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*Attorneys for D. Ray Strong, Liquidating Trustee*

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**IN THE UNITED STATES DISTRICT COURT**

**FOR THE DISTRICT OF UTAH, CENTRAL DIVISION**

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AXIS SURPLUS INSURANCE COMPANY,

Plaintiff,

v.

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

Defendants.

**REPLY IN SUPPORT OF MOTION TO INTERVENE**

Civil Case No. 2:14-cv-00244-DAK

The Honorable Dale A. Kimball

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Proposed intervenor D. Ray Strong (the “Trustee”), as the post-confirmation estate representative of the Consolidated Legacy Debtors, Castle Arch Opportunity Partners I, LLC, Castle Arch Opportunity Partners II, LLC, and the 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,<sup>1</sup> by and through his undersigned counsel, submits this *Reply* in support of his Motion to Intervene (the “Motion to Intervene”). This Reply addresses (1) *Axis’ Opposition to Trustee’s Motion to Intervene*<sup>2</sup> filed by Plaintiff Axis Surplus Insurance Company (“Axis”), and (2) a joint *Memorandum in Opposition to Motion to Intervene*<sup>3</sup> filed by Defendants Douglas W. Child, Kirby D. Cochran, Jeff Austin, William Grundy, and Keith Green (collectively, the “Opposing Defendants”). Defendants Robert D. Geringer, Robert Clawson, William H. Davidson, and William K. Warwick (“Warwick”) have not objected to the Trustee’s Motion to Intervene. Unless stated otherwise, capitalized terms used herein are as defined in the Motion to Intervene.

#### **FACTS ARISING SINCE FILING THE MOTION TO INTERVENE**

As discussed in the Trustee’s Motion to Intervene, Warwick and the Trustee entered into a Settlement Agreement, which is subject to approval by the Bankruptcy Court.<sup>4</sup> On May 30, 2014, the Trustee and Warwick filed in the Bankruptcy Court a *Joint Motion for (1) Approval of Settlement Agreement Between Trustee and William Warwick Under Federal Rule of Bankruptcy Procedure 9019; and (2) Entry of Contribution Bar Order*,<sup>5</sup> seeking approval of the Settlement Agreement (the “9019 Motion”). Since filing his Motion to Intervene, certain of the Defendants

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<sup>1</sup> See Bankr. Case No. 11-35082 (Bankr. D. Utah).

<sup>2</sup> [Docket No. 45](#).

<sup>3</sup> [Docket No. 44](#).

<sup>4</sup> A copy of the Settlement Agreement is attached as Exh. B to the Declaration of D. Ray Strong, which Declaration (the “Strong Declaration”) is attached as Exh. 1 to the Trustee’s Motion to Intervene. [[Docket No. 36-1](#)]

<sup>5</sup> Bankruptcy Case No. 11-35082, Docket No. 925.

in this action have conducted discovery related to the Settlement Agreement and the 9019 Motion, including deposing the Trustee and Warwick.<sup>6</sup> No opposition to the 9019 Motion has been filed at this time, but at least one Defendant in this action has indicated that he plans to do so.<sup>7</sup> The hearing on the 9019 Motion has been continued pending settlement negotiations.<sup>8</sup>

Also, on June 12, 2014, Axis filed a *Motion for Summary Judgment* in this case (the “Axis MSJ”).<sup>9</sup> Finally, since filing the Motion to Intervene, the Trustee has engaged in settlement discussions with additional Defendants in this action.<sup>10</sup>

### **ARGUMENT**

Axis and the Opposing Defendants make two primary arguments against the Trustee’s intervention in this action: (1) that the Trustee does not currently have a sufficient interest in the Policy, and (2) that Warwick adequately represents the Trustee’s interests.<sup>11</sup> Both of these

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<sup>6</sup> Declaration of Milo Steven Marsden (the “Marsden Declaration”), at ¶ 6, attached hereto as Exhibit 1.

<sup>7</sup> *Id.* at ¶ 7.

<sup>8</sup> *Id.*; Bankruptcy Case No. 11-35082, Docket No. 942.

<sup>9</sup> Docket No. 41.

<sup>10</sup> Marsden Declaration, at ¶ 8.

<sup>11</sup> Axis also argues that the intervention is procedurally improper due to the Trustee’s failure to attach a pleading setting out the claim or defense for which intervention is sought as required by Fed. R. Civ. P. 24(c). Axis’ Complaint asserts only one claim—interpleader. The Trustee does not oppose that claim or that Axis deposit the remaining Policy funds with the Court. Instead, it seeks to intervene to participate in the ultimate distribution of these funds. As such, a pleading by the Trustee, apart from the Trustee’s *Motion for Summary Judgment and Disbursement of Interpleader Funds* that it filed with Warwick’s cooperation in this action, Docket No. 37, does not serve the purpose of setting forth the claim or defense for which intervention is sought. Nevertheless, to technically comply with the requirements of Rule 24(c), the Trustee has attached a proposed *Answer in Intervention* as Exhibit 2 hereto.

arguments fail. The Trustee must be permitted to intervene at this time to protect the bankruptcy estates' interests in the Interpleader Funds and in bringing potential claims against Axis.

**A. The Trustee's Interests Are Sufficient to Support Intervention.**

Axis's main argument is that in order to intervene, the Trustee must have a "direct, substantial, and legally protectable interest"<sup>12</sup> in the property that is the subject of the litigation. Axis argues that the Trustee's interest does not meet this "direct, substantial, and legally protectable" standard.<sup>13</sup>

Unfortunately, Axis's claim is directly contrary to controlling authority. In *San Juan Cnty. v. United States*,<sup>14</sup> the Tenth Circuit Court of Appeals explicitly rejected the "direct, substantial, and legally protectable interest" test, explaining that it was "problematic," "too narrow," "not particularly helpful," and that it "misses the point."<sup>15</sup> While a prospective intervenor who possesses a direct, substantial, and legally protectable interest would likely justify intervention, the "direct, substantial, and legally protectable" test "is best considered a test of 'inclusion rather than exclusion.'"<sup>16</sup> The central concern in intervention in the Tenth Circuit is the practical effect of the litigation on the applicant for intervention.<sup>17</sup> The inquiry is a flexible

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<sup>12</sup> Axis' Opposition to Trustee's Motion to Intervene, at 2 & 5 [[Docket No. 45](#)].

<sup>13</sup> *Id.*

<sup>14</sup> 503 F.3d 1163, 1199 (10th Cir. 2007) (en banc).

<sup>15</sup> *Id.* at 1192-93.

<sup>16</sup> *Id.* at 1194 (quoting 7C Charles Alan Wright & Arthur R. Miller, Federal Practice and Procedure, § 1908).

<sup>17</sup> *Id.* at 1193.

one and involves the balancing of the three individual components, *i.e.*, a direct interest, a substantial interest, and a legally protectable interest.<sup>18</sup>

Considered under the appropriate test, it is clear that the Trustee has a sufficient interest in this litigation to intervene because he holds a present interest in the Policy for the benefit of the bankruptcy estates. Under the executed Settlement Agreement, Warwick expressly assigned his rights in the Policy to the Trustee for the benefit of the bankruptcy estates on May 6, 2014, when he executed the Settlement Agreement. Specifically, the Settlement Agreement provides that:

Upon *execution* of this Agreement, Warwick will assign to the Trustee any and all rights Warwick has under the AXIS Insurance Policy, including any right to pursue a bad faith claim.<sup>19</sup>

Accordingly, under the Settlement Agreement's terms, Warwick's rights in the Policy have already transferred to the Trustee giving the Trustee a present interest in the Policy.

Despite these express terms, Axis and the Opposing Defendants contend that the Trustee has no interest in the Policy because paragraph 2 of the Settlement Agreement requires Bankruptcy Court approval of the Agreement.<sup>20</sup> While agreements such as the Settlement Agreement are subject to Bankruptcy Court approval, and paragraph 2 of the Settlement Agreement quoted by Axis is consistent with this requirement, the express terms of the

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<sup>18</sup> *Id.* at 1195.

<sup>19</sup> Settlement Agreement ¶1.b (emphasis added), attached as Exh. B to the Strong Declaration (Exh. 1 to the Motion to Intervene) [[Docket No. 36-1](#)].

<sup>20</sup> Settlement Agreement ¶2 (emphasis added), attached as Exh. B to the Strong Declaration (Exh. 1 to the Motion to Intervene) [[Docket No. 36-1](#)], *quoted in* Axis' Opposition to Trustee's Motion to Intervene at 6 [[Docket No. 45](#)]; *see* Opposing Defendants' Memorandum in Opposition to Motion to Intervene at 5 [[Docket No. 44](#)].

Agreement discussed above make clear that Warwick *already* assigned his rights to the Trustee when he executed the Settlement Agreement. Paragraph 2 in fact envisions this interpretation, stating:

In the event that the Court does not issue an Order approving this Agreement and a Contribution Bar, or if such Order is appealed and reversed, then: (a) this Agreement shall be null and void and shall be of no force or effect . . . and (c) to the degree possible, *the Parties shall be in the same position they were in as though this Agreement had never been executed.*<sup>21</sup>

Thus, while the Settlement Agreement is subject to Bankruptcy Court approval, the Agreement itself gives the Trustee a present interest in this action because Warwick's interests in the Policy have already been transferred.<sup>22</sup>

Furthermore, even if it could be argued that the Trustee's rights in the Policy are contingent as a result of the need for Bankruptcy Court approval, such an interest is sufficient to allow intervention. In *San Juan*, the Tenth Circuit explicitly stated that "intervention may be based on an interest that is contingent."<sup>23</sup> No party argues that the Trustee does not have at least a contingent interest in the Policy as a result of the Settlement Agreement and, therefore, intervention is appropriate.

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<sup>21</sup> Settlement Agreement ¶ 2 (emphasis added), attached as Exh. B to the Strong Declaration (Exh. 1 to Motion to Intervene) [[Docket No. 36-1](#)].

<sup>22</sup> The parties' conduct also indicates that the Settlement Agreement was binding upon execution. Warwick delivered \$200,000.00 to the Trustee's counsel when the Settlement Agreement was executed in accordance with the Settlement Agreement which states that "[u]pon execution of this Agreement, Warwick will pay Two Hundred Thousand Dollars (\$200,000.00) to the Trustee's Counsel." Settlement Agreement ¶ 1 (emphasis added), attached as Exh. B to the Strong Declaration (Exh. 1 to Motion to Intervene) [[Docket No. 36-1](#)].

<sup>23</sup> 503 F.3d at 1203 (quotations omitted).

It should also be noted that the Motion to Intervene is not premature.<sup>24</sup> Whether the bankruptcy estates have a present or contingent interest in the Policy, the Trustee has a *current interest* in protecting against the disbursement of the Interpleader Funds to avoid their depletion prior to the Bankruptcy Court approving the Settlement Agreement and to preserving potential claims that the bankruptcy estates might have against Axis as Warwick's assignee. Since the Trustee filed the Motion to Intervene, Axis filed the Axis MSJ, seeking an order:

[D]ismissing it from this action, discharging it from any further liability, and for entry of a permanent injunction enjoining any Insured or claimant from instituting or prosecuting any action against AXIS with respect to the interpleaded fund, the insurance policy issued by AXIS, its obligations to any Insured or claimant with respect to the policy or its proceeds, and the underlying claims asserted against the Defendants.<sup>25</sup>

If the Trustee is not permitted to intervene before the Court decides the Axis MSJ or proceeds to disburse the Interpleader Funds, he may lose the rights that have been assigned to him by Warwick to recover from the Policy and to assert potential claims against Axis.

In short, allowing this action to continue without the participation of the Trustee would adversely affect the Trustee's interests in the Policy, whether they are direct or contingent. If the Trustee is not permitted to participate, the bankruptcy estates might lose the ability to collect the portion of the Policy to which they are entitled under the Settlement Agreement and might lose

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<sup>24</sup> If the Court determines that the Trustee's interest is in fact premature, the Trustee requests that the Court refrain from disbursing any of the Interpleader Funds or deciding Axis' MSJ until the Bankruptcy Court enters an order passing judgment on the Settlement Agreement. When the Bankruptcy Court enters an order approving the Settlement Agreement, the Court may treat the Trustee's Motion to Intervene as one to substitute parties under Rule 25 of the Federal Rules of Civil Procedure or, alternatively, the Trustee may file such a motion.

<sup>25</sup> Axis MSJ, [Docket No. 41, at 2](#).

potential claims that they might have against Axis. These interests are sufficient to permit the Trustee to intervene under Tenth Circuit law, and thus, the Motion to Intervene should be granted.

**B. Warwick Does Not Adequately Represent the Trustee's Interests.**

Both Axis and the Opposing Defendants argue that Warwick adequately protects the Trustee's interests in these proceedings, pointing to the fact that Warwick has already participated in this case by filing an Answer and joining with the Trustee to file a *Joint Motion for Summary Judgment and Disbursement of Interpleader Funds*<sup>26</sup> as he is required to do under the Settlement Agreement. Axis and Opposing Defendants, however, ignore the fact that Warwick filed his Answer before entering into the Settlement Agreement with the Trustee,<sup>27</sup> and he was required to be cooperative in filing the Joint Motion so as to allow the Trustee to effectuate the rights that Warwick afforded to the bankruptcy estates under the Settlement Agreement.<sup>28</sup>

With the 9019 Motion pending in the Bankruptcy Court, Warwick has no incentive to protect the Trustee's interests in the Interpleader Funds. After executing the Settlement Agreement, Warwick's counsel even indicated that Warwick has no intention of actively

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<sup>26</sup> [Docket No. 37](#); see Axis' Opposition to Trustee's Motion to Intervene at 6-7 [[Docket No. 45](#)]; Opposing Defendants' Memorandum in Opposition to Motion to Intervene at 6 [[Docket No. 44](#)].

<sup>27</sup> See Settlement Agreement, attached as Exh. B to the Strong Declaration (Exh. 1 to Motion to Intervene) (entered into May 6, 2014) [[Docket No. 36-1](#)]; Answer, [Docket No. 21](#) (filed April 22, 2014).

<sup>28</sup> Settlement Agreement ¶ 3, attached as Exh. B to the Strong Declaration (Exh. 1 to Motion to Intervene) [[Docket No. 36-1](#)].



participating in the proceeding.<sup>29</sup> And, there is no question that once the Bankruptcy Court approves the Settlement Agreement, Warwick will have no interest in this lawsuit because he will have assigned that interest to the Trustee for the benefit of the bankruptcy estates.

For these reasons, Warwick does not adequately represent the Trustee's interests in ensuring the availability of and ultimate disbursement to the Trustee of the Interpleader Funds.

### **CONCLUSION**

For the reasons expressed herein and in the Trustee's Motion to Intervene, the Court should grant the Trustee's Motion to Intervene, allowing the Trustee to intervene in this case. Should the Court find that the Trustee's Motion to Intervene is premature, the Trustee requests that the Court refrain from deciding the Axis MSJ and disbursing any of the Interpleader Funds until the time that the Trustee may be permitted to participate.

DATED this 2<sup>nd</sup> day of July, 2014.

### **DORSEY & WHITNEY LLP**

/s/ Peggy Hunt  
Milo Steven Marsden  
Peggy Hunt  
Sarah Goldberg  
*Attorneys for D. Ray Strong, Trustee*

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<sup>29</sup> Declaration of Sarah Goldberg, attached hereto as Exhibit 3, at Exh. A (email from Oliver Myers).

**CERTIFICATE OF SERVICE**

I hereby certify that on this 2nd day of July, 2014, I caused a true and correct copy of the foregoing **REPLY IN SUPPORT OF MOTION TO INTERVENE** to be filed with the United States District Court for the District of Utah by using the CM/ECF system, which will automatically send email notifications of such filing to all counsel who have entered an appearance in this action. I also caused a true and correct copy to be sent via U.S. mail to the following:

Brian J. Watson  
Jason P. Minkin  
Omnid C. Farashahi  
BATES CAREY LLP  
191 N. Wacker, Ste. 2400  
Chicago, IL 60606

Heidi G. Goebel  
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/s/ Sarah Goldberg

# Exhibit 1

Milo Steven Marsden (Utah State Bar No. 4879)

Peggy Hunt (Utah State Bar No. 6060)

Sarah Goldberg (Utah State Bar No. 13222)

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goldberg.sarah@dorsey.com

*Attorneys for D. Ray Strong, Liquidating Trustee*

---

**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 K.  
WARWICK; WILLIAM GRUNDY; and  
KEITH GREEN,

Defendants.

**DECLARATION OF MILO STEVEN  
MARSDEN**

Civil Case No. 2:14-cv-00244-DAK

The Honorable Dale A. Kimball

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Milo Steven Marsden, being of lawful age, hereby declares, verifies, and states as follows:

1. I am a partner in the law firm of Dorsey & Whitney LLP and work in Salt Lake City.

2. I represent D. Ray Strong (the “Trustee”), as the post-confirmation estate representative of the Consolidated Legacy Debtors, Castle Arch Opportunity Partners I, LLC, Castle Arch Opportunity Partners II, LLC, and the 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 in the Chapter 11 bankruptcy case styled as *In re Castle Arch Real Estate Investment Company, LLC*, Bankr. No. 11-35082 (Bankr. D. Utah), and in the above captioned proceeding.

3. I submit this Declaration in support of the Trustee’s *Reply in Support of Motion to Intervene*, and unless otherwise stated, capitalized terms used herein are as defined in the Motion to Intervene and in the Reply. This Declaration is based upon my personal knowledge of the facts set forth herein.

4. On May 30, 2014, I caused to be filed a *Joint Motion for Approval of Settlement Agreement Between Trustee and William Warwick Under Federal Rule of Bankruptcy Procedure 9019, Including Contribution Bar Required Under Settlement Agreement* (the “9019 Motion”), seeking approval of the Settlement Agreement between the Trustee, on the one hand, and Warwick, on the other hand.<sup>1</sup>

5. On June 4, 2014, I filed a Motion to Intervene on behalf of the Trustee in the above captioned case.

6. Since filing the Motion to Intervene, certain of the Defendants in this action have conducted discovery related to the Settlement Agreement and the 9019 Motion. Depositions were taken of the Trustee and Warwick.

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<sup>1</sup> Bankruptcy Case No. 11-35082, Docket No. 925.

7. No opposition to the 9019 Motion at has been filed at this time, but at least one Defendant in this action has indicated that he plans to do so. On behalf of the Trustee, I have agreed to continue the hearing on the 9019 Motion to allow the Trustee to attempt to overcome this Defendant's objections.

8. Since filing the Motion to Intervene, I have engaged in settlement negotiations with some of the Defendants.

I declare under penalty of perjury that the foregoing is true and accurate to the best of my knowledge and belief.

DATED this 2nd day of July, 2014

*/s/ Milo Steven Marsden*

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Milo Steven Marsden

# Exhibit 2



Milo Steven Marsden (Utah State Bar No. 4879)

Peggy Hunt (Utah State Bar No. 6060)

Sarah Goldberg (Utah State Bar No. 13222)

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*Attorneys for D. Ray Strong, Liquidating Trustee*

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**IN THE UNITED STATES DISTRICT COURT**

**FOR THE DISTRICT OF UTAH, CENTRAL DIVISION**

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AXIS SURPLUS INSURANCE COMPANY,

Plaintiff,

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

Defendants.

**ANSWER IN INTERVENTION**

Civil Case No. 2:14-cv-00244-DAK

The Honorable Dale A. Kimball

---

Proposed intervenor D. Ray Strong, as the post-confirmation estate representative of the Consolidated Legacy Debtors Castle Arch Opportunity Partners I, LLC and Castle Arch Opportunity Partners II, LLC, and the 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 his undersigned counsel, answers the Complaint for Interpleader as follows:

### **INTRODUCTION**

1. The Trustee admits that AXIS issued a \$1 million insurance policy to CAREIC, that CAREIC and its affiliates declared bankruptcy in October 2011, that the Trustee is asserting claims against CAREIC's former officers and directors, and is seeking damages that exceed the limits of the policy. The Trustee is without sufficient information to admit or deny the amount of defense costs that AXIS has paid, the amount remaining in the policy, how Axis has proposed to divide the policy, and the defendants' contentions as to how the policy should be apportioned and, on that basis, denies the same. The Trustee denies the remaining allegations in paragraph 1.

### **JURISDICTION AND VENUE**

2. The Trustee admits the allegations in paragraph 2.
3. The Trustee admits the allegations in paragraph 3.
4. The Trustee admits the allegations in paragraph 4.

### **PARTIES**

5. The Trustee lacks sufficient information to admit or deny the allegations in paragraph 5 and, on that basis, denies the same.

6. The Trustee admits that each of the nine defendants was a director, officer, and/or employee of CAREIC, and thus an Insured under the Policy. The Axis policy speaks for itself, and the Trustee denies the allegations and characterizations set forth in paragraph 6 to the extent they are inconsistent with the contents thereof.

7. The Trustee admits the allegations in paragraph 7.

8. The Trustee admits the allegations in paragraph 8.
9. The Trustee admits the allegations in paragraph 9.
10. The Trustee admits the allegations in paragraph 10.
11. The Trustee admits the allegations in paragraph 11.
12. The Trustee admits the allegations in paragraph 12.
13. The Trustee admits the allegations in paragraph 13.
14. The Trustee admits the allegations in paragraph 14.
15. The Trustee admits the allegations in paragraph 15.
16. The Trustee admits the allegations in paragraph 16.

#### **AXIS POLICY**

17. The Trustee admits that AXIS issued 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”). The Policy speaks for itself and the Trustee denies the allegations and characterizations set forth in paragraph 17 to the extent they are inconsistent with the contents thereof.

18. The Policy speaks for itself and the Trustee denies the allegations and characterizations set forth in paragraph 18 to the extent they are inconsistent with the contents thereof.

19. The Policy speaks for itself and the Trustee denies the allegations and characterizations set forth in paragraph 19 to the extent they are inconsistent with the contents thereof.

#### **BACKGROUND**

20. The Trustee admits the allegations in paragraph 20.

21. The Trustee admits the allegations in paragraph 21.

22. The Trustee admits that he issued demand letters to certain of the Insureds, including Geringer, Cochran, Austin, Clawson, Child, Davidson, and Warwick. The demand letters speak for themselves and the Trustee denies the allegations and characterizations set forth in paragraph 22 to the extent they are inconsistent with the contents thereof.

23. The Trustee admits that on October 12, 2013, he issued a draft complaint against the Insureds. The draft complaint speaks for itself and the Trustee denies the allegations and characterizations set forth in paragraph 23 to the extent they are inconsistent with the contents thereof.

24. The Trustee's draft complaint speaks for itself, and the Trustee denies the allegations and characterizations set forth in paragraph 24 to the extent they are inconsistent with the contents thereof.

25. The Trustee's draft complaint speaks for itself, and the Trustee denies the allegations and characterizations set forth in paragraph 25 to the extent they are inconsistent with the contents thereof.

26. The Trustee admits that it originally executed Tolling Agreements tolling the statutes of limitations applicable to the Trustee's claims through April 15, 2014.

27. The Trustee admits the allegations in paragraph 27.

#### **COMPETING CLAIMS**

28. The Trustee is without sufficient information to admit or deny the allegations in paragraph 28 and, on that basis, denies the same.

29. The Trustee admits the allegations in paragraph 29.

30. The Trustee is without sufficient information to admit or deny the allegations in paragraph 30 and, on that basis, denies the same.

31. The Trustee admits that he participated in a global mediation on February 21, 2014, and that the parties were unable to reach a global settlement. The Trustee denies remaining allegations in paragraph 31.

32. The Trustee is without sufficient information to admit or deny the allegations in paragraph 32 and, on that basis, denies the same.

33. The Trustee admits the allegations in paragraph 33.

34. The Trustee admits the allegations in paragraph 34.

35. The Trustee is without sufficient information to admit or deny the allegations in paragraph 35 and, on that basis, denies the same.

36. The Trustee is without sufficient information to admit or deny the allegations in paragraph 36 and, on that basis, denies the same.

**COUNT 1 - INTERPLEADER**

37. The Trustee incorporates his response to paragraphs 1 through 36 in response to paragraph 37.

38. The Trustee admits that he is unwilling to agree to a settlement with all Insureds for an amount within the remaining Policy proceeds. The Trustee denies the remaining allegations in paragraph 38.

39. The Trustee admits the allegations in paragraph 39.

40. The Trustee is without sufficient information to admit or deny the allegations in paragraph 40 and, on that basis, denies the same.

41. The Trustee is without sufficient information to admit or deny the allegations in paragraph 41 and, on that basis, denies the same.

42. The Trustee is without sufficient information to admit or deny the allegations in paragraph 42 and, on that basis, denies the same.

43. The Trustee admits the allegations in paragraph 43.

44. The Trustee is without sufficient information to admit or deny the allegations in paragraph 44 and, on that basis, denies the same.

WHEREFORE, the Trustee agrees to participate in the interpleader of all claims against the remaining funds held by AXIS in the CAREIC matter.

DATED this 2nd day of July, 2014.

**DORSEY & WHITNEY LLP**

/s/ Milo Steven Marsden  
Milo Steven Marsden  
Peggy Hunt  
Sarah Goldberg  
*Attorneys for D. Ray Strong, Trustee*

# Exhibit 3

Milo Steven Marsden (Utah State Bar No. 4879)

Peggy Hunt (Utah State Bar No. 6060)

Sarah Goldberg (Utah State Bar No. 13222)

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*Attorneys for D. Ray Strong, Liquidating Trustee*

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Plaintiff,

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DOUGLAS W. CHILD; JEFF AUSTIN;  
WILLIAM H. DAVIDSON; WILLIAM K.  
WARWICK; WILLIAM GRUNDY; and  
KEITH GREEN,

Defendants.

**DECLARATION OF SARAH  
GOLDBERG**

Civil Case No. 2:14-cv-00244-DAK

The Honorable Dale A. Kimball

---

Sarah Goldberg, being of lawful age, hereby declares, verifies, and states as follows:

1. I am an associate in the law firm of Dorsey & Whitney LLP and work in Salt Lake City.
2. I represent D. Ray Strong (the "Trustee"), as the post-confirmation estate representative of the Consolidated Legacy Debtors, Castle Arch Opportunity Partners I, LLC,



Castle Arch Opportunity Partners II, LLC, and the 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 in the Chapter 11 bankruptcy case styled as *In re Castle Arch Real Estate Investment Company, LLC*, Bankr. No. 11-35082 (Bankr. D. Utah), and in the above captioned proceeding.

3. I submit this Declaration in support of the Trustee's *Reply in Support of Motion to Intervene*, and unless otherwise stated, capitalized terms used herein are as defined in the Motion to Intervene and in the Reply. This Declaration is based upon my personal knowledge of the facts set forth herein.

4. Attached hereto as Exhibit A is a true and correct copy of a June 4, 2014 email I received from Oliver Myers, counsel for Warwick, relating to the *Joint Motion for Summary Judgment and Disbursement of Interpleader Funds* filed by the Trustee and Warwick.<sup>1</sup>

I declare under penalty of perjury that the foregoing is true and accurate to the best of my knowledge and belief.

DATED this 2nd day of July, 2014

*/s/ Sarah Goldberg*

\_\_\_\_\_  
Sarah Goldberg

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<sup>1</sup> Docket No. 37.

# Exhibit A

**From:** [Oliver Myers](#)  
**To:** [Goldberg, Sarah](#)  
**Subject:** Re: Castle Arch Draft Motion for Summary Judgment and Disbursement of Interpleaded Funds  
**Date:** Wednesday, June 04, 2014 10:53:02 AM

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Sarah,

I do have one problem with the draft. The address for me is an old address and incorrect. My current mailing address is P.O. Box 9153, SLC, UT 84109-0153. Please change.

I have no problem with the substance of the draft. You can file with my signature as Warwick is cooperating with the settlement.

I don't expect to actively advocate this matter.

Oliver Myers

On Wed, Jun 4, 2014 at 8:37 AM, <[Goldberg.Sarah@dorsey.com](mailto:Goldberg.Sarah@dorsey.com)> wrote:

Hi Oliver,

I'm just following up on this. Please let us know if you have any comments. We would like to get this filed today.

Thanks,

Sarah

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**From:** Goldberg, Sarah  
**Sent:** Monday, June 02, 2014 8:51 PM  
**To:** '[myersok1@gmail.com](mailto:myersok1@gmail.com)'; '[myersok@msn.com](mailto:myersok@msn.com)'  
**Cc:** Marsden, Steve; Hunt, Peggy  
**Subject:** Castle Arch Draft Motion for Summary Judgment and Disbursement of Interpleaded Funds

Oliver,

Attached is a draft of a joint motion for summary judgment and disbursement of

interpleaded funds to be filed in the Axis interpleader case. Please let us know if you have any comments and if we have the approval to add your signature.

Thanks,

**Sarah Goldberg**

Associate

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