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

<p>AXIS SURPLUS INSURANCE COMPANY,</p> <p>Plaintiff,</p> <p>v.</p> <p>ROBERT D. GERINGER, KIRBY D. COCHRAN, ROBERT CLAWSON, DOUGLAS W. CHILD, JEFF AUSTIN, WILLIAM H. DAVIDSON, WILLIAM J. WARWICK, WILLIAM GRUNDY and KEITH GREEN,</p> <p>Defendants.</p>	<p>DEFENDANTS KIRBY D. COCHRAN, DOUGLAS CHILD, JEFF AUSTIN, WILLIAM GRUNDY AND KEITH GREEN'S JOINT RESPONSE TO MOTION FOR SUMMARY JUDGMENT FILED BY AXIS SURPLUS INSURANCE COMPANY</p> <p>Case No. 2:14-CV-00244-DAK</p>
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Defendants Kirby Cochran, Douglas Child, Jeff Austin, William Grundy and Keith Green (collectively, “Defendants”), by their respective counsel, jointly respond to the motion for summary judgment filed by AXIS Surplus Insurance Company.

This case currently involves a dispute between nine (9) insured directors and officers covered by the AXIS policy over the proper distribution of certain remaining insurance proceeds under a policy issued by AXIS Surplus Insurance Company (“AXIS”). The Defendants filing this response represent more than half of the insureds who have made claims on the policy. They have limited means, and certain of the Defendants are only a step away from personal bankruptcy. The policy proceeds represent one of the few (if not only) sources for paying their defense costs or for funding a settlement of the claims against them. The proceeds should be distributed as quickly as possible, on a per capita basis, for the reasons set forth in Defendants’ separate motion for summary judgment.

Defendants thus oppose the efforts of Defendants Robert Geringer, William Warwick and the Trustee to use this interpleader proceeding to seek costly discovery from other parties in the proceeding and to bring other issues into the interpleader. This proceeding has a limited purpose -- to distribute the small remainder of the funds in the policy -- and the Court should not entertain attempts to litigate other matters. Defendants reserve their rights to assert claims against other parties and non-parties related to the Policy, including, but not limited to, rights to further proceeds from any subsequent litigation that results in additional insurance proceeds from AXIS. Nevertheless, with regard to the remainder of the \$1 million limits now before the court, we urge the court to distribute those monies per capita.

RESPONSE TO AXIS' STATEMENT OF UNDISPUTED FACTS

Defendants do not dispute AXIS' Statement of Facts as it relates to the remainder of the \$1 million policy limits that must be distributed under the Policy, as modified from the Policy as originally issued. *See* Dec. of Mee S. Choi, Ex. 1 to AXIS' Motion for Summary Judgment, and Ex. A (the "Policy"), Endorsement No. 17, attached thereto. Defendants dispute the allegations in the Underlying Claim, and reserve their rights, and leave to another day, whether the actual policy limits exceed the remainder of the \$1 million currently at issue.

DATED this 31st day of July, 2014.

/s/ Neil A. Kaplan

Neil A. Kaplan
Jennifer A. James
Attorneys for Defendant Kirby D. Cochran
Signed by filing party with permission

/s/ Schuyler G. Carroll

Schuyler G. Carroll
Attorney for Jeff Austin, William Grundy and
Keith Green
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/s/ Jennifer R. Korb

Loren E. Weiss
Jennifer R. Korb
Attorney for Douglas W. Child

CERTIFICATE OF SERVICE

I hereby certify that on July 31, 2014, I electronically filed Defendants Kirby D. Cochran, Douglas Child, Jeff Austin, William Grundy and Keith Green's Joint Response to Motion for Summary Judgment Filed By AXIS Surplus Insurance Company with the Clerk of Court using the CM/ECF system which sent notification of such filing to the following:

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