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Attorneys for The Hunt Law Corporation

IN THE UNITED STATES BANKRUPTCY COURT

FOR THE DISTRICT OF UTAH

In re: CASTLE ARCH REAL ESTATE INVESTMENT COMPANY, LLC; CAOP MANAGERS, LLC; CASTLE ARCH OPPORTUNITY PARTNERS I, LLC; CASTLE ARCH OPPORTUNITY PARTNERS II, LLC; CASTLE ARCH KINGMAN, LLC; CASTLE ARCH SECURED DEVELOPMENT FUND, LLC; and CASTLE ARCH SMYRNA, LLC, Debtors.	Bankruptcy Case No. 11-35082 Bankruptcy Case No. 11-35237 Bankruptcy Case No. 11-35240 Bankruptcy Case No. 11-35242 Bankruptcy Case No. 11-35243 Bankruptcy Case No. 11-35246 Bankruptcy Case No. 11-35241 (Jointly Administered) (Chapter 11) The Honorable Joel T. Marker

OBJECTION TO MOTION FOR ORDER APPROVING SETTLEMENT AGREEMENT WITH LONGVIEW FINANCIAL HOLDING, INC., LONGVIEW FINANCIAL GROUP, INC., ROCKHILL INSURANCE COMPANY AND OTHER PARTIES

The Hunt Law Corporation ("Hunt"), a creditor of Castle Arch Real Estate Investment Company, LLC ("CAREIC") by and through counsel, herein objects to the approval of the "Settlement Agreement With Longview Financial Holding, Inc., Longview Financial Group, Inc., Rockhill Insurance Company And Other Parties" (the "Settlement") and motion in support of the same (the "Settlement Motion") filed by D. Ray Strong (the "Trustee") Chapter 11 Trustee

of the bankruptcy of CAREIC, and manager of CAOP Manager, LLC ("CAOP Manager"); Castle Arch Opportunity Partners I, LLC ("CAOP I"); Castle Arch Opportunity Partners II, LLC ("CAOP II"); Castle Arch Kingman, LLC ("CAK"); Castle Arch Secured Development Fund, LLC ("SDF") *and* Castle Arch Smyrna, LLC. ("CAS"). (Sometimes collectively, the "Debtors.")

INTRODUCTION

While the Settlement appears long and complex, it is relatively easy to understand as affects the jointly administrated estates of the Debtor. Prior to the filing of bankruptcy, one or more the Debtors carried D&O insurance through the company the Settlement refers to as "Rockhill." Also prior to the filing of bankruptcy, the entity referenced as "Longview" in the Settlement commenced litigation in New York asserting a variety of claims against the pre-petition Debtors and some of the Debtors' officers and all of its directors. That claim had its roots in "commissions" allegedly earned for Longview acting as "broker" for securities in one or more of the Debtors (though the litigation included claims for RICO, fraud and other allegation). Related litigation previously arose in Utah and, in fact, prior to appointment of the Trustee, the Debtor-in-possession filed an adversary proceeding against Longview. Suffice it to say that the claim of Longview were disputed by the Debtors and, indeed, prior to the settlement, the Trustee had concluded that Longview did not have a claim against the Debtors at all, but the Debtors had claims against Longview. *Trustee's Objection to Amended Motion for Relief From Automatic Stay Filed by Longview Financial Holdings, Inc.* Dkt 270 at p. 44 ¶ 35.

Under the Settlement, Rockhill is to pay Longview $1,000,000.00 for claims against the Debtors and the Debtors' Management. Longview is then allowed a claim against the Debtors'

estates in the amount of $385,000.00. For all purposes, including voting under a Chapter 11 Plan: $290,896.49 is deemed an allowed unsecured claim against CAREIC[1]; $2,337.87 is deemed an allowed claim against CAK; $6,242.11; is deemed and unsecured claim against CAS; $10,095.19 is deemed an unsecured claim against CASDF; $60,341.85 is deemed an unsecured claim against CAOP1 and $15,086.49 is deemed an unsecured claim against CAOP II.

In comparison, the DIP's analysis of the "commissions" owed by the Debtor entities allocated the claim as follows: CAREIC had underpaid commissions by $2,988,13; CAOP I had overpaid commissions in the amount of $137,156.59; CAOP II had overpaid commissions by $33,564.50; CAK never owed commissions; CASDF had underpaid commissions by $108,887.09 and CAS underpaid commissions by $38,546.50. *Adversary Complaint, CAREIC v. Longview Financial Group, Inc.* Dkt 166 p.6 ¶ 21. Thus, the Settlement does not allocate the unsecured claim based upon any financial analysis or objective analysis. It allocates the unsecured claim in accord with the percentage of the Proofs of Claim filed by Longview. That allocation has an incongruous result in this case. As far as the estate of CAREIC's estate is concerned, it creates a very large unsecured claim that not only impacts potential recovery of other unsecured creditors – it gerrymanders the vote on the Plan. For instance, the relative amount of the vote of Hunt (and all other creditors of CAREIC) are worth less than they were before the settlement. On the other hand, CAK (which has no unsecured creditors) now has a class of unsecured creditors that will be impaired by, and deemed to vote for, the Plan.

[1] The Trustee's Motion states the allowed unsecured claims against the Debtor estates are "relatively small." *Trustee's Motion* at p. 18. Hunt's claim against CAREIC is about $336,000.00. Hunt's interactions with the Trustee indicate the Trustee does not consider that claim "relatively small."

Nowhere in the Trustee's Motion does he explain how his business judgment worked in allocating the amount of Longview Claims against the respective estates. Indeed, the Motion does not disclose or discuss the conflict in any way. Presumably, Longview's interest is getting paid, not from whom it is paid – meaning the allocation is largely irrelevant to Longview (unless Longview wishes to continue to have significant input into the estates,in which case that should be disclosed).[2] The problem is that the Trustee is, as a legal matter, incapable of resolving the disputes regarding how the claim is allocated between the Debtors' estates because those estates have significant conflicting interests in the allocation. Such conflicts have been and continue to be the hallmark of the Trustee's administration and it is no small problem[3]. Indeed, it likely requires appointment of separate Trustee's in these bankruptcy cases. That general problem aside, the best the Court can do in regard to the Motion is to approve the Settlement *without* approving the allocation of the claim between estates. In the event that problem derails the settlement, appointment of a Trustee for each estate to consider the issue is appropriate.

I. THE TRUSTEE'S BUSINESS JUDGMENT IS LIMITED TO INSTANCES IN WHICH HE IS DISINTERESTED.

(a) The Trustee is not Disinterested.

A Trustee appointed under 11 U.S.C. § 1104 must be disinterested. 11 U.S.C. § 1104(b)(1). Disinterest means that Trustee is free from any "interest materially adverse to the interest of the estate or of any class of creditors or equity security holders". 11 U.S.C. §

[2] Longview remains on the unsecured creditors committee – though its interests are not (and never have been) aligned with average unsecured creditors. Now, it appears, Longview has no role as an unsecured creditor. It has been "deemed" to vote for a plan. Yet Longview remains on the unsecured creditors committee.

[3] Indeed, there are avoidance claims in amounts that appear to exceed $5 million between CAREIC and CAOP I. See, e.g., *Motion For Appointment Of A Chapter 11 Trustee In The Castle Arch Secured Development Fund, LLC*, Dkt 484 p.6 ¶ (3) That is a problem that is beyond resolution by the Trustee acting as a "disinterested party" and the other claims between the estates occasionally involve hundreds of thousands of dollars. The claims are not insignificant.

101(14).[4] Recognizing that there are instances in which joint administration of multiple debtors may be appropriate, a single trustee may be appointed to administer joint estates.

Fed.Bankr.R.Pro 2009 (c)(2). However:

> On a showing that creditors or equity security holders of different estates will be prejudiced by conflicts of interests of a common trustee who has been elected or appointed, the court **shall** order the selection of separate trustees for estates being jointly administered.

Fed.R.Bankr.Pro.2009 (d). That is not to say that every potential conflict mandates appointment of separate Trustees. *See e.g. Richie Special Credit Investments v. U.S. Trustee*, 415 B.R. 391, 400-401 (D. Minn. 2009). By the same token, where conflicts exist, courts do not shy away from appointing separate Trustees. *See In re BH&P*, 119 B.R. 35,42 (D.N.J. 1990) (finding that conflicts between estates created as conflict that prohibited a Trustee from being a "disinterested party" who may serve as Trustee for "jointly administered" estates.

Commonly, in estate administration, the key to avoiding problems is to *over disclose* them. Thus, were the Trustee seeking to assure that his actions fell within the scope of what is permitted for a Trustee operating estate under Rule 2009(a), the solution would have been to discuss the problems with allocating the settlement between the estates and then explain how that was resolved. The Trustee could also have entered into a settlement agreement that did not involve allocation of the claims between debtors and reserved that issue for later resolution – noting that the Trustee was ill-equipped to make that allocation between debtors. The Trustee did

[4] Debtors-in-Possession need not meet the disinterestedness standard – they are the Debtor *Id.* Indian River Homes, Inc. v. Sussex Trust Co., 108 B.R. 46, 51 (D. Del. 1989). That argument is often use to support appointment of a Trustee. It is not solved when the Trustee is not, then disinterested.

neither, as if the problem of his inability to be disinterested on behalf of each debtor in relationship to the allocation of claims between the estates was not apparent. It is.

Moreover, this is not a case wherein appointment of separate Trustees is a large expense for the jointly administered estate. Each Debtor already has its own counsel and each counsel is on the heading of the Motion. Legal counsel simply does not (or should not) make decisions. The only person making decision in this case is the Trustee, who cannot make decisions that resolve the intercompany conflicts, such as those apparent in the Settlement. That situation seems futile. Trustees represented by separate counsel are unlikely to cost significantly more and are infinitely more likely to be qualified to reach a resolution involving intercompany disputes that is fair to each Debtor's creditors.[5]

For the record – after learning from that Hunt was filing an objection to the settlement and before knowing the nature of the objection, counsel for CAREIC called Hunt's counsel and indicated that Hunt's counsel, Cohne, of *CAREIC v. Stuart Shultz* Rappaport & Segal P.C. was "conflicted" in this matter (and the Trustee would not waive the conflict) because CRS represented CAREIC in the matter et al case number 100903991, which is resolved under the settlement. Counsel also sent the Mr. Hunt an e-mail which is attached inferring that he was disclosing "attorney client privileged" 'information. *See Exhibit "A" attached hereto*. In short, the message was,shut up and go away or we'll sue you.[6]

[5] The Trustee's proposed Plan indicated that the Trustee wanted to appoint a "Dispute Referee" to resolve intercompany disputes. The problem, again, the Trustee remains manager and holds decision making power on both sides of the dispute. On the other hand, separate Trustees could agree to mediation of intercompany disputes and, when they are resolved, submit the proposal for approval. That is not more expensive than the Trustee's proposal. It is more likely to achieve a fair and balanced result.

[6] This mode of communication by the Trustee is not unfamiliar. For instance, Hunt is aware that the Trustee, through counsel threatened to "zealously" pursue "both Longview and non-Longview related claims" against former

There are multiple responses to the Trustee's approach. The short one is that he management of the Debtor bankruptcy estates and the Trustee's disinterested standard have nothing to do with the merits of the dispute with Mr. Shultz. Nothing in this Memorandum contains information that is not in the record in this bankruptcy case or was sent *by the Trustee* to third parties. Hunt had and has no intent of voicing an opinion on the merits of the dispute except as follow: In the Trustee's November Status Report, the Trustee disclosed that the fees for the Trustee's counsel and the Trustee's accountants totaled about $540,000.00 but the fees: "Include substantial fees and costs relating to Longview that are covered by the D&O Policy." *See Exhibit "D."* No mention of that agreement is referenced in this settlement. Perhaps there is another settlement that is related or the issue remains pending and unresolved. Absent resolution, there is a pending controversy over how the large administrative expenses should be allocated among the Debtors. Those are all issues that separate Trustees can address and explain. It isn't and shouldn't be Hunt's province. Hunt is, however a creditor and in that capacity, is entitled to object to the Trustee's actions.

CONCLUSION

By virtue of the unexplained allocation of a settlement amount between Debtors who have conflicting interests in the settlement, the Trustee has illustrated a problem that has existed and will continue in this estate. The estates have *materially* adverse interests. If the settlement cannot be approved to eliminate resolution of those issues (the amount of the claim allowed

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directors and officers if they did not agree to the settlement. *See Exhibit "B"* attached hereto. That e-mail raises a question of whether the terms of the Settlement include a tacit agreement not to pursue non-Longview related claims against the officers and directors because they agreed to the Settlement. (Hunt knows of no claims against these officers and directors. Waiving non-existent claims may be of no consequence; but it should not have been the subject e openly disclosed.). At the same time, Hunt is aware that Longview, at least, thought that the Trustee's counsel had a conflict of interest. *See Exhibit "C"*. If this problem weighed at all into the amount of the settlement, it is improper – and should at least have been disclosed.

against each estate) it cannot be approved because no disinterested party exists who can explain to the court, in his or her business judgment, why this settlement is in the best interest of creditors and equity security holders of all estates. Accordingly, Hunt respectfully requests that the Settlement not be approved as proposed. Hunt further requests that unless the Settlement can be altered in a manner that is neutral to all estates, that disinterested Trustees be appointed for each Debtor so that they may consider the impact of the Settlement on each estate.

DATED this 3rd day of December, 2012.

COHNE, RAPPAPORT & SEGAL, P.C.

/s/ Julie A. Bryan
Julie A. Bryan

CERTIFICATE OF SERVICE

I hereby certify that on the 3rd day of December, 2012, the foregoing was filed with the Court and served via the Court's CM/ECF system upon all parties that receive electronic notice in the above-captioned, jointly administered bankruptcy case including but not limited to:

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Nathan Seim
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seim.nathan@dorsey.com

Gregory J. Adams
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Andrew@abclawutah.com

pkeith@jdplaw.com

U.S. Trustee's Office
405 South Main St., # 300
Salt Lake City, UT 84111

/s/ Julie A. Bryan

Julie Bryan

From: dh@hunt-pc.com
Sent: Monday, December 03, 2012 5:43 PM
To: Julie Bryan
Subject: Fwd: Castle Arch

Fyi.

David

-------- Original message --------
Subject:Castle Arch
From:hunt.peggy@dorsey.com
To:dh@hunt-pc.com,asa@princeyeates.com
Cc:RStrong@brg-expert.com

David and Adam,

It has come to the Trustee's attention that you both have provided information regarding CAREIC and or other affiliated entities to third persons and given your general impressions about certain issues to them. Both of you/your firms have served as counsel to CAREIC and/or its affiliated entities and, as a result, as you know, certain professional and ethical duties exist as a result. Although this has been clear to date, the Trustee believes that it is important that he remind you that he has not and will not waive any applicable privileges, and you are expressly instructed not to discuss the affairs of the entities with any person without express prior consent of the Trustee. In the event that the Trustee learns of any future event of this kind, he will bring an appropriate action against you and, if appropriate, your respective firms.

Thanks,

Peggy Hunt

Partner

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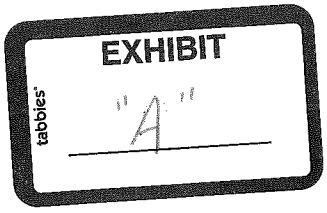

From:durocher.skip@dorsey.com [mailto:durocher.skip@dorsey.com]
Sent: Friday, November 02, 2012 3:59 PM
To: cmitchell@c-mlaw.com
Cc: Ray Strong; hunt.peggy@dorsey.com
Subject: RE: Longview settlement

Clyde.

Your insistence on a general release by the Trustee is not acceptable. I told you that several days ago, and the Trustee's position on that point has not changed and will not change. I believe the rest of the parties to the settlement are in general agreement on all material terms. Over the weekend I plan to incorporate final changes into the current draft. I will then circulate a revised draft that contains what I believe is language acceptable to all the other parties. I will need to know by the end of the day Monday if your clients will sign off on the agreement. If they do not and the settlement fails, be advised that the Trustee intends to zealously pursue your clients for both Longview and non-Longview related claims. He will also have to report to the Bankruptcy Court that we had a settlement agreed to by all the other parties, which included a $1 million payment from an insurer who has steadfastly denied any indemnity coverage, and the Trustee intends to advise the Court that the settlement failed because of your clients, Mr. Austin and Mr. Davidson.

Regards,

Skip

Skip Durocher

Partner

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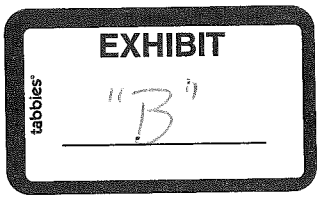

From: Bruce Schoenberg [mailto:bruce@schradschoen.com]
Sent: Tuesday, July 24, 2012 2:42 PM
To: Sullivan, Mark
Subject: In re Castle Arch
Importance: High

Mark – a while ago, I contacted you regarding the possible retention of Dorsey & Whitney to represent the unsecured creditors committee of Castle Arch Real Estate, Inc. (CAREIC) in connection with CAREIC's bankruptcy in Utah. We subsequently had a long conversation with your partner in Utah, Stephen Waterman, regarding the case and my client's (Longview Financial Group's) claim against CAREIC. Ultimately, I was unsuccessful in trying to get the UCC to retain Dorsey as its counsel in Utah. I subsequently learned that Dorsey had been retained by the Chapter 11 Trustee of CAREIC, and this morning, I learned that Dorsey had appeared as counsel for CAREIC in my case against CAREIC in New York. I believe that Dorsey has a clear conflict of interest in representing CAREIC against my client in New York, due to the fact that you are in possession of confidential information regarding my client's claims against CAREIC. This may be a case of no good deed going unpunished, but by this email, I am asking you to withdraw as counsel for CAREIC in New York. Unless we can resolve this dispute amicably, I will be compelled to file a motion to disqualify in New York and possibly in Utah.

Bruce A. Schoenberg
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New York, New York 10017
T: (212) 986-4888
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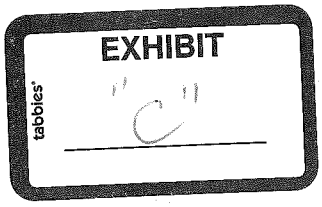

DEBTOR: Castle Arch Real Estate Investment Company, LLC. **CASE NO:** 11-35082

Form 2-E
SUPPORTING SCHEDULES
For Period 09/01/12 to 09/30/12

ACCOUNTS RECEIVABLE AND POST PETITION PAYABLE AGING

Due	Accounts Receivable	Post Petition Accounts Payable
Under 30 days	$ 39,000.00	$ 0.00
30 to 60 days	0.00	0.00
61 to 90 days	0.00	0.00
91 to 120 days	0.00	0.00
Over 120 days	273,824.64	12,582.75
Total Post Petition	312,824.64	
Pre Petition Amounts	0.00	
Total Accounts Receivable	$ 312,824.64	
Less: Bad Debt Reserve	0.00	
Net Accounts Receivable (to Form 2-C)	$ 312,824.64	
	Total Post Petition Accounts Payable	$ 12,582.75

**** Attach a detail listing of accounts receivable and post-petition accounts payable***

SCHEDULE OF PAYMENTS TO ATTORNEYS AND OTHER PROFESSIONALS

	Month-end Retainer Balance	Current Month's Accrual	Paid in Current Month	Date of Court Approval	Month-end Balance Due *
Trustee	$ 0.00	$ 16,200.00	$ 0.00		$ 120,450.00
Trustee Counsel *(1)*	0.00	148,086.00	0.00		420,789.45
Trustee Accountants *(1)*	0.00	34,000.00	0.00		129,400.00
Former Debtor's Counsel	100,000.00	14,721.70	0.00		243,951.13
Counsel for Unsecured Creditors' Committee	0.00	1,920.00	0.00		125,085.72
Other:	212,500.00	0.00	0.00		0.00
Total	$ 312,500.00	$ 214,927.70	$ 0.00		$ 1,039,676.30

***Balance due to include fees and expenses incurred but not yet paid.**

*SCHEDULE OF PAYMENTS AND TRANSFERS TO PRINCIPALS/EXECUTIVES***

Payee Name	Position	Nature of Payment	Amount
Martinsen, Glen	CFO	Salary, P/R Taxes & Expense Reimb.	8,332.07

*****List payments and transfers of any kind and in any form made to or for the benefit of any proprietor, owner, partner, shareholder, officer or director. Upon the Trustee's appointment, Jeff Austin and David Hunt were terminated. Glen Martinsen was retained by the Trustee to assist with day-to-day accounting. Amounts do not include Payroll taxes paid.***
(1) Includes substantial fees and costs relating to Longview that are covered by the D&O policies.

EXHIBIT
tabbies
"D"