

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, §

Civil Action No.: 3:07-CV-1153-G

vs. §

ERWIN & JOHNSON, LLP and CHRISTOPHER §
R. ERWIN §

Defendants §

AMENDED COMPLAINT

TO THE HONORABLE JORGE A. SOLIS, UNITED STATES DISTRICT JUDGE:

COMES NOW, Michael J. Quilling, as Receiver for ABC Viaticals, Inc. and other related entities and files this Complaint against Erwin & Johnson, LLP and Christopher R. Erwin and in support of such, would respectfully show the Court as follows:

Parties

1. Michael J. Quilling (“Quilling” or “Receiver”) is the Receiver for ABC Viaticals, Inc. and other related entities in an action pending before the United States District Court for the Northern District of Texas, Dallas Division, the Honorable Jorge A. Solis presiding.

2. Defendant Erwin & Johnson, LLP (“Erwin & Johnson”) is a limited liability partnership organized under the laws of the State of California and may be served with process at 2603 Main Street, Suite 1180, Irvine, California 92614.

3. Defendant Christopher R. Erwin (“Erwin”) is an individual and resident of the State of California and may be served with process at 2603 Main Street, Suite 1180, Irvine, California 92614.

Jurisdiction and Venue

4. This Court has jurisdiction over the subject matter of this action because the stated transactions involve Receivership Assets as described in the Court's Order Appointing Receiver. That Order states that all disputes relating to Receivership Assets must be filed in this Court. Furthermore, this Court has subject matter jurisdiction, in personam jurisdiction, and in rem jurisdiction under 28 U.S.C. § 754, § 1692, and Fed. R. Civ. P. 4(k)(1)(D).

5. Venue for this action is proper in the Northern District of Texas because: (1) this action is ancillary to the United States Securities and Exchange Commission proceedings pending in this District; (2) the Receiver was appointed in this District; and (3) this action involves Receivership Assets within the meaning of the Order Appointing the Receiver, which requires that all such disputes be filed in this District.

Background Facts

6. On November 17, 2006, the United States Securities and Exchange Commission ("SEC") initiated *SEC v. ABC Viaticals, Inc., C. Keith LaMonda, and Jesse W. LaMonda, Jr. Defendants, and LaMonda Management Family Limited Partnership, Structured Life Settlements, Inc., Blue Water Trust, and Destiny Trust, Relief Defendants*, Cause No. 3:06-CV-2136-P, ("SEC Proceedings") and sought to have a Receiver appointed for the entities named in that case. On November 17, 2006, the United States District Court for the Northern District of Texas entered an Agreed Order Appointing Receiver. On December 1, 2006, the Court issued an Order Modifying and Clarifying Agreed Order Appointing Receiver.

7. Those Orders appointed Quilling as Receiver for ABC Viaticals, Inc., numerous related entities, and a series of numbered trusts held for the benefit of ABC investors (collectively "ABC"). Before these proceedings, ABC was involved in what is generally known as the viatical business. In this instance, it is more accurately referred to as the life settlement

business. In essence, ABC purchased insurance policies on the lives of third-party insureds. Fractionalized interests in those policies were then sold to investors. In theory, investor funds were used to cover the policy's purchase price, premium payments, ABC's sales commissions, operating expenses, trustee fees, and other costs. Investors were promised and expected to realize a return ranging from 30% to 150% from benefits paid when the insured died.

8. ABC is the successor entity to Accelerated Benefits Corporation ("Accelerated Benefits"). C. Keith LaMonda and Jesse W. LaMonda, Jr. operated Accelerated Benefits as a viatical company in Florida until state regulators forced it to cease operations there. The LaMondas then moved the company to Houston, Texas and changed its name to ABC. The LaMondas were recently convicted by the United States Federal District Court for the Middle District of Florida for their role in operating Accelerated Benefits, which conducted business in a manner virtually identical to that of ABC.

9. In order to cloak themselves in legitimacy and supposedly enhance the safe nature of the investment and the handling of investor funds, the LaMondas, on behalf of each company, would retain and tout the services of an independent trustee/escrow agent who would handle all investor funds. The last in a series of trustees was Defendant Erwin & Johnson, who conducted its services through Defendant Erwin. Erwin has been a licensed attorney licensed in California since 2002 and currently has offices in Irvine, California.

10. When ABC acquired a third-party's life insurance policy, it transferred the ownership and beneficiary interest into a specific trust created to hold and administer that policy. ABC then sold fractionalized interests in each policy to its investors. In particular, ABC created the following trusts and designated Erwin & Johnson as the trustee for each:

1.	"70084V Life Settlement Trust"
2.	"70094V Life Settlement Trust"
3.	"70083V Life Settlement Trust"
4.	"70064V Life Settlement Trust"
5.	"70093V Life Settlement Trust"
6.	"70091V Life Settlement Trust"
7.	"70116V Life Settlement Trust"
8.	"70118V Life Settlement Trust"
9.	"70079V Life Settlement Trust"
10.	"70106V Life Settlement Trust"
11.	"70107V Life Settlement Trust"
12.	"70105V Life Settlement Trust"
13.	"70080V Life Settlement Trust"
14.	"70060V Life Settlement Trust"
15.	"70100V Life Settlement Trust"
16.	"70097V Life Settlement Trust"
17.	"70085V Life Settlement Trust"
18.	"70086V Life Settlement Trust"
19.	"70119V Life Settlement Trust"
20.	"70037V Life Settlement Trust"
21.	"70039V Life Settlement Trust"
22.	"70040V Life Settlement Trust"
23.	"70041V Life Settlement Trust"
24.	"70043V Life Settlement Trust"
25.	"70045V Life Settlement Trust"

26.	"70046V Life Settlement Trust"
27.	"70048V Life Settlement Trust"
28.	"70050V Life Settlement Trust"
29.	"70069V Life Settlement Trust"
30.	"70021V Life Settlement Trust"
31.	"70063V Life Settlement Trust"
32.	"70065V Life Settlement Trust"
33.	"70087V Life Settlement Trust"
34.	"70092V Life Settlement Trust"
35.	"70075V Life Settlement Trust"
36.	"70077V Life Settlement Trust"
37.	"70078V Life Settlement Trust"
38.	"70090V Life Settlement Trust"
39.	"70082V Life Settlement Trust"
40.	"70070V Life Settlement Trust"
41.	"70049V Life Settlement Trust"
42.	"70051V Life Settlement Trust"
43.	"70098V Life Settlement Trust"
44.	"70095V Life Settlement Trust"
45.	"70096V Life Settlement Trust"
46.	"70117V Life Settlement Trust"
47.	"70081V Life Settlement Trust"
48.	"70057V Life Settlement Trust"
49.	"70120V Life Settlement Trust"

Hereinafter collectively referred to as the "Trusts."

11. Investors were instructed to send their funds directly to Erwin & Johnson, where those funds would be held in the law firm's trust account and disbursed strictly in accordance with the investor's written purchase agreement with ABC.

12. Each individual who invested with ABC was provided a package of closing documents that contained a section regarding the trustee/escrow agent services. In that section,

Erwin & Johnson claimed to be the oldest and largest law firm in Ladera Ranch, California. Erwin & Johnson prepared and provided those materials for inclusion in ABC's closing documents and knew that ABC would provide them to investors. Each investor also received a copy of ABC's trust agreement with Erwin & Johnson that related to the specific policy in which they were buying an interest.

13. Article III of each Trust Agreement described the purpose as follows:

“Grantor has created this Trust for the purpose of establishing a fund and mechanism for the management of a Life Settlement Policy insuring the life/lives of individuals identified or to be identified in such policy (the “Policy”), provide a fund and mechanism for the payment of premiums on the Policy, to receive the proceeds of the Policy at the time of maturity, to distribute such proceeds as set forth herein and the provision of other services related thereto as specified herein.”

Although Erwin & Johnson had a number of duties under the Trust Agreement and applicable law, its most important duty was to establish and insure proper funding of a segregated premium escrow account. Paragraph 6.01 of the Trust Agreement describes that obligation in detail:

“**6.01 Payment of Insurance Premiums.** Trustee shall establish a “Policy Premium Payment Account” into which the Grantor will deposit a sum certain for the payment of premiums on the Policy equal to the term of the bond or certificate of reinsurance if applicable or the life expectancy of the insured plus 2 years if the Policy purchased has no additional bonding or reinsurance, and from the funds of this account, Trustee shall timely pay all premiums due and owing under the Policy at the direction of the Grantor or his designee.”

Determination of the amount to satisfy the foregoing premium requirement and the deposit of that amount into a separate account was unquestionably one of the single-most important features of the arrangement and a critical aspect of the performance of its duties by Erwin & Johnson.

14. However, from the inception of ABC's arrangement with Erwin & Johnson, neither party had any clue about the amount of premium escrow reserves that Erwin & Johnson needed to maintain in each Trust's account to satisfy these obligations and ensure timely payment of all premiums. Not surprisingly, the Defendants woefully underfunded those accounts. That fact, however, did not seem to bother ABC and the Defendants so long as they continued to raise new investor money to cover Erwin & Johnson's obligations. Accordingly, the representations made to the investors regarding premium escrows were blatantly false and known by the Defendants to be false.

15. Erwin admits that, as time went by, he grew increasingly concerned about the problem but did nothing to remedy it other than talk to the LaMondas. Had he so desired, Erwin could have easily obtained a schedule of premium requirements either on his own or from an independent analyst. In fact, the Receiver obtained such a report within two weeks of his appointment.

16. Erwin has also testified that, as the criminal problems surfaced in Florida, he grew increasingly concerned about both his reputation and his continued participation with ABC. Ultimately, the parties agreed that Erwin & Johnson would continue acting as trustee/escrow agent if ABC paid a \$500,000.00 retainer to Erwin & Johnson and gave Erwin & Johnson a \$1,000,000.00 ownership interest in a third-party life insurance policy.

17. As a further inducement to investors regarding the safety of their investment and the proper performance of their duties, Erwin & Johnson touted the fact that the law firm had malpractice insurance in the amount of at least \$2,000,000.00 and it provided many of them with a copy of the insurance certificate.

18. As investor funds were received, Erwin & Johnson deposited them into an account styled the Erwin & Johnson ABC Escrow Account. From that account, Erwin &

Johnson had a written obligation to (1) pay all sales and administrative costs with respect to the policy purchased and (2) fund the necessary amount into a separate premium escrow account for each policy. However, in addition to not knowing or making the required premium escrow deposit, Erwin & Johnson also allowed ABC to use the account as its own piggy bank. Despite its obligations under the Trust Agreement, Erwin & Johnson followed every instruction from Keith LaMonda about disbursing money from that account.

19. When the Receiver was appointed, Erwin & Johnson maintained no individual escrow accounts for the 49 trusts marketed to ABC's investors. Instead, all premium obligations were apparently intended to be paid from a single account – the Erwin & Johnson ABC Premium Escrow Account. When the Receiver was appointed, that account had a balance of only \$277,833.57. The primary escrow account into which investor funds were initially deposited had a balance of \$3,961,231.07. Although the total amount that should have been in the premium escrow account(s) fluctuated as premiums were paid and as new policies were added, at the time the Receiver was appointed, there should have been in excess of \$20 million in segregated funds to pay premiums.

20. Since being appointed, the Receiver has determined that ABC made material misrepresentations to its investors, improperly diverted investor funds on numerous occasions, and that its principals operated ABC as an insolvent financial scheme. It is, therefore, the Receiver's determination that ABC was operated as a Ponzi scheme and that any transfers to Defendants were fraudulent or otherwise held in constructive trust.

COUNT ONE
Breach of Contract
(as to Defendant Erwin & Johnson only)

21. The Receiver incorporates paragraphs 1 through 20 as if fully set forth herein.

22. The Trust Agreement for each trust for which Erwin & Johnson acted as trustee constitutes a contract.

23. Erwin & Johnson breached those contracts by failing to perform their written obligations under the Trust Agreements.

24. As a result of Erwin & Johnson's conduct, each Trust suffered damages and the Receiver hereby sues for those amounts, plus interest at the highest rate allowed by law.

25. As a result of Erwin & Johnson's conduct, it was necessary for the Receiver to retain legal counsel to pursue this cause of action. The Receiver is, therefore, entitled to recover his reasonable and necessary attorneys' fees.

COUNT TWO
Breach of Fiduciary Duty

26. The Receiver incorporates paragraphs 1 through 25 as if fully set forth herein.

27. By functioning as the trustee of each of the Trusts, Erwin & Johnson owed the Trusts and each of the beneficiaries under the Trusts a fiduciary duty.

28. Erwin & Johnson breached its fiduciary duties by virtue of the conduct described above.

29. As a result of its breaches of fiduciary duty, Erwin & Johnson proximately caused damage to each of the Trusts, for which damages the Receiver hereby sues.

30. Intentionally omitted.

31. Intentionally omitted.

32. Intentionally omitted.

33. Intentionally omitted.

34. Intentionally omitted.

COUNT FOUR
Aiding and Abetting Corporate Waste

35. The Receiver incorporates paragraphs 1 through 34 as if fully set forth herein.

36. As explained above, ABC allowed investor funds to be misused and wasted the corporation's assets and those of the Trusts.

37. Erwin & Johnson knew that the conduct of ABC constituted corporate waste as to both ABC and each of the Trusts.

38. Erwin & Johnson gave substantial assistance to ABC in accomplishing the corporate waste and, as a result, aided and abetted ABC in wasting those assets.

39. As a result of aiding and abetting ABC in corporate waste, Erwin & Johnson proximately caused damages to ABC, each of the Trusts, and the investors under each Trust, and the Receiver hereby sues for those damages.

COUNT FIVE
Professional Malpractice/Negligence

40. The Receiver incorporates paragraphs 1 through 39 as if fully set forth herein.

41. As attorneys and in their role as trustee for each of the Trusts, Erwin & Johnson owed a duty of care to each of the Trusts to use the same degree of skill, prudence, and diligence that other members of the legal profession and/or trustees commonly possess and exercise.

42. Erwin & Johnson breached those duties by negligently performing its obligations as trustee. Those acts proximately caused injury and damage to each of the Trusts, for which amount the Receiver hereby sues.

COUNT SIX
Gross Negligence

43. The Receiver incorporates paragraphs 1 through 42 as if fully set forth herein.

44. Erwin & Johnson's conduct, as described above, reflects such an extreme departure of care that it indicates indifference towards its own acts and the welfare of ABC, the Trusts and its investors. That conduct explained above constitutes gross negligence that caused damages to ABC, the Trusts and its investors, for which amount the Receiver hereby sues.

COUNT SEVEN
Exemplary Damages

45. The Receiver incorporates paragraphs 1 through 44 as if fully set forth herein.

46. In causing ABC to suffer actual damages, Defendants committed numerous acts that constitute malice, fraud, or oppression. As described above, Defendants engaged in conduct with a willful and conscious disregard for the rights of others and made knowing misrepresentations of material fact, causing willful deprivation of property to ABC, the Trusts and its investors. Furthermore, Erwin & Johnson authorized and/or ratified the acts of malice, fraud, or oppression committed by Erwin as its officer, director, or managing agent. Therefore, the Receiver seeks exemplary damages to both punish and make an example of the Defendants.

COUNT EIGHT
Fraudulent Transfer

47. The Receiver incorporates paragraphs 1 through 46 as if fully set forth herein.

48. At all times material to this Complaint, ABC was insolvent and operated as a Ponzi scheme. ABC did not handle investor funds in a manner consistent with its representations. Instead, it made numerous undisclosed transfers of investor funds and underfunded the escrow accounts used to pay premiums on the insurance policies owned by the Trusts. In reality, ABC diverted funds from new investors to satisfy its obligations to earlier investors. ABC was, therefore, an insolvent Ponzi scheme. As a result, all transfers from ABC to the Defendants, both directly and/or indirectly as subsequent transferees, were fraudulent and

made with the intent to hinder, delay, and defraud creditors as a matter of law. The Receiver seeks to recover those amounts, their proceeds, or equivalent value.

COUNT NINE
Constructive Trust & Disgorgement

49. The Receiver incorporates paragraphs 1 through 48 as if fully set forth herein.

50. In his capacity, the Receiver has a claim and interest in funds belonging to ABC along with any transfers, proceeds, or their equivalent value that can be traced to those funds. As explained above, the Defendants received funds that are directly traceable to contributions from ABC's defrauded investors. As such, they are impressed with a constructive trust and constitute Receivership Assets. According to principles of equity, the Receiver seeks disgorgement of those assets or, alternatively, a money judgment in an amount equal to the funds or asset value received by the Defendants, either directly and/or as subsequent transferees.

WHEREFORE, the Receiver requests judgment against the Defendants, jointly and severally (with the exception of Count I):

- 1) Under Count I for money judgment consistent with the foregoing as well as all relief, legal or equitable, general or special to which the Receiver is entitled plus costs, expenses, pre-and post-judgment interest and reasonable attorney fees; and
- 2) Under Count II for money judgment consistent with the foregoing as well as all relief, legal or equitable, general or special to which the Receiver is entitled plus costs, expenses, pre-and post-judgment interest and reasonable attorney fees; and
- 3) Intentionally omitted.

- 4) Under Count IV for money judgment consistent with the foregoing as well as all relief, legal or equitable, general or special to which the Receiver is entitled plus costs, expenses, pre-and post-judgment interest and reasonable attorney fees; and
- 5) Under Count V for money judgment consistent with the foregoing as well as all relief, legal or equitable, general or special to which the Receiver is entitled plus costs, expenses, pre-and post-judgment interest and reasonable attorney fees; and
- 6) Under Count VI for money judgment consistent with the foregoing as well as all relief, legal or equitable, general or special to which the Receiver is entitled plus costs, expenses, pre-and post-judgment interest and reasonable attorney fees; and
- 7) Under Count VII for money judgment consistent with the foregoing as well as all relief, legal or equitable, general or special to which the Receiver is entitled plus costs, expenses, pre-and post-judgment interest and reasonable attorney fees; and
- 8) Under Count VIII for money judgment consistent with the foregoing as well as all relief, legal or equitable, general or special to which the Receiver is entitled plus costs, expenses, pre-and post-judgment interest and reasonable attorney fees; and
- 9) Under Count IX, a money judgment in an amount equal to the funds or asset value received by the Defendants; and.
- 10) For such other and further relief, general or special, at law and in equity, to which the Receiver may be entitled.

