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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
J. WARWICK; WILLIAM GRUNDY;
and KEITH GREEN,

Defendants.

**ANSWER TO AMENDED
COMPLAINT FOR INTERPLEADER**

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

Judge Dale A. Kimball
Magistrate Judge Brooke C. Wells

Defendant Robert D. Geringer (“Geringer”) hereby answers AXIS Surplus Insurance Company’s (“AXIS”) Complaint for Interpleader (the “Complaint”). Geringer denies each and every allegation of the Complaint, except as specifically stated herein, and further denies that AXIS is entitled to the relief requested in the Complaint. The numbered paragraphs below respond to the corresponding paragraph numbers in the Complaint.

1. The paragraph is an introductory statement which does not allege facts. No response is necessary. Geringer denies any characterization of fact or legal conclusion stated therein.

JURISDICTION AND VENUE

2. Geringer admits that AXIS has in its custody property in excess of \$500. Geringer lacks sufficient information to form a belief as to the truth of the allegation regarding whether more than two adverse claimants of diverse citizenship are claiming or will imminently claim to be entitled to property in AXIS’s custody. This paragraph otherwise states a legal conclusion for which no response is necessary.

3. Geringer admits that AXIS has deposited \$589,661.61 into the registry of this Court. Geringer denies that \$589,661.61 represents or should represent the remaining portion of the proceeds from AXIS Private Equity and Venture Capital Fund Liability Policy Number EAN756858/01/2010 (the “AXIS Policy”).¹

¹ Geringer understands that the Chapter 11 Trustee of Castle Arch Real Estate Investment Company, LLC, and its subsidiaries and affiliates is currently investigating the facts and circumstances surrounding certain renewals of the AXIS Policy that purportedly reduced the policy limit from \$5 million to \$1 million and eliminated coverage for CAREIC. Geringer understands that the Trustee may uncover evidence that those renewals and the commensurate reduction in available coverage were either invalid, inappropriate, or otherwise actionable. In light of that investigation, evidence the Trustee has already uncovered, and the evidence he may uncover in the future, Geringer: (a) affirmatively denies that the AXIS Policy’s aggregate limit is \$1 million; and (b) hereby provides notice of, and reserves the right to assert in the future (either by amending this Answer or otherwise), (i) affirmative defenses, including but not limited to, waiver, estoppel, consent, breach of insurance contract, breach of the implied covenant of good faith and fair dealing, the reasonable expectation doctrine, contra proferentem, ambiguity,

4. This paragraph states a legal conclusion for which no response is necessary.

PARTIES

5. Geringer lacks sufficient information to form a belief as to the truth of the allegation regarding AXIS's domicile and business transactions.

6. Geringer is informed and believes and on that basis admits the allegation that the AXIS Policy covers the directors, officers and employees of Castle Arch Real Estate Investment Company, LLC ("CAREIC") and related companies for the policy period of December 20, 2010 to January 20, 2013. Geringer further admits, based on information and belief, that the nine co-defendants were directors, officers and/or employees of CAREIC. Whether each defendant qualifies as an insured person under the AXIS Policy is a legal conclusion for which no response is necessary.

7. Geringer admits the allegations of this paragraph. Geringer further admits he served as President and a member of CAREIC's Board of Directors until his resignation on July 15, 2009.

8. Geringer admits co-defendant Kirby D. Cochran served as CEO and Chairman of the Board of Directors of CAREIC prior to this Complaint, but lacks sufficient information to form a belief as to the truth of the allegation regarding co-defendant's citizenship and length of service for CAREIC.

9. Geringer admits co-defendant Robert Clawson served as Managing Director of Business Development for CAREIC, but lacks sufficient information to form a belief as to the truth of the allegation regarding co-defendant's citizenship.

detrimental reliance, fraud, deceit, misrepresentation, lack of acceptance, and lack of cooperation, (ii) affirmative counterclaims against AXIS and/or some or all of Geringer's co-defendants, and (iii) related claims against third parties in connection with those policy renewals and reduction in available coverage.

10. Geringer admits co-defendant Jeff Austin served as Senior Vice President of Business Development and as a member of CAREIC's Board of Directors, but lacks sufficient information to form a belief as to the truth of the allegation regarding co-defendant's citizenship or length of service for CAREIC.

11. Geringer admits co-defendant Douglas W. Child served as CFO and as a member of CAREIC's Board of Directors, but lacks sufficient information to form a belief as to the truth of the allegation regarding co-defendant's citizenship.

12. Geringer admits co-defendant William H. Davidson served as Chairman and as a member of CAREIC's Board of Directors, but lacks sufficient information to form a belief as to the truth of the allegation regarding co-defendant's citizenship and length of service for CAREIC.

13. Geringer admits co-defendant William J. Warwick served as a member of CAREIC's Board of Directors, but lacks sufficient information to form a belief as to the truth of the allegation regarding co-defendant's citizenship.

14. Geringer admits co-defendant William Grundy served as Regional Vice President of Business Development for the East Region of CAREIC, but lacks sufficient information to form a belief as to the truth of the allegation regarding co-defendant's citizenship.

15. Geringer admits co-defendant Keith Green served as Regional Vice President of Business Development for the West Region of CAREIC, but lacks sufficient information to form a belief as to the truth of the allegation regarding co-defendant's citizenship.

16. This paragraph does not contain an allegation that requires an affirmative response.

THE AXIS POLICY

17. Geringer admits that Exhibit 1 appears to be a true copy of the AXIS Policy, as amended and extended. With respect to the remaining allegations of this paragraph, Geringer refers to the AXIS Policy for a full and accurate rendition of its contents, which speak for themselves, and otherwise denies the remaining allegations of this paragraph.

18. With respect to the allegation that CAREIC is “bankrupt,” Geringer admits that CAREIC was a debtor in a case commenced under Title 11 of the U.S. Code, pending before the United States Bankruptcy Court for the District of Utah. With respect to the allegation that “the Insureds are not being indemnified,” Geringer lacks sufficient information to form a belief as to whether this allegation is true. With respect to the remaining allegations of this paragraph, Geringer refers to the AXIS Policy, which speaks for itself.

19. AXIS’s characterization of the AXIS Policy’s definition of “Defense Costs” and the effect of AXIS’s Defense Costs payments states a legal conclusion for which no response is necessary.² The AXIS Policy speaks for itself.

BACKGROUND

20. Geringer admits the allegations of this paragraph.

21. Geringer admits the allegations of this paragraph.

22. Geringer admits that on or about January 18, 2013, the Trustee sent a letter to Geringer regarding pre-petition conduct. That letter speaks for itself and is the best evidence of what it says. Geringer lacks sufficient information to form a belief as to the remaining allegations contained in this paragraph.

² The capitalized term “Defense Cost(s)” used in the Complaint and Answer indicates that the AXIS Policy defines the term differently from its plain and ordinary meaning.

23. Geringer admits that on or about October 12, 2013, he received a document purporting to be a draft complaint (the “Draft Complaint”) containing various allegations against the co-defendants, including Geringer. The Draft Complaint speaks for itself and is the best evidence of the Trustee’s allegations in such complaint.

24. Geringer admits that the Draft Complaint contains various potential causes of action against the co-defendants. The Draft Complaint speaks for itself and is the best evidence of what it says.

25. Geringer admits that the Draft Complaint includes a description of potential damages. The Draft Complaint speaks for itself and is the best evidence of what it says. Geringer denies that the Trustee is entitled to damages. Geringer denies the remaining allegations of this paragraph.

26. Geringer admits he executed tolling agreements with the Trustee. The tolling agreements speak for themselves and are the best evidence of what they say. Geringer lacks sufficient information to form a belief as to the truth of the allegation regarding tolling agreements executed between the Trustee and other co-defendants.

27. Geringer lacks sufficient information to form a belief as to the truth of the allegation regarding the Trustee’s statements to AXIS with respect to potential damages.

28. Geringer lacks sufficient information to form a belief as to the truth of the allegations regarding the Trustee’s complaint against other co-defendants.

29. Geringer lacks sufficient information to form a belief as to the truth of the allegations regarding the Trustee’s complaint against co-defendant William Grundy.

30. Geringer lacks sufficient information to form a belief as to the truth of the allegations regarding the Trustee’s complaint against co-defendant Keith Green.

31. Geringer is informed and believes and on that basis admits that the Trustee has not filed a lawsuit against Geringer. Geringer lacks sufficient information to form a belief as to the truth of the allegations regarding the Trustee's agreements with co-defendant William J. Warwick.

THERE ARE COMPETING CLAIMS

32. Geringer admits he is seeking defense and indemnity coverage under the AXIS Policy for responding to the Trustee's claims and is informed and believes and on that basis admits the allegation that the other co-defendants seek coverage from AXIS.

33. Geringer admits that on January 9, 2014, the Bankruptcy Court entered an order regarding the advancement of "Defense Costs" under the AXIS Policy. That order speaks for itself and is the best evidence of what it says.

34. Geringer is informed and believes and on that basis admits that AXIS advised the co-defendants on several occasions that AXIS would treat them equally under the AXIS Policy.

35. Geringer admits that representatives of AXIS attended a mediation session with the other co-defendants on February 21, 2014, which did not result in settlement. Geringer lacks sufficient information to form a belief as to the truth of the allegations regarding why AXIS attended the mediation. Geringer denies the remaining allegations in this paragraph.

36. Geringer admits that AXIS paid "Defense Costs" to the co-defendants' respective law firms and the mediator, but lacks sufficient information to form a belief as to the truth of the allegations regarding the accuracy of the amounts paid by AXIS or the remaining policy proceeds.

37. Geringer denies the allegations of this paragraph on the basis that the amount of remaining policy proceeds has not been established.

38. Geringer lacks sufficient information to form a belief as to the truth of the allegations regarding settlement demands from the Trustee sent to other co-defendants.

39. Geringer is informed and believes and on that basis admits that on or about March 21, 2014, Geringer received a letter from AXIS regarding the remaining policy proceeds. The letter speaks for itself and is the best evidence of what it says. Geringer lacks sufficient information to form a belief as to the truth of the remaining allegations in this paragraph.

40. Geringer admits the allegations of this paragraph.

COUNT I - INTERPLEADER

41. Geringer realleges and incorporates by reference all of his responses to the preceding paragraphs in their entirety.

42. Geringer lacks sufficient information to form a belief as to the truth of the allegations regarding AXIS's efforts to extricate all co-defendants from the Trustee's claims. Whether or not AXIS honored its defense and indemnity obligation to each co-defendant under the AXIS Policy states a legal conclusion for which no response is necessary.

43. Geringer lacks sufficient information to form a belief as to the truth of the allegations regarding the Trustee's settlement offers to other co-defendants and the amounts of those offers.

44. Geringer admits the allegations of this paragraph.

45. Geringer lacks sufficient information to form a belief as to the truth of the allegations regarding each co-defendant's claim to the remaining policy proceeds. Geringer admits that he is entitled to proceeds from the AXIS Policy as a person insured thereunder.

46. AXIS's contention that there are "competing demands" from co-defendants regarding the remaining policy proceeds is a legal conclusion for which no response is necessary.

47. Geringer denies the allegations in this paragraph. *See* fn. 1.

48. Geringer is informed and believes and on that basis admits that AXIS will pay the remaining policy proceeds to Geringer and/or the other co-defendants in responding to the Trustee's claims.

49. Geringer denies the allegations in this paragraph.

- a) Geringer denies the allegations in this paragraph.
- b) Geringer denies the allegations in this paragraph.
- c) Geringer denies the allegations in this paragraph.
- d) Geringer denies the allegations in this paragraph.
- e) Geringer denies the allegations in this paragraph.

AFFIRMATIVE DEFENSES

FIRST AFFIRMATIVE DEFENSE

(Failure to State a Cause of Action)

50. The Complaint and Count I fail to state a claim upon which relief can be granted against Geringer.

SECOND AFFIRMATIVE DEFENSE

(Unclean Hands)

51. AXIS is barred from maintaining its Complaint as a result of its unclean hands with respect to certain events upon which the Complaint are allegedly based.

THIRD AFFIRMATIVE DEFENSE

(No Attorneys' Fees)

52. AXIS is not entitled to attorneys' fees. AXIS had a duty under the terms and conditions of the AXIS Policy to cover Geringer's defense costs and losses in response to the Trustee's underlying claims. Instead of doing so, AXIS filed this interpleader action and seeks a

determination from the Court. AXIS is not entitled to shift the cost of making that determination onto Geringer and the other co-defendants by seeking attorneys' fees in this action.

FOURTH AFFIRMATIVE DEFENSE

(Unknown Defenses)

53. Geringer may have additional affirmative defenses available to him which he is not yet fully aware. Geringer reserves his right to assert additional affirmative defenses and/or counterclaims and to amend his answer after such defenses shall have been ascertained or new facts are discovered. Geringer specifically reserves and reiterates his right to amend this Answer to address issues, claims, and defenses discussed in footnote 1 hereto.

Dated: June 11, 2015

COHNE KINGHORN
A Professional Corporation

/s/ Kimberley L. Hansen

George Hofmann
Kimberley L. Hansen

-and-

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JONES DAY

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