

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 ORIGINAL REPLY TO DEFENDANT  
CHRISTOPHER R. ERWIN’S AMENDED 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 Christopher R. Erwin’s Amended Counterclaims [Dkt. No. 42]. In support, the Receiver would respectfully show the Court as follows:

**A. Admissions And Denials**

1. The Receiver denies the allegations in Paragraph 73.
2. The Receiver denies the allegations in Paragraph 74.
3. The Receiver denies the allegations in Paragraph 75.
4. The Receiver denies the allegations in Paragraph 76.

**B. Affirmative Defenses**

5. The Receiver is not liable to Erwin because Erwin does not have standing to sue under the Escrow Account Agreement, the Life Settlement Trust Agreement, or any other contract at issue in his counterclaims.

6. The Receiver is not liable to Erwin because Erwin has not performed all conditions precedent under the Escrow Account Agreement, the Life Settlement Trust Agreement, or any other contract before filing his counterclaims.

7. The Receiver is not liable to Erwin because the contracts and provisions on which he relies are void as against public policy.

8. The Receiver is not liable to Erwin because the contracts and provisions on which he relies ceased to be in effect.

9. The Receiver is not liable to Erwin because Erwin's actions contributed to his damages.

10. The Receiver is not liable to Erwin because Erwin did not mitigate his damages.

11. The Receiver is not liable to Erwin because there was failure of consideration.

12. The Receiver is not liable to Erwin because his claims fail to state a claim upon which relief can be granted.

13. The Receiver is not liable to Erwin because of Erwin's fraud.

14. The Receiver is not liable to Erwin because of Erwin's bad faith.

15. The Receiver is not liable to Erwin because of illegality.

16. The Receiver is not liable to Erwin because of the doctrine of unclean hands.

17. The Receiver is not liable to Erwin because of estoppel.

18. The Receiver is not liable to Erwin because of waiver.

19. The Receiver is not liable to Erwin because of release.
20. The Receiver is not liable to Erwin because of payment.
21. The Receiver is not liable to Erwin because of duress.
22. The Receiver is not liable to Erwin because of laches.
23. The Receiver is not liable to Erwin because the statute of frauds bars his claims.
24. The Receiver is not liable to Erwin because the statute of limitations has run.
25. The Receiver reserves the right to amend his answer and state additional

affirmative defenses based on facts discovered later in this case.

**C. Prayer**

26. For these reasons, the Receiver asks the court to do the following:

- a. Enter judgment that Erwin take nothing.
- b. Dismiss Erwin's claims with prejudice.
- c. Assess costs against Erwin.
- 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  
State Bar No. 24048770

By: /s/ Bruce Kramer

Bruce Kramer  
Tennessee Bar No. 7472  
BOROD & KRAMER, PC  
80 Monroe, Suite G-1  
Memphis, TN 38103  
(901) 524-0200 (Telephone)  
(901) 523-0043 (Facsimile)

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