FILED IN THE DISTRICT COURT
OKLAHOMA COUNTY, OKLA.

JUN - 6 2011

PATRICIA PRESLEY, COURT CLERK
by________
DEPUTY

IN THE DISTRICT COURT OF OKLAHOMA COUNTY
STATE OF OKLAHOMA

Oklahoma Department of Securities, Ex rel. Irving L. Faught, Administrator,	)	
Plaintiff,	)	
vs.	)	Case No. CJ-99-2500-66 Judge Daniel L. Owens
Accelerated Benefits Corporation, a Florida Corporation, et al.,	)	
Defendants.	)	

REPLY BRIEF IN SUPPORT OF ACHERON PORTFOLIO TRUST'S MOTION FOR AUTHORIZATION TO PURCHASE ABC INVESTORS' INTEREST IN CONSERVATORSHIP ASSETS

In this proceeding, which has spanned over 9 years, the Court, the Conservator, Acheron Portfolio Trust ("Acheron") and the Oklahoma Department of Securities have all agreed on one thing—that a reasonably priced lump sum purchase of the Conservatorship Assets would be in the best interest of the Investors. Under the current arrangement, the Investors, who are an average age of 71.5 (as of October 2010), are not projected to be paid out until 2025. At the evidentiary hearing on October 28, 2010, the Court stated that the parties did not appear to be far apart and that a fair offer for the Investors could be reached. The Court, using the evidence from various experts, also provided criteria that a lump sum offer should meet. Thus, Acheron presents for the Court's consideration a materially increased offer that meets the Court's criteria and would immediately put $18 million in the hands of the Investors, specifically the remaining $1.8 million of Premium Reserve Account ("PRA") funds and a $16.2 million payment by Acheron.[1]

[1] In his Supplemental Response to Acheron's Motion on June 2, 2011, the Conservator indicates a sudden intent to distribute $500,000 of the PRA. While the date of the proposed distribution is unclear, the transaction proposed by Acheron assumes distribution of whatever amount remains in the PRA at the time of an executed transaction.

ARGUMENT

The approval of an accelerated purchase by Acheron of the Conservatorship Assets and termination of the Conservatorship would: 1) end for the Investors the prolonged illiquidity of their investment dollars, owing, in part to continuing advances in the treatment of AIDS, and instead permit the Investors to capitalize on the time value of money, 2) eliminate the significant administrative and legal costs required to maintain the Conservatorship, 3) eliminate the risk of a default by Acheron and guarantee that Investor funds will never be required to cover premiums or servicing, and 4) eliminate the risk of insurer defaults, the existence of which has been acknowledged by both Todd Lisle and Roger Annin.

The Conservator's Response of May 25, 2011 ("Opposition" or "Opp."), must be considered in light of the significant conflict of interest under which the Conservator operates in evaluating any potential prepayment since it is Mr. Moran who, as both Conservator and majority shareholder of the Servicer, should the Conservatorship continue, stands to earn \$7.3 million in servicing fees from Acheron,[2] more than \$1 million in operating expenses from the Investors[3] and a potential termination fee of \$2-3 million from Acheron.[4] It is hardly surprising then that the Conservator would oppose any transaction that ends the Conservatorship.

The Conservator claims that Acheron attempts to "inflate the appearance of what [it] is willing to pay" by including the PRA in its offer and advocates for an alternate calculation of

[2] The Conservator misrepresents the testimony of Patrick Yan in claiming that Acheron would be relieved of all servicing costs were its offer to be accepted by the Court. Opp. at 3, 10. Servicing would still be required; however, as an alternative to the rates charged by Mr. Moran's Asset Servicing Group, Acheron would likely "be able to reduce the servicing fees" by pursuing efficiencies outside the Conservatorship. Tr. 38:19-20 (See Ex. A, hereto). Indeed, Acheron has never denied that an accelerated transaction makes economic sense for Acheron.

[3] Mr. Moran testified that 75% of all dividends and increased death benefits (and the interest thereon) goes to the conservatorship's operating fund "to help offset any fees that [it] might have," which fees have ranged from \$70,000 to \$316,000 annually. Tr. 176:9-180:4.

[4] Tr. 174:10-23; Opp., p. 14, n. 2.

discount rates. Acheron makes no claim in its moving papers that the lump sum portion of its offer exceeds \$16.2 million. Nor has Acheron altered its method for calculating the discount rate of 7.8%, which method was used by the Conservator in his counteroffer of March 2010 (Tr. 197:16-198:7), referenced by the Court as amounting to 11% in October 2010 (Tr. 223:18-22), and cited by Mr. Annin as a "fair and reasonable offer" of 7.8% (Motion at Ex. A). The claim that the current offer represents a 10% discount rate is a sideshow—on the metrics focusing on what Investors would receive, the current offer is at 7.8%, below the 8% benchmark the Court has set.[5]

Distribution of the PRA to Investors is part and parcel of Acheron's Motion because termination of the Conservatorship eliminates the need for the PRA. Conversely, in a continued Conservatorship, there is no guarantee that all or any of the \$1.8 million in the PRA would flow to the Investors in light of the fees and uncertainties that may arise over the next fourteen years. And while the Conservator claims that the OPA does not permit the PRA to be credited towards Acheron's remaining Purchase Price, Section 6.1 of the OPA, attached as Exhibit B hereto, indicates otherwise;

> "In addition to the Option Payment of [\$800,000], which Buyer will pay to Seller on or before the Closing Date under Paragraph 1B above, Buyer will pay the Earnest Money Deposit described in Paragraph 1A above in the amount of [\$50,000] which will be paid by Buyer to the Servicer on the complete execution of this Agreement and such amount (\$50,000), together with the interest earned thereon will **collectively**, be the "Earnest Money Deposit" hereunder. Such Earnest Money Deposit will be held by the Servicer until the Conveyance Date, at which time such Earnest Money Deposit will be paid by the Servicer to Seller **and applied**

[5] Absent from the Opposition is any explanation of why the Conservator's \$23.5 million offer in March 2010 (which included the PRA funds and is attached as Ex. D to Acheron's Motion) equated to a 5% discount rate while the current 6% discount rate totals \$23.276 million, particularly when the underlying assets have decreased by approximately \$1.5 million since that time. See Motion at 5. While Acheron has attempted to negotiate in good faith with the Conservator, it is clear the Conservator does not want to end the present arrangement.

against the then remaining amount of the Purchase Price."
(emphasis added)[6]

The Conservator also downplays the risk of a default by overstating the testimony of Roger Annin. Opp. at 4. Mr. Annin testified that in the event of default, the Investors would be "required to start making premium payments" but would receive all maturities such that "the premiums could be managed from the existing cash flow." Tr. 94:2-17. However, Mr. Annin did not address whether the Investors could also "manage" the significant servicing and operating fees inherent to the Conservatorship or how those amounts would impact the Investors' ultimate returns. Acheron is the third purchaser of this portfolio. The prior defaults by SIG and Infiniti have already cost Investors $1.66 million in PRA (or "Option Payment") funds in order to cover premium and servicing costs.[7] Even without any present intention by Acheron to default, the risk and resulting negative impact on the Investors is impossible to deny, which is why the PRA was initially established.

Mr. Annin also never testified that "the Insured's life expectancies could actually be shorter than projected due to the long term effects of HIV/AIDS and drug treatments they have undergone over time." Opp. at 4. Mr. Annin said only that there are "no statistics available to show what [the impact of living under a regimen of drug treatments] means as people age" and it is really "an unknown." Tr. 89:18-20, 90:1-2. Advances in the treatment of AIDS continue to

---

[6] Even supposing Section 6.1 were ambiguous—which Acheron respectfully submits it is not—under Oklahoma law, any ambiguity must be construed in favor of Acheron. Dismuke v. Cseh, 830 P.2d 188, 190 (Okla. 1992)(under Oklahoma law, contract ambiguities should be interpreted most strongly against the drafting party).

[7] See Tr. 194:5-20; Conservator's Motion for Approval of New Purchase and Servicing Agreements, filed May 17, 2006 at ¶26 (indicating PRA payments of $691,847), attached as Ex. C; Conservator's Motion for Approval of SIG Option Purchase Agreements, filed May 26, 2005, at ¶20 (indicating PRA payments of $972,768), attached as Ex. D.

increase life expectances[8] as demonstrated by the maturities of the portfolio which continue to significantly trail even the latest conservative projections.

Finally, the Conservator's reference to the net cash surrender value of certain policies is a red herring. First, it makes no economic sense for Acheron to pay $16.2 million for the Conservatorship Assets in order to turn around and surrender the majority of the policies for $8.9 million. Second, the prospect of the Conservator *surrendering* Conservatorship Assets to cover servicing and premium costs in the event of a default fails to demonstrate the prudence in distributing $500,000 of the PRA funds. Nor is it clear how the $1.3 million proposed to remain will be adequate to protect the Investors considering that Conservatorship costs in 2010 totaled $1,742,147, including premiums of $1,180,348, servicing of $461,936 and Conservatorship expenses of $99,863. The PRA distribution proposed by the Conservator is thus irresponsible and demonstrates an intent to muddy the economics of the instant Motion and preserve the status quo at all costs.

CONCLUSION

Particularly in today's difficult economy, the opportunity for the Investors to receive a fair and expedited return on what has been an illiquid investment for over a decade cannot be overstated. For all the reasons set forth herein and in Acheron's prior submission, Acheron respectfully requests that the Offer for Acheron's accelerated purchase of the Conservatorship assets be approved by the Court.

[8] See e.g., Age of AIDS: 30 years after medical mystery, patients survive, SACRAMENTO BEE, June 2, 2011 available at http://www.sacbee.com/2011/06/02/v-print/3671379/age-of-aids-30-years-after-medical.html; Kate Kelland, Special Report: An end to AIDS?, REUTERS (London), June 1, 2011 available at http://www.reuters.com/assets/print?aid=USTRE75030I20110601; LINDA DAHLSTROM, AGING WITH AIDS: MORE ARE LIVING LONGER, LIVING WITH LOSS, 2011, http://www.msnbc.msn.com/cleanprint/CleanPrintProxy.aspx?unique=1307021017799, attached hereto as Ex. E.

Respectfully submitted,

Richard Mildren

Michael C. Turpen, OBA No. 9139
Richard A. Mildren, OBA No. 6182
RIGGS, ABNEY, NEAL, TURPEN
ORBISON & LEWIS
5801 Broadway Extension, Suite 101
Oklahoma City, OK 73118
Telephone: (405) 843-9909
Facsimile: (405) 842-2913

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing instrument was mailed via first class mail with proper postage affixed, on the 6th day of June, 2011, to the following:

Patricia A. Labarthe, Esq.
Oklahoma Department of Securities
120 North Robinson Ave., Suite 860
ATTORNEY FOR PLAINTIFF

Melvin R. McVay, Jr.
Shannon K. Emmons
Kenneth A. Tilotson
PHILLIPS MURRAH, P.C.
Corporate Tower/Thirteenth Floor
101 North Robinson
Oklahoma City, OK 73102
ATTORNEYS FOR CONSERVATOR H. THOMAS MORAN, II

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

Richard A. Mildren

EXHIBIT A

IN THE DISTRICT COURT OF OKLAHOMA COUNTY
STATE OF OKLAHOMA

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

FILED IN THE DISTRICT COURT
OKLAHOMA COUNTY, OKLA.

NOV 1 8 2010

PATRICIA PRESLEY, COURT CLERK
By
Deputy

* * * * *

SEVENTH JUDICIAL DISTRICT OF OKLAHOMA

TRANSCRIPT OF PROCEEDINGS

HAD ON THE

28TH DAY OF OCTOBER, 2010

BEFORE THE HONORABLE DANIEL L. OWENS

DISTRICT JUDGE

* * * * *

Reported By:

Deborah J. Torbert, CSR, RPR
Official Court Reporter
321 West Park Avenue, Room 315
Oklahoma City, Oklahoma 73102
(405) 713-1406

COPY

So why don't we just set that aside for a minute and talk about the actual payment that Acheron would be making if its offer was accepted, which as I understand now consists of a lump sum payment of 11.5 million, plus an additional 1.8 million paid at the beginning of 2011. Correct?

A. Yes. That's correct.

Q. Okay. So I'd like to stick with that amount and not blur the whole subject with money that is already the investors at this time. Okay?

A. I would just like to point out that there is an economic benefit to releasing the money early.

Q. I'm glad you pointed that out because as you started out your testimony here today, you went into some detail about the economic benefit to Acheron if it's able to persuade the Court to approve this and able to persuade the investors to accept it. And that economic benefit to Acheron is the ability to cut off $7 million, by Acheron's estimation, in servicing fees. Correct?

A. We would be able to reduce the servicing fees, most likely, yes.

Q. I believe your testimony earlier before was that you were going to incur $7 million if this conservatorship concludes to its natural end, and you would be saving that, correct, if you can conclude the receivership with this prepayment you're proposing?

they're aging like the rest of us. Correct?
A. Correct.
Q. And so compounding the problem of having lived with HIV and AIDS with many of these insureds, they're now facing the problem of aging on top of it all?
A. That's correct.
Q. And we don't know yet, or the medical community doesn't know yet, what really is going to happen in the next 10, 15, 20 years as this bubble of HIV and AIDS individuals reach middle age and start to encounter the normal problems on top of the problems they already have?
A. That is correct.
Q. While there could be vast improvements, we also could see rapid declines in the health of these insureds. Right?
A. Yeah. Actuaries tend to take a, because we're assessing risk, we tend to look at the downside and the extension and what happens there.

But the cumulative impact of living under a regimen of drug treatments over a period of years, there's just no statistics available to show what that means as people age and incur the normal aging process and the ailments that come along with that.

And so, again, we're making projections based on what the current data shows. We could see that mortality increases markedly as people age. We could see continued enhancements in treatments. And it's really a little bit of an unknown because we've not gone through any period where we can measure experience with this disease.

Q. Okay. And the third risk you identified when we were discussing this yesterday was what if Acheron defaults on its obligations. Correct?

A. And that's a risk that Mr. Yan commented on. Of course, they don't expect to default, but we're looking over a 15-year period. So there's a risk component there.

Q. Okay. If we take out those two risk factors that are really unknowns at this point and changes in the treatment and longevity of HIV and AIDS patients, and the third risk factor, which is also pretty much an unknown at this time, Acheron's possible default in the future, and we talk only about the risk factor that everybody agrees is there, the payment of money over a 14, 15, perhaps even 16-year time span, taking just that risk factor, how would you evaluate or determine the discount rate for the prepayment to the investors?

A. What I would do, and I'm not necessarily an expert in all asset classes, but what I would do is look at the indeterminate period of time for these payments.

We don't have a 15-year bond. We have an estimated 15-year period, but some uncertainty as to the timing of the payments over that period of time.

A. Yeah. I thought through that some.

What I think, and I don't have the details of the agreement so I don't know all the ramifications, but what I assume would happen would the Conservator would take over the entire portfolio again and the investors would be, then, required to start making premium payments to support the continuance of the policies, but they'd also participate in the full 100 percent of death benefits or maturities, as opposed to the 60 percent share for a period of time.

And since the cash flow is greater, and has been greater in terms of maturities relative to the premium payments, the premiums could be managed from the existing cash flow.

So that risk, as I at least think about it, is not a, as significant a risk as -- it's not a nightmare scenario by any means. In fact, it actually may be advantageous because the investors would regain the profit in the remainder part of the portfolio.

Q. So we're still back to the five to six discount rate for the investor's share of the portfolio?

A. Correct.

MS. EMMONS: If may I approach, Your Honor?

THE COURT: You may.

(Documents tendered.)

Q. (BY MS. EMMONS) Mr. Annin, I've handed you what we've marked as Conservator's Exhibit 1. Can you identify this

A. It was brought to the court and the court approved it.
Q. Okay. Do you recall the pleadings that were offered to the Court? Do you recall if in those pleadings it just said that it was somewhere in substance to the prior agreements?
A. I don't remember that.
Q. Okay. If I represent to you that it did not point out that this significant difference existed in this servicing agreement, would you have any reason to disagree with that?
A. Huh-huh.
Q. Does this termination agreement that provides your company with eight percent of the remaining viaticals, does that benefit these investors in any way?
A. It doesn't hurt them.
Q. Does it benefit the investors in any way?
A. No.
Q. Have you made any determination or calculation of what you think that that termination agreement, what the total amount your company would receive under that termination agreement is?
A. Well, I think I did at one time.
Q. If I represented to you between two and a half and $3 million, would you have any reason to dispute that?
A. No.
Q. Now, how do you determine the amount or the timing of the investor distributions?

Conservator fees, are that the conservatorship has paid since 2002?

A. No.

Q. Now, those Conservator fees and legal fees, those are paid out of the investor's moneys. Correct?

A. Yes. Actually, the way that was structured is it was designed that when a maturity comes in, sometimes there's interest payments and dividends and sometimes there's an extra death benefit. And 75 percent of that was to go to the receiver -- or the conservatorship estate to help offset any fees that we might have.

And that's how we did that.

Q. But in the end, it comes out of the investor's pocket? It's not Acheron paying it. Correct?

A. Well, not really, because Acheron gets 25 percent of it and the receivership gets 75. Otherwise if we hadn't -- or the conservatorship.

If we hadn't have done that, Acheron would have gotten all of it. So it's actually more coming out of Acheron's pocket than the investor's pocket.

Q. Explain to me again where these funds are coming from. I'm not sure I understand.

A. When there's a maturity, sometimes there's an increased death benefit; sometimes there's a dividend; there's interest on the maturity benefit; and those all go into a pot that's

split 25 percent with Acheron and 75 percent with ASG.
Q. Okay. But where do the funds that pay the conservatorship and the legal fees come from?
A. There.
Q. So the conservator is paying 75 percent of them?
A. I'm not following you.
Q. My understanding from you is that these additional moneys that you're talking about come into a separate pot?
A. Yeah. They come into our operating fund.
Q. The legal fees and conservator fees come out of that?
A. We use it to pay that, yeah.
Q. Okay. And whatever is left in there, 75 percent of goes to those investors and 25 percent goes to Acheron?
A. Right.
Q. So at least 75 percent of those legal fees and conservatorship fees are paid out of moneys that would go to the investors. Correct?
A. No.
Q. Okay.
A. Like I said, originally it would have all gone to the buyer, Acheron. We structured it where we could get 75 percent, so that we would have money to help the conservatorship estate.
Q. Who is the "we" that you're talking about? Your servicing company or the investors?

A. Well, me, me. I work that.

Q. Okay. So that you get that 75 percent?

A. I don't. It comes to the company to pay offset fees and expenses of the conservatorship estate.

Q. Okay. Say if a dollar comes into that account --

A. Yeah.

Q. -- and that dollar is not spent on conservatorship fees or legal fees --

A. Yes.

Q. -- how does that dollar -- who does that dollar get paid out to?

A. It would go to the investors and that would increase the amount from 55 percent to a higher amount.

Q. Okay. So that money would go to the investors otherwise?

A. Which would increase the purchase price.

Q. Okay. My question is just: Would those funds go to the investor?

A. Yeah.

Q. Okay. Now, in 2003, if I represent to you that those conservatorship fees and legal fees were in excess of $123,000, would you have any reason to dispute that?

A. No, I would not.

Q. And in '04, in excess of 285,000?

A. Okay.

Q. In '05, over 229,000?
A. Okay.
Q. In '06, in excess of 316,000; in '07, in excess of 106,000; in 2008, in excess of 70,000; in '09, in excess of 99,000; and in '10, in excess of 78,000.
Do those all sound correct?
A. They do.
Q. So that the least expensive year has been in excess of $70,000. Right?
A. Right.
Q. So if you took just the least expensive year and add that over the next 15 years, over a million dollars that would go to the investors is going to the conservatorship. Is that accurate?
A. That is not necessarily money that would come -- in the case of a buyout, it wouldn't go to the investors. It wouldn't come out of the investors anyway or go to the investors.
Q. Okay. Your assertion though is that those funds do not come out of the maturity stream?
A. Let's say there's 100,000 maturity. Okay? And there's dividends of $800. There's interest that the insurance company pays of $750. There's something else in the policy that increased the death benefit by a little bit, maybe $100. So we get an extra, say, $1,600 in.

75 percent of that 1,600 or $1,200 goes to, which would actually go to increase the purchase price, but it's coming back to help offset those fees and expenses you're talking about.

Q. Did you ask L&E to include these costs in their valuation of the current value?

A. What cost?

Q. The cost of the conservatorship and the legal fees.

A. No.

Q. So if there were over a million dollars in costs over the next 15 years, then there's a little over $30 million left on this payout. Almost three percent of the remaining balance owed to investors would go to conservatorship fees and legal fees; isn't that correct?

A. No.

Q. Isn't it true that currently the investors have no access to the premium reserve account?

A. That's true.

Q. Now, I assume, since you've made the decision that it's not worthwhile to take this to the investors, that you have some idea of the needs of those investors. Would that be true?

A. Based on letters and so forth we get, I have some, some idea, but we don't correspond with all of them.

Q. What efforts have you made to learn the needs and

A. I mean, I guess. I remember something about that, but I don't know about it in particular.
Q. Okay. Earlier you also said that there was no reason to tell the investors about the previous defaults.
Now, after Infinity defaulted, you drew down the premium reserve account, didn't you?
A. I don't --
Q. Maintain the premiums?
A. I don't believe we had to.
Q. You don't believe that you used the premium reserve account to pay premiums after the Infinity default?
A. Maybe we did, but I thought we had money in the operating account to take care of that.
Q. When you say "the operating account," what is -- whose money is that operating account?
A. The investors.
Q. Okay. So you were drawing down their funds, whether it was in the PRA or in the account of moneys that's supposed to be paid out to them?
A. Yeah. Right.
Q. And you didn't think it was important to let them know that this default had occurred and you were drawing down on their funds?
A. I didn't.
Q. Okay. Have you made offers to sell the investor's

think everybody is uncertain about the market right now.

As a matter of fact, in our dealings with the investment banks that we deal with, all the outside money is looking for investments in -- I can't remember the term -- but it's not, not the equities. It's -- oh, what's the term that's used? It doesn't matter.

So in my opinion, it has made this particular note much, much more valuable than it was back in those days. So...

Q. So with an uncertain economy, the present value, in an uncertain market, having this indefinite payout is better than having cash in hand?

A. Absolutely. I absolutely believe that.

Q. Okay. So even though the portfolio has declined in value due to maturities, you've drastically increased the asking price because the economy has gotten more uncertain?

A. I've increased the, increased the asking price based on what the face amount is and based on the discount rate of anywhere from five to seven percent.

Q. Okay. And in your March 26, 2010, letter rejecting the Acheron offer, you counteroffered with an offer 23.5 million. Right?

A. Right.

Q. And you included as part of that purchase price the 1.8 million in the PRA. Right?

A. I think we reduced the price by that 1.8. So we actually discounted it to Acheron and then we would add that back into pay to the investors.

So in other words, we said 23. whatever it was, but Acheron only had to pay 23. whatever it was less the 1.8.

Q. Okay. I'm not sure if I understand your answer. So the PRA was included in that 23.5 million. Right?

A. Right. And it really doesn't matter.

Q. Okay.

A. It's something that I would have been willing to bring to this court.

Q. Okay. And you've already said that you agree that the best thing for these investors would be a lump sum payment.

You agree that a lump sum payment to purchase an income stream should be reasonably discounted. We don't have any dispute there, do we?

A. No.

Q. And how many cents on the dollar do you believe will be repaid to the investors under the current agreement?

A. I believe that they will receive close to 57 percent.

Q. Okay. And I'm curious how you calculated that since on your web site you say 50 cents on the dollar, and in every paper that I've seen filed, it says 55 cents on the dollar, and now we're up to 57 cents on the dollar. Can you --

A. I'll be happy to answer it again if you want me to.

Q. Okay.

that purpose.

And I don't begrudge Acheron for trying to reduce this to a lower value, but I'm not going to be pushed into the situation of giving these investors an opportunity to make a decision when they're in their average age of 71 and a half, and the ones I've met and know of are not sophisticated and they're just sick of this whole thing and would take a nickel to get out of this investment.

And I think Mr. Page said that very well. His investors would take ten cents on the dollar. I'm not sure what that says for Mr. Page in getting his investors into that type of investment. That's not for me to determine, if he's the one that got them into the viatical investment opportunity. It was a great thing when it started.

Like all things, it turned it into a money opportunity for greedy people that weren't quite honest, as Mr. Lamanda wasn't honest.

I will not submit this offer to the investors. If Acheron were to come forward with a reasonable discount rate, and that's not 11 percent, this Court would consider letting it go to the investors to make a decision, but this discount rate is not reasonable in light of the circumstances.

And let's look at reality. A discount rate is to make the opportunity available to the person getting the discount rate to make that much money in the future. That's

EXHIBIT B

OPTION PURCHASE AGREEMENT

THIS OPTION PURCHASE AGREEMENT (the "Agreement") is made and entered into this 24 day of May, 2006, by and between LORENZO TONTI LIMITED, a corporation formed under the laws of Ireland (the "Buyer") and TOM MORAN of OKLAHOMA CITY, OKLAHOMA, as CONSERVATOR (the "Seller") for certain assets of ACCELERATED BENEFITS CORPORATION, a Florida corporation ("ABC").

RECITALS:

A. The Seller is the Conservator of certain assets (the "Conservator Assets") of ABC and its agents, including American Title Company of Orlando and David Piercefield under Case Number CJ-99-2500-66 (the "Conservatorship Proceeding") in the District Court of Oklahoma County, State of Oklahoma (the "OK District Court"), reference of which is hereto made for all purposes including the appointment of the Seller as Conservator of the Conservator Assets.

B. The Conservator Assets, include certain unmatured life insurance policies which were 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, pursuant to which the OK District Court ordered the Conservator to manage, which management specifically included but was not limited to the OK District Court's authorization to evaluate, protect, liquidate and sell the Policies.

C. Buyer desires to acquire certain of the policies and related assets included in the Conservator Assets as more fully set forth herein upon terms hereof, subject to the condition that this Agreement is approved by the Oklahoma District Court.

D. Unless otherwise defined herein, the capitalized terms used herein will have the meanings set forth in the Conservatorship Proceeding.

AGREEMENT:

In consideration of the mutual agreement herein contained and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Seller and Buyer agree as follows:

1A. Condition Precedent; Deposit of Earnest Money. Upon complete execution of this Agreement, Buyer will deposit with the Servicer (as hereafter defined) the sum of Fifty-Thousand Dollars ($50,000) as the Earnest Money Deposit. Upon the Servicer's receipt of the Earnest Money Deposit, Seller will promptly take the necessary acts to seek approval of the Oklahoma District Court of this Agreement and the related Service and Escrow Agreement between Buyer, Seller and HTM Conservator, LLC (the "Servicer") of even date herewith, which is attached hereto as Exhibit "B". If such approval by the Oklahoma District Court has not been obtained on or before the 23rd day of June, 2006, then this Agreement will be null and void and applicable premiums for Policies arising on December 27, 2005 and all subsequently arising obligations as is more fully described in the Service and Escrow Agreement which is incorporated herein by reference.

5. Closing. Unless otherwise agreed by Buyer and Seller in writing, the Closing shall take place at Phillips McFall McCaffrey McVay & Murrah, P.C., One Leadership Square, 12th Floor, 211 N. Robinson, Oklahoma City, Oklahoma 73102 within ten (10) business days after the Buyer receives the Court Approval Notice, provided that all conditions to Closing set forth in Paragraphs 10 and 11 hereof have been satisfied or waived by the party entitled to waive the same (the "Closing Date" or sometimes referred to as the "Closing"). If the Closing has not occurred on or before 9:00 a.m. on the 2nd day of July, 2006, and the parties have not agreed in writing to extend the Closing Date, then at such time this Agreement shall terminate and be of no further force or effect and the Earnest Money Deposit will be returned to Buyer. Notwithstanding the Closing, it is expressly recognized and agreed that Seller and/or Servicer shall retain ownership of the Policies until (a) Seller has received the applicable portions of the Purchase Price (as hereafter defined); and (b) the Conveyance Date has occurred. The Closing will occur and be evidenced by a closing statement in substantially the form of Exhibit "E" attached hereto, which will be updated as of the Closing Date and mutually approved by Buyer and Seller.

6. Purchase Price. The purchase price for all of the Assets (the "Purchase Price") shall be the sum of Thirty-Eight Million Fifty Thousand Dollars in United States currency ($38,050,000). Such Purchase Price shall be paid in accordance with the terms and conditions of this Agreement and the Service and Escrow Agreement, as follows:

6.1 Earnest Money Deposit. In addition to the Option Payment of Eight Hundred Thousand Dollars ($800,000) which Buyer will pay to Seller on or before the Closing Date under Paragraph 1B above, Buyer will pay the Earnest Money Deposit described in Paragraph 1A above in the amount of Fifty Thousand Dollars ($50,000) which will be paid by Buyer to the Servicer on the complete execution of this Agreement and such amount ($50,000), together with interest earned thereon will collectively, be the "Earnest Money Deposit" hereunder. Such Earnest Money Deposit will be held by the Servicer until the Conveyance Date, at which time such Earnest Money Deposit will be paid by the Servicer to Seller and applied against the then remaining amount of the Purchase Price.

6.2 Large Policies. In partial payment of the Purchase Price, it is expressly agreed that a certain percentage of the payments and proceeds received from and after the Policy Cut-Off Date through the Conveyance Date (the "Escrow Period") with respect to those certain Policies with a face amount equal to or greater than One Million Dollars ($1,000,000) which are identified on Exhibit "C" attached hereto (the "Large Policies") shall be paid to Seller and applied against the Purchase Price. Specifically, it is agreed that the amount to be paid to Seller and applied against the Purchase Price will equal the product of (a) seventy-five percent (75%); times (b) the payments and proceeds received with respect to the Large Policies (not to exceed the respective face amounts thereof) during the Escrow Period. All other payments and proceeds received with respect to the Large Policies (not to exceed the respective face amounts thereof which are Excluded Assets) shall be paid to Buyer without application against the Purchase

EXHIBIT C

FILED IN THE DISTRICT COURT
OKLAHOMA COUNTY, OKLA.

MAY 17 2006

PATRICIA PRESLEY, COURT CLERK
by ____________
Deputy

IN THE DISTRICT COURT OF OKLAHOMA COUNTY
STATE OF OKLAHOMA

Oklahoma Department of Securities, ex rel. Irving L. Faught, Administrator,	)	
Plaintiff,	)	
vs.	)	Case No.: CJ-99-2500-66 Judge Daniel L. Owens
Accelerated Benefits Corporation, a Florida corporation, et al.,	)	
Defendants.	)	

CONSERVATOR'S MOTION FOR APPROVAL OF NEW PURCHASE AND SERVICING AGREEMENTS

COMES NOW Tom Moran, Conservator of Certain Assets of Accelerated Benefits Corporation (the "Conservator") and hereby respectfully moves the Court for approval of a proposed new Option Purchase Agreement and a proposed new Service and Escrow Agreement (collectively, the "Tonti Purchase Contracts") to be executed between the Conservator and Lorenzo Tonti, Ltd. ("Tonti"). In support thereof, the Conservator would show the Court as follows:

1. This proceeding began as a fraud action commenced by the Oklahoma Department of Securities against Accelerated Benefits Corporation ("ABC") and its Oklahoma agents, who offered and sold Viatical Polices (as hereafter defined) to numerous investors on ABC's behalf.

2. On February 6, 2002, the Court entered its Order Appointing Conservator and Transferring Assets (the "Conservatorship Order").

3. Under the Conservatorship Order, Tom Moran was appointed Conservator of certain assets of ABC and its agents, including American Title Company of Orlando and David Piercefield. The Conservatorship Order was agreed to by the parties and authorized the Conservator 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** . . . (emphasis added)

4. The Conservatorship assets consisted primarily of life insurance policies (the "Viatical Policies") with an aggregate face value in excess of $140,000,000 on individuals who had been diagnosed with terminal illnesses, whose ownership and beneficiary interests were acquired by ABC in exchange for cash payments. Upon acquisition of the Viatical Policies, ABC solicited investments from various individual investors (the "ABC Investors"), who were promised significant returns on their investments by ABC, upon the maturity of the respective Viatical Policy to which they were matched.

5. In most cases, the insureds under the respective Viatical Policies (the "Viators") far outlived the projected life expectancies placed on them by ABC and insufficient funds were allocated by ABC for payment of future premiums. As a result, the Viatical Policies were in danger of lapsing, which would have resulted in the ABC Investors, many of whom were elderly and retired, losing their entire investments.

6. Pursuant to the directives of the Conservatorship Order, and as part of his duty to protect the interests of the ABC Investors, the Conservator sought offers to purchase the Viatical Policies from various institutional buyers.

7. On October 25, 2002, the Conservator filed his Motion for Order Approving Sale of Conservatorship Assets (the "Motion to Sell"). In the Motion to Sell, the Conservator presented

offers from Infinity Capital Services, Inc. ("Infinity") and various other proposed purchasers to the Court for consideration and approval.

8. On December 23, 2002, following hearings on the Motion to Sell, the Court granted the Motion to Sell and approved the sale of the Viatical Policies to Infinity. The Order Approving the Sale was entered by the Court on January 16, 2003, and subsequently modified by the Court on January 24, 2003 (the "Order Approving Sale").

9. Following the Court's Order Approving Sale, the Conservator, HTM Conservator, LLC, a court approved entity created to hold title to the Viatical Policies, and Infinity negotiated an Option Purchase Agreement and Service and Escrow Agreement (the "Infinity Purchase Contracts") to evidence the terms of the approved sale.

10. On March 12, 2003, the Court approved the Infinity Purchase Contracts. The sale of the Viatical Policies closed on March 17, 2003.[1]

11. The Infinity Purchase Contracts required Infinity to pay (a) an aggregate of $59,000,000 for the Viatical Policies (which represented the $2,500,000 nonrefundable "Infinity Option Payment" and the $56,500,000 "Purchase Price"); and (b) one hundred percent (100%) of all future premiums and servicing costs for the Viatical Policies. The aggregate payments under the Infinity Purchase Contracts were estimated to return to the ABC Investors approximately 55% of their initial investments, and importantly, Infinity's payment of the premiums eliminated the need for the ABC Investors to make premium payments, and the Conservator to fund the premium shortfalls to keep the Viatical Policies in force.

---

[1] On March 12, 2003, ABC filed an appeal of the District Court's order approving the sale of the Viatical Policies to Infinity. On July 20, 2004, the Court of Appeals affirmed the District Court's order approving the sale. On October 11, 2004, ABC filed a Petition for Certiorari seeking to have the Oklahoma Supreme Court review the decision of the Court of Appeals. On January 24, 2005, the Oklahoma Supreme Court denied ABC's Petition for Certiorari and

12. Pursuant to the terms of the Infinity Purchase Contracts, Infinity paid to the Conservator at Closing the Infinity Option Payment of $2,500,000.00. This Infinity Option Payment received by the Conservator was fully earned and non-refundable and represented approximately a year's worth of premium payments to be held by the Conservator to cover shortfalls in the event of a default by Infinity, or other termination of the Infinity Purchase Contracts.

13. The balance of the Purchase Price of $56,500,000 under the Infinity Purchase Contracts was to be paid with an agreed percentage of the maturity proceeds from the Viatical Policies and the Infinity Earnest Money Deposit of $200,000 which was deposited at Closing. Under the Infinity Purchase Contracts, HTM Conservator, LLC was to hold and administer the Viatical Policies until the full payment of such Purchase Price was received by the Conservator, at which time, the remaining unmatured Viatical Policies were to be transferred to Infinity and only then would the Infinity Purchase Contracts be fully performed.

14. Between March, 2003, and October, 2004, Infinity tendered to the Conservator all sums due under the Infinity Purchase Contracts. Accordingly, the Investors did not have to pay any part of the policy premiums or servicing costs on the Viatical Policies during this period.

15. However, on or about January, 2005, the Conservator declared the Infinity Purchase Contracts to be in default as a result of Infinity's failure to satisfy its November, 2004, and succeeding obligations under the terms of the Infinity Purchase Contracts by paying all sums due for premiums and servicing costs with respect to the Viatical Policies.

16. On or about May 19, 2005, the Conservator entered into an Option Purchase Agreement and Service and Escrow Agreement, with SIG Partners I, LP, a Texas limited partnership

---

mandate issued on February 4, 2005.

("SIG"), subject to approval by the Court. SIG deposited with the Conservator $50,000.00 representing the earnest money deposit required by the SIG Purchase Contracts (the "SIG Earnest Money Deposit"), pending Court approval of: (i) the termination of the Infinity Purchase Contracts; and, (ii) the approval of the SIG Purchase Contracts.

17. On or about May 20, 2005, the Court approved the termination of the Infinity Purchase Contracts.

18. On or about June 24, 2005, the Court approved the sale of the then remaining Viatical Policies to SIG, under the SIG Option Purchase Agreement, on terms which were similar to the Infinity Option Purchase Agreement. The Court also approved the SIG Service and Escrow Agreement, which continued the servicing of the policies in a similar manner as previously done with Infinity.

19. On or about July 7, 2005, SIG assigned its interest in the SIG Purchase Contracts to PSK Enterprises, Inc. (the "Purchaser").

20. Under the terms of the SIG Purchase Contracts, the Purchaser paid to the Conservator $975,000.00 (the "SIG Option Payment"). The amount of this SIG Option Payment was determined in part as an amount necessary to fully restore the $2,500,000.00 Option payment made by Infinity. *See* Exhibit "1," Option Purchase Agreement.

21. Between July, 2005, and November, 2005, the Purchaser tendered to the Conservator all sums due under the SIG Purchase Contracts. Accordingly, the Investors did not had to pay any part of the policy premiums or servicing costs on the Viatical Policies during this period.

22. The Purchaser failed to satisfy the January, 2006 premium and servicing fees which were due on or before December 25, 2005 and the Purchaser failed to pay succeeding obligations under the terms of the SIG Purchase Contracts.

23. The Conservator provided to the Purchaser written notice and demand that the Purchaser cure its defaults in accordance with the SIG Purchase Contracts.

24. Despite notice and demand, the Purchaser failed to cure the defaults as required by the terms of the SIG Purchase Agreement.

25. On January 5, 2006, the Conservator notified the Purchaser that the Conservator had exercised its option to terminate the SIG Purchase Contracts as a result of the Purchaser's default which option was in accordance with the remedies expressly set forth under the SIG Purchase Contracts and, as a result, the termination of the SIG Purchase Contract occurred effective as of December 26, 2005.

26. Since the Purchaser's default and through April, 2006, the Conservator has paid approximately $691,847.00 to fund premiums and pay servicing costs with respect to the remaining Viatical Policies, which as of April, 2006 had an aggregate face value of approximately $108 million dollars. Further, since the Purchaser's default and through May 11, 2006, the Conservator has received approximately $657,996.00 of maturity proceeds from the Viatical Policies. In addition to the maturity proceeds actually received by the Conservator, as of April 1, 2006, there were approximately $700,000.00 of pending maturities in which the insureds are deceased and claims upon the respective Viatical Policies are pending.

27. Since the closing of the sale pursuant to the SIG Purchase Contracts through the December, 2005 default by the Purchaser, the amount of the original purchase price remaining to be paid for the Viatical Policies has been reduced to approximately $38 million dollars, as a result of the Conservator's receipt of the allocated share of the maturity proceeds. Accordingly, as of May 1, 2006, the Conservator has distributed payments of $20,147,870.05 to the ABC Investors. The remaining Viatical Policies have a face value of approximately $108,000,000.00.

28. The Conservator has moved the Court to approve the termination of the SIG Purchase Contracts.

ARGUMENT

PROPOSITION I: The Conservator Believes It Would Be In the Best Interest of the ABC Investors For the Court To Approve the Tonti Purchase Agreements.

As a result of the termination of the SIG Purchase Contracts, the Conservator was entitled to retain the $50,000 Earnest Money Deposit as liquidated damages under the terms of the SIG Purchase Contracts cited above, which amount, together with the SIG Option Payment of $975,000.00, which was previously received and is fully earned and non-refundable, has enabled the Conservator to maintain the remaining Viatical Policies for the benefit of the ABC Investors.

Since the default by the Purchaser through April 30, 2006, the Conservator has used approximately $691,847.00 to fund premium payments and servicing costs with respect to the remaining Viatical Policies.

Subject to this Court's approval, the Conservator has negotiated an Option Purchase Agreement and Service and Escrow Agreement with Lorenzo Tonti, Ltd. The Tonti Purchase Contracts contain substantially similar terms to the Infinity Purchase Contracts and SIG Purchase Contracts previously approved by the Court, as well as provide for an additional $850,000.00 to the ABC Investors. *See* Exhibit "1," Option Purchase Agreement, and "2," Service and Escrow Agreement, attached hereto.

Under the Tonti Purchase Contracts, Tonti will tender at closing a non-refundable and fully earned Option Payment of $800,000.00 and the sum of $50,000.00 in earnest money. Tonti will also tender at closing the amount of $691,887.06 in premiums and servicing fees for the period of January 1, 2006 through May 31, 2006, less the purchaser's share of policy maturities from December 27, 2005 through present in the amount of $273,840.78. The total amount due from Tonti at closing would be $1,268,046.28.

Under the Tonti Purchase Contracts, Tonti will be relieved of all liability for any claims or causes of action by the Viators or ABC Investors arising from acts or omissions of any owners or purchasers of the Viatical Policies, or any persons or entities acting or purporting to act on their behalf, which acts or omissions occurred on or before the closing date of the sale to Tonti.

The Tonti Purchase Contracts provide for a purchase price of $38,050,000.00 for the remaining Viatical Policies. The aggregate payments under the Tonti Purchase Contracts, together with the proceeds distributed under the Infinity Purchase Contracts and SIG Purchase Contracts, should continue to return to the ABC Investors approximately 55% of their initial investments. Importantly, Tonti will reimburse the Conservator for all premium payments and servicing costs commencing January 1, 2006, and such payments, together with the Tonti Option Payment and Tonti Earnest Money Payment, will replenish the $2,500,000.00 reserve maintained by the Conservator and will make available for distribution to the ABC Investors an additional $850,000.00.

Accordingly, the Tonti Purchase Contracts should have no adverse economic impact on the ABC Investors, who should receive an increased amount of distributions from the sale of the Viatical Policies to Tonti over what they would have received under the sale to Infinity and the Purchaser, had there been no defaults. The Conservator believes that no potential buyer exists who would provide a greater return to the ABC Investors than that offered by Tonti. The Conservator also believes that the sale to Tonti would be the safest and most expedient course of action for the benefit of the ABC Investors.

Therefore, the Conservator believes it would be in the best interest of the ABC Investors for the Court to approve the sale of the remaining Viatical Policies to Tonti.

WHEREFORE, premises considered, Conservator Tom Moran respectfully moves the Court to approve the Tonti Purchase Contracts and the performance and consummation of the terms required thereby.

Respectfully submitted,

Melvin R. McVay, Jr., OBA No. 6096
Thomas P. Manning, OBA No. 16117
Sally A. Hasenfratz, OBA No. 11853
PHILLIPS McFALL McCAFFREY
McVAY & MURRAH, P.C.
Twelfth Floor, One Leadership Square
211 North Robinson
Oklahoma City, Oklahoma 73102
Telephone: (405) 235-4100
Facsimile: (405) 235-4133
ATTORNEYS FOR CONSERVATOR,
TOM MORAN

CERTIFICATE OF MAILING

The undersigned certifies that on the 17th day of May, 2006, a true and correct copy of the foregoing document was sent postage prepaid by first-class mail, to:

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

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

EXHIBIT D

FILED IN THE DISTRICT COURT
OKLAHOMA COUNTY, OKLA.
MAY 2 6 2005
PATRICIA PRESLEY, COURT CLERK
by ________ Deputy

IN THE DISTRICT COURT OF OKLAHOMA COUNTY
STATE OF OKLAHOMA

Oklahoma Department of Securities, ex rel. Irving L. Faught, Administrator, Plaintiff, vs. Accelerated Benefits Corporation, a Florida corporation, et al., Defendants.	)	Case No.: CJ-99-2500-66 Judge Daniel L. Owens

CONSERVATOR'S MOTION FOR APPROVAL OF SIG OPTION PURCHASE AGREEMENTS

COMES NOW Tom Moran, Conservator of Certain Assets of Accelerated Benefits Corporation (the "Conservator") and respectfully moves the Court for approval of a proposed new Option Purchase Agreement and a proposed new Service and Escrow Agreement (collectively, the "SIG Purchase Agreements") to be executed between the Conservator and SIG Partners I, LP, a Texas limited partnership ("SIG").

In support thereof, the Conservator would show the Court as follows:

1. This proceeding began as a fraud action commenced by the Oklahoma Department of Securities against Accelerated Benefits Corporation ("ABC") and its Oklahoma agents, who offered and sold Viatical Polices (as hereafter defined) to numerous investors on ABC's behalf.

2. On February 6, 2002, the Court entered its Order Appointing Conservator and Transferring Assets (the "Conservatorship Order"). *See* Exhibit "1," Order Appointing Conservator and Transferring Assets.

3. Under the Conservatorship Order, Tom Moran was appointed Conservator of certain

assets of ABC and its agents, including American Title Company of Orlando and David Piercefield. The Conservatorship Order was agreed to by the parties and authorized the Conservator 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** . . . (emphasis added)

See Exhibit "1," Order Appointing Conservator and Transferring Assets.

4. The Conservatorship assets consisted primarily of life insurance policies (the "Viatical Policies") with an aggregate face value in excess of $140,000,000 on individuals who had been diagnosed with terminal illnesses, whose ownership and beneficiary interests were acquired by ABC in exchange for cash payments. Upon acquisition of the Viatical Policies, ABC solicited investments from various individual investors (the "ABC Investors"), who were promised significant returns on their investments by ABC, upon the maturity of the respective Viatical Policy to which they were matched. *See* Exhibit "2," Affidavit of H. Thomas Moran, ¶ 4.

5. In most cases, the insureds under the respective Viatical Policies (the "Viators") far outlived the projected life expectancies placed on them by ABC and insufficient funds were allocated by ABC for payment of future premiums. As a result, the Viatical Policies were in danger of lapsing, which would have resulted in the ABC Investors, many of whom were elderly and retired, losing their entire investments. *See* Exhibit "2," Affidavit of H. Thomas Moran, ¶ 5.

6. Pursuant to the directives of the Conservatorship Order, and as part of his duty to protect the interests of the ABC Investors, the Conservator sought offers to purchase the Viatical Policies from various institutional buyers. *See* Exhibit "2," Affidavit of H. Thomas Moran, ¶ 6.

7. On October 25, 2002, the Conservator filed his Motion for Order Approving Sale of Conservatorship Assets (the "Motion to Sell"). In the Motion to Sell, the Conservator presented offers from Infinity Capital Services, Inc. ("Infinity") and various other proposed purchasers to the

Court for consideration and approval. *See* Exhibit "2," Affidavit of H. Thomas Moran, ¶ 7.

8. On December 23, 2002, following hearings on the Motion to Sell, the Court granted the Motion to Sell and approved the sale of the Viatical Policies to Infinity. The Order Approving the Sale was entered by the Court on January 16, 2003, and subsequently modified by the Court on January 24, 2003 (the "Order Approving Sale"). *See* Exhibit "2," Affidavit of H. Thomas Moran, ¶ 8.

9. Following the Court's Order Approving Sale, the Conservator, HTM Conservator, LLC, a court approved entity created to hold title to the Viatical Policies, and Infinity negotiated that certain Option Purchase Agreement and Service and Escrow Agreement, both dated February 13, 2003 (collectively, the "Infinity Purchase Contracts") to evidence the terms of the approved sale. *See* Exhibit "2," Affidavit of H. Thomas Moran, ¶ 9.

10. On March 12, 2003, the Court approved the Infinity Purchase Contracts. The sale of the Viatical Policies closed on March 17, 2003.[1] *See* Affidavit of H. Thomas Moran, ¶ 10.

11. The Infinity Purchase Contracts required Infinity to pay (a) an aggregate of $59,000,000 for the Viatical Policies (which represented the $2,500,000 nonrefundable "Option Payment" and the $56,500,000 "Purchase Price"); and (b) one hundred percent (100%) of all future premiums and servicing costs for the Viatical Policies. The aggregate payments under the Infinity Purchase Contracts were estimated to return to the ABC Investors approximately 55% of their initial investments, and importantly, Infinity's payment of the premiums eliminated the need for the ABC Investors to make premium payments, and the Conservator to fund the premium shortfalls to keep

[1] On March 12, 2003, ABC filed an appeal of the District Court's order approving the sale of the Viatical Policies to Infinity. On July 20, 2004, the Court of Appeals affirmed the District Court's order approving the sale. On October 11, 2004, ABC filed a Petition for Certiorari seeking to have the Oklahoma Supreme Court review the decision of the Court of Appeals. On January 24, 2005, the Oklahoma Supreme Court denied ABC's Petition for Certiorari and mandate issued on February 4, 2005.

the Viatical Policies in force. *See* Exhibit "2," Affidavit of H. Thomas Moran, ¶ 11.

12. Pursuant to the terms of the Infinity Purchase Contracts, Infinity paid to the Conservator at Closing the Option Payment of $2,500,000.00. This Option Payment received by the Conservator was fully earned and non-refundable and represented approximately a year's worth of premium payments to be held by the Conservator to cover shortfalls in the event of a default by Infinity, or other termination of the Infinity Purchase Contracts. *See* Exhibit "2," Affidavit of H. Thomas Moran, ¶ 12.

13. The balance of the Purchase Price of $56,500,000 under the Infinity Purchase Contracts was to be paid with an agreed percentage of the maturity proceeds from the Viatical Policies and the Earnest Money Deposit of $200,000 which was paid at Closing. Under the Infinity Purchase Contracts, HTM Conservator, LLC was to hold and administer the Viatical Policies until the full payment of such Purchase Price was received by the Conservator, at which time, the remaining unmatured Viatical Policies were to be transferred to Infinity and only then would the Infinity Purchase Contracts be fully performed. *See* Exhibit "2," Affidavit of H. Thomas Moran, ¶ 13.

14. Between March, 2003, and October, 2004, Infinity tendered to the Conservator all sums due under the Infinity Purchase Contracts. Accordingly, the Investors have not had to pay any part of the policy premiums or servicing costs on the Viatical Policies since the closing of the sale. *See* Exhibit "2," Affidavit of H. Thomas Moran, ¶ 14.

15. Since the closing of the sale, the amount of the original Infinity Purchase Price remaining to be paid to the Conservator under the Infinity Purchase Contracts has been reduced from $56,500,000 to approximately $42 million dollars as a result of the Conservator's receipt of its share of the maturity proceeds of $14,498,229.00. Accordingly, the Conservator has distributed payments

of almost $14.5 million to the ABC Investors. See Exhibit "2," Affidavit of H. Thomas Moran, ¶ 15.

16. Infinity failed to satisfy its November, 2004, and succeeding obligations under the terms of the Infinity Purchase Contracts by paying all sums due for premiums and servicing costs with respect to the Viatical Policies.[2] See Exhibit "2," Affidavit of H. Thomas Moran, ¶ 16.

17. The Conservator provided to Infinity written notice and demand that Infinity cure its defaults in accordance with the Infinity Purchase Contracts. See Exhibit "2," Affidavit of H. Thomas Moran, ¶ 17.

18. Despite notice and demand, Infinity failed to cure the defaults as required by the terms of the Infinity Purchase Contracts. See Exhibit "2," Affidavit of H. Thomas Moran, ¶ 18.

19. On November 30, 2004, the Conservator notified Infinity that the Conservator had exercised its option to terminate the Infinity Purchase Contracts as a result of Infinity's default which option was in accordance with the remedies expressly set forth under the Infinity Purchase Contracts. See Exhibit "2," Affidavit of H. Thomas Moran, ¶ 19.

20. During the period of November, 2004 through April 30, 2005, the Conservator has used approximately $972,768 of the Option Payment to fund premiums and pay servicing costs with respect to the remaining Viatical Policies. As of November 1, 2004, the remaining Viatical Policies had an aggregate face value of approximately $115,960,897.87. See Exhibit "2," Affidavit of H. Thomas Moran, ¶ 20.

21. On May 20, 2005, the Court approved the termination of the Infinity Purchase Contracts. See Exhibit "3," Order Approving Termination of Infinity Purchase Contracts.

22. Since the termination of the Infinity Purchase Contracts, the Conservator has

negotiated with and reached an agreement with SIG to sell the remaining Viatical Policies to SIG. Such sale of the remaining Viatical Policies is subject to the condition precedent that this Court approve the SIG Purchase Agreements on or before July 1, 2005. *See* Exhibit "2," Affidavit of H. Thomas Moran, ¶ 21.

23. The terms of the SIG Purchase Agreements between the Conservator and SIG are attached hereto as Exhibits "4" (Option Purchase Agreement with SIG dated May 19, 2005) and "5" (Service and Escrow agreement with SIG dated May 19, 2005).

24. The Conservator believes it would be in the best interest of the ABC Investors for the Court to approve the sale of the remaining Viatical Policies to SIG in accordance with the SIG Purchase Agreements. *See* Exhibit "2," Affidavit of H. Thomas Moran, ¶ 22.

ARGUMENT

PROPOSITION I: The Conservator Believes It Would Be In the Best Interest of the ABC Investors For the Court To Approve the SIG Purchase Agreements.

As a result of the termination of the Infinity Purchase Contracts, the Conservator was entitled to retain the $200,000 Earnest Money Deposit as liquidated damages under the terms of the Infinity Purchase Contracts cited above, which amount, together with the Option Payment of $2,500,000 which was previously received, fully earned and non-refundable, has enabled the Conservator to maintain the remaining Viatical Policies for the benefit of the ABC Investors. Since the default by Infinity through April 30, 2005, the Conservator has used in excess of $972,768 to fund premium payments and servicing costs with respect to the remaining Viatical Policies. The funds remaining from the Infinity Option Payment and Earnest Money Deposit (without consideration of any further maturities) are estimated to be sufficient to fund the premium payment and servicing costs for

---

2 A default initially occurred in October 2004, but was subsequently cured.

approximately 9-11 months.

Subject to the express condition precedent of this Court's approval, the Conservator has entered into the SIG Purchase Agreements and has received the sum of $50,000 Earnest Money. The SIG Purchase Agreements, if approved by the Court, will mirror the economic terms of the Infinity Purchase Contracts previously approved by the Court.

Under the SIG Purchase Agreements, SIG will tender a non-refundable and fully earned Option Payment of $975,000 upon the Closing thereof. This Option Payment, together with the Earnest Money Deposit of $50,000 previously tendered by SIG and received by the Conservator, totals $1,025,000, which is the amount estimated to recoup the funds expended by the Conservator for premium payments and servicing costs since the Infinity default and through April 30, 2005, plus incidental costs associated with such default. Further, the SIG Purchase Agreements provide for a purchase price of $42,061,771 for the remaining Viatical Policies, which equals the adjusted purchase price under the Infinity Purchase Contracts, immediately prior to the Infinity Default. The aggregate payments under the SIG Purchase Agreements, together with the proceeds distributed under the Infinity Purchase Contracts, should continue to return to the ABC Investors approximately 55% of their initial investments. Importantly, SIG will pay for all premium payments and servicing costs commencing May 1, 2005, which will prevent the Viatical Policies from lapsing and such payments, together with the Option Payment, will restore the $2,500,000 reserve maintained by the Conservator.

Accordingly, the SIG Purchase Agreements should have no adverse economic impact on the ABC Investors, who should receive approximately the same amount of distributions from the sale of the Viatical Policies that they would have received under the sale to Infinity, had there been no default. The Conservator believes that no potential buyer exists who would provide a greater return to the ABC Investors than that offered by SIG. The Conservator also believes that the sale to SIG would be the safest and most expedient course of action for the benefit of ABC Investors.

Therefore, the Conservator believes it would be in the best interest of the ABC Investors for the Court to approve the sale of the remaining Viatical Policies to SIG.

WHEREFORE, premises considered, Conservator Tom Moran respectfully asks the Court to approve the SIG Purchase Agreements and the performance and consummation of the terms required thereby.

Respectfully submitted,

Melvin R. McVay, Jr., OBA No. 6096
Thomas P. Manning, OBA No. 16117
Sally A. Hasenfratz, OBA No. 11853
PHILLIPS McFALL McCAFFREY
McVAY & MURRAH, P.C.
Twelfth Floor, One Leadership Square
211 North Robinson
Oklahoma City, Oklahoma 73102
Telephone: (405) 235-4100
Facsimile: (405) 235-4133
ATTORNEYS FOR CONSERVATOR,
TOM MORAN

CERTIFICATE OF MAILING

The undersigned certifies that on the 26th day of May, 2005, a true and correct copy of the foregoing Application was sent postage prepaid by first-class mail, to:

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

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

[Tom, should we give notice to David Nelson, principal of SIG?]

EXHIBIT E

THE SACRAMENTO BEE sacbee.com

Age of AIDS: 30 years after medical mystery, patients survive

McClatchy Newspapers

Published Thursday, Jun. 02, 2011

MIAMI -- Thirty years after America started battling HIV/AIDS, deaths linked to the virus have plummeted. New HIV cases are down by three-quarters. Life expectancy has more than tripled. Many HIV-positive people lead active lives, often on a single pill a day.

But there's a darker side: More than 1.2 million Americans still are living with HIV/AIDS, and 40,000 new infections and 16,000 deaths are expected this year. Drugs to combat the virus can cost $20,000 or more a year per patient. Side effects can include liver damage and hallucinations, and life expectancies are seven years shorter than for average Americans.

Worse, some researchers say they're detecting a new HIV threat called "immuno-senescence" - a premature aging of the immune system caused by hidden reservoirs of virus even in patients apparently well-controlled on drugs. While not all researchers concur, some fear it's causing earlier cancers, heart attacks, loss of mental acuity and other age-related illnesses.

As AIDS nears its 30th anniversary on June 5, there is both hope and concern.

"Advances in antiretroviral drugs have been the spectacular success story of the past 20 years," says Dr. Mario Stevenson, chief of infectious diseases at the University of Miami Miller School of Medicine. "They've changed the face of AIDS on the planet."

Ron Cox, 44, of Wilton Manors, Fla., who at 28 watched his lover die in part from AIDS-related muscle-wasting, has fought back from his own HIV diagnosis to live a relatively normal life, down from 40 pills a day to seven.

"I'm not a quitter. I'm a body builder," he says. He works out regularly and can squat-lift 250 pounds.

But for Dale Penn, 54, of Miami Beach, Fla., who has been HIV-positive for 20 years, the concept of premature aging strikes a note of recognition. He used to be a high-powered commercial lender for big New York banks, but now says "to get up each day and know I have the energy and brain-power to solve complex problems is no longer feasible."

As research continues, doctors say an absolute cure remains elusive.

"It's unclear if we can get a real cure any time soon," Dr. Tae-Wook Chun, a researcher at the National Institutes of Health, told a Miami symposium in April.

The new research comes at a time when HIV patients are so well-controlled that many believe any crisis is over. A Kaiser Family Foundation poll found that, while 44 percent of

Americans in 1995 saw HIV/AIDS as the nation's most urgent health problem, only 6 percent felt that way by 2009.

That upsets Charles Martin, executive director of the South Beach AIDS Project, which counsels patients.

"We've come a long way, but people still die. I lost a friend the other day," he said.

For all the successes in controlling HIV, it remains a resilient enemy. New cases in the United States peaked at 160,000 in 1985 and plummeted to 40,000 by 1991 as potential victims learned to take precautions. But it has been stuck at that number ever since, according to the Centers for Disease Control and Prevention.

And since there's a steady supply of new patients and those patients are living longer, every year brings an increase in the number of people living with HIV. Nationwide, the number grew from about 950,000 in 1995 to more than 1.2 million in 2009.

Across the nation, heroic efforts are going on to fight HIV/AIDS. Deaths peaked in the mid 1990s and dropped by two-thirds by 2009. Tom Liberti, chief of the Florida Department of Health AIDS Bureau, credits new drugs but also aggressive testing.

"Because of our testing, as many as 86 percent of HIV-positive people are aware of their status so they can get treatment and protect their sexual partners," he says. "When I started here 30 years ago, it was only 10 percent."

Liberti also credits statewide anti-HIV programs such as "Man Up," a campaign urging men to take responsibility for their actions by promising to be faithful, use condoms and take other measures.

Over the past decade, the face of HIV/AIDS has changed.

-Injection drug users: In the early days of AIDS, up to 25 percent of new HIV infections came from addicts sharing dirty needles. That declined with education about risks and as states instituted needle exchange programs or allowed needle sales without prescriptions.

-Men who have sex with men: Reducing HIV in this group has been more difficult, Liberti said. Across the country, 53 percent of new HIV cases in 2010 were in men who have sex with men.

"If we could reduce that, we could cut back the whole epidemic," Liberti said. "But younger men haven't seen the devastation. They haven't seen their friends go through the cancers and the wasting. They haven't sat down with a doctor who told them they had six months to live."

-African-Americans: In both Miami-Dade and Broward, HIV rates have fallen slightly among African-American males in the past decade, and more sharply among African-American women - although both remain higher than other racial and ethnic groups.

"We've put more focus on the African-American community," says Terry DeCarlo, spokesman for Broward House, an HIV/AIDS service agency in Fort Lauderdale.

HIV/AIDS first was recognized in the United States on June 5, 1981, when the CDC reported five cases of a rare pneumonia among previously healthy young men in Los Angeles. Within a year, the root cause would have a name: AIDS, for Acquired Immune Deficiency Syndrome.

In the early years, death often came in months. The psychological toll was devastating. Penn, the former New York banker, was diagnosed in 1991 when his doctor, crying, told him he had six weeks to live. Two weeks later, he recalls, a nurse called to say the doctor had read the wrong chart: "She said I actually had two years to live."

Over the years, researchers developed powerful drugs that to some extent have tamed HIV/AIDS. In 1987, the federal government approved AZT, the first effective HIV treatment, developed in major part by University of Miami medical school researcher Margaret Fischl. In 1995 came the first of the complex, multi-antiretroviral-drug cocktails. That ushered in the era of HAART, or "highly active antiretroviral therapy." AIDS deaths dropped.

HIV patients had to take pills in handfuls, 20 or more a day. In 2006, the FDA approved Atripla, by Gilead Sciences and Bristol-Myers Squibb, the first triple-drug treatment in a single daily tablet. Now, pharmaceutical firms make about 30 HIV medicines in five drug classes, each targeting HIV in a different way.

Today, a new HIV patient might live 25 to 30 more years - or longer, doctors say.

"With drugs and proper care and diet, people can live long, long lives," DeCarlo said.

An example is basketball great Earvin "Magic" Johnson, who in 1991 retired from the Los Angeles Lakers, announcing he was HIV-positive. Fans feared it was a death sentence. But with AZT, then multi-drug cocktails, he has maintained his health and become a high-profile crusader for HIV awareness.

Still, patients who can get by on a single pill a day are the newly diagnosed and those whose status is caught early. Penn has been on antiretroviral multi-drug cocktails since they were developed in the mid-1990s, and has had to change his regimen five times to stay ahead of HIV's chronic mutations.

"Medication management is a huge issue," he said. "You can't run out. Miss a dose and the virus mutates."

New treatments are in the works. Fischl, at the UM medical school, is working on a therapeutic vaccine to treat patients who are already HIV-positive.

"It will harness the immune system and control the virus so there is no more need for antiretroviral therapy," she said.

But some researchers now fear the virus is harder to suppress completely than previously believed. Even when HIV patients seem well-controlled on drugs, with blood viral counts near zero, a hidden reservoir of virus might lurk in the lymphatic system, they say.

To explore the issue, UM's Stevenson convened a symposium in April in Miami with experts from the National Institutes of Health, universities, the National Cancer Institute and the pharmaceutical firm Merck & Co.

"Antiretroviral drugs can suppress the HIV virus in the blood, but the virus can still replicate in the lymphatic system," said Dr. Timothy Schacker, director of the Infectious Disease Clinic at the University of Minnesota, told those at the symposium.

Stevenson agreed: "Even when the patient goes on therapy early and stays on it for years, and the virus is suppressed so it's undetectable, if you stop treatment the virus comes back in every single person. It causes inflammation of the immune system, and that causes health problems."

Such health problems can be extensive, added Dr. Steven Deeks, AIDS researcher at the University of California at San Francisco: "The patients are at increased risk for heart disease, cancer, kidney and liver problems."

Penn says he recognizes signs of premature aging - heart attacks and other problems - in acquaintances with HIV. He says he suffers from kidney disease, chronic fatigue and other problems he attributes to his well-controlled HIV. He blames it in part on the antiretroviral drugs that are keeping him alive. Each time he changes his multi-drug cocktail, he says, he worries the new combination hasn't been adequately tested in the haste to stay ahead of HIV mutations.

"Every one of us is a scientific experiment," he says.

Deeks acknowledges that the idea of premature aging is controversial, and not every researcher agrees with it. In a study published in the Annals of Internal Medicine in October , Dr. Meredith Shiels of the National Cancer Institute and others argue that the increase in cancers is due to the growth and aging of the HIV population.

"People with HIV have not been shown to be at an elevated risk of ... breast, prostate and colon cancers," Shiels said in an email. But even her study agreed that lung and anal cancers were occurring earlier to HIV-positive patients.

Despite doubts about quickly conquering HIV, Stevenson's name for his April symposium was "The Road to a Cure for HIV/AIDS." And several researchers took optimistic tones. They defined what a true cure for HIV/AIDS might look like: when the HIV virus in the patient's blood and lymphatic system was so thoroughly suppressed that it did not return even if the patient stopped all therapy.

And they cited the now-famous "Berlin Patient," an HIV-positive patient declared cured by doctors who treated him. In 2007, American Timothy Ray Brown, then 44, was undergoing treatment for both leukemia and HIV. Doctors in Berlin planned to fight his leukemia with chemotherapy and radiation, then implant bone marrow stem cells from a healthy donor to rebuild his immune system.

They decided to attack his HIV at the same time by harvesting stem cells from an extremely rare donor born naturally immune to HIV. It worked. Four years later neither Brown's blood nor his lymphatic system show signs of the virus.

It's not a general cure for HIV/AIDS, Stevenson said. The patient had both leukemia and HIV. HIV-immune donors are very rare. The treatment had a 30 percent chance of mortality and cost hundreds of thousands of dollars.

Still, HIV researchers say it may be a turning point, a demonstration that the hidden reservoir of virus can be eliminated and HIV can be cured.

At the symposium, researchers concluded it will take a multi-pronged approach to move toward a cure. To start, that means new drugs to flush the hidden reservoir of virus out of hiding so traditional antiretroviral drugs can suppress it. Gilead Sciences, for one, is in the early stages of research into that, said Dr. Andrew Cheng, the California pharmaceutical company's senior vice president of development.

Researchers also will need new therapeutic vaccines to strengthen patients' immune systems and more radical genetic approaches to engineer patients' cells to become immune to HIV.

"This is the excitement, the biggest challenge in the field," Stevenson says. "It used to be heretical to consider the idea that we could eradicate AIDS. Now even the NIH is embracing this. ... I'm optimistic. Maybe a better word is stubborn - as stubborn as the virus."

(HeraldSource, part of the Public Insight Network, contributed to this report.)

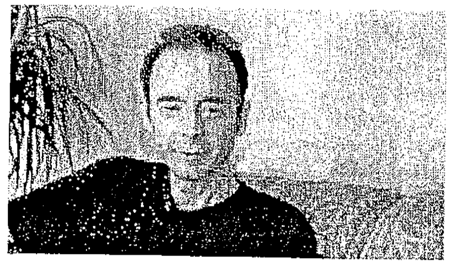
REUTERS

» Print

Special Report: An end to AIDS?

Wed, Jun 1 2011

By Kate Kelland



LONDON (Reuters) - For his doctors, Timothy Ray Brown was a shot in the dark. An HIV-positive American who was cured by a unique type of bone marrow transplant, the man known as "the Berlin patient" has become an icon of what scientists hope could be the next phase of the AIDS pandemic: its end.

Dramatic scientific advances since HIV was first discovered 30 years ago this week mean the virus is no longer a death sentence. Thanks to tests that detect HIV early, new antiretroviral AIDS drugs that can control the virus for decades, and a range of ways to stop it being spread, 33.3 million people around the world are learning to live with HIV.

People like Vuyiseka Dubula, an HIV-positive AIDS activist and mother in Cape Town, South Africa, can expect relatively normal, full lives. "I'm not thinking about death at all," she says. "I'm taking my treatment and I'm living my life."

Nonetheless, on the 30th birthday of HIV, the global scientific community is setting out with renewed vigor to try to kill it. The drive is partly about science, and partly about money. Treating HIV patients with lifelong courses of sophisticated drugs is becoming unaffordable.

Caring for HIV patients in developing countries alone already costs around $13 billion a year and that could treble over the next 20 years.

In tough economic times, the need to find a cure has become even more urgent, says Francoise Barre Sinoussi, who won a Nobel prize for her work in identifying Human Immunodeficiency Virus (HIV). "We have to think about the long term, including a strategy to find a cure," she says. "We have to keep on searching until we find one."

The Berlin patient is proof they could. His case has injected new energy into a field where people for years believed talk of a cure was irresponsible.

THE CURE THAT WORKED

Timothy Ray Brown was living in Berlin when besides being HIV-positive, he had a relapse of leukemia. He was dying. In 2007, his doctor, Gero Huetter, made a radical suggestion: a bone marrow transplant using cells from a donor with a rare genetic mutation, known as CCR5 delta 32. Scientists had known for a few years that people with this gene mutation had proved resistant to HIV.

"We really didn't know when we started this project what would happen," Huetter, an oncologist and haematologist who now works at the University of Heidelberg in southern Germany, told Reuters. The treatment could well have finished Brown off. Instead he remains the only human ever to be cured of AIDS. "He has no replicating virus and he isn't taking any medication. And he will now probably never have any problems with HIV," says Huetter. Brown has since moved to San Francisco.

Most experts say it is inconceivable Brown's treatment could be a way of curing all patients. The procedure was expensive, complex and risky. To do this in others, exact match donors would have to be found in the tiny proportion of people -- most of them of northern European descent -- who have the mutation that makes them resistant to the virus.

Dr Robert Gallo, of the Institute of Virology at the University of Maryland, puts it bluntly. "It's not practical and it can kill people," he said last year.

Sinoussi is more expansive. "It's clearly unrealistic to think that this medically heavy, extremely costly, barely reproducible approach could be replicated and scaled-up ... but from a scientist's point of view, it has shown at least that a cure is possible," she says.

The International AIDS Society will this month formally add the aim of finding a cure to its HIV strategy of prevention, treatment and care.

A group of scientist-activists is also launching a global working group to draw up a scientific plan of attack and persuade governments and research institutions to commit more funds. Money is starting to flow. The U.S. National Institutes of Health is asking for proposals for an $8.5 million collaborative research grant to search for a cure, and the

Foundation for AIDS Research, or amfAR, has just announced its first round of four grants to research groups "to develop strategies for eradicating HIV infection."

THE COST OF TREATMENT

Until recently, people in HIV and AIDS circles feared that to direct funds toward the search for a cure risked detracting from the fight to get HIV-positive people treated. Even today, only just over five million of the 12 million or so people who need the drugs actually get them.

HIV first surfaced in 1981, when scientists at the U.S. Centers for Disease Control and Prevention discovered it was the cause of acquired immunodeficiency syndrome (AIDS). An article in the CDC's Morbidity and Mortality Weekly Report of that June referred to "five young men, all active homosexuals" from Los Angeles as the first documented cases. "That was the summer of '81. For the world it was the beginning of the era of HIV/AIDS, even though we didn't know it was HIV then," says Anthony Fauci, director of the U.S. National Institute of Allergy and Infectious Diseases, who has made AIDS research his life's work.

In the subsequent three decades, the disease ignorantly branded "the gay plague" has become one of the most vicious pandemics in human history. Transmitted in semen, blood and breast milk, HIV has devastated poorer regions, particularly sub-Saharan Africa, where the vast majority of HIV-positive people live. As more tests and treatment have become available, the number of new infections has been falling. But for every two with HIV who get a chance to start on AIDS drugs, five more join the "newly infected" list. United Nations data show that despite an array of potential prevention measures -- from male circumcision to sophisticated vaginal or anal microbicide gels -- more than 7,100 new people catch the virus every day.

Treatment costs per patient can range from around $150 a year in poor countries, where drugs are available as cheap generics, to more than $20,000 a year in the United States.

The overall sums are huge. A recent study as part of a non-governmental campaign called AIDS2031 suggests that low and middle-income countries will need $35 billion a year to properly address the pandemic by 2031. That's almost three times the current level of around $13 billion a year. Add in the costs of treatment in rich countries and experts estimate the costs of HIV 20 years from now will reach $50 to $60 billion a year.

"It's clear that we have to look at another possible way of managing of the epidemic beyond just treating everyone forever," says Sharon Lewin, a leading HIV doctor and researcher from Monash University in Melbourne, Australia.

In some ways, we have been here before. Early AIDS drugs such as AZT came to market in the late 1980s, but within a decade they were overtaken by powerful cocktail treatments known as HAART, or highly active antiretroviral treatment. HAART had a dramatic effect -- rapidly driving the virus out of patients' blood and prompting some to say a cure was just around the corner.

But then scientists discovered HIV could lie low in pools or reservoirs of latent infection that even powerful drugs could not reach. Talk of a cure all but died out.

"Scientifically we had no means to say we were on the way to finding a cure," says Bertrand Audoin, executive director of the Geneva-based International AIDS Society. "Scientists ... don't want to make any more false promises. They didn't want to talk about a cure again because it really wasn't anywhere on the horizon."

GENE THERAPY

The ultimate goal would allow patients to stop taking AIDS drugs, knocking a hole in a $12 billion-a-year market dominated by Californian drugmaker Gilead and the likes of Pfizer, GlaxoSmithKline and Merck.

It's unlikely to happen anytime soon, but Brown's case has opened the door to new ideas. "What it proved was that if you make someone's cells resistant to HIV...then all the last bits of HIV, that hang around for a long time in patients on treatment, did in fact decay and disappear," says Lewin.

Now scientists working on mimicking the effect of the Berlin patient's transplant have had some success. One experimental technique uses gene therapy to take out certain cells, make them resistant to HIV and then put them back into patients in the hope they will survive and spread.

At an HIV conference in Boston earlier this year, American researchers presented data on six patients who had large numbers of white blood cells known as CD4 cells removed, manipulated to knock out the existing CCR5 gene, and then replaced.

"It works like scissors and cuts a piece of genetic information out of the DNA, and then closes the gap," says Huetter. "Then every cell arising from this mother cell has this same mutation."

Early results showed the mutated cells managed to survive inside the bodies of the patients at low levels, remaining present for more than three months in five. "This was a proof of concept," says Lewin. Another potential avenue is a small group of patients known as "elite controllers", who despite being infected with HIV are able to keep it under control simply with their own immune systems. Researchers hope these patients could one day be the clue to developing a successful HIV/AIDS vaccine or functional cure.

Scientists are also exploring ways to "wake up" HIV cells and kill them. As discovered in the late 1990s, HIV has a way of getting deep into the immune system itself -- into what are known as resting memory T-cells -- and going to sleep there. Hidden away, it effectively avoids drugs and the body's own immune response.

"Once it goes to sleep in a cell it can stay there forever, which is really the main reason why we can't cure HIV with current drugs," says Lewin. Her team in Melbourne and another group in the United States are about to start the first human trials using a drug called SAHA or vorinostat, made by Merck and currently used in cancer treatment, which has shown promise in being able to wake up dormant HIV.

WHAT ABOUT PREVENTION?

As scientists begin to talk up a cure, the old question of whether that's the right goal has re-emerged. Seth Berkley, a medical epidemiologist and head of the U.S.-based International AIDS Vaccine Initiative (IAVI) is concerned.

"From a science point of view, it's a fabulous thing to do. It's a great target and a lot of science will be learned. But from a public health point of view, the primary thing you need to do is stop the flow of new infections," says Berkley. "We need a prevention revolution. That is absolutely critical."

Vuyiseka Dubula agrees. The South African activist finds talk of a cure for HIV distracting, almost disconcerting. "This research might not yield results soon, and even when it does, access to that cure is still going to be a big issue," she says. "So in the meantime, while we don't have the answer on whether HIV can be cured or not, we need to save lives."

(Additional reporting by Julie Steenhuysen in Chicago, editing by Sara Ledwith and Simon Robinson)

msnbc.com

Aging with AIDS: More are living longer, living with loss

Long-term survivors have had unexpected lives, but many face accelerated aging

By Linda DahlstromHealth editor

msnbc.com

updated 51 minutes ago

Bill Rydwels is 78, but he hasn't celebrated his birthday since 1985.

On that day all those years ago, his partner of 17 years, Franco Prieto, died of AIDS. Now, every Oct. 9 calls into sharp contrast all that Rydwels lost — and all that remains as he turns another year older.

He has lived to be a senior citizen. something that seemed unimaginable to him back when he tested positive for HIV in 1985 — the first year the test was available. Then, the Chicago man only expected to live another year or so.

Now, his doctor jokes that he'll live to be 100. But sometimes, on his down days, he says, "The older I get, the more I wonder, why am I still here when everyone is gone?"

Like other long-term survivors of the pandemic that officially began 30 years ago this month with a medical report about gay men who were gravely ill, Rydwels lives with the duality of bonus years of life he never expected — and the loss of myriad friends.

Like him, many are facing not only the ravages of old age, but also the cumulative effects of living for years with AIDS, which is now understood to accelerate the aging process.

More than 30 percent of all those with HIV are 50 years old or older, according to statistics from the Centers for Disease Control and Prevention for 2008, the most recent year for which data is available. That's up from 26 percent in 2006.

Now, geriatricians are incorporated into the care of HIV patients, said Dr. Brad Hare, an expert on HIV and aging and the medical director of San Francisco General Hospital's HIV/AIDS clinic, Ward 86.

"If you'd told someone that 10 years ago, they'd think it was science fiction," Hare says, adding that the average age of the clinic's 3,000 patients is now 46.

A warning shot

Today an estimated 1.1 million people in the U.S. are HIV positive. Another 600,000 have died during the decades of the pandemic, according to the CDC.

But the report that sent a warning shot to the world about a mysterious disease that would come to be known as AIDS centered on just five men, all gay, all in their 20s and 30s, living in the Los Angeles area.

Titled "Pneumocystis Pneumonia — Los Angeles," the report published in the CDC's Morbidity and Mortality Weekly Report on June 5, 1981, was only 522 words and recounted c ase reports of men who had strangely developed pneumocystis carinii pneumonia. One patient had a "ball of yeast" on his finger, remembers Dr. Andrew Saxon, 65, professor of medicine of clinical immunology and allergy at the David Geffen School of Medicine at UCLA.

"It was extraordinarily unusual except in bubble babies [kids who are severely immune compromised]," says Saxon, a co-author of the report. After that first patient, he began hearing about others with symptoms that were unheard of for men who had been previously healthy. All seemed to be tied to some kind of profound immune problem.

A new test was available that measured patients' CD4 T-cells, essential to the immune system. "We ran it and they were gone — they were absolutely gone," he recalls. "We said, 'Wow. Oh, wow.' ...

"We didn't realize the massive public health impact. No one did," he says. "But we realized it was important."

'Goodbye to you'

Rydwels remembers the moment in July of 1985 when he learned he was HIV positive. The doctor didn't even ask him to sit down, he says, he just "shook his head and acted like, 'Goodbye to you.'"

Prieto died only months later and Rydwels assumed he'd soon follow. Instead, he's survived to witness deaths of countless friends — and remember. Many of his friends have been gone for decades, but he can see them clearly in his mind's eye — his partner, Prieto, tending to the orange trees at the Hollywood, Fla., home they shared; his friend Russell, who took him on a road trip to New Mexico after Prieto's death; and Patrick, a friend who wore orange pork pie hats and whose family slammed the door in his face when he tried to reconcile with them shortly before his death.

Almost every day, Rydwels prays the names of the dozens of friends he's lost over the years: *Franco, Russell, Patrick C, Chris, Patrick G., Thom (Znoy), Bill R., Mark, Bill W., Juan, Bill B., V ictor, Rudy, Ron A., Scott W., Ron V., Scott B., Danny, Scott M., Jay, Gary, Stan, Peter, Charles C., Jim ...*

"I have to say their names. How can I not when they were such an essential part of my life?" he says. "No one should be forgotten."

The first AIDS unit

It's the fear in the eyes of very sick young men that Dr. Diane Havlir remembers vividly. In 1984, she began working as an intern at San Francisco General Hospital's Ward 5B, the world's first AIDS unit, which had opened the year before.

She had countless discussions with patients struggling to breathe with pneumocystis pneumonia about whether they wanted to go on breathing tubes. Then, there just weren't many good options. "Some of them were able to come off but many didn't. Those were very difficult conversations to have," says Havlir, now the chief of the HIV/AIDS division and Positive Health Program at San Francisco General.

At least a third of the patients died soon after being admitted, said Havlir. Many others went home to die.

msnbc.com

Nurse Diane Jones worked with Havlir on Ward 5B and had been there from the very beginning. She went to work at San Francisco General Hospital in 1982, fresh out of nursing school, and saw patients with a constellation of mysterious ailments including pneumocystis, Kaposi's sarcoma and meningococcal meningitis.

Vasna Wilson / Vasna Wilson for msnbc.com
Nurse Diane Jones, left, greets a longtime patient, Richard Apodaca atSan Francisco General Hospital. Jones started working withpatients with HIV and AIDSat the hospital in 1982, right out of nursing school. Nearlyyears later, she's still there.

Back then, the patients were "really sick and were gay men who were diagnosed with this thing that was freaking everybody out," remembers Jones. "It was a communicable disease and the staff didn't know what risk it was to them. ... It was incredibly stigmatizing."

Jones, a political activist and a lesbian, says she was drawn to patients with AIDS because she knew many of them were targets of homophobia as well as the stigma of AIDS. "Homophobia and AIDS phobia all got mixed up together. We didn't know where one ended and the other began."

In what Havlir calls the "battle days of AIDS," the now-standard universal precautions of wearing gloves when treating patients and disposing of needles in protected containers weren't in place. Jones says she and many others had the kind of bravado of first responders who rush into a burning building. She dealt with any fear she had of becoming infected through sheer denial.

"I had a needle stick and then had a moment of fear but quickly repressed it," she says.

Both she and Havlir say they were too busy taking care of patients to worry much about themselves.

"If you know how to define courage, we saw courage," says Havlir. "We saw patients with an incredible fight to stay alive and with their loved ones."

'I never thought I'd make it this long'

The CDC doesn't track how many people who were HIV-positive are still alive today, but Hare, 41, says he believes the numbers are "pretty small."

"We definitely have some patients who have been known to be HIV positive for 20-plus years, but relatively few," he said.

Hare doesn't know exactly why some have lived for decades when so many others died. "There are cases of a less-virulent virus, but those are pretty rare. My sense is that it's more likely to be related to how an individual's immune system handles the virus. There are some people who can control HIV viral load to very low levels — even undetectable — without medications," he says. "Generally, those people do have slower progression of HIV, but they do go on to progress over time."

Richard Wolitski, deputy director for behavioral and social science in the division of HIV/AIDS prevention at the CDC, tested HIV positive himself in the 1990s. His partner, John Piontkowski, died in 1994 and "I never thought I'd make it this long," he says.

Back in 1996, the life expectancy of someone who was HIV positive (but who didn't have full-blown AIDS) was 10 years, says Wolitski, now 47. As of 2005, that number had climbed to 22.5 years, primarily due to the use of anti-HIV medications.

'You didn't live with AIDS, you died with AIDS'

Tony, Meyer, Charles B., Michael P., Jerome, Michael T., Charlie C., Peacock, Bob, Jerry B., J ames, Dennis F., Hugo, Charles A., Jerome K., Jerry B., Emmett, Jerry M., Randy ...

Prieto was one of the first people Rydwels knew who had AIDS. He proudly recalls him as a self-made man who moved from Colombia with $5,000 and left behind an estate of a half a million dollars from savvy real estate investments. Prieto loved taking care of others, he says, always putting them first and wanting to make sure they were comfortable. If Prieto noticed Rydwels' laundry needed washing, he'd do it for him. Sometimes he'd bring Rydwels elaborately wrapped presents just because he loved him.

But the summer of 1985, it was Rydwels' turn to take care of Prieto. The first sign that anything was wrong came when he became disoriented at work and didn't know where he was. Panicked, Rydwels took him to the hospital where he was diagnosed with a brain infection and soon after suffered a stroke. Rydwels remembers that no one wanted to touch Prieto or bring food in to his room. But he doesn't blame them: "We were as afraid as they were."

No one ever told Prieto that he had AIDS, although Rydwels believes he must have suspected it. "We didn't want him to know. He couldn't have faced it. You didn't live with AIDS, you died with AIDS," Rydwels says.

Three months later, on the afternoon of Oct. 9, 1985, Rydwels went to a church and "prayed like crazy negotiating — cure him or take him." While he was there, Prieto died.

Not long after, Rydwels moved from Florida to Chicago, to be near his family for the short time he thought he had left to live. He spent a long time grieving and waiting to die, he said.

But then, one day, a friend told him he needed to start making a life for himself and he began going to support groups through Test Positive Aware Network, an AIDS organization, and meeting others who were HIV positive. He began speaking publicly about AIDS, doing volunteer work to advance AIDS education and routinely visiting sick friends in the hospital.

Slideshow: 30 years of HIV/AIDS in black America

For years, Rydwels' own health remained steady. He didn't go on any medications for HIV until he was diagnosed with non-Hodgkins lymphoma in 1996 and his T-cell count dropped him into an AIDS diagnosis. Ten years later, the cancer returned, requiring another round of treatment before slipping back into remission. Now he takes antiretroviral medication for HIV in addition to pills for the age-related maladies of high blood pressure, heart disease, diabetes and high cholesterol.

These days, he still goes to support groups and makes a point to connect with others. While many of his old friends are gone, he's found new ones.

"That's the terrible thing of aging — you lose people," he says, "But as you lose people new people step in."

msnbc.com

Hare, the medical director of San Francisco General Hospital's Ward 86, says many of his older patients have lost all social support since so many of their peers died. "There's a lot of depression," he says.

Some who were diagnosed in the early days of AIDS didn't think they had to plan for a future so didn't continue their education or chose a l ong-term career, he says. One of his patients was told when he was in his 20s that he wouldn't live past 30. "He had a very difficult time when he turned 50," he says. "He was saying 'Why am I here? This isn't what I planned for.'"

Now, Hare says, when his patients are first diagnosed, he tells them they need to plan for their retirement. "It's one of the successes of modern medicine."

Still, HIV may shorten a person's lifespan by 10 years or so, Hare says. And those with the virus show some signs of aging sooner. "We see heart disease, cancer, kidney [problems] 1 0 to 15 years earlier," he says. "Instead of seeing heard disease in people in their 60s and 70s, we're seeing it in their 40s and 50s."

Story: Controversial AIDS cure continues to spur hope

But, for the first time in a long while, scientists are again talking about hope for a cure due to advances in understanding how the virus works, the effectiveness of anti-HIV medications and new research in gene therapy , says Hare.

'Will I see Franco again?'

Randy, Ken K., Fred, Robert, Ken K., Fred, Greg O., Greg T., James S. Joe, James A., Robert, George, Glen, Robert, Jerry B., Dennis F., Dennis N., Dennis L, ...

Sometimes, on quiet afternoons, Rydwels thinks of Prieto and what their lives would be l ike if he hadn't died. He suspects they'd have gone back to Prieto's home country of Colombia to have a farm, like they'd always talked about doing. There, together, they'd tend to the animals and plants, like they used to do at their Florida home.

Rydwels says he's grateful for his many friends who check on him, drive him to appointments and support group meetings and try to keep him from feeling lonely. But sometimes, he says, he has down moments.

He never dated again after Prieto died, saying no one else would measure up. "It'd be impossible. I want another Franco and there's not another one." After all these years, it's the s imple moments with his partner he aches for most. "I miss sharing the joy of just a bright sunny day, or the flowers in the garden."

Recently, he jokingly asked his doctor if he'd give him something to sleep where he'd never wake up.

"There are things I wish I knew," he says, "I joke that the reason I haven't died is that Franco says [to God] I put up with him for 17 years, give me more time! But if I die, will I see Franco again?"

Meanwhile, he continues to pray the names of all his friends even as he knows that someday his friends will be praying his.

"I have wonderful friends. I know I won't be forgotten," he says. "I'm hoping that when my time comes, I'll be as noble in accepting it as all the people who died."