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SUPERIOR COURT OF ARIZONA
COUNTY OF MARICOPA

Peter S. Davis, as)
Receiver of DenSco)
Investment Corporation,))
an Arizona corporation,))
Plaintiff,) No. CV2017-013832
vs.)
CLARK HILL PLC, a) DEPOSITION OF
Michigan limited)
liability company;) BARRY LUCHTEL
David G. Beauchamp and)
Jane Doe Beauchamp,)
husband and wife,)
Defendants.)
-----)

COPY

THE DEPOSITION OF BARRY LUCHTEL,
taken before Debra A. Hoadley, Registered
Professional Reporter and Notary Public,
commencing at 9:08 a.m., March 7, 2019, at
Suite 200, 317 Sixth Avenue, Des Moines, Iowa.

Reported by: Debra A. Hoadley, R.P.R.

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A P P E A R A N C E S

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1 (Exhibit 722 was marked for
2 identification by the reporter.)

3 BARRY LUCHTTEL,
4 called as a witness, having been first duly
5 sworn, testified as follows:

6 DIRECT EXAMINATION

7 BY MR. DeWULF:

8 Q. Will you please state your name for the
9 record.

10 A. Barry Luchtel.

11 Q. Barry, I want to just ask some
12 background questions. Did you attend high school
13 in Iowa?

14 A. Yes.

15 Q. Where?

16 A. Okoboji High School in Milford, Iowa.

17 Q. What year did you graduate?

18 A. 1997.

19 Q. And you attended college at Buena Vista
20 University?

21 A. That's correct.

22 Q. And is Buena Vista University in Iowa?

23 A. Yes.

24 Q. Where is it?

25 A. Storm Lake, Iowa.

1 Q. And you graduated there in 2001?

2 A. Yes.

3 Q. And you had a degree in business there?

4 A. That's correct.

5 Q. And let me just kind of go through with
6 you kind of a career background with you bringing
7 us up-to-date. And, I'm sorry, the information
8 I've been able to get ahold of is not complete,
9 so let me kind of walk through with you.

10 I understand that Advanced Roofing
11 was an entity that you either owned or worked at;
12 is that right?

13 A. That's correct. I owned it.

14 Q. And that was from 2000 to 2004?

15 A. Yes.

16 Q. And then you had HomeBuyer Group LLC
17 from 2004 to roughly 2013?

18 A. Yes.

19 Q. And what business did HomeBuyer Group
20 LLC do?

21 A. It was in the real estate investment
22 business.

23 Q. And did it buy real estate in any
24 particular location?

25 A. Primarily almost exclusively in the

1 Phoenix Metro area.

2 Q. There's also an entity -- and did you
3 wind down HomeBuyer Group LLC in 2013?

4 A. If I remember correctly, that sounds
5 about right.

6 Q. Now, there's also an entity called
7 Arizona Home Buyer LLC that I've seen referenced
8 in some of the documents, which is also one of
9 your entities; right?

10 A. That's correct.

11 Q. And is that also a real estate
12 investment firm?

13 A. That is an entity that was formed by --
14 for investment purposes, and all that that's done
15 to this date is real estate investment. Just a
16 handful of deals, if that.

17 Q. And were the deals primarily in Metro
18 Phoenix?

19 A. Yes.

20 Q. I've also seen references to an entity
21 called Flip Capital, Inc. Is that one of your
22 entities?

23 A. It was, and --

24 Q. Does it --

25 A. It was never active. I don't believe --

1 I don't believe we had any activity there, or maybe
2 just a handful of deals were done through that
3 entity.

4 Q. It looks like there's also an entity
5 called B, as in boy, L-L Capital LLC, which I think
6 is the entity through which you invested in
7 DenSco, but could you explain what that entity
8 did?

9 A. Yeah. That's a -- that entity was
10 established to help facilitate a self-directed
11 IRA.

12 Q. And is that the entity through which you
13 invested in DenSco?

14 A. That's correct.

15 Q. And then I've also seen references to
16 Kayak Capital, LLC. Could you explain when you
17 formed that entity and what it does?

18 A. I believe that was formed in 2013, and
19 that entity lends money to real estate investors.

20 Q. And does it do business in Arizona, in
21 Iowa or where?

22 A. In the Phoenix Metro area primarily.

23 Q. Do you understand the word "hard money
24 lender"?

25 A. Yes.

1 Q. Would Kayak Capital be a hard money
2 lender?

3 A. Yes. I understand the word "hard money
4 lender" to be an asset-based lending, and, yes,
5 that's what we do.

6 Q. Would a hard money lender also be an
7 entity that -- typically when you say asset-based,
8 it's typically looking at the asset being
9 purchased to secure the loan being made as opposed
10 to guaranties by borrowers and that kind of thing;
11 right?

12 A. That's correct.

13 Q. And typically the loans are perhaps
14 short-term and there may be a higher interest rate
15 than would be charged by a conventional lender
16 like a bank?

17 A. Yes.

18 Q. And you think you formed Kayak Capital
19 in 2013?

20 A. Yes.

21 Q. I also saw a reference to an entity
22 called Mortgage Capital and Investment LLC. Do
23 you have some affiliation with that entity?

24 A. At one time I -- that was my broker when
25 I had a mortgage loan originator license.

1 Q. Do you remember what time frame you had
2 that entity?

3 A. It was not my entity. It was the entity
4 that I hung my license under.

5 Q. I've also seen references to a K2
6 Charitable Foundation. Did you form that entity?

7 A. No.

8 Q. You're a director of that entity,
9 though?

10 A. That's correct.

11 Q. And what business does it do?

12 A. That is a charitable organization set up
13 to support the mission of spreading and --
14 spreading God's word and supporting Christian
15 ministries.

16 Q. It grants money to church organizations?

17 A. Exactly.

18 Q. Then I've also seen a couple of websites
19 referenced, Barry, and I just want to follow up.

20 I've seen a reference to a webuyiowahouses.com.

21 Is that a website registered to your name?

22 A. Yes.

23 Q. And what does it do?

24 A. Nothing. It's parked.

25 Q. And another entity called

1 offmarketaz.com. Is that an entity you also own?

2 A. That's also an inactive domain.

3 Q. Is there any other entity through which
4 you do business currently that we haven't
5 identified?

6 A. There's the entity Kayak Capital
7 Mortgage, LLC; and that is the entity with which
8 holds my mortgage broker license in the state of
9 Arizona.

10 Q. Do you do any hard money lending in Iowa
11 through any entity?

12 A. No.

13 Q. Do you remember how you first met Dennis
14 Chittick, or Denny Chittick?

15 A. I was -- I don't remember -- I remember
16 the first time I ever talked to him was in --
17 while I was searching for funding for a deal that
18 we had purchased with HomeBuyer Group.

19 Q. Do you remember what year?

20 A. I don't.

21 Q. So this first exhibit that we've marked
22 here, or Debbie has marked, Barry, is a personal
23 guaranty. And it's October 9, 2006. It's
24 Exhibit 722, and it looks like it's a personal
25 guaranty. If you go to the last page, or the

1 third page, it shows your name, a signature and a
2 Social Security Number.

3 Does this refresh your memory in any
4 way as to when you may have initially borrowed
5 money from DenSco?

6 A. This -- if I -- this would be about
7 right. I mean, if I had to guess, it would be
8 2005 or 2006.

9 Q. And you said you talked to Denny
10 Chittick about funding for a deal. Do you know
11 how you became aware of him and DenSco?

12 A. I do not recall that.

13 Q. Let's look at the next document in that
14 stack.

15 MR. DeWULF: Debbie, if you could
16 mark that as 723.

17 (Exhibit 723 was marked for
18 identification by the reporter.)

19 MR. MURPHY: Which document is that?

20 MR. DeWULF: It's the next document
21 in the stack, which has "DenSco Investment
22 Corporation" across the top. It's a form letter.

23 MR. MURPHY: Had you premarked that
24 or prenumbered that in any way or --

25 MR. DeWULF: No, nothing is

1 premarked, because I did not want to -- I wasn't
2 intending to use every document. I wanted to get
3 everything to everyone so that they could look at
4 things, but I'm not going to mark every one, and
5 so I didn't premark it, Ryan. Do you have it
6 handy? It's October 5, 2007.

7 MR. MURPHY: Yeah. I don't have the
8 dates. Do you have the doc number on the bottom
9 of it?

10 MR. DeWULF: Yeah, it's 70340.

11 MR. MURPHY: Thank you.

12 MR. DeWULF: Yeah.

13 Q. Barry, this is a form letter dated
14 October 5, 2007, on DenSco letterhead having to do
15 with what I read to be a default or a potential
16 default of a loan. And I'm only showing this to
17 ask a couple of questions.

18 In the loans that you did with
19 DenSco over the number of years that you did work
20 with them, did DenSco ever allege that there was
21 a default or seek to collect default interest on
22 the loan?

23 A. No.

24 Q. As I look at the documents, it appears
25 that many of the loans were six-month loans at 18

1 percent. Is that your memory?

2 A. That's correct.

3 Q. And the default interest was 29 percent
4 on those promissory notes?

5 A. Yes.

6 Q. And the notes were typically secured by
7 a deed of trust in favor of DenSco?

8 A. Yes.

9 Q. Let me ask you, did you do any loans
10 with any other hard money lenders in Arizona other
11 than DenSco from the period of 2007 through 2016?

12 A. Not that I recall.

13 Q. Let's look at the third document in that
14 stack, so this will be 724. Again, I'm trying to
15 get a chronology to the events relative to your
16 working with DenSco.

17 (Exhibit 724 was marked for
18 identification by the reporter.)

19 MR. MURPHY: Document number,
20 please?

21 MR. DeWULF: 724. Oh, I'm sorry,
22 the Bates stamp is 70338.

23 MR. STURR: Can I just ask, who is
24 asking? Is that the videographer?

25 MR. DeWULF: No, it's Ryan Murphy

1 who is his counsel who is in Minneapolis.

2 MR. STURR: Okay.

3 Q. So would it be fair, Barry, to say that
4 when you initially started doing business with
5 Denny Chittick and DenSco, you discussed with him
6 how he went about the business of hard money
7 lending with borrowers such as yourself?

8 A. Yes.

9 Q. Do you recall what he told you would be
10 the procedures he would follow?

11 A. I don't specifically recall. I think I
12 was more familiar with his procedures just because
13 I had been through them so many times.

14 Q. Could I ask you to clarify? "Been
15 through them so many times," you mean with other
16 hard money lenders or --

17 A. As a borrower.

18 Q. As a borrower.

19 So prior to borrowing money from
20 Denny Chittick and DenSco, had you borrowed money
21 from other hard money lenders?

22 A. No.

23 Q. How was it that you were familiar with
24 his procedures when you started out with him if
25 you had not dealt with hard money lenders before?

1 A. Well, I must have misunderstood your
2 question. This is dated 2009, and the last E-mail
3 you sent me was 2006, and so I was thinking of
4 that, you know, in those three years I probably
5 had 45 loans with him. I have no idea.

6 Q. I understand.

7 A. I mean, that's a rough ballpark, but we
8 had a lot of loans, so I had been through -- been
9 able to see from the borrower's side what he was
10 doing and how he conducted business.

11 Q. That's a good answer. I thank you for
12 the clarification.

13 Let me back up. I want to do a
14 couple of more background questions, and I
15 appreciate you clarifying for me your answer. If
16 any of my questions are difficult to understand or
17 imprecise, will you tell me and I'll try to
18 rephrase?

19 A. Sure.

20 Q. And if you answer the question I ask
21 you, I'm going to assume you understood the
22 question I asked. Is that fair?

23 A. Yes.

24 Q. You've been good so far, but just a
25 couple other things to keep in mind. One is that

1 we're going to have to allow each other to
2 complete speaking before the other speaks because
3 it's going to be hard, particularly in these
4 instances where we're a distance apart, for the
5 court reporter to take everybody down accurately.
6 Do you understand that?

7 A. Yes.

8 Q. Have you been deposed before?

9 A. Yes.

10 Q. How many times?

11 A. Once, I believe.

12 Q. And was that in a litigation?

13 A. Yes.

14 Q. And was it here in Arizona?

15 A. It was in Iowa.

16 Q. What is your date of birth?

17 A. February 17, 1979.

18 Q. And where do you currently reside?

19 A. At 303 South 61st Street in West
20 Des Moines, Iowa 50266.

21 Q. And do you understand that you're being
22 deposed today in connection with a lawsuit that
23 was filed by the receiver on behalf of DenSco
24 against a law firm Clark Hill and its lawyer David
25 Beauchamp?

1 A. Yes.

2 Q. And you're represented by counsel
3 Mr. Ryan Murphy?

4 A. Yes. I would like to clarify one other
5 thing.

6 Q. You had indicated -- yes.

7 A. With regards to the number of
8 depositions, I can't remember if I was actually
9 deposed or if I just attended a second deposition,
10 and that was in Phoenix.

11 Q. Okay. You mentioned that you may have
12 started borrowing money from DenSco in 2006, and
13 you estimated that by 2009 you may have borrowed
14 as many as 45 times. Is that your testimony?

15 A. That is an extremely rough ballpark. I
16 think that was -- if I had to try to dial it in
17 and think about the number of times I borrowed
18 money from Denny in the first three years, I think
19 it would actually probably be closer to a hundred.

20 Q. And just to clarify your answer, so do
21 you think from the time that you would have
22 started borrowing through your entities from
23 DenSco in 2006 to the time that Mr. Chittick
24 passed away in 2016 you would have borrowed
25 approximately a hundred times?

1 A. I would think I would have borrowed more
2 than a hundred times.

3 Q. And the purpose for the loans that
4 you were making with DenSco was to purchase
5 residential real estate?

6 A. That's correct.

7 Q. And was the goal to -- did you have a
8 pattern that you followed with respect to the real
9 estate you purchased with the loans from DenSco?
10 In other words, did you typically fix those
11 properties up and resell them? Could you explain
12 to us what your normal procedure would be with
13 respect to the real properties that secured the
14 loans with DenSco?

15 A. Typically we would do one of two things.
16 I would either fix them up and sell them or we
17 would wholesale the property to another investor
18 who would complete the remodel and sell it
19 themselves.

20 Q. When you use the word "wholesale," does
21 that mean you actually sell the property soon
22 after you buy it to another investor?

23 A. That's correct.

24 Q. And when you do that, do you normally
25 then pay off the loan from DenSco that secured the

1 original purchase?

2 A. Yes.

3 Q. Let's look at the next exhibit in that
4 stack, if we could, Barry. It would be 725.

5 MR. DeWULF: And it is stamped
6 70819, Ryan.

7 MR. MURPHY: Thank you.

8 (Exhibit 725 was marked for
9 identification by the reporter.)

10 Q. Barry, you will see this document
11 Exhibit 725 is dated October 16, 2009. Do you see
12 that at the top?

13 A. Yes.

14 Q. And it looks to be a communication
15 between Landon Luchtel and Denny Chittick. Landon
16 is your brother?

17 A. Yes.

18 Q. And did he work with you at HomeBuyer
19 Group?

20 A. Yes.

21 Q. If you look at the middle of this
22 exhibit, it identifies various properties in
23 Mesa, Arizona, with purchase prices, and then
24 there are comments under each of the properties.
25 Do you see that?

1 A. Yes.

2 Q. And the ultimate E-mail that is being
3 sent is to both you and Landon. Do you recall
4 this communication?

5 A. I don't.

6 Q. It appears as though Mr. Chittick is
7 providing you input on the values of the
8 properties that are the subject of the E-mail. Do
9 you see that?

10 A. I see what you're referring to.

11 Q. Those notes under each of the identified
12 properties, are those your or Landon's notes or
13 are those Denny Chittick's, do you know?

14 A. I believe those are Landon's.

15 Q. All right. Let me ask about Denny
16 Chittick's knowledge of the Phoenix Metropolitan
17 area and real estate values. Were you able to
18 gain an opinion of his ability to accurately
19 evaluate properties in the Phoenix Metropolitan
20 area?

21 MR. MURPHY: I object to the extent
22 it calls for speculation. Go ahead and answer the
23 question, if you can, Barry.

24 A. We evaluated the properties on our own,
25 so we never relied on any outside parties'

1 evaluation, so it wasn't part of the discussion
2 with Denny very often.

3 Q. Did he have to determine, though,
4 whether there was sufficient value in the
5 properties to secure the loan?

6 A. Yes.

7 MR. STURR: Object to the form.

8 Q. But you don't recall having
9 conversations with him as to what his view of
10 purchase prices were versus the value of the
11 properties being loaned against?

12 A. No, I don't recall any specific
13 conversations of that nature.

14 Q. Do you know whether he did any due
15 diligence with respect to checking the properties
16 out that were the subject of the loans that DenSco
17 made to you and your brother and your entities?

18 A. I was aware that he would do diligence
19 on them because he would say -- you know,
20 sometimes he would comment on the property when I
21 was on the phone with him talking to him setting
22 up the loan.

23 Q. Do you know what the due diligence
24 consisted of?

25 A. I don't. I don't specifically know.

1 Q. Did it appear that -- at least this is
2 my take, and I'm asking whether you agree with
3 this -- that over time he, Denny Chittick, grew to
4 trust your judgment about values in the properties
5 that you were borrowing for?

6 MR. STURR: Object to the form.

7 A. Well, I always felt like Denny was
8 watching what he was lending. I never had the
9 impression that I'd just send him something and
10 he'd set it up. It was always my impression that
11 he was doing diligence behind the scenes.

12 Q. And again, do you know what that
13 consisted of? Was he checking public records?
14 Was he driving by the properties? What do you
15 know?

16 A. I don't know what that would consist of.
17 I do know he did check public records. That's one
18 thing I know he did. And as we discuss this, I
19 do specifically, you know, remember one time me
20 sending a loan over and him coming back and
21 saying, well -- contacting me later that afternoon
22 and saying what the hell's going on with this
23 property, I don't think it's worth that much type
24 of a discussion. Or why is it worth that much, I
25 guess, or why are you paying that much.

1 Q. During the entire time that you were a
2 borrower, either you, your brother or your
3 entities were a borrower from DenSco, were you
4 able to pay all those loans off in a timely way?

5 A. Yes.

6 Q. Did you ever need more than the term of
7 the loan to pay the loan back? In other words,
8 for a six-month loan there would frequently be a
9 balloon payment required at the end of the six
10 months. Did you ever have to extend the terms of
11 the loan that you can recall?

12 A. Yeah, I think we held some properties
13 for more than six months.

14 Q. Did you ever get charged default
15 interest when you didn't meet the six-month term
16 of the loan?

17 A. No.

18 Q. And just a broader question, Barry.
19 Even though perhaps the specific terms of the loan
20 had not been met, Mr. Chittick wasn't enforcing
21 default terms under the loans made to you or your
22 entities?

23 MR. MURPHY: I object to the form of
24 the question.

25 A. Well, I had -- no.

1 Q. Let's look at this next document in the
2 stack. It will be 726.

3 MR. DeWULF: And, Ryan, it is
4 58298.

5 (Exhibit 726 was marked for
6 identification by the reporter.)

7 Q. Barry, I'm showing you a document that
8 has a letterhead of DenSco Investment. It's dated
9 February 5, 2010. And it's a letter that Denny
10 Chittick is writing to, I believe it's the state
11 of Arizona. I'm not clear because I don't really
12 have all of the surrounding documents, but do you
13 recall an occasion in February of 2010 where you
14 asked Denny Chittick to write a letter on your
15 behalf?

16 A. Yes.

17 Q. Do you remember the reason for asking
18 for a letter?

19 A. I needed a reference.

20 Q. Do you know why you needed a reference?

21 A. It was in regard to -- it specifically
22 was in regard to a court case regarding a dispute
23 or connected to a dispute I had with a contractor.

24 Q. A contractor in Arizona?

25 A. That's correct.

1 Q. And so did this have to do with the
2 Arizona Department of Real Estate?

3 A. No.

4 Q. Do you remember what department of the
5 state of Arizona was involved in the issue with
6 the contractor?

7 A. It was a criminal case.

8 Q. And we'll get to that in a minute. Let
9 me just focus on this letter for a minute. The
10 first paragraph references that by this date there
11 had been loans in 25 transactions of worth roughly
12 \$3.639 million. Do you see that?

13 A. Yes.

14 Q. Do you think that would have been
15 accurate as of February 5, 2010?

16 A. I assume it is. Denny kept meticulous
17 records, as far as I knew.

18 Q. Yeah.

19 And then let's go to the second
20 paragraph, Barry. He mentions that you and your
21 brother had borrowed funds. The second sentence
22 he says, "Every transaction went as planned; all
23 monies were paid back with interest. I never had
24 a single problem with any loans that we did
25 together."

1 And then his last sentence, "I lent
2 this money sight unseen many times because they
3 had built such a good reputation with me that I
4 trusted them without issue." Do you know what
5 he's saying there, what he means by "sight
6 unseen"?

7 MR. MURPHY: Object to the extent it
8 calls for speculation.

9 MR. STURR: Object to the form.

10 A. I don't.

11 Q. You don't know if he's talking about the
12 actual properties against which the loans are
13 being made?

14 A. I don't.

15 Q. Let's look at this next document. It is
16 727, and it's Bates stamped 58297.

17 (Exhibit 727 was marked for
18 identification by the reporter.)

19 Q. I think this is referencing, Barry, your
20 requesting help from Denny Chittick. Let me ask
21 you, does that refresh your memory at all? Was
22 this the communication you had with Denny about
23 having him write a letter on your behalf?

24 A. Yes.

25 Q. All right. Let's look at the next

1 document, 728; Bates stamp 59708.

2 (Exhibit 728 was marked for
3 identification by the reporter.)

4 MR. STURR: John, before we go on,
5 can we just -- I've had this issue before,
6 basically before. I don't know where these
7 documents come from, because they don't have an
8 identifying Bates number. You put the doc ID
9 number. Can you tell me the source of this
10 document?

11 MR. DeWULF: I can't tell you
12 specifically each of these documents. They're all
13 in the documents that we've shared.

14 MR. STURR: I don't think that's the
15 case. We'll get to an exhibit that I don't think
16 I saw until yesterday, but I just want to raise
17 the issue. I'm going to raise it with you again.
18 I'm concerned that we don't know where these
19 documents come from.

20 MR. DeWULF: Okay. Well, you can
21 raise that and we can talk about it. I don't
22 think you're going to find any of these documents
23 all that critical one way or the other. They're
24 more context for questions.

25 Q. So let me ask you to look at 728, if I

1 could, Barry. There's a reference to a Kevin
2 Potempa. Do you see that?

3 A. Yes.

4 MR. MURPHY: Would you please
5 identify the document?

6 MR. DeWULF: Yes. 59708.

7 Q. Did you ever do business with
8 Mr. Potempa?

9 A. Not that I recall.

10 Q. If you look at the E-mail at the very
11 top of the first page on 728 from Denny Chittick
12 to Princeville Group/Kevin Potempa, he says, "I
13 meant to forewarn you. I lent this guy and his
14 brother a lot of money during the boom. They
15 left at the right time and now are coming back."

16 Let me just stop there. Did you
17 and your brother do borrowing and real estate
18 purchasing in Arizona for a period of time and
19 then stopped and then came back later?

20 A. That's correct.

21 Q. Can you give us roughly the timing of
22 being in the market, then getting out of the
23 market, then coming back in?

24 A. I think we were to some degree active
25 out there throughout the entire time, but we did

1 physically move back to Iowa. And I think we
2 would have moved about 2-4-2007-ish and -- to Iowa
3 at that time and then came back, you know, just
4 judging by the date stamp on this, somewhere late
5 2010.

6 Q. Came back to Arizona in 2010?

7 A. Correct.

8 Q. And then did you move back to Iowa then
9 later?

10 A. Yes.

11 Q. When was that?

12 A. Well -- maybe 2014, approximately.

13 Q. Let's look at the next document in the
14 stack, Exhibit 729.

15 MR. DeWULF: Debbie, if you could
16 mark it; and, Ryan, it's stamped 13383.

17 (Exhibit 729 was marked for
18 identification by the reporter.)

19 Q. So this document 729 is an E-mail from
20 Denny Chittick dated February 2, 2011, to you and
21 a variety of other individuals. Do you see that?

22 A. Yes.

23 Q. And your E-mail address is
24 barryluchtel@gmail.com?

25 A. Correct.

1 Q. Do you know whether these were -- this
2 listing is a listing of borrowers for DenSco?

3 A. That was my understanding.

4 Q. Did you know any other borrowers for
5 DenSco?

6 A. I knew Miller Blackford very casually.
7 I mean, probably seen him in person less than a
8 handful of times. And I recognize some of the
9 other names, but I didn't personally know them.

10 Q. There's a reference here about four
11 lines down to, it says smena98754@aol.com. Do you
12 see that?

13 A. Yes.

14 Q. And that is a reference to an E-mail
15 address for a man named Scott Menaged. Did you
16 ever meet Scott Menaged?

17 MR. STURR: Object to the form,
18 foundation.

19 A. No.

20 Q. Do you remember ever talking to Denny
21 Chittick about Scott Menaged?

22 A. No. I never heard that name until after
23 Denny was dead.

24 Q. So this E-mail seems to be saying to you
25 and others that DenSco has money available to be

1 lent. Is that your reading of it?

2 A. Yes.

3 Q. And we'll see a variety of these kinds
4 of communications, but was it your experience,
5 Barry, with Denny Chittick that he would
6 periodically reach out to you and other borrowers
7 about having money available through DenSco to
8 lend?

9 A. Yes.

10 Q. And also it appears from a number of
11 these documents that you or your brother might
12 locate a residential property that under the
13 circumstances would require funds on an expedited
14 basis. Would that be true?

15 A. Yes.

16 Q. And there are occasions where you would
17 E-mail Denny Chittick and say can you provide me
18 X dollars within two or three days; correct?

19 A. Yes.

20 Q. And frequently he was able to do that?

21 A. Yes.

22 Q. And in those instances -- and I know
23 every case and every transaction would be
24 different, but on many of those instances would
25 Denny Chittick through DenSco wire funds before

1 the loan documents were signed and notarized?

2 A. There may have been occasions where he
3 would send the funds to title prior to title
4 obtaining the -- or prior to the loan docs being
5 executed.

6 Q. And were there occasions, Barry, where
7 Mr. Chittick would wire money directly to you as
8 opposed to through an escrow agent or a title
9 company?

10 A. I believe there may have been one
11 occasion that that happened.

12 Q. And we'll see this in the E-mails, and
13 you and your counsel may have seen this when I
14 forwarded the documents, but there are occasions
15 where you're talking to Denny Chittick about doing
16 the loan outside of escrow. Do you recall that?

17 A. Funding outside of escrow?

18 Q. Yes.

19 A. Yes.

20 Q. Can you explain the mechanics of that
21 situation? How would you do that?

22 A. Well, everything went -- I think that
23 happened a handful of times. I don't specifically
24 remember how many. But that was more a function
25 of necessity because I would guess the timeline

1 issues. So if he funds through escrow, so to
2 speak, then the sellers would have to sign -- the
3 title company would put that loan on the HUD in
4 the settlement statement that the sellers would
5 sign.

6 And when him -- at least when Denny
7 and I were talking about funding outside of
8 escrow, we were talking about all the money is
9 still going to the title company, but he was --
10 but he didn't need to be put on there as the
11 lender on the HUD because -- because it would
12 slow the transaction somehow.

13 Maybe my sellers had already signed,
14 and I got in a cash crunch and said do you have
15 money available? He said yes, and I'd say can we
16 fund this one outside of escrow? Instead of
17 having title possibly delay it or have to re-sign
18 the borrowers, can you just send the money and
19 I'll execute the docs directly with you? And, you
20 know, he recorded them himself.

21 Q. So he would wire the money still through
22 a title company?

23 A. Yes, exactly.

24 Q. And then he would follow up with having
25 you sign whatever necessary loan documents there

1 would be?

2 A. Well, as I recall it almost always, I
3 would sign -- send signed docs before he would
4 send the wire. I don't specifically remember a
5 time where he would shoot -- you know, sending
6 wires out without having my signed docs.

7 Q. A moment ago you talked about a HUD
8 statement, and by that you're referring to the
9 settlement statement that's generated that would
10 identify the fees and charges and how the money
11 is being used in the transaction?

12 A. Correct.

13 Q. Do you think over the period of time
14 from 2006 or so to 2016 you were able to gain an
15 opinion about Mr. Chittick, his personality, his
16 qualities, that kind of thing?

17 A. Yes.

18 Q. What would you share with us, and what
19 we would share with the jury, in terms of your
20 view of Denny Chittick, his strengths, his
21 weaknesses, his personality traits?

22 MR. STURR: Object to form and
23 foundation.

24 MR. MURPHY: I also object to form.

25 A. Well, obviously once I found out Denny

1 had committed suicide, I reevaluated everything,
2 so, you know, to a degree I have kind of two
3 states of -- my opinion of him now if I were to
4 share it with you would be different than they
5 were prior to when he died.

6 Q. Let's break that down then, if we could.
7 Do you remember how you learned -- and we'll see
8 some documents that are timed right around the
9 time of the suicide on July 28, 2016. Do you
10 remember how you learned about the suicide?

11

12 [REDACTED]
13 [REDACTED]
14 [REDACTED]
15 [REDACTED]
16 [REDACTED]
17 Q. You indicated that your view or
18 impression of Denny may have changed as a result
19 of the suicide. Let me ask you what your
20 impression of Denny was before his suicide.

21 MR. STURR: Object to the form,
22 foundation.

23 MR. MURPHY: Same objection.

24 A. I thought he was very fair. I thought
25 he was a straight shooter. He and I shared a dry

1 sense of humor, and he was -- I believe -- he
2 would do things like just automatically send you
3 back overpaid interest when you paid a loan off
4 or when a title company sent in too much money,
5 and that was rare.

6 I don't think anyone else in the
7 Valley was doing that. You would have to request
8 it or else they could potentially keep hundreds
9 or thousands of your dollars. And it is pretty
10 standard, and it still is today, that if you don't
11 specifically call your hard money lender and tell
12 him you want your money back, they'll just keep
13 it.

14 Denny wasn't like that. He would
15 just -- a check would show up in the mail or --
16 and so, you know, I looked at things that there
17 were a lot of small things like that that Denny
18 did that -- and working with a guy over hundreds
19 of deals for over a decade, yeah, I felt like I
20 could trust the guy.

21 We didn't share a lot of personal
22 information, but, you know, occasionally did check
23 in on the families, each other's families, just
24 over E-mail or over the phone.

25 Q. Do you remember that he was married to

1 a woman named Ranasha?

2

[REDACTED]

22 Q. Did he, Denny Chittick, ever talk to you
23 about his wife Ranasha?

24 A. Never.

25 Q. You indicated that over many

1 transactions you felt that you could trust him.

2 Was that your testimony?

3 A. I felt like he was trustworthy.

4 Q. And did you gain an understanding that
5 he trusted you as well over the years?

6 A. Yeah, I think there was a mutual respect
7 because of the -- we were both -- my brother and
8 I were successful real estate investors; and, you
9 know, like I said, at the time I thought Denny was
10 a, you know, very successful real estate lender.
11 So we were both respected in the industry and so
12 that, you know, just kind of a mutual respect for
13 each other.

14 Q. Some witnesses have observed that he was
15 really smart, particularly with numbers. Was that
16 your experience?

17 MR. STURR: Object to form.

18 A. Yeah, I don't specifically remember that.
19 I thought -- I'd never had that thought. I always
20 pictured him sitting in front of a computer, so
21 anything he'd rattle off I guess I just thought
22 came out of a calculator.

23 Q. So you didn't gain an opinion of whether
24 he was smart or not?

25 MR. STURR: Object to the form.

1 A. Well, I thought Denny was intelligent.
2 As far as being some type of wizard with numbers,
3 I knew he was meticulous with his bookkeeping.
4 I knew that -- at least that was my impression.
5 And, you know, he seemed to run a business very
6 straightforward. I mean, he was -- he was keeping
7 track of stuff.

8 He -- if I didn't get him a payment
9 on the 1st, even if it was my 200th loan with him,
10 you know, on the 3rd or 2nd I'd get an E-mail
11 saying where the hell's my money, which was
12 partially his dry sense of humor, but also, you
13 know, I appreciated that about him.

14 I think that actually happened once.
15 Other than that, I don't think we ever missed a
16 payment on the 1st. And that was a -- turned out
17 to be a bank -- an oversight or something. I
18 don't remember what the cause was.

19 Q. When you're talking about payment, are
20 you talking about interest payments on the loans?

21 A. Correct.

22 Q. You know, it looks in the documents,
23 Barry, as though there were times when you would
24 ask Denny Chittick for advice about hard money
25 lending in connection with some of the work that

1 you were doing. Is that a fair observation?

2 A. Yes.

3 Q. And was he willing to share with you
4 lessons he had learned and ways that he thought
5 you ought to go about hard money lending?

6 A. He was extremely helpful and gracious
7 with his time.

8 Q. I've seen in a couple of documents, as
9 have you, where you thanked him for the time he
10 spent in being available to talk about hard money
11 lending. And were there occasions when you talked
12 to him about the business of hard money lending?

13 A. Yes.

14 Q. Did you gain the impression that he was
15 good at the business of hard money lending?

16 A. Yes.

17 Q. And by that he understood -- he had good
18 loan documents, knew what they allowed him to do
19 and knew how to enforce them?

20 MR. STURR: Object to the form,
21 foundation.

22 A. When I say he was good, I just had the
23 impression that he -- he was working with a bunch
24 of other borrowers like me that never missed the
25 payments and he was getting good loans on deals

1 and was running a successful business. I was
2 never under the impression that Denny didn't just
3 have a great portfolio of loans, and in my opinion
4 that was good.

5 Q. I've seen some references to discussions
6 of the loan docs and loan procedures. Did you
7 gain the impression that he understood how to
8 safeguard his money when he was making loans and
9 how to protect his secured position when he was
10 making loans?

11 MR. STURR: Object to form and
12 foundation.

13 MR. MURPHY: Same objection.

14 A. Yes, I respected his opinion on those
15 matters.

16 Q. And you were also an investor, as was
17 your brother, right, in DenSco?

18 A. Correct.

19 Q. And do you recall that the business
20 model for DenSco as it related to its loans was
21 that it sought to make sure that its loans had
22 proper loan to value ratios?

23 MR. STURR: Form and foundation.

24 A. Yes.

25 Q. And did you see him applying that when

1 he loaned money to you and your entities, that he
2 wanted to make sure there was proper security for
3 the loans?

4 A. Yes.

5 Q. And as it related to safeguarding the
6 money of DenSco in connection with making the
7 loans, did you understand that he understood the
8 need to make sure that the money was wired to the
9 proper location to make sure that it was used
10 properly?

11 MR. STURR: Form and foundation.

12 A. That was never even a part of our
13 discussion.

14 Q. I mean, it's pretty fundamental to a
15 hard money lender that you make sure that you're
16 safeguarding the monies that you're loaning and
17 you make sure that you are secured properly on the
18 loan; is that fair?

19 A. Right. I would never imagine he'd send
20 money anywhere other than, you know, a proper
21 place.

22 Q. And did you always understand that he
23 was requiring a first position lien or deed of
24 trust on the loans he was making to his borrowers
25 like you?

1 A. Yes.

2 MR. MURPHY: Object to form.

3 Q. And so in order to do that in Arizona,
4 he would need to make sure that he recorded the
5 deed of trust against the property that was the
6 subject of the loan in a timely way?

7 MR. STURR: Form.

8 A. I really had knowledge of Denny's
9 procedures as they related to my company, so --
10 and I assumed that that's how he was doing it
11 everywhere; but, yes, he -- I assumed that as he
12 did with us hundreds of times, he was recording
13 the deeds of trust and getting the appropriate
14 documents and sending money straight to the title
15 company.

16 Q. And was that your experience from the
17 first loans that you made with DenSco in roughly
18 2006 or 2007 forward?

19 A. Yes.

20 Q. You indicated that he was meticulous
21 with his bookkeeping. How were you able to
22 conclude that?

23 A. Well, that is an example of one of those
24 opinions that changed after his death, because
25 prior to his death I thought he was tracking a

1 \$50 million loan portfolio of \$200,000 loans
2 successfully and had been for over a decade.

3 Q. And what did you learn after his death?

4 A. I learned that that wasn't the case. It
5 seemed like there was a -- the Denny I learned
6 about after his death is not the Denny that I
7 thought I knew.

8 Q. And are you talking specifically as to
9 the relationship with Scott Menaged as a borrower
10 from DenSco?

11 MR. STURR: Object to form.

12 A. Well, after his death I questioned
13 everything I thought about him. So I found out
14 about the relationship with Menaged after his
15 death, and I had never even heard of the guy. And
16 then when I heard -- you know, found out that he
17 had \$45 million lent to this single guy, I thought
18 I do not know this Denny. This isn't the guy I've
19 been talking to on the phone.

20 Q. Have you been able since Denny's death
21 to be able to determine how he allowed himself to
22 get in this position at DenSco?

23 MR. MURPHY: Object, calls for
24 speculation.

25 MR. STURR: And form.

1 A. I think I have an understanding of where
2 this -- everything went wrong, of the flaw in his
3 procedure that allowed him to be compromised.

4 Q. And what is that?

5 A. Again, this is based off of my
6 understanding, but I believe he was not doing an
7 adequate job of ensuring that he was -- the money
8 he was sending out was secured in first position.
9 And that was the result of him wiring -- my
10 understanding, was wiring funds directly to a
11 borrower instead of -- when a trustee sale is
12 purchased and you're the lender, typically the
13 procedure is to get a cashier's check made out to
14 the trustee and deliver it to the trustee.

15 Q. So what he did with Scott Menaged, that
16 is as you've observed that he was not making sure
17 that his loans were being properly used and
18 secured in first position, that was inconsistent
19 with how you viewed Denny Chittick did business
20 before his death?

21 MR. STURR: Object to form.

22 A. That was a complete 180 from what I
23 thought of Denny and how he operated.

24 Q. And do you have any sense today as to
25 what it was about that relationship between him

1 and this Scott Menaged that caused him to lower
2 his guard or do something out of the ordinary with
3 respect to protecting his money and his lien
4 positions?

5 MR. STURR: Object to form and
6 foundation.

7 MR. MURPHY: I object, calls for
8 speculation.

9 A. I don't know.

10 Q. Do you know whether he had any problems
11 with any other borrowers in the same way that he
12 had with Menaged where he showed a lack of care
13 with the use of the DenSco funds and securing
14 first position liens?

15 MR. STURR: Form and foundation.

16 A. Menaged was the first borrower I had
17 ever heard of that Denny had a problem with and
18 still the only. I don't know of anyone else that
19 comes to mind.

20 Q. Do you know, Barry, whether before
21 his death Denny ever spoke to anyone about the
22 problems he had with Menaged or his loan -- his
23 lending relationship with Menaged?

24 A. I don't. Once I realized Denny was
25 dead, I had a wife and a young family, and I

1 believe one of -- my son or my daughter was just
2 one year old or less. And quite frankly, I just
3 compartmentalized that whole issue and put it --
4 I mean, haven't thought about it.

5 I didn't speculate. A lot of guys
6 were call -- not a lot, but people would want to
7 talk about it, and I just didn't want -- I just
8 wanted to move on and focus on my family.

9 That's one thing I took from
10 Denny's death was that guy would answer his phone
11 anywhere. He'd take a call and he'd be out on the
12 field coaching his kids and answered in the middle
13 of the night. And I thought, man, you know, this
14 guy's priorities were screwed up. And it went
15 off the rails, apparently.

16 And just in hindsight maybe he
17 wouldn't have felt -- yeah, I don't want to
18 speculate. I mean, I just thought it was an
19 unfortunate thing, and I thought, you know, he
20 probably wishes at the end he would have spent
21 more time focusing on his family. So I didn't let
22 Denny's suicide or speculation about what may or
23 may not have caused it take away from my family.

24 Q. Some witnesses have observed that he may
25 have been too trusting, that is Denny Chittick,

1 with some of his borrowers. Do you have any basis
2 for -- do you have any opinion about that at all?

3 MR. STURR: Object to form and
4 foundation.

5 A. I only know what I saw in my experience
6 with Denny, and I was always -- I always felt like
7 he was being diligent and was -- you know, I never
8 thought he'd lend me more than a house was worth.
9 I never thought he'd lend me more than was
10 appropriate for the hard money model, regardless
11 of our history together.

12 He was pretty straight -- like I
13 said, prior to his death I thought he was a pretty
14 straitlaced guy. He just played by the rules.

15 Q. Would you agree with me that the things
16 that Denny Chittick did with respect to Menaged as
17 a borrower were completely counter to the typical
18 hard money model that hard money lenders follow?

19 MR. STURR: Object to form and
20 foundation.

21 MR. MURPHY: Same objection.

22 A. Yes.

23 Q. And could you explain that answer?

24 A. Well, as I stated earlier, the hard
25 money model is -- and the success of the hard

1 money model is based on getting appropriate
2 security for the money you lend; and Denny was not
3 doing that, apparently from what I can see.

4 Q. So would you agree with me that at least
5 the following three things are important to a hard
6 money lender and a part of the hard money model?
7 It would include making sure that the money gets
8 to the right location, to the right party; that
9 there is sufficient security in the property to
10 cover the loan; and that you have properly
11 recorded in first position the deed of trust
12 recording -- protecting the loan?

13 A. That's correct.

14 MR. STURR: Object to form and
15 foundation.

16 MR. MURPHY: Join.

17 Q. And in your experience as a hard money
18 lender and having worked with hard money lenders,
19 that's fundamental, and all hard money lenders
20 understand that as a part of doing business;
21 right?

22 MR. STURR: Form, foundation.

23 MR. MURPHY: Same objection.

24 A. That's the business as I understand it.
25 Those are the most important things.

1 Q. And you understood, having worked with
2 Denny Chittick over that period of time that you
3 did, that he understood as a hard money lender that
4 that was the model he needed to follow and did
5 follow; right?

6 MR. STURR: Form and foundation.

7 A. Yes.

8 MR. DeWULF: All right. So it's
9 been a little over an hour. Do you want to keep
10 going or how are you doing? Do you need a break?
11 Or I can do whatever you wish.

12 THE WITNESS: I'm good. Maybe we'll
13 take a break here in 15 minutes.

14 MR. DeWULF: All right. Debbie, how
15 are you?

16 THE COURT REPORTER: Oh, I'm fine.

17 MR. DeWULF: Okay. Let us know.
18 Sometimes we forget that you have to take breaks
19 too, so just let us know.

20 Q. So I'm not going to ask you about the
21 next document in the stack of documents, but I do
22 want to go to the subscription agreement, which is
23 the document after that, Barry.

24 MR. DeWULF: And it would be 730;
25 and, Ryan, it's 63891.

1 (Exhibit 730 was marked for
2 identification by the reporter.)

3 Q. Actually, you know what, I'm going to
4 move on. I'm going to come back to one, because
5 you actually signed a subscription agreement
6 later. I'm not going to ask you about that.
7 Let's go on to the next document in that stack,
8 which is Bates stamped 62152.

9 (Exhibit 731 was marked for
10 identification by the reporter.)

11 Q. Barry, this is E-mails between you and
12 Denny Chittick. They're dated January 3, 2012.
13 Do you recall these communications?

14 A. Yes.

15 Q. And a part of the communication relates
16 to you becoming a father. Do you see that?

17 A. Yes.

18 Q. And there were times when you and Denny
19 Chittick would share information about the
20 experience of having children; right?

21 A. Yes.

22 Q. And in your E-mail you're also asking
23 for a request for money from Denny Chittick for a
24 purchase of property; right?

25 A. Yes.

1 Q. And let's look at his E-mail back to
2 you. The last paragraph it reads, "Ok, attached
3 are the documents. Let me know what bank and bank
4 account you want me to transfer the money to.
5 Just need the aba and account number. Thanks,
6 dc."

7 Did I read that correctly?

8 A. Yes.

9 Q. So was this an occasion where he was
10 wiring money directly into your bank account?

11 A. I don't -- I specifically recall that
12 discussing our children, but I don't -- like I
13 said, I don't have any recollection of Denny
14 wiring -- other than just one time maybe, wiring
15 money directly to my account, so --

16 Q. Okay. And was this --

17 A. And I'm not a hundred percent certain,
18 because I was -- yeah, that could be the case
19 here. I'm not certain that this is what was
20 occurring here, but it could have been.

21 Q. Well, he clearly trusted you, and I
22 guess I'm -- it appears as though there was a
23 fairly informal process of you asking for money
24 and him being able to turn around and get you
25 money fairly quickly. Was that your experience

1 with him?

2 A. Yes.

3 Q. And does it refresh your memory that on
4 some occasions, because of the logistics of the
5 deal, that he would wire money directly to you as
6 opposed to through a title company or an escrow
7 agent?

8 A. At this time I do not remember him
9 wiring direct to my accounts.

10 Q. So let's look at the next documents, and
11 let's mark that 732.

12 MR. DeWULF: And that's 62498, Ryan.

13 (Exhibit 732 was marked for
14 identification by the reporter.)

15 Q. Barry, I want to focus your attention on
16 the top of that first page. There's an E-mail
17 from you to Denny dated February 14, 2012, and it
18 reads, "I'm not sure, but let's just do it outside
19 of title, if that's okay." And then he writes you
20 back later that day, "No problem, I'll send you
21 docs today."

22 Do you see that?

23 A. Yes.

24 Q. Now, this would reflect the fact that
25 you're asking him to forward monies outside of the

1 title company; correct?

2 A. That's incorrect. So as a homebuyer,
3 we would commit to buying a house in cash or just
4 buying it. We're buying it no matter what. So
5 occasionally, if I remember correctly, people
6 would say -- would see a borrower on the -- or,
7 I'm sorry, a lender on the settlement statement
8 and would wonder if the deal was actually going to
9 happen, like has this really been approved, are
10 we -- what are we waiting for, this --

11 And so in reflecting on this, what I
12 think we were discussing here -- when we said
13 "outside of title," he still sent the money to the
14 title company, but I didn't send -- and this is
15 another instance, as I discussed earlier, where
16 maybe it was -- well, let's see. When did I send
17 this? On a Tuesday shooting for a closing on
18 Friday. Where it could have been an issue of
19 timeliness. Maybe the borr -- the sellers had
20 already signed or they were out of state and title
21 had sent the docs.

22 And when I said "outside of title,"
23 it didn't mean send me the money, Denny, and I'll
24 use it. It meant I'm not going to have the title
25 company put you on the HUD. It means, you know,

1 if I'm buying it for a hundred and -- a hundred
2 thousand, then you send them the 90,000 and -- or
3 85 grand or whatever you're sending me, and I'll
4 send them the rest.

5 Q. All right. So as we're looking at this
6 Exhibit 732, where would he then be transferring
7 the money if it's outside of title?

8 A. Well, the way him and I referred to, at
9 least with Denny and I when we said "outside of
10 title," that means that the title company isn't
11 going to put the lender on the settlement
12 statement.

13 So if it's -- if it's through title,
14 that means the title company is going to -- at
15 least this was how we worked together. If I --
16 typically I would just say, hey, we're doing it.
17 It's at -- Chicago Title's closing it, and go
18 ahead.

19 But there were times where because,
20 like I said, of timeliness or some other issue
21 where he would just wire it -- I'd send him the
22 title company wire instructions or he would
23 still -- I'd forward them on from the title
24 company, but he would fund the title.

25 I mean, I don't -- I really don't

1 ever remember him sending money for a real estate
2 purchase directly to my account. This was always
3 still going to the title company. I didn't touch
4 the money and send it through. I mean, it would
5 be inefficient anyway, you know, from the amount
6 of volume we're doing to account for it all. He
7 would just not -- and I don't think he would have
8 done it, at least the Denny I knew then. I
9 wouldn't even ask him to do it. There's no point
10 in it.

11 So, yeah, he -- this -- outside of
12 titlement, they're not going to have to withdraw
13 docs or they're not going to put you on the
14 settlement statement. You're just going to send
15 the money to them and I'm going to execute the
16 docs and get them back to you.

17 Q. Were there times when your execution and
18 notarization of documents lagged the money being
19 placed with the title company?

20 A. Yes.

21 Q. And I saw on some of the documents that
22 you would typically have your mother notarize the
23 documents for you?

24 A. That's correct.

25 Q. Were there other times when you would

1 send documents unnotarized to Denny and he would
2 have them notarized by someone in Arizona?

3 A. Yes.

4 Q. Do you remember who he used to notarize
5 the documents?

6 A. I do not recall.

7 Q. Do you remember a woman named Veronica
8 Castro? Does that ring a bell?

9 A. I don't.

10 Q. You never had any dealings with a woman
11 named Veronica Castro?

12 A. No. And it wouldn't be common for me to
13 see the notarized -- you know, I'd send him what I
14 had and then close the deal when we were fixing up
15 the house; so, you know, that next component of it
16 wouldn't be common for me to see, at least on a
17 regular basis.

18 Q. Let's look at the next document, Barry.
19 Let's make that 733. And it's stamped 63184.

20 (Exhibit 733 was marked for
21 identification by the reporter.)

22 Q. This document, Barry, references an
23 attachment of a private offering memorandum 2011.
24 Do you see that?

25 A. Yes.

1 Q. Do you recall whether you first became
2 an investor with DenSco in 2011? I apologize.
3 The date of the E-mail is May 7, 2012. Do you
4 think that you would have first become an investor
5 around that time?

6 A. Well, I had seen this -- I actually
7 don't remember specifically when I became an
8 investor; but if you could refresh my memory, that
9 would be great.

10 Q. I think --

11 MR. STURR: John, excuse me for
12 interrupting, but it looks like he has the wrong
13 document. He's got a multipage document.

14 MR. DeWULF: Oh.

15 MR. STURR: And you've got a single-
16 page document.

17 MR. DeWULF: I'm sorry, that's a
18 good point.

19 Q. So there should be, the document in your
20 hand, it's just a very short E-mail at the top of
21 the page.

22 MR. STURR: Yeah, I think you
23 skipped over one of the stack, John. Forgive me
24 for interrupting.

25 MR. DeWULF: No. I may have.

1 MR. STURR: The document that I
2 think he's looking at is the subscription
3 agreement, and the next document is the E-mail
4 you're talking about.

5 MR. DeWULF: Okay. Yeah, so drop
6 that, and then if you could go to a document
7 that's stamped 63184.

8 Debbie, if you could help him with
9 that.

10 (Exhibit 733 was re-marked for
11 identification by the reporter.)

12 Q. So going back to my question earlier,
13 this references a private operating memorandum.
14 You don't recall when you first became an
15 investor?

16 A. Well, I know it was -- I don't recall
17 the specific year.

18 Q. So let me back up, because I should have
19 asked this question. Why did you use DenSco as a
20 lender on the transactions you were doing? Did
21 you not have liquidity sufficient or why did you
22 need to go to a hard money lender to borrow?

23 A. Because we needed to borrow funds.
24 Yeah, an insufficient liquidity, especially in the
25 beginning of our professional investment career.

1 Q. And when you finally decided to become
2 an investor in DenSco, why did you decide to do
3 that?

4 A. Well, I did that because I had money in
5 an IRA, and I didn't want to -- I wanted a place
6 to invest it for a return. And at -- as I said,
7 prior to his death I felt very comfortable with
8 Denny and his procedures and --

9 Q. Do you recall, Barry, whether in
10 connection with becoming an investor with DenSco
11 that you reviewed the private operating
12 memorandum?

13 A. Yes, I had.

14 Q. But you understood the way he did
15 business because you had done business with DenSco
16 for a period of time as a borrower; right?

17 A. Correct.

18 Q. And so you at least believed prior to
19 Denny's death that he was doing things consistent
20 with a hard money model of making sure that the
21 loans were properly secured and that the money was
22 safeguarded so it was used properly; fair?

23 A. Absolutely.

24 Q. All right. Let's look at the next
25 document in that stack, and it is stamped 63890.

1 (Exhibit 734 was marked for
2 identification by the reporter.)

3 Q. So, Barry, I'm just going to ask you
4 really quickly. The E-mail that begins about a
5 third of the way down on that page is from you to
6 Denny Chittick dated August 21, 2012. Do you see
7 that?

8 A. Yes.

9 Q. Let's look at the second paragraph of
10 that E-mail. It reads, "Thinking about the hard
11 money business idea again, along with the ppm. Do
12 you have a note or subscription agreement? If so,
13 would you mind if I read through that? I'd like
14 to know the level of fine print and sign your life
15 away someone has to do before handing me a check.
16 Probably similar to the forms the anesthesiologist
17 has patients sign."

18 Was this communication in connection
19 with you becoming an investor or was it you were
20 wanting to know more about how DenSco did
21 business?

22 A. This would be me exploring the
23 necessary -- yeah, how Denny did business. How a
24 hard money lender did business.

25 Q. You hadn't started your work through

1 Kayak Capital as a hard money lender as of this
2 August 21, 2012 date; right?

3 A. Correct.

4 Q. Were you able to use the information
5 that you gained from Denny Chittick in connection
6 with hard money lending to start your own
7 business?

8 A. I would say that I didn't take his
9 information and start my business, but I
10 definitely looked at him as one of the many
11 sources, resources I could call on to understand
12 the business better.

13 Q. And there are references in the E-mails
14 about you thanking him for sharing information.
15 Would it be true over the time that you knew him
16 that he did share with you how he went about hard
17 money lending and the business practices he
18 followed?

19 A. Yes.

20 Q. And did you feel that the business
21 practices he followed were a good model for how
22 you would want to be a hard money lender if you
23 started your own business?

24 A. Well, at the time I perceived him as
25 having -- being successful, and so I thought he

1 was a good -- you know, one of many resources I
2 could look to to see the inner workings of a
3 successful lender.

4 Q. I'm going through some of these
5 exhibits, Barry. I don't think I need to ask you
6 about all of them, so I'm going to kind of move
7 through some of these to save us some time.

8 Let's go to -- let's skip the next
9 documents and go to what's marked as 64130. It's
10 dated September 17, 2012.

11 (Exhibit 735 was marked for
12 identification by the reporter.)

13 Q. Let me be quick about this, if I could,
14 Barry. Your note to Denny Chittick dated
15 September 17, 2012, says, "I mean, let's fund
16 outside of escrow." And then you go on, or the
17 later E-mail reads, "Let's close Marshall outside
18 of escrow if you haven't already contacted the
19 title company."

20 So would this be an instance where
21 monies would be funded still through the title
22 company but not reflected on the HUD or are you
23 describing something else?

24 A. Nope, this is where money goes still to
25 the title company, just not -- yeah, I'm not

1 talking about something else. This is where Denny
2 is still sending money to the title company.

3 Q. So let's look at 736, which is the next
4 document in the stack.

5 (Exhibit 736 was marked for
6 identification by the reporter.)

7 MR. MURPHY: What is that document?

8 MR. DeWULF: Oh, I'm sorry, it's
9 61 -- I'm sorry, 64147, Ryan. I apologize.

10 MR. MURPHY: Thank you.

11 Q. So your E-mail at the bottom of that
12 first page, Barry, reads "That" 450,000, "450K,
13 house got postponed. Can you help me with cash
14 flow forecasting/management over here? Do you
15 use a program with lots of bells and whistles you
16 can recommend or are you doing it on some
17 homemade Excel" spread -- "worksheet? Thanks."

18 Are you asking for advice about hard
19 money lending here?

20 A. I believe so. I was asking how he did
21 it.

22 Q. And then you will see his E-mail
23 follow-up he talks about his practice and
24 procedure. Is this a part of what you earlier
25 observed were kind of meticulous recordkeeping

1 practices by him?

2 A. I guess. This isn't that meticulous,
3 but, yeah, in general I just -- I was interested
4 in his opinion because, you know, my understanding
5 was he had hundreds of loans and 40 or \$50 million
6 out and was doing it successfully. So I would
7 approach him with, well, I was thinking about the
8 hard money business. You know, I -- and how I
9 would do it. I'd see -- I'd also touch base with
10 Denny and see how he's doing it.

11 MR. DeWULF: Why don't we take a
12 brief break, if we could. You can stretch your
13 legs, maybe use the rest room. Debbie, you can
14 get a little bit of a break. We've been going a
15 while. And do you think ten minutes would be
16 sufficient?

17 THE WITNESS: That's plenty of time.

18 MR. DeWULF: So let's get back in
19 about ten till or so?

20 THE WITNESS: All right, great.

21 MR. DeWULF: All right. Thanks.

22 (A recess was taken.)

23 MR. DeWULF: Ryan, are you on the
24 line?

25 MR. MURPHY: I am.

1 MR. DeWULF: Okay. Barry, are you
2 good to go?

3 THE WITNESS: You bet.

4 MR. DeWULF: All right. Thank you.
5 Again, I appreciate you coming down. I know you
6 got weather there, and I appreciate you coming for
7 the deposition.

8 Q. Let me ask a couple of -- I want to
9 circle back on a couple of questions. There are
10 E-mails, and I'm going to try not to go through
11 some of these if I can just cover the subject
12 matter without having to make the documents
13 exhibits, where you're asking for some advice on
14 things like pediatricians and baby-sitters and
15 that kind of thing. You recall that?

16 A. Generally, yes.

17 Q. Would you have called your relationship
18 with Denny Chittick a friendship?

19 A. Yes.

20 Q. But did it appear to you now looking
21 back that there were things about his life that he
22 didn't share with you?

23 MR. STURR: Object to the form.

24 A. Yeah, there were things he didn't -- you
25 know, he didn't share anyway. I mean, it's not --

1 in retrospect. But, yeah, particularly the fraud
2 and the way everything went down, yeah, I was
3 surprised at all that. [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

7 Q. There are some references in some of the
8 communications about technology and the use of
9 technology. Did you draw any conclusions about
10 Denny Chittick being technology savvy?

11 A. Well, it was my understanding he had
12 successfully -- had had success in a technology
13 company prior to starting the hard money lending
14 business, so I kind of gave him the benefit of the
15 doubt that he knew what he was doing in that
16 realm.

17 Q. Do you recall ever giving Denny Chittick
18 advice? I know we talked earlier about him
19 sharing with you some of his knowledge and
20 experience in the hard money lending business. Do
21 you recall ever giving him advice about anything?

22 A. Yeah, I would talk to him. Like I said,
23 I think there weren't a lot of places -- from my
24 friendship with Denny and what we discussed, there
25 weren't a lot of areas of his life I knew well

1 enough to give advice, but I think on occasion I
2 would -- Denny was so available to borrowers that
3 I just thought, man, you should cut it back a
4 little bit. I think I mentioned that previously
5 that -- so I might have shared something about,
6 hey, you should get some help in there. You
7 should, you know, be more conscious of keeping
8 your free time free as opposed to working day and
9 night. One of those deals where --

10 Q. -- to that advice?

11 A. I'm sorry, what's that?

12 Q. I apologize. I cut you off. Go ahead.

13 A. Oh, just one of those things where you
14 would -- as a friend you would hope -- one of
15 those things where if he didn't answer your call
16 late at night or respond to an E-mail at 10 p.m.,
17 you'd kind of be glad in a way, even though it was
18 a work deal. Which never happened; but, I mean,
19 just in general you send them out, fire them out
20 at all hours and maybe hope one doesn't come back
21 and he's just hanging out.

22 Q. Do you recall how he reacted to your
23 advice about things like that?

24 A. Yeah, I don't recall broaching it too
25 directly except for maybe once or twice, and, you

1 know, he said he's got it covered, you know. He
2 said -- I think he appreciated it, but just said,
3 yeah, thanks, you know. I'm doing my thing over
4 here and I've got a pretty good system. And I
5 actually thought it's hard to change systems, so,
6 I mean, it makes sense.

7 Q. Do you know whether he was getting help
8 from anyone in connection with the DenSco
9 business?

10 A. I don't know that anybody -- I guess
11 the only people I knew affiliated -- that were
12 affiliated with the business were Denny and his
13 attorney David, and like on an ongoing basis.

14 Q. A comment has been made by some
15 investors that Denny was really careful with his
16 money, and some might call him cheap. Did you see
17 that evidenced anywhere or do you have any opinion
18 about that?

19 MR. STURR: Form.

20 A. Yeah, I thought he was -- him and I both
21 came from a -- my understanding of Denny was that
22 we both came from a similar background and a --
23 kind of a small town, and money was hard to make
24 in kind of rural small-town areas. And he
25 respected -- he was wise with his money, so that

1 was another thing that we really had in common.

2 I mean, I think a lot of guys that
3 I ran into in our business were particularly
4 interested in the show and the flash, and I could
5 relate to Denny in, you know, driving an older car
6 and just, you know, being a good steward of the
7 money as I -- as I had interpreted him to be, you
8 know, prior to his death.

9 Q. Did he ever talk to you about attorneys'
10 fees or complaining about the cost of attorneys?

11 A. He did mention that one time I remember,
12 or that I thought of.

13 Q. What do you remember?

14 A. Well, I couldn't remember if it was in
15 an E-mail or a discussion. I mean, I'm hoping it
16 was an E-mail, but he -- you know, he just said --
17 when we had discussed -- I don't specifically
18 remember what it was in relation to, but something
19 like I'm paying them so damn much money they
20 better do it type of thing.

21 Q. You don't remember what it related to?

22 A. I don't. And I don't even specifically
23 remember -- you know, it was a -- it was something
24 I thought of that -- you know, I can't put -- it
25 just stood out because I could relate. That's how

1 I feel about all attorneys. They're paid a lot of
2 money, so they should do a good job.

3 Q. There were a couple of occasions where
4 I saw in the documents where you had referred
5 individuals to David Beauchamp. Do you recall
6 that?

7 A. Yes.

8 Q. Do you remember why you referred them?

9 A. Well, at the time prior to Denny's
10 death, you know, I assumed David was part of --
11 seemed to be an instrumental part in the -- in
12 this really successful hard money business. So
13 these were guys that were interested in the hard
14 money business; and in the same fashion that Denny
15 opened -- open to dialogue with me about -- was
16 open to dialogue with me about the business and
17 just was helpful in general, I kind of wanted to
18 pay it forward.

19 So when guys would call me and say
20 how do you do this or what about this or do you
21 know anybody that does this, prior to Denny's
22 death I would say, you know what, if you really
23 want to get into the weeds on it, call the -- you
24 know, Denny's attorney. This guy's a great hard
25 money lender for 15 plus years.

1 Q. Do you recall actually reaching out to
2 David Beauchamp at some point to have him do or
3 provide you legal services or give you legal
4 advice?

5 A. I do remember contacting him and as
6 part of our diligence in considering starting a
7 business, a hard money lending business.

8 Q. And was the hard money lending business
9 what ended up being Kayak?

10 A. That's correct.

11 Q. And had you reached out to David
12 Beauchamp because you had gained a favorable
13 impression of him?

14 A. Well, I had -- I reached out to him on
15 the advice of Denny who said call David. He's --
16 he can help you do that or he'll be able to answer
17 questions about that.

18 Q. Do you recall Denny ever sharing with
19 you any of his views or opinions of David
20 Beauchamp at any time?

21 A. I don't. I just remember the fact that
22 I think that if I had a positive view of David, it
23 wasn't because Denny said this is an amazing guy.
24 It was just that Denny associated with him
25 regularly, and I knew he was involved in the

1 business, in Denny's business; so that's where I
2 gleaned that -- you know, my thoughts about David,
3 initial thoughts.

4 Q. We'll see these documents later in your
5 deposition, but do you recall that after Denny's
6 death you communicated with David Beauchamp with
7 respect to trying to pay off monies that were due
8 on loans DenSco had made to you?

9 A. I do.

10 Q. Was he helpful to you in that regard?

11 A. He was.

12 Q. You know, sitting here today, do you
13 have any complaints about David Beauchamp or his
14 law firm based on your experiences?

15 A. Well, I have one observation that sticks
16 with me about David after coming to full light on
17 the events that transpired and Denny's death and
18 then the things I learned afterward, and that is I
19 just thought it was in retrospect -- and it seemed
20 a little odd at the time; but after Denny's death
21 David hopped right in there, you know, was very
22 proactive, got involved, but was particular -- and
23 I believe it's even in an E-mail, but then also in
24 conversations I had with him or he had with other
25 investors, my understanding is, I mean, was just

1 very, hey, this -- receivers are a terrible thing.
2 You guys do not want a receiver in here. They eat
3 up all the money.

4 And I'm not exaggerating this
5 at all. And in hindsight you're going, yeah,
6 that kind of makes sense, I guess, based on
7 the knowledge I've gleaned of the overall
8 circumstances that led up to and --

9 But he was just that's kind of
10 like -- and I think if the guy had -- was sitting
11 there truly giving the investors the best advice,
12 he'd probably say let's get a receiver in here
13 right away. This is -- this is not a one-man job.
14 But alternatively, his professional legal advice
15 was, guys, we'll work through this. You'll end up
16 getting a lot more of your money back if I'm
17 running this. A receiver is the last thing in the
18 world that -- you won't get any of your -- you
19 know, you'll get a lot less money back.

20 So I look at that conversation and
21 kind of that -- the couple months that transpired
22 after Denny's death and David's involvement now
23 as somewhat curious as to what he was advising
24 everybody to do.

25 Q. Did you actually have a conversation

1 with David or are you talking about the E-mails
2 that were sent to the investors?

3 A. There were E-mails, and then there
4 were -- to my recollection, I was on at least one
5 phone call with a couple other investors with
6 David and possibly Denny's sister after Denny's
7 death.

8 Q. Are you referring to Shawna Heuer?

9 A. Yes.

10 Q. Do you recall that Shawna Heuer was the
11 personal representative for Chittick's estate?

12 A. Yes.

13 Q. Did you ever have any communications
14 with Robert Koehler?

15 A. I believe he was on a conference call
16 with me. I don't know that I E-mailed him about
17 it. Like I said, I think it -- I had like a nine-
18 month-old or a year-old kid at home and a -- when
19 this was all going down and then a three- -- a
20 three- or four-year-old also, so I was --

21 People wanted to get -- to be
22 involved and discuss it and talk it through, and
23 I in general had just made the quick decision to
24 focus my energy on my family, because I didn't
25 feel like I could run parallel paths of being

1 extremely involved in the DenSco thing and being
2 a good dad and husband, so I -- it was too
3 distracting.

4 Q. So you were not that actively involved
5 in monitoring what was going on at DenSco after
6 Denny's death?

7 A. Not nearly as active as I could have
8 been.

9 Q. But you do recall that there was a
10 communication with David Beauchamp about receivers
11 being expensive; is that right?

12 A. Right.

13 Q. What specifically do you remember him
14 saying, if you can recall?

15 A. Well, if I remember correctly, it was
16 something to the effect of that -- he may have
17 even cited some study, where if a receiver's
18 involved, then plaintiffs -- plaintiffs end up
19 recovering 40 percent of the money and -- you
20 know, it was something to that effect. I mean,
21 we were just -- he was really -- you know, made it
22 a point to have us understand that, man, this is --
23 let's get our arms around this, and a receiver is
24 probably not the best path if you actually want
25 to get money back.

1 Q. Do you remember having any discussions
2 with him about getting a forensic accountant
3 involved to look at DenSco and what had happened
4 with all the money?

5 A. I think I do remember that. I do.

6 Q. And do you recall that the Arizona
7 Corporation Commission got involved fairly quickly
8 after Mr. Chittick's death?

9 A. I do.

10 Q. And, of course, you know that the
11 Corporation Commission then sought the appointment
12 of the receiver. Do you recall that?

13 A. Yes.

14 Q. So other than the comment that David
15 made about the receivers being expensive, any
16 other criticism or complaint you have about him
17 or his law firm sitting here today?

18 A. No.

19 Q. Let's go back to these documents. I'm
20 going to skip the next one, which is -- I guess
21 Debbie has got it in front of her, but we're going
22 to skip that one, 74978; and then let's go to the
23 next one, which is 65142.

24 MR. DeWULF: Do you have that,
25 Debbie?

1 THE COURT REPORTER: Yes.

2 MR. DeWULF: All right. Let's mark
3 that then. I guess that's two -- is that going
4 to be 237?

5 MR. STURR: Seven.

6 MR. DeWULF: I'm sorry, 737?

7 THE COURT REPORTER: 737.

8 MR. DeWULF: Got it.

9 (Exhibit 737 was marked for
10 identification by the reporter.)

11 Q. All right. So, Barry, let me just ask
12 you about this. I was just confused. There is a
13 communication from your brother Landon with a copy
14 to you, or to you and Denny, where you say, "Here
15 you do, Denny. This is the one that is being
16 vested in DenSco Investment Corp. It's through
17 John. Thanks again for all of your help."

18 And then he writes back again on
19 February 14, 2013, "Ok, call me, walk me through
20 oh you see this" -- must be "how you see this
21 working."

22 Do you know what this refers to?

23 A. It looks like it refers to a house on
24 Redwing.

25 Q. How would it vest in DenSco?

1 A. I believe it was a trustee sale.

2 Q. But when I use, when I see the word
3 "vested," I'm thinking someone might be gaining
4 title; but DenSco wasn't getting title, was it?

5 A. I don't recall if DenSco was on the
6 title or not. I remember the intention on this
7 was ultimately to own that house as a primary
8 residence.

9 Q. Let me ask you, do you recall how DenSco
10 protected itself when a trustee sale was involved
11 in terms of recording documents to make sure it
12 had a first position lien?

13 A. I do.

14 Q. What do you recall about that?

15 A. I remember he would fund the trustee,
16 fund the loan and simultaneously record a one-page
17 mortgage document. That was kind of a notice of
18 mortgage that would show up on title. And then he
19 would wait for -- and then I guess I don't -- I
20 knew he did that, and then after the -- you know,
21 he would record the -- after the deed had made
22 it into the borrower's name, he would record
23 the actual full deed of trust and other loan
24 documents.

25 Q. So to make sure that nobody else got in

1 superior position to the deed of trust, he
2 recorded this one-page mortgage document to put
3 everyone on notice between the time the sale was
4 completed and the deed of trust was recorded?

5 A. Correct.

6 Q. Let's look at the next -- well, let's
7 skip the balance sheet, which is the next document
8 in that grouping, the balance sheet with income
9 statement; and then let's go to the next document
10 which is stamped 65755.

11 (Exhibit 738 was marked for
12 identification by the reporter.)

13 Q. Are you there, Barry?

14 A. Yes.

15 Q. So at the bottom of that first page --
16 well, let's look at the second. Go back to that.
17 Are you looking at the same thing I am? Is it
18 dated April 4 -- or April 8, 2013, at the top of
19 that first page?

20 A. Yes.

21 Q. All right. If you look at the second
22 page of that, it looks like you're asking for
23 Denny to fund you on a purchase of a property for
24 about 200,000?

25 A. Yes.

1 Q. And you're asking on the 8th, and then
2 he asks you on the first page, "Who is the escrow
3 company? Am I wiring to you or them?"

4 Do you see that?

5 A. Yes.

6 Q. So this would tell us that at least he's
7 willing to wire you money directly as opposed to
8 through an escrow or title company; right?

9 MR. MURPHY: I object to the extent
10 it calls for speculation.

11 A. I would have read that as just his dry
12 sense of humor. I mean, it didn't even really --

13 Q. All right.

14 A. He had never done that with me, and I
15 just wasn't on the radar at all.

16 Q. And so then you respond, "Wire to them,"
17 which is the title company. And then he sends you
18 the documents, the loan documents; right?

19 A. Correct.

20 Q. Then let's look at the next document,
21 which is a limited liability resolution.

22 MR. DeWULF: It's stamped 70883,
23 Ryan.

24 (Exhibit 739 was marked for
25 identification by the reporter.)

1 Q. This is a resolution for one of the
2 entities through which you bought residential
3 properties in Arizona?

4 A. Correct.

5 Q. And were you providing this to DenSco to
6 reflect that you and your brother were authorized
7 to sign on their behalf?

8 A. I just have the document, but it -- I
9 provided this to numerous title companies and, you
10 know, to Denny, I'm sure.

11 Q. Let's skip the next document; and then
12 let's go to the document after that, which is
13 66043 dated May 3, 2013.

14 (Exhibit 740 was marked for
15 identification by the reporter.)

16 Q. If we just look at the first page of
17 that, Barry, together --

18 A. Okay.

19 Q. -- you say, "We just got one from Eric
20 @ Buy Arizona Foreclose -- Buy AZ Foreclosures."
21 Do you see that?

22 A. Yes.

23 Q. Does this mean you were actually -- were
24 you buying a property directly from another buyer?

25 A. From, yeah, a wholesaler.

1 Q. Did you ever work through any parties
2 that bid for you at trustee sales?

3 A. Less than a handful of times. I think
4 literally two or three times.

5 Q. Did you ever have any dealings with a
6 guy named Luigi Amoroso?

7 A. Never. He was another name I hadn't
8 heard until after Denny's death.

9 Q. The comment back to you from Denny
10 Chittick, again on May 2nd, is, "I'm going to
11 check with Eric."

12 So he apparently knows Eric. Do you
13 recall that?

14 A. Yeah. I mean, that would make sense
15 he --

16 Q. Then he finishes, "So we need to make
17 sure we've got clear title and nothing hanging out
18 there."

19 Was that always a concern -- well,
20 did you discuss with Denny the importance of
21 getting clear title on properties?

22 A. I think we both had a clear
23 understanding that that was critical to him
24 lending on it or me buying it.

25 Q. I mean, that's fundamental from a hard

1 money model standpoint, right, is that the title
2 is clear for the buyer and the lender?

3 A. Exactly.

4 Q. And is that title clear meaning that
5 there are no superior liens on the property as
6 well?

7 A. That's correct.

8 Q. Let's skip the next documents. And
9 the document after that I'm not going to have
10 marked. I just want to ask a quick question. It
11 relates to a MOMS meeting. Do you recall there
12 being MOMS meetings that were organized by Denny
13 Chittick?

14 A. Yes.

15 Q. And did you attend any of those?

16 A. I think maybe three to five.

17 Q. What went on at those meetings, do you
18 recall?

19 A. Denny would give an update, share his
20 thoughts on the market. And there was typically
21 some food, and we would hang out with other guys.
22 You know, there would be a handful of investors
23 that were -- at the time, I thought, were very
24 active real estate investors in Phoenix, and I
25 thought they were doing the same thing my brother

1 and I were doing.

2 Q. Do you remember any of those folks who
3 attended those meetings you attended?

4 A. Yeah, yes.

5 Q. Any names?

6 A. I remember Kevin Potempa being there,
7 and Jacob Garcia was at one that I was at. As
8 I -- oh, and Miller Blackford. He's an Iowa guy
9 also.

10 Q. All right. Let's go to the next
11 document, and let's mark it as an exhibit. It's
12 69921.

13 MR. DeWULF: Is that 740, Debbie?

14 THE COURT REPORTER: It's 741.

15 MR. DeWULF: Oh, 741, okay.

16 (Exhibit 741 was marked for
17 identification by the reporter.)

18 Q. So I just want to -- why don't you look
19 at this real quickly, and I'm going to ask you a
20 couple questions about it.

21 Barry, I'm showing you 741. Denny
22 in his comment to you on the bottom of the first
23 page -- again, this is dated May 28; Tuesday,
24 May 28, 2013 -- he says, "I feel better and sleep
25 better knowing you owe me more than 50,000 a

1 month, because I look at this this way, you owe
2 me \$4.5 million!"

3 Was there a point in time where you
4 and your brother through your entities owed DenSco
5 on loans around \$4 1/2 million?

6 A. Yes.

7 Q. And you were paying monthly interest of
8 approximately 50,000 a month?

9 A. Correct.

10 Q. Let's look at the next document in that
11 stack. It's 742, and I'll just -- Debbie will
12 mark it for you.

13 (Exhibit 742 was marked for
14 identification by the reporter.)

15 Q. So let me just ask, this references a
16 loss of loan docs, that Denny Chittick can't find
17 the documents that relate to a loan that he made
18 to you even though I think he has sent the wiring
19 of the monies. Do you recall this occurring in
20 June of 2013?

21 A. I don't specifically remember this.

22 I actually think I do remember this
23 now that I see he was on vacation.

24 Q. So let's look at the top of that second
25 page, Barry. On June 10, 2013, it says, "Docs

1 attached, instructions requested, wire sent."

2 So would this indicate to you that
3 he does not have the documents yet but he's wiring
4 the money?

5 A. One correction. Insurance requested is
6 what that -- it's not instructions, so insurance.

7 Q. Okay.

8 A. But the -- yes, it would.

9 Q. Would it be fair to say that at some
10 point in time you and Denny grew to trust each
11 other so you knew that each of you would cover the
12 formalities of the loan even if it wasn't done
13 immediately?

14 A. To a degree. There's -- when he's
15 sending wires, he's sending them to a Chicago
16 Title, for example, so it's not coming in for me
17 to go spend. So there's -- it's not uncommon in
18 the lending business if you know by necessity
19 to occasionally send a wire prior to -- to a
20 title company prior to getting the executed docs
21 back.

22 Q. But if you're going what's called
23 outside of title, then the escrow agent or the
24 title agent wouldn't know to finalize the loan
25 docs in connection with releasing the money;

1 right?

2 A. Actually, that's -- I don't believe this
3 was outside of title.

4 Q. Okay. But in those instances where that
5 happens, you're trusting one another that the loan
6 docs will get executed maybe after the money is
7 wired in; right?

8 MR. MURPHY: I object to form of the
9 question.

10 A. I don't know if he circled back in with
11 a final authorization to release or not; but,
12 you know, if Denny sent loan docs over, I would --
13 you know, I would send them back, execute them and
14 send them back.

15 Q. Let's skip the next documents and the
16 next one after that and the next one after that
17 and the next one after that, and let's look at
18 what is stamped 71208.

19 (Exhibit 743 was marked for
20 identification by the reporter.)

21 MR. DeWULF: Is that 743, Debbie?

22 THE COURT REPORTER: Yes.

23 Q. So I just want to look at this really
24 quickly with you. Halfway down the page, Barry,
25 there's an E-mail from you dated November 6, 2013.

1 It says, "Thanks again for chatting with me about
2 this business, Denny. You've been a significant
3 part of our success over the past eight years, and
4 we appreciate your all your help along the way!"

5 Let me just ask, what are you
6 referring to where you've said he's been a
7 significant part of your success?

8 A. I mean, he was -- from the background I
9 came from, money was hard to come by, and I didn't
10 have a big network of high net-worth individuals.
11 And the fact that Denny would lend us money
12 enabled us to be successful. There's no way I
13 could have bought and sold that many houses
14 without a private money lender.

15 Q. And so when you're saying "help along
16 the way," you're really referring to help in the
17 form of funds that allow you to purchase
18 properties?

19 A. I believe so. Oh, absolutely. When I
20 discuss the past eight years, yeah, that's -- I'm
21 referring to AZ Home Buyer and HomeBuyer Group,
22 and I'm talking about, hey, just giving me some
23 money so I can get these properties.

24 MR. DeWULF: All right. So let's
25 skip the next document, Debbie. Let's skip the

1 next document, and then let's mark the document
2 that's stamped 69131.

3 (Exhibit 744 was marked for
4 identification by the reporter.)

5 Q. So, Barry, just this is a short E-mail
6 back and forth. You're saying to Denny Chittick
7 on January 8, 2014, "Any word from Beauchamp if
8 Obama has put us out of business yet?"

9 Do you know what that's referring
10 to?

11 A. Yeah. I think -- well, two things. In
12 my discussions with Beauchamp and Denny, you know,
13 it's my understanding that he was a fairly -- that
14 he had some specific involvement with regulators
15 and the state of Arizona, AZDFI and things like
16 that, that would affect our business. So on that
17 basis my question to Denny was, hey, with this --
18 I was basically asking if Beauchamp had any idea,
19 any word of new regulatory requirements that
20 would -- you know, may affect us as lenders.

21 Q. All right. And then he indicates back,
22 again on January 8, 2014, "I actually have a
23 meeting with him tomorrow at 10."

24 Did you ever learn about what
25 happened at that meeting?

1 A. No.

2 Q. This was about the time when the
3 information about Scott Menaged and his borrowings
4 from DenSco was being shared with his lawyers.
5 And I know I asked you earlier, and you said that
6 you didn't know anything about Menaged until after
7 Denny Chittick's death. Let me ask a broader
8 question. Did you ever learn from Denny Chittick
9 before his death that he was having problems with
10 any of his lender -- any of his borrowers?

11 A. I never had an idea.

12 Q. So let's look at the next document.
13 It's Exhibit -- we'll mark it 745, and it's Bates
14 stamped at the bottom 69097.

15 (Exhibit 745 was marked for
16 identification by the reporter.)

17 Q. Barry, I'm showing you 745; and let me
18 just ask you, it looks like your first E-mail to
19 Denny Chittick is on the second page, January 15,
20 2014. You say, "Do you have 200 for me Friday if
21 I need it? I'll know in 30 minutes."

22 You're asking for 200,000; right?

23 A. Right.

24 Q. And this is Wednesday, January 15. And
25 you're asking whether he would be able to fund you

1 two days later?

2 A. I believe so, yes.

3 Q. And then if you look at the first page
4 of this document, he indicates, yes, that he
5 would be able to fund. And then you get back to
6 him on the 15th; 2014, January 15, "Great! Kim
7 has already drawn docs, and I think seller is
8 literally signing right now, so let's fund outside
9 of escrow. 200K, COE Friday."

10 Did I read that correctly?

11 A. Yes.

12 Q. And then he writes you back, "Get me
13 details."

14 So you would have to get him details
15 about where to wire the funds and that kind of
16 thing?

17 A. Yeah. I don't know -- you know, I would
18 guess he would have wanted the purchase price and
19 the, you know, wire instructions and the evidence
20 of insurance.

21 Q. But I'm mainly asking about this
22 document to illustrate a point, and that is that
23 your relationship with Denny Chittick, at least as
24 of this point in time, was one where you could ask
25 for money with a pretty short fuse, and he would

1 make an effort and turn around so he could get
2 money to you to meet whatever your needs were;
3 right?

4 A. Yeah. A Wednesday to a Friday close is
5 actually not -- relative to the layman seems like
6 a quick close, but 48 hours is not that untypical
7 in this -- in the hard money lending and real
8 estate investor world. But, yeah, I could
9 definitely contact him and -- on a Wednesday; and
10 if he had money, we could do a deal on Friday.

11 But this -- one other thing to point
12 out, this is literally the exact thing I'm talking
13 about when you read, "Great! Kim has already
14 drawn docs. The seller is signing right now, so
15 let's fund outside of escrow." Exactly, so -- and
16 this is what I'm talking about where, hey, I got
17 one Wednesday. The seller is signing all this
18 stuff. We don't want to have him re-sign it, so
19 just send it direct to escrow without getting on
20 the settlement statement.

21 Q. Understood.

22 Do you remember whether you did
23 anything with Denny Chittick on a shorter time
24 fuse than 48 hours?

25 A. It would not surprise me at all if we

1 did some on a shorter 24-hour time frame.

2 Q. All right. Let's skip the next
3 document, and the document after that I'm not
4 going to have marked as a document, but it
5 references a DenSco dinner party. Do you recall
6 ever going to DenSco dinner parties?

7 A. I went to one.

8 Q. Was any business done at those or was it
9 strictly social?

10 A. It was strictly social.

11 Q. All right. Let's skip that document,
12 and let's go on to the -- let's skip the next one
13 after that. Let's skip the next one after that,
14 and let's go to -- let's skip the one after that.
15 Skip the one after that. Let's skip the one after
16 that. Skip the one after that. Skip the one
17 after that.

18 Let's go to what's stamped 71948 and
19 mark that as an exhibit.

20 (Exhibit 746 was marked for
21 identification by the reporter.)

22 Q. Do you have that, Barry?

23 A. Yes, yes.

24 MR. DeWULF: I think that's 746?

25 THE COURT REPORTER: Yes.

1 Q. Let me just ask, this series of E-mails
2 which occur on April 8, 2014, reference Denny
3 Chittick's bank account at Bank of America being
4 shut down. Do you see that?

5 A. Yes.

6 Q. Did Denny share with you what happened
7 with regard to that bank account?

8 A. No, he didn't.

9 Q. This E-mail that's from Denny to you on
10 the 8th references that "B of A has closed my
11 account because of suspicious large dollar
12 transactions in and out on a regular basis."

13 Do you remember anything about that?

14 A. I remember getting this E-mail, and I
15 had actually previously worked with B of A. They
16 had all my business accounts, and I switched
17 because they -- to FirstBank because they were so
18 hard to work with. So when I saw this, I just
19 thought, God, it's about time. They, you know,
20 are terrible over there. So that's really what I
21 read into this.

22 Of course, in hindsight now anyone
23 switching bank accounts -- my Advantage IRA guy
24 switched bank accounts, banks, like a year ago;
25 and I was so paranoid about it you wouldn't

1 believe it. So I realize now there should be a
2 red -- could have been a red flag, but at the time
3 I thought, yeah, they're terrible. I switched --
4 had to switch a couple years ago.

5 Q. Did you introduce him to another bank in
6 Arizona?

7 A. I called my banker to introduce him; and
8 by the time I did make the introduction, he had
9 been introduced to a different person at FirstBank
10 through another investor. So while, you know, I
11 saw it as an opportunity to help Denny and connect
12 him with a good banker, by the time I had made the
13 contact at the bank I wanted to plug him in with,
14 he had already spoken with another branch manager
15 somewhere else in the FirstBank network.

16 Q. All right. Let's skip the next
17 documents. Let's mark this next document which is
18 71397.

19 (Exhibit 747 was marked for
20 identification by the reporter.)

21 Q. Barry, I want to focus your attention on
22 the middle of this first page. On May 7, 2014,
23 you're writing Denny Chittick, and you say, "Hard
24 money people jack me around all day, and then I've
25 got this extra spreadsheet over here called AZ

1 Home Buyer that my brother constantly jumps on and
2 destroys my cash flow. Thanks for your help!"

3 What are you referring to there?

4 A. Oh. Well, I'm talking about trying to
5 balance -- trying to have capital available for
6 the purchases for AZ Home Buyer that show up last
7 minute. Like we just saw a purchase contract
8 comes in Wednesday for AZ Home Buyer and we've got
9 to have the money Friday, so I was talking about
10 having to manage cash flow.

11 Q. And so "Hard money people jack me
12 around," do you know who you're referring to
13 there?

14 A. Oh, yeah, that was -- so let me see.
15 2014 I was -- had two businesses. One was AZ Home
16 Buyer, the real estate investment business, and
17 the other was Kayak Capital, the hard money
18 lending business. And so when I said "Hard money
19 people jack me around," my -- we typically -- we
20 would utilize our own personal capital to make
21 loans through Kayak Capital, but we would also use
22 it to buy homes with AZ Home Buyer, just our own
23 money.

24 And when I said hard people -- "Hard
25 money people jack me around all day," I think what

1 I'm talking about is probably that I'm having
2 trouble managing the cash -- you know, cash flow
3 between the two companies.

4 Q. All right. So let's skip the next
5 document, and I'm going to ask you about 66437.

6 (Exhibit 748 was marked for
7 identification by the reporter.)

8 Q. Showing you 748, you ask at the bottom
9 to Denny Chittick June 23, 2014, you say, "I'm
10 still vetting out a lot of these slow-paying
11 assholes, so it may benefit me more than you to
12 get this figured out. I would have an attorney
13 get the exact verbiage, but have you considered
14 putting a paragraph in the note that says
15 something like" -- and then you have a quote.

16 And then he responds and gives you
17 an excerpt from his promissory note. Do you see
18 that?

19 A. Yes.

20 Q. And so this was a discussion about how
21 to address late fees and the consequence of a
22 borrower who is slow in payment?

23 A. Yes.

24 Q. This would tell you that Denny knew what
25 his documents say and that this was a provision in

1 his promissory note that relates to late payment
2 and default; right?

3 MR. STURR: Object to form,
4 foundation.

5 A. Yes.

6 Q. The next document I'm not going to mark,
7 but it references a Chris Hughes. Did you ever do
8 any business with a Chris Hughes?

9 A. Not that I recall. The name doesn't
10 sound familiar to me.

11 Q. All right. The next document references
12 a Victor, but it doesn't have a last name. Do you
13 know what -- did you have a conversation with
14 Denny Chittick about an individual with the first
15 name Victor? Does that ring a bell?

16 A. I don't recall that conversation, no.

17 Q. Let's skip the next page. Let's mark
18 this next document which is 66821.

19 (Exhibit 749 was marked for
20 identification by the reporter.)

21 Q. Barry, the E-mail to Denny Chittick from
22 you that starts about halfway down the page is
23 dated September 22, 2014. You tell him you're
24 closing a deal tomorrow. It's with American Title
25 Service Agency. "How about I just get them the

1 funds and have you backfill me? I bought this one
2 off the MLS, and it just seems easier to do it
3 that way since everyone has already signed
4 documents."

5 Are you saying here that you're
6 going to go ahead and pay for the property but
7 then he would loan you money later?

8 A. Yes, he would do that.

9 Q. And so he responds, "Attached are the
10 documents. I'll wire you 250K to you tomorrow."

11 So he's agreeing that he's going to
12 go ahead and lend you the money. And he's going
13 to wire the money tomorrow, and he's sending you
14 the documents regarding the loan; right?

15 A. Yes.

16 Q. Let's look at the next document. Let's
17 have it marked, it would be 750, and it's 66848.

18 (Exhibit 750 was marked for
19 identification by the reporter.)

20 Q. So this has to do with checking
21 properties out, Barry. And I'm going to read the
22 bottom E-mail, your original E-mail to Denny
23 Chittick October 1, 2014. "Denny, when you're
24 writing a loan in Sun City West or Avondale and
25 you don't want to personally drive the properties,

1 do you have a good company that swings by and
2 takes a few pics for you or are you living off of
3 Google Earth and other technology like that?" And
4 he responds, "Live off technology."

5 So is he saying that in some
6 instances he doesn't actually drive by and eyeball
7 the properties but rather he relies on Google
8 Earth or something on-line?

9 MR. STURR: Object to form,
10 foundation.

11 A. Yeah, I believe that's what he's saying.

12 Q. Is that what you recall in some
13 instances?

14 A. Yeah.

15 Q. He would not drive by?

16 A. Well, I wouldn't know if he did or did
17 not drive by them, but -- you know, I would never
18 know that for sure.

19 Q. Let's look at the next document. Let's
20 mark it. It's 58046.

21 (Exhibit 751 was marked for
22 identification by the reporter.)

23 Q. This is a document, it's entitled "Loan
24 Processing," and then it has a heading "Steps in
25 Loan Funding:" and then down below it has a

1 heading "Steps in Loan Payoff:" Do you recognize
2 this document?

3 A. Yes.

4 Q. Could you identify it for us?

5 A. It looks like at some point a draft of,
6 you know, my loan processing procedures.

7 Q. Do you know if you were sharing your
8 loan procedures with Denny Chittick?

9 A. I don't recall that. I'm actually
10 surprised to see this document here because I
11 don't recall sending this over, but it's not un --
12 if I did, it doesn't surprise me either.

13 Q. And these would be your loan funding
14 procedures through Kayak?

15 A. This was most likely a draft. I don't
16 know. I can't speak to -- it does -- it's not
17 dated. I don't see a date that it was attached to
18 an E-mail or anything. So this would be -- as I
19 said, in the process of starting Kayak Capital,
20 you know, we explored and tried to gather
21 absolutely as much information as possible and
22 then develop extremely great procedures. So this
23 was definitely, you know, part of that process.

24 Q. Over the period of time that you worked
25 with Denny Chittick, was he sharing with you the

1 steps that he follows on loan funding and loan
2 payoff?

3 A. He would. And I was just so familiar
4 with him also from being a borrower that, you
5 know, he would -- he would answer any questions I
6 would ask him, but I knew a lot of it already.

7 Q. Based on your experience, were the loan
8 funding steps and the loan payoff steps that
9 DenSco followed under Denny Chittick consistent
10 with the ones you've identified here for Kayak?

11 MR. STURR: Object to form.

12 Q. Or for, I guess, you as a lender?

13 MR. STURR: Form and foundation.

14 MR. MURPHY: Same objection.

15 A. I don't specifically know his procedure.

16 Q. It wouldn't be inconsistent with what
17 you know, though; right?

18 MR. STURR: Object to the form.

19 MR. MURPHY: Same objection.

20 A. This would be similar to what I would
21 expect his procedure to be.

22 Q. Let's look at the next document. It's
23 stamped 66930.

24 (Exhibit 752 was marked for
25 identification by the reporter.)

1 Q. Let me ask to look with you on the
2 second page at the bottom, Barry. Your E-mail to
3 Denny Chittick dated November 18, 2014, you say,
4 "I am lending to an individual, but the EOI has
5 his LLC as the insured. I am named as the
6 mortgagee. Does it matter that the EOI is under
7 his LLC and the DOT is under his personal name?"

8 And then he responds to that; right?

9 A. Yes. So I would -- it's not uncommon
10 for me to take -- if I had questions about the
11 lending business, to take a question like this and
12 pose it to several different resources as I was
13 getting things going.

14 Q. And he's telling you basically that the
15 title company -- or the insurance company will
16 help but you need to make sure that the names
17 match up?

18 A. Correct, yeah.

19 Q. All right. Let's skip the next
20 documents. I'm not going to mark the next
21 document after that, which is stamped 67000, but
22 you're asking him an accounting question. Do you
23 recall talking to Denny Chittick about how he kept
24 his books as it related to the loans being made?

25 A. Would you repeat the question there?

1 Q. Yeah.

2 My question is simply, is this an
3 example -- well, does this refresh your memory
4 that, in fact, you were also asking Denny for
5 advice as it related to how he booked the loans
6 that DenSco was making?

7 A. Sure, yup, absolutely. I mean, I was
8 diligent in approaching many resources to try to
9 develop, absolutely, the best business possible,
10 so Denny was one of those guys that I posed
11 questions like this to. It wasn't exclusive to
12 Denny, but definitely I counted him as a resource
13 and took his opinion into consideration on things
14 like this.

15 Q. Okay. Let's skip the next documents,
16 and let's mark the next document just so we've got
17 it in the record, so that's 67384 is the number.

18 (Exhibit 753 was marked for
19 identification by the reporter.)

20 Q. Barry, if you look at the second page of
21 this document, there's a reference "I made it to
22 Iowa."

23 Does this refresh your memory? Do
24 you think you would have moved back to Iowa in
25 March of 2015?

1 A. Yeah, that looks right. I wouldn't move
2 back here in January.

3 Q. Or perhaps February or March?

4 A. Right, exactly.

5 Q. All right. So let's skip the next
6 document. We'll skip the next document, and let's
7 mark the document that's 67557.

8 (Exhibit 754 was marked for
9 identification by the reporter.)

10 MR. DeWULF: What number, Debbie, is
11 that?

12 THE COURT REPORTER: 754.

13 MR. DeWULF: Thank you.

14 Q. So I'm going to be brief on this. The
15 middle of that first page Denny Chittick is
16 writing you. He says, "Basically I am not
17 funding anything. I have three investors that
18 for different unrelated reasons asked for 4.5
19 million back. I am about halfway through the
20 total, so every time I get a close, I am returning
21 money and not funding deals."

22 Do you recall receiving this E-mail
23 on or about June 9, 2015?

24 A. Yes, looks familiar.

25 Q. Did he ever explain to you the situation

1 with these investors?

2 A. Never talked about it.

3 Q. Let's mark the next document. It is
4 67572.

5 (Exhibit 755 was marked for
6 identification by the reporter.)

7 Q. Here you're asking Denny Chittick about
8 bankruptcy and what might occur if you are --
9 well, let me just ask, what are these E-mails
10 about?

11 A. Okay, I'm going to review it.

12 Q. Okay.

13 A. Apparently I was approached by a
14 gentleman that was currently in bankruptcy that
15 was looking for a loan to access some equity he
16 had in a property.

17 Q. And this had to do with what protection
18 you might have if they were to file for
19 bankruptcy?

20 A. Yup. So anytime I came across a unique
21 situation that I hadn't encountered before, I
22 always just again researched it and consulted my
23 network, and Denny was part of that network. Say,
24 well, what's this; what do you think of this,
25 what's your opinion and what would you do. So I

1 definitely posed a lot of different questions like
2 this to him and other people.

3 Q. And did you find that he generally had
4 an answer for you?

5 A. Yeah, Denny -- consistent with what I
6 thought was true, which was he was running a, you
7 know, \$50 million fund with hundreds and hundreds
8 of outstanding loans at any given time, you know,
9 Denny would -- had seen everything, you know, been
10 around a long time. And I never threw one -- I
11 don't think I ever threw one at him that he hadn't
12 seen or -- so he had an opinion on about everything.

13 Q. So let's just look at the next document,
14 but I'm not going to mark it. June 26, 2015,
15 you're thanking Denny for help on your lending
16 business. Do you see that?

17 A. Yes.

18 Q. Again, recognizing that in setting up
19 your business as a lender, he had been a resource
20 for you?

21 A. Absolutely.

22 Q. Let's mark the next document, which is
23 67723.

24 (Exhibit 756 was marked for
25 identification by the reporter.)

1 Q. All right. So, Barry, I'm just going to
2 ask you really quickly if you would look at the
3 second page. Your first E-mail to Denny Chittick
4 July 22, 2015, you're saying, "I'd love to use
5 that money! I bought this one a few weeks ago,
6 and we decided to keep it as a rental instead of
7 wholesale it. Have a look and see if you can do.
8 We" -- I think it's probably "bought the hell out
9 of it at 115K, but I could use 200K if you can
10 swing it. I know that's not typical, but this
11 is the deepest buy we've had in over a year.
12 Anything will do, though. Thanks for your help!"

13 What are you asking for there, do
14 you recall?

15 A. Yeah, I'm asking for a \$200,000 loan on
16 that property.

17 Q. And a \$200,000 loan on a property that
18 you purchased at 115,000?

19 A. Yeah. That's not un -- I mean, it's not
20 uncommon. We wouldn't have bought it if it didn't
21 have a lot of equity, so at that -- when I look at
22 that, I think I reference in there it was a heck
23 of a buy.

24 Q. So typically then Denny would have to
25 make a determination of whether he could lend the

1 money at 200,000 and have sufficient equity in the
2 property to protect him in the event there was a
3 default; right?

4 A. Correct. I think it's worth noting that
5 this is a property we already owned, so it wasn't
6 a -- I wasn't getting cash out at a closing.
7 This is one we owned, and I was asking for a
8 cash-out refi.

9 Q. Understand.

10 All right. Let me, I'm going to
11 blow through some of these documents, so skip the
12 next documents. Skip the next document. Skip the
13 next document. Skip the next document. Let's go
14 to the questionnaire, the prospective purchaser
15 questionnaire, which is 67942.

16 (Exhibit 757 was marked for
17 identification by the reporter.)

18 Q. Do you have it?

19 A. Yes.

20 Q. And this does not bear your signature,
21 but do you recall filling out a prospective
22 purchaser questionnaire in connection with
23 becoming an investor with DenSco?

24 A. I don't specifically recall filling this
25 out. That's not to say that I didn't, but I don't

1 recall it.

2 Q. Do you recall that you needed to be an
3 accredited investor in order to invest in DenSco?

4 A. Yes.

5 Q. And did you later create a company to
6 serve as a lender where you took investors?

7 A. Yes.

8 Q. And was that Kayak or was that some
9 other entity?

10 A. That's Kayak Capital.

11 Q. All right. I'm going to again move
12 through these. Let's skip the next page. This
13 next document I'm not going to mark, but it's you
14 asking questions about how to charge interest on
15 a loan. Do you see that?

16 A. Yes.

17 Q. And what date you note. And so again,
18 Denny Chittick is advising you as to when interest
19 ought to start running in connection with when the
20 funds are wired?

21 A. Correct. He was part of the -- part of
22 my process to gather information on that kind of
23 thing.

24 Q. Let's skip the next documents. This is
25 a subscription agreement is the next document.

1 Let's mark it. And it is 486027.

2 (Exhibit 758 was marked for
3 identification by the reporter.)

4 Q. And is this a subscription agreement
5 dated November 30, 2015, for the investment by BLL
6 Capital LLC in DenSco?

7 A. Yes.

8 Q. Let's mark the next document in that
9 stack. That will be 759, and it is Bates stamped
10 68133.

11 (Exhibit 759 was marked for
12 identification by the reporter.)

13 Q. Do you have that?

14 A. Yes.

15 Q. So let me just ask, if you look down
16 about two-thirds of the way down the page, you
17 say, "Hey, Denny, here are the subscription
18 documents." Then you go on and you say, "I would
19 like to roll the interest. Also, please send me
20 the PPM so I can throw it in my file as well."

21 Do you see that?

22 A. Yes.

23 Q. And then he indicates that he's
24 forwarded it to you?

25 A. Yes.

1 Q. He's attached the PPM?

2 So then let's keep looking at that
3 E-mail, and you say, "I also wanted to follow up
4 on our discussion a few weeks ago about succession
5 planning for DenSco and our interest in being a
6 part of that."

7 Do you recall talking to Denny about
8 you and/or your brother involving yourself in
9 acquiring DenSco at some point in time?

10 A. I do.

11 Q. What do you remember about that?

12 A. Well, they were pretty one-sided
13 conversations. It was my interest to potentially
14 acquire what at the time I thought was an
15 extremely successful business, and I knew Denny
16 was at an age and perceived him to be at a wealth
17 level that he could retire any day.

18 So I would bring it up occasionally,
19 and it wouldn't go much further than, hey, well,
20 let's talk about this in five or seven years or
21 when the boys are out of high school or, you know,
22 there was always something down the road.

23 So the interest wasn't there; but
24 the last thing, I just wanted to be sure that
25 if -- some day I didn't wake up and find out Denny

1 had sold the company to somebody else. I wanted
2 to kind of be on the top of that list of guys he
3 calls if he ever does sell it.

4 Q. And so here he's saying that it's going
5 to be at least six or seven years out before he's
6 going to actually think about a succession plan or
7 actually try to accomplish one.

8 A. Yes.

9 Q. Is that what you're reading that to be?

10 A. Yeah.

11 Q. Let's skip the next document. Let's go
12 to what are form statements. And the first one is
13 stamped 19148. And then let's mark the next one
14 too. Let's mark them both, if we could.

15 (Exhibits 760 and 761 were marked
16 for identification by the reporter.)

17 MR. DeWULF: So are those 760 and
18 761?

19 THE COURT REPORTER: Yes.

20 Q. And is this a reflection of the
21 investment that you made into DenSco, you and your
22 brother? Or, I'm sorry, you through BLL Capital?

23 A. Correct.

24 Q. Let's skip the next document. Let's
25 skip the next document, but do you recall getting

1 a newsletter periodically from DenSco?

2 A. Yes.

3 Q. What would the newsletter typically tell
4 you?

5 A. I really read it just a handful of
6 times, but it was market information and his
7 general take on global issues and local issues and
8 things like that. We had our own -- I felt like I
9 was -- the things Denny covered I felt comfortable
10 that we had an extremely in-depth knowledge of
11 typically, and I didn't feel like there was much
12 to gain from reading those given what I already
13 understood and my propensity to stay connected to
14 the news at that time.

15 Q. All right. So we're looking now at 762,
16 which is Bates stamped 68415.

17 (Exhibit 762 was marked for
18 identification by the reporter.)

19 Q. And at the top of the first page this is
20 Denny Chittick referencing this mortgage document
21 that he records in order to preserve his position
22 so that he can get a first deed of trust in
23 connection with a trustee's sale; correct?

24 A. Correct.

25 MR. STURR: John, I'm sorry, did we

1 mark this?

2 MR. DeWULF: 762, and it's Bates
3 stamped 68415.

4 MR. STURR: Got it.

5 Q. All right. Then let's skip the next
6 document. Skip the next document. Skip the next
7 documents. Let's skip the next document. Mark
8 this next document, which is 7124. Actually, let's
9 not. Let's skip it.

10 I think let me just -- you testified
11 or you talked earlier, Barry, about the fact that
12 you actually conferred with David Beauchamp at
13 some point in time about the business of Kayak
14 Capital?

15 A. Correct.

16 Q. And potentially using him as a counsel
17 in connection with doing a private placement and
18 complying with mortgage licensing laws in Arizona?

19 A. Yes.

20 Q. And I think on the mortgage licensing
21 issues you also referred a couple of your business
22 associates to Mr. Beauchamp?

23 A. Yes.

24 Q. And was that in 2016, do you recall?

25 A. I believe it was. I always referred

1 guys when I felt like they were getting -- asking
2 beyond what is common knowledge into legal advice.

3 Q. Understood.

4 Let's skip the next two, the next
5 one after that. Skip the next one after that, the
6 next one after that. Skip the next one after
7 that. Let's look at 68653.

8 (Exhibit 763 was marked for
9 identification by the reporter.)

10 MR. DeWULF: What number is that,
11 Debbie?

12 THE COURT REPORTER: 763.

13 MR. DeWULF: Thank you.

14 Q. The E-mail from you on that first page
15 about halfway down, you indicate your notary is
16 out. This would be a situation where you're
17 asking for more time because you're not able to
18 get the notarized copies to him yet; is that what
19 you're communicating?

20 A. Correct.

21 Q. And he tells you it's fine to not get
22 them to him till the following Monday?

23 A. Yes.

24 Q. And was this still a situation where you
25 were at least in Iowa having your mom notarize

1 documents?

2 A. Yes.

3 Q. And is her name Arlene?

4 A. That's correct.

5 Q. And if we look at the next document, I'm
6 not going to mark it, but there's a discussion
7 about whether that's sufficient, and Denny has
8 told you that he can record the documents with
9 your mother's notarization?

10 A. Right. And we also -- you know, through
11 other means we also researched that, and that is
12 fine.

13 Q. So the next document is talking about
14 templates for documents, and let me just ask you
15 a general question. Was it your experience that
16 Denny Chittick had automated his lending practice
17 with technology?

18 A. I think it was my assumption that he had
19 some pretty efficient systems in place to manage
20 the amount of money he was managing.

21 Q. Let's skip the next documents, skip the
22 next documents. Let's mark the next document,
23 which is 68731.

24 (Exhibit 764 was marked for
25 identification by the reporter.)

1 Q. All right, Barry, it's a fairly lengthy
2 E-mail back and forth. Let me just ask you, the
3 E-mail from you that starts at the bottom of the
4 first page, it's dated April 5, 2016. The subject
5 is "My turn to help you." And in it you're
6 talking to him about hiring some help and trying
7 to free himself up a little bit. Do you recall
8 this E-mail?

9 A. Right, yes.

10 Q. This is an example of you providing him
11 some advice, even though it's unsolicited. And
12 you also reference a woman named Lauren. Who is
13 Lauren, do you know?

14 A. Yeah. She was his -- my understanding
15 was she was Denny's niece and -- that's it.

16 Q. And he writes back again on April 6th,
17 "I understand what you are doing. If it works to
18 make you more efficient, then that's great. I've
19 got a system that works pretty well. It's not
20 like I'm an old dog not willing to learn new
21 tricks!"

22 So he appreciates the advice, but he
23 doesn't necessarily choose to take it; right?

24 A. Yes. My wife does that sometimes as
25 well.

1 Q. Let's look at the next document. Let's
2 mark it as an exhibit. So it will be 765, and
3 it's Bates stamped 68808.

4 (Exhibit 765 was marked for
5 identification by the reporter.)

6 Q. So here you're proposing in the E-mail
7 at the bottom of the page or questioning whether
8 it might make sense for you and DenSco to get
9 together and do business together or Kayak and
10 DenSco doing business together?

11 A. Yeah, let me read through this.

12 Correct.

13 Q. Did anything come out of that?

14 A. No.

15 Q. He responds, he says, "I" -- and again,
16 this is April 29, 2016. "I pay out 12 percent to
17 earn 10 wouldn't make sense, nor would what I tell
18 my investors would that be allowed."

19 So when he says "I pay out 12
20 percent," he's paying his investors 12 percent,
21 right, on their money?

22 A. Correct.

23 Q. And what you're proposing is you would
24 pay him 10 percent, which is less than what he has
25 committed to his investors to pay?

1 A. Correct.

2 Q. Then he said, "nor would what I tell my
3 investors would that be allowed."

4 In other words, he's saying I've
5 told my investors through the documents that I'm
6 going to do things a certain way, and doing
7 something with Kayak wouldn't be kosher with what
8 he has said in his PPM?

9 A. Yes.

10 Q. Did Denny Chittick ever talk to you
11 about his disclosures to investors or the need to
12 disclose information to investors?

13 A. Not that I recall.

14 Q. Did he ever say anything like, you know,
15 my lawyers are constantly telling me that I need
16 to disclose information to the investors when
17 things happen?

18 A. Not that I can recall.

19 Q. All right. The next document I'm not
20 going to mark, Barry, but it does talk about
21 whether you can have a family member notarize.
22 Did you conclude that it was all right for your
23 mom to notarize documents in Iowa for recording
24 in Arizona, even though maybe a family member
25 couldn't notarize in Arizona, or what do you

1 recall about that?

2 A. Let me -- let me see here.

3 Q. All right.

4 A. Yeah, that's it. I was just having a
5 discussion with him about that.

6 Q. And did you draw a conclusion it was
7 okay to do it the way you're doing it?

8 A. Ultimately I did. I remember not
9 relying on this to make that final determination.

10 Q. All right. Let's mark the next
11 document. It will be 766.

12 MR. DeWULF: It's 68825, Ryan.

13 (Exhibit 766 was marked for
14 identification by the reporter.)

15 Q. 766 appears to be a series of E-mails
16 between you and Denny Chittick. They start in
17 April 13, and then they pick up on the first page
18 in May, early May of 2016. But it appears that
19 there were a set of loan documents regarding a
20 loan. Specifically appears to be on a Diamond
21 Street property. But do you recall there being
22 loan documents that were not executed on a loan
23 that you did with him, you had to do them later?

24 A. That appears to be the case.

25 Q. So skip the next documents. Skip the

1 next document. Skip the next document. Skip the
2 next document. Let's look at what's Bates stamped
3 68916.

4 (Exhibit 767 was marked for
5 identification by the reporter.)

6 Q. In some of these E-mails, and I haven't
7 shown you all of them, Denny is really expressing
8 stress about trying to maintain all of the loans
9 and making sure everything is done. Did he ever
10 express that to you, Barry, that he was stressed
11 out about all of the money in and out and keeping
12 track of everything?

13 MR. MURPHY: I object to the form of
14 the question.

15 A. I don't remember him conveying that or I
16 never -- through these E-mails, I mean, I -- I
17 never had an impression that that was the case.

18 Q. So the first page of Exhibit 767
19 starting at halfway down looks like it's
20 referencing loaning the money and then signing the
21 loan docs, is that a fair summarization, all on
22 June 22, 2016?

23 A. Yeah. I said I'll -- wire the money in
24 the morning, and I said I'll notarize DOT to follow
25 in the morning, so yeah.

1 Q. Let's look at the next document, which
2 is a note, and it's 485892 stamped.

3 MR. DeWULF: Be Exhibit 768?

4 THE COURT REPORTER: Yes.

5 (Exhibit 768 was marked for
6 identification by the reporter.)

7 Q. I just want to confirm with you, this
8 is a document that's dated June 23, 2016. Do you
9 see that, the first page?

10 A. Yes.

11 Q. And would this be an example of the type
12 of note that you would enter into with DenSco? And
13 then if you look back farther in this document,
14 there's a deed of trust and assignment of rents.
15 Would these be examples of the documentation you
16 would enter into with him?

17 A. Yes.

18 Q. And if we look at what is basically the
19 fifth page of this document, and it's Bates
20 stamped 00485892, this is your signature with your
21 mom notarizing it; right?

22 A. Correct.

23 Q. And then the next page after that, is
24 this an example of what we refer to as a HUD
25 statement?

1 A. Yes.

2 Q. And if we look at the note on the first
3 page, it's a six-month note dated June and comes
4 due by December 30, 2016. Do you see that?

5 A. Yes.

6 Q. And so typically the loans that you were
7 taking out from DenSco were six-month loans at
8 18 percent interest per annum. Interest payments
9 were due every month. The balloon payment on
10 principal was due at the end of the six months?

11 A. Correct.

12 Q. And in the event of default, interest
13 would accrue at 29 percent?

14 A. Right.

15 Q. Let me ask you just to look at the next
16 page, the next document. I don't know if I'm
17 going to mark it. In Denny Chittick's E-mail to
18 you, at the very top you're referencing HUDs, and
19 it says, "When we do these deals where I'm wiring
20 in, signing the third-party agreement, HUD is going
21 to have to have all the paperwork."

22 Is he simply saying that it's good
23 to have HUD statements to track all the money? Is
24 that what he's saying?

25 A. I don't know what he's saying here other

1 than that he would like to have the HUD.

2 Q. And your E-mail to him that is dated
3 June 24, 2016, you ask, "Is there some regulatory
4 reason you're keeping these now too?" And I think
5 you're referencing the preaudit. Was there any
6 regulatory reason or was it simply just keeping
7 track of the paperwork?

8 A. No, it was just keeping track of the
9 paperwork.

10 Q. Let's skip the next documents. Skip the
11 next document. Let's mark the next document,
12 which is 69003.

13 (Exhibit 769 was marked for
14 identification by the reporter.)

15 A. Got it.

16 Q. All right. I think I just want to focus
17 you on the bottom of that first page. It's
18 Chittick's E-mail to you July 18, 2016. He says,
19 "I'm still trying to figure out cash."

20 And we now know, obviously -- this
21 is July 18, 2016. And so in reconstructing the
22 chronology of DenSco, there are lots of problems
23 and issues going on at the company, but do you
24 recall in July of 2016 Denny relating to you in
25 any way any problems he had with cash or the

1 ability to lend money or anything?

2 A. I do not.

3 Q. And it looks like in this case he was
4 able to wire you the money you were asking for;
5 right?

6 Oh, I'm sorry, let me rephrase that.
7 I'm looking at this -- forget it. Forget that
8 question. I think it ended up being you didn't
9 need the money. All right. Let's go to the next
10 document. Let's mark this. This is 69002.

11 (Exhibit 770 was marked for
12 identification by the reporter.)

13 Q. So he's telling you that you're -- is he
14 giving you notice that he needs your payment and
15 you're late? Is that the way this starts, this
16 series of E-mails?

17 A. Let me see here.

18 Q. Or just a reminder?

19 A. Yeah, I can't believe I would -- I
20 mean, we didn't pay late, so, yeah, it's just a
21 reminder.

22 Q. When you go to the very top of that
23 first page, you say, "I understand that! You're
24 always my first stop for fixing problems before I
25 go to Plan B with my ski mask and getaway driver,

1 so nbd. Thanks for working on it, Denny. When
2 you get some extra cash, drop me a line!"

3 You're just basically telling him
4 when you have cash, I have some borrowing I'd like
5 to do?

6 A. Yeah. Yeah, I was just saying touch
7 base with me if I -- I don't know if I'll need it
8 or not, but let me know.

9 Q. So you indicated that this was a notice
10 you got, the first reference was a notice of a
11 monthly payment due. Would DenSco typically send
12 you a notice of payments that were coming due
13 before they came due?

14 A. He did.

15 Q. And was that generally a five-day
16 notice?

17 A. That's correct.

18 Q. Let's skip the next documents. Let's
19 skip the next document, and let's go to the
20 document that is 37910. I think this is
21 Exhibit 771.

22 (Exhibit 771 was marked for
23 identification by the reporter.)

24 Q. So this looks like, Barry, it's an
25 internal electronic document that records a

1 communication between you and Denny Chittick.
2 They may be texts. I'm not clear about that, but
3 did you have any actual communication with Denny
4 on or about either July 28 or 29? Or July 28 or
5 earlier than that day, 27th?

6 A. No, I don't believe so.

7 Q. So when you learned that Denny had
8 passed away, you hadn't communicated with him
9 within a day or two of that; right?

10 A. I guess I can't speak specifically to
11 that. I know I didn't communicate with him the
12 day of his death, and I don't think I did speak
13 with him the couple days prior to his death
14 either.

15 Q. Let's look at the next document. And
16 let's mark it. It would be 772.

17 (Exhibit 772 was marked for
18 identification by the reporter.)

19 Q. And these are communications, Barry,
20 that are with you after Denny's death relating to
21 you paying off what was owed on interest on the
22 loans. And do you generally recall that topic?

23 A. Yes.

24 Q. Do you think you ever met with Shawna
25 Heuer?

1 A. No, I was in Iowa at that time. Oh, and
2 I don't think I met with her previously either.

3 Q. And did you understand that there were
4 a number of people involved in those last -- in
5 the days before the receiver was appointed as it
6 related to trying to handle the DenSco business?
7 In other words, the Corporation Commission was
8 stepping in.

9 A. Yes.

10 Q. Robert Koehler had some involvement,
11 Shawna Heuer had some involvement, and David
12 Beauchamp was trying to help. Did you recall
13 that?

14 A. Yes.

15 Q. And do you recall David Beauchamp making
16 an effort to try to inform you about what payment
17 was due and how you could handle satisfying your
18 obligations to DenSco?

19 A. Yeah. I actually -- my recollection is
20 that I contacted them first and said I've got -- I
21 want to pay these off. At some point. I mean, I
22 was -- we were definitely working together to get
23 these things paid off.

24 Q. Do you recall that at some point David
25 Beauchamp introduced you to the attorney for the

1 receiver to communicate with that person?

2 A. I don't specifically recall that, but
3 I'm sure that that did occur.

4 Q. Do you remember having any
5 communications with a gentleman named Ryan
6 Anderson?

7 A. I recognize the name as a part of the
8 receiver's team, but specifically I think I --
9 I do remember reaching out to him about this
10 deposition, and other than that -- and he said he
11 declined to help or provide advice. And other
12 than that, I don't remember any specific dialogue
13 or conversation or communication with him.

14 Q. Do you remember having any communication
15 with lawyers who represented the Chittick estate?
16 There's a gentleman named Kevin Merritt and a
17 gentleman named Jim Polese. Do those ring a bell?

18 A. They do not ring a bell.

19 Q. Did you have any communications with the
20 Corporation Commission in those days after Denny
21 passed away?

22 A. No.

23 Q. Let's skip the next few documents. Do
24 you remember referring a gentleman named John Lewis
25 to David Beauchamp?

1 A. I don't, actually. The name doesn't ring
2 a bell.

3 Q. Let me ask you to go forward to a
4 document that has a big Listserv of E-mail
5 addresses, and it's stamped 001346.

6 (Exhibit 773 was marked for
7 identification by the reporter.)

8 A. Got it.

9 MR. STURR: And is that 772?

10 THE COURT REPORTER: It's 773.

11 Q. And I was just going to ask you a quick
12 question. There's a reference here. Now, these
13 are communications from the receiver. And I know
14 you testified earlier that you were busy with a
15 young family and you didn't take a real active
16 role in working with the receiver in connection
17 with its business; fair?

18 A. Correct.

19 Q. This relates to a reporter for a
20 publication called Crime Watch Daily with Chris
21 Hansen. Did you have any contact with any
22 reporters or anyone in the media about DenSco?

23 A. No.

24 Q. And we talked earlier, you did not know
25 who Veronica Castro is; correct?

1 A. Correct.

2 Q. And you are a claimant as an investor in
3 DenSco in with the receiver; right? You're a
4 claimant on DenSco for the monies owed to you as
5 an investor?

6 A. Correct.

7 Q. Let's look at, it's 001456. It's back
8 a ways. It's on a Simon Consulting letterhead.

9 (Exhibit 774 was marked for
10 identification by the reporter.)

11 A. Got it.

12 Q. Barry, I'm showing this to you. The
13 cover letter is from the receiver Peter Davis, and
14 then attached to it is a summary of filed claims.
15 That's on the third page of the document. I want
16 you to go to the fourth page of the document and
17 go to Claim Numbers 61 and 62. Are you there?

18 A. Yes.

19 Q. So does this reflect that your entity
20 BLL Capital LLC is a creditor for \$87,000 or has a
21 claim for \$87,000 against DenSco?

22 A. Yes.

23 Q. And your brother Landon Luchtel through
24 LJL Capital LLC has a claim for 104,000?

25 A. Correct.

1 Q. There also in this pile of documents are
2 LinkedIn pages just to confirm that over the years
3 2012 through 2015 you had endorsed David Beauchamp
4 for various areas of practice, legal practice?

5 A. Yes. It was in response to an
6 unsolicited endorsement from him, and I thought --
7 yeah, I'm never even on that LinkedIn really,
8 but -- I probably haven't been on there for a year
9 or two. But, yeah, so when somebody endorsed me,
10 I'd pop on and give them a few endorsements.

11 MR. DeWULF: Okay. I have no
12 further questions. Thank you. I really
13 appreciate --

14 MR. STURR: Barry, do you have a few
15 more minutes? Do you want to take a break or
16 can -- I've got about ten minutes of questions.

17 THE WITNESS: Let's go for it.

18 MR. STURR: Okay. Thank you very
19 much. Barry, I'm Geoff Sturr. I represent the
20 receiver.

21 Debbie, would you do me a favor.
22 Could you go back to -- these exhibits that
23 Mr. DeWulf has been working through are in
24 chronological order, and if you could go back
25 chronologically to the document that is

1 February 12, 2016. It's an E-mail.

2 THE COURT REPORTER: I'm sorry, was
3 it one of the ones that was marked or --

4 MR. STURR: No, it was not marked,
5 so if you kept that pile in order. I'm sorry to
6 do this. I apologize for doing this; but if you
7 could go back chronologically to February 12,
8 2016, and pull out an E-mail. It's from David
9 Beauchamp to Barry.

10 THE COURT REPORTER: Okay.

11 THE WITNESS: Guys, I'll tell you
12 what, I actually would like to take just a five-
13 minute bathroom break, if that's okay. Does that
14 sound good?

15 MR. STURR: That's fine.

16 THE WITNESS: Okay. Yup, I mean,
17 I'll be right back.

18 (A recess was taken.)

19 (Exhibits 775 and 776 were marked
20 for identification by the reporter.)

21 MR. STURR: Debbie, we ready to go?

22 THE COURT REPORTER: Yup, I'm ready.

23 CROSS-EXAMINATION

24 BY MR. STURR:

25 Q. Barry, I've had the court reporter mark

1 two documents for you. 775.

2 MR. STURR: Sorry, John, this is the
3 February 12, 2016 E-mail.

4 MR. DeWULF: Yes.

5 Q. And 776 is an unsigned engagement letter
6 from Clark Hill to you dated March 2, 2016. Do
7 you have those?

8 A. Yes.

9 Q. Okay. I just want to go back in time.
10 Using Exhibit 775 as a starting point, February of
11 2016, do you have a memory of ever meeting David
12 Beauchamp before February of 2016?

13 A. No.

14 Q. Do you have a memory of speaking with
15 Mr. Beauchamp by phone before February of 2016?

16 A. Oh, I'm sorry, guys, so I have met -- I
17 have spoken with him by phone prior to that date.

18 Q. Okay. Here's my question, and I don't
19 want to -- did you ever retain David Beauchamp or
20 Clark Hill to represent you or Kayak Capital?

21 A. Guys, to the best of my recollection, I
22 did send -- I did retain them.

23 Q. So in that case I don't want to delve
24 into any attorney-client privilege, and I just
25 spoke with Ryan about this. So without divulging

1 information that you shared with Mr. Beauchamp,
2 what is your recollection about the retention?
3 What did you hire Clark Hill to do and what did
4 they do for you, without going into the substance
5 of it?

6 A. Yup. So we had an initial conversation
7 with him about potentially handling the placement
8 memorandum for us and about some regulatory
9 issues, so kind of a two-prong discussion. And
10 we -- and then he -- we sent him a retainer
11 because he said, hey, we've been talking about
12 this long enough, you're going to have to send
13 some money over.

14 Q. Okay. Let me just stop you.

15 MR. STURR: Ryan, do you have an
16 objection if Barry simply identifies Exhibit 775
17 and can authenticate it, the E-mail?

18 MR. MURPHY: Yeah, I don't. And I
19 guess just to put on the record what we talked
20 about before, to the extent that there's
21 communication between Kayak Capital here and Barry
22 on its behalf and Mr. Beauchamp that's protected
23 by the attorney-client privilege, we haven't
24 waived that and are going to assert that as a
25 standing objection but will allow the questioning

1 to proceed and raise that objection further as we
2 feel appropriate.

3 MR. STURR: Thank you.

4 Q. And then, Barry, take a look at
5 Exhibit 776. That's an engagement letter that's
6 not signed. Is it your memory that you signed
7 this letter and/or otherwise engaged Clark Hill to
8 provide services?

9 A. Correct.

10 Q. And without going into any privileged
11 information you received, this letter refers to
12 being engaged to represent Kayak Capital in
13 connection with the Arizona Department of
14 Financial Institutions; correct?

15 A. Yes.

16 Q. And again, without divulging privileged
17 information, did Clark Hill and/or David Beauchamp
18 provide legal services to Kayak Capital relating
19 to the Arizona Department of Financial
20 Institutions?

21 A. Yes.

22 Q. I want to briefly -- because we're going
23 to run out of time. Just very briefly, after Denny
24 died, you spoke about -- Mr. DeWulf was asking you
25 questions about if you had any complaints or

1 criticisms of Mr. Beauchamp. What was your
2 understanding of Mr. Beauchamp's role? Who was he
3 representing?

4 A. My understanding was he was representing
5 DenSco.

6 MR. STURR: All right. I think
7 given we're out of time, I think that that's all
8 I have for you right now. I want to say --
9 before we go off the record, I want to say for
10 the record, John, we did not receive these
11 documents until yesterday. I think there's
12 a question about whether they should have
13 been produced because of privilege; but if
14 there's information relating to Clark Hill's
15 representation of the witness and Kayak
16 Capital, we think it should have been
17 disclosed beforehand. We'll take that up with
18 you separately.

19 MR. DeWULF: I'm not aware of
20 anything other than what you've just seen as
21 these two exhibits, so, you know, it was news to
22 me as well until we were able to locate these
23 documents in the file on a word search, but I
24 understand the point you're making.

25 Thank you, Barry. Appreciate all

1 the time you spent with us today and making the
2 trip down there.

3 MR. STURR: And actually before we
4 go, Ryan, you know, our rules give you the right
5 to ask for the right to review before you sign
6 the transcript. I assume you'd like that, Ryan?

7 MR. MURPHY: Yes, we will reserve
8 the right to read and sign.

9 MR. STURR: Okay.

10 MR. DeWULF: Thanks, Ryan.
11 Appreciate your professionalism.

12 MR. STURR: Thank you very much,
13 Ryan.

14 MR. MURPHY: Okay.

15 MR. STURR: And thank you, Barry.

16 MR. DeWULF: Thank you.

17 (Deposition concluded at 12:50 p.m.)

18 The deposition of Barry Luchtel is
19 now complete. When transcribed, the original of
20 the deposition shall be given to Mr. DeWulf after
21 reading and signing. The original exhibits shall
22 be distributed as follows: Exhibits 722-776
23 enclosed with original transcript.

24 (UNLESS OTHERWISE DIRECTED BY COUNSEL
25 OR THE PARTIES HERETO, THE STENOGRAPHIC NOTES FOR
THE FOREGOING DEPOSITION SHALL BE DESTROYED AFTER
A PERIOD OF 3 YEARS FROM THE DATE OF TAKING OF
SAID DEPOSITION.)

CORRECTION/CHANGE SHEET

I have read the entire transcript of my deposition taken on the 7th day of March, 2019, or the same has been read to me. I request that the following changes be entered upon the record for the reasons indicated. I have signed my name to the signature page and authorize you to attach the same to the original transcript.

Page	Line	Correction or change and reason therefor
------	------	--

Date _ _ _ _ _ Signature _ _ _ _ _

C E R T I F I C A T E

I, the undersigned, a
Registered Professional and Notary Public,
do hereby certify that I acted as the
Registered Professional Reporter in the
foregoing matter at the time and place
indicated herein; that I took in shorthand
the proceedings had at said time and place;
that said shorthand notes were reduced to
typewriting under my supervision and
direction, and that the foregoing pages are
a full and correct transcript of the shorthand
notes so taken; that said deposition was
submitted to the witness for signature as
requested and that any changes, if any,
requested by the witness are attached hereto.

I further certify that I am
neither attorney nor counsel for, or related
to or employed by any of the parties in the
foregoing matter, and further that I am not
a relative or employee of any attorney or
counsel employed by the parties hereto, or
financially interested in the action.

IN WITNESS WHEREOF, I have
hereunto set my hand and seal this _15th_
day of _March_ _ _ _ _ , 2019.

Debra A. Hoadley

REGISTERED PROFESSIONAL REPORTER
and NOTARY PUBLIC

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