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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,

v.

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

Defendants.

No. CV2017-013832

**PLAINTIFF'S REPLY IN SUPPORT  
OF MOTION FOR A SANCTION  
FOR LATE DISCLOSURE OF THE  
"IRREGULARITIES EMAIL"**

(Assigned to the  
Honorable Daniel Martin)

(Oral Argument Requested *and, If  
Necessary, an Evidentiary Hearing*)

1 Defendants' Response raises more questions than it answers. Their answers  
2 concede important details: Defendants admit that they did not disclose the Irregularities  
3 Email until years after they were required to. And they admit that their failure meant  
4 that the Receiver did not learn of the Irregularities Email until long after deposing the  
5 two crucial witnesses who participated in that email exchange: David Beauchamp and  
6 Mark Sifferman.

7 But many questions remain. Trying to stave off a sanction, Defendants blame  
8 the discovery violation on an "inadvertent" oversight. But their own explanation is  
9 materially incomplete, demonstrates an intent to improperly withhold information, and  
10 indicates a wider systemic failure in their discovery procedures.

11 Defendants claim that (1) they incorrectly marked the Irregularities Email as  
12 "privileged" in August 2017 and withheld it; then (2) they decided that the Irregularities  
13 Email was "responsive" in August 2018 but did not change the "privileged" marker and  
14 continued withholding it; then (3) their "counsel team" decided, at "some point" after  
15 Beauchamp's deposition, that the Irregularities Email was not, in fact, privileged, but  
16 they continued withholding it; and then (4) they happened to include the Irregularities  
17 Email in a production to their expert in April 2019, which is how the Receiver  
18 eventually found out about it. (Decl. of Marvin Ruth, **Resp. Ex. A**, at ¶¶ 9-18.)

19 Even accepting this explanation, serious questions need answers. If the  
20 Irregularities Email had been marked as privileged since August 2017, *why didn't*  
21 *Defendants identify it on a privilege log?* Why didn't Defendants notify the Receiver,  
22 before the depositions of Beauchamp and Sifferman, that they were withholding a  
23 relevant email exchange on grounds of privilege? Who decided that the Irregularities  
24 Email was not, in fact, privileged, and when and how was that decision made? *And*  
25 *once Defendants decided that the Irregularities Email was not privileged, why didn't*  
26 *they immediately disclose it to the Receiver?* Indeed, once Defendants decided that the  
27 Irregularities Email was not privileged, did they take any steps at all to determine  
28 whether it had been previously disclosed?

1 Even more troubling: What other documents have been treated similarly and are  
2 therefore still unknown to the Receiver? The Receiver got lucky with the Irregularities  
3 Email. Defendants happened to include it in a production to their expert, and the  
4 Receiver found out about it by asking pointed questions about the document numbers  
5 given to the expert. But how many other relevant documents were marked as  
6 privileged, never identified on a privilege log, and never given to an expert and thus  
7 their existence has not been revealed? The Receiver has no way of knowing.

8 In short, Defendants say that their violation was inadvertent, but the  
9 circumstances show otherwise.

10 **A. The Irregularities Email is Highly Relevant.**

11 The parties dispute whether, and to what extent, Defendants terminated their  
12 representation of DenSco in May 2014. (*Compare* Mot. at 2-4 *with* Resp. at 9-11.) The  
13 Irregularities Email is directly relevant to that dispute. (Mot. Ex. 1.) It is an email  
14 exchange between Beauchamp and Sifferman, on the day Beauchamp learned that  
15 DenSco’s principal, Denny Chittick, committed suicide. (*Id.*) In the email exchange,  
16 Beauchamp described DenSco as a “client”—even though he now claims to have  
17 terminated representation two years earlier. (*Id.*; *see also* Receiver’s Responses to  
18 Defendants’ Motions for Summary Judgment, filed 1/1/20.)

19 In addition, the parties sharply dispute whether Beauchamp can be trusted at all.  
20 Key elements of Defendants’ case hang on Beauchamp’s credibility. Yet the  
21 Irregularities Email is powerful evidence that Beauchamp should not be trusted. In the  
22 email exchange, Beauchamp told the managing partner and resident assistant general  
23 counsel at his firm that he did not know of “any irregularities” with DenSco’s fund.  
24 (Mot. Ex. 1.) But other evidence makes clear that Beauchamp knew of enormous  
25 irregularities with DenSco’s fund. After all, Chittick had told Beauchamp that DenSco  
26 had been defrauded out of *millions of dollars*, and Beauchamp had agreed to help  
27 Chittick continue raising money from investors and worked with Chittick and Menaged  
28 to develop a forbearance agreement *without disclosing the fraud*. (*See* Receiver’s

Responses to Defendants’ Motions for Summary Judgment, filed 1/1/20.) Indeed, even on Defendants’ view of the facts, the reason Defendants allegedly terminated their representation of DenSco in May 2014 is that they knew Chittick had been raising money without adequate disclosures – *i.e., because of irregularities with the fund*. Who could believe Beauchamp given his deception to his own law firm management?

Defendants claim that the Irregularities Email “does not deserve the significance the Receiver seeks to attribute to it.” (Resp. at 9-11.) The Receiver expects that the jury will disagree. The jury will view the Irregularities Email as strong evidence that Defendants did not terminate their representation of DenSco in May 2014, that Beauchamp cannot be trusted, and that Defendants made up an evolving story about the termination within weeks of the Irregularities Email after the Securities Division of the Arizona Corporation Commission and DenSco investors started asking questions about Clark Hill’s role in DenSco’s failure.

**B. Defendants Did Not Disclose the Irregularities Email on Any Privilege Log During the Time They Deemed It Privileged, Despite a Specific Request by the Receiver’s Counsel for Such Documents.**

In August 2016, after appointment of the Receiver – and only a few weeks after the Irregularities Email – the Receiver’s counsel (Ryan Anderson) asked Defendants for their “entire file” concerning their representation of DenSco. (Mot. at 5.) In making that request, the Receiver’s counsel made clear that the Receiver was entitled to the entire file, and was the holder of any privilege that might attach to it.<sup>1</sup> But in October 2016, Defendants responded by producing only what they privately described as “the portions of the file that [Beauchamp] need[s] to protect against a securities claim.”

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<sup>1</sup> The Receiver’s counsel cited “an extensive body of law recognizing a receiver’s right to exercise the privileges and property rights of the receivership entity.” (Letter from Pl.’s Counsel Ryan Anderson to Def. David Beauchamp dated 8/29/16, **Mot. Ex. 6**, at page 1.) Defendants do not dispute that the Receiver is the holder of DenSco’s privileges.

1 (Mot. at 5-6.)<sup>2</sup> The Irregularities Email was not given to the Receiver at that time.

2 In June 2017, the Receiver’s counsel (Osborn Maledon) asked Defendants to  
3 “supplement” their production, including with “electronic files.” (Mot. at 6.) Because  
4 the Receiver held DenSco’s privileges, the Receiver’s counsel did not expect  
5 Defendants to withhold any documents. The Receiver’s request prompted defense  
6 counsel to compile electronic files, including the Irregularities Email, in a database.  
7 (Resp. Ex. A at ¶ 5.)

8 In August 2017, as part of this “supplemental” production, defense counsel say  
9 they marked the Irregularities Email as “privileged” in their database and withheld it  
10 from production. (Resp. Ex. A at ¶ 9.) But *no privilege log was ever provided*. So the  
11 Receiver’s counsel, who was not expecting any documents to be withheld, had no way  
12 of knowing that the Irregularities Email – or any other relevant document – was being  
13 withheld on privilege grounds.

14 In July 2018, the Receiver’s counsel deposed Beauchamp. It was a long, two-  
15 day deposition. The Receiver’s counsel questioned Beauchamp extensively about his  
16 claim that he had terminated representation of DenSco in May 2014. (Excerpts of  
17 Beauchamp Depo., attached hereto as **Reply Exhibit 1**, at 194:5–199:14.) The  
18 Receiver’s counsel also specifically asked Beauchamp whether he notified his firm  
19 management about Chittick’s suicide, and Beauchamp said he did not remember  
20 sending an email about it. (**Reply Ex. 1** at 98:3–99:20.) But the Receiver’s counsel  
21 did not know about the Irregularities Email and had not received any privilege log about  
22 it, and thus was unable to use the Irregularities Email in questioning.

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23  
24 <sup>2</sup> Specifically, Beauchamp told another attorney in a September 2016 email: “I  
25 just talked to Mark Sifferman, who is just back today after a couple weeks in Italy.  
26 Mark does not want me to spend the money to digitize the files for the Receiver and he  
27 does not want me to spend the time to review all of the files for attorney-client  
28 information. *He just wants me to review and make copies of the portions of the file  
that I need to protect against a securities claim against me and the firm.*” (Mot. Ex.  
9 (emphasis added).) Defendants’ Response makes no attempt to address this email.

1 In August 2018, the Receiver's counsel prepared to depose Mark Sifferman. On  
2 August 14, 2018, the Receiver's counsel asked defense counsel for "all" of Sifferman's  
3 documents "relating to DenSco":

4 We are preparing for Mark Sifferman's August 31 deposition. We have  
5 reviewed all documents Clark Hill has produced to date for references to Mr.  
6 Sifferman. *Would you please confirm that Clark Hill's previous*  
7 *productions included all documents relating to DenSco that Mr. Sifferman*  
*maintained while he was affiliated with Clark Hill?*

8 (Email from Pl.'s Counsel Geoffrey Sturr to Defs.' Counsel John DeWulf dated  
9 8/14/18, attached hereto as **Reply Exhibit 2** (emphasis added).)

10 The Irregularities Email was directly responsive to that request. It was one of  
11 Sifferman's documents. And it related to DenSco.

12 Defense counsel admit that on August 16, 2018 – two days after the Receiver's  
13 counsel requested Sifferman documents – they marked the Irregularities Email as  
14 "responsive" in their database. (Resp. Ex. A at ¶ 11.) They did not remove the  
15 "privileged" marker, however. (*Id.*)

16 These events prove two things. **First**, defense counsel knew that the  
17 Irregularities Email was relevant. Not only was it relevant to the questioning of  
18 Beauchamp that had already occurred, it was also directly responsive to the Receiver's  
19 request for Sifferman documents in preparation for the upcoming deposition. **Second**,  
20 defense counsel knew that the Irregularities Email was still marked as "privileged" and  
21 thus had not yet been disclosed. As a result, defense counsel had two options:

22 (1) Expressly withhold the Irregularities Email on privilege grounds and provide  
23 a privilege log, as required by Rule 26(b)(6)(A); or

24 (2) Disclose the Irregularities Email.

25 But defense counsel did neither. Instead, defense counsel sent the Receiver's counsel  
26 a letter and email on August 29 and August 30, 2018, attaching selected documents.  
27 (Letter from Defs.' Counsel John DeWulf to Pl.'s Counsel Geoffrey Sturr dated  
28 8/29/18, attached hereto as **Reply Exhibit 3**; Email from Defs.' Counsel John DeWulf

1 to Pl.’s Counsel Geoffrey Sturr dated 8/30/18, attached hereto as **Reply Exhibit 4.**) But  
2 neither the letter nor the email mentioned that there were any emails between  
3 Beauchamp and Sifferman relating to DenSco – much less any emails on the day of  
4 Chittick’s suicide in which Beauchamp described DenSco as a “client” and claimed not  
5 to know of “any irregularities” with DenSco’s fund.<sup>3</sup>

6 On August 31, 2018, the Receiver’s counsel deposed Sifferman. Question topics  
7 included (i) whether Beauchamp terminated representation of DenSco in May 2014,  
8 (ii) when and how Sifferman learned of Chittick’s suicide, and (iii) what Beauchamp  
9 told Sifferman after Chittick’s suicide. (Excerpts of Sifferman Depo., attached hereto  
10 as **Reply Exhibit 5**, at 42:10–43:22; 45:8–48:8.) But again, the Receiver’s counsel did  
11 not know about the Irregularities Email and had not received any privilege log about it,  
12 and thus was unable to use the Irregularities Email in questioning.

13 **C. Defendants Did Not Produce the Irregularities Email Once They**  
14 **Decided It Was Not Privileged, and the Receiver Only Discovered It**  
15 **Through Fortuity.**

16 Defense counsel claim that, at “some point,” their “counsel team” decided that  
17 the Irregularities Email was not privileged. But they are frustratingly vague about who  
18 actually made this decision and when and how the decision was made. Here is what  
19 defense counsel say:

20 . . . It is unclear when exactly counsel team made the determination that the  
21 Irregularities Email was not privileged. It is also unclear whether counsel  
22 team determined on August 16, 2018 that the Irregularities Email was not  
privileged, and had simply failed to correctly tag the document.

23 Counsel cannot reconstruct precisely when counsel team determined  
24 that the Irregularities Email was not privileged.

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25 <sup>3</sup> In fact, the document attached to defense counsel’s email affirmatively  
26 indicated that there were *no* such emails between Beauchamp and Sifferman. That  
27 document was Sifferman’s time entries. Sifferman’s first time entry relating to DenSco,  
28 according to defense counsel’s redactions, was on August 10, 2016 – nearly two weeks  
after the Irregularities Email. (**Reply Ex. 4**, at CH\_0018012.)

1           At some point on or after August 16, 2018, however, counsel team  
2           made the determination that the Irregularities Email did not rise to the level  
3           of an attorney-client privileged conversation. . . .

4           (Resp. Ex. A at ¶¶ 11-13.)

5           Of course, once defense counsel decided that the Irregularities Email was not  
6           privileged, they were required to produce it under Rule 26.1. So, by being vague about  
7           who made the decision and when and how it was made, defense counsel are claiming  
8           inadvertence without giving any information that would support or otherwise allow  
9           examination of that claim.

10          For example, defense counsel claim: “Counsel failed to immediately produce  
11          the Irregularities Email to opposing counsel once counsel determined that the document  
12          was not privileged. That mistake was inadvertent.” (Resp. Ex. A at ¶ 18.) But wait.  
13          **Who** was on the “counsel team” that determined that the Irregularities Email was not  
14          privileged?<sup>4</sup> **When** was that decision made? **Why** did those decision makers not  
15          immediately produce the Irregularities Email after making that decision? **What** did  
16          those decision makers do instead? Answers to these questions are necessary to  
17          determine whether the failure to produce really was “inadvertent.”<sup>5</sup>

18          Defense counsel then claim that, after deciding the Irregularities Email was not  
19          privileged, they “mistakenly believed that the Irregularities Email had been produced.”  
20          (Resp. Ex. A at ¶ 14.) But again, this is a claim of inadvertence without any information  
21          to support the claim or otherwise allow examination. **Who** believed that the  
22          Irregularities Email had already been produced? **Why** did that person believe that?  
23          **What steps** did that person take to determine whether it had been produced? Answers

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24           <sup>4</sup> For example: Did the “counsel team” include general counsel from Clark Hill?  
25           Was the client involved in the determination?

26           <sup>5</sup> The lack of detail in defense counsel’s account makes one wonder: How do  
27           defense counsel know that *anyone* decided that the Irregularities Email was not  
28           privileged? After all, it is still marked as “privileged” in their database. (Resp. Ex. A  
          at ¶ 11.) If no one knows who made the decision or when or how it was made, one  
          wonders whether the decision was made at all.



1 to these questions are necessary to determine whether the belief that the Irregularities  
2 Email had been produced really was “mistaken.”<sup>6</sup>

3 To make matters worse, this was not a situation where the offending party  
4 realized their failure on their own and took the initiative to correct it. Quite the opposite.  
5 Defendants happened to include the Irregularities Email in a production to their expert.  
6 (Resp. Ex. A at ¶ 15.) Only after Defendants disclosed the list of documents they gave  
7 their expert, in April 2019, did the Receiver’s counsel notice that some of those  
8 documents did not readily match previously produced documents and begin asking  
9 questions. (Mot. at 6-7.) And even then, when Defendants finally did produce the  
10 Irregularities Email, they merely stated that it was “not clear” whether it had been  
11 produced before. (Mot. at 7.) Indeed, Defendants did not list the Bates number  
12 assigned to the Irregularities Email on any disclosure statement until September 13,  
13 2019, the agreed-upon deadline for final disclosure statements. (Mot. at 7.)

14 **D. Intent Is Not Required for the Requested Sanction, But Regardless,**  
15 **There Is Clear Evidence of Intent Here. If the Court Has Doubt, an**  
16 **Evidentiary Hearing Would Be Necessary.**

17 Defendants argue that the sanction being requested here requires a finding of  
18 “intent.” (Resp. at 11-12.) And they claim that their years-long failure to disclose the  
19 Irregularities Email – either on a privilege log or in a production – was “inadvertent.”  
20 (Resp. at 4-8.) They are wrong on the law and wrong on the facts.

21 **First**, the law does not require intent for a sanction of a jury instruction regarding  
22 untimely disclosure. Rule 37(c)(1), which generally governs failure to timely disclose,  
23 does not require intent. It states, in relevant part: “In appropriate circumstances, the  
24 court may also order any of the sanctions set forth in Rule 37(g)(2)(B).” It is true that  
25 Rule 37(g)(2)(B), which governs failure to preserve ESI, requires a finding “that the

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26  
27 <sup>6</sup> Defense counsel evidently did not check their database to determine whether  
28 the Irregularities Email was produced. If they had, they would have seen that the  
Irregularities Email was still marked as “privileged.” (Resp. Ex. A at ¶ 11.)

1 party acted with the intent to deprive another party of the information's use in the  
2 litigation" before certain sanctions may be imposed. But that requirement applies to  
3 violations of Rule 37(g): failure to preserve ESI. It does not apply to violations of Rule  
4 37(c)(1): failure to timely disclose.

5 Moreover, Rule 37(d), which specifically governs failure to timely disclose  
6 "unfavorable information," merely requires knowledge, not intent. It states, in relevant  
7 part: "If a party or attorney knowingly fails to make a timely disclosure of damaging  
8 or unfavorable information required under Rule 26.1, the court may in its discretion  
9 impose any sanctions the court deems appropriate in the circumstances."

10 **Second**, in any event, the facts here show intent. To summarize:

11 (1) In response to a request by the Receiver's counsel (Ryan Anderson) for  
12 Defendants' "entire file" for DenSco, Defendants produced only "the portions of the  
13 file that [Beauchamp] need[s] to protect against a securities claim."

14 (2) Then, in response to a request by the Receiver's counsel (Osborn Maledon) to  
15 "supplement" production, defense counsel marked the Irregularities Email as  
16 "privileged" but withheld it and did not provide a privilege log.

17 (3) Then, in response to a request by the Receiver's counsel (Osborn Maledon) for  
18 "all" of Sifferman's documents on DenSco, defense counsel marked the Irregularities  
19 Email as "responsive" but still withheld it and still did not provide a privilege log.

20 (4) After an unknown "counsel team" decided, at "some point," that the  
21 Irregularities Email was not, in fact, privileged, Defendants still withheld it.

22 (5) But for the fact that Defendants gave the Irregularities Email to their expert, the  
23 Receiver would not have learned about it at all.

24 These facts show intent. Withholding a document is an intentional act. Not  
25 providing a privilege log is an intentional act. Letting Beauchamp and Sifferman  
26 answer questions directly related to the Irregularities Email, without mentioning that  
27 any such email existed, is an intentional act. Defense counsel's claim that they acted  
28 "inadvertently" is unaccompanied by details that would support their claim or allow

1 examination. And Defendants offer no explanation for the lack of a privilege log.

2 But if the Court believes intent is required and doubts whether intent has been  
3 proven, the Receiver respectfully requests an evidentiary hearing to determine:

4 . Why didn't Defendants provide a privilege log when they first withheld the  
5 Irregularities Email as "privileged"?

6 . Why didn't Defendants provide a privilege log when they marked the  
7 Irregularities Email as "responsive" but continued to withhold it, even after the  
8 Receiver's counsel requested all of Sifferman's documents relating to DenSco?

9 . Who was on the "counsel team" that decided that the Irregularities Email was  
10 not, in fact, privileged? When and how was that decision made? Once that decision  
11 was made, why wasn't the Irregularities Email immediately disclosed?

12 . Who believed that the Irregularities Email had already been produced? Why did  
13 that person hold that belief? Did he or she take any steps to investigate?

14 **E. Prejudice Is Not Required Either, But Regardless, the Untimely**  
15 **Disclosure Did Prejudice the Receiver.**

16 Defendants argue that prejudice is a "key element" in determining sanctions.  
17 (Resp. at 11.) And they argue that, because the Receiver now has the Irregularities  
18 Email, "the Receiver will be able to prosecute his case without any prejudice." (Resp.  
19 at 12.) Again, they are wrong on the law and wrong on the facts.

20 **First**, the law does not require a finding of prejudice for the sanction of a jury  
21 instruction regarding untimely disclosure. Rule 37(c)(1), which generally governs  
22 failure to timely disclose, does not require a finding of prejudice to impose a sanction.  
23 Rather, it requires a finding of *no* prejudice to *avoid* a sanction. It states, in relevant  
24 part, that a court may order sanctions "[u]nless the court specifically finds that such  
25 failure caused no prejudice or orders otherwise for good cause." So, where prejudice  
26 is unclear, a sanction may still be imposed.

27 Moreover, Rule 37(d), which specifically governs failure to timely disclose  
28 "unfavorable information," does not mention prejudice at all.

1           **Second**, in any event, the facts here show prejudice. To summarize:

2       **(1)**    At Beauchamp's deposition, the Receiver's counsel asked about when  
3       Beauchamp terminated representation of DenSco and what Beauchamp told his firm  
4       management after Chittick's suicide. Had the Receiver's counsel known of the  
5       Irregularities Email, he would have used it at that deposition.

6       **(2)**    At Sifferman's deposition, the Receiver's counsel asked about when Beauchamp  
7       terminated representation of DenSco, how Sifferman learned of Chittick's suicide, and  
8       what Beauchamp told Sifferman after the suicide. Had the Receiver's counsel known  
9       of the Irregularities Email, he would have used it at that deposition too.

10      **(3)**    Defendants did not produce the Irregularities Email until April 2019 – nine  
11      months after Beauchamp's deposition and eight months after Sifferman's deposition.

12      **(4)**    Even when Defendants produced the Irregularities Email, they did not point out  
13      its existence except by Bates number. They suggested (via a paralegal's letter) that it  
14      may have already been produced and did not disclose any information that would show  
15      it was a previously unknown email on the day of Chittick's suicide between Beauchamp  
16      and Sifferman. And they did not list it in any disclosure statement until the agreed-  
17      upon deadline for final disclosure statements in September 2019. As a result, the  
18      Receiver's counsel did not discover it until preparing his own final disclosure statement.

19           Thus, the Receiver's counsel was prejudiced because he did not learn of the  
20      Irregularities Email until near the end of discovery, long after Beauchamp and  
21      Sifferman had been deposed. Defendants' suggestion that the Receiver's counsel could  
22      simply have "requested additional discovery" (Resp. at 3) improperly shifts the  
23      consequences of their own failure to the Receiver and ignores the realities of litigating  
24      this case. Even assuming Defendants would have allowed a re-deposition of  
25      Beauchamp and Sifferman near the end of discovery, the Receiver is eager to go to trial  
26      and does not wish to prolong discovery, and any re-deposition would have given the  
27      witnesses an unfair opportunity to put a different spin on prior testimony. A jury  
28      instruction is an appropriate sanction in this circumstance.

1 RESPECTFULLY SUBMITTED this 10th day of February, 2020.

2 OSBORN MALEDON, P.A.

3  
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and copy delivered\*/e-served via the  
11 AZTurboCourt eFiling system  
this 10th day of February, 2020, on:

12  
13 Honorable Daniel Martin\*  
Maricopa County Superior Court  
14 101 West Jefferson, ECB-412  
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24 8394959

# **Exhibit 1**

IN THE SUPERIOR COURT OF THE STATE OF ARIZONA

IN AND FOR THE COUNTY OF MARICOPA

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

Plaintiff,

vs.

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

Defendants.

NO. CV2017-013832

VIDEOTAPED DEPOSITION OF DAVID GEORGE BEAUCHAMP

VOLUME I  
(Pages 1 through 233)

Phoenix, Arizona  
July 19, 2018  
9:03 a.m.

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

PREPARED FOR:

1 and I think immediately after Denny's suicide, but I don't  
2 remember specifically.

3 Q. well, you think that immediately after  
4 Mr. Chittick's suicide you notified the risk manager?

5 A. well, there is many factors that go into  
6 notifying the risk factor, and one of the factors is if  
7 you are working with a client that is investing other  
8 people's funds and the person commits suicide, that's a  
9 triggering event whether or not there has been any  
10 allegation against you.

11 Q. Is there a practice and policy of Clark Hill  
12 that states this?

13 A. Not that I recall, but I do remember in one of  
14 my previous firms that had been presented by a class as  
15 something to remember in terms of to advise the carrier  
16 immediately when these facts happen.

17 Q. where were you working when you heard this?

18 A. It -- it could have been Bryan Cave. It could  
19 have been Quarles & Brady. I don't remember.

20 Q. Okay.

21 A. But it was in the last seminar I was at.

22 Q. So when Mr. Chittick died, like Mr. Dan Coats  
23 would say, you had red lights flashing that this was  
24 something you should notify your risk manager of?

25 MR. DeWULF: Object to form.



1 THE WITNESS: When Mr. Chittick died, I was --  
2 he was -- he was a friend and I was emotionally upset, but  
3 I -- I realized this fell into a category of facts and  
4 circumstances that I needed to let somebody at the firm  
5 know, despite the fact that I was still trying to collect  
6 the necessary facts that would both help Shawna, DenSco,  
7 and also I would need to provide to the firm.

8 Q. (BY MR. CAMPBELL) Did you notify him by email?

9 A. That would be a protected communication, and I  
10 don't remember if it was in person or by email.

11 Q. My question was, did you notify him by email,  
12 and your answer is you don't know?

13 A. I don't remember.

14 Q. Do you think you notified him orally?

15 A. He was literally just down the hall from me and  
16 so a lot of times I would walk in and say when you have a  
17 moment, let me know, because we need to talk about  
18 something. And we did that with conflict letters all the  
19 time, and I think that is probably what I did here. I  
20 don't recall doing it as an email.

21 Q. All right. So fair to say, though, that your  
22 employer, Clark Hill, knew fairly quickly after  
23 Mr. Chittick's death that you thought there might be a  
24 risk issue here?

25 MR. DeWULF: Object to form.

1 THE WITNESS: Very shortly after Denny's  
2 suicide, I knew there was facts and circumstances that I  
3 needed to make sure the firm knew about for reporting  
4 purposes.

5 I hadn't thought through what my personal risk  
6 or the firm's risk was at that time. I was simply trying  
7 to deal with the facts, which were like standing in the  
8 face of -- well, that were emotionally overwhelming at  
9 times.

10 Q. (BY MR. CAMPBELL) who was your client in this  
11 case, Mr. Beauchamp?

12 A. DenSco.

13 Q. DenSco was always your client?

14 A. I believe at one point in time, when DenSco was  
15 looking to invest in a title insurance company, we went to  
16 open a matter under Denny Chittick, and it -- it got put  
17 in -- he wanted it done under DenSco, because DenSco was  
18 going to get the benefit of it, so they should -- they  
19 should pay the legal fees going forward.

20 I -- I know I signed the affidavit with respect  
21 to the receivership hearing --

22 Q. Did I ask you that question, sir?

23 A. DenSco was my client. Denny Chittick, as the  
24 president, CEO, was the person I interacted with.

25 Q. Go to Volume 3, Exhibit No. 137.

1 firm of Legal Video Specialists, Phoenix, Arizona. This  
2 begins media six of the videotaped deposition of David G.  
3 Beauchamp. The time is 3:31 p.m. We are now back on the  
4 record.

5 Q. (BY MR. CAMPBELL) All right. Mr. Beauchamp,  
6 when we broke we were on the 26.1 disclosure statement,  
7 page 5. And you will see from line 12 to line 23, you  
8 describe your termination of representation of DenSco,  
9 correct?

10 Wait a minute. That might be the wrong part.  
11 That's 2013.

12 MR. DEWULF: I'm lost here.

13 Q. (BY MR. CAMPBELL) Turn to page 15, I'm sorry,  
14 line 8.

15 So you state under oath that, "In May 2014,  
16 Mr. Beauchamp handed Mr. Chittick a physical copy of the  
17 draft POM and asked him what Mr. Chittick's specific  
18 issues were with the disclosure. Mr. Chittick responded  
19 there was nothing wrong with the disclosure, he was simply  
20 not ready to make any kind of disclosures to his investors  
21 at this stage. Mr. Beauchamp again explained that  
22 Mr. Chittick had no choice in the matter and that he had a  
23 fiduciary duty to his investors to make these disclosures.  
24 Mr. Chittick would not budge. Faced with an intransigent  
25 client who was now acting contrary to the advice

1 Mr. Beauchamp was providing, and with concerns that  
2 Mr. Chittick may not have been providing any disclosures  
3 to anyone since January 2014, Mr. Beauchamp informed  
4 Mr. Chittick that Beauchamp and Clark Hill could not and  
5 would not represent DenSco any longer."

6 That's your best memory of what happened?

7 A. Yes.

8 Q. When in May 2014 did you have this conversation?

9 A. Approximately May 20th. May 18th, May 20th,  
10 somewhere in there, give or take a few days.

11 Q. Okay. Turn to Exhibit No. 11.

12 So Exhibit No. 11 is -- it's your invoice.  
13 Well, there is a cover letter for legal services through  
14 the end of May, and it's dated June 25th, 2014, correct?

15 A. Correct.

16 Q. You bill all your time. True?

17 MR. DeWULF: Object to form.

18 THE WITNESS: I review it, and if there is a  
19 question as to value or whatever, I make adjustments as is  
20 required under the ethical rules, so...

21 Q. (BY MR. CAMPBELL) I notice on the cover letter  
22 for June 25th, there is no statement in here "we have  
23 terminated our representation."

24 A. No. There should have been, but there isn't.  
25 And I believe I did that simply because Daniel Schenck was

1 still trying to clean up issues on the foreclosure  
2 agreement, although I was no longer involved, at Denny's  
3 and my mutual agreement.

4 Q. Before you -- before you terminated with  
5 Mr. Chittick, as I understand it, you had a conversation  
6 with the general counsel of Clark Hill?

7 A. Correct.

8 Q. When you terminated Mr. Chittick, did you write  
9 a letter saying: Dear Mr. Chittick, we represent DenSco.  
10 Here is the advice we gave you. You are not following our  
11 advice. We think you are committing securities fraud. We  
12 can't be parties to that. We urge you to come into  
13 compliance with the law, but we cannot represent you  
14 because we can't be part of securities fraud.

15 Did you write a letter like that?

16 A. No, I did not.

17 MR. DeWULF: Object to form.

18 Q. (BY MR. CAMPBELL) Why would you have not  
19 written a letter, after talking to general counsel,  
20 putting in writing that you were terminating Mr. Chittick  
21 and why you were terminating Mr. Chittick?

22 MR. DeWULF: Object to form.

23 THE WITNESS: Denny had indicated he was already  
24 in consultation with other securities counsel. He would  
25 not give me a name. And I said, "well, we will get the

1 files cleaned up and transfer them since you are going to  
2 have other counsel to handle your securities work going  
3 forward." And I -- I did not write and send a letter.

4 Q. (BY MR. CAMPBELL) All right. Well, you only  
5 did not write and send a letter; you didn't even do a  
6 handwritten note in the file that you terminated. True?

7 A. Well, Daniel Schenck and I were the only ones  
8 doing work at the time, and we had discussed it and he  
9 understood that he was simply doing work on the, you know,  
10 cleanup of the forbearance, because we were done with this  
11 client.

12 Q. I wasn't asking you about Mr. Schenck.  
13 You didn't create any written document  
14 whatsoever, a note to the file, a handwritten typed to  
15 your calendar page, there was not a single piece of  
16 writing in May of 2014 that I can look to that says: Oh,  
17 here is David saying he is terminating his representation.

18 A. I was coordinating the steps with Mark  
19 Sifferman, and -- and Denny had said: Don't bother, don't  
20 send me a letter. I'm looking for other counsel. So I  
21 didn't do it. I didn't do it.

22 Q. There is nothing in the file, in your file,  
23 Mr. Beauchamp, in May of 2019 (sic) that you talked to  
24 Mr. Sifferman or had any conversation with anyone in the  
25 firm about termination.

1       A.    I believe at that time in conversations with  
2   Mr. Sifferman, I was advised to --

3           MR. DeWULF:   Don't talk about privileged  
4   communications, but you can talk about an event, if you  
5   wish to.   Be careful about what you say.

6       Q.    (BY MR. CAMPBELL)   If you have a concern whether  
7   you are going to violate a privilege, I will let you step  
8   outside and talk to your counsel so you don't.

9           THE WITNESS:   I should do that.

10          MR. DeWULF:   I trust --

11          THE WITNESS:   Okay.   No.

12          MR. DeWULF:   I trust your judgment on this.   I  
13   just want to make sure you are thinking about it.

14          THE WITNESS:   Yeah.

15          MR. CAMPBELL:   And I want to be protective.

16          MR. DeWULF:   No, I get it and I appreciate it.  
17   Thank you for the gesture.   I want to --

18               Are you comfortable, David, going forward?

19               Let's take a minute.

20          THE WITNESS:   No.   Give me -- give me a minute.

21          VIDEOGRAPHER:   The time is 3:39 p.m.   We are  
22   going off the record, ending media six.

23               (A recess was taken from 3:39 p.m. to 3:42 p.m.)

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

25          VIDEOGRAPHER:   My name is Mary Onuschak with the

1 firm of Legal Video Specialists, Phoenix, Arizona. This  
2 begins media six of the videotaped deposition of David  
3 Beauchamp. The time is 3:42 p.m. We are now back on the  
4 record.

5 THE WITNESS: Thank you. Thank you for  
6 rereading the question, but just to clarify, I think you  
7 said May 2019. We are referencing 2014.

8 Q. (BY MR. CAMPBELL) Correct.

9 A. Just -- okay.

10 No, I don't believe there is anything in the  
11 file. The billing records show work ceased. I talked  
12 with Denny Chittick. He acknowledged it. He said he was  
13 talking with other counsel, and I advised the appropriate  
14 people within my firm that that was the conclusion.

15 Q. Who was the appropriate people within the firm  
16 you advised?

17 MR. DeWULF: I think you can say.

18 THE WITNESS: Mark Sifferman.

19 Q. (BY MR. CAMPBELL) Was he the only one?

20 A. I'm sorry?

21 Q. Was he the only one?

22 A. I think I also advised the head of the corporate  
23 group, but I don't remember for sure, because he had been  
24 involved with various questions during it as well.

25 Q. What was his name?



1 I would hope to God he would be completely honest, like he  
2 had been in other instances previously.

3 Q. (BY MR. CAMPBELL) Did you ever stop to think  
4 that the work you were doing would prevent an audit of his  
5 books?

6 MR. DeWULF: Object to form.

7 THE WITNESS: In my past experience with the  
8 Arizona Department of Financial Institutions, they audit  
9 the loans closed, not the company.

10 MR. CAMPBELL: Why don't we break for the day  
11 and we will start tomorrow at 9:00.

12 MR. DeWULF: Okay.

13 VIDEOGRAPHER: The time is 4:32 p.m. We are  
14 ending for the day with media seven.

15 (Deposition Exhibit Nos. 103 through 432 were  
16 marked for identification.)

17 (4:32 p.m.)

18

19

20

---

DAVID GEORGE BEAUCHAMP

21

22

23

24

25

# **Exhibit 2**

**From:** [Geoff Sturr](#)  
**To:** [John E. DeWulf](#)  
**Cc:** [Colin Campbell](#); [Marvin Ruth](#); [Vidula Patki](#)  
**Subject:** Davis v. Clark Hill, et al: Mark Sifferman  
**Date:** Tuesday, August 14, 2018 5:32:27 PM

---

John,

We are preparing for Mark Sifferman's August 31 deposition. We have reviewed all documents Clark Hill has produced to date for references to Mr. Sifferman. Would you please confirm that Clark Hill's previous productions included all documents relating to DenSco that Mr. Sifferman maintained while he was affiliated with Clark Hill?


We have not been able to find any calendar entries for Mr. Sifferman or Mr. Beauchamp which reflect dates on which they may have met to discuss matters relating to DenSco. Would you please confirm that the calendars of both men were searched for entries relating to DenSco and that all such calendar entries, if any were found, have been produced?

Lastly, we would like to receive in advance of Mr. Sifferman's deposition any documents that identified Mr. Sifferman as a member of Clark Hill's Office of General Counsel or as a person in Clark Hill's Scottsdale office tasked with addressing matters of professional liability or professional responsibility, if such documents exist. Please produce any such documents pursuant to Rule 26.1.

Thank you.

Geoff

**Geoffrey M. T. Sturr**

[Profile](#) | [Add me to your address book](#) | 

[2929 North Central Avenue](#)

[21st Floor](#)

[Phoenix, Arizona 85012](#)

Telephone 602.640.9377

Facsimile 602.640.9050

[gsturr@omlaw.com](mailto:gsturr@omlaw.com)

[omlaw.com](http://omlaw.com)

# **Exhibit 3**

COPPERSMITH  
BROCKELMAN  
LAWYERS

**John E. DeWulf**

jdewulf@cblawyers.com  
PH. (602) 381-5475  
FAX (602) 224-6020

2800 North Central Avenue, Suite 1900  
Phoenix, Arizona 85004  
CBLAWYERS.COM

August 29, 2018

**VIA EMAIL and U.S. MAIL**

Geoffrey Sturr, Esq.  
OSBORN MALEDON, P.A.  
2929 North Central Avenue, 21<sup>st</sup> Floor  
Phoenix, Arizona 85012

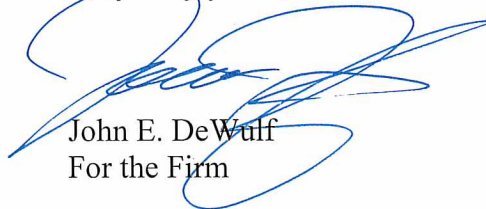
Re: *DenSco Investment Corporation/Clark Hill, PLC*

Dear Geoff:

In response to your August 17, 2018 email, enclosed are documents relating to the firm intake for the business wind down and Firm Responsibilities and Structure. They are produced as CH\_0017997-CH\_0018010. We continue to try to locate Sifferman's calendar and scheduling documents but have thus far been unsuccessful.

If you have any questions, please do not hesitate to contact me.

Very truly yours,



John E. DeWulf  
For the Firm

JED/vlc  
Enclosure

**A. Select one:**☐**New Client**

To identify related clients, please link this new client to client # \_\_\_\_\_

Is New Client an Insurance Company? If yes, Insurance Conflicts Committee member must approve this opening.

☒**New Matter for an Existing Client**Client Name: DenSco Investment CorporationClient #: 43820**B. Client Information (ALL fields required for new clients only):**

True Legal Name: \_\_\_\_\_

Client name for billing (if different from true legal name): \_\_\_\_\_

Attention: \_\_\_\_\_

Address: \_\_\_\_\_

City: \_\_\_\_\_

State: \_\_\_\_\_

Zip: \_\_\_\_\_

Country: \_\_\_\_\_

Contact Name (A/R purposes): \_\_\_\_\_

Contact Email Address: \_\_\_\_\_

Contact Telephone No.: \_\_\_\_\_

NAICS Code: \_\_\_\_\_

Industry Description: \_\_\_\_\_

Client Originator Timekeeper:

Single originator, list name: \_\_\_\_\_

Shared origination, list names and %: \_\_\_\_\_

**C. Matter Information:**Practice Group Assigned: Corporate

Matter Type: \_\_\_\_\_

Nature of Assignment (Explain in sufficient detail the nature of the work):

Wind down of business mattersMatter Name: Business Wind down

Matter Contact Name and Email Address (A/R Purposes, if different from Client Contact):

Contact Name: \_\_\_\_\_

Contact Email Address: \_\_\_\_\_

Contact Telephone No.: \_\_\_\_\_

Referred By: N/A - Existing Client

Referral Name: \_\_\_\_\_

Matter Originator Timekeeper (**must be** different from Client Originator if being assigned):

Single originator, list name: \_\_\_\_\_

Shared origination, list names and %: \_\_\_\_\_

Client Responsible (Billing) Timekeeper (senior level timekeeper only):

Primary client responsible timekeeper, list name: David Beauchamp

Shared client responsible timekeepers, list names and %: \_\_\_\_\_

Supervising Timekeeper (senior level timekeeper in practice group for type of work being performed):

Single supervising timekeeper, list name: David Beauchamp

Shared supervising timekeepers, list names and %: \_\_\_\_\_

Attorney(s) Assigned to perform the work:

David Beauchamp

# CLARK HILL

DenSco Investment Corporation  
43820  
Wind down

## D. Billing Information:

### BILLING SPECIFICS:

Estimate total fee billings for this matter (REQUIRED):

\$ 15-20 K

Billing Arrangement:

Hourly

Billing Frequency: Monthly

Retainer (REQUIRED FOR ALL NEW CLIENTS), specify amount:

\$ n/a existing client

If fixed fee, specify amount:

\$ n/a

Will the matter be billed in .25 hour increments?

Yes ☐ No ☒

Which state will receive benefit of services performed: Other

Will the matter be billed at rates other than standard? If yes, please complete and attach the approved **Negotiated Rate Request Form**.

Yes ☐ No ☒

Does Negotiated Rate apply to all matters for this client?

Yes ☐ No ☒

Will the matter be billed electronically?

Yes ☐ No ☒

If yes, please provide the name of the ebilling system:

Task Codes Required:

Yes ☐ No ☒

Activity Codes Required:

Yes ☐ No ☒

Task Code: Select One

Activity Code:

Select One

Are there special billing guidelines?

Yes ☐ No ☒

If yes, please attach a copy of billing guidelines.

Client Reference No.:

### WHERE TO SEND INVOICE IF DIFFERENT FROM CLIENT ADDRESS IN SECTION B ABOVE:

Is this matter to be billed to an address other than the client level address?

Yes ☐ No ☒

If yes, please provide billing address and contact information. Please attach additional sheet if there are more billing addresses. **(ALL fields required)**

Name:

Attention:

Address:

City:

State:

Zip:

Country:

### E-MAIL ?

Does Client want invoice to be e-mailed? If yes, please provide e-mail address

n/a

# CLARK HILL

DenSco Investment Corporation

43820

Wind down

**PAYOR** (Who will pay our invoices? List Payor name and percentage):

Payor Name:	<u>payor</u>	Percentage:	<u>100</u>
Payor Name:	<u></u>	Percentage:	<u></u>
Payor Name:	<u></u>	Percentage:	<u></u>
Payor Name:	<u></u>	Percentage:	<u></u>
Payor Name:	<u></u>	Percentage:	<u></u>
Payor Name:	<u></u>	Percentage:	<u></u>

## INSURANCE COMPANY AS PAYOR:

Will any of the fees be paid by an insurance company, either currently or potentially in the future?

Yes ☐ No ☒

If yes, please provide the name of the insurance company:

Is any portion of the fees being paid by this payor subject to any agreement that has conflict provisions that have not yet been approved by the Insurance Conflicts Committee?

Yes ☐ No ☒

If yes, Insurance Conflicts Committee must review and approve this matter opening.

## MULTIPLE REPRESENTATIONS:

If this matter is being billed as part of a multi-client representation (see User's Guide for explanation), and the Client/Matter identified on this form are the Primary, please check this box: ☐

If Client/Matter identified on this form are **not** the Primary, please identify both the Primary Client Number and Primary Matter Number to which to link this new Client and Matter:

Primary Client #:

Primary Matter #:

## E. Risk Assessment:

### Conflicts

- |    | Yes                                 | No                                  |  |
|----|-------------------------------------|-------------------------------------|--|
| 1. | <input checked="" type="checkbox"/> | <input type="checkbox"/>            | Has a check been run for any client, issue or business conflict and all involved partners using the Firm's methods?<br>If not, explain why: <u></u>  |
| 2. | <input type="checkbox"/>            | <input checked="" type="checkbox"/> | Is there any potential for a client, issue or business conflict? If yes, explain how they were resolved (waiver letter or other written documentation evidencing resolution of potential conflict must be attached): <u></u> |
| 3. | <input type="checkbox"/>            | <input checked="" type="checkbox"/> | By representing this client, does Clark Hill thereby also represent any other entity(s) within this client's corporate tree? If yes, contact General Counsel to obtain approval to proceed.                                  |
| 4. | <input type="checkbox"/>            | <input checked="" type="checkbox"/> | Is this client a party to a Joint Defense Agreement for this new matter or is such an agreement likely for this matter? If yes, please refer to the User's Guide for proper submission of conflict check with this form.     |

### Billing and Collection

- |    |                          |                                     |  |
|----|--------------------------|-------------------------------------|--|
| 5. | <input type="checkbox"/> | <input checked="" type="checkbox"/> | Engagement letter attached. (REQUIRED FOR ALL NEW CLIENTS)   |
| 6. | <input type="checkbox"/> | <input checked="" type="checkbox"/> | Has an Orbis credit report been requested from Donna Kielar, reviewed and attached as applicable?<br>If not, explain why: <u>existing client</u> |

**NOTE:** An Orbis credit report is **required** for any new client that is a business or organization; NOT required for an individual or start up company.



## Preservation and Discovery Needs

- |    | Yes                      | No                                  |   |
|----|--------------------------|-------------------------------------|---|
| 7. | <input type="checkbox"/> | <input checked="" type="checkbox"/> | Is this an investigation, a litigation matter, or a matter that has the potential to lead to litigation? If yes, the client may need to be informed of and/or assisted with specific preservation obligations. Please attach documentation sufficient to demonstrate the client's awareness of and compliance with any preservation requirements (internal hold policies, correspondence or other communication between Clark Hill and client, etc.).<br>If no notice given, explain why: _____ |
| 8. | <input type="checkbox"/> | <input checked="" type="checkbox"/> | Will this matter require discovery or other document review and/or management? If yes, it is likely that electronically stored information (ESI) will need to be evaluated for preservation, collection, and production purposes. The Discovery Services Group will contact you to discuss action steps for this data.  |

## Other

- |     |                          |                                     |  |
|-----|--------------------------|-------------------------------------|--|
| 9.  | <input type="checkbox"/> | <input checked="" type="checkbox"/> | Does a Firm lawyer or relative have an equity interest or management position with the client? If yes, please attach the appropriate authorization documentation. Refer to CHIPP Section 9.1 |
| 10. | <input type="checkbox"/> | <input checked="" type="checkbox"/> | Is the Firm substituting for other counsel whose services have been terminated?  |
| 11. | <input type="checkbox"/> | <input checked="" type="checkbox"/> | Is the Firm serving <b>only</b> as local counsel in this matter?   |

## ***F. Approvals:***

<u>D G Beauchamp</u>	David Beauchamp	8/23/2016
Client Responsible Timekeeper, Signed	Print Name	Date
<u>John Ermanni</u>	John Ermanni	
Practice Group Leader or Delegate, Signed	Print Name	Date

## ***Additional Approvals Required:***

For Contingent or Pro Bono Matters, applicable Committee Member must sign;  
For Shared Timekeeper Arrangements, Applicable PGLs and Sharing Timekeepers must sign;  
If representing entities within this Client's corporate tree (if answer to Risk Assessment Q3 is yes) GC must sign;  
If Insurance Conflicts Committee is required to review this form, member of Insurance Conflicts Committee must sign;  
For Engagement Letter Waivers, GC must sign;  
For Retainer Waivers, Financial Operations Manager and PGL/PGD must sign.

<u>Signed</u>	<u>Print Name</u>	<u>Date</u>
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____

**G. Form Completed By (print name):** Lindsay Grove

# FILE LABEL REQUEST FORM

Which of the following barcoded inserts do you need?

- |                                     |                        |
|-------------------------------------|------------------------|
| <input checked="" type="checkbox"/> | Correspondence         |
| <input checked="" type="checkbox"/> | Drafts                 |
| <input type="checkbox"/>            | Legal Authority        |
| <input type="checkbox"/>            | Memoranda              |
| <input checked="" type="checkbox"/> | Attorney Notes         |
| <input type="checkbox"/>            | Misc. & Extra Copies   |
| <input type="checkbox"/>            | Pleadings              |
| <input type="checkbox"/>            | Research               |
| <input checked="" type="checkbox"/> | Client Documents       |
| <input type="checkbox"/>            | Other (please specify) |

This image shows a single sheet of white paper with horizontal blue or grey ruling lines. The lines are evenly spaced and run across the width of the page. There are approximately 20 lines visible. The paper has a slight shadow on the right side, suggesting it's resting on a surface.

- |                          |                     |
|--------------------------|---------------------|
| <input type="checkbox"/> | NO FOLDER REQUIRED  |
| <input type="checkbox"/> | NO INSERTS REQUIRED |

File Location (Pittsburgh Files ONLY)

For Records Use Only

Client #:	Matter #:	Date Records Received:
Records Initials:	Date Linked by Conflicts:	Conflicts Initials:

**Client Information**

Client (True Legal) 43820 DenSco Investment Corporation

Address DenSco Investment Corporation  
Attn: Denny Chittick  
6132 W. Victoria Place  
Chandler, AZ 85226

City Chandler State AZ  
Zip 85226

**Matter Information**

Client Responsible 1482 Beauchamp, David G.

**Matter Parties**

Report Type ☐ All Relationships Report ☒ Direct Conflicts Report  
Nature of Matter Wind down of business matters  
Conflict Check Type None of the above

Conflicts Found? ☒ Yes ☐ No

No. of Conflicts Reports 4

ID	Last Name/Company	First Name	Affiliation	Approval	Group #
1	The William and Helene Alber Family Trust		Adverse	Accept	1
2	Brinkman Family Trust		Adverse	Accept	1
3	Craig & Tomie Brown Living Trust		Adverse	Accept	1
4	Desert Classic Investments, LLC		Adverse	Accept	1
5	Bunger	Steven G.	Adverse	Accept	1
6	Steven G. and Mary E. Bunger Estate		Adverse	Accept	1
7	Burdett	Anthony	Adverse	Accept	1
8	Burkhart	Kennen	Adverse	Accept	1
9	Bush	Warren	Adverse	Accept	1
10	Butler	Mary	Adverse	Accept	1
11	Butler	Van	Adverse	Accept	1
12	Thomas & Sara Byrne Living Trust		Adverse	Accept	2
13	Caro McDowell Revocable Trust		Adverse	Accept	2
14	Erin Carrick Trust		Adverse	Accept	2
15	Gretchen P. Carrick Trust		Adverse	Accept	2
16	Cate, Jr.	Averill J.	Adverse	Accept	2
17	Arden & Nina Chittick Family Trust		Adverse	Accept	2
18	Mo & Sam Chittick Family Trust		Adverse	Accept	2
19	Cohen Revocable Trust		Adverse	Accept	2
20	Cohen	Eileen	Adverse	Accept	2
21	Davis	Glen	Adverse	Accept	2

22	Detota	Scott D.	Adverse	Accept	3
23	Dirks	Amy	Adverse	Accept	3
24	Dirks	Bradley	Adverse	Accept	3
25	Dupper	Russ H.	Adverse	Accept	3
26	Todd F. Einck Trust		Adverse	Accept	3
27	Four Futures Corporation		Adverse	Accept	3
28	Grant	Stacy	Adverse	Accept	3
29	Michael & Diana Gumbert Trust		Adverse	Accept	3
30	Hafiz	Nihad	Adverse	Accept	3
31	Robert & Elizabeth Hahn Family Trust		Adverse	Accept	3
32	Hahn	Robert	Adverse	Accept	4
33	Hey	Ralph	Adverse	Accept	4
34	Hickman	Dale	Adverse	Accept	4
35	Hood	Craig	Adverse	Accept	4
36	Howze	Doris	Adverse	Accept	4
37	Indieke Revocable Trust		Adverse	Accept	4
38	Indieke	Brian	Adverse	Accept	4
39	Jetton	James	Adverse	Accept	4
40	Zones	Michael	Adverse	Accept	4
41	Kaiser	Ralph	Adverse	Accept	5
42	Kent	Mary	Adverse	Accept	5
43	Paul A. Kent Family Trust		Adverse	Accept	5
44	Koehler	Robert Z.	Adverse	Accept	5
45	LeRoy Kopel Revocable Living Trust		Adverse	Accept	5
46	Kopel	Jemma	Adverse	Accept	5
47	Kopel	Roy	Adverse	Accept	5
49	Howze	Lee	Adverse	Accept	4
50	Bush	Fay	Adverse	Accept	1

## Approvals

## Approval History

Approver	Approval Type	Signed Date	Status
JWELCH	Conflicts	08/15/2016	Approve_Conflicts
JWELCH	Conflicts	08/15/2016	Approve_Senior_Conflicts
DBEAUCHAMP	Attorney	08/22/2016	Approve_Conflicts_Report

## Finalization

Search Batch ID      225752,  
225753,  
225754,  
225755,  
225756

Username	Date / Time	Action
clarkhillplc\jwelch	08/15/2016 12:43 PM	Successfully created prospective search batch (225752,225753,225754,225755,225756).

## Notes Archive

From: clarkhillplc\lgrove  
Sent: 08/12/2016 04:02 PM  
Stage: Form\_Entries

All names have been pre-validated by K. Klish. Thank you.



**Client Information**

Client (True Legal) 43820 DenSco Investment Corporation

Address DenSco Investment Corporation  
Attn: Denny Chittick  
6132 W. Victoria Place  
Chandler, AZ 85226

City Chandler State AZ  
Zip 85226

**Matter Information**

Client Responsible 1482 Beauchamp, David G.

**Matter Parties**

Report Type ☐ All Relationships Report ☒ Direct Conflicts Report  
Nature of Matter Wrap up of business  
Conflict Check Type None of the above

Conflicts Found? ☒ Yes ☐ No

No. of Conflicts Reports 3

ID	Last Name/Company	First Name	Affiliation	Approval	Group #
1	Weiskopf	Laurie A.	Adverse	Accept	1
2	Weiskopf	Thomas D.	Adverse	Accept	1
3	Wellman Family Living Trust		Adverse	Accept	1
4	Wellman	Carol	Adverse	Accept	1
5	Wellman	Michael	Adverse	Accept	1
6	B & C Wenig Family Trust		Adverse	Accept	1
7	Wenig	Brian M.	Adverse	Accept	1
8	Wenig	Carla Couch	Adverse	Accept	1
9	Wenig	Mark Alan	Adverse	Accept	1
10	Wenig	Debbie Ellen	Adverse	Accept	1
11	Zones	Michael	Adverse	Accept	2
12	Angel's Investors LLC		Adverse	Accept	2
13	Yildiz	Yusef	Adverse	Accept	2
14	BLL Capital, LLC		Adverse	Accept	2
15	Luchtel	Barry	Adverse	Accept	2
16	LJL Capital, LLC		Adverse	Accept	2
17	Luchtel	Landon	Adverse	Accept	2
18	Brinkman	Robert	Adverse	Accept	2
19	Smith	Tom	Adverse	Accept	2
20	Davis	Jack J.	Adverse	Accept	1
21	Griswold	Russell	Adverse	Accept	3

22	Smith	Branson	Adverse	Accept	2
23	Hughes	Bill Bryan	Adverse	Accept	3
24	Hughes	Judy Kay	Adverse	Accept	3
25	Locke	William F.	Adverse	Accept	3
26	Preston	David M.	Adverse	Accept	3
27	Lee	Terry	Adverse	Accept	3
28	McArdle	Jim	Adverse	Accept	3
29	Sterling	Donald E.	Adverse	Accept	3

### Approvals

#### Approval History

Approver	Approval Type	Signed Date	Status
JWELCH	Conflicts	08/15/2016	Approve_Conflicts
JWELCH	Conflicts	08/15/2016	Approve_Senior_Conflicts
DBEAUCHAMP	Attorney	08/22/2016	Approve_Conflicts_Report

#### Finalization

Search Batch ID      225774,  
                                 225775,  
                                 225776

Username	Date / Time	Action
clarkhillplc\jwelch	08/15/2016 03:13 PM	Successfully created prospective search batch (225774,225775,225776).

### Notes Archive

**From:** clarkhillplc\lgrove  
**Sent:** 08/15/2016 10:57 AM  
**Stage:** Form\_Entries

Please link to NBIE60405  
 Parties # 1-17 have been pre-validated by K. Klisch. Parties 18 on are new names to be conflicted.  
 Thank you.

**From:** clarkhillplc\jwelch  
**Sent:** 08/15/2016 03:10 PM  
**Stage:** Conflicts\_Clerk

NBIE60435: We were unable to validate the names Tom Smith or Jim McArdle, so they were run as is. If you later obtain more information about these parties, please submit a supplemental if necessary.

**Client Information**

Client (True Legal) 43820 DenSco Investment Corp  
oration

Address DenSco Investment Corporation  
Attn: Denny Chittick  
6132 W. Victoria Place  
Chandler, AZ 85226

City Chandler State AZ  
Zip 85226

**Matter Information**

Client Responsible 1482 Beauchamp, David G.

**Matter Parties**

Report Type ☐ All Relationships Report ☒  
Direct Conflicts Report  
Nature of Matter Wrap up of business  
Conflict Check Type None of the above

Conflicts Found? ☒ Yes ☐ No

No. of Conflicts  
Reports 4

ID	Last Name/Company	First Name	Affiliation	Approval	Group #
1	Lawson	Robert F.	Adverse	Accept	1
2	Wayne J. Ledet Revocable Trust		Adverse	Accept	1
3	Ledet	Wayne J.	Adverse	Accept	1
4	The Lee Group, Inc.		Adverse	Accept	1
5	Lent	Lillian	Adverse	Accept	1
6	Lent	Manuel A.	Adverse	Accept	1
7	Locke	Jean	Adverse	Accept	1
8	James & Lesley McCoy Trust		Adverse	Accept	1
9	The Marvin G Miller & Pat S Miller 1989 Trust		Adverse	Accept	1
10	LF Fund Marvin Miller & Pat S Miller		Adverse	Accept	1
11	Moss Family Trust		Adverse	Accept	2
12	Moss	Kaylene	Adverse	Accept	2
13	Muscat Family Trust		Adverse	Accept	2
14	Muscat	Vincent I.	Adverse	Accept	2
15	Muscat	Sharry M.	Adverse	Accept	2
16	Non-Lethal Defense, Inc.		Adverse	Accept	2
17	Dubay	David Karl	Adverse	Accept	2
18	Odenthal	Brian	Adverse	Accept	2
19	Odenthal	Janice	Adverse	Accept	2
20	Page	Jolene	Adverse	Accept	2
21	Paxton	Valerie	Adverse	Accept	3



22	Pearce	Marlene	Adverse	Accept	3
23	Dori Ann Davis Living Trust		Adverse	Accept	3
24	Phalen Family Trust		Adverse	Accept	3
25	Phalen	Jeffrey J.	Adverse	Accept	3
26	Preston Revocable Living Trust		Adverse	Accept	3
27	Rzonca	Peter A.	Adverse	Accept	3
28	Saltire, LLC		Adverse	Accept	3
29	Sherriff	Stewart W.	Adverse	Accept	3
30	Sherriff	William Stewart	Adverse	Accept	3
31	Sanders	JoAnn	Adverse	Accept	4
32	Schloz	Mary	Adverse	Accept	4
33	Schloz	Stanley	Adverse	Accept	4
34	Schloz Family Trust		Adverse	Accept	4
35	GB 12 LLC		Adverse	Accept	4
36	Scroggin	Annette	Adverse	Accept	4
37	Scoggin	Michael	Adverse	Accept	4
38	Siefford	Judith E.	Adverse	Accept	4
39	Siefford	Gary D.	Adverse	Accept	4
40	Carysn Smith Trust		Adverse	Accept	4
41	McKenna Smith Trust		Adverse	Accept	4
42	Branson & Sandra Smith Trust		Adverse	Accept	4
43	Swirtz	Nancy	Adverse	Accept	5
44	Long Time Holdings, LLC		Adverse	Accept	5
45	Swirtz	William	Adverse	Accept	5
45	Thompson	Coralee	Adverse	Accept	5
47	Thompson	Gary	Adverse	Accept	5
48	Trainor	James R.	Adverse	Accept	5
49	Tuttle	Stephen	Adverse	Accept	5
50	Underwood	Wade	Adverse	Accept	5

### Approvals

#### Approval History

Approver	Approval Type	Signed Date	Status
JWELCH	Conflicts	08/15/2016	Approve_Conflicts
JWELCH	Conflicts	08/15/2016	Approve_Senior_Conflicts
DBEAUCHAMP	Attorney	08/22/2016	Approve_Conflicts_Report

#### Finalization

Search Batch ID      225762,  
225763,  
225764,  
225765,  
225766

Username	Date / Time	Action
clarkhillplc\jwelch	08/15/2016 02:02 PM	Successfully created prospective search batch (225762,225763,225764,225765,225766).

### Notes Archive

From: clarkhillplc\lgrove  
Sent: 08/15/2016 10:36 AM  
Stage: Form\_Entries

All parties pre-validated by K. Klisch.  
Link to NBIE60405.  
There will be another conflict check to follow with additional names as well.



# Clark Hill

## Firm Responsibilities and Structure

January 1, 2016

REDACTED



**Risk Management and Firm Counsel:**

Edward J. Hood  
Mark F. Nowak

**Assistant General Counsel:**

John P. Schneider

Chicago:

Donald A. Shindler

Lansing:

Ronald A. King

Phoenix:

Mark S. Sifferman

Pittsburgh:

Kimberly Ward Burns

REDACTED



REDACTED



# **Exhibit 4**

**From:** [John E. DeWulf](#)  
**To:** [Geoff Sturr](#)  
**Cc:** [Marvin Ruth](#); [Vidula Patki](#); [Shelley Tolman](#); [Linda Hasseler](#)  
**Subject:** Davis v. Clark Hill  
**Date:** Thursday, August 30, 2018 1:20:01 PM  
**Attachments:** [Sifferman Time Entries.pdf](#)

---

Dear Geoff,

Enclosed is Mr. Sifferman's recorded time entries for the DenSco matter.

John

**John E. DeWulf**

**Coppersmith Brockelman PLC**

2800 North Central Avenue, Suite 1900

Phoenix, AZ 85004

602.381.5475 (PH.)

602.224-6020 (FAX)

[jdewulf@cblawyers.com](mailto:jdewulf@cblawyers.com)

CBLAWYERS.COM

**We moved to the 19th floor! Our new address is 2800 N. Central Ave., Suite 1900, Phoenix, AZ 85004.**

For more information about Coppersmith Brockelman, please see our website at [www.cblawyers.com](http://www.cblawyers.com).

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Date	Initials	Name / Invoice Number	Hours	Amount	Description	Matter Number	Index
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REDACTED

08/10/2016	1058	Mark S. Sifferman	1.90	0.02	Densco issues.	09999-010700	7853100
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REDACTED

08/18/2016	1058	Mark S. Sifferman	1.90	0.02	Densco issues.	09999-010700	7853119
------------	------	-------------------	------	------	----------------	--------------	---------

REDACTED

Date	Initials	Name / Invoice Number	Hours	Amount	Description	Matter Number	Index
REDACTED							
10/04/2016	1058	Mark S. Sifferman	4.00	0.04	Densco; REDACTED	09999-010700	7977753
10/07/2016	1058	Mark S. Sifferman	2.40	0.02	DenSco document production to receiver.	09999-010700	7977925
10/08/2016	1058	Mark S. Sifferman	2.50	0.03	DenSco document review and production.	09999-010700	7978070
10/12/2016	1058	Mark S. Sifferman	6.50	0.07	DenSco document review and production.	09999-010700	7978059
10/13/2016	1058	Mark S. Sifferman	4.10	0.04	DenSco document review and production; prepare letter to attorney for receiver.	09999-010700	7978141
REDACTED							

# **Exhibit 5**



IN THE SUPERIOR COURT OF THE STATE OF ARIZONA

IN AND FOR THE COUNTY OF MARICOPA

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

Plaintiff,

vs.

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

Defendants.

NO. CV2017-013832

VIDEOTAPED DEPOSITION OF MARK SIFFERMAN

Phoenix, Arizona  
August 31, 2018  
9:32 a.m.

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

PREPARED FOR:

MARK SIFFERMAN, 8/31/2018

1 MR. DeWULF: I'm sorry.

2 MR. STURR: I have another copy if you can't  
3 find it.

4 MR. DeWULF: If you gave it to me, I have it.  
5 I've just got to find it.

6 MR. STURR: Here it is. You have it right in  
7 front of you. That's it.

8 MR. DeWULF: I misnumbered it. I have it as  
9 456. It's 457.

10 Q. (BY MR. STURR) 457.

11 Mr. Sifferman, I'm handing you what's been  
12 marked as Exhibit 457. It's an email from Mr. Beauchamp  
13 to Ryan Anderson, who is counsel for the receiver, dated  
14 February 8, 2017, and you are copied on it.

15 Do you see that?

16 A. Yes.

17 Q. And in the second paragraph of the email,  
18 Mr. Beauchamp discusses the Clark Hill's termination of  
19 doing any securities or other legal work for DenSCO when  
20 Denny Chittick refused to send the amended private  
21 offering memorandum to his investors.

22 Do you see that?

23 A. Yes, I do.

24 Q. And he goes on to say that he believes that we  
25 terminated our representation in approximately July 2014.

MARK SIFFERMAN, 8/31/2018

1 Do you see that?

2 A. Yes, I do.

3 Q. Okay. Do you have a -- do you have any memory,  
4 Mr. Sifferman, of discussing with Mr. Beauchamp at some  
5 time in 2014 the termination of the firm's representation  
6 of DenSco on securities or other legal work?

7 A. I don't remember one way or the other.

8 Q. Okay. And we have no other -- we haven't  
9 received any time records that would have -- had you done  
10 so, there is no time record that we have that would show  
11 the time you devoted to that, correct?

12 A. Correct.

13 Q. As far as you know?

14 And I think you told me earlier, you didn't keep  
15 notes of your work as general counsel?

16 A. Correct.

17 Q. And you have no memory one way or the other on  
18 that issue?

19 A. Of a discussion with David Beauchamp over  
20 terminating the legal work with DenSco, no, at that time.

21 Q. In 2014?

22 A. Correct.

23 Q. Okay.

24 MR. DeWULF: Let me just make a note. I want  
25 him to be able to answer the questions. There arguably

MARK SIFFERMAN, 8/31/2018

1 are some of the things that are being said that may be  
2 privileged or at least borderline privileged  
3 communications, but I want him to be able to answer as  
4 completely as he can, so I haven't drawn any distinctions,  
5 fine distinctions here, but just be careful to make sure  
6 not to disclose -- I think subject matter topics could be  
7 disclosed. Actual communications I would caution you  
8 against revealing, but with that kind of note, go ahead.

9 MR. STURR: Yeah, I think --

10 MR. DeWULF: I don't want to interfere.

11 MR. STURR: Yeah. No. John, I think we have  
12 been proceeding on that understanding.

13 Q. (BY MR. STURR) If I wasn't clear, I was asking  
14 about whether you have a memory of the fact of a  
15 communication.

16 A. Correct, subjects.

17 Q. Subjects, right. The subject of the  
18 communication. And you do not?

19 A. Correct.

20 MR. STURR: Okay. We have been going an hour.  
21 Do you need a break? I'm anxious to finish this quickly,  
22 but I'm just --

23 MR. DeWULF: I would like to take a break.

24 VIDEOGRAPHER: The time is 10:30 a.m. We are  
25 going off the record, ending media one.

MARK SIFFERMAN, 8/31/2018

1 (A recess was taken from 10:30 a.m. to  
2 10:38 a.m.)

3 VIDEOGRAPHER: My name is Mary Onuschak with the  
4 firm of Legal Video Specialists, Phoenix, Arizona. This  
5 begins media two of the videotaped deposition of Mark  
6 Sifferman. The time is 10:38 a.m. We are now back on the  
7 record.

8 Q. (BY MR. STURR) Mr. Sifferman, I'm going to have  
9 you take a look at Exhibit 454 again. Those were your  
10 time records. And, again, I want to be as efficient as I  
11 can with your time today.

12 Exhibit 454 has records from 2016. And if I  
13 remember correctly, you told me beginning in 2015 you  
14 were -- you thought you were a little more diligent about  
15 recording your time as assistant general counsel.

16 And the reason I'm asking that question is  
17 looking at Exhibit 454, the first entry that I see on a  
18 DenSco matter is August 10, 2016.

19 Do you see that?

20 A. Yes.

21 Q. Okay. Is it -- is it likely, and I'm not going  
22 to hold you to this, but is it likely that if you had some  
23 other time before August 10, 2016, you would have recorded  
24 it, given that time period, the 2016 time period?

25 MR. DeWULF: Object to form.

MARK SIFFERMAN, 8/31/2018

1 THE WITNESS: No.

2 Q. (BY MR. STURR) Okay. All right.

3 A. I said I got better.

4 Q. Well, let me -- then I will take a little longer  
5 route to the questions I want to ask you, if I may.

6 Take a look at Exhibit, if you would -- this is  
7 going to be in another volume -- it's Exhibit 18, which is  
8 going to be in the first volume.

9 A. You said 18?

10 Q. 18. Do you see that?

11 A. Yes, I do.

12 Q. Exhibit 18 is a letter dated September 15, 2016,  
13 from Mr. Beauchamp to the -- Peter Davis, the receiver,  
14 and attached to it are certain invoices.

15 Do you see that?

16 A. Yes, I do.

17 Q. If you go to the last --

18 MR. STURR: John, I'm sorry.

19 MR. DeWULF: Go ahead. I think I finally found  
20 it. I'm sorry. My stuff isn't organized very well. I'm  
21 with you. I'm with you.

22 Q. (BY MR. STURR) If you go to the last couple of  
23 pages of the exhibit, Mr. Sifferman, beginning on  
24 CH\_0008042.

25 Are you there?

MARK SIFFERMAN, 8/31/2018

1 A. Yeah, I am.

2 Q. That's an invoice dated July 22, 2016, for  
3 business matters. And the next page, excuse me, two pages  
4 over, 0008044, there is an invoice August 10th, 2016, for  
5 business matters.

6 Do you see that?

7 A. Yes.

8 Q. And if you flip to the last page of the exhibit,  
9 you see some time recorded on 7/30/16 and 7/31/16 by  
10 Mr. Beauchamp.

11 Do you see that?

12 A. Yes, I do.

13 Q. Okay. Does this appear to you that -- would you  
14 agree with me that based on these invoices, DenSco was a  
15 current client of Clark Hill's as of July 2016?

16 A. Yes.

17 Q. And you will see in Mr. Beauchamp's billing  
18 entries for July 30, there is a reference to a phone call  
19 regarding the death of Denny Chittick.

20 Do you see that?

21 A. I see that reference, yes.

22 Q. Do you have a present memory today of when you  
23 learned of Mr. Chittick's death?

24 A. Shortly after his death.

25 Q. How did you learn it?

MARK SIFFERMAN, 8/31/2018

1 A. David told me.

2 Q. Okay. Do you have a present memory of that?

3 A. Yes.

4 Q. Okay. Where did that conversation occur?

5 A. Either my office or his office.

6 Q. Okay. And what was the subject of the  
7 conversation, broadly speaking?

8 A. The death of a client. The suicide of a client.

9 Q. Did you have any discussions in that meeting  
10 relating to potential conflicts of interest?

11 A. No.

12 Q. Okay. I'm going to hand you what's been marked  
13 as Exhibit 458.

14 Before I -- stay on that exhibit, before you put  
15 it away. Excuse me. Sorry, Mr. Sifferman.

16 If you go back to Exhibit 18, at the beginning  
17 of the -- if you go back to the cover letter,  
18 Mr. Beauchamp writes: Enclosed is the invoices for legal  
19 services provided by Clark Hill to DenSco Investment  
20 Corporation through the end of August regarding the wind  
21 down of the business.

22 Do you see that?

23 A. Yes, I do.

24 Q. Okay. And you see there are time entries in the  
25 first billing entry beginning with August 1 forward.



MARK SIFFERMAN, 8/31/2018

1 A. No.

2 Q. You did not.

3 Did you ever meet with Mr. Anderson?

4 A. No.

5 Q. Did you speak with Mr. Anderson about delivering  
6 the files to him?

7 A. I don't think so.

8 MR. STURR: Okay. I don't think I have any  
9 other questions for you, Mr. Sifferman. Thank you.

10 MR. DeWULF: Thank you.

11 VIDEOGRAPHER: The time is 12:00 p.m. We are  
12 ending the deposition with media two.

13 MR. DeWULF: We will read and sign.

14 (12:00 p.m.)

15

16

17

-----  
MARK SIFFERMAN

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