

1 **GUTTILLA MURPHY ANDERSON**

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

3 5415 E. High St., Suite 200

4 Phoenix, Arizona 85054

5 Email: randerson@gamlaw.com

6 Phone: (480) 304-8300

7 Fax: (480) 304-8301

8 Attorneys for the Receiver

9 IN THE SUPERIOR COURT OF THE STATE OF ARIZONA

10 IN AND FOR MARICOPA COUNTY

11 ARIZONA CORPORATION
12 COMMISSION,

13 Plaintiff,

14 v.

15 DENSCO INVESTMENT
16 CORPORATION, an Arizona
17 corporation,

18 Defendant.

Cause No. CV2016-014142

PETITION NO. 151

PETITION FOR ORDER APPROVING
PAYMENT TO SPECIAL COUNSEL
OSBORN MALEDON, P.A. AND
BERGIN, FRAKES, SMALLEY &
OBERHOLTZER PLC

(Assigned to the Honorable John Hannah)

19 Peter S. Davis, as the court appointed Receiver, respectfully petitions the Court as
20 follows:

21 1. On August 18, 2016, this Court entered its *Order Appointing Receiver*, which
appointed Peter S. Davis as Receiver of DenSco Investment Corporation (“DenSco”).
DenSco is an Arizona Corporation formed by Denny J. Chittick in April of 2001.

2. The Receiver initially determined that DenSco held significant claims against
financial institutions including Chase Bank N.A (“Chase Bank”) and U.S. Bank N.A. (“U.S.
Bank”) for their participation in a scheme to defraud DenSco. Specifically, the Receiver

1 determined that Chase Bank and U.S. Bank were instrumental in allowing Yomtov Scott
2 Menaged (“Menaged”) to operate a massive fraudulent loan scheme upon DenSco. The
3 Receiver learned that starting in January 2014, as part of DenSco’s underwriting
4 requirements, Menaged was required to provide DenSco with a copy of each specific
5 cashier’s check, issued by Menaged’s financial institution, to the respective foreclosure
6 trustee for the purchase of a property by Menaged at a foreclosure trustee’s auction/sale. The
7 Receiver’s investigation determined that Menaged was able to procure at least 1,383
8 legitimate cashier’s checks from Chase Bank and U.S. Bank in a period of two years for a
9 collective face value of at least \$319,292,828. However, the cashier’s checks from Chase
10 Bank and U.S. Bank were used by Menaged to make it appear that Menaged was using
11 DenSco loan proceeds to purchase property from a foreclosure trustee, when in fact, Menaged
12 obtained the cashier’s check for the sole purpose of photographing the cashier’s check.
13 Moreover, the Receiver learned that after Menaged took a picture of the cashier’s check to
14 send to DenSco, Menaged returned the cashier’s check to Chase Bank and U.S. Bank to be
15 cancelled and the funds redeposited, typically minutes after the cashier’s check was issued.
16 The sheer volume of issued and then immediately cancelled and redeposited cashier’s checks
17 was staggering.

18 3. On September 19, 2017, the Receiver filed *Petition No. 36* seeking approval of
19 the engagement of the law firm of Bergin, Frakes, Smalley & Oberholtzer, PLLC to serve as
20 Special Counsel to the Receiver to investigate DenSco’s potential claims against Chase Bank
21

1 and U.S. Bank. On October 18, 2017, the Court approved the engagement of Bergin, Frakes,
2 Smalley & Oberholtzer, PLLC pursuant to *Order Re Petition No. 36*.

3 4. On August 28, 2019, the Receiver filed Petition No. 80, an ex-parte petition
4 seeking approval to file a civil complaint against U.S. Bank., Hilda H. Chavez, Chase Bank,
5 Samantha Nelson f/k/a Samantha Kumbaleck, Kristofer Nelson, and Vikram Dadlani (“Bank
6 Litigation Defendants”). On September 17, 2019, the Court, approved the filing of a
7 complaint against the Bank Litigation Defendants pursuant to *Order Re Petition No. 80*.

8 5. Accordingly, the Receiver caused a Complaint to be filed in the Maricopa
9 County Superior Court against the Bank Litigation Defendants in the Superior Court of the
10 State of Arizona for the County of Maricopa, captioned *Peter S. Davis, as Receiver of*
11 *DenSco Investment Corporation v. U.S. Bank, N.A., et al.*, Case No. CV2019-011499 (the
12 “Lawsuit”).

13 6. Thereafter, the Receiver determined that the prosecution of the Lawsuit would
14 benefit from the expertise of the lawyers (and other professionals) at Osborn Maledon, P.A.,
15 who have significant experience in the area of civil litigation and previously served as the
16 Receiver’s Special Counsel in the DenSco receivership. The Receiver then determined that
17 Osborn Maledon, P.A. should substitute for Bergin Frakes Smalley & Oberholtzer, PLLC as
18 his counsel in the Lawsuit and prosecute the Lawsuit to conclusion.

19 7. On October 21, 2020, the Receiver filed *Petition No. 102* seeking approval of
20 the engagement of the law firm of Osborn Maledon, P.A. (“Special Counsel”) as his counsel
21

1 in the Lawsuit and to prosecute the Lawsuit to conclusion. On December 4, 2020, the Court
2 approved the engagement of Special Counsel pursuant to *Order Re Petition No. 102*.

3 8. After Davis v. U.S. Bank et al was filed, Bergin Frakes Smalley &
4 Oberholtzer, PLLC and Osborn Maledon devoted substantial time and efforts in obtaining
5 relevant documents through discovery, and then reviewing, cataloging, and managing a
6 large document file for litigation. Aside from document management, a large number of
7 depositions took place multiple employees of US Bank and Chase Bank and third-party
8 witnesses. Moreover, successfully litigating Davis v. U.S. Bank required expert witnesses,
9 both as to liability and as to damages.

10 9. Davis v. U.S. Bank et al was vigorously defended on both liability, damages
11 and multiple alleged third parties at fault. Competent and able defense counsel represented
12 both US Bank and Chase Bank.

13 10. After participating in a mediation on April 20, 2023, the Receiver and U.S.
14 Bank reached a settlement, the terms of which are set forth in a Settlement Agreement that
15 was executed on June 5, 2023. On December 4, 2020, the Court approved the settlement
16 agreement between the Receiver and U.S. Bank pursuant to *Order Re Petition No. 137*.

17 11. On November 20, 2023, the Maricopa County Superior Court in *Davis vs US*
18 *Bank et al (CV-2019-011499)* issued its *Under Advisement Ruling on Motions for Summary*
19 *Judgment*, which granted Summary Judgment to the Chase Bank on all of DenSco's claims.
20 As a result of this adverse ruling, the Receiver and the Chase Bank agreed to resolve all

1 issues in *Davis vs US Bank et al (CV-2019-011499)* and to mutually release any and all
2 claims between and among each other.

3 12. On February 16, 2024, the Receiver caused his Petition No. 147, Petition for
4 Order Approving Settlement Agreement between Receiver, JPMorgan Chase Bank National
5 Association, Samantha and Kristofer Nelson, Vikram Dadlani and Robyn Howard to be filed
6 with the Court. On March 1, 2024, this Court entered its order approving the Settlement
7 Agreement.

8 13. Attached as Exhibit “A” is the Declaration of Colin F. Campbell and Geoffrey
9 M.T. Sturr in Support of the Receiver’s Petition for Order Approving Payment to Special
10 Counsel Osborn Maledon, P.A. This Declaration provides additional information regarding
11 the litigation of Davis v. U.S. Bank, the professionals engaged by the Receiver as Special
12 Counsel and supports the Receiver’s request to approve payment to Osborn Maledon.

13 14. Attached as Exhibit “B” to this Petition is an invoice from Osborn Maledon
14 seeking total payment of attorneys’ fees in the amount \$303,000 and for Costs of
15 \$514,123.50. Based on the terms of the engagement agreement between Osborn Maledon
16 and the Receiver, the exemplary work performed by Osborn Maledon and the successful
17 resolution of the Receiver’s claims, the Receiver recommends that the Court approve
18 payment of \$817,123.50 to Osborn Maledon.

19 15. Attached as is Exhibit “C” is an invoice from Bergin Frakes Smalley &
20 Oberholtzer, PLLC seeking total payment of attorneys’ fees in the amount \$30,000 and for
21 costs of \$11,760.52

