

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

INDEX

WITNESS:	PAGE
SCOTT RHODES	
EXAMINATION	
By Mr. Campbell	6

* * *

EXHIBITS

EXHIBIT:	DESCRIPTION	MARKED/REF'ED
950	Excerpt from Legal Malpractice, 2019 Edition, Issued in January 2019 by Ronald E. Mallen	30 32
951	First Supplemental Arizona Rule of Evidence 807(b) Notice	36 36
952	Rules of Professional Conduct, ER 1.2	73 73
953	Rules of Professional Conduct, ER 1.6	81 81
954	Rules of Professional Conduct, ER 1.16	82 82
955	Rules of Professional Conduct, ER 4.1	84 84
956	Rules of Professional Conduct, ER 1.13	85 85
957	Printout of PowerPoint presentation	86 86

PREVIOUSLY REFERENCED EXHIBITS

EXHIBIT	PAGE
550.....	66
4.....	109
36.....	138

REQUESTS TO PRODUCE DOCUMENTS

Page	Line
59	21

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

RECESSES TAKEN

	PAGE
Recess taken from 10:09 a.m. to 10:22 a.m.	58
Recess taken from 11:03 a.m. to 11:14 a.m.	91
Recess taken from 12:08 p.m. to 1:05 p.m.	133
Recess taken from 2:08 p.m. to 2:20 p.m.	177

SCOTT RHODES, 5/15/2019

1 VIDEOTAPED DEPOSITION OF SCOTT RHODES, commenced
2 at 9:05 a.m. on May 15, 2019, at the law offices of Osborn
3 Maledon, P.A., 2929 North Central Avenue, 21st Floor,
4 Phoenix, Arizona, before KELLY SUE OGLESBY, a Certified
5 Reporter, CR No. 50178, in and for the County of Maricopa,
6 State of Arizona, pursuant to the Rules of Civil
7 Procedure.

8 * * *

9 APPEARANCES

10 FOR PLAINTIFF:

11 OSBORN MALEDON, P.A.
12 BY: MR. COLIN F. CAMPBELL
13 MR. GEOFFREY M.T. STURR
14 2929 North Central Avenue
15 21st Floor
16 Phoenix, Arizona 85012-2793
17 ccampbell@omlaw.com
18 gsturr@omlaw.com

19 FOR DEFENDANTS:

20 COPPERSMITH BROCKELMAN, PLC
21 BY: MR. JOHN E. DEWULF
22 2800 North Central Avenue
23 Suite 1900
24 Phoenix, Arizona 85004
25 jdewulf@cblawyers.com

Also Present:

Bryce Olson, Legal video specialists

SCOTT RHODES, 5/15/2019

1 Phoenix, Arizona
2 May 15, 2019
3 9:05 a.m.

4 * * *

5 VIDEOGRAPHER: This is the videotaped deposition
6 of J. Scott Rhodes, taken by the plaintiff in Cause No.
7 CV2017-013832, styled Peter Davis, as receiver of DenSco
8 Investment Corp. v. Clark Hill, PLC, et al., filed in the
9 Superior Court of the State of Arizona, in and for the
10 County of Maricopa.

11 Today is May 15th, 2019, at 9:05 a.m. Our
12 location is 2929 North Central Avenue, Phoenix, Arizona.

13 Kelly Oglesby is the certified shorthand
14 reporter with JD Reporting, 1934 East Camelback Road,
15 Phoenix, Arizona; and Bryce Olson is the certified legal
16 video specialist with Legal Video Specialists, 3033 North
17 Central Avenue, Phoenix, Arizona.

18 Counsels may state their name, firm, and whom
19 they represent, beginning with plaintiff's counsel,
20 please.

21 MR. CAMPBELL: Colin Campbell and Geoff Sturr
22 for plaintiff.

23 MR. DEWULF: John Dewulf for defendants David
24 Beauchamp and Clark Hill.

25 VIDEOGRAPHER: Thank you.

You may swear the witness now, please.

SCOTT RHODES, 5/15/2019

1 SCOTT RHODES,
2 called as a witness herein, having been first duly sworn,
3 was examined and testified as follows:

4

5

EXAMINATION

6

7 Q. (BY MR. CAMPBELL) All right. So could you
8 state your full name for the record.

9

A. Scott Rhodes.

10

Q. And, Scott, you were born on May 21, 1957, in
11 Washington, D.C.?

12

A. That's correct.

13

Q. And you were born into a famous family?

14

A. One might -- some people think so.

15

Q. Your father was I think almost a 30-year
16 congressman for the State of Arizona?

17

A. Exactly 30 years, yes.

18

Q. House minority leader?

19

A. Correct, yes.

20

Q. Went with Senator Scott to meet with Richard
21 Nixon and tell him he had lost support?

22

A. Senator Hugh Scott and Senator Barry Goldwater,
23 correct.

24

Q. I take it -- well, you would have been of age at
25 that time, right?

SCOTT RHODES, 5/15/2019

1 A. I was of age. In fact, I was living at home and
2 I remember very in detail those events.

3 Q. Tumultuous time.

4 A. Very interesting time.

5 Q. I wish he was the majority leader now.

6 A. Am I supposed to answer that? Is that a
7 question? I could say I agree.

8 Q. As I get older, I have a tendency to make
9 comments.

10 Did you grow up in D.C.?

11 A. I did. I was born and raised in D.C.

12 Q. And where did you go to high school there?

13 A. To the Landon School for Boys.

14 Q. Landon School for Boys?

15 A. Yes.

16 Q. A private school?

17 A. A private school, yes.

18 Q. You must have taken French.

19 A. I did not. Actually, I studied Spanish from
20 junior high school all the way through college.

21 Q. Oh, very good.

22 A. I learned French once I moved to France.

23 Q. I'm going to ask you more about that than about
24 your opinions.

25 So --

SCOTT RHODES, 5/15/2019

1 MR. DeWULF: We will stipulate to that. Let's
2 go ahead and talk about that.

3 Q. You went to Yale?

4 A. I did.

5 Q. And I saw you got not just a B.A. in English
6 literature, but you got, what did you call it, a
7 distinguish?

8 A. Some -- yeah, a distinguish.

9 Q. What does that -- what does that mean?

10 A. Well, you are testing my memory from 1980. It
11 means, I believe, as I recall, that my grades and then
12 also my significant paper were considered good enough to
13 get that distinction award, whatever the criteria were.
14 They didn't tell me. I just said thank you.

15 Q. Okay. So you graduated in 1980 from Yale?

16 A. Correct.

17 Q. I'm sure your father was worried what job you
18 would get with an English major, but how did you end up in
19 France?

20 A. Well, some of that, Mr. Campbell, is a little
21 personal. I'll just put it this way. I was married
22 before at a young age, and my first wife developed a brain
23 tumor and died within a year of our marriage. And that
24 was obviously a pretty traumatic event for a young man in
25 his early 20s.

SCOTT RHODES, 5/15/2019

1 Q. Of course.

2 A. And so I wasn't sure what I was going to do
3 after that. I had worked enough jobs to save enough money
4 to go to France, where I thought I would just be
5 reflecting on my future. I had enough money saved up to
6 stay there for six months, and I came back ten years, one
7 wife, and three children later.

8 Q. All right.

9 A. So in other words, I met my current wife. I
10 actually met her again. She also went to Yale. And we
11 ended up getting married and having -- starting our family
12 in France. She is French.

13 Q. So what sort of, you know, Noel Fidel I think
14 married a French woman, too.

15 A. Yes.

16 Q. You have that in common.

17 A. Yes.

18 Q. What sort of business work did you do in France?

19 A. It has nothing to do with what I am doing now.
20 My wife was raised in a family of artists. Her mother
21 actually worked for two French painters. Her mother was
22 from very, very modest background. And those painters
23 over time, because my mother-in-law was a single mother,
24 those painters had no children, so over time they kind of
25 adopted both my mother-in-law and my wife into their

SCOTT RHODES, 5/15/2019

1 families and raised them. Actually had the money to send
2 my wife to Yale.

3 When the second of them passed away is about the
4 time that I was there. He had been painting for 50 years,
5 and was a pretty well-known painter in France and in some
6 larger collections around the world. He left behind him
7 what one would say a mess, a lot of debts and a lot of
8 things, like paintings and property.

9 This was during the socialist presidency of
10 President Mitterand. The estates were taxed at about
11 90 percent of their value at that time. So I learned by
12 the seat of my pants how to manage an artistic estate for
13 a group of people who inherited from him. And then doing
14 that, I realized that no one else in France really knew
15 how do that. Other painters and their families became
16 aware of what we were doing, and it developed into a small
17 business as a result of that.

18 Q. Okay. So was it a business dealing with estate
19 paintings or managing art galleries or sort of a
20 combination of both?

21 A. We didn't have an art gallery, but we negotiated
22 contracts with galleries and auction houses and the like.

23 Q. All right. So you did that for about nine
24 years --

25 A. Correct, yeah.

SCOTT RHODES, 5/15/2019

1 Q. -- or so?

2 A. Yeah.

3 Q. Well, I'm jealous you got to live in France for
4 nine years.

5 so the church would say you had a late vocation,
6 but you apparently had a late vocation to the law?

7 A. I did. I did.

8 Q. What brought that about?

9 A. Our third child was born and it was time to
10 decide where we were going to go with this business. And
11 as I said before, it was during the socialist presidency
12 of President Mitterand, which is M-i-t-t-e-r-a-n-d.

13 Our income, we calculated that our -- for every
14 dollar of revenue, we were paying about 80 cents in
15 various taxes. My wife had gone to college in the United
16 States and loved it here, and it was time for us to decide
17 either we grow the business that we had started or we were
18 going to do something else.

19 And we -- I literally just went through the
20 parts that I liked and disliked about what I was doing,
21 and I quickly realized that the parts I liked the most
22 were all law related. We had had some very interesting
23 cases, one of which went to the French Supreme Court, and
24 I liked working with our French lawyers. I had learned
25 quite a bit.

SCOTT RHODES, 5/15/2019

1 So we decided that either we were going to stay
2 and grow that business or we were going to come back to
3 Arizona, where my family is from, and go to law school.
4 So I applied -- I took the LSAT in the bottom of a
5 Catholic church, in the basement of a Catholic church in
6 Paris with four other people, and I applied to one and
7 only one law school, which was ASU. Got in. They offered
8 me a scholarship, and so we made the decision to come
9 back. That's how it happened.

10 Q. Very good.

11 And then you graduated from ASU in 1995?

12 A. Correct, yeah.

13 Q. And have you been with Jennings Strouss ever
14 since?

15 A. I have. Actually, before then I was a summer
16 associate in the summer of 1994.

17 Q. Okay.

18 A. And ever since, with the exception I was a clerk
19 at the Arizona Supreme Court for the year after law school
20 before I started.

21 Q. I saw that. With Corcoran and then --

22 A. Correct.

23 Q. -- with Bud Jones?

24 A. Yeah. I'm sorry. I talked over you.

25 Yeah. I started with Justice Corcoran. He

SCOTT RHODES, 5/15/2019

1 retired, and then Bud Jones took his place.

2 Q. Now, I notice that at -- you have been general
3 counsel at Jennings Strouss for two periods of time?

4 A. That's correct.

5 Q. So describe for me what you do as general
6 counsel at Jennings Strouss?

7 A. I was the first general counsel, and back in the
8 time when it started, it was kind of a new concept for law
9 firms. The idea -- there had been for many years, most
10 law firms had an informal general counsel, I think, which
11 is -- it used to be someone who was kind of a guru at the
12 firm who kind of knew enough and who was there to give
13 advice, often informally, to colleagues about how to
14 handle difficult situations.

15 Q. Like Mr. Sturr here.

16 A. Like Mr. Sturr is now. At about the time before
17 I became the first general counsel there, some cases were
18 decided in various jurisdictions on the issue of whether
19 in-house, in-firm communications might be privileged,
20 especially if it's a communication between lawyers about
21 an existing client, under what conditions might that be a
22 privileged communication. And the first opinions were a
23 little bit mixed, but little by little a momentum
24 developed among the jurisdictions that there should be
25 some privilege attached to such communications, but those

SCOTT RHODES, 5/15/2019

1 decisions said provided there was someone who is
2 designated as the general counsel of the firm.

3 So at about that time, firms started to give
4 certain people like me a title, general counsel, and
5 that's when it started.

6 To answer your question, I do a lot of things.
7 I -- especially because of my area of law, and I have been
8 there so long, I'm someone that my colleagues come to if
9 they see anything unusual going on, whether it's from an
10 opposing counsel or from a client or a court decision or
11 anything where they just simply want a second opinion. I
12 think I'm more of a consultant in those circumstances.

13 And then of course if there are any situations
14 that arise, whether it's with respect to a client who
15 might be disputing a bill, anything like that, or any
16 indication that some -- a client might have concerns about
17 our legal services, anything that might come up along
18 those lines, that -- that's what people come to me for,
19 and I -- and I manage those matters.

20 Q. Do you perform, as general counsel, any sort of
21 risk management functions?

22 A. Yeah. I think, for example, we are -- our
23 insurance carrier is ALAS, A-L-A-S, and they have for a
24 long time -- they don't call it risk management. They
25 call it loss prevention counselors. It's a nicer sounding

SCOTT RHODES, 5/15/2019

1 term, I think. But I had that role for many years before,
2 so that's -- that has quite a bit to do with what I do.
3 But I -- Colin, honestly, when I break down what I do,
4 that's a very small part of it, thankfully, because we
5 don't have many of those kind of issues. It's mainly
6 advice so that hopefully we avoid issues or just make sure
7 we are on the same page about things.

8 Does that answer your question?

9 Q. Yes, it does.

10 So from your resumé it appears you sort of, and
11 maybe you started out doing this, but I gather that your
12 practice is in the area of what we would call professional
13 responsibility?

14 A. Correct, yes. Most of it.

15 Q. And is that something you just started doing
16 from the beginning or were you attracted to it when you
17 started practicing?

18 A. I had no idea it even existed when I was a young
19 associate. But a former partner of Jennings Strouss, Gary
20 Stewart, was one of the first lawyers in Arizona to start
21 to represent lawyers with State Bar disciplinary matters.
22 One of the other first ones was Mark Harrison of your
23 firm. The two of them were kind of the deans in that area
24 for a long time, and Gary wrote a book called The Ethical
25 Trial Lawyer.

SCOTT RHODES, 5/15/2019

1 When I was a summer associate, he gave me a
2 project for one of his cases defending a lawyer, and
3 then -- and I liked it. And then when I came back, he
4 gave me more and more of that work. And he retired I
5 would say about three years after I started, and from then
6 on -- in the beginning he referred matters to me that
7 would have come to him otherwise, and then little by
8 little, my own reputation developed and it -- sort of the
9 practice took a life of its own.

10 I think that the fact that I was chronologically
11 older, but a younger lawyer, was an advantage in that
12 practice, because several of our clients early on were
13 much more experienced in the practice of law than I was,
14 but about the same chronological age that I was, so it
15 allowed me to develop a rapport with them that I think --
16 that helped me --

17 Q. All right.

18 A. -- as I developed the practice.

19 Q. And the Arizona Supreme Court has promulgated
20 the, I think the rules of professional responsibility. We
21 refer to them as ethics rules, but you are expert in them?

22 A. I have been designated as an expert in that
23 area, yes.

24 Q. All right. And -- but professional
25 responsibility encompasses more than just the ethical

SCOTT RHODES, 5/15/2019

1 rules or not?

2 A. Oh, it does. Absolutely it does.

3 Q. All right. So I have here the ABA/BNA Lawyers
4 Manual on Professional Conduct.

5 would you consider this a learned treatise in
6 your profession?

7 MR. DeWULF: Object to form.

8 THE WITNESS: well, I don't want to quibble.
9 I'm not sure it's a treatise in the sense that ABA, parts
10 of it would be a treatise, parts of it would not.

11 The ABA/BNA manual is also a compendium of cases
12 and opinions. It's kind of a reporting. It collects
13 opinions from various jurisdictions, ethics opinions from
14 various jurisdictions, other learned articles that might
15 be written.

16 There is one part of it which is called, I
17 think, practice guides or something where they attempt to
18 take everything that they have gathered together and
19 reduce that to best practices. That part would probably
20 be a learned treatise since it's their work, but a lot of
21 it is simply a gathering. It's a central point where one
22 can go and research and get answers to questions, but not
23 necessarily their answers to questions. Answers that
24 others have come up with for those issues.

25 Q. Okay. In your curriculum vitae you state: The

SCOTT RHODES, 5/15/2019

1 ABA/BNA Lawyers Manual on Professional Conduct, a
2 publication highly regarded as an authoritative source for
3 news and guidance on attorney conduct and legal ethics.

4 Those were your --

5 A. Where do I state that?

6 Q. In your curriculum vitae.

7 A. But as -- as what? Just as what? Something
8 that I have -- I don't remember. I'm sorry.

9 Oh. This is -- yes, one of my cases, the
10 ABA/BNA picked up on and did a synopsis of it and then
11 published it. And yes.

12 Q. All right. But --

13 A. And I -- and I agree that it is highly regarded
14 in the sense that it's an area where many people in this
15 practice area go for --

16 Q. All right.

17 A. -- information.

18 Q. And is an authoritative source for news and
19 guidance --

20 A. For news and guidance.

21 Q. -- on attorney conduct and legal ethics?

22 A. Right. And I think that's consistent with my
23 answer. The news part is the compendium, and guidance
24 would be the practice.

25 Q. Are you familiar with, sir, Ronald Mallen?

SCOTT RHODES, 5/15/2019

1 A. I am.

2 Q. And he has a publication called Legal
3 Malpractice?

4 A. Correct.

5 Q. Would you consider that authoritative?

6 A. I would, and that actually is a learned
7 treatise. It's -- he obviously draws from cases, like
8 many people do, but he assimilates them into his view of
9 the state of the law.

10 Q. Actually, I forgot to ask you. On your
11 curriculum you got some order of merit in France.

12 A. Yes, I did.

13 Q. Can you pronounce it for me in French?

14 A. Yes. L'Ordre du Mérite. Chevalier de l'Ordre
15 du Mérite National.

16 MR. CAMPBELL: I will show you where that is in
17 his resumé.

18 Q. But what was that for?

19 A. I was the acting honorary counsel for France in
20 Arizona, and it so happened that I was, during the first
21 Iraq war, and as you might recall, France and Germany
22 declined to support the United States' efforts in the Iraq
23 war because they didn't believe there were weapons of mass
24 destruction. Many Americans were very upset about that
25 decision, and so I was -- I fielded many calls from

SCOTT RHODES, 5/15/2019

1 journalists and irate U.S. citizens about France's
2 position.

3 And then I served in that position in other
4 capacities. I was also asked to be on a committee that
5 the Ambassador to France held, where the purpose was to
6 try to improve the reputation of France after that
7 decision.

8 And so I think in recognition of my efforts,
9 they gave me that. It was -- it's -- the president of the
10 Republic of France bestows that honor.

11 Q. This was back at the time people were calling
12 French fries "freedom fries"?

13 A. That's exactly when it was.

14 Q. Okay. Are you currently doing any work for
15 Mr. Dewulf on this case?

16 A. Currently doing any work. Other than being an
17 expert witness or --

18 Q. Are you preparing any other reports at this
19 time?

20 A. Oh. I have told Mr. Dewulf that I would like to
21 consider doing a rebuttal opinion to Mr. Wertlieb's
22 opinion, but I haven't made a decision yet.

23 Q. So you have read Mr. Wertlieb's report?

24 A. I have, yes.

25 Q. And when you say you have told Mr. Dewulf you

SCOTT RHODES, 5/15/2019

1 would like to do a rebuttal opinion, how did that come
2 about?

3 A. I told him I would like to consider doing one,
4 just to be clear. I haven't decided yet whether I want
5 to.

6 well, it's common for experts, when they receive
7 the other side's opinion, to do a rebuttal opinion. And
8 my opinion ends with a reservation of rights, which is
9 also very common, that if I see anything or receive any
10 other opinions, I reserve the right to either supplement
11 or modify or rebut, so...

12 Q. Have you been retained to do a rebuttal opinion?

13 A. My retention is simply to be the expert in this
14 case. It doesn't have any subsets like that. So I would
15 say that if I determine it's appropriate and Mr. Dewulf
16 approves -- approves it, because I don't pay my own fees,
17 so somebody else would, then I would consider it part of
18 the original retention. I don't think I would need a new
19 retention letter.

20 Q. Okay. At this point in time, has he approved
21 you doing a rebuttal report?

22 MR. DEWULF: Let me interject for a moment.
23 There is a court schedule for rebuttal opinions. Any
24 rebuttal that would be submitted would be due on June 7.
25 what we talk about in terms of that rebuttal opinion and

SCOTT RHODES, 5/15/2019

1 what the strategy or intentions are is premature, in my
2 view, but you can testify about what you know.

3 THE WITNESS: Right. There has been no final
4 decision made, so no approval because I haven't said
5 whether I -- yet, I haven't decided yet whether I think
6 it's appropriate.

7 Q. So you have not begun work at this time on any
8 aspect of a rebuttal opinion.

9 MR. DeWULF: Object to form.

10 Q. True?

11 A. That's true.

12 Q. Mr. Weintraub works in the area of securities
13 law?

14 MR. DeWULF: Object to form.

15 THE WITNESS: Well, he would answer that
16 question himself, but I have read his description and it
17 depends on what you mean by work, because he clearly has
18 done quite a fair amount of volunteer work that's
19 associated with lawyer regulation in California.

20 Q. You read his report?

21 A. Yeah, I did.

22 Q. You read his curriculum vitae?

23 A. I read his description. I don't think I went,
24 then, through the CV, but...

25 Q. When you read his description, did you come to

SCOTT RHODES, 5/15/2019

1 the conclusion that he was very experienced and had
2 practiced in the area of securities regulations?

3 MR. DeWULF: Object to form.

4 THE WITNESS: I did, yes.

5 Q. All right. And you have not practiced in the
6 area of securities law. True?

7 A. That's true.

8 Q. And you do not practice in the area of drafting
9 private offering memorandums. True?

10 A. That is also true.

11 Q. And you do not practice in the area of
12 hard-money lending. True?

13 A. That's also true.

14 Q. And you do not practice in the area of fiduciary
15 duties that a hard-money lender may owe to its investors.
16 True?

17 A. True.

18 Q. And you would not be qualified to give opinions
19 on whether or not Clark Hill fulfilled its obligation and
20 responsibilities in the area of securities law. True?

21 MR. DeWULF: Object to form.

22 THE WITNESS: The qualification of an expert is
23 a question for the court, but I am not holding myself out
24 as an expert in those areas.

25 Q. By not holding yourself as an expert in those

SCOTT RHODES, 5/15/2019

1 areas, will you concede that you are not qualified to give
2 opinions in those areas?

3 MR. DeWULF: Object to form.

4 Q. Yes or no.

5 A. With the qualification that only a court -- I
6 don't -- the only reason -- I'm not trying to quibble,
7 it's I just I know what -- everybody stays in their lane.
8 Judges decide those things. I would never hold myself out
9 to a court as qualified in those areas, so I guess that's
10 a concession.

11 Q. I'm not as much worried about the court as I am
12 a jury. This case will be tried to a jury.

13 A. Okay.

14 Q. In front of a jury, would you tell a jury that
15 you are qualified to give an opinion as to whether or not
16 Clark Hill fulfilled its obligations and responsibilities
17 as securities lawyers?

18 A. Fair enough. No, I would not tell a jury that.

19 Q. Fair to say that you are not qualified to give
20 an opinion as to whether or not Clark Hill appropriately
21 advised DenSco in the area of securities fraud. True?

22 MR. DeWULF: Object to form.

23 THE WITNESS: No, not true.

24 Q. And why is that not true?

25 A. Because my opinion, as I state probably with

SCOTT RHODES, 5/15/2019

1 some repetition in my opinion, is related to the standard
2 of care for all Arizona lawyers, so that includes
3 necessarily securities lawyers. It's not specific to
4 securities lawyers. It's all Arizona lawyers.

5 So in the sense that securities lawyers are
6 Arizona lawyers, then I do have an opinion as to whether
7 DenSco's conduct was, I mean Clark Hill's conduct was at
8 or above the standard of care.

9 Q. Let me see, let's see if we can drill into that
10 a little bit.

11 As I understand your report -- well, let's go --
12 you state in your report, and this is under
13 qualifications, paragraph D: My opinions are not intended
14 to and do not include the standard of care specific to
15 lawyers practicing in the area of securities law.

16 Did I read that correctly?

17 A. You did. And then the follow-on sentence I
18 think is relevant.

19 Q. Let's stay with the first sentence. Okay?

20 A. Okay.

21 Q. You do not intend to and do not express opinions
22 on the standard of care specific to lawyers practicing in
23 the area of securities law. True?

24 A. That is true.

25 Q. Neil Weintraub, to the contrary, does express

SCOTT RHODES, 5/15/2019

1 opinions about the standard of care specific to lawyers
2 practicing in the area of securities law. True?

3 A. I don't know, and I think that would be a good
4 question to ask him, because his opinion is broken down
5 into two sections. The first section is generally related
6 to -- to essentially my area. He refers to the model
7 rules and I refer to the Arizona ethical rules, but it's
8 the law of lawyering that he refers to to begin, and then
9 he goes into securities law.

10 And I was not certain whether he -- his opinions
11 are intended to cover both, like I am, which is the
12 standard of care as applies to all lawyers, and then to
13 break it down into the specifics for securities lawyers.

14 Your question implies it's only in the second
15 category. I wasn't sure that that's the proper
16 interpretation, but only he could tell us that.

17 MR. CAMPBELL: Okay. I lost track of my
18 question. Could you reread it?

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

20 Q. That's a true statement, correct?

21 A. That's a true statement that might not cover the
22 entire breadth of his opinion.

23 Q. Understood. But with respect to the section of
24 his report that expresses opinion about the standard of
25 care specific to lawyers practicing in the area of

SCOTT RHODES, 5/15/2019

1 securities law, you are not qualified to comment or rebut
2 that. True?

3 MR. DeWULF: Could you read that back, please,
4 Kelly. I want to hear it back.

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

6 MR. DeWULF: Object to form.

7 THE WITNESS: I'll repeat my former answers, in
8 that, no, I do not hold myself out as an expert in
9 securities law, so therefore I think I would not
10 specifically rebut those areas that -- when he reaches
11 opinions based on securities law.

12 And I don't remember the details of his opinion
13 well enough to say whether some of those opinions might be
14 a combination of the law of lawyering in the standard of
15 care and securities law, so I don't want to tie my hands
16 and say that if there is a paragraph within the section
17 that he has identified as securities law, I would never
18 comment on it.

19 I would not comment on it as it pertains to
20 securities law, but if it's a hybrid that also talks about
21 general principles of standard of care pertinent to all
22 lawyers, then I reserve the right to comment on it.

23 Q. Have you read Mr. Olson's report?

24 A. Yes.

25 Q. All right. You understand -- you do some trial

SCOTT RHODES, 5/15/2019

1 work, don't you?

2 A. Yes.

3 Q. You understand under the Arizona Rules of Civil
4 Procedure, Clark Hill only gets one expert per issue?

5 A. I understand that.

6 Q. And they are trying to separate you from
7 Mr. Olson, correct?

8 A. I don't know what they are trying to do, but
9 there are two experts, Mr. Olson on securities law and I
10 am on the general, on the practice of law.

11 Q. Are you expressing any opinions that Mr. Olson
12 is also expressing, since you reviewed his report?

13 MR. DEWULF: Object to form.

14 THE WITNESS: Am I expressing any opinions that
15 he is also expressing. I don't think so, no.

16 Q. All right. So someone is trying to distinguish
17 his opinions from your opinions, right?

18 A. I'm sorry?

19 Q. Well, let me rephrase it.

20 You were not asked by Clark Hill to form any
21 opinion as about the standard of care of securities
22 lawyers with respect to securities law in the state of
23 Arizona. True?

24 A. That is true.

25 Q. You understand that securities law involves, in

SCOTT RHODES, 5/15/2019

1 part, determining what material facts need to be made to
2 investors. True?

3 MR. DeWULF: Object to form.

4 THE WITNESS: I'd refer to Mr. Olson on what
5 securities law requires. I'm willing to accept that as a
6 premise, if you want.

7 Q. Okay. But you have no opinion about whether or
8 not Clark Hill met the standard of care with respect to
9 making recommendations as to what material disclosures had
10 to be made under the securities law to investors of
11 DenSco. True?

12 A. I think that's overbroad and so I'm going to say
13 no -- not -- not true. The reason it's overbroad is
14 because securities lawyers are lawyers. They are lawyers
15 in the State of Arizona and there are certain aspects of
16 the standard of care that apply to all lawyers. So to
17 limit what -- what Clark Hill did only to the area of
18 securities law, to me, is overly narrow.

19 Q. Okay. I need to know whether you have an
20 opinion as to whether Clark Hill met the standard of care
21 with respect to its advice on making disclosures, material
22 disclosures in the area of securities law to the investors
23 of DenSco?

24 MR. DeWULF: Object to form.

25 THE WITNESS: well, and I have stated in my

SCOTT RHODES, 5/15/2019

1 opinion that I believe that Mr. Beauchamp met his
2 obligations that are -- that are pertinent and relevant to
3 any lawyer as to the advice and counsel that he gave his
4 client, irrespective of subject matter.

5 So to the extent that you are asking me whether
6 Clark Hill met the standard of care when it counseled its
7 client as to its legal obligations, my answer is, yes, I
8 have an opinion, and I have stated it.

9 Q. And we will go through that in your report.

10 A. Okay.

11 Q. You do not practice in the area of forbearance
12 agreements?

13 A. I do not.

14 Q. And I assume you are not qualified to express an
15 opinion as to whether or not the Forbearance Agreement in
16 this case was in DenSco's best interests?

17 MR. DeWULF: Object to form.

18 THE WITNESS: I have not reached an opinion on
19 that.

20 Q. You would agree that the Ethical Rules of the
21 State of Arizona with respect to professional conduct may
22 be considered by a jury as an aid in understanding and
23 applying the standard of care in Arizona for Clark Hill?

24 A. I do.

25 (Deposition Exhibit No. 950 was marked for

SCOTT RHODES, 5/15/2019

1 identification.)

2 Q. (BY MR. CAMPBELL) would you agree with me that
3 in the area of risk management in a law firm, you may
4 recommend things that the rules of professional
5 responsibility may just not address?

6 MR. DeWULF: Could I read that -- I want that
7 question back. Kelly, could you read it back?

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

9 THE WITNESS: As a theoretical question, I do
10 agree.

11 Q. Right.

12 And in your work as general counsel and a risk
13 manager, you may want to document more things in the area
14 of risk management than the rules of professional
15 responsibility may require you to do?

16 A. I think that what you are asking there is sort
17 of a best practices question and is it wise and prudent to
18 document some things, and, yes, of course it can be wise
19 and prudent. It can be a best practice.

20 Q. Right.

21 A. And I want to make sure I'm being fair to your
22 question, because you said more than the ethical rules
23 require, and the answer thereto is yes. It can be -- at
24 times when it might not be required by the ethical rules
25 to document something, it might be a best practice or just

SCOTT RHODES, 5/15/2019

1 a good idea to do it.

2 Q. Correct.

3 So I have handed you what's Exhibit No. 950, and
4 this is the Mallen book on Legal Malpractice, 2019
5 edition, that you told me was a learned treatise, right?

6 A. Correct.

7 Q. And let me -- actually, let me switch copies --

8 A. Oh, sure.

9 Q. -- because I have given you my highlighted copy.

10 A. Okay.

11 Q. I will give you a blank copy.

12 MR. CAMPBELL: I think yours is blank, too,
13 right?

14 Q. Okay.

15 A. I thought you were trying to make it easier for
16 me.

17 Q. Well, I'm trying to make it easier for myself.

18 So if you turn the first page, you are going to
19 go to section 2:45 on page 127, and it talks about closing
20 letters, end-of-engagement letters, right?

21 A. I see that.

22 Q. Is this a section of his book that you have
23 looked at before?

24 A. As I am sitting here today, I don't remember.
25 No, I don't remember.

SCOTT RHODES, 5/15/2019

1 Q. Okay. Under the Rules of Evidence, we can
2 either read learned treatises into evidence, sometimes
3 judge's allow the actual text to come in. But let me just
4 read it to you. This is the first paragraph of
5 Section 2:45.

6 "When a matter has been completed, the client
7 should be so informed by written communication. This is
8 sometimes inappropriately referred to as a 'disengagement'
9 letter, which is the term that used to describe the
10 premature termination of a representation, a topic
11 discussed below. A better description of such a
12 communication is a closed-file letter, also known as an
13 end-of-engagement letter. The letter also should confirm
14 that the client is not seeking further advice or
15 representation regarding the concluded matter."

16 Did I read that correctly?

17 A. You did, yes.

18 Q. And that's certainly a best practice?

19 A. It is, and especially in the subject matter of
20 the chapter, which is stated at the top, Preventing and
21 Mitigating Legal Malpractice Claims.

22 Q. Right. And a risk manager at a law firm would
23 certainly be aware of this. True?

24 A. Yes, I agree.

25 Q. All right.

SCOTT RHODES, 5/15/2019

1 A. Typically.

2 Q. You read Mr. Beauchamp's deposition, didn't you?

3 A. I did.

4 Q. Do you recall that when he terminated the
5 representation in this case, he testified that he had
6 talked to the general counsel of Clark Hill?

7 A. I do.

8 Q. And that general counsel was Mr. Edward Hood,
9 right?

10 A. That's correct. Well, I think Mr. Hood is a
11 co-general counsel, but he is a general counsel, yes.

12 Q. You are correct.

13 And he also -- you read his deposition also?

14 A. I did, yes.

15 Q. And parts of his job involved risk management.
16 True?

17 A. I don't remember his description, but I assume
18 so, yes. Yeah. Actually, I think he did say that.

19 Q. All right. I want you to turn to the third
20 paragraph of section 2:45, the learned treatise you have
21 recognized.

22 A. Uh-huh.

23 Q. And I'm going to read the first two sentences.

24 "A closing letter can prevent confusion about
25 whether the law firm's representation has ended."

SCOTT RHODES, 5/15/2019

1 well, let me just stop it there. Did I read
2 that correctly?

3 A. You did, yeah.

4 Q. Is it important for a risk manager at the law
5 firm for a client to know that representation has ended?

6 A. You said "important for a risk manager." I
7 would say it's important for the client to know that the
8 representation has ended.

9 Q. What happens, what are the responsibilities --
10 well, strike that.

11 If a client -- if it's not clearly communicated
12 to a client that the representation has ended, can that
13 create issues for the law firm?

14 MR. DeWULF: Object to form.

15 THE WITNESS: It depends. That's a very broad
16 question, but it's possible that that can lead to issues,
17 if there is evidence of actual confusion by the client
18 where the client believes that the attorney-client
19 relationship is ongoing.

20 Q. All right.

21 A. The client has to have an actual belief and an
22 objectively reasonable belief that the representation has
23 not been terminated.

24 Have we finished with this one?

25 Q. No, no, no. Please leave it. I'm just going to

SCOTT RHODES, 5/15/2019

1 mark something else. Exhibit 951.

2 (Deposition Exhibit No. 951 was marked for
3 identification.)

4 Q. Let me ask you. I want to go back to your
5 resumé for a second.

6 A. Sure.

7 Q. Not your resumé. Your report in the case.

8 A. This is also the highlighted copy.

9 MR. DeWULF: He is thoughtful that way.

10 MR. CAMPBELL: I may have Xeroxed it that way.
11 It got copied. I'll come back to it. This is a problem I
12 have.

13 MR. DeWULF: We have had -- he has helped me out
14 before with highlighting, or his paralegal has. Somebody
15 has.

16 Q. The -- on page 2 of your report, you said: In
17 formulating my preliminary opinions in this matter, I
18 relied on my background and experience, interviewed
19 defense's -- defendant's counsel, and reviewed documents
20 as listed on Exhibit B --

21 A. Correct.

22 Q. -- correct?

23 And then you actually attach Exhibit B, right?

24 A. Yes.

25 Q. And it's a long list.

SCOTT RHODES, 5/15/2019

1 A. It is a long list.

2 Q. And you were also given depositions and exhibits
3 in the case?

4 A. I was, yes.

5 Q. And you strike me as a thorough man. I assume
6 you reviewed all of the documents on Exhibit B?

7 A. Well, as I put into a footnote, I have reviewed
8 them to the extent I found them relevant to the opinion.
9 So I can go through my methodology if you want of how I
10 managed it --

11 Q. Well --

12 A. -- because it is a lot of documents.

13 Q. -- in order to determine whether a document is
14 relevant, you have to look at it, right?

15 A. I did -- I did two things. My approach to this
16 was I did look at it, but I looked at it very quickly. I
17 have been retained since August of 2017, so it's been a
18 process.

19 So I would -- I looked at documents quickly to
20 see generally what's going on, and then as I put in there,
21 I interviewed defense counsel, at certain times during the
22 last two years. I have spoken to Mr. DeWulf to say what
23 is the status of the case and how do certain depositions,
24 in a big picture, fit into what's going on. Then when I
25 started the actual opinion, I chose which ones to delve

SCOTT RHODES, 5/15/2019

1 into and look at with more detail.

2 So I'm not an expert on everything that's -- I'm
3 not a scholar on every document on that list.

4 Q. Well, how am I supposed to know which ones you
5 are a scholar on and which ones you are not a scholar on?

6 A. I think we are probably both required for you to
7 ask me a question, do you remember this document and I
8 will tell you whether I do or don't. And maybe I can just
9 have my recollection refreshed if you show me one.

10 Q. Can you give me any understanding of how many
11 hours you spent reading Exhibit B documents? If you spent
12 ten minutes, I might consider you less qualified than if
13 you spent more.

14 A. Well, each document is a little different. With
15 respect to depositions, I looked at the deposition
16 testimony. I didn't, in the beginning, go into the
17 exact -- to the exhibits to them unless there was
18 something that really popped out.

19 Do you want me to give you an idea of my overall
20 time spent on this case in two years? Would that help
21 you?

22 Q. I think I asked you how many hours you spent
23 reviewing the documents. I'm waiting for an answer to
24 that question.

25 A. I actually didn't look at hours. I have

SCOTT RHODES, 5/15/2019

1 numbers. I have billed about \$19,000 --

2 Q. All right. And --

3 A. -- at \$500 an hour.

4 Q. Okay. So what would that tell you in terms of
5 time? Neither you or I are mathematicians.

6 A. At least, if I were coming into my office and
7 doing nothing but this case and it were a compressed time,
8 it would be a week's worth of ten-hour days probably.

9 Q. All right.

10 A. That's -- obviously I'm estimating a little bit,
11 but that's --

12 Q. You understand this, in part, is a malpractice
13 case against Clark Hill?

14 A. Oh, I do, yes.

15 Q. All right. Would it be fair to assume you read
16 all of Mr. Beauchamp's deposition?

17 A. Yes. Yes.

18 Q. All of Mr. Hood's deposition?

19 A. Correct. Yes.

20 Q. All of the other Clark Hill attorney
21 depositions?

22 A. Correct. Well, the others, meaning
23 Mr. Sifferman and Mr. Schenck. Those are the two that
24 I --

25 Q. Did you read Mr. Anderson's?

SCOTT RHODES, 5/15/2019

1 A. I don't remember Mr. -- reading Mr. Anderson's.

2 Q. Did you read Shawna Heuer's deposition?

3 A. I didn't -- I looked at it, but I didn't read it
4 in detail.

5 Q. All right. Well, if on a break I were to give
6 you your Exhibit B, could you put a checkmark what you
7 reviewed in detail?

8 A. Sure.

9 Q. Okay. We will do that.

10 A. What I was trying to do with Exhibit B, because I
11 think it's a question of fairness, is to give you every
12 document I was provided.

13 Q. Well, the rules require that, right?

14 A. Right, so...

15 Q. And I would assume the attorneys for Clark Hill
16 gave you these documents.

17 A. They did, right.

18 Q. At least did you assume they thought they might
19 be important to what you were doing?

20 A. I wouldn't put words in their mouths.

21 Q. Did you tell them you weren't going to review
22 everything?

23 A. I did. Actually, I told them that I was going
24 to be -- because the case was ongoing, it was a relatively
25 long time before I was aware of a deadline, I told them I

SCOTT RHODES, 5/15/2019

1 will be staying abreast of the status of the case, but I'm
2 not going to spend a lot of time or somebody else's money
3 before it's time for me to start to prepare for getting
4 ready for -- to prepare my opinion.

5 MR. DeWULF: And let me enter -- I want to
6 interject regarding what work you might do on a break.

7 what counsel has asked you to do is look at the
8 listing on Exhibit B, but I'm not sure those descriptions
9 are going to sufficiently educate you as to whether it's a
10 document that you recall viewing, so I don't want you to
11 undertake a job that you may not be able to accomplish,
12 but we'll certainly make --

13 MR. CAMPBELL: This isn't an objection to form.

14 MR. DeWULF: We will make a good faith effort,
15 but I don't -- I don't want that to be sitting there as
16 though we have acquiesced in a job we can't accomplish,
17 so -- but we'll do our best.

18 Q. Well, would it be fair to say that with respect
19 to Exhibit No. B, it contains documents that you wanted to
20 review in more detail, and it included documents that you
21 made a decision you weren't going to review in any more
22 detail?

23 A. Correct. All of the decisions about the depth
24 of my review of a document were mine.

25 Is that -- is that your question?

SCOTT RHODES, 5/15/2019

1 Q. My -- no.

2 A. Okay.

3 Q. My question is with respect to each document on
4 B, you made a decision either to review it in more detail,
5 and I have got three volumes of this, or you made the
6 decision I'm not going to review it in more detail?

7 A. Right, and that's what I was trying to say.
8 Yes, that's correct, and it was my decision, not someone
9 else's decision.

10 Q. All right. Now, you say you interviewed defense
11 counsel?

12 A. Correct.

13 Q. All right. And did you interview defense
14 counsel with a view to deciding what you were going to
15 look at in detail and what you were not going to look at
16 in detail?

17 A. In part. I felt that that was, especially in a
18 complex case like this, that's, for me, an efficient way
19 of getting an understanding of the facts as I am
20 understanding, and am I on track or am I missing anything,
21 and also where the case is in terms of who has been
22 deposed.

23 And so it -- I have found that doing that helps
24 to reduce the cost of the expert witness by simply getting
25 a better sense through defense counsel, or whichever

SCOTT RHODES, 5/15/2019

1 counsel has retained me, about where the case is and
2 what -- and pointing me to things that they might think
3 are relevant, with it being understood that the final call
4 is mine.

5 Q. I want to draw a distinction here. We have a
6 new rule on expert witnesses, effective January 1 of this
7 year.

8 A. Right.

9 Q. So your communications about your opinions, your
10 drafts, that's work product --

11 A. Correct.

12 Q. -- and I don't want to get into that.

13 To the extent he communicates to you facts,
14 that's different. I'm entitled to know what facts you
15 were told to maybe look at in more detail as opposed to
16 not look at.

17 So can you make that distinction for me?

18 A. Absolutely. But I can tell you that the facts
19 were I reviewed the 26.1 statements and then I was asking
20 questions back to him, am I understanding correctly the
21 sequence of events as you -- as you portray them in 26.1.

22 So there wasn't anything beyond, that I recall,
23 anything beyond what's in there. Sometimes when I read a
24 deposition, if there was something that I wasn't sure I
25 had seen before, one of your questions, for example, I

SCOTT RHODES, 5/15/2019

1 wasn't sure if I had seen a fact before, then I might call
2 and say here is a question, that I don't remember this
3 fact. And I don't have any details, but is -- can you
4 point me to where I can see, where I can follow up on
5 that.

6 Q. All right. So with respect to your factual
7 communications with counsel, let me make sure I understand
8 it correctly, you read the Rule 26.1 disclosures, and if
9 you had questions about them, you asked counsel?

10 A. That's correct.

11 Q. Do you remember --

12 A. I don't remember any fact being told to me that
13 I did not see in 26.1 disclosures and/or coming through
14 deposition testimony.

15 Q. All right. And when you read a deposition, if
16 there was some fact you didn't recall, you might ask for
17 guidance where to --

18 A. Where.

19 Q. -- where is this coming from?

20 A. Where to look for a document or where I can just
21 verify it on my own.

22 Q. And were there times you then went back and
23 looked at particular documents to verify facts?

24 A. Yes.

25 Q. Okay. Now, you were given, and it's on your

SCOTT RHODES, 5/15/2019

1 Exhibit B, entitled documents reviewed --

2 A. Right.

3 Q. -- the Chittick corporate journals for 2013.

4 A. That's -- actually, I was given those. I have
5 not reviewed them. Thank you for bringing that up. And I
6 haven't reviewed them because I have understood that there
7 might be an issue as to their admissibility. So I -- I
8 have reviewed parts of them or am aware of parts of them
9 through your questions in some depositions, and Mr. Hood's
10 deposition.

11 Q. Sir, you are aware -- you certainly must be
12 familiar with the expert witness rules, because you have
13 been an expert several times.

14 A. Right.

15 Q. And you are aware that an expert can rely upon
16 materials that otherwise may not be admissible in
17 evidence. True?

18 A. I am aware of that.

19 MR. DEWULF: Object -- I'll object to form.

20 Q. And you have just told me that you have made a
21 conscious decision, in forming your opinions in this case,
22 not to look at the DenSco corporate journals.

23 Did I hear you correctly?

24 A. Yes.

25 Q. And that's true; you have not looked at the

SCOTT RHODES, 5/15/2019

1 DenSco corporate journals?

2 A. I have not looked at the papers. I have read
3 some questions where they are --

4 Q. All right.

5 A. -- quoted.

6 Q. That, in forming your opinions, that is a
7 conscious decision you made, "I'm not going to look at the
8 journals"?

9 A. That's correct. As of the preliminary opinion,
10 that's correct.

11 Q. Well, now you give me pause.

12 Do you intend to look at them in forming a final
13 opinion and surprise me at trial?

14 MR. DeWULF: Object to form.

15 THE WITNESS: I wouldn't want to surprise you at
16 trial. If I look at them, I think I have a duty to
17 supplement my opinion and inform you of that.

18 Q. So you will -- if you -- if you review anything
19 more in this case after today, you will let me know?

20 MR. DeWULF: Object to form.

21 Q. True?

22 A. I don't know if I can communicate with you
23 directly, Colin, but I think that if I look at anything
24 more and it affects my opinion, then I would supplement my
25 opinion.

SCOTT RHODES, 5/15/2019

1 Q. Okay.

2 A. That's the way I would handle that.

3 Q. You were also given a letter that Mr. Chittick
4 had wrote to investors but never sent to the investors.

5 Did you read that?

6 A. I did, yes.

7 Q. You were also given a letter that Mr. Chittick
8 wrote to his sister, Shawna Heuer.

9 Did you read that?

10 A. If that's what's referred to as the Iggy letter?

11 Q. Yes.

12 A. Yes. I read it the first time, and I actually
13 reviewed it yesterday.

14 Q. Okay. And you said you reviewed Mr. Beauchamp's
15 deposition?

16 Were you aware that his --

17 COURT REPORTER: Is that "yes"?

18 MR. DeWULF: Yes?

19 THE WITNESS: Yes.

20 Q. Were you aware that his deposition exhibits
21 included the 2013, 2014, and 2015 and maybe 2016 corporate
22 journals?

23 A. They did.

24 Q. And did you make a conscious decision, in
25 forming your opinions in this case, that you would not

SCOTT RHODES, 5/15/2019

1 look at the corporate journals?

2 A. Other than the questions asked pertaining to
3 them, I did not look into all of the corporate journals,
4 yes.

5 Q. Okay. Now, let's go to -- which one did I mark?
6 It was Exhibit 951, this right here. Actually, this is a
7 supplemental Arizona Rule of Evidence 807(b) Notice we
8 have given, and I am using it because it's a shorthand
9 way, instead of going through all the journals, we cite
10 from them.

11 Let me tell you where I want you to go. What I
12 want to do is I want to look at notations from the
13 journals after May 2014.

14 A. Okay.

15 Q. Is there something significant in this case that
16 happened in May 2014?

17 A. Yes, there is.

18 Q. What happened in May 2014?

19 A. Clark Hill withdrew from representing DenSco.

20 Q. All right. So I want you to turn to page 5,
21 paragraph 29, and this is from the 2014 corporate journal,
22 Chittick wrote, quote --

23 A. Which paragraph are you on?

24 Q. Paragraph 29.

25 A. Okay.

SCOTT RHODES, 5/15/2019

1 Q. Quote: My time is running out on updating my
2 private placement memorandum and notifying my investors,
3 end of quote.

4 Do you see that?

5 A. I do.

6 Q. Then if you look to the one below it,
7 paragraph 30, "On July 31, 2014, Chittick wrote: 'It's
8 all going in the right direction, just not sure if it's
9 going fast enough. As long as David doesn't bug me, I
10 feel like we are doing the right thing.'"

11 Do you see that?

12 A. I do.

13 Q. Are those consistent with Mr. Chittick believing
14 that David is still representing him?

15 A. I --

16 MR. DeWULF: Object to form.

17 THE WITNESS: I don't know if they are
18 consistent or not. I don't know.

19 Q. Did you review any evidence in this case to
20 determine whether Mr. Chittick had an understanding and
21 belief that Clark Hill had withdrew from representation?

22 MR. DeWULF: Could you read that back, please,
23 Kelly.

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

25 THE WITNESS: I have seen no writing indicating

SCOTT RHODES, 5/15/2019

1 one way or another whether Mr. Chittick believed that
2 Clark Hill had withdrawn.

3 Q. Now, when we were talking about Exhibit No. 950,
4 the learned treatise --

5 A. Right.

6 Q. -- you recall that we discussed it was important
7 for a client to understand that the lawyer had withdrawn.
8 True?

9 A. Correct. That's what the -- that's what
10 Mr. Mallen says.

11 Q. Turn to the next page of Exhibit 951,
12 paragraph 32. "On March 13, 2015, Chittick wrote: 'I got
13 an email from Dave my attorney wanting to meet. He gave
14 me a year to straighten stuff out. We'll see what
15 pressure I'm under to report now.'"

16 Did I read that correctly?

17 A. You did.

18 Q. That's from the 2015 corporate journal?

19 A. Correct.

20 Q. Is that consistent with Mr. Chittick believing
21 that Clark Hill continued to represent him?

22 MR. DEWULF: Object to form.

23 THE WITNESS: It's hard to tell whether
24 Mr. Chittick believed this when he wrote it, but the words
25 on the page indicate that he apparently believed that

SCOTT RHODES, 5/15/2019

1 before Mr. Beauchamp withdrew, Beauchamp gave him some
2 period of time of a year to straighten stuff out, but I
3 have not seen any documents that corroborate that
4 Mr. Beauchamp gave him that advice.

5 Q. Well, you chose not to read any of the corporate
6 journals. True?

7 MR. DeWULF: Object to form.

8 THE WITNESS: Well, I have told you I did not
9 read them, but I accept for -- to the extent that there
10 are references to them in depositions, just like these
11 paragraphs that you are pointing out to me.

12 Q. Are you aware in the 2014 corporate journals
13 there is not one word in the daily journals about
14 Mr. Beauchamp withdrawing?

15 A. I'm --

16 MR. DeWULF: Object to form.

17 THE WITNESS: I'm aware of questions asked, I
18 believe to Mr. Hood, to that extent, yes.

19 Q. All right. So you are aware that in the 2014
20 corporate journals there is not one word written by
21 Mr. Chittick in his daily journals that Clark Hill has
22 withdrawn. True?

23 MR. DeWULF: Object to form.

24 THE WITNESS: May I answer it this way? I can't
25 say I'm aware from having looked at those journals with my

SCOTT RHODES, 5/15/2019

1 own eyes, because I have told you I haven't, but I am
2 certainly willing to accept that as a premise that you
3 have given.

4 Q. All right. Let's go to paragraph --
5 paragraph 33 of Exhibit 951. On March 24th, 2015,
6 Chittick wrote: "I had lunch with Dave Beauchamp. I was
7 nervous he was going to put a lot of pressure on me.
8 However, he was thrilled to know where we were at and I
9 told him by April 15th, we'll be down to 16 properties
10 with seconds on them, and by the end of June we hope to
11 have all the retail houses sold by then and darn near be
12 done with it. I'm going to slow down the whole memorandum
13 process too. Give us as much time as possible to get
14 things in better order."

15 Did I read that correctly?

16 A. You did.

17 Q. All right. Prior to this moment, you never read
18 that, correct?

19 MR. DeWULF: Object to form.

20 THE WITNESS: I don't remember reading this, no.
21 I don't remember this from any of the deposition
22 testimony. Correct me if I'm wrong, if it was in there,
23 but I don't remember it.

24 Q. Okay. You read the Iggy letter that he wrote
25 prior to his suicide, correct?

SCOTT RHODES, 5/15/2019

1 A. I did.

2 Q. Was there anything you read in the Iggy letter
3 where Mr. Chittick said "Clark Hill had withdrawn from
4 representing me"?

5 A. Well, he certainly doesn't use that language,
6 no.

7 Q. He doesn't use the language "withdrawn" and he
8 doesn't use the language "terminated." True?

9 A. True. Neither word, as I recall, neither of
10 those words appears in the letter.

11 Q. All right. Let's look at, if you look on
12 page 6, these are quotes from the pre-suicide letter to
13 Shawna Heuer.

14 And my recollection was you did read this.
15 Right?

16 A. Yes.

17 Q. So in the letter, Chittick wrote: "Dave my
18 attorney even allowed us to do the wholesaling....[H]e let
19 me get the workout signed[,] not tell the investors[,] and
20 try to fix the problem. That was a huge mistake....Dave
21 did a workout agreement with [Menaged], we were
22 executing" -- "executing to it and making headway, yet
23 Dave never made me tell the investors."

24 Did you read that?

25 A. I did, yes.

SCOTT RHODES, 5/15/2019

1 Q. Let's go to paragraph 2 on page 6. "In the
2 letter, Chittick wrote: 'I talked Dave my attorney in to
3 allowing me to continue without notifying my investors.
4 Shame on him. He shouldn't have allowed me. He even told
5 me once I was doing the right thing.'"

6 Did you read that?

7 A. I did.

8 Q. Well, so as a risk manager, going back to
9 Exhibit No. 950, one of the reasons you would want to do a
10 closing letter is to make sure the client understood that
11 you -- Clark Hill was not going to represent him anymore,
12 right?

13 A. As a best -- as a best practice, there are
14 several reasons why a closing letter is a good idea, and
15 that's one of them.

16 Q. All right. And you would anticipate that a risk
17 manager and general counsel like Mr. Hood would want to
18 follow best practices. True?

19 A. I can't speak for what Clark Hill believes are
20 best practices under the circumstances, so I think you
21 would have to ask him that.

22 Q. Is it your opinion that Mr. Hood did not follow
23 best practices in the termination of Clark Hill's
24 representation of Denny Chittick?

25 MR. DeWULF: Object to form.

SCOTT RHODES, 5/15/2019

1 THE WITNESS: Well, first of all, best practices
2 have nothing to do with the standard of care. Even your
3 expert says that.

4 Q. That's not my question, Mr. Rhodes.

5 A. I haven't reached a conclusion as to whether he
6 followed best practices.

7 Q. Okay. I want my question read back, and if you
8 have no opinion, tell me you have no opinion. Let's read
9 the question back.

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

11 THE WITNESS: I'm sorry. Was the question
12 whether Mr. Hood followed best practices or Clark Hill?

13 MR. CAMPBELL: Read it again.

14 MR. DeWULF: Yeah. Would you read it again,
15 Kelly.

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

17 THE WITNESS: I have no -- no opinion.

18 Q. Do you have any opinion as to whether Clark Hill
19 followed best practices in its termination of Denny
20 Chittick --

21 MR. DeWULF: Object to form.

22 Q. -- as a client?

23 A. I don't believe I was retained as an expert to
24 opine about best practices, so I have no opinion.

25 Q. No opinion at all, sir?

SCOTT RHODES, 5/15/2019

1 A. I don't think that's within the scope of my
2 retention. I'm a standard of care expert.

3 Q. It's within the scope of your cross-examination
4 under the Arizona Rules of Evidence, which is wide open
5 cross-examination. And you can have no opinion. I just
6 want to make sure that's what you are going to tell the
7 jury.

8 So you have no opinion as to whether Clark Hill
9 followed best practices in the termination of Mr. Chittick
10 as a client. True?

11 MR. DeWULF: Object to form.

12 THE WITNESS: The answer is true.

13 May I explain it?

14 Q. No.

15 Let's go back to the learned treatise, which is
16 going to be Exhibit 950. We will take a break in a
17 second. Let's go back to page 127.

18 You see --

19 MR. DeWULF: Counsel, it's been a little over an
20 hour, so whenever is good for you, we can take a break.

21 MR. CAMPBELL: Okay.

22 Q. You see at the bottom of page 127, last line, it
23 says, quote, In discussing how to prevent such problems in
24 the future, the court cited to the Comment to Kansas'
25 Model Rule of Professional Conduct 1.3 and offered some

SCOTT RHODES, 5/15/2019

1 succinct advice: "A written communication is
2 recommended."

3 Did I read that correctly?

4 A. You did. I'm not sure -- I haven't read the
5 rest of the paragraph, so I'm not sure which court he was
6 referring to there, but, yes, you read it correctly.

7 Q. Are you aware that Clark Hill is alleging an
8 affirmative defense of the statute of limitations?

9 A. I -- I don't recall. I might have been aware of
10 it at some time, but if I was, I have forgotten.

11 Q. Okay. If you turn to page 128 of 950, third
12 paragraph. Tell me if I am reading from the learned
13 treatise correctly.

14 Quote, A second situation concerns the statute
15 of limitations. A closing letter can provide important
16 evidence that the representation ended, end of quote.

17 Did I read that correctly?

18 A. You did.

19 Q. I want you to turn to page -- let me just finish
20 this document and we will take a break -- turn to
21 page 129, section 2:46.

22 A. Yes.

23 Q. Tell me if I am reading correctly.

24 Quote, A disengagement letter should be used
25 when the law firm decides to withdraw, or is unvoluntarily

SCOTT RHODES, 5/15/2019

1 terminated by the client or by court order before the
2 completion of the matter, end of quote.

3 Did I read that correctly?

4 A. With a quibble that it's involuntarily and not
5 unvoluntarily, but other than that, you read it correct.

6 Q. You are correct. You are correct.

7 A. I don't know if that was a test, but other than
8 that, that's correct, yes.

9 MR. CAMPBELL: All right. Why don't we take our
10 break now.

11 VIDEOGRAPHER: We are going off the record at
12 10:09 a.m.

13 (A recess was taken from 10:09 a.m. to
14 10:22 a.m.)

15 VIDEOGRAPHER: We are on the record at
16 10:22 a.m.

17 Q. Let me just clarify some things.

18 I think you testified earlier that you were
19 retained in August of 2017?

20 A. My first conversation with Mr. DeWulf was in
21 July of 2017. I was formally retained about a month
22 later.

23 Q. Okay. And that was before we filed suit in the
24 case, which was October of 2017.

25 Have you been doing work on the case

SCOTT RHODES, 5/15/2019

1 consistently since July of 2017?

2 MR. DeWULF: Object to form.

3 THE WITNESS: No.

4 Q. When did you actually start working on the case?

5 A. I don't --

6 MR. DeWULF: Object to form.

7 THE WITNESS: Well, every time I've been
8 involved in the case, that's work, so I don't -- I guess
9 that's -- I'm not quite sure how to answer that question.
10 But I -- my involvement in the case has been from time to
11 time, up until the last several months when I knew there
12 was going to be a deadline for expert -- an expert report.

13 There were long periods of time when I was doing
14 nothing on this case, and then I would say, as I say, in
15 the last few months when I knew there was an expert report
16 deadline, that I started working on it more intensively.

17 Q. Okay. I assume you could give me your billing
18 records on the case that would tell me what times you
19 worked on the case?

20 A. I certainly have the billing records, yes.

21 MR. CAMPBELL: John, could I get those? You can
22 certainly go through for redactions for --

23 MR. DeWULF: Yeah, let me --

24 MR. CAMPBELL: -- whatever the rule allows you
25 to redact.

SCOTT RHODES, 5/15/2019

1 MR. DeWULF: Yeah, let me look that, Colin.
2 I -- I think so. I haven't given any thought to that.
3 Let me -- let me look at that issue.

4 MR. CAMPBELL: Okay.

5 Q. And then on Exhibit 951, I think you told me
6 that you did not look at the corporate journals.

7 were you instructed by counsel for Clark Hill
8 not to look at the corporate journals?

9 A. No. I was -- I was informed, I became aware
10 that there were issues as to the reliability of those
11 documents. I made the call that I did not want to -- even
12 though I knew what you referred to earlier as experts can
13 rely on information that might not be admissible, in my
14 experience, if an expert has relied on such information
15 that's not admissible, it becomes -- it can become a
16 complicating factor later to parse out what from that
17 opinion is acceptable at trial and what is not. So my
18 inclination is very conservative in that regard. I try to
19 rely on what I think seems to be heading towards
20 admissible evidence.

21 MR. CAMPBELL: Could you read my question back.
22 Listen to my question.

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

24 THE WITNESS: No.

25 Q. All right. So when did you first -- well, let's

SCOTT RHODES, 5/15/2019

1 go back.

2 So how did you reach the decision you weren't
3 going to look at the corporate journals? When did that
4 first happen?

5 A. One of the -- one of the earliest points in that
6 decision was when I became aware that there were hundreds
7 of pages; that they were, had been in existence for a long
8 time. So the corporate journals, my understanding was
9 they were very long, spanning a long period of time.

10 And then I started to see both -- in your
11 disclosure statements that the parties were referring to
12 parts of them, so I felt I had a good sense of what the
13 parties had identified as the relevant portions of those
14 corporate journals.

15 So, you know, the combination of knowing that
16 the entirety of the corporate journals was really very
17 long, covering a long period of time, plus what the
18 parties seem to have identified as what was relevant, I
19 decided to rely on what the parties had parsed out as what
20 was relevant.

21 Q. All right. So I just -- I want to find out
22 when, because the Rule 26.1 statements were filed early on
23 in the case.

24 So when did you make a decision by yourself not
25 to look at documents that were given to you by Clark Hill?

SCOTT RHODES, 5/15/2019

1 MR. DeWULF: Object to form.

2 THE WITNESS: First I have to tell you that I
3 don't remember when I first found out that they existed.
4 I think probably in the -- when I read the 26.1 statement.

5 I asked the question what are they, how long are
6 they. Learned that they were very, very long. I didn't
7 make a final decision not to go back and review all of
8 them until I started the process of organizing my thoughts
9 and preparing to draft my opinion.

10 Q. Did you have any conversation with counsel for
11 Clark Hill at all about whether you should review the
12 corporate journals?

13 A. Not specifically on the question of whether I
14 should. In other words, no direction to me. I became
15 aware that there -- there is an issue in this case as to
16 reliability and therefore admissibility of those journals.

17 Q. Okay. Well, let's stop there.

18 A. When?

19 Q. When did you become aware there was an issue of
20 reliability?

21 A. As in a general sense, probably pretty early on.
22 I'm sorry. The reason I'm hesitating is because you are
23 challenging my memory here, but --

24 Q. Lawyers do that.

25 A. -- probably pretty early on, when I first

SCOTT RHODES, 5/15/2019

1 became -- when I read the 26.1's, saw they existed, asked
2 about them. I think -- I think I recall a question of,
3 well, there might be an issue down the line as to how
4 reliable they are.

5 when you call that an issue, as in terms of the
6 legal sense for this lawsuit, last week.

7 Q. Last week?

8 A. Right.

9 Q. What happened last week?

10 A. I became aware that there is an issue pending
11 between or brewing between the parties as to the
12 admissibility of them.

13 Q. So you learned that last week?

14 A. Uh-huh.

15 Q. Which your opinion was written --

16 A. True, but I --

17 Q. -- before that.

18 A. -- I had known before that that there was --
19 there was a lingering question out there as to these
20 journals and their reliability.

21 Q. Well, okay. Well, that's -- I have to unpack
22 this, because I need to understand it.

23 A. That's fine.

24 Q. You say you learned last week there was an issue
25 with respect to reliability?

SCOTT RHODES, 5/15/2019

1 MR. DeWULF: Object to form.

2 THE WITNESS: No. what I said was I learned
3 last week that it appears there might become a true issue,
4 meaning a litigated issue, as to the admissibility of the
5 journals.

6 Q. How did you learn that last week?

7 A. From counsel.

8 Q. Okay. So you were talking to counsel about
9 facts in the case and he told you there was an issue about
10 these facts?

11 A. I was -- I was meeting with counsel to prepare
12 for my deposition and I asked about the status of the
13 case, and as I always do, what's going on other than these
14 depositions, and I was told that there was an issue
15 about -- that might -- that might or might not be
16 litigated about that. I had already reached my
17 conclusion, however, as I told you before.

18 Q. I will go back to that, sir.

19 A. Okay.

20 Q. What did Mr. DeWulf, Clark Hill's lawyer, tell
21 you last week, as you were preparing your deposition,
22 about the facts related to the corporate journal?

23 A. He didn't tell me anything about the facts
24 related to the corporate journal. He told me that there
25 might be a litigated issue as to their admissibility.

SCOTT RHODES, 5/15/2019

1 Q. Okay. But you had formed the decision not to
2 read them long before last week?

3 A. That -- to read them in their entirety, that's
4 absolutely correct. Long before last week.

5 Q. Did you read them in part?

6 A. Well, as I have testified, what I did is I read
7 what was -- the parties identified and parsed out of them
8 as relevant from the 26.1 statement, and then also from
9 deposition questions.

10 Q. So you did read parts of the corporate journals
11 through reading the depositions and reading the 26.1
12 statement?

13 A. To me, reading the corporate journals means
14 taking the journals themselves and reading them, and I
15 have not done that. What I have read is, just as you have
16 shown me here, quotations from them through the parties,
17 either through deposition questions or 26.1 statements.

18 Q. And you have ignored what you have read with
19 respect to the statements in forming your opinions?

20 A. I have not relied exclusively on those. Ignored
21 is too strong of a word, but I have decided that my
22 opinions did not depend on and were not affected by
23 anything that I had seen in them.

24 Q. Okay. But you have read parts of the corporate
25 journal through your readings in preparation for your

SCOTT RHODES, 5/15/2019

1 opinions, and your -- I want to make sure I understand
2 you --

3 A. Sure.

4 Q. -- and you are excluding them from your opinion?

5 MR. DeWULF: Object to form.

6 THE WITNESS: I'm not sure why you used the word
7 "exclude." They have not informed my opinions.

8 Q. All right. But they are part of what you
9 reviewed in forming your opinions in the case. True?

10 A. The parties' recitations of segments of the
11 journals are part of what I have read in preparing my
12 opinion.

13 Q. And you made a conscious decision not to read
14 anything more in the journals?

15 A. That's correct.

16 Q. Even though the journals were part of what was
17 turned over to you?

18 A. That -- that is correct. That's what I have
19 been trying to say.

20 MR. CAMPBELL: So this is the Peter Davis
21 deposition Exhibit 550, so I don't think I need to mark it
22 unless you want me to, John.

23 MR. DeWULF: No.

24 MR. CAMPBELL: But I don't have the stamped copy
25 of it. This was -- it's got 550 on the bottom.

SCOTT RHODES, 5/15/2019

1 MR. DeWULF: That's fine. I accept your
2 representation of that. If you have got an extra copy of
3 it, that would be great.

4 MR. CAMPBELL: I do.

5 MR. DeWULF: Oh, yeah. This is fine.

6 Q. So I'm going to show you what's been marked as
7 Exhibit No. 550 in the Peter Davis deposition. Why don't
8 you take a moment just to review it. I want to see if it
9 refreshes your recollection.

10 A. I certainly recall the email of March 13, 2015,
11 from David Beauchamp to Denny Chittick with the subject
12 matter "How are you?" And I recall some of the subsequent
13 interchange between Scott Menaged and Denny Chittick. I'm
14 not sure if I remember all of that.

15 Q. All right.

16 A. A good -- good portion of it.

17 Q. So on 550, let's go -- let's start with
18 Beauchamp's email to Chittick dated March 13th, 2015. All
19 right?

20 A. Yes.

21 Q. And Mr. Beauchamp writes, "I would like to meet
22 for coffee or lunch (at no charge to you) so we can sit
23 down and talk about how things have progressed for you
24 since last year."

25 Do you see that?

SCOTT RHODES, 5/15/2019

1 A. I do.

2 Q. I would also like to listen to you about your
3 concerns, and frustrations with how the forbearance
4 settlement and the documentation process was handled. I
5 have thought back to it a lot and I have second guessed
6 myself concerning several steps in the overall process,
7 but I wanted to protect you as much as I could. When I
8 felt that your frustration reached a very high level, I
9 stopped calling you about how things were going on so that
10 you did not feel I was trying to add more attorneys fees.
11 I planned to call you after about 30 days, but then I let
12 it slip all of last year because I kept putting it off. I
13 even tried to write you several different emails, but I
14 kept erasing them before I could send them.

15 Did I read that correctly?

16 A. Yes.

17 Q. Now, the only way Chittick would believe that
18 Mr. Beauchamp was going to charge him for attorney's fees
19 on a phone call is if he were a client. True?

20 MR. DeWULF: Object to form.

21 THE WITNESS: I don't think that's necessarily
22 true.

23 Q. You do agree with me that Mr. Beauchamp is
24 saying that he is concerned that Mr. Chittick might think
25 he is adding more attorney's fees?

SCOTT RHODES, 5/15/2019

1 A. Well, those are his words, yes.

2 Q. Those are his words.

3 He goes on to say: I acknowledge you are
4 justifiably frustrated and upset with the expense and how
5 the other lenders (and Scott's at time) seemed to go
6 against you as you were trying to get things resolved last
7 year for Scott. I have tried to let time pass so that we
8 can discuss it if you are willing to move beyond
9 everything that happened and still work with me.

10 Mr. Beauchamp is expressing the desire to work
11 with Mr. Chittick. True?

12 A. Well, he would have to tell you what his intent
13 was in this email, but to me it seems -- it reads like an
14 email from a lawyer to a former client who is regretting
15 that the end of the representation, the end of the
16 relationship did not go well, and the client had been
17 frustrated.

18 Q. There is not a word in here about termination of
19 the representation. True?

20 A. Those words are not used. You are right.

21 Q. There is not a word in here about withdrawal
22 from representing you. True?

23 A. That word is not used either. You are correct.

24 Q. And when an attorney calls someone and they are
25 not the lawyer, they don't worry about charging attorney's

SCOTT RHODES, 5/15/2019

1 fees. True?

2 A. I -- I can't say that as a general statement.
3 They certainly, especially with a client like
4 Mr. Chittick, who had not liked paying attorneys and had
5 problems with attorneys in general, as I understand it, he
6 probably was anticipating that an email from Mr. Beauchamp
7 to him saying let's get together would immediately cause
8 Mr. Chittick to be concerned that he is going to get
9 charged for it.

10 Q. You are speculating, sir.

11 A. I am. I am.

12 Q. All right.

13 A. That's why my -- I started my answer with saying
14 you would have to ask Mr. Beauchamp what he meant.

15 Q. Turn to page 2. I want you to see the March 13,
16 2015, at 8:14 p.m. This is Denny to Mr. Menaged.

17 A. Okay.

18 Q. And he says, "I have some legal reporting
19 obligations that r the real rub, I will see what he has to
20 say."

21 A. Correct, yes.

22 Q. Fair to say that Mr. Chittick wants to know what
23 Mr. Beauchamp was going to say about reporting
24 obligations?

25 A. It's fair to say that Mr. Chittick is stating

SCOTT RHODES, 5/15/2019

1 the obvious, which is that he has legal reporting
2 obligations, and he is also recognizing that he knows that
3 they are real. "The real rub." After that, he is simply
4 saying he is going to see what Mr. Beauchamp has to say
5 about that. It doesn't necessarily mean he is asking for
6 legal advice or intends to ask for legal advice.

7 Q. Turn to page 1, March 13th, 2015, at 8:46.

8 A. Yes. 8:46, I see.

9 Q. 8:46 p.m.: That's what I need to find out is
10 the timing of the need to report and stay in compliance
11 and be able to show something that isn't scary enough to
12 start a stampede on the bank.

13 Did I read that correctly?

14 A. You did.

15 Q. All right. Now, sir, in preparing your opinions
16 in this case, you state, and I quote: Experts rely on
17 their understanding for facts presented to them in the
18 record of the case as of the time of their opinions, and
19 assume that those facts are and will be supported by
20 evidence introduced at trial. True?

21 A. That's what I write, yes.

22 Q. All right. So in forming your preliminary
23 opinions in your report, you are going to assume certain
24 facts to be true, correct?

25 A. That's true.

SCOTT RHODES, 5/15/2019

1 Q. And if your assumption is incorrect, for
2 example, if the jury says your assumptions are not right,
3 the facts are different, that would change your opinion.
4 True?

5 MR. DeWULF: Object to form.

6 THE WITNESS: well, it depends on what the facts
7 are and how material they are.

8 Q. Let's say the jury concluded as a matter of
9 fact, based on all the evidence, that Clark Hill did not
10 terminate its representation in May 2014, would that
11 change your opinion?

12 MR. DeWULF: Object to form.

13 THE WITNESS: As to standard of care, not
14 necessarily.

15 Q. Not necessarily?

16 A. Not necessarily. I can explain why, if you
17 want.

18 Q. Were you ever given Mr. Chittick's personal
19 journals?

20 A. I don't recall. I don't think so.

21 Q. Were you given his pre-suicide letter to his
22 ex-wife?

23 A. I do not recall looking at that, no.

24 Q. You said you read Mr. Beauchamp's deposition.
25 Did you view any of his testimony on video?

SCOTT RHODES, 5/15/2019

1 A. No.

2 Q. So you did not observe his demeanor?

3 A. No.

4 Q. All right. There is a number of rules of
5 professional responsibility to deal with a situation where
6 your client may be breaking the law, correct?

7 A. Yes.

8 Q. And there is a number of rules of professional
9 responsibility about what a lawyer has to do if your
10 client is committing a crime or a fraud. True?

11 A. Depends on your definition of a number, but
12 there is more than one, yes.

13 Q. Okay.

14 (Deposition Exhibit No. 952 was marked for
15 identification.)

16 Q. What's in front of you?

17 A. ER 1.2.

18 Q. All right. And this is the Arizona version?

19 A. It is.

20 Q. And these are the Rules of Professional Conduct
21 that you based your opinion on in this case, right?

22 A. Yes.

23 Q. Okay. If you look at ER 1.2(d), it says, "A
24 lawyer shall not counsel a client to engage, or assist a
25 client, in conduct that the lawyer knows is criminal or

SCOTT RHODES, 5/15/2019

1 fraudulent, but a lawyer may discuss the legal
2 consequences of any proposed course of conduct with a
3 client and may counsel or assist a client to make a good
4 faith effort to determine the validity, scope, meaning or
5 application of the law."

6 Did I read that correctly?

7 A. You did.

8 Q. And I notice the Rules have comments attach to
9 them.

10 A. They do.

11 Q. And in the comments there is a section on
12 criminal, fraudulent and prohibited transactions, right?

13 A. Yes.

14 Q. And there is a comment number 11, and it says:
15 when the client's course of action has already begun and
16 is continuing, the lawyer's responsibility is especially
17 delicate. The lawyer is required to avoid assisting the
18 client, for example, by drafting or delivering documents
19 that the lawyer knows are fraudulent or by suggesting how
20 the wrongdoing might be concealed. A lawyer may not
21 continue assisting a client in conduct that the lawyer
22 originally supposed was legally proper but then discovers
23 is criminal or fraudulent. The lawyer, therefore, must
24 withdraw from the representation of the client and the
25 matter. See ER 1.16(a). In some cases, withdrawal alone

SCOTT RHODES, 5/15/2019

1 might be insufficient. It may be necessary for the lawyer
2 to give notice of the fact of withdrawal and to disaffirm
3 any opinion, document, affirmation or the like. In
4 extreme cases, a lawyer may be required to disclose
5 information relating to the representation to avoid being
6 deemed to have assisted the client's crime or fraud. See
7 ER 4.1.

8 Did I read that correctly?

9 A. You did.

10 Q. And then it says, "where the client is a
11 fiduciary, the lawyer may be charged with special
12 obligations in dealing with a beneficiary."

13 what's all that about?

14 A. Which part?

15 Q. The fiduciary part.

16 MR. DeWULF: You are talking about comment 12?

17 MR. CAMPBELL: Comment 12.

18 THE WITNESS: Usually that comment applies to
19 administration of estates. I mean, that's its most common
20 application. So the word "beneficiary" is selected for
21 that purpose.

22 In my experience, it's usually used in helping
23 lawyers for a personal representative or a trustee to
24 determine their obligations, and if the personal
25 representative or the trustee might be acting in an

SCOTT RHODES, 5/15/2019

1 appropriate -- in an inappropriate way.

2 Q. There are fiduciaries outside the estates.
3 True?

4 A. Correct, yes.

5 Q. You understand that in this case DenSco was a
6 fiduciary?

7 MR. DeWULF: Object to form.

8 THE WITNESS: I think that's a legal conclusion,
9 but I'm not -- I'm certainly willing to accept that as a
10 premise.

11 Q. You read Mr. Beauchamp's deposition?

12 A. Yes.

13 Q. He admitted multiple times that DenSco was a
14 fiduciary in this case. True?

15 A. Absolutely, he did, yes.

16 Q. You read Mr. Hood's deposition?

17 A. I did.

18 Q. He admitted that DenSco was a fiduciary in this
19 case. True?

20 A. I think he also said he thinks it was a legal
21 conclusion, but he is willing to accept that, so -- and
22 that's what I am doing.

23 Q. You read Rule --

24 A. It's a valid premise.

25 Q. You read the Rule 26.1 statement that was issued

SCOTT RHODES, 5/15/2019

1 by Clark Hill?

2 A. I have, yes.

3 Q. They said in the 26.1 statement multiple times
4 that DenSco was a fiduciary, correct?

5 A. True, which is why I'm not arguing with you.
6 I'm trying to simply make the point that whether or not
7 there is a fiduciary obligation is a legal conclusion, and
8 experts don't make legal determinations. That's my only
9 point. I'm willing to accept it as a premise, and I have
10 no problems with it as a premise.

11 Q. And the beneficiary of the fiduciary duty is
12 DenSco's investors. True?

13 MR. DEWULF: Object to form.

14 THE WITNESS: No. I think DenSco itself is a
15 beneficiary. And the term "beneficiary" is kind of a term
16 of art, which is why I think it was used and drafted into
17 comment 12, because it's a comment that pertains usually
18 to trust administrations and estate administrations. But
19 in a -- in a general sense, both DenSco and then
20 indirectly the investors would be the beneficiaries,
21 without using the legal term, but would benefit from
22 DenSco's compliance with its obligations.

23 Q. Sir, you read Mr. Beauchamp's deposition?

24 A. I did, as I have said.

25 Q. He said multiple times that DenSco owed

SCOTT RHODES, 5/15/2019

1 fiduciary duties to its investors. True?

2 A. Yes. You asked me that just a moment ago.

3 Q. Ed Hood said the same thing?

4 A. Correct.

5 Q. The Rule 26.1 statement says the same thing?

6 A. Yes.

7 Q. The persons to whom a fiduciary duty is owed are
8 beneficiaries. True?

9 MR. DeWULF: Object to form.

10 THE WITNESS: well, they benefit from the
11 performance of the fiduciary duty in accordance with the
12 law. The term "beneficiary" has some term of art
13 implications to it. I'm really not trying to argue with
14 you, Mr. Campbell. I'm just trying to parse the use of a
15 word.

16 Q. I want to know what we are going to disagree
17 about in front of a jury.

18 A. I don't think we would disagree on this point.

19 Q. Okay. Then you agree that DenSco owes fiduciary
20 duties to its investors and they are beneficiaries of
21 those fiduciary duties. True?

22 MR. DeWULF: Object to form.

23 THE WITNESS: I think that they are at least
24 indirect beneficiaries. I think DenSco's obligations are
25 to DenSco as an entity, and then if the entity is

SCOTT RHODES, 5/15/2019

1 performing in accordance with its legal obligations, then
2 the investors benefit from that.

3 Q. Do you practice in the area of fiduciary duties
4 owed when a company is in the zone of insolvency?

5 A. No, I don't.

6 Q. You don't.

7 Do you practice in any area with respect to when
8 a corporation owes fiduciary duties to its stockholders or
9 its investors?

10 A. Directly, no, as I have testified before. But
11 in terms of my area of expertise, advising lawyers and law
12 firms, I am familiar with those concepts, yes.

13 Q. Well, I just want know if you are going to agree
14 or disagree with what Clark Hill says in the case.

15 Clark Hill says that the investors are owed
16 fiduciary duties, and in the concept that they are owed
17 those duties, they are beneficiaries of those duties.

18 Do you agree or disagree?

19 MR. DeWULF: Are you -- let me -- are you asking
20 as it relates to comment 12 under this rule? Because
21 that's the way you framed your earlier questions.

22 MR. CAMPBELL: That's not an objection as to
23 form.

24 MR. DeWULF: I'm trying to clarify.

25 MR. CAMPBELL: And if you do it again, I'm going

SCOTT RHODES, 5/15/2019

1 to have an objection. Then stop there.

2 MR. DeWULF: Well, then I think you need to make
3 the question clearer.

4 MR. CAMPBELL: You are coaching the witness.

5 MR. DeWULF: No, because what you did is you
6 started out referring to the rule and the comment, and
7 then the question has now been asked and answered 12
8 times. And now you're going back --

9 MR. CAMPBELL: If you have an objection as to
10 form, make it.

11 MR. DeWULF: I'll object to form.

12 MR. CAMPBELL: Reread my question.

13 (The requested portion of the record was read.

14 THE WITNESS: I am not going to disagree with
15 what Clark Hill has said --

16 Q. All right.

17 A. -- in that regard.

18 Q. So with respect to the issues in this case with
19 respect to withdrawals because of client contact, ER 1.2
20 is one of the rules that's going to be implicated, right?

21 A. I find that ER 1.12 -- ER 1.2 is extremely
22 important to the analysis of the standard of care in this
23 case.

24 Q. I want to go through the other ethical rules. I
25 think we are going to go through four, so let me just go

SCOTT RHODES, 5/15/2019

1 through the other ones.

2 VIDEOGRAPHER: Colin, could I rearrange your
3 microphone?

4 MR. CAMPBELL: Sure.

5 VIDEOGRAPHER: Thank you.

6 (Deposition Exhibit No. 953 was marked for
7 identification.)

8 Q. All right. Now what is in front of you?

9 A. Ethical Rule 1.6 related to confidentiality of
10 information. It's the Arizona version.

11 Q. And this is another rule you think is important
12 with respect to your opinions in this case?

13 A. Well, it's -- yes.

14 Q. Okay. ER 1.6(c) says, "A lawyer may reveal the
15 intention of the lawyer's client to commit a crime and the
16 information necessary to prevent the crime."

17 A. That's what it says.

18 Q. All right. It goes on to say in subsection (d),
19 "A lawyer may reveal such information relating to the
20 representation of a client to the extent the lawyer
21 reasonably believes necessary:" Subsection "(1) to
22 prevent the client from committing a crime or fraud that
23 is reasonably certain to result in substantial injury to
24 the financial interests or property of another and in
25 furtherance of which the client has used or is using the

SCOTT RHODES, 5/15/2019

1 lawyer's services," and subsection "(2) to mitigate or
2 rectify substantial injury to the financial interests or
3 property of another that is reasonably certain to result
4 or has resulted from the client's commission of a crime or
5 fraud in furtherance of which the client has used the
6 lawyer's services."

7 So is that the relevant part of the rule that
8 comes into effect in this case?

9 A. Which one? You have read a couple of them.

10 Q. ER 1.6(c) and (d) and (d)(1) and (d)(2).

11 A. Well, no, that's not all that's relevant. You
12 have to start with ER 1.6(a), which is the basic premise
13 of the duty of confidentiality of a lawyer.

14 Q. All right. Anything else?

15 I'm just trying -- what I'm going to do, I'm
16 going to go through 4.1 and 1.16. I just want to make
17 sure I understand the relevant portions you are looking
18 at.

19 A. With the addition of 1.6(a), you have identified
20 the relevant portions.

21 (Deposition Exhibit No. 954 was marked for
22 identification.)

23 Q. All right. This is -- well, what ER is in front
24 of you?

25 A. This is ER 1.16, related to declining or

SCOTT RHODES, 5/15/2019

1 terminating representation.

2 Q. All right. And ER 1.6(a) (sic) says: Except as
3 stated in paragraph (c), a lawyer shall not represent a
4 client or, where representation has commenced, shall
5 withdraw from the representation of a client if: The
6 representation will result in violation of the Rules of
7 Professional Conduct or other law.

8 Did I read that correctly?

9 A. Yes.

10 Q. And this provision --

11 A. That's subsection (1) of (a).

12 Q. ER 1.16(a) and ER 1.16(a)(1)?

13 A. Correct.

14 Q. Are those the provisions of the rule that you
15 are relying upon in this case?

16 A. I'm not sure I relied on 1.16, but -- and that's
17 because I'm not remembering every detail, but 1.16 is
18 relevant, I think, to this case. I think it might be --
19 so it -- it's a rule that has relevance and you have
20 identified the subsection.

21 Q. All right. And if you turn the page to where it
22 has comments --

23 A. Yes.

24 Q. -- you will see in comment 2 it actually talks
25 about mandatory withdrawal --

SCOTT RHODES, 5/15/2019

1 A. Correct.

2 Q. -- right?

3 A. Yes.

4 Q. It says, "A lawyer ordinarily must decline or
5 withdraw from representation if the client demands that
6 the lawyer engage in conduct that is illegal or violates
7 the Rules of Professional Conduct or other law."

8 Did I read that correctly?

9 A. True, but to fully understand the comment, you
10 have to also read the second sentence.

11 Q. Understood.

12 But you would agree there are some times under
13 the rules of professional responsibility where withdrawal
14 from representation is mandatory?

15 A. Yes.

16 Q. And I think the last one I have is this ER 4.1.
17 (Deposition Exhibit No. 955 was marked for
18 identification.)

19 Q. So do you have in front of you the Arizona State
20 version of ER 4.1?

21 A. Which is truthfulness in statements to others.

22 Q. Yes. And that's -- this is another rule that is
23 relevant to the opinions you formed in this case?

24 A. I don't remember citing to 4.1, but I might
25 have.

SCOTT RHODES, 5/15/2019

1 Q. All right. Well, let's just look at it. It's a
2 short rule.

3 A. Uh-huh.

4 Q. In the course of representing a client a lawyer
5 shall not knowingly make a false statement of material
6 fact or law to a third person; or fail to disclose a
7 material fact when disclosure is necessary to avoid
8 assisting a criminal or fraudulent act by a client, unless
9 disclosure is prohibited by ER 1.6.

10 Did I read that correctly?

11 A. You did.

12 Q. And this is something that would be relevant
13 your opinions in this case?

14 A. There is -- yes, I -- it is relevant.

15 Q. And then I think our last one, and you do refer
16 to this in your opinions, is going to be ER 1.13.

17 (Deposition Exhibit No. 956 was marked for
18 identification.)

19 Q. 956 deals with an organization as a client,
20 right?

21 A. Yes.

22 Q. And actually this rule, among other things,
23 refers to the fact that an organization is the client, not
24 its directors and officers, right?

25 A. That is typically the case, yes.

SCOTT RHODES, 5/15/2019

1 Q. And it also gives guidance to lawyers about what
2 to do if a director or officer is acting against the best
3 interests of the organization?

4 A. It can be a director or officer. It can be
5 any -- the term -- the term of art or terminology is a
6 constituent, any constituent who is -- acts, intends to
7 act, refusing to act in a manner in violation of a legal
8 organization of the client -- of the organization, that
9 could be imputed to the organization. So there is kind of
10 a chain of things you go through, but your general
11 description is accurate.

12 Q. All right. And that rule is relevant to the
13 opinions you formed in this case?

14 A. It is.

15 Q. All right.

16 (Deposition Exhibit No. 957 was marked for
17 identification.)

18 Q. You have done a lot of CLEs, haven't you?

19 A. I have.

20 Q. A lot of PowerPoint.

21 A. Quite a few, yes.

22 Q. What is Exhibit 957?

23 A. This was a seminar I taught to the Nineteenth
24 Annual Public Practice Legal Seminar, which is an annual
25 conference of public sector lawyers mainly in the civil

SCOTT RHODES, 5/15/2019

1 practice of public government lawyers. They meet in
2 Prescott every year, and I've, for quite -- a few times
3 I've gone up and done seminars for them.

4 This particular one, which I think was three
5 hours, which was probably three hours of torture for them,
6 had to do with how public lawyers have to manage conflict
7 of interest situations.

8 Q. And they are going to get all their CLE credits
9 done, right?

10 A. It's in May and the deadline is June, so they
11 are at least happy to get their three hours of ethics.

12 Q. Actually, so if you turn, it's going to be
13 page 43. It may be slide 43. I'm not sure, but...

14 A. Yes.

15 Q. So -- and actually in this particular
16 presentation, you are going to make a presentation about
17 ER 1.6 and 1.3, right?

18 A. It was 1.13, 1.7, 1.6.

19 Q. Right.

20 So 1.13 -- 6 was the one we were looking at with
21 respect to confidentiality --

22 A. Right.

23 Q. -- correct?

24 A. Yes.

25 Q. And you start out with (a), which is the

SCOTT RHODES, 5/15/2019

1 requirement you not disclose confidential information,
2 right?

3 A. That's correct.

4 Q. Which is what you corrected me on when we went
5 through the rule.

6 And then if you turn to the next page, page 44,
7 you get to the exceptions, right?

8 A. Yes.

9 Q. So certainly there is an exception if a client
10 is going to commit a death or a substantial bodily harm,
11 right?

12 A. Right. Arizona is actually one of the few
13 jurisdictions where that's mandatory --

14 Q. That's mandatory.

15 A. -- to disclose.

16 Q. And then ER 1.6(c) you have in your PowerPoint,
17 "A lawyer may reveal the intention of the lawyer's client
18 to commit a crime and the information necessary to prevent
19 the crime."

20 Do you see that?

21 A. I do.

22 Q. So, for example, hypothetically, if Mr. Chittick
23 is going to commit a financial crime and Mr. Beauchamp is
24 representing DenSco, he is the president of DenSco, he may
25 reveal the intention of Mr. Chittick to commit a crime and

SCOTT RHODES, 5/15/2019

1 the information necessary to prevent the crime. True?

2 MR. DeWULF: Object to form.

3 THE WITNESS: No, not necessarily true.

4 Because, as you have pointed out earlier, DenSco is the
5 client. Mr. Chittick is a constituent of the client. He
6 is the only principal of the client, but he is a
7 constituent of the client, so 1.16(c) doesn't apply here.
8 The analysis would be through 1.13.

9 Q. Okay. Let me just stop for a second.

10 DenSco is acting through Mr. Chittick, right?

11 A. Correct.

12 Q. If DenSco is going to commit a securities
13 crime -- well, do you understand, are you familiar what
14 crimes can be involved in securities sales?

15 MR. DeWULF: Object to form.

16 THE WITNESS: Well, first of all, let's go back
17 to the beginning of the deposition where you established
18 very curtly I am not an expert in that area, but am I
19 generally familiar, yes, I am.

20 Q. Okay. So you are familiar that if a company is
21 selling securities and is withholding material
22 information, that can be a crime under the securities
23 laws?

24 MR. DeWULF: Object to form.

25 THE WITNESS: My understanding is that they can

SCOTT RHODES, 5/15/2019

1 be a crime, and it can also be a civil offense.

2 Q. All right. Well, it can be treated as a crime
3 or it can be treated as a civil offense. That's up to
4 prosecutors, right?

5 MR. DeWULF: Object to form.

6 THE WITNESS: Generally, yes, I would say so.

7 Q. Okay. So under ER 1.6(c), if DenSco is going to
8 do an ongoing sale of securities and withhold material
9 information, Mr. Beauchamp may reveal the intention of the
10 client to commit a crime and the information necessary to
11 prevent the crime. True?

12 MR. DeWULF: Object to form.

13 THE WITNESS: Now, your question now is
14 different than when I quibbled with you before, because
15 now you are asking about DenSco's action.

16 DenSco is the client, so now under those
17 scenarios, this would be under 1.6(c) and there would be
18 an optional disclosure.

19 Q. All right.

20 MR. DeWULF: It's been a little over an hour.
21 Whatever works for you, Colin, in terms of breaking.

22 MR. CAMPBELL: If you want to take a break
23 now --

24 MR. DeWULF: Yeah --

25 MR. CAMPBELL: -- we can take five minutes.

SCOTT RHODES, 5/15/2019

1 MR. DeWULF: -- I would.

2 VIDEOGRAPHER: We are going off the record at
3 11:03 a.m.

4 (A recess was taken from 11:03 a.m. to
5 11:14 a.m.)

6 VIDEOGRAPHER: This begins media unit number
7 three. We are on the record at 11:14 a.m.

8 Q. All right. So I think we were on your
9 PowerPoint to the public lawyers when we broke, so let's
10 go to page 47 of your PowerPoint.

11 A. Okay.

12 Q. And on page 47, you are listing the subsection
13 (d) exception on confidentiality?

14 A. (d)(1), yes.

15 Q. (d)(1), and that's to prevent the client from
16 committing a crime or a fraud that is reasonably certain
17 to result in substantial injury to the financial interests
18 or property of another and in furtherance of which the
19 client has used or is using the lawyer's services.

20 Do you see that?

21 A. I do.

22 Q. Did you form any opinion, as a matter of
23 securities law, that DenSco was using Clark Hill's
24 services by utilizing the 2011 Private Offering Memorandum
25 in continuing to sell securities?

SCOTT RHODES, 5/15/2019

1 MR. DeWULF: Could you read that back, please,
2 Kelly.

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

4 MR. DeWULF: Object to form.

5 THE WITNESS: I think we established earlier in
6 the deposition that I'm not forming any opinions in regard
7 to securities laws.

8 Q. All right. So to respect -- with respect to
9 DenSco continuing to sell securities from, let's say, the
10 summer of 2013 until Mr. Chittick's death in August of --
11 July or August of 2016, you have no opinion one way or the
12 other as to whether they were utilizing Clark Hill's
13 services by using the 2011 Private Offering Memorandum to
14 sell securities.

15 MR. DeWULF: Object to form.

16 Q. True?

17 A. That's -- that's true. I would refer to
18 Mr. Olson on that.

19 Q. All right. Let's turn to your next page. To
20 mitigate or rectify substantial injury to the financial
21 interests or property of another that is reasonably
22 certain to result or has resulted from the client's
23 commission of a crime or a fraud in furtherance of which
24 the client has used the lawyer's services.

25 That's -- what's the difference between (d)(1)

SCOTT RHODES, 5/15/2019

1 and (d)(2)?

2 A. (d)(1) is prevention of a crime or fraud and
3 (d)(2) is mitigation or rectification of substantial
4 injury.

5 Q. Okay.

6 A. And the other is any crime or fraud, (d)(1), and
7 (2) is substantial injury to financial interests or
8 property of another.

9 Q. Did you form any opinion, as a matter of
10 securities law, whether Clark Hill could have mitigated or
11 rectified substantial injury to the property of the
12 investors if it had acted in January of 2014?

13 MR. DeWULF: Are you finished?

14 Object to form.

15 Q. It may be an awkward question. If you want me
16 to rephrase it, I -- you can always ask me to rephrase it.

17 A. I think I understand the question. And the
18 answer pertains to what is a theme in my opinion, and that
19 is in order to answer your question, you have to focus on
20 what Mr. Beauchamp knew at the time.

21 So my answer to the question is based on my
22 understanding, I'm -- I have -- I do not believe
23 Mr. Beauchamp had facts sufficient to allow him to
24 appreciate in that relevant time period that there was
25 anything to mitigate or rectify, that there were -- there

SCOTT RHODES, 5/15/2019

1 were corrections to be made, disclosures that were going
2 to have to be made, and that there was a process under way
3 to make those disclosures at an appropriate time, which
4 is -- so I don't think he had the knowledge necessary to
5 get to this point whether he would have concluded that he
6 had an option to do a disclosure.

7 Q. All right. And we will come back to that.

8 A. Okay.

9 Q. Let's finish going through this.

10 All right. Let's turn to page 55. This going
11 to bring us into ER 1.13.

12 A. Okay.

13 Q. So this section of your presentation deals with
14 conflicts of interest.

15 who is the client, right?

16 A. Yes.

17 Q. And you are talking to public lawyers, but what
18 you are going to do is resort to ER 1.13 that deals with
19 the client as an organization, right?

20 A. That's correct.

21 Q. So if you turn to page 57, this seems pretty
22 clear. "A lawyer employed or retained by an organization
23 represents the organization acting through its duly
24 authorized constituents," right?

25 A. Yes.

SCOTT RHODES, 5/15/2019

1 Q. So as applied to our case, Mr. Beauchamp is
2 representing DenSco. True?

3 A. That's correct, yes.

4 Q. And then on page 59, you say why ER 1.13 is
5 important, right? It establishes the general rule for the
6 identity of the client, right?

7 A. Yes.

8 Q. It's important for the lawyer to know who his
9 client is. True?

10 A. True.

11 Q. And important for client to know who its lawyer
12 is, right?

13 A. That's correct, yes.

14 Q. And then you say it's also important because it
15 directs how lawyers should act when there are bad actors
16 in the organization, right?

17 A. That's correct, yes.

18 Q. So if Mr. Chittick were a bad actor for DenSco,
19 ER 1.13 is going to tell the lawyer here is what you
20 should do?

21 A. It's going to tell the lawyer what the lawyer's
22 options are.

23 Q. Very good.

24 So turn to the next page. You are walking --
25 you are walking the lawyers you are teaching through the

SCOTT RHODES, 5/15/2019

1 rule, right --

2 A. That's correct.

3 Q. -- on what they have to do?

4 A. Yes.

5 Q. Because you want them to be good lawyers. True?

6 A. That's correct.

7 Q. All right. So you say first you have to look at
8 subsection (b), "If a lawyer for an organization knows
9 that an officer, employee or other person associated with
10 the organization is engaged in action, intends to act or
11 refuses to act in a manner related to the representation
12 that is a violation of a legal obligation to the
13 organization, or a violation of law that reasonably might
14 be imputed to the organization, and that is likely to
15 result in substantial injury to the organization, the
16 lawyer shall proceed as is reasonably necessary in the
17 best interests of the organization," right?

18 A. Yes, that's -- and then I have to go on, because
19 that rule is so long that it took several slides to fit it
20 all in.

21 Q. All right. So you go to Exhibit No. 60 or 62,
22 then, or page 62, and you talk about an "up the ladder"
23 approach. Why don't you just describe for me what the ER
24 1.3 "up the ladder" approach is.

25 A. Sure. First of all, in the dense language that

SCOTT RHODES, 5/15/2019

1 you just read that's in this rule, it's actually one of
2 the most poorly drafted rules of them all, it's just so
3 dense, but if all of those things are met, so the lawyer
4 knows that a constituent is intending to act in violation
5 of the law or engage in illegal activity, or has already
6 started and refuses to stop, or has already committed an
7 act, and then it goes on from there. And also the lawyer
8 has to know that the end result of that must be a
9 potential substantial injury to the organization.

10 If you get through all of that part, then the
11 lawyer has some things the lawyer has to do. And number
12 one, which is why I referred back to ER 1.2 earlier,
13 number one is under ER 1.2 is you consult with, you
14 counsel that person, and you say either don't do that
15 thing or stop doing it or fix what you have done.

16 If you try that, if the lawyer tries that and
17 fails, then there -- you trigger what's called the "up the
18 ladder" approach. And so that "up the ladder" approach is
19 you see if there is somebody in a superior position to the
20 bad actor to whom the lawyer can go and reveal the issues
21 as they exist, the problem, the -- the conduct that's at
22 issue, and ask that person, who has a superior authority,
23 please use your authority to stop this or rectify it or
24 fix the problem.

25 If that person refuses, then you see if there is

SCOTT RHODES, 5/15/2019

1 another rung in the ladder to go above that person's head.
2 And then you continue to do that until you get to the
3 highest level.

4 Q. And then turn to page 65.

5 A. Yes.

6 Q. "What if going up the ladder doesn't work?"

7 A. Right.

8 Q. Then you go back to the rule, right?

9 A. You do, to subsection (c).

10 Q. So describe for me what you do, pursuant to your
11 PowerPoint here, if that doesn't work, going up the
12 ladder.

13 A. Well, there are a couple things again, and
14 this -- this rule is so dense, but let's say you have gone
15 to the highest level within the organization and it hasn't
16 worked. Then, in very unhelpful language, it says the
17 lawyer shall do what the lawyer reasonably believes is in
18 the best interests of the company in that situation. That
19 can include -- it's discretionary, it's not mandatory, but
20 that can include a disclosure of relevant information, if
21 necessary, even if that would have violated the duty of
22 confidentiality otherwise, ethical rule 1.6.

23 Q. All right.

24 A. And just to finish that thought, if the lawyer
25 takes that rather extreme step of nobody in this

SCOTT RHODES, 5/15/2019

1 organization is listening to me, this conduct is ongoing,
2 it's not mandatory, but if the lawyer decides I'm going to
3 now disclose, the rule says you can only disclose the
4 minimum amount necessary in order to accomplish the -- the
5 objective.

6 Q. Let me give you a hypothetical.

7 A. Sure.

8 Q. Assume DenSco is going to commit securities
9 fraud. Assume that DenSco is going to sell securities and
10 give the buyer a 2011 Private Offering Memorandum prepared
11 by Clark Hill that fails to disclose material facts.

12 Are you with me so far?

13 A. I am, yeah.

14 Q. And Mr. Beauchamp sends out an email to all the
15 investors that he is aware of saying: I have withdrawn
16 from representation. You should not rely on the 2011
17 Private Offering Memorandum that Clark Hill prepared in
18 making any decisions.

19 Authorized by the rule?

20 MR. DeWULF: Can I have that back? I was trying
21 to write them all down.

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

23 MR. DeWULF: Object to form.

24 THE WITNESS: To me, your question implies that
25 Mr. Beauchamp knows that there are material

SCOTT RHODES, 5/15/2019

1 misrepresentations in the -- the 2011 Private Offering
2 Memorandum has become materially false, and he knows that,
3 which -- because that's why he is sending this letter.

4 Q. You have understood my question correctly.

5 A. Then with that clarification, yes, that's what's
6 called a noisy withdrawal. That's the term that we use,
7 and it's stated in a comment to the rules, that sometimes
8 it typically happens in a securities context with a
9 publicly traded corporation or entity where disclosures
10 have been made to the Security and Exchange Commission
11 that has the lawyer's name on it, and it's called a
12 disavowal letter where the lawyer writes to the SEC and
13 says I disavow my signature on such and such a document,
14 which in the world of publicly traded corporations, I
15 understand is very noisy. It gets investors' attention.

16 Your hypothetical is a little bit unusual in the
17 sense that this is not in the SEC domain. It's Private
18 Offering Memorandum, but it's the same concept. What it's
19 basically saying is: I -- we prepared the Private
20 Offering Memorandum. I have determined that I -- I no
21 longer stand beside it.

22 Q. Is the noisy withdrawal sort of the equivalent
23 of a public lawyer being a whistleblower sort of, or is
24 that something entirely different?

25 A. Actually, I think there is a big difference

SCOTT RHODES, 5/15/2019

1 there. Because 1.13, as I pointed out before, says that
2 whether or not Rule 1.6 permits such disclosure can
3 happen, but only if and to the extent the lawyer
4 reasonably believes necessary to prevent substantial
5 injury, and then goes on to say that the disclosure has to
6 be to the minimum extent necessary, which -- and that
7 explains why these disavowal letters are very short. All
8 they say is I'm removing my signature from something.
9 They don't say why. And that's the minimum nec -- extent
10 necessary portion of it. At least that's how it's been
11 interpreted.

12 so I think I have forgotten your question,
13 but -- oh, a whistleblower to me implies that somebody is
14 doing a lot more than that. They are going in and they
15 are sitting down with someone saying I want to tell you
16 all of the things I have discovered about my client or --

17 Q. So it's more than a noisy withdrawal?

18 A. More than a noisy withdrawal.

19 Q. Okay. Let me just see if there is something
20 more on here.

21 so let's turn to paragraph or page 69 of your
22 PowerPoint, and you talk about an ER 1.13 safety net.

23 what are you referring to here?

24 A. Well, not surprisingly, sometimes when a lawyer
25 for an organization is caught in this quandary of knowing

SCOTT RHODES, 5/15/2019

1 of bad acts by a constituent of the company, and
2 especially a highly-placed constituent of the company, the
3 act of going to that individual and saying "You are about
4 to commit fraud or a crime, you need to stop this," well,
5 the reaction could be, "Thank you very much for your
6 advice. You are fired." And lawyers can be fired in
7 situations such as that.

8 1.13(e) anticipates that that might happen. And
9 what it -- let's say that we are in a larger organization
10 and you have a senior-level manager who is the bad actor,
11 and the lawyer has gone to that senior-level manager, done
12 everything that's necessary in 1.13 in terms of counseling
13 the manager, saying "You can't do this anymore," and the
14 manager has authority to fire that lawyer, so the manager
15 fires the lawyer.

16 well, then the problem is the lawyer has been
17 fired, but the board of directors or even the higher
18 officers of the entity might not know about any of this.
19 what 1.13(e) says is that in that circumstance, that
20 lawyer can, he doesn't have to, but a lawyer can go to
21 those higher officials, the board -- the CEO or the board,
22 and say, "I want you to know that I have been terminated
23 and here is why I was terminated." And that's basically
24 all it says.

25 It's really not a safety net in the sense you

SCOTT RHODES, 5/15/2019

1 don't -- the lawyer doesn't get his or her job back, but
2 it does allow the lawyer to complete the job of making
3 certain that the organization, in terms of its highest
4 level of decision making, is aware of this dangerous
5 situation and is in a position to maybe take action, if
6 they elect do so.

7 Q. Very good.

8 If you turn to 71. And here we are talking
9 about -- you know, we were talking about how all these
10 rules interlink.

11 A. Right.

12 Q. In here you are bringing out that ER 1.13 and
13 1.6 are linked, and then they both exist with respect to
14 ER 1.4 and ER 4.3.

15 A. Correct.

16 Q. So they are all sort of part of a puzzle that
17 comes together, right?

18 A. That's correct, yes.

19 Q. Okay. Let me see if there is anything else I
20 want to ask you on this.

21 If you turn to Exhibit 77. You talk about -- on
22 page 77, PowerPoint 77, you talk about ER 1.13 provisions
23 are related to this dilemma. And the dilemma is the issue
24 of whether an individual is acting, I guess, or may be in
25 conflict with the best interests of the organization,

SCOTT RHODES, 5/15/2019

1 right?

2 A. On slide 76, I describe a dilemma as what can or
3 should a public lawyer do if a constituent's belief that
4 he or she is "duly authorized" is the very issue that
5 leads the public lawyer to conclude that action is
6 necessary to protect the organization.

7 The reason I -- that's the dilemma for public
8 lawyers is that I would say it happens particularly often
9 in counties, because counties have the county, the elected
10 Board of Supervisors, but there is also an elected
11 sheriff, an elected attorney, elected treasurer, there are
12 other elected officers, and sometimes those elected
13 officers think they have more power than they actually do
14 or arguably do, because the Board of Supervisors is the
15 last voice for the county.

16 And there are at times situations where a public
17 lawyer, usually a county, a Deputy County Attorney, is
18 advising a subsection of the county, say a county
19 treasurer or somebody that works for there or the
20 Sheriff's Office, and is caught between the situation
21 where that officer is claiming legal authority that
22 probably or might not exist, arguably might not exist. So
23 who is the client at that point? Because the Board of
24 Supervisors is the last voice for the county, and yet this
25 other elected official believes he or she might have some

SCOTT RHODES, 5/15/2019

1 authority.

2 So that's the dilemma that I was referring to
3 there.

4 Q. So there is times that the lawyer has to tell
5 the person, "I don't represent you. I represent the board
6 or the organization"?

7 A. That's correct, yes. Yeah.

8 Q. And that's the same, for example, let's say,
9 hypothetically, Mr. Chittick is has gone rogue and he is
10 doing things that are hurting DenSco. Mr. Beauchamp would
11 have the obligation to say, "Mr. Chittick, I'm not
12 representing you. I'm representing DenSco, and what you
13 are doing is hurting DenSco," right?

14 MR. DeWULF: Object to form.

15 THE WITNESS: Yeah, in the hypothetical, because
16 your hypothetical assumes that he knows that Mr. Chittick
17 himself is engaging in fraudulent or improper conduct.

18 Q. You are correct. You are correct. That's what
19 I'm assuming.

20 A. So if that's the situation, then, yes.

21 Q. Okay.

22 A. To clarify the relationship would be called
23 on -- called upon.

24 Q. All right. I think it was a very helpful
25 PowerPoint for me.

SCOTT RHODES, 5/15/2019

1 A. It was bigger type.

2 Q. I'm sure the public lawyers appreciated it.

3 A. It actually scared them a lot.

4 Q. All right. So in your report you express a
5 number of opinions, and you do it sort of by paragraph
6 number. Let me -- what am I looking for?

7 In paragraph 27 --

8 A. I don't have a copy of my report. Is it --

9 Q. Okay.

10 A. Does it matter?

11 Q. I will show it to you.

12 A. Okay.

13 Q. I'm not trying to trick you.

14 A. Okay.

15 Q. In paragraph 27 you say: In short, within the
16 standard of care as determined by the Arizona lawyers
17 ethical and professional obligations, Beauchamp reasonably
18 could consider that DenSco's interests and those of its
19 principal Chittick were the same, such that the DenSco and
20 Chittick were one client, not separate or distinct
21 clients, nor one client and a party with adverse
22 interests. In my opinion, there was no conflict of
23 interest in late 2013 and early 2014, as determined by
24 ERs 1.7 or 1.9.

25 A. That's right.

SCOTT RHODES, 5/15/2019

1 Q. Does that refresh your memory?

2 A. It does.

3 Q. Okay. So with respect to that ethical rule we
4 were just talking about where you had to sit down and say
5 "I'm not representing you, I'm representing the
6 organization," it's your opinion that in late 2013 and
7 early 2014, that wasn't the situation here?

8 A. That's my opinion.

9 Q. Okay. Now, you have run across private offering
10 memorandums --

11 A. I'm sorry?

12 Q. -- in your practice?

13 A. Yes, yes.

14 Q. Okay. And you understand on the facts of this
15 case, DenSco is selling securities and it's using a
16 Private Offering Memorandum to sell to accredited
17 investors so it doesn't have to register the security,
18 right?

19 A. That's my understanding.

20 Q. Okay. You would agree that DenSco's interest,
21 DenSco has an interest to comply with the law?

22 A. Absolutely. Yes.

23 Q. And do you understand that the purpose of the
24 Private Offering Memorandum is to disclose all material
25 facts to an investor about DenSco before they purchase the

SCOTT RHODES, 5/15/2019

1 security?

2 MR. DeWULF: Object to form.

3 Q. Or does that go beyond?

4 A. Well, it goes beyond the scope of my expert
5 testimony, so -- as we established before. So if you want
6 to state it to me, ask me to accept that as a premise, I'm
7 comfortable accepting it.

8 Q. Okay. I want you to accept it as a premise.

9 would you agree that DenSco has an interest in
10 making sure that the Private Offering Memorandum is
11 updated so that no one can accuse it of not disclosing
12 material facts?

13 MR. DeWULF: Object to form.

14 THE WITNESS: I would refer or defer to
15 Mr. Olson as to DenSco's interests under securities laws
16 for that. DenSco's interests, as I see them, are to
17 ensure that it is in compliance with applicable law.

18 Q. All right. Would you agree that if Clark Hill
19 was recommending to DenSco that it update its Private
20 Offering Memorandum, that it would be in DenSco's best
21 interests to do that?

22 MR. DeWULF: Object to form.

23 THE WITNESS: Yes, I generally agree with that.
24 I think that -- but it's based on my assumption and my
25 understanding of the facts that Mr. Chittick agreed with

SCOTT RHODES, 5/15/2019

1 Clark Hill that it was advisable and necessary to update
2 the POM, the 2011 POM, and so that the only issues were
3 timing and then substance.

4 Q. All right. Are you familiar with the FREO
5 lawsuit --

6 A. Yes.

7 Q. -- from the summer of 2013?

8 A. I am familiar with that it existed, and I'm
9 generally familiar with its background, yeah.

10 Q. Does that form any part of the factual puzzle
11 you put together to form your opinions?

12 MR. DeWULF: Object to form.

13 THE WITNESS: Yes.

14 Q. Okay. I think you indicated you said you had
15 read the Rule 26.1 statements?

16 A. Correct.

17 MR. CAMPBELL: So, you know, these were marked
18 as, I think as Exhibit 4, John, so I'm not going to remark
19 it. I think it's Exhibit 4 to the --

20 MR. DeWULF: The disclosure statements?

21 MR. CAMPBELL: I can double-check.

22 MR. DeWULF: No. That's -- that's fine. You
23 are talking about a closure statement?

24 MR. CAMPBELL: Yeah. It's the initial one.

25 MR. DeWULF: That's fine.

SCOTT RHODES, 5/15/2019

1 MR. CAMPBELL: Yeah, it's marked as Exhibit 4 to
2 Mr. Beauchamp's deposition.

3 Q. Looking under the initial disclosure statement.
4 I think I have a copy for you.

5 And I want you to turn to -- now, actually you
6 told me you did read the disclosure statement, right?

7 A. I did, yes.

8 Q. And this informed your opinions in the case,
9 right?

10 A. This is part of what informed my opinions in the
11 case, yes.

12 Q. All right. So let's turn to page 6 of the
13 disclosure statement, or actually maybe even, just to set
14 the stage, turn to page 5.

15 A. I see.

16 Q. And you see there is a section on the FREO
17 lawsuit?

18 A. I do. I see it.

19 Q. All right. And you understand that there was a
20 paragraph in the FREO lawsuit that indicated that two
21 hard-money lenders had a deed of trust on the property?

22 A. That's -- that's a paraphrasing, but yes.

23 Q. Okay.

24 A. That's, in essence, what it says.

25 Q. All right. Now, go to page 6 and look at the

SCOTT RHODES, 5/15/2019

1 bottom. And you say: Mr. Beauchamp did, however -- this
2 is the last paragraph -- explain to Mr. Chittick that this
3 lawsuit would need to be disclosed in the 2013 POM, right?

4 A. Right.

5 MR. DEWULF: Could you read that back?

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

7 THE WITNESS: I think you just -- your question
8 was "I" say. I didn't write this.

9 Q. Let me rephrase it.

10 A. It says.

11 Q. Sometimes my mind races ahead of my mouth, which
12 I'm sure John will agree to. Let me read it correctly.

13 The disclosure statement said, "Mr. Beauchamp
14 did, however, explain to Mr. Chittick that this lawsuit
15 would need to be disclosed in DenSco's 2013 POM."

16 A. That's what it says.

17 Q. And that's an assumed fact you are making in
18 this case, right?

19 A. Correct.

20 Q. Now, did you understand that the POM had to be
21 updated to disclose the lawsuit?

22 A. Yes. My understanding is that's exactly what
23 Mr. Beauchamp was telling, was saying: You have to update
24 your POM, and there is now a lawsuit and so you will have
25 to disclose the existence of the lawsuit.

SCOTT RHODES, 5/15/2019

1 Q. All right. And you would agree that's in
2 DenSco's interests, because DenSco wants to comply with
3 the law, right?

4 A. I agree.

5 Q. All right.

6 A. The advice was given in his capacity as DenSco's
7 lawyer.

8 Q. Are you aware that Mr. Chittick did not want to
9 do the update?

10 MR. DeWULF: Object to form.

11 THE WITNESS: Actually, I'm aware that when
12 Mr. Beauchamp told him by email, when he became aware of
13 the FREO lawsuit, that this -- the lawsuit will have to be
14 disclosed, Mr. Chittick replied immediately indicating
15 that he agreed.

16 Q. Okay. So on your facts that you are forming
17 your opinion on, you are assuming that Mr. Chittick said,
18 "Yes, let's do that"?

19 A. True. I'm basing that on an email that I saw.

20 Q. Okay.

21 A. Email chain.

22 Q. And if that email chain happens to be wrong, you
23 would change your opinion, right?

24 MR. DeWULF: Object to form.

25 THE WITNESS: well, do you mean that what I saw

SCOTT RHODES, 5/15/2019

1 is an email that doesn't exist, is that what you are
2 saying, or that Mr. Chittick believes something else? I'm
3 not sure I understand the question.

4 Q. What if that fact is not true?

5 A. The fact that --

6 Q. What if Mr. Chittick stopped Mr. Beauchamp from
7 updating the POM? Would that change your opinion?

8 A. Oh --

9 MR. DeWULF: Object to form.

10 THE WITNESS: In fact, my understanding is that
11 later Mr. Chittick did -- I don't think the word is
12 stopped. I think it was delayed. He was too busy. I
13 forget the reasons, but he stopped it for a period of
14 time.

15 Q. Okay. Are you aware that Mr. Beauchamp has
16 testified under oath -- let me reset it.

17 The FREO lawsuit is in May 2013?

18 A. I thought it was June.

19 Q. I think the lawsuit is filed in May.

20 A. Oh, it might be. It might be.

21 Q. It doesn't matter.

22 A. I think that Beauchamp became aware of it in
23 June '13.

24 Q. It's a June 14th email to him --

25 A. Right.

SCOTT RHODES, 5/15/2019

1 Q. -- that explains it, so you are correct. It's
2 filed in May. He learns about it in June.

3 A. Okay.

4 Q. Were you aware that in, excuse me, August 2013
5 Mr. Chittick told Mr. Beauchamp, "Stop all work on the
6 POM"?

7 A. That is my understanding, yes, for a period of
8 time.

9 Q. Sir, do you know how quickly you have to change
10 a material disclosure when you are selling securities?

11 MR. DeWULF: Object to form.

12 THE WITNESS: I am not an expert, as we have
13 established, both of us, and we agree on that. I'm not an
14 expert on securities law. You have one and Mr. Olson is
15 one. They can answer that question.

16 Q. Are you aware that if any security is sold
17 without the disclosure of a material fact known by the
18 parties, that is a problem?

19 MR. DeWULF: Object to form.

20 THE WITNESS: I'm going to accept that as a
21 premise.

22 Q. All right. And that in DenSco's interests,
23 DenSco wants to make sure the securities laws are fully
24 complied with?

25 A. I think we have established that.

SCOTT RHODES, 5/15/2019

1 Q. All right. I think you told me you read
2 Mr. Beauchamp's deposition?

3 A. Yes.

4 MR. CAMPBELL: I don't have another copy of it.

5 Q. Just take a look at it. Will you agree with me
6 this is the deposition from Mr. Beauchamp that you read?

7 A. I'm going to accept your representation that it
8 is. It appears to be.

9 Q. Let's go to page 59.

10 A. Okay.

11 Q. Look at page 59, line 13, this is Mr. Beauchamp
12 under oath:

13 At Clark Hill and at the time of Bryan Cave, he
14 was not providing a lot of information requested. He
15 seemed thoroughly distracted, which is why he stopped the
16 work on the memorandum in August of 2013. And while I was
17 at Clark Hill, at that time it was pulling teeth to get
18 information out of him, which was very, very unusual.

19 Did I read that correctly?

20 A. Yes, you did.

21 Q. And you read that in preparation for your
22 opinions in this case?

23 A. I did. I did.

24 Q. Turn to page 74, go to line 11.

25 Question: Sir, you state, do you not, you

SCOTT RHODES, 5/15/2019

1 believe that Mr. Chittick instructed you not to finish the
2 Private Offering Memorandum in the year 2013, correct?

3 The witness: I did state he instructed me, and
4 that was based upon a conversation where he had to provide
5 specific answers to information that we needed right then
6 in order to finish the private offering memorandum. He
7 said he did not have time, and I said then are you saying
8 to put it on hold? And he said, yes, put it on hold.

9 Do you see that?

10 A. I see that.

11 Q. All right. You read that in preparing for your
12 opinions in the case?

13 A. I did.

14 Q. Turn to page 262, line 15.

15 A. Yes.

16 Q. You state under oath, "that Mr. Beauchamp
17 diligently worked to update the 2013 POM between May and
18 August of 2013, until he was ordered to stop by Mr.
19 Chittick."

20 Do you see that?

21 Answer: Yes.

22 Question: That's the truth?

23 Answer: That's the truth.

24 Is there an email that you can point to where
25 Mr. Chittick ordered you to stop work on the POM in 2013?

SCOTT RHODES, 5/15/2019

1 I don't recall if there is an email.

2 You read that in preparing your opinions?

3 A. I did. I actually think there is a mistake,
4 because your question referred to the 2013 POM and I think
5 it was the 2011 POM. Is that right? It should have been
6 to the 2011.

7 Q. Actually, sir, in 2013 he started work -- the
8 2011 POM was for two years, and then in the summer of 2013
9 he started work on a new 2013 POM.

10 Does that refresh your recollect?

11 A. It does. It's just the word "update" the 2013
12 POM. My understanding was they were -- in '13 they were
13 working to update the '11.

14 Q. Correct. Correct.

15 A. So --

16 Q. You are right.

17 A. But the transcript, you read it accurately.

18 Q. Okay. Go to page 264.

19 All right. This is again questioning

20 Mr. Beauchamp on line 8:

21 And then on August 15th, 2016, you tell
22 Mr. Clapper, "I only have access to some of DenSco's
23 files. Despite my requests, Denny Chittick did not
24 request for all of DenSco's files to be transferred to me.
25 In addition, Denny stopped our efforts to do an updated

SCOTT RHODES, 5/15/2019

1 offering memorandum in 2013, so the initial work on that
2 was never finalized."

3 Did you see that, that phrase?

4 A. I remember this from the transcript, yes.

5 Q. All right. And you relied on it in forming your
6 opinions?

7 A. Yes.

8 Q. And turn to 301.

9 A. Well, I was aware of it in forming my opinions.

10 Q. Of course.

11 Page 301 --

12 A. Yes.

13 Q. -- line 18.

14 All right. Just so I'm fair, you didn't -- the
15 reason you didn't work on the POM from August of 2013 to
16 December 18th of 2013 is because Mr. Chittick told you not
17 to, right?

18 The witness: He did not provide the information
19 requested and he had said put it on hold, despite my
20 comments that he needed to do the disclosure.

21 A. Correct.

22 Q. Correct?

23 A. Yes.

24 Q. And you read that?

25 A. I did.

SCOTT RHODES, 5/15/2019

1 Q. All right. In August of 2013, it is in DenSco's
2 interest to complete the 2013 Private Offering Memorandum.
3 True?

4 A. It is, yes.

5 Q. And in fact Mr. Beauchamp advised that the 2013
6 offering memorandum had to be completed. True?

7 A. Yes, that's my understanding.

8 Q. And I -- I understand you are not expressing any
9 opinion on the securities law, but did you -- do you at
10 least understand that if there is a failure to disclose
11 material facts, that's going to be a huge legal problem
12 for DenSco?

13 MR. DeWULF: Object to form.

14 THE WITNESS: What I at least understand is that
15 it's a potential huge legal problem for DenSco.

16 Q. May even be a crime?

17 A. I --

18 MR. DeWULF: Object to form.

19 THE WITNESS: I'm not qualified to say, but I
20 think we have established that as a premise for the
21 deposition, for this deposition. It could be a crime. It
22 could be civil.

23 Q. All right. Mr. Chittick kiboshes the completion
24 of the 2013 POM in August 2013, if you believe what
25 Mr. Beauchamp says.

SCOTT RHODES, 5/15/2019

1 MR. DeWULF: Object to form.

2 THE WITNESS: well, "kibosh" is a huge word, but
3 he certainly stopped it and he said he didn't have time to
4 deal with it at the time. And he did not give them -- he
5 did not give Mr. Beauchamp and his firms the information
6 that they were requesting to complete the update.

7 Q. All right. Now, I'm a simple man.

8 why is that not a conflict of interest in August
9 of 2013 between DenSco and Mr. Chittick?

10 A. Because it's -- it's an ongoing problem.
11 Lawyers often face situations with clients where the
12 client are not -- the client is not immediately taking the
13 advice given, but the advice given is accurate. The
14 advice is given in very clear form. The lawyer keeps
15 trying.

16 So the client, for whatever reason, whether they
17 are too busy or they are dragging their feet or for
18 reasons that are not revealed until months later, doesn't
19 immediately comply. It doesn't mean that there is
20 instantaneously a conflict of interest. And that's why I
21 go back in this case to ER 1.2, which is the duty to
22 counsel communication.

23 Mr. Beauchamp did that. He did that repeatedly:
24 You need to update the POM. We need to get this done.
25 His client is saying: I understand, but I can't do it

SCOTT RHODES, 5/15/2019

1 right now. Beauchamp keeps trying. I think that's what a
2 lawyer does under circumstances like that.

3 If you look at it the other way, if Beauchamp
4 had declared "I now have a conflict because you are not
5 doing what I say when I say to do it," then DenSco would
6 be left with no counsel.

7 Q. You are forming this opinion without any
8 understanding of what the federal and state securities law
9 require of an issuer of securities. True?

10 MR. DeWULF: Object to form.

11 THE WITNESS: Well, I -- I have stated multiple
12 times that my opinion is based on what any lawyer
13 representing any client would do. Any lawyer in any legal
14 representation has surrounding it a legal overlay of the
15 subject matter. That's always true. That's always true.

16 But the facts as you have presented them to me,
17 as I understand them, are not rising to the level of a
18 clear current violation of, you know, fraud or illegal
19 conduct. It's not taking steps that are necessary in
20 order to protect the client, the organization's interest.

21 Q. You are saying it's not illegal because you
22 don't understand the securities context.

23 A. No.

24 MR. DeWULF: Object to form.

25 Q. True?

SCOTT RHODES, 5/15/2019

1 A. I am deferring to other experts on whether there
2 was a current unlawfulness at the time.

3 Q. Mr. Weintraub is another expert. True?

4 MR. DeWULF: Object to form.

5 THE WITNESS: That's correct.

6 Q. You have read his report. True?

7 A. I have.

8 Q. And he says it's a material disclosure that has
9 to be made. True?

10 MR. DeWULF: Object to form.

11 THE WITNESS: You are right, but I have not seen
12 it -- I do not believe his report says that there was a
13 current criminal -- there was current criminal misconduct
14 as of this time.

15 Q. If you are selling securities, sir, without
16 material disclosure of relevant facts, what is that under
17 the securities law?

18 A. I'll --

19 MR. DeWULF: Object to form.

20 THE WITNESS: I will let you ask Mr. Weintraub
21 and Mr. Olson for their opinions on that.

22 Q. Okay. So if you had an understanding of the
23 securities law that informed you a different way, it would
24 change your opinion, true --

25 MR. DeWULF: Object to form.

SCOTT RHODES, 5/15/2019

1 Q. -- as to whether there was a conflict of
2 interest between DenSco and Mr. Chittick?

3 A. If -- if I were aware of any certain illegal
4 conduct that was occurring at this time, that might affect
5 my opinion.

6 Q. When did the POM expire?

7 MR. DeWULF: Object to form.

8 THE WITNESS: I don't know the exact date, but I
9 know that each -- each one was for -- it says on it it
10 will be updated every two years. Whether that's a legal
11 requirement or not, again, Mr. -- the securities experts
12 are going to have to opine as to the effect of that,
13 but the -- it was anticipated it would be updated every
14 two years, as I recall.

15 Q. Was the information in the 2011 POM still true
16 as of August of 2013?

17 MR. DeWULF: Object to form.

18 THE WITNESS: I'm not sure whether Mr. Beauchamp
19 knew, had any reason to believe that there was any --
20 any -- any part of the 2011 POM that was not true.

21 what he was aware of as of August 13, because of
22 the FREO lawsuit, was that there had been one incident of
23 double liening. That was the extent of his knowledge,
24 which he might have, as a securities lawyer, concluded
25 that's not a material violation. It's something that

SCOTT RHODES, 5/15/2019

1 needs to be disclosed, but it's not a material violation.

2 Q. It was more than double liening, wasn't it, sir?

3 A. Why?

4 MR. DeWULF: Object to form.

5 THE WITNESS: Explain.

6 Q. Was Mr. Beauchamp aware in May of 2013 that
7 Mr. Chittick had given monies for the foreclosure of a
8 home directly to the borrower and not to the trustee of
9 the deed of trust sale?

10 A. Well, first of all, I think --

11 MR. DeWULF: May I have that question back?

12 MR. CAMPBELL: I think he heard it correctly.

13 MR. DeWULF: I want to hear it back.

14 MR. CAMPBELL: You just want to give him more
15 time to think of an answer.

16 MR. DeWULF: Counsel, that's unprofessional. I
17 have the right to ask for that, and --

18 MR. CAMPBELL: Have it read.

19 MR. DeWULF: -- I think the --

20 MR. CAMPBELL: Have it read.

21 MR. DeWULF: -- question is vague and ambiguous
22 and that it gets difficult to understand.

23 MR. CAMPBELL: Counsel, you do it so many times,
24 I question your motive, but let's go forward.

25 Go ahead and read the question.

SCOTT RHODES, 5/15/2019

1 MR. DeWULF: Well, the record will speak for
2 itself. There maybe are less than seven times that I have
3 asked for something read back, and in this instance I have
4 the right to have it read back. The witness obviously is
5 ready to answer. It's really for me.

6 Go ahead.

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

8 MR. DeWULF: Object to form.

9 THE WITNESS: In May of 2013 he wasn't aware of
10 any of these facts. He became aware of the FREO lawsuit
11 in June, as we said earlier, and that -- my answer is, no,
12 he was not aware of -- of Chittick having given money for
13 directly -- the FREO lawsuit, as I understand it, didn't
14 pertain to any of those facts. Also, in June of 2014, he
15 received not a complete copy of the complaint, but only
16 partial pages of it, so --

17 Q. Sir, turn to page 6 of the Rule 26.1 that
18 informed your decisions in the case. Last paragraph of
19 page 6, second sentence: In addition, Mr. Beauchamp
20 advised Mr. Chittick, as he had done previously, that
21 Mr. Chittick needed to fund DenSco's loans directly to the
22 trustee or escrow company conducting the sale, rather than
23 providing loan funds directly to the borrower, to ensure
24 that DenSco's deed of trust was protected.

25 A. Correct. I remember reading that, and it

SCOTT RHODES, 5/15/2019

1 doesn't change my answer. To me, what this indicates is
2 that Mr. Beauchamp is doing what he is required to do,
3 which is counsel for DenSco saying I'm not sure how this
4 happened, so let's go back and review. This is -- these
5 are the orders. These are how your loans have to occur.

6 Q. Sir, it changes your answer that Mr. Beauchamp
7 was unaware that money was given directly to Mr. Menaged,
8 doesn't it?

9 MR. DeWULF: Object to form.

10 THE WITNESS: I'm sorry. I don't understand
11 your question.

12 Q. You testified previously that Mr. Beauchamp did
13 not know in June of 2013 that Mr. Chittick had given money
14 directly to Mr. Menaged as opposed to the trustee.

15 MR. DeWULF: Object --

16 Q. Isn't that what you told me just a few minutes
17 ago?

18 MR. DeWULF: Object to form.

19 THE WITNESS: That's what I told him. Yes,
20 that's my understanding.

21 Q. And reading Rule 26.1 changes your opinion. He
22 did know about it in this instance. True?

23 A. No, that's not how I read this sentence.

24 Q. Well, how do you read this sentence? We both
25 speak English. How do you read it?

SCOTT RHODES, 5/15/2019

1 MR. DeWULF: Counsel, don't ask like that.

2 That's --

3 THE WITNESS: It's all right.

4 MR. DeWULF: -- improper.

5 THE WITNESS: It's all right. I'm okay.

6 MR. CAMPBELL: He is doing fine, John.

7 MR. DeWULF: I know he is.

8 THE WITNESS: I read this as Mr. Beauchamp, as I
9 just said a moment ago, he is aware that there was one
10 incident of a double lien, so to speak. That shouldn't
11 have happened. He believes there was only one.

12 So as a lawyer for DenSco, he said: Okay. But
13 it happened once. Let's go back and review the
14 fundamentals here.

15 Because Mr. Beauchamp, through his firm, had
16 helped to set up all of the steps necessary for the loans
17 to occur. If the steps had been followed in that
18 particular instance, the double lien incident would not
19 have occurred.

20 So he is saying: Let's just make sure that
21 going forward in the future, you -- this doesn't happen
22 again. Let's review the steps.

23 That, to me, is very different than a disclosure
24 that says Mr. Beauchamp was informed at the time, which
25 you are suggesting, and I don't think that's what the

SCOTT RHODES, 5/15/2019

1 disclosure says and that's certainly not my understanding
2 of the facts.

3 Q. Turn to page 59 of his deposition.

4 A. Okay.

5 Q. Do you know when Mr. Beauchamp left Bryan Cave?

6 A. It was in the summer of two thousand -- in the
7 period 2013. In the summer of 2013.

8 Q. Look at page 59, line 3. This is
9 Mr. Beauchamp's testimony:

10 He also did not, which I found just towards the
11 end of my time at Bryan Cave, did not follow the
12 instructions with respect to providing the dollars to
13 either the trustee or the title company under an
14 instruction letter, and instead in certain instances, I
15 was informed he would send it to the borrower, who would
16 get a cashier's check and deliver it to the trustee, which
17 I was told were four or five times by Mr. Chittick, which
18 has subsequently been shown to be many more times than he
19 revealed to me.

20 Did I read that correctly?

21 A. Right. Yes.

22 Q. Mr. Beauchamp knew in August of 2013 when he
23 left Bryan Cave that Mr. Chittick had given money directly
24 to the borrower. True?

25 A. Well --

SCOTT RHODES, 5/15/2019

1 MR. DeWULF: Object to form.

2 THE WITNESS: -- your original question was what
3 did he know in May, and then in my answer he didn't know
4 anything, and then we -- we talked about when the FREQ
5 lawsuit was revealed to him in June, and now you are
6 asking me about August, so you are changing the time
7 period on me here.

8 According to this testimony, in August, about
9 the time he changed, he was aware of four or five times.
10 So the issue is, is that a material problem or is it one
11 where simply Mr. Beauchamp counsels his client: Stop
12 deviating from -- do not deviate from the procedure that
13 we set up. Four or five times you did. You need to stop
14 doing that, which is good advice to his -- to the client.

15 Q. Sir -- okay. We started on this because of
16 conflicts of interest.

17 A. Right.

18 Q. Mr. Beauchamp advised Mr. Chittick and DenSCO to
19 update their POM in -- well, actually from May till August
20 of 2013, correct?

21 MR. DeWULF: Object to form.

22 THE WITNESS: It might have even been earlier
23 than that.

24 Q. And whether there were material facts that had
25 to be added to that POM is an area you are not qualified

SCOTT RHODES, 5/15/2019

1 to express an opinion on. True?

2 MR. DeWULF: Object to form.

3 THE WITNESS: I'm not sure I understand the
4 question. As to what is material or what is not? Is that
5 what you mean?

6 Q. In terms of a securities law disclosure in a
7 private offering memorandum, are you qualified to tell me
8 what is a material fact or what is not a material fact?

9 A. No, I am not.

10 Q. All right. Would you agree with me that
11 Mr. Beauchamp had concluded that the POM needed to be
12 updated?

13 A. I do agree with you.

14 Q. And Mr. -- and that would be in DenSco's best
15 interests. True?

16 A. Yes.

17 Q. And Mr. Chittick told him to stop. True?

18 A. At about that time, I think in August, yes, as
19 we established earlier.

20 Q. And your opinion, as I understand it, is that is
21 not a conflict of interest. True?

22 A. I understand -- no. My opinion is that is not
23 yet at that point a conflict of interest based on what
24 Mr. Beauchamp knew, and Mr. Beauchamp's reasoned analysis
25 as to whether he, as DenSco's attorney, can manage these

SCOTT RHODES, 5/15/2019

1 issues through counseling Mr. Chittick.

2 Q. Well, what -- what testimony do you have, sir,
3 as to Mr. Beauchamp's reasoned analysis in August of 2013
4 when he was told to stop work?

5 MR. DEWULF: Object to form.

6 THE WITNESS: I -- I -- I'm not sure there is
7 any testimony that's directly on that point, because I'm
8 not sure he was asked questions that were that specific.

9 Q. In fact, I think his testimony was he didn't
10 talk to Mr. Chittick again until December of 2013.

11 A. That's right, there was a period of time. And
12 I'm not -- it's not in my area of expertise whether
13 that -- those few months, three or four months, is
14 material. You will have to speak to Mr. Olson and
15 Mr. Wertlieb about that.

16 The point, my point and my opinion is based on
17 what Mr. Beauchamp reasonably concluded on his own. I see
18 him working to get his -- get Mr. Chittick, as the
19 constituent of DenSco, to do the work that's necessary to
20 update the POM.

21 Chittick had already said that he wanted to
22 update the POM. Every indication was that he wanted to
23 update the POM. Every indication was not whether to
24 disclose these facts. It was when the POM would get --
25 would be updated and that work would be completed.

SCOTT RHODES, 5/15/2019

1 Q. Well, Mr. Rhodes, you can't have it both ways.
2 You can't say what he is doing is fine, but I have no idea
3 whether what he is doing is a violation of the securities
4 laws, can you?

5 A. I -- in my -- yeah, Mr. Campbell, in the -- in
6 my area, which is what a reasonable lawyer would do under
7 the standard of care, putting aside the securities laws,
8 absolutely I can say that, because what you have to do is
9 look at the judgment of the lawyer under the facts that
10 the lawyer had at the time.

11 And at that time Mr. Beauchamp had an almost
12 ten-year history with Mr. Chittick, and that ten-year
13 history included Chittick managing DenSco extremely well
14 as a successful operation. Chittick most of the time, if
15 not all the time, doing what Beauchamp recommended to him.

16 There was no history in this relationship that
17 gave Beauchamp reason to suspect that Chittick was up to
18 something. What he knew was that Chittick was being
19 slower than he, as the lawyer, would like him to be in
20 DenSco's best interests, but that's all he knew.

21 Q. Mr. Rhodes, he is not slower. He has told him
22 to stop.

23 A. He has told him to stop for a period of time,
24 and we also know that once more information came out,
25 Beauchamp was very definitive: You need to disclose.

SCOTT RHODES, 5/15/2019

1 MR. CAMPBELL: We will get to that after our
2 lunch break, Mr. Rhodes. So why don't we -- you want to
3 try and get back at 1:00? 45 minutes, 50 minutes? What
4 do you need?

5 MR. DeWULF: We can try. We can try.

6 MR. CAMPBELL: If you need to do something, we
7 can take an hour.

8 MR. DeWULF: Well, we'll just go somewhere
9 close.

10 COURT REPORTER: We need to go off the record.

11 VIDEOGRAPHER: We are going off the record at
12 12:08 p.m.

13 (A recess was taken from 12:08 p.m. to
14 1:05 p.m.)

15 VIDEOGRAPHER: We are on the record at 1:05 p.m.

16 Q. All right. Let's just go back to August of
17 2013. And before we broke for lunch, remember we were
18 talking about conflict of interest in the sense of DenSco
19 having an interest to comply with the law, and then
20 Chittick wanting to put a hold on the Private Offering
21 Memorandum.

22 So have I just oriented you to where we were?

23 A. Yes.

24 Q. Okay. I want you to assume hypothetically that
25 in August 2013 DenSco has continued to sell securities

SCOTT RHODES, 5/15/2019

1 without complying with Mr. Beauchamp's advice that they
2 had to update the Private Offering Memorandum, and I want
3 you to assume that that would be a securities fraud.

4 Would Chittick's declaration to Mr. Beauchamp to
5 stop the update of the Private Offering Memorandum be a
6 conflict of interest between Chittick and DenSco?

7 MR. DeWULF: Object to form.

8 THE WITNESS: Is your assumption that there was
9 a failure to do either a written update of the POM or a
10 verbal update to investors?

11 Q. Assume for purposes of this hypothetical that
12 neither was done.

13 A. Neither was done.

14 And are you asking me to assume that
15 Mr. Beauchamp knew that securities were being sold without
16 any oral or written updates?

17 Q. Yes.

18 A. If Mr. Beauchamp had that level of knowledge
19 that would allow him to make the analysis necessary for a
20 conflict of interest, then he would have had several
21 duties, one of which would be to advise Mr. Chittick of
22 the possibility of a conflict between Chittick and DenSco.

23 Q. Okay.

24 A. Because you asked me if there is one.

25 Q. I missed the last part of your answer.

SCOTT RHODES, 5/15/2019

1 So you said at that point he would have a duty
2 to tell, on those facts --

3 A. Chittick --

4 Q. -- as you have described them and I have
5 described them as assumptions, your opinion is that he
6 would have a duty then to sit down with Mr. Chittick and
7 say there is a conflict between you and DenSco and I
8 represent DenSco?

9 A. Well, certainly "I represent DenSco and I do not
10 represent you in this." And then the question is whether
11 it's a conflict of the kind that can be waived. In other
12 words, does it require some action? Does it require an
13 action of I now have to withdraw because of this?

14 And I think that the discussion that had --
15 would have had to occur under your hypothetical is -- is
16 the potential legal impact of those actions and whether
17 they can be remediated. So some -- something would have
18 to happen as a result of that.

19 I do think at that point, and you asked me
20 earlier this question, would David Beauchamp have had to
21 admonish him that his interests and DenSco's interests
22 might be diverging, yes. The answer is yes.

23 Q. All right. And once he advised him of that,
24 assuming further that Mr. Chittick is saying "I don't
25 care. Do what I want you to do," would that then raise

SCOTT RHODES, 5/15/2019

1 issues such as withdrawal and a noisy withdrawal that we
2 talked about earlier?

3 A. Yes, because, in essence, what -- the question
4 you are asking me pertained to ER 1.13.

5 So under the hypothetical that you have asked me
6 to assume, all the facts you have asked me to assume,
7 because Mr. Beauchamp in the hypothetical has that
8 knowledge and because he has admonished Mr. Chittick,
9 under your hypothetical, that your interests and the
10 company's interests might diverge.

11 Because he has counseled him that he has engaged
12 in conduct that could be in violation of the obligations
13 of DenSco's legal obligations, then he is right into 1.13,
14 as we discussed earlier. And since there is nobody to go
15 above the ladder, then he would have had a decision to
16 make whether to disclose any information and/or whether to
17 withdraw.

18 Q. Okay. Let's go back to this issue about
19 Mr. Chittick giving money directly to the -- his borrower,
20 like Mr. Menaged, as opposed to giving the money to the
21 trustee.

22 Now, you would agree with me it's in DenSco's
23 interest that procedures be followed that the money be
24 given to the trustee so they are not embezzled. True?

25 A. Well, certainly any action that results in no

SCOTT RHODES, 5/15/2019

1 embezzlement is in DenSco's interests. I agree with that
2 as a hypothetical. It's a very general hypothetical, but
3 I agree with it.

4 Q. Well, and we have looked at, in the 26.1, that
5 Mr. Beauchamp told Mr. Chittick in the summer of 2013, I
6 think he got the emails, as you pointed out, in
7 June 14th of 2013: Don't give the money to the borrower,
8 give the money to the trustee. Right?

9 A. Yes, that's what we looked at.

10 Q. And before we broke for lunch, we looked at some
11 of his deposition testimony in August --

12 A. Right.

13 Q. -- of 2013 that he was aware of four or five
14 instances, not one, four or five, where Mr. Chittick had
15 given money directly to the borrower, not to the trustee,
16 right?

17 A. Correct. Yes.

18 Q. And would it be fair to say that if Mr. Chittick
19 didn't want to follow that advice and wanted to give money
20 directly to the borrower, that would be a conflict of
21 interest between what DenSco needed to have done and what
22 Mr. Chittick wanted to do?

23 MR. DeWULF: Object to form.

24 THE WITNESS: So when you use the term "conflict
25 of interest," yes, I agree.

SCOTT RHODES, 5/15/2019

1 Now, you haven't put anything in your
2 hypothetical about what Mr. Beauchamp knew in your
3 hypothetical, but if Mr. Chittick wanted to give money
4 directly to Mr. Menaged, which later was revealed to have
5 happened quite a bit, and earlier than I think any --
6 Beauchamp knew, that was contrary to the interests of
7 DenSco, clearly.

8 MR. CAMPBELL: Okay. So I want to go to
9 Exhibit 36. This is Exhibit 36 to Mr. Beauchamp's
10 deposition. And I don't have copies of it. Let me show
11 it to you, John.

12 MR. DeWULF: Yeah, I'm familiar with it.

13 Q. So let me show you what's been previously marked
14 as Exhibit No. 36. And, again, it's got some highlighting
15 on it. You can ignore that. But I want you just to
16 review it first to refresh your recollection.

17 A. I remember this.

18 Q. All right. So Exhibit 36 was something you
19 reviewed in forming your opinions --

20 A. Yes.

21 Q. -- in the case?

22 A. Yes.

23 Q. Now, as I read it -- now, this is Mr. Chittick
24 writing an email to Mr. Beauchamp in January of 2014, and
25 he is telling him that in 90 percent of the loans he does,

SCOTT RHODES, 5/15/2019

1 he sends the money directly to the borrower, not to the
2 trustee?

3 A. Correct.

4 Q. Now, if you believe Mr. Beauchamp and what he
5 says in his deposition, he has counseled Mr. Chittick
6 multiple times by now not to give the money to the
7 borrower --

8 A. Right.

9 Q. -- right?

10 And this is Mr. Chittick writing and saying "I
11 do it 90 percent of the time."

12 Now, would you agree with me that as of the date
13 of that email, which is, what, January 9th, 2014,
14 Mr. Beauchamp and Clark Hill have actual knowledge that
15 Mr. Chittick is not funding the loan to the trustee in
16 90 percent of his transactions?

17 MR. DeWULF: Object to form.

18 THE WITNESS: I would -- I would agree that
19 that's what it says, and so they would have actual
20 knowledge as to what Mr. Chittick is representing to
21 Mr. Beauchamp at that time.

22 And I would add that it is clearly at this time
23 that Beauchamp's actions and directions in regard to
24 Chittick get elevated in the sense of their urgency and
25 their definition of what needs to be done. There have to

SCOTT RHODES, 5/15/2019

1 be disclosures. There is no more we need to disclose a
2 lawsuit, which was the situation with the FREO. And then
3 in August he becomes aware of maybe four or five other
4 incidents. Now for the first time, January 9, he is been
5 told it's 90 percent of the time that I am not following
6 your directions.

7 Q. All right.

8 A. So it's clearly -- this clearly has changed a
9 lot in terms of what the lawyer knows about the principal
10 of the company's conduct.

11 Q. All right. Well, what I want to explore is this
12 conflict of interest issue we have been talking about.

13 A. Uh-huh.

14 Q. So on January 9th, 2014, fair to say it is
15 clearly in DenSco's interest that the procedure that money
16 be funded directly to the trustee be followed?

17 A. Well, as of January 9, 2014, it was in DenSco's
18 interest to have it followed, as it was before.

19 Q. Right. It hasn't --

20 A. And that's the issue --

21 Q. Correct.

22 A. -- because it hasn't been followed.

23 Q. But it hasn't changed. DenSco's interests are
24 pay the trustee, don't pay the borrower?

25 A. Those are DenSco's interests with respect to

SCOTT RHODES, 5/15/2019

1 each loan.

2 Q. Right.

3 A. But DenSco's interests are now a little
4 different and Beauchamp has recognized that, because
5 DenSco now has another interest, which is how are we going
6 to manage this problem.

7 Q. Yeah, but I want to stay focused on the money
8 problem. Okay?

9 A. Okay. As you wish.

10 Q. Chittick is explicitly telling Beauchamp "In
11 90 percent of the cases, I don't do that," right?

12 A. Right.

13 Q. And in that email, he is not saying "I'm going
14 to change and do something different," is he?

15 MR. DeWULF: You mean "he," being Chittick?

16 MR. CAMPBELL: Yes. Thank you.

17 THE WITNESS: No, he is not saying that.

18 Q. Is there a conflict of interest on January 9th,
19 2014, between DenSco's interests and Mr. Chittick's
20 interests, with respect to this issue of how money is
21 paid?

22 A. Chittick's past conduct as to how he has
23 deviated from the way loans should be done was not
24 consistent with his obligations to DenSco.

25 As of this time I can't say whether there is a

SCOTT RHODES, 5/15/2019

1 conflict, because, as you just pointed out, whether or not
2 Chittick is going to follow the advice to rectify this
3 situation is uncertain to me. If Chittick were saying
4 this is the way I have done it and I am not going to
5 change, I'm going to continue to do it, then I think we
6 would have a very clear conflict interest -- conflict of
7 interest issue.

8 Q. Hand Exhibit 36 to me.

9 All right. Is there anything in Exhibit 36,
10 being the reader of an English language, that suggests to
11 you that Chittick is going to change?

12 MR. DeWULF: Object to form.

13 THE WITNESS: There is nothing in Exhibit 36
14 that says he will or he will not. But what I do see is
15 the response, which is Beauchamp saying: All right. I'll
16 look to see whether what you have done is industry
17 standard or not, but it certainly appears to me there is
18 either another way do it or someone described a procedure
19 that does not work. You got bad advice from somebody,
20 which indicates to me Beauchamp is responding to him:
21 I'm -- I'll tell you what. I'll look to see if maybe this
22 is a better way of doing it, but it appears to me that
23 that's not going to be the situation.

24 So this is part of a dialogue that's clearly
25 going -- that's happening.

SCOTT RHODES, 5/15/2019

1 Q. So let's talk about the dialogue.

2 Fair to say that Mr. Beauchamp responds and says
3 I'll look at this and I'm going to give you advice?

4 A. Is that fair to say?

5 Q. Yes.

6 A. That appears to me as what I hear. That's what
7 I think he is saying.

8 Q. All right. And does the standard of care for a
9 lawyer practicing in the State of Arizona, when a client
10 gives you a question and you say I'm going to give you
11 advice, does the standard of care require you to give that
12 advice?

13 MR. DeWULF: Object to form.

14 THE WITNESS: The standard of care is to
15 communicate with your client. So if you have said I will
16 be getting back to you about this issue, that would be
17 expected to -- to do.

18 Q. Right.

19 A. That's what you have engaged to do, so...

20 Q. And if Mr. Beauchamp, hypothetically, did not
21 get back to Mr. Chittick with advice on this issue, that
22 would be a breach of the standard of care. True?

23 MR. DeWULF: Object to form.

24 THE WITNESS: Not -- well, not necessarily. And
25 first of all, the hypothetical I'm -- you could probably

SCOTT RHODES, 5/15/2019

1 see from my face that doesn't sound like the facts here,
2 but if you can show me something to substantiate your
3 hypothetical.

4 But as a hypothetical, when a lawyer commits to
5 do something for the client, the lawyer either should do
6 that or there must be -- there can be a rational reason
7 not to.

8 And sometimes communications between client and
9 lawyers are not expressed, they are not put into emails.
10 They might be by telephone. So I don't really know what
11 was said or not said between Beauchamp and Chittick on
12 this subject.

13 If your hypothetical is if a lawyer takes on a
14 task and drops the ball completely, well, yeah, that
15 usually is beneath the standard of care. I'm just not
16 sure I have seen that in this case.

17 Q. Okay. So we are on the same page.

18 If he dropped the ball and didn't get back to
19 Mr. Chittick about this procedure, that would be below the
20 standard of care?

21 MR. DeWULF: Object to form.

22 THE WITNESS: One thing is that when a -- not
23 necessarily. And I'm going to say why, and this is in my
24 opinion.

25 Lawyers are allowed, and it's within the

SCOTT RHODES, 5/15/2019

1 standard of care for a lawyer to understand the capacity
2 and the knowledge of their client. Chittick had been
3 running this company for -- successfully for a long time.
4 Chittick knew the standards. He knew the right way to do
5 it.

6 So what Beauchamp was up against here was a
7 principal of his client who knew fully well how to manage
8 this company, because he had done it successfully, who all
9 of a sudden has deviated from it, and in this email
10 Chittick is giving his explanation as to why he deviated.

11 Beauchamp then is saying, in essence, I've never
12 heard of that being done, but because you are -- you are
13 the businessman, I'll look into it. It seems to me like
14 there is another way to do it. Maybe somebody gave you
15 bad advice.

16 You get to -- one of the things lawyers do is
17 respond to the client they have. Chittick was a
18 knowledgeable businessman. Beauchamp, within the standard
19 of care, could give him some leeway, and given their track
20 record, I think it was perfectly reasonable to do so.

21 In other words, it's possible either through
22 oral communications, which I understand they had a lot of,
23 or simply because of Chittick's track record, that
24 Beauchamp determined that a specific response wasn't
25 necessary. I just don't have the facts to give you an

SCOTT RHODES, 5/15/2019

1 answer to that one way or the other.

2 Your question was, is it definitively, under
3 your hypothetical, a breach of the standard of care, and
4 because of the knowledgeable client rule I just told you
5 about, I can't tell you that it is.

6 Q. Mr. Rhodes, if on January 9th, 2014,
7 Mr. Beauchamp believed that Mr. Chittick was going to
8 continue giving 90 percent of his loans directly to the
9 borrower, which was contrary to DenSco's interests,
10 wouldn't he have to do something?

11 A. So this is a hypothetical again, correct?

12 Q. Unfortunately, this turns out to be the truth,
13 but go ahead.

14 A. Well, should I take it as a hypothetical?

15 Q. You can take it any way you want, sir.

16 A. Well, I'm going to take it as a hypothetical,
17 but with it, and the key part there is you are saying that
18 Beauchamp knew on January 14th that Chittick was going to
19 continue with this kind of lending practice, and I have
20 seen nothing that indicates that that's true.

21 Q. You don't think the letter itself indicates
22 that's true, sir?

23 A. This email? This letter?

24 Q. The one that says: I'm giving 90 percent of my
25 money directly to the borrower.

SCOTT RHODES, 5/15/2019

1 A. You mean the email of January 9?

2 Q. That one. The one you just read.

3 A. Okay. So the email. I don't -- I don't think
4 it says that.

5 Q. Well --

6 A. I think it says: I'm going -- I declare I'm
7 going to continue to do this.

8 Q. We are getting off track.

9 A. Yeah, I think we are, because I'm just asking --

10 Q. Go back to my original question.

11 A. All right.

12 Q. Mr. Beauchamp gets a letter: I'm sending
13 90 percent of my borrowers the money directly. Why should
14 I change?

15 Assume Mr. Beauchamp drops the ball and never
16 gets back to him. What does Mr. Beauchamp have to do?
17 Don't we have a conflict between DenSco and Mr. Chittick?

18 A. And I think, respectfully, I think we are just
19 reading the January 9, 2014, email differently, so I will
20 take your question as a hypothetical, if that's okay with
21 you.

22 Q. Take it any way you want. You are the expert.

23 A. If -- if Mr. Beauchamp knows as a result to that
24 on January 9, 2014, that Chittick is insistent that he is
25 going to continue to lend money through money, funds being

SCOTT RHODES, 5/15/2019

1 sent directly to Menaged -- and at the time it wasn't, I
2 don't think he knew it was Menaged -- sent to -- what does
3 he say?

4 Q. Borrowers.

5 A. To borrowers. And your question to me, doesn't
6 he have to do something? Yes, and I think he did.

7 Q. What does he have to do?

8 A. He has to advise his client, again, to follow
9 the protocol for the loans.

10 Q. And if the client says no, what do you do then?

11 A. Then we are back into ER 1.13.

12 Q. Okay. In the review of all the work you did in
13 this case, did you see in -- here, hand me that letter.

14 A. Sure.

15 Q. Did you see an email from Mr. Beauchamp where he
16 got back to Denny telling him what other lenders got from
17 the trustee and how we can make a better decision?

18 A. Not that I remember, no.

19 Q. You read Mr. Beauchamp's deposition, correct?

20 A. Yes.

21 Q. Did you read that he had delegated to other
22 lawyers in the firm the responsibility to get back to
23 Mr. Chittick?

24 A. I believe --

25 MR. DeWULF: Object to form.

SCOTT RHODES, 5/15/2019

1 Go ahead.

2 THE WITNESS: I -- I -- I believe so. If you
3 could --

4 Q. Who did he delegate it to?

5 A. I don't remember.

6 Q. In reviewing the depositions of other Clark Hill
7 lawyers, did you find testimony from any Clark Hill lawyer
8 that they got back to Mr. Chittick with the advice he
9 wanted?

10 A. Well, I know Mr. Hood didn't, because he was --
11 he wasn't involved at that level. Mr. Sifferman was the
12 local general counsel. And honestly, I don't remember
13 what -- if Mr. Schenck testified about this issue.

14 Q. Okay. So in terms of gathering the facts to
15 inform your opinions in this case, you didn't determine
16 whether or not any other Clark Hill lawyer got back to
17 Mr. Chittick about this procedure?

18 MR. DeWULF: Object to form.

19 THE WITNESS: The way you say the question, it
20 sounds like you are wondering whether I did an
21 investigation specifically on that question, and, no, I
22 don't -- I don't remember anything that I saw that
23 indicated who got back to them, or to him, or if they did.

24 Q. Okay. And if the ball was dropped by Clark
25 Hill, that would be a violation of the standard of care?

SCOTT RHODES, 5/15/2019

1 A. No. I --

2 MR. DeWULF: Object to form.

3 THE WITNESS: I answered that before. Not
4 necessarily.

5 Q. You indicate in your opinions that Clark Hill
6 has no duty to investigate?

7 MR. DeWULF: Object to form.

8 THE WITNESS: I don't remember that language.

9 Q. I think it's in paragraph 30 of your report.
10 Let me look at it.

11 A. I think you are referring to duty to investigate
12 Menaged. Because what I state is that not only did they
13 have no duty to investigate Menaged, they could not
14 ethically have done so because they weren't asked to do
15 so.

16 Q. All right. So -- well, let's just go with what
17 you are saying.

18 Your opinion is they had no duty to investigate
19 Menaged?

20 A. That's correct.

21 Q. Under -- would there be circumstances that might
22 arise where they would have to investigate Menaged?

23 MR. DeWULF: Object to form.

24 THE WITNESS: That's such a general question. I
25 don't know if there theoretically could be circumstances

SCOTT RHODES, 5/15/2019

1 when they would. But based on what Mr. Beauchamp knew at
2 the time, based on his history with Mr. Chittick that
3 created a reasonable basis to believe Mr. Chittick, based
4 on his understanding at the time that the fraud in
5 question was perpetrated by Menaged's cousin, that after
6 Menaged's cousin had committed fraud, that Menaged was a
7 victim that then subsequently DenSco was a victim, and the
8 fact that Chittick had said to him we have a plan in place
9 that we have already started to implement to resolve this
10 and we are going to disclose it, but we are going to
11 resolve the issue first if we can.

12 It's like a series of dominoes, and there is
13 nothing in those facts that gives DenSco's counsel
14 authority to go and investigate somebody who, according to
15 what Beauchamp knew at the time, was himself a victim of
16 fraud. And unless Chittick says "I want you, Clark Hill,
17 to look into this man Menaged," it's outside of the scope
18 of their representation. They can't do it.

19 Q. Could you go to Mr. Beauchamp's deposition.

20 A. Sure. Page?

21 Q. Page 333, line four.

22 So Mr. Beauchamp is asked: You met with
23 Mr. Menaged and Mr. Chittick on January 9th, right?

24 A. Correct.

25 Q. And you recognize that; that's a pivotal date --

SCOTT RHODES, 5/15/2019

1 A. Yes.

2 Q. -- in the case, right?

3 And: what's your independent recollection of
4 what happened at the meeting?

5 It was a very eye-opening experience.
6 Previously Denny had been a very reasonable, sound
7 business person, considered all the facts and made sound
8 business decisions.

9 He was being deferential to Menaged. Menaged
10 was being aggressive and using language that normally
11 Denny wouldn't tolerate in his presence. Denny looked to
12 Menaged at times as if he could talk and -- or making a
13 statement, would turn to Menaged and say: You agree with
14 that?

15 I had never, ever seen Denny act that way
16 before, which caused me a lot of concern and caused
17 several of the conversations that I had with Denny.

18 Does that cause you any concern?

19 A. In what way?

20 Q. In the way that Mr. Beauchamp describes how
21 Mr. Chittick is acting?

22 MR. DEWULF: Object to form.

23 THE WITNESS: Caused me concern, no. To me,
24 that's description of a lawyer who is in tune with an
25 individual he has known for years, who is coming to reveal

SCOTT RHODES, 5/15/2019

1 for the first time a problem that is far deeper and wider
2 than Mr. Beauchamp had been led to believe that he knew
3 before.

4 Mr. Beauchamp is trying to understand the
5 problem itself, what's going on. And he is meeting for
6 the first time an individual who is involved, who is a
7 serious lender or borrower from -- of DenSco. And so he
8 is just trying to analyze the dynamic. Both the facts as
9 he is being told them about the transactions, but also who
10 is this new player Menaged.

11 I see this as the description of a seasoned
12 lawyer describing what he is seeing in front of him under
13 a situation that's just starting to evolve before his
14 eyes. Nothing more than that. But that's a lot, because
15 it indicates to me the depth of experience, the fact that
16 you bring everything to the table. You observe everyone
17 in front of you, but you don't necessarily leap to
18 conclusions. You let things play out.

19 Q. Do you recall Mr. Beauchamp expressing the
20 opinion that he thought Chittick was unduly influenced by
21 Mr. Menaged?

22 MR. DeWULF: Object to form.

23 THE WITNESS: I -- I recall that, but I think --
24 I think that's a given now, as facts have evolved, but you
25 are asking about -- me about January 9, 2014.

SCOTT RHODES, 5/15/2019

1 Q. Back in this time period were you aware that
2 Mr. Beauchamp was concerned that Mr. Chittick was unduly
3 influenced by Mr. Menaged?

4 A. Can you show me something in the deposition
5 testimony?

6 Q. Answer my question.

7 A. Because I don't --

8 Q. And if you have no recollection, tell me you
9 have no recollection.

10 A. As of now, I don't recall that being tied to
11 January 9.

12 Q. What is it tied to?

13 A. Just in general, an ultimate conclusion reached.

14 Q. But that was an ultimate conclusion reached
15 between January and April of 2014, right?

16 MR. DeWULF: Object to form.

17 THE WITNESS: I -- I believe that is correct,
18 that over time, because there is a lot that happened
19 between January 8th, actually, and when Clark Hill
20 withdrew.

21 Q. Mr. Beauchamp represents DenSco, right?

22 A. Yes.

23 Q. When he forms an opinion that its president,
24 Mr. Chittick, is unduly influenced by Mr. Menaged, does he
25 have any duty to investigate?

SCOTT RHODES, 5/15/2019

1 MR. DeWULF: Object to form.

2 THE WITNESS: To investigate whom? Menaged?
3 Not necessarily. To -- to respond to what he might
4 consider undue influence, as you put it, by counseling his
5 client, yes, and I think he did that. In fact, I know he
6 did that.

7 Q. All right. Now, you said that on January 9th,
8 2014, Mr. Beauchamp recognized the depth of the problem?

9 A. I said -- I think I said he started to
10 recognize. He started to become aware.

11 Q. What was the depth of the problem, as you
12 reviewed the record?

13 A. Well --

14 MR. DeWULF: Object to form.

15 THE WITNESS: -- what was the depth of the
16 problem as I know it now, sitting here, somebody who has
17 reviewed a record, or as Mr. Beauchamp knew on
18 January 9th?

19 Q. Sir, in forming your opinions in this case --

20 A. Right.

21 Q. -- you have formed opinions about different
22 parts of this case, right?

23 A. I -- I don't know. I don't know what you mean,
24 but...

25 Q. Well, you formed the opinion, for example, there

SCOTT RHODES, 5/15/2019

1 was no conflict of interest between DenSco and Chittick in
2 late 2013 or early 2014, right?

3 A. Okay. Yes.

4 Q. And you base that on certain facts, right?

5 A. As I understand them, yes, that's true.

6 Q. All right. And you think there was no conflict,
7 for example, even though DenSco had an interest to do an
8 updated Private Offering Memorandum and Mr. Chittick in
9 August said stop updating the memorandum, right?

10 A. Well, I think you are paraphrasing my testimony,
11 but do you want me to take that as a -- as just a summary
12 of what you heard me say, or do we -- should we go back
13 through all of that?

14 I'm trying to be helpful, but --

15 Q. Your opinion is -- well, you are being very
16 helpful to me.

17 Your opinion is there was no conflict between
18 Chittick and DenSco in August of 2013 with respect to
19 updating the POM. True?

20 A. That's what I said, yes.

21 Q. And there is no conflict of interest between
22 DenSco and Chittick on January 9th of 2014, with respect
23 to how the loans were funded. True?

24 A. No, that's not what I said. What I said is that
25 how the loans were funded were not consistent with what

SCOTT RHODES, 5/15/2019

1 DenSco's procedures were, that Chittick's deviation from
2 those procedures was not in conformance with what was in
3 the best interests of DenSco, but whether or not Chittick
4 would take action consistent with rectifying those issues
5 so that DenSco could continue as a viable business entity
6 was still possible. And Beauchamp was -- as I have seen
7 it, Beauchamp was trying to discern whether he -- whether
8 Chittick would do the things necessary to resolve the
9 issues.

10 Q. Was there --

11 A. So --

12 Q. Oh.

13 A. -- I think the terminology I used was that there
14 was the potential for a conflict, and it was under
15 hypotheticals that you asked me to use, remember related
16 to what Beauchamp knew, et cetera, and I was careful to
17 ask you what the parameters of the hypothetical were.

18 Q. In January 2014, was there a conflict between
19 DenSco's interests and Mr. Chittick being under the sway
20 of Menaged?

21 A. Are you asking whether there was an ethical
22 conflict between that -- or what? What kind of conflict
23 are you talking about?

24 Q. Sir, you expressed the opinion there was no
25 conflict between DenSco's interests and Chittick's

SCOTT RHODES, 5/15/2019

1 interests --

2 A. I said there was a potential.

3 Q. -- from 2013 through early 2014.

4 Are you now -- do you have another opinion?

5 A. No. I think --

6 MR. DeWULF: Object to form.

7 THE WITNESS: I think we are just talking past
8 each other a little bit. I think I have been trying to
9 tell you that in this time period in January, when
10 Mr. Beauchamp for the first time is understanding that he
11 had seen the very tip of an iceberg before and that there
12 is more to it, but he doesn't yet know how -- how deep it
13 is. He doesn't know exactly what's going on.

14 And what he is doing is he is analyzing the
15 situation, and certainly he becomes aware through the
16 email that you showed me that there were loans made, and
17 apparently a significant number of them, that deviated
18 from the procedures that DenSco had set forth.

19 He is aware of that, but what he doesn't know is
20 why that happened, what caused it to happen. Is there a
21 way to -- how deep is the problem? what's the potential
22 exposure to DenSco? He doesn't know any of those things,
23 so he is not yet in a position to analyze whether Denny
24 Chittick has a conflict with DenSco that requires him,
25 Beauchamp, to advise Chittick, your interests are

SCOTT RHODES, 5/15/2019

1 different than my client DenSco's. He doesn't know enough
2 yet. He is still in fact-gathering mode. That's what I
3 have been trying to express.

4 Q. How many homes were in a double-lien situation
5 in January of 2014?

6 A. I don't know. I do understand that in January
7 of 2014, Mr. Beauchamp didn't know, and the facts develop
8 over time.

9 Q. Were enough homes in a double -- well, let me
10 rephrase it.

11 From a securities law perspective, do you have
12 an opinion as to whether or not what Mr. Beauchamp learned
13 by January 10th, 2014, required DenSco to make material
14 disclosures to its investors?

15 A. Well, again, I'm not giving opinions about
16 securities law, but what I see in my area of expertise is
17 that Mr. Beauchamp himself determined that there was a
18 disclosure obligation; that that disclosure could happen
19 in writing or verbally; that there had to be a revised POM
20 that needed to be done.

21 Actions were going to have to be taken as a
22 result of what he was beginning to learn about in January,
23 early January 2014. Actions were going to have to happen,
24 and he expressed that to Mr. Chittick.

25 He didn't get anything back from Chittick

SCOTT RHODES, 5/15/2019

1 indicating "I won't do it." In fact, every indication was
2 Chittick saying "I understand. We need to disclose these
3 things."

4 The only question for Chittick was to inform
5 Mr. Beauchamp: We have started to work on a resolution to
6 this problem, and when we do the disclosure, we would like
7 to include its resolution as well.

8 Q. Let's turn to Mr. Beauchamp's deposition at
9 page 341.

10 So 341, line 5: Did you advise Mr. Chittick on
11 January 9th, 2014, that pursuant to the fiduciary duties
12 DenSco had to its investors, he had to disclose to them
13 right now about the fraud, what the cousin had done, and
14 that there were 100 and 125 properties affected?

15 Did you advise him that or did you not?

16 Line 14: I did tell him that had to be
17 disclosed. I did tell him at this point it appears to be
18 material, it's got to be disclosed, and we need to get
19 something out to the investors.

20 A. That's correct. I remember that. That's the
21 reason -- that's exactly why I testified a moment ago that
22 Mr. Beauchamp made the essential immediate judgment call
23 that this is serious enough that you have disclosure
24 obligations now. You have had them before, but this is
25 new, and this has to be disclosed.

SCOTT RHODES, 5/15/2019

1 Q. Let's go on.

2 A. Okay.

3 Q. Line 18: Right now, correct? You told him
4 that?

5 The witness: I don't remember if I used the
6 word "right now" or if I used the word "immediately." I
7 did convey it was an imminent obligation.

8 A. Right.

9 Q. Right?

10 Turn to 343. You see line 14: If in
11 January 2014 you had actual knowledge that he had not
12 disclosed to every investor the fraud committed by
13 Menaged, would you have terminated your representation?

14 Line 20: I would have taken some preliminary
15 steps, but, yes, I would have.

16 You agree with Mr. Beauchamp?

17 A. Do I -- do I believe him when he says he would
18 have taken those steps?

19 Q. Yes.

20 A. Yes, I do. I don't have any reason not to.

21 Q. Okay. But he would -- in your opinion, he would
22 have to withdraw at that point in time --

23 A. Well, your question --

24 Q. -- if he had actual knowledge?

25 A. Well, again, this is based on your question.

SCOTT RHODES, 5/15/2019

1 Your question was if he had actual knowledge that Chittick
2 had not disclosed to every investor the fraud committed by
3 Menaged.

4 well, in January of 2018 (sic), Mr. Beauchamp
5 did not know that Menaged himself had committed fraud.
6 What he had been told was that Menaged's cousin had
7 committed a fraud, that Menaged had then discovered it,
8 and so it had gone down the line, ending up with DenSco
9 having an issue.

10 So this question of would you have withdrawn if
11 you knew that Chittick had not disclosed to every investor
12 Menaged's fraud in January '14 is an interesting one,
13 because neither Beauchamp nor, as I understand it,
14 Chittick even knew at that point that it was Menaged
15 committing the fraud. So there is a -- there is a gap of
16 knowledge here.

17 Q. Sir, from the point of view of the investors,
18 does it matter whether Menaged or his cousin, who worked
19 for him, did the fraud?

20 MR. DeWULF: Object to form.

21 THE WITNESS: I -- I can't speak for the
22 investors, but I do know that the end result were some
23 loans, as we have discovered, and it was a serious
24 problem, yes.

25 Q. Let's go on. Line 22: And you would agree with

SCOTT RHODES, 5/15/2019

1 me that if Mr. Menaged -- well, I probably meant
2 Mr. Chittick -- did not follow your advice to tell every
3 investor about the fraud committed by Menaged in
4 January 2014, that the standard of care would have
5 required you to terminate?

6 The witness: There is many different ways to
7 satisfy the standard of care in that regard. Under this
8 unique circumstance, since I was going through Denny and
9 Denny was the conduit to everybody, I needed to make sure
10 he had confirmed it, and he did confirm that he had
11 disclosed it to everyone.

12 A. Right.

13 Is there a question to me?

14 Q. We will get to it.

15 A. Okay.

16 Q. I want you to turn to -- I may just be repeating
17 myself.

18 Turn to page -- well, all right. So fair to say
19 from the materials you reviewed, Mr. Beauchamp told Denny
20 in January 2014 "You have to tell every investor," and
21 Beauchamp says Denny told him "I did that," right?

22 A. That's your hypothetical to me?

23 Q. We have just read it from Beauchamp's
24 deposition.

25 Did you read it any differently than I did in

SCOTT RHODES, 5/15/2019

1 forming your opinions in this case?

2 MR. DeWULF: Object to form.

3 THE WITNESS: Sure. I think I told you the
4 question beginning on page 333, lines 14 to 16, is asking
5 about actual knowledge that Chittick had not disclosed
6 Menaged's fraud to every investor in January 2014, and
7 what I explained was my understanding is that Chittick
8 didn't know in January 2014 that Menaged had committed
9 fraud, and Beauchamp certainly didn't know at that time.

10 Q. Sir, when you read the deposition, and I don't
11 understand why we are miscommunicating here --

12 A. It happens, I guess.

13 Q. -- Mr. Beauchamp testified that he was told by
14 Mr. Chittick that all the investors knew the material
15 facts. True?

16 A. Let me reread what you have asked me to read
17 then --

18 Q. well --

19 A. -- because your questions are all --

20 Q. -- let's go to --

21 A. -- they are all hypotheticals. They are, and
22 you would agree with me that if Menaged did not follow
23 your advice.

24 Q. No, no, no. Go to page 341. Okay?

25 A. Okay.

SCOTT RHODES, 5/15/2019

1 Q. Line 5.

2 You read this deposition. True?

3 A. I did, and you just read it to me. I apologize
4 if I'm not remembering it properly.

5 Q. Did you advise Mr. Chittick on January 9th that
6 pursuant to the fiduciary duties DenSco had to its
7 investors, it had to disclose to them right now about the
8 fraud, what the cousin had done, and that there were 100
9 and 125 properties affected?

10 A. Sure.

11 Q. Did I read that right?

12 A. You did, but --

13 Q. And he said: I did tell them that had to be
14 disclosed?

15 A. That's right. That's what it says.

16 Q. And he goes on to say that Denny confirmed to me
17 that he had told all the investors.

18 A. Where does it say that?

19 Q. Turn to page 342, line 20: Do you think he
20 talked to every investor who had money in DenSco and told
21 them about the fraud?

22 20 -- page or line 24: He regularly had
23 communications with them, so that wouldn't be unusual.

24 Question: Answer my question.

25 Answer: Yes, I did believe he had.

SCOTT RHODES, 5/15/2019

1 A. Okay. Thank you, because we hadn't read that
2 part earlier, so I hadn't had my memory --

3 Q. Well, let's go on.

4 A. No. That's --

5 Q. Let's go on.

6 A. Sure. Sure. Go ahead.

7 Q. Question: Did you do anything to confirm that
8 he had complied with his fiduciary duties and told every
9 investor in DenSco of the material fact of the fraud?

10 Answer: I asked him, and he said, quote, "what
11 the hell do you think I've been doing?"

12 Question: When did he say that to you, sir?

13 It was one of the many telephone conversations,
14 and I did without Menaged on the phone, which he was on so
15 many of the calls, that it was difficult, but I had a
16 separate conversation with him. It was just a quick
17 confirmation, here, let's get to the other issues.

18 A. Well, I think maybe this is why we are not quite
19 on the same page. I thought all of your questions had to
20 do with January 9, 2014.

21 Now that you have read this to me, I realize
22 that Mr. Beauchamp was telling about actions taken and
23 communications he had after January 9, 2014. So I am
24 aware that after that time period, Beauchamp had told him
25 you have to communicate with investors, and Chittick was

SCOTT RHODES, 5/15/2019

1 reporting back to him that he was in communication with
2 investors.

3 Q. And he had told them about the fraud. True?

4 A. Yes, and that was the understanding, that he
5 told them about the fraud.

6 Q. And Beauchamp had told him he had to do that
7 imminently, right?

8 A. Correct. Correct. But I think the way -- the
9 reason you and I weren't on the same page is I thought you
10 were asking me about January 9, 2014. I now realize you
11 are talking about the time period after that as well.

12 Q. All right.

13 A. So...

14 Q. So in your report you talk about the fact that
15 there was an issue about when it had to be disclosed to
16 the investors.

17 A. That's a summary, but I do have information or I
18 do have opinions in there about timing, yes, I do.

19 Q. And do you recall that Mr. Chittick had
20 expressed to Mr. Beauchamp that he did not want to
21 disclose to investors because he was afraid there was
22 going to be a run on the bank?

23 A. I don't think that's --

24 MR. DEWULF: Object to form.

25 THE WITNESS: I don't -- I think what he said is

SCOTT RHODES, 5/15/2019

1 not that he didn't want to disclose to investors. It's
2 that he was -- he wanted to try to document the plan they
3 had to fix the problem, so that when he did disclose, the
4 disclosure would -- would include both the issue and its
5 resolution.

6 Q. All right.

7 A. So it's a question of timing now.

8 Q. I think we are saying the same thing.

9 A. Maybe, except I thought you said --

10 Q. Let me -- let me break it down.

11 Did you see anything in all the materials you
12 reviewed to prepare your preliminary opinion that Chittick
13 was concerned if the investors knew about the fraud, there
14 would be a run on the bank and he would be out of
15 business?

16 A. Yes.

17 Q. Okay. And you have just expressed that Chittick
18 wanted to, I believe, do the Forbearance Agreement so that
19 when disclosure had to be made, he could disclose to
20 investors not only the fraud, but what they were doing
21 because of that?

22 MR. DeWULF: Object to form.

23 THE WITNESS: I think that, to be a little bit
24 more precise, Menaged and Chittick put together a plan
25 before they revealed any of this to Beauchamp, the

SCOTT RHODES, 5/15/2019

1 existence of the problem or the resolution, and they were
2 already acting on their plan.

3 So when Beauchamp became aware of it, he became
4 aware of the general parameters of the issue and the fact
5 that they had a plan. That was already in place.

6 Chittick expressed that he understood that he
7 was going to have to disclose, but that he had hoped that
8 he would, as I just said, be able to disclose both the
9 issue and the plan and its -- and the progress towards
10 completing the plan.

11 As I understand it, Beauchamp said you need to
12 document that plan. It has to be something in writing.
13 And so the Forbearance Agreement arose out of the need to
14 have the plan memorialized.

15 Q. But based on all the materials you reviewed, my
16 understanding of your opinion, and maybe I'm summarizing
17 it wrong, is that Mr. Beauchamp agreed we will put off the
18 updated Private Offering Memorandum until the Forbearance
19 Agreement was done.

20 A. I -- my sense of it is not quite that way. My
21 sense of it was that he stated and restated that
22 disclosure was not an option, but it was absolutely
23 mandatory; that time was of the essence; and that when he
24 was told by Chittick and Menaged, I assume, that the plan
25 was already well under way, that they thought it would

SCOTT RHODES, 5/15/2019

1 take -- in the beginning I think they said they thought it
2 would take a couple of weeks. Menaged had an attorney,
3 that they were starting to work on the Forbearance
4 Agreement. That Beauchamp's bottom line was if you get
5 this documentation done quickly, then okay, but it was
6 important that it happen quickly.

7 So it was not an open-ended, okay, go out and
8 get your Forbearance Agreement, and whenever you get
9 around to finishing it, then we will disclose. That is
10 not the sense that I have at all.

11 Q. All right. So I just want to understand what's
12 in your mind, what are the facts you are assuming in
13 forming your opinions.

14 And so what I understand you are saying is that
15 Beauchamp agreed we can put off doing the update to the
16 Private Offering Memorandum till we did the Forbearance
17 Agreement, assuming we could get this done quickly?

18 A. I --

19 MR. DeWULF: Object to form.

20 THE WITNESS: I think that's a fairly, fairly
21 accurate summary of what I just said.

22 Q. With respect to securities law, you have no
23 opinion as to whether that is right or wrong in terms of
24 what has to be done under securities law. True?

25 MR. DeWULF: Object to form.

SCOTT RHODES, 5/15/2019

1 THE WITNESS: well, I'm not qualified to give an
2 opinion.

3 Q. Okay.

4 A. I don't know whether or not -- I wouldn't say.
5 I'm not qualified.

6 Q. Now, the Forbearance Agreement did not happen
7 quickly, did it?

8 A. No, as it turned out, it did not.

9 Q. And in fact it took from -- well, let's just
10 assume a start date of January 9th. It wasn't until
11 sometime in April 2014 that the Forbearance Agreement was
12 signed?

13 A. That sounds right.

14 Q. All right. And would it be fair to say that
15 Mr. Beauchamp agreed to put off the Private Offering
16 Memorandum from January 9th until the time the Forbearance
17 Agreement was signed in April of 2014?

18 MR. DeWULF: Could you read that back, please.

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

20 MR. DeWULF: Object to form.

21 THE WITNESS: I'm not -- I'm not sure. I don't
22 remember any communications in which it was put to him in
23 exactly that -- in those terms.

24 The Forbearance Agreement started, the
25 negotiations turned out to be much more difficult than I

SCOTT RHODES, 5/15/2019

1 think Mr. Beauchamp thought they would be, more
2 complicated than Mr. Beauchamp felt they would be, but
3 your question to me was that Beauchamp agreed to put it
4 off. Well, he didn't really control. He can give advice,
5 but ultimately Mr. Chittick either follows it or doesn't.

6 I don't remember any communications during that
7 time period of January to April that refer to the
8 Forbearance Agreement with, at the same time, a discussion
9 about the timing of the POM.

10 Q. Okay. Let me go at it this way.

11 A. Okay.

12 Q. On your review of the evidence in forming your
13 opinion on this case, based on all the documents you
14 reviewed, did you see any time between January 9th of 2014
15 and the time the Forbearance Agreement was signed in April
16 of 2014 that Mr. Beauchamp said, as the lawyer for DenSco,
17 "Stop. We have to make disclosure now"?

18 MR. DeWULF: Object to form.

19 THE WITNESS: I -- no, I have not. And I think
20 that's what I meant a moment ago.

21 Q. Okay.

22 A. I'm not --

23 Q. And you would agree with me that's -- he is --
24 one of his responsibilities as the lawyer for DenSco is to
25 tell DenSco when they have to make the disclosure?

SCOTT RHODES, 5/15/2019

1 A. Well, are you talking about in terms of the
2 exact date? No, I'm not sure I can give you that answer.
3 And I think you would have to refer to Mr. Olson or Mr. --

4 I'm sorry. I forgot his name.

5 MR. DeWULF: Wertlieb.

6 THE WITNESS: -- Wertlieb.

7 Q. Just so I'm clear --

8 A. If you're --

9 Q. -- David Beauchamp is acting as a securities
10 lawyer for DenSco.

11 Will you give me that much?

12 A. Yes.

13 Q. All right. Acting as a securities lawyer for
14 DenSco, you are not aware of any time between -- based on
15 your review of the record, between January 9th of 2014 and
16 April of 2014 when the Forbearance Agreement was signed
17 that he, as a lawyer, said, "Stop, we have to do the
18 disclosure right now"?

19 A. Not in those terms. I am aware of email
20 communications, at least one that I'm thinking of now,
21 between Beauchamp and Chittick in which Beauchamp is
22 discussing the negotiations, and is reminding Chittick as
23 DenSco's lawyer that he needs to be wary of Menaged's
24 lawyer, who is making demands on what's in the Forbearance
25 Agreement that are atypical for a Forbearance Agreement,

SCOTT RHODES, 5/15/2019

1 and in essence is saying the whole thing is taking a lot
2 longer than it needs to be. This should be -- I have done
3 hundreds of these. This should be a simple transaction.
4 It's going on way too long.

5 I take that as part and parcel of the earlier
6 advice of which Chittick was well aware, which is we need
7 to disclose ASAP. So I see that as one transaction. We
8 are trying to get this Forbearance Agreement done. It's
9 taking much too long. We need to get it finished, because
10 we need to disclose.

11 Q. Okay. If Mr. Beauchamp is giving the advice for
12 Clark Hill that this updated POM has to be done ASAP and
13 it's not getting done, what's his obligation?

14 MR. DeWULF: Object to form.

15 THE WITNESS: To keep trying.

16 Q. When does ER 1.13 kick in and he may have to
17 withdraw from representation?

18 A. Okay. Well, there -- not yet. The question is
19 one of professional judgment. Mr. Beauchamp was very
20 experienced not only in general securities law as a
21 lawyer, but also with this client. This was a client that
22 was in a serious, had a serious issue, and it had to
23 result ultimately in disclosure to investors.

24 To follow your question a little bit, the logic
25 and where I fail a little bit to understand it, is if you

SCOTT RHODES, 5/15/2019

1 assume that somewhere along the line here between January
2 and April that what Beauchamp should have done is say
3 I'm -- under ER 1.13, I'm withdrawing because this is
4 taking too long and there have been no disclosures, then
5 where does that leave DenSco? without a lawyer, without
6 anybody with the knowledge, without anybody with the
7 experience, and so DenSco is really the one that's left
8 all by itself, if you take that line of reasoning.

9 In my view, in my opinion, the standard of care
10 absolutely allowed Beauchamp to make a professional
11 judgment that under these circumstances, he can stay in
12 there and continue to give the advice necessary to get the
13 situation under control, which is finishing the
14 Forbearance Agreement and then doing the disclosures.

15 Q. Under the federal securities law and the state
16 securities law, did Mr. Beauchamp have professional
17 judgment about when material disclosures had to be made to
18 buyers of securities?

19 MR. DEWULF: Object to form.

20 THE WITNESS: Are you asking me to make an
21 assumption about what those state and federal laws say?

22 MR. CAMPBELL: Read my question back to the
23 expert.

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

25 THE WITNESS: I'm not an expert on federal or

SCOTT RHODES, 5/15/2019

1 state securities laws. As a general matter, experts -- as
2 an expert in regard to the practice of law in general,
3 there is, as I said earlier, there is always a legal
4 framework for any lawyer's work. And so if there is some
5 legal time restriction placed on something, whether it's a
6 statute of limitations or anything else, then clearly that
7 comes into play --

8 Q. So --

9 A. -- but if there isn't one, then the lawyer's
10 judgment --

11 MR. DeWULF: Let him finish his answer.

12 THE WITNESS: -- then the lawyer's judgment
13 determines the time.

14 Q. Assume, sir, for me that the material disclosure
15 requirement of federal securities law and state securities
16 law requires disclosure of material facts before a person
17 buys securities.

18 would that change your opinion?

19 A. Are you asking me to assume that there were
20 securities purchased during this time period?

21 Q. Do you understand that the promissory notes
22 issued by DenSco are securities under federal law and
23 state law?

24 A. Let me put it this way. Yes, I understand that,
25 but I'm -- because of the restrictions here, we are going

SCOTT RHODES, 5/15/2019

1 to assume -- I'm going to take it as an assumption, and I
2 am willing to do that, yes.

3 Q. Okay.

4 A. It's a security.

5 Q. Well, sir, you can't look at someone's
6 professional obligations without looking at the context of
7 what he is doing, right?

8 A. That's -- that's a context, yes.

9 Q. Without knowing what securities law requires,
10 how -- strike it. Just strike it.

11 MR. DeWULF: You know, it's been a little over
12 an hour, Colin, since lunch. We're -- it might be a good
13 time to take break, if it works for your questioning.

14 MR. CAMPBELL: Yeah. Let me just look at my
15 notes here.

16 Yeah, we will take a break.

17 MR. DeWULF: How much time do we have left?

18 VIDEOGRAPHER: We have been on the record
19 approximately three hours and 43 minutes, so...

20 We are going off the record at 2:08 p.m.

21 (A recess was taken from 2:08 p.m. to 2:20 p.m.)

22 VIDEOGRAPHER: This begins media unit number
23 five. We are on the record at 2:20 p.m.

24 Q. I want you to answer this question yes or no, if
25 you can. If you can't answer it yes or no, tell me you

SCOTT RHODES, 5/15/2019

1 can't. Okay?

2 A. Okay.

3 Q. Can you do that?

4 A. I'll do my best.

5 Q. Do you see any inconsistency between
6 Mr. Beauchamp's testimony that Denny Chittick told me he
7 gave full disclosure to the investors in January 2014 and
8 Mr. Beauchamp's testimony that Mr. Chittick did not want
9 to give full disclosure until after the Forbearance
10 Agreement was done?

11 A. I can't answer the question, because I don't
12 think it summarizes the actual testimony.

13 Q. So you can't answer it yes or no?

14 A. I cannot, because I think the first part of it
15 is inaccurate.

16 Q. Okay. May 2014, from everything you read in the
17 record, what's -- what's your factual assumptions about
18 what happened in May 2014?

19 A. Well, May 2014 is Clark Hill terminated the
20 representation. I don't know if it's end of April of '14
21 or May of '14, but the Forbearance Agreement was
22 completed, as we said earlier, at that point consistent
23 with his earlier not only advice, but his insistence we
24 are going to finish the update, the POM. At that point
25 Mr. Chittick informed him he was not willing to do so.

SCOTT RHODES, 5/15/2019

1 And because of that, for the first time having
2 received a clear indication from Mr. Chittick he was not
3 going to comply with the disclosure obligations,
4 Mr. Beauchamp concluded that Clark Hill was going to
5 withdraw and they did.

6 Q. All right. And you would agree that in May of
7 2014 there was a conflict of interest between what
8 Mr. Chittick wanted and what was in the best interest of
9 DenSco?

10 A. Well, what Mr. -- yes. What Mr. Chittick was
11 insisting at that point, yes. I agree.

12 Q. And turn to Mr. Beauchamp's deposition at
13 page 121.

14 You will see on line 20, Question: Did you ever
15 consider that there was a conflict of interest between
16 Mr. Chittick and DenSco?

17 Answer: Only when he refused to do the
18 disclosure that we provided to him in May 2014 to disclose
19 the Forbearance Agreements to its investors.

20 And you agree with that?

21 A. I do.

22 Q. And would you agree that Mr. Beauchamp was aware
23 in May 2014 that Mr. Chittick was committing securities
24 fraud?

25 MR. DeWULF: Object to form.

SCOTT RHODES, 5/15/2019

1 THE WITNESS: I think all I'm qualified to say
2 in that regard is that in May of 2014, he knew that
3 Mr. Chittick, as the principal, the constituent for his
4 client, DenSco, was -- was intending to act or was acting
5 in a manner that was contrary to the law.

6 Q. All right.

7 A. And I'm using the terminology, as I'm sure you
8 recognize, that pertains to ER 1.13.

9 Q. Turn to page 161 of Mr. Beauchamp's deposition?

10 MR. DeWULF: 160 what?

11 MR. CAMPBELL: 161.

12 Q. Line 7, Question: Was there a point in time,
13 sir, where you learned that Mr. Chittick was continuing to
14 raise money?

15 Answer: As I indicated earlier, the end of
16 April, beginning of May of 2014, he acknowledged he was
17 doing it beyond his line of credit and beyond his personal
18 loans that he had.

19 A. Correct.

20 Q. Question: So you learned at the end of April or
21 early May?

22 Answer: Correct.

23 Question: All right. And once you learned
24 that, you knew he was committing a securities violation?

25 The witness: I -- at that point, I believed he

SCOTT RHODES, 5/15/2019

1 had committed a securities violation, and it was paramount
2 that we get the disclosure statement out in writing to all
3 of the investors as quickly as possible. His
4 representations that he had advised everybody and told
5 them to the contrary, we needed something more formal than
6 that.

7 A. Correct.

8 Q. You agree with Mr. Beauchamp that at that point
9 in time, Mr. Beauchamp believed there was a securities
10 violation?

11 A. Well, certainly that's what he said, and there
12 is no reason to question his professional judgment about
13 that call.

14 Q. Right.

15 A. Up until that time before, I -- there was a
16 question as to whether the written POM and then of course
17 there might have been oral disclosures made, but it
18 appears at this point in April, early May, Mr. Beauchamp
19 is concluding that there had been either no oral
20 disclosures or inadequate oral disclosures.

21 Q. And in the situation or circumstance when your
22 client is committing an ongoing fraud, securities fraud,
23 or a crime, there is a mandatory duty to withdraw. True?

24 A. Yes, I think that at this point the withdrawal
25 was mandatory.

SCOTT RHODES, 5/15/2019

1 Q. So earlier today I think I asked you about this
2 and you seemed to suggest, I thought, that it wasn't
3 mandatory.

4 A. When? I don't think --

5 Q. This morning.

6 A. -- we were talking about May 2014 earlier.

7 Q. Okay. If Mr. Beauchamp had knowledge, and I
8 realize -- let's assume actual knowledge is a question of
9 fact.

10 A. Okay.

11 Q. If he had actual knowledge of a securities
12 violation prior to May of 2014, he would have been
13 required to mandatorily withdraw at that time?

14 A. It depends on whether under the securities law
15 it would have been possible to remedy the improper conduct
16 through disclosures.

17 Q. Let me rephrase it.

18 A. Sure.

19 Q. If he had actual knowledge at any time prior to
20 May of 2014 that there was an ongoing securities fraud or
21 ongoing crime and his client refused to follow his advice,
22 he had a duty to mandatorily withdraw, right?

23 A. You rephrased it, but my answer is the same.

24 First of all, DenSco is the client. Not
25 Chittick. If he was aware of an ongoing fraud earlier,

SCOTT RHODES, 5/15/2019

1 the obligation would have been first, as we have
2 discussed, to inform Chittick, "I'm not your lawyer. I'm
3 DenSco's lawyer."

4 Then the next question is, can I, remaining as
5 DenSco's lawyer, assure that such actions are taken to
6 protect DenSco's interests, notwithstanding Chittick's
7 fraud. And if so, can I continue as counsel for DenSco in
8 order to protect the interests of DenSco by whatever would
9 be necessary under the securities laws, making proper
10 disclosures or whatever else needs to be done.

11 Q. Let me rephrase it. We are making this more
12 complicated than it has to be.

13 If prior to May 2014 -- well, strike that.

14 You understand that DenSco only has one
15 employee, one president, one shareholder --

16 A. Sure.

17 Q. -- right?

18 A. I understand.

19 Q. Prior to May 2014, if Mr. Beauchamp has actual
20 knowledge that DenSco is selling securities in violation
21 of the federal and state securities laws by not making
22 full disclosure of material matters, and Mr. Chittick
23 won't change that, he would have a mandatory duty to
24 withdraw. True?

25 A. I think that the first step would have been to

SCOTT RHODES, 5/15/2019

1 advise Chittick I'm not your lawyer, have Chittick get
2 separate counsel, and to -- you have to do something. So
3 I'm not -- I'm not indicating that there is not a
4 mandatory withdrawal that might come into play, and it
5 might happen very quickly, but before, there is going to
6 be a discussion with Chittick: I'm not your lawyer. You
7 have committed securities fraud. Your -- your duties run
8 to DenSco. My duty runs to try to -- to DenSco as well.
9 I'm going to try to save the company.

10 But obviously he can't do anything on his own.
11 If DenSco won't -- if Chittick won't step down, then
12 probably he is going to be left with no option than to
13 withdraw.

14 Q. well --

15 A. And the reason I am -- I am quibbling with you a
16 little bit here is that I understand what you are saying
17 is that DenSco has committed securities fraud, because --
18 I assume it's because Chittick's actions are imputed to
19 DenSco.

20 On the other hand, Chittick made his own
21 decisions and they -- under your hypothetical, and they
22 would have been imputed. They would have been his own
23 actions.

24 And so there is a little window of time, even in
25 a slow -- in a closely held corporation where perhaps

SCOTT RHODES, 5/15/2019

1 there can be a separation between that one individual, and
2 someone else can step in and take over the company.

3 And so that's -- I don't want to foreclose that
4 as being a possibility. And unless Beauchamp had had the
5 knowledge necessary, under your hypothetical, if he had
6 then had that discussion with Chittick, there is some
7 possibility, maybe a slim one, but some possibility
8 Chittick would have resigned, someone else would have
9 stepped in to take control of the company, and then
10 perhaps Clark Hill could have stayed on as company
11 counsel.

12 Q. Let's go back to May of 2014.

13 A. Okay.

14 Q. Okay?

15 You agree he had a mandatory duty to withdraw in
16 May of 2014?

17 A. Because at that time --

18 MR. DeWULF: Object to form.

19 THE WITNESS: I do, and that's because at that
20 point Chittick had been advised. Mr. Beauchamp had done
21 everything he was supposed to do. He had counseled him,
22 he had stayed with him, he had worked with us, and then it
23 gets to the point where it is now time to disclose. And
24 it's at that point that he learns that Chittick has lied
25 to him, that there were other loans, that there were --

SCOTT RHODES, 5/15/2019

1 there was a failure to disclose after he had been told you
2 should not be raising new money, that Beauchamp had not
3 been aware of those facts, and that Chittick is saying,
4 "No, I'm not going to disclose any of these facts."

5 well, at that point there is no -- there are no
6 options. You have to -- you have to withdraw.

7 Q. Let me give you a hypothetical.

8 First of all, you understand there is an issue
9 of fact between plaintiffs and Clark Hill about whether
10 they terminated or not?

11 A. I have understood that, yes.

12 Q. Assume hypothetically that Mr. Beauchamp did not
13 terminate the representation; that he put his pencil down
14 and said I'll give you a year to fix this problem.

15 would that meet the standard of care?

16 MR. DeWULF: Object to form.

17 THE WITNESS: You are asking me then in very
18 simple terms, so I'm going to answer it in simple terms.
19 In other words, I'm assuming there are no other facts,
20 that there was not a discussion between Beauchamp and
21 Chittick. So, in other words, you are asking me to assume
22 things that are inconsistent with what I have seen, but I
23 will answer it as such.

24 Under these facts with what he knew in May of
25 2014, as I have testified, I think he had a duty to

SCOTT RHODES, 5/15/2019

1 withdraw. So if he did not withdraw, then, no, he didn't
2 meet -- he did not meet his duties.

3 Q. When you terminate your representation because
4 your client is committing an ongoing crime or fraud, is it
5 your opinion you can -- that Mr. Beauchamp could continue
6 to work on the Forbearance Agreement that was going to be
7 disclosed in the Private Offering Memorandum?

8 A. Well, first of all, you started that as sort of
9 a general question, if you, and then you went specifically
10 into him.

11 So generally speaking, when a lawyer withdraws,
12 whether it's mandatory or not, a lawyer needs to, has to
13 do what's necessary to avoid prejudice. That's called
14 just cleanup work basically. So, yes, it's not unusual
15 for an attorney-client relationship to end, but with some
16 work to be done after the -- after that.

17 Q. Okay. So your opinion is that Mr. Beauchamp,
18 under the standard of care for securities lawyers, could
19 continue working on the Forbearance Agreement after he
20 terminated the representation for fraud?

21 A. Now --

22 MR. DeWULF: Object to form.

23 THE WITNESS: -- again, my standard of care is
24 with respect to lawyers in general under the ethical and
25 professional obligations. I'm not a securities expert.

SCOTT RHODES, 5/15/2019

1 In my opinion, based on the facts as I have seen
2 them, when he determined that he was going to end the
3 attorney-client relationship, it was based on information
4 he had received about loans that had been effectuated
5 without his knowledge, with new -- new money coming in
6 that he had not known about, apparently with either
7 inadequate or nonexistent disclosures, and that Chittick
8 was going to refuse to complete the revised updated POM.

9 The Forbearance Agreement was a piece of that,
10 but it wasn't all of that. There was nothing that
11 required immediate cessation of work on the Forbearance
12 Agreement, because that's not part of the problem that
13 caused the termination of the representation. It was a
14 sliver of work, and it was still in DenSco's best interest
15 to complete that Forbearance Agreement.

16 Q. Remember how we had talked earlier this morning
17 about whether a client might get confused about whether
18 the representation had been terminated or not?

19 A. We talked about that, yes.

20 Q. And that's one of the reasons why law firms, at
21 least if they go and talk to their general counsel and
22 risk managers, might do a written closure letter, right?

23 A. As a best practice, yes.

24 Q. All right. There is no termination letter in
25 this case, right?

SCOTT RHODES, 5/15/2019

1 A. Right.

2 Q. In fact, there is not a scrap of paper about the
3 termination. Not an email, not a note, not an indication
4 on a billing statement, right?

5 A. That's -- I haven't seen anything like that, and
6 I'm gathering that's the case since it's referred -- those
7 facts are referred to several times, so I think that's
8 correct.

9 Q. If Mr. Beauchamp is continuing to provide work,
10 when is Mr. Chittick going to assume the representation
11 ceases?

12 MR. DeWULF: Object to form.

13 THE WITNESS: When he is informed.

14 Q. Have you seen anything -- the only thing I have
15 read is that Mr. Beauchamp says that he orally told him he
16 was terminating in May.

17 Have you seen anything else --

18 A. Well, this morning --

19 Q. -- of when he was informed?

20 A. This morning you asked me to look at an exhibit
21 which is an email from 2015 in which Mr. Beauchamp is
22 suggesting a lunch, and in it he describes the end of the
23 relationship and the last period of time, and he is
24 talking about the Forbearance Agreement, he is talking
25 about the disclosure issues. And he -- and he is, in

SCOTT RHODES, 5/15/2019

1 essence, saying I'm very sorry that we got along so badly.
2 You, Chittick, were frustrated with me. I was frustrated.
3 It was a difficult situation. To me that's a language
4 that's describing an attorney-client relationship that
5 ended badly.

6 Q. You are speculating, sir. Will you admit that?

7 MR. DeWULF: Object to form.

8 THE WITNESS: I am giving you my impression
9 based on what I read.

10 Q. Your impression is pure speculation. Would you
11 admit that?

12 MR. DeWULF: Object to form.

13 THE WITNESS: I don't know. I don't feel like
14 it's speculation, but you are free to call it that if you
15 like.

16 Q. Do you know why they were still working on the
17 Forbearance Agreement in June and July? It was signed in
18 April.

19 A. No, I don't know what they did with it.

20 Q. Do -- were you aware that Mr. Beauchamp and
21 Clark Hill had goofed up the numbers in the Forbearance
22 Agreement and it had to be redone?

23 MR. DeWULF: Object to form.

24 THE WITNESS: No, that's -- I was not aware of
25 that.

SCOTT RHODES, 5/15/2019

1 Q. Do you think that might be a basis why a client
2 might be upset, because the work was not done competently
3 the first time?

4 MR. DeWULF: Object to form.

5 THE WITNESS: I don't know.

6 Q. Mr. Chittick commits suicide. Mr. Beauchamp
7 reports that to the risk manager of Clark Hill.

8 Do you recall his testimony why he did that?

9 A. Beauchamp's testimony why he did that? I
10 don't -- I don't remember the exact words.

11 Q. Do you recall that he testified that when
12 someone who is handling money, who is a client of yours,
13 commits suicide and he is handling investors' money,
14 that's a fact you should disclose to the risk manager?

15 A. Well, I -- I do think -- I don't know if he
16 stated it as succinctly as you just did, but I think
17 that's -- that's correct.

18 Q. I think you told me you read the Iggy letter?

19 A. I did.

20 Q. And you read the investor letter?

21 A. Right.

22 Q. You would agree that there are statements in
23 those letters that would support a lawyer looking at
24 filing a cause of action against Clark Hill?

25 MR. DeWULF: Object to form.

SCOTT RHODES, 5/15/2019

1 THE WITNESS: Well, I don't know what you mean
2 by a lawyer looking at it. If you are asking whether a
3 lawyer would investigate a possible cause of action,
4 maybe. I'm not sure I have seen anything that supports a
5 cause of action against Clark Hill.

6 Q. Why do you think we are here, sir?

7 A. Because apparently you saw something, but I
8 don't know if it was in that letter or elsewhere.

9 Q. Let's turn to page 90 of Mr. Beauchamp's
10 deposition.

11 MR. DeWULF: What page was it again?

12 THE WITNESS: 90.

13 Q. Page 90.

14 So let's start on line 2 on page 90: At any
15 time when you reviewed the investor letter did it cross
16 your mind you might be opening up the firm to a securities
17 action?

18 Line 9, The Witness: Yeah, I was.

19 Yes, it did cross my mind, but I was still
20 trying to do what was right under the circumstances to try
21 to help.

22 Question: All right. But you understood when
23 you read the investor letter that there were facts that
24 could be used to sue your firm for a securities action,
25 right?

SCOTT RHODES, 5/15/2019

1 The witness: I agree that there were statements
2 in this letter that, yeah, could lead to a litigation
3 against me and the firm.

4 Do you disagree with Mr. Beauchamp?

5 MR. DEWULF: Object to form.

6 THE WITNESS: well, he has said several things
7 here.

8 Your first question was, which I don't
9 understand, frankly, is when you reviewed the letter, it
10 seems that your question was just was the act of reviewing
11 it opening up the firm to a securities action. I don't
12 understand that. why would reading a letter open a firm
13 to --

14 Q. You are quibbling with me, Mr. Rhodes.

15 A. But was there something in the letter that might
16 be used by a plaintiff's counsel against the firm and did
17 Mr. Beauchamp recognize that? Sure, I see that.

18 Q. All right. You understand that he -- I think he
19 received the investor letter right away after
20 Mr. Chittick's suicide.

21 Do you recall that?

22 A. Within a short period of time, yes.

23 Q. well, within a day or so, right?

24 A. Uh-huh.

25 Q. Under the conflict of interest rules, when you

SCOTT RHODES, 5/15/2019

1 have a client that can sue you, what are your ethical
2 obligations?

3 MR. DeWULF: Object to form.

4 THE WITNESS: I'm not quite sure what you mean a
5 client who can sue you, because I guess any client can
6 sue.

7 Q. Chittick dies. It's quickly discovered that
8 Menaged has perpetrated a fraud on DenSco.

9 You are aware of that?

10 MR. DeWULF: Object to form.

11 THE WITNESS: I'm not sure what you mean by
12 quickly, but it was discovered, yes.

13 A. I mean, there was a bit of an investigation.

14 Q. Let me ask -- let me go at it this way, sir.

15 You think -- do you think there is a conflict of
16 interest in Clark Hill opening a file after Mr. Chittick's
17 death to represent DenSco in its wind-down?

18 A. Right. And you see in my opinion, you know that
19 I do not. I do not see one. And the reason for that is
20 because Chittick and Clark Hill had -- were the only law
21 firm with any institutional knowledge, even though it was
22 quite limited, and it turned out that Beauchamp didn't
23 know anywhere near as much as he had been led to believe,
24 but he had institutional knowledge about the company.

25 The company was in exigent circumstances based

SCOTT RHODES, 5/15/2019

1 on its principal committing suicide. The investors had no
2 idea what was going on. Chittick's sister, who was an
3 accountant, but from out of state and a stranger to the
4 company, suddenly has it put on her shoulders to manage
5 this, and the Arizona Corporation Commission is saying we
6 want documents and information.

7 I can't think of another law firm that could --
8 was in a better position to step in and stabilize that
9 situation so that then someone else takes over that can
10 try to bring a rational approach to the whole situation.

11 There was an emergency going on, and what I see
12 is that Clark Hill just did the discrete tasks necessary
13 to, as I say, stabilize the situation and then move on.

14 Q. Sir, your opinion with respect to this is set
15 forth in, I think, it's paragraph 44.

16 A. 44, correct.

17 Q. And that's the only place in your report you
18 address this, correct?

19 A. That's correct.

20 Q. You did not cite the conflict of interest Rule
21 ER 1.7 in your opinion --

22 A. Right.

23 Q. -- do you?

24 A. No, I don't.

25 Q. Does ER 1.7 have an exception?

SCOTT RHODES, 5/15/2019

1 A. Well, it does. It has one that says that it
2 doesn't apply if there is no conflict of interest.

3 Q. All right.

4 A. I don't think there was a conflict of interest.

5 Q. You are saying there was no conflict of
6 interest?

7 A. No. The fact that -- the fact that a law firm
8 has represented a company, its principal commits suicide,
9 and it appears that its principal commits suicide because
10 there was massive fraud that had been unknown to the -- to
11 the law firm.

12 But it's not -- it doesn't -- it's not
13 surprising that investors are not going to be happy about
14 that, and as often happens, they look around to see what
15 deep pockets might be available, and the law firm that
16 represented them might be one.

17 So that's all a possibility, but as of this time
18 period, nobody has made a claim against Clark Hill, nobody
19 has sent a demand letter to Clark Hill, nobody has given
20 them a litigation hold letter, because it's all new. And
21 what Mr. Beauchamp and Clark Hill did know is that the
22 situation was extremely volatile and somebody had to
23 stabilize it.

24 So is there a conflict there? No. Being a
25 smart enough lawyer who has been around the block a few

SCOTT RHODES, 5/15/2019

1 times to say there is a situation out here and there are
2 going to be people who look for deep pockets and ours
3 might be one of them, that's not a conflict. That's just
4 being savvy as to the real world. But there -- there had
5 been no claim at that time. There is no conflict.

6 Q. All right. Did you read the letter that
7 Mr. Beauchamp wrote to the investors?

8 A. I did.

9 Q. And he sent it out to every investor, correct?

10 A. I did.

11 Q. And you read that he recommended to the
12 investors that a receiver not be appointed.

13 Do you recall that?

14 A. I -- no. I think -- well, that's true, he said
15 that. He also gave them his reasons.

16 Q. Did he say --

17 A. A bankruptcy or a receiver.

18 Q. He told the investors, sir, that a receiver
19 should not be appointed. True?

20 A. I think that was in his bottom. I don't know --
21 I don't know if it was in the first email or in a
22 subsequent one, but at some point he made clear that all
23 things being told, he thought that they should -- his
24 advice was that they should either delay or not do a
25 receiver, correct, or bankruptcy.

SCOTT RHODES, 5/15/2019

1 Q. Do you think Mr. Beauchamp was naive enough to
2 believe that a receiver would not look at claims against
3 Clark Hill under the facts and circumstances of this case?

4 MR. DeWULF: Object to form.

5 THE WITNESS: You would have to ask him. I
6 don't think that I have read the reasonings that he gave.
7 The reasons are pretty common sense. Receivers are
8 expensive, bankruptcies are expensive, and if investors
9 can work together to resolve an issue, it might be in
10 their best financial interest. I didn't see any advice
11 beyond that.

12 Q. That's fine. I just want to know what you're
13 going to say in front of a jury.

14 There is no conflict of interest, in your
15 opinion, between Clark Hill representing DenSco in the
16 wind-up and its own interests. True?

17 A. Not as of the time that you asked me.

18 Now, later on, as you know, Clark Hill informed
19 individuals that they were going to be withdrawing because
20 they anticipated that there was a conflict, and that's
21 because they had received some indications of questions
22 being posed about their conduct.

23 So they were -- they recognized the conflict
24 once it occurred, but in the time period we are talking
25 about where there are these few discrete tasks were

SCOTT RHODES, 5/15/2019

1 performed, there was speculation that maybe some day they
2 would be sued, but there was no claim yet.

3 Q. So there -- Okay. Let's assume August 16th is
4 when the receiver is appointed.

5 A. Right.

6 Q. And Chittick dies, I think, the end of July --

7 A. July, I think.

8 Q. -- 2016.

9 when in that time period would a lawyer have
10 realized they had a conflict of interest between their
11 prior representation of DenSco, they are trying to protect
12 themselves, and DenSco's interests to recover money
13 suffered for the loss?

14 A. Well, first of all --

15 MR. DeWULF: Object to form.

16 THE WITNESS: -- I haven't seen any indication
17 of any action that I identified by Clark Hill where I said
18 to myself they are trying to protect themselves. I have
19 seen actions consistent with lawyers doing their duties
20 for their clients.

21 I haven't seen anything that indicated --

22 Q. You --

23 A. -- that the action was to protect themselves.

24 To finish my answer and to answer your question,
25 when would a lawyer do that? It's when a lawyer receives

SCOTT RHODES, 5/15/2019

1 either a telephone call or some other form of
2 communication that indicates a possible claim against the
3 law firm.

4 Q. You have reviewed all the facts in this case,
5 sir, and you are offering yourself as an expert witness.

6 when, between August 1 and August 16th, did
7 Clark Hill have a duty to withdraw from its representation
8 of DenSco because of a conflict of interest?

9 MR. DeWULF: Object to form.

10 THE WITNESS: I'm not sure it was actually
11 between those two dates, because I'm not sure when the
12 first communication came to Clark Hill that informed them,
13 that gave them the first indication of an actual review of
14 their conduct. And it might have been -- it might have
15 been after August.

16 Q. So when --

17 A. Might have been after the receiver was
18 appointed.

19 Q. When they wrote the letter to the investor about
20 not getting a receiver, your opinion is there was no
21 conflict of interest at that time?

22 A. That's my opinion.

23 Q. When they signed an affidavit saying that they
24 represented Chittick personally, was there a conflict of
25 interest then?

SCOTT RHODES, 5/15/2019

1 MR. DeWULF: Object to form.

2 THE WITNESS: You are referring to
3 Mr. Beauchamp's affidavit that he did in question -- with
4 regard to the question of potential privilege claims?

5 Q. The affidavit he testified in his deposition was
6 a misstatement, but was not intentional. That one.

7 MR. DeWULF: Object -- object to form.

8 THE WITNESS: I just want to make sure I'm
9 talking about the same. I don't want to testify about an
10 affidavit unless I know which one it is.

11 Q. Let me just ask you this.

12 You understand that the estate of Denny
13 Chittick, which DenSco started, excuse me, which Clark
14 Hill started representing, wanted to assert a privilege
15 over Chittick's material, Chittick's attorney-client
16 materials, right?

17 A. That's my general understanding, yes.

18 Q. And the estate wanted to say that Mr. Chittick
19 believed Clark Hill was representing him personally,
20 right?

21 MR. DeWULF: Object to form.

22 THE WITNESS: You are speaking of Gammage &
23 Burnham's arguments?

24 Q. That's their argument, yes.

25 A. Yeah, I think that's their argument.

SCOTT RHODES, 5/15/2019

1 Q. And they sent an affidavit to Mr. Beauchamp.

2 Do you recall that?

3 A. I believe that's correct, that they prepared the
4 affidavit.

5 Q. And Mr. Beauchamp changed the affidavit.

6 Do you understand that?

7 A. I don't remember that.

8 MR. DeWULF: Object to form.

9 THE WITNESS: No.

10 Q. You don't remember that?

11 A. No, I don't remember.

12 Q. And then he -- well, do you understand that the
13 affidavit said it was reasonable for Mr. Chittick to
14 believe that Beauchamp was representing him personally?

15 MR. DeWULF: Object to form.

16 THE WITNESS: I think that's a simplification.

17 MR. DeWULF: If we are going to talk about this,
18 I would recommend you show him the declaration so he can
19 review it, rather than test his memory about what might be
20 in the document.

21 THE WITNESS: Yeah, I don't remember it being
22 that definitive, as you just described.

23 Q. Do you agree it's a misstatement, as
24 Mr. Beauchamp said?

25 MR. DeWULF: Object to form.

SCOTT RHODES, 5/15/2019

1 THE WITNESS: That it's a misstatement? No, I
2 don't agree it's a misstatement.

3 Q. You understand that Mr. Beauchamp worked with
4 the Gammage law firm about what receiver should be
5 appointed in the case?

6 A. I don't know. No, I didn't know that.

7 Q. Do you there think that would be a conflict of
8 interest --

9 MR. DeWULF: Object to form.

10 Q. -- if Clark Hill was involved in trying to
11 determine what receiver would be appointed at the time
12 they were representing DenSco?

13 A. Not necessarily.

14 Q. Turn to page 90 of Mr. Beauchamp's deposition.

15 A. I happen to already be there.

16 Q. Oh, wait a minute. That's the wrong page. Hold
17 on.

18 Turn to 143, line 7.

19 A. Okay.

20 Q. Question: All right. But for purposes of our
21 deposition today, you will admit that the affidavit as
22 drafted that was submitted to the Court misrepresented the
23 facts?

24 The witness: I admit it's misleading, which was
25 not intentional.

SCOTT RHODES, 5/15/2019

1 MR. DeWULF: Counsel, for the record, that's
2 been amended and modified with corrections submitted to
3 the court reporter, so I think --

4 MR. CAMPBELL: It's just giving me another
5 opportunity to impeach him. That's all.

6 MR. DeWULF: What I'm telling you is that every
7 witness has an opportunity to review his testimony and
8 correct it when either he misheard, misunderstood the
9 question, or the court reporter didn't reflect it.

10 MR. CAMPBELL: We'll argue that to a jury.

11 MR. DeWULF: And so the comments -- you can
12 argue all you would like about what you --

13 MR. CAMPBELL: Well, you are the one arguing.

14 MR. DeWULF: No. What I'm telling you is that
15 if you are going to quote from the testimony of a witness
16 in a deposition, then you ought to also take into account
17 the comments that are made on the corrections.

18 MR. CAMPBELL: You can ask him any question you
19 want, sir.

20 MR. DeWULF: All right. For the record, I'm
21 just saying that what -- your question was incomplete and
22 inaccurate --

23 MR. CAMPBELL: Then object to form.

24 MR. DeWULF: -- as questioned.

25 MR. CAMPBELL: Then object to form.

SCOTT RHODES, 5/15/2019

1 MR. DeWULF: This went beyond that.

2 MR. CAMPBELL: Obviously.

3 Q. Do you disagree with what Mr. Beauchamp
4 testified to under oath in his deposition?

5 A. Well, I see --

6 MR. DeWULF: Object to form.

7 THE WITNESS: I see the words on the page. You
8 used the word "misrepresented." He said "misleading." He
9 said it was not intentional.

10 Q. You agree that Mr. Beauchamp's client was
11 DenSco?

12 A. Yes. I think --

13 Q. Not Mr. Chittick personally. True?

14 A. Well, you are right, but -- but as ER 1.13
15 points out, it's actually a very interesting part of the
16 rule, because it says that typically a lawyer for an
17 organization represents the organization, not its
18 constituents. And yet in comments, I think it might even
19 be the first comment, it says that most of the time in a
20 typical setting the representatives of the company have a
21 reasonable expectation that their communications with
22 counsel are -- are confidential, if not privileged. There
23 is case law that -- that distinguishes between when such
24 communications are privileged and not.

25 so even though there is not an attorney-client

SCOTT RHODES, 5/15/2019

1 relationship, there is a -- in a typical setting there is
2 an expectation of confidentiality in communications. The
3 issue for the affidavit had to do with privilege.

4 Q. The privilege belongs to the organization, sir,
5 correct?

6 A. DenSco's privilege belongs to the organization,
7 that's correct.

8 Q. Right.

9 A. Yes.

10 Q. And Mr. Beauchamp at that time was representing
11 DenSco. True?

12 A. Correct, yes.

13 Q. And representing DenSco, he signed an affidavit
14 that he -- it was reasonable for Chittick to believe he
15 represented him personally. True?

16 MR. DeWULF: Object to form. Again --

17 THE WITNESS: That's correct.

18 MR. DeWULF: -- with the ongoing objection that
19 the declaration speaks for itself. If you are going to
20 ask him about the language of the declaration, I would ask
21 that you present it to him so he can look at it.

22 Q. Can you answer my question?

23 A. And frankly, he is in a much better position
24 than I am as to what he intended by the words. I'm just
25 telling you that in a closely-held corporation, there

SCOTT RHODES, 5/15/2019

1 often is really very -- there is little or no distinction
2 between the entity and the principal --

3 Q. Turn to --

4 A. -- in their communications.

5 Q. Turn to page 103 of Mr. Beauchamp's deposition.

6 Are you on 103?

7 A. Almost.

8 Q. Line 6.

9 A. Okay.

10 Q. All right. You understand there is a big
11 difference between communicating with Mr. Chittick as the
12 president and owner of DenSco and representing him
13 individually. True?

14 Answer: True.

15 And then turn to page 105. And this is
16 referring to a communication he had with the Arizona
17 Corporation commission on line 12.

18 You say and write, quote, I have not previously
19 represented Denny Chittick and I do not have authority to
20 accept the service of subpoena on Mr. Chittick or his
21 Estate.

22 A. Right.

23 Q. Turn to 121, line 17: Did you ever represent
24 Mr. Chittick personally, yes or no?

25 Answer: No, I did not.

SCOTT RHODES, 5/15/2019

1 Did I read that correctly?

2 A. Yes, you did.

3 Q. Turn to his deposition at page 140. Turn to
4 page or line 21.

5 Question by Mr. Campbell: Did you ever tell
6 Mr. Chittick he was wrong to consider you his counsel?

7 Answer: We did have a conversation several
8 times that I'm his counsel in connection with being an
9 officer and director of DenSco, and DenSco is the client.

10 Did I read that correctly?

11 A. Yes, you did.

12 Q. Your understanding of the facts was that
13 Mr. Beauchamp represented DenSco and not Mr. Chittick
14 personally. True?

15 A. Yeah, absolutely. And -- but the distinction I
16 was trying to draw is DenSco and Chittick in his official
17 capacity, and under 1.13, while communicating with a
18 lawyer in your official capacity, you have an expectation
19 of privilege.

20 And I don't know much about this -- this issue
21 that was being litigated as to privilege when it pertains
22 to Mr. Chittick's documents and after his suicide. It
23 just doesn't seem that surprising to me. If there is a
24 combination of some documents that are personal and some
25 that are business oriented and maybe some that are a

SCOTT RHODES, 5/15/2019

1 combination of both, then typically what -- in my
2 experience what lawyers do is they assert a privilege so
3 that then they can be sorted out through litigation as to
4 what is and what is not privileged. And you have to give
5 an explanation to the court as to what the arguments, why
6 should there be a general assertion of privilege to start
7 with, and then sort of a winnowing down of that to
8 determine what is and isn't privilege.

9 And it's very simple the reason. If a law firm
10 starts by waiving privilege, you can't undo that. So you
11 always start with the most conservative approach. Some of
12 these documents are likely privileged. We are going to
13 assert a privilege, and we will argue and litigate how
14 this plays out.

15 And the way I interpreted the affidavit -- and
16 perhaps, you know, I'm wrong, you will have to ask
17 Mr. Beauchamp about it, and I know you did -- I
18 interpreted it simply trying to say that because Chittick
19 was the principal of DenSco, he assumes that Chittick had
20 an expectation of confidentiality as it concerns
21 communications with him as DenSco's counsel.

22 Q. Was it in DenSco's best interest after
23 Chittick's death to delay production of documents to the
24 Arizona Corporation Commission and to the receiver --

25 MR. DeWULF: Object to form.

SCOTT RHODES, 5/15/2019

1 Q. -- by asserting a privilege?

2 A. Well, first of all, I understand it was
3 Gammage & Burnham that did that on behalf of the estate.

4 Q. Mr. Beauchamp filed an affidavit, did he not?

5 A. True, but he was not counsel for DenSco at the
6 time, was he?

7 Q. Why do you say that?

8 A. I don't know. I don't remember. It's a
9 question.

10 Q. He was.

11 A. I don't know if it was or -- it was in DenSco's
12 best interests or not. It was just a question for
13 litigation.

14 MR. CAMPBELL: All right. Read and sign?

15 MR. DeWULF: Yes.

16 VIDEOGRAPHER: This concludes the videotaped
17 deposition of J. Scott Rhodes, consisting of one media
18 unit. We are going off the record at 3:01 p.m.

19 (3:01 p.m.)

20

21

22

SCOTT RHODES

23

24

25

SCOTT RHODES, 5/15/2019

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

BE IT KNOWN that the foregoing proceeding was taken before me; that the witness before testifying was duly sworn by me to testify to the whole truth; that the questions propounded to the witness and the answers of the witness thereto were taken down by me in shorthand and thereafter reduced to typewriting under my direction; that the foregoing is a true and correct transcript of all proceedings had upon the taking of said deposition, all done to the best of my skill and ability.

I CERTIFY that I am in no way related to any of the parties hereto nor am I in any way interested in the outcome hereof.

- Review and signature was requested.
- Review and signature was waived.
- Review and signature was not requested.

I CERTIFY that I have complied with the ethical obligations in ACJA Sections 7-206(F)(3) and 7-206-(J)(1)(g)(1) and (2).

<u>Kelly Sue Oglesby</u>	5/24/2019
Kelly Sue Oglesby	Date
Arizona Certified Reporter No. 50178	

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

<u>JD REPORTING, INC.</u>	5/24/2019
JD REPORTING, INC.	Date
Arizona Registered Reporting Firm R1012	