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8  
9 **SUPERIOR COURT OF ARIZONA**  
10 **COUNTY OF MARICOPA**

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

13 Plaintiff,

14 v.

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

17 Defendants.

No. CV2017-013832

**DEFENDANTS' RESPONSE TO  
PLAINTIFF'S MOTION TO SET A  
RULE 16 TRIAL SETTING  
CONFERENCE**

(Assigned to the Honorable Daniel Martin)

18  
19 Defendants Clark Hill PLC and David Beauchamp oppose Plaintiff's Motion to Set  
20 A Rule 16 Trial Setting Conference ("Motion"). The circumstances here do not warrant  
21 abandoning this Court's May 16, 2018 Scheduling Order to prematurely set a trial date in  
22 March or April of next year. At the Court's direction and pursuant to Rule 16, the parties  
23 conferred in April 2018 about a pretrial schedule that would accomplish the work each party  
24 in good faith believed would be needed to prepare their respective cases. The parties were  
25 unable to agree on all details of that schedule. The parties submitted their positions to the  
26 Court and explained them at a May 4, 2018 Rule 16(d) Pretrial Conference ("Pretrial

1 Conference”). This Court entered its Scheduling Order after considering the written and oral  
2 presentations. Since then the parties have relied on that schedule and, through counsel, have  
3 worked diligently to meet it. The sequence of deadlines and the various goals to be  
4 accomplished from disclosures, to lay discovery, to expert disclosures and discovery, to the  
5 filing of dispositive motions, to private mediation – all before the Rule 16 Trial Setting  
6 Conference on December 3, 2019 – is fair and sensible. Defendants, through their discovery,  
7 research and motions, believe they will be able to reduce and perhaps defeat Plaintiff’s case  
8 before the Trial Setting Conference.

9 The following sets forth the status of the litigation and the efforts made by the parties  
10 to gather and organize evidence and advance their interests. It demonstrates that the schedule  
11 is realistic and should be maintained along with the current Trial Setting Conference set for  
12 December 3, 2019.

13 Non-Party At Fault Discovery. Defendants shared with the Court at the Pretrial  
14 Conference that this legal malpractice case is complicated and involved the possible  
15 wrongdoing of a number of non-parties. Defendants needed to pursue discovery on a number  
16 of fronts so that Defendants could present the necessary evidence to and properly instruct  
17 the jury. In fact, Defendants’ June 7, 2018 Notice of Non-Parties at fault identifies twenty-  
18 six (26) persons or entities who may have caused or contributed to Plaintiff’s alleged  
19 damages. Discovery related to Defendants’ non-party at fault claims has been difficult and  
20 time consuming.

21 For example, Defendants are pursuing JPMorgan Chase Bank and U.S. Bank as non-  
22 parties at fault, and the Receiver has hired a Special Counsel to pursue claims against the  
23 banks as well. Defendants have alleged that the banks facilitated the financial injury to  
24 DenSco referred to as the “Second Fraud” which started in January 2014, continued through  
25 Mr. Chittick’s suicide and involved over \$300 million in false cashier check transactions.  
26 Menaged portrayed himself to DenSco as a bona fide borrower purchasing residential real

1 estate with the DenSco loans. Defendants subpoenaed Chase Bank on January 8, 2019 and  
2 U.S. Bank on January 16, 2019 for their relevant documents. Each has fought discovery  
3 efforts every step of the way. This Court granted Defendants' Motion to Compel Chase  
4 Bank on May 10, 2019 and asked counsel for the Defendants to draft an appropriate order.  
5 Defendants hope that US Bank will now cooperate in light of the Court's ruling, but that is  
6 not a certainty. Defendants intend to gather and organize the relevant documents and take  
7 the depositions of the banks' personnel as soon as possible.

8 Defendants are also pursuing other hard money lenders, including Active Funding  
9 Group ("AFG"), as non-parties at fault. The Receiver hired Special Counsel Houston law  
10 firm Ajamie LLC in November 2017 to pursue claims against AFG. In its Petition No. 45  
11 in the companion Receivership action, the Receiver reported that its investigation indicated  
12 AFG uncovered Menaged's scheme to defraud it and DenSco, took actions to protect its own  
13 historical loans to Menaged and at the same time worked cooperatively with Menaged to  
14 enable him to defraud DenSco. But the Receiver chose to shelve those claims and entered  
15 into a Tolling Agreement with AFG on April 10, 2019. Defendants have subpoenaed Ajamie  
16 for its non-privileged documents in Houston, Texas but they too have opposed Defendants'  
17 efforts to gather this information every step of the way. Defendants are currently awaiting  
18 the Texas Court's direction on Ajamie's Motion for Protective Order.

19 Discovery regarding the non-party at fault claim against Yomtov "Scott" Menaged  
20 will also be time consuming. He is currently serving a 17 year prison sentence for federal  
21 crimes against DenSco, banks and financial institutions. Coordinating his deposition with  
22 the federal prison and all counsel will take time.

23 Finally, there are a number of other parties who may bear fault for the Receiver's  
24 alleged injury and Defendants are gathering and analyzing evidence related to those claims  
25 also.

26 . . .

1       Experts

2       The parties exchanged expert disclosures on April 5, 2019 in accordance with the  
3 Scheduling Order. Rebuttal opinions are due June 7, 2019.

4       There are seven experts between the parties. Five remain to be deposed.

5       Discovery

6       Plaintiff has noticed and taken five depositions. Defendants have noticed and taken  
7 19 depositions. Defendants have identified at least 15 additional witnesses to be deposed  
8 before the October 18, 2019 deposition deadline.

9       Motion Practice

10       Plaintiff filed a Motion for Determination that Plaintiff Has Made a *Prima Facie* Case  
11 for Punitive Damages for Aiding and Abetting Breach of Fiduciary Duty. Defendants filed  
12 their Response on May 13, 2019. Plaintiff has requested, and Defendants have granted, an  
13 extension to June 13 for the Receiver's Reply Brief.

14       On May 15, 2019 Defendants filed their Motion *In Limine* to Preclude Use of  
15 Documents Identified in Plaintiff's Rule of Evidence 807(b) Notices. Plaintiff has requested,  
16 and Defendants have granted, Plaintiff an extension to June 13, 2019 to file the Receiver's  
17 Response.

18       Defendants anticipate filing dispositive motions on or before the November 15, 2019  
19 deadline.

20       Finally, the parties have agreed to a private mediation before the Trial Setting  
21 Conference, which will require its own set of briefing.

22       As noted, the Scheduling Order sets the Trial Setting Conference for December 3,  
23 2019. This fits the natural sequence of the case and recognizes that with the completion of  
24 discovery and the filing of motions the case may look very different by that time. Plaintiff  
25 requests that the Court set the Rule 16 Trial Setting conference on an earlier date and then  
26 expedite the trial to March or April of 2020 to accommodate Plaintiff's counsel's schedule.

1 Of course, Defendants are open to discussing the status of the case with the Court. And  
2 Defendants have no reason to challenge Plaintiff's counsel's representations about matters  
3 he is handling before the Special Water Master. But, respectfully, that representation should  
4 not dictate whether the parties and this Court follow the Scheduling Order already  
5 established. Defendants have rightfully relied upon the time granted by the Court and are  
6 making good use of that time. The Court should not alter it, but should allow the parties to  
7 complete their discovery and motion practice on the schedule they have relied upon. Then,  
8 once the parties have completed discovery and motion practice and everyone knows better  
9 what the case looks like, the Court can determine its availability for a lengthy jury trial, if  
10 necessary.

11 DATED this 3<sup>rd</sup> day of June, 2019.

12  
13 **COPPERSMITH BROCKELMAN PLC**

14 By: /s/ John E. DeWulf

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19 mailed this 3<sup>rd</sup> day of June, 2019 to:

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