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Attorneys for Robert D. Geringer

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

AXIS SURPLUS INSURANCE COMPANY,

Plaintiff,

vs.

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.

**EX PARTE MOTION TO CONTINUE
EVIDENTIARY HEARING WITHOUT
DATE**

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

Judge Dale A. Kimball

Robert D. Geringer (“Geringer”), through his undersigned counsel, requests this Court to continue without date the evidentiary hearing (the “Hearing”) scheduled in this matter for March 17, 2015, and in support of this motion respectfully states as follows:

1. On March 1, 2015, Kirby Cochran (“Cochran”) filed a voluntary Chapter 7 bankruptcy petition.

2. Before his bankruptcy filing, Cochran filed an objection to the Trustee's proposed settlement with William Warwick, and that objection has not been withdrawn.

3. As a result of his bankruptcy filing, this proceeding is stayed as to Cochran. See TW Telecom Holdings Inc. v. Carolina Internet Ltd., 661 F.3d 495 (10th Cir. 2011). This matter was originally brought against Cochran, and therefore it is a proceeding against the Debtor and is subject to the bankruptcy automatic stay. Id. at 497; see also 11 U.S.C. § 362(a)(1).

4. Geringer does not believe that Cochran's bankruptcy trustee has any notice of these proceedings, which could affect the rights of Cochran's bankruptcy estate to the insurance policy and proceeds that underlies this dispute.

5. In addition, Geringer does not believe that any party has obtained relief from the automatic stay in Cochran's bankruptcy case. It is black-letter law that any action taken in violation of the automatic stay is void.

6. Geringer concedes that he does not have standing to enforce the automatic stay arising from Cochran's bankruptcy case. The stay in Cochran's case does not prevent any action against Geringer or the other co-defendants in this case.

7. Nevertheless, as a matter of judicial efficiency, and the parties' efficiency, it makes no sense to have two hearings on the proposed settlement with William Warwick. Cochran has pending objections to the proposed settlement with William Warwick that cannot be adjudicated at the Hearing. This means that some subsequent hearing would be needed to resolve Cochran's objections.

8. Moreover, the Court's primary options in this matter are either to approve, or to disapprove, the settlement. A single settlement cannot be both approved and

disapproved (or vice versa). Therefore it does not appear to Geringer that a final determination can be made concerning the settlement until Cochran's bankruptcy estate becomes a party to this matter and becomes bound by the result. This will not happen unless and until relief from stay is granted in Cochran's bankruptcy case and notice is provided to Cochran's bankruptcy trustee.

9. As a result, Geringer respectfully submits that the Hearing should be continued, unless and until relief from the automatic stay is granted in Cochran's bankruptcy case, and appropriate notice and an opportunity to respond is provided to Cochran's bankruptcy trustee. Otherwise, it appears certain that the Court and the parties will be required to conduct two separate evidentiary hearings before a determination can be made whether the proposed settlement with William Warwick should be approved or disapproved.

10. Geringer has consulted with the Trustee's counsel before filing this Motion, and enquired whether the Trustee would agree to jointly request the Court to continue the Hearing. The Trustee declined to join in this request, and Geringer understands that the Trustee wishes to go forward with the Hearing as scheduled.

WHEREFORE, Geringer respectfully requests that the Hearing be continued without date.

Dated: March 9, 2015

COHNE KINGHORN HARRIS, P.C.

/s/ George Hofmann

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-and-

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