checkbox"/> 6	<input type="checkbox"/> 6

IV. NATURE OF SUIT (Place an "X" in One Box Only)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl. Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury PERSONAL INJURY <input type="checkbox"/> 362 Personal Injury - Med. Malpractice <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability PERSONAL PROPERTY <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 610 Agriculture <input type="checkbox"/> 620 Other Food & Drug <input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 630 Liquor Laws <input type="checkbox"/> 640 R.R. & Truck <input type="checkbox"/> 650 Airline Regs. <input type="checkbox"/> 660 Occupational Safety/Health <input type="checkbox"/> 690 Other <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Mgmt. Relations <input type="checkbox"/> 730 Labor/Mgmt. Reporting & Disclosure Act <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Empl. Ret. Inc. Security Act	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark SOCIAL SECURITY <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) FEDERAL TAX SUITS <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609	<input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 810 Selective Service <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 875 Customer Challenge 12 USC 3410 <input checked="" type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 892 Economic Stabilization Act <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 894 Energy Allocation Act <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice <input type="checkbox"/> 950 Constitutionality of State Statutes
REAL PROPERTY <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	CIVIL RIGHTS <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 444 Welfare <input type="checkbox"/> 445 Amer. w/Disabilities - Employment <input type="checkbox"/> 446 Amer. w/Disabilities - Other <input type="checkbox"/> 440 Other Civil Rights	PRISONER PETITIONS <input type="checkbox"/> 510 Motions to Vacate Sentence <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition		

V. ORIGIN (Place an "X" in One Box Only)
 1 Original Proceeding
 2 Removed from State Court
 3 Remanded from Appellate Court
 4 Reinstated or Reopened
 5 Transferred from another district (specify)
 6 Multidistrict Litigation
 7 Appeal to District Judge from Magistrate Judgment

VI. CAUSE OF ACTION
 Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):
28 USCA Section 1651

Brief description of cause:
seeks post judgment Writ of Execution

VII. REQUESTED IN COMPLAINT:
 CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23
 DEMAND \$ _____
 CHECK YES only if demanded in complaint:
 JURY DEMAND: Yes No

VIII. RELATED CASE(S) IF ANY (See instructions):
 JUDGE _____ DOCKET NUMBER _____

DATE 3/16/06
 SIGNATURE OF ATTORNEY OF RECORD


FOR OFFICE USE ONLY
 RECEIPT # _____ AMOUNT _____ APPLYING IFP _____ JUDGE _____ MAG. JUDGE _____

UNITED STATES DISTRICT COURT

MIDDLE

DISTRICT OF

FLORIDA

ORLANDO DIVISION

GARETH S. GELINAS et al

CERTIFICATION OF JUDGMENT FOR REGISTRATION IN ANOTHER DISTRICT

V.

ACCELERATED BENEFITS CORPORATION and AMERICAN TITLE COMPANY OF ORLANDO,

Case Number: 6:03-cv-249-orl-31JGG

I, SHERYL L. LOESCH

Clerk of the United States district court certify that the

attached judgment is a true and correct copy of the original judgment entered in this action

Sept 17, 2004

Date

appears in the records of this court, and that

an appeal was taken from this Judgment and the appeal was dismissed by Order entered on May 31, 2005.

IN TESTIMONY WHEREOF, I sign my name and affix the seal of this Court.

3-15-06

Date

SHERYL L. LOESCH

Clerk

(By) Deputy Clerk

Insert the appropriate language: ...“no notice of appeal from this judgment has been filed, and no motion of any kind listed in Rule 4(a) of the Federal Rules of Appellate Procedure has been filed.” ...“no notice of appeal from this judgment has been filed, and any motions of the kinds listed in Rule 4(a) of the Federal Rules of Appellate Procedure () have been disposed of, the latest order disposing of such a motion having been entered on [date].” ...“an appeal was taken from this judgment and the judgment was affirmed by mandate of the Court of Appeals issued on [date].” ...“an appeal was taken from this judgment and the appeal was dismissed by order entered on [date].”

(* Note: The motions listed in Rule 4(a), Fed. R. App. P., are motions: for judgment notwithstanding the verdict; to amend or make additional findings of fact; to alter or amend the judgment; for a new trial; and for an extension of time for filing a notice of appeal.)

**UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
ORLANDO DIVISION**

**GARETH S. GELINAS, JEFFREY T.
GELTNAS, FRED POST, BARBARA D. POST,
and JAMES W. JACKSON,**

Plaintiffs,

-vs-

Case No. 6:03-cv-249-Orl-31JGG

**ACCELERATED BENEFITS CORPORATION,
and AMERICAN TITLE COMPANY OF
ORLANDO,**

Defendants.

JUDGMENT IN A CIVIL CASE

Decision by Court. This action came to trial or hearing before the Court. The issues have been tried or heard and a decision has been rendered.

IT IS ORDERED AND ADJUDGED

Judgment is entered for Plaintiffs, Gareth S. Gelinas, Jeffrey T. Gelinas, Fred Post, Barbara D. Post and James W. Jackson and against Defendant, Accelerated Benefits Corporation, in the amount of \$51,686.17.

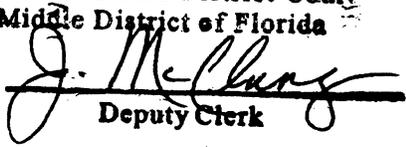
Date: September 17, 2004

SHERYL L. LOESCH, CLERK

I certify the foregoing to be a true and correct copy of the original.

SHERYL L. LOESCH, Clerk
United States District Court
Middle District of Florida

By: s/H. Lang, Deputy Clerk

By: 
Deputy Clerk

1. **Appealable Orders:** Courts of Appeals have jurisdiction conferred and strictly limited by statute:

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CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM.)

I. (a) PLAINTIFFS

GARETH S. GELINAS, JEFFREY T. GELINAS, FRED POST,
BARBARA POST, and JAMES W. JACKSON,

(b) County of Residence of First Listed Plaintiff Cobb County, GA
(EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorney's (Firm Name, Address, and Telephone Number)

Gordon & Jones, LLP 400 Interstate N. Pkwy #890, Atlanta, GA 30339
(770) 952-2900

DEFENDANTS

ACCELERATED BENEFITS CORPORATION and
AMERICAN TITLE COMPANY OF ORLANDO

County of Residence of First Listed Defendant Orange County, FL
(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE
LAND INVOLVED.

Attorneys (If Known)

not known

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- 1 U.S. Government Plaintiff
- 2 U.S. Government Defendant
- 3 Federal Question (U.S. Government Not a Party)
- 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- | | | | | | |
|-----------------------------------------|---------------------------------------|----------------------------|---------------------------------------------------------------|----------------------------|---------------------------------------|
| | PTF | DEF | | PTF | DEF |
| Citizen of This State | <input type="checkbox"/> 1 | <input type="checkbox"/> 1 | Incorporated or Principal Place of Business In This State | <input type="checkbox"/> 4 | <input type="checkbox"/> 4 |
| Citizen of Another State | <input checked="" type="checkbox"/> 2 | <input type="checkbox"/> 2 | Incorporated and Principal Place of Business In Another State | <input type="checkbox"/> 5 | <input checked="" type="checkbox"/> 5 |
| Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3 | <input type="checkbox"/> 3 | Foreign Nation | <input type="checkbox"/> 6 | <input type="checkbox"/> 6 |

IV. NATURE OF SUIT (Place an "X" in One Box Only)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl. Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury	PERSONAL INJURY <input type="checkbox"/> 362 Personal Injury - Med. Malpractice <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability PERSONAL PROPERTY <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 610 Agriculture <input type="checkbox"/> 620 Other Food & Drug <input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 630 Liquor Laws <input type="checkbox"/> 640 R.R. & Truck <input type="checkbox"/> 650 Airline Regs. <input type="checkbox"/> 660 Occupational Safety/Health <input type="checkbox"/> 690 Other	<input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 810 Selective Service <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 875 Customer Challenge 12 USC 3410 <input checked="" type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 892 Economic Stabilization Act <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 894 Energy Allocation Act <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice <input type="checkbox"/> 950 Constitutionality of State Statutes
REAL PROPERTY <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	CIVIL RIGHTS <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 444 Welfare <input type="checkbox"/> 445 Amer. w/Disabilities - Employment <input type="checkbox"/> 446 Amer. w/Disabilities - Other <input type="checkbox"/> 440 Other Civil Rights	PRISONER PETITIONS <input type="checkbox"/> 510 Motions to Vacate Sentence Habeas Corpus: <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark SOCIAL SECURITY <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) FEDERAL TAX SUITS <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609	

V. ORIGIN

(Place an "X" in One Box Only)

- 1 Original Proceeding
- 2 Removed from State Court
- 3 Remanded from Appellate Court
- 4 Reinstated or Reopened
- 5 Transferred from another district (specify)
- 6 Multidistrict Litigation
- 7 Appeal to District Judge from Magistrate Judgment

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):
28 USCA Section 1651

Brief description of cause:
seeks post judgment Writ of Execution

VII. REQUESTED IN COMPLAINT:

CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23

DEMAND \$

CHECK YES only if demanded in complaint:

JURY DEMAND: Yes No

VIII. RELATED CASE(S) IF ANY

(See instructions):

JUDGE

DOCKET NUMBER

DATE 3/16/06

SIGNATURE OF ATTORNEY OF RECORD

FOR OFFICE USE ONLY

RECEIPT # _____ AMOUNT _____ APPLYING IFP _____ JUDGE _____ MAG. JUDGE _____

Issued this 16th day of August, 2006, and shall be returned with proof of service within ten (10) days of this date.

ROBERT DENNIS, CLERK

U.S. District Court, Western District of Oklahoma

By: Bess Booles

Deputy Clerk

Gareth S. Gelinas

Plaintiff

Stanley Ward, Esq.

Local Attorney for Plaintiff

Oklahoma Bar Association No.: 9351

Address: Ward & Glass, LLP

One Corporate Center

2600 John Saxon Blvd., Suite 350

Norman, Oklahoma 73071

Cammi R. Jones, Esq.

Attorney for Plaintiff

Georgia Bar Number: 398999

Address: 400 Interstate North Pkwy. Suite 890

Atlanta, Georgia 30339

Phone: (770) 952-2900

OFFICER'S RETURN

Received this writ on the ___ day of _____, 2006, at _____ o'clock
___ .m. by _____.

Dated this ___ day of _____, 2006.

Sheriff

Deputy

Issued this 16th day of August, 2006, and shall be returned with proof of service within ten (10) days of this date.

ROBERT DENNIS, CLERK

U.S. District Court, Western District of Oklahoma

By: LESA BOLES

Deputy Clerk

Gareth S. Gelinas

Plaintiff

Stanley Ward, Esq.

Local Attorney for Plaintiff

Oklahoma Bar Association No.: 9351

Address: Ward & Glass, LLP

One Corporate Center

2600 John Saxon Blvd., Suite 350

Norman, Oklahoma 73071

Cammi R. Jones, Esq.

Attorney for Plaintiff

Georgia Bar Number: 398999

Address: 400 Interstate North Pkwy. Suite 890

Atlanta, Georgia 30339

Phone: (770) 952-2900

OFFICER'S RETURN

Received this writ on the ___ day of _____, 2006, at _____ o'clock
___ .m. by _____.

Dated this ___ day of _____, 2006.

Sheriff

Deputy

IN THE UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF OKLAHOMA

GARETH S. GALINAS, JEFFREY T.)
GALINAS, FRED POST, BARBARA D.)
POST and JAMES W. JACKSON,)

Plaintiffs,)

vs.)

CIVIL ACTION NO.5:06-FJ-02-F

ACCELERATED BENEFITS)
CORPORATION and AMERICAN)
TITLE COMPANY OF ORLANDO,)

Defendants,)

and)

KIRKPATRICK BANK, HTM)
CONSERVATOR, L.L.C., and)
H. THOMAS MORAN, individually)

Garnishees.)

NON-CONTINUING AND GENERAL GARNISHEE'S
ANSWER/AFFIDAVIT

STATE OF OKLAHOMA)
COUNTY OF OKLAHOMA) ss:

I, H. Thomas Moran, being duly sworn deposes and says:

IF GARNISHEE IS AN INDIVIDUAL:

[XX] That he is the garnishee herein. That he does business in the name of H. Thomas Moran, Conservator of Certain Assets of Accelerated Benefits Corporation.

IF GARNISHEE IS A PARTNERSHIP:

That he is a member of _____, a partnership composed of garnishee and _____.

IF GARNISHEE IS A CORPORATION:

That he is the _____ of _____, a corporation, organized under the laws of the State of _____.

Garnishee or _____, on behalf of garnishee having been served with a garnishment summons on the the _____ day of _____, 2006, and



9/20/06 #18

having knowledge of the facts and being sworn, states:

- 1. At the time of the service of the garnishment summons, or upon the date it became effective, the garnishee was not indebted to the judgment debtor for any amount of money nor did the garnishee have possession or control of any property, money, goods, chattels, credits, negotiable instruments, or effects belonging to the judgment debtor or in which the judgment debtor had an interest because the employee/individual/judgment debtor was:

Not Employed

Employed but no amounts due--specify reason: _____

Other, specify: _____

- 2. At the time of service of the garnishment summons or upon the date it became effective, the garnishee was indebted to the judgment debtor or had possession or control of the following property, money, goods, chattels, credits, negotiable instruments, or effects belonging to the judgment debtor as follows:

Earnings as shown on the Calculation for Garnishment of Earnings Form (on reverse side) which is incorporated by reference into this Answer;

Other, specify: \$16.71 for investment distributions.

- 3. Nothing has been withheld due to a prior garnishment or continuing garnishment which will expire on _____ and is in case # _____ in the District Court of _____ County, Oklahoma.

- 4. On September 18, 2006, the garnishee mailed a copy of the Notice of Garnishment & Exemptions and Application for Hearing by first-class mail to the judgment debtor at:

William H. Whitehill, Jr., Esq.
Fellers, Snider, Blankenship,
Bailey & Tippens, P.C.
100 North Broadway Avenue, Suite 1700
Oklahoma City, Oklahoma 73102
Attorney for Defendants,
Accelerated Benefits Corporation

or hand-delivered the same to judgment debtor at:

- 5. The garnishee makes the following claim of exemption on the part of the judgment debtor, or has the following objections, defenses, or setoffs to judgment creditor's right to apply garnishee's indebtedness to judgment debtor upon judgment creditor's claim.

All amounts held by Garnishee are subject to set-off of debt owed to Garnishee by

Judgment Debtor pursuant to two Journal Entries of Judgment issued by the District Court of Oklahoma County, Oklahoma on the 20th day of November, 2002 in Case No. CJ-99-2500. Further, the amounts held by Garnishee are being held pursuant to an Order entered by the District Court of Oklahoma County, Oklahoma on the 1st day of February, 2006 in Case No. CJ-99-2500.

Check here if additional pages are necessary [].

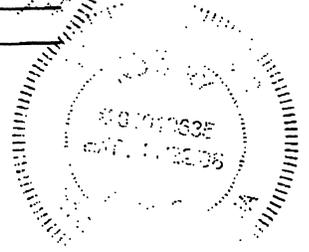
Date: _____ By: *H. Thomas Moran*
H. THOMAS MORAN

SUBSCRIBED AND SWORN TO before me this 18th day of September, 2006, by H. Thomas Moran.

Jimmie Thomas
Notary Public

My Commission No. _____
Expires _____

[SEAL]



IN THE UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF OKLAHOMA

GARETH S. GALINAS, JEFFREY T.)
GALINAS, FRED POST, BARBARA D.)
POST and JAMES W. JACKSON,)

Plaintiffs,)

vs.)

CIVIL ACTION NO.5:06-FJ-03-F

ACCELERATED BENEFITS)
CORPORATION and AMERICAN)
TITLE COMPANY OF ORLANDO,)

Defendants,)

and)

KIRKPATRICK BANK, HTM)
CONSERVATOR, L.L.C., and)
H. THOMAS MORAN, individually)

Garnishees.)

NON-CONTINUING AND GENERAL GARNISHEE'S
ANSWER/AFFIDAVIT

STATE OF OKLAHOMA)
COUNTY OF OKLAHOMA) ss:

I, H. Thomas Moran, being duly sworn deposes and says:

IF GARNISHEE IS AN INDIVIDUAL:

[XX] That he is the garnishee herein. That he does business in the name of H. Thomas Moran, Conservator of Certain Assets of Accelerated Benefits Corporation.

IF GARNISHEE IS A PARTNERSHIP:

That he is a member of _____, a partnership composed of garnishee and _____.

IF GARNISHEE IS A CORPORATION:

That he is the _____ of _____, a corporation, organized under the laws of the State of _____.

Garnishee or _____, on behalf of garnishee having been served with a garnishment summons on the the _____ day of _____, 2006, and

9/8/06 #18

having knowledge of the facts and being sworn, states:

1. At the time of the service of the garnishment summons, or upon the date it became effective, the garnishee was not indebted to the judgment debtor for any amount of money nor did the garnishee have possession or control of any property, money, goods, chattels, credits, negotiable instruments, or effects belonging to the judgment debtor or in which the judgment debtor had an interest because the employee/individual/judgment debtor was:

Not Employed

Employed but no amounts due--specify reason: _____

Other, specify: _____

2. At the time of service of the garnishment summons or upon the date it became effective, the garnishee was indebted to the judgment debtor or had possession or control of the following property, money, goods, chattels, credits, negotiable instruments, or effects belonging to the judgment debtor as follows:

Earnings as shown on the Calculation for Garnishment of Earnings Form (on reverse side) which is incorporated by reference into this Answer;

Other, specify: \$16.71 for investment distributions.

3. Nothing has been withheld due to a prior garnishment or continuing garnishment which will expire on _____ and is in case # _____ in the District Court of _____ County, Oklahoma.

4. On September 7, 2006, the garnishee mailed a copy of the Notice of Garnishment & Exemptions and Application for Hearing by first-class mail to the judgment debtor at:

William H. Whitehill, Jr., Esq.
Fellers, Snider, Blankenship,
Bailey & Tippens, P.C.
100 North Broadway Avenue, Suite 1700
Oklahoma City, Oklahoma 73102
Attorney for Defendants,
Accelerated Benefits Corporation

or hand-delivered the same to judgment debtor at:

5. The garnishee makes the following claim of exemption on the part of the judgment debtor, or has the following objections, defenses, or setoffs to judgment creditor's right to apply garnishee's indebtedness to judgment debtor upon judgment creditor's claim.

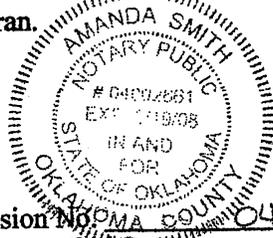
All amounts held by Garnishee are subject to set-off of debt owed to Garnishee by

Judgment Debtor pursuant to two Journal Entries of Judgment issued by the District Court of Oklahoma County, Oklahoma on the 20th day of November, 2002 in Case No. CJ-99-2500. Further, the amounts held by Garnishee are being held pursuant to an Order entered by the District Court of Oklahoma County, Oklahoma on the 1st day of February, 2006 in Case No. CJ-99-2500.

Check here if additional pages are necessary [].

Date: 9/7/06 By: *H. Thomas Moran*
H. THOMAS MORAN

SUBSCRIBED AND SWORN TO before me this 7 day of September, 2006, by H. Thomas Moran.



Amanda Smith
Notary Public

My Commission No. 04002661
Expires 3/31/08

[SEAL]

CERTIFICATE OF MAILING

- I hereby certify that on September 8, 2006, I electronically transmitted the attached document to the Clerk of the Court using the ECF System for filing and transmittal of a Notice of Electronic Filing to the following ECF registrants:

Cammi Ryan Jones cjlaw1@bellsouth.net

Richard A. Gordon gjlaw@bellsouth.net

Stanley M. Ward carol@wardglasslaw.com

- I also hereby certify that on September 8, 2006, I sent true and correct copies of the attached document, via first-class mail, postage prepaid, to:

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

Patricia A. Labarthe, Esq.
Oklahoma Department of Securities
First National Center, Suite 860
120 North Robinson
Oklahoma City, OK 73102
*Attorneys for Defendant,
Oklahoma Department of Securities,
ex rel., Irving L. Faught, Administrator*

/s Thomas P. Manning

GORDON & JONES, LLP
Attorneys at Law

400 Interstate N. Pkwy. Ste. 890
Atlanta, Georgia 30339
(770) 952-2900
gjlaw@bellsouth.net

By: /s/Cammi R. Jones

Cammi R. Jones
Ga. Bar No. 398999

WARD & GLASS, L.L.P.
Attorneys at Law

One Corporate Center, Suite 350
2600 John Saxon Blvd.
Norman, OK 73071

By: /s/Stanley Ward

Stanley Ward
Oklahoma Bar #9351

IN THE UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF OKLAHOMA

GARETH S. GELINAS, JEFFREY T.)	
GELINAS, FRED POST, BARBARA D.)	
POST, and JAMES W. JACKSON,)	CIVIL ACTION NO. 5:06-fj-02
)	
Plaintiffs,)	
)	
Vs.)	
ACCELERATED BENEFITS)	
CORPORATION and AMERICAN)	
TITLE COMPANY OF ORLANDO,)	
)	
Defendants.)	
)	
and)	
)	
KIRKPATRICK BANK, HTM CONSERVATOR,)	
L.L.C., and H. THOMAS MORAN, individually)	
)	
Garnishees.)	

CERTIFICATE OF MAILING

I hereby certify that on September 25, 2006, I electronically transmitted the attached document to the Clerk of Court using the CM/ECF system for filing and transmittal of a Notice of Electronic Filing to the following registered ECF users:

Thomas P. Manning	ecf@phillipsmcfall.com ,
	Tpmanning@phillipsmcfall.com
	Dmcaldwel@phillipsmcfall.com

Stanley M. Ward	carol@wardglasslaw.com
-----------------	--------------------------------------------------------------------

I also hereby certify that on September 14, 2006, I sent true and correct copies of the attached document, via first class mail, postage prepaid to:

Kirkpatrick Bank
Attn: Mr. James A. Shane, Vice-President
15 E. 15th Street
Edmond, OK 75013

William H. Whitehill, Jr., Esq.
Fellers, Snider, Blankenship, Bailey & Tippens, P.C.
100 North Broadway Avenue, Suite 1700
Oklahoma City, OK 73102

Attorney for Defendants, Accelerated Benefits Corporation and American Title Company of Orlando

/s Cammi R. Jones

GORDON & JONES, LLP
Attorneys at Law

400 Interstate N. Pkwy. Ste. 890
Atlanta, Georgia 30339
(770) 952-2900
gjlaw@bellsouth.net

By: /s/Cammi R. Jones

Cammi R. Jones
Ga. Bar No. 398999

WARD & GLASS, L.L.P.
Attorneys at Law

One Corporate Center, Suite 350
2600 John Saxon Blvd.
Norman, OK 73071

By: /s/Stanley Ward

Stanley Ward
Oklahoma Bar #9351

IN THE UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF OKLAHOMA

GARETH S. GELINAS, JEFFREY T.)	
GELINAS, FRED POST, BARBARA D.)	
POST, and JAMES W. JACKSON,)	CIVIL ACTION NO. 5:06-fj-02
)	
Plaintiffs,)	
)	
Vs.)	
)	
ACCELERATED BENEFITS)	
CORPORATION and AMERICAN)	
TITLE COMPANY OF ORLANDO,)	
)	
Defendants.)	
)	
and)	
)	
KIRKPATRICK BANK, HTM CONSERVATOR,)	
L.L.C., and H. THOMAS MORAN, individually)	
)	
Garnishees.)	

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Thomas P. Manning	<u>ecf@phillipsmcfall.com</u> ,
	<u>Tpmanning@phillipsmcfall.com</u>
	<u>Dmcaldwell@phillipsmcfall.com</u>

Stanley M. Ward	<u>carol@wardglasslaw.com</u>
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Fellers, Snider, Blankenship, Bailey & Tippens, P.C.
100 North Broadway Avenue, Suite 1700
Oklahoma City, OK 73102

*Attorney for Defendants, Accelerated Benefits Corporation and
American Title Company of Orlando*

/s Cammi R. Jones

IN THE UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF OKLAHOMA

GARETH S. GELINAS, JEFFREY T.)	
GELINAS, FRED POST, BARBARA D.)	
POST, and JAMES W. JACKSON,)	CIVIL ACTION NO. 5:06-fj-03
)	
Plaintiffs,)	
)	
Vs.)	
)	
ACCELERATED BENEFITS)	
CORPORATION and AMERICAN)	
TITLE COMPANY OF ORLANDO,)	
)	
Defendants.)	
and)	
)	
KIRKPATRICK BANK, HTM CONSERVATOR,)	
L.L.C., and H. THOMAS MORAN, individually)	
)	
Garnishees.)	

TRAVERSE OF ANSWER OF POSTJUDGMENT GARNISHMENT

Come Now Gareth S. Gelinias, Jeffrey T. Gelinias, Fred Post, Barbara Post, and James W. Jackson, the Plaintiffs herein, and traverse the Non-Continuing and General Garnishee, H. Thomas Moran's Answer of Garnishment filed on September 7, 2006. Plaintiffs dispute that H. Thomas Moran is entitled to hold the amounts claimed to be "set-off of debt owed to Garnishee by Judgment Debtor". Plaintiffs seek a hearing in the above captioned matter.

This 14th day of September, 2006.

[signatures follow]

9/15/06 #20

GORDON & JONES, LLP
Attorneys at Law

400 Interstate N. Pkwy. Ste. 890
Atlanta, Georgia 30339
(770) 952-2900
gjlaw@bellsouth.net

By: /s/Cammi R. Jones

Cammi R. Jones
Ga. Bar No. 398999

WARD & GLASS, L.L.P.
Attorneys at Law

One Corporate Center, Suite 350
2600 John Saxon Blvd.
Norman, OK 73071

By: /s/Stanley Ward

Stanley Ward
Oklahoma Bar #9351

IN THE UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF OKLAHOMA

GARETH S. GELINAS, JEFFREY T.)
GELINAS, FRED POST, BARBARA D.)
POST, and JAMES W. JACKSON,) CIVIL ACTION NO. 5:06-fj-03
)
Plaintiffs,)
)
Vs.)
)
ACCELERATED BENEFITS)
CORPORATION and AMERICAN)
TITLE COMPANY OF ORLANDO,)
)
Defendants.)
)
and)
)
KIRKPATRICK BANK, HTM CONSERVATOR,)
L.L.C., and H. THOMAS MORAN, individually)
)
Garnishees.)

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Thomas P. Manning	<u>ecf@phillipsmcfall.com,</u>
	<u>Tpmanning@phillipsmcfall.com</u>
	<u>Dmcaldwell@phillipsmcfall.com</u>

Stanley M. Ward	<u>carol@wardglasslaw.com</u>
-----------------	---------------------------------------------------------------------------

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

/s Cammi R. Jones

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

UNITED STATES COURTHOUSE
N.W. 4TH AND HARVEY, OKLAHOMA CITY, OKLAHOMA

AMENDED

STATUS/SCHEDULING CONFERENCE DOCKET BEFORE JUDGE STEPHEN P. FRIOT
IN CHAMBERS - ROOM 3102

MONDAY - DECEMBER 1, 2008
(previously set on Monday - November 24, 2008)

(Note: Times have changed)

NOTICE TO ALL COUNSEL: Local Rule 16.1 requires the filing of a Joint Status Report. The report must be filed not later than **Wednesday, November 19, 2008**. The Status Report is a joint report to be initiated by counsel for plaintiff. It should include a concise statement of the case to inform the court of the basic factual background and primary contentions of the parties. (LCvR16.1).

All counsel and pro se litigants are directed to familiarize themselves with Judge Friot's chambers procedures which may be found at <http://www.okwd.uscourts.gov/files/jfriotrules.pdf>. If you do not have internet access, the courtroom deputy will be happy to give you a copy of these chambers procedures. You will be asked at the status and scheduling conference whether you have any questions about these chambers procedures. Counsel should pay particular attention to the court's expectations, based on the Federal Rules of Civil Procedure and applicable case law, with respect to full and timely compliance with requirements with respect to Rule 26(a)(2)(B) reports from retained experts.

Pursuant to Rule 26(f), Fed.R.Civ.P., the parties are excused from submitting a written discovery plan. The parties shall be prepared to discuss any unusual discovery-related matters at the status/scheduling conference.

Even though the parties are excused from submitting a written discovery plan, the parties must confer, prior to the status and scheduling conference, with respect to "any issues relating to disclosure or discovery of electronically stored information, including the form or forms in which it should be produced," as set forth in Rule 26(f). The court will expect the parties, having so conferred, to be prepared to discuss any unresolved issues at the status and scheduling conference.

Pursuant to Rule 26(d), the parties are authorized to begin discovery immediately.

The disclosures required by Fed.R.Civ.P. 26(a)(1) must be made not later than seven days before the date of the status/scheduling conference.



Counsel whose offices are outside Oklahoma County and pro se parties who live outside Oklahoma County may attend the conference by telephone, provided that appropriate arrangements are made at least 24 hours in advance by contacting Courtroom Deputy Lori Gray (405-609-5502).

Counsel should carefully read and heed Sections 3 and 4 of the OBA Standards of Professionalism, adopted by the OBA on November 20, 2002 (accessible at the OBA website).

All attorneys and other persons entering the U.S. Courthouse will be required to show valid photo identification to the Court Security Officer.

10:00 A.M.

CIV-08-856-F	Stephen B. George, as Guardian and Next Friend of Stephen L. George, an incapacitated person	G. Thorne Stallings, Jr. James N. Edmonds John S. Gladd
	-vs-	
	Curwood, Inc., a Delaware corporation, et al.	J. Chris Condren Kristina L. Bell Sean H. McKee Steven W. Simcoe

10:15 A.M.

CIV-08-704-F	J&J Sports Productions, Inc.	Breanna Marie Grove Adam S. Weintraub
	-vs-	
	Panchita's, an unknown business entity, d/b/a Panchita's, et al.	

10:30 A.M.

CIV-08-1004-F	Drummond American Corporation	Adam W. Childers Jacqueline C. Johnson Jeremy W. Hawpe W. Joseph Miguez, III
	-vs-	
	Share Corporation and Sheila Manning	Michael F. Lauderdale

10:45 A.M.

CIV-08-1052-F

Stephanie Wiles and Joe Wiles,
individually, as husband and wife,
and as parents and next friends of
their children, et al.

Walter D. Haskins, III

-vs-

The Sherwin-Williams Co., an Ohio
for-profit corporation

Gregory A. Mueggenborg
Robert P. Redemann

11:00 A.M.

CIV-08-1062-F

Charles Wirtz, Jr. and Christy
Callahan

William D. Smith

-vs-

State Farm Mutual Automobile
Insurance Company

Daniel C. Andrews
David V. Jones
Benjamin G. Kemble
Holly D. Shull

11:15 A.M.

CIV-06-871-F

Wahiid M. Alamiin a/k/a James
Shockey

John Mac Hayes

-vs-

Jewel Beasley, et al.

Don G. Pope
John H. Graves

1:30 P.M.

CIV-07-121-F

Robert L. Thomas and Amanda
Thomas, individually and on behalf
of all others similarly situated

Brian L. Cramer
Carolyn G. Anderson
David B. Donchin
G. Pat O'Hara
Guy R. Wood
Mark E. Bialick
Michael Burrage
Patrick O'Hara, Jr.
Reggie N. Whitten
Rodney D. Stewart
Timothy John M. Becker
Venessa R. Bentwood
Lauren Fisher Guhl

-vs-

Metropolitan Life Insurance Company
and MetLife Securities, Inc.

Daniel M. Lane
Michael J. Biles
Nada L. Ismail
Yusuf A. Bajwa
David L. Kearney
Emiline T. Ebrite

1:45 P.M.

CIV-08-1038-F

Jessica Helfenbein, Personal
Representative of the Estate of
Donna Eugenia Wagner, Deceased

Kelly S. Bishop
Ed D. Abel

-vs-

Marvel Industries, Inc., et al.

Linda G. Kaufman
James A. Jennings, III
Robert S. Duran, Jr.
Anton J. Rupert

2:00 P.M.

CIV-08-746-F

Joe Cooper Truck Center. LLC

Lyndon W. Whitmire

-vs-

Freightliner of Grand Rapids, Inc.,
et al.

C. Russell Woody

2:15 P.M.

CIV-08-627-F

Ramona Stults, individually and on behalf of all others similarly situated

George H. Brown
Tony Gould

-vs-

Horace Mann Property & Casualty Insurance Company, a foreign corporation

Jerry D. Noblin, Jr.
Ronald L. Walker

2:30 P.M.

CIV-08-819-F

Autumn Bridge, LLC

Linda G. Scoggins
Sarah J. Glick
D. Benham Kirk, Jr.

-vs-

Michael O. Leavitt, Secretary of United States Department of Health and Human Services

H. Lee Schmidt

2:45 P.M.

CIV-08-1067-F

Fred Flores

Darren M. Tawwater
Larry A. Tawwater
David N. Mayo

-vs-

Monumental Life Insurance Company

Mary S. Robertson

3:00 P.M.

FJ-06-002-F

Gareth S. Gelinias, et al.

Cammi Ryan Jones
Richard A. Gordon
Stanley M. Ward

-vs-

Accelerated Benefits Corporation and American Title Company of Orlando

William H. Whitehill, Jr.

and

Kirkpatrick Bank, HTM Conservator, L.L.C., and H. Thomas Moran, individually

Shannon K. Emmons

-and-

FJ-06-003-F

Gareth S. Gelinas, et al.

-vs-

Accelerated Benefits Corporation
and American Title Company of
Orlando

and

Kirkpatrick Bank, HTM Conservator,
L.L.C., and H. Thomas Moran,
individually

Cammi Ryan Jones
Richard A. Gordon
Stanley M. Ward

William H. Whitehill, Jr.

Shannon K. Emmons

3:15 P.M.

CIV-08-924-F

Tonnia Anderson, Ph.D.

-vs-

State of Oklahoma, ex rel. The Board
of Regents of the University of
Oklahoma, a constitutional state
agency

Scott F. Brockman
Scott K. Thomas
Stanley M. Ward
Woodrow K. Glass

Shawnae E. Robey
Matthew Ryan Stangl

3:30 P.M.

CIV-08-1089-F

Robert Duarte

-vs-

Batmagnai Chulungaatar,
Preferred Transit, Inc., and
National Liability & Fire Insurance
Company

Ed D. Abel
Mariano Acuna

Bart J. Robey
James W. Dobbs

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

GARETH S. GELINAS, JEFFREY T.)	
GELINAS, FRED POST, BARBARA D.)	
POST, and JAMES W. JACKSON,)	CIV-06-002-F
)	
Plaintiffs,)	
)	
Vs.)	
)	
ACCELERATED BENEFITS)	
CORPORATION,)	
)	
Defendants,)	
and)	
)	
KIRKPATRICK BANK, HTM)	
CONSERVATOR, L.L.C., and)	
H. THOMAS MORAN, individually,)	
)	
Garnishees.)	

JOINT STATUS REPORT AND DISCOVERY PLAN

Date of Conference: December 1, 2008

Appearing for Plaintiffs: Richard A. Gordon

Appearing for Garnishees: Shannon K. Emmons, Phillips Murrah P.C.

Defendant: Plaintiffs' counsel provided Defendant's counsel with a copy of the draft Joint Status Report, but has received no response and has not been notified that Defendant intends to appear at the Status Conference.

Jury Trial Demanded - Non-Jury Trial



1. **BRIEF PRELIMINARY STATEMENT.**

On February 7, 2002, by Order of the District Court of Oklahoma County in the matter of *Oklahoma Dept. of Securities v. Accelerated Benefits Corp.*, CJ-99-2500-66 (the "Conservatorship Court"), H. Thomas Moran ("Mr. Moran") was appointed Conservator of certain assets of Accelerated Benefits Corporation ("ABC"), including life insurance policies owned by ABC.

On February 21, 2002, the Conservatorship Court entered its Order authorizing the establishment of HTM Conservator, LLC ("HTM") and granting authority to transfer title to viatical and/or life settlement policies belonging to the Conservatorship to HTM. In accordance with the Orders of the Conservatorship Court, and under the Conservatorship Court's authority and supervision, title to the viatical and life settlement policies were transferred to HTM.

The Plaintiffs hold Judgments against ABC, entered by the U.S. District Court, for the Middle District of Florida on June 15, 2004 in the amount of \$281,229.71, and on September 17, 2004 in the amount of \$51,686.17. The Judgments were domesticated in Oklahoma on March 16, 2006 by the U.S. District Court for the Western District Court of Oklahoma.

On August 16, 2006 Plaintiffs commenced a garnishment action against Mr. Moran. In his Answer, Mr. Moran stated that at the time the Garnishment Summons was served Mr. Moran, as Conservator, was indebted to ABC, judgment debtor, or had possession or control of \$16.71 for investment distributions. Mr. Moran also stated that

all amounts held were subject to set-off of debt owed to pursuant to Judgments entered against ABC and in favor of the Conservatorship. Mr. Moran further stated in his Answer that the amounts held by Mr. Moran were held pursuant to the Conservatorship Court's Order.

On September 25, 2006, Plaintiffs filed their Traverse of Answer of Postjudgment Garnishment disputing that Mr. Moran is entitled to hold the amounts claimed to be a set-off of debt owed by ABC.

2. **JURISDICTION.**

Plaintiffs have invoked jurisdiction on the basis of diversity, 28 USCA §1651.

Mr. Moran objects to the Court's exercise of jurisdiction. Because there is an ongoing state court proceeding, the Court is required to abstain from exercising jurisdiction. Mr. Moran anticipates filing a Motion to Dismiss on these grounds, and taking further appropriate action in the state court proceeding.

3. **STIPULATED FACTS.** Generally, all relevant facts (as stated in Paragraph 1 above) are matters of public record.

4. **CONTENTIONS AND CLAIMS FOR DAMAGES OR OTHER RELIEF SOUGHT.**

a. **Plaintiff:** Plaintiffs seek a determination with respect to the priority of claim as between a Conservator appointed under state law, or the holder of a perfected federal court judgment Plaintiffs also seek judgment against Garnishees for the amount of the assets of Defendant, Accelerated Benefits Corporation in their hands as of the date of

service of summons of garnishment, up to the amount of Plaintiffs' Judgments.

b. Defendant: Not applicable.

c. Garnishee: As stated by Mr. Moran in his Answer, in his capacity as Conservator he held \$16.71 that was due to ABC as investment distribution. Mr. Moran was not indebted to ABC for any other sums. Furthermore, Mr. Moran does not hold any assets of ABC in his capacity as Conservator. Title to certain assets of ABC was transferred to HTM by Order of the Conservatorship Court. With the transfer of title to these assets in 2002, they became the property of HTM.

In their objection to Mr. Moran's Answer, Plaintiffs only disputed whether Mr. Moran is entitled to hold the amounts claimed to be a set-off of debt owed by ABC. The "amounts claimed" totaled \$16.71, the amount Mr. Moran, in his capacity as Conservator, was indebted to ABC as investment distribution. Plaintiffs did not make any objection or claim that they should be allowed to execute on the Conservatorship's assets to satisfy Plaintiffs' Judgments against ABC.

Plaintiffs' attempts to execute or levy on the Conservatorship's assets is in violation of the Conservatorship Court's ORDER APPOINTING CONSERVATOR AND TRANSFERRING ASSETS, which provides:

IT IS FURTHER ORDERED that except by leave of Court during the pendency of this Conservatorship, all creditors and other persons seeking money, damages or other relief from ABC or its agents, including American Title Company of Orlando and David Piercefield, and all others acting on behalf of any such creditor or other persons, including sheriffs, marshals, and other officers and their deputies, and their respective attorneys, servants, agents, and employees are hereby stayed and restrained from doing act or thing whatsoever to interfere with ABC or its agents,

including American Title Company of Orlando and David Piercefield, in the orderly transfer of the Conservatorship assets or *the Conservator or to the possession of or management by the Conservator of the Conservatorship Assets, or to interfere in any manner during the pendency of this proceeding with the exclusive jurisdiction of this Court over ABC.* This Conservatorship Order shall not stay or restrain any pending or future action whatsoever by any government agency or any representative on behalf of any government. (Emphasis added.)

In attempting to execute and levy on the Conservatorship's assets, Plaintiffs are acting in violation of the Conservatorship Court's Order.

5. **APPLICABILITY OF FED. R. CIV. P. 5.1 AND COMPLIANCE.**

Do any of the claims or defenses draw into question the constitutionality of a federal or state statute where notice is required under 28 U.S.C. § 2403 or Fed. R. Civ. P. 5.1?

Yes

No

6. **MOTIONS PENDING AND/OR ANTICIPATED** (include date of filing, relief requested, and date responsive brief to be filed).

Plaintiffs anticipate filing dispositive motions within 45 days.

Mr. Moran anticipates filing his Motion to Dismiss no later than December 15.

7. **COMPLIANCE WITH RULE 26(a)(1).** Have the initial disclosures required by Fed. R. Civ. P. 26(a)(1) been made?

The parties request the Court to exempt them from the requirements of Fed. R. Civ. P. 26(a)(1). The limited issues before the Court do not require these disclosures to be made by the parties. The relevant documents are a matter of public records, accessible to both parties.

8. **PLAN FOR DISCOVERY.**

The parties do not believe that discovery is necessary in this matter for the reasons stated above.

9. **ESTIMATED TRIAL TIME:** None.

10. **BIFURCATION REQUESTED:** Yes No

11. **POSSIBILITY OF SETTLEMENT:** Good Fair Poor

12. **SETTLEMENT AND ADR PROCEDURES:**

A. Compliance with LCvR 16.3(c) - ADR discussion: Yes No

B. The parties request that this case be referred to the following ADR process:

Mediation

Judicial Settlement Conference

Other

None - the parties do not request ADR at this time.

13. **Parties consent to trial by Magistrate Judge?** Yes No

14. **Type of Scheduling Order Requested.** Standard - Specialized

The parties request the Court to enter an order setting forth deadlines for submissions of the motions anticipated by the parties, as set forth in paragraph 6.

Submitted this 21st day of November, 2008.

s/ Richard A. Gordon

Richard A. Gordon
Ga Bar No. 302475
Gordon & Jones, LLP
400 Interstate N. Pkwy #890
Atlanta, GA 30339
(770) 952-2900
(770) 952-2901 fax
gilaw@bellsouth.net

Attorneys for Plaintiffs

s/ Shannon K. Emmons

Shannon K. Emmons, OBA No. 14272
PHILLIPS MURRAH P.C.
Corporate Tower / Thirteenth Floor
101 North Robinson
Oklahoma City, Oklahoma 73102
Telephone: (405) 235-4100
Facsimile: (405) 235-4133
skemmons@phillipmurrah.com

*Attorneys for Garnishees, HTM Conservator,
L.L.C., and H. Thomas Moran, individually*

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

GARETH S. GELINAS, JEFFREY T.)	
GELINAS, FRED POST, BARBARA D.)	
POST, and JAMES W. JACKSON,)	CIV-06-003-F
)	
Plaintiffs,)	
)	
Vs.)	
)	
ACCELERATED BENEFITS)	
CORPORATION,)	
)	
Defendants,)	
and)	
)	
KIRKPATRICK BANK, HTM)	
CONSERVATOR, L.L.C., and)	
H. THOMAS MORAN, individually,)	
)	
Garnishees.)	

JOINT STATUS REPORT AND DISCOVERY PLAN

Date of Conference: December 1, 2008

Appearing for Plaintiffs: Richard A. Gordon

Appearing for Garnishees: Shannon K. Emmons, Phillips Murrah P.C.

Defendant: Plaintiffs' counsel provided Defendant's counsel with a copy of the draft Joint Status Report, but has received no response and has not been notified that Defendant intends to appear at the Status Conference.

Jury Trial Demanded - Non-Jury Trial

1. **BRIEF PRELIMINARY STATEMENT.**

On February 7, 2002, by Order of the District Court of Oklahoma County in

the matter of *Oklahoma Dept. of Securities v. Accelerated Benefits Corp.*, CJ-99-2500-66 (the "Conservatorship Court"), H. Thomas Moran ("Mr. Moran") was appointed Conservator of certain assets of Accelerated Benefits Corporation ("ABC"), including life insurance policies owned by ABC.

On February 21, 2002, the Conservatorship Court entered its Order authorizing the establishment of HTM Conservator, LLC ("HTM") and granting authority to transfer title to viatical and/or life settlement policies belonging to the Conservatorship to HTM. In accordance with the Orders of the Conservatorship Court, and under the Conservatorship Court's authority and supervision, title to the viatical and life settlement policies were transferred to HTM.

The Plaintiffs hold Judgments against ABC, entered by the U.S. District Court, for the Middle District of Florida on June 15, 2004 in the amount of \$281,229.71, and on September 17, 2004 in the amount of \$51,686.17. The Judgments were domesticated in Oklahoma on March 16, 2006 by the U.S. District Court for the Western District Court of Oklahoma.

On August 16, 2006 Plaintiffs commenced a garnishment action against HTM. In its Answer, HTM stated that at the time the Garnishment Summons was served HTM was indebted to ABC, judgment debtor or had possession or control of \$16.71 for investment distributions. HTM also stated that all amounts held by HTM were subject to set-off of debt owed to HTM pursuant to Judgments entered against ABC and in favor of the Conservatorship. HTM further stated in its Answer that the amounts held by HTM were

held pursuant to the Conservatorship Court's Order.

On September 25, 2006, Plaintiffs filed their Traverse of Answer of Postjudgment Garnishment disputing that HTM is entitled to hold the amounts claimed to be a set-off of debt owed to HTM by ABC.

2. **JURISDICTION.**

Plaintiffs have invoked jurisdiction on the basis of diversity, 28 USCA §1651.

HTM objects to the Court's exercise of jurisdiction. Because there is an ongoing state court proceeding, the Court is required to abstain from exercising jurisdiction. HTM anticipates filing a Motion to Dismiss on these grounds, and taking further appropriate action in the state court proceeding.

3. **STIPULATED FACTS.** Generally, all relevant facts (as stated in Paragraph 1 above) are matters of public record.

4. **CONTENTIONS AND CLAIMS FOR DAMAGES OR OTHER RELIEF SOUGHT.**

a. **Plaintiff:** Plaintiffs seek a determination with respect to the priority of claim as between a Conservator appointed under state law, or the holder of a perfected federal court judgment Plaintiffs also seek judgment against Garnishees for the amount of the assets of Defendant, Accelerated Benefits Corporation in their hands as of the date of service of summons of garnishment, up to the amount of Plaintiffs' Judgments.

b. **Defendant:** Not applicable.

c. **Garnishee:** As stated by HTM in its Answer, it held \$16.71 that was due to

ABC as investment distribution. HTM was not indebted to ABC for any other sums. Furthermore, HTM does not hold any assets of ABC. Title to certain assets of ABC was transferred to HTM by Order of the Conservatorship Court. With the transfer of title to these assets in 2002, they became the property of HTM.

In their objection to HTM's Answer, Plaintiffs only disputed whether HTM is entitled to hold the amounts claimed to be a set-off of debt owed to HTM by ABC. The "amounts claimed" totaled \$16.71, the amount HTM was indebted to ABC as investment distribution. Plaintiffs did not make any objection or claim that they should be allowed to execute on HTM's assets to satisfy Plaintiffs' Judgments against ABC.

Plaintiffs' attempts to execute or levy on HTM's assets is in violation of the Conservatorship Court's ORDER APPOINTING CONSERVATOR AND TRANSFERRING ASSETS, which provides:

IT IS FURTHER ORDERED that except by leave of Court during the pendency of this Conservatorship, all creditors and other persons seeking money, damages or other relief from ABC or its agents, including American Title Company of Orlando and David Piercefield, and all others acting on behalf of any such creditor or other persons, including sheriffs, marshals, and other officers and their deputies, and their respective attorneys, servants, agents, and employees are hereby stayed and restrained from doing act or thing whatsoever to interfere with ABC or its agents, including American Title Company of Orlando and David Piercefield, in the orderly transfer of the Conservatorship assets or the Conservator or to the possession of or management by the Conservator of the Conservatorship Assets, or to interfere in any manner during the pendency of this proceeding with the exclusive jurisdiction of this Court over ABC. This Conservatorship Order shall not stay or restrain any pending or future action whatsoever by any government agency or any representative on behalf of any government. (Emphasis added.)

In attempting to execute and levy on HTM's assets, Plaintiffs are acting in violation

of the Conservatorship Court's Order.

5. **APPLICABILITY OF FED. R. CIV. P. 5.1 AND COMPLIANCE.**

Do any of the claims or defenses draw into question the constitutionality of a federal or state statute where notice is required under 28 U.S.C. § 2403 or Fed. R. Civ. P. 5.1?

Yes No

6. **MOTIONS PENDING AND/OR ANTICIPATED** (include date of filing, relief requested, and date responsive brief to be filed).

Plaintiffs anticipate filing dispositive motions within 45 days.

HTM anticipates filing its Motion to Dismiss no later than December 15.

7. **COMPLIANCE WITH RULE 26(a)(1).** Have the initial disclosures required by Fed. R. Civ. P. 26(a)(1) been made?

The parties request the Court to exempt them from the requirements of Fed. R. Civ. P. 26(a)(1). The limited issues before the Court do not require these disclosures to be made by the parties. The relevant documents are a matter of public records, accessible to both parties.

8. **PLAN FOR DISCOVERY.**

The parties do not believe that discovery is necessary in this matter for the reasons stated above.

9. **ESTIMATED TRIAL TIME:** None.

10. **BIFURCATION REQUESTED:** Yes No

11. **POSSIBILITY OF SETTLEMENT:** Good Fair Poor

12. **SETTLEMENT AND ADR PROCEDURES:**

A. Compliance with LCvR 16.3(c) - ADR discussion: Yes No

B. The parties request that this case be referred to the following ADR process:

Mediation

Judicial Settlement Conference

Other

None - the parties do not request ADR at this time.

13. **Parties consent to trial by Magistrate Judge?** Yes No

14. **Type of Scheduling Order Requested.** Standard - Specialized

The parties request the Court to enter an order setting forth deadlines for submissions of the motions anticipated by the parties, as set forth in paragraph 6.

Submitted this 21st day of November, 2008 .

s/ Richard A. Gordon

Richard A. Gordon
Ga Bar No. 302475
Gordon & Jones, LLP
400 Interstate N. Pkwy #890
Atlanta, GA 30339
(770) 952-2900
(770) 952-2901 fax
gjlaw@bellsouth.net
Attorneys for Plaintiffs

s/ Shannon K. Emmons

Shannon K. Emmons, OBA No. 14272
PHILLIPS MURRAH P.C.
Corporate Tower / Thirteenth Floor
101 North Robinson
Oklahoma City, Oklahoma 73102
Telephone: (405) 235-4100
Facsimile: (405) 235-4133
skemmons@phillipmurray.com
***Attorneys for Garnishees, HTM Conservator,
L.L.C., and H. Thomas Moran, individually***



PHILLIPS MURRAH P.C.

Attorneys and Counselors at Law

DOUGLAS A. BRANCH
ELIZABETH K. BROWN
ROBERT J. CAMPBELL, JR.
MARC EDWARDS
SHANNON K. EMMONS
LLOYD T. HARDIN, JR.
SALLY A. HASENFRATZ
TERRY L. HAWKINS
ERIC L. JOHNSON
FRED A. LEIBROCK
J. MARK LOVELACE
BYRONA J. MAULE
JAMES A. MCCAFFREY
MELVIN R. MCVAY, JR.
ROBERT O. O'BANNON
MICHAEL R. PERRI
SANDY L. SCHOVANEC
ROBERT N. SHEETS
DOUGLAS M. TODD
LYNDON W. WHITMIRE
THOMAS G. WOLFE
RAYMOND E. ZSCHIESCHE

E. CAROLE BARNES
BOBBY (BOBBAK) DOLATABADI
JOSHUA L. EDWARDS
JUSTON R. GIVENS
JENNIFER K. GOLDEN
RANDY W. HENNING
HEATHER L. HINTZ
WILLIAM J. JARVIS
CELESTE T. JOHNSON
JASON M. KRETH
JOAN M. LAMSON
ANDREW S. MILDREN
JENNIFER L. MILLER
A.V. PEOPLES, III
DAWN M. RAHME
JOHN L. SHEARS
CAROL E. SORENSEN
MYRON K. STOUT
LAUREN L. SYMCOX
KENNETH A. TILLOTSON
BEVERLY I. VILARDOFSKY

of counsel

CATHERINE L. CAMPBELL
MICHAEL D. CARTER
V. GLENN COFFEE
JOHN D. HASTIE
ROBERT J. HAUPT
D. MATT HOPKINS
CORI H. LOOMIS
FRED H. MILLER
CINDY H. MURRAY
SAM D. OTT
MARTIN G. OZINGA
DONALD A. PAPE
WILLIAM S. (BILL) PRICE
ELLEN K. SPIROPOULOS
D. CRAIG STROY

in memoriam

ALFRED P. MURRAH, JR. 1933-2005
T. RAY PHILLIPS, III 1939-2005

November 25, 2008

VIA EMAIL gilaw@bellsouth.net

VIA FEDERAL EXPRESS

Richard A. Gordon
Gordon & Jones, LLP
400 Interstate N. Pkwy #890
Atlanta, GA 30339

Re: *Gelinas v. Accelerated Benefits Corporation et al.*, United States District Court for the Western District of Oklahoma; Case No. CIV-06-003-F; Our File No. 20861.12201

Dear Mr. Gordon:

As you are aware, on February 7, 2002, H. Thomas Moran ("Mr. Moran") was appointed Conservator of certain assets of Accelerated Benefits Corporation ("ABC"), including life insurance policies owned by ABC, by Order of the District Court of Oklahoma County in the matter of *Oklahoma Dept. of Securities v. Accelerated Benefits Corp.*, CJ-99-2500-66 (the "Conservatorship Court"). On February 21, 2002, the Conservatorship Court entered its Order authorizing the establishment of HTM Conservator, LLC ("HTM") and granting authority to transfer title to viatical and/or life settlement policies belonging to the Conservatorship to HTM. In accordance with the Orders of the Conservatorship Court, and under the Conservatorship Court's authority and supervision, title to the viatical and life settlement policies was transferred to HTM.

When Mr. Moran and HTM filed their respective Answers to your clients' Garnishment Summons, stating that they were indebted to ABC in the amount of \$16.71, your clients only disputed whether Mr. Moran and HTM were entitled to hold the amounts claimed to be a set-off of debt owed by ABC. The "amounts claimed" totaled \$16.71, the amount owed to ABC as an investment distribution. Your clients did not make any objection or claim – as they are now making – that they should be allowed to execute on the Conservatorship's assets to satisfy their Judgments against ABC.

The Power of a Strategic Partner.®

Corporate Tower | Thirteenth Floor | 101 N. Robinson | Oklahoma City, Oklahoma 73102
405.235.4100 | Fax 405.235.4133 | www.phillipsmurray.com



Mr. Richard Gordon
November 25, 2008
Page 2 of 3

As stated by Mr. Moran and HTM in the Joint Status Report, we plan to file a Motion to Dismiss the above-referenced lawsuits. The Conservatorship Court has ongoing and exclusive jurisdiction of the Conservatorship Assets that your clients are seeking to levy in satisfaction of the Judgments they hold against ABC. The ORDER APPOINTING CONSERVATOR AND TRANSFERRING ASSETS provides:

IT IS FURTHER ORDERED that *except by leave of Court during the pendency of this Conservatorship, all creditors and other persons seeking money, damages or other relief from ABC* or its agents, including American Title Company of Orlando and David Piercefield, *and all others acting on behalf of any such creditor or other persons, including sheriffs, marshals, and other officers and their deputies, and their respective attorneys, servants, agents, and employees are hereby stayed and restrained from doing act or thing whatsoever to interfere with ABC* or its agents, including American Title Company of Orlando and David Piercefield, in the orderly transfer of the Conservatorship assets or *the Conservator or to the possession of or management by the Conservator of the Conservatorship Assets, or to interfere in any manner during the pendency of this proceeding with the exclusive jurisdiction of this Court over ABC.* This Conservatorship Order shall not stay or restrain any pending or future action whatsoever by any government agency or any representative on behalf of any government. (Emphasis added.)

We have enclosed a copy of the Order.

Because there is an ongoing state court proceeding, the federal court is required to abstain from exercising jurisdiction. Furthermore, your clients' attempt to execute and levy on the Conservatorship's assets is in violation of the Conservatorship Court's Order. Accordingly, if your clients persist in pursuing the action in federal court, our clients will have no choice but to notify the Conservatorship Court and request that the Conservatorship Court hold your clients and your law firm in contempt of Court.

Aside and apart from the jurisdictional infirmities of your clients' claims, neither Mr. Moran nor HTM are either indebted to ABC or hold any assets of ABC. Title to certain assets of ABC was transferred to HTM by Order of the Conservatorship Court. With the transfer of title to these assets in 2002, they became the property of HTM. Neither HTM, nor for that matter Mr. Moran, holds these assets for ABC.

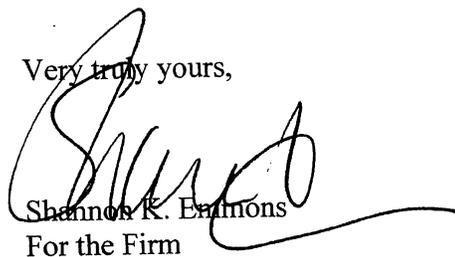
The purpose of this letter is to make formal request on your clients to voluntarily dismiss the federal actions. If Mr. Moran and HTM are forced to file a Motion to Dismiss, and such Motion is granted, they will seek attorney's fees and costs in seeking dismissal. They will also take the appropriate action with the Conservatorship Court to enforce the terms of its stay and Orders.

P M

Mr. Richard Gordon
November 25, 2008
Page 3 of 3

After you have had an opportunity to discuss these matters with your clients, please let us know how they intend to proceed.

Very truly yours,

A handwritten signature in black ink, appearing to read "Shannon K. Eamons", with a long horizontal flourish extending to the right.

Shannon K. Eamons
For the Firm

SKE/sad
Enclosure.

cc: H. Thomas Moran, II
Melvin R. McVay, Jr.

PM

1. all life insurance policies owned or held beneficially, directly or indirectly, by or for the benefit of ABC and/or the ABC Investors, that were purchased from the date of inception of ABC through September 30, 2000 ("Policies");

2. all assets of ABC necessary to accomplish the objectives of the Conservatorship listed below including, but not limited to, computer hardware, databases, software, ABC Investor and viator files relating to the Policies, accounting and financial records pertaining to premium payments and receipt and distribution of proceeds on the Policies, any deposit of cash, bond or guarantee, filing cabinets, office supplies, the lease to office space at 105 East Robinson Street, Suite 320, Orlando, Florida 32801, and telephone systems;

3. all premium reserve accounts and bank accounts into which ABC Investor funds or proceeds from Policies have been deposited; and

4. the right to recoup from the proceeds of the Policies all funds advanced by ABC to finance the payment of premiums on the Policies.

IT IS FURTHER ORDERED that the Conservator is given directions and authority to accomplish the following:

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

2. to manage all Conservatorship Assets pending further action by this Court including, but not limited to, the evaluation of the Policies, and to take the necessary steps to protect the ABC Investors' interests including, but not limited to, the liquidation or sale of the Policies to institutional buyers and the assessment to ABC Investors of future premium payments;

3. to receive and collect any and all sums of money due or owing on the Policies to ABC or its agents whether the same are due or shall hereinafter become due and payable;
4. to seek the return of any cash, bond or guarantee on deposit with any regulatory agency or other entity on behalf of ABC or its agents;
5. to make such payments and disbursements as may be necessary and advisable for the preservation of the Conservatorship Assets and as may be necessary and advisable in discharging his duties as Conservator including, but not limited to, the timely payment of all premiums for Policies that have not yet matured;
6. to monitor the viators of the Policies by tracking the location of the viators and periodically checking the health of the viators;
7. to receive notice of the death of viators, file death claims on the viators, and collect the proceeds paid on the Policies as such mature;
8. to disburse to each ABC Investor his proportionate share of the proceeds paid on matured Policies, which amount may be reduced by the total amount of any premium payments advanced by ABC or the Conservator on behalf of such ABC Investor;
9. to establish open communication with ABC Investors with proper disclosure of available options and consequences including, but not limited to, notice to ABC Investors of this Conservatorship Order within thirty (30) days of the entry of this Order;
10. to retain and employ attorneys, accountants, computer consultants and other persons as may be advisable or necessary to the exercise of the duties of the Conservator. Conservator may immediately retain or employ such persons, and compensate such persons, all subject to application to and approval by the Court;

11. to open and inspect any and all mail and/or deliveries if same relate to the existence, location, identity and/or collection, preservation, maintenance or operation of Conservatorship Assets, and to notify any insurance company or third party administrator and the United States Postal Service to effect the forward delivery of any mail related to the Conservatorship Assets to a mail depository under the control of the Conservator;

12. to institute, prosecute, defend, intervene in or become party to such actions or proceedings in any state court, federal court or United States bankruptcy court as may in the Conservator's opinion be necessary or proper for the protection, maintenance and preservation of the Conservatorship Assets, or the carrying out of the terms of this Conservatorship Order; and

13. to exercise those powers necessary to implement his conclusions with regard to disposition of this Conservatorship pursuant to the orders and directives of this Court.

IT IS FURTHER ORDERED that ABC and its agents, including American Title Company of Orlando and David Piercefield, shall immediately begin the process of transferring the ownership and beneficial rights to the Conservatorship Assets to the Conservator until all Conservatorship Assets have been transferred. The transfer process shall conclude within ninety (90) days of the execution of this Order. If for any reason any Conservatorship Asset has not been transferred on or before end of the ninety (90) day period, ABC and/or its agents, including American Title Company of Orlando and David Piercefield, shall provide a list to the Conservator of the Conservatorship Assets that have not been transferred and the reasons therefor.

IT IS FURTHER ORDERED that this order supercedes the order of this Court dated May 10, 2001, that prohibited the assessment or collection of future premium payments from ABC Investors.

IT IS FURTHER ORDERED that ABC pay and maintain all office expenses, salaries, and other costs of the Conservatorship until at least seventy-five percent (75%) of all Conservatorship Assets have been transferred to the Conservator.

IT IS FURTHER ORDERED that all persons and entities, including ABC, its subsidiaries, affiliates, officers, directors, agents, servants, employees, attorneys, and all persons acting on their behalf, under their direction and control, and/or in active concert or participation with them, and further including any banks or financial institutions, wherever chartered or located, life insurance companies, federal and state agencies, viators, viatical settlement providers, and viatical settlement brokers who receive actual notice of this Conservatorship Order, by personal service, facsimile transmission or otherwise, shall promptly deliver and surrender to the Conservator:

1. all Conservatorship Assets in the possession of or under the control of any one or more of them; and
2. all books and records of any kind pertaining to the Conservatorship Assets, to the ABC Investors, or to the viators whose lives are insured by the Policies.

IT IS FURTHER ORDERED that all persons and entities, including ABC, its subsidiaries, affiliates, officers, directors, agents, servants, employees, attorneys, and all persons acting on their behalf, under their direction and control, and/or in active concert or participation with them, and further including any banks or financial institutions, wherever chartered or located, life insurance companies, federal and state agencies, viators, viatical settlement providers, and viatical settlement brokers who receive actual notice of this Conservatorship Order, by personal service, facsimile transmission or otherwise, fully cooperate with and assist the Conservator and that they take no action, directly or indirectly, to hinder or obstruct the

Conservator in the conduct of his duties or to interfere in any manner, directly or indirectly, with the custody, possession or control exercised by said Conservator.

IT IS FURTHER ORDERED that the Conservator is authorized, without breaching the peace, to enter and secure any premises under the control of ABC or its agents, wherever located or situated, in order to take possession, custody or control of, or to identify the location or existence of, any Conservatorship Assets.

IT IS FURTHER ORDERED that the Conservator may apply to the Court for compensation, from time to time, in a reasonable sum to be determined by the Court and from such sources as approved by the Court and for reimbursement for reasonable expenses incurred in connection with his duties as Conservator. The fees and expenses of the Conservator shall have priority over any other claims made against ABC. The Conservator shall not be required to give any bond. The Oklahoma Department of Securities shall have the authority to seek removal of the Conservator for cause and upon approval of this Court.

IT IS FURTHER ORDERED that except by leave of Court during the pendency of this Conservatorship, all creditors and other persons seeking money, damages or other relief from ABC or its agents, including American Title Company of Orlando and David Piercefield, and all others acting on behalf of any such creditor or other persons, including sheriffs, marshals, and other officers and their deputies, and their respective attorneys, servants, agents, and employees, are hereby stayed and restrained from doing any act or thing whatsoever to interfere with ABC or its agents, including American Title Company of Orlando and David Piercefield, in the orderly transfer of the Conservatorship assets or the Conservator or to the possession of or management by the Conservator of the Conservatorship Assets, or to interfere in any manner during the pendency of this proceeding with the exclusive jurisdiction of this Court over ABC. This

Conservatorship Order shall not stay or restrain any pending or future action whatsoever by any government agency or any representative on behalf of any government.

IT IS FURTHER ORDERED that any Conservatorship Assets remaining at the conclusion of the Conservatorship shall be transferred to ABC.

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

IT IS FURTHER ORDERED that the Conservator be held harmless from any and all liability, costs and damages arising from acts of ABC and its agents, including American Title Company of Orlando and David Piercefield, before Conservatorship Assets have been transferred to the Conservator.

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

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

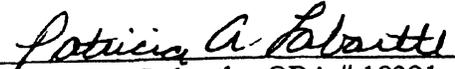
Dated this 6th day of February, 2002.

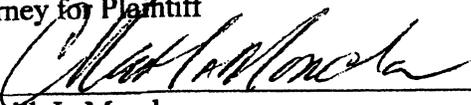


District Court Judge

I, PATRICIA PRESLEY, Court Clerk for Oklahoma County, Okla., hereby certify that the foregoing is a true, correct and complete copy of the instrument herewith set out as appears of record in the District Court Clerk's Office of Oklahoma County, Okla., this 7 day of Feb, 2002.
By [Signature] PATRICIA PRESLEY, Court Clerk Deputy

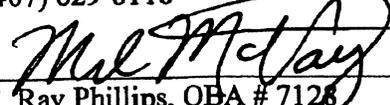
Approved as to form and substance:


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


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


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


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


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