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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 K.
WARWICK; WILLIAM GRUNDY; and
KEITH GREEN,

Defendants.

**SURREPLY TO 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

Judge Dale A. Kimball

Robert D. Geringer ("Geringer"), through his undersigned counsel, hereby submits this Surreply to the Trustee's Reply (the "Reply Brief") in Response to Robert D. Geringer's Opposition to Joint Motion for Summary Judgment and for Distribution of Interpleaded Funds [Docket No. 154], and respectfully states as follows:

1. In the Reply Brief, the Trustee argues that Mr. Geringer's opposition to the Trustee's summary judgment motion was untimely. The Trustee is mistaken in this

argument because through an email exchange between the undersigned counsel and the Trustee's counsel, it was agreed that Mr. Geringer would be granted an indefinite extension to respond to the Trustee's summary judgment motion, which would terminate two weeks after the date of a mediation between the Trustee and Mr. Geringer. A copy of this email exchange is attached as Exhibit 1.

2. As of the date of that email exchange, September 3, 2015, the date of the mediation had not been fixed. Subsequently, the mediation was scheduled for November 4, 2015. Unfortunately, the mediation was not successful.

3. In the meantime, on September 28, 2015 the Court fixed a hearing on the Trustee's summary judgment motion for November 12, 2015. Although Mr. Geringer's extension granted by the Trustee would not expire until November 18, 2015, Mr. Geringer filed his opposition to the Trustee's summary judgment motion on October 23, 2015, in order to ensure that it would be on file well in advance of the scheduled hearing, in the event that the mediation did not result in a settlement.

4. Accordingly, Mr. Geringer's opposition to the Trustee's summary judgment motion was timely because it was filed before the expiration of the extension to respond that had been granted by the Trustee's attorneys.

Dated: November 9, 2015

COHNE KINGHORN HARRIS, P.C.

/s/ George Hofmann
George Hofmann
Kimberley L. Hansen
Attorneys for Robert D. Geringer

Exhibit 1

George Hofmann

From: George Hofmann
Sent: Thursday, September 03, 2015 12:39 PM
To: Marsden.Steve@dorsey.com
Cc: rlwynne@jonesday.com
Subject: RE: Got your message

Thanks for the quick response Steve. Just so it is clear what we are talking about it is the joint motion for summary judgment by the Trustee and Warwick in the AXIS interpleader litigation. I had asked for an extension two weeks beyond the date of mediation between the Trustee and Robert Geringer to be determined. As always I appreciate your professional courtesy, have a great trip.

Regards,

George Hofmann
COHNE KINGHORN
A Professional Corporation
A merger of Cohne Rappaport & Segal and
Parsons Kinghorn Harris
111 East Broadway, 11th Floor
Salt Lake City, Utah 84111
Direct: (801) 415-0132
Fax: (801) 363-4378

From: Marsden.Steve@dorsey.com [mailto:Marsden.Steve@dorsey.com]
Sent: Thursday, September 03, 2015 11:55 AM
To: George Hofmann <ghofmann@cohnekinghorn.com>
Subject: Got your message

I'm headed out of town right now. The extension is fine, and yes, we are interested in pursuing a further mediation.

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