

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

**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
ERWIN & JOHNSON LLP'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 Erwin & Johnson LLP's Amended Counterclaims [Dkt. No. 43]. 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.
3. The Receiver denies the allegations in Paragraph 74.
4. The Receiver denied the allegations in Paragraph 75.

B. Affirmative Defenses

5. 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.

6. The Receiver is not liable to E&J because the contracts and provisions on which he relies are void as against public policy.

7. The Receiver is not liable to E&J because the contracts and provisions on which he relies ceased to be in effect.

8. The Receiver is not liable to E&J because E&J’s actions contributed to its damages.

9. The Receiver is not liable to E&J because E&J did not mitigate its damages.

10. The Receiver is not liable to E&J because there was failure of consideration.

11. The Receiver is not liable to E&J because its claims fail to state a claim upon which relief can be granted.

12. The Receiver is not liable to E&J because of E&J’s fraud.

13. The Receiver is not liable to E&J because of E&J’s bad faith.

14. The Receiver is not liable to E&J because of illegality.

15. The Receiver is not liable to E&J because of the doctrine of unclean hands.

16. The Receiver is not liable to E&J because of estoppel.

17. The Receiver is not liable to E&J because of waiver.

18. The Receiver is not liable to E&J because of release.

19. The Receiver is not liable to E&J because of payment.

20. The Receiver is not liable to E&J because of duress.

21. The Receiver is not liable to E&J because of laches.
22. The Receiver is not liable to E&J because the statute of frauds bars his claims.
23. The Receiver is not liable to E&J because the statute of limitations has run.
24. The Receiver reserves the right to amend his answer and state additional affirmative defenses based on facts discovered later in this case.

C. Prayer

25. 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.

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By: /s/ Michael J. Quilling

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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