

Mark T. Hiraide (*Admitted Pro Hac Vice*)
PETILLON HIRAIDE LLP
21515 Hawthorne Blvd., Ste. 1260
Torrance, CA 90503
Telephone: (310) 543-0500
Fax: (310) 543-0550
E-mail: mhiraide@hiraidelaw.com

*Attorneys for Defendant
William H. Davidson*

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

<p>AXIS SURPLUS INSURANCE COMPANY, Plaintiff, v. 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.</p>	<p>DEFENDANT WILLIAM H. DAVIDSON'S MOTION FOR SUMMARY JUDGMENT AND FOR PER CAPITAL DISTRIBUTION OF INTERPLEADED FUNDS AND CROSS-MOTION FOR SUMMARY JUDGMENT TO DENY THE TRUSTEE ANY DISTRIBUTION FROM THE INTERPLEADED FUNDS Case No. 2:14CV-0244DAK</p>
--	---

Pursuant to Federal Rule of Civil Procedure 56, Defendant William H. Davidson, by and through his undersigned counsel, hereby moves for Summary Judgment for per capita distribution of the interpleaded funds and for summary judgment to deny the Trustee any distribution from the interpleaded funds. Defendant Davidson further moves that any interpleaded funds owing to AXIS Surplus Insurance Company for expenses relating to this case be paid from the distributions made to Defendants Robert Geringer and William Warwick.

I. PRELIMINARY STATEMENT

At issue in this interpleader proceeding are the proceeds of the policy by Axis Surplus Insurance Company (“Axis”), Policy No. EAN756858/2010 (the “Policy”). Defendant William H. Davidson was a director of Castle Arch Real Estate Investment Company, LLC (“CAREIC”). Amended Complaint for Interpleader, ¶12 (Dkt. 115); Answer of Jeff Austin, William Grundy, and Keith Green to Amended Complaint for Interpleader, ¶12 (Dkt 118); Robert D. Geringer Answer to Amended Complaint for Interpleader, ¶12 (Dkt. 119); Douglas W. Child Answer to Amended Complaint for Interpleader, ¶12 (Dkt. 120).

The Trustee’s numerous claims against the named officers and directors of CAREIC in this lawsuit exceed \$50 million. Declaration of D. Ray Strong in Support of Joint Motion for Summary Judgment and for Distribution of Interpleader Funds, Appendix to Trustee’s Motion for Summary Judgment and Distribution of Interpleaded Funds, Exhibit 1, ¶5. (Dkt. 38).

The Policy contains a maximum aggregate limit of liability of \$1 million and provides coverage to the directors, officers, and employees of CAREIC. (Policy at Endorsement 17 ¶2). Under the Policy, defense costs are part of, and not in addition to, the Limit of Liability; payment of defense costs reduces and may totally exhaust the limit of liability. Amended Complaint for Interpleader, ¶ 19.

In view of the Trustee’s claims and the nature of this case, it is not disputed that the defense costs in this case will exhaust the Policy’s liability limit. The only question presented by the instant motion is where there are multiple claimants under the Policy and claims that far exceed the proceeds available under the Policy, how should the Court exercise its equitable powers to distribute the proceeds.

II. STATEMENT OF ELEMENTS AND UNDISPUTED MATERIAL FACTS AND ARGUMENT

Defendant Davidson incorporates by reference the statement of elements and undisputed material facts and arguments and reasons set forth in:

(i) the Joint Motion for Summary Judgment and for Per Capita Distribution of Interpleaded Funds Filed By Defendants Kirby D. Cochran, Douglas Child, Jeff Austin, William Grundy and Keith Green, filed on October 29, 2014 , pp. 9-11. (Dkt. 85)

(ii) the cross-motion for summary judgment (Opposition of Jeff Austin, Keith Green, William Grundy, and Douglas Child to Joint Motion for Summary Judgment and for Distribution of Interpleader Funds and Cross-Motion for Summary Judgment, filed on August 31, 2015, pp. 3-24. (Dkt. 144).

WHEREFORE, Defendant Davidson moves the Court to grant his motion for summary judgment and cross-motion for summary judgment and distribute the interpleaded fund to the Defendants on a per capita basis, deny the Trustee any distribution from the interpleaded funds.

Dated: October 28, 2015

PETILLON HIRAIDE LLP

/s/ Mark T. Hiraide
Mark T. Hiraide, Esq.(*Pro Hac Vice*)
E-mail: mhiraide@hiraidelaw.com

*Attorneys for Defendant William H.
Davidson*

CERTIFICATE OF SERVICE

I hereby certify that on this date, October 30, 2015, a true and correct copy of the foregoing was electronically filed with the Clerk of the Court using the CM/ECF electronic filing system, which will send an electronic copy of this filing to the counsel of record.

/s/ Mark T. Hiraide

Mark T. Hiraide (*Admitted Pro Hac Vice*)
PETILLON HIRAIDE LLP
21515 Hawthorne Blvd., Ste. 1260
Torrance, CA 90503
Telephone: (310) 543-0500
Fax: (310) 543-0550
E-mail: mhiraide@hiraidelaw.com

*Attorneys for Defendant
William H. Davidson*

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

<p>AXIS SURPLUS INSURANCE COMPANY, Plaintiff, v. 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.</p>	<p>ORDER GRANTING DEFENDANT WILLIAM H. DAVIDSON'S MOTION FOR SUMMARY JUDGMENT AND FOR PER CAPITAL DISTRIBUTION OF INTERPLEADED FUNDS AND CROSS-MOTION FOR SUMMARY JUDGMENT TO DENY THE TRUSTEE ANY DISTRIBUTION FROM THE INTERPLEADED FUNDS Case No. 2:14CV-0244DAK</p>
--	--

Based upon the motion of Defendant William H. Davidson, and good cause shown,
IT IS HEREBY ORDERED that the Defendant William H. Davidson's Motion for
Summary Judgment and for Per Capita Distribution of Interpleaded Funds and Cross-Motion for
Summary Judgment to Deny the Trustee Any Distribution from the Interpleaded Funds is hereby
GRANTED.

DATED this _____ day of November 2015.

BY THE COURT:

DALE A. KIMBALL
U.S. District Court Judge