

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

| | | |
|------------------------------------------------|---|-------------------------|
| MICHAEL J. QUILLING, Receiver | § | |
| for ABC VIATICALS, INC., and | § | |
| Related Entities, | § | |
| | § | |
| Plaintiff and Counter-Defendant, | § | |
| | § | |
| v. | § | CIVIL ACTION NO. |
| | § | 3:07-CV-1153-P |
| ERWIN & JOHNSON, LLP, and | § | |
| CHRISTOPHER R. ERWIN, | § | |
| | § | |
| Defendants, Counter Claimants, | § | |
| and Third-Party Plaintiffs,¹ | § | |
| | § | |
| v. | § | |
| | § | |
| MILLS, POTOZAK & COMPANY, | § | |
| | § | |
| Third-Party Defendant. | § | |

**MILLS, POTOZAK & COMPANY’S ORIGINAL ANSWER
AND AFFIRMATIVE DEFENSES TO CHRISTOPHER R. ERWIN’S
ORIGINAL ANSWER, COUNTERCLAIMS & CROSS-COMPLAINT**

TO THE HONORABLE JORGE A. SOLIS:

Third-Party Defendant Mills, Potoczak & Company (“Mills”) files this its Original Answer and Affirmative Defenses to Christopher R. Erwin’s (“Erwin”) Original Answer, Counterclaims & Cross-Complaint (“Answer”) and would respectfully show the Court as follows:

¹ Erwin & Johnson, LLP (“E& J”) and Christopher R. Erwin (“Erwin”) incorrectly labeled their claims against third-party Mills as a cross-complaint. See E&J’s Original Answer, Counterclaims, & Cross-Complaint at 9; See Erwin’s Original Answer, Counterclaims, & Cross-Complaint at 9. Since Mills was not a party to this action, Federal Rule of Civil Procedure 14(a)(1) states that the defending party, “as third-party plaintiff,” may serve a summons and complaint on a nonparty “who is or may be liable to it for all or part of the claim against it.” FED R. CIV. P. 14(a)(1). The rule describes the nonparty as the “third-party defendant.” *Id.* Mills has corrected the third-party plaintiffs’ error and will refer to E&J and Erwin as the third-party plaintiffs and to Mills as the third-party defendant.

I.

MILLS' ORIGINAL ANSWER

INTRODUCTORY PARAGRAPH

The allegations contained in the introductory paragraph on page 1 of Erwin's Answer are not subject to admission or denial. To the extent the Court determines that an answer is required, Mills denies allegations contained in said paragraph.

ORIGINAL ANSWER

1. The allegations in Paragraph 1 of Erwin's Answer contain Erwin's response to the allegations in Plaintiff's Original Complaint and are not subject to admission or denial by Mills. To the extent the Court determines that an answer is required, Mills denies allegations contained in said paragraph.

2. The allegations in Paragraph 2 of Erwin's Answer contain Erwin's response to the allegations in Plaintiff's Original Complaint and are not subject to admission or denial by Mills. To the extent the Court determines that an answer is required, Mills denies allegations contained in said paragraph.

3. The allegations in Paragraph 3 of Erwin's Answer contain Erwin's response to the allegations in Plaintiff's Original Complaint and are not subject to admission or denial by Mills. To the extent the Court determines that an answer is required, Mills denies allegations contained in said paragraph.

4. The allegations in Paragraph 4 of Erwin's Answer contain Erwin's response to the allegations in Plaintiff's Original Complaint and are not subject to admission or denial by Mills. To the extent the Court determines that an answer is required, Mills denies allegations contained in said paragraph.

5. The allegations in Paragraph 5 of Erwin's Answer contain Erwin's denial of allegations in Plaintiff's Original Complaint and are not subject to admission or denial by Mills. To the extent the Court determines that an answer is required, Mills denies allegations contained in said paragraph.

6. The allegations in Paragraph 6 of Erwin's Answer contain Erwin's denial of allegations in Plaintiff's Original Complaint and are not subject to admission or denial by Mills. To the extent the Court determines that an answer is required, Mills denies allegations contained in said paragraph.

7. The allegations in Paragraph 7 of Erwin's Answer contain Erwin's denial of allegations in Plaintiff's Original Complaint and are not subject to admission or denial by Mills. To the extent the Court determines that an answer is required, Mills denies allegations contained in said paragraph.

8. The allegations in Paragraph 8 of Erwin's Answer contain Erwin's denial of allegations in Plaintiff's Original Complaint and are not subject to admission or denial by Mills. To the extent the Court determines that an answer is required, Mills denies allegations contained in said paragraph.

9. The allegations in Paragraph 9 of Erwin's Answer contain Erwin's denial of allegations in Plaintiff's Original Complaint and are not subject to admission or denial by Mills. To the extent the Court determines that an answer is required, Mills denies allegations contained in said paragraph.

10. The allegations in Paragraph 10 of Erwin's Answer contain Erwin's denial of allegations in Plaintiff's Original Complaint and are not subject to admission or denial by Mills.

To the extent the Court determines that an answer is required, Mills denies allegations contained in said paragraph.

11. The allegations in Paragraph 11 of Erwin's Answer contain Erwin's denial of allegations in Plaintiff's Original Complaint and are not subject to admission or denial by Mills. To the extent the Court determines that an answer is required, Mills denies allegations contained in said paragraph.

12. The allegations in Paragraph 12 of Erwin's Answer contain Erwin's denial of allegations in Plaintiff's Original Complaint and are not subject to admission or denial by Mills. To the extent the Court determines that an answer is required, Mills denies allegations contained in said paragraph.

13. The allegations in Paragraph 13 of Erwin's Answer contain Erwin's denial of allegations in Plaintiff's Original Complaint and are not subject to admission or denial by Mills. To the extent the Court determines that an answer is required, Mills denies allegations contained in said paragraph.

14. The allegations in Paragraph 14 of Erwin's Answer contain Erwin's denial of allegations in Plaintiff's Original Complaint and are not subject to admission or denial by Mills. To the extent the Court determines that an answer is required, Mills denies allegations contained in said paragraph.

15. The allegations in Paragraph 15 of Erwin's Answer contain Erwin's denial of allegations in Plaintiff's Original Complaint and are not subject to admission or denial by Mills. To the extent the Court determines that an answer is required, Mills denies allegations contained in said paragraph.

16. The allegations in Paragraph 16 of Erwin's Answer contain Erwin's denial of allegations in Plaintiff's Original Complaint and are not subject to admission or denial by Mills. To the extent the Court determines that an answer is required, Mills denies allegations contained in said paragraph.

17. The allegations in Paragraph 17 of Erwin's Answer contain Erwin's denial of allegations in Plaintiff's Original Complaint and are not subject to admission or denial by Mills. To the extent the Court determines that an answer is required, Mills denies allegations contained in said paragraph.

18. The allegations in Paragraph 18 of Erwin's Answer contain Erwin's denial of allegations in Plaintiff's Original Complaint and are not subject to admission or denial by Mills. To the extent the Court determines that an answer is required, Mills denies allegations contained in said paragraph.

19. The allegations in Paragraph 19 of Erwin's Answer contain Erwin's denial of allegations in Plaintiff's Original Complaint and are not subject to admission or denial by Mills. To the extent the Court determines that an answer is required, Mills denies allegations contained in said paragraph.

20. The allegations in Paragraph 20 of Erwin's Answer contain Erwin's denial of allegations in Plaintiff's Original Complaint and are not subject to admission or denial by Mills. To the extent the Court determines that an answer is required, Mills denies allegations contained in said paragraph.

21. The allegations in Paragraph 21 of Erwin's Answer contain Erwin's denial of allegations in Plaintiff's Original Complaint and are not subject to admission or denial by Mills.

To the extent the Court determines that an answer is required, Mills denies allegations contained in said paragraph.

22. The allegations in Paragraph 22 of Erwin's Answer contain Erwin's denial of allegations in Plaintiff's Original Complaint and are not subject to admission or denial by Mills. To the extent the Court determines that an answer is required, Mills denies allegations contained in said paragraph.

23. The allegations in Paragraph 23 of Erwin's Answer contain Erwin's denial of allegations in Plaintiff's Original Complaint and are not subject to admission or denial by Mills. To the extent the Court determines that an answer is required, Mills denies allegations contained in said paragraph.

24. The allegations in Paragraph 24 of Erwin's Answer contain Erwin's denial of allegations in Plaintiff's Original Complaint and are not subject to admission or denial by Mills. To the extent the Court determines that an answer is required, Mills denies allegations contained in said paragraph.

25. The allegations in Paragraph 25 of Erwin's Answer contain Erwin's denial of allegations in Plaintiff's Original Complaint and are not subject to admission or denial by Mills. To the extent the Court determines that an answer is required, Mills denies allegations contained in said paragraph.

26. The allegations in Paragraph 26 of Erwin's Answer contain Erwin's denial of allegations in Plaintiff's Original Complaint and are not subject to admission or denial by Mills. To the extent the Court determines that an answer is required, Mills denies allegations contained in said paragraph.

27. The allegations in Paragraph 27 of Erwin's Answer contain Erwin's denial of allegations in Plaintiff's Original Complaint and are not subject to admission or denial by Mills. To the extent the Court determines that an answer is required, Mills denies allegations contained in said paragraph.

28. The allegations in Paragraph 28 of Erwin's Answer contain Erwin's denial of allegations in Plaintiff's Original Complaint and are not subject to admission or denial by Mills. To the extent the Court determines that an answer is required, Mills denies allegations contained in said paragraph.

29. The allegations in Paragraph 29 of Erwin's Answer contain Erwin's denial of allegations in Plaintiff's Original Complaint and are not subject to admission or denial by Mills. To the extent the Court determines that an answer is required, Mills denies allegations contained in said paragraph.

30. The allegations in Paragraph 30 of Erwin's Answer contain Erwin's denial of allegations in Plaintiff's Original Complaint and are not subject to admission or denial by Mills. To the extent the Court determines that an answer is required, Mills denies allegations contained in said paragraph.

31. The allegations in Paragraph 31 of Erwin's Answer contain Erwin's denial of allegations in Plaintiff's Original Complaint and are not subject to admission or denial by Mills. To the extent the Court determines that an answer is required, Mills denies allegations contained in said paragraph.

32. The allegations in Paragraph 32 of Erwin's Answer contain Erwin's denial of allegations in Plaintiff's Original Complaint and are not subject to admission or denial by Mills.

To the extent the Court determines that an answer is required, Mills denies allegations contained in said paragraph.

33. The allegations in Paragraph 33 of Erwin's Answer contain Erwin's denial of allegations in Plaintiff's Original Complaint and are not subject to admission or denial by Mills. To the extent the Court determines that an answer is required, Mills denies allegations contained in said paragraph.

34. The allegations in Paragraph 34 of Erwin's Answer contain Erwin's denial of allegations in Plaintiff's Original Complaint and are not subject to admission or denial by Mills. To the extent the Court determines that an answer is required, Mills denies allegations contained in said paragraph.

35. The allegations in Paragraph 35 of Erwin's Answer contain Erwin's denial of allegations in Plaintiff's Original Complaint and are not subject to admission or denial by Mills. To the extent the Court determines that an answer is required, Mills denies allegations contained in said paragraph.

36. The allegations in Paragraph 36 of Erwin's Answer contain Erwin's denial of allegations in Plaintiff's Original Complaint and are not subject to admission or denial by Mills. To the extent the Court determines that an answer is required, Mills denies allegations contained in said paragraph.

37. The allegations in Paragraph 37 of Erwin's Answer contain Erwin's denial of allegations in Plaintiff's Original Complaint and are not subject to admission or denial by Mills. To the extent the Court determines that an answer is required, Mills denies allegations contained in said paragraph.

38. The allegations in Paragraph 38 of Erwin's Answer contain Erwin's denial of allegations in Plaintiff's Original Complaint and are not subject to admission or denial by Mills. To the extent the Court determines that an answer is required, Mills denies allegations contained in said paragraph.

39. The allegations in Paragraph 39 of Erwin's Answer contain Erwin's denial of allegations in Plaintiff's Original Complaint and are not subject to admission or denial by Mills. To the extent the Court determines that an answer is required, Mills denies allegations contained in said paragraph.

40. The allegations in Paragraph 40 of Erwin's Answer contain Erwin's denial of allegations in Plaintiff's Original Complaint and are not subject to admission or denial by Mills. To the extent the Court determines that an answer is required, Mills denies allegations contained in said paragraph.

41. The allegations in Paragraph 41 of Erwin's Answer contain Erwin's denial of allegations in Plaintiff's Original Complaint and are not subject to admission or denial by Mills. To the extent the Court determines that an answer is required, Mills denies allegations contained in said paragraph.

42. The allegations in Paragraph 42 of Erwin's Answer contain Erwin's denial of allegations in Plaintiff's Original Complaint and are not subject to admission or denial by Mills. To the extent the Court determines that an answer is required, Mills denies allegations contained in said paragraph.

43. The allegations in Paragraph 43 of Erwin's Answer contain Erwin's denial of allegations in Plaintiff's Original Complaint and are not subject to admission or denial by Mills.

To the extent the Court determines that an answer is required, Mills denies allegations contained in said paragraph.

44. The allegations in Paragraph 44 of Erwin's Answer contain Erwin's denial of allegations in Plaintiff's Original Complaint and are not subject to admission or denial by Mills. To the extent the Court determines that an answer is required, Mills denies allegations contained in said paragraph.

45. The allegations in Paragraph 45 of Erwin's Answer contain Erwin's denial of allegations in Plaintiff's Original Complaint and are not subject to admission or denial by Mills. To the extent the Court determines that an answer is required, Mills denies allegations contained in said paragraph.

46. The allegations in Paragraph 46 of Erwin's Answer contain Erwin's denial of allegations in Plaintiff's Original Complaint and are not subject to admission or denial by Mills. To the extent the Court determines that an answer is required, Mills denies allegations contained in said paragraph.

47. The allegations in Paragraph 47 of Erwin's Answer contain Erwin's denial of allegations in Plaintiff's Original Complaint and are not subject to admission or denial by Mills. To the extent the Court determines that an answer is required, Mills denies allegations contained in said paragraph.

48. The allegations in Paragraph 48 of Erwin's Answer contain Erwin's denial of allegations in Plaintiff's Original Complaint and are not subject to admission or denial by Mills. To the extent the Court determines that an answer is required, Mills denies allegations contained in said paragraph.

49. The allegations in Paragraph 49 of Erwin's Answer contain Erwin's denial of allegations in Plaintiff's Original Complaint and are not subject to admission or denial by Mills. To the extent the Court determines that an answer is required, Mills denies allegations contained in said paragraph.

50. The allegations in Paragraph 50 of Erwin's Answer contain Erwin's denial of allegations in Plaintiff's Original Complaint and are not subject to admission or denial by Mills. To the extent the Court determines that an answer is required, Mills denies allegations contained in said paragraph.

51. The allegations in Paragraph 51 of Erwin's Answer contain Erwin's denial of allegations in Plaintiff's Original Complaint and are not subject to admission or denial by Mills. To the extent the Court determines that an answer is required, Mills denies allegations contained in said paragraph.

AFFIRMATIVE DEFENSES

52. The allegations in Paragraph 52 of Erwin's Answer concern Erwin's alleged defenses to the claims alleged in Plaintiff's Original Petition and are not subject to admission or denial by Mills. To the extent the Court determines that an answer is required, Mills denies the allegations contained in said paragraph.

53. The allegations in Paragraph 53 of Erwin's Answer concern Erwin's alleged defenses to the claims alleged in Plaintiff's Original Petition and are not subject to admission or denial by Mills. To the extent the Court determines that an answer is required, Mills denies the allegations contained in said paragraph.

54. The allegations in Paragraph 54 of Erwin's Answer concern Erwin's alleged defenses to the claims alleged in Plaintiff's Original Petition and are not subject to admission or

denial by Mills. To the extent the Court determines that an answer is required, Mills denies the allegations contained in said paragraph.

55. The allegations in Paragraph 55 of Erwin's Answer concern Erwin's alleged defenses to the claims alleged in Plaintiff's Original Petition and are not subject to admission or denial by Mills. To the extent the Court determines that an answer is required, Mills denies the allegations contained in said paragraph.

56. The allegations in Paragraph 56 of Erwin's Answer concern Erwin's alleged defenses to the claims alleged in Plaintiff's Original Petition and are not subject to admission or denial by Mills. To the extent the Court determines that an answer is required, Mills denies the allegations contained in said paragraph.

57. The allegations in Paragraph 57 of Erwin's Answer concern Erwin's alleged defenses to the claims alleged in Plaintiff's Original Petition and are not subject to admission or denial by Mills. To the extent the Court determines that an answer is required, Mills denies the allegations contained in said paragraph.

58. The allegations in Paragraph 58 of Erwin's Answer concern Erwin's alleged defenses to the claims alleged in Plaintiff's Original Petition and are not subject to admission or denial by Mills. To the extent the Court determines that an answer is required, Mills denies the allegations contained in said paragraph.

59. The allegations in Paragraph 59 of Erwin's Answer concern Erwin's alleged defenses to the claims alleged in Plaintiff's Original Petition and are not subject to admission or denial by Mills. To the extent the Court determines that an answer is required, Mills denies the allegations contained in said paragraph.

60. The allegations in Paragraph 60 of Erwin's Answer concern Erwin's alleged defenses to the claims alleged in Plaintiff's Original Petition and are not subject to admission or denial by Mills. To the extent the Court determines that an answer is required, Mills denies the allegations contained in said paragraph.

61. The allegations in Paragraph 61 of Erwin's Answer concern Erwin's alleged defenses to the claims alleged in Plaintiff's Original Petition and are not subject to admission or denial by Mills. To the extent the Court determines that an answer is required, Mills denies the allegations contained in said paragraph.

62. The allegations in Paragraph 62 of Erwin's Answer concern Erwin's alleged defenses to the claims alleged in Plaintiff's Original Petition and are not subject to admission or denial by Mills. To the extent the Court determines that an answer is required, Mills denies the allegations contained in said paragraph.

63. The allegations in Paragraph 63 of Erwin's Answer concern Erwin's alleged defenses to the claims alleged in Plaintiff's Original Petition and are not subject to admission or denial by Mills. To the extent the Court determines that an answer is required, Mills denies the allegations contained in said paragraph.

64. The allegations in Paragraph 64 of Erwin's Answer concern Erwin's alleged defenses to the claims alleged in Plaintiff's Original Petition and are not subject to admission or denial by Mills. To the extent the Court determines that an answer is required, Mills denies the allegations contained in said paragraph.

65. The allegations in Paragraph 65 of Erwin's Answer concern Erwin's alleged defenses to the claims alleged in Plaintiff's Original Petition and are not subject to admission or

denial by Mills. To the extent the Court determines that an answer is required, Mills denies the allegations contained in said paragraph.

66. The allegations in Paragraph 66 of Erwin's Answer concern Erwin's alleged defenses to the claims alleged in Plaintiff's Original Petition and are not subject to admission or denial by Mills. To the extent the Court determines that an answer is required, Mills denies the allegations contained in said paragraph.

67. The allegations in Paragraph 67 of Erwin's Answer concern Erwin's alleged defenses to the claims alleged in Plaintiff's Original Petition and are not subject to admission or denial by Mills. To the extent the Court determines that an answer is required, Mills denies the allegations contained in said paragraph.

68. The allegations in Paragraph 68 of Erwin's Answer concern Erwin's alleged defenses to the claims alleged in Plaintiff's Original Petition and are not subject to admission or denial by Mills. To the extent the Court determines that an answer is required, Mills denies the allegations contained in said paragraph.

69. The allegations in Paragraph 69 of Erwin's Answer concern Erwin's alleged defenses to the claims alleged in Plaintiff's Original Petition and are not subject to admission or denial by Mills. To the extent the Court determines that an answer is required, Mills denies the allegations contained in said paragraph.

70. The allegations in Paragraph 70 of Erwin's Answer concern Erwin's alleged defenses to the claims alleged in Plaintiff's Original Petition and are not subject to admission or denial by Mills. To the extent the Court determines that an answer is required, Mills denies the allegations contained in said paragraph.

71. The allegations in Paragraph 71 of Erwin's Answer concern Erwin's alleged defenses to the claims alleged in Plaintiff's Original Petition and are not subject to admission or denial by Mills. To the extent the Court determines that an answer is required, Mills denies the allegations contained in said paragraph.

72. The allegations in Paragraph 72 of Erwin's Answer concern Erwin's alleged defenses to the claims alleged in Plaintiff's Original Petition and are not subject to admission or denial by Mills. To the extent the Court determines that an answer is required, Mills denies the allegations contained in said paragraph.

COUNTERCLAIMS

73. The allegations in Paragraph 73 of Erwin's Answer concern Erwin's counterclaims against ABC Viaticals, Inc. ("ABC") and are not subject to admission or denial by Mills. To the extent the Court determines that an answer is required, Mills denies the allegations contained in said paragraph.

74. The allegations in Paragraph 74 of Erwin's Answer concern Erwin's counterclaims against ABC and are not subject to admission or denial by Mills. To the extent the Court determines that an answer is required, Mills denies the allegations contained in said paragraph.

CROSS-COMPLAINT

75. Mills denies the allegations in Paragraph 75 of Erwin's Answer. Erwin has improperly labeled his claims against Mills as a cross-complaint. *See* Footnote 1, *supra*, which is incorporated herein by reference.

76. Mills admits the allegations in Paragraph 76 of Erwin's Answer.

77. Mills is without sufficient information to admit or deny the allegations in Paragraph 77 of Erwin's answer, and on this basis, denies the allegations contained therein.

78. Mills admits the allegations in Paragraph 78 of Erwin's Answer.

79. Mills admits the allegations in Paragraph 79 of Erwin's Answer.

80. Regarding the allegations in Paragraph 80 of Erwin's Answer, Mills admits that ABC selected E&J as successor trustee, but denies all of the remaining allegations in Paragraph 80 of Erwin's Answer not specifically admitted herein.

81. Regarding the allegations in Paragraph 81 of Erwin's Answer, Mills admits it notified insurance companies involved in the policies which it held in trusts that it had been replaced as trustee by E&J. Mills admits that it transferred documents to E&J in connection with the transfer of trustee services for ABC from Mills to E&J. Mills denies all of the remaining allegations in Paragraph 81 of Erwin's Answer not specifically admitted herein.

82. Mills denies the allegations in Paragraph 82 of Erwin's Answer.

83. Mills admits the allegations in the first sentence in Paragraph 83 of Erwin's Answer. Mills denies all remaining allegations in Paragraph 83 of Erwin's Answer not specifically admitted herein.

84. Regarding allegations in Paragraph 84 of Erwin's Answer, Mills admits that Mills attempted to force ABC to escrow money and fund policies as required. Mills further admits that when ABC tried to bribe representatives of Mills to disburse money inconsistent with their obligations, Mills resigned its position as trustee rather than follow an illegal path. Mills also admits that the Receiver has not brought any claims against it. Mills denies all remaining allegations in Paragraph 84 of Erwin's Answer not specifically admitted herein.

85. Mills denies the allegations in Paragraph 85 of Erwin's Answer.

86. Mills denies the allegations in Paragraph 86 of Erwin's Answer.

A. Breach of Fiduciary Duties

87. Mills denies the allegations in Paragraph 87 of Erwin's Answer. Mills further denies that Erwin is entitled to relief or has stated a claim under Ohio Revised Code § 5807.07.

88. Mills denies the allegations in Paragraph 88 of Erwin's Answer. Mills further denies that Erwin is entitled to relief or has stated a claim under Ohio Revised Code § 5808.04.

89. Mills denies the allegations in Paragraph 89 of Erwin's Answer. Mills denies that it breached any fiduciary duty to Erwin or anyone else. Mills denies that Erwin is entitled to relief or has stated a claim under Ohio Revised Code §§ 5810.01, 5810.02, or 51.10.04.

B. Fraudulent Viatical Settlement Acts

90. Mills denies the allegations in Paragraph 90 of Erwin's Answer. Mills further denies that Erwin is entitled to relief or has stated a claim under Ohio Revised Code § 3619.01(E)(1)(d). Mills denies that it has committed any "Fraudulent Viatical Settlement Acts."

91. Mills denies the allegations in Paragraph 91 of Erwin's Answer. Mills denies that Erwin is entitled to any damages or attorney's fees or expenses.

C. Negligence & Gross Negligence

92. Mills denies the allegations in Paragraph 92 of Erwin's Answer. Mills denies that it was negligent in any way. Mills also denies that it participated in any way in any fraud perpetrated by ABC. Mills denies that Erwin has suffered damages or that he is entitled to any relief whatsoever.

JURY DEMAND

93. Paragraph 93 of Erwin's Answer is in the nature of a jury demand to which no response is required. To the extent a response is required, Mills denies the allegations in Paragraph 93 and denies that Erwin is entitled to any relief whatsoever, at law or in equity. *See* FED. R. CIV. P. 8(d).

PRAYER

94. The Prayer paragraph on page 14 of Erwin's Answer is in the nature of a prayer for relief to which no response is required. To the extent a response is required, Mills denies the allegations in the Prayer and denies that Erwin is entitled to any relief whatsoever, at law or in equity. *See* FED. R. CIV. P. 8(d).

95. To the extent that any claim or allegation contained in Erwin's Answer has not been affirmatively admitted herein, such claim or allegation is hereby specifically denied.

II.

MILLS' AFFIRMATIVE DEFENSES

96. For further answer, if same be necessary, and while at all times denying liability, Mills asserts the following affirmative defenses to Erwin's claims:

1. Erwin's claims are barred because he has failed to state a claim upon which relief can be granted.
2. Erwin's claims are barred because he lacks standing to assert his claims.
3. Erwin's claims are barred because his damages, if any, resulted from his own acts or failures to act.
4. Erwin's claims are barred by the doctrine of comparative responsibility.
5. Erwin's claims are barred by the doctrine of waiver.
6. Erwin's claims are barred by the doctrine of ratification.

7. Erwin's claims are barred by the doctrine of estoppel.
8. Erwin's claims are barred by the doctrine of quasi-estoppel.
9. Erwin's claims are barred because he failed to mitigate his damages, if any.
10. Erwin's claims are barred by laches.
11. Erwin's claims are barred by the statute of limitations.
12. Erwin's claims are barred by his own wrongful conduct and the doctrine of unclean hands.
13. Erwin's claims are barred by the doctrine of offset/setoff.
14. Erwin's claims are barred because they are groundless and brought without valid grounds, in bad faith and solely for the purpose of harassment.

Respectfully submitted,

BELL NUNNALLY & MARTIN LLP

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**ATTORNEYS FOR THIRD-PARTY
DEFENDANT MILLS, POTOCZAK &
COMPANY**

CERTIFICATE OF SERVICE

I certify on May 5, 2008, that a true and correct copy of the foregoing was sent via the Court's ECF filing system to the following:

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