

IN THE SUPERIOR COURT OF THE STATE OF ARIZONA

IN AND FOR THE COUNTY OF MARICOPA

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

Plaintiff,

vs.

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

Defendants.

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) NO. CV2017-013832
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VIDEOTAPED DEPOSITION OF KEVIN LORY OLSON

Phoenix, Arizona
May 17, 2019
8:31 a.m.

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

KEVIN LORY OLSON, 5/17/2019

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KEVIN LORY OLSON

EXAMINATION

By Mr. Campbell 5

* * *

EXHIBITS

EXHIBIT: DESCRIPTION MARKED/REF'ED

958 Plaintiff's Disclosure of Expert
witness Report Re Standard of Care 14 14959 Confidential Private Offering
Memorandum, DenSco Investment
Corporation, July 1, 2011 (Draft)
(Bates Nos. DIC0008731-8800) 23 23960 Subscription Agreements for Steven
Bunger 46 46961 Email from Daniel Schenck to David
Beauchamp dated 5/14/2014 with attachment
(Bates Nos. DIC0008639, DIC0008874-8945) 76 76

PREVIOUSLY REFERENCED EXHIBITS

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RECESSES TAKEN

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1 VIDEOTAPED DEPOSITION OF KEVIN LORY OLSON,
2 commenced at 8:31 a.m. on May 17, 2019, at the law offices
3 of Osborn Maledon, P.A., 2929 North Central Avenue,
4 Suite 2100, Phoenix, Arizona, before KELLY SUE OGLESBY, a
5 Certified Reporter, CR No. 50178, in and for the County of
6 Maricopa, State of Arizona, pursuant to the Rules of Civil
7 Procedure.

8 * * *

9 APPEARANCES

10 FOR PLAINTIFF:

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17 FOR DEFENDANTS:

18 COPPERSMITH BROCKELMAN, PLC
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24 ALSO PRESENT:

25 Mary Onuschak, Legal Video Specialists

KEVIN LORY OLSON, 5/17/2019

Phoenix, Arizona
May 17, 2019
8:31 a.m.

* * *

VIDEOGRAPHER: This is the videotaped deposition of Kevin Olson, taken by the plaintiff in cause number CV2017-013832, styled Peter Davis, as receiver of DenSco Investment Corporation, versus Clark Hill, PLC, et al., filed in the Superior Court of the State of Arizona, in and for the County of Maricopa.

Today is May 17th. The year is 2019. The time is 8:31 a.m. Our location is 2929 North Central Avenue, Phoenix, Arizona.

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

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

MR. CAMPBELL: Colin Campbell for the receiver.

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

VIDEOGRAPHER: You may swear the witness.

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1 KEVIN LORY OLSON,
2 called as a witness herein, having been first duly sworn,
3 was examined and testified as follows:

4

5 EXAMINATION

6

7 Q. (BY MR. CAMPBELL) would you state your full
8 name for the record.

9 A. Kevin Lory Olson.

10 Q. I have to ask you a question out of curiosity.
11 I just heard Steptoe Johnson is dissolving.

12 where are you going?

13 A. I'm going back home. I'm going back to Lewis
14 and Roca, what I still call Lewis and Roca, but Lewis Roca
15 Rothgerber Christie.

16 Q. So you are going full circle?

17 A. Yes.

18 Q. There is, I'm sure, some poetic symmetry in
19 that.

20 A. Yeah. It's been an interesting spring.

21 Q. I can imagine.

22 Let me just get -- first of all, I understand
23 you have never been deposed as an expert or testified as
24 an expert.

25 A. I believe that's correct. If I have been, it

KEVIN LORY OLSON, 5/17/2019

1 was 25 or 30 years ago.

2 Q. Are you familiar with deposition --

3 A. Yeah.

4 Q. -- procedures?

5 A. The first two and a half years of my career, I
6 did do litigation and learned that I didn't want to do
7 litigation anymore.

8 Q. You are smarter than John and me.

9 MR. DeWULF: We are slow learners.

10 THE WITNESS: Now I sign up for an expert
11 witness every five or ten years, and realize again why I
12 didn't want to be in litigation.

13 Q. Very good.

14 where were you born and raised?

15 A. I was born in Berkeley, California; raised in
16 California various places where my dad was an American
17 Baptist minister, until we moved to Phoenix in 1971.

18 Q. All right. And how old were you in '71 when you
19 moved here?

20 A. I was a sophomore in high school. So what would
21 that be? 14 maybe?

22 Q. Yeah. Where did you go to high school?

23 A. I went to Saguaro in Scottsdale.

24 Q. Okay. I notice that you list a National Peace
25 Corps Association award that Steptoe Johnson received, so

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1 I was curious, had you been involved in the Peace Corps?

2 A. I was not in the Peace Corps. I have an aunt
3 and uncle who spent -- went to Paraguay, but I represent
4 one of the lawyers in Washington at Steptoe, who is my
5 good friend who is a nonprofit tax lawyer, and she has
6 involved me in helping the National Peace Corps
7 Association with various corporate issues over the years.
8 That's one of the ones that I'll regret when I end up at
9 Lewis and Roca.

10 Q. A labor of love, right?

11 A. Yeah. Yeah.

12 Q. When were you first contacted to do work in this
13 case?

14 A. Last fall?

15 MR. DeWULF: I don't remember, actually.

16 THE WITNESS: Yeah, something like last fall. A
17 while back.

18 Q. All right. I assume that, since you are billing
19 for your time, that if I asked for a billing statement,
20 you can give me a regular monthly reporting of what --

21 A. I'm sure we could produce billing statements if
22 you find them useful.

23 Q. I do.

24 Do you know approximately how much time you
25 spent on the case?

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1 A. Maybe 50 or 60 hours at this point. Something
2 like that.

3 Q. All right. A full week and maybe some more?

4 A. Yeah.

5 Q. Assuming we are working ten-hour days?

6 A. If I wasn't interrupted, yeah.

7 Q. You attach materials that were considered by you
8 to your report. You list a number of things.

9 You read all of those?

10 A. Uh-huh.

11 Q. Is that a yes?

12 A. Yes, that is a yes. Sorry.

13 Q. You took everything into account --

14 A. Yes.

15 Q. -- in these materials in forming your opinion?

16 A. Yes.

17 Q. You relied on them for your opinion?

18 A. Yes.

19 Q. Are you doing any ongoing work in the case?

20 A. Other than having prepared the report I prepared
21 and preparing for this deposition, no.

22 Q. All right. You -- I -- I notice one of the
23 things you have been given was Neil Wertlieb's report. He
24 is the plaintiff's --

25 A. Yes.

KEVIN LORY OLSON, 5/17/2019

1 Q. -- standard of care expert.

2 Are you preparing a rebuttal report with respect
3 to Mr. Wertlieb?

4 A. I haven't begun that at this point. I have
5 skimmed his report. I haven't read it in -- I haven't
6 read it closely yet.

7 Q. Have you been asked to do a rebuttal report?

8 A. Not yet.

9 Q. Defendant Clark Hill has two standard of care
10 experts in this case. There is you and there is Mr. Scott
11 Rhodes.

12 Have you talked with Mr. Rhodes about this case?

13 A. I have not talked with him, no.

14 Q. There seems to be a division of responsibility.
15 Have you read Mr. Rhodes' report?

16 A. I have.

17 Q. All right. And you understand that he is
18 commenting on the standard of care with respect to the
19 rules of professional responsibility?

20 A. Right.

21 Q. Fair to say you have no opinions with respect to
22 the matters that Mr. Rhodes is going to be the standard of
23 care expert on?

24 A. That's correct.

25 Q. And then your -- your opinions are limited to

KEVIN LORY OLSON, 5/17/2019

1 the applicable standard of care for securities and
2 transactional lawyers, correct?

3 A. Correct.

4 Q. And in giving those opinions, you are excluding
5 from that, though, the application of the rules of
6 professional responsibility?

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

8 THE WITNESS: Correct, except to the extent that
9 they are a necessary part of applying what the securities
10 and transactional standards are. So --

11 Q. Okay.

12 A. -- I think those inform what a securities and
13 transactional lawyer does, but I'm not an expert in them.

14 Q. Okay. I need you to press on that, because
15 there is only one expert per issue.

16 A. Uh-huh.

17 Q. To form your opinions in this case, do you have
18 to rely on the professional rules of responsibility?

19 A. Well, no.

20 MR. DeWULF: Object to form.

21 THE WITNESS: No.

22 Q. And in forming your opinion and writing your
23 report in this case, you did not take into account the
24 professional rules of responsibility as to whether
25 Mr. Beauchamp was complying or not complying with those?

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1 A. That's correct.

2 Q. Let's talk about securities. I don't mean this
3 to be like you are back at Yale, or did you do
4 undergraduate at Yale?

5 A. I did not do undergraduate at Yale.

6 Q. You did law school at Yale.

7 A. I did law school at Yale.

8 Q. Well, I don't want you to think I'm a professor
9 at Yale asking you questions, but you are expressing
10 opinions about securities.

11 what is a security?

12 A. A security, you know, the famous Howey Test is
13 an investment for the purpose of having a profit, of
14 making a profit from the -- from the efforts of others.

15 Q. All right. Now, in this particular case, DenSco
16 was giving promissory notes to investors that lended it
17 money.

18 A. Yes.

19 Q. Is that a security?

20 A. Yes, normally.

21 Q. And why normally is it a security?

22 A. Well, ordinarily a note is one of the specific
23 listed items that are securities in the '33 and '34 Act.
24 So notes are ordinarily securities, and -- and that's
25 really just black letter law with respect to securities.

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1 Q. Very good.

2 And so if I am a new investor going to DenSco
3 and I am giving them money for the first time, the
4 promissory note I get would be a security under the
5 securities law?

6 A. Correct.

7 Q. You are aware that these promissory notes refer
8 to a certain term?

9 A. Yes.

10 Q. And that investors could roll them over?

11 A. Yes.

12 Q. And by roll over, that means they could get a
13 new -- a new promissory note?

14 A. Correct.

15 Q. Keep their money in the investment, correct?

16 A. Well, not technically. Their -- keep their
17 money in the company, but they are getting a new security
18 so it's a new investment.

19 Q. That was my question.

20 Is that -- is that rollover transaction, the new
21 promissory note they are getting, is that also a security?

22 A. Yes.

23 Q. In your practice have you represented hard-money
24 lenders?

25 A. Not in any significant -- not to any significant

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1 degree. Mostly borrowers from hard-money lenders in a few
2 cases.

3 Q. All right. So fair to say you are not familiar
4 necessarily with the inner workings of a hard-money lender
5 company?

6 MR. DeWULF: Object to form.

7 THE WITNESS: I am -- I haven't been involved in
8 the internal workings, no. I'm aware of the expectations
9 that they have in terms of what they want from a borrower
10 in most cases.

11 Q. All right. Do you have any knowledge with
12 respect -- Strike that.

13 Regarding DenSco and the materials you reviewed
14 about DenSco, did you form any opinions about whether
15 DenSco needed investors to roll over their monies so that
16 they would have capital to keep going?

17 MR. DeWULF: Object to form.

18 THE WITNESS: No, in the sense that -- in the
19 sense that I did not review DenSco's financial statements,
20 so that I'm not aware of what their capital position was
21 at any given time. Based on Mr. Chittick's and
22 Mr. Beauchamp's understanding of the way -- the way the
23 company was working, I assumed that they needed some of
24 those rollovers or alternate financing at the time that
25 money rolled off, but -- but I didn't form an opinion

1 about that.

2 Q. All right.

3 (Deposition Exhibit No. 958 was marked for
4 identification.)

5 THE WITNESS: I'm going to switch glasses.

6 Q. You don't have bifocals?

7 A. I hate bifocals, so if -- I have computer and
8 reading glasses and I have distance glasses. So most of
9 this is going to be close in, so I should have switched
10 earlier, but...

11 Q. All right. What I wanted -- so Exhibit No. --

12 COURT REPORTER: 958.

13 MR. DeWULF: 958.

14 Q. -- 958 is -- that's a disclosure statement, but
15 it attaches Mr. Wertlieb's report.

16 A. Right.

17 Q. And this is the report that you reviewed
18 quickly, but you haven't studied it in any depth?

19 A. Correct.

20 Q. And I want you to turn to page 37 and 40 of his
21 report.

22 A. Is it okay if I take this off?

23 Q. Yeah, you can take that off.

24 All right. So on page 37, he has a Section B
25 entitled Securities Law.

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1 Do you see that?

2 A. Yes.

3 Q. So what I want to do is just go through this
4 quickly and see if you agree or disagree with what he is
5 stating.

6 So if you want to -- why don't you read -- well,
7 here, I will read it.

8 "From the early 2000s to at least mid-2014,
9 Mr. Beauchamp provided securities advice to DenSco in
10 connection with its offer and sale of Notes. He 'advised
11 DenSco regarding his Private Offering Memoranda, which
12 DenSco generally updated every two years. He helped draft
13 the 2003, 2005, 2007, 2009 and 2011 POMs.' Because of his
14 role as securities counsel for DenSco, the standard of
15 care applicable to Mr. Beauchamp required a basic
16 understanding of securities law applicable to DenSco's
17 offering of Notes, including the following."

18 Is there anything you disagree with in that
19 statement by Mr. Wertlieb?

20 A. No.

21 Q. Let's go to the next paragraph: The issuance of
22 securities is regulated by federal and state law. Under
23 both the federal Securities Act of 1933 and the Arizona
24 Securities Act, the offer and sale of securities must be
25 registered with the appropriate regulatory agency, that is

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1 the SRC (sic) or the Arizona Corporation Commission,
2 respectively, or be subject to an exemption from such
3 registration. Issuers must strictly adhere to the
4 requirements of an exemption, as the failure to do so
5 results in an unlawful offering, with the accompanying
6 penalties and liabilities, including potential criminal
7 liability. DenSco's offerings were intended to fall
8 within the "private placement" exemption from registration
9 pursuant to Regulation D promulgated under the Securities
10 Act of 1933.

11 Do you disagree with anything Mr. Wertlieb
12 states in that paragraph?

13 A. No.

14 Q. Let's go to the next paragraph.

15 "Although Regulation D itself does not mandate
16 that any specific disclosures be provided to investors
17 that are 'accredited investors,' other provisions of the
18 securities laws regulate disclosures provided to
19 investors, including pursuant to a private placement. For
20 example, SEC Rule 10b-5, promulgated under Section 10(b)
21 of the Securities Exchange Act of 1934, provides that it
22 is unlawful, in connection with the sale of securities,
23 'to make any untrue statement of a material fact or omit
24 to state a material fact necessary in order to make the
25 statements made, in light of the circumstances under which

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1 they were made, not misleading.'"

2 Do you disagree with anything Mr. Wertlieb says
3 in that paragraph?

4 A. No.

5 Q. Let's continue.

6 "Disclosures that are provided to investors in a
7 private placement offering are typically contained in a
8 written document, often called a private offering
9 memorandum. Such a POM" -- P-O-M -- "is a disclosure
10 document used to solicit investment in private securities
11 transactions. A POM is provided to prospective investors
12 to provide such investors with information regarding the
13 issuer and the securities it intends to issue. Generally,
14 a POM describes the business, the investment opportunity,
15 the associated risks, the management team, historical
16 performance and expected performance of the business.
17 Disclosures made in a POM are regulated under the federal
18 securities laws by, among other laws and rules,
19 Rule 10b-5. DenSco's POMs offered Notes according to the
20 terms set forth therein."

21 Do you agree or disagree with that statement by
22 Mr. Wertlieb?

23 A. I agree with it.

24 Q. He goes on to talk about integration. You are
25 familiar with that concept?

1 A. Yes.

2 Q. So you -- if you have -- as I understand it, if
3 you have an integrated continuous offering, but you fail
4 to comply with Rule 10b-5 as to just one transaction, that
5 could invalidate the entire continuous integrated
6 offering?

7 MR. DeWULF: Object to form.

8 THE WITNESS: It could, yes.

9 Q. Now I want you to turn to page 39. Second
10 paragraph, right in the middle where it says, "As a
11 result."

12 "As a result, because of the continuous nature
13 of its securities offerings, DenSco needed to be able to
14 timely update the disclosures provided to investors so as
15 to correct any material misstatement or omission before
16 such investors purchased (or committed to purchase)
17 DenSco's securities. This would require both the constant
18 monitoring of the accuracy of the content of the POMS and
19 the ability to promptly correct and distribute updated
20 disclosures."

21 Do you agree or disagree with that statement by
22 Mr. Wertlieb?

23 A. I agree.

24 Q. He then goes on to say, "In my opinion, the
25 applicable standard of care would require that

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1 Mr. Beauchamp be aware of at least the following
2 requirements under the federal securities laws and advise
3 his client DenSco accordingly:

4 "The offer and sale of all Notes was subject to
5 compliance by DenSco with Regulation D and Rule 10b-5.

6 "If at any point in time, the applicable POM was
7 no longer in compliance with Rule 10b-5, DenSco must
8 immediately cease offering and selling Notes (whether to
9 new or existing investors, and whether for new monetary
10 consideration or in consideration of the rollover of
11 Notes).

12 "In the event that the applicable POM was no
13 longer in compliance with Rule 10b-5, DenSco must not
14 resume offering selling Notes unless and until updated and
15 compliant disclosures are provided to investors.

16 "Because of the continuous nature of the
17 offerings, both pursuant to each individual POM and
18 presumably across all POMs, the apparently arbitrary
19 two-year time period limitation imposed by Mr. Beauchamp
20 and as set forth in the POMs would have no impact on
21 integration or compliance under Regulation D in
22 Rule 10b-5."

23 And, "DenSco's failure to comply at all times
24 with Regulation D and Rule 10b-5 could result in material
25 penalties and liabilities, including potential criminal

1 liability."

2 Do you agree or disagree with anything
3 Mr. Wertlieb says?

4 A. I disagree partially with his second bullet
5 point.

6 Q. All right. And --

7 A. In -- in the sense that if you read the second
8 bullet point independently of the third, it goes too far.
9 If you read -- if you combine the second and third bullet
10 point, then I think he is correct.

11 Q. All right. If you take what I just read to you
12 as a whole --

13 A. As a whole --

14 Q. -- you agree?

15 A. -- yes, I agree.

16 Q. If you were to piece it off --

17 A. There would be --

18 Q. -- with respect to bullet point one and two, you
19 would have an issue?

20 A. Two and three, yes.

21 Q. Two and three. Thank you.

22 You state in your opinion that you have written
23 that issuers have an obligation to disclose material
24 information that is accurate and disclose all information
25 necessary to make the disclosures that are made not

1 misleading.

2 Do you recall writing that in your preliminary
3 report?

4 A. Yes.

5 Q. Could you expand on that for me?

6 MR. DeWULF: Object to form.

7 THE WITNESS: That's the -- that's the same
8 10b-5 point that I agreed with with Mr. Wertlieb on in the
9 third paragraph you read to me; that is to say an issuer
10 has an obligation to make full disclosure of the facts of
11 the offering that are material and not to make statements
12 that, shall we say, imply things and then leave out items
13 necessary to make the statements complete.

14 A. All right.

15 Q. You know, I know there is federal securities
16 laws and there is state securities laws.

17 Does the state securities laws have sort of a
18 counterpart to the federal 10b-5 requirement?

19 A. As a practical matter, the state regulations
20 incorporate 10b-5, so yes.

21 Q. So the same sorts of disclosures required under
22 federal law are also required under state law?

23 A. Yes, except you should take into account then
24 under recent Reg D amendments and the congressional
25 actions, in certain Reg D offerings state law is preempted

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1 and so only -- only federal law will apply, but if it's
2 not been preempted, yes, state law imposes comparable,
3 essentially comparable obligations.

4 Q. With respect to the time period we are looking
5 at here with DenSco, is there any federal preemption?

6 MR. DeWULF: Object to form.

7 THE WITNESS: I don't remember the precise date
8 that preemption was adopted. It was -- if I recall right,
9 it was in the JOBS Act, which was in the early 2010s.

10 And, you know, for example, the implementing
11 rules that -- that allow general solicitation to
12 accredited investors went into effect in July of 2013.
13 And I'm sure that the preemption was in effect by then,
14 but I don't remember whether there needed to be SEC
15 implementation of that or whether Congress immediately
16 preempted when they enacted that act.

17 I would -- that's the type of question where,
18 frankly, I would go look at the volumes if I -- if I -- it
19 became an issue in the case.

20 Q. All right. With respect to the investment
21 process, you state in your opinion, in Section 5.4, that
22 investors were required to sign a Subscription Agreement
23 and received a Promissory Note from DenSco setting forth
24 the terms of their investment. Only accredited investors
25 could purchase the notes from DenSco.

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1 Now, you don't, in that Section 5.4, you don't
2 make any mention of the Private Offering Memorandum.

3 A. No. In order to -- in terms of the process to
4 actually commit, those are the documents that they add to.

5 Q. But they also received, along with a
6 Subscription Agreement, the Private Offering Memorandum?

7 A. I believe that's correct, yes.

8 Should I put this away?

9 Q. You can put it to the side. We will be going
10 back to it.

11 A. Okay.

12 MR. CAMPBELL: I know we have marked this 2011
13 POM, but I think just in terms of having it --

14 MR. DeWULF: I don't have it with me.

15 MR. CAMPBELL: Yeah.

16 MR. DeWULF: Yeah. There is a couple versions
17 of this.

18 MR. CAMPBELL: Yeah. This is one I think coming
19 from Schenck's.

20 (Deposition Exhibit No. 959 was marked for
21 identification.)

22 Q. Exhibit 959 is a copy of the July 1st, 2011,
23 Private Offering Memorandum. I think this was marked in
24 Mr. Schenck's deposition, but we have marked it again.
25 You don't need to be worried about any handwritten notes

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1 on it.

2 Do you recall seeing this before?

3 A. I -- I have seen it.

4 Q. And this was, I assume, the Private Offering
5 Memorandum you reviewed in respect to forming your
6 opinions in this case?

7 A. Yes.

8 MR. DeWULF: Object to form.

9 THE WITNESS: Yes, I believe so, as well as the
10 later draft from 2013.

11 Q. Actually, yeah, I'm going to get to the 2014
12 draft also.

13 A. Okay.

14 Q. But let's look at the 2011 one. And I'll use
15 the Bates stamps at the bottom. I'm looking first at
16 8732.

17 So you will see down at the bottom it says that:
18 The Company intends to offer the Notes on a continuous
19 basis until the earlier of the sale of the maximum
20 offering, or two years from the date of this memorandum.

21 A. Uh-huh.

22 Q. So you need to answer yes or no. She can't take
23 down --

24 A. Yes.

25 Q. -- uh-huh.

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1 So if you are explaining to a layman what that
2 meant in terms of the continuous offering, from the
3 perspective of a securities lawyer, what does that mean
4 that they are doing a continuous offering that at some
5 point in time is going to end?

6 A. Well, it means that during the period that the
7 offering is effective, they are -- they are selling
8 securities and that -- and that there may well be multiple
9 closings on those, on the sale of the securities, and that
10 the securities, the sale will end at whatever period that
11 they have specified, either reaching the maximum amount or
12 at the end of that period.

13 Q. All right. So let's assume -- let's go -- this
14 is dated July 1, 2011. Let's go to July 1, 2013.

15 What happens to the Private Offering Memorandum?

16 MR. DeWULF: Object to form.

17 THE WITNESS: The Private Offering Memorandum by
18 its terms is obsolete. That does not mean, though, that
19 the company can't continue using it with supplemental
20 disclosures that inform investors of the nature of the new
21 offering and of -- and/or how the offering is the same or
22 different, and any supplemental disclosures to make, bring
23 it up to date, the disclosures made.

24 Q. Okay. I want to understand what it means to say
25 it's obsolete from your viewpoint as a securities lawyer.

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1 What if DenSco just proceeded using it after
2 July 1, 2013, without any supplemental disclosures.

3 Can you use an obsolete private offering
4 memorandum that has not been updated?

5 MR. DeWULF: Object to form.

6 THE WITNESS: Yes.

7 Q. Under what circumstances?

8 MR. DeWULF: Object to form.

9 THE WITNESS: well, the company can inform an
10 investor, you know. The minimum the company would have to
11 inform the investor would be, for example, we are still
12 using this because there is nothing new to say, and we are
13 offering additional securities under, and this is the
14 disclosure you need.

15 I would be surprised if anyone would actually
16 use it in that way as opposed to and by the way, here are
17 the additional changes, but technically you could.

18 Q. All right. well, just so -- I'm just a
19 litigator.

20 A. Uh-huh.

21 Q. The minimum the company would have to do if they
22 continued using it is to say we are still using the 2011
23 POM and there is nothing new?

24 MR. DeWULF: Object to form.

25 THE WITNESS: Correct.

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1 Q. Assuming, of course, that was true?

2 A. Assuming that was true.

3 Q. All right. I want you to turn to Bates stamp
4 8736, and I want you to look at the paragraph above the
5 last paragraph.

6 A. So the one starting "The obligations and
7 representations"?

8 Q. Yes, that's the one. I want to look at the
9 second sentence.

10 Actually, one question I may want to ask. Why
11 is this all in pica point type? You know, if you get an
12 email like this where it's all capital letters and pica
13 point, it's annoying, but why is it done that way on a
14 securities offering?

15 MR. DeWULF: Object to form.

16 THE WITNESS: Well, you want the full
17 disquisition on the history of this or what I do?

18 Q. Well --

19 A. The full disquisition is in, you know, the --
20 and I'll keep it short. I promise I won't filibuster on
21 this.

22 The full story is that when people started doing
23 POMs and prospectuses, you either had to produce the
24 document internally or more often you went to a printer.
25 And the way printers worked at that time, you know, from

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1 the 1930s to the 1970s and '80s, there was relatively
2 little flexibility, and the custom became to use all caps
3 as a method of emphasizing and of saying this is
4 particularly important.

5 Now, since the era of the word processor,
6 anybody who actually pays attention to typesetting and
7 helping readers knows that in fact all caps is the most
8 effective way of pretending that something is important
9 and assuring that nobody actually reads it.

10 And so, for example, if you see a -- if I'm
11 involved and can -- and have control of the situation,
12 which is not always the case when I am representing a
13 client, none of my stuff will be in all caps. It may well
14 be in regular sentence format with bolded or italics or
15 something else to make an emphasis point, but it won't be
16 in all caps. But all caps is a historic accident of
17 that's the way people emphasized in the era before word
18 processing made it easier to do bold and things like that.

19 Q. All right. Turn to the second sentence.

20 It says, "NO PERSON HAS BEEN AUTHORIZED TO GIVE
21 ANY INFORMATION OR TO MAKE ANY REPRESENTATION CONCERNING
22 THE COMPANY OTHER THAN AS CONTAINED IN THIS CONFIDENTIAL
23 PRIVATE OFFERING MEMORANDUM, AND IF GIVEN OR MADE, SUCH
24 OTHER INFORMATION OR REPRESENTATIONS MUST NOT BE RELIED
25 UPON. THE DELIVERY OF THIS CONFIDENTIAL PRIVATE OFFERING

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1 MEMORANDUM DOES NOT IMPLY THAT THE INFORMATION SET FORTH
2 IN IT IS CORRECT AS OF ANY TIME SUBSEQUENT TO THE DATE
3 HEREOF."

4 Now, first of all, every -- pursuant to
5 Rule 10b-5, I take it all the statements in this Private
6 offering Memorandum has to be true, right?

7 A. Correct.

8 Q. So am I right to say --

9 A. Unless the company corrects them in a separate
10 document or statement.

11 Q. Assuming there is no separate document, a person
12 buying the security is told that no person is authorized
13 to give any information or to make any representation
14 concerning the company, other than what's contained in
15 this Private Offering Memorandum. True?

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

17 Q. All right. Let's turn to Bates stamp 8740.

18 So one of the things a Private Offering
19 Memorandum is going to do is tell an investor about the
20 business, and these are going to be representations that
21 someone who buys a note can rely upon, right?

22 A. Uh-huh. Yes.

23 Q. What he is going to read is going to be the
24 truth, correct?

25 A. Subject, again, to if the company has

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1 supplemented or -- or made other disclosure that corrects
2 or adds to this disclosure.

3 Q. So if you look at the section on this page
4 entitled The Company.

5 Are you with me?

6 A. Uh-huh. Yes, I am. I'm trying catch myself.

7 Q. Okay. You notice that it says that the company
8 is going to seek a diversity of builders.

9 Do you see that?

10 A. Yes.

11 Q. And that the company intends to maintain a
12 loan-to-value ratio below 70 percent in the aggregate for
13 all loans in the loan portfolio?

14 A. Yes.

15 Q. And loan to value means that the value of the
16 loan in the aggregate will be no more than the fair market
17 value, as the company assesses it, of the homes?

18 MR. DeWULF: Object to form.

19 Could you read that back, please?

20 MR. CAMPBELL: Let me rephrase it, make sure
21 it's clear.

22 MR. DeWULF: I think you left a little bit out.

23 Q. All right. Do you understand what a
24 loan-to-value ratio is?

25 A. Yes.

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1 Q. What is it?

2 A. The loan is at a -- at a specified amount, and
3 the ratio of the value of the property to that loan is
4 typically expressed in a percentage.

5 For example, FHA rules, if you are doing a small
6 FHA loan that has actually insured, generally require a
7 5 percent loan down payment and therefore a 95 percent
8 loan-to-value ratio.

9 And similarly, he is expressing here a
10 70 percent, so on a \$100,000 -- this is in the aggregate
11 obviously, but in the aggregate, \$100,000 worth of
12 property value would support a \$70,000 loan.

13 Q. And why would that be important to a person who
14 is buying the notes?

15 A. It's a statement of what level of risk the
16 company is taking, remembering that the notes are not
17 secured by any of the -- of any of the underlying notes or
18 assets that the company is -- is using or engaging in, but
19 the notes are a general obligation of the company and
20 therefore the level of the company's risk is lower, the
21 company can be much more confident of recovering its loan
22 when it's due to be repaid if there is a favorable
23 loan-to-value ratio instead of a difficult loan-to-value
24 ratio.

25 Q. Okay. Let's go to Bates stamp Bates 8743. And

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1 you will see there is a section entitled Target Markets
2 and Potential Future Markets.

3 You see that?

4 A. Yes.

5 Q. And that the company is going to target and
6 purchase trust deeds to qualified purchasers, right?

7 A. Uh-huh. Yes.

8 Q. That's a yes?

9 And it says: When purchasing Trust Deeds, the
10 Company intends to consider Trust Deeds that the
11 loan-to-value ratio does not exceed 70 percent and the
12 current yield is 18 percent or greater.

13 Do you see that?

14 A. Yes.

15 Q. So this is not talking about deeds in the
16 aggregate. It's talking about the deeds it's intending to
17 purchase. True?

18 A. Correct.

19 Q. And if you look down below, in the last
20 paragraph, it starts about the middle, "The Company
21 intends to have these Trust Deeds have loan-to-value
22 ratios no greater than 70 percent but with an objective
23 goal of 50 to 60 percent."

24 Correct?

25 A. Correct.

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1 Q. So, again, if I'm buying these promissory notes,
2 I'm reading this and I'm assuming it's true, that the
3 company is going to try and buy trust deeds no greater
4 than 70 percent, but they are even going to try to do
5 better than that, right?

6 MR. DeWULF: Object to form.

7 THE WITNESS: That's what this says, yes.

8 Q. Let's turn to Bates stamp 8749.

9 MR. DeWULF: 49?

10 MR. CAMPBELL: 49. It's page 10.

11 Q. You see there is a Diversity of Risk section?

12 A. Yes.

13 Q. And it says, "The Company will attempt to
14 maintain a diverse portfolio of Trust Deeds and loans by
15 seeking a large borrowing base," correct?

16 A. Correct.

17 Q. And if you go to the last paragraph, it says
18 that "Because of these varying degrees of diversification,
19 the relatively short duration of each of the loans, and
20 management's knowledge of the Phoenix metropolitan area
21 market, the Company's management anticipates that it will
22 not experience a significant amount of losses."

23 An investor reading that would assume that's a
24 true statement of what their intentions are?

25 A. Yes, but they would read the "however" clause

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1 following.

2 Q. "However, there can be no assurance that the
3 Company will not experience such losses" --

4 A. Correct.

5 Q. -- right?

6 Let's turn to Bates stamp 8763.

7 This is -- you see there is a section here about
8 the Difficulties and Costs of a Continuing Offering?

9 A. Yes.

10 Q. And one of the purposes of these Private
11 offering Memorandums is to let the investor know the risk
12 they are getting into, right?

13 A. There is typically a risk factor section that
14 highlights the risks the company is aware of, yes.

15 Q. All right. And this -- this one, if you look,
16 start at the second sentence, "In order to continue
17 offering the Notes during this period, the Company will
18 need to update this Memorandum from time to time. Keeping
19 the information in the Memorandum current will cause the
20 Company to incur additional costs. A failure to update
21 this Memorandum as required could result in the Company
22 being subject to a claim Section 10b-5 of the Securities
23 Act for employing a manipulative or deceptive device in
24 the sale of securities, subjecting the Company, and
25 possibly the management of the Company, to claims from

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1 regulators and investors. In addition, an investor might
2 seek to have the sale of the Notes hereunder rescinded
3 which would have a serious adverse effect on the Company's
4 operations."

5 Did I read that correctly?

6 A. Yes.

7 Q. So DenSco is telling the investor that they have
8 a duty to keep the memorandum updated from time to time.
9 True?

10 A. True.

11 Q. And if they don't do that, that could be a
12 problem, right?

13 A. Yes.

14 Q. Let's turn to 8769.

15 You will see it says, "Finally, in advising" --
16 actually -- I'm looking at Legal Counsel will Represent
17 the Interests Solely of the Company and Its President.

18 A. Yes.

19 Q. Do you see that?

20 And you will see that it says, the last
21 sentence, "Finally, in advising as to matters of law
22 (including matters of law described in this Memorandum),
23 legal counsel has relied, and will rely, upon
24 representations of fact made by the Company's President.
25 Such advice may be materially inaccurate or incomplete if

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1 any such representations are themselves inaccurate or
2 incomplete, and legal counsel generally will not undertake
3 independent investigation with regard to such
4 representations."

5 Did I read that correctly?

6 A. Yes.

7 Q. If legal counsel learned that the company's
8 president was making to him materially inaccurate or
9 incomplete statements, would that be a material fact that
10 would have to be told to the investors?

11 MR. DeWULF: Object to form.

12 THE WITNESS: It would depend upon the
13 circumstances at the time.

14 Q. All right. That seems to be the catchall
15 testimony of about every expert on your side of the case.

16 MR. DeWULF: I'll object that to that
17 statement --

18 MR. CAMPBELL: I'll strike it.

19 MR. DeWULF: I don't think it's accurate.

20 MR. CAMPBELL: I'll strike it.

21 Q. If legal counsel were to learn that the
22 president had misrepresented to him or her the
23 loan-to-value ratio of the properties, would that
24 circumstance be a material fact that would have to be
25 disclosed to the investors?

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1 MR. DeWULF: Object to form.

2 THE WITNESS: You are asking two separate
3 questions there. I'll answer them separately.

4 First, the -- the failure to meet the
5 loan-to-value ratio would almost certainly be a material
6 fact that needs to be disclosed to the investors.

7 whether the company's statements -- whether the
8 president's statements about it to the -- to the legal
9 counsel were false would in part depend upon exactly what
10 the context of the statements made were, and therefore it
11 might be a material fact and it might not. It would
12 depend upon what -- counsel's understanding of how the
13 situation developed.

14 Q. I'm with you.

15 Turn to 8776. And you will see at the first
16 paragraph at the top of the page, last sentence in that
17 paragraph, "The Company continues to strive to achieve a
18 diverse borrower base by attempting to ensure that one
19 borrower will not comprise more than 10 to 15 percent of
20 the total portfolio."

21 Did I read that right?

22 A. Yes.

23 Q. If the company, after this was issued, were to
24 learn that one borrower has more than 15 percent of the
25 total portfolio, is that a material fact that would have

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1 to be told to the investors?

2 MR. DeWULF: Object to form.

3 THE WITNESS: It might be, and -- and I -- let
4 me provide the context for that. The company is striving
5 to achieve that. If, for a time, the company achieves --
6 has opportunities such that they go to 17 or 18 percent, I
7 think it's likely that that's not going to be material.

8 I understand in this case that the percentages
9 to Mr. Menaged's companies became dramatically higher than
10 that, and, yes, I would think that at that point it would
11 be material.

12 Q. If you look a little further down, you will see
13 that there is information with respect to loans funded,
14 loan value from 2001 to 2011, right?

15 A. Yes.

16 Q. When you mentioned that a POM becomes obsolete,
17 I take it when you get to the year two fifteen,
18 two sixteen, it's obsolete in the sense that we have
19 periods of time where we have no information at all?

20 A. Correct.

21 MR. DeWULF: You are talking about the year
22 2015, right --

23 MR. CAMPBELL: Yeah.

24 MR. DeWULF: -- for your question?

25 MR. CAMPBELL: Yeah.

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1 Q. When is there a point that that has to be
2 supplemented?

3 Let's say you are continuing to use this. Is
4 there some point in time that you have to say that, you
5 know, it's really not 36 million in loans. We are now
6 over 50 million in loans, for example?

7 A. Well, it depends upon how the circumstances have
8 changed and, again, supplement -- the key is the company
9 may well have supplemented outside of the memorandum, and
10 so the -- it's likely that something will have needed to
11 be provided in 2012, but depending on if -- if there -- if
12 the changes are material.

13 Q. All right. It goes on and then it describes
14 losses of the company.

15 Do you see historical losses --

16 A. Yes.

17 Q. -- if you look at Bates stamp...

18 If the historical losses of the company change
19 dramatically, is that a material fact that has to be
20 disclosed to the investors?

21 A. You are -- you are -- obviously you are assuming
22 that they changed dramatically, but, yes, I would -- I
23 would think in the ordinary course if there was a dramatic
24 change, that a supplement, a supplemental disclosure would
25 need to be made, yes.

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1 Q. The Forbearance Agreement that was entered into
2 in this case between DenSco and Mr. Menaged's companies --
3 is a material fact that has to be disclosed to investors.
4 True?

5 A. I would think so, yes.

6 Q. Turn to Bates stamp 8784.

7 You see the first paragraph -- well, this is the
8 Description of Securities section?

9 A. Yes.

10 Q. If you look at the first paragraph and look up
11 to the fourth line up or fifth line up, it says: If the
12 Company changes its operations or method of offering --
13 offering in any material respect, the Company will update
14 the Memorandum as necessary to provide correct information
15 to investors.

16 Did I read that correctly?

17 A. Yes.

18 Q. The Forbearance Agreement that was entered into
19 between DenSco and Mr. Menaged's company was a material
20 change in its operations. True?

21 A. Yes.

22 Q. It would have to be disclosed to the investors.
23 True?

24 A. I believe so.

25 Shall I put this aside for now?

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1 Q. Put it aside, but we may come back to it.

2 A. That's fine.

3 Q. All right. In your review of the materials in
4 this case, the documents you have listed to your report, I
5 assume you learned that in January of 2014, Mr. Chittick
6 sent an email to Mr. Beauchamp.

7 A. Yes.

8 Q. And in that email to Mr. Beauchamp, he tells him
9 that he discovered that Mr. Menaged's companies had a
10 cousin that was defrauding DenSco.

11 A. Yes.

12 Q. That, sir, is a material fact. True?

13 MR. DeWULF: Object to form.

14 THE WITNESS: That depends on how big a problem
15 that turns out to be.

16 Q. All right. In January 2014, Mr. Beauchamp sends
17 an email -- strike that. I'm constantly mixing up names.

18 In January 2014, Mr. Chittick sends an email to
19 Mr. Beauchamp telling him that with respect to 90 percent
20 of his loans, he sends the money directly to the borrower
21 and not to the trustee.

22 Do you recall that?

23 A. Yes.

24 MR. DeWULF: Object to form.

25 Q. And you would agree with me that's not in

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1 compliance with the procedures set forth in the Private
2 Offering Memorandum?

3 A. I'm not sure I agree with that. The Private
4 offering Memorandum says that the company intends to get a
5 first-position loan, and the procedure Mr. Chittick
6 described is inadequate to ensure that, but is not
7 necessarily a direct violation of the POM statement.

8 Q. All right. If you were an investor buying
9 promissory notes in DenSco, would you want to know, as a
10 reasonable investor, whether DenSco was giving money to
11 the borrower or giving money to the trustee?

12 MR. DeWULF: Object to form.

13 THE WITNESS: If -- if I wanted to know that,
14 under the way the Reg D rules for an accredited investor
15 only offer works, I could ask Mr. Chittick to walk
16 through -- if I deemed it that material, I could ask
17 Mr. Chittick to walk through the procedure he uses to fund
18 loans.

19 Q. All right. Sir, let's not play games.

20 MR. DeWULF: Let's what? I'm sorry. I didn't
21 hear what you said.

22 MR. CAMPBELL: Let's not play games.

23 MR. DeWULF: Okay. I will object to that
24 comment on the record. That's inappropriate.

25 MR. CAMPBELL: I'll strike it.

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1 MR. DeWULF: Just ask precise questions and
2 he'll provide you answers.

3 Q. Rule 10b-5 prohibits an issuer from hiding
4 material facts. True?

5 A. True.

6 Q. So the issuer has an obligation on its own,
7 without regard to the investor, to disclose all material
8 facts to someone who is buying their securities. True?

9 A. Yes.

10 Q. Is the fact that DenSco is giving, in 90 percent
11 of its loans, the monies to the borrower and not to the
12 trustee a material fact?

13 MR. DeWULF: Object to form.

14 THE WITNESS: On -- on its own, I don't believe
15 so. It may well be useful in other contexts, but on its
16 own, I'm not sure that it's a material fact, no.

17 Q. Sir, in your opinion letter in this case you say
18 the reason Menaged was able to perpetuate his frauds upon
19 DenSco was because he was given the money directly from
20 DenSco.

21 A. That's correct.

22 Q. Let's put these two pieces of facts together.

23 DenSco knows that 90 percent of the loans are
24 given directly to its borrowers, and DenSco knows in
25 January 2014 that because of that practice, Mr. Menaged's

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1 cousin was able to defraud DenSco with respect to 100 to
2 125 transactions.

3 Is that a material fact that has to be disclosed
4 to investors?

5 MR. DeWULF: Object to form.

6 THE WITNESS: Yes.

7 Q. On January 10th of 2014, is it fair to say that
8 Mr. Beauchamp knows that the 2011 POM contains material
9 misstatements of fact?

10 MR. DeWULF: Object to form.

11 THE WITNESS: On its own, yes.

12 Q. I don't know what you mean by "on its own."

13 A. I mean that Mr. Beauchamp knows that the POM
14 does not adequately disclose this. He does not know, and
15 in fact I believe his testimony is that Mr. Chittick tells
16 him that in fact there have been supplemental disclosures
17 made so that anyone making an investment knows these
18 facts.

19 So the POM, the POM on its own is inadequate.
20 Whether the disclosure to investors is inadequate is the
21 question I think you were trying to get to, and that's
22 not -- that's not -- the POM alone does not say, establish
23 that.

24 Q. Let me put it to you this way, just so we are
25 clear.

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1 On January 10th, 2014, Mr. Beauchamp knows that
2 the 2011 POM on its own contains material misstatements of
3 fact. True?

4 A. Yes.

5 Q. On January 10th, 2014, Mr. Beauchamp knows that
6 one of the inadequacies of the 2011 POM is that DenSco is
7 not in first position on at least 100 to 125 loans. True?

8 MR. DeWULF: Object to form.

9 THE WITNESS: True.

10 Q. Mr. Beauchamp knows on January 10th, 2014, that
11 a fraud has been perpetrated on the company by a cousin
12 who took monies that were directly given to Menaged and
13 ran. True?

14 MR. DeWULF: Object. Object to form.

15 THE WITNESS: That's what he has been told, yes.

16 Q. And that's a material fact. True?

17 MR. DeWULF: Object to form.

18 THE WITNESS: Again, it depends on how those 100
19 to 120 loans relate to the rest of the portfolio.

20 Q. Okay. Let me just step back.

21 Mr. Beauchamp knows that 90 percent of DenSco's
22 funding is given directly to the borrower. True?

23 MR. DeWULF: Object to form.

24 THE WITNESS: That's what Mr. Chittick has told
25 him, yes.

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1 Q. And Mr. Beauchamp knows that because of that
2 practice, the cousin was able to embezzle money on 100 to
3 125 homes. True?

4 MR. DeWULF: Object to form.

5 THE WITNESS: Yes.

6 Q. Those two things together are a material fact
7 that investors are entitled to know. True?

8 A. Yes.

9 MR. CAMPBELL: Let's mark these.

10 John, these are from Mr. Bunger's deposition.
11 We have like one exhibit number that has a bunch of
12 documents that I took this out of. They have got the
13 Bates stamps on the bottom, but I thought I would just
14 re-mark them for the depo.

15 MR. DeWULF: That's fine. Whose deposition did
16 you say?

17 MR. CAMPBELL: Bunger.

18 MR. DeWULF: Bunger.

19 (Deposition Exhibit No. 960 was marked for
20 identification.)

21 Q. I don't know whether you reviewed Mr. Bunger's
22 deposition or not.

23 Does that ring a bell?

24 A. I don't believe so.

25 Q. Have you reviewed any of the investor depositions?

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1 A. I don't believe so.

2 Q. Okay. These are -- these are exhibits that were
3 marked in Exhibit 629 of Mr. Bunger's deposition, and this
4 is the portion of the exhibit that has the file, DenSco's
5 file on Mr. Bunger. So it's going to have his
6 subscription agreements and related materials --

7 A. Uh-huh.

8 Q. -- from 2013, 2014, and 2015.

9 So what I would like to do first, is I want to
10 look at a subscription agreement, and I'm going to need
11 you to turn -- you are going to have to turn the page.
12 These aren't -- all of them are Bates stamped.

13 If you go to Bates stamp -- well, they are not
14 in order. The Bates stamps are not in order. I want to
15 go to a Subscription Agreement for investment number 4,
16 dated April 22nd, 2013.

17 A. I think I have that.

18 MR. DeWULF: I'm sorry. What date again? I
19 want to catch up with you here.

20 THE WITNESS: For '13.

21 MR. CAMPBELL: That's the first one.

22 Q. If you look at the first one --

23 MR. DeWULF: Got it.

24 Q. -- and turn the page, it's the first and second
25 and last page.

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1 A. So the page -- the page with the signature page?

2 Q. Yeah. That's the last page. I want you to turn
3 the pages until you get to the Subscription Agreement that
4 says Investment 4, April 22nd, 2013.

5 Keep turning.

6 A. Investment number what?

7 Q. 4.

8 A. That's what the front one is.

9 Q. Keep turning. We are going to go to the entire
10 subscription.

11 A. Okay. Okay.

12 Q. That's what I'm looking for.

13 MR. DeWULF: So it's been a little over an hour,
14 so whenever is good for you, Colin, I'd like to take a
15 break.

16 MR. CAMPBELL: Okay.

17 THE WITNESS: That one?

18 MR. CAMPBELL: Yeah. Let me just finish this
19 Subscription Agreement --

20 MR. DeWULF: All right.

21 MR. CAMPBELL: -- and we will take a break.

22 Q. So if you look at this, this is investment
23 number 4, dated April 22nd, 2013, it has one, two, three,
24 four, five, and six pages, if you include the signature
25 page, right?

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1 A. Yes.

2 Q. All right. So this is given to the investor
3 every time he makes an investment, right?

4 A. I would expect so. I -- I haven't reviewed
5 their specific procedures, but I would expect so, yes.

6 Q. Okay. Well, in the -- in your opinion letter
7 you say that the investments each have a Subscription
8 Agreement?

9 A. Right. That's what I was --

10 Q. Okay.

11 A. -- told.

12 Q. And you will see that at the very top it says,
13 "The undersigned investor has received and reviewed the
14 Confidential Private Offering Memorandum dated July 1,
15 2009."

16 Do you see that?

17 A. Correct.

18 Q. Now, this is in 2013, so we know we have a 2011
19 POM in place.

20 A. Correct.

21 Q. So either no one updated this or he actually got
22 a POM that even predated the 2011 POM, right?

23 A. Correct. One or the other.

24 Q. All right. So with each subscription, the
25 investor says I got the Private Offering Memorandum,

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1 right?

2 A. Yes.

3 Q. And then if you look down at the bottom, you
4 will see it says in the last two lines: The undersigned
5 has received and carefully reviewed the Private Offering
6 Memorandum, right?

7 A. Yeah.

8 Q. And you will notice, if you turn to the second
9 page of the Subscription Agreement, subparagraph (b): No
10 representations have been made or information furnished to
11 me or my advisor relating to the Company or the Note which
12 are in any way inconsistent with the POM.

13 Do you see that?

14 A. Uh-huh.

15 Q. So with respect to assuming that this
16 Subscription Agreement is used in every investment, every
17 time the investor invests, he is told to make a
18 representation that I don't know anything inconsistent
19 with the Private Offering Memorandum, right?

20 A. Correct. Correct.

21 Q. And if the investor had received some sort of
22 supplemental information inconsistent, that should be
23 stated in writing, correct?

24 MR. DeWULF: Object to form.

25 THE WITNESS: In theory, yes.

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1 Q. In theory. In theory -- well, in practice we
2 are also talking about manipulative schemes and
3 deceptions, right?

4 MR. DeWULF: Object to form.

5 THE WITNESS: I assume that's what you think,
6 yes.

7 MR. DeWULF: Don't assume what he thinks. I
8 object to the question.

9 Q. We are talking about Rule 10b-5, aren't we?

10 MR. DeWULF: Object to form.

11 THE WITNESS: I gather that that's what you are
12 talking about, yes.

13 Q. Right. Okay. So when you say that's what you
14 mean, we were both on the same page length. We are
15 talking about Rule 10b-5, right?

16 A. I was not talking about Rule 10b-5. I was
17 talking about the reality of how private investors often
18 deal with these kinds of circumstances.

19 Q. Okay. Let's talk about the law. That's what
20 you are here for, right?

21 MR. DeWULF: Object to the form.

22 Q. You are an expert on securities law, correct?

23 MR. DeWULF: Object to form.

24 THE WITNESS: Yes.

25 Q. All right. Under Rule 10b-5, the investor is

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1 being told we are giving you a Private Offering
2 Memorandum, and you are telling us that you have heard
3 nothing inconsistent with this Private Offering
4 Memorandum.

5 That's what the investor is doing under the law.
6 True?

7 MR. DeWULF: Object to form.

8 THE WITNESS: That's what this agreement states,
9 yes.

10 Q. And if you look down to subsection (d), it also
11 says, again, "The undersigned, and if applicable the
12 undersigned Purchaser's Representative, has carefully
13 reviewed the POM." True?

14 A. True.

15 MR. CAMPBELL: All right. Let's take our break
16 now.

17 VIDEOGRAPHER: The time is 9:33 a.m. We are
18 going off the record, ending media one.

19 (A recess was taken from 9:33 a.m. to 9:48 a.m.)

20 VIDEOGRAPHER: My name is Mary Onuschak with the
21 firm of legal video specialists, Phoenix, Arizona. This
22 begins media two of the videotaped deposition of Kevin
23 Olson. The time is 9:48 a.m. We are now back on the
24 record.

25 Q. All right. Before we took our break, we were

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1 looking at an April 22nd, 2013, Subscription Agreement for
2 a Mr. Steven Bunger.

3 A. Yes.

4 Q. And just to sum up where we are, the
5 Subscription Agreement says that Mr. Bunger received the
6 July 1, 2009, POM, and the Subscription Agreement has him
7 represent he knows nothing inconsistent with it. True?

8 A. True.

9 Q. Now, in doing your work in this case, did you
10 look at how DenSco sold securities after January of 2014?

11 MR. DeWULF: Object to form.

12 THE WITNESS: What do you mean by how DenSco
13 sold securities?

14 Q. Did you look at investor files to see what was
15 in DenSco's files with respect to securities it was
16 selling after January 1 of 2014?

17 A. I did not.

18 Q. And Clark Hill did not give you any of those
19 files to review. True?

20 MR. DeWULF: Object to form.

21 THE WITNESS: I haven't dealt directly with
22 Clark Hill on anything relating to this. Mr. Dewulf did
23 not give me any of those files.

24 Q. All right. Well, you understand he is the
25 lawyer for Clark Hill, right?

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1 A. I do.

2 Q. Okay. Turn to the next tab in that exhibit,
3 which is 960?

4 COURT REPORTER: Yes.

5 Q. All I need to do is get to it myself.

6 okay. The next tab at the very top has
7 something called investment number 2 on July 1, 2014,
8 right?

9 A. Correct.

10 Q. All right. So July 1, 2014, is going to be
11 after January of 2014 where Mr. Beauchamp has learned
12 about problems with the POM, right?

13 A. Correct.

14 Q. And this particular Subscription Agreement, if
15 you -- actually, so we are just going to have the first
16 and last page of it, but you will see it's dated July 1,
17 2014, and if you turn the page, it looks like it's signed
18 on that same date.

19 Do you see that?

20 A. Yes.

21 Q. So when this sale of security was made to
22 Mr. Bunker, DenSco had the legal obligation to disclose
23 all material facts to him, correct?

24 A. Correct.

25 Q. And you will see that this Subscription

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1 Agreement says again that he has received the July 1,
2 2009, POM. True?

3 A. True.

4 Q. And let's assume for purposes of my question
5 that the 2009 and 2011 POM are basically the same.

6 A. Okay.

7 Q. And those POMs say you can only rely on what's
8 written in the POM. True?

9 A. They do, yes.

10 Q. And the Subscription Agreement is going to have
11 the representation again that I haven't been told anything
12 inconsistent with the POM.

13 A. Obviously I'm not looking at that right now, but
14 I assume it's the same form as the 2013 one you showed me,
15 yes.

16 Q. And I want you to assume there is no other
17 writing, there is no other disclosure in writing to
18 Mr. Bungler, and he hasn't received any oral
19 supplementation from anyone.

20 Are you with me?

21 A. Okay.

22 Q. This sale of securities on July 1, 2014, would
23 be in violation of the federal securities laws. True?

24 MR. DEWULF: Object to form.

25 THE WITNESS: If I accept your assumption, which

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1 may or may not be consistent with the actual facts, yes,
2 true.

3 Q. All right. And the reason it's in violation of
4 the federal securities law is the material facts that were
5 disclosed in January of 2014, if they are not disclosed
6 either in writing or orally, would be a violation of law.
7 True?

8 MR. DeWULF: Object to form.

9 THE WITNESS: Again --

10 Q. In connection with the sale.

11 A. -- your assumption -- your assumption is that
12 they were not disclosed in any other way, and with that
13 assumption, yes, true.

14 Q. In your review of the materials, have you seen
15 any writing given to an investor that discloses the
16 material facts we talked about in January 2014?

17 A. I have not, no.

18 Q. All right. You had told me earlier that if you
19 continued using the POM, that something had to be said as
20 a minimum.

21 Do you recall that?

22 MR. DeWULF: Object to form.

23 THE WITNESS: Yes, I remember.

24 Q. And what was the minimum thing that had to be
25 said?

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1 A. At the very least, you would need to say this --
2 this POM, by its term -- terms expired on whatever the
3 date was, but we are continuing to use it and the offering
4 is the same as under the POM, or the offering is the same
5 as under the POM, except for whatever additional
6 disclosure you might make.

7 Q. Have you seen any written document to any
8 investor after January 2014 that says that?

9 A. I haven't seen any, no.

10 Q. All right. In any of the documents that Clark
11 Hill gave you to review, did you see anything like that?

12 MR. DeWULF: Again, I'll object.

13 THE WITNESS: I have not seen any or I don't
14 recall seeing any.

15 Q. All right. Let's turn to the next tab in that
16 exhibit, and that's going to get us to 2015. And 2015 is
17 going to start with an investment number 1, dated
18 October 1, 2015.

19 Do you see that?

20 A. Yes.

21 Q. It looks like this one has all six pages.
22 Actually, it looks like it's missing page 5, but it has
23 more of the pages of the Subscription Agreement, right?

24 A. It's missing pages 3 and 5 on the copy that I
25 have, but, yes.

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1 Q. It may have been Xeroxed --

2 A. Yeah.

3 Q. -- yeah.

4 In any event, this refers to an investment made
5 October 1, 2015, and it's made, again, by Mr. Bunger or
6 one of his entities, right?

7 A. Correct.

8 Q. And this Subscription Agreement again says that
9 he has received and reviewed the confidential Private
10 Offering Memorandum dated July 1, 2009, right?

11 A. Yes.

12 Q. And it has the representation we talked about
13 previously where he makes the representation that he
14 doesn't know anything inconsistent with the POM?

15 A. Correct.

16 Q. If this is all Mr. Bunger received, there was no
17 supplemental writing, there was no supplemental oral
18 disclosure, would this sale of security be in violation of
19 the federal securities law?

20 A. Again, with the assumption you are making, which
21 I do not know whether it is correct or not, yes. With
22 your assumption, yes.

23 Q. All right. Let me give you an additional fact,
24 because Mr. Bunger has been deposed. He did not receive
25 orally or in any way any further information at all.

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1 Assuming that fact, is this sale of security in
2 violation of federal law?

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

4 Go ahead.

5 THE WITNESS: Again, on that -- on that
6 assumption, yes.

7 Q. And I don't want to go through each of these.
8 You will notice there is several subscription agreements
9 for each year, and on the assumption I have given you,
10 they are all in violation of federal law if there hasn't
11 been further disclosures. True?

12 A. Again, with that -- with accepting your
13 assumptions, which I don't know whether the full evidence
14 will support, but accepting your assumptions, yes.

15 Q. So in your opinion, the report you prepared in
16 this case, you said that if the Private Offering
17 Memorandum had expired, DenSco could stop using the
18 expired Private Offering Memorandum entirely, but make
19 other disclosures, both orally and in writing, to replace
20 the expired Private Offering Memorandum?

21 A. Correct.

22 Q. All right. Was there anything you have seen in
23 the record that would suggest to you that DenSco stopped
24 using the expired POM after July 1 of 2013?

25 MR. DeWULF: Object to form.

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1 THE WITNESS: No.

2 Q. In fact, the documents you just looked at would
3 suggest that they continued using the POM all the way up
4 through 2015, right?

5 MR. DeWULF: Object to form.

6 THE WITNESS: The documents appear to have been
7 signed in 2015 and still refer to the POM, the incorrect
8 POM, but, yes.

9 Q. All right. And the incorrect POM told the
10 investors, "don't rely on anything else except what's
11 written in the POM." True?

12 A. True.

13 MR. DeWULF: Object to form.

14 THE WITNESS: That statement was in the POM.

15 Q. Well, and that statement is supposed to be true
16 under Rule 10b-5, correct?

17 MR. DeWULF: Object to form.

18 THE WITNESS: That statement, combined with any
19 other authorized statements provided by the company, are
20 supposed to be true.

21 Q. Would any other statement have to tell the
22 investor that this statement in the POM is not true, we
23 are telling you to rely now on something other than the
24 POM?

25 Would you have to say that?

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1 MR. DeWULF: Object to form.

2 THE WITNESS: The reality of what you are
3 disclosing to the investor is such that it is pretty
4 self-evident when those kinds of disclosures are made.

5 Frankly, that particular statement in the all
6 caps in the POM is boilerplate that everyone uses and is
7 often overlooked.

8 Q. The fact that it's boilerplate, does that mean
9 under federal law it doesn't have to be true?

10 MR. DeWULF: Object to form.

11 THE WITNESS: No.

12 Q. Under federal law, it has to be true, correct?

13 A. Correct.

14 MR. DeWULF: Object to form.

15 Q. You are not suggesting -- well, let me take that
16 back.

17 A. Well, let me -- let me clarify my statement.

18 It has to be true in the context of all other
19 disclosures. So if other disclosures have been made, that
20 particular statement in isolation may not be true.

21 Q. All right. Let's go back.

22 You have not seen any written supplemental
23 disclosures that were used after January 1 of 2014. True?

24 A. Correct.

25 Q. And you have given the general opinion, in your

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1 opinion letter, that the issuer of a security could give
2 supplemental oral disclosures and continue using the POM?

3 A. That's correct.

4 Q. If you are going to advise your client to make
5 supplemental oral disclosures, what does the standard of
6 care require a securities lawyer to do under the facts and
7 circumstances of this case in January 2014?

8 MR. DeWULF: Object to form.

9 THE WITNESS: In this case, I believe that
10 Mr. Beauchamp did the appropriate thing, that is he
11 advised Mr. Chittick that -- the thing to remember is that
12 your choice is to go silent and not make any further
13 sales, or if you are making further sales, make full and
14 adequate disclosure. Under Rule 506, that -- under a
15 Rule 506 offering to accredited investors, that disclosure
16 does not have to be in any form, and therefore you can
17 advise the client to make disclosure and allow -- and the
18 client, it's the client's decision what -- how to make the
19 disclosure.

20 In this particular case, Mr. -- Mr. Beauchamp
21 had clearly been working with Mr. Chittick for many, many
22 years, knew that Mr. Chittick was sophisticated and
23 understood the offerings that he was making, and I
24 personally, I believe, it's my opinion that he,
25 Mr. Beauchamp, was reasonable and met the standard of care

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1 in advising Mr. Chittick and providing answers to
2 questions Mr. Chittick asked about that, and relying on
3 Mr. Chittick as to the method and form of disclosure.

4 Q. I don't think you answered my question.

5 what does the standard of care require
6 Mr. Beauchamp to tell Mr. Chittick with respect to making
7 oral disclosures in January 2014?

8 MR. DeWULF: Object to form.

9 Q. What is he supposed to disclose?

10 A. I believe Mr. Beauchamp did that, that is he is
11 supposed to disclose the material developments that were
12 the subject of this -- of this whole meeting, the
13 double-liening issue and so forth.

14 Q. Well, telling me that the standard of care means
15 he is supposed to disclose so forth doesn't help me.

16 what in particular, under the standard of care
17 for securities lawyers practicing in the State of Arizona,
18 does he have to tell Mr. Chittick to disclose?

19 MR. DeWULF: Object to form.

20 THE WITNESS: The material -- the material
21 changes that have occurred. And I'm, frankly, not going
22 to try and create a laundry list, because I'll forget
23 something, but it's fundamentally the -- enough for an
24 investor to understand what the double-lien issue is, what
25 the scope of it is, and how it's being solved.

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1 Q. All right. Let me drill down on that.

2 The standard of care required Mr. Beauchamp to
3 tell Mr. Chittick you have to disclose the double-lien
4 issue.

5 Did I hear you right?

6 MR. DeWULF: Object to form.

7 THE WITNESS: Yes, but I think you are being
8 unfair in -- in -- in the form of the question, because
9 Mr. Beauchamp and Mr. Chittick have a long-term
10 relationship, and he -- he could well have satisfied that
11 requirement by saying all of this that we discussed, you
12 need to disclose the material parts of it and could be
13 confident that Mr. Chittick understood what that meant.

14 So I don't think there is any particular form of
15 words he needed to use. He needed to say what I believe
16 he has testified he did say, which is until you make
17 disclosure of the situation, the material developments to
18 investors, you can't take new money, and new money
19 includes rollover money, just to be clear.

20 Q. Sir, the standard of care -- well, let me go
21 back at it this way.

22 Is it unfair for Mr. Beauchamp, who is the
23 attorney who knows securities law, is it unfair to ask him
24 to tell Mr. Beauchamp these are the five or ten or six
25 material things that have to be disclosed to each

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1 investor?

2 MR. DeWULF: Object to form.

3 THE WITNESS: That depends upon the relationship
4 with Mr. Chittick and Mr. Beauchamp's beliefs about
5 Mr. Chittick's understanding of the situation.

6 If Mr. Chittick already is fully aware of the
7 issues that Mr. Menaged's behavior have -- and fraud have
8 created, for -- for David to then go through one by one
9 is, frankly, may well be a waste of time and effort.

10 If he is confident that Mr. Chittick understands
11 the overall situation and what that means, he would need
12 to answer questions if Mr. Chittick asks, "Well, what does
13 that mean," but if he believed that Mr. Chittick
14 understands the situation and understands the disclosure,
15 no, he would not have to go through a laundry list.

16 Q. Let me see if I have this right.

17 Mr. Beauchamp learns facts by January 10th,
18 2014, that he knows result in the Private Offering
19 Memorandum being deficient under federal securities law.
20 True?

21 A. True.

22 Q. And he knows that if DenSco continues to use
23 that Private Offering Memorandum without more, DenSco is
24 subject to civil and criminal liability under the federal
25 securities laws. True?

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1 MR. DeWULF: Object to form.

2 THE WITNESS: DenSco will be violating the
3 offering. What penalties it's subject to I don't think is
4 the subject of the discussion.

5 Q. Is it the subject of the standard of care that
6 the lawyer has to follow?

7 MR. DeWULF: Object to form.

8 THE WITNESS: The -- the lawyer needs -- the
9 lawyer's obligation is to help the client understand the
10 risks and issues arising out of the client's conduct and
11 proposed course of conduct.

12 Q. All right. And the lawyer cannot aid and abet
13 his client in committing a securities fraud. True?

14 MR. DeWULF: Object to form.

15 THE WITNESS: True.

16 Q. And the standard of care applicable to
17 Mr. Beauchamp is to give advice so that DenSco does not
18 commit a securities fraud. True?

19 A. Not true. It's -- his obligation is to advise
20 DenSco as to the -- as to the consequences of proposed
21 courses of action. It's then DenSco's decision whether to
22 engage in particular conduct.

23 At some point it may well be that Mr. --
24 Mr. Beauchamp and Clark Hill need to resign because they
25 can't countenance the choices that DenSco makes, but --

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1 but Mr. -- but the lawyer's role is not to direct the
2 client's actions. The lawyer's role is to advise the
3 client about the consequences of its actions or potential
4 consequences.

5 Q. But he doesn't -- he doesn't advise
6 Mr. Beauchamp, even by giving him a list of items, these
7 are the things you have to tell to each individual
8 investor.

9 He doesn't do that, does he?

10 MR. DeWULF: I think you misspoke.

11 THE WITNESS: I think you meant Mr. --

12 Q. Let me rephrase it. Let me rephrase it.

13 Mr. Beauchamp does not give Mr. Chittick a list
14 of bullet points that are the bare minimum he has to
15 disclose in these oral conversations with investors.
16 True?

17 MR. DeWULF: Object to form.

18 THE WITNESS: I have not seen any such list of
19 bullet points, no.

20 Q. All right. Does Mr. Chittick have to tell the
21 investors that he has learned that a cousin in
22 Mr. Menaged's business has defrauded him?

23 MR. DeWULF: Object to form.

24 Q. Yes or no?

25 A. I don't think that just the person who did it is

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1 material. I think the existence of the loss is the
2 material development, and the -- and, you know, so that
3 Mr. Chittick -- and, again, the key piece to -- to
4 remember on an accredited investor only offering,
5 especially if you are making oral disclosures, is that you
6 can go to the investor and say, "Here is what I know.
7 what more would you like to know?" and answer questions,
8 so that there isn't a laundry list of items you can create
9 of here is what you need to answer.

10 You are -- especially if you are making oral
11 disclosure, and it seems pretty clear that Mr. Chittick
12 was telling Mr. Beauchamp that he was making oral
13 disclosures, that's -- that's a dialogue between the
14 company and the investors.

15 Q. Sir, it is not a material fact that Mr. Chittick
16 was defrauded by an employee in Mr. Menaged's business who
17 took the money and went to Israel? That's not a material
18 fact? Is that what you are telling me?

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

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

21 MR. DeWULF: Object to form.

22 THE WITNESS: The details of who did it and how
23 they did it and where they took it may or may not be
24 material, but probably are not.

25 The important issue is that money -- that there

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1 was a fraud committed and that as a result of it, DenSco
2 was placed in a second position instead of a first
3 position in a number of loans, which increased its risk
4 with respect to those loans.

5 Q. Does Mr. Beauchamp have to tell Mr. Chittick in
6 his oral disclosures, you have to tell the investors that
7 you are giving 90 percent of the monies you lend directly
8 to the borrower, and because I do that, I was defrauded?

9 MR. DeWULF: Object to form.

10 THE WITNESS: First, I believe that you are
11 incorrect in the 90 percent of the monies he lent, since
12 trustee sales were not all of the loans that he made, but
13 if you want to amend that to 90 percent of the trustee
14 sales, no, not necessarily. It's the fraud that's the
15 issue.

16 Q. So you don't think an investor would care about
17 the way he put the money at risk? You don't think that's
18 a material fact?

19 MR. DeWULF: Object to form.

20 THE WITNESS: It's probably an important fact, a
21 material fact in terms of explaining the fraud. If there
22 had not been fraud and this was just an issue and it was
23 just a matter of him wiring the money to the borrowers,
24 there is nothing inconsistent with the POM. And in fact
25 if you look at his experience, except for Mr. Menaged, it

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1 appears that -- that's -- except -- there isn't any
2 evidence that I have seen that anyone other than
3 Mr. Menaged took advantage of the wiring directly to
4 borrowers.

5 Q. Okay. Do you think it's a material fact an
6 investor would want to know that someone in Menaged's shop
7 stole my money, but I'm going to keep giving money to
8 Mr. Menaged? Is that a material fact?

9 MR. DeWULF: Object to form.

10 THE WITNESS: If you are disclosing the
11 Forbearance Agreement plan and explaining, it's probably a
12 material fact to disclose it, yes.

13 Q. In January 2014, there was no Forbearance
14 Agreement?

15 A. There was a plan.

16 Q. All right. What does he -- what does he
17 materially have to disclose to the investor in
18 January 2014 as a minimum with respect to the plan?

19 MR. DeWULF: Object to form.

20 THE WITNESS: I can't tell you the specifics of
21 what he has to disclose. I was not there. I don't --
22 wasn't part of the relationship between Mr. Beauchamp and
23 Mr. Chittick. It depends on what the client's experience
24 and sophistication is.

25 Q. The client's experience and sophistication was

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1 such that he was defrauded. Is that a material fact?

2 MR. DeWULF: Object to form.

3 THE WITNESS: We have already agreed that the
4 client needs to disclose the existence of the fraud.

5 Q. And that the fraud occurred because of how he
6 was operating his business. True? He would have to
7 disclose that?

8 MR. DeWULF: Object to form.

9 THE WITNESS: The overall context would depend
10 upon -- it depends.

11 Q. All right. So let me see if I understand you,
12 sir.

13 You are saying that in January 2014,
14 Mr. Beauchamp could rely on Mr. Chittick to talk to each
15 of the investors and disclose all the material facts that
16 would make the securities offering comply with Rule 10b-5,
17 right?

18 A. He can tell Mr. Chittick what he testified that
19 he did tell Mr. Chittick, which is that these facts are
20 sufficiently material that until you disclose them, you
21 can't take new money or rollover money.

22 And he knows that Mr. Chittick has been
23 providing -- I shouldn't say that. It seems evident that
24 Mr. Chittick had been providing investors with updated
25 information on a regular basis, and he could -- Mr. --

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1 Mr. Beauchamp could accept Mr. Chittick's assurance that
2 he was making appropriate disclosures.

3 Q. And you think that is, quote, reasonable?

4 A. Yes.

5 Q. Have you ever done that in your actual practice?

6 MR. DeWULF: Object to form.

7 THE WITNESS: Have I relied on clients to make
8 decisions and --

9 Q. Sir, in this situation --

10 MR. DeWULF: Were you finished in your answer?

11 THE WITNESS: Yes, I do rely on my clients all
12 the time.

13 Q. In this situation, sir, where a sole-man company
14 had been defrauded, would you rely on the owner of the
15 business to make disclosures orally, without your
16 presence, that comply with Rule 10b-5?

17 MR. DeWULF: Object to form.

18 THE WITNESS: One, I am having -- having never
19 had a role in meeting with investors, it would be -- yes,
20 I would rely on the client. So, yes, I would rely on the
21 client.

22 Let me add to that.

23 Q. Go ahead. Add all you want.

24 A. If you have, you know, the context of these
25 answers are a long-term relationship where Mr. Beauchamp

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1 had -- had observed Mr. Chittick solving very difficult
2 problems over the years, including managing the company
3 through a recession in which many, many hard-money lenders
4 went out of business, and addressing the issues that that
5 created with his investors.

6 So that the context of that, if -- if
7 Mr. Chittick had come to me in December of 2013 and I was
8 a new -- he was a new client, that would be a different
9 question than if Mr. Chittick came to me in 2000 and has
10 demonstrated a capacity to deal with problems over the
11 course of a decade. So that the context of the
12 relationship between Mr. Beauchamp and Mr. Chittick is an
13 important element in what is appropriate to rely on
14 Mr. Chittick and what is not.

15 Q. Sir, Mr. Beauchamp testified under oath that he
16 had advised Mr. Chittick multiple times not to give money
17 directly to the borrower.

18 You recall that?

19 A. I do.

20 Q. And despite that advice, Mr. Chittick, in
21 90 percent of his transactions, gave the money directly to
22 the borrower.

23 MR. DeWULF: Object to form.

24 Q. True?

25 A. 90 percent of the trustee sale transactions,

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1 yes.

2 Q. And based on that experience, your testimony is
3 that it is reasonable for Mr. Beauchamp to make full
4 disclosure under Rule 10b-5 orally without any bullet
5 points, any written agreement, or anything else. True?

6 A. Did you mean Mr. Chittick?

7 Q. Mr. Chittick. It's reasonable for him to rely
8 on Mr. Chittick after that experience?

9 A. Yes.

10 Q. Then why was he doing an update to the Private
11 offering Memorandum in April of 2014?

12 A. Well --

13 MR. DEWULF: By "he" you mean Beauchamp or
14 Chittick?

15 MR. CAMPBELL: Beauchamp.

16 THE WITNESS: The Private Offering Memorandum is
17 a more efficient way of making full disclosure than oral
18 and written disclosures and meeting with clients. That's
19 why -- that's why even though the regulations do not
20 require any specific form of disclosure in an accredited
21 investors only offering, there is no requirement for a
22 POM.

23 On the other hand, the -- the POM has become
24 normally used in transactions, like in most -- and most
25 accredited investor offerings, because it's an efficient

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1 way of providing full disclosure.

2 And so once the Forbearance Agreement was
3 complete and you had a set of facts that had become not
4 moving and that you could make disclosure of in a written
5 way, it would make sense to do an update to the POM.

6 Q. But that's the client's choice, right?

7 A. Yes.

8 Q. In fact, I thought you said in your private
9 offering or in your opinion letter that you don't even
10 need a POM. You can just make oral disclosures.

11 A. That's correct.

12 Q. And from what I hear you say, from January on,
13 it was reasonable for Mr. Beauchamp and Clark Hill to rely
14 upon Mr. Chittick to do all these oral disclosures, and in
15 fact they thought it was reasonable and it was all done.
16 Right?

17 A. Well, if that's what you heard, you are slightly
18 off. It was Mr. Beauchamp and Clark Hill's duty to advise
19 Mr. Chittick that he needed to make disclosure. And if
20 Mr. Chittick asked questions about, well, what do I need
21 to disclose, to work with him to identify what needed to
22 be disclosed. It was then reasonable for Mr. Beauchamp to
23 accept Mr. Chittick's statements that he was making full
24 disclosure and focus his efforts on putting the
25 forbearance in place so that you could replace that oral

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1 disclosure, because facts were changing, with something
2 that described the Forbearance Agreement in a final POM.

3 MR. CAMPBELL: Can you read that back to me.

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

5 Q. Did Mr. Chittick ask Mr. Beauchamp what he
6 needed to disclose?

7 A. I have not seen any -- I haven't seen testimony,
8 unless I am forgetting something.

9 Q. All right. Did Mr. Chittick ask Mr. Beauchamp
10 what he needed to disclose any time between January 10th,
11 I'm talking about oral disclosures, any time between
12 January 10th, 2014, and the time the Forbearance Agreement
13 was signed?

14 MR. DeWULF: Object to form.

15 THE WITNESS: I don't recall seeing any -- any
16 emails or so forth, but I could have forgotten something.

17 Q. Did you see anything that would indicate that
18 Mr. Beauchamp asked Mr. Chittick, tell me in detail what
19 you are telling investors?

20 MR. DeWULF: Object to form.

21 THE WITNESS: No.

22 (Deposition Exhibit No. 961 was marked for
23 identification.)

24 Q. If you will just take a moment to look at 961.
25 And what is Exhibit 961?

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1 A. It looks like it's Mr. Schenck's draft of the
2 POM changes.

3 Q. Is this a final draft of a Private Offering
4 Memorandum?

5 A. Definitely not.

6 Q. Okay. It's definitely not. Why do you say it's
7 "definitely not"?

8 A. Well, I'm going to turn to a page that I think I
9 remember, if this is the version that I think I'm looking
10 at.

11 If you -- if you look to the prior performance
12 on page -- starting on page 36 and, well, especially on
13 page 38 -- and this is just an example. This is -- it's
14 throughout -- but when you get to performance in 2012,
15 2013 and 2014 and the other material there, it's blank
16 because that's information that Mr. Chittick needed to
17 provide in order to complete the disclosure.

18 Q. Have you seen any email transmitting Exhibit 961
19 to Mr. Chittick?

20 A. No.

21 MR. DeWULF: Colin, are you going to introduce
22 any other versions of the draft of the POM?

23 MR. CAMPBELL: No.

24 MR. DeWULF: Okay. So then for the record,
25 there is a draft that is an exhibit that contains

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1 handwritten notes by Mr. Schenck as well, just so the jury
2 knows that.

3 MR. CAMPBELL: I'm not trying to fool anyone.
4 My recollection is this is the last draft in the file.

5 MR. DeWULF: It's the last draft as it relates
6 to the marginalia, but there is a draft that contains
7 handwritten notes in the margins.

8 MR. CAMPBELL: After May '14?

9 MR. DeWULF: Well, I don't know the date of it,
10 but it's --

11 MR. CAMPBELL: The reason I took this one is I
12 thought this was the last draft.

13 MR. DeWULF: I think, as it relates to the
14 typewritten material, this is the latest draft. What I'm
15 saying is that there contains -- there is an exhibit which
16 has in the margins handwritten notes by Daniel Schenck.

17 MR. CAMPBELL: Okay. Does it have a date?

18 MR. DeWULF: I don't recall off the top of my
19 head.

20 MR. CAMPBELL: On this one we have a date
21 because of the email, but...

22 Q. Okay. What I would like you to do is turn to
23 page 39 and 40.

24 A. Here I had closed it up. I was already at 38.
25 Okay.

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1 Q. You will see on page 39, it starts, the third
2 paragraph, the second full paragraph says, "In April 2014,
3 the Company agreed to a forbearance agreement."

4 Do you see that?

5 A. Yes.

6 Q. So this is a draft attempt to try and update the
7 Private Offering Memorandum, right?

8 A. Correct.

9 Q. It's not a final. True?

10 A. Correct.

11 Q. Have you read this?

12 A. Yes, although I didn't study it.

13 Q. Okay. In this draft agreement, it does not
14 discuss the fraud that was committed by Menaged's cousin,
15 right?

16 A. I believe that's correct.

17 Q. It does not discuss that in 90 percent of the
18 transaction, DenSco gave money directly to the borrower,
19 transactions for deeds of trust. True?

20 A. True.

21 MR. DeWULF: Could I have that read back,
22 please.

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

24 MR. DeWULF: Object to form.

25 THE WITNESS: I haven't studied this looking for

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1 things like that, so I will take your word that it does
2 not, but I -- I have -- I can't confirm it myself, unless
3 you want to take the time to read the entire thing.

4 Q. All right. This particular disclosure does not
5 say that the Forbearance Agreement applies to over
6 \$30 million in loans. True?

7 MR. DeWULF: Object to form.

8 THE WITNESS: That's because it -- it
9 contemplates that number will be put in because there is a
10 blank for it.

11 Q. All right. But the Forbearance Agreement was
12 done in April, right?

13 A. Correct.

14 Q. This is May 14th.

15 A. Correct.

16 Q. It does not list the number of homes that have
17 second liens?

18 A. Correct.

19 Q. It does not discuss the issue with respect to
20 diversity of borrowers. True?

21 MR. DeWULF: Object to form.

22 THE WITNESS: Correct.

23 Q. In fact, it doesn't even indicate what
24 percentage of borrowers DenSco is in May of 2014, right?

25 A. Yes, although there are some pretty extensive

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1 blanks that might well eventually include that
2 information.

3 Q. It doesn't indicate whether or not DenSco is
4 still lending directly to the borrower. True?

5 A. Except to the extent that the Forbearance
6 Agreement contemplates a workout process.

7 Q. It doesn't indicate whether even now, in May of
8 2014, after the Forbearance Agreement, after the fraud,
9 whether DenSco is still lending directly to its borrowers
10 as opposed to giving money to the trustee. True?

11 MR. DeWULF: Object to form.

12 THE WITNESS: Again, that one -- that one is one
13 that I have not read this in enough detail to be confident
14 of, but I will take your word for it.

15 Q. All right. Well, you wouldn't call this, if
16 this were the final of the Private Offering Memorandum, do
17 you think this is sufficient?

18 MR. DeWULF: Object to form.

19 Q. Or you just haven't studied it or looked at it?

20 A. My -- my -- my instinct is that a document like
21 this is a product of an iterative process between the
22 client and the lawyer, and that the client's information
23 often raises issues that the lawyer, in drafting, will
24 say, "well, if that's the facts, then we need to do this
25 as well."

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1 Q. Okay.

2 A. So that I would -- I would expect, had
3 Mr. Chittick been willing to continue the process and
4 provide all of the information that's called for in the
5 blanks and in the other places where questions are raised,
6 that this was not a process of just filling in the blanks
7 for Mr. Chittick and declaring it final, that the
8 information Mr. Chittick provided would lead to additional
9 changes.

10 Q. Mr. Beauchamp is not a blank slate on May 14th
11 of 2014, is he?

12 A. No.

13 MR. DEWULF: Object to form.

14 Q. He has gone through multiple versions of the
15 Forbearance Agreement with Mr. Menaged and his lawyer,
16 Jeff Goulder, right?

17 A. Right.

18 Q. He has a complete list of all of the loans
19 attached to the Forbearance Agreement. I think it's
20 \$35 million in loans, right?

21 MR. DEWULF: Object to form.

22 THE WITNESS: I believe Mr. Schenck was still
23 working on finalizing some of that, but I will take your
24 word that by then he had that information, yes.

25 Q. He knew all about the fraud purportedly caused

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1 by Mr. Menaged's cousin?

2 A. Yes.

3 Q. He had the letter on the direct borrowing?

4 Anyway, in any event, are you suggesting in any
5 way that Mr. Beauchamp had incomplete facts in May of 2014
6 in terms of drafting a Private Offering Memorandum?

7 MR. DeWULF: Object to form.

8 THE WITNESS: Two -- two pieces to that answer.

9 First, yes, he did have incomplete facts because
10 Mr. Chittick would have the more complete facts.

11 Second, and this is really -- well, second, the
12 financial arrangement in terms of Mr. Chittick's
13 preference about how to do this was such that, as I
14 understand it, Mr. Chittick wished to minimize attorney's
15 fees, and one of the ways you do that in an offering like
16 this where diligence is not part of the lawyer's retainer,
17 is not part of the project that the lawyer is retained to
18 do, just as -- just as DenSco did not retain an accountant
19 to do audited financial statements for it as part of the
20 disclosure in the POM. I know that they had a
21 relationship with an accountant, but I believe he only did
22 their taxes and did not -- he certainly didn't audit the
23 financial statements.

24 well, in a -- in an offering involving
25 nonaccredited investors, you would be required to provide

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1 the written information comparable to the extant material,
2 to what you would do in a public offering, and therefore
3 you would have the accountants and lawyers doing extensive
4 due diligence.

5 One of the ways that accredited investor only
6 offerings are made economically feasible is the -- one of
7 the consequences, and it doesn't have to be in any
8 particular form, is that the clients generally do their
9 own diligence, and that means that the clients prefer to
10 provide the information so that they are not paying the
11 lawyer to go and extract information that is just as
12 readily available, in fact more readily available to the
13 client.

14 So, no, Mr. Beauchamp -- Mr. Beauchamp would not
15 be expected to fill in these blanks, even if he may well
16 have the data in connection with another matter, because
17 Mr. Chittick had demonstrated a preference for doing all
18 this work himself and saving the fees.

19 MR. CAMPBELL: What was my question?

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

21 Q. All right. Going back to something you
22 previously said in your opinion letter or opinion report,
23 whatever you want to call, you state that Mr. Chittick's
24 history and relationship with Mr. Beauchamp was one that
25 appears to demonstrate Chittick's professionalism, desire

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1 to operate DenSco in full compliance with law and
2 willingness to follow the obligations and guidelines set
3 forth in the POM.

4 Those are your words, right?

5 A. Correct.

6 Q. Let's go to Mr. Wertlieb's report. And let's go
7 to -- let's just start with pages 9 and 11.

8 Okay. In the materials you reviewed, you
9 reviewed information about the FREO lawsuit in the summer
10 of 2013. True?

11 A. Yes.

12 Q. And Mr. Chittick forwarded the FREO lawsuit to
13 Mr. Beauchamp, right?

14 A. Yes.

15 Q. And there is a paragraph in the lawsuit that
16 indicated that both Active Lending and DenSco had
17 contemporaneous deeds of trust on the same property.

18 A. I saw that paragraph in the complaint, yes.

19 Q. And that's -- that's part of the double-liening
20 issue we have been talking about, right?

21 MR. DEWULF: Object to form.

22 THE WITNESS: It's -- it's the first small piece
23 of data about it that I have seen, yes.

24 Q. All right. And Mr. Beauchamp told Mr. Chittick
25 that this has to be disclosed. True?

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1 MR. DeWULF: Object.

2 THE WITNESS: Correct.

3 Q. Have you seen any written disclosure of that
4 fact on or after June 15th of 2013 to investors?

5 A. No.

6 Q. Did you see Mr. Beauchamp prepare -- did you see
7 any draft of a written disclosure that Mr. Beauchamp
8 prepared of that lawsuit to the investors?

9 A. No.

10 Q. When we looked at the 2011 POM, remember we
11 looked at a section that said because this is a continuous
12 offering, it has to be updated from time to time.

13 Remember that?

14 A. Uh-huh.

15 Q. That's a yes?

16 A. Yes. Sorry.

17 Q. And to your knowledge, Mr. Beauchamp never
18 updated the POM and disclosed the FREO lawsuit. True?

19 A. Correct.

20 Q. Even in his 2014 disclosure POM, he does not
21 disclose the FREO lawsuit. True?

22 MR. DeWULF: Object to form.

23 THE WITNESS: That's true, except that there is
24 a -- there are blanks for disclosure of losses and claims
25 in 2012, '13, and '14 that I would expect would ultimately

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1 include that and other losses that Mr. -- that DenSco had
2 suffered.

3 Q. Let me see if I understand what you are saying.

4 You are saying that if Mr. Beauchamp had done a
5 final POM, that it probably would have been in that?

6 MR. DeWULF: Object to form.

7 THE WITNESS: I would anticipate that it would
8 be in that, yes.

9 Q. All right. You understand that Mr. Beauchamp
10 left Bryan Cave in August of 2013, who he had been
11 employed by?

12 A. Yes.

13 Q. And he went to work at Clark Hill in early
14 September 2013?

15 A. Yes.

16 Q. And upon coming to work with Clark Hill, he
17 opened up a file for DenSco at Clark Hill labeled, you
18 know, updating the Private Offering Memorandum?

19 A. Correct.

20 Q. And you read Mr. Beauchamp's deposition?

21 A. Yes.

22 Q. And you understand that Mr. Beauchamp was
23 recommending to DenSco and Mr. Chittick that they had to
24 update their Private Offering Memorandum?

25 A. Yes.

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1 Q. That's what you would expect, right,
2 Mr. Beauchamp to do?

3 A. Yes.

4 Q. And he had done private offering memorandums
5 every two years, right?

6 A. Correct.

7 Q. And each one of the -- well, at least 2011, I'm
8 sure each one before it, said that you are not to rely on
9 anything except what's in this Private Offering
10 Memorandum, right?

11 A. Correct.

12 Q. Do you recall what Mr. Beauchamp said he was
13 advised to do by Mr. Chittick?

14 A. When you say what he was advised to do, what do
15 you mean?

16 Q. Well, Mr. Beauchamp testified under oath --

17 A. Yes.

18 Q. -- that he was advised by Mr. Chittick to stop
19 work on the Private Offering Memorandum.

20 A. That's correct. I understood that. I wasn't
21 sure what -- what time Mr. Chittick told Mr. Beauchamp
22 that you were referring to, but yes.

23 Q. All right. But Mr. Chittick's advice is to
24 update the Private Offering Memorandum?

25 A. You mean Mr. Beauchamp?

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1 Q. Correct.

2 A. Yes.

3 Q. And Mr. Beauchamp had said in the summer, we
4 have to update it to include this FREO lawsuit, right?

5 A. Correct.

6 Q. What did Mr. Beauchamp do in September --
7 MR. DeWULF: Object to form.

8 Q. -- 2013?

9 A. He stopped work, as Mr. Chittick instructed him
10 to.

11 Q. Did he advise DenSco to stop soliciting
12 securities money, or let me strike that.

13 Did he advise DenSco to stop selling securities?

14 MR. DeWULF: Object to form.

15 THE WITNESS: Not that I'm aware.

16 Q. Did he advise DenSco to stop selling securities
17 until they updated their Private Offering Memorandum?

18 MR. DeWULF: Object to form.

19 THE WITNESS: Not that I'm aware.

20 Q. Did he advise Mr. Chittick, you have to orally
21 talk to each investor and tell them about the FREO
22 lawsuit?

23 MR. DeWULF: Object to form.

24 THE WITNESS: Not that I'm aware.

25 Q. You understand there was a December 2013 phone

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1 call between Mr. Beauchamp and Mr. Chittick?

2 A. Yes.

3 Q. And you are aware that in this phone call,
4 Mr. Chittick told Mr. Beauchamp, according to
5 Mr. Beauchamp, that there were several double-liening
6 problems?

7 A. Yes.

8 Q. Did Mr. Beauchamp give DenSco any securities
9 advice after learning that?

10 A. I don't --

11 MR. DeWULF: Object to form.

12 THE WITNESS: I don't recall any disclosure
13 issues raised in that call.

14 Q. Did Mr. Beauchamp advise DenSco, stop selling
15 securities until you take -- make disclosures to
16 investors?

17 A. Not that I'm aware.

18 Q. Did Mr. Beauchamp tell DenSco that they had to
19 talk to each investor before they took a rollover and let
20 them know about this double-liening problem?

21 MR. DeWULF: Object to form.

22 THE WITNESS: Not that I'm aware.

23 Q. Why don't you turn to pages 42 to 47.

24 A. Of?

25 Q. Of Mr. Wertlieb's report.

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1 On pages 42 to 47 of Mr. Wertlieb's report, he
2 describes the types of things that a hard-money lender
3 like DenSco has to do to process his transactions.

4 Have you reviewed this portion of the report?

5 A. I have -- I have read it lightly. I haven't --
6 I haven't studied it at this -- at this point yet.

7 Q. I tell you what. Why don't we take a break. I
8 would like you just to read this, and I'm going to ask you
9 if you disagree with any of it.

10 A. Okay.

11 MR. DeWULF: So then --

12 Go ahead and go off the record.

13 VIDEOGRAPHER: The time is 10:44 a.m. We are
14 going off the record, ending media two.

15 (A recess was taken from 10:44 a.m. to
16 11:00 a.m.)

17 VIDEOGRAPHER: My name is Mary Onuschak with the
18 firm of Legal Video Specialists, Phoenix, Arizona. This
19 begins media three of the videotaped deposition of Kevin
20 Olson. The time is 11:00 a.m. We are now back on the
21 record.

22 MR. DeWULF: So I'm going to go on the record
23 just for a moment.

24 MR. CAMPBELL: Sure.

25 MR. DeWULF: Off the record counsel has asked

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1 us -- Mr. Olson to review pages 42 to 47 specifically
2 starting heading number 3, to page 47, heading number 4.
3 And it's a lot of information, but a jury will obviously
4 see this eventually. There are a lot of footnotes, it's
5 dense, and as the expert has already testified, we have
6 not asked him to study this at this point, so we have
7 taken a break to do our best with that.

8 Go ahead. Kevin.

9 Q. I think I need to ask a question.

10 A. I hope so.

11 Q. All right. You have now had the opportunity to
12 review pages 42 to 47 that we asked you to review?

13 A. Yes.

14 Q. All right. And this concerns, at least
15 Mr. Wertlieb is trying to describe the types of things a
16 hard-money lender does in processing a transaction?

17 A. Correct.

18 Q. Do you have any reason to agree or disagree with
19 respect to the type of actions he describes a hard-money
20 lender has to do?

21 MR. DeWULF: Object to form.

22 THE WITNESS: With respect to the general
23 description, I don't have any reason to disagree.

24 Q. And that's the only question I have.

25 A. Okay.

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1 MR. DeWULF: That dollar is just almost out of
2 my pocket.

3 THE WITNESS: There you go.

4 Q. I want you to turn to page 18 and 20 of
5 Mr. Wertlieb's report.

6 A. Now you are confusing me going back and forth.

7 MR. DeWULF: What pages?

8 MR. CAMPBELL: 18 to 20.

9 THE WITNESS: The description of the Forbearance
10 Agreement?

11 Q. Yes, he is talking about the Forbearance
12 Agreement. And I want you to look at, if you look at
13 page 18 -- and, again, you indicated you had quickly
14 reviewed this.

15 Do you recall reviewing this material on the
16 Forbearance Agreement?

17 A. Yes.

18 Q. And actually you have an opinion, if I recall,
19 your opinion is that the Forbearance Agreement was in
20 DenSco's interests. True?

21 A. Correct.

22 Q. I want to look at the bullet points he has,
23 starting on page 18.

24 A. Uh-huh.

25 Q. So bullet point one, "DenSco agreed to forbear

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1 from collecting on the loans to Mr. Menaged and his
2 affiliated entities (the 'Menaged Loans'), or otherwise
3 exercising any of its rights or remedies under the Loan
4 Documents and applicable law, for so long as Mr. Menaged
5 and the Borrower were in compliance with the Forbearance
6 Agreement."

7 Do you agree or disagree with that statement?

8 A. I haven't studied the Forbearance Agreement, but
9 I think that's right, yes.

10 Q. Okay. He goes on to say in the next bullet
11 point, "DenSco agreed to extend the maturity date on all
12 of the Menaged Loans to February 1, 2015 and reserved the
13 right to further extend the maturity date for another
14 year."

15 Do you agree or disagree with that statement?

16 A. I believe that's correct.

17 Q. Third bullet point, "DenSco committed a fund not
18 less than an additional \$6 million to the Borrower, most
19 of which would be used to pay off the other lenders."

20 Do you agree or disagree with that statement?

21 A. I believe that's correct.

22 Q. Fourth bullet point, "DenSco agreed to defer the
23 collection of interest on all Menaged Loans, and to waive
24 its right to charge default interest on all defaulted
25 loans."

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1 Do you agree or disagree?

2 A. I believe they did that, yes.

3 Q. Next bullet point, "Contrary to the disclosures
4 made in the 2011 POM, DenSco agreed to increase its
5 loan-to-value ratio to up to 120% for loans on the double
6 lien properties (meaning that the debt on such properties
7 was materially in excess of the realizable value of such
8 properties)."

9 Do you agree or disagree?

10 A. I disagree with the -- the -- the contrary to
11 the disclosures made in the 2011 POM. That, I don't think
12 it's clear that the POM actually -- it's not clear that
13 the POM violated, that this agreement violated anything
14 specific in the POM in terms of loan-to-value ratio,
15 because the loan-to-value ratio discussed in the POM is
16 aggregate and is objective, but --

17 Q. Do you remember when we went through the 2011
18 POM earlier --

19 A. Uh-huh.

20 Q. -- there was a section that talked about each
21 deed of trust, and it said with respect to each deed of
22 trust, they were going to try to and realize 70 percent
23 and perhaps 50 to 60 percent?

24 A. Yes, but deed of trusts are a different -- are a
25 different asset that you are buying than foreclosed

1 properties.

2 Q. Sir, you understand that DenSco is giving money
3 to people who go to the county courthouse, buy foreclosed
4 properties, fix them up and flip them?

5 A. Yes.

6 MR. DeWULF: Object to form.

7 Q. All right. So in fact Mr. Menaged would get
8 monies, use it to pay for the property at the deed of
9 trust sale, right?

10 A. Yes.

11 Q. And the Private Offering Memorandum says with
12 respect to those deeds of trust that are being funded by
13 DenSco, DenSco is going to try to get at least a
14 70 percent loan-to-value ratio?

15 MR. DeWULF: Object to form.

16 THE WITNESS: I think you are making a technical
17 mistake there. The deeds of trust, as I understand it,
18 DenSco's business involved at least two different ways of
19 acquiring assets. One is to lend money to borrowers in
20 foreclosure sales and then -- as you describe. The second
21 is to buy deeds of trust from existing lenders and acquire
22 the -- and acquire the loan and asset through acquiring
23 directly a deed of trust that someone already owns the
24 property.

25 And my understand -- my understanding of the POM

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1 was that with respect to that second piece where you are
2 more confident about the asset value of the property,
3 because if there has been a flip and improvements, those
4 likely already been made, because normally people buying
5 in foreclosure try to act pretty quickly to improve the
6 property and flip it, as opposed to when you are buying it
7 in foreclosure, the improvements haven't been made yet, so
8 you may not, you may well not be able to achieve the same
9 loan-to-value ratio initially. So I think you are just
10 technically wrong --

11 Q. All right.

12 A. -- in terms of the POM.

13 Q. Well, the POM says what it says, right?

14 A. Correct.

15 Q. So we can just go back to the POM and we can see
16 what it says. But other than that disagreement about what
17 the POM says --

18 A. The rest is correct.

19 Q. And in the final bullet point, "DensCo
20 committed, for the benefit of Mr. Menaged, to limit the
21 information that DensCo could disclose to its investors
22 (including omitting the names of Mr. Menaged and his
23 entities), and granted Mr. Menaged the right to review and
24 comment on any disclosure prior to it being released."

25 Do you agree --

KEVIN LORY OLSON, 5/17/2019

1 MR. DeWULF: Object to form.

2 Q. Do you agree or disagree?

3 MR. DeWULF: Object to form.

4 THE WITNESS: I believe the -- the
5 Confidentiality Agreement and the Forbearance Agreement is
6 consistent with that, yes.

7 Q. I want you to go down to the next paragraph,
8 starting with the second sentence, and he is talking about
9 the Forbearance Agreement.

10 In substance, because it had the effect of
11 subordinating DenSco recovery to the recovery of the other
12 lenders (by conceding the priority of the other lenders'
13 liens), the Forbearance Agreement was essentially the same
14 as the subordination agreements that Mr. Chittick rejected
15 as being inconsistent with assurances made to DenSco's
16 investors.

17 Do you agree or disagree with that statement?

18 MR. DeWULF: Object to form.

19 THE WITNESS: I disagree with that sentence.
20 It's -- it produces a similar result, but it's not
21 essentially the same.

22 Q. All right. Sir, you understand that under the
23 Forbearance Agreement, on properties that were double
24 liened, the other lenders were paid off before DenSco.
25 True?

KEVIN LORY OLSON, 5/17/2019

1 MR. DeWULF: Object to form.

2 THE WITNESS: I understand that that was the
3 process.

4 Q. All right. And then let's look at the next
5 sentence. Quote, "By allowing the other lenders to be
6 paid off before DenSco, Mr. Chittick's Plan, as
7 effectuated by the Forbearance Agreement, had the effect
8 of worsening DenSco's financial position by increasing the
9 leverage on the double lien properties such that there was
10 insufficient residual equity value to repay DenSco's loans
11 in full."

12 Do you agree --

13 MR. DeWULF: Object to form.

14 Q. (BY MR. DeWULF) -- or disagree?

15 A. I disagree with that statement.

16 Q. And why do you disagree?

17 A. Because you have to consider it in the context
18 of what the alternatives were. That is to say, if that
19 statement said it was putting DenSco in a financial
20 position worse than it intended because it intended to
21 have been in first positions, yeah, that's correct.

22 But the context of the Forbearance Agreement is
23 important. These things have already happened. There --
24 if -- if they did not enter into the Forbearance
25 Agreement, almost certainly there would have been

KEVIN LORY OLSON, 5/17/2019

1 extensive litigation, multi-party litigation, including
2 Mr. Menaged and his entities, DenSco and the lenders on
3 the other -- the lenders who also lent on these
4 properties.

5 And so in that context, it's not at all clear
6 that this puts -- puts DenSco in a worse position than
7 they were immediately -- than they were, once the facts on
8 the ground were that there were these double-lien issues.

9 Q. All right. Turn to exhibit or page 26 of
10 Mr. Wertlieb's report. And I just want to turn to the
11 events following Mr. Chittick's suicide, and I want to
12 understand, you have expressed some securities opinions on
13 this.

14 A. Uh-huh.

15 Q. You are not expressing any opinions as to
16 whether there was a conflict of interest in any
17 representation after Mr. Chittick committed suicide.
18 True?

19 A. That's correct.

20 Q. You are deferring those issues to Mr. Rhodes,
21 right?

22 A. Correct.

23 MR. CAMPBELL: We are done. Where is my dollar?

24 VIDEOGRAPHER: Are we ready to end the
25 deposition, Counsel?

KEVIN LORY OLSON, 5/17/2019

1 MR. DeWULF: We are.

2 VIDEOGRAPHER: The time is 11:12 a.m. This
3 concludes the deposition with media three.

4 MR. DeWULF: We will read and sign.

5 (11:12 a.m.)

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KEVIN LORY OLSON

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KEVIN LORY OLSON, 5/17/2019

BE IT KNOWN that the foregoing proceeding was taken before me; that the witness before testifying was duly sworn by me to testify to the whole truth; that the questions propounded to the witness and the answers of the witness thereto were taken down by me in shorthand and thereafter reduced to typewriting under my direction; that the foregoing is a true and correct transcript of all proceedings had upon the taking of said deposition, all done to the best of my skill and ability.

I CERTIFY that I am in no way related to any of the parties hereto nor am I in any way interested in the outcome hereof.

☒ Review and signature was requested.
☐ Review and signature was waived.
☐ Review and signature was not requested.

I CERTIFY that I have complied with the ethical obligations in ACJA Sections 7-206(F)(3) and 7-206-(J)(1)(g)(1) and (2).

Kelly Sue Oglesby
Kelly Sue Oglesby
Arizona Certified Reporter No. 50178

5/26/2019

Date

I CERTIFY that JD Reporting, Inc. has complied with the ethical obligations in ACJA Sections 7-206(J)(1)(g)(1) and (6).

JD REPORTING, INC.
Arizona Registered Reporting Firm R1012

5/26/2019

Date