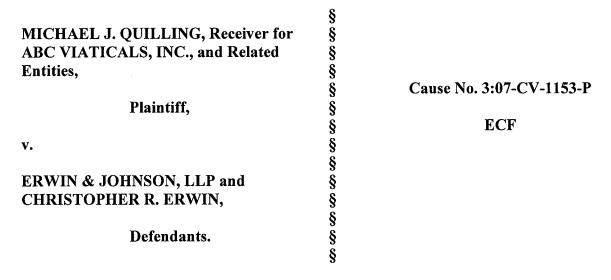
### IN THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF TEXAS DALLAS DIVISON



# PLAINTIFF'S ORIGINAL REPLY TO DEFENDANT ERWIN & JOHNSON LLP'S COUNTERCLAIMS

Michael J. Quilling, as the appointed Receiver for ABC Viaticals, Inc. and other related entities, ("Plaintiff" or "Receiver") now files this Original Reply to Defendant Erwin & Johnson LLP's Counterclaims [Dkt. No. 25]. In support, the Receiver would respectfully show the Court as follows:

#### A. Admissions And Denials

- 1. The Receiver denies the allegations in Paragraph 72.
- 2. The Receiver denies the allegations in Paragraph 73.

#### B. Affirmative Defenses

3. The Receiver is not liable to Erwin & Johnson LLP ("E&J") because E&J has not performed all conditions precedent under the Escrow Account Agreement, the Life Settlement Trust Agreement, or any other contract before filing his counterclaims.

- 4. The Receiver is not liable to E&J because the contracts and provisions on which he relies are void as against public policy.
- 5. The Receiver is not liable to E&J because the contracts and provisions on which he relies ceased to be in effect.
- 6. The Receiver is not liable to E&J because E&J's actions contributed to its damages.
  - 7. The Receiver is not liable to E&J because E&J did not mitigate its damages.
  - 8. The Receiver is not liable to E&J because there was failure of consideration.
- 9. The Receiver is not liable to E&J because its claims fail to state a claim upon which relief can be granted.
  - 10. The Receiver is not liable to E&J because of E&J's fraud.
  - 11. The Receiver is not liable to E&J because of E&J's bad faith.
  - 12. The Receiver is not liable to E&J because of illegality.
  - 13. The Receiver is not liable to E&J because of the doctrine of unclean hands.
  - 14. The Receiver is not liable to E&J because of estoppel.
  - 15. The Receiver is not liable to E&J because of waiver.
  - 16. The Receiver is not liable to E&J because of release.
  - 17. The Receiver is not liable to E&J because of payment.
  - 18. The Receiver is not liable to E&J because of duress.
  - 19. The Receiver is not liable to E&J because of laches.
  - 20. The Receiver is not liable to E&J because the statute of frauds bars his claims.
  - 21. The Receiver is not liable to E&J because the statute of limitations has run.

22. The Receiver reserves the right to amend his answer and state additional affirmative defenses based on facts discovered later in this case.

## C. Prayer

- 23. For these reasons, the Receiver asks the court to do the following:
  - a. Enter judgment that E&J take nothing.
  - b. Dismiss E&J's claims with prejudice.
  - c. Assess costs against E&J.
  - d. Award the Receiver's attorney fees.
- e. Award the Receiver such other and further relief, general or special, at law or inequity, to which he might otherwise show himself entitled.

Respectfully submitted,

QUILLING, SELANDER, CUMMISKEY & LOWNDS, P.C. 2001 Bryan Street, Suite 1800 Dallas, Texas 75201-4240 (214) 871-2100 (Telephone) (214) 871-2111 (Facsimile)

By: /s/ Michael J. Quilling

Michael J. Quilling State Bar No. 16432300 Brent J. Rodine

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By: /s/ Bruce Kramer

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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