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

ARIZONA CORPORATION)	
COMMISSION,)	Cause No. CV2016-014142
)	
Plaintiff,)	
)	PETITION NO. 2
v.)	
DENSCO INVESTMENT)	PETITION FOR ORDER GOVERNING
CORPORATION, an Arizona)	ADMINISTRATION OF THE
corporation,)	RECEIVERSHIP
)	
Defendant.)	
)	

Peter S. Davis, as the court appointed Receiver, recommends that the Court enter the proposed *Order Re: Petition No. 2, Order Governing the Administration of the Receivership* lodged with the Court with this petition.

INTRODUCTION

There are procedural and administrative aspects of receivership proceedings which will be clarified and facilitated by a special procedural order of this Court. Accordingly, the Receiver requests that the Court enter the *Order Re: Petition No. 2, Order Governing the Administration of the Receivership* lodged with the Court.

1 A Receiver is neither the plaintiff nor defendant in this action, but, instead acts as the
2 Court's agent with respect to the recovery and administration of the receivership assets. *Clark*
3 *v. Clark*, 58 U.S. 315, 331 (1855); *FSLIC v PSL Really Co.*, 630 F.2d 515, 521 (7th Cir.
4 1980), *cert denied*, 452 U.S. 961 (1981) ("receiver is an officer of the court and subject to its
5 orders in relation to the property for which he is responsible until discharged by the court").
6 Accordingly, an equity receiver's authority is determined by orders of the appointing court,
7 and receivers are therefore authorized to petition the appointing court on all matters related to
8 the administration of the receivership. *Gaskill v. Gordon*, 27 F.3d 248, 251 (7th Cir. 1994);
9 *FSLIC v. PSL Realty Co.*, 630 F.2d at 521.

11 Cases discussing court administration of equity receiverships are sparse and generally
12 limited to the facts involved in each particular case. *SEC v. Hardy*, 803 F.2d 1034, 1037 (9th
13 Cir. 1986). Nonetheless, two basic principles are recognized in most receivership
14 proceedings. First, district courts are given "extremely broad" discretion in determining "the
15 appropriate procedures to be used in its administration." *FDIC v. Bernstein*, 786 F.Supp. 170,
16 177 (E.D.N.Y. 1992); *SEC v. Hardy*, 803 F.2d at 1037; *SEC v. Safety Fin. Serv. Inc.*, 674
17 F.2d 368, 372 (5th Cir. 1982) ("Any action by a trial court supervising an equity receivership
18 is committed to his sound discretion and will not be disturbed unless there is a clear showing
19 of abuse."). Second, "a primary purpose of equity receiverships is to promote orderly and
20 efficient administration of the estate by the district court for the benefit of creditors." *SEC v.*
21 *Hardy*, 803 F.2d at 1038. Accordingly, "reasonable procedures instituted by the district court
that serve [these] purpose[s]" are generally upheld. *Id.* Indeed, in determining relief in

1 receivership proceedings the United States District Court has discretion to disregard the
2 Federal Rules of Civil Procedure. *SEC v. Elliott*, 953 F.2d, 1560, 1566 (11th Cir. 1992).

3 Because the administration of receiverships is discretionary, very few cases are published
4 regarding general administration issues, such as those requested here by the Receiver.

5 Nonetheless, numerous other courts have utilized the procedures requested by the
6 Receiver here.¹ Moreover, as described in this Petition each of the specific procedures
7 requested by this Petition seeks to minimize expenses and confusion and maximize
8 efficiency, and the Receiver therefore is of the opinion that each is “appropriate.” Finally, as
9 procedures directed at the orderly and efficient operation of the Receivership, each of the
10 matters requested below falls within the Court’s broad discretionary authority in supervising
11 this Receivership and is therefore “permissible.” *Id.*; *see also, Safety Fin. Serv. Inc.*, 674 F.2d
12 at 373-73; *Spark Tarrytown, Inc.*, 829 F.Supp. at 85.

14 The very nature of the receiver’s “relation to the court, and his duties to the creditors,
15 entitle him to the largest degree of discretion possible in the discharge of his duties.”

16 *Continental Trust Co. v. Toldedo, St. L & K C.R. Co.*, 59 F. 5 14, 5 18 (N.D. Ohio 1894).

17 Further, receivers are generally encouraged to seek the Court’s instructions or approval as
18 necessary during the course of the Receivership. *See Id.* (holding that a receiver is an officer
19 of the Court, “yet his instructions are always general in their character . . . [and] he is
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¹ For example, in *State v. Landmarc Capital & Investment Company*, Cause No. CV2009-020595, Judge Robert Oberbillig issued a management order governing the administration of the receivership in that case similar to the order sought here. Similar management orders were also entered in this county in: *State v. Vilan, et al.*, Cause No. CR2007-167253; and *State v. Sherman Unkefer, III, et al.*, Cause No. CV2014-006765.

1 expected to look after the details of the business and to apply to the court from time to time
2 when special instructions seem necessary”). With respect to the specific matters listed below,
3 the Receiver contends that requesting authorization from the Court at this early juncture in the
4 underlying litigation ensures that the Receivership is conducted in accordance with the
5 Court’s wishes, even if the Court should decide that they should be different than what is
6 proposed here by the Receiver.

7 **PROPOSED PROCEDURES**

8
9 The proposed order lodged with the Court provides the following (paragraph numbers
10 below correspond to the described paragraph in the proposed order lodged with the Court):

- 11 (1) Prescribes procedures for further proceedings regarding this
12 receivership, including the filing of “petitions” when the Receiver or a
13 party seeks relief regarding the receivership², and in the case of petitions
14 filed by the Receiver for the Receiver to obtain a hearing date from the
15 Court and prepare and serve a notice of hearing;
- 16 (2) Provides for the case to be retained on the active calendar until
17 terminated by order of the Court in order to prevent the Clerk from
18 putting the case on the inactive calendar when the litigation on the merits
19 is completed;
- 20 (3) Provides procedures for service and for the maintenance and use of
21 service lists regarding the receivership;

² Labeling pleadings regarding the receivership as “petitions” helps to differentiate them from other pleadings relating to the underlying litigation.

- (4) Authorizes the filing of *ex parte* petitions by the Receiver for certain limited matters;
- (5) Establishes an interim claims procedure for persons who wish to assert a claim against the receivership estate;
- (6) Prescribes procedures for giving notice of various types of petitions;
- (7) Authorizes the Receiver's use of discovery to obtain information concerning the Receivership's assets or causes of action;
- (8) Authorizes a procedure for filing petitions for the payment of the Receiver's fees and the fees of all professionals engaged by the Receiver; and
- (9) Authorizes the Receiver to engage out-of-state legal counsel without prior order of the Court, provided no fees are paid to such counsel without Court approval.

This *Petition No. 2* and the proposed *Order Re: Petition No. 2, Order Governing the Administration of the Receivership* lodged with the Court this date have been provided to counsel for the Plaintiff for the Arizona Corporation Commission and to Mr. James F. Polese, counsel for the estate of Denny Chittick and they have indicated that they have no objection to the entry of the relief requested herein and in the proposed order.

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

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