

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 and
Third-Party Plaintiffs,

v.

MILLS, POCOTZAK & COMPANY,
Third-Party Defendants.

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

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APPENDIX TO DEFENDANTS' BRIEF IN SUPPORT OF THEIR MOTION
FOR LEAVE TO FILE A THIRD-PARTY COMPLAINT AGAINST
DMH STALLARD AND CHRISTOPHER JOHN WILLIAM STENNING

WILSON, ELSER, MOSKOWITZ, EDELMAN
& DICKER LLP

Lee L. Cameron, Jr.
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ATTORNEYS FOR DEFENDANTS/
THIRD-PARTY PLAINTIFFS
CHRISTOPHER ERWIN and ERWIN &
JOHNSON, LLP

APPENDIX

Defendants Erwin & Johnson, LLP and Christopher Erwin file this appendix of supporting evidence (“Appendix”) contemporaneously with and in support of its Brief in Support of Its Motion For Leave to File a Third-Party Complaint Against DMH Stallard and Christopher J.W. Stenning. The Appendix contains the evidence listed below and attached hereto:

- APP 1 Receiver’s Response and Objections to Christopher Erwin’s First Set of Interrogatories
- APP 2 Receiver’s Response and Objections to Erwin & Johnson, LLP’s First Set of Interrogatories

Respectfully submitted,



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

CERTIFICATE OF SERVICE

I hereby certify that on this [5th] day of May, 2009, I electronically transmitted the attached document to the Clerk of Court using the ECF System for filing and transmittal of Notice of Electronic Filing to the following ECF registrants:

Bruce S. Kramer, Esq.
Borod & Kramer, P.C.
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Memphis, TN 38103

Christopher Trowbridge, Esq.
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1400 One McKinney Plaza
3232 McKinney Avenue
Dallas, Texas 75204



Cathlynn H. Cannon

**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,

vs.

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

**Defendants and
Third-Party Plaintiffs,**

and

MILLS, POCOCZAK & COMPANY,

Third-Party Defendant.

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

**RECEIVER’S RESPONSE AND OBJECTIONS TO
CHRISTOPHER R. ERWIN’S FIRST SET OF INTERROGATORIES**

TO: Defendant Christopher R. Erwin c/o Lee L. Cameron, Wilson, Elser, Moskowitz, Edelman & Dicker, LLP, Bank of America Plaza, 901 Main Street, Suite 4800, Dallas, Texas 75202.

Plaintiff Michael J. Quilling, as Receiver for ABC Viaticals, Inc. and Related Entities, (“Receiver”) serves this response and objections to Defendant Christopher R. Erwin in accordance with Rule 33 of the Federal Rules of Civil Procedure.

Respectfully submitted,

QUILLING, SELANDER, CUMMISKEY
& LOWNDS, P.C.
2001 Bryan Street, Suite 1800
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(214) 871-2100 (Telephone)
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By: /s/ Brent J. Rodine
Michael J. Quilling
State Bar No. 16432300
Brent Rodine
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ATTORNEYS FOR RECEIVER

CERTIFICATE OF SERVICE

On March 13, 2009, the undersigned delivered a copy of this document and its attachments by e-mail to:

William J. Akins
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ATTORNEYS FOR THIRD-PARTY
DEFENDANT

/s/ Brent J. Rodine

**I.
CONDITIONS AND OBJECTIONS**

1. The investigation of facts and discovery in this case are ongoing. These responses are based on the information and documents currently known to the Receiver. He reserves the right to amend these responses upon further discovery and analysis.

2. Although answers are provided below, the Receiver reserves the right to object to Defendants' use of these responses including: (a) questions of relevance, privilege, materiality, and admissibility; (b) the use of these responses in any subsequent suit or proceeding; and (c) the right at any time to revise, correct, or clarify any of these responses.

**II.
DEFINITIONS**

3. "E&J" refers to Defendant Erwin & Johnson, LLP and any officers, employees, attorneys, agents, representatives, or other persons or entities acting on its behalf or in concert with it.

4. "Erwin" refers to Defendant Christopher R. Erwin and any employees, attorneys, agents, representatives, and other persons or entities acting on his behalf or in concert with him.

5. "ABC" refers to ABC Viaticals, Inc., the ABC Trusts, the principal officers of those entities, and any employees, attorneys, agents, representatives, and other persons or entities that they control, that acted on their behalf, or that acted in concert with them. This includes other entities that Keith LaMonda controlled.

6. "ABC Trusts" or "Trusts" specifically refer to the separate trusts for which E&J served as trustee and handled investor funds. Some, if not all, of those trusts are identified in Paragraph 10 of the Receiver's Amended Complaint.

**III.
ANSWERS TO INTERROGATORIES**

INTERROGATORY NO. 1:

With respect to your allegations set forth in Count Six of the Complaint that E&J committed gross negligence:

- A. Specifically identify each act or omission by E&J that you contend constituted gross negligence, including without limitation when you contend each such act or omission occurred;
- B. Identify with particularity each element of monetary relief (including actual, compensatory, and punitive) that you seek to recover as damages for such alleged gross negligence (including without limitation the amount thereof, the factual basis thereof and the precise calculation thereof);
- C. Identify each person having knowledge of any such alleged gross negligence; and
- D. Identify all documents upon which you rely in making such contention that E&J committed gross negligence.

ANSWER:

- A. E&J committed gross negligence through the following acts and omissions:
 - 1. E&J failed to maintain separate premium escrow accounts for each of the ABC Trusts;
 - 2. E&J commingled investor funds sent to the ABC Trusts;
 - 3. E&J failed to set aside enough reserves to meet ABC's premium obligations;
 - 4. E&J failed to calculate the reserves needed to meet ABC's premium obligations;
 - 5. E&J failed to notify Keith LaMonda of the insufficient premium reserves or demand additional funds for the premium escrow account;
 - 6. E&J failed to insist on a premium payment schedule before releasing funds from the purchaser escrow account;
 - 7. E&J failed to independently contact insurance providers to confirm the premium information;
 - 8. E&J failed to exercise its own independent judgment;

9. E&J failed to raise questions or doubts about information it received regarding the policies;
10. E&J executed transfers to Keith LaMonda that depleted funds from ABC, the ABC Trusts, the premium escrow account, and the purchaser escrow accounts;
11. E&J executed transfers directed by Keith LaMonda that depleted funds from ABC, the ABC Trusts, the premium escrow account, and the purchaser escrow accounts;
12. E&J executed transfers that violated its trust agreement(s) and escrow agreement(s) with ABC;
13. E&J executed transfers without proper documentation to support those transfers;
14. E&J executed transfers that made ABC, the ABC Trusts, the premium escrow accounts, and the purchaser escrow accounts increasingly insolvent;
15. E&J continued to hold funds in the escrow account without proper documentation or directions for its use;
16. E&J failed to provide a detailed monthly financial activity report;
17. E&J did not conduct adequate due diligence regarding the use of funds by Keith LaMonda;
18. E&J effectively gave Keith LaMonda powers over the purchaser escrow account and too much authority to make decisions;
19. E&J effectively gave Keith LaMonda powers over the premium escrow account and too much authority to make decisions;
20. E&J released funds from the purchaser escrow account despite numerous questions about the viability of bonds in place to pay the death benefit amount for those policies;
21. E&J released funds from the purchaser escrow account before completing the purchase of policies and/or collecting all the necessary records;
22. E&J released funds from the purchaser escrow account before the premium escrow accounts were created and fully funded;
23. E&J did not adequately protect escrow assets for the benefit of ABC and the ABC Trusts;
24. E&J did not adequately protect trust assets for the benefit of the ABC Trusts and investors;

25. E&J acted in a manner that placed its own interests ahead of the interests of ABC, the ABC Trusts, and the investors;
26. E&J acted in a manner that placed Keith LaMonda's interests ahead of the interests of ABC, the ABC Trusts, and the investors
27. E&J failed to notify investors that International Fidelity & Surety Ltd. could not meet its bond obligations;
28. E&J failed to notify investors in November 2005 about improprieties with the letters of credit that backed Albatross bonds; *
29. E&J accepted inadequate due diligence in February and March 2006 from DMH Stallard relating to the Albatross bonds; *
30. E&J failed to notify investors in March 2006 about the inadequacy of due diligence regarding Albatross; *
31. E&J misrepresented its credentials and experience to ABC and the investors;
32. E&J allowed its liability insurance to be used in marketing these investments to ABC's investors;
33. E&J continued facilitating the sale of these investments after questions of misrepresentation, fraud, and illegality were raised.

Unless otherwise noted, these acts occurred continuously during the time that E&J served as trustee and escrow agent for ABC and the ABC Trusts.

B. The Receiver seeks to recover the following monetary relief as a result of E&J's gross negligence:

1. \$19,937,980.89 in reserves that should have been in the premium escrow account as of November 30, 2006, after all November premiums were paid;
2. \$971,815.00 in interest payments on the amount the Receiver had to borrow to pay premiums because there were not adequate reserves in the premium escrow account;
3. damages caused by the continuation of the ongoing securities fraud in an amount yet to be calculated;
4. all fees that ABC or the ABC Trusts paid to defendants, which is yet to be fully determined;
5. attorneys fees, pre-judgment interest, and post-judgment interest to be calculated at the conclusion of this case.

C. The Receiver objects to Interrogatory No. 1(C) because it calls for speculation. The Receiver cannot attest to the personal knowledge possessed by third parties. Subject to that objection, the following persons may have knowledge of the facts stated above:

1. Christopher R. Erwin;
2. Rick B. Johnson;
3. Clarence Keith LaMonda;
4. ABC's employees, sales agents, and investors;
5. the Receiver and his retained professionals;
6. Mills, Potoczak & Company;
7. William Potoczak.

D. The following documents support the claim that E&J committed gross negligence:

1. ABC's bank records;
2. E&J's bank records;
3. E&J's trust agreement(s);
4. E&J's escrow agreement(s);
5. E&J's advertising materials;
6. ABC's advertising materials;
7. ABC's investor agreements;
8. Kit Stennings' due diligence report;
9. Kit Stennings' correspondence with E&J;
10. Erwin's testimony to the SEC;
11. numerous documents produced by E&J;
12. an expert report to be prepared by the Receiver's accountant.

INTERROGATORY NO. 2:

With respect to your allegations set forth in Count Seven of the Complaint that E&J's acts constituted malice, fraud or oppression:

- A. Specifically identify each act or omission by E&J that you contend constituted malice, fraud and/or oppression, including without limitation when you contend each such act or omission occurred;
- B. Identify with particularity each element of monetary relief (including actual, compensatory, and punitive) that you seek to recover as damages for such alleged malice, fraud and/or oppression (including without limitation the amount thereof, the factual basis thereof and the precise calculation thereof);
- C. Identify each person having knowledge of any such alleged malice, fraud and/or oppression; and
- D. Identify all documents upon which you rely in making such contention that E&J's acts constituted malice, fraud and/or oppression.

ANSWER:

- A. The Receiver contends that E&J committed malice, fraud, or oppression through the following acts and omissions:
 - 1. E&J failed to maintain separate premium escrow accounts for each of the ABC Trusts;
 - 2. E&J commingled investor funds sent to the ABC Trusts;
 - 3. E&J failed to set aside enough reserves to meet ABC's premium obligations;
 - 4. E&J failed to calculate the reserves needed to meet ABC's premium obligations;
 - 5. E&J failed to notify Keith LaMonda of the insufficient premium reserves or demand additional funds for the premium escrow account;
 - 6. E&J failed to insist on a premium payment schedule before releasing funds from the purchaser escrow account;
 - 7. E&J failed to independently contact insurance providers to confirm the premium information;
 - 8. E&J failed to exercise its own independent judgment;
 - 9. E&J failed to raise questions or doubts about information it received regarding the policies;

10. E&J executed transfers to Keith LaMonda that depleted funds from ABC, the ABC Trusts, the premium escrow account, and the purchaser escrow accounts;
11. E&J executed transfers directed by Keith LaMonda that depleted funds from ABC, the ABC Trusts, the premium escrow account, and the purchaser escrow accounts;
12. E&J executed transfers that violated its trust agreement(s) and escrow agreement(s) with ABC;
13. E&J executed transfers without proper documentation to support those transfers;
14. E&J executed transfers that made ABC, the ABC Trusts, the premium escrow accounts, and the purchaser escrow accounts increasingly insolvent;
15. E&J continued to hold funds in the escrow account without proper documentation or directions for its use;
16. E&J failed to provide a detailed monthly financial activity report;
17. E&J did not conduct adequate due diligence regarding the use of funds by Keith LaMonda;
18. E&J effectively gave Keith LaMonda powers over the purchaser escrow account and too much authority to make decisions;
19. E&J effectively gave Keith LaMonda powers over the premium escrow account and too much authority to make decisions;
20. E&J released funds from the purchaser escrow account despite numerous questions about the viability of bonds in place to pay the death benefit amount for those policies;
21. E&J released funds from the purchaser escrow account before completing the purchase of policies and/or collecting all the necessary records;
22. E&J released funds from the purchaser escrow account before the premium escrow accounts were created and fully funded;
23. E&J did not adequately protect escrow assets for the benefit of ABC and the ABC Trusts;
24. E&J did not adequately protect trust assets for the benefit of the ABC Trusts and investors;
25. E&J acted in a manner that placed its own interests ahead of the interests of ABC, the ABC Trusts, and the investors;

26. E&J acted in a manner that placed Keith LaMonda's interests ahead of the interests of ABC, the ABC Trusts, and the investors
27. E&J failed to notify investors that International Fidelity & Surety Ltd. could not meet its bond obligations;
28. E&J failed to notify investors in November 2005 about improprieties with the letters of credit that backed Albatross bonds;
29. E&J accepted inadequate due diligence in February and March 2006 from DMH Stallard relating to the Albatross bonds;
30. E&J failed to notify investors in March 2006 about the inadequacy of due diligence regarding Albatross;
31. E&J misrepresented its credentials and experience to ABC and the investors;
32. E&J allowed its liability insurance to be used in marketing these investments to ABC's investors;
33. E&J continued facilitating the sale of these investments after questions of misrepresentation, fraud, and illegality were raised.

Unless otherwise noted, these acts occurred continuously during the time that E&J served as trustee and escrow agent for ABC and the ABC Trusts.

- B. The Receiver seeks to recover exemplary damages at the highest rate permitted by law.
- C. The Receiver objects to Interrogatory No. 2(C) because it calls for speculation. The Receiver cannot attest to the personal knowledge possessed by third parties. Subject to that objection, the following persons may have knowledge of the facts stated above:
 1. Christopher R. Erwin;
 2. Rick B. Johnson;
 3. Clarence Keith LaMonda;
 4. ABC's employees, sales agents, and investors;
 5. the Receiver and his retained professionals;
 6. Mills, Potoczak & Company;
 7. William Potoczak.

D. The following documents support the claim that E&J committed malice, fraud, or oppression:

1. ABC's bank records;
2. E&J's bank records;
3. E&J's trust agreement(s);
4. E&J's escrow agreement(s);
5. E&J's advertising materials;
6. ABC's advertising materials;
7. ABC's investor agreements;
8. Kit Stennings' due diligence report;
9. Kit Stennings' correspondence with E&J;
10. Erwin's testimony to the SEC;
11. numerous documents produced by E&J;
12. an expert report to be prepared by the Receiver's accountant.

INTERROGATORY NO. 3:

With respect to your allegations set forth in Count Eight of the Complaint that "ABC was insolvent and operated as a Ponzi scheme":

- A. Identify the specific facts upon which you rely in making such contention;
- B. Identify each person having knowledge of any such alleged facts; and
- C. Identify all documents upon which you rely in making such contention.

ANSWER:

- A. The Receiver relies on the following facts in stating that ABC was insolvent and operated as a Ponzi scheme:
 1. Keith LaMonda purported to sell each investor a fractional ownership interest in a bonded life settlement policy;
 2. There were no legitimate bonds in place to pay the full death benefit of policies by a date certain;

3. There were not separate premium escrow accounts for each of the ABC Trusts capable of paying each Trust's premium obligations;
4. Funds belonging to the ABC Trusts were commingled;
5. ABC did not have enough assets to meet all of its existing premium obligations;
6. Funds from new investors were commingled and used to pay premiums for the benefit of earlier investors;
7. E&J executed transfers to Keith LaMonda that depleted funds from ABC, the ABC Trusts, and the premium escrow account;
8. E&J executed transfers directed by Keith LaMonda that depleted funds from ABC, the ABC Trusts, and the premium escrow account;
9. E&J executed transfers that made ABC, the ABC Trusts, and the premium escrow accounts increasingly insolvent;
10. E&J continued to facilitate new sales in order to raise funds from new investors to use in paying prior investor expenses.

Unless otherwise noted, these acts occurred continuously during the time that E&J served as trustee and escrow agent for ABC and the ABC Trusts.

B. The Receiver objects to Interrogatory No. 3(B) because it calls for speculation. The Receiver cannot attest to the personal knowledge possessed by third parties. Subject to that objection, the following persons may have knowledge of the facts stated above:

1. Christopher R. Erwin;
2. Rick B. Johnson;
3. Clarence Keith LaMonda;
4. ABC's employees, sales agents, and investors;
5. the Receiver and his retained professionals;
6. Mills, Potoczak & Company;
7. William Potoczak.

- C. The following documents support the fact that ABC was insolvent and operated as a Ponzi scheme:
1. ABC's bank records;
 2. E&J's bank records;
 3. E&J's trust agreements;
 4. E&J's escrow agreements;
 5. ABC's advertising materials;
 6. ABC's investor agreements;
 7. an expert report to be prepared by the Receiver's accountant.

INTERROGATORY NO. 4:

With respect to your allegations set forth in Count Eight of the Complaint that "ABC diverted funds from new investors to satisfy its obligations to earlier investors:"

- A. Identify the specific facts upon which you rely in making such contention, including with specificity each alleged diversion of funds from new investors to satisfy obligations to earlier investors;
- B. Identify each person having knowledge of any such alleged facts; and
- C. Identify all documents upon which you rely in making such contention, including with specificity any document that memorializes each alleged diversion of funds from new investors to satisfy obligations to earlier investors.

ANSWER:

- A. The following facts support the claim that ABC diverted funds from new investors to satisfy its obligations to earlier investors:
 1. Investors were told that a bond would pay the full amount of a policy's death benefit by a date certain;
 2. There were not separate premium escrow accounts for each of the ABC Trusts capable of paying each Trust's premium obligations;
 3. Funds belonging to the ABC Trusts were commingled;
 4. There were not enough assets in the premium escrow account to meet all of ABC's existing premium obligations;

5. Funds from new investors were commingled and used to pay premiums for all policies.
- B. The Receiver objects to Interrogatory No. 4(B) because it calls for speculation. The Receiver cannot attest to the personal knowledge possessed by third parties. Subject to that objection, the following persons may have knowledge of the facts stated above:
1. Christopher R. Erwin;
 2. Rick B. Johnson;
 3. Clarence Keith LaMonda;
 4. ABC's employees, sales agents, and investors;
 5. the Receiver and his retained professionals;
 6. Mills, Potoczak & Company;
 7. William Potoczak.
- C. The following documents support the fact that ABC diverted funds from new investors to satisfy its obligations to earlier investors:
1. ABC's bank records;
 2. E&J's bank records;
 3. E&J's trust agreements;
 4. E&J's escrow agreements;
 5. ABC's advertising materials;
 6. ABC's investor agreements;
 7. an expert report to be prepared by the Receiver's accountant.

INTERROGATORY NO. 5:

With respect to your allegations set forth in Count Eight of the Complaint that "all transfers from ABC to the Defendants, both directly and/or indirectly as subsequent transferees, were fraudulent and made with intent to hinder, delay, and defraud creditors as a matter of law":

- A. Identify the specific facts upon which you rely in making such contention;

- B. Identify each person having knowledge of any such alleged facts;
- C. Identify all documents upon which you rely in making such contention;
- D. Identify the source (*i.e.*, common law, federal statute, state statute, etc.) of the law to which you refer;
- E. Identify with specificity the amounts you contend were transferred to E&J, and when and how such alleged transfers were made; and
- F. Identify with specificity all reasons, if any, that support your contention, if any, that ABC did not receive reasonably equivalent value for each such transfer.

ANSWER:

- A. The following facts support the claim that all transfers from ABC to the Defendants, both directly and/or indirectly as subsequent transferees, were fraudulent and made with intent to hinder, delay, and defraud creditors as a matter of law:
 - 1. As stated above, ABC was insolvent and operated as a Ponzi scheme by Keith LaMonda, E&J, and Erwin;
 - 2. E&J and Erwin received transfers directly and/or indirectly from ABC.
- B. The Receiver objects to Interrogatory No. 5(C) because it calls for speculation. The Receiver cannot attest to the personal knowledge possessed by third parties. Subject to that objection, the following persons may have knowledge of the facts stated above:
 - 1. Christopher R. Erwin;
 - 2. Rick B. Johnson;
 - 3. Clarence Keith LaMonda;
 - 4. ABC's employees, sales agents, and investors;
 - 5. the Receiver and his retained professionals;
 - 6. Mills, Potoczak & Company;
 - 7. William Potoczak;
 - 8. Kit Stennings;
 - 9. Mark Wolok.

- C. The following documents support the fact that all transfers from ABC to the Defendants, both directly and/or indirectly as subsequent transferees, were fraudulent and made with intent to hinder, delay, and defraud creditors as a matter of law:
1. ABC's bank records;
 2. E&J's bank records;
 3. E&J's trust agreements;
 4. E&J's escrow agreements;
 5. ABC's advertising materials;
 6. ABC's investor agreements;
 7. an expert report to be prepared by the Receiver's accountant.
- D. The source of law for the Receiver's statement is the California Uniform Fraudulent Transfer Act and/or the Texas Uniform Fraudulent Transfer Act.
- E. Attached are amounts the Receiver believes were transferred to E&J. The Receiver may also seek disgorgement of other funds or proceeds the defendants received that are not yet known.
- F. The Receiver objects to Interrogatory No. 5(F) because it calls for speculation. Reasonably equivalent value is an affirmative defense that defendants must assert and prove. Until they specifically articulate their claim of reasonably equivalent value, the Receiver cannot accurately respond or be held to his answers stated below.

Nevertheless, the Receiver believes the following factors undermine any claim that ABC, the ABC Trusts, or the investors received reasonably equivalent value for funds paid to E&J and Erwin:

1. E&J failed to maintain separate premium escrow accounts for each of the ABC Trusts;
2. E&J commingled investor funds sent to the ABC Trusts;
3. E&J failed to set aside enough reserves to meet ABC's premium obligations;
4. E&J failed to calculate the reserves needed to meet ABC's premium obligations;
5. E&J failed to notify Keith LaMonda of the insufficient premium reserves or demand additional funds for the premium escrow account;

6. E&J failed to insist on a premium payment schedule before releasing funds from the purchaser escrow account;
7. E&J failed to independently contact insurance providers to confirm the premium information;
8. E&J failed to exercise its own independent judgment;
9. E&J failed to raise questions or doubts about information it received regarding the policies;
10. E&J executed transfers to Keith LaMonda that depleted funds from ABC, the ABC Trusts, the premium escrow account, and the purchaser escrow accounts;
11. E&J executed transfers directed by Keith LaMonda that depleted funds from ABC, the ABC Trusts, the premium escrow account, and the purchaser escrow accounts;
12. E&J executed transfers that violated its trust agreement(s) and escrow agreement(s) with ABC;
13. E&J executed transfers without proper documentation to support those transfers;
14. E&J executed transfers that made ABC, the ABC Trusts, the premium escrow accounts, and the purchaser escrow accounts increasingly insolvent;
15. E&J continued to hold funds in the escrow account without proper documentation or directions for its use;
16. E&J failed to provide a detailed monthly financial activity report;
17. E&J did not conduct adequate due diligence regarding the use of funds by Keith LaMonda;
18. E&J effectively gave Keith LaMonda powers over the purchaser escrow account and too much authority to make decisions;
19. E&J effectively gave Keith LaMonda powers over the premium escrow account and too much authority to make decisions;
20. E&J released funds from the purchaser escrow account despite numerous questions about the viability of bonds in place to pay the death benefit amount for those policies;
21. E&J released funds from the purchaser escrow account before completing the purchase of policies and/or collecting all the necessary records;

22. E&J released funds from the purchaser escrow account before the premium escrow accounts were created and fully funded;
23. E&J did not adequately protect escrow assets for the benefit of ABC and the ABC Trusts;
24. E&J did not adequately protect trust assets for the benefit of the ABC Trusts and investors;
25. E&J acted in a manner that placed its own interests ahead of the interests of ABC, the ABC Trusts, and the investors;
26. E&J acted in a manner that placed Keith LaMonda's interests ahead of the interests of ABC, the ABC Trusts, and the investors
27. E&J failed to notify investors that International Fidelity & Surety Ltd. could not meet its bond obligations;
28. E&J failed to notify investors in November 2005 about improprieties with the letters of credit that backed Albatross bonds;
29. E&J accepted inadequate due diligence in February and March 2006 from DMH Stallard relating to the Albatross bonds; *
30. E&J failed to notify investors in March 2006 about the inadequacy of due diligence regarding Albatross; ➤
31. E&J misrepresented its credentials and experience to ABC and the investors;
32. E&J allowed its liability insurance to be used in marketing these investments to ABC's investors;
33. E&J continued facilitating the sale of these investments after questions of misrepresentation, fraud, and illegality were raised.

INTERROGATORY NO. 6:

With respect to your allegations set forth in Count Nine of the Complaint that "they are impressed with a constructive trust and constitute Receivership Assets":

- A. Identify the specific facts upon which you rely in making such contention;
- B. Identify each person having knowledge of any such alleged facts;
- C. Identify the legal source (*i.e.*, common law, federal statute, state statute, etc.) of such contention; and
- E. Identify with specificity the amounts that you contend are "impressed with a constructive trust and constitute Receivership Assets."

ANSWER:

- A. The following facts support the claim that payments to defendants are imposed with a constructive trust and constitute Receivership Assets:
1. Funds of investors were wrongfully acquired by Keith LaMonda, E&J, and/or Erwin by fraud, breach of fiduciary duty, accident, mistake, undue influence, violation of a trust, or other wrongful act;
 2. Funds of the ABC Trusts were wrongfully acquired by Keith LaMonda, E&J, and/or Erwin by fraud, breach of fiduciary duty, accident, mistake, undue influence, violation of a trust, or other wrongful act;
 3. At all times, Keith LaMonda, E&J, and/or Erwin had a duty to return those funds;
 4. E&J and Erwin received transfers of those funds either directly and/or indirectly;
 5. E&J and Erwin are not justly entitled to those funds and have a duty to return them;
 6. E&J and Erwin now hold those funds as constructive trustees for the benefit of the investors or the ABC Trusts.
- B. The Receiver objects to Interrogatory No. 6(B) because it calls for speculation. The Receiver cannot attest to the personal knowledge possessed by third parties. Subject to that objection, the following persons may have knowledge of the facts stated above:
1. Christopher R. Erwin;
 2. Rick B. Johnson;
 3. Clarence Keith LaMonda;
 4. ABC's employees, sales agents, and investors;
 5. the Receiver and his retained professionals;
 6. Mills, Potoczak & Company;
 7. William Potoczak.
- C. The source of law for the Receiver's statement is common law, the California Civil Code §§ 2223-24, and the Order Appointing Receiver.

- D. Attached as are amounts the Receiver believes are impressed with a constructive trust and constitute Receivership Assets. The Receiver may also seek disgorgement of other funds or proceeds the defendants received that are not yet known.

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,

vs.

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

**Defendants and
Third-Party Plaintiffs,**

and

MILLS, POTOCZAK & COMPANY,

Third-Party Defendant.

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

**RECEIVER’S RESPONSE AND OBJECTIONS TO
ERWIN & JOHNSON, LLP’S FIRST SET OF INTERROGATORIES**

TO: Defendant Erwin & Johnson, LLP c/o Lee L. Cameron, Wilson,
Elser, Moskowitz, Edelman & Dicker, LLP, Bank of America
Plaza, 901 Main Street, Suite 4800, Dallas, Texas 75202

Plaintiff Michael J. Quilling, as Receiver for ABC Viaticals, Inc. and Related
Entities, (“Receiver”) serves this response and objections to Defendant Erwin & Johnson,
LLP in accordance with Rule 33 of the Federal Rules of Civil Procedure.

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Respectfully submitted,

QUILLING, SELANDER, CUMMISKEY
& LOWNDS, P.C.

2001 Bryan Street, Suite 1800
Dallas, Texas 75201
(214) 871-2100 (Telephone)
(214) 871-2111 (Facsimile)

By: /s/ Brent J. Rodine
Michael J. Quilling
State Bar No. 16432300
Brent Rodine
State Bar No. 24048770

ATTORNEYS FOR RECEIVER

CERTIFICATE OF SERVICE

On March 13, 2009, the undersigned delivered a copy of this document and its attachments by e-mail to:

William J. Akins
WILSON, ELSER, MOSKOWITZ, EDELMAN
& DICKER, L.L.P.
5000 Renaissance Tower
1201 Elm Street
Dallas, Texas 75270-2161
E-mail: william.akers@wilsonelser.com

Christopher B Trowbridge
BELL NUNNALLY & MARTIN LLP
McKinney Plaza
3232 McKinney Ave Suite 1400
Dallas, TX 75204-2429
E-mail: christophert@bellnunnally.com

ATTORNEYS FOR DEFENDANTS

ATTORNEYS FOR THIRD-PARTY
DEFENDANT

/s/ Brent J. Rodine

**I.
CONDITIONS AND OBJECTIONS**

1. The investigation of facts and discovery in this case are ongoing. These responses are based on the information and documents currently known to the Receiver. He reserves the right to amend these responses upon further discovery and analysis.

2. Although answers are provided below, the Receiver reserves the right to object to Defendants' use of these responses including: (a) questions of relevance, privilege, materiality, and admissibility; (b) the use of these responses in any subsequent suit or proceeding; and (c) the right at any time to revise, correct, or clarify any of these responses.

**II.
DEFINITIONS**

3. "E&J" refers to Defendant Erwin & Johnson, LLP and any officers, employees, attorneys, agents, representatives, or other persons or entities acting on its behalf or in concert with it.

4. "Erwin" refers to Defendant Christopher R. Erwin and any employees, attorneys, agents, representatives, and other persons or entities acting on his behalf or in concert with him.

5. "ABC" refers to ABC Viaticals, Inc., the ABC Trusts, the principal officers of those entities, and any employees, attorneys, agents, representatives, and other persons or entities that they control, that acted on their behalf, or that acted in concert with them. This includes other entities that Keith LaMonda controlled.

6. "ABC Trusts" or "Trusts" specifically refer to the separate trusts for which E&J served as trustee and handled investor funds. Some, if not all, of those trusts are identified in Paragraph 10 of the Receiver's Amended Complaint.

**III.
ANSWERS TO INTERROGATORIES**

INTERROGATORY NO. 1:

With respect to your allegations set forth in paragraph 19 of the Complaint that “there should have been in excess of \$20 million in segregated funds to pay premiums”:

- A. Identify the specific facts upon which you rely in making such contention;
- B. Identify each person having knowledge of any such alleged facts;
- C. Identify all documents upon which you rely in making such contention; and
- D. Identify with specificity how much money you contend should have been in the subject accounts to pay premiums as of November 17, 2006, and specify in detail how you calculated that amount. Include in your detail: (1) identify each policy; (2) specify the annual premium for each such policy; and (3) specify the net cash value for each such policy as of November 17, 2006 (or within 60 days thereof).

ANSWER:

- A. Since filing his Amended Complaint, the Receiver now believes that there should have been in excess of \$19 million in segregated funds to pay premiums. He relies on the following facts in making that statement:
 - 1. Keith LaMonda purported to sell each investor a fractional ownership interest in a bonded life settlement policy;
 - 2. There were to be legitimate bonds in place to pay the full death benefit of a policy by a date certain;
 - 3. There were to be enough funds set aside to pay all premium obligations until the bonds matured;
 - 4. When the Receiver was appointed, the total amount needed to pay all premium obligations until the bonds matured exceeded \$19 million;
 - 5. When the Receiver was appointed, the premium escrow account had only \$277,833.57 set aside to pay premiums.
- B. The Receiver objects to Interrogatory No. 1(B) because it calls for speculation. The Receiver cannot attest to the personal knowledge possessed by third parties. Subject to that objection, the following persons may have knowledge of the facts stated above:
 - 1. Christopher R. Erwin;

2. Rick B. Johnson;
3. Clarence Keith LaMonda;
4. ABC's employees, sales agents, and investors;
5. the Receiver and his retained professionals;
6. Mills, Potoczak & Company;
7. William Potoczak.

C. The following documents support the claim that there should have been in excess of \$19 million in segregated funds to pay premiums:

1. premium forecasts prepared by the Receiver's professionals;
2. periodic statements from the insurance providers;
3. ABC's account records;
4. E&J's account records;
5. the report to be prepared by the Receiver's retained expert.

D. The Receiver objects to Interrogatory No. 1(D) to the extent it asks the Receiver to create a summary of information that is readily available to defendants through other records—including records in their possession.

Nevertheless, the Receiver states that there should have been a total of \$19,937,980.89 in reserves in the premium escrow account as of November 30, 2006, after all November premiums were paid. Attached is a diagram showing the premium reserves needed to pay all actual periodic premiums for the policies. Evidence of each policy's cash value as of November 2006 can be obtained from other records made available to defendants without the Receiver listing it in his summary.

INTERROGATORY NO. 2:

With respect to your allegations set forth in Count One of the Complaint that E&J breached contracts:

- A. Specifically identify each contract that you contend E&J breached;
- B. Specifically identify each provision of such contracts that you contend E&J breached;
- C. Specifically identify each act or omission by E&J that you contend constituted breach of such contracts by E&J, including without limitation when you contend each such act or omission occurred;

- D. Identify with particularity each element of monetary relief (including actual, compensatory, and punitive) that you seek to recover as damages for such alleged breaches of contracts (including without limitation the amount thereof, the factual basis thereof and the precise calculation thereof);
- E. Identify each person having knowledge of any such alleged breaches of contract; and
- F. Identify all documents upon which you rely in making such contention that E&J breached contracts.

ANSWER:

- A. The Receiver contends that E&J breached the following contracts:
 - 1. its trust agreement(s) with ABC;
 - 2. its escrow agreement(s) with ABC.
- B. E&J breached the following provisions of those contracts:
 - 1. Section 6.01 of the trust agreement(s);
 - 2. Section 6.02 of the trust agreement(s);
 - 2. Section II.G of the escrow agreement(s);
 - 2. Section III.A(4) of the escrow agreement(s);
 - 3. Section III.D of the escrow agreement(s);
 - 4. Section III.E of the escrow agreement(s);
 - 5. Section V.A(2) of the escrow agreement(s);
 - 6. Section VI.E of the escrow agreements(s);
 - 7. Section VII.B of the escrow agreement(s).
- C. E&J breached those contracts through the following acts or omissions:
 - 1. E&J failed to maintain separate premium escrow accounts for each of the ABC Trusts;
 - 2. E&J commingled investor funds sent to the ABC Trusts;
 - 3. E&J failed to set aside enough reserves to meet ABC's premium obligations;

4. E&J failed to calculate the reserves needed to meet ABC's premium obligations;
5. E&J failed to notify Keith LaMonda of the insufficient premium reserves or demand additional funds for the premium escrow account;
6. E&J failed to insist on a premium payment schedule before releasing funds from the purchaser escrow account;
7. E&J failed to independently contact insurance providers to confirm the premium information;
8. E&J failed to exercise its own independent judgment;
9. E&J failed to raise questions or doubts about information it received regarding the policies;
10. E&J executed transfers to Keith LaMonda that depleted funds from ABC, the ABC Trusts, and the premium escrow account;
11. E&J executed transfers directed by Keith LaMonda that depleted funds from ABC, the ABC Trusts, and the premium escrow account;
12. E&J executed transfers without proper documentation to support those transfers;
13. E&J executed transfers that made ABC, the ABC Trusts, and the premium escrow accounts increasingly insolvent;
14. E&J held continued to hold funds in the escrow account without proper documentation or directions for its use;
15. E&J failed to provide a detailed monthly financial activity report;
16. E&J effectively gave Keith LaMonda powers over the purchaser escrow account and too much authority to make decisions.

Unless otherwise noted, these acts occurred continuously during the time that E&J served as trustee and escrow agent for ABC and the ABC Trusts.

D. The Receiver seeks the following damages for breach of contract:

1. \$19,937,980.89 in reserves that should have been in the premium escrow account as of November 30, 2006, after all November premiums were paid;
2. any pre-paid and unearned fees not returned to ABC;
3. attorneys fees, pre-judgment interest, and post-judgment interest to be calculated at the conclusion of this case.

E. The Receiver objects to Interrogatory No. 2(E) because it calls for speculation. The Receiver cannot attest to the personal knowledge possessed by third parties. Subject to that objection, the following persons may have knowledge of the facts stated above:

1. Christopher R. Erwin;
2. Rick B. Johnson;
3. Clarence Keith LaMonda;
4. ABC's employees, sales agents, and investors;
5. the Receiver and his retained professionals;
6. Mills, Potoczak & Company;
7. William Potoczak.

F. The following documents support the claim that E&J breached its contracts:

1. ABC's bank records;
2. E&J's bank records;
3. E&J's trust agreements;
4. E&J's escrow agreements;
5. ABC's investor agreements;
6. Erwin's testimony to the SEC.

INTERROGATORY NO. 3:

Pursuant to Fed. R. Civ. P. 26(a)(3)(A), state the name, address and telephone number of any person who is expected to be called to testify at trial.

ANSWER:

The Receiver identifies the following individuals who may be called to testify at trial:

1. Michael J. Quilling, Receiver
QUILLING SELANDER CUMMISKEY & LOWNDS, P.C.
2001 Bryan Street, Suite 1800
Dallas, Texas 75201
2. Milo H. Segner, Jr.

LITZLER, SEGNER, SHAW & MCKENNEY, LLP
1412 Main Street, Suite 2400
Dallas, Texas 75202

3. Christopher R. Erwin
c/o William J. Akins
WILSON, ELSER, Moskowitz, Edelman
& Dicker, L.L.P.
5000 Renaissance Tower
1201 Elm Street
Dallas, Texas 75270-2161
4. Rick B. Johnson
ERWIN & JOHNSON LLP
9170 Irvine Center Drive
Irvine, California 92618
5. William Potoczak
c/o Christopher B Trowbridge
BELL NUNNALLY & Martin LLP
McKinney Plaza
3232 McKinney Ave., Suite 1400
Dallas, TX 75204-2429

INTERROGATORY NO. 4:

With respect to your allegations set forth in Count Two of the Complaint that E&J breached fiduciary duties:

- A. Specifically identify each fiduciary duty that you contend E&J breached and the specific legal source (*i.e.*, common law, federal statute, state statute, etc.) of such duty;
- B. Specifically identify each act or omission by E&J that you contend constituted breach of fiduciary duty by E&J, including without limitation when you contend each such act or omission occurred;
- C. Identify with particularity each element of monetary relief (including actual, compensatory, and punitive) that you seek to recover as damages for such alleged breaches of fiduciary duty (including without limitation the amount thereof, the factual basis thereof and the precise calculation thereof);
- D. Identify each person having knowledge of any such alleged breaches of fiduciary duty; and
- E. Identify all documents upon which you rely in making such contention that E&J breached fiduciary duties.

ANSWER:

- A. E&J breached the following fiduciary duties:
1. the duty of loyalty;
 2. the duty to deal impartially with the beneficiaries;
 3. the duty of good faith and fair dealing;
 4. the duty to avoid conflicts of interest;
 5. the duty to control and preserve trust and escrow property;
 6. the duty to make trust and escrow property productive;
 7. the duty to dispose of improper investments;
 8. the duty to report;
 9. the duty to account;
 10. the duty of faithful compliance;
 11. the duty to administer the trust solely in the beneficiaries' interest;
 12. the duty not to use or deal with trust or escrow property for the trustee's own profit;
 13. the duty not to use or deal with trust or escrow property for any purpose not connected with it;
 14. the duty not to take part in any transaction in which the trustee has an interest adverse to the beneficiary;
 15. the duty to withhold any portion of a distribution that is reasonably in dispute;
 16. the duty to avoid knowingly serving as trustee for multiple trusts with adverse interests;
 17. the duty to eliminate conflicting duties or otherwise resign;
 18. the duty to keep segregate trust or escrow property;
 19. the duty to see that trust or escrow property is properly designated as such;
 20. the duty to enforce all claims of the trust;

21. the duty not to delegate performance of duties that can be reasonably and personally performed;
22. the duty not to delegate the entire administration to another person;
23. the duty to exercise general supervision over any other person performing actions for the trust or escrow;
24. the duty to apply the full extent of one's skills;
25. the duty to maintain the standard of any special skills that one advertises.

These duties are imposed by common law, by statute in California Probate Code §16000 et seq, and/or by the terms of the trust agreement(s) and escrow agreement(s) with ABC.

B. E&J breached those fiduciary duties through the following acts or omissions:

1. E&J failed to maintain separate premium escrow accounts for each of the ABC Trusts;
2. E&J commingled investor funds sent to the ABC Trusts;
3. E&J failed to set aside enough reserves to meet ABC's premium obligations;
4. E&J failed to calculate the reserves needed to meet ABC's premium obligations;
5. E&J failed to notify Keith LaMonda of the insufficient premium reserves or demand additional funds for the premium escrow account;
6. E&J failed to insist on a premium payment schedule before releasing funds from the purchaser escrow account;
7. E&J failed to independently contact insurance providers to confirm the premium information;
8. E&J failed to exercise its own independent judgment;
9. E&J failed to raise questions or doubts about information it received regarding the policies;
10. E&J executed transfers to Keith LaMonda that depleted funds from ABC, the ABC Trusts, the premium escrow account, and the purchaser escrow accounts;
11. E&J executed transfers directed by Keith LaMonda that depleted funds from ABC, the ABC Trusts, the premium escrow account, and the purchaser escrow accounts;

12. E&J executed transfers that violated its trust agreement(s) and escrow agreement(s) with ABC;
13. E&J executed transfers without proper documentation to support those transfers;
14. E&J executed transfers that made ABC, the ABC Trusts, the premium escrow accounts, and the purchaser escrow accounts increasingly insolvent;
15. E&J continued to hold funds in the escrow account without proper documentation or directions for its use;
16. E&J failed to provide a detailed monthly financial activity report;
17. E&J did not conduct adequate due diligence regarding the use of funds by Keith LaMonda;
18. E&J effectively gave Keith LaMonda powers over the purchaser escrow account and too much authority to make decisions;
19. E&J effectively gave Keith LaMonda powers over the premium escrow account and too much authority to make decisions;
20. E&J released funds from the purchaser escrow account despite numerous questions about the viability of bonds in place to pay the death benefit amount for those policies;
21. E&J released funds from the purchaser escrow account before completing the purchase of policies and/or collecting all the necessary records;
22. E&J released funds from the purchaser escrow account before the premium escrow accounts were created and fully funded;
23. E&J did not adequately protect escrow assets for the benefit of ABC and the ABC Trusts;
24. E&J did not adequately protect trust assets for the benefit of the ABC Trusts and investors;
25. E&J acted in a manner that placed its own interests ahead of the interests of ABC, the ABC Trusts, and the investors;
26. E&J acted in a manner that placed Keith LaMonda's interests ahead of the interests of ABC, the ABC Trusts, and the investors;
27. E&J continued facilitating the sale of these investments after questions of misrepresentation, fraud, and illegality were raised.

Unless otherwise noted, these acts occurred continuously during the time that E&J served as trustee and escrow agent for ABC and the ABC Trusts.

- C. The Receiver seeks the following damages as a result of E&J's breach of fiduciary duty:
1. \$19,937,980.89 in reserves that should have been in the premium escrow account as of November 30, 2006, after all November premiums were paid;
 2. \$971,815.00 in interest payments on the amount the Receiver had to borrow to pay premiums because there were not adequate reserves in the premium escrow account;
 3. all fees that ABC or the ABC Trusts paid to defendants;
 4. attorneys fees, pre-judgment interest, and post-judgment interest to be calculated at the conclusion of this case.
- D. The Receiver objects to Interrogatory No. 4(D) because it calls for speculation. The Receiver cannot attest to the personal knowledge possessed by third parties. Subject to that objection, the following persons may have knowledge of the facts stated above:
1. Christopher R. Erwin;
 2. Rick B. Johnson;
 3. Clarence Keith LaMonda;
 4. ABC's employees, sales agents, and investors;
 5. the Receiver and his retained professionals;
 6. Mills, Potoczak & Company;
 7. William Potoczak.
- F. The following documents support the claim that E&J breached its contracts:
1. ABC's bank records;
 2. E&J's bank records;
 3. E&J's trust agreements;
 4. E&J's escrow agreements;
 5. ABC's investor agreements;

6. Erwin's testimony to the SEC;
7. an expert report to be prepared by the Receiver's accountant;
8. documents produced by Erwin & Johnson.

INTERROGATORY NO. 5:

With respect to your allegations set forth in Count Four of the Complaint that E&J aided and abetted corporate waste:

- A. Specifically identify each act or omission by E&J that you contend constituted aiding and/or abetting corporate waste, including without limitation when you contend each such act or omission occurred;
- B. Identify with particularity each element of monetary relief (including actual, compensatory, and punitive) that you seek to recover as damages for such alleged aiding and/or abetting corporate waste (including without limitation the amount thereof, the factual basis thereof and the precise calculation thereof);
- C. Identify each person having knowledge of any such alleged aiding and/or abetting corporate waste; and
- D. Identify all documents upon which you rely in making such contention that E&J aided and/or abetted corporate waste

ANSWER:

- A. The following acts or omissions constituted aiding and/or abetting corporate waste:
 1. E&J failed to maintain separate premium escrow accounts for each of the ABC Trusts;
 2. E&J commingled investor funds sent to the ABC Trusts;
 3. E&J failed to set aside enough reserves to meet ABC's premium obligations;
 4. E&J failed to calculate the reserves needed to meet ABC's premium obligations;
 5. E&J failed to notify Keith LaMonda of the insufficient premium reserves or demand additional funds for the premium escrow account;
 6. E&J failed to insist on a premium payment schedule before releasing funds from the purchaser escrow account;
 7. E&J failed to independently contact insurance providers to confirm the premium information;

8. E&J failed to exercise its own independent judgment;
9. E&J failed to raise questions or doubts about information it received regarding the policies;
10. E&J executed transfers to Keith LaMonda that depleted funds from ABC, the ABC Trusts, the premium escrow account, and the purchaser escrow accounts;
11. E&J executed transfers directed by Keith LaMonda that depleted funds from ABC, the ABC Trusts, the premium escrow account, and the purchaser escrow accounts;
12. E&J executed transfers that violated its trust agreement(s) and escrow agreement(s) with ABC;
13. E&J executed transfers without proper documentation to support those transfers;
14. E&J executed transfers that made ABC, the ABC Trusts, the premium escrow accounts, and the purchaser escrow accounts increasingly insolvent;
15. E&J continued to hold funds in the escrow account without proper documentation or directions for its use;
16. E&J failed to provide a detailed monthly financial activity report;
17. E&J did not conduct adequate due diligence regarding the use of funds by Keith LaMonda;
18. E&J effectively gave Keith LaMonda powers over the purchaser escrow account and too much authority to make decisions;
19. E&J effectively gave Keith LaMonda powers over the premium escrow account and too much authority to make decisions;
20. E&J released funds from the purchaser escrow account despite numerous questions about the viability of bonds in place to pay the death benefit amount for those policies;
21. E&J released funds from the purchaser escrow account before completing the purchase of policies and/or collecting all the necessary records;
22. E&J released funds from the purchaser escrow account before the premium escrow accounts were created and fully funded;
23. E&J did not adequately protect escrow assets for the benefit of ABC and the ABC Trusts;

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24. E&J did not adequately protect trust assets for the benefit of the ABC Trusts and investors;
25. E&J acted in a manner that placed its own interests ahead of the interests of ABC, the ABC Trusts, and the investors;
26. E&J acted in a manner that placed Keith LaMonda's interests ahead of the interests of ABC, the ABC Trusts, and the investors
27. E&J failed to notify investors that International Fidelity & Surety Ltd. could not meet its bond obligations;
28. E&J failed to notify investors in November 2005 about improprieties with the letters of credit that backed Albatross bonds;
29. E&J accepted inadequate due diligence in February and March 2006 from DMH Stallard relating to the Albatross bonds; ✖
30. E&J failed to notify investors in March 2006 about the inadequacy of due diligence regarding Albatross; ✖
31. E&J misrepresented its credentials and experience to ABC and the investors;
32. E&J allowed its liability insurance to be used in marketing these investments to ABC's investors;
33. E&J continued facilitating the sale of these investments after questions of misrepresentation, fraud, and illegality were raised.

Unless otherwise noted, these acts occurred continuously during the time that E&J served as trustee and escrow agent for ABC and the ABC Trusts.

B. The Receiver seeks the following damages for aiding and abetting corporate waste:

1. \$19,937,980.89 in reserves that should have been in the premium escrow account as of November 30, 2006, after all November premiums were paid;
2. \$971,815.00 in interest payments on the amount the Receiver had to borrow to pay premiums because there were not adequate reserves in the premium escrow account;
3. damages caused by the continuation of the ongoing securities fraud in an amount yet to be calculated;
4. all fees that ABC or the ABC Trusts paid to defendants;
5. attorneys fees, pre-judgment interest, and post-judgment interest to be calculated at the conclusion of this case.

- C. The Receiver objects to Interrogatory No. 5(C) because it calls for speculation. The Receiver cannot attest to the personal knowledge possessed by third parties. Subject to that objection, the following persons may have knowledge of the facts stated above:
1. Christopher R. Erwin;
 2. Rick B. Johnson;
 3. Clarence Keith LaMonda;
 4. ABC's employees, sales agents, and investors;
 5. the Receiver and his retained professionals;
 6. Mills, Potoczak & Company;
 7. William Potoczak.
- D. The following documents support the fact that E&J aided and abetted corporate waste:
1. ABC's bank records;
 2. E&J's bank records;
 3. E&J's trust agreements;
 4. E&J's escrow agreements;
 5. an expert report to be prepared by the Receiver's accountant;
 6. documents produced by E&J.

INTERROGATORY NO. 6:

With respect to your allegations set forth in Count Five of the Complaint that E&J committed professional malpractice/negligence:

- A. Specifically identify each act or omission by E&J that you contend constituted professional malpractice/negligence, including without limitation when you contend each such act or omission occurred;
- B. Identify with particularity each element of monetary relief (including actual, compensatory, and punitive) that you seek to recover as damages for such alleged professional malpractice/negligence (including without limitation the amount thereof, the factual basis thereof and the precise calculation thereof);

- C. Identify each person having knowledge of any such alleged professional malpractice/negligence; and
- D. Identify all documents upon which you rely in making such contention that E&J committed professional malpractice/negligence.

ANSWER:

- A. The following acts or omissions constituted professional malpractice/negligence:
 - 1. E&J failed to maintain separate premium escrow accounts for each of the ABC Trusts;
 - 2. E&J commingled investor funds sent to the ABC Trusts;
 - 3. E&J failed to set aside enough reserves to meet ABC's premium obligations;
 - 4. E&J failed to calculate the reserves needed to meet ABC's premium obligations;
 - 5. E&J failed to notify Keith LaMonda of the insufficient premium reserves or demand additional funds for the premium escrow account;
 - 6. E&J failed to insist on a premium payment schedule before releasing funds from the purchaser escrow account;
 - 7. E&J failed to independently contact insurance providers to confirm the premium information;
 - 8. E&J failed to exercise its own independent judgment;
 - 9. E&J failed to raise questions or doubts about information it received regarding the policies;
 - 10. E&J executed transfers to Keith LaMonda that depleted funds from ABC, the ABC Trusts, the premium escrow account, and the purchaser escrow accounts;
 - 11. E&J executed transfers directed by Keith LaMonda that depleted funds from ABC, the ABC Trusts, the premium escrow account, and the purchaser escrow accounts;
 - 12. E&J executed transfers that violated its trust agreement(s) and escrow agreement(s) with ABC;
 - 13. E&J executed transfers without proper documentation to support those transfers;

14. E&J executed transfers that made ABC, the ABC Trusts, the premium escrow accounts, and the purchaser escrow accounts increasingly insolvent;
15. E&J continued to hold funds in the escrow account without proper documentation or directions for its use;
16. E&J failed to provide a detailed monthly financial activity report;
17. E&J did not conduct adequate due diligence regarding the use of funds by Keith LaMonda;
18. E&J effectively gave Keith LaMonda powers over the purchaser escrow account and too much authority to make decisions;
19. E&J effectively gave Keith LaMonda powers over the premium escrow account and too much authority to make decisions;
20. E&J released funds from the purchaser escrow account despite numerous questions about the viability of bonds in place to pay the death benefit amount for those policies;
21. E&J released funds from the purchaser escrow account before completing the purchase of policies and/or collecting all the necessary records;
22. E&J released funds from the purchaser escrow account before the premium escrow accounts were created and fully funded;
23. E&J did not adequately protect escrow assets for the benefit of ABC and the ABC Trusts;
24. E&J did not adequately protect trust assets for the benefit of the ABC Trusts and investors;
25. E&J acted in a manner that placed its own interests ahead of the interests of ABC, the ABC Trusts, and the investors;
26. E&J acted in a manner that placed Keith LaMonda's interests ahead of the interests of ABC, the ABC Trusts, and the investors
27. E&J failed to notify investors that International Fidelity & Surety Ltd. could not meet its bond obligations;
28. E&J failed to notify investors in November 2005 about improprieties with the letters of credit that backed Albatross bonds;
29. E&J accepted inadequate due diligence in February and March 2006 from DMH Stallard relating to the Albatross bonds; ~~X~~

30. E&J failed to notify investors in March 2006 about the inadequacy of due diligence regarding Albatross;
31. E&J misrepresented its credentials and experience to ABC and the investors;
32. E&J allowed its liability insurance to be used in marketing these investments to ABC's investors;
33. E&J continued facilitating the sale of these investments after questions of misrepresentation, fraud, and illegality were raised.

Unless otherwise noted, these acts occurred continuously during the time that E&J served as trustee and escrow agent for ABC and the ABC Trusts.

B. The Receiver seeks the following damages for professional malpractice/negligence:

1. \$19,937,980.89 in reserves that should have been in the premium escrow account as of November 30, 2006, after all November premiums were paid;
2. \$971,815.00 in interest payments on the amount the Receiver had to borrow to pay premiums because there were not adequate reserves in the premium escrow account;
3. damages caused by the continuation of the ongoing securities fraud in an amount yet to be calculated;
4. all fees that ABC or the ABC Trusts paid to defendants;
5. attorneys fees, pre-judgment interest, and post-judgment interest to be calculated at the conclusion of this case.

C. The Receiver objects to Interrogatory No. 6(C) because it calls for speculation. The Receiver cannot attest to the personal knowledge possessed by third parties. Subject to that objection, the following persons may have knowledge of the facts stated above:

1. Christopher R. Erwin
2. Rick B. Johnson
3. Clarence Keith LaMonda
4. ABC's employees, sales agents, and investors
5. the Receiver and his retained professionals
6. Mills, Potoczak & Company
7. William Potoczak.

D. The following documents support the fact that E&J committed professional malpractice / negligence:

1. ABC's bank records
2. E&J's bank records
3. E&J's trust agreements
4. E&J's escrow agreements
5. ABC's investor agreements
6. Erwin's testimony to the SEC
7. the report prepared by the Receiver's accountant