

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.

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

**Defendants, Counter Claimants,
and Third-Party Plaintiffs,**

v.

MILLS, POCOCZAK & COMPANY,

Third-Party Defendant.

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**CIVIL ACTION NO.
3:07-CV-1153-P**

**MILLS, POCOCZAK & COMPANY’S AMENDED ANSWER AND AFFIRMATIVE
DEFENSES TO ERWIN & JOHNSON, LLP’S AMENDED ANSWER,
COUNTERCLAIMS & THIRD-PARTY COMPLAINT, SUBJECT
TO DEFENDANTS’ MOTION FOR RECONSIDERATION
OF FEBRUARY 20, AND 25, 2008 ORDERS**

TO THE HONORABLE JORGE A. SOLIS:

Mills, Potoczak & Company (“Mills”) files this its Amended Answer and Affirmative Defenses to Erwin & Johnson, LLP’s (“E&J”) Amended Answer, Counterclaims & Third-Party Complaint Subject to Defendants’ Motions for Reconsideration of February 20, and 25, 2008 Orders (“Amended Answer”) and would respectfully show the Court as follows:

I.

MILLS' ORIGINAL ANSWER

INTRODUCTORY PARAGRAPH

The allegations contained in the introductory paragraph on page 1 of E&J's Amended 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 E&J's Amended Answer contain E&J's response to the allegations in Plaintiff's Amended 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 E&J's Amended Answer contain E&J's response to the allegations in Plaintiff's Amended 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 E&J's Amended Answer contain E&J's response to the allegations in Plaintiff's Amended 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 E&J's Amended Answer contain E&J's response to the allegations in Plaintiff's Amended 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 E&J's Amended Answer contain E&J's response to the allegations in Plaintiff's Amended 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 E&J's Amended Answer contain E&J's response to the allegations in Plaintiff's Amended 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 E&J's Amended Answer contain E&J's response to the allegations in Plaintiff's Amended 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 E&J's Amended Answer contain E&J's response to the allegations in Plaintiff's Amended 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 E&J's Amended Answer contain E&J's response to the allegations in Plaintiff's Amended 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 E&J's Amended Answer contain E&J's response to the allegations in Plaintiff's Amended 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 E&J's Amended Answer contain E&J's response to the allegations in Plaintiff's Amended 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 E&J's Amended Answer contain E&J's response to the allegations in Plaintiff's Amended 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 E&J's Amended Answer contain E&J's response to the allegations in Plaintiff's Amended 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 E&J's Amended Answer contain E&J's response to the allegations in Plaintiff's Amended 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 E&J's Amended Answer contain E&J's response to the allegations in Plaintiff's Amended 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 E&J's Amended Answer contain E&J's response to the allegations in Plaintiff's Amended 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 E&J's Amended Answer contain E&J's response to the allegations in Plaintiff's Amended 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 E&J's Amended Answer contain E&J's response to the allegations in Plaintiff's Amended 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 E&J's Amended Answer contain E&J's response to the allegations in Plaintiff's Amended 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 E&J's Amended Answer contain E&J's response to the allegations in Plaintiff's Amended 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 E&J's Amended Answer contain E&J's response to the allegations in Plaintiff's Amended 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 E&J's Amended Answer contain E&J's response to the allegations in Plaintiff's Amended 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 E&J's Amended Answer contain E&J's response to the allegations in Plaintiff's Amended 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 E&J's Amended Answer contain E&J's response to the allegations in Plaintiff's Amended 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 E&J's Amended Answer contain E&J's response to the allegations in Plaintiff's Amended 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 E&J's Amended Answer contain E&J's response to the allegations in Plaintiff's Amended 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 E&J's Amended Answer contain E&J's response to the allegations in Plaintiff's Amended 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 E&J's Amended Answer contain E&J's response to the allegations in Plaintiff's Amended 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 E&J's Amended Answer contain E&J's response to the allegations in Plaintiff's Amended 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 E&J's Amended Answer contain E&J's response to the allegations in Plaintiff's Amended 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 E&J's Amended Answer contain E&J's response to the allegations in Plaintiff's Amended 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 E&J's Amended Answer contain E&J's response to the allegations in Plaintiff's Amended 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 E&J's Amended Answer contain E&J's response to the allegations in Plaintiff's Amended 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 E&J's Amended Answer contain E&J's response to the allegations in Plaintiff's Amended 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 E&J's Amended Answer contain E&J's response to the allegations in Plaintiff's Amended 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 E&J's Amended Answer contain E&J's response to the allegations in Plaintiff's Amended 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 E&J's Amended Answer contain E&J's response to the allegations in Plaintiff's Amended 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 E&J's Amended Answer contain E&J's response to the allegations in Plaintiff's Amended 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 E&J's Amended Answer contain E&J's response to the allegations in Plaintiff's Amended 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 E&J's Amended Answer contain E&J's response to the allegations in Plaintiff's Amended 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 E&J's Amended Answer contain E&J's response to the allegations in Plaintiff's Amended 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 E&J's Amended Answer contain E&J's response to the allegations in Plaintiff's Amended 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 E&J's Amended Answer contain E&J's response to the allegations in Plaintiff's Amended 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 E&J's Amended Answer contain E&J's response to the allegations in Plaintiff's Amended 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 E&J's Amended Answer contain E&J's response to the allegations in Plaintiff's Amended 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 E&J's Amended Answer contain E&J's response to the allegations in Plaintiff's Amended 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 E&J's Amended Answer contain E&J's response to the allegations in Plaintiff's Amended 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 E&J's Amended Answer contain E&J's response to the allegations in Plaintiff's Amended 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 E&J's Amended Answer contain E&J's response to the allegations in Plaintiff's Amended 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 E&J's Amended Answer contain E&J's response to the allegations in Plaintiff's Amended 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 E&J's Amended Answer contain E&J's response to the allegations in Plaintiff's Amended 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 E&J's Amended Answer concern E&J's alleged defenses to the claims alleged in Plaintiff's Amended Complaint 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 E&J's Amended Answer concern E&J's alleged defenses to the claims alleged in Plaintiff's Amended Complaint 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 E&J's Amended Answer concern E&J's alleged defenses to the claims alleged in Plaintiff's Amended Complaint and are not subject to

MILLS, POTOCZAK & COMPANY'S AMENDED ANSWER AND AFFIRMATIVE DEFENSES TO ERWIN & JOHNSON, LLP'S AMENDED ANSWER, COUNTERCLAIMS & THIRD-PARTY COMPLAINT, SUBJECT TO DEFENDANTS' MOTIONS FOR RECONSIDERATION OF FEBRUARY 20, AND 25, 2008 ORDERS

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 E&J's Amended Answer concern E&J's alleged defenses to the claims alleged in Plaintiff's Amended Complaint 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 E&J's Amended Answer concern E&J's alleged defenses to the claims alleged in Plaintiff's Amended Complaint 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 E&J's Amended Answer concern E&J's alleged defenses to the claims alleged in Plaintiff's Amended Complaint 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 E&J's Amended Answer concern E&J's alleged defenses to the claims alleged in Plaintiff's Amended Complaint 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 E&J's Amended Answer concern E&J's alleged defenses to the claims alleged in Plaintiff's Amended Complaint 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 E&J's Amended Answer concern E&J's alleged defenses to the claims alleged in Plaintiff's Amended Complaint 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 E&J's Amended Answer concern E&J's alleged defenses to the claims alleged in Plaintiff's Amended Complaint 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 E&J's Amended Answer concern E&J's alleged defenses to the claims alleged in Plaintiff's Amended Complaint 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 E&J's Amended Answer concern E&J's alleged defenses to the claims alleged in Plaintiff's Amended Complaint 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 E&J's Amended Answer concern E&J's alleged defenses to the claims alleged in Plaintiff's Amended Complaint 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 E&J's Amended Answer concern E&J's alleged defenses to the claims alleged in Plaintiff's Amended Complaint 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 E&J's Amended Answer concern E&J's alleged defenses to the claims alleged in Plaintiff's Amended Complaint 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 E&J's Amended Answer concern E&J's alleged defenses to the claims alleged in Plaintiff's Amended Complaint 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 E&J's Amended Answer concern E&J's alleged defenses to the claims alleged in Plaintiff's Amended Complaint 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 E&J's Amended Answer concern E&J's alleged defenses to the claims alleged in Plaintiff's Amended Complaint 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 E&J's Amended Answer concern E&J's alleged defenses to the claims alleged in Plaintiff's Amended Complaint 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 E&J's Amended Answer concern E&J's alleged defenses to the claims alleged in Plaintiff's Amended Complaint 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

72. The allegations in Paragraph 72 of E&J's Amended Answer concern E&J'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.

73. The allegations in Paragraph 73 of E&J's Amended Answer concern E&J'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.

74. The allegations in Paragraph 74 of E&J's Amended Answer concern E&J'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.

75. The allegations in Paragraph 75 of E&J's Amended Answer concern E&J'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.

THIRD-PARTY COMPLAINT

76. Mills admits the allegations in Paragraph 76 of E&J's Amended Answer that E&J has asserted a third-party complaint against Mills, but denies that E&J has asserted any valid claim against Mills on which it is entitled to recover.

77. Mills admits the allegations in Paragraph 77 of E&J's Amended Answer.

78. Mills is without sufficient information to admit or deny the allegations in Paragraph 78 of E&J's Amended Answer, and on this basis, denies the allegations contained therein.

79. Mills admits the allegations in Paragraph 79 of E&J's Amended Answer.

80. Mills admits the allegations in Paragraph 80 of E&J's Amended Answer.

81. Regarding the allegations in Paragraph 81 of E&J's Amended Answer, Mills admits that ABC selected E&J as successor trustee, but denies all of the remaining allegations in Paragraph 81 of E&J's Amended Answer not specifically admitted herein.

82. Regarding the allegations in Paragraph 82 of E&J's Amended 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 82 of E&J's Amended Answer not specifically admitted herein.

83. Mills denies the allegations in Paragraph 83 of E&J's Amended Answer.

84. Mills admits the allegations in the first sentence in Paragraph 84 of E&J's Amended Answer. Mills denies all remaining allegations in Paragraph 84 not specifically admitted herein.

85. Regarding allegations in Paragraph 85 of E&J's Amended 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 dispose money inconsistent with their obligations, Mills resigned its position rather than follow an illegal path. Mills admits that the Receiver has not brought any claims against it. Mills denies all remaining allegations in Paragraph 85 of E&J's Amended Answer not specifically admitted herein.

86. Mills denies the allegations in Paragraph 86 of E&J's Amended Answer.

87. Mills denies the allegations in Paragraph 87 of E&J's Amended Answer.

A. Breach of Fiduciary Duties

88. Mills denies the allegations in Paragraph 88 of E&J's Amended Answer. Mills further denies that E&J is entitled to relief or has stated a claim under Ohio Revised Code § 5807.07.

89. Mills denies the allegations in Paragraph 89 of E&J's Amended Answer. Mills further denies that E&J is entitled to relief or has stated a claim under Ohio Revised Code § 5808.04.

90. Mills denies the allegations in Paragraph 90 of E&J's Amended Answer. Mills denies that it breached any fiduciary duty to E&J or anyone else. Mills denies that E&J 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

91. Mills denies the allegations in Paragraph 91 of E&J's Amended Answer. Mills further denies that E&J 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.”

92. Mills denies the allegations in Paragraph 92 of E&J’s Amended Answer. Mills denies that E&J is entitled to any damages or attorney’s fees or expenses.

C. Negligence & Gross Negligence

93. Mills denies the allegations in Paragraph 93 of E&J’s Amended 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 E&J has suffered any damages and denies that E&J is entitled to any relief whatsoever.

JURY DEMAND

94. Paragraph 94 of E&J’s Amended 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 94 and denies that E&J is entitled to any relief whatsoever, at law or in equity. *See* FED. R. CIV. P. 8(d).

PRAYER

95. The Prayer paragraph on page 15 of E&J’s Amended Answer is in the nature of a prayer for relief to which no response is required. To the extent a response is required, Mills denied the allegations in the Prayer and denies that E&J is entitled to any relief whatsoever, at law or in equity. *See* FED. R. CIV. P. 8(d).

96. To the extent that any claim or allegation contained in E&J’s Amended Answer has not been affirmatively admitted herein, such claim or allegation is hereby specifically denied.

II.

MILLS' AFFIRMATIVE DEFENSES

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

1. E&J's claims are barred because it has failed to state a claim upon which relief can be granted.
2. E&J's claims are barred because it lacks standing to assert its claims.
3. E&J's claims are barred because its damages, if any, resulted from its own acts or failures to act.
4. E&J's claims are barred by the doctrine of comparative responsibility
5. E&J's claims are barred by waiver.
6. E&J's claims are barred by the doctrine of ratification.
7. E&J's claims are barred by the doctrine of estoppel.
8. E&J's claims are barred by the doctrine of quasi-estoppel
9. E&J's claims are barred because it failed to mitigate its damages, if any.
10. E&J's claims are barred by laches.
11. E&J's claims are barred by the statute of limitations.
12. E&J's claims are barred by its own wrongful conduct and the doctrine of unclean hands.
13. E&J's claims are barred by the doctrine of offset/setoff.
14. E&J'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 June 11, 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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