

Milo Steven Marsden (Utah State Bar No. 4879)

Peggy Hunt (Utah State Bar No. 6060)

Sarah Goldberg (Utah State Bar No. 13222)

DORSEY & WHITNEY LLP

136 South Main Street, Suite 1000

Salt Lake City, UT 84101-1685

Telephone: (801) 933-7360

Facsimile: (801) 933-7373

Email: hunt.peggy@dorsey.com

marsden.steve@dorsey.com

goldberg.sarah@dorsey.com

Attorneys for Plaintiff D. Ray Strong, Liquidating Trustee

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

D. RAY STRONG, as 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,

Plaintiff,

v.

KIRBY D. COCHRAN; JEFF AUSTIN;
AUSTIN CAPITAL SOLUTIONS; WILLIAM
H. DAVIDSON; DOUGLAS W. CHILD;
CHILD, VAN WAGONER & ASSOCIATES,
PLLC, fka CHILD, SULLIVAN &
ASSOCIATES, fka CHILD, VAN WAGONER
& ASSOCIATES, LLC, fka CHILD VAN
WAGONER & BRADSHAW, PLLC;
ROBERT CLAWSON; HYBRID ADVISOR
CROUP; and JOHN DOES 1-50,

Defendants.

**STATUS REPORT AND REQUEST FOR
STATUS CONFERENCE**

Case No. 2:14-cv-00788-TC

The Honorable Tena Campbell

D. Ray Strong (the “Trustee”) hereby files this *Status Report* and requests that the Court hold a joint status conference in *Strong v. Cochran*, [Case No. 14-cv-788](#) (the “Insider Case”), *Strong v. Geringer*, [Case No. 15-cv-837](#) (the “Geringer Case”), and *Geringer v. Strong*, [Case No. 16-cv-391](#) (the “Breach-of-Contract Case”) in lieu of the hearing already scheduled for January 17, 2017, at 2:00 p.m. on the Trustee’s Motion to Stay in the Breach-of-Contract Case.

STATUS REPORT

The Trustee is currently involved in three interrelated cases with the former officers and directors of the Castle Arch Real Estate Investment Company, LLC (“CAREIC”), which are all pending in this Court: the Insider Case, the Geringer Case, and the Breach-of-Contract Case.

The Trustee provides a brief summary of the status of each case:

The Insider Case

1. On October 30, 2014, the Trustee filed the Insider Case against Kirby Cochran,¹ Jeff Austin, William Davidson, Douglas Child, Robert Clawson, and their associated entities (the “Insiders”). [Insider Case, Docket No. 2](#). The individual defendants were all former officers and directors of CAREIC.

2. On January 16, 2015, Insider Case defendant Jeff Austin and his entity, Austin Capital Solutions (collectively, “Austin”), filed a *Motion to Compel Arbitration and Motion to Dismiss*, seeking to compel the Insider Case to arbitration or, in the alternative, to dismiss it. (the “Austin Motion to Compel”). [Insider Case, Docket No. 12](#).

3. On August 20, 2015, this Court entered an order granting the Austin Motion to

¹ The Trustee and Cochran entered into a settlement agreement and on June 3, 2016, the Court entered an order dismissing Cochran with prejudice. [Insider Case, Docket No. 76](#).

Compel and ordered that the Trustee arbitrate his claims against the Insiders.² [Insider Case, Docket No. 55.](#)

4. Pursuant to this order, on October 29, 2015, the Trustee filed an arbitration demand against the Insiders with the American Arbitration Association (the “AAA”), thus commencing the “Insider Arbitration.”³

5. The AAA appointed a panel of three arbitrators but delayed holding a preliminary hearing until this Court ruled on the arbitrability of the Geringer Case.

6. On November 21, 2016, the AAA suspended the Insider Arbitration due to the refusal by Austin (the party who first sought to compel arbitration) to pay the deposit required by the AAA.

7. On December 19, 2016, the AAA terminated the Insider Arbitration due to Austin’s refusal to pay the required fees.

8. The parties did not conduct any discovery in the Insider Arbitration and the parties took no substantive action.

The Geringer Case

9. Robert D. Geringer (“Geringer”) was a CAREIC insider and served as its president. Because the Trustee was in active settlement negotiations with Geringer at the time he filed the Insider Case, the Trustee did not name Geringer as a defendant in the Insider Case.

10. Instead, the Trustee and Geringer engaged in continued settlement discussions and participated in three additional mediation sessions after the Trustee filed the Insider

² The Court did not rule on the motion-to-dismiss issues. Those issues are fully briefed. *See* Insider Case, Docket Nos. [12](#), [13](#), [14](#), [21](#) & [31](#).

³ The Trustee and Douglas Child also reached a settlement agreement and on October 10, 2016, the AAA entered an order dismissing him from the Insider Arbitration.

Complaint. When it became clear that settlement negotiations were at an impasse, the Trustee filed a complaint against Geringer (and his entities Robert D. Geringer, P.C. and Fine Arts Entertainment, Inc.) on November 24, 2015. [Geringer Case, Docket No. 2](#). The complaint in the Geringer Case is nearly identical to the complaint in the Insider Case.

11. Soon after filing his complaint against Geringer, the Trustee filed a motion to compel the Geringer Case to arbitration so that he could litigate it efficiently in conjunction with the Insider Arbitration (the “[Geringer Motion to Compel](#)”). [Geringer Case, Docket Nos. 7 & 42](#); [Insider Case, Docket No. 58](#).⁴

12. The Court granted the Geringer Motion to Compel, in part, on September 15, 2016. [Geringer Case, Docket No. 60](#). The Court ordered that Geringer and the Trustee must arbitrate some of their claims and stayed the rest pending the arbitration.

13. Pursuant to the Court’s order, on October 14, 2016, the Trustee filed a motion in the Insider Arbitration seeking to add Geringer as a party to the Insider Arbitration (the “[Motion to Add](#)”).

14. Geringer filed an opposition to the Motion to Add on November 3, 2016.

15. Because of the suspension of the Insider Arbitration, the Trustee did not file a reply in support of his Motion to Add.

The Breach-of-Contract Case

16. On November 6, 2015, Geringer filed a complaint against the Trustee in the U.S. District Court for the Central District of California. [Breach-of-Contract Case, Docket No. 3](#).

⁴ On January 22, 2016, Geringer filed a *Motion to Dismiss Under Rule 12(b)(6)*, [Geringer Case, Docket No. 8](#). The Court denied this motion without prejudice on June 6, 2016. [Geringer Case, Docket No. 40](#). Geringer has never filed an answer.

Even though Geringer filed the complaint on November 6, 2015, he did not serve it on the Trustee until November 23, 2015. [Breach-of-Contract Case, Docket No. 10](#).

17. In his complaint, Geringer alleges claims for breach of contract and breach of the covenant of good faith and fair dealing relating to a “Memorandum of Understanding” (the “MOU”) that the Trustee and Geringer signed after a May 2015 mediation session. The MOU required, among other things, Bankruptcy Court approval, which was never received. Geringer also alleged three claims for declaratory relief, claiming that the Trustee is estopped from bringing claims against Geringer, that the Trustee’s claims against Geringer are time barred, and that the Trustee’s claims are barred by a purported settlement agreement.

18. On March 22, 2016, the Trustee filed a *Motion to Transfer Venue*, seeking to transfer the Breach-of-Contract Case from the Central District of California to this Court. [Breach-of-Contract Case, Docket No. 19](#). The Court granted the motion to transfer on May 9, 2016, [Breach-of-Contract Case, Docket No. 36](#), and transferred the Breach-of-Contract Case to this Court.

19. There was no activity in the Breach-of-Contract Case until October 31, 2016, when Geringer filed a *Motion for Rule 16 Pretrial Conference*, [Breach-of-Contract Case, Docket No. 46](#), seeking to schedule a pretrial conference and a trial date for the Breach-of-Contract Case.

20. In response, on November 15, 2016, the Trustee filed an *Opposition to Motion for Rule 16 Pretrial Conference*, [Breach-of-Contract Case, Docket No. 49](#), and a *Motion to Stay and Memorandum in Support* (the “Motion to Stay”), [Breach-of-Contract Case, Docket No. 47](#), seeking to stay the Breach-of-Contract Case pending the resolution of the Insider Arbitration

(which the Trustee intended would also include the claims against Geringer).

21. Geringer filed his *Opposition* to the Motion to Stay on December 8, 2016, [Breach-of-Contract Case, Docket No. 50](#). He also filed a motion to amend his complaint to remove his claims for declaratory relief. [Breach-of-Contract Case, Docket No. 51](#).

22. The Court has scheduled a hearing on the Motion to Stay for January 17, 2017 at 2:00 p.m.

REQUEST FOR STATUS CONFERENCE

In light of the fact that the Insider Arbitration has been terminated and that Geringer cannot now be added to the Insider Arbitration, the Trustee submits that the most prudent course of action is to consolidate the Insider Case, the Geringer Case, and the Breach-of-Contract Case so that they can be litigated together in this Court. The Trustee is also filing a *Motion to Consolidate and Memorandum in Support* that asks the Court to: (1) lift the stay in the Insider Case due to the termination of the Insider Arbitration; (2) withdraw the order compelling arbitration of certain of the Trustee's claims against Geringer; (3) consolidate the Insider Case, the Geringer Case, and the Breach-of-Contract Case, and (4) enter a scheduling order for the consolidated actions that will allow them to be tried by the end of 2017.

In light of these requests, the Trustee hereby withdraws its Motion to Stay and requests that in lieu of the hearing on the Motion to Stay scheduled for January 17, 2017, the Court hold a status conference at that time to discuss the scheduling of these three cases. To aid in this discussion, the Trustee has attached as [Exhibit A](#) a draft proposed scheduling order that will permit the parties to resolve these three cases by the end of 2017.

DATED this 22nd day of December, 2016.

DORSEY & WHITNEY LLP

/s/ Milo Steven Marsden

Milo Steven Marsden

Peggy Hunt

Sarah Goldberg

Attorneys for D. Ray Strong, Liquidating Trustee

CERTIFICATE OF SERVICE

I hereby certify that on this 22nd day of December, 2016, I caused a true and correct copy of the foregoing **STATUS REPORT AND REQUEST FOR STATUS CONFERENCE** 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/ Leslie DeBry

Exhibit A

Milo Steven Marsden (Utah State Bar No. 4879)

Peggy Hunt (Utah State Bar No. 6060)

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Facsimile: (801) 933-7373

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CHILD, VAN WAGONER & ASSOCIATES,
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& ASSOCIATES, LLC, fka CHILD VAN
WAGONER & BRADSHAW, PLLC;
ROBERT CLAWSON; HYBRID ADVISOR
CROUP; and JOHN DOES 1-50,

Defendants.

PROPOSED SCHEDULING ORDER

Case No. 2:14-cv-00788-TC

The Honorable Tena Campbell

The following matters are scheduled. The times and deadlines set forth herein may not be modified without the approval of the Court and on a showing of good cause pursuant to Fed. R. Civ. P. 6.

1.	PRELIMINARY MATTERS	DATE
	Nature of claims and any affirmative defenses:	
a.	Was Rule 26(f)(1) Conference held?	no
b.	Have the parties submitted the Attorney Planning Meeting Form?	no
c.	Deadline for 26(a)(1) initial disclosure?	<u>2/15/2017</u>
2.	DISCOVERY LIMITATIONS	NUMBER
a.	Maximum Number of Depositions by Plaintiff(s)	<u>40</u>
b.	Maximum Number of Depositions by Defendant(s)	<u>40</u>
c.	Maximum Number of Hours for Each Deposition (unless extended by agreement of parties)	<u>7</u>
d.	Maximum Interrogatories by any Party to any Party	<u>25</u>
e.	Maximum requests for admissions by any Party to any Party	<u>25</u>
f.	Maximum requests for production by any Party to any Party	<u>25</u>
g.	The Parties shall handle discovery of electronically stored information consistent with Fed. R. Civ. P. 34(b)(2)(E)	
h.	The parties shall handle a claim of privilege or protection as trial preparation material asserted after production as follows: Pursuant to Fed. R. Evid. 502, the inadvertent disclosure or production of any information or documents that is subject to an objection on the basis of attorney-client privilege or work-product protection, will not be deemed to waive a party's claim to its privileged or protected nature or estop that party or the privilege holder from designating the information or document as attorney-client privileged or subject to the work product doctrine at a later date. Any party receiving such information or document shall return it upon request from the producing party. Upon receiving such a request as	

to specific information or documents, the receiving party shall return the information or documents to the producing party within five (5) business days, regardless of whether the receiving party agrees with the claim of privilege and/or work-product protection. Disclosure of the information or document by the other party prior to such later designation shall not be deemed a violation of this agreement or any Court Order incorporating this agreement.

- | | | |
|-----------|--|------------------|
| i. | Last day to serve written discovery: | 4/14/2017 |
| j. | Close of fact discovery: | 5/15/2017 |
| k. | (<i>optional</i>) Final date for supplementation of disclosures and discovery under Rule 26 (e): | 5/15/2017 |
| 3. | AMENDMENT OF PLEADINGS/ADDING PARTIES¹ | DATE |
| a. | Last Day to File Motion to Amend Pleadings | <u>3/15/2017</u> |
| b. | Last Day to File Motion to Add Parties | <u>3/15/2017</u> |
| 4. | RULE 26(a)(2) REPORTS FROM EXPERTS | DATE |
| a. | Parties bearing burden of proof | <u>6/1/2017</u> |
| b. | Counter reports | <u>6/15/2017</u> |
| 5. | OTHER DEADLINES | DATE |
| a. | Last day for Expert discovery | <u>6/30/2017</u> |
| b. | Deadline for filing dispositive or potentially dispositive motions | <u>7/15/2017</u> |
| c. | Deadline for filing partial or complete motions to exclude expert testimony | <u>7/15/2017</u> |
| 6. | SETTLEMENT/ALTERNATIVE DISPUTE RESOLUTION | DATE |
| a. | Referral to Court-Annexed Mediation: | <u>No</u> |
| b. | Referral to Court-Annexed Arbitration | <u>No</u> |

¹ Counsel must still comply with the requirements of Fed. R. Civ. P. 15(a).

- c. The parties will complete Private Mediation/Arbitration by: 8/15/2017
 - d. Evaluate case for Settlement/ADR on 10/1/2017
 - e. Settlement probability: Fair
- Specify # of days for Bench or Jury trial as appropriate.
The court will complete the shaded areas.*

7.	TRIAL AND PREPARATION FOR TRIAL	TIME	DATE
a.	Rule 26(a)(3) Pretrial Disclosures ²		
	Plaintiff		<u>00/00/00</u>
	Defendant		<u>00/00/00</u>
b.	Objections to Rule 26(a)(3) Disclosures (if different than 14 days provided in Rule)		<u>00/00/00</u>
c.	Special Attorney Conference ³ on or before		<u>00/00/00</u>
d.	Settlement Conference ⁴ on or before		<u>00/00/00</u>
e.	Final Pretrial Conference	__:___.m.	<u>00/00/00</u>
f.	Trial	<u>Length</u>	
	i. Bench Trial	<u># days</u>	__:___.m. <u>00/00/00</u>
	ii. Jury Trial	<u>15 days</u>	__:___.m. <u>00/00/00</u>

² The Parties must disclose and exchange any demonstrative exhibits or animations with the 26(a)(3) disclosures.

³ The Special Attorneys Conference does not involve the Court. Counsel will agree on voir dire questions, jury instructions, a pre-trial order and discuss the presentation of the case. The parties should schedule witnesses to avoid gaps and disruptions. The parties should mark exhibits in a way that does not result in duplication of documents. The pre-trial order should include any special equipment or courtroom arrangement requirements.

⁴ The Settlement Conference does not involve the Court unless the Court enters a separate order. Counsel must ensure that a person or representative with full settlement authority or otherwise authorized to make decisions regarding settlement is available in person or by telephone during the Settlement Conference.

8. OTHER MATTERS

Parties should file all Motions in Limine well in advance of the Final Pre Trial.

Signed December 22, 2016.

BY THE COURT:
