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*Attorneys for Plaintiff*  
*AXIS Surplus Insurance Company*

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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 J.  
WARWICK; WILLIAM GRUNDY; and  
KEITH GREEN,

Defendants.

**AXIS' RESPONSE TO DEFENDANTS'  
JOINT MOTION FOR SUMMARY  
JUDGMENT AND FOR PER CAPITA  
DISTRIBUTION OF INTERPLEADED  
FUNDS**

Civil Case No. 2:14-cv-000244-DAK

Judge Dale A. Kimball

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Plaintiff, AXIS Surplus Insurance Company (“AXIS”), by and through its undersigned counsel, submits the following Response to the Joint Motion for Summary Judgment and for Per Capita Distribution of Interpleaded Funds (the “Joint Motion”)<sup>1</sup> filed by Defendants Kirby D. Cochran, Douglas Child, Jeff Austin, William Grundy, and Keith Green (collectively, the “Moving Defendants”).

**AXIS’ RESPONSE TO MOVING DEFENDANTS’ STATEMENT OF FACTS**

AXIS concurs with the facts stated in ¶¶ 1–3, ¶¶5–22, and ¶¶24–26 of Section II.B. of the Joint Motion. With respect to ¶4, AXIS does not dispute that the Bankruptcy Court approved the appointment of D. Ray Strong as the Chapter 11 Trustee on behalf of CAREIC and certain of its subsidiaries or affiliates, but states that the Bankruptcy Court’s approval was given on May 3, 2012.<sup>2</sup> With respect to ¶23, AXIS states that all of the Defendants have answered AXIS’ Complaint, except for Robert Clawson who has been served with the Complaint but has not answered the Complaint or filed an appearance in this action. With respect to ¶¶27-28, AXIS lacks personal knowledge of the facts stated therein, but has no reason or basis to dispute them.

**AXIS SUPPORTS MOVING DEFENDANTS’ EFFORTS TO EFFICIENTLY AND EQUITABLY RESOLVE THIS INTERPLEADER ACTION**

AXIS supports the Moving Defendants’ efforts to efficiently and equitably resolve this interpleader action. While AXIS does not oppose the Joint Motion, AXIS submits that the Court should first decide AXIS’ motion for summary judgment because the Court must first determine whether the interpleader has been properly brought by AXIS pursuant to 28 U.S.C. § 1335 before the Court determines how to distribute the remaining policy proceeds. AXIS further states that its

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<sup>1</sup> Dkt. No. 85.

<sup>2</sup> Bankr. Case No. 11-35082, Dkt. No. 215.

motion for summary judgment as well as the Joint Motion are now more urgent as the Trustee has filed three separate lawsuits on October 30, 2014; one against William Grundy,<sup>3</sup> a second against Keith Green,<sup>4</sup> and the third against all remaining Defendants except for Robert Geringer and William Warwick.<sup>5</sup>

Finally, AXIS reserves its rights to seek to recover its expenses relating to this interpleader to the extent that the Trustee, William Warwick, and Robert Geringer continue to needlessly multiply these proceedings by seeking discovery in opposition to AXIS' motion for summary judgment, despite the fact that they already possess the information they claim to need to support their meritless contentions.<sup>6</sup>

RESPECTFULLY SUBMITTED this 25th day of November, 2014.

BATESCAREY LLP

/s/ Ommid C. Farashahi

Ommid C. Farashahi

Jason P. Minkin

Michael Skoglund

Brian J. Watson

*Attorneys for AXIS Surplus Insurance Company*

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<sup>3</sup> Bankr. Case No. 14-02339, Dkt. No. 1.

<sup>4</sup> Bankr. Case No. 14-02340, Dkt. No. 1.

<sup>5</sup> Case No. 14-cv-00788-BCW, Dkt. No. 1.

<sup>6</sup> *Septembertide Pub., B.V. v. Stein and Day, Inc.*, 884 F.2d 675, 683 (2nd Cir. 1989) (“A disinterested stakeholder who asserts interpleader is entitled to be awarded costs and attorneys’ fees. These are generally awarded against the interpleader fund, but may, in the discretion of the court, be taxed against one of the parties when their conduct justifies it.”).

**CERTIFICATE OF SERVICE**

I hereby certify that, on November 25, 2014, **AXIS' RESPONSE TO THE DEFENDANTS' JOINT MOTION FOR SUMMARY JUDGMENT AND FOR PER CAPITA DISTRIBUTION OF INTERPLEADED FUNDS** was filed with the United States District Court for the District of Utah via the CM/ECF system, and that a copy of the foregoing is similarly being served via electronic mail on counsel designated to accept service on behalf of the named Defendants who have not entered an appearance in this action.

/s/ Brian J. Watson  
Brian J. Watson