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SUPERIOR COURT OF ARIZONA

COUNTY OF MARICOPA

Peter S. Davis, as Receiver of DenSco Investment Corporation, an Arizona corporation, Plaintiff, v. Clark Hill PLC, a Michigan limited liability company; David G. Beauchamp and Jane Doe Beauchamp, husband and wife, Defendants.	No. CV2017-013832 **DEFENDANTS' REBUTTAL DISCLOSURE OF EXPERT WITNESS SCOTT J. RHODES** (Commercial Case) (Assigned to the Honorable Daniel Martin)

Pursuant to the Court's May 16, 2018 Scheduling Order, Defendants Clark Hill PLC and David G. Beauchamp, hereby disclose the attached rebuttal report of Scott J. Rhodes.

DATED this 7th day of June, 2019.

COPPERSMITH BROCKELMAN PLC

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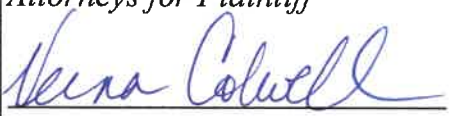

REBUTTAL EXPERT OPINION OF J. SCOTT RHODES

This Rebuttal Opinion pertains to the Expert Report of Neil J. Wertlieb dated March 26, 2019 (the "Wertlieb Opinion"). This Rebuttal Opinion is limited to those aspects of the Wertlieb Opinion that are relevant to the standard of care for Arizona lawyers in regard to lawyers' general ethical and professional responsibilities. This Rebuttal Opinion does not address those aspects of the Wertlieb Opinion that entirely concern the standard of care for Arizona securities lawyers. No interpretation should be drawn or conclusion reached that I agree with any part of the Wertlieb Opinion that is not addressed herein. I attempt in this Rebuttal Opinion to include only those parts of the Wertlieb Opinion that I believe Mr. Wertlieb's qualifications do not support, that are improper under Arizona law, and/or that illustrate the most important differences between his analytical approach, and opinions, and my own.

This Rebuttal Opinion is not intended to modify the opinions stated in my Preliminary Opinion of April 5, 2019 ("Preliminary Opinion"), or as stated in my deposition of May 15, 2019.

Mr. Wertlieb's Qualifications Concerning Arizona Attorney Ethics and Professional Responsibility

Mr. Wertlieb has disclosed no experience pertaining to the ethical and professional requirements of Arizona lawyers. He disclosed a certain amount of experience in regard to legal ethics in California; however, the Arizona Supreme Court governs the conduct of Arizona lawyers and is not bound by California law. Moreover, as stated in my Preliminary Opinion, ¶¶ 1-2, Mr. Wertlieb relies on the American Bar Association's Model Rules of Professional Conduct ("Model Rules"), although the Model Rules are not the relevant standard in Arizona. The relevant standard resides in the Arizona Rules of Professional Conduct ("Ethical Rules" or "ERs"). The fact that the applicable Arizona Ethical Rules might consist of the same language as the parallel Model Rules is irrelevant, because the Arizona Supreme Court considered, adopted, and interprets the Arizona Ethical Rules. As stated in my Preliminary Opinion, ¶ 2, the standard of care in this case, as it pertains to Arizona lawyers' general ethical and professional responsibilities, will be established by examination of Arizona community practices. Based on his disclosures, Mr. Wertlieb has no experience with Arizona standards, Arizona law, or Arizona community practices in the field of general ethical and professional responsibility.

Mr. Wertlieb's Determination of Fact Questions is Improper in Arizona

Triers of fact determine issues of fact. Resolving fact issues is not the province of experts. As stated in my Preliminary Opinion, the role of an expert is to assist the trier of fact "which may include the application of facts to law." Preliminary Op., General Principles, ¶ 1(a). In addition, experts "rely on their understanding of facts presented to them in the record of a case as of the time of their opinions ...." *Id.* ¶ 1(b). There is a profound difference, however, between an expert's reliance on an assumed fact and an expert deciding factual issues. The former not only is permissible, it is necessary in order for an expert to develop and state his/her opinions. The latter, however, invades the province of the trier of fact and is impermissible. "A court should reject expert testimony that does not assist the jury to understand the evidence or to determine a fact in issue. It should also reject expert testimony that invades the province of the jury by telling it how to decide. Although expert opinions may encompass an ultimate issue when they are otherwise helpful to the jury, they may not do so when they are couched as legal conclusions because

of the risk that the jury may turn to the expert for guidance on applicable law rather than the judge." *Schuoler v. Napier*, No. 2 CA-CV 2017-0022, 2018 WL 1179447, at *4 (Ariz. Ct. App. Mar. 6, 2018) (internal quotation marks and citations omitted).

The following are examples when Mr. Wertlieb, instead of forming opinions in reliance on factual assumptions, improperly inserted his own factual conclusions:

- **Page 10**: "The Freo Lawsuit put Mr. Beauchamp on notice that DenSco's 2011 POM may be materially misleading because, if the allegations in the complaint were correct, DenSco *was not following the methodology and procedure stated in the 2011 POM for funding its loans.*" (Emphasis added.)

  In this sentence, Mr. Wertlieb misstates the allegations of the Freo Lawsuit and inserts an opinion that the lawsuit created notice that DenSco had a general practice of disregarding the methodology. As the Wertlieb Opinion itself acknowledges, however, the Freo Lawsuit pertained to only one property and one instance of an alleged deviation from the DenSco financing methodology. *See* Wertlieb Opinion at 10 ("The Complaint in the Freo Lawsuit alleged that Mr. Menaged had secured two mortgages *on one property* ....")(emphasis added); *see also id.*, n. 34.

- **Page 11**: "Although Mr. Beauchamp did some work on an updated POM in July and August of 2013 (after the POM had expired), *he was also preoccupied with changing law firms.*" (Emphasis added.)

  I have seen no evidence that Mr. Beauchamp had a "preoccupied" mental state at the time. "Preoccupied" implies distraction to the point of ignoring other duties or obligations.[1] Indeed in the part of the Beauchamp deposition testimony that Mr. Wertlieb quotes to support this opinion, Mr. Beauchamp testified only that he "explored different options" during that time period. (Wertlieb Op. n. 40.) The Wertlieb opinion thus mischaracterizes the testimony, with the risk of misleading the jury through an improper expert opinion.

- **Pages 12-13**: "Based on the record I have reviewed,... *there was no discussion or effort to update the POM to disclose this fact, nor does it appear that the Defendants did any investigation into the matter.*" (Emphasis added.)

  There are several issues with the emphasized portion of this opinion. First, by failing to include a time reference, the opinion improperly opines as a matter of fact that no such "discussion" or "effort" *ever* occurred. The record is clear, however, that a meeting occurred in January 2014 where Mr. Beauchamp listened to Chittick and Menaged, learned for the first time about the nature and apparent extent of the DenSco-Menaged transactions and where he restated the importance of disclosures. Second, as the Wertlieb Opinion previously recognized, Mr. Beauchamp had already discussed with Chittick the need to update the 2011 POM, and the fact that certain disclosures (e.g., the Freo Lawsuit) would have to be included in the update, *and that Chittick had agreed.* Under the standard of care for all Arizona lawyers in regard to their ethical and professional obligations, lawyers do not have a duty to restate information that they know the client already knows and understands. In December 2013, Mr. Beauchamp had no information that reasonably would have led

[1] See https://www.dictionary.com/browse/preoccupied#: "completely engrossed in thought; absorbed."

a reasonably competent Arizona attorney to conclude that Chittick ultimately would fail to follow the lawyer's advice. To the contrary, as the Wertlieb Opinion points out, on December 18, 2013, Chittick emailed about the still-existent need to update the POM. (Wertlieb Op., n. 47.)

What Mr. Beauchamp knew at the time reasonably leads to a conclusion that is directly contrary to Mr. Wertlieb's opinion. Based not only on Chittick's response to the advice to disclose the Freo Lawsuit, but also on Mr. Beauchamp's years of representing DenSco, and notably also based on Chittick's record of substantially following Mr. Beauchamp's advice and counsel, Mr. Beauchamp did not have, under the general ethics standard of care in Arizona, a duty to make an immediate "effort to update the POM to disclose this fact," nor a duty to immediately conduct an "investigation into the matter."

The phrasing of the Wertlieb Opinion about the December 2013 period of time improperly and misleadingly implies a lack of action or communication by Mr. Beauchamp over an extended period of time. In fact, in early January 2014, Mr. Beauchamp not only discussed updating the POM, he also investigated through discussions with Chittick and Menaged the nature and scope of their transactions.

- **Page 13**: "It is clear that, despite this very serious and material problem with a borrower that Mr. Beauchamp knew to be very important to DenSco's business (and the very same borrower that was the apparent cause of both the Freo Lawsuit and the December 2013 Phone Call), *there was no effort made to update the POM to disclose this fact, nor does it appear that the Defendants did any investigation into this matter.*"

  There are two issues with the emphasized portion of this opinion. First, by failing to include a time reference, the opinion improperly opines as a matter of fact that no such "effort" or "investigation" *ever* occurred. Second, the opinion implies that the lack of a written update to the POM between January and May 2014 means that *no updates occurred,* but Chittick's communications indicated that he was making oral disclosures.

- **Page 14**: "In fact, as discussed above, once the Bryan Cave Demand Letter came to his attention, *Mr. Beauchamp's priority* became drafting and negotiating the Forbearance Agreement (as defined below), *not updating* the 2011 POM." (Emphasis added.)

  First, Mr. Wertlieb attributes to Mr. Beauchamp, not Chittick, the decision about a "priority"; however, the deposition transcript that Mr. Wertlieb quotes implies the contrary – that Chittick set the priority: "I was giving [Chittick] clear advice as far as what to do, he would not let me independently confirm that he was giving [sic] that advice, which – he said I've never lied to you, and on the basis, that was true, so we proceeded the priority was the Forebearance Agreement at that time." (Wertlieb Op. n. 53, quoting Beauchamp Depo. Tr. at 59:19-24.) Mr. Wertlieb's choice to ignore the totality of the testimony and instead to attribute to Mr. Beauchamp selection of the "priority" is an opinion, albeit an implied one, about Mr. Beauchamp's credibility as a witness, which as discussed below is improper.

  Second, Mr. Beauchamp ethically could allow Chittick to set as his "priority," in January 2014, to pursue completion of the Forebearance Agreement, because at that

time Mr. Beauchamp had advised Chittick of the importance of making disclosures, and further because Mr. Beauchamp then had no knowledge of any improper conduct *by Chittick.* Mr. Beauchamp's ethical and professional obligations were still controlled by his duty to communicate with his client, DenSco (ER 1.4), and to pursue Chittick's objectives for DenSco so long as they appeared to be lawful (ER 1.2). In January 2014, Mr. Beauchamp was informed there were multiple double-lien transactions between DenSco and Menaged (he did not yet know how many), but he was also informed that the double-lien aspect of these transactions was created by Menaged's cousin. Neither Menaged nor Chittick were alleged to have been involved in the cousin's fraud. Indeed, Menaged, and DenSco by extension, were portrayed as the cousin's victims.

Because in January 2014, Chittick himself (and thus, DenSco) appeared to be a victim, not a participant, and because Chittick appeared to have only recently learned of the cousin's conduct and to be trying to resolve the fallout of the cousin's conduct so any detrimental impact on DenSco and its investors would be contained, if not eliminated, Mr. Beauchamp had no duty to undertake any actions in contravention of Chittick's instructions. Mr. Beauchamp had no information indicating that Chittick would not disclose the double-lien transactions. To his knowledge at the time, the issue was not "if" he would disclose, but "when." Mr. Beauchamp emphasized to Chittick that time was of the essence for disclosure and no new money should be raised absent disclosures. Chittick appeared, by word and conduct, to understand and agree. If Chittick wanted to document the solution to the issue through the Forebearance Agreement before making written disclosures, Mr. Beauchamp could reasonably, under the standard of care applicable to all Arizona attorneys, allow Chittick to pursue that objective, provided that it had to be finished as quickly as possible.

The Wertlieb Opinion implies that the Bryan Cave Demand Letter[2] created a duty that precluded Mr. Beauchamp from respecting Chittick's desire to document the Forebearance Agreement.[3] However, because Chittick's goal was to complete the Forebearance Agreement *and then include the agreement as part of the disclosures for the updated POM,* then based on the standard of care as measured by ethical and professional obligations for all Arizona lawyers, not only was Mr. Beauchamp not precluded from working on the Forebearance Agreement, he was required to do so. The Wertlieb Opinion implies a separation between work on the Forebearance Agreement and the updated POM, implying that it was beneath the standard of care for Mr. Beauchamp to work on the Forebearance Agreement before written disclosures occurred. However, Mr. Beauchamp reasonably believed, based on the facts and circumstances known to him at the time, that Chittick intended to disclose, and his goal was first to complete the Forebearance Agreement then include it with the written disclosures in an updated POM. Mr. Beauchamp believed that process would be completed within a short period of time.

- **Page 15**: "These improper and risky funding procedures were not disclosed in the 2011 POM. In fact, the 2011 POM incorrectly stated that DenSco's loans were funded so as to ensure first lien positions on such properties."

[2] Defined term from the Wertlieb Opinion.
[3] Defined term from the Wertlieb Opinion.

This opinion is an implied, but nonetheless improper, factual conclusion that (a) in 2011 Chittick was already engaging in that type of funding procedure, and further that (b) Mr. Beauchamp knew about such procedures when his firm prepared the 2011 POM. I have seen nothing in the record that substantiates either conclusion.

- **Pages 19-20**: "It does not appear to be the case that execution of the Forebearance Agreement itself (as opposed to the speculative benefits DenSco might possibly receive going forward, when and if so received) would provide Mr. Chittick with the positive message he wanted to share with investors that DenSco's exposure had been minimized (especially since DenSco committed to extend at least another $6 million to Mr. Menaged). In other words, because Mr. Chittick had explained to Mr. Beauchamp that he did not want to make disclosures until much of the double lien problem had been resolved, *Mr. Beauchamp could not have reasonably believed* that the completion of the Forebearance Agreement itself would prompt Mr. Chittick to make appropriate disclosures. In fact, the Defendants [sic] pursuit of the Forebearance Agreement had the effect of further delaying and limiting the required disclosures to DenSco's investors." (Emphasis added.)

  By failing to put a time frame on the italicized language, the Wertlieb Opinion improperly implies, akin to a finding of fact, that *at no relevant time* could Mr. Beauchamp have had a reasonable belief. In January when Mr. Beauchamp first started to learn about the breadth and scope of the Menaged transaction issues, Mr. Beauchamp could have had a reasonable belief that Chittick would disclose. That reasonable belief was based on years of representing DenSco through Chittick, Chittick's portrayal of the facts as having been instigated by Menaged's cousin (and not by either Menaged or Chittick), and Chittick's statements that were consistent with an intent to follow Mr. Beauchamp's advice. Negotiation of the Forebearance Agreement was a process, not a foregone conclusion, as the Wertlieb Opinion implies. Indeed, over the approximately three months between January 6, 2014 and April 16, 2014, when the Forebearance Agreement was executed, Mr. Beauchamp impressed on Chittick the importance of not acquiescing to the demands of Menaged's lawyer during negotiations, reminding Chittick of his duties to DenSco. Mr. Beauchamp did not know, because Chittick hid it from him, that Menaged was the true fraudster and Chittick had fallen prey to his schemes. Contrary to Mr. Wertlieb's characterization of "Defendants [sic] pursuit of the Forebearance Agreement," in reality Mr. Beauchamp was attempting to meet Chittick's objectives which, despite challenges that became more imposing over time, were within Chittick's appropriate domain as DenSco's principal.

  As I stated in my Preliminary Opinion, "[w]hile it is true that 'a lawyer cannot ignore the obvious,' the lawyer nevertheless, within the standard of care as determined by Arizona lawyers' ethical and professional obligations, can (and should) consider such factors as 'the apparent motivation of the person involved.' ER 1.13, cmt. [4]." Preliminary Op., ¶ 24. Until Chittick refused in late April or early May 2014 to make disclosures in writing, to Mr. Beauchamp's knowledge, Chittick's motivation was to protect both DenSco and the investors. The fulcrum issue is not whether Chittick was deft or smart in his decision to pursue the Forebearance Agreement, or how to negotiate the agreement. As stated in my Preliminary Opinion and in ER 1.13, "a lawyer for an organization must give deference to the organization's business leadership, because '[w]hen constituents of the organization make decisions for it, the decisions ordinarily must be accepted by the lawyer even if their utility or prudence is doubtful. Decisions concerning policy and operations, including ones

entailing serious risk, are not as such in the lawyer's province.'" Preliminary Op., ¶ 32, *quoting* ER 1.13, cmt. [3].

Mr. Wertlieb's Opinions About Credibility Are Improper for Experts in Arizona

The Wertlieb Opinion contains multiple instances where Mr. Wertlieb improperly opines about issues of credibility, which are issues of fact belonging to the jury, not to an expert. *State v. Reimer*, 189 Ariz. 239, 241, 941 P.2d 912, 914 (App. 1997)("Arizona courts have expressly determined that neither expert nor lay witnesses assist the trier of fact to understand the evidence or to determine a fact in issue when they merely opine on the truthfulness of a statement by another witness. Such opinions are rejected because they are nothing more than advice to jurors on how to decide the case.")(internal quotation marks and citations omitted).

The following are examples of improper credibility opinions:

- **Page 11**: "In his deposition, Mr. Beauchamp asserted that the delay in updating the POM was caused by Mr. Chittick, and that Mr. Chittick instructed Mr. Beauchamp to stop working on the POM in August 2013 .... Based on the record I have reviewed, it appears there is no evidence confirming Mr. Beauchamp's assertion. *While I do not find Mr. Beauchamp's assertion credible under the circumstances*, for the reasons discussed below, any such instruction did not relieve Mr. Beauchamp of his obligation to take some form of corrective action." (Emphasis added.)

  Even if it were permissible for an expert to issue such an opinion (which it is not), Mr. Wertlieb fails to explain what "circumstances" substantiate his opinion.[4]

- **Page 12, n. 47**: "See email dated December 18, 2013 from Mr. Chittick to Mr. Beauchamp ("Since you moved, we've never finished the update on the memorandum.") The Defendants attempt to contradict the clear implication of this email by asserting that it was Mr. Beauchamp who reminded Mr. Chittick. See Defendants' DS, page 8 ('Mr. Beauchamp reminded Mr. Chittick that he still needed to update DenSco's private offering memorandum.') *While I do not find Defendants' assertion credible under the circumstances,* for the reasons discussed below, the Defendants were still obligated to take some form of corrective action."

  Like with the first example of a credibility opinion, in addition to being improper, Mr. Wertlieb also fails to discuss the "circumstances" on which he basis his opinion.

- **Section II.7 (pages 20-26)**: This section is rife with opinions about Defendants' credibility, all of which are improper under Arizona law. It is proper and common for experts to comment about the record, even to point out inconsistencies between various witnesses' positions and/or between documents, but experts must not opine about credibility. The Wertlieb Opinion regularly deviates from this limitation.

  For example, in Section II.7, Mr. Wertlieb gives the following credibility opinions[5]:

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[4] Despite opining that Mr. Beauchamp's testimony about the Chittick Instructions was not credible, Mr. Wertlieb nevertheless calls those Instructions the second "Red Flag" to which Mr. Beauchamp should have paid attention. I do not believe they were a "Red Flag" at all, but if Mr. Wertlieb has indeed concluded that no such instructions occurred, then he should not have included them as a "Red Flag."

- Page 20: "However, based on the record I have reviewed and for the following reasons, it is clear [contrary to Mr. Beauchamp's position] that Mr. Beauchamp was aware that ...."
- Footnote 84: "For the reasons stated herein, I do not find this assertion credible."
- Page 22: "Fifth, although Mr. Beauchamp claimed that he believed Mr. Chittick provided full disclosure to every investor about the fraud, that is implausible based on the record I have reviewed ...."
- Page 22: "Further, although the Defendants assert to the contrary, Mr. Beauchamp knew that there was no proper disclosure mechanism other than pursuant to a new or supplemental POM ...."

Mr. Wertlieb Also Draws Impermissible Legal Conclusions.

To the extent that any of the examples discussed above also reach legal conclusions, experts do not decide matters of law, which are for the court to determine. "[E]xpert opinions addressing ultimate issues are excluded when couched as legal conclusions because such beliefs by expert witnesses 'tend to blur the separate and distinct responsibilities of the judge, jury, and witness[,]' and create the danger that jurors may turn to the expert for guidance on applicable law rather than the judge." *Webb v. Omni Block, Inc.*, 216 Ariz. 349, 354, 166 P.3d 140, 145 (App. 2007) (quoting *Steffensen v. Smith's Mgmt. Corp.*, 862 P.2d 1342, 1347-48 (Utah 1993)).

The Four "Red Flags"

The Wertlieb Opinion identifies and then relies on four "Red Flags" as they related to Chittick, implying that the standard of care required Mr. Beauchamp to recognize and act after *each one* of the "Red Flags." However, Mr. Beauchamp's knowledge, based on the facts and circumstances available to him, did not create a duty after the first three of the four "Red Flags." Specifically, the first "Red Flag," the Freo Lawsuit, pertained to a single property, and Mr. Chittick's communications to Mr. Beauchamp did not imply the existence of other, similar transactions. The second "Red Flag," Chittick's instructions to curtail work on the POM update, was based on Mr. Beauchamp's understanding that Chittick was distracted with other activities, but that he intended to update the POM. Mr. Beauchamp's prior experience with Chittick following his advice made Beauchamp's reliance on Chittick's explanation for curtailing work on the POM reasonable and within the standard of care. The third "Red Flag," the December 2013 phone call from Chittick, was the first of a series of events that led, in January 2014, to Mr. Beauchamp learning that Chittick had engaged in more than just a few Menaged transactions. In December 2013, however, the nature and scope of those transactions was not yet apparent.

Importantly, only a few weeks went by between the third "Red Flag" and the fourth "Red Flag," which was the letter from Bryan Cave on January 6, 2014. That letter led to a meeting among Beauchamp, Chittick, and Menaged on January 9, 2014. In short, Mr. Beauchamp not only recognized the importance of both the third and fourth "Red Flags," but he took prompt action after the fourth one. In regard to the standard of care for all Arizona attorneys, during this entire time period (from before the first "Red Flag" through and

[5] I am not rendering an opinion regarding conclusions reached in this or any other part of the Wertlieb Opinion as they pertain to the application of facts to securities law and the standard of care specific to securities lawyers.

including the fourth "Red Flag," up until Chittick refused to update the POM in May 2014), Mr. Beauchamp had a reasonable basis to believe that Chittick intended to and would update the POM with full disclosures. The reasonable basis for his belief was Chittick's track record of following Mr. Beauchamp's advice and counsel, and his statements that were consistent with an intent to update the POM.

An Arizona attorney who knows his client has heard and understood his advice and has demonstrated that he intends to follow that advice is not required to repeat the advice multiple times. It appears that Mr. Beauchamp in fact did repeat the advice, but he met the standard of care once he had given the advice and received from Chittick acknowledgement, not only of the advice, but of Chittick's intent to follow it.

In sum, Mr. Wertlieb opines there was a pattern of neglect by Mr. Beauchamp from the first "Red Flag" in June 2013 through and including the fourth "Red Flag" in January 2014 (and beyond). In my opinion, there was no neglect at all beneath the standard of care applicable to all Arizona attorneys, because the first three "Red Flags" were insufficient to put a reasonable lawyer on notice that Chittick was engaging in improper loans and also was deceiving the company's lawyer about the loans. The "Red Flags" were insufficient, first, because of the paucity of information contained in each "Red Flag" event before the fourth one, and further because of Mr. Beauchamp's decade-long history of working with Chittick with never a reason to doubt Chittick's judgment or veracity.

The Problem With Hindsight

The Wertlieb Opinion indulges in hindsight analysis; however, in determining the applicable standard of care for all Arizona lawyers, the issue is what the lawyer *actually knew* at the time of the conduct in question. While, Mr. Wertlieb agrees with me on this point, he makes a critical error in applying that concept to the standard of care in Arizona. On page 36 of his opinion, he states: "And because the proper exercise of the standard of care is dependent on the knowledge of the lawyer, the particular facts and circumstances should take into account the information that the lawyer knew *or should have known* at all relevant times." (Emphasis added.) In Arizona, knowledge in regard to lawyer conduct is not established by what a lawyer "should have known." *In re Tocco,* 194 Ariz. 453, 457, ¶ 11, 984 P.2d 539, 543 (1999) (holding that "a mere showing that the attorney reasonably *should have known* her conduct was in violation of the rules, without more, is insufficient" to establish a knowing ethical violation). That reasoning, coupled with the admonition in the Preamble to the Ethical Rules that a lawyer's conduct is judged by "rules of reason" that take into account "that a lawyer often has to act upon uncertain or incomplete evidence of the situation" (Preamble, ¶ 19), means that the trier of fact in this case should be guided by the practices and customs relevant to all Arizona lawyers and, in this case, by how a reasonable Arizona lawyer would have acted under the facts actually known to Mr. Beauchamp at the time of his conduct – not merely the facts from June 2013 through May 2014, but the facts relevant to an attorney-client relationship that spanned a decade. The sad truth is that Mr. Chittick, without Mr. Beauchamp's knowledge, fell under Menaged's spell, then Chittick hid from his lawyer how far and deeply under Menaged's control he had deviated from the business structure that had made him so successful, and that Mr. Beauchamp believed still guided him. Contrary to Mr. Wertlieb's conclusions (based on an analysis bolstered only by judgment in hindsight), the truth was only revealed to Mr. Beauchamp in morsels between January and May 2014, and to a large extent, not until after Mr. Chittick's suicide. Under the standard of care as determined by all Arizona attorneys' ethical and professional responsibilities, Mr. Beauchamp was not required to know what his client hid, not only from him, but from Chittick's closest friends and family members. He

served properly within the standard of care as DenSco's lawyer. No standard applicable in Arizona required him to be its savior.

Reservation of Rights

The reservation of rights that I set forth in my Preliminary Opinion pertain as well to this Rebuttal Opinion.

This statement is made under penalty of perjury.

DATED this 6th day of June, 2019.

J. Scott Rhodes