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

PETER S. DAVIS, as Receiver of DENSCO INVESTMENT CORPORATION, an Arizona corporation, Plaintiff, vs. U.S. BANK, NA, a national banking organization; HILDA H. CHAVEZ and JOHN DOE CHAVEZ, a married couple; JP MORGAN CHASE BANK, N.A., a national banking organization; SAMANTHA NELSON f/k/a SAMANTHA KUMBALECK and KRISTOFER NELSON, a married couple; and VIKRAM DADLANI and JANE DOE DADLANI, a married couple. Defendants.	Case No.: cv2019-011499 **PLAINTIFF'S MOTION FOR DISQUALIFICATION OF COUNSEL FOR THE U.S. BANK DEFENDANTS** (Assigned to the Hon. Daniel Martin) **(Oral Argument Requested)**

Plaintiff, Peter S. Davis, as Receiver of DenSco Investment Corporation ("Receiver"), hereby moves to disqualify the law firm Snell & Wilmer from representing U.S. Bank National Association ("U.S. Bank") and Hilda Chavez (collectively, the "U.S. Bank Defendants") in this matter.

MEMORANDUM OF POINTS AND AUTHORITIES

Snell & Wilmer's representation of US Bank in this case presents a conflict of interest in violation of ER 1.9. Snell & Wilmer *first* represented the Receiver in the administrative Receivership proceeding styled, *Arizona Corporation Commission v. DenSco Investment Corporation*, Case No. CV2016-014142 (The "Receivership Court")[1]. The Receivership Court is the "parent case" to this one; it entered Orders authorizing the Receiver to bring this lawsuit and prosecute its claims against US Bank and Chase. Now, Snell & Wilmer has decided to "switch sides" to represent US Bank against the Receiver in defense of the Receiver's lawsuit against US Bank.

The Court must disqualify Snell & Wilmer. It obtained confidential information during its representation of the Receiver that could be used against the Receiver. That is a conflict and all that is required for Snell & Wilmer's disqualification.

Surprisingly, it was the Receiver who had to alert Snell & Wilmer that it represented the Receiver. When asked to withdrawal because of the conflict, Snell & Wilmer has flatly refused, and in response, bent over backwards, split hairs, and read non-existent ambiguities into the ethical rules. Unfortunately, the Receiver needs this Court to enforce its rights and enter an order disqualifying Snell & Wilmer from representing US Bank in this matter.

To make matters worse, the Court appointed Receiver is not a standard plaintiff. Generally, a receiver is a ministerial officer of the court appointing him and may act only subject to its orders. *See Sawyer v. Ellis*, 37 Ariz. 443, 295 P. 322 (Ariz. 1931). Moreover, the lawyers who represent the Receiver are specifically appointed by the receivership court with their employment and professional fees subject to approval and payment by orders of the Receivership Court. The Receiver himself was not harmed by US Bank, but he is standing in the shoes of a corporation whose victims include defrauded investors of

[1] Maricopa County Superior Court Judges Lori Bustamante and Teresa Sanders have overseen the administration of the DenSco Receivership since 2016.

DenSco. Imagine how the DenSco victims will feel knowing their legal counsel—who recently worked to assist in the Receivership Court in the recovery of assets for the benefit of the receivership estate—is now working against them.

I. FACTUAL BACKGROUND

Yomtov Scott Menaged ("Menaged") utilized multiple and distinct fraudulent schemes to defraud DenSco in excess of $46 million dollars between 2011 through 2016. The Receivership Court authorized the Receiver, to, among other things, employ attorneys and other professionals that are necessary for the proper collection, preservation, and maintenance of Receivership Assets ("the Receivership Order"). (Anderson Declaration, ¶ 2). This includes bringing claims that the DenSco Receivership Estate may have against third party tortfeasors that have damaged DenSco. *Id.* Pursuant the Receivership Order and subsequent orders of the Receivership Court, the Receiver has employed multiple law firms to represent the Receivership Estate.[2]

As set forth above, the Receiver employed Snell & Wilmer to pursue claims against the Chittick Estate[3] related to certain ERISA claims and other legal matters. The Chittick

[2] For example, the law firm of Guttilla Murphy Anderson was appointed to represent the Receiver as general counsel [See Petition No. 1- DenSco Receivership (CV2016-014142); the law firm of Fredenberg Beams was appointed to assist the Receiver in the foreclosure related issues [See Petition No. 4- DenSco Receivership (CV2016-014142); the law firm of Frazer Ryan Goldberg & Arnold, LLP was appointed to advise the Receiver with issues in probate court [See Petition No. 10- DenSco Receivership (CV2016-014142); *the law firm of Snell & Wilmer was appointed to advise the Receiver with respect to issues relating to an Erisa and Defined Benefit Plan] [See Petition No. 13- DenSco Receivership (CV2016-014142)*; the law firm of Osborn Maledon was engaged to bring a malpractice claim against DenSco's lawyers at Clark Hill, PLLC] [See Petition No. 22- DenSco Receivership (CV2016-014142); the law firm of Bergin, Frakes, Smalley & Oberholtzer, PLLC was engaged to pursue claims against US Bank and Chase for aiding and abetting Menaged's fraud] [See Petition No. 36- DenSco Receivership (CV2016-014142); and the law firm of Ajamie LLP was engaged to address claims against a third party hard money lender. (Anderson Declaration, ¶¶ 3-5)].

[3] Denny J. Chittick was the sole owner, shareholder and operator of DenSco.

Estate objected to the Receiver's employment of Snell and Wilmer, but after the Receiver urged Snell and Wilmer's employment, Judge Bustamante approved Snell and Wilmer's appointment as counsel to the Receiver. (S*ee* Declaration of Ryan W. Anderson ("Anderson Declaration" attached hereto as **Exhibit A**, ¶¶ 5-6).

During Snell & Wilmer's representation of the Receiver, the Receiver provided Snell & Wilmer with confidential information related to (1) the potential claims it had against various entities, including the claims against US Bank; (2) the litigation strategy in pursuing those claims; (3) the strength and weaknesses of those claims, and (4) detailed confidential information relating to the operation of DenSco and Denny Chittick. (Anderson Declaration, ¶¶ 7-8).

II. LEGAL ANALYSIS

Under Ethical Rule 1.9, the Court must disqualify Snell & Wilmer from representing US Bank because it learned confidential information while representing the Receiver that it may use to the benefit of US Bank in this litigation.

A. Snell & Wilmer's Representation of US Bank Is a Conflict of Interest Pursuant to ER 1.9.

Ethical Rule 1.9 ("ER 1.9") of the Arizona Rules of Professional Conduct, Ariz.S.Ct.R. 42, discusses an attorney's duties to former clients. It provides that "[a] lawyer who has formerly represented a client in a matter shall not thereafter represent another person in the same or a substantially related matter in which that person's interests are materially adverse to the interests of the former client unless the former client gives informed consent, confirmed in writing." ER 1.9(a).

For a conflict to exist, the moving party must show: (1) the existence of an attorney-client relationship; (2) that the former representation was the same or substantially related to the current litigation; and (3) that the current client's interests are materially adverse to the former client's interests. *Roosevelt Irr. Dist. v. Salt River Project Agr. Imp. & Power*

Dist., 810 F. Supp. 2d 929, 945 (D. Ariz. 2011), citing *Foulke v. Knuck*, 162 Ariz. 517, 520-521 (App. 1989).

There is no question that Snell & Wilmer represented the Receiver and that the Receiver's interests are materially adverse to US Bank's interests.[4] (Anderson Declaration, ¶¶ 5-6, 14-16). It is also undisputed that the Receiver did not give informed consent to Snell & Wilmer's representation of US Bank. (Anderson Declaration, ¶ 16)

The only issue, therefore, is whether the two matters are substantially related.

B. Matters Are Substantially Related When There Is a Reasonable Probability That Confidential Information Was Disclosed in the Prior Representation That Could Later Be Used against the Client in the Subsequent Representation.

Matters are substantially related "if they involve the same transaction or legal dispute or if there otherwise is a substantial risk that confidential factual information as would normally have been obtained in the prior representation would materially advance the client's position in the subsequent matter." ER 1.9 cmt. 3. Determining whether there is a substantial relationship depends on the possibility, or the appearance thereof, that confidential information might have been given to the attorney. *Westinghouse Elec. Corp. v. Gulf Oil Corp*., 588 F.2d 22, 221, 224 (7th Cir. 1978).

The substantial relationship test focuses on the general features of the matters involved and inferences as to the likelihood that confidences were imparted by the former client that could be used in representing the new client to adversely affect the former client's interests. Restatement (Third) of the Law Governing Lawyers § 132 cmt. d (2000).

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[4] Although the attorneys handling Snell & Wilmer's representation of US Bank were not, to the Receiver's knowledge, involved in Snell & Wilmer's representation of the Receiver, the pertinent question is whether Mr. Smith has a conflict of interest under ER 1.9. Any such conflict is imputed to the entire firm pursuant to ER 1.10(a), which provides in pertinent part: "While lawyers are associated in a firm, none of them shall knowingly represent a client when any one of them practicing alone would be prohibited from doing so by ERs 1.7 or 1.9…."

If it is reasonable to assume that the lawyer would have obtained confidential information during the representation of the former client that would materially advance the subsequent client's position, the matters are substantially related and the lawyer has a conflict. *Id*.

This rule of disqualification is intended to preserve secrets and confidences communicated to the lawyer by the client. *Trone v. Smith*, 621 F.2d 994, 998 (9th Cir. 1980). "If there is a reasonable probability that confidences were disclosed which could be used against the client in later, adverse representation, a substantial relation between the two cases is presumed." *Id*.

In performing this analysis, the Court does not need to determine whether confidences and secrets *were actually divulged* in the former representation. *Foulke*, 162 Ariz. at 522 (App. 1989). To avoid the "Catch-22" scenario where the client must divulge the very same confidences and secrets which it seeks to prevent, there is a presumption that the attorney received confidential information in his representation of the client. *Id*. at 522-523; *see also* ER 1.9 cmt. 3 ("A former client is not required to reveal the confidential information learned by the lawyer in order to establish a substantial risk that the lawyer has confidential information to use in the subsequent matter.").

Importantly, for the matters to be "substantially related" within the meaning of ER 1.9, the matters *do not* have to arise out of the same facts and circumstances. Rather, there only needs to be "a reasonable probability that confidences were disclosed which could be used against the client in later, adverse representation." *Trone v. Smith*, 621 F.2d at 998.

For instance, "a lawyer who has represented a businessperson and learned extensive private financial information about that person may not then represent that person's spouse in seeking a divorce." ER 1.9 cmt. 3. Clearly, the representation of the former client in business matters have nothing to do with the divorce proceedings. But the lawyer is disqualified because she (1) probably learned confidential information from her former client that (2) could be used against him in the divorce proceedings. "Knowledge of specific

facts gained in a prior representation that is relevant to the matter in question ordinarily will preclude such a representation." *Id.*

(1) <u>The Receiver Did—In Fact—Provide Confidential Information to Snell & Wilmer Concerning Its Litigation Strategy against US Bank.</u>

In this case, the Receiver provided Snell & Wilmer *actual* confidential factual information that could now be used to advance US Bank's position to the Receiver's detriment. Figuratively, the Receiver gave Snell & Wilmer its "playbook," filled with confidential facts, work product, and litigation strategy. (Anderson Declaration, ¶¶ 7-10).

Snell & Wilmer could not have represented the Receiver in the claims against the Chittick Estate without fully understanding (1) the facts and circumstances related to the damages that DenSco incurred; and (2) the multitude of claims the Receiver would bring for the collection and preservation of its assets. (Anderson Declaration, ¶¶ 8-10). Snell & Wilmer needed to know of the over-lapping facts and work product to ensure that it did not take a position in the ERISA matter that may be detrimental to other claims that the Receiver intended to bring. (Anderson Declaration, ¶ 10). To that end, the Receiver provided Snell &Wilmer with confidential factual information related to the strengths and weaknesses of those claims, including the claims against Clark Hill, Chase, and US Bank. (Anderson Declaration, ¶¶ 7-10). With that confidential information, the Receiver provided Snell & Wilmer with its overall litigation strategy in pursuing those claims. (Anderson Declaration, ¶¶ 7-13).

Using that confidential information, Snell & Wilmer provided the Receiver with a comprehensive strategy in pursuing certain claims relating to the ERISA plans and Defined Benefit Plan which Snell & Wilmer used to advise the Receiver to settle the ERISA matters with Chittick's Estate. (Anderson Declaration, ¶¶ 11-14). Moreover, Snell and Wilmer caused the Receiver to undertake certain confidential and privileged financial analysis, the results of which informed the Receiver's actions and decisions in the lawsuit against the

Estate of Chittick. (Anderson Declaration, ¶¶ 11-12). Finally, months prior to the Receiver's settlement of the ERISA matters, the Receiver and Snell & Wilmer had a litigation and settlement strategy conference with other representatives of the Receivership Estate in which the Receiver and Snell & Wilmer exchanged confidential information. (Anderson Declaration, ¶¶ 11-12).

Furthermore, Snell & Wilmer used this confidential information to advise the Receiver to settle the ERISA matters with Chittick's estate. (Anderson Declaration, ¶¶ 11-12). Prior to the Receiver's settlement of the ERISA matters, the Receiver and Snell & Wilmer had a litigation and settlement strategy conference. (Anderson Declaration, ¶ 11). Snell & Wilmer—knowing the Receiver's overall collection strategy—advised the Receiver to settle the ERISA action and pursue the claims it had against Chase Bank, US Bank, and Clark Hill. (Anderson Declaration, ¶ 13).[5] Snell & Wilmer advised in an email:

> I though the most important and insightful thing that Peter said today (which was at the very end of the call) was to get the DB Plan and Estate issues resolved so you can focus on what's really important – all the fraud and malpractice claims.

Attached as Exhibit A-1 to the Anderson Declaration.

Simply put, knowing the Receiver's confidential factual information and nature of its litigation strategy, Snell & Wilmer advised the Receiver to settle the ERISA claims *and*

[5] To be clear, the Receiver is not waiving any attorney client privilege it has with Snell & Wilmer. Rather, the Receiver is disclosing this email to show that Snell & Wilmer was aware of the Receiver's claims against Us Bank and Chase and that Snell & Wilmer advised the Receiver to pursue those claims. Furthermore, there is no implied waiver of attorney client privilege either. Under the law, "reliance on privileged information in support of a motion to disqualify . . . does not impliedly waive privilege as to the opposing party." *Burch & Cracchiolo, P.A. v. Meyers*, 237 Ariz. 369, ¶¶ 21-22, 351 P.3d 376 (App. 2015). Finally, if the Court believes that the Receiver should disclose more privileged information to rule on this Motion to Disqualify, then this Court should allow the Receiver to provide it *in camera* for another judicial officer to conduct review and rule on this Motion to Disqualify. *Id.* ¶¶11-12, 25. But under the law, that should not be necessary because the Receiver has met this burden.

pursue its claims against US Bank, only to switch sides to represent US Bank *against* the Receiver in this matter. (Anderson Declaration, ¶¶ 14-15). Now, knowing this confidential information, Snell & Wilmer could use this confidential information to US Bank's advantage, to the Receiver's detriment. (Anderson Declaration, ¶¶ 14-15).

(2) <u>There Is a Reasonable Probability That Confidences Were Disclosed to Snell & Wilmer During the Prior Representation That Could Be Used against the Receiver.</u>

In the ERISA matter, the Receiver and Denny Chittick's estate both asserted rights to the funds in DenSco's defined benefit plan (the "DB Plan"). Denny Chittick's estate was, therefore, adverse to the Receiver. In this case, US Bank and Chase will undoubtedly name Denny Chittick as a non-party at fault in this case, just as he was in the previous litigation arising out of the Receivership Court against Clark Hill. In developing its non-party of fault defense, there is a significant danger that Snell & Wilmer will use against the Receiver the confidential information that it learned about Denny Chittick while previously representing the Receiver in the ERISA litigation. (Anderson Declaration, ¶ 15). Doing so would materially benefit US Bank to the Receiver's detriment.

III. <u>CONCLUSION</u>

The bottom line is that not only is it reasonably probable that Snell & Wilmer learned confidential facts in its previous representation of the Receiver, it is a certainty. It is equally certain that Snell & Wilmer can use this information in the furtherance of US Bank's defense in this case, to the detriment of the Receiver. It is for these reasons that a conflict exists under ER 1.9, and the Court must disqualify Snell & Wilmer.

. . .

. . .

. . .

DATED this 27th day of May, 2020.

Bergin, Frakes, Smalley & Oberholtzer, PLLC

/s/ Ken Frakes
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Kevin Kasarjian
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ORIGINAL filed electronically
this 27th day of May, 2020 via
TURBOCOURT with:
Maricopa County Superior Court
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And a copy mailed and/or emailed
this 27th day of May, 2020 to:

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By: /s/ Kristine Berry

EXHIBIT A

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IN THE SUPERIOR COURT OF THE STATE OF ARIZONA

IN THE COUNTY OF MARICOPA

PETER S. DAVIS, as Receiver of DENSCO INVESTMENT CORPORATION, an Arizona corporation, Plaintiff, vs. U.S. BANK, NA, a national banking organization; HILDA H. CHAVEZ and JOHN DOE CHAVEZ, a married couple; JP MORGAN CHASE BANK, N.A., a national banking organization; SAMANTHA NELSON f/k/a SAMANTHA KUMBALECK and KRISTOFER NELSON, a married couple; and VIKRAM DADLANI and JANE DOE DADLANI, a married couple. Defendants.	Case No.: CV2019-011499 **DECLARATION OF RYAN W. ANDERSON** (Assigned to the Hon. Daniel Martin)

I, Ryan W. Anderson, of the firm Guttilla Murphy Anderson P.C., declare under penalty of perjury the following is true and correct. To the fullest extent possible, I make this declaration without waiving or breaching any attorney-client privilege or confidentiality. All privileges are fully intact.

1. I am a shareholder of the firm Guttilla, Murphy Anderson P.C, and have held that position during all relevant times mentioned in the following declaration.

2. I, and the law firm of Guttilla Murphy Anderson P.C., and at all relevant times, have represented the Receiver as general counsel in *Arizona Corporation Commission v DenSco Investment Corporation*, Maricopa County Superior Court Case No. CV2016-014142 ("the DenSco Receivership"), and have personal knowledge of the facts set forth herein.

2. The Receivership Court authorized the Receiver, to, among other things, employ attorneys and other professionals that are necessary for the proper collection, preservation, and maintenance of Receivership Assets ("the Receivership Order"). This includes bringing claims that the DenSco Receivership Estate may have against third party tortfeasors that have damaged DenSco Investment Corporation ("DenSco").

3. Pursuant the provisions of the Receivership Order, the Receiver has sought the Receivership Court's approval to employ a series of law firms to assist the Receiver in addressing issues in the DenSco Receivership. Specifically, the Receivership Court has approved the engagement of the law firm of Fredenberg Beams, appointed to assist the Receiver in the foreclosure related issues [See Petition No. 4- DenSco Receivership (CV2016-014142)]; the law firm of Frazer Ryan Goldberg & Arnold, LLP, appointed to advise the Receiver with issues in probate court [See Petition No. 10- DenSco Receivership (CV2016-014142)]; the law firm of Snell & Wilmer, appointed to advise the Receiver with respect to issues relating to an ERISA and Defined Benefit Plan [See Petition No. 13- DenSco Receivership (CV2016-014142)]; the law firm of Osborn Maledon, appointed was engaged to bring a malpractice claim against DenSco's lawyers at Clark Hill, PLLC [See Petition No. 22- DenSco Receivership (CV2016-014142)]; the law firm of Bergin, Frakes, Smalley & Oberholtzer, PLLC, appointed to pursue claims against US Bank and Chase for aiding and abetting Menaged's fraud [See Petition No. 36- DenSco Receivership (CV2016-014142)]; and the law firm of Ajamie LLP, appointed to address claims against a third party hard money

lender. [See Petition No. 45- DenSco Receivership (CV2016-014142)]

4. Since the Receiver is merely a ministerial officer of his appointing Court, when seeking to employ a law firm on behalf of the Receivership estate, the Receiver must specifically seek his appointing Court's approval of the engagement. In addition to articulating a basis for the potential engagement, the Receiver provides his appointing Court [in a public filing] a copy of the proposed engagement agreement between the Receiver and law firm.

5. On December 22, 2016, I filed Petition No. 13, *Petition for Order to Approve the Engagement of Special Counsel, Marvin "Bucky" Smith of Snell & Wilmer, LLP to Represent the Receiver with respect to ERISA and the DenSco Defined Benefit Plan.* ("Petition No. 13")[See Petition No. 13- DenSco Receivership (CV2016-014142)]. Attached to the Petition No. 13 was a copy of the engagement agreement between the Receiver and Steven Jerome on behalf of Snell and Wilmer.

6. On December 29, 2016, the Estate of Denny Chittick opposed Petition No. 13 and the employment of Snell and Wilmer. The Estate of Denny Chittick opposed Petition No. 13 for a myriad of reasons including the hourly rates charged by Snell and Wilmer and the fundamental concept that the Receiver needed a law firm with depth and knowledge in the area of defined benefit plans and ERISA issues. The Receivership Court, after a review of the arguments, including the Reply filed by the Receiver in support of Snell and Wilmer's employment, approved Petition No. 13 and the employment of Snell and Wilmer[1].

7. As general counsel, I assisted, counseled, and advised the Receiver on claims brought against third parties pursuant to Receivership Order. Additionally, I was responsible for assisting the Receiver in the management of the attorneys and other professionals that are necessary for the proper collection, preservation, and maintenance of Receivership Assets, including but not limited to, the management of Snell & Wilmer to pursue claims against the

[1] Despite seeking to employ multiple lawyers and law firms in the DenSco Receivership, Snell and Wilmer were the only firm subject to an objection from a creditor.

Chittick Estate related to certain ERISA claims and other legal matters.

8. The Receiver provided Snell & Wilmer with actual confidential information related to (1) the potential claims it had against various entities, including the claims against US Bank; (2) the litigation strategy in pursuing those claims; (3) the strength and weaknesses of those claims; and (4) detailed confidential information relating to the operations of DenSco and Denny Chittick. Additionally, the Receiver provided Snell & Wilmer detailed strategic information regarding the Receivership Estate's litigation strategies which included confidential facts, work product, and litigation strategy because Snell & Wilmer could not have adequately represented the Receiver in the claims against the Chittick Estate without fully understanding (1) the facts and circumstances related to the damages that DenSco incurred; and (2) the multitude of claims the Receiver would bring for the collection and preservation of its assets.

10. Moreover, Snell & Wilmer needed to know of the over-lapping facts and work product to ensure that it did not take a position in the ERISA matter that may be detrimental to other claims that the Receiver intended to bring against other third parties. To that end, the Receiver provided Snell &Wilmer with confidential factual information related to the strengths and weaknesses of those claims, including the claims against Clark Hill, Chase, and US Bank.

11. With that confidential information, Snell & Wilmer provided the Receiver with a comprehensive strategy in pursuing certain claims relating to the ERISA plans and Defined Benefit Plan which Snell & Wilmer used to advise the Receiver to settle the ERISA matters with Chittick's Estate. Moreover, Snell and Wilmer caused the Receiver to undertake certain financial analysis, which further bolstered the Receiver's claims against the Estate of Chittick. Finally, months prior to the Receiver's settlement of the ERISA matters, the Receiver and Snell & Wilmer had a litigation and settlement strategy conference with other representatives of the Receivership Estatein which the Receiver and Snell & Wilmer exchanged confidential information..

12. This confidential information resulted in the Receiver and the Estate of Chittick negotiating a comprehensive settlement agreement which was eventually memorialized in a written settlement agreement in November of 2017.

13. Snell & Wilmer was actively involved in advising the Receiver in the potential compromise. With knowledge of the Receiver's overall collection and litigation strategy in the receivership case advised the Receiver to settle the ERISA action and pursue the claims it had against Chase Bank, US Bank, and Clark Hill. Snell & Wilmer advised:

> I though the most important and insightful thing that Peter said today (which was at the very end of the call) was to get the DB Plan and Estate issues resolved so you can focus on what's really important – all the fraud and malpractice claims. Exhibit A-1.

14. Knowing the Receiver's confidential factual information and nature of its litigation strategy, Snell & Wilmer advised the Receiver to settle the ERISA claims *and* pursue its claims against US Bank, only to switch sides to represent US Bank *against* the Receiver in this matter. Knowing this confidential information, Snell & Wilmer could use this confidential information to US Bank's advantage to the Receiver's detriment.

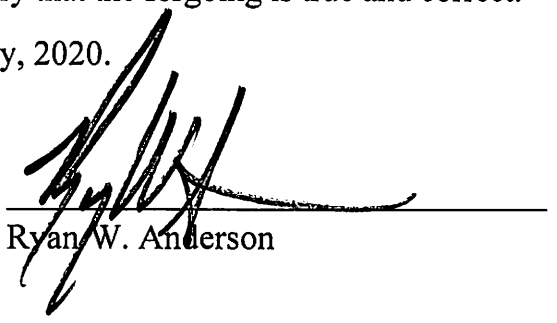
15. In developing its non-party of fault defense, there is a significant danger that Snell & Wilmer will use against the Receiver the confidential information that it learned about Denny Chittick while previously representing the Receiver in the ERISA litigation.

16. The Receiver did not give informed consent to Snell & Wilmer's representation of US Bank. In fact, during conversations with Andrew F. Hallaby after the Receiver discovered the conflict with Snell & Wilmer representing US Bank, I specifically asked Mr. Hallaby if he wanted to know the information, which is known to Marvin Bucky Smith [and imputed to Snell and Wilmer] that was causing the Receiver to have to seek to disqualify Snell and Wilmer. Mr. Halaby refused claiming it could result in Snell & Wilmer's disqualification.

[Signature on following page]

I declare under the penalty of perjury that the forgoing is true and correct.

EXECUTED this 27th day of May, 2020.



Ryan W. Anderson

EXHIBIT A-1

From: Ryan Anderson
To: Ryan Anderson
Subject: FW: The call today
Date: Monday, March 2, 2020 6:39:55 PM
Attachments: image001.png

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From: Swift, Marvin <mswift@swlaw.com>
Sent: Tuesday, May 9, 2017 6:04 PM
To: Ryan Anderson <randerson@gamlaw.com>
Subject: The call today

I hope I was able to help today to get Peter to a place where he can focus on what's important to him. Honestly, I really wanted to push for a settlement [redacted] I though the most important and insightful thing that Peter said today (which was at the very end of the call) was to get the DB Plan and Estate issues resolved so you can focus on what's really important – all the fraud and malpractice claims.

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