



After extensive negotiations the parties agreed that it was in the investors' best interests to appoint a conservator to take over administration of the Viatical policies, in lieu of a judgment for restitution against Defendants. On February 6, 2002, the Court entered its Order Appointing Conservator and Transferring Assets (the "Conservatorship Order") and appointed Tom Moran as Conservator. The Conservatorship Order transferred certain assets of ABC and its agents (the "Conservatorship Assets"), including:

- a. All life insurance policies owned or held beneficially, directly or indirectly, by or for the benefit of ABC and/or ABC Investors, that were purchased prior to October 1, 2000 (the "Policies"); ...

The Conservator was further given the direction and authority to accomplish the following:

- a. To take custody, possession and control of the Conservatorship Assets as they are transferred to the Conservator;
- b. To manage all Conservatorship Assets pending further action by the Court including, but not limited to, the evaluation of the Policies, and to take 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 the future premium payments; ...

During the course of the Conservatorship, the Conservator contacted numerous institutions, including Life Alliance and Infinity Capital Services, Inc. ("Infinity"), regarding their potential interest in purchasing the viatical portfolio included as part of the Conservatorship Assets. Both Life Alliance and Infinity made offers for the purchase of the viatical portfolio.

Initially, Life Alliance made a cash offer of approximately \$24,000,000.00, but ultimately amended its proposal to include three separate options for the purchase of the portfolio. Each of the

options differed in length of time and amount of return to the investors. Included in the Life Alliance offers was a proposal for premium financing, Life Alliance Option No. 3, which provided for advances by Life Alliance for the payment of premiums and expenses, in exchange for a portion of future maturity proceeds, as well as repayment of the amounts advanced by Life Alliance, plus interest.

On October 25, 2002, the Conservator filed his motion seeking the Court's approval of the sale of Conservatorship Assets (the "Conservator's Motion"). Copies of the Conservator's Motion were provided by the Conservator to Life Alliance and Infinity, and neither Alliance nor Infinity voiced any objection regarding the explanation offered by the Conservator to the Court and investors regarding their respective offers. The Conservator's Motion stated that the "Conservator [would] continue to seek alternative purchasers for the viatical portfolio pending the Court's ruling on [the] motion." The Conservator continued to seek additional bids for the portfolio, and also continued to negotiate with Life Alliance and Infinity in an effort to get them to increase their offers in order to maximize the return to the investors.

In order to allow the Conservator time to have all offers examined and analyzed by an independent actuary prior to the scheduled hearing, the Conservator notified all potential purchasers that all offers had to be submitted by close of business on December 10, 2002. Both Life Alliance and Infinity increased their proposals prior to the deadline set by the Conservator for submission of offers. The Conservator also received an offer from Dover Investment Corporation within the time allowed which the Conservator intends to present to the Court for consideration.<sup>1</sup>

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<sup>1</sup> An offer was also received from Mercurius Capital Management, Ltd. after the deadline, which was not considered by the Conservator.

The Conservator submitted the proposals which were timely received to the independent actuary for analysis to assist the Court and Conservator in their evaluation of the various proposals. The Conservator also met separately with representatives of both Life Alliance and Infinity to discuss the details of their respective proposals. Included in these discussions were the Conservator's and the Department of Securities questions to Life Alliance confirming certain details of its offer, including whether title to the policies would be transferred to Life Alliance under each of their various options. The Life Alliance representatives confirmed to the Conservator and the Department of Securities that it was their intent that title would be transferred to Life Alliance under Life Alliance Option 1 and Life Alliance Option 2 in order to satisfy the requirements of their lender.<sup>2</sup>

Following these meetings, upon the receipt of the analysis provided by the actuary and following discussions with counsel for the Department of Securities, the Conservator made his determination to recommend to the Court the Infinity offer. The Conservator contacted both Life Alliance and Infinity to inform them of his intent to make such recommendation to the Court.

On December 12, 2002, prior to the conversation with the Infinity representative, but after the Conservator made his determination to recommend approval of the Infinity Offer to the Court, the Conservator received a letter from Infinity stating that if the Court approved the Infinity offer, it would increase the amount paid to the investors by \$2,000,000.00.<sup>3</sup> The Conservator contacted the Infinity representative and told him that it was too late for Infinity to modify its offer, and therefore the increased payment would not be a factor in his recommendation to the Court. However, the

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<sup>2</sup> Under Life Alliance Option 3 and the Infinity offer, title to the policies would remain with the Conservatorship until all funds due the investors had been paid.

<sup>3</sup> The decision to recommend the Court's acceptance of the Infinity offer was made prior to the offer of additional funds and was not a factor in the Conservator's decision. However, the additional funds further distinguish the Infinity offer as being the best overall offer.

Conservator does intend to make the Court aware of this increase to the investors, to be included in the Infinity offer, should the Court approve the Infinity offer.

**ARGUMENT AND AUTHORITY**

Life Alliance has entered its appearance and moved the Court to exclude the proposals of Infinity for the alleged reasons that: 1) the Conservator has failed to comply with his requirement that bids were required to be for the "sale" of Conservatorship assets; and, 2) as to the proposals of Infinity and others that the Conservator has considered bids submitted after the deadline of December 10, 2002. Such allegations have no basis, and as such, Life Alliance's motion should be denied.

Further, as the above facts show, the Conservator has acted properly in soliciting bids from the various entities and only those offers which were received prior to the deadline were considered by the Conservator in making his determination of which offer to recommend to the Court. The various reasons for the Conservator's recommendation will be presented to the Court at the evidentiary hearing on the Conservator's Motion. The Conservator is also seeking to have the Court approve more than one of the offers, in order to provide the Conservator with options in case of a failure of the successful bidder to consummate a purchase agreement, or to pay the required consideration.

**A. Nothing in the Conservator's Solicitation of Bids, or the Conservator's Motion, Required a "Sale" of Assets, or Would Preclude a Proposal for Premium Financing.**

Life Alliance attempts to argue that the Court should exclude the Infinity offer because "it does not involve a 'sale' of Conservatorship Assets." This argument is unsupported by any law or

facts, and therefore has no merit. All timely offers received by the Conservator from the various bidders have been submitted to the Court for consideration. Neither the Conservator, nor the Court, has set any qualifications on the type of offers which would be considered.

Life Alliance argues that "rules established by the Conservator required that interested persons submit offers for the 'sale' of the ABC Portfolio." In support of this argument, Life Alliance offers a letter from the Conservator to Life Alliance acknowledging the receipt of Life Alliance's offer. *See* Exhibit 12 attached to Life Alliance's Motion. Clearly, nothing in this letter sets forth any "rules" for the type of offer which must be submitted.

Life Alliance argues that the Infinity offer should be excluded because it is not a "sale" of the assets, but is instead a premium financing proposal. The Conservator never required that any offer be limited to a sale of assets and Life Alliance's argument is further refuted by the fact that Life Alliance has also included a proposal for premium financing in its Life Alliance Option No. 3. Therefore, any objection to the Court's consideration of the Infinity offer because it is not a "sale of assets" is not supported by the evidence and should be denied by the Court.

**B. The Conservator Has Not Considered Any Offers Received After the Deadline Imposed.**

Life Alliance next attempts to argue that the Infinity offer should be excluded because it was not received prior to the deadline of December 10, 2002. However, this argument is also not supported by the evidence. Infinity's initial offer was attached to the Conservator's Motion. As noted above, the Conservator continued to negotiate with Life Alliance and Infinity, as well as other potential bidders, after the initial proposals were submitted to the Court. During the course of these negotiations, both Infinity and Life Alliance made modifications to their original offers. Infinity

modified its offer by letter dated December 3, 2002.

On December 6, 2002, counsel for the Conservator sent a letter to the various bidders and potential bidders which set a deadline of December 10, 2002 for receipt of any offer to be presented to the Court for consideration. Life Alliance amended its offer by letter dated December 10, 2002 which was received by facsimile that same day. All timely offers were submitted to the independent actuary for evaluation to assist in the analysis by the Conservator.

As noted above, upon the receipt of the analysis provided by the actuary and following discussions with counsel for the Department of Securities, the Conservator made his determination to recommend that the Court accept the Infinity offer. After the Conservator made his decision to recommend the Infinity offer, he received Infinity's letter dated December 12, 2002, informing the Conservator that if approved, Infinity would pay an additional \$2,000,000.00 to the investors under its proposal.<sup>4</sup>

Since the offer of the additional payment was received after the Conservator had made his determination to recommend Infinity, it clearly did not influence his decision, and it is only the Infinity offer of December 3, 2002 which is being submitted to the Court for consideration. However, it is the Conservator's intent to make this increased payment known to the Court at the hearing, if the Infinity offer is approved by the Court, and to include the increased payment in the terms of any purchase agreement for the benefit of the investors.

All of the offers evaluated by the Conservator which will be submitted to the Court for consideration were properly received in the time set forth by the Conservator. Therefore, despite

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<sup>4</sup> An additional offer was also received from Mercurius Capital Management Ltd. after the deadline. This offer was not considered by the Conservator and is not being presented to the Court for consideration.

Life Alliance's assertion to the contrary, there has been no fundamental unfairness and the Court should consider the Infinity offer.

WHEREFORE, the Conservator, Tom Moran, respectfully requests the Court overrule Life Alliance's motion and consider all offers submitted to the Court for consideration.

Respectfully submitted,



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