

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

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686	Email from Denny Chittick to Dave Preston dated 3/5/2013 with attachments (DOCID_00065266 and 65267)	53	54
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DAVID MARK PRESTON, 1/25/2019

1 DEPOSITION OF DAVID MARK PRESTON, commenced at
2 12:09 p.m. on January 25, 2019, at the law offices of
3 Coppersmith Brockelman, PLC, 2800 North Central Avenue,
4 Suite 1900, Phoenix, Arizona, before KELLY SUE OGLESBY, a
5 Certified Reporter, CR No. 50178, in and for the County of
6 Maricopa, State of Arizona, pursuant to the Rules of Civil
7 Procedure.

8 * * *

9 APPEARANCES

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Phoenix, Arizona
January 25, 2018
12:09 p.m.

* * *

DAVID MARK PRESTON,
called as a witness herein, having been first duly sworn,
was examined and testified as follows:

EXAMINATION

Q. (BY MR. RUTH) Good afternoon, Mr. Preston.

Do you mind if I call you David or do you prefer
Mr. Preston?

A. You can call me Dave.

Q. Okay. Dave?

A. Uh-huh.

Q. All right. Dave, can you please state your name
and date of birth?

A. Sure. My name is David Mark Preston, and my
date of birth is December 21st, 1955.

Q. Dave, have you been deposed before?

A. No.

Q. This is your first time?

COURT REPORTER: Is that "yes"?

THE WITNESS: Yes.

Q. (BY MR. RUTH) In fact, that leads me to my next

DAVID MARK PRESTON, 1/25/2019

1 set of instructions, which is to lay out some parameters
2 for how these things work in the best way for our court
3 reporter to take down your testimony and my questions.

4 First off, your answers have to be verbal, so
5 you can't shake your head or use uh-huhs or nuh-uhs. It
6 has to be a yes or a no. That way the court reporter can
7 get down your response.

8 Does that make sense?

9 A. Yes.

10 Q. I will do my best to let you finish your answer
11 before I launch into my next question. If you could also
12 do your best to let me get my question out before you
13 start answering. I know sometimes it's easy to anticipate
14 what I might be getting at, but that way we won't be
15 talking over each other and the record will be clear.

16 Does that make sense?

17 A. Yes.

18 Q. If you don't understand a question that I ask,
19 please let me know and I will try my best to rephrase it
20 in a way that does make sense to you. If you answer one
21 of the questions that I ask, I'm going to assume that you
22 understood it.

23 Is that fair?

24 A. Yes.

25 Q. You are here with your counsel, correct,

DAVID MARK PRESTON, 1/25/2019

1 Mr. Polese?

2 A. Yes.

3 Q. There are times Mr. Polese or Mr. Sturr or
4 Mr. Campbell might object to one of my questions. You
5 will hear them say "Objection to form." If you hear that,
6 you can still answer my question. Those objections are
7 for the record. So as long as you understand my question,
8 please go ahead and answer it. Of course if your counsel
9 instructs you not to answer a question, that's -- don't
10 answer it.

11 A. Yes.

12 Q. If you need a break at any time, please let me
13 know. I'll try to break regularly just to make sure I'm
14 organized, but if you need to take a break at any time to
15 talk to your counsel, use the restroom, get a drink of
16 water, let me know and we will take a break.

17 A. Okay.

18 Q. Is that understood?

19 A. Uh-huh. Yes. I'm trying to remember to say
20 yes. Sorry. I have a tendency of shaking my head.

21 Q. If at any point you feel like you need to talk
22 to Mr. Polese, please let me know. As long as we're not
23 in the middle of a question, we will break so you can talk
24 to your counsel.

25 A. Okay.

DAVID MARK PRESTON, 1/25/2019

1 Q. Dave, did you do anything to prepare for the
2 deposition today?

3 A. I met with Mr. Polese and he kind of told me
4 what happens in a deposition.

5 Q. And of course I don't want to know anything
6 substantively that you discussed.

7 Did you review any documents with Mr. Polese?

8 A. No.

9 Q. You understand that we are here because I
10 represent Clark Hill and David Beauchamp?

11 A. I didn't know who you represented --

12 Q. Okay.

13 A. -- to be honest.

14 Q. Okay. Do you understand that the receiver for
15 the DenSco estate, Peter Davis, has sued Clark Hill and
16 Mr. Beauchamp?

17 A. That's what I understand.

18 Q. Do you have any understanding as to what that
19 lawsuit is about?

20 A. Not really, no.

21 Q. Not even a general idea?

22 A. I mean, I can only guess.

23 Q. Yes. And I'm not asking you to guess.

24 MR. POLESE: He doesn't want you to guess or
25 want you to speculate, so if you know, you know. If you

DAVID MARK PRESTON, 1/25/2019

1 don't, say so.

2 Q. (BY MR. RUTH) Have you ever spoken with
3 Mr. Sturr or Mr. Campbell --

4 A. No.

5 Q. -- about this lawsuit?

6 what about the receivership, in general? Have
7 you spoken with Mr. Sturr or Mr. Campbell about it?

8 A. No.

9 Q. Have you spoken to the receiver, Peter Davis,
10 about this lawsuit?

11 A. No.

12 Q. Have you talked to any of the other investors in
13 DenSco about this action against Clark Hill?

14 A. No.

15 Q. Do you understand that the receiver, Mr. Davis,
16 has a website set up for both the receivership and for the
17 actions he is taking on behalf of the receivership?

18 A. Yes.

19 Q. Do you regularly visit that website?

20 A. No.

21 Q. Have you ever visited the website with respect
22 to this proceeding against Clark Hill or Mr. Beauchamp?

23 A. No.

24 Q. How often would you say you visit that website?

25 A. Once or twice.

DAVID MARK PRESTON, 1/25/2019

1 Q. A year or total?

2 A. Total.

3 Q. Okay. Are you aware of any other potential
4 claims that the receivership has against third parties in
5 an effort to collect money for the DenSco estate?

6 A. I mean, I am an investor in the DenSco, so the
7 receiver, I get all the receiver's information. So I know
8 they -- when they went after this guy that went to prison
9 and all that, and they got some of his assets or some
10 furniture and some of that, but, no, I just know in
11 general terms what has happened.

12 Q. The receiver issues a report once or twice a
13 year.

14 Have you reviewed those reports?

15 A. Yes, I have.

16 Q. Did you follow up with the receiver with any
17 questions as to those reports?

18 A. No, I did not.

19 Q. Have you participated in any conference calls or
20 meetings with the receiver?

21 A. No, not that I recall.

22 Q. Have you ever spoken to one of the receiver's
23 lawyers, Ryan Anderson?

24 A. Yes, I have.

25 Q. What was the nature of those conversations?

DAVID MARK PRESTON, 1/25/2019

1 A. It was early on in the meetings. I think I went
2 to an investor meeting. Mr. Anderson was there,
3 explaining what the receiver was trying to go after and
4 what the situation was.

5 Q. Did you take notes or anything like that at that
6 meeting?

7 A. I probably did.

8 Q. Do you still have those notes?

9 A. I'm not sure.

10 Q. Did Mr. Anderson hand out any materials or
11 documents at that meeting?

12 A. I don't believe so. Mr. Davis may have.

13 Q. Mr. Davis was at the meeting as well?

14 A. Uh-huh.

15 Q. Is there a PowerPoint or anything like that or
16 some sort of presentation?

17 A. I mean, it's been a long time. I don't think
18 there was a presentation. I don't believe there was a
19 PowerPoint.

20 Q. Dave, you own a company known as Preston CPA,
21 P.C.?

22 A. Correct.

23 Q. And are you the only owner of that company?

24 A. I am.

25 Q. Any employees?

DAVID MARK PRESTON, 1/25/2019

1 A. Yes, I have four employees.

2 Q. And who are they?

3 A. There is Hattie Divine, she is a CPA; Nathan
4 Freehan, he is a CPA; Jamie Wiles, she is a tax preparer,
5 bookkeeper; and Dale Hamilton is an administrative person.

6 Q. Anyone else?

7 A. Nope. That's it.

8 Q. And you are a CPA as well, correct?

9 A. Correct.

10 Q. How long have you been a CPA?

11 A. Since 1984.

12 Q. And you have maintained that status since 1984?

13 A. Correct.

14 Q. Where did you go to college?

15 A. I went to Arizona State University.

16 Q. That's unfortunate.

17 When did you graduate?

18 A. I graduated in 1979.

19 Q. And how long have you owned Preston CPA?

20 A. Since 1992.

21 Q. What did you do prior to 1992?

22 A. I was always in public accounting. I worked for
23 national CPA firms and then large local CPA firms.

24 Q. What was the large national firm?

25 A. I worked for Peat Marwick, which is now KPMG.

DAVID MARK PRESTON, 1/25/2019

1 And I worked for Deloitte Touche, or for Touche Ross,
2 which is now Deloitte Touche.

3 Q. How would you describe sort of what you do for
4 Preston CPA? What's your --

5 A. I basically handle most client matters. We're
6 primarily a tax firm. I review and sign tax returns, do
7 tax planning for clients, meet with clients, do some
8 business consulting from time to time. Do a little bit of
9 financial statements, compile and review financial
10 statements. No audits. Handle all tax matters with IRS,
11 Arizona Department of Revenue, anything like that.

12 Q. You said you do some business consulting. I
13 notice on your web page it says that you do strategic
14 business planning or offer business strategies.

15 would that be accurate?

16 A. Yes.

17 Q. What percentage of your business do you think
18 involves strategic business planning?

19 A. Probably 5 percent or less.

20 Q. Did you ever provide those kinds of services to
21 DenSco?

22 A. No.

23 Q. And when I say "DenSco," you know what I am
24 talking about, correct?

25 A. Denny.

DAVID MARK PRESTON, 1/25/2019

1 Q. Denny's business?

2 A. No.

3 Q. Did Mr. Chittick or anyone else at DenSco ever
4 ask you to provide sort of strategic business planning?

5 A. No.

6 Q. What kind of services did you provide to DenSco?

7 A. I provided tax compliance and/or tax planning.

8 Q. What is tax compliance? How would you describe
9 that?

10 A. It's preparation of his corporate return for
11 DenSco, preparation of his personal 1040 for Denny
12 Chittick.

13 Q. Anything else?

14 A. The tax planning was just perhaps meeting to
15 discuss ways of reducing taxes legally. I started a
16 retirement plan or something along those lines.

17 Q. Anything else you recall doing for DenSco?

18 A. We did Form 1099s for people he paid, investors
19 he paid interest to. We prepared 1099s.

20 Q. Anything else you recall?

21 A. No.

22 Q. All right. You said you provided services --
23 provided, prepared 1040s for Mr. Chittick personally.

24 Can you tell me what a 1040 is?

25 A. 1040 is a personal income tax return that a U.S.

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1 individual files in the United States.

2 Q. Did you have a separate engagement with
3 Mr. Chittick for the work you did for him personally
4 versus the work you did for DenSco?

5 A. Yes, I did.

6 Q. So there are engagement letters between Preston
7 CPA and Mr. Chittick personally?

8 A. Yes, there are.

9 Q. Do you still have those engagement letters?

10 A. Yes, I do.

11 Q. Do you know if those were provided to the
12 receiver pursuant to his subpoena?

13 A. I don't know if they were or not. There was a
14 lot of things asked for and I'm not positive what got sent
15 over, but I can find those if they haven't been provided.

16 Q. I take it if there were individual engagement
17 letters, that there are also separate invoices that
18 Mr. Chittick was separately invoiced for the work you did
19 for him personally?

20 A. No.

21 Q. No?

22 A. No.

23 Q. I'm sorry. I don't mean to cut you off.

24 A. I believe what happened in billings with
25 Mr. Chittick is that we billed his personal to his

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.

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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.

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1 Q. Do you know if you ever communicated with Denny
2 Chittick using a different email address other than that
3 one?

4 A. No, I never have.

5 Q. So this is an email from Mr. Chittick to you and
6 a host of other people with respect to a DenSco dinner
7 party that he had hosted.

8 A. Yes.

9 Q. Do you see that?

10 A. Uh-huh.

11 Q. Are these the investor parties that you had
12 referenced in your last answer?

13 A. Some of them. Yes, some of them I recognize.
14 Some of them I don't know.

15 Q. You said these parties occurred once a year?

16 A. Uh-huh. Always in March.

17 Q. And you always attended?

18 A. Most of the time I attended.

19 Q. What was Mr. Chittick like at these parties?

20 A. Very social and, you know, friendly and very,
21 just very nice.

22 Q. Not awkward?

23 A. No.

24 Q. No.

25 what happened at these get-togethers? Was it

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1 just a social event?

2 A. Social event. I mean, he provided food and
3 drink. It was usually during, like I say, it was during
4 March so it was during tax time. I would go over there
5 for -- I would either take one of my associates and go
6 over, or go over by myself and have food, drink for a
7 couple hours and --

8 Q. Meet some potential clients?

9 A. -- meet and greet some potential clients and
10 talk to Denny for a few minutes.

11 Q. Did Denny ever do any sort of, like, business
12 presentations --

13 A. No.

14 Q. -- or, you know, state -- purely social?

15 COURT REPORTER: Is that "yes"?

16 MR. POLESE: Answer audibly.

17 Q. (BY MR. RUTH) You have to say yes or no.

18 A. No, he didn't do any business presentations.

19 Q. All right. You will see that somebody by the
20 name of Warren Bush responded to Denny and said: Dave
21 Preston seemed to make a special point of wanting to play
22 golf after tax season.

23 Do you see that?

24 A. Yes.

25 Q. Did you end up playing golf with Mr. Bush?

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1 A. No.

2 Q. Do you know whether any of DenSco's other
3 investors are clients of your firm?

4 A. They are.

5 Q. Do you know who some of them are?

6 A. Yes.

7 Q. And who are they?

8 MR. POLESE: Well, why don't we just find out
9 how many he has. And I don't know that we necessarily
10 need to get into the relationship of specific other
11 individuals.

12 So I don't want to hinder your deposition, but
13 you can explore the area, but I certainly don't want to
14 start dwelling on financial stuff of people who are not
15 party to this litigation.

16 MR. RUTH: Sure. I'm just asking if any of them
17 are clients and who they might be.

18 MR. POLESE: Okay.

19 THE WITNESS: Yes, I probably have six to eight
20 people that are investors with Denny that are clients of
21 mine.

22 Q. (BY MR. RUTH) And can you tell me who those
23 are, if you know?

24 A. Sure. It's Brian Imdieke. I believe he is the
25 largest investor in DenSco. Paul Kent. My mother-in-law,

DAVID MARK PRESTON, 1/25/2019

1 Caro McDowell. Let's see who else it might be. This Mike
2 Cengiz was a client for a little while.

3 I can't think who else would be a client. I
4 can't think of anybody else right this second, but --

5 Q. Thank you.

6 A. -- I would say there was roughly half a dozen.

7 Q. Were any of those clients people that you
8 introduced to DenSco as potential investors?

9 A. No.

10 Q. They were already investors at the time they
11 became clients of yours?

12 A. Most of them were people that Denny knew that he
13 referred to me.

14 Could we back up one second on something?

15 Q. Of course.

16 A. I just thought of two more people. Todd Einck,
17 E-i-n-c-k, and Stewart Sheriff. Both of those people were
18 clients of mine that I did introduce to Denny and became
19 investors.

20 Q. You said Stewart Sheriff?

21 A. Uh-huh.

22 Q. And Todd Einck?

23 A. Einck, E-i-n-c-k.

24 Q. And they eventually became investors in DenSco?

25 A. Uh-huh. Yes.

DAVID MARK PRESTON, 1/25/2019

1 Q. Sort of looking back at everything that's
2 transpired the last 10 or 12 years, how well do you feel
3 like you knew Mr. Chittick?

4 A. Obviously I thought I knew him better than I
5 did. I thought I knew him okay and I thought, you know,
6 we were -- he was a good business client and a good -- you
7 know, I thought he was a friend, and a distant friend, I
8 guess, but obviously I didn't know all this was going on
9 in his life.

10 Q. Did you ever interact with Mr. Chittick's
11 family?

12 A. I've -- not much. I met his wife and met his
13 kids, but not really had much interaction with them.

14 Q. [REDACTED]

15 A. [REDACTED]

16 Q. [REDACTED]

17 [REDACTED]

18 [REDACTED]

19 [REDACTED]

20 A. She rarely came to business meetings or...

21 MR. POLESE: Just answer the question he asked
22 you.

23 Q. (BY MR. RUTH) There were times, however, where
24 she would attend business meetings?

25 A. Not that I recall.

DAVID MARK PRESTON, 1/25/2019

1 Q. Do you know if you did any tax planning for her?

2 A. No, I did not.

3 Q. Or tax preparation?

4 A. When they were filing joint returns, I met with
5 Denny to do tax projections and stuff and planning, and
6 that obviously affected her.

7 Q. [REDACTED]

8 [REDACTED]

9 [REDACTED] [REDACTED] [REDACTED]

10 [REDACTED] [REDACTED]

11 [REDACTED] [REDACTED]

12 [REDACTED] [REDACTED]

13 [REDACTED]

14 [REDACTED] [REDACTED]

15 [REDACTED] [REDACTED]

16 [REDACTED]

17 [REDACTED] [REDACTED]

18 [REDACTED] [REDACTED]

19 [REDACTED]

20 [REDACTED] [REDACTED]

21 [REDACTED] [REDACTED]

22 [REDACTED]

23 MR. POLESE: Objection; form.

24 THE WITNESS: Do I still answer?

25 Q. (BY MR. RUTH) Yes.

DAVID MARK PRESTON, 1/25/2019

1 MR. POLESE: Go ahead and answer.

2 [REDACTED]

3 [REDACTED]

4 [REDACTED]

5 [REDACTED]

6 [REDACTED]

7 [REDACTED]

8 Q. (BY MR. RUTH) Did he mention --

9 A. I have no knowledge of that.

10 Q. I'm sorry. I don't mean to cut you off.

11 [REDACTED]

12 [REDACTED]

13 [REDACTED]

14 [REDACTED]

15 [REDACTED]

16 [REDACTED]

17 [REDACTED]

18 [REDACTED]

19 A. No, I don't.

20 MR. POLESE: Objection as to form.

21 Q. (BY MR. RUTH) You don't know?

22 A. I don't know.

23 [REDACTED]

24 [REDACTED]

25 Q. You have known Mr. Chittick for a while.

DAVID MARK PRESTON, 1/25/2019

1 Did you observe any changes in his behavior from
2 before versus after his divorce?

3 [REDACTED]
4 [REDACTED]
5 [REDACTED]
6 [REDACTED]
7 [REDACTED]
8 [REDACTED]
9 [REDACTED]
10 [REDACTED]
11 [REDACTED]
12 [REDACTED]
13 [REDACTED]

14 [REDACTED] Most of his investors I think were close friends
15 or were friends. I don't know about close.

16 Q. Any of them in particular that seemed to you
17 might know Denny better than others?

18 A. I think Mr. Kent knew him pretty well.
19 Mr. Imdieke probably knew him pretty well.

20 Q. Anyone else?

21 A. Not that I would know of.

22 Q. At some point you decided to invest with Densco,
23 correct?

24 A. Correct.

25 Q. Do you recall around what time that was?

DAVID MARK PRESTON, 1/25/2019

1 A. I think it was in the early 2000s. Maybe 2001
2 or 2002. Maybe 2003 even.

3 Q. And what spurred you to want to invest with
4 Mr. Chittick?

5 A. Him paying 12 percent interest, and what I
6 thought was a safe investment from what he described.

7 Q. What did he describe that made you think it was
8 a safe investment?

9 A. That he was doing first deeds of trust on
10 properties and loaning at 65 to 70 percent fair market
11 values to loan, loan to values.

12 Q. And he told you that in conversation?

13 A. I can't remember if he told me in conversation
14 or I saw it in the offering.

15 Q. Anything else about DenSco or Mr. Chittick that
16 made you think your money would be safe with him?

17 A. No. Just I just trusted Denny.

18 Q. Did he ever discuss with you loan concentrations
19 or, you know, diverse borrower base or anything like that?

20 A. No.

21 Q. Did he ever talk to you about his lending
22 procedures?

23 A. No.

24 Q. Did he ever talk to you about how he would
25 ensure that he was in first position on property?

DAVID MARK PRESTON, 1/25/2019

1 A. No.

2 Q. You just assumed he knew how to do it?

3 A. Yes.

4 Q. And that was based on your observations of him?

5 A. Yes. Plus he had done some hard-money lending
6 with some other gentlemen, Scott and --

7 Q. Scott Gould?

8 A. Yes, and somebody else. Robert. Robert
9 Koehler.

10 Q. Koehler.

11 A. So I thought he had learned how to do these and
12 had a pretty good grasp on it.

13 Q. Did you know Scott Gould at all?

14 A. I met him.

15 Q. At the investor parties?

16 A. Yes.

17 Q. Other than that, did you have any sort of --

18 A. No.

19 Q. What about Mr. Koehler?

20 A. Met him at the investor parties.

21 Q. Other than that, no?

22 A. Think Mr. Koehler and one or two partners, I did
23 their tax work for one or two years on some property maybe
24 up north or a partnership up north or something like that.
25 So I had met Mr. Koehler, and he was a client for a very

DAVID MARK PRESTON, 1/25/2019

1 short time period. But usually I would see him at the
2 investor party.

3 Q. But you understood Mr. Chittick to be a pretty
4 bright guy?

5 A. Yes.

6 Q. Who would know the proper way to make sure that
7 his loans were protected in first position?

8 A. Yes.

9 Q. Did he ever discuss with you lending money
10 directly to his borrowers?

11 A. No.

12 Q. Did he ever discuss with you sending money to a
13 trustee or to an escrow company?

14 A. No.

15 Q. You just assumed however he was doing it --

16 A. Yes.

17 Q. -- it was going to be the safe, conservative way
18 to do it?

19 A. Yes.

20 (Deposition Exhibit No. 682 was marked for
21 identification.)

22 Q. (BY MR. RUTH) Mr. Preston, I'm handing you a
23 series of subscription agreements that I will represent
24 were obtained out of DenSco's files. I should say the
25 receiver obtained out of DenSco's files and provided to

DAVID MARK PRESTON, 1/25/2019

1 us. If you flip all the way to the back, it's called a
2 Bates number, it starts with a letter and then a number, D
3 134597.

4 A. It's on the very back?

5 Q. Yes. Flip one more page over. That's -- it's
6 double-sided. There you go.

7 This is a Subscription Agreement dated May 1st,
8 2007.

9 Do you see that?

10 A. Yes.

11 Q. Do you think this would have been your first
12 investment in DenSco or do you think there would have been
13 a Subscription Agreement prior to this?

14 A. There was one prior to this.

15 Q. If you flip the page over, those are your
16 signatures on the other side?

17 A. Yes, they are.

18 Q. And the signature of Ms. Preston, is that your
19 wife?

20 A. Yes, it is.

21 Q. The top of the page under 1, Subscription, it
22 says: The undersigned investor has received and reviewed
23 the Confidential Private Offering Memorandum dated
24 June 1st, 2005.

25 Do you see that?

DAVID MARK PRESTON, 1/25/2019

1 A. June 1st, 2005?

2 Q. Yes.

3 MR. RUTH: Sorry. Thanks, Jim.

4 THE WITNESS: Yes, I do.

5 Q. (BY MR. RUTH) Did you in fact receive and
6 review that --

7 A. Yes.

8 Q. -- Private Offering Memorandum?

9 A. I don't know how much review I did, but I did
10 receive it.

11 Q. When you received it, were you sitting with
12 Mr. Chittick? Did you discuss the Private Offering
13 Memorandum with him?

14 A. I don't remember discussing it with him. I
15 think he provided it to me perhaps at my office and said
16 you should take a look at this, and gave it to me to take
17 home.

18 Q. Do you recall contacting Mr. Chittick with any
19 follow-up questions --

20 A. No.

21 Q. -- or concerns?

22 A. No.

23 MR. POLESE: Let him finish his question first.

24 THE WITNESS: Okay.

25 Q. (BY MR. RUTH) So this Subscription Agreement,

DAVID MARK PRESTON, 1/25/2019

1 you see it's a quarterly payment note in the amount of
2 \$100,000?

3 A. Yes.

4 Q. And it pays interest at 12 percent per year?

5 A. Yes.

6 Q. My understanding is when the interest was paid,
7 you collected the interest, correct?

8 A. Correct.

9 Q. You didn't keep it in DenSco?

10 A. Correct.

11 Q. You said there was a Subscription Agreement
12 prior to this. I don't believe I have that.

13 So this would have been a rollover of a prior
14 investment? Would that be accurate?

15 A. I'm sorry. This -- I may have misspoke. This
16 may be the initial one. I thought it was earlier --
17 earlier, but I invested 100,000 and then invested another
18 60,000. So I guess this 100,000 must have been the -- I'm
19 not certain, to be sure.

20 Q. Okay.

21 A. You know, it could be earlier. This would be
22 the initial one. I don't know.

23 Q. Understood.

24 But every two years it seems your, for example,
25 \$100,000 investment would come up, the maturity would come

DAVID MARK PRESTON, 1/25/2019

1 up and you would roll it over, roll over the investment
2 again for another two years.

3 Is that accurate?

4 A. Correct.

5 Q. Can you describe for me the process as to how
6 that would happen? would Mr. Chittick call you and say:
7 Dave, your note's come due. What do you want to do?

8 A. Yes. He would call me and say: Do you want to
9 reinvest? Do you want me to pay you off? What do you
10 want me to say you do? And I would say: Yes, let's roll
11 it over.

12 Q. Would you ask him for any additional
13 information?

14 A. No.

15 Q. Ever?

16 A. I don't recall ever asking him. He may have
17 provided additional information. A new memorandum may
18 have come out or something like that that he said here is
19 something for your files.

20 Q. And as far as you recall, every time one of your
21 notes came due, Mr. Chittick would offer to either pay you
22 off or roll over the investment?

23 A. That's what I recall, uh-huh.

24 Q. In fact when you flip over to the next page,
25 what's going to have the numbers D134595 at the bottom.

DAVID MARK PRESTON, 1/25/2019

1 Do you see that?

2 MR. POLESE: The 2009 subscription.

3 THE WITNESS: This one?

4 MR. POLESE: 2009.

5 MR. RUTH: Thank you, Jim.

6 MR. POLESE: This one.

7 Q. (BY MR. RUTH) So this would be a Subscription
8 Agreement for your roll over --

9 A. 100,000.

10 Q. -- of that \$100,000 investment?

11 A. Yes.

12 Q. Here at the top it says: The undersigned
13 investor has received and reviewed the Confidential
14 Private Offering Memorandum dated June 1st, 2007.

15 Do you read that in paragraph 1?

16 A. Yes.

17 Q. Do you know if you would have reviewed the 2007
18 POM?

19 A. I think I probably have a copy of it. Whether I
20 reviewed it or not, I am not recalling.

21 Q. And do you recall what kind of discussions you
22 may have had with Mr. Chittick prior to deciding to roll
23 over the money?

24 A. Probably no discussions.

25 Q. You were getting your interest paid and you

DAVID MARK PRESTON, 1/25/2019

1 trusted that things were going well?

2 A. Correct.

3 Q. The next document -- keep flipping the page
4 towards the front. There you go.

5 MR. POLESE: It's the 2011 Subscription
6 Agreement we are going to next?

7 MR. RUTH: Yes.

8 Q. (BY MR. RUTH) So this one is signed by
9 Mr. Chittick and it's also signed by you. I don't believe
10 this one has your wife's signature on it.

11 Do you know why not?

12 A. I have no idea.

13 MR. POLESE: Because the investor changed.

14 THE WITNESS: Is it because we went to the
15 revocable living trust? No. It was the revocable living
16 trust before.

17 I have no idea.

18 Q. (BY MR. RUTH) Well, here the Subscription
19 Agreement references a 2009 POM in paragraph 1.

20 Do you see that?

21 A. Yes, I do.

22 Q. Do you know if you would have reviewed that POM
23 prior to signing this Subscription Agreement?

24 A. Again, I don't know if I reviewed it. I
25 probably have a copy of it.

DAVID MARK PRESTON, 1/25/2019

1 Q. And would you have had any discussions with
2 Mr. Chittick prior to rolling --

3 A. No.

4 Q. -- this over?

5 A. No.

6 Q. You never asked him for any additional financial
7 information or --

8 A. No. I had seen his tax returns.

9 Q. Right.

10 And then go one more page towards the front. It
11 will have the date October 6, 2011, at the top.

12 A. Okay. October --

13 Q. It should say investment number 2.

14 Do you see that?

15 A. Yes, I do.

16 Q. This is the \$60,000 investment, correct?

17 A. Correct.

18 Q. Do you think this would have been the first time
19 you had a second investment in --

20 A. Yes, it is.

21 Q. -- DenSco?

22 And why did you decide to invest an additional
23 \$60,000?

24 A. I had some extra money and I thought it was a
25 good investment.

DAVID MARK PRESTON, 1/25/2019

1 Q. Did you have any further discussions or receive
2 any additional information from Mr. Chittick prior to
3 making this second investment?

4 A. Not that I recall.

5 Q. Did you ever discuss your investments in DenSco
6 with any of the other investors?

7 A. With the other investors?

8 Q. Yeah.

9 A. Probably not.

10 Q. And finally, let's go ahead and go to the first
11 one. This is investment number 1. I apologize. It
12 should be page D134588.

13 A. Okay.

14 Q. There is yet another rollover of your \$100,000
15 investment, correct?

16 A. Correct.

17 Q. This is dated May 1st, 2013?

18 A. Yes.

19 Q. Here in paragraph 1 it says again that the
20 undersigned investor has received and reviewed the
21 Confidential Private Offering Memorandum dated July 1st,
22 2009.

23 Do you see that?

24 A. Yes, I do.

25 Q. Did you ever -- do you remember reviewing this

DAVID MARK PRESTON, 1/25/2019

1 before you signed it, or reading that before you signed
2 it?

3 A. I don't recall reading it, but I would think
4 that I have a copy of it.

5 Q. Did you find it curious that it referenced a
6 2009 private offering memorandum and not a more recent
7 Private Offering Memorandum?

8 A. No. I didn't know what the legal requirements
9 were for how often they had to have memorandums.

10 Q. Did you ask Mr. Chittick if anything had changed
11 in the interim or if there was anything else you needed to
12 be aware of?

13 A. No.

14 Q. Do you recall if you ever received a 2011 POM?

15 A. I don't recall whether I received one or not.

16 Q. Let's take a real quick break.

17 (A recess was taken from 12:53 p.m. to
18 1:07 p.m.)

19 (Deposition Exhibits No. 683 through 685 were
20 marked for identification.)

21 Q. (BY MR. RUTH) Dave, so I have handed you what's
22 been marked Exhibit 683. Let's start with that one. And
23 this looks to me to be the claim that you filed on behalf
24 of the Preston Revocable Living Trust.

25 Is that accurate?

DAVID MARK PRESTON, 1/25/2019

1 A. Yes.

2 Q. If you look at the first page of that Proof of
3 Claim, you are on it right now, it says total combined
4 principal invested, 160,000 minus cash interest payments
5 of \$67,874, leaves you with a total claim of 92,126.

6 Do you see that?

7 A. Yes.

8 Q. And that's accurate?

9 A. I believe so.

10 Q. Why did you subtract out the interest earned
11 after January 1st, 2013?

12 A. Why did I subtract the interest earned after
13 January?

14 Q. Do you know why?

15 A. I don't really recall.

16 Q. It's fine if you don't. I'm just curious.

17 A. I don't recall.

18 Q. Did you have any discussions with the receiver
19 as to why you were supposed to subtract out those interest
20 payments?

21 A. I think I saw the receiver's schedule and I was
22 trying to back into the figures that he was saying. In
23 fact, now that you say that, I think I do recall that the
24 monies that were received after '13 or '13 and after were
25 considered the return of principal, and they were not to

DAVID MARK PRESTON, 1/25/2019

1 be reported as interest, even though we had to report them
2 as interest on our tax returns.

3 Q. And do you recall if January 1st, 2013, was
4 chosen because that's the date the receiver believes
5 DenSco was insolvent?

6 MR. POLESE: Object. If you know, answer it,
7 but don't speculate.

8 Q. (BY MR. RUTH) Only if you know.

9 A. I think that's what I heard from the receiver.

10 Q. Did you have any discussions with the receiver
11 about his analysis on the solvency hearing, insolvency?

12 A. No, I did not.

13 Q. Did you analyze for yourself whether you
14 believed DenSco was insolvent at that date?

15 A. No, I did not.

16 Q. Did you push back on the receivers?

17 A. No, I did not.

18 Q. If you flip to the next page, you are already on
19 it, this is a statement dated June 2016, is that correct?

20 A. Yes.

21 Q. Did you include this statement because this was
22 the last statement you received from DenSco?

23 A. Yes.

24 Q. For the Preston Revocable Living Trust
25 investment?

DAVID MARK PRESTON, 1/25/2019

1 A. Yes.

2 Q. Did you review this statement when you received
3 it?

4 A. I don't know how much review I did, but I looked
5 at it.

6 Q. But you believe the facts and figures on here to
7 be accurate?

8 A. Yes. Yes.

9 Q. Then if you flip to the next page, is this the
10 last note that you received from DenSco for the \$100,000
11 investment?

12 A. I believe it is.

13 Q. It says date of issue, May 1st, 2015.
14 Do you see that?

15 A. Yes.

16 Q. Do you recall having any discussions with
17 Mr. Chittick around that time related to your rolling over
18 of this investment?

19 A. No.

20 Q. I'll represent that the last Private Offering
21 Memorandum that had been issued as of this time was a 2011
22 Private Offering Memorandum.

23 Were you aware of that at the time you signed
24 this or received this note?

25 A. I'm not sure.

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1 Q. You didn't ask to see an updated --

2 A. No, I did not.

3 Q. -- memorandum?

4 You weren't sort of keeping track as to whether
5 a memorandum had been issued or had not been issued?

6 A. No.

7 Q. It didn't concern you?

8 A. No.

9 Q. And you didn't ask Mr. Chittick why a new
10 memorandum hadn't been issued?

11 A. No.

12 Q. If you go to -- let's go to Exhibit 685. I
13 apologize. I marked these out of order. We will be doing
14 684, but go ahead and go to 685.

15 So, again, these are documents we received from
16 the receiver, who I understand received these from the
17 DenSco. These appear to be subscription agreements on
18 behalf of The Caro McDowell Revocable Trust?

19 MR. POLESE: Is the handwriting your
20 handwriting, Counsel?

21 MR. RUTH: It is. Oh, I'm sorry. Yes, it is.
22 I do that at least once every deposition.

23 Q. (BY MR. RUTH) Is that correct; are these
24 subscription agreements for The Caro McDowell Revocable
25 Trust?

DAVID MARK PRESTON, 1/25/2019

1 A. Yes, it looks like they are.

2 Q. Who is Ms. McDowell?

3 A. She is my mother-in-law.

4 Q. Did you introduce her to DenSco or --

5 A. Yes, I did.

6 Q. So I assume, then, you must have had pretty
7 significant confidence in Mr. Chittick to introduce family
8 members to this opportunity?

9 A. I had probably more confidence than I should
10 have had, to say the least.

11 Q. Do you know if Ms. McDowell ever spoke with or
12 communicated with Mr. Chittick, or did she sort of rely on
13 you to give her information on this investment?

14 A. She relied upon me. She went to the annual
15 March social meetings, social dinners that Denny would put
16 on sometimes.

17 Q. But other than that --

18 A. Yeah. So she met Denny and talked with him a
19 few times at those, but I don't think she talked with him
20 other than that.

21 Q. And was she located out of state or did she live
22 in Arizona?

23 A. She lived in Arizona. She has the same address
24 as we do.

25 Q. And it looks like Ms. McDowell made three

DAVID MARK PRESTON, 1/25/2019

1 investments of \$100,000 each. Is that accurate?

2 A. I believe that's correct.

3 Q. Do you know if Ms. McDowell reviewed any private
4 offering memorandums or any other sort of information with
5 respect to DenSco prior to entering into these
6 investments?

7 MR. POLESE: If you know.

8 THE WITNESS: I don't know if she reviewed them
9 or not.

10 Q. (BY MR. RUTH) But you had discussions with her
11 about the safety of the investment or Mr. Chittick's track
12 record?

13 MR. POLESE: Objection; form.

14 THE WITNESS: Yes, I had discussions with her
15 that I thought these were good investments.

16 Q. (BY MR. RUTH) All right. Let's move to 684.

17 684 looks to be the Proof of Claim that you
18 filed on behalf of Ms. McDowell. Is that correct?

19 A. That is correct.

20 Q. Pursuant to a power of attorney?

21 A. Correct.

22 Q. If you look at the general obligation notes,
23 there are three general obligation notes attached to this.

24 Do you see that?

25 A. Yes, I do.

DAVID MARK PRESTON, 1/25/2019

1 Q. Is each one of these notes the last rollover
2 note for the three separate \$100,000 investments?

3 A. I think they are.

4 Q. And it looks like the first one was issued
5 July 6th, 2014; and the second \$100,000 note was issued
6 July 24th, 2015; and then the last one was actually issued
7 July 24th, 2016.

8 Do you see that?

9 A. Yes.

10 Q. When these notes were issued, did you meet with
11 Mr. Chittick or did you receive these in the mail?

12 A. I don't recall meeting with him. I don't know
13 how we received the notes.

14 Q. Do you recall having a discussion with
15 Mr. Chittick about rolling over these notes, in particular
16 the one that was issued July 24th, 2016?

17 A. I don't recall having a discussion with him, but
18 I'm not sure if I did or didn't.

19 Q. Do you think he would have called -- do you know
20 whether he called you or discussed with you rolling over
21 this last investment, or if he discussed it with
22 Ms. McDowell?

23 A. I think he might have discussed it with
24 Ms. McDowell, because Ms. McDowell at that time would deal
25 with Denny, I think. I mean, I think he would call her.

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1 I'm not certain of that, but I think he would call her.

2 Q. So she hasn't relayed to you what sort of
3 information or statements Mr. Chittick may have made to
4 her?

5 A. No.

6 Q. Of course we know now that Mr. Chittick passed
7 away and took his life a few days after issuing this last
8 note, right?

9 It was July 24th, 2016. I believe he passed
10 July 29th, 2016.

11 A. I guess so.

12 Q. Do you recall around that time talking with
13 Mr. Chittick or communicating with Mr. Chittick?

14 A. No.

15 Q. Do you know if Ms. McDowell had the option of
16 pulling her \$100,000 out when it came time to roll this
17 over in July of 2016?

18 A. I don't know if she had the option or not. I
19 believe she did, but I don't know their discussions.

20 Q. Okay. Leading up to the end of July 2016, did
21 you have any insight that anything was going poorly at
22 DenSco?

23 A. No.

24 Q. Did you have any insight that Mr. Chittick
25 wasn't doing so well?

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1 A. No. I was totally shocked.

2 Q. Did you know who Mr. Menaged was prior to --

3 A. No.

4 Q. -- Mr. Chittick's suicide?

5 MR. POLESE: Let him finish his question.

6 Q. (BY MR. RUTH) Prior to Mr. Chittick's suicide?

7 A. No.

8 Q. You know who he is now, of course?

9 A. I have read about him now.

10 MR. POLESE: He is going to be on American
11 Greed? Is that right?

12 MR. RUTH: I heard something.

13 Q. (BY MR. RUTH) So in addition to being an
14 investor in DenSco, you also did DenSco's tax returns,
15 correct?

16 A. Correct.

17 Q. Can you give me a general sense as to what the
18 process was for doing a DenSco tax return?

19 A. Denny would bring in his QuickBooks, which
20 included a balance sheet and an income statement. I would
21 ask him any questions or numbers that didn't look
22 appropriate or didn't look like they -- looked like they
23 were in the wrong place. I would ask him about whether he
24 booked a retirement plan contribution, if there was one of
25 those. And then he would leave the stuff with me and we

DAVID MARK PRESTON, 1/25/2019

1 would prepare returns.

2 Q. When you say he would bring in his QuickBooks,
3 what do you mean by that?

4 A. He would literally bring in QuickBooks printed
5 off like this.

6 Q. That was my question. So he --

7 A. Paper.

8 Q. You didn't have access to the actual accounting
9 software?

10 A. No.

11 Q. And you didn't even have access to sort of a
12 native file or a native document, right?

13 A. No.

14 Q. It would just be a print-off?

15 A. Correct.

16 Q. So you couldn't manipulate any numbers, correct?

17 A. No. If we made any journal entries, we would
18 give those to him when we delivered the tax return and
19 say, okay, you got to book this retirement plan
20 contribution in, but it was very organized.

21 Q. And I believe you said he would bring in a
22 balance sheet and an income statement?

23 A. Yes.

24 Q. Would he also bring in a list of properties or
25 of collateral that secured the loans?

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1 A. No. He would bring in some properties that he
2 had taken back, that maybe he now owned those properties
3 while he was trying to remarket them, but those would be
4 on his balance sheet. He would say blah, blah, blah,
5 North 49th Avenue.

6 Q. And then you said you would review his numbers
7 and sort of let him know if something didn't seem right to
8 you?

9 A. Correct.

10 Q. Do you recall ever noticing something that
11 didn't seem right to you?

12 A. No.

13 Q. Can you give me a sense of sort of what you
14 would be looking for?

15 A. I mean, I would be looking for a negative number
16 in -- a debit number in liability accounts or a credit
17 number in asset accounts, that kind of stuff.

18 He would never show me his bank reconciliations.
19 He always said he did them. They were numbers not like
20 10,000. They were 10,241.33, so --

21 Q. You said he never showed you his bank
22 reconciliations?

23 A. No.

24 Q. Did you ask for them?

25 A. No. He said he had done them, and we didn't

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1 need them to do the returns.

2 Q. Did you ever ask him for any other financial
3 information or backup information?

4 A. Not that I recall.

5 Q. Do you ever recall asking him for something he
6 wasn't willing to provide?

7 A. No.

8 Q. How often would your firm, you or your firm,
9 receive DenSco's financial information? Was it --

10 A. Once a year.

11 Q. There was no periodic reporting that he did to
12 you?

13 A. No. If we did tax planning, we usually did it
14 in the fall, and he might set and give us his numbers for
15 the fall.

16 Q. And again --

17 A. Or he would give me an idea how much money he
18 was going to make. Lots of times he would just give me a
19 number and say: Okay. I'm going to make a million
20 dollars. And we would just use that number.

21 Q. And, again, during these meetings he would come
22 in with papers for you to look at. He wasn't sending you
23 QuickBooks files or --

24 A. Correct.

25 (Deposition Exhibit No. 686 was marked for

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1 identification.)

2 Q. (BY MR. RUTH) Did you ever ask to look at his
3 QuickBooks or the actual software?

4 A. I don't believe so.

5 Q. Did you ever ask to see any promissory notes or
6 anything like that? Any documentation that --

7 A. We would ask him sometimes, if he sold one of
8 the properties he took back, for the closing statement to
9 make sure we recorded it correctly.

10 Q. All right. So I have handed you Exhibit 686.
11 It's an email from Mr. Chittick to yourself, March 5th,
12 2013. And attached to the email are the DenSco balance
13 sheet, DenSco profit and loss statement.

14 Do you see that?

15 A. Yes, I do.

16 Q. It's possible that we may have missed it, but
17 this is the only email I have found, in all of the
18 documents we have for Mr. Chittick, emails you have copied
19 of his financials.

20 Would that surprise you or is that --

21 A. That would surprise me. Usually he came in and
22 we met and he brought them in.

23 Q. If you look towards the end here, you will see
24 towards the end of this whole packet, you will see a long
25 spreadsheet. Its DOCID number at the bottom left, you

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1 will see 65267 is the first. There you go. It starts
2 there.

3 Do you recognize this document, or this type of
4 document, maybe not this one specifically?

5 A. Not really, but...

6 Q. Do you recall whether this was something that
7 Mr. Chittick or DenSco would provide you?

8 A. Not normally.

9 Q. Do you recall ever reviewing a document like
10 this?

11 A. I don't recall.

12 Q. So it looks like it's a list of properties that
13 secure DenSco loans. You will see there is a column for
14 amount of loan, estimated value of the property,
15 loan-to-value ratio.

16 Do you see that?

17 A. Uh-huh.

18 Q. Do you recall ever looking at that information,
19 either as a tax preparer or as an interested investor?

20 A. I don't recall looking at it either way, as the
21 tax preparer or as an investor. I don't believe he sent
22 me this every year.

23 MR. STURR: Before we go on, where did this
24 document come from? It's got the same number on every
25 page, the same Bates number, the DOCID number.

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1 MR. RUTH: Oh, that's weird. So we probably
2 produced it out of our database, but it came from you
3 guys. It's a Chittick email to Preston, so --

4 MR. STURR: You believe it came out of the
5 repository and you put that number on it?

6 MR. RUTH: Yes. That would be my assumption,
7 since we received all the PSD from Chittick. We can go
8 off the record if you want, unless you want this on the
9 record.

10 MR. STURR: I was just clarifying whether it
11 came from the repository or if it came from the electronic
12 devices that --

13 MR. RUTH: I suppose it's possible that it came
14 from the electronic devices. I think there was a
15 duplication of PSD files provided there.

16 MR. STURR: That's fine. If you don't know,
17 that's fine. I was just asking.

18 (Deposition Exhibit No. 687 was marked for
19 identification.)

20 Q. (BY MR. RUTH) So, Dave, I have handed you
21 what's been marked Exhibit 687, which are a series of
22 Preston CPA engagement letters with DenSco.

23 Is that what it looks like to you?

24 A. Yes, they do.

25 Q. Was there sort of a rationale as to why or when

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1 you would ask DenSco to enter into a new engagement letter
2 with the company?

3 A. Our firm policy is to have new engagement
4 letters every three years.

5 Q. If you look -- these are all relatively similar,
6 so I'm not going to belabor each one. If you just look at
7 the first one, the one dated April 3rd, 2016.

8 That first paragraph at the end, it says: We
9 will not audit or otherwise verify the data you submit,
10 although we may ask you to clarify some of that.

11 Do you see that?

12 A. Yes.

13 Q. Do you recall ever asking Mr. Chittick to
14 clarify some of the DenSco data provided?

15 A. I don't recall specifically asking him, but if I
16 saw something that looked unusual, I would ask him.

17 Q. And how would that -- would you call him? would
18 you send him an email?

19 A. I would probably call him.

20 Q. Do you do audited -- does your company do
21 audited financials?

22 A. No, we don't.

23 Q. Did you ever recommend to Mr. Chittick that
24 DenSco have its file audited?

25 A. No, I didn't.

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1 Q. Did the IRS or the Arizona Department of Revenue
2 ever audit DenSco's taxes?

3 A. I don't believe so.

4 Q. The second paragraph says: The tax returns are
5 prepared to meet the taxing authorities' requirements.
6 Therefore, they are not prepared in accordance with
7 generally accepted accounting principles (which includes
8 necessary disclosures) and should not be considered to be
9 financial statements.

10 Do you see that?

11 A. Yes, I do.

12 Q. Do you know, understanding that the work you did
13 wasn't up to GAAP, wasn't intended to meet GAAP standards,
14 do you know whether DenSco's financial statements, if
15 Mr. Chittick represented to you that those complied with
16 the GAAP accounting standards?

17 A. He never represented that to me.

18 Q. Did you ever ask if they did?

19 A. No, I didn't.

20 MR. POLESE: Does anybody do GAAP accounting? I
21 don't know anybody who does.

22 Q. (BY MR. RUTH) Do you know if he used any other
23 type of accounting standard or ever told you what his
24 accounting standard was?

25 A. No, he didn't.

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1 Q. Do you know whether Mr. Chittick had any other
2 entities, other than DenSco?

3 A. Had any other entities.

4 Q. Yeah. We may see one here shortly. If you
5 don't know, that's fine.

6 A. There was an entity that DenSco invested in
7 called Investors Title Holdings, LLC.

8 Q. Okay.

9 A. It was a small investment.

10 Q. Okay.

11 A. I didn't -- wasn't familiar with it. We got a
12 K-1 to put into DenSco's returns.

13 Q. So my question I was going to ask, you didn't do
14 their taxes?

15 A. No, I did not.

16 Q. Do you know what the purpose of that entity was?

17 A. I don't.

18 Q. Do you know who the other investors are anymore?

19 A. No, I don't.

20 Q. Before we start the taxes, let's take a quick
21 break.

22 (A recess was taken from 1:31 p.m. to 1:34 p.m.)

23 (Deposition Exhibit No. 688 was marked for
24 identification.)

25 Q. (BY MR. RUTH) Dave, I have handed you what's

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1 been marked as Exhibit 688. These are the 2011 tax
2 returns for DenSco Investment Corporation.

3 Do you see that?

4 A. Yes, I do.

5 MR. POLESE: Both state and federal or just one?

6 MR. RUTH: Just one.

7 MR. POLESE: No. It's got the state return
8 attached.

9 MR. RUTH: what do you know.

10 MR. POLESE: All right.

11 Q. (BY MR. RUTH) Just one. It's all in one. All
12 the returns, all the work papers, all in one bundle.

13 And you prepared these returns, correct,
14 Mr. Preston?

15 A. Yes, I do.

16 Q. I just had a couple questions on this first
17 page, DP46. And you will have to bear with me, because
18 I'm a lawyer, not an accountant. But line 10, deductions,
19 bad debts, it lists 120,661.

20 Do you see that?

21 A. Yes, I do.

22 Q. What constitutes a bad debt for tax return
23 purposes?

24 A. Well, this return, there were some notes owed,
25 that he wrote off the notes, I believe, and that would be

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1 the bad debts, the 120,661. I'm not sure what this one
2 relates to, but I take it there...

3 Q. I guess I'm just sort of generally trying to
4 understand what would go into this column, bad debt.

5 So you mentioned bad notes, notes owed that had
6 been written off?

7 A. Right.

8 Q. So, for example, if DenSco lent money to someone
9 and didn't think it would collect that money, that would
10 go into bad debt?

11 A. Correct.

12 Q. Is that like a charge-off?

13 A. It's a charge-off. It's an expense charge-off.

14 I'm a little confused on this one, because --

15 Q. I think this one might have been a repossession
16 or something. And, again, I don't want to hold you. I'm
17 just trying to understand, what does this mean on a tax
18 return?

19 A. I mean, what it is is an expense for something.
20 Normally you see more of this on an accrual basis, so it's
21 an expense of sometimes where you had a receivable and you
22 are not going to collect that receivable. That would be a
23 bad debt.

24 Q. And the example you provided about a note that
25 you are not going to collect on is sort of appropriate for

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1 this lawsuit.

2 So if I understand what you are saying, a note
3 issued that you don't think you are going to collect
4 100 percent, you would charge off the portion you don't
5 think is collectible and that might go in here as bad
6 debt?

7 A. That correct. That is not usually shown on a
8 cash-basis tax return.

9 Q. And this is a cash basis?

10 A. Basis tax return. So I'm not sure what this 120
11 relates to.

12 Q. Line 7 says compensation of officers, 154,000.
13 Do you see that?

14 A. Uh-huh. Yes, I do.

15 Q. Was Mr. Chittick taking a salary?

16 A. Yes, he was.

17 Q. Is that because it was an S corp.?

18 A. Yes.

19 Q. How was that salary determined, if you know?

20 A. I think he -- as I recall, he and I discussed it
21 and I said you need to take a reasonable salary, and he
22 thought this was what would be a reasonable salary based
23 on what would he have to pay somebody else to run his
24 business.

25 Q. Is reasonable salary the standard?

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1 A. Yeah, reasonable salary would be the standard.

2 Q. And you said it was Mr. Chittick who came up
3 with this amount?

4 A. Mr. Chittick, we probably discussed it, and he
5 thought that was a reasonable salary and I agreed, so we
6 went with it.

7 Q. Are there any sort of benchmarks or sort of
8 third-party documents that you look at to get a sense of
9 what a reasonable salary might be?

10 A. I'm sure there are some benchmarks. I didn't go
11 to them or --

12 Q. You didn't consult them for purposes of this tax
13 return?

14 A. No, I did not.

15 Q. I don't have the 2010 tax return with me. I
16 don't believe a salary was listed in the 2010 tax return.

17 Do you know why that might be?

18 A. I wouldn't. I wouldn't know why.

19 Q. Okay.

20 A. I would expect there to always be a salary on an
21 S corp. Especially if he was taking distributions.

22 Q. Go ahead and flip to page -- I'm going to refer
23 to the numbers in the bottom right -- DP49.

24 A. Okay.

25 Q. This sort of shows a balance sheet over the

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1 year, balance beginning of the year, balance at the end of
2 the year, correct?

3 A. Yes.

4 Q. And you put these numbers in here based on the
5 financial statements that Mr. Chittick provided to you?

6 A. Yes, I did.

7 Q. Did you do any due diligence or review of any of
8 those facts and figures?

9 A. When you say did I do any review, I mean, I
10 reviewed what my staff put in or somebody reviewed.

11 Q. To make sure it was accurate?

12 A. Yes.

13 Q. But you didn't look to see whether there in fact
14 were \$16,467 worth of loans made? You didn't ask for --

15 A. No.

16 Q. -- supporting documentation or anything like
17 that?

18 A. No.

19 Q. You will see on line 8, mortgage and real estate
20 loans.

21 Do you understand that to be the money that
22 DenSco was lending to borrowers?

23 A. Yes.

24 Q. You see the beginning of this tax year, 2011,
25 that was 16 million 467, and by the end of the tax year it

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1 increased to 27 million 859.

2 Do you see that?

3 A. Yes, I do.

4 Q. That's an increase of about --

5 A. 11 million.

6 Q. -- 11 million.

7 Did you make note of that increase or is that
8 the size of increase that might concern you or cause you
9 to ask additional questions?

10 A. I did not make note of it and I didn't ask any
11 questions. We are preparing a tax return. We weren't
12 doing a financial statement.

13 Q. Understood.

14 A. So...

15 Q. As an investor, were you interested in that
16 number or concerned that that number was increasing?

17 A. I think after I invested with Denny, I pretty
18 much had come to the conclusion that I trusted him, that
19 he was a good businessman. I did not go back every year
20 and go: Okay. How is my investment doing? So I don't
21 think I looked at any of his detail any more as an
22 investor versus a tax preparer.

23 Q. Okay. So the same question then with respect to
24 mortgages. Line 20, mortgages, notes, bonds payable in
25 one year or more. My understanding is that would be the

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1 amounts raised from investors and owed, the long-term
2 liabilities.

3 A. Correct.

4 Q. So same thing there. That's increased about
5 \$9 million over the year, but you didn't take a look at
6 that and that didn't cause you any concern?

7 A. Not that I recall.

8 Q. Did you ever discuss with Mr. Chittick sort of
9 DenSco's business practice?

10 A. Not that I recall, no.

11 Q. Did you ever discuss whether, you know,
12 Mr. Chittick might need to add additional employees or
13 whether he could handle the size of his loan portfolio or
14 anything like that?

15 A. I mean, as the loans went up in value, he said,
16 you know, he was getting busier and busier. More, you
17 know, that he could only handle so much -- so much, but I
18 thought that number was about, when he told me this, it
19 was about 50 million.

20 Q. And when you heard that, that didn't make you
21 go: Geez, Denny, I don't know how you can handle
22 \$50 million. You need to hire somebody?

23 A. I thought Denny knew what he was doing, so I
24 figured he knew more about it than I did.

25 Q. On line 19, it says loans from shareholders.

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1 \$1,353,745.

2 Do you see that?

3 A. Yes, I do.

4 Q. I assume Mr. Chittick is the only shareholder.

5 A. Correct.

6 Q. So this is a loan from Mr. Chittick to DenSco?

7 A. Correct.

8 Q. Do you know if that loan was ever documented?

9 A. I'm not sure.

10 MR. POLESE: If the loan was ever --

11 MR. RUTH: Documented.

12 THE WITNESS: I'm not sure.

13 Q. (BY MR. RUTH) Do you know what the terms were
14 to that loan, if there was interest accrued or if there
15 was a maturity date, anything like that?

16 A. I think this was 2011. Yeah, I don't know about
17 a maturity date or what the interest was, but -- but that
18 was where Denny had put some money into the business.

19 Q. Do you know why he had to put money or chose to
20 put money into the business?

21 A. I think he just wanted to because he was
22 collecting the interest on his money, too.

23 Q. Okay. So was he -- do you know whether he was
24 getting sort of the same terms on his loan --

25 A. I don't know.

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1 Q. -- to the company as the investors were getting?

2 A. I don't know.

3 Q. The number is the same from beginning of the
4 year to end of the year, the loans from shareholder
5 number.

6 A. Uh-huh.

7 Q. I understand you may not know the answer to
8 this. would that indicate that there was interest being
9 paid or that there was just no interest being accrued?

10 A. It wouldn't have anything to do with interest.
11 Just saying the principal was the same. Interest could
12 have been paid.

13 Q. Okay.

14 A. And if we look at his personal return, you would
15 see it.

16 Q. Okay. we would see it.

17 A. In fact, I think interest is -- well, I'm not
18 sure if interest was paid or not. I would think interest
19 would be paid on this.

20 Q. Why don't we go ahead and skip ahead to DP72.

21 This is the balance sheet that Mr. Chittick
22 provided to you for 2011, correct?

23 A. Correct.

24 Q. You will see here under, I'm sorry, DP70 to
25 DP72, it lists the accounts receivable.

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1 A. Correct.

2 Q. Do you see that?

3 A. Uh-huh. Yes.

4 Q. Do you understand that to be the borrowers that
5 DenSco was lending money to?

6 A. Correct, that's what I understand.

7 Q. Did you do any sort of review as to who these
8 borrowers were or how much money was being lent to them?

9 A. No, I did not.

10 Q. So, for example, on DP72, you will see
11 Mr. Menaged's name is listed.

12 Do you see that?

13 A. Yes, I do.

14 Q. It's 2,666,000.

15 Do you see that?

16 A. Yes.

17 Q. You didn't make note of that or the fact --

18 A. No, I did not.

19 Q. -- that it was on the high end or the low end?

20 A. No, I did not.

21 Q. Did you ever discuss with Mr. Chittick problems
22 he was having with any of his borrowers?

23 A. No. He never brought it up. I never discussed
24 it with him.

25 Q. Do you need this information, this borrower

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1 information in order to do the tax returns?

2 A. No, I don't.

3 Q. Do you know if you asked for it or if it was
4 just what Denny gave you?

5 A. I think it was provided by Denny. I don't think
6 we asked for it.

7 Q. If you stay on DP72, under the long-term
8 liability section you will see that there is three entries
9 for Mr. Chittick, Denny Chittick. The \$1,353,000 figure
10 that I think we just discussed was the shareholder loan?

11 A. Correct.

12 Q. And then there is Denny Chittick 401(k), and
13 Denny Chittick DB plan, which I assume means defined
14 benefit plan.

15 A. Correct.

16 Q. Can you explain to me what those numbers
17 represent?

18 A. I think he lent some money from his retirement
19 plans over to DenSco to have his retirement plans get paid
20 the interest.

21 Q. And how do you know that?

22 A. I mean, how do I know that? I think we had a
23 discussion with Pension Strategies about whether he could
24 do that or not and make the money on it, and at some later
25 point I think it was decided that he should not be doing

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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?

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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.

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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

1 identification.)

2 Q. (BY MR. RUTH) So here we are looking at the
3 2012 tax return. This is -- by the way, the DP number at
4 the bottom indicates that we got this from you.

5 A. Okay.

6 Q. This was provided by you in response to the
7 receiver's subpoena.

8 And you prepared this 2012 tax return?

9 A. Yes, I did.

10 Q. I think you answered this before, but I just
11 want to make sure I understood it.

12 So if you look at line 10 again, bad debts,
13 there is nothing there.

14 Would that surprise you for a company in the
15 business of --

16 A. No, because what we were doing with his bad
17 debts from -- it surprised me on the other one, so I think
18 it had to be a foreclosure that he got shorted on.

19 Q. Okay.

20 A. That's why the 120 was in 2011.

21 The other, if he decided -- if he told me we are
22 going to write off so many of these loans, I think we
23 would have booked them somewhere else.

24 So what I'm saying is -- but I don't see bad
25 debts. I don't see any big numbers jumping out at me. I

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1 don't know if he didn't write off anything in that year
2 or...

3 Q. So I think I understand what you are saying, but
4 if a note, for example, was -- he had determined it was
5 not collectible, \$100,000 note, he was only going to get
6 \$50,000 on it, where would that \$50,000 loss show up on
7 this tax return, if anywhere?

8 A. I think we show that under other deductions on
9 line 19. So I don't think it's there in this particular
10 year.

11 Q. Okay.

12 A. But there were some years where he would come to
13 me and say: You know what? I've got some problems on
14 three or four notes. I want to write off \$400,000. Or,
15 you know: So I'm writing off 400,000. Here is the number
16 we are writing off.

17 And then I think it would show up on line 19
18 as -- we didn't call them bad debts. We called them
19 something else, I believe. And maybe one of the other
20 returns will have them.

21 Q. So in your dealings with Mr. Chittick and
22 DenSco, there were times where he would come to you and
23 say this note is not collectible or --

24 A. Correct.

25 Q. -- is not fully collectible?

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1 A. Correct.

2 Q. And that would then be reflected in the tax
3 returns?

4 A. Correct. And it never really worried me because
5 of the amount of income he was recording, the amount of
6 the loans. It wasn't like it was -- you know,
7 percentage-wise it was maybe, you know, less than 5
8 percent or something.

9 Q. I note here that line 7, compensation of
10 officers, it's now at 253,496, which I think is about a
11 \$100,000 increase from the year before.

12 Again, that's just a discussion that you have
13 with Mr. Chittick as to what Mr. Chittick thinks might be
14 reasonable?

15 A. Could be, and it could be some planning to get a
16 bigger retirement contribution or something like that that
17 could have affected that discussion a little bit.

18 Q. And you would give him advice on that?

19 A. Yeah.

20 Q. And would he typically take your advice?

21 A. Pretty much.

22 Q. Yeah.

23 Do you recall any instances where you provided
24 some tax planning or tax preparation advice that
25 Mr. Chittick turned down or didn't want to follow?

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1 A. Not off the top of my head, no.

2 Q. It's possible?

3 A. It's possible. He had his own way of doing
4 things. It's possible he would not follow my advice, but
5 pretty much we agreed to things.

6 Q. When you say "he had his own way of doing
7 things," what do you mean by that?

8 A. I mean, he had his own mindset on what he wanted
9 to do and how he wanted to do it, and I just would
10 encourage him tax-wise, this would be a better way of
11 doing it.

12 Q. Go to DP104. This is, again, the balance sheet
13 for book Schedule L.

14 Now we have seen from 2010 to 2011 to 2012 that
15 the investments, line 8, mortgage and real estate loans,
16 has grown from about 10 million to 27.8 million, to now
17 it's 38.2 million.

18 I'm just going to ask the same question. Did
19 you see that and did that cause you to question
20 Mr. Chittick, or it had no bearing on you at all?

21 A. I would say it had no bearing. I mean,
22 Mr. Chittick seemed to -- things were getting better.
23 There was more activity. He was doing better. His income
24 was going up. He had more loans.

25 Q. When you say "things were getting better, there

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1 was more activity," is that a discussion you actually had
2 with Mr. Chittick sort of about the lending market?

3 A. I just looked at the numbers.

4 Q. Okay.

5 A. I mean, if you look at '12 versus '11, it's a
6 million dollars income versus 377,000. Obviously it's a
7 better year.

8 Q. But you didn't have any discussions with
9 Mr. Chittick about the market or about hard-money
10 lending or --

11 A. No.

12 Q. -- coming out of the recession in Arizona and
13 how that would affect real estate, anything like that?

14 A. No. He had a better grasp on that than I did.

15 Q. And then I guess the same question for the
16 amount of money that he was raising. So that climbed as
17 well from about 10 million to 31 million, to now
18 40 million at the end of 2012.

19 Again, that had no bearing on you either as a
20 tax preparer or as an investor?

21 A. No. Probably had a bearing on me as an
22 investor, but I didn't realize it.

23 Q. You didn't realize it.

24 And I will note here loans from shareholders
25 went up about \$400,000.

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1 A. 400,000.

2 Q. Do you recall any discussion on that, or was
3 that -- do you know if that's --

4 A. I don't recall any discussions.

5 Q. Is there anything about that, as a tax preparer,
6 that would strike you as odd or cause you to ask any
7 additional questions, if shareholder loans are increasing
8 year over year?

9 A. I mean, if I thought the company was in trouble,
10 that would cause me some concern, but I never thought this
11 company was in trouble. I always believed Denny was
12 lending the money back in because it was a good investment
13 for Denny.

14 Q. Let's go ahead and go to DP132. Actually, you
15 can go ahead and flip to 133.

16 So, again, we are looking at the DenSco balance
17 sheet for 2012. This is the breakdown of the accounts
18 receivable, and you will see Mr. Menaged, at the end he
19 owes DenSco \$4,650,000.

20 Do you see that?

21 A. Yes, I do.

22 Q. At this time Mr. Menaged is now pretty handedly
23 the biggest number on this receivable list.

24 Were you aware of that or --

25 A. I was not aware of that.

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1 Q. -- is that something you would have noted?

2 A. No.

3 Q. In fact, if you divide the 4.65 million by the
4 total accounts receivable of 39 million, you will see that
5 Mr. Menaged now has about 12 percent of the DenSco loans.

6 Again, that's not something you would have made
7 note of --

8 A. No, I would not.

9 Q. -- or done anything on?

10 A. No.

11 Q. Were you aware of what representations DenSco
12 was making in its Private Offering Memorandum with respect
13 to loan concentration?

14 A. No, I wasn't.

15 Q. Are you sort of generally aware that a higher
16 loan concentration might be more risky than a lower loan
17 concentration?

18 A. Yes, I would realize that.

19 Q. Then again, I just want to note, if you go to
20 161, Mr. Chittick again provides a list of collateral.

21 You see that?

22 A. Yes, I do.

23 Q. And, again, this is not something you would have
24 reviewed either as an investor or as a tax preparer?

25 A. No, I did not.

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1 (Deposition Exhibit No. 690 was marked for
2 identification.)

3 Q. (BY MR. RUTH) So I have handed you what's now
4 the DenSco 2013 tax returns and your assorted work papers.

5 You prepared this tax return for DenSco,
6 correct?

7 A. Yes, I did.

8 Q. Let's go to 193. If you look at line 8 -- so
9 193, DP193 on this exhibit is, again, the balance sheet
10 comparison, beginning of the year to the end of year.

11 So here, again, on line 8, beginning of the
12 year, \$38 million in loans being made by DenSco. By the
13 end of the year, that number has jumped 20 million to
14 58 million.

15 Do you see that?

16 A. Yes, I do.

17 Q. And, again, did you notice that? Did it seem
18 like a large increase to you?

19 A. It seems like a large increase, but I don't
20 think I noticed it or thought anything unusual about it,
21 outside of he was doing better.

22 Q. You didn't have any concerns about his ability
23 to manage loan amounts of that size?

24 A. No.

25 Q. And, again, the same for line 20. The amount

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1 that he is raising from investors has gone from 40 million
2 to 56 million.

3 Does that strike you as a pretty large increase
4 from one year?

5 A. It strikes me now as a pretty large increase,
6 but I wasn't concerned about it back in 2013.

7 Q. You simply trusted that Mr. Chittick knew that
8 he was doing and was doing it the right way?

9 A. I think Denny knew what he was doing. Yeah.

10 Q. You will see here that loans from shareholders
11 actually goes down from 1.7 million to 865 million.

12 MR. POLESE: 865,000.

13 Q. (BY MR. RUTH) I'm sorry. Yes. 865,000. So it
14 looks like it goes down about \$900,000.

15 Do you see that?

16 A. Yes, I do.

17 Q. Do you recall discussing with Mr. Chittick that
18 decrease?

19 A. No, I don't recall discussing that with him.

20 Q. Would that suggest to you he was getting
21 principal paid out of the company to himself?

22 A. That would suggest that he got principal paid
23 out.

24 Q. Would that fact cause you any concern?

25 A. I believe the number might have gone into his

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1 retirement plan. There is a journal entry here for
2 accrued pension of 867,000, so I think he used some of
3 that money to fund his pension plan perhaps. I don't
4 know.

5 Q. And that's -- I'm not asking you to guess, but
6 that's one explanation?

7 A. Uh-huh. It looks like there is a re-class on
8 Denny's note for 777,000.

9 Q. What page are we on on that?

10 A. I'm on page 217.

11 Q. Okay. That's where I was going to go next
12 anyway.

13 A. Journal entry number 7.

14 Q. Okay.

15 A. I don't recall what that's about.

16 Q. So what's being re-classified to what? I'm
17 having a hard time reading this.

18 A. So they are taking the due to shareholder --

19 Q. Okay.

20 A. -- and they are reducing it by 770,000 and
21 putting it into a note payable. So it's moved from line
22 19 to line 20.

23 Q. Okay.

24 A. I'm not sure why.

25 Q. Looking back and sort of knowing everything

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1 that's happened, is this problematic or does this cause
2 you to raise an eyebrow?

3 A. I mean, not really. I mean, again, I'm
4 preparing his tax return. All's I'm trying do is get a
5 tax return that looks reasonable --

6 Q. Sure.

7 A. -- and, you know, and you are paying some tax on
8 this money. I mean, it wasn't like he was recording
9 20,000 income. On this tax return it says 1.1 million.

10 Q. But I'm saying now looking back, knowing
11 everything that's happened, the issues that DenSco was
12 facing at the time.

13 A. Yeah. And hindsight being 20/20.

14 Q. What could this indicate to you now, with
15 hindsight being 20/20?

16 A. That he was over his head. That Denny was over
17 his head with how much he could handle. That perhaps he
18 lent more money to Scott whatever his name is.

19 MR. POLESE: Let me object here. I want to make
20 sure he is answering the question you posed.

21 MR. RUTH: Yes.

22 MR. POLESE: I think your question was does this
23 entry --

24 MR. RUTH: Yes.

25 MR. POLESE: -- on line 19.

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1 Q. (BY MR. RUTH) Correct. I'm focusing solely on
2 the reclassification.

3 A. That reclassification doesn't make me concerned.

4 Q. Okay. Even with hindsight?

5 A. Even in hindsight.

6 Q. Okay. That was my question. Thank you.

7 A. He had enough money in the account, he was
8 making enough money, he could take out whatever he wanted
9 to take out.

10 Q. But the bottom line is this would indicate that
11 he was taking money out of the company --

12 A. Yes.

13 Q. -- and giving it to himself?

14 A. Yes.

15 Q. Let's go to 218. Actually, let's stay there. I
16 have some follow-up questioning.

17 So I think we just discussed the number 7, the
18 re-classification?

19 A. Can you tell me what page you are on again?

20 Q. I'm sorry. 217, DP217.

21 A. Okay.

22 Okay.

23 Q. Can you explain the entry right above it to me,
24 what's going on there, what's being re-classified?

25 A. On number 6?

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1 Q. Yes.

2 A. That is an entry to record the pension
3 contribution that's going to be made after year end.

4 Q. Okay. Accrued pension because it hasn't -- it's
5 not being paid in that year?

6 A. Correct.

7 Q. Okay.

8 A. That 867,000 is in line 17, part of line 17.

9 Q. It looks like line 18 to me. Oh, I'm sorry.

10 A. 17 on page 1.

11 Q. Okay. All right. Let's go to 218, DP218.

12 And so, again, this is the DenSco balance sheet
13 for 2013. It has broken out the accounts receivable for
14 the various borrowers.

15 If you flip ahead to page 220, you see
16 Mr. Menaged again, and this time, at least for the first
17 time that I am aware of, Mr. Menaged is broken out into
18 three separate entities, Arizona Home Foreclosures, Easy
19 Investments, and Yomtov Menaged - other.

20 Do you see that?

21 A. Yes, I do.

22 Q. Here it lists that the total that Mr. Menaged
23 owes to DenSco is \$28,454,732.07.

24 Do you see that?

25 A. Yes, I do.

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1 Q. Do you recall noticing that number at all when
2 reviewing these work papers and putting this tax return
3 together?

4 A. No, I don't recall thinking about it.

5 Q. If you had noticed it, would it cause you some
6 concern just one borrower had \$28 million outstanding?

7 A. Not doing a tax return, if Denny said that's --

8 Q. What's owed, then that's what's owed?

9 A. -- what's owed.

10 Q. What about as an investor?

11 A. As an investor, it might have given me concern,
12 but I didn't notice it.

13 Q. And of course now with a total A/R of
14 58 million, it looks like Mr. Menaged has almost
15 50 percent, more than 50 percent?

16 A. Less than 50 percent.

17 Q. Less than 50 percent. Just under 50 percent of
18 the outstanding A/R?

19 A. Correct.

20 Q. And that wouldn't have -- you didn't make note
21 of that either or notice that either?

22 A. No.

23 Q. Under the liability section here, the long-term
24 liabilities, the Chittick 401(k) entry is up about \$60,000
25 from the 2012 balance sheet, and the defined benefit plan

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1 entry is about \$400,000 up.

2 Do you know --

3 A. There were probably either contributions made or
4 income earned in those accounts. I don't know if Denny
5 was paying his retirement plan the actual money or just
6 keeping track of it and accruing it.

7 Q. And as the tax preparer, it wouldn't have really
8 made a difference to you either way?

9 A. No.

10 Q. The Denny -- the line Denny Chittick right above
11 that, the \$777,000 owed, that's down about a million. It
12 was about 1.7 million the prior tax return.

13 Again, this would indicate that Denny is taking
14 money out?

15 A. Correct.

16 Q. Although it's possible that some of that money
17 is going back into the 401(k) --

18 A. Correct.

19 Q. -- or the defined benefit?

20 A. Could be.

21 Q. Not all of it, though, obviously, right?

22 A. Correct.

23 Q. This is also going to be the first time I don't
24 ask you about that spreadsheet of properties. It's not
25 attached to this.

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1 Did you notice that that piece of --

2 A. No.

3 Q. -- information wasn't provided to you?

4 A. I didn't need that information to start with, so
5 I wouldn't have noticed if he didn't give it to me.

6 (Deposition Exhibit No. 691 was marked for
7 identification.)

8 Q. (BY MR. RUTH) I have handed you what's been
9 marked as Exhibit 691. It's the 2014 tax return. Skip
10 over some of the usual questions.

11 If you go to DP260, you will see here there is a
12 line for deductions of legal and professional expenses.

13 Do you see that?

14 A. Yes. Uh-huh. Yes.

15 Q. And those expenses are, for 2014, \$81,790.

16 Do you see that?

17 A. Yes, I do.

18 Q. So I'll represent, at least in my mind, that's a
19 significantly higher expense than it's been in years
20 prior.

21 Do you recall noticing that or wondering why
22 DenSco was spending so much more money on legal fees?

23 A. I don't know that I recall noticing it back
24 then, but was there a memorandum issued during this time
25 period? That would account for a lot of legal fees going

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1 up. I don't know if there was or wasn't. But, no, I did
2 not inquire about the 81,790.

3 Q. And, again, Mr. Chittick never mentioned to you
4 any issues with his business or potential problems looming
5 on the horizon?

6 A. No.

7 Q. He never mentioned a Forbearance Agreement?

8 A. No.

9 Q. If you flip to DP265, it says distribute of
10 share of income, 1,364,529.

11 Do you see that?

12 A. Yes.

13 Q. Is this sort of what -- is this what
14 Mr. Chittick received as distributions from DenSco?

15 A. No.

16 Q. What is this?

17 A. That is the total amount of income received from
18 DenSco by Mr. Chittick that he had to report tax on.

19 If you look at 249, and you add up -- if you add
20 up line 2, 3, and 5, I believe that will be that number.

21 Q. Okay.

22 A. The amount of distributions he received are on
23 line 7 for 108,436.

24 Q. Okay. Thank you.

25 Let's go to DP273. Of course here you will see

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1 there is a line item for total assets, but had a line item
2 for accounts receivable.

3 At least from what I can tell, for the first
4 time Mr. Chittick hasn't broken out all the borrowers.
5 Correct?

6 A. Correct.

7 Q. Did you ask him why or --

8 A. No. I didn't need that information to prepare
9 the tax return.

10 Q. You will also see that Mr. Chittick, under
11 long-term liabilities, appears to have lumped shareholder
12 loan, 401(k), defined benefit plan into one entry that
13 just says Denny Chittick.

14 Do you see that?

15 A. Yes, I do. I believe that relates to the
16 Pension Strategies telling him that he could not self-deal
17 with the retirement plan, and so I think he took the money
18 out of the retirement plan. And I'm not sure what he did
19 right now.

20 Q. But it doesn't look like he put that money back
21 into the company in some other form, correct, through an
22 increased shareholder loan or investment?

23 A. I don't know. I don't know how that was arrived
24 at, without studying the work papers.

25 Q. Hold on.

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1 So that number under Chittick is \$1,448,460.49
2 as a long-term liability, correct?

3 A. Uh-huh.

4 Q. If you go to DP248, on line 23, you will see
5 there is now a line item for additional paid in capital --

6 A. Yes.

7 Q. -- for that amount.

8 A. Uh-huh.

9 Q. To someone who doesn't understand this, can you
10 explain what that means?

11 A. Yeah. What happened was I -- we had talked
12 about it would be more tax advantageous for Denny to not
13 have to pay the 3.8 percent net investment income, by
14 getting paid that money, if he would take it out and show
15 that as a distribution instead of getting paid the
16 interest, so we moved it to additional paid-in capital
17 from the note.

18 Q. Can you give me a general primer on what
19 additional paid-in capital is?

20 A. It's just part of the investment into the
21 company.

22 Q. I guess what I --

23 A. You have stock --

24 Q. Correct.

25 A. -- and then you have additional paid-in capital.

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1 The stock may have par value or no par value, and then you
2 have additional paid-in capital. They are both just
3 investments in the company.

4 Q. But the additional paid-in capital would still
5 show up as a liability?

6 A. It's equity. We just didn't make -- there is
7 no -- he showed it on his books as liability --

8 Q. All right. I understand.

9 A. -- and we re-classified it on an adjusting
10 journal entry to additional paid-in capital.

11 Q. Okay. Thank you.

12 (Deposition Exhibit No. 692 was marked for
13 identification.)

14 Q. (BY MR. RUTH) I have handed you what's been
15 marked as Exhibit 692, which is a series of emails in
16 December of 2014 involving Mr. Chittick, some of them
17 involving yourself, and Pension Strategies.

18 Do you see that?

19 A. Yes, I do.

20 Q. If you go to the very first email, the way these
21 are organized, the first email is on the last page, so it
22 scrolls up. DOCID number 67119 at the bottom.

23 This is an email from Mr. Wohrle at Pension
24 Strategies to Mr. Chittick and copied to yourself.
25 Mr. Wohrle states at the top: I wanted to follow up with

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1 you on the topic of your retirement plan investments that
2 we reviewed during our December 11th meeting with Dave.

3 Do you see that?

4 A. Yes.

5 No. Hold on. I don't. Where are you looking?

6 Q. DOCID67119.

7 A. Okay. Yes, I do see that.

8 Q. Is this the meeting where you sort of just --
9 where you believe it was discussed that Mr. Chittick had
10 to change his retirement investment strategy due to
11 potential conflicts?

12 A. Yes, it is.

13 Q. And then in the second paragraph, you will see
14 Mr. Wohrle says: Because your strategy is complex --
15 second paragraph, second sentence -- because your strategy
16 is complex and appears to also involve your company, who
17 sponsors the plan, we strongly encourage you to consult
18 with an ERISA attorney.

19 Do you see that?

20 A. Yes.

21 Q. And you were there for that discussion?

22 A. I think I have been cc'd on this.

23 Q. Do you recall being present for a discussion
24 with Mr. Chittick and with Mr. Wohrle?

25 A. I don't recall being -- having a conference call

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1 or anything like that.

2 Q. Do you know if Mr. Chittick or DenSco ever hired
3 or used an ERISA attorney to work through retirement
4 planning issues?

5 A. I don't know if he did or didn't. I think he
6 was trying to refer him over to Richard Smith, yes.

7 Q. Do you know Mr. Smith?

8 A. Yes, I do. But it was Pension Strategies'
9 referral.

10 Q. Sure.

11 If you look on page, the number is DOCID67119?

12 MR. POLESE: 11 --

13 MR. RUTH: 9.

14 MR. POLESE: There is a whole bunch of them with
15 119.

16 MR. RUTH: Sorry. That's the problem with this.
17 It's the one, two, third page from the front. My
18 apologies.

19 MR. POLESE: It says "can I take" --

20 THE WITNESS: The funds out of the current
21 account and move it to --

22 Q. (BY MR. RUTH) Yes. And we are looking at the
23 email right below that from Mr. Wohrle where he writes to
24 Denny and to yourself. And at the end of the third
25 paragraph, the last sentence, it says: The other

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1 consideration is obviously -- it says and, I'm assuming it
2 means any tax advantage contributions to the 401(k) profit
3 sharing plan that you may be missing out on if you
4 terminate the 401(k) plan, but Dave would be able to
5 assist with those types of questions.

6 Do you see that?

7 A. Yes, I do.

8 Q. Do you recall having a discussion with
9 Mr. Chittick about what would be the most tax advantageous
10 way to set up his retirement planning?

11 A. I think Denny became upset with Pension
12 Strategies because he thought he was told early on that he
13 could do this, and then he was told later on that it could
14 be a problem, and so Mr. Chittick wanted to terminate all
15 plans and roll to IRAs.

16 And I think I -- what Brian was saying is that
17 he could keep putting money into a 401(k) and it would be
18 more advantageous. He could put more money away. And I
19 agreed with that, but Denny did not. I don't think he
20 heeded our advice on this one, and I think he rolled
21 everything to IRAs.

22 Q. Do you know why? Did he share with you,
23 Mr. Chittick share with you why?

24 A. He was frustrated with Pension Strategies and he
25 didn't want to have a retirement plan anymore. He was

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1 frustrated with the advice he got from Pension Strategies.

2 Q. So your understanding was because he was upset
3 with Pension Strategies, he just no longer wanted a 401(k)
4 at all --

5 A. Right.

6 Q. -- even though there might be tax advantages to
7 having one?

8 A. Correct.

9 Q. Okay.

10 MR. RUTH: Let's take another real quick break.

11 (A recess was taken from 2:27 p.m. to 2:34 p.m.)

12 Q. (BY MR. RUTH) I want to revisit the last topic
13 we were just on for a second, which I believe was
14 Mr. Chittick deciding not to set up a 401(k) because he
15 was upset with Pension Strategies, notwithstanding the tax
16 benefits that might provide him --

17 A. Down the road.

18 Q. -- down the road.

19 A. Yes.

20 Q. It strikes me as a somewhat irrational response.
21 Does it strike you that way?

22 A. Yeah, it strikes me a little bit as an
23 irrational response. I mean, it's not a well thought out
24 response, but he was obviously upset with Pension
25 Strategies.

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1 Q. Do you recall any other instances where
2 Mr. Chittick rejected your advice because he was angry at
3 something or just simply wanted to follow his own mindset?

4 A. No.

5 Q. Looking back on everything that you now know
6 happened with DenSco after Mr. Chittick's suicide, was
7 Mr. Chittick providing you with accurate information for
8 tax planning purposes?

9 A. I don't believe his tax returns were accurately
10 filed, no.

11 Q. And were they -- I'm sorry. I didn't mean to
12 cut you off.

13 A. I mean, I think he was overstating his income,
14 from what I have heard from the receiver and from the
15 investment meetings that I have been familiar with. I
16 don't think he made the money that these tax returns
17 showed he made. Quite unusual. In hindsight, that's what
18 I think happened, but I don't know.

19 Q. And because one factor in the tax returns,
20 overstating his income, was that Mr. Chittick wasn't
21 providing you with correct and accurate financial
22 information with respect to DenSco.

23 would you agree?

24 MR. POLESE: Objection; form.

25 THE WITNESS: I would say no, he wasn't

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1 providing me with correct and accurate information.

2 Q. (BY MR. RUTH) So, for example, do you
3 understand that one of the issues with DenSco was that it
4 lent money to a borrower who double-liened DenSco's
5 collateral?

6 A. That's what I understand.

7 Q. Do you understand that a lot of that
8 double-liening happened in 2013?

9 A. That's what I have heard.

10 Q. If Mr. Chittick had provided that information to
11 you, would that have changed how you would have prepared
12 his taxes?

13 A. If he had provided me different information, I
14 would have prepared the returns differently.

15 Q. If he would have told you that I have lent money
16 to someone, instead of that money being in first position,
17 that money is in second position on collateral, would that
18 impact how you prepared his tax returns?

19 A. No.

20 Q. No?

21 A. I don't think that would have impacted how I
22 prepared his tax return. It might have impacted whether I
23 invested with him continually, but I don't think it would
24 have affected how I prepared it. I would have still
25 prepared the returns based on the information he gave me.

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1 Perhaps I would have asked more questions about
2 loans, whether they were good loans or not good loans, if
3 he said there was a problem, but I was never aware of any
4 problem.

5 Q. Understood, but that's my question.

6 Hypothetically, if you would have been aware of
7 the double-lien problem, would you have filed the tax
8 returns in the same manner that you did, or would it have
9 affected, for example, whether you charged off certain
10 amounts on loans?

11 A. I think if Denny said these loans, we're going
12 to get back the money, I would have filed them the way he
13 said -- I would have based it on what his opinion was on
14 what we were going to get, what he was going to get, what
15 Densco was going to get.

16 Q. So if Mr. Chittick had told you, look, I'm in
17 second position or I'm undersecured, but I think the
18 market is going to recover and we will be fully secured
19 down the road. I will be paid off on this, you would have
20 filed the tax returns exactly the same way?

21 A. If that's the way he wanted them filed, yeah.
22 They are his tax returns, not my tax returns. I just
23 prepared them based on the information he provided.

24 So if he would have said we are not writing off
25 any of these loans right now, then I would have said you

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1 will pay more tax today.

2 Q. So that's as a tax preparer.

3 As an investor?

4 A. I might have rethought about pulling my money
5 out.

6 Q. So the determination as to whether a loan that
7 DenSco makes to someone like Menaged, the determination as
8 to whether that loan is good or bad or will be paid or
9 won't be paid rests entirely with Mr. Chittick?

10 A. Correct. We take the information that the
11 client gives us. Unless we know there is something wrong,
12 we put that information on the returns.

13 Q. Do you exercise any discretion to suggest that
14 you think Mr. Chittick is being overly optimistic?

15 A. I mean, we might talk about that, but it's his
16 decision.

17 Q. Were you involved, after Mr. Chittick's suicide,
18 in amending his tax returns?

19 A. Was I involved in amending his tax returns?

20 MR. POLESE: Objection as to form.

21 Are you talking about with respect to the
22 estate?

23 MR. RUTH: Yes.

24 MR. POLESE: Okay.

25 THE WITNESS: For some reason I'm drawing a

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1 blank here.

2 Did I prepare those returns, his amended
3 returns? For some reason I'm drawing a blank. I'm not
4 sure. I think -- did I prepare the amended returns, do
5 you remember, Jim?

6 MR. POLESE: I think it was simply in a
7 requested form. I don't think amended returns were
8 actually prepared, Counsel.

9 MR. RUTH: Thank you.

10 MR. POLESE: 873, I think, got a form filed.

11 Q. (BY MR. RUTH) And what's an 873 form?

12 A. An 873 is to keep the year open.

13 MR. POLESE: No. It's the request for a refund.

14 THE WITNESS: It's not an 873.

15 MR. POLESE: Wrong number.

16 Q. (BY MR. RUTH) Well, it's not critical. My real
17 basis of my question is --

18 MR. POLESE: Let's go off the record.

19 MR. RUTH: Sure.

20 (An off-the-record discussion.)

21 Q. (BY MR. RUTH) So just to clarify, this was
22 really the intent of my question, was were there amended
23 tax returns filed after Mr. Chittick's death --

24 A. No.

25 Q. -- that you were involved with?

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1 A. Not amended returns.

2 Q. Sounds like what was filed was a form 1045?

3 A. Right, to carry back a loss that was generated
4 in a subsequent year or in a year ending after his
5 suicide. There was a loss generated that they carried
6 back to get back some taxes on prior years for
7 Mr. Chittick.

8 Q. Were those losses accruing during those tax
9 years and then just carried back in 2016 or 2017, or were
10 the losses all recognized in one year?

11 A. The losses were all recognized in one year.

12 Q. And why is that?

13 A. I think we came -- there was a determination
14 that -- that some of those loans weren't good, and so the
15 loss got recognized in one of the subsequent years and
16 then carried back. I don't remember the years or what we
17 carried back to.

18 You don't go back and amend the return, though.
19 There is an IRS procedure on this or a ruling on this that
20 we went through some research on it to find out. Because
21 we had to do the same thing on all the investors,
22 including myself.

23 Q. We know now, though, looking back, though, that
24 many of those loans weren't good the instant they were
25 made, correct?

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1 A. I guess so.

2 MR. POLESE: Objection as to form.

3 Q. (BY MR. RUTH) Do you know?

4 A. I don't know if the loans were good or not, but
5 that's what the receiver, I think, has alluded to.

6 Q. I think we have covered some of this, but I just
7 want to make sure.

8 Did you ever ask Mr. Chittick about how DenSco's
9 business was doing, other than reviewing the numbers he
10 was giving you?

11 A. I think every time I sit down with a client, I
12 ask how is business, how are things going, and they say
13 it's fine, doing better.

14 Q. Beyond those generalized statements, there is no
15 further digging or discussion?

16 A. No, unless he says there is some problem he
17 wants to discuss.

18 Q. Did he ever say that there was a problem?

19 A. No, he never said there was a problem.

20 Q. Did you ever offer any advice to Mr. Chittick in
21 regards to DenSco's business, as how it operates its
22 business?

23 MR. POLESE: Object to form.

24 THE WITNESS: Yeah, I offered him advice as to
25 what his wages should be from the business, what he should

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1 put into retirement plans, that kind of stuff.

2 Q. (BY MR. RUTH) But not in terms of how he
3 actually operates the business?

4 A. No. No.

5 Q. And you had never heard of Mr. Menaged until
6 after Mr. Chittick's death?

7 A. Correct.

8 Q. Did you ever discuss Mr. Beauchamp with
9 Mr. Chittick?

10 A. No.

11 Q. Did you ever discuss the legal advice he was
12 receiving?

13 A. No. He never asked me about Mr. Beauchamp. I
14 don't even think I have met Mr. Beauchamp.

15 Q. I think we saw on some of the tax returns, and
16 we can take a look at them real quick if it helps frame
17 the question better, but it looks like you identified
18 certain corrections that needed to be made to DenSco's
19 QuickBooks records --

20 A. Correct.

21 Q. -- recharacterizing certain entries, correct?

22 A. Correct.

23 Q. How did you determine or how did you go about
24 determining what needed to be fixed or recharacterized?

25 A. Primarily from discussions with Denny about

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1 certain numbers, you know, what the retirement plan
2 contribution is or getting information from Pension
3 Strategies as to what the retirement plan was going to be
4 this year, that kind of stuff, or from discussions with
5 Denny about what was reflected.

6 I mean, are there certain adjusting journal
7 entries you have a question about?

8 Q. No. I'm just trying to generally understand the
9 procedure how you got from receiving the information to
10 ultimately filing the tax return.

11 In terms of meetings that you had, did you have
12 any meetings with Pension Strategies where you were
13 present?

14 A. We had some phone conferences sometimes where I
15 was present.

16 Q. Did you take notes during those phone
17 conferences?

18 A. I take notes during every meeting, so...

19 Q. Do you still have those notes?

20 A. I'm sure. I think I probably sent them over.
21 I'm not sure. They are probably tax plans.

22 Q. I don't recall having seen any.

23 Is that something that you could provide us
24 through your counsel or something I can consult with your
25 attorney about?

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1 MR. POLESE: Well, we will look. If we have got
2 them, then we will produce them.

3 Counsel, since you earlier asked about notes
4 about a meeting with the receiver and Brian Anderson that
5 were early on, and he said he thought he had notes, you
6 want those as well?

7 MR. RUTH: Yes, if there are some.

8 MR. POLESE: Okay.

9 MR. RUTH: As well as Mr. Chittick's individual
10 tax returns.

11 MR. POLESE: They are not in the repository?
12 They should be.

13 MR. RUTH: I will have to take a check.

14 MR. STURR: I believe they are.

15 MR. RUTH: Okay. Well, I don't have them, but I
16 will take a look at the index again. It's a long index.

17 MR. POLESE: I'm sure they are there.

18 MR. RUTH: Okay.

19 MR. POLESE: The receiver couldn't have gotten
20 the refunds without them.

21 You don't have any more chairs full of
22 documents, do you?

23 MR. RUTH: I'm even skipping some for you.

24 (Deposition Exhibit No. 693 was marked for
25 identification.)

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1 Q. (BY MR. RUTH) I'm handing you what's marked as
2 Exhibit 693. It's a letter from your counsel to
3 Mr. Dewulf, my partner here, with respect to a subpoena
4 that was served.

5 Do you see that? It looks like you were copied,
6 if you look back a page.

7 A. Yes.

8 Q. I just wanted to verify a couple of the
9 statements on here.

10 If you look on the first page, second paragraph,
11 second to last sentence, it says: David has confirmed to
12 me that he remitted to the Receiver all DenSco-related
13 documents he had that were responsive to the subpoena.

14 I believe Mr. Polese here is referring to the
15 subpoena that the receiver served on you.

16 MR. POLESE: To the ACC.

17 Q. (BY MR. RUTH) Or the ACC.

18 Is that accurate, that you provided them with
19 everything that's DenSco-related?

20 A. I believe I did. If there is something, you
21 need, though, have at it. I still got them.

22 Q. The next paragraph states: I also confirmed
23 that Denny Chittick maintained DenSco's books and records.
24 David did not do any internal accounting work for DenSco
25 in the nature of projections or pro formas.

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1 Is that accurate, you didn't do any projections
2 or pro formas for DenSco?

3 A. Correct.

4 Q. The next sentence says: He did not maintain
5 original source materials or prepare internal unaudited
6 financial statements.

7 Do you see that?

8 A. Yes.

9 Q. Is that accurate?

10 A. Correct.

11 Q. Do you recall ever receiving any original source
12 materials?

13 A. No. I mean, just the QuickBooks.

14 Q. Right.

15 A. Right.

16 Q. Those are the PDF copies or the physical copies,
17 correct?

18 A. Right, the physical copies.

19 Q. And then it says: Similarly, he, Mr. Preston,
20 has no recollection of withholding documents that he may
21 have had in his possession that were responsive insofar as
22 they related to Chittick personally.

23 Do you see that?

24 A. Yes.

25 Q. Have you produced to the receiver or to us all

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1 of the emails with Mr. Chittick?

2 A. I believe I did. I mean, it's been so long
3 since I did it. I believe I have remitted almost
4 everything in my files that I thought was -- had any
5 significance in it at all.

6 Q. And that's where the emails would have been,
7 would have been in -- you would have a file for DenSco?

8 A. Right.

9 Q. And you would place emails that you sent in
10 there?

11 A. Correct.

12 Q. Do you keep a file, hard copy or soft copy?

13 A. Hard copy.

14 Q. I know in my Outlook I have got a folder for
15 everything where I squirrel away all of these emails
16 without printing them out.

17 Do you do something similar?

18 A. No. I print everything and it goes in folders
19 and we have paper up the yingyang.

20 MR. POLESE: Don't feel bad. I have partners
21 that don't trust the ones and zeros either.

22 Q. (BY MR. RUTH) Did you ever text message with
23 Mr. Chittick?

24 A. No.

25 Q. Do you know if anyone else at your firm ever

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1 corresponded with Mr. Chittick?

2 A. I'm sure my staff members have either spoke to
3 him on the phone or emailed him.

4 Q. And that correspondence would have been in the
5 file that you produced?

6 A. Should be.

7 Q. They follow the same procedure you do --

8 A. They should, yes.

9 Q. -- print things off?

10 A. Yeah.

11 (Deposition Exhibit No. 684 was marked for
12 identification.)

13 Q. (BY MR. RUTH) Handing you what's been marked as
14 Exhibit 694, which is an email from Mr. Chittick to
15 yourself and Ms. Divine at your firm, November 19th, 2015.

16 And Mr. Chittick is saying he is going to be a
17 few minutes late to a meeting, but a borrower of his,
18 Victor, and I do not know how to pronounce his last name,
19 Gojcaj, I think --

20 MR. STURR: Gojcaj.

21 Q. (BY MR. RUTH) -- is going to come to your
22 office to sign some documents.

23 Do you see that?

24 A. Yes, I do.

25 Q. Do you recall why Mr. Chittick was having a

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1 borrower come to your office to sign loan documents?

2 A. I have no idea. I don't recall this. I mean, I
3 figured it was probably just convenient, that we were more
4 convenient than going to his house, but I don't recall
5 this happening.

6 Q. That was going to be my question. Do you even
7 recall?

8 A. I don't recall meeting this guy or seeing this
9 guy, but it could have been the documents, printing these
10 documents out for him.

11 (A consultation was had between witness and
12 counsel.)

13 Q. (BY MR. RUTH) If you don't recall, you don't
14 recall.

15 Do you have any recollection of any other
16 borrowers coming to your office to sign documents?

17 A. No.

18 Q. Any DenSco borrowers?

19 A. No.

20 What was this gentleman's name?

21 Q. Victor Gojcaj.

22 A. I never met him, but it doesn't mean he didn't
23 come to our office. I mean, my receptionist could have
24 had documents up front and he would have signed them.

25 Q. Were you aware that Mr. Chittick kept an almost

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1 daily business journal?

2 A. No.

3 Q. Were you aware that Mr. Chittick kept an almost
4 daily personal journal?

5 A. No. Never seen them.

6 Q. Never discussed his practice of writing things
7 down?

8 A. No.

9 Q. Exhibit 22, what's already been marked.

10 Let me go off the record. I didn't actually
11 bring my copy. I will be right back.

12 (A recess was taken from 2:55 p.m. to 2:56 p.m.)

13 Q. (BY MR. RUTH) What I have handed you is
14 Exhibit 22 that was previously marked at another
15 deposition, and this is what we believe to be one of
16 Mr. Chittick's annual journals.

17 You have never seen anything like this?

18 A. No, I haven't.

19 Q. If you go to page Receiver 11 -- you see at the
20 bottom there is page numbers. Receiver 111. I'm sorry --
21 there is an entry June 5th.

22 A. Uh-huh.

23 Q. It says: I went golfing with Dave Preston for a
24 charity event.

25 Do you see that?

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1 A. That's true.

2 Q. Do you recall what Mr. Chittick was like at this
3 event?

4 A. It was raining, like, really hard. He came late
5 to the event, but we were late getting off the tee.

6 Q. Nothing stood out about his demeanor to you?

7 A. No. Just that he is busy.

8 Q. In all your meetings with him to plan and
9 prepare his tax returns, did he ever seem stressed,
10 depressed?

11 A. No more than normal. I mean, I never saw him
12 really -- I mean, I don't think he seemed stressed to me,
13 you know. He was upset when he got divorced, but that was
14 a whole different time period.

15 Q. Having, you know, interacted with Mr. Chittick
16 so often, have you formed any sort of opinion on what
17 happened here? How Mr. Chittick --

18 A. I think he didn't tell anybody what was
19 happening.

20 Q. Do you think he knew what was going on?

21 A. I -- I think he knew.

22 Q. Do you have any thoughts or opinions on why he
23 kept doing it, why he kept investing with Menaged?

24 A. He was embarrassed. His pride. I think his
25 pride and his embarrassment. I mean, all of his investors

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1 are friends and family, for the most part. I mean, I
2 think that's why he took his life.

3 Q. Was he a prideful person?

4 A. Yes.

5 Q. Smartest guy in the room?

6 A. Yes.

7 Q. Do you know what his relationship with his
8 parents was like?

9 MR. POLESE: Objection; form.

10 THE WITNESS: I thought it was good. I mean,
11 they were around to the investor meetings and, you know,
12 they invested money and always seemed in good -- he seemed
13 to be a family kind of guy.

14 Q. (BY MR. RUTH) He never told you otherwise?

15 A. No.

16 Q. If you move over to page 128, Receiver 128.

17 It's the entry for November 2nd. Just go ahead and take a
18 chance to read that. Let me know when you are done.

19 A. Okay, I'm done.

20 Q. Right in the middle, you know, he mentions one
21 of his investors calling him. He says: Then she cries
22 and puts Roy on the phone. He thinks it's best if I just
23 send him their money back. After two more phone calls, I
24 mail them a check. I told Dave to call them.

25 Do you think he is referring to you here?

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1 A. Uh-huh.

2 Q. Do you know what he is talking about there?

3 A. They are clients of mine.

4 Q. Okay.

5 A. Jemma and Roy Kopeł. Roy got pancreatic cancer
6 and was dying. So I take it they called for their money.
7 I think he called me just to tell me about what was going
8 on with sending the money back.

9 Q. Do you know anyone named Donna Preston?

10 COURT REPORTER: Is that "no"?

11 THE WITNESS: No. Sorry.

12 Q. (BY MR. RUTH) Do you generally recall having
13 any discussions with Mr. Chittick about capping the number
14 of investors, the amount of money invested, starting to
15 return funds back to investors?

16 A. I recall him saying that he felt he was getting
17 overwhelmed with the amount of work he had at 50 million,
18 and that he wanted to try to reduce the amount of funds so
19 that he didn't have to work so hard and it wouldn't be so
20 overwhelming to him.

21 Q. Do you know when that conversation would have
22 occurred?

23 A. I'd say 2000 -- what year did he die? '16?

24 Q. '16.

25 A. Okay. So it was probably in '14 or '15 that he

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1 wanted to start cutting back.

2 Q. Do you know if he ever did? It looks like, from
3 the financial statements he was providing you --

4 A. He didn't.

5 Q. -- that he didn't.

6 A. No.

7 Q. Did that cause you any concern that he was
8 telling you that he was feeling overwhelmed, but his
9 portfolio just keeps getting bigger and bigger?

10 MR. STURR: Object to the form.

11 THE WITNESS: I mean, I figured he knew himself
12 better than I knew him, so, you know.

13 (Deposition Exhibit No. 695 was marked for
14 identification.)

15 Q. (BY MR. RUTH) Handing you what's been marked
16 Exhibit 695. It's a September 30th, 2013, email from
17 Mr. Chittick to yourself.

18 Do you see that?

19 A. Yes.

20 Q. Starting from the top, he says at one point:
21 I've also updated my newsletter, and then he gives a link
22 to the newsletter.

23 Do you see that?

24 A. Yes.

25 Q. Did you ever read his newsletter?

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1 A. No.

2 Q. Then he says right after that: As I said in the
3 past, I won't be accepting any more money after the end of
4 the year. The growth in this quarter reaffirms that this
5 is the right strategy.

6 Do you see that?

7 A. Yes.

8 Q. Do you think that's what he is talking about
9 here, is sort of capping the amount of investment money?

10 A. Yes.

11 Q. And he is making this statement to you
12 September 30th, 2013, correct?

13 A. Yes, I guess so.

14 Q. So it sounds like at that point he is already
15 concerned that --

16 A. That he has got too much.

17 Q. And he says "as I have said in the past," which
18 would suggest he has mentioned this to you before.

19 Do you recall having multiple conversations with
20 him about that or him mentioning this to you multiple
21 times?

22 A. I remember him mentioning it to me a few times,
23 I mean, two or three times, but I don't know the exact
24 timing on it.

25 Q. At the end he concludes: It's just a thought at

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1 this point, as well as to give you plenty of notice.

2 Do you see that?

3 A. Yes.

4 Q. Do you know why you needed to have plenty of
5 notice? Do you know what he is talking about?

6 A. No. Maybe that's -- it could be that if I
7 wanted to invest more money, he wasn't going to do
8 anything until after the end of the year, so if I wanted
9 to invest more, he maybe was encouraging me to invest
10 more, but...

11 Q. Did you end up having a follow-up discussion
12 with him about proper limits on investments or proper
13 strategy?

14 A. No.

15 Q. When you met with Mr. Chittick, would you
16 usually meet in your office or would you meet at
17 Mr. Chittick's home?

18 A. At my office.

19 Q. Did you ever meet at Mr. Chittick's office?

20 A. No.

21 (Deposition Exhibit No. 696 was marked for
22 identification.)

23 Q. (BY MR. RUTH) Mr. Preston, I have handed you
24 what's been marked Exhibit 696, which is Statement 3 from
25 the AI CPA Statement of Standards for Tax Services.

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1 Do you see that?

2 A. Yes.

3 Q. And you are aware of those standards?

4 A. Yes.

5 Q. And you are aware of this statement?

6 A. Yes.

7 Q. If you go where I have highlighted in
8 paragraph 2, it states: In preparing or signing a return,
9 a member may in good faith rely, without verification, on
10 information furnished by the taxpayer or by third parties.
11 However, a member should not ignore the implications of
12 information furnished and should make reasonable inquiries
13 if the information furnished appears to be incorrect,
14 incomplete, or inconsistent either on its face or on the
15 basis of other facts known to the member. Further, a
16 member should refer to the taxpayer's returns for one or
17 more prior years whenever feasible.

18 Do you see that?

19 A. Yes. Uh-huh.

20 Q. Do you feel like you have lived up to this
21 statement with respect to DenSco's tax returns?

22 A. Yes, I do.

23 Q. Looking back and now knowing what you know, are
24 there things in the tax returns that would now appear to
25 be incorrect, incomplete, or inconsistent on their face?

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1 MR. POLESE: Objection; form.

2 THE WITNESS: They were figures that were
3 provided to me by Mr. Chittick. If they were incorrect,
4 it was because Mr. Chittick made them incorrect. I used
5 the figures he provided. Nothing looked out of line that
6 would prevent me from preparing the returns.

7 Q. (BY MR. RUTH) I have handed you what's been
8 marked as Exhibit 413, which is one of the letters that
9 Mr. Chittick wrote prior to his passing.

10 Have you ever seen this before?

11 A. Yes, I have.

12 Q. How did you come to see it or how did you come
13 to view it?

14 A. I think Denny's parents or sister provided it to
15 me, or gave me a copy of it or said here is a copy for you
16 or something on those lines.

17 Q. And you reviewed it at that time?

18 A. Yes.

19 Q. If you go -- I just have a couple questions
20 about some of the statements made in here. If you stay on
21 this first page, it's a little hard to -- one, two, three,
22 four, five, six, six, eight, nine lines down, there is a
23 sentence that says: I didn't come out of it unscathed.

24 Do you see that?

25 MR. POLESE: I'm sorry, Counsel. I was

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1 distracted. Which?

2 Q. (BY MR. RUTH) It's on the first page.

3 A. Yes, I see it.

4 Q. You see that sentence?

5 A. Yes.

6 Q. I think he is referring to the --

7 A. Downturn.

8 Q. -- real estate crash --

9 A. Yes.

10 Q. -- in 2008.

11 He says: I didn't come out of it unscathed but
12 I survived it, which is more than I can say for many other
13 lenders. I took millions of dollars in losses over a few
14 years. I remained profitable every year. I was able to
15 talk to a few of you to help make decisions on what I
16 should do.

17 Do you see that?

18 A. Yes.

19 Q. Did Mr. Chittick ever talk with you about what
20 he should do to weather the downturn --

21 A. No.

22 Q. -- or weather the real estate crash?

23 A. No.

24 Q. Are you aware of any investors that he talked to
25 about the real estate downturn or --

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1 A. No.

2 Q. If you keep going, same page, there is a
3 sentence that starts "Scott."

4 MR. POLESE: Scott?

5 MR. RUTH: Right here.

6 MR. POLESE: Okay.

7 THE WITNESS: Got it.

8 MR. POLESE: About three-quarters of the way
9 down.

10 Q. (BY MR. RUTH) Now he is referring to
11 Mr. Menaged, Scott as Mr. Menaged: So Scott contacted me
12 and asked if would be interested in funding a bank of
13 rentals to which a hedge fund friend of his out of
14 New York would buy once it reached 7 to 10 million. He
15 would put down 15 to 20 percent, fix them up and rent
16 them, and then when he acquired the total dollar amount he
17 would sell out to this guy. That amount of money would
18 take me over the 10 to 15 percent threshold to any one
19 borrower. Again I talked to a few of you investors and
20 got a positive response, based on his track record, the
21 down payments, et cetera, the comfort level moved there.
22 I agreed.

23 Do you see that?

24 A. Yes.

25 Q. When he says "I talked to a few of you

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1 investors," did he ever talk to you about investing money
2 with Mr. Menaged?

3 A. No.

4 Q. Did he ever talk to you about increasing his
5 loan concentration to any particular borrower?

6 A. No.

7 Q. Did he ever ask your advice on anything like
8 that?

9 A. No.

10 Q. Are you aware of any other investors who he may
11 have talked to about it?

12 A. No.

13 Q. If you go down a couple --

14 A. I mean, his next-door neighbor. I am not aware
15 he talked to any of them about it, but his next-door
16 neighbor was his biggest investor.

17 Q. If you go a couple sentences down, he says: For
18 efficiency sake, I would normally wire the funds I'm
19 lending to the bidding company. They would get the check
20 and give it to the trustee. Send me receipts. Sometimes
21 I would even wire the full amount and my borrower would
22 bring me their down payment check and bidding fee because
23 they lived here in the East Valley versus running across
24 town. I have operated this way ever since I was given the
25 ability to wire online in 2003. Many of you knew this and

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1 I told you this is how I operated.

2 Do you see that?

3 A. Yes.

4 Q. Did you know this?

5 A. No.

6 Q. You had no idea that's how he operated?

7 A. No.

8 Q. Were you aware of any other investors that knew
9 that this is how he operated?

10 A. No.

11 Q. If you flip to page, it's DIC9465. Right at the
12 top. I will represent he is now talking about the
13 double-liening issue. He says: Now we just had the AFG
14 properties that I was in second position. He says: Every
15 time we sold a property there was a shortfall owed to me.
16 Instead of taking this as a loss, I booked it as an
17 accounts receivable and Scott was paying down on it and
18 was reducing the A/R. It was of course going up faster
19 than he was able to pay it down.

20 Do you see that?

21 A. No. Where are you again?

22 MR. POLESE: Right here.

23 THE WITNESS: Okay. Every time we sold a
24 property there was a shortfall owed to me.

25 Q. (BY MR. RUTH) Do you see that?

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1 A. Yes.

2 Q. And have you read up through: It was of course
3 going up faster than he was able to pay it down?

4 A. Yes.

5 Q. As a CPA, do you believe it was appropriate for
6 Mr. Chittick to book --

7 A. No.

8 Q. -- that shortfall as accounts receivable?

9 A. And I did not talk to him about this.

10 Q. And it was not appropriate?

11 A. No. It wasn't appropriate and I did not talk to
12 him.

13 Q. How should he have booked it, coming from a CPA?

14 A. Are you talking --

15 Q. I'm talking about the shortfalls. So he is in
16 second position. Every time he sold a property there was
17 a shortfall owed to me. Instead of taking this as a loss,
18 I booked it as an A/R.

19 A. He should have booked the loss.

20 He never talked to me about this. Is this where
21 he says I talked to Dave about this in January?

22 Q. No. I think that's later. And I'm not sure you
23 are the Dave he is talking about.

24 A. Okay. Good. Thank goodness.

25 Q. But taking a look, even seeing just his

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1 financial statements, you couldn't tell from those
2 financial statements whether he was properly or not
3 properly --

4 A. Recording things, right.

5 MR. RUTH: That's all I have got.

6 MR. STURR: Mr. Preston, I have got a few quick
7 questions, if I may.

8 THE WITNESS: Okay.

9 MR. POLESE: Can we take a quick break?

10 MR. STURR: Sure.

11 (A recess was taken from 3:14 p.m. to 3:16 p.m.)
12

13 EXAMINATION
14

15 Q. (BY MR. STURR) Mr. Preston, I've asked you to
16 just put in front of you Exhibits 689 and 690.

17 MR. STURR: Jim, those are the 2012 and 2013 tax
18 return.

19 MR. POLESE: Okay.

20 Q. (BY MR. STURR) All I wanted to do is I just
21 wanted to clarify who worked with you on the tax returns
22 and the significance of some of the handwritten notes.

23 If you go in Exhibit 689, the 2012 return,
24 beginning on page 131, I see -- if you flip through the
25 pages, I see various handwritten notes and dates --

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1 A. Yes.

2 Q. -- with initials.

3 A. Yes.

4 Q. And then in the 2013 return, beginning on 20 at
5 page 214, I see the same thing. I see some various dates
6 and handwritten and initials.

7 A. Yes.

8 Q. Just, I'm curious, what's the significance of
9 those initials?

10 A. That's the person that prepared it or reviewed
11 the information.

12 Q. So on a particular page if there is a set of
13 initials and a date, that would reflect who actually
14 reviewed the document?

15 A. Correct.

16 Q. Okay.

17 A. So DMP is my initials and that date. DHS is
18 Devon Smith, who is a CPA.

19 Q. I see PBC. Is that another staff member?

20 A. That means it was prepared by client.

21 Q. Oh, I see. Okay.

22 A. BEO is & Betsy Omlor.

23 MR. STURR: That was my only question. Thank
24 you, Mr. Preston. I was curious. No further questions.

25 MR. RUTH: I'm still done.

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MR. POLESE: We will read and sign.

(3:17 p.m.)

David Mark Preston

DAVID MARK PRESTON

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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

1/2/2019

Date

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

JD REPORTING, INC.
Arizona Registered Reporting Firm R1012

1/2/2019

Date