

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

MICHAEL J. QUILLING, Receiver for
ABC VIATICALS, INC., and Related
Entities,

Plaintiff,

v.

ERWIN & JOHNSON, LLP and
CHRISTOPHER R. ERWIN,

Defendants.

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Cause No. 3:07-CV-1153-P
ECF

**PLAINTIFF’S RESPONSE TO MOTION FOR
RECONSIDERATION OF FEBRUARY 20, 2008 ORDER**

Michael J. Quilling, as the court-appointed Receiver for ABC Viaticals, Inc. and other related entities, (“Plaintiff” or “Receiver”) submits this response to Defendants’ Motion for Reconsideration [Dkt. No. 22] and would respectfully show the Court as follows:

**I.
ARGUMENTS AND AUTHORITIES**

In its Order of February 20, 2008 [Dkt. No. 20], the Court clearly explains how the Receiver presented a prima facie case of jurisdiction over Defendant Chris Erwin (“Erwin”). First, the Receiver sets forth sufficient facts to show that ABC Viaticals, Inc. (“ABC”) paid \$1.3 million in cash and a \$1 million policy death benefit in compensation to Erwin’s law firm, Erwin & Johnson, LLP (“E&J”). (Resp. to Mot. to Dismiss, Ex. A [Dkt. No. 14-2] at 2.) The Complaint also alleges that money ABC paid to Erwin’s law firm—and any proceeds ultimately distributed to its partners—are traceable to funds of the receivership entities and/or their

investors. (Compl. at 3, 11.) In its Order of February 20, 2008, the Court notes that those allegations remain undisputed at this point. (Order [Dkt. No. 20] at 6.)

In the motion now before the Court, Erwin simply restates his jurisdictional challenge on the basis of an evasive and self-serving affidavit. In relevant part, his affidavit states as follows:

9. Any action I took with respect to the business relationship between Erwin & Johnson LLP and ABC Viaticals, Inc., was done on behalf of, and in my capacity as an owner of, Erwin & Johnson LLP, and not on my personal behalf.

* * *

13. I do not have individual possession, custody, or control of any property of ABC Viaticals, Inc. or its investors.

(Mot. to Dismiss, Ex. A [Dkt. No. 9-2].) The Court should disregard both of these statements as subjective legal conclusions. *See, e.g., Smiley v. Oxford Capital, LLC*, 100 Fed. Appx. 970, 974 (5th Cir. 2004). Only this Court may determine whether particular assets in Erwin's control are receivership assets subject to these proceedings. *See Order Appointing Receiver* [Dkt. No. 8] at ¶¶ 3, 14, Cause No. 3:06-CV-2136-P (N.D. Tex. Nov. 17, 2006). Furthermore, Erwin leaves open the possibility that he did, in fact, receive proceeds of funds that ABC transferred to E&J. (Order [Dkt. No. 20] at 6) ("Defendant does not state that he never received fees from E&J for services rendered to ABC from funds paid to E&J by ABC"). In short, there is nothing for the Court to reconsider and it should deny Erwin's motion for the reasons already stated in its Order of February 20, 2008.

Respectfully submitted,

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ATTORNEYS FOR RECEIVER

CERTIFICATE OF SERVICE

A true and correct copy of this motion shall be served on all interested parties through the Court's electronic filing system.

/s/ Michael J. Quilling