

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 DAVID GEORGE BEAUCHAMP

VOLUME II
(Pages 234 through 493)

Phoenix, Arizona
July 20, 2018
9:02 a.m.

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

PREPARED FOR:

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By Mr. Campbell

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DESCRIPTION
(None.)

MARKED/REF'ED

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1 VIDEOTAPED DEPOSITION OF DAVID GEORGE BEAUCHAMP,
2 VOLUME II, commenced at 9:02 a.m. on July 20, 2018, at the
3 law 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

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ALSO PRESENT:

Craig Onuschak, Legal Video Specialists

Phoenix, Arizona
July 20, 2018
9:02 a.m.

* * *

VIDEOGRAPHER: This is the videotaped deposition of David G. Beauchamp, Volume II, taken by the plaintiffs in Cause No. CV2017-013832, styled Peter Davis, as Receiver of DenSco Investments corp., 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 July 20th, 2018, at 9:02 a.m. Our location is 2929 North Central Avenue, Phoenix, Arizona.

Kelly Oglesby is the certified shorthand reporter with JD Reporting, 1934 East Camelback Road, Phoenix, Arizona. Craig Onuschak is the 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 plaintiffs, and Ryan Anderson is present as the client representative.

MR. DEWULF: John Dewulf for defendants Clark Hill and David Beauchamp.

VIDEOGRAPHER: Thank you.

1 The witness remains under oath from the previous
2 day.

3

4

CONT. EXAMINATION

5

6 Q. (BY MR. CAMPBELL) David, I'd like to do
7 something different today. I'm going to ask questions, I
8 hope, that can be answered with a yes or no answer. If
9 you can answer yes or no, please do so.

10 If you cannot answer yes or no, just tell me.
11 Say "I can't answer it yes or no." In that event, I will
12 make a decision whether I want you to answer and move on
13 to something else or reframe the question.

14 Is that okay?

15 A. Yes.

16 Q. Okay. So let's pull out Exhibit No. 111, which
17 is going to be in volume 3.

18 Now, Exhibit No. 111 is an email from
19 Mr. Chittick to you dated June 14th, 2013. True?

20 A. Yes.

21 Q. And Mr. Chittick is telling you on June 4th,
22 2013, in his email that he has a borrower to which I have
23 done a ton of business with, millions in loans and
24 hundreds of loans for several years, and he is getting
25 sued along with me.

1 That's what he tells you, correct?

2 A. Yes.

3 Q. And he attaches to his email a complaint. It's
4 civil action -- it's going to be on Bates stamp 59, and
5 it's Civil Action 2013-007663. It's been filed by Cobb &
6 Lake, but you recall getting this email and the complaint
7 that's attached, right?

8 A. Correct.

9 Q. And going back to his cover email, he tells you
10 in his last paragraph, "I'm ok to piggy back with his
11 attorney to fight it. Easy Investments willing to pay the
12 legal fees to fight it. I wanted you to be aware of it,
13 and talk to his attorney."

14 That's what he tells you, correct?

15 A. Correct.

16 Q. Did you ever talk to the attorney that
17 Mr. Chittick wanted you to talk to?

18 A. The attorney is Jeff Goulder and I did talk to
19 him, but not at this time.

20 Q. All right. Mr. Goulder you are going to spend a
21 lot of time talking to later on in 2014?

22 A. Correct.

23 Q. But with respect to this letter, you never
24 talked to Mr. Goulder. True?

25 A. No. Mr. Chittick changed his advice in a phone

1 call message sent right after sending the email.

2 Q. All right. And do you have any documentation of
3 this phone message?

4 A. I have not seen what the Bryan Cave files at all
5 look like, so I don't know what's there.

6 Q. All right. You don't recall whether you did a
7 handwritten note, telephone call with Mr. Chittick about
8 this subject?

9 A. I do not remember that.

10 Q. And I want you to look at, let's go back to the
11 Complaint and look at paragraph 20.

12 Now, did you know in June 2014 that Easy
13 Investments was a company that Mr. Menaged was involved
14 in?

15 A. Based on the email, yes.

16 Q. And do you see in paragraph 20 of the Complaint,
17 this is on Bates stamp 64, it says, "Easy attempted to
18 encumber the property with deeds of trust to Active and
19 DenSco."

20 Do you see that?

21 A. Yes, I do.

22 Q. Were you aware on June 14th, 2013, that Easy, a
23 company that's run by Mr. Menaged, had intended to
24 encumber the property involved in this Complaint with
25 deeds of trust to Active and DenSco?

1 A. In my subsequent conversation with Denny
2 Chittick, he indicated that the other lender didn't
3 release his lien when the property was foreclosed upon,
4 and so that's why they are handling it and I don't need to
5 get involved. And that's my understanding how the case
6 subsequently resolved.

7 Q. This subsequent conversation was the one you
8 were just telling me about that you got a phone call from
9 Mr. Chittick after you got this email, or is it another
10 one?

11 A. No. That was subsequent to that. It wasn't the
12 immediate one. The immediate one was: Wait, I'm going to
13 get more information, and he did.

14 Q. And when did you have this subsequent telephone
15 call?

16 A. I don't remember.

17 Q. Do you recall whether you have a handwritten
18 note saying telephone call with Chittick on some day
19 reflecting that subsequent phone call?

20 A. I don't recall that.

21 Q. It was your normal practice, if you were in your
22 office and you got a phone call, to take those handwritten
23 notes, correct?

24 MR. DEWULF: Object to form.

25 THE WITNESS: A lot of facts and circumstances

1 went into it. If I was in the middle of a meeting, he
2 would call me up. Normally he would call me on my cell
3 phone, and I -- you can't just, you know, flip pages and
4 start taking notes when it's a 30-second call.

5 Q. (BY MR. CAMPBELL) All right. Now, turning back
6 to the Complaint, which is Exhibit 111, you will notice
7 that in paragraph 10, this is on Bates 63, it gives the
8 address of the property.

9 Do you see that?

10 A. Yes, I do.

11 Q. And the address of the property is 7089 west
12 Andrew Lane, Peoria, Arizona. True?

13 A. That's what's listed here, yes.

14 Q. Now, have you ever gone to the records of the
15 County Recorder to look up records on property?

16 A. I normally have someone do that for me.

17 Q. Okay. So at Clark Hill, you have a paralegal
18 who can go look up real estate property records for you,
19 or is there some associate, or who is the person that does
20 it?

21 A. There -- there are different people that have
22 done it over the time period there, people who have, you
23 know, gotten training with regard to the records, and --

24 Q. All right. So if you wanted to, you could have
25 told these people at Clark Hill: Go pull me what's

1 recorded on this piece of property. True?

2 A. But at the time that I received this, I was at
3 Bryan Cave.

4 Q. You are correct.

5 Did you have people at Bryan Cave that could
6 have pulled the records for you?

7 A. Yes.

8 Q. So if you wanted to, you could have told -- let
9 me rephrase it.

10 I understand you told me that you got a call
11 saying to do nothing. You could have asked someone at
12 Bryan Cave to go pull the -- what's the recorded record on
13 7089 West Andrew Lane. True?

14 A. I could have, yes, but asked -- Denny said not
15 to, and I followed his instructions.

16 Q. Now, remember, I asked you to answer yes or no
17 if you could. If you can't answer yes or no, just tell
18 me.

19 Go ahead and finish.

20 A. With his explanation of what the case was, there
21 was no reason to do it, given the other lien was prior to
22 the foreclosure.

23 Q. As you go forward, if I ask you a fair yes-or-no
24 question, I just want you to answer yes or no. If you
25 can't do that, because you think it's unfair, just tell me

1 and I will decide whether to move on or to ask you to give
2 a longer answer.

3 Can you follow that instruction?

4 A. I will try.

5 Q. Okay. Turn to Exhibit No. 103. And you are
6 going to have to go right to the front.

7 So Exhibit -- well, first of all, you have not
8 seen Exhibit No. 103 before. True?

9 A. Correct.

10 Q. Looking at the first page, does it appear to you
11 to be a recording that the Maricopa County Recorder, at
12 that time Helen Purcell, had in her records?

13 A. That's what's stamped here.

14 Q. And you will see the trustor in this case is
15 Easy Investments?

16 A. Correct.

17 Q. And the beneficiary is Active Funding, correct?

18 A. That's what's listed here, yes.

19 Q. And is Active Funding the company that
20 eventually, going into next year 2014, Mr. Bob Miller is
21 going to be representing?

22 A. I don't recall.

23 Q. You notice the address of this property is 7089
24 West Andrew Lane, Peoria.

25 Do you see that?

1 A. Yes.

2 Q. So this document, Exhibit No. 103, tells us that
3 Easy Investments, which is the company Mr. Menaged is
4 running, is the trustor on a deed of trust whose
5 beneficiary is Active Funding, and is the property on
6 Andrew Lane that's listed in the Complaint. True?

7 MR. DeWULF: Could you read that back, please.

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

9 Q. (BY MR. CAMPBELL) I should have said is the
10 property that's identified in the Complaint we previously
11 looked at.

12 A. That is what this document reflects. You said
13 it's a company that Mr. Menaged ran. I didn't know that
14 at that time.

15 Q. Understood. Go to Exhibit No. 104.

16 Exhibit No. 104 is another deed of trust,
17 correct?

18 A. Correct.

19 Q. And it's a deed of trust on the same property we
20 have been talking about, which is 7089 West Andrew Lane,
21 correct?

22 A. Correct.

23 Q. And the trustor in this case is Easy
24 Investments, right?

25 A. Correct.

1 Q. But the beneficiary in this case is DenSco, your
2 client, correct?

3 A. Correct.

4 Q. And this deed of trust, if you look up on the
5 top, appears to have been recorded on April 2nd, 2013?

6 A. That's what it's stamped, yes.

7 Q. And if you go back to 103, the deed of trust in
8 favor of Active Funding, it looks like it was recorded on
9 March 25th, 2015, correct?

10 A. That's what it's stamped, yes.

11 Q. And if you go back to the Complaint, which is
12 Exhibit 111, paragraph 20, where it says Easy attempted to
13 encumber the property with deeds of trust to Active and
14 DenSco, we have just looked at the two deeds of trust
15 that's referred to in paragraph 20, correct?

16 MR. DEWULF: Object to form.

17 THE WITNESS: Since there is no reference
18 number, I can't be sure that those are the deeds of trust.
19 It's a logical response, but I don't know that for sure.

20 Q. (BY MR. CAMPBELL) All right. If you will turn
21 to Exhibit No. 112, you see Exhibit No. 112 is an email
22 from Mr. -- well, it's an email string. And at the very
23 top it's an email from Mr. Menaged to Mr. Chittick, with a
24 copy to you, and it's dated Friday, June 14th, 2013.
25 True?

1 A. Correct.

2 Q. And it says, "David, Please bill me for your
3 services and utilize my attorney for anything you may
4 need."

5 Do you see that?

6 A. Yes, I do.

7 Q. All right. Now, his attorney was Mr. Goulder,
8 right?

9 A. Based on the -- well, based on the below email,
10 yes.

11 Q. And you will see that at least as of June 14th,
12 you knew that Mr. Menaged was the borrower to which
13 Mr. Chittick had done a ton of business with, millions in
14 loans and hundreds of loans for several years, correct?

15 A. No. At that point in time, all I know is that a
16 Mr. Menaged was telling me to bill him for my services,
17 but it was not saying that "I am the borrower." I -- it
18 very well could have been a mortgage broker. I did not
19 know that.

20 Q. David, again, I would like you to just answer
21 yes or no. If you cannot answer yes or no, tell me and I
22 will honor that and decide whether to move on or to
23 reframe my question.

24 Can you follow that instruction?

25 A. I will try to follow it.

1 Q. Let's go to Exhibit 113.

2 Exhibit 113 is an email string, and I'm just
3 looking at the first two Bates stamps, 3633 and 3634. And
4 you will see that you received the email from Mr. Chittick
5 on Friday, June 14th, and you responded to him and said:
6 We will need to disclose this in the private offering
7 memorandum, correct?

8 A. Correct.

9 Q. Fair to say that you had made the decision on
10 June 14th, 2013, that the lawsuit was a material fact that
11 needed to be disclosed in the private offering memorandum?

12 A. Any litigation is supposed to be disclosed in
13 the private offering memorandum that could be material.

14 Q. Again, I'm going to ask you questions that I
15 believe can be answered by a yes or a no. If you can
16 answer it yes or no, please do so. If you cannot, tell me
17 you cannot fairly answer it yes or no.

18 A. Your question implied the basis for that answer,
19 and I am explaining it was a different basis to the
20 answer.

21 Q. Mr. Beauchamp --

22 MR. DEWULF: And just tell him, David, you can't
23 answer it the way it's been phrased, and then he can
24 rephrase it.

25 THE WITNESS: Okay.

1 Q. (BY MR. CAMPBELL) Thank you.

2 Mr. Beauchamp, with respect to a private
3 offering memorandum in the State of Arizona, when you
4 reach the conclusion that there is a material fact that
5 needs to be disclosed, can you continue to borrow money
6 without disclosing that fact?

7 MR. DeWULF: Object to form.

8 THE WITNESS: Depends on facts and
9 circumstances.

10 Q. (BY MR. CAMPBELL) All right. The fact and
11 circumstance in here, Mr. Beauchamp, is that you have made
12 a decision that there is a material fact to investors that
13 needs to be included in the private offering memorandum.

14 When does that fact have to be disclosed to the
15 investors?

16 MR. DeWULF: Object to form.

17 THE WITNESS: In this case, this hadn't reached
18 the level of material fact, because we had a third party
19 indemnifying and I did not know the amount of the loan.

20 Q. (BY MR. CAMPBELL) If it was not a material
21 fact, can you explain to me why you told your client,
22 quote: we will need to disclose this in the POM?

23 A. You disclose the litigation and then indicate
24 that it's not material in the private offering memorandum.
25 The private offering memorandum is at a point in time you

1 are disclosing everything. Whether or not you have to do
2 an additional disclosure, it depends upon whether there is
3 a material change. And based upon the information I had
4 at the time, this wasn't a material change.

5 Q. So you -- just so I understand, you were
6 recommending to your client that he had to put into the
7 private offering memorandum a fact that you deemed
8 immaterial --

9 MR. DeWULF: Object to form.

10 Q. (BY MR. CAMPBELL) -- is that right?

11 MR. DeWULF: Object to form.

12 THE WITNESS: Please restate the question.

13 MR. CAMPBELL: Please reread the question to
14 Mr. Beauchamp.

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

16 THE WITNESS: The total decision hadn't been
17 made at that time. I can't answer the question yes or no.

18 Q. (BY MR. CAMPBELL) I'd like you to turn -- I
19 want to go back to your Rule 26 statement, which is
20 Exhibit No. 4.

21 A. Unfortunately, I didn't bring the extra copy.

22 MR. DeWULF: Just take this. It will be in a
23 binder. The exhibit is in the binder.

24 MR. CAMPBELL: Yeah.

25 Q. (BY MR. CAMPBELL) In your -- now, your

1 Rule 26.1 statement on pages 5, 6, and 7 discuss the FREO
2 lawsuit, correct?

3 A. Yes.

4 Q. And everything you said with respect to the FREO
5 lawsuit, you verified under oath not just once, but four
6 times, correct?

7 MR. DeWULF: Object to form.

8 THE WITNESS: Let me reread pages 5, 6, and 7
9 to -- yeah. Yes, I did verify this under oath.

10 Q. (BY MR. CAMPBELL) All right. I want you to
11 turn to the bottom of page 6. And you will see on line 22
12 you verify under oath that, "Mr. Beauchamp did, however,
13 explain to Mr. Chittick that this lawsuit would need to be
14 disclosed in DenSco's 2013 POM."

15 Do you see that?

16 A. Yes.

17 Q. And then you say, "In addition, Mr. Beauchamp
18 advised Mr. Chittick, as he had done previously, that
19 Mr. Chittick needed to fund DenSco's loans directly to the
20 trustee or escrow company conducting the sale, rather than
21 provide loan funds directly to the borrower, to ensure
22 that DenSco's deed of trust was protected."

23 Do you see that?

24 A. Yes.

25 Q. So at the time you told Mr. Chittick that this

1 lawsuit would need to be disclosed, which was in
2 June 14th of 2013, you also told him not to give the money
3 directly to Menaged, but to give it to the trustee,
4 correct?

5 A. Correct.

6 Q. And the only reason you would have done that is
7 because the Complaint told you that there was a piece of
8 property double funded, one to Active Funding, one to
9 DenSco, and you must have talked with Mr. Chittick how
10 that happened, and he told you that he wired the money to
11 Menaged.

12 Is that what happened, Mr. Beauchamp?

13 MR. DEWULF: Object to form.

14 THE WITNESS: I -- that's a -- I don't recall
15 that, that specific conversation.

16 Q. (BY MR. CAMPBELL) Is there -- why would you
17 even talk to him about how he is funding his loans, if
18 it's an immaterial lawsuit that you haven't looked at at
19 all? Why would you talk to him about how he funds his
20 loans?

21 A. It -- it probably -- if it did, it probably came
22 up in the conversation and he explained how it happened in
23 things like he explains the details in the background,
24 which gets...

25 Q. (BY MR. CAMPBELL) All right. But you have said

1 under oath, in connection with this lawsuit, you told
2 Mr. Chittick: Don't fund the loans directly to DenSco,
3 give them to the trustee, correct?

4 MR. DeWULF: Object to form. I think you
5 misspoke, Colin. Let's read it back.

6 MR. CAMPBELL: I will rephrase it. It's
7 quicker.

8 Q. (BY MR. CAMPBELL) Fair to say that you verified
9 under oath in your 26.1 statement, your first one, you
10 advised Mr. Chittick to fund DenSco's loans directly to
11 the trustee, rather than provide loan funds directly to
12 the borrower, which in this case was Mr. Menaged. True?

13 MR. DeWULF: Object to form.

14 THE WITNESS: My hesitation is I -- could you
15 read back, I just want to make sure the timing as to when
16 I am supposed to look.

17 Q. (BY MR. CAMPBELL) What's your question? The
18 time?

19 MR. DeWULF: He is asking it to be read back, if
20 she can read it back.

21 MR. CAMPBELL: Go ahead.

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

23 THE WITNESS: True.

24 Q. (BY MR. CAMPBELL) Fair to say that if
25 Mr. Chittick in June 2014 was funding money to Mr. Menaged

1 directly as opposed to giving the money to the trustee,
2 that would be a material fact that would have to be
3 disclosed in the POM. True?

4 MR. DeWULF: Object to form.

5 THE WITNESS: I didn't have any of those details
6 at that time.

7 Q. (BY MR. CAMPBELL) Again, I am asking you, and
8 this is now I don't know how many times I have asked you,
9 if you can answer the question yes or no, answer the
10 question yes or no. If you cannot answer it yes or no,
11 tell me.

12 MR. CAMPBELL: Can you reread the question to
13 the witness, and see if you can follow my instruction.

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

15 THE WITNESS: I can't answer that true or false.

16 Q. (BY MR. CAMPBELL) Thank you.

17 A. It's --

18 MR. DeWULF: No. Just -- you have given an
19 answer.

20 THE WITNESS: There is too many total loans.

21 MR. DeWULF: Give him an opportunity. If he
22 wants to ask a question, he can.

23 Q. (BY MR. CAMPBELL) Okay. Let's turn to Exhibit
24 No. -- it's 105A, which is going to be in volume 3.

25 MR. DeWULF: What number again, Colin?

1 MR. CAMPBELL: 105A.

2 Q. (BY MR. CAMPBELL) Are you at 105A?

3 A. Yes.

4 Q. All right. So 105A is an email string between
5 you and Mr. Chittick, and I want you to go to the page
6 Bates stamped 3694. It's going to the second page. And
7 you will see at the very bottom, Mr. Chittick emails you
8 on May 1st, 2013.

9 Do you see that?

10 A. Yes.

11 Q. And if you turn the page, he is emailing you and
12 he is asking you, "It's the year we have to do the update
13 on the memorandum, when do you want to start?"

14 Do you see that?

15 A. Yes.

16 Q. And do you remember getting this email from
17 Mr. Chittick?

18 A. I remember him -- yes.

19 Q. All right. And do you remember this is what
20 started off the time to revise the POM process?

21 A. Correct.

22 Q. I'm just wondering, why -- why do you -- why is
23 it your practice to revise the POM every two years?

24 A. That -- that was a suggestion made by a former
25 SEC official, that given the nature of this industry, two

1 years would be an appropriate time. However, if something
2 material happened before then, you need to tell your
3 client this has to be disclosed.

4 Q. All right. So just to clarify, you understood
5 that if there was a material fact, material to the
6 investors, that took place between these two-year
7 benchmarks, you couldn't wait to disclose it; it had to be
8 disclosed when you learned about it, right?

9 MR. DeWULF: Object to form.

10 Q. (BY MR. CAMPBELL) Again, if you can answer it
11 yes or no, tell me. If you cannot answer it yes or no --

12 A. I cannot answer it yes or no based on the
13 framing of the question.

14 Q. All right. Now, I wanted to look at how you
15 respond to Mr. Chittick. And you -- this is on May 1st,
16 2013. And this is -- this is before the FREO lawsuit, by
17 the way.

18 You email him back and you say, "the first part
19 is to identify anything that might be relevant to a
20 potential investor that has happened to the company or the
21 industry in the last couple of years. If possible, please
22 review your current offering memorandum and highlight (or
23 flag) any business practices or issues that have changed
24 or are not exactly as things are being done currently."
25 And then you go forward about talking about a time to get

1 together.

2 Do you remember emailing him back?

3 A. Yes.

4 Q. And then if you look at the very first page,
5 Mr. Chittick emails you back and says, "I'll re-read it
6 and see what I come up with. Thursday would be better,
7 Tuesday I have boys in the afternoon."

8 So he is trying to set up a meeting with you,
9 correct?

10 A. Correct.

11 Q. And at this time he is cooperative. True?

12 A. Correct.

13 Q. So let's turn to Exhibit No. 107.

14 So Exhibit No. 107 are your notes of a meeting
15 with Mr. Chittick on May 9th, 2013, correct?

16 A. It appears to be the case.

17 Q. And I -- do you recall if this was a meeting in
18 your office?

19 A. I believe so.

20 Q. And are these notes you are taking during the
21 meeting or do you do them after the meeting?

22 A. During the meeting.

23 Q. And you are just trying to put down what facts
24 that you want to record and just have in the file?

25 A. Subjects that were touched on that I need to do

1 something further with.

2 Q. All right. And one of the things you have right
3 at the top is \$50 million, right?

4 A. Correct.

5 Q. And one of the things that's going to happen is
6 you have a concern because of the \$50 million amount of
7 loans, that might trigger some other regulatory
8 requirements, correct?

9 A. That is correct.

10 Q. It looks like he has 114 accounts from 75 to 80
11 individuals, right?

12 A. Correct.

13 Q. He tells you the types of loans he is doing,
14 correct?

15 A. Correct.

16 Q. All right. So Mr. Chittick was cooperative at
17 the meeting?

18 A. As far as I remember, yes.

19 Q. He was a good client, giving you all the
20 information you had asked for?

21 A. As far as I remember, yes, or agreed to give the
22 information. Excuse me.

23 Q. Turn to Exhibit 119.

24 So you are at Bryan Cave at this time, right?

25 A. Correct.

1 Q. And 119 is the Bryan Cave billing records from
2 May of 2013, and if you look at Bates stamp BC_3079, those
3 are your billing records, right?

4 A. What -- 3079?

5 Q. 3079.

6 A. Okay. Yes.

7 Q. You see it's for legal services rendered through
8 May 31, 2013? And it's all your time, correct?

9 A. It's all the time I recorded and billed.

10 Q. Right.

11 You worked over six hours on the private
12 offering memorandum, including your meeting on May 9th.

13 Do you see that?

14 A. That's what I billed, correct.

15 Q. Now, let's go to Exhibit 106.

16 A. On May 9th, in my description, I say travel to
17 and meeting with D. Chittick, so maybe the meeting was not
18 in my office.

19 Q. Okay. Thank you.

20 So let's go Exhibit 106. Okay. So 106 is a
21 Confidential Private Offering Memorandum dated May 2013.

22 Do you see that?

23 A. Where is the May -- I see May blank. I don't --

24 Q. Right.

25 A. Where is the specific date?

1 Q. I'm just looking at the front page. It says
2 Confidential Private Offering Memorandum, May blank 2013.

3 A. Oh, I thought you said May 20th. That's what I
4 was looking for.

5 Q. No.

6 A. Sorry.

7 Q. No.

8 Now, how did this get created?

9 A. We took the previous 2011 and made some -- and
10 copied it over and made some notes and questions, and
11 wanted this as a starting point to have something to start
12 reviewing with him.

13 Q. So would this be something that you would have
14 prepared and had at the meeting with Mr. Chittick on
15 May 9th, if you recall?

16 A. I don't recall if it would have been available
17 for the May 9th meeting.

18 Q. Now, actually, I'm going to give you, this is
19 Exhibit 422. It's in -- it's in volume 8, the
20 miscellaneous, and I'm going to give him a freestanding
21 copy, because I may refer to it several times.

22 Can you identify Exhibit 422?

23 MR. DeWULF: Hold on a second, if I could get to
24 that.

25 Q. (BY MR. CAMPBELL) Can you identify Exhibit 422?

1 A. It's my responses to the plaintiff's first set
2 of non-uniform interrogatories.

3 Q. All right. And if you turn to the last page,
4 there is a verification?

5 A. Correct.

6 Q. And you signed it on June 21, 2018?

7 A. Correct.

8 Q. And you verify under oath and under penalty of
9 perjury that the foregoing answers are true and correct,
10 correct?

11 A. Correct.

12 Q. And if you turn to page 10, line 5 and 6.
13 Are you with me?

14 A. Yes.

15 Q. You state under oath, "that Mr. Beauchamp
16 diligently worked to update the 2013 POM between May and
17 August of 2013, until he was ordered to stop by
18 Mr. Chittick."

19 Do you see that?

20 A. Yes.

21 Q. That's the truth?

22 A. That is the truth.

23 Q. Is there any email that you can point to where
24 Mr. Chittick ordered you to stop work on the POM in August
25 of 2013?

1 A. I don't recall if there is an email.

2 Q. Is there any note you have, either of a meeting
3 with Mr. Chittick or a telephone call with Mr. Chittick,
4 that says you were ordered to stop work on the POM in
5 August of 2013?

6 MR. DeWULF: Object to form.

7 THE WITNESS: We clearly had that conversation.
8 I don't recall if there is anything in writing, but he was
9 not providing the information that we needed to finish it.

10 Q. (BY MR. CAMPBELL) Mr. Beauchamp, again, if I'm
11 asking you a question that can be answered by a yes or a
12 no, please answer yes or no. If you think it's unfair and
13 you can't answer it yes or no, please tell me.

14 Can we have that understanding?

15 A. I think the way you phrased the question was
16 unfair.

17 Q. And you cannot answer it yes or no. True?

18 A. I have to answer I don't know.

19 Q. Let's go to -- I want to go to Exhibit 283. And
20 283 is going to be in Volume 5.

21 Are you with me, are you at 283?

22 MR. CAMPBELL: So 283, again, these underlines
23 are not in the original document, John.

24 MR. DeWULF: I understand.

25 Q. (BY MR. CAMPBELL) Exhibit 283 is an email chain

1 between you and Mr. Clapper on August 15th, 2016, and
2 Mr. Clapper is someone who works for the Arizona
3 Corporation Commission. True?

4 A. I believe so, at that time.

5 Q. Do you remember getting these emails?

6 A. Not this specifically, but there was a whole
7 bunch at that time.

8 Q. All right. And then on August 15th, 2016, you
9 tell Mr. Clapper, "I only have access to some of DenSco's
10 files. Despite my requests, Denny Chittick did not
11 request for All of DenSco's files to be transferred to me.
12 In addition, Denny stopped our efforts to do an updated
13 offering memorandum in 2013, so the initial work on that
14 was never finalized."

15 Did you write that?

16 A. Yes, I did.

17 Q. And I assume you wrote him a true statement.
18 That was a true statement?

19 A. That is correct.

20 Q. And then you also state, "Denny also did not
21 engage us to prepare an amendment to the offering document
22 or to prepare a new disclosure document despite several
23 conversations about that issue."

24 Did you tell him that?

25 A. Yes.

1 Q. Was that a true statement?

2 A. Yes.

3 Q. Isn't it true that in 2014 you worked on an
4 amendment to the offering document?

5 Can you answer yes or no?

6 A. Your question is not -- your question is not
7 technically correct.

8 Q. I want you to answer my question yes or no. If
9 you cannot answer it yes or no, tell me. Okay?

10 You worked on an amendment to the offering
11 document in 2014. True?

12 A. We worked on a new POM.

13 Q. You worked on a new POM for the offering
14 document in 2014. True?

15 A. Correct.

16 Q. You did not tell Mr. Clapper in this email that
17 you had worked on a new offering memorandum in 2014,
18 correct?

19 MR. DeWULF: Object to form.

20 THE WITNESS: No, I did not tell him in 2014.

21 Q. (BY MR. CAMPBELL) I want you to turn to Exhibit
22 No. 305, which is going to be in volume 6.

23 Okay. Exhibit No. 305 is another email chain.
24 It's between you and an individual by the name of
25 Mr. Brinkman, and these conversations take place or these

1 emails take place on, it looks like, from August 11th to
2 August 21st of 2016.

3 Do you recall these emails?

4 A. I recall that there were emails. I don't recall
5 the specifics.

6 Q. All right. And Mr. -- Mr. Brinkman is an
7 investor in DenSco?

8 A. I believe that is what he indicated.

9 Q. And you will see he emails you on August 20th,
10 2016. This is on the first page. And he says:
11 Mr. Beauchamp, I've gone back through my records and
12 noticed that the most current (2015 and 2016) Subscription
13 Agreements all reference the Private Offering Memorandum
14 of July 1, 2009.

15 Do you see that?

16 A. Yes, I do.

17 Q. "However, I received by email DenSco's 2011
18 Private Offering Memorandum in which Denny states he
19 updates the memorandum every two years."

20 And then you will see he has what appears to be
21 a section where it says, "I work with David Beauchamp,
22 (securities attorney) to review all the statutes and laws
23 in Arizona as it pertains to my business and all the
24 states that I have investors in. This is to ensure that
25 I'm filing all the forms and following all the rules that

1 legislators like to change from time to time."

2 Do you remember receiving this from
3 Mr. Brinkman?

4 A. Not specifically.

5 Q. In this case, your side of the case has filed a
6 non-parties at fault form.

7 Do you know what that is?

8 A. I saw it, but I don't know all the details for
9 it.

10 Q. Do you believe that investors like Mr. Brinkman
11 were at fault for the losses they suffered in this case?

12 MR. DeWULF: Object to form. And don't disclose
13 something that would be based on communications with
14 counsel.

15 Q. (BY MR. CAMPBELL) Absolutely. I'm not asking
16 for any attorney/client privilege. Let me rephrase.

17 Is it your opinion that investors like
18 Mr. Brinkman are at their own fault for the losses they
19 have suffered in this case?

20 MR. DeWULF: Object to form.

21 Q. (BY MR. CAMPBELL) If you can answer it yes or
22 no, will you answer it yes or no?

23 A. Possibly facts and circumstances.

24 Q. You cannot answer that question yes or no,
25 Mr. Beauchamp?

1 A. Could you repeat the question?

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

3 THE WITNESS: I cannot answer that yes or no
4 right now. Facts have to be determined.

5 Q. (BY MR. CAMPBELL) All right. Let's go to the
6 top of the email where you respond to Mr. Brinkman.

7 You say: Mr. Brinkman, I believe the
8 Confidential Private Offering Memorandum for 2011 was
9 prepared and sent to Denny. I also believed it was shared
10 with investors. My law firm started preparing the 2013
11 POM, but we were put on hold.

12 Did you state that?

13 A. Yes.

14 Q. And -- all right. I want to go to Exhibit 108.
15 It's going to be in Volume 3.

16 So Exhibit No. 108 is an email string between
17 you and a Mr. Robert Pedersen in June of 2013.

18 Do you see that?

19 A. I see the heading, yes.

20 Q. And Mr. Pedersen is another lawyer in the Clark
21 Hill law firm or, excuse me, this would be the Bryan Cave
22 law firm, right?

23 A. Correct.

24 Q. And you are reaching out to Mr. Pedersen because
25 you want to get some advice with respect to the 2013

1 private offering memorandum, correct?

2 A. Correct.

3 Q. And you will see you actually have a question.
4 And you say, Question: DenSco has previously had
5 aggregate investor loans outstanding at approximately \$16
6 to 18 million from its investors. We are starting the
7 process to update and renew DenSco's private offering
8 memorandum (renew it every two years) and we have been
9 advised that DenSco now has almost \$47 million in
10 aggregate investor loans outstanding.

11 Do you see that?

12 A. Yes.

13 Q. And you have some concern that if the threshold
14 is 50 million or more, that the Trust Indenture Act or the
15 Investment Company Act or the Investment Advisors Act may
16 lead to additional regulatory requirements --

17 MR. DeWULF: Object --

18 Q. (BY MR. CAMPBELL) -- right?

19 MR. DeWULF: Object to form.

20 THE WITNESS: I have concerns regarding
21 additional requirements, not just limited to those
22 statutes.

23 Q. (BY MR. CAMPBELL) Right.

24 And you are not -- you are not an expert in
25 these statutes, and you are reaching out to other lawyers

1 in the firm to help you resolve the question. True?

2 A. True.

3 Q. Now, you realize that DenSco was a one-man shop,
4 right?

5 A. Was what?

6 Q. A one-man shop.

7 A. He had subcontractors to assist him with things.
8 I -- I don't know everyone's -- I was not general counsel.
9 I do not know. He was the employee, he was the officer,
10 but he paid for outside services.

11 Q. What outside services did he pay for?

12 A. At one time he told me he paid somebody to drive
13 by some of the prospective properties. He also told me
14 that, I mean, he had other attorneys involved with the
15 overall thing on certain things in litigation and stuff,
16 of properties he had taken back. He had people providing
17 oversight and construction management for them. He also
18 had, at various time, for lack of a better term, runners
19 to carry around certain things for him and stuff --

20 Q. All right.

21 A. -- to get signatures.

22 Q. Did you ever have a concern that DenSco, which
23 had only one director, one shareholder and one employee,
24 Mr. Chittick, that as their business grew from 16 to
25 \$18 million to nearly \$50 million in investments, that one

1 person couldn't keep up with all of it?

2 MR. DeWULF: Object to form.

3 THE WITNESS: I had extensive conversations with
4 Denny as to procedures.

5 Q. (BY MR. CAMPBELL) Did those extensive
6 conversations with respect to procedures include the fact:
7 Denny, can you do everything that's required for due
8 diligence as a one-man shop as your business has nearly
9 tripled?

10 MR. DeWULF: Object to form.

11 THE WITNESS: I believe so.

12 Q. (BY MR. CAMPBELL) Do you believe that the fact
13 he was a one-man shop trying to do over \$50 million worth
14 of business by himself would be a material risk that
15 investors needed to know?

16 MR. DeWULF: Object to form.

17 THE WITNESS: I can't answer it yes or no. You
18 have to look at the size of the loans. As he was doing
19 certain retail and other things and doing 5 to \$8 million
20 loans, that changes the amount of work he needs to do.

21 Q. (BY MR. CAMPBELL) Again, I want you to answer
22 my questions yes or no, and if you can't answer them yes
23 or no, just tell me and I will decide whether I want you
24 to explain or whether I move on. Okay?

25 Can you follow that instruction?

1 A. Yes.

2 Q. Would you agree with me that the problems
3 Mr. Chittick had with respect to Mr. Menaged, which you
4 learned about later in the year, were due to lax lending
5 practices by Mr. Chittick?

6 MR. DeWULF: Would you read this back, please.

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

8 MR. DeWULF: Object to form.

9 THE WITNESS: I can't answer that yes or no,
10 because I don't know when you are asking at the point of
11 time that it could have.

12 Q. (BY MR. CAMPBELL) We will come back to it.

13 Let me just -- do you recall that the private
14 offering memorandum got sort of put on hold while you were
15 trying to determine, in the summer of 2013, whether other
16 regulatory requirements were going to be imposed on DenSco
17 because of the volume of their borrowing and lending?

18 MR. DeWULF: Object to form.

19 THE WITNESS: The word "hold" in there concerns
20 me, because that's -- it wasn't put on hold till August.
21 Denny stopped providing information in July, using that as
22 a reason.

23 Q. (BY MR. CAMPBELL) Did you stop updating the POM
24 when you were told that the amount of investors had jumped
25 to 47 and a half million dollars?

1 MR. DeWULF: Object to form.

2 THE WITNESS: We continued to ask Denny
3 questions and on other related issues that were needed for
4 the POM.

5 Q. (BY MR. CAMPBELL) Turn to Exhibit No. 125,
6 please.

7 So Exhibit No. 125 is an email between you and
8 Elizabeth Sipes. It's an email string that starts on
9 June 25th. It looks like it's all on June 25th.

10 Do you remember Ms. Sipes there at Bryan Kenny
11 at this time -- or Bryan Cave?

12 My question is, do you remember Ms. Sipes?

13 A. I remember being directed to her and sending her
14 this email. She was new to the firm.

15 Q. And she was trying to get you an answer to the
16 question whether the Investment Company Act would apply
17 more regulatory requirements on Mr. Denny.

18 Do you recall that?

19 A. That is correct.

20 Q. And if you will turn the page, you write her on
21 June 25th, 2013, an email, correct?

22 A. Correct.

23 Q. And you say: Elizabeth, Attached is the
24 previous POM for the client which has only had the date
25 changed. We stopped the updating when we were told that

1 the investments from the investors had jumped to
2 approximately 47 and a half million. Given that
3 significant increase, I have been asking for help to
4 determine what other federal or state laws might be
5 applicable. Bob Pedersen of New York has said the Trust
6 Indenture Act will not be applicable so long as the client
7 is under the Regulation D, Rule 506 exemption. The other
8 big issues have waited for your help to discern if we need
9 to comply with the Investment Advisors Act of 1940 and the
10 Registered Investment Advisors requirements.

11 Did I read that correctly?

12 A. Correct.

13 Q. Did you write in your own words, "We stopped the
14 updating when we were told that the investments from the
15 investors had jumped to approximately \$47.5 million"?

16 A. Yes.

17 Q. Do you recall that when you were doing this,
18 when you were looking for help on these other regulatory
19 acts, do you recall that it turned out that Mr. Chittick
20 was doing a general solicitation on his website?

21 MR. DeWULF: Object to form.

22 THE WITNESS: That was brought to my attention
23 at some point in time.

24 Q. (BY MR. CAMPBELL) Let's turn to Exhibit
25 No. 117. Actually, let me turn back to 114. There is one

1 prior to this.

2 So Exhibit No. 14 (sic) is going to be an
3 email -- emails between you and someone by the name of
4 Randall wang in June of 2013.

5 who is Randall wang?

6 A. He is an expert on public securities and certain
7 type of funds.

8 Q. All right. Now, turn to the page Bates stamped
9 3617. This is an email from Mr. Pedersen to you on
10 June 17th, 2013.

11 And you will see that in the very last sentence
12 of this email, Mr. Pedersen tells you: However, Randy
13 questioned whether, in the DenSco Investment Corp. case,
14 the existence of, and/or statements made on the DenSco
15 Investment Corp., which I had brought to his attention,
16 made the transaction exemption unavailable to DenSco. In
17 any event, you may wish to discuss further with Randy.

18 Do you see that?

19 A. Yes.

20 Q. Does this refresh your recollection that on
21 June 17th, 2013, attorneys at Bryan Cave had a concern
22 that Mr. Chittick was doing a general solicitation that
23 would take him outside of Regulation D?

24 MR. DEWULF: Object to form.

25 THE WITNESS: This was a concern.

1 Q. (BY MR. CAMPBELL) All right. And then turn to
2 the first page where you are writing Mr. Wang back. And
3 you tell Mr. Wang: I was not aware that the client had
4 added his personal description of who or what is an
5 eligible investment or creditor to the DenSco website. I
6 will have him take it down.

7 Do you see that?

8 A. Yes.

9 Q. Now, do you recall that the problem with this is
10 that in order to get back under the Regulation D
11 exemption, DenSco would have to cease its business for
12 several months and then start over again?

13 MR. DEWULF: Object to form.

14 THE WITNESS: The language, that -- that was
15 discussed amongst counsel and the determination was made,
16 given the proposed changes at the time at the SEC and the
17 fact that the language was not so clear asking for
18 investors, that that wasn't required as part of that. We
19 just needed to get it down, and we got it down
20 immediately.

21 Q. (BY MR. CAMPBELL) I'm going to ask you again,
22 if I ask a yes or no question, I want you to answer yes or
23 no.

24 A. I didn't realize that was a yes-or-no question.

25 Q. Turn to Exhibit No. 116. This is one of your

1 handwritten notes of a telephone call with Randy Wang on
2 June 17th, 2013.

3 Do you see that?

4 A. Yes.

5 Q. And you see you write in your handwritten notes:
6 what is the effect of the website?

7 Do you see that?

8 A. Yes.

9 Q. The first thing you write: what is the effect
10 of the website?

11 If you look at the very last thing you write,
12 you say: Best bet -- wait 6 months after it is taken
13 down.

14 Do you see that?

15 A. Yes.

16 Q. On June 17th, 2013, Mr. Wang, an attorney at
17 Bryan Cave, was telling you the best bet was for Chittick
18 to stop his business, wait six months, and then start up
19 again. True?

20 MR. DeWULF: Object to form.

21 THE WITNESS: That's what he said, to be
22 100 percent safe, and that was the conversation I had with
23 Chittick.

24 Q. (BY MR. CAMPBELL) Okay. Turn to the next tab,
25 which is Exhibit No. 117.

1 This is an email from you to Mr. Wang dated
2 June 17th, 2013, correct?

3 A. Correct.

4 Q. And you are telling him a little bit about the
5 business, right?

6 You tell him there are 114 individual investors
7 from approximately 80 families. All of his investors are
8 either family or friends or verified referrals from family
9 or friends.

10 You tell him that. True?

11 A. Correct.

12 Q. You tell him that, "According to his note
13 schedule," this is the last part of the email, "Denny has
14 approximately 60 investor notes that are scheduled to
15 expire in the next 6 months."

16 Do you see that?

17 A. Yes.

18 Q. And you understood that in Mr. Chittick's
19 business there were constantly notes expiring and rolled
20 over and then coming due again, correct?

21 MR. DeWULF: Object to form.

22 THE WITNESS: I was aware that notes would roll
23 over at various times. The number and amount and timing I
24 did not know.

25 Q. (BY MR. CAMPBELL) And you told Mr. Wang that

1 Mr. Chittick would prefer not to be shut down and have to
2 return all of that investment money to his investors until
3 he could commence operations again. True?

4 A. That is what I told Randy.

5 Q. Now, does this refresh your recollection that
6 work on the POM had stopped in June of 2013, because there
7 were these issues about the other regulatory acts and
8 there was these issues about whether you were going to
9 recommend he shut down because of the general solicitation
10 on his website?

11 Is your memory refreshed?

12 MR. DeWULF: Object to form.

13 THE WITNESS: We stopped drafting the POM, but
14 we never stopped trying to collect the data.

15 Q. (BY MR. CAMPBELL) So if I were to look at your
16 emails, would I find emails during this period of time
17 where you are asking Mr. Chittick, send me this
18 information?

19 MR. DeWULF: Object to form.

20 THE WITNESS: I don't recall if there were
21 emails or conversations in terms of that. He also knew
22 what information we were waiting for.

23 Q. (BY MR. CAMPBELL) Okay. Mr. Beauchamp, you are
24 telling me under oath that you were asking him for
25 information in June of 2013, July of 2013, August of 2013,

1 until you were ordered to stop.

2 where would I go to find any documents that
3 would verify that?

4 MR. DeWULF: Object to form.

5 THE WITNESS: Initially the meeting in May and
6 then the follow-up comments in May. He also had a copy of
7 the private offering memorandum and he was supposed to
8 identify all the changes, and "changes" being in terms of
9 what facts and circumstances have changed so that we can
10 disclose it, and it -- that part of it never stopped.

11 MR. DeWULF: It's been a little over an hour,
12 Colin. Whatever works for you in terms of breaking.

13 MR. CAMPBELL: This is fine. You want to take
14 ten minutes?

15 MR. DeWULF: Yeah, let's do.

16 VIDEOGRAPHER: The time is 10:07 a.m. We are
17 now going off record, ending media one.

18 (A recess was taken from 10:07 a.m. to
19 10:22 a.m.)

20 VIDEOGRAPHER: The time is 10:22 a.m. We are
21 now back on record, beginning media two.

22 Q. (BY MR. CAMPBELL) David, I just want to move
23 the story along, so if you turn to Exhibit No. 129.

24 And Exhibit No. 129 is an email exchange between
25 you and Ms. Sipes. And you will see that on Monday,

1 July 1st, 2013, she emails you and tells you that with
2 respect to DenSco, no one needs to register as an
3 investment advisor. True?

4 A. Correct.

5 Q. And she says it's not necessary to count
6 accredited investors. DenSco is offering the notes under
7 506, which permits an unlimited number of accredited
8 investors. True?

9 A. True.

10 Q. So that whole issue with respect to others, that
11 regulatory act gets resolved on July 1, 2013, correct?

12 MR. DeWULF: Object to form.

13 THE WITNESS: With respect to that specific
14 issue.

15 Q. (BY MR. CAMPBELL) Yes. And then if you look at
16 Exhibit 130. Wait a minute it. I may have the wrong
17 number here. 130 is the wrong number.

18 But do you recall also the SEC's general
19 solicitation ban was lifted, which resolved the issue of
20 his website?

21 Do you remember that?

22 MR. DeWULF: Object to form.

23 THE WITNESS: That is correct. Sorry.

24 MR. DeWULF: That's all right.

25 Q. (BY MR. CAMPBELL) All right. So let's turn to

1 Exhibit No. 130. And what is Exhibit No. 130? what is
2 it?

3 A. 1 -- 130 is the version of the POM with -- for
4 July, updated with my notes and comments.

5 Q. All right. So fair to say that sometime in
6 July of 2013, you took the Confidential Private Offering
7 Memorandum, instead of May 2013, you hand write in
8 July 2013, right?

9 A. Correct.

10 Q. And on top, is this your handwriting on the top?

11 A. Yes.

12 Q. And it says "revised to new version for," what's
13 that? what's it say after "for"?

14 A. Black line purposes.

15 Q. Okay.

16 A. The abbreviation for that.

17 Q. And then if I look through it, it appears that
18 you have -- is the handwritten notes on here from you?

19 A. So far all the notes I have seen are from me.

20 Q. All right. You want to just look through it and
21 tell me, they are all from you?

22 MR. DEWULF: Again, with the highlighting being
23 your work, not his?

24 MR. CAMPBELL: If there is highlighting on it,
25 that's not --

1 MR. DeWULF: There is in my copy. I don't know
2 if there is in yours.

3 THE WITNESS: Yeah, there is.

4 MR. CAMPBELL: That's funny. It's not on mine.

5 Q. (BY MR. CAMPBELL) But disregard the
6 highlighting.

7 Are the notes all yours?

8 A. As far as I can tell.

9 Q. All right. So let's go to Exhibit 132.

10 And 132 is the Bryan Cave billing records for
11 June of 2013, correct?

12 A. It appears to be, yes. I'm checking dates on
13 it. I'm sorry.

14 Yes.

15 Q. All right. And you will see, starting on Bates
16 No. 3082 to 3085, it has all -- all your entries with
17 respect to the case, correct, along with other --

18 MR. DeWULF: Object to form.

19 Q. (BY MR. CAMPBELL) -- Bryan Cave attorneys?

20 MR. DeWULF: Object to form.

21 THE WITNESS: It's the entries that are
22 recorded, yes.

23 Q. (BY MR. CAMPBELL) All right. And then if I'm
24 looking at this, if you look at your June 14th, 2013,
25 issue --

1 A. June when? I'm sorry.

2 Q. June 14th, 2013, on your billing records.

3 A. Yes.

4 Q. You will see this is an email to Mr. Chittick
5 regarding need to disclose pending litigation and private
6 offering.

7 You see that?

8 A. Yes.

9 Q. And that's the FREO lawsuit, right?

10 MR. DeWULF: Object to or form.

11 THE WITNESS: Given the date, I believe so.

12 Q. (BY MR. CAMPBELL) And then if you look over on
13 June 25th, 2013, you have some work on revisions to the
14 private offering memorandum.

15 Do you see that?

16 A. Yes.

17 Q. And as far as I can tell, those two entries are
18 the only entries you have regarding the private offering
19 memorandum in June. There is a lot of work on the --
20 well, actually, take that back.

21 On June 26 you also refer to the private
22 offering memorandum. Do you see that, June 26, 2013?

23 A. Yes.

24 Q. And there is a lot of work with respect to all
25 these different regulatory acts by you and other Bryan

1 Cave attorneys, right?

2 A. Correct.

3 Q. Let's turn to Exhibit 133. Exhibit 133 are the
4 Bryan Cave time records for July 2013.

5 Do you see that?

6 A. Yes.

7 Q. And it looks like, starting on -- you will see
8 on July 10th is the last time you communicate with
9 Mr. Wang and Ms. Sipes?

10 MR. CAMPBELL: Object to form.

11 Q. (BY MR. CAMPBELL) July 10, 2013.

12 A. That's the last time that it's recorded here,
13 yes.

14 Q. And then from July 12th, 2013, until July 31,
15 you have a number of time entries indicating that you are
16 working on the private offering memorandum. Fair?

17 A. That is the description.

18 Q. Now, the only written work we have on the
19 private offering memorandum is that July 2013 POM we
20 previously did.

21 Do you recall if you did any other written work
22 with respect to the POM?

23 MR. DeWULF: Object to form.

24 THE WITNESS: Yes, I did. There were a number
25 of situations where I reviewed the file and the previous

1 file with respect to status of disclosure items,
2 background information.

3 I also was trying to relate the facts and
4 circumstances to the other litigation matters. And also
5 at this time, we did -- I did get on his website and
6 confirm that the changes had been made and he had in fact
7 taken it down.

8 Q. (BY MR. CAMPBELL) Are there other drafts, I
9 mean, are there a series of drafts in July on the private
10 offering memorandum?

11 A. That's not -- typically what I do is work on the
12 background to a particular section before it gets
13 incorporated to the draft to the client.

14 Q. All right. As I look at your time entries from
15 July 12th, 2013, to July 31, 2013, I don't see anything
16 reflecting a telephone call with Mr. Chittick.

17 MR. DeWULF: Object to form.

18 Q. (BY MR. CAMPBELL) Do you see any billing
19 entries reflecting a telephone call to Mr. Chittick
20 between July 12th and July 31, 2013?

21 A. I do not see an entry.

22 Q. When did you leave Bryan Cave?

23 A. It was the last business day in August.

24 Q. All right. And then so you started work at
25 Clark Hill the next day in September?

1 A. I believe Monday was Labor Day, and I traveled
2 to Detroit that day for orientation and computer training.

3 Q. All right. If you turn to Exhibit No. 139, 139
4 is the Bryan Cave invoice for your time in August at Bryan
5 Cave, correct?

6 A. Yes.

7 Q. Now, I don't know. Would you have reviewed
8 this? It's dated in September.

9 A. No.

10 Q. All right. You will see the only time entry you
11 have in August is for .4 tenths of an hour, reviewing and
12 responding to emails concerning Reg D.

13 Do you see that?

14 A. Yes.

15 Q. You don't show any telephone call with
16 Mr. Chittick with respect to that August billing
17 statement, right?

18 A. No, not on -- on that bill, no. That is -- I
19 thought I saw notes of another conversation in there,
20 though.

21 Q. When did Mr. Chittick tell you to stop work?

22 A. It was early in August. I don't remember the
23 specifics. It was clearly before I announced any
24 decision.

25 Q. Well, it must have been after August 6, 2013,

1 because you have a billing record with respect to a
2 private offering memorandum on that date.

3 A. Yeah, but early, as in first half of the month.
4 I don't know specifics.

5 Q. And, again, this wasn't by letter or email. You
6 think this was a telephone conversation?

7 A. That's how Denny preferred it.

8 Q. Let's look at Exhibit No. 134.

9 Exhibit No. 134 are handwritten notes, correct?

10 A. Right.

11 Q. And they are both on August 26, 2013. Am I
12 right?

13 A. That is correct.

14 Q. So I'm going to read from the top down.

15 The first one you just left -- it says you left
16 a message. You were recording a telephone message you
17 left him, right?

18 A. Correct.

19 Q. And you say, "need to work on the latest version
20 of POM that Denny has."

21 And could you read the rest of it for me?

22 A. With the prior experience charts, because he was
23 supposed to have given that to me earlier in the month,
24 and he said it was done, so I wanted to make sure it got
25 in the file before I left.

1 Q. And then what do you read after that?

2 A. "Need to discuss timing & update." Later that
3 day he called me back and --

4 Q. Hold on. Let's stay on that one.

5 I didn't see anything in that August 26 message
6 you left him that he had instructed you to stop work.

7 MR. DeWULF: Object to form.

8 Q. (BY MR. CAMPBELL) You are -- you are leaving
9 him a message to get information from him, right?

10 A. To get it to the file, because he said it was
11 done, and he never sent it to me after saying it was done.

12 Q. All right. And then you had a telephone call
13 with him later that day?

14 A. Yeah. And he --

15 Q. And you write, in your handwriting: Explained
16 delay with POM.

17 Did you write that?

18 A. Yes, I did. And that was -- that was a
19 reference, again, to his -- I believe it was a reference,
20 again, to his decision to put it on hold for the time
21 being, because he wasn't able to focus on it and get us
22 the information.

23 Q. You weren't explaining your delay on the POM,
24 Mr. Beauchamp?

25 A. No.

1 Q. And you write: Need to get copy of Danny's --
2 Denny's latest POM and make changes to it.

3 Do you see that?

4 A. Yeah. I had some information from other sources
5 that I could put into it so he had an update.

6 Q. And then you say, you write in your handwriting:
7 BC will be sending a letter to Denny & letting Denny
8 decide if he wants file kept at BC or move to CH.

9 Do you see that?

10 A. Yes.

11 Q. But unequivocally, it's your testimony under
12 oath that by August 26, 2013, he told you to stop working
13 on the POM?

14 A. That is correct.

15 Q. Let's go to Exhibit No. 135.

16 And you will see that Exhibit No. 135 is a
17 letter that goes out, and it's basically telling
18 Mr. Chittick that you are moving, and then Mr. Chittick
19 decides whether or not to have any files forwarded to you.

20 A. That is correct.

21 Q. Okay. And this is really, this is a form letter
22 really, in the sense of when someone leaves the firm, the
23 client has the choice to stay with the old firm or go
24 follow the lawyer, right?

25 A. Correct.

1 Q. And the purpose of this letter is to give him
2 that choice, right?

3 A. Correct.

4 Q. And this would have been your last day at Bryan
5 Cave, right?

6 A. I believe so.

7 Q. Exhibit No. 136.

8 Exhibit No. 136 is something entitled a due
9 diligence file regarding the 2013 private offering
10 memorandum.

11 Do you see that?

12 A. Yes.

13 Q. Is this your due diligence file when you were at
14 Bryan Cave?

15 A. It was a portion of it. I don't know what
16 happened to the other information that, including the
17 information from Ms. Sipes that was supposed to be in
18 there.

19 Q. All right. Well, this was the file that was
20 produced to us.

21 You are saying this is an incomplete due
22 diligence file?

23 MR. DeWULF: Object to form.

24 THE WITNESS: I did not receive this file from
25 Bryan Cave until much later. I don't know what happened

1 or whatever is in it. I mean, I knew what I had directed
2 to be put into the file.

3 Q. (BY MR. CAMPBELL) Okay.

4 A. But I don't know what happened.

5 Q. So you got Exhibit No. 136 sometime later --

6 A. Correct.

7 Q. -- from Bryan Cave?

8 A. Correct.

9 Q. And is this all you got from Bryan Cave that we
10 have marked as Exhibit 136?

11 A. That is correct.

12 MR. DeWULF: Object to form.

13 Q. (BY MR. CAMPBELL) And your testimony is there
14 was more in it and you just don't know what happened to
15 it, correct?

16 A. It was --

17 MR. DeWULF: Object to form.

18 Go ahead.

19 THE WITNESS: There was more in it when I left
20 Bryan Cave, when it was at Bryan Cave.

21 Q. (BY MR. CAMPBELL) And there was less in it when
22 you got the file from Bryan Cave sometime later. True?

23 A. There was less in it than I remembered when I
24 came to Bryan Cave.

25 Q. Let's go to Exhibit 139A. Actually, let's skip

1 one -- before we get to 139A, let me cover some other
2 matters.

3 Let's go to Exhibit No. 138.

4 A. I'm sorry?

5 Q. 1-3-8.

6 A. Thank you.

7 Q. Exhibit No. 138 --

8 MR. DeWULF: You are saying 138 or 130 letter A.

9 MR. CAMPBELL: 1-3-8.

10 MR. DeWULF: Thank you.

11 MR. CAMPBELL: 8 as in 8 ball.

12 Q. (BY MR. CAMPBELL) Exhibit No. 138 is an
13 engagement letter. Apparently you sent Mr. Chittick an
14 engagement letter and he sent you back a signature on the
15 last page.

16 Do you see that?

17 A. Yes, but I don't see the beginning of the
18 engagement letter where I identified the matter.

19 Q. It's not attached to this?

20 A. No, it's not.

21 Q. The previous exhibit?

22 Go to 137. Geoff is ahead of me.

23 So you see Exhibit No. 137 is your engagement
24 letter?

25 A. Yes, I see it.

1 Q. And you are going to represent DenSco Investment
2 Corporation with regard to legal matters transferred to
3 Clark Hill.

4 Do you see that?

5 A. Correct.

6 Q. And then now turn back to 138, and there you
7 have the signature page from Mr. Chittick, correct?

8 A. Correct.

9 Q. And attached to it is a new client matter form.
10 Do you see that --

11 A. Correct.

12 Q. -- on the last page?

13 And the new client matter form is finish private
14 offering memorandum.

15 Do you see that?

16 A. Yes.

17 Q. All right. So if Mr. Chittick told you to stop
18 work on the private offering memorandum, why would you
19 open a file saying you were engaged by him to finish the
20 private offering memorandum?

21 A. Because I had to open a file. This was the one
22 file he had said to transfer to us and hold, and I had to
23 have a file open in order to be able to put it into the
24 file room.

25 Q. Okay. So your testimony under oath is that even

1 though he told you to stop work on the 2013 private
2 offering memorandum, that he authorized Bryan Cave to send
3 to you the entire file on the 2013 private offering
4 memorandum?

5 MR. DeWULF: Object to form.

6 THE WITNESS: I don't see the form that he
7 signed for that, but that is what I remember talking to
8 him about. And he wanted, very clear, this doesn't mean
9 to start work on it.

10 Q. (BY MR. CAMPBELL) So your testimony under oath
11 is he sent the 2013 file from Bryan Cave over to you, that
12 you opened up a file to finish the private offering
13 memorandum, and that he told you to open the file but not
14 work on it?

15 MR. DeWULF: Object to form.

16 THE WITNESS: He specifically said: I'll sign
17 the engagement letter, but I'm not authorizing you to do
18 any work on it until I'm ready to go. And that's what
19 I'm -- that's what happened.

20 Q. (BY MR. CAMPBELL) Let's turn to Exhibit
21 No. 139A. This is an email from Mr. Chittick to you on
22 December 18th, 2013.

23 Do you see that?

24 A. Yes.

25 Q. And he says to you, quote, "Since you moved,

1 we've never finished the update on the memorandum. Warren
2 is asking where it is," end of quote.

3 Do you see that?

4 A. Yes.

5 Q. Now, from the time you got to Bryan Cave until
6 December 2013, you didn't bill any time at all to the
7 private offering memorandum. True?

8 MR. DeWULF: Object to form.

9 THE WITNESS: No, I did not bill any time to the
10 private offering memorandum, but I don't think I billed
11 any time because I didn't hear from Denny.

12 Q. (BY MR. CAMPBELL) Turn to Exhibit No. 141.

13 So in Exhibit No. 141, there is an email chain
14 between you and Mr. Chittick and then your secretary.

15 Do you see that?

16 A. Yes.

17 Q. And Mr. Chittick is sending you the 2011 POM,
18 correct?

19 A. He is referencing it as the 2011 POM.

20 Q. Well, when he says "here you go," was he sending
21 you the 2011 POM?

22 A. I had asked him to send the latest draft
23 electronically to us so that we didn't have to re-input it
24 all at the new firm. We did not get electronic files,
25 copies from Bryan Cave, even for all the big documents I

1 requested.

2 Q. You got the 2013 private offering memorandum
3 files, didn't you?

4 A. I -- I don't recall that.

5 Q. Okay. We saw that you had a private offering
6 memorandum that you dated May 2013. You had one July 2013
7 that you have --

8 A. Right.

9 Q. -- handwritten notes on.

10 I thought you just told me that the 2013 private
11 offering memorandum file was transferred to you at Bryan
12 Cave.

13 A. But not an electronic copy. This wasn't an
14 electronic copy.

15 Q. Bryan Cave is not capable of taking a hard
16 document and turning it into an electronic document in
17 word?

18 MR. DeWULF: Object to form.

19 THE WITNESS: I did not receive electronic
20 copies from Bryan Cave.

21 Q. (BY MR. CAMPBELL) Here is my question.

22 Does Bryan Cave have the technological
23 capability to scan a paper document and create a word
24 document?

25 MR. DeWULF: Object to form.

1 THE WITNESS: I believe so.

2 Q. (BY MR. CAMPBELL) Did you ever ask anyone at
3 Bryan Cave to take your July 2013 POM or the May 2013 POM
4 that were transferred over to you and scan them on to the
5 system?

6 A. Yes, I did, and I was told they need to get
7 other approvals for forwarding documents after a previous
8 incident involving another attorney, and at that point I
9 just called Denny and asked for it.

10 Q. Well, let's stop.

11 So you started at Bryan Cave back in September.
12 You got sent the 2013 POM file.

13 Did you ask them to scan your copies of the POM
14 on to the system?

15 MR. DeWULF: Object to form.

16 THE WITNESS: When did Denny authorize the
17 document to go from Bryan Cave to me? I don't think that
18 was --

19 Q. (BY MR. CAMPBELL) Do you know, sir?

20 A. Not off the top of my head.

21 Q. Do you think you might have authorized it before
22 he sent you the email on December 18th asking what's
23 happened to the POM?

24 MR. DeWULF: Object to form.

25 THE WITNESS: I -- it -- I don't recall when I

1 received the physical file from Bryan Cave.

2 Q. (BY MR. CAMPBELL) well, we do know, though,
3 that on December 18th, 2013, Mr. Chittick sent you an
4 electronic file.

5 A. That is correct.

6 Q. On December 18th, you told Ms. Stringer, "Please
7 put this on our system for DenSco Investment Corporation,"
8 correct?

9 A. Correct.

10 Q. And then in January 6, you go to Ms. Stringer
11 and you say: This is what I sent you last month. I'm not
12 sure where it is on our system.

13 A. Yeah, that is what the email reads.

14 Q. Fair to assume from that, that from
15 Mr. Chittick's email of December 18th when he said where
16 is the POM, that you really didn't look at the issue again
17 until January 6 when you were looking for the POM and
18 couldn't find it?

19 MR. DEWULF: Object to form.

20 THE WITNESS: There was interim stuff done, but
21 I was also out of the office for a period of time. That
22 was the Christmas holiday.

23 Q. (BY MR. CAMPBELL) Let me get the right number
24 here. I want to go to Volume 1 of the documents and I
25 want to look at your billing records for December of 2013,

1 so I can get you the number for that.

2 So actually, if you turn to Exhibit No. 6, these
3 are your billing records for -- actually, they are both
4 December of 2013 and part of January.

5 Are you with me?

6 A. Yes.

7 Q. So on December 18th, you see you bill, review
8 email. That's the email when Mr. Chittick is asking where
9 is the POM. And you indicate you had a telephone
10 conversation with him and you reviewed the POM.

11 Do you see that?

12 A. Yes.

13 Q. And then remember he also asked you about doing
14 business in Florida.

15 A. That -- and he said that was the priority issue.

16 Q. Well, apparently so, because on December 18,
17 everything else you have listed is with respect to
18 Florida.

19 MR. DeWULF: Is that a question?

20 Q. (BY MR. CAMPBELL) Everything you have -- I will
21 rephrase it.

22 Everything you have listed after December 18th,
23 2013, is about the issue of doing business in Florida,
24 right?

25 A. Yes.

1 Q. So let me see if I -- am I right.

2 Your testimony is that he told you to stop
3 working on the POM in August 2013, correct?

4 A. That is correct.

5 Q. And then on December 18th, 2013, when he emailed
6 you and said where is the POM, your testimony is that in a
7 telephone conversation you had with him, he said it wasn't
8 a priority?

9 A. No. Let's go back and look at his email on
10 December 18th or whatever it was. He simply referenced we
11 hadn't finished it, which is correct.

12 Q. My question to you, your testimony is that in
13 the telephone conversation you had with him on
14 December 18th, 2013, he said it's not a priority?

15 A. No, I'm not saying not a priority. He said
16 Florida -- he had to have an answer by end of the year
17 concerning Florida.

18 Q. All right. So just so I'm fair, you didn't --
19 the reason you didn't work on the POM from August of 2013
20 to December 18th of 2013 is because Mr. Chittick told you
21 not to, right?

22 MR. DEWULF: Object to form.

23 THE WITNESS: He did not provide the information
24 requested and he had said put it on hold, despite my
25 comments that he needed to do the disclosure.

1 Q. (BY MR. CAMPBELL) And from December 18th to the
2 rest of the year, you didn't do anything on the POM,
3 because he said do Florida first?

4 MR. DeWULF: Object to form.

5 Q. (BY MR. CAMPBELL) True?

6 A. That -- that is what he said, yes.

7 Q. Now, Mr. Beauchamp, you have stated under oath
8 that you had a telephone call with Mr. Chittick in
9 December of 2018, correct?

10 A. Yeah, that is what's reflected on the -- the
11 time, time records.

12 Q. But under oath you have said, in your Rule 26.1
13 statement, that in that phone call Mr. Chittick advised
14 you of problems he was having with DenSco?

15 MR. DeWULF: Could you read that back, please.

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

17 MR. DeWULF: Object to form.

18 Q. (BY MR. CAMPBELL) Does that ring a bell with
19 you?

20 A. He -- he indicated briefly that there were
21 certain loans that he was having an issue for, enough that
22 I had to review the POM to confirm the comments giving him
23 discretion to do -- to resolve some loan issues.

24 Q. Let's go back to your 26.1 statement, if we
25 could. So that's going to be Exhibit No. 4, I believe.

1 And let's go -- are you at Exhibit 4?

2 A. Not yet.

3 Q. Tell me when you are.

4 A. Yeah.

5 Q. Let's go to page 7.

6 All right. I want you to look at lines 17 to
7 26. This is your statement under oath of the facts of
8 this case, correct?

9 A. Yes.

10 Q. And you state, "In December 2013, Mr. Chittick
11 contacted Mr. Beauchamp for the first time in months."

12 Do you see that?

13 A. Correct.

14 Q. He told Mr. Beauchamp over the phone that he had
15 run into an issue with some of his loans to Menaged, and
16 specifically, the property securing a few DenSco loans
17 were each subject to a second deed of trust competing for
18 priority with DenSco's deed of trust.

19 Did I read that correctly?

20 A. That is correct.

21 Q. "Mr. Beauchamp reminded Mr. Chittick that he
22 still needed to upgrade DenSco's private offering
23 memorandum. After briefly discussing the allegedly
24 limited double lien issue, Mr. Chittick emphasized to
25 Mr. Beauchamp that Mr. Chittick wanted to avoid litigation

1 with other lenders. Mr. Chittick, however, did not
2 request any advice or help. Accordingly, Mr. Beauchamp
3 suggested that Mr. Chittick develop and document a plan to
4 resolve the double liens, and nothing more came of the
5 conversation."

6 Did I read that correctly?

7 A. That is correct.

8 MR. DeWULF: Object to form.

9 Q. (BY MR. CAMPBELL) And that statement in your
10 Rule 26.1 statement is the truth?

11 A. Correct.

12 Q. Now, remember when we were talking about the
13 FREO loan in that paragraph 20 of the Complaint, this
14 double-escrow problem was talked about.

15 Do you remember that?

16 MR. DeWULF: Object to form.

17 THE WITNESS: Yeah, I remember we talked about
18 it.

19 Q. (BY MR. CAMPBELL) Well, when you had this
20 conversation with Mr. Chittick in December 2013, did it
21 help you remember back that this was a problem you saw the
22 previous summer?

23 A. He did not -- I do not believe he identified the
24 borrower in the December conversation, and -- and he said
25 a few loans and specifically said, you know, that he

1 hasn't had this issue before, so he had separated the two.

2 Q. Again, I'm going to instruct you, I'm going to
3 ask you a yes-or-no answer. If you can answer it yes or
4 no, fine. If you can't, just tell me you can't. Okay?

5 when you had this telephone call from
6 Mr. Chittick in December 2013, did you remember that you
7 had told Mr. Chittick the previous summer that the
8 litigation had to be disclosed in a private offering
9 memorandum?

10 MR. DeWULF: Object to form.

11 THE WITNESS: I'm -- I'm pretty sure I did, yes.

12 Q. (BY MR. CAMPBELL) When you had this
13 conversation with Mr. Chittick in December 2013, did you
14 also recall that the previous summer you had told
15 Mr. Chittick: Do not give money directly to Easy
16 Investments, give it to the trustee?

17 MR. DeWULF: Object to form.

18 THE WITNESS: Yes, I -- I do recall reminding
19 him of that.

20 Q. (BY MR. CAMPBELL) So when you had this
21 conversation in December 2013, you remembered that, gee,
22 this was an issue I dealt with in the summer and here it
23 is back again in December. True?

24 MR. DeWULF: Object to form.

25 THE WITNESS: I am not sure that in the brief

1 phone call that we had in December, while I was on the
2 phone, I recalled the previous lawsuit, because I was not
3 involved with it other than having quick conversations. I
4 did recall it afterwards, and that's why I had a bunch of
5 questions for him.

6 Q. (BY MR. CAMPBELL) In December 2013, when he
7 told you he had properties subject to a deed of trust
8 where there was another deed of trust on the property,
9 that would be in violation of the private offering
10 memorandum and what investors were told. True?

11 MR. DeWULF: Object to form.

12 THE WITNESS: I -- I believe that is exactly
13 correct in terms of what was in the POM.

14 Q. (BY MR. CAMPBELL) The private offering
15 memorandum told investors they would always be in a first
16 position, correct?

17 A. I do not remember the exact language, but I
18 believe it was something to that effect.

19 Q. And if investors were not in a first position,
20 but they were in a second position, that would be contrary
21 to what they were told in the private offering memorandum.
22 True?

23 MR. DeWULF: Object to form.

24 THE WITNESS: If in facts -- if the facts and
25 circumstances proved out that they were in second position

1 and it was a material amount, then that would fall into
2 that category.

3 At this point I had no ideas as to the number of
4 loans, the amount of the loans, was he in fact a true
5 second position. Those were all facts that I -- at this
6 point I did not have, so I can't answer the question based
7 upon this time period.

8 Q. (BY MR. CAMPBELL) Mr. Beauchamp, in
9 December 2013, the fact that Mr. Chittick was saying that
10 he had run into an issue with some of his loans to
11 Menaged, and specifically the property securing a few
12 DenSco loans were each subject to a second deed of trust
13 competing for priority with DenSco's deed of trust, would
14 be a material fact that investors would need to know in
15 the private offering memorandum. True?

16 MR. DeWULF: Object to form.

17 THE WITNESS: Based on that information, I can't
18 agree with you.

19 Q. (BY MR. CAMPBELL) would you agree with me that
20 the standard of care or the practices of an Arizona lawyer
21 practicing in the area of private offering memorandums
22 would have advised Mr. Chittick in December 2013 to stop
23 lending because you were lending in violation of your
24 private offering memorandum?

25 MR. DeWULF: Object to form.

1 THE WITNESS: I had to get more information.

2 Q. (BY MR. CAMPBELL) And in fact, as I understand
3 your testimony, you didn't do anything in December 2013,
4 because Mr. Chittick did not request any advice or help.

5 MR. DeWULF: Object to form.

6 THE WITNESS: He said we will start on this in
7 early January, and at that point in time, we were talking
8 less than two weeks.

9 Q. (BY MR. CAMPBELL) You were DenSco's lawyer,
10 true, in December 2013?

11 A. On the specific projects that are assigned to
12 me.

13 Q. And one of the projects assigned to you was the
14 2013 private offering memorandum, correct?

15 A. That he had put on hold.

16 Q. And you knew in December 2013 that DenSco owed
17 fiduciary duties of disclosure to its investors, correct?

18 MR. DeWULF: Object to form.

19 THE WITNESS: Fiduciary duty of material facts.

20 Q. (BY MR. CAMPBELL) And you did not tell
21 Mr. Chittick on December 2013: Stop borrowing money and
22 tell your investors under your fiduciary duty that there
23 are loans where DenSco is competing for a first lien?

24 MR. DeWULF: Would you read that back, please.

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

1 MR. DeWULF: Object to form.

2 THE WITNESS: I don't remember every word of
3 that conversation, if -- but I do remember he did not have
4 answers to my questions.

5 Q. (BY MR. CAMPBELL) And after this phone
6 conversation, you concluded that your first priority was
7 the Florida business, correct?

8 MR. DeWULF: Object to form.

9 THE WITNESS: Denny said he would get answers to
10 my questions and get back to me, but it might not be till
11 beginning of January.

12 MR. DeWULF: It's been a little over an hour,
13 Colin. Whatever is good for you in terms of a break time.

14 MR. CAMPBELL: Okay. Let me just look at
15 something here.

16 Q. (BY MR. CAMPBELL) I want you to turn to your
17 interrogatory answers, which are 422 right in front of
18 you. Now, these answers are under oath. I want you to
19 turn to page 10.

20 MR. DeWULF: You said which number was it again?

21 MR. CAMPBELL: Page 10, Exhibit 422.

22 MR. DeWULF: 422. All right.

23 Q. (BY MR. CAMPBELL) Now, I want you to look at
24 line 7. In here you are going to make statements about
25 that December 2013 call that you also gave statements

1 under oath about in your Rule 26.1 statement.

2 MR. DeWULF: I'm sorry. What page are you on?

3 MR. CAMPBELL: Page 10, line 7.

4 MR. DeWULF: Thanks.

5 Q. (BY MR. CAMPBELL) Tell me if I am reading your
6 answer under oath correctly.

7 "Once Mr. Chittick reinitiated contact with
8 Mr. Beauchamp in mid-December 2013 and informed him of the
9 allegedly limited double lien issue, Mr. Beauchamp
10 immediately advised Mr. Chittick of his general obligation
11 to disclose the problem and his specific obligation to
12 disclose the problem to any new investors from whom he was
13 receiving additional money (whether in the form of a new
14 investment or rollover of an existing investment).
15 Mr. Chittick appears to have informed Mr. Beauchamp that
16 he had done so, telling him in a January 12th, 2014 email,
17 shortly after the initial January 9, 2014 meeting where
18 Mr. Beauchamp first instructed Mr. Chittick that
19 disclosures were required prior to accepting additional
20 funds, that 'I've have the day contacting every investor
21 that has told me they want to give me more money.'"

22 Did I read that correctly?

23 A. You -- you read that portion correctly.

24 Q. So in your interrogatory answer, which was
25 prepared sometime after your Rule 26.1 statement, you now

1 state that in that December phone call you specifically
2 told him of a general obligation to disclose the problem
3 and a specific obligation to disclose it to any investors
4 from whom he was receiving additional money, whether in
5 the form of a new investment or a rollover of an existing
6 investment, correct?

7 MR. DeWULF: Object to form.

8 THE WITNESS: When I did the answer to the
9 interrogatories, it was based upon the facts that I was
10 able to review at the time to say, yes, this is correct.

11 Sitting here today and trying to answer your
12 questions, I am not remembering that conversation as
13 clearly as when we did this and I looked at other facts
14 and circumstances.

15 Q. (BY MR. CAMPBELL) Mr. Beauchamp, when you gave
16 me your answers to interrogatories, you signed a
17 verification. True?

18 A. Correct.

19 Q. You were involved in drafting the answers to
20 interrogatories. True?

21 A. Yes.

22 Q. Your lawyer would send you a draft of it, you
23 would review it, you would make any changes you wanted to,
24 and you would send it back, correct?

25 A. Correct.

1 Q. And --

2 A. And I also --

3 Q. -- what I just read you was the product of that,
4 correct?

5 MR. DeWULF: Object to form.

6 Q. (BY MR. CAMPBELL) That procedure, that's how
7 this answer was verified and given to me, correct?

8 MR. DeWULF: Object to form.

9 THE WITNESS: That is how that answer was
10 verified and given to you, but you are not allowing the
11 distinction as to what information I was able to draw upon
12 to refresh my recollection.

13 Q. (BY MR. CAMPBELL) Mr. Beauchamp, we will take a
14 break, and while we are on the break, I want you to please
15 remember my admonition when we come back. If you can
16 answer it yes or no, answer it yes or no. If you can't,
17 tell me.

18 MR. DeWULF: Answer what yes or no?

19 MR. CAMPBELL: My questions when we come back.

20 MR. DeWULF: I don't know what the questions are
21 so I don't know if it's going to be productive.

22 MR. CAMPBELL: Well, he seems to be having
23 trouble following the instructions I am trying to follow,
24 but we will take a break.

25 VIDEOGRAPHER: The time is 11:09 a.m. We are

1 going off record, ending media two.

2 (A recess was taken from 11:09 a.m. to
3 11:25 a.m.)

4 VIDEOGRAPHER: The time is 11:25 a.m. We are
5 now back on record, beginning media three.

6 Q. (BY MR. CAMPBELL) David, I would like to go to
7 Exhibit No. 142, which is going to be in Volume 4.

8 MR. DeWULF: So Colin, just for the record,
9 before we broke you had some instructions to the witness,
10 but you are now moving on to something else? I thought
11 you left with some sort of request of him.

12 MR. CAMPBELL: Well --

13 MR. DeWULF: Am I misunderstanding?

14 MR. CAMPBELL: -- I still want him to answer
15 questions yes or no. If he can't answer them yes or no,
16 to tell me and I will make a decision whether to --

17 MR. DeWULF: Okay.

18 MR. CAMPBELL: I realize if ask a question that
19 maybe is sloppy and isn't a yes or no, that's my fault.

20 MR. DeWULF: But I -- but what I am directing my
21 question to is I thought you were asking him about the
22 interrogatory answers. So that's fine. It's up to you.
23 I just didn't want there to be some uncertainty on the
24 record as whether we had an obligation to do something we
25 didn't do. It wasn't clear to me what you wanted.

1 MR. CAMPBELL: No, no. I was just repeating my
2 instructions. That's all.

3 MR. DeWULF: All right.

4 Q. (BY MR. CAMPBELL) All right. Do you have
5 Exhibit No. 142 in front of you, Mr. Beauchamp?

6 A. Yes, I do.

7 Q. All right. So --

8 MR. DeWULF: Could you give me a second.
9 Go ahead.

10 Q. (BY MR. CAMPBELL) Okay. So Exhibit No. 142, we
11 are on January 6, 2014, correct? And you received this
12 email from Mr. Chittick that has an attachment, correct?

13 A. Correct.

14 Q. In the attachment is a letter from your old firm
15 from Mr. Miller that's dated January 6, 2014.

16 Are you with me?

17 A. Yes.

18 Q. And actually, so -- and so you got these on
19 January 6, 2014, you read them, right?

20 A. I read the first two pages. I didn't go through
21 all the exhibits.

22 Q. All right. Well, Mr. Miller is writing
23 Mr. Chittick and he is telling him that he represents
24 Azben Limited, Geared Equity, and another LLC, 50780,
25 correct?

1 A. Correct.

2 Q. And he is letting Mr. Chittick know that they
3 all made various loans to Mr. Menaged's entities with
4 respect to hard-money lending and him foreclosing on
5 properties. True?

6 THE WITNESS: Could you read the end of the
7 question? I missed it. I'm sorry.

8 Q. (BY MR. CAMPBELL) Let me just repeat it.

9 In this letter, Mr. Miller on behalf of his
10 clients is letting Mr. Chittick know that his clients have
11 loans and deeds of trusts on property that DenSco also
12 have liens and deeds of trust on. True?

13 A. True.

14 Q. And in fact, he attaches a list of loans as
15 Exhibit No. A.

16 Do you see the list of loans on Exhibit A?

17 A. Yes, I do.

18 Q. And some of these loans are paid in full, but he
19 is saying these are all loans on Exhibit A that Azben
20 Limited, LLC has, and if you turn the page, he mentions
21 Geared Equity and the other LLC. But they are all loans
22 where his client had a deed of trust and DenSco had a deed
23 of trust.

24 Do you recall that?

25 A. Yes.

1 Q. Is this a material number of loans to you in the
2 sense of fiduciary duty?

3 MR. DeWULF: Object to form.

4 THE WITNESS: I don't know the amounts and the
5 value of the property, so that enters into the question,
6 but Denny said the lists were wrong.

7 Q. (BY MR. CAMPBELL) My question for you, when you
8 received this on January 6, 2014, did you form the opinion
9 that this was immaterial?

10 MR. DeWULF: Object to form.

11 THE WITNESS: I can't answer that question.
12 It --

13 Q. (BY MR. CAMPBELL) That's fine. If you can't
14 answer it yes or no, tell me you can't answer it yes or
15 no.

16 Mr. Miller, on behalf of his clients, was asking
17 DenSco to subordinate their loans, correct?

18 A. That is what he requested, yes.

19 Q. And subordination means that his clients would
20 be paid first and DenSco would be paid, if at all, second?

21 A. Correct.

22 Q. Now, the problem was, for example, let's say you
23 had a house that was worth \$100,000 and Mr. Miller's
24 client had lent 80,000 on it and DenSco had lent 80,000 on
25 it, Mr. Miller's client is going to get paid if they get

1 \$100,000, and DenSco is not going to have its loan
2 entirely paid, just part of it, correct?

3 MR. DeWULF: Object to form.

4 THE WITNESS: Correct, but there is a number of
5 variables that go beyond that.

6 Q. (BY MR. CAMPBELL) If you can answer my question
7 yes or no, please answer it yes or no. If you can't
8 answer it yes or no, tell me you can't.

9 To have signed the Subordination Agreement, if
10 Chittick had signed that, he would have been acting
11 directly contrary to his private offering memorandum.
12 True?

13 MR. DeWULF: Object to form.

14 THE WITNESS: I believe so, yes. And that's, I
15 believe, the advice I gave him.

16 Q. (BY MR. CAMPBELL) Mr. Chittick, in these
17 subordination agreements, actually refers to actual
18 properties, correct?

19 MR. DeWULF: Could you read that back, please.

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

21 MR. DeWULF: Do you mean Mr. Miller?

22 MR. CAMPBELL: Yes.

23 MR. DeWULF: You can answer that question.

24 THE WITNESS: Based on the example that I have
25 looked at here, it does refer to a specific property and

1 that would be what would be required for a subordination.

2 Q. (BY MR. CAMPBELL) When you were at Clark Hill,
3 were there people you could go to and say go pull me the
4 County Recorder documents on these properties?

5 MR. DeWULF: Object to form.

6 THE WITNESS: Yes, there were people available
7 to do that. Denny said he was already having a title
8 company do that.

9 Q. (BY MR. CAMPBELL) Sir, on January 6, 2014, when
10 you read this letter, did you go to anyone at Bryan Cave
11 and say pull me the County Recorder documents on these
12 homes?

13 MR. STURR: Clark Hill.

14 Q. (BY MR. CAMPBELL) At Clark Hill.

15 A. No. I talked to Denny.

16 Q. All right. Is there something about answering a
17 question yes or no that you can't do?

18 I have asked you several times if you can't
19 answer it yes or no to tell me. Is that just impossible
20 for you to do?

21 A. Given the question that you are asking,
22 including the references, mixing up references to the
23 different firms and timing issues, you are -- you are
24 deliberately trying to get me to say yes or no to a
25 question that there is insufficient facts or there is

1 other things that are not accurate.

2 Q. Then is it impossible for you to say "I can't
3 answer it yes or no"?

4 A. I have said that and you said please answer the
5 question.

6 Q. All right, Mr. Beauchamp.

7 You said that you did not ask anyone at Clark
8 Hill to get those records from the County Recorder because
9 Denny told you that he was getting them. True?

10 A. True.

11 Q. When did he tell you this?

12 A. When we talked after he sent this to me.

13 Q. All right. Do you have a handwritten telephone
14 call with Denny Chittick, handwritten note that says Denny
15 will get me these records I have asked for?

16 A. Not that I recall.

17 Q. Did Mr. Chittick bring you those records and
18 give them to you?

19 MR. DEWULF: Object to form.

20 THE WITNESS: Not the actual records.

21 Q. (BY MR. CAMPBELL) When Mr. Chittick did not
22 bring you the actual County Recorder records on the two
23 properties or three properties that you want to get them
24 on, at that point in time, did you go to the people at
25 Clark Hill and say get me the recorded documents on these

1 properties? Yes or no please.

2 A. I cannot answer in the form provided.

3 Q. All right. Let's go to Exhibit No. 143.

4 This is a handwritten note of a telephone call
5 you had with Mr. Chittick on January 6, 2014, correct?

6 A. That is correct.

7 Q. First of all, I don't see anything on this
8 handwritten note about Mr. Chittick getting you any
9 recorded documents.

10 Do you see it?

11 MR. DeWULF: Object to form.

12 THE WITNESS: Just because it's not referenced
13 here doesn't -- that was a specific question I had asked
14 him.

15 Q. (BY MR. CAMPBELL) My question was, sir, is
16 there anything on this handwritten note that indicates you
17 want Denny to get you records?

18 A. No, there is nothing on the handwritten form.

19 Q. You write that "largest borrower had a guy
20 working in his office & was getting 2 loans on each
21 property."

22 You see that?

23 A. Yes.

24 Q. All right. That is a material fact that any
25 investor would want to know. True?

1 MR. DeWULF: Object to form.

2 THE WITNESS: Again, it depends on the facts and
3 circumstances.

4 Q. (BY MR. CAMPBELL) You think you need further
5 facts and circumstances to make a determination as to
6 whether the largest borrower of DenSco has a guy working
7 in his office getting two loans? You need to know more
8 facts to determine whether that is material to an
9 investor?

10 A. I need to know more facts to be able to
11 determine the extent of the issue so I can disclose it
12 properly. A bad disclosure with improper information is
13 worse than no disclosure at all. You need to get the
14 correct information and then disclose it.

15 Q. So part of getting the correct information would
16 be to get the recorded documents on the list of loans you
17 have and to see if they are a problem and what the value
18 of them are, correct?

19 MR. DeWULF: Object to form.

20 THE WITNESS: That's only one small part of it.

21 Q. (BY MR. CAMPBELL) You didn't even do that one
22 small part of it, correct?

23 MR. DeWULF: Object to form.

24 THE WITNESS: I received an index from Denny.

25 Q. (BY MR. CAMPBELL) What index did you receive

1 from Denny?

2 A. Information that -- from the records that he had
3 reviewed. I didn't receive the actual records. I
4 received information from him indicating --

5 Q. Mr. Beauchamp, you were given a list of loans by
6 Mr. Miller and you never went and got the recorded
7 documents on those properties. True?

8 A. True.

9 Q. Now, Mr. Chittick also tells you that he has
10 already fixed about six loans. Did you ask him what that
11 meant, fixing six loans?

12 A. Yes, I did, and --

13 Q. What did it mean to fix six loans? What did he
14 tell you?

15 A. They paid off -- paid off the other lender on
16 the property, or the property has been sold and they paid
17 them off.

18 Q. Okay. Well, if they paid off the other lender,
19 what did DenSco get paid?

20 MR. DeWULF: Object to form.

21 THE WITNESS: I don't remember exactly how he
22 answered it, but to paraphrase, Denny said that it was
23 taken care of without a loss.

24 Q. (BY MR. CAMPBELL) Well, DenSco owes fiduciary
25 duties to the investors who are in those six loans, right?

1 MR. DeWULF: Object to form.

2 THE WITNESS: All investors are a general
3 unsecured creditor with respect to the loans, so it's not
4 individual lenders in those loans.

5 Q. (BY MR. CAMPBELL) Understood.

6 What did you do to inquire whether any investors
7 had been hurt?

8 MR. DeWULF: Object to form.

9 THE WITNESS: You are not stating the issue and
10 the facts correctly. The investors have an interest --

11 Q. (BY MR. CAMPBELL) My question is --

12 A. -- against DenSco, not against individual loans.

13 Q. All right, sir. Turn to Exhibit 144.

14 Did you receive Exhibit No. 144?

15 A. Yes, I did.

16 Q. Did you read it the day you got it on
17 January 9th, 2014?

18 A. No. I believe I was out of the office in a
19 closing.

20 MR. DeWULF: The date is the 7th, not the 9th,
21 for the record.

22 MR. CAMPBELL: Thank you for correcting me.

23 Q. (BY MR. CAMPBELL) So you did not read it on the
24 day you got it on the 7th.

25 When did you read it?

1 A. Quite probably either late the 8th or the 9th.
2 I was out for a two-day closing, so... I probably skimmed
3 it, but I didn't read it in any detail.

4 Q. Hold on one moment.

5 Here, let's go back. Let's go to Exhibit No. 6.
6 These are just your time records.

7 I'm looking at -- so Exhibit No. 6 has your time
8 records for January of 2014, correct?

9 A. With respect to this matter, yes.

10 Q. Okay. Well, it has -- you have general business
11 matters and invoice. Then if you turn over to Bates stamp
12 Clark Hill 2312, you have workout of lien issue, right?

13 A. Correct.

14 Q. So I'm looking on January 7th, 2014. You review
15 the legislative history for purchase money security
16 interests. You review documents and follow-up
17 information. You have a telephone conversation with
18 office of Dennis Chittick and you bill 1.80 hours,
19 correct?

20 A. Yes.

21 Q. So you did work on January 7th, 2014, which is
22 the same day you got this email. I assume you read it on
23 January 7th. Am I wrong to assume that?

24 And to be fair, look at January 8th. You say
25 review information from Dennis Chittick.

1 So does this help you? Did you review it on
2 January 7th? Did you review it on January 8th?

3 A. I -- I probably reviewed it on the 8th.

4 Q. Okay. So let's see what Mr. Chittick is writing
5 you. So he is sending you this email so you have
6 something to read so you are up to date when you meet on
7 the 9th, right?

8 MR. DeWULF: Could you read that back, please.

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

10 MR. DeWULF: I'll object to form.

11 THE WITNESS: That is his stated purpose in the
12 first paragraph.

13 Q. (BY MR. CAMPBELL) All right. And he tells you
14 he has been lending to Mr. Menaged through a few different
15 LLCs since 2007, correct?

16 A. Correct.

17 Q. And he tells you that sometime last year,
18 Mr. Menaged's wife became ill with cancer.

19 Do you see that?

20 A. Yes.

21 Q. Do you know if that's a true statement or a
22 false statement, whether his wife was actually ill from
23 cancer?

24 MR. DeWULF: You are asking him today?

25 MR. CAMPBELL: If he knows.

1 MR. DeWULF: Object to form.

2 THE WITNESS: I have no personal knowledge of
3 it, but through hearsay, I have heard it's not true.

4 Q. (BY MR. CAMPBELL) He tells you that, "His
5 cousin was working with him and took on a stronger day to
6 day role as Scott was distracted with his wife. Scott was
7 always the one that determined what properties to buy, how
8 much, etc. His cousin was doing paperwork, checks and
9 management of the day to day."

10 You read that, right?

11 A. Yes.

12 Q. "At some point his cousin decided to take
13 advantage of our relationship and started to steal money."

14 You read that?

15 A. Yes.

16 Q. Scott would request a loan from me, his cousin
17 would request a loan from another borrower (I would say
18 there are as many as 1/2 dozen different borrower -- or
19 different lenders in total).

20 You read that?

21 A. Yes.

22 Q. So you knew from this email that the problem is
23 larger than just the email you got from Mr. Miller,
24 correct?

25 MR. DeWULF: Object to form.

1 THE WITNESS: I can't answer that with just yes
2 or no, because there are other --

3 Q. (BY MR. CAMPBELL) That's fine. Just you can't
4 answer it yes or no.

5 Because of our long term relationship, when
6 Scott needed money, I would wire money to his account and
7 he would pay the trustee.

8 You read that on January 8th, correct?

9 A. Yes.

10 Q. I did the same thing with several borrowers and
11 bidding companies. For example, he would buy a property
12 at auction for 100K, it's worth 145K, he would ask me for
13 80K. I would wire it to him, he would pay the trustee
14 with my 80K and his 20K and he would sign the RM, which I
15 have attached.

16 You read that?

17 A. Yes.

18 Q. "(all docs you have reviewed and have been
19 reviewed by a guy at your last law firm, maybe two firms
20 ago in 2007)."

21 You read that?

22 A. Yes.

23 Q. And he goes on and tells you that they would
24 record the RM the day he paid for the property. Once the
25 trustee's deed was recorded, which during the last few

1 years has been a time six weeks from the auction date to
2 the recorded date, I would then record my deed of trust.

3 You read that?

4 A. Yes.

5 Q. Let's go down to the bottom.

6 what his cousin was doing was receiving the
7 funds from me, then requesting them from other lenders.
8 These other lenders would cut a cashier's check for the
9 agreed loan amount and then take it to the trustee and
10 receive the receipt.

11 You read that, correct?

12 A. Yes.

13 Q. They would then record a DOT immediately, then
14 after the trustee's deed is recorded, they would re-record
15 their deed of trust. Sometimes I would record my RM
16 first. Sometimes they would. Then after the trustee --
17 trustee's deed, sometimes I would record my DOT first,
18 sometimes they would.

19 You read that?

20 A. Yes.

21 Q. "The cousin absconded with the funds."

22 You read that?

23 A. Yes.

24 Q. "Scott figured this out in mid November. He
25 came to me and told me what was happening. He said he had

1 talked to the other lenders and they agreed that this was
2 a mess, and as long as they got their interest and they
3 were being paid off they wouldn't foreclose, sue or
4 anything else."

5 You read that?

6 A. Yes.

7 Q. And then he goes on and tells you that: Scott
8 and I spent a great deal of time creating a plan to fix
9 this.

10 Did you see that?

11 A. Yes.

12 Q. Then at the bottom of the page he sort of tells
13 you what the plan is going to be.

14 You see that and you read it?

15 A. Yes.

16 Q. All right. And then let me just see what else I
17 have. It looks like there is a -- there is also an
18 appointment email from you. You were setting up just a
19 conference room to meet with Mr. Chittick and Scott on
20 January 9th, 2014.

21 A. Where are you at? I'm sorry.

22 MR. DEWULF: The last page of that exhibit.

23 Q. (BY MR. CAMPBELL) It's the last page.

24 A. Oh, okay.

25 Q. It's not marked separately.

1 A. Okay.

2 Q. All right. So you are being told in the email
3 that a fraud has been committed.

4 Would it be fair to say that a fraud had been
5 committed upon DenSco?

6 A. Based on the information he has provided here,
7 yes, there was a fraud committed, but in no way here did I
8 understand the dollar amount, the facts or circumstances,
9 and what DenSco was going to be at risk.

10 He does reference Menaged is bringing in 4 to
11 5 million in the next 120 days, plus other money. All
12 that goes into, you know, the extent of the fraud.

13 Q. You had a full list of loans from Mr. Miller
14 from his letter that you got a few days before with
15 respect to his clients and what properties they had.

16 A. What number was that? I'm sorry.

17 Q. 142, sir.

18 You have a list of his loans from his clients
19 that were double-liened, correct?

20 A. As he purported, yes.

21 Q. And you knew that there were more lenders than
22 just Mr. Miller's clients?

23 A. According to Denny's email, yes.

24 Q. All right. I want to focus on fiduciary duty
25 right now.

1 DenSco had a fiduciary duty of loyalty and
2 disclosure to its investors. True?

3 A. Correct.

4 Q. In your opinion, when you read on
5 January 8th the January 7th email coupled with
6 Mr. Miller's, did you form an opinion that DenSco,
7 pursuant to its fiduciary duties, had to tell its
8 investors that this fraud had been perpetrated upon them?

9 A. It raised specific concerns and questions, and
10 we needed to get the facts and answers to those, how it
11 was to be taken care of.

12 Q. So your opinion on January 8th, 2016, after you
13 read Mr. Miller's letter and after you read this email,
14 was that in your opinion, you did not have an immediate
15 duty to disclose to the investors these facts under
16 DenSco's fiduciary duties?

17 MR. DeWULF: Object to form.

18 THE WITNESS: I needed to verify facts and get
19 information. The valuation of the collateral, the numbers
20 of the loans, all of that, that's all relevant to
21 determine what is going to be the net effect to DenSco,
22 his company.

23 Q. (BY MR. CAMPBELL) So it sounds like you are
24 agreeing with me.

25 You had formed the opinion on January 8th that

1 DenSco did not have to disclose, pursuant to its fiduciary
2 duties, until more facts and circumstances were gathered
3 down the road?

4 MR. DeWULF: Would you read that back, please.

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

6 MR. DeWULF: Object to form.

7 THE WITNESS: Based on the information on
8 January 8th, it was going to require disclosure, but we
9 didn't have the information to disclose to define the
10 extent of the problem.

11 Q. (BY MR. CAMPBELL) Okay. You don't think the
12 information that Mr. Miller had over 50 clients or, excuse
13 me, that his clients had over 50 loans that were
14 double-escrowed, double-liened with Mr. Menaged, was by
15 itself a fact that had to be disclosed to investors?

16 MR. DeWULF: Object to form.

17 THE WITNESS: Denny had said that that list is
18 wrong, and that there were -- you know, the list was wrong
19 and that a lot of these have been resolved or the other
20 lenders don't have the right, and I needed to get more
21 information.

22 Q. (BY MR. CAMPBELL) You do not think that the
23 fact that Mr. Menaged's cousin took monies that were wired
24 directly to them from DenSco and stole them is a material
25 fact that investors had the right to immediately know

1 because of DenSco's fiduciary duties to the investor?

2 MR. DeWULF: Object to form.

3 THE WITNESS: What I knew at that time, no.

4 Q. (BY MR. CAMPBELL) You met with Mr. Menaged and
5 Mr. Chittick on January 9th?

6 A. Yes. What number are you at? I'm sorry.

7 Q. What's your independent recollection of what
8 happened at that meeting?

9 A. It was a very eye-opening experience.
10 Previously Denny had been a very reasonable, sound
11 business person, considered all the facts and made -- made
12 sound business decisions.

13 He was being deferential to Menaged. Menaged
14 was being aggressive and using language that normally
15 Denny wouldn't tolerate in his presence. Denny looked to
16 Menaged at times if he could talk and -- or making a
17 statement, would turn to Menaged and say: You agree with
18 that?

19 I had never, ever seen Denny act that way
20 before, which caused me a lot of concern and caused
21 several of the conversations that I had with Denny.

22 And in terms of the plan they had, Menaged
23 represented he was going to make everything right. He was
24 worth, you know, 10, \$20 million. This -- we are going to
25 take care of it, and your, DenSco's investors are not

1 going to be hurt at all. We have got to get it cleaned
2 up.

3 Q. Is that all you remember about the meeting?

4 A. Bits and pieces, but those were the -- the key,
5 key thoughts that I had.

6 And then they -- I asked questions about the
7 plan from Denny's email, but I didn't want to show it
8 there at the meeting, and then finally Scott said he has
9 already seen it.

10 Q. I'm sorry. Your voice dropped.

11 A. Then Scott Menaged said, "Oh, it doesn't matter.
12 You can bring it out. I have already seen the email,"
13 which I was shocked about.

14 Q. Have you told me everything now you can remember
15 about the meeting?

16 A. I had a separate conversation with Denny before
17 he left about even if Menaged is going to make this thing
18 right and everything, you know, you can't take any money.
19 You need -- we need to get this disclosure done to the
20 investors so that they know what's going on.

21 Q. Okay. I thought you had told him that in
22 December, too.

23 A. Well, I -- I had said in December, but that was
24 a very -- that was a relatively brief phone call, because
25 he was rushed to do something. I said we need to get the

1 facts and understand this, so -- because we need to
2 disclose this to your investors.

3 Q. All right. Have you told me now everything,
4 based on your independent recollection, you can recall?

5 A. Yeah, based on what I recall right now off the
6 top of my head.

7 Q. All right. Let's turn to Exhibit No. 145.

8 And these are your handwritten notes of your
9 meeting with Chittick and Menaged on January 9th, 2014,
10 right?

11 A. Yes.

12 Q. Let's see what you wrote down. You have a note
13 saying "put cousin in charge."

14 Do you see that?

15 A. Yes.

16 Q. Did you ever do anything to investigate this
17 cousin's story?

18 A. Chittick said he had investigated it. At one
19 point in time I asked how he had investigated it, and he
20 referenced telecompanies or something, people that he had
21 checked with to verify it, and it seemed very logical, but
22 I did not go beyond that.

23 Q. Did you ever get the recorded documents filed
24 with the County Recorder with respect to the properties to
25 see whether Mr. Menaged has signed all the deeds of trust?

1 A. That seemed to be a futile effort because
2 Menaged admitted the cousin put documents in front of him,
3 and he signed and then ran to be with his wife, and so
4 they did have his signature.

5 Q. You understand they were notarized?

6 A. Well, a recorded deed of trust, it has to be.

7 Q. You work with notaries, don't you?

8 A. Yes.

9 Q. What do notaries do when they notarize a
10 signature?

11 A. They have to verify the ID of the person signing
12 it.

13 Q. Did you look who notarized the signatures of
14 Mr. Menaged on any of the recorded documents?

15 MR. DeWULF: Object to form.

16 THE WITNESS: As I have indicated, Menaged
17 admitted he signed them all. So it was not at the point
18 where, you know, to pull them to see who notarized them,
19 because he admitted he did sign them.

20 Q. (BY MR. CAMPBELL) So you knew at the meeting on
21 January 9th that Menaged had signed the deeds of trust for
22 all the lenders in front of a notary?

23 A. I didn't ask him the question if it was in front
24 of a notary, but he admitted he had signed them.

25 Q. But he had told you he had signed all the

1 documents?

2 A. That is correct.

3 Q. Did that in any way raise a question in your
4 mind about the truthfulness of his story?

5 A. I have a lot of clients where the signature for
6 the companies, and I know for a fact they don't read
7 everything that's put in front of them to sign if one of
8 the other officers puts it in front of them to sign. So
9 it did not raise a flag because the story sounded
10 completely plausible.

11 Q. DenSco had a fiduciary duty of diligence to its
12 investors. True?

13 MR. DeWULF: Object to form.

14 THE WITNESS: It had a fiduciary duty to use
15 sound business judgment in doing the loans, yes.

16 Q. (BY MR. CAMPBELL) It had a fiduciary duty to
17 its investors to be diligent with respect to its
18 investors' interests. True?

19 MR. DeWULF: Object to form.

20 THE WITNESS: It had a general fiduciary duty to
21 act as a reasonable, prudent business person with -- with
22 respect to the loans.

23 Q. (BY MR. CAMPBELL) With respect to your
24 representation of a corporation which has fiduciary duties
25 to its investors, do you believe you satisfied the

1 standard of care for attorneys in the investigation you
2 did of Mr. Menaged?

3 MR. DeWULF: Object to form.

4 THE WITNESS: From the very beginning of
5 DenSco's operations, based upon my history with him and
6 based upon his, whatever, nine, ten years before of his
7 lending, he always did his own loan documents for any of
8 the loans that he did or to remodelers or whatever you
9 want -- people that buy at the foreclosure sales. He
10 always did that, took care of it, and -- and I had seen
11 that hundreds, maybe even thousands of loans have been
12 processed properly.

13 Q. (BY MR. CAMPBELL) Sir, your client has come to
14 you and just told you with Mr. Menaged they have been
15 defrauded, right, by Scott's cousin?

16 MR. DeWULF: Object to form.

17 Q. (BY MR. CAMPBELL) That's what you learned at
18 this meeting on January 9th. True?

19 A. It was confirmed at the January 9th meeting from
20 the email that he had sent to me immediately prior.

21 Q. In your handwritten notes on Exhibit 145, I see
22 you have a note it happened to about 100 to 125
23 properties.

24 A. Correct.

25 Q. So that's -- I think Mr. Miller had about 50

1 properties. There is another 50 to 75 also out there,
2 correct?

3 MR. DeWULF: Object to form.

4 THE WITNESS: Those were the facts that Denny
5 and Menaged were saying at the meeting, but it was
6 expressed several times during the meeting that they
7 needed to confirm things and get a handle on things with
8 respect to this. And so that was their -- that was the
9 estimate that was given to me. And the dollar value,
10 because I asked for dollar value, and they couldn't give
11 it to me.

12 Q. (BY MR. CAMPBELL) All right. So let's see if
13 I'm clear.

14 You have got the 50 loans from Mr. Miller. You
15 have got another 50 to 75 of other properties that you
16 wrote down in your own handwriting. You have been told
17 that a cousin in Menaged's shop has taken the money and
18 stolen it.

19 Are you at a point now where you believe there
20 is a material fact you need to tell the investors pursuant
21 to DenSco's fiduciary duty to its investors?

22 MR. DeWULF: Object to form.

23 THE WITNESS: That's why I told Denny he could
24 not take any more money or rollover money without doing
25 disclosure to investors.

1 Q. (BY MR. CAMPBELL) Under the fiduciary duties
2 DenSco owed to the investors, do they have a fiduciary
3 duty to tell them, without regard as whether they are
4 raising any money or not?

5 MR. DeWULF: Object to form.

6 THE WITNESS: There is an obligation to tell the
7 investors, but that obligation, if the money is already
8 invested, that is not -- that's a continuing matter and
9 you have to get all the necessary information and
10 basically what is going to be the effect on your note, as
11 opposed to "We have this problem, don't invest." And so
12 there is a different standard there.

13 Q. (BY MR. CAMPBELL) Just so I'm clear,
14 Mr. Beauchamp, you never advised Mr. Chittick on
15 January 9th, 2014, that he had to immediately disclose to
16 his investors this fraud pursuant to the fiduciary duties
17 DenSco owed the investors?

18 MR. DeWULF: Object to form.

19 THE WITNESS: I said this has to be disclosed to
20 your investors.

21 Q. (BY MR. CAMPBELL) Right now. True?

22 A. Denny understood that from past issues with the
23 press releases that Insight had sent out, and -- and
24 specifically here it was described: we need to get the
25 facts, we need to do a write-up, and you need to get this

1 to your investors, and any new money, you can't take
2 anything until you describe what has gone on.

3 Q. I want you to focus on fiduciary duties,
4 Mr. Beauchamp.

5 Did you advise Mr. Chittick on January 9th,
6 2014, that pursuant to the fiduciary duties DenSco had to
7 its investors, he had to disclose to them right now about
8 the fraud, what the cousin had done, and that there were
9 100 and 125 properties affected?

10 Did you advise him that or did you not?

11 MR. DeWULF: Could you read that back, please.

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

13 MR. DeWULF: Object to form.

14 THE WITNESS: I did tell him that had to be
15 disclosed. I did tell him that at this point it appears
16 to be material, it's got to be disclosed, and we need to
17 get something out to the investors.

18 Q. (BY MR. CAMPBELL) Right now, correct? You told
19 him that?

20 MR. DeWULF: Object to form.

21 THE WITNESS: I don't remember if I used the
22 word "right now" or if I used the word "immediately." I
23 did convey it as it was an imminent obligation.

24 Q. (BY MR. CAMPBELL) All right. And you
25 understand that Mr. Chittick did not do that. He did not

1 send anything to the investors telling them that he had
2 been defrauded by Scott Menaged's cousin, and that it
3 involved 100 to 125 properties, and that the cousin had
4 stolen the money? He did not tell the investors that?

5 MR. DeWULF: Object to form.

6 THE WITNESS: I did not --

7 MR. DeWULF: Go ahead.

8 THE WITNESS: I did not know that. I thought
9 his follow-up email that he said "I've talked to my
10 investors" was confirmation that he had in fact disclosed
11 that.

12 Q. (BY MR. CAMPBELL) Mr. Beauchamp, are you
13 telling me under oath that you thought from January 9th to
14 the end of January that he had sent notice to every
15 investor of DenSco about Mr. Menaged's fraud or his
16 cousin's fraud?

17 MR. DeWULF: Object to form.

18 THE WITNESS: You said "sent notice." Do you
19 mean provided the information?

20 Q. (BY MR. CAMPBELL) Do you think he talked to
21 every investor who had money in DenSco and told them about
22 the fraud?

23 MR. DeWULF: Object to form.

24 THE WITNESS: He regularly had communications
25 with them, so that wouldn't be unusual.

1 Q. (BY MR. CAMPBELL) Answer my question.

2 A. Yes, I did believe he had.

3 Q. You had -- did you do anything to confirm that
4 he had complied with his fiduciary duties and told every
5 investor in DenSco of the material fact of the fraud?

6 A. I asked him, and he said, quote, "what the hell
7 do you think I've been doing?"

8 Q. When did he say that to you, sir?

9 A. It was one of the many telephone conversations,
10 and I did it without Menaged on the phone, which he was on
11 so many of the calls, that it was difficult, but I had a
12 separate conversation with him. It was just a quick
13 confirmation, here, let's get to the other issues.

14 Q. If in January 2014 you had actual knowledge that
15 he had not disclosed to every investor the fraud committed
16 by Menaged, would you have terminated your representation?

17 MR. DeWULF: would you read that back, please.

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

19 MR. DeWULF: Object to form.

20 THE WITNESS: I would have taken some
21 preliminary steps, but, yes, I would have.

22 Q. (BY MR. CAMPBELL) And you would agree with me
23 that if Mr. Menaged did not follow your advice to tell
24 every investor about the fraud committed by Menaged in
25 January 2014, that the standard of care would have

1 required you to terminate?

2 MR. DeWULF: Object to form.

3 THE WITNESS: There is many different ways to
4 satisfy the standard of care in that regard. Under this
5 unique circumstance, since I was going through Denny and
6 Denny was the conduit to everybody, I needed to make sure
7 he had confirmed it, and he did confirm that he had
8 disclosed it to everyone.

9 Q. (BY MR. CAMPBELL) All right. And you would
10 certainly not want to put Clark Hill in a position where
11 they were aiding and abetting in a breach of fiduciary
12 duty by Mr. Chittick. True?

13 MR. DeWULF: Object to form.

14 THE WITNESS: Read the question back.

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

16 THE WITNESS: True.

17 Q. (BY MR. CAMPBELL) Do you know who Tom Smith is?
18 One of the founding members of Taser?

19 A. Yes, I do.

20 Q. Do you remember having a conversation with
21 Mr. Chittick about Tom Smith?

22 A. Not right here and now, no, I don't.

23 Q. Do you recall that Mr. Smith, who is quite a
24 wealthy man, had \$5 million invested with Mr. Chittick?

25 MR. DeWULF: Object to form.

1 THE WITNESS: I don't know that.

2 Q. (BY MR. CAMPBELL) Do you recall a conversation
3 with Mr. Chittick where he wanted to know what to do about
4 Tom Smith?

5 MR. DeWULF: Counsel, I'm confused. Are you
6 talking about a conversation between Mr. Chittick and
7 Mr. Smith?

8 MR. CAMPBELL: Between Mr. Chittick and
9 Mr. Beauchamp.

10 Q. (BY MR. CAMPBELL) Did you ever have a
11 conversation with Mr. Chittick about what to do with
12 Mr. Smith's investment?

13 MR. DeWULF: Object to form.

14 THE WITNESS: I don't remember the conversation,
15 so --

16 Q. (BY MR. CAMPBELL) Look at Exhibit No. 147.

17 You see there is an email, Exhibit No. 147 is an
18 email from Mr. Chittick to you, and he is telling you
19 about an investor that has two trusts, each one for his
20 children. He cannot definitively say that they would be
21 valued at 5 million each. What do you recommend I do? He
22 is completely flexible. I have known him for 20 years.
23 This is the Taser guy, Tom Smith.

24 Does that refresh your recollection?

25 A. Yeah, now, it does.

1 Q. And you email back, "Let me think about it. I
2 will get back to you."

3 A. And we did have a subsequent conversation. I
4 didn't know it was the children's trust issue. In that
5 case, the investment had to be with the trust that clearly
6 were -- met the accredited investor status.

7 Q. Well, this is January 9th. This was the same
8 day that you have this meeting all about Menaged, and he
9 is asking you what do you recommend I do.

10 what was he ask -- what advice was he asking you
11 for about Mr. Smith?

12 A. Well, in -- in this specific case, reading my
13 history with him into the email, and in my history with
14 the email he would periodically find out from clients:
15 Yeah, we borrowed it in our family LLC or, excuse me, we
16 originally invested from our family LLC, but now we have
17 had our estate plan done and that asset has been
18 transferred over here.

19 And -- and -- and the way I'm reading this,
20 that's -- that's what has happened in terms of the
21 situation, because that did happen with the investors he
22 worked with.

23 Q. Mr. Beauchamp, did you tell Mr. Chittick that he
24 had to immediately go to Mr. Tom Smith and tell him that
25 the monies invested with him, that he should know that a

1 fraud had been committed against him --

2 MR. DeWULF: Object to form.

3 Q. (BY MR. CAMPBELL) -- with respect to the
4 cousin?

5 MR. DeWULF: Object to form.

6 THE WITNESS: I think I addressed this issue
7 separately, but it was always under the total disclosure
8 requirement, that you have to do this with all your
9 investors, with respect to this, you need to have him deal
10 with it.

11 Q. (BY MR. CAMPBELL) what you say in your email,
12 "Let me think about it." You don't email and say, "You
13 have to tell Tom Smith you have been defrauded."

14 MR. DeWULF: Object to form.

15 Q. (BY MR. CAMPBELL) what did you have to think
16 about?

17 MR. DeWULF: Object to form.

18 THE WITNESS: Think about the specific question
19 that he was asking here, not -- because I had already
20 given him the other advice with respect to all the
21 investors.

22 Q. (BY MR. CAMPBELL) what did you get back and
23 tell him? what do you think he was asking?

24 A. When I got back to Denny, I reminded him that he
25 had an affirmative obligation to advise all the investors.

1 That would include Tom Smith. The -- and he needed to do
2 that.

3 with respect to the specific issue dealing with
4 the trust, they needed to go back and either verify that
5 the children's trusts, which are a subset, had the
6 5 million valuation or the holding trust, which does have
7 it, needs to retain these. This asset can't be
8 transferred.

9 MR. CAMPBELL: Why don't we take our break. We
10 will take one hour and be back at 1:20.

11 MR. DeWULF: That would be fine.

12 VIDEOGRAPHER: The time is 12:17 p.m. We are
13 going off record, ending media three.

14 (A recess was taken from 12:17 p.m. to
15 1:15 p.m.)

16 VIDEOGRAPHER: The time is 1:15 p.m. We are now
17 back on record, beginning media four.

18 Q. (BY MR. CAMPBELL) David, I want to go back to
19 your Rule 26.1 statement, which is Exhibit No. 4. And I
20 want you to turn to page 16 on Exhibit 4. All right. And
21 I want you to look at lines 10 to 12.

22 And this is your statement under oath, and in --
23 you have got a little subparagraph (c), you say that you
24 repeatedly reminded Mr. Chittick that he needed to fund
25 loans directly to a trustee or escrow company, rather than

1 to the borrower. Mr. Chittick ignored Mr. Beauchamp's
2 advice.

3 And that's the truth, correct?

4 A. Correct.

5 Q. And I think you testified this morning that even
6 in December of 2013, you told him that same thing,
7 correct?

8 A. That's correct.

9 Q. Let's turn to Exhibit No. 36.

10 Exhibit No. 36 is an email chain between you and
11 Mr. Chittick, and it starts out on January 9th, 2014.

12 Do you see that?

13 A. That's correct.

14 Q. This is the exact same day that you meet with
15 Mr. Chittick and Mr. Menaged about the double-escrow
16 problem, right?

17 A. That is correct.

18 Q. So Chittick writes you and he tells you that:
19 If I cut a cashier's check and take it to the trustee
20 myself, I don't get a receipt that DenSco Paid for it. I
21 get a receipt saying that X property was paid for, for X's
22 cash vested in borrower's name. My name doesn't appear on
23 it. Other than having a cashier's check receipt saying
24 that I made a check out for it, there isn't anything from
25 the trustee saying that it was my check.

1 I could wire Scott the money, he could produce a
2 cashier's check that says remitter was DenSco and it would
3 have the same exact effect as if I got a cashier's check
4 that said I'm the remitter.

5 I don't just do this with Scott, I do this with
6 90% of the guys that I fund at the auctions. 90% of the
7 time there is an intermediary between my borrower and the
8 trustee, a bidding company. Everyone wires the money to
9 the bidding company the bidding companies get the
10 cashier's check saying the remitter is the borrower.

11 Put aside --

12 MR. DeWULF: Buyer. The remitter is the buyer.

13 Q. (BY MR. CAMPBELL) Buyer.

14 Put aside the logistics for a second, what proof
15 or what guarantee is there by me cutting a check and
16 handing it to Suzy at the trustee's office rather than my
17 borrowers? I know I must be missing something.

18 Now, Mr. Beauchamp, if you had told him again
19 and again and again to hand the money directly to the
20 trustee, why is he emailing you and telling you what his
21 procedure is with 90 percent of the borrowers?

22 A. Because he is arguing with me.

23 Q. And then let's see how you respond,
24 Mr. Beauchamp.

25 You respond and say, "Denny: Let me see what

1 the other lenders got from the Trustee and we can make a
2 better decision. There is either another way do it or
3 someone described a procedure that does not work."

4 That was your response, correct?

5 A. Correct.

6 Q. You do not say, "Hand the money to the trustee.
7 Do not wire it to Denny," in your email. True?

8 A. We had discussed this issue three or four times
9 that day, and like I said, he was arguing with me, so at
10 that point --

11 Q. All right.

12 A. -- he wasn't listening. I wanted to get
13 additional resources or statements to help convince him.

14 Q. All right. Mr. Beauchamp, you are arguing with
15 me now. I have told you repeatedly I would like you to
16 answer a fair yes-or-no question yes or no. If you cannot
17 answer it yes or no, if you feel you need to make an
18 explanation, tell me you can't answer it yes or no.

19 So for I don't know how many times I have asked
20 you, can you follow that instruction? Can you answer a
21 question yes or no? If you feel you can't answer it, just
22 tell me you can't answer it.

23 will you do that?

24 MR. DEWULF: I feel like I ought to say
25 something. I think he is doing his best. Some of the

1 questions don't really fit in that category, but with
2 that -- with that kind of a background, do the best you
3 can, David, with the questions. Make sure if you -- if
4 you can answer yes or no, try to do that. If you can't,
5 tell him that.

6 Q. (BY MR. CAMPBELL) My question was, you do not,
7 in your email of January 9th, 2014, responding to
8 Mr. Chittick, tell him, "Hand the money to the trustee.
9 Don't wire it to Menaged." True?

10 A. True.

11 Q. Now, do you recall bringing a real estate lawyer
12 on to this case?

13 A. When you say case, matter, can you be more
14 defined, please?

15 Q. You know how when you were worried about the
16 \$50 million in lending, you went to other lawyers in your
17 firm to get assistance?

18 A. Correct.

19 Q. With respect to the problem that DenSco was
20 having from January 9th and with respect to the email you
21 got on how he is wiring money, do you recall reaching out
22 to another lawyer in your firm who was an expert in real
23 estate to help you?

24 MR. DeWULF: Object to form.

25 THE WITNESS: I -- I remember reaching out to a

1 couple different people in the firm.

2 Q. (BY MR. CAMPBELL) Tell me who you remember.

3 A. Bob Anderson in the Phoenix office, I talked to
4 him. I also reached out to Jeff Van Winkle in terms of
5 who he thought I should talk to in the firm with respect
6 to it. And I probably reached out to one of the
7 administrative people in charge of the corporate section.

8 Q. All right. Robert Anderson is an expert in real
9 estate transactions. True?

10 A. Correct.

11 Q. Why were you bringing Mr. Anderson as an expert
12 in real estate transactions into the case?

13 A. Maybe I misunderstood the question. I thought
14 you were asking in terms of the issues when there was a
15 problem, when we were talking about the forbearance.

16 Were you implying to a different part of this
17 case or a different aspect?

18 Q. Here, let's go about it this way. Turn to
19 Exhibit No. 6.

20 Exhibit No. 6 is your -- it's the bill that went
21 out in February 2014 and it has January time entries on
22 it. I want you to look at Clark Hill Bates stamp 2315.
23 And I want you to look at the January 17th, 2014 billing
24 entries.

25 A. What date was that?

1 Q. January 17.

2 A. Okay. It's the highlighted entry. Okay.

3 Q. Yeah. I want you to look at the one below that,
4 which is the one for Mr. Schenck. And it says: Attorney
5 conference regarding procedures with Bob, B. Anderson.
6 Attorney conference with D. Beauchamp recording same.

7 And if you look above it, Mr. Anderson says:
8 Meeting with David Schenck regarding history of loans and
9 fraud; review letter from Bryan Cave and documents.

10 Now, why was -- what was your understanding of
11 why Mr. Schenck and Mr. Anderson had that meeting and what
12 was Mr. Anderson tasked to do?

13 MR. DEWULF: Object to form.

14 THE WITNESS: January 17th, I had gone to Daniel
15 for assistance in connection with this matter. And I
16 don't remember if he asked me, he wanted to reach out with
17 some of the real estate questions to Bob Anderson or if he
18 just did it. Given what we were dealing with, he had the
19 authority to do that.

20 And he met with Bob to deal with, you know,
21 discussion and to verify -- well, it's not stated here,
22 but their discussion centered on my suggested approach to
23 deal with a Forbearance Agreement.

24 Q. (BY MR. CAMPBELL) Did you bring Mr. Anderson in
25 to help answer the question from Mr. Chittick, why can't I

1 keep wiring the money to Mr. Menaged?

2 A. I don't specifically remember that.

3 Q. Turn to Exhibit No. 52.

4 Exhibit No. 52 on the top is an email from you
5 to Lindsay Stringer.

6 She is your secretary?

7 A. She was.

8 Q. All right. Is she gone now?

9 A. Yeah. She followed her husband to a job
10 promotion to California.

11 Q. So it's an email to her, copy to Mr. Schenck.
12 You remember this email?

13 A. No, I didn't remember it until seeing it now.

14 Q. You see in the second paragraph, you say, "Dan:
15 we also need to talk to Bob Anderson about the procedures
16 used by DenSco to refute research from Bob Miller or to
17 change DenSco's procedures."

18 Do you see that?

19 A. Correct.

20 Q. One of the reasons Mr. Anderson was brought on
21 board was to look at DenSco's procedures and to determine
22 whether you should recommend DenSco change its procedures.
23 True?

24 A. Not exactly as you stated it.

25 Q. All right. Let me reframe the question.

1 You told Mr. Schenck in part to talk to Bob
2 Anderson about the procedures used by DenSco. True?

3 A. Correct.

4 Q. And you ask Mr. Schenck in part to talk to
5 Mr. Anderson about whether to recommend a change to
6 DenSco's procedures. True?

7 A. It was more complicated than that.

8 Q. So you can't -- you can't answer that yes or no?

9 A. I can't, no.

10 Q. Look at Exhibit 53. 53 is an email that you
11 write to Mr. Anderson on January 17th, 2014.

12 Do you see that?

13 A. Correct.

14 Q. And you tell Mr. Anderson, "Attached is the
15 demand letter from Bryan Cave asserting the claim from the
16 other lenders. If this claim has any merit, we need to
17 advise DenSco to change its internal procedures."

18 Did I read that correctly?

19 A. Correct.

20 Q. You asked Mr. Anderson to review the claim from
21 Bryan Cave and to let you know whether Clark Hill needed
22 to advise DenSco to change its internal procedures. True?

23 MR. DEWULF: Could I have that back, please.

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

25 THE WITNESS: True, but there was more to it

1 than that.

2 Q. (BY MR. CAMPBELL) And one of the internal
3 procedures that Mr. Chittick was seeking advice on was how
4 he funded the loans, that he funded them 90 percent of the
5 time by wiring the money to the borrower. True?

6 A. You need to restate it, because it's not going
7 to be correct either way I answer it.

8 Q. You cannot answer it yes or no?

9 A. I cannot answer it yes or no.

10 Q. That's fine.

11 You would agree that Mr. Chittick asked you for
12 advice in his email as to how he should fund loans, the
13 procedures for it. True?

14 A. He asked me to reexamine the issue because he
15 wasn't happy with my answer.

16 Q. All right. In that email that he sent you, in
17 the emails we have looked at with respect to Mr. Anderson,
18 the real estate expert in your firm, there is not one word
19 you write about let's tell Mr. Chittick to give the money
20 directly to the trustee, not to Menaged. True?

21 MR. DeWULF: Would you read that back, please.

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

23 MR. DeWULF: Object to form.

24 THE WITNESS: There was not an email.

25 Q. (BY MR. CAMPBELL) In fact, you cannot point me

1 to any email, between January 1, 2014, and the time you
2 terminated your representation of DenSco, where you
3 advised Mr. Chittick by email not to fund the loan by
4 giving, wiring money to Menaged, but hand deliver a check
5 to the trustee, correct?

6 MR. DeWULF: Object to form.

7 THE WITNESS: I'm not familiar with every email
8 that went out, so I cannot say yes or no that there is --
9 so you are right, I cannot point to an email off the top
10 of my head.

11 Q. (BY MR. CAMPBELL) In the preparation for your
12 deposition today and in reviewing documents for your
13 deposition, did you see a single email that you can recall
14 from January 1, 2014, until the time you terminated, where
15 you sent an email saying "Don't wire the money to the
16 borrower. Hand deliver it to the trustee"?

17 MR. DeWULF: Object to form.

18 THE WITNESS: I -- I don't recall an email, but
19 we had numerous conversations on that point.

20 Q. (BY MR. CAMPBELL) I want you to put that book
21 back up and bring down volume 2.

22 MR. DeWULF: Volume 2?

23 MR. CAMPBELL: Volume 2, Exhibit 61.

24 Q. (BY MR. CAMPBELL) All right. Are you on
25 Exhibit 61?

1 A. Yes.

2 Q. So Exhibit 61 is some sort of appointment
3 calendar.

4 Is this -- do you have within Clark Hill an
5 appointment calendar where you can post meetings?

6 A. There -- I have never seen this format, but,
7 yes, there is a way to do that.

8 Q. All right. So you say this looks -- this is
9 Mr. Anderson. It's on January 29th, 2014. The subject is
10 David B, rev, which I assume is reviewed DenSco loan
11 documents and procedures re closing and 1st lien position,
12 title company.

13 I was just going to ask, do you have any
14 recollection of meeting with Mr. Anderson at any time to
15 talk about DenSco loan document and procedures re closing
16 and 1st lien position?

17 A. I don't have a recollection of a meeting, but I
18 have recollection of talking to him.

19 Q. Okay. Give me a recollection of what your
20 discussion was with Mr. Anderson regarding DenSco loan
21 docs and procedures re closing and 1st lien position,
22 title co.

23 A. He had reviewed Bob Miller's letter, and I
24 indicated that the client was not accepting my advice as
25 to what he -- how he had to do, and he asked for an

1 independent view. That's why I got you involved with no
2 background information. And we need to, you know, confirm
3 to the client what is the procedure. And he said: well,
4 he has got to go through the trustee or the title company.
5 I said: Then you need to tell him that.

6 Q. All right. So you told Mr. Anderson that he had
7 to tell Mr. Chittick that the proper procedure was to give
8 the money to the trustee, not to wire it to the borrower?

9 A. Denny wanted independent confirmation. He
10 didn't want it from me. And the best way to deal with
11 that was to either have -- you know, to have Bob deal with
12 Denny directly so Denny wouldn't accuse me of filtering
13 it.

14 Q. I understand, but I'm just trying -- you know,
15 when we have multiple --

16 A. I understand.

17 Q. When you have multiple team members on a case,
18 different people have different responsibilities. And I
19 hear you saying that it was Mr. Anderson's responsibility
20 to get back to Mr. Chittick and let him know that he is
21 independently confirming that he is not to send the money
22 to the borrower, he is to bring the check to the trustee?

23 MR. DEWULF: Object to form.

24 THE WITNESS: It -- it was either that he needed
25 to coordinate with Daniel to get back to him, but I had to

1 be out of the loop. This needs to be a way, outside my
2 hands.

3 Q. (BY MR. CAMPBELL) All right. I understand, but
4 Mr. Chittick had asked for advice from Clark Hill about
5 this procedure of funding?

6 A. Correct.

7 Q. Clark Hill said "We will give you advice,"
8 correct?

9 A. Well, I had provided advice and he wanted a
10 second opinion, yeah.

11 Q. And Clark Hill said "We will give you a second
12 opinion," right?

13 A. Correct.

14 Q. And the person that was going to give
15 Mr. Chittick a second opinion was going to be
16 Mr. Anderson?

17 MR. DeWULF: Object to form.

18 THE WITNESS: It was going to be some
19 combination of Mr. Anderson and Mr. Schenck.

20 Q. (BY MR. CAMPBELL) All right. So either
21 Mr. Anderson or Mr. Schenck was going to give the advice
22 back to Mr. Chittick, am I correct, but you are out of the
23 loop?

24 A. On this issue, yes.

25 Q. All right. In preparation for your deposition,

1 have you read Mr. Anderson's deposition?

2 A. No.

3 Q. Have you read Mr. Schenck's deposition?

4 A. No.

5 Q. Have you seen any summaries of their
6 depositions?

7 A. No.

8 Q. Turn to Exhibit No. 62. Again, this is just for
9 purposes of refreshing your recollection. It may or may
10 not. But here is another appointment note from
11 Mr. Anderson. He is scheduling time for DenSco loan
12 document review.

13 Does that refresh your memory on anything else
14 with respect to this issue?

15 A. I have not seen this before, and it would be
16 about the appropriate time when we were trying to get the
17 answer to DenSco, but I thought it was -- it could have
18 been done before this, but that makes sense.

19 Q. Turn to Exhibit No. 73.

20 Exhibit 73 is another appointment, again,
21 Mr. Anderson. This is February 12th, and the subject is
22 DenSco memo.

23 Did you ever learn that Mr. Anderson was
24 preparing a memorandum to give to Mr. Chittick regarding
25 proper loan procedures?

1 A. Probably not until I reviewed the billing.

2 Q. Okay. Is it your recollection that Mr. Anderson
3 was going to prepare a memo to Mr. Chittick regarding the
4 proper loan procedures?

5 A. I don't know exactly how he was going to convey
6 the information. I left that up to him and Daniel.

7 Q. Okay. Turn to Exhibit No. 78.

8 Have you seen Exhibit No. 78 before?

9 A. I believe so.

10 Q. And what's your -- when did you see Exhibit
11 No. 78?

12 A. I don't recall if I saw it in early 2014, but I
13 did see it in connection with documents to review for
14 today.

15 Q. Did you ever transmit this document to
16 Mr. Chittick?

17 A. I was under the impression it had been
18 transmitted to him.

19 Q. Did you transmit it?

20 A. I don't know if I transmitted it.

21 Q. This document doesn't have anything about
22 funding, how you fund the loan, how you get the money down
23 there, do you give it to the borrower, do you give it to
24 the trustee.

25 Have you ever seen a memorandum on that issue?

1 MR. DeWULF: Object to form.

2 THE WITNESS: It references the escrow letter,
3 the title company in terms of that, and how he closed
4 other loans for other clients for me. He always used the
5 escrow letter to convey with the money going, you are
6 receiving on behalf of the lender. That is how Bob
7 Anderson operated.

8 What was the balance of the question? I'm
9 sorry.

10 Q. (BY MR. CAMPBELL) Mr. Anderson in his
11 deposition said that this document had nothing to do with
12 how you fund the loan.

13 Are you disagreeing with that?

14 MR. DeWULF: Object to the form.

15 THE WITNESS: If -- if he provided this, this
16 could have been a separate request from the client.

17 Q. (BY MR. CAMPBELL) Do you have any recollection
18 whether you did anything to confirm that either
19 Mr. Anderson or Mr. Schenck actually gave legal advice to
20 Mr. Chittick about how to fund the loan?

21 A. I -- I did talk with Denny, and he said -- he
22 didn't indicate where it came from, but: I understand the
23 objections to the procedure to funding and I'm going to
24 modify my procedures.

25 So at that point I thought he had gotten the

1 information and stopped it.

2 Q. When did this conversation take place?

3 A. It -- it was triggered by questions that I had
4 dealing with the Forbearance Agreement, which I would say
5 probably third week in February or so.

6 Q. And where did the conversation take place?

7 A. With Denny, it was 90 percent by phone, so it
8 probably was by phone.

9 Q. You think it was a phone call. Where were you,
10 where was he?

11 A. I never knew where Denny was when he would call
12 in. It could be Idaho, California. I -- I never knew
13 where he would be. I -- if he called me, excuse me, I
14 could be in my office, I could be home, I could be
15 driving. I don't -- don't recall.

16 Q. Do you have a telephone call handwritten note
17 with respect to this conversation?

18 A. Not that I recall. It's -- it's quite possible.
19 It could -- it's -- we were discussing other issues, so it
20 could have been other notes could have been there and it
21 was -- I just wanted to know if in fact he had changed the
22 procedure, because what he was doing was not good practice
23 and I told him that.

24 Q. Well, it was more than not good practice. It
25 was the reason that Mr. Menaged could steal money from him

1 or his cousin, correct?

2 MR. DeWULF: Object to form.

3 THE WITNESS: That's -- that's a subject of
4 determination. There was...

5 Q. (BY MR. CAMPBELL) You don't -- you don't think
6 that wiring the money to the borrower was the catalyst for
7 the frauds committed in this case?

8 MR. DeWULF: Object to form.

9 THE WITNESS: I haven't seen everything in terms
10 of things subsequent to 2016 or seen the analysis to know
11 what any catalyst was. If I had to say there was a
12 catalyst, it was Denny Chittick unduly and improperly
13 trusting Scott Menaged.

14 MR. DeWULF: You said 2016. Is that what you
15 meant?

16 THE WITNESS: No. I meant 2014. Sorry.

17 Q. (BY MR. CAMPBELL) I want you to turn to your
18 Exhibit No. 7. It's in Volume 1.

19 MR. DeWULF: Which exhibit did you say?

20 MR. CAMPBELL: Exhibit 7.

21 Q. (BY MR. CAMPBELL) So this is going to be the
22 March billing of all time in February. And why don't you
23 take a moment to review it, and can you point me to any
24 billing entry that refers to this telephone call that you
25 had regarding lending procedures on how you fund.

1 A. I see several telephone conversations with him,
2 including extended time phone calls. I don't see a
3 specific reference to that, although there was words
4 indicating procedure, status, and, you know, the
5 Forbearance Agreement, so it's --

6 Q. Mr. Beauchamp, just to close on that issue, how
7 he funded the loans was a very important issue, correct?

8 A. Yeah. I'm sorry. In looking at the second
9 invoice dealing with business matters, and there is a
10 reference on 2/27 where we are talking about the questions
11 and responds to D. Chittick; telephone call with D.
12 Chittick regarding information needed and procedure;
13 prepare and transmit.

14 So, you know, it could have been in that
15 context, or it could have been in the context of the
16 discussion on the workout with several of those.

17 Q. I'm looking at the 2/27/2014. It says "prepare
18 and transmit email request for additional procedural
19 information."

20 What additional procedural information were you
21 asking for?

22 A. Without getting into some of the other mission
23 at that -- information at that time, I could only guess.

24 Q. All right. Let's go back to just this general
25 overarching issue.

1 It is a very important and material issue how he
2 delivers money to buy these properties. True?

3 A. That's why I had several arguments with him
4 about it.

5 Q. It goes to whether or not he is complying with
6 his fiduciary duty of diligence to his investors. True?

7 A. It's a factor.

8 Q. It's just a factor? It's not a material fact
9 all on its own?

10 A. A lot depends upon -- there are a number of
11 other facts that could affect that, so --

12 Q. If he is not following your advice, that is a
13 material fact you have to immediately disclose to the
14 investors because of DenSco's fiduciary duties. True?

15 MR. DeWULF: Would you read that back, please.

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

17 MR. DeWULF: Object to form.

18 THE WITNESS: It would depend on the advice and
19 what I was giving him. And he told me he was following
20 the instructions, but he disagreed with me and -- and
21 that's why I had Robert Anderson and Daniel Schenck try to
22 provide third-party verification.

23 Q. (BY MR. CAMPBELL) Okay. I hadn't picked that
24 up before.

25 You had told Mr. Schenck and Mr. Anderson to

1 devise a procedure where there would be third-party
2 verification that the funds were delivered to the trustee?

3 A. No, that's not what I meant.

4 MR. DeWULF: Object to form.

5 MR. CAMPBELL: Repeat to me his last answer.

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

7 Q. (BY MR. CAMPBELL) Okay. You told Mr. Anderson
8 and Mr. Schenck to provide third-party verification?

9 A. Of why he had to pay the money to the trustee or
10 to a telecompany and not to the borrower.

11 Q. All right. So you had told him he had to do it
12 a certain way and he disagreed?

13 A. Strenuously.

14 Q. You went to Mr. Anderson and Mr. Schenck and
15 told them give them -- you two give him independent
16 verification this is what he has to do?

17 A. Yeah. And Robert Anderson's comment when I
18 asked him, he goes -- he said: well, you can't just give
19 it to the borrower. And I said: Here is a copy of his
20 email. We need to prove why this is not acceptable. He
21 is not accepting my advice on this.

22 Q. If Mr. Anderson and Mr. Schenck did not do that,
23 was Clark Hill at fault for not giving independent
24 verification to Mr. Chittick?

25 MR. DeWULF: Object to form.

1 THE WITNESS: I -- I believe they did that. I'm
2 not -- I don't agree with the facts as you allege them to
3 be.

4 Q. (BY MR. CAMPBELL) Have you seen a memo they
5 gave to Mr. Chittick?

6 A. No, but I know they had conversations with him.

7 Q. Have you seen an email they gave to
8 Mr. Chittick?

9 A. Well, there were emails sent to Mr. Chittick. I
10 don't remember if this topic was touched on in them, but I
11 do know Daniel talked to Mr. Chittick. And I had relayed
12 to Denny, which he didn't want to hear, they have
13 confirmed my recommendation. I want to hear it from, you
14 know, them. That's -- that's what I thought had happened.

15 Q. Did you go to them and confirm that it happened,
16 Mr. Schenck or Mr. Anderson?

17 A. I believe I did, because Denny referenced that:
18 Okay, okay. I understand what you are telling me. You
19 know, and then he made some other comment about, you know,
20 dealing with the procedures and a closing letter and
21 stuff, and I said: You got to do that.

22 Q. All right. Mr. Chittick's dead.

23 A. I know.

24 Q. Is there any one party to this conversation that
25 can verify this besides you?

1 A. I -- I probably told Daniel about it, but he
2 can't verify it. He is only going on what I told him.

3 Q. All right. I want to turn to the Forbearance
4 Agreement, and I want you to turn to Exhibit No. 168.

5 Now, remember in Mr. Miller's letter that you
6 received, Mr. Miller wanted Subordination Agreements,
7 correct?

8 A. Correct.

9 Q. Now, Menaged was being represented by Jeff
10 Goulder. True?

11 A. For a portion of the time.

12 Q. And did you find Mr. Goulder a difficult person
13 to work with?

14 MR. DeWULF: Object to form.

15 THE WITNESS: He was being very zealous in -- on
16 behalf of Mr. Menaged and refused to even let his client
17 acknowledge the facts leading to the default.

18 Q. (BY MR. CAMPBELL) Well, so Mr. Goulder was very
19 zealous. He didn't want to admit facts leading to the
20 default. He also wanted a confidentiality agreement.
21 True?

22 A. He -- he wanted a confidentiality agreement so
23 we could not disclose it, and there happened to be a
24 three-way call with Mr. Chittick, Mr. Goulder, and -- and
25 Mr. Menaged where that was discussed, and I wasn't made --

1 provided access to that phone call.

2 Q. Well, and he also wanted a release at some point
3 in time?

4 A. Yes, he did.

5 Q. I mean, he made, in your opinion, a number of
6 unreasonable demands. True?

7 A. Correct.

8 Q. Now, in this Exhibit No. 168, you are
9 communicating to Mr. Goulder on January 15th, 2014, and
10 you are sending him the letter from Mr. Miller around the
11 Subordination Agreements. True?

12 A. Correct.

13 Q. And you tell him, quote, "Please note that
14 DenSco cannot enter into any Subordination Agreements
15 without violating its private offering documents and its
16 underlying fund documents. So we have had to explore a
17 different way to proceed to resolve this matter."

18 Do you see that?

19 A. Yes.

20 Q. So you had formed the opinion that DenSco, in
21 fulfilling its fiduciary duties, could not sign a
22 Subordination Agreement because it would be directly
23 contrary to what investors had been told in the private
24 offering memorandum?

25 A. That was part of the reason for it.

1 Q. Okay. What was the other part?

2 A. The other part was Mr. Chittick stated
3 unequivocally that not all those loans should be
4 subordinated. I was prior in time, I had right, and he
5 wants all of them subordinated, and I'm not willing to do
6 that.

7 Q. At the end of the day, was there any loan that
8 DenSco took ahead of Mr. Miller's clients?

9 MR. DeWULF: Object to form.

10 THE WITNESS: I -- I was not involved with the
11 payoffs on the loans and the procedures that were handled
12 in connection with the payoff of the other loans or upon
13 the sale of the loan to know exactly what transpired with
14 that.

15 I do know that Mr. Menaged was supposed to be
16 providing outside capital from his other companies to
17 cover some of that, and at one point I was told there
18 might be a two- to three-day delay with that, while
19 everything is held by the telecompany, but that was just
20 one reference at one time.

21 Q. (BY MR. CAMPBELL) Here, let's turn to Exhibit
22 No. 97.

23 So Exhibit 97, 97 is -- it looks like they are
24 agreements. And actually if you go through and look at
25 the copy, they are all signed.

1 But is this the -- are these the Forbearance
2 Agreement documents that you worked on in this case?

3 A. I believe so.

4 Q. All right. And just to look at a few things in
5 it --

6 A. The chain of custody at the end is not.

7 Q. Okay. Turn to Bates stamp 10787.

8 And you see Exhibit A is Lender Loans and
9 Encumbered Properties?

10 A. I see the title, yes.

11 Q. All right. And what is this list of loans?

12 A. I would have to refer back on the Forbearance
13 Agreements to understand the reference.

14 It's -- according to Recital A, that's supposed
15 to be the loans a borrower is indebted to the lender, and
16 the lender would be DenSco.

17 Q. And are these loans that have double escrow
18 or -- I call it double escrow, I mean double-lien
19 problems?

20 A. I'm not seeing the precise language, if it was a
21 subset of those or if it was all of them.

22 Q. Well, explain to me, Mr. Beauchamp, how this
23 Forbearance Agreement was supposed to work.

24 MR. DEWULF: Object to form.

25 THE WITNESS: We are going to be here until

1 8:00 o'clock tonight.

2 Q. (BY MR. CAMPBELL) who was going to -- with
3 respect to the -- with respect to the loans that had two
4 liens on them, who was going to get paid off first?

5 MR. DeWULF: Object to form.

6 THE WITNESS: That was left to the discretion of
7 Denny Chittick within the guidelines established here.

8 Q. (BY MR. CAMPBELL) well, Mr. Miller had asked
9 for a Subordination Agreement, correct?

10 A. Correct.

11 Q. Was his clients' loans paid off upon the sale of
12 the properties that his clients had liens on?

13 MR. DeWULF: Object to form.

14 THE WITNESS: I can't answer that yes or no
15 because there is an additional circumstance.

16 Can I clarify?

17 Q. (BY MR. CAMPBELL) Not yet.

18 Was Mr. Miller's clients paid from the proceeds
19 of the properties that were sold that he had liens on?

20 A. Same issue.

21 Q. Tell me what the issue is.

22 A. Some of those loans were paid off in connection
23 with other closings and not upon the sale of that actual
24 property.

25 Q. So he may have been paid off from proceeds from

1 the sale of another property that he didn't have an
2 interest in?

3 A. Correct.

4 Q. But basically Mr. Miller's clients were
5 guaranteed that they were going to be paid off on their
6 loans from proceeds of the sale of the properties. True?

7 MR. DeWULF: Object to form.

8 THE WITNESS: That was my understanding.

9 Q. (BY MR. CAMPBELL) And that DenSco would be
10 looked to be paid for after that. True?

11 MR. DeWULF: Object to form.

12 THE WITNESS: It varied on the property and the
13 procedure, but that, in essence, it would -- it would in
14 fact, depending upon the additional equity that Menaged
15 brought, Menaged was supposed to bring in and all the
16 other requirements.

17 Q. (BY MR. CAMPBELL) All right. But basically
18 Mr. Miller got out of this; and why they didn't sue was
19 they in effect knew they were going to get paid first out
20 of the proceeds of the sale, right?

21 MR. DeWULF: Object to form.

22 THE WITNESS: Very close, but not exactly, yes.

23 Q. (BY MR. CAMPBELL) And DenSco made some
24 agreements, for example, that it would go up to high
25 loan-to-value ratios on some of the remaining properties,

1 right?

2 A. To a higher loan than what had been the previous
3 policy of DenSco.

4 Q. All right. And you agree with me that if they
5 moved to a loan-to-value ratio of 95 percent, that was in
6 violation of the private offering memorandum?

7 MR. DeWULF: Object to form.

8 THE WITNESS: The prior offering memorandum
9 referred to value. The 95 percent here was based upon
10 original purchase price. So it's possible that there was
11 added value, which all of these were supposed to have had
12 with remodeling, tenants in there and improvements, that
13 the value was supposed to go up to cover that.

14 Q. (BY MR. CAMPBELL) Is it your opinion,
15 Mr. Beauchamp, when you had this Forbearance Agreement
16 signed, that DenSco was not in violation of its
17 loan-to-value ratios with respect to its investors?

18 MR. DeWULF: Object to form.

19 THE WITNESS: The POM provided discretion for
20 certain things. A loan work is an issue where the manager
21 has discretion. And once this was signed, my
22 understanding completely was a POM discussing, disclosing
23 this was to be provided to all the investors updating the
24 previously disclosed ratios.

25 Q. (BY MR. CAMPBELL) Pursuant to DenSco's

1 fiduciary duties to its investors, did DenSco have a duty
2 to immediately inform its investors that it was going to
3 start doing loan-to-value ratios of 95 percent?

4 MR. DeWULF: Could you read that back, please.

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

6 MR. DeWULF: Object to form.

7 THE WITNESS: I can't answer it the way you have
8 it phrased.

9 Q. (BY MR. CAMPBELL) All right. That's fine.

10 The reason Mr. Miller did not sue on behalf of
11 his clients, was this Forbearance Agreement gave him
12 confidence that he would be paid first on his clients'
13 loans. True?

14 MR. DeWULF: Object to form.

15 THE WITNESS: Mr. Miller withdrew in
16 mid-January. As you know, this was signed in April, and I
17 cannot speculate on his reasoning.

18 Q. (BY MR. CAMPBELL) If you could not sign a
19 Subordination Agreement because being in second place
20 would violate the POM, can you explain to me how this
21 Forbearance Agreement in practical effect is any different
22 than a Subordination Agreement?

23 MR. DeWULF: Object to form.

24 THE WITNESS: The private offering memorandum,
25 or POM as it's referred to, set up overall value for the

1 portfolio of loans. And with the money and the other
2 assets that Menaged was supposed to provide, according to
3 calculations that Denny Chittick showed me in the values
4 of the property, he felt he was close overall to the
5 70 percent loan to value, looking at totality of the
6 loans.

7 He showed me that, third week in February. He
8 showed me an update to that in March sometime, and then
9 when we received the actual exhibit to attach to the
10 Forbearance Agreement in April, what he had shown me
11 previously didn't fit anymore, which is why we immediately
12 started to work on the private offering memorandum.

13 Q. (BY MR. CAMPBELL) Mr. Beauchamp, investors were
14 told not only in the private offering memorandum, but on
15 Mr. Chittick's website that they would always be in first
16 position on loans. True?

17 MR. DeWULF: Object to form.

18 THE WITNESS: I don't think the word "always"
19 was there.

20 Q. (BY MR. CAMPBELL) You don't think so?

21 A. Can we look at -- pull the POM and look?

22 Q. No. You just don't remember?

23 A. I thought it was the intention, but I don't
24 think "always" was used because that's a guarantee word.

25 Q. Do you think Mr. Chittick told investors that

1 they were not in first position on their loans?

2 MR. DeWULF: Object to form.

3 THE WITNESS: He had told me he did.

4 Q. (BY MR. CAMPBELL) No. You are talking again
5 about the disclosure.

6 Back when times were good, before Mr. Menaged,
7 isn't it true that Mr. Chittick told investors that they
8 would always be in first position on their loans, yes or
9 no?

10 MR. DeWULF: Object to form.

11 THE WITNESS: I don't know exactly what he said
12 beyond the scope of the POM.

13 Q. (BY MR. CAMPBELL) The reason it's material to
14 an investor to be in first position is it means the first
15 money out of the sale goes to pay them back. True?

16 MR. DeWULF: Object to form.

17 THE WITNESS: If they had an individual note and
18 deed of trust, yes. But in this instance, they were
19 general -- and the POM described this, they were general
20 unsecured creditors of DenSco. They didn't have an
21 interest in the specific loans. And your wording for the
22 question referred to an interest on a specific loan when
23 the house was sold.

24 Q. (BY MR. CAMPBELL) Sir, are you telling me in
25 your opinion the investors would not consider being in

1 first position a material fact they needed to know?

2 MR. DeWULF: Object to form.

3 THE WITNESS: I think they were more concerned
4 with the overall loan-to-value coverage than first
5 position.

6 If you have a \$100,000 loan and the house is
7 only worth 50, you are in first position, it's going to be
8 the loan to value is what hard-money lenders and the
9 investors have -- every, in my experience, in years
10 working with these, that's always been the issue is the
11 loan to value.

12 Q. (BY MR. CAMPBELL) Mr. Beauchamp, is it your
13 opinion that DenSco can decide for itself what's material
14 and has to be told to investors who are investing in it?

15 MR. DeWULF: Object to form.

16 THE WITNESS: There is an objective standard,
17 and -- but it's based upon the totality of the facts and
18 circumstances.

19 Q. (BY MR. CAMPBELL) All right. And it's your
20 opinion, Mr. Beauchamp, that DenSco did not have to tell
21 investors that there were circumstances where they are not
22 in first position. True?

23 MR. DeWULF: Could you please read that back.

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

25 MR. DeWULF: Object to form.

1 THE WITNESS: That would be a facts and
2 circumstances analysis.

3 Q. (BY MR. CAMPBELL) Mr. Beauchamp, isn't in truth
4 and in fact, under their Forbearance Agreement, DenSco
5 investors are second place behind the other lenders; true?

6 MR. DeWULF: Object to form.

7 THE WITNESS: That would not be the legal
8 analysis of their position. That might be the net effect,
9 but with the additional collateral being provided, or that
10 was to be provided, and the way that the other aspects
11 were to work out, they were, according to the analysis
12 from Denny Chittick that he said he went over -- I think
13 he said the account, but I can't remember for sure, but he
14 had these numbers that he worked out, they still had
15 adequate loan-to-value coverage.

16 Q. (BY MR. CAMPBELL) Mr. Beauchamp, you agree that
17 the net effect of the Forbearance Agreement is that the
18 other lenders are paid first before the DenSco investors.
19 True?

20 MR. DeWULF: Object to form.

21 THE WITNESS: It was a convoluted process, so
22 I'm not sure you could say that they were paid first.

23 Q. (BY MR. CAMPBELL) Mr. Beauchamp, you just told
24 me that was the net effect in your previous answer and I
25 was giving it back you to.

1 Are you changing your testimony now?

2 MR. DeWULF: Object to the characterization.

3 Go ahead.

4 THE WITNESS: With respect to the other lenders'
5 loans on some of the property, there was discretion given
6 to Menaged on how he would resolve them or deal with them,
7 and -- and where DenSco would remain in first position,
8 because it was clearcut -- excuse me -- it was clearcut on
9 some instances that they were in fact the second position,
10 not the first position. And Menaged wanted the right to
11 deal with that separately, et cetera.

12 What was here was if in fact the house is going
13 to be sold, here is how the liens would be paid off and
14 the money would transfer. It also was how the additional
15 money was supposed to come in from the sale of other
16 homes, from his other businesses, et cetera, and how it
17 was to pay off and reduce the liens.

18 Q. (BY MR. CAMPBELL) Mr. Beauchamp, the other
19 lenders were paid before DenSco on the proceeds of the
20 sale of the home. True or false?

21 MR. DeWULF: Object to form.

22 THE WITNESS: I wasn't involved with the actual
23 specifics on that.

24 Q. (BY MR. CAMPBELL) Under the agreement, they
25 were paid off before DenSco investors. True or false?

1 MR. DeWULF: Object to form.

2 THE WITNESS: It involves a number of different
3 facts and circumstances that there is no way to be able to
4 say that right now.

5 Q. (BY MR. CAMPBELL) Mr. Beauchamp, under the
6 fiduciary duty DenSco owed to its investors, did DenSco
7 have an immediate obligation to tell its investors that we
8 did not know whether you would be paid off first from the
9 proceeds of the sale; it depended upon a number of facts
10 and circumstances that we don't understand and can apply
11 to your particular situation?

12 Would they have to tell the investors that?

13 MR. DeWULF: Could you read that back, please.

14 MR. CAMPBELL: Can't you follow it, John?

15 MR. DeWULF: Let's listen together. That's a
16 paragraph. I mean, that's a long -- and it has a lot of
17 facts wrapped into it, Colin.

18 MR. CAMPBELL: I think you are trying to give
19 him time is what you're doing.

20 MR. DeWULF: No. What I'm trying to do -- in
21 fairness, Colin, if you are going to try to call me out on
22 this, these questions have a lot of facts assumed in them,
23 and it's unfair for this witness to get this prolix
24 question --

25 MR. CAMPBELL: Go ahead. Have it read.

1 MR. DeWULF: -- without having the opportunity
2 to hear what it is.

3 MR. CAMPBELL: Have it read.

4 MR. DeWULF: And if you are afraid that
5 rereading it is going to reveal something, that's your
6 problem, not mine.

7 MR. CAMPBELL: There is nothing about this
8 witness I'm afraid of.

9 Go ahead and reread the question.

10 MR. DeWULF: Well, then let him have it back.
11 Why were you objecting?

12 MR. CAMPBELL: Read him the question.

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

14 THE WITNESS: Read the beginning, because that
15 was so long I lost track of what the point of time was.

16 Q. (BY MR. CAMPBELL) Here, I will withdraw it.

17 When you signed -- when you had the Forbearance
18 Agreement signed --

19 A. Okay. That's what I wanted to clarify.

20 Q. When you had the Forbearance Agreement signed,
21 did DenSco have the fiduciary obligation to tell its
22 investors that it did not know whether or not they would
23 be paid first out of the proceeds of sales?

24 MR. DeWULF: Object to form.

25 THE WITNESS: When the Forbearance Agreement was

1 signed and the exhibits were finalized in proper sequence,
2 because Menaged had attached different exhibits to it,
3 than -- than Denny had, and that clearly had to get
4 resolved, at that point in time, I absolutely advised
5 Denny that we were working on the disclosure document,
6 because now we have sufficient facts to do the disclosure.

7 Q. (BY MR. CAMPBELL) I want you to put the
8 disclosure document aside.

9 Do you understand that DenSco's fiduciary duties
10 are separate and apart from whatever duties it may have
11 under the securities law?

12 MR. DeWULF: Object to form.

13 THE WITNESS: well, its duties under the
14 securities law is a factor in its fiduciary duties.

15 Q. (BY MR. CAMPBELL) Fiduciary duty creates
16 obligations wholly independent of the securities laws.
17 True?

18 MR. DeWULF: Object to form.

19 THE WITNESS: But it's still a factor evaluating
20 fiduciary duty.

21 Q. (BY MR. CAMPBELL) Is it your opinion that you
22 can delay disclosing matters to investors under fiduciary
23 law because of something happening over here with
24 securities law?

25 MR. DeWULF: Object to form.

1 THE WITNESS: I couldn't hear the end of your
2 statement when you turned.

3 Q. (BY MR. CAMPBELL) Is it your opinion that
4 DenSco could delay advising investors of material facts
5 because you were working on a private offering memorandum
6 under the securities law?

7 MR. DeWULF: Object to form.

8 THE WITNESS: Again, that's a facts and
9 circumstances. If it's two weeks to get everything
10 cleaned up and correct and to the investors, then that
11 would be deemed a reasonable period of time, and dealing
12 with the SEC and its rules and in terms of notices and
13 press releases to investors.

14 Now -- yeah, leave it at that.

15 MR. DeWULF: It's been about an hour, Colin.
16 Whatever works for you in terms of a break.

17 MR. CAMPBELL: Let me ask one question, and then
18 we will come back to it after the break.

19 Q. (BY MR. CAMPBELL) Tell me why the Forbearance
20 Agreement was in DenSco's best interests, taking into
21 account its fiduciary duties to its investors.

22 MR. DeWULF: Object to form.

23 THE WITNESS: In -- the reasons evolved during
24 the time period. Initially in January it was to try to
25 ascertain all of the applicable facts and to get as much

1 of the information set forth in the agreement so that
2 there would be one agreement that people could look to
3 that would understand what is the arrangement.

4 The second part of that is you want the
5 Forbearance Agreement to -- in addition to collecting
6 that, to get as many acknowledgments from the borrower, in
7 this case multiple borrowers, as possible in terms of the
8 facts that could be part of a future complaint.

9 The third part of that is that you want to get
10 commitments from the borrower or borrowers in terms of
11 bringing in money or whatever else they are going to do to
12 correct the problem.

13 In January, we actually had -- the cousin had to
14 be terminated and that was already done and he was gone,
15 so that didn't even get included in the document, but we
16 wanted to make sure that what had been represented,
17 Menaged was taking the steps, we wanted to make sure that
18 he brought in the money, he had the life insurance policy,
19 and that he was providing the additional, other additional
20 collateral he was supposed to do.

21 So you want that there, because that is supposed
22 to ease the situation to the lender to give more
23 collateral and make the lender more secure. You want to
24 have a written agreement that indicates how do you go from
25 problem A, that if you follow, you work it out to the

1 effect of the lender in the transaction. That didn't
2 happen here.

3 Q. I don't -- why is it in DenSco's interests to
4 forbear suing Chittick and his companies?

5 A. Why would DenSco --

6 MR. DeWULF: You said Chittick.

7 THE WITNESS: -- sue Chittick and his companies?

8 Q. (BY MR. CAMPBELL) Excuse me.

9 why is it in DenSco's best interests to forbear
10 suing Menaged and his companies for an obvious fraud they
11 had committed upon DenSco?

12 MR. DeWULF: Object to form.

13 THE WITNESS: Despite advice and given a copy of
14 the statute to Denny many, many years ago, he did not get
15 Menaged's wife to sign the guarantee on those loans. So
16 he would only go, be able to go after Menaged for his
17 individual property and not the community property.

18 And according to the financial information that
19 had been presented, that was a very material number. So
20 cleaning up the past problem for Denny's use of the
21 documents was an issue.

22 In addition to that, Denny's knowledge and
23 Scott's knowledge, because he kept repeating the point, if
24 this goes in litigation, we are all in bankruptcy and
25 nobody gets anything.

1 Excuse me. The third point

2 Q. (BY MR. CAMPBELL) Go ahead. I didn't mean to
3 stop you. Do you have another point?

4 A. The third point with why it was in DenSco's best
5 interests, was in addition, if they had followed this,
6 there was going to be a direct outside investment of
7 several million dollars into this to provide the
8 additional assets to DenSco, which would benefit DenSco's
9 position in this overall problem.

10 Q. I want to -- I didn't -- you say that
11 Mrs. Menaged did not sign guarantees?

12 A. Not the original guarantees, no.

13 Q. On any of the properties, any of the loans?

14 A. Several of the ones that we looked at, I want to
15 say 17 to 20 out of maybe 25 that were given to us to look
16 at, she didn't sign.

17 Q. Was she required to do that under the private
18 offering memorandum?

19 MR. DeWULF: Object to form.

20 THE WITNESS: The private offering memorandum
21 just simply said guarantees. It did not say. But if you
22 are going to try to enforce a guarantee in Arizona, as you
23 know, and you want to go against community property, you
24 need both spouses to sign.

25 Q. (BY MR. CAMPBELL) When did you learn this?

1 A. When I saw some of the loan documents in
2 January.

3 Q. Is that a material fact you have to disclose to
4 the investors?

5 MR. DeWULF: Object to form.

6 THE WITNESS: By that time we were already
7 working towards the forbearance and Scott had already
8 agreed his wife was going to sign everything to clean up
9 the issue, because he brought it up, not Denny.

10 Q. (BY MR. CAMPBELL) My question is, is it a
11 material fact that has to be told to the investors, that
12 Mr. Chittick had failed to get guarantees on the loan?

13 MR. DeWULF: Object to form.

14 THE WITNESS: He had guarantees. He just didn't
15 cover community property with it. And Scott claimed,
16 which I have no way of knowing, that he had, you know,
17 easy 8 to \$10 million sole and separate property,
18 irrespective of the community property.

19 Q. (BY MR. CAMPBELL) I need you to answer my
20 question.

21 Was it your opinion in January 2014 that the
22 failure of Mr. Chittick to get guarantees signed by the
23 community of Mr. and Mrs. Menaged, was it your opinion
24 that was not a material fact for investors?

25 MR. DeWULF: Object to form.

1 THE WITNESS: Facts and circumstances, you had
2 to know what, you know, basically what loss to DenSco that
3 could have generated, and in early January we didn't even
4 know the number of loans, we didn't know how many she had
5 signed and how many she had not signed. We did not have
6 that information.

7 Q. (BY MR. CAMPBELL) As the lawyer for DenSco
8 having to determine whether that was a material fact that
9 had to be disclosed, what investigation did you do to
10 resolve that question?

11 MR. DeWULF: Object to form.

12 THE WITNESS: I -- please -- please read that
13 back.

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

15 THE WITNESS: I repeatedly asked for the number
16 of loans, how many of the guarantees were signed by
17 Mrs. Menaged, and I wanted also at that point to get a
18 breakdown as to the amount of those respective loans and
19 the value of the property, so that that analysis could
20 flow through.

21 Q. (BY MR. CAMPBELL) When did you find that out?

22 A. I never got all that information. I requested
23 it numerous times and I never got all that information.

24 Q. Why didn't you withdraw immediately from your
25 representation in January 2014, if that's true?

1 MR. DeWULF: Object to form.

2 THE WITNESS: It kept being promised to me, and
3 previously Denny would be slow with things, but he would
4 provide it.

5 MR. CAMPBELL: Let's take our break.

6 VIDEOGRAPHER: The time is 2:32 p.m. We are now
7 going off record, ending media four.

8 (A recess was taken from 2:32 p.m. to 2:49 p.m.)

9 VIDEOGRAPHER: The time is 2:49 p.m. We are now
10 back on record, beginning media five.

11 Q. (BY MR. CAMPBELL) Mr. Beauchamp, wasn't one of
12 the purposes of the Forbearance Agreement to protect
13 Mr. Chittick from DenSco's investors?

14 MR. DeWULF: Object to form.

15 THE WITNESS: I -- I don't think I ever thought
16 that, nor anybody broached that to me, and it wasn't
17 discussed with Denny Chittick.

18 Q. (BY MR. CAMPBELL) You would agree that drafting
19 a Forbearance Agreement to protect Mr. Chittick from
20 DenSco's investors would be a violation of DenSco's
21 fiduciary duties.

22 MR. DeWULF: Object to form.

23 Q. (BY MR. CAMPBELL) True?

24 MR. DeWULF: Object form.

25 THE WITNESS: Repeat that question.

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

2 THE WITNESS: If that was the sole purpose, yes,
3 or a major purpose, excuse me.

4 Q. (BY MR. CAMPBELL) If it was any purpose, that
5 would be wrong. True?

6 MR. DeWULF: Object to form.

7 THE WITNESS: At that time, that never -- that
8 issue never crossed my mind. It strictly was what was
9 Denny authorized to deal with this to get in the best
10 position for DenSco and his investors.

11 Q. (BY MR. CAMPBELL) Turn to Exhibit No. 70.

12 A. What number again, please?

13 Q. 7-0. 70.

14 A. Thank you.

15 Q. Exhibit No. 70 is an email that you wrote to
16 Mr. Goulder on February 7th, 2014. True?

17 A. Yes.

18 Q. And you are writing Mr. Goulder, and tell me if
19 I am reading it correctly. You start off by saying,
20 "Based on your previous changes, the Forbearance Agreement
21 would be prima facia evidence that Denny Chittick had
22 committed securities fraud because the loan documents he
23 had Scott sign did not comply with DenSco's
24 representations to DenSco's investors in its securities
25 offering documents."

1 Did you write that?

2 A. Yes, I did.

3 Q. In your opinion, Mr. Chittick did not comply
4 with the private offering memorandum when he wired money
5 directly to Mr. Menaged. True?

6 MR. DeWULF: Object to form.

7 THE WITNESS: No.

8 Q. (BY MR. CAMPBELL) No, it is not your opinion?

9 A. It is not my opinion that he violated the
10 representations in the POM when he wired the money to
11 Menaged, because other factors would have to be involved
12 with that analysis.

13 Q. What other factors would have to be involved?

14 A. If it was wired with the express understanding
15 and a third party such as the trustee or whatever were
16 copied on that and had it continue on through.

17 You can have a wire go from the lender to the
18 borrower and automatically go to a third party. That
19 wasn't what -- that wasn't the case that I saw with what
20 Denny Chittick did on the ones that I reviewed, but you
21 can do that and that would not be a violation.

22 Q. Is wiring money to Mr. Menaged, in your view and
23 in your opinion, was a violation of the mortgage
24 agreement?

25 MR. DeWULF: Object to form.

1 THE WITNESS: Mortgage agreement? what do you
2 mean?

3 Q. (BY MR. CAMPBELL) You understand that
4 Mr. Chittick filed a mortgage when properties were
5 purchased by Mr. Menaged?

6 MR. DeWULF: Object to form.

7 THE WITNESS: I was told somewhere in this later
8 process that he had filed a notice of mortgage in his
9 process, which I told him was not effective and wouldn't
10 do him any good.

11 Q. (BY MR. CAMPBELL) All right. Do you think that
12 Mr. Chittick had committed securities fraud prior to
13 February 7th, 2014?

14 A. No, I do not.

15 Q. why did you think he had not committed
16 securities fraud?

17 MR. DeWULF: Object to form.

18 THE WITNESS: We were still trying to get the
19 facts and circumstances so that we could understand that.
20 We were trying to take the previous agreement that Denny
21 had worked out with Menaged, and which included additional
22 money and assets -- well, money to come in and assets for
23 collateral, which were standard forbearance-type issues.
24 So at that point in time he was resolving it, taking it
25 from an allegedly material fact and he was taking it into

1 a standard forbearance-type of arrangement, imposing
2 restrictions and obligations on the borrower.

3 Q. (BY MR. CAMPBELL) Here, let's finish up with
4 this exhibit before we jump to some of the things you have
5 said.

6 You state in your email to Mr. Goulder,
7 "Unfortunately, this agreement needs to not only protect
8 Scott from having this agreement used as evidence of fraud
9 against him in a litigation."

10 Do you see that?

11 A. Correct.

12 Q. So you wanted to draft an agreement that the
13 investors could not use against him in litigation?

14 MR. DeWULF: Object to form.

15 THE WITNESS: No, that's what -- that's what
16 Goulder wanted.

17 Q. (BY MR. CAMPBELL) Goulder wanted what?

18 A. He wanted the agreement to completely release
19 Scott and protect Scott from any implication of fraud
20 against him with the borrowers in any subsequent
21 litigation.

22 Q. That's right. So he wasn't willing to admit any
23 fraud in the Forbearance Agreement. True?

24 A. Correct.

25 Q. And the agreement needs to comply with Denny's

1 fiduciary obligations to his investors as well and not
2 become evidence to be used against Denny for securities
3 fraud?

4 A. Do we have anywhere here the changes that
5 Goulder proposed back to us?

6 Q. Can you answer my question, please.

7 MR. DeWULF: I'm not sure there is a question.
8 Go ahead.

9 Q. (BY MR. CAMPBELL) You wrote in your email to
10 Mr. Goulder that the agreement needed to comply with
11 Denny's fiduciary obligations to his investors as well as
12 not become evidence to be used against Denny for
13 securities fraud.

14 MR. DeWULF: Are you asking whether that's in
15 the email?

16 Q. (BY MR. CAMPBELL) Did you write that?

17 A. Yes, I did.

18 Q. One of your purposes in doing the Forbearance
19 Agreement is to try and not make it become evidence to be
20 used against Denny by the investors. True?

21 A. No. I was trying to prevent --

22 Q. You have answered my question.

23 A. -- erroneous facts that were recited in the
24 draft. That's why I asked if the draft of Goulder was
25 available.

1 Q. If I ask you a yes-or-no question or a
2 true-or-false question, can you follow my instruction to
3 just answer it that way? And if you can't, tell me you
4 can't?

5 A. Then I could not answer your question the way it
6 was phrased.

7 Q. Now, you go on to state, "The previous version
8 that I had sent to you was basically a complete rewrite of
9 our standard forbearance agreement that I have used in
10 almost 200 forbearance agreements over the last 10 years."

11 Did you write that?

12 A. Yes, I did.

13 Q. You state in the third paragraph, "We wanted the
14 documents to set forth the necessary facts for Denny to
15 satisfy his securities obligations to his investors."

16 How does the Forbearance Agreement satisfy
17 Denny's securities obligations to his investors?

18 A. Well, it specifically recites the facts as to
19 how those loans were in fact entered into. They were
20 intended to be a first lien, and that, you know, based
21 upon the valuation, whatever, that that was what was the
22 intent and what he was doing.

23 Q. How does the Forbearance Agreement satisfy his
24 securities obligations?

25 A. It recites the facts.

1 Q. His securities obligations were to make
2 immediate disclosure to the investors. True?

3 MR. DeWULF: Object to form.

4 THE WITNESS: One of -- depending upon the
5 confirmation of the facts, the timing, but there is also
6 other securities obligations and being responsible with
7 the loans and how to do them pursuant to the guidelines
8 outlined in the POM.

9 Q. (BY MR. CAMPBELL) I'm confused. The
10 Forbearance Agreement was meant to change the internal
11 procedures of Mr. Chittick so he would comply with the
12 POM?

13 MR. DeWULF: Object to form.

14 THE WITNESS: No, that's not what I am saying.

15 Q. (BY MR. CAMPBELL) How did the Forbearance
16 Agreement comply with any securities obligation
17 Mr. Chittick had?

18 A. The Forbearance Agreement, as any Forbearance
19 Agreement, is to recite the necessary facts that led to
20 the default.

21 In this instance, the necessary facts, Denny
22 loaned money against various, you know, again, to be
23 secured by deeds of trust against various properties to
24 the respective borrowers. They were intended to be in
25 first lien position.

1 That is completely deleted and in its place was
2 basically he wired the money to the borrower. He did not
3 deal with his fiduciary. It was like Denny Chittick, if
4 he, you know, agreed to what Goulder put down, would go to
5 jail for fraud and none of it was true.

6 Q. You would agree with me that the Forbearance
7 Agreement by itself does not satisfy any securities
8 obligation that Mr. Chittick had to his investors?

9 MR. DeWULF: Object to form.

10 THE WITNESS: A Forbearance Agreement typically
11 does not do that, but deleting Goulder's language
12 prevented it from admitting a violation that wasn't there.

13 Q. (BY MR. CAMPBELL) But Denny's securities
14 obligations to his investors existed entirely apart from
15 the Forbearance Agreement.

16 A. Oh, completely. I just didn't want to have
17 Denny sign an agreement that had language in it that
18 wasn't true, and that Denny was very adamant to me wasn't
19 true, and that would basically set up a situation that he
20 could get sued. "well, you acknowledged this." "well, it
21 wasn't true." "why did you sign it?"

22 Q. But the purpose of the Forbearance Agreement,
23 from Mr. Chittick's point of view, was to go to the
24 investors and say even though I was defrauded, I'm going
25 to get all this money back for you and try and blunt the

1 fact that he had been defrauded and he had lost a lot of
2 money.

3 MR. DeWULF: Object to form.

4 THE WITNESS: Can you split the question in two?
5 Because a yes or no will not do it.

6 MR. CAMPBELL: Reread the question for him.

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

8 THE WITNESS: A yes or no? There are two
9 different things you are linking there that's not the same
10 answer for.

11 Q. (BY MR. CAMPBELL) You can't answer it yes or
12 no?

13 A. Can't answer it.

14 Q. Turn to Exhibit No. 345, which is going to be in
15 volume 6.

16 Exhibit No. 345 are emails between you and
17 Mr. Chittick, right?

18 A. Yes.

19 Q. So let's turn to Bates stamp 6703. And at the
20 top of the page you are emailing Mr. Chittick on
21 February 9th, 2014. And you said, "Denny: Please
22 understand that you are limited in what risk or liability
23 you can assume. Your fiduciary duty to your investors
24 makes this a difficult balancing act."

25 Did you write that?

1 A. Yes.

2 Q. And your concern was that entering into the
3 Forbearance Agreement itself might be a breach of the
4 fiduciary duty. True?

5 MR. DeWULF: Object to form.

6 THE WITNESS: It depends on the terms of the
7 Forbearance Agreement.

8 Q. (BY MR. CAMPBELL) You were worried that under
9 some terms, the Forbearance Agreement itself would violate
10 the fiduciary duty to his investors?

11 COURT REPORTER: I'm sorry. Colin, can you
12 repeat that?

13 MR. CAMPBELL: Yes.

14 Q. (BY MR. CAMPBELL) You were telling Mr. Chittick
15 on February 9th, 2014, that if he wasn't careful, the
16 Forbearance Agreement itself would be a violation of his
17 fiduciary duties to his investors.

18 MR. DeWULF: Object to form.

19 Q. (BY MR. CAMPBELL) True?

20 A. True.

21 Q. Let's go to the front page. And you email him
22 again on February 9th, 2014, and you tell Denny, "Your
23 point is understood. If possible, please recognize and
24 understand that you will 'use' the document even if you
25 and Scott never refer to it again. It has to have the

1 necessary and essential terms to protect you from
2 potential litigation from investors and third parties."

3 Did you write that?

4 A. Sloppy wording, but yes.

5 Q. Well, that sloppy wording you refer to
6 specifically says that the Forbearance Agreement has to
7 have the necessary and essential terms to protect you from
8 potential litigation from your investors. True?

9 MR. DeWULF: And third parties is the rest of
10 that statement.

11 Q. (BY MR. CAMPBELL) And third parties.
12 Did I read it correctly?

13 A. That is what is worded here.

14 Q. DenSco has fiduciary duties to its investors.
15 True?

16 A. Correct.

17 Q. And it cannot advance its own self-interest to
18 the detriment to the interest of the investors. True?

19 A. Correct.

20 Q. And it cannot create a document that will
21 protect Mr. Chittick from a suit from the investors.
22 True?

23 MR. DeWULF: Object to form.

24 THE WITNESS: It's a balancing act. It's not a
25 straight --

1 Q. (BY MR. CAMPBELL) My question was a yes-or-no
2 question, a true-or-false question. If you can't answer
3 it, tell me you cannot answer it.

4 A. I can't answer it the way you have worded it.

5 Q. Turn to Exhibit No. 350.

6 Again, these are emails between you and
7 Mr. Chittick?

8 A. Yes.

9 Q. So --

10 A. I believe this email continues beyond at the
11 bottom of page 2.

12 Q. Mr. Chittick, this is in February 2014, he does
13 not want to go and tell the investors what's happening.
14 True?

15 MR. DeWULF: Object to form.

16 THE WITNESS: I don't believe I have the full
17 email from the original that was sent to Denny.

18 Q. (BY MR. CAMPBELL) I'm not referring to the
19 email. I'm just -- step outside the email for a second.

20 Mr. Chittick was worried if he told the
21 investors, that there would be a run on the bank and it
22 would be a Mortgages Limited situation. True?

23 MR. DeWULF: Object to form.

24 THE WITNESS: He -- he was told that I believe
25 by, you know, Menaged, or the statement was made by

1 Menaged in our meeting.

2 Q. (BY MR. CAMPBELL) Okay. But he didn't want to
3 tell the investors because he was worried there would be a
4 run on the bank, there would be a big lawsuit and the
5 business would be dead. True?

6 MR. DeWULF: Object to form.

7 THE WITNESS: It's -- it's not as black and
8 white as you are portraying it.

9 Q. (BY MR. CAMPBELL) He wanted the forbearance --
10 he wanted delay doing a disclosure so you could get this
11 Forbearance Agreement so he can try and soften the
12 disclosure he was going to make to the investors at the
13 end of the day.

14 MR. DeWULF: Object to form.

15 THE WITNESS: I really cannot say what his mind
16 set was.

17 Q. (BY MR. CAMPBELL) He never said that to you?

18 A. Denny said a lot of things that he later
19 clarified when we were on the phone. So he -- he wanted
20 it done for all kinds of reasons, and to be able to show
21 his investors that he had, you know, a feasible means
22 where he is getting in additional money and they are
23 working it out, it's going to get resolved, yeah, that was
24 important to him, but that's also an important thing to
25 any lender.

1 Q. You know, I get confused sometimes by your
2 answers.

3 Are you telling me that the impression you had
4 from Mr. Chittick when you were working with him in
5 January, February, March and April of 2016, is that he
6 wanted to tell his investors about this problem with
7 Menaged?

8 A. He knew he had to tell the investors about the
9 problem with Menaged. He understood and acknowledged that
10 to me, but he wanted to have sufficient information to
11 show them how they were going to work out of it and get it
12 resolved.

13 Q. Right. Because he wanted -- when he made the
14 disclosure, he wanted to be able to say this is bad, but I
15 have fixed all of this and you are going to get your
16 money, right?

17 MR. DeWULF: Object to form.

18 THE WITNESS: I -- I can't say what was in his
19 mind with respect to that. He knew he had to disclose and
20 he wanted to be able to show them that here is a plan, we
21 are going to resolve it, and this is what's going to
22 happen so we can, you know, protect your investments.

23 And that was -- so long as he was telling the
24 investors separately and said, yeah, we are working on the
25 problem, we are working on the problem, to put something

1 in writing. Because that was going to be a new POM. That
2 wasn't going to be an amendment. There is a different
3 disclosure there.

4 And a new POM states everything to the day. It
5 is a complete independent document. An amendment takes
6 and just changes sections of the earlier one, and I had
7 offered to do that, to do an amendment, and he didn't want
8 to do it. He wanted a new POM. And there is a different
9 disclosure requirement.

10 Q. (BY MR. CAMPBELL) You never drafted a new POM.

11 A. I'm sorry?

12 Q. You never drafted a new POM in 2014. Isn't that
13 true?

14 A. That's not true.

15 Q. The only POM I have seen is the old POM that has
16 additional things added to it.

17 Is there some other document I don't know about?

18 A. The POM that I gave to Denny had questions, had
19 sections changed, and we needed to get the information
20 from him to plug in at the various points, and then we did
21 describe the Forbearance Agreement.

22 Q. Every POM I have seen in this case, David, you
23 take the last one, you put a new date on it, and then
24 maybe you change some of the stuff in it.

25 When you say you did a completely new POM, did

1 you throw that out and start drafting a new one?

2 MR. DeWULF: Object to form.

3 THE WITNESS: Typically when you are doing a
4 follow-up POM for an existing company, you leave the
5 description of the company in there and change it to what
6 has changed. The management team, you indicate what has
7 changed, who is in what position. You then indicate the
8 business and the financial information, and go from there.

9 In this case, obviously we hadn't updated the
10 risk factors. When we gave the draft to him, we hadn't
11 updated, you know, several things in connection with that
12 May 2014 document, but it -- we were trying to get his
13 buy-in on the forbearance disclosure and also to restate
14 the information we needed from him.

15 Q. (BY MR. CAMPBELL) Go to Exhibit No. 42 (sic),
16 your interrogatory answers. Okay?

17 A. 4 -- 422?

18 Q. Right. It's your interrogatory answers that you
19 filed under oath.

20 All right. Do you see on the bottom of page 4
21 and the top of page 5, you are giving an answer that you
22 verified under oath, right?

23 A. Yes.

24 Q. And when Mr. Chittick first told you about his
25 problems with Menaged at this January 9th meeting --

1 A. What line are you referring to?

2 Q. Well, I'm looking at lines 16 to 18 right now.

3 "Mr. Chittick assured Mr. Beauchamp that
4 notwithstanding the threatened lawsuit, he had developed
5 and implemented a plan with Mr. Menaged to rectify the
6 situation."

7 Do you see that?

8 A. Yes.

9 Q. That's the truth, right?

10 A. That was the terms that he sent to me.

11 Q. "Mr. Beauchamp advised Mr. Chittick that he
12 should document this plan with Mr. Menaged in a
13 Forbearance Agreement, which would then also need to be
14 disclosed to investors," right? That's what you told him?

15 A. Correct.

16 Q. "Though negotiating the terms of the Forbearance
17 Agreement proved difficult, spanning nearly four months,
18 Mr. Beauchamp consistently advised Mr. Chittick of his
19 disclosure and update obligations to his investors during
20 this time and reminded him that the terms of the
21 Forbearance Agreement would have to be memorialized in the
22 updated POM," right?

23 A. Correct.

24 Q. So the intention all along, based on your
25 conversations with Mr. Chittick, is that you are going to

1 do the Forbearance Agreement first, and then that's going
2 to go into the POM, and it's going to go into the POM so
3 that Mr. Chittick, when he makes disclosures, can say I
4 fixed this whole problem, right?

5 MR. DeWULF: Object to form.

6 THE WITNESS: What is here is basically saying
7 it's going to be memorialized in the updated private
8 offering memorandum. However, that didn't change his
9 ongoing disclosure obligations, which he assured me he was
10 telling his investors.

11 Q. (BY MR. CAMPBELL) Okay. So, David, think about
12 this for a moment. He doesn't want to disclose to his
13 investors because there is going to be a run on the bank
14 on one hand, which is why you are doing this Forbearance
15 Agreement, and on the other hand you are telling me that
16 you believe he is telling all the investors what he
17 doesn't want to tell them until he has the Forbearance
18 Agreement.

19 Can you explain that to me?

20 MR. DeWULF: I want that read back.

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

22 MR. DeWULF: Object to form.

23 THE WITNESS: There is -- you are stating facts
24 there that aren't appropriate. I can go point by point or
25 you can restate it. Whatever you want.

1 Q. (BY MR. CAMPBELL) Mr. Beauchamp, if he told
2 everyone in January 2014, every single one of the
3 investors, if he disclosed, in your opinion, all the
4 material facts, why have the Forbearance Agreement?

5 MR. DeWULF: Object to form.

6 THE WITNESS: To have DenSco have protections
7 against Menaged, and to force Menaged to bring in the
8 additional money to help correct the problem.

9 Q. (BY MR. CAMPBELL) why delay the POM?

10 A. The POM was intended to do a clean break. If we
11 did the POM in January and sent it out, we would have to
12 update it when the Forbearance Agreement was done. So it
13 was easier to have him update the information from his
14 previous POM, finish the Forbearance Agreement, and then
15 do the POM. The Forbearance Agreement was originally
16 anticipated, and Menaged agreed, we are going to knock it
17 out in two to three weeks.

18 Q. Then why don't you do the POM when two or three
19 weeks pass and it's not done?

20 If it's already been all disclosed to the
21 investors, as you say he told you, why didn't you do the
22 POM in early February of 2014?

23 A. Because we didn't have a completed Forbearance
24 Agreement where we could explain everything. If we did a
25 POM in the beginning of February, we would have "we

1 believe; we are not sure of these facts," et cetera,
2 because we were still getting facts. There were still
3 changes. There were a number of different things that
4 were going on. We would have to do an updated POM when we
5 finished the Forbearance Agreement.

6 Q. The whole purpose of disclosure is to update
7 disclosure with material facts each and every time you
8 learn them. How can you put it off?

9 MR. DeWULF: Object to form.

10 THE WITNESS: What could we say in the beginning
11 of February that we could swear is true and correct?

12 Q. (BY MR. CAMPBELL) That you were defrauded by
13 Menaged's cousin; that he stole from multiple loans, over
14 50 loans with three investors alone, and 100 to 125 all
15 together; that he wired money directly to Menaged which
16 allowed this to take place.

17 You could tell them that. True?

18 MR. DeWULF: Object to form.

19 THE WITNESS: As far as I knew, he was providing
20 a version of that to his investors.

21 Q. (BY MR. CAMPBELL) Then why not do a written POM
22 and comply with Reg D?

23 MR. DeWULF: Object to form.

24 THE WITNESS: The amount of time that it would
25 take to work with Chittick to do the POM would have

1 significantly delayed the Forbearance Agreement.

2 Q. (BY MR. CAMPBELL) Isn't it true, Mr. Beauchamp,
3 that the whole purpose of the Forbearance Agreement was to
4 roll it in the POM so when the disclosure was going to be
5 made, Chittick could say: Look, I have fixed this whole
6 problem. Isn't that true?

7 MR. DeWULF: Object to form.

8 THE WITNESS: I don't think that's -- that's
9 correct.

10 Q. (BY MR. CAMPBELL) Let's go to Exhibit 365.
11 which is going to be volume 6.

12 All right. This is a telephone call you have
13 with Mr. Chittick on February 27th, 2014, right?

14 A. Well, it's notes of that telephone conversation,
15 yes.

16 Q. It's got TCW Denny Chittick, February 27, 2014.
17 So I assume you are in your office, because you
18 are writing notes as you are having this conversation.
19 Right?

20 A. Probably. Unless I was at my desk at home.

21 Q. And you say: Denny has talked to Scott for
22 hours over the last two days. Scott just wants to get
23 this resolved. Cannot drag out.

24 Is that what you wrote?

25 A. Yes.

1 Q. Jeff told Scott that Jeff can beat every
2 argument why this is a fraud, so Jeff should not worry
3 about it.

4 Is that what you wrote?

5 A. Yes.

6 Q. And Scott does not want to fight this and go to
7 court, right?

8 A. Yes.

9 Q. Denny has not talked to Greg and there is no
10 assurance that Greg would be willing to participate in any
11 shortfall.

12 Is that what you wrote?

13 A. That is what I wrote.

14 Q. Now, Greg is Mr. Miller's clients, and what you
15 are learning here is that he wants to be completely paid
16 off, he is not going to take any shortfall, right?

17 MR. DeWULF: Object to form.

18 THE WITNESS: I don't remember if Greg was one
19 of his clients. I believe you are correct, but I don't
20 know for sure. One of Mr. Miller's clients, excuse me.
21 But they always referred to a Greg.

22 Q. (BY MR. CAMPBELL) Now, you notice they go
23 through -- you go through a discussion that Denny had with
24 Mr. Menaged about, you know, let's just take all the
25 losses now, right?

1 A. Correct.

2 Q. And then Denny says: Denny is willing to take
3 the loss this year so long as DenSco gets some cash back
4 so DenSco can return cash to investors and reduce interest
5 to obligation.

6 You see that? You wrote that?

7 A. Right. It dropped down. I haven't read
8 everything in between, but, yes, I see that.

9 Q. And then you have, apparently you are discussing
10 how to write this up for investors, discussed.

11 You see that?

12 A. Yes.

13 Q. So you are talking about how are we going to
14 tell this to the investors, right? That's the discussion?

15 We are going to take a huge loss and I'm going
16 to have to tell this to the investors somehow, correct?

17 A. This -- Denny was saying do this in lieu of the
18 Forbearance Agreement.

19 Q. And is this your words: Do we still need
20 Forbearance Agreement? Yes, but it would be less
21 problematic. Will need Forbearance Agreement to explain
22 procedures and protect Denny from previous revisions.

23 Did I read that right?

24 A. Well, that -- that's what I wrote, but there
25 were other factors that I did discuss with him.

1 Q. You wrote: Will need Forbearance Agreement to
2 explain procedure and protect Denny from previous
3 revisions.

4 You wrote that. True?

5 A. Yes, I wrote that.

6 Q. Now, I think --

7 A. Was there additional pages to these notes?

8 Q. I have just marked this one page, I think, so I
9 don't know. I would have to go look.

10 A. Well, that could be very relevant.

11 MR. DeWULF: Well, let -- let him ask questions.

12 Q. (BY MR. CAMPBELL) All right. I think we had
13 talked about -- well, let me -- let me go about it this
14 way.

15 Mr. Goulder was representing Mr. Menaged, right?

16 A. For a portion of the time, yes.

17 Q. And Mr. Goulder understood that Mr. Chittick did
18 not want this matter to go to court?

19 A. Yes, he did.

20 Q. And he used that to leverage as many concessions
21 as he could get in the Forbearance Agreement, correct?

22 MR. DeWULF: Object to form.

23 THE WITNESS: Well, that and other things.

24 Q. (BY MR. CAMPBELL) What were the other things?

25 A. "We could negotiate with you for the next nine

1 months and it's not going to do anybody any good." And
2 there was all kinds of threats like that. "We could let
3 Miller's people sue you and, you know, they are going
4 after you, not us."

5 And it was, you know, all the litigation
6 argument, one after another, that he would use, and so
7 there were a number of factors there.

8 Q. And, I mean, I think you covered some of the
9 things that Mr. Goulder tried to do. He didn't want to
10 have any admission of liability by Mr. Menaged, right?

11 A. That's part of it, yes.

12 Q. He wanted to get a confidentiality agreement,
13 right?

14 A. Correct.

15 Q. And you negotiated and wrote up a
16 confidentiality agreement in the Forbearance Agreement?

17 A. Well, confidentiality provision in the
18 agreement, yes.

19 Q. Right.

20 Was there any conflict between confidentiality
21 and your duty to make disclosures to the investors?

22 MR. DEWULF: Object to form.

23 THE WITNESS: I actually had that section
24 reviewed by other securities partners and they said the
25 exceptions and what I put was adequate.

1 Q. (BY MR. CAMPBELL) Well, who are the other
2 securities partners at Clark Hill that reviewed it and
3 gave you advice?

4 A. Sitting here right now, I can't remember it.

5 Q. Okay. I haven't seen any email that you sent to
6 another securities partner, like you did with the
7 Investment Advisory Act, saying please give me advice on
8 the confidentiality agreement.

9 Was it someone you talked to down the hall or --

10 A. I clearly ran it by Daniel.

11 Q. Daniel Schenck, the associate?

12 A. Correct. Right. Just to get his feedback,
13 since he had been involved in the process.

14 I believe I called somebody and told them what
15 document number, and on the national system they can
16 access it directly from their computer to look at it and
17 to view the language. But I -- I might have read it to
18 them over the phone as opposed to -- because the
19 exceptions, I believe, were just in the first couple
20 lines, and that's what I would have read for the -- to
21 deal with the concern.

22 Q. All right. You were so concerned about the
23 Forbearance Agreement -- well, you made comments like it
24 cut muscle and bone from the traditional Forbearance
25 Agreement.

1 Do you remember making comments like that?

2 A. Where is that?

3 Q. My question was, do you remember saying it cut
4 muscle and bone --

5 MR. DeWULF: Are you --

6 Q. (BY MR. CAMPBELL) -- that Goulder was cutting
7 muscle and bone from the Forbearance Agreement?

8 MR. DeWULF: Are you referring to a document?

9 MR. CAMPBELL: I will. I want to see if he has
10 an independent recollection of it first.

11 MR. DeWULF: All right.

12 THE WITNESS: I -- I might have made that
13 reference, because I -- I have heard other people use that
14 reference, and I -- not in connection with this, but in
15 other matters, and I very well could have said it.

16 Q. (BY MR. CAMPBELL) All right. Let's go to
17 Exhibit 337.

18 This is an email you wrote to Mr. Denny on
19 February 4th, 2014?

20 A. Correct.

21 Q. Now, one of the things you say in this email is
22 "You and I need to make sure that we have a clear
23 understanding of what you can do and what you cannot do
24 without going back to all of your investors for approval."

25 What do you mean by that?

1 A. There are certain specific obligations that
2 would not be deemed within the realm of a responsible
3 authorized person for a lender to agree to. If it's not
4 reasonable business judgment, then you are not acting
5 fiduciary, we need to get -- disclose and get consent, and
6 that's what I was trying to keep him, with the Forbearance
7 Agreement, in terms of what a reasonable business judgment
8 of a lender would be.

9 Q. All right. But here DenSco has fiduciary
10 duties, correct?

11 A. Correct.

12 Q. Is there some line you are trying to make to
13 here is the Forbearance Agreement we can do without
14 telling our investors, and if we go this far we have to
15 tell them before we enter into it?

16 MR. DeWULF: Object to form.

17 THE WITNESS: I am not saying it's not a
18 disclosure issue to disclose to the investors. What I am
19 saying is pursuant to the POM, that he was given
20 reasonable discretion to act, pursuant to business
21 standard, on behalf of DenSco for the investors.

22 Q. (BY MR. CAMPBELL) When he is doing a workout
23 provision on a fraud that's been committed on him and you
24 have a concern that muscle and bone is being cut from the
25 agreement, when does he have to go to the investors and

1 tell them what's going on?

2 MR. DeWULF: Object to form.

3 THE WITNESS: We did not agree to Goulder's
4 revisions prior to February 4th.

5 Q. (BY MR. CAMPBELL) If you go down to the second
6 paragraph, do you see your comment on muscle and bone?

7 A. Yes, now, I do.

8 Q. All right. Do you recall making the comment
9 that Mr. Goulder was cutting muscle and bone out of the
10 Forbearance Agreement?

11 A. Correct.

12 Q. And you indicate that you have prepared in
13 excess of 100, if not closer to 200, Forbearance
14 Agreements for various institutional lenders?

15 A. That is correct.

16 Q. And you have never seen one like the one
17 Mr. Goulder is asking for, right?

18 A. That is correct. Those weren't all real estate
19 Forbearance Agreements, but still, nothing like he had
20 asked for.

21 Q. All right. And in -- actually, turn a page back
22 on 366.

23 A. 366 or 336?

24 Q. 336.

25 And here you are telling Mr. Chittick that, you

1 will see at the bottom of the second paragraph, "JEFF'S
2 CHANGES ARE NOT JUST WORD CHANGES, BUT SUBSTANTIVE CHANGES
3 THAT CLEARLY TRANSFER SIGNIFICANT RISK TO YOU AND YOUR
4 INVESTORS."

5 Do you see that?

6 A. Oh, the top email. I'm sorry.

7 Q. Do you see that?

8 A. Yes, now I see it.

9 Q. And you also tell Mr. Chittick, "if even a
10 portion of these changes are allowed to remain, we can no
11 longer describe this as an industry standard 'forbearance
12 agreement' in the description that you HAVE to provide to
13 your investors."

14 A. Correct.

15 Q. You told me that one of the benefits of the
16 Forbearance Agreement is that new money is going to come
17 in from Mr. Menaged, right?

18 A. That's what the Forbearance Agreement provided
19 for.

20 Q. Did you provide anything to verify that?

21 MR. DEWULF: Object to form.

22 THE WITNESS: What time period? I don't
23 understand the question.

24 Q. (BY MR. CAMPBELL) You thought one of the
25 reasons this was beneficial to DenSco was that Mr. Menaged

1 was bringing new money into the venture.

2 A. That was a requirement in the Forbearance
3 Agreement.

4 Q. What did you do to investigate whether that in
5 fact was true?

6 MR. DeWULF: Object to form.

7 THE WITNESS: At what time period?

8 Q. (BY MR. CAMPBELL) At any time period, sir.

9 A. Menaged said he was in the process of selling
10 assets and accumulating the money to make it happen. I
11 did not call his bank to verify the amount in his account.
12 It wouldn't have done much good, since he had millions
13 going in and out every day.

14 And it was substantially left, after a few phone
15 calls that I did make, Menaged got actually ticked off,
16 and Denny said that he would be dealing with that. That
17 is the administration of the agreement as opposed to
18 negotiation, and that's his. Okay.

19 Q. As the lawyer with DenSCO with fiduciary duties
20 to the investors, is it your opinion you had no obligation
21 to verify that Menaged was actually bringing real money
22 into the deal?

23 MR. DeWULF: Object to form.

24 THE WITNESS: I was told Denny had received
25 assurances; Menaged said the money was going to be there

1 when we are done; this is how it's going to be done, it's
2 going to be administered.

3 It sounded extremely logical. I mean, there was
4 a schedule for the money to come in, into the Forbearance
5 Agreement.

6 Q. (BY MR. CAMPBELL) Mr. Beauchamp, you passed
7 your information that the funds are real, didn't you?

8 A. Yeah.

9 Q. And you were told that Mr. Menaged was not going
10 to tell you where the money was coming from?

11 A. He was not going to tell me the terms with his
12 investors.

13 Q. He was not going to tell you where he is getting
14 the money and what the deal was for him to get new money,
15 right?

16 A. That -- that -- that sounds right. He wasn't
17 going to tell me his deal to get the money.

18 Q. All right. So here is a guy who tells you that
19 his cousin stole money from your client; that he is going
20 to put new money into the deal; that you try to verify
21 whether that's true and he tells you I won't tell you.

22 Did that in any way raise any red flag that
23 perhaps this deal was not in DenSco's best interests?

24 A. And I -- it raised a caution, a concern, and I
25 discussed it with Denny Chittick and said he needed to

1 check out and he needed to be comfortable. Since Menaged
2 wouldn't let me, Denny needed to be comfortable that the
3 money was real and was going there.

4 Q. Did you do a limited representation for DenSco?

5 A. Yes.

6 MR. DeWULF: Object to form.

7 Q. (BY MR. CAMPBELL) All right.

8 A. Oh, at what point I should -- yeah.

9 Q. While you are doing the Forbearance Agreement,
10 are you agreeing to limitations on your representation?

11 MR. DeWULF: Object to form.

12 THE WITNESS: It was understood to be limited.

13 Q. (BY MR. CAMPBELL) It was understood to be
14 limited.

15 I mean, there were certain things you ordinarily
16 would do, but you were not doing, at the request of
17 Mr. Chittick, right?

18 MR. DeWULF: Object to form.

19 THE WITNESS: Denny wanted -- Denny was always
20 complaining about the attorney's fees. Denny wanted to do
21 as much of the diligence, negotiation, et cetera, as he
22 could to save attorney's fees, because that would leave
23 money in DenSco that he could use to pay the investors
24 back.

25 Q. (BY MR. CAMPBELL) All right. Well, did you

1 choose not to investigate Mr. Menaged and limit your
2 representation in that way?

3 MR. DeWULF: Object to form.

4 THE WITNESS: At what time?

5 Q. (BY MR. CAMPBELL) When you were doing the
6 Forbearance Agreement. From January 9th, okay,
7 January 9th, 2014, until the time you terminate, were you
8 doing a limited representation where you were not going to
9 investigate what Mr. Menaged was doing?

10 MR. DeWULF: Object to form.

11 THE WITNESS: I did attempt a couple times, and
12 every time I did, Denny would, you know, be very, very
13 irate with me and tell me: I'm doing that. These -- I'm
14 checking with these people. This is what I'm doing, and,
15 you know, you are not to be concerned with that.

16 Q. (BY MR. CAMPBELL) And you agreed?

17 MR. DeWULF: Object to form.

18 THE WITNESS: I stated a contrary position with
19 him, but for the time period, you know, he was going to
20 have to be satisfied that the representations in the
21 Forbearance Agreement were correct, part of his fiduciary
22 duty to DenSco and the investors, and -- but we were going
23 to need more evidence of that for the POM.

24 Q. (BY MR. CAMPBELL) Turn to Exhibit 427. That's
25 in volume 8.

1 A. I'm sorry. You said 427?

2 Q. 427, volume 8.

3 A. Oh, okay.

4 Q. You are familiar with ER 1.2?

5 A. Repeat that question.

6 Q. You are familiar with the ethical rules for
7 lawyers in Arizona?

8 A. Yes.

9 Q. And you are familiar with ER 1.2,
10 subsection (c) "A lawyer may limit the scope of the
11 representation if the limitation is reasonable under the
12 circumstances and the client gives informed consent."

13 Do you see that?

14 A. Where -- I don't see that. I must be on the
15 wrong page.

16 Q. Are you on 427?

17 A. Now I am.

18 Q. Okay. Look at 1.2, subsection (c).

19 A. Yes.

20 Q. All right. Now, if I'm hearing you correctly,
21 you are telling me there are things you want to do that
22 Chittick told you not to do, right?

23 MR. DeWULF: Object to form.

24 THE WITNESS: At what point in time?

25 Q. (BY MR. CAMPBELL) Between January 9, 2014, and

1 the time you terminated.

2 A. Yes.

3 Q. And because of Mr. Chittick's requests, you
4 didn't do certain things, right?

5 MR. DeWULF: Object to form.

6 THE WITNESS: It was more than just his request.

7 Q. (BY MR. CAMPBELL) You want to express something
8 more that I am not expressing. Tell me what it is.

9 A. On his assurances that he was doing it and he
10 did routinely provide follow-up information as to why he
11 thought he was doing it, and I would advise him what more
12 would need to be done.

13 Q. And it's your opinion, Mr. Beauchamp, that as
14 the lawyer for a corporation that had fiduciary duties to
15 investors, that that limitation on your representation was
16 reasonable?

17 MR. DeWULF: Object to form.

18 THE WITNESS: Based on what I knew then, the
19 research that he was doing, I thought it was --

20 Q. (BY MR. CAMPBELL) All right.

21 A. -- at that time.

22 Q. So you thought it was reasonable, even though
23 you have also expressed the opinion that he was ignoring
24 your legal advice?

25 MR. DeWULF: Object to form.

1 THE WITNESS: He accepted some advice. He
2 ignored some advice. When he showed me he was following
3 through and doing something, then I felt comfortable he
4 was doing it.

5 Q. (BY MR. CAMPBELL) You have told me that you
6 thought Mr. Chittick was under the somehow sway of
7 Mr. Menaged, that you had never seen him like that before.

8 Did I hear you correctly earlier today?

9 MR. DeWULF: Object to form.

10 THE WITNESS: In the meeting on January 9th, he
11 was.

12 Q. (BY MR. CAMPBELL) And even though you thought
13 he was unduly influenced and was swayed by Menaged, you
14 thought it was reasonable to limit your representation,
15 even though DenSco owed fiduciary duties to its investors?

16 MR. DeWULF: Object to form.

17 Can you read that back, please.

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

19 THE WITNESS: That's a time -- that's a facts
20 and circumstances based on periods of time. And when I
21 told him what he needed to do, what he needed to verify,
22 he was getting the information. He had information from
23 the bank. He had information as from Menaged that -- who
24 he was talking to and getting the money.

25 MR. DeWULF: It's been about an hour, Colin. I

1 need a break.

2 MR. CAMPBELL: Let me do just one more question
3 and we'll break.

4 MR. DeWULF: I need to use the restroom.

5 MR. CAMPBELL: We can break now. Ten minutes?

6 THE WITNESS: Yeah, that would be good.

7 VIDEOGRAPHER: The time is 3:46 p.m. We are now
8 going off record, ending media five.

9 (A recess was taken from 3:46 p.m. to 4:01 p.m.)

10 VIDEOGRAPHER: The time is 4:01 p.m. We are now
11 back on record, beginning media six.

12 Q. (BY MR. CAMPBELL) David, I want to go back to
13 your interrogatories which are Exhibit 422.

14 A. Before we jump there, I have had a chance to
15 read the rest of 1.2, which I didn't stop before while we
16 were doing it.

17 I don't think the relationship was a limited
18 representation. I thought we limited, it was a scope of
19 duties and responsibility. He always had the authority,
20 not me.

21 So I don't want to be misleading in any way. I
22 mean, I read just that (c), but reading the rest of this,
23 it goes into a number of issues that were not applicable.

24 Q. Do you have anything else you want to say?

25 MR. DeWULF: Let's wait for a question from him.

1 If he has got a question, you can answer it.

2 Q. (BY MR. CAMPBELL) All right. Let's go to your
3 Exhibit 422, which is your answers to interrogatories, and
4 I want to go to page 6.

5 Okay. Are you with me?

6 A. Yes.

7 Q. And you say in your answers to interrogatories,
8 "Mr. Beauchamp prepared all of DenSco's offering documents
9 including the POMs and investor notes, also reviewed and
10 commented on the promissory notes from borrowers, deeds of
11 trusts, mortgages and guaranties, all of which disclosed
12 to DenSco's investors the processes and procedures that
13 DenSco used to protect the investments made in the
14 company."

15 Is that a true statement?

16 A. Yes, it is. We looked at his forms of
17 promissory notes to use with borrowers, deeds of trusts,
18 mortgages, guaranties, not on individual loans.

19 Q. All right. Look down at page 17 and 19. Every
20 mortgage -- line 17 and 19 on page 6.

21 A. Oh, I'm sorry.

22 Q. "Every mortgage evidencing a property purchase
23 made with a DenSco loan stated that the check purchasing
24 the property was made to the Trustee."

25 True statement?

1 A. The sample mortgages that we have, that was
2 true.

3 Q. All right. So every time he wired money
4 directly to Menaged, he violated the mortgage document
5 that you had reviewed and commented on?

6 MR. DeWULF: Object to form.

7 THE WITNESS: The mortgage documents that I saw
8 pertaining to Menaged, still had the language in it.

9 Q. (BY MR. CAMPBELL) My question was, every time
10 he wired money directly to Menaged, he violated the
11 mortgage documents that you had commented upon and
12 reviewed?

13 MR. DeWULF: Object to form.

14 THE WITNESS: I -- I cannot say that with
15 respect to everyone.

16 Q. (BY MR. CAMPBELL) All right. Could we turn to
17 Exhibit No. 51. That's going to be in volume 1.

18 And we have looked at this earlier today, right?

19 A. I'm not sure I have the -- you said 51?

20 Q. 51.

21 A. Does that start with just the words at the top,
22 "take it to the trustee and receive the receipt"?

23 Q. Exhibit 51 is the email from Mr. Chittick to you
24 on January 7th.

25 A. I don't have the first page. Here, I will show

1 you what I have.

2 Q. Okay. That's fine.

3 what happened to it?

4 A. I wasn't hungry. I swear.

5 Q. Why don't you look -- on the second page

6 Mr. Menaged says, when he is telling you about this whole
7 problem with the Menaged.

8 A. What number on the very bottom?

9 Q. 5791.

10 A. I don't have that.

11 Q. Okay. I'm going to read it to you and then I
12 will show you.

13 "(all docs you have reviewed and have been
14 reviewed by a guy at your last law firm, maybe two firms
15 ago in 2007)."

16 Do you remember reading that?

17 A. Yeah, I remember reading that.

18 Q. Do you recall that Mr. Chittick thought he might
19 have a claim because all the documents were reviewed by
20 you and whatever law firms that you were at?

21 MR. DEWULF: Object to form.

22 THE WITNESS: I have no idea what he had
23 contemplated.

24 Q. (BY MR. CAMPBELL) Okay. Let's look at
25 Exhibit 21. And I want you to turn, it's his notes on

1 January 10th.

2 And look at the last sentence in that, his note,
3 his journal for that day: The one thing that is helping
4 us is the procedure that I follow to fund the properties,
5 was blessed by the attorney's right hand man that is
6 threatening me. He's now worried I can come after his law
7 firm for damages. I just know I rather have control of
8 the properties in a worse loan to value than have them
9 wrapped up in lawsuits.

10 Did he ever express to you that what he was
11 doing was blessed by the attorneys, on or about
12 January 10th --

13 MR. DeWULF: Object to form.

14 Q. (BY MR. CAMPBELL) -- 2014?

15 MR. DeWULF: I'm sorry. Object to form.

16 THE WITNESS: I'm not sure what -- what he means
17 by this. I mean, this is his log and what he is writing.
18 And "blessed by the attorney's right hand man that is
19 threatening me," I'm -- I'm not sure what his intent, what
20 he was trying to say.

21 Q. (BY MR. CAMPBELL) Did you ever have a concern
22 at the beginning of this problem with Menaged that
23 Mr. Chittick might decide to just sue you and firms you
24 were at because you had blessed the procedures in your
25 representation of him?

1 MR. DeWULF: Could you read that back, please.

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

3 THE WITNESS: No, that never crossed my mind.

4 Q. (BY MR. CAMPBELL) You told Mr. Miller at Bryan
5 Cave that he had a conflict of interest, right?

6 A. That is correct.

7 Q. And you told Mr. Miller at Bryan and Cave that
8 he had to get a conflict waiver and that you had to get a
9 conflict waiver?

10 A. Yeah, but that -- that was on the advice of
11 ethics counsel to be extra cautious.

12 MR. DeWULF: Don't -- don't disclose what --

13 THE WITNESS: Okay.

14 MR. DeWULF: -- ethics counsel tells you. Just
15 try to answer the question without that.

16 Q. (BY MR. CAMPBELL) Let's turn to Exhibit 184,
17 okay? 184 is going to be in Volume 4.

18 184 is an email from you to Mr. Miller dated
19 January 16th, 2014. So that's going to be the email. And
20 part of it is going to be things in italics that are
21 written by Mr. Miller, if you see at the top. Okay?

22 A. Yes.

23 Q. All right. So in your email to him on the third
24 line, you say, "I disagree with your email, because I have
25 told you the basis for the potential conflict," and you

1 are responding to an email that's on the prior page.

2 A. Where was that statement? I'm sorry. Oh, I see
3 it now.

4 Q. Third paragraph.

5 Then you see in italics, I assume this is
6 Mr. Miller: Let's be clear about this particular topic
7 (whether I know the nature of the potential conflict):
8 what you told me is that Dennis told you that the topic in
9 the demand letter was addressed in advice provided by one
10 or two of your associates when you were here (either
11 Ray B. or Mr. Dvoren).

12 Is it true that Mr. Chittick told you that the
13 topic in the demand letter was addressed in advice
14 provided by one or two of your associates when you were at
15 Bryan Cave?

16 A. Mike Dvoren had done the update to the legal
17 procedures for I think the 2011 POM.

18 Q. The question I have is, did Mr. Chittick tell
19 you, as Mr. Miller is stating, that the topic in the
20 demand letter was addressed in advice provided by one or
21 two of your associates when you were at Bryan Cave?

22 A. I remember disclosing that to Denny as a
23 potential conflict, and we then pulled the email from
24 Dvoren subsequent to this and it did not focus on what
25 Denny thought it focused on.

1 Q. What email from Dvoren?

2 A. It did an analysis of the mortgage broker, that
3 there was no change in the mortgage broker statute, and
4 that -- and it did not get into his procedures with his
5 loan documents, which is what Denny thought it did.

6 Q. The date of this is January 16th, 2014.

7 A. Correct.

8 Q. You are at Clark Hill?

9 A. Correct.

10 Q. Where did you get the email?

11 A. I think I got it from Denny, but I can't
12 remember for sure.

13 Q. Where is it? It hasn't been produced.

14 A. He had me read it when he gave it to me, and I
15 gave it back to him because I thought we would get it when
16 we got the files from Bryan Cave, and I would have to look
17 at the Bryan Cave files to see it's there.

18 Q. Okay. So you are telling me there is an email
19 from Mr. Dvoren?

20 A. Dvoren.

21 Q. -- Dvoren to Mr. Chittick?

22 A. No. I think it was an email to me that I
23 forwarded.

24 Q. An email from Mr. Dvoren to you that you
25 forwarded to who?

1 A. I would have forwarded it to Chittick, listing
2 the, you know, updating the statute and the requirements.

3 Q. When did you -- when did you do this email and
4 forward it?

5 A. It was an update from one of the earlier
6 private offering -- I think it was the 2011, but I can't
7 remember for sure. It was an earlier POM. And it
8 basically said that, you know, the mortgage broker issues,
9 what the language had been changed, and that's not
10 applicable to be reported, there is no difference there.
11 And it had the -- and it did not go into the payment
12 procedures, as Denny had said, dealing with how he was
13 supposed to pay the trustee or the title company. It
14 didn't even get into -- it didn't discuss that issue.

15 Q. We will be able to get this email from Bryan
16 Cave, I assume?

17 A. You should.

18 Q. You didn't keep it?

19 A. I didn't get it.

20 Q. All right. Turn to Exhibit No. 166.

21 Do you see your email, it's in the middle of the
22 page, from you to Mr. Miller dated Wednesday,
23 January 15th, 2014?

24 A. Yes.

25 Q. He says, "I told Denny that you and I both need

1 that."

2 And what you were referring to is a conflict
3 waiver, right?

4 A. Right.

5 Q. "He said he had no problem with that. He agreed
6 to speak to one of his investors who is an attorney to
7 confirm. I should hear later today."

8 A. Correct.

9 Q. You never obtained a conflict waiver on or about
10 January 15th, 2014. True?

11 MR. DeWULF: Object form.

12 THE WITNESS: No, we did not obtain a conflict
13 waiver, because the information was -- did not state what
14 he had thought it stated.

15 Q. (BY MR. CAMPBELL) And you learned this sometime
16 after January 16th, 2014?

17 A. Yes.

18 Q. Did you document it in your file in any way?

19 A. I don't remember documenting it in the file, but
20 I would have -- I would have talked to somebody about it
21 to stop doing the conflict letter.

22 Q. You would have talked to someone about it so
23 they would stop doing the conflict letter.

24 Do you have an email on that?

25 A. Probably not. I probably asked my assistant to

1 take a previous conflict letter and revise it and give me
2 a draft, and it wasn't necessary so we didn't finish it.
3 I don't know if that's -- went into the file, because it
4 still had the other names on it or not. I don't know.

5 Q. Well, we have never been produced a draft
6 conflict letter.

7 Do you think one was made up?

8 A. I don't remember how far it got. I mean, if it
9 still has the old names from the old client on it, please
10 convert to, then it wouldn't have gone in the file,
11 because --

12 Q. Let's jump ahead, Mr. Beauchamp. I want to go
13 to July 28th, 2016, when Mr. Chittick passes away.

14 At that time you were representing DenSco, were
15 you not?

16 MR. DeWULF: I didn't hear it. I'm sorry.
17 Could you have that read back?

18 Q. (BY MR. CAMPBELL) I will rephrase it.

19 On July 28th, 2016, when Mr. Chittick died, were
20 you representing DenSco?

21 A. I was asked by Shawna to be a caretaker and
22 that's what I was doing.

23 Q. You were representing DenSco prior to his death,
24 right up to the day of his death, right?

25 A. No.

1 Q. Okay. Turn to Exhibit No. 18. 17. So 17 is
2 your time for June.

3 Do you see that --

4 A. Yes.

5 Q. -- Exhibit 17?

6 So at least you are doing work for Mr. Chittick
7 in June of 2016?

8 A. In that, I believe this completed the work for
9 DenSco because it completed, and I thought the Arizona
10 Department of Financial Institutions closed the audit.

11 Q. All right. So you were working for DenSco right
12 up to June 28th, 2016, right?

13 A. Yeah, just for that assignment.

14 Q. When Mr. Chittick dies, you step in as attorney
15 for DenSco, correct?

16 A. I was a caretaker. I wasn't an attorney.

17 Q. Will you turn to Exhibit No. 18?

18 A. Yes.

19 Q. I want you to look at your billing records for
20 August of 2016.

21 You are billing your time for DenSco and you
22 were expecting DenSco to pay you. True?

23 A. I had been told by the -- Wendy Coy that, yes, I
24 would get paid, which she now denies.

25 Q. Mr. Beauchamp, starting August 1 --

1 Mr. Beauchamp, are you denying that as of August 1, 2016,
2 you were the attorney for DenSco?

3 A. I acted on behalf of DenSco on August 1, 2016,
4 at the request of who was -- Shawna Heuer and subsequently
5 with the Arizona Securities Division.

6 Q. All right. I want you to turn to -- well, I'm
7 sorry.

8 who hired you to work for DenSco?

9 A. Shawna hired me initially, and then she and her
10 new counsel had discussions with Wendy Coy and others at
11 the Arizona Securities Division with respect to what they
12 needed me to do, how to deal with it till they got a
13 receiver appointed. And that's, you know, the subpoena
14 and everything they served on me for DenSco is -- is what
15 I was trying to deal with, plus I had the deeds of release
16 sent to me and for the loans that were supposed to close
17 in August that Denny had presigned.

18 Q. Shawna hired you to represent DenSco. True or
19 false?

20 A. That's -- that's my understanding, yes.

21 Q. Are you trying to tell me that Wendy Coy hired
22 you to work for DenSco?

23 A. When Shawna got separate counsel, I had a
24 specific conversation with Wendy Coy and she said: You
25 can't walk away from this. I need somebody to deal with a

1 subpoena. I need somebody to gather the documents. I
2 need someone to follow through on this. You can't walk
3 away. You know, DenSco will pay for your time, but you
4 need to deal with this and collect the monies and deliver
5 the deeds of release on the loans and you need -- till we
6 get a receiver in place.

7 Q. Are you saying that Wendy Coy at the Arizona
8 Corporation Commission hired you to work for DenSco and
9 she told you she would pay you for that?

10 MR. DeWULF: Object to form.

11 THE WITNESS: In my -- one of my conversations
12 with Wendy Coy, when she wanted to make sure that all the
13 DenSco documents and files were preserved, she said: I'm
14 going to serve subpoena on you for DenSco and DenSco will
15 be responsible to pay you for your time. Because I said:
16 Shawna has got new counsel. I'm out.

17 Q. (BY MR. CAMPBELL) Are you expressing the
18 opinion that you had an attorney/client relationship with
19 Wendy Coy of the Arizona Corporation Commission?

20 MR. DeWULF: Object to form.

21 THE WITNESS: Not -- not an attorney/client, no.

22 Q. (BY MR. CAMPBELL) All right. Did you have an
23 attorney/client relationship with Shawna -- how do you
24 pronounce her last name?

25 A. I believe it's Heuer.

1 Q. Heuer.

2 Did you have an attorney/client relationship
3 with Shawna Heuer in her capacity as personal
4 representative of the estate which owned all of DenSco's
5 stock? So in her capacity as the shareholder.

6 A. I represented DenSco. I was not representing
7 her.

8 Q. Understood. But was there anyone in
9 relationship to DenSco that you went to to make decisions
10 for DenSco? Just as Mr. Chittick was the president and he
11 would make decisions when he was alive, was Shawna Heuer
12 making decisions as the personal representative of the
13 estate or were you acting autonomously?

14 MR. DeWULF: Object to form.

15 THE WITNESS: Depends on the decision. I was
16 told by Wendy Coy and Shawna that if I get a request from
17 a title company for the payoff amount, get the amount from
18 Robert Koehler, have it wired to DenSco's account and then
19 deliver the release of the deed of trust. Both of them
20 agreed, so there was a mechanism in place to deal with
21 that until the receiver could be put in position.

22 Q. (BY MR. CAMPBELL) Turn to Exhibit No. 425.
23 That's in Volume 4. Or, no, in Volume 8. I'm sorry.

24 All right. Exhibit 425 are applications for
25 fees to the receiver in this case by Clark Hill.

1 Have you seen these before?

2 A. I'm aware of them. I did not see this.

3 Q. Do you know who Mr. Lorenz is?

4 A. Yes. He is one of the other members of Clark
5 Hill who took over for Mark Sifferman when he left.

6 Q. Did he show these to you before he filed them
7 with the receiver?

8 A. I don't believe he showed them to me. I think
9 he asked questions, that he needed to put information in
10 here, but I don't think he showed them to me.

11 Q. All right. If you look at paragraph 9 on page 2
12 of the first notice of claim, it says, "After the death of
13 DenSco's principal, Denny Chittick, in July 2016, the Firm
14 transitioned the subject matter of its work to advice and
15 guidance to DenSco to assist it in winding down its
16 business."

17 Is that a true statement?

18 A. Yes.

19 Q. All right. So Clark Hill was representing
20 DenSco. You were the lawyer at Clark Hill representing
21 DenSco, and as far as I can tell, there was no one like
22 Mr. Chittick you were talking to about your representation
23 of DenSco.

24 A. That -- that is not correct.

25 Q. And what is incorrect about it?

1 A. I communicated with Wendy Coy and Shawna Heuer
2 to make sure that anything I did was in agreement for them
3 so that I could get the money collected on behalf of
4 DenSco and from the title companies.

5 Q. Mr. Beauchamp, you did a lot more than just
6 collect money for DenSco in your representation of DenSco.
7 Isn't that true?

8 A. Initially, before Wendy Coy was involved, yes.
9 I tried to gather, get ahold of information and
10 disseminate things at the request of Shawna.

11 Q. All right. So you were representing DenSco.
12 who was the DenSco official that you would go to
13 to say: Do I have authority to say this?

14 A. Initially it was Shawna. She approved the
15 emails before I sent them out, and they were sent at her
16 request.

17 Q. All right. Well, you tell me if I am getting
18 into attorney/client stuff.

19 Did you have a discussion with Shawna about what
20 the attorney/client relationship was with her, with
21 respect to your representation of DenSco?

22 A. Yes, extensive.

23 Q. Did you discuss with her potential conflicts of
24 interest that you and Clark Hill would have with respect
25 to representing DenSco?

1 A. Yes.

2 Q. Did you disclose to her that you had gone to the
3 risk manager to tell them about the death of Chittick?

4 A. Yes.

5 Q. Did you disclose to her that Clark Hill was
6 concerned about potential claims that could be made
7 against Clark Hill regarding your representation of
8 DenSco?

9 A. Yes.

10 Q. And she waived all those conflicts?

11 MR. DeWULF: Object to form.

12 THE WITNESS: She consulted with her attorney
13 friend, at least she told me that, and back in Idaho, I
14 believe, and it was follow the will for probate and
15 resign, but she would then get the letters of authority or
16 whatever it is --

17 Q. (BY MR. CAMPBELL) I'm not talking --

18 A. -- with regard to -- okay? And it was only to
19 deal with protecting the documents and files of DenSco,
20 which the ACC had already requested, and to do the emails
21 to the investors to give everybody a status report.

22 Q. Did she sign a written waiver of the conflict of
23 interest to have Clark Hill represent DenSco after Denny
24 Chittick's death?

25 A. Things were moving so fast right then. I -- I

1 thought it was done in connection with the estate file,
2 but I don't recall.

3 Q. Okay. I'm not talking about the estate file
4 right now. I'm talking about the conflict of interest of
5 Clark Hill, who could potentially be a defendant in claims
6 for the work it had done for DenSco.

7 Did someone waive that conflict of interest so
8 that you could continue to represent DenSco after
9 Mr. Chittick's death?

10 MR. DeWULF: Object to form.

11 THE WITNESS: I don't recall that there was
12 something, or it might have been prepared and sent to her
13 attorney. And by that time, it was decided the receiver
14 was being appointed and it didn't get followed through on.
15 I -- I don't remember.

16 Q. (BY MR. CAMPBELL) Are you telling me you
17 specifically recall telling Shawna Heuer that Clark Hill
18 would have a conflict of interest in representing DenSco
19 because DenSco may have claims against Clark Hill, and
20 that she waived it?

21 MR. DeWULF: Object to form.

22 THE WITNESS: I don't remember the conversation
23 that clearly, but I said -- and I believe I said, I'm
24 paraphrasing -- in this type of situation and with the
25 information that we have gathered in the first several

1 days, there is a number of factors and claims going here,
2 and so she wanted to review everything that went out and
3 approve it, and she wanted to make sure I collected the
4 money.

5 And had -- and then the ACC coming into the
6 picture, that added, but I was not -- I had to -- I had a
7 very -- anything I was doing had to be reviewed, and I was
8 not -- I don't think I had independent authority during
9 that time.

10 Q. (BY MR. CAMPBELL) Reviewed by who?

11 A. Shawna and whoever she would ask. When the ACC
12 was involved, they -- one of the people there was
13 confirming for me to collect the money.

14 Q. Now, at the time Mr. Chittick died, you had been
15 representing Mr. Chittick or DenSco with respect to the
16 Arizona financial department institution.

17 Did you know at the time of Mr. Chittick's death
18 that Mr. Chittick had never changed the POM from the 2011
19 POM?

20 MR. DeWULF: Read that back.

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

22 MR. DeWULF: Object to form.

23 THE WITNESS: I -- I thought he had hired other
24 counsel to do that and was -- and that had been done. I
25 did not find out until digging into this stuff in early

1 August.

2 Q. (BY MR. CAMPBELL) Did you learn fairly quickly,
3 after you assumed the representation of DenSco, that
4 Mr. Chittick had never changed the POM and had been
5 trading in these promissory notes for, I don't know, from
6 the time of your termination until August 1, after his
7 death, and had never complied with any of your advice on
8 the securities laws?

9 MR. DeWULF: Object to form.

10 THE WITNESS: Denny had represented to me, when
11 I was doing the response to the Arizona Department of
12 Financial Institutions: Yeah, I have got other counsel
13 and we have taken care of that. Okay, fine. I asked for
14 a copy he and he said no. Okay. He didn't have an
15 obligation. That wasn't related to the stuff with the
16 Arizona Department of Financial Institutions.

17 After -- in August when I was drinking out of a
18 firehose, dealing with all my regular work, plus
19 everything here that dropped in my lap, I can't remember
20 who told me that he had never done that, and so -- but I
21 did become aware. I guess somebody had mentioned it
22 before Wendy Coy told me that.

23 Q. (BY MR. CAMPBELL) DenSco had a fiduciary duty
24 to its investors that continued even after Mr. Chittick's
25 death.

1 A. Correct.

2 Q. Mr. Chittick was not there to say don't tell the
3 investors, because he was dead, right?

4 MR. DeWULF: Object to form.

5 THE WITNESS: He was not there, but the first
6 thing was to get somebody who was authorized by a court to
7 make decisions, and that was the testimony provided to the
8 Court and why a receiver was appointed.

9 Q. (BY MR. CAMPBELL) You were the attorney for
10 DenSco, correct?

11 A. I think what you are implying by attorney to
12 DenSco means that I did everything. I wasn't general
13 counsel. I was literally dealing with the subpoena, and
14 after the ACC was involved and investors or their
15 attorneys called, I told them to call the ACC.

16 Q. You wrote two letters to investors as the
17 attorney for DenSco, correct?

18 A. Actually, I took -- I did drafts, they were
19 revised with Shawna and the third parties' comments, and I
20 sent them out at her request.

21 Q. In those letters you sent to investors as the
22 attorney for DenSco, knowing that DenSco owed fiduciary
23 duties to its investors, did you tell the investors what
24 had happened --

25 A. We didn't --

1 Q. -- between January 9th of 2014 and May of 2014
2 when you terminated your representation, and once you had
3 learned that Mr. Chittick had never complied with the
4 securities laws? Did you disclose that to the investors?

5 MR. DeWULF: Object to form.

6 THE WITNESS: When I sent those emails, I was
7 not aware that he had not done an updated POM. I was not
8 aware that the situation with Menaged was unbelievable.

9 Q. (BY MR. CAMPBELL) Well, Mr. Beauchamp, you were
10 aware of the unbelievable thing that Mr. Menaged had done
11 back in 2013 and 2014. True?

12 MR. DeWULF: Object to form.

13 THE WITNESS: In April of 2014, there was the
14 Forbearance Agreement that was executed, and if in fact
15 that agreement had been followed and disclosed, as I
16 advised before I terminated, then there would not have
17 been this problem.

18 Q. (BY MR. CAMPBELL) Mr. Beauchamp, Mr. Brinkman,
19 one of the investors, wrote you and asked for their
20 Forbearance Agreement, didn't he?

21 Do you remember that?

22 A. No, I do not.

23 Q. After Mr. Chittick's death, when you were
24 writing to the investors, why did you not tell the
25 investors about the fraud that Mr. Menaged had committed

1 upon the company back in 2013 involving double liens and
2 loan values over \$30 million?

3 MR. DeWULF: Object to form.

4 THE WITNESS: I could not give them an
5 up-to-date statement of that, because I didn't have any of
6 the current facts.

7 Q. (BY MR. CAMPBELL) You were concerned, were you
8 not, Mr. Beauchamp, that if you disclosed that
9 information, the investors would sue Clark Hill?

10 MR. DeWULF: Object to form.

11 THE WITNESS: No. I was much more concerned
12 with, as I had stated with Shawna concerning this, that
13 the information has got to get to them as soon as we can
14 confirm what is the information.

15 Q. (BY MR. CAMPBELL) Did you talk to anyone,
16 Mr. Beauchamp, about the conflict of interest of having
17 you communicate with investors and you having knowledge
18 about the Menaged fraud and whether that had to be
19 disclosed?

20 MR. DeWULF: Object to form.

21 Q. (BY MR. CAMPBELL) I don't want to disclose your
22 attorney/client information. I want to know if you talked
23 to anyone about that information. Answer yes or no.

24 A. Yes, I did.

25 Q. Who did you talk to?

1 A. After dealing with ethics counsel, I talked to
2 Shawna and explained the issue. And I don't remember,
3 but -- who she said, you know, that she talked to, because
4 she called back and said: But you are the only one that
5 knows the information. We need to tell people about
6 Denny's suicide and what is going on right now so we can
7 get a handle on this and -- and make sure they are
8 protected, with --

9 Q. I'm getting confused, and maybe I'm not clear.

10 MR. DEWULF: The question was confusing. I
11 don't -- I'm lost myself, too.

12 MR. CAMPBELL: It may have been.

13 MR. DEWULF: It's late.

14 Q. (BY MR. CAMPBELL) So let me rephrase it.

15 Did you talk to Shawna that Mr. Menaged had
16 committed a fraud on Mr. Chittick, the first fraud, the
17 double-lien fraud, back in 2013/2014? Did you tell that
18 to Shawna?

19 MR. DEWULF: Object to form.

20 THE WITNESS: I don't remember specifically
21 talking about that. I did talk to her about the
22 Forbearance Agreement, and the fact that she said
23 something to the effect that she never saw that or
24 whatever was -- was a surprise to me.

25 But she said, you know, Denny shared some

1 information about things, but not everything. And so that
2 was one of the issues that, okay, fine, there is a
3 conflict, and I am very much limited, what I was doing,
4 and it was approved by her and this other person. I can't
5 remember if it was -- who it was that she wanted, and I
6 was trying to be a placeholder and try to help.

7 Q. (BY MR. CAMPBELL) Mr. Beauchamp, I think
8 yesterday we looked at Exhibit 414 and Exhibit 415, and
9 that's the investor letter, the long email that Chittick
10 wrote but didn't send; and the Iggy letter, which is the
11 email, the long email to Shawna Heuer.

12 Do you remember us talking about that yesterday?

13 A. Right. And I did not see those till after the
14 first email had been sent to the investors.

15 Q. You are aware that there are some things said in
16 both the investor letter and the Iggy letter that you
17 disagree with?

18 A. Correct.

19 Q. And what was said in those letters could be
20 taken as the basis of a lawsuit against Clark Hill and
21 against you. True?

22 MR. DeWULF: Object --

23 THE WITNESS: Correct.

24 MR. DeWULF: Object to form.

25 THE WITNESS: There -- there were certain

1 statements that Mr. Chittick made in those that could be
2 interpreted to be a claim, and, yeah.

3 Q. (BY MR. CAMPBELL) Okay. I want to look at --
4 let's look at Exhibit 420.

5 MR. DeWULF: 420?

6 MR. CAMPBELL: 420. So that's going to be in
7 volume 7.

8 Q. (BY MR. CAMPBELL) All right. So Exhibit 420,
9 this is July 31 and it's from Shawna to you. And she is
10 sending you a copy of the note she sent to all the
11 investors advising them about Mr. Chittick's death, right?

12 A. I didn't know that she sent it to all. I
13 thought she didn't have all the email addresses
14 originally.

15 Q. All right. But, I mean, she is -- there is an
16 email to you on July 31. You respond saying, "Thank you
17 for sending me a copy," right?

18 A. Correct.

19 Q. So you know, as of July 31, that there is an
20 email with all the -- there is an email system you can
21 send to all of the investors, right?

22 A. Correct.

23 Q. And then look at 421. And these are attorney
24 notes.

25 Are these just notes you are writing to

1 yourself?

2 A. Yes.

3 Q. This is your writing?

4 A. Those are questions I needed to confirm.

5 Q. So you wanted to know if Robert -- that's Robert
6 Koehler, right?

7 A. Correct.

8 Q. You wanted to know if he has access to Denny's
9 computer, investors, amounts, et cetera.

10 So these are just things you were going to
11 follow up on the next day?

12 A. Well, what was in my mind when I wrote this
13 7/31 was for me to completely bow out and let Robert be
14 the caretaker going forward until the receiver got
15 appointed.

16 Q. You notice you are saying here on the email, on
17 your handwritten notes: Was letter to DGB sent by email
18 but somehow lost.

19 What's that about?

20 A. Where -- where is that?

21 Q. Your handwritten notes on 421, Exhibit 421.

22 A. Oh. Shawna said he sent you a letter and I had
23 not received it, so I was trying to ask if it was, you
24 know, sent by email or it was mailed or whatever, and that
25 was an open question from my part, because I hadn't seen

1 that, that letter.

2 Q. Okay. Go to 418. It's still in volume 8, or
3 volume 7. I'm sorry.

4 A. I'm sorry?

5 MR. DeWULF: 418 is what he said.

6 Q. (BY MR. CAMPBELL) 418.

7 A. Okay.

8 Q. This is an email from you to Shawna Heuer on
9 July 31st, correct?

10 A. Yes.

11 Q. And you are asking, "Do we know if there is any
12 reason to worry the investors? If not, we should inform
13 the investors that Denny has passed suddenly," right?

14 A. Correct.

15 Q. You thought there was no reason to worry the
16 investors on July 31st, 2016?

17 MR. DeWULF: Object to form.

18 THE WITNESS: On July 31, 2016, I had no clue
19 what prompted Denny's suicide. I hadn't seen the
20 documents. I didn't know the status of the loans and the
21 information. No, I -- I really didn't know. I was trying
22 to gather information.

23 Q. (BY MR. CAMPBELL) All right. Let's turn to
24 Exhibit 288 or, yeah, 288.

25 Q. So Exhibit 288, if you turn to the second page,

1 this is an email that's going out on August 12th, 2016,
2 and it's going out to all the investors, right?

3 A. That was the intent, yes, based upon the email
4 addresses I was finally given.

5 Q. All right. And you are telling the investors
6 right at the very part, "I am the only person who is still
7 able to represent DenSco and the investors to deal with
8 the current issues," right?

9 MR. DeWULF: Object to form.

10 Q. (BY MR. CAMPBELL) Is that what you wrote?

11 A. It -- it is what I wrote, because Robert Koehler
12 wasn't going to honor his previous agreement.

13 Q. And if you go down, do you see where you say, "I
14 was asked to stay on"?

15 A. Correct.

16 Q. "I was asked to stay on for the interim time by
17 a couple of investors, the Chittick family, and this
18 decision was discussed with and consented to by the
19 Securities Division as the best approach under the
20 circumstances."

21 The Chittick family would be Shawna Heuer?

22 A. Yes.

23 Q. Who were the investors that asked you to stay
24 on?

25 A. Brian, I think that's his name, who is Denny's

1 investor; and Shawna had also talked to a couple of the
2 investors and that -- and it was, you know, the short time
3 period, yes, he knows, given the documents, he can deal
4 with getting all the files to the ACC.

5 Q. Did some investors talk to you, or Shawna told
6 you she talked to some investors?

7 A. Yes, I did talk to some investors. At the time,
8 Friday, August 12th, I don't remember if I had already
9 talked to the investors there or if Shawna had said that
10 she had talked to the investors.

11 Q. Do you know their names, the ones you talked to?

12 A. It's in my notes for the ones that called me.

13 Q. All right. Go down a little further.

14 One of the things you say you have to do is to
15 finish the investigation of these Arizona Department of
16 Financial Institutions, which is almost complete.

17 A. Correct. We -- we received a phone call asking
18 for information, and when I explained Denny was dead, they
19 said they would get back to me and I never heard from them
20 again.

21 Q. All right. You told me that had been completed
22 a month ago.

23 A. Correct.

24 Q. Here you are telling the investors it's not
25 complete.

1 A. When I submitted the information the end of June
2 and it was reflected on the billing statement, I thought
3 that was completed. They asked for follow-up information.
4 It was provided. Okay. Thank you. We got it. The
5 matter is closed.

6 Then I got a subsequent phone call from them
7 saying they might have more questions, and I explained to
8 them that, well, Denny is dead. Oh, okay. Thank you.
9 Bye.

10 Q. All right. In this email to the investors, you
11 don't tell them anything about the Menaged fraud that took
12 place back in 2013 or Clark Hill's role in that. True?

13 MR. DeWULF: Object to form.

14 THE WITNESS: If you want to give me time to
15 read it, I can answer your question.

16 Q. (BY MR. CAMPBELL) If you need to read it to
17 answer it, go ahead.

18 MR. DeWULF: How are you doing on time? Because
19 I'm going to have to use the restroom again.

20 MR. CAMPBELL: Yeah. I have got some more stuff
21 to cover on this. If you want to take a break, we can do
22 it while he is reading.

23 MR. DeWULF: It's up to you.

24 MR. CAMPBELL: Go ahead. Let's just take a
25 break.

1 MR. DeWULF: We can -- let's finish what we need
2 to do here.

3 MR. CAMPBELL: Why don't we take five minutes
4 and I can have him review another letter, so we don't have
5 to do it again. John --

6 MR. DeWULF: That's fine.

7 MR. CAMPBELL: -- why don't we take five
8 minutes.

9 MR. DeWULF: That's fine.

10 VIDEOGRAPHER: The time is 4:54 p.m. We are
11 going off record, ending media six.

12 (A recess was taken from 4:54 p.m. to 5:00 p.m.)

13 VIDEOGRAPHER: The time is 5:00 o'clock p.m. We
14 are now back on record, beginning media seven.

15 Q. (BY MR. CAMPBELL) All right. David, I think
16 when we broke, you were looking at Exhibit 288, and the
17 question I had was, in that investor letter, you didn't
18 tell them anything about Mr. Menaged's fraud that you
19 worked on back in 2013 and 2014. True?

20 MR. DeWULF: Object to form.

21 THE WITNESS: At -- at this time, I thought that
22 it had already been disclosed.

23 Q. (BY MR. CAMPBELL) All right. Let's go -- let's
24 go back to the front of the book, and I'm going to try and
25 go back to asking yes-or-no questions, because I would

1 like to get through this so we can all get home, but if
2 you can't answer it yes or no, tell me.

3 Turn to Exhibit 206.

4 A. 206 or 213?

5 Q. 206.

6 A. I'm sorry.

7 Q. I am going to get to 213, but we will work our
8 way there.

9 Exhibit 206 is an email from Ms. Heuer to you on
10 August 1st, 2016. She is sending you an attachment called
11 investors doc.

12 Do you see that?

13 A. Yeah.

14 Q. And Shawna says: Here is the investor letter he
15 wrote, edited, wanted to send out, changed his mind and
16 asked me not to give it to anyone but you.

17 Do you recall that it was on August 1, 2016,
18 that you got the investor letter?

19 A. Based on the information here, yeah, it was
20 August 1. I know I did not -- she asked me, "Can you read
21 before we meet today," and I wasn't able to.

22 Q. All right. But you had it, correct, on
23 August 1, 2016?

24 A. According to what it says here, it was attached
25 to this, yes.

1 Q. Let's turn to 207. These are your handwritten
2 notes of a meeting with Shawna Heuer, Robert Koehler,
3 yourself, and there is a name here, Helen.

4 who is Helen?

5 A. That was the friend of Shawna's who came with
6 her for this, because she was so totally shook up.

7 Q. All right. And this was a meeting at your
8 office?

9 A. Yes.

10 Q. On 8/1/2016?

11 A. Yes.

12 Q. And these are your notes of it, correct?

13 A. Yes.

14 Q. One. Things you write: Shawna, accountant
15 works with communication with investors.

16 Do you see that?

17 A. Yes. I had never met her before.

18 Q. You have a note here about the investor letter.
19 You say: Shawna sent last night to investors.

20 So that's the short letter about Mr. Chittick's
21 death?

22 A. Correct.

23 Q. And then you have down at the bottom: Wednesday
24 communication, DGB to do, right?

25 So you are the one that's going to draft a

1 communication to the investors. Am I right?

2 A. Yes. That's what she specifically asked, yes.

3 Q. All right. And it looks like you were writing
4 some of it or you were discussing the things that should
5 be in the letter, and you say: A plan is being
6 formulated, right?

7 A. Yes.

8 Q. Probate files so Shawna will be appointed to be
9 personal rep and in control of DenSco stock, right?

10 A. Yes.

11 Q. Shawna will conduct a shareholder meeting and
12 have, correct?

13 A. Yes.

14 Q. You say: Trying to maximize return to
15 investors, right?

16 A. Yes.

17 Q. Plan to have an advisory board of five investors
18 to work with each -- with work and advise Shawna?

19 A. Yes.

20 Q. Okay. All right. And do you remember -- well,
21 here, let's move on.

22 Exhibit 208 is an -- is not an email, but it was
23 instructions to Robert, and my only question is, did you
24 see this?

25 A. I don't -- I don't remember seeing it. It could

1 have been attached in some documents, but when he said he
2 wasn't -- on the advice of counsel he wasn't going to do
3 it, I might not have read it.

4 Q. All right. You see on Exhibit 208 at the very
5 first paragraph he has a statement, it's the second or the
6 third to the last, he says, "The long explanation of how I
7 got here is with Dave Beauchamp," and he gives your
8 number.

9 Do you see that?

10 A. Yes.

11 Q. Did Mr. Koehler call you and ask you for the
12 long explanation of how we got here?

13 A. No. He called with Shawna to tell me on that
14 Saturday that Denny had committed suicide, and then he
15 came to the meeting.

16 Q. Okay. Turn to Exhibit 210.

17 Now, again, these are your notes?

18 A. Yes.

19 Q. Now, was there some meeting that took place?
20 Because this almost looks like notes as if you are going
21 to be speaking.

22 A. This was trying to take notes from the meeting
23 and the notes from conversation and voicemail messages to
24 me and trying to put it in a format for what they wanted
25 in the email to investors.

1 Q. All right. So this is the start of like an
2 outline of what you want to put in the letter, right?

3 A. What they had asked me to put into the letter,
4 yes.

5 Q. Okay. So let's just look a little bit at your
6 notes.

7 It looks like you say the probate has been filed
8 with respect to Shawna to get her authority to control
9 DenSco and get authority to make decisions?

10 A. Correct.

11 Q. And then you have a whole section on the plan.
12 You see that?

13 A. Yes.

14 Q. You have a section on going forward you want to
15 ask five investors to volunteer to be part of an advisory
16 council.

17 Do you see that?

18 A. Yes.

19 Q. Now let's turn to the next page.

20 A. The advisory council is what Shawna and Robert
21 had suggested based on what they thought, so --

22 Q. Okay.

23 A. -- the notes are probably a little more
24 detailed, because I wanted to capture it right.

25 Q. I want to look at your notes where you talk

1 about in order to maximize the return to all of the
2 investors. That's on the second page.

3 Do you see that?

4 A. Okay.

5 Q. It says: would like to keep DenSco out of the
6 courts, particularly bankruptcy.

7 Did you write that?

8 A. Yeah, that's my notes, but that's what Shawna
9 had said, because that was one of the things that she was
10 familiar with with workouts that she had been involved
11 with in other parts of the country.

12 Q. Based on studies that if this goes into
13 bankruptcy court, the return to investors will be -- I
14 can't read that.

15 A. Less than half of what they should have
16 received, due to the third-party professional costs and
17 delays associated with the bankruptcy court. And that's
18 right from Shawna.

19 Q. All right. You had no part of that?

20 A. I said it sounds reasonable. Other than that, I
21 didn't know about the studies.

22 Q. You didn't tell Shawna that DenSco might have
23 significant claims against third parties who were involved
24 in this case?

25 MR. DeWULF: Object to form.

1 THE WITNESS: I don't think you said that -- or
2 I'm not understanding the wording.

3 Q. (BY MR. CAMPBELL) You did not tell Shawna, when
4 you were discussing this position, that DenSco may have
5 significant claims against third parties involved in all
6 of this?

7 MR. DeWULF: Object to form.

8 THE WITNESS: Do you mean third parties might
9 have claims against DenSco or --

10 Q. (BY MR. CAMPBELL) That there are claims that
11 DenSco may have against third parties, like Clark Hill?

12 MR. DeWULF: Object to form.

13 THE WITNESS: I -- I don't specifically
14 remember. I did have that conversation with Shawna. I
15 don't remember if I said it in the very first meeting with
16 her, because of the other people there.

17 Q. (BY MR. CAMPBELL) But you had a conversation
18 with Shawna that DenSco may have claims against Clark
19 Hill?

20 MR. DeWULF: Object to form.

21 THE WITNESS: Yeah, that was the basis why we
22 could not be representing her, and it had to get referred
23 out right away.

24 Q. (BY MR. CAMPBELL) Okay. But did it ever occur
25 to you when you are sitting here representing DenSco that

1 maybe you shouldn't be doing this because DenSco has
2 claims against Clark Hill?

3 MR. DeWULF: Object to form.

4 THE WITNESS: It was a basket case. Robert was
5 supposed to deal with it. He was refusing. Shawna asked
6 me to help until they could get somebody else. And I -- I
7 was trying to very limit anything I did to get control of
8 the assets and the documents and deal with the ACC, and
9 then get the heck out of there.

10 Q. (BY MR. CAMPBELL) Let's turn to Exhibit
11 No. 211.

12 So this is August 2nd, 2016, and, again, these
13 are still notes you are making, right?

14 A. Yes.

15 Q. And you have a note about Scott Menaged, you
16 want to check the status of his bankruptcy, right?

17 A. Yes. That was because there was a reference, I
18 guess, in the letter to Iggy or something.

19 Q. You have notes here on the Forbearance
20 Agreement, right?

21 A. Yes.

22 Q. And you want to pull the forbearance and clarify
23 loan balances, right?

24 A. Correct.

25 Q. All right. Let's turn to Exhibit 212.

1 And, again, these are your notes on August 3rd.
2 It looks like you are starting to get calls from different
3 investors, right?

4 A. Yes.

5 Q. And you are keeping notes of these so you can
6 keep track of who the investors are that are calling you,
7 correct?

8 A. Correct. I'm trying.

9 Q. Exhibit 213 is an email you sent on August 3rd,
10 2016, to the DenSco investors, right?

11 A. Correct.

12 Q. And -- and so this is the first communication
13 and you drafted this, right?

14 A. Initial draft, based on the outline she had
15 given me.

16 Q. All right.

17 A. She and Robert, I should say. I'm sorry.

18 Q. Let me go just through this and see if I have
19 any particular questions.

20 So one of the things you were telling the
21 investors is that there might be a problem with good loans
22 and bad loans, right, or maybe you call them troubled
23 loans?

24 A. I -- yeah, there was an issue that Robert had
25 indicated that they needed to analyze the outstanding

1 loans, because he thought there was a problem.

2 Q. All right. Let's go to paragraph 3 on the next
3 page.

4 You state that the problem with DenSco's
5 Troubled Loans developed over time and it will take some
6 time to understand those Troubled Loans.

7 Do you see that?

8 A. Yes.

9 Q. You don't tell them anything about the Menaged
10 fraud in 2013/2014. True?

11 MR. DeWULF: Object to form.

12 THE WITNESS: At this point in time, I didn't
13 know if that had been resolved or not.

14 Q. (BY MR. CAMPBELL) Listen to my question and
15 please just answer it yes or no. If you can't answer it,
16 say you can't answer it.

17 You do not state in that letter what you knew
18 about the Menaged fraud in 2013/2014. True?

19 MR. DeWULF: Object to form.

20 THE WITNESS: Let me read the whole thing.

21 In the paragraph at the top of page 2, I do
22 reference there are also claims that DenSco has against
23 either Auction.com or Scott Menaged or some other parties
24 that we need to better understand.

25 So I referenced that there was an outstanding

1 issue there, but I have not come across anything with
2 regard to the Forbearance Agreement, et cetera.

3 Q. (BY MR. CAMPBELL) All right. You don't mention
4 that the other parties might include Clark Hill, right?

5 MR. DeWULF: Object to form.

6 THE WITNESS: No, I did not put that in there,
7 as far as I can tell, but I have only gone through part of
8 the email.

9 Q. (BY MR. CAMPBELL) Let's go back to the third
10 paragraph. In the middle of that you state that: whoever
11 is in charge of DenSco does not work with the Investors,
12 then DenSco will either be put into bankruptcy or have a
13 Receiver appointed, which will incur costs on behalf of
14 the Investors and DenSco that will significantly reduce
15 what will be available to return to the Investors. For
16 example, one of the recent reports concerning liquidation
17 of companies owing money to investors indicated that the
18 costs associated with such a bankruptcy or Receiver can
19 reduce the amount to be paid by investors by almost half
20 or even a much more significant reduction.

21 Did you write that?

22 A. Based upon input, and then it was revised by
23 Shawna.

24 Q. And the intent of that comment is to try and
25 keep DenSco from going into bankruptcy or having a

1 receiver appointed. True?

2 MR. DeWULF: Object to form.

3 THE WITNESS: What Shawna told me was the
4 intent, that why she wanted this was she did not want
5 somebody to file a bankruptcy until we got at least a
6 30,000-foot review of DenSco.

7 Q. (BY MR. CAMPBELL) All right. And it had the
8 collateral benefit of keeping a receiver from being
9 appointed who might sue Clark Hill, right?

10 MR. DeWULF: Object to form. I'm objecting to
11 this insinuation. It's late in the day. You keep making
12 these insulting kinds of questions. You have asked that
13 question three separate times. It's just beyond -- it's
14 beyond the pale at this point.

15 MR. CAMPBELL: We are seeking punitive damages
16 in this case, and what Clark Hill did in this case is
17 beyond the pale, John.

18 MR. DeWULF: It isn't. And, you know, you can
19 ask all you want. You have asked this question in
20 multiple ways. It's late.

21 MR. CAMPBELL: Can you read my question --

22 MR. DeWULF: Try to answer the questions if you
23 can.

24 MR. CAMPBELL: Can you read my question so he
25 can answer it.

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

2 MR. DeWULF: Object to form.

3 THE WITNESS: When this was prepared, that --
4 that thought did not cross my mind.

5 Q. (BY MR. CAMPBELL) Let's turn to Exhibit 216.
6 And just to get it in our timeframe, this is the probate
7 petition for letters of -- for the appointment of a
8 personal representative for Mr. Chittick's estate.

9 A. Correct.

10 Q. So it's filed on August 4th, and Clark Hill is
11 representing the petitioner, right?

12 A. And we resigned immediately after this.

13 Q. Right.

14 And this was the issue you said you had a
15 discussion with her about the conflict of interest and she
16 waived it. True?

17 MR. DeWULF: Object to form.

18 THE WITNESS: I had the discussion, Michelle
19 Tran had the discussion, and, yeah, that was one of the
20 several conversations.

21 Q. (BY MR. CAMPBELL) Okay. Go to Exhibit No. 217.
22 This is August 4th. There is a letter attached from Wendy
23 Coy, which indicates, she thanks you for speaking with us.

24 Did you have a conversation with Ms. Coy on
25 August 4th?

1 A. According to this, I did. There were several
2 conversations over the first couple weeks. I don't
3 remember all the dates.

4 Q. I'm going to ask you what your recollection
5 of -- I take it it's hard to separate them?

6 A. That is correct.

7 Q. You have already told me some parts of the
8 conversation.

9 Is there -- you remember about Ms. Coy wanting
10 you to take control or to help with the subpoena.

11 Are there anything more you remember about your
12 conversations with Ms. Wendy Coy?

13 A. Well, in the first paragraph she says: I
14 appreciate your willingness to, you know, to speak with us
15 and to take control of a very sad and problematic
16 situation.

17 She did not want me to resign and stop right
18 then. She wanted a chance to deal with the issues. She
19 needed somebody as -- to be a caretaker. And that was
20 part of our conversation, because, okay, if you guys are
21 going to be involved, you are going to handle this, I'm
22 out of here.

23 Q. Is there anything else you remember about your
24 conversations with her? I just want to make sure I have
25 everything you recall.

1 MR. DeWULF: Conversations with Wendy Coy?

2 Q. (BY MR. CAMPBELL) Wendy Coy.

3 A. I -- I can't remember if this is when she told
4 me that there was a box of cash or not. I remember she
5 said that. I knew nothing about that and I told her I
6 knew nothing about that.

7 And she then wanted to, you know, get -- clearly
8 get the subpoena and she would limit it to just DenSco
9 stuff, which wasn't accurate. And she wanted stuff boxed
10 up and protected immediately and made a reference that in
11 an empty house like that, things can happen.

12 Q. Okay. Turn to Exhibit 218.

13 So this is an email from Mr. Koehler to you, and
14 he has done sort of an analysis of the loans.

15 So I take it he was tasked to sort of try and
16 get his arms around the loans and see what's good and
17 what's bad?

18 A. He was requested to do that and on a limited
19 basis he did that, but he wouldn't -- did not want to be
20 referred to in any communications with the ACC or with the
21 investors. That's why his name wasn't referenced.

22 Q. All right. And in this email that's copied to
23 you on August 4th, 2016, is this around the first time you
24 realized the extent of the troubles that DenSco is in?

25 A. Correct.

1 Q. All right. Turn to Exhibit No. 219.

2 Again, this just a communication with Wendy Coy,
3 correct?

4 A. Yes.

5 Q. Let's turn to Exhibit No. 220.

6 These are more investor phone calls --

7 A. No.

8 Q. -- you are getting and you take notes?

9 A. No. These -- Kurt Johnson was the statutory
10 agent for the company and he formed the company.

11 Q. All right. So he is calling you just to let you
12 know he is the stat agent?

13 A. Yes, and he had heard what happened and he was
14 telling me he was going to resign.

15 Q. All right. And then if you turn the page, it
16 looks like you got notes of a telephone call with Shawna
17 Heuer on August 4th.

18 I assume you are almost talking with her on a
19 daily basis at this point?

20 A. Yes.

21 MR. DEWULF: Object to form.

22 THE WITNESS: At -- at that period of time,
23 there was so much going on, yes, or people would call me
24 for her.

25 Q. (BY MR. CAMPBELL) All right. Let's -- I'm

1 going to skip some things and move ahead so we can get
2 done with this.

3 If you look at Exhibit 224, this is an email you
4 are sending to Wendy and Gary at the Arizona Corporation
5 Commission, and you are forwarding them the email that you
6 had sent to the investors, right?

7 A. Right, which they had already had.

8 Q. Did you --

9 A. Yeah. They had asked for it, yes.

10 Q. Okay. Did you send Ms. Coy, on or about
11 August 5th, the investor letter that Denny Chittick had
12 drafted and then sent to you, the one that was never
13 mailed out?

14 A. I don't remember. I mean, Shawna had control of
15 that and it might have been deferred until she had
16 separate counsel to deal with that. I don't remember.

17 Q. All right. Do you remember whether on or about
18 August 5th, 2016, you sent to the Arizona Corporation
19 Commission the Iggy letter?

20 A. Okay. I'm sorry. On or about August 5th?

21 Q. Yeah. Exhibit 224 is when you are forwarding
22 your investor email.

23 A. Correct.

24 Q. And I'm wondering on or about August 5th, 2016,
25 did you send the Iggy letter to the Arizona Corporation

1 Commission?

2 A. No. I don't believe that was sent at that time.

3 Q. Okay. Exhibit 225, this is August 5th. You are
4 communicating with Eileen Cohen.

5 Now, she is an investor, right?

6 A. That was my understanding.

7 Q. And she is emailing you, telling you what a
8 shock it was to hear.

9 Now, when you started getting these investor
10 emails, did you discover that the private offering
11 memorandum that you wanted to send out when you -- before
12 you terminated, had never gone out to investors?

13 MR. DeWULF: Could you read that back, please.

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

15 THE WITNESS: It was in connection with investor
16 letters, but I don't know at what point that came out.

17 Q. (BY MR. CAMPBELL) Okay. Fair to say, though,
18 that you were getting investor letters from which you --
19 it didn't appear they knew about the prior problems with
20 Menaged?

21 MR. DeWULF: Object to form.

22 THE WITNESS: I -- I did not know what they knew
23 and didn't know at this time.

24 Q. (BY MR. CAMPBELL) All right. Turn to Exhibit
25 No. 227.

1 So these are your handwritten notes of a
2 telephone call with Shawna Heuer on August 5th, 2016?

3 A. Yes.

4 Q. And at this time you talked to Chris Gorman of
5 the Gorman Consulting Group, correct?

6 A. I believe Shawna had talked to Chris Gorman of
7 the Gorman Consulting Group.

8 Q. Okay. And why had she talked to Chris Gorman?

9 MR. DeWULF: Object to form.

10 THE WITNESS: About trying to --

11 MR. DeWULF: Object to form.

12 THE WITNESS: Pardon?

13 MR. DeWULF: Object to form.

14 Go ahead. You can answer.

15 THE WITNESS: What she represented to me is she
16 was trying to find an independent person that could step
17 in as a receiver on a voluntary basis with the approval of
18 the ACC.

19 Q. (BY MR. CAMPBELL) All right. Actually, just
20 you will see there is a number of notes you have. You
21 have a telephone call with Cody Jess. You have a
22 telephone call with Wendy Coy.

23 So these are all calls you are doing in
24 connection with your role as the attorney for DenSco?

25 A. Yeah, I was getting several calls.

1 Q. All right. Turn to Exhibit No. 228.

2 A. And there is the reference above, the costs from
3 Wendy Coy.

4 So 228, yes.

5 Q. 228. Tony Smith sent you an email on
6 August 5th, 2016.

7 Do you see that?

8 A. Yes.

9 Q. And he tells you, "To state the obvious, there
10 is something really wrong here besides the fact that
11 practically all the money is gone. I can't see Denny
12 lending this guy \$45 million of the company's money even
13 with full security (forget about little or no security)."

14 Do you remember getting this email?

15 A. Not specifically, but I see it now.

16 Q. All right. And in your response to him you
17 don't tell him anything about your knowledge with respect
18 to the prior Menaged fraud, correct?

19 MR. DeWULF: Object to form.

20 THE WITNESS: At this point in time, I was
21 trying to minimize any conversation till somebody could
22 take over and deal with that independently.

23 Q. (BY MR. CAMPBELL) All right. So fair to say
24 you made a decision: I'm not going to disseminate a lot
25 of information. I'm going to wait for someone else to

1 come in?

2 MR. DeWULF: Object to form.

3 THE WITNESS: That was advised to me from
4 several people, including Shawna, Robert Koehler, and
5 Wendy Coy.

6 Q. (BY MR. CAMPBELL) All right. Let me just go
7 through. I'm just going to see if I have -- I'm going to
8 see if I can bypass a lot of this.

9 Exhibit No. 234 is an email to you from Shawna
10 Heuer enclosing an audio file.

11 A. Correct.

12 Q. And did you listen to the audio file?

13 A. I don't think it came through.

14 Q. All right. So you did not listen to the audio
15 file?

16 A. Not at this time.

17 Q. Did you listen to the audio file at another
18 time?

19 A. It depends which audio file it is.

20 Q. How many audio files were there?

21 A. The audio file that I'm remembering is the one
22 that Denny recorded, talking to Menaged without Menaged's
23 knowledge. In addition there was a voicemail message at
24 one point that was shared with me, but it never came
25 through.

1 Q. Okay. Turn to Exhibit No. 235. This is an
2 email from Mr. Byrne to you with copies to all the
3 investors. And you see he makes the comment here, "the
4 concentration of dollars out to one related person/entity
5 is staggering."

6 Do you see that?

7 A. Yes.

8 Q. All right. Was this one of the emails that
9 suggested to you that the POM had never been sent out to
10 the investors?

11 MR. DeWULF: Object to form.

12 THE WITNESS: Other than he was outraged and had
13 specific questions, I wasn't sure what all it was
14 implying. It clearly indicated a problem, but I, just
15 based on this, I could not say it was that.

16 Q. (BY MR. CAMPBELL) Well, back when you were
17 involved in drafting the POMs up to 2011, there was a
18 requirement in the private offering memorandums that loans
19 not be concentrated in any one person or entity, right?

20 MR. DeWULF: Object to form.

21 THE WITNESS: There was -- I believe through
22 2011, there was a language to the effect that DenSco would
23 try to or the plan was that they would not exceed a
24 concentration in any one lender above a certain limit.

25 Q. (BY MR. CAMPBELL) All right. And when he is

1 talking about the concentration of dollars, that's what
2 this investor is talking about, right?

3 MR. DeWULF: Object to form.

4 THE WITNESS: He very well could be. I didn't
5 write it. I don't know.

6 Q. (BY MR. CAMPBELL) All right. Turn to Exhibit
7 No. 236. They are trying to send you another audio file.

8 Do you remember if this one came through to you?

9 A. I -- I forwarded it to Lindsay. I'm not quite
10 sure if -- if this is the one that got saved or not. I
11 was having problems with it.

12 Q. Give me a second, David. I'm just going to go
13 see if there is something else I want to go over.

14 Do you remember there was -- when Kevin Merritt
15 and Jim Polese was representing Shawna, you discussed
16 legal strategy with them about the case?

17 MR. DeWULF: Object to form.

18 THE WITNESS: When are you specifically
19 referring to?

20 Q. (BY MR. CAMPBELL) Well, the receiver is
21 appointed August 17th.

22 A. Yes.

23 Q. The petition for probate is filed August 4th.
24 Kevin Merritt comes into the case because you are going to
25 withdraw from the probate, right?

1 A. Correct.

2 Q. Coming up -- after August 4th, coming up to the
3 receivership hearing, do you remember having
4 communications with Kevin Merritt and Jim Polese about the
5 receivership hearing?

6 MR. DeWULF: Object to form.

7 THE WITNESS: There was certain communication
8 with them, but it was on a number of fronts dealing with a
9 number of issues.

10 Q. (BY MR. CAMPBELL) All right. We already
11 covered the issues with respect to attorney/client
12 privilege.

13 Do you remember having communications with them
14 about who should be selected as a receiver?

15 A. I believe they asked my opinion on that, and I
16 don't know that many receivers so I couldn't really help
17 in that.

18 Q. Do you remember talking with them on the phone
19 about steering the case to particular receivers as opposed
20 to others?

21 A. There was -- the one comment that was made is
22 they are going to try to steer the receiver to somebody
23 that has a track record of making sure there is money left
24 for the investors.

25 Q. And you understand that they had a concern that

1 it not go to a receiver who would be overly litigious?

2 MR. DeWULF: Object to form.

3 THE WITNESS: I don't think that -- that wording
4 was expressed, but I could be wrong.

5 Q. (BY MR. CAMPBELL) Well, how would a receiver --
6 what would a receiver do that would decrease the potential
7 amount of money available to the investors?

8 MR. DeWULF: Object to form.

9 THE WITNESS: I -- I don't deal with receivers
10 that much. I -- I cannot answer that question.

11 Q. (BY MR. CAMPBELL) Let's turn to Exhibit
12 No. 308, which is going to be in the next volume.

13 So if you look at Exhibit No. 308, if you look
14 at the bottom of the first page, it's Mr. Anderson writing
15 to you on August 22nd, 2016, right?

16 A. Yes.

17 Q. And he writes, "Mr. Chittick's letter to Robert
18 Koehler references a lengthy explanation [perhaps a
19 letter] to you from Mr. Chittick regarding DenSco's
20 dealings with Scott Menaged. Do you have this letter of
21 explanation? If so, please send me a copy of it. If
22 there some reason it can't be disclosed, please let me
23 know."

24 So fair to say as of August 22nd, you had not
25 sent the investor letter even to the receiver?

1 A. No. This -- this pertains to a letter to me as
2 opposed to the investor letter.

3 Q. Okay. Look at your response to Mr. Anderson.
4 And you tell Mr. Ryan, "Denny did prepare and send his
5 sister an email that contained information that she was to
6 give to me. It appears that as Denny was running out of
7 time, he combined my letter with the letter to his sister
8 and Personal Representative so he could finish both
9 letters as one letter. I think that might be what is
10 being referred to in Denny's notes and in his letter to
11 Robert Koehler."

12 Do you remember sending that to Mr. Anderson?

13 A. Right. And that was just pure speculation on my
14 part, because I was told there was no letter for me found
15 on his computer or -- and I never received one.

16 Q. In the second paragraph, you tell Mr. Anderson,
17 "I have been advised to discuss any request to share this
18 letter with Kevin Merritt at Gammage before I share my
19 portion with anyone," right?

20 A. I am not seeing that. I'm sorry.

21 Q. It's in the middle of the second paragraph.

22 A. Okay.

23 Q. And do you see at the bottom of the second
24 paragraph, you say, "The DenSco portion includes incorrect
25 statements and references as to the legal advice that I

1 had provided to him and fails to properly reference why I
2 was not providing any further securities advice to him and
3 DenSco."

4 Do you see that?

5 A. Yes.

6 Q. This is the first time you disclosed that to the
7 receiver?

8 MR. DeWULF: Object to form.

9 THE WITNESS: I don't know if it's the first
10 time.

11 Q. (BY MR. CAMPBELL) Had you ever disclosed that
12 to Wendy Coy?

13 MR. DeWULF: Object to form.

14 THE WITNESS: I -- I don't -- I remember sharing
15 with her that there were certain things and statements
16 that I disagreed with, but I don't think I got into any
17 detail, because I didn't know what she was to receive from
18 Shawna when Shawna had independent counsel and what she
19 was receiving from Robert Koehler and other parties.

20 Q. (BY MR. CAMPBELL) All right. And turn to
21 Exhibit No. 311. This is an email from Mr. Polese to
22 Mr. Anderson, copied you to, on August 23rd, 2016?

23 A. Yes.

24 Q. And he is sending two versions of the investor
25 letter, one redacted and one unredacted.

1 Do you see that?

2 A. Yes.

3 Q. Do you know who did the redactions on the
4 letter?

5 A. It wasn't me.

6 Q. I see. It wasn't you.

7 Do you know who did the redactions?

8 A. No.

9 Q. Turn to -- let me see if I have the right number
10 on this.

11 MR. CAMPBELL: Let me just talk to my counsel.

12 MR. DeWULF: I'm sorry?

13 MR. CAMPBELL: Let me just talk to my
14 co-counsel.

15 MR. DeWULF: Oh, sure.

16 You want us to get out of the room?

17 MR. CAMPBELL: Oh, no.

18 VIDEOGRAPHER: The time is 5:42 p.m. We are now
19 going off record, ending media six.

20 (A recess was taken from 5:42 p.m. to 5:43 p.m.)

21 VIDEOGRAPHER: The time is 5:43 p.m. We are now
22 back on record, beginning media eight.

23 MR. CAMPBELL: We have no further questions.

24 MR. DeWULF: We would like to read and sign.

25 VIDEOGRAPHER: The time is 5:43 p.m. This

1 concludes the deposition with media eight.

2 (5:43 p.m.)

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DAVID GEORGE BEAUCHAMP

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DAVID GEORGE BEAUCHAMP, VOLUME II, 7/20/2018

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 8/2/2018
Kelly Sue Oglesby Date
15 Arizona Certified Reporter No. 50178

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. 8/2/2018
Arizona Registered Reporting Firm R1012 Date