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BEFORE THE ARIZONA CORPORATION COMMISSION

DOCKET CONTROL

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COMMISSIONERS

BOB STUMP, Chairman  
GARY PIERCE  
BRENDA BURNS  
BOB BURNS  
SUSAN BITTER SMITH

ORIGINAL

In the matter of:

TRI-CORE COMPANIES, LLC, an Arizona limited liability company,

TRI-CORE MEXICO LAND DEVELOPMENT, LLC, an Arizona limited liability company,

TRI-CORE BUSINESS DEVELOPMENT, LLC, an Arizona limited liability company,

ERC COMPACTORS, LLC, an Arizona limited liability company,

ERC INVESTMENTS, LLC, an Arizona limited liability company,

C&D CONSTRUCTION SERVICES, INC., a Nevada corporation;

PANGAEA INVESTMENT GROUP, LLC, an Arizona limited liability company, d/b/a Arizona Investment Center,

JASON TODD MOGLER, an Arizona resident,

BRIAN N. BUCKLEY and CHERYL BARRETT BUCKLEY, husband and wife,

CASIMER POLANCHEK, an Arizona resident,

NICOLE KORDOSKY, an Arizona resident,

Respondents.

DOCKET NO. S-20867A-12-0459

**SECURITIES DIVISIONS' RESPONSE TO MOTION TO WITHDRAW AS ATTORNEY OF RECORD FOR C&D CONSTRUCTION SERVICES, INC.**

Arizona Corporation Commission

DOCKETED

JAN 24 2014

DOCKETED BY

1           The Securities Division of the Arizona Corporation Commission (“the Division”) submits  
2 the following Response to the Motion to Withdraw as Attorney for C&D Construction Services,  
3 Inc. (“Motion to Withdraw”). Although ordinarily the Division would have no objection to the  
4 Motion to Withdraw, the timing of the Motion may prejudice the judicial process and delay the  
5 hearing scheduled to begin February 3, 2014.

6           The Division agrees that the Rules of Practice and Procedure Before the Commission and  
7 the Arizona Rules of Professional Conduct cited in the Motion to Withdraw permit the relief  
8 requested in appropriate circumstances. However, case law interpreting the Rules of Professional  
9 Conduct provides that such relief should be denied when there is prejudice to the judicial process  
10 or the parties.

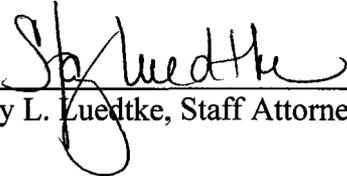
11           In *Riley, Hoggatt & Suagee, P.C. v. Riley*, the Arizona Court of Appeals held that the trial  
12 judge must exercise discretion in ruling on a motion to withdraw based on non-payment of fees  
13 and take into consideration (1) the timing of the motion to withdraw, and (2) possible prejudice to  
14 the judicial process and the parties. 165 Ariz. 138, 796 P.2d 940 (App. 1990). Case law  
15 interpreting similar state Rules of Professional Conduct has set similar standards for these motions.  
16 *See e.g. In re Kiley*, 459 Mass. 645, 650, 947 N.E.2d 1, 6 (2011); *Robbins v. Legacy Health System*  
17 *Inc.*, 311 P.3d 96 (Wash. App. 2013).

18           Here, the Motion to Withdraw is not timely. First, although the amount due to counsel by  
19 C&D Construction Services, Inc. is not spelled out in the Motion to Withdraw, counsel admits that  
20 the overdue balance has been an issue for at least nine months. *See* Motion to Withdraw at p. 2.  
21 The Motion to Withdraw does not indicate why counsel failed to withdraw months ago, instead of  
22 on January 22, 2014, less than two weeks before the hearing is scheduled to resume. Minimally,  
23 there was a period of three months between the last hearing (in late October 2013) and the date that  
24 the Motion to Withdraw was filed in which counsel took no action to withdraw.

25           Counsel’s withdrawal from the proceedings could also prejudice the judicial process and  
26 the Division to the extent that it delays the hearing. The Division is aware of the Motion to

1 Continue recently filed by Jason Mogler and the Tri-Core entities requesting a continuance of the  
2 February 4, 2014 hearing ("Motion to Continue"). The Division is responding to the Motion to  
3 Continue separately. However, to the extent that the hearing proceeds on February 4, 2014 or  
4 during any of the days during the three weeks it is scheduled, the Motion to Withdraw should be  
5 denied if it delays the proceedings in any way. The parties have been aware of the February 2014  
6 hearing dates since October 2013. See Sixth Procedural Order dated October 4, 2013. Minimally,  
7 C&D Construction Services, Inc. should not be allowed to continue any of the scheduled hearing  
8 dates whether it is represented or not.

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10  
11 RESPECTFULLY SUBMITTED this 24th day of January, 2014.

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14 Stacy L. Luedtke, Staff Attorney for the Securities Division

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16  
17 ORIGINAL and 9 copies of the foregoing  
18 filed this 24th day of January, 2014 with:

19 Docket Control  
20 Arizona Corporation Commission  
21 1200 W. Washington St.  
Phoenix, AZ 85007

22 COPY of the foregoing hand-delivered  
23 this 24th day of January, 2014, to:

24 The Honorable Marc E. Stern  
25 Administrative Law Judge  
26 Arizona Corporation Commission  
1200 W. Washington St.  
Phoenix, AZ 85007

1 COPY of the foregoing mailed  
2 this 24th day of January, 2014, to:

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12 Guy Quinn  
13 1129 Stonegate Ct.  
14 Bartlett, IL 60103

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