

IN THE UNITED STATES DISTRICT COURT

FOR THE SOUTHERN DISTRICT OF OHIO  
WESTERN DIVISION

H. THAYNE DAVIS,	)	
	)	
Plaintiff,	)	
vs.	)	Case No. 3:04 CV 0059
LIFETIME CAPITAL, INC.,	)	(Magistrate Judge
	)	Sharon L. Ovington)
and	)	
	)	
DAVID W. SVETE,	)	
	)	
Defendants.	)	
	)	

EXAMINATION UNDER OATH OF H. THOMAS MORAN, II  
TAKEN ON BEHALF OF THE EXAMINER  
IN OKLAHOMA CITY, OKLAHOMA  
ON AUGUST 14, 2004

REPORTED BY: MARLA J. CULLISON, CSR ##1647

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S T I P U L A T I O N S

IT IS HEREBY STIPULATED AND AGREED by and among the attorneys for the respective parties hereto that the Examination Under Oath of H. THOMAS MORAN, II may be taken on behalf of The Examiner on the 14th of August, 2004, in Oklahoma City, Oklahoma, by Marla J. Cullison, Certified Shorthand Reporter within and for the State of Oklahoma, pursuant to Notice.

H. THOMAS MORAN, II,  
after having been first duly sworn at 8:05 a.m.,  
deposes and says in reply to the questions  
propounded as follows, to wit:

EXAMINATION UNDER OATH

BY THE EXAMINER:

Q Let the record reflect that this is  
Examination Under Oath of the receiver, Thomas  
Moran, regarding the caption matter. Would you state your full  
name, please?

A Henry Thomas Moran, II.

Q Mr. Moran, have you ever given sworn  
testimony before?

A Yes, I have.

Q I'll assume you understand the ground  
rules and not go through them.

MR. KIRK: Mr. Oehlers, are you able to  
hear?

MR. OEHLERS: I am.

Q (By The Examiner) What is your business  
address?

A 4240 West Britton Road, Oklahoma City.

Q Would you tell us about your educational  
background?

A I have a BA from Oklahoma City

University. Graduated from McGinnis High School in Oklahoma City.

Q Are you currently employed?

A Yes.

Q Where?

A I'm employed with the Heritage Group as CCE.

Q What is the Heritage Group?

A It's a life settlement brokerage agency.

Q What does a life settlement brokerage agency do?

A Life settlement brokerage agency assists people in selling their life insurance policies.

Q To Viatical companies?

A To Viatical companies.

Q Do you operate as a Viatical company?

A No. Wait, rephrase that.

Q Other than as a receiver?

A No, I don't.

Q Have you ever operated as a Viatical company?

A No.

Q And you're currently receiver for LifeTime Capital?

A Yes, I am.

Q Have you ever served as a receiver for a Viatical company previously?

A I've served as a conservator for Accelerated Benefits Corporation.

Q Is there a difference between a server and a receiver in your opinion?

A Not much. Very little, if any.

Q Let's talk a little bit about Accelerated Benefits. When were you named conservator?

A In February 2002.

Q What was the reason that you were named conservator?

A The Oklahoma Securities Department had a judgment against the principals of the company, and the company had found them -- there was a fraud conviction, I guess is the word, against them. And they were wanting to execute on that judgment. And through a joint order we agreed that I would become conservator.

Q Viatical company has a portfolio of life insurance policies?

A Correct.

Q What was the condition of the Accelerated Benefits portfolio at the time you took over?

A It was in relatively good shape

accounting wise. Now, we only took over certain assets of the Accelerated Benefits. We didn't take over the whole company. Those assets being primarily cash and policies.

Q Who took over the balance of the company?

A The prior management kept that portion of it.

Q What sort of services did you perform as conservator for Accelerated Benefits?

A Well, we managed the portfolio, which means that we would pay the premiums. In that instance we actually billed the investors for premiums for a period of time. We would track the health of the people who sold their policies, and we would track their -- if they were living or dead or that type of things. We did all the accounting. Just the general administrative functions.

Q Approximately how much was invested originally in the Accelerated Benefits portfolio?

A well, the portion that we were conservator for represented right at one hundred million dollars.

Q And what was the face value of the portfolio?

A Right at -- right at a little under one

hundred fifty million dollars.

Q So very similar to LifeTime?

A Very close. Very similar, yes.

Q Are you still conservator for Accelerated Benefits?

A Yes.

Q What is going on now with that conservatorship?

A We sold the portfolio, more or less, for lack of a better term, on a contract for order deed. We put the portfolio out for bid. We had five different people bid on it that we considered to be legitimate bidders. We had several different methods of purchase from these people. We determined the five best -- actually its probably more than that. But I think the five best offers.

We sent the five best offers out to all the investors. There were about five thousand investors. And we asked them to tell us which offer they liked the best. We pooled that, gave the information to the judge. After we got that, we received a couple more offers that we then proposed to the judge as well. The judge took that information and awarded the sale to what he considered to be the best offer.

Q Was that one of the five that you had sent out?

A Yes.

Q What was the nature of that offer?

A Basically, it was a down payment. They put up two point seven million dollars. And agreed to pay the premiums and share with the investors on the maturities. And it would be anywhere from sixty percent to seventy percent of the maturities going to the investors. They also agreed, besides paying premiums, to pay administrative cost and legals.

Q How was the sharing determined as far as the amount of sharing?

A Excuse me one second. Up to a maximum of fifty-nine million dollars.

Q So they put two point seven million down. They would share with the investors sixty to seventy percent of maturities. Now, they would share with the investors up to fifty-nine million, or they would take a maximum of -

A Once the investors received a maximum of fifty-nine million, they had the balance, whatever that was.

Q So the investors' maximum recovery is approximately sixty-one point seven million,

something in that range?

A No, it's exactly fifty-nine million. That two and a half, two point seven is included in that.

Q Okay. The down payment is included?

A Yes.

Q So in that situation, the investors are going to receive basically fifty-nine cents on the dollar, approximately?

A Well, it was over one hundred million. It was probably closer to one hundred five million. We think it's going to be close to fifty-five percent. Fifty-five cents on the dollar of investment.

Q Why is it that you can't sell it for the amount of the investment?

A We tried. And at that time, we didn't have financing, either. And no one would offer it. I mean, we got -- we ended up with multiple offers. This offer in the judge's opinion was the highest offer, and that's why we did it.

Q Were there any issues as far as life expectancies and things like that you envisioned perhaps being for a long period of time or something?

A Oh, yeah, the actual report said twelve percent of the people would still be alive in twenty years.

Q Does that reduce the fair market value of the portfolio?

A Yeah. Nobody is going to pay anything for something that is twenty years out.

Q Why is that?

A Present value of money. You can't pay for anything really over fifteen years out. It's not worth it to sophisticated investors.

Q So twelve percent are projected to be alive in twenty years?

A Yes.

Q What about the balance of the --

A It was spread out over a period of time. I mean obviously thirty-three percent are going to die within twenty years or on some type of a Bell curve.

Q Beside it wasn't like eighty percent were to die in the next two years?

A No, no. It was close to about four million a year for the first five years, a little less than four the first year and a little lower than four the next four years. So I would say maybe

a maximum of seventeen million dollars in the first five years.

The other thing, too, and you have to understand, is that every one of those policies had already reached the life expectancy. So these people were supposed to have -- those policies were supposed to have matured long ago, and here they are to be projected five, fifteen, twenty, twenty-five, and thirty years.

Q So in your examination of the portfolio, did you find any understatements of life expectancies at the time of sale?

A Yes. Every one of them were understated.

Q Has there been any action in that regard against those that put together the life expectancy?

A Put together by the federal government.

Q What are you currently doing?

A Right now, we're just managing that portfolio and paying premiums, tracking the people. And as the policies mature, we collect the money, and we pay the investors, and we pay the people that purchased it.

Q Now, paying the premiums, you're using the purchasers' money?

A Yes. Right; that is correct.

Q So no more investor funds?

A No, no more. And we were able to pay back the investors all the money that they paid in for premiums at the time that we took over as receiver.

Q Do you have any projected end date as far as the investors are concerned?

A It's going to be anywhere from -- I'll just give my best guess. Ten, eleven years.

Q Okay. But the investors aren't going to incur any additional cost during that period?

A No.

Q Any other receiverships, conservatorships, anything like that prior to LifeTime?

A We were hired to be the consultants of the conservator of any future reimbursements.

Q As the consultant to the conservator, what did you do?

A We managed the portfolio for him. We assisted in helping him sell the portfolio.

Q Were you the decision-maker, as far as sales were concerned?

A No.

Q That portfolio has been sold?

A Yes.

Q Was it similar to Accelerated Benefits and LifeTime as far as the condition of the portfolio when you became a consultant?

A Yes.

Q Was it about the same size, one hundred million invested?

A It was about two -- no. There were a lot of conflicting amounts, and I'm not sure I was ever involved in all of that. But the portfolio was about two hundred forty, two hundred fifty million.

Q Invested?

A No, face value.

Q Okay.

A The investment has ranged, I've heard, anywhere from, gosh, one hundred fifty, all the way up to three hundred. So I have no idea what the actual investment dollar amount was on that.

Q The portfolio has been sold?

A Yes.

Q Was it a straight sale?

A It was a time sale.

Q What were the terms of that sale?

A It was fifty percent. The people that bought it would pay the premiums and the expenses to

administer. And pay fifty percent of the maturities to the investors to a maximum of thirty-five million dollars.

Q Do you have any idea what that maximum thirty-five million dollars actually represents as far as return to the investors?

A Probably --

Q I mean, is it thirty cents? Is it twenty cents?

A I think it was determined to be -- let's see. This will tell us what the determined amount was that was put in. I think it was determined somewhere, give or take, one or two percent of about fifteen cents on the dollar.

Q Fifteen cents?

A Uh-huh.

Q Do I understand that you weren't the decision-maker?

A That is correct.

Q Was this a good idea for the investors?

A The judge made the ruling.

Q Were you at all involved in the purchase? You or any entity or associated with part of the purchase?

A Oh, no.

Q Why fifteen cents on the dollar? Again, I understand you're not the decision-maker, but was there something about that portfolio or the market that --

MR. KIRK: Can we go off the record for just a minute?

(Off-the-record discussion

8:20 a.m. to 8:21 a.m.)

Q (By The Examiner) So market conditions, based on the portfolio and the management of the portfolio at the time you were consulting, dictated that this was about the best offer you could get?

A That's the best offer they got.

Q Okay. Any other receiverships, conservatorships, or consulting as far as --

A No.

Q -- problem viatical companies?

A No.

Q What services are you currently performing for LifeTime?

A Again, we're managing the portfolio. That means paying the premiums, tracking the people that have viaticated their policy. Getting actuarial studies. Assisting in formulating the information to get an accurate study. Beginning to

track some health on the individuals. Those type things.

Q In your review of the portfolio, have you determined -- I assume you've reviewed the portfolio?

A Yes.

Q Have you determined that the majority of the viators are in excess of eighty years old?

A No, about a little over thirty percent are in excess of eighty years old.

Q I understand you're in the process of an actuarial study?

A Yes.

Q But have you formulated any opinions as to whether the life expectancies at the time of sale to the investors were understated?

A In my opinion, they were terribly understated.

Q Do you have any opinion as to by how much percentage wise or --

A In the cases that I've reviewed, I've seen cases anywhere from twenty to twenty-five years, down to maybe four or five years.

Q And the majority of these policies were sold with something between twenty-four to perhaps a

maximum of forty-eight to sixty months' life expectancy?

A That is correct, yes.

Q And you're saying what you've reviewed about forty-eight months out to about twenty to twenty-five years?

A Well, I meant forty-eight months over the -

Q Predicted?

A -- the predicted, yes.

THE EXAMINER: Let's go off the record.

(off the record 8:23 a.m. to 8:24 a.m.)

Q (By The Examiner) In your management of the portfolio, what exactly do you do?

A As I said, we pay the premiums, and then we track the individuals to see if there had been any maturities.

Q Now, in tracking individuals, have you determined whether there have been maturities or not?

A Yes. Since we've taken over, we determined that there was one maturity prior to us taking over as receiver that we discovered after taking over as receiver. And then there's been one other maturity since then. It's been about six

months, and we've had one since we've taken over.

Q Now, the maturity that occurred prior to your taking over, did that money come into LifeTime before or after you were appointed receiver?

A After we were appointed receiver.

Q Have you advised the court of that maturity?

A Yes, I have.

Q Does that involve two Prudential policies?

A Yes, it does.

Q And it's my understanding that you're intending to take that issue to the Court for direction as to what to do with those funds?

A Exactly.

Q Do you currently have the power to disburse those funds to anyone without a court order?

A No.

(Examiner's Exhibit Number 1  
marked for identification purposes)

Q Handing you what has been marked as Examiner's Exhibit 1. I assume you've seen that document before?

A Yes, I have.

Q I just wanted to go through a few matters in the document. First off, have you ever met Mr. Bustos?

A No, I have not.

Q Have you ever talked with him at all?

A No, I have not.

Q Now, he indicates in the third paragraph that you were the receiver for Accelerated Benefits. We know you were a conservator, but the activities are basically the same?

A That's correct.

Q And he indicates that the investors were supposed to receive the amount that they invested. Did you ever advise the investors of Accelerated Benefits that they would receive their entire investment back?

A No.

Q Did anyone on your behalf ever do that?

A Oh, no.

Q Do you know where that statement would come from?

A I have no idea.

Q He indicates that the investors are going to receive fifty-two cents on every dollar over seven years. That's close to accurate, I guess?

A That's fairly close to accurate.

Q If you look further down in the fourth paragraph, the language states, quote, "Mr. Moran estimates that he will pay out eighty-six million," closed quote. Have you ever projected to anyone that you were planning on a pay-out to the LifeTime investors in the amount of eighty-six million dollars?

A No.

Q Are you in a position at this point in time to even estimate what the payout will be to the investors?

A It would be impossible for anyone to do at this time.

Q Mr. Bustos goes on to say that the balance of the money, the difference between eighty-six million and one hundred fifty-four million is needed for premiums and legal expenses. Have you ever represented to anyone that this difference between one hundred fifty-four million and eighty-six million was needed for premium and legal expense?

A No. That's absurd.

Q Last paragraph there. He states that he asked an expert, and the expert told him that the

premiums are likely to be between fifteen and twenty million over the next seven years. Is that reasonably accurate?

A No.

Q Assuming the LifeTime portfolio was paid out over the next seven years, do you have any numbers on what the premium expense would be?

A It would be probably closer to thirty million dollars.

Q What is the current annual premium expense?

A It's close to five million dollars.

Q If you go to the top of the next page it's indicated there in the first paragraph that you project forty-four million dollars, basically in administrative and legal expense, during your receivership. Is that accurate?

A That's absurd as well.

Q Do you have any projections as to the administrative and legal expense?

A Of course not. We don't know how long we're going to be doing this. There is no way to determine at this point. But if we were there twenty years, it wouldn't be that much.

Q In the second paragraph, he indicates

that his expert placed a best-case scenario at a return to the investors of as much as one hundred twenty million after satisfying the debt already occurred. Do you have any opinion as to the accuracy of that statement? Not that his expert said it, but is that something that you can project at this point in time?

A No. That's impossible.

Q If all the buyers died tomorrow, that would probably be accurate?

A Sure, that would be accurate.

Q You don't have any expectation?

A History proves out that that isn't going to happen.

(Examiner's Exhibit Number 2  
marked for identification purposes)

Q Hand you what has been marked as Examiner's Exhibit 2. But before we get to that, have you ever indicated to the Court that you needed to borrow thirty-three million dollars for LifeTime for payment of legal fees?

A No.

Q Now referring to Examiner's Exhibit 2, do you recognize that document?

A Yes.

Q If you would, turn to page 3, and the bottom of the page there, there's a paragraph entitled Pro Rata Interest in the Receivership Assets as a whole.

Frankly there has been some confusion as to what the meaning of that paragraph is, primarily with Mr. Bustos, but with some other individuals as well. Are you projecting in there that an investor with one hundred thousand dollars invested out of the total of ninety-six million invested, would have a percentage claim against that ninety-six million, or a percentage claim against the pot, whatever side it may be?

A It's against the pot, whatever side it may be.

Q For instance, if you recover one hundred ten million?

A Yes.

Q An investor would have the .0010331 claim against that pot if they had invested one hundred thousand dollars?

A That's correct.

Q And if they invested two hundred thousand dollars, their claim would be twice that size?

A That's right.

Q And if they invested fifty thousand dollars, their claim would be half that much?

A That's right.

Q But you're in no way limiting the investors' claim to the amount of the original investment regardless of the pot size, are you?

A That's right.

Q I'm just curious as to your thoughts regarding Mr. Bustos' proposal wherein each investor sends him one hundred dollars to perform basically a hostile takeover, and then operate this company by themselves.

A I've seen these things before. It's sad. It hurts the investors who have already been hurt. It stirs them up. Sometimes gives them unrealistic expectations. We've been hired and work for the court to represent the investors and to make sure that they get the biggest return that we can possibly do. And have people like this come out of the woodwork with unrealistic expectations and throwing numbers that have no meaning whatsoever to stir them up, just, it's criminal in my opinion.

Q You're in the process of doing an actuarial study now; is that right?

A Yes.

Q           Until that is concluded, is there any way you can really place any sort of fair market value on this portfolio?

A           No. And even if it is concluded, that's only for the purposes of valuation and an option. Actuaries can tell you something is worth something, but if no one is willing to pay that, it's not. Actuaries can tell you it's worth something and someone may be willing to pay a lot more than that. It's just a barometer reading.

Q           Have you made any decisions as to what your recommendation is going to be to the court as far as the handling of this portfolio, whether it's going to be a quick sale, or administering the portfolio for a while or anything like that?

A           My intention at this point is to administer the portfolio to see if it will mature as has been told to these investors. We know that's not going to happen, but if we can get maturities, every policy that matures will make that much more return to the investors, rather than selling that policy for a fraction of the face amount. The longer that we can hold onto it, it's my opinion, the more money we can get for them if it gets to that point.

As I said, we haven't had but one small maturity since we've taken over. If that continues for a year or two and we don't get any maturities, then there's not going to be any money for anybody. I shouldn't say that. We will get some maturities, but there's only one hundred fifty people involved. So you have a small sampling for an actuary study. So there is a lot of if's-and-but's that go into these things, but if we do receive some maturities, it's just beneficial to the investors.

Q So your options are really, administrate the portfolio, deal with maturities as they come in, perhaps do interim distributions if there's sufficient cash?

A Yes. Yes, sure. Or selling the portfolio at a fraction of the face amount.

THE EXAMINER: Okay. That's all I have.  
Thank you.

THE WITNESS: Okay. Thank you.

MR. KIRK: May I ask one question?

THE EXAMINER: Yes.

MR. KIRK: Mr. Moran, when we've been talking about your role as an officer of the court in connection with the Accelerated Benefits Corporation case, we've sort of used "receiver" and

"conservator" interchangeably, correct? You were the conservator for Accelerated Benefits. Are you the receiver in this case?

THE WITNESS: That's right.

THE EXAMINER: You have the right to review this and sign it, or you can waive that right.

THE WITNESS: I'll waive that right.

(Examination Under Oath Adjourned at 8:45 a.m.)

C E R T I F I C A T E

STATE OF OKLAHOMA                    )  
  ss:  
COUNTY OF OKLAHOMA                )

I, Marla J. Cullison, a Certified Shorthand Reporter for the State of Oklahoma, certify that the above-named H. THOMAS MORAN, II was by me first duly sworn to testify the truth; that the above and foregoing deposition taken by me in stenotype and thereafter transcribed is a true and correct transcript of the testimony of the witness; that the deposition was taken on August 14, 2004, at 8:05 a.m, at 4240 West Britton Road, Oklahoma City, State of Oklahoma; that I am not an attorney for nor a relative of any said parties, or otherwise interested in the event of said action.

IN WITNESS WHEREOF, I have hereunto set my hand and seal of office on this 26th day of August, 2004.

Marla J. Cullison,  
Oklahoma Certified  
Shorthand Reporter  
Certificate No. 1647.  
Exp. Date: December 31, 2004