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BEFORE THE ARIZONA CORPORATION COMMISSION

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COMMISSIONERS

2014 MAY 22 A 11: 32

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

ORIGINAL

ARIZONA CORPORATION COMMISSION
DOCKET CONTROL

In the matter of:
CONCORDIA FINANCING COMPANY,
LTD, a/k/a "CONCORDIA FINANCE,"
ER FINANCIAL & ADVISORY
SERVICES, L.L.C.,
LANCE MICHAEL BERSCH, and
DAVID JOHN WANZEK and LINDA
WANZEK, husband and wife,
Respondents.

DOCKET NO. S-20906A-14-0063

SECURITIES DIVISION'S SUPPLEMENTAL
CITATION OF AUTHORITIES

Arizona Corporation Commission

DOCKETED

MAY 22 2014

DOCKETED BY

The Securities Division ("Division") of the Arizona Corporation Commission ("Commission") respectfully submits this Supplemental Citation of Authorities pursuant to this Tribunal's direction at the hearing on Respondents' Motion to Dismiss on May 21, 2014.

The following four cases cite *Trimble v. American Savings Life Insurance Company*, 152 Ariz. 548, 733 P.2d 1131 (App. 1986), for its analysis of when statutes of limitation do and do not apply to civil actions brought by government agencies for the public's benefit:

1. *In re Diamond Benefits Life Ins. Co.*, 184 Ariz. 94, 96, 907 P.2d 63, 65 (1995) ("Although *Trimble* presents a different factual scenario than this case, we believe the principles *Trimble* expresses and the cases it discusses indicate that the present claim is not barred by the statute of limitations.").

1 2. *Young Electric Sign Co. v. State ex rel. Winder*, 25 P.3d 117, 121 (Idaho
2 2001) (“[S]tatutes of limitations do not operate against the state when the state is acting in
3 its sovereign capacity to enforce a public right.”).

4 3. *State ex rel. Smith v. Kermit Lumber & Pressure Treating Co.*, 488 S.E.2d
5 901, 908 n.8 & 909 (W.Va. 1997) (Noting, “The doctrine of *nullum tempus occurrit regi*
6 applies if the right which the governmental unit seeks to assert is in fact a right belonging to
7 the general public. It does not apply if the right belongs only to the government or to some
8 small and distinct section of the public.”; holding that the West Virginia legislature
9 abrogated the doctrine, however, by enacting W. Va. Code § 55-2-19, which provides
10 “Every statute of limitation, unless otherwise expressly provided, shall apply to the State.”).

11 4. *Laramie County Sch. Dist. Number One v. Muir*, 808 P.2d 797, 801 (Wyo.
12 1991) (“[U]nless the legislature expressly includes governmental bodies as subject to the
13 applicable statute of limitations or those governmental bodies are included within the
14 statute by necessary application, the statute of limitations does not run against the
15 government.”).

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17 The two laches cases undersigned counsel for the Division referenced at the hearing are:

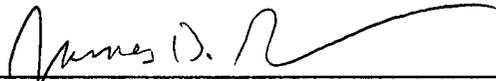
18 1. *Mohave County v. Mohave-Kingman Estates, Inc.*, 120 Ariz. 417, 421, 586
19 P.2d 978, 982 (1978) (“In general, equitable defenses, such as estoppel and laches, will not
20 lie against the state, its agencies or subdivisions in matters affecting governmental or
21 sovereign functions.”).

22 2. *Defenders of Wildlife v. Hull*, 199 Ariz. 411, 415 ¶ 2 n.1, 18 P.3d 722, 726
23 n.1 (App. 2001) (“[N]either doctrines of laches nor statutes of limitations of actions can be
24 allowed to defeat the state’s sovereign title to trust lands.”).

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RESPECTFULLY SUBMITTED this 22nd day of May, 2014.

ARIZONA CORPORATION COMMISSION

By 
James D. Burgess
Attorney for the Securities Division of the
Arizona Corporation Commission

ORIGINAL and 8 copies of the foregoing
filed this 22nd day of May, 2014, with:

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

COPY of the foregoing hand-delivered
this 22nd day of May, 2014, to:

The Honorable Mark H. Preny
Administrative Law Judge
Arizona Corporation Commission
1200 W. Washington St.
Phoenix, AZ 85007

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