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5 IN THE SUPERIOR COURT OF THE STATE OF ARIZONA

6 IN AND FOR MARICOPA COUNTY

7 ARIZONA CORPORATION
8 COMMISSION,

Plaintiff,

9 v.

10 DENSCO INVESTMENT
CORPORATION, an Arizona
11 corporation,

Defendant.

Cause No. CV2016-014142

RECEIVER'S REPLY TO ESTATE OF
CHITTICK'S OPPOSITION TO
RECEIVER'S PETITION NO. 13 AND
ESTATE OF CHITTICK'S REQUEST
FOR CONSOLIDATION OF PETITIONS
NO. 11 AND 13.

(Assigned to the Honorable Lori Horn
Bustamante)

14 Peter S. Davis, as the court appointed Receiver of DenSco Investment Corporation,
15 ("Receiver") hereby replies to the Estate of Denny J. Chittick's ("Estate of Chittick")
16 opposition to Receiver's Petition No. 13 for employment of special counsel Marvin "Bucky"
17 Swift and its request for consolidation of Petitions No. 11 and 13 as follows:

18 **I. RECEIVER SHOULD HAVE LEGAL COUNSEL WITH EXPERTISE IN DEFINED BENEFIT**
19 **PLANS**

20 The Estate of Chittick opposes the Receiver's engagement of Marvin "Bucky" Swift as
21 special counsel to the Receiver because the Estate of Chittick incorrectly contends that the

1 DenSco Investment Corporation Defined Benefit Plan (the “Plan”) is not an asset of the
2 Receivership and therefore Mr. Swift’s legal services are unnecessary.

3 As detailed in the Receiver’s *Response to the Estate of Chittick’s Petition No. 11*, the
4 Plan is an asset of DenSco and the Receiver of DenSco has certain responsibilities and
5 obligations as the administrator of the Plan. The Receiver, to carry out these duties, requires
6 legal counsel with expertise in issues relating to the management and operation of defined
7 benefit plans. Furthermore, the Receiver intends to explore issues related to the formation
8 and historical operation of the Plan to determine if the Plan was not tax-qualified as of the
9 date of Mr. Chittick’s death and if the Plan’s assets are be subject to the claims of all of
10 DenSco’s creditors (including the beneficiaries under the Plan). Despite the Estate of
11 Chittick’s contention that the Plan is not an asset of the DenSco Receivership, DenSco owns
12 the Plan¹. Given the obligations of the Receiver of DenSco to operate, manage and investigate
13 the Plan, the Receiver is entitled to retain a lawyer qualified to provide him advice and
14 counsel on the issues related to the Plan.

15 Moreover, the Estate of Chittick opposes the Receiver’s engagement of Mr. Swift as
16 Special Counsel, because it claims that the assets of the Plan are not subject to creditor claims
17 and therefore, the Receiver’s retention of Special Counsel is “squandering” DenSco funds on
18 a “fanciful hope” of potential recovery. Apparently, the Estate of Chittick has not reviewed
19 the case law which demonstrates that courts are empowered to review the tax-qualified status
20

21

¹ The Plan’s assets may be held for the benefit of the participant’s beneficiaries.

1 of retirement plans and creditors may reach assets in a retirement plan, which would
2 otherwise be exempt, after a finding that the retirement plan is disqualified.

3 Ironically, the Estate of Chittick has specifically advised the Receiver that it has
4 consulted with and intends to engage lawyer Michael Pietzch to represent the Plan if its client
5 were to gain control of Plan. Apparently, it is appropriate for the Estate of Chittick to engage
6 a lawyer to assist it with the Plan, but the Receiver should not.

7 There can be no reasonable dispute that the interest of the Receiver and the DenSco
8 Receivership and its creditors are best served if the Receiver has skilled and experienced legal
9 counsel to address the myriad of issues with respect to the Plan and it has not disputed that
10 Mr. Swift is more than qualified to provide this specialized knowledge to the Receiver.

11 **II. CONSOLIDATION OF PETITION NO. 11 AND PETITION NO. 13 IS NOT NECESSARY**

12 The Receiver believes that it is not necessary to consolidate Petition No. 11 and
13 Petition No. 13 as the issues raised in each Petition are discrete and distinct. In Petition No
14 11, the Estate of Chittick seeks an Order that the Plan is not a Receivership Asset. Petition
15 No. 13 deals with the Receiver’s request for the employment of legal counsel for the Receiver
16 to address issues with the Plan. While the Estate of Chittick may believe there is a tactical
17 advantage to delay the engagement of Mr. Swift as Special Counsel, There is no reason to
18 consolidate these two distinct Petitions.

19 **III. CONCLUSION**

20 The objections by the Estate of Chittick to the engagement of Marvin “Bucky” Swift
21 as Special Counsel to the Receiver are without merit. The Receiver, as the Receiver of

MASTER SERVICE LIST

Arizona Corporation Commission v. DenSco Investment Corporation
IN THE SUPERIOR COURT OF THE STATE OF ARIZONA

CV2016-014142

(Revised January 10, 2017)

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