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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.

**LIQUIDATING TRUSTEE'S
RESPONSE TO AXIS' MOTION FOR
LEAVE TO FILE FIRST AMENDED
COMPLAINT FOR INTERPLEADER,
*INSTANTER***

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

The Honorable Dale A. Kimball

Proposed intervenor, D. Ray Strong, as the Liquidating Trustee for 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 (the "Trustee") in the bankruptcy case *In re Castle Arch Real Estate Investment Company, LLC et al.*,¹ by and through

¹ Bankr. Case No. 11-35082 (Bankr. D. Utah).

undersigned counsel, hereby submits this Response to the *Motion for Leave to File First Amended Complaint for Interpleader, Instanter* (the “Motion to Amend”) filed by Axis Surplus Insurance, Co. (“Axis”).² While the Trustee does not oppose the Motion to Amend, he notes that the relief sought could have been obtained by stipulation.³ The Motion to Amend is an example of Axis’s over litigation and needless motion practice in this case to the detriment of stakeholders.

RESPONSE

1. Axis initiated this case by filing its *Complaint in Interpleader* (the “Interpleader Complaint”)⁴ against the above-named Defendants and depositing proceeds of a Private Equity and Venture Capital Fund Liability, Policy No. EAN756858/01/2010 (the “Policy”), with the Court. The basis for the Interpleader Complaint was a draft complaint provided by the Trustee to the Defendants and Axis on October 12, 2013, alleging claims against the Defendants that exceed the Policy’s limit of liability.

2. On June 12, 2014, Axis filed a *Motion for Summary Judgment*, alleging that it is a disinterested stakeholder and seeking discharge from any liability related to the Policy.⁵

3. On October 30, 2014, the Trustee filed complaints against all Defendants (the “Trustee Complaints”)⁶ except Robert Geringer (“Geringer”)—who is engaged in settlement

² Docket No. 96.

³ See Fed. R. Civ. P. 15(a)(2).

⁴ Docket No. 2.

⁵ Docket No. 41.

discussions with the Trustee, and William Warwick (“Warwick”)—who has settled with the Trustee.⁷

4. Thereafter, on January 21, 2015, Axis filed the present Motion to Amend, seeking leave to amend its Interpleader Complaint to reflect the Trustee Complaints and to add a request for attorney fees. It attaches a redlined version of the proposed amended complaint to the Motion to Amend, showing several non-substantive proposed amendments. Axis does not allege that its proposed amendments impact its pending Motion for Summary Judgment, its potential liability, or any other relief that it has requested in this case.

5. While the amendments are non-substantive in nature, it does not appear that Axis asked any of the parties if they would simply stipulate to the proposed amendments to the interpleader complaint. The Trustee was not contacted by Axis about this matter, and had he been contacted he, and likely the Defendants, would have consented to the relief sought.

6. The Motion to Amend is another example of Axis’s needless motion practice in this case and needless consumption of the interpleaded funds to the detriment of those with an interest in the funds.

⁶ See *Strong v. Cochran*, Case No. 14-cv-788-TC (D. Utah) (Complaint against Defendants Cochran, Austin, Davidson, Child, and Clawson); *Strong v. Green*, Case No. 14-2340 (Bankr. D. Utah); *Strong v. Grundy*, Case No. 14-2339 (Bankr. D. Utah).

⁷ The Trustee requested that the Bankruptcy Court approve the settlement agreement with Warwick pursuant to Federal Rule of Bankruptcy Procedure 9019. Certain Defendants have objected to this request, thus creating a contested matter within the bankruptcy case. This Court recently withdrew the reference of that dispute, and that matter is now ripe for consideration by the Court. See Docket No. 97.

CERTIFICATE OF SERVICE

I hereby certify that on this 4th day of February, 2015, I caused a true and correct copy of the foregoing **LIQUIDATING TRUSTEE'S RESPONSE TO AXIS' MOTION FOR LEAVE TO FILE FIRST AMENDED COMPLAINT FOR INTERPLEADER, INSTANTER** 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.

/s/ Sarah Goldberg