

Colin F. Campbell, 004955
Geoffrey M. T. Sturr, 014063
Joshua M. Whitaker, 032724
Osborn Maledon, P.A.
2929 North Central Avenue, 21st Floor
Phoenix, Arizona 85012-2793
(602) 640-9000
ccampbell@omlaw.com
gsturr@omlaw.com
jwhitaker@omlaw.com

Attorneys for Plaintiff

IN THE SUPERIOR COURT OF THE STATE OF ARIZONA
IN AND FOR THE COUNTY OF MARICOPA

Peter S. Davis, as Receiver of DenSco
Investment Corporation, an Arizona
corporation,

Plaintiff,

vs.

Clark Hill PLC, a Michigan limited
liability company; David G. Beauchamp
and Jane Doe Beauchamp, husband and
wife,

Defendants.

No. CV2017-013832

~~PROPOSED~~ PROTECTIVE
ORDER

(Assigned to the
Honorable Daniel Martin)

Upon stipulation by the parties to this action and good cause appearing,

IT IS HEREBY ORDERED pursuant to Ariz. R. Civ. P. 26(c) that the
following procedures shall apply to confidential documents and information produced
or disclosed in this action:

DESIGNATION OF CONFIDENTIAL MATERIALS

1. The parties may designate as "Confidential Materials" any Documents,
Testimony, or Information that they produce or exchange pursuant to the Arizona
Rules of Civil Procedure if they believe in good faith that the Documents, Testimony,
or Information is entitled to confidential treatment under applicable law.

a. "Documents" means any and all documents or electronically
stored information, including, but not limited to, all of the items listed in Rule

1 34(a) of the Rules of Civil Procedure for the Superior Courts of Arizona, which
2 have been produced in discovery in this action by any person or entity, and
3 (ii) any copies, reproductions, or summaries of all or any part of the foregoing.

4 b. "Testimony" means all depositions, declarations, or other
5 testimony taken or used in this Proceeding.

6 c. "Information" means the content of Documents or Testimony.

7 d. The parties will not claim that the following Documents are
8 confidential or subject to any protective order: communications between Clark
9 Hill and DenSco related to the subject matter of this litigation or any
10 representation of DenSco by Clark Hill; DenSco business records; the corporate
11 journal kept by Mr. Chittick while he was president of DenSco;
12 communications between DenSco and any borrower of funds from DenSco, or
13 the borrower's representative; communications between DenSco and its
14 accountants; communications between Mr. Chittick and any third party
15 regarding the subject matter of this litigation, including without limitation, the
16 Arizona Corporation Commission.

17 2. The disclosing party making such designation (the "Designating Party")
18 must clearly designate Documents, Testimony, or Information as Confidential at the
19 time the Document, Testimony, or Information is disclosed or produced.

20 a. For Documents (apart from transcripts of depositions or other
21 pretrial or trial proceedings), the Designating Party must affix the legend
22 "Confidential Materials" on each page of any Document containing such
23 designated material, without obscuring the legibility of the Document. If only
24 part of a Document is designated as Confidential, the Designating Party shall
25 clearly designate which parts are designated as Confidential.

26 b. For Testimony given in depositions, the Designating Party may
27 either:

28 i. identify on the record, before the close of the deposition,

1 the specific portions of the Testimony that are designated as
2 Confidential; or

3 ii. designate on the record the entirety of the Testimony at the
4 deposition as Confidential, before the close of the deposition, with the
5 right to identify more specific portions of the Testimony as to which
6 protection is sought within 30 days following receipt of the deposition
7 transcript.

8 The court reporter shall affix to the top of each transcript page containing
9 Testimony designated as Confidential the legend "Confidential Materials." If
10 only part of the Testimony is designated as Confidential, the portions
11 designated as Confidential may be separately bound by the court reporter.

12 c. For Information produced in some form other than Documents,
13 and for any other tangible items, including, without limitation, flash drives,
14 hard drives, compact discs, or DVDs, the Designating Party must affix in a
15 prominent place on the exterior of the container or containers in which the
16 Information or item is stored the legend "Confidential." If only portions of the
17 Information or item warrant protection, the Designating Party, to the extent
18 practicable, shall identify the Confidential portions with particularity.

19 3. Inadvertent production of or failure to designate any matter as
20 Confidential shall not be deemed a waiver of the producing party's claim of
21 confidentiality as to such matter, and the producing party may thereafter designate
22 such matter as Confidential within fifteen business days of the discovery of the
23 inadvertent production or failure to designate. In addition, within fifteen business
24 days of the entry of this Order by the Court, the parties may designate as Confidential
25 any materials disclosed prior to the execution of this Confidentiality Agreement and
26 Protective Order.

27 4. The inadvertent production of any Document, Testimony, or Information
28 during discovery in this proceeding without a Confidential designation that the

1 producing party believes contains attorney-client communications, attorney work
2 product, or otherwise privileged information shall be handled in accordance with the
3 applicable Arizona rules and laws, including but not limited to, Rule 26.1(f)(2) of the
4 Rules of Civil Procedure for the Superior Courts of Arizona, Rule 502 of the Rules of
5 Evidence for Courts in the State of Arizona, and ER 4.4(b) of the Arizona Rules of
6 Professional Conduct.

7 5. Any Document, Testimony, or Information that may be produced by a
8 non-party witness in discovery in the Proceeding pursuant to subpoena or otherwise
9 may be designated by such non-party as Confidential under the terms of this
10 Confidentiality Agreement and Protective Order, and any such designation by a non-
11 Party shall have the same force and effect, and create the same duties and obligations,
12 as if made by one of the undersigned Parties hereto. Any such designation shall also
13 function as consent by such producing non-party to the authority of this Court to
14 resolve and conclusively determine any motion or other application made by any
15 person or party with respect to such designation, or any other matter otherwise arising
16 under this Protective Order.

17 6. In the event that counsel for a party receiving Documents, Testimony or
18 Information in discovery designated as Confidential objects to such designation with
19 respect to any or all of such items, said counsel shall advise counsel for the
20 designating party, in writing, of such objections. Unless a prompt challenge to such
21 designation is necessary to avoid foreseeable substantial unfairness, unnecessary
22 economic burdens, or a later significant disruption or delay of this action, a party does
23 not waive its right to challenge a "Confidential" designation by electing not to mount a
24 challenge promptly after the original designation is disclosed. Within fourteen days of
25 an objection being made, the parties shall meet and confer in an attempt to resolve the
26 dispute. If the dispute cannot be resolved, the party claiming confidentiality shall have
27 no more than thirty days from the initial "meet and confer" session within which to
28 seek relief from the Court, and shall have the burden of establishing the applicability

1 of its Confidential Designation. If relief is sought, any and all existing designations on
2 the Documents, Testimony, or Information at issue in such Motion shall remain in
3 place pending resolution by the Court. Failure to seek such relief shall constitute a
4 binding admission that the subject Documents, Testimony or Information should not
5 be designated Confidential and need not be treated as such.

6 **USE OF CONFIDENTIAL MATERIALS**

7 7. Documents, Testimony, and Information designated as Confidential
8 pursuant to this Order shall be used by the persons or entities receiving them only for
9 the purposes of preparing for, conducting, participating in the conduct of, and/or
10 prosecuting and/or defending this action, and not for any business or other purpose
11 whatsoever.

12 8. Access to and/or Disclosure of Confidential Materials shall be permitted
13 only to the following persons or entities:

14 a. the Court, including Court personnel;

15 b. attorneys of record in this action and their affiliated attorneys,
16 paralegals, clerical and secretarial staff employed by such attorneys who are
17 actively involved in the proceeding;

18 c. parties who are natural persons and, for those parties that are
19 corporate entities, those officers, directors, experts and employees that counsel
20 for such parties deem necessary to aid counsel in the prosecution and defense of
21 this proceeding; provided, however, that each non-lawyer given access to
22 Confidential Materials shall be advised in writing that such materials are being
23 disclosed pursuant to, and are subject to, the terms of this Protective Order and
24 that they may not be disclosed other than pursuant to its terms;

25 d. court reporters in this proceeding (whether at depositions,
26 hearings, trial, or any other proceeding);

27 e. any deposition or non-trial hearing witness in the proceeding;
28 provided, however, that each such witness given access to Confidential

1 Materials shall be advised orally and in writing that such materials are being
2 disclosed pursuant to, and are subject to, the terms of this Confidentiality
3 Agreement and Protective Order and that they may not be disclosed other than
4 pursuant to its terms;

5 f. outside experts or expert consultants consulted by the
6 undersigned Parties or their counsel in connection with the Proceeding, whether
7 or not retained to testify at any oral hearing; provided, however, that prior to the
8 disclosure of Confidential Materials to any such expert or expert consultant,
9 counsel for the party making the disclosure shall deliver a copy of this
10 Confidentiality Agreement and Protective Order to such person, shall explain
11 its terms to such person, and shall secure the signature of such person on a
12 statement in the form attached hereto as Exhibit A. It shall be the obligation of
13 counsel, upon learning of any breach or threatened breach of this
14 Confidentiality Agreement and Protective Order by any such expert or expert
15 consultant, to promptly notify counsel for the Designating Party of such breach
16 or threatened breach;

17 g. any other person or entity that the designating party agrees to in
18 writing;

19 h. in response to any lawfully issued subpoena or other legal
20 process, subject to the provisions of Paragraph 12 herein;

21 i. authors, originators, or original recipients of the document,
22 testimony or information, as specifically reflected on the face of the document,
23 testimony or information.

24 9. Whenever any Documents, Testimony or Information designated as
25 Confidential are to be discussed or shown in a deposition, the party who designated
26 that material as Confidential may exclude from the room any person who is not
27 entitled to view or receive documents, testimony or information so designated. Unless
28 otherwise agreed, a deponent, other than a party's experts or consultants, may not

1 retain a copy of any deposition materials deemed Confidential unless such deposition
2 material was produced by the deponent in connection with the deposition and/or was
3 previously in the deponent's possession, custody or control.

4 10. The party submitting or presenting any Confidential Materials in any
5 motion or other proceeding shall comply with Rule 5.4 of the Arizona Rules of Civil
6 Procedure and Rule 2.19 of the Local Rules of Practice of the Superior Court of
7 Maricopa County.

8 11. The Parties shall meet and confer regarding the procedures for use of
9 any materials designated as Confidential at trial and shall move the Court for entry of
10 an appropriate order.

11 12. If any person subject to this Confidentiality Agreement and Protective
12 Order who has custody of any materials designated as Confidential receives a
13 subpoena or other process ("Subpoena") from any governmental entity or other person
14 or entity demanding production of such Confidential Materials, the recipient of the
15 Subpoena shall promptly give notice of the same by electronic mail transmission but
16 no less than five (5) business days after receiving service of such Subpoena, followed
17 by either express mail or overnight delivery to counsel of record for the designating
18 party, and shall furnish such counsel with a copy of the Subpoena. Upon receipt of
19 this notice, the designating party may, in its sole discretion and at its own cost, move
20 to quash or limit the Subpoena, otherwise oppose production of the Confidential
21 Materials, and/or seek to obtain confidential treatment of such materials from the
22 subpoenaing person or entity to the fullest extent available under law. Such party
23 subject to the Subpoena or order shall also promptly inform in writing the party who
24 caused the Subpoena to issue that some or all of the matter covered by the Subpoena is
25 subject to this Protective Order. The recipient of the Subpoena may not produce any
26 Confidential Materials pursuant to the Subpoena prior to the date specified for
27 production on the Subpoena.

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1 13. If, after execution of this Protective Order, any Confidential Materials
2 are Disclosed by a non-Designating Party to any person other than in the manner
3 authorized by this Order, the non-designating Party responsible for the disclosure shall
4 (a) bring all pertinent facts relating to the disclosure of such Confidential Materials to
5 the immediate attention of the designating party; and (b) use its best efforts to retrieve
6 all copies of the inadvertently disclosed Confidential Materials.

7 14. This Protective Order is entered without prejudice to the right of any
8 party to knowingly waive the applicability of this Protective Order to any Confidential
9 Materials designated by that Party. If the designating party uses Confidential
10 Materials in a non-Confidential manner, then the designating party shall advise that
11 the designation no longer applies. Nothing contained in this Protective Order shall
12 prevent a party to this action from using its own designated material in any way that it
13 sees fit, or from revealing its own designated material to whomever it chooses, without
14 prior consent of any person or of the Court.

15 15. Upon written request made within thirty (30) days after the settlement or
16 other termination of the proceeding, the undersigned parties shall have thirty (30) days
17 to either (a) promptly return to counsel for each designating party all Confidential
18 Materials, and all copies thereof (except that counsel for each party may maintain in
19 its files, in continuing compliance with the terms of this Protective Order, all work
20 product, one copy of each pleading filed with the Court, one copy of each deposition
21 together with the exhibits marked at the deposition, and one copy of any exhibits
22 admitted at any hearing or trial), (b) agree with counsel for the designating party upon
23 appropriate methods and certification of destruction or other disposition of such
24 materials including any and all electronic copies, or (c) as to any Documents,
25 Testimony, or other Information not addressed by sub-paragraphs (a) and (b), file a
26 motion seeking a Court order regarding proper preservation of such materials. To the
27 extent permitted by law the Court shall retain continuing jurisdiction to review and
28 rule upon the motion referred to in sub-paragraph (c) herein.

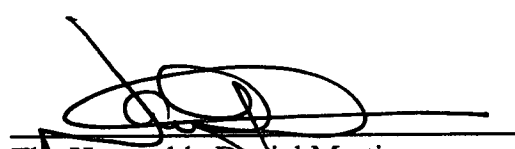
1 **EFFECT OF THIS AGREEMENT AND ORDER**

2 16. The parties and all signatories to the Certification attached hereto as
3 Exhibit A agree to be bound by this Protective Order pending its approval and entry by
4 the Court. In the event that the Court modifies this Protective Order, or in the event
5 that the Court enters a different Protective Order, the Parties agree to be bound by this
6 Protective Order until such time as the Court may enter such a different Order.

7 17. The entry of this Protective Order does not alter, waive, modify, or
8 abridge any right, privilege, or protection otherwise available to any Party with respect
9 to the discovery of matters or the admission of evidence, including but not limited to
10 the right to pursue or oppose any request for discovery on any ground permitted by the
11 Arizona Rules of Civil Procedure or other applicable law or to assert or contest the
12 attorney-client privilege, the attorney work product doctrine, the common interest
13 privilege, or other privileges.

14 18. Any Party to this action (or other person subject to the terms of this
15 Protective Order) may ask the Court, after appropriate notice to the other Parties to
16 this action, to modify or grant relief from any provision of this Protective Order.

17 19. This Protective Order shall continue to be binding after the conclusion of
18 this action and all subsequent proceedings arising from this action, except that a Party
19 may seek the written permission of the Designating Party or may move the Court for
20 relief from the provisions of this Protective Order. To the extent permitted by law, the
21 Court shall retain jurisdiction to enforce, modify, or reconsider this Protective Order,
22 even after the Proceeding is terminated.

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26 
27 The Honorable Daniel Martin
28 Maricopa County Superior Court

April 3, 2018

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EXHIBIT A

Agreement to Terms of Protective Order

FORM OF ACKNOWLEDGEMENT:

I, _____, being a person authorized to have access to Confidential documents pursuant to the Protective Order entered in *Peter S. Davis, as Receiver of DenSco Investment Corporation v. Clark Hill PLC, et al.*, Maricopa County Superior Court No. CV2017-013832, have read and understood the Protective Order, and hereby agree to comply with the provisions of the Protective Order regarding any Confidential documents that are provided to me.

s/ _____

Date: _____

Print name: _____