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7 Attorneys for James C. Sell, Receiver

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SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

JAMES C. SELL, as Receiver for
American National Mortgage Partners,
L.L.C., and Related Entities, and as
Assignee of Creditors, Investors,
Shareholders, Members, Partners and
Trusts of the Receivership Entities,

Plaintiff,

v.

TITUS, BRUCKNER & BERRY, P.C., an
Arizona professional corporation;
CHARLES R. BERRY and JOAN BERRY,
husband and wife; JOHN DOES 1-50,
JANE DOES 1-50, and XYZ COMPANIES
1-50,

Defendants.

Case No: CV2005-

COMPLAINT

(Tort Non-Motor Vehicle)

Plaintiff James C. Sell, as Receiver for American National Mortgage Partners,
L.L.C., and Related Entities (collectively, the “Receivership Entities”) (the “Receiver”) alleges for his Complaint as follows:

1. The Receiver is the duly appointed Receiver for the Receivership Entities as named in and pursuant to that certain First Amended Order Appointing Receiver, filed May 15, 2003, in Maricopa County Superior Court, State of Arizona, Case No. CV2003-005724 (the “Receivership Order”), a copy of which is attached hereto as Exhibit “A.”

2. The Receiver has the authority to commence this action on behalf of the Receivership Entities.

1 **GENERAL ALLEGATIONS**

2 11. At all relevant times, the Receivership Entities, certain of which were
3 licensed by the Arizona State Banking Department as mortgage brokers and/or mortgage
4 bankers were engaged in the apparent business of mortgage lending.

5 12. Upon information and belief, the Attorney Defendants undertook to, and
6 did, provide to the Receivership Entities legal services, including without limitation (a)
7 review, analysis and drafting of loan security documents in the form of “Illinois Land
8 Trusts,” (b) review, advice and instructions as to policies and procedures, and (c) general
9 legal advice.

10 13. Upon information and belief, while the Attorney Defendants were providing
11 such legal services, the Fictitiously Named Defendants conspired and participated in a
12 multi-year conspiracy to dominate, control and use the Receivership Entities as an
13 enterprise to facilitate a multi-level fraud in the form of a sophisticated Ponzi scheme.

14 14. In connection with providing legal services to the Receivership Entities, the
15 Attorney Defendants had access to the books, records, and management of the
16 Receivership Entities, and therefore knew, or should have known, of the Ponzi scheme.

17 15. The Attorney Defendants failed to disclose the Ponzi scheme to the
18 Receivership Entities.

19 **COUNT ONE**
20 **(BREACH OF FIDUCIARY DUTY)**

21 16. The Receiver repeats and realleges all of the prior allegations as if set forth
22 at length.

23 17. By virtue of their status as attorneys for the Receivership Entities, the
24 Attorney Defendants owed the Receivership Entities a fiduciary duty to act in their best
25 interest with the highest degree of good faith and fair dealing.

26 18. The Attorney Defendants breached these duties by, among other things,
27 failing to discover and/or disclose the Ponzi scheme to the Receivership Entities.
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1 Receivership entities of relevant statutes and regulations, including without limitation
2 “Reg Z,” ERISA and the Arizona forfeiture and deed of trust statutes.

3 23. As a direct and proximate result of the Attorney Defendants’ breaches of
4 fiduciary duty, the Receivership Entities suffered damages, in the form of business losses,
5 potential liability to investors and others, insolvency and otherwise, in an amount to be
6 proven at trial.

7 WHEREFORE, the Receiver requests judgment against Defendants Charles R.
8 Berry and Joan Berry, and Titus, Brueckner & Berry, P.C., and each of them, as follows:

9 A. For compensatory damages, incidental damages and consequential
10 damages in such amounts as may be proved at trial;

11 B. For interest on the foregoing amounts at the highest legal rate from
12 the date due until paid in full;

13 C. For his costs; and

14 D. For such other and further relief as is proper and just.

15 DATED this _____ day of March, 2005.

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18 **JABURG & WILK, P.C.**

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21 Roger L. Cohen
22 Lawrence E. Wilk
23 Attorneys for Plaintiff
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