

**UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF TEXAS  
HOUSTON DIVISION**

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<b>In re:</b>	§ <b>Chapter 11</b>
	§
<b>EPIC COMPANIES, LLC,</b>	§ <b>Case No. 19-34752 (DRJ)</b>
	§
<b>Debtors.<sup>1</sup></b>	§ <b>(Jointly Administered)</b>
	§
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<b>JEFFREY T. VARSALONE,</b>	§
<b>LIQUIDATING TRUSTEE,</b>	§
<b>Plaintiff.</b>	§
	§ <b>Adv. No. 21- _____</b>
<b>vs.</b>	§
	§
<b>UNUM LIFE INSURANCE COMPANY</b>	§
<b>OF AMERICA</b>	§
<b>Defendant.</b>	§

**COMPLAINT TO AVOID AND RECOVER TRANSFERS PURSUANT TO 11 U.S.C. §§ 547 AND 550 AND TO DISALLOW CLAIMS PURSUANT TO 11 U.S.C. § 502**

Jeffrey T. Varsalone, as the Liquidating Trustee for Epic Companies, LLC Trust (the “Liquidating Trustee” or the “Plaintiff”), files this complaint (the “Complaint”) against Unum Life Insurance Company of America (the “Defendant”) seeking to avoid and recover certain pre-petition transfers as preferences pursuant to sections 547 and 550 of chapter 5 of title 11 of the United States Code (the “Bankruptcy Code”) and to disallow any claims held by the Defendant pursuant to section 502(d) of the Bankruptcy Code.

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<sup>1</sup> The Debtors in these chapter 11 cases, along with the last four digits of each Debtor’s federal tax identification number, are as follows: Epic Companies, LLC (1473), Epic Diving & Marine Services, LLC (2501), Epic Applied Technologies, LLC (5844), Epic Specialty Services, LLC (8547), Epic Alabama Steel, LLC (6835), Epic San Francisco Shipyard, LLC (5763) and Zuma Rock Energy Services, LLC (1022). The mailing address for the Debtors is: P.O. Box 79625, Houston, Texas 77279-9625.

**THE PARTIES**

1. The Plaintiff is an individual appointed pursuant to the confirmed *Joint Plan of Liquidation of Epic Companies, LLC and its Debtor Subsidiaries under Chapter 11 of the Bankruptcy Code* [Case No. 19-34752, Docket No. 581] (the “Plan”). Articles V.D, V.E, and V.H of the Plan provide that the Liquidating Trustee succeeded to the rights of the Debtors (as defined below) and may pursue causes of action on their behalf. The Plaintiff’s mailing address, for the purpose of notice and communications is c/o Eric M. English, Porter Hedges, LLP 1000 Main Street, 36th Floor, Houston, Texas 77002.

2. The Defendant is an insurance company, which on information and belief is organized under the laws of Maine and can be served through its registered agent for service of process, Corporation Service Company, 40 Technology Parkway South, Suite 300, Norcross, Georgia 30092.

**JURISDICTION AND VENUE**

3. This Court has jurisdiction over this matter pursuant to 28 U.S.C. § 1334. The statutory and legal predicates for the relief sought herein are sections 502(d), 547, and 550 of the Bankruptcy Code, rules 3007(b) and 7001 of the Federal Rules of Bankruptcy Procedure, Bankruptcy Local Rule 7008-1, and other applicable law.

4. This adversary is a core proceeding pursuant to 28 U.S.C. § 157(b)(2)(A), (F), and (O). Pursuant to Bankruptcy Local Rule 7008-1, the Plaintiff consents to the entry of final orders or judgment by the bankruptcy judge if it is determined that the bankruptcy judge, absent consent of the parties, cannot enter final orders or judgment consistent with Article III of the United States Constitution.

5. Venue is proper in this district pursuant to 28 U.S.C. § 1409(a).

### **SUMMARY OF THE COMPLAINT**

6. The Plaintiff seeks to avoid and recover from the Defendant, or from any other person or entity for whose benefit the transfers were made, all preferential transfers of property that occurred during the ninety (90) day period prior to the Petition Date (as defined below) pursuant to sections 547 and 550 of the Bankruptcy Code, plus pre- and post-petition interest in accordance with applicable law.

7. In addition, the Plaintiff seeks to disallow, pursuant to section 502(d) of the Bankruptcy Code, any claim that the Defendant has filed or asserted against the Debtors or that has been scheduled for the Defendant pending the payment of the Avoidable Transfer (as defined below). The Plaintiff does not waive but hereby reserves all of its rights to object to any such claim for any reason, including, but not limited to, any reason set forth in sections 502(a) through (j) of the Bankruptcy Code.

### **STATEMENT OF RELEVANT FACTS**

#### **A. The Debtors**

8. Epic Companies, LLC and certain of its affiliates and subsidiaries, as debtors and debtors in possession in the above captioned cases (collectively, the “Debtors”) formed a full-service provider to the global decommissioning, installation and maintenance markets headquartered in Houston, Texas. The Debtors’ services included heavy lift, diving and marine, specialty cutting and well plugging and abandonment services. The Defendant provided group life and critical care insurance coverage to the Debtors’ employees.

9. On August 26, 2019, (the “Petition Date”), the Debtors each commenced these bankruptcy cases by filing a petition for relief under Chapter 11 of the Bankruptcy Code (collectively, the “Chapter 11 Cases”).

10. On April 7, 2020, the Court entered an order [Docket No. 681] (the “Confirmation Order”) approving the Debtors’ *Disclosure Statement for Joint Plan of Liquidation of Epic Companies, LLC and Its Debtors Subsidiaries under Chapter 11 of the Bankruptcy Code* [Docket No. 582] (the “Disclosure Statement”) on a final basis and confirming the Plan. The effective date of the Plan (the “Effective Date”) occurred on April 13, 2020. Pursuant to the Plan and the Confirmation Order, on the Effective Date Jeffrey T. Varsalone was appointed as the Liquidating Trustee and the Debtors’ assets were transferred to the Liquidating Trust.

### **B. The Transfer**

11. During the ninety (90) days prior to the Petition Date, the Debtor made at least the following transfers to the Defendant: During the ninety (90) days before and including the Petition Date, that is between May 28, 2019 and August 26, 2019 (the “Preference Period”), the Debtors continued to operate their businesses, including the transfer of money, either by checks, cashier checks, wire transfers, ACH transfers, direct deposits, or otherwise, to various entities.

12. Upon information and belief, the Debtors entered into agreements for the purchase of goods and/or services from the Defendant on behalf of one or more of the Debtors, as evidenced by one or more contracts, purchase orders, invoices, communications, and other documents (collectively, the “Agreements”). The payment to the Defendant in respect of the Agreements during the Preference Period is set forth below:

<b>DATE</b>	<b>PAYMENT TYPE</b>	<b>AMOUNT</b>
07/02/2019	Check	\$39,472.18
<b>Total</b>		<b>\$39,472.18</b>

13. One or more of the Debtors made a transfer of an interest of the Debtors' property to or for the benefit of the Defendant during the Preference Period through a payment not less than \$39,472.18 (the "Transfer").

14. The Plaintiff is seeking to avoid the Transfer made by the Debtors to the Defendant within the Preference Period, subject to the new value defense discussed below.

### **C. The Defendant's Statutory Defenses**

15. On October 30, 2020, the Plaintiff, through counsel, sent a demand letter (the "Demand Letter") to the Defendant seeking a return of the Transfer. The Demand Letter requested that if the Defendant had any affirmative defenses, it contact counsel so the Plaintiff could review the same. The Defendant never responded to the Demand Letter; therefore, the Defendant failed to assert any statutory defenses to the Transfer.

16. The Plaintiff conducted its own evaluation of the reasonably knowable affirmative defenses to avoidance of the Transfer under the circumstances of this case, and the Plaintiff has determined that it may avoid some of the Transfer even after taking into account the Defendant's potential statutory defense under section 547(c)(4) of the Bankruptcy Code. The Plaintiff concluded that the Defendant provided new value under section 547(c)(4) of the Bankruptcy Code in the amount of \$6,221.76 as the Defendant provided insurance coverage after the Transfer was made. Therefore, the net preferential amount of the Transfer is \$33,250.42. *See* 11 U.S.C. § 547(c)(4).

17. During the course of this proceeding, the Plaintiff may learn (through discovery or otherwise) of additional transfers made to the Defendant during the Preference Period or that may be avoidable under other provisions of the Bankruptcy Code. It is the Plaintiff's intention to avoid and recover all avoidable transfers of property made by the Debtors, as well as interests of

the Debtors in property, to or for the benefit of the Defendant or any other transferee. The Plaintiff reserves its right to amend this original Complaint to include the following: (a) further information regarding the Transfer; (b) additional transfers; (c) modifications of and/or revision to the Defendant's name; (d) additional defendants; and/or (e) additional causes of action, if applicable (collectively, the "Amendments"), that may become known to the Plaintiff at any time during this adversary proceeding, through formal discovery or otherwise, and for the Amendments to relate back to this original Complaint.

### **CLAIMS FOR RELIEF**

#### **First Claim for Relief**

#### **(Avoidance of Preferential Transfers under 11 U.S.C. § 547)**

18. The Plaintiff incorporates all preceding paragraphs as if fully re-alleged herein.

19. The Transfer received by the Defendant within the Preference Period in the amount not less than \$33,250.42 is avoidable as a preferential transfer under section 547 of the Bankruptcy Code. Under section 547, the Plaintiff:

may, based on reasonable due diligence in the circumstances of the case and taking into account a party's known or reasonably knowable affirmative defenses under subsection (c), avoid any transfer of an interest of the debtor in property—

- (1) to or for the benefit of a creditor;
- (2) for or on account of an antecedent debt owed by the debtor before such transfer was made;
- (3) made while the debtor was insolvent;
- (4) made—
  - (A) on or within 90 days before the date of the filing of the petition; or
  - (B) between ninety days and one year before the date of the filing of the petition, if such creditor at the time of such transfer was an insider; and
- (5) that enables such creditor to receive more than such creditor would receive if—

- (A) the case were a case under chapter 7 of this title;
- (B) the transfer had not been made; and
- (C) such creditor receive payment of such debt to the extent provided by the provisions of this title.

11 U.S.C. § 547(b).

20. The Transfer set forth above was a transfer of an interest in property of the Debtors.

21. The Transfer was to or for the benefit of the Defendant as a creditor (within the meaning of 11 U.S.C. § 101(10)) because the Transfer either reduced or fully satisfied a debt or debts then owed by the Debtors to the Defendant.

22. The Transfer was on account of an antecedent debt owed by the Debtors to the Defendant before the Transfer was made.

23. The Transfer was made while the Debtors were insolvent. The Debtors are entitled to the presumption of insolvency for each Transfer made during the Preference Period pursuant to 11 U.S.C. § 547(f).

24. The Transfer was made during the Preference Period.

25. As a result of the Transfer, the Defendant received more than the Defendant would have received if: (a) the Chapter 11 Cases were cases under chapter 7 of the Bankruptcy Code; (b) the Transfer had not been made; and (c) the Defendant received distributions on account of its debts under the provisions of the Bankruptcy Code. As evidenced by the Debtors' schedules filed in the underlying bankruptcy case as well as the proofs of claim that have been received to date, the Plan, the Confirmation Order, and the Disclosure Statement, the Debtors' liabilities exceed their assets such that unsecured creditors will not receive payment of their claims in full from the Debtors' estates.

26. In accordance with the foregoing, the Transfer is avoidable pursuant to section 547(b) of the Bankruptcy Code.

**Second Claim for Relief**  
**(Recovery of Avoided Transfers Pursuant to 11 U.S.C. § 550)**

27. The Plaintiff incorporates all preceding paragraphs as if fully re-alleged herein.

28. After accounting for the reasonably knowable affirmative defenses to avoidance, the Plaintiff is entitled to avoid the Transfer in the amount not less than \$33,250.42 pursuant to section 547(b) of the Bankruptcy Code (the “Avoidable Transfer”).

29. Under section 550(a) of the Bankruptcy Code, the Plaintiff may recover the Avoidable Transfer from “the initial transferee of such transfer or the entity for whose benefit such transfer was made; or any immediate or mediate transferee of such initial transferee.” 11 U.S.C. § 550(a)(1) and (2).

30. The Defendant was the initial transferee of the Avoidable Transfer or the immediate or mediate transferee of such initial transferee or the entity for whose benefit the Avoidable Transfer was made.

31. Accordingly, pursuant to section 550(a) of the Bankruptcy Code, the Plaintiff is entitled to recover the Avoidable Transfer made within the Preference Period as set forth above plus pre- and post-judgment interest.

**Third Claim for Relief**  
**(Disallowance of Claims Pursuant to 11 U.S.C. § 502(d))**

32. The Plaintiff incorporates all preceding paragraphs as if fully re-alleged herein.

33. The Defendant is a transferee of transfers avoidable under section 547 of the Bankruptcy Code, which property is recoverable under section 550 of the Bankruptcy Code.



34. The Defendant has not paid the amount of the Avoidable Transfer, or turned over such property, for which the Defendant is liable under section 550 of the Bankruptcy Code.

35. Pursuant to section 502(d) of the Bankruptcy Code, any claims held or filed by the Defendant against the Debtors must be disallowed until the Defendant pays to the Plaintiff an amount equal to the Avoidable Transfer plus applicable interest.

**REQUEST FOR PRE- AND POST-JUDGMENT INTEREST**

36. The Plaintiff seeks pre-judgment interest on the value of the Avoidable Transfer from the date of demand through the date of judgment at the maximum legal rate and to the fullest extent allowed by applicable law. The Plaintiff seeks post-judgment interest on all money damages awarded hereunder from the date of judgment until paid at the prevailing federal judgment rate.

**PRAYER FOR RELIEF**

WHEREFORE, the Plaintiff requests that the Court grant it the following relief against the Defendant:

A. On Plaintiff's First and Second Claims for Relief, judgment in favor of the Plaintiff and against the Defendant avoiding all of the Avoidable Transfer and directing the Defendant to return to the Plaintiff the amount of the Avoidable Transfer, pursuant to sections 547(b) and 550(a) of the Bankruptcy Code, plus interest from the date of demand at the maximum legal rate and to the fullest extent allowed by applicable law and post-judgment interest at the maximum legal rate and to the fullest extent allowed by applicable law, together with the costs and expenses of this action including, without limitation, attorneys' fees;

B. On the Plaintiff's Third Claim for Relief, judgment in favor of the Plaintiff and against the Defendant disallowing any claims held or filed by the Defendant against the Debtors

until the Defendant returns the Avoidable Transfer to the Plaintiff pursuant to section 502(d) of the Bankruptcy Code; and

C. Such other and further relief as this Court may deem just and proper.

Dated: August 25, 2021  
Houston, Texas

**PORTER HEDGES LLP**

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