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Attorneys for Plaintiff
AXIS Surplus Insurance Company

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF UTAH, CENTRAL DIVISION

AXIS SURPLUS INSURANCE COMPANY,

Plaintiff,

v.

ROBERT D. GERINGER; KIRBY D.
COCHRAN; ROBERT CLAWSON;
DOUGLAS W. CHILD; JEFF AUSTIN;
WILLIAM H. DAVIDSON; WILLIAM J.
WARWICK; WILLIAM GRUNDY; and
KEITH GREEN,

Defendants.

**MOTION FOR ORDER DIRECTING
PAYMENT INTO REGISTRY**

Civil Case No. 2:14-cv-000244

Magistrate Judge Brooke C. Wells

Plaintiff, AXIS Surplus Insurance Company (“AXIS”), by and through its undersigned attorneys, hereby moves the Court pursuant to F.R.C.P. Rule 67 for an Order directing payment of its remaining policy proceeds into the Court’s Registry. In support thereof, AXIS states as follows:

1. AXIS issued to Castle Arch Real Estate Investment Company, LLC (“CAREIC”) Private Equity and Venture Capital Fund Liability Policy No. EAN756858/01/2010 for the Policy Period of December 20, 2010 to January 20, 2013 (the “Policy”). Subject to its terms, conditions, exclusions, and endorsements, the Policy contains a maximum aggregate Limit of Liability of \$1 million and provides insurance coverage to the Defendants, who are directors, officers, and/or employees of CAREIC.

2. The Chapter 11 bankruptcy trustee of CAREIC and its affiliates is currently asserting claims against the Defendants for damages which exceed the AXIS Policy’s Limit of Liability.

3. Under the Policy, Defense Costs, as defined in the Policy, are part of, and not in addition to, the Limit of Liability. With consent of all of the Defendants, AXIS has paid \$410,338.39 in Defense Costs to date, which has reduced the Limit of Liability to \$589,661.61.

4. The Defendants each claim that they are entitled to some or all of the remaining Policy proceeds, and dispute how the remaining Policy proceeds should be distributed among them.

5. As a result of the Defendants’ competing claims to the remaining Policy proceeds, on April 3, 2014, AXIS filed the instant action for interpleader under 28 U.S.C. § 1335. (Dkt. 1)

6. The federal interpleader statute requires the disputed funds to be deposited into the Court's Registry in order to perfect jurisdiction over the interpleader action. 28 U.S.C. § 1335(a)(2) confers upon the Court original jurisdiction over the interpleader if "the plaintiff has deposited [the] money or property or has paid the amount of or the loan or other value of such instrument or the amount due under such obligation into the registry of the court, there to abide the judgment of the court, or has given bond payable to the clerk of the court in such amount and with such surety as the court or judge may deem proper, conditioned upon the compliance by the plaintiff with the future order or judgment of the court with respect to the subject matter of the controversy."

7. As a mere stakeholder, AXIS claims no interest in the remaining Policy proceeds.

8. AXIS will present to the Court's Clerk a check made payable to the Clerk for the sum of \$589,661.61, which is the amount of the remaining Policy proceeds, for ultimate disposition by the Court.

9. AXIS has filed this Motion without collusion of any of the parties to this action.

WHEREFORE, the Plaintiff, AXIS Surplus Insurance Company, requests that this Court grant its Motion and direct the Clerk, upon receipt of the payment amount of \$589,661.61, to deposit the payment into this Court's Registry.

RESPECTFULLY SUBMITTED this 8th day of April, 2014.

CHRISTENSEN & JENSEN, P.C.

/s/ Heidi G. Goebel
Heidi G. Goebel
Attorneys for AXIS Surplus Insurance Company

CERTIFICATE OF SERVICE

I hereby certify that on April 8, 2014 the foregoing Motion was filed with the Court via the CM/ECF System, and that a copy of the foregoing is similarly being served via certified mail and electronic mail on the named defendants or their counsel designated to accept service on their behalf.

/s/ Heidi G. Goebel _____

Heidi G. Goebel

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[PROPOSED] ORDER

Plaintiff, AXIS Surplus Insurance Company (“AXIS”), has filed its complaint in interpleader. (Dkt. 1) Upon notice to each Defendant, AXIS submitted for this Court’s consideration AXIS’ Motion pursuant to F.R.C.P Rule 67 for permission to deposit the remaining policy proceeds under Policy No. EAN756858/01/2010 in the amount of \$589,661.61 into this Court’s Registry. (Dkt. 2)

NOW THEREFORE, AXIS’ Motion is granted. It is ordered that the Clerk of this Court shall accept from AXIS a check in the amount of \$589,661.61 and shall deposit such funds into the Registry of this Court for ultimate disposition by order of this Court in the above-captioned action.

DATED this ___ day of _____, 2014.

BY THE COURT:

Honorable Brooke C. Wells
United States Magistrate Judge

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