

1 **GUTTILLA MURPHY ANDERSON**

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8 Attorneys for the Receiver

9 IN THE SUPERIOR COURT OF THE STATE OF ARIZONA

10 IN AND FOR MARICOPA COUNTY

11	ARIZONA CORPORATION	)	Cause No. CV2016-014142
12	COMMISSION,)	
13)	
14	Plaintiff,	)	PETITION NO. 13
15)	
16	v.	)	PETITION FOR ORDER TO APPROVE
17		)	THE ENGAGEMENT OF SPECIAL
18	DENSCO INVESTMENT	)	COUNSEL, MARVIN "BUCKY" SWIFT
19	CORPORATION, an Arizona	)	OF SNELL & WILMER, LLP TO
20	corporation,	)	REPRESENT THE RECEIVER WITH
21		)	RESPECT TO ERISA AND THE
	Defendant.	)	DENSCO DEFINED BENEFIT PLAN
		)	(Assigned to the Honorable Lori Horn
		)	Bustamante)
)	

15 Peter S. Davis, as the court appointed Receiver of DenSco Investment Corporation,
16 respectfully petitions the Court for an Order approving the engagement of Marvin "Bucky"
17 Swift of the law firm of Snell & Wilmer, LLP, as Special Counsel to the Receiver, as follows:

- 18 1. On August 18, 2016, this Court entered its *Order Appointing Receiver*, which
19 appointed Peter S. Davis as the Receiver of DenSco Investment Corporation ("Receivership
20 Order").

1 2. The Receivership Order authorizes the Receiver to, among other things,
2 employ attorneys and other professionals that are necessary and proper for the collection,
3 preservation and maintenance of the Receivership Assets. [See ¶16 of the Receivership
4 Order]

5 3. The Receiver has determined that he requires the legal services of Marvin
6 “Bucky” Swift, Esq. and the law firm of Snell & Wilmer, LLP to assist the Receiver in
7 addressing issues in the complicated areas of ERISA and specifically issues surrounding
8 single participant Defined Benefit Pension Plans and the DenSco Defined Benefit Plan.

9 4. The Receiver has determined that Denny J. Chittick (“Chittick”) participated in
10 a single participant Defined Benefit Pension Plan at DenSco Investment Corporation.
11 Initially, all of the investments in the Defined Benefit Pension Plan were invested in DenSco
12 Investment Corporation. On or about December 24, 2014, Chittick caused the liquidation of
13 all funds in the Defined Benefit Pension Plan at DenSco Investment Corporation and directed
14 the transfer of the liquidated funds to a secure investment in the form of a certificate of
15 deposit at an FDIC insured bank. More specifically, when the actual value of the investment
16 in the Defined Benefit Pension Plan was worthless, or nearly worthless, Chittick transferred
17 \$1,817,243.03 out of the DenSco Investment Corporation and into the certificate of deposit.
18 Even if the true value of the investment in the Defined Benefit Plan’s investments in DenSco
19 Investment Corporation was \$1,817,243.03 at the time of its transfer, \$867,289.00 of these
20 funds were the property of DenSco Investment Corporation because \$867,289.00 was
21 transferred to the Defined Benefit Plan as a type of distribution for Chittick over and above

1 his annual wages, plus \$9,405.49 in interest that accrued on the Defined Benefit Pension
2 Plan’s investor balance. Moreover, all of these transfers occurred after November 27, 2013,
3 or the date that Chittick became aware of the fraud committed against DenSco Investment
4 Corporation by Scott Menaged.

5 5. The Estate of Denny Chittick has now filed its Petition No. 11¹ seeking among
6 other things to have the Receivership Court determine that the Defined Benefit Pension Plan
7 is not an “asset” of the Receivership and seek to replace DenSco Investment Corporation as
8 the administrator of the Defined Benefit Pension Plan.

9 6. Based on the foregoing, the Receiver requires the legal services of Mr. Swift to
10 assist the receiver in the evaluation of these issues and explore all avenues to determine who
11 should be in control of the DenSco Defined Benefit Pension Plan and if the investments in the
12 Defined Benefit Pension Plan are available to pay the massive investor losses from the
13 operation of DenSco Investment Corporation.

14 7. Mr. Swift and the professionals at Snell & Wilmer, LLP have substantial
15 experience in all areas of ERISA and are qualified to provide legal counsel to the Receiver
16 and serve as special counsel. Moreover, The professional rates of Mr. Swift and other
17 professionals at the law firm of Snell & Wilmer, LLP, as set forth in Exhibit ‘A”, are
18 reasonable in light of the substantial experience of Mr. Swift and other professionals at the

19 _____
20 ¹ The Estate of Chittick failed to follow the Court’s Order re: Petition No. 2 and request a petition number from
21 Receiver’s counsel before filing a petition in the DenSco Receivership. The result is that there are now two Petition No.
11’s on file. The Receiver will be filing a Notice of Errata to change the Receiver’s Petition No. 11, (which was filed
yesterday) to Petition No. 12.

1 law firm of Snell & Wilmer, LLP and the extremely complex legal issues surrounding the
2 formation, management and operation of Defined Benefit Pension Plans.

3 WHEREFORE, the Receiver respectfully requests that the Court enter an order:

- 4 1. Approving the engagement agreement with Marvin “Bucky” Swift of Snell &
5 Wilmer, LLP attached hereto as Exhibit “A”; and
- 6 2. Appointing Marvin “Bucky” Swift of Snell & Wilmer, LLP as special counsel
7 to the Receiver.

8 Respectfully submitted this 22nd day of December, 2016.

9 GUTTILLA MURPHY ANDERSON, P.C.

10 /s/Ryan W. Anderson
11 Ryan W. Anderson
12 Attorneys for the Receiver

13 2359-001(271418)

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December 21, 2016

DENVER
LAS VEGAS
LOS ANGELES
LOS CABOS
ORANGE COUNTY
PHOENIX
RENO
SALT LAKE CITY
TUCSON

VIA E-MAIL pdavis@simonconsulting.net

Peter S. Davis, Court Appointed Receiver
for Densco Investment Corporation
c/o Simon Consulting, LLC
3200 N. Central Ave., Ste. 2460
Phoenix, AZ 85012

Re: Agreement for Legal Services

Dear Peter:

We are pleased that you have asked Snell & Wilmer to serve as your special counsel in connection with the matter described below. This letter will confirm our discussion with you regarding the terms of that engagement and describe the basis on which our firm will provide legal services to you. If you are in agreement with the provisions concerning our engagement set forth in the balance of this letter, please sign the enclosed copy in the space provided and return it to us. If you have questions concerning any of these provisions, please do not hesitate to call. Once again, we are pleased to have the opportunity to serve you.

1. *Client; Scope of Engagement.* The scope of our engagement will be to serve as your special counsel with respect to ERISA and related litigation issues, in the case entitled *Arizona Corporation Commission v. Densco Investment Corporation*, pending as Case No. CV2016-014142 in Maricopa County Superior Court ("Receivership Case"). For all other matters, you are represented, if at all, by separate counsel.

2. *Fees, Expenses and Staffing.* Since this will be our first engagement by you, I want to encourage you to bring to my attention at any time any questions or concerns you may have concerning either our services or our fees. In order to assist you in understanding our billing practices, I enclose a copy of our current Policy on Professional Fees. While hourly rates for attorneys and paraprofessional staff are adjusted from time to time, Marvin (Bucky) Swift's hourly rate beginning in January 2017 will be \$700.00. However, Marvin (Bucky) Swift has agreed to reduce his 2017 standard billing rate 10%, resulting in a reduced billing rate of \$630.00. Billings for professional services, however, will be based on all of the considerations discussed in the enclosed Policy on Professional Fees and not simply time expended and hourly

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rates. We will send statements for professional fees and expenses to your attention on a monthly basis. Payment is due upon Court approval in the Receivership Case and any dispute between you and Snell & Wilmer with respect to fees and costs will be adjudicated by the Court in the Receivership Case.

3. *Cooperation and Communication; Termination; Withdrawal.* We will provide legal counsel to you in accordance with this letter and in reliance upon information and guidance provided by you, will keep you reasonably informed of progress and developments, and will respond to your inquiries. To enable us to represent you effectively, you agree to cooperate fully with us in connection with this matter, and to fully and accurately disclose all facts and documents that may be relevant to the matter or that we may otherwise request. You also will make yourselves reasonably available to attend meetings, discovery proceedings and conferences, hearings, and other proceedings as may be necessary.

Because it is important that we be able to contact you at all times to consult with you regarding your representation, you agree to inform us, in writing, of any changes in the name, address, telephone number, contact person, e-mail address, state of incorporation, or other relevant changes regarding you or your business. Whenever we need your instructions or authorization in order to proceed with legal work on your behalf, we will contact you at the latest business address we have received from you.

Either at the commencement or during the course of our representation, we may express opinions or beliefs concerning various courses of action and the results that might be anticipated. Any such statement made by any partner or employee of our firm is intended to be an expression of opinion only, based on information available to us at the time, and should not be construed by you as a promise or guarantee.

You may terminate our representation at any time by notifying us. Subject to any applicable rules of professional conduct, we may withdraw from representation if you fail to fulfill your obligations under this agreement, including your obligation to timely pay our fees and expenses, or for any other reason permitted or required under those rules. In the event that we terminate the engagement, we will take such steps as are reasonably practicable to protect your interests in the above matter, and you agree to take all steps necessary to free us of any obligation to perform further, including the execution of any documents necessary to perfect our withdrawal. If permission for withdrawal is required by a court or arbitration panel, we will promptly request such permission, and you agree not to oppose our request. Termination of our representation will not affect your responsibility for payment of outstanding statements and accrued fees and expenses incurred before termination or in connection with an orderly transition of the matter.

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Unless previously terminated, our representation will terminate upon our sending you our final statement for services in this matter. Upon the completion of our work on the last active matter we have for you, you will be considered a former client for all matters. Following termination of each matter, any otherwise nonpublic information you have supplied to us which is retained by us will be kept confidential in accordance with the applicable rules of professional conduct and we will close the file for that matter. During the course of our representation and as part of the file closing process, we will endeavor to keep relevant information in the file. Consistent with the firm's records retention and disposal policy, however, we may, in our discretion, discard various documents including but not limited to drafts, notes, research, memoranda, correspondence, and other documents. We will be pleased to furnish you with a copy of the policy upon request, and to answer any questions about it you may have. The contents of the closed file will be retained by the firm and stored for a reasonable period of time in accordance with the policy. Upon request, you may obtain at no cost to you a copy of any such materials which have not been previously furnished to you. In addition, please let us know if you would like us to return any original papers or other property which you have furnished to us. In the absence of contrary instructions, we will dispose of such items in accordance with the policy. The period for which particular client files will be retained may vary depending on the nature of the matter and the engagement. Following the prescribed retention period, those files may be destroyed or otherwise disposed of without further notice or attorney review.

4. *Conflicts of Interest.* In undertaking this representation, our objective is to represent you to the best of our ability without forfeiting the representation of other existing or potential clients. One purpose of this letter, therefore, is to avoid our disqualification from representing such existing or potential clients on matters unrelated to those for which you have engaged us. Given the limited nature of our representation, there are certain conditions to our engagement which we would like to explain to you and to which we would like to secure your approval and consent.

As you are aware, Snell & Wilmer currently represents Peter Strock in litigation pending before the Maricopa County Superior Court in the case *Strock v. Arizona Nature's Wellness* (the "State Court Action"). You are currently engaged as an expert witness in the State Court Action by the adverse parties. Therefore, as a specific condition to our undertaking your representation, you understand and agree that this firm can and will continue to represent Strock in the State Court Action and be adverse to you in your capacity as an adverse expert witness in the State Court Action and you will not attempt to preclude the firm from doing so.

Additionally, Snell & Wilmer is a large law firm which has represented, and continues to represent, many different corporate and individual clients with various business interests in numerous industries. It is possible that, during the time we are representing your interests in the matter for which we have been engaged, we may be asked to represent interests, belonging to one of the firm's present or future clients, that are adverse to yours. If such a conflict were to

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arise between your interests and those of another present or future client of the firm, the firm reserves the right to represent the interests of the other client with respect to that particular matter.

Therefore, as a specific condition to our undertaking your representation, you understand and agree that this firm may continue to represent, or may undertake in the future to represent, existing or new clients in any matter that is not substantially related to the matter we are handling on your behalf, even if the interests of such other clients in those other matters are directly adverse to yours, and even if those other matters ripen into or involve litigation between such other clients and yourself.

We agree, however, that your prospective agreement and consent to such conflicting representation shall not apply in any instance where, as a result of our representation of you, we have obtained sensitive, proprietary or other confidential information of a nonpublic nature that, if known to such other client, could be used to the material disadvantage of your interests in the matter involved. Nor shall it apply to permit us to represent any client against you in any litigation or similar proceeding in which we represent you. Furthermore, this prospective agreement and consent will not apply to any matter where you are acting as receiver for Densco Investment Corporation.

We understand that you are familiar with the potential consequences of such a prospective conflict of interest waiver. Nevertheless, you may want to consider consulting separate counsel regarding whether to grant such a waiver on the terms set forth herein. We encourage you to do so before agreeing to these terms of representation.

Please review this letter carefully and, if the terms and conditions of our representation and the billing arrangements meet with your approval, please sign the enclosed copy of this letter and return it to me so that we may begin work. Please call if you have any questions.

We very much appreciate this opportunity to work with you.

Very truly yours,

Snell & Wilmer



Steven D. Jerome

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SDJ:mjm
Enclosures

I have reviewed this letter and Snell & Wilmer's Policy on Professional Fees and I agree to the terms and conditions of representation and the billing arrangements.



Peter Davis, Court Appointed Receiver for Densco
Investment Corporation

POLICY ON PROFESSIONAL FEES

TO OUR CLIENTS:

The attorney-client relationship works best when there is a mutual understanding about fees and payment terms. Accordingly, our Policy on Professional Fees is intended to explain briefly our current billing policies and procedures. These policies and procedures are subject to change. We encourage you to discuss with us at any time any questions you might have concerning these policies and procedures.

How Fees Are Determined. To help us determine the value of our services, we ask each of our attorneys, paralegals, legal assistants and certain clerical personnel providing specialized support to maintain time records for each client and matter. These individuals are assigned hourly rates, which are reflected on the billing statement sent to clients. These hourly rates are adjusted from time to time (generally once a year) and can change during the course of our engagement. Our rates are a benchmark, and not the sole determinant of the value of our services for billing purposes. The billing attorney assigned to your account reviews the time records before a billing statement is rendered. Pursuant to the applicable Rules of Professional Conduct, a reasonable fee takes into consideration, among other factors, the time and labor required, the novelty of the issues involved and the skill required to perform the legal services properly, the amount involved and the results obtained, any time limitations imposed by the client or by the circumstances, the nature and length of the professional relationship with the client, the experience, reputation and ability of the attorneys performing the services, and the degree of risk assumed by the attorney. In accounting for the hours attributable to an assignment, the billing attorney may take into consideration efficiencies and value resulting from the firm's technology and other resources that provide benefit to the client that is greater than would be reflected in the hourly rate of the individual lawyer involved.

Billing for Disbursements and Expenses. Snell & Wilmer L.L.P. obtains reimbursement for disbursements made on behalf of clients, such as filing fees, transcript and deposition fees, reasonable travel expenses and expert witness fees. We also charge for certain expenses incurred on behalf of clients, such as copies, scans, facsimiles, postage, messengers, long-distance telephone calls and computerized research. The charge for copies is \$.20 per page, scans is \$.10 per page, outgoing facsimiles is \$1.50 per page and computerized research is \$5.00 per minute. There is no charge for incoming facsimiles, normal deliveries to local courts, secretarial overtime or similar activity. We may forward to you large disbursement billings for direct payment to the vendor.

We make every effort to include disbursements and expenses in the statement for the month in which they are incurred. Some disbursements and expenses are not available to us until the following months, in which case a subsequent statement will be rendered to you for these additional charges.

Retainer Policy. It is also our policy to obtain a retainer from new clients, and from existing clients under certain circumstances to secure the payment of our fees and costs and expenses. The amount and terms of a retainer arrangement are generally determined after

consultation with the billing attorney. It may be appropriate to require an additional retainer after the commencement of the engagement, or to require an increase in a prior retainer, depending on the scope of the work or payment history. For example, prior to a lengthy trial, we may require the posting of a retainer sufficient to cover expected fees. We may also request a retainer for the purpose of paying out-of-pocket costs we incur on your behalf.

Fee Estimates. Any estimates of anticipated fees that we provide are, due to the uncertainties involved, necessarily only an approximation of potential fees. Under no circumstances are such estimates a maximum fee quotation. Our actual fees will be determined in accordance with the policies described herein.

In some cases, we may provide specific fee arrangements on a project basis. A specific fee arrangement will always be confirmed in writing; otherwise, our normal billing policies will apply.

Billing Statements. In the absence of other arrangements or factors, our billing statements ordinarily will be rendered to you on a monthly basis. Any matter that is not billed monthly and which extends beyond three months ordinarily will be billed quarterly, unless otherwise agreed between us.

Our billing statements are due and payable upon receipt. We ask and expect payment of our statements on a current basis, as delayed payment adds to our overall costs of providing services. Interest at the rate of 12% per annum will be assessed on all amounts over 30 days past due.

Dispute Resolution. Although we look forward to a mutually rewarding relationship, in the unlikely event of a dispute, including a dispute regarding the amount or payment of fees and expenses, the following dispute resolution terms will apply.

In the event of a dispute concerning the amount or payment of fees and expenses, we mutually agree that any such dispute will be submitted to mandatory binding arbitration to be held in Maricopa County, Arizona and conducted in accordance with procedures established by the State Bar of Arizona. The decision of the arbitrator(s) will be final and binding on the parties. Judgment on any arbitration award may be entered in accordance with the provisions of the Uniform Arbitration Act, as adopted in Arizona, A.R.S. §§ 12-1501 *et seq.*, and of the Arizona Rules of Civil Procedure. In the event that dispute resolution proceedings are instituted between us for any reason, the prevailing party shall be entitled to an allowance of reasonable attorneys' fees and other costs incurred as a result of the action or proceeding.

As to any claim or dispute arising out of or connected with our services, other than a fee dispute covered by the preceding paragraph, we mutually agree to attempt in good faith to settle the dispute by non-binding mediation in Phoenix, Arizona before commencing any legal action or other dispute resolution procedure. Unless we otherwise agree, the mediation will be conducted pursuant to the then current Center for Public Resources (366 Madison Avenue, New York, N.Y.) Mediation Procedures. Either of us may commence mediation by letter requesting mediation delivered to the other party and to the Center for Public Resources ("CPR"). In the event we fail to agree upon a neutral mediator within ten (10) working days after the mediation

request is delivered, either of us can apply to CPR to appoint a neutral mediator who has experience in the subject matter of the claim or dispute.

Lex Mundi. Snell & Wilmer is a member of Lex Mundi, a global association of independent law firms that can be called upon to provide clients worldwide access to legal services. Although a member of Lex Mundi, Snell & Wilmer is completely independent and does not have common operations, share fees or collaborate on a pre-arranged basis with other member firms. If collaboration with other independent members of Lex Mundi is appropriate to serve client needs, Snell & Wilmer will discuss the specific engagement with the client to assure understanding and agreement of the roles and duties assumed by each involved law firm.

Errors and Omissions Coverage. Some states require that a law firm disclose the existence of errors and omissions insurance coverage applicable to the services to be rendered. Snell & Wilmer hereby confirms the existence of such insurance coverage.

Finally, in closing, let us assure you that our goal has always been and will continue to be to provide legal services to you on the most cost-efficient basis possible. If at any time you wish to discuss either our billing policies or procedures generally or a specific billing statement, we encourage you to contact us.