

IN THE SUPERIOR COURT OF THE STATE OF ARIZONA

IN AND FOR THE COUNTY OF MARICOPA

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

Plaintiff,

vs.

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

Defendants.

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) NO. CV2017-013832
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DEPOSITION OF DEBBIE PIHL

Phoenix, Arizona
September 13, 2019
10:05 a.m.

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

DEBBIE PIHL, 9/13/2019

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1079	Email string		49	49
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1080	Email string		52	52
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1089	Email string		80	80
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1090	Email string		81	82
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1092	Email string		85	85
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EXHIBITS

EXHIBIT:	DESCRIPTION	MARKED/REF'ED	
1093	Email from Debbie Pihl to Scott Menaged and Veronica Gutierrez dated 6/2/2014 with attachment (Bates Nos. CH_REC_MEN_0019944-19948)	89	89
1094	Email string (Bates No. CH_REC_MEN_0051232)	90	90
1095	Email string (Bates Nos. CH_REC_MEN_0018287-18291)	91	91

PREVIOUSLY REFERENCED EXHIBITS

EXHIBIT	PAGE
	(None.)

REQUESTS TO PRODUCE DOCUMENTS

Page	Line
	(None.)

QUESTIONS INSTRUCTED NOT TO ANSWER

Page	Line
	(None.)

RECESSES TAKEN

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Recess taken from 12:38 p.m. to 12:46 p.m.	95

DEBBIE PIHL, 9/13/2019

1 DEPOSITION OF DEBBIE PIHL, commenced at
2 10:05 a.m. on September 13, 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 APPEARANCES

9 FOR PLAINTIFF:

10 OSBORN MALEDON, P.A.
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Scottsdale, Arizona 85260
dbrookshire@hgplaw.com

DEBBIE PIHL, 9/13/2019

Phoenix, Arizona
September 13, 2019
10:05 a.m.

* * *

DEBBIE PIHL,

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

EXAMINATION

Q. (BY MR. RUTH) Good morning, Ms. Pihl. Could
you please state your name.

A. Debbie Pihl.

Q. And, Ms. Pihl, do you mind if I call you Debbie
or do you prefer Ms. Pihl?

A. Everybody calls me Debbie. My name when I was
born was Deborah, but --

Q. But Debbie is fine with you?

A. Yes, it is.

Q. Okay. Thank you, Debbie.

Debbie, have you ever been deposed before?

A. Yes, I have.

Q. And in what capacity?

A. Through my work.

Q. For Magnus?

A. No, not for Magnus.

DEBBIE PIHL, 9/13/2019

1 Q. Okay.

2 A. Prior.

3 Q. When was that deposition?

4 A. Oh, I can't remember.

5 Q. More than ten years ago?

6 A. I would say so, yeah.

7 Q. Okay. Let me just go over a couple of the basic
8 ground rules that will make it easier for this
9 deposition to go smoothly, and make it easier for the
10 court reporter to take down your testimony. I'm sure you
11 have already been over this with your counsel, but let me
12 do it one more time.

13 It's important that your answers be verbal, so
14 we can't shake our head or use nuh-uhs or uh-huhs, because
15 the court reporter can't take those down.

16 Does that make sense?

17 A. Yes.

18 Q. I will do my best to let you finish your answer
19 to a question before I launch into another question, if
20 you could also do your best to let me finish a question
21 before you answer it.

22 Does that make sense?

23 A. Yes.

24 Q. Okay. If you don't understand a question I'm
25 asking, if you could please ask me to rephrase it or let

DEBBIE PIHL, 9/13/2019

1 me know that you don't understand it, and I will do my
2 best to rephrase the question in a way that makes sense
3 you to. okay?

4 A. Fine.

5 Q. If you need a break, please let me know. We can
6 take a break any time you want. If you need to consult
7 with your lawyer, please let me know. We can do that at
8 any time. The only time we can't do that is in the middle
9 of a question.

10 Does that make sense?

11 A. That's fine.

12 Q. There are times during this deposition where
13 your lawyer might object to a question that I have asked,
14 or Mr. Whitaker.

15 MR. RUTH: I assume, are you defending this
16 today?

17 MR. WHITAKER: Yes.

18 Q. (BY MR. RUTH) Mr. Whitaker may object to a
19 question that I have asked. Unless they instruct you not
20 to answer, I would ask you to go ahead and answer the
21 question. Most of those objections are just for the
22 record or for us to fight about later in front of a judge.

23 Does that make sense?

24 A. Yes.

25 Q. Okay. Debbie, did you do anything to prepare

DEBBIE PIHL, 9/13/2019

1 for this deposition?

2 A. No.

3 Q. You didn't review any documents?

4 A. No.

5 Q. Did you speak with Mr. Sturr or Mr. Whitaker?

6 A. No.

7 Q. Did you speak with your lawyer?

8 A. No.

9 Q. You didn't look up any transactions having to do
10 with DenSco or Menaged?

11 A. No.

12 MR. WHITAKER: Object to form.

13 Q. (BY MR. RUTH) Do you know who Yomtov Menaged
14 is?

15 A. Yes.

16 Q. And you are aware that he was someone who
17 borrowed money from lenders?

18 A. Yes.

19 Q. And utilized you and Magnus Title to handle
20 escrow and title insurance issues?

21 A. Yes.

22 MR. WHITAKER: Object to form.

23 Q. (BY MR. RUTH) Do you know who I refer to when I
24 refer to DenSco?

25 A. Yes.

DEBBIE PIHL, 9/13/2019

1 Q. What is DenSco? What does that term mean you
2 to?

3 A. It was a private-money lender.

4 Q. What about if I use the term Mr. Chittick or
5 Denny Chittick? Do you know who that is?

6 A. I know the name.

7 Q. Okay. Do you know that Mr. Chittick owned and
8 operated DenSco?

9 A. Yes.

10 MR. WHITAKER: Object to form.

11 Q. (BY MR. RUTH) Have you ever met Mr. Chittick?

12 A. No.

13 Q. Have you ever met Mr. Menaged?

14 A. Yes.

15 Q. Debbie, where do you currently work?

16 A. Magnus Title.

17 Q. And how long have you been at Magnus?

18 A. 11-plus years.

19 Q. And where were you before Magnus Title?

20 A. Camelback Title.

21 Q. And what is your current title at Magnus Title?

22 A. I'm a branch manager.

23 Q. How long have you been the branch manager?

24 A. 11-plus years.

25 Q. So the entire time you have been at Magnus

DEBBIE PIHL, 9/13/2019

1 Title, you have been a branch manager?

2 A. Yes.

3 Q. What are your responsibilities as branch manager
4 at Magnus Title? What's your job description?

5 A. It's a loaded question. Let's see here. My job
6 is to manage my office, to manage escrows and close
7 escrows.

8 Q. When you say "manage escrows," what does that
9 mean?

10 A. Well, you open and you close them.

11 Q. So that means opening escrow for the sale of a
12 property and then clearing encumbrances in order for the
13 sale to close?

14 A. Certainly, yes.

15 Q. Do you have any role in underwriting or title
16 insurance?

17 A. No.

18 Q. Do you know what the underwriting guidelines are
19 for issuing title insurance?

20 A. I have knowledge. I have been in the business
21 for 46 years, so I have a little bit of knowledge.

22 Q. Have you ever been involved in the underwriting
23 side?

24 A. Not the underwriting side, no.

25 Q. Have you ever been involved in issuing title

DEBBIE PIHL, 9/13/2019

1 insurance?

2 A. I have been involved in the -- yes, the
3 preparation of title commitments.

4 Q. What is a title commitment?

5 A. It's a commitment to insure real property.

6 Q. In the past 11 years at Magnus Title, have you
7 been involved in the preparation of title commitments?

8 A. No.

9 Q. It's safe to say you understand how to read a
10 title commitment?

11 A. Yes.

12 MR. WHITAKER: Object to form.

13 Q. (BY MR. RUTH) If someone asked you what does --
14 what does Magnus Title do generally, what would your
15 response be?

16 A. We are a title insurance agency.

17 Q. Do you also provide escrow services?

18 A. Yes.

19 Q. Does that fall within --

20 A. That is my responsibility. That is correct.

21 Q. Does that fall within title insurance?

22 A. Yes.

23 Q. Does Magnus ever act as trustee for trustee
24 sales?

25 A. No.

DEBBIE PIHL, 9/13/2019

1 Q. Currently every week, how many escrows would you
2 estimate you close?

3 MR. BROOKSHIRE: Are you asking her personally,
4 her branch?

5 MR. RUTH: Yes.

6 MR. BROOKSHIRE: Magnus Title in general?

7 Q. (BY MR. RUTH) You personally.

8 A. Me personally?

9 Q. Yes.

10 A. I have a team that closes escrows.

11 Q. Okay. How many does your team, how many does
12 your branch close?

13 A. It varies. I'm going to say on an average of 25
14 a week.

15 Q. Has that number gone up or down since the
16 2012/2013 time period?

17 A. It's gone up in the last four months. It's a
18 rollercoaster.

19 Q. Okay.

20 A. I can't -- I'm not going to give you a
21 definitive, because I can't.

22 Q. How many people work under you?

23 A. Right now, my team is five.

24 Q. Do they all have the same, similar
25 responsibilities?

DEBBIE PIHL, 9/13/2019

1 A. No. There is different levels.

2 Q. Can you give me a sense of who those people are,
3 what their levels are? what do the people on your team
4 do?

5 MR. WHITAKER: Object to form.

6 THE WITNESS: Well, I have a front desk, just
7 like you have a front desk, who opens escrows and assists,
8 as up to her capabilities. And then I have a trainee who
9 is training to become an escrow officer. I have another
10 escrow officer with experience. Two other escrow officers
11 with experience. That's right, if I count my people
12 right. Right now I have got kind of a part-time staff.
13 So you are asking me about the current?

14 Q. (BY MR. RUTH) Correct.

15 So you have got a front desk person who helps
16 you open escrow. A trainee and --

17 A. Well, she is a trainee as well.

18 Q. Okay.

19 A. So I have two trainees and two escrow officers.

20 Q. Two.

21 was your office staffed similarly in 2012/2013?

22 A. I don't remember.

23 Q. How did you first come to know Yomtov Menaged or
24 Menaged?

25 A. I don't recall.

DEBBIE PIHL, 9/13/2019

1 Q. Do you know approximately how long you have
2 known him?

3 A. I could take an educated guess, if that's what
4 you would like.

5 Q. Sure.

6 A. I shouldn't put myself in that position.

7 MR. BROOKSHIRE: If you don't recall, just say
8 you don't recall.

9 THE WITNESS: It really don't. I really, I
10 don't feel like I could give anything accurate.

11 MR. BROOKSHIRE: They don't want guesses.

12 THE WITNESS: It would have to be a guess, so...

13 Q. (BY MR. RUTH) And you said before you have
14 personally met Mr. Menaged?

15 A. I have.

16 Q. By the way, do you know if it's pronounced
17 MEN-A-GED or MEN-A-JED?

18 A. I always called him Scott MEN-A-GED.

19 Q. Okay. How did you come to meet Mr. Menaged in
20 person?

21 A. Well, we closed escrows for him.

22 Q. So he would come to your office?

23 A. Yes. On occasion, yeah.

24 Q. Would you ever go to his office?

25 A. No.

DEBBIE PIHL, 9/13/2019

1 Q. What was your impression of Mr. Menaged?

2 MR. WHITAKER: Objection; form.

3 THE WITNESS: I don't have an opinion.

4 Q. (BY MR. RUTH) Did he seem like a good
5 businessman?

6 MR. WHITAKER: Objection; form, foundation.

7 THE WITNESS: He was an investor.

8 Q. (BY MR. RUTH) Did he seem trustworthy to you?

9 MR. WHITAKER: Objection; form, foundation.

10 THE WITNESS: To me, and yes.

11 Q. (BY MR. RUTH) You were aware -- were you aware
12 that he purchased properties out of trustee sales?

13 A. Yes.

14 Q. And that he used certain entities that he owned
15 in order to do so?

16 A. Yes.

17 Q. One of those entities was Easy Investments?

18 A. Yes.

19 Q. And another one of those entities was Arizona
20 Home Foreclosures?

21 A. I'm not familiar with that one, no.

22 Q. You have been in the industry, lending industry,
23 escrow industry for some time here in Phoenix, correct?

24 A. Correct.

25 Q. And during that time, I presume you have met

DEBBIE PIHL, 9/13/2019

1 many lenders, many investors --

2 MR. WHITAKER: Objection; form.

3 Q. (BY MR. RUTH) -- people involved in the
4 industry?

5 A. That's my business, correct, uh-huh.

6 Q. Did you ever hear any discussion of
7 Mr. Menaged's business practices from any of these people
8 in the industry?

9 A. No.

10 Q. No.

11 How did you first come to know Denny Chittick?

12 A. I never met Denny Chittick.

13 Q. Have you spoken with him on the phone?

14 A. Maybe less than five times.

15 Q. I take it most of your communications with him
16 then were over email?

17 A. Very little communication with him.

18 Q. Do you know what business Denny Chittick was in?

19 A. Yes. You asked me this previously. He was a
20 private-money lender.

21 Q. If I use the term hard-money lender, does that
22 mean something to you?

23 A. It's the same thing.

24 Q. Were you aware of what Denny Chittick or DenSco,
25 his company DenSco's business model was?

DEBBIE PIHL, 9/13/2019

1 MR. WHITAKER: Objection; form.

2 THE WITNESS: He was a private-money lender.

3 Q. (BY MR. RUTH) But aside from that, do you know
4 how he went about raising money, for example?

5 A. I have no idea.

6 Q. Do you know -- you have no idea? You have never
7 seen a business plan, for example?

8 A. No.

9 Q. He never gave you any indication about how he
10 chose properties to lend on?

11 A. No.

12 Q. He never asked you to invest in his company?

13 A. No.

14 Q. Do you know whether DenSco, what -- what type of
15 lien priority DenSco sought through its investments?

16 A. Denny never ordered title insurance, so I don't
17 know.

18 Q. Do you work with other hard-money lenders?

19 A. I do.

20 Q. In your experience, do those hard-money lenders
21 typically order title insurance?

22 A. Yes.

23 Q. So you would say DenSco was an outlier in not
24 requesting title insurance?

25 MR. WHITAKER: Objection; form, foundation.

DEBBIE PIHL, 9/13/2019

1 THE WITNESS: If you are asking me for a
2 personal opinion --

3 Q. (BY MR. RUTH) Yes.

4 A. -- yes.

5 Q. When, at what point in the transaction would a
6 hard-money lender typically ask for title insurance?

7 A. When they provide a loan.

8 Q. Were you or Magnus generally involved when
9 DenSco was funding the purchase of property?

10 A. Never.

11 Q. So in that sense, you may not have been around
12 at the part of the transaction where title insurance would
13 ordinarily be requested.

14 Is that fair?

15 A. If we don't issue title insurance, we are not
16 involved with the lending of any money.

17 Q. Is it fair to say that your involvement with
18 DenSco was typically on the sale of property subject to a
19 lien held by DenSco?

20 A. Yes.

21 Q. It sounds like Denny never discussed lien
22 priority issues with you then. Is that correct?

23 A. I'm not going to say never. I would say that he
24 would ask me for verbal information maybe, again, less
25 than five times.

DEBBIE PIHL, 9/13/2019

1 Q. Do you know whether Menaged used other title
2 insurance companies other than Magnus?

3 A. I would presume so.

4 Q. But you don't know?

5 A. No.

6 Q. And you don't recall how long that relationship
7 between Magnus and Menaged, in which you were personally
8 involved, lasted?

9 A. No.

10 Q. Did you ever socialize with Mr. Menaged?

11 A. No.

12 Q. Did he ever invite you to mixers or investment
13 meetings, business meetings, things like that?

14 MR. WHITAKER: Objection; form.

15 THE WITNESS: I don't -- I don't participate in
16 any of that.

17 Q. (BY MR. RUTH) Do you know if anyone in your
18 branch socialized with Mr. Menaged?

19 A. No.

20 (Deposition Exhibit No. 1068 was marked for
21 identification.)

22 Q. (BY MR. RUTH) I have handed you what's been
23 marked as Exhibit 1068. This is an email chain from
24 October 26 and October 25th, 2011.

25 Do you see that?

DEBBIE PIHL, 9/13/2019

1 A. Uh-huh. Yes.

2 Q. And your email is debbie@magnustitle.com?

3 A. That is correct.

4 Q. Feel free to take a look through this if you
5 would like. I'm only going to ask certain specific
6 questions, but if you feel the need to review any part of
7 the document, please let me know and I will give you the
8 time to do so.

9 Do you recall anything about this email --

10 A. No.

11 Q. -- having taken a look at it? I realize it's a
12 long time ago.

13 A. No. The answer is no.

14 Q. You will see that this is an email from Ellen
15 Bolduc.

16 Do you know Ms. Bolduc?

17 A. No.

18 Q. It appears she works for a company called
19 Suburban Mortgage.

20 Do you know what that company does?

21 A. I work with every lender there is, so I don't
22 know her, but Suburban Mortgage, sure, of course.

23 Q. Is a lender?

24 A. Yes.

25 Q. And it looks like on page -- these are called

DEBBIE PIHL, 9/13/2019

1 Bates numbers, those little numbers down on the bottom --
2 3554 should be page 2.

3 Ms. Bolduc sends you an email on August 6th,
4 2011, saying, "Do you know the relationship between DenSco
5 Investment Corp. & Easy Investments? DenSco Investment
6 who obtained the property thru Trustees Deed quit claimed
7 the property to Easy Investments instead of a warranty
8 Deed."

9 Do you see that?

10 A. I do.

11 Q. And then you respond in part, up top at that top
12 page, "I do know the relationship. DenSco is a lender and
13 Easy Investments, borrows from DenSco. Just a business
14 relationship."

15 Do you see that?

16 A. I can read that, uh-huh.

17 Q. How did you know that the relationship between
18 DenSco and Easy Investments was just a business
19 relationship?

20 A. Well, all I know is that Easy Investments would
21 borrow from DenSco. When Easy Investments would sell a
22 piece of property, I would receive a purchase contract and
23 I would pay off DenSco.

24 Q. If you go to the first page, Ms. Bolduc
25 responds, "So maybe DenSco purchase the property at

DEBBIE PIHL, 9/13/2019

1 Trustee Sale on Easy Investments behalf?"

2 Do you see that?

3 A. I see that.

4 Q. And then you respond, you forward this email it
5 looks like to Mr. Menaged --

6 A. Uh-huh.

7 Q. -- and you say, "Scotty please read below. I
8 have NEVER seen this happen before with u and DenSco."

9 Do you see that?

10 A. I do.

11 Q. It sounds like you had pretty good familiarity
12 with how DenSco and Menaged would typically structure
13 their transactions?

14 A. No. This seems odd to me. This particular
15 scenario seems odd to me.

16 Q. Okay. What about it seems odd?

17 A. Well, it appears to me, if I am quickly reading
18 this, that DenSco bought at trustee sale or put the title
19 in DenSco, and then quitclaimed it to Easy Investments.
20 That's not my recollection of normal transactions.

21 Q. Typically you would see Menaged or one of his
22 entities purchase the property --

23 A. Foreclosure properties, yeah. There is many,
24 back in the day. You remember the day.

25 Q. Oh, I do.

DEBBIE PIHL, 9/13/2019

1 A. Okay. Well, that's when the investors were
2 buying at foreclosure. They would purchase at public
3 auction, and the successful bidder would put the trustee's
4 deed in their name.

5 Q. And then DenSco would have a lien on that
6 property through a deed of trust or a mortgage?

7 A. Many times. Yes, many times.

8 Q. Have you seen this type of transaction with
9 other hard-money lenders where the lender would take
10 title?

11 A. I have seen a lot of things, sir. Many times
12 trustee's deeds get drafted incorrectly. They have to be
13 redone. I mean, I have seen a lot, so...

14 Q. But as far as you knew, DenSco and Menaged, this
15 was just a pure business relationship? They weren't in
16 business together, joint venturers?

17 A. I don't know.

18 Q. You wouldn't happen to recall what Mr. Menaged's
19 response to this email was, would you?

20 A. No.

21 Q. Do you ever recall seeing a similar transaction
22 like this between DenSco and Mr. Menaged?

23 A. No. I have seen similar transactions like this.

24 Q. But not where DenSco took title and then deeded
25 it?

DEBBIE PIHL, 9/13/2019

1 A. I can't -- I have done thousands of
2 transactions.

3 (Deposition Exhibit No. 1069 was marked for
4 identification.)

5 MR. RUTH: Are you able to look on with your
6 client?

7 Q. (BY MR. RUTH) I'm handing you what's been
8 marked as Exhibit 1069, a chain of emails between
9 yourself, Mr. Chittick, and a man named Eric Bengson.

10 A. Uh-huh. I know Eric.

11 Q. August 2012?

12 A. Yes.

13 Q. Do you know who Mr. Bengson is?

14 A. I do.

15 Q. Who is Mr. Bengson?

16 A. He is a real estate agent.

17 Q. If you go to the last page, the first email in
18 the chain, it's on the last page of how these printed out.

19 Oh, you know what?

20 MR. BROOKSHIRE: You are going to want to trade
21 these, since he gave you his highlighted copy.

22 MR. RUTH: It's fine. That one is marked,
23 right?

24 MR. BROOKSHIRE: Yes.

25 MR. RUTH: Is my writing on it? It's fine.

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1 THE WITNESS: I don't need highlighted, if you
2 want to trade.

3 Q. (BY MR. RUTH) It's fine.

4 Mr. Chittick writes to you and copies
5 Mr. Bengson on August 21st, 2012, and he says that:
6 Mr. Bengson wants to borrow 50,000, 50K off his Desoto
7 Lane house. I'm willing to do this for him.

8 And then he goes on to ask: If you could run a
9 title report showing there are no liens against it, then
10 wire you the 50K, and have him sign my docs.

11 A. No. He says run a title report. There is a
12 difference.

13 Q. I'm sorry. What did I say?

14 A. Prepare a title report.

15 Q. Okay. You will have to forgive me. I'm not in
16 the industry.

17 What's the difference between running a title
18 report and preparing a title report?

19 A. With DenSco, he would ask me to look at the
20 title and give him verbal information. That's different
21 than a written title insurance commitment to insure. So I
22 would have to read this whole email, but just from the
23 bottom, that's what it appears.

24 So I asked him here, "Do u want a title policy
25 or just maybe a condition of title?"

DEBBIE PIHL, 9/13/2019

1 Q. So you said Mr. Chittick would ask you to --
2 what was the phrase you used?

3 A. On occasion he would ask me to verbally look at
4 a chain of title and give him my verbal, unwritten
5 committed information that I saw that affected the
6 property.

7 Q. About how many times would you say that
8 happened?

9 A. Less than five times.

10 Q. Does it appear in this email that he is in a
11 sense asking you to act as an escrow?

12 MR. WHITAKER: Objection; form, foundation.

13 THE WITNESS: No.

14 Q. (BY MR. RUTH) He is asking -- it sounds like he
15 is saying or suggesting he is going to wire you the money,
16 have the borrower sign the documents --

17 A. Never happened.

18 Q. -- and send it all back to him.

19 Never happened?

20 A. Never happened. If you do not have an escrow,
21 you do not take in or disburse monies, period.

22 Q. Do you recall ever opening an escrow for
23 Mr. Chittick?

24 A. I don't. That's the way he always wanted it.

25 (A consultation was had between witness and

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1 counsel.)

2 Q. (BY MR. RUTH) I think you will see this goes to
3 your testimony. Your next email says: I can do the below
4 for all, BUT I need the exact address. Do u want a title
5 policy or just maybe a condition of title?

6 what's a condition of title?

7 A. It's just a -- it's not title insurance. It's a
8 report reflecting the condition of the title.

9 Q. Do you recall Mr. Chittick ever asking you to
10 provide a condition of title?

11 A. No.

12 Q. What does it cost if a client wants Magnus to
13 run a condition of title?

14 A. All rates are filed with state banking and it's
15 based on loan and sales amount.

16 Q. It sounds like, however, Mr. Chittick would call
17 you up and just ask you to take a look at title and give
18 him a verbal assessment?

19 A. That is correct.

20 Q. And you think he did that less than five times?

21 A. That's about all I remember talking to him.

22 Q. When you open escrow and you are trying to close
23 escrow for the sale of a property, is it unusual for the
24 lenders who have liens on the property to call you and ask
25 for a condition of title?

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1 MR. WHITAKER: Objection; form, foundation.

2 THE WITNESS: I don't understand the question.

3 Q. (BY MR. RUTH) In the process of closing escrow,
4 is it your experience that lenders may request a condition
5 of title report or may request that you give them a verbal
6 explanation of --

7 A. No, there would be no reason to do that.

8 MR. WHITAKER: Objection, even though the
9 question is answered, form, foundation.

10 Q. (BY MR. RUTH) Why would there be no reason for
11 that, in your experience?

12 A. Well, you wouldn't issue two products, a
13 condition of title and a commitment to insure. They are
14 two -- two separate products.

15 Q. Okay. Well, let me break it down then.

16 In your experience in closing escrow, do lenders
17 who have liens on the property as being sold typically ask
18 you to run a condition of title?

19 A. No.

20 Q. Do they typically ask you to issue a title
21 report?

22 A. If you issue a title commitment to insure, then
23 that means you have been requested to insure.

24 I'm sorry. I forgot to turn that off.

25 Sorry.

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1 Q. That's all right.

2 And in your experience, is that something a
3 lender in that situation generally asks for?

4 MR. WHITAKER: Objection; form.

5 Q. (BY MR. RUTH) I guess my question is, is the
6 borrower usually asking or the purchaser of the property
7 usually asking for the commitment?

8 A. Lenders require title insurance, wherein a
9 borrower pays for title insurance, insuring their lien in
10 a first-lien position, second-lien position, whatever --
11 whatever they have requested.

12 Q. So typically a lender would make that request at
13 the time they fund, correct?

14 A. Prior, well before funding.

15 Q. In your experience, do lenders ever request that
16 information at the time that you are closing escrow --

17 A. No.

18 Q. -- and resolving their encumbrances?

19 No.

20 (Deposition Exhibit No. 1070 was marked for
21 identification.)

22 Q. (BY MR. RUTH) Handing you what's been marked as
23 Exhibit 1070, which appears to be a Commitment for Title
24 Insurance issued by First American Title Insurance
25 Company.

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1 Do you agree?

2 A. I do.

3 Q. And Magnus Title is the agent For First American
4 Title Insurance?

5 A. We are.

6 Q. If you look at the page, page number 1126 -- I
7 think actually you are already on it -- it looks like this
8 is a Commitment for Title Insurance with respect to
9 property located at 6116 West Questa Drive.

10 A. Yes.

11 Q. Just so I understand how this process works from
12 the opening and closing of escrow, I'm just going to use
13 this document and a couple other documents so I have an
14 understanding of how this works, if that's okay.

15 what -- what triggers the opening of escrow?

16 A. In this particular case, a purchase contract was
17 received.

18 Q. How do you know that?

19 A. Because this is a commitment to insure an
20 owner's policy and a lender's policy.

21 Q. who typically would provide you with the
22 purchase contract? The seller?

23 A. The real estate agent.

24 Q. For the buyer or for the seller?

25 A. That's a loaded question. It should come from

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1 the buyer's agent, but both.

2 Q. When you get the purchase contract, what do you
3 do to open escrow?

4 A. Data entry the information into a computer
5 system and request a title report from our title
6 department.

7 Q. Just so I don't mess this up, this is not the
8 title report, right? This is a Commitment for Title
9 Insurance?

10 A. They are the same thing.

11 Q. Okay. Thank you.

12 So escrow would be opened, and you or one of
13 your escrow agents in your branch would request --

14 A. My assistants.

15 Q. -- would request this document?

16 MR. WHITAKER: Form.

17 THE WITNESS: would request a title commitment
18 based on the contract received, yes.

19 Q. (BY MR. RUTH) Okay. And who prepares or issues
20 this title commitment?

21 A. Someone in our title department.

22 Q. Have you ever worked in the title department
23 before?

24 A. Yes, many years ago.

25 Q. How do the or how did you at the time go about

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1 preparing this type of document? Is there a special
2 software that allows you to see what all the encumbrances
3 are? How do you go about figuring out --

4 A. Current --

5 MR. WHITAKER: Form.

6 THE WITNESS: Currently, yes.

7 Q. (BY MR. RUTH) Okay. What's that software?

8 A. The name is -- well, it's had a lot of names,
9 well before you were even born. Okay? But it's now
10 called Data -- DataTrace.

11 Q. Is that similar to what was used at this time in
12 2011, 2012?

13 A. That's the software system that Magnus Title and
14 many title companies use to obtain their title
15 information.

16 Q. And that software scours the county recorder
17 records, or how does it -- how do you determine what deed
18 of trusts have been recorded, what mortgages have been
19 recorded, what easements have been recorded?

20 MR. WHITAKER: Form.

21 THE WITNESS: It's a -- it's a company that,
22 yes, compiles information from recorded documents from the
23 Maricopa County Recorder's Office.

24 Q. (BY MR. RUTH) When it compiles that information
25 as part of the process to issue the Commitment for Title

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1 Insurance, do you actually review the deeds of trusts and
2 mortgages and other recorded documents that come up?

3 A. Review them by reading them?

4 Q. Yes.

5 A. No.

6 Q. Okay. I don't know, so I'm asking. No?

7 A. No.

8 Q. So, for example, if you look at page 1124, this
9 is a list. This is Schedule BI, B1?

10 A. It's called Schedule B1, that is correct.

11 Q. And what is Schedule B1?

12 A. It's the requirements necessary to be met in
13 order to issue good marketable title to a piece of
14 property.

15 Q. And as part of those requirements, you often
16 need to release certain encumbrances that have been
17 recorded against the property?

18 A. You request payoffs. You pay off at closing.
19 Releases follow.

20 Q. So in this case, if you look at item number 4,
21 it's been determined that on September 23rd, 2011, a deed
22 of trust was recorded to the benefit of Active Funding
23 Group, is that correct?

24 A. Correct.

25 Q. And if you flip the page, it looks like a couple

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1 days later a mortgage was recorded in favor of DenSco
2 Investment Corporation.

3 Do you see that?

4 A. I do.

5 Q. It sounds like in the title department, as part
6 of issuing this commitment, no one takes a look and
7 actually reviews the mortgage or the deed of trust?

8 MR. WHITAKER: Objection; form, foundation.

9 THE WITNESS: You don't read a 20-page document.
10 It's a standard form. You identify that it affects your
11 property, and then you reflect the fact that it has to be
12 paid off at closing.

13 Q. (BY MR. RUTH) Go ahead and keep this out.

14 (Deposition Exhibits No. 1071 and 1072 were
15 marked for identification.)

16 Q. (BY MR. RUTH) So I have handed you
17 Exhibit 1071.

18 Is 1071 the Notice of Deed of Trust?

19 A. Yes.

20 Q. And 1072, which is the Mortgage?

21 A. Yes.

22 Q. And without forcing you to read these, I will
23 represent that the Notice of Deed of Trust is the item
24 listed in number 4 in the title commitment, and the
25 Mortgage is the item listed in number 5.

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1 A. I see that.

2 Q. And if you look at both these documents, you
3 will see that they both state -- if you look at the Notice
4 of Deed of Trust, it says that, in the first paragraph,
5 last sentence, that says: The Loan was made to Borrower
6 and was used by the Borrower to purchase that certain real
7 property located in Maricopa County -- and then it
8 describes the property, which was the Questa property --
9 at a trustee's sale.

10 Do you see that?

11 A. Uh-huh.

12 Q. And if you look at the Mortgage, it says
13 essentially the same thing, that in this case the borrower
14 acknowledged the receipt of proceeds from the loan in the
15 sum of at this time \$115,000, and that the loan was made
16 to borrower to purchase the real property.

17 Do you see that?

18 MR. WHITAKER: Objection; form.

19 THE WITNESS: I see that.

20 Q. (BY MR. RUTH) So we have two documents, both of
21 which state that money was lent to purchase the same
22 property, correct?

23 A. There is two different lien positions, correct.

24 Q. And each security document states that money was
25 lent to purchase the property, correct?

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1 A. Yes.

2 Q. Do you know whether, as part of issuing the
3 Commitment for Title Insurance, that this type of scenario
4 raises any red flags?

5 MR. WHITAKER: Objection.

6 Q. (BY MR. RUTH) That two liens were recorded
7 within days of each other, each ostensibly --

8 A. Our responsibility is to prepare a Commitment
9 for Title Insurance and report the record.

10 MR. WHITAKER: Objection to the form and
11 foundation.

12 Q. (BY MR. RUTH) So as long as these get released
13 so that you can close escrow, it doesn't really matter why
14 they --

15 A. That is correct.

16 Q. In the process of closing escrow, in your
17 experience, do lenders ever ask you for a copy of this
18 title commitment?

19 A. Of course. Everyone -- everyone that is a party
20 to the transaction received a copy of the title commitment
21 to insure.

22 Q. Even on a borrower's policy?

23 A. Of course. Any party to the transaction
24 receives a copy of the Commitment for Title Insurance.

25 Q. Are the lenders with liens on the property

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1 considered to be parties to it?

2 A. No.

3 Q. Okay. So Active Funding, for example, the
4 beneficiary of the deed of trust number 4, wouldn't
5 automatically get a copy of this?

6 A. No.

7 Q. And DenSco, the beneficiary under item
8 number 5 --

9 A. No.

10 Q. -- wouldn't automatically get this?

11 If they asked for one would you give it to them,
12 or is this --

13 A. Maybe. I mean, if they are getting paid off,
14 they -- I guess you could consider them a party, but they
15 don't ask for them, so...

16 Q. You do, however, in this, taking this Questa
17 example, you now have to go about somehow obtaining a
18 release of these encumbrances, correct?

19 A. You acquire a payoff.

20 Q. Okay.

21 A. You don't release before you pay off. It
22 wouldn't make sense, right? So you obtain a payoff, a
23 lender gets paid off, and then the release follows. I
24 think there is a statute it has to follow within 30 days,
25 the payoff.

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1 Q. How do you go about obtaining the payoff?

2 A. You contact the lender and request a written
3 payoff.

4 Q. Is that typically something that falls under
5 Magnus's responsibility or does the seller contact?

6 A. No. That is an escrow function.

7 (Deposition Exhibit No. 1073 was marked for
8 identification.)

9 Q. (BY MR. RUTH) I have handed you what's been
10 marked Exhibit 1073. It's a November 2nd, 2011, email
11 from Mr. Chittick to Danielle Mauzy with respect to payoff
12 of Questa Drive.

13 Is that accurate?

14 A. That's what it says, correct.

15 Q. Who was Ms. Mauzy?

16 A. She worked for me a long time ago.

17 Q. Okay. Was she an escrow -- it looks like it
18 says escrow officer.

19 A. Escrow officer. Yes, you can see her title.

20 Q. And if you look at page 2, you have got a payoff
21 statement from DenSco, correct?

22 A. Correct.

23 Q. And this is typically what you would request
24 from the lender in order to determine what you need to pay
25 them?

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1 A. That is correct.

2 Q. In the middle of the page on the DenSco payoff,
3 it lists an escrow number and a loan number.

4 Do you see that?

5 A. Correct.

6 Q. Is that information they receive from Magnus?

7 A. This information --

8 MR. WHITAKER: Objection; foundation.

9 THE WITNESS: -- was provided by DenSco as to
10 where to send the payoff.

11 Q. (BY MR. RUTH) But if you look in the middle of
12 the page, it lists an escrow number and a loan number.

13 Do you see that?

14 A. Oh, the escrow number is, yeah, that would be a
15 Magnus escrow number and a DenSco loan number.

16 Q. Okay. I was going to ask that question.

17 (Deposition Exhibit No. 1074 was marked for
18 identification.)

19 Q. (BY MR. RUTH) Handing you what's been marked as
20 Exhibit 1074. It's an email chain between Danielle
21 Fehsenfeld and it looks like Mr. Menaged.

22 Do you see that?

23 A. Okay.

24 Q. If you start on the first email available on
25 this chain, it's an email from Ms. Fehsenfeld to Dana

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1 Johnson, saying: Good Afternoon, Just making sure this
2 payoff has been paid. Can you please confirm?

3 (A consultation was had between witness and
4 counsel.)

5 THE WITNESS: Dana Johnson. Okay.

6 Q. (BY MR. RUTH) And if you see Ms. Johnson's
7 response in the next email, it looks like Ms. Johnson
8 works at Active Funding Group?

9 A. I don't know Dana Johnson.

10 Q. So it looks like Magnus Title is asking the
11 lender whether the lender has been paid off on this loan
12 or not.

13 would that be an accurate summary of this
14 document?

15 MR. WHITAKER: Objection; foundation.

16 THE WITNESS: Well, in reading it, that would be
17 accurate.

18 Q. (BY MR. RUTH) If you read through the rest of
19 this email chain, Ms. Fehsenfeld then writes to
20 Mr. Menaged and says, "Help!! I am trying to record and I
21 need to know have you not payed Active or DenSco? Am I
22 paying both off through escrow. Please let me know so I
23 can record today."

24 Do you see that?

25 A. I do.

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1 Q. So it sounds to me like the situation is there
2 aren't necessarily sufficient funds in escrow to pay off
3 both lenders, right?

4 MR. WHITAKER: Objection; form, foundation.

5 THE WITNESS: No. You cannot close escrow
6 unless you have sufficient funds, period. I don't
7 understand this.

8 Q. (BY MR. RUTH) I understand you are not involved
9 in this.

10 A. And I don't understand what is happening here.

11 Q. Okay.

12 A. Maybe you have a final title policy and we can
13 talk about that. That will reflect more information, but
14 I don't understand this --

15 Q. Okay.

16 A. -- communication.

17 Q. Are there instances where a lender has kept a
18 lien on a property that they have previously been paid off
19 on that still shows up?

20 A. Oh, many times. Many times, but the records
21 still must be cleared prior to closing escrow.

22 Q. Sure.

23 Let's take a quick break.

24 (A recess was taken from 10:57 a.m. to
25 11:04 a.m.)

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1 (Deposition Exhibits No. 1075 through 1077 were
2 marked for identification.)

3 Q. (BY MR. RUTH) I just want to go through these
4 documents really quickly just to get them in the record.

5 Exhibit 1075, I believe, starts with Bates
6 number 3557, is that correct?

7 A. Correct.

8 Q. I just want to make sure we are both looking at
9 the same document.

10 Is this a Magnus Commitment for Title Insurance?

11 A. Yes.

12 Q. And this is, if you look on page 3569 --

13 MR. BROOKSHIRE: Actually, Mr. Ruth, it's a
14 Commitment for Title Insurance issued by First American
15 Title. Magnus is not the issuing title company.

16 THE WITNESS: That is correct.

17 MR. BROOKSHIRE: It was an authorized agent and
18 representative of the underwriting insurance company.

19 Q. (BY MR. RUTH) With that clarification --

20 A. That is correct. He is correct.

21 Q. And if you look at page 3569, this is a
22 Commitment for Title Insurance with respect to 8305 South
23 45th Lane.

24 Is that the property address that's --

25 A. We are looking at the tax sheet.

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1 The address should be listed on the commitment.
2 I have not seen it, but it appears that that would be,
3 since you have it stapled, I'm assuming that's the right
4 address. I don't know.

5 Q. If we look at that same page, we will see that
6 the plat is Lot 158, Cheatham Farms Unit 2, if you look at
7 the legal description on page 3560.

8 A. Then it matches, doesn't it?

9 Q. Yeah.

10 And if you look at Exhibit 1076, is this a
11 Commitment for Title Insurance --

12 MR. WHITAKER: Which Bates number?

13 Q. (BY MR. RUTH) Sorry. Bates number is 1042.
14 Is that correct?

15 A. Yes.

16 Q. Is this a Commitment for Title Insurance issued
17 by First American Title Insurance Company?

18 A. Issued by Magnus Title as agent for First
19 American Title. It's right at the bottom of the page
20 right here.

21 Q. I just need you to recognize that that's what
22 this is so I can get the document in.

23 A. Yes.

24 Q. And if you look at page 1048, is this a
25 Commitment for Title Insurance with respect to property

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1 located at 20001 West Colter in Litchfield Park?

2 A. That is what the address says, correct.

3 Q. And then Exhibit 1077, is this a Commitment for
4 Title Insurance issued by Magnus Title Agency as agent for
5 First American Title Insurance?

6 A. Yes.

7 Q. And in this case, on page 1835, is this a title
8 commitment issued with respect to 7604 East Covina Street
9 in Mesa, Arizona?

10 A. Yes.

11 (Deposition Exhibit No. 1078 was marked for
12 identification.)

13 Q. (BY MR. RUTH) Handing you what's been marked as
14 Exhibit 1078, it's a series of emails June 3rd and
15 June 4th between yourself and Mr. Chittick, as well as
16 Ms. Veronica Gutierrez and Mr. Menaged, is that correct?

17 A. Yes.

18 Q. If you start on the last page, which is the
19 first email of the chain, you write Mr. Chittick with
20 respect to a property at 4745 West Golden, saying, "Denny
21 in regards to the above you recorded a Mortgage, borrower
22 Easy Investments? U usually then record a Deed of Trust
23 after that? Do u have a loan on this property?"

24 Do you see that?

25 A. I do.

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1 Q. Do you recall what caused you to ask
2 Mr. Chittick whether he had a loan on this property, where
3 the deed of trust was?

4 A. I don't recall this conversation. I know why
5 the question was asked.

6 Q. Why was the question asked?

7 A. Because when Denny would lend money after
8 foreclosure, he would first record a mortgage and then a
9 deed of trust. The record will show you that.

10 Q. Is that an unusual way to go about, for lenders
11 to go about securing their loans, in your experience?

12 MR. WHITAKER: Objection; form.

13 THE WITNESS: I'm not going to identify it as
14 unusual. It was his way of doing it.

15 Q. (BY MR. RUTH) And you had worked with him
16 enough to know that that was the way he typically --

17 A. The record. I worked with the record enough to
18 know.

19 Q. Mr. Chittick responds that he did indeed record
20 a deed of trust and gives you the recording number. And
21 it looks like you looked it up, and then you write back to
22 him, "OK 2nd position correct?"

23 MR. WHITAKER: Objection; form.

24 Q. (BY MR. RUTH) And he writes back, "no it
25 shouldn't be, should be a first, who's in first?"

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1 Do you see that?

2 A. I do.

3 Q. So it looks like from this you have alerted him
4 that, based on your review, his lien is in second
5 position?

6 A. I would agree with that.

7 Q. Mr. Chittick says, "it shouldn't be, should be
8 in first."

9 So he is expecting that his lien is in first,
10 the way this is written, correct?

11 MR. WHITAKER: Objection; form.

12 THE WITNESS: The way this is written, I would
13 agree with you that that's what he is indicating, yes.

14 Q. (BY MR. RUTH) And you respond back to him
15 letting him know that -- this is on the bottom of the
16 first page -- Active Funding Group is in first position?

17 A. Correct.

18 Q. Is Active Funding Group another hard-money
19 lender?

20 A. Yes.

21 Q. Is that a business that you work with a fair
22 amount?

23 A. Yes.

24 Q. Chittick then responds back to you, and copies
25 Ms. Gutierrez and Mr. Menaged, and he says, "We have had

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1 this issue before, AFG hasn't always been best at
2 releasing their position once they are paid off. I think
3 Scott is on cruise with his son. Perhaps Veronica can
4 verify if they were paid off, or you can ask Greg."

5 Did I read that right?

6 A. Yes.

7 Q. In your recollection, was this an issue that had
8 popped up before on your radar, that AFG hadn't released
9 positions that they had been paid off on?

10 A. I don't have recollection from 2013.

11 Q. On an aside, who at Active Funding Group did you
12 typically work with at this period of time? Do you
13 recall?

14 A. Gregg Reichman is the owner.

15 Q. Anyone else?

16 A. He has a partner.

17 Q. Jody Angel?

18 A. Yes.

19 Q. And then at the top you say, "OK they have
20 requested a title insurance policy." And I -- the way I'm
21 reading it, I think you are saying AFG has requested a
22 title insurance policy.

23 A. That's what it sounds like.

24 Q. And you say: It does not make sense. I will
25 make contact with Active and see if it can be worked out.

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1 Do you see that?

2 A. I do.

3 Q. Why did that not make sense to you?

4 A. Probably because there is -- it appears there is
5 two positions on a piece of property, and sometimes things
6 don't get released of record. It's not that uncommon.

7 Q. Is it uncommon that a lender at this point would
8 be asking you for a title insurance policy?

9 A. After the fact?

10 Q. Yeah.

11 A. Typically not.

12 Q. You said, "I will make contact with Active and
13 see what can be worked out."

14 Do you recall contacting Active Funding with
15 respect to this?

16 A. No, I didn't.

17 Q. Do you recall whether Mr. Chittick ever told you
18 he would contact AFG to see what the issue was?

19 A. No.

20 (Deposition Exhibit No. 1079 was marked for
21 identification.)

22 Q. (BY MR. RUTH) Handing you what's been marked as
23 Exhibit 1079, this is an additional set of communications
24 arising out of the email chain we just looked at in
25 Exhibit 1078.

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1 You will see at the bottom of the first page, we
2 see that same email from Mr. Chittick again, where he says
3 that AFG hasn't always been best at releasing their
4 position?

5 A. Uh-huh.

6 Q. You see that?

7 A. Uh-huh.

8 Q. Mr. Menaged then responds, forwards that email
9 you to. He doesn't copy Denny. And he says, "Debbie,
10 Please get payoff from Active as well. I may have screwed
11 up. Let's not alarm Denny."

12 And you respond, "Sorry was not trying to alarm
13 Denny. Active has been bugging me for a title policy and
14 in review of the record issuing said would not be
15 possible? Sorry u are having to deal with this while on
16 vacation."

17 Do you see that?

18 A. I do.

19 Q. Aside from looking at these documents, do you
20 have any independent memory of this issue or these sets of
21 communications?

22 A. No, I don't.

23 Q. Do you know -- do you know why Mr. Menaged told
24 you not to alarm Denny?

25 A. I have no idea.

DEBBIE PIHL, 9/13/2019

1 Q. Did you think it was odd that he had suggested
2 to you not to alarm Denny on that?

3 A. I don't have any recollection from this year,
4 sir.

5 Q. When you say "Active has been bugging me for a
6 title policy and in review of the record issuing said
7 would not be possible," are you saying given the status of
8 the record, it wouldn't be possible to issue a title
9 insurance policy?

10 A. That is what it sounds like to me, uh-huh. You
11 can only insure in a first-lien position if it's in a
12 first-lien position.

13 Q. It sounds like based on your review, though,
14 that Active was in a first-lien position, wasn't it?

15 MR. WHITAKER: Objection; form, foundation.

16 THE WITNESS: I don't -- it sounds like it, but
17 unless I have the escrow file, I can't -- I'm not -- I
18 don't know.

19 Q. (BY MR. RUTH) Well, if you flip back to the
20 original sets of communications, you can look back on
21 this --

22 A. Uh-huh.

23 Q. -- you know, Denny gives you his deed of trust
24 number.

25 A. Uh-huh.

DEBBIE PIHL, 9/13/2019

1 Q. You respond to him, "OK 2nd position." He says:
2 It shouldn't be. Who's in first? And you say "Active
3 Funding Group."

4 A. Uh-huh.

5 Q. I'm presuming in order to tell Denny that he is
6 in second and that Active Funding is in first, you had to
7 have been looking at some sort of record.

8 A. I run a chain of title, uh-huh.

9 Q. Okay. And given that you saw Active Funding
10 Group in first, do you recall why you wouldn't have been
11 able to issue them a title policy?

12 A. No.

13 Q. You wouldn't need to clear subordinate liens off
14 in order to issue a title policy to AFG?

15 A. It depends on the escrow. Unless I have the
16 escrow file, I'm unable to answer the question.

17 (Deposition Exhibit No. 1080 was marked for
18 identification.)

19 Q. (BY MR. RUTH) Handing you what's been marked as
20 Exhibit 1080, this was a continuation of that prior email
21 chain about AFG potentially being in first position on
22 this property.

23 would you agree?

24 A. It looks like it, yes.

25 Q. And here, Ms. Gutierrez writes to you Monday,

DEBBIE PIHL, 9/13/2019

1 June 3rd, copy Scott, does not copy Mr. Chittick. It
2 says: Hi Debbie. When we have issues like this ask me
3 first and I can always figure it out. The two companies
4 don't really get along and I would rather handle any
5 issues ourselves.

6 Do you see that?

7 A. I do.

8 Q. Do you know what issues she is referring to?

9 A. I have no idea.

10 Q. It sounds like, from the original chain of
11 emails, that Active Funding asked you to issue a title
12 policy, correct, or title insurance policy?

13 A. I'm not sure.

14 Q. But somehow they asked you to do something, and
15 in doing your research, you realized that DenSco also had
16 a lien on this property.

17 A. That is correct. I would agree with that, from
18 No. 1079.

19 Q. And you let DenSco know about that, it sounds
20 like, right? You wrote him first and said: Denny, you
21 recorded a mortgage on this. Do you also have a deed of
22 trust?

23 MR. WHITAKER: Objection; form.

24 Q. (BY MR. RUTH) The first email on this chain is
25 from you to Mr. Chittick.

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1 A. Okay.

2 Q. All right. It sounds like something in your
3 review of this record caused you to want to ask
4 Mr. Chittick whether he recorded a deed of trust.

5 Is that fair?

6 A. It sounds like that, correct.

7 Q. That wouldn't be unusual, right? I mean,
8 that's --

9 MR. WHITAKER: Objection; form.

10 THE WITNESS: Again, I don't know the
11 circumstances. I don't recall the circumstances. There
12 are so many different variables in our business, so...

13 Q. (BY MR. RUTH) But you have been involved in
14 this business for a long time, correct?

15 A. I have.

16 Q. Would it be unusual for the owner of the
17 property to tell you not to contact the lenders about
18 their liens?

19 MR. WHITAKER: Objection; form, foundation.

20 THE WITNESS: The owner of the property, would
21 that be Veronica?

22 Q. (BY MR. RUTH) Well, Menaged or his entity. I
23 will represent that Ms. Gutierrez works for Mr. Menaged.

24 A. In my opinion, this is just someone trying to
25 reprimand me, because maybe something is going on. I

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1 don't know.

2 Q. Did you have any sense at the time that AFG and
3 DenSco didn't get along?

4 A. I don't recall that.

5 Q. I would agree with your characterization that it
6 seems like she is trying to reprimand you. I'm just
7 wondering whether that strikes you as odd, given that all
8 you did was alert a lender to their lien position.

9 MR. WHITAKER: Objection; form, foundation.

10 THE WITNESS: It happens in my business all the
11 time.

12 Q. (BY MR. RUTH) And then you respond, at the top,
13 "I am truly sorry and will follow the below in the
14 future."

15 Do you see that?

16 A. Just a whatever rebuttal.

17 Q. Trying to maintain client relationships?

18 A. Saying whatever, yeah. That's --

19 Q. Did you feel like you had done something wrong?

20 A. No.

21 Q. Did you feel like you had something to apologize
22 for?

23 A. No.

24 (Deposition Exhibit No. 1081 was marked for
25 identification.)

DEBBIE PIHL, 9/13/2019

1 Q. (BY MR. RUTH) Have you had a chance to take a
2 look at this document?

3 A. I'll reading it.

4 Q. Okay. This is Exhibit 1081.

5 A. This is just an extension of the same property,
6 correct?

7 Q. That is correct. You will see on the subject
8 line it's still referring to the 4745 west Golden
9 property.

10 A. Okay. So all we are doing here, is it says --
11 we are reading page 1, right?

12 MR. BROOKSHIRE: He hasn't asked you a question
13 yet. Just wait.

14 THE WITNESS: All right. I don't know what he
15 is talking about.

16 Q. (BY MR. RUTH) At the top of page 2 --

17 (A consultation was had between witness and
18 counsel.)

19 Q. (BY MR. RUTH) Let me know when you are ready.
20 Take your time.

21 A. Okay.

22 Q. If you look a the top of page 2 of this exhibit,
23 Exhibit 1081, page 12071, again, this is continuing off of
24 that chain about AFG not releasing their position,
25 Ms. Gutierrez writes to you and says, "Hi Debbie. They

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1 were paid off, I will work on this thank you."

2 Do you see that?

3 A. Right, which was two minutes before this one
4 over here, right?

5 Q. Correct.

6 A. Okay. All right.

7 Q. And then you respond, "Thanks they just recorded
8 another Deed of Trust last week and are really pressuring
9 for a title policy but the title is all messed up with
10 numerous Deeds of Trust."

11 And then Mr. Menaged chimes in, this time
12 copying Denny, and says: Deb, I spoke to Active and they
13 have screwed up once again. They are sending you a
14 release now.

15 Do you see that?

16 A. I do.

17 Q. Do you recall ever receiving a release from
18 Active Funding with respect to this?

19 A. Before --

20 Q. I'm not trying to trick you. I will show you
21 some documents later that would suggest there was never a
22 release.

23 Do you recall ever getting any kind of a
24 document?

25 A. I can't recall back to 2013.

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1 Q. He then says that they actually wanted title
2 insurance, quote, on something different. What they
3 wanted title insurance -- title ins on was something
4 different. It's a prop that had a screwed up title
5 report. They will send you the address.

6 Do you see that?

7 A. That's what it says, correct.

8 Q. Do you have any recollection of Active Funding
9 sending you another address --

10 A. No, I don't.

11 Q. -- or in any way addressing this issue here?

12 A. No, I don't.

13 Q. And then at the top you write to everyone, "Boy
14 I get it now, as I nor u work with them."

15 Does that mean -- I guess are you trying to say
16 that neither you nor Menaged tends to work with AFG, or do
17 you know what that phrase means?

18 A. I'm not sure. AFG has come in and out of my
19 world many times over my career, so maybe this was when
20 they were coming back into my world. I don't have
21 recollection from 2013.

22 Q. And you say, "Therefore when 'out of the blue' I
23 got this request I was just trying to figure out what in
24 the world they were doing."

25 Does this suggest it was pretty unusual for a

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1 lender like AFG to ask for a title insurance policy like
2 this?

3 A. It sounds like to me I had not been in contact
4 with AFG for some time, and for some reason they came to
5 me for a title policy and that's when all this. But,
6 again, without the escrow file, I cannot tell you for
7 certain.

8 Q. And then you say, "Denny we are all good."
9 Do you see that?

10 A. I do.

11 Q. Until AFG is either paid off or until AFG
12 releases its deed of trust, DenSco would still be in
13 second position, correct?

14 A. I would agree with that.

15 Q. Do you recall Mr. Chittick ever calling you to
16 say have you gotten that release or what's going off the
17 release?

18 A. No.

19 (Deposition Exhibit No. 1082 was marked for
20 identification.)

21 Q. (BY MR. RUTH) Feel free to let me know when you
22 have read it.

23 A. Okay.

24 Q. All done?

25 If we can flip to the second page of

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1 Exhibit 1082, Bates number 12062, you will see that
2 Mr. Chittick writes you on June 4, 2013, and says: Scott
3 told me that he is forwarding a release to your office.

4 Do you see that?

5 A. I do.

6 Q. I take that to mean that Scott is forwarding a
7 release of AFG's deed of trust?

8 MR. WHITAKER: Objection; form.

9 THE WITNESS: I would say that would be a fair
10 assumption.

11 Q. (BY MR. RUTH) Fair reading?

12 Would it be unusual for the property owner to
13 send release documents?

14 A. We wouldn't take it from the property owner.

15 Q. Okay.

16 A. I don't even think I had an escrow on this, so I
17 think this is all just free work --

18 Q. I agree.

19 A. -- quite frankly. So, you know, this would be
20 the last thing I would remember.

21 Q. But you would need the release to come from the
22 lender, correct?

23 A. Absolutely.

24 Q. And then you respond to Denny with a -- to Denny
25 with a similar email that we just looked at before, where

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1 again you apologize. You say, "as I not Scott to my
2 knowledge works with Active."

3 I assume you mean as I nor Scott? Do you think
4 that's correct?

5 MR. WHITAKER: Objection; form, foundation.

6 THE WITNESS: Probably meant to say nor. I
7 don't know.

8 Q. (BY MR. RUTH) And, again, you mentioned that:
9 out of nowhere I had this crazy request and was just
10 trying to figure out what in the heck was going on. It
11 appears the Active deed of trust was recorded in error.

12 Do you see that?

13 A. I do.

14 Q. Do you know what you based that statement on,
15 that the Active deed of trust was recorded in error?

16 A. I have no idea.

17 Q. Okay. Do you think it was just Mr. Menaged's
18 representations to you that --

19 A. It could have been a phone conversation with
20 Active. There is many things, so I --

21 Q. But you don't recall?

22 A. I don't recall.

23 Q. And then you say, "Thanks I will make sure all
24 is cleared up to protect your 1st lien position."

25 Do you see that?

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1 A. I do.

2 Q. What would that entail, particularly since it
3 looks to both of us like there is no escrow open here?

4 A. Just probably following up to make sure that
5 Active recorded the deed of release.

6 Q. In your opinion, given that there is no escrow
7 here, wouldn't that be DenSco's responsibility to make
8 sure?

9 MR. WHITAKER: Objection; form.

10 Q. (BY MR. RUTH) Why would it be your
11 responsibility to make sure?

12 A. Because they asked -- they are reaching out to
13 me to help them. I get a lot of pro bono requests.

14 Q. Just good client service for people that use you
15 for escrow?

16 A. That is correct. I have a lot of long-term
17 relationships.

18 Q. And Mr. Chittick responds to you, says: Thanks
19 for looking out for me.

20 And you respond again: See below. You
21 respond -- you forward this to Mr. Menaged and say: I'm
22 pretty sure we are good. So SORRY never make that mistake
23 again.

24 A. So I'm --

25 Q. And I guess I'm just curious, what mistake did

DEBBIE PIHL, 9/13/2019

1 you think you had made?

2 A. It was probably over Veronica reprimanding me
3 for doing something that I was not supposed to do.

4 Q. Contacting the lender to let them know about
5 their lien position?

6 MR. WHITAKER: Objection; form, foundation.

7 THE WITNESS: I don't understand it that way.

8 Q. (BY MR. RUTH) What did you think Veronica was
9 upset about?

10 A. The fact that I let DenSco know that there was
11 an Active Funding lien position superior to his. That's
12 what it sounds like to me.

13 (Deposition Exhibit No. 1083 was marked for
14 identification.)

15 Q. (BY MR. RUTH) I have handed you what's been
16 marked as Exhibit 1083. I will represent to you that you
17 are not listed on this email or on the document.

18 This looks to be an email from Kenny Hieb.

19 A. Yes. He worked for me.

20 Q. He is at Magnus Title?

21 A. No longer. He did most of my Scott Menaged
22 closings. Probably 99.9 percent of them.

23 Q. How many closings do you think you did for
24 Mr. Menaged on a weekly basis back then?

25 A. Oh, I don't know.

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1 Q. Couple a week or couple a month?

2 A. You want me just to guess?

3 Q. No.

4 MR. BROOKSHIRE: Don't guess.

5 Q. (BY MR. RUTH) If you have good recollection --

6 MR. BROOKSHIRE: If you don't know.

7 Q. (BY MR. RUTH) -- but if it's just a guess --

8 A. I don't know.

9 Q. So Mr. Hieb on April 14th, 2014, forwards, it
10 looks to be a HUD settlement statement to various people,
11 including Mr. Menaged with respect to 4745 West Golden
12 Lane.

13 Do you see that?

14 A. I do.

15 Oh, so we did have an escrow.

16 Q. Well, eventually.

17 MR. BROOKSHIRE: This is dated -- this is 2/14.

18 THE WITNESS: Oh, yeah, a year later. Got it.

19 MR. BROOKSHIRE: This is 2/13.

20 Q. (BY MR. RUTH) If you look at the second page of
21 this document, the first page of the HUD statement.

22 A. It never got cleared up. Yeah, I see it.

23 Q. It says here it's certified to be a true and
24 correct copy of the original Magnus Title Agency.

25 Do you see that?

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1 A. I do.

2 Q. Do you know whose initials those are?

3 A. It would be Kenneth Hieb.

4 Q. Okay. And it looks like, if you go in the
5 Summary of Seller's Transaction, look at line 504 and 505,
6 that there are going to be payoffs out of escrow to Active
7 Funding in first position and DenSco in second position.
8 Is that correct?

9 A. I would agree with that.

10 Q. So it would appear, at least based on this, that
11 Active Funding's first position lien was never released,
12 correct?

13 A. That is correct.

14 Q. If you look at line 403, seller's closing
15 funds --

16 A. Uh-huh.

17 Q. -- does that indicate that the seller had to
18 come to escrow with additional funds over and above the
19 purchase price?

20 A. Yes, it did.

21 Q. Do you recall that being a regular or typical
22 occurrence with Mr. Menaged?

23 A. I didn't really handle his escrows. I had
24 assistants who handled them, but I know sometimes he had
25 to come in with money, yes.

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1 Q. Do you know where he got that money from or how
2 he came up with those closings costs?

3 A. No.

4 Q. No?

5 As long as the funds were there, it didn't
6 really matter?

7 A. That is correct.

8 Q. Would DenSco have received a copy of the HUD?

9 A. No.

10 MR. WHITAKER: Objection; foundation.

11 Q. (BY MR. RUTH) Typically when you are closing
12 escrow, do the lenders with liens on the property being
13 sold receive copies of the HUD statement?

14 A. No.

15 MR. WHITAKER: Objection; form, foundation.

16 (Deposition Exhibit No. 1084 was marked for
17 identification.)

18 Q. (BY MR. RUTH) Handing you Exhibit 1084, this is
19 not a document that you are copied from. It's an email
20 from Mr. Reichman to Mr. Menaged, June 4th, 2014, letting
21 Mr. Menaged know, quote, By the way, we are now using
22 Debbie Pihl for title.

23 Do you see that?

24 A. I do.

25 Q. Does this spur any memory that AFG was now

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1 re-entering your life as escrow agent?

2 A. Well, it's in writing, so that would be obvious.
3 I communicated to you before, they have come in and out of
4 my world a few times in my career.

5 Q. But aside from seeing this email, you have no
6 independent recollection as to when --

7 A. No.

8 Q. -- AFG started using you again?

9 A. No.

10 Q. Is AFG currently using you as escrow?

11 A. Yes.

12 MR. RUTH: Let's take another real quick break
13 so I can look at my documents. There is not a whole lot
14 left and I don't want to waste your time.

15 (A recess was taken from 11:39 a.m. to
16 11:50 a.m.)

17 Q. (BY MR. RUTH) All right. So we just walked
18 through some 2013 emails with respect to an AFG
19 first-position lien and a DenSco second-position lien.

20 Is that accurate?

21 A. Yes.

22 Q. Do you recall towards the end of 2013 either
23 DenSco or Menaged making you aware of a larger set of
24 issues with respect to liens --

25 MR. WHITAKER: Objection.

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1 Q. (BY MR. RUTH) -- on property?

2 MR. WHITAKER: Objection.

3 THE WITNESS: No.

4 Q. (BY MR. RUTH) No.

5 Let's just look at the document.

6 You don't recall anything about Menaged
7 asserting that a cousin in his shop had accepted loan
8 funds from two different hard-money lenders for the
9 purchase of the same property and recorded two liens to
10 secure those?

11 A. No.

12 Q. Do you recall any issue or discussion with
13 DenSco of problems with lien priority in, like, 2013,
14 early 2014?

15 A. No.

16 (Deposition Exhibit No. 1085 was marked for
17 identification.)

18 Q. (BY MR. RUTH) Before I ask you about this
19 document, are you aware that Mr. Chittick committed
20 suicide in 2016?

21 A. I am.

22 Q. Were you aware of it at the time that it
23 happened, or is it something you learned years later as a
24 result of this lawsuit or my contacting you?

25 A. I was going through cancer in 2016, so I don't

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1 really recall. I'm sure it was just word on the street
2 probably.

3 Q. And are you aware that Mr. Menaged is in federal
4 prison --

5 A. I am.

6 Q. -- as a result of issues related to this case?

7 A. Yes.

8 Q. Have you done anything to sort of keep apprised
9 as to what's going on in this receivership for DenSco or
10 in this litigation against my clients?

11 A. Nothing.

12 Q. Given your understanding that Mr. Menaged is in
13 prison, do you understand what he is in prison for?

14 A. Not really.

15 Q. You understood that Mr. Chittick had committed
16 suicide.

17 Did you understand any of the circumstances
18 surrounding that suicide?

19 A. No, I don't know.

20 Q. You aren't aware that DenSco ended up losing
21 millions of dollars as a result of Mr. Menaged's fraud
22 or --

23 MR. WHITAKER: Objection; form.

24 THE WITNESS: I don't think word of mouth or
25 secondhand information is for me to speak about.

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1 Q. (BY MR. RUTH) But did you hear about issues
2 related to Mr. Menaged and DenSco?

3 A. Through my business, I have heard rumors,
4 correct.

5 Q. Let's take a look at this document real quick.
6 This is Exhibit 1085. This is a Term Sheet. It's not
7 signed by DenSco on the last page. It is signed by
8 Mr. Menaged.

9 Have you ever seen this document before?

10 A. No, I haven't.

11 Q. Let me walk through some portions of this Term
12 Sheet.

13 If you look at the top, you say, "The provisions
14 of this Term Sheet are intended only as an expression of
15 intent on behalf of DenSco Investment Corporation,"
16 defined as DenSco, "and Scott Menaged, Arizona Home
17 Foreclosures, LLC, Easy Investments, LLC and possibly
18 other entities owned by or under the control of Scott
19 Menaged used to purchase real property from trustee
20 sales." And all of those Scott Menaged entities are
21 referred to as the borrower.

22 Do you see that?

23 A. I do.

24 Q. And if you look under the terms, the first
25 paragraph, it says: DenSco has advanced several loans to

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1 the Borrower entities. These loans are secured by a
2 Mortgage/Deed of Trust.

3 Do you see that?

4 A. I do.

5 Q. And that would be in keeping with your knowledge
6 of DenSco and Menaged's relationship, correct, that DenSco
7 lent money to Menaged or one of his companies, and would
8 put a deed of trust on the property to secure it?

9 A. The record discloses it hundreds of times, if
10 not thousands.

11 Q. And you see in paragraph 2 it says: Certain of
12 Borrower's properties were used as security for loans from
13 other lenders and for loans from DenSco.

14 Do you see that?

15 A. I do.

16 Q. Is that an issue that you recall being made
17 aware of either by DenSco or Mr. Menaged?

18 A. No. And I'm not certain I even understand the
19 sentence.

20 Q. In paragraph 3 it then says: Certain of the
21 other lenders have retained Bryan Cave, LLP to represent
22 them in connection with the liens of DenSco and the liens
23 of these other lenders.

24 Do you see that?

25 A. I do.

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1 Q. Again, does that ring a bell to you at all?

2 A. No.

3 Q. Paragraph 4 says: DenSco and Borrower agreed to
4 cooperate and assist each other in connection with
5 resolving the dispute with the Other Lenders concerning
6 the Conflict Properties.

7 Then in paragraph 5, it goes on to sort of start
8 describing how they are going to cooperate and assist.
9 And it says: As each of the Conflict Properties are sold
10 through an escrow, Borrower is to pay any shortfall of
11 funds required to satisfy the liens of the Other Lenders
12 and DenSco on or prior to the closing of the sale of such
13 Conflict Property.

14 And then as you keep going down, in paragraph 6
15 it says: Borrower and DenSco will work with the Other
16 Lenders to obtain a Priority List of the Conflict
17 Properties from the Other Lenders. This Priority List
18 will list the order in which the Other Lenders want each
19 Conflict Property to be refinanced so that the respective
20 Other Lender is paid in full for the loan secured by such
21 Conflict Property.

22 Do you see that?

23 A. I do.

24 Q. Is any of this ringing a bell to you?

25 A. No. I have never seen this document, so...

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1 Q. Are any of these issues ringing a bell for you?

2 A. No.

3 Q. The reason I'm asking you this is because it
4 goes on in 6A, it says --

5 A. I see that, but I have -- no one has ever
6 presented me with this. I have never seen this document.

7 Q. It says: The Priority List will be submitted to
8 Debbie Pihl at Magnus Title Agency. Magnus will arrange
9 for the necessary title work and verify the payoff amounts
10 for the Other Lender's loan and arrange for the closing of
11 the additional funding from DenSco pursuant to a
12 modification of its existing loan.

13 Do you see that?

14 A. I do.

15 Q. You don't recall either DenSco or Menaged
16 discussing this --

17 A. Never.

18 Q. -- at all with you?

19 Or their agreement to use you to sort of process
20 the loans?

21 A. Never.

22 Q. Section B, 6B, goes on to say: Based on the
23 payoff amounts required to satisfy the loan of the
24 applicable Other Lender, as determined by Magnus above,
25 DenSco will submit funds to Magnus to modify and increase

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1 DenSco's outstanding loan to an LTV, loan to value, of
2 approximately 95 percent of the applicable Conflict
3 Property.

4 Again, you don't recall any discussion with --

5 A. Never.

6 We have been assured by Debbie Pihl. Baloney.

7 Q. It says: Borrower will be required to deliver
8 the balance of the required funds to pay off and release
9 the lien of the Other Lender on the applicable Conflict
10 Property and to provide title insurance to DenSco showing
11 DenSco in first-lien position to secure its modified loan.

12 I apologize. This might seem repetitive, but,
13 again, you don't recall this discussion?

14 A. This never happened with Debbie Pihl.

15 Q. And then in C: Borrower and DenSco have been
16 assured by Debbie Pihl and Magnus that Magnus has
17 sufficient resources to process the payoffs of all of the
18 loans from the Other Lenders associated with each of the
19 Conflict Properties on or before February 28th, 2014.

20 I take it that is incorrect?

21 A. That is 100 percent incorrect.

22 Q. I'll represent to you, and I'm sure I will get
23 an objection, but I just want you to assume for these
24 questions going forward that there were situations where
25 Menaged would buy a property at a trustee sale, he would

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1 obtain funds from DenSco to purchase the property, and he
2 would obtain funds from another lender to purchase the
3 property. Each one of those lenders would record a deed
4 of trust, so now we would have two liens on the property,
5 each purportedly securing purchase money. Of course the
6 property typically wasn't worth enough to pay off both of
7 those liens.

8 And so this Term Sheet describes a situation
9 where DenSco and Menaged would come up with the additional
10 funds to pay off the other lender on their lien when the
11 property was sold, and that all this would happen through
12 an escrow set up through you.

13 You don't recall a discussion about anything
14 like that?

15 MR. WHITAKER: Objection; form, foundation.

16 THE WITNESS: Never.

17 Q. (BY MR. RUTH) Have you ever spoken to a man
18 named David Beauchamp, a lawyer at Clark Hill?

19 A. I don't know.

20 Q. Not that you recall?

21 A. Not that I recall.

22 (Deposition Exhibit No. 1086 was marked for
23 identification.)

24 MR. RUTH: I apologize. I only have one extra
25 one.

DEBBIE PIHL, 9/13/2019

1 MR. BROOKSHIRE: Okey-dokey.

2 Q. (BY MR. RUTH) This is Exhibit 1086. I
3 understand you are not copied on this. It's a series of
4 emails from January 12th and January 13th, 2014.

5 And you will see in the second paragraph on the
6 first page -- well, really that entire email from
7 Mr. Chittick on January 12th, 2014, at 3:05 p.m., outlines
8 the issue they are having.

9 And then he states in the second paragraph,
10 quote: The idea, which Scott and I talked about Friday
11 night, would be to have the opposing group, give a list of
12 addresses and \$'s amounts to us and to Debbie Pihl (yes
13 it's spelled correctly, pronounced Peal) she works at
14 Magnus, both Scott and I have worked with her for years,
15 highly respected. I'm quite sure they know her too. She
16 then does the title work, verifies the dollar amounts,
17 gives us a list of \$'s and properties to pay off their
18 loans. And based on cash that Scott and I have, we will
19 start knocking them off.

20 Do you see that?

21 A. I do.

22 Q. And, again, even at this point in time, you have
23 no recollection of anything like this?

24 A. Never happened.

25 MR. WHITAKER: Objection to the last two

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1 questions on form.

2 (Deposition Exhibit No. 1087 was marked for
3 identification.)

4 Q. (BY MR. RUTH) This is Exhibit 1087. It's an
5 email from yourself to Mr. Chittick and Mr. Menaged --

6 A. Oh, maybe it did happen. Oh, okay.

7 Q. -- and Ms. Gutierrez, January 22nd, 2014.

8 Do you see that?

9 A. I see. Here is a list -- please have -- I don't
10 know. I have no recollection.

11 Q. So it looks like, if we look at pages 28830 and
12 28831, that Mr. Menaged sent you a list of properties?

13 A. And he could have, yeah.

14 Q. And then asked you to request payoffs and title
15 work.

16 Do you see that?

17 A. No, I don't think that's what happened at all.
18 I mean, I would have to look in my software system.

19 I think they were looking to me to look at the
20 record and give verbal information. I never insured
21 anything for Denny Chittick that I recall, ever. So
22 whatever. I don't know. I don't -- I have no
23 recollection of this.

24 Q. I don't know either, and I can't ask
25 Mr. Chittick about this.

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1 A. Yeah, I understand. I have no recollection of
2 this. I have run hundreds and hundreds of chains of title
3 for Scott Menaged, pro bono.

4 Q. Sure.

5 And you think this is what happened here, is
6 they would send you a property and you would just look it
7 up for them?

8 A. And say, yeah -- the words I would use is it
9 appears first, appears second.

10 Q. But they are also requesting payoff information.

11 A. Uh-huh.

12 Q. Is that something that you would do verbally?

13 A. No, I would not. So, again, I don't -- if I had
14 escrows, I don't recall them. I would have never
15 requested payoffs if I did not have an open title request,
16 knowing I was going to get paid for the service.

17 Q. And sitting here today, you don't have a
18 recollection of opening up --

19 A. No.

20 Q. -- numerous escrows on this?

21 A. Not with Denny involved, no way, because he
22 didn't buy title insurance, so...

23 (Deposition Exhibit No. 1088 was marked for
24 identification.)

25 Q. (BY MR. RUTH) If you could take -- go ahead and

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1 read this email, and let me know when you are ready.

2 A. I have no idea.

3 Go ahead.

4 Q. So this is, just for the record, Exhibit 1088?

5 A. Uh-huh.

6 Q. This is a series of emails of January 16th
7 between Mr. Chittick, yourself, and Mr. Menaged?

8 A. Uh-huh.

9 Q. And you write to Mr. Chittick on January 16th,
10 "Denny, U have lien positions on all three properties.
11 The way I understand it those will stay in place, and be
12 insured. Am I getting it OR are U replacing all
13 together?"

14 Do you see that?

15 A. I see that.

16 Q. Does that spur any recollection for you that
17 maybe you did open escrow on some of these properties?

18 A. No.

19 Q. No.

20 A. I don't believe I did.

21 Q. Mr. Chittick responds and says, "The positions
22 that are in place will stay in place. I'm doing seconds
23 on the properties, and the balance is coming from Scott.
24 Scott and I will do docs separately for the 2nd and I'll
25 record." And you respond, "OK perfect thanks Denny."

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1 Do you see that?

2 A. That's telling me he is going to do it
3 internally by himself.

4 Q. Outside of escrow?

5 A. That is correct.

6 MR. WHITAKER: Objection; foundation.

7 Q. (BY MR. RUTH) Do you have any idea what your
8 role is in this process?

9 A. No. I can only assume I was asked to give
10 verbal information on properties, and then this was what
11 they decided to do, I guess. I don't know. But this is
12 before that. I have no idea.

13 Q. Your initial email also suggests that there is
14 going to be some sort of insurance issues, the way I'm
15 reading it. "The way I understand it those will stay in
16 place, and be insured."

17 You don't recall yourself issuing?

18 MR. WHITAKER: Objection; form.

19 THE WITNESS: I don't recall insuring properties
20 for D.C., DenSco, whatever it's called.

21 (Deposition Exhibit No. 1089 was marked for
22 identification.)

23 Q. (BY MR. RUTH) Handing you what's been marked as
24 Exhibit 1089.

25 A. Okay.

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1 Q. Email between yourself and Mr. Menaged and
2 Mr. Hieb. You write to them on January 14th, 2014, "Jody
3 with Active Funding as well as one of his staff members,
4 keep asking for your HUD's. I have no problem providing,
5 but have been told U do NOT want them to have them.
6 Please call me so we can discuss and come to resolution.
7 Thanks."

8 Do you see that?

9 A. I do.

10 Q. Do you have any recollection about this issue?

11 A. No, I don't, but I can tell you, you do not
12 provide another party, someone else that is not a party to
13 a transaction, a HUD unless you have written authorization
14 from a party to the transaction.

15 Q. Okay.

16 A. So that sounds like what I'm saying.

17 Q. Do you have any recollection as to why AFG would
18 want to see Menaged's HUD's?

19 A. No, I don't.

20 Q. Do you have any recollection as to what the
21 resolution was?

22 A. I have no idea.

23 (Deposition Exhibit No. 1090 was marked for
24 identification.)

25 Q. (BY MR. RUTH) A little out of order date-wise.

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1 We are now into 2015. I don't want you to be confused
2 that we are still talking about 2014 here.

3 A. Okay. Yeah.

4 Q. This starts off with a Chittick email, this is
5 Exhibit 1090 at page 29531, to yourself, copying
6 Mr. Menaged and Ms. Gutierrez, asking you to run quick
7 title search on these three properties. I think I made
8 some mistakes in my recordings.

9 Do you see that?

10 A. I do.

11 Q. Would this sort of be in keeping in informal
12 requests for a verbal?

13 A. That is correct.

14 Q. Do you recall any discussions with Mr. Chittick
15 or Mr. Menaged in 2015 related to the issues that we read
16 through in the term sheet?

17 MR. WHITAKER: Objection; form.

18 THE WITNESS: No. I shook my head. I'm sorry.
19 No.

20 (Deposition Exhibit No. 1091 was marked for
21 identification.)

22 Q. (BY MR. RUTH) I'm handing you what's been
23 marked Exhibit 1091. Emails between yourself,
24 Mr. Menaged, and Mr. Chittick on March 18th, 2014. Let me
25 know when you have had a chance to review.

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1 A. Okay.

2 Q. Do you have an understanding as to what's going
3 on in this email?

4 MR. WHITAKER: Objection; form.

5 THE WITNESS: I don't recall the email, but it
6 sounds like, to me, we are going to transfer some titles
7 into Scott's name, and then DenSco was going to put on
8 loans.

9 Q. (BY MR. RUTH) Would that require opening
10 escrow?

11 A. No. Pro bono.

12 Q. Do you recall thinking during this time you are
13 doing a lot of free work for Scott and Denny?

14 A. Well, I got a lot of escrows from Scott Menaged,
15 so it's a give and take. And he used to be a partner with
16 another person that is to this day a wonderful customer,
17 and I do a lot of business with him.

18 Q. You say at the end of this first paragraph, on
19 this March 18th, 2014 email, "BUT if U are getting your
20 loans from DENSCO, why can we not just transfer from the
21 current entity to U a married man as sole and separate and
22 then put loans on properties. That would be the least
23 expensive."

24 Do you see that?

25 A. I do. Because initially -- do you want me to

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1 explain to you what I think the initial email says?

2 Q. I would love you to, yes.

3 A. I think, I do not recall the email, you need to
4 understand that, but it sounds like to me they were
5 approaching me wanting purchase contracts from one of
6 Scott's entities to Scott Menaged.

7 well, purchase contracts meant that I would be
8 drafting escrow instructions to act as a binding contract,
9 and then he would get loans from Denny.

10 well, Denny didn't want title insurance anyway,
11 so what the hell was I going to do it for? So I suggest
12 another option. Probably helped him transfer his titles.
13 I don't recall, but I might have, and then he just went
14 and did his thing with Denny.

15 Q. You have said several times now Denny didn't
16 want title insurance.

17 How did you know that?

18 A. He just never asked for it. He just asked for
19 verbal information.

20 Q. Did you ever suggest it to him?

21 A. I'm not a hard sell. If you feel like you don't
22 need it, don't buy it.

23 Q. When you say "that would be the least
24 expensive" --

25 A. Uh-huh.

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1 Q. -- would there still have been costs incurred?

2 A. I would have charged him a few bucks just to do
3 the deeds and recordation, so, you know.

4 Q. Mr. Chittick writes to you, "We need to pay off
5 two loans and I have to ensure that I'm in first
6 position."

7 Do you see that?

8 A. I do.

9 Q. But you don't recall issuing some sort of policy
10 or commitment --

11 A. No, I do not.

12 Q. -- establishing that he would have been in first
13 position?

14 A. No, I do not.

15 (Deposition Exhibit No. 1092 was marked for
16 identification.)

17 Q. (BY MR. RUTH) Exhibit 1092, a chain of emails
18 from May 30th, 2014. Go ahead and take your time.

19 A. I will start from the back.

20 Okay.

21 Q. All right. So this is Exhibit 1092. The
22 initial email from you to Mr. Menaged on May 28th, 2014,
23 page 64291, provides him with an estimated HUD. You say,
24 "Look at the commission and advise. Buyer closing funds
25 here."

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1 This would suggest that this is a sale that did
2 involve an escrow.

3 A. That is correct.

4 MR. WHITAKER: Objection; form.

5 THE WITNESS: Yes.

6 Q. (BY MR. RUTH) Mr. Menaged then flips that email
7 to Mr. Chittick, then Mr. Chittick writes you, "Are you
8 ready for this wire?" And you say, "Yes please send."

9 Do you know why Mr. Chittick would be wiring you
10 money?

11 A. Probably for Scott's required, if he was upside
12 down.

13 Q. So these are the seller funds needed to close?

14 A. Yes.

15 Q. Do you recall this happening regularly with
16 DenSco, where DenSco would wire money to help close?

17 A. I recall it happening.

18 Q. Do you recall finding it unusual that it was
19 happening?

20 MR. WHITAKER: Objection; form, foundation.

21 THE WITNESS: We are a neutral party between all
22 parties. We operated on written instruction and...

23 Q. (BY MR. RUTH) You never asked Denny: What's
24 going on here? why do you keep having to --

25 A. No. I had my own assumptions, but I don't know

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1 if you want to hear assumptions.

2 MR. BROOKSHIRE: No.

3 THE WITNESS: So...

4 Q. (BY MR. RUTH) I would like to hear what your
5 assumptions are.

6 A. I assumed Scott was an investor in D.C.,
7 whatever it was called, DenSco. I just assumed. I don't
8 know.

9 Is that bad?

10 MR. BROOKSHIRE: Don't volunteer.

11 THE WITNESS: Don't volunteer. Okay.

12 But I have no idea, so...

13 Q. (BY MR. RUTH) You didn't call up Denny and
14 say --

15 A. No.

16 Q. -- what's going on here?

17 A. I have no idea, no.

18 Q. Okay. And you didn't ask Menaged?

19 A. No.

20 Q. Again, going to your email on May 30th, you say:
21 Yes please send Buyer will NOT sign until 2 and I will do
22 my best to get closed as requested by BUYER and Buyer
23 agent. Tried to get her to sign yesterday without
24 success. U will receive your payoff wire Monday.

25 So am I correct in reading this that DenSco

DEBBIE PIHL, 9/13/2019

1 would wire you the seller funds needed to close, that
2 would then pay off the liens, one of which was DenSco's,
3 and you would send the money back for --

4 A. That is correct.

5 MR. WHITAKER: Form.

6 Q. (BY MR. RUTH) -- payoff on the excess?

7 A. That's what this sounds like, yes.

8 Q. Was that an unusual transaction?

9 MR. WHITAKER: Form, foundation.

10 THE WITNESS: No.

11 Q. (BY MR. RUTH) No.

12 So nothing stood out to you about this that
13 DenSco was coming up with additional funds to pay off its
14 own lien and another lienholder company?

15 A. No.

16 Q. Do you recall how often this happened?

17 A. No.

18 Q. If it had happened more than 30 times in a year,
19 would you find that to be unusual?

20 A. I didn't handle his escrows. I thought I
21 expressed that to you earlier. I had staff that handled
22 them, so I don't recall the number of times. I don't.

23 Q. So Kenny Hieb would be the person to ask?

24 A. Kenny Hieb handled them, as well as Daniel
25 Mauzy, Daniel Fehsenfeld, if I recall correctly.

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1 Q. And you don't recall any of them bringing any
2 issues about this to your attention, saying --

3 A. No.

4 (Deposition Exhibit No. 1093 was marked for
5 identification.)

6 Q. (BY MR. RUTH) Exhibit 1093, it's a June 2nd,
7 2014, email from yourself to Mr. Menaged, Ms. Gutierrez,
8 attaching a certified final HUD for Frank Lloyd Wright,
9 which is the same property we were looking at in
10 Exhibit 1092.

11 Is that accurate?

12 A. Yes.

13 Q. And this would have been an escrow where you
14 were directly involved in closing the transaction?

15 A. I was involved in this one. That is correct.

16 Q. Does this refresh any recollection for you in
17 terms of handling these types of transactions where DenSco
18 would fund seller's money needed to close?

19 A. DenSco did some -- on occasion fund seller's
20 closing funds. I thought we talked about that.

21 Q. But nothing about these transactions stood out
22 to you or seemed unusual to you?

23 MR. WHITAKER: Objection; form, foundation.

24 THE WITNESS: No. Again, I'm a neutral party
25 between all parties. You have contractual things. You

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1 follow the paper trail and written instruction.

2 Q. (BY MR. RUTH) Do you recall an attorney by the
3 name of Cody Jess?

4 A. I do not.

5 Q. Were you aware that at some point Mr. Menaged
6 filed for bankruptcy?

7 A. I don't recall.

8 (Deposition Exhibit No. 1094 was marked for
9 identification.)

10 Q. (BY MR. RUTH) Handing you what's been marked
11 Exhibit 1094. It's an October 4th, 2016, email from
12 yourself to Mr. Jess, Mr. Menaged, and Ms. Castro.

13 You write, "Hi Cody, Scott and Veronica included
14 in this email provided me with your contact information."

15 And then it looks like Scott is trying to sell
16 some property, but you need some information from the
17 bankruptcy court.

18 A. That's what it appears.

19 MR. WHITAKER: Objection; form.

20 THE WITNESS: This is evidence that he did file
21 bankruptcy.

22 Q. (BY MR. RUTH) I'm just wondering, does this
23 refresh your recollection about --

24 A. It does not.

25 Q. -- any bankruptcy issues?

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1 A. No.

2 Q. Do you recall whether Mr. Jess responded to
3 this?

4 A. I told you in 2016, I was going through cancer.
5 I have zero recollection.

6 MR. RUTH: Just give me a few minutes. I think
7 we are done.

8 MR. BROOKSHIRE: Thank you.

9 (A recess was taken from 12:31 p.m. to
10 12:33 p.m.)

11 (Deposition Exhibit No. 1095 was marked for
12 identification.)

13 Q. (BY MR. RUTH) I handed you Exhibit 1095, a
14 series of emails from July 2013. I just had a couple
15 questions. You are not copied on any of this.

16 Who is Mr. Springer, Chris Springer?

17 A. He was a file clerk that worked for me.

18 Q. On July 8th, Mr. Springer writes to Mr. Hieb on
19 page 18289 at the top. He says, "The underwriter is
20 asking for the following: The multiple Deeds of Trust and
21 assignments thereof are major red flags. It appears the
22 deeds are all open, and there are 5 liens on the property.
23 We would need detailed explanation and more information to
24 determine if the loan is eligible for the flip waiver."

25 Do you see that?

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1 A. I do.

2 Q. Can you explain to me what a flip waiver is, if
3 you know?

4 A. Yes.

5 MR. WHITAKER: Objection; form, foundation.

6 Q. (BY MR. RUTH) Go ahead.

7 A. A flip waiver is when you buy at foreclosure,
8 many lenders, particularly FHA and VA, you have to wait 90
9 days before the lender will start processing a loan for
10 the purchase.

11 Q. So the flip waiver, I take it in your years in
12 this industry, you have dealt with flip waivers before?

13 A. Many times, yes.

14 Q. And so this flip waiver only arises when you
15 have got an FHA backed or some other --

16 A. FHA or VA, uh-huh. And some recognize it and
17 some don't.

18 Q. And it says that "multiple Deeds of Trust and
19 assignments thereof are major red flags."

20 In your experience, is that only with respect to
21 flip waivers?

22 A. No.

23 MR. WHITAKER: Objection; form, foundation.

24 THE WITNESS: Not necessarily. I mean, it's
25 just a lender questioning the title report.

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1 Q. (BY MR. RUTH) Is there a written policy on what
2 you need to obtain a flip waiver, or is that --

3 A. No. That's a lender question. I have no idea.

4 Q. You will see that Mr. Hieb responds a couple
5 minutes later and says: There are only going to be 2
6 payoffs. 1 is Active Funding who has recorded their deed
7 of trust 3 times and 2 is DenSco Investment who recorded
8 theirs 2 times.

9 Do you see that?

10 A. I do.

11 Q. And there are some additional communications,
12 and ultimately Mr. Hieb contacts Veronica Gutierrez. She
13 responds: Kenny, we are fine on the title report,
14 everything will be released upon closing. When we buy the
15 homes at the auction we place the deed of trust with AFG
16 and bridge loan with DenSco. Sometimes they do not get
17 released until we are at closing.

18 Do you see that?

19 A. I do.

20 MR. WHITAKER: Objection; form.

21 MR. RUTH: What's wrong with the question?

22 MR. WHITAKER: Well, I'm generally uncomfortable
23 with asking her about the meaning of emails that she is
24 not on.

25 MR. RUTH: I haven't asked her what it means

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1 yet, but I just asked her if I read it correctly.

2 MR. WHITAKER: I know, but sometimes she answers
3 giving the meaning, so I'm finding I have to object early.

4 MR. RUTH: Okay. I understand.

5 Q. (BY MR. RUTH) Do you know what Ms. Gutierrez
6 refers to when she says a bridge loan?

7 MR. WHITAKER: Objection; form.

8 MR. RUTH: Foundation.

9 THE WITNESS: I don't.

10 Q. (BY MR. RUTH) In your years in the industry, is
11 that something you have encountered with respect to homes
12 purchased out of foreclosure at a trustee sale?

13 A. No.

14 MR. RUTH: That's all I've got. I really
15 appreciate your time, Ms. Pihl. I know you have other
16 things to be doing, so...

17 MR. WHITAKER: Shall we take a quick break?

18 MR. RUTH: Sure. Oh, did you have some?

19 I did not mean to suggest that they don't get to
20 ask questions.

21 MR. WHITAKER: Yeah. Let's take ten. Is that
22 okay? If I have anything, it won't be much at all.

23 MR. RUTH: I apologize. He does get to ask
24 questions as well.

25 THE WITNESS: Okay.

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1 MR. WHITAKER: Let's take ten minutes.

2 (A recess was taken from 12:38 p.m. to
3 12:46 p.m.)

4

5

EXAMINATION

6

7 Q. (BY MR. WHITAKER) Back on the record.

8

Ms. Pihl, are you a lawyer?

9

A. No.

10

Q. You said you had never talked to a man named
11 David Beauchamp.

12

Did you know that DenSco had legal counsel?

13

A. Well, I have a lot of lawyers call me, my
14 friend.

15

Q. Yes.

16

Did you know whether DenSco had legal counsel?

17

A. Maybe this thing let me know.

18

Q. Did you know whether DenSco had legal counsel
19 back in 2013/2014?

20

A. No.

21

Q. Do you ever recall interacting with someone who
22 you thought may have been DenSco's legal counsel in 2013
23 or 2014?

24

MR. RUTH: Object to form.

25

THE WITNESS: No, I do not.

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1 MR. WHITAKER: That's all.

2 MR. RUTH: I have no follow-up. Thank you
3 again.

4 (12:47 p.m.)

5

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DEBBIE PIHL

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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

9/23/2019

Date

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

Jane M. Doyle
 JD REPORTING, INC.
 Arizona Registered Reporting Firm R1012

9/23/2019

Date