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Trustee for Castle Arch Real Estate Investment
Company, LLC*

**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

**REPLY TO OBJECTION OF THE HUNT LAW CORPORATION RELATING TO THE
MOTION FOR ORDER APPROVING SETTLEMENT AGREEMENT WITH
LONGVIEW FINANCIAL HOLDING, INC., LONGVIEW FINANCIAL GROUP, INC.,
ROCKHILL INSURANCE COMPANY AND OTHER PARTIES PURSUANT TO
FEDERAL RULE OF BANKRUPTCY PROCEDURE 9019**

D. Ray Strong, the duly appointed Chapter 11 Trustee (the "Trustee") for Castle Arch Real Estate Investment Company, LLC ("CAREIC"), hereby files this Reply to the Objection

filed by The Hunt Law Corporation (“Hunt”) to the *Motion for Order Approving Settlement Agreement with Longview Financial Holding, Inc., Longview Financial Group, Inc., Rockhill Insurance Company and Other Parties Pursuant to Federal Rule of Bankruptcy Procedure 9019* [Docket No. 442] (the “Settlement Motion”). All capitalized terms used but not defined herein have the meanings ascribed to such terms in the Settlement Motion. In support hereof, the Trustee states as follows:

INTRODUCTION

The proposed Settlement Agreement resolves multiple disputes involving the Debtors and greatly benefits the Debtors’ estates for all of the reasons set forth in the Settlement Motion, as supported by the Strong Declaration. The only objection to the Settlement Motion is filed by Hunt, a law firm whose principal, David Hunt, is a pre-trustee insider of the Debtors, and who, upon information and belief, served as counsel to both the Debtors and Longview. Although Hunt has filed a proof of claim against CAREIC, the claim is disputed by the Trustee, and the Trustee maintains that Hunt—which received hundreds of thousands of dollars prior to the Petition Date—is liable to the estates for a variety of potential claims, including but not limited to disgorgement of pre-petition fees based on Hunt’s apparent conflicts of interest in representing the Debtors and Longview, potential malpractice claims, and avoidance claims. Thus, while Hunt has a claim on file against CAREIC, to which at this time the Trustee has not yet objected,¹ his standing to object the Settlement Agreement is highly suspect as a matter of law given (1) that he was pre-trustee management of CAREIC; (2) the circumstances of this case—*i.e.*, Hunt’s prior involvement in the matters being settled; and (3) that he is represented by counsel who in

fact represented CAREIC prior to the Petition Date in matters related specifically to Landmark and Schulz—who are parties to the very Settlement Agreement before the Court.² The Objection, therefore, should be overruled, and the Settlement Motion should be granted.

BACKGROUND

1. On November 14, 2012, the Trustee and the Debtors filed the Settlement Motion, which seeks Court approval of the Settlement Agreement attached as Exhibit A to the Settlement Motion (the “Settlement Agreement”).

2. Amongst other things, the Settlement Agreement provides that the Longview Parties will receive a \$385,000.00 general unsecured claim against the Debtors, which amount will be allocated against the Debtors in proportion to the Longview Parties’ respective Proofs of Claim filed against each of the Debtors.

3. The terms of the Settlement Agreement took at least six weeks to negotiate amongst multiple parties, and negotiations amongst the parties were intense and hard fought.³

4. In conjunction with the Settlement Motion, the Trustee and the Debtors filed a *Notice of Settlement Motion and Notice of Opportunity for Hearing* [Docket No. 444] (the

¹ The Trustee has informed Hunt that he intends to file a lawsuit against Hunt and Mr. Hunt. It is not surprising, therefore, that Hunt is now attempting to discredit the Trustee at every turn.

² Cohne Rappaport & Segal P.C. (“CRS”) is listed as a creditor in CAREIC’s case as an unsecured creditor holding an undisputed claim for unpaid legal fees. See CAREIC Schedule F [Docket No. 29] (claim in the amount of \$10,005.70). Upon information and belief, CRS represented at least CAREIC in a case that it filed against Landmark and Schulz in the Third Judicial District Court for the State of Utah styled *Castle Arch Real Estate Investment Company, LLC v. J. Stuart Schultz d/b/a Landmark*, Case No. 100903991 (the “Utah State Action”). On December 3, 2012, the Trustee and his counsel contacted Ms. Bryan by telephone to inform her of this conflict of interest and of the Trustee’s refusal to waive any conflict on behalf of CAREIC. Despite this fact, CRS filed the present Objection later that same night and admitted this non-waivable conflict of interest, arguing that somehow the Trustee’s actions were improper. See Objection at p. 6. Obviously, the unsupported allegations made by Hunt are denied. The Trustee intends to file a motion to disqualify CRS if necessary.

³ See *Declaration of D. Ray Strong, Chapter 11 Trustee, in Support of Settlement Motion* [Docket No. 443] (the “Strong Declaration”) at ¶ 13.

“Notice”), which was served on all parties in interest in this case, including all parties known to the Trustee and the Debtors that assert a claim against or interest in any of the Debtors.

5. On December 3, 2012, Hunt filed an Objection to the Settlement Agreement and Settlement Motion [Docket No. 486] (the “Hunt Objection”), which does not object to the substance of the Settlement Agreement as a whole, but merely to the portion of the Settlement Agreement allocating the claim allowed to the Longview Parties in these cases amongst each of the Debtors.

ARGUMENT

THE SETTLEMENT AGREEMENT IS IN THE BEST INTERESTS OF ESTATES AND SHOULD BE APPROVED BY THE COURT

As set forth more fully in the Settlement Motion, settlements and compromises “are favored in bankruptcy”⁴ and “[t]he purpose behind compromises is to allow the trustee and creditors to avoid the expenses and burdens associated with litigating sharply contested and dubious claims.”⁵ In fact, due to the deference given to a trustee’s business judgment in making decisions in bankruptcy proceedings,⁶ courts should approve a proposed settlement unless it falls “below the lowest point in the range of reasonableness.”⁷

In the instant matter, the Court should grant the Settlement Motion and approve the Settlement Agreement. As argued in detail in the Settlement Motion, the four *Kopexa* factors

⁴ *Korngold v. Lloyd (In re Southern Med. Arts Cos.)*, 343 B.R. 250, 255 (B.A.P. 10th Cir. 2006) (quoting 10 COLLIER ON BANKRUPTCY ¶ 9019.01, at 9019-2 (Alan N. Resnick & Henry J. Sommer eds., 15th rev. ed. 2006)).

⁵ *Id.* (quoting *Martin v. Kane (In re A&C Props.)*, 784 F.2d 1377, 1380–81 (9th Cir. 1986)).

⁶ *See, e.g., In re JL Building, LLC*, 452 B.R. 854, 859 (Bankr. D. Utah 2011) (allowing a sale of assets as a “prudent exercise of the trustee’s reasonable business judgment”); *In re Wardley Corp.*, 2012 WL 5467748 at *3 (Bankr. D. Utah 2012) (approving settlement agreement as within the “business judgment of the trustee”).

⁷ *In re Carson*, 82 B.R. 847, 853 (Bankr. S.D. Ohio 1987) (quoting *Cosoff v. Rodman (In re W.T. Grant Co.)*, 699 F.2d 599, 608 (2d Cir. 1983), *cert. denied*, 464 U.S. 822 (1983)).

support approval of the Settlement Agreement,⁸ and the Trustee, in the exercise of his business judgment, has determined that the Settlement Agreement is in the best interests of the Debtors' estates.⁹

**HUNT LACKS STANDING TO OBJECT TO THE SETTLEMENT AGREEMENT
AND, EVEN IF CONSIDERED, THE OBJECTION IS WITHOUT MERIT**

Initially, it must be noted that Hunt lacks standing to make the Hunt Objection as a matter of law. The Court of Appeals for the Tenth Circuit in *C.W. Mining Co., v. Aquila Inc. (In re C.W. Mining Co.)*¹⁰ has made clear that the Trustee alone controls the ability to make litigation decisions on behalf of the Debtor.¹¹ Mr. Hunt, as former management, lacks standing to take positions contrary to the Settlement Agreement.

Hunt summarily maintains that somehow the Proof of Claim it filed against CAREIC gives it standing to object to the Settlement Agreement as it pertains to all Debtors. Yet, when the eight-page Hunt Objection is viewed in total, the *only* objection to the Settlement Agreement appears to be that the Trustee “does [not] explain how his business judgment worked in allocating the amount of [the] Longview Claims against the respective estates.”¹² Oddly, however, in so doing, Hunt answers the very issue he raises, recognizing that the claim is allocated “in accord with the percentage of the Proofs of Claim filed by Longview [against each

⁸ See Settlement Motion, pp. 15–18.

⁹ Strong Declaration ¶ 14.

¹⁰ 636 F.3d 1257, 1262-1263 (10th Cir. 2011).

¹¹ The Trustee has discovered that Hunt continues to communicate with persons involved in this case about the matters before the Court despite the fact that Trustee has been appointed. As discussed in *C.W. Mining*, this is completely inappropriate and, thus, the Trustee has requested that Mr. Hunt discontinue such acts as set forth in Exhibit A to the Hunt Objection. See *id.* at 1262 (quoting *Commodity Futures Trading Comm’n. v. Weintraub*, 471 U.S. 363, 353 (1985) (“corporate officers are ‘completely ousted’ once a trustee has been appointed.”)).

¹² See Hunt Objection, p. 4.

Debtor].”¹³ This allocation is well within the Trustee’s business judgment.¹⁴ Hunt’s allegation that the allocation method used is part of a gerrymandering scheme meant to dilute any vote that he may have related to his claim against CAREIC,¹⁵ is just that—a mere allegation that is disproved by its own recognition of the allocation method used, not supported by any evidence, and, importantly, based on a false assumption that it will even have a right to vote on the Trustee’s proposed plan.¹⁶

The true purpose of the Hunt Objection clearly is to push Hunt’s newest motive to attempt to discredit the Trustee. While he was part of the management team that consented with the Creditors’ Committee to the appointment of the Trustee for CAREIC, he now claims that the Trustee is disinterested and that separate trustees should be appointed. There is no evidence that this is the case, and a mere allegation that a potential conflict of interest exists is insufficient to disregard the Trustee’s business judgment in negotiating the terms of the Settlement Agreement that will greatly benefit all creditors and investors, as well as aid in the administration and conclusion of these cases.¹⁷

¹³ *Id.*, p. 3.

¹⁴ Strong Declaration ¶ 8 (“To avoid significant expense and delay in administrating the Debtors’ cases and to minimize the inherent risks of litigation, I have engaged in arms’ length and good-faith settlement negotiations with the Parties . . . including disputes related to the validity and amount of the Longview Parties’ claims in the Debtors’ cases.”).

¹⁵ Hunt Objection, p. 3.

¹⁶ While Hunt argues that the Settlement Agreement may affect his right to vote on the Trustee’s Plan, the Trustee in fact will not be soliciting Hunt’s vote inasmuch as he will commence a lawsuit against him prior to plan solicitation and, if Hunt seeks estimation of his claim for purposes of voting, the Trustee will present evidence showing that the amount of that claim should be zero.

¹⁷ *See In re Paige*, 439 B.R. 786, 794 (D. Utah 2010) (affirming the bankruptcy court’s holding to apply the business judgment rule to a trustee’s decision and disregarding appellant’s argument that the trustee was disinterested because there was no evidence of actual bias or misconduct).

CONCLUSION

For the reasons set forth above and in the Settlement Motion, the Court should overrule the Hunt Objection and grant the Settlement Motion, thus approving the Settlement Agreement.

DATED this 6th day of December, 2012.

DORSEY & WHITNEY LLP

/s/ Peggy Hunt
Peggy Hunt
Nathan S. Seim
Counsel for the Chapter 11 Trustee

CERTIFICATE OF SERVICE – BY NOTICE OF ELECTRONIC FILING (CM/ECF)

I hereby certify that on December 6, 2012, I electronically filed the foregoing REPLY TO OBJECTION OF THE HUNT LAW CORPORATION RELATING TO THE MOTION FOR ORDER APPROVING SETTLEMENT AGREEMENT WITH LONGVIEW FINANCIAL HOLDING, INC., LONGVIEW FINANCIAL GROUP, INC., ROCKHILL INSURANCE COMPANY AND OTHER PARTIES PURSUANT TO FEDERAL RULE OF BANKRUPTCY PROCEDURE 9019 with the United States Bankruptcy Court for the District of Utah by using the CM/ECF system. I further certify that the parties of record in this case, as identified below, are registered CM/ECF uses and will be served through the CM/ECF system.

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