

Peggy Hunt (Utah State Bar No. 6060)  
Milo Steve Marsden (Utah State Bar No. 4879)  
Nathan S. Seim (Utah State Bar No. 12654)

**DORSEY & WHITNEY LLP**

136 South Main Street, Suite 1000  
Salt Lake City, UT 84101-1685  
Telephone: (801) 933-7360

Email: [hunt.peggy@dorsey.com](mailto:hunt.peggy@dorsey.com)  
[marsden.steve@dorsey.com](mailto:marsden.steve@dorsey.com)  
[seim.nathan@dorsey.com](mailto:seim.nathan@dorsey.com)

*Attorneys for D. Ray Strong, Liquidating Trustee of the Consolidated Legacy Debtors  
Liquidating Trust*

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**IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF UTAH**

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In re:

CASTLE ARCH REAL ESTATE  
INVESTMENT COMPANY, LLC; CAOP  
MANAGERS, LLC; CASTLE ARCH  
KINGMAN, LLC; CASTLE ARCH  
SECURED DEVELOPMENT FUND, LLC;  
CASTLE ARCH SMYRNA, LLC; CASTLE  
ARCH STAR VALLEY, LLC; *and*

CASTLE ARCH OPPORTUNITY  
PARTNERS I, LLC; CASTLE ARCH  
OPPORTUNITY PARTNERS II, LLC,

Debtors.

Case Nos. 11-35082, 11-35237,  
11-35243, 11-35242 and 11-35246  
(Substantively Consolidated)

Case Nos. 11-35241 and 11-35240  
(Jointly Administered)

(Chapter 11)  
The Honorable Joel T. Marker

- Affects All Debtors
- Affects Only the Substantively Consolidated Debtors
- Affects only Castle Arch Opportunity Partners I, LLC
- Affects only Castle Arch Opportunity Partners II, LLC

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**TRUSTEE’S STATUS REPORT RELATING TO INSIDERS’ MOTION FOR RELIEF  
FROM THE AUTOMATIC STAY**

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D. Ray Strong, the duly appointed Liquidating Trustee (the “Trustee”) of the Consolidated Legacy Debtors Liquidating Trust, the Castle Arch Opportunity Partners I, LLC Liquidating Trust and the Castle Arch Opportunity Partners II, LLC Liquidating Trust

(collectively, the “Trusts”), by and through his counsel, hereby files this Status Report to apprise the Court of developments in his efforts to enter into a settlement agreement with Douglas Child (“Child”) and AXIS Surplus Insurance Company (“AXIS”), which settlement, if consummated, would moot the *Relief from the Automatic Stay, to the Extent Applicable, to Advance Defense Costs* [Docket No. 863] (the “Insiders’ Stay Relief Motion”).

### **BACKGROUND**

1. On November 27, 2013, Movant-Insiders Kirby Cochran, Robert Geringer, Jeff Austin, William Warwick, William Davidson, William Grundy, Keith Green and Child (collectively, the “Insiders”) filed the Insiders’ Stay Relief Motion.
2. On December 16, 2013, the Trustee filed an *Objection* to the Insiders’ Stay Relief Motion [Docket No. 869] (the “Objection”).
3. In the Objection, the Trustee informed the Court that (a) he has engaged in settlement negotiations with Child and AXIS; (b) he has sent a proposed settlement agreement to AXIS for review and approval;<sup>1</sup> (c) if AXIS approved the basic terms of the settlement agreement, the Trusts would receive \$950,000.00 under the Policy;<sup>2</sup> (d) to the extent such an agreement occurs, the Insiders’ Stay Relief Motion will be moot because there will be no funds for the Insiders to collect as Costs of Defense under the Policy; and (e) he would inform the Court of any updates on the potential settlement with Child prior to the hearing on the Insiders’ Stay Relief Motion.

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<sup>1</sup> A copy of the proposed settlement agreement with Child is attached as Exhibit 4 to the Trustee’s Objection.

<sup>2</sup> This term refers to the Private Equity and Venture Capital Fund Liability Policy No. EAN756858/01/2010 that AXIS issued to Castle Arch Real Estate Investment Company, LLC, a copy of which is attached as Exhibit 1 to the Trustee’s Objection.

4. While the Trustee has, since the filing of his Objection, diligently attempted to obtain AXIS's approval of the proposed settlement agreement with Child, AXIS has thus far refused to participate in negotiations. AXIS has failed to approve the settlement, failed to refuse the settlement, and failed to articulate any objection to the proposed settlement. The Trustee believes that, under the Policy and applicable law, AXIS has a duty to participate in the Trustee's settlement negotiations with Child in good faith, and ultimately approve a proposed settlement with Child. At this stage, AXIS's refusal to participate in any meaningful way is the principal obstacle to the Trustee consummating a settlement with Child. True and correct copies of emails between the Trustee's counsel and AXIS's counsel relating to the proposed settlement agreement are attached hereto as Exhibit 1.<sup>3</sup>

5. Pursuant to applicable law governing the Policy (i.e., Illinois, Georgia or New Jersey law), AXIS has a responsibility to approve the proposed settlement with Child because (a) Child's potential liability to the Liquidating Trusts is far greater than \$1,000,000; (b) the proposed settlement amount is \$950,000, which amount is within the Policy's limits; and (c) Illinois, Georgia and New Jersey all follow the "first to settle rule," which means that AXIS must first pay cognizable claims from insureds within the Policy's limits for settlements with claimants such as the Trustee. AXIS may not defeat this rule by refusing to participate in settlement negotiations.

6. Therefore, the Trustee requests that the Insiders' Stay Relief Motion be denied without prejudice, or that the Court continue the hearing on the Motion pending further developments with AXIS or until a mediation.

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<sup>3</sup> This correspondence was provided to Mr. Hoffman late in the afternoon on Friday, January 3, 2014.

DATED this 6th day of January, 2014.

**DORSEY & WHITNEY LLP**

    /s/ Peggy Hunt      
Peggy Hunt  
Milo Steven Marsden  
Nathan S. Seim  
*Attorneys for D. Ray Strong, Liquidating  
Trustee*

# EXHIBIT 1

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**From:** Marsden, Steve  
**Sent:** Friday, January 03, 2014 3:10 PM  
**To:** Farashahi, Ommid C.; LWeiss@rqn.com  
**Cc:** Hunt, Peggy; rstrong@brg-expert.com; Watson, Brian J.; Minkin, Jason P.  
**Subject:** RE: Doug Child Settlement -- Conf call.

Ommid – Thanks for your correspondence, and for confirming AXIS’s willingness to participate in a global mediation, but that does not respond to my pending question: Is AXIS willing to participate in the Trustee’s separate efforts to conclude a settlement with Mr. Child or not?

If AXIS is willing to participate, we would like to schedule a substantive discussion about terms as soon as possible – today, if possible, or Monday at the latest. If AXIS is not willing to participate in this separate effort I would appreciate it if AXIS would stop prevaricating, and would forthrightly say so. Then, the Trustee can move on to next steps and not waste further time pursuing AXIS’s approval.

At present, AXIS is the obstacle to making further progress on a settlement with Mr. Child within policy limits. We provided you with a draft of the Trustee’s proposed settlement agreement a month ago. To date, we have received no substantive reaction to any of the proposed settlement terms from AXIS. If there is a reason for this, other than delay for delay’s sake, the Trustee would like to hear it. The Trustee does not see any reason that his proposed settlement with Mr. Child cannot be promptly concluded.

As you are no doubt aware, the more time that passes the more claims there will be on the Policy, and the less likely the proposed settlement with Mr. Child will work. By not substantively participating in settlement negotiations, AXIS is depriving Mr. Child of his rights under the policy, under applicable law. Axis Surplus Insurance Co. is domiciled in Illinois and has its principal place of business in Georgia. It also requires notice of claims to be sent to New Jersey. If the Trustee is willing to settle with Mr. Child within limits, AXIS has a duty to approve and pay the settlement, notwithstanding the presence of other potential claims. *See Haas v. Mid Am. Fire & Marine Ins. Co.*, 343 N.E.2d 36 (Ill. App. Ct. 1976); *State Farm Mut. Auto. Ins. Co. v. Murphy*, 348 N.E.2d 491 (Ill. App. Ct. 1976); *Allstate Ins. Co. v. Evans*, 409 S.E.2d 273 (Ga. App. 1991); *Goughan v. Rutgers Cas. Ins. Co.*, 570 A.2d 501 (N.J. Super. Ct. Law Div. 1989) (“Our courts encourage the settlement of claims. They will not interfere with an insurer’s settlement of the claim of one of several persons injured by a tortfeasor notwithstanding the fact that the settlement may deplete or exhaust the insurance proceeds available to others.”); *Ligouri v. Allstate Ins. Co.*, 184 A.2d 12 (N.J. Super. Ct. Ch. Div. 1962).

Please cooperate in our efforts to settle with Mr. Child.

**Milo Steven Marsden**

Partner  
Salt Lake City Trial Department Head

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**DORSEY & WHITNEY LLP**  
Kearns Building

136 South Main Street, Suite 1000  
Salt Lake City, UT 84101-1685  
P: 801.933.7360 F: 801.933.7373 C: 801.243.9000

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**From:** Farashahi, Ommid C. [<mailto:OFarashahi@BatesCarey.com>]  
**Sent:** Friday, January 03, 2014 11:43 AM  
**To:** Marsden, Steve; [LWeiss@rqn.com](mailto:LWeiss@rqn.com)  
**Cc:** Hunt, Peggy; [rstrong@brg-expert.com](mailto:rstrong@brg-expert.com); Watson, Brian J.; Minkin, Jason P.  
**Subject:** RE: Doug Child Settlement -- Conf call.

Steve – We are in receipt of a letter dated December 23, 2013, which you sent to several of AXIS' Insureds proposing a global mediation sometime during the weeks of January 27, February 3, or February 10, 2014. AXIS is willing to participate in a global mediation addressing the Trustee's claims against all Insureds. After we have had a chance to discuss with AXIS and all of the Insureds, either we or one or more of the Insureds will get back to you.

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**From:** [Marsden.Steve@dorsey.com](mailto:Marsden.Steve@dorsey.com) [<mailto:Marsden.Steve@dorsey.com>]  
**Sent:** Thursday, January 02, 2014 3:16 PM  
**To:** [LWeiss@rqn.com](mailto:LWeiss@rqn.com); Farashahi, Ommid C.  
**Cc:** [hunt.peggy@dorsey.com](mailto:hunt.peggy@dorsey.com); [rstrong@brg-expert.com](mailto:rstrong@brg-expert.com)  
**Subject:** RE: Doug Child Settlement -- Conf call.

I need to hear from Ommid. Sounds like he is out of the office today.

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**From:** Loren Weiss [<mailto:LWeiss@rqn.com>]  
**Sent:** Thursday, January 02, 2014 1:57 PM  
**To:** Marsden, Steve; 'ofarashahi@bcnlaw.com'  
**Cc:** Hunt, Peggy; 'rstrong@brg-expert.com'  
**Subject:** RE: Doug Child Settlement -- Conf call.

Tomorrow works for me, at either time. If the morning is scheduled, I will need to use my cell. Afternoon, and I will be in the office.

I am always happy to discuss settlement, of all matters I handle. However, I am going to be taciturn, until the carrier encourages me to become more actively involved. I am frankly, unaccustomed to proceeding in this order, but I do not wish to antagonize anyone.

Loren

**Loren Weiss | Ray Quinney & Nebeker P.C.** | 36 South State Street, Suite 1400 | Salt Lake City, Utah 84111  
Direct: 801-323-3330 | Facsimile: 801-532-7543 | [www.rqn.com](http://www.rqn.com)

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**From:** Marsden.Steve@dorsey.com [mailto:Marsden.Steve@dorsey.com]  
**Sent:** Thursday, January 02, 2014 1:46 PM  
**To:** Loren Weiss; ofarashahi@bcnlaw.com  
**Cc:** hunt.peggy@dorsey.com; rstrong@brg-expert.com  
**Subject:** Doug Child Settlement -- Conf call.

Loren and Ommid – As you know the bankruptcy court has scheduled a hearing next Monday on the potential defendants’ motion for relief from stay. We would like to be able to provide the bankruptcy court with a positive status report regarding the progress of our negotiations on settling with Doug Child. To that end, we’ like to schedule a conference call tomorrow to work through substantive or technical issues. Are you available 10:00am (Mountain) or 2:00pm (Mountain)? If another time is more convenient, please let me know that. I’m available anytime over the weekend as well.

Happy New Year! I look forward to talking to you both tomorrow.

**Milo Steven Marsden**

Partner  
Salt Lake City Trial Department Head

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Salt Lake City, UT 84101-1685  
P: 801.933.7360 F: 801.933.7373 C: 801.243.9000

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**CERTIFICATE OF SERVICE**

I certify that on January 6, 2014, the foregoing **TRUSTEE'S STATUS REPORT RELATING TO INSIDERS' MOTION FOR RELIEF FROM THE AUTOMATIC STAY** (the "Status Report"), was filed with the Court and served via the Court's CM/ECF system upon the following parties that receive electronic notice in the above-captioned bankruptcy case:

- Gregory J. Adams gadams@mbt-law.com
- Gregory J. Adams gadams@mbt-law.com
- Adam S. Affleck asa@pyglaw.com, debbie@princeyates.com;docket@princeyates.com
- Troy J. Aramburu taramburu@swlaw.com, jpollard@swlaw.com;docket\_slc@swlaw.com
- Jeffrey M Armington armington.jeff@dorsey.com
- Julie A. Bryan julie@crslaw.com, diana@crslaw.com;josh@crslaw.com
- Mona Lyman Burton mburton@hollandhart.com, ckelly@hollandhart.com;intaketeam@hollandhart.com;slclitdocket@hollandhart.com
- Leonard J. Carson len@pearsonbutler.com, kylie@pearsonbutler.com
- Andrew B. Clawson andrew@abclawutah.com, len@pearsonbutler.com;maryann@pearsonbutler.com;daneise@pearsonbutler.com
- Victor P Copeland vpc@pkhlawyers.com, js@pkhlawyers.com
- Joseph M.R. Covey calendar@parrbrown.com
- T. Edward Cundick tec@princeyates.com, heidi@princeyates.com;docket@princeyates.com
- Anna W. Drake annadrake@att.net
- David R. Hague dhague@fabianlaw.com, dromero@fabianlaw.com
- George B. Hofmann gbh@pkhlawyers.com, dh@pkhlawyers.com;aa@pkhlawyers.com
- Mary Margaret Hunt hunt.peggy@dorsey.com, long.candy@dorsey.com;stauffer.erin@dorsey.com;slc.lit@dorsey.com
- Mary Margaret Hunt hunt.peggy@dorsey.com, long.candy@dorsey.com;stauffer.erin@dorsey.com;slc.lit@dorsey.com
- Lon A. Jenkins jenkins.lon@dorsey.com, daniels.heidi@dorsey.com
- Penrod W. Keith pkeith@djplaw.com, khughes@djplaw.com
- Penrod W. Keith pkeith@djplaw.com, khughes@djplaw.com
- Michael L. Labertew michael@labertewlaw.com
- Christopher J Martinez martinez.chris@dorsey.com, stauffer.erin@dorsey.com
- Adelaide Maudsley maudsley@chapman.com, jemery@chapman.com
- John T. Morgan tr john.t.morgan@usdoj.gov, James.Gee@usdoj.gov;Lindsey.Huston@usdoj.gov;Rinehart.Peshell@usdoj.gov;Suzanne.Verhaal@usdoj.gov
- Oliver K. Myers myersok@msn.com

- Knute A. Rife KARife@RifeLegal.com
- Nathan Seim seim.nathan@dorsey.com
- Nathan Seim seim.nathan@dorsey.com
- Jeremy C. Sink jeremy@mbt-law.com
- Jeremy C. Sink jeremy@mbt-law.com
- James A Sorenson jsorenson@rqn.com, tpahl@rqn.com;docket@rqn.com
- D. Ray Strong tr\_rstrong@brg-expert.com
- Gerald H. Suniville gsuniville@vancott.com, docketing@vancott.com
- Marca Tanner marca.tanner@gmail.com
- United States Trustee USTPRegion19.SK.ECF@usdoj.gov
- Kim R. Wilson bankruptcy\_krw@scmlaw.com
- Brock N. Worthen bworthen@swlaw.com

I further certify that on January 6, 2014, the Status Report was served via electronic mail

to the following:

Loren Weiss	lweiss@rqn.com
George Hofmann	gbh@pkhlawyers.com
Oliver Meyers	myersok@msn.com
Neil Kaplan	nak@clydesnow.com
Schuyler Carroll	scarroll@perkinscoie.com
Ommid Farashahi	ofarashahi@bcnlaw.com

/s/ Peggy Hunt