

ROBERT ZACKERY KOEHLER, 12/17/2018

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ROBERT ZACKERY KOEHLER, 12/17/2018

1 DEPOSITION OF ROBERT ZACKERY KOEHLER, commenced
2 at 9:35 a.m. on December 17, 2018, at the law offices of
3 Coppersmith Brockelman, PLC, 2800 North Central Avenue,
4 Suite 1900, Phoenix, Arizona, before KELLY SUE OGLESBY, a
5 Certified Reporter, CR No. 50178, in and for the County of
6 Maricopa, State of Arizona, pursuant to the Rules of Civil
7 Procedure.

8 * * *

9 APPEARANCES

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25

ROBERT ZACKERY KOEHLER, 12/17/2018

Phoenix, Arizona
December 17, 2018
9:35 a.m.

* * *

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

EXAMINATION

Q. (BY MR. RUTH) Good morning, Mr. Koehler. My name is Marvin Ruth. I'm counsel for the defendants in this case, the defendants being Clark Hill and David Beauchamp.

Do you mind if I call you Robert?

A. Yeah, Robert is fine.

Q. Robert is fine? Okay.

Robert, could you please state your full name for the record?

A. Robert Zackery Koehler.

Q. When were you born?

A. 7/30/1979.

Q. Have you ever been deposed before?

A. No.

Q. I just want to give a couple ground rules, mostly for the benefit of our court reporter, but also

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1 just to make sure that the record is clear, since
2 everything that we are saying, she is taking down. It's
3 going to end up on a transcript somewhere.

4 A. Okay.

5 Q. First things being all our answers have to be
6 verbal, so we have to say yes's and no's. She can't take
7 down shakes of heads or nuh-uhs and uh-uhs, things like
8 that.

9 A. Okay.

10 Q. Does that make sense?

11 A. Yes.

12 Q. I'm going to try my best to let you finish
13 giving an answer before I launch into my next question or
14 ask for clarification. If you could give me a chance to
15 get my question out before you start answering, that way
16 we are not talking over each other.

17 A. Okay.

18 Q. If you don't understand one of my questions,
19 which is entirely possible, please let me know and I will
20 try to rephrase it. If you answer the question I've
21 asked, I'm going to assume that you understood the
22 question I was asking.

23 Does that seem fair?

24 A. Yes.

25 Q. If you need a break, please let me know. We can

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1 take a break at any time. I will usually try to break
2 every 45 minutes to an hour just so we can stretch our
3 legs, but if you need to use the restroom, get a drink of
4 water, whatever, for any reason, just let me know and
5 we'll take a break.

6 A. Okay.

7 Q. The only time we can't take a break is if a
8 question is pending. I will ask you to answer that
9 question. Then we can take a break.

10 A. Understood.

11 Q. Do you have a lawyer with you today?

12 A. I do not.

13 Q. If at any point during the deposition you think
14 to yourself, you know, that last answer I just gave wasn't
15 quite clear or I want to change it, let me know and I will
16 give you a chance to amend your answer to that question.

17 A. Okay.

18 Q. Robert, did you do anything to prepare for the
19 deposition today?

20 A. No.

21 Q. Did you review any documents?

22 A. No.

23 Q. And you said you have never been deposed before?

24 A. Correct.

25 Q. Robert, we are in a case where DenSco

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1 Corporation -- you understand what DenSco Corporation is,
2 correct?

3 A. Yes.

4 Q. And you understand it's been placed in a
5 receivership?

6 A. Yes.

7 Q. And do you understand that Mr. Peter Davis is
8 the receiver for DenSco?

9 A. I do.

10 Q. And you understand that Mr. Davis has sued my
11 clients?

12 A. I do, yes.

13 Q. What's your understanding of what that lawsuit
14 is about?

15 A. Very little, except an assumption that it has to
16 do with Mr. Beauchamp's representation of DenSco and
17 actions in that representation.

18 Q. Okay. Have you yourself reviewed any of the
19 documents that have been filed in this case?

20 A. No.

21 Q. Have you drawn any conclusions as to guilt or
22 liability or --

23 A. No.

24 Q. -- anything like that?

25 A. I'm sorry. I didn't let you finish your

1 question.

2 Q. That's fine.

3 sitting to your right is Mr. Geoff Sturr, who is
4 counsel for the receiver in this matter, along with Colin
5 Campbell from the law firm Osborn Maledon.

6 Have you ever spoken to either Mr. Sturr or
7 Mr. Campbell?

8 A. I don't believe I have.

9 Q. Mr. Davis, the receiver in this lawsuit, has a
10 website devoted both to the receivership and another
11 website devoted to this lawsuit in particular.

12 Are you aware of that?

13 A. I'm aware of the website to the receivership,
14 but not to the lawsuit.

15 Q. So I take it, then, you have never visited the
16 website with respect to this lawsuit?

17 A. Correct. I have not.

18 Q. Have you visited the website with respect to the
19 receivership?

20 A. Yes, I have.

21 Q. What did you review when you visited that
22 website, if you recall?

23 A. It was early on and I was probably reviewing the
24 potential distributions that they were talking about for
25 investors.

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1 Q. Anything else?

2 A. I don't -- not that I recall, no.

3 Q. Do you periodically check that website to see if
4 something --

5 A. Not in a long time, no.

6 Q. Are you aware of any other potential claims the
7 receiver has against any other third parties to collect
8 money for the receivership?

9 A. I knew he was going after Mr. Menaged and
10 whatever entities he had.

11 Q. Anything else?

12 A. No.

13 Q. Are you aware of any potential claims against
14 Mr. Menaged's banks?

15 A. No.

16 Q. Or should I say the banks Mr. Menaged had a
17 banking relationship with?

18 A. No.

19 Q. Are you aware of any potential claims against
20 other hard-money lenders?

21 A. No.

22 MR. RUTH: Can we go off the record real quick.

23 (An off-the-record discussion.)

24 Q. (BY MR. RUTH) Have you followed Mr.

25 Menaged's -- are you aware that Mr. Menaged was the

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1 subject of federal criminal proceedings?

2 A. Yes.

3 Q. Have you followed those proceedings at all?

4 A. No. Just I did hear that he was sent to prison,
5 but that's really all.

6 Q. How did you hear that?

7 A. I believe the receiver sent out a notice, and I
8 read an article, a news article.

9 Q. You said the receiver sent out a notice?

10 A. I believe so.

11 Q. Do you periodically get communications from the
12 receiver?

13 A. Periodically.

14 Q. Do you review those communications?

15 A. Yeah.

16 Q. Do you recall what any of them were about?

17 A. Usually they are updates. Early on they were
18 updates about the proceedings with Mr. Menaged, with
19 assets, distributions and -- I mean, that's all I remember
20 really.

21 Q. Do you recall receiving any communications from
22 the receiver about this litigation?

23 A. No.

24 Q. Or about claims against Clark Hill or David
25 Beauchamp, in general?

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1 A. I don't recall.

2 Q. Have you ever spoken or communicated with
3 Mr. Davis?

4 A. No. Not directly to him, no.

5 Q. What about Ryan Anderson, his counsel?

6 A. I met him at an investors' meeting, but it was
7 just an introduction.

8 Q. So how many times have you spoken or
9 communicated with Mr. Anderson?

10 A. One time.

11 Q. And you said that was in a meeting for
12 investors?

13 A. Yes.

14 Q. And when was that, if you recall?

15 A. I don't recall the date. It was, if I remember
16 right, within a year of the DenSco, Denny incident.

17 Q. Do you think it was all the way back in 2016 or
18 would it have been 2017?

19 A. I really don't remember.

20 Q. Do you recall what was discussed at this
21 investor meeting?

22 A. Yes. It was state of affairs of the company,
23 and a timeline was presented on how DenSco was kind of
24 managed to its demise with Mr. Menaged.

25 Q. Was a copy of that timeline provided to you?

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1 A. I believe there was.

2 Q. Do you still have that?

3 A. I'm sure I do. If it was provided, I will have
4 it.

5 Q. And that was provided by Mr. Anderson?

6 A. Or Mr. Davis.

7 Q. Okay.

8 A. He ran the meeting.

9 Q. Okay. Anything else handed out at that meeting?

10 A. Not that I recall.

11 Q. Did you take notes at the meeting?

12 A. No.

13 Q. Do you recall claims against Clark Hill being
14 discussed at that meeting?

15 A. No.

16 Q. What about claims against any other third
17 parties, banks, lenders?

18 A. Menaged and Furniture King.

19 Q. Okay.

20 A. And that's all I recall for that meeting.

21 Q. Okay. So that would have been your only time
22 communicating with Ryan Anderson --

23 A. Yes.

24 Q. -- or Peter Davis?

25 Mr. Koehler, what's your occupation?

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1 A. I'm in private lending, mortgage banking.

2 Q. And do you own any entities --

3 A. Yeah.

4 Q. -- as part of that?

5 A. I own RLS Capital and RLS Mortgage.

6 Q. How would you describe what RLS Capital does?

7 A. We lend to investors for fix-and-flip properties
8 and new-construction homes. Investment properties,
9 basically.

10 Q. You said fix and flip and new construction?

11 A. Yes.

12 Q. Do you do commercial as well?

13 A. Yes.

14 Q. What percentage of your lending is in the
15 fix-and-flip area?

16 A. Today I would say 20 percent or less.

17 Q. What about in the 2008 to 2012 timeline?

18 A. Probably 80 percent.

19 Q. Do you help investors buy homes out of
20 pre-foreclosure sales?

21 A. Yes.

22 Q. What about out of foreclosure sales?

23 A. Yes.

24 Q. Foreclosure wholesaling?

25 A. Yes.

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1 Q. Can you describe for me what the term
2 "wholesaling" means to you in this context?

3 A. To me it means one party bought a property and
4 is trying to sell it for -- in a very short period of time
5 for a shorter gain than the normal.

6 Q. So you step in to be the purchaser?

7 A. We --

8 Q. Or you finance?

9 A. We are the lender.

10 Q. Okay. You are generally aware of what kind of
11 business DenSco was in, correct?

12 A. Yes.

13 Q. Would you say that RLS and DenSco were in
14 similar areas of business?

15 A. I would say that, yes.

16 Q. And certainly in 2008, 2009, 2012, that would
17 have been the case, correct?

18 A. Yes.

19 Q. When you lend in the pre-foreclosure/foreclosure
20 sale context, do you try to ensure -- I assume you take
21 security in the property that's purchased.

22 Is that correct?

23 A. Yes.

24 Q. And do you attempt to get first position on that
25 security?

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1 A. Yes, we do.

2 Q. Is that always the intent?

3 A. Yes.

4 Q. And how do you go about ensuring that you are in
5 first position?

6 A. We record a first position deed of trust. We
7 pay for the property ourselves. So we retain or receive a
8 receipt for sale.

9 And you were just talking about foreclosure?

10 Q. Yeah. The trust -- the trustee sale process.

11 A. Trustee sale.

12 Q. Yeah.

13 A. Yeah. And then we record our deed of trust
14 immediately.

15 Q. When you say you pay for the property ourselves,
16 what do you mean by that?

17 A. We physically take the funds to the trustee to
18 pay.

19 Q. Do you ever provide the funds to the borrower or
20 the investor, directly to the borrower or the investor?

21 A. For them to pay?

22 Q. Yes.

23 A. No.

24 Q. What about a bidding company or a bidder?

25 A. No. We pay direct.

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1 Q. Do you get title insurance on your properties?

2 A. No. We get a condition of title report.

3 Q. What is that?

4 A. It's basically a chain of title -- chain of
5 title summary on the subject property.

6 Q. And do you get that before you advance the
7 funds?

8 A. We get the chain of title prior to advancing.
9 We do not get the certificate of title until after.

10 Q. Is that part of your due diligence into the
11 property?

12 A. Correct. Yes.

13 Q. You then say you record the deed of trust
14 immediately?

15 A. Yes.

16 Q. Immediately upon what? If you could walk me
17 through the process of how this works.

18 A. We would pay for the property and then submit
19 our deed of trust to record it.

20 Q. And you submit that deed of trust to the
21 trustee?

22 A. No. We record it ourselves.

23 Q. Okay. Did you ever discuss these types of
24 lending procedures with Denny Chittick?

25 A. I would say yes.

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1 Q. Are you aware, sort of as a result of all that's
2 happened, that Mr. Chittick did not follow, did not always
3 follow the same procedures that you use?

4 A. Yes.

5 Q. Did you discuss his procedures in 2008, 2009,
6 2010?

7 A. No.

8 Q. Were you aware, between 2008 and 2014, that
9 Mr. Chittick would lend directly to the investor or to the
10 borrower?

11 A. No.

12 Q. If you had been aware of that, what would your
13 reaction have been?

14 A. I would have been upset, as an investor, and I
15 would have tried to help Denny to make a better policy for
16 DenSco.

17 Q. I have seen statements made that the idea of
18 lending directly to the investor or directly to the
19 borrower was commonplace in this sort of hard-money
20 lending area.

21 would you agree with that?

22 A. I would agree with that, yes.

23 Q. Why don't you do that, if it's common?

24 A. Simply protection.

25 Q. Is this how you ensure you are in first

1 position?

2 A. Correct, yes.

3 Q. Did you ever share with Mr. Chittick that this
4 is your process for --

5 A. I don't recall specifically sharing our process
6 with him.

7 Q. Have you ever used a mortgage to cloud title
8 prior to recording a deed of trust?

9 A. Yes.

10 Q. In what type of situation?

11 A. Well, we used a document called a receipt and
12 mortgage, and that was early. I don't remember what years
13 we used that. At some point we stopped. And that was the
14 idea, to cloud title while we were waiting for a trustee's
15 deed.

16 Q. Can you give me a general sense when you use
17 that procedure?

18 A. As far as timeline, what years?

19 Q. Yeah.

20 A. I would say probably in the 2004/2005 would be
21 my guess. I don't know exactly what time we stopped doing
22 that.

23 Q. Do you recall why you stopped doing that?

24 A. I believe a discussion with maybe one of our
25 attorneys who suggested that it was not really a valid --

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1 I don't know if valid is not the right word, but there was
2 a better procedure.

3 Q. Without wanting to get into what your attorney
4 told you, because I know you are not represented here, but
5 I don't want to invade your attorney/client privilege,
6 would you say that your -- your decision to provide the
7 money directly to the trustee and record the deed of trust
8 yourself, is that a process that arose as a result of your
9 consulting with an attorney?

10 A. No.

11 Q. That's something you understood as being
12 involved in this business?

13 A. Yes.

14 Q. Is that something you would have expected
15 Mr. Chittick to understand?

16 A. Yes.

17 MR. RUTH: Mark this, please.

18 (Deposition Exhibit No. 647 was marked for
19 identification.)

20 MR. RUTH: And, Geoff, this doesn't have a Bates
21 label on it, but this was pulled out of the Chittick files
22 that we received from you.

23 MR. STURR: Okay.

24 Q. (BY MR. RUTH) Robert, if you could just take a
25 quick look and just take a look at this.

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1 A. Okay.

2 Q. I do want to point out that this was -- this is
3 a series of emails. It appears that your email address is
4 on this series of emails.

5 A. Yes, I see it.

6 Q. Your email address is rzkoehler@yahoo.com?

7 A. Yes, it was.

8 Q. At the time?

9 A. Yeah.

10 Q. And I'm really most interested in the email
11 starting on the second page, whether anyone has found a
12 way around Tiffany & Bosco's new sales receipt policy, and
13 then it goes on.

14 A. Okay.

15 Q. As someone who is not involved in this line of
16 work, so on September 22nd, 2011, someone by the name of
17 Noah Brocious sends an email to a group of people,
18 including yourself.

19 A. Yes.

20 Q. Do you know who Noah Brocious is?

21 A. Yes.

22 Q. Who is he?

23 A. He is a competitor of ours with Capital Fund.
24 He is another hard-money lender.

25 Q. Was it typical that hard-money lenders would

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1 sort of send questions and -- tips and questions to each
2 other like this?

3 A. It's not typical. It happens every once in a
4 while.

5 Q. It's a pretty competitive marketplace?

6 A. It is, yes.

7 Q. And DenSco would have been one of your
8 competitors as well, right?

9 A. Yes.

10 Q. Mr. Brocious states or asks whether: Anyone has
11 found a way around Bosco's new bullshit sale receipt
12 policy. For those who haven't encountered it yet, they
13 now only give the bidder a receipt that shows the sale ID
14 number. The bidder fills out the vesting info at Bosco's
15 office and they don't get a copy. We called Bosco and
16 they said they will not verify the vesting and that "you
17 need to trust your bidder."

18 Do you see that? Did I read that correctly?

19 A. Yes.

20 Q. Do you understand what he is referring to here?

21 A. I don't recall the change of form. I do
22 understand what they are talking about, though.

23 Q. Can you explain that to me?

24 A. So I'm assuming prior to this, and I remember a
25 Bosco original form, when you paid for the property, you

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1 would fill in the vesting for the trustee's deed right at
2 the time of paying for the property. And it looks like at
3 some point they took that away --

4 Q. What is --

5 A. -- which means --

6 Q. I'm sorry.

7 A. -- they were asking the bidder at the time of
8 the bid to fill the vesting in and submit it that way, not
9 at the time of actually paying for the property.

10 Q. Okay. What is the vesting info?

11 A. Who the property should be deeded to.

12 Q. Do you understand why Mr. Brocious seemed to be
13 upset about this new policy?

14 A. Yes.

15 Q. And why is that?

16 A. If for some reason a bidder put a different name
17 on the trustee's deed and he didn't know about it, then
18 potentially he would be creating a deed of trust or a loan
19 to a name that may not necessarily be shown on the deed.

20 Q. So it seemed that this new policy sort of opens
21 the door for some type of shenanigans with the bidder?

22 A. It could, yes.

23 Q. He references a person by the name of Jose
24 Montes in that second paragraph.

25 A. Yes.

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1 Q. Do you know who that is?

2 A. I do.

3 Q. Who was that?

4 A. He was a borrower and a -- not a bidder, but he
5 would buy properties at a trustee's sale.

6 Q. And when he says Mr. Montes is going to have a
7 heyday, do you know what he is referring to?

8 A. Mr. Montes was, I believe, frauding people on
9 deeds. I don't have all the details on that, but...

10 Q. So that it sounds like he is suggesting that
11 this new policy would allow Mr. Montes to get away with
12 more shenanigans?

13 A. Correct, yes.

14 Q. You see the next email Mr. Chittick responds,
15 and he says: From my understanding they are just forcing
16 what happens downtown. You have to vest the property when
17 you win the bid, not the next day when you pay for it.

18 Do you see that?

19 A. Yes.

20 Q. In your mind, does that address the issue that
21 Mr. Brocious is raising?

22 A. I think it's an explanation, but it doesn't
23 solve the problem.

24 Q. Do you recall this ever creating an issue for
25 you?

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1 A. I remember it being a conversation with bidders.

2 Q. Yeah.

3 A. And how we would deal with it was to find out
4 who they vested the property to. If it was another name
5 than that name, they had to create another deed to record
6 sequentially with the trustee deed. I don't remember if
7 it was directly in reference to Bosco or not.

8 (Deposition Exhibit No. 648 was marked for
9 identification.)

10 Q. (BY MR. RUTH) This is along the lines of that
11 same Exhibit 648. Another chain of emails that arises out
12 of Mr. Brocious's September 22nd, 2011, email about sales
13 receipts. And I'm mostly interested in the two emails on
14 the front page. The first one from Dan DIE-THELM or
15 DIET-HELM.

16 Do you see that?

17 A. I do, yes.

18 Q. Have you had a chance to take a look at this?
19 That would have been one of my other instructions. Feel
20 free to take whatever time you need to review whatever
21 documents I hand you to make sure you understand.

22 A. Give me a second here.

23 Okay.

24 Q. So Mr. Diethelm states -- do you know who
25 Mr. Diethelm is?

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1 A. I do, yes.

2 Q. Is he another competitor?

3 A. Yes. He is a private lender. Not the same as
4 us exactly. He is more of an individual lender.

5 Q. So he doesn't have investors who provide him
6 with the funds?

7 A. Correct.

8 Q. In his response to Mr. Brocious's emails: This
9 opens up a greater possibility of the return of kiting of
10 deeds of trust which was somewhat prevalent in the
11 mid-'70s and the late '80s.

12 Do you see that?

13 A. I do.

14 Q. Do you know what kiting of deeds of trust means?

15 A. I'm assuming he means signing multiple deeds of
16 trust on the same property in order to receive funds for
17 that.

18 Q. And in fact Noah Brocious responds to him and
19 says: Can you explain what that is? And then he explains
20 at the top: Borrowers borrow money for the same property
21 from multiple lenders giving each a Deed of Trust while
22 telling each they are the only lender. Like kiting
23 "checks" they are kiting Deeds of Trust.

24 Do you see that?

25 A. Yes.

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1 Q. Okay. Do you think that's a good explanation of
2 what kiting deeds of trust is?

3 A. I think that's close, yes.

4 Q. Were you aware of this issue at the time?

5 A. I don't know if at the time, but we -- at some
6 point we initiated a document that's attached to our deed
7 of trust specifically for foreclosure sales, where the
8 borrower signs saying they are signing a first position
9 deed of trust, the only first position deed of trust. The
10 language is much more than that, but that's the brief
11 version.

12 Q. Did you come up with that on your own?

13 A. Yeah, we did. Yes, we did.

14 Q. Do you recall ever discussing that change in
15 your procedures with Mr. Chittick?

16 A. I don't.

17 Q. Do you know if other lenders were changing their
18 procedures similarly to deal with this particular issue?

19 A. I don't know.

20 Q. Are you the only officer at RLS Capital?

21 A. No, I'm not.

22 Q. How many other officers are there?

23 A. There are two others.

24 Q. And do you have employees aside from those two
25 other officers?

ROBERT ZACKERY KOEHLER, 12/17/2018

1 A. Yes, we do.

2 Q. How many employees do you have?

3 A. Currently three.

4 Q. In the 2012 to 2014 timeframe, did you have
5 employees at that time, too?

6 A. Yes, and I would assume two or three at that
7 time.

8 Q. How large was your portfolio at that time?

9 A. At that time, roughly 45 million would be my
10 guess.

11 Q. Do the officers, do they also work for the
12 company or are they simply equity holders?

13 A. Yes, they do.

14 Q. And you work as well?

15 A. Yes, I do.

16 Q. So it sounds like between 2012 and 2014, that
17 you would have between five and six people actively
18 working on RLS Capital's business?

19 A. Yes.

20 Q. Did you feel like you needed that many people in
21 order to service the portfolio?

22 A. Yes.

23 Q. Do you ever recall having discussions with
24 Mr. Chittick about the size of his portfolio?

25 A. Yes.

ROBERT ZACKERY KOEHLER, 12/17/2018

1 Q. What do you recall about those conversations?

2 A. Specifically about the size?

3 Q. Yes.

4 A. We would -- we would discuss size occasionally,
5 probably in reference to market growth and stuff like
6 that. I don't know if I ever had a specific conversation
7 with him about management and size.

8 Q. But you were aware of how large his portfolio
9 was?

10 A. Yes.

11 Q. And you were generally aware, sort of as time
12 went on, about how that portfolio grew or shrank?

13 A. I think generally aware, yes.

14 Q. Were you aware that Mr. Chittick was the only
15 officer and employee at DenSco?

16 A. I was.

17 Q. Did that raise any concerns for you, given the
18 size of his portfolio?

19 A. Yes, because it is a large management job, so I
20 think I was impressed that he could pull it off.

21 Q. Did you ever express to him any concern or
22 suggest that maybe he needs to hire some more people?

23 A. I don't think I ever expressed concern. I think
24 I asked him if he had help.

25 Q. And what did he say?

ROBERT ZACKERY KOEHLER, 12/17/2018

1 A. I believe his wife helped him for a while, but I
2 don't know to what extent.

3 Q. Do you know if his wife had any background in
4 real estate or in lending?

5 A. She worked for a bidder for a while, so, yes,
6 she had some background. Bidder meaning foreclosure
7 bidder.

8 Q. Okay. But you said you don't know exactly what
9 she may have been doing for the business?

10 A. I don't know.

11 Q. I assume since you had investors, that you
12 provided those investors with private offering
13 memorandums?

14 A. Yes.

15 Q. Did you have an attorney help you put those
16 together?

17 A. Yes.

18 Q. In the 2012 to 2014 timeframe, do you recall who
19 your attorney was?

20 A. I believe it was Mr. Beauchamp. He was our
21 first to help us with the Private Offering Memorandum.

22 Q. Do you recall around from what timeframe he was
23 the attorney helping you with that?

24 A. Let's see. I would say 2008 and, I don't know,
25 maybe till 2009 or '10. But after the formation of the

ROBERT ZACKERY KOEHLER, 12/17/2018

1 private offering, I don't know how much more we used him
2 for anything.

3 Q. In the 2008 to 2010 timeframe, was helping you
4 with the POM Mr. Beauchamp's only role in terms of legal
5 counsel?

6 A. Yes. For the company, yes.

7 Q. Were there other roles that he filled other than
8 for the company?

9 A. Personally I contacted him, but he ended up not
10 representing me in a case, so...

11 Q. Who was your counsel after 2010 with respect to
12 securities work?

13 A. Jared Black, and I can't recall the other
14 attorney's name.

15 Q. That's all right.

16 Is Mr. Black still your attorney?

17 A. Yes.

18 Q. Did Mr. Beauchamp help you with any due
19 diligence issues or business planning or anything like
20 that?

21 A. No.

22 Q. Litigation?

23 A. No.

24 Q. Did you have any concerns or complaints about
25 his work?

ROBERT ZACKERY KOEHLER, 12/17/2018

1 A. No.

2 Q. Did you stay in touch with Mr. Beauchamp after?

3 A. Yes.

4 Q. How often do you think you communicated with him
5 after he stopped being your lawyer?

6 A. I would say annually for a while, through Denny.

7 Q. What were the context of those communications?

8 A. Generally an annual party for DenSco, or through
9 Mr. Beauchamp checking in on me with -- in regards to my
10 backup role for DenSco.

11 Q. And we will get to the backup role stuff.

12 In terms of the annual party, is that something
13 you typically attended?

14 A. I would say one every two years probably.

15 Q. Just so we are clear, this is a party that
16 DenSco threw for its investors?

17 A. Investors and borrowers.

18 Q. And at times you would run into Mr. Beauchamp
19 there?

20 A. Yes, I believe so. I think so, yeah.

21 Q. I forgot to ask you this at the beginning, but
22 in terms of discussing the receivership and potentially
23 this lawsuit, have you been in touch with any of your
24 other investors, with any of the other investors in
25 DenSco?

ROBERT ZACKERY KOEHLER, 12/17/2018

1 A. Just right after it happened, people were
2 calling me, yeah.

3 Q. Calling you directly?

4 A. Yes.

5 Q. Do you recall who called you?

6 A. I don't. I'd have to see a list of names to
7 help me.

8 Q. After that, have you communicated with any
9 investors as to the receivership?

10 A. Yes. One that -- we share an investor, Bill and
11 Judy Hughes. So, yes, I contact them or they contact me.

12 Q. Regarding DenSco or regarding their investment
13 with RLS?

14 A. Both, yeah. They most recently asked me for a
15 DenSco update, if I had heard anything.

16 Q. Do you have sort of aggregate loan-to-value
17 goals or limits with respect to your investors in your
18 portfolio?

19 A. In respect to the actual lending on a specific
20 property?

21 Q. Yes.

22 A. Yes.

23 Q. And what is that?

24 A. 70 percent or below value, estimated value.

25 Q. How do you assess the value of a property before

ROBERT ZACKERY KOEHLER, 12/17/2018

1 you invest in it?

2 A. Generally with comparables and photos or a drive
3 of the property.

4 Q. You get appraisals?

5 A. No.

6 Q. No time, right?

7 A. Right.

8 Q. Did you ever have discussions with Denny
9 Chittick about appropriate loan-to-value ratios?

10 A. I'm sure we did, yeah.

11 Q. Do you recall anything specific about those
12 discussions?

13 A. Maybe just going over those general parameters,
14 but nothing specific.

15 Q. Was it your understanding that Mr. Chittick had
16 his own set of parameters for investors investing with
17 DenSco?

18 A. Yes.

19 Q. Do you recall what those parameters were?

20 A. I don't recall. I would assume they were
21 similar to ours.

22 Q. Is the 70 percent sort of an industry standard
23 goal?

24 A. I believe it is, yeah.

25 Q. I know you know who Scott Menaged is at this

ROBERT ZACKERY KOEHLER, 12/17/2018

1 point certainly.

2 Prior to Denny's death, did you know who Scott
3 Menaged was?

4 A. Yes, I did.

5 Q. How did you know who Mr. Menaged was?

6 A. I had lent him, or had lent to him.

7 Q. Do you recall around what time you lent to him?

8 A. I would say 2004 or 2005.

9 Q. And did you lend directly to him or to one of
10 his companies?

11 A. To Easy Investments, LLC is a name I remember.
12 And he was with a group, but I can't recall the name of
13 the group at that time.

14 Q. Was he a good borrower?

15 A. Yes.

16 Q. Paid on time?

17 A. Yes.

18 Q. Did you run into any issues with him?

19 A. No.

20 Q. Anything about your interactions with him as a
21 borrower that would raise any kind of red flag?

22 A. No.

23 Q. You never had any double-liening issues or
24 recording issues?

25 A. No, we didn't.

ROBERT ZACKERY KOEHLER, 12/17/2018

1 Q. Do you know of a company by the name of Arizona
2 Home Foreclosures?

3 A. It rings a bell.

4 Q. Do you know if you lent money to them?

5 A. I don't recall.

6 (Deposition Exhibit No. 649 was marked for
7 identification.)

8 Q. (BY MR. RUTH) In 2004 and 2005, were you
9 lending under RLS Capital?

10 A. No.

11 Q. Do you know who you were lending through?

12 A. Real Estate Equity Lending at that time.

13 Q. I have handed you Exhibit 649. This is just a
14 printout of a search I ran --

15 A. Sure.

16 Q. -- on the County Recorder's website, searching
17 for two names, RLS Capital and Easy Investments, and it
18 looks like there are some loans in 2008 and 2009 --

19 A. Yeah.

20 Q. -- that ended up being released in 2010 and
21 2011.

22 A. I see that, yes.

23 Q. Does that seem accurate?

24 A. It does.

25 Q. Do you recall lending any money to Mr. Menaged

ROBERT ZACKERY KOEHLER, 12/17/2018

1 or one of his entities after 2008 or 2009?

2 A. I don't.

3 Q. And, again, you don't recall any issues with any
4 of the loans?

5 A. I don't, no.

6 Q. Do you know why you stopped advancing funds to
7 Mr. Menaged or one of his entities?

8 A. I don't know a reason specifically. Generally
9 it's because they stop asking.

10 Q. Stop asking?

11 A. Yeah.

12 Q. But as far as you recall, there is nothing about
13 Mr. Menaged himself that caused you to stop lending?

14 A. No, not that I recall.

15 Q. Up until Mr. Chittick's death, do you recall
16 hearing anything about Mr. Menaged, sort of in the context
17 of hard-money lending, stories, rumors?

18 A. No, nothing -- nothing negative or scary, no.
19 He was on a TV show that was entertaining.

20 Q. Did you watch the TV show?

21 A. I did, yes.

22 Q. We have seen some emails between you and other
23 hard-money lenders discussing sort of trustee practices
24 and recording practices.

25 would you guys ever exchange information about

ROBERT ZACKERY KOEHLER, 12/17/2018

1 troublesome borrowers or who to avoid?

2 A. Occasionally, yes.

3 Q. Do you recall Mr. Menaged's name ever coming up
4 in anything like that?

5 A. I don't recall.

6 Q. Do you recall, prior to Chittick's death, ever
7 discussing Mr. Menaged with Mr. Chittick?

8 A. No, not specifically. Let me think for a second
9 here.

10 I can't recall a specific conversation with
11 Denny about Scott.

12 Q. Okay.

13 A. No.

14 Q. Do you recall having discussions about
15 Mr. Menaged with any other -- with any investors, any of
16 your co-investors in DenSco?

17 A. No.

18 Q. Did you have -- do you recall having any
19 discussions about Mr. Menaged with Mr. Beauchamp?

20 A. No.

21 Q. Do you know who Gregg Reichman is?

22 A. Yes.

23 Q. And his company Active Funding Group?

24 A. Yes. He is another competitor.

25 Q. Is he also a borrower?

ROBERT ZACKERY KOEHLER, 12/17/2018

1 A. Not that I know of, no. Not of mine.

2 Q. Have you ever interacted with Mr. Reichman?

3 A. A few times over the years.

4 Q. How did those interactions arise?

5 A. I believe through a meeting with other people.

6 Yeah.

7 Q. Are these meetings for people in the industry or
8 is it just sort of a --

9 A. Yes. They are -- some borrowers or bidders
10 would throw holiday parties, and you would run into people
11 in the industry.

12 Q. Any other context you recall running into
13 Mr. Reichman?

14 A. No.

15 Q. Have you ever worked with Mr. Reichman?

16 A. Worked with him?

17 Q. Yeah.

18 A. No.

19 Q. You are not co-investors on anything?

20 A. No.

21 Q. Are you aware of Mr. Reichman's reputation in
22 the industry?

23 A. Through -- from borrowers or from --

24 Q. Just in general. From borrowers. From other
25 lenders.

ROBERT ZACKERY KOEHLER, 12/17/2018

1 A. He has been around a long time. I don't --
2 nothing is really, as far as, I mean, I have never heard
3 anything bad about him or his practices.

4 Q. You said you owned another company,
5 RLS Mortgage?

6 A. Yes.

7 Q. Is it in the same line of business as
8 RLS Capital?

9 A. Yes. RLS Mortgage originates for RLS Capital.

10 Q. Any other entities?

11 A. My LLCs that I am involved in.

12 Q. When you say your LLCs, what does that mean?

13 A. Generally personal LLCs that I use for
14 investment.

15 Q. Okay.

16 A. Occasionally a partnership LLC for an
17 investment, usually a specific investment.

18 Q. Did you ever partner with DenSco or Mr. Chittick
19 on anything, other than investing in his company?

20 A. No. I don't think we were ever on a loan
21 together or anything like that, no.

22 Q. Did you ever lend Mr. Chittick or DenSco money,
23 aside from investing --

24 A. No.

25 Q. -- in the company?

ROBERT ZACKERY KOEHLER, 12/17/2018

1 I'm about to switch topics. Let's take a real
2 quick break.

3 A. Okay.

4 (A recess was taken from 10:23 a.m. to
5 10:27 a.m.)

6 Q. (BY MR. RUTH) Robert, how did you first come to
7 meet or get to know Mr. Chittick?

8 A. He was an investor in the first company I
9 started working for, Real Estate Equity Lending.

10 Q. And was Real Estate Equity Lending your company?

11 A. No.

12 Q. Was it a company you worked for?

13 A. Yes.

14 Q. What was your position there?

15 A. I think I was the only employee, so whatever
16 needed to be done.

17 Q. Mr. Chittick was an investor in that company?

18 A. Yes.

19 Q. And what business was that? What kind of loans
20 or what kind of investments?

21 A. Similar type of loans. Commercial loans, some
22 fix and flip back then, and some construction.

23 Q. And as a result of Mr. Chittick being an
24 investor, how did you come to sort of get to know him or
25 interact with him?

ROBERT ZACKERY KOEHLER, 12/17/2018

1 A. He wanted to be more than an investor and wanted
2 to learn the business, so I was kind of paired up with him
3 to, you know, talk through what I knew, you know, of
4 business at that time.

5 Q. Who owned Real Estate Equity Lending?

6 A. Mike Coffman.

7 Q. Hoffmann?

8 A. Coffman with a C.

9 Q. And you said you were paired up with him?

10 A. Yeah. They were -- they were friends and --

11 Q. Mr. Coffman and Mr. Chittick?

12 A. Mr. Coffman and Mr. Chittick. And then there
13 was another party, Scott Gould. So I worked for -- and
14 Scott Gould, I believe, was just an employee of Real
15 Estate Equity Lending, so I worked for both of them.

16 And Mr. Chittick at the time wanted to, like I
17 said, learn the business. I was the -- you know, I had
18 the time to spend with him, so he drove around with me and
19 we looked at properties together and looked at files and
20 stuff like that.

21 Q. Do you know what -- was Mr. Chittick simply an
22 investor at the time? Was he still working for another
23 employer? Was this something he was doing on the side?

24 A. No. I believe he was just an investor. I'm
25 pretty sure he was retired.

ROBERT ZACKERY KOEHLER, 12/17/2018

1 Q. You knew he had previously working at Insight?

2 A. Yes.

3 Q. He was no longer working at Insight at the time
4 of this?

5 A. I don't think so, no.

6 Q. And do you recall about what time this was?

7 A. 2000, 2001, somewhere in there maybe. Yeah, I'm
8 not exactly sure, but yes. My early years when I first
9 started.

10 Q. And when he invested and when you were paired up
11 with him, prior to that he had no experience in real
12 estate lending?

13 A. Not that I know of.

14 Q. None that he shared with you?

15 A. Not that I recall, no.

16 Q. What all -- what would you consider part of your
17 role in introducing him to this market?

18 A. Kind of we just -- he -- he tailed me,
19 basically. He just -- kind of like a trainee would. So
20 he would follow me to property inspections. He would sit
21 next to me when I would take a loan app or data entry. He
22 would help me as I put files together.

23 Q. Was part of -- I'm sorry. I didn't mean to cut
24 you off.

25 A. That's okay.

ROBERT ZACKERY KOEHLER, 12/17/2018

1 Q. Was part of what you did at the time the fix and
2 flip, purchasing property out of trustee sales?

3 A. Yes, we were lending to fix and flippers at that
4 time.

5 Q. So was he your trainee in respect to that
6 portion of the business as well?

7 A. Yeah. I believe we went to trustee sales
8 together to watch them.

9 Q. Did you show him how to document those
10 transactions?

11 A. I'm sure, yes. How to fill in deeds of trust,
12 et cetera.

13 Q. Do you recall sort of part of that, I will put
14 "training" in quotes, how to ensure that your loan is in
15 first position on a piece of property?

16 A. I don't know that I was as qualified back then
17 to make that judgment, but I would say yes. Whatever I
18 knew, I was trying to share with him.

19 Q. Do you know if Real Estate Equity Lending at
20 that time was providing funds directly to the trustee
21 through trustee sales situations?

22 A. I don't remember how they were paid for then. I
23 don't remember.

24 Q. What were your impressions of Mr. Chittick?

25 A. I liked him. He was smart. I was impressed

ROBERT ZACKERY KOEHLER, 12/17/2018

1 that he was, you know, a young retired person. And, yeah,
2 we got along well.

3 Q. Eager to learn?

4 A. Oh, yeah.

5 Q. Detail oriented?

6 A. Yes.

7 Q. Conservative lending approach?

8 A. I would say yes.

9 Q. And how long would you say he sort of tailed you
10 at Real Estate Equity Lending?

11 A. I'm not sure how long. Maybe a couple months.

12 Q. What happened after that?

13 A. I believe he started DenSco at some time after
14 that. I can't remember exactly when.

15 Q. So this still would have been in the 2001/2002
16 timeframe?

17 A. I don't remember. It seems later.

18 Q. Yeah.

19 A. The years kind of mixed. I'm not sure, but
20 somewhere between 2001 and let's say 2004. That would be
21 my guess.

22 Q. Did you come to consider Mr. Chittick a friend?

23 A. Yes.

24 Q. Did you guys socialize?

25 A. We didn't do much outside of work together, but

ROBERT ZACKERY KOEHLER, 12/17/2018

1 I would see him, you know, out of the office or we would
2 run into him at, like, kids' sporting events or something
3 like that.

4 Q. When Mr. Chittick left to form DenSco, did he
5 maintain his investment at Real Estate Lending, if you
6 know?

7 A. I don't know for sure.

8 Q. And how long were you at Real Estate Lending?

9 A. Until 2007 or '08. No. 2006 or '07. 2006.
10 Either the end of 2006 or beginning of 2007.

11 Q. And did you leave Real Estate Lending -- Equity
12 Lending to form your company?

13 A. Yes.

14 Q. Do you recall whether you then turned to
15 Mr. Chittick for advice on how to start your own?

16 A. I believe I asked him for a referral for
17 Mr. Beauchamp, which he ended up giving me Mr. Beauchamp.

18 Q. Anything else?

19 A. I think mostly I had questions about the
20 formation of the company and just getting the private
21 offering set up.

22 Q. Did you turn to him for introductions to
23 potential investors?

24 A. No.

25 Q. Did you turn to him for information on potential

ROBERT ZACKERY KOEHLER, 12/17/2018

1 borrowers?

2 A. No.

3 Q. Did you ask him for information on sort of
4 processes and procedures, loan documents?

5 A. I would say doubtful. I had a lot of those in
6 place.

7 Q. Once he formed DenSco and you formed RLS, did
8 you guys still see each other socially?

9 A. At his annual party. Other than that, it would
10 be rare occasions, yeah.

11 Q. Did you ever go to happy hour together?

12 A. No.

13 Q. Play golf together?

14 A. Denny didn't drink.

15 No. Never golf, no.

16 Q. No sporting events together?

17 A. I don't think so.

18 Q. Can you tell me, as someone who has never met
19 Mr. Chittick, how would you describe him? What's he like?

20 A. Energetic. I would say conservative in nature.
21 He was witty. In good shape. Took care of himself. A
22 good dad. Yeah. I don't know. Generally a likable guy.

23 Q. Trustworthy?

24 A. Yes.

25 Q. Did you ever find your interactions with him

1 [REDACTED]

2 [REDACTED]

3 [REDACTED]

4 [REDACTED]

5 [REDACTED]

6 [REDACTED]

7 [REDACTED]

8 [REDACTED]

9 Q. How big was this annual party?

10 A. He held it at his house and it was a pretty good

11 number of people. You know, I would say there was a

12 minimum -- every time I was there, there was a minimum of

13 50 people. He had it catered. A good-sized event.

14 [REDACTED]

15 [REDACTED]

16 [REDACTED]

17 [REDACTED]

18 [REDACTED]

19 [REDACTED]

20 [REDACTED]

21 [REDACTED]

22 [REDACTED]

23 [REDACTED]

24 [REDACTED]

25 [REDACTED]

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ROBERT ZACKERY KOEHLER, 12/17/2018

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Q. But you considered him a friend, right? Did you think it was odd that he didn't share this part of his life with you?

A. Yes.

Q. Did you subsequently learn the reason for their divorce or issues that they had in their marriage?

A. I don't think I know.

Q. Issues of fidelity or things like that never came up?

A. No, not that I'm aware of.

Q. Did you notice a change in his demeanor or his behavior after the divorce? Keeping in mind the divorce was final in October of 2012.

A. Yeah. I can't comment on his demeanor, because I didn't see him much. Behavior, no. I -- I'd say I maybe talked to him less, but I don't know that that's even true. Yeah.

Q. Could you make any assessment as to what role his relationship had or what impact his relationship had on his demeanor, on his attitude?

MR. STURR: Object to the form.

ROBERT ZACKERY KOEHLER, 12/17/2018

1 THE WITNESS: Yeah, I don't think I can. I -- I
2 can't recall any specific conversations or anything that
3 would lead me to, you know, take that conclusion.

4 Q. (BY MR. RUTH) Did he ever express any sort of
5 positive feelings about his relationship to you or did he
6 just not discuss it at all?

7 A. After the divorce or before?

8 Q. At any time.

9 A. I mean, I -- let me think. I had no -- before
10 the divorce, I had no reason to think they had any
11 problems, and I would assume that -- I mean, they always
12 seemed to get along, so I had nothing, no indicators
13 either way.

14 Q. So after the divorce, do you know whether
15 Mr. Chittick ever dated anybody?

16 A. Not that I heard of, no.

17 Q. He never discussed any girlfriends?

18 A. No.

19 Q. Did he ever mention any dates?

20 A. He mentioned the ladies at the school being --
21 paying attention to him a little more. That's one comment
22 I do remember.

23 Q. But that was about the extent of it?

24 A. That was the extent of it.

25 Q. I know you mentioned that you didn't recall who

ROBERT ZACKERY KOEHLER, 12/17/2018

1 his friends might be.

2 Can you think of who he might have confided in
3 about his relationships or about his marriage?

4 A. I would -- if I had to pick one, I would assume
5 it would be his parents. He was close to them. But
6 not -- I can't think of anybody else.

7 Q. At some point you became an investor in DenSco,
8 correct?

9 A. Yes.

10 Q. Do you recall when that was?

11 A. I do not.

12 Q. I will track it down.

13 A. Yeah.

14 MR. RUTH: Can we go off the record real quick.
15 (An off-the-record discussion.)

16 (Deposition Exhibit No. 650 was marked for
17 identification.)

18 Q. (BY MR. RUTH) Mr. Koehler, I have handed you
19 what I understand to be the claim that you filed in this
20 case, so feel free to flip through and let me know if this
21 appears to be accurate and complete.

22 A. Yes, it looks accurate and complete.

23 Q. So if you flip to the first page, that's your
24 signature, claimant oath?

25 A. Yes.

ROBERT ZACKERY KOEHLER, 12/17/2018

1 Q. And the total amount of your claim is
2 \$176,335.49?

3 A. Yes.

4 Q. I notice that the Proof of Claim asks you to add
5 your principal invested, which was 84,000, is that
6 correct?

7 A. Yes.

8 Q. And then interest accrued but not paid through
9 December 31st, 2012.

10 Do you see that?

11 A. Yes.

12 Q. And your interest accrued was 92,335.49?

13 A. Yes.

14 Q. Do you know why you didn't accrue or get to
15 claim interest beyond December 31st, 2012?

16 A. I do not know. My assumption is it had
17 something do with a point of insolvency or something.

18 Q. Did you yourself do any sort of analysis as to
19 when that point of insolvency should have been or whether
20 you should get to add interest beyond December of 2012?

21 A. I don't think I made an effort to argue it or
22 research it harder.

23 Q. If you flip -- I apologize that this isn't Bates
24 labeled. If you flip about five pages beyond that, you
25 will get to a DenSco Investment Corporation General

ROBERT ZACKERY KOEHLER, 12/17/2018

1 Obligation Note. There.

2 A. Yes.

3 Q. This note is -- well, what's First Trust Company
4 of Onaga?

5 A. They are a custodian for IRAs.

6 Q. This is a note evidencing your investment into
7 DenSco?

8 A. Yes.

9 Q. And the date of issuance is March 31st, 2006?

10 A. I see that, yes.

11 Q. Was this your first investment with Denny?

12 A. I believe it was the first.

13 Q. And the maturity date on this note is
14 March 31st, 2011.

15 Do you see that?

16 A. Yes.

17 Q. It's a five-year note?

18 A. Correct.

19 Q. And my understanding was that this was an
20 accrual note. So you wouldn't get paid out your interest;
21 the interest would simply accrue over the life of the
22 note?

23 A. Yes.

24 Q. What did you review or -- what did you review
25 before you -- with respect to DenSco before you decided to

ROBERT ZACKERY KOEHLER, 12/17/2018

1 invest these \$40,000?

2 A. I'm sure I was given a copy of the private
3 offering. I doubt I reviewed any more than that.

4 Q. Do you think you would have reviewed the Private
5 Offering Memorandum?

6 A. Very little. I think I was fairly familiar with
7 what DenSco did, so --

8 Q. And how did you come about that familiarity?

9 A. Knowing the -- just knowing the business and
10 what DenSco's goals were in the business.

11 Q. Did you ever have a meeting with Denny about
12 investing in DenSco?

13 A. I think if we had a meeting, it would have been
14 me providing the money and him signing a note.

15 Q. Okay. He didn't sort of offer you any sort of
16 explanation on loan to value or any concentration?

17 A. I don't think I relied on him for that, no.

18 Q. Do you recall reviewing that in the POM?

19 A. I recall looking at the POM, but do I remember
20 what it says, no.

21 Q. Okay. would it be accurate to say you simply
22 trusted Denny's business acumen?

23 A. Yes.

24 Q. Part of that business acumen would have been
25 ensuring first position deeds of trust?

ROBERT ZACKERY KOEHLER, 12/17/2018

1 A. Yes.

2 Q. Did you have any discussions with him as to how
3 he would go about ensuring that he was in first position
4 on his loans, on DenSco's loans?

5 A. I don't think specifically, no.

6 Q. Do you recall receiving any other kind of
7 financial information from Mr. Chittick about DenSco?

8 A. No, I don't. Not at the time of the investment.

9 Q. Do you recall why you chose to invest over a
10 period of five years?

11 A. Because it was an IRA investment for me and long
12 term made sense.

13 Q. Around this time you were starting up your own
14 company, correct?

15 A. Yes, that's correct.

16 Q. Why did you choose to invest in a competitor's
17 business?

18 A. I believe in the business and I couldn't put my
19 IRA in my company, and self-directing to something I
20 understood made more sense to me as an investor.

21 Q. Have you invested in any other what I'll call
22 hard-money lending businesses?

23 A. No.

24 Q. Have you been approached to invest in any other
25 hard-money lending businesses?

ROBERT ZACKERY KOEHLER, 12/17/2018

1 A. No.

2 Q. I assume that you picked this one because of
3 your relationship with Mr. Chittick?

4 A. Yes.

5 Q. If you keep flipping through this Proof of
6 Claim, you will come up to another note. It's another
7 DenSco general obligation note.

8 Do you see that?

9 A. Yes, I do.

10 Q. This was in your name, not in the name of a
11 trust, is that correct?

12 A. The note is, but it should be in the name or it
13 should have been in the name of my IRA.

14 Q. So this is still an IRA contribution?

15 A. Yeah.

16 Q. Is that the reason you went with another
17 five-year?

18 A. Yes.

19 Q. So the date of issuance on this note is 2007,
20 correct?

21 A. Correct.

22 Q. This was a year after the initial --

23 A. Initial.

24 Q. -- note?

25 A. Yes.

ROBERT ZACKERY KOEHLER, 12/17/2018

1 Q. Why did you decide to invest additional monies
2 in DenSco at that time?

3 A. Same reason. I believed in the company and
4 Denny.

5 Q. Did you review any new information or additional
6 information?

7 A. I would assume not.

8 Q. If you flip to the next page, you will see the
9 Subscription Agreement.

10 A. Yes.

11 Q. And this is for the second note?

12 A. Yes.

13 Q. It says: The undersigned investor has received
14 and reviewed at the top the Confidential Private Offering
15 Memorandum dated June 1st, 2005.

16 Do you see that?

17 A. Yes.

18 Q. Did you review that POM prior to signing this?

19 A. I believe I received it. Whether I read it or
20 not, I don't remember.

21 Q. So my understanding -- so it states here that
22 that POM was dated June 1st, 2005.

23 You are now investing almost two years later,
24 correct?

25 A. Yes, correct.

ROBERT ZACKERY KOEHLER, 12/17/2018

1 Q. Did you ask for any sort of updated information
2 prior to this?

3 A. No, I didn't.

4 Q. If you look at the second page under subheading
5 b., it says: The undersigned has been given the
6 opportunity to ask questions about the Company and has
7 been granted access to all information, financial and
8 otherwise, with respect to the Company which has been
9 requested, has examined such information, and is satisfied
10 with respect to the same.

11 Do you see that?

12 A. Yes, I do.

13 Q. Do you recall asking Mr. Chittick for access to
14 any other kind of information about DenSco?

15 A. No.

16 Q. If you flip back to the first page, under the
17 accrual note where your loan information is listed, it
18 states at the end, in brackets: The minimum amount of a
19 Note is \$50,000 with \$10,000 increments above the minimum
20 amount.

21 Do you see that?

22 A. Yes.

23 Q. Did you have any discussions with Mr. Chittick
24 about allowing you to lend below the minimum amount?

25 A. No. I think I just assumed, in combination with

ROBERT ZACKERY KOEHLER, 12/17/2018

1 the previous investment.

2 Q. Okay. Do you know if there was a Subscription
3 Agreement for the first note?

4 A. I don't remember.

5 Q. Okay.

6 A. I remember going through my documents and
7 submitting what I had for the claim.

8 Q. So 2008/2009 come up after this.

9 would you agree generally a tough time for real
10 estate lending?

11 A. Yes, extremely.

12 Q. Did you have any discussions with Mr. Chittick
13 about the status of your investment or how the economy was
14 impacting his business?

15 A. I believe we had some discussions during that
16 time, yeah.

17 Q. Do you recall anything specifically?

18 A. Potentially about specific borrowers or
19 projects. I don't recall specifically about the state of
20 affairs, because I think we all knew we were struggling.

21 Q. Struggling.

22 A. Yeah.

23 Q. Do you know if you were still accruing interest,
24 as required by your note?

25 A. I believe I was, yes.

ROBERT ZACKERY KOEHLER, 12/17/2018

1 Q. So as far as you could tell, DenSco was still
2 performing as it was?

3 A. Yes.

4 Q. If you keep flipping through, actually it's
5 probably about two more pages. I'm sorry. No. The other
6 way. Keep going until you get to another obligation of --
7 sorry. Yeah.

8 A. This way? I'm sorry. I'm losing you.

9 Q. I think it's this one right here. There we go.

10 A. Okay.

11 Q. So if I recall, your first note expired or
12 matured in April of 2011, correct?

13 A. Yes.

14 Q. And your second note matured in April 2012,
15 correct?

16 A. Yes, correct.

17 Q. Here we have an April 2012, a third note in the
18 amount of \$81,913.01.

19 Do you see that?

20 A. Yes, I do.

21 Q. That's a pretty specific amount.

22 Do you recall what that amount represents?

23 A. I would assume it was my principal at that time
24 of the note expiring and this note being issued.

25 Q. So the principal plus all your accrued interest?

ROBERT ZACKERY KOEHLER, 12/17/2018

1 A. That would be my assumption, yes.

2 Q. And then you recall rolling all that over into a
3 new investment?

4 A. Yes.

5 Q. Do you recall withdrawing any of your accrued
6 interest?

7 A. No.

8 Q. That was a poorly-phrased question.
9 Did you withdraw any accrued interest?

10 A. No.

11 Q. At the time you entered into this note, did you
12 review any POMs?

13 A. I don't remember.

14 Q. This is April 2012. To my recollection, there
15 would have been a 2011 POM.

16 Do you recall reviewing that?

17 A. I recall receiving new paperwork. I don't
18 recall specifically reviewing the POM or not.

19 Q. Did you meet with Denny to sort of get an update
20 on what's going on with the company?

21 A. On this one, no.

22 Q. So safe to assume you didn't review any new
23 financial information?

24 A. I don't believe I did, no.

25 Q. You didn't check to see if loan to values were

ROBERT ZACKERY KOEHLER, 12/17/2018

1 within promised levels or anything like that?

2 A. I don't -- I don't recall doing that, no.

3 Q. This is now a two-year note as opposed to a
4 five-year note.

5 Do you know why you chose a shorter term?

6 A. I don't remember why. I had other IRA
7 investments at that time, and I remember making a decision
8 whether I wanted to move money or not, so I might have
9 just chosen a shorter maturity because of that.

10 Q. Keep flipping. The next page is the
11 Subscription Agreement for this note, the \$81,000 note.

12 A. Yes.

13 Q. And at the top, I'm just curious, it says: The
14 undersigned investor has received and reviewed the
15 Confidential Private Offering Memorandum dated July 1st,
16 2009.

17 Do you see that?

18 A. I do, yes.

19 Q. Do you know whether there was a 2011 POM that
20 had been issued at this time?

21 A. I don't know.

22 Q. And you don't recall whether you reviewed a POM
23 or not?

24 A. I really don't, no.

25 Q. If you keep flipping to the end of the

ROBERT ZACKERY KOEHLER, 12/17/2018

1 Subscription Agreement, the next page after that, this is
2 another note, what I will call note 4. And this is --
3 well, you tell me. So this is a principal amount of
4 \$79,963.08.

5 Do you see that?

6 A. Yes.

7 Q. It was also issued April 11th, 2012, so issued
8 around the same time as the prior note we looked at,
9 correct?

10 A. Uh-huh. Yes.

11 Q. Do you know what this amount represents, what
12 this amount represents?

13 A. No.

14 Q. Do you think it could have been a rollover from
15 another investment?

16 A. No. I only had the one investment.

17 Q. Well, I think if we look at the -- your first
18 note was a \$40,000 note and the second note was a \$44,000
19 note.

20 So is it possible that one of these is the
21 rollover of one of those notes --

22 A. Yeah.

23 Q. -- and the other one is the rollover of the
24 other?

25 And if you don't recall, that's fine. I'm not

ROBERT ZACKERY KOEHLER, 12/17/2018

1 trying to put words in your mouth.

2 A. That is possible. I don't recall.

3 Q. Okay.

4 A. And in quick review, that would make sense,
5 based on the numbers.

6 Q. So both of these, this note and the third note
7 that we looked at, are both dated April 2012.

8 A. Yes.

9 Q. The first note that you signed with DenSco,
10 though, had a 2011 maturity date.

11 Do you recall that?

12 A. Yes.

13 Q. Do you know what happened to that note, once it
14 reached its 2011 maturity date between April 2011 and
15 April 2012?

16 A. I don't think anything happened.

17 Q. It just sat in DenSco's account?

18 A. Yes.

19 Q. Do you know if it kept accruing interest?

20 A. I believe it did, yes.

21 Q. And then if you flip the page, you will see a
22 Subscription Agreement. This is for the \$79,000 note?

23 A. Yes.

24 Q. When you rolled over your investments, assuming
25 this was a rollover, were you required to sign a new

ROBERT ZACKERY KOEHLER, 12/17/2018

1 Subscription Agreement?

2 A. I believe so. I believe he sent me new
3 paperwork each time.

4 Q. Do you recall at any point taking any money out
5 of DenSco?

6 A. No.

7 Q. Do you recall why, in April 2012, you had two
8 notes as opposed to rolling your investments over into one
9 note?

10 A. No, but I assume it's because they were set up
11 as separate originally.

12 (Deposition Exhibit No. 651 was marked for
13 identification.)

14 Q. (BY MR. RUTH) I have handed you Exhibit 651.
15 It's a series of emails between you and Mr. Chittick
16 April 3rd and 4th, 2011.

17 A. Yes.

18 Q. Do you see that?

19 A. Yes.

20 Q. On the bottom of the first page, on April 2nd,
21 2011, Mr. Chittick sends you an email that says: You want
22 me to send you the renewal docs or you want me to return
23 your funds? Let me know.

24 Do you see that?

25 A. Yes.

ROBERT ZACKERY KOEHLER, 12/17/2018

1 Q. Do you recall receiving this email?

2 A. Not specifically.

3 Q. Do you know if this is typically how renewals
4 were handled, sort of rolling over --

5 A. With me, yes, but I don't know about any other.

6 Q. I meant with you.

7 A. Yes.

8 Q. So once one of your notes reached maturity,
9 Mr. Chittick would reach out to you and ask whether you
10 wanted to renew that note?

11 A. Yes.

12 Q. Should we expect to see emails like this with
13 respect to all your notes once they reach maturity, to the
14 extent that you renewed those notes?

15 A. I don't know that you would see an email. It
16 might have been a phone call.

17 Q. And during those phone calls, would you ask
18 Mr. Chittick for any information or conduct any due
19 diligence with respect to DenSco?

20 A. I don't think I would.

21 Q. So we just saw that the third note and the
22 fourth note were both dated in the April 2012 timeframe?

23 A. Yes.

24 Q. And this email on Exhibit 651 from Mr. Chittick
25 is dated April 2nd, 2011.

ROBERT ZACKERY KOEHLER, 12/17/2018

1 Does this refresh any recollection as to what
2 happened with that -- the note that reached maturity in
3 April 2011, between then and the date of the new note in
4 2012?

5 A. No.

6 Q. So both the third note and the fourth note had
7 an April 2013 maturity date, correct?

8 A. Correct.

9 Q. What happened with those notes after April 2014?

10 A. Nothing that I know of. It just continued to
11 accrue, as far as I know.

12 Q. Do you recall if you signed any new notes?

13 A. I don't recall.

14 Q. If you had new notes in your possession, would
15 you have included them in this Proof of Claim?

16 A. Yes, I would have.

17 Q. Do you recall if Mr. Chittick contacted you
18 about renewing your notes or rolling over your notes?

19 A. I don't remember that conversation.

20 Q. Do you think it happened and you just don't
21 remember it, or you don't recall if it ever happened?

22 A. I don't recall it ever happening.

23 Q. Were you concerned at all as to what was
24 happening with your notes in April of 2014? The notes had
25 matured.

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1 A. No. I don't recall being concerned. Get my
2 monthly statement, business as usual. I am not even sure
3 I was aware of the maturity date, you know, without
4 looking it up.

5 Q. I take it, then, you never contacted
6 Mr. Chittick about withdrawing your matured funds?

7 A. No.

8 Q. Were you still receiving monthly statements?

9 A. Yes.

10 Q. Is it safe to say that you didn't make any sort
11 of conscious decision to roll over or renew these notes in
12 2014?

13 A. Yes.

14 Q. I assume investors in RLS Capital also have
15 notes that mature that they then at times renew or roll
16 over into a new investment?

17 A. We are set up a little differently than that.

18 Q. Okay.

19 A. They -- we have kind of a rolling maturity, so
20 they have to call their note.

21 Q. Okay. So they have to actively reach out to
22 you?

23 A. Yes.

24 Q. And when you say "call their note," what does
25 that mean exactly?

ROBERT ZACKERY KOEHLER, 12/17/2018

1 A. That means request their funds.

2 Q. And if they don't call and request their funds,
3 then the note just keeps rolling forward?

4 A. Correct. Sorry I interrupted you.

5 Q. These notes with DenSco weren't that kind of
6 note, though, correct?

7 A. Correct.

8 Q. These had a hard maturity date?

9 A. Yes, that's correct.

10 Q. Did you receive any newsletters from DenSco with
11 respect to --

12 A. He posted a newsletter on his website. If I
13 remember correctly, he would email a link to the website
14 so you could read the newsletter. I can't remember if
15 that was annually, but I remember that happening.

16 Q. Did you ever review those newsletters?

17 A. Yeah, I have read a few.

18 Q. Do you know what a MOM's meeting is, M-O-M-S?

19 A. No.

20 Q. I will take it, then, you never attended a MOM's
21 meeting?

22 A. No.

23 Q. Did Mr. Chittick ever fail to send you a monthly
24 statement?

25 A. I don't think so. No.

ROBERT ZACKERY KOEHLER, 12/17/2018

1 Q. Did you review your monthly statements when you
2 got them?

3 A. Yes.

4 Q. I believe the last Private Offering Memorandum
5 that was issued by DenSco was dated in the summer of 2011.

6 Did it concern you at all that you didn't
7 receive an updated Private Offering Memorandum after 2011?

8 A. I don't remember being concerned about that, but
9 I was also having fairly regular conversations with Denny,
10 so nothing caused alarm.

11 Q. And in those fairly regular conversations with
12 Denny, he was sort of keeping you abreast of what was
13 going on with DenSco?

14 A. Yeah. I would say when he -- when we did talk,
15 he would say what the status was.

16 Q. When you say "fairly regular," was that like a
17 couple times a year, once a month?

18 A. I would say not monthly, but more than a couple
19 times a year.

20 Q. And did those conversations occur in 2014 and
21 2015 as well?

22 A. I would assume so, but I don't know for sure.

23 Q. Do you recall during these regular conversations
24 with Mr. Chittick that he ever expressed to you any issues
25 with DenSco?

ROBERT ZACKERY KOEHLER, 12/17/2018

1 A. No.

2 Q. Any issues with any borrowers?

3 A. That's possible, yes. Sometimes he would have a
4 specific borrower that he would want to warn me about or
5 said he was dealing with a problem.

6 Q. Mr. Menaged probably was never one of those
7 borrowers that he --

8 A. No.

9 Q. During these regular conversations did
10 Mr. Chittick ever raise with you the issue of him being in
11 second position on --

12 A. No.

13 Q. No.

14 Did he ever discuss with you an entity by the
15 name of auctions.com?

16 A. No, but I know that entity.

17 Q. Okay. But you never got the sense from his
18 conversations that any of DenSco's lending had anything to
19 with auctions.com?

20 A. No.

21 Q. So at some point did you agree to sort of serve
22 as Mr. Chittick's backup or failsafe in the event he
23 became incapacitated?

24 A. Yes, I did.

25 Q. And what led to that arrangement?

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1 A. Denny reached out to me at some point, and I
2 can't remember when, and asked if I would fill that role
3 because he was a one-man show, basically.

4 Q. And what was your reaction to that request?

5 A. I said I would do it.

6 Q. I mean, it seems to me that it seems like a big
7 responsibility, correct, to sort of step into the shoes of
8 the sole proprietor of a business?

9 A. Yes.

10 Q. Is it safe to say that your agreeing to take on
11 this role meant you had some trust in how Denny ran his
12 business?

13 A. Yes.

14 Q. And in his recordkeeping procedures?

15 A. Yes.

16 Q. This next one is going to be a little more
17 complicated. So the binders next to you contain exhibits
18 that have already been marked in this case.

19 A. Okay.

20 Q. And we are just going to go through a couple of
21 them very briefly. If you see a binder sitting right in
22 that chair next to you that's got Exhibit 430.

23 MR. STURR: Can you just tell me what it is?

24 MR. RUTH: It's the 2007 POM. I do have a copy
25 for you.

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1 MR. STURR: Oh, thanks.

2 MR. RUTH: I know you are dying to take a look
3 at it.

4 Q. (BY MR. RUTH) All right. If you could flip to
5 Exhibit No. 430. This is what's previously been marked as
6 Exhibit 430 in this case. It is a redlined Private
7 Offering Memorandum, so I won't represent that it's final.

8 A. Okay.

9 Q. But if you could flip to page 1010, and that's
10 the bolded -- yeah, that one.

11 This is the page that has a heading Contingency
12 Plan in the Event of Death or Disability of Mr. Chittick.

13 A. Okay.

14 Q. Do you recall if discussions about serving in
15 this role came up before 2007?

16 A. I don't recall.

17 Q. You will see in the first sentence, it says: In
18 the event that Mr. Chittick is unable to perform his
19 duties to continue the operation of the company in any
20 capacity, Mr. Chittick has reached an agreement in
21 principal with Robert Koehler.

22 You see that?

23 A. Yes.

24 Q. An agreement in principal to me suggests that
25 you didn't actually have a binding agreement.

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1 Is that what it suggests to you?

2 A. I don't really understand that language, so I
3 don't know.

4 Q. Do you know if you had signed a letter or any
5 kind of agreement with respect to --

6 A. At some -- I'm sorry.

7 Q. -- with respect to this POM, the 2007 POM?

8 A. Not specifically.

9 Q. Did Mr. Chittick -- was this a reciprocal
10 arrangement? Did Mr. Chittick also serve in that same
11 capacity for you with respect to RLS?

12 A. No.

13 Q. If you read down in this paragraph, sort of in
14 the middle, the sentence starts "As part of this."

15 Do you see that?

16 A. Yes, I do.

17 Q. And it says: As part of this contingency plan,
18 Robert is signatory on the company's bank account.

19 Do you see that?

20 A. Yes, I do.

21 Q. Is that correct?

22 A. I never verified that. He told me it was
23 correct.

24 Q. Did you ever sign anything with a bank
25 indicating that you had any authority?

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1 A. I don't recall doing that. That doesn't mean it
2 didn't happen.

3 Q. Did you ever receive bank statements with
4 respect to DenSco?

5 A. No.

6 Q. Do you recall at this time which bank DenSco
7 banked at?

8 A. I think at this time it was Bank of America.

9 Q. The next sentence goes on to say: Robert
10 receives an updated spreadsheet of all properties
11 currently being used as collateral for a loan.

12 Do you see that?

13 A. Yes.

14 Q. Is that accurate?

15 A. Yes, it is.

16 Q. And then it goes on to say: On a monthly basis
17 Robert receives a spreadsheet of all the investors and
18 what is owed to each of them.

19 Do you see that?

20 A. Yes.

21 Q. Is that accurate?

22 A. Yes, it is.

23 Q. We will look at some of these spreadsheets in a
24 second.

25 Outside of the spreadsheet of the properties and

ROBERT ZACKERY KOEHLER, 12/17/2018

1 the spreadsheet of the investors, did you receive any
2 other periodic information about DenSco from Mr. Chittick?

3 A. No.

4 Q. Did you ever receive QuickBooks information,
5 pre-suicide?

6 A. No.

7 Q. Did you ever receive financial statements?

8 A. No.

9 Q. So no profit and loss, no balance sheets,
10 nothing like that?

11 A. No.

12 Q. Did you ever see his tax returns?

13 A. No.

14 Q. DenSco's tax returns?

15 A. No.

16 Q. Go ahead and flip to the next exhibit in there,
17 which is 431.

18 MR. STURR: Thank you, Marvin.

19 Q. (BY MR. RUTH) If you can flip to page 39.

20 So Exhibit 431 is the July 1st, 2009, DenSco
21 Private Offering Memorandum. If you would flip to page 39
22 there.

23 And, again, we are looking at the paragraph
24 titled Contingency Plan in the Event of Death or
25 Disability of Mr. Chittick.

ROBERT ZACKERY KOEHLER, 12/17/2018

1 Do you see that?

2 A. Yes, I do.

3 Q. Here it says: In the event that Mr. Chittick is
4 unable to perform his duties to continue the operation of
5 the Company in any capacity, Mr. Chittick has a written
6 agreement with Robert Koehler, an owner of RLS, to provide
7 or arrange for any necessary services for the Company.

8 Do you see that?

9 A. Yes, I do.

10 Q. Do you recall at this point in time, with
11 respect to the 2009 POM, actually signing an agreement to
12 do this?

13 A. I recall signing an agreement. I can't say in
14 respect to this specific memorandum.

15 Q. Do you recall whether you sought advice from an
16 attorney or anybody else with respect to this arrangement
17 to step in for Mr. Chittick?

18 A. No.

19 Q. Were you ever asked to sign any sort of, or did
20 you ever see any corporate minutes or any corporate
21 documents that would have allowed you to step in as -- and
22 control --

23 A. No.

24 Q. -- would have allowed you to step in on behalf
25 of DenSco in the event of Mr. Chittick's incapacity?

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1 A. Nothing official, besides our conversations and
2 the one agreement that I signed.

3 Q. You only recall signing one agreement?

4 A. I don't know. They may have updated it at some
5 point. I don't remember.

6 Q. Can you tell me what your understanding of this
7 arrangement sort of was?

8 A. If Denny was to die, the portfolio would need to
9 be wound down, basically, which means loans would start
10 getting payoffs, investors would need to be paid back,
11 until the company had zeroed out.

12 Q. Would you have had any responsibility for
13 servicing the loans going forward or raising additional
14 funds, or was it simply a wind-down?

15 A. A wind-down, was my understanding.

16 Q. And, again, this paragraph suggests that as part
17 of the contingency plan, you were the signatory on the
18 company's bank account.

19 Do you recall at this point in 2009 ever signing
20 anything with respect to a bank?

21 A. I do not recall doing that.

22 Q. You were still receiving updated spreadsheets of
23 all properties?

24 A. Yes.

25 Q. And you were still receiving monthly statements

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1 for all investors?

2 A. Yes.

3 Q. What did you do with those property statements
4 that you received?

5 A. I saved them onto a hard drive.

6 Q. Did you open them?

7 A. Occasionally.

8 Q. Did you do any sort of analysis or review of
9 them?

10 A. I don't know that I reviewed them. Sometimes I
11 would open them just to see -- you know, honestly,
12 sometimes I would open them to see who borrowers were or
13 just general information on the spreadsheet.

14 Q. Did you look to see what the sort of
15 loan-to-value percentage might be?

16 A. I don't think I ever analyzed them in that way.
17 Just to make sure the information was there.

18 Q. Did you ever look to see sort of whether loans
19 were coming due, whether there was debts hanging out
20 there?

21 A. No. If I did, it would have been because I had
22 interest in a specific borrower or because of a
23 conversation with Denny, but no.

24 Q. If you could flip to the next exhibit. This is
25 Exhibit 432, a 2011 POM. If you flip to page 2961, that's

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1 the Bates number, or it's page 41 of the document.

2 And here, again, we are looking at the paragraph
3 titled Contingency Plan in the Event of Death or
4 Disability of Mr. Chittick.

5 Do you see that?

6 A. Yes.

7 Q. And, again, it references a written agreement
8 between Mr. Chittick and yourself?

9 A. Yes.

10 Q. And, again, you recall signing an agreement like
11 that?

12 A. Yes.

13 Q. At this point now, in 2011, do you recall having
14 that agreement reviewed by an attorney?

15 A. No.

16 Q. Did you do any sort of assessment as to its
17 enforceability?

18 A. No.

19 Q. And, again, this paragraph suggests you are
20 getting weekly updated spreadsheets of all the properties?

21 A. Suggests weekly.

22 Q. I'm sorry: On a weekly basis that Robert
23 receives an updated spreadsheet of all properties
24 currently being used as collateral for a loan.

25 A. I believe I was getting them monthly.

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1 Q. Okay. And along with, on a monthly basis,
2 receiving a spreadsheet of all the investors?

3 A. Yes.

4 MR. RUTH: Let's take a quick break.

5 (A recess was taken from 11:27 a.m. to
6 11:32 a.m.)

7 (Deposition Exhibit No. 652 was marked for
8 identification.)

9 Q. (BY MR. RUTH) Handing you what's been marked as
10 Exhibit 652. It's an email from yourself to Mr. Chittick,
11 dated August 22nd, 2011.

12 Do you see that?

13 A. Yes.

14 Q. And it attaches a letter signed by yourself,
15 dated July 1st, 2011.

16 Do you see that?

17 A. Yes, I do.

18 Q. Well, your signature is actually on August 22nd,
19 2011, correct?

20 A. Yes.

21 Q. Is this the letter agreement providing that you
22 are the backup for Mr. Chittick in the event of his death
23 or incapacity?

24 A. Yes, that's my understanding.

25 Q. And, again, you never took this document to an

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1 attorney to determine if it was --

2 A. No, I did not.

3 Q. Do you recall signing any of these letters after
4 signing this one?

5 A. I don't recall.

6 Q. Do you recall signing any letters before signing
7 this one?

8 A. I don't recall.

9 (Deposition Exhibit No. 653 was marked for
10 identification.)

11 Q. (BY MR. RUTH) All right. I'm handing you
12 what's been marked as Exhibit 653, which is an email from
13 Mr. Chittick to you dated January 6th, 2012. Two
14 attachments, DenSco Properties and DenSco Statement
15 Spreadsheet.

16 Do you see that?

17 A. Yes, I do.

18 Q. I will tell you, I have not attached the DenSco
19 statement spreadsheet to this. This is only the DenSco
20 Properties spreadsheet.

21 A. Okay.

22 Q. Is this indicative of what you would receive
23 from DenSco every other week or every month with respect
24 to the collateral?

25 A. Yes.

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1 Q. Did you -- what sort of review would you do on
2 this spreadsheet, if any?

3 A. If any, I may look at a problem loan that I
4 would know about, or maybe -- I don't even know. I didn't
5 really analyze them very much.

6 Q. How would you have known about a problem loan
7 that DenSco was having?

8 A. Just from conversation, it would be something he
9 would have told me was an issue or something I knew was an
10 issue, just being in the business.

11 Q. Did you do any sort of review to determine how
12 many loans were going out to a particular kind of
13 borrower?

14 A. No, not really. If something stood out maybe on
15 a quick glance, I would look into it, but I didn't feel
16 like I was auditing him, so I didn't.

17 Q. Okay. If you look at the last page of this.
18 Well, actually -- yeah, the very last page of the
19 spreadsheet.

20 A. Okay.

21 Q. You will see it totals up a couple columns.

22 A. Yes.

23 Q. One column which is the amount of loans
24 outstanding, then one column which is the suggested value
25 of a collateral.

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1 A. Yes.

2 Q. And then a percentage, which is the loan to
3 value.

4 A. Correct.

5 Q. Would you take a look at those numbers when you
6 received this first?

7 A. I think occasionally I would look at the overall
8 numbers.

9 Q. And you will see here -- so this is sent
10 January of 2012. It looks like his overall lending is a
11 little over \$32 million?

12 A. Yes.

13 Q. Do you recall if you received any other type of
14 spreadsheets to go along with this property statement?

15 A. Not that went along with the property statement.

16 Q. So, for example, I think I have seen, when I
17 look at these in their native file as opposed to printed
18 out on PDF, a tab called, like, closed loans or --

19 A. Like additional tabs on the spreadsheet?

20 Q. -- additional tabs on the spreadsheet?

21 A. I would have to be looking at one.

22 Q. Okay.

23 A. But it doesn't stand out to me.

24 Q. Okay. Do you recall any particular tabs that
25 you would check on when you received these statements?

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1 A. No, definitely not.

2 (Deposition Exhibit No. 654 was marked for
3 identification.)

4 Q. (BY MR. RUTH) So 654 is another email from
5 Mr. Chittick to yourself with the properties spreadsheet.
6 This was sent on May 17th, 2013, is that correct?

7 A. Yes.

8 Q. Did your approach or review of these
9 spreadsheets change at all over the time period where you
10 were receiving them? Was there a particular period of
11 time where you might pay a little bit closer attention to
12 the type of information you were getting or --

13 A. No.

14 Q. If you flip to the last page of this one, again,
15 it totals up the loans outstanding and the loan -- the
16 value of the collateral and provides a loan to value
17 percentage.

18 Do you see that?

19 A. Yes, I do.

20 Q. And it looks like its loans outstanding now is
21 up to -- DenSco's loans outstanding are up to over
22 \$51 million?

23 A. Yes.

24 Q. And I think when we looked at the prior
25 spreadsheet from January 2012, the loans outstanding were

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1 a little over \$32 million?

2 A. Yes.

3 Q. Do you recall making note of the sort of
4 increase in lending that DenSco was doing?

5 A. No.

6 Q. Would you consider an almost \$20 million
7 increase in lending from -- in a year and a half to be
8 pretty significant?

9 A. I would consider it significant.

10 Q. If you had focused on that, would it have caused
11 you any concern or troubled you at all?

12 A. It may have spurred a question, but depending on
13 the time, maybe not, because that was a good time to be in
14 lending.

15 Q. Do you recall having any conversations with
16 Mr. Chittick about the escalating size of his portfolio?

17 A. Not specifically, no.

18 (Deposition Exhibits No. 655 and 656 were marked
19 for identification.)

20 Q. (BY MR. RUTH) Mr. Koehler, I have handed you
21 Exhibits 655 and 656.

22 A. Yes.

23 Q. 655 is an email from Mr. Chittick to yourself,
24 dated October 24th, 2014, once again attaching a DenSco
25 properties spreadsheet.

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1 A. Yes.

2 Q. Do you see that?

3 A. I do.

4 Q. And 656 is a copy of that spreadsheet I will
5 represent to you, and this is sort of similar to
6 Exhibits 654 and 653 that we just looked at.

7 A. Okay.

8 Q. If you look at the last page of Exhibit 656, I
9 think you will see the amount of loans outstanding is now
10 close to \$56 million.

11 A. Yes.

12 Q. With a collateral value of almost 74 million?

13 A. Yes.

14 Q. And a loan to value now inching over 70 percent?

15 A. Yes, I see that.

16 Q. Do you recall reviewing any information like
17 this and having it trigger any issues for you?

18 A. I don't, no.

19 Q. If you look through, just sort of generally flip
20 through who the noteholder is in the column --

21 A. Yes.

22 Q. -- and the column under who, it seems like there
23 are a fair number of Easy Investments and Arizona Home
24 Foreclosures borrowers.

25 Do you see that?

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1 A. Yes, I do.

2 Q. Do you recall ever -- did you ever review these
3 and make note of increased number of loans to a specific
4 borrower?

5 A. I remember seeing the increase to Easy, because
6 I knew that was Menaged.

7 Q. Did you discuss that with Mr. Chittick?

8 A. I don't recall if I specifically asked him about
9 it.

10 Q. Did it cause you any concern?

11 A. No.

12 Q. Did you know who Arizona Home Foreclosures was?

13 A. No.

14 (Deposition Exhibit No. 657 was marked for
15 identification.)

16 Q. (BY MR. RUTH) Handing you what's been marked as
17 Exhibit 657.

18 MR. STURR: Marvin, would you mind identifying
19 where this document came from?

20 MR. RUTH: Yes. These are all -- this is all
21 part of the same spreadsheet that was attached to
22 Exhibit 655, so they came out of Chittick's .pst files.

23 MR. STURR: And those are the files that your
24 firm has obtained from the ESI files?

25 MR. RUTH: No. Those are ones we obtained

1 from --

2 MR. STURR: From the document depository?

3 MR. RUTH: -- depository. Yes. I'm not marking
4 anything that we have gotten out of the ESI files today.

5 MR. STURR: Okay.

6 Q. (BY MR. RUTH) If I could bring it up on the TV,
7 I would show it to you, but I will represent to you that
8 this is another tab in the same spreadsheet we just
9 reviewed as 656.

10 A. Yep.

11 Q. And it's a tab titled sheet 1.

12 A. Okay.

13 Q. Do you recall ever looking at any tabs called
14 sheet 1, sheet 2?

15 A. No.

16 Q. If you look at this spreadsheet, it looks to me
17 to be a spreadsheet that only covers loans to Easy
18 Investments and Arizona Home Foreclosures.

19 A. Yes, I see that.

20 Q. Do you have any reason to know why or do you
21 know why this spreadsheet was created and provided to you?

22 A. No.

23 Q. Did you know that the spreadsheet had been
24 created prior?

25 A. No. Never seen it.

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1 Q. If you look at the top, there is a column
2 towards the end titled "I'm First," and then another
3 column titled "ACV 1st," and then another column titled
4 "Second."

5 Do you see that?

6 A. Yes, I do.

7 Q. Do you -- does ACV have any meaning to you?

8 A. I think that's a lender.

9 Q. Okay. Do you know who that lender is?

10 A. I'm not sure. I would -- I could guess it might
11 be Gregg Reichman, because it sounds familiar.

12 Q. Does he have an entity that goes by the name of
13 ACV?

14 A. Just because it sounds, those two names together
15 sound familiar, but I don't know 100 percent for sure.

16 Q. And, again, you would have no reason know why he
17 has columns indicating that I'm first or I'm second?

18 A. I do now. At the time I didn't. No.

19 Q. And you weren't aware that this was part of the
20 package that he was sending you in October of 2014?

21 A. No.

22 (Deposition Exhibit No. 658 was marked for
23 identification.)

24 Q. (BY MR. RUTH) I'm handing you what's been
25 marked as Exhibit 658, and I will represent to you that

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1 this is sheet 2 to the spreadsheet that was previously
2 marked as Exhibit 656.

3 MR. STURR: Marvin, I have a question on this.

4 MR. RUTH: Sure.

5 MR. STURR: Are these tabs -- is 657 and 658, are
6 they part of the spreadsheet that was attached to
7 Exhibit 655 --

8 MR. RUTH: Yes.

9 MR. STURR: -- on the 10/24/14 email?

10 MR. RUTH: Yes. Thanks for clarifying that.
11 That's what had I hoped to put on the TV so we could just
12 sort of see it all on one native file.

13 MR. STURR: I thought you were going to show us
14 a video.

15 MR. RUTH: It would be a lot more fun.

16 Q. (BY MR. RUTH) So this is a tab titled Sheet 2
17 attached to that Excel file that was sent to you in
18 Exhibit 655.

19 Have you ever seen this type of document that
20 was provided to you by DenSco?

21 A. No.

22 Q. No.

23 And, again, this one seemed to be some sort of
24 summary with respect to loans to Easy Investments and
25 Arizona Home Foreclosures?

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1 A. That's what it appears to be, yes.

2 Q. Okay. Do you recall in the October 2014
3 timeframe or any time in 2014, Mr. Chittick approaching
4 you and discussing any issues with respect to Easy
5 Investments or Arizona Home Foreclosures?

6 A. No.

7 (Deposition Exhibit No. 659 was marked for
8 identification.)

9 Q. (BY MR. RUTH) Handing you what's been marked as
10 Exhibit 659, I will represent to you this is yet another
11 tab in the spreadsheet that was attached to Exhibit 655.
12 This one is called Tab 3 or Sheet 3.

13 And, again, my question is only, have you ever
14 seen this tab before?

15 A. No.

16 Q. Have you ever seen this document before?

17 A. No.

18 Q. I note that at the bottom of this tab, it totals
19 up the amount, and the amount is \$14,246,100.

20 Do you see that?

21 A. Yes, I see that.

22 Q. Does that amount mean anything to you with
23 respect to this receivership or these proceedings?

24 A. In respect to the receivership, I remember a
25 comment of nearly \$15 million being a part of an original

1 fraud scheme.

2 Q. This would suggest that Mr. Chittick was keeping
3 track of those amounts?

4 A. That's what it looks like, yes.

5 Q. Do you recall if there was ever a period of time
6 where you didn't receive these property statements as sort
7 of periodically as you had in the past?

8 A. I don't remember a -- I don't remember a
9 dropoff. It's something that I would have to actually
10 look for.

11 Q. Do you recall receiving any in 2015 or 2016?

12 A. I don't remember.

13 Q. If you had received them, is that information
14 you would still have?

15 A. I would assume on an email search I could find
16 it, sure. Yes.

17 Q. Do you know if these types of property
18 statements or spreadsheets were shared with anybody else
19 other than you?

20 A. I don't know.

21 Q. Prior to Mr. Chittick's death, did you ever see
22 a DenSco financial statement?

23 A. No.

24 Q. Were you ever provided with a bank statement?

25 A. No.

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1 Q. Were you aware that at one point, Bank of
2 America had closed DenSco's bank accounts?

3 A. Yes.

4 Q. How were you aware of that?

5 A. Denny told me.

6 Q. Do you recall what he told you about that?

7 A. He told me it had something to do with wires and
8 possibly frequency and he was switching to a different
9 bank.

10 Q. Did that raise any red flags to you?

11 A. No.

12 Q. Are some banks sort of known for allowing more
13 transfers on a day-in/day-out basis versus others?

14 A. I don't know the answer to that, but I do know
15 that I had heard of banks analyzing and red flagging
16 accounts, so it didn't seem totally out of the blue to me.

17 Q. The fact that a bank red flagged the account
18 didn't suggest to you that something untoward was going
19 on?

20 A. Not with the nature of the business, no.

21 Q. Were you aware that Mr. Chittick switched banks
22 to FirstBank?

23 A. I believe he told me that.

24 Q. Do you know if you were provided signing
25 authority with respect to accounts at FirstBank?

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1 A. I don't recall.

2 Q. Do you recall signing anything with respect to
3 FirstBank?

4 A. No, I don't.

5 Q. How did you become aware of Mr. Chittick's
6 death?

7 A. A neighbor called me. I believe he was an
8 investor as well. I can't recall his name at this exact
9 moment.

10 Q. Mr. Imdieke?

11 A. I believe it was Mr. Imdieke.

12 Q. Do you recall when that was?

13 A. No.

14 Q. What did Mr. Imdieke tell you?

15 A. That Denny had been found dead. He had killed
16 himself or hung himself. I believe he also told me when
17 the family was coming or planning to be there, and I can't
18 remember if he asked me to come or not, but just was
19 giving me information.

20 Q. Did this come as a shock to you?

21 A. Yes.

22 Q. Have you seen anything in Mr. Chittick's
23 behavior that would suggest to you he was depressed or
24 despairing in any way?

25 A. No, not in behavior.

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1 Q. What did you do after you received that phone
2 call?

3 A. I don't remember. I think I called my wife
4 immediately. I was driving at the time. Yeah, I don't --
5 I don't remember much more than that.

6 Q. Do you recall at some point speaking to
7 Ms. Shawna Heuer or David Beauchamp after receiving that
8 phone call?

9 A. Yes. Not via phone, though. I think I met
10 Shawna on site first.

11 Q. And "on site" meaning?

12 A. At Denny's house.

13 Q. Okay.

14 A. I don't recall the first time I spoke to
15 Mr. Beauchamp in regards to it.

16 Q. And prior to meeting Ms. Heuer at Denny's house,
17 you had never spoken with her or met her before, correct?

18 A. No.

19 Q. Prior to the meeting at Denny's house, do you
20 recall speaking to Mr. Beauchamp?

21 A. I don't remember if we talked before that or
22 not.

23 Q. You should have a binder over there that's got
24 Exhibit 417 in it.

25 MR. STURR: Thank you, Marvin.

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1 Q. (BY MR. RUTH) Exhibit 417 was previously marked
2 as a series of emails from July 31st, 2016.

3 Do you see that?

4 A. Yes, I do.

5 Q. If you look at the first email in the email
6 chain, it looks like it's an email from Ms. Heuer to David
7 Beauchamp.

8 And she says: I might be putting the cart
9 before the horse, but have had phone calls of concern and
10 I feel like we should communicate to calm some nerves.
11 What do you think if this is sent to the investors
12 tonight? I have sent this to Robert in hopes he will
13 agree and send from his DenSco email account he set up.

14 Do you see that?

15 A. Yes, I do.

16 Q. Do you recall Ms. Heuer sending you or talking
17 to you about an initial communication with the investors?

18 A. I do recall that, yes.

19 Q. And what was your reaction to that?

20 A. I think I remember thinking that was a good
21 idea, to communicate, yes.

22 Q. Do you know how Ms. Heuer had your email address
23 to send this to you?

24 A. I believe I gave it to her the day I met her.

25 Q. And then it says: I have sent this to Robert to

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1 send from his DenSco email account he set up.

2 Did you set up an email account for use with
3 DenSco?

4 A. I did.

5 Q. Did that happen after the death or did you
6 already have an account?

7 A. It happened after the death.

8 Q. And what account was that?

9 A. It was a Gmail account. I don't remember. I
10 can get the information, but I don't remember the specific
11 name, but it was DenSco name @gmail.com.

12 Q. Do you know if it was ever used?

13 A. It was used a couple times for payoff requests
14 from title companies, because they were calling looking
15 for a place to send requests.

16 Q. In the email above that, David Beauchamp writes
17 to Ms. Heuer: Shawna, Unfortunately, I do not know what
18 information Denny put in his letter to Robert.

19 Do you see that?

20 A. Yes, I do.

21 Q. Is that the letter that Mr. Chittick wrote prior
22 to his passing that was directed towards yourself?

23 A. Yes, I believe so.

24 Q. Do you recall when you first -- did you ever see
25 that letter?

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1 A. I did, yes.

2 Q. Do you recall when you first saw that letter?

3 A. Shawna handed it to me the morning I arrived at
4 his house.

5 Q. You never received it via email or in the mail?

6 A. No.

7 Q. Flip to the next document, Exhibit 418. This is
8 a second set of that same email chain --

9 A. Okay.

10 Q. -- where David states his phone slipped. And
11 then he says: If not -- do we know if there is any reason
12 to worry the investors? If not, we should inform the
13 investors that Denny has passed suddenly. Pursuant to
14 Denny's backup plan, Robert has been notified and he will
15 begin the process to review all accounts and to provide
16 information as soon as possible as to when the investors
17 should receive their interest payments.

18 Do you see that?

19 A. Yes, I do.

20 Q. Do you recall having a discussion with
21 Mr. Beauchamp about doing this review at this time,
22 July 31st, 2016?

23 A. I don't recall specifically. I did talk to him
24 over that time period, so we must have had conversation
25 about it.

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1 Q. Do you recall any specifics?

2 A. No, not -- not -- no.

3 Q. Do you recall, did you initially agree to do the
4 review?

5 A. I believe I did, yes.

6 Q. So my understanding is that the meeting with
7 yourself and Ms. Heuer and David at Denny's house took
8 place on August 1st.

9 Does that sound right?

10 A. Yes. I don't remember -- I don't remember David
11 being at the house.

12 Q. Okay. So you recall having a meeting just with
13 Shawna?

14 A. Yes.

15 Q. Was anybody else there?

16 A. Family was there, yes.

17 Q. What do you recall happening at this meeting?
18 What was discussed?

19 A. Her handing me a letter. Her having
20 understanding that I had a role to play as a backup, and
21 her trying to share any information she could to help me
22 with that.

23 Q. At that point did you receive any files? I
24 mean, what --

25 A. Not at that point. I had found out where they

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1 were. We went to Denny's office and looked, but I don't
2 think I took anything that day.

3 MR. RUTH: Go off the record.

4 (A recess was taken from 12:03 p.m. to
5 12:06 p.m.)

6 Q. (BY MR. RUTH) still discussing what's
7 previously been marked as Exhibit 418.

8 So I think we were mentioning the meeting at
9 Mr. Chittick's house with you and Shawna and her family
10 members. You said Mr. Beauchamp was not at that meeting,
11 correct?

12 A. Correct.

13 Q. Do you recall having a phone conversation with
14 Mr. Beauchamp prior to that meeting?

15 A. Not prior to the meeting, no.

16 Q. And it was after that meeting that you received
17 access to DenSco files and documents?

18 A. Yes.

19 Q. Do you recall what kind of files and documents
20 you received access to?

21 A. All the loan files, which Shawna boxed up, and
22 then just review of the spreadsheet, which I already had
23 the latest property spreadsheet. I think she offered
24 financials. I don't remember if they were -- they weren't
25 printed or anything. I think it was just access when I

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1 was ready or needed them. And at some point the files,
2 the loan files were boxed up and delivered. Actually, I
3 met Shawna at Mr. Beauchamp's office, and they were
4 delivered there for me to take back to my office to review
5 so I could see the active loan files.

6 Q. Do you recall ever receiving access to DenSco's
7 QuickBooks files?

8 A. I recall that being part of the conversation. I
9 believe I did receive access.

10 Q. And who provided you with that access?

11 A. I think that was Shawna.

12 Q. Do you know if she would have sent you an email
13 with the QuickBooks?

14 A. I don't think so. I think it would have been
15 provided via file of some sort.

16 Q. So like on a thumb drive or like a Dropbox or
17 something like that?

18 A. Yeah, I believe, I think a Dropbox is how it was
19 available. You are hurting my memory.

20 Q. Go ahead and flip to 419.

21 Just real briefly, this is another email from
22 that same day, July 31st. Shawna writes at the top that
23 there is concern, fear, and speculation that has been
24 voiced from multiple investors.

25 Do you see that?

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1 A. Yes, I do.

2 Q. At this point in time, had any of the investors
3 reached out to you?

4 A. Yes.

5 Q. Do you recall which investors?

6 A. One in particular, Tony Smith. I think he was
7 the only one that called me. No. There was another one.
8 I can't remember his name.

9 So there was Imdieke who originally called me,
10 Tony Smith, and there is a third, but I can't remember who
11 he was.

12 Q. What do you recall about your conversation with
13 Mr. Smith?

14 A. I recall him being -- he was asking for a
15 status, asking for information, as far as what I knew
16 about Denny. He -- he was not in a panic mode by any
17 means. Just, you know, wanted to know what was going on.

18 Q. Did you have any information to provide to him
19 at that point?

20 A. No, I wasn't providing, because I had very
21 little information.

22 Q. Can you flip to 438? That might be in the next
23 volume.

24 So this is Exhibit 438. It's an email from
25 David Beauchamp to yourself.

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1 A. Yes.

2 Q. I'd like to focus first on the email that was
3 forwarded to you from David Beauchamp to Shawna Heuer. It
4 looks like a draft email that was to be sent to the
5 investors?

6 A. Yes.

7 Q. If you look at the first -- so this was an email
8 sent Wednesday, August 3rd, 2016. And if you look at the
9 first sentence, it says: As a follow up to the email of
10 Denny Chittick's family that was distributed on Sunday,
11 I -- meaning David Beauchamp -- met late Monday with
12 Shawna Chittick Heuer (Denny's sister) and Robert Koehler
13 to discuss Denny's unfortunate and untimely passing.

14 Do you see that?

15 A. Yes.

16 Q. So that Monday would have been August 1st.

17 A. Okay.

18 Q. Do you recall having a meeting with Shawna and
19 Denny to sort of discuss what to do?

20 A. Shawna and David, yes.

21 Q. I'm sorry. Yes.

22 Do you recall discussing putting this type of
23 communication together for the investor?

24 A. I recall a discussion about that, yes.

25 Q. Did you have any hand or role in drafting this

1 communication?

2 A. No.

3 Q. If you look in the second paragraph, it says:
4 Robert has agreed with Shawna Heuer and me that he will do
5 a quick and basic analysis of DenSco's loans to its
6 borrowers.

7 Do you see that?

8 A. Yes.

9 Q. At that point had you agreed to do that?

10 A. At that point, yes.

11 Q. Then if you go on, it says that: Robert will
12 also identify the anticipated timeframe for each of these
13 good loans to be liquidated in a timely fashion.

14 Do you see that?

15 A. Yes.

16 Q. At that point had you agreed to do that?

17 A. Yes.

18 Q. It also goes on to say: Robert will also try to
19 identify the "Troubled Loans."

20 Do you see that?

21 A. Yes, I do.

22 Q. And at that point had you agreed to do that?

23 A. Yes.

24 Q. The paragraph concludes by saying: Robert
25 anticipates having his initial analysis done by Friday of

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1 this week and we will share that with you.

2 Do you see that?

3 A. Yes.

4 Q. Was that your estimate of when you thought you
5 would be able to get this done?

6 A. I believe it was.

7 Q. Do you recall any discussions with Shawna and
8 David about a receiver being appointed or DenSco being
9 placed into bankruptcy?

10 A. Yes. I don't remember at which point, but, yes,
11 I remember that being a topic of conversation.

12 Q. What do you recall about that conversation?

13 A. You would have to ask me a specific question. I
14 don't remember.

15 Q. Do you recall either David or Shawna suggesting
16 that a receivership or a bankruptcy might be expensive
17 or --

18 A. I don't recall that specifically, no.

19 Q. Do you just recall that it was sort of an option
20 that was sitting out there?

21 A. Yes.

22 Q. Did you have any opinions or form any opinions
23 on whether receivership was appropriate?

24 A. Not that I recall specifically.

25 Q. If you flip to the second page, go to the last

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1 sort of large paragraph. It says: To have good and open
2 communication, we would like to create an "Advisory Board"
3 of 5 investors.

4 Do you see that?

5 A. Yes.

6 Q. Do you recall discussing that?

7 A. I do recall that, yes.

8 Q. Do you know whose idea that was?

9 A. I cannot remember if that was Shawna's or
10 David's. I do remember the conversation.

11 Q. Did you ask to be or volunteer to be on this
12 advisory board?

13 A. I don't know that I volunteered at that time,
14 but I think I was open to the idea at the time.

15 Q. Do you know if an advisory board was ever
16 formed?

17 A. I don't believe it was.

18 Q. Do you recall if the investors ever formed a
19 sort of email group or a separate chain of communications
20 for the investors to talk about this issue amongst
21 themselves?

22 A. I -- I kind of remember a chain email at some
23 point. Who originated it and how all the addresses got on
24 there, I'm not 100 percent sure.

25 Q. Do you recall a fair amount of communication

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1 going back and forth amongst the investors with respect to
2 DenSco and Chittick's suicide?

3 A. No. I don't -- what I recall from that chain is
4 more like a call for organization, not so much specifics.

5 Q. If you go to the top, the email from David to
6 yourself, David writes: I did not include your telephone
7 number or an email address for either you or Shawna.

8 Do you see that?

9 A. No. The back page?

10 Q. Back on 438, the top email.

11 A. Oh, okay. Yes, I see that.

12 Q. Was that at your request? Did you ask David to
13 remove your phone number and email address?

14 A. I don't remember asking that.

15 Q. The investors all knew you because you are
16 mentioned in the POM, though, correct?

17 A. I assume they knew my name.

18 (Deposition Exhibit No. 660 was marked for
19 identification.)

20 Q. (BY MR. RUTH) Handing you what's been marked as
21 Exhibit 660, it's an email from you to David dated
22 Wednesday, August 3rd, 2016.

23 Do you see that?

24 A. Yes, I do.

25 Q. At the top you write: David, I'm not

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1 comfortable agreeing to provide the duties listed in your
2 proposed letters to the investors.

3 Do you see that?

4 A. Yes, I do.

5 Q. What happened? Why not?

6 A. I believe what spurred that was reading the
7 suicide note. And quick review of, you know, what Denny
8 told me about Menaged and the overall portfolio, I think I
9 realized that this was out of my scope for, you know,
10 backup liquidation role.

11 Q. When you say quick review of what Denny told you
12 about Menaged, you mean in the suicide note or verbally?

13 A. In the suicide note.

14 Q. So you just reached the conclusion that someone
15 else, a third party, should step in and take control of
16 this?

17 A. Yes.

18 Q. Were you concerned about lawsuits or being sued?

19 A. No. Just that the right person handled it.

20 Q. Do you know if you consulted with an attorney
21 before sending this email?

22 A. I did not.

23 Q. Did you consult with the co-owners in RLS
24 Capital?

25 A. I consulted with them. I don't know that it

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1 directly had involvement in this email or not.

2 Q. You state in the second paragraph: I have not
3 had any involvement in the DenSco business and no legal
4 authority to act on behalf of the company.

5 Do you see that?

6 A. Yes.

7 Q. How did you come to that conclusion?

8 A. Well, I wasn't active in the business, and I
9 believed I didn't have any ability to sign for anything.

10 Q. And, again, you didn't run that -- you didn't
11 come to this conclusion after seeking the advice of a
12 lawyer or anything like that?

13 A. No.

14 Q. Do you recall Mr. Beauchamp being upset?

15 A. I recall him being frustrated, yes.

16 Q. Do you recall any more specifics or just
17 frustrated with you, frustrated with the process?

18 A. I think a little bit of both. Frustrated at me
19 making that particular decision, and I'm sure the process
20 to come.

21 Q. And then ultimately this letter to the investors
22 went out without your name on it, correct?

23 A. I believe so, yes.

24 Q. Can you grab a binder that's got 214 in it.

25 This is an email from David, dated August 3rd,

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1 to Shawna and copied to you.

2 A. Yes, I see that.

3 Q. In the middle he writes: Under separate copy, I
4 will send the original email to Gary Clapper at the
5 Arizona Securities Division.

6 Do you see that?

7 A. Yes.

8 Q. Did you personally have any discussions with
9 anybody at the Arizona Securities Division?

10 A. When they picked up the documents --

11 Q. That was the extent of it?

12 A. -- there was a brief discussion. Yeah.

13 Q. So the discussion was here are the documents, or
14 was there a substantive discussion as to --

15 A. No, it wasn't substantive.

16 Q. So you never had a conversation or a
17 communication with Gary Clapper?

18 A. No.

19 Q. Or Wendy Coy?

20 A. No.

21 Q. Flip to 218 in that book.

22 So Exhibit 218 is a series of emails dated
23 August 4th, 2016, between yourself and David Beauchamp and
24 Shawna?

25 A. Yes.

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1 Q. And the email that you sent, the first email in
2 this chain, states: Hello Shawna, As per your request, I
3 have gathered some preliminary information in regards to
4 loans that DenSco holds. These estimates are derived from
5 the information that was provided after Denny's passing.

6 Do you see that?

7 A. Yes, I do.

8 Q. Do you recall looking at sort of what you have
9 summarized here, what information you were provided in
10 order to reach these conclusions?

11 A. I believe most of this information was derived
12 from the spreadsheet.

13 Q. Those property statements --

14 A. Yeah.

15 Q. -- that we took a look at?

16 A. Correct.

17 Q. Do you recall if that spreadsheet that you were
18 reviewing at the time had anything similar to those
19 additional tabs that we reviewed earlier?

20 A. I don't recall.

21 Q. Do you recall taking any notes? Do you have
22 any, like, work papers from the work you did on this?

23 A. I'm assuming I wrote whatever numbers down here
24 on paper before I disseminated them in email.

25 Q. Do you know if you still have those notes?

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1 A. Don't know if I have them.

2 Q. What was your reaction after sort of summarizing
3 this information?

4 A. Not -- not happy. Scared for the investors and
5 myself.

6 Q. Had Mr. Chittick given you any indication as to
7 any of these troubles or the depths of those troubles?

8 A. No.

9 Q. Were you surprised that Mr. Chittick had so much
10 of his portfolio tied up with a single borrower?

11 A. Yes.

12 Q. Is that good business practice?

13 A. No.

14 Q. Sort of generally understood not to be good
15 business practice in your area?

16 A. Generally, yes.

17 Q. At the top Mr. Beauchamp writes to you: Sorry
18 for the phone call last night. I was wrong to push you so
19 hard on the phone.

20 Do you see that?

21 A. Yes, I do.

22 Q. Do you recall what he was pushing you to do?

23 A. To stay involved, I believe.

24 Q. After you sort of summarized this information,
25 did you have an understanding that this was going to be

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1 sent to the investors?

2 A. No. I wasn't sure how they were going to
3 disseminate it, but I promised I would do it.

4 Q. Okay. Was this sort of your last function?

5 A. Yeah.

6 Q. I'm sorry do this, but you are going to have to
7 go to one of the other binders --

8 A. Okay.

9 Q. -- with 442 in it.

10 A. Okay.

11 Q. So this is Exhibit 424, a series of emails dated
12 August 5th, 2016. If you could look at the -- the initial
13 set of emails involve a man by the name of Barry Luchtel.

14 Do you know who Mr. Luchtel is?

15 A. I don't know him, but I know his name.

16 Q. You were aware that he was a borrower?

17 A. Yes. Wasn't he a borrower and an investor?

18 Q. Yes.

19 A. Then, yes, I remember.

20 Q. And it looks like Mr. Luchtel is asking some
21 questions of Mr. Beauchamp, who then forwards his emails
22 to you --

23 A. Okay. I see that.

24 Q. -- at the top of the second page. Because it
25 asks about the process for a payoff calculation to obtain

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1 deeds of release and reconveyance.

2 Do you see that?

3 A. Yes.

4 Q. And then you respond on the first page: I can
5 help Shawna with this.

6 Do you see that? Towards the bottom. There you
7 go.

8 A. Yes.

9 Q. What was your involvement with respect to
10 dealing with loan payoffs and releases?

11 A. Shawna didn't know how to handle them, and
12 borrowers that wanted to pay off were starting to call,
13 and title companies as well who knew I had a relationship
14 with Denny were starting to call me, so I knew that was
15 going to be an issue. Plus the fact that investors, it
16 was important for them for those loans to pay off to
17 collect the money, so I was willing to help facilitate
18 some way if I could.

19 Q. And what was required of you in order to
20 facilitate that process?

21 A. I believe what I did was looked at the
22 spreadsheet based on the current information of the loan,
23 provided I believe it was David the numbers of what should
24 be due and who was requesting the payoff.

25 Q. So that spreadsheet would have had to allow you

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1 to sort of calculate interest accumulating on a day-by-day
2 basis to get an accurate payoff amount?

3 A. Yes.

4 Q. Do you think you used Mr. Chittick's QuickBooks
5 in order to arrive at that information --

6 A. No.

7 Q. -- or was there a different spreadsheet?

8 A. It would have been the property spreadsheet.

9 Q. Property spreadsheet.

10 Do you know if there was like a calculator built
11 into the spreadsheet, or did you have to...

12 A. I don't remember. He might have had it done
13 that way, but the information as far as date of the loan
14 and the last payment was available.

15 Q. It looks like Mr. Beauchamp is involved in this
16 process as well.

17 A. Yes.

18 Q. Do you recall what his role was?

19 A. I believe just kind of to oversee that it was
20 sent out or done okay. Review it.

21 Q. Did you form any impressions of his actions,
22 after the death, of facilitating these loan payoffs?

23 A. No. He seemed available for Shawna, and if --
24 and then when I either called him or emailed him, he was
25 responsive.

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1 Q. Did you consider him helpful?

2 A. Yes.

3 Q. If you look at the top, top email, Mr. Beauchamp
4 writes to you and to Shawna as well or, I'm sorry, Shawna
5 writes to you and to Mr. Beauchamp as well, towards the
6 end: I have a new reliable forensic accountant lead that
7 I'm going to contact right now.

8 Do you see that?

9 A. Yes.

10 Q. Do you recall any discussions with David or with
11 Shawna about hiring a forensic accountant?

12 A. I kind of recall, when I met Shawna and David at
13 Beauchamp's office, him recommending that.

14 Q. David recommended that?

15 A. I recall that, yeah.

16 Q. Do you recall any discussions with David or with
17 Shawna about involving law enforcement?

18 A. No. No.

19 Q. Or the FBI?

20 A. No.

21 Q. Did you have any discussions with any of the
22 attorneys at Gammage & Burnham, Kevin Merritt or Jim
23 Polese?

24 A. Kevin Merritt, I believe, called me at one
25 point.

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1 Q. Do you recall what that was about?

2 A. I think he was calling about Mr. Beauchamp. We
3 were talking about asking me some questions, and I
4 remember saying: Just so you know, I'm an investor. I
5 don't think -- you know, just so we don't cross any lines,
6 and I kind of remember that being the quick end of the
7 conversation, and thanks for being helpful.

8 Q. Do you know if Mr. Merritt was involved at all
9 with the payoff issues and getting releases?

10 A. I don't know that, no.

11 Q. Do you recall ever having any conversations with
12 David or Shawna about Menaged's bankruptcy attorney, Cody
13 Jess?

14 A. No.

15 Q. Do you know if -- after Chittick's death, do you
16 recall David Beauchamp ever expressing concern to you that
17 the investors might sue his law firm or that his law firm
18 might be at risk of lawsuit?

19 A. No.

20 Q. Do you remember the issue of potential conflicts
21 ever coming up?

22 A. No.

23 Q. Did it seem to you sort of the collective goal
24 between you and Shawna and David was to simply gather the
25 information and provide it to the investors?

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1 A. Yes, that was the initial goal.

2 Q. Did you form any thoughts or opinions about
3 Mr. Beauchamp after Mr. Chittick's suicide, how he handled
4 himself?

5 A. No different than I thought before.

6 Q. And that was positive?

7 A. Yes.

8 Q. Do you recall having any discussions with
9 Mr. Beauchamp prior to Mr. Chittick's suicide regarding
10 DenSco, other than signing the letter?

11 A. No. That's the only one I recall.

12 Q. I'm sorry. Which one are you in? Can you get
13 to 413? Is that in there?

14 A. No.

15 Q. So I have handed you what's been marked as
16 Exhibit 413, and this was information that Mr. Chittick
17 drafted for his investors prior to his death.

18 A. Yes.

19 Q. Have you ever seen this document before?

20 A. Yes.

21 Q. Have you read this document before?

22 A. I believe I have.

23 Q. If you look -- I just want to talk about a
24 couple sentences in here. Starting on the first page,
25 about six sentences down, Mr. Chittick writes: Things

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1 were working perfectly until 2008. We had the great
2 recession and Phoenix was the epicenter of the housing
3 crash.

4 Do you see that?

5 A. Yes.

6 Q. He says: I was always impressed and surprised
7 that nearly everyone stuck with me through it.

8 Do you see that?

9 A. Yes.

10 Q. Do you recall having any discussions with
11 Mr. Chittick during that crash about retaining his
12 investors or weathering the storm?

13 A. I think we both talked about that.

14 Q. If you keep going down, he writes: I was able
15 to talk to a few of you to help me make decisions on what
16 I should do. Should I sell these house -- I assume it
17 says houses -- I was getting back and take huge losses or
18 keep them, rent them, hope the market comes back?

19 Then he says: Gladly after consultations from
20 several of you, you agreed with my strategy, it was
21 smarter to rent them at cash flow neutral my interest
22 costs and wait it out.

23 Do you see that?

24 A. I haven't found it yet, but I heard you.

25 Q. I'm sorry.

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1 A. Yes, I found it.

2 Q. Okay. Were you one of the -- did you have
3 consultations with Mr. Chittick about this?

4 A. Not in regards to the strategy during that time.

5 Q. Did you generally have conversations with
6 Mr. Chittick about business strategy?

7 A. No.

8 Q. Do you recall discussing with him, you know,
9 rentals versus flips or investing in commercial?

10 A. That could have been a conversation, yes.

11 Q. But you don't recall specifically?

12 A. No. We were dealing with the same type of
13 problems.

14 Q. If you go down, it might be a little hard to
15 find, I can show you on my page, maybe it's easier for you
16 to see, where it starts with Scott?

17 A. Yes.

18 Q. I believe he is referring to Mr. Menaged. Here
19 he says: Scott contacted me and asked if would be
20 interested in funding a bank of rentals to which a hedge
21 fund friend of his out of New York would buy once it
22 reached 7 to 10 million.

23 Do you see that?

24 A. Yes.

25 Q. Do you ever recall discussing with Mr. Chittick

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1 anything about a hedge fund?

2 A. No.

3 Q. It goes on to say: He would put down 15 to
4 20 percent, fix them up and rent them and then when he
5 acquired the total dollar amount he would sell out to this
6 guy. That amount of money would take me over me 10 to
7 15 percent threshold to any one borrower. Again I talked
8 to a few of you investors and got a positive response,
9 based on his track record, the down payments, etc, the
10 comfort level was there.

11 Do you see that?

12 A. I do see that.

13 Q. Do you recall him ever talking to you about
14 this?

15 A. Never, no.

16 Q. Did any of the other investors ever indicate to
17 you that he had talked to them about any of this?

18 A. No, they did not.

19 Q. After Mr. Chittick's death, did you talk about
20 this letter with any of the investors?

21 A. That's possible.

22 Q. Do you know if any of these issues came up? For
23 example, did you ask any of the other investors whether
24 Mr. Chittick consulted with them about increasing their
25 lending to Mr. Menaged?

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1 A. I didn't ask that specifically, but I had the
2 impression, everyone I was talking to, that was not what
3 happened.

4 Q. If you keep going down, Mr. Chittick writes:
5 For efficiency sake, I would normally wire the funds I am
6 lending to the bidding company. They would get the check
7 and give it to the trustee. Send me receipts. Sometimes
8 I would even wire the full amount and my borrower would
9 bring me their down payment check and bidding fee because
10 they lived here in the East valley versus running across
11 town. I have operated this way ever since I was given the
12 ability to wire online in 2003.

13 Do you see that?

14 A. Yes.

15 Q. Were you aware of that, that this is how
16 Mr. Chittick had operated since 2003?

17 A. No, I wasn't.

18 Q. In your discussions with the investors, did any
19 of them suggest that they were aware that this is how
20 Mr. Chittick had operated?

21 A. No, they didn't.

22 Q. Would you consider that good business practice?

23 A. I would not, no.

24 Q. Were you surprised to read that Mr. Chittick was
25 operating like this?

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1 A. Yes, I was.

2 Q. He was a smart guy?

3 A. Yes, he was.

4 Q. He then concludes: Many of you knew this and I
5 told you this is how I operated.

6 Do you see that?

7 A. I do see that.

8 Q. Did he tell you?

9 A. No, he did not.

10 Q. And, again, you haven't heard anything from any
11 other investor that suggests he told them this?

12 A. That is correct, I have not.

13 Q. If you flip to the second page, close to the
14 top, it starts with: He would sign.

15 A. Yes.

16 Q. It says: He would sign all my docs -- referring
17 to Menaged -- and then I would record the Mortgage receipt
18 and then once I saw the trustee's deed was recorded, which
19 sometimes took a few weeks, I would then record my Deed of
20 Trust. This was to cloud title until the trustee's deed
21 was recorded.

22 Do you see that?

23 A. Yes, I do.

24 Q. Were you aware that this is how Mr. Chittick was
25 conducting his business?

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1 A. Yes, I was.

2 Q. You were?

3 A. Yes.

4 Q. This how you conduct -- this is not, however,
5 how you conduct your practice, correct?

6 A. Correct.

7 Q. And why is that again?

8 A. We don't use the receipt. We record the Deed of
9 Trust.

10 Q. He goes on to say: Some lenders record a Deed
11 of Trust the day the property is paid for and then
12 re-record Deed of Trust.

13 would that describe how RLS Capital proceeds?

14 A. Yes.

15 Q. So once the trust deed is issued, RLS then
16 re-records the deed of trust?

17 A. Yes.

18 Q. Okay. I think I'm almost done. Let me
19 double-check on one last exhibit.

20 A. Okay.

21 (A recess was taken from 12:42 p.m. to
22 12:44 p.m.)

23 Q. (BY MR. RUTH) Let's go to 208.

24 This is Exhibit 208. It is Mr. Chittick's
25 letter to you, correct, Mr. Koehler, prior to his death?

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1 A. Yes, it is.

2 Q. And you have reviewed this letter before?

3 A. Yes, I have.

4 Q. I just have a couple questions on some of the
5 statements in here.

6 In the first paragraph he writes: The
7 spreadsheet I gave you are all the loans.

8 Do you see that?

9 A. Yes, I do.

10 Q. Is that the property statement spreadsheet that
11 you think --

12 A. I believe that's what he is referencing, yes.

13 Q. He says: The ones that aren't Scott, save maybe
14 the oldest 5, except Lobo are all good.

15 Then he goes on to say: Some of them, a few
16 loans with me, so I didn't duplicate them. I was going to
17 email them all -- I believe he is referring to the
18 borrowers -- and say to contact you, but I'd rather you do
19 that because the timing of my email to them and my demise
20 may conflict. And then he provides instructions on what
21 you should say.

22 Do you see that?

23 A. Yes, I do.

24 Q. Do you recall ever sending -- did you ever send
25 an email to any of the borrowers?

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1 A. No.

2 Q. In paragraph 3 he writes: You have DenSco
3 properties, that's all open loans. Second tab is closed
4 loans. Third tab is monthly payment reminder details for
5 borrowers.

6 Do you see that?

7 A. Yes, I do.

8 Q. Were you aware of those second tabs and third
9 tabs when he was sending you the property statements
10 before?

11 A. No. I never paid attention to them.

12 Q. If you flip the page to paragraph 6, he writes:
13 Scott owes 14 million from the bad debt of the double
14 encumbered properties that I had to pay off back in 2013
15 and 2014. How this number is contrived out of the
16 situation of double encumbered properties.

17 Then he says: Talk to Dave Beauchamp,
18 602-319-5602 about the details. I sent him a long letter
19 with exact details of how this all happened.

20 Do you see that?

21 A. I do see that.

22 Q. Did you ever see a letter sent to David -- that
23 was addressed to David Beauchamp from Mr. Chittick?

24 A. No.

25 Q. Did you talk with Dave Beauchamp about how

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1 this -- how we got this \$14 million number?

2 A. I don't think we ever got to that specific, no.

3 Q. The statement, "I sent him a long letter with
4 exact details of how this all happened," does that suggest
5 to you that Mr. Beauchamp didn't already know how it
6 happened?

7 A. Repeat that. I'm sorry.

8 MR. STURR: Object to the form.

9 Q. (BY MR. RUTH) Does that sentence suggest to
10 that you Mr. Beauchamp didn't already know how it
11 happened; that Mr. Chittick had to explain it to him in a
12 letter?

13 MR. STURR: Object to the form.

14 THE WITNESS: I'm still -- I'm sorry. I'm
15 having trouble.

16 Q. (BY MR. RUTH) It's not a very good question.
17 safe to say, though, you did not have a
18 conversation with Mr. Beauchamp about how Mr. Chittick
19 ended up in hock to Mr. Menaged?

20 A. I don't think so.

21 Q. In paragraph 7 he writes: The 28.1 million is
22 the amount that is holding from the "wholesale"
23 transaction that Scott was doing. Again, Dave knows about
24 how this worked.

25 Do you see that?

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1 A. I do see that.

2 Q. Did you have any conversations with Dave about
3 this wholesale transaction?

4 A. No.

5 Q. Did you ever get the sense from Mr. Beauchamp
6 that he was aware of what was going on with DenSco in the
7 years prior to Mr. Chittick's death?

8 A. No, he never told me specifically he was aware.

9 Q. Did you ask him?

10 A. I don't believe I did, no.

11 Q. Did you ask -- were you aware whether
12 Mr. Beauchamp was still serving as DenSco's lawyer at the
13 time of the suicide? Did you know one way or the other?

14 A. I assumed. I don't know that I verified it by
15 asking anybody.

16 Q. Did you ever ask Mr. Beauchamp if he was still
17 serving as counsel to DenSco?

18 A. I don't know that I asked him that specific
19 question, no.

20 MR. RUTH: I have no further questions.

21

22 EXAMINATION

23

24 Q. (BY MR. STURR) Mr. Koehler, I have a few
25 questions for you.

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1 A. Okay.

2 Q. AS you know, I'm Geoffrey Sturr. I represent
3 Peter Davis, the receiver.

4 When was -- and you may have said this. I
5 didn't hear it. When was RLS Capital founded?

6 A. I believe 2007.

7 Q. 2007.

8 And you are one of the founders?

9 A. Yes.

10 Q. You were telling us a little bit about your
11 business practices.

12 In a year, I will use the same timeframe
13 Mr. Ruth was using, say from 2012 to 2014, in that time
14 period, how many loans per year were you and your team
15 processing, just approximately?

16 A. I would say 170-ish.

17 Q. And you mentioned that RLS originates -- RLS
18 Mortgage originates for RLS Capital.

19 Can you explain what you meant by "originate"?

20 A. Yes. RLS Mortgage is a mortgage bank, so -- and
21 I am a licensed mortgage loan originator. So RLS Capital
22 is a private fund lender, so RLS Mortgage operates as a
23 mortgage broker to pass deals through to RLS Capital,
24 being the actual lender, or sell notes is a better way.

25 Q. So is RLS mortgage, is that licensed, then, by

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1 the Arizona Department of Financial Institutions?

2 A. Yes, it is.

3 Q. What are the consequences of being licensed,
4 just in very brief terms?

5 A. You can charge fees for brokering deals. You
6 can service loans. I don't know what you meant
7 by consequences.

8 Q. Well, I'm sorry. Let me be more precise.

9 Does that mean that you are subject to
10 regulation, review, audits, those kinds of things?

11 A. We are subject to those exams, yes, by the
12 Department of Financial Institutions.

13 Q. How often do these occur?

14 A. Once every five years, I believe.

15 Q. And then I wanted to ask you -- so you founded
16 the company in 2007. I just wanted to go back, and you
17 said that at one time David Beauchamp was the lawyer for
18 RLS Capital?

19 A. Yes.

20 Q. So that would have been in 2007 when the company
21 was founded?

22 A. Yes.

23 Q. Is it possible -- do you know how you were
24 introduced to Mr. Beauchamp?

25 A. Through Mr. Chittick.

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1 Q. And there was a period of time when
2 Mr. Beauchamp was the company lawyer; you don't recall for
3 how long?

4 A. Correct.

5 Q. Okay. I wanted to ask you about -- this may
6 refresh your recollection.

7 MR. STURR: Kelly, can we mark this.

8 (Deposition Exhibit No. 661 and 662 were marked
9 for identification.)

10 Q. (BY MR. STURR) Okay. Let me start with 662,
11 Mr. Koehler, just for a minute.

12 Exhibit 662 is a document that we obtained from
13 Mr. Beauchamp's files. It's a redline, you can see, of a
14 Subscription Agreement, and it says RLS Capital, Inc. and
15 then it has some cross-outs there.

16 And there is a reference in that first
17 paragraph, excuse me, the third paragraph down to a
18 Private Offering Memorandum dated April 17, 2007.

19 Do you see that?

20 A. Yes, I do.

21 Q. Does that refresh your memory that in April of
22 2007, RLS Capital issued a Private Offering Memorandum?

23 A. Yes.

24 Q. And that was prepared by Mr. David Beauchamp?

25 A. Yes.

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1 Q. And Mr. Beauchamp was at the law firm Gammage &
2 Burnham at that time?

3 A. I believe he was, yes.

4 Q. The notes --

5 MR. RUTH: Am I looking at the same one you are?
6 Mine is redlined and struck through. Is yours as well?

7 THE WITNESS: Yes.

8 MR. STURR: Did I give you the wrong copy? It
9 should say --

10 MR. RUTH: I'm just wondering. Mine is entirely
11 struck through.

12 MR. STURR: Is it a Subscription Agreement?

13 Yeah. No. I'm looking at the struck-out text.

14 MR. RUTH: Oh, okay.

15 Q. (BY MR. STURR) This is a note that we obtained
16 from Mr. Beauchamp's file, and this is a note --

17 MR. DeWULF: Can I interrupt just for a second?

18 MR. RUTH: You can go off.

19 (An off-the-record discussion.)

20 Q. (BY MR. STURR) These are notes that
21 Mr. Chittick wrote about a conversation he had with Denny,
22 excuse me, Mr. Beauchamp wrote of a conversation with
23 Denny Chittick on May 1, 2007.

24 And his notes state: Denny thinks this should
25 be a lot easier since we just did the RLS offering.

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1 And a few lines down, it says: Assured Denny
2 that legal costs will be treated fairly since RLS used his
3 book.

4 Did you know that Mr. Beauchamp had used a form
5 of a DenSco offering memorandum for the RLS offering
6 memorandum?

7 A. I don't know if I knew that specifically, but it
8 wouldn't surprise me.

9 Q. So when we look at Exhibit 650, which is your
10 investor packet --

11 A. Uh-huh.

12 Q. -- and within it there is a copy of an offering
13 memorandum that was issued on May -- June 1, 2007, was the
14 offering memorandum Mr. Beauchamp prepared for RLS Capital
15 substantially similar to this POM?

16 MR. RUTH: Object to form, foundation.

17 Q. (BY MR. STURR) If you remember.

18 A. I don't remember. I would have to see them side
19 by side.

20 Q. Do you remember anything about the Private
21 Offering Memorandum that Mr. Beauchamp prepared for RLS
22 Capital's use?

23 A. Do I know anything about it?

24 Q. Yeah. Do you remember anything about it?

25 MR. RUTH: Object to form.

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1 THE WITNESS: Yes, I do.

2 Q. (BY MR. STURR) Just what do you remember the
3 offering memorandum said or did?

4 A. Basically disclosed the company intentions,
5 actions; disclosed potential downfalls, conflicts, market
6 conditions. Any effect, change of market could --
7 anything an investor would need to know to make an
8 informed decision.

9 Q. Do you remember that the offering memorandum had
10 a time period during which it was in effect?

11 MR. RUTH: Object to form.

12 THE WITNESS: I don't remember that
13 specifically, no.

14 Q. (BY MR. STURR) Did you recall that the DenSco
15 offering was a two-year offering, was in effect for two
16 years?

17 A. I don't recall.

18 Q. And you testified earlier about in the past the
19 company used a receipt and mortgage?

20 A. Yes.

21 Q. And that would have been in about 2007 when the
22 company was founded?

23 A. I don't know that RLS Capital ever used a
24 receipt and mortgage. It might have been the company
25 prior to me working -- Real Estate Equity Lending, prior

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1 to RLS Capital.

2 Q. So you are not sure if RLS Capital used that
3 document?

4 A. Yeah. I don't believe we did.

5 Q. Okay. And then you testified that at some point
6 you stopped using Mr. Beauchamp as the company's lawyer
7 and you were using a lawyer by the name of Jerry Black?

8 A. Yeah, Jerry Black.

9 Q. Do you know what firm Mr. Black is affiliated
10 with?

11 A. Not without looking. I can't remember.

12 Q. Mr. Ruth was asking you questions, Mr. Koehler,
13 about the agreement that you signed, in which you agreed
14 to stand in for Mr. Chittick --

15 A. Yes.

16 Q. -- if he died.

17 Do you recall that?

18 A. I do.

19 Q. And Mr. Ruth asked you if you had a reciprocal
20 agreement, and you said you didn't recall having one.

21 A. No.

22 MR. STURR: I don't have a copy marked, Marvin,
23 but I want to show the witness this document to refresh
24 his recollection.

25 This is -- it's Bates stamped DIC001608. This

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1 came from Mr. Beauchamp's files. And, Marvin, it's a
2 document that is marked RLS Capital letterhead.

3 MR. RUTH: Okay.

4 Q. (BY MR. STURR) And it's scratched out and he
5 has essentially flipped. This was a letter that was
6 evidently for RLS to have Denny Chittick serve in the
7 event of your incapacity, and it's been revised to apply
8 to DenSco.

9 Do you recall that Mr. Beauchamp prepared a
10 document under which Denny Chittick would stand in for you
11 if something happened to you?

12 A. No.

13 Q. It doesn't refresh your memory?

14 A. No.

15 Q. Do you remember getting any advice from
16 Mr. Beauchamp in that time period about the letter that
17 you were signing on behalf of -- to stand in for
18 Mr. Chittick?

19 A. Not advice, no.

20 Q. Do you remember what he told you about it?

21 A. No, nothing specific, besides the fact that this
22 was a general agreement, and make sure I was okay with
23 signing it, I think it was probably.

24 Q. But to be clear, in 2007 Mr. Beauchamp was RLS's
25 lawyer, correct?

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1 MR. RUTH: Object to form.

2 THE WITNESS: I believe he was, yes.

3 Q. (BY MR. STURR) And he was also DenSco's lawyer?

4 A. Yes, I believe so.

5 Q. In the years that you have been operating RLS
6 Capital, has the company ever been sued in a lawsuit over
7 a loan priority, where another lender is claiming it has a
8 priority over a loan that the company made?

9 A. Yes.

10 Q. How often has that happened?

11 A. I would say maybe three times. Maybe three,
12 maybe four times.

13 Q. And what are the circumstances that give rise to
14 that lawsuit?

15 A. It usually was because of a fraudulent, recorded
16 fraudulent release. I think actually in all cases it was
17 because of a recorded fraudulent release, and then another
18 lender was asked to come in and put money on the property.

19 Q. Did the company prevail in those lawsuits?

20 A. Yes, we did.

21 MR. STURR: I don't want to keep you any longer,
22 appreciate your time. That's all I have.

23 THE WITNESS: Thank you.

24 MR. RUTH: Thank you so much. I really
25 appreciate it.

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1 MR. STURR: Marvin -- since you probably don't
2 know, a witness can ask for the right to review a
3 transcript and make corrections to it.

4 THE WITNESS: Okay.

5 MR. STURR: And they can waive the right. You
6 actually have to ask for it now. So if you wanted the
7 right to review the transcript to make sure your testimony
8 is accurate, we can -- you can make that request and
9 Marvin or I will get you a copy, if that's what you would
10 like. It's up to you. It's 30 days you will have to
11 review it.

12 THE WITNESS: And I have a copy that I can
13 review?

14 MR. RUTH: Yes, we will provide you one.

15 THE WITNESS: Yeah, I will take a copy of that.

16 MR. STURR: Okay.

17 (1:00 p.m.)

18

19

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ROBERT ZACKERY KOEHLER

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

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

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

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

13
 14 Kelly Sue Oglesby
 Kelly Sue Oglesby
 Arizona Certified Reporter No. 50178

12/30/2018

Date

15
 16 I CERTIFY that JD Reporting, Inc. has complied
 17 with the ethical obligations in ACJA Sections
 7-206(J)(1)(g)(1) and (6).

18
 19
 20 JD REPORTING, INC.
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12/30/2018

Date