

Colin F. Campbell, 004955
Geoffrey M. T. Sturr, 014063
Joseph N. Roth, 025725
Joshua M. Whitaker, 032724
OSBORN MALEDON, P.A.
2929 North Central Avenue, 21st Floor
Phoenix, Arizona 85012-2793
(602) 640-9000
ccampbell@omlaw.com
gsturr@omlaw.com
jroth@omlaw.com
jwhitaker@omlaw.com

Attorneys for Plaintiff

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 MOTION TO
EXCLUDE OPINION OF DR. ERIN
NELSON UNDER RULE 702 AND
DAUBERT**

(Assigned to the Honorable
Daniel Martin)

(Oral Argument Requested)

1 Pursuant to Arizona Rule of Evidence 702 and *Daubert v. Merrell Dow*
2 *Pharmaceuticals, Inc.*, 509 U.S. 579 (1993), Plaintiff Peter Davis, as Receiver of DenSco
3 Investment Corporation (“the Receiver”), moves to exclude the expert opinion of Dr. Erin
4 Nelson. Under Rule 702 and *Daubert*, courts act as gatekeepers to ensure that expert
5 testimony will help the jury and is based on sufficient data, objectively reliable methods,
6 and a reliable application of methods. Dr. Nelson’s testimony fails each of these
7 requirements.

8 Dr. Nelson presents no scientific opinions, but instead testifies to psychological
9 “impressions” after her review of selective discovery in the case. Her impressions are
10 not based on any psychological diagnosis like a disorder to be found in the DSM-5, or
11 psychological testing like an MMPI, or any other matter subject to peer review in her
12 field. If Dr. Nelson can testify as to her “impressions” after simply reviewing discovery,
13 then the Receiver should be able to ask any other fact witness in the case what their
14 “impressions” are. Such testimony is not helpful to the jury, nor does it meet the
15 reliability requirements of Rule 702 and *Daubert*. The Court should keep the gate shut.

16 **(A) Dr. Erin Nelson**

17 Dr. Nelson is a psychologist. Defendants hired her to provide her “psychological
18 impression(s)” regarding “the level of influence, if any, Scott Menaged had over Denny
19 Chittick’s decision-making and conduct on or about January 2014 through May 2014.”
20 (Dr. Nelson’s 4/4/19 Report, attached as **Exhibit 1**, at 4.) Her impression is that Menaged
21 had “substantial influence” over Chittick’s decision-making and conduct during that
22 time. (*Id.* at 20; *see also* Dr. Nelson’s 10/7/19 Addendum Report, attached as **Exhibit 2**,
23 at 5.)

24 This impression—that Menaged had substantial influence over Chittick—is not a
25 diagnosis of any recognized medical condition. (Deposition of Dr. Nelson on 10/10/19,
26 excerpts attached as **Exhibit 3**, at 90:2-7, 114:13-24.) Nor is the term “substantial
27 influence” a medical term. (*Id.* at 71:16-19.) Rather, Dr. Nelson admits that she is simply
28 offering her “subjective views” on the matter. (*Id.* at 110:19-20.)

1 That Menaged had substantial influence over Chittick is the only opinion Dr.
2 Nelson is offering. (*Id.* at 71:25–72:20.) Dr. Nelson offers no opinion on whether anyone
3 else—including Chittick’s long-time lawyer, Defendant David Beauchamp—had
4 influence over Chittick. (*Id.* at 112:10–113:7.) She insists that she is “not testifying
5 about David Beauchamp” and is “not offering an opinion about Mr. Beauchamp.” (*Id.* at
6 93:2-3, 107:3.)

7 Dr. Nelson’s impression is based solely on a review of documents, including
8 emails, letters, and selected deposition testimony in this case. (Ex. 3 at 69:22–71:5; *see*
9 Ex. 1 at 4-14 (listing sources of information reviewed); Ex. 2 at 3-4 (same).) She did not
10 interview Chittick, Menaged, Beauchamp, any of Chittick’s family or friends, or anyone
11 else. (Ex. 3 at 92:23-25, 95:5-8, 96:1-9.) The only documents she reviewed are what
12 Defendants gave her. (*Id.* at 75:4-8, 81:12-18, 83:19-23.) Among those documents was
13 a “Chronology” made by Defendants, containing Defendants’ own descriptions of, and
14 selective quotations from, various documents. (Chronology, attached as **Exhibit 4**; *see*
15 *also* Ex. 1 at 5 (listing “Chronology for E. Nelson” as source of information reviewed).)

16 **(B) Rule 702 and Daubert**

17 The “party seeking to admit expert testimony must prove, by a preponderance of
18 the evidence, that the testimony is both relevant and reliable.” *State ex rel. Montgomery*
19 *v. Miller*, 234 Ariz. 289, 298 ¶ 19 (App. 2014) (citing *Daubert v. Merrell Dow Pharm.,*
20 *Inc.*, 509 U.S. 579, 592 & n.10 (1993)). The “trial judge serves as a ‘gatekeeper’ who
21 makes a preliminary assessment as to whether the proposed expert testimony is relevant
22 and reliable.” *Id.* (citation omitted). This gatekeeping function applies to all types of
23 expert testimony, including “expert psychological testimony.” *Arizona State*
24 *Hosp./Arizona Cmty. Prot. & Treatment Ctr. v. Klein*, 231 Ariz. 467, 474 ¶¶ 30–31 (App.
25 2013) (citing cases where courts have excluded expert psychological testimony).

26 Accordingly, for Dr. Nelson’s testimony to be admissible, Defendants must prove
27 that it (a) will “help the trier of fact to understand the evidence or to determine a fact in
28 issue,” (b) is based on “sufficient facts or data,” (c) is based on “reliable principles and

1 methods,” and (d) is based on her having “reliably applied the principles and methods to
2 the facts of the case.” Ariz. R. Evid. 702.

3 **(C) Dr. Nelson’s opinion will not help the jury.**

4 Dr. Nelson’s impression that Menaged had “influence” over Chittick is not an
5 opinion that requires expertise. For example, Beauchamp, who met regularly with
6 Menaged and Chittick, testified that based on his observations, Menaged had “some type
7 of mental control” over Chittick. (*See* Deposition of David Beauchamp on 7/19/18,
8 excerpts attached as **Exhibit 5**, at 75:10-13.) The jury is fully capable of reviewing the
9 trial evidence and deciding whether Menaged had “influence” over Chittick and, if he did,
10 what relevance it has in the case. Indeed, the jury will be in a better position to evaluate
11 these matters because the jury, unlike Dr. Nelson, will also consider whether *Beauchamp*
12 had influence over Chittick—and that is the more relevant issue.

13 **1. The jury is fully capable of evaluating Menaged’s “influence”**
14 **over Chittick.**

15 “The primary concern in the admission of expert testimony is ‘whether the subject
16 of inquiry is one of such common knowledge that people of ordinary education could
17 reach a conclusion as intelligently as the witness or whether, on the other hand, the matter
18 is sufficiently beyond common experience that the opinion of an expert would assist the
19 trier of fact.’ *State v. Dickey*, 125 Ariz. 163, 169 (1980) (quoting *State v. Owens*, 112
20 Ariz. 223, 227 (1975)).

21 Arizona courts regularly exclude expert psychological testimony on matters within
22 the jury’s knowledge. *See, e.g., State v. Laffoon*, 125 Ariz. 484, 486 (1980) (affirming
23 exclusion of psychiatric testimony regarding the “effect of alcohol” on defendant’s ability
24 to form intent because the matter is “within the common knowledge and experience of
25 the jury”); *Dickey*, 125 Ariz. at 168-69 (affirming exclusion of psychiatrist opinion that
26 defendant “acted out of fear” because the opinion “would add nothing to the jury’s own
27 common knowledge and experience”).
28

1 Courts across the country regularly exclude such testimony as well. *See, e.g.,*
2 *United States v. DiDomenico*, 985 F.2d 1159, 1163-64 (2d Cir. 1993) (affirming exclusion
3 of psychiatric opinion that defendant had a “dependent personality disorder” because “the
4 imprimatur of a clinical label was neither necessary nor helpful for the jury to make an
5 assessment of [defendant’s] state of mind”); *People v. Czahara*, 203 Cal. App. 3d 1468,
6 1477-78 (1988) (affirming exclusion of psychiatric opinion that certain events would
7 “provoke” an ordinary person to a heat of passion because the matter “is not a subject
8 sufficiently beyond common experience”); *United States v. Esch*, 832 F.2d 531, 535 (10th
9 Cir. 1987) (affirming exclusion of psychological testimony regarding defendant’s
10 “personality characteristics” because “it addressed a subject matter within the knowledge
11 and experience of the jury”); *United States v. Felak*, 831 F.2d 794, 797-98 (8th Cir. 1987)
12 (affirming exclusion of psychiatric testimony regarding defendant’s reasons for avoiding
13 taxes because “the jury was fully capable of resolving this question” and there was no
14 “psychological disorder requiring an expert’s explanation”); *Commonwealth v. Smith*,
15 290 Pa. Super. 33, 46 (1981) (affirming exclusion of psychiatric testimony regarding “the
16 influence of group dynamics” because it “involves a matter of common knowledge”).

17 Indeed, courts “routinely exclude as impermissible expert testimony as to intent,
18 motive, or state of mind” because such testimony “offers no more than the drawing of an
19 inference from the facts of the case” and “[t]he jury is sufficiently capable of drawing its
20 own inferences.” *Siring v. Oregon State Bd. of Higher Educ. ex rel. E. Oregon Univ.*,
21 927 F. Supp. 2d 1069, 1077-78 (D. Or. 2013) (collecting cases).

22 This reasoning squarely applies here. Dr. Nelson’s “impression” about the level
23 of Menaged’s “influence” over Chittick is not the sort of thing the jury needs an expert
24 for. Dr. Nelson admits that she is “not rendering a diagnosis.” (Ex. 3 at 90:6-7.) And
25 she admits that a lay witness “could certainly give their opinion or impression” regarding
26 Menaged’s influence over Chittick—and indeed, some of the lay witnesses in this case
27 have done precisely that in depositions. (*Id.* at 88:6-17.) Thus, the jury is fully capable
28 of reviewing the same evidence that Dr. Nelson reviewed—including emails, letters, and

1 witness testimony—and drawing its own conclusion on the matter. Dr. Nelson’s
2 impression should be excluded as unhelpful.

3 **2. Dr. Nelson failed to address the more relevant issue: how much**
4 **influence *Beauchamp* had over Chittick.**

5 Expert testimony must also “fit” the issue that the jury is deciding. *Daubert*, 509
6 U.S. at 591-92; *see also Miller*, 234 Ariz. at 298 ¶ 21 (describing this requirement). Under
7 this requirement, judges must exclude expert testimony “unless they are convinced that it
8 speaks clearly and directly to an issue in dispute in the case.” *Daubert v. Merrell Dow*
9 *Pharm., Inc.*, 43 F.3d 1311, 1321 n.17 (9th Cir. 1995).

10 Courts regularly exclude psychological testimony that does not “fit” the issue at
11 hand. For example, in *United States v. Dixon*, 413 F.3d 520 (5th Cir. 2005), the defendant
12 sought to introduce expert testimony about the “psychological effects” of being beaten by
13 her boyfriend. *Id.* at 523. But the trial court excluded the testimony and the Fifth Circuit
14 affirmed, reasoning that although the testimony went to the defendant’s “subjective”
15 perception of danger, the issue for the jury was, instead, whether the defendant’s
16 perception was “objectively” reasonable. *Id.* at 523-24; *accord, e.g., State v. Amaya-Ruiz*,
17 166 Ariz. 152, 167 (1990) (affirming exclusion of expert opinion regarding “general”
18 political situation in El Salvador because the relevant issue was, instead, whether an
19 individual had a certain “personal” experience in El Salvador).

20 Here, too, Dr. Nelson’s impression about Menaged’s influence over Chittick does
21 not “fit” the issue at hand. This lawsuit is against Beauchamp, not Menaged. The
22 Receiver will submit evidence that if Beauchamp had given proper advice, Chittick would
23 have followed it. The relevant issue, therefore, is whether *Beauchamp* had influence over
24 Chittick, not whether Menaged did. Yet Dr. Nelson admits that she offers no opinion on
25 that issue. (Ex. 3 at 112:10–113:7.) In fact, she emphasizes that she is “not testifying
26 about David Beauchamp” or “offering an opinion about Mr. Beauchamp.” (*Id.* at 93:2-3,
27 107:3.) Her opinion is therefore not helpful for what the jury will decide.

Moreover, courts regularly exclude psychological testimony that fails to analyze alternative countervailing causes. *See, e.g., Cloud v. Pfizer Inc.*, 198 F. Supp. 2d 1118, 1135-37 (D. Ariz. 2001) (excluding psychiatric testimony regarding cause of suicide because, among other things, the psychiatrist “did not fully explore other potential causes”). Yet Dr. Nelson formed an impression about Menaged’s influence over Chittick without analyzing an alternative countervailing cause: Beauchamp’s influence over Chittick. This is another reason why Dr. Nelson’s impression should be excluded.

(D) Dr. Nelson’s opinion is not a scientifically reliable opinion.

Expert opinions must also be scientifically reliable. There are three distinct requirements for reliability: The opinion must be based on “reliable principles and methods,” based on “sufficient facts or data,” and the expert must have “reliably applied the principles and methods to the facts of the case.” Ariz. R. Evid. 702. Dr. Nelson’s impression fails all three requirements.

1. Dr. Nelson’s opinion is not based on an objectively reliable method.

A party offering an expert opinion must “explain the expert’s methodology and demonstrate in some objectively verifiable way that the expert has both chosen a reliable scientific method and followed it faithfully.” *Miller*, 234 Ariz. at 298 ¶ 23 (quoting *Daubert*, 43 F.3d at 1319 n.11). Courts consider several factors in determining whether an expert’s method is objectively reliable, including: (1) whether the method can be or has been “tested,” (2) whether the method has been subjected to “peer review and publication,” (3) whether the method is “generally accepted” in the relevant field, (4) the “rate of error” of the method, (5) whether there are “standards controlling application” of the method, (6) whether the expert prepared the opinion “solely in anticipation of litigation” as opposed to independent research, (7) whether the expert’s field is “known to produce reliable results,” (8) whether “other courts” have deemed the method reliable, and (9) whether there are “non-judicial uses” for the method. *Id.* at 299 ¶¶ 24-25.

1 Dr. Nelson’s method fails this requirement in several basic ways. **First**, her overall
2 inquiry—whether Menaged “influenced” Chittick—is inherently subjective. Dr. Nelson
3 admits that she is not diagnosing Chittick with a recognized condition. (Ex. 3 at 71:16-
4 19, 90:2-7, 114:13-24.) She even admits that she is offering her “subjective views” on
5 the matter. (*Id.* at 110:19-20.)

6 Rule 702 squarely precludes such testimony. Indeed, the Supreme Court in
7 *Daubert* expressly warned against admitting “subjective belief.” 509 U.S. at 590.
8 Accordingly, courts regularly exclude such opinions, especially psychological opinions.
9 *See, e.g., Coble v. State*, 330 S.W.3d 253, 277-80 (Tex. Crim. App. 2010) (reversing trial
10 judge for admitting psychiatric testimony because, among other things, there was “no
11 objective source material in this record to substantiate [the expert’s] methodology”);
12 *Algarin v. New York City Dep’t of Corr.*, 460 F. Supp. 2d 469, 477 (S.D.N.Y. 2006)
13 (excluding psychiatric testimony because, among other things, it “is not the product of
14 the application of any analytic method, aside from [the expert’s] personal experience”).

15 **Second**, even if Dr. Nelson’s overall inquiry could be done with an objective
16 method, *she* did not do so. She simply reviewed records provided by Defendants and
17 concluded that Menaged had “substantial influence” over Chittick. Nowhere in her report
18 does she cite any specific methodology, publication, or other generally accepted standard
19 supporting her approach. (Ex. 1; Ex. 2.) She does not cite, for example, the Diagnostic
20 and Statistical Manual of Mental Disorders (DSM)—even though she has used the DSM
21 in other cases. (*See* Ex. 3 at 25:4–26:7 (Dr. Nelson explaining that she has used the DSM
22 in determining whether a defendant’s act was caused by a mental defect).) Nor does she
23 cite, for example, a psychological test such as the Minnesota Multiphasic Personality
24 Inventory (MMPI)—even though she has administered the MMPI in other cases. (*See id.*
25 at 25:4-11, 29:10–31:24 (Dr. Nelson explaining that she has administered the MMPI in
26 determining whether a defendant’s act was caused by a mental defect).)

27 Instead, Dr. Nelson sprinkles her report with unverifiable statements such as that
28 her opinion is “based on [her] training and experience.” (Ex. 1 at 14.) She used the same

1 tactic in her deposition. When asked what “scientific or psychological principles” she
2 relied on, she simply said that she used “a behavioral science perspective.” (Ex. 3 at 89:9-
3 22.) And when asked whether she relied on any “publication,” “testing,” or “diagnostic
4 methods,” she simply said that she was “not rendering a diagnosis” and was instead
5 “applying [her] training and expertise and experience.” (*Id.* at 90:2-16, 110:1-20.)

6 Dr. Nelson’s invocation of “training and experience”—and nothing more—is
7 precisely the sort of Because-I-Say-So that Rule 702 and *Daubert* prohibit. Courts
8 regularly exclude such opinions, especially psychological opinions. *See, e.g., Raynor v.*
9 *G4S Secure Sols. (USA) Inc.*, No. 3:17-cv-00160-FDW-DSC, 2018 WL 662483, at *2
10 (W.D.N.C. Feb. 1, 2018) (excluding psychiatric testimony because, among other things,
11 expert failed to show that her method “can be or has been tested,” “has been subjected to
12 peer review and publication,” “does not have a high known or potential rate of error,” and
13 “is generally accepted within a relevant scientific community” (citations and alterations
14 omitted)); *Coble*, 330 S.W.3d at 277-80 (reversing trial judge for admitting psychiatric
15 testimony because, among other things, expert “cited no books, articles, journals, or even
16 other forensic psychiatrists who practice in this area” and expert’s purported reliance on
17 “principles involved in the field of psychiatry” was “simply the *ipse dixit* of the witness”);
18 *Algarin*, 460 F. Supp. 2d at 477 (excluding psychiatric testimony because, among other
19 things, expert did not use “any particular accepted methodology, cite to any pertinent
20 medical literature, or employ any other evidence in support of his conclusion”); *Figueroa*
21 *v. Simplicity Plan de Puerto Rico*, 267 F. Supp. 2d 161, 165 (D.P.R. 2003) (excluding
22 psychiatric testimony as “conclusory because it is not supported by any comprehensive
23 scientific knowledge nor does [the expert] display the method that he used to reach this
24 conclusion”); *accord Adams v. Amore*, 182 Ariz. 253, 254–55 (App. 1994) (excluding
25 expert opinion where party “failed to lay the foundation that [the expert] based his

1 opinions on facts or data ‘of a type reasonably relied upon by experts in [his] particular
2 field’” (citing Ariz. R. Evid. 703)).¹

3 **Third**, lest there be any doubt, a simple examination of the factors set forth in
4 *Miller*, 234 Ariz. at 299 ¶¶ 24-25, confirms that Dr. Nelson’s method is not objectively
5 reliable:

- 6 (1) She has not explained whether her method can be tested.
- 7 (2) She has not identified any publication supporting her method.
- 8 (3) She has not explained whether her method is generally accepted.
- 9 (4) She has not identified a rate of error for her method.
- 10 (5) She has not identified specific standards controlling application of her
11 method.
- 12 (6) She prepared her opinion solely in anticipation of litigation.
- 13 (7) She has not explained whether her method is known to produce reliable
14 results.
- 15 (8) She has not identified other courts that have deemed her method reliable.
- 16 (9) She has not identified non-judicial uses of her method.

17 Her impression should therefore be excluded.

18 **2. Dr. Nelson’s opinion is not based on sufficient data.**

19 In addition to having an objectively reliable method, experts must also “obtain[]
20 enough information or data to make the proffered opinion reliable.” *Miller*, 234 Ariz. at
21 298 ¶ 22. Dr. Nelson failed this requirement as well, in several basic ways.

24 ¹ Although Dr. Nelson does not cite them, there are general guidelines for her field:
25 namely, the APA’s Ethical Principles of Psychologists and Code of Conduct and the
26 APA’s Specialty Guidelines for Forensic Psychology. (Exs. 6, 7.) But these guidelines
27 do not establish a methodology. *See Raynor*, 2018 WL 662483, at *2 (holding that § 9.03
28 of the Specialty Guidelines for Forensic Psychology is not a “method of evaluation” and
is “insufficient” to show reliability). In any event, Dr. Nelson failed to follow these
guidelines, as explained below.

1 **First**, Dr. Nelson admits that her evaluation of Menaged’s “influence” on Chittick
2 is based entirely on a review of documents in this case. (Ex. 3 at 69:22–71:5; *see also*
3 Ex. 1 at 4-14 (listing sources of information reviewed); Ex. 2 at 3-4 (same).) She admits
4 that she did not examine Chittick (who is deceased) or interview anyone who knew him,
5 such as Menaged, Beauchamp, any of Chittick’s family or friends, or anyone else. (Ex.
6 3 at 92:23-25, 95:5-8, 96:1-9.)

7 Dr. Nelson’s failure to examine Chittick or interview people who knew him,
8 including the person who she says influenced him (Menaged) and the defendant in this
9 case (Beauchamp), renders her opinion unreliable. Section 9.01(b) of the APA’s Ethical
10 Principles of Psychologists and Code of Conduct (hereafter “Ethical Principles”) explains
11 that psychologists should generally “provide opinions of the psychological characteristics
12 of individuals *only after* they have conducted an examination.” (Ethical Principles,
13 attached as **Exhibit 6**, at 24 (emphasis added).) When an examination is “not practical,”
14 psychologists should at least “clarify the probable impact of their limited information on
15 the reliability and validity of their opinions” and “appropriately limit the nature and extent
16 of their conclusions.” (*Id.*) Similarly, Section 9.03 of the APA’s Specialty Guidelines
17 for Forensic Psychology (hereafter “Specialty Guidelines”) states that psychologists
18 should “only provide written or oral evidence about the psychological characteristics of
19 particular individuals when they have sufficient information or data to form an adequate
20 foundation for those opinions,” and when it is “not possible” to conduct an examination,
21 psychologists should “strive to make clear the impact of such limitations on the reliability
22 and validity of their professional products, opinions, or testimony.” (Specialty
23 Guidelines, attached as **Exhibit 7**, at 15.) Indeed, in another case, Dr. Nelson criticized,
24 as unreliable, a psychologist who opined on a person’s mental state without having
25 conducted an examination or interviewed others. (Dr. Nelson’s 2/21/19 Declaration in
26 *Stearney v. USA*, attached as **Exhibit 8**, at 4-5, ¶¶ 7, 8(a), (d), (e).)

27 Here, Dr. Nelson admits that her failure to conduct any examinations or interviews
28 renders her opinion “limited,” but she fails to explain the specific impact of that limitation

1 on her opinion. (Ex. 1 at 14.) Courts have rejected psychological opinions because of a
2 failure to conduct examinations or interviews, and this Court should too. *See, e.g.,*
3 *Raynor*, 2018 WL 662483, at *2 (excluding psychiatric testimony because, among other
4 things, expert “never met or spoke with” the person she evaluated); *United States v.*
5 *Falcon*, 245 F. Supp. 2d 1239, 1243-45 (S.D. Fla. 2003) (excluding psychological
6 testimony because, among other things, expert merely reviewed records and did not
7 conduct an “interview” or speak with “witnesses”); *accord United States v. Hoac*, 990
8 F.2d 1099, 1103 (9th Cir. 1993) (affirming exclusion of psychological testimony because
9 expert “had not performed any formal testing on [the person he evaluated] and had spoken
10 with him on only two occasions”).²

11 **Second**, even if Dr. Nelson could form a reliable opinion based on documents
12 alone, she did not have all the necessary documents in this case. For example, Dr. Nelson
13 admits that it is generally important to review medical records when evaluating a
14 decedent. (Ex. 3 at 57:19-24, 92:5-10.) Yet she did not review any of Chittick’s medical
15 records. (*Id.* at 91:10-25.)

16 Similarly, Dr. Nelson admits that it was important for her to review depositions of
17 Chittick’s “friends” and “associates”—in fact, she said she “wanted as much of that
18 information as possible.” (Ex. 3 at 79:17–80:10.) Yet she did not review the depositions
19 of several such persons. (*See* Ex. 1 at 5 (listing depositions reviewed), Ex. 2 at 1-2
20 (same).) For instance, she did not review the deposition of Robert Koehler, who was
21 Chittick’s friend since the early 2000s, an investor of DenSco, and specially designated
22 by Chittick to manage DenSco in the event of Chittick’s death. (*See* Deposition of Robert
23

24 ² It is true that Dr. Nelson reviewed transcripts of some depositions and attended
25 part of Menaged’s deposition. (Ex. 1 at 5; Ex. 2 at 1.) But a deposition is fundamentally
26 different from a psychological interview, given the adversarial context. Dr. Nelson
27 herself made this point in another case, explaining that the “presence of a third party
28 during a one-on-one examination unavoidably changes the interaction between
interviewer and subject.” (Dr. Nelson’s 10/7/14 Affidavit in *Rahn v. City of Scottsdale*,
attached as **Exhibit 9**, at 1-2, ¶ 5.)

1 Koehler on 12/17/18, excerpts attached as **Exhibit 10**, at 45:15-23, 53:7-9, 73:21-24.)
2 Nor did she review the deposition of David Preston, who had known Chittick since the
3 early 1990s and was Chittick’s accountant, DenSco’s accountant, and an investor of
4 DenSco. (See Deposition of David Preston on 1/25/19, excerpts attached as **Exhibit 11**,
5 at 18:13-21, 20:2-17, 72:9-17.) Nor did she review the deposition of Paul Kent, who was
6 Chittick’s friend since 1990 and an investor of DenSco. (See Deposition of Paul Kent on
7 3/19/19, excerpts attached as **Exhibit 12**, at 12:1-6, 19:4-8.)³

8 Moreover, Dr. Nelson relied on Defendants to give her documents, so she admits
9 that she does not know, for example, whether she reviewed all relevant correspondence
10 between Chittick and Menaged, or between Chittick and Beauchamp. (Ex. 3 at 81:12-18,
11 82:22–83:18.)

12 Courts have rejected psychological opinions because of a failure to review all
13 relevant records, and this Court should too. *See, e.g., North v. Ford Motor Co.*, 505 F.
14 Supp. 2d 1113, 1119 (D. Utah 2007) (excluding psychiatric testimony because, among
15 other things, expert “relied on incomplete information, and did not include such
16 information as a complete medical and psychological history”); *Cloud v. Pfizer, Inc.*, 198
17 F. Supp. 2d 1118, 1135-37 (D. Ariz. 2000) (excluding psychiatric testimony because,
18 among other things, expert reached his conclusion “before reviewing all of [the
19 decedent’s] medical records”).

20 **3. Dr. Nelson did not reliably apply her own method.**

21 Even if Dr. Nelson had used an objectively reliable method, and even if she had
22 reviewed sufficient information, her opinion should *still* be excluded because she did not
23 “reliably apply” her method to this case. *Miller*, 234 Ariz. at 299 ¶ 26.

24
25
26 ³ And even when Dr. Nelson did review depositions, she often did not review
27 exhibits. For instance, though she claims to have reviewed Menaged’s deposition and
28 Beauchamp’s deposition, she did not review the exhibits to those depositions. (Ex. 3 at
85:6-16; *see also* Ex. 1 at 5 (listing depositions reviewed), Ex. 2 at 1-2 (same).)

1 Courts must ensure that an expert “employs in the courtroom the same level of
2 intellectual rigor that characterizes the practice of an expert in the relevant field.” *Kumho*
3 *Tire Co. v. Carmichael*, 526 U.S. 137, 152 (1999). For a forensic psychologist like Dr.
4 Nelson, that means taking an impartial, holistic look at the evidence. Indeed, Section 1.02
5 of the Specialty Guidelines requires forensic psychologists to “strive to be unbiased and
6 impartial, and avoid partisan presentation of unrepresentative, incomplete, or inaccurate
7 evidence that might mislead finders of fact.” (Ex. 7 at 8-9.)

8 But Dr. Nelson’s report is blatantly partisan. Three examples prove the point.
9 **First**, most of the “Background Information” section of her report is just a block quotation
10 of *several pages* of Defendants’ disclosure statement—which, as one might expect,
11 significantly downplays Beauchamp’s role in the harms that befell DenSco. (Ex. 1 at 2-
12 4.) In contrast, Dr. Nelson never cites Plaintiff’s disclosure statement in her report, even
13 though she claims to have reviewed it. (*See id.* at 4.)

14 **Second**, one of the “Sources of Information” listed in Dr. Nelson’s report is a
15 “Chronology” made by Defendants, which contains Defendants’ one-sided descriptions
16 of, and selective quotations from, various documents. (Ex. 4; *see* Ex. 1 at 5 (listing
17 “Chronology for E. Nelson” as source of information reviewed).) For example, in the
18 Chronology, Defendants briefly describe Chittick’s suicide note to his sister Iggy (Ex. 4
19 at 43), but completely omit the fact that this note included statements about Beauchamp’s
20 influence over Chittick, such as the following: “Dave my attorney . . . let me get the
21 workout signed[,] not tell the investors[,] try to fix the problem. That was a huge mistake.
22 . . . Dave did a workout agreement with [Menaged], we were executing to it and making
23 headway, yet Dave never made me tell the investors.” (*See* Receiver’s First Suppl. Ariz.
24 R. Evid. 807(b) notice, filed 7/13/18, at 6 ¶ 1.) This omission of relevant information
25 shows that Dr. Nelson’s review of documents was not holistic, but instead focused on the
26 evidence that Defendants want to focus on.

27 **Third**, the “Forensic Opinions” section of Dr. Nelson’s report is full of statements
28 that are nothing more than an adoption of Defendants’ narrative, even though much of the

evidence is to the contrary and even though Dr. Nelson is no more qualified than the jury to draw such inferences. (Ex. 1 at 14-20.) For example, Dr. Nelson states that Beauchamp “continually advised Mr. Chittick about his disclosure obligations.” (*Id.* at 18.) But that statement completely ignores evidence to the contrary, such as the fact that Chittick wrote in his journal: “I can raise money according to Dave.” (*See* Receiver’s First Suppl. Ariz. R. Evid. 807(b) notice, filed 7/13/18, at 2 ¶ 7.) Again, the omission of relevant information shows that Dr. Nelson’s review was not holistic, but partisan.

Dr. Nelson’s partisanship confirms that she did not use “the same level of intellectual rigor” that she would have used if she were not hired by Defendants. *Kumho Tire*, 526 U.S. at 152. Her opinion should therefore be excluded. Otherwise she will be exactly what *Daubert* seeks to prevent: “just another lawyer, masquerading as a pundit.” *People v. Johnson*, 19 Cal. App. 4th 778, 779 (1993) (quoting Peter Huber, *Galileo’s Revenge: Junk Science in the Courtroom* (2d ed. 1993), p. 204).

(E) Conclusion

The Receiver respectfully requests that the Court exclude the opinion of Dr. Erin Nelson under Arizona Rule of Evidence 702 and *Daubert v. Merrell Dow Pharmaceuticals, Inc.*, 509 U.S. 579 (1993).

RESPECTFULLY SUBMITTED this 4th day of December, 2019.

OSBORN MALEDON, P.A.

By /s/Joshua M. Whitaker
Colin F. Campbell
Geoffrey M. T. Sturr
Joseph N. Roth
Joshua M. Whitaker
2929 North Central Avenue, 21st Floor
Phoenix, Arizona 85012-2793

Attorneys for Plaintiff

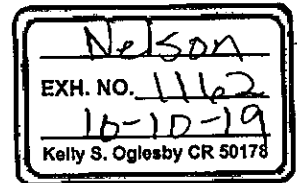
1 This document was electronically filed
2 and copy delivered*/e-served via the
3 AZTurboCourt eFiling system
4 this 4th day of December, 2019, on:

5 Honorable Daniel Martin*
6 Maricopa County Superior Court
7 101 West Jefferson, ECB-412
8 Phoenix, Arizona 85003

9 John E. DeWulf
10 Marvin C. Ruth
11 Vidula U. Patki
12 COPPERSMITH BROCKELMAN PLC
13 2800 North Central Avenue, Suite 1900
14 Phoenix, Arizona 85004
15 jdewulf@cblawyers.com
16 mruth@cblawyers.com
17 vparki@cblawyers.com
18 *Attorneys for Defendants*

19 /s/Karen McClain
20 8319032

EXHIBIT 1



1 John E. DeWulf (006850)
Marvin C. Ruth (024220)
2 Vidula U. Patki (030742)
COPPERSMITH BROCKELMAN PLC
3 2800 North Central Avenue, Suite 1900
Phoenix, Arizona 85004
4 T: (602) 224-0999
F: (602) 224-0620
5 jdewulf@cblawyers.com
mruth@cblawyers.com
6 vpatki@cblawyers.com
7 *Attorneys for Defendants*

8
9 **SUPERIOR COURT OF ARIZONA**
10 **COUNTY OF MARICOPA**

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

13 Plaintiff,

14 v.

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

17 Defendants.

No. CV2017-013832

**DEFENDANTS' DISCLOSURE OF
EXPERT WITNESS DR. ERIN
NELSON**

(Commercial Case)

(Assigned to the Honorable Daniel Martin)

18 Pursuant to the Court's May 16, 2018 Scheduling Order, Defendants Clark Hill PLC
19 and David G. Beauchamp, hereby disclose the attached report of Dr. Erin Nelson.

20 DATED this 5th day of April, 2019.

21 **COPPERSMITH BROCKELMAN PLC**

22 By: 

23 John E. DeWulf
24 Marvin C. Ruth
25 Vidula U. Patki
26 2800 North Central Avenue, Suite 1900
Phoenix, Arizona 85004
Attorneys for Defendants

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26

ORIGINAL of the foregoing e-mailed/mailed this
5th day of April, 2019 to:

Colin F. Campbell, Esq.
Geoffrey M. T. Sturr, Esq.
Joshua M. Whitaker, Esq.
OSBORN MALEDON, P.A.
2929 N. Central Ave., Suite 2100
Phoenix, AZ 85012-2793
Attorneys for Plaintiff





ERIN M. NELSON, PSY.D.
Forensic & Clinical Psychology

April 4, 2019

John E. DeWulf, Esq.
Coppersmith Brockelman, P.L.C.
2800 North Central Avenue, Suite 1900
Phoenix, Arizona 85004

Marvin C. Ruth, Esq.
Coppersmith Brockelman, P.L.C.
2800 North Central Avenue, Suite 1900
Phoenix, Arizona 85004

Re: *Peter S. Davis v. Clark Hill*
Maricopa County Superior Court Case No. CV-2017-013832

Dear Mr. DeWulf and Mr. Ruth:

Pursuant to your request, I recently performed a record review and analysis pertaining to the above captioned matter.

BACKGROUND INFORMATION

Denny Chittick was a 48-year-old, divorced, Caucasian father of two at the time of his July 28, 2016 death by suicide. Mr. Chittick obtained a Bachelor of Science degree in Business Finance from Arizona State University.¹ Mr. Chittick was the Senior Vice President and CIO of Insight Enterprises, Inc., at the time of his retirement in 1997.² Mr. Chittick subsequently founded, and was the president and sole shareholder of, DenSco Investment Corporation ("DenSco"). Over the years Mr. Chittick/DenSco developed a substantial base of investors, many of whom were his family and friends.

Given your familiarity with the events leading up to the instant record review, I will forgo a detailed review of that information. Suffice it to say, David Beauchamp served as legal counsel to the decedent, Denny Chittick, for many years. Toward the end of Mr. Chittick's life, he withheld critical information from Mr. Beauchamp, particularly as it pertained to the scope and magnitude of his unfortunate business dealings with Mr. Scott Menaged.

¹ BC_000296

² BC_000296

John E. DeWulf, Esq.
Marvin C. Ruth, Esq.
Re: Davis v. Clark Hill
April 4, 2019
Page 2

When he took his own life, Mr. Chittick/DenSco's financial losses related to his involvement with Mr. Menaged was in the tens of millions of dollars. Mr. Menaged is currently incarcerated as a result of crimes perpetrated against Mr. Chittick/DenSco and others.

As outlined in Defendants' Sixth Supplemental Disclosure Statement³, David Beauchamp served as counsel for Denny Chittick/DenSco Investment Corporation ("DenSco") dating back to the early 2000's. In 2013, Mr. Beauchamp discussed with DenSco that it should update its Private Offering Memorandum ("POM"). This update was initiated but not completed. In June 2013, Mr. Chittick advised Mr. Beauchamp that DenSco, along with Scott Menaged, had been sued by FREO Arizona, LLC. Although Mr. Beauchamp did not represent DenSco in that matter, he did advise Mr. Chittick, in part, that the litigation should be disclosed in DenSco's 2013 POM. Mr. Chittick represented to Mr. Beauchamp that Scott Menaged was "...someone he had 'done a ton of business with...hundreds of loans for several years'..." In December 2013, Mr. Chittick advised Mr. Beauchamp that several of DenSco's loans to Mr. Menaged were in jeopardy as a result of double-lien issues. Mr. Chittick indicated to Mr. Beauchamp that he intended to pursue a remediation plan independently and directly with Mr. Menaged. In January 2014, Mr. Chittick described Mr. Menaged as someone he had lent a "...total of \$50 million since 2007 and that he'd 'never had a problem with payment or issue that hasn't been resolved'." However:

While it was true that DenSco had lent Menaged approximately \$50 million since 2007, DenSco had lent Menaged \$31 million in 2013 alone, and had \$28.5 million in loans to Menaged outstanding as of the end of 2013, a large portion of which were more than six months past due, including a significant number of 2012 loans. Further, Mr. Chittick had known as of September 2012 that Menaged had double-liened multiple properties with DenSco loans, thereby jeopardizing DenSco's lien position, yet not only did he keep this a secret, Mr. Chittick thereafter drastically increased DenSco's lending to Menaged, from \$4.65 million outstanding at the end of 2012 to more than \$28 million outstanding by the end of 2013 (all of which Mr. Chittick also failed

³ Defendants' Sixth Supplemental Rule 26.1 Disclosure Statement, dated March 13, 2019

John E. DeWulf, Esq.
Marvin C. Ruth, Esq.
Re: Davis v. Clark Hill
April 4, 2019
Page 3

to timely disclose to Mr. Beauchamp). Rather than provide Mr. Beauchamp with any of this information, Chittick instead misrepresented to Mr. Beauchamp in January 2014 that Menaged was a good borrower with a sterling track record. Mr. Chittick made similar misrepresentations to Mr. Beauchamp regarding his positive lending relationship with Menaged when he disclosed the FREO lawsuit.

Mr. Chittick further explained that Menaged's wife had become critically ill in the past year, and that Menaged had turned the day-to-day operations of his companies over to his cousin. According to Mr. Chittick, the cousin would receive loan funds directly from DenSco, then request loans for the same property from another lender, including the Miller Lenders. The other lenders, who had funded their loans directly to the trustee, would record their deed of trust, as would DenSco, leaving DenSco in second position. The cousin, unfortunately, then purportedly absconded with the funds DenSco lent directly to Menaged. This "double lien" issue consequently jeopardized DenSco's secured position and its loan-to-value ratios. Mr. Chittick feared that a lawsuit with the Miller Lenders would jeopardize DenSco's entire enterprise.

According to Mr. Chittick's email, Menaged purportedly found out about his cousin's scam in November and revealed the fraud to Mr. Chittick at the time. Yet rather than consult legal counsel, Mr. Chittick devised a plan to fix the double lien issue with Menaged. The initial plan included DenSco paying off the other lenders. That required additional capital, which Menaged and Mr. Chittick agreed would come from DenSco lending Menaged an additional \$1 million and Menaged investing additional capital, including \$4-\$5 million from the liquidation of other assets, as set forth in a term sheet DenSco and Menaged signed after having already put their plan into effect. As the scope of the problem appeared to grow, Mr. Chittick and Menaged agreed to terms of an expanded plan, which included further investment from both DenSco and Menaged, who would also continue to flip and rent homes to raise the necessary profits needed to pay off the other lenders.

John E. DeWulf, Esq.
Marvin C. Ruth, Esq.
Re: Davis v. Clark Hill
April 4, 2019
Page 4

Unbeknownst to Mr. Beauchamp, and according to Mr. Chittick's January 7, 2014 email, DenSco and Menaged had already been "proceeding with this plan since November [2013]."...In other words, by the time Mr. Chittick approached Mr. Beauchamp with a partial disclosure of the issues in late 2013 and early 2014, Mr. Chittick had already agreed to a business plan with Menaged to work out the double lien problems, and had already advanced Menaged significant sums pursuant to that agreement. As Mr. Beauchamp explained in a February 20, 2014 email to his colleagues, Mr. Chittick "without any additional documentation or any legal advice...has been reworking his loans and deferring interest payments to assist Borrower...When we became aware of this issue, we advised our client that he needs to have a Forbearance Agreement in place to evidence the forbearance and the additional protections he needs."⁴

The instant record review and analysis was requested in order to provide my psychological impression(s) pertaining to the relevant behavior of Denny Chittick and factors that may have influenced such behavior. Specifically, you asked me to address the level of influence, if any, Scott Menaged had over Denny Chittick's decision-making and conduct on or about January 2014 through May 2014.

SOURCES OF INFORMATION:

Pleadings:

1. Complaint
2. Defendants' Initial Rule 26.1 Disclosure Statement
3. Plaintiff's Initial Rule 26.1 Disclosure Statement
4. Plaintiff's Notice of Service of Preliminary Expert Opinion
5. Plaintiff's Disclosure of Areas of Expert Testimony (9/7/18)
6. Defendants' Disclosure of Areas of Expert Testimony (9/7/18)
7. Defendants' 6th Supplemental Disclosure Statement

⁴ Defendants' Sixth Supplemental Rule 26.1 Disclosure Statement, dated March 13, 2019

John E. DeWulf, Esq.
Marvin C. Ruth, Esq.
Re: Davis v. Clark Hill
April 4, 2019
Page 5

Deposition Transcripts:

1. July 19, 2018 Deposition of David Beauchamp (Vol. I)
2. July 20, 2018 Deposition of David Beauchamp (Vol. II)
3. August 22, 2018 Deposition of Shawna Heuer
4. November 16, 2018 Deposition of Peter Davis (w/Exhibits)
5. December 3, 2019 Deposition of Steve Bunker (w/Exhibits)
6. December 17, 2018 Deposition of Victor Gofcaj (w/Exhibits)
7. December 12, 2018 Deposition of Brian Imdieke (w/Exhibits)
8. February 20, 2019 Deposition of Russ Dupper
9. March 7, 2019 Deposition of Barry Luchtel
10. March 9, 2019 Deposition of DoriAnn Davis

Miscellaneous Transcripts:

1. 2016-08-26 Scott Menaged 341 Testimony
2. Menaged Rule 2004 Testimony
3. Transcript of Interview of Menaged in ACC Litigation
4. Audio & Transcript of Chittick and Menaged Conversation

Additional Documents:

1. Chittick Estate Documents – Personal Journals
 2. October 20, 2017 Menaged Judgment in a Criminal Case
 3. Chittick Corporate Journals
 4. Chittick Letter to Investors
 5. Chittick Letter to Robert Koehler
 6. Chittick Letter to Shawna Heuer
 7. Chittick To Do List
 8. Menaged Indictment
 9. Menaged Information-Indictment
 10. Menaged Plea Agreement
 11. Chronology for E. Nelson
 12. DOCID_00383613
 13. DOCID_00386378
 14. DOCID_00432523
 15. DOCID_00432524
 16. CTRL_00062082
 17. DOCID_00432525
-

John E. DeWulf, Esq.
Marvin C. Ruth, Esq.
Re: Davis v. Clark Hill
April 4, 2019
Page 6

18. Misc Chittick Device Documents
 19. DOCID_00074182
 20. DOCID_00074098
 21. DOCID_00074789
 22. DOCID_00074413
 23. DOCID_00074416
 24. DOCID_00074399
 25. DOCID_00079194
 26. DOCID_00078688
 27. DOCID_00078737
 28. DOCID_00078637
 29. DOCID_00078610
 30. DOCID_00078621
 31. DOCID_00078635
 32. DOCID_00078604
 33. DOCID_00078518
 34. DOCID_00078558
 35. DOCID_00078468
 36. DOCID_00078508
 37. DOCID_00078509
 38. DOCID_00078401
 39. DOCID_00078402
 40. DOCID_00078406
 41. DOCID_00078434
 42. DOCID_00078438
 43. DOCID_00078393
 44. DOCID_00078386
 45. DOCID_00078388
 46. DOCID_00078390
 47. DOCID_00078381
 48. DOCID_00078320
 49. DOCID_00078343
 50. DOCID_00078264
 51. DOCID_00078191
 52. DOCID_00078193
 53. DOCID_00078214
 54. DOCID_00078185
 55. DOCID_00078188
 56. DOCID_00078112
-

John E. DeWulf, Esq.
Marvin C. Ruth, Esq.
Re: Davis v. Clark Hill
April 4, 2019
Page 7

57. DOCID_00078109
 58. DOCID_00078080
 59. DOCID_00077527
 60. DOCID_00077001
 61. DOCID_00085946
 62. DOCID_00087434
 63. DOCID_00087270
 64. CH_EstateSDT_0002042
 65. CH_EstateSDT_0002570
 66. CH_EstateSDT_0024321
 67. CH_EstateSDT_0024416
 68. CH_EstateSDT_0024417
 69. CH_EstateSDT_0024418
 70. CH_EstateSDT_0024419
 71. CH_EstateSDT_0024420
 72. CH_EstateSDT_0024421
 73. CH_EstateSDT_0024422
 74. CH_EstateSDT_0024425
 75. CH_EstateSDT_0024426
 76. CH_EstateSDT_0024427
 77. CH_EstateSDT_0024428
 78. CH_EstateSDT_0024430
 79. CH_EstateSDT_0024432
 80. CH_EstateSDT_0024434
 81. CH_EstateSDT_0024435
 82. CH_EstateSDT_0024436
 83. CH_EstateSDT_0024437
 84. CH_EstateSDT_0025071
 85. CH_EstateSDT_0025541
 86. CH_EstateSDT_0026610
 87. CH_EstateSDT_0027935
 88. CH_EstateSDT_0027939
 89. CH_EstateSDT_0028079
 90. CH_EstateSDT_0028081
 91. CH_EstateSDT_0028082
 92. CH_EstateSDT_0028087
 93. CH_EstateSDT_0028091
 94. CH_EstateSDT_0028092
 95. CH_EstateSDT_0028093
-

John E. DeWulf, Esq.
Marvin C. Ruth, Esq.
Re: Davis v. Clark Hill
April 4, 2019
Page 8

96. CH_EstateSDT_0028094
97. CH_EstateSDT_0028095
98. CH_EstateSDT_0028096
99. CH_EstateSDT_0028097
100. CH_EstateSDT_0028098
101. CH_EstateSDT_0028106
102. CH_EstateSDT_0028107
103. CH_EstateSDT_0028114
104. CH_EstateSDT_0028117
105. CH_EstateSDT_0028120
106. CH_EstateSDT_0039964
107. CH_EstateSDT_0040401
108. CH_EstateSDT_0040837
109. CH_EstateSDT_0064769
110. CH_EstateSDT_0065302
111. CH_EstateSDT_0067593
112. CH_EstateSDT_0072252
113. CH_EstateSDT_0072253
114. CH_EstateSDT_0072254
115. CH_REC_CHI_0006446
116. CH_REC_C HI_0017000
117. CH_REC_C HI_0017980
118. CH_REC_C HI_0018966
119. CH_REC_C HI_0021542
120. CH_REC_CHI_0021613
121. CH_REC_CHI_0021702
122. CH_REC_CHI_0042251
123. CH_REC_CHI_0042883
124. CH_REC_C HI_0048926
125. CH_REC_CHI_0051093
126. CH_REC_CHI_0051478
127. CH_REC_CHI_0054845
128. CH_REC_C HI_0054885
129. CH_REC_C HI_0054945
130. CH_REC_C HI_0054998
131. CH_REC_C HI_0055078
132. CH_REC_C HI_0068678
133. CH_REC_MEN_0026584
134. CH_REC_MEN_0027591

John E. DeWulf, Esq.
Marvin C. Ruth, Esq.
Re: Davis v. Clark Hill
April 4, 2019
Page 9

135. CH_EstateSDT_0039287
 136. DOCID_00038876
 137. DOCID_00038934
 138. DOCID_00040808
 139. DOCID_00043908
 140. DOCID_00044223
 141. DOCID_00044252
 142. DOCID_00086937
 143. DOCID_00078839
 144. BC_000296
 145. CH_0000915
 146. CH_0002080
 147. CH_REC_CHI_0009504
 148. CH_REC_CHI_0009542
 149. CH_REC_CHI_0060228
 150. CH_REC_CHI_0062356
 151. CH_REC_CHI_0065965
 152. CH_REC_CHI_0067611
 153. CH_REC_CHI_0068720
 154. CH_REC_CHI_0084775
 155. CH_REC_CHI_0095659
 156. CH_REC_MEN_0025912
 157. CH_REC_MEN_0026580
 158. CH_REC_MEN_0026584
 159. CH_REC_MEN_0026600
 160. CH_REC_MEN_0027195
 161. CH_REC_MEN_0027591
 162. DIC0005403
 163. DIC0005418
 164. DIC0006068
 165. DIC0006079
 166. DIC0006221
 167. DIC0006242
 168. DIC0006261
 169. DIC0006528
 170. DIC0006602
 171. DIC0006615
 172. DIC0006625
 173. DIC0006656
-

John E. DeWulf, Esq.
Marvin C. Ruth, Esq.
Re: Davis v. Clark Hill
April 4, 2019
Page 10

174. DIC0006673
175. DIC0006707
176. DIC0006803
177. DIC0007075
178. DIC0007135
179. DIC0007598
180. DIC0007630
181. DIC0008036
182. DP000190-244
183. BC_000003
184. BC_000208
185. BC_000296
186. BC_000754
187. BC_001979
188. BC_002000
189. BC_002982
190. CH_0000637
191. CH_0000708
192. CH_0001015
193. CH_0001113
194. CH_0002080
195. CH_0004241
196. CH_0006602-6605
197. CH_0009806
198. CH_EstateSDT_0002326
199. CH_EstateSDT_0002570
200. CH_EstateSDT_0027935
201. CH_EstateSDT_0028085
202. CH_EstateSDT_0028086
203. CH_EstateSDT_0028087
204. CH_EstateSDT_0028090
205. CH_EstateSDT_0028091
206. CH_EstateSDT_0028106
207. CH_EstateSDT_0039964
208. CH_EstateSDT_0040401
209. CH_EstateSDT_0040837
210. CH_EstateSDT_0065302
211. CH_EstateSDT0028084
212. DIC0000965

John E. DeWulf, Esq.
Marvin C. Ruth, Esq.
Re: Davis v. Clark Hill
April 4, 2019
Page 11

213. DIC0002491
214. DIC0005387
215. DIC0005403
216. DIC0005405
217. DIC0005410
218. DIC0005412
219. DIC0005413
220. DIC0005414
221. DIC0005418
222. DIC0005439
223. DIC0005444
224. DIC0005570
225. DIC0005689
226. DIC0005700
227. DIC0005823
228. DIC0005849
229. DIC0005902
230. DIC0006068
231. DIC0006079
232. DIC0006111
233. DIC0006175
234. DIC0006179
235. DIC0006182
236. DIC0006203
237. DIC0006221
238. DIC0006242
239. DIC0006261
240. DIC0006302-6304
241. DIC0006308
242. DIC0006420
243. DIC0006435
244. DIC0006463
245. DIC0006528
246. DIC0006600-6604
247. DIC0006615
248. DIC0006625
249. DIC0006627
250. DIC0006633
251. DIC0006656

John E. DeWulf, Esq.
Marvin C. Ruth, Esq.
Re: Davis v. Clark Hill
April 4, 2019
Page 12

- 252. DIC0006673
 - 253. DIC0006679-6681
 - 254. DIC0006691
 - 255. DIC0006702-6706
 - 256. DIC0006707-6710
 - 257. DIC0006729
 - 258. DIC0006733-6737
 - 259. DIC0006738
 - 260. DIC0006759
 - 261. DIC0006803
 - 262. DIC0006822
 - 263. DIC0006901
 - 264. DIC0006904
 - 265. DIC0006958
 - 266. DIC0006968
 - 267. DIC0007075
 - 268. DIC0007085
 - 269. DIC0007125
 - 270. DIC0007135
 - 271. DIC0007145
 - 272. DIC0007165-7168
 - 273. DIC0007341
 - 274. DIC0007521
 - 275. DIC0008036
 - 276. DIC0008607
 - 277. DIC0008660
 - 278. DIC0009149
 - 279. DIC0010755
 - 280. DIC0010791
 - 281. DIC0010830
 - 282. DOCID_00017178
 - 283. DOCID_00017206
 - 284. DOCID_00019226
 - 285. DOCID_00030170
 - 286. DOCID_00030177
 - 287. DOCID_00033018
 - 288. DOCID_00044699
 - 289. DOCID_00044736
 - 290. DOCID_00044785
-

John E. DeWulf, Esq.
Marvin C. Ruth, Esq.
Re: Davis v. Clark Hill
April 4, 2019
Page 13

291. DOCID_00044787
292. DOCID_00044808
293. DOCID_00044967
294. DOCID_00044968
295. DOCID_00046170
296. DOCID_00049186
297. DOCID_00049396
298. DOCID_00049465
299. DOCID_00049595
300. DOCID_00049870
301. DOCID_00049977
302. DOCID_00058805
303. DOCID_00061118
304. DOCID_00063731
305. DOCID_00063842
306. DOCID_00069048
307. DOCID_00074080
308. DOCID_00074097
309. DOCID_00074172
310. DOCID_00074182
311. DOCID_00074222
312. DOCID_00074228
313. DOCID_00074229
314. DOCID_00074233
315. DOCID_00074248
316. DOCID_00074251
317. DOCID_00075186
318. DOCID_00075439
319. DOCID_00075465
320. DOCID_00078185
321. DOCID_00470840
322. DP000046
323. DP000101
324. DP000190
325. DP0000296-340
326. RECEIVER_000001
327. RECEIVER_000044
328. RECEIVER_000093
329. RECEIVER_000136

John E. DeWulf, Esq.
Marvin C. Ruth, Esq.
Re: Davis v. Clark Hill
April 4, 2019
Page 14

330. R-RFP-Respons.000014
331. R-RFP-Response000911

QUALIFICATIONS OF EXAMINER:

I have enclosed a copy of my curriculum vitae which outlines my qualifications to perform this analysis (*Exhibit "A"*). I have also attached my Testimony List and Fee Schedule (*Exhibits "B" and "C"*).

LIMITATIONS:

The observations/opinions provided herein are based on my training and experience as well as my review of the Information listed in the Sources of Information section of this report. I did not conduct a face-to-face evaluation of Mr. Chittick prior to his death, nor have I conducted any collateral interviews. As such, my opinions are thereby limited.

FORENSIC OPINIONS:

Note: This report includes multiple footnote citations. The citations are not intended to be all inclusive/exhaustive. Rather, they are intended to highlight salient examples of a given point.

As previously stated, the instant record review was requested in order to provide my psychological impression(s) pertaining to the relevant behavior of Denny Chittick and factors that may have influenced such behavior. Specifically, you asked to me to address the level of influence, if any, Scott Menaged had over Denny Chittick's decision-making and conduct on or about January 2014 through May 2014.

Available records suggest that Mr. Chittick was a highly competitive and driven man who placed tremendous value on money and equated the accumulation of wealth as a primary marker of success.⁵ Notwithstanding his apparent focus on financial achievement, by many accounts, Mr. Chittick was not lavish in his spending habits.⁶ To the contrary, he was relatively frugal. Although

⁵ CH_REC_CHI_0074014

⁶ D. Beauchamp deposition, 202:13-16 and 206:06-07;
CH_EstateSDT_0039964; CH_EstateSDT_0040401;

he had numerous personal and professional associates, Mr. Chittick seems to have been guarded interpersonally and to have had few trusted relationships.⁷ It appears that Mr. Chittick was deeply devoted to his wife prior to discovering her infidelity in 2009, and remained deeply devoted to his children until the time of his death.⁸ In fact, despite his wife's perceived betrayal, Mr. Chittick postponed divorce for three more years as he believed this to be in the best interest of his children.⁹

Mr. Chittick began doing business with Scott Menaged in approximately 2007.¹⁰ For the first several years of their relationship, Mr. Menaged demonstrated the capacity to fully execute and fulfill his professional obligation(s) to Mr. Chittick.¹¹ Mr. Menaged appears to have sought, obtained, and nurtured Mr. Chittick's trust. Although it is unclear precisely when Mr. Menaged began to violate that trust, available records suggest that Mr. Chittick first became aware of any wrongdoing by Scott Menaged sometime in the fall of 2012.¹² At that time, and despite the disturbing nature of his discovery, Mr. Chittick apparently chose to address the problem with Mr. Menaged privately and elected to withhold the information from his counsel and his investors. Moreover, it appears that rather than limit the scope of his business with Mr. Menaged in response to his discovery, Mr. Chittick expanded the amount and number of loans provided to Menaged exponentially.¹³ Mr. Chittick's collective business dealings with Menaged put him in violation of representations and/or commitments made to his investors. Over the next

CH_EstateSDT_0040837; CH_EstateSDT_0065302

⁷ R. Dupper deposition, 17:5-15; B. Luchtel deposition, 67:17-68:6; D. Davis deposition, 17:1-3; D. Davis deposition, 30:25.

⁸ CH_EstateSDT_0027935; B. Luchtel deposition, 36:15-16.

⁹ CH_REC_CHI_0095659

¹⁰ DIC0007135

¹¹ DIC0007135

¹² CH_REC_CHI_0009504; CH_REC_CHI_0009542

¹³ Counsel has represented to me that the balance of loans made by DenSco to Mr. Menaged between the fall of 2012 and fall of 2013 grew from less than \$5 million to approximately \$25.5 million. In November 2013 when Mr. Menaged revealed more detail about the double-lien issue to Mr. Chittick, Mr. Chittick loaned Mr. Menaged another \$3 million before the end of the year. I anticipate receipt of documentation of these figures will be forthcoming.

12-14 months, Mr. Chittick continued to withhold information about the problems with Mr. Menaged from critical vested parties. Unfortunately, Denny Chittick remained inextricably intertwined with Scott Menaged for the remainder of his life.¹⁴

Specifically, as it pertains to the January to April 2014 time period in question, I have several noteworthy observations. Those observations include, but are not limited to:

- On January 7, 2014, Denny Chittick sent an e-mail message to David Beauchamp that purported to explain the scope of Mr. Menaged's misuse of DenSco's funds.¹⁵
- However, Mr. Chittick's January 7, 2014 email contained inaccuracies that suggest he was deliberately deceiving Mr. Beauchamp. For example, Mr. Chittick wrote, in part, "...I have never had problem with payment or issue that hasn't been resolved."¹⁶
- A January 7, 2014 email from Mr. Chittick to Mr. Beauchamp also referenced a series of issues with DenSco's lien positions. In this email, Mr. Chittick also outlined a "plan to fix" the problem that he and Mr. Menaged crafted and had already begun to implement.¹⁷
- On January 9, 2014, Mr. Chittick and Mr. Menaged met with David Beauchamp. During this meeting, Mr. Chittick and Mr. Menaged broadly explained the nature of the problem with the liens and cited Mr. Menaged's personal difficulties (e.g., wife's cancer, cousin's mishandling of funds) as the explanation for their predicament.¹⁸
- With respect to their aforementioned explanation, it is now clear that the personal difficulties Mr. Menaged put forth were fiction.¹⁹ That said, there is no evidence to suggest that Mr. Chittick was aware of

¹⁴ Transcript of Recorded Conversation between Chittick and Menaged

¹⁵ DIC0007135

¹⁶ DIC0007135

¹⁷ DIC0007135

¹⁸ DIC0005403

¹⁹ Menaged 2004 Testimony

Mr. Menaged's deception in January 2014. In fact, it is unclear if Mr. Chittick ever seriously doubted the veracity of Menaged's story.

- After the January 9, 2014 meeting, Mr. Chittick and Mr. Menaged, along with their respective counsel, engaged in a lengthy negotiation in order to document the terms of Mr. Chittick and Mr. Menaged's proposed solution.²⁰ Note: This was ultimately memorialized on April 16, 2014.²¹
- During the course of the January-April 2014 negotiations, Mr. Chittick repeatedly acquiesced to Mr. Menaged's attempts to manipulate the agreement in his own interest.²²
- During the course of the January-April 2014 negotiations, Mr. Beauchamp repeatedly advised Mr. Chittick against Mr. Menaged's revisions and insisted that he protect DenSco's interests and investors.²³
- Also during the course of the January-April 2014 negotiations, and despite David Beauchamp's explicit advice to the contrary, Mr. Chittick persisted in sharing information with Mr. Menaged.²⁴
- During this same time period, Scott Menaged repeatedly made significant unfulfilled promises to Mr. Chittick about potential solutions to their financial woes.²⁵

²⁰ DIC0006242; DIC0006068; DIC0006528; DIC0006079;
DIC0006615; DIC0006602; DIC0007598; DIC0007630

²¹ DIC0008036

²² DIC00006242; DIC0006261; DIC0006221; DIC0005418;
DIC0006673; CH_0002080; DIC0006707

²³ DIC0006625; DIC0006707; DIC0006803

²⁴ CH_REC_MEN_0031108; CH_REC_MEN_0027195;
CH_REC_MEN_0026580; CH_0000915

²⁵ CH_REC_CHI_0060228; DIC0007075; CH_REC_MEN_0014382;
CH_REC_CHI_0068720; CH_REC_CHI_0062356; DIC0007135;
CH_REC_CHI_0065965; CH_REC_MEN_0025912

- As of April 2014, Mr. Menaged was indebted to Mr. Chittick/DenSco for almost \$40 million.²⁶
- Mr. Beauchamp continually advised Mr. Chittick about his disclosure obligations before and after the April 16, 2014 memorialization.²⁷
- Despite the gravity of the position Mr. Menaged put him in, Mr. Chittick appears to have remained steadfast in his trust in, and support of, Mr. Menaged.
- In an effort to conceal the seriousness of the problems created by Mr. Menaged, Mr. Chittick intentionally misled (by omission and/or commission) his closest associates, including his accountant, investors, family and friends.²⁸
- It appears as if Mr. Chittick disliked lawyers (and legal fees). Throughout Mr. Beauchamp's representation of Mr. Chittick, Mr. Chittick routinely made disparaging comments about Mr. Beauchamp professionally, as well as the legal profession generally.²⁹
- According to David Beauchamp's testimony, as of May 2014, Mr. Chittick was unwilling to finalize preparation of documents to inform DenSco's investors of the Menaged-associated problems.³⁰
- According to David Beauchamp's testimony, Mr. Chittick would not agree to update the investors as Mr. Beauchamp advised.³¹

²⁶ DIC0008036

²⁷ DIC0006673; DIC0006707; DIC0006803; DIC0006656

²⁸ RECIEVER_002570; 2013 Tax Return & Work Papers; DIC0007135;
S. Heuer deposition, 45

²⁹ CH_REC_MED_0026584; CH_REC_MEN_0026600;
CH_REC_CHI_0067611; CH_REC_CHI_0084775

³⁰ D. Beauchamp deposition, 279:13-14; D. Beauchamp deposition,
408:12-21

³¹ D. Beauchamp deposition, 164:1-14

- According to David Beauchamp's testimony, he terminated representation of Mr. Chittick in May 2014.³²
- Between January 2013 and June 2016, Mr. Menaged obtained approximately 2,712 loans from DenSco. Of those, only 96 involved actual property transactions. The remaining 2,712 were fraudulent/phantom properties.³³
- Not only did Mr. Menaged utilize DenSco funds for personal luxury (trips to Las Vegas, gambling, cars, etc.), he also used the fraudulent loans to pay back prior DenSco loans in order to conceal the embezzlement.³⁴
- Over the course of their relationship, Mr. Menaged defrauded Mr. Chittick/DenSco out of at least \$34 million.³⁵
- DenSco was not Scott Menaged's only victim. Mr. Menaged was indicted for crimes committed against a number of entities, including but not limited to, banks and financial institutions.³⁶
- Scott Menaged is currently serving a 17-year sentence with the Federal Bureau of Prisons.

By all outward appearances, Denny Chittick was an intelligent, driven, successful businessman. He seems to have cared deeply about the perception of others and worked hard to portray himself as having full command of his personal and professional lives. However, in Mr. Chittick's case, there was a disconnect between external appearance and internal reality. Although many people thought they knew Mr. Chittick, and he had many positive acquaintances, he appears to have had few intimate personal relationships. Mr. Chittick married his first love, Ranasha, in September 2000. Unfortunately, he appears to have been devastated by his wife's repeated infidelity. Ranasha was one of the few people who Mr. Chittick "let in" and the

³² D. Beauchamp deposition, 121:22-122:1

³³ Menaged Plea Agreement

³⁴ Menaged Plea Agreement

³⁵ Menaged Plea Agreement

³⁶ 2017-10-20 Menaged Judgment In a Criminal Case

John E. DeWulf, Esq.
Marvin C. Ruth, Esq.
Re: Davis v. Clark Hill
April 4, 2019
Page 20

demise of their relationship seems to have had an indelible impact. Unfortunately for Mr. Chittick, one of the only other people he appears to have placed his full faith in was Scott Menaged.

It is not uncommon for bright, well-educated people to fall prey to financial crime. In fact, financial predators engage a wide range of victims. In their effort to identify and cultivate a potential target, offenders typically seek to establish a trusting relationship. The preliminary demonstration of credibility becomes the foundation upon which the fraud can be built. The victim's trust is reinforced by the "reward" of initial follow-through. Once trust is established, the loyalty of the victim is a conduit for exploitation. In Mr. Chittick's case it seems his vulnerability was, in part, borne of a need to avoid failure, not only in the eyes of others, but also to himself. To this end, Mr. Chittick appears to have employed the most pervasive and effective of defense mechanisms – denial.

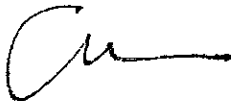
Although in retrospect it may seem counterintuitive, Mr. Chittick's decision to "double down" on his attachment to Mr. Menaged's false narrative, is consistent with a typology of victims of financial crime. It is not uncommon for vulnerable parties, especially those whose conduct is incongruent with their self-perception, to cling to their course no matter how problematic. In the face of a reality that is too much to bear, people often engage in seemingly irrational decisions to avoid confronting the truth. While in hindsight a better course of action may seem obvious, for the individual at a given period in time, internal and external psychological mechanisms can eclipse logic and reason. Mr. Chittick's behavior, prior, during and subsequent to the time period in question, reveals a pattern of enduring and intensifying attachment to his relationship with Mr. Menaged. Mr. Chittick's decision-making demonstrates his capacity to essentially discount information that interfered with his tightly held belief that Scott Menaged would not only rectify the problems he caused, but would be a central figure in his (Mr. Chittick's) future success.

In sum, based on the totality of information available to me, it is my opinion to a reasonable degree of psychological probability that, on or about January 2014 to May 2014 Scott Menaged had substantial influence over Denny Chittick's decision-making and resultant conduct.

John E. DeWulf, Esq.
Marvin C. Ruth, Esq.
Re: Davis v. Clark Hill
April 4, 2019
Page 21

My opinions are based on the information listed at the beginning of this report. I reserve the right to supplement and/or modify my opinions as additional information becomes available. To this end, please forward any additional records/discovery to my office. Please do not hesitate to contact me at 480.250.4601, if I can be of any further assistance.

Respectfully submitted,



Erin M. Nelson, Psy.D.
Forensic and Clinical Psychologist

Enclosures: Curriculum Vitae: Erin M. Nelson, Psy.D. (*Exhibit "A"*)
Court Testimony List: Erin M. Nelson, Psy.D. (*Exhibit "B"*)
Fee Schedule: Erin M. Nelson, Psy.D. (*Exhibit "C"*)

EXHIBIT "A"

ERIN M. NELSON, PSY.D.

(Updated: January 2019)

**Contact
Information:**

2415 East Camelback Road, Suite 700
Phoenix, Arizona 85016
P: 480.250.4601
E: drerinmn@gmail.com
W: www.nelsonforensicpsychology.com

Licensure:

Arizona – License #3697
California – License #PSY25135
New Mexico – License #1367

**Professional
& Clinical
Positions:**

Forensic and Clinical Psychologist
Erin M. Nelson, Psy.D.
Phoenix, Arizona
January 2005 - Present

Forensic and Clinical Psychologist
Steven Pitt & Associates
Scottsdale, Arizona & Century City, California
January 2005 – June 2018

Director, Preparation for Practice Course
Texas Christian University & University of North Texas
Health Sciences Center School of Medicine
Fort Worth, Texas
May 2017 - Present

Director, Psychological & Behavioral Science Curriculum
Texas Christian University & University of North Texas
Health Sciences Center School of Medicine
Fort Worth, Texas
May 2017 - Present

Director, Behavioral and Social Sciences Curriculum
University of Arizona College of Medicine – Phoenix
November 2010 – January 2018

Director, School Training
Threat Assessment Group, Inc. (TAG)
Newport Beach, California
June 2011 – Present

**Teaching
Appointments:**

Associate Professor, Medical Education
Texas Christian University/University of North Texas
Health Sciences Center School of Medicine
May 2017 - Present

Associate Professor, Psychiatry
The University of Arizona College of Medicine – Phoenix
July 2016 – Present

Associate Professor, Bioethics and Medical Humanism
The University of Arizona College of Medicine – Phoenix
July 2016 - Present

Clinical Assistant Professor, Psychiatry
Louisiana State University School of Medicine – New Orleans
July 2003 – Present

**Consulting
Positions:**

Phoenix Police Department
Phoenix, Arizona
November 2008 - Present

Park Dietz & Associates (PD&A), and
Threat Assessment Group, Inc. (TAG)
Newport Beach, California
April 2002 – Present

**Committee
Appointments:**

Chair, Admissions Committee
Texas Christian University & University of North Texas
Health Sciences Center School of Medicine
Fort Worth, Texas
November 2017 - Present

Executive Team – Curricular Evaluation
University of Arizona College of Medicine - Phoenix
May 2015 – January 2018

First Responder Traumatic Incident
Support and Response Task Force
City of Phoenix
November 2014 – Present

Chair, Theme and Topic Management Team
University of Arizona College of Medicine - Phoenix
June 2013 – December 2017

Curriculum Committee
University of Arizona College of Medicine - Phoenix
December 2012 – December 2017

Admissions Committee - Selection Subcommittee
University of Arizona College of Medicine - Phoenix
June 2011 – December 2017

Education: Doctor of Psychology, Clinical Psychology
Arizona School of Professional Psychology/Argosy
Phoenix, Arizona
July, 2003

Master of Arts, Clinical Psychology
Arizona School of Professional Psychology/Argosy
Phoenix, Arizona
June, 2000

Master of Arts, Clinical Psychology
Sam Houston State University, Huntsville, Texas
December, 1996

Bachelor of Arts, Psychology
Arizona State University, Tempe, Arizona
May, 1992

Honors: Honoree: Arizona Foothills Magazine; Women who
Move the Valley; January 2009
Certificate of Merit: American Psychological Association
Division 18, Psychologists in Public Service;
May 2002
Outstanding Advocacy Award: Argosy University;
May 2002
Magna Cum Laude Graduate, Arizona State University;
May 1992

Professional Affiliations: American Psychological Association
Division 18: Psychologists in Public Service
Division 41: American Psychology-Law Society
Arizona Psychological Association
California Psychological Association

Past Professional and Clinical Positions: Director, Special Projects
Steven Pitt & Associates
Forensic and General Psychiatry
December 1993 – August 2003

Associate Clinical Psychologist, III
Texas Department of Criminal Justice, Institutional Division
University of Texas Medical Branch
Huntsville, Texas
April 1997 - June 1998

Clinical Case Manager
Community Partnership for Behavioral Health Care
Phoenix, Arizona 85029
October 1992 - August 1994

Past Teaching Appointments: Assistant Professor, Psychiatry
The University of Arizona College of Medicine – Phoenix
October 2011 – July 2016

Assistant Professor, Bioethics and Medical Humanism
The University of Arizona College of Medicine – Phoenix
April 2014 – July 2016

Clinical Assistant Professor
Clinical Psychology Program, College of Health Sciences
Midwestern University School of Medicine
August 2008 – February 2011

Associate Adjunct Faculty
Arizona School of Professional Psychology
Phoenix, Arizona
August 1999 - August 2000

Graduate Teaching Assistant
Arizona School of Professional Psychology
Phoenix, Arizona
April 2000 - July 2000

Past Consulting Positions: Baseline Serial Killer Task Force
Phoenix Police Department
Phoenix, Arizona
July 2006 – December 2006

Phoenix Police Department - Homicide Division
Phoenix, Arizona
July 2003 – November 2008

Arizona Response Crisis Team
Arizona Department of Public Safety
Phoenix, Arizona
June 2002 – January 2005

Threat Assessment Group, Inc.
Newport Beach, California
Research Director, Columbine Psychiatric Autopsy Project
April 2001 – 2002

Joel A. Dvoskin, Ph.D., A.B.P.P. (Forensic)
Forensic and General Psychology
Tucson, Arizona
August 1998 – October 2003

Centers for Disease Control and Prevention
Macro International
Calverton, Maryland
Youth Risk Behavior Survey
Time-limited research: February - April 1997

Training:

Professional Program in Neuropsychological Assessment
University of California Berkeley
Behavioral Health Sciences Extension
Berkeley, California
April 2013 - May 2015

Postdoctoral Fellow
Steven Pitt & Associates
Forensic and General Psychiatry
Scottsdale, Arizona
August 2003 – January 2005

Psychology Intern
Louisiana State University Health Sciences Center
School of Medicine – New Orleans
Department of Psychiatry, Division of Psychology
New Orleans, Louisiana
July 2002 – June 2003

Psychology Intern
United States Department of Justice
Federal Bureau of Prisons
Federal Correctional Institution and Federal Prison Camp
Phoenix, Arizona
September 2000 - July 2001

Psychology Intern
Maricopa Integrated Health System
Maricopa Medical Center
Inpatient Psychiatric Annex
Phoenix, Arizona
September 1999 - July 2000

Counselor Intern
Texas Department of Criminal Justice
Institutional Division
University of Texas Medical Branch
Wynne Unit, Huntsville, Texas
August 1996 - December 1996

**Research
Positions:**

Graduate Research Assistant
Sam Houston State University
Department of Psychology, Huntsville, Texas
Forensic Research Grant
Master's Thesis: Bale, E.M. (1996) Reliability of Criteria Based
Content Analysis as Applied to Alleged Cases of Child Sexual
Abuse.
July 1995 - December 1996

Graduate Assistant
Sam Houston State University
Division of Health and Kinesiology, Huntsville, Texas
Grant funded by the Texas Commission on Alcohol and Drug
Abuse (TCADA)
July 1995 - December 1996

**Past:
Committee
Appointments:**

Eastern Region Designated Representative
Internal Audit/Review Board
Texas Department of Criminal Justice, Institutional Division
University of Texas Medical Branch - Correctional Managed Care
June 1997 - June 1998

Unit Post-Trauma Support Team, Crisis Response Division
Texas Department of Criminal Justice, Institutional Division
University of Texas Medical Branch - Correctional Managed Care
June 1997 - June 1998

Presentations: Nelson, E.M. & Pitt, S.E.: Forensic Files – Behavioral Sciences
and the Law. University of Arizona College of Medicine - Phoenix
Mini-Medical School Community Lecture Series, Phoenix,
Arizona, May 2016

Nelson, E.M.: The Art & Science of Human Behavior. Arizona Association of Certified Fraud Examiners, AZ ACFE Spring Conference, Phoenix, Arizona, April 2016

Manriquez, M., Mendez, M.D., Nelson, E.M., Venegas, V., Page, A.S.: Screening for Sex Trafficking: Using Standardized Patients to Teach Residents and Students During Ob-Gyn Objective Standardized Clinical Examination (OSCE) Sessions. The Big and Not So Easy, Today's Challenges in Medical Education – 2016 Council on Resident Education in Obstetrics and Gynecology, Association of Professors of Gynecology and Obstetrics; New Orleans, Louisiana, March 2016

Nelson, L.R., Nelson, E.M. & Barcellona, D.S.: Integration of Basic Science with Behavioral Science and Ethics Material in the Preclinical Curriculum covering Sexuality, Gender Identity and Reproduction. Sex and Gender Medical Education Summit – Mayo Clinic School of Continuous Professional Development; Rochester, Minnesota, October 2015

Hartmark-Hill, J., Nelson, E.M. & Gardner, A.: Interprofessional Integration and the Program for Narrative Medicine and Medical Humanities at the University of Arizona College of Medicine – Phoenix. Association for Behavioral Science in Medical Education – IPECP: Linking the Arts and Sciences to Promote Patient-Centered Care; Minneapolis, Minnesota, October 2015

Nelson, E.M. & Standley, E.S.: Art in Medicine: Structured Observation and Patient Care. Association for Behavioral Science in Medical Education – IPECP: Linking the Arts and Sciences to Promote Patient-Centered Care; Minneapolis, Minnesota, October 2015

Pitt, S.E. & Nelson, E.M.: Mass Shooters and Mental Illness: Fact vs. Fiction. Arizona Osteopathic Medical Association, 34th Annual Fall Seminar - Back to Basics; Tucson, Arizona, November 2014
Nelson, E.M., Hartmark-Hill, J., Lundy, M., Sell, M., Shepherd, T,

Bonifas, R., Coplan, B., Babock, E. & Sayles, J. Cultural Sensitivity, Communication and the Interprofessional Healthcare Team: An Inter-Institutional Collaboration. Association for Behavioral Science in Medical Education – The Behavioral Science of Interprofessional Education: Confronting Issues of Hierarchy and Power; Newport Beach, California, October, 2014

Nelson, E.M. & Dvoskin, J.A.: Campus Violence Prevention. College and University Professional Association for Human Resources 2014 Conference; Prescott, Arizona, June 2014

Nelson, E.M.: A Transportation Safety Culture – Why Aren't We There Yet? Arizona Department of Public Safety, Arizona Department of Transportation Strategic Highway Safety Summit. Phoenix, Arizona, November 2013

Restifo, K., Nelson, E.M., Dietz, P., & Nicholson, C.: Threat Assessment in the Medical School Environment – What is Being Done, What Should be Done, What Can be Done. AAMC Western Regional Conference, University of California School of Medicine; Irvine, California, May 2013

Nelson, E.M.: Promising Practices in Threat Management. Tennessee Department of Education, School Safety Summit; Nashville, Tennessee, January 2013

Nelson, E.M.: Violence Prevention at School. Tennessee School Personnel Officer's Association; Nashville, Tennessee, October 2012

Nelson, E.M.: Keeping Schools Safe. Tennessee School Plant Managers Association; Murfreesboro, Tennessee, June 2012

Nelson, E.M.: Postvention Lessons from the Columbine Tragedy. State of Tennessee, Safe Schools Conference; Nashville, Tennessee, April 2012

Nelson, E.M.: Supporting a Safe and Respectful School – A Program to Train Supervisors, Managers, and Administrators. Threat Assessment Group, Inc. & The Tennessee Department of Education, Office of School Safety; Nashville, Tennessee, February 2012

Pitt, S.E., Nelson, E.M.: Child Abduction and Murder: What Happens After the Arrest? Arizona Missing Persons Association; Glendale, Arizona, November 2011

Dvoskin, J.A. & Nelson, E.M.: Assessing Risk for Violence. Arizona Psychological Association 2011 Annual Conference: Together Through Challenge and Change; Scottsdale/Fountain Hills, Arizona, October 2011

Nelson, E.M.: Supporting a Safe and Respectful School – A Program to Train Supervisors, Managers, and Administrators. Threat Assessment Group, Inc. & The Tennessee Department of Education, Office of School Safety; Knoxville, Tennessee, August 2011; Jackson, Tennessee, August 2011; Nashville, Tennessee, September 2011

Nelson, E.M. & Culbertson, K.: Clinicians and the Court. Arizona Psychological Association 2010 Annual Conference: Advancing the Profession of Psychology – Diversity, Relevancy and Collaboration; Tucson, Arizona, October 2010

Nelson, E.M.: Psychology and the Law: Expert Consultation in Criminal Cases. Pima County Bar Association; Tucson, Arizona, May 2010

Pitt, S.E. & Nelson, E.M.: Information Gathering: The Forensic Psychiatric Evaluation and Beyond...Strategies to Maximize Success. Forensic Trends: Psychiatric and Behavioral Issues; Las Vegas, Nevada, May 2010

Pitt, S.E. & Nelson, E.M.: Media and Forensic Psychiatry: Practical Considerations. Forensic Trends: Psychiatric and Behavioral Issues; Las Vegas, Nevada, May 2010

Pitt, S.E. & Nelson, E.M.: The Forensic Psychiatric Evaluation: Civil and Criminal Case Applications. Arizona Paralegal Association; Phoenix, Arizona, May 2010

Nelson, E.M. & Pitt, S.E.: Forensic Psychiatric and Psychological Expert Consultation in Criminal Cases. Maricopa County Bar Association. Phoenix, Arizona, March 2010

Pitt, S.E. & Nelson, E.M.: Behind Closed Doors: Understanding the Human Side of Hoarding. Petsmart® Charities Feline Forum; Chicago, Illinois, September 2009

Stefan, S., Joyce, M., Dvoskin, J.A., Nelson, E.M. & Pitt, S.E.: Right to Refuse Medication Hearings. National Association for Rights Protection and Advocacy Conference; Phoenix, Arizona, September 2009

Pitt, S.E. & Spiers, E.M.: Difficult Physician Behavior: The Role of the Forensic Psychiatric Evaluation. Arizona Health Care Lawyers Association; Phoenix, Arizona, May 2009

Pitt, S.E., Spiers, E.M. & Hayes, J.: Back to Basics: The Independent Forensic Evaluation. Office of the Arizona Attorney General; Phoenix, Arizona, March 2009

Pitt, S.E., Spiers, E.M. & Hayes, J.: Back to Basics: The Art of Interviewing. Arizona Psychiatric Society 2007 Spring Scientific Conference; Scottsdale, Arizona, April 2007

Pitt, S.E., Hayes, J. & Spiers, E.M.: Links Between Animal Cruelty and Violence Toward People. Arizona Humane Society, Law Enforcement Animal Protection Program; Phoenix, Arizona, March 2007

Pitt, S.E., Dietz, P.E., Dvoskin, J.A. & Spiers, E.M.: The Importance of Video Recording Forensic Evaluations. American Academy of Psychiatry and the Law, 35th Annual Meeting; Scottsdale, Arizona, October 2004

Spiers, E.M.: Understanding Psychological Evaluations. Arizona Bar Association Annual Conference; Scottsdale, Arizona, June 2004

Spiers, E.M., Dvoskin, J.A., Pitt, S.E., Dietz, P.E. & Walker, R.P.: Columbine: Understanding Why – Implications for Psychologists. American Psychology-Law Society Annual Conference; Scottsdale, Arizona, March, 2004

Spiers, E.M.: Introduction to Forensic Mental Health. Louisiana State University School of Medicine – New Orleans; New Orleans, Louisiana, January, 2004

Pitt, S.E., Dietz, P.E., Dvoskin, J.A., Spiers, E.M., Walker, R.P., & Kurtis, B.: Columbine: Understanding Why. American Academy of Psychiatry and the Law, 34th Annual Meeting; San Antonio, Texas, October, 2003

Spiers, E.M.: Psychological Autopsy: Methods, Procedures, and Indications. Louisiana State University Health Sciences Center, Grand Rounds; New Orleans, Louisiana, October, 2003

Spiers, E.M.: The Columbine Psychiatric Autopsy – A Videotape Presentation. The New Orleans Adolescent Hospital; New Orleans, Louisiana, June 2003

Pitt, S.E., Spiers, E.M. & Dvoskin, J.A.: What has been learned from Columbine: The signs that were missed and how this can be avoided in our own backyards. Mental Health Association of Arizona, Arizona Department of Health Services – Division of Behavioral Health. 15th Annual Seeds of Success Symposium; Phoenix, Arizona, October 2002

Pitt, S.E. & Spiers, E.M.: Trauma and Crisis Response: Expectations and Interventions. Arizona Coalition for Victim Services, Arizona Response Crisis Team (ARCT); Phoenix, Arizona, June 2002

Pitt, S.E. & Spiers, E.M.: Trauma and Crisis Response: Expectations and Interventions. Arizona Coalition for Victim Services, Arizona Response Crisis Team (ARCT); Phoenix, Arizona, April 2002

Spiers, E.M.: Mass Media and Interpersonal Violence: Influence and Implications. Midwestern University College of Medicine; Glendale, Arizona, March 2002

Pitt, S.E. & Spiers, E.M.: Dangerousness and Firearms: Assessing the Risk for Violence in Teens and Adults. Midwestern University College of Medicine; Glendale, Arizona, November, 2000

Pitt, S.E. & Spiers, E.M.: Assessing the Risk for Domestic Violence. Arizona School of Professional Psychology - Survey of Forensic Psychology; Phoenix, Arizona, November, 2000

Dvoskin, J.A. & Spiers, E.M.: Violence and Mental Illness. Vernon State Hospital; Denton, Texas, November, 2000

Dvoskin, J.A. & Spiers, E.M.: Preventing Suicide in Adult Prisons. Georgia Department of Corrections; Atlanta, Georgia, October, 2000

Pitt, S.E. & Spiers, E.M.: Necrophilia and Necrosadism: Identifying and Assessing the Offender. Mesa Community College, Department of Mortuary Science; Mesa, Arizona, October, 2000

Spiers, E.M.: Youth and Violence: Juvenile Firesetting. Arizona State University Department of Criminal Justice; Tempe, Arizona, April, 2000

Spiers, E.M.: The Psychologist's Role in Corrections. Peoria Unified School District, Cactus High School, Elective Law; Glendale, Arizona, February, 1999

Pitt, S.E. & Spiers, E.M.: Searching for Mental Illness in Firesetters. Maricopa County Attorney's Office Arson Investigation Seminar; Mesa, Arizona, February, 1999

Pitt, S.E. & Spiers, E.M.: Toward an Understanding of Infant Murder. Northern New Jersey Maternal Child Health Consortium Hot Topics in Obstetrics and Pediatrics V; West Orange, New Jersey, November, 1998

Spiers, E.M.: Toward an Understanding of Serial Murder. Mesa Community College, Department of Criminal Justice; Mesa, Arizona, October, 1998

Spiers, E.M.: Career Directions in the field of Psychology. Paradise Valley Unified School District, North Canyon High School, Advanced Psychology; Paradise Valley, Arizona, September, 1998

Bale, E.M.: The Clinical Assessment of Feigned versus Actual Mental Illness. Texas Department of Criminal Justice/University of Texas Medical Branch, Eastern Regional Continuing Education Seminar; Huntsville, Texas, October, 1997

Bale, E.M.: Suicide Risk Assessment and Prevention: Texas Department of Criminal Justice/University of Texas Medical Branch. Bi-monthly training of new employees and correctional officers; October 1997 - June 1998

Pitt, S.E. & Bale, E.M.: Neonaticide, Infanticide, and Filicide: Two Case Reports and Review of the Literature. Good Samaritan Regional Medical Center, Department of Psychiatry, Grand Rounds Presentation; Phoenix, Arizona, May, 1995

Pitt S.E. & Bale, E.M.: Women who Murder Their Children. American College of Neuropsychiatrists' Mid-year Meeting and Scientific Seminar; Phoenix, Arizona, April, 1995

Pitt, S.E. & Bale, E.M.: Post-Traumatic Stress Disorder and DSM-IV: For Better or For Worse? Arizona Trial Lawyers Association; Medical Experts Speak: A Melange of Riveting Medical Topics; Phoenix, Arizona, December, 1993

Pitt, S.E. & Bale, E.M.: The Diagnosis and Treatment of Depression for the Family Practitioner. Phoenix General Hospital and Medical Center; Phoenix, Arizona, September, 1993

Pitt, S.E. & Bale, E.M.: Confidentiality and Privilege: Are you Protecting Your Patient's Rights? 71st Annual Arizona State Osteopathic Medical Association Convention; Phoenix, Arizona, April, 1993

Pitt, S.E. & Bale, E.M.: Preparing for Courtroom Testimony. 71st Annual Arizona State Osteopathic Medical Association Convention; Phoenix, Arizona, April, 1993

Publications:

Pitt, S.E., Nelson, E.M., Chapman, B. & Lamoreux, I. (2018) Handling Suspects' Claims of Insanity During Interrogation. In Police/Law Enforcement, 42(9), 66-70

Kane, A.W., Nelson, E.M., Dvoskin, J.A., & Pitt, S.E. (2012) Evaluation for Personal Injury Claims. In R. Roesch & P.A. Zapf (Eds.). Forensic assessments in criminal and civil law: A handbook for lawyers. NY: Oxford University Press.

Dvoskin, J.A., Pitt, S.E., Dietz, P.E., Spiers, E.M. & Walker, R.P. (2008) Making America's Schools Safer
www.TeachSafeSchools.Org

Dvoskin, J.A., Spiers, E.M. & Brodsky, S.L. (2007) Correctional Psychology: Law, Ethics, & Practice. In A.M. Goldstein (Ed): Forensic Psychology: Emerging Topics and Expanding Roles. New York: Wiley

Spiers, E.M., Pitt, S.E., & Dvoskin, J.A. (2006) Psychiatric Intake Screening. In Puisis, Michael (Ed): Clinical Practice in Correctional Medicine, Second Edition. Philadelphia: Elsevier Health Sciences

Dvoskin, J.A. & Spiers, E.M. (2004) On the Role of Correctional Officers in Prison Mental Health Care. Psychiatric Quarterly.

Dvoskin, J.A. & Spiers, E.M. (2003) Commentary on Munetz, M.R., Galon, P.A., & Frese III, F.J. The Ethics of Mandatory Community Treatment. Journal of the American Academy of Psychiatry and Law, 31(2), 184-188.

Glancy, G.D., Spiers, E.M., Pitt, S.E., & Dvoskin, J.A. (2003) Commentary on Chen Y-H, Arria A.M., & Anthony J.C. Firesetting in adolescence and being aggressive, shy, and rejected by peers: New epidemiologic evidence from a national sample survey. Models and correlates of firesetting behavior. Journal of the American Academy of Psychiatry and Law.

Dvoskin, J.A., Spiers, E.M., Metzner, J.L., & Pitt, S.E. (2003) The Structure of Correctional Mental Health Services. In Rosner, R. (ed.), Principles and Practice of Forensic Psychiatry, Second Edition. London: Arnold Publishing.

Spiers, E.M., Dvoskin, J.A., & Pitt, S.E. (2002) Mental health professionals as institutional consultants and problem-solvers. In Fagan, T, and Ax, B (Eds) Correctional Mental Health Handbook Lanham, MD: American Correctional Association.

Pitt, S.E., Spiers, E.M., Dietz, P.E., & Dvoskin, J.A. (1999) Preserving the integrity of the interview: The value of videotape. Journal of Forensic Sciences, 44 (6), 1287-1291.

Pitt, S.E. & Bale, E.M. (1995) Neonaticide, Infanticide, and Filicide: A Review of the Literature. The Bulletin of the American Academy of Psychiatry and the Law, 23(3), 375-386.

Pitt, S.E. & Bale, E.M. (1993) Neonaticide: Mothers Who Kill their Newborn - A Case Report and Preliminary Review of the Literature. AOMA Digest, 8, 6-7, 16

EXHIBIT "B"

ERIN M. NELSON, PSY.D.**TESTIMONY LIST**

DATE	CASE/CAPTION	COURT	CIV/CRMJ	PROCEEDING	RETAINED BY
5/24/18	WILSON V. DILLARDS	UNITED STATES DISTRICT COURT - ARIZONA	CIVIL	HEARING	CAROLINE LARSEN, ESQ.
9/26/17	MORGAN V. CHAO	UNITED STATES DISTRICT COURT - ARIZONA	CIVIL	DEPOSITION	KRISSY MORRISON, ESQ.
9/11/17	SALAZ V. ARIZONA	PIMA COUNTY SUPERIOR	CIVIL	DEPOSITION	JENNIFER SANDERS, ESQ.
5/19/17	RIALL V. VALLEY ENT	MARICOPA COUNTY SUPERIOR	CIVIL	DEPOSITION	CHRIS HOLDEN, ESQ.
5/10/17	MICHACA V. FOREST RIVER	SAN BERNARDINO SUPERIOR	CIVIL	DEPOSITION	PETER SCHNIATMAN, ESQ.
6/23/16	GILLEN V. ARIZONA	UNITED STATES DISTRICT COURT - ARIZONA	CIVIL	DEPOSITION	MARTIN BIHN, ESQ.
6/8/16	CUSHING V. LIFETIME FITNESS	UNITED STATES DISTRICT COURT - ARIZONA	CIVIL	DEPOSITION	ERICA SPURLOCK, ESQ.
1/26/16	COX V. STATE OF ARIZONA	MARICOPA COUNTY SUPERIOR	CIVIL	DEPOSITION	JAMES BOWEN, ESQ.

LAST UPDATED: JANUARY 2019

EXHIBIT "C"



ERIN M. NELSON, PSY.D.
FEE SCHEDULE

P: 480.250.4601

E: drerinmn@gmail.com

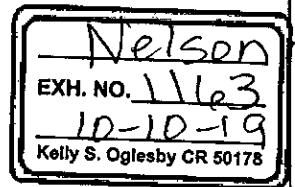
\$425.00 per hour for all work (e.g., telephone calls, record review, psychological evaluation/testing, analysis of test data, collateral interview(s), research, consultation, correspondence, report writing, travel, preparation for deposition/hearing/trial and testimony). Psychological test scoring fees and transcription fees are billed separately. Out of state travel is based on a 10-hour day with airfare and lodging expenses billed at cost.

\$185.00 per hour for preparation of database/chronology (with prior authorization).

Administrative surcharge: A 10% administrative surcharge is added to invoices to cover the costs of administrative support, telephones, copying, storage, and other office expenses that are not itemized on invoices. Only exceptional charges (e.g., research resources, high volume copying, courier services) are itemized.

Cancellation policy: Cancellations made less than 48 hours in advance will result in a full-day (8.0 hour) charge.

EXHIBIT 2



1 John E. DeWulf (006850)
2 Marvin C. Ruth (024220)
3 Vidula U. Patki (030742)
4 **COPPERSMITH BROCKELMAN PLC**
5 2800 North Central Avenue, Suite 1900
6 Phoenix, Arizona 85004
7 T: (602) 224-0999
8 F: (602) 224-0620
9 jdewulf@cblawyers.com
10 mruth@cblawyers.com
11 vparki@cblawyers.com

12 *Attorneys for Defendants*

13
14
15 **SUPERIOR COURT OF ARIZONA**
16 **COUNTY OF MARICOPA**

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

20 Plaintiff,

21 v.

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

25 Defendants.

No. CV2017-013832

**DEFENDANTS' SUPPLEMENTAL
DISCLOSURE OF EXPERT WITNESS
DR. ERIN NELSON**

(Commercial Case)

(Assigned to the Honorable Daniel Martin)

26 Pursuant to Rule 26.1(d), Defendants provide notice that they have served the
Addendum Report of Dr. Erin Nelson, attached hereto.

DATED this 8th day of October, 2019.

COPPERSMITH BROCKELMAN PLC

By: 

John E. DeWulf
Marvin C. Ruth
Vidula U. Patki
2800 North Central Avenue, Suite 1900
Phoenix, Arizona 85004
Attorneys for Defendants

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26

ORIGINAL of the foregoing e-mailed/mailed this
8th day of October, 2019 to:

Colin F. Campbell, Esq.
Geoffrey M. T. Sturr, Esq.
Joshua M. Whitaker, Esq.
OSBORN MALEDON, P.A.
2929 N. Central Ave., Suite 2100
Phoenix, AZ 85012-2793
Attorneys for Plaintiff





ERIN M. NELSON, PSY.D.
Forensic & Clinical Psychology

October 7, 2019

John E. DeWulf, Esq.
Coppersmith Brockelman, P.L.C.
2800 North Central Avenue, Suite 1900
Phoenix, Arizona 85004

Marvin C. Ruth, Esq.
Coppersmith Brockelman, P.L.C.
2800 North Central Avenue, Suite 1900
Phoenix, Arizona 85004

Re: Addendum Report - Peter S. Davis v. Clark Hill
Maricopa County Superior Court Case No. CV-2017-013832

Dear Mr. DeWulf and Mr. Ruth:

Pursuant to your request, I am providing a supplement to my report dated April 3, 2019 (see attached).

UPDATED SOURCES OF INFORMATION

In-person Observation:

1. September 23, 2019 Deposition testimony of Yomtov Scott Menaged

Pleadings:

2. Plaintiff's Seventh Disclosure Statement, dated September 13, 2019
3. Defendant's Eighth Supplemental Rule 26.1 Disclosure Statement, dated September 13, 2019

Deposition Transcripts:

1. March 20, 2019 Deposition of Warren Bush
2. April 16, 2019 Deposition of Judith E. Siegford
3. April 18, 2019 Deposition of Ranasha Chittick
4. April 23, 2019 Deposition of Gregg Reichman

John E. DeWulf, Esq.
Marvin C. Ruth, Esq.
Re: Davis v. Clark Hill - Addendum
October 7, 2019
Page 2

5. Jun 20, 2019 Deposition of Scott Allen Gould
6. September 23-24, 2019 Deposition of Yomtov Scott Menaged

Additional Documents:

1. July 1, 2019 Correspondence from Scott Menaged to Mr. Anderson

LIMITATIONS:

The observations/opinions provided herein are based on my training and experience as well as my review of the information listed in the Sources of Information section of this report. I did not conduct a face-to-face evaluation of Mr. Chittick prior to his death, nor have I conducted any collateral interviews. As such, my opinions are thereby limited.

FORENSIC OPINIONS:

Note: This addendum includes footnote citations. The citations are not intended to be all inclusive/exhaustive. Rather, they are intended to highlight salient examples of a given point.

As stated in my April 3, 2019 report, I was asked to provide my psychological impression(s) pertaining to Denny Chittick and factors that may have influenced his behavior. Specifically, you asked to me to address the level of influence, if any, Scott Menaged had over Denny Chittick's decision-making and conduct on or about January 2014 through May 2014.

Subsequent to the submission of my initial report, I had the opportunity to review additional discovery (as outlined in the Updated Sources of Information section above) and to personally observe a portion of the deposition of Yomtov Scott Menaged. After reviewing the aforementioned records and witnessing Mr. Menaged's testimony, you asked me to provide you with a brief written supplement as it pertains to my opinions in this matter, including whether or not my impressions changed, required modification or remained the same.

The additional information I reviewed did not change the opinion outlined in my April 3, 2019 report. Rather, subsequent collateral data was markedly

John E. DeWulf, Esq.
Marvin C. Ruth, Esq.
Re: Davis v. Clark Hill - Addendum
October 7, 2019
Page 3

consistent with the impression previously offered. Additional discovery underscored, in part:

- Denny Chittick was an intelligent, driven businessman with tightly held focus and determination.
- Denny Chittick placed a high value on the accumulation of wealth.^{1,2,3}
- Denny Chittick was relatively frugal with respect to his spending.^{4,5,6}
- Denny Chittick held disdain for attorneys and legal fees.^{7,8,9,10}
- Denny Chittick had few close personal relationships.^{11,12,13}
- Denny Chittick placed his trust in Scott Menaged "completely."¹⁴
- Scott Menaged explicitly sought to gain Mr. Chittick's trust and engender himself to Mr. Chittick as a friend, confidant, and colleague.¹⁵

¹ Deposition Testimony of Warren Bush, Page 75-76

² Deposition Testimony of Scott Gould, Page 99-102

³ Deposition Testimony of Yomtov Scott Menaged, Page 43; 59

⁴ Deposition Testimony of Renasha Chittick, Page 71-72

⁵ Deposition Testimony of Scott Gould, Page 94-96

⁶ Deposition Testimony of Yomtov Scott Menaged, Page 59

⁷ CH_REC_CHI_0060457

⁸ CH_REC_MEN_0027814

⁹ CH_REC_MEN0027218

¹⁰ Deposition Testimony of Yomtov Scott Menaged, Page 37-38; 229

¹¹ Deposition Testimony of Renasha Chittick, Page 96-97

¹² Deposition Testimony of Scott Gould, Page 94-96

¹³ Deposition Testimony of Yomtov Scott Menaged, Page 29-31; 46-47

¹⁴ Deposition Testimony of Greg Relchman, Page 68; Page 76

¹⁵ Deposition Testimony of Yomtov Scott Menaged, Page 46-479

John E. DeWulf, Esq.
Marvin C. Ruth, Esq.
Re: Davis v. Clark Hill - Addendum
October 7, 2019
Page 4

- Scott Menaged intentionally exploited Mr. Chittick's trust and deliberately mislead him with false explanations, reassurances and promises.^{16,17,18,19,20}
- Scott Menaged's pervasive deception created a stranglehold on Mr. Chittick, rendering him essentially incapable of identifying or engaging a rational remedy.
- Scott Menaged crafted and nurtured a narrative whereby he was the only person who could help "save" Mr. Chittick from financial catastrophe.
- As time went on, and the pressure mounted, Mr. Chittick clung desperately to what he saw as the only way out – help from Scott Menaged.
- Ultimately, Denny Chittick succumbed to the painful realization that Scott Menaged could not, and would not, be able to extricate him from the results of his (Mr. Chittick's) misplaced faith and trust.

Superficially, it may be difficult to understand how Denny Chittick, an intelligent successful businessman could not only be lured in by someone like Scott Menaged but could allow himself to be repeatedly jeopardized and manipulated. When viewed through the lens of psychological/behavioral science, however, the relationship between Mr. Chittick and Mr. Menaged can be explained through basic tenets of human behavior. Mr. Chittick's faith in Mr. Menaged was built on a foundation of positive reinforcement. Mr. Menaged followed through on early promises and demonstrated himself to be a reliable colleague and business associate. As their relationship evolved the positive reinforcement pattern continued. Mr. Chittick's attachment to Mr. Menaged intensified as Mr. Menaged ingratiated himself in Mr. Chittick's world beyond the workplace. By the time Mr. Menaged's double-lien practice was initially discovered for example, Mr. Menaged was a central figure in Mr.

¹⁶ Deposition Testimony of Greg Reichman, Page 142

¹⁷ Deposition Testimony of Yomtov Scott Menaged, Page 126-127

¹⁸ CH_REC_CHI_0042251-59

¹⁹ CH_REC_CHI_0058450-59

²⁰ CH_REC_MEN_0026749-50

John E. DeWulf, Esq.
Marvin C. Ruth, Esq.
Re: Davis v. Clark Hill - Addendum
October 7, 2019
Page 5

Chittick's life. This allowed Mr. Menaged to capitalize on the foundation of faith and good will he had developed with Mr. Chittick. Although clearly troubling for him, Mr. Chittick had already become attached to Mr. Menaged, and, as a result, his internal need to rely upon Mr. Menaged was again reinforced - now by his desire to alleviate stress associated with financial losses. Repetition ensued and the feedback loop was solidified. Engrained patterns of behavior are not easily extinguished, especially when complicated by a veiled power differential. Mr. Menaged relied on Mr. Chittick's sense of fairness and reciprocity to manipulate Mr. Chittick into a series of poor decisions, each predicated on the prior, digging himself deeper and deeper into an insurmountable deficit. Concurrently, Mr. Chittick became increasingly desensitized to the situation as he was no match for the duplicity of Mr. Menaged's tactics. As the gravity of the situation emerged as unavoidable, Mr. Chittick's lens narrowed. From his perspective, and with intentional crafting of the message from Mr. Menaged, Mr. Chittick came to believe that Scott Menaged was the only hope he had left. Not unlike a person who has lost significant money at the racetrack, only to "bet it all" on one more race, or the person who has lost significant money in a slot machine, but is driven to keep going, with the perception that the very next pull of the handle could bring everything back into balance. Mr. Chittick's attachment to Mr. Menaged was perpetuated at each step in the process and Mr. Menaged's exploitation of Mr. Chittick persisted in kind.

In sum, based on the totality of information available to me, it remains my opinion, to a reasonable degree of psychological probability, that on or about January 2014 to May 2014 Scott Menaged had substantial influence over Denny Chittick's decision-making and resultant conduct.

My opinions are based on the information listed at the beginning of this report. I reserve the right to supplement and/or modify my opinions as additional information becomes available. To this end, please forward any additional records/discovery to my office. Please do not hesitate to contact me at 480.250.4601, if I can be of any further assistance.

John E. DeWulf, Esq.
Marvin C. Ruth, Esq.
Re: Davis v. Clark Hill - Addendum
October 7, 2019
Page 6

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'Erin M. Nelson', with a long horizontal stroke extending to the right.

Erin M. Nelson, Psy.D.
Forensic and Clinical Psychologist

*Enclosures: (Exhibit "A" Report Re: Peter S. Davis v. Clark Hill Maricopa
County Superior Court Case No. CV-2017-013832, dated
April 3, 2019)*

EXHIBIT 3

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 ERIN M. NELSON, PSY.D.

Phoenix, Arizona
October 10, 2019
1:05 p.m.

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

1 Arizona Attorney General's Office, correct?

2 A. Yes.

3 Q. And the purpose of the retention was to conduct
4 a psychological evaluation of Mr. Atwood, correct?

5 A. Yes.

6 Q. Mr. Atwood was a prisoner; he had been convicted
7 of murder, and he was pursuing a habeas corpus petition --

8 A. Correct.

9 Q. -- correct?

10 Okay. In that case, you testified that you
11 received from the Attorney General's Office what you
12 called referral questions, the questions that you were
13 asked to answer.

14 Is that a term you frequently use, a referral
15 question from a lawyer asking you about an evaluation?

16 A. Yes.

17 Q. Okay. And you said this is a fundamental
18 feature of a forensic evaluation, is that the mental
19 health professional is asked a referral question.

20 Is that consistent with your -- I am quoting
21 here, but is that -- is that your -- is that your
22 position?

23 A. Yes, it is.

24 Q. All right. And you said you are asked a
25 specific question by counsel, and then you give -- you

ERIN M. NELSON, PSY.D., 10/10/2019

1 answer, you try to set out to answer that question,
2 correct?

3 A. Yes.

4 Q. Okay. And in that case, the question that was
5 put to you was does Mr. Atwood suffer from a mental
6 disease or defect, and is there any causal connection
7 between any mental disease or defect and the murder of
8 which he was convicted.

9 Is that consistent with your memory?

10 A. Yes, generally. I don't remember if that's
11 verbatim what they asked, but yes.

12 Q. All right. Now, I just want to -- so -- so
13 ultimately you wrote a report, correct?

14 A. Yes.

15 Q. And that report would have set forth all of your
16 opinions and the information you considered, correct?

17 A. Correct.

18 Q. And the report had attached -- and this is in
19 the transcript. I actually don't have the report, because
20 it's sealed, but the report included DSM criteria, capital
21 D, capital S, capital M, which you appended to your report
22 as an index.

23 Would you tell -- tell us, please, what is --
24 what is DSM, generally?

25 A. Sure. DSM is the Diagnostic and Statistical

ERIN M. NELSON, PSY.D., 10/10/2019

1 Manual of Mental Disorders. We are now on the fifth
2 edition, so it's DSM-5. I think that might have been the
3 DSM-IV TR back then. And it's the manual used, published
4 by the American Psychiatric Association, but used by
5 psychologists and psychiatrists to offer diagnostic
6 opinions. It has the criteria for diagnostic conditions
7 that are necessary to diagnose somebody.

8 Q. So for a particular mental disease or defect, it
9 would enumerate the diagnostic conditions that are needed
10 to diagnose that condition?

11 A. Right. The diagnostic criteria for everything
12 that is a recognized mental illness or personality
13 disorder are listed in that -- in that manual.

14 Q. Okay. And just to quickly recap what you did
15 here, as you testified, you conducted an in-person
16 interview of Mr. Atwood?

17 A. Yes.

18 Q. You recorded that interview?

19 A. Yes.

20 Q. You transcribed it?

21 A. Yes.

22 Q. You attached the transcription of the interview
23 to your report?

24 A. Yes.

25 Q. And in the -- correct me if I'm not

1 understanding this process.

2 In the course of your -- is the right term you
3 use "evaluation" when you -- it's not an interview. When
4 you meet with someone, what's the term I should use?

5 A. Well, that's a psychological interview when I do
6 that part. The evaluation is in total, when you also add
7 psychological testing and collateral sources.

8 Q. Okay. I want you to help me walk through this.

9 So when you interviewed him, is it in the course
10 of that interview that you were forming diagnostic
11 impressions?

12 A. That is a part of how you form diagnostic
13 impressions, yes.

14 Q. Okay. So do the diagnostic impressions come
15 later, after the testing and other pieces?

16 A. Yeah. Typically you form a diagnosis after you
17 have all of that information.

18 Q. Okay. So what are you doing in the course of
19 the interview? Are you forming impressions, or is there
20 any technical term that you would use as you are asking
21 questions of the -- of the subject?

22 A. So a general psychological interview has major
23 subject areas --

24 Q. Okay.

25 A. -- that you include when you are interviewing

ERIN M. NELSON, PSY.D., 10/10/2019

1 somebody. Their -- their psychological history, their
2 educational history, vocational history, medical
3 conditions, relationship history. You need to understand
4 that person's view.

5 And then you -- and you also ask specific
6 symptom questions, as if you are looking at a diagnosis or
7 you are starting to rule diagnoses in or out --

8 Q. Okay.

9 A. -- based on the information you are getting from
10 the person, and then typically you would have some sort of
11 objective psychological testing as well.

12 Q. Okay. I want to stop right there.

13 So that's the first part. Then do you a
14 diagnostic test, a psychological test, correct?

15 And in this case you administered the MMPI-2,
16 which is the Minnesota Multiphasic Personality
17 Inventory-2, correct?

18 MR. DeWULF: Object to form.

19 THE WITNESS: Yes.

20 MR. STURR: What's the objection?

21 MR. DeWULF: I don't think you let her answer
22 the prior question, and I think you -- I think she was
23 about to give you additional information. And I think
24 your predicate for the question may have misstated what
25 her testimony was.

ERIN M. NELSON, PSY.D., 10/10/2019

1 MR. STURR: Oh, thank you, John.

2 Q. (BY MR. STURR) I didn't mean to tread on your
3 answer.

4 Did I cut you off before you answered my
5 question?

6 A. I can't even remember what that question was
7 right now. I'm sorry.

8 Q. John will keep me honest. I'm not trying to cut
9 you off, Dr. Nelson, so let me ask the question again.

10 In Mr. Atwood's case, you did administer a
11 psychological test, correct?

12 A. That's correct.

13 Q. Okay. And what was the test you administered to
14 Dr. -- to Mr. Atwood, if you can recall?

15 A. I don't independently remember, but -- and it
16 would have been likely the Minnesota Multiphasic
17 Personality Inventory-2.

18 Q. Okay. And if you -- I can point you to the
19 page, if you want to look at it. It's page 188.

20 A. That's okay.

21 Q. Again, I'm not trying to put words in your
22 mouth.

23 You described in there testimony, the MMPI-2 as
24 the gold standard personality test, correct? wait.
25 Sorry.

1 would you use those terms today?

2 A. Yes, that would be a yes, and there is another
3 test in the years that have -- since this, that has really
4 come to be almost equivalent, or not almost, equivalent
5 measure.

6 Q. what is that? Sorry. what is that test?

7 A. The Personality Assessment Inventory.

8 Q. And as I understand it -- and, again, I'm just
9 trying to get a general sense here -- you would never use
10 test results alone to diagnose a psychological condition,
11 correct?

12 A. That's correct.

13 Q. And in your testimony in court, you said it's a
14 way of taking another look at your impressions as you are
15 developing them, and you see if they are -- and I'm just
16 summarizing here -- you want to see if a test result is
17 consistent with your diagnostic impressions to make sure
18 that -- that they are consistent, the test results and the
19 impressions.

20 Is that a fair statement of what you do?

21 A. Yeah. It's another check and balance so that
22 you can see if they are consistent, and if not, seek to
23 understand why there is a discrepancy.

24 Q. Okay. And you refer to the term "check and
25 balance."

1 So part of the process that you followed here
2 was in administering the test, you -- as I understand from
3 your testimony, you enter the test results multiple times
4 to make sure they are accurately entered, roughly? Is
5 that fair to say?

6 A. There are different scoring services. Sometimes
7 you can just mail the form in and a computer will score
8 it. I have the software myself, so you hand enter them,
9 and I always do the -- hand entered them all a second time
10 to make sure that there wasn't any, you know --

11 Q. Correct.

12 A. -- click typo, I guess.

13 Q. And then, as I understand it, you just get --
14 you then get a summary, a computer-generated summary
15 report, correct?

16 A. Correct.

17 Q. And, again, you wouldn't rely on that alone for
18 a diagnosis, correct?

19 A. Certainly not.

20 Q. Okay. That's just another layer or another way
21 of verifying the opinions or the conclusions you are
22 reaching, correct?

23 A. Verifying or helping me understand and make sure
24 I'm accurate.

25 Q. Right. Okay.

ERIN M. NELSON, PSY.D., 10/10/2019

1 And then in addition to conducting in this case,
2 I'm staying with Atwood, so you conducted the test, you
3 interviewed him, is -- is another stage in the process you
4 described in your testimony as reviewing written records.
5 And in that case you testified that you reviewed
6 approximately 12,000 pages of records.

7 Is that what you were referring to before as
8 collateral source? How would you describe these records
9 that you reviewed in the Atwood case?

10 A. Many boxes. I -- there were criminal records
11 and police reports and correctional health records and
12 medical records, and, I mean...

13 Q. I just want to get the terminology correct.
14 That's collateral source information.

15 Is that the correct term? I think you -- I read
16 that in the testimony. Is that how you describe those
17 records?

18 A. Yes.

19 Q. Okay. And what is the importance of collateral
20 source information in performing a psychological
21 assessment?

22 A. You are try -- well, especially when you are
23 doing a forensic assessment, you want to have as much
24 information as you can, instead of relying solely on an
25 interviewee.

ERIN M. NELSON, PSY.D., 10/10/2019

1 Q. Now, in those types of cases, so in the cases
2 that you can recall, who hired you?

3 A. It could have been either side of the case.

4 Q. Okay.

5 A. Counsel, a lawyer.

6 Q. A lawyer.

7 And what was the referral question, if you can
8 recall?

9 A. Oh, we are talking about several cases. So
10 generally, if I'm retained by a lawyer in a case where
11 somebody has passed away, it's a question of what their
12 cognitive situation was, were they able to make decisions,
13 was there undue influence. Those are the sort of issues,
14 but I can't even think of the actual -- of a case name
15 right now to tell you what a specific --

16 Q. Okay.

17 A. -- referral question would be.

18 Q. That's fine.

19 So the referral question, broadly speaking,
20 would be what were the decedent's -- what were the
21 decedent's cognitive abilities and were they under --
22 subject to undue influence?

23 MR. DeWULF: Object to form.

24 THE WITNESS: That would be one of the examples
25 of questions I could then be asked.

ERIN M. NELSON, PSY.D., 10/10/2019

1 Q. (BY MR. STURR) Okay. And in the absence of the
2 ability to interview the decedent, tell me what steps you
3 would follow to conduct an assessment of the decedent's
4 psychological condition?

5 A. Sure. I would look at the -- again, ask for the
6 collateral source records, pleadings, testimony of
7 relevant witnesses and parties, and may or may not also
8 conduct collateral interviews.

9 Q. I want to break this down. So you have used two
10 terms, collateral interviews and collateral source.

11 So a collateral source, if I may, you referred
12 to pleadings, testimony.

13 Is a medical record a collateral source?

14 A. Yes. And I should clarify, collateral
15 interviews would technically fall under the broad category
16 of collateral sources. One source could be interviews,
17 another could be medical records, another could be
18 deposition testimony, and so on.

19 Q. Okay. So in order to -- so let me talk about
20 medical records.

21 So you would, in order to determine the
22 decedent's cognitive state, you would review available
23 medical records, generally?

24 A. Yes.

25 Q. Okay. So, for example, if the decedent had

ERIN M. NELSON, PSY.D., 10/10/2019

1 been, I'm speaking hypothetically, in a nursing home, the
2 chart may reflect testing that was conducted or reports or
3 analyses of the decedent's mental state?

4 A. If a decedent was in a nursing home, you would
5 want to look at the medical records and see if there was a
6 diagnosis of dementia, other sort of mental health
7 history, of other diagnoses that could interfere with your
8 mental state.

9 Q. Okay. But those would be important records for
10 you in order to render an opinion about the decedent's
11 psychological condition, would be medical records showing
12 either past assessments or tests?

13 A. Yes, that would be one piece of data I would
14 want in order to offer that opinion.

15 Q. Okay. would it also be important to you to
16 conduct, I think you used the term collateral, collateral
17 interviews?

18 A. There are some cases where I feel like that's
19 something I need to do in order to offer an opinion about
20 what I'm being asked, and other times it's not necessary.

21 Q. Give me an example when it wouldn't be
22 necessary?

23 A. For example, if there are multiple affidavits or
24 deposition testimony of parties, there are times when I
25 will say it is not necessary for me to reinterview

ERIN M. NELSON, PSY.D., 10/10/2019

1 confirms your retention and rates and things like that,
2 correct?

3 A. Correct.

4 Q. Did you at any time receive from Mr. DeWulf,
5 Mr. Ruth, or Ms. Patki what we have been calling a
6 document that set forth referral questions?

7 A. No.

8 Q. Okay. How did you receive the referral
9 questions in this case?

10 A. Verbally.

11 Q. Do you recall when you received those?

12 A. Not specifically. Early on, it was -- there
13 wasn't a specific question from phone call one in this
14 case, which is also not uncommon. It was: We think there
15 is some psychological things perhaps going on here and we
16 are not psychologists, so can you have an initial
17 impression? The specific scope of what I would answer, I
18 don't remember, but it was much later.

19 Q. Okay. All right. Well, let me just ask you
20 generally, you have issued a written report in this case
21 and a supplement. Tell us in your own words what you were
22 asked to do.

23 A. From the beginning or in issuing my report?

24 Q. Is there a difference? What -- were you asked
25 to do something differently at the beginning?

ERIN M. NELSON, PSY.D., 10/10/2019

1 A. Just what I just explained to you, that it was
2 broader, we think there is some psychological concept
3 here. By the time it got to the report, I was
4 specifically asked to look at the relationship dynamic
5 between Denny Chittick and Scott Menaged during January
6 to, I believe, May of 2014.

7 Q. Before that, before you said you got to the
8 report, were you asked to provide information or
9 assistance to Mr. Dewulf on other issues, without telling
10 me the substance of your communications?

11 A. No. Generally they said we think that there is
12 some sort of psychological concept that we need a
13 psychologist to look at.

14 Q. Okay. And so generally you were asked to look
15 at the relationship between Mr. Chittick and Mr. Menaged
16 in the time period January '14 to May 14, is that correct?

17 A. Correct.

18 Q. Okay. How did you go about doing that?

19 A. I started by reading -- well, not started.
20 started and continued to read voluminous records in this
21 case that are all included in my source list.

22 Q. Your report refers to a record review and
23 analysis.

24 what is a record review and analysis in the
25 field of forensic psychology?

1 A. I identified that to make very clear that this
2 was simply, or not simply, nothing is simple, but a --
3 specifically a record review opinion as opposed to one
4 where I collected a psychological evaluation.

5 Q. So you are -- okay. So you use that term
6 specifically to say you are not -- you did not conduct a
7 psychological evaluation?

8 A. That I didn't conduct a face-to-face evaluation
9 of a person; that I'm offering psychological opinions
10 based on a record review.

11 Q. Is that -- is that to distinguish this from
12 diagnostic opinions?

13 A. In part, that's a part of it, but not the
14 totality. The totality is because I want to make very
15 clear to the audience that my impressions are based on a
16 review of records.

17 Q. Okay. And my question, in the field of forensic
18 psychology, is the term "record review and analysis" a
19 recognized term?

20 A. It could be record review report. I mean, it
21 might not necessarily say record review and analysis. It
22 could. An evaluation of the records. It's just that you
23 need to distinguish that you are only reviewing records as
24 opposed to conducting independent psychological
25 evaluation, as we talked about earlier.

ERIN M. NELSON, PSY.D., 10/10/2019

1 Q. Okay. And so to be clear, then, the opinions
2 that you have based are -- are based solely on the records
3 that you have identified in your initial and supplemental
4 report?

5 A. Correct.

6 Q. And what is -- what is your opinion? what
7 opinions did you form on the basis of the record review?

8 A. Ultimately, that during that specific timeframe,
9 Scott Menaged had significant influence over Denny
10 Chittick's decision-making.

11 Q. Scott Menaged had significant influence over
12 Denny Chittick's decision-making, that is your opinion?

13 A. Yes.

14 Q. In the time period January through May 2014?

15 A. Correct.

16 Q. When you say that Scott Menaged had significant
17 influence, what do you mean by "significant"?

18 A. I'm trying to think of synonyms. Substantial,
19 weighty.

20 Q. And what -- have you formed an opinion about
21 specific decisions that Denny Chittick did or did not make
22 on the basis of that opinion that you have reached that
23 Mr. Menaged had significant influence?

24 A. General decisions.

25 Q. What I'm trying to understand, Dr. Nelson, is

1 you are rendering an opinion that Mr. Menaged had
2 significant influence over Denny Chittick's
3 decision-making in this time period, correct?

4 A. Correct.

5 Q. Is that the only opinion you are -- you have
6 reached in this case?

7 A. Yes.

8 Q. You are not giving an opinion about any specific
9 decisions that were made?

10 A. I believe I outline in my report examples to
11 explain how I arrived at that opinion, but that is the
12 only opinion I have to offer.

13 Q. The only opinion you are offering is this
14 opinion that Scott Menaged had significant influence over
15 Denny Chittick's decision-making between January and
16 May 2014?

17 A. That's correct.

18 Q. There are no other opinions you have reached in
19 this case?

20 A. That's correct.

21 Q. Okay. How did you -- I want to just make sure I
22 understand your process from -- as a forensic
23 psychologist, what process did you follow to reach that
24 opinion?

25 A. I reviewed, as I said, volumes of electronic

ERIN M. NELSON, PSY.D., 10/10/2019

1 mail correspondence, written correspondence, deposition
2 testimony, pleadings, many, many documents that, again, I
3 can't list them all for you. That's where they are on
4 the -- in my report.

5 Q. Well, let's take a look at your report. Let's
6 start with your first report, Exhibit 1162.

7 A. Oh.

8 Q. You have on page 4, you have a heading Sources
9 of Information.

10 Do you see that?

11 A. Yes.

12 Q. Okay. This -- this goes on for a number of
13 pages, to page 14, correct?

14 A. Correct.

15 Q. And I want to be clear about this. The --
16 because I think you say this at the end of the opinion,
17 your opinion is based solely on the sources of information
18 that are listed on pages 4 to 14, correct?

19 A. Yes.

20 Q. And you have identified the sources of
21 information as pleadings, deposition transcripts,
22 miscellaneous transcripts and additional documents,
23 correct?

24 A. Yes. I wasn't sure, I mean, I was trying to be
25 as clear as possible in separating out categories, but I

ERIN M. NELSON, PSY.D., 10/10/2019

1 wasn't sure how to characterize, other than additional
2 documents.

3 Q. How did you -- how did you first receive
4 documents relating to this case?

5 A. I can't remember which mechanism they used, but
6 ShareFile or something to that effect.

7 Q. Let me rephrase the question.

8 So I'm looking at your billing statement, and on
9 February 20, 2018, you have initial telephone conference
10 with Mr. Dewulf; on March 5, 2018, you have a longer
11 telephone conversation; and on March 12, 2018, you had a
12 brief telephone conversation, correct?

13 A. Correct.

14 Q. And then that's followed by approximately seven
15 hours of record review between -- on March 19 and
16 March 20, correct?

17 A. Correct.

18 Q. How did the documents that you reviewed on those
19 two dates get compiled? How were they selected, rather?

20 A. I would have asked them, I mean, I don't
21 remember verbatim what I said to Mr. Dewulf, but my
22 typical process is to say to get started, I would like
23 some general pleadings that outline the, you know, issues
24 in the case and, you know, whatever other record, I don't
25 remember what I asked them specifically for, but I would

ERIN M. NELSON, PSY.D., 10/10/2019

1 have asked for a set of records to have initial review and
2 a little more informed conversation than just relying on
3 what counsel described.

4 Q. But in that conversation, did you rely on
5 Mr. Dewulf and his colleagues to assemble what documents
6 might be relevant for your review?

7 A. I would have asked for the type of document,
8 but, yes, they would have had to put them together for me.

9 Q. Can we take a quick break?

10 A. Certainly.

11 VIDEOGRAPHER: This ends media number two of the
12 ongoing deposition of Dr. Erin Nelson. We are off the
13 record at 2:41.

14 (An off-the-record discussion.)

15 VIDEOGRAPHER: This begins media number three of
16 our ongoing deposition of Dr. Erin Nelson. We are on the
17 record at 2:42.

18 Q. (BY MR. STURR) So just before we took that
19 quick break, so you received -- after receiving documents
20 from Mr. Dewulf and his colleagues, do you recall asking
21 for additional documents?

22 A. Yes.

23 Q. What do you recall asking for?

24 A. I don't recall specifically. There were more,
25 but over the course of this case -- I don't recall

ERIN M. NELSON, PSY.D., 10/10/2019

1 specifically at the beginning, but over the course of this
2 case, they were -- continually were taking the depositions
3 of these people, were gathering or have sent out requests,
4 and I always want to obtain those documents.

5 MR. STURR: Let's go ahead and mark this,
6 please.

7 (Deposition Exhibit No. 170 was marked for
8 identification.)

9 Q. (BY MR. STURR) Dr. Nelson, the court reporter
10 has handed you what's been marked as Exhibit 1170.

11 Do you recognize that document?

12 A. Yes.

13 Q. My understanding is that this is -- this
14 document is identified in your report as Chronology for
15 E. Nelson?

16 A. Yes.

17 Q. Did you ask for this document?

18 A. I don't remember in this case, but it's -- I
19 would have very likely. When -- whenever there is a case,
20 particularly with voluminous records, I will ask counsel
21 if they have a chronology that I can use or, an
22 alternative, I will create one myself, just to sort of
23 orient to where source documents are.

24 Q. So just to be clear, this is a document that was
25 prepared by defense counsel in this case, correct?

1 A. Correct.

2 Q. And it's a document that you reviewed and relied
3 upon in forming your opinion?

4 MR. DeWULF: Object to form.

5 THE WITNESS: I would never rely on a chronology
6 provide -- provided by counsel in forming my opinion. I
7 would use it to orient me chronologically, and then if
8 there was something -- because I have all the source
9 records, to go back and pull the original document.

10 And just to clarify also, the way that it -- I
11 don't know if they just prepared it for me. The reason
12 it's written that way on my source is because that's
13 how -- that's what the label of the document was when it
14 came to me, so I don't know if they have given it for
15 other people.

16 Q. (BY MR. STURR) And it's your understanding that
17 this is a document, a chronology that was prepared by
18 defense counsel to provide you with a timeline of relevant
19 events and documents?

20 MR. DeWULF: Object to form.

21 THE WITNESS: Again, I'm not sure if it was
22 prepared just for me, that's why I want to clarify the way
23 I wrote it there. I don't know what their initial purpose
24 was, but that's how I would have used it, as another piece
25 of information, having to sort of effectively let me go

ERIN M. NELSON, PSY.D., 10/10/2019

1 back and reference where source documents that I already
2 had were.

3 Q. (BY MR. STURR) Okay. So let me make sure I
4 understand this.

5 So you -- your opinion is based on certain -- on
6 these documents, which includes deposition transcripts.

7 Looking at your -- at your reports, do you know
8 that you reviewed every deposition that was -- the
9 transcript of every deposition that was taken in this
10 case?

11 A. I have no idea.

12 Q. Did you ask to see all the deposition
13 transcripts?

14 A. No.

15 Q. Why not?

16 A. I would have specifically, likely in a case like
17 this, felt that it would have been not a -- what's the
18 word I want to use -- would not be unreasonable for me to
19 be reviewing stacks of depositions related specifically
20 only to financial matters that weren't relevant to my
21 opinion.

22 Q. Your opinion is based in part on, as I
23 understand it, you were focused on a particular time
24 period, January to May 2014, correct?

25 A. Correct.

ERIN M. NELSON, PSY.D., 10/10/2019

1 Q. In -- in -- in the process of gathering
2 information to form that opinion, let me start with that
3 time period, what was important to you in understanding
4 relevant information?

5 A. As I said, in the beginning I would want and
6 continuing to have pleadings that outlined both -- both or
7 multiple parties' views of the story, what happened to
8 whom, the major participants, and people who would have
9 relevant information to the specific referral question I'm
10 being asked.

11 I could certainly -- at some point I make an
12 ethical decision that to bill, to continue to bill extra
13 time on reading things that won't -- that I don't believe
14 will offer substantive addition, I just don't do it.

15 Q. Let me rephrase my question, Dr. Nelson.

16 A. Okay.

17 Q. You have given an opinion that in the time
18 period, you were asked to address the level of influence,
19 if any, Scott Menaged had over Denny Chittick's
20 decision-making and conduct on or about January 2014
21 through May 2014, correct? That's the referral question?

22 A. That's correct.

23 Q. Okay. So I want to make sure I'm understanding
24 your process.

25 In order to answer that question, what documents

ERIN M. NELSON, PSY.D., 10/10/2019

1 did you identify that you needed to review for that
2 particular time period?

3 A. We had specific -- I don't recall every
4 conversation that we would have. I would have
5 conversations with counsel where they would explain they
6 were taking the depositions of these people, and I would
7 say I want that deposition, I want this deposition. I
8 would ask are there depositions of friends, associates,
9 family members, partners. I wanted as much of that
10 information as possible.

11 I also would have said if a deposition is
12 specifically, for example, a financial expert, I don't
13 need to read that. That's not going to be useful time or
14 budget or whatever, anybody's time or resource, for me to
15 be reviewing that.

16 Q. I want to focus on documents, Dr. Nelson.

17 You are rendering an opinion about
18 Mr. Chittick's decision-making with respect to business
19 matters and other matters in a time period, January to
20 May 2014, correct?

21 A. Business and other matters, to his general -- to
22 the level of influence another person had over him.

23 Q. Right. And so what would be relevant to that
24 question would be any communication or interaction between
25 Mr. Chittick and Mr. Menaged.

1 would you agree?

2 A. All of those communications would be relevant,
3 yes.

4 Q. All right. Did you ask to ensure -- did you ask
5 Mr. DeWulf to provide you with every written communication
6 between Mr. Chittick and Mr. Menaged between January and
7 May 2014?

8 A. I can't remember phrasing it that way, but I
9 assure you they are very clear that I wanted all that
10 information. You were asking me earlier about
11 depositions.

12 Q. Did you -- can you say with certainty today that
13 you received every written communication between
14 Mr. Chittick and Mr. Menaged between January and May 2014?

15 A. I could not guarantee that.

16 Q. So you relied on counsel to provide you with
17 those documents, correct?

18 A. Yes.

19 Q. Okay. What other records -- would you also
20 agree with me that records of Mr. Chittick's
21 communications with David Beauchamp between January and
22 May 2014 would be important and relevant to your giving an
23 opinion on the referral question?

24 A. To the extent that they are related to
25 Mr. Menaged and the -- yes.

ERIN M. NELSON, PSY.D., 10/10/2019

1 Q. You understand that Mr. Beauchamp was the lawyer
2 for DenSco Investment Corporation, correct?

3 A. Yes.

4 Q. And Mr. Beauchamp was providing advice to
5 Mr. Chittick with respect to various legal matters between
6 January and twenty -- January and May 2014, correct?

7 A. It's my understanding that's a critical period
8 for everyone in this case, yes.

9 Q. That's your referral question, Dr. Nelson.

10 A. My referral question was not about David
11 Beauchamp.

12 Q. Your -- Dr. Nelson, I want to be clear about
13 this.

14 You are rendering an opinion about Denny
15 Chittick's -- the extent to which Scott Menaged had
16 influence over Denny Chittick's decision-making and
17 conduct between January and May 2014, correct?

18 A. Yes.

19 Q. Okay. I just want to make sure. Forgive me for
20 stumbling through this question. I want to make sure I
21 understand.

22 So tell me again, I want to focus on that time
23 period, step one, what documents -- so I have asked you
24 before. You have not -- you cannot say with certainty
25 that in the course of rendering an opinion, and in

ERIN M. NELSON, PSY.D., 10/10/2019

1 response to the referral question, you reviewed every
2 written communication between Denny Chittick and Scott
3 Menaged that was authored between January and May of 2014,
4 correct?

5 A. Of course not.

6 Q. If Mr. Chittick had communications with David
7 Beauchamp that related to decisions he was making on
8 behalf of DenSco Investment Corporation in a transaction
9 involving Scott Menaged, would it be important for you to
10 review all of those written communications?

11 MR. DeWULF: Object to form.

12 THE WITNESS: I would want all of that, yes.

13 Q. (BY MR. STURR) Can you tell me today that in
14 rendering this opinion you reviewed every written
15 communication between David Beauchamp and Denny Chittick
16 between January and May of 2014?

17 MR. DeWULF: Object to form.

18 THE WITNESS: No, I can't guarantee that.

19 Q. (BY MR. STURR) And the way I can test,
20 Dr. Nelson, whether you have done so is I can look at your
21 report and I can pull out these documents and I can see if
22 all of those communications are present, correct?

23 A. Yes.

24 Q. Because your report stands exclusively on the
25 documents identified in your initial and supplemental

1 report, correct?

2 A. Correct.

3 Q. I want to -- now I want to focus for a minute,
4 if I can, on some other documents you reviewed.

5 Under Additional Documents, you have item 1 is
6 Chittick Estate Documents - Personal Journals.

7 Do you see that?

8 A. Yes.

9 Q. Did you review the personal journals?

10 A. Yes. And I just want to clarify, that -- these
11 are how the documents are labeled to me, so I will have
12 made -- written specifically exactly what the label of the
13 document was.

14 Q. Understand.

15 A. Okay.

16 Q. But you did review a document that is generally
17 described as a personal journal, correct?

18 A. Yes.

19 Q. And you did -- did you review and rely upon
20 the -- what's been described as a corporate journal that
21 Mr. Chittick kept?

22 A. All of the information on the source list are
23 pieces of data. I can't tell you right now what I read,
24 which was in which one, the personal or corporate journal.

25 Q. But every document on this list would have in

ERIN M. NELSON, PSY.D., 10/10/2019

1 some way informed the opinion you have given in this case?

2 MR. DeWULF: Object to form.

3 THE WITNESS: Some will be relevant, perhaps
4 others are not relevant, but I want to make clear that
5 everything is identified.

6 Q. (BY MR. STURR) Okay. You -- let me focus on
7 depositions for a second. I'm on page 5 of your report.

8 You -- you reviewed the two volumes of
9 Mr. Beauchamp's deposition, correct?

10 A. Correct.

11 Q. It doesn't indicate that you reviewed the
12 exhibits to those depositions.

13 Do you know why you did not?

14 MR. DeWULF: Object to form.

15 THE WITNESS: I don't, as I typically try to
16 identify if there were exhibits, so I don't.

17 Q. (BY MR. STURR) Would it have been important to
18 you, in rendering an opinion, to review the deposition
19 transcripts of any individual who had a personal
20 relationship with Mr. -- and a business relationship with
21 Mr. Chittick and testified about that relationship?

22 MR. DeWULF: Object to form.

23 THE WITNESS: Personal and a business
24 relationship?

25 Q. (BY MR. STURR) Yes.

ERIN M. NELSON, PSY.D., 10/10/2019

1 A. Sure, I would want that.

2 Q. You would want all of those?

3 A. Yes.

4 Q. Did you take steps -- can you tell -- to ensure
5 that you were given copies of and reviewed every such
6 deposition?

7 A. Other than asking them to send them to me, I
8 don't know if they took more.

9 Q. So if there is -- if there is a deposition, for
10 example, of an investor who had a long-time relationship
11 with Mr. Chittick, you would want to have read that in the
12 course of forming this opinion?

13 A. Yes.

14 Q. Did you take any steps to ensure that you
15 received all such transcripts?

16 A. Other than asking them for them, no.

17 Q. You are aware, Dr. Nelson, that in many, if not
18 all, of the depositions that Mr. Dewulf and his colleagues
19 have taken of investors and others who knew Denny
20 Chittick, they have asked questions about Mr. Chittick's
21 psychology or personality.

22 Do you recall those questions?

23 MR. DEWULF: Object to form.

24 THE WITNESS: Generally speaking.

25 Q. (BY MR. STURR) Did you give any advice, by the

ERIN M. NELSON, PSY.D., 10/10/2019

1 way, to Mr. Dewulf and his colleagues about psychological
2 questions that should be asked in those -- in those
3 depositions?

4 A. In our early conversations, I explained to them
5 the type of information I would want to know about
6 Mr. Chittick, so yeah, I would have told them the type of
7 information I was looking to know about him.

8 Q. So you -- you -- tell me what the type of
9 information was that you would like to know about
10 Mr. Chittick?

11 A. Similar to what we had discussed earlier, more
12 broadly I would like to know about friendships, interests,
13 hobbies, passions, relationships. I want to understand
14 who he is, to the best of my ability, or who he was.

15 Q. And that -- and you would also want to know
16 about his relationship with Scott Menaged?

17 A. Correct.

18 Q. Okay. And based on your review of the
19 depositions that have been taken in this case, many
20 witnesses have testified about Mr. Chittick's personality
21 characteristic, et cetera?

22 A. That's correct.

23 Q. And is it also your understanding that those
24 witnesses have given opinions, have been asked to give
25 opinions and given opinions about, if they can offer them,

ERIN M. NELSON, PSY.D., 10/10/2019

1 why Mr. Chittick behaved in the way he did?

2 A. Opinions in their -- what do you think happened,
3 not legal opinions or forensic opinions. Just asking
4 someone what -- I recall seeing them ask what do you think
5 happened, not using that specific verbatim question.

6 Q. So a layperson could give an opinion, who knew
7 Mr. Chittick well, and could give an opinion that they
8 thought that Mr. Chittick was somehow under Mr. Menaged's
9 influence?

10 MR. DeWULF: Object to form.

11 THE WITNESS: A human being answering a question
12 in a deposition could certainly give their opinion or
13 impression.

14 Q. (BY MR. STURR) Haven't some of the witnesses in
15 this case given that opinion, based on their knowledge and
16 history with Mr. Chittick?

17 A. Sure.

18 Q. How was your opinion any different than theirs?

19 A. I was asked to help explain to them how this --
20 how that could have happened, using a psychological
21 background and training and expertise.

22 Q. Is that -- excuse me. That's not in your
23 opinion.

24 You have given an opinion that there was a
25 presence of influence.

ERIN M. NELSON, PSY.D., 10/10/2019

1 MR. DeWULF: Object to form.

2 Q. (BY MR. STURR) The opinion you were proposed to
3 give is the same opinion that witnesses in this case have
4 expressed in the deposition transcripts you have read,
5 correct?

6 MR. DeWULF: Object to form.

7 THE WITNESS: I -- yes. I explained in my
8 narrative how I arrive at that opinion.

9 Q. (BY MR. STURR) What scientific or psychological
10 principles do you identify in your report that you rely
11 upon in arriving at that opinion?

12 A. I explain that my opinion is based on all of
13 this information that I had available, and how, and gave
14 examples of how I formed it.

15 Q. I didn't ask that question.

16 A. Oh.

17 Q. I said what psychological principles do you
18 identify in your report that you rely upon in rendering
19 your opinion?

20 A. I guess I'm not understanding what you are
21 asking. I explain it from a behavioral science
22 perspective.

23 Q. You -- you provide background about how you
24 arrive at that conclusion from a -- based on your
25 experience, correct?

1 A. Training, experience and expertise, yes.

2 Q. But not on anything else? You are not relying
3 on, for example, a publication? You are not relying on
4 any testing or diagnostic methods, correct?

5 MR. DeWULF: Object to form.

6 THE WITNESS: I -- I'm not rendering a
7 diagnosis, no.

8 Q. (BY MR. STURR) So -- so the -- what I'm trying
9 to understand is apart from your training and experience,
10 that is, you are not identifying anything else in your
11 report that you rely upon in rendering your opinion, is
12 that correct?

13 MR. DeWULF: Object to form.

14 THE WITNESS: well, no, I am applying my
15 training and expertise and experience to all of this
16 information, and then providing an opinion based on it.

17 Q. (BY MR. STURR) And the opinion is limited to
18 that, in your opinion, Scott Menaged had influence over
19 Denny Chittick between January -- his decision-making
20 between January and May of 2014, correct?

21 MR. DeWULF: Object to form.

22 THE WITNESS: I think you missed the word
23 "significant," but yes.

24 Q. (BY MR. STURR) Significant.

25 But that's the sum -- that's the only opinion

ERIN M. NELSON, PSY.D., 10/10/2019

1 you are giving in this case, correct?

2 A. Correct.

3 Q. Okay. All right. Now, I want to understand,
4 Dr. Nelson, just so I'm clear, the -- you have not -- you
5 have only relied, as I understand it, and correct me if
6 I'm wrong, you have only relied upon the documents that
7 are listed in your initial and supplemental report,
8 correct?

9 A. Correct.

10 Q. Did you ask or attempt to obtain any of Denny
11 Chittick's medical records?

12 A. Yes.

13 Q. How did you do that?

14 A. I asked Mr. Dewulf, and I can't remember if it
15 was Vidula or Mr. Ruth, if we could have -- if I could
16 have medical records pertaining to Denny Chittick.

17 Q. And what did he tell you?

18 A. They are not available.

19 Q. How do you know they are not available?

20 A. I don't.

21 MR. DEWULF: Object to form.

22 THE WITNESS: I asked them.

23 Q. (BY MR. STURR) So you relied on counsel to tell
24 you that there are no available medical records?

25 A. Yes.

ERIN M. NELSON, PSY.D., 10/10/2019

1 Q. Did you ask Mr. DeWulf if they could serve a
2 subpoena to attempt to obtain medical records?

3 A. I don't recall asking it verbatim, but, yes, I
4 asked them if I could have medical records.

5 Q. Would medical records have been relevant to your
6 work here in rendering an opinion?

7 MR. DeWULF: Object to form.

8 THE WITNESS: Well, I don't know what they would
9 have said, but, yes, that's why I asked for them, to see
10 if they would be helpful.

11 Q. (BY MR. STURR) And -- but the extent of your
12 efforts to obtain them were simply to ask counsel?

13 A. Yes. I asked counsel to provide me with medical
14 records.

15 Q. Did you ask for any of Mr. Chittick's academic
16 records or work records?

17 A. I can't remember. I don't think I would have
18 asked for his academic records in this case, because I was
19 looking at the specific timeframe. And I believe I had a
20 lot of his work records, so I don't recall if I asked them
21 for that. I'm not referencing his academics. I know he
22 graduated from Arizona State.

23 Q. Did you ask Dr. Nelson if you could conduct a
24 collateral interview of David Beauchamp?

25 A. No.

1 Q. Why not?

2 A. Because I'm not testifying about David
3 Beauchamp, and I have read two of his depositions.

4 Q. Are you saying, Dr. Nelson, that in the course
5 of trying to render an opinion about whether Denny
6 Chittick was -- his decision-making was influenced by
7 Scott Menaged between January and May of 2014, it was
8 not -- it wouldn't have been useful or appropriate to
9 conduct an interview of David Beauchamp?

10 MR. DeWULF: Object to form.

11 THE WITNESS: I did not think that was necessary
12 for my opinion, no.

13 Q. (BY MR. STURR) I'm still struggling with why.
14 You have testified before that in other cases
15 you have wanted -- you criticized Dr. Rawling in the other
16 case for not conducting collateral interviews. You
17 could -- excuse me. Let me stop. I'm going to -- I
18 withdraw the question.

19 MR. DeWULF: Don't -- yeah. Don't do that.

20 MR. STURR: I withdraw -- I withdraw the
21 question, John.

22 MR. DeWULF: All right.

23 Q. (BY MR. STURR) David Beauchamp was the lawyer
24 for DenSco Investment Corporation, correct?

25 A. Correct.

ERIN M. NELSON, PSY.D., 10/10/2019

1 Q. David Beauchamp was providing advice to Denny
2 Chittick between January and May of 2014 on matters
3 involving Scott Menaged, correct?

4 A. Correct.

5 Q. You have testified earlier that in forming this
6 opinion, it was relevant for you to review all written
7 communications between Denny Chittick and David Beauchamp
8 in that time period, correct?

9 A. I think you asked if I would have wanted to see
10 them, and I said yes.

11 Q. Okay. Why wouldn't you want to conduct a
12 forensic interview of David Beauchamp to understand from
13 him his perceptions about his dealings with Scott Menaged?

14 A. Again, I feel like from what I was being asked
15 to answer, reading the deposition transcripts was more
16 than sufficient for me, for my opinion.

17 Q. So in other words, you elect -- you could have
18 asked, made that request, correct?

19 A. I could have asked them for anything.

20 Q. But you did not?

21 A. I did not think it was necessary for me to
22 interview David Beauchamp.

23 Q. And instead you relied on deposition testimony
24 only?

25 MR. DeWULF: Object to form.

ERIN M. NELSON, PSY.D., 10/10/2019

1 THE WITNESS: In addition to all of the
2 electronic and written communications that I do have.

3 Q. (BY MR. STURR) That you did in fact review?

4 A. Correct.

5 Q. But you didn't -- and just to be quite clear,
6 and you did not ask to conduct an interview of Scott
7 Menaged, correct?

8 A. Correct.

9 Q. And so the two people that dealt most -- mostly
10 with Denny Chittick in this time period on the issues that
11 you are evaluating, you elected not to interview?

12 A. Well, I did not ask to do any collateral
13 interviews. I did review all of the documentation I have
14 and observed Mr. Menaged's testimony in person.

15 Q. For one day of his testimony?

16 A. Yes, absolutely. One day of his testimony.

17 Q. So to be clear then, you are rendering an
18 opinion that is based solely on a review of documents
19 only?

20 MR. DeWULF: Object to form.

21 THE WITNESS: Yes.

22 Q. (BY MR. STURR) And you have elected not to --
23 not to attempt to obtain any collateral interviews?

24 A. Yes, I did not ask for any collateral
25 interviews.

1 Q. You did not ask to interview Ranasha Chittick,
2 correct?

3 A. Still no.

4 Q. Or any investors or anyone else who knew Denny
5 Chittick well?

6 A. Still no.

7 Q. And so your opinion is based exclusively on the
8 documents identified in your report?

9 A. Still yes.

10 MR. STURR: Let's take another break.

11 VIDEOGRAPHER: Okay. This ends media number
12 three of our ongoing deposition of Dr. Erin Nelson. We
13 are off the record at 3:08.

14 (A recess was taken from 3:08 p.m. to 3:18 p.m.)

15 VIDEOGRAPHER: This begins media number four of
16 our ongoing deposition of Dr. Erin Nelson. We are back on
17 the record at 3:18.

18 Q. (BY MR. STURR) Dr. Nelson, your report has a
19 section captioned Limitations on page 14.

20 A. Yes.

21 Q. Do you see it?

22 Is it your view that your discussion of the
23 limitations on your opinion meet the standards of the APA
24 guidelines, Specialty Guidelines for forensic psychology?

25 A. Yes. That's the purpose for having it there.

ERIN M. NELSON, PSY.D., 10/10/2019

1 interacting with David, excuse me, Denny Chittick in the
2 relevant time period would be a relevant source of opinion
3 for developing, excuse me, a relevant source of
4 information to render an opinion?

5 MR. DEWULF: Would you read that back, Kelly,
6 because I didn't follow it.

7 THE WITNESS: I'm sorry. That's what I was
8 going to ask. I don't understand what you just asked.

9 Q. (BY MR. STURR) So you could have in this case,
10 Dr. Nelson, decided that it would be -- that David
11 Beauchamp possesses relevant information about Scott
12 Menaged's influence over Denny Chittick, that was not
13 evident from his deposition transcripts and the documents
14 that you reviewed? Is that possible?

15 A. Sure.

16 Q. Okay. And if you had done so, you could have
17 conducted an interview of David Beauchamp, correct?

18 A. I could have requested one. I don't know if
19 that would have transpired, but sure.

20 Q. And if you had done so, there would be a
21 transcript that you would prepare, correct?

22 A. Correct.

23 Q. And so if someone else were to examine the
24 reliability of your opinion, they could not only look at
25 the documents referenced in your report, but they could

ERIN M. NELSON, PSY.D., 10/10/2019

1 also read a transcript of Mr. Beauchamp's interview,
2 correct?

3 A. I'm not offering an opinion about Mr. Beauchamp.

4 Q. You are offering an opinion about whether or not
5 Scott Menaged had influence over Denny Chittick, and
6 Mr. Beauchamp possesses relevant information to that
7 inquiry, correct?

8 MR. DeWULF: Object to form.

9 THE WITNESS: I feel like I had sufficient
10 information from him from the deposition testimony, that
11 any other psychologist could also review.

12 Q. (BY MR. STURR) It is your testimony today,
13 Dr. Nelson, that there was sufficient questioning of
14 Mr. Beauchamp about his dealings with Denny Chittick to
15 shed light on the extent to which Scott Menaged had
16 influence over him?

17 A. I'm not just relying on Mr. Beauchamp's
18 testimony. I'm relying on several pages worth of -- I
19 mean, pages and pages and pages worth of documents that I
20 arrived on that conclusion. I did not feel like I needed
21 to interview Mr. Beauchamp.

22 Q. Were you instructed by Mr. DeWulf not to
23 interview Mr. Beauchamp?

24 A. No. I didn't ask for any collateral interviews.
25 I felt like I had sufficient information to render the

ERIN M. NELSON, PSY.D., 10/10/2019

1 limited opinion that I rendered.

2 Q. Okay. So it is limited -- can you agree with
3 me, Dr. Nelson, that it is limited in part because you did
4 not conduct a forensic collateral interview of David
5 Beauchamp?

6 A. No.

7 MR. DeWULF: Object to form.

8 THE WITNESS: What I was trying to -- using the
9 word "limited" interchangeably, I meant focused or narrow
10 or precise opinion, as opposed to more broad.

11 Q. (BY MR. STURR) And similarly you did -- it
12 would have been -- had you interviewed Scott Menaged, you
13 would have obtained information about his relationship
14 with Mr. Chittick that might not have been available from
15 the deposition that you attended and the transcripts you
16 read?

17 MR. DeWULF: Object to form.

18 THE WITNESS: That's an endless question. I
19 can't know every single thing that he would have said to
20 anyone beyond those, but I felt like I have sufficient
21 information from those transcripts as well.

22 Q. (BY MR. STURR) But here is what I'm struggling
23 with, Dr. Nelson. You are a professional who has had
24 hundreds of interviews of individuals where you have an
25 objective in mind. You have your psychological training

ERIN M. NELSON, PSY.D., 10/10/2019

1 and you are trying to understand and develop information
2 in order to reach a -- a sufficient foundation to render a
3 psychological opinion, and you elected not to use those
4 skills to interview David Beauchamp, and instead simply
5 relied on a deposition transcript taken by an opposing
6 lawyer --

7 MR. DeWULF: Object to form.

8 Q. (BY MR. STURR) -- and the documents that you
9 have identified in your report.

10 MR. DeWULF: Object to form.

11 THE WITNESS: Again, I feel like with all of the
12 training, expertise and experience I bring, in addition to
13 all of the volumes of records in this case, I had more
14 than adequate information to answer the question that I
15 was being asked.

16 Q. (BY MR. STURR) Is there any publication,
17 peer-review journal that you can point to that would
18 support the methodology that you used in this case?

19 A. I can -- there is -- there is volumes and
20 volumes of explanations of what forensic psychological
21 opinions are and what you -- when you need to state
22 limitations in a record review. I can't -- I don't have
23 one.

24 Q. I'm asking about your methodology --

25 A. Yes.

1 Q. -- Dr. Nelson. And in a case in which you
2 have -- you are rendering an opinion about the conduct of
3 a person you have not examined, and you elect to rely
4 exclusively on deposition transcripts and documents, and
5 you have forgone any collateral interview, is there a
6 peer-reviewed publication that tells me that that is an
7 appropriate methodology?

8 MR. DeWULF: Object to form.

9 THE WITNESS: Any publication would discuss or
10 talk about the scope, the breadth and depth of the opinion
11 you are offering. All of them would say you need
12 sufficient information to offer that opinion, which is my
13 position.

14 Q. (BY MR. STURR) And how -- if we were to try to
15 replicate or reproduce your opinion, there is no method to
16 do that? Am I right? Because it's based exclusively on
17 your subjective views of the documents you have read. You
18 don't have any other source information?

19 A. They are my subjective views based on my
20 professional training and experience. And you could
21 certainly -- that's why the sources are listed the way
22 they are. You could have another psychologist read all of
23 the same documents and ask them the same question, and ask
24 them to base it on their psychological expertise and
25 training.

ERIN M. NELSON, PSY.D., 10/10/2019

1 Q. I want to make sure I understand your
2 methodology, which is you did not think it was necessary
3 to conduct any collateral interviews or review other
4 collateral documents, and you -- because the information
5 that you have identified in your report is sufficient for
6 you to reach that, the opinion you have reached?

7 A. You just added "other collateral documents," and
8 I don't know what you are referring to.

9 Q. Well, collateral interviews we have talked
10 about. Collateral documents, by that I mean you said you
11 asked for medical records and you were told they were not
12 available.

13 Are there other collateral documents that you
14 would have wanted to review but did not review?

15 A. And, again, as we mentioned earlier, I can't
16 recall if I asked for other work records, but what you
17 need to have in order to address a question depends on the
18 scope of your question.

19 And in this case, I believe I have sufficient
20 information to render the opinion that I did. I do not
21 think I needed additional information to render the
22 opinion that I did.

23 Q. Okay. And if -- and is it your testimony that
24 you obtained all relevant records that were created in the
25 course of the litigation that were relevant to your

1 opinion?

2 A. Just like I said before, if I don't have
3 something and I don't know it exists, I believe I have
4 sufficient information to answer my referral question.

5 Q. Did you read, only read Mr. Beauchamp's
6 transcript? Did you watch -- and did you also watch the
7 video of it?

8 A. I don't remember. I don't think I watched the
9 video, but I don't -- I don't recall.

10 Q. Have you attempted to assess other individuals
11 who had influence over Mr. Chittick's decision-making in
12 January to May 2014, or is the only subject of your
13 analysis Scott Menaged?

14 A. That was the question I was asked, was about
15 Scott Menaged. I haven't answered a question about
16 anybody else.

17 Q. So the referral question did not ask you about,
18 in any way to assess David Beauchamp's relationship with
19 Mr. Chittick and Mr. Beauchamp's ability to influence
20 Mr. Chittick's decision-making and conduct?

21 MR. DeWULF: That's two questions. I'll object;
22 form.

23 THE WITNESS: Obviously the relationship or
24 Mr. Beauchamp's relationship and the correspondence
25 between all of them was another piece of data, but I was

ERIN M. NELSON, PSY.D., 10/10/2019

1 not asked to analyze Mr. Beauchamp's influence.

2 Q. (BY MR. STURR) You were not asked to analyze in
3 any way the degree to which Mr. Beauchamp, the level of
4 influence, if any, that Mr. Beauchamp had on David -- on
5 Denny Chittick's decision-making and conduct between
6 January 2014 through May 2014?

7 A. That is not an opinion that I'm offering.

8 Q. The -- your report, Exhibit 1162, has as
9 appendix A, Dr. Nelson, your resumé or CV?

10 A. Yes.

11 Q. And it's stated updated January 2019.

12 Is that current or is there any material change
13 to that, that you are aware of?

14 A. Yes, there is change.

15 Q. What is that?

16 A. I am now the assistant dean of admissions and
17 outreach for the Texas Christian University and University
18 of Texas North. University -- it's such a long name. We
19 don't call it -- we just say TCU and UNT, so...

20 Q. It is TCU?

21 A. It's Texas Christian University School of
22 Medicine, but if the University of North Texas Health
23 Science Center ever read this, they would be offended that
24 I shortened it to that.

25 Q. Congratulations.

ERIN M. NELSON, PSY.D., 10/10/2019

1 A. Thank you.

2 Q. Dr. Nelson, I just wanted -- if I could take --
3 I think I'm done. Can we just take a quick break?

4 MR. DeWULF: Sure. We'll just wait.

5 THE WITNESS: Of course.

6 VIDEOGRAPHER: Sure. This ends video number
7 four of the ongoing deposition of Dr. Erin Nelson. We are
8 off the record at 3:45.

9 (A recess was taken from 3:45 p.m. to 3:46 p.m.)

10 VIDEOGRAPHER: This begins media number five of
11 our ongoing deposition of Dr. Erin Nelson. We are back on
12 the record at 3:46.

13 Q. (BY MR. STURR) Just before we leave today,
14 Dr. Nelson, I want to make sure I understand this concept
15 of a psychological impression, and I'm referring to page 4
16 of your report.

17 what is a psychological impression?

18 A. I think what I'm trying to articulate here is
19 the distinction between offering a diagnosis of someone,
20 and explaining that this is my opinion, impression, based
21 on my knowledge and training and years of experience in
22 the field of behavioral science and psychology. It's my,
23 I guess I could have said professional impressions. It's
24 based on my training.

25 Q. But the distinction, just to go back to the

ERIN M. NELSON, PSY.D., 10/10/2019

1 beginning of our conversation today when I asked you to
2 explain what you did in Atwood and other cases, is when
3 you are doing it, when you have a diagnostic impression,
4 is it fair to say that the diagnostic impression is based
5 on an established scientific or psychological method?

6 MR. DeWULF: Object to form.

7 THE WITNESS: Well, not necessarily. It should
8 be. You could go to a primary care office and have them
9 write that they think that you have depression.

10 Q. (BY MR. STURR) Forgive me. I'm sorry. I
11 didn't mean to cut you off.

12 In the context of forensic psychology, so for a
13 forensic psychologist to give a diagnostic impression, if
14 I'm -- I just want to make sure I understand this --
15 requires you to do certain things, such as conducting the
16 examination or interview, using a personality test, taking
17 other steps to corroborate the diag -- the impressions,
18 and then articulate diagnostic impressions that are
19 grounded in the DSM?

20 MR. DeWULF: Object to form.

21 Q. (BY MR. STURR) Am I -- am I -- just help me
22 understand that.

23 That is -- to my understanding, there is an
24 established method, methodology for reaching diagnostic
25 impressions.

1 Am I correct?

2 A. So the last question, there -- the established
3 methodology to reaching diagnostic impressions is that you
4 have to understand or believe that a person, someone you
5 are examining or a patient, meets the specific criteria
6 before you could assign any label.

7 So if I say you have major depressive disorder,
8 I have to be able to show that you meet all of these
9 criteria. Some of the ways people do that is by talking
10 to their patient, reading other records, administering
11 psychological testing.

12 Q. Okay. But -- but in -- would -- you say some
13 would. But for a forensic psychologist to give a
14 diagnos -- an opinion, a diagnostic impression or opinion,
15 it necessarily must be based, am I wrong, on conducting an
16 interview and then applying established methods to
17 corroborate the information obtained?

18 MR. DeWULF: Object to form.

19 Q. (BY MR. STURR) Are you saying that you don't
20 need to do those things? I thought we went through all of
21 that.

22 A. Well, you are saying "necessarily must," and I'm
23 trying to imagine the most, you know, any plausible
24 scenario where I might be asked, as a psychologist in a
25 forensic context, which means not treatment, but --

1 Q. Right.

2 A. -- anything else, did you think that this person
3 meets the criteria for a diagnosis? And I have records
4 from several years of treatment saying they met the
5 diagnosis, they met the diagnosis, here is somebody else's
6 testing, they met the diagnosis, they met the diagnosis,
7 that I could plausibly say, look, I didn't interview them
8 myself, but here is all the 20 years of information that
9 says they meet this diagnosis, so they probably meet this
10 diagnosis.

11 Q. I'm sorry. I'm -- but in that case you
12 weren't -- you wouldn't be giving a diagnostic impression
13 because you didn't examine them, right?

14 A. That's what I was just trying to explain. I'm
15 trying to find a, make a hypothetical scenario where I
16 could potentially say, yes, I think this person meets the
17 diagnostic criteria for something, when I didn't interview
18 them. That's what I was just trying to explain.

19 Q. Okay. But you haven't done that in your career
20 as a -- as a forensic psychologist? You have not given an
21 opinion, a diagnostic opinion when you have not examined
22 someone?

23 Am I right about that?

24 A. I don't believe I have given a diagnostic
25 opinion when I haven't examined someone. That would not

1 be my practice.

2 Q. Okay. So when you are giving a diagnostic
3 opinion and you formed diagnostic impressions, there is a
4 record on which to test and corroborate your impressions.

5 Is that a fair statement?

6 A. Lots of psychologists don't have -- don't --

7 Q. I'm asking about you, Doctor.

8 A. Oh, for me?

9 Q. Yeah.

10 A. That's why I audio record and would have the
11 transcript and the list of sources of everything that I
12 relied upon.

13 Q. Okay.

14 A. And yeah.

15 Q. So that would be objectively -- that would be an
16 objective assessment, supported by data that could be
17 verified and checked by someone?

18 A. In the same way that anyone could look at all
19 the sources I gave in this report.

20 Q. I'm not asking about that yet.

21 A. Okay.

22 Q. I want to understand the distinction.

23 So when you are giving a diagnostic -- a
24 diagnostic impression or a diagnostic opinion, it is based
25 on first an assessment, and then other factors that you

ERIN M. NELSON, PSY.D., 10/10/2019

1 use to corroborate the assessment?

2 A. A diagnostic opinion could be rendered by -- in
3 a forensic context or a clinical context.

4 Q. I'm sorry. I'm sticking to forensic.

5 A. Okay. So in a forensic context, the only thing
6 that you have to do is be able to demonstrate how a --
7 give a diagnosis, is how did -- how do you know that they
8 meet these different criteria that are in the DSM.

9 The way that you would go about doing that would
10 be to read other records, interview them, and administer a
11 psychological test.

12 Q. And when you do those things and you say, you
13 render an opinion to a reasonable degree of psychological
14 certainty, that reasonable degree of psychological
15 certainty is based on testing, interviews, et cetera, that
16 form -- that are the foundation for the opinion you have
17 given?

18 MR. DEWULF: Object to form.

19 THE WITNESS: It's based on the totality of
20 information available to me.

21 Q. (BY MR. STURR) Okay. What I'm struggling with
22 and just trying to understand, in this case you are not
23 giving a diagnostic opinion or impression, correct?

24 A. That's correct.

25 Q. You are giving a psychological impression about

ERIN M. NELSON, PSY.D., 10/10/2019

1 Mr. Chittick's behavior that is based on the documents you
2 have identified and your training and experience.

3 MR. DeWULF: Object to form.

4 Q. (BY MR. STURR) And --

5 MR. DeWULF: I'm sorry.

6 Q. (BY MR. STURR) And, again, how can someone
7 assess whether you have done that to a reasonable degree
8 of medical probability or psychological probability?

9 MR. DeWULF: Object to form.

10 THE WITNESS: I'm applying psychological
11 concepts and theories, understanding of human behavior, to
12 the records that I have reviewed, and I believe that I
13 have outlined that more than sufficiently, that another
14 psychologist could read all of these records and read my
15 rationale and opinion and render their own. There will
16 be -- there is no secret as to how I arrived at my
17 conclusion.

18 MR. STURR: You have been very patient with me,
19 Dr. Nelson. Thank you. Those are the questions I have
20 for you today.

21 THE WITNESS: Thank you.

22 This is the part where I'm very careful not to
23 pick any of these up.

24 VIDEOGRAPHER: Read and sign?

25 MR. DeWULF: Yes.

ERIN M. NELSON, PSY.D., 10/10/2019

1 VIDEOGRAPHER: This ends media number five of
2 our ongoing deposition of Dr. Erin Nelson. We are off the
3 record at 3:55.

4 (3:55 p.m.)

5

6

7

ERIN M. NELSON PSY.D.

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

ERIN M. NELSON, PSY.D., 10/10/2019

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

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

8
9 [X] Review and signature was requested.
[] Review and signature was waived.
[] Review and signature was not requested.

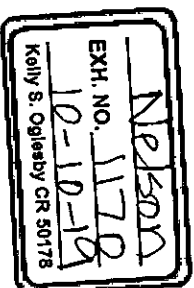
10
11 I CERTIFY that I have complied with the ethical
12 obligations in ACJA Sections 7-206(F)(3) and
7-206-(J)(1)(g)(1) and (2).

13
14 Kelly Sue Oglesby 10/20/2019
Kelly Sue Oglesby Date
15 Arizona Certified Reporter No. 50178

16
17 I CERTIFY that JD Reporting, Inc. has complied
18 with the ethical obligations in ACJA Sections
7-206(J)(1)(g)(1) and (6).

19 Jane M. Doyle 10/20/2019
20 JD REPORTING, INC. Date
21 Arizona Registered Reporting Firm R1012
22
23
24
25

EXHIBIT 4



Date	Event	Source Document
09/16/2001	D. Chittick writes letter to Ranasha for first anniversary. Overjoyed to be married. Notes that extended families are happy about marriage. "We are very fortunate to have our families and for them to care about each of us at they do. I think you nearly bring my sisters to tears every time they speak of you marrying me. I know they were convinced that no one would put up with me, understand me, and loved me the way they do. My parents were probably worried that they failed to raise a son that could be loved and would love as they have shown me over the years. . . . I know that I am not the easiest person to get a long with."	CH_EstatesDT_0028087; CTRL_00062033
09/16/2002	D. Chittick writes letter to Ranasha for anniversary. D. Chittick was building and designing home at the time. Notes that in building home, "I'll question everything on cost and practicality."	CH_EstatesDT_0028091; CTRL_00062037
09/15/2003	D. Chittick writes letter to Ranasha for anniversary. "When I look back at the three years of marriage and being together for five years, it's truly been the best time of my life."	CH_EstatesDT_0028090; CTRL_00062036
09/15/2004	D. Chittick writes letter to Ranasha for anniversary. "I'm really glad that the Suns season and Mercury dancing is behind us. I know you enjoyed it all. I enjoyed watching you, and seeing you perform. . . . I know you are going through lots of changes both with your hormones and your body. I'm not dealing, thinking, or acting anywhere close to you. You always tell me 'you don't understand' for as much as you don't think that I understand, you equally don't understand."	CH_EstatesDT_0028086; CTRL_00062032
09/16/2005	Ranasha apparently had miscarriage before Dillon was born.	CH_EstatesDT_0028085; CTRL_00062031
09/16/2006	D. Chittick writes letter to Ranasha on anniversary. Notes that a year ago, they didn't know they were pregnant with Ty. Notes that pregnancy with Ty was much smoother than Dillon, which he is happy about because he didn't "want to be tested again. I think it's healthy. I know your priorities will be with the boys, but to build something yourself, make it successful, there is just a certain satisfaction that you can't describe until you accomplish it. I will support you 100%. I will try to be more patient and understanding with you as you learn about business. I know you are smart, it's just a new field for you."	CH_EstatesDT_0002326; CTRL_00003201

	Is effusive about how important family is, and notes that Ranasha "caught the business bug. It's not what I thought you might want to do, but I'm glad you have a diversion from motherhood."	
01/01/2007	Notes that the two have been together for 8 years. D. Chittick writes a note to Don, noting that he had an influence on him and directed his career path into business. Notes that Don gave Dillon his name. "With Dillon Cash, bearing the name that you gave him, he'll always be linked to you."	CH_EstatesDT_0028107
05/07/2007	D. Chittick writes letter to Mr. P. "I started my business, which after six years, I feel more proud of this accomplishment then all the things I did at Insight in 10 years. I take all the credit and all the blame, which in my mind is the best way to be successful. . . . I wanted you to know, how much you have meant to me and that you've played a big part in my life's accomplishments and successes, Thank You."	CH_EstatesDT_0002430
05/07/2007	Writes letter to Pianna (likely nickname), signs off with nickname "Den Den." Appears to be close to Pianna's family. "Once I was asked what I was doing still hanging around you and your sisters. I wasn't blood, never married in to the family, yet I'm still going to games, events and celebrations."	CH_EstatesDT_0028114
06/01/2007	First Private Offering Memorandum drafted <ul style="list-style-type: none"> Engaged in 975 loan transactions LTV should not exceed 70% Loans not to exceed \$1 million Company's base of borrowers exceeds 200 qualified borrowers. Goal is to eventually have 500 qualified borrowers. All money raised from investors is through sale of promissory notes 	DIC0000965 DIC0002491
09/16/2007	D. Chittick asks if he needs D. Beauchamp's "blessing" before he prints it. In anniversary letter to Ranasha notes that he doesn't have the energy to "wander." Notes that the two have "done a poor job as spending time together. Even if it's as small as watching a movie or something on TV together, and I don't mean while I watch it and you fall asleep. We have to make that effort. It's important for us and our relationship."	CH_EstatesDT_0002570; CTRL_00004946

09/16/2008	D. Chittick sends letter to Ranasha for 8 year anniversary. Reminds Ranasha to "take some time to with Ty each day. . . Take the time, it won't be available too much longer, and you'll never regret the time you spent with him. . . I don't want to be blind sided with situations when they've become a bigger issue and it could have been more helpful if we could have headed them off before they became emergencies. I'm really not trying to meddle in your affairs as much as to help. . . . I hope that you are finding life fulfilling and exciting, with a touch of wonder every now and again. I don't want life to be running long in a rut. Sometimes you have to work at improving it and making sure it's going in the direction you want it to go in. I love you and our boys more then anything in the world. I look forward to what comes next with their growth and our experiences."	CH_EstatesDT_0028084; CTRL_00062030
04/01/2009	D. Chittick asks D. Beauchamp if an update needs to be done on the POM. D. Beauchamp responds "Given the economy and real estate collapse, it is pretty important that we do an update."	BC_000756
04/23/2009	D. Beauchamp emails D. Chittick and notes that DenSco could be subject to some applicable licensing requirements required by ADFI	BC_000208
06/01/2009	DenSco Private Offering Memorandum D. Beauchamp writes in notes of what Denny needs to change and be added or confirmed, including: <ul style="list-style-type: none"> • The houses owned and leased by DenSco after foreclosure • Number of foreclosed homes owned by company is intended to be kept to a minimum to maintain a diversified financing operation • Confirm status of applicable FHA regulations • "As of the date of this Memorandum, Mr. Chittick has experienced only ____ loan defaults requiring initiating foreclosure, and no loans that resulted in principal losses." • Asks for update of operating history • Asks for addition of decrease in value of collateral for the loans in Company's Portfolio 	BC_000296

	<ul style="list-style-type: none"> • Notes that Denny needs to describe the risk to the Company and indirectly to Notes and Investors • Asks Denny to confirm sole ownership • Asks Denny to check numbers regarding prior performance • Asks Denny if they need to specify if any subordination is written 	
09/16/2009	<p>Ranasha sends D. Chittick an anniversary note that apologizes. "I am sorry Denny. Thank you for not kicking me out of the house, thank you for supporting me despite my wishes and my coldness, thank you for carrying our family and taking care of the home and boys while I flounder through life these days trying to figure out what my life has been and through recovery. Than you for putting up with my moods and crazy schedule. Thank you for trying, thank you for putting gup with my audacity to distrust you and thank you for understanding. . . I know this is not a happy anniversary but know that I today, although sad for our loss of the life we once knew, I am grateful and humbled."</p>	CH_EstatesDT_0027935 (CTRL_00061690)
05/12/2010	<p>D. Chittick and Sharla Chittick (Denny's sister) have exchange about differences in opinion over government/money. Sharla tells Denny that he "worships the holy dollar . . . You must find it ridiculous that your kids are taught in school to share, apologize, hold hands, use their words, be polite, be honest, and make-up after arguments." Then goes on to say "I will always be slightly saddened, however, that I never cultivated a health relationship with you. I also fully realise you keep me somewhat near you in hope that you can offer my son some salvation in your religion, just as I exhaust myself engaging in conversation with you in the hopes that I can keep a relationship with my nephews and sister-in-law. After our row two years ago, I thought maybe you might just leave me off your sermon mailing list, but this particular email was sent twice this year, so you obviously enjoy provoking me."</p> <p>D. Chittick refuses to respond and Sharla emails back and says (among other things) "I love you deeply and you have been the challenge of my life. You are the one man I can not break up with or divorce. I try so desperately hard to make some form of a relationship work, but I feel detested by you most of the time. I truly thought things were getting better. I thought we would just leave our differences aside, but twice</p>	DOCID_00058805

	in the last few months you send the same email. Why? The first time I simply said 'If Obama was a socialistic, he would support a single payer system.' That was it. I refrained from anything. But then you send it again . . . I just don't get you."	
2011	Tax return for DenSco notes following: <ul style="list-style-type: none"> • Balance of loans made to Scott Managed personally is \$2,666,000 • Value of mortgage and real estate loans at beginning and end of tax year is \$16,467,372 and \$27,859,162, respectively • Value of mortgages, notes, bonds payable in 1 year or more at beginning and end of tax year is not identified Total liabilities and shareholders' equity at beginning and end of tax year is \$23,066,833 and \$32,412,716, respectively	DP000046-100 (DOCID_00470833); 2011 Tax Return & Work Papers
2011	Documents disclosed by D. Preston note that DenSco's income was \$377,042 and Chittick salary was \$186,765	R-RFP-Response000014
07/01/2011	D. Beauchamp emails D. Chittick about changes to POM. Asks: <ul style="list-style-type: none"> • Did you receive the changes we sent to you concerning the descriptions of the loan loss reserves? • How soon do you think that you will be able to complete the prior performance chart for the POM? • Will you give me an opportunity to look at it before you circulates the POM to your investors so that I can try to make sure that it is clear and even an attorney can understand it? 	BC_000003
07/01/2011	DenSco Confidential private Offering Memo drafted. Notes offered in \$50k initial investment, with additional increments of \$10k.	DIC0008660
	Notes that: <ol style="list-style-type: none"> (1) in past ten years since April 2001, DenSco engaged in 2,622 loan transactions (2) DenSco intends to not exceed maximum loan size of \$1 million (3) DenSco will maintain loan-to-value ratio below 70% in aggregate for all loans in loan portfolio 	

	(4) DensCo is dependent on continued services of D. Chittick (5) History of how much money was raised each year over the last 10 years	
07/17/2011	Arden Chittick makes joke about Dillon Chittick (D. Chittick's son) going to law school. D. Chittick responds that "my son will never go to law school! At least with me paying for it. They can be anything they want in the world except a lawyer!"	DOCID_00061118-1
09/09/2011	D. Chittick emails Mark Cardwell asking for search of Ranasha's computer and various devices for key words that are "anything sexual in nature." Asks that Mark give him the chat names and email addresses. Pornographic images found on both hard drives. D. Chittick complains about how long it is taking to find data and how much it is costing. An excel spreadsheet noting all the numbers Ranasha called with notes about those numbers provided.	CH_EstatesDT_0039964 (DOCID_00108863); CH_EstatesDT_0040401 (DOCID_00109300); CH_EstatesDT_0040837 (DOCID_00109736); CH_EstatesDT_0065302 (DOCID_00383613)
10/2011	D. Chittick and Mark Cardwell exchange emails where D. Chittick frustrated with how long it is taking Mark to find materials on Ranasha's devices	CH_EstatesDT_0040401 CH_EstatesDT_0040837
2012	Tax return for DensCo notes following: <ul style="list-style-type: none"> • Balance of loans made to Scott Menaged personally is \$4,650,000 • Value of mortgage and real estate loans at beginning and end of tax year is \$27,859,162 and \$38,238,134, respectively • Value of mortgages, notes, bonds payable in 1 year or more at beginning and end of tax year is \$31,038,925 and \$40,557,053 • Total liabilities and shareholders' equity at beginning and end of tax year is \$32,412,716 and \$42,873,421, respectively 	DP000101-189 (DOCID_00470834); 2012 Tax Return & Work Papers
2012	Documents disclosed by D. Preston indicate that DensCo income was \$1,046,307 and salary of Chittick was \$115,956	R-RFP-Response000014
05/05/2012	Writes letter to someone named SK. "All my life I've give out nicknames to people. . When I was in your class I wondered how you could teach with such enthusiasm	CH_EstatesDT_0028117

	every day . . . I remember how proud you were of your new lecturer that some kids made for you in shop class."	
07/30/2012	D. Chittick emails family to let them know that Ranasha moved out and divorce should be final in the next 10 days. Notes that "[t]his has been a long time coming and it's finally here. I know your first reaction is to be upset and call, but don't worry it's for the best, and the last thing I need is any emotional support. I waited until it actually happened before telling you because this isn't the first time she's threatened, and I didn't want to run you all through it again."	DOCID_00063731
	Notes that the most important thing is the boys and that though they will split custody, the boys will spend most of their time with D. Chittick.	
08/2012	Parenting Plan for Dillon and Ty executed between D. Chittick and Ranasha	CH_EstatesDT_0028106 (CTRL_00062054)
	Agreed to joint legal custody but that parenting time will not necessarily be equal.	
08/13/2012	D. Chittick emails a document to self and Mo Sam Chittick with title ELDON. Document appears to be letter to Chittick's father from mother. Unclear who wrote it, but metadata suggests that Chittick himself wrote it from mother's perspective. Key excerpts: "Every time I think about what your face looked like, I start shaking all over again. In fact, I am shaking writing this to you. Your face was full of hatred towards me, for me & to me. The RAGE you exhibited was something I would never have believed or anyone that know you would or could ever picture or believe could have come from you – Eldon Vern Chittick. I, for sure, never thought I would see that kind of violence toward me or anyone else for that matter. (There was the time you threw Denny into the wall. – that also had a Sharla involvement. And, then your pushing the camera into the guys face in Southern Idaho. That did not have a Sharla involvement) Okay, I guess you can lose control.)	DOCID_00063842

	<p>I never thought I would ever see that kind of violence toward me or anyone else for that matter. Sorry I am repeating myself! And I would never have believed you would intentionally hurt me physically. ****BUT now I know you would and could!</p> <p>Letter goes on to encourage Eldon to file for divorce.</p>	
09/21/2012	<p>Notes that Eldon could not handle diagnosis of MCI (appears to be Mild Cognitive Impairment?).</p> <p>Gregg Reichman from Active Funding emails S. Menaged:</p> <p>"From reading the chain there are DOTs recorded from both companies. We are senior on all 3 deals and Denny's DOT is recorded behind ours."</p> <p>"Both Densco and AFG have loans on those properties. Veronica told me that Densco has been paid off and she was waiting for releases. I just spoke with Denny. He indicated that he has not been paid off. Please get this squared away as this is troubling."</p> <p>"OK – it's an important matter. It looks like these three deals of yours were double pledged to both AFG and Densco.</p> <p>37209 12th St 6507 Straight Arrow 28631 46th Way</p> <p>From reading the chain there are DOT's recorded from both companies. We are Sr. on all 3 deals and Denny's DOT is recorded behind ours. Do you remember these at all and what happened with them?"</p> <p>S. Menaged responds that he doesn't remember the properties, but "it's impossible" that they are double liened.</p> <p>Greg responds: "Not impossible, I'm looking at the chains of title sitting in front of me. Both Densco and AFG have loans on those properties. Veronica told me that Densco has been</p>	DOCID_00074251

	<p>paid off and she was waiting for releases. I just spoke to Denny. He is indicated that he has not been paid off. Please get this squared away as it is troubling."</p>	
09/24/2012	<p>G. Reichman emails S. Menaged "Over the weekend we pulled chains on all properties we have with you that we provided financing on, which have not been paid off. There are DOT's from AFG and DOTs from Densco on all of them. They appear to all be double pledged. I spoke to Denny on three of them and he indicates that he has not been paid off on them, and AFG has not been paid off on them either. I have not yet been able to discuss the other ones with him."</p> <p>G. Reichman then identifies all the properties that are double liened: "Over the weekend we pulled chains on all properties we have with you that we provided financing on, which have not been paid off. There are DOT's from AFG and DOTs from Densco on all of them. They appear to all be double pledged. I spoke to Denny on three of them and he indicates that he has not been paid off on them, and AFG has not been paid off on them wither. I have not yet been able to discuss the other ones with him. Please give this the first priority when you are back at your office this morning and we will do the same but absent proof of payoff we believe these are valid deeds and that represents a very serious issue that needs to be resolved today."</p> <p>G. Reichman then emails S. Menaged and says: "We are on for 10am tomorrow. We just wanted to set some minimum goals for the meeting. First, please bring a check to get all loan payments current and down payments met as they are almost all past due. Secondly, our expectation is that by the end of the meeting, our deployed capital will be secured or recovered by either repayment of funds in cash, or substitute collateral being pledged to us as a replacement for defective collateral that has been double pledged. Any of the above will be acceptable for a near term solution."</p>	DOCID_00074248

	<p>S. Menaged responds and says, "I appreciate the emails and I want to make you as comfortable as possible. I did not benefit from this mess. In fact losing a million and a half dollars only with you . . . I am discovering other issues with my stores. Please don't put unrealistic demands on me right now as the focus of this meeting is to make you whole."</p> <p>G. Reichman replies, " We do not have unrealistic expectations, we would ask the same from you as this is a significant problem with significant ramifications. At minimum we would like payments and down payment requirements brought current and we can't see any reason why that would be objectionable to you, is it? If you have other assets which we believe you do they should be offered to us as additional collateral."</p>	
09/24/2012	<p>D. Chittick emails S. Menaged and says that Gregg Reichman from Active Funding has called him about double lien properties. He writes to Menaged, "He called me again. He has more properties that he feels that we both have loans on, he swears you never gave him a check to payoff the first three loans in question. The list has grown, he is reviewing all of your loans to see if there are more." Lists allegedly double lien properties and then tells Menaged, "We've got to get this straightened out today."</p>	DOCID_00017178
	<p>D. Chittick later asks S. Menaged what Menaged's research on the double lien properties showed. Tells Menaged, "I never heard back from Greg either."</p>	
09/26/2012	<p>D. Chittick emails S. Menaged about Gregg at Active Funding. Says "He just blamed his past employees and quickly got off the phone. Trust me my books are golden, down to a gnats ass crack."</p>	DOCID_00017206
09/26/2012	<p>G. Reichman tells S. Menaged, "You talked about 60 rentals, you gave us 36 properties to run. I assume you just forgot some. At the bottom I have listed the other properties you or Easy own and I ran them as well. Total is 61. If you could please write your values next to my values, and then the amount of debt you have</p>	DOCID_00074233

	on each, and how much you would propose to pledge at payoff for each we can move to getting documentation completed assuming we agree."	
09/27/2012 – 09/28/2012	G. Reichman emails S. Menaged, "This will help you. 10 free and clear properties indicated with asterisks**." G. Reichman later emails S. Menaged and says "On the free and clear properties we would expect at least 80% because that would put them "in line" with what we would normally lend we can lay the paper off to our investors to recapture our capital. The situation is creating significant financial harm damages to us because we now have over \$1,000,000 which we have paid to you and our security interest in those assets is likely defective so we can't lay them off to investors and replenish our cash. With the free and clear assets we could lay them off because our security interest would not be defective."	DOCID_00074229; DOCID_00074228
10/01/2012 – 10/02/2012	G. Reichman emails S. Menaged, "We are in agreement with what you wrote with the following structural suggestions: The following properties are carved out since they are free and clear and we can lay off the paper: We will do individual DOT's on these so we can assign our beneficial interest to our Investors in lieu of the defective collateral we now have. We won't get made whole but it's a start. In addition, if any of the other properties listing your Dad as 1 st position are actually paid off please tell us and lets add to the carve out list. This is causing us the most heartburn. On the rest, we can do a blanket DOT for the full amount we deployed on the defective collateral \$1,400,000. We will list out all of the other properties on my summary, excluding "carved out" collateral above. We prepare a memorandum of understanding/agreement that relates to the security interest that has the following terms: 1. You agree to keep current on all interest due per the terms of the notes in place. 2. In addition to payments due, you agree to make a principal pay down on the 1 st of each month in the amount of \$30,000.00. This is credited to principal reduction provided you are current on all other payments. 3. On any collateral already pledged where Short Term or a family member or related entity has a security position that is superior to the AFG position you agree to get that position released. 4. You agree to begin marketing the properties for sale at market,	DOCID_00074222

	<p>retail price (hopefully with our brokerage) and continue to try to sell them until we are paid off. 5. On a sale by sale basis, property by property by piece basis we agree to release our security interest on each specific asset in exchange for fifty percent (50%) of the net distributable cash at closing, after closing costs are paid. This needs to be a "pure" calculation of net cash available with no fees or other charges being distributed to you or an entity of yours before the split is calculated. 6. The agreement will carry your personal guarantee in addition to the company guarantee."</p> <p>S. Menaged emails G. Reichman and responds, "All notes are correct with short term as you see them. Please let me know what time docs will be ready for signature." Then later emails G. Reichman and says, "My sister went into labor just now . . . Can I come to your office at 10 am tomorrow to sign . . . I want to be with her."</p> <p>G. Reichman responds, "I guess so. Scott, the delay is making us very uncomfortable and I am sure you can understand why. What hospital is she at? I thought she was divorced."</p>	
10/02/2012	Easy Investments executes promissory note for \$1.4 million in favor of Active Funding	R-RFP-Response000911
10/17/2012	Active funds another deal for S. Menaged. While working out financing, G. Reichman emails S. Menaged, "I am assuming Denny (or anyone else) has no knowledge of [property] so we won't have to deal with him recording a DOT in front of us, correct?"	DOCID_00074182
10/30/2012	G. Reichman emails S. Menaged. Subject line is "Some more loans." Body of email says "I have an idea I Would like to discuss with you. Please call me."	DOCID_00074172
11/10/2012	S. Menaged emails G. Reichman, "SUBJECT: Scotty – if Ok with you we will take Denny out of these loans...call me Just got your message... Thanks I am ok! I did respond, I said we will talk on Monday and I'll get payoffs from Denny Monday"	DOCID_00074097

11/14/2012	G. Reichman emails S. Menaged and says, "Please let Denny know that he will receive a single wire in the amount of \$415,733.00 today for full payoff of the following assets... The wire will come from Note Acquisition Company, LLC Please let him know that tomorrow e will receive a second wire, also from Note Acquisition Company, LLC in the amount of \$350,655.25 for full payoff of the following assets:"	DOCID_00074080
2013	<p>Tax return for DenSco notes following:</p> <ul style="list-style-type: none"> • Balance of loans made to Scott Menaged personally is \$12,937,000 • Balance of loans made to AHF is \$15,368,400 • Balance of loans made to EI is \$149,332 • Value of mortgage and real estate loans at beginning and end of tax year is \$38,238,134 and \$58,327,810, respectively • Value of mortgages, notes, bonds payable in 1 year or more at beginning and end of tax year is not provided • Total liabilities and shareholders' equity at beginning and end of tax year is \$42,873,421 and \$58,894,465, respectively 	<p>DP000190-244 (DOCID_00470830); 2013 Tax Returns & Work Papers</p>
2013	Documents disclosed by D. Preston indicate that DenSco income was \$1,166,960 and salary of Chittick was \$258,312	R-RFP-Response000014
05/2013	D. Beauchamp circulates draft of POM	BC_002982
06/01/2013	D. Chittick tells D. Beauchamp that he has 114 individuals who hold investor notes and 80 families	BC_002000
06/14/2013	D. Chittick emails D. Beauchamp about Freo lawsuit and says "I have a borrower, to which I've done a ton of business with, million in loans and hundreds of loans for several years, he's getting sued along with me... Easy Investments, has his attorney working on it, I'm ok to piggy back with his attorney to fight it, Easy Investments is willing to pay the legal fees to fight it. I just wanted you to be aware of it, and talk to his attorney."	BC_001979

07/01/2013	G. Reichman tells Veronica Gutierrez (works for S. Menaged) that Active will not be funding any more loans under the name of Easy Investments. "Scott will be using a different entity for his purchases that are financed with AFG from this point forward."	DOCID_00075465
07/10/2013	G. Reichman emails S. Menaged: "...here is a summary as you requested. There are 3 "asset categories" as detailed in our prior agreement. 1. Properties listed on Exhibit "A": AFG is to receive 100% of the distributable cash available after any secured lender receives its required payoff. 2. Properties listed on Exhibit "B": AFG is to receive 50% of the distributable cash available after any secured lender receives its required payoff. 3. Properties listed on Exhibit "C": These properties were free and clear at the time of the agreement. AFG is to receive 80% of the distributable cash available after payment of Escrow/Title fees but in no event less than the original principal amounts reflected in the recorded deeds of trust for these assets."	DOCID_00075439
9/10/2013	Attorney Scott Gould is inadvertently copied on email. And Menaged asks why he is copied. Reichman responds that it was sent in error, but that Gould does "not have any idea what the actual agreement is just a few components and he has no idea what drove the need for the agreement in the first place."	
9/10/2013	G. Reichman asks S. Menaged if he is okay and that he is worried about him. Menaged responds that he is "[g]oing thru a hard personal time with my family. I'll call you later because I need a friend to talk to." Reichman responds, "Ok. I am here for you and happy to listen."	DOCID_00075186
11/27/2013	S. Menaged meets with D. Chittick to tell him that certain properties guaranteeing loans by DenSCO have been used as security for one or more loans from one or more other lenders and that loans from DenSCO may not be in the first lien position.	DIC0005570
	S. Menaged acknowledges at that meeting that AHF and EI (both owned by S. Menaged), as borrowers of loan, had obligation to discharge the liens of the other	

	lenders or to take such other actions to comply with section 5 of the deed of trust within 10 days (referenced in forbearance agreement).	
	Agreement includes a mutual release and covenant not to sue AHF, EI or S. Menaged.	
12/18/2013	Clark Hill invoice reflects that D. Chittick and D. Beauchamp chatted on telephone for .2 hours.	CH_0009806; 12/18/2013 CH invoice
12/18/2013	D. Chittick sends email to D. Beauchamp noting that 2013 POM was never finished.	CH_0000637 (DOCID_00002169) and CH_0000708 (DOCID_00002171)
2014	Tax return for DenSco notes following: <ul style="list-style-type: none"> • Tax returns stop identifying balance of loans to Menaged and Menaged-controlled entities. • Value of mortgage and real estate loans at beginning and end of tax year is \$58,327,810 and \$54,846,456, respectively • Value of mortgages, notes, bonds payable in 1 year or more at beginning and end of tax year is not identified • Total liabilities and shareholders' equity at beginning and end of tax year is \$58,894,465 and \$59,336,655, respectively 	DOCID_00470840; 2014 Tax Return & Work Papers
2014	Documents disclosed by D. Preston indicate that DenSco income was \$1,349,671 and salary of Chittick was \$246,100	R-RFP-Response000014
01/01/2014	D. Chittick emails S. Menaged and says that he will have 4 million by July 15. S. Menaged responds and says "Between the million I forwarded cheap, the million from PV house, plus profits! We can have this wrapped up this year easy, then send u on a two yr flip spree to earn back ur net worth". Then asks what D. Chittick's thoughts are about subordination. "Active is now saying as we'll they want that or will begin foreclosures [on double liened properties where DenSco and Active both had competing positions]."	DOCID_00046170
01/06/2014	Other lenders who loaned money to buy homes send demand letter to DenSco demanding that DenSco subordinate its claims to other lenders. Threaten to bring	DIC0007145 DIC0008607

	claims for (i) fraud and conspiracy to defraud, (ii) negligent misrepresentation and (iii) wrongful recordation.	
01/06/2014	D. Beauchamp had call with D. Chittick where D. Chittick told D. Beauchamp that the largest borrower was getting 2 loans on each property	DIC0005405
01/07/2014	<p>D. Chittick emails D. Beauchamp explaining issue and proposed plan to repay lenders. Notes that had loaned S. Menaged \$50 million since 2007. Provides that:</p> <p>"I've been lending to Scott Menaged through a few different LLC's and his name since 2007. I've lent him 50 million dollars and I have never had a problem with payment or issue that hasn't been resolved."</p> <p>The proposed plan is:</p> <ul style="list-style-type: none"> • All lenders will be paid their interest, except me, I'm allowing my interest to accrue. • I'm extending him a million dollars against a home at 3% • He is bringing in 4-5 million dollars over the next 120 days from liquidating some assets as well as getting some money back that the cousin stole, and other sources. • He's got a majority of these houses rented, this brings in a lot of money every month. • The houses that he's buying now and will be flipping will bring in money every week starting next week or two. • As the houses become vacant either because of ending the lease or the tenant leaves, scott will fix up the house and sell it retail. This will drive the order in which the houses will be sold. • He also owns dozens of houses that only have one lien on them and have substantial equity in them, and he'll be selling these as the tenants vacate. <p>"I've been over this plan 100 times and the numbers and I truly believe this is the right avenue to fix the problem. We have been proceeding with this plan since November and we've already cleared up about 10% of the total \$'s in question."</p>	DIC0007135 – DIC0007138

	That's in the slowest part of the selling season. We feel once things pick up seasonally we can speed this up."	
	"What we need is an agreement that as long as the other lenders are being paid their interest and payoffs continue to come, (we have 12 more houses in escrow currently, all planned to close in the next 30 days), that no one initiates foreclosure for obvious reasons, which will give us time to execute our plan. "	
01/09/2014	<p>D. Beauchamp meets with D. Chittick and S. Menaged and summarizes issues:</p> <ol style="list-style-type: none"> 1. S. Menaged told D. Beauchamp that put cousin in charge, but doesn't know what happened to money 2. Plan is to pay off other lenders through: <ol style="list-style-type: none"> a. Raising coverage and loan amount b. Raising money from other investors to help S. Menaged come up with balance. 	DIC0005403
01/09/2014	<p>D. Chittick emails D. Beauchamp and explains that "I could wire Scott the money, he could produce a cashiers check that says remitter is DenSco and it would have the exact same affect as if I got cashiers check that said I'm the remitter. I don't just do this with scott, I do this with 90% of the guys that I fund at the auctions. 90% of the time there is an intermediary between my borrower and the trustee, a bidding co. everyone wires the money to the bidding co and the bidding co' gets the cashiers check saying remitter is the buyer. Put aside the logistics for a second, what proof or what guarantee is there by my cutting the check and handing it to suzy at the trustees office rather than my borrowers?"</p> <p>D. Beauchamp responds that "Let me see what the other lenders for form the Trustee and we can make a better decision. There is either another way to do it or someone described a procedure that does not work."</p>	DIC007125-26
01/12/2014	<p>D. Chittick tells D. Beauchamp that he "spent the day contacting every investor that has told me they want to give me more money. I don't have an answer on</p>	DIC0007085

	<p>specifically how much I can raise, I'll know that in a day or two. I have 3 million in my acct. I still have to fund my regular business at the same time. I've got a few million closing in the next 10 business days. I feel like if all goes well, I'll have my money in total of rough 5-6 million in this time frame.</p> <p>...</p> <p>If both Scott and I can raise enough money, we should be able to have this all done in 30 days easy, less than three weeks would be my goal."</p> <p>D. Chittick alludes that the plan he sent to D. Beauchamp went to spam folder and then says "that's my plan, shoot holes in it."</p> <p>D. Beauchamp tells D. Chittick that he "should feel very honored that you could raise that amount of money that quickly."</p>	
01/12/2014	D. Chittick emails S. Menaged and tells him that David "[j]ust emailed me and said he would have plan tomorrow."	DOCID_00044968
01/13/2014	<p>D. Chittick emails S. Menaged and says that "Dave has asked me, because the Bob lawyer for Dan and group would like to know the agreement that you have with your friend/investor that is providing you capital."</p> <p>S. Menaged emails D. Beauchamp and says that "I understand the other side wants to know my agreement with my friend who will provide me some capital. I will be able to borrow up to 1,000,000 as a personal loan with a balloon in December 2015."</p> <p>D. Chittick then emails S. Menaged and says Miller had "some dumb ass demands." Concludes that "skip all their bullshit, this is what is going to happen. They are going to get a list to us, we can double check it, send it to escrow. We'll determine if the property is in escrow, we'll let it go through, or if we just pay it off." D. Chittick says willing to make an agreement with Miller as long as there is a confidentiality agreement, which D. Beauchamp signed off on.</p>	<p>DOCID_00044967</p> <p>DIC0007075</p>

01/16/2014	<p>D. Beauchamp emails D. Chittick about Term Sheet and tells him not to accept changes made by S. Menaged on Term Sheet. Notes that the changes "still leaves open the question of whether Scott intended for DenSco to be in the first position. Ideally, Scott would make the acknowledgment (which would be an admission of default should DenSco be determined to not be in first position), but Scott would be protected by the terms of the forbearance agreement." Tells him that "the whole consideration to DenSco (and protection to you) is for Scott to acknowledge he is in default. In exchange, DenSco agrees not to take certain actions and to provide funding to Borrowers to assist Borrower to resolve these disputes. . . . Without Scott's admission here, you are left on your own to deal with Miller's clients. . . . I think it is not in your legal best interest to agree to all of your commitments in this term sheet without getting this admission from Scott."</p> <p>D Chittick notes that S. Menaged will personally guarantee the loans in Term Sheet.</p> <p>D. Schenck emails D. Chittick and writes that "[a]ttached is the revised Term Sheet with the changes that Scott requested and that David discussed with you. As requested, we revised the language so that the Borrower is not expressing its intent on which lender was supposed to be in first position. As David mentioned, we don't recommend that you accept these changes because it still leaves open the question of whether Scott intended for DenSco to be in the first position. Ideally, Scott would make the acknowledgment (which would be an admission of default should DenSco be determined to not be in the first position), but Scott would be protected by the terms of the forbearance agreement.</p> <p>D. Chittick emails D. Beauchamp and notes that "scott just texted me said he's willing to sign it. If you are telling me it puts me in a bad situation, then we need to find middle ground to where I'm not in a weaker position and he's not in a position of admitting guilt."</p>	<p>DIC0006242 DIC0006261 DIC0006420 CH_0001015</p>
01/18/2014	<p>Carlene Chittick (D. Chittick's mother) emails D. Chittick about visit with family. Notes that Carlene spoke with Sharla, but did not speak with Sharla and Eldon</p>	<p>DOCID_00069048</p>

	<p>together. "When the two of them are in a discussion of any kind, I usually do not participate! I do a lot of listening! She is my first born daughter, I love her BUT – we are not close and will never be! After the experience I had with her and Eldon in August '12! I will never come between those two again! Because I know where I stand! Please don't miss understand this, but she has always come first in my eyes since the day she was born! I think you, Shawna, and maybe, Quilene realize that – but it is something I will not discuss with Eldon!" Says that she wants to keep email between D. Chittick and her."</p> <p>D. Chittick responds that "[a]s far as her priority in dad's life, we have learned to accept it and doesn't bother us in the least."</p>	
01/2014	<p>Undated, signed term sheet provides:</p> <p>"The provisions of this Term Sheet are intended only as an expression of intent on behalf of DenSco and Menaged, AHF, EI and possibly other entities owned by or under the control of Scott Menaged used to purchase real property from trustee sales. These provisions are not intended to be legally binding on DenSco or Borrower and are expressly subject to the execution of an appropriate definitive agreement."</p> <ul style="list-style-type: none"> • DenSco has advanced several loans to the Borrowers entities. These loans are secured by a Mortgage/Deed of Trust, which was intended to be in first lien position on each of the properties owned by the Borrower. • Certain of Borrower's properties were used as security for loans from other lenders and for loans from DenSco. • Certain of these other lenders have retained Bryan Cave to represent them in connection with the liens of these Other Lenders and the liens of DenSco which were each supposed to be in first lien position on the respective property. 	DIC0007521

	<ul style="list-style-type: none"> • DenSco and Borrower agree to cooperate and assist each other in connection with resolving the dispute with the Other Lenders concerning these Conflict Properties. • As each of the Conflict Properties are sold through an escrow, Borrower is to pay any shortfall of funds required to satisfy the liens of the Other Lenders and DenSco on or prior to the closing of the sale of such Conflict Property. • Borrower and DenSco will work with the other Lenders to obtain a Priority List of the Conflict Properties from the Other Lenders. This Priority List will list the order in which the Other Lenders want each Conflict Property to be refinanced so that the respective Other Lender is paid in full for the loan secured by such Conflict Property and its corresponding lien will be released on such Conflict Property. • Borrower agrees to continue to pay the interest due to each of the Other Lenders • Borrower has arranged for private outside financing in the amount of approximately \$1 million ("Outside Funds") which is to be provided to Borrower on or before February 28, 2014. Such outside funds shall be used exclusively for the pay-off of the Other Lenders and any other similarly situated lender. • Borrower has agreed to inform DenSco of all of the terms of Borrower's transaction to obtain the Outside Funds and the security provided for such Outside Funds. DenSco agrees to keep such information on a confidential basis, provided, however, DenSco will be able to provide such terms and information to its investors, legal counsel, accountants and other applicable professionals • Borrower agrees to provide any additional security to DenSco, as may be requested by DenSco, to secure Borrower's existing obligations to DenSco and to secure the additional obligations that DenSco is agreeing to provide pursuant to this forbearance/workout agreement • Borrower agrees to use its good faith efforts to: (i) liquidate other assets, which is expected to generate approximately 4 to 5 million US Dollars; (ii) 	
--	--	--

	<p>apply all net proceeds from the rental of Borrower's homes, or the net proceeds from the acquisition and disposition of additional homes by Borrowers, and (iii) apply all funds received from Borrower's continued good faith efforts to recover any other assets that can be recovered from the missing proceeds from the multiple loans that were advanced from DenSco and other lenders with respect to certain properties as referenced above. Any additional funds obtained and/or made available to Borrower pursuant this subsection shall be made available to and used by Borrower in connection with the resolution of the lien disputes between DenSco and other lenders as referenced above</p> <ul style="list-style-type: none"> • Borrower agrees to provide DenSco a life insurance policy in the amount of \$10 million, insuring the life of S. Menaged with DenSco named as the sole beneficiary, until all obligations pursuant to the forbearance/workout agreement have been fully satisfied; and • Borrower agrees to provide DenSco with a personal guaranty from S. Menaged, guaranteeing all of Borrower's obligations pursuant to the forbearance/workout agreement. Further, Borrower agrees to provide re-affirmation and consent from S. Menaged to restate and re-affirm his personal obligations as set forth in his outstanding personal guarantees of DenSco's loans to Borrower, so that the terms and provisions of the forbearance/workout agreement will not cause or create any waiver of such guarantees, but rather will ratify and guarantee all of the Borrower's obligations, as such obligations may be increased by the actions of DenSco and Borrowers pursuant to the terms and provisions of the forbearance/workout agreement • DenSco will defer the collection of interest from the Borrowers on DenSco's loans to the Borrowers. • DenSco will provide a new loan to Borrower in the amount of up to \$1 million • So long as Borrower is in compliance with the terms of the forbearance and workout agreement and any other agreements with DenSco, DenSco agrees 	
--	---	--

	to comply with its obligations set forth elsewhere in this Term Sheet, including the obligation to modify its existing loans to the Borrower that are secured by the Conflict Properties, so that the amount of such loans shall be increased to 95% LTV as indicated above.	
01/16/2014	<p>S. Menaged objects to many of the provisions in the term sheet:</p> <ol style="list-style-type: none"> 1. Says that verbage needs to be changed to state that Densco believes it should be in the first position, and that S. Menaged is not admitting that it should be in first position. <p>D. Beauchamp advises D. Chittick to not accept these changes and that S. Menaged must admit that he is in default. "Without Scott's admission here, you are left on your own to deal with Miller's clients. . . . I think it is not in your legal best interest to agree to all of your commitments in this term sheet without getting this admission from Scott."</p>	DIC0006221
01/17/2014	D. Chittick emails S. Menaged and says "[w]e need to accelerate payoffs, we can start with requesting more today. From the million I am extending u, u have room to do more, u have cash coming in next week I hope, then with the PV house I could pay that off his first, then extent money above that loan say by 400k, that would perhaps payoff as many as another dozen loans."	DOCID_00044808
01/17/2014	<p>D. Chittick emails D. Beauchamp with draft email to Dan Diethelm of Geared Equity and notes "[w]e have agreed upon terms sheet for the work out that Scott and I are committed to performing on. I'm not sure what your status is with change of representation. However, I think we can use the same non-disclosure/confidentiality agreement and then we can forward over the terms sheet so you have confidence that we have a working plan in order.</p> <p>...</p> <p>Again, I want to reaffirm my commitment in getting you paid off as quickly as possible."</p>	DIC0006435 CH_0001113

	<p>D. Beauchamp responds and says "A litigation attorney would tell you not to send it, because certain parts might be construed to work against you. However, I agree with every word you said and I think it is merely following up what you agreed to do. So send it."</p> <p>Dan Diethelm responds to email with "We did not ask for a plan, we asked for subordination."</p>	
	<p>D. Beauchamp tells D. Chittick to send following: "Your counsel advised that if a subordination was not possible, that you wanted to see how this could be resolved in the next 45 days. We have worked diligently toward that despite Scott's limited availability. If you are to be paid off before you could even get a hearing in court with respect to any litigation, why not explore that first."</p>	
01/20/2014	<p>S. Menaged emails D. Chittick about plan to payoff "Gregg" (presumably hard money lender suing DenSco), but Chittick does not seem to understand plan. (Plan too long to include in full here.) D. Chittick also notes that "[t]he flexibility I can legally do with David will have to be determined."</p>	DOCID_00044736 DOCID_00044785
01/20/2014	<p>D. Chittick tells S. Menaged that there are 170 properties with second loans.</p>	DOCID_00044787
01/21/2014	<p>S. Menaged apparently works out some of the loan issues with Bryan Cave and tells D. Beauchamp about it. D. Beauchamp responds that this is great, but that he still strongly recommends finalizing the Forbearance Agreement to document "the concessions, the guarantees, the additional security for you and the right to reimbursement for your costs. In addition, this will give you protection if any of your investors raise questions."</p> <p>D. Beauchamp notes that he is "very concerned about the payoffs getting so far ahead of the documentation. I have authorized the preparation of the Forbearance Agreement and the related documents. Under normal circumstances, this should be finalized and signed before you advance all of this additional money. We plan to get the documents to you and Scott later this week."</p>	DIC0006068 DIC0006528

01/21/2014	D. Chittick emails D. Beauchamp about paying off double encumbered properties. Notes that "we have a plan I just need your blessing."	DIC0006463
	D. Beauchamp responds by asking D. Chittick to call him.	
01/21/2014	D. Chittick tells S. Menaged "david is beating me up about keeping it through title for multiple reasons, he wants us to use multiple escrow co's if that's the bottle neck"	DOCID_00044699
01/21/2014	D. Schenck emails D. Chittick regarding documents needed to complete forbearance agreement. Asks Chittick to send loan agreement and deed of trust Chittick sends a deed and note used for every loan D. Beauchamp emails Chittick and provides that "I have authorized the preparation of the Forbearance Agreement and the related documents. Under normal circumstances, this should be finalized and signed before you advance all of this additional money. We plan to get the documents to you and Scott later this week. Hopefully, we can get the documents signed later this week." D. Beauchamp sends another email to Chittick the same day and says "I still strongly recommend that we finalize the Forbearance Agreement to document the concessions, the guarantees, the additional security for you and the right to reimbursement for your costs. In addition, this will give you protection if any of your investors raise questions."	DIC0006738 DIC0006528 DIC0006068
01/31/2014	J. Goulder notes that he spoke to S. Menaged about draft forbearance and will have comments next week.	DIC0006079 DIC0006615
	D. Beauchamp advises D. Chittick that "[u]ntil you have the Forbearance Agreement and the other documents in place, you are not protected with respect to Scott OR your investors. You have no rights to any of the additional collateral that Scott has agreed to give you, until the Forbearance Agreement is signed and the other documents are also signed and filed as may be necessary."	
02/03/2014	D. Beauchamp emails J. Goulder (S. Menaged attorney) about Forbearance Agreement and says that "DenSco has been very straightforward and cooperative	DIC0006602

	with your client throughout this process. DenSco has gone out of its way to help your client for a situation that your client created. . . . By Friday, DenSco will have advanced approximately \$8 million in loans to your client in excess of its authorized leverage ratios and will have deferred significant amounts of interest." Goes on to say that S. Menaged is stalling signing agreement, which is unacceptable.	
02/03/2014	Notes explain that D. Beauchamp explained that "we followed Denny's instructions + prepared the agmt as fair to Borrower as possible – did not leave room for negotiation."	DIC0005418
	Notes further provide that "Denny understands our concern if we have to get back into negotiations."	
02/03/2014	D. Beauchamp asks D. Chittick to prepare Exhibit A to Forbearance Agreement. This exhibit should "list all of the properties affected by this double-funding' with "separate sublists showing the properties that have already been resolved. Also include the other properties that are security for other outstanding loans you have made to the Borrowers. If possible, please prepare the lists and send them to me to review."	DIC0006633 DIC00006600 DIC0006627
	D. Chittick says that he won't have a complete list until he is done funding all the loans which will be another 3 weeks. "I think my goal is to have them done by end of this month."	
	D. Beauchamp responds that "[w]e need to know the list that existed when this problem was first recognized and you started to correct it in November and the changes since that time until the Forbearance Agreement is signed."	
02/04/2014	D. Beauchamp emails D. Chittick and informs him that many of the changes that J. Goulder (S. Menaged's attorney) made to forbearance agreement transferred risk to D. Chittick and investors. "Jeff deleted whole sections of the Forbearance Agreement. Jeff even deleted that Scott is to pay your attorneys' fees in connection with this matter, which Scott offered in the very first meeting with you and me. Jeff also has you waiving many, many rights that are standard in a forbearance	DIC0006625

	<p>agreement, including the right to collect default interest if the Borrower defaults under the Forbearance Agreement, and the cross-default provision that is referenced as a standard provision in your loans in DenSco's POM for your investors. [BOTTOM LINE: JEFF'S CHANGES ARE NOT JUST WORD CHANGES, BUT SUBSTANTIVE CHANGES THAT CLEARLY TRANSFER SIGNIFICANT RISK TO YOU AND YOUR INVESTORS.]”</p> <p>D. Beauchamp warns D. Chittick that if even a portion of J. Goulder's edits are allowed to remain, this is no longer an “industry standard” forbearance agreement “in the description that you HAVE to provide to your investors.”</p>	
02/04/2014	<p>D. Beauchamp emails D. Chittick about changes that J. Goulder made to forbearance agreement.</p> <p>Notes that “At your request, I did not include any harsh or significantly pro-lender provisions.” States the changes from Jeff are “cutting muscle and bone that are needed to protect you.”</p> <p>Notes that they need to be clear about what D. Chittick can and can't do without going back to all of the investors for approval. Notes that “[w]e have a deal that works for you, your investors and is fair to Scott.” Concludes that “[y]ou can help and have helped Scott, but you cannot OBLIGATE DenSco to further help Scott, because that would breach your fiduciary duty to your investors.”</p> <p>States in earlier email that day that “Although I have asked for this and we have discussed this several times, we still do not have an actual copy of any of the loan documents for any of the loans that you made to Scott that are the subject of this problem. This is really important for many different reasons, but a key reason is the ‘guarantee’ at the bottom of the note that Scott signed.”</p> <p>D. Chittick responds that “I understand your concerns. I talked to Scott three times today over certain points so that we are on the same page. We worked through</p>	DIC0006673

	several things. Noen of them r ones u brought up. It is like scott and I talk, u and I talk, we r ok Jef enters and it is like a different language. I will talk to scott but I am not sure what will be the next step.	
02/07/2014	Notes provide that "Scott + Denny talked," and that "Jeff does not want Scott admitting to any fraud."	DIC0005413 DIC0005414
	D. Beauchamp has call with both S. Menaged and D. Chittick about "problem." (Problem is unspecified)	
02/07/2014	Notes further provide that "title insurance on a required basis." D. Beauchamp emails J. Goulder and notes that edits from J. Goulder are unacceptable. "Based on your previous changes, the Forbearance Agreement would be prima facie evidence that Denny Chittick has committed securities fraud because the loan documents he had Scott sign did not comply with DenSco's representations to DenSco's investors in its securities offering documents. Unfortunately, this agreement needs to not only protect Scott from having this agreement used as evidence of fraud against him in a litigation, the agreement needs to comply with Denny's fiduciary obligations to his investors as well as not become evidence to be used against Denny for securities fraud."	DIC0006656
	"The previous version that I had sent to you was basically a complete rewrite of our standard forbearance agreement that I have used in almost 200 forbearance agreements over the last 10 years. The previous version that I sent to you was intended to be as fair as possible while setting forth all of the business points that both Denny and Scott had told me in a meeting and over several conference calls." "In addition to the business points, we had intended to make the document as balanced as possible. We wanted the document to set forth the necessary facts for Denny to satisfy his securities obligations to his investors . . . without having Scott have to admit facts that could cause trouble to him."	

	<p>"Referencing the language of the Loan Documents is needed to satisfy Denny's fiduciary obligations, but I have also modified the other provisions so that Borrower is not admitting that it was required to provide first lien position in connection with the loans."</p> <p>"Bottom line: Borrower does not admit that the existing loans were to be secured in the first lien position, nor that the modified loans will be in first lien position. However, Borrower will obtain a lender's title insurance policy in favor of Lender that will insure Lender in first lien position as the other liens are extinguished on each Property (unless DenSco is paid off). Correspondingly, the respective provisions in the Loan Documents are referenced to satisfy Denny's fiduciary duties to his investors and the Default is acknowledged so that this workout is consistent with the limitations of the scope of Denny's authority."</p>	
02/07/2014	<p>D. Beauchamp emails D. Chittick with additional modifications to Forbearance Agreement. Notes that "the previous language could be construed that you also agreed that Scott was not at fault. Since Jeff will not allow us to put the facts of what happened in this document, you need to be protected if you subsequently learn that something different happened. You should not waive your rights without having a sworn set of facts that you can rely upon."</p>	CH_0002080-2082
02/09/2014	<p>D. Beauchamp emails D. Chittick about ongoing edits that S. Menaged is making to agreement. Notes that edits are limited because D. Chittick has a fiduciary duty to investors in Forbearance Agreement, which makes drafting document a "difficult balancing act."</p> <p>D. Chittick responds "I trust that we are in balance and I have even more confidence that Scott and I can solve this problem with out issue and we never have to use the document that we've worked so long on getting completed."</p> <p>D. Beauchamp then responds "Your point is understood. If possible, please recognize and understand that you will 'use' the document even if you and Scott never refer to it again. It has to have the necessary and essential terms to protect</p>	<p>DIC0006702</p> <p>DIC0006703</p> <p>DIC0006707</p>

	you from potential litigation form investors and third parties." D. Chittick responds "I understand, I just want to get it done and I will continue on working on the solving the problem."	
	D. Beauchamp also comments that he "gave away the store" in the forbearance agreement according to a litigation partner.	
02/10/2014	D. Chittick emails D. Beauchamp noting that that he agrees he won't pursue a civil fraud case, but that he wants his money back.	DIC0005412
02/11/2014	Meeting between D. Beauchamp, S. Menaged and attorney J. Goulder with litigators Notes document issue of Material Disclosure -- "exceeds 10% of the overall portfolio"	DIC0005410
02/13/2014	D. Beauchamp asks D. Chittick if he was able "to obtain the information from Scott for the dates and amounts for his additional funding so that I can insert it with my other changes".	DIC0006111
02/14/2014	D. Beauchamp emails D. Chittick about changes J. Goulder keeps making after D. Beauchamp and D. Chittick talk. "Every time that Scott has gone to you after talking to Jeff, you are only told half of the story and less than half of the negative impact for you from a change they request. So Scott and Jeff believe with both of us in the room, that they will push you to reach an agreement over my objections and you will not listen to me. As Jeff told me, Scott has previously told Jeff that you will do anything to avoid litigation, so Jeff said that I am in a bad negotiation position. Jeff clearly thinks he can force you to agree to accept a watered down agreement and give up substantial rights that you should not have to give up. Unfortunately, it is not your money. It is you investors' money. So you have a fiduciary duty."	DIC0006803
	Also warns D. Chittick that he could "face an action by the SEC or by the Securities Division of the ACC if an investors is able to convince someone in a prosecutor's office that you somehow assisted Scott to cover up this fraud or you were guilty of gross negligence by failing to perform adequate due diligence (on behalf of you investors' money) to determine what was going on. If Scott performs the Agreement in full and everything goes right, then those claims are unlikely to	

	<p>happen, but Scott will control the future events, so his FUTURE actions directly affect the likelihood of any action being brought against you."</p> <p>I know you want this over and done, but Jeff just keeps trying to whittle away at your protections so that you are not protected in the future. Jeff's basic argument is how he construes "fairness" to Scott. However, your duty and obligation is not to be fair to Scott, but t completely protect the rights of your investors. I am sorry if Scott is hurt through this, but Scott's hurt will give Scott the necessary incentive to go after his cousin. Your job is to protect the money that your investors have loaned to DenSco.</p> <p>Title of email is "Denny: Please Read This But do NOT Share with Scott: Attorney Client Privileged!!!"</p> <p>D. Chittick responds "I understand the situation. I understand I need to protect myself and my responsibility to my investors. At this point I don't think I've jeopardized any of that. An agreement has to be reached between Scott and myself, which protects me and my investors and allows Scott and I solve the problem created by scott. What do you recommend to do?"</p>	
02/20/2014	Meeting between J. Goulder, S. Menaged, D. Chittick and D. Beauchamp summarizing what needs to be in Exhibit A and various terms of agreement and status of loans outstanding	DIC0005444
02/20/2014	D. Beauchamp emails BK attorneys asking for advice in how to protect D. Chittick in Forbearance Agreement. Good summary of what D. Beauchamp understand factual background to be that prompted Forbearance Agreement. D. Beauchamp forwards email to D. Chittick so D. Chittick can see how D. Beauchamp has characterized issue.	<p>DIC0006729</p> <p>DIC0006822</p> <p>DIC0006736</p>
	Notes that D. Beauchamp advised D. Chittick that a Forbearance Agreement needed to be put in place when he became aware of D. Chittick reworking loans and deferring interest payments to pay off some duplicate loans.	

	At the time, 145 loans made to Menaged entities were not in first positions.	
02/25/2014	D. Beauchamp tells D. Chittick that J. Goulder's "demands and changes have pretty much killed your ability to sign the Forbearance Agreement, which I believe Jeff wanted to do from the beginning. I did send the revisions back to the head of our lending group and he said that Jeff's changes are clearly intended to prevent the parties from reaching any agreement.	DIC0006759 DIC0006691
	D. Beauchamp finds changes made to release section particularly problematic.	
	William Price of Clark Hill says client should not sign Forbearance Agreement.	
02/25/2014	S. Menaged emails D. Chittick and says "Gregg wants to meet to figure out the plan. I will meet him tomorrow morning to discuss with him." (Presumably about how to handle the double liened properties where Active and DenSco had competing interests.)	DOCID_00078185
02/26/2014		DOCID_00078185
	D. Chittick responds, "That worries me." Then says, "U know u can't explain in any detail to Gregg how we r working this out?"	
	S. Menaged responds, "Yes I know! That's what will make it difficult! I am trying to figure that out."	
	D. Chittick writes, "Gregg does not have to know how I am secured. This is necessary for my purposes.	
	S. Menaged responds, "He will probably say it is necessary for his purposes as well."	
02/26/2014		
02/26/2014	D. Chittick emails D. Beauchamp and says that "I'm no longer in violation of anything with my investors. I'm in possession of money that now I can put to work with new loans that are actually paying me interest versus right now that I'm have no interest coming in. or I can return the money to investors if I can't put it to work."	DIC0006680

02/27/2014	Notes recount that D. Chittick has talked to S. Menaged "four hours" over the last 2 days. "Jeff told Scott that Jeff can beat every argument why this is a fraud." Notes further provide that "Denny willing to take loss this year – so long as DenSco gets some cash back – so DenSco can return cash to investors + reduce interest obligation."	DIC0005439
	"Denny needs this resolved because Denny is losing money to make payments to his investors if DenSco is not getting paid interest from Scott."	
	Notes also recite that "[h]ow to write this up for investors" discussed. Notes conclude that need a forbearance agreement because it will be less problematic. Forbearance agreement will explain procedure and protect D. Chittick for previous revisions.	
	"Will need multiple advance note (unsecured) so DenSco can advance cash on houses or double loans to be sold."	
03/07/2014	D. Chittick emails S. Menaged regarding presumably Forbearance Agreement and says "I just got off the phone with David, he never told me what the delay has been, I guess busy."	DOCID_00049186
03/13/2014	D. Beauchamp tells D. Chittick that negotiations regarding language are problematic because they are already "very late in providing information to your investors" about loan problems.	DIC0006904
03/13/2014	D. Beauchamp does complete rewrite of Confidentiality provision of Forbearance Agreement.	DIC0006904 DIC0006901 DIC0005849
	Advises D. Chittick to look at it before circulating to S. Menaged. Tells D. Chittick that he is " <u>very late</u> in providing information to your investors about this problem and the resulting material changes from your business plan. We cannot give Scott and his attorney any time to cause further delay in getting this Forbearance Agreement finished and the necessary disclosure prepared and circulated.	

	Incorporated into draft.	
03/17/2014	Changes to Forbearance Agreement to reflect changes suggested by D. Chittick <ul style="list-style-type: none"> Section 7.A. – LTV changed from 95% to 120% Suggests that in addition to \$1 million line of credit, also extend \$5 million line 	DIC0005902 DIC0006958 DIC0006968
	Prior to this, when Chittick made suggestions to Forbearance, D. Beauchamp said that he was “concerned about disclosure to your investors.”	
03/17/2014	After D. Chittick is sent invoice for legal work, he forwards to S. Menaged and says “not nearly as bad as I feared!” S. Menaged responds that “it could have been worse! I can’t stand these bills though!” D. Chittick responds that “I slow pay lawyers!”	DOCID_00049396
03/18/2014	D. Chittick emails S. Menaged and says that he is working on “getting david to change the wording for the 1 million at 3%. Because you are selling the house we have to have it lay it out somewhere else that I’m lending 1 million at 3%.”	DOCID_00049465
03/19/2014	D. Chittick and D. Beauchamp exchange emails about language of forbearance agreement. Conversation reflects that D. Chittick getting lots of input from S. Menaged about what agreement should say about fraud. “Scott wants eliminated last part of the last sentence. . . . the Borrower and/or Guarantor. – then from ‘in connection . . . ’ to be stricken, doesn’t want it said fraud anywhere.” D. Beauchamp apparently made changes in response to comments from S. Menaged.	DIC0006303 DIC0006308
	Forbearance agreement modified to read that DenSco agrees to “execute a mutual release and covenant not to sue (or pursue) the Borrower and/or Guarantor in any action based upon the facts set forth in the Recitals to this Agreement.”	
03/20/2014	D. Chittick reviews changes to Forbearance Agreement and notes that “rather unique way of doing the 1 million but I think it will work.” Tells S. Menaged that he told D. Beauchamp that “I had told him that 5 million should be the max of the work out loan. When I told him that 1 million would come off of your house and then that would be needed to give me the flexibility to either put it on a house(s) or add it to the work out loan total, which I would account for differently of course.”	DOCID_00049595

03/25/2014	D. Beauchamp sends email to D. Chittick asking "some hard legal issues in order to finalize the closing documents." These issues are: 1. What is the health status of S. Menaged's wife? This affects the ability of S. Menaged to bind the assets of the marital community. 2. Does S. Menaged have a family trust or other estate planning entity to hold or own marital community assets? This also affects the guaranty and the ability of D. Chittick to have "legal recourse to Scott's assets to support his obligations pursuant to the documents."	DIC0006175 DIC0006179
	D. Chittick responds that he doesn't know answers, but asks D. Beauchamp to send specific questions to send on to S. Menaged, which D. Beauchamp does.	
03/26/2015	S. Menaged sends back answers to questions	DIC0006182
3/30/2014	D. Chittick asks "Should we just have Scott's wife sign a disclaimer instead of adding her to everything? He says he owns it all sole and separate" D. Beauchamp says that is fine. "Since we do not have a detailed financial statement indicating what assets are owned by who or what entity, we probably should have a document that Scott and his wife signs where Scott indicates how he hold his assets (no family trust, no family partnership entity, Etc.) and have his wife sign agreeing with the representations and disclaiming her community property interest in Scott's assets."	DIC0006203 DOCID_00049870
	D. Beauchamp later tells D. Schenck that D. Schenck needs to prepare a Representation and Disclaimer Agreement and delete Scott's wife as a signer on the other documents. Note: D. Chittick suggests disclaimer idea after S. Menaged proposes it.	
04/03/2014	S. Menaged emails D. Chittick and says "I have signed the Notes and Agreement even though it is not anymore a true understanding of what we are doing.... So	DOCID_00049977

	lots of this is no longer valid or True, but I signed it so at least you have it for and not to have Dave Change it again and again with every move we make."	
04/04/2014	DenSco lends to AHF, EI, Furniture King and S. Menaged \$5 million. Properties listed as collateral for loan. DenSco makes an additional \$1 million loan, guaranteed by Furniture King and other liens on homes.	DIC0005689
	Chart of loans found at DIC0005548	
04/04/2014	Secured line of credit promissory note signed.	DIC0005700
	Exhibit A to Forbearance Agreement is DIC0005550 and DIC0005558	
04/11/2014	Paralegal Jessica Zaporowski from Clark Hill send to D. Chittick the following that D. Beauchamp drafted: <ul style="list-style-type: none"> • Forbearance agreement • \$5 million promissory note • \$1 million promissory note • Security agreement and Guaranty agreement (Furniture King) • Guaranty agreement (Menaged) • Representation and Disclaimer agreement 	DIC0005387
04/14/2014	Forbearance Agreement executed. <p>Parties to agreement are AHF and EI (collectively Borrower), S. Menaged (Guarantor), Furniture King (New Guarantor) and DenSco (Lender).</p> <p>Forbearance Agreement notes that Borrower indebted to Lender under certain loans and loans are secured by Deed of Trust. Guarantor guaranteed payment and performance of each loan in favor of Lender.</p> <p>Forbearance Agreement notes that Borrower will discharge any lien that has priority over Forbearance Agreement's Deed of Trust.</p>	DIC0008036

	<p>Agreement notes that on 11/27/2013, Guarantor met with D. Chittick to inform Lender that "certain of the Properties had also been used (though Guarantor acknowledged no fault) as security for one or more loans from one or more other lenders . . . and the loans from Lender may not be in the first lien position on each respective Property." Also at that meeting, Guarantor "acknowledged to Lender that Borrower had an obligation to discharge the liens of the Other Lenders or to take such other actions to satisfy Section 5 of each Deed of Trust within 10 days."</p> <p>Loan balance is for \$39,116,888.</p> <p>Borrower agrees:</p> <ol style="list-style-type: none"> 1. Generate income to recover proceeds from missing assets 2. To maintain life insurance policy for \$10 million insuring S. Menaged's life, payable to Lender 3. To provide Lender with a separate personal guaranty from Guarantor, guaranteeing all of Borrower's obligations under the Loan Documents 4. To provide separate corporate guaranty from New Guarantor, guaranteeing all of Borrower's obligations 5. To pay the interest due to the other lenders for loans secured by any of the Properties 6. To arrange for private outside financing to pay off the other lenders and any other similarly situated lender. Borrower will also inform Lender of the terms of Borrower's transactions to obtain outside funds. <p>Guarantor consents to terms of Forbearance Agreement and agrees to be bound by all terms and provision.</p> <p>Confidentiality provision built into Agreement, but there is an exception for Lender to disclose information needed by Lender's current or future investors. Disclosure is limited to applicable SEC Regulation D disclosure rules. Lender can describe: (1) the multiple Loans secured by the same Properties, which created the Loan Defaults, (2)</p>	
--	--	--

	the work-out plan pursuant to this Agreement in connection with the steps to be taken to resolve the Loan Defaults, (3) the work-out plan shall also include disclosing the previous additional advances that Lender has made and the additional advances that are intended to be made by Lender to Borrower pursuant to this Agreement in connection with increases in the loan amount of certain specific loans, the additional advances pursuant to both the Additional Loan and the Additional Funds Loan and (4) the cumulative effect that all of such additional advances to Borrower will have on Lender's business plan that Lender has previously disclosed to its investors in Lender's private offering docs and which Lender committed to follow.	
04/16/2014	S. Menaged executes guaranty agreement regarding Forbearance Agreement.	DIC0010755
04/16/2014	Secured Line of Credit Promissory Note executed between DenSco (lender) and Arizona Home Foreclosures (borrower) for \$1 million	DIC0010791
04/16/2014	Parties execute an authorization to update forbearance documents, which notes that CH has authority to insert replacement pages into forbearance agreement. Changes seem to be fairly minor (making dates line up, getting loan amounts correct, etc.) <ul style="list-style-type: none"> Amount of funds advanced to borrowers pursuant to \$1M secured line of credit promissory note is \$915,167.89 and updated figure under \$5M secured line of credit promissory note is \$1,780,239.76 	DIC0005823 DIC0008036
04/18/2014	Daniel Schenck notes that there are discrepancies on loan work out documents between March 1 and April 16. "Several of the agreements refer to the balance of the Loans, as of March 1 st , as \$39,116,888, consisting of \$37,133,019 in principal and \$1,983,869 in accrued interest." April 16 th version listed \$39,752,893.28, with \$37,456,620.47 in principal and \$2,296,272.81 in accrued interest."	DIC0007341
	Also notes that there is a discrepancy in the amount of credit advances and that S. Menaged needs to confirm what the correct amount advanced is.	
04/18/2014	D. Chittick emails D. Schenk and wants to know if the dollar amounts can be changed in the documents.	CH_0004241

	D. Beauchamp notes that there are huge risks with changing the numbers without S. Menaged's written permission. "There are so many arguments that could be made to a court to make all of the documents void and ineffective is we start changing more than just a few dates."	
05/15/2014	D. Beauchamp emails D. Chittick and says that need authorization from S. Menaged, S. Menaged's wife, and D. Chittick to finalize various changes to Forbearance Agreement. Initially requested email authorization, but after he never received it, noted that needed a more formal process to approve changes given time lapse in June 2014.	DIC007165-68 DOCID_00019226
2015	Tax return for DenSco notes following: <ul style="list-style-type: none"> • Balance of loans made to Scott Menaged personally and his entities is not identified • Value of mortgage and real estate loans at beginning and end of tax year is \$54,846,456 and \$50,889,115, respectively • Value of mortgages, notes, bonds payable in 1 year or more at beginning and end of tax year is \$55,530,688 and \$49,803,682 • Total liabilities and shareholders' equity at beginning and end of tax year is \$59,336,655 and \$54,215,578, respectively Documents disclosed by D. Preston indicate that DenSco income was \$823,780 and salary of Chittick was \$215,600	DP000296-340; 2015 Tax Returns & Work Papers
03/13/2015	D. Beauchamp emails D. Chittick to say that he wants to "talk about how things have progressed I would like to listen to you about your concerns, and frustrations with how the forbearance settlement and the documentation process was handled. I have thought back to it a lot and I have second guessed myself concerning several steps in the overall process, but I wanted to protect you as much as I could. . . . I acknowledge that you were justifiably frustrated and upset with the expense and the how the other lenders (and Scott at times) seemed to go against you as you were trying to get things resolved last year for Scott."	CH_0006604
03/13/2015	D. Chittick forwards email from D. Beauchamp to S. Menaged and says "I have some legal reporting obligations that r the real rub, I will see what he has to say."	DOCID_00030170 DOCID_00030177

	<p>S. Menaged then appears to ask if can delay reporting "a bit more till the dealership opens" so "we can make real headway on the workout." D. Chittick responds "That's what I have to find out is the timing of the need to report and stay in compliance and be able to show something that isn't scary enough to start a stampede on the bank!" S. Menaged advises "Hopefully you can show things in general terms and not specific. He will say no but there is no choice right now. Remember if you listened to him a year ago we would never be where we are now."</p> <p>D. Chittick responds, "I will be as general as I can, becuz I don't want to get him on a roll."</p>	
06/02/2015	<p>D. Chittick emails S. Menaged says "I think the best thing is to do is suspend, defer the interest on the workout. If you can make 100k payments a week to all principle the total will stop going up so fast and then will start working itself down in the next 60 days or so. I know you keep saying you don't want to. However, this solves a couple of problems. The balance goes the right direction, because with David, this is going to be a huge issue. Since our agreement says 5 million. The balance goes down and shows just mentally progress. I'll keep track of it and down the road we'll work that out. . . .</p> <p>You are eating up 75% of my available cash right now. I can't have it go much further, otherwise I'm not going to have much of a business."</p>	DOCID_00033018
03/16/2016	<p>AZ Department of Financial Institutions sends letter to D. Chittick noting that Department believes that DenSco had violated or is violating laws.</p>	DIC0009149
07/18/2016	S. Menaged texts D. Chittick and tells him he is leaving his bankruptcy attorney's office.	CH_EstatesDT_0035736
07/22/2016	Ranasha texts D. Chittick and writes "I fear the enlightenment will be very dark."	CH_EstatesDT_0035820
07/		
08/03/2016	D. Beauchamp emails investors about D. Chittick's passing and wrapping up DenSco matters.	DIC0011830

Undated Entries

D. Chittick writes letters to each son on each year of his life.	CH_EstateSDT_0028092 CH_EstateSDT_0028093
Ty (year 1): discusses the thought Ranasha and D. Chittick put into having children and highlights the sacrifice Ranasha made to have children. Comments on miscarriage between Dillon and Ty.	CH_EstateSDT_0028094 CH_EstateSDT_0028095 CH_EstateSDT_0024437
Ty (years 2 and 3): effusive about how much Ty has grown	
Ty (year 4): "I'm a different person. I'm probably short temper and not very fun loving a rarely laugh. I can assure you that I have done everything I can to be as good as father to you as I could. The things your mother has done, have affected me so strongly that I cannot fake my way through life being someone I'm not. I am disappointed that you won't have found memories of the fun loving somewhat crazy dad that I was before this year. . . . One day I will explain everything to you." Goes on to give usual updates. Notes that Ranasha swam with boys only twice all year. Also notes that when he took the boys to Costco once, "there was a 400 lb woman, and you yelled 'daddy there is big, bigger and biggest, she she's the biggest of everyone!' We left quickly! Though it was funny, just one of those times I Wanted to crawl under a rock!" Also notes that Ranasha did little to comfort boys when a scary incident involving a neighbor occurred. Concludes letter with "I hope you don't remember me with a short temper with you boys. I can tell you when I've lost my temper it's because your mother's actions have put me in a bad mood and you guys just end up suffering the outburst from it, for that apologize."	
Ty (year 6): "In late February, you and Dillon said to me, 'daddy, why don't you ever laugh?' you said 'Ya you are the no laugh daddy!' Sometimes Brian makes you laugh, but we never see you laugh!' Now you know what I was dealing with and that day your mom told me she was moving out and wanted a divorce. I had been dealing with this for three years and it will be nearly another six months before we told you. Sorry, I hope you don't have memories of me being the no laugh daddy and no fun. I really tried my best for you."	
D. Chittick appears to write letter to self about Ranasha. Notes all the things she has done that upset him. Filled with resentment.	CH_EstateSDT_0024322
Ranasha writes letter to D. Chittick about fight over going to Vegas and going to meetings to help resolve conflict. Apologizes to Denny.	CH_EstateSDT_0024321

Letter drafted to Eldon by D. Chittick from mother's perspective. Notes various instances of abuse against D. Chittick and other family members, and how Eldon dissatisfied in marriage (specifically with sex life and with mother's medical condition).	CH_EstatesDT_0064769
D. Chittick writes suicide letter to someone named Adwee (likely nickname). Notes that "you taught me unconditional love. It was such a gift. . . . I hope you will remember me in a positive influence in your life."	CH_EstatesDT_0024416
D. Chittick writes suicide letter to "Ally-Coo Man Choo!" Notes that "I have kept the picture of you at our wedding on my credenza all this time. It's just beautiful innocent photo that I always treasured. I hope you treasure my memory and I'm sorry for the sadness I've brought you."	CH_EstatesDT_0024417
D. Chittick writes letter to Blonde (Sharla, his sister). "I know I've always been a sense of conflict and love for you. I apologize for not being more patient and understanding. I've always struggled to relate to you, I know it's my short coming. I've always been impressed by your accomplishments because I knew they were ones I could never attain! I'm sorry to send you in to a depression over this."	CH_EstatesDT_0024418
D. Chittick writes suicide letter to Carol (presumably Patton, Mr. P's wife). "I never did anything intentional wrong like someone else you remember. . . . I helped you in your time of need, I need the favor returned. . . . You and Mr. P were great people and I was always proud to be considered family."	CH_EstatesDT_0024421
D. Chittick writes suicide letter to CB. "Now you know why I kept pushing you away. I've been dealing with this since 2013. . . . I enjoyed all the time we spent together, you are an incredible woman in many ways."	CH_EstatesDT_0024422
D. Chittick writes two suicide letters to Ranasha (nickname FACSLIB).	CH_EstatesDT_0024425 CH_EstatesDT_0024426 CH_EstatesDT_0025541
In first he writes, "You had nothing to do with my demise. Although you had everything to do with my sadness in my life. I hope you have conquered your demons and can dedicate your life to ensuring our boys have the best life they can and not fuck it up like you did yours and my life. Now you'll have to deal with my sister for the next ten years or so. . . . You were the only woman that I truly ever loved. But I guess that's not true since love is only possible when it's both ways. Several times you told me you never loved me. That's too bad I think I was worth it."	
In second, gives instructions on what to do. "Also writes, "Igsy will of course be in charge of the boys trust. . . . She's knows you'll need help." Notes that he is "desperately afraid" of boys' anger. Explains that he is doing this because "[t]he consequences are so harsh that I believe I will end up in jail for a long time, completely financially ruined." Writes "I know you are going to hate me too. I understand. But I can promise you this, with all that you did to me and us, I never spoke badly of you in front of the boys. 1/2 of them was you. If I tear you down I'm tearing 1/2 of them down."	
Appears to leave directions on what to do.	

D. Chittick writes letter to unspecified person. "I did everything I could to make things rights once I found out how messed it was. I'm sorry I failed you, I did what you could have wanted to do. I just didn't use a gun!"	CH_EstatesDT_0024427
D. Chittick writes letter to Heuey. "The one kid that wasn't supposed to be is the one that no one can imagine life without you! The closeness you have with your cousins will be a relationship you can carry through life... I'm sorry I'm not able to watch, it would be quite entertaining! I'm sorry for the sadness and please be there for your cousins."	CH_EstatesDT_0024428
D. Chittick writes letter to Jen. "I know this will take me off the pedestal of a great father that you had put me on. In time I think you'll agree it what was best for them... I really enjoyed the time we shared through the struggles."	CH_EstatesDT_0024432
D. Chittick writes suicide letter to Mike. "You are the oldest friend I have."	CH_EstatesDT_0024435
D. Chittick writes suicide letter to Maxx. "I really enjoyed having you at me house... Who knows where things will go with Petra."	CH_EstatesDT_0024434
D. Chittick writes suicide letter to Iggy (Shawna). "I'm so sorry for the pain I've caused you and your kids, stress in your marriage and certainly all the issues I'm asking you deal with... it's wrong for me to burden you with this shit. However, you are the one person in the world I can trust more than anyone to do the right thing... I'm sorry that you have to now deal with her all the time. I know you hate her as much as I do. The only thing that got me to not say anything and do the things I did, was one thought. What was best for the boys? I hope that will guide you through this journey in hell."	CH_EstatesDT_0024430
D. Chittick writes suicide letter to Mo and Sam. "I can't even imagine the unbearable hell I have just put you in. I am so sorry for bringing that pain to you... You gave me the best upbringing a son could have... I've failed as a son, and now as a father."	CH_EstatesDT_0024436
D. Chittick writes suicide letter to Brian. "you became a very close friend and I enjoyed the talks, education and neighborly activities... Perhaps that's my short lack of understanding of friendship, but when it comes to this kind of money, friendship means nothing; I lost that when I discovered the fraud and couldn't fix it."	CH_EstatesDT_0024420
D. Chittick writes suicide letter to boys and gives advice on number of topics, including: Relationships: "The less people you have sexual relations with the fewer problems you'll have with the opposite sex."	CH_EstatesDT_0024419
Money: Notes that making money was a challenge and "one that I enjoyed... It may not make sense to you now, but trust me I was never frivolous with my money, you should remember I was cheap. I would spend it on experience way more easily than on objects... If you need advice ask Aunty Iggy."	

School/College

Notes that "your family will always be there. . . . Your mom and I didn't have that growing up.. You are lucky to have your grandparents and cousins in your life."

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 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 part, he did follow, or I -- through April/May 2014, I
2 believed he was following the legal advice, but not
3 necessarily the recommendations.

4 Q. Mr. Beauchamp, if I read your 26.1 statement
5 correctly, you are blaming Mr. Chittick for what happened
6 in this case. True?

7 MR. DeWULF: Object to form.

8 THE WITNESS: I thought I indicated that
9 Mr. Menaged was the primary person and who exercised
10 control over Mr. Chittick in ways I never understood.

11 Q. (BY MR. CAMPBELL) Sir, you state, do you not,
12 you believe that Mr. Chittick instructed you not to finish
13 the private offering memorandum in the year 2013, correct?

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

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

16 THE WITNESS: I did state he instructed me, and
17 that was based upon a conversation where he had to provide
18 specific answers to information that we needed right then
19 in order to finish the private offering memorandum. He
20 said he did not have time, and I said then you are saying
21 to put it on hold? And he said, yes, put it on hold.

22 Q. (BY MR. CAMPBELL) All right. And that was
23 against your advice. True?

24 A. Yes, that -- my advice was to get it done, but
25 we could not get it done without that information, and he

1 explained it was an impossibility to get that information
2 together at that point.

3 Q. In your 26.1 statement you state that you told
4 Mr. Chittick not to work with Mr. Menaged. He wasn't to
5 be trusted. True?

6 A. True.

7 Q. He ignored your advice. True?

8 A. I believe that was more of a recommendation,
9 because it wasn't legal advice with respect to that. It
10 was a recommendation based upon how I had seen Mr. Menaged
11 act with Mr. Chittick and how I had seen Mr. Chittick act
12 with Mr. Menaged, that there was some type of mental
13 control there. That's not the right term, but it was a
14 deference that clearly worked to DenSco's disadvantage.

15 Q. All right. Turn to page 14 of your Rule 26.1
16 statement, line 3. You state under oath, "Nevertheless,
17 Mr. Beauchamp at one point became concerned enough at
18 Menaged's intransigence and the apparent influence he held
19 over Mr. Chittick, that he reached out to third parties in
20 late January 2014 to inquire about Menaged. Those third
21 parties informed him that Menaged was generally someone to
22 be distrusted and not someone to do business with.
23 Mr. Beauchamp attempted to persuade Mr. Chittick of this
24 during several heated conversations, but Mr. Chittick
25 ignored these admonitions, explaining that while Menaged

1 could be sharp and off-putting, Menaged had always
2 performed on DenSco's loans in the past, and had stood by
3 Mr. Chittick in tough times. Despite Mr. Beauchamp's
4 efforts, Mr. Chittick could not be convinced to cut ties
5 with Mr. Menaged."

6 Did you write that?

7 A. Yes.

8 Q. That's true?

9 A. That is true.

10 Q. You advised him not to do work with Mr. Menaged?

11 A. That was not legal advice, in my mind. That was
12 a strong recommendation in terms of how he should be
13 performing his business that did not fall in the category
14 of legal advice, so it was clearly within his rights to
15 make that decision as the client.

16 Q. It was his rights as the client to ignore your
17 admonitions and work with Menaged.

18 Is that your testimony?

19 MR. DEWULF: would you read that back, please.

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

21 THE WITNESS: That's my testimony at that period
22 of time on that issue.

23 Q. (BY MR. CAMPBELL) Has it changed? Is that your
24 opinion today or not?

25 A. Clearly based upon the information that has

DAVID GEORGE BEAUCHAMP, VOLUME II, 7/20/2018

concludes the deposition with media eight.

(5:43 p.m.)

David G. Beauchamp

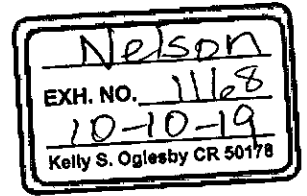
DAVID GEORGE BEAUCHAMP

RECEIVED AUG 31 2018

EXHIBIT 6



AMERICAN PSYCHOLOGICAL ASSOCIATION



Including 2010 and 2016 Amendments

Effective date June 1, 2003 with amendments effective June 1, 2010 and January 1, 2017. Copyright © 2017 American Psychological Association. All rights reserved

► Introduction and Applicability

The American Psychological Association's (APA) Ethical Principles of Psychologists and Code of Conduct (hereinafter referred to as the Ethics Code) consists of an Introduction, a Preamble (?item=2), five General Principles (?item=3) (A-E) and specific Ethical Standards (?item=4). The Introduction discusses the intent, organization, procedural considerations, and scope of application of the Ethics Code. The Preamble and General Principles are aspirational goals to guide psychologists toward the highest ideals of psychology. Although the Preamble and General Principles are not themselves enforceable rules, they should be considered by psychologists in arriving at an ethical course of action. The Ethical Standards set forth enforceable rules for conduct as psychologists. Most of the Ethical Standards are written broadly, in order to apply to psychologists in varied roles, although the application of an Ethical Standard may vary depending on the context. The Ethical Standards are not exhaustive. The fact that a given conduct is not specifically addressed by an Ethical Standard does not mean that it is necessarily either ethical or unethical.

This Ethics Code applies only to psychologists' activities that are part of their scientific, educational, or professional roles as psychologists. Areas covered include but are not limited to the clinical, counseling, and school practice of psychology; research; teaching; supervision of trainees; public service; policy development; social intervention; development of assessment instruments; conducting assessments; educational counseling; organizational consulting; forensic activities; program design

and evaluation; and administration. This Ethics Code applies to these activities across a variety of contexts, such as in person, postal, telephone, Internet, and other electronic transmissions. These activities shall be distinguished from the purely private conduct of psychologists, which is not within the purview of the Ethics Code.

Membership in the APA commits members and student affiliates to comply with the standards of the APA Ethics Code and to the rules and procedures used to enforce them. Lack of awareness or misunderstanding of an Ethical Standard is not itself a defense to a charge of unethical conduct.

The procedures for filing, investigating, and resolving complaints of unethical conduct are described in the current Rules and Procedures of the APA Ethics Committee (/ethics/code/committee) . APA may impose sanctions on its members for violations of the standards of the Ethics Code, including termination of APA membership, and may notify other bodies and individuals of its actions. Actions that violate the standards of the Ethics Code may also lead to the imposition of sanctions on psychologists or students whether or not they are APA members by bodies other than APA, including state psychological associations, other professional groups, psychology boards, other state or federal agencies, and payors for health services. In addition, APA may take action against a member after his or her conviction of a felony, expulsion or suspension from an affiliated state psychological association, or suspension or loss of licensure. When the sanction to be imposed by APA is less than expulsion, the 2001 Rules and Procedures do not guarantee an opportunity for an in-person hearing, but generally provide that complaints will be resolved only on the basis of a submitted record.

The Ethics Code is intended to provide guidance for psychologists and standards of professional conduct that can be applied by the APA and by other bodies that choose to adopt them. The Ethics Code is not intended to be a basis of civil liability. Whether a psychologist has violated the Ethics Code standards does not by itself determine whether the psychologist is legally liable in a court action, whether a contract is enforceable, or whether other legal consequences occur.

The modifiers used in some of the standards of this Ethics Code (e.g., reasonably, appropriate, potentially) are included in the standards when they would (1) allow professional judgment on the part of psychologists, (2) eliminate injustice or inequality that would occur without the modifier, (3) ensure applicability across the broad range of activities conducted by psychologists, or (4) guard against a set of rigid rules that might be quickly outdated. As used in this Ethics Code, the term reasonable means the prevailing professional judgment of psychologists engaged in similar activities in

similar circumstances, given the knowledge the psychologist had or should have had at the time.

In the process of making decisions regarding their professional behavior, psychologists must consider this Ethics Code in addition to applicable laws and psychology board regulations. In applying the Ethics Code to their professional work, psychologists may consider other materials and guidelines that have been adopted or endorsed by scientific and professional psychological organizations and the dictates of their own conscience, as well as consult with others within the field. If this Ethics Code establishes a higher standard of conduct than is required by law, psychologists must meet the higher ethical standard. If psychologists' ethical responsibilities conflict with law, regulations, or other governing legal authority, psychologists make known their commitment to this Ethics Code and take steps to resolve the conflict in a responsible manner in keeping with basic principles of human rights.

► Preamble

Psychologists are committed to increasing scientific and professional knowledge of behavior and people's understanding of themselves and others and to the use of such knowledge to improve the condition of individuals, organizations, and society. Psychologists respect and protect civil and human rights and the central importance of freedom of inquiry and expression in research, teaching, and publication. They strive to help the public in developing informed judgments and choices concerning human behavior. In doing so, they perform many roles, such as researcher, educator, diagnostician, therapist, supervisor, consultant, administrator, social interventionist, and expert witness. This Ethics Code provides a common set of principles and standards upon which psychologists build their professional and scientific work.

This Ethics Code is intended to provide specific standards to cover most situations encountered by psychologists. It has as its goals the welfare and protection of the individuals and groups with whom psychologists work and the education of members, students, and the public regarding ethical standards of the discipline.

The development of a dynamic set of ethical standards for psychologists' work-related conduct requires a personal commitment and lifelong effort to act ethically; to encourage ethical behavior by students, supervisees, employees, and colleagues; and to consult with others concerning ethical problems.

► General Principles

This section consists of General Principles. General Principles, as opposed to Ethical Standards, are aspirational in nature. Their intent is to guide and inspire psychologists toward the very highest ethical ideals of the profession. General Principles, in contrast to Ethical Standards, do not represent obligations and should not form the basis for imposing sanctions. Relying upon General Principles for either of these reasons distorts both their meaning and purpose.

Principle A: Beneficence and Nonmaleficence

Psychologists strive to benefit those with whom they work and take care to do no harm. In their professional actions, psychologists seek to safeguard the welfare and rights of those with whom they interact professionally and other affected persons, and the welfare of animal subjects of research. When conflicts occur among psychologists' obligations or concerns, they attempt to resolve these conflicts in a responsible fashion that avoids or minimizes harm. Because psychologists' scientific and professional judgments and actions may affect the lives of others, they are alert to and guard against personal, financial, social, organizational, or political factors that might lead to misuse of their influence. Psychologists strive to be aware of the possible effect of their own physical and mental health on their ability to help those with whom they work.

Principle B: Fidelity and Responsibility

Psychologists establish relationships of trust with those with whom they work. They are aware of their professional and scientific responsibilities to society and to the specific communities in which they work. Psychologists uphold professional standards of conduct, clarify their professional roles and obligations, accept appropriate responsibility for their behavior, and seek to manage conflicts of interest that could lead to exploitation or harm. Psychologists consult with, refer to, or cooperate with other professionals and institutions to the extent needed to serve the best interests of those with whom they work. They are concerned about the ethical compliance of their colleagues' scientific and professional conduct. Psychologists strive to contribute a portion of their professional time for little or no compensation or personal advantage.

Principle C: Integrity

Psychologists seek to promote accuracy, honesty, and truthfulness in the science, teaching, and practice of psychology. In these activities psychologists do not steal,

cheat or engage in fraud, subterfuge, or intentional misrepresentation of fact. Psychologists strive to keep their promises and to avoid unwise or unclear commitments. In situations in which deception may be ethically justifiable to maximize benefits and minimize harm, psychologists have a serious obligation to consider the need for, the possible consequences of, and their responsibility to correct any resulting mistrust or other harmful effects that arise from the use of such techniques.

Principle D: Justice

Psychologists recognize that fairness and justice entitle all persons to access to and benefit from the contributions of psychology and to equal quality in the processes, procedures, and services being conducted by psychologists. Psychologists exercise reasonable judgment and take precautions to ensure that their potential biases, the boundaries of their competence, and the limitations of their expertise do not lead to or condone unjust practices.

Principle E: Respect for People's Rights and Dignity

Psychologists respect the dignity and worth of all people, and the rights of individuals to privacy, confidentiality, and self-determination. Psychologists are aware that special safeguards may be necessary to protect the rights and welfare of persons or communities whose vulnerabilities impair autonomous decision making. Psychologists are aware of and respect cultural, individual, and role differences, including those based on age, gender, gender identity, race, ethnicity, culture, national origin, religion, sexual orientation, disability, language, and socioeconomic status, and consider these factors when working with members of such groups. Psychologists try to eliminate the effect on their work of biases based on those factors, and they do not knowingly participate in or condone activities of others based upon such prejudices.

➤ Section 1: Resolving Ethical Issues

1.01 Misuse of Psychologists' Work

If psychologists learn of misuse or misrepresentation of their work, they take reasonable steps to correct or minimize the misuse or misrepresentation.

1.02 Conflicts Between Ethics and Law, Regulations, or Other Governing Legal Authority

If psychologists' ethical responsibilities conflict with law, regulations, or other governing legal authority, psychologists clarify the nature of the conflict, make known

their commitment to the Ethics Code, and take reasonable steps to resolve the conflict consistent with the General Principles and Ethical Standards of the Ethics Code. Under no circumstances may this standard be used to justify or defend violating human rights.

1.03 Conflicts Between Ethics and Organizational Demands

If the demands of an organization with which psychologists are affiliated or for whom they are working are in conflict with this Ethics Code, psychologists clarify the nature of the conflict, make known their commitment to the Ethics Code, and take reasonable steps to resolve the conflict consistent with the General Principles and Ethical Standards of the Ethics Code. Under no circumstances may this standard be used to justify or defend violating human rights.

1.04 Informal Resolution of Ethical Violations

When psychologists believe that there may have been an ethical violation by another psychologist, they attempt to resolve the issue by bringing it to the attention of that individual, if an informal resolution appears appropriate and the intervention does not violate any confidentiality rights that may be involved. (See also Standards 1.02, Conflicts Between Ethics and Law, Regulations, or Other Governing Legal Authority (#102), and 1.03, Conflicts Between Ethics and Organizational Demands (#103).)

1.05 Reporting Ethical Violations

If an apparent ethical violation has substantially harmed or is likely to substantially harm a person or organization and is not appropriate for informal resolution under Standard 1.04, Informal Resolution of Ethical Violations (#104), or is not resolved properly in that fashion, psychologists take further action appropriate to the situation. Such action might include referral to state or national committees on professional ethics, to state licensing boards, or to the appropriate institutional authorities. This standard does not apply when an intervention would violate confidentiality rights or when psychologists have been retained to review the work of another psychologist whose professional conduct is in question. (See also Standard 1.02, Conflicts Between Ethics and Law, Regulations, or Other Governing Legal Authority (#102).)

.)

1.06 Cooperating with Ethics Committees

Psychologists cooperate in ethics investigations, proceedings, and resulting requirements of the APA or any affiliated state psychological association to which they belong. In doing so, they address any confidentiality issues. Failure to cooperate is itself an ethics violation. However, making a request for deferment of adjudication of an ethics complaint pending the outcome of litigation does not alone constitute

noncooperation.

1.07 Improper Complaints

Psychologists do not file or encourage the filing of ethics complaints that are made with reckless disregard for or willful ignorance of facts that would disprove the allegation.

1.08 Unfair Discrimination Against Complainants and Respondents

Psychologists do not deny persons employment, advancement, admissions to academic or other programs, tenure, or promotion, based solely upon their having made or their being the subject of an ethics complaint. This does not preclude taking action based upon the outcome of such proceedings or considering other appropriate information.

► Section 2: Competence

2.01 Boundaries of Competence

(a) Psychologists provide services, teach, and conduct research with populations and in areas only within the boundaries of their competence, based on their education, training, supervised experience, consultation, study, or professional experience.

(b) Where scientific or professional knowledge in the discipline of psychology establishes that an understanding of factors associated with age, gender, gender identity, race, ethnicity, culture, national origin, religion, sexual orientation, disability, language, or socioeconomic status is essential for effective implementation of their services or research, psychologists have or obtain the training, experience, consultation, or supervision necessary to ensure the competence of their services, or they make appropriate referrals, except as provided in Standard 2.02, Providing Services in Emergencies (#202).

(c) Psychologists planning to provide services, teach, or conduct research involving populations, areas, techniques, or technologies new to them undertake relevant education, training, supervised experience, consultation, or study.

(d) When psychologists are asked to provide services to individuals for whom appropriate mental health services are not available and for which psychologists have not obtained the competence necessary, psychologists with closely related prior training or experience may provide such services in order to ensure that services are

not denied if they make a reasonable effort to obtain the competence required by using relevant research, training, consultation, or study.

(e) In those emerging areas in which generally recognized standards for preparatory training do not yet exist, psychologists nevertheless take reasonable steps to ensure the competence of their work and to protect clients/patients, students, supervisees, research participants, organizational clients, and others from harm.

(f) When assuming forensic roles, psychologists are or become reasonably familiar with the judicial or administrative rules governing their roles.

2.02 Providing Services in Emergencies

In emergencies, when psychologists provide services to individuals for whom other mental health services are not available and for which psychologists have not obtained the necessary training, psychologists may provide such services in order to ensure that services are not denied. The services are discontinued as soon as the emergency has ended or appropriate services are available.

2.03 Maintaining Competence

Psychologists undertake ongoing efforts to develop and maintain their competence.

2.04 Bases for Scientific and Professional Judgments

Psychologists' work is based upon established scientific and professional knowledge of the discipline. (See also Standards 2.01e, Boundaries of Competence (#201e) , and 10.01b, Informed Consent to Therapy (?item=13#1001b) .)

2.05 Delegation of Work to Others

Psychologists who delegate work to employees, supervisees, or research or teaching assistants or who use the services of others, such as interpreters, take reasonable steps to (1) avoid delegating such work to persons who have a multiple relationship with those being served that would likely lead to exploitation or loss of objectivity; (2) authorize only those responsibilities that such persons can be expected to perform competently on the basis of their education, training, or experience, either independently or with the level of supervision being provided; and (3) see that such persons perform these services competently. (See also Standards 2.02, Providing Services in Emergencies (#202) ; 3.05, Multiple Relationships (?item=6#305) ; 4.01, Maintaining Confidentiality (?item=7#401) ; 9.01, Bases for Assessments (?item=12#901) ; 9.02, Use of Assessments (?item=12#902) ; 9.03, Informed Consent in Assessments (?item=12#903) ; and 9.07, Assessment by Unqualified Persons (?item=12#907) .)

2.06 Personal Problems and Conflicts

(a) Psychologists refrain from initiating an activity when they know or should know that there is a substantial likelihood that their personal problems will prevent them from performing their work-related activities in a competent manner.

(b) When psychologists become aware of personal problems that may interfere with their performing work-related duties adequately, they take appropriate measures, such as obtaining professional consultation or assistance, and determine whether they should limit, suspend, or terminate their work-related duties. (See also Standard 10.10, Terminating Therapy (?item=13#1010) .)

► Section 3: Human Relations

3.01 Unfair Discrimination

In their work-related activities, psychologists do not engage in unfair discrimination based on age, gender, gender identity, race, ethnicity, culture, national origin, religion, sexual orientation, disability, socioeconomic status, or any basis proscribed by law.

3.02 Sexual Harassment

Psychologists do not engage in sexual harassment. Sexual harassment is sexual solicitation, physical advances, or verbal or nonverbal conduct that is sexual in nature, that occurs in connection with the psychologist's activities or roles as a psychologist, and that either (1) is unwelcome, is offensive, or creates a hostile workplace or educational environment, and the psychologist knows or is told this or (2) is sufficiently severe or intense to be abusive to a reasonable person in the context. Sexual harassment can consist of a single intense or severe act or of multiple persistent or pervasive acts. (See also Standard 1.08, Unfair Discrimination Against Complainants and Respondents (?item=4#108) .)

3.03 Other Harassment

Psychologists do not knowingly engage in behavior that is harassing or demeaning to persons with whom they interact in their work based on factors such as those persons' age, gender, gender identity, race, ethnicity, culture, national origin, religion, sexual orientation, disability, language, or socioeconomic status.

3.04 Avoiding Harm

(a) Psychologists take reasonable steps to avoid harming their clients/patients, students, supervisees, research participants, organizational clients, and others with

whom they work, and to minimize harm where it is foreseeable and unavoidable.

(b) Psychologists do not participate in, facilitate, assist, or otherwise engage in torture, defined as any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person, or in any other cruel, inhuman, or degrading behavior that violates 3.04(a).

3.05 Multiple Relationships

(a) A multiple relationship occurs when a psychologist is in a professional role with a person and (1) at the same time is in another role with the same person, (2) at the same time is in a relationship with a person closely associated with or related to the person with whom the psychologist has the professional relationship, or (3) promises to enter into another relationship in the future with the person or a person closely associated with or related to the person.

A psychologist refrains from entering into a multiple relationship if the multiple relationship could reasonably be expected to impair the psychologist's objectivity, competence, or effectiveness in performing his or her functions as a psychologist, or otherwise risks exploitation or harm to the person with whom the professional relationship exists.

Multiple relationships that would not reasonably be expected to cause impairment or risk exploitation or harm are not unethical.

(b) If a psychologist finds that, due to unforeseen factors, a potentially harmful multiple relationship has arisen, the psychologist takes reasonable steps to resolve it with due regard for the best interests of the affected person and maximal compliance with the Ethics Code.

(c) When psychologists are required by law, institutional policy, or extraordinary circumstances to serve in more than one role in judicial or administrative proceedings, at the outset they clarify role expectations and the extent of confidentiality and thereafter as changes occur. (See also Standards 3.04, Avoiding Harm (#304), and 3.07, Third-Party Requests for Services (#307).)

3.06 Conflict of Interest

Psychologists refrain from taking on a professional role when personal, scientific, professional, legal, financial, or other interests or relationships could reasonably be expected to (1) impair their objectivity, competence, or effectiveness in performing their functions as psychologists or (2) expose the person or organization with whom

the professional relationship exists to harm or exploitation.

3.07 Third-Party Requests for Services

When psychologists agree to provide services to a person or entity at the request of a third party, psychologists attempt to clarify at the outset of the service the nature of the relationship with all individuals or organizations involved. This clarification includes the role of the psychologist (e.g., therapist, consultant, diagnostician, or expert witness), an identification of who is the client, the probable uses of the services provided or the information obtained, and the fact that there may be limits to confidentiality. (See also Standards 3.05, Multiple relationships (#305), and 4.02, Discussing the Limits of Confidentiality.)

3.08 Exploitative Relationships

Psychologists do not exploit persons over whom they have supervisory, evaluative or other authority such as clients/patients, students, supervisees, research participants, and employees. (See also Standards 3.05, Multiple Relationships (#305); 6.04, Fees and Financial Arrangements (?item=9#604); 6.05, Barter with Clients/Patients (?item=9#605); 7.07, Sexual Relationships with Students and Supervisees (?item=10#707); 10.05, Sexual Intimacies with Current Therapy Clients/Patients (?item=13#1005); 10.06, Sexual Intimacies with Relatives or Significant Others of Current Therapy Clients/Patients (?item=13#1006); 10.07, Therapy with Former Sexual Partners (?item=13#1007); and 10.08, Sexual Intimacies with Former Therapy Clients/Patients (?item=13#1008).)

3.09 Cooperation with Other Professionals

When indicated and professionally appropriate, psychologists cooperate with other professionals in order to serve their clients/patients effectively and appropriately. (See also Standard (javascript:goToItem(7);) 4.05, Disclosures (?item=7#405).)

3.10 Informed Consent

(a) When psychologists conduct research or provide assessment, therapy, counseling, or consulting services in person or via electronic transmission or other forms of communication, they obtain the informed consent of the individual or individuals using language that is reasonably understandable to that person or persons except when conducting such activities without consent is mandated by law or governmental regulation or as otherwise provided in this Ethics Code. (See also Standards 8.02, Informed Consent to Research (?item=11#802); 9.03, Informed Consent in Assessments (?item=12#903); and 10.01, Informed Consent to Therapy (?item=13#1001).)

(b) For persons who are legally incapable of giving informed consent, psychologists

nevertheless (1) provide an appropriate explanation, (2) seek the individual's assent, (3) consider such persons' preferences and best interests, and (4) obtain appropriate permission from a legally authorized person, if such substitute consent is permitted or required by law. When consent by a legally authorized person is not permitted or required by law, psychologists take reasonable steps to protect the individual's rights and welfare.

(c) When psychological services are court ordered or otherwise mandated, psychologists inform the individual of the nature of the anticipated services, including whether the services are court ordered or mandated and any limits of confidentiality, before proceeding.

(d) Psychologists appropriately document written or oral consent, permission, and assent. (See also Standards 8.02, Informed Consent to Research (?item=11#802) ; 9.03, Informed Consent in Assessments (?item=12#903) ; and 10.01, Informed Consent to Therapy (?item=13#1001) .)

3.11 Psychological Services Delivered to or Through Organizations

(a) Psychologists delivering services to or through organizations provide information beforehand to clients and when appropriate those directly affected by the services about (1) the nature and objectives of the services, (2) the intended recipients, (3) which of the individuals are clients, (4) the relationship the psychologist will have with each person and the organization, (5) the probable uses of services provided and information obtained, (6) who will have access to the information, and (7) limits of confidentiality. As soon as feasible, they provide information about the results and conclusions of such services to appropriate persons.

(b) If psychologists will be precluded by law or by organizational roles from providing such information to particular individuals or groups, they so inform those individuals or groups at the outset of the service.

3.12 Interruption of Psychological Services

Unless otherwise covered by contract, psychologists make reasonable efforts to plan for facilitating services in the event that psychological services are interrupted by factors such as the psychologist's illness, death, unavailability, relocation, or retirement or by the client's/patient's relocation or financial limitations. (See also Standard 6.02c, Maintenance, Dissemination, and Disposal of Confidential Records of Professional and Scientific Work (?item=9#602c) .)

▶ Section 4: Privacy and Confidentiality

4.01 Maintaining Confidentiality

Psychologists have a primary obligation and take reasonable precautions to protect confidential information obtained through or stored in any medium, recognizing that the extent and limits of confidentiality may be regulated by law or established by institutional rules or professional or scientific relationship. (See also Standard 2.05, Delegation of Work to Others (?item=5#205) .)

4.02 Discussing the Limits of Confidentiality

(a) Psychologists discuss with persons (including, to the extent feasible, persons who are legally incapable of giving informed consent and their legal representatives) and organizations with whom they establish a scientific or professional relationship (1) the relevant limits of confidentiality and (2) the foreseeable uses of the information generated through their psychological activities. (See also Standard 3.10, Informed Consent (?item=6#310) .)

(b) Unless it is not feasible or is contraindicated, the discussion of confidentiality occurs at the outset of the relationship and thereafter as new circumstances may warrant.

(c) Psychologists who offer services, products, or information via electronic transmission inform clients/patients of the risks to privacy and limits of confidentiality.

4.03 Recording

Before recording the voices or images of individuals to whom they provide services, psychologists obtain permission from all such persons or their legal representatives. (See also Standards 8.03, Informed Consent for Recording Voices and Images in Research (?item=11#803) ; 8.05, Dispensing with Informed Consent for Research (?item=11#805) ; and 8.07, Deception in Research (?item=11#807) .)

4.04 Minimizing Intrusions on Privacy

(a) Psychologists include in written and oral reports and consultations, only information germane to the purpose for which the communication is made.

(b) Psychologists discuss confidential information obtained in their work only for appropriate scientific or professional purposes and only with persons clearly concerned with such matters.

4.05 Disclosures

(a) Psychologists may disclose confidential information with the appropriate consent of the organizational client, the individual client/patient, or another legally authorized person on behalf of the client/patient unless prohibited by law.

(b) Psychologists disclose confidential information without the consent of the individual only as mandated by law, or where permitted by law for a valid purpose such as to (1) provide needed professional services; (2) obtain appropriate professional consultations; (3) protect the client/patient, psychologist, or others from harm; or (4) obtain payment for services from a client/patient, in which instance disclosure is limited to the minimum that is necessary to achieve the purpose. (See also Standard 6.04e, Fees and Financial Arrangements (?item=9#604e) .)

4.06 Consultations

When consulting with colleagues, (1) psychologists do not disclose confidential information that reasonably could lead to the identification of a client/patient, research participant, or other person or organization with whom they have a confidential relationship unless they have obtained the prior consent of the person or organization or the disclosure cannot be avoided, and (2) they disclose information only to the extent necessary to achieve the purposes of the consultation. (See also Standard 4.01, Maintaining Confidentiality (#401) .)

4.07 Use of Confidential Information for Didactic or Other Purposes

Psychologists do not disclose in their writings, lectures, or other public media, confidential, personally identifiable information concerning their clients/patients, students, research participants, organizational clients, or other recipients of their services that they obtained during the course of their work, unless (1) they take reasonable steps to disguise the person or organization, (2) the person or organization has consented in writing, or (3) there is legal authorization for doing so.

► Section 5: Advertising and Other Public Statements

5.01 Avoidance of False or Deceptive Statements

(a) Public statements include but are not limited to paid or unpaid advertising, product endorsements, grant applications, licensing applications, other credentialing applications, brochures, printed matter, directory listings, personal resumes or curricula vitae, or comments for use in media such as print or electronic transmission,

statements in legal proceedings, lectures and public oral presentations, and published materials. Psychologists do not knowingly make public statements that are false, deceptive, or fraudulent concerning their research, practice, or other work activities or those of persons or organizations with which they are affiliated.

(b) Psychologists do not make false, deceptive, or fraudulent statements concerning (1) their training, experience, or competence; (2) their academic degrees; (3) their credentials; (4) their institutional or association affiliations; (5) their services; (6) the scientific or clinical basis for, or results or degree of success of, their services; (7) their fees; or (8) their publications or research findings.

(c) Psychologists claim degrees as credentials for their health services only if those degrees (1) were earned from a regionally accredited educational institution or (2) were the basis for psychology licensure by the state in which they practice.

5.02 Statements by Others

(a) Psychologists who engage others to create or place public statements that promote their professional practice, products, or activities retain professional responsibility for such statements.

(b) Psychologists do not compensate employees of press, radio, television, or other communication media in return for publicity in a news item. (See also Standard 1.01, Misuse of Psychologists' Work (?item=4#101) .)

(c) A paid advertisement relating to psychologists' activities must be identified or clearly recognizable as such.

5.03 Descriptions of Workshops and Non-Degree-Granting Educational Programs

To the degree to which they exercise control, psychologists responsible for announcements, catalogs, brochures, or advertisements describing workshops, seminars, or other non-degree-granting educational programs ensure that they accurately describe the audience for which the program is intended, the educational objectives, the presenters, and the fees involved.

5.04 Media Presentations

When psychologists provide public advice or comment via print, Internet, or other electronic transmission, they take precautions to ensure that statements (1) are based on their professional knowledge, training, or experience in accord with appropriate psychological literature and practice; (2) are otherwise consistent with this Ethics Code; and (3) do not indicate that a professional relationship has been established with the recipient. (See also Standard 2.04, Bases for Scientific and Professional

Judgments (?item=5#204) .)

5.05 Testimonials

Psychologists do not solicit testimonials from current therapy clients/patients or other persons who because of their particular circumstances are vulnerable to undue influence.

5.06 In-Person Solicitation

Psychologists do not engage, directly or through agents, in uninvited in-person solicitation of business from actual or potential therapy clients/patients or other persons who because of their particular circumstances are vulnerable to undue influence. However, this prohibition does not preclude (1) attempting to implement appropriate collateral contacts for the purpose of benefiting an already engaged therapy client/patient or (2) providing disaster or community outreach services.

Section 6: Record Keeping and Fees

6.01 Documentation of Professional and Scientific Work and Maintenance of Records

Psychologists create, and to the extent the records are under their control, maintain, disseminate, store, retain, and dispose of records and data relating to their professional and scientific work in order to (1) facilitate provision of services later by them or by other professionals, (2) allow for replication of research design and analyses, (3) meet institutional requirements, (4) ensure accuracy of billing and payments, and (5) ensure compliance with law. (See also Standard 4.01, Maintaining Confidentiality (?item=7#401) .)

6.02 Maintenance, Dissemination, and Disposal of Confidential Records of Professional and Scientific Work

(a) Psychologists maintain confidentiality in creating, storing, accessing, transferring, and disposing of records under their control, whether these are written, automated, or in any other medium. (See also Standards 4.01, Maintaining Confidentiality (?item=7#401) , and 6.01, Documentation of Professional and Scientific Work and Maintenance of Records (#601) .)

(b) If confidential information concerning recipients of psychological services is entered into databases or systems of records available to persons whose access has not been consented to by the recipient, psychologists use coding or other techniques

to avoid the inclusion of personal identifiers.

(c) Psychologists make plans in advance to facilitate the appropriate transfer and to protect the confidentiality of records and data in the event of psychologists' withdrawal from positions or practice. (See also Standards 3.12, Interruption of Psychological Services (?item=6#312) , and 10.09, Interruption of Therapy (?item=13#1009) .)

6.03 Withholding Records for Nonpayment

Psychologists may not withhold records under their control that are requested and needed for a client's/patient's emergency treatment solely because payment has not been received.

6.04 Fees and Financial Arrangements

(a) As early as is feasible in a professional or scientific relationship, psychologists and recipients of psychological services reach an agreement specifying compensation and billing arrangements.

(b) Psychologists' fee practices are consistent with law.

(c) Psychologists do not misrepresent their fees.

(d) If limitations to services can be anticipated because of limitations in financing, this is discussed with the recipient of services as early as is feasible. (See also Standards 10.09, Interruption of Therapy (?item=13#1009) , and 10.10, Terminating Therapy (?item=13#1010) .)

(e) If the recipient of services does not pay for services as agreed, and if psychologists intend to use collection agencies or legal measures to collect the fees, psychologists first inform the person that such measures will be taken and provide that person an opportunity to make prompt payment. (See also Standards 4.05, Disclosures (?item=7#405) ; 6.03, Withholding Records for Nonpayment (#603) ; and 10.01, Informed Consent to Therapy (?item=13#1001) .)

6.05 Barter with Clients/Patients

Barter is the acceptance of goods, services, or other nonmonetary remuneration from clients/patients in return for psychological services. Psychologists may barter only if (1) it is not clinically contraindicated, and (2) the resulting arrangement is not exploitative. (See also Standards 3.05, Multiple Relationships (?item=6#305) , and 6.04, Fees and Financial Arrangements (#604) .)

6.06 Accuracy in Reports to Payors and Funding Sources

In their reports to payors for services or sources of research funding, psychologists take reasonable steps to ensure the accurate reporting of the nature of the service provided or research conducted, the fees, charges, or payments, and where applicable, the identity of the provider, the findings, and the diagnosis. (See also Standards 4.01, Maintaining Confidentiality (?item=7#401) ; 4.04, Minimizing Intrusions on Privacy (?item=7#404) ; and 4.05, Disclosures (?item=7#405) .)

6.07 Referrals and Fees

When psychologists pay, receive payment from, or divide fees with another professional, other than in an employer-employee relationship, the payment to each is based on the services provided (clinical, consultative, administrative, or other) and is not based on the referral itself. (See also Standard 3.09, Cooperation with Other Professionals (?item=6#309) .)

► Section 7: Education and Training

7.01 Design of Education and Training Programs

Psychologists responsible for education and training programs take reasonable steps to ensure that the programs are designed to provide the appropriate knowledge and proper experiences, and to meet the requirements for licensure, certification, or other goals for which claims are made by the program. (See also Standard 5.03, Descriptions of Workshops and Non-Degree-Granting Educational Programs (?item=8#503) .)

7.02 Descriptions of Education and Training Programs

Psychologists responsible for education and training programs take reasonable steps to ensure that there is a current and accurate description of the program content (including participation in required course- or program-related counseling, psychotherapy, experiential groups, consulting projects, or community service), training goals and objectives, stipends and benefits, and requirements that must be met for satisfactory completion of the program. This information must be made readily available to all interested parties.

7.03 Accuracy in Teaching

(a) Psychologists take reasonable steps to ensure that course syllabi are accurate regarding the subject matter to be covered, bases for evaluating progress, and the

nature of course experiences. This standard does not preclude an instructor from modifying course content or requirements when the instructor considers it pedagogically necessary or desirable, so long as students are made aware of these modifications in a manner that enables them to fulfill course requirements. (See also Standard 5.01, Avoidance of False or Deceptive Statements (?item=8#501) .)

(b) When engaged in teaching or training, psychologists present psychological information accurately. (See also Standard 2.03, Maintaining Competence (?item=5#203) .)

7.04 Student Disclosure of Personal Information

Psychologists do not require students or supervisees to disclose personal information in course- or program-related activities, either orally or in writing, regarding sexual history, history of abuse and neglect, psychological treatment, and relationships with parents, peers, and spouses or significant others except if (1) the program or training facility has clearly identified this requirement in its admissions and program materials or (2) the information is necessary to evaluate or obtain assistance for students whose personal problems could reasonably be judged to be preventing them from performing their training- or professionally related activities in a competent manner or posing a threat to the students or others.

7.05 Mandatory Individual or Group Therapy

(a) When individual or group therapy is a program or course requirement, psychologists responsible for that program allow students in undergraduate and graduate programs the option of selecting such therapy from practitioners unaffiliated with the program. (See also Standard 7.02, Descriptions of Education and Training Programs (#702) .)

(b) Faculty who are or are likely to be responsible for evaluating students' academic performance do not themselves provide that therapy. (See also Standard 3.05, Multiple Relationships (?item=6#305) .)

7.06 Assessing Student and Supervisee Performance

(a) In academic and supervisory relationships, psychologists establish a timely and specific process for providing feedback to students and supervisees. Information regarding the process is provided to the student at the beginning of supervision.

(b) Psychologists evaluate students and supervisees on the basis of their actual performance on relevant and established program requirements.

7.07 Sexual Relationships with Students and Supervisees

Psychologists do not engage in sexual relationships with students or supervisees who are in their department, agency, or training center or over whom psychologists have or are likely to have evaluative authority. (See also Standard 3.05, Multiple Relationships (?item=6#305) .)

▶ Section 8: Research and Publication

8.01 Institutional Approval

When institutional approval is required, psychologists provide accurate information about their research proposals and obtain approval prior to conducting the research. They conduct the research in accordance with the approved research protocol.

8.02 Informed Consent to Research

(a) When obtaining informed consent as required in Standard 3.10, Informed Consent, psychologists inform participants about (1) the purpose of the research, expected duration, and procedures; (2) their right to decline to participate and to withdraw from the research once participation has begun; (3) the foreseeable consequences of declining or withdrawing; (4) reasonably foreseeable factors that may be expected to influence their willingness to participate such as potential risks, discomfort, or adverse effects; (5) any prospective research benefits; (6) limits of confidentiality; (7) incentives for participation; and (8) whom to contact for questions about the research and research participants' rights. They provide opportunity for the prospective participants to ask questions and receive answers. (See also Standards 8.03, Informed Consent for Recording Voices and Images in Research (#803) ; 8.05, Dispensing with Informed Consent for Research (#805) ; and 8.07, Deception in Research (#807) .)

(b) Psychologists conducting intervention research involving the use of experimental treatments clarify to participants at the outset of the research (1) the experimental nature of the treatment; (2) the services that will or will not be available to the control group(s) if appropriate; (3) the means by which assignment to treatment and control groups will be made; (4) available treatment alternatives if an individual does not wish to participate in the research or wishes to withdraw once a study has begun; and (5) compensation for or monetary costs of participating including, if appropriate, whether reimbursement from the participant or a third-party payor will be sought. (See also Standard 8.02a, Informed Consent to Research (#802a) .)

8.03 Informed Consent for Recording Voices and Images in Research

Psychologists obtain informed consent from research participants prior to recording their voices or images for data collection unless (1) the research consists solely of naturalistic observations in public places, and it is not anticipated that the recording will be used in a manner that could cause personal identification or harm, or (2) the research design includes deception, and consent for the use of the recording is obtained during debriefing. (See also Standard 8.07, Deception in Research (#807) .)

8.04 Client/Patient, Student, and Subordinate Research Participants

(a) When psychologists conduct research with clients/patients, students, or subordinates as participants, psychologists take steps to protect the prospective participants from adverse consequences of declining or withdrawing from participation.

(b) When research participation is a course requirement or an opportunity for extra credit, the prospective participant is given the choice of equitable alternative activities.

8.05 Dispensing with Informed Consent for Research

Psychologists may dispense with informed consent only (1) where research would not reasonably be assumed to create distress or harm and involves (a) the study of normal educational practices, curricula, or classroom management methods conducted in educational settings; (b) only anonymous questionnaires, naturalistic observations, or archival research for which disclosure of responses would not place participants at risk of criminal or civil liability or damage their financial standing, employability, or reputation, and confidentiality is protected; or (c) the study of factors related to job or organization effectiveness conducted in organizational settings for which there is no risk to participants' employability, and confidentiality is protected or (2) where otherwise permitted by law or federal or institutional regulations.

8.06 Offering Inducements for Research Participation

(a) Psychologists make reasonable efforts to avoid offering excessive or inappropriate financial or other inducements for research participation when such inducements are likely to coerce participation.

(b) When offering professional services as an inducement for research participation, psychologists clarify the nature of the services, as well as the risks, obligations, and limitations. (See also Standard 6.05, Barter with Clients/Patients (?item=9#605) .)

8.07 Deception in Research

(a) Psychologists do not conduct a study involving deception unless they have

determined that the use of deceptive techniques is justified by the study's significant prospective scientific, educational, or applied value and that effective nondeceptive alternative procedures are not feasible.

(b) Psychologists do not deceive prospective participants about research that is reasonably expected to cause physical pain or severe emotional distress.

(c) Psychologists explain any deception that is an integral feature of the design and conduct of an experiment to participants as early as is feasible, preferably at the conclusion of their participation, but no later than at the conclusion of the data collection, and permit participants to withdraw their data. (See also Standard 8.08, Debriefing (#808) .)

8.08 Debriefing

(a) Psychologists provide a prompt opportunity for participants to obtain appropriate information about the nature, results, and conclusions of the research, and they take reasonable steps to correct any misconceptions that participants may have of which the psychologists are aware.

(b) If scientific or humane values justify delaying or withholding this information, psychologists take reasonable measures to reduce the risk of harm.

(c) When psychologists become aware that research procedures have harmed a participant, they take reasonable steps to minimize the harm.

8.09 Humane Care and Use of Animals in Research

(a) Psychologists acquire, care for, use, and dispose of animals in compliance with current federal, state, and local laws and regulations, and with professional standards.

(b) Psychologists trained in research methods and experienced in the care of laboratory animals supervise all procedures involving animals and are responsible for ensuring appropriate consideration of their comfort, health, and humane treatment.

(c) Psychologists ensure that all individuals under their supervision who are using animals have received instruction in research methods and in the care, maintenance, and handling of the species being used, to the extent appropriate to their role. (See also Standard 2.05, Delegation of Work to Others (?item=5#205) .)

(d) Psychologists make reasonable efforts to minimize the discomfort, infection, illness, and pain of animal subjects.

(e) Psychologists use a procedure subjecting animals to pain, stress, or privation only

when an alternative procedure is unavailable and the goal is justified by its prospective scientific, educational, or applied value.

(f) Psychologists perform surgical procedures under appropriate anesthesia and follow techniques to avoid infection and minimize pain during and after surgery.

(g) When it is appropriate that an animal's life be terminated, psychologists proceed rapidly, with an effort to minimize pain and in accordance with accepted procedures.

8.10 Reporting Research Results

(a) Psychologists do not fabricate data. (See also Standard 5.01a, Avoidance of False or Deceptive Statements (?item=8#501a) .)

(b) If psychologists discover significant errors in their published data, they take reasonable steps to correct such errors in a correction, retraction, erratum, or other appropriate publication means.

8.11 Plagiarism

Psychologists do not present portions of another's work or data as their own, even if the other work or data source is cited occasionally.

8.12 Publication Credit

(a) Psychologists take responsibility and credit, including authorship credit, only for work they have actually performed or to which they have substantially contributed. (See also Standard 8.12b, Publication Credit (#812b) .)

(b) Principal authorship and other publication credits accurately reflect the relative scientific or professional contributions of the individuals involved, regardless of their relative status. Mere possession of an institutional position, such as department chair, does not justify authorship credit. Minor contributions to the research or to the writing for publications are acknowledged appropriately, such as in footnotes or in an introductory statement.

(c) Except under exceptional circumstances, a student is listed as principal author on any multiple-authored article that is substantially based on the student's doctoral dissertation. Faculty advisors discuss publication credit with students as early as feasible and throughout the research and publication process as appropriate. (See also Standard 8.12b, Publication Credit (#812b) .)

8.13 Duplicate Publication of Data

Psychologists do not publish, as original data, data that have been previously

published. This does not preclude republishing data when they are accompanied by proper acknowledgment.

8.14 Sharing Research Data for Verification

(a) After research results are published, psychologists do not withhold the data on which their conclusions are based from other competent professionals who seek to verify the substantive claims through reanalysis and who intend to use such data only for that purpose, provided that the confidentiality of the participants can be protected and unless legal rights concerning proprietary data preclude their release. This does not preclude psychologists from requiring that such individuals or groups be responsible for costs associated with the provision of such information.

(b) Psychologists who request data from other psychologists to verify the substantive claims through reanalysis may use shared data only for the declared purpose. Requesting psychologists obtain prior written agreement for all other uses of the data.

8.15 Reviewers

Psychologists who review material submitted for presentation, publication, grant, or research proposal review respect the confidentiality of and the proprietary rights in such information of those who submitted it.

▶ Section 9: Assessment

9.01 Bases for Assessments

(a) Psychologists base the opinions contained in their recommendations, reports, and diagnostic or evaluative statements, including forensic testimony, on information and techniques sufficient to substantiate their findings. (See also Standard 2.04, Bases for Scientific and Professional Judgments (item=5#204) .)

(b) Except as noted in 9.01c (#901c) , psychologists provide opinions of the psychological characteristics of individuals only after they have conducted an examination of the individuals adequate to support their statements or conclusions. When, despite reasonable efforts, such an examination is not practical, psychologists document the efforts they made and the result of those efforts, clarify the probable impact of their limited information on the reliability and validity of their opinions, and appropriately limit the nature and extent of their conclusions or recommendations. (See also Standards 2.01, Boundaries of Competence (item=5#201) , and 9.06, Interpreting Assessment Results (#906) .)

(c) When psychologists conduct a record review or provide consultation or supervision and an individual examination is not warranted or necessary for the opinion, psychologists explain this and the sources of information on which they based their conclusions and recommendations.

9.02 Use of Assessments

(a) Psychologists administer, adapt, score, interpret, or use assessment techniques, interviews, tests, or instruments in a manner and for purposes that are appropriate in light of the research on or evidence of the usefulness and proper application of the techniques.

(b) Psychologists use assessment instruments whose validity and reliability have been established for use with members of the population tested. When such validity or reliability has not been established, psychologists describe the strengths and limitations of test results and interpretation.

(c) Psychologists use assessment methods that are appropriate to an individual's language preference and competence, unless the use of an alternative language is relevant to the assessment issues.

9.03 Informed Consent in Assessments

(a) Psychologists obtain informed consent for assessments, evaluations, or diagnostic services, as described in Standard 3.10, Informed Consent, except when (1) testing is mandated by law or governmental regulations; (2) informed consent is implied because testing is conducted as a routine educational, institutional, or organizational activity (e.g., when participants voluntarily agree to assessment when applying for a job); or (3) one purpose of the testing is to evaluate decisional capacity. Informed consent includes an explanation of the nature and purpose of the assessment, fees, involvement of third parties, and limits of confidentiality and sufficient opportunity for the client/patient to ask questions and receive answers.

(b) Psychologists inform persons with questionable capacity to consent or for whom testing is mandated by law or governmental regulations about the nature and purpose of the proposed assessment services, using language that is reasonably understandable to the person being assessed.

(c) Psychologists using the services of an interpreter obtain informed consent from the client/patient to use that interpreter, ensure that confidentiality of test results and test security are maintained, and include in their recommendations, reports, and diagnostic or evaluative statements, including forensic testimony, discussion of any limitations on

the data obtained. (See also Standards 2.05, Delegation of Work to Others (?item=5#205) ; 4.01, Maintaining Confidentiality (?item=7#401) ; 9.01, Bases for Assessments (#901) ; 9.06, Interpreting Assessment Results (#906) ; and 9.07, Assessment by Unqualified Persons (#907) .)

9.04 Release of Test Data

(a) The term *test data* refers to raw and scaled scores, client/patient responses to test questions or stimuli, and psychologists' notes and recordings concerning client/patient statements and behavior during an examination. Those portions of test materials that include client/patient responses are included in the definition of *test data*. Pursuant to a client/patient release, psychologists provide test data to the client/patient or other persons identified in the release. Psychologists may refrain from releasing test data to protect a client/patient or others from substantial harm or misuse or misrepresentation of the data or the test, recognizing that in many instances release of confidential information under these circumstances is regulated by law. (See also Standard 9.11, Maintaining Test Security (#911) .)

(b) In the absence of a client/patient release, psychologists provide test data only as required by law or court order.

9.05 Test Construction

Psychologists who develop tests and other assessment techniques use appropriate psychometric procedures and current scientific or professional knowledge for test design, standardization, validation, reduction or elimination of bias, and recommendations for use.

9.06 Interpreting Assessment Results

When interpreting assessment results, including automated interpretations, psychologists take into account the purpose of the assessment as well as the various test factors, test-taking abilities, and other characteristics of the person being assessed, such as situational, personal, linguistic, and cultural differences, that might affect psychologists' judgments or reduce the accuracy of their interpretations. They indicate any significant limitations of their interpretations. (See also Standards 2.01b and c, Boundaries of Competence (?item=5#201b) , and 3.01, Unfair Discrimination (?item=6#301) .)

9.07 Assessment by Unqualified Persons

Psychologists do not promote the use of psychological assessment techniques by unqualified persons, except when such use is conducted for training purposes with appropriate supervision. (See also Standard 2.05, Delegation of Work to Others (?item=5#205) .)

item=5#205) .)

9.08 Obsolete Tests and Outdated Test Results

(a) Psychologists do not base their assessment or intervention decisions or recommendations on data or test results that are outdated for the current purpose.

(b) Psychologists do not base such decisions or recommendations on tests and measures that are obsolete and not useful for the current purpose.

9.09 Test Scoring and Interpretation Services

(a) Psychologists who offer assessment or scoring services to other professionals accurately describe the purpose, norms, validity, reliability, and applications of the procedures and any special qualifications applicable to their use.

(b) Psychologists select scoring and interpretation services (including automated services) on the basis of evidence of the validity of the program and procedures as well as on other appropriate considerations. (See also Standard 2.01b and c, Boundaries of Competence (?item=5#201b) .)

(c) Psychologists retain responsibility for the appropriate application, interpretation, and use of assessment instruments, whether they score and interpret such tests themselves or use automated or other services.

9.10 Explaining Assessment Results

Regardless of whether the scoring and interpretation are done by psychologists, by employees or assistants, or by automated or other outside services, psychologists take reasonable steps to ensure that explanations of results are given to the individual or designated representative unless the nature of the relationship precludes provision of an explanation of results (such as in some organizational consulting, preemployment or security screenings, and forensic evaluations), and this fact has been clearly explained to the person being assessed in advance.

9.11 Maintaining Test Security

The term *test materials* refers to manuals, instruments, protocols, and test questions or stimuli and does not include *test data* as defined in Standard 9.04, Release of Test Data (#904) . Psychologists make reasonable efforts to maintain the integrity and security of test materials and other assessment techniques consistent with law and contractual obligations, and in a manner that permits adherence to this Ethics Code.

► Section 10: Therapy

10.01 Informed Consent to Therapy

(a) When obtaining informed consent to therapy as required in Standard 3.10, Informed Consent (?item=6#310) , psychologists inform clients/patients as early as is feasible in the therapeutic relationship about the nature and anticipated course of therapy, fees, involvement of third parties, and limits of confidentiality and provide sufficient opportunity for the client/patient to ask questions and receive answers. (See also Standards 4.02, Discussing the Limits of Confidentiality (?item=7#402) , and 6.04, Fees and Financial Arrangements (?item=9#604) .)

(b) When obtaining informed consent for treatment for which generally recognized techniques and procedures have not been established, psychologists inform their clients/patients of the developing nature of the treatment, the potential risks involved, alternative treatments that may be available, and the voluntary nature of their participation. (See also Standards 2.01e, Boundaries of Competence (?item=5#201e) , and 3.10, Informed Consent (?item=6#310) .)

(c) When the therapist is a trainee and the legal responsibility for the treatment provided resides with the supervisor, the client/patient, as part of the informed consent procedure, is informed that the therapist is in training and is being supervised and is given the name of the supervisor.

10.02 Therapy Involving Couples or Families

(a) When psychologists agree to provide services to several persons who have a relationship (such as spouses, significant others, or parents and children), they take reasonable steps to clarify at the outset (1) which of the individuals are clients/patients and (2) the relationship the psychologist will have with each person. This clarification includes the psychologist's role and the probable uses of the services provided or the information obtained. (See also Standard 4.02, Discussing the Limits of Confidentiality (?item=7#402) .)

(b) If it becomes apparent that psychologists may be called on to perform potentially conflicting roles (such as family therapist and then witness for one party in divorce proceedings), psychologists take reasonable steps to clarify and modify, or withdraw from, roles appropriately. (See also Standard 3.05c, Multiple Relationships (?item=6#305c) .)

10.03 Group Therapy

When psychologists provide services to several persons in a group setting, they describe at the outset the roles and responsibilities of all parties and the limits of confidentiality.

10.04 Providing Therapy to Those Served by Others

In deciding whether to offer or provide services to those already receiving mental health services elsewhere, psychologists carefully consider the treatment issues and the potential client's/patient's welfare. Psychologists discuss these issues with the client/patient or another legally authorized person on behalf of the client/patient in order to minimize the risk of confusion and conflict, consult with the other service providers when appropriate, and proceed with caution and sensitivity to the therapeutic issues.

10.05 Sexual Intimacies with Current Therapy Clients/Patients

Psychologists do not engage in sexual intimacies with current therapy clients/patients.

10.06 Sexual Intimacies with Relatives or Significant Others of Current Therapy Clients/Patients

Psychologists do not engage in sexual intimacies with individuals they know to be close relatives, guardians, or significant others of current clients/patients.

Psychologists do not terminate therapy to circumvent this standard.

10.07 Therapy with Former Sexual Partners

Psychologists do not accept as therapy clients/patients persons with whom they have engaged in sexual intimacies.

10.08 Sexual Intimacies with Former Therapy Clients/Patients

(a) Psychologists do not engage in sexual intimacies with former clients/patients for at least two years after cessation or termination of therapy.

(b) Psychologists do not engage in sexual intimacies with former clients/patients even after a two-year interval except in the most unusual circumstances. Psychologists who engage in such activity after the two years following cessation or termination of therapy and of having no sexual contact with the former client/patient bear the burden of demonstrating that there has been no exploitation, in light of all relevant factors, including (1) the amount of time that has passed since therapy terminated; (2) the nature, duration, and intensity of the therapy; (3) the circumstances of termination; (4) the client's/patient's personal history; (5) the client's/patient's current mental status; (6) the likelihood of adverse impact on the client/patient; and (7) any statements or

actions made by the therapist during the course of therapy suggesting or inviting the possibility of a posttermination sexual or romantic relationship with the client/patient. (See also Standard 3.05, Multiple Relationships (?item=6#305) .)

10.09 Interruption of Therapy

When entering into employment or contractual relationships, psychologists make reasonable efforts to provide for orderly and appropriate resolution of responsibility for client/patient care in the event that the employment or contractual relationship ends, with paramount consideration given to the welfare of the client/patient. (See also Standard 3.12, Interruption of Psychological Services (?item=6#312) .)

10.10 Terminating Therapy

(a) Psychologists terminate therapy when it becomes reasonably clear that the client/patient no longer needs the service, is not likely to benefit, or is being harmed by continued service.

(b) Psychologists may terminate therapy when threatened or otherwise endangered by the client/patient or another person with whom the client/patient has a relationship.

(c) Except where precluded by the actions of clients/patients or third-party payors, prior to termination psychologists provide pretermination counseling and suggest alternative service providers as appropriate.

► History and Effective Date

The American Psychological Association's Council of Representatives (/about/governance/council) adopted this version of the APA Ethics Code during its meeting on Aug. 21, 2002. The Code became effective on June 1, 2003. The Council of Representatives amended this version of the Ethics Code on Feb. 20, 2010, effective June 1, 2010, and on Aug. 3, 2016, effective Jan. 1, 2017. Inquiries concerning the substance or interpretation of the APA Ethics Code should be addressed to the Director, Office of Ethics, American Psychological Association, 750 First St. NE, Washington, DC 20002-4242. The standards in this Ethics Code will be used to adjudicate complaints brought concerning alleged conduct occurring on or after the effective date. Complaints will be adjudicated on the basis of the version of the Ethics Code that was in effect at the time the conduct occurred.

The APA has previously published its Ethics Code as follows:

American Psychological Association. (1953). *Ethical standards of psychologists*. Washington, DC: Author.

American Psychological Association. (1959). Ethical standards of psychologists. *American Psychologist*, 14, 279-282.

American Psychological Association. (1963). Ethical standards of psychologists. *American Psychologist*, 18, 56-60.

American Psychological Association. (1968). Ethical standards of psychologists. *American Psychologist*, 23, 357-361.

American Psychological Association. (1977, March). Ethical standards of psychologists. *APA Monitor*, 22-23.

American Psychological Association. (1979). *Ethical standards of psychologists*. Washington, DC: Author.

American Psychological Association. (1981). Ethical principles of psychologists. *American Psychologist*, 36, 633-638.

American Psychological Association. (1990). Ethical principles of psychologists (Amended June 2, 1989). *American Psychologist*, 45, 390-395.

American Psychological Association. (1992). Ethical principles of psychologists and code of conduct. *American Psychologist*, 47, 1597-1611.

American Psychological Association. (2002). Ethical principles of psychologists and code of conduct. *American Psychologist*, 57, 1060-1073.

American Psychological Association. (2010). 2010 amendments to the 2002 "Ethical Principles of Psychologists and Code of Conduct." *American Psychologist*, 65, 493.

American Psychological Association. (2016). Revision of ethical standard 3.04 of the "Ethical Principles of Psychologists and Code of Conduct" (2002, as amended 2010). *American Psychologist*, 71, 900.

Request copies of the APA's Ethical Principles of Psychologists and Code of Conduct from the APA Order Department, 750 First St. NE, Washington, DC 20002-4242, or phone (202) 336-5510.

► Amendments to the 2002 “Ethical Principles of Psychologists and Code of Conduct” in 2010 and 2016

2010 Amendments

Introduction and Applicability

If psychologists' ethical responsibilities conflict with law, regulations, or other governing legal authority, psychologists make known their commitment to this Ethics Code and take steps to resolve the conflict in a responsible manner. ~~If the conflict is unresolvable via such means, psychologists may adhere to the requirements of the law, regulations, or other governing authority~~ in keeping with basic principles of human rights.

1.02 Conflicts Between Ethics and Law, Regulations, or Other Governing Legal Authority

If psychologists' ethical responsibilities conflict with law, regulations, or other governing legal authority, psychologists clarify the nature of the conflict, make known their commitment to the Ethics Code, and take reasonable steps to resolve the conflict consistent with the General Principles and Ethical Standards of the Ethics Code. ~~If the conflict is unresolvable via such means, psychologists may adhere to the requirements of the law, regulations, or other governing legal authority. Under no circumstances may this standard be used to justify or defend violating human rights.~~

1.03 Conflicts Between Ethics and Organizational Demands

If the demands of an organization with which psychologists are affiliated or for whom they are working are in conflict with this Ethics Code, psychologists clarify the nature of the conflict, make known their commitment to the Ethics Code, and ~~to the extent feasible, resolve the conflict in a way that permits adherence to the Ethics Code. take~~ reasonable steps to resolve the conflict consistent with the General Principles and Ethical Standards of the Ethics Code. Under no circumstances may this standard be used to justify or defend violating human rights.

2016 Amendment

3.04 Avoiding Harm

(a) Psychologists take reasonable steps to avoid harming their clients/patients,

students, supervisees, research participants, organizational clients, and others with whom they work, and to minimize harm where it is foreseeable and unavoidable.

(b) Psychologists do not participate in, facilitate, assist, or otherwise engage in torture, defined as any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person, or in any other cruel, inhuman, or degrading behavior that violates 3.04(a).

Find this article at:

<https://www.apa.org/ethics/code/>

EXHIBIT 7

Specialty Guidelines for Forensic Psychology

American Psychological Association

In the past 50 years forensic psychological practice has expanded dramatically. The American Psychological Association (APA) has a division devoted to matters of law and psychology (APA Division 41, the American Psychology–Law Society), a number of scientific journals devoted to interactions between psychology and the law exist (e.g., *Law and Human Behavior*; *Psychology, Public Policy, and Law*; *Behavioral Sciences & the Law*), and a number of key texts have been published and undergone multiple revisions (e.g., Grisso, 1986, 2003; Melton, Pettila, Poythress, & Slobogin, 1987, 1997, 2007; Rogers, 1988, 1997, 2008). In addition, training in forensic psychology is available in predoctoral, internship, and postdoctoral settings, and APA recognized forensic psychology as a specialty in 2001, with subsequent recertification in 2008.

Because the practice of forensic psychology differs in important ways from more traditional practice areas (Monahan, 1980) the “Specialty Guidelines for Forensic Psychologists” were developed and published in 1991 (Committee on Ethical Guidelines for Forensic Psychologists, 1991). Because of continued developments in the field in the ensuing 20 years, forensic practitioners’ ongoing need for guidance, and policy requirements of APA, the 1991 “Specialty Guidelines for Forensic Psychologists” were revised, with the intent of benefiting forensic practitioners and recipients of their services alike.

The goals of these Specialty Guidelines for Forensic Psychology (“the Guidelines”) are to improve the quality of forensic psychological services; enhance the practice and facilitate the systematic development of forensic psychology; encourage a high level of quality in professional practice; and encourage forensic practitioners to acknowledge and respect the rights of those they serve. These Guidelines are intended for use by psychologists when engaged in the practice of forensic psychology as described below and may also provide guidance on professional conduct to the legal system and other organizations and professions.

For the purposes of these Guidelines, *forensic psychology* refers to professional practice by any psychologist working within any subdiscipline of psychology (e.g., clinical, developmental, social, cognitive) when applying the scientific, technical, or specialized knowledge of psychology to the law to assist in addressing legal, contractual, and administrative matters. Application of the Guidelines does not depend on the practitioner’s typical areas of practice or expertise, but rather, on the service provided in the case at hand. These Guidelines apply in all matters in which psychologists provide expertise to judicial, administrative, and

educational systems including, but not limited to, examining or treating persons in anticipation of or subsequent to legal, contractual, or administrative proceedings; offering expert opinion about psychological issues in the form of amicus briefs or testimony to judicial, legislative, or administrative bodies; acting in an adjudicative capacity; serving as a trial consultant or otherwise offering expertise to attorneys, the courts, or others; conducting research in connection with, or in the anticipation of, litigation; or involvement in educational activities of a forensic nature.

Psychological practice is not considered forensic solely because the conduct takes place in, or the product is presented in, a tribunal or other judicial, legislative, or administrative forum. For example, when a party (such as a civilly or criminally detained individual) or another individual (such as a child whose parents are involved in divorce proceedings) is ordered into treatment with a practitioner, that treatment is not necessarily the practice of forensic psychology. In addition, psychological testimony that is solely based on the provision of psychotherapy and does not include psycholegal opinions is not ordinarily considered forensic practice.

For the purposes of these Guidelines, *forensic practitioner* refers to a psychologist when engaged in the practice of forensic psychology as described above. Such professional conduct is considered forensic from the time the practitioner reasonably expects to, agrees to, or is legally mandated to provide expertise on an explicitly psycholegal issue.

The provision of forensic services may include a wide variety of psycholegal roles and functions. For example, as

This article was published Online First October 1, 2012.

These Specialty Guidelines for Forensic Psychology were developed by the American Psychology–Law Society (Division 41 of the American Psychological Association [APA]) and the American Academy of Forensic Psychology. They were adopted by the APA Council of Representatives on August 3, 2011.

The previous version of the Guidelines (“Specialty Guidelines for Forensic Psychologists”; Committee on Ethical Guidelines for Forensic Psychologists, 1991) was approved by the American Psychology Law Society (Division 41 of APA) and the American Academy of Forensic Psychology in 1991. The current revision, now called the “Specialty Guidelines for Forensic Psychology” (referred to as “the Guidelines” throughout this document), replaces the 1991 “Specialty Guidelines for Forensic Psychologists.”

These guidelines are scheduled to expire August 3, 2021. After this date, users are encouraged to contact the American Psychological Association Practice Directorate to confirm that this document remains in effect.

Correspondence concerning these guidelines should be addressed to the Practice Directorate, American Psychological Association, 750 First Street, NE, Washington, DC 20002 4242.

researchers, forensic practitioners may participate in the collection and dissemination of data that are relevant to various legal issues. As advisors, forensic practitioners may provide an attorney with an informed understanding of the role that psychology can play in the case at hand. As consultants, forensic practitioners may explain the practical implications of relevant research, examination findings, and the opinions of other psycholegal experts. As examiners, forensic practitioners may assess an individual's functioning and report findings and opinions to the attorney, a legal tribunal, an employer, an insurer, or others (APA, 2010b, 2011a). As treatment providers, forensic practitioners may provide therapeutic services tailored to the issues and context of a legal proceeding. As mediators or negotiators, forensic practitioners may serve in a third-party neutral role and assist parties in resolving disputes. As arbiters, special masters, or case managers with decision-making authority, forensic practitioners may serve parties, attorneys, and the courts (APA, 2011b).

These Guidelines are informed by APA's "Ethical Principles of Psychologists and Code of Conduct" (hereinafter referred to as the EPPCC; APA, 2010a). The term *guidelines* refers to statements that suggest or recommend specific professional behavior, endeavors, or conduct for psychologists. Guidelines differ from standards in that standards are mandatory and may be accompanied by an enforcement mechanism. Guidelines are aspirational in intent. They are intended to facilitate the continued systematic development of the profession and facilitate a high level of practice by psychologists. Guidelines are not intended to be mandatory or exhaustive and may not be applicable to every professional situation. They are not definitive, and they are not intended to take precedence over the judgment of psychologists.

As such, the Guidelines are advisory in areas in which the forensic practitioner has discretion to exercise professional judgment that is not prohibited or mandated by the EPPCC or applicable law, rules, or regulations. The Guidelines neither add obligations to nor eliminate obligations from the EPPCC but provide additional guidance for psychologists. The modifiers used in the Guidelines (e.g., *reasonably*, *appropriate*, *potentially*) are included in recognition of the need for professional judgment on the part of forensic practitioners; ensure applicability across the broad range of activities conducted by forensic practitioners; and reduce the likelihood of enacting an inflexible set of guidelines that might be inapplicable as forensic practice evolves. The use of these modifiers, and the recognition of the role of professional discretion and judgment, also reflects that forensic practitioners are likely to encounter facts and circumstances not anticipated by the Guidelines and they may have to act upon uncertain or incomplete evidence. The Guidelines may provide general or conceptual guidance in such circumstances. The Guidelines do not, however, exhaust the legal, professional, moral, and ethical considerations that inform forensic practitioners, for no complex activity can be completely defined by legal rules, codes of conduct, and aspirational guidelines.

The Guidelines are not intended to serve as a basis for disciplinary action or civil or criminal liability. The standard of care is established by a competent authority, not by the Guidelines. No ethical, licensure, or other administrative action or remedy, nor any other cause of action, should be taken *solely* on the basis of a forensic practitioner acting in a manner consistent or inconsistent with these Guidelines.

In cases in which a competent authority references the Guidelines when formulating standards, the authority should consider that the Guidelines attempt to identify a high level of quality in forensic practice. Competent practice is defined as the conduct of a reasonably prudent forensic practitioner engaged in similar activities in similar circumstances. Professional conduct evolves and may be viewed along a continuum of adequacy, and "minimally competent" and "best possible" are usually different points along that continuum.

The Guidelines are designed to be national in scope and are intended to be consistent with state and federal law. In cases in which a conflict between legal and professional obligations occurs, forensic practitioners make known their commitment to the EPPCC and the Guidelines and take steps to achieve an appropriate resolution consistent with the EPPCC and the Guidelines.

The format of the Guidelines is different from most other practice guidelines developed under the auspices of APA. This reflects the history of the Guidelines as well as the fact that the Guidelines are considerably broader in scope than any other APA-developed guidelines. Indeed, these are the only APA-approved guidelines that address a complete specialty practice area. Despite this difference in format, the Guidelines function as all other APA guideline documents.

This document replaces the 1991 "Specialty Guidelines for Forensic Psychologists," which were approved by the American Psychology–Law Society (Division 41 of APA) and the American Board of Forensic Psychology. The current revision has also been approved by the Council of Representatives of APA. Appendix A includes a discussion of the revision process, enactment, and current status of these Guidelines. Appendix B includes definitions and terminology as used for the purposes of these Guidelines.

1. Responsibilities

Guideline 1.01: Integrity

Forensic practitioners strive for accuracy, honesty, and truthfulness in the science, teaching, and practice of forensic psychology and they strive to resist partisan pressures to provide services in any ways that might tend to be misleading or inaccurate.

Guideline 1.02: Impartiality and Fairness

When offering expert opinion to be relied upon by a decision maker, providing forensic therapeutic services, or teaching or conducting research, forensic practitioners strive for accuracy, impartiality, fairness, and independence (EPPCC Standard 2.01). Forensic practitioners rec-

ognize the adversarial nature of the legal system and strive to treat all participants and weigh all data, opinions, and rival hypotheses impartially.

When conducting forensic examinations, forensic practitioners strive to be unbiased and impartial, and avoid partisan presentation of unrepresentative, incomplete, or inaccurate evidence that might mislead finders of fact. This guideline does not preclude forceful presentation of the data and reasoning upon which a conclusion or professional product is based.

When providing educational services, forensic practitioners seek to represent alternative perspectives, including data, studies, or evidence on both sides of the question, in an accurate, fair and professional manner, and strive to weigh and present all views, facts, or opinions impartially.

When conducting research, forensic practitioners seek to represent results in a fair and impartial manner. Forensic practitioners strive to utilize research designs and scientific methods that adequately and fairly test the questions at hand, and they attempt to resist partisan pressures to develop designs or report results in ways that might be misleading or unfairly bias the results of a test, study, or evaluation.

Guideline 1.03: Avoiding Conflicts of Interest

Forensic practitioners refrain from taking on a professional role when personal, scientific, professional, legal, financial, or other interests or relationships could reasonably be expected to impair their impartiality, competence, or effectiveness, or expose others with whom a professional relationship exists to harm (EPPCC Standard 3.06).

Forensic practitioners are encouraged to identify, make known, and address real or apparent conflicts of interest in an attempt to maintain the public confidence and trust, discharge professional obligations, and maintain responsibility, impartiality, and accountability (EPPCC Standard 3.06). Whenever possible, such conflicts are revealed to all parties as soon as they become known to the psychologist. Forensic practitioners consider whether a prudent and competent forensic practitioner engaged in similar circumstances would determine that the ability to make a proper decision is likely to become impaired under the immediate circumstances.

When a conflict of interest is determined to be manageable, continuing services are provided and documented in a way to manage the conflict, maintain accountability, and preserve the trust of relevant others (also see Guideline 4.02 below).

2. Competence

Guideline 2.01: Scope of Competence

When determining one's competence to provide services in a particular matter, forensic practitioners may consider a variety of factors including the relative complexity and specialized nature of the service, relevant training and experience, the preparation and study they are able to devote to the matter, and the opportunity for consultation with a professional of established competence in the sub-

ject matter in question. Even with regard to subjects in which they are expert, forensic practitioners may choose to consult with colleagues.

Guideline 2.02: Gaining and Maintaining Competence

Competence can be acquired through various combinations of education, training, supervised experience, consultation, study, and professional experience. Forensic practitioners planning to provide services, teach, or conduct research involving populations, areas, techniques, or technologies that are new to them are encouraged to undertake relevant education, training, supervised experience, consultation, or study.

Forensic practitioners make ongoing efforts to develop and maintain their competencies (EPPCC Standard 2.03). To maintain the requisite knowledge and skill, forensic practitioners keep abreast of developments in the fields of psychology and the law.

Guideline 2.03: Representing Competencies

Consistent with the EPPCC, forensic practitioners adequately and accurately inform all recipients of their services (e.g., attorneys, tribunals) about relevant aspects of the nature and extent of their experience, training, credentials, and qualifications, and how they were obtained (EPPCC Standard 5.01).

Guideline 2.04: Knowledge of the Legal System and the Legal Rights of Individuals

Forensic practitioners recognize the importance of obtaining a fundamental and reasonable level of knowledge and understanding of the legal and professional standards, laws, rules, and precedents that govern their participation in legal proceedings and that guide the impact of their services on service recipients (EPPCC Standard 2.01).

Forensic practitioners aspire to manage their professional conduct in a manner that does not threaten or impair the rights of affected individuals. They may consult with, and refer others to, legal counsel on matters of law. Although they do not provide formal legal advice or opinions, forensic practitioners may provide information about the legal process to others based on their knowledge and experience. They strive to distinguish this from legal opinions, however, and encourage consultation with attorneys as appropriate.

Guideline 2.05: Knowledge of the Scientific Foundation for Opinions and Testimony

Forensic practitioners seek to provide opinions and testimony that are sufficiently based upon adequate scientific foundation, and reliable and valid principles and methods that have been applied appropriately to the facts of the case.

When providing opinions and testimony that are based on novel or emerging principles and methods, forensic practitioners seek to make known the status and limitations of these principles and methods.

Guideline 2.06: Knowledge of the Scientific Foundation for Teaching and Research

Forensic practitioners engage in teaching and research activities in which they have adequate knowledge, experience, and education (EPPCC Standard 2.01), and they acknowledge relevant limitations and caveats inherent in procedures and conclusions (EPPCC Standard 5.01).

Guideline 2.07: Considering the Impact of Personal Beliefs and Experience

Forensic practitioners recognize that their own cultures, attitudes, values, beliefs, opinions, or biases may affect their ability to practice in a competent and impartial manner. When such factors may diminish their ability to practice in a competent and impartial manner, forensic practitioners may take steps to correct or limit such effects, decline participation in the matter, or limit their participation in a manner that is consistent with professional obligations.

Guideline 2.08: Appreciation of Individual and Group Differences

When scientific or professional knowledge in the discipline of psychology establishes that an understanding of factors associated with age, gender, gender identity, race, ethnicity, culture, national origin, religion, sexual orientation, disability, language, socioeconomic status, or other relevant individual and cultural differences affects implementation or use of their services or research, forensic practitioners consider the boundaries of their expertise, make an appropriate referral if indicated, or gain the necessary training, experience, consultation, or supervision (EPPCC Standard 2.01; APA, 2003, 2004, 2011c, 2011d, 2011e).

Forensic practitioners strive to understand how factors associated with age, gender, gender identity, race, ethnicity, culture, national origin, religion, sexual orientation, disability, language, socioeconomic status, or other relevant individual and cultural differences may affect and be related to the basis for people's contact and involvement with the legal system.

Forensic practitioners do not engage in unfair discrimination based on such factors or on any basis proscribed by law (EPPCC Standard 3.01). They strive to take steps to correct or limit the effects of such factors on their work, decline participation in the matter, or limit their participation in a manner that is consistent with professional obligations.

Guideline 2.09: Appropriate Use of Services and Products

Forensic practitioners are encouraged to make reasonable efforts to guard against misuse of their services and exercise professional discretion in addressing such misuses.

3. Diligence

Guideline 3.01: Provision of Services

Forensic practitioners are encouraged to seek explicit agreements that define the scope of, time-frame of, and

compensation for their services. In the event that a client breaches the contract or acts in a way that would require the practitioner to violate ethical, legal or professional obligations, the forensic practitioner may terminate the relationship.

Forensic practitioners strive to act with reasonable diligence and promptness in providing agreed-upon and reasonably anticipated services. Forensic practitioners are not bound, however, to provide services not reasonably anticipated when retained, nor to provide every possible aspect or variation of service. Instead, forensic practitioners may exercise professional discretion in determining the extent and means by which services are provided and agreements are fulfilled.

Guideline 3.02: Responsiveness

Forensic practitioners seek to manage their workloads so that services can be provided thoroughly, competently, and promptly. They recognize that acting with reasonable promptness, however, does not require the forensic practitioner to acquiesce to service demands not reasonably anticipated at the time the service was requested, nor does it require the forensic practitioner to provide services if the client has not acted in a manner consistent with existing agreements, including payment of fees.

Guideline 3.03: Communication

Forensic practitioners strive to keep their clients reasonably informed about the status of their services, comply with their clients' reasonable requests for information, and consult with their clients about any substantial limitation on their conduct or performance that may arise when they reasonably believe that their clients expect a service that is not consistent with their professional obligations. Forensic practitioners attempt to keep their clients reasonably informed regarding new facts, opinions, or other potential evidence that may be relevant and applicable.

Guideline 3.04: Termination of Services

The forensic practitioner seeks to carry through to conclusion all matters undertaken for a client unless the forensic practitioner–client relationship is terminated. When a forensic practitioner's employment is limited to a specific matter, the relationship may terminate when the matter has been resolved, anticipated services have been completed, or the agreement has been violated.

4. Relationships

Whether a forensic practitioner–client relationship exists depends on the circumstances and is determined by a number of factors which may include the information exchanged between the potential client and the forensic practitioner prior to, or at the initiation of, any contact or service, the nature of the interaction, and the purpose of the interaction.

In their work, forensic practitioners recognize that relationships are established with those who retain their services (e.g., retaining parties, employers, insurers, the

court) and those with whom they interact (e.g., examinees, collateral contacts, research participants, students). Forensic practitioners recognize that associated obligations and duties vary as a function of the nature of the relationship.

Guideline 4.01: Responsibilities to Retaining Parties

Most responsibilities to the retaining party attach only after the retaining party has requested and the forensic practitioner has agreed to render professional services and an agreement regarding compensation has been reached. Forensic practitioners are aware that there are some responsibilities, such as privacy, confidentiality, and privilege, that may attach when the forensic practitioner agrees to consider whether a forensic practitioner-retaining party relationship shall be established. Forensic practitioners, prior to entering into a contract, may direct the potential retaining party not to reveal any confidential or privileged information as a way of protecting the retaining party's interest in case a conflict exists as a result of pre-existing relationships.

At the initiation of any request for service, forensic practitioners seek to clarify the nature of the relationship and the services to be provided including the role of the forensic practitioner (e.g., trial consultant, forensic examiner, treatment provider, expert witness, research consultant); which person or entity is the client; the probable uses of the services provided or information obtained; and any limitations to privacy, confidentiality, or privilege.

Guideline 4.02: Multiple Relationships

A multiple relationship occurs when a forensic practitioner is in a professional role with a person and, at the same time or at a subsequent time, is in a different role with the same person; is involved in a personal, fiscal, or other relationship with an adverse party; at the same time is in a relationship with a person closely associated with or related to the person with whom the forensic practitioner has the professional relationship; or offers or agrees to enter into another relationship in the future with the person or a person closely associated with or related to the person (EPPCC Standard 3.05).

Forensic practitioners strive to recognize the potential conflicts of interest and threats to objectivity inherent in multiple relationships. Forensic practitioners are encouraged to recognize that some personal and professional relationships may interfere with their ability to practice in a competent and impartial manner and they seek to minimize any detrimental effects by avoiding involvement in such matters whenever feasible or limiting their assistance in a manner that is consistent with professional obligations.

Guideline 4.02.01: Therapeutic-Forensic Role Conflicts

Providing forensic and therapeutic psychological services to the same individual or closely related individuals involves multiple relationships that may impair objectivity and/or cause exploitation or other harm. Therefore, when requested or ordered to provide either concurrent or se-

quential forensic and therapeutic services, forensic practitioners are encouraged to disclose the potential risk and make reasonable efforts to refer the request to another qualified provider. If referral is not possible, the forensic practitioner is encouraged to consider the risks and benefits to all parties and to the legal system or entity likely to be impacted, the possibility of separating each service widely in time, seeking judicial review and direction, and consulting with knowledgeable colleagues. When providing both forensic and therapeutic services, forensic practitioners seek to minimize the potential negative effects of this circumstance (EPPCC Standard 3.05)

Guideline 4.02.02: Expert Testimony by Practitioners Providing Therapeutic Services

Providing expert testimony about a patient who is a participant in a legal matter does not necessarily involve the practice of forensic psychology even when that testimony is relevant to a psycholegal issue before the decision maker. For example, providing testimony on matters such as a patient's reported history or other statements, mental status, diagnosis, progress, prognosis, and treatment would not ordinarily be considered forensic practice even when the testimony is related to a psycholegal issue before the decision maker. In contrast, rendering opinions and providing testimony about a person on psycholegal issues (e.g., criminal responsibility, legal causation, proximate cause, trial competence, testamentary capacity, the relative merits of parenting arrangements) would ordinarily be considered the practice of forensic psychology.

Consistent with their ethical obligations to base their opinions on information and techniques sufficient to substantiate their findings (EPPCC Standards 2.04, 9.01), forensic practitioners are encouraged to provide testimony only on those issues for which they have adequate foundation and only when a reasonable forensic practitioner engaged in similar circumstances would determine that the ability to make a proper decision is unlikely to be impaired. As with testimony regarding forensic examinees, the forensic practitioner strives to identify any substantive limitations that may affect the reliability and validity of the facts or opinions offered, and communicates these to the decision maker.

Guideline 4.02.03: Provision of Forensic Therapeutic Services

Although some therapeutic services can be considered forensic in nature, the fact that therapeutic services are ordered by the court does not necessarily make them forensic.

In determining whether a therapeutic service should be considered the practice of forensic psychology, psychologists are encouraged to consider the potential impact of the legal context on treatment, the potential for treatment to impact the psycholegal issues involved in the case, and whether another reasonable psychologist in a similar position would consider the service to be forensic and these Guidelines to be applicable.

Therapeutic services can have significant effects on current or future legal proceedings. Forensic practitioners

are encouraged to consider these effects and minimize any unintended or negative effects on such proceedings or therapy when they provide therapeutic services in forensic contexts.

Guideline 4.03: Provision of Emergency Mental Health Services to Forensic Examinees

When providing forensic examination services an emergency may arise that requires the practitioner to provide short-term therapeutic services to the examinee in order to prevent imminent harm to the examinee or others. In such cases the forensic practitioner is encouraged to limit disclosure of information and inform the retaining attorney, legal representative, or the court in an appropriate manner. Upon providing emergency treatment to examinees, forensic practitioners consider whether they can continue in a forensic role with that individual so that potential for harm to the recipient of services is avoided (EPPCC Standard 3.04).

5. Fees

Guideline 5.01: Determining Fees

When determining fees forensic practitioners may consider salient factors such as their experience providing the service, the time and labor required, the novelty and difficulty of the questions involved, the skill required to perform the service, the fee customarily charged for similar forensic services, the likelihood that the acceptance of the particular employment will preclude other employment, the time limitations imposed by the client or circumstances, the nature and length of the professional relationship with the client, the client's ability to pay for the service, and any legal requirements.

Guideline 5.02: Fee Arrangements

Forensic practitioners are encouraged to make clear to the client the likely cost of services whenever it is feasible, and make appropriate provisions in those cases in which the costs of services is greater than anticipated or the client's ability to pay for services changes in some way.

Forensic practitioners seek to avoid undue influence that might result from financial compensation or other gains. Because of the threat to impartiality presented by the acceptance of contingent fees and associated legal prohibitions, forensic practitioners strive to avoid providing professional services on the basis of contingent fees. Letters of protection, financial guarantees, and other security for payment of fees in the future are not considered contingent fees unless payment is dependent on the outcome of the matter.

Guideline 5.03: Pro Bono Services

Forensic psychologists recognize that some persons may have limited access to legal services as a function of financial disadvantage and strive to contribute a portion of their professional time for little or no compensation or personal advantage (EPPCC Principle E).

6. Informed Consent, Notification, and Assent

Because substantial rights, liberties, and properties are often at risk in forensic matters, and because the methods and procedures of forensic practitioners are complex and may not be accurately anticipated by the recipients of forensic services, forensic practitioners strive to inform service recipients about the nature and parameters of the services to be provided (EPPCC Standards 3.04, 3.10).

Guideline 6.01: Timing and Substance

Forensic practitioners strive to inform clients, examinees, and others who are the recipients of forensic services as soon as is feasible about the nature and extent of reasonably anticipated forensic services.

In determining what information to impart, forensic practitioners are encouraged to consider a variety of factors including the person's experience or training in psychological and legal matters of the type involved and whether the person is represented by counsel. When questions or uncertainties remain after they have made the effort to explain the necessary information, forensic practitioners may recommend that the person seek legal advice.

Guideline 6.02: Communication With Those Seeking to Retain a Forensic Practitioner

As part of the initial process of being retained, or as soon thereafter as previously unknown information becomes available, forensic practitioners strive to disclose to the retaining party information that would reasonably be anticipated to affect a decision to retain or continue the services of the forensic practitioner.

This disclosure may include, but is not limited to, the fee structure for anticipated services; prior and current personal or professional activities, obligations, and relationships that would reasonably lead to the fact or the appearance of a conflict of interest; the forensic practitioner's knowledge, skill, experience, and education relevant to the forensic services being considered, including any significant limitations; and the scientific bases and limitations of the methods and procedures which are expected to be employed.

Guideline 6.03: Communication With Forensic Examinees

Forensic practitioners inform examinees about the nature and purpose of the examination (EPPCC Standard 9.03; American Educational Research Association, American Psychological Association, & National Council on Measurement in Education [AERA, APA, & NCME], in press). Such information may include the purpose, nature, and anticipated use of the examination; who will have access to the information; associated limitations on privacy, confidentiality, and privilege including who is authorized to release or access the information contained in the forensic practitioner's records; the voluntary or involuntary nature of participation, including potential consequences of par-

ticipation or nonparticipation, if known; and, if the cost of the service is the responsibility of the examinee, the anticipated cost.

Guideline 6.03.01: Persons Not Ordered or Mandated to Undergo Examination

If the examinee is not ordered by the court to participate in a forensic examination, the forensic practitioner seeks his or her informed consent (EPPCC Standards 3.10, 9.03). If the examinee declines to proceed after being notified of the nature and purpose of the forensic examination, the forensic practitioner may consider postponing the examination, advising the examinee to contact his or her attorney, and notifying the retaining party about the examinee's unwillingness to proceed.

Guideline 6.03.02: Persons Ordered or Mandated to Undergo Examination or Treatment

If the examinee is ordered by the court to participate, the forensic practitioner can conduct the examination over the objection, and without the consent, of the examinee (EPPCC Standards 3.10, 9.03). If the examinee declines to proceed after being notified of the nature and purpose of the forensic examination, the forensic practitioner may consider a variety of options including postponing the examination, advising the examinee to contact his or her attorney, and notifying the retaining party about the examinee's unwillingness to proceed.

When an individual is ordered to undergo treatment but the goals of treatment are determined by a legal authority rather than the individual receiving services, the forensic practitioner informs the service recipient of the nature and purpose of treatment, and any limitations on confidentiality and privilege (EPPCC Standards 3.10, 10.01).

Guideline 6.03.03: Persons Lacking Capacity to Provide Informed Consent

Forensic practitioners appreciate that the very conditions that precipitate psychological examination of individuals involved in legal proceedings can impair their functioning in a variety of important ways, including their ability to understand and consent to the evaluation process.

For examinees adjudicated or presumed by law to lack the capacity to provide informed consent for the anticipated forensic service, the forensic practitioner nevertheless provides an appropriate explanation, seeks the examinee's assent, and obtains appropriate permission from a legally authorized person, as permitted or required by law (EPPCC Standards 3.10, 9.03).

For examinees whom the forensic practitioner has concluded lack capacity to provide informed consent to a proposed, non-court-ordered service, but who have not been adjudicated as lacking such capacity, the forensic practitioner strives to take reasonable steps to protect their rights and welfare (EPPCC Standard 3.10). In such cases, the forensic practitioner may consider suspending the pro-

posed service or notifying the examinee's attorney or the retaining party.

Guideline 6.03.04: Evaluation of Persons Not Represented by Counsel

Because of the significant rights that may be at issue in a legal proceeding, forensic practitioners carefully consider the appropriateness of conducting a forensic evaluation of an individual who is not represented by counsel. Forensic practitioners may consider conducting such evaluations or delaying the evaluation so as to provide the examinee with the opportunity to consult with counsel.

Guideline 6.04: Communication With Collateral Sources of Information

Forensic practitioners disclose to potential collateral sources information that might reasonably be expected to inform their decisions about participating that may include, but may not be limited to, who has retained the forensic practitioner; the nature, purpose, and intended use of the examination or other procedure; the nature of and any limits on privacy, confidentiality, and privilege; and whether their participation is voluntary (EPPCC Standard 3.10).

Guideline 6.05: Communication in Research Contexts

When engaging in research or scholarly activities conducted as a service to a client in a legal proceeding, forensic practitioners attempt to clarify any anticipated use of the research or scholarly product, disclose their role in the resulting research or scholarly products, and obtain whatever consent or agreement is required.

In advance of any scientific study, forensic practitioners seek to negotiate with the client the circumstances under and manner in which the results may be made known to others. Forensic practitioners strive to balance the potentially competing rights and interests of the retaining party with the inappropriateness of suppressing data, for example, by agreeing to report the data without identifying the jurisdiction in which the study took place. Forensic practitioners represent the results of research in an accurate manner (EPPCC Standard 5.01).

7. Conflicts in Practice

In forensic psychology practice, conflicting responsibilities and demands may be encountered. When conflicts occur, forensic practitioners seek to make the conflict known to the relevant parties or agencies, and consider the rights and interests of the relevant parties or agencies in their attempts to resolve the conflict.

Guideline 7.01: Conflicts With Legal Authority

When their responsibilities conflict with law, regulations, or other governing legal authority, forensic practitioners make known their commitment to the EPPCC, and take steps to resolve the conflict. In situations in which the

EPPCC or the Guidelines are in conflict with the law, attempts to resolve the conflict are made in accordance with the EPPCC (EPPCC Standard 1.02).

When the conflict cannot be resolved by such means, forensic practitioners may adhere to the requirements of the law, regulations, or other governing legal authority, but only to the extent required and not in any way that violates a person's human rights (EPPCC Standard 1.03).

Forensic practitioners are encouraged to consider the appropriateness of complying with court orders when such compliance creates potential conflicts with professional standards of practice.

Guideline 7.02: Conflicts With Organizational Demands

When the demands of an organization with which they are affiliated or for whom they are working conflict with their professional responsibilities and obligations, forensic practitioners strive to clarify the nature of the conflict and, to the extent feasible, resolve the conflict in a way consistent with professional obligations and responsibilities (EPPCC Standard 1.03).

Guideline 7.03: Resolving Ethical Issues With Fellow Professionals

When an apparent or potential ethical violation has caused, or is likely to cause, substantial harm, forensic practitioners are encouraged to take action appropriate to the situation and consider a number of factors including the nature and the immediacy of the potential harm; applicable privacy, confidentiality, and privilege; how the rights of the relevant parties may be affected by a particular course of action; and any other legal or ethical obligations (EPPCC Standard 1.04). Steps to resolve perceived ethical conflicts may include, but are not limited to, obtaining the consultation of knowledgeable colleagues, obtaining the advice of independent counsel, and conferring directly with the client.

When forensic practitioners believe there may have been an ethical violation by another professional, an attempt is made to resolve the issue by bringing it to the attention of that individual, if that attempt does not violate any rights or privileges that may be involved, and if an informal resolution appears appropriate (EPPCC Standard 1.04). If this does not result in a satisfactory resolution, the forensic practitioner may have to take further action appropriate to the situation, including making a report to third parties of the perceived ethical violation (EPPCC Standard 1.05). In most instances, in order to minimize unforeseen risks to the party's rights in the legal matter, forensic practitioners consider consulting with the client before attempting to resolve a perceived ethical violation with another professional.

8. Privacy, Confidentiality, and Privilege

Forensic practitioners recognize their ethical obligations to maintain the confidentiality of information relating to a client or retaining party, except insofar as disclosure is

consented to by the client or retaining party, or required or permitted by law (EPPCC Standard 4.01).

Guideline 8.01: Release of Information

Forensic practitioners are encouraged to recognize the importance of complying with properly noticed and served subpoenas or court orders directing release of information, or other legally proper consent from duly authorized persons, unless there is a legally valid reason to offer an objection. When in doubt about an appropriate response or course of action, forensic practitioners may seek assistance from the retaining client, retain and seek legal advice from their own attorney, or formally notify the drafter of the subpoena or order of their uncertainty.

Guideline 8.02: Access to Information

If requested, forensic practitioners seek to provide the retaining party access to, and a meaningful explanation of, all information that is in their records for the matter at hand, consistent with the relevant law, applicable codes of ethics and professional standards, and institutional rules and regulations. Forensic examinees typically are not provided access to the forensic practitioner's records without the consent of the retaining party. Access to records by anyone other than the retaining party is governed by legal process, usually subpoena or court order, or by explicit consent of the retaining party. Forensic practitioners may charge a reasonable fee for the costs associated with the storage, reproduction, review, and provision of records.

Guideline 8.03: Acquiring Collateral and Third Party Information

Forensic practitioners strive to access information or records from collateral sources with the consent of the relevant attorney or the relevant party, or when otherwise authorized by law or court order.

Guideline 8.04: Use of Case Materials in Teaching, Continuing Education, and Other Scholarly Activities

Forensic practitioners using case materials for purposes of teaching, training, or research strive to present such information in a fair, balanced, and respectful manner. They attempt to protect the privacy of persons by disguising the confidential, personally identifiable information of all persons and entities who would reasonably claim a privacy interest; using only those aspects of the case available in the public domain; or obtaining consent from the relevant clients, parties, participants, and organizations to use the materials for such purposes (EPPCC Standard 4.07; also see Guidelines 11.06 and 11.07 of these Guidelines).

9. Methods and Procedures

Guideline 9.01: Use of Appropriate Methods

Forensic practitioners strive to utilize appropriate methods and procedures in their work. When performing examinations, treatment, consultation, educational activities, or scholarly investigations, forensic practitioners seek to

maintain integrity by examining the issue or problem at hand from all reasonable perspectives and seek information that will differentially test plausible rival hypotheses.

Guideline 9.02: Use of Multiple Sources of Information

Forensic practitioners ordinarily avoid relying solely on one source of data, and corroborate important data whenever feasible (AERA, APA, & NCME, in press). When relying upon data that have not been corroborated, forensic practitioners seek to make known the uncorroborated status of the data, any associated strengths and limitations, and the reasons for relying upon the data.

Guideline 9.03: Opinions Regarding Persons Not Examined

Forensic practitioners recognize their obligations to only provide written or oral evidence about the psychological characteristics of particular individuals when they have sufficient information or data to form an adequate foundation for those opinions or to substantiate their findings (EPPCC Standard 9.01). Forensic practitioners seek to make reasonable efforts to obtain such information or data, and they document their efforts to obtain it. When it is not possible or feasible to examine individuals about whom they are offering an opinion, forensic practitioners strive to make clear the impact of such limitations on the reliability and validity of their professional products, opinions, or testimony.

When conducting a record review or providing consultation or supervision that does not warrant an individual examination, forensic practitioners seek to identify the sources of information on which they are basing their opinions and recommendations, including any substantial limitations to their opinions and recommendations.

10. Assessment

Guideline 10.01: Focus on Legally Relevant Factors

Forensic examiners seek to assist the trier of fact to understand evidence or determine a fact in issue, and they provide information that is most relevant to the psycholegal issue. In reports and testimony, forensic practitioners typically provide information about examinees' functional abilities, capacities, knowledge, and beliefs, and address their opinions and recommendations to the identified psycholegal issues (American Bar Association & American Psychological Association, 2008; Grisso, 1986, 2003; Heilbrun, Marczyk, DeMatteo, & Mack-Allen, 2007).

Forensic practitioners are encouraged to consider the problems that may arise by using a clinical diagnosis in some forensic contexts, and consider and qualify their opinions and testimony appropriately.

Guideline 10.02: Selection and Use of Assessment Procedures

Forensic practitioners use assessment procedures in the manner and for the purposes that are appropriate in light of

the research on or evidence of their usefulness and proper application (EPPCC Standard 9.02; AERA, APA, & NCME, in press). This includes assessment techniques, interviews, tests, instruments, and other procedures and their administration, adaptation, scoring, and interpretation, including computerized scoring and interpretation systems.

Forensic practitioners use assessment instruments whose validity and reliability have been established for use with members of the population assessed. When such validity and reliability have not been established, forensic practitioners consider and describe the strengths and limitations of their findings. Forensic practitioners use assessment methods that are appropriate to an examinee's language preference and competence, unless the use of an alternative language is relevant to the assessment issues (EPPCC Standard 9.02).

Assessment in forensic contexts differs from assessment in therapeutic contexts in important ways that forensic practitioners strive to take into account when conducting forensic examinations. Forensic practitioners seek to consider the strengths and limitations of employing traditional assessment procedures in forensic examinations (AERA, APA, & NCME, in press). Given the stakes involved in forensic contexts, forensic practitioners strive to ensure the integrity and security of test materials and results (AERA, APA, & NCME, in press).

When the validity of an assessment technique has not been established in the forensic context or setting in which it is being used, the forensic practitioner seeks to describe the strengths and limitations of any test results and explain the extrapolation of these data to the forensic context. Because of the many differences between forensic and therapeutic contexts, forensic practitioners consider and seek to make known that some examination results may warrant substantially different interpretation when administered in forensic contexts (AERA, APA, & NCME, in press).

Forensic practitioners consider and seek to make known that forensic examination results can be affected by factors unique to, or differentially present in, forensic contexts including response style, voluntariness of participation, and situational stress associated with involvement in forensic or legal matters (AERA, APA, & NCME, in press).

Guideline 10.03: Appreciation of Individual Differences

When interpreting assessment results, forensic practitioners consider the purpose of the assessment as well as the various test factors, test-taking abilities, and other characteristics of the person being assessed, such as situational, personal, linguistic, and cultural differences that might affect their judgments or reduce the accuracy of their interpretations (EPPCC Standard 9.06). Forensic practitioners strive to identify any significant strengths and limitations of their procedures and interpretations.

Forensic practitioners are encouraged to consider how the assessment process may be impacted by any disability an examinee is experiencing, make accommodations as

possible, and consider such when interpreting and communicating the results of the assessment (APA, 2011d).

Guideline 10.04: Consideration of Assessment Settings

In order to maximize the validity of assessment results, forensic practitioners strive to conduct evaluations in settings that provide adequate comfort, safety, and privacy.

Guideline 10.05: Provision of Assessment Feedback

Forensic practitioners take reasonable steps to explain assessment results to the examinee or a designated representative in language they can understand (EPPCC Standard 9.10). In those circumstances in which communication about assessment results is precluded, the forensic practitioner explains this to the examinee in advance (EPPCC Standard 9.10).

Forensic practitioners seek to provide information about professional work in a manner consistent with professional and legal standards for the disclosure of test data or results, interpretation of data, and the factual bases for conclusions.

Guideline 10.06: Documentation and Compilation of Data Considered

Forensic practitioners are encouraged to recognize the importance of documenting all data they consider with enough detail and quality to allow for reasonable judicial scrutiny and adequate discovery by all parties. This documentation includes, but is not limited to, letters and consultations; notes, recordings, and transcriptions; assessment and test data, scoring reports and interpretations; and all other records in any form or medium that were created or exchanged in connection with a matter.

When contemplating third party observation or audio/video-recording of examinations, forensic practitioners strive to consider any law that may control such matters, the need for transparency and documentation, and the potential impact of observation or recording on the validity of the examination and test security (Committee on Psychological Tests and Assessment, American Psychological Association, 2007).

Guideline 10.07: Provision of Documentation

Pursuant to proper subpoenas or court orders, or other legally proper consent from authorized persons, forensic practitioners seek to make available all documentation described in Guideline 10.05, all financial records related to the matter, and any other records including reports (and draft reports if they have been provided to a party, attorney, or other entity for review), that might reasonably be related to the opinions to be expressed.

Guideline 10.08: Record Keeping

Forensic practitioners establish and maintain a system of record keeping and professional communication (EPPCC Standard 6.01, APA, 2007), and attend to relevant laws and rules. When indicated by the extent of the rights, liberties,

and properties that may be at risk, the complexity of the case, the amount and legal significance of unique evidence in the care and control of the forensic practitioner, and the likelihood of future appeal, forensic practitioners strive to inform the retaining party of the limits of record keeping times. If requested to do so, forensic practitioners consider maintaining such records until notified that all appeals in the matter have been exhausted, or sending a copy of any unique components/aspects of the record in their care and control to the retaining party before destruction of the record.

11. Professional and Other Public Communications

Guideline 11.01: Accuracy, Fairness, and Avoidance of Deception

Forensic practitioners make reasonable efforts to ensure that the products of their services, as well as their own public statements and professional reports and testimony, are communicated in ways that promote understanding and avoid deception (EPPCC Standard 5.01).

When in their role as expert to the court or other tribunals, the role of forensic practitioners is to facilitate understanding of the evidence or dispute. Consistent with legal and ethical requirements, forensic practitioners do not distort or withhold relevant evidence or opinion in reports or testimony. When responding to discovery requests and providing sworn testimony, forensic practitioners strive to have readily available for inspection all data which they considered, regardless of whether the data supports their opinion, subject to and consistent with court order, relevant rules of evidence, test security issues, and professional standards (AERA, APA, & NCME, in press; Committee on Legal Issues, American Psychological Association, 2006; Bank & Packer, 2007; Golding, 1990).

When providing reports and other sworn statements or testimony in any form, forensic practitioners strive to present their conclusions, evidence, opinions, or other professional products in a fair manner. Forensic practitioners do not, by either commission or omission, participate in misrepresentation of their evidence, nor do they participate in partisan attempts to avoid, deny, or subvert the presentation of evidence contrary to their own position or opinion (EPPCC Standard 5.01). This does not preclude forensic practitioners from forcefully presenting the data and reasoning upon which a conclusion or professional product is based.

Guideline 11.02: Differentiating Observations, Inferences, and Conclusions

In their communications, forensic practitioners strive to distinguish observations, inferences, and conclusions. Forensic practitioners are encouraged to explain the relationship between their expert opinions and the legal issues and facts of the case at hand.

Guideline 11.03: Disclosing Sources of Information and Bases of Opinions

Forensic practitioners are encouraged to disclose all sources of information obtained in the course of their professional services, and to identify the source of each piece of information that was considered and relied upon in formulating a particular conclusion, opinion, or other professional product.

Guideline 11.04: Comprehensive and Accurate Presentation of Opinions in Reports and Testimony

Consistent with relevant law and rules of evidence, when providing professional reports and other sworn statements or testimony, forensic practitioners strive to offer a complete statement of all relevant opinions that they formed within the scope of their work on the case, the basis and reasoning underlying the opinions, the salient data or other information that was considered in forming the opinions, and an indication of any additional evidence that may be used in support of the opinions to be offered. The specific substance of forensic reports is determined by the type of psycholegal issue at hand as well as relevant laws or rules in the jurisdiction in which the work is completed.

Forensic practitioners are encouraged to limit discussion of background information that does not bear directly upon the legal purpose of the examination or consultation. Forensic practitioners avoid offering information that is irrelevant and that does not provide a substantial basis of support for their opinions, except when required by law (EPPCC Standard 4.04).

Guideline 11.05: Commenting Upon Other Professionals and Participants in Legal Proceedings

When evaluating or commenting upon the work or qualifications of other professionals involved in legal proceedings, forensic practitioners seek to represent their disagreements in a professional and respectful tone, and base them on a fair examination of the data, theories, standards, and opinions of the other expert or party.

When describing or commenting upon clients, examinees, or other participants in legal proceedings, forensic practitioners strive to do so in a fair and impartial manner.

Forensic practitioners strive to report the representations, opinions, and statements of clients, examinees, or other participants in a fair and impartial manner.

Guideline 11.06: Out of Court Statements

Ordinarily, forensic practitioners seek to avoid making detailed public (out-of-court) statements about legal proceedings in which they have been involved. However, sometimes public statements may serve important goals such as educating the public about the role of forensic practitioners in the legal system, the appropriate practice of forensic psychology, and psychological and legal issues that are relevant to the matter at hand. When making public statements, forensic practitioners refrain from releasing

private, confidential, or privileged information, and attempt to protect persons from harm, misuse, or misrepresentation as a result of their statements (EPPCC Standard 4.05).

Guideline 11.07: Commenting Upon Legal Proceedings

Forensic practitioners strive to address particular legal proceedings in publications or communications only to the extent that the information relied upon is part of a public record, or when consent for that use has been properly obtained from any party holding any relevant privilege (also see Guideline 8.04).

When offering public statements about specific cases in which they have not been involved, forensic practitioners offer opinions for which there is sufficient information or data and make clear the limitations of their statements and opinions resulting from having had no direct knowledge of or involvement with the case (EPPCC Standard 9.01).

REFERENCES

- American Bar Association & American Psychological Association. (2008). *Assessment of older adults with diminished capacity: A handbook for psychologists*. Washington, DC: American Bar Association and American Psychological Association.
- American Educational Research Association, American Psychological Association, & National Council on Measurement in Education. (in press). *Standards for educational and psychological testing* (3rd ed.). Washington, DC: Authors.
- American Psychological Association. (2002). Criteria for practice guideline development and evaluation. *American Psychologist*, 57, 1048–1051. doi:10.1037/0003-066X.57.12.1048
- American Psychological Association. (2003). Guidelines on multicultural education, training, research, practice, and organizational change for psychologists. *American Psychologist*, 58, 377–402. doi:10.1037/0003-066X.58.5.377
- American Psychological Association. (2004). Guidelines for psychological practice with older adults. *American Psychologist*, 59, 4, 236–260. doi:10.1037/0003-066X.59.4.236
- American Psychological Association. (2007). Record keeping guidelines. *American Psychologist*, 62, 993–1004. doi:10.1037/0003-066X.62.9.993
- American Psychological Association. (2010a). *Ethical principles of psychologists and code of conduct* (2002, Amended June 1, 2010). Retrieved from <http://www.apa.org/ethics/code/index.aspx>
- American Psychological Association. (2010b). Guidelines for child custody evaluations in family law proceedings. *American Psychologist*, 65, 863–867. doi:10.1037/a0021250
- American Psychological Association. (2011a). *Guidelines for psychological evaluations in child protection matters*. Washington, DC: Author. (*American Psychologist*, 2013, 68, 20–31. doi:10.1037/a0029891)
- American Psychological Association. (2011b). *Guidelines for the practice of parenting coordination*. Washington, DC: Author. (*American Psychologist*, 2012, 67, 63–71. doi:10.1037/a0024646)
- American Psychological Association. (2011c). *Guidelines for the evaluation of dementia and age related cognitive change*. Washington, DC: Author. (*American Psychologist*, 2012, 67, 1–9. doi:10.1037/a0024643)
- American Psychological Association. (2011d). *Guidelines for assessment of and intervention with persons with disabilities*. Washington, DC: Author. (*American Psychologist*, 2012, 67, 43–62. doi:10.1037/a0025892)
- American Psychological Association. (2011e). *Guidelines for psychological practice with lesbian, gay, and bisexual clients*. Washington, DC: Author. (*American Psychologist*, 2012, 67, 10–42. doi:10.1037/a0024659)
- Bank, S., & Packer, R. (2007). Expert witness testimony: Law, ethics, and

- practice. In A. M. Goldstein (Ed.), *Forensic psychology: Emerging topics and expanding roles* (pp. 421–445). Hoboken, NJ: Wiley.
- Committee on Ethical Guidelines for Forensic Psychologists. (1991). Specialty guidelines for forensic psychologists. *Law and Human Behavior*, 15, 655–665.
- Committee on Legal Issues, American Psychological Association. (2006). Strategies for private practitioners coping with subpoenas or compelled testimony for client records or test data. *Professional Psychology Research and Practice*, 37, 215–222. doi:10.1037/0735-7028.37.2.215
- Committee on Psychological Tests and Assessment, American Psychological Association. (2007). *Statement on third party observers in psychological testing and assessment: A framework for decision making*. Washington, DC: Author. Retrieved from <http://www.apa.org/science/programs/testing/third-party-observers.pdf>
- Golding, S. L. (1990). Mental health professionals and the courts: The ethics of expertise. *International Journal of Law and Psychiatry*, 13, 281–307. doi:10.1016/0160-2527(90)90023-V
- Grisso, T. (1986). *Evaluating competencies: Forensic assessments and instruments*. New York, NY: Plenum.
- Grisso, T. (2003). *Evaluating competencies: Forensic assessments and instruments* (2nd ed.). New York, NY: Kluwer/Plenum.
- Heilbrun, K., Marczyk, G., DeMatteo, D., & Mack-Allen, J. (2007). A principles-based approach to forensic mental health assessment: Utility and update. In A. M. Goldstein (Ed.), *Forensic psychology: Emerging topics and expanding roles* (pp. 45–72). Hoboken, NJ: Wiley.
- Melton, G., Pettila, J., Poythress, N., & Slobogin, C. (1987). *Psychological evaluations for the courts. A handbook for mental health professionals and lawyers*. New York, NY: Guilford Press.
- Melton, G., Pettila, J., Poythress, N., & Slobogin, C. (1997). *Psychological evaluations for the courts. A handbook for mental health professionals and lawyers* (2nd ed.). New York, NY: Guilford Press.
- Melton, G., Pettila, J., Poythress, N., & Slobogin, C. (2007). *Psychological evaluations for the courts. A handbook for mental health professionals and lawyers* (3rd ed.). New York, NY: Guilford Press.
- Monahan, J. (Ed.). (1980). *Who is the client? The ethics of psychological intervention in the criminal justice system*. Washington, DC: American Psychological Association. doi:10.1037/10051-000
- Rogers, R. (Ed.). (1988). *Clinical assessment of malingering and deception*. New York, NY: Guilford Press.
- Rogers, R. (Ed.). (1997). *Clinical assessment of malingering and deception* (2nd ed.). New York, NY: Guilford Press.
- Rogers, R. (Ed.). (2008). *Clinical assessment of malingering and deception* (3rd ed.). New York, NY: Guilford Press.

Appendix A

Revision Process of the Guidelines

This revision of the Guidelines was coordinated by the Committee for the Revision of the Specialty Guidelines for Forensic Psychology (“the Revisions Committee”), which was established by the American Academy of Forensic Psychology and the American Psychology–Law Society (Division 41 of the American Psychological Association [APA]) in 2002 and which operated through 2011. This committee consisted of two representatives from each organization (Solomon Fulero, PhD, JD; Stephen Golding, PhD, ABPP; Lisa Piechowski, PhD, ABPP; Christina Studebaker, PhD), a chairperson (Randy Otto, PhD, ABPP), and a liaison from Division 42 (Psychologists in Independent Practice) of APA (Jeffrey Younggren, PhD, ABPP).

This document was revised in accordance with APA Rule 30.08 and the APA policy document “Criteria for Practice Guideline Development and Evaluation” (APA, 2002). The Revisions Committee posted announcements regarding the revision process to relevant electronic discussion lists and professional publications (i.e., the *Psychology-L* e-mail listserv of the American Psychology–Law Society, the American Academy of Forensic Psychology listserv, the American Psychology–Law Society Newslet-

ter). In addition, an electronic discussion list devoted solely to issues concerning revision of the Guidelines was operated between December 2002 and July 2007, followed by establishment of an e-mail address in February 2008 (sgfp@yahoo.com). Individuals were invited to provide input and commentary on the existing Guidelines and proposed revisions via these means. In addition, two public meetings were held throughout the revision process at biennial meetings of the American Psychology–Law Society.

Upon development of a draft that the Revisions Committee deemed suitable, the revised Guidelines were submitted for review to the Executive Committee of the American Psychology Law Society (Division 41 of APA) and the American Board of Forensic Psychology. Once the revised Guidelines were approved by these two organizations, they were submitted to APA for review, commentary, and acceptance, consistent with APA’s “Criteria for Practice Guideline Development and Evaluation” (APA, 2002) and APA Rule 30-8. They were subsequently revised by the Revisions Committee and were adopted by the APA Council of Representatives on August 3, 2011.

(Appendices continue)

Appendix B

Definitions and Terminology

For the purposes of these Guidelines:

Appropriate, when used in relation to conduct by a forensic practitioner means that, according to the prevailing professional judgment of competent forensic practitioners, the conduct is apt and pertinent and is considered befitting, suitable, and proper for a particular person, place, condition, or function. **Inappropriate** means that, according to the prevailing professional judgment of competent forensic practitioners, the conduct is not suitable, desirable, or properly timed for a particular person, occasion, or purpose; and may also denote improper conduct, improprieties, or conduct that is discrepant for the circumstances.

Agreement refers to the objective and mutual understanding between the forensic practitioner and the person or persons seeking the professional service and/or agreeing to participate in the service. See also Assent, Consent, and Informed Consent.

Assent refers to the agreement, approval, or permission, especially regarding verbal or nonverbal conduct, that is reasonably intended and interpreted as expressing willingness, even in the absence of unmistakable consent. Forensic practitioners attempt to secure assent when consent and informed consent cannot be obtained or when, because of mental state, the examinee may not be able to consent.

Consent refers to agreement, approval, or permission as to some act or purpose.

Client refers to the attorney, law firm, court, agency, entity, party, or other person who has retained, and who has a contractual relationship with, the forensic practitioner to provide services.

Conflict of Interest refers to a situation or circumstance in which the forensic practitioner's objectivity, impartiality, or judgment may be jeopardized due to a relationship, financial, or any other interest that would reasonably be expected to substantially affect a forensic practitioner's professional judgment, impartiality, or decision making.

Decision Maker refers to the person or entity with the authority to make a judicial decision, agency determination, arbitration award, or other contractual determination after consideration of the facts and the law.

Examinee refers to a person who is the subject of a forensic examination for the purpose of informing a decision maker or attorney about the psychological functioning of that examinee.

Forensic Examiner refers to a psychologist who examines the psychological condition of a person whose psychological condition is in controversy or at issue.

Forensic Practice refers to the application of the scientific, technical, or specialized knowledge of psychol-

ogy to the law and the use of that knowledge to assist in resolving legal, contractual, and administrative disputes.

Forensic Practitioner refers to a psychologist when engaged in forensic practice.

Forensic Psychology refers to all forensic practice by any psychologist working within any subdiscipline of psychology (e.g., clinical, developmental, social, cognitive).

Informed Consent denotes the knowledgeable, voluntary, and competent agreement by a person to a proposed course of conduct after the forensic practitioner has communicated adequate information and explanation about the material risks and benefits of, and reasonably available alternatives to, the proposed course of conduct.

Legal Representative refers to a person who has the legal authority to act on behalf of another.

Party refers to a person or entity named in litigation, or who is involved in, or is witness to, an activity or relationship that may be reasonably anticipated to result in litigation.

Reasonable or **Reasonably**, when used in relation to conduct by a forensic practitioner, denotes the conduct of a prudent and competent forensic practitioner who is engaged in similar activities in similar circumstances.

Record or **Written Record** refers to all notes, records, documents, memorializations, and recordings of considerations and communications, be they in any form or on any media, tangible, electronic, handwritten, or mechanical, that are contained in, or are specifically related to, the forensic matter in question or the forensic service provided.

Retaining Party refers to the attorney, law firm, court, agency, entity, party, or other person who has retained, and who has a contractual relationship with, the forensic practitioner to provide services.

Tribunal denotes a court or an arbitrator in an arbitration proceeding, or a legislative body, administrative agency, or other body acting in an adjudicative capacity. A legislative body, administrative agency, or other body acts in an adjudicative capacity when a neutral official, after the presentation of legal argument or evidence by a party or parties, renders a judgment directly affecting a party's interests in a particular matter.

Trier of Fact refers to a court or an arbitrator in an arbitration proceeding, or a legislative body, administrative agency, or other body acting in an adjudicative capacity. A legislative body, administrative agency, or other body acts in an adjudicative capacity when a neutral official, after the presentation of legal argument or evidence by a party or parties, renders a judgment directly affecting a party's interests in a particular matter.

EXHIBIT 8

DECLARATION OF ERIN M. NELSON, PSY.D.

State of Arizona)
)
County of Maricopa)

I, Erin M. Nelson, Psy.D., declare:

I am of legal age and competent to testify in court. The facts and opinions stated herein are based on my personal knowledge, and I could and would testify to these facts in a court of law if asked to do so.

1. I am a forensic and clinical psychologist licensed in the states of Arizona, California and New Mexico.
2. In addition to my private practice, I am an Associate Professor of Medical Education at the Texas Christian University/University of North Texas Health Sciences Center School of Medicine. I am also an Associate Professor in the Departments of Psychiatry and Bioethics and Medical Humanism at the University of Arizona College of Medicine - Phoenix (*Exhibit "A" - Curriculum Vitae*).
3. In the matter of *Kaori Stearney v. USA* (Court No.: 3:16-CV-08060-DCG; USAO No.: 2016V00320) I was provided with the following records:
 - a. Amended Complaint;
 - b. Answer;
 - c. Joint Status Report;
 - d. Plaintiff's Initial Disclosure
 - e. Documents with Plaintiff's Initial Disclosures (STEAR-PLA-000001-000979);
 - f. Plaintiff's Supplemental Disclosure;
 - g. Documents submitted with Plaintiff's Supplemental Disclosure (STEAR-PLA-001066-001517);
 - h. Plaintiff's Second Supplemental Disclosure;
 - i. Documents submitted with Plaintiff's Second Supplemental Disclosure (STEAR-PLA-001518-001578);
 - j. Plaintiff's Third Supplemental Disclosure;
 - k. Documents submitted with Plaintiff's Third Supplemental Disclosure (STEAR-PLA-001657-001749);
 - l. Plaintiffs Fourth Supplemental Disclosure;
 - m. Documents submitted with Plaintiffs Fourth Supplemental Disclosure (STEAR-PLA-001750-001874);
 - n. Plaintiffs Answers to US's 1st Interrogatories;

- o. Documents submitted with Plaintiffs Answers to US' s 1st Interrogatories (STEAR-PLA-001579-001628);
- p. Plaintiffs Response to US's 1st Request for Production;
- q. Documents submitted with Plaintiffs Response to US's 1st Request for Production (STEAR-PLA-001629-001656);
- r. Plaintiffs Response to US's 2nd Interrogatories;
- s. Documents submitted with Plaintiffs Response to US's 2nd Request for Production;
- t. Plaintiffs Rule 26(1)(2) (A)-(C) Disclosures (Expert Disclosures):
 - i. Expert Report of George L. Kirkham, D. Crim. (STEAR-PLA-001907-001947);
 - ii. Expert Report of Michael W. Rogers, P.E. (STEAR-PLA-001948-001969);
 - iii. Scott Jay Hunter, PhD Curriculum Vitae & Report (STEAR-PLA-002029-002093);
- u. Defendant's 4th Supplemental Disclosure Statement – inclusive;
- v. Medical Records Summary;
- w. Arizona Department of Public Safety Records:
 - i. Accident Report (STEAR-AZDPS-000001-0014);
 - ii. Documents provided by Officer Millius (STEAR-AZDPS-MILIUS-000001-000150);
- x. Bureau of Indian Affairs (STEAR-BIA-000001-000850);
- y. Ann & Robert H. Lurie Children's Hospital of Chicago (STEAR-LCHC-000001-000032);
- z. Dr. Michelle Sagan, Ann & Robert H. Lurie Children's Hospital of Chicago (STEAR-SAGAN-000001-000024);
- aa. Northern Arizona Healthcare (STEAR-NAH-000001-000110);
- bb. Guardian Air (STEAR-NAH-000111-000120);
- cc. Phoenix Children's Hospital Re: [REDACTED] (STEAR-PCH-000001-000566);
- dd. Transcript of Deposition of Scott Jay Hunter, Ph.D., Volume I, dated February 20, 2018, with exhibits):
 - i. Exhibit 1: Curriculum Vitae of Scott Jay Hunter, PhD
 - ii. Exhibit 2: Notes from Dr. Hunter interview of Mr. Motoshige;
 - iii. Exhibit 3: Report prepared by Dr. Hunter, dated October 31, 2017, with testimony list; and
 - iv. Exhibit 4: Hunter Appendix A, MVA Interview.

4. In correspondence from Laurence G. Tinsley, Jr., Esq., dated February 4, 2019 (*Exhibit "B"*), I was asked to provide my opinion as to whether the methodology employed by Scott J. Hunter, Ph.D. - as it pertained to the opinion(s) he proffered in the *Stearney v. USA* matter – met the standard of *Daubert v. Merrell Dow Pharmaceuticals, Inc.*, 509 U.S. 579, (1993).
5. The Specialty Guidelines for Forensic Psychology (*Exhibit "C"*) define forensic psychology as "...professional practice by any psychologist working within any subdiscipline of psychology (e.g., clinical, developmental, social, cognitive) when applying the scientific, technical, or specialized knowledge of psychology to the law to assist in addressing legal, contractual, and administrative matters. Application of the Guidelines does not depend on the practitioner's typical areas of practice or expertise, but rather, on the service provided in the case at hand. These Guidelines apply in all matters in which psychologists provide expertise to judicial, administrative and educational systems including, but not limited to, examining or treating persons in anticipation of or subsequent to legal, contractual, or administrative proceedings; offering expert opinions about psychological issues in the form of amicus briefs or testimony to judicial, legislative, or administrative bodies; acting in and adjudicative capacity; serving as a trial consultant or otherwise offering expertise to attorneys, the courts, or others..."¹
6. The Specialty Guidelines explain that, when acting as a forensic practitioner, psychologists, in part:
 - a. Acquire collateral/third party information (8.03);
 - b. Use multiple sources of information (9.02);
 - c. Seek to obtain sufficient data and document their efforts to do so (9.03);

¹ In his Deposition, Dr. Hunter testified that he does not "identify" as a forensic psychologist. However, he also testified that he was hired by Plaintiff's counsel to be a psychological expert in this matter (Page 33); was serving as a clinical psychology consultant to counsel (Page 108) and; was using his professional knowledge to provide expertise in this matter (Page 118-119).

- d. Must only provide written or oral evidence about the psychological characteristics of particular individuals when they have sufficient information or data to form an adequate foundation for their opinion (9.03);
 - e. When it is not possible to conduct an examination, strive to make clear the impact of such limitations on the reliability and validity of their opinions (9.03); and
 - f. Document all data considered with sufficient detail to allow for reasonable scrutiny and adequate discovery by all parties (10.06);
7. Dr. Hunter is a well-credentialed psychologist with demonstrated expertise in his specialty area. However, in the *Stearney v. USA* matter, his methodology does not meet the applicable or generally accepted standard of practice standard of practice.
8. Interview Data:
- a. Dr. Hunter did not conduct an interview or examination of RH. While it is professionally acceptable to render limited opinions in the absence of direct contact with a subject individual, it is imperative that the resultant limitation(s) with respect to reliability and validity be expressly conveyed.
 - b. The only interview Dr. Hunter conducted in this matter consisted of a single 2-hour international telephonic conversation with RH's grandfather, Tashiaki Motoshige, which was translated by an interpreter.²
 - c. Dr. Hunter did not document the date of Mr. Motoshige's interview in his report. During his deposition, Dr. Hunter was uncertain of the date of his interview with Mr.

² In my experience, even by conservative estimate, the use of a foreign language interpreter essentially doubles the time required to conduct an interview. Stated in reverse, one half of the total time spent is used to acquire actual interview data, while the remaining half of the time is subsumed by the exchange between the translator and interviewer and/or the translator and the interviewee.

Motoshige, but estimated it took place toward the end of October 2017.³

- d. Dr. Hunter did not interview RH's grandmother, as she was reportedly "ill" at the time of his aforementioned contact with RH's grandfather. Dr. Hunter made no attempt to conduct an interview with Mrs. Motoshige at a later date.
- e. In fact, Dr. Hunter made no attempt to seek collateral interviews with *any* parties or persons who may have been able to provide relevant data about RH, either prior or subsequent to the accident, including, but not limited to:
 - i. Teachers;
 - ii. Other school officials/personnel;
 - iii. Extended family/friends; and/or
 - iv. Medical providers.
- f. Dr. Hunter made no effort to seek any information to either corroborate or refute the information provided by Mr. Motoshige.
 - i. Dr. Hunter testified that he was comfortable with the information provided by Mr. Motoshige.
 - ii. Dr. Hunter did not address or discuss the marked potential for intentional or unintentional bias in Mr. Motoshige's perception.

9. Collateral/Corroborating Sources:

- a. In his report, Dr. Hunter did not clearly identify the sources of information he reviewed.


³ Later in the deposition (following a break) Dr. Hunter was able to determine when the interview of Mr. Motoshige took place and provided a date for the record.

- b. Dr. Hunter did not request, nor did he obtain, any collateral or corroborating data beyond the limited records initially provided by counsel.
 - i. To the extent Dr. Hunter did review the records initially provided, it is noteworthy that the entirety of those records were proximal to the March 28, 2014 accident and reflect RH's status approximately three years prior to the date of Dr. Hunter's report.
 - ii. Dr. Hunter did not request, obtain or review any medical, psychological or academic records pertaining to RH's status or care during the three intervening years.
 - iii. Dr. Hunter did not request, obtain or review, any documentation pertaining to RH's pre or post-accident educational or academic performance.
 - 1. Dr. Hunter relied on Mr. Motoshige's account of RH's pre-accident academic performance yet acknowledged that he was unaware of whether or not Mr. Motoshige ever had access to RH's pre-accident educational records.
 - 2. Although Dr. Hunter indicated that Mr. Motoshige did have access to RH's post-accident educational records, he was not aware if Mr. Motoshige reviewed those records prior to their interview.
- 10. In the *Stearney v. USA* matter, the methodology employed by Scott J. Hunter, Ph.D. does not meet the applicable or generally accepted standard of practice, nor does it provide sufficient foundational support for the scope of the opinions he rendered.
 - a. Dr. Hunter addressed and/or opined about RH's psychological status, mood, affect, interpersonal relationships, academic performance, educational engagement, marked psychological/psychiatric treatment needs and prognosis for the future. He did so without

requesting or reviewing a single source document or record pertaining to RH after her return to Japan.

- b. The totality of interview data Dr. Hunter relied upon in forming his opinions about RH consisted of a single, translated, international telephone call with her grandfather.
 - c. Dr. Hunter did not provide reasonable qualifying language about the significant limitation(s) in the nature and quality of the data upon which his opinions were based.
11. Collateral data is fundamental to the integrity, foundation and formation of forensic psychological opinions. The collection and review of multiple relevant sources of information substantiates reliability, mitigates intentional and/or unintentional bias and allows for scrutiny of convergent and divergent validity. In the *Stearney v. USA* matter, Dr. Hunter's methodological omissions include the failure to request or review any collateral source interviews; the failure to request or review sufficient objective medical, psychological or academic records; the reliance upon chronologically remote and limited objective documentation; the reliance upon a single anecdotal account of RH's status over several years leading up to the production of his opinions; and the failure to articulate resultant limitations. As a result, the opinions proffered by Dr. Hunter, including any formal or informal diagnostic impressions and/or treatment recommendations, are inherently invalid and unreliable.

I declare under penalty of perjury of the laws of the United States and the State of Arizona that the foregoing is true and correct.

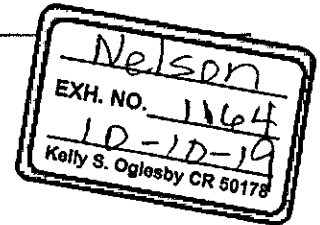


Erin M. Nelson, Psy.D.
Forensic & Clinical Psychologist

2.21.19

Date

EXHIBIT 9



2017 WL 5523843 (Ariz.Super.) (Expert Report and Affidavit)
Superior Court of Arizona.
Maricopa County

Erica RAHN,
v.
CITY OF SCOTTSDALE.

No. CV2012017693.
October 7, 2017.

Affidavit of Erin M. Nelson, Psy.D.

Case Type: Civil Rights & Constitutional Law >> False Arrest

Case Type: Malicious Prosecution & Abuse of Process >> N/A

Case Type: Privacy >> N/A

Jurisdiction: Maricopa County, Arizona

Name of Expert: Erin M. Nelson, Psy.D.

Area of Expertise: Health Care-Physicians & Health Professionals >> Psychologist

Area of Expertise: Social Science >> Behavioral Science

Representing: Unknown

State of Arizona)

County of Maricopa)

I, Erin M. Nelson, declare:

My name is Erin M. Nelson, Psy.D. I am of legal age and competent to testify in Court. The facts stated herein are based on my personal knowledge, and I could and would testify to these facts in a court of law if asked to do so.

1. I am a forensic and clinical psychologist licensed in the states of Arizona and California.
2. In addition to my private forensic and clinical practice, I am the Director of the Behavioral Sciences curriculum for the University of Arizona College of Medicine - Phoenix. I am also an Assistant Professor in the College of Medicine's Departments of Psychiatry and Bioethics and Medical Humanism. See *Exhibit "A"*, Curriculum Vitae.
3. As a forensic psychologist, I have video-recorded hundreds of independent psychological examinations in both civil and criminal matters.
4. I have extensively researched the use of video recording forensic mental health evaluations and co-authored an article that was published in the Journal of Forensic Sciences about this subject entitled, *Preserving the Integrity of the Interview: The Value of Videotape*. See *Exhibit "B"*.
5. It has been my position for several years that the presence of a third party adverse to the process can interfere with an independent psychological examination. The presence of a third party during a one-on-one examination unavoidably changes

the interaction between interviewer and subject. The validity of the examination will be adversely affected and the third person's presence to monitor me transforms the evaluation into an adversarial process. Ms. Rahn may respond differently than she would out of the presence of the third person. Ms. Rahn might, without realizing it, respond to questions in ways that she ordinarily would not but for the presence of the third person in the interview, which fundamentally changes the nature of the interview.

6. While the presence of a third party adverse to the process can be a disruptive influence, there is no objective data to suggest that the presence of audio or video recording equipment is a distraction, will diminish the accuracy of the process, or distort psychological openness or effect the spontaneity of the process.

7. It is my practice to record, through the use of both audio and video recording, all forensic interviews. A third person is not present during the interview. I have regularly used this method of examination on cases for which I have testified as an expert.

8. In my opinion, the use of video recording enables the interviewer to capture the subject's unique image, as well as all verbalizations and non-verbal behavior. It allows all interested parties to see the demeanor, body language and subtle aspects of the interview that cannot be captured with note taking or audio recording by itself. Audio and video recording eliminate the need for the examiner to take notes during the interview and eliminate the possibility of any unintentional bias in the selection of what is documented by the note-taker. The recordings preserve the data in order for all subsequent evaluators (*including plaintiff's counsel and plaintiff's own expert*) to have access to equivalent material. This method also creates an unbiased record; it holds the examiner up to scrutiny, but protects her against unfounded claims of impropriety from the fallible memory of a live witness. Further, video and audio recording the examination eliminates the need for a third person in the room. In a forensic psychological examination, this third person witness is disruptive and adversely affects the interview. In short, it is my opinion that the combination of audio and video recording is an unparalleled instrument for preserving the integrity of a forensic psychological interview.

9. It has been my experience that the use of video and audio recording equipment has no substantive effect on the overall emotional well-being of the examinee.

10. Video recording forensic psychological examinations is the best way to insure the integrity of the process. Video recording forensic psychological examinations also serves as a safeguard and protection for both the evaluator and evaluatee. This procedure will record the honesty, thoroughness and objectivity of the evaluator's work and will not interfere unnecessarily with the evaluation.

I declare under penalty of perjury of the laws of the United States and the State of Arizona that the foregoing is true and correct.

State of Arizona)

)

County of Maricopa)

I hereby certify that the foregoing Affidavit was subscribed and sworn to before me on this 7th day of October 2014, by Erin M. Nelson, Psy.D.

End of Document

© 2019 Thomson Reuters. No claim to original U.S. Government Works.

EXHIBIT 10

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

DEPOSITION OF ROBERT ZACKERY KOEHLER

Phoenix, Arizona
December 17, 2018
9:35 a.m.

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

PREPARED FOR:

ROBERT ZACKERY KOEHLER, 12/17/2018

1 Q. Was part of what you did at the time the fix and
2 flip, purchasing property out of trustee sales?

3 A. Yes, we were lending to fix and flippers at that
4 time.

5 Q. So was he your trainee in respect to that
6 portion of the business as well?

7 A. Yeah. I believe we went to trustee sales
8 together to watch them.

9 Q. Did you show him how to document those
10 transactions?

11 A. I'm sure, yes. How to fill in deeds of trust,
12 et cetera.

13 Q. Do you recall sort of part of that, I will put
14 "training" in quotes, how to ensure that your loan is in
15 first position on a piece of property?

16 A. I don't know that I was as qualified back then
17 to make that judgment, but I would say yes. Whatever I
18 knew, I was trying to share with him.

19 Q. Do you know if Real Estate Equity Lending at
20 that time was providing funds directly to the trustee
21 through trustee sales situations?

22 A. I don't remember how they were paid for then. I
23 don't remember.

24 Q. What were your impressions of Mr. Chittick?

25 A. I liked him. He was smart. I was impressed

ROBERT ZACKERY KOEHLER, 12/17/2018

1 that he was, you know, a young retired person. And, yeah,
2 we got along well.

3 Q. Eager to learn?

4 A. Oh, yeah.

5 Q. Detail oriented?

6 A. Yes.

7 Q. Conservative lending approach?

8 A. I would say yes.

9 Q. And how long would you say he sort of tailed you
10 at Real Estate Equity Lending?

11 A. I'm not sure how long. Maybe a couple months.

12 Q. What happened after that?

13 A. I believe he started DenSco at some time after
14 that. I can't remember exactly when.

15 Q. So this still would have been in the 2001/2002
16 timeframe?

17 A. I don't remember. It seems later.

18 Q. Yeah.

19 A. The years kind of mixed. I'm not sure, but
20 somewhere between 2001 and let's say 2004. That would be
21 my guess.

22 Q. Did you come to consider Mr. Chittick a friend?

23 A. Yes.

24 Q. Did you guys socialize?

25 A. We didn't do much outside of work together, but

ROBERT ZACKERY KOEHLER, 12/17/2018

1 I would see him, you know, out of the office or we would
2 run into him at, like, kids' sporting events or something
3 like that.

4 Q. When Mr. Chittick left to form DenSco, did he
5 maintain his investment at Real Estate Lending, if you
6 know?

7 A. I don't know for sure.

8 Q. And how long were you at Real Estate Lending?

9 A. Until 2007 or '08. No. 2006 or '07. 2006.
10 Either the end of 2006 or beginning of 2007.

11 Q. And did you leave Real Estate Lending -- Equity
12 Lending to form your company?

13 A. Yes.

14 Q. Do you recall whether you then turned to
15 Mr. Chittick for advice on how to start your own?

16 A. I believe I asked him for a referral for
17 Mr. Beauchamp, which he ended up giving me Mr. Beauchamp.

18 Q. Anything else?

19 A. I think mostly I had questions about the
20 formation of the company and just getting the private
21 offering set up.

22 Q. Did you turn to him for introductions to
23 potential investors?

24 A. No.

25 Q. Did you turn to him for information on potential

1 THE WITNESS: Yeah, I don't think I can. I -- I
2 can't recall any specific conversations or anything that
3 would lead me to, you know, take that conclusion.

4 Q. (BY MR. RUTH) Did he ever express any sort of
5 positive feelings about his relationship to you or did he
6 just not discuss it at all?

7 A. After the divorce or before?

8 Q. At any time.

9 A. I mean, I -- let me think. I had no -- before
10 the divorce, I had no reason to think they had any
11 problems, and I would assume that -- I mean, they always
12 seemed to get along, so I had nothing, no indicators
13 either way.

14 Q. So after the divorce, do you know whether
15 Mr. Chittick ever dated anybody?

16 A. Not that I heard of, no.

17 Q. He never discussed any girlfriends?

18 A. No.

19 Q. Did he ever mention any dates?

20 A. He mentioned the ladies at the school being --
21 paying attention to him a little more. That's one comment
22 I do remember.

23 Q. But that was about the extent of it?

24 A. That was the extent of it.

25 Q. I know you mentioned that you didn't recall who

1 his friends might be.

2 Can you think of who he might have confided in
3 about his relationships or about his marriage?

4 A. I would -- if I had to pick one, I would assume
5 it would be his parents. He was close to them. But
6 not -- I can't think of anybody else.

7 Q. At some point you became an investor in DenSco,
8 correct?

9 A. Yes.

10 Q. Do you recall when that was?

11 A. I do not.

12 Q. I will track it down.

13 A. Yeah.

14 MR. RUTH: Can we go off the record real quick.

15 (An off-the-record discussion.)

16 (Deposition Exhibit No. 650 was marked for
17 identification.)

18 Q. (BY MR. RUTH) Mr. Koehler, I have handed you
19 what I understand to be the claim that you filed in this
20 case, so feel free to flip through and let me know if this
21 appears to be accurate and complete.

22 A. Yes, it looks accurate and complete.

23 Q. So if you flip to the first page, that's your
24 signature, claimant oath?

25 A. Yes.

ROBERT ZACKERY KOEHLER, 12/17/2018

1 Q. And the total amount of your claim is
2 \$176,335.49?

3 A. Yes.

4 Q. I notice that the Proof of Claim asks you to add
5 your principal invested, which was 84,000, is that
6 correct?

7 A. Yes.

8 Q. And then interest accrued but not paid through
9 December 31st, 2012.

10 Do you see that?

11 A. Yes.

12 Q. And your interest accrued was 92,335.49?

13 A. Yes.

14 Q. Do you know why you didn't accrue or get to
15 claim interest beyond December 31st, 2012?

16 A. I do not know. My assumption is it had
17 something do with a point of insolvency or something.

18 Q. Did you yourself do any sort of analysis as to
19 when that point of insolvency should have been or whether
20 you should get to add interest beyond December of 2012?

21 A. I don't think I made an effort to argue it or
22 research it harder.

23 Q. If you flip -- I apologize that this isn't Bates
24 labeled. If you flip about five pages beyond that, you
25 will get to a DenSco Investment Corporation General

ROBERT ZACKERY KOEHLER, 12/17/2018

1 Q. Did you review your monthly statements when you
2 got them?

3 A. Yes.

4 Q. I believe the last Private Offering Memorandum
5 that was issued by DenSco was dated in the summer of 2011.

6 Did it concern you at all that you didn't
7 receive an updated Private Offering Memorandum after 2011?

8 A. I don't remember being concerned about that, but
9 I was also having fairly regular conversations with Denny,
10 so nothing caused alarm.

11 Q. And in those fairly regular conversations with
12 Denny, he was sort of keeping you abreast of what was
13 going on with DenSco?

14 A. Yeah. I would say when he -- when we did talk,
15 he would say what the status was.

16 Q. When you say "fairly regular," was that like a
17 couple times a year, once a month?

18 A. I would say not monthly, but more than a couple
19 times a year.

20 Q. And did those conversations occur in 2014 and
21 2015 as well?

22 A. I would assume so, but I don't know for sure.

23 Q. Do you recall during these regular conversations
24 with Mr. Chittick that he ever expressed to you any issues
25 with DenSco?

1 A. No.

2 Q. Any issues with any borrowers?

3 A. That's possible, yes. Sometimes he would have a
4 specific borrower that he would want to warn me about or
5 said he was dealing with a problem.

6 Q. Mr. Menaged probably was never one of those
7 borrowers that he --

8 A. No.

9 Q. During these regular conversations did
10 Mr. Chittick ever raise with you the issue of him being in
11 second position on --

12 A. No.

13 Q. No.

14 Did he ever discuss with you an entity by the
15 name of auctions.com?

16 A. No, but I know that entity.

17 Q. Okay. But you never got the sense from his
18 conversations that any of DenSco's lending had anything to
19 with auctions.com?

20 A. No.

21 Q. So at some point did you agree to sort of serve
22 as Mr. Chittick's backup or failsafe in the event he
23 became incapacitated?

24 A. Yes, I did.

25 Q. And what led to that arrangement?

ROBERT ZACKERY KOEHLER, 12/17/2018

1 A. Denny reached out to me at some point, and I
2 can't remember when, and asked if I would fill that role
3 because he was a one-man show, basically.

4 Q. And what was your reaction to that request?

5 A. I said I would do it.

6 Q. I mean, it seems to me that it seems like a big
7 responsibility, correct, to sort of step into the shoes of
8 the sole proprietor of a business?

9 A. Yes.

10 Q. Is it safe to say that your agreeing to take on
11 this role meant you had some trust in how Denny ran his
12 business?

13 A. Yes.

14 Q. And in his recordkeeping procedures?

15 A. Yes.

16 Q. This next one is going to be a little more
17 complicated. So the binders next to you contain exhibits
18 that have already been marked in this case.

19 A. Okay.

20 Q. And we are just going to go through a couple of
21 them very briefly. If you see a binder sitting right in
22 that chair next to you that's got Exhibit 430.

23 MR. STURR: Can you just tell me what it is?

24 MR. RUTH: It's the 2007 POM. I do have a copy
25 for you.

ROBERT ZACKERY KOEHLER, 12/17/2018

1 MR. STURR: Marvin -- since you probably don't
2 know, a witness can ask for the right to review a
3 transcript and make corrections to it.

4 THE WITNESS: Okay.

5 MR. STURR: And they can waive the right. You
6 actually have to ask for it now. So if you wanted the
7 right to review the transcript to make sure your testimony
8 is accurate, we can -- you can make that request and
9 Marvin or I will get you a copy, if that's what you would
10 like. It's up to you. It's 30 days you will have to
11 review it.

12 THE WITNESS: And I have a copy that I can
13 review?

14 MR. RUTH: Yes, we will provide you one.

15 THE WITNESS: Yeah, I will take a copy of that.

16 MR. STURR: Okay.

17 (1:00 p.m.)

18

19

20

ROBERT ZACKERY KOEHLER

21

22

23

24

25

ROBERT ZACKERY KOEHLER, 12/17/2018

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

12/30/2018

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

12/30/2018

Date

EXHIBIT 11

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

DEPOSITION OF DAVID MARK PRESTON

Phoenix, Arizona
January 25, 2019
12:09 p.m.

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

PREPARED FOR:

DAVID MARK PRESTON, 1/25/2019

1 corporation, to DenSco. So all the bills for his personal
2 were billed into DenSco.

3 Q. Do you know if those invoices and bills were
4 provided to the receiver pursuant to the receiver
5 subpoena?

6 A. I'm not certain. I think they were.

7 Q. You understand that DenSco was in the business
8 of lending money secured by real estate, correct?

9 A. Yes, I am.

10 Q. Do you personally or does Preston CPA do any
11 lending like that?

12 A. No, we don't.

13 Q. And you personally don't?

14 A. No, I don't.

15 Q. Have you ever invested with any other hard-money
16 lenders who were engaged in that kind of practice?

17 A. No, I haven't.

18 Q. So DenSco was the only entity that you invested
19 in?

20 A. Correct.

21 Q. Are you a member of or own an entity known as
22 KTP Range Rider?

23 A. Yes, I do.

24 Q. Can you tell me real briefly what that is?

25 A. It is a land investment partnership owned

DAVID MARK PRESTON, 1/25/2019

1 between myself, my family's corporation, and my
2 mother-in-law. We invested in a piece of property with a
3 client up in Pinetop, Arizona.

4 Q. So that entity holds a piece of real estate?

5 A. We own an investment -- we own an interest in a
6 partnership that owns real estate in Pinetop, Arizona.

7 Q. Is that improved property?

8 A. It is. It's got -- it's got roads and sewer and
9 that kind of stuff on it.

10 Q. But there is no buildings or residences?

11 A. Right. No. It's just bare land. Residential
12 lots.

13 Q. When did you first meet Mr. Chittick?

14 A. When did I first meet Mr. Chittick? I'm not
15 exactly certain. I would probably guess in the early
16 '90s, when he was a client of a firm that I was partner in
17 called Gallant & Company. I believe he was a client of
18 that firm. And I was asked to go out and run the Tempe
19 office for Gallant & Company, and I think that's when I
20 met Mr. Chittick. I'm not exactly sure of the date, but
21 early '90s.

22 Q. And so Mr. Chittick was a personal client of
23 Gallant & Company or was there --

24 A. Yes, they were. Yes, he was.

25 Q. And did you -- were you sort of the person at

DAVID MARK PRESTON, 1/25/2019

1 Gallant who handled Mr. Chittick's business needs at
2 Gallant?

3 A. Yes, I was.

4 Q. And what were those needs at the time?

5 A. Just tax compliance and tax planning, similar to
6 what we are doing as Preston CPA.

7 Q. Do you know if Mr. Chittick was -- owned his own
8 company at the time?

9 A. I don't believe he owned his own company at the
10 time, because I believe DenSco was formed roughly in the
11 early 2000s, so I don't think he had his own company back
12 when I first met him. I believe he might have been
13 involved with Insight Enterprises, but I'm not sure.

14 Q. What were your initial impressions of
15 Mr. Chittick?

16 A. I thought that he was a good businessman and
17 that he was very knowledgeable with business and was very
18 good financially and was somebody that I trusted,
19 obviously.

20 Q. At that time, what gave you the impression that
21 he was good financially or a good businessman?

22 A. Just the way he spoke, the things he did with
23 his money. He seemed to invest it wisely and wasn't a --
24 seemed to be a conservative investor and, you know, seemed
25 to know a lot about finance, so that gave me the

DAVID MARK PRESTON, 1/25/2019

1 impression he was a good businessman.

2 Q. From the time that you met Mr. Chittick in the
3 early '90s when you were affiliated with Gallant & Company
4 doing his tax planning, have you been doing
5 Mrs. Chittick's tax planning and tax preparation since
6 that time?

7 A. Yes, I have.

8 Q. Any gaps where you weren't doing the tax
9 planning?

10 A. I don't believe so.

11 Q. As far as you know, were you always the one who
12 did the tax planning and tax preparation for DenSco?

13 A. Yes, I believe I was.

14 Q. Did you come to consider Mr. Chittick a friend
15 during this time or more of a business relationship?

16 A. It was more of a business relationship. I mean,
17 obviously I trusted him. I invested with him, so...

18 Q. How frequently would you say you communicated
19 with Mr. Chittick outside of tax preparation? Did you
20 ever do anything socially?

21 A. We played in a golf tournament together once. I
22 saw him once a year at a DenSco party that he always had
23 at his house. I might go to a basketball game or a
24 football game with him once a year, something like that.
25 So I would see him socially a couple times a year.

DAVID MARK PRESTON, 1/25/2019

1 (Deposition Exhibit No. 681 was marked for
2 identification.)

3 Q. (BY MR. RUTH) Dave, I have handed you what's
4 been marked as Exhibit 681. You are not on this email.
5 It's an email from Denny to someone by the name of Warren
6 Bush.

7 MR. POLESE: Well, yeah, he is on it. It says
8 to --

9 THE WITNESS: To Dave Preston.

10 MR. POLESE: -- Dave Preston. Down below.

11 MR. RUTH: Okay. The initial -- the initial
12 email.

13 MR. POLESE: Okay.

14 Q. (BY MR. RUTH) Correct.

15 The first email in the chain is from Denny to a
16 group of people, including yourself, right? Dave Preston
17 at prestoncpa.biz.

18 Do you see that?

19 A. Where are you looking?

20 Q. Right there. It's from Denny to --

21 A. To me.

22 Q. -- yourself, along with a host of other people.

23 A. Okay.

24 Q. Is that your correct email address?

25 A. Yes.

DAVID MARK PRESTON, 1/25/2019

1 that. I don't know what point.

2 Q. Do you recall what the reasoning was as to why
3 he shouldn't be doing it?

4 A. I think it went against the ERISA rules or
5 something, that it was a self-dealing kind of thing. So
6 he had wanted his retirement plans to make the same amount
7 of money or make good money out of the investment. And I
8 think at some future date, Pension Strategies had told him
9 that -- I think we were on a conference call, told him
10 that we should not be doing that. It's self-dealing or
11 something, as I recall.

12 Q. So as far as you know -- it's okay if you don't
13 know -- these monies weren't lent to the company because
14 the company needed an infusion of cash?

15 A. No.

16 Q. This was just part of Denny's investment?

17 A. As far as I know, they were not put in because
18 DenSco needed money.

19 Q. And my same question here.

20 Did you need this level of detail on the
21 long-term liabilities as to who was owed what?

22 A. No.

23 Q. You just needed the total number --

24 A. Yes.

25 Q. -- for tax return purposes?

DAVID MARK PRESTON, 1/25/2019

1 A. Yes.

2 Q. As an investor, did you review any of this
3 information just because it piqued your interest?

4 A. No. No, I'm sorry to say, no, I didn't.

5 Q. DP77. At the top it lists, under professional
6 fees, it lists accounting and legal fees.

7 Do you see that?

8 A. Yes, I do.

9 Q. As far as you knew, were you the only person
10 incurring accounting expenses for DenSco?

11 A better way of putting that, as far as you
12 know, were you the only accountant for DenSco?

13 A. I think I was the only accountant. I don't know
14 if he paid other people to work on his books, i.e., I'm
15 thinking perhaps his sister Shawna might have done some
16 accounting work. I don't know. I don't know if those are
17 all our fees or not.

18 Q. Do you know if he ever hired his sons to do any
19 work for DenSco?

20 A. I believe he did hire his son sometime to do
21 some office kind of work so that they could get paid some
22 money.

23 Q. What about Ranasha? Do you know if she was ever
24 paid?

25 A. I don't believe she was paid by DenSco.

DAVID MARK PRESTON, 1/25/2019

1 Q. Okay. You will see legal fees of \$23,000 listed
2 there.

3 You knew that Mr. Beauchamp was counsel for
4 DenSco?

5 A. Yes.

6 Q. Did you know or do you know whether DenSco had
7 any other attorneys?

8 A. I don't know.

9 Q. Prior to Mr. Chittick's death, did you ever
10 speak with or communicate with Mr. Beauchamp?

11 A. I don't believe so.

12 Q. And if you keep going, DP80, you will see again
13 this long spreadsheet of properties.

14 Is this something you would have looked at?

15 A. We probably have a copy of it. I'm not so sure
16 I would have looked at it, unless -- I don't know if I
17 would have looked at it or not. I didn't need it to
18 prepare the tax return.

19 Q. So I take it by that answer, you weren't looking
20 at DenSco's loan-to-value ratio --

21 A. No.

22 Q. -- or how many loans were in default or anything
23 like that?

24 A. No, I was not.

25 (Deposition Exhibit No. 689 was marked for

DAVID MARK PRESTON, 1/25/2019

MR. POLESE: We will read and sign.

(3:17 p.m.)

David Mark Preston

DAVID MARK PRESTON

RECEIVED FEB 06 REC'D

EXHIBIT 12

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
)
)
)
)
)
)
)

DEPOSITION OF PAUL KENT

Phoenix, Arizona
March 19, 2019
9:04 a.m.

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

PAUL KENT, 3/19/2019

1 Q. And what do you do? Do you pretty much do
2 everything there or --

3 A. Yeah. I mean, I don't -- when I'm there, I am
4 helping the staff that's employed, but generally I'm doing
5 the managerial and the accounting and marketing from
6 Tempe.

7 Q. And does the business own the property that it's
8 on? Did you purchase the property?

9 A. No. It's a public-private partnership with
10 Coconino County.

11 Q. Have you had any experience with real estate or
12 financing, other than this PPP?

13 A. Not really. I own a house.

14 Q. So I'm going to get into some questions about
15 Denny.

16 A. Uh-huh.

17 Q. I'm going to apologize, because some of this is
18 personal and it feels a little probing.

19 But when did you -- when did you meet Denny?

20 A. I don't recall specifically, but I'm sure it was
21 1989.

22 Q. And was that through working at Insight?

23 A. Yes.

24 Q. And how did you become friends?

25 A. Long hours of work in the same close area.

PAUL KENT, 3/19/2019

1 Q. And would you say that you became friends pretty
2 early on and in the 1989, 1990 area or was it quite a bit
3 after?

4 A. I would say, you know, I was there sometime --
5 I'm not overly outgoing, so I would say probably '90
6 maybe.

7 Q. And for the 16 years that you were at Insight,
8 did you talk to him daily pretty much?

9 A. I don't -- I don't recall that. I --
10 frequently, but I don't know daily.

11 Q. Okay. And then after you left Insight, did you
12 continue to talk to him frequently or was it less often?

13 A. Less often, yeah, for sure.

14 Q. About how often?

15 A. I would say that there were -- there were years
16 when we spoke maybe every couple months, and there were
17 years that we spoke much more frequently, like weekly, you
18 know, especially after he got married and had kids.

19 Q. So after you got married and had kids, you
20 talked to him you would say more weekly?

21 A. Yes, because we have children that are similar
22 ages.

23 Q. And did you know his family?

24 A. Yes.

25 Q. Did you ever discuss his relationship with his

PAUL KENT, 3/19/2019

1 parents?

2 A. Not that I recall.

3 Q. Did you discuss his relationship with his
4 siblings?

5 A. Discussion is probably not the right word. He
6 had nicknames for his sisters, and so he would say the
7 blonde is doing this, Squit is doing this, and that's
8 what's happening. The blonde is his blonde sister.

9 So I, frankly, didn't know all of their names
10 for years, because he only referred to them as their
11 nicknames. So he would just comment on what they were
12 doing. We weren't -- it wasn't like a discussion back and
13 forth about that. I would probably tell him what my
14 brother was doing or something like that.

15 Q. And did you meet his parents and his siblings?

16 A. Yes.

17 Q. Do you have a sense of the relationship from
18 what you saw?

19 A. The relationship, the interfamily relationship?

20 Q. Uh-huh.

21 A. Just as an observer, they seemed fairly typical.
22 You know, all families interact with each other
23 differently. So they interact differently than my family
24 does, but it wasn't -- it seemed -- it seemed good, you
25 know. They seemed to have a good relationship.

PAUL KENT, 3/19/2019

1 very different than me, and he is very smart, quick,
2 trustworthy, and reliable.

3 Q. Others have said that he was the smartest guy in
4 the room, particularly with financing.

5 would you agree?

6 MR. STURR: Object to the form.

7 THE WITNESS: Yes, especially compared to me,
8 but, yes, absolutely.

9 Q. From your impression, did Denny general follow
10 advice given by other people to him?

11 MR. STURR: Foundation, form.

12 THE WITNESS: I mean, from my experience, I
13 would say so.

14 Q. And if he disagreed with that advice, would he
15 still follow it?

16 MR. STURR: Form and foundation.

17 THE WITNESS: You know, I don't know.

18 Q. Did your impression of Denny change over time?

19 A. No.

20 Q. Did he seem isolated?

21 A. No, not especially.

22 Q. Did he seem to be having any mental issues at
23 any point in time?

24 A. No.

25 Q. Did Denny talk to you about starting DenSco?

PAUL KENT, 3/19/2019

1 A. I don't think he talked to me about starting
2 DenSco. I believe that I was living not in the country
3 when he was thinking about starting it.

4 Q. And so at what point did you become aware of
5 DenSco?

6 A. That's a good question. I don't know. I know
7 when I -- I don't recall specifically when I invested, but
8 I felt very comfortable at that, whatever date that was.

9 Q. Do you think around when you invested is when
10 you would have learned of DenSco?

11 A. I probably learned about DenSco maybe six months
12 or a year before. Just either the concept or that he had
13 started it or, I don't know. It's a long time ago.

14 Q. I hear ya.

15 And do you remember what you initially learned?

16 A. Just the concept of there are people out there
17 that buy houses and fix them up in a short period of time,
18 and then charge more than what they paid for it and what
19 they remodeled it for, and then they pay back the loan and
20 they make the spread. The concept of the business, that
21 was what I learned about it.

22 Q. And so you generally understood that DenSco
23 would be providing loans to individuals who flipped --

24 A. Yes.

25 Q. -- houses?

PAUL KENT, 3/19/2019

1 And then would be paid back with interest?

2 A. Yes.

3 Q. Let's go -- it's actually three documents in.

4 It has 1141 on the bottom.

5 (Deposition Exhibit No. 785 was marked for
6 identification.)

7 Q. So this is a large stack --

8 A. Okay.

9 Q. -- of subscription agreements.

10 A. Okay.

11 Q. You can take a quick minute to look through it.
12 It's marked Exhibit No. 785. But it may help you with
13 timing.

14 A. Okay. Yeah.


15 MR. STURR: Shelley, before you begin, can you
16 just, for the record, identify the source of the document?
17 It has multiple Bates numbers on different pages.

18 MS. TOLMAN: Yes. So we took the documents, and
19 you can see the Bates numbers, we took the documents that
20 were submitted as groups of subscription agreements, but
21 some of them were not complete in these sets, and so then
22 we added a complete version just so that we would have the
23 most complete version for the record. And these have all
24 been produced at some point in time in the litigation with
25 Bates numbers.

PAUL KENT, 3/19/2019

MR. ZIMMERMAN: Thank you.

(11:55 a.m.)



PAUL KENT

RECEIVED APR 19 REC'D

Colin F. Campbell, 004955
Geoffrey M. T. Sturr, 014063
Joseph N. Roth, 025725
Joshua M. Whitaker, 032724
OSBORN MALEDON, P.A.
2929 North Central Avenue, 21st Floor
Phoenix, Arizona 85012-2793
(602) 640-9000
ccampbell@omlaw.com
gsturr@omlaw.com
jroth@omlaw.com
jwhitaker@omlaw.com

Attorneys for Plaintiff

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

ORDER

(Assigned to the Honorable
Daniel Martin)

Having considered Plaintiff's Motion to Exclude Opinion of Dr. Erin Nelson
Under Rule 702 and *Daubert*, filed December 4, 2019, and good cause appearing,

IT IS HEREBY ORDERED granting the motion.

DATED this ____ day of ____, 2019.

Honorable Daniel Martin
Judge of the Superior Court