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

AXIS SURPLUS INSURANCE COMPANY,

Plaintiff,

v.

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,

D. RAY STRONG, as Liquidating Trustee of
the Legacy Trust, CAOP I Trust and CAOP II
Trust,

Intervener.

**TRUSTEE’S REPLY IN RESPONSE TO
ROBERT D. GERINGER’S
OPPOSITION TO JOINT MOTION
FOR SUMMARY JUDGMENT AND
FOR DISTRIBUTION OF
INTERPLEADED FUNDS**

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

The Honorable Dale A. Kimball

Intervenor D. Ray Strong, as the Liquidating Trustee for the Consolidated Legacy Debtors Liquidating Trust, the Castle Arch Opportunity Partners I, LLC Liquidating Trust, and the Castle Arch Opportunity Partners II, LLC Liquidating Trust (the “Liquidating Trustee”)

submits this *Reply* in support of his and Defendant William Warwick's *Joint Motion for Summary Judgment and Distribution of Interpleaded Funds* [[Docket No. 37](#)] (the "Joint Motion") and in response to *Robert D. Geringer's Opposition to Joint Motion for Summary Judgment and for Distribution of Interpleaded Funds* (the "Geringer Opposition") [[Docket No. 147](#)].

I. INTRODUCTION

In a brief filed months after it was due, defendant Robert Geringer ("Geringer") adds nothing relevant to the current briefing on the issue of whether Warwick is entitled to a \$200,000 distribution from the Policy. Other than rehashing arguments already made by the Moving Defendants in their *Opposition to Joint Motion for Summary Judgment and for Distribution of Interpleaded Funds and Cross-Motion for Summary Judgment* [[Docket No. 135](#)] (the "Opposition/Cross-Motion"), ignoring arguments already made by the Trustee in response to the Moving Defendant's *Motion for Summary Judgment and for Per Capita Distribution of Interpleaded Funds* [[Docket No. 85](#)], and without providing any details or admissible evidence, Geringer simply uses this untimely brief to argue that the Trustee breached a Memorandum of Understanding (the "MOU") between Geringer and the Trustee and to purportedly reserve his rights to seek to vacate the Court's order approving the Warwick Settlement Agreement. The Court should not consider these untimely arguments that are no more than a last-ditch attempt to gain leverage in the parties' settlement discussions.

II. REPLY TO GERINGER'S RESPONSE TO STATEMENT OF UNDISPUTED MATERIAL FACTS

Geringer contends that "[t]here remain numerous issues of disputed material fact, including the amount of coverage owed by AXIS" that "preclude summary judgment at this

time.” [Geringer Opposition at 13](#). But this is not the case. Geringer does not dispute that Warwick is an Insured Individual under the Policy, that the Trustee and Warwick entered into the Warwick Settlement Agreement, or the terms of the Warwick Settlement Agreement.¹ These are the only material facts relevant to this dispute. The only questions left are legal ones—whether the Trustee, as Warwick’s assignee—is entitled to a \$200,000 distribution from the Policy.

III. ARGUMENT

At the outset, the Court should not consider the Geringer Opposition because it was filed over 2.5 months after it was originally due. The parties originally agreed that the Defendants could file their oppositions to the Joint Motion two weeks after the Court ruled on the Trustee’s *Motion to Intervene* [[Docket No. 36](#)]. The Court granted the Motion to Intervene on July 20, 2015, in conjunction with its order approving the Warwick Settlement Agreement (the “Order”) [[Docket No. 129](#)]. Thus, the deadline for Geringer to file an opposition to the Joint Motion was August 3, 2015. Unlike certain other defendants, Geringer did not request an extension from this date. Instead, Geringer waited until after fellow defendants Jeff Austin, Doug Child, Keith Green, and Robert Grundy filed the Opposition/Cross-Motion (filed August 31, 2015) and the Trustee filed his *Reply in Support of the Joint Motion for Summary Judgment and for Distribution of Interpleaded Funds and Opposition to Cross-Motion for Summary Judgment* [[Docket No. 142](#)] (filed October 6, 2015) (the “Reply/Opposition”). In fact, Geringer waited a full 2.5 weeks after the Trustee filed his Reply/Opposition. Because it is grossly and unjustifiably untimely, the Court should not consider the Geringer Opposition. See [Link v.](#)

¹ Moreover, while Geringer purports to dispute many of the other facts set forth in the Joint Motion, Geringer has not provided or cited to any admissible evidence to support these alleged disputes as required by [Fed. R. Civ. P. 56\(c\)\(1\)](#) and [DUCivR56-1\(c\)\(2\)\(B\)](#).

[Wabash R. Co.](#), 370 U.S. 626, 629-30 (1962); [Utah Republican Party v. Herbert](#), No. 14-cv-876, 2015 WL 6394534, at *3 (D. Utah Oct. 22, 2015) (citing *Link* and stating that “[a] federal trial court has *inherent* authority to manage its docket” and that “[t]his inherent authority includes the ability to strike untimely motions and oppositions.”).

Even if the Court does consider the Geringer Opposition, the arguments contained therein add nothing to the arguments already briefed in the Joint Motion, the Opposition/Cross-Motion, and the Reply/Opposition. Geringer first argues that a distribution to Warwick is premature based on the Trustee’s alleged failure to comply with the terms of the MOU. Under the MOU, Geringer agreed to, and did withdraw his opposition to the Warwick Settlement Agreement. Geringer now contends that the Order is somehow improper and the only reason the Court approved the Warwick Settlement Agreement and entered the Order was because he withdrew his objection to it. He now states that he “reserves his right to seek relief from the order approving the Warwick settlement under [Fed. R. Civ. P. 60\(b\)](#) and otherwise,” because “the Warwick settlement never should have been approved.” [Geringer Opposition at 11](#).

Aside from being made solely to gain traction in settlement negotiations with the Trustee, this argument fails for numerous reasons. The Order is well reasoned and “consider[ed] the evidence and the arguments of counsel” and “f[ound] that the settlement is fair, equitable, and in the best interest of the Debtors and the Trusts.” [Order at 4](#). Geringer presented no arguments in his original withdrawn objection that would change the Court’s reasoning. Moreover, despite Geringer’s statements, the Trustee fully performed the requirements of him under the MOU and did not breach the parties’ preliminary and unenforceable agreement to agree.

Next, Geringer makes the same argument as the other Moving Defendants in their Opposition/Cross-Motion that Warwick has not suffered a Loss under the Policy and that the Trustee should thus not receive a distribution from the Policy. As discussed in pages 18-20 of the Reply/Opposition, this argument ignores paragraph 1.b of the Warwick Settlement Agreement under which Warwick assigns all of his rights under the Policy to the Trustee. Warwick paid the Trustee \$200,000—an amount that he was legally obligated to pay under the Warwick Settlement Agreement. He thus suffered a Loss under the Policy for which he is entitled to indemnification. As he has assigned that right to the Trustee, the Trustee may recover that \$200,000 from the Policy.

Finally, Geringer contends that there is “no basis upon which to favor Warwick’s settlement with the Trustee over the other parties’ claims to the Policy proceeds.” [Geringer Opposition at 12](#). Again, this is not true. In the Trustee’s *Memorandum in Opposition to Joint Motion for Summary Judgment and Per Capita Distribution of Interpleaded Funds* [[Docket No. 87](#)] (the “Per Capita Opposition”), the Trustee set forth at length the reasons for, and authority behind a first-in-time approach to distributing policy proceeds—most importantly, promoting a race of diligence and encouraging prompt settlement and resolution of claims. Geringer presents no argument to the contrary.

IV. CONCLUSION

For the reasons set forth in the Joint Motion, the Reply/Opposition, the Per Capita Opposition, and herein, the Court should grant the Joint Motion and permit a distribution of \$200,000 from the Policy to the Trustee.

DATED this 6th day of November, 2015.

DORSEY & WHITNEY LLP

/s/ Milo Steven Marsden

Milo Steven Marsden

Peggy Hunt

Sarah Goldberg

Attorneys for Liquidating Trustee

CERTIFICATE OF SERVICE

I hereby certify that on this 6th day of November, 2015, I caused a true and correct copy of the foregoing **TRUSTEE'S REPLY IN RESPONSE TO ROBERT D. GERINGER'S OPPOSITION TO JOINT MOTION FOR SUMMARY JUDGMENT AND FOR DISTRIBUTION OF INTERPLEADED FUNDS** to be filed with the United States District Court for the District of Utah by using 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/ Sarah Goldberg