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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**

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AXIS SURPLUS INSURANCE COMPANY,

Plaintiff,

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.

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

STIPULATION TO WITHDRAW THE  
OPPOSITIONS TO AXIS' MOTION TO  
SUPPLEMENT THE RECORD AND  
MOTION FOR SUMMARY JUDGMENT,  
AND THE RULE 56(D) REQUESTS FOR  
DISCOVERY

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D. Ray Strong, Liquidating Trustee (the “Trustee”), Robert D. Geringer (“Geringer”), and AXIS Surplus Insurance Company (“AXIS”), through their undersigned counsel, submit this joint stipulation whereby the Trustee and Geringer stipulate to withdraw their oppositions to AXIS’ Motion for Summary Judgment, such that AXIS’ Motion is now unopposed, and AXIS stipulates to withdraw its claim for attorneys’ fees from the interpleaded fund. In support thereof, the Trustee, Geringer, and AXIS state as follows:

1. AXIS filed the instant action for interpleader pursuant to 28 U.S.C. § 1335 (the “Interpleader”) on April 2, 2014 in order to resolve competing claims by the individual Defendants, who are former directors and officers of the bankrupt Castle Arch Real Estate Investment Company, LLC (“CAREIC”) and Insureds under an insurance policy issued by AXIS (the “Policy”), to the proceeds of the Policy in order to defend and settle claims asserted against them by the Trustee for damages in excess of \$73 million.<sup>1</sup>

2. AXIS previously paid \$410,338.39 in defense costs on behalf of the individual Defendants in defense of the Trustee’s claims with the written consent of all of the individual Defendants. On May 2, 2014, pursuant to an order of the Court, AXIS deposited the \$589,661.61 in remaining policy proceeds at the time (the “Policy Proceeds”) into the Court’s Registry to abide by the judgment of the Court as to how the Policy Proceeds should be distributed among the Defendants.<sup>2</sup> Since depositing the Policy Proceeds into the Court’s Registry, the Court ordered that \$14,326.34 be distributed from the interpleaded fund to pay James T. Burghardt of Moye White LLP who mediated the Trustee’s claims prior to the interpleader being filed.<sup>3</sup>

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

<sup>2</sup> Dkt. No. 26.

<sup>3</sup> Dkt. No. 117.

3. Currently pending before this Court is AXIS' Motion for Summary Judgment,<sup>4</sup> which asks the Court to: (a) determine that AXIS properly filed the interpleader pursuant to 28 U.S.C. § 1335; (b) discharge AXIS from further liability under the Policy; and (3) dismiss AXIS from the interpleader. AXIS also seeks to recover its attorneys' fees from the interpleaded fund.<sup>5</sup>

4. The Trustee has opposed AXIS' Motion for Summary Judgment.<sup>6</sup> Among other reasons, the Trustee has disputed that the Policy contains a \$1 million limit of liability on the basis that there is a question of fact as to whether the Policy's limit of liability could be \$5 million. In conjunction with this opposition, the Trustee filed a Rule 56(d) motion seeking discovery.<sup>7</sup>

5. Defendant Robert Geringer has also opposed AXIS' Motion for Summary Judgment and has adopted the arguments raised by the Trustee in his opposition brief and the Rule 56(d) motion.<sup>8</sup>

6. Aside from the Trustee and Geringer, no other parties have opposed AXIS' Motion for Summary Judgment.<sup>9</sup>

7. A hearing on AXIS' Motion for Summary Judgment is scheduled on September 9, 2015.<sup>10</sup>

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<sup>4</sup> Dkt. No. 41.

<sup>5</sup> Dkt. No. 115.

<sup>6</sup> Dkt. No. 60.

<sup>7</sup> Dkt. No. 63.

<sup>8</sup> Dkt. Nos. 64 and 65.

<sup>9</sup> Defendant William Warwick previously joined the Trustee's opposition to AXIS' Motion for Summary Judgment and the Trustee's Rule 56(d) Motion for Discovery. *See* Dkt Nos. 66 and 67. Since then, the Court approved the Trustee's settlement with Warwick and granted the Trustee's motion to intervene in this case pursuant to an assignment of Warwick's rights, such that the Trustee now stands in Warwick's shoes. *See* Dkt. No. 129.

<sup>10</sup> Dkt. No. 129.

8. Also pending before this Court is AXIS' Motion to Supplement the Record on its Summary Judgment Motion and its Opposition to the Trustee's Rule 56(d) Motion.<sup>11</sup> The Trustee has opposed AXIS' Motion.<sup>12</sup>

9. Counsel for AXIS, the Trustee, and Geringer have since conferred and hereby stipulate and agree as follows:

- (a) the Trustee and Geringer agree to withdraw their oppositions to AXIS' Motion for Summary Judgment (Dkt. Nos. 60 and 64);
- (b) the Trustee and Geringer agree to withdraw their Rule 56(d) Motion for Discovery (Dkt. Nos. 63 and 65);
- (c) the Trustee agrees to withdraw his opposition to AXIS' Motion to Supplement the Record (Dkt. No. 128); and
- (d) AXIS' agrees to withdraw its claim for attorneys' fees from the interpleaded fund (Dkt. No.115, ¶ 49(d)).

RESPECTFULLY SUBMITTED this 31st day of August, 2015.

BATESCAREY LLP

/s/ Michael T. Skoglund

Ommid C. Farashahi  
Jason P. Minkin  
Michael T. Skoglund  
Brian J. Watson

*Attorneys for AXIS Surplus Insurance  
Company*

DORSEY & WHITNEY LLP

/s/ Milo Steven Marsden

*Signed by Brian J. Watson with permission*  
Milo Steven Marsden  
Peggy Hunt  
Nathan Seim  
Sarah Goldberg

*Attorneys for D. Ray Strong, Liquidating  
Trustee*

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<sup>11</sup> Dkt. No. 125.

<sup>12</sup> Dkt. No. 128.

COHNE KINGHORN, P.C.

/s/ George B. Hofmann  
*Signed by Brian J. Watson with permission*  
George B. Hofmann  
Kimberley L. Hansen

-and-

Richard L. Wynne  
Craig M. Hirsch  
JONES DAY LLP  
555 South Flower Street, 50th Floor  
Los Angeles, California 90071

*Attorneys for Robert D. Geringer*

**CERTIFICATE OF SERVICE**

I hereby certify that on August 31, 2015 the foregoing **STIPULATION TO WITHDRAW THE TRUSTEE'S OPPOSITION TO AXIS' MOTION FOR SUMMARY JUDGMENT** was filed with the United States District Court for the District of Utah via 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/ Brian J. Watson  
Brian J. Watson