

James F. Polese (State Bar #003451)
Christopher L. Hering (State Bar #028169)
GAMMAGE & BURNHAM, P.L.C.
Two N. Central Avenue, 15th Floor
Phoenix, Arizona 85004
Telephone: (602) 256-0566
E-mail: jpolese@gblaw.com
chering@gblaw.com
Attorneys for Petitioner

**SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY**

ARIZONA CORPORATION
COMMISSION,

Plaintiff

vs.

DENSCO INVESTMENT
CORPORATION, an Arizona corporation

Cause No. _CV2016-014142

**PETITION NO. 26
FOR APPPOINTMENT OF
GUARDIAN AD LITEM
FOR MINOR CHILDREN OF
DENNY J. CHITTICK, DECEASED**

**(Assigned to the Honorable
Lori Horn Bustamante)**

(Peter Davis – Appointed Receiver)

The undersigned Personal Representative for the Estate of Denny J. Chittick, Deceased hereby petitions the court to appoint Paul J. Theut as Guardian Ad Litem (“GAL”) to protect the interests of Ty Riley Chittick and Dillon Cash Chittick, minor children who are the sole heirs of the Estate of Denny J. Chittick, Deceased.

The Petition is supported by the following:

1. The undersigned are counsel for the Estate of Denny J. Chittick, Deceased.
2. Under the terms of the Last Will and Testament dated May 5, 2009, all assets of the decedent are to be distributed to the minor children. The Will created a testamentary trust with the undersigned as the trustee for all assets passing to the children under the Will.

1 3. Upon the death of the decedent, the trusts established for the minor children
2 under the will were designated as beneficiaries of an Individual Retirement Account (the
3 “IRA”) maintained by the Decedent and the amount thereof was transferred to these
4 testamentary trusts.

5 4. In addition, DenSco Investment Corporation (“DenSco”) had, at the time of the
6 death of the Decedent, established and maintained the DenSco Investment Corporation
7 Defined Benefit Pension Plan and Trust (the “Plan”).

8 5. Since the time of the decedent’s death, no formal beneficiary designation has
9 been located. Under the terms of the Plan documents, the minor children individually are
10 designated as default beneficiaries although there are other documents that suggest that the
11 Estate is the default beneficiary.

12 6. The Estate believes it was the intention of the Decedent that his minor children
13 be the designated default beneficiaries of the Plan.

14 7. Under the Plan documents, DenSco is the Plan Administrator. The Receiver is
15 currently acting as the sole agent of DenSco under the Order Appointing Receiver dated
16 August 18, 2016 (the “Order”).

17 8. The Receiver has filed a claim (the “Claim”) in the Probate Court against the
18 Estate (Case No. PB2016-051754) which alleges, *inter alia*, transfers by the decedent and/or
19 by DenSco in defraud of creditors. That claim has been denied by the Estate and the
20 Receiver has been given an extension to file its case in the Probate Court while the parties
21 discuss settlement.

22 9. Notwithstanding the fact that the Plan and its assets are not Receivership assets
23 as defined in the Order, there is currently a dispute between the Estate and the Receiver as to
24 the treatment to be accorded to the Plan and the amount that is required to be distributed to
25 the Plan beneficiaries. The efficacy of the Plan and the right or inability of the Receiver to
26

1 take action against the Plan and its assets is the subject of Petition No. 11, currently set for
2 hearing before this Court on September 4, 2017.

3 10. There has also been action threatened by the Receiver that would seek to
4 recover amounts distributed from the IRA for the benefit of the Receivership.

5 11. The Estate and Receiver have been engaged in discussions to resolve issues
6 relating to the Plan, the IRA and the Receiver's Claim against the Estate.

7 12. The Estate believes that the issues are complex and complicated and that the
8 minor children should have independent counsel in the form of a GAL appointed to evaluate
9 any settlement proposals and negotiate the same on behalf of the minor children.

10 13. Paul J. Theut is a member of the State Bar of Arizona and designated by the
11 courts to serve as a GAL. Paul J. Theut has consented to his appointment. His consent is
12 attached hereto.

13 14. Ranasha Dawn Chittick is currently the custodial parent of the minor children.
14 The Estate intends to seek Ranasha Chittick's consent to the Petition and will file her consent
15 with the Court as soon as it is obtained.


16 WHEREFORE, Petitioner asks the Court for an order:

17 1. Authorizing the appointment of Paul J. Theut to serve as Guardian Ad Litem to
18 protect the interests of the minor children of Denny J. Chittick in connection with the Plan,
19 the IRA and the Claims of the Receiver filed in the Probate Court, and the resolution and
20 settlement thereof.

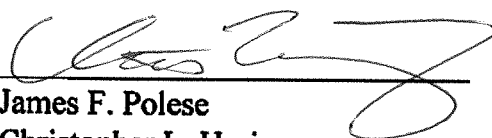
21 2. The cost of the Guardian Ad Litem shall be borne by the Estate of Denny J.
22 Chittick, Deceased, to the extent that the Estate remains solvent. Thereafter, the cost shall be
23 borne by the liquidation of assets that passed to the minor children outside of the probate;
24 provided, that the Estate reserves the right to seek reimbursement for such costs if the
25 circumstances arise.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26

DATED this 22nd day of May, 2017.


Shawna C. Heuer, Personal Representative of
the Estate of Denny J. Chittick, Deceased
Petitioner

GAMMAGE & BURNHAM, P.L.C.

By: 
James F. Polese
Christopher L. Hering
Two N. Central Avenue, 15th Floor
Phoenix, Arizona 85004-4607
Attorneys for Petitioner

1 ELECTRONICALLY FILED with
2 the Court and copies mailed this
3 22nd day of May, 2017, to:

4 Honorable Lori Bustamante
5 Maricopa County Superior Court
6 101 West Jefferson, ECB-811
7 Phoenix Arizona 85003-2243

8 And to all persons listed on the
9 attached Master Service List

10 /s/ Dawn M. McCombs

- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8
- 9
- 10
- 11
- 12
- 13
- 14
- 15
- 16
- 17
- 18
- 19
- 20
- 21
- 22
- 23
- 24
- 25
- 26

IN THE SUPERIOR COURT OF THE STATE OF ARIZONA

CV2016-014142

Carlos M. Arboleda
Arboleda Brechner
4545 E. Shea Blvd., Suite 120
Phoenix, Arizona 85028
Attorney for PAJ Fund I, LLC

Cody J. Jess / Tyler J. Grim
Schian Walker, P.L.C.
1850 N. Central Avenue, Suite 900
Phoenix, Arizona 85004-4531
Attorneys for Yomtov “Scott” Menaged

Sanford J. Germaine
Sanford J. Germaine, PC
4040 E. Camelback Road, Suite 110
Phoenix, Arizona 85018
Attorney for Transamerican Capital, LLC

Steven D. Nemecek
Steve Brown & Associates
1414 E. Indian School Road, Suite 200
Phoenix, Arizona 85014
Attorney for Chapter 7 Trustee, Jill Ford

10552.1.1123996.3

1 James F. Polese (State Bar #003451)
2 Christopher L. Hering (State Bar #028169)
3 GAMMAGE & BURNHAM, P.L.C.
4 Two N. Central Avenue, 15th Floor
5 Phoenix, Arizona 85004
6 Telephone: (602) 256-0566
7 E-mail: jpolese@gbllaw.com
8 chering@gbllaw.com
9 *Attorneys for Petitioner*

10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27

**SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY**

ARIZONA CORPORATION
COMMISSION,

Plaintiff

vs.

DENSCO INVESTMENT
CORPORATION, an Arizona corporation

Cause No. _CV2016-014142

**CONSENT TO APPOINTMENT AS
GUARDIAN AD LIEM FOR MINOR
CHILDREN OF DENNY J. CHITTICK,
DECEASED**

**(Assigned to the Honorable
Lori Horn Bustamante)**

(Peter Davis – Appointed Receiver)

STATE OF ARIZONA)
) ss.
County of Maricopa)

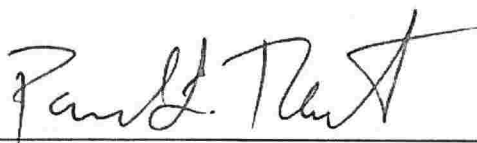
Paul J. Theut states as follows:

1. I am an attorney licensed to practice law in the State of Arizona since 1988. I am approved by the Maricopa County Superior Court to serve as guardian ad litem in proceedings before the court.

2. I have reviewed Petition No. 26 for Appointment of Guardian Ad Litem for Minor Children of Denny J. Chittick, Deceased (the "Petition").

1 3. I consent to the Petition and to my appointment as the Guardian Ad Litem for
2 the minor children of Denny J. Chittick, and agree that the Petition should be granted by the
3 Court.

4 Dated: May 19th, 2017.

5
6 

7 Paul J. Theut
8 Guardian Ad Litem

9
10 SUBSCRIBED AND SWORN TO before me this 19th day of May, 2017, by Paul J.
11 Theut.

12 
13 Notary Public

14 NOTARY
15 SEAL

16 My Commission Expires: 1/9/2021



18 MARK J. THEUT
19 Notary Public - Arizona
20 Maricopa County
21 Expires 01/09/2021
22
23
24
25
26
27