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SUPERIOR COURT OF ARIZONA

COUNTY OF MARICOPA

Peter S. Davis, as Receiver of DenSco Investment Corporation, an Arizona corporation, Plaintiff, v. Clark Hill PLC, a Michigan limited liability company; David G. Beauchamp and Jane Doe Beauchamp, husband and wife, Defendants.	No. CV2017-013832 **DEFENDANTS' REBUTTAL DISCLOSURE OF EXPERT WITNESS KEVIN OLSON** (Commercial Case) (Assigned to the Honorable Daniel Martin)

Pursuant to the Court's May 16, 2018 Scheduling Order, Defendants Clark Hill PLC and David G. Beauchamp, hereby disclose the attached rebuttal report of Kevin Olson.

DATED this 7th day of June, 2019.

COPPERSMITH BROCKELMAN PLC

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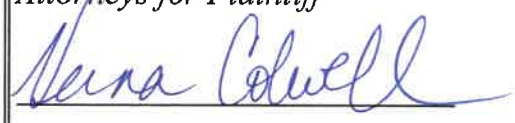

REBUTTAL EXPERT OPINION OF KEVIN OLSON

This Rebuttal Opinion pertains to the Expert Report of Neil J. Wertlieb dated March 26, 2019 (the "Wertlieb Opinion"). This Rebuttal Opinion is limited to those aspects of the Wertlieb Opinion that are relevant to the standard of care for Arizona securities lawyers. This Rebuttal Opinion does not address those aspects of the Wertlieb Opinion that concern the standard of care for Arizona lawyers in regard to lawyers' general ethical and professional responsibilities. No interpretation should be drawn or conclusion reached that I agree with any part of the Wertlieb Opinion that is not addressed in this rebuttal. This Rebuttal Opinion is focused on only some of the most important differences between Mr. Wertlieb's opinions and my own.

This Rebuttal Opinion is not intended to modify the opinions stated in my Preliminary Opinion of April 5, 2019 ("Preliminary Opinion"), or as stated in my deposition of May 17, 2019.

Mr. Wertlieb's Qualifications Concerning an Arizona Securities Lawyer's Standard of Care

Mr. Wertlieb has disclosed no experience pertaining to representing clients who are selling securities from Arizona and how Arizona lawyers manage such representations. He disclosed experience with respect to securities offerings while affiliated with a large New York financial center law firm, a law firm that would be expected to represent clients in extremely large offerings—offerings where clients employ lawyers to do the same sort of diligence as is expected in a public offering. Given the amounts to be raised, the lawyer's diligence efforts in such offerings are a small fraction of the amount to be raised and, therefore, budgetary constraints are not significant.

A New York financial center practice is not the reality typically faced by securities lawyers in Arizona who are representing clients using Rule 506 of Regulation D, one of the purposes of which is to minimize the cost of a small offering. In my experience, Arizona clients typically do not believe that they should pay a large percentage of the offering to lawyers and other experts. In return for diligence that, in comparison to the diligence required for a public offering, is narrower in scope (while still satisfying the requirements of Regulation D) clients are willing to assume responsibility for preparing at times significant parts of the offering documents and for confirming the veracity of facts such that their securities lawyers can then reasonably rely on the client's representations. Thus, in my experience, it is not unusual or improper in Arizona in such a Regulation D offering, for Clients to look to lawyers, and lawyers to expect to provide, only the technical advice necessary to allow the client to comply with the obligations imposed by Regulation D. Lawyer's fees then are a fraction of those charged by such firms as Mr. Wertlieb's former firm and lawyer's duties are accordingly much more limited.

Mr. Wertlieb's Conclusions about Mr. Beauchamp's Duties are Inappropriate

Mr. Wertlieb's financial center/large offering orientation leads to a number of conclusions that are not appropriate in a small offering such as those DensCo conducted. Primary examples of problems in his opinion include:

1. In his opinion Mr. Wertlieb repeatedly suggests that Mr. Chittick's desire to wait to update the POM until the Forbearance Agreement was completed is equivalent to a desire not to tell the investors about the Menaged situation in any way. For example, at page 22 he asserts that Mr. Beauchamp "knew that Mr. Chittick did not

want to make *any* disclosures until the Plan had been implemented and the damage contained."

The record does not support Mr. Wertlieb's suggestions. It is true that Mr. Chittick wanted to wait to update the POM until the Forbearance Agreement was completed. In my opinion this was a reasonable delay because, if an updated POM had been issued in January 2014 as Mr. Wertlieb suggests was required, a new update to the POM would have been necessary upon signing of the Forbearance Agreement which was expected in a short time.

In my opinion, it was reasonable for Mr. Beauchamp to rely on Mr. Chittick, who lawfully could inform investors who were making a new or rollover investment (either in DensCo or by loaning money to Mr. Chittick) using written or oral disclosures outside of the POM. Mr. Chittick clearly had up-to-date information about DensCo's current situation and could inform investors just as he had done throughout the period when DensCo (and almost all other hard money lenders) was struggling with the fallout from the real estate collapse in the late 2000s.

2. Mr. Wertlieb places substantial emphasis on the boilerplate statements in the POM and subscription agreement, each of which state that the investor is not authorized to rely on representations made outside of the POM. These boilerplate statements are standard in offering documents in order to protect companies selling securities from representations by brokers and salesman who have no authority to act on behalf of the seller. They are not intended to preclude authorized officers of the company itself from providing additional information to investors.

   For example, even in this case the POM notes that the investor has been given the opportunity to meet with and ask questions of DensCo management. The information provided through that process is clearly information that investors were entitled to rely on notwithstanding the boilerplate in the offering documents. Mr. Chittick as sole owner, director and officer of DensCo, had full authority to make appropriate additional representations and it was reasonable for Mr. Beauchamp to believe that any investments (either in DensCo or by loan to Mr. Chittick) were made only after Mr. Chittick informed investors of DensCo's current situation.

3. Mr. Wertlieb's criticizes the draft 2014 POM that Clark Hill lawyers provided Mr. Chittick because it did not yet contain the full disclosure of facts that would be expected in a final POM. He seems to overlook the numerous blanks and questions for Mr. Chittick contained in the draft and assumes that the lawyers should have somehow divined the information needed to complete the draft even though only Mr. Chittick had access to that information. Mr. Wertlieb's criticism here is, I suspect, a result of his financial center orientation—it certainly is likely that in a financial center offering the lawyers and accountants will work with lower level staff to secure and confirm the information that is eventually to be presented to senior management for its approval. In my experience, that is not the reality, in a small offering in Arizona where the client does the diligence for the offering. The draft 2014 POM Clark Hill prepared appears to me to identify the topics Mr. Chittick needed to address to complete the POM and to ask Mr. Chittick to prepare the information necessary to do so. Clark Hill's draft was presented to Mr. Chittick in a form that clearly required more information. The information Mr. Chittick supplied might well have led to further changes and questions, as is normal in the iterative process necessary to complete a POM.

To criticize a draft that asks the client to provide information, because the draft fails to include that information, demonstrates a fundamental misunderstanding of the common practice in Arizona for Regulation D offerings, where clients often decide to develop information rather than pay lawyers (or accountants) to do so. Rule 506 of Regulation D, in its authorization to provide accredited investors information in any form and only to the extent material, clearly permits the client to take control of the information and does not require that lawyers and accountants do the diligence required in a public offering.

4. At pages 18 to 20 of his opinion Mr. Wertlieb questions the terms of the Forbearance Agreement Mr. Chittick negotiated with Mr. Beauchamp's help, suggesting that the terms were less favorable to DensCo than they should have been and that the benefits DensCo received were inadequate. Mr. Wertlieb's suggestion overlooks the reality that the Forbearance Agreement was a result of a negotiation with another party—a party who clearly had his own priorities and insisted on terms to satisfy those priorities. Given this reality, Mr. Beauchamp repeatedly advised Mr. Chittick about DensCo's duties to its investors and the nature of the risks created by the terms of the Forbearance Agreement.

   Once Mr. Beauchamp advised Mr. Chittick about the risks involved in certain terms proposed for the Forbearance Agreement, it was Mr. Chittick's prerogative to decide upon the risks DensCo would accept, and the benefits it would require, as part of the final agreement. Acceptance of the final terms was a business decision that no Arizona securities lawyer should undertake in place of his or her client. Only Mr. Chittick knew the details underlying DensCo's business. Only he could weigh the risks of the Forbearance Agreement against the alternatives (including a "no deal" alternative that seems likely to have generated litigation that would have involved significant time, cost and uncertainty for DensCo). Mr. Beauchamp, unless asked, neither could nor should impose his own judgment in place of Mr. Chittick within the standard of care for Arizona securities lawyers.

5. Similarly, Mr. Wertlieb specifically questions the confidentiality obligations DensCo accepted in the Forbearance Agreement. Certainly, as evidenced by Mr. Beauchamp's efforts to help Mr. Chittick negotiate less restrictive confidentiality obligations, most Arizona securities lawyers would prefer not to accept the sort of confidentiality obligations Mr. Chittick eventually accepted for DensCo. Again, however, the Forbearance Agreement was the result of negotiation and not a document any party could dictate. Under the standard of care for Arizona securities lawyers, it was not unreasonable for Mr. Beauchamp to accept Mr. Chittick's business decision that the terms were better than a failure to reach a deal.

6. Finally, at pages 40 to 44 of his opinion, Mr. Wertlieb asserts that DensCo was a high risk client and that as a result of this risk Clark Hill and Mr. Beauchamp should have engaged in "extraordinary monitoring" of DensCo and Mr. Chittick and, therefore, been ready to act immediately when any issue was identified with respect to its business. It is true that DensCo had characteristics of a high-risk business. Certainly, a hard-money lending business that relies on borrowed money for its own capital needs is at risk of financial reversals that may force it into bankruptcy.

   Against the risk associated with a hard money lending business, DensCo and Mr. Chittick had demonstrated (a) a willingness to seek and then largely follow Mr.

Beauchamp's advice and (b) the ability to manage through the most difficult real estate market since at least World War II—a market that brought down many hard-money lenders and others who were in less risky parts of the real estate industry. Mr. Beauchamp had observed DensCo and Mr. Chittick through over a decade's worth of working together. The credibility gained through this relationship reasonably led Mr. Beauchamp to give Mr. Chittick the benefit of the doubt when DensCo encountered problems. Mr. Wertlieb's suggestion that Mr. Beauchamp should have inserted himself into DensCo's business as a mini-receiver supervising Mr. Chittick because of alleged "high" risk is neither consistent with the reality of 10 years of work nor part of the standard of care imposed on an Arizona securities lawyer.

Reservation of Rights

The reservation of rights that I set forth in my Preliminary Opinion pertain as well to this Rebuttal Opinion.

This statement is made under penalty of perjury.

DATED this 7th day of June, 2019.

Kevin Olson