

GUTTILLA MURPHY ANDERSON

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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. 83

PETITION TO APPROVE
PROCEDURES RE: DECEASED
DENSCO CREDITORS

(Assigned to the Honorable
Teresa Sanders)

Peter S. Davis, as the court appointed Receiver, respectfully petitions the Court to approve the procedures detailed below to allow the Receiver to make payment on approved claims of creditors of DenSco Investment Corporation ("DenSco Creditors") when the DenSco Creditor has died without further orders of this Court as follows:

1. On August 18, 2016, this Court entered its *Order Appointing Receiver*, which appointed Peter S. Davis as Receiver of DenSco Investment Corporation ("Receivership Order").

1 2. On March 28, 2017, the Court entered its *Order Re: Petition No. 19 – Order*
2 *Establishing Procedures for the Adjudication of Claims* (“Claims Order”) which, among other
3 things, established the procedures for the solicitation and adjudication of creditor claims
4 against DenSco.

5 3. On October 27, 2017, the Court entered its *Order Re: Petition No. 37*, which
6 approved one hundred and thirteen (113) creditor claims in a collective total amount of
7 \$31,446,001.79 and approved individual claim amounts for each of the DenSco Creditors.

8 4. On December 13, 2017, the Court entered its *Amended Order Re Petition No. 41*,
9 which approved the Receiver’s first interim distribution of \$4,500,000.03 to the DenSco
10 Creditors.

11 5. On May 10, 2018, the Court entered its *Order re: Petition No. 56*, which
12 approved the Receiver’s second interim distribution of \$2,500,000.07 to the DenSco creditors.

13 6. On September 17, 2019, the Court entered its *Order re: Petition No. 78*, which
14 approved the Receiver’s third interim distribution of \$1,000,000.00 to the DenSco creditors.

15 7. Unfortunately, a number of the DenSco Creditors are elderly, and the Receiver
16 has already begun to receive notifications from relatives and others that some DenSco
17 Creditors have died. In those cases, it becomes necessary for the Receiver to determine the
18 appropriate person to whom current and future distributions from the DenSco Receivership
19 should be paid. To address these situations, the Receiver proposes that the Court adopt the
20 following procedures, which the Receiver believes will generally eliminate the need to apply
21 to the Court for a modification of the claims order or for other relief, thus expediting the

1 payment of claims to the DenSco Creditors and minimizing the expenses to the Receivership
2 Estate.

3 8. A.R.S. §14-1301 provides that the Arizona probate statutes apply, not only to
4 the distributions of the property of decedents who resided in Arizona at the time of their death,
5 but also to distributions of “the property of nonresidents located in this state or property
6 coming into the control of a fiduciary who is subject to the laws of this state.” [See
7 A.R.S. § 14-1301(2)]

8 9. In those cases where there is a judicial probate in place, the Receiver proposes
9 to make distributions to the duly appointed personal representative or executor of the deceased
10 DenSco Creditor’s estate.

11 10. In cases where the probate has been concluded or there are insufficient assets to
12 warrant a judicial probate, the Receiver proposes to make distributions to DenSco Creditors
13 as provided in A.R.S. § 14-3971(B), which provides in pertinent part as follows:

14 B. Thirty days after the death of a decedent, any person indebted to
15 the decedent or having possession of tangible personal property or an instrument
16 evidencing a debt, obligation, stock or chose in action belonging to the decedent
17 shall make payment of the indebtedness or deliver the tangible personal property
18 or an instrument evidencing a debt, obligation, stock or chose in action to a
19 person claiming to be the successor of the decedent upon being presented an
20 affidavit made by or on behalf of the successor and stating that all of the
21 following are true:

1. Thirty days have elapsed since the death of the decedent.

2. Either:

(a) An application or petition for the appointment of a personal
representative is not pending and a personal representative has not been
appointed in any jurisdiction and the value of all personal property in the
decedent’s estate wherever located, less liens and encumbrances, does
not exceed \$75,000 as valued as of the date of death.

1 (b) The personal representative has been discharged or more
2 than one year has elapsed since a closing statement has been filed and the
3 value of all personal property in the decedent's estate, wherever located,
less liens and encumbrances, does not exceed \$75,000¹ as valued as of
the date of the affidavit.

4 3. The claiming successor is entitled to payment or delivery of the
property.

5 11. By following this proposed procedure, the Receiver avoids having to conduct an
6 independent investigation into a deceased DenSco Creditor's estate and enjoys certain
7 protections should the information contained in an affidavit, submitted to the Receiver, turn
8 out not to be accurate. A.R.S. § 14-3972(A) provides that:

9 A. The person paying, delivering, transferring or issuing personal
10 property or the evidence thereof pursuant to affidavit is discharged and released
to the same extent as if he dealt with a personal representative of the decedent.
11 He is not required to see to the application of the personal property or evidence
thereof or to inquire into the truth of any statement in the affidavit. If any person
12 to whom an affidavit is delivered refuses to pay, deliver, transfer or issue any
personal property or evidence thereof it may be recovered or its payment,
13 delivery, transfer or issuance compelled upon proof of their right in a proceeding
brought for the purpose by or on behalf of the persons entitled thereto. Any
14 person to whom payment, delivery, transfer or issuance is made is answerable
and accountable therefore to any personal representative of the estate or to any
15 other person having a superior right.

16 12. Some states have similar summary procedures for the estates of decedents who
17 resided in those states at the time of their death, but with maximum asset limits higher than
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21 ¹ The Receiver must rely on valuation of other assets by the decedent's beneficiaries or
representatives. With respect to DenSco Creditors, all but 21 of the 113 approved claims are
in an amount more than \$75,000.00.

1 those in Arizona.² Where those statutes have been complied with, the Receiver will distribute
2 in accordance with the laws of those states.

3 13. Accordingly, the Receiver proposes that in each case in which a DenSco
4 Creditor is deceased at the time of any distribution by the Receiver on the approved DenSco
5 Creditor's claim, that any person asserting the right to receive a distribution from the
6 Receivership Estate on behalf of any deceased DenSco Creditor on their approved claim will
7 be required to produce one of the following to the Receiver:

8 (1) An affidavit, together with a copy of letters of appointment from Arizona
9 or the state in which the DenSco Creditor resided at the time of his or her death, showing
10 that the DenSco Creditor is deceased, and that the person seeking to receive
11 distributions on the approved claim of the DenSco Creditor is the duly appointed and
12 serving personal representative of the deceased DenSco Creditor and is entitled to take
13 possession of the property of the deceased DenSco Creditor;

14 (2) An affidavit, under A.R.S. § 14-3971(B) showing that the DenSco
15 Creditor is deceased, and that the person seeking to receive distributions on the
16 approved claim of the deceased DenSco Creditor is a lawful heir entitled to part or all
17 of the property of the deceased DenSco Creditor and the percentage of the distribution
18 to which he or she is entitled;

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² Section 13100 of the California Probate Code provides a similar summary probate
procedure by affidavit in cases where the gross value of the decedent's assets in California
does not exceed \$150,000.

1 (3) An affidavit, complying with the laws of another state authorizing a
2 summary disposition of estate assets similar to A.R.S. §14-3971(B), showing that the
3 DenSco Creditor is deceased, and that the person seeking to receive distributions on the
4 approved claim of the DenSco Creditor is a lawful heir entitled to part or all of the
5 property of the DenSco Creditor and the percentage of the distribution to which he or
6 she is entitled;

7 (4) An affidavit, showing that the DenSco Creditor is deceased, together with
8 a copy of the trust instrument showing that the person seeking to receive distributions
9 on the approved claim of the DenSco Creditor is the duly appointed and serving trustee
10 of a trust for the DenSco Creditor and is entitled to take possession of the property of
11 the DenSco Creditor; or

12 (5) An affidavit, together with supporting documentation that the DenSco
13 Creditor is deceased, and that the investment underlying the approved claim was held
14 in an IRA or other custodial account and that the claimant is a beneficiary of the
15 custodial account and the percentage beneficial interest the person has in the custodial
16 account.

17 14. The Receiver will not be required to verify the truth of the statements contained
18 in any affidavit submitted to the Receiver, although the Receiver may apply to the
19 Receivership Court to resolve disputes or seek further instructions in extraordinary cases.
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1 15. If a DenSco Creditor is deceased at the time of any interim distribution approved
2 by the Court to be paid to the DenSco Creditors, the Receiver may make the approved
3 distribution to the following:

4 a. A personal representative of the deceased DenSco Creditor who has filed
5 an affidavit as required above;

6 b. Heir of the deceased DenSco Creditor who has filed an affidavit as
7 required above. In the event that more than one heir produces an affidavit as required
8 above, the Receiver will pay the respective percentages set forth in the affidavits as
9 long as they do not exceed 100% of the distribution being made to the deceased DenSco
10 Creditor;

11 c. Trustee of the trust holding title to the investment underlying the
12 approved claim who has filed an affidavit as required above; or

13 d. The person designated as the beneficiary under an IRA or other custodial
14 account holding title to the investment underlying the approved claim who has filed an
15 affidavit as required above. In the event that more than one person produces an
16 affidavit as required above, the Receiver will pay the respective percentages set forth
17 in the affidavits as long as they do not exceed 100% of the distribution being made on
18 the approved claim of the deceased claimant.

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1 WHEREFORE, the Receiver respectfully requests that the Court enter an order:

2 Approving the procedures set forth in this motion for the Receiver to make distributions
3 in payment of approved claims of DenSco Creditors who are deceased at the time of the
4 distribution.

5 Respectfully submitted: November 12, 2019.

6 GUTTILLA MURPHY ANDERSON, P.C.

7 /s/Ryan W. Anderson

8 Ryan W. Anderson

9 Attorneys for the Receiver

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