

GUTTILLA MURPHY ANDERSON

Ryan W. Anderson (Ariz. No. 020974)

5415 E. High St., Suite 200

Phoenix, Arizona 85054

Email: randerson@gamlaw.com

Phone: (480) 304-8300

Fax: (480) 304-8301

Attorneys for the Receiver

IN THE SUPERIOR COURT OF THE STATE OF ARIZONA

IN AND FOR MARICOPA COUNTY

ARIZONA CORPORATION
COMMISSION,

Plaintiff,

v.

DENSCO INVESTMENT
CORPORATION, an Arizona
corporation,

Defendant.

Cause No. CV2016-014142

PETITION NO. 91

PETITION FOR ORDER APPROVING
SETTLEMENT AGREEMENT
BETWEEN RECEIVER, CLARK HILL
PLC AND DAVID BEAUCHAMP

(Assigned to the Honorable Teresa
Sanders)

Peter S. Davis, as the court appointed Receiver of DenSco Investment Corporation,
respectfully petitions the Court for an Order approving a settlement agreement between the
Receiver, Clark Hill PLC and David Beauchamp as follows:

I. Background

1. On August 18, 2016, this Court entered its *Order Appointing Receiver*, which
appointed Peter S. Davis as Receiver of DenSco Investment Corporation (“DenSco”). DenSco
is an Arizona Corporation formed by Denny J. Chittick in April of 2001.

1 2. During the initial stages of the Receivership, the Receiver determined that
2 DenSco may hold significant civil claims against DenSco's former legal advisors, including
3 the law firm of Clark Hill PLC, and DenSco's primary legal counsel David Beauchamp.

4 3. On March 31, 2017, the Receiver filed *Petition No. 22* seeking approval of the
5 engagement of the law firm of Osborn Maledon, P.A. ("Special Counsel") to serve as Special
6 Counsel to the Receiver to investigate DenSco's potential claims against its former legal
7 advisors. On April 27, 2017, the Court, pursuant to *Order Re Petition No. 22* approved the
8 engagement of Special Counsel.

9 4. On September 14, 2017, the Receiver filed *Petition No. 35*, an ex-parte petition
10 seeking approval to file a civil complaint against Clark Hill PLC and David Beauchamp. On
11 October 9, 2017, the Court, pursuant to *Order Re Petition No. 35* approved the filing of a
12 complaint against Clark Hill PLC and David Beauchamp.

13 5. On October 16, 2017, the Receiver caused a Complaint to be filed in the Maricopa
14 County Superior Court against Clark Hill PLC and David Beauchamp. The case was styled,
15 *Peter S. Davis, as Receiver of DenSco Investment Corporation vs Clark Hill PLC and David*
16 *G. Beauchamp*, CV2017-013832.

17 6. Disclosure and discovery in CV2017-013832 took place over approximately
18 twenty-two months, from March 2018 through December 2019, and included more than 35
19 depositions and the production of more than 180,000 documents.
20
21

II. DenSco Claims against Clark Hill and David Beauchamp

7. The Receiver alleged that in January 2014, Clark Hill PLC and David Beauchamp learned that representations that DenSco had made to its investors were untrue and that DenSco's sole owner, shareholder and operator, Denny Chittick, had grossly mismanaged DenSco. Specifically, the Receiver alleged that Clark Hill PLC and David Beauchamp were told that a single borrower, Yomotov "Scott" Menaged, had fraudulently obtained from DenSco more than 125 loans that were not secured by a first-position deed of trust, and that Mr. Menaged accounted for 30% or more of DenSco's total loan portfolio. Clark Hill and Beauchamp knew, given the number of Menaged loans that were unsecured or under-secured, that DenSco was insolvent. Clark Hill and Beauchamp were in a position to protect DenSco and its investors from further harm and should have advised DenSco to immediately sever its relationship with Mr. Menaged, investigate the circumstances of the fraud, inform its investors, not accept any new investor funds, and take all available steps to recover its losses from Mr. Menaged. The Receiver claims that Clark Hill and Beauchamp helped Chittick breach his fiduciary duties to DenSco and its investors to cover up their own negligence, Chittick's mismanagement, and Mr. Menaged's fraud. In his complaint, the Receiver sought an award of compensatory damages against Clark Hill and Beauchamp for their negligence, breaches of fiduciary duty, aiding and abetting Chittick's breaches of fiduciary duty, for the disgorgement of attorney fees paid by DenSco to Clark Hill, prejudgment interest and punitive damages.

1 8. Clark Hill PLC and David Beauchamp vigorously refuted, through fact and
2 expert witnesses, the Receiver's contentions and denied that they were liable for the damages
3 sought by the Receiver.

4 **II. Settlement and Recent Developments**

5 9. On February 24, 2020, the Receiver, Clark Hill PLC and David Beauchamp
6 entered into an Agreement to compromise the Receiver's Complaint. That initial agreement
7 was expanded into a written settlement agreement.

8 10. A material provision of the Settlement Agreement is that the material terms,
9 specifically the amount of consideration being paid by Clark Hill PLC and David Beauchamp
10 is confidential, yet the Settlement Agreement is conditioned on the approval of the
11 Receivership Court. Accordingly, a copy of the Settlement Agreement will be filed as Exhibit
12 "A" and will be filed with this Court under seal. The Settlement Agreement contains a
13 provision that allows a DenSco investor or creditor to view the Settlement Agreement if they
14 executed an agreement as set forth in Exhibit "B" which serves to bind any DenSco investor to
15 maintain the strict confidentiality of the material terms of the Settlement Agreement.

16 11. Under the terms of the Settlement Agreement, Clark Hill PLC and David
17 Beauchamp shall pay a confidential sum of money to the Receiver and Clark Hill PLC and
18 David Beauchamp denies all liability or wrongdoing. Importantly, the Settlement Agreement
19 calls for the Receiver and Clark Hill PLC and David Beauchamp to mutually release any and
20 all claims between and among each other.

1 12. Although the Settlement Agreement will be filed under seal, it contains a
2 provision that allows a DenSco investor to review its terms if they execute the agreement
3 attached as Exhibit “B”, which binds any DenSco investor to confidentiality and requires that
4 the investor not disclose the terms of the settlement.

5 13. The Receiver recommends that the Court approve the Settlement Agreement with
6 Clark Hill PLC and David Beauchamp for a series of reasons. First, the amount of the
7 consideration being paid by Clark Hill PLC and David Beauchamp is substantial and will allow
8 a meaningful distribution to DenSco creditors. Second, while the Receiver has the utmost
9 confidence in his claims and that a jury would render a verdict for the Receiver, the Receiver
10 is aware that litigation is unpredictable. Clark Hill PLC and David Beauchamp have (i)
11 contested liability, (ii) contested that they were the cause of any damages, and (iii) identified
12 various individuals and organizations that should share responsibility and financial liability,
13 including DenSco’s owner Denny Chittick, and Yomtov Menaged, who was convicted of
14 defrauding DenSco, thereby potentially undercutting how much money the Receiver may be
15 awarded against Clark Hill PLC and David Beauchamp should a jury find them liable. Third,
16 while the Receiver’s Special Counsel agreed to prosecute this matter on a contingency, there
17 are substantial costs associated with taking this matter to trial, including the costs of various
18 experts engaged by the Receiver. Fourth, if the Receiver were to prevail at trial, the ultimate
19 resolution of the case, and thus payment to DenSco’s investors, could be substantially delayed
20 by post-trial motions and a likely appeal of various potential evidentiary, legal and factual
21

1 issues. Accordingly, the Receiver believes this compromise is in the best interest of the DenSco
2 Receivership Estate.

3 WHEREFORE, the Receiver respectfully requests that the Court enter an order
4 approving the Settlement Agreement between the Receiver, Clark Hill PLC and David
5 Beauchamp.

6 Respectfully submitted this 21st day of March, 2020.

7 GUTTILLA MURPHY ANDERSON, P.C.

8 /s/ Ryan W. Anderson

9 Ryan W. Anderson

Attorneys for the Receiver

10 2359-001(291942)

**Arizona Corporation Commission v.
Densco Investment Corporation, et al,**

CV-2016-014142

EXHIBIT 'A' TO PETITION NO. 91

(FILED UNDER SEAL)

INVESTOR CONFIDENTIALITY AGREEMENT

Peter Davis as Receiver for DenSco (“Plaintiff”), Clark Hill PLC and David Beauchamp (“Defendants”) have entered into a Settlement Agreement to resolve the claims Plaintiff asserted against Defendants in Maricopa County Superior Court Case No. CV 2017-013832 (collectively, “the Parties”). The Settlement Agreement says that its material terms are to be kept confidential except as the Agreement allows. The Settlement Agreement allows DenSco’s investors to review the Settlement Agreement if they “request in writing to review the Settlement Agreement and . . . execute a confidentiality agreement.”

_____ (“Investor”) is a DenSco investor who has asked in writing to review the Settlement Agreement.

Upon receipt of a signed copy of this Investor Confidentiality Agreement, the Receiver will either (1) allow the Investor to review the Settlement Agreement at the Receiver’s offices or (2) if the Investor is not able to travel to the Receiver’s office, send the Investor a copy of the Settlement Agreement.

By signing this Agreement, the Investor agrees to (1) keep the terms of the Settlement Agreement confidential and (2) if they have received a copy of the Settlement Agreement, to destroy that copy after reviewing it and not make or retain any copy of the Settlement Agreement.

If the Investor believes the Investor is required to disclose the terms of the Settlement Agreement to anyone, the Investor will first give written notice to the Receiver. The Receiver will have 60 days from the receipt of such notice to address the request with the Investor, notify the Defendants of the request, and if appropriate, seek relief from the Receivership Court. During that 60-day period, the Investor agrees not to disclose the terms of the Settlement Agreement and to abide by any Court order regarding disclosure that should be issued.

If the Investor believes that the Investor is required to address the terms of the Settlement with the Receivership Court and the Investor is not able to prepare a filing without disclosing the material terms of the Settlement, any filing which details any of the material terms of the Settlement must be filed with the Receivership Court under seal.

[Signature page follows]

Dated this ____ day of _____, 2020

Investor