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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. 48

PETITION FOR RECONSIDERATION
OF THE ORDER APPOINTING
RECEIVER WITH RESPECT TO
ALLEGED JOINT ATTORNEY CLIENT
PRIVILEGE

(Assigned to the Honorable Teresa
Sanders)

Peter S. Davis, as the court appointed Receiver of DenSco Investment Corporation (“Receiver”), respectfully petitions the Court for an Order modifying the Court’s *Order Appointing Receiver*, issued August 18, 2016, to strike provisions relating to an alleged joint attorney-client privilege held by the Receiver and the Estate of Denny Chittick (the “Privilege Provision”) as follows:

The Privilege Provision

1
2 1. On August 17, 2016, the Arizona Corporation Commission (the “ACC”)
3 initiated this action seeking, among other relief, the appointment of a receiver.

4 2. On August 18, 2016, this Court (Judge Bustamante) held a hearing on the
5 ACC’s application. Counsel for the ACC and the Estate of Denny Chittick (the “Estate”)
6 appeared. *See* Exhibit “A,” relevant portions of Reporter’s Transcript of Digital Recording
7 (“R.T.”), at 3:5-9.

8 3. At the outset of the hearing, the Estate’s counsel provided the Court and the
9 ACC’s counsel with a document captioned “Recommendations Re Receiver and
10 Attorney/Client Privilege” (the “Recommendations”). R.T., Ex. A, at 3:22—4:9.

11 4. The Recommendations, relevant portions of which are attached as Exhibit “B,”
12 were filed with the Clerk later that day.

13 5. Most of the August 18th hearing was devoted to the selection of a receiver of
14 DenSco Investment Corporation.

15 6. With respect to the attorney-client privilege, the following occurred:

16 a. At the outset of the hearing, the Estate’s counsel: (i) stated that David
17 Beauchamp of the law firm Clark Hill PLC “was counsel for both the company and
18 Mr. Chittick”; (ii) asserted that there was a “presumption . . . that any [privilege]
19 would apply to both the Estate and the corporation”; and (iii) asked that any order
20 appointing a receiver include an instruction that the receiver “cannot waive the
21

attorney[-]client privilege with respect to the company, unless the Estate also agrees.”
R.T., Ex. A, at 5:9-19.

b. Counsel for the ACC, without addressing the merits of the Estate’s argument that a joint privilege existed, proposed that the Court not “make the decision as to whether or not [the] attorney[-]client privilege should be waived,” and declined to address the issue in the order appointing a receiver. R.T., Ex. A, at 12:11-17. The ACC proposed instead that “a motion should be filed . . . whenever that issue arises.” *Id.* at 12:25—26:1.

c. There was no further discussion about the merits of the Estate’s position.

7. After the hearing concluded, the Court entered its *Order Appointing Receiver*, at the end of which the following was written by hand: [“It is further ordered the Receiver may not waive the attorney-client privilege as to Chittick’s communications with Beauchamp without the Estate’s consent. The Receiver must obtain court approval before waiving the privilege as to DenSco if the Estate does not consent to the waiver.” Relevant portions of the Order are attached as Exhibit “C.”]

Circumstances Giving Rise to this Petition

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

1 9. Special Counsel completed its investigation into DenSco's potential claims
2 against its former legal advisors and submitted a memorandum to the Receiver setting forth
3 its findings and recommendations. After review and consideration of the investigation
4 conducted by Special Counsel, the Receiver directed the preparation of a civil complaint
5 against Clark Hill PLC and David Beauchamp ("Beauchamp").

6 10. On August 3, 2017, the Receiver filed *Petition No. 35 Ex Parte Petition Seeking*
7 *Approval for Receiver to File Complaint Against Clark Hill PLC and David Beauchamp*. On
8 October 10, 2017, the Court, pursuant to *Order Re Petition No. 35*, authorized the Receiver to
9 file a complaint and prosecute civil litigation against Clark Hill and Beauchamp.

10 11. On October 16, 2017, Special Counsel filed the Receiver's complaint against
11 Clark Hill and Beauchamp in Maricopa County Superior Court as Case No. CV 2017-
12 013832.

13 12. As alleged in the complaint, Beauchamp and the various law firms with which
14 he was affiliated represented DenSco from 2003 through 2016. Those firms included
15 Gammage & Burnham (2003-2008); Bryan Cave (2008-2013); and Clark Hill (2013-2016).

16 13. To pursue DenSco's claims against Clark Hill and Beauchamp, the Receiver
17 has waived the attorney-client privilege with respect to any legal representation that
18 Beauchamp, Gammage & Burnham, Bryan Cave, and Clark Hill provided to DenSco. The
19 Receiver has the authority to waive the attorney-client privilege on behalf of DenSco. *See,*
20 *e.g., 9 A Ariz. Prac., Business Law Deskbook §41:10 (2017-2018 ed.)* ("Like a bankruptcy
21

1 trustee, the receiver assumes management powers, which include control over corporate
2 attorney-client privilege claims.”).

3 14. After filing the complaint, Special Counsel determined that because the Estate
4 claimed a joint privilege, the Receivership Order arguably required the Receiver to obtain the
5 Estate’s consent to disclose in litigation privileged communications that DenSco had with
6 Beauchamp and the law firms with which he was affiliated.

7 15. Special Counsel also determined that the joint privilege claim the Estate
8 presented to the Court on August 18, 2016 was not well founded in fact and law, and that the
9 Privilege Provision was therefore improvidently entered by the Court.

10 16. To ensure compliance with the Receivership Order, and allow time for the
11 Receiver to bring this motion, Special Counsel has obtained an order from the Court in CV
12 2017-013832 under which the complaint has been sealed and the deadline for Clark Hill and
13 Beauchamp to respond to the complaint has been extended. The Receiver has also removed
14 from its website a copy of the filed complaint.

15 Legal Standard

16 17. The Order Appointing Receiver contemplates that the Receiver may apply to
17 the Court, with notice to the parties, for the issuance of orders to carry out the mandates of the
18 Receivership Order and seek amendment of the Receivership Order (See Receivership Order
19 ¶21 and at pg. 7 ln 21.) Additionally, Rule 7.1(e), Ariz. R. Civ. P., permits a party to seek
20 reconsideration of a court order. The Receiver’s request for reconsideration of Judge
21 Bustamante’s inclusion of the Privilege Provision in the *Order Appointing Receiver* is

1 appropriate because the Privilege Provision “did not actually decide the issue in question” or
2 “address the merits” – i.e., whether a joint attorney-client privilege existed – and is
3 ambiguous. *See Ceroney v. TCR-Montana Ranch Joint Venture, II*, 176 Ariz. 275, 279, 860
4 P.2d 1328, 1332 (App. 1993) (trial court may reconsider decision of another trial judge in
5 same matter “if the prior decision did not actually decide the issue in question, if the prior
6 decision is ambiguous, or if the prior decision does not address the merits”). Reconsideration
7 is also appropriate when “a substantial change occurs in essential facts or issue, in evidence,
8 or in the applicable law.” *Id.* Here, the Receiver had not been appointed when the attorney-
9 client privilege issue was presented to the Court and, as set forth below, the Court was not
10 presented with relevant facts and law before the Privilege Provision was added to the
11 Receivership Order. The Privilege Provision should now be stricken because it is not
12 supported by the facts or applicable law.

13 **Factual and Legal Basis for the Estate’s August 2016 Claim of a Joint Privilege**

14 18. The Estate’s original argument that a joint attorney-client privilege existed
15 rested on the contention that “Chittick retained Beauchamp on behalf of both DenSco **and**
16 **himself in his individual capacity.**” Recommendations, Ex. B, at 5:22-23 (emphasis added).
17 In making that contention, the Estate relied on Beauchamp, obtaining from Beauchamp a
18 declaration that was attached to the Recommendation.

19 19. Apparently believing that Beauchamp and the various law firms with which he
20 was affiliated had, in fact jointly, represented DenSco and “[Chittick] in his individual
21 capacity,” the Estate argued that because DenSco and Chittick (in his individual capacity)

1 were “jointly represented” by Beauchamp and his various law firms, Section 75 of the
2 Restatement (Third) of the Law Governing Lawyers was applicable. *Id.* at 6:9-15. Section
3 75 is captioned *The Privilege of Co-Clients*. The Estate cited §75 for the proposition that “one
4 co-client may *not* waive the privilege for communications relating to the other co-client
5 without prior consent.” *Id.*

6 20. The Estate went on to argue that, “[c]onsistent with Restatement §75, the Court
7 should presume that all communications between Chittick and Beauchamp are privileged.”
8 *Id.* at 6:16-17.

9 21. The Estate then told the Court that “[t]he receivership order should provide that
10 DenSco’s receiver may *not* waive the attorney-client privilege as to Chittick’s
11 communications with Beauchamp without the Estate’s consent. The order should further
12 provide that the Receiver must obtain court approval before waiving the privilege as to
13 DenSco if the Estate does not consent to the waiver.” *Id.* at 6:17-21.

14 22. Judge Bustamente evidently accepted as accurate the facts and legal arguments
15 presented in the Estate’s Recommendations (which the ACC did not have time to evaluate
16 and contest during the hearing), as evidenced by the fact that the wording of the Privilege
17 Provision is taken verbatim from the Recommendations.

18 **Facts Beauchamp Failed to Disclose**

19 23. Beauchamp attended the August 18, 2016 hearing, (*see* billing statement
20 excerpt attached as Exhibit “D,”) and presumably received a copy of the Recommendations
21 when that document was presented to the Court and the ACC’s counsel.

1 24. However, Beauchamp did not tell the Court, and apparently never told the
2 Estate, that the factual premise on which the Estate’s argument rested – that “Chittick
3 retained Beauchamp on behalf of both DenSco *and* himself in his individual capacity” – was
4 untrue.

5 25. The Receiver believes the statement that Beauchamp and his various law firms
6 represented Chittick “in his individual capacity” is untrue based on the following:

7 a. On August 10, 2016, Beauchamp wrote a letter to the ACC, a copy of
8 which is attached as Exhibit “E,” in which he acknowledged that he had “accepted
9 delivery of a subpoena from your office to DenSco,” but stated that he “[*had*] *not*
10 *previously represented Denny Chittick* and [did] not have authority to accept the
11 service of the Subpoena on Mr. Chittick or his Estate.” (Emphasis added.)

12 b. The engagement letter Beauchamp sent to Chittick in September 2013 –
13 through which DenSco retained Clark Hill – identified DenSco as the firm’s only
14 client and expressly disclaimed representation of Chittick, either in his capacity as an
15 employee, officer and director of DenSco, or in his individual capacity. A copy of the
16 engagement letter is attached as Exhibit “F.”

17 c. When Beauchamp moved his practice from Bryan Cave to Clark Hill in
18 September 2013, the only transferred files related to the representation of DenSco, not
19 Chittick in his individual capacity. *See* Letter from Beauchamp to Chittick dated
20 August 30, 2013, a copy of which is attached as Exhibit “G.”
21

1 d. Similarly, when Beauchamp moved his practice from Gammage &
2 Burnham to Bryan Cave in March 2008, the only transferred files related to the
3 representation of DenSco, not Chittick in his individual capacity. *See* Letter from
4 Beauchamp to Chittick dated March 18, 2008, a copy of which is attached as Exhibit
5 “H.”

6 e. In reviewing DenSco’s files, the Receiver has seen no evidence that
7 Beauchamp and his various law firms ever represented Chittick in his individual
8 capacity. All legal advice and work performed was provided to Chittick in his
9 capacity as an officer and director of DenSco.

10 **Legal Authority Improperly Cited or Not Cited by the Estate**

11 26. Because the Estate’s factual predicate that Beauchamp and the firms with which
12 he was affiliated jointly represented DenSco and Chittick in his individual capacity was
13 incorrect, the Estate’s reliance on Restatement §75 was misplaced. As comment (C) to
14 Restatement §75 notes, the “co-client” relationships covered by that rule arise only when two
15 clients “have expressly or impliedly agreed to common representation in which confidential
16 information will be shared.” As set forth above, the Receiver is not aware of any evidence
17 establishing that Beauchamp and his various law firms ever agreed to jointly represent
18 DenSco and Chittick, in his individual capacity.

19 27. Section 75 is, in any event, inapplicable “in a subsequent adversary proceeding
20 between [the jointly represented clients].” Restatement (Third) of Law Governing Lawyers §
21

1 75(2). The interests of DenSco and the Estate in this proceeding have been, and continue to
2 be, adverse, so that §75 would not apply by its own terms.

3 28. The Estate's claim that it could prevent the Receiver from waiving the privilege
4 without its consent is also at odds with settled law that the Estate failed to cite in its
5 Recommendations. The general rule is that if Chittick, as DenSco's only "director, officer
6 [and] employee[,] communicate[d] about [a DenSco] legal matter with [Beauchamp, who, as
7 demonstrated above, was] functioning solely on behalf of [DenSco], the privilege may be
8 invoked only on behalf of [DenSco] and may not be invoked by [the Estate] in [its] own
9 behalf, nor may [the Estate] prevent [DenSco] from waiving the privilege." Restatement
10 (Third) of the Law Governing Lawyers §73 ("Privilege for an Organizational Client")
11 Reporter's Notes, comment (j). If the Estate wants to claim such communications are
12 privileged, it "bears the burden of establishing that [Chittick's] communications to
13 [Beauchamp] were made in [Chittick's] individual capacity and not in [his] capacity as [an]
14 officer or employee" of DenSco. *Id.* The Estate has not attempted to meet that burden, nor
15 can it.

16 Conclusion

17 29. The Privilege Provision was improvidently included in the Receivership Order
18 and now impedes the Receiver, through Special Counsel, from pursuing DenSco's substantial
19 claims against Clark Hill and Beauchamp. It should be stricken in its entirety. If the Estate
20 asserts that the Receiver lacks the authority to waive the privilege for any document in the
21 files that Clark Hill, Bryan Cave and Gammage & Burnham maintained for their work on

1 behalf of DenSco, the Estate should be required to file a motion with the Court, establishing
2 that (i) Beauchamp and the law firm with which he was affiliated at the time had agreed to
3 represent Chittick in his individual capacity and (ii) the communication evidenced by the
4 document was made in Chittick's individual capacity and not in his capacity as an officer or
5 director of DenSco.

6 WHEREFORE, and based on the foregoing, the Receiver respectfully requests that the
7 Court, pursuant to Rule 7.1(e)(2), issue an Order giving the Estate an opportunity to respond
8 to this petition, and that upon receipt of the Estate's response or the end of the response
9 period if no response is received, enter an Order striking the Privilege Provision from the
10 *Order Appointing Receiver*.

11 Respectfully submitted this 11th day of December, 2017.

12 GUTTILLA MURPHY ANDERSON, P.C.

13 /s/Ryan W. Anderson
14 Ryan W. Anderson
Attorneys for the Receiver

15 2359-001(295114)

IN THE SUPERIOR COURT OF THE STATE OF ARIZONA

IN AND FOR THE COUNTY OF MARICOPA

ARIZONA CORPORATION
COMMISSION,

Plaintiff,

vs.

DENSCO INVESTMENT CORPORATION,

Defendant.

NO. CV2016-014142

REPORTER'S TRANSCRIPT OF DIGITAL RECORDING

TRANSCRIBED BY:
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Registered Reporting Firm R1012

PREPARED FOR:

Exhibit "A"

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1 JUDGE BUSTAMANTE: Thanks. This is
2 CV 2016-014142 Arizona Corporation Commission versus
3 DenSco Investment Corporation.

4 May I have appearances, please.

5 MS. COY: Wendy Coy for the Arizona Corporation
6 Commission.

7 MR. POLESE: And James Polese and Chris Hering
8 on behalf of the Estate of Denny Chittick, who was the
9 sole shareholder of the entity, who is recently deceased.

10 JUDGE BUSTAMANTE: Okay. Thank you.

11 MR. WILK: Your Honor, Lawrence C. Wilk of
12 Jaburg & Wilk, here on behalf of James C. Sell. I want to
13 thank you for your indulgence in allowing him to appear
14 telephonically, and I am hoping he is on the phone.

15 JUDGE BUSTAMANTE: Okay.

16 MR. WILK: He is one of the people that's up for
17 appointment as receiver in this case.

18 JUDGE BUSTAMANTE: Okay. Thank you.

19 And I know he is -- as soon as he calls in, she
20 is going to -- Bernadette will let me know. So hopefully
21 that will be soon.

22 MR. POLESE: We have a paper, Your Honor, we
23 would like to hand up to the court --

24 JUDGE BUSTAMANTE: Perfect.

25 MR. POLESE: -- on the issue of both who the

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1 receiver should be, as well as some attorney/client
2 privileged matter that we think needs to be addressed
3 (inaudible).

4 JUDGE BUSTAMANTE: Oh, goodness. Okay. Give me
5 just a moment to review this.

6 Have you had an opportunity to review it,
7 Ms. Coy?

8 MS. COY: Not really. I just got it when I sat
9 down. If I could approach, I don't have it in a PDF
10 format, but I have the resumés of two candidates that the
11 Commission believes are appropriate for this.

12 JUDGE BUSTAMANTE: Okay. Sure.

13 MR. POLESE: (Inaudible).

14 MS. COY: Yes. I have emailed them, but --

15 JUDGE BUSTAMANTE: And Mr. Polese, do you
16 want -- do you want to give me a summary here --

17 MR. POLESE: Oh, sure.

18 JUDGE BUSTAMANTE: -- of your position?

19 MR. POLESE: In short, Your Honor, we have been
20 talking with the Estate about who was the appropriate
21 individual, and we hoped that we would have a stipulation
22 to the Court. Unfortunately, we are not able to do that.

23 There are two issues. One is who the receiver
24 should be. My discussions with Ms. Coy had been whether
25 Mr. Sell, who the State is very adamant in wanting, is the

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1 appropriate individual, or our candidate, for want of a
2 better term, who is Mr. Giallanza, who is also in the
3 courtroom today, who we think is a much better fit both in
4 terms of experience and cost for this particular
5 receivership.

6 In addition, there is an issue -- I'm sorry. In
7 addition, there is an issue with respect to
8 attorney/client privilege with respect to communications
9 with Mr. David Beecham -- Beauchamp of Clark Hill, who was
10 counsel for both the company and Mr. Chittick, and the
11 issue has been raised as to who has the right to waive the
12 attorney/client privilege. We have addressed that issue.

13 We think that receiver order, whoever the
14 receiver is, should be instructed that he or she cannot
15 waive any attorney/client privilege with respect to the
16 company, unless the Estate also agrees. Otherwise, they
17 will have to get a court order before they do that, the
18 presumption being that any communications would apply to
19 both the Estate and the corporation. That's the
20 (inaudible).

21 JUDGE BUSTAMANTE: Okay. So at this point you
22 are not objecting -- as the Estate, you are not
23 objecting -- objecting to the appointment of a receiver;
24 it's just a matter of who that receiver is?

25 MR. POLESE: That's correct. In fact, we think

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1 the receiver needs to be appointed as soon as possible.
2 So if the Court can hear testimony today, that would be
3 great, because there are payoffs that are coming due early
4 next week.

5 Everybody knows that we need to get somebody in
6 place to protect the good notes that are out there that
7 are -- that are going to be collected. And then once
8 those are all -- a handle is gotten as to those, then we
9 can sit back and see where there -- where there are other
10 avenues to go.

11 Our view is this is not a forensic accounting
12 case, because I think the company's records are going to
13 be determined to be in very good order. What -- this is a
14 situation, I think, at this time is that DenSco got
15 scammed by one of its borrowers, but will -- the Court can
16 hear more of that if it wants to hear testimony on these
17 issues.

18 JUDGE BUSTAMANTE: Okay. Ms. Coy, how do you
19 want to proceed today?

20 MS. COY: Your Honor, we agree with a number of
21 things that Mr. Polese indicated. We, too, agree and
22 believe that a receiver needs to be immediately appointed.

23 This is a situation in which it came to my
24 attention approximately two weeks ago, if not a little
25 less than that, and we were told that DenSco raised money,

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1 prosecuted in approximately 2013.

2 I handled the receivership for the State from
3 two -- getting him appointed through the criminal case. I
4 was also appointed as a Special Assistant U.S. Attorney
5 and assisted in the prosecution.

6 A lot of the information that was provided in
7 these pleadings, they are taken out of context, and the
8 issues were resolved. And in fact Mr. Sell's work product
9 was upheld by the federal court, and the person, the
10 documents and the pleadings that are attached to
11 Mr. Polese's pleading, was the defendant in the case and
12 is now serving seven to nine years in federal pen, based
13 on the Ponzi scheme where they overvalued all the assets,
14 and were upset that Mr. Sell did not find those
15 overvaluations valid.

16 Basically, again, the State believes that we
17 need a forensic accountant in place and to liquidate the
18 asset and trace the funds.

19 As to the attorney/client privileged
20 information, we understand that issue. It's come up in a
21 number of real estate -- I'm sorry -- a number of
22 receiverships that I have dealt with. And the way I
23 personally know it was handled is when the attorney/client
24 privilege waiver comes up and whether it's necessary or
25 not, we make a motion to the Court, or the receiver made a

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1 motion to the Court and let the judge decide.

2 And in this case I understand the sensitivity
3 between having a corporate counsel and a personal lawyer,
4 basically the same individual. I understand the issues
5 that come up. I think the best way to handle it is the
6 receiver should not -- we shouldn't put anything in the
7 order ordering the receivership, but I think what needs to
8 be done is it needs to come in front of the Court,
9 especially with the sensitivity of the personal aspect and
10 the professional aspect being dealt with.

11 Under normal circumstances, the company has
12 corporate counsel, and the personal aspect isn't there. I
13 recognize the sensitivity there, and I think the best bet
14 would let the judge make the decision as to whether or not
15 that attorney/client privilege should be waived, and I
16 don't think it needs to be addressed in the order
17 appointing the receiver.

18 And again, I would just like to say in this case
19 the state brought the case, and technically the company is
20 the defendant here, and the defendant is basically pushing
21 to have their person put into place. I'm not sure that's
22 appropriate in this point. From enforcing the Securities
23 Act, we need a forensic accountant as a receiver, and we
24 defer to the Court on the attorney/client privilege
25 waiver, and I think a motion should be filed on a regular

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1 basis or whenever that issue arises.

2 I think that it.

3 JUDGE BUSTAMANTE: Okay. Do -- so do you want
4 to take testimony of your two proposed receivers, and we
5 will take testimony of the defendant's proposed receivers,
6 or do you just want me to review the resumés?

7 MS. COY: I don't know that it's entirely
8 necessary to put on an evidentiary hearing. I think based
9 on the recommendations from the parties and I believe
10 based on the review of their resumés, it's strong enough.

11 If you have questions after the review of the
12 resumés, I have got people, I have got both the
13 Commission's candidates here and I think they can take the
14 stand if you have questions of them, but I think based on
15 their resumé, you can go forward with just that, but we
16 are here if you want testimony.

17 JUDGE BUSTAMANTE: Okay. Mr. Polese, what's
18 your proposal in terms of selecting a receiver?

19 MR. POLESE: My proposal is, Your Honor, that
20 since Mr. Giallanza is here and since the State remains
21 adamant that he somehow is not qualified, that he take the
22 stand, go through briefly his -- his resumé and address
23 these, what we think to be pretty irrelevant arguments as
24 to why he is not qualified.

25 I do want to point out one thing that the Court

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1 Honor.

2 MS. COY: It's attached to your papers.

3 Okay. I'm going to take a break and review
4 everything, and then we may have some testimony.

5 So all of the proposed receivers are here. Is
6 that accurate, or we have one on the line and then --
7 okay. And so we will have him call back in; I can't
8 imagine it's going to take me too long, but maybe ten
9 minutes, and then we will resume. Okay?

10 MR. POLESE: Okay.

11 JUDGE BUSTAMANTE: Do any of you have a proposed
12 order regarding the appointment of a receiver?

13 MS. COY: Yes, we do.

14 JUDGE BUSTAMANTE: Okay. If I could review that
15 as well.

16 MR. POLESE: And we have no objection to that
17 order, as -- as the language that's in it. Our objection
18 is it needs additional language.

19 JUDGE BUSTAMANTE: Okay.

20 MR. POLESE: And that's about the
21 attorney/client privilege.

22 JUDGE BUSTAMANTE: The attorney/client privilege
23 language. Okay.

24 MS. COY: Excuse me. If I can approach.

25 JUDGE BUSTAMANTE: Yes.

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1 MS. COY: Here is the order for preliminary
2 injunction, and here is the order appointing the receiver.

3 Do you have yours with you?

4 MR. POLESE: Oh, yeah. It's the --

5 MS. COY: Do you have the preliminary
6 injunction?

7 MR. POLESE: Yeah.

8 JUDGE BUSTAMANTE: And do you have any proposed
9 language in regards to the attorney/client privilege?

10 MR. POLESE: No, Your Honor --

11 JUDGE BUSTAMANTE: Okay.

12 MR. POLESE: -- but we can certainly submit it
13 to the Court.

14 JUDGE BUSTAMANTE: Okay.

15 MS. COY: You have both of them.

16 JUDGE BUSTAMANTE: I have what you need. Okay.

17 All right. I'm guessing about ten minutes and I
18 will be back.

19 MS. COY: Thank you.

20 JUDGE BUSTAMANTE: Thank you.

21 (A recess was taken.)

22 JUDGE BUSTAMANTE: Okay. We have Mr. Sell on
23 the line, so I am just going to let him participate here.
24 Maybe.

25 It's not coming up. Is it coming up on that

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1 have a fair assessment of the range that that property
2 could be valued at, but it was done in a least expensive
3 way as opposed to full appraisals.

4 MS. COY: At this time I have no further
5 questions.

6 MR. POLESE: Nothing further, Your Honor.

7 JUDGE BUSTAMANTE: Okay. Thank you. You can go
8 ahead and step down.

9 I am going to review all the resumés, again, in
10 light of the testimony that I just heard, and I will issue
11 a decision in regards to receivership as soon as possible.
12 I understand the urgency of the situation, so I assure you
13 it will be soon.

14 Thank you all. You all have a good day.

15 MR. POLESE: Thank you, Your Honor.

16 JUDGE BUSTAMANTE: Thank you, Mr. Sell. I am
17 going to go ahead and disconnect you.

18 * * *

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C E R T I F I C A T E

I, KELLY SUE OGLESBY, Arizona Certified Reporter No. 50178, do hereby certify that the foregoing printed pages constitute a full, true, and accurate record of the proceedings had in the foregoing matter, all to the best of my skill and ability.

I further certify that I am in no way related to any of the parties hereto, nor am I in any way interested in the outcome thereof.

I CERTIFY that I have complied with the ethical obligations in ACJA Sections 7-206(F)(3) and 7-206-(J)(1)(g)(1) and (2).

Kelly Sue Oglesby
Kelly Sue Oglesby
Arizona Certified Reporter No. 50178

7/27/2017

Date

I CERTIFY that JD Reporting, Inc. has complied with the ethical obligations in ACJA Sections 7-206(J)(1)(g)(1) and (6).

JD REPORTING, INC.
JD REPORTING, INC.
Arizona Registered Reporting Firm R1012

Date

1 James F. Polese #003451
2 Christopher L. Hering #028169
3 **GAMMAGE & BURNHAM, P.L.C.**
4 TWO NORTH CENTRAL AVENUE
5 15TH FLOOR
6 PHOENIX, AZ 85004
7 TELEPHONE (602) 256-0566
8 FAX (602) 256-4475
9 EMAIL: JPOLESE@GBLAW.COM
10 CHERING@GBLAW.COM

11 *Attorneys for Estate of Denny Chittick, Deceased*

12 **SUPERIOR COURT OF ARIZONA**
13 **MARICOPA COUNTY**

14 **ARIZONA CORPORATION COMMISSION,**

No. CV2016-014142

15 **Plaintiff,**

16 **vs.**

17 **DENSCO INVESTMENT CORPORATION,**
18 **an Arizona corporation,**

19 **Defendant.**

**RECOMMENDATIONS RE
RECEIVER AND
ATTORNEY/CLIENT
PRIVILEGE**

(Assigned to the Honorable
Lori Bustamante)

20 Counsel undersigned represents the Estate of Denny Chittick (the "Estate"). Mr.
21 Chittick, recently deceased, the founder, sole employee, officer, director and shareholder
22 of DenSco Investment Corporation ("DenSco"). The Estate appears in this matter on
23 DenSco's behalf as the entity with control over DenSco since no corporate officers have
24 yet been named.

25 The Estate does not object to the appointment of a receiver for DenSco as is being
26 requested by the Arizona Corporation Commission ("ACC") with this action. However,
the Estate has two concerns about the ACC's proposed course of action in seeking a
receiver. First, the Estate has recommends that the Court appoint Thomas Giallanza

1 (“Giallanza”) as receiver¹. As further articulated herein, Giallanza seems the perfect
2 person to act as receiver. However, the ACC has been adamant in its refusal to consent to
3 his appointment and instead intends to ask the Court to appoint Jim Sell (“Sell”) as
4 DenSco’s receiver, because the ACC “works well with him” and has never worked with
5 Giallanza. The role of the receiver is not to be a sycophant of the Division but to be
6 utterly independent and answerable only to the Court.

7 Second, the Estate has asked the ACC to acknowledge that Mr. David Beauchamp,
8 who the decedent considered his attorney as well as that of DenSco (a point that Mr.
9 Beauchamp has acknowledged) was indeed attorney for both and thus the receiver could
10 not be allowed to waive the attorney client privilege with respect to communications
11 between the deceased and Mr. Beauchamp unless the Estate also agreed to such a waiver.
12 For reasons not articulate, the ACC has refused to include such a proscription in its
13 proposed order for the appointment of the receiver. The Estate believes that it is essential
14 that the Court’s receivership order must preserve the attorney-client privilege as to
15 communications between Denny Chittick (“Chittick”) and his lawyer, David Beauchamp
16 (“Beauchamp”).

17 I. The Court should appoint Giallanza, not Sell, as DenSco’s receiver.

18 Giallanza is a lawyer with extensive experience in real estate, financial
19 institutions, and receiverships. A copy of Giallanza’s curriculum vitae is attached as
20 Exhibit 1. On point here is Giallanza’s experience as deputy receiver for Landmarc
21 Capital and Investment Company (“Landmarc”), a company that, like DenSco, made
22 loans secured by real property. As deputy receiver, Giallanza identified and disposed of
23 hundreds of loan assets and disbursed the proceeds to hundreds of claimants. The

24
25 ¹ As the ACC knows, the undersigned has already averred that neither he nor to his
26 knowledge anyone at Gammage & Burnham, PLC has ever had any relationship with Mr.
Giallanza. The Estate has recommended him solely because, after investigation of
suitable candidates, the Estate believes he is the best person for the position.

1 Moreover, as noted herein, there is no evidence that DenSco will involve any
2 allegation of fraudulent activities by DenSco or the decedent.²

3 Finally, the ACC wrongly claims that Sell is experienced in securities matters and
4 Giallanza is not. Again, Giallanza has been the deputy receiver for Landmarc, an entity
5 in the same line of business as DenSco—secured lending on real property.

6 Not only does the side by side comparison of the two individuals strongly favor
7 Mr. Giallanza over Mr. Sell, Mr. Sell has some unpleasant baggage that makes his
8 appointment problematic.

9 In one receivership matter, the U.S. Department of Justice questioned Sell's bill of
10 \$95,000 for pre-engagement fees, \$15,000 over Sell's proposed budget. See Exhibit 2.
11 Sell was later accused of devaluing the receivership's assets by holding them during a
12 declining economy in an effort to boost his fees. Indeed, many of the receivership's
13 creditors disagreed with Sell's strategies and disposition of the receivership's assets.
14 Exhibit 3. Ultimately, Sell received an exorbitant sum of *\$7.5 million* in fees for
15 handling the receivership. Exhibit 4.

16 In light of these facts, the Court should be troubled by the ACC's aggressive
17 conduct in seeking Sell's appointment over that of Mr. Giallanza.

18 The Court should appoint Giallanza as DenSco's receiver because he would be
19 cheaper and has the most relevant real estate background and experience.

20 **II. The Court's receivership order must preserve privileged conversations**
21 **between Chittick and his lawyer, Beauchamp.**

22 Chittick retained Beauchamp on behalf of both DenSco *and* himself in his
23 individual capacity. Beauchamp Dec'l (Exhibit 5) at ¶ 5. Chittick never specified or

24
25 ² The undersigned has not had time to digest the extensive complaint that has been filed
26 and there appear to be suggestions of impropriety in the records of DenSco. We believe
 that once the company records are fully reviewed there will be no missing
 documentation.

1 delineated which communications were on DenSco's behalf and which were on his own
2 behalf, and it is next to impossible to determine which client a particular communication
3 involved. Beauchamp Dec'l at ¶ 6.

4 After Chittick's death, the Estate steps into Chittick's shoes and holds the
5 attorney-client privilege as to Chittick's communications with Beauchamp. DenSco's
6 receiver will hold the attorney-client privilege as to DenSco. The receivership order must
7 therefore ensure that DenSco's receiver cannot impair the attorney-client privilege held
8 by the Estate.

9 When a lawyer jointly represents two or more clients, either co-client's
10 communication with the jointly-retained lawyer is privileged from disclosure to third
11 parties. *Restatement (Third) of the Law Governing Lawyers* § 75(1). One co-client may
12 waive the privilege with respect to its own communications with the jointly-retained
13 lawyer *only* if the communications relate solely "to the communicating and waiving
14 client." *Id.* cmt. e. In other words, one co-client may *not* waive the privilege for
15 communications relating to the other co-client without prior consent. *Id.*

16 Consistent with Restatement § 75, the Court should presume that all
17 communications between Chittick and Beauchamp are privileged. The receivership order
18 should provide that DenSco's receiver may *not* waive the attorney-client privilege as to
19 Chittick's communications with Beauchamp without the Estate's consent. The order
20 should further provide that the receiver must obtain court approval before waiving the
21 privilege as to DenSco if the Estate does not consent to the waiver. These mechanisms
22 are the only way the Estate's communications with Beauchamp can remain confidential
23 and privileged.

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RESPECTFULLY SUBMITTED this 18th day of August, 2016.

GAMMAGE & BURNHAM, P.L.C.

By /s/ Christopher L. Hering
James F. Polese
Christopher L. Hering
Two North Central Avenue, 15th Floor
Phoenix, Arizona 85004
Attorneys for DenSco Investment Corporation

ORIGINAL of the foregoing e-filed
this 18th day of August, 2016, with:

Maricopa County Superior Court
Phoenix, Arizona

COPY of foregoing mailed this
this 18th day of August, 2016, to:

Wendy Coy
Arizona Corporation Commission
1300 West Washington, 3rd Floor
Phoenix, Arizona 85007
Attorneys for Plaintiff

/s/ Dawn M. McCombs

EXHIBIT 5

1 James F. Polese, Esq. (Bar No. 003451)
2 Christopher Herring, Esq., (Bar No. 028169)
3 Gammage & Burnham, PLC
4 2 North Central Avenue
5 15th Floor
6 Phoenix, Arizona 85004-4607
7 jpolese@qblaw.com
8 cherring@qblaw.com

9
10 **IN THE SUPERIOR COURT OF THE STATE OF ARIZONA**
11 **IN AND FOR THE COUNTY OF MARICOPA**

12 ARIZONA CORPORATION COMMISSION, No. CV2016-1014142

13 Plaintiff,

14 v.

15 DENSCO INVESTMENT CORPORATION,
16 an Arizona corporation,
17 Defendant.

**DECLARATION OF DAVID G.
BEAUCHAMP**

(Assigned to the Honorable Lori
Bustamonte)

18 I make the following declaration under penalty of perjury:

19 1. I am an attorney licensed to practice in the State of Arizona since 1981 and
20 have continuously practiced law since that time.

21 2. Beginning in approximately 2003, I was retained by Denny Chittick, the
22 sole shareholder, President and director of DenSco Investment Corporation, an Arizona
23 corporation. ("DenSco") in connection with the preparation of a securities offering for
24 investors. To my knowledge he was the sole employee of DenSco.

25 3. Over the years, I have prepared, at Mr. Chittick's direction, several Private
26 Offering Memoranda ("POMs") to be distributed to investors of DenSco in compliance
27 with Arizona and federal security laws. In addition, I was retained to undertake the
28

1 needed securities law filings. My engagement included numerous communications with
2 Mr. Chittick concerning the POMs and recommendations for amended or additional
3 POMs in keeping with the investments being made or contemplated by DenSco.

4 4. The POMs routinely stated that I was acting as counsel for not only DenSco
5 but its president Mr. Chittick and that I was not the counsel for any investors who were
6 all urged to seek separate legal counsel.

7 5. During my involvement with Mr. Chittick and DenSco, I understood that
8 Mr. Chittick considered that I was his counsel as well as counsel for DenSco, even
9 though all billings were tendered to and paid by DenSco.

10 6. In connection with my representation, it would be impossible for me to
11 segregate what advice I tendered or what attorney-client communications were solely
12 corporate only and what were personal to Mr. Chittick as the President of DenSco.

13 7. In late 2014 or 2015, I ended my formal relationship with Mr. Chittick and
14 DenSco. In late 2015 or early 2016, I was reengaged by Mr. Chittick and DenSco in
15 connection with an audit by the Arizona Department of Financial Institutions which
16 concerned whether Mr. Chittick was required to have a mortgage broker license. I was
17 counsel to him and DenSco in this limited capacity at the time of his death on July 28,
18 2016.
19

20 I declare under penalty of perjury that the foregoing is true and correct.

21 EXECUTED this 17th day of August 2016 at Scottsdale, Arizona.

22 
23 _____
24 David G. Beauchamp
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FILED
01/13/2017 3:00pm
MICHAEL L. JEANES, Clerk
By M. Patrick
M. Patrick, Deputy

1 ARIZONA CORPORATION COMMISSION
2 Wendy Coy, #013195
3 1300 West Washington, 3rd Floor
4 Phoenix, Arizona 85007
5 Attorney for Plaintiff
6 Telephone: (602) 542-0633
7 wcoy@azcc.gov

8 STATE OF ARIZONA

9 MARICOPA COUNTY SUPERIOR COURT

10 ARIZONA CORPORATION COMMISSION

No. CV 2016-014142

11 Plaintiff

ORDER APPOINTING RECEIVER

12 v.

13 DENSCO INVESTMENT CORPORATION, an
14 Arizona corporation

15 Defendant.

16 Plaintiff the Arizona Corporation Commission ("ACC") having filed a Verified Complaint
17 and an Application for Appointment of a Receiver for the Defendant hereto (collectively
18 "Receivership Defendant"), the Court finds, based upon the papers filed by the ACC, that this
19 Order Appointing Receiver is both necessary and appropriate in order to prevent waste and
20 dissipation of the assets of the Receivership Defendant to the detriment of investors.

21 IT IS THEREFORE ORDERED:

22 1. This Court hereby takes exclusive jurisdiction and possession of the assets, monies,
23 securities, choses in action, and properties, real and personal, tangible and intangible, of whatever
24 kind and description, wherever situated, of the Receivership Defendant, (hereinafter, "Receivership
25 Assets").
26

1 20. The Receiver is hereby authorized to institute such actions or proceedings to impose
2 a constructive trust, obtain possession and/or recover judgment with respect to persons or entities
3 who received assets or funds traceable to investor monies. All such actions shall be filed in this
4 Court.

5 21. The Receiver shall be authorized, after notice and hearing, to seek Court approval
6 for the amendment of the Receivership Order to include additional parties to the pending litigation.

7 22. Upon the request of the Receiver, any peace officer of this State is authorized and
8 directed to assist the Receiver in carrying out his duties to take possession, custody or control of, or
9 identify the location of, any Receivership Assets. The Receiver is authorized to remove any person
10 from any premises or real estate constituting a Receivership Asset that attempts to interfere with
11 the Receiver, his attorneys or agents in the performance of their duties. The Receiver is further
12 authorized to change any locks or other security mechanisms with respect to any premises or other
13 assets that constitute Receivership Assets.

14 23. The Receiver shall keep the ACC and the Receivership Defendant apprised at
15 reasonable intervals of developments concerning the operation of the receivership, and shall
16 provide to the ACC upon request any documents under the control of the Receiver.

17 24. The Receiver shall seek and obtain the approval of this Court prior to disbursement
18 of professional fees and expenses to himself or counsel, by presentation of a written application
19 therefor and after consultation with the ACC or in accordance with further order of the Court. All
20 costs incurred by the Receiver shall be paid from the Receivership Assets.

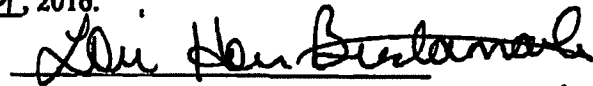
21 IT IS FURTHER ORDERED that this Court shall retain jurisdiction of this action for all
22 purposes. The Receiver is hereby authorized, empowered and directed to apply to this Court, with
23 notice to the ACC and Defendant, for issuance of such other orders as may be necessary and
24 appropriate in order to carry out the mandate of this Court.

25 It is further ordered the Receiver may not waive
26 the attorney-client privilege as to Chittick's communication
with Beauchamp without the Estate's consent. The
Receiver must obtain court approval before waiving
the privilege as to Denso if the Estate does not consent
to the waiver.

YAB

1 IT IS FURTHER ORDERED that this Order will remain in effect until modified by further
2 order of this Court.

3 DATED this 18th day of August, 2016.

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5 Honorable Lori Horn Bustamante
6 Judge of the Superior Court
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CLARK HILL

David Beauchamp
T: 480.684.1126
F: 480.684.1199
dbeauchamp@clarkhill.com

Clark Hill PLC
14850 N. Scottsdale Road
Suite 500
Scottsdale, AZ 85254
T 480.684.1100
F 480.684.1199
clarkhill.com

September 15, 2016

DenSco Investment Corporation
Attn: Peter Davis, Receiver
Simon Consulting
3200 N. Central Avenue, Suite 2460
Phoenix, AZ 85012

Via E-Mail and US Mail
(pdavis@simonconsulting.net)

Re: DenSco Wind Down

Dear Peter:

Enclosed is the invoice for legal services provided by Clark Hill to DenSco Investment Corporation through the end of August regarding the wind down of the business. Also enclosed are copies of the previous invoices to DenSco which remain outstanding. If you have any questions concerning these invoice, please contact me to discuss.

Very Truly Yours,



David G. Beauchamp
CLARK HILL PLC

Enclosure



DIC0010490

Exhibit "D"

CLARK HILL P.L.C.

DenSco Investment Corporation
Business Wind Down
September 12, 2016
INVOICE # 670634
Page 6

08/16/16 DGB Review, work on and respond to several emails 4.20
and text messages; review messages; several
telephone conversations with escrow agents,
title officers, real estate agents and
borrowers; review files and documents; work on
information and issues for response to Subpoena
from AZ Securities Division; telephone call
with office of R. Koehler regarding payoff
calculation; review question from Investor and
respond; review notes and information from B.
Luchtel; telephone call with B. Luchtel.

08/17/16 DGB Review, work on and respond to several emails 11.70
and telephone messages; review messages;
several telephone calls with escrow agents,
borrowers and real estate agents; work on and
revise Declaration; review POM and file
documents to confirm information for
Declaration; sign and transmit Declaration;
several telephone calls with G. Clapper and W.
Coy; conference call with J. Polese and K.
Merritt RE: motion for and hearing to appoint
receiver; review documents; work on issues and
information concerning response to subpoena
from AZ Securities Division; review message
from L. Schultz; several telephone calls with
L. Schultz regarding loan payoffs, issues and
procedure; follow up with emails; review
messages from B. Edwards; telephone call with
office of B. Edwards; review message from M.
Blackbird regarding loan payoffs; several
telephone calls with M. Blackbird regarding
loan payoffs; telephone call with R. Koehler
regarding loan payoffs; review message from P.
Crawford; telephone call with K. Merritt
regarding loan payoffs and information;
telephone call with P. Crawford regarding Deeds
of Release and documentation for release.

08/18/16 DGB Review, work on and respond to several emails 12.50
and text messages; review messages; several
telephone calls with W. Coy and G. Clapper
regarding information for hearing; travel to
and attend hearing; work with G. Clapper
concerning loan files; discuss issues and
procedure with W. Coy; meeting with K.
Merritt to discuss attorney-client privilege
log and response to subpoena from AZ
Securities Division; work on issues and

DIC0010496

Exhibit "D"

CLARK HILL

David Beauchamp
T: 480.684.1126
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dbeauchamp@Clarkhill.com

Clark Hill PLC
14850 N. Scottsdale Road
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Scottsdale, AZ 85254
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clarkhill.com

August 10, 2016

VIA EMAIL & US MAIL
(WCoy@azcc.gov)

Ms. Wendy Coy
Arizona Corporation Commission
Securities Division
1300 West Washington Street
Phoenix, AZ 85007

Re: DenSco Investment Corporation /File No. 8604

Dear Ms. Coy:

As a follow-up to our telephone conversation on Monday, we discussed the Subpoena Duces Tecum ("Subpoena") that I received from your office concerning the files of DenSco Investment Corporation ("DenSco"). Although we were previously special legal counsel to DenSco, our status as on-going counsel has been questioned and we will likely withdraw as counsel depending on how the courts and the interested parties elect to proceed to collect and distribute the recoverable assets of DenSco. When we had talked previously, I had said that I would accept delivery of a Subpoena from your office to DenSco to get started in the record location and delivery process. However, **I have not previously represented Denny Chittick and I do not have authority to accept the service of the Subpoena on Mr. Chittick or his Estate**, so some of the items listed in the Subpoena (e.g. Denny Chittick's personal tax records) are not within my control and I have forwarded the Subpoena to the Personal Representative for his Estate, Shawna Chittick Heuer. Shawna did not return to Arizona until very late last night and she did not arrive at Denny Chittick's house until early this morning. Accordingly, she has not had any time to look for the requested items prior to the 10:00 am, August 10 deadline in the Subpoena. However, she is aware of the items requested and she has assured me that she will diligently look for the requested personal items from Denny Chittick.

Currently, we only have a small portion of DenSco's files in our possession. We have made arrangements with Shawna to have the approximately 51 boxes of DenSco files to be transported from Denny Chittick's office to our firm's offices. Again, we will not receive those files until after the expiration of the deadline in the Subpoena. Even when we receive those files, there will be a significant amount of work to review the materials in those files and to find the items requested in the Subpoena. In our conversation on Monday, I had explained the inability

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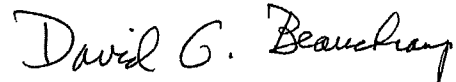
Exhibit "E"

DIC0009319

to timely respond to the Subpoena and you had indicated for us that you understood and you wanted us to proceed diligently looking for the items for your office and to keep your office fully informed of the progress being made.

If you disagree with the set forth above or would like to proceed with a different approach to satisfy the items requested in the Subpoena, please contact me.

Very truly yours,

A handwritten signature in black ink that reads "David G. Beauchamp". The signature is written in a cursive style with a large, stylized 'D' and 'B'.

David G. Beauchamp
CLARK HILL PLC

CLARK HILL

David Beauchamp
T:480.684.1126
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Clark Hill PLC
14850 N. Scottsdale Road
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Scottsdale, AZ 85254
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F 480.684.1199

clarkhill.com

Sept. 12, 2013
~~January 9, 2014~~

Via E-Mail and US Mail
(dcmoney@yahoo.com)

Denny J. Chittick
DenSco Investment Corporation
6132 W. Victoria Place
Chandler, AZ 85226

Re: Representation of DenSco Investment Corporation

Dear Denny:

Thank you for this opportunity to continue to work with you and DenSco Investment Corporation. This letter serves to record the terms of our engagement to represent DenSco Investment Corporation (the "Client"), with regard to the legal matters transferred to Clark Hill PLC from Bryan Cave, LLP. We agree that the scope of our services in these matters is to provide legal services required for these transferred files as such services may be requested by you. We are prepared to provide services beyond this scope after consultation and mutual agreement.

Our fees in this matter are based on hours spent by lawyers and other professionals necessary to produce the work product. Our minimum billing increment is .1 hour. At this time, our lawyer billing rates range from \$180 to \$650 an hour, and legal assistant rates range from \$80 to \$195 per hour. These rates may be adjusted periodically to reflect the experience and expertise of our professionals. I will be the principal attorney contact in your matters, unless we otherwise agree. My hourly rate is \$440.00. We will transmit our billing on a monthly basis to you.

This letter is supplemented by our Standard Terms of Engagement for Legal Services, attached, which are incorporated in this letter and apply to this matter and the other matter(s) for which you engage us. If you agree that this letter provides acceptable terms for our engagement in these matters, please sign and return a copy to me.

We look forward to continuing to work with you.

DIC0008632

Exhibit "F"

DenSco Investment Corporation
September 12, 2013
Page - 2 -

Sincerely,

CLARK HILL PLC

David G. Beauclerk

Enclosure

DenSco Investment Corporation accepts, and agrees to be bound by, the foregoing.

DenSco Investment Corporation

By: 

Its: Pres

DIC0008633

STANDARD TERMS OF ENGAGEMENT FOR LEGAL SERVICES

This statement provides the standard terms of our engagement as your lawyers. Unless modified in writing by mutual agreement, these terms will be an integral part of our agreement with you. Therefore, we ask that you review this statement carefully and contact us promptly if you have any questions.

GENERAL RIGHTS AND RESPONSIBILITIES OF CLIENTS OF THE FIRM

A client of the firm has the right to: (A) expect competent representation by the firm; (B) determine the purposes to be served by the legal representation, so long as those purposes are legal and do not violate the firm's obligation to the profession or to the judiciary; (C) be kept reasonably informed about the status of the matter and have the firm respond promptly to reasonable requests for information; and (D) terminate the representation at any time, with or without cause, subject to the obligation for payment of legal services provided and costs incurred by the firm.

A client of the firm has the responsibility to: (A) obey all orders issued by a court or other tribunal concerning your matter; (B) be candid and truthful with the firm and the court or other tribunal; and (C) pay the firm as provided by this agreement and any other agreements regarding payment for legal services and expenses. A client may not: (A) demand that the firm use offensive tactics or treat anyone involved in the legal process with anything but courtesy and consideration; (B) demand any assistance which violates the Rules of Professional Conduct; or (C) pursue or insist upon a course of action which the firm reasonably believes to be illegal, fraudulent, offensive or unwise. The firm may terminate this agreement for reasons permitted under the Rules of Professional Conduct.

OBLIGATIONS OF A LAWYER

All lawyers are required to observe and uphold the law, including applicable court rules; and are governed by Rules of Professional Conduct that pertain to our relationship with a client, with third persons, other professionals and the courts. All of these laws and rules apply to our representation of you, and we welcome your inquiry about them.

WHOM WE REPRESENT

The person or entity whom we represent is the person or entity identified in our engagement letter and does not include any affiliates or related parties of such person or entity, such as parent companies, subsidiaries, sibling entities, and/or other affiliates; or employees, officers, directors, shareholders of a corporation, partners of a partnership, members of an association or limited liability company, and/or other constituents of a named client unless our engagement letter expressly provides otherwise

THE SCOPE OF OUR WORK

You should have a clear understanding of the legal services we will provide. Any questions that you have should be dealt with promptly.

We will at all times act on your behalf to the best of our ability. Any expressions on our part concerning the outcome of your legal matters are expressions of our best professional judgment, but are not guarantees. Such opinions are necessarily limited by our knowledge of the facts and are based on the state of the law at the time they are expressed. Your obligation to pay our fees as provided in this letter is not in any way contingent upon a result or results in the matter.

Our attorney-client relationship will be considered ended upon the earliest of (a) our completion of services in the matter(s) for which you have engaged us, (b) notification by you to us that you desire to terminate such services, or (c) notification by the firm of termination of our attorney-client relationship.

WHO WILL PROVIDE THE LEGAL SERVICES

Customarily, each client of the firm is served by a principal attorney contact. The principal attorney should be someone in whom you have confidence and with whom you enjoy working. You are free to request a change of principal attorney at any time. Subject to the supervisory role of the principal attorney, your work or parts of it may be performed by other lawyers and legal assistants in the firm. Such delegation may be for the purpose of involving lawyers or legal assistants with special expertise in a given area or for the purpose of providing services on an efficient and timely basis.

PRESERVATION OF EVIDENCE AND COMMUNICATION PROTOCOL IN LITIGATED MATTERS

All evidence of any nature that is arguably relevant to this matter, including but not limited to documents (whether hard copy or electronic) and other physical evidence, must be preserved. Moreover, scheduled routine destruction of any stored records (whether hard copy or electronic) must be suspended immediately until after this matter is concluded. Failure to do so may result in sanctions by a court or tribunal.

In order to preserve the attorney-client privilege that attaches to our communications, it is important that all future oral communications about this matter occur only in the presence of a Clark Hill attorney. Further, all written communications about the matter should be directed to a Clark Hill attorney. You recognize that, while convenient and sometimes necessary, communications transmitted by internet, mobile and other electronic means may not be entirely secure. Therefore, in communicating by such means you accept the risks that such communications may not be protected by the attorney-client privilege, and we agree that no party will be liable for any loss, damage, expense, harm or inconvenience resulting from the loss, delay, interception, corruption, or alteration of any such communications due to any reason beyond that party's reasonable control.

HOW FEES WILL BE SET

Unless our engagement letter provides otherwise, our fees will be charged on an hourly basis, *i.e.*, time expended multiplied by the hourly rates of our lawyers and other professionals. Among the factors we consider in determining the staffing of the matter and the hourly rates charged are:

- The novelty and complexity of the issues presented, and the skill required to perform the legal services;
- The fees customarily charged in the community for similar services and the value of the services to you;
- The amount of money or value of property involved;
- The time constraints imposed by you as our client and other circumstances, such as an emergency closing, the need for injunctive relief from court, or substantial disruption of other office business;
- The experience, reputation and expertise of the lawyers performing the services.

We will keep accurate records of the time we devote to your work, including conferences (both in person and over the telephone), negotiations, factual and legal research and analysis, document preparation and revision, travel on your behalf, and other related matters. We record our time in tenths of an hour.

The hourly rates of our lawyers are adjusted periodically to reflect current levels of legal experience, changes in overhead costs and other factors.

We are often requested to estimate the amount of fees and costs likely to be incurred in connection with a particular matter. Whenever possible we will respond to your request by furnishing an estimate based upon our professional judgment, but always with a clear understanding that it is not a maximum or fixed fee quotation. The ultimate cost frequently is more or less than the amount estimated.

RETAINER AND TRUST DEPOSITS

Clients of the firm are commonly asked to deposit a retainer with a firm. Unless otherwise agreed, the retainer deposit will be credited toward your unpaid invoices, if any, at the conclusion of services. While the retainer is on deposit, you grant us a security interest in such funds. At the conclusion of our legal representation or at such time as the deposit is unnecessary or is appropriately reduced, the remaining balance or an appropriate part of it will be returned to you.

Deposits which are received to cover specific items will be disbursed as provided in our agreement with you, and you will be notified from time to time of the amounts applied or withdrawn. Any amount remaining after disbursement will be returned to you.

All trust deposits we receive from you will be placed in a trust account for your benefit. Your deposit will be placed in a pooled account unless you request a segregated account. By law, interest earned on the pooled account is payable to a charitable foundation. Interest earned on a segregated trust account will be added to the deposit for your benefit and will be includable in your taxable income.

EXPENSES

We frequently incur and/or pay on behalf of our clients a variety of expenses arising in connection with legal services. These expenses include charges made by courts, other government agencies, and service vendors. You authorize us to incur such charges on your behalf, and agree to reimburse the firm to the extent we pay these charges on your behalf. You also authorize us to incur on your behalf expenses incidental to the representation, including but not limited to deposition and transcript costs; witness fees; travel expenses; charges of outside experts and consultants; and other legal counsel fees. You agree that you will be solely responsible for such expenses and that the firm will not be responsible for such expenses. We will usually advance expenses up to \$100, and require that our clients directly pay, or deposit with us funds to pay, expenses exceeding \$100.

The firm does not charge for internal costs of routine copying, telephone, third party charges for research, faxes, secretarial overtime, mailing, and the like. However, the firm does charge for extraordinary expenses of this type, and we will bill you for them at our cost.

FILES AND OTHER MATERIALS

Files generated in the matter will be retained by the firm as required by law, and thereafter may be retained or destroyed, at our discretion. To the extent we retain them, we will provide you reasonable access to matter files in accordance with applicable law, excluding firm files (firm administrative records, time and expense reports, personnel and staffing materials, accounting records, and internal lawyers' work product, *e.g.*, drafts, notes, internal memoranda, legal research, and factual research). Matter files to which you are given access may be reproduced at your request and at your expense. We reserve the right to make and retain copies of all documents generated or received by us in connection with the matter. After our engagement in this matter ends, upon your request and at your expense we will return any property you have entrusted to us, unless there is a balance on your account. If there is a balance on your account, the firm will assert a retaining lien on such property to the extent allowed by law. If you have not requested return of such property within a reasonable time after our engagement in the matter ends, we may retain or destroy such property at our discretion.

TERMINATION

You may terminate our representation at any time, with or without cause, by notifying us. Your termination of our services will not affect your responsibility for payment of legal services rendered and out-of-pocket costs and internal charges incurred before termination and in connection with an orderly transition of the matter.

The Rules of Professional Conduct list several types of conduct or circumstances that require or allow us to withdraw from representing a client, including, for example: persistence in a course of conduct which we reasonably believe to be criminal or fraudulent, insistence upon pursuing an objective which we consider to be repugnant or imprudent, failure of a substantial nature to fulfill an obligation after reasonable warning that it will result in our withdrawal, or other good cause.

BILLING ARRANGEMENTS AND TERMS OF PAYMENT

Our invoices will report the hours and rates for attorneys and other professionals on the matter, and describe the work performed. Unless otherwise provided in our engagement letter, we will provide you with a bill on a monthly basis. Payment is due on receipt. Any balance unpaid after 30 days of the date of the invoice shall accrue interest at the rate of seven percent (7%) per annum. Payments shall be applied first to costs and expenses, then to accrued interest, if any, and then to the unpaid fees.

We will give you notice if your account becomes delinquent, and you agree to bring the account or the retainer deposit current. If the delinquency continues and you do not arrange satisfactory payment terms, we may withdraw from the representation and pursue collection of your account. We may also request permission of any court in which we have filed an appearance on your behalf to allow us to withdraw as your counsel, and you agree that non-payment of our fees is a valid basis for our request to so withdraw. To the extent collection of your account becomes necessary, you agree that, in addition to any unpaid balance and interest thereon, we will be entitled to recover all costs and expenses of collection, including reasonable attorney fees.



August 30, 2013

U.S. Mail and
Email: dcmoney@yahoo.com

PERSONAL AND CONFIDENTIAL

Mr. Denny J. Chittick
DenSco Investment Corporation
6132 West Victoria Place
Chandler, AZ 85226

Dear Denny:

This is to inform you that David G. Beauchamp will be leaving Bryan Cave LLP effective August 31, 2013, to join the law firm of Clark Hill PLC.

In light of his departure, we are writing to discuss the disposition of your active and any inactive files located in our Phoenix office. **The attached report is a list of your Bryan Cave LLP matters in the Phoenix office, including any files which have been inactive.** It is important that you instruct us to release or retain each matter individually.

You are entitled to those documents currently in Bryan Cave LLP's possession relating to legal services performed by us for you, excluding internal accounting records and other documents not reasonably necessary to your representation. This includes personal or corporate documents or property. For your convenience, we have enclosed with this letter an index of each matter. If you choose to have some or all of the above-described files returned to you, Bryan Cave will arrange to have the files transferred or delivered to you. Under Bryan Cave's document retention policy, inactive files are destroyed ten years after a matter is closed. Please indicate any documents or property you would like returned to you.

Once you have completed your directions, please sign and date the attached page in the space provided and return the letter to the attention of David Beauchamp, at his contact information below, with copies to Jay Zweig at Bryan Cave's Phoenix office. You may do this by facsimile to David at (480) 684-1199, and to Jay at (602) 716-8300; or you may send an e-mail with your instructions to David Beauchamp, at dbeauchamp@clarkhill.com, with a copy to Jay Zweig at jay.zweig@bryancave.com; or you can return it via U.S. Mail. However you choose to respond, we would appreciate a written response by close of business on September 6, 2013. This will facilitate the efficient handling of your files.

Bryan Cave LLP
One Renaissance Square
Two North Central Avenue
Suite 2200
Phoenix, AZ 85004-4406
Tel (602) 364-7000
Fax (602) 364-7070
www.bryancave.com

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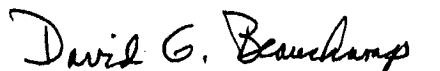
David G. Beauchamp's contact information as of September 1, 2013 will be as follows:

Clark Hill PLC
14850 N. Scottsdale Road, Suite 500
Scottsdale, AZ 85254
Office: (480) 684-1100
Mobile: (602) 319-5602
Fax (480) 684-1199

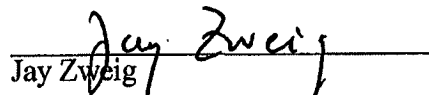
In the meantime, please contact us if you have any questions at the following numbers:

David Beauchamp: (602) 319-5602 Jay Zweig: (602) 364-7300

Very truly yours,



David G. Beauchamp



Jay Zweig

MATTER LIST

Please indicate in the spaces provided below those files you wish delivered to you, delivered to David Beauchamp at Clark Hill, PLC, retained by Bryan Cave LLP for handling, retained by Bryan Cave in offsite storage or destroyed. Any files that are not specifically marked will be retained under Bryan Cave's document retention policy and destroyed ten years after a matter is closed. In addition, please notify Bryan Cave LLP of any personal or corporate documents or property retained in these files. Such personal material will be returned to you at this time. Your signature is an acknowledgment of Bryan Cave LLP's retention policy.

Matter Name	Matter Number	Returned to Client	Delivered to David Beauchamp at Clark Hill PLC	Retained by Bryan Cave	Destroyed
C068584 – DenSco Investment Corp.					
2007 Private Offering	0224518	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
2008 Private Offering	0220088	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
2009 Private Offering	0232360	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
2011 Private Offering	0322546	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
2013 Private Offering	0352992	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
AZ Practice Review	0326715	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Blue Sky Issues	0235165	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Formation of affiliated entity w/partners	0323475	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Garnishments	0307850	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
General Corporate	0219815	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

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I hereby acknowledge the return or destruction of the documents as indicated below.

By: _____ Date: _____
Name _____
Position _____

To schedule file(s) for pick-up at Bryan Cave's Phoenix office, please call **Katherine Velazquez** at **602-364-7044**.

For matters to be shipped COD (collect on delivery), please fill out the form below:

Name: _____

Street Address: _____

City: _____

State: _____ Zip: _____

Phone: _____ Email: _____

FedEx Account Number: _____

UPS Account Number: _____

USPS COD (collect on delivery) _____