

IN THE SUPERIOR COURT OF THE STATE OF ARIZONA

IN AND FOR THE COUNTY OF MARICOPA

Peter S. Davis, as Receiver of
DenSco Investment Corporation,
an Arizona corporation,

Plaintiff,

vs.

Clark Hill PLC, a Michigan
limited liability company;
David G. Beauchamp and Jane Doe
Beauchamp, Husband and Wife,

Defendants.

NO. CV2017-013832

VIDEOTAPED DEPOSITION OF EDWARD JOSEPH HOOD

Phoenix, Arizona
February 8, 2019
9:04 a.m.

REPORTED BY:
KELLY SUE OGLESBY, RPR
Arizona CR No. 50178
Registered Reporting Firm R1012

PREPARED FOR:

EDWARD JOSEPH HOOD, 2/8/2019

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1 VIDEOTAPED DEPOSITION OF EDWARD JOSEPH HOOD,
2 commenced at 9:04 a.m. on February 8, 2019, at the law
3 offices of Osborn Maledon, P.A., 2929 North Central
4 Avenue, 21st Floor, Phoenix, Arizona, before KELLY SUE
5 OGLESBY, a Certified Reporter, CR No. 50178, in and for
6 the County of Maricopa, State of Arizona, pursuant to the
7 Rules of Civil Procedure.

8 * * *

9 APPEARANCES

10 FOR PLAINTIFF:

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16 FOR DEFENDANTS:

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20 ALSO PRESENT:

21 Mary Onuschak, Legal Video Services
22
23
24
25

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Phoenix, Arizona
February 8, 2019
9:04 a.m.

* * *

(Deposition Exhibits No. 697 through 711 were marked for identification.)

VIDEOGRAPHER: This is the videotaped deposition of Ed Hood taken by the plaintiff in Cause No. CV2017-013, excuse me, 013832, styled Peter Davis, as receiver of DenSco Investment Corporation, versus Clark Hill PLC, et al., filed in the Superior Court of the State of Arizona, in and for the County of Maricopa.

Today is February 8th. The year is 2019. The time is 9:04 a.m. Our location is 2929 North Central Avenue, Phoenix, Arizona.

Kelly Oglesby is a certified shorthand reporter with JD Reporting, 1934 East Camelback Road, Phoenix, Arizona; and Mary Onuschak is a certified legal video specialist with Legal Video Specialists, 3033 North Central Avenue, Phoenix, Arizona.

Counsel may state their name, firm, and whom they represent, beginning with plaintiff's counsel, please.

MR. CAMPBELL: Colin Campbell and Geoff Sturr for the receiver.

MR. DEWULF: John Dewulf for defendants Clark

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1 Hill and David Beauchamp.

2 VIDEOGRAPHER: You may swear the witness.

3
4 EDWARD JOSEPH HOOD,
5 called as a witness herein, having been first duly sworn,
6 was examined and testified as follows:

7
8 EXAMINATION

9
10 Q. (BY MR. CAMPBELL) Could you state your full
11 name for the record.

12 A. Edward Joseph Hood.

13 Q. And, Mr. Hood, we have in front of you some
14 exhibits we have marked. Over to your right is some
15 exhibits we have marked in other cases.

16 Let me just start by asking, what have you done
17 to prepare for your deposition today?

18 A. Met with counsel on a couple of occasions, most
19 recently Wednesday; reviewed some notes that I have
20 prepared along this journey, since I have been involved in
21 the matter; I have reviewed some, but not all of the
22 deposition exhibits; I have reviewed some portions of the
23 deposition testimony. And I think that pretty much sums
24 it up.

25 Q. All right. Let me ask about your notes. Could

EDWARD JOSEPH HOOD, 2/8/2019

1 you describe these notes for me?

2 A. Just there is no particular format to them.
3 They are just notes that I have taken along the way that
4 reflect my impressions of the matter, excuse me, my
5 discussions with counsel, my discussions with our
6 personnel, but, you know, they are -- they are not in a
7 neat package or anything like that. They are just things
8 that I have accumulated along the way.

9 Q. All right. Are these notes in a file or --

10 A. No.

11 Q. Where are they?

12 A. They are handwritten notes I have taken
13 periodically.

14 Q. When did you start taking notes on the case?

15 A. Probably when I first became aware that there
16 was an issue and that I needed to be involved.

17 Q. When did you first become aware there was an
18 issue and you needed to be involved?

19 A. Well, I guess I would pinpoint it, to the extent
20 I can pinpoint it, to late March, early April of 2017,
21 which is when I was notified that the receiver in the
22 Densco receivership had moved to appoint counsel to look
23 into, if not pursue, a claim against the firm.

24 Q. All right. So this would have been before a
25 complaint was even filed in this case?

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1 A. Yes, sir.

2 Q. Is it the very first time you got involved in
3 the issues in this case?

4 A. In any in-depth way, yes.

5 Q. Okay. And had you had communications with
6 anyone about this case prior to that?

7 A. Well, not about the case, because there wasn't a
8 case, per se, but I had been notified that there was a
9 situation that involved David representing a client who
10 had committed suicide, and, you know, anything beyond --
11 and I think that was, I want to say, in the fall of 2016.

12 Q. I think -- yeah. I think Mr. Chittick committed
13 suicide towards the end of July of 2016, if my
14 recollection is correct.

15 Does that seem like the right timeframe?

16 A. It probably would have been a little after that,
17 but yes.

18 Q. Okay.

19 A. In broad strokes, that general timeframe.

20 Q. Let me just go back to your notes.

21 So in terms of your involvement in this case, I
22 take it from time to time you write notes to yourself, and
23 you reviewed them in preparation for your deposition?

24 A. I reviewed some of them. Certainly not all of
25 them. I made no effort to go back and try to centralize

EDWARD JOSEPH HOOD, 2/8/2019

1 all of them, but the ones that I had, I wrote a few things
2 down and I reviewed those.

3 Q. Did you review them to refresh your
4 recollection?

5 A. Well, no, not really. I mean, I don't have any
6 recollection of any firsthand personal knowledge involved
7 in the case. I -- you know, my personal knowledge is
8 limited to when I, you know, became involved, but I only
9 began taking notes at the point when I mentioned, late
10 March, early April of 2017.

11 Q. All right. I just -- why did you feel the need
12 to review your notes prior to your deposition?

13 A. To try to testify truthfully and the best of my
14 ability.

15 Q. What deposition testimony did you review in
16 preparation for your deposition?

17 A. I think I reviewed excerpts of David
18 Beauchamp's, or Beauchamp I think he pronounces it,
19 transcript. I think I reviewed portions of Mark
20 Sifferman's testimony, portions of Daniel Schenck's
21 deposition transcript. And I think that -- that's it.

22 Q. All right. Have you reviewed any of the video
23 of those individuals' depositions?

24 A. I started watching David Beauchamp's video
25 deposition, but I got about ten minutes into it and that

1 was about it.

2 Q. Okay. At any point in time have you read the
3 entire David Beauchamp transcript?

4 A. I have not.

5 Q. Have you read the entire Schenck transcript?

6 A. I don't believe so.

7 Q. And have you read the entire Sifferman
8 transcript?

9 A. I may have made it all the way through Mark's.

10 Q. Okay. In terms of the excerpts you reviewed,
11 were those excerpts prepared for you by someone else?

12 A. Yes. Certainly counsel directed me to certain
13 portions of the testimony, and I think I may have done a
14 word search to see if "Hood" was mentioned at any point,
15 just to see what the witnesses had said, but I think that
16 sums it up.

17 Q. All right. To your right are the exhibits from
18 Mr. Beauchamp's deposition.

19 Have you reviewed all of them?

20 A. Oh, no, I have not reviewed them soup to nuts.

21 Q. Okay. Have we covered everything you did in
22 prep for your deposition?

23 A. I believe so.

24 Q. All right. If you open that book in front of
25 you --

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1 A. Okay.

2 Q. -- we are going to see your picture on
3 exhibit -- what's the number here -- 697.

4 A. Okay. With apologies to all.

5 Q. So this is the -- this is the page from Clark
6 Hill's website which describes you. I assume this is sort
7 of your current website resumé.

8 A. It looks to be, yes, sir.

9 Q. So first of all, you are a civil litigation
10 attorney. True?

11 A. I believe that is a fair description, sure.

12 Q. And you have been involved in, I assume,
13 hundreds of depositions?

14 A. Probably so, yes.

15 Q. Have you ever been deposed before yourself?

16 A. Yes, I have.

17 Q. And in what situations?

18 A. Well, most recently I was deposed in a matter
19 where I had represented two radiologists who were building
20 a home in my former hometown of Ann Arbor, Michigan, and
21 they had gotten crosswise with their builder and architect
22 and I think everybody who had ever breathed on their
23 house, and so I was deposed as -- as a witness because --
24 well, I don't know because why, but I had terminated my
25 representation of the doctors and they had gotten new

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1 counsel, and I think my deposition focused on what -- what
2 I had perceived to be the dealings between the owners and
3 the architect and the builder.

4 Q. Any other situations where you have been
5 deposed?

6 A. Yes. Approximately seven years ago I was
7 deposed in a professional liability matter involving the
8 firm, where I had done an investigation into a situation
9 involving one of our lawyers.

10 Q. And were you deposed with respect to your
11 investigation?

12 A. Yes.

13 Q. So before coming back to that, any other
14 situations where you were a deponent?

15 A. Not -- a deposition deponent, no. I have
16 testified at trial, but it was many, many years ago,
17 involving a case that I had tried.

18 Q. All right. According to your resumé, you are
19 general counsel for the firm?

20 A. I guess technically I'm co-general counsel.

21 Q. Okay. And who are you co-general counsel with?

22 A. A fellow by the name of David Kitner,
23 K-i-t-n-e-r.

24 Q. Is he back in Michigan?

25 A. No. He is in Dallas.

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1 Q. Dallas.

2 So I know you belong to a large firm. I believe
3 over 600 members now.

4 How much of your time is consumed by being
5 general counsel?

6 A. As we sit here today or historically?

7 Q. Well, let's start with today.

8 A. Well, today you have my undivided attention.

9 Q. I do. I do.

10 A. But I would say probably anywhere from a third
11 to half of my time at -- at the present time I devote to
12 the GC role as opposed to my civil litigation practice.

13 Q. And I assume, I understand from looking at your
14 firm, the firm has grown over time.

15 How long have you been general counsel?

16 A. Since -- well, as either the general counsel or
17 a co-general counsel since 2007, and going back to 2004, I
18 was the assistant general counsel.

19 Q. And I assume as the firm has gotten bigger, it's
20 taken more and more of your time.

21 Is that a --

22 A. Well, that may be overgeneralizing. I would say
23 that in the last couple of years, yes, it's taken more and
24 more of my time, particularly as we have gone into
25 jurisdictions like California and Texas, merging with

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1 larger firms that require a lot of love, care, and
2 attention to reconciling processes and policies and
3 getting to know people, too, which is really important, in
4 my humble opinion.

5 But going back to -- but I would just -- the
6 reason I say it might be overgeneralizing is we -- we have
7 grown over time, but I have had help along the way. For
8 example, when we merged with the Pittsburgh firm of Thorp
9 Reed, I was a co-general counsel at the time with a fellow
10 in Pittsburgh, and so we were able to share the load, as
11 it were. But, yeah, more in, I would say the last two or
12 three years, the demands on the office have been greater.

13 Q. So as general counsel, according to your
14 website, you represent the law firm in its legal matters?

15 A. I think that's true, yes.

16 Q. What does that involve? Are we talking about
17 mainly professional liability matters, or just sort of any
18 legal -- I assume it's any legal matter involving the
19 firm?

20 A. Well, in broad strokes, my role involves
21 advising our lawyers and management on matters of legal
22 ethics. It certainly involves helping to resolve claims
23 and circumstances that might lead to claims against the
24 firm or its -- or its attorneys and other professionals.

25 And then, you know, beyond that, I think it's --

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1 it's all tactical in terms of how I do that. There are
2 other things that the job entails, like arranging for
3 professional liability insurance, cyber insurance, working
4 with our insurance brokers, but that's -- that's a broad
5 overview I would say.

6 Q. Is part of your role as general counsel to do
7 investigations internally with respect to matters that may
8 involve malpractice or professional negligence?

9 A. Sometimes.

10 Q. So you indicated you had been deposed on a case
11 where you did an investigation in a situation like that?

12 A. Correct.

13 Q. Regarding the issue with respect to
14 Mr. Beauchamp that brings us here today, did you do an
15 investigation, an internal investigation?

16 A. No. I wouldn't say I did that per se. I think
17 by the time that I became involved, there was a potential
18 claim, certainly the threat of a claim. And so my
19 investigation was not, you know, an investigation on a
20 sort of a standalone basis where we intended to get to the
21 bottom of something and then disclose it or report it out
22 to the client or some third party, as I did in the
23 prior -- in the prior matter that I alluded to.

24 In this instance I would say that my role was
25 more of trying to understand the situation so that we

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1 could, you know, arrange to defend ourselves, because it
2 appeared that there would be a claim.

3 Q. And you talked about insurance.

4 Are you the one at the firm who communicates
5 with the insurance carrier in this case?

6 A. Yes, I do.

7 Q. Do you do reports to the insurance carrier?

8 A. No, I wouldn't say, other than if they have a
9 request for information, I would do that. I do that, by
10 the way, through coordinating counsel, but not to the
11 carriers themselves.

12 Q. Who is coordinating counsel?

13 A. Mendes & Mount.

14 Q. In New York, is it?

15 A. Yes.

16 Q. Well, let me just ask you, do you do any sort of
17 written reports to Mendes & Mount by email, by report
18 form, or some other way?

19 A. Again, I don't believe that I do a report in any
20 formulaic way. If they have a question about what's going
21 on in the case, they'll send me an email and I'll
22 typically email them back. But they don't ask for, you
23 know, sort of a status report that is broken out into any,
24 you know, outline or set format. So it's all -- it all
25 depends on what's on their mind and what they want to

1 know.

2 Q. Is there anyone -- is there anyone else outside
3 the firm that you may communicate with with respect to
4 this case?

5 A. Outside the firm. I can't think of anybody.
6 Maybe you can help me by way of category, but I can't
7 think of anybody that I --

8 Q. You don't communicate directly with lawyers or
9 any insurance company?

10 A. No. Oh, no.

11 Q. Do you report to someone inside the firm with
12 respect to this case?

13 A. Yes. I report to management.

14 Q. And who is management?

15 A. Management would be our executive committee and
16 our CEO.

17 Q. Who is your CEO?

18 A. John J. Hern, H-e-r-n, Jr.

19 Q. And do you do any sort of written evaluations
20 within the firm with regards -- with respect to the case?

21 A. Periodically I will send written reports, status
22 updates, that sort of thing to management to keep them
23 apprised of goings on in this and other matters.

24 Q. Do you know how many times you have submitted
25 written reports internally on the case?

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1 A. Oh, it would be just a handful. Maybe, you
2 know, one or two.

3 Q. All right. You also indicated, aside from being
4 general counsel and dealing with coordinating counsel in
5 legal matters, that you give advice on professional ethics
6 within the firm?

7 A. I do.

8 Q. And in fact I think I may have it in this
9 exhibit. If you turn a few pages in, it looks like you
10 are part of the Professional Ethics and Risk Management
11 group.

12 A. Correct.

13 Q. Fair to say you are an expert on professional
14 ethics?

15 MR. DeWULF: Object to form.

16 THE WITNESS: Well, that question is kind of
17 tricky, because in Michigan we don't have certifications,
18 and so it would be inappropriate to hold myself out as an
19 expert in ethics or in any other area of practice, because
20 there is no certification.

21 I can tell you that it is a field of practice
22 and that I have experience in that area. I have never
23 testified as an expert. I think in an appropriate case I
24 could probably qualify as an expert, but I'm not here to
25 serve that role or function in this case, and I haven't

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1 prepared as an expert would in this particular case.

2 Q. (BY MR. CAMPBELL) Fair to say, though, that you
3 are one of the people at the firm that people turn to for
4 advice on ethics?

5 A. Certainly.

6 Q. Fair to say that you are one of the people
7 within the firm that gives guidance to other attorneys as
8 to ethics?

9 A. Yes.

10 Q. And my recollection is that ethical behavior is
11 a very important cultural matter for your firm.

12 A. Certainly.

13 Q. Let me just go back through your -- you are an
14 undergraduate of the University of Michigan --

15 A. Yes, I am.

16 Q. -- Ann Arbor, 1986?

17 A. Yes, sir.

18 Q. My curiosity is getting the better of me. It
19 says you played football. What did you play? What was
20 your position?

21 A. Well, left out, as they say. No. I was a --
22 nominally a defense back, but I -- when I saw the field,
23 it was on special teams.

24 Q. Okay.

25 A. Yeah.

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1 Q. And then you went to Wayne State for law school,
2 graduating in 1989?

3 A. Yes.

4 Q. And then you got, after that, an MBA, again from
5 Michigan. True?

6 A. Correct.

7 Q. It indicates on the second page of your resumé
8 on the web page, when you are talking about significant
9 cases, that you have been lead counsel on cases involving
10 corporate governance and fiduciary duty?

11 A. Yes.

12 Q. And shareholder rights also, correct?

13 A. Correct.

14 Q. And you were lead counsel in a case involving an
15 SEC civil enforcement action with a related Ponzi-scheme
16 operator and ancillary fraudulent transfer and securities
17 fraud actions, correct?

18 A. That is right.

19 Q. So with respect to securities work, you have
20 actual practice experience in litigation with securities?

21 A. I would say that my involvement in the
22 securities aspect of that particular representation is
23 more incidental, and that others, I work with others to
24 pursue those claims on behalf of the receiver.

25 I wouldn't -- I would not hold myself out as a

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1 securities practitioner, whether transactional or
2 litigation, but certainly we -- I am involved in matters
3 where securities fraud is an issue.

4 Q. And where breach of fiduciary duties is an issue
5 also. True?

6 A. In this particular receivership, I'm trying to
7 think if -- because we have had a number of different --
8 yeah, I don't know that there is a fiduciary -- yeah, I
9 think there is a fiduciary duty claim that is pending,
10 yes.

11 Q. What? In this case? What are you thinking of?

12 A. In the SEC enforcement action.

13 Q. Okay. I was actually looking at your -- you
14 said, also in your resumé you say you were lead counsel on
15 several, several corporate governance, fiduciary duty, and
16 shareholder rights actions in Michigan courts.

17 A. Okay. Yes.

18 MR. DeWULF: The second bullet point.

19 THE WITNESS: I'm with you now. Yes, that's
20 true.

21 Q. (BY MR. CAMPBELL) Let's talk a little bit about
22 Clark Hill.

23 So if you turn to 6 -- the next tab, 698. These
24 are -- this is material from your website about Clark
25 Hill.

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1 A. Okay.

2 Q. So it says that Clark Hill is one of the largest
3 firms in the United States with more than 650 attorneys.
4 True?

5 A. I believe that to be true, yes.

6 Q. 25 offices spanning the United States, as well
7 as Dublin and Mexico City. True?

8 A. Correct.

9 Q. It indicates here that Clark Hill is built upon
10 a core set of values. True?

11 A. I believe that to be true, yes.

12 Q. And then it talks about Clark Hill's DNA, and it
13 indicates that ethical behavior is nonnegotiable. True?

14 A. That's what it says and I agree.

15 Q. And that's a very important part of your firm
16 and what you do?

17 A. It is.

18 Q. Let's turn to 699, Tab 699. Are you familiar
19 with the NLJ 500?

20 A. I can't say that I am.

21 Q. All right. Do you know who at the firm reports
22 information to some of these legal periodicals with
23 respect to the firm?

24 A. I do not, no.

25 Q. You do not?

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1 This particular one is I think the 2018 NLJ 500.
2 If you turn to the next page --

3 A. Okay.

4 Q. -- you will see down at the bottom, someone
5 reported to them that the total revenue of Clark Hill was
6 \$193 million, right?

7 A. That's what it says here on the page.

8 Q. Do you know whether that's -- this is actually
9 2017 gross revenue. Do you know if that's true or not?

10 A. I -- I don't know. I don't have any idea, quite
11 frankly.

12 Q. Who is the person at the firm that's most
13 knowledgeable about revenue at Clark Hill?

14 A. Well, I would say it would be our management,
15 including our CEO Mr. Hern, and probably our COO, Phil
16 Ross, R-o-s-s.

17 Q. And Mr. Hern is in Michigan?

18 A. Yes.

19 Q. And Mr. Ross?

20 A. He is also in Michigan.

21 Q. So if you turned from that page to the third
22 page --

23 A. Okay.

24 Q. -- this is actually the Am Law 200, and you will
25 see at the top it has Clark Hill.

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1 A. Yes.

2 Q. So we know this is sort of an older report
3 because it has you with only 313 lawyers.

4 A. Okay.

5 Q. You will see it also lists revenue per lawyer
6 and profits per lawyer.

7 Do you see that?

8 A. Revenue per lawyer and profits per partner --

9 Q. Oh, profits per partner.

10 A. -- yes, I see that.

11 Q. I'm sorry. Thank you for correcting me.

12 And, again, you are not familiar with those
13 types of numbers. That would be the CEO and the COO,
14 correct?

15 A. Correct.

16 Q. With respect to your deposition today, did you
17 review the 26.1 statement you verified?

18 A. Yes.

19 Q. All right. Let's just go to --

20 A. Thank you for reminding me. I forgot about
21 that.

22 Q. Let's just go through those quickly. If you
23 turn to Tab 701.

24 A. All right.

25 Q. Actually, 701 looks like it's your second

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1 supplemental disclosure statement. If you turn to the
2 very last page --

3 A. All right.

4 Q. -- you see your signature?

5 A. Yes, sir.

6 Q. And that's the verification you made on the
7 disclosure statement?

8 A. That is correct.

9 Q. And it's dated July 20th, 2018?

10 A. Correct.

11 Q. Turn to 702. This is the third supplemental
12 disclosure. If you will turn to the back page.

13 A. Okay.

14 Q. Actually, it's the second to the last. Is that
15 your signature again?

16 A. Yes, it is.

17 Q. July 20th, 2018?

18 A. Yes.

19 Q. And if you will turn to 703, this is the fourth
20 supplemental disclosure. Turn to the back. Again, do you
21 see your signature?

22 A. Yes.

23 Q. And that's also dated July 20th, 2018?

24 A. Yes.

25 Q. All right. And in each one of these

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1 verifications, you are disclosing that the facts set forth
2 in the accompanying statement are true, right?

3 A. Yes.

4 Q. What did you do to assure yourself that these
5 facts were true before you signed these verifications?

6 A. I would say that I reviewed all the material
7 that was available to me; certainly worked with counsel to
8 go over sort of the -- the voluminous material and facts
9 that seems to be growing daily involved in the matter; and
10 compiling facts, working with counsel to satisfy our
11 obligations under Rule 26.

12 Q. All right. And what do you understand your
13 obligations under Rule 26 to be?

14 A. Well, to state facts to the best of our ability
15 as we know them, so that, you know, we -- we are stating
16 the facts as we know them so that there are no surprises
17 in the future. I think that's the -- in the spirit of the
18 initial disclosures.

19 Q. You understand -- from the way you are phrasing
20 your answer, you understand Arizona has a voluntary
21 disclosure obligation?

22 A. Yes.

23 Q. And both good and bad facts have to be
24 disclosed, if relevant to the case.

25 You understand that?

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1 A. I understand that, yes.

2 Q. And how was it that -- well, you maybe don't
3 know, but how -- why were you chosen to be the one to
4 verify for Clark Hill what the facts are?

5 A. Well, from an organizational standpoint, I
6 probably have had the most involvement in terms of, you
7 know, getting involved, trying to understand what happened
8 and to try to compile all the information at our disposal
9 and work with counsel to distill all of the -- all of the
10 germane facts for purposes of the case.

11 Q. So in terms of distilling everything you had at
12 the time you signed the verification, fair to say you had
13 talked with Mr. Beauchamp about the case prior to signing
14 your verification?

15 A. Yes.

16 Q. Fair to say that you had reviewed Clark Hill's
17 files in the case prior to signing your verification?

18 A. You know, I can't say that I reviewed all of the
19 files. I certainly was involved in trying to marshal them
20 and compile them and make sure that we were complete and
21 that we preserved everything and then turned those over to
22 counsel, but I can't say that I have reviewed everything
23 that was in our files.

24 Q. Okay. You are aware that Mr. Beauchamp wrote a
25 number of emails throughout the relevant time period with

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1 respect to the work he did on the case?

2 A. Yes.

3 Q. Had you reviewed Mr. Beauchamp's emails before
4 you signed your verification in this case?

5 A. I reviewed a number of them. I cannot testify
6 that I did a complete review of every email that he -- he
7 and Mr. Chittick exchanged, or others, to the extent they
8 are relevant.

9 Q. How many times had you talked to Mr. Beauchamp
10 before you signed your verification?

11 A. About the matter? I have not kept track, but I
12 would say that we were in frequent communication certainly
13 right after I became involved and we started compiling all
14 the information and began working with counsel. So I
15 would only be guessing as to the number of times, but it
16 was frequent. Certainly in early mid-2017 and then
17 periodically since.

18 Q. Did you talk with any other Clark Hill lawyers
19 who were involved in representation of DenSCO before you
20 signed your verification?

21 A. I may have talked to Mr. Schenck briefly, but
22 certainly not in an in-depth way, I guess. But beyond
23 Mr. Schenck, I don't believe so.

24 Q. Okay. I think your verifications were -- well,
25 they say they were signed on July 20th, 2018.

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1 You had been involved in the case for some time
2 before you signed your verification. True?

3 A. Yes.

4 Q. So from the time the receiver had filed their
5 petition asking for counsel to look at claims against
6 Clark Hill, from that moment you were involved until you
7 signed your verification on July 20th, 2018?

8 A. Yes, with, you know, varying degrees of
9 frequency, sure.

10 Q. Okay. Had you met with David Beauchamp face to
11 face before you signed your verification?

12 A. Yes.

13 Q. How many times?

14 A. Oh, I would say maybe three. That's only a
15 guess. Somewhere in that range. Maybe more.

16 Q. Do you know how many hours you had spent with
17 him in those three face-to-face interviews before you
18 signed your verification?

19 A. Well, I guess I wouldn't call them interviews.
20 They were more discussions and trying to, you know,
21 gather -- gather facts. No, I would only be guessing.
22 Several -- several hours, though.

23 Q. As general counsel, do you record your time like
24 you would if you were billing a client?

25 A. I do.

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1 Q. So with respect to the investigation and work on
2 this case, you would have billing statements of everything
3 you did, correct?

4 A. Yes, I would have entries since late March,
5 early April 2017. But just -- just so there is no
6 misunderstanding, again, you used the word
7 "investigation." I don't consider what I have done to be
8 an investigation as much as just preparation for our
9 defense.

10 Q. Okay. As a lawyer, you consider an oath
11 important, correct?

12 A. Yes.

13 Q. And certainly as a trial lawyer, you understand
14 the significance of a sworn statement?

15 A. I do.

16 Q. And before you swore to facts on behalf of Clark
17 Hill, you wanted to make sure what you were swearing to
18 was true, right?

19 A. To the best of my ability, yes, sir.

20 Q. And to the best of your ability when you signed
21 the verifications in this case as to what Clark Hill
22 believed the truth to be, you did everything you could to
23 make sure that was correct?

24 A. I believe we did a proper job, yes, sir.

25 Q. I may have asked this a different way, but other

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1 than David Beauchamp, fair to say that you are the person
2 at Clark Hill most familiar with the facts of this case?

3 MR. DeWULF: Object to form.

4 THE WITNESS: well, again, my knowledge is not
5 firsthand knowledge. I would say that at a high level
6 that probably is true.

7 Q. (BY MR. CAMPBELL) All right. well, is there
8 anyone else working with you at Clark Hill with respect to
9 this legal matter?

10 A. No.

11 Q. Is there anyone else at Clark Hill you are aware
12 of that has reviewed exhibits, depositions, things like that?

13 A. Early on I had some assistance with people in my
14 general counsel office, as it were, just to talk about
15 certain issues and ideas. This was very early on, but
16 other than that, no.

17 Q. Okay. who would those people be?

18 A. Frances, F-r-a-n-c-e-s, Rosinski,
19 R-o-s-i-n-s-k-i, was involved in, and she is an assistant
20 general counsel, was involved in reviewing certain items.
21 I can't recall specifically what she reviewed, other than
22 perhaps the bankruptcy testimony of Scott Menaged. And I
23 think I may have consulted with Bill Dunn, D-u-n-n, who is
24 a deputy general counsel that I periodically drag back in.
25 He is of counsel to the firm.

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1 Q. Anyone else?

2 A. Not that I can think of.

3 Q. Okay. Now, did you review Mr. Beauchamp's 26.1
4 statement?

5 A. I believe I may have. Well, I can't say for
6 sure. I think I did when I signed the verifications, so
7 the answer is I believe so.

8 Q. Okay. Clark Hill's verified statement of what
9 the facts in this case are is identical to what
10 Mr. Beauchamp verifies the facts are.

11 Do you recall that?

12 A. I recall there being substantial similarity, if
13 not identity, yes.

14 Q. Well, there is more than substantial similarity.
15 It is identical word for word. True?

16 A. I didn't compare the two word for word, but it
17 wouldn't surprise me.

18 Q. Why don't you look at Exhibit 701 --

19 A. Okay.

20 Q. -- 702 and 703. You will see that you both
21 verified the exact same disclosure statement.

22 A. Ah, that would -- that would explain it, sure.

23 Q. So it is Clark Hill's position in this case
24 under oath that everything Mr. Beauchamp says is the
25 truth, correct?

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1 A. Yes.

2 MR. DeWULF: Object to form.

3 Q. (BY MR. CAMPBELL) There is no difference in
4 opinion at all between Mr. Beauchamp's statement of the
5 facts of the case under oath and Clark Hill's statement of
6 the facts of the case under oath?

7 A. As stated in the disclosure statements?

8 Q. Yes.

9 A. No.

10 Q. Is there a difference outside the disclosure
11 statement?

12 A. Not that I am aware of, but, I mean, I would
13 have to go, you know, one by one, but I'm not aware of
14 anything as I sit here.

15 Q. You understand that Clark Hill has a duty to
16 amend or modify its disclosure statement if it believes
17 its view of the facts has changed or was erroneous. True?

18 A. Sure.

19 Q. Have you signed any amendment or modification of
20 the disclosure statements?

21 A. I have not.

22 Q. Were you involved in drafting the Rule 26.1
23 statement?

24 A. In part, yes.

25 Q. Tell me what your role was in drafting the Rule

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1 26.1 statement?

2 A. Working with counsel, reviewing, commenting, and
3 that pretty much captures it.

4 Q. David Beauchamp testified in his deposition he
5 would get a draft he would review, rewrite and send it
6 back.

7 Were you involved in that process?

8 A. I think I saw what he was sending to counsel,
9 and commented and had questions and worked with counsel
10 and, again, tried to be as accurate as we could.

11 MR. DeWULF: Colin, let me just -- I'm thinking
12 about a question you asked a moment ago about amending
13 disclosure statements.

14 As you know, and there are multiple exhibits
15 showing that there have been supplemental disclosure
16 statements, Exhibit 703 is the fourth supplemental. So
17 there is an ongoing obligation for us to disclose, which
18 you know, we are complying with that obligation, but when
19 you use the word amendment, it would be true, I think,
20 that there are multiple statements, later statements
21 sometimes might correct or change information that was in
22 earlier statements, for the record.

23 MR. CAMPBELL: Well, John, I think on the ones
24 that we have been given, the amendments are adding
25 additional exhibits. The factual statements, legal

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1 theories have never changed.

2 MR. DeWULF: I think that's not completely
3 accurate, but so that you and I both understand for the
4 record, there are multiple statements.

5 MR. CAMPBELL: We can run redlines.

6 MR. DeWULF: Yeah, we will, and we have another
7 statement that we are about to provide to you. So, I
8 mean, it's just an ongoing process as we review facts, get
9 more documents.

10 MR. CAMPBELL: I don't mean to say that you
11 haven't done a second, third or fourth disclosure
12 statement. You have, and that's why I marked them.

13 MR. DeWULF: Right. It was the word -- "

14 MR. CAMPBELL: Let me just rephrase it.

15 MR. DeWULF: The word "amendment" is the one
16 that I had trouble with, because technically it doesn't
17 say amendment on the document, but it in fact is an
18 updating and a supplementation.

19 MR. CAMPBELL: I understand. Let me rephrase my
20 question maybe just to clarify it.

21 Q. (BY MR. CAMPBELL) With respect to every
22 disclosure statement that you have verified for Clark Hill
23 in this case, and there is four of them --

24 A. Yes.

25 Q. -- in each one your verification of the facts is

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1 identical, word for word, with what Mr. Beauchamp says.

2 A. Okay.

3 Q. Is that true?

4 A. I believe that to be true, yeah.

5 Q. And Clark Hill in four supplemental Rule 26 --
6 strike that.

7 Clark Hill, in four Rule 26.1 statements, has
8 never deviated from verifying what Mr. Beauchamp said
9 happened.

10 A. Okay. I have no reason to disagree with that.

11 Q. And going back to what we were talking about,
12 this process where the Rule 26.1's went back and forth
13 between counsel, if you had changes, you made them; if you
14 had comments, you made them; and this was all done along
15 with David Beauchamp in coming up with a final product.
16 True?

17 A. That is correct.

18 Q. And always with the view towards what you were
19 going to tell us was the truth?

20 A. Correct.

21 MR. DeWULF: Form.

22 Q. (BY MR. CAMPBELL) Did you do any sort of
23 investigation as to whether what Mr. Beauchamp was saying
24 was accurate?

25 MR. DeWULF: Object to form.

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1 THE WITNESS: Well, again, you are using the
2 term "investigation." I certainly talked to David, as
3 well as other people, to try to understand what had
4 happened. And if you want to call that an investigation,
5 I suppose it is, because we talked and gathered
6 information, documents, talked to as many people as we
7 could.

8 Q. (BY MR. CAMPBELL) In verifying what the truth
9 was in this case, what the facts are, did you ever
10 question whether David was telling the truth?

11 A. Well, I think that you are starting to get into
12 a privileged area, and I may need to talk to counsel about
13 that. But what I -- my involvement in the matter
14 certainly after March, April 2017, I consider to have been
15 in anticipation of litigation.

16 And I do respect and recognize a privilege as
17 between me and David and others in our firm, so when you
18 drill down into the particulars of what exactly I did, I
19 would respectfully decline to answer, unless counsel asks
20 me to provide you with the particulars.

21 Q. Okay. You are here as a witness, right?

22 A. Yes, sir.

23 Q. You are here with an attorney?

24 A. Yes.

25 Q. All right. Is it your intention to make your

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1 own objections as a witness when you are asked questions?

2 A. Well, no, because I am not licensed in Arizona,
3 for number one; but number two, to answer your question,
4 no, but I think I have a right to express my concerns.

5 Q. If at any time you want to take a break to talk
6 to your lawyer about a privilege issue, we will take a
7 break. Okay?

8 Do you want to take a break and talk to your
9 lawyer about a privilege issue right now?

10 A. Yes, unless he is instructing me to answer the
11 question.

12 MR. DeWULF: Well, it depends on what you are
13 asking. If --

14 MR. CAMPBELL: Let me --

15 MR. DeWULF: You haven't asked a substantive
16 question. You asked a theoretical question, and what the
17 witness expressed to you is a concern about privilege.

18 MR. CAMPBELL: Okay. Well, let me --

19 MR. DeWULF: So I don't know that the issue is
20 framed up at this point, but, you know, if the witness
21 wants to take a break, we have been here a sufficient time
22 where we could take a bathroom break if you would like in
23 any event, but if there is something you want to ask to
24 force that issue, you can do that.

25 MR. CAMPBELL: Let me go back to the question I

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1 had asked. Maybe I can rephrase it.

2 Q. (BY MR. CAMPBELL) You are the person for Clark
3 Hill, as a party in this case, who are verifying what the
4 facts are. True?

5 A. Yes.

6 Q. And before you signed your verification under
7 oath, did you ever ask yourself, is David Beauchamp
8 telling the truth?

9 A. Well, I would need to confer with counsel,
10 because I think you are asking for my mental impressions.

11 Q. Then let's take a break.

12 A. Yeah. Okay.

13 VIDEOGRAPHER: The time is 9:51 a.m. We are
14 going off the record, ending media one.

15 (A recess was taken from 9:51 a.m. to
16 10:03 a.m.)

17 VIDEOGRAPHER: My name is Mary Onuschak with the
18 firm of Legal Video Specialists, Phoenix, Arizona. This
19 begins media two of the videotaped deposition of Ed Hood.
20 The time is 10:03 a.m. We are now back on the record.

21 Q. (BY MR. CAMPBELL) All right. Mr. Hood, if you
22 look at the back of the book in front of you, I have
23 Mr. Beauchamp's deposition.

24 A. Back of the full book or a specific exhibit?

25 Q. The book right in front of you, just skip to the

1 back of it.

2 A. All right. Oh, the last pages.

3 Q. A few more pages. Actually, this one isn't
4 marked. Just move to his deposition. It's going to be --
5 there you go.

6 A. Okay.

7 Q. I want you to turn to page 182 of
8 Mr. Beauchamp's deposition.

9 A. 182.

10 Q. Are you with me now?

11 A. Yes, sir.

12 Q. I want to look at line 14 of page 182.

13 A. All right.

14 Q. And I asked Mr. Beauchamp:

15 Did you go talk to the general counsel of the
16 firm between January of 2014 and the time you terminated
17 your representation?

18 Answer: Yes.

19 And then turn to the top of -- well, and then I
20 ask him:

21 And you went to talk to the general counsel of
22 the firm about the conflict of interest?

23 About --

24 Mr. Dewulf: Be careful here. I think you can
25 talk about the topic.

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1 Yeah.

2 I don't want to reveal what communications may
3 have occurred.

4 Top of 183:

5 The totality of the circumstances of my
6 increasing level of comfort with what was -- what I was
7 getting feedback on.

8 So in January of 2014, were you the general
9 counsel of the firm?

10 A. Yes. I was the lead general counsel, I suppose,
11 yeah.

12 Q. Do you have any recollection in January of 2014
13 talking to Mr. Beauchamp?

14 MR. DeWULF: Object to form.

15 THE WITNESS: I do not.

16 Q. (BY MR. CAMPBELL) Have you gone back to your
17 billing records in determination of whether you have any
18 billing records of talking with Mr. Beauchamp?

19 MR. DeWULF: Object to form.

20 THE WITNESS: I can't remember if I went back
21 that far, but, no, I don't have any memory or record that
22 I can think of, as I sit here, of talking to David in
23 January of '14.

24 Q. (BY MR. CAMPBELL) Turn to page 196.

25 And you see on page 196, line 4,

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1 Question to Mr. Beauchamp: Before you -- before
2 you terminated with Mr. Chittick, as I understand it, you
3 had a conversation with the general counsel of Clark Hill?

4 Answer: Correct.

5 Now, the termination of the representation of
6 DenSco took place in May of 2014, according to your
7 verified Rule 26.1 statement.

8 Do you have any recollection of talking with
9 Mr. Beauchamp about terminating the DenSco
10 representation --

11 MR. DeWULF: Object to form.

12 Q. (BY MR. CAMPBELL) -- as stated here in the
13 deposition?

14 A. I did not, to the best of my recollection.
15 Whether others in the office did, I -- I can't testify
16 because I don't have personal knowledge of that.

17 Q. Do you have any indirect knowledge of whether he
18 talked to any other associate general counsel, deputy
19 general counsel, regional general counsel with respect to
20 this matter?

21 MR. DeWULF: Object to form.

22 THE WITNESS: Well, yes. I understand that
23 David was in periodic discussion with Mark Sifferman, who
24 was then with the firm --

25 Q. (BY MR. CAMPBELL) Okay.

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1 A. -- and was the assistant general counsel for
2 the -- for the Phoenix office.

3 Q. Did you read Mr. Sifferman's deposition?

4 A. I did. I think for the most part, yeah. I
5 can't remember if I did cover to cover.

6 Q. Do you remember what he testified about, whether
7 he talked to Mr. Beauchamp about the termination?

8 MR. DeWULF: Object --

9 Q. (BY MR. CAMPBELL) Just if you recall.

10 MR. DeWULF: Object to form.

11 THE WITNESS: I don't recall specifically, other
12 than he may have had a fuzzy memory about it, but that's
13 his -- that's the most I can remember.

14 Q. (BY MR. CAMPBELL) Okay. Turn to page 214.

15 A. Sure.

16 Q. Okay. If you look at line 15, he has asked the
17 question, Mr. Beauchamp:

18 well, clearly on this issue there must be
19 something in the file saying that we are terminating this,
20 but we have made this decision we can go ahead and keep
21 working for him because in our mind we are separating
22 these two things out.

23 Is there a piece of paper you can show me in
24 your file that that -- that's what your firm decided?

25 Answer: That would have been decided with the

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1 general counsel's office and that would be under --

2 Is there a single --

3 Answer: -- the attorney/client privilege.

4 Do you have any recollection of talking to
5 Mr. Beauchamp about terminating the representation but
6 continuing to do other work --

7 MR. DeWULF: Object to form.

8 Q. (BY MR. CAMPBELL) -- for DenSco?

9 A. I have no recollection of me personally
10 consulting with David on that issue.

11 Q. I want you to turn to Exhibit 706.

12 All right. This is an email chain between Kevin
13 Merritt and David Beauchamp. Ryan Anderson is the counsel
14 for the receiver.

15 And if you are on page 1, if you look at the
16 bottom, Mr. Merritt is talking to Mr. Beauchamp and says:
17 Am I at liberty to disclose that Clark Hill has determined
18 not to preserve a copy of the complete files (without
19 going into detail beyond that)?

20 And then Mr. Beauchamp writes back and says: We
21 should wait on that until after my meetings on Monday and
22 Tuesday in Ohio. I will try to get some clarification on
23 that direction.

24 Now, do you recall having any meeting with
25 Mr. Beauchamp in Ohio on or about September 23rd, 2016?

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1 A. No.

2 Q. Do you recall any conversations with him about
3 whether files should be reserved -- preserved or not?

4 A. With David directly, no. I may have had a
5 discussion with Mark Sifferman, but my recollection is
6 really vague on whether we talked about this specific
7 issue.

8 Q. Okay. Do you recall a meeting in Ohio on Monday
9 and Tuesday?

10 A. No.

11 Q. -- back in September of 2016?

12 A. No, not at that time. I was not in Ohio.

13 Q. Okay. Does sometime -- does firm management
14 sometimes meet in Ohio?

15 A. Yeah. I mean, we had a firm retreat in
16 Cleveland one year, but it was not in that timeframe. So
17 what he is referencing here, I really could not say.

18 Q. All right. Let's turn back to Exhibit 700.
19 This is going to be the initial Rule 26.1 statement.

20 A. Okay.

21 Q. I want you to turn to 15, and I want to look at
22 the second paragraph that starts on line 8, and I'm going
23 to read it into the record.

24 "In May 2014, Mr. Beauchamp handed Mr. Chittick
25 a physical copy of the draft POM and asked him what

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1 Mr. Chittick's specific issues were with the disclosure.
2 Mr. Chittick responded there was nothing wrong with the
3 disclosure, he was simply not ready to make any kind of
4 disclosures to his investors at this stage. Mr. Beauchamp
5 again explained that Mr. Chittick had no choice in the
6 matter and that he had a fiduciary duty to his investors
7 to make these disclosures. Mr. Chittick would not budge.
8 Faced with an intransigent client who was now acting
9 contrary to the advice Mr. Beauchamp was providing, and
10 with concerns that Mr. Chittick may not have been
11 providing any disclosures to anyone since January 2014,
12 Mr. Beauchamp informed Mr. Chittick that Beauchamp and
13 Clark Hill could not and would not represent DenSco any
14 longer. Mr. Beauchamp also told Chittick that he would
15 need to retain new securities counsel, not only to provide
16 the proper disclosure to DenSco's investors, but to
17 protect DenSco's rights under the forbearance agreement.
18 Mr. Chittick suggested that he had already started that
19 process and was speaking with someone else."

20 You verified that statement to be true, correct?

21 A. Yes.

22 Q. And Clark Hill verifies as a fact that it
23 terminated its attorney/client relationship with DenSco in
24 May 2014. True?

25 A. Yes. I think there were a few odds and ends

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1 that wound up the representation, but certainly as
2 securities counsel.

3 Q. And if in truth and in fact Mr. Beauchamp did
4 not terminate Clark Hill's relationship with DenSco, and
5 David Beauchamp told DenSco that he would give them more
6 time to fix the financial problem before requiring a
7 disclosure statement, would you agree that that would be
8 aiding and abetting a breach of a fiduciary duty?

9 MR. DeWULF: Object to form.

10 THE WITNESS: well, I don't know. I have not
11 studied the matter. I do take issue with the premise,
12 because I don't believe those are the facts, but I would
13 need to research it and I'm not prepared to do that at
14 this time.

15 Q. (BY MR. CAMPBELL) Before you signed your
16 verification, did you uncover any fact from which an
17 inference could be made that Clark Hill did not terminate
18 its representation?

19 A. No.

20 MR. DeWULF: Object to form.

21 Q. (BY MR. CAMPBELL) Did you -- prior to signing
22 your verification, did you come into possession of any
23 fact from which Clark Hill could draw an inference that
24 David Beauchamp did not terminate the representation?

25 MR. DeWULF: Object to form.

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1 THE WITNESS: Could you repeat or restate your
2 question? I'm sorry. I want to make sure I follow it.
3 Or we can have it read back.

4 MR. CAMPBELL: Sure.

5 (The requested portion of the record was read.)

6 THE WITNESS: Well, here again, I suppose I
7 would need to confer with counsel about any mental
8 impressions I had in my capacity as general counsel for
9 the firm.

10 Q. (BY MR. CAMPBELL) When you signed your
11 verification under Rule 26.1, did you have any mental
12 impression that you were not telling the truth when you
13 signed that verification?

14 MR. DeWULF: Object to form.

15 THE WITNESS: No. We -- we did our level best,
16 and I believe the contents to be true.

17 Q. (BY MR. CAMPBELL) When you signed your
18 verification, were you aware of any facts from which an
19 inference could be drawn that Clark Hill did not terminate
20 its representation?

21 MR. DeWULF: Object to form.

22 THE WITNESS: Well, yeah, I suppose you could
23 look at the fact that we, in some of the other matters or
24 the other matter might have been styled business matters,
25 that we wrapped up the Forbearance Agreement after May of

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1 2014, but then, you know, wound up the representation very
2 shortly thereafter.

3 I guess that's the only thing I can think of,
4 but I don't -- now sitting here today, I don't believe
5 that that's inconsistent with the termination of
6 representation.

7 Q. (BY MR. CAMPBELL) In the investigation you did
8 prior to -- I don't want to use -- put a word in your
9 mouth, because I know you have disagreed on this idea --

10 A. We can agree to disagree. I understand what
11 you're saying.

12 Q. In terms of all the facts you gathered that
13 assisted you in saying this is the truth when you signed
14 that verification, did you come across any letter in
15 writing from Clark Hill's files where Mr. Chittick, as
16 president of DenSco, was advised in writing that Clark
17 Hill was terminating its representation?

18 MR. DeWULF: Object to form.

19 THE WITNESS: No, I did not.

20 Q. (BY MR. CAMPBELL) Did you run across any
21 writing from Clark Hill to Mr. Chittick, as president of
22 DenSco, that Clark Hill was terminating its representation
23 of DenSco because Mr. Chittick was not following the law?

24 A. No --

25 MR. DeWULF: Object to form.

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1 THE WITNESS: -- I did not find a writing as you
2 described.

3 Q. (BY MR. CAMPBELL) Did you find any email or
4 handwritten note to the file indicating that DenSco was
5 being terminated by Clark Hill in May 2014?

6 MR. DeWULF: Object to form.

7 THE WITNESS: Certainly no with regard to email,
8 I have not seen that. Whether there is a note in the
9 file, I cannot say as I sit here now. I don't have a
10 distinct memory of finding anything like that, no.

11 Q. (BY MR. CAMPBELL) Are you aware that in the
12 files that were produced by Clark Hill are handwritten
13 notes by Mr. Beauchamp from time to time during the course
14 of his representation of DenSco?

15 A. Yes, I have seen those.

16 Q. All right. Did you see any handwritten note
17 saying something like "We have to stop representing
18 DenSco"?

19 A. Not that I recall.

20 Q. Now, you serve as a risk manager for the firm?

21 A. I think you could -- yeah, unofficially, I think
22 that's descriptive of my function. Sure.

23 Q. If you were aware that a Clark Hill client was
24 not following the law under circumstances where Clark Hill
25 had to terminate the representation, as the risk manager

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1 would you want that in writing?

2 MR. DeWULF: Object to form.

3 THE WITNESS: Well, I always advise our
4 constituents, just speaking generally, to do as much as
5 they can to engage in best practices. Certainly a best
6 practice would be to confirm things in writing. It's not
7 always so easy, though, when you are in the -- where the
8 rubber hits the road and you have a client like
9 Mr. Chittick who obviously had his own set of issues.

10 So, yes. Would I have preferred that there be
11 something in writing to document everything? Yes. Do I
12 think it was required? No.

13 The same would be true of waivers of conflicts
14 of interest, at least in Michigan, but, yeah, I always
15 like to see something in the file, as the risk manager.

16 Q. (BY MR. CAMPBELL) Did you ever ask
17 Mr. Beauchamp why he didn't put anything in writing?

18 MR. DeWULF: Object to form.

19 THE WITNESS: Well, I think that would be a
20 privileged matter that I would have to consult with
21 counsel on, but I think it seeks a privileged
22 communication.

23 Q. (BY MR. CAMPBELL) When you signed your
24 verification in this case, you relied on everything you
25 knew about the case. True?

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1 A. I did.

2 Q. And what you knew about the case includes your
3 communications with Mr. Beauchamp. True?

4 A. Well, in part, but to the extent I was acting in
5 my capacity as general counsel as opposed to a
6 representative of the firm trying to present the facts as
7 we know them, I think they are distinct roles. I think
8 what you are asking me is for a communication in my role
9 as general counsel.

10 Q. Sir, when you reviewed the file in this case and
11 you saw there was nothing in writing about the termination
12 of DenSco, did that give you any pause about the
13 truthfulness of Mr. Beauchamp's statement that he
14 terminated DenSco?

15 MR. DeWULF: I'm going to object to form, and I
16 think that that does get into privileged information.

17 MR. CAMPBELL: Are you instructing him not to
18 answer?

19 MR. DeWULF: I will caution you.

20 Why don't we have the question read back. It's
21 a long question.

22 MR. CAMPBELL: She can -- of course she can read
23 it back.

24 (The requested portion of the record was read.)

25 MR. DeWULF: I want you to be able to answer

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1 questions to the best of your ability. I do think the way
2 the question is posed is inappropriate and I think it
3 would get into the area of privilege, so I would instruct
4 you not to answer that question.

5 Q. (BY MR. CAMPBELL) All right. Let me rephrase
6 it this way.

7 When you signed the verification that it was
8 true that Mr. Beauchamp terminated the representation, you
9 knew at that time that he had never documented that in
10 writing, either by correspondence, by email, by
11 handwritten note, by internal memorandum, or by anything
12 else. True?

13 MR. DEWULF: Object to form.

14 THE WITNESS: I think your statement is correct,
15 at least to my knowledge.

16 Q. (BY MR. CAMPBELL) Did you review
17 Mr. Beauchamp's billing records?

18 A. I think in part I have seen them certainly.
19 Now, whether I reviewed them cover to cover, I cannot say.
20 I don't think I did. I may have seen excerpts.

21 MR. CAMPBELL: The billing records, I don't have
22 the folder here.

23 MR. STURR: Oh, you want another book?

24 MR. CAMPBELL: Yeah. It's going to be the
25 first -- the first book.

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1 Let me come back to that while he is getting the
2 records.

3 Q. (BY MR. CAMPBELL) Have you ever seen
4 Mr. Chittick's corporate journal?

5 A. I have.

6 Q. And when did you review Mr. Chittick's corporate
7 journals?

8 A. I think it was shortly after they became
9 available, and I cannot put a precise date or even season
10 when I first saw them, but I did look at them, sure.

11 Q. Let me just -- I need -- I need those books. I
12 want to show him things, so --

13 VIDEOGRAPHER: Off the record?

14 MR. CAMPBELL: Yeah, let's just go off the
15 record for a second.

16 VIDEOGRAPHER: The time is 10:24 a.m. We are
17 going off the record, ending media two.

18 (A recess was taken from 10:24 a.m. to
19 10:26 a.m.)

20 VIDEOGRAPHER: My name is Mary Onuschak with the
21 firm of Legal Video Specialists, Phoenix, Arizona. This
22 begins media three of the videotaped deposition of Ed
23 Hood. The time is 10:26 a.m. We are now back on the
24 record.

25 Q. (BY MR. CAMPBELL) Mr. Hood, I'm going to show

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1 you Exhibit No. 11 in this case.

2 A. Okay.

3 Q. This is the billing records of Clark Hill to
4 DenSco for May of 2014. So if you turn the cover page,
5 you should see the billing there.

6 A. Okay.

7 Q. All right. Mr. Beauchamp does not put into his
8 billing entries any meeting with Mr. Chittick, as
9 president of DenSco, where he discussed terminating the
10 representation. True?

11 MR. DeWULF: Object to form.

12 THE WITNESS: Do you want me to read all of them
13 to verify that?

14 Q. (BY MR. CAMPBELL) Sure. Go ahead.

15 A. Or I can take your word for it. I mean, if you
16 tell me that they are not there or that the entry is not
17 there, that's fine.

18 Q. It's not there.

19 A. Okay.

20 Q. When you signed your verification that it was
21 true that Clark Hill terminated the representation, were
22 you aware that Mr. Beauchamp had not even documented in
23 his billing records that he had a meeting with
24 Mr. Chittick on that subject?

25 MR. DeWULF: Object to form.

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1 THE WITNESS: Well, I don't have a memory of
2 that lack of fact. I suppose I am struggling to
3 understand your question. Was I aware when I signed the
4 verification that there was no billing entry reflecting a
5 meeting with Mr. Chittick? Yeah, I suppose I -- I suppose
6 I was.

7 Q. (BY MR. CAMPBELL) All right. And that didn't
8 give you any pause on signing the truthfulness of that
9 Rule 26.1 statement. True?

10 MR. DeWULF: Object to form.

11 THE WITNESS: No, I did not have any pause in
12 signing the Rule 26 statement.

13 Q. (BY MR. CAMPBELL) Now, you mentioned, and
14 actually if you look at the next exhibit number, I think
15 it's Exhibit 12, Clark Hill continues to bill DenSco for
16 legal work after it says it terminated the representation.
17 True?

18 A. Yes.

19 Q. So they bill for time spent in June, correct?

20 A. That's what is reflected in Exhibit 12, yes,
21 sir.

22 Q. And are you aware that DenSco paid that bill?

23 A. Yes, I believe it did.

24 Q. All right. Turn to Exhibit 13. This is work in
25 July, correct, of 2013?

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1 A. Yes.

2 Q. And Clark Hill continues to bill DenSco for work
3 done in July of 2013?

4 A. '14?

5 Q. 2014. You are correct. I'm sorry.

6 A. Yes, sir. Your statement is correct.

7 Q. After the termination of the representation?

8 A. Yes.

9 Q. And you knew that Clark Hill continued to work
10 for DenSco, and verified that they terminated the
11 representation in May 2014. True?

12 A. Yes.

13 Q. In the facts you gathered with respect to this
14 case, you are aware that the Forbearance Agreement was
15 tied into this whole issue of the private offering
16 memorandum. True?

17 MR. DeWULF: Could I have that answer or
18 question back, please.

19 (The requested portion of the record was read.)

20 MR. DeWULF: Object to form.

21 THE WITNESS: Yes. I understand that they were
22 related documents, yes.

23 Q. (BY MR. CAMPBELL) And in all the facts you
24 gathered in this case, you were aware that the new private
25 offering memorandum was going to disclose to the investors

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1 the Forbearance Agreement?

2 A. Yes, I am aware of that.

3 Q. And at the time you signed your verification,
4 you were aware that the reason Mr. Beauchamp says he
5 terminated the representation was that DenSco,
6 Mr. Chittick, did not want to disclose the Forbearance
7 Agreement in the private offering memorandum?

8 MR. DeWULF: Object to form.

9 THE WITNESS: I don't know that it was that
10 specific. I think that he was -- as I understand it,
11 Mr. Chittick was reluctant to send the private offering
12 memorandum to his investors generally. Whether it was the
13 Forbearance Agreement in particular, I cannot tell you. I
14 don't have that level of understanding, but I know he was
15 refusing -- as I understand, he was refusing to send the
16 POM to his investors.

17 Q. (BY MR. CAMPBELL) All right. So just so I'm
18 clear, you have no understanding that the purpose of the
19 Forbearance Agreement was to let the investors know that
20 this fraud had been taken care of. True?

21 MR. DeWULF: Object to form.

22 THE WITNESS: Well, I don't know -- well, there
23 is -- you are asking a lot in that question. That a fraud
24 had been taken care of. I don't know that we knew that a
25 fraud had been perpetrated.

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1 At that time my understanding was that we -- we
2 were informed by Mr. Chittick and Mr. Menaged that there
3 had been mistakes made with regard to financing of certain
4 properties, and that that led to DenSco being in second
5 position on many of the properties. And so the
6 Forbearance Agreement, as I understand it, was intended to
7 make the best of a bad situation and that was what was
8 intended to be disclosed to the investors.

9 I hope that answers your question.

10 Q. (BY MR. CAMPBELL) Well, let me -- I just need
11 to understand what you understand.

12 Do you understand that in January 2014,
13 Mr. Scott Menaged told Mr. Beauchamp that his cousin had
14 taken DenSco money and run off with it?

15 MR. DeWULF: Object to form.

16 THE WITNESS: Yes, I understand that that is the
17 story that was told to Mr. Chittick and Mr. Beauchamp.

18 Q. (BY MR. CAMPBELL) And that as a result of that,
19 DenSco was in second position on multiple loans.

20 Do you understand that?

21 MR. DeWULF: Object to form.

22 THE WITNESS: Right, right.

23 And let me just back up. I -- I think you said
24 ran away with the money. I think as presented to us, it
25 was something to the effect that the cousin had

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1 inadvertently borrowed twice with respect to certain of
2 the properties that DenSco had thought it was financing,
3 and that the cousin had disappeared, I think, with the
4 excess funds, and, yes, that is the general gist of the
5 story that Mr. Menaged was telling.

6 Q. (BY MR. CAMPBELL) Mr. Menaged said he stole the
7 money, the cousin.

8 Do you understand that?

9 MR. DeWULF: Object to form.

10 THE WITNESS: I don't remember those words being
11 said, but it was something to the effect that the cousin
12 had taken off or something to that effect.

13 Q. (BY MR. CAMPBELL) With the money, right?

14 MR. DeWULF: Object to form.

15 THE WITNESS: I can't recall specifically if
16 that is what he said.

17 Q. (BY MR. CAMPBELL) Okay.

18 A. But certainly there was a problem.

19 Q. How can you terminate your representation of
20 DenSco, as you verify, and continue to provide work on the
21 Forbearance Agreement?

22 MR. DeWULF: Object to form.

23 THE WITNESS: How can we? How can we? I mean,
24 I don't understand your question. Do you think -- are you
25 asking me whether it was appropriate or --

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1 Q. (BY MR. CAMPBELL) Well, let me put it this way.
2 You verify as the truth that Clark Hill
3 terminated representation of DenSco in May of 2014, right?

4 A. Correct.

5 Q. And you make that representation even though at
6 the time you signed the verification you knew that Clark
7 Hill continued to provide legal services to DenSco in June
8 and July of 2014 on the Forbearance Agreement?

9 A. Yes, sir.

10 Q. And you see nothing contradictory in that?

11 MR. DeWULF: Object to form. I don't -- I'm not
12 quite -- well, I'll object to form.

13 THE WITNESS: No. I see there being a potential
14 contradiction in it. To the extent you want me to try to
15 reconcile it, again, not having been on the scene as these
16 events were unfolding and not having participated in the
17 decision to do certain things, I would say that certainly
18 nothing with respect to the POM was done after May of
19 2014. And to the extent we were doing any work, and I see
20 it's not a significant amount of work, I believe it was to
21 finish the job that we were asked to do with regard to the
22 Forbearance Agreement.

23 And I think when you do withdraw as counsel, you
24 do have a duty not to leave the client in a precarious
25 situation, and so, you know, to the extent you want me to

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1 comment after the fact, I would say that there was nothing
2 inappropriate about finishing the job, particularly when
3 David was trying to persuade the client to disclose
4 everything to his investors.

5 Q. (BY MR. CAMPBELL) All right. Wait a minute,
6 Mr. Hood.

7 According to your verified statement,
8 Mr. Beauchamp had done everything he could to persuade
9 Mr. Chittick, as president of DenSco, to disclose this.
10 True?

11 MR. DeWULF: Object to form.

12 THE WITNESS: I don't know that we use those
13 precise words, but I know he tried hard.

14 Q. (BY MR. CAMPBELL) And you give ethics advice
15 within your firm?

16 A. I do.

17 Q. When your client is in a continuing pattern of
18 violating the law, the rules of professional conduct would
19 require Clark Hill to withdraw and terminate the
20 representation. True?

21 MR. DeWULF: Let me -- I'm going to intervene
22 here.

23 Number one, to the extent that this is asking
24 for you to give expert advice, I would tell you not to
25 give it. You are not here as an expert.

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1 To the extent it's seeking to have you be
2 knowledgeable as a fact witness on the underlying events,
3 I also would caution you to answer the question, because I
4 think it presumes things that you wouldn't know.

5 But my main goal --

6 MR. CAMPBELL: You can't -- you can state an
7 objection. You can't coach him.

8 MR. DeWULF: My main goal was to simply be --
9 you are not here as an expert to give opinions and we
10 haven't identified you as such, and I think the question
11 is phrased in that way.

12 MR. CAMPBELL: He is here because he verified
13 facts of this case for Clark Hill that are at issue in
14 this case, and I'm entitled to cross-examine him as to the
15 veracity of his statements under oath.

16 Q. (BY MR. CAMPBELL) would you like the question
17 reread?

18 A. Yes.

19 MR. DeWULF: Yeah, I would like it rewritten
20 too.

21 THE WITNESS: Rewritten or reread? I would like
22 to rewrite it, but I don't think I have that -- that
23 power.

24 (The requested portion of the record was read.)

25 THE WITNESS: I cannot agree with your statement

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1 as in the general way that you have described it. I think
2 we could apply the rules.

3 Now, if we -- if we know that the client is
4 committing a fraud or using our services to act in an
5 illegal way, then certainly I think the right thing to do
6 would be to withdraw from the representation.

7 I hope that -- you know, but there are other
8 instances where our clients, you know, we can represent
9 somebody in a criminal defense.

10 Q. (BY MR. CAMPBELL) Of course.

11 But in this case you verify under oath that
12 Clark Hill withdrew because Mr. Chittick was not following
13 your advice and was doing something illegal. True?

14 MR. DeWULF: Object to form.

15 THE WITNESS: I'd be happy to look at a passage
16 of what we wrote. But, I mean, I'll try to answer your
17 question by saying that, yes, the reason we withdrew, as I
18 understand it, is that Mr. Chittick was refusing to
19 disseminate the POM, and we thought he was legally
20 required to do that.

21 Q. (BY MR. CAMPBELL) Right.

22 And if I understand what you are telling me
23 today under oath is that even though Clark Hill terminated
24 its representation, because Mr. Chittick was doing
25 something illegal and you couldn't be part of it, that

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1 it's okay for Clark Hill to continue to represent him on
2 the Forbearance Agreement?

3 That's your testimony. True?

4 MR. DeWULF: Object to form.

5 THE WITNESS: Yeah, my testimony is that upon
6 withdrawal, we have a duty, a separate duty to protect the
7 client's interests. So finishing up the Forbearance
8 Agreement and putting together a few odds and ends I think
9 is consistent with our ethical responsibilities.

10 Q. (BY MR. CAMPBELL) And during that whole time
11 that you were representing Clark Hill, your firm, who has
12 ethics in its DNA, believing that Mr. Chittick was
13 violating the law, you continued to represent him in June
14 and July of 2014. True?

15 MR. DeWULF: Object to form.

16 MR. CAMPBELL: Your objection is well taken.
17 Let me rephrase.

18 Q. (BY MR. CAMPBELL) You -- do I have this right.

19 Clark Hill's position is that it terminated the
20 representation in May because its client was violating the
21 law, but it could continue to represent him in June and
22 July of 2014. True?

23 MR. DeWULF: I'm going to instruct you not to
24 answer. The term "violating the law" I think requires an
25 expert opinion you are not here to give. I'm not quite

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1 sure what violating the law means, but I don't think you
2 are in a position to render an opinion, which I think is
3 what the question asks for.

4 Q. (BY MR. CAMPBELL) Let me rephrase it.

5 Sir, if you are selling securities and you are
6 not disclosing material facts with respect to the sale of
7 those securities, is that a violation of the law?

8 MR. DeWULF: Again, I will instruct you not to
9 answer, because I think that's giving an expert opinion
10 you are not here to render.

11 Q. (BY MR. CAMPBELL) Sir --

12 MR. DeWULF: It's a hypothetical.

13 Q. (BY MR. CAMPBELL) Sir, didn't you verify in the
14 Rule 26.1 statement that the reason Clark Hill terminated
15 the representation was because Mr. Chittick was violating
16 the law?

17 MR. DeWULF: No. Object to form.

18 THE WITNESS: I don't remember specifically what
19 we said, but, again, I think we terminated because he was
20 refusing to disseminate the POM that we believed was
21 required for legal compliance.

22 Q. (BY MR. CAMPBELL) All right. So your testimony
23 is that even though you terminated because Mr. Chittick
24 was not doing what you told him to do for legal
25 compliance, Clark Hill could continue to represent him in

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1 June and July of 2014?

2 A. To finish up the Forbearance Agreement, yes.

3 Q. You said you read Mr. Chittick's journals?

4 A. Yes.

5 Q. Turn to Exhibit 21.

6 A. Okay.

7 Q. Exhibit 21 is Mr. Chittick's journals for 2014.

8 A. Did you intend for me to have the highlighted --

9 Q. That's fine.

10 A. -- version?

11 Q. You can have the highlighted version.

12 A. Okay.

13 Q. Are you aware that in his notes for May 2014
14 there is not a single mention about Clark Hill terminating
15 the representation?

16 MR. DeWULF: Object to form.

17 THE WITNESS: If you tell me there is no entry
18 there --

19 MR. DeWULF: Don't --

20 THE WITNESS: -- I have no reason to disagree.

21 MR. DeWULF: I don't want you to assume
22 anything, but I -- just if you don't know, just say you
23 don't know.

24 THE WITNESS: No. Did you want me to look at
25 the document?

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1 Q. (BY MR. CAMPBELL) Yes.

2 You said you gathered documents before signing
3 your verification, and one of the things you gathered were
4 the corporate journals, right?

5 MR. DeWULF: Object to form.

6 THE WITNESS: Yeah. I think I did review the
7 corporate journals before I signed the verification, yeah.

8 Q. (BY MR. CAMPBELL) All right. Do you recall if
9 you looked at May 2014 to see if Mr. Chittick said
10 anything about being terminated by Mr. Beauchamp?

11 A. I don't remember looking for that specifically,
12 but I know that I did read them.

13 Q. All right. Are you aware that -- and if you
14 want to look at it now to refresh your memory -- that
15 there is no mention of meeting with Dave about any
16 termination in his May 2014 corporate journal?

17 MR. DeWULF: Object to form.

18 THE WITNESS: I mean, I can look at it if you
19 want, but I'll -- the document speaks for itself. If you
20 tell me it's not there, I agree.

21 Q. (BY MR. CAMPBELL) And you signed for Clark Hill
22 the verification in this case that Clark Hill terminated
23 representation, even though there is no mention in
24 Mr. Chittick's journal that there was a termination.
25 True?

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1 MR. DeWULF: Object to form.

2 THE WITNESS: I think that's a correct
3 statement, yes.

4 Q. (BY MR. CAMPBELL) On Exhibit No. 21 --

5 A. Okay.

6 Q. -- I want you to turn to the entry for July 31,
7 2014.

8 A. I'm sorry. What date?

9 Q. July 31 --

10 A. 31.

11 Q. -- 2014.

12 All right. On the July 31, 2014, entry --
13 Do you have it there?

14 A. Yes.

15 Q. -- do you see where Mr. Chittick states, quote,
16 "It's all going in the right direction, just not sure if
17 it's going fast enough. As long as David doesn't bug me I
18 feel like we are doing the right thing." End of quote.

19 Do you see that?

20 A. I see that.

21 Q. It doesn't say anything in the July 31, 2014,
22 note that Clark Hill has terminated its representation.
23 True?

24 A. It does not say that here.

25 Q. And if Clark Hill had terminated its

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1 representation, it's odd that he would think David was
2 going to bug him.

3 would you agree on that?

4 MR. DeWULF: Object to form.

5 THE WITNESS: well, I don't know how to answer
6 whether something is odd or not. There were a number of
7 things in the journals that I found to be odd, so I don't
8 know how to answer your question.

9 Q. (BY MR. CAMPBELL) All right. But you verified
10 under oath that Clark Hill terminated its representation,
11 despite the statements that are made in the corporate
12 journal. True?

13 MR. DeWULF: Object to form.

14 THE WITNESS: I wouldn't say despite. I would
15 say that with the benefit of having reviewed them, yes.

16 Q. (BY MR. CAMPBELL) Are you familiar with the
17 Iggy letter?

18 A. Yes, I am.

19 Q. All right. Tell me your familiarity with the
20 Iggy letter.

21 A. well, I think the -- if we are talking about the
22 same Iggy letter, it's one of the letters that
23 Mr. Chittick prepared as he was planning his demise.

24 Q. And in the things you reviewed in gathering
25 materials, did you review the Iggy letter?

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1 A. I did.

2 Q. Here, why don't you hand me that book back.

3 A. Sure.

4 Q. I'm going to direct you to Exhibit No. 415,
5 which is going to be to your right.

6 A. 415?

7 Q. 415.

8 MR. DeWULF: Do you think, are we finished with
9 this volume, Colin?

10 MR. CAMPBELL: We are going to come back to it,
11 but we can put it away.

12 Okay. I'm beyond that now.

13 MR. STURR: All right.

14 Q. (BY MR. CAMPBELL) All right. Is Exhibit
15 No. 415 a copy of the Iggy letter?

16 MR. DeWULF: Could you hold on just a minute,
17 Colin?

18 MR. CAMPBELL: Yes. Yes, I can. Yeah, I will.

19 MR. DeWULF: I will find it in the volumes of
20 exhibits I have got here.

21 You said 415, right?

22 MR. CAMPBELL: 415, yes.

23 MR. DeWULF: I'm sorry. I thought I had done a
24 good job of organizing these. I can't seem to lay my
25 hands on it.

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1 Here we go. I apologize.

2 MR. CAMPBELL: No problem. No problem.

3 THE WITNESS: To answer your question, yeah,
4 it's been some time since I have looked at this letter,
5 but, yes, it appears to be the Iggy letter.

6 Q. (BY MR. CAMPBELL) All right. And do you
7 understand that Iggy is his sister?

8 A. That's my understanding, yes.

9 Q. And were you aware that Mr. Beauchamp was given
10 a copy of this letter shortly after Mr. Chittick committed
11 suicide?

12 A. I don't remember specifically, but it wouldn't
13 surprise me.

14 Q. All right. This is one of the documents you
15 reviewed before you signed your verification?

16 A. It was.

17 Q. So you see on the bottom there are some Bates
18 stamp numbers. I want you -- turn to the Bates stamp
19 number 9484. And if you start from the bottom and go up
20 about one, two, three, four, five, six, seven -- ten
21 lines, I'm going to read from the journal here.

22 It says, "Now I've compounded the issue."

23 Are you with me?

24 A. Yes, I see it now.

25 Q. "Now I've compounded the issue and it's worse.

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1 I'm responsible. That how I see it and that's how the
2 court will see it. I can say I didn't intend, they might
3 even agree, but there are fiduciary and morally
4 responsible things to do and I didn't do them, fear, drove
5 most of those decisions. I talked Dave my attorney into
6 allowing me to continue without notifying my investors.
7 Shame on him. He shouldn't have allowed me. He even told
8 me once I was doing the right thing." End of quote.

9 A. I see that.

10 Q. When you signed your verification under oath,
11 you were aware of that statement that Mr. Chittick made in
12 the Iggy letter. True?

13 MR. DeWULF: Object to form.

14 THE WITNESS: Yes, I had reviewed the letter.

15 Q. (BY MR. CAMPBELL) Turn to the next page.

16 A. 9485?

17 Q. Correct.

18 A. Okay.

19 Q. So I want to go up nine lines, and I'm going to
20 start reading from where it says "do you see" over on the
21 right.

22 A. Okay. I'm with you.

23 Q. Quote, "Do you see why that was a better
24 alternative? Dave my lawyer, negotiated the work out
25 agreement, and endorsed the plan. Then when Scott said

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1 hey, let me buy some foreclosures, flip them, wholesale
2 them, etc so I can make money. All the other lenders
3 wouldn't lend to him. I needed him to make money now more
4 than ever before, we went to Dave, and he gave some
5 constraints on how we were to operate. I followed them."
6 End of quote.

7 You were aware of that when you signed your
8 verification. True?

9 MR. DeWULF: Object to form.

10 THE WITNESS: Yes, I was aware of the letter and
11 I read it.

12 Q. (BY MR. CAMPBELL) Did it give you any pause
13 whether Mr. Beauchamp was telling the truth?

14 A. Well, again, without --

15 THE WITNESS: Do you want me to answer the
16 question, John?

17 MR. DeWULF: If you can, you can go ahead and
18 answer.

19 THE WITNESS: I mean, look, you know, anybody
20 who has been a lawyer in civil litigation drives a bus
21 tapping the brakes. And so, yeah, we question everything.
22 I think we would be doing a disservice by not questioning
23 everything.

24 Is this something that I took into account
25 before I signed my verification? Yes.

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1 Q. (BY MR. CAMPBELL) Okay. But your understanding
2 when you signed your verification, you weren't acting as a
3 defense lawyer. You understand that?

4 A. No. I understand I was acting as a corporate
5 representative, as it were.

6 Q. And you were binding Clark Hill to the truth of
7 the statements made, correct?

8 A. I understood that, yes.

9 MR. DeWULF: Colin, it's about 11:00. I would
10 like to take a break whenever it works for you.

11 MR. CAMPBELL: This is a good time.

12 MR. DeWULF: All right.

13 VIDEOGRAPHER: The time is 10:54 a.m. We are
14 going off the record, ending media three.

15 (A recess was taken from 10:54 a.m. to
16 11:07 a.m.)

17 VIDEOGRAPHER: My name is Mary Onuschak with the
18 firm of Legal Video Specialists, Phoenix, Arizona. This
19 begins media four of the videotaped deposition of Ed Hood.
20 The time is 11:07 a.m. We are now back on the record.

21 Q. (BY MR. CAMPBELL) All right. Mr. Hood, let's
22 go to Exhibit 411, which is going to be a few exhibits
23 before that last one. This is an email chain between
24 Mr. Beauchamp and Denny Chittick.

25 Is this one of the emails you reviewed in the

1 case?

2 A. I believe I did see this, yes.

3 Q. All right. And this is an email -- well, an
4 email chain. I'm trying to look at the bottom here. It
5 looks like the email we have, the date of it is
6 March 13th, 2015, so this is going to be some ten months
7 after Clark Hill terminated its representation of DenSco,
8 right?

9 A. Yes.

10 Q. And you see that Mr. Beauchamp is writing
11 Mr. Chittick and he asked to set up a meeting with him.

12 A. That appears, in broad strokes, to be what is
13 the gist of the email, yes.

14 Q. And nowhere in this email does Mr. Beauchamp
15 mention that Clark Hill had terminated its relationship
16 with DenSco. True?

17 MR. DeWULF: Object to form.

18 THE WITNESS: There is no reference to
19 termination of their relationship that I see.

20 Q. (BY MR. CAMPBELL) And in fact Mr. Beauchamp is
21 soliciting work in this email, right?

22 MR. DeWULF: Object to form.

23 THE WITNESS: That's not how I read it, no.

24 Q. (BY MR. CAMPBELL) Okay. Look at the second
25 paragraph. And he says, quote, "I acknowledge that you

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1 were justifiably frustrated and upset with the expense and
2 how the other lenders (and Scott at times) seemed to go
3 against you as you were trying to get things resolved last
4 year for Scott. I have tried to let time pass so that we
5 can discuss if you are willing to move beyond everything
6 that happened and still work with me."

7 A. Okay. I see that, yeah.

8 Q. Fair to say he is trying to solicit work?

9 A. Well, whether it's a direct solicitation or, you
10 know, trying to ask him if he is in the mood to work again
11 with David, I think you could read it that way, sure.

12 Q. And when you signed your verification, you were
13 aware of this email. True?

14 MR. DeWULF: Object to form.

15 THE WITNESS: Aware of this --

16 Q. (BY MR. CAMPBELL) Email.

17 A. Yes. I had read the email.

18 Q. Turn to -- we are going to have to go back. I
19 want to see if I have the right number for it. It's going
20 to be Exhibit 22, so it's going to be that volume we
21 brought in.

22 A. 22?

23 Q. Exhibit 22. And I want you to turn -- now, this
24 is Mr. Chittick's corporate journal for 2015.

25 This is part of the things you gathered

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1 together, right?

2 A. Well, I don't -- I did not gather this because I
3 don't think we had it. I think we were later provided
4 with it, and it was part of the universe of documents that
5 we were accumulating.

6 Q. All right. I want you to look at March 13th.

7 A. Okay.

8 Q. And you will see on March 13th, he writes, "I
9 funded four deals for Scott. I had two pay off and one
10 other deal. A few payments which I'll have to see the
11 deposits to figure out who they are and how much. I'm
12 ready as I can be for this party. At 11 pm I got an email
13 from Dave my attorney wanting to meet. He gave me a year
14 to straighten stuff out we'll see what pressure I'm under
15 to report now."

16 Do you read that?

17 A. That's what the words say, yes.

18 Q. And you were aware of that when you signed your
19 verification?

20 MR. DeWULF: Object to form.

21 THE WITNESS: I believe that, you know, at a
22 high level I had -- I had been aware of the journal and
23 probably read that particular entry, yes.

24 Q. (BY MR. CAMPBELL) Actually, turn to the entry
25 on 3/24 --

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1 A. Okay.

2 Q. -- and tell me if I am reading this correctly.

3 3/24, "I had lunch with Dave Beauchamp, I was
4 nervous he was going to put a lot of pressure on me.
5 However, he was thrilled to know where we were at and I
6 told him by April 15th, we'll be down to 16 properties
7 with seconds on them, and by the end of June we hope to
8 have all the retail houses sold by then and just doing
9 wholesale. He said he would give me 90 days. I just hope
10 we can sell them all by then and darn near be done with
11 it. I'm going to slow down the whole memorandum process
12 too. Give us as much time as possible to get things in
13 better order."

14 So I correctly read what he has in his journal?

15 A. You did read it correctly, yes.

16 Q. And you were aware of that when you signed your
17 verification?

18 MR. DeWULF: Object to form.

19 THE WITNESS: I believe I had gone over the
20 journal before I signed the verification, yes, sir.

21 Q. (BY MR. CAMPBELL) All right. Now, you are
22 aware that Mr. Beauchamp did get more work from DenSco in
23 2016?

24 A. I am aware that he did get -- he was asked to do
25 a licensing issue.

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1 Q. All right. Well, the licensing issue had do
2 with the -- I believe it's the Arizona Department of
3 Financial Institutions.

4 A. Okay. I'll take your word for it.

5 Q. All right. And the issue was whether they could
6 regulate hard-money lenders like DenSco.

7 Were you aware of that?

8 MR. DeWULF: Object to form.

9 THE WITNESS: I wasn't aware of the details that
10 you describe, but I am aware of the representation
11 generally, yeah.

12 Q. (BY MR. CAMPBELL) Well, you are aware that
13 Clark Hill billed DenSco for legal services in March 2016,
14 April 2016, May 2016, and June 2016?

15 A. Specifically, no, but I have no reason to
16 question what you are asking.

17 Q. When Clark Hill said it terminated DenSco as a
18 client, did it terminate DenSco as to all matters or just
19 as to securities offerings?

20 MR. DeWULF: Object to form.

21 Q. (BY MR. CAMPBELL) What did -- what did Clark
22 Hill terminate?

23 A. My understanding, and, again, you know, this
24 is -- I have no firsthand knowledge of any of this, but my
25 understanding was that we terminated the representation.

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1 In May 2015 we finished up -- we finished the job that we
2 were asked to do on the Forbearance Agreement, and that
3 was it until Mr. Chittick came back to us and asked us to
4 perform some work that was related to something we had
5 already done for him. And that all things considered, we
6 decided to perform that small piece of work for him.

7 MR. DeWULF: Ed, I think you said May of 2015.
8 I don't know if that's what you intended to say.

9 Q. (BY MR. CAMPBELL) I think you meant '14.

10 MR. DeWULF: Up to termination.

11 THE WITNESS: Yes. I'm sorry. My mistake.
12 Yeah, May of 2014.

13 Q. (BY MR. CAMPBELL) So I just want to understand
14 this, I mean, the way this plays out.

15 Clark Hill's verified statement and its
16 Rule 26.1 is that it terminated the representation in
17 May 2014, but it continued to finish up the work for two
18 months; that Mr. Beauchamp solicited additional work in
19 2015; and that Clark Hill did additional work in March,
20 April, May, and June of 2016.

21 MR. DeWULF: Could you read that back, please.
22 (The requested portion of the record was read.)

23 MR. DeWULF: Object to form.

24 THE WITNESS: Yeah, again, I don't necessarily
25 agree with the term solicit the work. I think he asked

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1 him whether he would be -- he would consider working with
2 him again. But, yes, in 2016 he came to us with a
3 licensing issue and we agreed to do that.

4 Q. (BY MR. CAMPBELL) All right. Let's switch
5 subjects.

6 Clark Hill, in its Rule 26.1 statement, has
7 verified that the standard of care required Mr. Beauchamp
8 in January of 2014 to tell DenSco that it was not
9 permitted to take new money without full disclosure, that
10 it was not permitted to roll over existing investments
11 without full disclosure, and that DenSco needed to update
12 its private offering memorandum. True?

13 MR. DeWULF: Object to form.

14 THE WITNESS: That's my understanding.

15 Q. (BY MR. CAMPBELL) And Clark Hill's position in
16 this case, as stated in its Rule 26.1 statement, is that
17 Mr. Beauchamp did this on January 9th, 2014. True?

18 MR. DeWULF: Object to form.

19 THE WITNESS: If that's what our statement says,
20 yes. Again, I don't have personal knowledge of that fact,
21 but I believe it to be true.

22 Q. (BY MR. CAMPBELL) All right. Let's just make
23 sure we are all on the same page.

24 A. Sure.

25 Q. So if you turn to Exhibit 700 and go to page 10.

1 A. Okay.

2 Q. All right. So if you look at page 10, you will
3 see there is -- I'm going to go to line 12, and I will
4 read it because it's worded a little differently than my
5 question.

6 "Mr. Beauchamp's advice to Mr. Chittick
7 regarding disclosures Mr. Chittick had to make to
8 investors was immediate, clear, practical, consistent with
9 his practice and experience and consistent with the
10 standard of care: (a) DenSco was not permitted to take
11 new money without full disclosure to the investor lending
12 the money; (b) DenSco was not permitted to roll over
13 existing investments without full disclosure to the
14 investor rolling over the money; and (c) DenSco needed to
15 update its POM and make full disclosure to all its
16 investors. Mr. Beauchamp provided this advice to DenSco
17 starting with his January 9, 2014 meeting with
18 Mr. Chittick, and repeated it routinely over the next few
19 months."

20 Did I read that correctly?

21 A. You did.

22 Q. And you verified that as true?

23 A. I did.

24 Q. Mr. Beauchamp never gave that advice prior to
25 January 9th, 2014. True?

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1 MR. DeWULF: Object to form.

2 THE WITNESS: I don't know. I don't have
3 personal knowledge either way.

4 Q. (BY MR. CAMPBELL) Well, in terms of what Clark
5 Hill has verified, Clark Hill verified he gave the advice
6 starting on January 9, 2014, and thereafter. True?

7 MR. DeWULF: Object to form.

8 THE WITNESS: Uhm, yeah, that's what it says,
9 that, right, I think that was right at about the time that
10 this issue was presented to Mr. Beauchamp.

11 Q. (BY MR. CAMPBELL) Right. And that's what you
12 verify under oath, right?

13 A. Yes, sir.

14 Q. Are you aware of a telephone call that
15 Mr. Beauchamp had with Mr. Chittick in December 2013?

16 MR. DeWULF: Object to form.

17 THE WITNESS: Can you be more specific?

18 Q. (BY MR. CAMPBELL) Do you recall that Mr. --
19 well, here, let me see if I can get it on here. Hold on
20 one moment. Let me find the page.

21 A. Is this number 7 -- page 7, item E?

22 Q. No. Hold on a second.

23 You are right. It's page 7.

24 So if you look at page 7 of the Rule 26.1
25 statement, it refers to a conversation that Mr. Beauchamp

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1 had in late 2013, right?

2 A. In December of '13, that's what it says, yes.

3 Q. Okay. And this is what you verify. You say,
4 "In December 2013, Mr. Chittick contacted Mr. Beauchamp
5 for the first time in months. He told Mr. Beauchamp over
6 the phone he had run into an issue with some of his loans
7 to Menaged, and specifically, that properties securing a
8 few DenSco loans were each subject to a second deed of
9 trust competing for priority with DenSco's deed of trust.
10 Mr. Beauchamp reminded Mr. Chittick that he still needed
11 to update DenSco's private offering memorandum. After
12 briefly discussing the allegedly limited double lien
13 issue, Mr. Chittick emphasized to Mr. Beauchamp that
14 Mr. Chittick wanted to avoid litigation with other
15 lenders. Mr. Chittick, however, did not request any
16 advice or help. Accordingly, Mr. Beauchamp suggested that
17 Mr. Chittick develop and document a plan to resolve the
18 double liens, and nothing more came of the conversation."

19 So that's what you verify as true. Right?

20 A. That's what it says, yes.

21 Q. All right. In December 2013, Mr. Beauchamp did
22 not tell Mr. Chittick he had to stop lending money. True?

23 MR. DEWULF: Object to form.

24 THE WITNESS: I -- I don't believe that he told
25 Mr. Chittick that, no.

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1 Q. (BY MR. CAMPBELL) And in December 2013, he
2 didn't tell Mr. Chittick that he couldn't take any
3 rollover monies. True?

4 MR. DeWULF: Object to form.

5 THE WITNESS: I -- I don't believe so.

6 Q. (BY MR. CAMPBELL) All right. So in your 26.1
7 statement, you talk about the FREO lawsuit.

8 Does that ring a bell?

9 A. I have seen reference to it, yes.

10 Q. So if you turn to page 5 of your 26.1, there is
11 a discussion there of the FREO lawsuit, right?

12 A. I see that, yes.

13 Q. All right. And turn to page 6 --

14 A. Okay.

15 Q. -- line 9. And you verify, quote: Contrary to
16 the allegations in the Receiver's Complaint, the law --
17 the FREO lawsuit did not concern lien priority or double
18 lien issues. True?

19 A. That's what it says, yes.

20 Q. All right. Could you turn to Exhibit 111,
21 please.

22 Okay. So have you seen Exhibit No. 11 (sic) is
23 a cover letter from Mr. Chittick to Mr. Beauchamp, copied
24 to Mr. Menaged. And if you turn a few pages, you will see
25 it has the summons and complaint for the FREO lawsuit.

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1 MR. DeWULF: I'm sorry. Did you say 111?

2 MR. CAMPBELL: 111. Turn a few pages. It's
3 attached to that.

4 THE WITNESS: Okay. I see that is contained in
5 here, yeah.

6 Q. (BY MR. CAMPBELL) Are those part of the
7 materials you reviewed before you signed your
8 verification?

9 MR. DeWULF: Object to form.

10 THE WITNESS: I don't remember this document
11 specifically. To be perfectly honest, I remember there
12 was some reference to another lawsuit involving
13 Mr. Menaged or his entities, but I -- I can't really say
14 one way or the other if I reviewed 111.

15 Q. (BY MR. CAMPBELL) All right. I want you to
16 look at, it's going to be Bates stamped 64, paragraph 20
17 in the Complaint.

18 A. Okay.

19 Q. And you see the allegation is, "Easy attempted
20 to encumber the property with deeds of trust Active and
21 DenSco"?

22 A. I see that.

23 Q. All right. One of the allegations in the case
24 was that there were two deeds of trust from two different
25 lenders on the property.

1 A. Okay.

2 MR. DeWULF: Are you asking him if he accepts
3 that?

4 MR. CAMPBELL: Well, did he understand that.

5 MR. DeWULF: At the -- I'll object to -- to the
6 form.

7 THE WITNESS: I -- I can't really give you a yes
8 or no on whether I have a specific memory of that
9 particular allegation.

10 Q. (BY MR. CAMPBELL) All right. Let's go back to
11 your 26.1 statement.

12 A. Okay. Refresh my memory. What number was that?
13 Oh, here we go.

14 Q. Yeah.

15 A. There it is.

16 Q. This is your copy here. If you could put it
17 over in your stand.

18 A. Yeah. Thank you.

19 Q. So we started with line 9 on page 6, where it
20 says, "Contrary to the allegations in the Receiver's
21 Complaint, the FREO lawsuit did not concern the lien
22 priority or double lien issues."

23 A. I'm with you.

24 Q. Are you now aware that in the FREO lawsuit there
25 was an allegation with respect to double liens?

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1 MR. DeWULF: Object to form.

2 THE WITNESS: I don't know, because I don't know
3 how to read that particular allegation, so, I'm sorry, I
4 can't help you with that one.

5 Q. (BY MR. CAMPBELL) All right. Let's go to the
6 bottom of your Rule 26.1. You will see it says that,
7 "Mr. Beauchamp, did, however, explain to Mr. Chittick that
8 this lawsuit would need to be disclosed in DenSco's 2013
9 POM."

10 A. I see that.

11 Q. All right. Now, this would have -- this
12 conversation would have taken place in May 2013.

13 Fair to say that Mr. Beauchamp did not tell him
14 he had to stop lending money or borrowing money?

15 MR. DeWULF: I think it -- I'm confused. I'm
16 going to object to the form, but I think that Exhibit 111
17 is dated June of 2013.

18 MR. CAMPBELL: I'll take your -- I'll rephrase
19 the question.

20 MR. DeWULF: I'm confused. The disclosure
21 statement doesn't reference May of 2013, but with that,
22 you can --

23 MR. CAMPBELL: I'll rephrase the question.

24 MR. DeWULF: All right.

25 Q. (BY MR. CAMPBELL) Fair to say that in

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1 June 2013, although Mr. Beauchamp said the lawsuit would
2 need to be disclosed, he did not tell DenSco they had to
3 stop borrowing money?

4 MR. DeWULF: Object to form.

5 THE WITNESS: I'm not aware that Mr. Beauchamp
6 told Mr. Chittick that he had to stop borrowing money. I
7 am aware that he told him that if he did borrow money, he
8 had to make disclosures, but I don't think he
9 categorically told him that he could not borrow money. At
10 least that's my understanding.

11 Q. (BY MR. CAMPBELL) Did he tell him that you
12 cannot take rollover monies?

13 MR. DeWULF: Object to form.

14 THE WITNESS: I don't know in those terms if
15 that's what he said, but my understanding is that any new
16 money from a new investor or current investor reinvesting,
17 as it were, whether you call it a rollover or something
18 else, I have seen references to line of credit, that that
19 would have to be accompanied or preceded by disclosures.

20 Q. (BY MR. CAMPBELL) In your verified statement
21 under oath, turn to page 6, do you disclose that
22 Mr. Beauchamp told Mr. Chittick not to take new monies
23 without disclosure?

24 MR. DeWULF: Object to form.

25 THE WITNESS: I'm sorry. Where are you at on

1 page 6?

2 Q. (BY MR. CAMPBELL) The bottom of page 6, where
3 you verify under oath what Mr. Beauchamp said.

4 A. And, forgive me, what line are you on?

5 Q. Start with line 22.

6 A. Okay.

7 I'm sorry. I don't see a reference to borrowing
8 money. I see something having to do with the funding
9 directly. I'm sorry.

10 Q. Sir, I'm asking you about the facts you verify
11 under oath.

12 A. Yeah.

13 Q. You do not state in the Rule 26.1 statement --

14 A. Oh, okay.

15 Q. -- that in June of 2013, Mr. Beauchamp told
16 DenSco, "Stop borrowing money unless you disclose this
17 now"?

18 MR. DeWULF: Object to the form.

19 THE WITNESS: The -- the disclosure does not
20 state that. I would agree with you.

21 Q. (BY MR. CAMPBELL) Now, Mr. Beauchamp started
22 will -- I'm getting tired. Mr. Beauchamp started work
23 with Clark Hill in September of 2013.

24 A. I'll have to take your word for it.

25 Q. All right.

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1 A. I don't know for sure.

2 Q. Well, turn to the 26.1 statement --

3 A. Okay.

4 Q. -- that you verified.

5 A. Yeah. I see that now on page 7, yes.

6 Q. All right. So Clark Hill says it's the truth,
7 he started work in September 2013. True?

8 A. Yes.

9 Q. Now, you are aware that Mr. Beauchamp opened a
10 file for the 2013 POM at Clark Hill?

11 A. Yes.

12 Q. And you are aware that Mr. Beauchamp did not do
13 any work on the 2013 POM after he commenced work with
14 Clark Hill, from September 1, 2013, through the end of the
15 year?

16 MR. DeWULF: Object to form.

17 THE WITNESS: I don't know that specifically,
18 but the record speaks for itself in terms of our billings.

19 Q. (BY MR. CAMPBELL) Are you aware that the 2011
20 POM expired? It was a two -- it expired at the end of two
21 years.

22 MR. DeWULF: Object to form.

23 THE WITNESS: I don't know that to be the case.

24 Q. (BY MR. CAMPBELL) Have you reviewed the POM?

25 A. The 2011?

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1 Q. Any of the POMs.

2 A. Well, I certainly reviewed the disclosures that
3 were made in the 2013 POM that we had urged Mr. Chittick
4 to disclose, but I don't know if we -- if I personally
5 reviewed the 2011. I may have, but I can't testify to a
6 specific memory.

7 Q. All right. Turn to page 5 of the 26.1
8 statement.

9 A. Okay.

10 Q. And if you look at -- you see there is a whole
11 section here on the private offering memorandum.

12 Do you see that?

13 A. I do.

14 Q. And you verified this section as true, right?

15 A. Yes. Along with the rest of the disclosure,
16 yes, sir.

17 Q. And you will see that on page 12 it says -- or
18 page 5, line 12, it says, "In early summer 2013,
19 Mr. Beauchamp advised DenSco that it needed to update its
20 2011 POM given the passage of time and changes in the
21 scope of DenSco's fund raising."

22 Do you see that?

23 A. I do.

24 Q. Then if turn to line 18, it says: Mr. Beauchamp
25 however, was never able to finalize the 2013 POM.

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1 Although Mr. Beauchamp asked for updated investment, loan
2 and financial information regarding DenSco, Mr. Chittick
3 stalled on providing the information, preferring to wait
4 until after he had scaled down the amount outstanding to
5 investors. Mr. Beauchamp repeatedly advised DenSco that
6 an update was necessary irrespective of DenSco's plans
7 regarding the outstanding amount of its offering, but
8 Mr. Chittick continued to delay."

9 Do you see that?

10 A. I do.

11 Q. So after Mr. Beauchamp joined Clark Hill,
12 despite his repeated advice that the POM update was
13 necessary, Mr. Chittick continued to delay is what you
14 verify. True?

15 A. Well, that's what the words say. Now, where the
16 delay occurred, I mean, it's clear that, you know, he
17 started -- my understanding is he started the update of
18 the 2013 back when he was at Bryan Cave, and that David
19 was waiting on information from Mr. Chittick as well as
20 perhaps Mr. Preston, and so he just wasn't able to finish
21 the task.

22 So, yeah, I think the delays started before he
23 joined Clark Hill and continued after he joined Clark
24 Hill.

25 Q. Turn to Tab 704.

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1 A. Okay.

2 Q. These are answers under oath by Mr. Beauchamp to
3 interrogatories.

4 Have you reviewed these?

5 A. I may have. I don't remember it specifically.

6 Q. I am missing a page in the copy I have. Let me
7 see yours and see if it's missing the same thing.

8 A. Yeah, sure.

9 MR. STURR: It must be off a page.

10 MR. CAMPBELL: Yeah. Our staff Xeroxed the
11 wrong pages, or didn't Xerox all of them.

12 MR. STURR: Do you want me to run and get it?

13 MR. CAMPBELL: Yeah, if you could run and get
14 it.

15 MR. DeWULF: I don't have it either, so if you
16 could make copies for all of us.

17 Q. (BY MR. CAMPBELL) Let me get at it this way.
18 Go back to Mr. Beauchamp's deposition, and let's turn to
19 page --

20 A. This is 711? It's going to be in 711?

21 Q. It's going to be in the back, yeah.

22 A. Okay.

23 Q. Turn to page 74. Let me see if I can find it
24 for you.

25 A. Okay.

1 Q. So you will see in his deposition, starting on
2 line 11:

3 Question: Sir, you state, do you not, you
4 believe that Mr. Chittick instructed you not to finish the
5 private offering memorandum in the year 2013, correct?

6 And then line 16: I did state he instructed me,
7 and that was based upon a conversation where he had to
8 provide specific answers to information that we needed
9 right then in order to finish the private offering
10 memorandum. He said he did not have time, and I said then
11 you are saying to put it on hold? And he said, yes, put
12 it on hold.

13 Question: And that was against your advice.
14 True?

15 Answer: Yes. My advice was to get it done, but
16 he could not get it done without the information, and he
17 explained it was an impossibility to get that information
18 together at that point.

19 Do you read that?

20 A. I see that, yes.

21 Q. In September 2013, is it your understanding that
22 Mr. Beauchamp testifies that Mr. Menaged told him not to
23 finish the POM?

24 MR. DEWULF: Could I have that back, please. I
25 got lost.

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1 (The requested portion of the record was read.)

2 MR. DeWULF: Object to form.

3 THE WITNESS: I don't have a specific
4 understanding of Mr. Menaged instructing David to do
5 anything. I wouldn't think that would be his place, but
6 perhaps you can show me where he said that.

7 Q. (BY MR. CAMPBELL) Well, he testified to it, and
8 I will get you the interrogatory answer where he says the
9 exact same thing.

10 MR. DeWULF: Object to form.

11 Q. (BY MR. CAMPBELL) But based on your 26.1
12 statement where you verify the facts under oath, I don't
13 see anywhere in your 26.1 statement where David advises
14 DenSco in September of 2013 that if it's going to stop
15 work on the POM, it has to stop borrowing money, stop
16 taking rollover monies, because it can't take money
17 without full disclosure.

18 MR. DeWULF: Object to form.

19 THE WITNESS: Okay. I guess, you know, if you
20 want me to agree with you as far as what it -- what it
21 says, I mean, it says what it says.

22 Now, I'm not a securities lawyer so I can't
23 agree or disagree on the substance of whether that was
24 correct or not. I'm not sure what you are asking me,
25 because I don't know one way or the other.

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1 Q. (BY MR. CAMPBELL) I want to know the facts so
2 I'm not surprised.

3 A. Sure.

4 Q. You said earlier you understood the purpose of
5 the Rule 26.1 statement was that we get the facts under
6 oath so we are not surprised. True?

7 A. That's one of the purposes, certainly, yeah.

8 Q. You state under oath in your 26.1 statement that
9 the advice Mr. Beauchamp gave to comply with the standard
10 of care took place on January 9th, 2014, and thereafter.
11 True?

12 MR. DeWULF: Object to form.

13 THE WITNESS: well, I think it dealt with
14 certain advice that David gave, yeah, but I don't know
15 that that's inconsistent with other advice that occurred
16 prior to that time --

17 Q. (BY MR. CAMPBELL) Sir --

18 A. -- if that's what you are asking.

19 Q. -- under oath in your 26.1 statement, you do not
20 state any time prior to January 9th, 2014, that
21 Mr. Beauchamp gave that advice. True?

22 MR. DeWULF: Object to form.

23 Q. (BY MR. CAMPBELL) You want the question reread?

24 A. No. I think the statement says what it says.
25 Are you asking me whether it was my intent to

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1 rule out any prior advice? No, that's not what I was
2 intending, but, you know, we did try to be complete, and,
3 again, to comply with the rule and our obligation to
4 disclose and be truthful.

5 Q. You have never filed an amended disclosure
6 statement from July 20th, 2018, until today, adding an
7 opinion or a statement of fact that Mr. Beauchamp in
8 September 2013 gave the standard of care advice to his
9 client. True?

10 MR. DeWULF: Object to form.

11 THE WITNESS: Not to my recollection, no, sir.

12 MR. CAMPBELL: All right. Exhibit 422, Geoff.

13 MR. STURR: Yes. Previously marked as
14 Exhibit 422?

15 MR. CAMPBELL: Yeah.

16 Q. (BY MR. CAMPBELL) Can you turn to Exhibit 422.

17 MR. STURR: Do you have that, John?

18 MR. DeWULF: What is it? Is that the answers to
19 interrogatories?

20 MR. CAMPBELL: The answers to interrogatories.

21 MR. STURR: Instead of reprinting it --

22 MR. DeWULF: No, that's fine. You found it. If
23 you can just give me a minute, I will try and run it down.

24 THE WITNESS: Okay. I am with you.

25 Q. (BY MR. CAMPBELL) And Exhibit 422 -- let's wait

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1 for counsel, for John.

2 MR. DeWULF: Is that one you have shown him
3 earlier, Colin? Oh, I found it. It's the last binder, of
4 course. I've got the mic here, Mary.

5 I'm with you.

6 Q. (BY MR. CAMPBELL) All right. So I want you
7 to -- actually, start on page 9, line 23, where you see --
8 you see where it says the word "response"?

9 A. At the top or at the bottom?

10 Q. At the bottom.

11 A. Okay. Yes, I do.

12 Q. Now, as a trial lawyer, you understand what
13 interrogatories are. True?

14 A. I do.

15 Q. And you understand they have to be answered
16 under oath by parties?

17 A. Yes, sir.

18 Q. So this is Mr. Beauchamp's statement under oath:
19 Throughout 2014, when Mr. Beauchamp was preparing the
20 Forbearance Agreement and later the updated POM that would
21 apprise investors of the double lien issue and
22 Mr. Chittick's plan to resolve it, Mr. Beauchamp
23 consistently reminded Mr. Chittick of his fiduciary
24 obligations to investors, his obligation to provide full
25 disclosure to his investors (including his obligation to

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1 inform investors as to what had occurred prior to taking
2 new investor money or rolling over investor money), as
3 well as his obligation to update the 2013 POM as soon as
4 possible.

5 Do you see that?

6 A. I do, yes.

7 Q. So he says all that advice was given in 2014,
8 right?

9 A. It says throughout 2014. That's how it begins,
10 yes.

11 Q. And then you will see on line 5, this is
12 evidenced by the fact that Mr. Beauchamp diligently worked
13 to update the POM, the 2013 POM, between May and August of
14 2013 until he was ordered to stop by Mr. Chittick.

15 Do you see that?

16 A. I do.

17 Q. So would you agree with me that in
18 September 2013, while he is working at Clark Hill,
19 Mr. Beauchamp is ordered by Mr. Chittick to stop working
20 on the POM?

21 A. Well, that's what appears to have been the case,
22 according to Mr. Beauchamp's interrogatory answers, yes.

23 Q. All right. In your 26.1 statement, Clark Hill
24 matches up identically with everything Mr. Beauchamp says,
25 word for word, does Clark Hill agree with this statement

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1 by Mr. Beauchamp?

2 MR. DeWULF: Object to form.

3 THE WITNESS: I mean, look, I would need to talk
4 to counsel about it. I have no reason to disagree with
5 the statement as I sit here today.

6 Q. (BY MR. CAMPBELL) All right. And in
7 September 2013, Mr. Beauchamp did not tell Mr. Chittick
8 that by stopping work on the POM, he had to stop borrowing
9 money from people, he couldn't take any rollover money, he
10 had to make full disclosure before he did anything. He
11 didn't say that in September 2013. True?

12 MR. DeWULF: Object to form.

13 THE WITNESS: I don't know one way or the other.
14 You know, if it's a fact that we simply goofed and didn't
15 include it in our disclosures, we need to fix that, but I
16 don't know one way or the other. I'll have to take it up
17 with counsel.

18 Q. (BY MR. CAMPBELL) Okay. So just so I'm clear,
19 today under oath you say it's a goof, that you didn't talk
20 about it in the four 26.1 disclosure statements that have
21 been filed in this case?

22 A. I didn't say that.

23 MR. DeWULF: Counsel --

24 THE WITNESS: I said that --

25 MR. DeWULF: Go ahead.

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1 THE WITNESS: -- we may have goofed, but that we
2 would review it, and if it was an omission, it was an
3 innocent one and we will amend, as our obligations
4 dictate.

5 Q. (BY MR. CAMPBELL) All right. Let's go back to
6 your 26.1 statement.

7 A. Okay.

8 Q. Page 7.

9 MR. DeWULF: Which number was that?

10 THE WITNESS: This was in the 700 series?

11 MR. CAMPBELL: No. 700 was the original one.

12 MR. DeWULF: 700 on the nose.

13 THE WITNESS: Where are you at? Sorry.

14 Q. (BY MR. CAMPBELL) Page 7, Section D.

15 A. Okay.

16 Q. Now, my recollection is when this was being
17 drafted, this was going back and forth between
18 Mr. Beauchamp and counsel, and you were in the process and
19 everyone was making comments. True?

20 A. It was a collaborative process, yes.

21 Q. There is nothing in this 26.1, in
22 September 2013, that Mr. Beauchamp gave the standard of
23 care advice to Mr. Chittick. True?

24 MR. DeWULF: Object to form.

25 THE WITNESS: I don't see that stated here on

1 page 7, no.

2 Q. (BY MR. CAMPBELL) You would agree with me, as a
3 matter of fact, that even though Clark Hill opened up a
4 file for the 2013 POM in September 2013, it did no work on
5 that file from September 2013 through the end of the year?

6 MR. DeWULF: Object to form.

7 THE WITNESS: Well, I'm not aware of any work
8 being performed that was actually billed to DenSco, but
9 beyond that, whether there was any work that wasn't
10 billed, I have no knowledge of that.

11 Q. (BY MR. CAMPBELL) Actually, don't you verify
12 that no work was done on it in your Rule 26.1?

13 MR. DeWULF: Object to form.

14 THE WITNESS: We may have. If you want to
15 direct me to it, I will take a look at it.

16 Q. (BY MR. CAMPBELL) That's the last page we were
17 on, page 7, where you discuss the transition of the file
18 to Mr. Beauchamp, and Mr. Beauchamp never heard from
19 Mr. Chittick regarding the unfinished 2013 POM or any
20 other matter until December 2013.

21 A. Okay. I have no reason to disagree with that.

22 Q. All right. So let's just -- well, let's just
23 advance it chronologically.

24 You see in the next part of your 26.1 you talk
25 about the telephone call with Mr. Beauchamp in late 2013,

1 right?

2 A. In section E, yes.

3 Q. And this is where Clark Hill is saying, as a
4 matter of truthful fact, that Chittick tells Beauchamp in
5 a telephone call in December 2013 that there is a
6 double-lien issue, right?

7 A. I think that's a fair summary.

8 Q. All right. And in mid-December 2013, according
9 to what you say is the factual truth under oath, there is
10 no statement that Mr. Beauchamp gave the standard of care
11 advice to Mr. Chittick in December 2013 that you say he
12 gave on January 9th, 2014. True?

13 MR. DeWULF: Object to form.

14 THE WITNESS: I don't see those words here in
15 the disclosure statement.

16 Q. (BY MR. CAMPBELL) All right. And the purpose
17 of the disclosure statement, you were trying to get me all
18 the facts on the case, right?

19 MR. DeWULF: Object to form.

20 THE WITNESS: We did the best we could.

21 Q. (BY MR. CAMPBELL) All right. I want to switch
22 subjects with you. Let's go to your 26.1 on page 3.

23 MR. DeWULF: Page what?

24 MR. CAMPBELL: Page 3.

25 Q. (BY MR. CAMPBELL) So one of the things

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1 addressed in your Rule 26.1 verification is who is
2 DenSco's client. On page 3 --

3 A. Excuse me. You mean who was Clark Hill's
4 client?

5 Q. Correct.

6 A. Okay.

7 Q. Thank you.

8 On page 3, line 7, you tell us under oath that,
9 "Although the various firms' engagement letters with
10 DenSco only specifically identified DenSco as the client,
11 DenSco could not operate or engage with legal counsel
12 except through its present and its sole owner,
13 Mr. Chittick. DenSco had no other employees; Mr. Chittick
14 was responsible for all aspects of DenSco's business, and
15 Mr. Chittick understood that Mr. Beauchamp, as an incident
16 to Mr. Beauchamp's representation of DenSco, was also
17 representing Mr. Chittick in his capacity as president of
18 DenSco."

19 Now, let me just explore that.

20 DenSco is a client of Clark Hill. True?

21 A. It was.

22 Q. It was.

23 Was Mr. Chittick a client of Clark Hill?

24 A. Not individually. Only in a representative
25 capacity.

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1 Q. Well, because he was the only person that could
2 speak for the corporation, right?

3 A. I believe that's true, at least while he was
4 alive.

5 Q. While he was alive.

6 But the fact he is the president of DenSco does
7 not make him an individual client of Clark Hill. True?

8 A. Not in and of itself, I agree.

9 Q. Are there any facts in the Rule 26.1 statement
10 that transforms Mr. Chittick into a client of Clark Hill?

11 MR. DeWULF: Object to form.

12 THE WITNESS: Well, again, I think that to the
13 extent he could be viewed as a client, it was because he
14 was the sole representative of the entity client, but I
15 don't believe that we represented Mr. Chittick separate
16 and apart from that.

17 Q. (BY MR. CAMPBELL) All right. But he is not a
18 client in the sense that you have to look at conflicts of
19 interest between Mr. Chittick and DenSco. True?

20 MR. DeWULF: Form.

21 THE WITNESS: Oh, no. If -- I mean, to the
22 extent we are representing Mr. Chittick, I think that we
23 do need to keep an eye on conflicts and whether his
24 interests conflict with those of the organization. I
25 think that's -- you know, that goes along with

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1 representing any organization.

2 Q. (BY MR. CAMPBELL) Are you aware of anything
3 Mr. Beauchamp said that Mr. Chittick believed Clark Hill
4 was representing him personally?

5 A. Not offhand.

6 Q. Let's go to Exhibit 297.

7 MR. DeWULF: Colin, it's noon. Could we go off
8 the record for a minute?

9 MR. CAMPBELL: Yeah.

10 VIDEOGRAPHER: The time is 11:57 a.m. We are
11 going off the record, ending media four.

12 (A recess was taken from 11:57 a.m. to
13 12:56 p.m.)

14 VIDEOGRAPHER: My name is Mary Onuschak with the
15 firm of Legal Video Specialists, Phoenix, Arizona. This
16 begins media five of the videotaped deposition of Ed Hood.
17 The time is 12:56 p.m. We are now back on the record.

18 Q. (BY MR. CAMPBELL) All right. I think when we
19 were breaking, we were talking about representation and we
20 were on the 26.1 statement. And I would like to put that
21 aside for a second and go to Exhibit 297.

22 A. Okay.

23 Q. All right. So you are more marked up than I am
24 there.

25 Exhibit 297 is a Declaration of Mr. Beauchamp.

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1 It was done in the initial receivership proceeding before
2 a receiver was appointed.

3 And have you had a chance to review this before?

4 A. Yes, I have seen it before.

5 Q. And if you look at paragraph 5 -- well, it looks
6 like a paragraph 4 and 5. Paragraph 4 says, "The POMS
7 routinely stated I was acting as counsel for not only
8 DenSco but its president Mr. Chittick and that I was not
9 counsel for any investors who were all urged to seek
10 separate counsel."

11 And then paragraph 5 says, "During my
12 involvement with Mr. Chittick and DenSco, I understood
13 that Mr. Chittick considered that I was his counsel as
14 well as counsel for DenSco, even though all billings were
15 tendered to and paid by DenSco."

16 So you are aware that when the receivership
17 petition started after Mr. Chittick's death, that the
18 estate made the claim that they had an attorney/client
19 privilege with Mr. -- with Clark Hill?

20 A. That Mr. Chittick had an attorney/client
21 privilege with the firm, yes, I am aware of that.

22 Q. All right. And then Mr. Beauchamp wrote this
23 affidavit that was filed, and you would agree that if you
24 are working with a client and you know the client thinks
25 you are acting as his attorney, that can create an

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1 attorney/client relationship?

2 MR. DeWULF: Object to form.

3 THE WITNESS: At a high level, I would agree
4 with your statement. However, I think that the rules
5 would require that we clarify with the representative that
6 our allegiance and duties run to the entity. I hope I'm
7 answering your question.

8 Q. (BY MR. CAMPBELL) I understand the high-level
9 view.

10 To your knowledge, from what you have reviewed,
11 did Mr. Beauchamp ever clarify with Mr. Chittick that he
12 was representing only DenSco?

13 A. I don't know.

14 Q. Okay. He should have, if there was any
15 confusion. Don't you agree?

16 MR. DeWULF: Object to form.

17 THE WITNESS: If there was confusion, then I
18 agree that the Rule 1.13 would require that David have a
19 discussion with Mr. Chittick.

20 Q. (BY MR. CAMPBELL) Okay. So let's -- let me
21 just -- tell me if I am incorrect.

22 When the representation starts at Clark Hill, so
23 we are back in September of 2013, the only client is
24 DenSco?

25 A. I believe that to be true.

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1 Q. And then in May of 2014, Clark Hill terminates
2 its representation of DenSco because Mr. Chittick is not
3 going to follow Clark Hill's advice. True?

4 A. I think that's what we have covered, yes.

5 Q. All right. Now, in the Rule -- you can put that
6 aside.

7 A. Okay.

8 Q. Put all these books away for me.

9 In the 26.1 statement, there is no factual
10 averments as to what Clark Hill did after Mr. Chittick
11 committed suicide?

12 A. Okay.

13 Q. All right. Do you know, was that addressed?
14 Was it kept out as an omission? Was there just nothing to
15 say with respect to what happened after Mr. Chittick
16 committed suicide?

17 A. I -- I'm not sure how to answer the question. I
18 mean, I know that, I mean, there are some passages that
19 talk about the postmortem activities, but are you stating
20 or asking me about what legal work we may have done?

21 Q. Well, there is allegations in the case about
22 Clark Hill's conduct after Mr. Chittick's suicide --

23 A. Okay.

24 Q. -- but I just don't see anything in your 26.1
25 statements that address that, and I was just asking why.

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1 Oversight, omission?

2 MR. DeWULF: Object to form.

3 THE WITNESS: I don't know offhand. I'll try to
4 answer any questions you have about any of that period.

5 Q. (BY MR. CAMPBELL) Yeah.

6 Well, let's turn to Exhibit -- now, this is the
7 book I had for you to start off this morning. The 700
8 series, as you called it.

9 A. Yes.

10 Q. So Exhibit 707.

11 A. All right.

12 Q. Now, this must be a form you are familiar with.

13 A. Yes, I am.

14 Q. So it's -- I take it whenever Clark Hill takes
15 on a new client, the lawyer or someone at the lawyer's
16 behalf fills out one of these new business intake forms?

17 A. At the time, this was the state-of-the-art
18 technology.

19 Q. Okay. If you turn to the third page, you will
20 see there is a cover letter there. And it's a cover
21 letter from Michelle Margolies Tran to Shawna Heuer,
22 regarding the Estate of Denny Chittick.

23 Do you see that?

24 A. August 2, 2016?

25 Q. Yes.

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1 A. Yes, I see it now.

2 Q. So let's go back to the business intake form.

3 So you see this is for a new client, and the client is

4 going to be the Estate of Denny Chittick.

5 Do you see that?

6 A. Yes, I do.

7 Q. It's for -- well, the practice group is personal

8 legal services. The matter type is probate. It says the

9 originator is Michelle Tran. Responsible Timekeeper is

10 David Beauchamp.

11 Do you see that?

12 A. I do.

13 Q. And then if you turn the page, it just has some

14 of the details that drive all of us lawyers crazy, I guess

15 estimated billings, retainers, things like that.

16 A. I see that.

17 Q. If you look over at risk assessment --

18 A. Okay.

19 Q. -- you will see, "Has a check been run for any

20 client, issue or business conflict and all involved

21 partners using the Firm's method's?" and you see that's

22 checked yes?

23 A. I see that.

24 Q. And then there is a question, "Is there any

25 potential for a client, issue or business conflict?"

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1 That's marked no.

2 A. I see that.

3 Q. It says, "By representing this client, does
4 Clark Hill represent any other entity(s) within this
5 client's corporate tree?" That's marked no, right?

6 A. Correct.

7 Q. And then if you turn the page, it looks like
8 it's approved by Mr. Beauchamp, right?

9 A. Yes.

10 Q. He is the Client Responsible Timekeeper?

11 A. Yes.

12 Q. And I take it you have to have a practice leader
13 who signs off on a new client also?

14 A. Yes.

15 Q. All right. So let me -- when Clark Hill
16 terminated its representation of DenSco, as I understand
17 it from your verified statement, it was because
18 Mr. Chittick was continuing to sell securities, issuing
19 promissory notes for loans, without making material
20 disclosures that he was required to make. True?

21 MR. DeWULF: Let me -- would you read that back,
22 please.

23 (The requested portion of the record was read.)

24 MR. DeWULF: Object to form.

25 THE WITNESS: Yeah, I don't know that I could

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1 answer affirmatively in the specific way that you have
2 asked the question. My knowledge is that we terminated
3 the relationship because Mr. Chittick was not following
4 our advice to issue the POM to his investors.

5 Q. (BY MR. CAMPBELL) Okay. So --

6 A. Going -- going then the granular detail that you
7 described, I can't say.

8 Q. I don't see how what you said is any different
9 than what I just said.

10 A. Okay.

11 MR. DeWULF: It is. It's very different.

12 MR. CAMPBELL: I disagree with you, John.

13 MR. DeWULF: You are misstating what he has
14 already talked about, Colin. And I don't think you are
15 doing it intentionally, but it isn't an accurate portrayal
16 of what his testimony is.

17 Q. (BY MR. CAMPBELL) Let me explore this, because
18 I don't understand why we are not communicating, or what I
19 am communicating wrong.

20 Mr. Beauchamp gave standard of care opinions, as
21 I understand it, to Mr. Chittick as set forth in the
22 Rule 26.1. True?

23 MR. DeWULF: Object to form.

24 THE WITNESS: Yeah, standard of care opinions
25 is, you know, I understand what you are saying, that he

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1 gave advice to Mr. Chittick and asked Mr. Chittick to take
2 the advice, and when Mr. Chittick did not --

3 Q. (BY MR. CAMPBELL) Okay. Look, turn to page 10.

4 A. Sure.

5 Q. Let's go back to 700, because I am not licking
6 this off the grass. I am trying to give you the words you
7 give me.

8 A. No. And I'm not trying to -- trying to fight
9 you any more than I have to. So where are you at?

10 Q. Page 10. That's the original disclosure.

11 A. Right.

12 Q. Line 12. You see -- and we went through this
13 this morning. Mr. Beauchamp's advice to Mr. Chittick
14 regarding disclosures he had to make to investors was
15 immediate, clear, practical, consistent with his practice
16 and experience, and consistent with the standard of care.

17 So when I say standard of care advice, this is
18 what I am referring to. He gave advice consistent with
19 the standard of care as set forth in your Rule 26.1
20 statement.

21 A. Okay. Thank you.

22 Q. All right. So we are on agreement on that?

23 A. We are on the same wavelength. Thank you.

24 Q. Okay. And then he has (a), (b), (c). DenSco is
25 not permitted to take new money without full disclosure to

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1 the investor lending the money; DenSco was not permitted
2 to roll over existing investments without full disclosure
3 to the investor rolling over the money; and C, DenSco
4 needed to update its POM to make full disclosure to all of
5 its investors.

6 A. I see that.

7 Q. All right. And Mr. Chittick was acting contrary
8 to all of that in May of 2014.

9 MR. DeWULF: Object to form.

10 THE WITNESS: No, that's not my understanding.
11 I think that he was acting contrary to subsection (c),
12 which really was the cause of the termination, but it
13 was -- it's my understanding that he was in fact complying
14 with (a) and (b).

15 Q. (BY MR. CAMPBELL) Okay. So you are saying that
16 Clark Hill thought in May 2014 that he was not taking any
17 new money without full disclosure?

18 A. That's my understanding, yes.

19 Q. All right. And that he was not taking rollovers
20 without full closure?

21 A. Correct.

22 Q. And your position, consistent with
23 Mr. Beauchamp's testimony, is that Mr. Beauchamp believed
24 he was making oral disclosures to all of his investors?

25 A. Correct.

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1 Q. All right. And also, Mr. Beauchamp said that
2 Mr. Chittick did not want to do disclosures because there
3 was going to be a run on the bank if he made disclosures.

4 MR. DeWULF: Object to form.

5 THE WITNESS: I think you are -- well, I don't
6 know. I mean, if you want to show me his testimony, I can
7 comment on it, but I know that that fear or concern is
8 reflected in a lot of the background documents here, that
9 Mr. Chittick was concerned that if he told his investors
10 as a group, that there would be a panic. I think we have
11 seen that in a lot of documents.

12 Q. (BY MR. CAMPBELL) All right.

13 A. So I would agree with that.

14 Q. Okay. In any event, your verified statement and
15 your statements under oath today, is that Clark Hill
16 terminated DenSco because it would not update its POM and
17 make full disclosure to all its investors?

18 A. That's my understanding, yes, sir.

19 Q. All right. And certainly Clark Hill understood
20 that if he was collecting money through a security, like a
21 promissory note, without making full disclosure, that
22 there could be lawsuits that could arise out of that.
23 True?

24 MR. DeWULF: Object to form.

25 THE WITNESS: Again, I'm not a securities

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1 lawyer, so, you know, I don't want to give you a
2 technical, legal opinion, but I can see how -- I could see
3 how that could arise, sure.

4 Q. (BY MR. CAMPBELL) You have done securities
5 lawsuits, sir. True?

6 A. I have been involved in many, in them, yes.

7 Q. A garden-variety securities lawsuit that
8 everyone has seen is an investor suing because he did not
9 receive material disclosures from the issuer. True?

10 MR. DeWULF: Object to form.

11 THE WITNESS: I agree that that can be a species
12 of securities fraud, sure.

13 Q. (BY MR. CAMPBELL) All right. And we have
14 already discussed about the fact that representing DenSco
15 and representing Mr. Chittick is two different things --

16 MR. DeWULF: Object to form.

17 Q. (BY MR. CAMPBELL) -- right?

18 A. I would need more context --

19 Q. All right.

20 A. -- to answer your question.

21 Q. On August 2nd -- well, strike that.

22 Before Mr. Chittick's death, was Clark Hill
23 representing Mr. Chittick?

24 A. Only in his represent -- representative
25 capacity. Easy for me to say.

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1 Q. Before Mr. Chittick's death, was Clark Hill
2 representing DenSco?

3 A. Yes.

4 Q. Would DenSco, assuming -- assume that
5 Mr. Chittick continued to raise monies through promissory
6 notes without doing full disclosures.

7 Are you with me?

8 A. I am assuming that for purposes of your
9 question, sure.

10 Q. But that's the reason Clark Hill terminated,
11 right?

12 MR. DeWULF: Hold on. So is the question about
13 why they terminated the relationship? Is that what the
14 question is? Because you had a bunch of statements before
15 that.

16 MR. CAMPBELL: They terminated the relationship
17 because he would not make full disclosures as they
18 recommended.

19 MR. DeWULF: No, that's not -- the testimony has
20 been specific that part (c) talks about the POM as it
21 relates, and counsel has or the witness has already talked
22 about that.

23 So I think -- but let me caution you not to
24 express an opinion. You are not an expert here, and so a
25 hypothetical to me is calling for an expert opinion about

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1 facts either -- you are not a fact witness, number one,
2 and number two, you are not here as an expert, but you can
3 go ahead and answer if you can.

4 I have kind of -- I think he is just asking
5 about termination.

6 THE WITNESS: Yeah, I think that the reason for
7 the termination was the failure to update the POM and
8 disseminate that to the investors, but I don't know if
9 your question was that precise.

10 Q. (BY MR. CAMPBELL) Here is my question.

11 A. Okay.

12 Q. Because remember you said you are going to -- if
13 I have any questions about what happened after
14 Mr. Chittick committed suicide, you will do your best to
15 answer them for me, right?

16 A. I stick to that, yes, sir.

17 Q. If Clark Hill was representing DenSco and
18 Mr. Chittick was raising money without full disclosure,
19 how can Clark Hill, on August 2nd, say that it can
20 represent the Estate of Mr. Chittick and DenSco at the
21 same time?

22 MR. DeWULF: Object to form.

23 THE WITNESS: well, I don't know the specific
24 scope of the representation, of our representation of
25 DenSco, and I don't think that anybody knew, quite

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1 frankly, because it was a -- we were brought in to a
2 situation with a host of unknowns.

3 I think our probate representation was extremely
4 limited to opening an estate, and I think everybody was
5 just trying to understand what happened and why. So I
6 don't know that there was information that would have
7 indicated that there was any conflict at all.

8 Is that what you are asking or something else?

9 Q. (BY MR. CAMPBELL) Sir, turn to Exhibit 708.

10 A. 708? Okay.

11 Q. What is Exhibit 708?

12 A. Well, it has a 458 sticker. Is that a
13 duplicate?

14 Q. It's a duplicate of another exhibit we are
15 remarking. I wanted to put everything together to make it
16 easier for you.

17 A. I see. I just wanted to make sure we were on
18 the same page.

19 This is another new business intake form. This
20 particular one is for DenSco Investment Corporation with a
21 matter called business wind down.

22 Q. All right. So this is -- were you aware that
23 Mr. Beauchamp continued to represent DenSco after
24 Mr. Chittick's death, and opened a new file for business
25 wind down?

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1 A. Yes.

2 Q. All right. And you will see the attorney
3 assigned to perform this work -- actually, if you look, it
4 says -- it says it's an existing client, right?

5 A. Correct.

6 Q. And that's true.

7 And then Mr. Beauchamp is going to be the
8 timekeeper and the attorney assigned to the work, right?

9 A. That's what it says, yes.

10 Q. There is an estimate for total billings for the
11 matter on the second page?

12 A. Right, I saw that.

13 And just by way of clarification, when it says
14 existing client, I think it means that in the business
15 sense, that we don't need to assign a new number, and not
16 that there has been an ongoing attorney/client
17 relationship. But with that clarification, sorry.

18 Q. Okay. Let's stop for a second.

19 Remember Clark Hill was representing DenSco for
20 three or four months prior to Mr. Chittick's death with
21 respect to the Arizona Financial Department?

22 A. Correct. And I believe that matter was
23 concluded.

24 Q. Why do you think it was concluded?

25 A. That's my memory, is that the issue was handled

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1 and -- and the matter was -- was done. We achieved the
2 client's objectives.

3 Q. Did you review the billing statements?

4 A. I think I have seen them, yeah.

5 Q. Look at risk assessment --

6 A. Okay.

7 Q. -- on 708. Has a check been run for conflicts?

8 Answer, yes.

9 Do you see that?

10 A. I do.

11 Q. Is there any potential for a conflict? Answer
12 no.

13 Did I read that right?

14 A. Yes, sir.

15 Q. Let's turn to the next page.

16 Is this an investigation or litigation matter or
17 a matter that has the potential to lead to litigation?
18 And the answer is no.

19 A. I see that.

20 Q. Will this matter require discovery or other
21 document review? The answer is no, right?

22 A. That's what it says, yes.

23 Q. It's signed by Mr. Beauchamp?

24 A. It is.

25 Q. And who is the practice leader here? Is that

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1 someone in the Phoenix office?

2 A. No. Actually, John Ermanni is a practice, what
3 we called at the time a practice group director, so it's
4 somebody who assists with the management of the practice
5 group.

6 Q. Okay. Turn the page. You see there is a cover
7 letter, and this -- I'm not sure if this is the same as
8 the cover letter on the -- I'm on 707. Let's go -- I'm
9 sorry. I got away from 708.

10 A. Okay.

11 Q. I went to the wrong one. So if you go to Bates
12 stamp 1800.

13 A. 1800?

14 Q. Yeah, on 708. This is the fourth page of the
15 business intake, so David Beauchamp signs it.

16 A. I'm sorry. I don't see the numbers that you are
17 describing.

18 Q. Okay. 708, you see there is a Clark Hill Bates
19 stamp at the bottom?

20 A. Yes.

21 Q. Okay. Turn to 1800.

22 MR. DeWULF: It's 18000, I think.

23 THE WITNESS: Oh, there it is. I got it.

24 Q. (BY MR. CAMPBELL) You see Mr. Beauchamp signs
25 it, right?

1 A. Yes.

2 Q. Turn the page, go to 18002.

3 A. All right.

4 Q. This looks like a conflict check form.

5 A. It is.

6 Q. Do you know who these people are?

7 A. I understand that they are the investors in
8 DenSco.

9 Q. So Mr. Beauchamp ran a conflict check listing
10 all the investors as potential conflicts?

11 MR. DeWULF: Object to form.

12 THE WITNESS: It appears that he did.

13 MR. DeWULF: Don't guess about stuff like that
14 if you don't have direct knowledge.

15 THE WITNESS: Well, I can only -- you know, it
16 would be my belief that that is what the purpose of the
17 document was.

18 Q. (BY MR. CAMPBELL) Right. This form -- I take
19 it you guys are computerized like everyone else and you
20 put together a form of who the IT people are to run names
21 on to see if any conflicts pop out, right?

22 A. True.

23 Q. That's the purpose of this form listing these
24 names, correct?

25 A. It is.

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1 Q. So at the same time he opens a file to represent
2 the estate, Clark Hill opens a file to represent DenSco?

3 A. It appears to be roughly contemporaneous, yeah.

4 Q. Does DenSco have any claims against the estate?

5 MR. DeWULF: Object to form.

6 THE WITNESS: At that point -- go ahead.

7 MR. DeWULF: Object to form. You are talking
8 today? Do you talk about that point in time?

9 Q. (BY MR. CAMPBELL) At that point in time, Clark
10 Hill made a determination that there was no conflict
11 between representing DenSco and representing the Estate of
12 Denny Chittick?

13 A. None that were known at the time, but I would
14 add that having, you know, run through a lot of conflict
15 analyses, that conflicts can be a moving target and you
16 have to keep an eye on it, and certain conflicts can arise
17 that you never anticipated. It's just the nature of our
18 practice.

19 Q. Is it your testimony, Mr. Hood, that Clark Hill
20 could not anticipate that DenSco might have a claim
21 against the estate of Denny Chittick, who Clark Hill
22 stopped representing because he would not follow Clark
23 Hill's legal advice to make full disclosure?

24 MR. DeWULF: Object to form.

25 THE WITNESS: No, that's not what I'm saying. I

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1 am saying that the rules deal with actual conflicts, not
2 potential conflict. And although we run names to, you
3 know, try to anticipate based on the information known, we
4 have to continue to refresh that information as we go.

5 And -- but at the time, I don't know that there
6 was any information that suggested that the -- that DenSco
7 had a -- had a claim against Mr. Chittick's estate,
8 because I think we had been, you know, pretty much removed
9 from the business in any meaningful way, other than the
10 licensing issue, which I understand was kind of
11 superficial, for years.

12 Q. (BY MR. CAMPBELL) Okay. Just so I'm clear, no
13 one at Clark Hill on August 2nd, 2016, thought there was a
14 conflict between representing DenSco and representing the
15 estate of Denny Chittick?

16 MR. DeWULF: Object to form.

17 THE WITNESS: The people involved certainly did
18 not, according to the way that they filled out the form.
19 I wasn't privy to the discussions or nor do I have
20 personal knowledge of exactly what was known at the time,
21 but I -- I believe, based on what I have -- what I know
22 after the fact, that at the time, nobody could tell.

23 Q. (BY MR. CAMPBELL) You would agree, and this is
24 in your 26.1 statement, that DenSco owed fiduciary duties
25 to its investors?

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1 A. I think I can agree with that.

2 Q. Did Clark Hill consider whether it had a
3 conflict representing DenSco adverse to its investors?

4 MR. DeWULF: Object to form.

5 THE WITNESS: I think that that was considered a
6 possibility as reflected by the conflict check, that
7 people who are investors, whether debt or equity, I mean,
8 those are the people who naturally would have a claim
9 against a defunct organization.

10 Q. (BY MR. CAMPBELL) Do you know if Mr. -- you
11 realize Mr. Beauchamp communicated with investors?

12 A. Yes. After Mr. Chittick's death, yeah, I was
13 aware of that, that he fielded -- he did a report. He may
14 have actually had some verbal communications.

15 Q. Actually, he wrote two long emails to the
16 investors.

17 Have you seen those?

18 A. I think so. It's been some time, but I think
19 so.

20 Q. Do you know if Mr. Beauchamp, in his
21 communication with investors, ever advised the investors
22 that he may be adverse to them?

23 A. That Mr. Beauchamp may be adverse to them?

24 Q. Clark Hill, in its representation of DenSco, may
25 be adverse to the investors.

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1 A. I don't remember those precise words, but,
2 again, I think in the spirit of the debt holders and
3 equity holders having claims against a defunct business,
4 it would be natural to run a conflict with them as
5 potentially adverse.

6 Q. You are aware that the receiver filed a claim
7 against the Estate of Dennis Chittick?

8 A. Yes, I did see that.

9 Q. And that case settled?

10 A. Okay. I'll take your word for it.

11 Q. All right. And just so I'm clear, your position
12 is it was unforeseeable to Clark Hill on August 2nd, when
13 it opened up a new matter for the estate, it was
14 unforeseeable that a claim could be filed against the
15 estate?

16 A. No, I'm not saying that. I mean, a lot of
17 things could have been foreseeable at that point in time,
18 but nobody knew enough information to say, yeah, we have a
19 conflict or we don't. I don't think that anybody
20 perceived that there was a conflict. I think everybody
21 was just trying to figure out which way was up.

22 Q. Who was involved in deciding which way was up in
23 this conflict check? Was Mr. Beauchamp the only lawyer
24 looking at this for conflicts?

25 A. I don't know. He may have --

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1 Q. Who would have?

2 A. I don't remember being consulted with respect to
3 that issue. He may have consulted with Mark or somebody
4 else in the general counsel office, because we don't -- we
5 don't compartmentalize ourselves. But I was not
6 consulted. I can say that.

7 Q. Let's go to Exhibit 414.

8 A. Sure.

9 Q. Now, we talked about the Iggy letter. Are you
10 aware of the investor letter?

11 A. I -- I believe I did see this, yes. This was
12 among the letters that we talked about earlier that
13 Mr. Chittick left after his passing.

14 Q. Okay. And you are aware that Mr. Beauchamp got
15 both the investor letter and the Iggy letter shortly after
16 Mr. Chittick's death?

17 A. I really don't know that specifically, but it
18 wouldn't surprise me.

19 Q. Remember this morning when we were looking at
20 the Iggy letter, Mr. Chittick makes statements indicating
21 that Mr. Beauchamp was involved in everything he did.

22 MR. DeWULF: Could I get that question back,
23 please.

24 (The requested portion of the record was read.)

25 MR. DeWULF: Let me object to form.

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1 THE WITNESS: I remember the excerpts that we
2 reviewed. I think maybe you are painting with too broad a
3 brush, but I agree we looked at them and it says what it
4 says.

5 Q. (BY MR. CAMPBELL) All right. Well, one of the
6 things the Iggy letter said, this is 415 --

7 A. Okay.

8 Q. Quote, this is on 415, Bates stamp 9484 at the
9 bottom of the page, "I talked Dave my attorney in to
10 allowing me to continue without notifying my investors.
11 Shame on him. He shouldn't have allowed me. He even told
12 me once I was doing the right thing."

13 Did I read that right?

14 A. Yes. I don't see it right now, but it sounds
15 like what we looked at before.

16 Q. All right. Let's go back to 414.

17 A. Okay.

18 Q. Actually, let's go to Bates stamp 9472 on the
19 investor letter.

20 A. All right.

21 Q. If you go to the top of the page, you are going
22 to see there are some things that seem to be in blocks
23 like someone with a pen sort of blocked them off.

24 A. I see that, yes.

25 Q. And if you go down, you see where it says, "I

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1 talked to Dave"?

2 A. I do see that, yeah.

3 Q. It says, "I talked to Dave about this January
4 and he was in agreement with it as long as I received
5 copies of checks and receipts showing that I was the one
6 paying the trustee."

7 Do you see that?

8 A. I do.

9 Q. And you understand one of the issues in the case
10 is whether Dave had told him not to give the borrower the
11 money as opposed to paying it to the trustee?

12 MR. DeWULF: Object to form.

13 THE WITNESS: Yeah, I know that the means and
14 methods and the advice we gave to Mr. Chittick in that
15 regard were, you know, they are part of the case. I don't
16 know that it's an official issue, but I know that it's
17 part of the case.

18 Q. (BY MR. CAMPBELL) Okay. If you go back to the
19 investor letter, Bates stamped 9471, down at the bottom of
20 the page, six lines up, it says, "I truly believe we had a
21 plan that would allow me to continue to operate, my
22 investor would receive their interest and redemptions as a
23 normal course of business, and the rest of my portfolio
24 was performing. Dave blessed this course of action."

25 Do you see that?

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1 A. I do.

2 Q. All right. Taking into account that Dave had
3 the investor letter and the Iggy letter containing
4 statements from Mr. Chittick about what Mr. Beauchamp had
5 done, did Clark Hill have a conflict of interest
6 representing DenSco?

7 MR. DeWULF: Object to form.

8 THE WITNESS: I think I would need more facts
9 than perhaps what you have given me, in terms of all the
10 other information that we had and the precise sequence of
11 events.

12 I think that it could raise some questions.
13 Again, going back to what I said earlier, that conflicts
14 are a moving target and we have to constantly monitor
15 those because they can arise, but I think that in the
16 context of what we were actually doing, which was to try
17 to get information and put it all together so that this
18 thing -- this thing, DenSco could wind up its affairs, and
19 I think that's what we called the matter, I don't know if
20 I could answer your question without having more
21 information.

22 Q. (BY MR. CAMPBELL) You are tapping the brakes on
23 the bus.

24 A. well, I always do.

25 Q. Sir --

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1 A. Don't you?

2 Q. Sir, are you telling me that you don't think
3 Mr. Beauchamp could have reasonably anticipated that
4 DenSCO could sue both the Estate of Mr. Chittick and Clark
5 Hill on August 2nd, after Mr. Chittick committed suicide?

6 MR. DeWULF: Object to form.

7 THE WITNESS: Again, I'd need more information.
8 So I can't -- I can't say yes or no.

9 Q. (BY MR. CAMPBELL) You need more information?

10 A. Yes.

11 Q. You have gathered a lot of information on this
12 case already, enough to sign a verification on a
13 Rule 26.1. True?

14 A. That's true.

15 Q. You need more information than what you already
16 have?

17 MR. DeWULF: Counsel, you are harassing the
18 witness at this point. He has already answered the
19 question.

20 MR. CAMPBELL: No, he hasn't.

21 THE WITNESS: well, I would need to sit down --

22 MR. DeWULF: Yes, he has.

23 THE WITNESS: -- and analyze that issue
24 specifically, and I have not focused on it.

25 Q. (BY MR. CAMPBELL) So perhaps when I get a

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1 supplemental Rule 26.1 statement on these facts that are
2 at issue in the case, those will be addressed by Clark
3 Hill?

4 MR. DeWULF: I'm not going to -- I'll instruct
5 you not to answer that question, because that's going to
6 be the subject of attorney/client communications and is
7 going to involve a whole broad array of facts and
8 communications.

9 MR. CAMPBELL: Well, I'm assuming I will get an
10 amended 26.1 on issues in this case after Mr. Chittick's
11 death that I haven't received yet.

12 MR. DeWULF: I don't know what you are assuming.
13 You can assume all you want. What I'm going to tell you
14 is that we are going to fulfill our obligations under
15 Rule 26.1, and also tell you that we have a draft ready,
16 it's probably a few days away from getting it to you, to
17 update on the basis of additional and recently discovered
18 information, including from documents and testimony.

19 MR. CAMPBELL: All right. Well --

20 MR. DeWULF: And that's -- as I see, that's our
21 obligation under the rules in any event, but your
22 assumption about what we may or may not do, I'm not going
23 to -- I'm not going to acquiesce into your view of the
24 world.

25 MR. CAMPBELL: I'm not asking you to acquiesce.

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1 All I'm -- if the next Rule 26.1 statement addresses
2 factual matters after Mr. Chittick's death, fine. If it
3 doesn't, though, we do want a 26.1 on factual matters
4 after Mr. Chittick's death. I can send you an email on it
5 if you want, but I think we are entitled to that.

6 Q. (BY MR. CAMPBELL) Let's go to Exhibit 213. So
7 let's put this one aside.

8 A. Okay.

9 MR. DeWULF: 213?

10 MR. CAMPBELL: 213.

11 Q. (BY MR. CAMPBELL) All right. Have you seen
12 Exhibit No. 213 before?

13 A. I may have. I don't have a specific memory of
14 it.

15 Q. Okay. Well, you see it's from Mr. Beauchamp?

16 A. I do see that, yes.

17 Q. And he is writing to all the investors?

18 A. Okay. I don't know who all the investors are,
19 but it looks like a lot of people.

20 Q. Okay. You see how it starts out, "Dear DenSco
21 Investors"?

22 A. I see that, yes.

23 Q. Now, in this letter he is writing to
24 unrepresented people, right?

25 MR. DeWULF: Object to form.

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1 THE WITNESS: I don't know that.

2 Q. (BY MR. CAMPBELL) Okay. well, he is --

3 A. In fact --

4 Q. Mr. Beauchamp is not representing them, is he?

5 A. He is not, but they may be represented, because
6 I think the POM actually suggests that they do, but I have
7 no way of knowing who was represented and who wasn't.

8 Q. All right. Is there any statement in this
9 letter from Mr. Beauchamp that he is not representing
10 them?

11 MR. DeWULF: Object to form.

12 THE WITNESS: I can read the whole thing if you
13 want me to.

14 Q. (BY MR. CAMPBELL) If you want to, go ahead.

15 A. Okay.

16 Okay. I have read it.

17 Q. All right. Do you see anywhere in the letter
18 where he advises them that he is not representing them?

19 A. I did not see that, no.

20 Q. All right. Turn to the second page of the
21 letter, Bates stamped 11837.

22 A. Okay.

23 Q. Third paragraph. This paragraph starts off:
24 This problem with DenSco's Troubled Loans developed over
25 time and it will take some time to understand these

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1 Troubled Loans, how these loans came into existence as
2 well as how to maximize the return on those loans to
3 maximize the return of capital to investors.

4 Do you see that?

5 A. I do.

6 Q. You would certainly agree with me that at this
7 moment in time, August 3rd, 2016, Mr. Beauchamp was fully
8 knowledgeable of the fraud committed by Mr. Menaged's
9 cousin and the problems with the double liens that had
10 occurred back in December of 2013, January of 2014, right?

11 MR. DeWULF: Object to form.

12 THE WITNESS: I would agree with you that he was
13 aware of the Menaged cousin situation and the problems
14 that it caused, certainly.

15 Q. (BY MR. CAMPBELL) And he was certainly aware
16 that Clark Hill had terminated its representation in
17 May 2014 because Mr. Chittick would not follow the advice
18 to issue a new POM with full disclosure?

19 A. Correct.

20 Q. He doesn't say anything about that in his letter
21 to the investors. True?

22 A. I don't see that referenced.

23 Q. He then talks about DenSco going into bankruptcy
24 or having a receiver appointed, and he says, quote: which
25 will incur costs on behalf of the Investors in DenSco that

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1 significantly reduce what will be available to return to
2 the Investors. For example, one of the most recent
3 reports concerning liquidation of companies owing money to
4 investors indicated that the costs associated with a
5 bankruptcy or Receiver can reduce the amount to be paid by
6 (sic) investors by almost half or even a much more
7 significant reduction.

8 Did I read that?

9 A. Yes, I see that passage.

10 Q. All right. On August 2nd, August 3rd, 2016,
11 with all of the information that Clark Hill knew, could
12 Clark Hill reasonably anticipate that a receiver might sue
13 Clark Hill for damages?

14 MR. DeWULF: Object to form.

15 THE WITNESS: I don't know that to be the case.
16 I think the email makes clear that they are trying to
17 understand exactly what occurred. And it had been some
18 time since David was involved in talking to Denny about
19 the nuts and bolts of the business, and so I suppose it
20 was a possibility, but beyond that, I really can't say.

21 Q. (BY MR. CAMPBELL) All right. So you have no
22 opinion -- well, strike that.

23 Do you have an opinion as to whether or not
24 Mr. Beauchamp had a conflict of interest in making these
25 statements about how a receiver might hurt the investors

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1 getting money?

2 MR. DeWULF: Again, I will caution you, because
3 you are not an expert in this case, you haven't been
4 prepared to express opinions in this regard. You are --
5 in this position, you are not a fact witness.

6 If you can answer the question with that in
7 mind, you can go ahead.

8 THE WITNESS: May I have the question read back?

9 MR. CAMPBELL: Sure. Absolutely.

10 (The requested portion of the record was read.)

11 THE WITNESS: Well, my opinion, subject to the
12 objection, for what it's worth, is that I don't believe
13 that Mr. Beauchamp had a conflict. I think he was
14 stating -- I think he was stating the truth, that there is
15 a lot of transaction costs that go along with a
16 receivership, as I know firsthand, having been involved in
17 receiverships myself, and bankruptcy likewise.

18 Q. (BY MR. CAMPBELL) Did Clark Hill have a
19 conflict of interest?

20 MR. DeWULF: Again, with the same caveat and
21 concern in terms of whether you are in a position to
22 answer, go ahead.

23 THE WITNESS: My answer would be the same as to
24 the firm.

25 Q. (BY MR. CAMPBELL) Turn to Exhibit 256.

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1 A. And for the record, I'm not related, to my
2 knowledge, to Craig and Samantha Hood.

3 Q. Okay. You will see, again, this is an email
4 from Mr. Beauchamp, right?

5 A. Yes.

6 Q. This is August 9th, 2016. And I want you to
7 turn to the second paragraph on the first page.

8 A. Okay. Mine has underlining. Does yours as
9 well?

10 Q. Mine, does, too.

11 MR. DeWULF: Mine does, too.

12 MR. CAMPBELL: So they all have it, so it might
13 have been in the original one we got.

14 MR. DeWULF: It saves us time.

15 Q. (BY MR. CAMPBELL) So it says here, "In other
16 cases, investors have been able to work with state
17 agencies to draw upon the resources and skills of the
18 state investigators to review cost and to approve results.
19 I think we need to keep pushing that, but not at the
20 expense that the Securities Division uses DenSco funds to
21 subsidize the Divisions funds for its employees. It is a
22 fine line that we need to walk. We need to be willing but
23 not overly anxious to turn it over to the Securities
24 Division. Several people in government made names and
25 careers with the Mortgages Ltd. matter and we do not want

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1 this to turn into anything like that."

2 So Mortgages Ltd. is a notorious case here in
3 the state of Arizona, but are you familiar with the
4 Mortgages Ltd. case?

5 A. I am aware of it, yes.

6 Q. All right. And you are aware in the
7 Mortgages Ltd. case, the CEO and founder of that company
8 committed suicide?

9 A. I don't know that to be true. I know it did
10 involve a suicide, yeah.

11 Q. It resulted with a receiver being appointed for
12 the company and multiple lawsuits against accounting
13 firms, law firms and other people involved in that
14 business.

15 MR. DeWULF: Are you asking him to accept that
16 as true or asking if he knows?

17 Q. (BY MR. CAMPBELL) Is that -- are you aware of
18 that?

19 A. No, not specifically. I am aware that it was,
20 you know, just a tragic situation, as this one was.

21 Q. When did Clark Hill, through Mr. Beauchamp,
22 write to the investors and tell them about the
23 Mortgages Ltd. matter?

24 MR. DeWULF: Object to form.

25 THE WITNESS: well, I think he references it. I

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1 don't know that he -- you know, I think he was using it as
2 an example of perhaps a process that may have gone, you
3 know --

4 MR. DeWULF: Don't speculate about why David did
5 what he did, Dan, unless you have got some direct
6 knowledge.

7 THE WITNESS: No. I just -- that's a good
8 point. But I would only say that I think he is trying to
9 take a cost benefit approach to carrying out what we saw
10 in the prior exhibit's statement were Denny's wishes to
11 get as much money back to the investors as possible. And
12 so I think he is making an observation here that is in
13 that spirit.

14 Q. (BY MR. CAMPBELL) It's also consistent with him
15 wanting Clark Hill not to be sued. True?

16 MR. DeWULF: Object to form.

17 THE WITNESS: No, I disagree with that. I -- I
18 don't think that, you know, knowing David as I have come
19 to know him, is a kind-hearted guy that wants to be
20 helpful, that he was just trying to help the company and
21 everyone associated with it.

22 MR. DeWULF: I'm not sure that works. It's my
23 old pen. Feel free to use it, but I think it's running
24 out.

25 MR. CAMPBELL: It's still got a little ink in

1 it.

2 Q. (BY MR. CAMPBELL) Turn to Exhibit 256.

3 MR. DeWULF: We are there.

4 THE WITNESS: I thought we were there.

5 Q. (BY MR. CAMPBELL) Oh, we are at 256?

6 MR. DeWULF: Uh-huh.

7 THE WITNESS: Yeah.

8 Q. (BY MR. CAMPBELL) I'm sorry. 258. This is a
9 letter from Mr. Merritt to Mr. Beauchamp, dated the same
10 day, August 9th, 2016.

11 Mr. Merritt is an attorney who is going to
12 represent the Estate of Chittick in the case. Look down
13 at the bottom.

14 A. Okay.

15 Q. And Mr. Merritt talks to David and says: Since
16 you are meeting with Wendy, for the moment it seems that
17 you are still representing DenSco in some capacity. While
18 you have conflict issues, do you expect Clark Hill to have
19 to resign from all representations or do you think Clark
20 Hill can continue to represent the estate since your firm
21 filed the probate, or is it still being sorted through?

22 Have you seen this before?

23 A. I think I did at one point in time, yeah.

24 Q. Fair to say Clark Hill knew, at least as of
25 August 9th, 2016, that it had conflicts?

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1 A. No, I don't agree that we actually concluded
2 that we have conflicts, but I would perhaps agree,
3 although I'm probably going out on a limb, that those
4 involved were aware that there could be issues and we had
5 to keep an eye on it and analyze it.

6 Q. But you think no conflict had come to fruition
7 yet?

8 A. I'm sorry?

9 Q. Well, first of all, let me back up for a second.
10 were you -- Chittick has died. I think you told
11 me that sometime after Chittick's death, this came up to
12 you.

13 A. I was notified. Without going into a privileged
14 communication, yeah, I was notified that something had
15 happened, and I can't remember if it was in August,
16 September.

17 Q. Okay. But to the best of your recollection, you
18 weren't involved in any conflict-of-interest decisions in
19 early August 2016?

20 A. That's true.

21 Q. Okay. Let's put this book aside.

22 A. Okay.

23 Q. And I want to go to Exhibit 709, back in our 700
24 series book.

25 A. Okay.

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1 Q. So this, Exhibit 709, is an email. The top one
2 is from Michelle Tran to David Beauchamp dated
3 August 10th.

4 You will see down below that there is an email
5 from Mr. Swinson to Ms. Tran, attaching a letter, and if
6 you turn the page, you will see the letter.

7 A. All right.

8 Q. Now, Mr. Swinson writes Ms. Tran, and he says in
9 the first paragraph that he is representing Mr. Rob
10 Brinkman, an investor/creditor.

11 From some of the statements Mr. Beauchamp has
12 made in his emails, it sounds as though your firm
13 represented either Mr. Chittick and/or DenSco prior to
14 Mr. Chittick's death. If this is in fact the case, I
15 would appreciate a confirmation from your firm that you
16 have considered the potential of a conflict of interest in
17 your representation of the Chittick estate and your
18 determination that no conflicts exist.

19 Was this letter brought to your attention?

20 A. At any time?

21 Q. Well, what about on August 9th, 2016 first.

22 A. Not to my recollection, no.

23 Q. Was it brought to your attention sometime later?

24 A. I think I saw it in the course of compiling
25 information or accumulating information, but I don't

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1 recall it specifically, to be honest.

2 Q. Clark Hill withdrew from representing the
3 estate.

4 Are you aware of that?

5 A. Yes.

6 Q. Okay. And Clark Hill, actually with the
7 appointment of the receiver, no longer represented DenSco
8 with the appointment of the receiver, correct?

9 A. That sounds right.

10 Q. Turn to Exhibit No. 425.

11 So 425 is a letter from Clark Hill to the
12 receiver dated June 22nd, 2017, and it includes proof of
13 claims for attorney's fees.

14 Have you seen this?

15 A. Yes, I have.

16 Q. So Clark Hill filed a claim with the receiver
17 for attorney's fees it incurred after Mr. Chittick's
18 death?

19 A. That is correct.

20 Q. And also for time incurred before Mr. Chittick's
21 death. There is some time for that also.

22 A. Okay. You are right. It does say June 1 to
23 August 17.

24 Q. All right. And even as of today, are you
25 pursuing that claim?

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1 A. I -- well, because we -- and this was in fact a
2 goof, because we didn't follow the proper procedure with
3 the receivership, I think our claim could not be appealed
4 because the receiver denied the claim on the basis of an
5 alleged conflict of interest. And so to the extent we are
6 asserting it as a set-off, yes, we are asserting the
7 claim.

8 Q. All right. So let's go to your Rule 26.1
9 statement that you verify under oath and turn to page 19.
10 So this would be Exhibit 700.

11 Are you on page 19?

12 A. Oh, I'm sorry. 19.

13 Q. Oh, I'm sorry. Wait a minute. The set-off is
14 on a different page.

15 A. Oh, in the affirmative defense.

16 Q. Page 21. I'm sorry.

17 A. Oh, the set-off section, yes.

18 Q. Right.

19 And you verified this as Clark Hill's legal
20 position in the case. True?

21 A. Yes. And I'm glad you referred me to that,
22 because it does refresh my recollection that after
23 considering what we did for DenSco postmortem, that I
24 believed that we did not have a conflict of interest in
25 doing what we did, and that the claim was appropriate.

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1 Q. All right. So on your legal position of
2 set-off, you, for the firm, verified that Clark Hill filed
3 a proof of claim in the DenSco receivership for unpaid
4 fees incurred by Clark Hill on behalf of DenSco after
5 Mr. Chittick's death, right?

6 A. Yes, sir.

7 Q. The receiver improperly denied the claim on the
8 basis of an alleged conflict of interest?

9 A. That's what it says, yes.

10 Q. All right. To the extent defendants are found
11 to owe plaintiffs anything, that debt must be reduced any
12 sums plaintiff owes Clark Hill, right?

13 A. Correct.

14 Q. So Clark Hill's position, even at the time it
15 filed its Rule 26.1 statement and even as of today, with
16 you under oath, is that there is no conflict of interest
17 after August 2nd with Clark Hill representing the estate,
18 representing DenSco, and making statements about not
19 pursuing a receivership?

20 MR. DeWULF: Object to form.

21 would you read that back, please.

22 (The requested portion of the record was read.)

23 THE WITNESS: Yeah. I mean, I guess I would
24 have to take issue with that last piece of your question
25 about statements of not pursuing a receivership.

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1 I think that David was laying out considerations
2 about what might be entailed in a receivership, including
3 incurring a lot of costs that would erode the funds
4 available to the claimants.

5 But given the scope of the work that we did by
6 way of gathering evidence and trying to make sense of a
7 horrible situation, yeah, I stand by the fact that we did
8 not have a conflict in doing what we did and that this is
9 appropriate.

10 Q. (BY MR. CAMPBELL) And you stand by that fact,
11 even though the estate was sued and settled, and Clark
12 Hill is currently being sued for its conduct in this case?

13 A. I do.

14 MR. DeWULF: Object to form.

15 Q. (BY MR. CAMPBELL) Turn to page 19, which is the
16 next page forward. You state under oath --

17 MR. DeWULF: I'm sorry. Which page?

18 MR. CAMPBELL: Page 19.

19 MR. DeWULF: Oh, page 19.

20 Q. (BY MR. CAMPBELL) So this has to do, at the top
21 of the page, dealing with aiding and abetting breach of
22 fiduciary duties.

23 A. Okay.

24 Q. You say, "It is unclear from the Complaint what
25 actions the Receiver asserts constitute a breach of

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1 Mr. Chittick's fiduciary duties to DenSco."

2 Clark Hill does not understand what the
3 complaint is with respect to the breach of Mr. Chittick's
4 fiduciary duties to DenSco?

5 MR. DeWULF: Object to form.

6 THE WITNESS: Well, I think the statement is
7 that the Complaint perhaps is not clear. I think I have a
8 general grasp of what is being alleged by the -- by the
9 receiver, that Mr. Chittick failed to fulfill his duties
10 to the company.

11 So to that extent, that's clear, but, you know,
12 I can't recall specifically, you know, if we were taking
13 issue with certain of the allegations perhaps being less
14 than -- less than clear to us. That's my understanding.

15 Q. (BY MR. CAMPBELL) All right. Sir, Clark Hill,
16 in its 21 -- this very statement under oath verifies that
17 Mr. -- or DenSco had fiduciary duties to its investors.
18 True?

19 MR. DeWULF: Object to form.

20 THE WITNESS: If we say it in there, we said it.
21 I don't disagree with the proposition, generally.

22 Q. (BY MR. CAMPBELL) Well, you don't say it just
23 once, you say it more than once, that DenSco owed
24 fiduciary duties to its investors in this 26.1 statement.
25 True?

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1 A. I'm sorry. I got confused, because I thought we
2 were talking about Mr. Chittick's duties, but --

3 Q. I mean DenSco's duties.

4 A. Okay. I mean, I would agree at a high level
5 that that sounds appropriate and correct, yeah.

6 Q. All right. When Mr. Chittick told Mr. Beauchamp
7 that he would not make full disclosure to his investors by
8 way of a new Private Offering Memorandum, that was a
9 breach of the fiduciary duties that DenSco owed its
10 investors. True?

11 MR. DeWULF: Object to form.

12 Could I have that question back.

13 (The requested portion of the record was read.)

14 THE WITNESS: Well, you are asking me for a
15 legal conclusion. I would say, if I parsed through it,
16 that the refusal to David by Mr. Chittick would not
17 necessarily in and of itself constitute a breach, but
18 perhaps the failure to actually do what we told him to do
19 would be a breach.

20 Q. (BY MR. CAMPBELL) All right. So if his failure
21 to issue a new Private Offering Memorandum with full
22 disclosure is a breach of fiduciary duties to the
23 investors, why do you say it's unclear from the Complaint
24 what actions the receiver asserts constitute a breach of
25 fiduciary duties?

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1 A. I'm not trying to be hard on this, but I can't
2 recall what we were taking issue with with respect to the
3 Complaint and if for some reason we thought this was
4 unclear.

5 Q. You also state here that defendants, that's
6 Clark Hill, did not have knowledge of Mr. Chittick's
7 purported, quote, primary violation, quote?

8 A. Okay.

9 Q. You state that under oath. What do you mean by
10 that?

11 MR. DeWULF: Object to form.

12 THE WITNESS: Well, to the best of my
13 understanding, we don't know what Mr. Chittick did after
14 we terminated the representation, and it's my
15 understanding that he was going to consult with other
16 counsel and, you know, I don't know if he ever did that,
17 but -- or what he did by way of, you know, sending the POM
18 after we had terminated, so...

19 Q. (BY MR. CAMPBELL) You certainly know what his,
20 quote, primary violation was before your termination.
21 True?

22 MR. DeWULF: Object to form.

23 THE WITNESS: Sitting here today, I can't tell
24 you what the reference is to primary violation. If you
25 want to pull out the Complaint, I will talk it through

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1 with you, but I'm just giving you my understanding.

2 MR. CAMPBELL: Uh-huh. Let's take a break so I
3 can talk with him.

4 VIDEOGRAPHER: The time is 2:03 p.m. We are
5 going off the record, ending media five.

6 (A recess was taken from 2:03 p.m. to 2:15 p.m.)

7 VIDEOGRAPHER: My name is Mary Onuschak with the
8 firm of Legal Video Specialists, Phoenix, Arizona. This
9 begins media six of the videotaped deposition of Ed Hood.
10 The time is 2:15. We are now back on the record.

11 MR. CAMPBELL: The plaintiff has no further
12 questions.

13 MR. DeWULF: Defendant has no questions, and we
14 will read and sign.

15 MR. CAMPBELL: Thank you.

16 VIDEOGRAPHER: The time is 2:15 p.m. This
17 concludes the deposition with media six.

18 (2:15 p.m.)

19

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EDWARD JOSEPH HOOD

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EDWARD JOSEPH HOOD, 2/8/2019

1 BE IT KNOWN that the foregoing proceeding was
2 taken before me; that the witness before testifying was
3 duly sworn by me to testify to the whole truth; that the
4 questions propounded to the witness and the answers of the
5 witness thereto were taken down by me in shorthand and
thereafter reduced to typewriting under my direction; that
the foregoing is a true and correct transcript of all
proceedings had upon the taking of said deposition, all
done to the best of my skill and ability.

6 I CERTIFY that I am in no way related to any of
7 the parties hereto nor am I in any way interested in the
outcome hereof.

8
9 [X] Review and signature was requested.
[] Review and signature was waived.
[] Review and signature was not requested.

10
11 I CERTIFY that I have complied with the ethical
12 obligations in ACJA Sections 7-206(F)(3) and
7-206-(J)(1)(g)(1) and (2).

13
14 Kelly Sue Oglesby
15 Kelly Sue Oglesby
Arizona Certified Reporter No. 50178

2/13/2019

Date

16
17 I CERTIFY that JD Reporting, Inc. has complied
18 with the ethical obligations in ACJA Sections
7-206(J)(1)(g)(1) and (6).

19
20 JD REPORTING, INC.
21 Arizona Registered Reporting Firm R1012

2/13/2019

Date