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Representative and Liquidating Trustee*

**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
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

**TRUSTEE’S RESPONSE TO OBJECTIONS OF DOUGLAS CHILD, KIRBY
COCHRAN, JEFFREY AUSTIN, WILLIAM GRUNDY AND KEITH GREEN TO THE
MOTION FOR APPROVAL OF SETTLEMENT AGREEMENT BETWEEN TRUSTEE
AND WILLIAM WARWICK UNDER FEDERAL RULE OF BANKRUPTCY
PROCEDURE 9019**

D. Ray Strong (the “Trustee”), the post-confirmation estate representative of the above-captioned Debtors and the duly appointed Liquidating 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, by and through his undersigned counsel, hereby files this Response to the *Objections of Douglas Child, Kirby Cochran, Jeffrey Austin, William Grundy and Keith Green to the Motion for Approval of Settlement Agreement Between Trustee and William Warwick Under Federal Rule of Bankruptcy Procedure 9019* (the “Objection”).¹

The basis for the Objection is the parties have filed a *Motion of Douglas Child, Kirby Cochran, Jeffrey Austin, William Grundy, and Keith Green to Withdraw the Reference* (the “Motion to Withdraw”),² seeking to withdraw the reference of the Trustee’s *Amended Motion for Approval of Settlement Agreement Between Trustee and William Warwick Under Federal Rule of Bankruptcy Procedure 9019*.³ Pursuant to 28 U.S.C. § 157, Federal Rule of Bankruptcy Procedure 5011 and DUCivR 83-7.4, the Motion to Withdraw has now been transmitted to the United States District Court for the District of Utah.⁴ Attached hereto as Exhibit A is the Trustee’s Response to the Motion to Withdraw that was filed in the District Court pursuant to DUCivR 83-7.4.

¹ Docket No. 992.

² Docket No. 991.

³ Docket No. 980.

⁴ See Bankr. Ct. Docket No. 995; District Court Case No. 2:14-cv-00626-BSJ.

DATED this 10th day of September, 2014.

DORSEY & WHITNEY LLP

/s/ Peggy Hunt

Peggy Hunt

Milo Steven Marsden

Nathan S. Seim

Attorneys for D. Ray Strong, Trustee

EXHIBIT A

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

DOUGLAS CHILD, KIRBY COCHRAN,
JEFFREY AUSTIN, WILLIAM GRUNDY
AND KEITH GREEN,

Petitioners,

v.

D. RAY STRONG, as Liquidating 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,

Respondent.

Case No. 2:14-cv-00626-BSJ
The Honorable Bruce S. Jenkins

(Pending Withdrawal of Contested Matter from
the United States Bankruptcy Court for the
District of Utah)

Bankruptcy Case No. 11-35082
The Honorable Joel T. Marker

**RESPONDENT-TRUSTEE’S RESPONSE TO MOTION OF DOUGLAS CHILD, KIRBY
COCHRAN, JEFFREY AUSTIN, WILLIAM GRUNDY, AND KEITH GREEN TO
WITHDRAW THE REFERENCE**

Respondent D. Ray Strong, the duly appointed post-confirmation estate representative
and Liquidating Trustee (the “Trustee”), by and through his undersigned counsel, hereby

responds to the *Motion of Douglas Child, Kirby Cochran, Jeffrey Austin, William Grundy and Keith Green to Withdraw the Reference* (the “Motion to Withdraw”),¹ filed by Douglas Child, Kirby Cochran, Jeffrey Austin, William Grundy and Keith Green (collectively, the “Petitioners”). For the reasons set forth below, the Trustee stipulates to the Motion to Withdraw. In support hereof, the Trustee states as follows:

BACKGROUND

The Trustee and the Petitioners

1. In October 2011, after raising approximately \$73 million from investors, Castle Arch Real Estate Investment Company, LLC (“CAREIC”) and six affiliated entities filed petitions seeking relief under Chapter 11 of the Bankruptcy Code in the United States Bankruptcy Court for the District of Utah (the “Bankruptcy Court”).² All of the cases were jointly administered in CAREIC’s case, designated as Bankr. Case No. 11-35082 (hereinafter, the “Bankruptcy Case”).

2. On May 3, 2012, the Bankruptcy Court entered an Order appointing the Trustee as the Chapter 11 Trustee for CAREIC, and in that capacity the Trustee managed CAREIC and all affiliated debtors in the Bankruptcy Case.³

3. Thereafter, in June 2012, the Bankruptcy Court entered an *Order Confirming Chapter 11 Trustee’s First Amended Plan of Liquidation Dated February 25, 2013 as Modified*

¹ Docket No. 2.

² Bankruptcy Case Nos. 11-35082 (CAREIC), 11-35237 (CAOP Managers, LLC), 11-35242 (Castle Arch Kingman, LLC), 11-35246 (Castle Arch Smyrna, LLC), 11-35243 (Castle Arch Secured Development Fund, LLC), 11-35240 (Castle Arch Opportunity Partners I, LLC) and 11-35241 (Castle Arch Opportunity Partners II, LLC).

³ Bankr. Case Docket No. 215; *see* 11 U.S.C. § 1104.

(the “Confirmation Order”),⁴ thereby, among other things: (a) confirming the *Second Amended Chapter 11 Trustee’s Plan of Liquidation Dated February 25, 2013* (the “Confirmed Plan”);⁵ (b) approving certain Liquidating Trust Agreements; (c) appointing the Trustee as the post-confirmation estate representative of the “Consolidated Legacy Debtors,”⁶ as well as Castle Arch Opportunity Partners I, LLC and Castle Arch Opportunity Partners II, LLC; and (d) appointing the Trustee as the Liquidating Trustee for three trusts known as the “Consolidated Legacy Debtors Trust,” the “CAOP I Trust” and the “CAOP II Trust” (collectively, the “Trusts”).

4. The Petitioners are former officers, directors and/or employees of CAREIC.

Retained Claims and Causes of Action

5. The bankruptcy estates have claims and causes of action against the Petitioners and other former CAREIC officers and directors related to their management of the Debtors prior to his appointment, and all of these “Claims” and “Causes of Action,” as defined in the Confirmed Plan, have been transferred to the Trusts for prosecution.⁷

6. Investors in the Debtors also have claims against the Petitioners under state and federal securities law related to the \$73 million that was raised from them prior to the filing of the Bankruptcy Case, and with certain nominal exceptions,⁸ these “Individual Claims,” as defined in the Confirmed Plan, have been assigned to the Trusts for prosecution by the Trustee.⁹

⁴ Bankr. Case Docket No. .

⁵ Bankr. Case Docket No. 705.

⁶ Earlier, the Bankruptcy Court entered an Order substantively consolidating four of the six affiliated Debtors with CAREIC as alter egos. Bankr. Case Docket No. 590. The consolidated debtors are referred to jointly in the Bankruptcy Case and herein as the “Consolidated Legacy Debtors.”

⁷ See Bankr. Docket Nos. 701 (Confirmed Plan §§ 6.1, 6.2 & 6.9); 705 (Confirmation Order §§ 3, 6).

⁸ One Investor opted out of assigning its claims and causes of action during the plan confirmation process.

⁹ See Bankr. Docket Nos. 701 (Confirmed Plan, § 6.4); 705 (Confirmation Order §§ 3, 6).

7. All of the Petitioners, as well as others, have entered into tolling agreements with the Trustee, and to date, no complaint has been filed against any of the Petitioners.

The Trustee's Settlement Agreement with William Warwick and the Interpleader Action

8. On or about May 6, 2014, prior to the filing of any complaint, the Trustee entered into a settlement agreement with William Warwick ("Warwick")—an outside director of CAREIC—which settlement agreement was subsequently amended on August 4, 2014 (as amended, the "Settlement Agreement").

9. The Settlement Agreement implicates, *inter alia*, certain insurance proceeds that have been interplead to this Court. Litigation related to these interplead funds is currently pending under the case styled as *Axis Surplus Insurance v. Geringer et al.*, Dist. Ct. Civ. Case No. 2:14-cv-00244-DAK (Kimball, J.) (the "Interpleader Action").

The Motion to Approve Settlement Agreement and the Motion to Withdraw

10. In conjunction with entering into the Settlement Agreement with Warwick, on August 6, 2014, the Trustee filed in the Bankruptcy Case an *Amended Motion for Approval of Settlement Agreement Between Trustee and William Warwick Under Federal Rule of Bankruptcy Procedure 9019*, seeking Bankruptcy Court approval of the Settlement Agreement (the "Motion to Approve Settlement Agreement").¹⁰

11. On August 26, 2014, the Petitioners filed an *Objection* to the Trustee's Motion to Approve Settlement Agreement,¹¹ thus creating a "contested matter" under Federal Rule of Bankruptcy Procedure 9014 related to that Motion.

¹⁰ Bankr. Docket No. 980; *see* Fed. R. Bankr. P. 9019.

¹¹ Bankr. Docket No. 992.

12. In conjunction therewith, the Petitioners filed their Motion to Withdraw with the Bankruptcy Court,¹² seeking to withdraw this Court's reference relating to the Motion to Approve Settlement Agreement under 28 U.S.C. §§ 157 and 1334, as well as DUCivR 83-7.1.¹³

13. On August 27, 2014, the Bankruptcy Court entered its *Order Directing Transmittal of Motion for Withdrawal of Reference to the United States Bankruptcy Court*,¹⁴ and this matter was thus transmitted to this Court as provided for in DUCivR 83-7.4(d).

APPLICABLE LAW

14. 28 U.S.C. § 157(d) states:

The district court may withdraw, in whole or in part, any case or proceeding referred under this section, on its own motion or on timely motion of any party, for cause shown. The district court shall, on timely motion of a party, so withdraw a proceeding if the court determines that resolution of the proceeding requires consideration of both title 11 and other laws of the United States regulating organizations or activities affecting interstate commerce.

15. Federal Rule of Bankruptcy Procedure 5011(a) states: "A motion for withdrawal of a case or proceeding shall be heard by a district judge."

RESPONSE

16. The Petitioners argue that this Court is required, pursuant to 28 U.S.C. § 157(d), to withdraw the reference of the contested matter related to the Trustee's Motion to Approve Settlement Agreement from the Bankruptcy Court because the Trustee's Settlement Agreement with Warwick implicates the Private Litigation Securities Reform Act, 15 U.S.C. § 78u-4 (the "PLSRA").

¹² See DUCivR 83-7.4(c)(3).

¹³ Bankr. Case Docket No. 991.

¹⁴ Bankr. Case Docket No. 995.

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

I hereby certify that on September 10, 2014, I electronically filed the foregoing **TRUSTEE’S RESPONSE TO OBJECTIONS OF DOUGLAS CHILD, KIRBY COCHRAN, JEFFREY AUSTIN, WILLIAM GRUNDY AND KEITH GREEN TO THE MOTION FOR APPROVAL OF SETTLEMENT AGREEMENT BETWEEN TRUSTEE AND WILLIAM WARWICK UNDER 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 users and will be served through the CM/ECF system.

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