

**GUTTILLA MURPHY ANDERSON**

**Ryan W. Anderson** (Ariz. No. 020974)

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Attorneys for the Receiver

IN THE SUPERIOR COURT OF THE STATE OF ARIZONA

IN AND FOR MARICOPA COUNTY

ARIZONA CORPORATION

COMMISSION,

Plaintiff,

v.

DENSCO INVESTMENT

CORPORATION, an Arizona

corporation,

Defendant.

Cause No. CV2016-014142

PETITION NO. 10

PETITION FOR ORDER TO APPROVE  
THE ENGAGEMENT OF SPECIAL  
COUNSEL, T.J. RYAN OF FRAZER  
RYAN GOLDBERG & ARNOLD LLP  
TO REPRESENT THE RECEIVER IN  
THE ESTATE OF DENNY J. CHITTICK

(Assigned to the Honorable Lori Horn  
Bustamante)

Peter S. Davis, as the court appointed Receiver of DenSco Investment Corporation, respectfully petitions the Court for an Order approving the engagement of T.J. Ryan of the law firm of Frazer Ryan Goldberg & Arnold LLP, as Special Counsel to the Receiver, as follows:

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

1           2.       The Receivership Order authorizes the Receiver to, among other things,  
2 employ attorneys and other professionals that are necessary and proper for the collection,  
3 preservation and maintenance of the Receivership Assets. [See ¶16 of the Receivership  
4 Order]

5           3.       The Receiver has determined that he requires the legal services of T.J. Ryan  
6 Esq. and the law firm of Frazer Ryan Goldberg & Arnold LLP to assist the Receiver in the  
7 investigation and prosecution of DenSco's creditor claims against the Estate of Denny J.  
8 Chittick and provide advice and counsel regarding the administration of the Estate of Denny  
9 J. Chittick.

10          4.       Specifically, the Receiver has determined that DenSco and the Receivership  
11 Estate has significant claims against the Estate of Chittick arising from actions of Denny J.  
12 Chittick during Mr. Chittick's tenure as the control person for DenSco. The Receiver has  
13 recently delivered to the Personal Representative of the Estate of Denny J. Chittick a *Notice*  
14 *of Claim against the Estate of Denny J. Chittick* ("Notice of Claim") establishing the  
15 Receiver's claims against the Estate of Denny J. Chittick in the amount of \$46,811,635.54<sup>1</sup>.

16          5.       The Receiver has determined that he requires the expertise of legal counsel in  
17 the areas of Trust and Probate litigation and administration to not only assist him in the  
18 prosecution of the Receiver's Notice of Claim, but also to provide advice and counsel in all  
19 aspects of probate and trust issues surrounding the Estate of Denny J. Chittick.  
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21

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<sup>1</sup> The Notice of Claim was also filed In the Matter of the Estate of Denny J. Chittick, PB 2016-051754.

7. The professional rates of Mr. Ryan and other professionals at the law firm of Frazer Ryan Goldberg & Arnold LLP, as set forth in Exhibit ‘A’, are reasonable in light of the substantial experience of Mr. Ryan and other professionals at the law firm of Frazer Ryan Goldberg & Arnold LLP.

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

1. Approving the engagement agreement with T.J. Ryan of Frazer Ryan Goldberg & Arnold, LLP attached hereto as Exhibit “A”; and
2. Appointing T.J. Ryan of Frazer Ryan Goldberg & Arnold, LLP as special counsel to the Receiver.

Respectfully submitted this 16<sup>th</sup> day of December, 2016.

GUTTILLA MURPHY ANDERSON, P.C.

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

December 9, 2016

**VIA EMAIL AND U.S. MAIL**

Peter S. Davis, CPA, ABV, CFF, CIRA, CTP, CFE,  
as Receiver of DenSco Investment  
Corporation in CV2016-014142 (the "Receiver")  
3200 North Central Avenue, Suite 2460  
Phoenix, AZ 85012

**Re: Engagement of Law Firm – Estate of Chittick**

Dear Mr. Davis:

We are honored that you have asked us to advise you in your capacity as the Receiver for DenSco Investment Corporation ("DenSco") in Maricopa County Cause No. CV2016-014142 (the "Receivership"). This letter will outline your engagement of this firm, the scope of our representation, communication policy, fee structure, billing procedure, and payment terms.

1. Scope of Engagement. As we understand it, Denny J. Chittick, passed away on July 28, 2016. I further understand that you were appointed as the Receiver for DenSco in the Receivership by order dated August 18, 2016. You have asked us to assist you in the Receivership by filing and prosecuting a creditor claim against the Estate of Denny J. Chittick, PB 2016-051754 (the "Estate" of "Chittick"), related to the alleged misdeeds of Chittick in relation to the operation of DenSco. Pursuant to your agreement to the terms of this letter of engagement, we agree to so represent you.

If there is to be any material expansion of the scope of our engagement, we ask that you direct such material expansion to us in writing. At that time, we will memorialize the expanded representation with a new engagement letter which will outline the scope of such project and the associated fees.

2. Fees. Our fees are determined in a manner consistent with the guidelines contained in the Arizona Rules of Professional Conduct. Our fees will be based primarily upon the time expended by each of the attorneys or legal assistants involved in this matter. A standard hourly rate has been

David R. Frazer\*\*\*  
James W. Ryan\*  
Yale F. Goldberg\*  
Charles L. Arnold\*  
John R. Fitzpatrick\*  
Scott A. Erickson\*\*  
T.J. Ryan\*  
Derek W. Kaczmarek\*\*  
Marsha Goodman\*\*  
Ernest Calderón\*\*  
Michael A. Harsch  
James E. McDougall  
Cathy L. Knapp  
Joshua D. Moya  
David Jojola  
Lisa M. Reilly  
Marilyn D. Cage  
David R. Cohen  
Barbara R. Berman  
Giselle C. Alexander  
Joshua N. Mozell  
Maya Milovic

Charles W. Whetstone\*  
- Of Counsel

Alyssa B. Whetstone  
Associate of Charles W. Whetstone, PC

\*Professional Corporation  
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\*\*\*Retired

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**Exhibit "A"**

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established for each of our attorneys and legal assistants. Our current hourly rates range from \$125.00 per hour for some legal assistants to \$500.00 per hour for some attorneys, the distinction being based upon the level of experience and demand for service of the individual performing the services. I will be handling the bulk of the representation but from time to time may enlist the assistance of other attorneys at the firm, including John R. Fitzpatrick, Josh D. Moya, Marilyn D. Cage, or paralegals of the firm, Rebecca A. Cutliffe or Kimberly Chrisman. My 2016 billing rate is \$350 per hour; Mr. Fitzpatrick's 2016 billing rate is \$400 per hour; Mr. Moya's 2016 billing rate is \$330 per hour; Ms. Cage's 2016 billing rate is \$300 per hour; Mrs. Cutliffe's 2016 billing rate is \$175 per hour; and Mrs. Chrisman's 2016 billing rate is \$175.00 per hour.

Our fee rates may be adjusted from time to time to reflect improved professional skills and changing economic conditions. We will attempt to provide you with our professional services as economically and efficiently as possible. Because of the dynamic nature of estate matters, we generally do not give estimates of our anticipated total billings. If we subsequently give an estimate of fees, such estimate will not be binding on the firm unless otherwise specifically agreed in writing.

We will bill you for certain costs and expenses (other than attorneys' fees) incurred in the course of performing legal services on your behalf. Examples of such costs and expenses include filing and/or recording fees and other charges assessed by public agencies, long distance telephone, facsimile, and courier charges, special postage, extraordinary photocopy and other document reproduction charges, and charges for accessing on-line legal research databases. Any expense item exceeding \$100 may, in our discretion, be forwarded directly to you for remittance to the creditor. You agree to pay such items without delay.

3. Billing Procedure. While it is a firm policy to ask for a fee deposit for all new projects, we have agreed to waive such requirement in this case. Our legal services will be billed to you on a monthly basis. We will prepare itemized billings with a description of the service performed, the amount charged for that service, and the day upon which the service was rendered.

4. Terms of Payment. Unless otherwise satisfied from the fee deposit, our statements for legal services are due and payable upon receipt and are considered to be past due if not paid by the tenth (10th) day of the following month. We reserve the right to impose, retroactively and without notice, a service charge of one and a half percent (1½%) per month on all past due balances. If there are special circumstances that would prevent you from complying with these terms of payment, please contact me immediately in writing. Otherwise, we will assume that these arrangements are acceptable.

We will freely discuss with you any questions or concerns about our billings, but we ask that such matters be raised in writing within thirty (30) days of receipt of our statements. If you do not articulate questions or concerns within such time, we will assume that you accept the stated charges as valid. Any dispute regarding our bills must be timely submitted to binding arbitration in

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accordance with the standards of the State Bar of Arizona Fee Arbitration program. If for any reason that arbitration program is unable to handle the dispute, you agree that the matter will be privately arbitrated by a retired Arizona Superior Court judge, Court of Appeals judge, or Supreme Court justice of our choosing.

5. Communication. We will make every effort to return your telephone calls as soon as possible. If I am unavailable to receive your call, please do not hesitate to discuss any inquiry with my paralegals, Rebecca A. Cutliffe or Kimberly Chrisman, as they may be able to answer your question or handle your request. If I am unavailable and you need to speak with an attorney, please feel free to call John R. Fitzpatrick or Josh D. Moya, partners of the firm, or Marilyn D. Cage, my associate, who can assist you.

We will notify you promptly of any significant developments and will provide you with copies of the documents and correspondence sent or received by our office. Also, we will expect to consult with you in advance of any significant decisions. Correspondingly, we may need you to cooperate in furnishing information and in taking action required of you. Occasionally, we may make a written record of a conversation with you by sending a letter memorializing our discussion. Please do not be annoyed by this procedure, as it adds clarity to situations that may require a precise understanding.

In connection with the provision of our services, we may communicate by facsimile transmission or send electronic mail over the internet. We might also speak to you while one of us is using a cellular telephone. Such communications may include information that is confidential. While we will use reasonable efforts to keep such communications secure in accordance with our obligations under applicable laws and professional standards, you recognize and accept that we have no control over the unauthorized interception of these communications.

6. Firm as a Witness. Although it rarely happens, it is possible that either during our representation and/or after termination of our engagement for any reason, we may be required to appear as a witness in a litigation or arbitration matter because of our representation of you or because of our knowledge of the facts relating to this representation. In that circumstance, we will require, and you hereby agree, that you will compensate us at our then prevailing rates for our time spent in such role and preparing for such role, and you will reimburse us for all expenses we incur responding to such matters, unless, of course, the litigation/arbitration relates to an actual breach of our duties owed to you.

7. Conflict of Interest. At this time, I am not aware of any existing matter involving a conflict of interest between you and other clients of my firm. However, unforeseen conflicts could arise, and in this event, I will notify you of the other conflict and you or my firm may terminate my representation unless you and the other source of the conflict agree to provide the appropriate waivers.

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8. **Mandatory Disclosure.** In the event contested litigation arises, please be aware that the Rules regarding litigation require you to make disclosure of all information pertinent to a matter, including things that you consider detrimental. In the event litigation ensues, you will be required to swear under oath that you have made a full, fair and complete disclosure in this case, and your failure to do so will be detrimental to your position.

9. **Termination.** You may terminate the firm's engagement for any reason whatsoever, but must do so in writing. Similarly, the firm may terminate the engagement at will, and the firm likely will terminate the engagement upon non-payment of our billing statements or refusals to replenish the fee deposit. In the event of such termination, you will remain responsible for all fees incurred in the course of the firm's representation and in the winding up of such representation, including the expenses incurred for the preparation and photocopying of the file for purposes of transfer and including the expense of preparing any "dis-engagement" letter confirming the termination and the status of the matter. Arrangements for the payment of all such expenses must be made prior to any file transfer. Also, if the engagement is to be terminated during the pendency of a lawsuit or other legal proceeding, we will likely have to seek to have the judge permit either withdrawal or our substitution before our engagement will be terminated. You will have to cooperate with us toward that end, and all fees incurred in that process will be your responsibility.

10. **Privacy and Confidentiality.** As a legal, practical, and ethical matter, I have a duty to keep matters related to the nature, scope, and content of our engagement and our communications confidential, including this correspondence. However, certain communications are practically or ethically necessary to complete the tasks associated with this engagement. Until my firm is instructed to the contrary in writing, by signing this engagement letter, you are waiving your privileges and rights of confidentiality and privacy with respect to any communication between my firm and other third parties regarding the tasks my firm determines to be necessary to complete the work associated with this engagement (e.g., recording a deed with the appropriate county recorder's office, communicating with your tax accountant about any legal documents affecting your tax status or liability). Also, please be advised that any information you disclose directly to a third party will lose the legal protections and privileges.

**Conclusion.**

If the above arrangements are consistent with your understanding of this engagement, please sign a duplicate copy of this letter and return it to me. If you have any questions, comments or concerns, please contact me, or any other lawyer of your choosing before signing this letter.

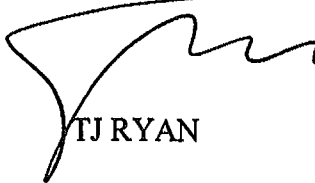
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We truly appreciate the opportunity to represent you, and we will use our best efforts on your behalf.

Sincerely,

Frazer, Ryan, Goldberg & Arnold, LLP



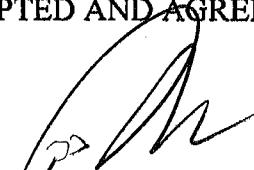
TJ RYAN

TJR:kac

**ACCEPTANCE OF TERMS OF ENGAGEMENT**

I have read the foregoing letter and understand its contents. I consent to have Frazer, Ryan, Goldberg & Arnold, L.L.P. represent me on the terms and conditions set forth in this letter.

ACCEPTED AND AGREED:

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By: Peter S. Davis,  
As Receiver