

**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-P
v.	§	
	§	ECF
ERWIN & JOHNSON, LLP, and	§	
CHRISTOPHER R. ERWIN,	§	
Defendants and	§	
Third-Party Plaintiffs,	§	
	§	
v.	§	
MILLS, POCOTZAK & COMPANY,	§	
Defendants.	§	

**DEFENDANTS’ MOTION FOR LEAVE TO BRING
IN THIRD-PARTY DEFENDANTS DMH STALLARD AND
CHRISTOPHER JOHN WILLIAM STENNING**

Pursuant to Rule 14 of the FEDERAL RULES OF CIVIL PROCEDURE, Defendants Christopher R. Erwin (“Erwin”) and Erwin & Johnson, LLP, (“E&J”) (collectively "Defendants") move for leave to serve summons and a Third-Party Complaint on DMH Stallard (“DMH Stallard”) and Christopher John William Stenning (“Stenning”) (collectively “Third-Party Defendants”).

1. DMH Stallard and Stenning are or may be liable to E&J and Erwin for all or part of the Plaintiff’s claims against E&J and Erwin. Specifically, DMH Stallard and Stenning acted as E&J’s and Erwin’s agents in conducting due diligence on their behalf and in issuing a legal opinion. Plaintiff has alleged that E&J and Erwin were negligent and breached various duties to ABC Viaticals, Inc. (“ABC”) by relying on the Third-Party Defendants' due diligence and opinion letter.

2. As this Motion is made more than ten (10) days from the date on which E&J and Erwin served their Answers in this case, leave of Court is require under FEDERAL RULE OF CIVIL PROCEDURE 14(a).

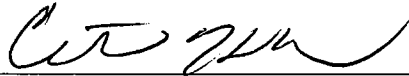
3. Despite the need for leave of court, E&J and Erwin have not unreasonably delayed in bringing this Motion. The Court's scheduling order establishes a deadline of August 28, 2009 to bring motions for leave to join additional parties. This Motion is brought almost four months prior to that deadline. Moreover, this Motion is brought within weeks of the Plaintiff's Responses to Defendants' Interrogatories in which Plaintiff asserted that the Defendants' reliance on the Third-Party Defendants due diligence and opinion letter forms a basis for Plaintiff's claims against the Defendants.

4. Defendants' Third-Party Complaint against DMH Stallard and Stenning is attached as Exhibit A to this Motion and its summons and requests for service abroad of judicial documents directed to DMH Stallard and Christopher Stenning are attached as Exhibits B and C respectively to this Motion.

WHEREFORE, DEFENDANTS ERWIN & JOHNSON L.L.P AND CHRISTOPHER R. ERWIN respectfully ask this Court to direct the clerk to file Defendants' Third-Party Complaint against DMH Stallard and Christopher John William Stenning and to issue a summons and requests for service abroad on DMH Stallard and Christopher John William Stenning and give Defendants whatever and further relief to which they may be entitled.

Respectfully submitted,

**WILSON, ELSER, MOSKOWITZ,
EDELMAN & DICKER LLP**

By: 

Lee L. Cameron, Jr.
State Bar No. 03675380
Cathlynn H. Cannon
State Bar No. 03747500
William J. Akins
State Bar No. 24011972
5000 Renaissance Tower
1201 Elm Street
Dallas, Texas 75270
Telephone: 214-698-8000
Facsimile: 214-698-1101

**ATTORNEYS FOR DEFENDANTS/
THIRD-PARTY PLAINTIFFS
CHRISTOPHER ERWIN and
ERWIN & JOHNSON, LLP**

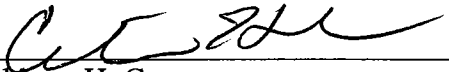
CERTIFICATE OF CONFERENCE

The undersigned attorney certifies that she spoke to Bruce Kramer, attorney for the Plaintiff on April 6th, 2009 and April 8th, 2009 but they were unable to reach agreement on this Motion and it is opposed by Plaintiff. She spoke to Christopher Trowbridge, attorney for Third-Party Defendant, Mills Potoczak on April 6, 2009 and on April 7, 2009 he advised that he was not opposed to the motion.


Cathlynn H. Cannon

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing document has been served on this 5th day of May, 2009, to all known counsel of record as required by the Federal Rules of Civil Procedure.



Cathlynn H. Cannon