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Attorneys for Plaintiff, AXIS Surplus Insurance Company

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF UTAH**

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

AXIS' MOTION FOR AN ORDER
GRANTING ITS NOW UNOPPOSED
MOTIONS FOR SUMMARY JUDGMENT
AND TO SUPPLEMENT THE
RECORD, AND TO STRIKE THE
SEPTEMBER 9, 2015 HEARING DATE

AXIS Surplus Insurance Company (“AXIS”), through its undersigned counsel, hereby moves the Court to grant its now unopposed Motions for Summary Judgment and Supplement the Record, and to strike the September 9, 2015 hearing date. In support thereof, AXIS states 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.¹

2. Currently pending before this Court is AXIS’ Motion for Summary Judgment,² 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.³

3. D. Ray Strong (the “Trustee”) and Robert Geringer opposed AXIS’ Motion for Summary Judgment.⁴ In conjunction with their opposition, the Trustee filed a Rule 56(d) Motion for Discovery and Geringer filed an affidavit requesting discovery pursuant to F.R.C.P. Rule 56(d).⁵

¹ Dkt. No. 1.

² Dkt. No. 41.

³ Dkt. No. 115, ¶ 49(d).

⁴ Dkt. Nos. 60 and 64.

⁵ Dkt. Nos. 63 and 65.

4. Aside from the Trustee and Geringer, no other parties have opposed AXIS' Motion for Summary Judgment.⁶

5. A hearing on AXIS' Motion for Summary Judgment is scheduled on September 9, 2015.⁷

6. By Stipulation dated August 31, 2015:⁸

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

7. Because AXIS' Motion for Summary Judgment and Motion to Supplement the Record are now unopposed, and the Trustee's Rule 56(d) Motion for Discovery has been withdrawn, there is no need for the September 9, 2015 hearing, and the Court should grant AXIS' Motion for Summary Judgment and Motion to Supplement the Record, and the relief requested therein. A proposed Order is attached hereto.

⁶ 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.

⁷ Dkt. No. 129.

⁸ Dkt. No. 133.

WHEREFORE, for the foregoing reasons, AXIS requests that this Court strike the September 9, 2015 hearing date and enter the proposed Order granting AXIS' Motion to Supplement the Record and Motion for Summary Judgment, including the relief requested therein.

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

CERTIFICATE OF SERVICE

I hereby certify that on August 31, 2015 AXIS' MOTION FOR AN ORDER GRANTING ITS NOW UNOPPOSED MOTIONS FOR SUMMARY JUDGMENT AND TO SUPPLEMENT THE RECORD, AND TO STRIKE THE SEPTEMBER 9, 2015 HEARING DATE 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

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Attorneys for Plaintiff, AXIS Surplus Insurance Company

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF UTAH**

AXIS SURPLUS INSURANCE COMPANY,

Plaintiff,

ROBERT D. GERINGER; KIRBY D.
COCHRAN; ROBERT CLAWSON;
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WILLIAM H. DAVIDSON; WILLIAM J.
WARWICK; WILLIAM GRUNDY; and
KEITH GREEN,

Defendants.

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

**PROPOSED ORDER GRANTING
AXIS' MOTION FOR AN ORDER
GRANTING ITS NOW UNOPPOSED
MOTIONS FOR SUMMARY
JUDGMENT AND TO SUPPLEMENT
THE RECORD, AND TO STRIKE THE
SEPTEMBER 9, 2015 HEARING DATE**

This matter having come before the Court on AXIS Surplus Insurance Company's ("AXIS") Motion for an Order granting its now unopposed Motions for Summary Judgment and to Supplement the Record, and to Strike the September 9, 2015 Hearing Date (the "Motion"), with due notice having been given, and the Court having considered the Motion, any opposition thereto, and the entire record, it is hereby:

1. **ORDERED** that AXIS' Motion is **GRANTED**;
2. **ORDERED** that the September 9, 2015 Hearing Date is **STRICKEN**;
3. **ORDERED** that AXIS' Motion to Supplement the Record is **GRANTED**;
4. **ORDERED** that AXIS' Motion for Summary Judgment is **GRANTED**;
5. **ORDERED** that AXIS is hereby **DISMISSED** from this action for interpleader;
6. **ORDERED** that AXIS, having deposited the full \$589,661.61 in remaining policy proceeds (the "Policy Proceeds") under Policy No. EAN756858/01/2010 (the "Policy") into the registry of the Court, is hereby discharged and released from any further liability with respect to the Policy Proceeds, the Policy, AXIS' obligations to any Insured or claimant with respect to the Policy or the Policy Proceeds (pursuant to contract, statute, common law, or otherwise), and the underlying claims brought by the post-confirmation estate representative of Castle Arch Real Estate Investment Company, LLC and its affiliates (the "Trustee") against the Defendants (the "Underlying Claim"); and
7. **ORDERED** that, pursuant to 28 U.S.C. § 2361, the Defendants, the Trustee, and all other Insureds or claimants to the Policy and/or the Policy Proceeds are permanently enjoined from instituting or prosecuting any action or proceeding against AXIS with respect to the Policy Proceeds, the Policy, AXIS' obligations to

any Insured or claimant with respect to the Policy or the Policy Proceeds (pursuant to contract, statute, common law, or otherwise), and the Underlying Claim.

Dated _____, 2015

The Honorable Dale A. Kimball
United States District Court Judge