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8 **SUPERIOR COURT OF ARIZONA**

9 **COUNTY OF MARICOPA**

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

12 Plaintiff,

13 v.

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

16 Defendants.

No. CV2017-013832

**DEFENDANTS' RESPONSE TO
PLAINTIFF'S MOTION TO
EXCLUDE OPINION OF DR. ERIN
NELSON UNDER RULE 702 AND
DAUBERT**

(Assigned to the Honorable Daniel Martin)

17 Plaintiff argues in its Motion to Exclude Opinion of Dr. Erin Nelson Under Rule 702
18 and *Daubert* ("Motion") that the Court must exclude the opinion of Dr. Nelson, a well-
19 respected psychologist, because it is not a diagnosis of a psychological disorder found in
20 the DSM-5. Short of diagnosing someone with such a disorder, Plaintiff's Motion asserts
21 that a non-diagnostic opinion like the one offered by Dr. Nelson fails to qualify as an
22 admissible expert opinion under Ariz. R. Evid. 702. The law flatly contradicts that
23 contention. Courts in both Arizona and around the country permit psychologists to testify
24 to a variety of matters so long as those opinions are relevant and reliable under the rules of
25 evidence. Whether a psychological opinion meets those requirements is an inherently fact-
26 based inquiry that depends on the opinion being offered. Here, Dr. Nelson's psychological

1 opinion is both relevant and reliable. It not only addresses, and provides context to, the
2 Plaintiff’s causation argument, but Dr. Nelson developed that opinion using a procedure
3 and methodology that is recognized and accepted by psychologists and physicians
4 generally. Plaintiff’s Motion, at best, raises issues that speak to the weight of Dr. Nelson’s
5 opinion (which is a jury determination), not its admissibility. Defendants therefore
6 respectfully request that the Court deny Plaintiff’s Motion and allow Dr. Nelson to share
7 her opinions with the Court and jury.

8 **A. Dr. Nelson’s Experience.**

9 Dr. Nelson is a board certified forensic and clinical psychologist who is licensed to
10 practice in three states. [Exhibit A (Declaration of E. Nelson) at ¶ 1] In addition to having
11 a robust private practice, she is the Interim Assistant Dean for Admissions and Outreach at
12 the Texas Christian University/University of North Texas Health Sciences Center School of
13 Medicine (“TCU”), as well as an Associate Professor at TCU and the University of Arizona
14 College of Medicine. [*Id.* at ¶ 2]

15 Dr. Nelson has served as an expert witness and/or consultant in hundreds of forensic
16 matters. [*Id.* at ¶ 4] These matters include, but are not limited to: financial crimes, undue
17 influence, impaired professionals, testamentary capacity, competency, psychological
18 autopsy, mental state at the time of the offense, murder and attempted murder, workplace
19 violence and sexual abuse, boundary violations, fitness for duty, and substance use/abuse.
20 [*Id.* at ¶ 3] She has also worked at state and federal correctional facilities evaluating and
21 treating adult male and female offenders across all security levels, and been a consultant for
22 the City of Phoenix, most notably appointed to the Phoenix Police Department’s “Baseline
23 Killer” task force. [*Id.* at ¶¶ 5-6]

24 **B. Dr. Nelson’s Opinion.**

25 Dr. Nelson’s opinion is contained in an initial and supplemental report, disclosed to
26 Plaintiff on April 5, 2019 and October 8, 2019, respectively. Collectively, excluding

1 exhibits, the two reports run 27 single-spaced pages. The reports conclude that Scott
2 Menaged, a convicted felon that Plaintiff itself charges with responsibility for \$31 million
3 in DenSco losses, “had substantial influence over Denny Chittick’s decision-making and
4 resultant conduct” between January and May 2014, the critical time period during which
5 Plaintiff alleges Clark Hill and Beauchamp could have prevented DenSco’s losses.
6 [Exhibit B (April 4, 2019 Expert Report of E. Nelson) at p. 20 and Exhibit C (October 7,
7 2019 Expert Report of E. Nelson) at p. 5] Dr. Nelson’s opinion, however, is not limited to
8 the ultimate conclusion. The reports also explain the dynamic between Chittick and
9 Menaged based on the two men’s characteristics, the various psychological mechanisms
10 that allowed Menaged to exert “substantial influence” over Chittick during the specified
11 time period, and the psychological elements of financial crime that compel that conclusion.
12 Importantly, the opinion explains how and why Chittick continued to invest in Menaged
13 (both literally and emotionally), despite mounting evidence that Menaged was defrauding
14 DenSco.

15 Excerpts from Dr. Nelson’s initial and supplemental report are illustrative of the
16 scope of her opinion:

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

23 Although in retrospect it may seem counterintuitive, Mr. Chittick’s decision to
24 “double down” on his attachment to Mr. Menaged’s false narrative, is
25 consistent with a typology of victims of financial crime. It is not uncommon
26 for vulnerable parties, especially those whose conduct is incongruent with their
self-perception, to cling to their course no matter how problematic. In the face
of a reality that is too much to bear, people often engage in seemingly irrational
decisions to avoid confronting the truth. While in hindsight a better course of

1 action may seem obvious, for the individual at a given period in time, internal
2 and external psychological mechanism can eclipse logic and reason.

3 Exhibit A at p. 20.

4 Superficially, it may be difficult to understand how Denny Chittick, an
5 intelligent successful businessman could not only be lured in by someone like
6 Scott Menaged but could allow himself to be repeatedly jeopardized and
7 manipulated. When viewed through the lens of psychological/behavioral
8 science, however, the relationship between Mr. Chittick and Mr. Menaged can
9 be explained through basic tenets of human behavior. Mr. Chittick's faith in
10 Mr. Menaged was built on a foundation of positive reinforcement. Mr.
11 Menaged followed through on early promises and demonstrated himself to be a
12 reliable colleague and business associate. As their relationship evolved the
13 positive reinforcement pattern continued. Mr. Chittick's attachment to Mr.
14 Menaged intensified as Mr. Menaged ingratiated himself in Mr. Chittick's
15 world beyond the workplace.

16 Exhibit B at p. 4.

17 The reports identify the exact methodology that Dr. Nelson used to form her opinion
18 – “a record review and analysis” – as well as the 362 specific records that Dr. Nelson
19 reviewed, including 16 deposition transcripts. Dr. Nelson also sat in on the majority of the
20 deposition of convicted felon Menaged, the only person in the Chittick-Menaged
21 relationship who is still alive.

22 C. Rule 702.

23 Rule 702 governs the admissibility of Dr. Nelson's testimony. The rule, which
24 mirrors its federal counterpart, states:

25 A witness who is qualified as an expert by knowledge, skill, experience,
26 training, or education may testify in the form of an opinion or otherwise if:

- 27 (a) the expert's scientific, technical, or other specialized knowledge will
28 help the trier of fact to understand the evidence or to determine a fact
29 in issue;
- 30 (b) the testimony is based on sufficient facts or data;
- 31 (c) the testimony is the product of reliable principles and methods; and
- 32 (d) the expert has reliably applied the principles and methods to the facts
33 of the case.

1 The Court determines whether an expert’s opinion is admissible under the rule as
2 exhibiting both relevance and reliability. *AZ. State Hospital/AZ. Comm. Prot. and*
3 *Treatment Ctr. V. Klein*, 231 Ariz. 467, 473, ¶ 29 (App. 2013). The Court must establish
4 that the proposed expert testimony is “reliable and thus helpful to the jury’s determination
5 of facts at issue” by a preponderance of the evidence. Ariz. R. Evid. 702, Comment to
6 2012 Amendment; Fed. R. Evid. 702 advisory committee’s note (citing *Bourjaily v. U.S.*,
7 483 U.S. 171, 107 S. Ct. 2775, 97 L.Ed.2d 144 (1987)). Determining whether an expert’s
8 opinion is reliable under Rule 702 requires a “flexible” approach. *Daubert v. Merrell Dow*
9 *Pharm., Inc.*, 509 U.S. 579, 589 (1999). The Court “must ensure that the expert ‘employs
10 in the courtroom the same level of intellectual rigor that characterizes the practice of an
11 expert in the relevant field.” *Klein*, 231 Ariz. at 473, ¶ 29 (citing *Kumho Tire Co., Ltd. v.*
12 *Carmichael*, 526 U.S. 137, 152 (1999)) (emphasis added). “Toward that end, the trial
13 judge must determine whether the testimony has a reliable basis in the knowledge and
14 experience of the relevant discipline.” *Id.* (citations and quotations omitted).

15 Contrary to Plaintiff’s assertion (at p. 6), the Court is not limited to determining
16 reliability based on the non-exclusive set of factors listed in *Daubert*. See *Klein*, 231 Ariz.
17 at 473, ¶ 28 (depending on the nature of the issue, the expert’s particular expertise, and the
18 subject of his testimony, the factors identified in *Daubert* “may or may not be pertinent in
19 assessing reliability”); see also, *Cameron v. Lowes Home Ctrs. Inc.*, No. CV-17-08082-
20 PCT-JJT, 2019 WL 2709817, at *1 (D. Ariz. Jun. 26, 2019) (“the *Daubert* factors may not
21 apply to testimony that depends on the knowledge and experience of the expert, rather than
22 a particular methodology”). Instead, “[a]n expert qualified by experience” may testify “if
23 his or her experiential knowledge will help the trier of fact to understand evidence or
24 determine a fact in issue, as long as the testimony is based on sufficient data, is the product
25 of reliable principles, and the expert has reliably applied the principles to the facts of the
26 case.” *Cameron*, 2019 WL 2709817, at *1. An expert’s experience is especially critical to

1 determining reliability when the area of expertise – like psychology – does not readily lend
2 itself to the “exactness of hard science methodologies” that *Daubert* concerned. *Klein*, 231
3 Ariz. at 473, ¶ 28. Rule 702 explicitly contemplates the Court’s admission of such
4 experience-based expert testimony, as the comment to the rule explains: “The amendment
5 is not intended . . . to permit a challenge to the testimony of every expert, preclude the
6 testimony of experience-based experts, or prohibit testimony based on competing
7 methodologies within a field of expertise.” (Emphasis added).

8 **D. Dr. Nelson’s Opinion is Relevant.**

9 Dr. Nelson’s opinion that explains that (i) Menaged had “substantial” influence over
10 Chittick and (ii) how he gained such influence, is relevant to the issue of causation in this
11 case. “Expert opinion testimony is relevant if the knowledge underlying it has a valid
12 connection to the pertinent inquiry.” *Elliot v. Google Inc.*, 45 F. Supp. 3d 1156, 1164 (D.
13 Ariz. 2014). Like relevance generally, the relevancy bar for admitting expert testimony is
14 low, “demanding only that the evidence logically advance[] a material aspect of the
15 proposing party’s case.” *Messick v. Novartis Pharm. Corp.*, 747 F.3d 1193, 1196 (9th Cir.
16 2014) (citations and quotations omitted).

17 Here, Plaintiff alleges that Defendants committed legal malpractice and aided and
18 abetted Chittick’s breach of fiduciary duties to DenSco. Central to Plaintiff’s claims is the
19 contention that if Defendants had provided specific advice between January and May 2014,
20 Chittick would have followed that advice and averted DenSco’s losses. Plaintiff contends
21 that during that critical period, Defendants should have (among other things): (1) advised
22 Chittick to terminate his dealings with Menaged, (2) forced DenSco to update its expired
23 Private Offering Memorandum (“POM”), and (3) “urged Mr. Chittick, on behalf of their
24 client DenSco, to protect and preserve the corporation’s assets” rather than pursuing the
25 Forbearance Agreement. [Exhibit D (Expert Report of Neil J. Wertlieb), p. 53-55]

1 There is no evidence, however, that DenSco (through Chittick) would have followed
2 such advice. The available evidence, in fact, suggests the opposite, as DenSco (again
3 through Chittick) disregarded its lawyers' advice between January and May 2014,
4 continued to disregard that advice in favor of its joint venture with Menaged after
5 Defendants terminated their representation of DenSco in May 2014, and had, in any event,
6 disregarded his attorneys' prior advice regarding disclosure and lending fundamentals,
7 DenSco's promises to its investors, and common business sense for more than a year before
8 slowly revealing DenSco's issues to Defendants starting in January 2014.¹ In short,
9 Defendants have argued (and will argue) that they were limited in what they could do to
10 prevent DenSco's losses because Menaged had ensnared Chittick in his fraud by January
11 2014. Dr. Nelson's opinion is relevant to that causal analysis. It helps explain why
12 Chittick: (1) repeatedly ignored Beauchamp's advice between January and May 2014, (2)
13 fought Beauchamp's efforts to enhance the protections for DenSco under the Forbearance
14 Agreement, (3) failed to disclose to Beauchamp all of the details necessitating the
15 Forbearance Agreement in the first place, and (4) spent more than a year violating
16 DenSco's promises to its investors without any disclosure to DenSco's attorney.

17 Notwithstanding the critical role of Dr. Nelson's opinion in the causation defense,
18 Plaintiff argues the opinion is not relevant for two reasons. The first (at p. 5) is that
19 because "[t]his lawsuit is against Beauchamp, not Menaged[,]" the only pertinent issue is
20 "whether *Beauchamp* had influence over Chittick." Plaintiff draws the scope of the case
21 too narrowly. Beauchamp's influence over Chittick is necessarily affected by the influence
22 *others* had over Chittick during the relevant time period. As recognized in the case law
23 above and Plaintiff's own Motion, expert testimony is relevant if "it speaks clearly and
24

25 ¹ The evidence shows that Chittick was aware of double-liening issues involving Menaged as
26 early as September 2012, failed to address those issues, and instead, lent Menaged more than
half of DenSco's portfolio over the course of 2013, all without any disclosure to Defendants.

1 directly to an issue in dispute in the case.” *Daubert*, 43 F.3d at 1321 n. 17 (emphasis
2 added). Causation is a disputed issue. And Dr. Nelson’s report relates “clearly and
3 directly” to that disputed issue, supporting Defendants’ assertion that they could not have
4 averted DenSco’s losses, even if Plaintiff’s accusations regarding the legal advice provided
5 are seen as credible. Dr. Nelson’s opinion regarding Menaged’s influence is therefore
6 relevant to this case, regardless of who is the subject of the lawsuit.

7 Plaintiff’s second argument regarding relevancy (at p. 3) is that because Dr.
8 Nelson’s opinion is not a diagnosis of a psychological disorder found in the DSM-5, her
9 opinion is not one “that requires expertise.” Reciting a catalog of out-of-state cases – the
10 most recent of which is 30 years old – Plaintiff dismisses Dr. Nelson’s opinion that
11 Menaged had “substantial” influence over Chittick (at p. 4) as “not the sort of thing the jury
12 needs an expert for” because she is “not rendering a diagnosis.”

13 Besides taking a dim view of psychology and the expertise of practitioners like Dr.
14 Nelson, Plaintiff’s statement is just plain wrong. Courts in Arizona have allowed
15 psychologists significant latitude to opine about psychological matters that do not
16 constitute diagnostic opinions. For example, in *Cameron*, the Court admitted the opinion
17 of a psychologist who opined only that the plaintiff needed “therapy and treatment” and
18 suffered “psychological harm.” 2019 WL 2709817, at *1. Similarly in *United States v.*
19 *Christensen*, 186 F. Supp. 3d 997, 999-1000 (D. Ariz. 2016), the Court admitted a
20 psychologist’s opinion that “certain people exhibit a general conspiracy mentality which
21 makes them susceptible to belief in a wide variety of conspiracy theories, that repeated
22 exposure to a particular conspiracy theory is known to increase the odds of believing it, that
23 [the] [d]efendant possesses the characteristics of a general conspiracy mentality, and that
24 [the] [d]efendant has had extensive exposure to the views of the taxation-denial
25 community.” The Court found that the opinion was “helpful to the jury’s evaluation of the
26 defense” because it “help[s] explain why [the] [d]efendant would accept otherwise

1 implausible views of the federal tax laws.” *Christensen*, 186 F. Supp. 3d at 999-1000.

2 Here, Dr. Nelson’s opinion is likewise helpful to explain why Chittick would hide critical
3 information from his attorneys and ignore his attorneys’ advice.

4 These Arizona cases are in line with cases from around the country. In *Duerbusch*
5 *v. Karas*, 267 S.W.3d 700, 710 (Mo. Ct. App. 2008), the court found that a forensic
6 psychiatrist’s opinion that the decedent was susceptible to undue influence because of her
7 age, education, physical condition and mental condition did not “invade[] the province of
8 the jury” because it was not of “such common knowledge.” This followed precedent set by
9 the same court in *Turnbo by Capra v. City of St. Charles*, 932 S.W.2d 851, 854 (Mo. Ct.
10 App. 1996), wherein the deposition testimony of a psychiatrist that testified that plaintiff
11 “had symptoms consistent with persons suffering from schizophrenia” was allowed.
12 Similarly, in *Martin v. Calier Hotel Corp.*, 48 F.3d 1341, 1358 (4th Cir. 1995), the Fourth
13 Circuit permitted testimony that the plaintiff’s “personality was such that she might be an
14 ‘easy victim’ and that her symptoms were consistent with those of someone who had been
15 sexually assaulted.”

16 Dr. Nelson’s opinion therefore falls well within the bounds of expert psychological
17 testimony that courts have admitted as being helpful to the jury. As highlighted in the
18 excerpted portions of her opinion, Dr. Nelson explains not only that Menaged had
19 “substantial” influence over Chittick (which itself is an admissible opinion), but how he
20 gained that influence and why Chittick exhibited behaviors that otherwise appear irrational.
21 [Exhibit B at p. 20; Exhibit C at p. 4] Her discussion of the how and why considers the
22 predator-prey relationship in the context of a financial fraud and the specific psychological
23 means Menaged used to make Chittick susceptible to that fraud. Plaintiff’s contention that
24 Dr. Nelson’s opinion is simply an ultimate conclusion and therefore one that the “jury is
25 fully capable of evaluating” because untrained friends, family and acquaintances of
26 Chittick may agree with that premise, doesn’t do justice to Dr. Nelson’s specialized

1 knowledge, skill and experience.² The full scope of her opinion discusses unique
2 psychological concepts that are well outside the “common experience” of a jury (and the
3 other lay witnesses), making it a relevant expert opinion under Rule 702.

4 **E. Dr. Nelson’s Opinion is Reliable.**

5 Dr. Nelson’s opinion is also reliable under Rule 702. As noted in *Klein*, the North
6 Star that guides the Court’s reliability determination is whether “the expert ‘employs in the
7 courtroom the same level of intellectual rigor that characterizes the practice of an expert in
8 the relevant field.’” 231 Ariz. at 473, ¶ 29 (citing *Kumho Tire Co., Ltd. v. Carmichael*, 526
9 U.S. 137, 152 (1999)). When the particular area of expertise concerns “areas of specialized
10 knowledge” outside the hard sciences, the expert’s “knowledge and experience” are
11 especially relevant to establishing reliability. *Cameron*, 2019 WL 2709817, at *1.

12 Dr. Nelson formed her opinion in this case by using a methodology recognized not
13 only in the field of psychology, but medicine generally. Specifically, Dr. Nelson conducted
14 a “record review and analysis” of “volumes of electronic mail correspondence, written
15 correspondence, deposition testimony, pleadings” and other documents identified in her
16 initial and supplemental reports. [Exhibit E at 72:25 – 73:4] Such record reviews by non-
17 treating psychologists are appropriate in rendering expert opinions. *See, e.g., Morgan v.*
18 *Comm’r of Soc. Sec. Admin*, 169 F.3d 595, 600 (9th Cir. 1999) (“Opinion of a

19 ² Plaintiff also misstates (at p. 4) the testimony of Dr. Nelson regarding a lay witness’s ability
20 to provide the same opinion that she does. In Dr. Nelson’s deposition, Plaintiff’s counsel
21 asked: “So a layperson could give an opinion, who knew Mr. Chittick well, and could give an
22 opinion that they thought that Mr. Chittick was somehow under Mr. Menaged’s influence?”
23 [Exhibit E (Deposition of E. Nelson), 88:6-9] Dr. Nelson replied, “A human being answering
24 a question in a deposition could certainly give their opinion or impression.” *Id.* at 88:11-13.
25 Plaintiff’s counsel followed up: “Haven’t some of the witnesses in this case given that opinion,
26 based on their knowledge and history with Mr. Chittick?” *Id.* at 88:14-16. Dr. Nelson’s
response was, “Sure.” *Id.* at 88:17. The next question by counsel was, “How was your opinion
any different than theirs?” *Id.* at 88:18. Dr. Nelson answered, “I was asked to help explain to
them how this - - how that could have happened, using a psychological background and training
and expertise.” *Id.* at 88:19-21 (emphasis added).

1 nonexamining, testifying medical advisor may serve as substantial evidence when they are
2 supported by other evidence in the record and are consistent with it.”). Dr. Nelson opined
3 that a record review was sufficient here because of the limited referral question Defendants
4 asked: “the level of influence, if any, Scott Menaged had over Denny Chittick’s decision-
5 making and conduct on or about January 2014 through May 2014.” [Exhibit E at 66:4-7
6 (“if I’m asked a limited question, then I would gather everything I needed to do to answer
7 that question, but it may not be necessary to do other work”)] She noted that “it’s
8 professionally acceptable to render” such limited opinions, and further explained that the
9 quality and quantity of data needed is commensurate with the question asked. [*Id.* at 49:8-
10 14 and 65:9-12] She specified that guidance in the field explains that psychologists must
11 have “sufficient information” depending on “the scope, the breadth and depth of the
12 opinion you are offering.” [*Id.* at 110:9-13]

13 Dr. Nelson then applied her extensive experience and training as a psychologist to
14 interpret the thousands of pages she reviewed. As spelled out in her Declaration, Dr.
15 Nelson has provided psychological opinions and consultation services in a wide variety of
16 matters, many of which involve predatory behavior analogous to the Menaged-Chittick
17 relationship. [Exhibit A at ¶¶ 3,5,6] Based on the methodology employed and her
18 experience, Dr. Nelson testified that she was “very comfortable” that she had “offered a
19 reliable and valid opinion.” [Exhibit E at 98:24 – 99:1]

20 Notwithstanding the fact that Dr. Nelson’s methodology comports with the
21 standards used in her field, Plaintiff argues that Dr. Nelson’s methodology is not reliable
22 because: (1) it cannot be evaluated under the *Daubert* factors (at p. 6-9), (2) she did not
23 review every document produced in the case or interview any witness herself (at p. 9-12),
24 and (3) she relied on documents produced by Defendants’ counsel to author her report (at
25 p. 12-14). All of those contentions relate only to the weight a jury should give Dr.
26 Nelson’s opinion, not its reliability.

1 I. *The Daubert factors are not dispositive in assessing the reliability of*
2 *Dr. Nelson’s opinion.*

3 Plaintiff mistakenly contends (at p. 6-9) that Dr. Nelson’s opinion is not “objectively
4 reliable” because it does not comport with the *Daubert* factors. As noted in cases like
5 *Klein* and *Cameron*, the *Daubert* factors have limited application in determining the
6 reliability of expert opinions outside of the hard sciences. When it comes to the opinions of
7 medical professionals like Dr. Nelson, *Sandretto v. Payson Healthcare Mgmt., Inc.*, 234
8 Ariz. 351, 356, ¶ 13 (App. 2014) clarifies that the “[a]pplication of the *Daubert* factors . . .
9 requires flexibility. . . . *Daubert’s* role of ensur[ing] that the courtroom door remains closed
10 to junk science . . . is not served by excluding [physician] testimony . . . that is supported
11 by extensive relevant experience. Such exclusion is rarely justified in cases involving
12 medical experts” (Citations and quotations omitted). The *Sandretto* court based its
13 reasoning on both the Arizona and federal Rule 702:

14 Arizona’s adoption of the language of the federal rule included a caution that
15 the amendment “is not intended to . . . preclude the testimony of experience-
16 based experts.” Ariz. R. Evid. 702 cmt.; *see also McMurdy v. Weatherford*
17 *Hotel, Inc.*, 231 Ariz. 244, ¶ 17, 293 P.3d 520, 527 (App. 2013). The advisory
18 committee note to Federal Rule 702 – from which Arizona’s 2012 comment is
19 derived – similarly explains, “Nothing in this amendment is intended to suggest
20 that experience alone – or experience in conjunction with other knowledge,
21 skill, training or education – may not provide a sufficient foundation for expert
22 testimony.”

23 *Sandretto*, 234 Ariz. at 357, ¶ 14 (emphasis added).

24 The *Sandretto*, *Klein* and *Cameron* opinions clarify that courts can, and should, go
25 beyond *Daubert* when evaluating the reliability of a medical expert opinion. The case law
26 directs courts to determine if the expert formulated the opinion using a methodology
employed in the field and consider the experience of the expert itself. Here, Dr. Nelson’s
methodology comported with the standards employed in the field of psychology as spelled
out in the Specialty Guidelines for Forensic Psychology (“Specialty Guidelines”). Dr.

1 Nelson: (1) acquired collateral/third party information; (2) used multiple sources of
2 information; (3) documented all of the data she considered; and (4) sought the amount of
3 data that she believed was necessary to render a limited “general psychological opinion.”
4 [Exhibit A at ¶ 8; Exhibit E at 62:13] The opinion she provided was “deliberately narrow”
5 so as to comply with the standards in her field. [Exhibit A at ¶ 15]

6 Plaintiff neither challenges the experience or qualifications of Dr. Nelson, nor cites
7 any authority that establishes that other practitioners would view Dr. Nelson’s
8 methodology as inappropriate. Instead, Plaintiff argues (at p. 7) that because Dr. Nelson
9 “is not diagnosing Chittick with a recognized condition” from the DSM-5 and employing
10 tests like the Minnesota Multiphasic Personality Inventory needed to diagnose
11 psychological disorders, her opinion must be unreliable under *Daubert*. That assertion is
12 not credible. The law allows for medical professionals like Dr. Nelson to provide non-
13 diagnostic opinions like the one in this case so long as: (1) those opinions are arrived at by
14 employing a methodology accepted in the field and (2) Dr. Nelson’s experience qualifies
15 her to do so. Those requirements are met here.

16 2. *Dr. Nelson’s inability to review every record in this case or interview*
17 *witnesses does not render her opinion unreliable.*

18 Plaintiff argues that Dr. Nelson’s opinion is also unreliable because “she did not
19 have all the necessary documents in this case” (at p. 11) and she failed to interview any
20 witnesses herself (at p. 10). Neither observation is meaningful in assessing the opinion’s
21 reliability.

22 First, Plaintiff’s allegation that Dr. Nelson “did not have all the necessary
23 documents in this case” is simply wrong. The parties have exchanged over 600,000 pages
24 of documents, deposed 39 witnesses, and exchanged almost 20 disclosures in this case. Dr.
25 Nelson requested that Defendants’ counsel continuously provide pleadings, documents and
26 witness deposition transcripts that contained information relating to Chittick’s “friendships,

1 interests, hobbies, passions, relationships” and other information that helped Dr. Nelson
2 “understand who he [was].” [Exhibit E at 87:12-14] Though Dr. Nelson could of course
3 not guarantee that she had reviewed every record in the case that related to Chittick’s
4 personality (a strawman assertion to begin with), she testified that she felt she had reviewed
5 enough information to provide her opinion and that it would not be ethical for her to
6 needlessly review other documents. [Exhibit A at ¶ 16; Exhibit E at 79:11-14, 81:12-15,
7 98:24 – 99:1] Her review included: (1) multiple pleadings and disclosure statements filed
8 by the parties; (2) deposition transcripts of 16 family members, investors and
9 acquaintances; (3) multiple transcripts relating to Menaged’s criminal proceedings; (4) the
10 audio and transcript of a conversation between Chittick and Menaged apparently recorded
11 by Chittick surreptitiously; and (5) 331 additional records produced in the case. [Exhibits
12 B and C] She also observed the parties’ deposition of Menaged. [Exhibit C at p. 1] To the
13 extent that Dr. Nelson did not review any specific record or piece of evidence, that relates
14 only to the weight of Dr. Nelson’s opinion, not its admissibility, which Plaintiff may raise
15 when cross-examining Dr. Nelson. *See Atencio v. Arpaio*, No. CV-12-02376-PHX-PGR,
16 2015 WL 11117187, at *18 (D. Ariz. Jan. 15, 2015) (relying on *Kennedy v. Collagen*
17 *Corp.*, 161 F.3d 1226, 1231 (9th Cir. 1998)) (“To the extent Defendants challenge the
18 admissibility of Wilcox’s opinions because he did not review certain other evidence prior
19 to rendering his opinions, or consider alternative theories or hypotheticals, such arguments
20 go to the weight, not the admissibility of his opinions.”).³

21 The fact that Dr. Nelson did not interview any witnesses herself similarly bears on
22 the weight of her opinion, rather than its admissibility. Plaintiff has not cited to a single
23 case that requires a psychological or medical expert’s testimony to be based on personal
24

25 ³ Further, although Plaintiff asserts that Dr. Nelson should have reviewed even more deposition
26 transcripts, Plaintiff does not argue, or even suggest, that anything in those purportedly critical
records would serve to undermine or contradict Dr. Nelson’s opinion.

1 examinations. Nor could it, given *Daubert*'s explicit recognition that "an expert is
2 permitted wide latitude to offer opinions, including those that are not based on firsthand
3 knowledge or observation." 509 U.S. at 592. Cases from around the country are therefore
4 clear that the fact that Dr. Nelson did not interview any witness herself relates only to the
5 opinion's weight. See *U.S. v. Vallejo*, 237 F.3d 1008, 1021 (9th Cir. 2001) (ruling that a
6 school psychologist's testimony was admissible even though he did not personally
7 interview the subject student because it "consisted of her observations of typical
8 characteristics drawn from many years experience interviewing many, many persons")
9 (citations and quotations omitted); *Luciano v. E. Cent. Bd. Of Co-op. Educ. Servs.*, 885 F.
10 Supp. 2d 1063, 1069 (D. Colo. 2012) ("The credibility of the information on which Dr.
11 Carson relied is fair game for attack, as is whether she placed too much reliance on the
12 parents' statements, but that does not render the opinions inadmissible."); *Rivas v. Thaler*,
13 No. 3:06-CV-344-B, 2010 WL 1223130, fn.1 (N.D. Tex. Jan. 22, 2010) ("To the extent that
14 Rivas claims Dr. Coons's testimony was inadmissible because he did not interview Rivas
15 himself, his claim is without merit.") (citing *Barefoot v. Estelle*, 463 U.S. 880, 896-906,
16 103 S. Ct. 3383, 77 L.E.2d 1090 (1983)); *Rivera v. Dyett*, Nos. 88 CIV. 4707(PKL), 90
17 CIV. 3783(PKL), 1994 WL 225454 (S.D.N.Y. May 25, 1994) ("the completeness of Dr.
18 Schwartz's preparation generally goes to the weight, not the admissibility, of his
19 opinions").⁴

20
21 ⁴ Citing no case law in support, Plaintiff also argues (at p. 10) that Dr. Nelson's opinion is
22 unreliable because she has not "clarif[ied] the probable impact" of her not reviewing all records
23 and/or interviewing witnesses herself as the Specialty Guidelines and Ethical Principles of
24 Psychologists and Code of Conduct ("Ethical Principles") requires. That is (once again) a
25 mischaracterization of Dr. Nelson's opinion. Both the initial and supplemental reports contain
26 an explicit limitation that reads: "The observations/opinions provided herein are based on my
training and experience as well as my review of the information listed in the Sources of
Information section of this report. I did not conduct a face-to-face evaluation of Mr. Chittick
prior to his death, nor have I conducted any collateral interviews. As such, my opinions are
thereby limited." [Exhibit B at p. 14 and Exhibit C at p. 2] That limitation is sufficient to

1 3. *Dr. Nelson’s reliance on documents provided and/or authored by the*
2 *Defendants does not render her opinion unreliable.*

3 Finally, Plaintiff argues (at p. 12-14) that Dr. Nelson’s opinion is unreliable because
4 her initial report quoted Defendants’ disclosure statement, she relied on a chronology
5 prepared by the Defendants, and her report “is full of statements that are nothing more than
6 an adoption of Defendants’ narrative.” This observation, yet again, is irrelevant for
7 assessing reliability. As noted in *Tormenia v. First Investors Realty Co., Inc.*, 251 F.3d
8 128, 135 (3d Cir. 2000), “Rule 702 does not require that experts . . . eschew reliance on a
9 [party’s] account of factual events that the experts themselves did not observe. . . . Whether
10 through contrary expert testimony or cross-examination,” an opposing party may
11 “challenge perceived weaknesses in assumptions underlying” an expert report. Plaintiff
12 cites no authority to the contrary, and in any event, Dr. Nelson reviewed Plaintiff’s
13 Complaint, Plaintiff’s Initial Rule 26.1 Disclosure Statement, Plaintiff’s Seventh
14 Supplemental Disclosure Statement and a plethora of documents produced by Plaintiff.
15 The fact that Dr. Nelson relied on documents provided by the Defendants in addition to
16 these other documents (as does any expert retained by a party) again, and at best, relates to
17 the weight the jury should bestow on Dr. Nelson’s report, not its admissibility.

18 **F. Conclusion.**

19 Rule 702 allows this Court to permit that expert testimony that is both relevant and
20 reliable. Despite Plaintiff’s suggestion otherwise, relevance and reliability are not
21 determined by blindly applying a rigid checklist of factors enumerated in *Daubert*. Instead,
22 in areas of expertise outside of the hard sciences, the Court must look at the experience of
23 the proffered expert and ensure that the expert arrived at her opinion using a methodology

24 _____
25 ensure compliance with the Specialty Guidelines and Ethical Principles. [Exhibit E at 96:22-
26 25] Though Plaintiff asserts that Dr. Nelson has not explained “the specific impact of that
limit,” Plaintiff cites to no legal or medical authority that requires further explanation than the
one provided by Dr. Nelson.

1 accepted in her field. Dr. Nelson's opinion specifies her exact methodology and that
2 methodology comports with the standards in her field. Moreover, her opinion relates to the
3 issue of causation, making it directly relevant to the case. Plaintiff's Motion, which largely
4 relies on inapposite, non-binding and dated case law, fails to establish otherwise.

5 Because Dr. Nelson's opinion meets both of Rule 702's relevance and reliability
6 requirements, Defendants Clark Hill and David Beauchamp respectfully request that the
7 Court deny Plaintiff's Motion and allow the expert opinion of Dr. Nelson under Arizona
8 Rule of Evidence 702.

9 DATED this 17th day of January, 2020.

10 **COPPERSMITH BROCKELMAN PLC**

11
12 By: /s/ John E. DeWulf

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

16 **ORIGINAL E-FILED** and a copy mailed and served via
17 **AZ TurboCourt** this 17th day of January, 2020, to:

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24 /s/ Verna Colwell

Exhibit A

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

17 Peter S. Davis, as Receiver of DenSco
18 Investment Corporation, an Arizona
19 corporation,
20
21 Plaintiff,
22
23 v.
24 Clark Hill PLC, a Michigan limited liability
25 company; David G. Beauchamp and Jane
26 Doe Beauchamp, husband and wife,
27
28 Defendants.

No. CV2017-013832

**DECLARATION OF ERIN M.
NELSON, Psy.D.**

(Assigned to the Honorable Daniel Martin)

18 STATE OF ARIZONA)
19 COUNTY OF MARICOPA) ss.

20 I, Erin M. Nelson, Psy.D., declare:

21 I am of legal age and competent to testify in court. The facts and opinions stated
22 herein are based on my personal knowledge, and I could and would testify to these facts in a
23 court of law if asked to do so.

24 1. I am a forensic and clinical psychologist licensed in the states of Arizona,
25 California and New Mexico.
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2. In addition to my private forensic practice, I am the Interim Assistant Dean for Admissions and Outreach and an Associate Professor of Medical Education at the Texas Christian University/University of North Texas Health Sciences Center School of Medicine. I am also an Associate Professor in the Departments of Psychiatry and Bioethics and Medical Humanism at the University of Arizona College of Medicine - Phoenix (*Exhibit "A" - Curriculum Vitae*).

3. In my role as a forensic psychologist, I have testified in and/or consulted on cases involving a wide range of issues, including, but not limited to: psychological autopsy; mental state at the time of the offense; competency; mitigation; murder; attempted murder; felony murder; domestic violence; school violence; workplace violence; stalking; kidnapping; suicide; suicide by cop; sexual abuse; sexual assault; sexual harassment; clergy sexual misconduct; teacher sexual misconduct; boundary violations; wrongful death; wrongful termination; ADA claims; fitness for duty; substance use/abuse; impaired professionals; case management standard of care; financial crimes; testamentary capacity; undue influence; personal injury; and emotional distress.

4. I have been an expert witness and/or consultant in hundreds of forensic matters.

5. I have worked at state and federal correctional facilities evaluating and treating adult male and female offenders across security levels.

6. I have been a consultant to the Phoenix Police Department and was a member of the Department's "Baseline Killer" task force as well as the First Responder Traumatic Incident Support and Response Task Force for the City of Phoenix.

7. As a clinical and forensic psychologist, I ascribe to the Ethical Principles of Psychologists and Code of Conduct as outlined by the American Psychological Association as well as the Specialty Guidelines for Forensic Psychology.

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8. The Specialty Guidelines for Forensic Psychology explain, in part, that, when acting as a forensic practitioner, psychologists:

- a. Acquire collateral/third party information (8.03);
- b. Use multiple sources of information (9.02);
- c. Seek to obtain sufficient data and document their efforts to do so (9.03);
- d. Must only provide written or oral evidence about the psychological characteristics of particular individuals when they have sufficient information or data to form an adequate foundation for their opinion (9.03);
- e. When it is not possible to conduct an examination, strive to make clear the impact of such limitations on the reliability and validity of their opinions (9.03); and
- f. Document all data considered with sufficient detail to allow for reasonable scrutiny and adequate discovery by all parties (10.06).

9. In the Davis v. Clark Hill matter, the primary relevant party was deceased.

10. In cases where a decedent's mind-frame is at issue, collateral source data is essential to the formation of a robust, reliable opinion.

11. In the Davis v. Clark Hill matter, I acquired and reviewed an extensive amount of collateral data – all of which was outlined in the Sources of Information section of my report, thereby allowing another peer professional or other party to identify and review the precise documentation I relied upon to draw my conclusion.

12. In the Davis v. Clark Hill matter, I explicitly stated that I did not conduct a face-to-face evaluation of the decedent and that the basis for my opinions was thereby limited.

13. My professional integrity is dependent upon my rendering opinions only to the extent that I have a reasonable capacity to do so.

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14. Ethical standards require that I strive for accuracy, honesty and truthfulness.

15. The scope of my opinion in the Davis v. Clark Hill matter was deliberately narrow insomuch as I would only render an opinion consistent with the ethical standards of my profession.

16. When I rendered my April 4, 2019 report and the opinion included therein, it was (and it remains), my position that I had sufficient information to provide an adequate foundation to render the limited opinion proffered.

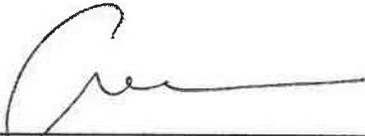
17. Also in keeping with ethical standards, I made clear that I was not asked to, nor would I, render diagnostic opinion(s) about the decedent.

18. In this or any matter, I did not, and would not, offer opinions about parties or issues outside the scope of the referral question(s) posed to me.

19. My engagement in the Davis v. Clark Hill matter is/was consistent with my professional and ethical obligations.

I declare under penalty of perjury of the laws of the United States and the State of Arizona that the foregoing is true and correct.

DATED: This 16 day of January, 2020.



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

Exhibit B

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Marvin C. Ruth (024220)
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8
9 **SUPERIOR COURT OF ARIZONA**
10 **COUNTY OF MARICOPA**

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

13 Plaintiff,

14 v.

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

17 Defendants.

No. CV2017-013832

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

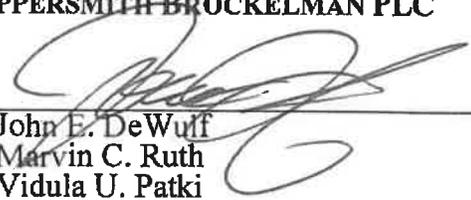
(Commercial Case)

(Assigned to the Honorable Daniel Martin)

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

20 DATED this 5th day of April, 2019.

21
22 **COPPERSMITH BROCKELMAN PLC**

23 By: 

24 John E. DeWulf
Marvin C. Ruth
Vidula U. Patki
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26 Attorneys for Defendants

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

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Joshua M. Whitaker, Esq.
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ERIN M. NELSON, PSY.D.
Forensic & Clinical Psychology

April 4, 2019

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

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

Dear Mr. DeWulf and Mr. Ruth:

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

BACKGROUND INFORMATION

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

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

¹ BC_000296

² BC_000296

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

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

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

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

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

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

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

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

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

SOURCES OF INFORMATION:

Pleadings:

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

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

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Deposition Transcripts:

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

Miscellaneous Transcripts:

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

Additional Documents:

1. Chittick Estate Documents – Personal Journals
 2. October 20, 2017 Menaged Judgment in a Criminal Case
 3. Chittick Corporate Journals
 4. Chittick Letter to Investors
 5. Chittick Letter to Robert Koehler
 6. Chittick Letter to Shawna Heuer
 7. Chittick To Do List
 8. Menaged Indictment
 9. Menaged Information-Indictment
 10. Menaged Plea Agreement
 11. Chronology for E. Nelson
 12. DOCID_00383613
 13. DOCID_00386378
 14. DOCID_00432523
 15. DOCID_00432524
 16. CTRL_00062082
 17. DOCID_00432525
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18. Misc Chittick Device Documents
 19. DOCID_00074182
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John E. DeWulf, Esq.
Marvin C. Ruth, Esq.
Re: Davis v. Clark Hill
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Page 8

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 131. CH_REC_C HI_0055078
 132. CH_REC_C HI_0068678
 133. CH_REC_MEN_0026584
 134. CH_REC_MEN_0027591
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 159. CH_REC_MEN_0026600
 160. CH_REC_MEN_0027195
 161. CH_REC_MEN_0027591
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 165. DIC0006079
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 168. DIC0006261
 169. DIC0006528
 170. DIC0006602
 171. DIC0006615
 172. DIC0006625
 173. DIC0006656
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174. DIC0006673
 175. DIC0006707
 176. DIC0006803
 177. DIC0007075
 178. DIC0007135
 179. DIC0007598
 180. DIC0007630
 181. DIC0008036
 182. DP000190-244
 183. BC_000003
 184. BC_000208
 185. BC_000296
 186. BC_000754
 187. BC_001979
 188. BC_002000
 189. BC_002982
 190. CH_0000637
 191. CH_0000708
 192. CH_0001015
 193. CH_0001113
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 208. CH_EstateSDT_0040401
 209. CH_EstateSDT_0040837
 210. CH_EstateSDT_0065302
 211. CH_EstateSDT0028084
 212. DIC0000965
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- 213. DIC0002491
 - 214. DIC0005387
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 - 218. DIC0005412
 - 219. DIC0005413
 - 220. DIC0005414
 - 221. DIC0005418
 - 222. DIC0005439
 - 223. DIC0005444
 - 224. DIC0005570
 - 225. DIC0005689
 - 226. DIC0005700
 - 227. DIC0005823
 - 228. DIC0005849
 - 229. DIC0005902
 - 230. DIC0006068
 - 231. DIC0006079
 - 232. DIC0006111
 - 233. DIC0006175
 - 234. DIC0006179
 - 235. DIC0006182
 - 236. DIC0006203
 - 237. DIC0006221
 - 238. DIC0006242
 - 239. DIC0006261
 - 240. DIC0006302-6304
 - 241. DIC0006308
 - 242. DIC0006420
 - 243. DIC0006435
 - 244. DIC0006463
 - 245. DIC0006528
 - 246. DIC0006600-6604
 - 247. DIC0006615
 - 248. DIC0006625
 - 249. DIC0006627
 - 250. DIC0006633
 - 251. DIC0006656
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- 252. DIC0006673
 - 253. DIC0006679-6681
 - 254. DIC0006691
 - 255. DIC0006702-6706
 - 256. DIC0006707-6710
 - 257. DIC0006729
 - 258. DIC0006733-6737
 - 259. DIC0006738
 - 260. DIC0006759
 - 261. DIC0006803
 - 262. DIC0006822
 - 263. DIC0006901
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 - 266. DIC0006968
 - 267. DIC0007075
 - 268. DIC0007085
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 - 270. DIC0007135
 - 271. DIC0007145
 - 272. DIC0007165-7168
 - 273. DIC0007341
 - 274. DIC0007521
 - 275. DIC0008036
 - 276. DIC0008607
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 - 281. DIC0010830
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 - 283. DOCID_00017206
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 - 286. DOCID_00030177
 - 287. DOCID_00033018
 - 288. DOCID_00044699
 - 289. DOCID_00044736
 - 290. DOCID_00044785
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292. DOCID_00044808
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306. DOCID_00069048
307. DOCID_00074080
308. DOCID_00074097
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310. DOCID_00074182
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314. DOCID_00074233
315. DOCID_00074248
316. DOCID_00074251
317. DOCID_00075186
318. DOCID_00075439
319. DOCID_00075465
320. DOCID_00078185
321. DOCID_00470840
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323. DP000101
324. DP000190
325. DP0000296-340
326. RECEIVER_000001
327. RECEIVER_000044
328. RECEIVER_000093
329. RECEIVER_000136

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

QUALIFICATIONS OF EXAMINER:

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

LIMITATIONS:

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

FORENSIC OPINIONS:

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

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

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

⁵ CH_REC_CHI_0074014

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

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

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

CH_EstateSDT_0040837; CH_EstateSDT_0065302

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

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

⁹ CH_REC_CHI_0095659

¹⁰ DIC0007135

¹¹ DIC0007135

¹² CH_REC_CHI_0009504; CH_REC_CHI_0009542

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

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

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

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

¹⁴ Transcript of Recorded Conversation between Chittick and Menaged

¹⁵ DIC0007135

¹⁶ DIC0007135

¹⁷ DIC0007135

¹⁸ DIC0005403

¹⁹ Menaged 2004 Testimony

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

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

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

²¹ DIC0008036

²² DIC0006242; DIC0006261; DIC0006221; DIC0005418;
DIC0006673; CH_0002080; DIC0006707

²³ DIC0006625; DIC0006707; DIC0006803

²⁴ CH_REC_MEN_0031108; CH_REC_MEN_0027195;
CH_REC_MEN_0026580; CH_0000915

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

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

²⁶ DIC0008036

²⁷ DIC0006673; DIC0006707; DIC0006803; DIC0006656

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

²⁹ CH_REC_MED_0026584; CH_REC_MEN_0026600;
CH_REC_CHI_0067611; CH_REC_CHI_0084775

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

³¹ D. Beauchamp deposition, 164:1-14

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

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

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

³³ Menaged Plea Agreement

³⁴ Menaged Plea Agreement

³⁵ Menaged Plea Agreement

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

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

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

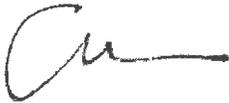
Although in retrospect it may seem counterintuitive, Mr. Chittick's decision to "double down" on his attachment to Mr. Menaged's false narrative, is consistent with a typology of victims of financial crime. It is not uncommon for vulnerable parties, especially those whose conduct is incongruent with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

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

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

Respectfully submitted,



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

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

EXHIBIT "A"

ERIN M. NELSON, PSY.D.

(Updated: January 2019)

**Contact
Information:**

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

Licensure:

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

**Professional
& Clinical
Positions:**

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

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

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

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

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

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

**Teaching
Appointments:**

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

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

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

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

**Consulting
Positions:**

Phoenix Police Department
Phoenix, Arizona
November 2008 - Present

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

**Committee
Appointments:**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Training:

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

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

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

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

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

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

**Research
Positions:**

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

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

**Past:
Committee
Appointments:**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Publications:

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

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

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

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

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

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

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

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

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

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

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

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

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

EXHIBIT "B"

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

EXHIBIT "C"



ERIN M. NELSON, PSY.D.

FEE SCHEDULE

P: 480.250.4601

E: drerinmn@gmail.com

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

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

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

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

JANUARY 2019

Exhibit C

Exhibit C

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

7 *Attorneys for Defendants*

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

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

13 Plaintiff,

14 v.

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

17 Defendants.

No. CV2017-013832

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

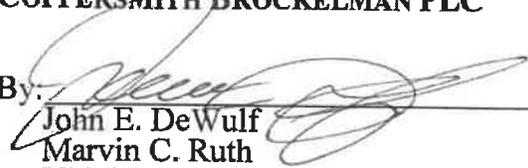
(Commercial Case)

(Assigned to the Honorable Daniel Martin)

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

20 DATED this 8th day of October, 2019.

21
22 **COPPERSMITH BROCKELMAN PLC**

23 By: 

24 John E. DeWulf
Marvin C. Ruth
Vidula U. Patki
2800 North Central Avenue, Suite 1900
Phoenix, Arizona 85004
Attorneys for Defendants
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ORIGINAL of the foregoing e-mailed/mailed this
8th day of October, 2019 to:

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





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

October 7, 2019

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

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

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

Dear Mr. DeWulf and Mr. Ruth:

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

UPDATED SOURCES OF INFORMATION

In-person Observation:

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

Pleadings:

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

Deposition Transcripts:

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

John E. DeWulf, Esq.
Marvin C. Ruth, Esq.
Re: Davis v. Clark Hill - Addendum
October 7, 2019
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5. Jun 20, 2019 Deposition of Scott Allen Gould
6. September 23-24, 2019 Deposition of Yomtov Scott Menaged

Additional Documents:

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

LIMITATIONS:

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

FORENSIC OPINIONS:

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

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

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

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

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

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

¹ Deposition Testimony of Warren Bush, Page 75-76

² Deposition Testimony of Scott Gould, Page 99-102

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

⁴ Deposition Testimony of Renasha Chittick, Page 71-72

⁵ Deposition Testimony of Scott Gould, Page 94-96

⁶ Deposition Testimony of Yomtov Scott Menaged, Page 59

⁷ CH_REC_CHI_0060457

⁸ CH_REC_MEN_0027814

⁹ CH_REC_MEN0027218

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

¹¹ Deposition Testimony of Renasha Chittick, Page 96-97

¹² Deposition Testimony of Scott Gould, Page 94-96

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

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

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

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

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

¹⁶ Deposition Testimony of Greg Reichman, Page 142

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

¹⁸ CH_REC_CHI_0042251-59

¹⁹ CH_REC_CHI_0058450-59

²⁰ CH_REC_MEN_0026749-50

John E. DeWulf, Esq.
Marvin C. Ruth, Esq.
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October 7, 2019
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Chittick's life. This allowed Mr. Menaged to capitalize on the foundation of faith and good will he had developed with Mr. Chittick. Although clearly troubling for him, Mr. Chittick had already become attached to Mr. Menaged, and, as a result, his internal need to rely upon Mr. Menaged was again reinforced - now by his desire to alleviate stress associated with financial losses. Repetition ensued and the feedback loop was solidified. Engrained patterns of behavior are not easily extinguished, especially when complicated by a veiled power differential. Mr. Menaged relied on Mr. Chittick's sense of fairness and reciprocity to manipulate Mr. Chittick into a series of poor decisions, each predicated on the prior, digging himself deeper and deeper into an insurmountable deficit. Concurrently, Mr. Chittick became increasingly desensitized to the situation as he was no match for the duplicity of Mr. Menaged's tactics. As the gravity of the situation emerged as unavoidable, Mr. Chittick's lens narrowed. From his perspective, and with intentional crafting of the message from Mr. Menaged, Mr. Chittick came to believe that Scott Menaged was the only hope he had left. Not unlike a person who has lost significant money at the racetrack, only to "bet it all" on one more race, or the person who has lost significant money in a slot machine, but is driven to keep going, with the perception that the very next pull of the handle could bring everything back into balance. Mr. Chittick's attachment to Mr. Menaged was perpetuated at each step in the process and Mr. Menaged's exploitation of Mr. Chittick persisted in kind.

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

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

John E. DeWulf, Esq.
Marvin C. Ruth, Esq.
Re: Davis v. Clark Hill - Addendum
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Respectfully submitted,

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

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

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

ADDENDUM EXHIBIT "A"



ERIN M. NELSON, PSY.D.

Forensic & Clinical Psychology

April 4, 2019

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

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

Dear Mr. DeWulf and Mr. Ruth:

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

BACKGROUND INFORMATION

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

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

¹ BC_000296

² BC_000296

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

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

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

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

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

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

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

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

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

SOURCES OF INFORMATION:

Pleadings:

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

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

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Deposition Transcripts:

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

Miscellaneous Transcripts:

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

Additional Documents:

1. Chittick Estate Documents – Personal Journals
 2. October 20, 2017 Menaged Judgment in a Criminal Case
 3. Chittick Corporate Journals
 4. Chittick Letter to Investors
 5. Chittick Letter to Robert Koehler
 6. Chittick Letter to Shawna Heuer
 7. Chittick To Do List
 8. Menaged Indictment
 9. Menaged Information-Indictment
 10. Menaged Plea Agreement
 11. Chronology for E. Nelson
 12. DOCID_00383613
 13. DOCID_00386378
 14. DOCID_00432523
 15. DOCID_00432524
 16. CTRL_00062082
 17. DOCID_00432525
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18. Misc Chittick Device Documents
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 173. DIC0006656
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251. DIC0006656

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253. DIC0006679-6681
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329. RECEIVER_000136

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

QUALIFICATIONS OF EXAMINER:

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

LIMITATIONS:

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

FORENSIC OPINIONS:

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

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

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

⁵ CH_REC_CHI_0074014

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

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

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

CH_EstateSDT_0040837; CH_EstateSDT_0065302

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

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

⁹ CH_REC_CHI_0095659

¹⁰ DIC0007135

¹¹ DIC0007135

¹² CH_REC_CHI_0009504; CH_REC_CHI_0009542

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

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

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

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

¹⁴ Transcript of Recorded Conversation between Chittick and Menaged

¹⁵ DIC0007135

¹⁶ DIC0007135

¹⁷ DIC0007135

¹⁸ DIC0005403

¹⁹ Menaged 2004 Testimony

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

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

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

²¹ DIC0008036

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

²³ DIC0006625; DIC0006707; DIC0006803

²⁴ CH_REC_MEN_0031108; CH_REC_MEN_0027195;
CH_REC_MEN_0026580; CH_0000915

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

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

²⁶ DIC0008036

²⁷ DIC0006673; DIC0006707; DIC0006803; DIC0006656

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

²⁹ CH_REC_MED_0026584; CH_REC_MEN_0026600;
CH_REC_CHI_0067611; CH_REC_CHI_0084775

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

³¹ D. Beauchamp deposition, 164:1-14

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

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

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

³³ Menaged Plea Agreement

³⁴ Menaged Plea Agreement

³⁵ Menaged Plea Agreement

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

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

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

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

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

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

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

Respectfully submitted,



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

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

Exhibit D

1 Colin F. Campbell, 004955
Geoffrey M. T. Sturr, 014063
2 Joshua M. Whitaker, 032724
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APR 03 2019

6 Attorneys for Plaintiff
7

8
9 IN THE SUPERIOR COURT OF THE STATE OF ARIZONA
10 IN AND FOR THE COUNTY OF MARICOPA
11

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

14 Plaintiff,

15 vs.

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

19 Defendants.
20

No. CV2017-013832

**PLAINTIFF'S DISCLOSURE OF
EXPERT WITNESS REPORT RE
STANDARD OF CARE**

(Commercial case)

(Assigned to the
Honorable Daniel Martin)

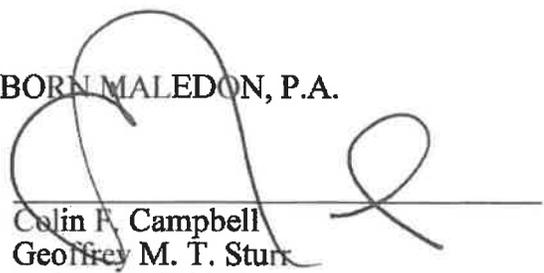
21 Pursuant to the scheduling order entered in this matter, Plaintiff Peter S. Davis, as
22 Receiver of DenSco Investment Corporation, hereby discloses the attached report of
23 Neil J. Wertlieb, which addresses the applicable standard of care, Defendants' departure
24 from the standard of care and how that departure caused injury to DenSco.
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DATED this 3rd day of April 2019.

OSBORN MALEDON, P.A.

By

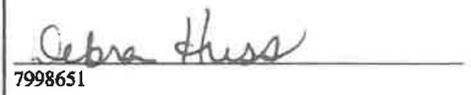


Colin F. Campbell
Geoffrey M. T. Sturr
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Phoenix, Arizona 85012-2793

Attorneys for Plaintiff

Original hand-delivered and
copy send by e-mail this
3rd day of April, 2019, to:

John E. DeWulf, Esq.
Coppersmith Brockelman PLC
2800 N. Central Avenue, Suite 1900
Phoenix, AZ 85004
Attorneys for Defendants


7998651

have become clear to Mr. Beauchamp that Mr. Chittick's strategy to "piggy back" on Mr. Menaged's defense in the Freo Lawsuit,²⁰⁹ and Mr. Chittick's Plan to resolve the double lien issue raised in the December 2013 Phone Call, had not only failed to address those problems, but were inappropriate actions to take on behalf of DenSco.

5. Call to Action

In my opinion, under such circumstances a reasonably prudent attorney would have immediately taken the following measures to protect DenSco and its Noteholders – none of which were taken by the Defendants:

a. Conduct Due Diligence

As discussed above, Arizona's Rules of Professional Conduct, Rule 1.3 (Diligence) would obligate such an attorney to "act with reasonable diligence and promptness in representing a client."²¹⁰

The Defendants themselves should have investigated the claims involving Mr. Menaged and his affiliated entities, which were raised in the Freo Lawsuit, the December 2013 Phone Call and the Bryan Cave Demand Letter, including Mr. Menaged's fabricated story involving his "cousin." As part of such investigation, the Defendants should have looked into where the proceeds from DenSco's loans went. The Defendants should have also reviewed all other outstanding loans to Mr. Menaged and his affiliated entities – and all other borrowers – so as to determine whether the problem was limited to the properties identified in the Freo Lawsuit, the December 2013 Phone Call and the Bryan Cave Demand Letter.

The Defendants themselves should have reviewed and reevaluated DenSco's internal procedures to ensure that it was not vulnerable to the type of double lien issue raised in the Freo Lawsuit, the December 2013 Phone Call and the Bryan Cave Demand Letter. As part of such review, the Defendants should have investigated the funding procedure used by DenSco to ensure that it was in fact obtaining first lien deeds of trust in properties owned by its borrowers (as it disclosed in the 2011 POM).

b. Terminate All Dealings with Mr. Menaged

The Defendants should have urged DenSco to sever its relationship with Mr. Menaged and his affiliated entities, and to immediately stop providing any additional funds to Mr. Menaged and his affiliated entities.

²⁰⁹ Email dated June 14, 2013 from Mr. Chittick to Mr. Beauchamp, copying Mr. Menaged ("Easy Investments, has his attorney working on it, I'm ok to piggy back with his attorney to fight it.").

²¹⁰ See, also, Comment [1] to Arizona Rule 1.3 ("A lawyer should pursue a matter on behalf of a client despite opposition, obstruction or personal inconvenience to the lawyer, and take whatever lawful and ethical measures are required to vindicate a client's cause or endeavor. A lawyer must also act with commitment and dedication to the interests of the client.").

The Defendants should have also researched, and advised DenSco with respect to, its rights and remedies with respect to Mr. Menaged and his affiliated entities and with respect to the double lien properties and the other lenders, and should have urged DenSco to take appropriate action against Mr. Menaged and his affiliated entities for fraud.

c. Update the 2011 POM Immediately and Cease All Solicitations

By the time of the Bryan Cave Demand Letter, the 2011 POM had already expired by its own terms over a half year earlier. In addition, it did not include any information about the Menaged fraud or DenSco's exposure in the Freo Lawsuit or pursuant to the Bryan Cave Demand Letter, nor did it describe Mr. Chittick's Plan. And, based on the information contained in the Freo Lawsuit, the December 2013 Phone Call and the Bryan Cave Demand Letter, the Defendants knew that the disclosures made in the 2011 POM were materially inaccurate,²¹¹ especially with respect to DenSco's first lien position,²¹² its loan-to-value ratio,²¹³ and the diversity of its borrowers.²¹⁴

The Defendants knew that the "failure to update [the 2011 POM] as required could result in the Company being subject to a claim under Section 10b-5 [sic] of the Securities Act for employing *manipulative or deceptive device in the sale of securities*, subjecting the Company, and possibly the management of the Company, to claims from regulators and investors."²¹⁵ Further, as Mr. Beauchamp acknowledged in February 2014, he was concerned that Mr. Chittick had committed securities fraud because the loan documents he had Mr. Menaged sign did not comply with DenSco's representations in the 2011 POM.²¹⁶ In addition, as Mr. Beauchamp testified, by "the end of April, beginning of May of 2014 ... *I believed he had committed a securities violation, and it was paramount that we get the disclosure statement out in writing to all of the investors as quickly as possible.*"²¹⁷

²¹¹ See Mr. Beauchamp's handwritten notes of a telephone call with Mr. Chittick on February 11, 2104 ("Material Disclosure – exceeds 10% of the overall portfolio").

²¹² See page 37, 2011 POM.

²¹³ See pages 10 & 37, 2011 POM.

²¹⁴ See pages 10 & 36-37, 2011 POM. See also pages 9-10, lines 25-2; Defendants' DS ("by the end of 2013, more than half of [DenSco's] loan portfolio was tied up with Menaged--well in excess of the promised loan concentrations DenSco had set forth in its disclosures to investors").

²¹⁵ Page 24, 2011 POM.

²¹⁶ Exhibit 70, email dated February 7, 2014 from Mr. Beauchamp to Mr. Goulder (Mr. Menaged's attorney), copying Mr. Chittick ("Based on your previous changes, the Forbearance Agreement would be prima facie evidence that Denny Chittick had committed securities fraud because the loan documents he had Scott sign did not comply with DenSco's representations to DenSco's investors in its securities offering documents.").

²¹⁷ See, also, page 161, lines 7-24, Deposition of Mr. Beauchamp ("Q. Was there any point in time, sir, where you learned that Mr. Chittick was continuing to raise money? A. ... *the end of April, beginning of May of 2014.* ... Q. And once you learned that, you knew he was committing a securities violation? ... A. I – *at that point in time, I believed he had committed a securities violation, and it was paramount that we get the disclosure statement out in writing to all of the*

For the reasons stated above,²¹⁸ it is clear that Mr. Beauchamp was aware that DenSco was continuing to offer Notes without updated disclosures, after the expiration of the 2011 POM, and despite his knowledge of the problems revealed in the Freo Lawsuit, the December 2013 Phone Call and the Bryan Cave Demand Letter.

Under these circumstances, and notwithstanding Mr. Chittick's Instruction, the Defendants should have insisted that DenSco immediately cease all solicitations of investors (including new investors and rollover investors) unless and until an updated and corrected POM, in compliance with Rule 10b-5, was prepared and provided to all such investors.

d. Advise Mr. Chittick of His Fiduciary Duties to DenSco and its Investors

As a result of the problems revealed in the Freo Lawsuit, the December 2013 Phone Call and the Bryan Cave Demand Letter, the Defendants should have advised Mr. Chittick of his fiduciary duties both to DenSco and to its Noteholders. For example, the duty of loyalty mandated that Mr. Chittick, as director,²¹⁹ officer²²⁰ and sole shareholder²²¹ of DenSco, act in the best interests of DenSco. Among other things, the Defendants should not have merely accepted and followed Mr. Chittick's Instruction, but rather urged Mr. Chittick of his obligations to update the POM.

And, to the extent that such problems may have rendered DenSco insolvent, Mr. Chittick would owe fiduciary duties to its creditors, and would be obligated to treat all assets of DenSco as "existing for the benefit" of the Noteholders and other creditors.²²² As a result, the Defendants should have assessed whether DenSco was insolvent or in the "zone of insolvency."

Because of such duties, the Defendants also should have urged Mr. Chittick, on behalf of their client DenSco, to protect and preserve the corporation's assets, and to not pursue a Plan that

investors as quickly as possible. His representations that he had advised everybody and told them to the contrary, we needed something much more formal than that." [italics added]).

²¹⁸ See the section entitled "Defendants Allege They Withdrew from Representing DenSco in May 2014" above in this Report.

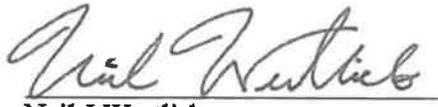
²¹⁹ See Arizona Revised Statutes, Section 10-842 ("an officer's duties shall be discharged ... [i]n a manner the officer reasonably believes to be in the best interests of the corporation.").

²²⁰ See Arizona Revised Statutes, Section 10-830 ("a director's duties ... shall be discharged ... [i]n a manner the director reasonably believes to be in the best interests of the corporation.").

²²¹ See *Sports Imaging of Arizona, L.L.C. v. 1993 CKC Trust*, No. 1 CA-CV 05-0205, 2008 WL 4448063, *12 (unpublished opinion, Ariz. Ct. App. 2008) ("shareholders that have the ability to control a corporation owe a fiduciary duty to the corporation").

²²² See *A.R. Teeters & Assocs. v. Eastman Kodak Co.*, 172 Ariz. 324, 836 P.2d 1034 (Ariz. Ct. App. 1992) ("all of the assets of a corporation, immediately on its becoming insolvent, exist for the benefit of all of its creditors" [internal citation omitted]). See, also, *Dooley v. O'Brien*, 226 Ariz. 149, 244 P.3d 586 (Ariz. Ct. App. 2010); *Dawson v. Withycombe*, 216 Ariz. 84, 163 P.3d 1034 (Ariz. Ct. App. 2007).

I reserve the right to supplement, update or amend my opinions as new information becomes available or is brought to my attention.


Neil J Wertlieb

March 26, 2019

Exhibit E

IN THE SUPERIOR COURT OF THE STATE OF ARIZONA

IN AND FOR THE COUNTY OF MARICOPA

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

Plaintiff,

vs.

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

Defendants.

NO. CV2017-013832

VIDEOTAPED DEPOSITION OF ERIN M. NELSON, PSY.D.

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

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

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

1 support for the scope of the opinions he rendered, and you
2 give various reasons.

3 One of those, Dr. Nelson, is that he did not
4 provide reasonable qualifying language about the
5 significant limitations and the nature and quality of the
6 data upon which his opinions were based, is that correct?

7 A. Yes.

8 Q. And you noted earlier in your declaration that,
9 this is paragraph 8a., it's professionally acceptable to
10 render limited opinions in the absence of direct contact
11 with the subject individual, but it is imperative that the
12 resultant limitations with respect to reliability and
13 validity be expressly conveyed, correct?

14 A. Correct.

15 Q. That's your opinion?

16 A. Yes.

17 Q. Okay. Now, in this case --

18 MR. STURR: Why don't we take a quick break. We
19 have gone about an hour.

20 THE WITNESS: Sure.

21 VIDEOGRAPHER: This ends video number one of the
22 ongoing deposition of Dr. Erin Nelson. We are off the
23 record at 1:58.

24 (A recess was taken from 1:58 p.m. to 2:08 p.m.)

25 (Deposition Exhibit No. 1169 was marked for

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

1 can give. Let me ask it that way.

2 A. Sure. You could be asked about somebody's
3 behavior. You could be asked about their capacity to
4 change their will or to make other types of decisions.
5 And you can look at their behavior and decision-making, as
6 opposed to simply whether they had met the diagnostic
7 criteria for dementia or some other sort of cognitive or
8 psychological emotional condition.

9 Q. So if you are giving an opinion about behavior
10 and decision-making, what label do you put on that
11 opinion? Again, I'm trying to find something other than
12 diagnostic.

13 A. That could be a general psychological opinion.

14 Q. And if you -- again, have there been
15 circumstances in -- in these types of cases, again, where
16 you are asked to give an opinion about a deceased person,
17 where you have conducted a collateral interview?

18 A. Yes.

19 Q. Okay. On how many occasions, can you recall?

20 A. I can't remember the number of cases I have done
21 this, but I don't know the answer to that. The answer is
22 definitely yes.

23 Q. So hypothetical, again, I'm trying to understand
24 your world, so you could have a family fight over a will,
25 there is a question about the testator's intent, testator

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

1 and third-party information?

2 A. Correct.

3 Q. You would need to use multiple sources of
4 information?

5 A. Correct.

6 Q. Okay. And what I'm trying to understand is can
7 the referral question limit the scope of what -- of the
8 examination or the assessment that you conduct?

9 A. The referral question wouldn't limit the scope
10 of what I do. It may limit what's -- or certainly could
11 limit what's necessary to answer the question I'm being
12 asked.

13 Q. How can a referral question limit what is
14 necessary? Help me understand that.

15 A. So if I am being asked to offer a diagnostic
16 opinion, then I would need to interview the person, see
17 testing, so on. If I'm being asked is this treatment
18 consistent with this diagnosis, I would not need to do
19 that.

20 Q. I'm more focused, Dr. Nelson, on when you are
21 asked to provide a psychological assessment of an
22 individual, and that psychological assessment is of an
23 individual who is no longer living, can the referral
24 question limit the extent or scope of your assessment?

25 A. I'm trying to think of the questions that I have

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

1 been asked, but always, as a matter of forensic practice,
2 you need to have sufficient information to render the
3 opinion you are rendering.

4 So if an opinion was -- if I'm asked a limited
5 question, then I would gather everything I needed to do to
6 answer that question, but it may not be necessary to do
7 other work.

8 Q. Okay. All right. Let me ask you about this
9 case.

10 You have been retained, as we discussed at the
11 outset of the deposition, by Mr. Dewulf's law firm. As I
12 understand it, you did not issue -- there is not an
13 engagement letter that you or Mr. Dewulf are aware of. Is
14 that correct?

15 A. Yes, and I don't -- I don't typically -- I know
16 some experts demand those. I haven't, typically.

17 Q. So there is nothing from Mr. Dewulf's firm that
18 sets out what we have been calling a referral question, is
19 that correct?

20 A. I thought we were talking about something
21 different, so let me clarify. I thought you were talking
22 about initially, like, we have retained you to review
23 these documents.

24 Q. Well, that's what I'm trying to get my arms
25 around, so let me -- let me step back.

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

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

4 A. Correct.

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

7 A. Yes.

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

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

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

17 A. That's correct.

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

20 A. That's correct.

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

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

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

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

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

7 A. Oh.

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

10 Do you see that?

11 A. Yes.

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

14 A. Correct.

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

19 A. Yes.

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

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

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

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

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

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

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

16 A. Okay.

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

22 A. That's correct.

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

25 In order to answer that question, what documents

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

1 would you agree?

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

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

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

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

15 A. I could not guarantee that.

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

18 A. Yes.

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

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

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

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

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

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

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

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

17 A. Correct.

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

22 A. That's correct.

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

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

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

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

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

10 MR. DEWULF: Object to form.

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

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

17 A. Sure.

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

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

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

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

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

3 A. still no.

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

6 A. still no.

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

9 A. still yes.

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

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

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

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

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

20 A. Yes.

21 Q. Do you see it?

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

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

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1 conclusions or recommendations.

2 Do you see that?

3 A. Yes.

4 Q. Okay. Where in your written report do you -- do
5 you clarify the probable impact of limited information on
6 the reliability and validity of your opinion?

7 A. As I just said, didn't my -- that was my
8 intention with this paragraph.

9 Q. Well, I understand that. But if you are not a
10 psychologist and you are reading this report without the
11 benefit of your experience, how does the fact that you did
12 not conduct face-to-face evaluations of Mr. Chittick or
13 conduct any collateral interviews have an impact on the
14 reliability and validity of your opinions?

15 A. I would be thinking of adding that specifier
16 were I to be talking in -- about testing or psychological
17 diagnoses that someone else has made. So if I should have
18 clarified that more, then that's certainly something I can
19 do. It was my intention for this to meet that standard.

20 Q. Well, would you please tell me now, in what way
21 is the opinion you are giving affected, is the reliability
22 and validity of your opinion affected by the limited
23 review you have conducted?

24 A. So maybe that's part of where I'm struggling
25 with this, because I am very comfortable that I have

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1 offered a reliable and valid opinion.

2 And I'm trying to explain here that I did not
3 evaluate him, but really the reliability and validity
4 portion would be if I tried to say I believe John Doe has
5 met criteria for a diagnosis, and here is what ten other
6 people have said about him and that's why I think it. I
7 would need to say I am not -- I didn't interview them. I
8 didn't do testing.

9 I guess I'm just -- I'm trying to think how I
10 would clarify that for you if I had the opportunity.

11 Q: What I'm trying to understand, Dr. Nelson, is
12 you have said here that this was limited both because he
13 is -- you didn't have the opportunity to examine him, but
14 you also said you did not conduct any collateral
15 interviews. You have not explained in this report how the
16 absence of a collateral interview affects the reliability
17 and validity of the opinion you have rendered.

18 Is it your opinion or is it your view that you
19 don't need to state any limitation, because you did not
20 conduct any collateral interviews?

21 MR. DEWULF: So I'm going to object, because I
22 think there are a series of questions there. There are
23 statements leading to a question, so could we have just
24 the question read back for this witness.

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

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

8 MR. DEWULF: Object to form.

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

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

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

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

(3:55 p.m.)

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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).

<i>Kelly Sue Oglesby</i>	10/20/2019
Kelly Sue Oglesby Arizona Certified Reporter No. 50178	Date

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

<i>Jane M. Doyle</i>	10/20/2019
JD REPORTING, INC. Arizona Registered Reporting Firm R1012	Date