

JAN 10 2024

IN THE DISTRICT COURT OF OKLAHOMA COUNTY  
STATE OF OKLAHOMA

RICK WARREN  
COURT CLERK

40

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 Sheila Stinson

**MOTION TO APPROVE PROCEDURES TO CLOSE THE CONSERVATORSHIP**

Sheri Townsend, as Assistant Conservator (the “Assistant Conservator”) of certain assets of Accelerated Benefits Corporation, files this Motion to Establish Procedures to Close the Conservatorship (the “Motion”). In support thereof, the Assistant Conservator would show the Court as follows:

**I. INTRODUCTION**

On April 8, 1999, the Oklahoma Department of Securities (the “Department of Securities”) commenced this action to enjoin Defendants from engaging in practices in violation of the Oklahoma Securities Act, seeking damages for violation of the Act, and to protect the interests of various individual investors (the “Investors”) in Accelerated Benefits Corporation (“ABC”). ABC’s primary asset was a portfolio of life and viatical settlements (the “ABC Portfolio”).<sup>1</sup> On or about March 13, 2001, the Court entered judgment in favor of the Department of Securities. On February 7, 2002, the Court established a conservatorship (the

---

<sup>1</sup> A life settlement is an arrangement in which the policy owner under a life insurance policy sells his or her interest in the death benefit proceeds to an investor in exchange for a cash payment during the insured’s life. The investor receives a return on the investment upon the death of the insured. A viatical settlement is similar to a life settlement but involves individuals who have a terminal or chronic condition. Here, the ABC Portfolio had a high concentration of viatical settlements where the underlying insureds had been diagnosed with HIV or AIDS.

“Conservatorship”) and appointed H. Thomas Moran II (the “Conservator”) to act as conservator for the ABC Portfolio. On February 21, 2002, the Court authorized HTM Conservator, L.L.C. (“HTM”) to hold title to the ABC Portfolio.

In 2006, the Court approved an Option Purchase Agreement which gave Acheron Portfolio Trust (“Acheron”) the exclusive option to purchase the ABC Portfolio. In conjunction with entering into the Option Purchase Agreement, the Conservator, Acheron’s predecessor, and HTM entered into a Service and Escrow Agreement that set out the agreement for the servicing of the ABC Portfolio. HTM, in turn, retained Asset Servicing Group, L.L.C. (“ASG”) to perform various servicing functions for the ABC Portfolio, which retention was authorized by the Service and Escrow Agreement.

Acheron has now completed the purchase of the ABC Portfolio pursuant to the Option Purchase Agreement, and the policies making up the ABC Portfolio have been, or are expected to be shortly, transferred to Acheron. The remaining asset of the Conservatorship consists of funds held in financial accounts. The Assistant Conservator is prepared to make final distributions to Investors and take other steps necessary to close the Conservatorship. Accordingly, by this Motion, the Assistant Conservator asks the Court to enter an order approving and implementing procedures for the winding down and termination of the Conservatorship.

## **II. RELEVANT HISTORY OF THE CONSERVATORSHIP**

### **A. Establishment of Conservatorship.**

1. On April 8, 1999, the Department of Securities brought this proceeding to enjoin Defendants from engaging in practices in violation of the Oklahoma Securities Act, seeking damages for violation of the Act, and to protect the interests of the Investors in the ABC Portfolio.

2. ABC's agents had offered and sold viaticals or life settlements to thousands of Investors throughout the country on ABC's behalf. ABC funded the fee transactions with the policy owners by executing Purchase Request Agreements with Investors and receiving money from the Investors in exchange for a pro rata share of the death benefit proceeds upon the death of an individual insured to which the Investor was matched.

3. In most cases, insureds far outlived their projected life expectancies placed on them by ABC and insufficient funds were allocated by ABC for payment of premiums. As a result, the ABC Portfolio was in danger of lapsing, which would have resulted in the ABC Investors, many of whom were elderly and retired, losing their entire investments.

4. This case came on for bench trial on January 29, 2001. Following trial, the Court granted judgment to the Department of Securities. The Court further entered an Order of permanent injunction against the Defendants.

5. On February 7, 2002, the Court entered an Order Appointing Conservator and Transferring Assets (the "Conservator Order"), which established the Conservatorship for the ABC Portfolio, and appointed H. Thomas Moran to act as Conservator of the ABC Portfolio.

6. On February 20, 2002, the Court entered an order authorizing and establishing HTM to hold title to the ABC Policies. At that time, there were approximately 1,327 policies with an approximate face value of \$138,508,975. There were also 3,600 Investors located in 10 countries and 46 states.<sup>2</sup>

7. On April 14, 2006, the Court entered an order appointing Sheri Townsend to act as Assistant Conservator of the ABC Portfolio.

8. On September 12, 2021, the Conservator passed away.

---

<sup>2</sup> There are currently 5,745 Investors due to the deaths of the original Investors whose interests passed to their heirs and beneficiaries.

**B. Sale of ABC Portfolio.**

9. On March 12, 2003, the Court approved the sale of the ABC Portfolio to Infinity Capital Services, Inc. (“Infinity”) pursuant to an Option Purchase Agreement (the “Infinity OPA”). In November, 2004, Infinity defaulted on the Infinity OPA, and on May 20, 2005, the Court terminated the Infinity OPA.

10. On May 19, 2005, SIG Partners (“SIG”) and the Conservator executed a second Option Purchase Agreement (the “SIG OPA”). On or about June 24, 2005, the Court approved the SIG OPA, and the SIG Service and Escrow Agreement. On or about July 7, 2005, SIG assigned its interests in the SIG OPA and the SIG Service and Escrow Agreement to PSK Enterprises, Inc. (“PSK”). Thereafter, PSK defaulted on the SIG OPA, and on January 5, 2006, the Conservator terminated the SIG OPA.

11. On June 2, 2006, Lorenzo Tonti Ltd. (“Tonti”) entered into an Option Purchase Agreement with the Conservator, which was approved by the Court on June 7, 2006 (the “Tonti OPA”). The Tonti OPA gave Tonti the exclusive option to pay \$38,050,000 for the ABC Portfolio, the total face value of which was over \$109 million at the time the Tonti OPA was executed. The Tonti OPA also allowed Tonti to pay the \$38,050,000 purchase price from the death benefits received from the policies, with between 60% and 75% of the death benefits being paid to the Conservatorship and credited against the purchase price, and the remainder being paid to Tonti. Until the purchase price was paid in full, HTM held title to the ABC Portfolio. As the purchase price was paid by Tonti, the net proceeds were distributed to the Investors in the ABC Portfolio.

12. In conjunction with entering into the Tonti OPA, the Conservator, Tonti and HTM entered into a Service and Escrow Agreement that set out the agreement for servicing the ABC

Portfolio. HTM, in turn, retained ASG to perform various servicing functions for the ABC Portfolio, which retention was authorized by the Service and Escrow Agreement.

13. Acheron Portfolio Trust became the successor-in-interest to Tonti.

14. In 2021, after much negotiation, the Conservator, HTM and Acheron reached an agreement allowing Acheron to make a final lump sum payment of \$10,550,000 to satisfy the remaining amount of the purchase price under the Tonti OPA, in the approximate amount of \$16.7 million. At the time of this agreement, there were 671 policies in the ABC Portfolio, with a total face value of \$70,247,082. It was estimated, at the time of this agreement, that it would take at least ten additional years, and potentially longer, for the remaining amount of the Tonti OPA purchase price to be paid to the Conservatorship from policy maturities. This agreement with Acheron allows the Conservator and Assistant Conservator to complete distributions to investors or beneficiaries of the ABC Portfolio years sooner than if payment occurred under the Tonti OPA.

15. On June 11, 2021, the Court entered an Order approving the agreement with Acheron providing for the prepayment of the purchase price under the Tonti OPA for a lump sum payment of \$10,550,000.

16. The remaining amount of the purchase price under the OPA has now been paid by Acheron and all Policies making up the ABC Portfolio have been, or are expected to be shortly, transferred to Acheron.

**C. Distributions By Conservatorship.**

17. To date, the Conservatorship has distributed \$54,427,316.22 to the Investors.

18. The Conservatorship currently holds approximately \$2,890,932.61 in funds to pay final Conservatorship expenses and to make a final distribution to the Investors, a portion of

which includes funds related to the ABC Parties (as hereinafter defined). This amount does not include Unclaimed Distributions (as hereinafter defined).

19. Upon information and belief, Investors and/or their heirs and successors are located in all 50 states and 11 foreign countries.

**D. ABC Parties Retention Order**

20. On December 22, 2005, the Conservator filed the Conservator's Motion for Order Allowing Conservator to Retain Funds (the "Retention Motion"), whereby the Conservator asked for authorization to retain certain funds that might otherwise have been disbursed to ABC and certain insiders of ABC, including American Title Company of Orlando, C. Keith LaMonda, and LaMonda Brokerage (collectively, the "ABC Parties").

21. On February 1, 2006, an Order (the "Retention Order") granting the Retention Motion was entered, ordering the Conservator to retain all funds attributable to the ABC Parties, pending further order of the Court.

22. Currently, the Conservatorship holds the following amounts attributable to the ABC Parties:

C. Keith LaMonda	\$11,729.15
American Title Company of Orlando	\$32,372.17
LaMonda Brokerage	\$1,955.68
ABC Houston	\$11.60

23. Upon information and belief, American Title Company of Orlando was controlled by David Piercefield, who is deceased.

24. Upon further information and belief, C. Keith LaMonda is deceased.

**E. Closing of the Conservatorship.**

25. In light of the transfer of the ABC Portfolio, the Conservatorship has served its purpose and should be concluded, subject to addressing the relief requested in Section III below,

as well as the handling of various investor matters, payment of final expenses, and making a final distribution to the Investors.

26. Prior to making a final distribution to the Investors, the Assistant Conservator will file with the Court an application to terminate the Conservatorship and to discharge and release the Assistant Conservator, her employees, agents, representatives, attorneys, ASG and HTM, from any and all liabilities, duties, and responsibilities arising from, related to, or derived from the Conservatorship, the Conservatorship Order, or any other order entered by the Court during the course of this Conservatorship (the “Termination Order”).

### **III. RELIEF REQUESTED**

The Assistant Conservator respectfully requests that the Court enter an order establishing procedures to wind down and terminate the Conservatorship. The Conservatorship has served its purpose by fully administering the ABC Portfolio, such that the only remaining tasks are to address the relief requested in this Motion, as well as the handling of various Investor matters, payment of final expenses, and making a final distribution to Investors. To allow the Conservatorship to be wound down in an efficient manner, the Assistant Conservator would request that the following procedures be approved:

#### **A. Unclaimed/Investor Distributions.**

As previously stated, in 2006, HTM retained ASG to perform various servicing functions for the ABC Portfolio, including Investor relations and services. Maintaining current information and addresses for Investors was a continual and complicated process, as many Investors discontinued communications, failed to notify ASG or the Conservator of new addresses, and many died. However, while ASG was successful in maintaining communications with the majority of Investors, and even effectively processed account transfers of hundreds of Investors to their rightful heirs, many Investor accounts were left unclaimed.

In situations where accounts were left unclaimed, ASG would research to locate new addresses or determine if the Investor was deceased. If a demise was confirmed, ASG worked to notify next of kin. ASG's efforts to locate Investors included performing in depth searches using databases it has access to, and which it uses to track insureds for purposes of health monitoring, in order to locate Investors and/or next of kin so that distributions could be made to them. ASG also attempted to communicate with the insured and/or next of kin on numerous occasions via phone, email and/or letter to explain what information and/or documents ASG needed to make a distribution or transfer/release an Investor account.

Despite all of these attempts many Investors and/or next of kin have either not been located or been unresponsive. In certain instances, the Investors or next of kin have been located, but Investors have knowingly and willingly abandoned their accounts and instructed the Conservator to discontinue distributions and communications. Also, apparent heirs have been unable or unwilling to provide legal documentation sufficient to transfer the account, and Investors have repeatedly failed to cash the checks they are sent. As a result, the Conservator has been holding these undistributed funds (the "Unclaimed Distributions") that would have been otherwise paid to these Investors (the "Unclaimed Funds Investors"). Currently there are 890 Unclaimed Funds Investor accounts (863 actual Unclaimed Funds Investors) totaling \$1,952,016.80 in Unclaimed Distributions. These Unclaimed Funds Investors are located in 46 states and 5 countries other than the United States.

More recently, in a final attempt, and in anticipation of closing the Conservatorship, ASG sent a letter to the last known address of each of the Unclaimed Funds Investors or their next of kin to explain the urgency in providing the necessary information and/or documentation to distribute the Unclaimed Distributions. This letter informed recipients that unless claimed, the



Unclaimed Distributions may be turned over to state unclaimed property programs. A copy of this letter is attached hereto as Exhibit 1. ASG also posted similar notifications on the ABC Conservatorship website, copies of which are attached hereto as Exhibit 2.

To the extent that any of the Unclaimed Funds Investors have not been located, been unresponsive, or heirs have not provided the appropriate documentation to allow the funds to be released, the Assistant Conservator is seeking the Court's permission to pay all Unclaimed Distributions attributable to each Unclaimed Funds Investor to Unclaimed Funds in the state in which ASG has that investor's best or last known address. Should ASG not have such an address for an Unclaimed Funds Investor, then that Unclaimed Funds Investor's Unclaimed Distributions would be paid to Unclaimed Funds in the State of Oklahoma, in accordance with the Uniform Unclaimed Property Act, 60 O.S. §651 et seq., or such other statute governing the turnover of unclaimed property as may be applicable. Similarly, to the extent that an Unclaimed Funds Investor's last known address was in a foreign country, then such Unclaimed Funds Investor's Unclaimed Distributions would also be paid into Unclaimed Funds in the State of Oklahoma. Upon payment of such Unclaimed Distributions to Unclaimed Funds, the Assistant Conservator, her employees, agents, representatives, attorneys, ASG and HTM shall be discharged and released of any and all liability in any way relating to the payment of such Unclaimed Distributions.

To assist with the process of attempting to locate Unclaimed Funds Investors and complying with the various states' Unclaimed Funds procedures, the Assistant Conservator requests the Court's permission to retain MarketSphere Consulting, LLC ("MarketSphere"), which maintains an office, among other places, at 154 Krog Street, Suite 100, Atlanta, Georgia 30307, and specializes in assisting companies with unclaimed property compliance and

management. A copy of the proposed agreement with MarketSphere, including the compensation to be paid to MarketSphere for its services, is attached hereto as Exhibit 3. The costs associated with attempting to locate Unclaimed Funds Investors and turn funds over to Unclaimed Property would be paid pro rata from the Unclaimed Distributions.

The Assistant Conservator requests (1) that its proposed procedures for handling Unclaimed Distributions, as set forth herein, be approved; (2) that the retention of MarketSphere be approved pursuant to the agreement with MarketSphere in substantially the form attached hereto; (3) that the costs and expenses associated with the Unclaimed Distributions be paid pro rata from the Unclaimed Distributions; and (4) that the Assistant Conservator, her employees, agents, representatives, attorneys, ASG, and HTM shall be discharged and released of any and all liability in any way relating to the payment of such Unclaimed Distributions.

**B. Distribution of Funds Held Pursuant to Retention Order**

The Assistant Conservator seeks authorization to distribute funds held pursuant to the Retention Order to the ABC Parties, or their identifiable successors and heirs, as applicable, in accordance with their share of such funds as set forth in ABC's records. Retaining such funds no longer serves any purpose and distributing such funds is necessary before the Conservatorship can be closed. To the extent the ABC Parties or their successors and heirs cannot be located, the Assistant Conservator asks for authorization to treat such funds as Unclaimed Distributions pursuant to the procedures set out herein.

**C. Reserve for Fees and Expenses Incurred in Termination of the Conservatorship.**

In the interest of judicial economy and minimizing future judicial proceedings, the Assistant Conservator requests that upon the filing of the Termination Order, the Court authorize and approve her to retain an expense reserve (the "Expense Reserve") in the total amount of

\$798,300.<sup>3</sup> This Expense Reserve, which likely covers a 4-5 year period, is calculated based on the following amounts:

<b>FEE AND EXPENSE RESERVE</b>	<b>Total</b>
Data Storage	\$30,000
File Storage / Destruction	\$28,000
PO Box Fee	\$2,000
Website/Email Address/Toll Free Line	\$3,200
Postage and Supplies	\$15,100
ASG Fees	\$172,500
Phillips Murrah Legal Fees	\$340,000
Assistant Conservator Fees	\$50,000
CPA OKC - Tax Preparation	\$57,500
Miscellaneous Expenses	\$100,000
<b>TOTAL</b>	<b>\$798,300</b>

The estimated reserve figures were prepared after careful consideration by the Assistant Conservator, ASG and their staff, and in consultation with the Assistant Conservator's tax advisor and legal counsel. The estimated reserve figures reflect the fees and expenses reasonably anticipated as being incurred in the course of making the final distribution and completing the tasks necessary to conclude the termination of the Conservatorship.

With respect to the final distribution, the Assistant Conservator's figures account for the significant amount of time and expense required to prepare letters to, and communicate with, Investors, providing notice of the final distribution, and for the issuance and mailing of letters and checks. Once the letters and distribution checks are mailed, it will be necessary for the Assistant Conservator and ASG to monitor how many of those checks are presented for payment, how many are returned, and attempts to track down the proper person or location for distribution

---

<sup>3</sup> This amount may be subject to change depending on additional information and requirements that the Assistant Conservator becomes aware of between the filing of this Motion and the filing of the application to terminate the Conservatorship and discharge the Assistant Conservator. It is also not intended to be a budget for each of the categories listed, but only what the Assistant Conservator estimates the fees and expenses for each category will be which accounts for the total amount of the Expense Reserve.

checks to be reissued, if possible. In addition, the Assistant Conservator anticipates some significant volume of inquiries from Investors relating to termination of the Conservatorship and the final distribution as well as the work involved in responding to those inquiries.

Another, and one of the significant components of the Assistant Conservator's reserve figures, is the cost of maintaining the physical and electronic records of the Conservatorship for the appropriate period after all activity is concluded. In consulting with her tax advisor and legal counsel, the Assistant Conservator believes that the Conservatorship records should be held for a period of four (4) years from the date of the Termination Order (the "Retention Period"). Consequently, the Assistant Conservator has not only estimated the cost of storing the Conservatorship's physical files, but also maintaining the Conservatorship's electronic records, including, but not limited to, the database of Investor information. To the extent that any state in which unclaimed funds are paid requires that records be retained for a longer period than four (4) years, the Conservatorship will maintain such records for such additional time. Finally, the Assistant Conservator's figures also include the estimated cost to securely destroy the data at the end of the Retention Period. In that regard, at the end of the Retention Period, the Assistant Conservator requests the Court's permission to destroy all books, records, electronically stored information and any other materials related to the Conservatorship.

To the extent additional fees and expenses included in the estimated reserve figures are incurred, the Assistant Conservator, the professionals employed by her, including ASG, and the Assistant Conservator's counsel will continue to maintain time records and will bill the Conservatorship. The rates that certain of the professionals have been receiving have not been updated since said professionals were first retained, over 20 years ago, and the Assistant Conservator believes that a market adjustment to account for the passage of time is appropriate.

Accordingly, the Assistant Conservator would request that professional fees be increased as follows:

<b>Professional</b>	<b>Current Hourly Rate</b>	<b>Proposed Hourly Rate</b>
Phillips Murrah Partners	\$225	\$325
Phillips Murrah Associates	\$220	\$225
Phillips Murrah Paralegals	\$130	\$150
Assistant Conservator	\$110	\$180

The proposed hourly rates constitute significant discounts from the hourly rates currently charged by the professional for similar services.

The Assistant Conservator requests approval and authorization that costs, expenses, and liabilities of the Conservatorship, including, but not limited to, the fees and expenses of the Assistant Conservator, ASG, and any retained professionals or attorneys, can be paid out of the Expense Reserve, in the Assistant Conservator's sole discretion, without further order of the Court. Notwithstanding the foregoing, copies of all billings will continue to be periodically provided to the Department of Securities. In the event that funds remain in the Expense Reserve after completion of all work to close the Conservatorship, the Assistant Conservator requests approval and authorization to pay those funds to the Oklahoma Department of Securities Investor Education Revolving Fund.

**D. Termination of Conservatorship and Final Distribution.**

As previously discussed, upon the completion of the general business of the Conservatorship, and prior to the final distribution, the Assistant Conservator shall file with the Court an application to terminate the conservatorship. Once the Termination Order is entered by the Court, a final distribution will be made to all known Investors and to Unclaimed Funds any funds the Conservatorship is unable to successfully distribute to the Investors.

**E. Right to Seek Further Relief.**

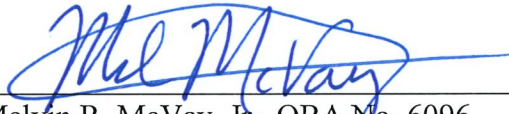
Nothing herein shall prejudice or be deemed a waiver of the Assistant Conservator's right to seek additional relief, including amendment of any procedures set forth herein.

In light of the foregoing, the Assistant Conservator believes that the above-listed procedures should be implemented, which will allow the Conservatorship to be wound down and closed in an efficient manner. Accordingly, the Court should enter an order approving such procedures.

**IV. CONCLUSION**

WHEREFORE, the Assistant Conservator respectfully requests that this Court enter an order approving the procedures set forth herein to allow the Assistant Conservator to wind down the Conservatorship, and for such other or further relief as is just and proper.

Respectfully submitted,



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

Clayton D. Ketter, OBA No. 30611

PHILLIPS MURRAH P.C.

Corporate Tower, Thirteenth Floor

101 North Robinson

Oklahoma City, Oklahoma 73102

Telephone: 405-235-4100

Facsimile: 405-235-4133

mrmcvay@phillipsmurrah.com

cdketter@phillipsmurrah.com

*Attorneys for the Assistant Conservator,*

*HTM, and ASG*

**CERTIFICATE OF MAILING**

The undersigned certifies that on January 10, 2024, a true and correct copy of the foregoing was mailed by first class mail, postage prepaid, to:

Patricia A. Labarthe  
Oklahoma Department of Securities  
204 North Robinson Avenue, Suite 400  
Oklahoma City, Oklahoma 73102  
*Attorney for Oklahoma Department of  
Securities*

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

Curtis J. Thomas  
McAfee & Taft  
10th Floor, Two Leadership Square  
211 North Robinson  
Oklahoma City, Oklahoma 73102-7103  
*Attorneys for Acheron Portfolio Trust*



October 2023

Dear ABC Investor,

Enclosed you will find a check representing an interim distribution from the Conservatorship. Your Conservatorship team is making progress, but bringing the Conservatorship to a close, which will allow a final distribution to you, is taking longer than anticipated.

As the Conservator indicated in early communications, it was estimated that you would receive approximately 50% of your original investment amount. The enclosed check represents approximately \_\_\_% of your original investment amount. It is too early to estimate the amount of your last and final payment.

**Next Step – Motion to Approve Procedures to Close the Conservatorship**

The next course of action is to file a Motion with the Court outlining the procedures to be taken to bring the Conservatorship to a close. We continue to work on this draft Motion and expect to have it ready to file with the court soon. When the Motion is filed with the Court, a hearing date will be scheduled by the Court, which may be several months in the future. A copy of the Motion, along with the Hearing date, will be mailed to you.

The goal of the Motion is to make all the outstanding and expected future requirements and expenses known to you and the Court, as well as to receive a Court Order that provides an outline for terminating the Conservatorship. The following highlights two topics that will be detailed in the Motion.

**Escrowed Funds**

The Conservatorship is holding in an escrow account, over \$2,000,000 in undistributed funds. These funds represent the accounts of over 800 investors (many deceased) with last-known addresses in 46 different states and multiple countries. ASG and the Conservator have made diligent efforts to locate these investors and distribute funds in a timely manner, however, for various reasons, and after lengthy and thorough research and communications, the Conservatorship is still unable to locate or distribute these funds to investors or their rightful heirs. Many of these investors are deceased and the Conservator's team has been unable to locate their rightful heirs or the heirs are unable or unwilling to provide the appropriate legal documentation to transfer the account. There are also situations where the funds have been willingly abandoned.

It was the Conservator's intent to continue efforts to locate these investors until the end of the Conservatorship at which time he would seek the Court's direction with respect to these undistributed funds. After much consideration, it is now our plan to request permission from the court to deposit these escrowed funds with the respective states Unclaimed Property Accounts. This is a very complicated and lengthy process, so we are in discussions with professional companies to assist in the process, which we believe would be the timeliest and most cost-effective step to take.

**Long-Term Requirements and Expenses**

After a final distribution, there are still many requirements that need to be fulfilled. For example, following the final distribution, there may be checks returned by the post office as "undeliverable" that



need to be researched and processed. Additionally, 1099s representing these funds need to be prepared and mailed.

In the long-term: final tax returns need to be filed; data and documents are required to be maintained and accessible for five years; the PO Box, website and phone lines need to be maintained (length of time to be determined); there may be additional unclaimed funds to be filed, and there may be legal filings that need to be handled by the Conservator's legal team.

These post Conservatorship functions will also need to be funded, so the Motion will include a potential budget and reserve to cover future expenses.

Please check the Conservator's website at [www.tommoranconservator.com](http://www.tommoranconservator.com) periodically for updates. Additionally, copies of all legal filings in this case can be found on the Oklahoma Securities Department website at [www.securities.ok.gov](http://www.securities.ok.gov) (type Accelerated Benefits in the search engine box and it will bring up the entire history in the case).

In an effort to keep expenses to a minimum, we ask that you email any questions you may have to [investorrelations@asgllc.us](mailto:investorrelations@asgllc.us) and we will prepare and post an FAQ.

With Kind Regards,

*Sheri Townsend*

Sheri Townsend, Assistant Conservator



## H.Thomas Moran II, Conservator

### Welcome

Welcome to the website of H. Thomas Moran II, Conservator of certain assets of Accelerated Benefits Corporation. The primary purpose of this website is to keep the investors of Accelerated Benefits Corporation informed of the actions of the Conservator and informed of current events.

### Next Step – Motion to Approve Procedures to Close the Conservatorship

The next course of action is to file a Motion with the Court outlining the procedures to be taken to bring the Conservatorship to a close. The Motion should be ready to file with the Court soon. After the Motion is filed with the Court, a hearing date will be scheduled by the Court, which may be several months in the future. A copy of the Motion, along with the hearing date, will be mailed to you.

The goal of the Motion is to make outstanding and future requirements and expenses known to you and the Court, as well as to receive a Court Order that provides an outline for terminating the Conservatorship. The following highlights two topics that will be detailed in the Motion.

### Escrowed Funds

The Conservatorship is holding undistributed funds in an escrow account for several hundred investors. ASG and the Conservator have made diligent efforts to locate these investors and distribute funds in a timely manner, however, for various reasons, and after lengthy and thorough research and communications, the Conservatorship is still unable to locate or distribute these funds to the investors. Many of these investors are deceased and the Conservator's team has been unable to locate their rightful heirs, or the heirs are unable or unwilling to provide the legal documentation necessary to transfer the account. There are also situations where the account funds have been willingly abandoned.

It was the Conservator's intent to continue efforts to locate these investors until the end of the Conservatorship at which time he would seek the Court's direction with respect to these undistributed funds. After much consideration, the plan is to request permission from the Court to deposit these escrowed funds with the respective states Unclaimed Property Accounts. This is a very complicated and lengthy process, so we



are in discussions with professional companies to assist in the process, which we believe would be the timeliest and most cost-effective step to take.

### **Long-Term Requirements and Expenses**

After a final distribution to the investors, there are still many requirements that need to be fulfilled. For example, following the final distribution, there may be checks returned by the post office as “undeliverable” that will require further research and processing. Additionally, 1099s detailing the final distribution need to be prepared and mailed.

In the long-term: final tax returns need to be filed; data and documents need to be maintained and accessible for five years; the PO Box, website and phone lines need to be maintained for a period of time; there may be additional unclaimed funds to be filed; and there may be legal filings that need to be handled by the Conservator’s legal team.

These post Conservatorship functions will need to be funded, so the Motion will include a potential budget and reserve to cover future expenses.

### **Conservatorship Information and Communication**

To keep expenses to a minimum, we ask that you email any questions you may have to [investorrelations@asglc.us](mailto:investorrelations@asglc.us).

Please check the Conservator’s website at [tommoranconservator.com](http://tommoranconservator.com) periodically for updates and additional information.

Copies of all legal filings in this case can be found on the Oklahoma Securities Department website at [www.securities.ok.gov](http://www.securities.ok.gov) (type Accelerated Benefits in the search engine box and it will bring up the entire history in the case).







Unclaimed Property Specialists  
9393 W 110<sup>th</sup> Street, Suite 430  
Overland Park, KS 66210

# MarketSphere Consulting, LLC

## ***Statement of Work***

## ***Unclaimed Property Services***

### **PRIVATE & CONFIDENTIAL**

November \_\_, 2023

Sheri Townsend  
Assistant Conservator  
c/o Asset Servicing Group, LLC  
521 W Wilshire Blvd STE 200  
Oklahoma City, OK 73116

Dear Sheri:

This Statement of Work and the attached Standard Business Terms constitute the understanding between MarketSphere Consulting, LLC ("MarketSphere" or "MSC") and Sheri Townsend, in her capacity as Assistant Conservator of Accelerated Benefits Corporation ("Client"), with respect to services to be performed by MarketSphere related to potential unclaimed property issues of the conservatorship (the "ABC Conservatorship") established by the District Court of Oklahoma County, Oklahoma in that action *Oklahoma Department of Securities v. Accelerated Benefits Corporation*, Case No. CJ-99-2500 (the "Court"). MarketSphere shall provide services pursuant to the provisions of this Statement of Work and MarketSphere's Standard Business Terms which, together, describe our understanding with respect to the services to be provided ("Agreement").

### **Project Objectives**

We understand that Client wishes to undertake an unclaimed property remote-based initial compliance assessment project with specific focus on resolving the unclaimed property it currently has identified on its books and records. This project will include the following objectives:

- Perform unclaimed property analysis of liability currently identified by Client and provide recommended strategy, by state, for coming into compliance and mitigating exposure.
- File first and final unclaimed property reports with applicable jurisdictions on behalf of Client.

### Project Scope

The scope for this project will be as follows:

- A review of the records identified by Client to-date and recommendations for mitigating exposure and achieving compliance with relative U.S. unclaimed property laws.
- Utilize advanced locator services technology to determine the most accurate address of each apparent owner whose name and last known address was identified from the ABC Conservatorship's records and attempt to reunify any unclaimed funds with the appropriate beneficiaries thereof.
- Complete and submit unclaimed property reports to states.
- Complete and submit Voluntary Disclosure Agreements to states (as necessary).

### MarketSphere Initial Compliance Assessment and Responsibilities

MarketSphere will be responsible for working with the Client and ABC Conservatorship team on the following:

- Overall project management.
- Coordination of data collection.
- Analysis and review of relevant data provided.
- Communication of specific analysis to Client.
- Delivery of Exposure Assessment and Voluntary Disclosure Plan (if necessary).
- Alternative remediation strategies regarding potential liabilities owed to states.
- Performing the services identified in this Agreement.

### Client Responsibilities for Initial Compliance Assessment

Client and ABC Conservatorship team will perform the tasks, furnish the personnel, provide the resources, or undertake the responsibilities specified below ("Client Responsibilities").

- Designate an employee within its management team who will communicate all management decisions with respect to engagement.
- Access to Client and ABC Conservatorship team.
- Gathering data from financial systems and manual processes.
- Gathering data from storage if necessary.
- Comprehensive fulfillment of information requests
- Review and acceptance of deliverables.
- Management decisions as necessary.

Client understands that MarketSphere's performance is dependent on Client's timely and effective satisfaction of Client Responsibilities hereunder and timely decisions and approvals by Client. To the extent Client or Client's personnel do not perform Client Responsibilities; MarketSphere shall notify Client of such non-performance. Client and MarketSphere shall work together to develop a mutually acceptable work-around plan.

### Project Assumptions

The services, fees and delivery schedule for this engagement are based upon the following assumptions, representations or information supplied by Client ("Assumptions").

#### Initial Compliance Assessment

- Client and ABC Conservatorship team will be available on a timely basis to participate in completion of all tasks as well as resolve any issues as they arise.
- Appropriate Client personnel will be available as required to provide necessary information and materials.
- Client and ABC Conservatorship team will provide MarketSphere with all necessary information from their financial systems, in an electronic format, to complete the assessment.
- Work will be completed at the MarketSphere offices.
- MarketSphere is relying upon the information that Client and ABC Conservatorship team provide for the delivery of services.
- Data will be provided from Client or ABC Conservatorship team to MarketSphere as a single dataset in MarketSphere's standard data template.
- Any changes in these assumptions, material additions or substitutions may impact project fees and timelines.
- Client shall respond within fifteen (15) days to MarketSphere requests for information to substantiate state and local information requests.

MarketSphere's delivery of services and the fees charged are dependent on (i) Client's timely and effective completion of Client Responsibilities, (ii) the accuracy and completeness of the Assumptions, and (iii) timely decisions and approvals by Client and ABC Conservatorship team's management. Client shall be responsible for any delays, additional costs, or other liabilities caused by or associated with any deficiencies in Client Responsibilities and Assumptions.

### Project Approach

During this project, the following activities will be performed, and the corresponding deliverables will be created.

Activities	Deliverables	Fees
<b>Phase 1 – Initial Quantification and Penalty &amp; Interest Analysis</b> <ul style="list-style-type: none"><li>• Perform a state-by-state escheatment analysis utilizing the data identified by Client thus far, including penalty and interest estimate.</li></ul>	<ul style="list-style-type: none"><li>• Recap of Liabilities by State, including penalty and interest estimates, and recommendations by state</li></ul>	<ul style="list-style-type: none"><li>• \$11,500.00 Fixed Fee billed at completion of Phase 1.</li></ul>

ABC Conservatorship Statement of Work – Unclaimed Property Services  
November 2023

Activities	Deliverables	Fees
<b>Phase 2 – Owner Reunification</b> <ul style="list-style-type: none"> <li>MarketSphere will determine contact information for the owner or their successor and conduct a communication campaign driving them to respond via multiple options such as a website hosted by MarketSphere, IVR, phone, email, or standard mail.</li> </ul>	<ul style="list-style-type: none"> <li>Summary of Owner Contact and Responses</li> </ul>	<ul style="list-style-type: none"> <li>\$80 per “success.”</li> <li>“Success” is defined as making contact with the owner or their successor and such owner or successor accepting the distribution.</li> </ul>
<b>Phase 3 - First and Final Report Filings</b> <ul style="list-style-type: none"> <li>Perform due diligence and owner outreach</li> <li>File unclaimed property reports in states in which the liability does not warrant commencing the formal voluntary disclosure process</li> </ul>	<ul style="list-style-type: none"> <li>Statutory Due Diligence Mailings and Response Copies</li> <li>Preliminary State Reports</li> <li>Final State Reporting Packages</li> </ul>	<ul style="list-style-type: none"> <li>\$15,000.00 Fixed Fee for reporting, which single fee shall cover all states (approximately 46) in which unclaimed property reports are filed.</li> <li>Due diligence mailings at \$4.00 per letter plus current first-class postage.</li> </ul>
<b>Phase 4 – Unclaimed Property Voluntary Disclosure Agreements (VDA), as elected</b> <ul style="list-style-type: none"> <li>Complete additional testing procedures as required by State VDA program(s)</li> <li>Finalize VDA methodology report(s), workpapers and supporting schedules for delivery to elected VDA states</li> <li>Draft necessary management representation letters</li> </ul>	<ul style="list-style-type: none"> <li>Enrollment in state VDAs, as elected</li> <li>Final workpapers and schedules</li> <li>VDA Methodology Report(s)</li> <li>Management representation letters</li> </ul>	<ul style="list-style-type: none"> <li>\$7,500.00 Fixed Fee for each state where VDAs are filed (estimate is 3-5 VDAs will be required).</li> </ul>

MarketSphere's fees for due diligence mailings and response tracking shall be billed at a rate of \$4.00 per letter plus current first class and/or certified postage rates. If customizations to the letter, such as Spanish or multiple pages, etc. are involved we will provide an updated quote for the per letter fee. MarketSphere will only perform these services upon receiving authorization from Client. Any fees in addition to those set out herein must be approved by Client prior to MarketSphere performing the accompanying services.

#### Transfer of Funds to States

To the extent any funds are paid into any State unclaimed property programs, Client shall be entitled to transmit the funds directly to the applicable State.

#### Billing and Invoicing

MarketSphere will bill Client monthly for fees and out-of-pocket expenses, as applicable. Client shall make payment within 30 days of the receipt of MarketSphere's e-mail invoice. Should any invoice remain unpaid for more than five working days beyond this deadline, MarketSphere shall be entitled to charge interest at the rate of 1.5% per month (or other appropriate amount based on the applicable business

ABC Conservatorship Statement of Work – Unclaimed Property Services  
November 2023

environment). Any taxes arising out of this arrangement other than those on MarketSphere's gross or net income shall be Client's responsibility.

Subject to Court Authorization

Notwithstanding anything to the contrary contained herein, this Agreement is contingent upon the entry of an Order by the Court approving the Client's entry into the same.

\*\*\*\*\*

We appreciate the opportunity to be of service to you and look forward to working with you on this project. You can be assured that it will receive our close attention. Please indicate your agreement to these arrangements by signing and returning to MarketSphere the enclosed copy of this Agreement.

Very truly yours,

MARKETSPHERE CONSULTING, LLC

By:

\_\_\_\_\_  
Luke Sims, Partner – Advisory Solutions Practice Leader

Attachments: MarketSphere Standard Terms

Acknowledged and accepted:

\_\_\_\_\_  
Sheri Townsend, in her capacity as Assistant  
Conservator of Accelerated Benefits Corporation

Date: \_\_\_\_\_



## ABC Conservatorship Statement of Work – Unclaimed Property Services November 2023

These Standard Business Terms ("Terms") shall govern the Services and Deliverables provided by MarketSphere Consulting, LLC ("MarketSphere") as set forth in the Statement of Work ("SOW") executed by Client and MarketSphere to which these Terms are attached. These Terms, together with the SOW, constitute the entire understanding and agreement between Client and MarketSphere with respect to the Services and Deliverables described in the SOW (collectively known as the "Agreement"), supersede all prior oral and written communications, and may be amended, modified or changed (including changes in scope or nature of the Services or fees as described under Change Order Process in the SOW) only in writing when signed by both parties. If there is a conflict between these Terms and the terms of any SOW, these Terms shall govern.

### **Section 1. Fees, Expenses**

Client shall pay MarketSphere the professional fees and the related expenses in accordance with the SOW.

### **Section 2. Client Responsibilities**

As a prerequisite to MarketSphere's delivery of Services, Client shall (i) fulfill the Client Responsibilities and ensure that all Assumptions are accurate as set forth in the SOW; (ii) provide MarketSphere with reliable, accurate and complete information, as required; (iii) make timely decisions and obtain required management approvals; and (iv) if on-site, furnish MarketSphere personnel with a suitable office environment and adequate resources and supplies, as needed. In addition, MarketSphere shall be entitled to rely on all Client decisions and approvals made independently of this Agreement and/or prior to its execution by the parties. Nothing in this Agreement shall require MarketSphere to evaluate, advise on, modify, confirm, or reject such decisions and approvals, except as expressly agreed to in the SOW.

### **Section 3. Confidentiality**

With respect to this Agreement and any information supplied in connection with this Agreement and designated by the disclosing party as confidential, or is non-public information that, by its nature, ought to be treated as proprietary and confidential or that a reasonable person would conclude is confidential, which is disclosed by one party, or such party's subcontractor or agent, to the other party, orally, electronically or in tangible form ("Confidential Information"), the recipient agrees to: (i) protect the Confidential Information in a reasonable and appropriate manner or in accordance with applicable professional standards; (ii) use Confidential Information only to perform its obligations under this Agreement; and (iii) reproduce Confidential Information only as required to perform its obligations under this Agreement. This section shall not apply to information which is (i) publicly known, (ii) already known to the recipient; (iii) disclosed to a third party without restriction; (iv) independently developed; or (v) disclosed pursuant to legal requirement or order. Subject to the foregoing, MarketSphere may disclose Client's Confidential Information to its subcontractors and affiliates, as required in connection with performing its obligations under the Agreement. At the end of the term or upon request, the receiving party agrees to return or destroy, at the disclosing party's election, any and all Confidential Information.

### **Section 4. Deliverables**

For the purposes of the Services provided in the Agreement, the parties agree that the Client shall retain all right, title and interest in and to the Deliverables as set forth in the Agreement. MarketSphere shall retain all right, title, and interest in all methodologies, processes,

techniques, ideas, concepts, trade secrets and know how used to produce the Deliverables or that MarketSphere may develop or supply in connection with this Agreement, including but not limited to all patent, copyright, trademark and other intellectual property rights therein (the "MarketSphere Knowledge"). Subject to the confidentiality restrictions contained in Section 3, MarketSphere may use the Deliverables and the MarketSphere Knowledge for any purpose.

### **Section 5. Acceptance**

Client shall accept Deliverables and Services which conform to the requirements of the SOW. Client will promptly give MarketSphere notification of any non-conformance of the Deliverables with such requirements ("Non-conformance"), and MarketSphere shall have a reasonable period of time, based on the severity and complexity of the Non-conformance, to correct the Non-conformance. If Client uses the Deliverable before acceptance, fails to promptly notify MarketSphere of any Non-conformance, or unreasonably delays MarketSphere's attempt to obtain Client acceptance, then the Deliverable shall be considered accepted by the Client.

### **Section 6. Warranty**

(a) MarketSphere warrants that the Services shall be performed with reasonable care in a diligent and competent manner. MarketSphere's sole obligation shall be to correct any Non-conformance with this warranty, provided that Client gives MarketSphere written notice within thirty (30) days after the Services are performed.  
(b) MarketSphere does not warrant and is not responsible for any third party products or services. Client's sole and exclusive rights and remedies with respect to any third party products or services are against the third party vendor and not against MarketSphere.  
(c) This section 6 is MarketSphere's only warranty concerning the services and any deliverable, and is made expressly in lieu of all other warranties and representations, express or implied, including any implied warranties of merchantability, non-infringement, or fitness for a particular purpose, or otherwise.

### **Section 7. Risk Allocation**

(a) MarketSphere's total liability relating to this Agreement shall in no event exceed the fees hereunder for the portion of the work giving rise to liability, and shall not include any special, punitive, consequential, incidental or exemplary damages or loss (nor any lost profits, savings or business opportunity).  
(b) As MarketSphere is performing the Services solely for the benefit of Client, Client will indemnify MarketSphere, its affiliates and their employees, officers and agents against

# MarketSphere Consulting

## Standard Business Terms

all costs, fees, expenses, damages and liabilities (including defense costs) associated with any third party claim, relating to or arising as a result of the Services, Client's use of the Deliverables, or this Agreement.

(c) MarketSphere will indemnify Client against any damage or expense relating to bodily injury or death of any person or damage to real and/or tangible personal property incurred while MarketSphere is performing the Services and to the extent caused by the gross negligence or willful acts or omissions of MarketSphere's personnel or agents in performing the Services.

(d) The provisions of this Section 7 are intended to apply in all circumstances, regardless of the grounds or nature of any claim asserted (including contract, statute, any form of negligence, whether of Client, MarketSphere, or others, tort, strict liability or otherwise) and whether or not the party seeking indemnification was advised of the possibility of the damage or loss asserted, to the extent not contrary to applicable law.

(e) Any action against MarketSphere must be brought within eighteen (18) months after the cause of action arises.

(f) If a dispute arises out of or relates to this contract, or the breach thereof, and if the dispute cannot be settled through negotiation, the parties agree first to try in good faith to settle the dispute by mediation administered by the American Arbitration Association under its Commercial Mediation Procedures before resorting to arbitration. If they do not reach such solution within a period of 60 days, then, upon notice by either party to the other, all disputes, claims, questions, or differences shall be finally settled by arbitration administered by the American Arbitration Association in accordance with the provisions of its Commercial Arbitration Rules.

### **Section 8. Personnel**

(a) While MarketSphere shall attempt to comply with Client's request for specific individuals, MarketSphere shall be responsible for assigning and re-assigning its personnel, as appropriate, to perform the Services.

(b) During the term of this Agreement, and for a period of twelve (12) months following the expiration or termination thereof, neither party will actively solicit the employment of the personnel of the other party involved directly with providing Services hereunder.

### **Section 9. Termination**

(a) This Agreement may be terminated at any time by either party upon thirty (30) days prior written notice to the other.

(b) Client shall pay MarketSphere for all Services rendered and expenses incurred as of the date of termination, and shall reimburse MarketSphere for all reasonable costs associated with any termination, which will be defined in a Change Order.

### **Section 10. Data Governance**

MarketSphere reserves the right to destroy Client data that is received erroneously, is determined to be irrelevant to the Services or Deliverables to be provided as outlined in the SOW, or has been used for the purpose of providing the Service or Deliverable and is not required to be retained.

MarketSphere shall notify Client before any destruction of Client data and provide the opportunity to have the data returned to the Client before its destruction. If Client requests data is returned then the Client agrees to pay MarketSphere applicable fees for the return of data.

### **Section 11. General**

(a) Neither party shall use the other party's name, trademarks, service marks, logos, trade names and/or branding without such party's prior written consent.

(b) Neither party shall be liable for any delays or failures in performance due to circumstances beyond its reasonable control.

(c) This Agreement may not be assigned or otherwise transferred without the prior express written consent of the other party. MarketSphere may, without Client's written consent, assign this Agreement to an affiliate or use subcontractors to provide Services. Notwithstanding anything herein to the contrary, either party may freely assign this Agreement in connection with a transfer to a related party or due to a merger, consolidation, or sale of substantially all of its assets or stock.

(c) Any notices given pursuant to this Agreement shall be in writing, delivered to the address set forth in the SOW, and shall be considered given when received.

(d) No term of this Agreement shall be deemed waived, and no breach of this Agreement excused, unless the waiver or consent is in writing signed by the party granting such waiver or consent.

(e) If any term or provision of this Agreement is determined to be illegal or unenforceable, such term or provision shall be deemed stricken, and all other terms and provisions shall remain in full force and effect.

(f) This Agreement does not make either party an agent or legal representative of the other party, and does not create a partnership or joint venture. Both parties are independent contractors and principals for their own accounts.

(g) Sections 3 through 11 of these Terms shall survive the expiration or termination of this Agreement.

(h) The laws of the State of Delaware shall govern this Agreement.

(i) Client acknowledges that: (i) MarketSphere and Client may correspond or convey documentation via Internet e-mail unless Client expressly requests otherwise, (ii) neither party has control over the performance, reliability, availability, or security of Internet e-mail, and (iii) MarketSphere shall not be liable for any loss, damage, expense, harm or inconvenience resulting from the loss, delay, interception, corruption, or alteration of any Internet e-mail due to any reason beyond MarketSphere's reasonable control.