

**In the Matter Of:**

Peter S. Davis vs Clark Hill P.L.C.

CV2017-013832

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**ANTHONY BURDETT**

*March 22, 2019*

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SUPERIOR COURT OF ARIZONA

COUNTY OF MARICOPA

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

Plaintiff,

v.

Cause No. CV2017-013832

Clark Hill P.L.C., a Michigan  
limited liability company;  
David G. Beauchamp and Jane  
Doe Beauchamp, husband and  
wife,

Defendants.

\*\*\*\*\*

ORAL DEPOSITION OF

ANTHONY BURDETT

MARCH 22, 2019

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The Oral Deposition of ANTHONY BURDETT, taken at  
the request of the Defendants, pursuant to the Texas  
Rules of Civil Procedure, on Friday, March 22, 2019,  
from 9:44 a.m. to 1:26 p.m., at 201 East Main, Suite  
1616, El Paso, Texas 79901.

Stenographically Reported by:

Tara K. Riojas, TX & NM CSR, RMR/CRR/RPR

A P P E A R A N C E S

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I N D E X

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ANTHONY BURDETT

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1 MR. DEWULF: We'll take the regular  
2 transcript, the condensed and the ASCII version.

3 MR. CAMPBELL: And I will do the same  
4 thing.

5 ANTHONY BURDETT,  
6 sworn by the Certified Court Reporter, testified as  
7 follows:

8 EXAMINATION

9 BY MR. DEWULF:

10 Q. Could you please state your name for the  
11 record.

12 A. Anthony Burdett, B-U-R-D-E-T-T.

13 Q. All right. So you -- off the record you  
14 indicated that you'd like to be addressed as Tony. Is  
15 that comfortable for you?

16 A. That's fine.

17 Q. Tony, have you been deposed before?

18 A. Many years ago in the late '70s or early '80s.

19 Q. All right. Let me -- let me go through a few  
20 things to keep in mind which hopefully will allow  
21 things to go more efficiently. Tara there -- you're  
22 under oath to tell the truth. You understand that.  
23 Right?

24 A. Yes.

25 Q. And Tara, the court reporter there, will type

1 down what you and Mr. Campbell and I say this morning  
2 in the deposition and those -- that testimony will be  
3 then typed into -- will become a transcript that can be  
4 used in court proceedings. Do you understand that?

5 A. Yes, I do.

6 Q. The goal here is to find out what you know  
7 with respect to a historical -- your historical  
8 involvement as an investor in DenSco. Do you  
9 understand that?

10 A. Yes, I do.

11 Q. My name is John DeWulf and I represent the  
12 defendants. The lawyer David Beauchamp and his law  
13 firm Clark Hill and they've been sued by counsel  
14 representing the receiver for DenSco. And Mr. Campbell  
15 is here representing the receiver.

16 There may be times when one of us might  
17 object to the other's questions and that's really to  
18 preserve the right later on in court in case we want to  
19 fight about a question or an answer. But you should  
20 proceed and try to answer the question, if you can. Do  
21 you understand that?

22 A. I do.

23 Q. Now, the goal here is to try to ask  
24 understandable clear questions, but sometimes we fail  
25 at that. If you do not understand our question, will

1 you please let us know.

2 A. I will.

3 Q. All right. Now, if you answer the question  
4 that we ask you, we're going to assume you understood  
5 the question we asked you. Is that fair?

6 A. Yes.

7 Q. Now, it's difficult for the court reporter to  
8 take down more than one person speaking at the same  
9 time so we'll need to extend the courtesy to one  
10 another to allow the other to complete speaking before  
11 the other speaks. Do you understand that?

12 A. Yes.

13 Q. The other thing -- two other things. One is  
14 your responses will need to be audible so that the  
15 court reporter and we can hear you and they will need  
16 to be -- and they'll need to be verbal in the sense  
17 that uh-huh, huh-uh is difficult to understand in the  
18 record.

19 Now, as a general procedure, Colin and I  
20 have -- we break about every hour or so, get up and  
21 stretch and use the restroom or whatever. But if -- if  
22 that doesn't fit you or if you want to do it more  
23 frequently, just let us know. Okay?

24 A. Yes.

25 Q. All right. Now, I tried to do some research

1 on your background, but I don't have, unfortunately, a  
2 lot of information so I'm going to ask you some  
3 background questions, if I could.

4           Could you summarize where you went to  
5 high school, what year and if you attended any post  
6 high school educational institutions?

7           A.    Yes.  I graduated from Ysleta High School in  
8 1962.  I got a bachelor of arts degree or bachelor of  
9 business administration degree at UTEP in 1973.

10          Q.    And you became a CPA.  Correct?

11          A.    Yes, I am.

12          Q.    When did you become a CPA?

13          A.    January 31st, 1977.

14          Q.    And have you kept your CPA license active  
15 since then?

16          A.    I went on retirement status two years ago.  It  
17 was active from 1977 through 2016, 2017.

18          Q.    And you reside in El Paso currently?

19          A.    Yes, I do.

20          Q.    How long have you resided in El Paso?

21          A.    My whole life, 74 years.

22          Q.    And you were born in the year 1945 in March?

23          A.    That's correct.

24          Q.    I'd like to go through with you your career  
25 background.  We don't need details.  I'm going to ask



1 you just a broad narrative question so that I'll just  
2 allow you to educate Mr. Campbell and me.

3 Starting from your graduation from UTEP  
4 if you could kind of summarize where you worked, what  
5 you did and for what years as a background for us. We  
6 can always ask more specific questions if we need to.

7 A. Okay. I graduated in May of '73 and went to  
8 work for Farah Manufacturing Company. It was a -- an  
9 apparel manufacturer in El Paso. I worked in the  
10 international accounting division and that's where I  
11 met Warren Bush, he was my supervisor. I stayed there  
12 through '75, went to sit for the CPA exam and passed  
13 the two parts of the four-part exam. I went to work in  
14 public accounting in January of 1976; I worked there  
15 through 1980. It was a small public accounting firm,  
16 N.C. Binyon and Company. From there I went to  
17 Robert E. McKee, it was a large general contractor that  
18 was founded and headquartered in El Paso, and I worked  
19 there from 1980 through May of 1985. I became the  
20 chief financial officer, the treasurer, vice president  
21 of finance.

22 From that point they relocated their  
23 headquarters to Dallas and I chose not to relocate so I  
24 started my own CPA firm as a public accountant in  
25 January of 1976 through November of 1998, at which time

1 I went to work for a local land developer by the name  
2 of Foster and Schwartz Developers. I retired from  
3 there at the age of 65 in 2010. I was the vice  
4 president of finance, CFO, and I continue to do  
5 consulting work with the founding family of that  
6 company and still do to this day. I just don't do  
7 anything -- I don't put out any financial statements or  
8 prepare any tax returns, anything that would require my  
9 license to be active. So that's what I do today on a  
10 very limited basis.

11 Q. You said the founding family. Was it the  
12 Foster family or the Schwartz family?

13 A. Foster family.

14 Q. And you still do that today?

15 A. I still do that today.

16 Q. You indicated that you had your own accounting  
17 firm from 1976 to 1998?

18 A. Yes.

19 Q. What did that firm focus on? What was its  
20 practice?

21 A. Public accounting, generally. Financial  
22 statement compilations and reviews, tax returns,  
23 financial planning and so forth. But primarily tax  
24 work would probably have been about 60 percent of it,  
25 compiled and reviewed financial statements, maybe

1 30 percent and the other miscellaneous consulting.

2 Q. So I tried to send you the documents I was  
3 anticipating we would talk about today and I know you  
4 reviewed some of those documents.

5 A. Uh-huh.

6 Q. Have you done anything else to prepare for  
7 today's deposition?

8 A. No. I reviewed --

9 Q. Did you speak to any --

10 A. I reviewed --

11 Q. I'm sorry. Say again.

12 A. I reviewed 12 to 15 documents, just pulled  
13 them up on my phone yesterday after they were emailed  
14 to me.

15 Q. Did you talk to anyone about it, any other  
16 investors or anyone else who may have been deposed in  
17 this case?

18 A. I have not. I mean warren Bush indicated that  
19 he had been deposed, also, but I -- I haven't  
20 communicated with Warren or really anybody else.

21 Q. My records indicate that you became an  
22 investor with DenSco in April of 2011. Is that  
23 consistent with your memory?

24 A. That is correct.

25 Q. Can you explain to us how you came to know

1 about DenSco and become an investor?

2 A. Through Warren Bush.

3 Q. Okay.

4 A. I -- he was my supervisor at Farah  
5 Manufacturing and he was -- we had lost contact over  
6 the years after I left Farah Manufacturing. And they  
7 had a reunion for Farah Manufacturing in El Paso and I  
8 went to that reunion and Warren wasn't there, but it  
9 kind of got me interested in reconnecting with him and  
10 so I did what everybody does, I Googled it and somehow  
11 got some contact information and we started  
12 communication again and he told me about DenSco.

13 Q. Do you remember, Tony, what Warren Bush told  
14 you about DenSco when you first got introduced to it?

15 A. Yes. He said, "Tony, I'd like you to check  
16 out this investment that I'm in." He said, "They've  
17 got a Website, why don't you check it out and give me  
18 your thoughts." And I did and I got back with him and  
19 I said, "It looks like a Ponzi scheme to me" -- And how  
20 prophetic that is -- anyway, he said, "Well, why don't  
21 you talk to Denny and," you know, "get any questions  
22 answered and so forth." And just by coincidence Warren  
23 Bush was friends with Denny Chittick's parents, Eldon  
24 and Carlene Chittick. So I did, I contacted Denny and  
25 got some history on the company. When I got invested

1 in 2011, he had been in business about 10 years. And I  
2 tried to do my homework, due diligence. I had him send  
3 me an Excel spreadsheet and I have some Excel skills so  
4 I got that worksheet and I did various sorts on it to  
5 see if it was consistent with what his Website was  
6 saying and they were.

7                   And then at some point, I met  
8 Denny Chittick and -- face-to-face and had him answer  
9 any questions I had. And I also looked through the  
10 entire history on the Website. When he started in  
11 2001, he would post a quarterly, I believe kind of a  
12 summary, of the -- that activity for the quarter and I  
13 reviewed each and every one of those quarterly  
14 statements to look for any inconsistencies in what he  
15 presented to me and I didn't find any. I found his  
16 worksheet to be confirmation of what he espoused on his  
17 Website, which were the three primary factors I was  
18 looking for. One, first lien deeds of trust; two,  
19 loan-to-value ratio of 60 to 7- -- 65, 70 percent and  
20 then diversification of his loan portfolio not to  
21 exceed 10 percent with any individual builder or a  
22 builder and their related companies. Those were the  
23 three things that I thought were crucial.

24                   And the homework that I did, the  
25 worksheet that he sent to me, going through the various

1 sorts, I was able to convince myself that, yeah, it  
2 looks like this is the real deal. So I did, I made an  
3 initial investment of 200,000 in, I believe it was,  
4 April of 2011. I made another \$100,000 investment, I  
5 believe it was, later that year or maybe the beginning  
6 of 2012, I can't recall for sure. And then finally I  
7 made another \$100,000 investment, bringing my total  
8 principal investment to 400,000, sometime in 2013.

9 Q. All right. Let me ask you a question. And  
10 that's helpful and we'll go through some of those  
11 statements and perhaps put a little more precision to  
12 the dates and the amounts, but what you just said is  
13 consistent with what I've seen.

14 And you would allow the interest on those  
15 obligations to accrue over time. Correct?

16 A. That is correct. I did not receive any  
17 interest.

18 Q. And the approach you would follow would be  
19 that when the term of the loan, the general loan you  
20 were making to DenSco, would come to an end, you would  
21 roll it over and enter a new note to replace that?

22 A. That's correct.

23 Q. All right. Let me go back to what you said  
24 earlier about Mr. Bush telling you you should check out  
25 DenSco and you indicated again what you did in terms of

1 due diligence. But did Mr. Bush tell you anything  
2 about his experience or his knowledge of either DenSco  
3 or the Chittick family?

4 A. Well, like I mentioned he knew -- he'd gone to  
5 college at the University of New Mexico with his  
6 parents and I believe I mentioned that I did meet his  
7 parents. I don't know if I did that or not, but I did  
8 meet his parents and they're very good people. And --  
9 but after I had indicated my initial doubts about the  
10 validity of the company and I did my research and so  
11 forth, my main question was -- to Warren was, "Well,  
12 who pays 18 percent on their money?" And he explained  
13 to me -- and, again, it made sense -- that if you're a  
14 typical flipper, you -- that 18 percent is for a very  
15 short period of time, probably two to three months  
16 until they buy the house, refurbish it, market it and  
17 sell it. And so in the whole scheme of things, while  
18 it's a high percentage rate of 18 percent, yeah, they  
19 don't have -- it doesn't come out to a large dollar  
20 amount of their total investment in a particular piece  
21 of property. So that's -- that made sense to me.

22 Also, DenSco offered a very  
23 streamlined -- maybe too streamlined -- approach to his  
24 lenders. In other words, he could get a deal put  
25 together in 15 minutes with his access to electronic

1 files and his knowledge of the real estate market in  
2 the two counties that he did business in so he was able  
3 to -- in other words, if you -- if a flipper would have  
4 gone to a commercial bank, they would have had to jump  
5 through a number of hoops to get the financing, whereas  
6 it was more streamlined with Denny and that to me made  
7 it a lot -- another reason it made sense that somebody  
8 would obligate themselves to an 18 percent interest  
9 rate. So that further --

10 Q. Well --

11 I'm sorry. Go ahead.

12 A. -- that further confirmed my confidence in  
13 what my research and due diligence had told me.

14 Q. We're going to see in documents later where I  
15 think you're asking questions about Denny Chittick's  
16 business model at DenSco. One of the things he  
17 emphasized was his relationship with his borrowers,  
18 that he knew a lot of his borrowers personally and  
19 could trust them. Do you recall him talking to you  
20 about that?

21 A. I believe so.

22 Q. Yeah. And that the trust he had with those  
23 individuals played a large part in his success. Do you  
24 recall that?

25 MR. CAMPBELL: Let me object as to form.



1                   And when we have an objection to a  
2 question, the only thing we can do is say we object as  
3 to form, that's something for the judge to consider  
4 later on. But when we do that, it doesn't mean you  
5 shouldn't answer. Go ahead and answer. It's for the  
6 judge for a later time.

7           A.     Okay. Repeat the question, please.

8                   MR. DEWULF: Tara, can you read that  
9 back.

10                   (The record was read by the court reporter.)

11           A.     Yes.

12           Q.     (BY MR. DEWULF) Okay. Let me rephrase that  
13 just so I make sure we're clear on the record.

14                   So Denny Chittick was relating to you  
15 with regard to its business model that a large part of  
16 its success was due to the fact that he had a strong  
17 relationship with the borrowers and could trust them.  
18 Is that right?

19                   MR. CAMPBELL: Object to form.

20           A.     Yes, that's right.

21           Q.     (BY MR. DEWULF) All right. So let me go  
22 back. You identified the three elements of what was  
23 important to you in connection with your investment  
24 decision.

25                   Actually, let me go back even further

1 than that in your testimony. You said when you  
2 initially looked at the opportunity, you thought it was  
3 a Ponzi scheme, I think was the term you used.

4 Correct?

5 A. Correct.

6 Q. What was it about what you read or -- or  
7 learned that caused you to believe it was a Ponzi  
8 scheme?

9 A. Well, the -- the interest rate. He had  
10 various interest rates based on the amount of time that  
11 you tied your money up. But I was -- because this was  
12 in a retirement plan and I was in no need for current  
13 income, I went ahead and went with the two-year  
14 commitment to get a 12 percent return. And at the time  
15 I invested -- I've invested in the stock market many  
16 years and I wasn't getting the -- in fact I had  
17 suffered through the 2008 meltdown in the stock market,  
18 real estate bubble, et cetera, and so 12 percent seemed  
19 like a very high return and I thought -- it just  
20 concerned me until I was able to get further research  
21 done and back it up with some more analysis.

22 Q. Understand. Let me just ask as a general  
23 background question, you said that you've been involved  
24 in the stock market. Are you a trader or someone  
25 who's -- are your accounts self-directed or do you

1 generally buy funds and hire investment advisors for  
2 those kinds of things?

3 A. They're self-directed, I do my own investing.

4 Q. All right. And so that -- and it sounds to me  
5 like you're a man who does his homework. So you  
6 research the market in connection with determining when  
7 to buy and sell stocks.

8 A. Yeah. I have done individual purchases of  
9 stock but also options. In other words, I do stock  
10 options or ETF options and I have a conservative  
11 approach to those options. I sell options, I don't buy  
12 options. And it is a pretty conservative way to invest  
13 your money. In other words, if I have a stock like  
14 Apple, which I do, I would sell a covered call on that  
15 option. In other words, if Apple's selling for 150, I  
16 would sell a call say -- a 30-day call for 175, meaning  
17 that I'm obligated if the stock hits 175, they're going  
18 to call my stock, they're going to take it. But I've  
19 done my research or I've done my calculations and say,  
20 fine, I'll take that obligation on in exchange for a \$4  
21 per share premium or whatever it might be.

22 Q. How much time do you think you spend a day  
23 working on your investment portfolio?

24 A. It just really fluctuates a lot. If I come up  
25 with some options maturing or expiring, I'll have some

1 money available to invest and I may spend an hour that  
2 day kind of going through some screens that I look at  
3 to see what might be of interest to me. But if I'm  
4 fully invested, I don't pay too much attention to it.

5 Q. So the -- when you went through the three  
6 criteria with respect to your investment in DenSco --  
7 and I'll summarize in an abbreviated fashion -- that  
8 you wanted first lien deeds of trust on the properties  
9 that were securing the loans being made. Right?

10 A. Correct.

11 Q. That you wanted a loan-to-value ratio of 65 to  
12 70 percent. Correct?

13 A. Yes.

14 Q. And you wanted a diversification in the loan  
15 portfolio such that no one borrower constituted greater  
16 than a 10 percent share of the total loan base.

17 A. That's correct.

18 Q. Now, were you able to confirm that those three  
19 criteria were met with respect to DenSco?

20 A. Yes. That's why I ended up investing.

21 Q. Okay. And did you do that based on  
22 communications with Mr. Chittick?

23 A. I did that primarily on that Excel worksheet  
24 that he had sent me. It was a fairly detailed and  
25 elaborate worksheet and it had enough data points in it

1 that I was able to do my various sorts by builder, get  
2 an ascending, descending loan-to-value sort just to see  
3 that it confirmed what was advertised on his Website.

4 Q. Do you remember talking at all to Mr. Chittick  
5 about his business practices or procedures before you  
6 made your first investment in DenSco about what DenSco  
7 does?

8 A. I did meet with him personally, it wasn't a  
9 real long meeting. In fact, Warren may have been --  
10 Warren had a condo out in Phoenix at that time and  
11 Warren may have been with me at that meeting, I can't  
12 really remember for sure. I think he was. But, yeah,  
13 I met with Denny. He again answered specific questions  
14 that I had developed from analyzing his worksheet that  
15 he sent me. Asked kind of off the cuff things like,  
16 "Okay, what is your -- what is your standard operating  
17 procedure from the time you get a call from a flipper  
18 to when you have loaned money on that particular piece  
19 of property?" And he kind of walked me through his  
20 procedure and indicated, like I said -- and I was,  
21 again, pretty impressed that he could put a loan  
22 package together in 15 minutes. And I'm thinking, wow,  
23 okay, then that kind of explains how he can do the  
24 volume of lending that he does. And I had been told by  
25 almost everyone I spoke with how knowledgeable he was

1 about the particular markets that he was involved in.  
2 I believe it was only two counties. He didn't venture  
3 out of those particular markets ever and he was kind of  
4 the go-to guy for any of the flippers that were  
5 contemplating buying a piece of property. "Hey, what's  
6 this thing worth if I was to get it up to  
7 marketability?" So he was a resource in that regard,  
8 which again gave me a comfort level that, yeah, this  
9 guy knows what he's doing here.

10 Q. So a moment ago you said that he kind of  
11 walked you through his procedures. Could you walk us  
12 through what you understood his procedures were based  
13 on what he told you?

14 A. A builder would come to him via maybe a  
15 telephone call or maybe not a personal visit and say,  
16 "Look, I'm looking at this piece of property on XYZ  
17 street. I think I'm going to bid 100,000 for it. What  
18 do you think the values -- what would you be willing to  
19 loan on it?" And Denny might say, "Well, it's 150,000,  
20 I'll loan you 70 percent of that." And the builder  
21 would make his decision, he'd go to auction, he would  
22 buy the -- or bid on the -- at the county court steps  
23 or however they do it -- I've never gotten involved in  
24 that -- but he would become the successful bidder and  
25 then the -- again, the key thing would be if he loaned

1 that money, it's secured by a first lien deed of trust,  
2 number one absolute most important thing. And that's  
3 what I understood the situation to be.

4 Q. And what you've just said that the number one  
5 most important thing is the first position deed of  
6 trust, did he tell you that?

7 A. Oh, yes, that was --

8 Q. All right.

9 A. And that was not only verbally communicated to  
10 me, but it was on his Website that it was just --

11 Q. Right.

12 A. -- this is how I do business and every loan is  
13 secured by nothing but a first lien. There were no  
14 second liens, it was all first liens deeds of trust.

15 Q. You talked about in your answer just a moment  
16 ago, Tony, about a borrower making a bid at a trustee  
17 sale. Do you recall that testimony?

18 A. Yes.

19 Q. And did Denny Chittick tell you how he  
20 safeguarded his funds, that is DenSco's funds, in  
21 connection with making those loans when they were made  
22 in connection with a purchase at a trustee sale?

23 A. You know, I -- I was under the impression  
24 that -- whether he took me step by step, but I was  
25 under the impression that the check for that particular

1 piece of property would be made out to the trustee.

2 Not to the builder, but to the trustee.

3 Q. When you say you had that impression, was that  
4 based on what he told you?

5 MR. CAMPBELL: I'm going to object as to  
6 form.

7 A. You know, I don't know. I -- I may have just  
8 gone by his Website saying, "Hey, I get a first lien  
9 deed of trust. Well, how do you do that?" Well -- I  
10 don't know if he specifically said, "Yeah, I write the  
11 check." I probably -- in fact, I probably didn't get  
12 that piece of information from him, but I would have  
13 assumed --

14 Q. (BY MR. DEWULF) Well, had he --

15 A. Go ahead.

16 Q. I apologize, I cut you off. I thought you  
17 were finished. Did you finish what you were trying to  
18 say?

19 A. Yes. Yeah, I don't know if he -- if I  
20 specifically asked him down to that level of detail as,  
21 "Okay, how do you -- how are you certain that you have  
22 that first lien deed of trust?" I mean the guy had  
23 been in business 10 years, he had had no issues that I  
24 was aware of with -- I think they -- I think he did  
25 have some -- you know, some stressful times during 2008



1 with the real estate doing -- bubble doing what it did,  
2 but he was able never to miss an interest payment to  
3 any of his investors, was my understanding. He had  
4 survived that crisis and in fact the person that he got  
5 his education from, a guy by the name of Scott, I  
6 believe, DenSco, that's how they got the name, Denny  
7 and then Scott, had had some issues and was not able to  
8 meet all his obligations and DenSco was. And that was  
9 I believe communicated to me by Denny and I believe  
10 also confirmed by -- by Warren.

11 MR. DEWULF: Could you read that back,  
12 Tara.

13 (The record was read by the court reporter.)

14 Q. (BY MR. DEWULF) So let me go back to this  
15 issue of how you're -- how the DenSco moneys were  
16 safeguarded in connection with a trustee sale. Would  
17 it be true or fair to say that either Mr. Chittick  
18 communicated to you about this or you assumed as a  
19 careful and prudent lender that the moneys that he was  
20 lending were provided to the trustee in connection with  
21 the trustee sale as opposed to being provided to a  
22 borrower?

23 MR. CAMPBELL: Objection, form.

24 A. That's correct. I -- like I said I don't know  
25 if Denny particularly told that -- told me that or I

1 just had assumed that you would make the check out to  
2 the trustee, because that is how you secure your first  
3 lien deed of trust. If you go through the builder, bad  
4 things can happen and did.

5 Q. (BY MR. DEWULF) Right. It's pretty  
6 fundamental as a lender that you would want to make  
7 sure that the moneys were used for the purpose they're  
8 intended and that is to buy the property and get a  
9 first lien. True?

10 A. True.

11 MR. CAMPBELL: Object to form.

12 Q. (BY MR. DEWULF) And as you mentioned and now  
13 we know, there are lots of problems and issues that can  
14 occur if DenSco were to loan money directly to the  
15 borrower as opposed to a third party like a trustee, an  
16 escrow agent, a title company, that sort of thing.  
17 Right?

18 A. Yes.

19 Q. Did it strike you when you learned later that  
20 Denny Chittick had actually for DenSco lent money and  
21 gave the money directly to the borrower, did that  
22 surprise you? Did it seem inconsistent with what you  
23 understood to be his business model?

24 A. Yes.

25 Q. All right. You mentioned a moment ago this

1 individual Scott who was the initial partner of Denny  
2 Chittick in DenSco. Do you recall that testimony?

3 A. Yes.

4 Q. Do you think that individual's name was  
5 Scott Gould?

6 A. That sounds right, but I can't say for sure.  
7 I just know it was Scott because of the DenSco name.

8 Q. And -- but at some point there was a parting  
9 of the ways between this individual, Scott, and Denny  
10 Chittick?

11 A. Yes.

12 Q. And what did you learn from Denny Chittick as  
13 to the reason for that parting of the ways?

14 A. I didn't -- I didn't inquire, didn't know.  
15 All I knew was Denny was -- represented the company,  
16 DenSco, even though there might have been another  
17 person involved in it, but he -- at the time I  
18 invested, he was the sole turned out to be shareholder  
19 of DenSco.

20 Q. You mentioned earlier in your testimony, Tony,  
21 that you reviewed Excel spreadsheets that were  
22 generated on a quarterly basis back to the beginning of  
23 the company. Right?

24 A. Well, not the Excel worksheets. I reviewed  
25 every Web posting on a quarterly basis since he started

1 in 2001. That Excel worksheet that I was talking about  
2 was a document that he gave me before I made my final  
3 decision to invest and that would have been sometime in  
4 2000- -- latter part of 2010 or early part of 2011.  
5 But what would happen on these quarterly postings to  
6 the Website is he'd say, "Hey, I have this amount of  
7 money from investors. This is the amount I've loaned  
8 out on X number of properties" and just kind of a -- a  
9 rolling, quarterly report and that's what I did a lot  
10 of detailed looking at to be sure that I didn't come  
11 across something where he said something one quarter  
12 and contradicted it the next quarter.

13 Q. Did the Excel spreadsheet that Denny Chittick  
14 provided to you prior to your investment, did it go  
15 back to the beginning of the business or was it simply  
16 a snapshot as of that point in time?

17 A. It was a snapshot.

18 Q. All right. But you said you did various sorts  
19 on that Excel spreadsheet to check his calculations.  
20 Right?

21 A. Yes. To check his representation about -- I  
22 couldn't check the first deeds of trust representation,  
23 but I was able to check concentration of loans and  
24 builders and also loan to value.

25 Q. Did you come away after reviewing the

1 spreadsheet and the other information that you could  
2 research that Denny Chittick was good at tracking the  
3 numbers in his business?

4 A. Yes.

5 Q. And you're an accountant, a CPA and someone  
6 who pays attention to those kinds of things. That  
7 played a role in your decision to invest. Right?

8 A. Yes.

9 Q. Now, kind of related to that issue is his  
10 ability to keep records through his computer, how adept  
11 he is, how computer savvy he is, did you gain an  
12 impression before your investment as to how well Denny  
13 could utilize computers and computer programs to track  
14 what was going on at DenSco?

15 MR. CAMPBELL: Objection, form.

16 A. You know, I didn't know the type of detail in  
17 his business, his subchapter S. It was actually the  
18 company of DenSco. In fact that was one thing that  
19 kind of bothered me a little bit was he did not open up  
20 those books of the DenSco corporation to anyone. So --  
21 but I felt very comfortable that as far as the real  
22 estate lending part of his operation, yeah, he was  
23 fully up to speed and was able -- now, what kind of  
24 level within his accounting system, I don't know, but  
25 he was able to give me that worksheet that had all this

1 detail in it that backed up everything that he had  
2 advertised and I knew he was good at that. Denny was  
3 an intelligent person.

4 Q. (BY MR. DEWULF) How were you able to gain that  
5 opinion that he was an intelligent person?

6 A. Doing what he was doing. I mean, you know,  
7 that's a fairly involved business model to run where  
8 you're taking in money from investors, loaning it out  
9 to builders, monitoring that, going through the  
10 necessary steps to be sure that it is a collateralized  
11 obligation. So there's a lot of moving parts in it  
12 that takes a fairly intelligent person to pull it off.

13 Q. Did you gain the impression that his being  
14 smart was important to him? In other words, that he  
15 prided himself in being smart and good with numbers?

16 A. Denny and I were really -- we didn't  
17 communicate that much. He would -- if I had a  
18 question, I would email it to him and he would give me  
19 a very short terse response and that was it. I  
20 certainly wouldn't say we were -- we were friends with  
21 one another. We had a business arrangement and he just  
22 seemed kind of a standoffish kind of guy.

23 Q. Do you recall, Tony, that the market as it  
24 related to hard money lending was getting better and  
25 better in early 2011, that that post recession, that

1 things had bottomed out in the Phoenix marketplace and  
2 it was coming back?

3 A. Yes.

4 Q. And do you recall when you made your  
5 investment in April 2011 that DenSco was increasing its  
6 volume of loans being made as a function of the  
7 marketplace getting better?

8 A. That was my understanding, yes.

9 Q. Did you ever have concerns in that first part  
10 of 2011 relative to historical activities of DenSco,  
11 that it was taking on too many loans or it was -- Denny  
12 wouldn't be able to manage what DenSco was doing?

13 A. I don't know how soon I started to get a  
14 little worried about his growth. It seemed to be  
15 growing very rapidly and I have a son who works on  
16 Wall Street and he said, "Dad, I just don't know where  
17 all the market is for this type of loans he's making."  
18 So that -- and I assured him that I was watching it  
19 very closely. But I was concerned that the business  
20 appeared to be growing very, very quickly. And so that  
21 brings up your concern where, you know, are you going  
22 to get so much money in that you might start relaxing  
23 your lending standards just to get the money working?  
24 Because he's obligated to pay 12 percent to his --  
25 assuming they have that time of investment of two

1 years, he's obligated to either pay the interest to  
2 them or let accrue the interest. So it's -- I would  
3 think be very imperative for him to get his money  
4 working for him as quickly as he can. And that kind of  
5 bothered me, that maybe the growth would -- maybe you  
6 would lose some control over your procedures if it grew  
7 that fast.

8 Q. Let me ask -- time to pinpoint perhaps the  
9 time where you had that concern. If you made your  
10 first investment in April of 2011 and of course we know  
11 that Denny Chittick died in July of 2016, when in that  
12 span of time do you think you began growing more  
13 concerned about the volume of investments he was taking  
14 in in the form of loans and the volume of loans he was  
15 making?

16 A. I would guess probably 2013, 2014. I'm just  
17 pulling that number kind of off the top of my head.  
18 But there was a time that -- I mean I think when I  
19 started investing in 2011, there was like \$10 million  
20 loan portfolio and then it grew to 60-plus million  
21 dollars. So that's an enormous amount of growth in a  
22 fairly short period of time, from 2011 to when it all  
23 blew up in 2016.

24 Q. Do you think using the dates of your  
25 investments as a point of reference -- points of



1 reference, if you invested in April of 2011 and then in  
2 2012 you did two additional investments, do you believe  
3 that it was after you made your investments you became  
4 concerned about the level of growth and the volume of  
5 activities he was involved in?

6 A. Yeah. I mean I wouldn't have made the  
7 additional investments if -- and I believe it was in  
8 2013 that I made that last \$100,000 investment. But I  
9 wouldn't have made them if I started having my  
10 concerns. So the growth just wasn't that dramatic at  
11 that time, as I recall.

12 Q. So you weren't troubled by the growth of  
13 DenSco either in terms of the investment growth or the  
14 loan growth when you initially made your investment in  
15 2011 or when you made your second and third investments  
16 in 2012, 2013. It would have been after that?

17 A. It would have been after that, yes.

18 Q. All right. So you mentioned a moment ago,  
19 Tony, this idea of getting the money working. Did --  
20 and that's this concept I think you're expressing which  
21 is that investors were providing general notes to  
22 DenSco, with DenSco having an obligation to pay those  
23 investors 12 percent on their money. Right?

24 A. Yeah. 12 percent or -- depending on -- he had  
25 certain time windows that it would -- two years would

1 be 12 percent, six months may be eight percent, a year  
2 may be 10 percent. He had a kind of sliding scale like  
3 that.

4 Q. I understand.

5 A. But he was obligated to either pay the  
6 interest out on a monthly basis, if that's what people  
7 chose, or to accrue the interest. And you would get a  
8 monthly printout from Denny every month, what your  
9 balance was and that's what I looked at on a monthly  
10 basis.

11 Q. So this idea of he would collect this money  
12 from investors that was being provided through the form  
13 of notes and then he would need to take that money --  
14 as the term you used get the money working, he would  
15 have to -- he would have to loan that money at a higher  
16 interest rate so he'd have to establish relationships  
17 with borrowers where they would borrow the money from  
18 DenSco, he'd have to do the analysis that you talked  
19 about earlier in terms of determining whether it's a  
20 good loan situation. But he didn't want money sitting  
21 around in DenSco. Right? He needed to move it into  
22 the form of a loan so he could collect money on it.

23 A. Absolutely.

24 Q. Did he ever express -- "he" being Denny  
25 Chittick -- did he ever express to you that he was

1 having problems getting the money working or that he  
2 couldn't find enough good opportunities to make loans?

3 A. I remember that there was some email  
4 communication where he just said he was -- he was going  
5 to be returning some money to investors because he -- I  
6 would assume he just couldn't find good investments to  
7 put it into. I do remember that.

8 Q. All right.

9 A. Which made me feel comfortable. It said,  
10 "Hey, you're still doing your analysis, you're saying  
11 if you don't see the market there, you're going to  
12 return the money back to the investors." That's the  
13 way you would do it, I would think.

14 Q. And we'll look at some documents in a moment  
15 which put some timing to that in terms of when he chose  
16 not to take any new money from outsiders, take any new  
17 investors, and then he later decided not to take any  
18 new money from present investors and then he decided  
19 that he would go from allowing interest to accrue to  
20 paying it out on a periodic basis. Do you recall that?

21 A. Yes, except in my particular case where I had  
22 it in a tax deferred sheltered IRA, he would not be --  
23 I would be excluded from that requirement to receive  
24 monthly interest payments. It would continue to  
25 accrue.

1 Q. All right. Let me circle back and then we're  
2 going to take a break because it's been a little  
3 over -- it's been in an hour or so, but I want to  
4 follow up on a couple of comments as it relates to the  
5 type of person Denny Chittick was.

6 You indicated -- you used the word  
7 standoffish and that your -- you had a business  
8 relationship with him, but you -- you did not develop a  
9 relationship beyond that. Is that fair?

10 A. That's fair.

11 Q. Did any other investors or anyone else share  
12 with you that they also felt he was a standoffish  
13 fellow?

14 A. I didn't really deal with any other investors  
15 other than Warren Bush and Warren Bush had kind of a  
16 unique relationship because of his relationship with  
17 the parents, Eldon and Carlene.

18 Q. Did Warren ever share with you his view of  
19 Denny Chittick's personality or qualities, traits,  
20 characteristics? Did he ever share with you his view  
21 of that?

22 A. I remember when I met Denny -- and Warren was  
23 there for that meeting and it was in Denny's house --  
24 and Warren later made the comment that, "Wow, this guy  
25 with all this money and his house is just like not

1 extravagantly decorated." In other words, he didn't  
2 appear to be flamboyant or extravagant in his spending  
3 habits, I'll put it that way. He had a nice home, but,  
4 you know, it's kind of like not top-end furniture. He  
5 drove an older Lexus. In other words, he wasn't one of  
6 these guys that would worry me by driving the Maserati  
7 or the Ferraris and being the big shot. He didn't come  
8 across that way to me and it was pretty much confirmed  
9 by Warren's comments about him.

10 Q. Warren in his testimony a couple of days ago  
11 described Denny Chittick as being frugal. Would you  
12 agree with that?

13 A. Yes.

14 Q. I asked him -- I asked Warren about why he  
15 felt Denny Chittick grew the company as large as he did  
16 and he said something -- and, again, the record will  
17 speak for itself -- but he said something about, well,  
18 he wanted to succeed and this was a way that -- to keep  
19 score or something like that. Did you ever gain an  
20 impression that Denny Chittick was looking maybe in a  
21 competitive sense to grow DenSco or anything like that?

22 MR. CAMPBELL: Object to form.

23 A. Well, I believe he -- I believe he did keep  
24 score on his -- the way he handled the business, its  
25 rate of growth and so forth. It looked like it was

1 confirmation to him that, yeah, I'm the smartest guy in  
2 the room here.

3 Q. (BY MR. DEWULF) What about the idea of the  
4 importance of money, accumulating wealth? I know we  
5 talked about him being frugal, but did you ever gain an  
6 impression of Denny Chittick that having money was  
7 important or he deemed that to be some reflection of  
8 self-worth or anything like that?

9 A. Not really. I just think he --

10 Q. All right.

11 A. -- had a competitive nature that he was able  
12 to provide his investors with above average rate of a  
13 return and he was able to grow his business. But I  
14 don't think he was counting his money in terms of that  
15 being a goal of his. I think he was a pretty average  
16 guy when it came to his spending habits.

17 Q. You mentioned earlier in your testimony, Tony,  
18 that you had met Denny Chittick's parents, Eldon and  
19 Carlene. Do you recall that testimony?

20 A. Yes, I do.

21 Q. On how many occasions did you meet them?

22 A. I met them I think twice, once was in Phoenix,  
23 before I invested. And it was with Warren because  
24 Warren and his wife Fay were good friends with Denny's  
25 parents. So I met them there. And then I also met

1 them up in Idaho when I was on a motorcycle trip. I  
2 had traveled -- I take extensive motorcycle trips and I  
3 happened to be up in the Idaho area and I went to  
4 Coeur d'Alene and met up with them and spent a couple  
5 hours with them up there.

6 Q. Other than those two occasions, did you ever  
7 communicate with them?

8 A. No, I don't believe I did.

9 Q. And I think you're answering this, but I want  
10 to make sure. After Denny Chittick's death, in July of  
11 2016, have you spoken to them about that?

12 A. I have not.

13 Q. Did you get to know any of the other Chittick  
14 family members?

15 A. I did not. I don't know anyone other than  
16 Denny and his parents, Eldon and Carlene. That's the  
17 only three Chitticks I knew.

18 Q. Did you ever meet his wife, Ranasha, while  
19 they were married?

20 A. I never did.

21 Q. Did you spend any time socially with  
22 Denny Chittick, other than perhaps a MOM's meeting or  
23 an investor meeting?

24 A. I went to one MOM's meeting. I was invited to  
25 an annual get-together up in Idaho and I never attended

1 any of those, it just didn't appeal to me, but I did  
2 want to go to one of these MOM's meeting to see the  
3 interaction between -- you had builders there, you had  
4 investors there and in fact I took my other son, Jason,  
5 to one of these meetings.

6 MR. DEWULF: All right. So why don't we  
7 break now. Five minutes.

8 (A recess was taken.)

9 Q. (BY MR. DEWULF) Tony, if you could look at  
10 the stack of documents, I'm going to use some of these  
11 just to prompt your memory in terms of timing and those  
12 kinds of things, but we may on occasion ask Tara to  
13 mark them because they could be used later in court  
14 proceedings.

15 But let's look at the top document which  
16 is an email June 29, 2010, and at the top you'll see  
17 from Denny Chittick to you and it says re memorandum.

18 A. Yes.

19 Q. You see that?

20 A. Yes.

21 Q. So I'm understanding this to be that you were  
22 provided the private offering memorandum in connection  
23 with your investment in 2011. Is that right?

24 A. Yes.

25 Q. And it probably would have been the 2009



1 private offering memorandum since the communication  
2 begins in 2010. You would have reviewed that document  
3 before you invested?

4 A. Oh, yes.

5 Q. And then I -- and I'm not going to mark that.

6 Let's look at the next document. It  
7 looks like you're wanting to talk to Denny about some  
8 questions you have and this is in July of 2010. Do you  
9 see that?

10 A. July 13th.

11 Q. Yes. July 12th, I think.

12 A. Oh, July 12th.

13 Yeah, I have that.

14 Q. Yeah. And then the document after that is  
15 July 13th, 2010, and in it Denny Chittick is sending to  
16 you, "I've attached a partial balance sheet and a  
17 spreadsheet." In that second paragraph, "The  
18 spreadsheet has a list of properties on it and the  
19 second tab has an abbreviated cash flow on it."

20 Do you see that?

21 A. Yes.

22 Q. So this would have been the spreadsheet you  
23 would have reviewed and perhaps done sorts on to  
24 determine the numbers of DenSco's business. Correct?

25 A. Yes. I believe that would be that worksheet I

1 was talking about.

2 Q. All right. You indicated earlier that Denny  
3 wouldn't share his books with anyone. Do you recall  
4 that testimony?

5 A. Yes. I mean his corporate books.

6 Q. And by books -- yeah.

7 And by "books," what do you mean? What  
8 are the corporate books? What is it you would be  
9 looking at if you got to see the corporate books?

10 A. Well, I'd be looking at a balance sheet, I'd  
11 be looking at a P&L, I'd be looking at a cash flow  
12 statement.

13 Q. Did you ask to see that information?

14 A. I did not because Warren indicated that he did  
15 not -- he did not share that with anyone.

16 Q. So was Warren telling you that he had asked to  
17 see that information and Denny had declined?

18 A. I don't know if he actually told me that, but  
19 basically somewhere along the discussion I said, "Well,  
20 I would like to see them, but if that's -- if that's  
21 not part of the deal, then I'll try to satisfy myself  
22 through other means that this is an appropriate  
23 investment."

24 Q. Did you ever learn why Denny Chittick was  
25 unwilling to show anyone his corporate books and

1 records which would include the balance sheet, profit  
2 and loss, other financial statements?

3 A. No, not really, other than he was a fairly  
4 private guy and as long as I was able to satisfy myself  
5 through other means about the loan portfolio and the  
6 collateral and loan-to-value ratios and things like  
7 that and his business model operating like he said it  
8 would, I didn't absolutely have to see his internal  
9 books, his complete DenSco corporation books. He was a  
10 sole shareholder.

11 Q. Did you ever meet an individual named  
12 David Preston?

13 A. I did not. I understand, though, that he's  
14 a -- was a CPA over the years for DenSco, but I never  
15 met him, no.

16 Q. Did you ever learn what David Preston did for  
17 DenSco?

18 A. I would -- I believe he prepared his 1120S  
19 corporate tax return. That's what he did. I think  
20 that was his primary function. I don't believe he  
21 prepared any financial statements or anything like that  
22 for DenSco because I don't believe Denny borrowed any  
23 money where he would need to present a financial  
24 statement to a banker.

25 Q. So sitting here today as far as you know,

1 Denny Chittick would have created his own internal  
2 financial statements, balance sheets, profit and loss  
3 statements, but he wasn't sharing those with anyone.

4 A. That's right.

5 Q. All right. Let's go back and look at -- let's  
6 turn to the next document in this stack, which is dated  
7 July 24, 2010.

8 There are two emails on that page. Do  
9 you see that?

10 A. I see July the 24th email. Okay.

11 Q. Right. And at the top Denny Chittick is  
12 saying to you, "Thanks for your consideration." Do you  
13 see that?

14 A. Yes.

15 Q. Okay. If you go down and you look at your  
16 email to him, you're saying that you became concerned  
17 about an interpretation of a portion of the OM -- which  
18 I think is referring to the offering memorandum --

19 A. Right.

20 Q. -- that you thought was different than the  
21 explanation he had provided about the business. Do you  
22 remember today what the discrepancy was you thought  
23 existed or where the differences were?

24 A. Let me read it real quickly.

25 MR. CAMPBELL: While he's reading it, I

1 just have this book I have which is 1 through 50.

2 (Discussion off the stenographic record.)

3 Q. (BY MR. DEWULF) The email -- the document  
4 we're referring to is this July 24th set of emails and  
5 you're expressing some concern about language in the OM  
6 as it relates to what you understood about DenSco.  
7 Does it refresh your memory, Tony, one way or the other  
8 about what it was you thought was different.

9 A. Yeah. Yeah. In fact I'm looking at the date,  
10 July of 2010, and there was something in that offering  
11 memorandum that said that he would reimburse the  
12 custodian directly up to one percent of the principal  
13 amount of the notes. And then when I had verbally  
14 discussed it, DenSco, I understood that, well, no  
15 that's not correct, he's not going to -- in other  
16 words, there's custodian fees associated with your IRA.  
17 And I understood the offering memorandum to say that he  
18 was to reimburse me up to one percent of the principal  
19 note amount, which I thought, well, that's real  
20 generous, that's very good. But it turned out that  
21 either I misunderstood that or what. And I was a  
22 little turned off by that so I said, "Okay, well I  
23 appreciate you clarifying that for me and I think I'll  
24 pass on the investment."

25 Q. So because of what you viewed to be a

1 discrepancy between what Denny Chittick told you about  
2 how DenSco was going to treat the fees on an IRA  
3 investment versus what the private offering memorandum  
4 said, you chose to forego investing at least at that  
5 time.

6 A. At that time I did. I'm fairly frugal myself  
7 and if somebody's going to reimburse me for something  
8 that's -- that would be what I want.

9 Q. All right. So let's look at the next  
10 document.

11 MR. DEWULF: And, Tara, could you mark it  
12 as an exhibit. And I believe, based on where we were,  
13 I think this will be 831.

14 (Exhibit marked, Exhibit 831.)

15 Q. (BY MR. DEWULF) All right. So, Tony, I'm  
16 looking at this 831 with you. You're there, I'm here.  
17 It's an email from Denny Chittick to you dated  
18 July 30th, 2010. He says: I received the book back,  
19 I've not had anyone send one back to me before. I also  
20 haven't had anyone fill out all the docs then decide  
21 not to invest!

22 (Reading) I'm still not sure what your  
23 confusion was about the IRA and why that would keep you  
24 from investing, but that's your decision. Thanks for  
25 taking the -- all the time to research it. Best of

1 luck on your investments, thanks, DC.

2 Did I read that correctly?

3 A. Yes.

4 Q. Okay. So you decided, as you said a moment  
5 ago, not to invest because of what you viewed to be  
6 some inconsistency or at least some ambiguity between  
7 the OM and what the -- the private offering memorandum  
8 you read and what Denny Chittick was telling you.  
9 Correct?

10 A. Yes.

11 Q. You later decided to become an investor.  
12 Right?

13 A. Yes.

14 Q. Were you able to reconcile the discrepancy or  
15 why did you go ahead with the investment after first  
16 being concerned?

17 A. Well, during this period of time, from July of  
18 2010 until April of 2011, I continued to monitor his  
19 Website, continued to talk to Warren Bush, just general  
20 questions and discussions that made me feel better.  
21 And it was a very immaterial thing about that offering  
22 memorandum, but sometimes I get -- I get upset if I  
23 read something in a document and it turns out that I  
24 either totally misunderstood it or -- in other words,  
25 it didn't turn out to be that way, then that's what

1 turned me off. But by the same token, I continued to  
2 look at DenSco going forward, not making any decisions  
3 until April of 2011.

4 MR. DEWULF: All right. So let's mark  
5 the next document in that stack if we could, Tara, and  
6 that's Bates stamp 60632.

7 (Exhibit marked, Exhibit 832.)

8 Q. (BY MR. DEWULF) Tony, I'm showing you 832 and  
9 it is -- there are two emails here. There's one on  
10 the -- about halfway down the first page from you to  
11 Denny Chittick dated April 26, 2011. I'm sorry.  
12 Actually, there's a preceding email from Denny Chittick  
13 to you, also April 26, 2011, where he says: You are an  
14 investor now. I received your funds today.

15 Do you see that?

16 A. I'm looking at the top of the Exhibit 832 and  
17 I see an email from Denny dated April the 26th saying:  
18 You are going to get a stack of docs. However, I have  
19 to wait for First Trust of Onaga -- or whatever it  
20 was -- to, send them to me and then I'll send them on  
21 to you. Thanks.

22 That's what I see at the top part of that  
23 exhibit.

24 Q. That's right. We're looking at the same  
25 document and I want you to go down that first page --



1 A. Okay.

2 Q. -- to the original Denny Chittick email which  
3 says: You are an investor now. I received your funds  
4 today.

5 Do you see that?

6 A. Oh, yes, I see that.

7 Q. All right. So do you know whether you  
8 received the 2011 private offering memorandum before  
9 you invested in 2011 or was it finished yet?

10 A. I don't think it was finished.

11 Q. All right. So the FTCO, is that a party that  
12 is holding your retirement fund?

13 A. Yes, it's the custodian. They are the First  
14 Trust of Onaga company, I think, and they were either  
15 merged with a company called Main Trust but same  
16 organization that I've always dealt with. I still deal  
17 with them.

18 Q. All right. And he says at the top of that  
19 page, Denny Chittick, says: You're going to receive a  
20 stack of documents.

21 And in connection with your investment  
22 you would have gotten at least a subscription agreement  
23 to sign and an investor questionnaire to establish  
24 you're an accredited investor. Right?

25 A. Correct.

1 Q. Do you remember any other documents that you  
2 obtained from him in connection with initially becoming  
3 an investor?

4 A. I don't know if I got an actual copy of the  
5 promissory note or not. I probably did.

6 Q. Yeah. I think --

7 A. The subscription agreement, promissory note,  
8 questionnaire.

9 Q. Right. Let's look at the next page. I'm not  
10 going to mark it yet, but it's -- it's dated April 27,  
11 2011.

12 MR. DEWULF: Actually, let's mark this.  
13 There's enough here that I think it's worth marking if  
14 you could, Tara.

15 (Exhibit marked, Exhibit 833.)

16 Q. (BY MR. DEWULF) So let's focus halfway down  
17 the page, if we could, Tony. The email from Warren  
18 Bush to you, with a copy to Denny Chittick. Do you see  
19 that? It's dated April 27.

20 A. Yes.

21 Q. He says to you: I find it very interesting to  
22 be involved with someone in the investment decision  
23 process -- either way it turns out.

24 And then it goes on: DenSco is unique  
25 because I find it difficult to decide where to

1 categorize the risk in the overall scheme of things.  
2 However, once trust is established, you can move on to  
3 the business activity and finally decide how much is  
4 appropriate for your own fashion.

5 Did I read that correctly?

6 A. (Reading) For your own situation.

7 Q. Your own situation. Right. How that finished  
8 is "your own situation." I'm sorry if I misread.

9 All right. So it says, "once trust is  
10 established." Were you understanding Warren to be  
11 saying once you and he have established trust with  
12 Denny Chittick and DenSco, then you can move on from  
13 there? Is that what he's saying?

14 A. Yes.

15 Q. So when you did choose to invest, you had  
16 gained a level of trust in his ability. Correct?

17 A. Oh, yes.

18 Q. And you trusted his character, as well?

19 A. Yes.

20 Q. How were you able to conclude as of April when  
21 you became an investor that he was a man of good  
22 character?

23 A. The meeting that I had with his parents, Eldon  
24 and Carlene, they were just good salt-of-the-earth  
25 people. Very, very good people. Still have that

1 feeling about them.

2 Q. And were you gaining that impression also from  
3 your direct communications with Denny Chittick?

4 A. Yes.

5 Q. All right. So let's go to the next document.

6 MR. DEWULF: Let's mark it as an exhibit.  
7 It is 6527 is the stamp, Tara.

8 (Exhibit marked, Exhibit 834.)

9 Q. (BY MR. DEWULF) Tony, do you have it?

10 A. I have it.

11 Q. Okay. Let's go to the second page. This is a  
12 statement as of June of 2011 and it shows that you've  
13 made -- in the investment history category, you've made  
14 an investment of \$200,000 as of April 26, 2011.  
15 Correct?

16 A. Correct.

17 Q. And in the two months intervening, you've  
18 already made some interest on the investment. Right?

19 A. Correct.

20 Q. And would you receive documents such as this  
21 on a monthly basis from DenSco?

22 A. Every month.

23 Q. Let's go to the next document.

24 MR. DEWULF: Let's mark this.

25 (Exhibit marked, Exhibit 835.)

1 Q. (BY MR. DEWULF) Let's focus on the middle of  
2 the page, Tony, it's an email from you to Denny  
3 Chittick dated July 1, 2011, and I think it must be  
4 referring to the end of the quarter. Is that a fair  
5 reading of what the reference is?

6 A. Yes.

7 Q. And in it you say to Denny: Thank you for  
8 your expertise and hard work in providing an investment  
9 that offering the "little guy" a solid rate of return  
10 on his investment. Hope you and your family have a  
11 great 4th.

12 Did I read that correctly?

13 A. Yes.

14 Q. Did you at that time feel that you were a  
15 little guy, in your definition?

16 A. Oh, yeah. Still am.

17 Q. All right. Let's go to the next document.  
18 I'm only asking this for reference purposes, we don't  
19 need to mark it. Actually, it's already a depo  
20 exhibit.

21 There's a reference here to a  
22 David Beauchamp in the second or third paragraph --  
23 third paragraph. Do you see that?

24 A. Yeah. Give me a minute to read it.

25 Q. Yeah. And I'm not going to ask about the

1 contents of it, I just wanted to show you that there's  
2 a reference to Beauchamp as being a securities  
3 attorney. But read it if you want.

4 MR. CAMPBELL: Just for the record, John,  
5 this is the exhibit previously marked as Exhibit 633.

6 A. Yes, I read it.

7 Q. (BY MR. DEWULF) All right. So let me first  
8 ask about David Beauchamp. Did you ever have any  
9 personal contact with David Beauchamp?

10 A. I had contact with him via email after DenSco  
11 collapsed.

12 Q. Right. You were one of the investors with  
13 whom he was communicating regarding the status of what  
14 was going on at DenSco?

15 A. That's correct.

16 Q. Before that, before Denny Chittick's death,  
17 did you ever have any contact with David Beauchamp?

18 A. No, I didn't.

19 Q. And did Denny Chittick ever reference or say  
20 anything about David Beauchamp to you?

21 A. Not that I recall. He may have causally  
22 mentioned something, but I don't recall.

23 Q. Sitting here today do you have any complaints  
24 about David Beauchamp, anything he did with respect to  
25 his serving as counsel to DenSco?

1           A.     I have no -- I have no complaint about him. I  
2 mean I don't -- I had no interaction with him other  
3 than I think I sent him an email after Denny -- after  
4 DenSco collapsed thanking him for answering some of my  
5 questions I had.

6           Q.     In connection with the work that  
7 David Beauchamp did after Denny Chittick's death, did  
8 you understand that he was counsel to DenSco and not  
9 counsel to the investors?

10                   MR. CAMPBELL: Object to form.

11           A.     I didn't make that distinction, no.

12           Q.     (BY MR. DEWULF) Did it matter to you?

13                   MR. CAMPBELL: Object to form.

14           A.     At that time, no, it didn't have any -- didn't  
15 matter. The deal was done.

16           Q.     (BY MR. DEWULF) What mattered was -- I'm  
17 sorry. I think I maybe -- did you complete your  
18 answer?

19           A.     I said, "The deal was done" by that time. The  
20 damage had been done.

21           Q.     So the main goal after Denny Chittick's death  
22 was to try to gather information and process what had  
23 happened and figure out how to maximize whatever was  
24 left for the investors. Is that fair?

25           A.     That's fair. That's accurate.

1 Q. All right. So in this paragraph we're looking  
2 at under Exhibit 633, there is a reference to your  
3 friend, Warren Bush, who volunteered to review the  
4 private offering memorandum. Do you see that?

5 A. Yes.

6 Q. Were you aware that Warren was doing that?

7 A. Yes, I was.

8 Q. Did you involve yourself at all in that  
9 process?

10 A. Not at all.

11 Q. Did you ever talk to him about what he was  
12 doing?

13 A. To Warren?

14 Q. Yes.

15 A. I just know that Warren mentioned that Denny  
16 was not real good with writing skills and Warren would  
17 kind of assist him in this fairly laborious task of  
18 updating that offering memorandum.

19 Q. Do you recall on that topic of private  
20 offering memorandum -- memoranda, do you recall that  
21 there was ever a 2013 private offering memoranda for  
22 DenSco?

23 A. I don't recall. I know that --

24 Q. I think --

25 Go ahead.



1           A.    I know that I -- you know, I thoroughly read  
2 the first offering memorandum before I finally, if you  
3 would, trigger and invested with them.  But I don't  
4 know --

5           Q.    Right.

6           A.    -- subsequent updates after that.

7           Q.    So -- and I think by that answer I think I  
8 know what your answer's going to be, but I need to ask  
9 it.

10                                So in 2013 or later, you never asked  
11 Denny Chittick for an updated memorandum?

12           A.    I do not believe I did.

13           Q.    Okay.  And you never learned from anyone why  
14 there was not an updated memorandum in 2013 or later?

15           A.    No.

16           Q.    All right.  Let's look at -- the next document  
17 in this stack is a previously marked exhibit, which is  
18 Exhibit 432, which is the form of the private offering  
19 memorandum.  And would this have been a document you  
20 would have reviewed in connection with your investment,  
21 at least as it related to your investments after 2011?

22           A.    Yes.  After 2011 that would have been it.  
23 This would have been after I made my initial investment  
24 in April of 2011.

25           Q.    Would it -- you indicated that you read the

1 earlier version of the 2009POM in connection with your  
2 original investment in April of 2011. Would you have  
3 also carefully read the 2011POM?

4 A. I probably would not have.

5 Q. All right. So let's move on.

6 A. I mean it's like a stock prospectus in a stock  
7 market. I mean it puts you in a coma.

8 Q. All right.

9 MR. DEWULF: Let's mark the next exhibit,  
10 Tara.

11 (Exhibit marked, Exhibit 836.)

12 Q. (BY MR. DEWULF) All right, Tony, let's first  
13 look at the email that starts about halfway down the  
14 page from you to Denny Chittick, it's dated August 18,  
15 2011. And you start out and you say: Hope all is  
16 well. I am toying with the idea of dipping my toe in  
17 the hard money lending business in El Paso. I plan on  
18 making a "test run" with one loan just to see what all  
19 is involved, getting all the bugs worked out (or at  
20 least most of them). I have a quick question.

21 And then you go on and ask some  
22 questions.

23 Did you ever engage in the hard money  
24 lending business?

25 A. I did not.

1 Q. Was there a reason?

2 A. El Paso is just a totally different market  
3 than Phoenix or Las Vegas. El Paso doesn't experience  
4 exceptional growth or recessions, it just kind of  
5 trucks along.

6 Q. And I know we'll see in other documents  
7 references to doing business in Las Vegas. And I take  
8 it from your answer, you never engaged in hard money  
9 lending in Las Vegas, either?

10 A. Did not. Got very close to it but didn't.  
11 Didn't actually do it.

12 Q. And your son didn't, either?

13 A. No, he did not. He was in real estate, but he  
14 wasn't in flipping.

15 Q. All right. Let's move on. I only -- I'm not  
16 going to mark this but the next document is an email  
17 from Denny Chittick dated September 30th, 2011, to what  
18 I think are the investors at the time. It references a  
19 newsletter, photos of properties, those kinds of  
20 things. Do you recall that Denny Chittick was  
21 providing investors newsletters on a periodic basis?

22 A. Yeah. The newsletter is what I refer to as  
23 the postings on his Website. Every quarter he would  
24 post an update to loans made, number of loans, some  
25 pictures of properties involved in those loans.

1 Q. So it was business specific information.

2 Right?

3 A. Oh, yes.

4 MR. DEWULF: Let's mark it, Tara.

5 (Exhibit marked, Exhibit 837.)

6 Q. (BY MR. DEWULF) Tony, were those newsletters  
7 or the updated information that was on the Website, how  
8 often was it updated, do you recall?

9 A. Every quarter.

10 Q. Every quarter?

11 A. Yes.

12 Q. And it talked about the volume of loans and  
13 what was going on within the company?

14 A. Yes.

15 Q. If there were a problem or a troubled loan,  
16 did it talk about those kinds of things, too?

17 A. No. It gave very broad statistics.

18 Q. We now know that there were problems with the  
19 Menaged loans starting in 2012. Do you recall ever  
20 learning through looking at the newsletter that DenSco  
21 was having challenges with some of its loans to  
22 Mr. Menaged or any other borrower?

23 A. I don't recall that.

24 Q. Did you tend to review this newsletter on a  
25 fairly consistent basis so -- to find out what the

1 updated information was?

2 A. I tried to. There may have been a couple  
3 months that I -- or a couple quarters that I would  
4 miss, but I tried to look at it.

5 Q. But it would be a way of -- if you weren't  
6 talking to Denny Chittick personally, it would be a way  
7 to apprise yourself of what the status of the company's  
8 business was. Fair?

9 A. That's correct. And at some point that's when  
10 I saw the big growth explosion in DenSco and started  
11 having some concerns there.

12 Q. Did you ever express to Denny Chittick that  
13 you had concerns about the growth in the company?

14 A. I may have communicated with him via email. I  
15 don't know if I've ever -- if I talked to Denny on the  
16 phone or not. I may have once or twice in the whole  
17 period of time I knew him. Usually it would be with  
18 email and I would -- I may have asked him about the  
19 growth of the company and is he able to -- is he  
20 concerned about being able to invest that money. I  
21 think I did that, but I -- if you have the documents in  
22 here, it'll refresh my memory again.

23 Q. I don't know that I do, but we'll go through  
24 what we got here. But do you remember what his  
25 response was to you expressing that concern?

1           A.     Pretty much he had it under control.  He was  
2     able to -- he was able to, you know, deploy the  
3     investor money and -- except at some point he ended up  
4     indicating that he was going to start returning money  
5     to some investors, which would have indicated to me  
6     that his market was shrinking on him.

7           Q.     Do you know if Denny ever got any help from  
8     anyone with respect to his due diligence or keeping  
9     track of the numbers or anything within DenSco?

10          A.     I don't think Denny ever relied on anyone else  
11     other than maybe Warren in helping him with the  
12     offering memorandum and then he had an individual that  
13     was supposedly the backup guy, Robert something.  I  
14     don't know what his name was.  Koehler or something  
15     like that, I don't remember.  But he supposedly was  
16     being given information on a monthly basis so that if  
17     something were to happen to Denny, he would be able to  
18     step in and have some kind of orderly wind down of  
19     DenSco.

20          Q.     I think the individual you're referring to is  
21     Robert Koehler, K-O-E-H-L-E-R.

22          A.     Okay.

23          Q.     Did you ever meet with that individual?

24          A.     I never did.

25          Q.     And never spoke to him or --

1 A. No.

2 Q. -- communicated in writing with him?

3 A. No.

4 Q. All right. The next document in the stack I  
5 think it's referencing a MOM's meeting. I don't think  
6 we need to mark it.

7 You said you did attend one MOM's  
8 meeting?

9 A. Yes.

10 Q. Did you ever meet any of the borrowers or get  
11 to know any of the borrowers for DenSco?

12 A. I didn't actually meet them. I -- they -- we  
13 had a big conference table and there were various  
14 flippers around the table.

15 Q. Let's look at the next document. Let's skip  
16 it, it also deals with MOM's meetings. Forget about  
17 that.

18 The next document references that your  
19 son, Jason, is looking at the business. I just want to  
20 raise this as a topic. I don't want to spend much time  
21 on it. But did you and your son look at the business  
22 of hard money lending as a possible pursuit and then  
23 decided not to do it?

24 A. Yes, that's accurate.

25 Q. And that was in 2011?

1 A. Yes.

2 Q. Now let's skip the next document. Let's skip  
3 the next document. I think that this just references  
4 another investment which we're going to get to in a  
5 moment. We've got a statement for that.

6 Let's skip the next document.

7 Let's mark the document which is  
8 11-29-2011.

9 MR. DEWULF: And it's stamped, Tara,  
10 61895.

11 (Discussion off the stenographic record.)

12 MR. DEWULF: Let's skip that and skip the  
13 next document and the document after that is the one  
14 I'm -- it's 61895 and it's dated 11-29-2011.

15 (Exhibit marked, Exhibit 838.)

16 Q. (BY MR. DEWULF) Let's look at the first page  
17 of this Exhibit 838, Tony. And -- well, what I want to  
18 focus on is the email from you to Denny Chittick. It's  
19 not at the very top of that first page, it's the email  
20 right below that where it begins: Thanks for the offer  
21 to share your process.

22 Do you see that?

23 A. Yes.

24 Q. It reads: Thanks for the offer to share your  
25 process. When you told me it took 10 to 15 minutes to



1 put a package together, I was impressed. I think that  
2 is one reason you have built up such a loyal group of  
3 builders. You make their lives easier. It is a  
4 win-win. Thanks again.

5 Did I read that correctly?

6 A. That's correct.

7 Q. So had Denny Chittick shared with you the  
8 process he undertook to make a loan?

9 A. Yes.

10 Q. And you're referencing the fact that you're  
11 impressed that he can put a package together in 10 or  
12 15 minutes?

13 A. Right.

14 Q. And earlier in your testimony you observed  
15 that it's a real benefit to a borrower who wants to  
16 move quickly that Denny can get a decision made quickly  
17 and get them funded quickly. Right?

18 A. That's correct.

19 Q. All right. Let's go to the next document in  
20 the stack. I'm not going to mark this, but this is  
21 where you're asking questions of comparing the process  
22 in Nevada versus Arizona and that kind of thing  
23 regarding foreclosures. Do you remember having those  
24 kinds of communications with Denny Chittick?

25 A. Which one are we looking at? 61975?

1 Q. Yes.

2 A. Okay. I'm looking at it.

3 Q. It's just that -- at the time you and your son  
4 were perhaps doing business in Las Vegas, you were  
5 comparing and contrasting the laws in Arizona versus  
6 Nevada. Right?

7 A. Yes.

8 Q. All right.

9 MR. DEWULF: Let's move on and let's mark  
10 the next document which is 62239, Tara.

11 (Exhibit marked, Exhibit 839.)

12 Q. (BY MR. DEWULF) All right. I'm sorry, there  
13 may have been a document that precedes this, but I  
14 don't have it. The bottom email on this page, Exhibit  
15 839, starts out Denny Chittick: Thank you, but there  
16 is more info in it.

17 I'm not sure what he's referring to, but  
18 then you're saying to him: Thanks, Denny. I have my  
19 reading squared away for a while. Are there two or  
20 three metrics that you focus on to give you a summary  
21 of data that's important to you?

22 And then the information at the top is  
23 his response. Correct?

24 A. Yes.

25 Q. And he writes to you on January 17th, 2012, as

1 it relates to the metrics you asked about. It says:  
2 MLS inventory, number of properties in foreclosure.  
3 Those are two I have been watching for years with both  
4 of those numbers changing so drastically in the right  
5 direction is why I've been so optimistic. It's econ  
6 101, supply and demand. We've been on the wrong side  
7 of that for so long, now that it's in the right  
8 direction prices will go up and I can't tell you how  
9 strange that is after five years.

10 Did I read that correctly?

11 A. Yes.

12 Q. What did you understand him to be saying when  
13 he said that numbers are changing so drastically in the  
14 right direction? What did that mean to you?

15 A. It meant that the market that he was investing  
16 or lending money to builders on was improving.

17 Q. And when it means improving [sic], does that  
18 mean that the value of properties are going up?

19 A. Well, I would think so plus just an increase  
20 in demand for his product that he was putting out  
21 there.

22 Q. All right then.

23 MR. DEWULF: Let's mark the next document  
24 in that stack if we could, Tara.

25 (Exhibit marked, Exhibit 840.)

1 Q. (BY MR. DEWULF) Are you there, Tony?

2 A. I've got it.

3 Q. All right. So the email you send, which  
4 starts about a third of the way down on February 18,  
5 2012, you start out and you ask: How do you arrive at  
6 your Estimated Values?

7 Estimated values being capitalized,  
8 question mark.

9 Did I read that correctly?

10 A. Yes.

11 Q. And then he responds: I use a combo of  
12 knowledge, Google Maps, MLS and NetValueCentral, a  
13 subscription service I pay off to give me sales  
14 history.

15 Did I read that correctly?

16 A. Yes.

17 Q. And was this your understanding of the due  
18 diligence he would do in connection with determining  
19 the value of the property against which he is providing  
20 loans?

21 A. Yes.

22 Q. And that would then drive whether he was  
23 comfortable with the loan-to-value ratios?

24 A. Yes.

25 Q. Did he also share with you whether he or

1 someone on his behalf would drive by the properties to  
2 eyeball the properties?

3 A. I don't know if he had anybody drive by or if  
4 he did it himself or -- I don't know.

5 Q. Did he ever tell you that there were certain  
6 borrowers or flippers who were borrowers that he  
7 trusted so much that he really didn't do much due  
8 diligence on the properties that were being purchased  
9 because he believed that they understood the values?

10 A. I don't know specifically, but I would guess  
11 at some point in time that probably occurred. But I  
12 don't know that he ever spoke to me specifically about  
13 it.

14 Q. So you don't remember if he ever spoke to you  
15 about that topic that sometimes he just relied on  
16 borrowers for value?

17 A. I can't answer that. I don't know. Don't  
18 recall.

19 Q. All right. And you said something like you  
20 assumed that he may have, but you don't really know one  
21 way or the other?

22 A. I don't know.

23 Q. All right. Did he, Denny Chittick, ever  
24 mention to you the identity of any repeat borrowers he  
25 had that he had established relationships with?

1           A.    I know in looking at some of those exhibits  
2 that were sent to me yesterday, when I was opening them  
3 up on my phone, there was a -- some kind of mention  
4 about easy investments that I believe turned out to be  
5 Menaged. But I'm just -- I'm just kind of -- I read it  
6 very quickly.

7           Q.    Yeah. We'll get to that in a moment.

8                         But do you recall him ever discussing  
9 with you -- I mean other than sending you that packet  
10 of information that had easy investments on it, do you  
11 remember him ever talking to you about any specific  
12 borrowers?

13          A.    No.

14          Q.    And I think that package -- and we'll look at  
15 it in a moment -- was really meant to show you the kind  
16 of information he gathered in connection with making a  
17 loan. Right?

18          A.    Yes.

19          Q.    All right.

20                         MR. DEWULF: I think the next document in  
21 the stack is 8547. Let's skip that and let's go to  
22 8548 and mark that as an exhibit.

23                                 (Exhibit marked, Exhibit 841.)

24          Q.    (BY MR. DEWULF) So, Tony, this would be a  
25 statement for April 2012 for your investment at DenSco?

1 A. Yes.

2 Q. And this would now show us that the date of  
3 your second investment in DenSco of 100,000 was  
4 December 15, 2011?

5 A. Yes, I see that.

6 Q. All right. Let's go to the next document.  
7 We're not going to mark it. It references a dinner  
8 party. Skip that. Let's go to the next document.

9 MR. DEWULF: And let's mark it. And it's  
10 17021.

11 MR. CAMPBELL: That's going to be number  
12 842?

13 MR. DEWULF: Yes.

14 (Exhibit marked, Exhibit 842.)

15 Q. (BY MR. DEWULF) So, Tony, why don't you look  
16 through this document. I'm not going to ask you about  
17 the first page. Well, I take that back. Just thumb  
18 through it, familiarize yourself with it, I'm going to  
19 ask you some questions about it.

20 A. Yeah, this is the one I remember seeing  
21 yesterday.

22 Q. Yeah. So this document is a reference to or  
23 it contains information in connection with a loan to  
24 Easy Investments and Scott Menaged. Right?

25 A. That's correct.

1 Q. Let's look at the first page together. This  
2 document is an email from Denny Chittick to you and  
3 it's dated September 3rd, 2012. The first paragraph  
4 reads: I look forward to see you, Jason on Monday.  
5 The example of the deal I have attached is to a guy  
6 that I've worked with for four and a half years, I've  
7 lent him about \$10 million.

8 Did I read that correctly?

9 A. Yes.

10 Q. So your understanding from this email when you  
11 looked at the attachment is that he, Denny Chittick,  
12 was describing a situation where he had a borrower of  
13 Scott Menaged through his entity, such as Easy  
14 Investments, had borrowed over \$10 million over 2012.  
15 Right?

16 A. Yes. Over a four-and-a-half-year period.

17 Q. Right. And the rest of this email is talking  
18 to you about the elements of the loan that protects the  
19 lender. Correct?

20 A. Yes, it looks like it.

21 Q. And was this in response to again questions  
22 that -- if you look at the second page, these are  
23 questions that you and your son -- or your son Jason  
24 may have had about hard money lending and how to  
25 protect yourself?



1           A.    Yes.  It's where I asked him if he could give  
2 me a typical transaction, yes.

3           Q.    You mentioned earlier in your testimony that  
4 Denny Chittick was a smart guy and good with numbers.  
5 Would you agree that he also knew how to be a good hard  
6 money lender?

7           A.    Yeah, I thought so.

8           Q.    The aspect of making sure your money is used  
9 appropriately and that you have proper security in the  
10 form of a first deed of trust, it's not very  
11 complicated, is it?

12          A.    No.

13          Q.    Did you say no?

14          A.    Yes, I said no.  It's not complicated.

15          Q.    We now know, looking back on it, that at times  
16 Denny was careless with his money, particularly as it  
17 relates to his loans to Scott Menaged and his entities.  
18 Correct?

19          A.    Yes.

20          Q.    And in your experience and based on your  
21 communications with Denny Chittick, it was out of  
22 character for him to be careless or to not insist upon  
23 making sure that all the elements of sound and prudent  
24 hard money lending were followed.  Right?

25          A.    That's what I -- that's what I thought, yes.

1 Q. Did you ever learn that Denny Chittick was  
2 also careless or less than prudent with respect to any  
3 other borrowers other than Scott Menaged?

4 A. I probably became aware of it after it all  
5 collapsed. He was fairly loose --

6 Q. Do you know --

7 A. He was fairly loose in his -- I guess over  
8 time he became lax in his processing of a loan. That's  
9 all I can figure out.

10 Q. Were you ever able to arrive at an opinion as  
11 to why he became more loose or relaxed or careless  
12 about the DenSco moneys and his loans?

13 A. I don't know. I couldn't -- I would hazard to  
14 guess, it just was a mistake.

15 Q. Have you talked to anyone else who was an  
16 investor about this topic of why he, Denny Chittick,  
17 became careless with DenSco's money?

18 A. Certainly talked to Warren Bush. We were in  
19 pretty constant communication and as soon as Denny's  
20 suicide became news.

21 Q. Did Warren express to you what he thought  
22 about why Denny Chittick became careless with the money  
23 he loaned to Scott Menaged and perhaps others?

24 A. No. I think Warren was just as surprised as I  
25 was that the procedures and policies that were spelled

1 out in his memorandum and his Website weren't being  
2 adhered to. I think he was as shocked as I was. And  
3 everybody else, I think. Somebody may have known more  
4 than I did or Warren did, but we were unaware of how  
5 this procedure had deteriorated over time.

6 Q. So let me ask that question. Are you aware of  
7 any investors having any knowledge of the problems with  
8 Menaged before Denny Chittick's death?

9 A. No. Never heard of the guy before his death.

10 Q. And I think you've answered this, but let me  
11 make sure. No one has expressed to you any sort of  
12 opinion as to why Denny Chittick would have become so  
13 careless in the use of DenSco moneys either regarding  
14 Menaged or anyone else?

15 A. No one -- you know, I had my own thoughts. I  
16 guess that he went through a divorce shortly after I  
17 had invested with him and I -- that concerned me  
18 because people go -- frequently go off the rails during  
19 that type of a situation. Talked to Warren about it  
20 and he kind of reassured me that they had been in  
21 counseling for quite some time and this wasn't a big  
22 shock to Denny, that he had probably prepared himself  
23 already and it was moving forward. That's kind of the  
24 impression I got.

25 Q. On that issue of the divorce, did you ever

1 learn what led to the divorce?

2 A. No.

3 Q. Did you ever talk to anyone about the divorce  
4 other than Warren?

5 A. No.

6 Q. Have you talked to anyone about how  
7 Scott Menaged influenced or manipulated Denny Chittick?

8 A. No, not really. I mean I was unaware that  
9 this whole situation was going on.

10 Q. All right. So let's look at this Exhibit 842  
11 real quickly and he has -- he's referencing what's in  
12 the packet. If you see about halfway down the email  
13 that says page 2, evidence of insurance. Do you see  
14 that?

15 A. Yes.

16 Q. And that was something you understood that  
17 Denny required as a part of every loan, was that the  
18 borrower get insurance on the property?

19 A. Sure.

20 Q. And then he talks about on page 3, he says: I  
21 record on the day that I fund the deal a one-page doc  
22 that says exactly what happened.

23 Did you gain an understanding as to how,  
24 for example in connection with a trustee sale, that  
25 Denny protected DenSco's first position?

1 A. Hold on one second, please.

2 Yes, I read it.

3 Q. But is that a -- did he ever -- that is Denny  
4 Chittick ever explain to you how he protected DenSco's  
5 first position in connection with a trustee sale?

6 A. Other than what he presented to me here, no.

7 Q. All right. Okay. And then let's go to --  
8 farther down that page, he references page 4 to 8 is  
9 the deed of trust, once the trustee's deed is recorded  
10 (which conveys the property to my borrower) I record  
11 this document.

12 And you understood that that was the  
13 security mechanism that was recorded to provide  
14 protection in the event there was a default on the  
15 loan?

16 A. Yes.

17 Q. Okay. And, again, that was a primary part of  
18 what gave you comfort was that DenSco and Mr. Chittick  
19 was telling you, "We always get first position deed of  
20 trust"?

21 A. Yes.

22 Q. And then page 9 references the note, spells  
23 everything out. And he's referencing a promissory note  
24 that's in the package?

25 A. Yes.

1 Q. And then page 10 references receipt and  
2 mortgage. Do you see that?

3 A. Yes.

4 Q. Or I'm sorry, the release.

5 Any doubt in your mind that  
6 Denny Chittick understood what his loan documents gave  
7 him the power to do at DenSco?

8 A. I didn't have any doubt that it -- he knew  
9 what he was doing.

10 Q. Okay. We're not going to mark the next  
11 statement, I don't think we need to because we've  
12 already got later statements that have more up-to-date  
13 information.

14 Let's look at the documents after that.

15 MR. DEWULF: And let's mark it. It is  
16 64873.

17 (Exhibit marked, Exhibit 843.)

18 Q. (BY MR. DEWULF) This is a series of emails,  
19 Tony. And you're a motorcycle enthusiast. Right?

20 A. Yes.

21 Q. And you've taken some extended trips.

22 A. Yes.

23 Q. If you'll look on the second page, the email  
24 that you write continues on and I think this looks like  
25 an interplay between you and Denny Chittick. In other

1 words, you're asking questions and he's responding  
2 within the same email. Do you read it as that?

3 A. That's right. I ask a question and then he  
4 responds to it right below that question.

5 Q. Okay. And the second page references the fact  
6 that you have visited his parents in Coeur d'Alene. Do  
7 you see that?

8 A. Yes, I see it.

9 Q. So let's -- I want to focus on this inset that  
10 is four paragraphs down. It reads: I did review your  
11 latest quarterly newsletter. A couple of observations.

12 Are you there with me?

13 A. Yes, I see it.

14 Q. Okay. And then it reads: Number one,  
15 doubling investor money from 21 million to 42 million  
16 in two years is stunning. Congratulations. This has  
17 to have you walking a very fine line in putting that  
18 money to work.

19 What did you mean by that?

20 A. Again, we've talked about his rapid growth and  
21 how he's, I would think, under a lot of pressure to get  
22 that money deployed and invested because he owes it to  
23 the investors of DenSco.

24 Q. But you're congratulating him because he's  
25 been able to grow his investor money?

1 A. Yes.

2 Q. And then number 2 reads: A number of your  
3 long term builders have found cheaper financing for  
4 their rental property. I don't know how much money  
5 they paid off but that would appear to put further  
6 pressure on you.

7 That observation is based on having read  
8 the quarterly newsletter?

9 A. That's interesting. I don't know where I  
10 would have come up with the information to make that  
11 statement. But, yeah, somewhere. Maybe it was on the  
12 quarterly update, maybe he mentioned it, I don't  
13 remember. But somehow some document gave me that  
14 information.

15 Q. But what you're also expressing is that your  
16 understanding is there would be pressure on his ability  
17 to find, quote, the room to lend money. Right?

18 A. Yes. Because he has this money invested by  
19 his investors and if he's lost some -- his more  
20 longterm builders that means he has less of a market to  
21 deploy lenders' money to.

22 Q. Let's look at this and go down this email page  
23 and there's a paragraph number 2 and it begins: Yes,  
24 it has.

25 Do you see that paragraph?



1 A. Yes.

2 Q. I want to go to the end of that paragraph.

3 Three lines up there's a sentence that  
4 begins: You are to be congratulated for operating one  
5 of the best hard money businesses around. I've always  
6 been impressed about how you have been able to receive  
7 the investors' money, turn around and put it to work, a  
8 balancing act to be sure.

9 A. Yes.

10 Q. Did I read that correctly?

11 A. Yes.

12 Q. And so the balancing act you're referring to  
13 is the idea of bringing in money from investors and  
14 being able to find loans so that you can put that -- he  
15 could put that money to work. Right?

16 A. That's correct.

17 Q. Okay. Let me -- then go to the next  
18 paragraph.

19 This would be a paragraph that was  
20 written by Denny Chittick. Right?

21 A. Yes.

22 Q. Because it begins, "I don't have any plans."

23 A. Yes.

24 Q. Let me read it: I don't have any plans to  
25 return money at this point. If I did get to that point

1 it would be well planned in advance. In nearly 13  
2 years I've always been able to put all the money I have  
3 to work. There have been many more times when I could  
4 have put more money to work than I have versus sitting  
5 on excess cash. Look at this way. If I can stay  
6 95 percent invested, I would be sitting on over  
7 \$2 million at all times. That is my normal cash  
8 position. I'm usually between 500K, 500,000, and 1.2  
9 and that money though sitting in my bank account is  
10 committed to deals sitting on my desk.

11 Did I read that correctly?

12 A. Yes.

13 Q. Do you understand what he's saying there?

14 A. Yeah, I think so.

15 Q. Is he saying that he's holding money back for  
16 future loans or -- I can't understand what -- is he  
17 saying he's sitting on \$2 million as cash all the time?

18 MR. CAMPBELL: Objection to form.

19 Q. (BY MR. DEWULF) I'm just asking what your  
20 interpretation is.

21 A. Okay. Hold on one second.

22 Seems to me like he's saying he never  
23 really had a problem with sitting on money and not  
24 being able to invest it. It's been the other way  
25 around, that he has more of a demand from his borrowers

1 than he has funds invested by his investors.

2 Q. All right.

3 MR. DEWULF: Let's mark the next document  
4 in the stack and then we're going to break for five  
5 minutes.

6 The next document, Tara, is 9884 and I  
7 want you to mark it if you could.

8 MR. CAMPBELL: That's going to be 844.

9 (Exhibit marked, Exhibit 844.)

10 Q. (BY MR. DEWULF) All right. So, Tony, this is  
11 an email from Denny Chittick to you dated  
12 March 29, 2013, and he writes to you: Investors:  
13 Anthony, I've decided not to take on any new investors.  
14 I'll continue to accept money from the current  
15 investors. I appreciate all the referral from  
16 everyone. Since I spent exactly zero dollars on  
17 marketing, word of mouth has -- was my only way to  
18 grow. Please find attached your monthly statement.

19 So did this refresh your memory that  
20 roughly March of 2013, he decided not to take on any  
21 new investors?

22 A. Yes.

23 Q. Okay.

24 MR. DEWULF: Let's skip the next  
25 documents. Let's skip the next document after that.

1                   And then we're going to mark the document  
2 which is 10803 and then I'm going to ask you about it  
3 when we get back and we'll take a five-minute break.

4                   (Exhibit marked, Exhibit 845.)

5                   MR. DEWULF: Thank you. We'll break for  
6 about five minutes, Tony.

7                   THE WITNESS: Okay.

8                   (A recess was taken.)

9                   Q.     (BY MR. DEWULF) So, Tony, I'm showing you  
10 Exhibit 845. And I want to look at the first page of  
11 this document first. And it's an email from  
12 Denny Chittick to you dated July 31, 2013. Correct?

13                  A.     Yes.

14                  Q.     And it says: Investors: Anthony.

15                             It says: Please find attached your  
16 monthly statement.

17                             And then it reads: I thought this would  
18 be as good as time as any to tell you that I'm going to  
19 have to soon quit accepting money from my current  
20 investors.

21                             And then he goes on: Between the organic  
22 growth of the interest that accrues and profits, plus  
23 what you are adding to your investments, the law of  
24 large numbers are working against me.

25                             Then it reads: Not to worry, nothing is

1 wrong, I just need to be able to manage the business in  
2 the confines of time that I've set for myself (grade  
3 school hours) and it's getting harder to do that.  
4 Thus, I believe by the end of the year I'll quit  
5 accepting money. Those of you that have IRAs, I'll  
6 keep accepting those annual contributions because they  
7 are small. Thanks, D.C.

8 Did I read that correctly?

9 A. Yes.

10 Q. So does this refresh your memory that around  
11 July of 2013 he stopped accepting money from the  
12 current investors?

13 A. Correct.

14 Q. And do you remember receiving this email?

15 A. Yeah, I remember receiving it.

16 Q. So I guess you -- I'm taking this from some of  
17 the things you said earlier. You took some comfort  
18 from the fact that he was concerned about managing the  
19 numbers and so he was now choosing to kind of back off  
20 to make sure he could manage everything. Fair?

21 A. Yeah, that gave me some comfort.

22 Q. And did you generally have the impression with  
23 Denny Chittick that he was aware enough in his  
24 abilities that he monitored these kinds of things to  
25 make sure that he wasn't getting too far out or that he

1 could properly manage his investors' money?

2 A. Yeah, I think that's accurate.

3 Q. And the second page of this document is the --  
4 or I'm sorry. Maybe it isn't.

5 Do you have a second page to your  
6 document?

7 A. Yes.

8 Q. Is it a statement?

9 A. Yes, I do.

10 Q. Okay. And it's a statement dated July 2013  
11 and you see the investment history. It shows that that  
12 third investment you made was in April -- on  
13 April 30th, 2013. Correct?

14 A. May 30th.

15 Q. Oh, I'm sorry. Gosh. May 30th, 2013, was the  
16 date of your third investment. Correct?

17 A. Right.

18 Q. All right. And it shows also the interest you  
19 earned, which reflects the fact that interest has  
20 accrued in your account.

21 A. That's right.

22 Q. Correct?

23 A. Right.

24 Q. And this would be the sum total of investments  
25 that you made in the company. Right?

1 A. That's it.

2 Q. All right. Let's go to the next document. I  
3 don't think -- this just -- again, this is dated  
4 December 18 of 2013 and he confirms in the document  
5 that he won't be accepting any more money after the end  
6 of the year. Do you see that?

7 A. Yes.

8 Q. And so would this be consistent with your  
9 memory that as of the end of 2013, he stopped accepting  
10 new money?

11 A. Yes.

12 Q. All right. Let me ask you to look at the next  
13 document in the stack, which is dated June 29, 2014.  
14 Do you see that?

15 A. Yes.

16 Q. And the document has a discussion generally of  
17 both what's going on within the company and then also  
18 what's going on at the -- he uses the word "macro," at  
19 the larger level of the economy. Do you see that?

20 A. Yes.

21 Q. Was this document provided in connection with  
22 the MOM's group --

23 A. Yes.

24 Q. -- and the MOM's meeting?

25 Okay. And was it your experience, Tony,

1 that in connection with the MOM's meetings, he would  
2 present or provide some summary of both what was going  
3 on at DenSco and what was going on in the larger  
4 economy?

5 A. Yeah. Like I said I only attended one, but I  
6 think that would be a fair statement.

7 Q. All right.

8 MR. DEWULF: Let's look at the next  
9 document.

10 And let's mark it if we could, Tara.

11 (Exhibit marked, Exhibit 846.)

12 Q. (BY MR. DEWULF) Tony, if I could ask you to  
13 look at this briefly, particularly that second  
14 paragraph, I just wanted to confirm something.

15 So in it he says that: To continue to  
16 constrain the size of the portfolio, I'm requesting  
17 that everyone that is presently accruing interest to  
18 take interest monthly or quarterly.

19 Did you see that?

20 A. With the exception for the IRAs.

21 Q. Right. And you were an IRA. Right?

22 A. That's correct.

23 Q. All right. So as of 12-27-2014, did you have  
24 any reaction to his decision to go from accruing  
25 interest, at least as to the non-IRA accounts, went



1 from accruing interest to paying interest monthly or  
2 quarterly?

3 A. You know, I wasn't -- I wasn't surprised  
4 because just looking at my statement, I -- my accrued  
5 interest was getting to be substantial. And if he had  
6 more investors like me and I know -- I believe he had  
7 quite a few individual retirement accounts, that people  
8 were letting their interest accrue, that that could be  
9 a cash flow problem later on. In fact I think later  
10 on, I even sent him an email saying, you know, my  
11 accrued interest is getting large and I'm getting too  
12 much of a concentration in DenSco and I think I  
13 suggested he pay me the accrued interest at that time.

14 Q. All right. Did you ever talk to him about  
15 this decision to pay quarterly or monthly instead of  
16 allowing accrual?

17 A. I never talked to him about that. That  
18 wasn't --

19 Q. All right.

20 A. It was of no interest to me. I didn't need  
21 the money then.

22 Q. All right. So let's look at the next  
23 document. I'm not going to mark it for now. There's a  
24 reference to an entity called Onaga, O-N-A-G-A.

25 A. Yeah.

1 Q. Was that some sort of a clearinghouse or what  
2 was Onaga?

3 A. That's the custodian. That's the FTCO or  
4 whatever it is.

5 Q. All right.

6 A. First Trust of Onaga.

7 Q. I understand. So here you are and you're  
8 pointing out if you look at it -- and you may have seen  
9 it previously -- you're pointing out --

10 A. What document are you looking at, please?

11 Q. I'm looking at a document that's dated  
12 April 17, 2015.

13 A. Okay.

14 Q. 67446 on the bottom.

15 A. I see it. Yes.

16 Q. And I'm just confirming with you that you are  
17 identifying a typo in a newsletter for Denny Chittick.

18 A. Yeah, it's one of my hang-ups.

19 Q. So you're reading the newsletters carefully  
20 enough to determine whether there was a typo and you're  
21 letting him know about that?

22 A. Yeah. Something big might have gone right  
23 over my head, but I guess I catch the little things.

24 Q. All right. It just shows you're being  
25 careful. You're following what he's sending you.

1 Right?

2 A. Right. Trying to.

3 Q. All right. Let's -- the next document I'm not  
4 going to mark and it's a September 4, 2015, set of  
5 emails and in it you're discussing the idea of doing a  
6 shorter term loan.

7 Do you recall those discussions with  
8 Denny Chittick?

9 A. I sure do.

10 Q. And did you end up doing any further  
11 investing?

12 A. I did not.

13 Q. All right. So let's go to the next document.

14 MR. DEWULF: And let's mark it, Tara.  
15 And it's D128039.

16 (Discussion off the stenographic record.)

17 (Exhibit marked, Exhibit 847.)

18 Q. (BY MR. DEWULF) All right. Tony, would you  
19 just confirm that this is a packet of documents in  
20 connection with your investments at DenSco.

21 A. Yes.

22 Q. All right. I'm not going to ask you about it.  
23 I think we've got a record of when you invested and  
24 those kinds of things.

25 A. Uh-huh.

1 Q. We'll skip the next page.

2 And then I want to ask you about the  
3 document after that and it is November 12th, 2015, and  
4 it has a stamp 68082 on the bottom.

5 A. 68082?

6 Q. Yes.

7 A. Yeah, I got it.

8 Q. All right. So that's 848, I believe.

9 (Exhibit marked, Exhibit 848.)

10 (Discussion off the stenographic record.)

11 Q. (BY MR. DEWULF) So this is a November 12th,  
12 2015, email from you -- I'm sorry -- from Denny  
13 Chittick to you at the very top. And then it looks  
14 like you had sent an earlier email to him so maybe he  
15 is putting information in. It looks like an  
16 interactive email between the two of you.

17 A. That's right. Yeah, he inserted his response  
18 after I sent him -- when I first researched DenSco back  
19 in 2011 and then he's saying -- I asked for an update  
20 on current status and that's what he gave me.

21 Q. So he's telling you as of November 12, 2015,  
22 DenSco has a 257 loans outstanding, the loan amount  
23 total in aggregate is 52,200,000, the collateral value  
24 is 72 million, the average number of days loans  
25 outstanding is 116. Did I read that correctly?

1 A. That's right.

2 Q. And that's the information Denny Chittick is  
3 providing to you in response to your question. Right?

4 A. Yes.

5 Q. And when it says total collateral value, do  
6 you understand that to be the collateral value of the  
7 properties against which the loans were made?

8 A. Yes.

9 Q. So an average you would take as a percentage  
10 to show loan-to-value ratio, you would take a loan  
11 amount of fifty-two-two million against the total value  
12 of the property of 72 million?

13 A. Yes.

14 Q. All right.

15 MR. DEWULF: Let's go to the next  
16 document. Let's mark it, please, 849, and it is stamp  
17 68083.

18 (Exhibit marked, Exhibit 849.)

19 Q. (BY MR. DEWULF) Do you have it, Tony?

20 A. I have it, yes.

21 Q. All right. So I'm showing you Exhibit 849 and  
22 it looks like an email dated November 12th and 13th,  
23 2015. Am I correct?

24 A. That's correct.

25 Q. And it looks like the -- you know, the

1 earliest email, which is on the third page, is the one  
2 we just looked at. And the first two pages look to  
3 be -- they contain questions posed by you of  
4 Denny Chittick and his response to those questions.

5 A. That's right.

6 Q. Is that a fair reading?

7 A. Yes.

8 Q. So could you explain to us are your questions  
9 the bullet points and then the next after that is his  
10 response to your bullet points?

11 A. Yes.

12 Q. So your first question starts out: On  
13 average, on an annual basis, how much of the investor  
14 dollar do you have working as a percent of building  
15 loans, 95 percent?

16 That goes on and that whole paragraph is  
17 your question being posed to Denny Chittick. Right?

18 A. That's correct.

19 Q. All right. And then in the following two  
20 paragraphs, he responds to your question. Right?

21 A. Yes.

22 Q. And then you ask the question that's about  
23 two-thirds of the way down the page: Back in 2011,  
24 flippers' source of properties was from foreclosure  
25 auctions. Is that still the case? If not, what is

1 their source now?

2 And then he responds to that question.

3 Right?

4 A. Yes.

5 Q. And then the next page, you ask him: Have you  
6 had to venture out of your "normal" product (i.e. first  
7 deeds on single family residential) to keep the  
8 investor money working?

9 And then he responds to that question.

10 Right?

11 A. Yes.

12 Q. And then you ask: Do you still have your  
13 succession plan in effect in 2011? As I recall, you  
14 had an individual that was up to speed on your current  
15 portfolio of loans and collateral and could step in if  
16 necessary.

17 Correct?

18 A. Correct.

19 Q. And then your -- it looks like your final  
20 question, the bullet point: Finally, if there was some  
21 major catastrophic event in the Phoenix real estate  
22 market where values collapsed and your flippers walked  
23 away leaving you with the properties, do you think the  
24 annual rentals would be sufficient to maintain  
25 investors' principal and accrued interest up to that

1 point and you could ride it out until the prices  
2 recover? I know that's a crystal ball question, but  
3 these are the things that keep me up at night.

4 Did I read that correctly?

5 A. Yes.

6 Q. Was there something, Tony, in this time frame,  
7 November of 2015, that concerned you about something  
8 going on at the company or was it just you doing your  
9 due diligence?

10 A. I think maybe some notes were getting ready to  
11 be rolled over and I wanted to be sure that nothing had  
12 materially changed in his investment process and whole  
13 business model since I was going to renew my  
14 investments. I think that's what I was saying there.

15 Q. Okay. You know, I'm -- I think I was mistaken  
16 in the way I characterized what the -- how this  
17 document reads because it looks as though on the bottom  
18 of the second page, there's a paragraph that begins "In  
19 summary" and I think that's your comment.

20 A. It is.

21 Q. Could you look at that and see if it's your  
22 comment?

23 A. Yeah, it is.

24 Q. All right.

25 A. I should have put a bullet point on it, but I



1 didn't.

2 Q. Okay. So it reads: In summary, I believe  
3 that you are the "go to" guy for the flippers in the  
4 Phoenix market. You offer them two things, an expert  
5 knowledge of the real estate market and a streamlined  
6 lending process that the banks can't compete with.  
7 When I first invested with you I did my due diligence,  
8 studying your business model and meeting with you and  
9 your parents. In the final analysis my decision to  
10 invest with you was that I trusted you. I did then and  
11 I do now. Thanks for your time.

12 Did I read that correctly?

13 A. Yep. Yes.

14 Q. And then he responds and he says: I  
15 appreciate that. I do try to provide a lot of extra  
16 value to my borrowers rather than just the funds. I  
17 have a lot of loyal borrowers and we have a good  
18 working relationship and communication. Things are  
19 going to go wrong, it's being able to work through  
20 those issues and keep the communication open so that we  
21 can find a solution. I've got many, many borrowers  
22 that I've lent millions to and completed dozens if not  
23 hundreds of deals with them. Those are the  
24 relationships you want to maintain and foster. The  
25 trust is key.

1                   Did I read that correctly?

2           A.    Yes.

3           Q.    I'm seeing a theme and I've seen it in other  
4 documents that trust is a big deal with Denny Chittick.  
5 Did you gain that impression with him?

6           A.    Yes.

7           Q.    Did he talk to you about how important it was  
8 that he trust his borrowers?

9           A.    Yeah.  I mean I -- you know, at some point via  
10 email or maybe a personal meeting I had with him, which  
11 there were like one or two, there weren't many, but he  
12 could have expressed that.  I would believe that.

13          Q.    I mean did you view that that was one of his  
14 quality traits is he placed value on trust?

15          A.    Yes.

16          Q.    How about loyalty?  Did he ever talk to you  
17 about the importance of loyalty with his borrowers or  
18 his investors or others?

19          A.    Not that I recall.

20          Q.    Okay.  Let's go to the -- we don't need to  
21 look at the next document.  I'm not going to mark it,  
22 it's just another financial statement.

23                   MR. DEWULF:  Let's mark the next  
24 document, Tara, it's stamped 68982.

25                               (Exhibit marked, Exhibit 850.)

1 Q. (BY MR. DEWULF) All right, Tony. This is a  
2 document dated July 5, 2016. So this would have been  
3 two to three weeks before Denny Chittick passed away  
4 and it's an email from Denny to you.

5 Again it looks as though there's kind of  
6 a interaction between the two of you in this email, but  
7 I want you to confirm that. I want you to go -- in it  
8 you're expressing the concern that you're too heavily  
9 weighted in DenSco. Do you see that?

10 A. Yes, I see that.

11 Q. So you as of 2016 determine that as it related  
12 to your total asset allocation you needed to reduce the  
13 money dedicated to your DenSco investments?

14 A. Yes.

15 Q. And were you in the process of doing that when  
16 he passed away?

17 A. Yes.

18 Q. And in this email you are again identifying  
19 when you originally made your investments. You talk  
20 about the accrued interest you've -- you total out.  
21 Almost to the end of the email, there is a paragraph  
22 that begins, "Thanks." Do you see that little  
23 paragraph?

24 A. Yes.

25 Q. It says: Thanks for your excellent

1 professional money management. I guess as they say "no  
2 good deed goes unpunished," but I have to look at my  
3 entire portfolio and becoming too weighted in one asset  
4 is not prudent.

5 So you're basically explaining to Denny  
6 why you're choosing to reduce the moneys you have in  
7 your DenSco investment?

8 A. Yes.

9 Q. Is the phrase "no good deed goes unpunished,"  
10 referring to the fact that he's done so well and your  
11 money has grown so much that you're going to have to  
12 reduce the amount?

13 A. Yes, that's exactly right.

14 Q. All right. So let's look at the next  
15 document. I think it's in the stack you have which is  
16 a previously marked document. It's Exhibit 448.

17 A. Yes.

18 Q. But -- all right. So this is a document that  
19 was marked in a previous deposition and I want to go  
20 through it very, very quickly. And I -- have you read  
21 this document before?

22 A. The actual document itself --

23 Q. I apologize. I cut you off. Go ahead.

24 A. The actual document that's from Denny?

25 Q. Yeah.

1 A. I have read that.

2 Q. And the document I'm referring to starts on  
3 the second page and it's a letter to the investors that  
4 he wrote and it was kind of in anticipation of his  
5 suicide, as I read it, and then I think it was provided  
6 to you after his suicide. Right?

7 A. That's right. It was -- I don't believe Denny  
8 sent this. I believe his sister or somebody made the  
9 decision to send this out, but it -- I don't believe it  
10 came from Denny directly.

11 Q. All right. I want you to go down about  
12 two-thirds of the way.

13 Now, there are no paragraphs in this  
14 document so it's difficult to track things. But I want  
15 you to go down about two-thirds and there is a sentence  
16 that begins: In 2012 I was saying that I would quit  
17 accepting money soon.

18 It's about halfway down, actually.

19 A. Yeah, I see it.

20 Q. All right. Let me just read that to you: In  
21 2012 I was saying I would quit accepting money soon and  
22 figured the portfolio would start shrinking. Going  
23 into 2013 I was starting to get larger idle cash  
24 positions on a regular basis. Scott Menaged (gives  
25 phone number and address), a long-time borrower, he was

1 probably one of my largest borrowers by dollars over  
2 the years. He was also ran a bidding company and sent  
3 me many borrowers over the years. He at the time had a  
4 few million dollars with me on his rentals and was  
5 still doing flips on a regular basis. Scott contacted  
6 me and asked if he would -- if would be interested in  
7 funding a bank of rentals to which a hedge fund friend  
8 of his out of New York would buy one-fifth for each, 7  
9 to 10 million. He would put down 15 to 20 percent, fix  
10 them up, rent them then when he acquired the total  
11 dollar amount he would sell out to this guy. That  
12 amount of money would take me over me a 10 to  
13 15 percent threshold to any one borrower. Again, I  
14 talked to a few of you investors and got a positive  
15 response. Based on his track record, the down payment,  
16 et cetera, the comfort level was there, I agreed.

17 Now let me stop there. Did Denny  
18 Chittick speak to you about this interaction with  
19 Scott Menaged in either 2012 or 2013?

20 A. Never.

21 Q. And do you know whether he spoke to -- I mean  
22 he said he talked to a few of you investors. Do you  
23 know whether he talked to other investors about this  
24 relationship with Menaged in this time frame?

25 A. I don't -- I don't know of any. I know it

1 deviated from his basic business model and when I read  
2 that, I started getting a sick feeling in my stomach  
3 because it -- it just was bad news.

4 Q. So you would have read this letter before you  
5 understood the larger details about what had happened  
6 at DenSco because everyone was still doing an  
7 investigation, David, Beauchamp and Shawna Heuer,  
8 S-H-A-W-N-A, H-E-U-E-R.

9 MR. CAMPBELL: Objection, form.

10 (Discussion off the stenographic record.)

11 Q. (BY MR. DEWULF) Let me just rephrase it and  
12 it'll probably be easier for everybody.

13 So this exhibit that we're looking at,  
14 which is Exhibit 448, you would have seen after  
15 Denny Chittick's suicide, but before you understood the  
16 status of what had happened to DenSco.

17 A. Yes.

18 Q. And do you -- and you recall that the status  
19 of what had gone on at DenSco was at least initially  
20 determined by efforts by Shawna Heuer, Denny's  
21 surviving sister, David Beauchamp, the lawyer, and to  
22 some degree Robert Koehler?

23 A. Yes.

24 Q. All right. So let's go down this page. There  
25 is about seven lines up, the sentence begins: For

1 efficiency sake.

2 Do you see that?

3 A. Yes.

4 Q. It reads: For efficiency sake I would  
5 normally wire the funds I'm lending to the bidding  
6 company that would get the check and give it to the  
7 trustee, send me receipt. Sometimes I would even wire  
8 the full amount and my borrower would bring me their  
9 down payment check and bidding fee because they lived  
10 here in the east valley versus running across town.  
11 I've operated this way ever since I was given the  
12 ability to wire online in 2003. Many of you knew this  
13 and I told you this is how I operated. Some of you  
14 that were also borrowers and investors have experienced  
15 this way of doing business and know it's common.

16 This description that he's giving where  
17 in some cases he's giving money directly to the  
18 borrower, did he ever share that with you?

19 A. No.

20 Q. Do you know if he ever shared it with any  
21 other investors?

22 A. Not that I'm aware of.

23 Q. So the comment we looked at earlier and this  
24 comment would not be accurate, would they?

25 A. No.



1 MR. CAMPBELL: Objection to form of the  
2 question.

3 Q. (BY MR. DEWULF) In other words, what he's  
4 saying he told a few of the investors, to your  
5 knowledge he never told the investors any such thing.

6 MR. CAMPBELL: Well, I'm going to object  
7 to the form.

8 Q. (BY MR. DEWULF) I'm sorry. Go ahead.

9 A. Well, I bet you there's no investors that step  
10 up to the plate now and say he discussed it with them.  
11 I kind of doubt he discussed it with anybody.

12 Q. Well, as a business matter, the investors  
13 would not be happy with the idea that he would give  
14 money directly to the borrower as opposed to making  
15 sure that the moneys were protected. Right?

16 A. That's correct.

17 Q. All right. And let's go to the next page.  
18 Again, it's hard to track but about -- almost halfway  
19 down the page -- and this is Bates stamped 14636 --  
20 there's a number 50 million.

21 Do you see that in the text?

22 A. Yes.

23 Q. All right. Right after that the sentence  
24 starts: It was only going to be for a few more months  
25 and he had been spotless with payments of interest and

1 I checked all the values of the properties, visited  
2 some of them. Everything seemed to be in order.

3 Let me stop there. Did you understand he  
4 was referring to his lending relationship with  
5 Scott Menaged?

6 A. Yes.

7 Q. And then he goes on and he says: I agreed to  
8 the -- I agreed to the increase. We talked again in  
9 the fall and he was telling me I would be cashed out of  
10 these by year end. I again spoke with a few of you  
11 saying that I might be returning some funds. The plan  
12 was all working out fine, the rest of the business was  
13 doing fantastic and I wasn't concerned. Then in  
14 November something came up that made it look like I was  
15 in second position on one of the properties I had a  
16 loan with Scott. I called him, he didn't know anything  
17 about it and said he would get back to me.

18 Let me just stop there. Are you aware of  
19 Denny Chittick telling anyone of the investors that he  
20 was running into problems with Scott Menaged in 2013?

21 A. No. Never heard of Scott Menaged before.

22 Q. It says he's talking about communicating with  
23 investors about Menaged, that would be an inaccurate  
24 statement. Right?

25 A. I can't speak for other investors, but I know

1 he didn't speak to me, I know he didn't speak to  
2 Warren.

3 Q. Let me ask you a couple general questions.  
4 Are you familiar with Active Funding Group?

5 A. I've seen it in some of the DenSco  
6 receivership Websites, but couldn't really -- I  
7 couldn't --

8 Q. Okay.

9 A. -- expand upon it.

10 Q. All right. He references -- and I can give  
11 you the specifics, but he talks about this fear of  
12 disclosing information to his investors and he  
13 references that one of his investors had done something  
14 through a bidding company when problems occurred. Do  
15 you have any knowledge of any of the investors ever  
16 getting sideways with a bidding company or litigating  
17 with a bidding company?

18 A. I know that there was a -- I believe a lady,  
19 her name doesn't come to my mind right now, but if I  
20 heard it, I could recognize it. Coralee something.

21 Q. Coralee Thompson?

22 A. Yeah, that's her. She's a pretty tough  
23 customer --

24 Q. I apologize. Go ahead.

25 A. She's a pretty tough customer. I think she

1 kept close tabs on things and so I think she was  
2 shocked as everybody else.

3 Q. So what you're saying is you think that  
4 Coralee Thompson may have gotten sideways with a  
5 bidding company and he may be referring to that?

6 A. Yes.

7 Q. And do you know if this bidding company was  
8 this fellow who was on Property Wars? The name escapes  
9 me, but he was a fellow who Denny Chittick knew?

10 MR. CAMPBELL: Object as to form.

11 A. I don't know.

12 Q. (BY MR. DEWULF) All right. Would it be fair  
13 to say as we look at this Exhibit 448 that based on  
14 your knowledge to the extent that he is saying that he  
15 is keeping any investors apprised of what's going on  
16 before his suicide, to your knowledge those are false  
17 statements. Right?

18 MR. CAMPBELL: Objection to form.

19 A. Yes.

20 Q. (BY MR. DEWULF) All right. So let's go to  
21 the next document.

22 MR. DEWULF: Let's mark it. It is 9674.

23 MR. CAMPBELL: That'll be 851?

24 MR. DEWULF: Yeah.

25 (Exhibit marked, Exhibit 851.)

1 Q. (BY MR. DEWULF) All right, Tony, that's  
2 Exhibit 851. This appears to be an email from  
3 David Beauchamp and then a responding email from you on  
4 August 4, 2016. Do you see that?

5 A. Yep. Yes.

6 Q. And let me read in -- your email is at the top  
7 of the first page. Right?

8 A. Yes.

9 Q. And this is after Denny Chittick has committed  
10 suicide and you're -- early August 2016, everyone's  
11 trying to reconstruct what happened to DenSco?

12 A. Yes.

13 Q. And you say to Mr. Beauchamp: My name is  
14 Anthony Burdett and I am a DenSco investor. I have a  
15 substantial amount invested with DenSco (over 680,000,  
16 including accrued interest through June 2016, the last  
17 statement I received). Assuming that I can be  
18 protected from my liability issues, I would offer to  
19 serve on the advisory board.

20 Let me stop there. Do you recall that  
21 there was some talk about putting together an advisory  
22 board to kind of oversee the investors' efforts to  
23 figure out what had gone on?

24 A. Yes.

25 Q. The board was never created ultimately because

1 the Corporation Commission stepped in at some point.

2 Right?

3 A. Yes.

4 Q. And then your email goes on, it says: My sole  
5 goal is to maximize the return of my investment but in  
6 doing so will help to maximize the return of all  
7 investors. If we go the bankruptcy/receivership route  
8 we will receive pennies on the dollar.

9 Did I read that correctly?

10 A. Yes.

11 Q. And then the next paragraph reads: I am a  
12 retired CPA with over 40-plus years of experience. I  
13 am also a friend of Eldon and Carlene Chittick and  
14 would like to offer them any assistance I can in this  
15 very difficult time. Hopefully we can get the other  
16 investors on board and make the best of a bad  
17 situation.

18 And then you give your contact  
19 information. Correct?

20 A. Yes.

21 Q. All right. So let me go back to that first  
22 paragraph.

23 You say "If we go the  
24 bankruptcy/receivership route we would receive pennies  
25 on the dollar." What are you saying there?

1           A.     Historically I think about 10 or 12 cents on  
2 the dollar is what you get when you go through the  
3 receivership route. No offense to attorneys, but all  
4 the funds get drained off in -- seriously -- in  
5 attorney's fees. I mean you-all are doing your job, it  
6 takes time. But I think you can look at the latest  
7 accounting of DenSco receivership and my prediction has  
8 been pretty much holding up. It's just the nature of  
9 the beast.

10          Q.     So you're expressing a concern here that if  
11 DenSco were put either in bankruptcy or receivership,  
12 the investors would stand to get less money on their  
13 investments.

14          A.     Sure.

15          Q.     And had you had experience previously with  
16 either dealing with a bankruptcy trustee being  
17 appointed or a receiver being appointed?

18          A.     No. But I had 40 years of accounting  
19 experience and I thought a group of people,  
20 conscientious, honest people, Warren, myself, some  
21 others, we could -- we could look out for the interest  
22 of all investors and try to do it in the most  
23 cost-effective way possible. That was the purpose of  
24 my email.

25          Q.     Did you share with the other investors your

1 concern about the fact that the receivership could be  
2 expensive and reduce the amount of moneys available to  
3 the investors ultimately?

4 A. I know I did with Warren and there was one  
5 other investor in Indiana, some Scoggins or something  
6 like that, he had called me. He got my phone number  
7 some -- well, I guess somehow they got my contact  
8 information and I think I probably mentioned to him  
9 that this receivership was going to be expensive.

10 Q. All right. And do you know if -- do you  
11 recall that David Beauchamp expressed a concern about  
12 that, as well, in one of his emails, the idea that a  
13 receivership can result in being a large expense and  
14 can reduce money to the interest holders?

15 A. I don't recall the communication exactly but  
16 sure could have done that, communicated that to me.

17 Q. And you would have agreed.

18 A. Oh, yeah.

19 Q. You would have agreed with that sentiment?

20 A. Yes.

21 Q. All right. Let's go to -- let me just show  
22 you the next -- the next document in that stack is --  
23 well, let's mark it. It's redundant, but I think we  
24 might as well have it in the record.

25 A. Is that 10 -- 10288?



1 Q. Yes.

2 MR. DEWULF: Would you mark it, Tara.

3 (Exhibit marked, Exhibit 852.)

4 Q. (BY MR. DEWULF) So we've just looked -- if  
5 you look about halfway down, it's your email to  
6 David Beauchamp we just went through.

7 Do you see that?

8 A. Yes.

9 Q. And then his response to you, do you see that  
10 he actually received your email and read it and he  
11 said: Thank you for your thoughtful response and your  
12 offer to serve on the advisory board.

13 Do you recall receiving that from him?

14 A. Yes.

15 Q. All right. Now let's go to the next document.

16 MR. DEWULF: Let's mark it. It is 9512.

17 (Exhibit marked, Exhibit 853.)

18 Q. (BY MR. DEWULF) So, Tony, this is a two-page  
19 document. On the cover it's August 7, 2016, email and  
20 attached to it looks to be kind of a financial summary.

21 Did you generate that second page?

22 A. Yeah.

23 Q. Why'd you do it?

24 A. I wanted to show that Menaged loans instead of  
25 being a maximum of 10 to 12 percent were 90 percent of

1 the loan portfolio.

2 Q. So in other words, the -- Denny Chittick had  
3 violated the promise he'd made to the investors to  
4 diversify his loan portfolio so that no one borrower  
5 represented 10 or 15 percent?

6 A. Yes.

7 Q. All right. So let's look at the first page.  
8 Again, it's an email to David Beauchamp who's helping  
9 DenSco in this time frame and it says: Good morning,  
10 Mr. Beauchamp. First I want to thank you for being  
11 very professional and forthcoming in your  
12 communications with investors. You have met your  
13 deadline to advise the investors as I said you would.  
14 Obviously, the news was not what we investors were  
15 hoping for.

16 Did I read that correctly?

17 A. Yes.

18 Q. And you believed that at the time. Right?

19 A. Yeah. Oh, yeah.

20 Q. The next paragraph, it says: From the "for  
21 whatever it's worth department," this Menaged person  
22 seems like he's a perfect candidate for investigation  
23 by the IRS and FBI.

24 Did I read that correctly?

25 A. Yes.

1 Q. And do you remember there being discussions  
2 among the investors and Mr. Beauchamp and Shawna Heuer  
3 about involving the FBI with respect to Menaged?

4 A. I don't recall that, but there was so much  
5 going on after those initial days, I could have read it  
6 and just don't remember it.

7 Q. You've now learned that ultimately the FBI did  
8 investigate Menaged. Right?

9 A. I did not know that specifically, but I guess  
10 by the time all the charges were levied against him and  
11 his sentence was issued, yeah, it probably was one of  
12 the factors.

13 Q. Right. So let's go on and read from this  
14 email. It says: Wouldn't it be reasonable to try and  
15 bring them on board and let their vast investigative  
16 capabilities be used in lieu of sending DenSco into  
17 receivership or bankruptcy?

18 Do you know whether that topic was  
19 discussed among the investors?

20 A. I don't know that.

21 Q. All right. And then the next paragraph, it  
22 says: I'm estimating 10 to 12 percent return to  
23 investors based on an analysis of your latest letter  
24 (I've attached an Excel worksheet detailing my  
25 estimate. Basically I'm just using the cash in first

1 lien note).

2 Did I read that correctly?

3 A. Yes.

4 Q. And then the next paragraph reads: The court  
5 appointed attorneys will significantly reduce that  
6 percentage.

7 And are you referring to there the fact  
8 that if there are attorneys appointed by the court or  
9 there's a receivership, it will reduce the amount of  
10 moneys to the investors?

11 A. Yes.

12 Q. All right. So let's skip the next documents.

13 The document after that is -- let's mark  
14 it.

15 MR. DEWULF: It is Bates stamp 10111.

16 (Exhibit marked, Exhibit 854.)

17 Q. (BY MR. DEWULF) So, Tony, these are a series  
18 of emails and I'm not going to ask about anything other  
19 than the first page of this document. The email is to  
20 Craig Brown, it's dated August 7, 2016.

21 Do you see that?

22 A. Yes.

23 Q. And you're one of the cc's as one of the  
24 investors of -- and I can't tell you exactly where you  
25 are on this list, but I remember looking at it last

1 night and seeing it.

2 Oh, here you are. You're about four  
3 lines down.

4 A. Yes.

5 Q. You see that?

6 A. Yes.

7 Q. So it reads -- the lawyer David Beauchamp is  
8 communicating to Craig Brown. It says: Craig, we have  
9 already interviewed a couple of forensic accountants,  
10 but the Director of Enforcement for the ACC Securities  
11 Division wants to be involved in the decision  
12 concerning who should be hired for this very important  
13 position. That should be discussed as part of the  
14 Wednesday meeting. Regards, David Beauchamp.

15 The reference here to forensic  
16 accountants, do you recall that there were discussions  
17 with David Beauchamp about finding a forensic  
18 accountant to get to the bottom of what had gone on  
19 financially within DenSco?

20 A. I don't recall that. I know that they had a  
21 meeting. Well, no. I'm sorry. Maybe it was the  
22 receiver who had a meeting. No, I don't know that  
23 there was a search for forensic accountants at that  
24 time.

25 Q. All right. Do you remember if there was ever

1 a time when -- before the receiver was appointed that  
2 there were discussions about getting a forensic  
3 accountant involved?

4 A. I do not know that.

5 Q. All right. Let's skip the next document.

6 Let's skip the document after that. Let's skip the  
7 document after that. Let's -- so let's go to the  
8 document 9976.

9 MR. CAMPBELL: This is going to be 855.

10 (Exhibit marked, Exhibit 855.)

11 Q. (BY MR. DEWULF) All right. So I want to be  
12 quick about this. This is a status email to you and  
13 the other investors from David Beauchamp, dated August  
14 8, 2016. Correct?

15 A. Yes.

16 Q. And I want to go to the second page, to  
17 paragraph 4 of his email to all of you.

18 Are you there?

19 A. Yes, I'm here.

20 Q. And I want to use this to see if you recall  
21 anything about this. He says: We have asked the  
22 Securities Division to avail itself of the FBI or any  
23 other public investigatory body that has subpoena power  
24 to research and uncover the potential fraud in this  
25 case. However, the securities commission is pushing

1 this matter on its own. We will have to continue to  
2 push the FBI or other investigatory body to get  
3 involved as this progresses.

4 Did I read that correctly?

5 A. Yes.

6 Q. Does it refresh your memory at all that the  
7 investors and David Beauchamp were urging the  
8 corporation commission to get the FBI or someone else  
9 involved to investigate?

10 A. Yes.

11 MR. CAMPBELL: Objection, form.

12 Q. (BY MR. DEWULF) Did you say yes?

13 A. Yes.

14 Q. Okay. Did you have any interaction with  
15 Shawna Heuer?

16 A. I've never spoken to her.

17 MR. DEWULF: Let's mark the next  
18 exhibit and it's 9228.

19 (Exhibit marked, Exhibit 856.)

20 Q. (BY MR. DEWULF) I just wanted to confirm for  
21 the record, Tony, this is an email exchange dated  
22 August 10, 2016, between you and David Beauchamp?

23 A. Yes.

24 Q. And in it you're wanting to confirm that  
25 relative to giving credit for your investment that your

1 accrued interest be included in the amount owed?

2 A. Yes.

3 Q. Okay. And then David responds to you.

4 Correct?

5 A. Yes.

6 Q. Let me ask --

7 MR. DEWULF: Let's mark the next document  
8 in this stack. It'll be 857 and it's 9825 is the  
9 number.

10 A. I've got a 9826.

11 Q. (BY MR. DEWULF) 9825 is what I have. So it's  
12 the August 10, 2016, email to the investors from  
13 Tony Smith at the top.

14 (Exhibit marked, Exhibit 857.)

15 Q. (BY MR. DEWULF) Tony, could you just confirm  
16 that this is an email or a series of emails in August  
17 of 2016 and the one at the top of the first page is  
18 from Tony Smith to the investors, including yourself?

19 A. Yes.

20 Q. And I want to just go to the fourth paragraph  
21 of his email to you and others and it says: This is to  
22 imply that -- this is not to imply that David has not  
23 been open and honest and kept us informed to a great  
24 extent but as was pointed out by Coralee, David is the  
25 attorney for DenSco and Denny.



1 Did I read that correctly?

2 A. I wasn't following you. I just see it right  
3 now. Yeah, I see that paragraph.

4 Q. And so I earlier asked you you couldn't  
5 remember if you had thought about whether David was the  
6 attorney for DenSco or the investors. Does this  
7 refresh your memory that the investors are observing  
8 that he is actually counsel for DenSco and it says  
9 Denny here?

10 A. Yes.

11 Q. All right. So let's skip the next documents.  
12 We'll skip the next document after that. And we're at  
13 Exhibit 623 that's already been marked. It has "Simon  
14 Consulting" on the first page.

15 A. Yes.

16 Q. And I just want to confirm with you -- let's  
17 go to the third page and you're identified, your IRA is  
18 identified as claim number 6.

19 Do you see that?

20 A. Yes.

21 Q. You've got -- the amount of your claim is  
22 \$457,765.75?

23 A. Yes.

24 Q. And so as of today that would be the amount of  
25 claim you have against DenSco as an investor and a

1 claimant against DenSco?

2 A. Yes.

3 Q. All right. I think I'm finished. Let me just  
4 look at my notes real quickly.

5 MR. DEWULF: I have no further questions.  
6 Thank you.

7 EXAMINATION

8 BY MR. CAMPBELL:

9 Q. Mr. Burdett, I'm Colin Campbell. I'm the  
10 attorney for the receiver in the lawsuit against Clark  
11 Hill and I have about I think maybe 20 minutes' worth  
12 of questions or 25. Do you want to go right ahead?

13 A. Yeah, let's do it.

14 Q. Okay. The first question is maybe more  
15 humorous. I wanted to know how old you were when UTEP  
16 won the UCAA championship?

17 A. I was a mere child. It was in 1962 so I just  
18 graduated high school.

19 Q. All right. So you mentioned -- well, let me  
20 go back. This was an investment that you investigated  
21 before you made it. Right?

22 A. Oh, yeah.

23 Q. And I have the impression that while you were  
24 invested, you stayed on top of it. I wanted to make  
25 sure that circumstances hadn't changed. Is that true?

1 A. That's true.

2 Q. And I think you said at the beginning of your  
3 deposition there were three things that were important  
4 to you when you were doing your investigation.

5 Number one was that there was going to be  
6 a first lien on the home.

7 A. Yes.

8 Q. Right?

9 A. Yes.

10 Q. If you had been told at any time after you  
11 made your investment that DenSco on a significant  
12 number of its loans had second liens, not first liens,  
13 what would you have done?

14 A. I would have tried to terminate my  
15 relationship with them.

16 Q. The second thing you said was important to you  
17 it was loan-to-value ratio on the homes, which if I  
18 recall was around 70 percent. Is that right?

19 A. Correct.

20 Q. If you had been told at any time after you  
21 invested that DenSco was in violation of those  
22 loan-to-value ratios, what would you have done?

23 A. Again, I would have tried to get out of the  
24 investment.

25 Q. And the third thing you said that was

1 important to you was diversification, that no one  
2 borrower would exceed 10 percent. Right?

3 A. That's correct.

4 Q. If you had been told at any time after your  
5 investment that DenSco was violating that  
6 diversification requirement, what would you have done?

7 A. Again, I would have tried to get out of the  
8 investment.

9 Q. Now, fair to say that you do not know  
10 Mr. David Beauchamp.

11 A. I don't.

12 Q. Never met him.

13 A. Never met him.

14 Q. In terms of what's -- the receiver in this  
15 case has a Website for investors to go and review  
16 documents about the case. Have you been on that  
17 Website?

18 A. I have -- I've been on it. Not a lot. It's  
19 really of no interest to me. The only thing that I  
20 looked for is a communication from Sierra Barreta. She  
21 is an assistant to the receiver. Usually she will  
22 indicate via email if there's some significant  
23 development on the Website or may be a pending  
24 distribution. That's really about all I tune in on.

25 Q. All right. So Mr. Beauchamp was deposed in

1 this case and his deposition is on the Website. Fair  
2 to say you have not read it?

3 A. No, I haven't. I haven't read these  
4 depositions. It's just -- like I say it's of no real  
5 interest to me.

6 Q. All right. Well, fair to say you have no  
7 knowledge, one way or the other, whether Mr. Beauchamp  
8 as a lawyer did anything wrong in this case. Is that  
9 fair?

10 A. I have no knowledge of that. Right.

11 Q. I want to go back to 851. That's going to be  
12 the investor letter. It's going to be dated August 4th  
13 of 2016. The exhibit is -- starts with an email of  
14 August 4th, 2016, Exhibit 851.

15 A. Okay. I've got 851 here.

16 Q. Okay. Actually, that's David's letter.

17 MR. DEWULF: Are you looking for the  
18 investor letter? That's previously marked.

19 Q. (BY MR. CAMPBELL) Hold on.

20 (Discussion off the stenographic record.)

21 Q. (BY MR. CAMPBELL) So it's actually -- it's  
22 marked Heuer Exhibit Number 448. It's an email from  
23 Mr. Beauchamp to Shawna Heuer.

24 A. I'm not finding it. I'm looking at  
25 Exhibit 848 and I'm looking at Exhibit 849. Where

1 would it be in relation to those?

2 Q. Okay. This one is already marked from a prior  
3 deposition and it's marked 448 in the upper right-hand  
4 corner.

5 A. Let me see.

6 Q. If they're in chronological order, it's  
7 August 2016.

8 (Discussion off the stenographic record.)

9 A. I've got it.

10 Q. (BY MR. CAMPBELL) Okay. So the first page is  
11 marked Exhibit 448, it's an email between Mr. Beauchamp  
12 and Shawna Heuer. And if you turn to the second page,  
13 that's the investor letter.

14 A. Right.

15 Q. And I just wanted to drum down a little bit  
16 further on when you may have first read the investor  
17 letter. I think it would be fair to say you didn't get  
18 it on August 1st, 2016.

19 A. Oh, that's correct.

20 Q. All right. When you read the investor letter,  
21 did you read it on the receiver's Website?

22 A. I don't know. I don't know if I got it via an  
23 email or on the investor's Website. Could have been  
24 either one.

25 Q. Okay. So the receiver was appointed -- well,

1 let me go back. Fair to say you didn't read this  
2 before the receiver was appointed?

3 A. Pretty sure that --

4 Q. The receiver was --

5 Pardon?

6 A. Pretty sure that would be the case. The  
7 receiver was appointed sometime in latter part of  
8 August. Is that right?

9 Q. I think around August 17th or August 18th.

10 A. Okay.

11 Q. And I'll tell you the receiver did not come  
12 into possession of this until months later.

13 A. Okay.

14 Q. But do you know -- did anyone give you a copy  
15 of this or do you have any recollection?

16 A. That's what I'm trying to remember where did I  
17 get that from. And I don't remember. I just --

18 Q. Okay.

19 A. I just know I looked at it and I just was  
20 amazed.

21 Q. Okay. So I want you to just -- if you go to  
22 the investor letter, it's Bates stamp 14635 on the  
23 first page.

24 A. Yes.

25 Q. And I want you to turn to the third page,

1 which is Bates stamp 14637.

2 A. Okay.

3 Q. Are we on the same page?

4 I want you to look at -- around the  
5 middle of the page, you'll see Mr. Beauchamp's name  
6 with a phone number.

7 A. Yes.

8 Q. Do you see that Mr. Chittick says: Yes, by  
9 this time I'm talking with my lawyer, David Beauchamp.  
10 He is aware of all that I know. He agreed it would be  
11 the worst situation to sue each other and try and  
12 figure it out.

13 Do you remember reading that?

14 A. I read through that pretty much the whole  
15 letter. It was kind of a rambling, incoherent at  
16 times, but I tried to read through the whole letter.

17 Q. Okay. When you were reading through it, did  
18 it occur to you that the lawyer was involved with some  
19 of the things that Mr. Denny was doing?

20 MR. DEWULF: Object to form.

21 A. It would appear that way from what Denny's  
22 saying here.

23 Q. (BY MR. CAMPBELL) Look down at the bottom of  
24 the page, it's about the fourth line up, and you'll see  
25 David's name again.



1 Do you see that?

2 A. I see that.

3 MR. DEWULF: Object to form.

4 Q. (BY MR. CAMPBELL) And in the investor letter,  
5 Mr. Chittick says: Dave blessed this course of action.  
6 We signed this workout agreement and began executing  
7 it.

8 Now, do you recall reading that?

9 A. Yes.

10 Q. All right. Do you recall whether it crossed  
11 your mind that the lawyer was involved in what  
12 Mr. Menaged -- or not Mr. Menaged, the lawyer was  
13 involved in what Mr. Chittick was doing?

14 MR. DEWULF: Object to form.

15 A. It would appear so.

16 Q. (BY MR. CAMPBELL) Turn to the next page and  
17 this is Bates stamp 14638.

18 And again if you go about 45 percent of  
19 the way up, you're going to see: Because of what and  
20 how we were operating, Dave blessed it.

21 Do you see that?

22 A. Yes.

23 Q. Again, do you recall reading that?

24 A. Like I said I'm sure I read the whole letter  
25 through, but specifically, you know, any particular

1 sentence, I don't -- I don't know. But I read the  
2 whole letter.

3 Q. Okay. Now, you're not a lawyer. Right?

4 A. Nope.

5 Q. When you read this, you weren't thinking about  
6 it in terms of what evidence is here and that the  
7 lawyers may be at fault. True?

8 A. True.

9 MR. DEWULF: Object to form.

10 Q. (BY MR. CAMPBELL) I'm sorry. I didn't hear  
11 your answer.

12 A. I said "True."

13 Q. Okay. Let's go back now to Exhibit 851. I  
14 think that's what I was -- sort of started off on. And  
15 this is going to be the email from Mr. Beauchamp to the  
16 DenSco investors.

17 A. I got it.

18 Q. Okay.

19 MR. DEWULF: I'm not there yet.

20 MR. CAMPBELL: Dated August 4, 2016.

21 MR. DEWULF: I'm with you. Go ahead.

22 Q. (BY MR. CAMPBELL) So, now, Mr. Burdett, I  
23 know you may be skeptical and maybe even cynical about  
24 lawyers, but do you understand what the receiver's job  
25 is when a receiver is appointed to represent the

1 company?

2 A. Yes, it's to --

3 Q. All right. And you understand that one of the  
4 things the receiver does is assess whether anyone is at  
5 fault that the company may sue to get a return on the  
6 moneys it has lost.

7 A. Yes.

8 Q. Do you know whether or not -- well, let me  
9 rephrase this.

10 Were you aware that Mr. Beauchamp knew  
11 that he might be someone that the receiver could sue?

12 MR. DEWULF: Object to form.

13 A. I was not aware of that.

14 Q. (BY MR. CAMPBELL) Were you aware that when  
15 Mr. Beauchamp sent his email on August 24th, 2016, he  
16 had read that investor letter that had made comments  
17 about him?

18 MR. DEWULF: Object to form.

19 A. I was not aware.

20 Q. (BY MR. CAMPBELL) All right. Did  
21 Mr. Beauchamp in any communication with you tell you  
22 what his involvement was with respect to Mr. Chittick  
23 and Mr. Menaged?

24 MR. DEWULF: Object to form.

25 A. No.

1 Q. (BY MR. CAMPBELL) Did Mr. Beauchamp ever tell  
2 you that he was involved in working out a forbearance  
3 agreement between DenSco and Mr. Menaged?

4 A. No.

5 Q. Did Mr. Beauchamp ever tell you that under the  
6 terms of that forbearance agreement, firstly moneys  
7 would go to other lenders besides DenSco, DenSco would  
8 be in the second position?

9 MR. DEWULF: Object to form.

10 A. No.

11 Q. (BY MR. CAMPBELL) That would have been  
12 something you would have expected to learn about if it  
13 was happening. True?

14 MR. DEWULF: Object to form.

15 A. I would want to know that.

16 Q. (BY MR. CAMPBELL) Did Mr. Beauchamp ever  
17 disclose to you that Mr. Chittick did not want to  
18 disclose to investors the problems he was having with  
19 Mr. Menaged?

20 MR. DEWULF: Object to form.

21 A. No.

22 Q. (BY MR. CAMPBELL) Did Mr. Beauchamp ever tell  
23 you that I knew that Mr. Chittick didn't want to  
24 disclose things to investors?

25 MR. DEWULF: Object to form.

1 A. No.

2 Q. (BY MR. CAMPBELL) Would you have wanted the  
3 lawyer for DenSco to tell you that?

4 A. Yes.

5 MR. DEWULF: Object to form.

6 Q. (BY MR. CAMPBELL) Mr. Beauchamp has testified  
7 in this case that he terminated his representation of  
8 DenSco because they would not follow his advice. Is  
9 that something you would have wanted to know?

10 MR. DEWULF: Object to form.

11 A. Yes.

12 Q. (BY MR. CAMPBELL) When Mr. Beauchamp wrote  
13 you and said that if a receiver is appointed it would  
14 reduce your recovery, would you have liked to know what  
15 Mr. Beauchamp's exposure would be if he was being sued  
16 by the receiver?

17 MR. DEWULF: Object to form.

18 A. You'll have to run that by me again. You lost  
19 me. It's getting late.

20 Q. (BY MR. CAMPBELL) Yeah, let me -- we've been  
21 going a long time.

22 A. Yep.

23 Q. You understand that part of a receiver's job  
24 is to sue people that may be at fault to recover losses  
25 for DenSco. Right?

1 A. Yes.

2 Q. And you understand that my role is to  
3 precisely do that. We're suing Mr. Beauchamp and Clark  
4 Hill for the recovery of losses we believe they caused  
5 DenSco.

6 MR. DEWULF: Object to form.

7 Q. (BY MR. CAMPBELL) You understand that?

8 A. Yes, I do.

9 Q. Okay. Well, maybe I can just shorten it. You  
10 are not aware that Mr. Beauchamp had his own  
11 self-interest with respect to saying we shouldn't get a  
12 receiver.

13 MR. DEWULF: Object to form.

14 A. No, I wasn't aware of that.

15 Q. (BY MR. CAMPBELL) Are you aware the damages  
16 being sought by the receiver in this case against Clark  
17 Hill is \$29 million?

18 MR. DEWULF: Object to form.

19 A. I'm not aware of that.

20 Q. (BY MR. CAMPBELL) Are you aware that Clark  
21 Hill is responsible for all of the second fraud  
22 committed by Menaged upon DenSco?

23 MR. DEWULF: Object to form.

24 A. I'm not aware of that.

25 Q. (BY MR. CAMPBELL) Okay. If they were

1 responsible and DenSco is collecting money to pay back  
2 to its investors, you'd like to see that. Right?

3 MR. DEWULF: Object to form.

4 A. Absolutely.

5 MR. CAMPBELL: Mr. Burdett, you've been  
6 very patient. Thank you very much.

7 FURTHER EXAMINATION

8 BY MR. DEWULF:

9 Q. I have a couple questions prompted by Colin's  
10 questions of you, but I'll try to be very quick.

11 Going back I wanted to try to get a sense  
12 of when you might have first seen this investor letter  
13 we've been talking about, this long letter,  
14 Exhibit 448. When I asked you questions about it, I  
15 think you said that when you got to a particular point  
16 in the letter, you started feeling sick or started  
17 being concerned because it -- I guess it was telling  
18 you that there was serious problems within the company.  
19 And so when we were trying to pinpoint when you may  
20 have read the letter, I thought you were saying that it  
21 would have been before you really understood exactly  
22 what was going on financially and what the status of  
23 the company was. But do you recall now one way or the  
24 other in terms of the sequence, do you think that the  
25 letter would have been read in a time frame before you

1 were getting information from David Beauchamp and  
2 Shawna Heuer and others about the company?

3 A. Like I said before, I'm -- now, I have a  
4 complete big file on DenSco and I may -- sometimes I  
5 write the date that I received something and I may have  
6 done it on this particular letter, but I just don't  
7 know. I would have to go back and look through my  
8 records. I just -- I don't know.

9 Q. That's fine. All right. Let me switch topics  
10 and then we'll wrap up. My next questions have to do  
11 with this topic of you as an investor wanting to know  
12 when circumstances might have changed within DenSco.

13 Do you recall some of that testimony you  
14 gave earlier?

15 A. Yes.

16 Q. And you obviously were careful and you were  
17 trying to keep apprised of what was going on in the  
18 company. It would be fair to say that DenSco was  
19 periodically providing newsletters to the investors to  
20 give them updates on what was going on with the  
21 business. Right?

22 A. Yes.

23 Q. And they were also -- you'd have these MOM's  
24 meetings that you could attend where sometimes there  
25 was information shared about what DenSco was doing?



1 A. Yes.

2 Q. And the Website would contain information for  
3 the investors to review?

4 A. Yes.

5 Q. And then we know and we've seen today that on  
6 occasion you might even send an email to  
7 Denny Chittick, asking him to answer questions or to  
8 give you more detail. Correct?

9 A. Yes.

10 Q. So you had the ability to get information from  
11 Denny Chittick and DenSco about what was going on, but  
12 it would rely upon Denny Chittick to be honest and  
13 forthright in the information he conveyed to you.  
14 Right?

15 A. Yes.

16 Q. And until you learned of his suicide, you  
17 believed him to be honest and forthright with respect  
18 to giving you information that was accurate and  
19 complete?

20 A. Yes.

21 MR. DEWULF: All right. No further  
22 questions.

23 MR. CAMPBELL: Let me just follow up.  
24  
25

FURTHER EXAMINATION

BY MR. CAMPBELL:

Q. David Beauchamp and Clark Hill learned in January 2013 that DenSco was not in a first loan position, that they had violated the loan-to-value ratio and that DenSco had violated the 10 percent diversification policy.

(Discussion off the stenographic record.)

MR. DEWULF: Objection, form.

MR. CAMPBELL: I misspoke.

MR. DEWULF: It helps me, but I want to make sure you know what you're doing.

MR. CAMPBELL: Let me rephrase.

Q. (BY MR. CAMPBELL) January 2014 is the time frame. In January 2014, without question, David Beauchamp and Clark Hill learned that DenSco was not in a first lien position on a substantial number of notes, learned that it had violated the loan-to-value ratio and learned that it had exceeded the diversification requirement. Fair to say that you have no knowledge what advice that Clark Hill gave to Mr. Chittick in January 2014?

MR. DEWULF: Object to form.

A. I have no knowledge.

Q. (BY MR. CAMPBELL) Fair to say you don't know

1 whether Clark Hill allowed Mr. Chittick to keep  
2 borrowing money from you without telling you the true  
3 facts. You have no knowledge about what advice they  
4 gave.

5 MR. DEWULF: Object to form.

6 A. I have no knowledge.

7 MR. CAMPBELL: No further questions.

8 Thank you, Mr. Burdett.

9 MR. DEWULF: Tony, thanks for the effort.  
10 Thanks for coming down.

11 MR. CAMPBELL: Is he going to read and  
12 sign?

13 MR. DEWULF: We're going to circle back  
14 to this issue of reading and signing the transcript of  
15 the deposition, Tara, before we go off.

16 Do you want to review the testimony.

17 THE WITNESS: I'll sign off. I'll waive.  
18 I'll waive.

19 MR. DEWULF: All right.

20 (Deposition concluded at 1:26 p.m.)

21

22

23

24

25

1 SUPERIOR COURT OF ARIZONA

2 COUNTY OF MARICOPA

3  
4 Peter S. Davis, as Receiver of  
5 DenSco Investment Corporation,  
an Arizona corporation

6 v. CV2017-013832

7 Clark Hill P.L.C., a Michigan  
8 limited liability company;  
9 David G. Beauchamp and Jane  
Doe Beauchamp, husband and  
wife

10  
11 REPORTER'S CERTIFICATION  
12 ORAL DEPOSITION OF  
ANTHONY BURDETT  
13 MARCH 22, 2019

14 I, Tara K. Riojas, a Certified Shorthand  
15 Reporter in and for the State of Texas, do hereby  
16 certify that this deposition transcript is a true  
17 record of the testimony given by ANTHONY BURDETT, after  
18 said witness was duly sworn by me, and that said  
19 transcription is done to the best of my ability.

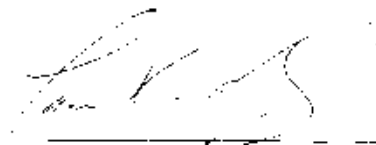
20 That the examination and signature of  
21 the deposition transcript was waived by the witness and  
22 all parties;

23 I further certify that I am neither counsel  
24 for, related to, nor employed by any of the parties or  
25 attorneys in the action in which this proceeding was

1 taken, and further that I am not financially or  
2 otherwise interested in the outcome of the action.

3 That \$\_\_\_\_\_ is the charge for the  
4 preparation of the completed deposition transcript and  
5 any copies of exhibits, charged to Defendants;

6 Given under my hand and seal of office on  
7 April 2, 2019.

8 

9 \_\_\_\_\_  
10 Tara K. Riojas  
11 Certificate No. 6594  
12 Expires 12-31-2019  
13 Firm No. 734

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	3813882 Ant	3:12	3813882 Ant	13:4,7
Exhibits	hony.	83:4,10	hony.	32:8
	Burdett.		Burdett.	
	EXHIBIT838	3813882 Ant	EXHIBIT852	\$2
3813882 Ant	3:4	hony.	3:19	81:7,17
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Burdett.		EXHIBIT846		51:14
EXHIBIT831	3813882 Ant	3:13	3813882 Ant	
2:21	hony.	87:11	hony.	\$29
45:14	Burdett.		Burdett.	133:17
	EXHIBIT839	3813882 Ant	EXHIBIT853	\$4
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Burdett.	15	EXHIBIT847		\$457,765.75
EXHIBIT832	3813882 Ant	3:14	3813882 Ant	120:22
2:22	hony.	90:17	hony.	
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	EXHIBIT840	3813882 Ant	EXHIBIT854	1
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51:25	Burdett.	97:25	Burdett.	113:5
	EXHIBIT843		EXHIBIT857	114:22
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Burdett.		Burdett.		123:2
EXHIBIT836	3813882 Ant	EXHIBIT851		137:6
3:2 57:11	hony.	3:18	\$	
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