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SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

ARIZONA CORPORATION
COMMISSION,

Plaintiff,

vs.

DENSCO INVESTMENT
CORPORATION, an Arizona
corporation,

Defendant.

No. CV2016-014142

**MOTION FOR RECONSIDERATION
OF PETITION NO. 13**

(Assigned to the Honorable
Lori Bustamante)

(Peter S. Davis – Appointed Receiver)

(ORAL ARGUMENT REQUESTED)

The Estate of Denny J. Chittick (the “Estate”) respectfully requests that the Court rescind its approval of the Receiver’s Petition No. 13 and set a combined hearing to consider Petition No. 13 with the Estate’s Petition No. 11.

The Receiver failed to follow the required process in filing Petition No. 13, which requested Court approval for the Receiver to retain Marvin “Bucky” Swift as ERISA counsel. Under Section 3(c) of the Order governing this Receivership, the Receiver was required to “obtain a hearing date from the Court and serve a notice of hearing.” Order Re: Petition No. 2, Order Governing Administration of Receivership at 3 (“If the petition

1 is filed by the Receiver, the Receiver shall also obtain a hearing date from the Court and
2 serve a notice of hearing.”). The Receiver failed to do so. The Estate then objected to
3 Petition No. 13 on December 29, 2016, and requested consolidation of Petition No. 13
4 with Petition No. 11, both of which deal with ERISA matters. On January 10, 2017, the
5 Receiver filed his reply in support of Petition No. 13 on opposition to the request for
6 consolidated hearings – but still failed to obtain a hearing date from the Court, although
7 the Receiver was then well aware of the Estate’s position.

8 The Estate is entitled to a hearing on its objections to Petition No. 13. Both the
9 Estate’s Petition No. 11 and the Receiver’s Petition No. 13 involve ERISA matters and
10 the DenSco Investment Corporation (“DenSco”) Defined Benefit Pension Plan (the “DB
11 Plan”). As the Receiver himself grudgingly admits (albeit indirectly), there is no need for
12 the Receiver to retain a high-priced ERISA lawyer unless and until this Court declares
13 that the DB Plan monies are an asset of the Receivership. *See* Receiver’s Reply to Estate
14 of Chittick’s Opposition to Receiver’s Petition No. 13 (“Reply”) at 2 (Jan. 10, 2017). In
15 Petition No. 11, the Estate convincingly demonstrates not only why the DB Plan can
16 never be viewed as an asset of DenSco or the Receivership as a matter of both Arizona
17 law and ERISA, but also why this Court lacks subject matter jurisdiction to invalidate the
18 DB Plan at the Receiver’s behest. The Receiver’s assertion that “the Receivership and its
19 creditors are best served if the Receiver has skilled [ERISA] counsel” (Reply at 3) only
20 makes sense if and when this Court were to find that the DB Plan assets are part of the
21 Receivership Estate, which this Court cannot do both for lack of jurisdiction and because
22 not a scintilla of law supports the Receiver’s theory.

23 In any case, the Court’s procedural order **mandates** a hearing on Petition No. 13.
24 The Court’s approval of Petition No. 13 was therefore premature. The Court should
25 rescind its approval of Petition No. 13 and set a consolidated hearing on the Estate’s
26 Petition No. 11 and the Receiver’s Petition No. 13.

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RESPECTFULLY SUBMITTED this 19th day of January, 2017.

GAMMAGE & BURNHAM, P.L.C

By: /s/ James F. Polese (#003451)
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ELECTRONICALLY FILED with
the Court and copies mailed this
19th day of January, 2017, to:

Honorable Lori Bustamante
Maricopa County Superior Court
101 West Jefferson, ECB-811
Phoenix Arizona 85003-2243

And to all persons listed on the
attached Master Service List

/s/ P. Meloserdoff

MASTER SERVICE LIST

Arizona Corporation Commission vs. DenSco Investment Corporation

IN THE SUPERIOR COURT OF THE STATE OF ARIZONA

CV2016-014142

(Revised January 10, 2017)

Honorable Lori Bustamante
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Phoenix, Arizona 85003-2243

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