

MARK SIFFERMAN, 8/31/2018

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REQUESTS TO PRODUCE DOCUMENTS

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QUESTIONS INSTRUCTED NOT TO ANSWER

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(None.)

RECESSES TAKEN

Recess taken from 10:30 a.m. to 10:38 a.m.

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1 VIDEOTAPED DEPOSITION OF MARK SIFFERMAN,
2 commenced at 9:32 a.m. on August 31, 2018, at the law
3 offices of Osborn Maledon, P.A., 2929 North Central
4 Avenue, 21st Floor, Phoenix, Arizona, before KELLY SUE
5 OGLESBY, a Certified Reporter, CR No. 50178, in and for
6 the County of Maricopa, State of Arizona, pursuant to the
7 Rules of Civil Procedure.

8 * * *

9 APPEARANCES

10 FOR PLAINTIFF:

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

17 FOR DEFENDANTS:

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

24 ALSO PRESENT:

25 Mary Onuschak, Legal Video Services

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1 Phoenix, Arizona
2 August 31, 2018
3 9:32 a.m.

4 * * *

5 (Deposition Exhibits No. 453 through 470 were
6 marked for identification.)

7 VIDEOGRAPHER: This is the videotaped deposition
8 of Mark Sifferman, taken by the plaintiff in cause number
9 CV2017-013832, styled Peter Davis, as receiver of DenSco
10 Investment Corporation, versus Clark Hill, PLC, et al.,
11 filed in the Superior Court of the State of Arizona, in
12 and for the County of Maricopa.

13 Today is August 31st. The year is 2018. The
14 time is 9:32 a.m. Our location is 2929 North Central
15 Avenue, Phoenix, Arizona.

16 Kelly Oglesby is the certified shorthand
17 reporter with JD Reporting, 1934 East Camelback Road,
18 Phoenix, Arizona; and Mary Onuschak is a certified legal
19 video specialist, with Legal Video Specialists, 3033 North
20 Central Avenue, Phoenix, Arizona.

21 Counsel may state their name, firm, and whom
22 they represent, beginning with plaintiff's counsel,
23 please.

24 MR. STURR: Geoffrey Sturr, Osborn Maledon,
25 representing the plaintiff.

MR. DeWULF: John Dewulf, Coppersmith

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1 Brockelman, representing defendants Clark Hill and David
2 Beauchamp.

3 VIDEOGRAPHER: You may swear the witness.

4

5 MARK SIFFERMAN,
6 called as a witness herein, having been first duly sworn,
7 was examined and testified as follows:

8

9

EXAMINATION

10

11 Q. (BY MR. STURR) Good morning, Mr. Sifferman.

12 A. Good morning.

13 Q. We are here today to take your deposition
14 relating to some time you spent at Clark Hill.

15 You are an attorney?

16 A. Yes, I am.

17 Q. How long have you practiced?

18 A. 37 years.

19 Q. What years were you at Clark Hill?

20 A. From 2009, January 1, 2009, through March 31,
21 2017.

22 Q. And where were you practicing before that?

23 A. At a firm that at the end was called Norling
24 Kolrsud Sifferman & Davis. Originally it was called
25 Norling Perry Pierson & Kolrsud.

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1 Q. Did that firm merge into or was it acquired by
2 Clark Hill?

3 A. The assets of Norling Kolstrud were acquired by
4 Clark Hill.

5 Q. And in the years that you were at Clark Hill,
6 approximately how large was the office here in Scottsdale
7 in terms of attorneys, number of attorneys? Excuse me.

8 A. Correct. Maybe at the beginning 15, growing to
9 about 25, if not 28.

10 Q. What roles did you have within that office apart
11 from practicing law? Did you have any management role?

12 A. Yes, I did. I was associate general counsel.

13 Q. Were you associate general counsel for the
14 entire period?

15 A. I don't believe so. I believe that appointment
16 occurred in 2010.

17 Q. Was there another person in the office who was
18 the office managing partner or had some similar role for
19 the Scottsdale office?

20 A. There was no one who had a position like
21 associate general counsel. I think that was done
22 firm-wide in 2010. There had always been a, I guess what
23 they call partner in charge, but that had nothing to do
24 with associate general counsel.

25 Q. And who was the partner in charge in, let me

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1 focus just on the years 2013 to 2017?

2 A. Darrell Davis.

3 Q. And what's the -- what is the role of the
4 partner in charge, broadly speaking?

5 A. To handle any management issues from personnel
6 or organizational issues.

7 Q. Okay. Tell me a little bit about your practice.
8 What areas of law do you practice in?

9 A. I term myself a commercial litigator. Primarily
10 my work is in the real estate, real estate finance,
11 business organization, business disputes areas.

12 Q. And I'm not going -- I know you are familiar
13 with deposition practice, so I won't ask you any questions
14 about that, other than to say are you feeling well today?
15 Are you having any health issues or taking any medication
16 that would affect your ability to testify today?

17 A. I'm feeling fine today, and there are no
18 conditions or medications that would affect my testimony
19 today.

20 Q. Okay. Well, I know your time is valuable, and I
21 will try to be as efficient as I can today.

22 Where are you practicing today?

23 A. The Sifferman Law Firm, PLC.

24 Q. How many lawyers do you practice with?

25 A. There are two members of that firm.

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1 Q. And you are engaged in your commercial
2 litigation practice?

3 A. Correct.

4 Q. Okay. I know from personal experience and from
5 doing a little research that you have experience in
6 professional responsibility matters. Mr. Sifferman, you
7 once served as a hearing officer for the Supreme Court
8 Disciplinary Committee.

9 Am I correct?

10 A. I -- I have been involved in the attorney
11 disciplinary system for approximately 25 years. I'm
12 currently in the pool of attorney volunteers for the
13 disciplinary hearing committee.

14 Q. Right. And I'm sure you have forgotten this,
15 but you were once a settlement officer in a discipline
16 case, you did a fine job, that I was involved in.

17 I can assume from that, those years of
18 experience in handling discipline matters, that you have a
19 substantial knowledge about the rules of professional
20 conduct that govern lawyers practicing in Arizona?

21 A. I don't know if I would say substantial. I am
22 familiar with the rules, and some rules more than others.

23 Q. Okay. Apart from that experience as a hearing
24 officer or working within the disciplinary system, have
25 you had any other -- have you had any training or

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1 experience on matters involving lawyers' professional
2 liability?

3 MR. DeWULF: Object to form.

4 THE WITNESS: During the years pre-Clark Hill, I
5 was the one in charge of arranging for personal --
6 professional liability insurance and gained some knowledge
7 through that, but I'm not sure that's what you are asking
8 me.

9 Q. (BY MR. STURR) Let me -- let me restate the
10 question.

11 Over the years that you were at Clark Hill
12 serving as associate general counsel, did you have the
13 opportunity to receive training, whether through formal
14 CLEs or informally, on risk management practices for law
15 firms?

16 A. I might have. I don't remember.

17 Q. Okay. What have you done to prepare to testify
18 today?

19 A. I met with Mr. DeWulf a week ago Tuesday for a
20 couple of hours. And other than trying to get a good
21 night's rest, that's all I've done.

22 Q. When you met with Mr. Wulf -- Mr. DeWulf, did
23 you review any documents?

24 A. I did.

25 Q. Were they provided to you by Mr. DeWulf?

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1 A. Yes.

2 Q. Can you describe generally what you reviewed?

3 A. There were some emails that I was copied on.
4 There was a Declaration of David Beauchamp that was
5 submitted in connection with the receivership case. I
6 believe that is it.

7 Q. Before Mr. Dewulf contacted you about this
8 deposition, before that meeting with Mr. Dewulf, and from
9 the time period since you left Clark Hill in March of
10 2017, have you had any contact with Mr. Dewulf or anyone
11 else at the firm about this lawsuit?

12 A. Yes, I have.

13 Q. Without revealing the substance of any
14 communications you had, can you tell me with whom you had
15 communications and when?

16 A. I have had telephone conversations with Ed Hood,
17 who was general counsel for the firm, and I had telephone
18 calls with Mr. Dewulf.

19 Q. And on how many occasions can you recall having
20 telephone conversations with Mr. Hood?

21 A. I believe two.

22 Q. Do you recall roughly when those were?

23 A. One was, I believe, in April of 2017, and then
24 the next one could have been that month or May.

25 Q. of 2017?

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1 A. Correct.

2 Q. Okay. And you haven't had any communication
3 with Mr. Hood since then, that you recall?

4 A. No, I have not.

5 Q. To your -- were you ever asked to review or
6 comment on any disclosure statements served by Clark Hill,
7 by the defendants in this case?

8 A. No, I have not.

9 Q. Did you know Mr. Beauchamp before
10 September 2013?

11 A. I met him when he was interviewing with the
12 firm.

13 Q. And that's the first time you met him?

14 A. Correct.

15 Q. Did you have, apart from -- what was your role
16 in the process through which Mr. Beauchamp came to Clark
17 Hill?

18 A. I was just one of the people in the Phoenix
19 office who interviewed him, and I may or may not have
20 provided some comments.

21 Q. Okay. Did you have any role as assistant
22 general counsel in the process of, for lack of a better
23 word, vetting Mr. Beauchamp to see if he would be a good
24 fit for Clark Hill?

25 A. As general -- as associate general counsel?

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1 Q. Yes.

2 A. No.

3 Q. Okay. Did you have any role at all, whether
4 associate general counsel or otherwise, in, for lack of a
5 better word, some people use the word on-boarding when
6 someone comes into an organization, in working with
7 Mr. Beauchamp when he joined the firm?

8 A. I'm not familiar with that term.

9 MR. DeWULF: Geoff, can I just ask a question?
10 I notice it looks like the phone system is on. Is there
11 someone participating by phone, or am I just misreading
12 the lighting?

13 MR. STURR: It's just the red dots are on.

14 MR. DeWULF: Okay.

15 MR. STURR: The phone is not on.

16 MR. DeWULF: Okay. Good. Thanks.

17 MR. STURR: This isn't that interesting.

18 THE WITNESS: I'm sorry.

19 MR. DeWULF: Don't be offended.

20 Q. (BY MR. STURR) Did you have -- I'll move on to
21 another topic.

22 Did you have any -- apart from any
23 communications you may have had with Mr. Beauchamp in your
24 role as assistant general counsel, did you have any
25 working relationship with him? Did you work on any

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1 matters together with him?

2 A. Yes, I did.

3 Q. What types of matters did you work on with
4 Mr. Beauchamp?

5 A. There was a matter where his clients were two of
6 three members of a limited liability company, which was
7 having a business divorce, and the clients had been sued
8 by the third party, third member, and I worked on that
9 case with David. David had some of the client contact, he
10 had client contact in the beginning. He also provided
11 some information during the -- during the case.

12 There was another matter where David's client
13 was either in bankruptcy or was purchasing a company that
14 was in bankruptcy, and I handled -- I assisted on a
15 contested matter hearing in bankruptcy court in that case.

16 And I think that's -- those are the only two I
17 can think of.

18 Q. Okay. Did you have a personal relationship with
19 him? Did you socialize outside the office?

20 A. I socialized with him a little bit.

21 Q. What do you mean "a little bit"?

22 A. We went to see Lewis Black together. I went to
23 a birthday party that his wife held for him. Other than
24 that, I think we had lunch a few times.

25 Q. Okay. Have you had any contact with him since

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1 you left Clark Hill?

2 A. No, I have not.

3 Q. Okay. Tell me a little bit -- I'm going to have
4 you look at this document that we have received, which has
5 been marked as Exhibit 453.

6 MR. STURR: John, I would have written on it,
7 but some people don't like people writing on exhibits. So
8 that's Exhibit 453.

9 MR. DeWULF: So you know, I don't mind that, but
10 do you mind if I -- when I'm doing depositions?

11 MR. STURR: No.

12 MR. DeWULF: Would you rather mark it?

13 MR. STURR: I don't mind.

14 MR. DeWULF: We are going to spend some time
15 together. We might as well figure out --

16 MR. STURR: I think so.

17 Q. (BY MR. STURR) Mr. Sifferman, Exhibit 453 is a
18 document we have received from Clark Hill, and it's a --
19 it's captioned Firm Responsibilities and Structure, and
20 it's dated January 1, 2016.

21 Do you recognize the document?

22 A. I don't know if I saw this exact document with
23 this date, but I am familiar with documents like this.

24 Q. Okay. And this identified you as the assistant
25 general counsel for the Phoenix office, correct?

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1 A. Correct.

2 Q. And was a similar document in existence in 2013
3 and 2014, if you recall?

4 A. I don't know.

5 Q. But you were designated as associate general
6 counsel in 2010 you told me, is that right?

7 A. Yes.

8 Q. And were you identified in documents such as
9 this, if you can recall, as the firm's associate general
10 counsel for the Phoenix office?

11 A. When?

12 Q. In 2010.

13 A. I don't know. I don't remember.

14 Q. But to -- your memory is you were held out
15 within the firm as a person who was part of the firm's
16 general counsel's office?

17 A. Yes.

18 Q. Okay. We also received from, just yesterday
19 from Mr. Dewulf what we have marked as Exhibit 454.
20 Exhibit 454 is a document that has time entries with your
21 name. Some -- some information is redacted.

22 Do you recognize this document?

23 A. Yes, I do.

24 Q. Tell me what it is.

25 A. It is a printout of time entries that -- for my

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1 time entries that were allocated to Clark Hill legal
2 services. And there was a number, 09999-010700, where I
3 would input time.

4 Q. So as your role as assistant general counsel,
5 you would record the amount of time that you devoted to
6 that role for timekeeping purposes and presumably for
7 compensation purposes?

8 MR. DeWULF: Object to form.

9 THE WITNESS: I -- the entry would be -- my
10 entry of time into this folder would be sporadic. And as
11 for the part about compensation, I don't know how it
12 factored into compensation.

13 Q. (BY MR. STURR) Okay. Fair enough.

14 But the firm did have a process for you to
15 record the work that you performed for the firm in your
16 role as assistant general counsel, and you would do that
17 by using this billing number?

18 A. Yes.

19 Q. The records we received relate to time entered
20 in 2016 and only in 2016. That's all we received.

21 Was this -- were you recording your time
22 throughout your role as assistant general counsel from
23 2010 to 2017?

24 A. Very sporadic.

25 MR. DeWULF: Well, let me just clarify. For

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1 DenSco or for all matters?

2 MR. STURR: Let me restate the question, John.
3 Thank you.

4 Q. (BY MR. STURR) During the time you were
5 assistant general counsel, 2010 to 2017, was the -- were
6 you recording your time for work as general counsel to
7 this billing number or a similar number, Clark Hill legal
8 services?

9 A. At the very beginning, I don't remember
10 inputting time for my services as associate general
11 counsel. Probably starting in 2015, I started being a
12 little bit better about inputting time, but it was -- I
13 didn't capture everything.

14 MR. STURR: Okay. And, John, just so we are
15 clear, these are the only records, billing records that
16 you could locate for work that Mr. Sifferman recorded for
17 work on DenSco issues?

18 MR. DeWULF: Correct.

19 Q. (BY MR. STURR) Did you keep notes in the
20 assistant general counsel file or records of the work you
21 performed?

22 A. No.

23 Q. Tell me what your duties were day to day.

24 A. Prime --

25 MR. DeWULF: Object to form.

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1 Q. (BY MR. STURR) As assistant general counsel.

2 A. Primary, my primary role was to be available to
3 other attorneys in the office or paralegals who had
4 questions of a practice or professional aspect. Sometimes
5 it would be case related. Sometimes it would be
6 client-intake related. Some -- that's primarily what I
7 did, was I was available for people to walk down the
8 hallway and talk to me, or for me to go to them when they
9 told my secretary that they wanted to see me.

10 There were times when an issue would come up
11 from the main office, from either Ed Hood or John
12 Schneider, about some issue, usually perhaps an issue of a
13 potential conflict with a potential lateral hire.
14 Responsibilities of file retention was an issue that came
15 up, because Arizona's rule is a little different than
16 other rules.

17 So those are -- that's kind of a basic idea of
18 what I did.

19 Q. Who is John Schneider?

20 A. John Schneider is an attorney. He is listed --

21 Q. I looked and didn't see him. Is he on here?

22 A. On Exhibit 453.

23 Q. Oh, Schneider. There he is.

24 A. John Schneider. I think he is in the Birmingham
25 office, and he was, at least to my memory, he was kind of

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1 the backstop to Ed Hood.

2 Q. Did you ever give CLE programs, CLE programs to
3 lawyers in the Scottsdale office?

4 A. I believe I did.

5 Q. Do you remember any topics that you discussed
6 with them?

7 A. I believe I gave a CLE presentation on the new
8 disciplinary system that went into effect in 2010. I gave
9 some other CLE programs, but they were not -- but they
10 were practice-group oriented, how to collect on
11 construction projects, things like that.

12 Q. Okay. Let me hand you what's been marked as
13 Exhibit 455. Exhibit 455, let me describe it while you
14 take a look at it, we served a request for production of
15 documents on Clark Hill, and Exhibit 455 contains the
16 response, and then the separate documents behind it that
17 are separated by yellow pages are the documents that were
18 identified in response to certain requests. I just want
19 to ask you some questions about this.

20 Request 3 asks for: Policies, procedures, or
21 other similar written guidance issued to, or accessible
22 by, Clark Hill attorneys during 2014 relating to
23 identifying, addressing and resolving conflicts of
24 interest.

25 And the response identified a document numbered

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1 13620, and if you go to the second -- if you look at those
2 yellow sheets, go to the second compilation, you will see
3 a document that has the Bates number 0013620.

4 Are you there?

5 A. Yes, I am.

6 Q. That document is just, I think it's captioned
7 Professional Conduct.

8 Do you recognize that document?

9 A. It looks familiar.

10 Q. From memory, are you aware of any other
11 documents that -- well, let me ask you this.

12 This appears to be an online -- a document that
13 could be accessible online. I'm only asking that question
14 because it says "top previous next."

15 Did Clark Hill have a system where lawyers
16 within the firm could access policies such as this through
17 an intranet or some internal database?

18 A. Yes.

19 Q. Okay. And this is a policy that's captioned
20 Professional Conduct.

21 Are you aware of any other policies?

22 A. About anything?

23 Q. Well, the subject of the request was for
24 policies relating to identifying and resolving conflicts
25 of interest.

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1 A. I don't remember any.

2 Q. Okay. This policy says, in the second
3 paragraph: All attorneys are required to strictly adhere
4 to the Rules of Professional Conduct promulgated from
5 time-to-time by the Bar Association of the state in which
6 they are employed or in which they practice, all ethics
7 opinions applicable to such individuals and other
8 applicable rules.

9 Did I read that correctly?

10 A. I believe you did.

11 Q. Okay. And your role, then, I take it, as
12 assistant general counsel would be to provide guidance to
13 lawyers in this office as to the Arizona Rules of
14 Professional Conduct?

15 A. That would be one of my roles, yes.

16 Q. What was -- you said that was one of your roles.
17 What was your practice in -- in advising lawyers at the
18 firm about conflicts of interest?

19 MR. DeWULF: Object to form.

20 THE WITNESS: I'm sorry. Can you rephrase that?
21 It's kind of general.

22 Q. (BY MR. STURR) It is very general.

23 So you -- I think you told me earlier you had
24 lawyers coming in who would consult with you if they had
25 questions or concerns about conflicts, correct?

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1 A. I don't know if I referenced conflicts
2 specifically, but lawyers who had issues about what I
3 would call professional matters would come in, and they
4 would include potential conflicts, conflict of interest,
5 yes.

6 Q. It wasn't -- wasn't a well-framed question, so
7 let me, I will try again in a bit.

8 Let me -- the other document we asked about, if
9 you look at -- back to Exhibit 455, Request No. 4 asks
10 for: Policies, procedures, or other similar written
11 guidance issued to, or accessible by, Clark Hill attorneys
12 during 2014 relating to the termination of a client
13 representation.

14 Do you see that?

15 A. Yes, I do.

16 Q. It identifies documents numbered 13621 through
17 13623, and those are the last group of documents attached
18 to the exhibit.

19 Are you there?

20 A. I am.

21 Q. Do you recognize this policy Resolution of Legal
22 and Positional Conflicts of Interest?

23 A. I assume I saw this at some point. It -- I
24 don't remember seeing it, but I'm sure I probably did.

25 Q. It -- it -- as I look at it, Mr. Sifferman, it

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1 doesn't explicitly speak to the policies or procedures
2 that the firm follows when it -- when a relationship, a
3 client relationship is terminated. I want to ask you
4 about that.

5 Did your office have a set of -- a practice that
6 it followed when a client representation was terminated?

7 A. I don't remember a written policy or procedure
8 specifically addressing termination of a representation.

9 Q. Would you -- would you agree with me that the
10 applicable ethical rule for terminating a representation
11 is Ethical Rule 1.16?

12 MR. DeWULF: Object to form.

13 THE WITNESS: I would always look at the rules
14 to make sure I knew which one we were talking about.

15 Q. (BY MR. STURR) Let me hand you what's been
16 marked as Exhibit 456. Exhibit 456 is a copy of Ethical
17 Rule 1.16, captioned Declining or Terminating
18 Representation, which could be downloaded from the State
19 Bar's website.

20 Are you familiar with the rule?

21 A. Yes, I am.

22 Q. And is this the rule that you would look up or
23 consult in advising a lawyer within the firm about the
24 steps to be taken when terminating a representation?

25 A. If -- if there was a concern that was impacted

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1 by this role. I mean, there are other facets of
2 terminating a relationship that may not be impacted by
3 this role. I'm not sure why. I mean, sometimes there is
4 the practical aspects of how to go about obtaining the --
5 how to get the file released, but, yes, in -- I would look
6 at this role.

7 Q. Okay. would you agree with me that the rule
8 addresses circumstances in which a lawyer's obligation
9 to -- a lawyer is obligated to withdraw from a
10 representation? I'm referring specifically to ER .6 --
11 1.16(a).

12 A. Yes.

13 Q. And then the rule also identifies circumstances
14 in which a lawyer, in subpart (b), a lawyer may withdraw
15 from representing a client, correct?

16 A. Yes.

17 Q. And the rule -- and there are other
18 circumstances in which a relationship simply terminates,
19 comes to a conclusion, and there is no need to address the
20 rule with respect to withdrawing from a representation,
21 correct?

22 A. Correct.

23 Q. But in that circumstance, the rule still has
24 some relevance, because it discusses the lawyer's
25 obligation to provide access to files.

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1 Is that your understanding?

2 A. Yeah, I believe that's in subsection (d), but
3 also in the rule that has to do with client's property.
4 It's a reference, a more specific reference to who is --
5 who owns the file.

6 Q. And comment [9] here describes what the client
7 is entitled to at the conclusion of a representation,
8 correct?

9 A. Yes.

10 Q. Is it -- is it a good practice to document in
11 writing when a representation of a client has concluded?

12 MR. DeWULF: Object to form.

13 THE WITNESS: I haven't been retained as an
14 expert witness, and I would -- I am inclined not to answer
15 questions that are asking for my opinion, and I think that
16 does, because I don't know what facts are -- we are
17 talking about to base that conclusion on.

18 Q. (BY MR. STURR) Did you ever, while you were
19 serving as assistant general counsel for the firm, advise
20 a lawyer to document in writing the conclusion of a
21 representation so there would be a clear record that the
22 firm's representation had ended?

23 A. I don't remember whether I did or I did not.

24 Q. Okay. Did you ever advise a lawyer at the firm,
25 when the firm was withdrawing from the representation

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1 before the conclusion of the work that was anticipated to
2 be performed, that the lawyer should document in writing
3 the fact of the termination and the reasons for the
4 termination?

5 A. I don't remember if I did or did not.

6 Q. If you look at, back to Exhibit 455, Request
7 No. 1 asks for: Documents reflecting data maintained in
8 Clark Hill's accounting and/or file management systems
9 identifying the date on which each matter that Clark Hill
10 had opened for DenSCO Investment Corporation was closed.

11 Do you see that?

12 A. I see the Request No. 1, yes.

13 Q. Okay. And then in the response, you see below
14 that certain documents are identified by Bates number?

15 A. Yes, I do.

16 Q. And those documents are the first attachment to
17 the response; they are numbered CH_0013617 through 13619.

18 Are you there?

19 A. Yes, I am.

20 Q. Do you recognize the printout or the document
21 that's attached as 13617?

22 A. I do not.

23 Q. You do not.

24 Were you aware that the firm had a -- has an
25 accounting or management system to document when matters

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1 are opened and closed?

2 A. I was aware that the firm -- I am aware that the
3 firm did have a file management program, yes, that would
4 track when a file was opened or closed, yes.

5 Q. But apart from that, you can't identify this
6 document?

7 A. Correct, I cannot.

8 Q. All right. What was the process the firm
9 followed for opening a new matter?

10 A. There was a document I think called a new matter
11 memo, which was filled out by the intake attorney or the
12 intake attorney's staff. It was then circulated to
13 somebody in record management to do a conflict check.

14 Let me back up. The contact of the record
15 management department would have occurred previously to
16 determine if there was some kind of conflict. They would
17 generate a list of every conceivable name that was similar
18 and that would be reviewed.

19 Then the new matter memo would be sent. If
20 there was any potential, if there was some potential
21 conflict, it would have been cleared by talking to whoever
22 the other lawyer was. Usually it wasn't a conflict. It
23 was just a name that was similar, which happens in a
24 national firm.

25 The practice group head or the practice group's

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1 delegate would review the form to determine if it was work
2 that was within that lawyer's sphere, whether there were
3 satisfactory fee arrangements. They would sign off on it
4 and the file would be opened.

5 Q. Okay. And were you ever called in to discuss
6 conflicts, conflict issues during this process?

7 A. During the process of opening files?

8 Q. Yes.

9 A. I probably was. I don't remember a specific
10 instance.

11 Q. Okay. would you take a look at -- this is going
12 to be in the books of exhibits over here -- Exhibit 138.

13 MR. STURR: Are you ready, John?

14 MR. DeWULF: Yeah. Thanks.

15 Q. (BY MR. STURR) Exhibit 138 was previously
16 marked in this case, Mr. Sifferman, and I want -- I just
17 want you to look at about three pages in. You will see it
18 says at the top New Client/Matter Form.

19 Are you there?

20 A. I think it's the fourth page.

21 Q. Okay. Is this the document that the firm was
22 using, this was back in 2013, for initiating a new matter?

23 A. Yes.

24 Q. And the lawyer who is opening the matter is
25 called upon to identify the client, is that correct?

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1 A. Yes.

2 Q. And then the next section, Matter Information,
3 to describe the nature of the form to be performed?

4 A. Yes.

5 Q. Okay. In the next section or two sections over;
6 it's called Risk Assessment.

7 Do you see that?

8 A. Yes.

9 Q. And this calls upon the lawyer opening the
10 matter to fill this part out and confirm that the
11 conflicts have been evaluated and assessed.

12 Is that fair to say?

13 A. Yes.

14 Q. If you could look at the previous exhibit, which
15 is 137. Exhibit 137 was previously marked and it contains
16 an email and its attachment, which is an engagement letter
17 that was signed by Mr. Beauchamp on September 12th, 2013.

18 Do you see that?

19 A. Yes, I do.

20 Q. This is -- were all attorneys required to use
21 this form engagement letter?

22 A. No.

23 Q. Okay. How would it vary?

24 MR. DeWULF: Object to form.

25 THE WITNESS: You were -- you were allowed to

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1 modify. You were allowed to have an engagement letter
2 that would be more personal, less sanitized, more
3 descriptive.

4 Q. (BY MR. STURR) In those circumstances, would
5 the lawyer still be required to attach the standard terms
6 of engagement for legal services?

7 A. Yes.

8 Q. And in this letter that Mr. Beauchamp sent, it
9 identifies the client in the second line as DenSco
10 Investment Corporation, is that correct?

11 A. You are talking about the September 12 letter?

12 Q. Yes.

13 A. Okay. The addressee is DenSco Investment
14 Corporation.

15 Q. The second sentence says, it refers to: Our
16 engagement to represent DenSco Investment Corporation (the
17 "client"), correct?

18 A. Yes.

19 Q. Okay. Was it important from Clark Hill's
20 perspective to clearly identify who the client was in
21 undertaking the representation of a new client?

22 A. Yes.

23 Q. And in representing corporate clients, it is
24 important to clarify whether or not the firm was
25 representing any of the entity or subsidiaries or

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1 constituents, is that correct?

2 MR. DeWULF: Object to form.

3 THE WITNESS: It wouldn't -- it wouldn't be
4 during the intake process, but whenever you represent an
5 entity, you are dealing with constituent members. And
6 they need to understand that when you are dealing with
7 them, you are dealing with them as constituent members of
8 the entity.

9 Q. (BY MR. STURR) And not the client?

10 A. Well, constituent member of an entity I think
11 necessarily is a client, too. Not in an individual
12 personal capacity, but in their capacity with that entity.

13 Q. That's not what the standard terms say, as I
14 read them. Can I ask you to look at that?

15 MR. DeWULF: Object to form.

16 Q. (BY MR. STURR) I don't know how long it's been
17 since you've looked at that, but if you look at -- this is
18 the page that's captioned Standard Terms of Engagement for
19 Legal Services.

20 Do you see that?

21 A. Yes, I do.

22 Q. Whom we Represent, do you see that paragraph?

23 A. Yes, I do.

24 Q. It says that: The person or entity whom we
25 represent is the person or entity identified in our

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1 engagement letter.

2 And we saw that that is DenSco Investment
3 Corporation, correct?

4 A. Yes.

5 Q. And does not include employees, officers,
6 directors, shareholders of the corporation, partners of a
7 partnership, member of an association or a limited
8 liability company, and/or other constituents of a named
9 client unless our engagement letter expressly provides
10 otherwise.

11 A. Yes.

12 Q. Would you agree with me that based on the
13 engagement letter and the standard language, the only
14 client that Clark Hill was agreeing to represent in
15 September 2013 was DenSco Investment?

16 MR. DeWULF: Object to form.

17 THE WITNESS: No.

18 Q. (BY MR. STURR) why not?

19 A. The -- whenever you represent an entity, you
20 necessarily represent the constituents as constituent
21 members of that entity, and I don't think this "whom we
22 represent" language is contrary to that.

23 Q. What's the basis for your view that when a
24 lawyer represents an entity, he also represents the
25 constituent members of the entity?

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1 A. Well, to the -- to the extent that the
2 constituent member is acting on behalf of the entity and
3 is giving you instructions or seeking your advice.

4 Q. It's your view, Mr. Sifferman, that there is a
5 joint representation of the entity and the constituent in
6 those circumstances?

7 MR. DeWULF: I don't know if you finished your
8 earlier answer, but if you need to complete your earlier
9 answer, go ahead, and answer this question as well.

10 THE WITNESS: I wouldn't say it's -- I don't
11 view it as joint. I think -- I wouldn't use the
12 terminology joint. The -- maybe my answer was confusing
13 or in -- poorly framed.

14 You don't represent the constituent members
15 personally. You don't represent them to the extent they
16 are -- you believe they are acting adversely to the
17 entity, but entities are artificial and you have to deal
18 with people. That's where I am coming from.

19 Q. (BY MR. STURR) Are you familiar with the entity
20 theory of representation?

21 MR. DeWULF: Object to form.

22 THE WITNESS: I'm not sure I have heard of it
23 in -- with that terminology.

24 Q. (BY MR. STURR) Are you familiar with the terms
25 of Ethical Rule 1.13?

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1 A. Yes.

2 Q. And do you recall that Ethical Rule 1.13 uses
3 the -- references the entity theory of representation?

4 A. Yes.

5 Q. Okay. And do you recall that Ethical Rule 1.13
6 identifies the entity as a lawyer's client?

7 A. Correct.

8 Q. Okay. And the rule specifically states in the
9 comments that simply representing the entity does not give
10 rise to representation of constituents.

11 MR. DeWULF: Object to form.

12 Q. (BY MR. STURR) Do you recall that?

13 MR. DeWULF: Object to form.

14 THE WITNESS: I don't recall that exactly. I
15 agree with that.

16 Q. (BY MR. STURR) So if there was to be a
17 representation of the entity and a constituent, that would
18 need to be confirmed in writing, would it not?

19 MR. DeWULF: Object to form.

20 THE WITNESS: In what context?

21 Q. (BY MR. STURR) If a lawyer is going to
22 represent an entity and will also represent a constituent
23 of the entity, that would need to be confirmed in writing,
24 would it not?

25 MR. DeWULF: Object to form.

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1 THE WITNESS: I don't know the answer to that
2 question. I'm not in a position to express an opinion
3 about how 1.13 works with your engagement letter
4 obligations in every situation, especially where there is
5 just so many combinations. I can't -- I'm not in a
6 position to give you a quick answer or yes or no.

7 Q. (BY MR. STURR) Okay. Sticking with the
8 engagement letter, there is a paragraph that says Scope of
9 our work.

10 Do you see that?

11 A. Yeah.

12 Q. And the last paragraph in that section says:
13 Our attorney-client representation will be considered
14 ended upon the earliest of, and there is (a) and (b) and
15 then (c), which says: Notification by the firm of
16 termination of our attorney-client relationship.

17 Do you see that?

18 A. Yes.

19 Q. Is it -- is it fair to read this to understand
20 that the standard terms of engagement contemplate that the
21 firm would send written notification of termination of an
22 attorney/client relationship?

23 A. No.

24 MR. DeWULF: Object to form.

25 Q. (BY MR. STURR) Why not?

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1 A. Just as -- it's the flip side of (c),
2 which is -- I'm sorry -- of (b), notification by the
3 client that they desire to terminate a relationship, if a
4 client verbally told me that they wanted to term --
5 terminate the relationship, it would be terminated.

6 Q. (BY MR. STURR) And you wouldn't confirm that in
7 writing?

8 A. I might. Whether or not -- if it's a piece of
9 litigation, it may be having them sign off on a Motion to
10 withdraw. It may be done by an email, but perhaps I would
11 confirm it in writing. I can't say that was a
12 requirement.

13 Q. And I take it from your earlier answers, you are
14 not able or willing today to give me an opinion about
15 practices with respect to confirming termination of
16 representations in writing?

17 MR. DeWULF: Object to form.

18 THE WITNESS: I have not been retained as an
19 expert witness, and I don't believe I am required to give
20 you my opinion testimony.

21 Q. (BY MR. STURR) Let's move on. I'm going to
22 hand you what's been marked as Exhibit 457.

23 A. I can put this book away?

24 Q. Yeah. Well, leave it out, if you would, because
25 I am probably going to come back to that, if you can make

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1 it just accessible.

2 Actually, before we get to that, I'm not going
3 to get to that just yet, so hold on, John. I'm going to
4 set that aside. I'm going to start on a different topic
5 before I get to that.

6 You know Mr. Beauchamp was deposed in this case?

7 A. Yes.

8 Q. Have you read Mr. Beauchamp's deposition?

9 A. No.

10 Q. Were you given any excerpts of it?

11 A. No.

12 Q. Okay. One of the reasons we wanted to depose
13 you, Mr. Sifferman, is to address certain things that
14 Mr. Beauchamp testified to.

15 Do you have a memory of, a present memory today
16 of any discussions you had with David Beauchamp in January
17 of 2014 regarding the need to obtain a conflict waiver for
18 a matter that he had just opened in that month?

19 A. Related to DenSco?

20 Q. Yes.

21 A. I don't remember that.

22 Q. You have no memory of that at all?

23 A. No, one way or the other.

24 Q. And we don't have any -- I'm just trying to
25 think about the -- about an efficient way to proceed

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1 today.

2 Let me -- let me at least, let me show you a
3 document and see if this refreshes your recollection.
4 would you look at Exhibit 164.

5 MR. STURR: Do you have that, John?

6 MR. DeWULF: Go ahead.

7 Q. (BY MR. STURR) Exhibit 164, Mr. Sifferman, is
8 an email that Mr. Beauchamp sent to Denny Chittick on
9 January 15, 2014. You were not copied on this email, but
10 I'm asking you to review it to see if it refreshes your
11 recollection.

12 If you look at the center of the email, this is
13 Mr. Beauchamp writing to Mr. Chittick, and in the second
14 paragraph, the last sentence says: My new firm would also
15 like for me to obtain a waiver from DenSco for me to
16 continue proceeding with this matter.

17 Does that refresh your memory that -- of any
18 conversations you had with Mr. Beauchamp in January of
19 2014 about obtaining a waiver on a DenSco matter?

20 A. I don't -- it does not refresh my recollection.

21 Q. And you have no present memory of this at all?

22 A. Correct.

23 Q. Okay. Let's move on, then. I'm going to hand
24 you what's been marked as Exhibit 457.

25 A. Actually, you know what? I turned the page, and

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1 there is an email from Robert Miller --

2 Q. Yes.

3 A. -- who was at David's old firm.

4 Q. Yes.

5 A. And I remember there was an issue that came up
6 involving Mr. Miller. And what firm was he at?

7 Q. Bryan Cave.

8 A. And some work that had been done at Bryan Cave
9 or was going on at Bryan Cave, and I talked to David about
10 it, but that's the extent of my memory.

11 Q. Okay. And -- and the memory is simply of that
12 of a -- would this have been an in-person conversation in
13 the office? That's all you can recall?

14 A. Yes.

15 Q. Okay.

16 A. And it's Robert Miller's involvement that brings
17 it to mind.

18 Q. And all you can remember is the issue was
19 raised, but you have no memory of what discussions you had
20 with Mr. Beauchamp about how it should be resolved?

21 A. Correct.

22 Q. Okay. Let's move on. If you could take a look
23 a look at Exhibit 457.

24 MR. STURR: John, do you have that? I gave it
25 to you earlier.

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1 MR. DeWULF: I'm sorry.

2 MR. STURR: I have another copy if you can't
3 find it.

4 MR. DeWULF: If you gave it to me, I have it.
5 I've just got to find it.

6 MR. STURR: Here it is. You have it right in
7 front of you. That's it.

8 MR. DeWULF: I misnumbered it. I have it as
9 456. It's 457.

10 Q. (BY MR. STURR) 457.

11 Mr. Sifferman, I'm handing you what's been
12 marked as Exhibit 457. It's an email from Mr. Beauchamp
13 to Ryan Anderson, who is counsel for the receiver, dated
14 February 8, 2017, and you are copied on it.

15 Do you see that?

16 A. Yes.

17 Q. And in the second paragraph of the email,
18 Mr. Beauchamp discusses the Clark Hill's termination of
19 doing any securities or other legal work for DenSCO when
20 Denny Chittick refused to send the amended private
21 offering memorandum to his investors.

22 Do you see that?

23 A. Yes, I do.

24 Q. And he goes on to say that he believes that we
25 terminated our representation in approximately July 2014.

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1 Do you see that?

2 A. Yes, I do.

3 Q. Okay. Do you have a -- do you have any memory,
4 Mr. Sifferman, of discussing with Mr. Beauchamp at some
5 time in 2014 the termination of the firm's representation
6 of DenSco on securities or other legal work?

7 A. I don't remember one way or the other.

8 Q. Okay. And we have no other -- we haven't
9 received any time records that would have -- had you done
10 so, there is no time record that we have that would show
11 the time you devoted to that, correct?

12 A. Correct.

13 Q. As far as you know?

14 And I think you told me earlier, you didn't keep
15 notes of your work as general counsel?

16 A. Correct.

17 Q. And you have no memory one way or the other on
18 that issue?

19 A. Of a discussion with David Beauchamp over
20 terminating the legal work with DenSco, no, at that time.

21 Q. In 2014?

22 A. Correct.

23 Q. Okay.

24 MR. DeWULF: Let me just make a note. I want
25 him to be able to answer the questions. There arguably

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1 are some of the things that are being said that may be
2 privileged or at least borderline privileged
3 communications, but I want him to be able to answer as
4 completely as he can, so I haven't drawn any distinctions,
5 fine distinctions here, but just be careful to make sure
6 not to disclose -- I think subject matter topics could be
7 disclosed. Actual communications I would caution you
8 against revealing, but with that kind of note, go ahead.

9 MR. STURR: Yeah, I think --

10 MR. DeWULF: I don't want to interfere.

11 MR. STURR: Yeah. No. John, I think we have
12 been proceeding on that understanding.

13 Q. (BY MR. STURR) If I wasn't clear, I was asking
14 about whether you have a memory of the fact of a
15 communication.

16 A. Correct, subjects.

17 Q. Subjects, right. The subject of the
18 communication. And you do not?

19 A. Correct.

20 MR. STURR: Okay. We have been going an hour.
21 Do you need a break? I'm anxious to finish this quickly,
22 but I'm just --

23 MR. DeWULF: I would like to take a break.

24 VIDEOGRAPHER: The time is 10:30 a.m. We are
25 going off the record, ending media one.

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1 (A recess was taken from 10:30 a.m. to
2 10:38 a.m.)

3 VIDEOGRAPHER: My name is Mary Onuschak with the
4 firm of Legal Video Specialists, Phoenix, Arizona. This
5 begins media two of the videotaped deposition of Mark
6 Sifferman. The time is 10:38 a.m. We are now back on the
7 record.

8 Q. (BY MR. STURR) Mr. Sifferman, I'm going to have
9 you take a look at Exhibit 454 again. Those were your
10 time records. And, again, I want to be as efficient as I
11 can with your time today.

12 Exhibit 454 has records from 2016. And if I
13 remember correctly, you told me beginning in 2015 you
14 were -- you thought you were a little more diligent about
15 recording your time as assistant general counsel.

16 And the reason I'm asking that question is
17 looking at Exhibit 454, the first entry that I see on a
18 DenSco matter is August 10, 2016.

19 Do you see that?

20 A. Yes.

21 Q. Okay. Is it -- is it likely, and I'm not going
22 to hold you to this, but is it likely that if you had some
23 other time before August 10, 2016, you would have recorded
24 it, given that time period, the 2016 time period?

25 MR. DeWULF: Object to form.

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1 THE WITNESS: NO.

2 Q. (BY MR. STURR) Okay. All right.

3 A. I said I got better.

4 Q. Well, let me -- then I will take a little longer
5 route to the questions I want to ask you, if I may.

6 Take a look at Exhibit, if you would -- this is
7 going to be in another volume -- it's Exhibit 18, which is
8 going to be in the first volume.

9 A. You said 18?

10 Q. 18. Do you see that?

11 A. Yes, I do.

12 Q. Exhibit 18 is a letter dated September 15, 2016,
13 from Mr. Beauchamp to the -- Peter Davis, the receiver,
14 and attached to it are certain invoices.

15 Do you see that?

16 A. Yes, I do.

17 Q. If you go to the last --

18 MR. STURR: John, I'm sorry.

19 MR. DeWULF: Go ahead. I think I finally found
20 it. I'm sorry. My stuff isn't organized very well. I'm
21 with you. I'm with you.

22 Q. (BY MR. STURR) If you go to the last couple of
23 pages of the exhibit, Mr. Sifferman, beginning on
24 CH_0008042.

25 Are you there?

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1 A. Yeah, I am.

2 Q. That's an invoice dated July 22, 2016, for
3 business matters. And the next page, excuse me, two pages
4 over, 0008044, there is an invoice August 10th, 2016, for
5 business matters.

6 Do you see that?

7 A. Yes.

8 Q. And if you flip to the last page of the exhibit,
9 you see some time recorded on 7/30/16 and 7/31/16 by
10 Mr. Beauchamp.

11 Do you see that?

12 A. Yes, I do.

13 Q. Okay. Does this appear to you that -- would you
14 agree with me that based on these invoices, DenSco was a
15 current client of Clark Hill's as of July 2016?

16 A. Yes.

17 Q. And you will see in Mr. Beauchamp's billing
18 entries for July 30, there is a reference to a phone call
19 regarding the death of Denny Chittick.

20 Do you see that?

21 A. I see that reference, yes.

22 Q. Do you have a present memory today of when you
23 learned of Mr. Chittick's death?

24 A. Shortly after his death.

25 Q. How did you learn it?

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1 A. David told me.

2 Q. Okay. Do you have a present memory of that?

3 A. Yes.

4 Q. Okay. Where did that conversation occur?

5 A. Either my office or his office.

6 Q. Okay. And what was the subject of the
7 conversation, broadly speaking?

8 A. The death of a client. The suicide of a client.

9 Q. Did you have any discussions in that meeting
10 relating to potential conflicts of interest?

11 A. No.

12 Q. Okay. I'm going to hand you what's been marked
13 as Exhibit 458.

14 Before I -- stay on that exhibit, before you put
15 it away. Excuse me. Sorry, Mr. Sifferman.

16 If you go back to Exhibit 18, at the beginning
17 of the -- if you go back to the cover letter,
18 Mr. Beauchamp writes: Enclosed is the invoices for legal
19 services provided by Clark Hill to DenSco Investment
20 Corporation through the end of August regarding the wind
21 down of the business.

22 Do you see that?

23 A. Yes, I do.

24 Q. Okay. And you see there are time entries in the
25 first billing entry beginning with August 1 forward.

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1 Do you see that?

2 A. Yes, I do.

3 Q. And this is for work Mr. -- Mr. Beauchamp was
4 performing that was related to a business wind-down,
5 correct?

6 A. Yes.

7 Q. And the work that is recorded here includes
8 communications with, in the first entry, Shawna Heuer.

9 Do you see that?

10 A. I see a reference to an S --

11 Q. Heuer.

12 A. -- Heuer.

13 Q. And in the second entry, do you see references
14 in the middle of the entry to work on information for
15 status email to investors?

16 Do you see that?

17 A. Yes.

18 Q. And in the third entry, August 3, there are some
19 references to a telephone call with Gary Clapper of the
20 Arizona Securities Division.

21 Do you see that?

22 A. Yes.

23 Q. Turning back to the Exhibit 458 now, this is a
24 New Business Intake Form.

25 Do you see that?

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1 A. Yes.

2 Q. It is for a business wind-down is what is
3 described on the first page, correct?

4 A. Yes.

5 Q. And if you go three pages in, maybe more than
6 that, actually, to the page marked CH_0018000, there is a
7 section F for approvals.

8 Do you see that?

9 A. Yes.

10 Q. And it's signed by Mr. Beauchamp and it's dated
11 August 23, 2016.

12 Do you see that?

13 A. Yes.

14 Q. It appears that the file was in fact not opened
15 until sometime after August 23, 2016, and that these time
16 entries that had been recorded were then billed under the
17 business wind-down matter.

18 Is that what it appears to you?

19 MR. DeWULF: Object to form.

20 Q. (BY MR. STURR) I'm sure I didn't ask the
21 question very well.

22 The invoice that we looked at earlier is a
23 billing for business wind-down and includes work that was
24 performed beginning on August 1, correct?

25 A. Correct.

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1 Q. Okay. It appears from Exhibit 458 that the
2 file, the matter at the firm for business wind down was
3 not opened or established until sometime after August 23,
4 2016. Is that correct?

5 A. Well, David signed it on August 23, so I think
6 that's a fair assumption.

7 Q. Okay. Take a look, if you would, in
8 Exhibit 216. Keep that book out, because we may come back
9 to it, but Exhibit 216. And I'm sorry, I don't have the
10 volume number for you.

11 Exhibit 216 was previously marked,
12 Mr. Sifferman. It's a Court-stamped document, captioned
13 Letters of Appointment of the Personal Representative and
14 Acceptance of Appointment as Personal Representative that
15 was filed on August 4, 2016, by lawyers at Clark Hill, is
16 that correct?

17 A. It was filed by the Clerk of the Court. It was
18 prepared by lawyers at Clark Hill.

19 Q. Okay. And were you aware -- before this
20 document was filed, before August 4, 2016, do you have a
21 memory of consulting with either the lawyers listed here,
22 Darra Lynn Rayndon and Michelle Tran, or Mr. Beauchamp,
23 about potential conflicts arising from the undertaking of
24 the representation of the estate of Denny Chittick?

25 MR. DeWULF: Object to form.

MARK SIFFERMAN, 8/31/2018

1 THE WITNESS: I don't remember one way or the
2 other.

3 Q. (BY MR. STURR) Okay. I'm going to ask you to
4 look at what's been marked as Exhibit 459. And I'm going
5 to also hand you what's been marked as Exhibit --

6 MR. STURR: John, are you ready?

7 MR. DeWULF: Yes.

8 MR. STURR: That's 459. This is 460.

9 MR. DeWULF: Did you hand me a copy of 460? I'm
10 sorry.

11 MR. STURR: I thought I did, but if I didn't,
12 let me give it to you.

13 MR. DeWULF: Thank you.

14 Q. (BY MR. STURR) Take a look, just if you would,
15 just a minute please, Mr. Sifferman, take a look at
16 Exhibit 459. This is an email chain. It begins with an
17 email from a person named Scott Swinson to Michelle Tran,
18 that Michelle Tran then forwards to Mr. Beauchamp. And
19 Exhibit 460 is Ms. Tran's August 10, 2016, response to
20 Mr. Swinson.

21 Do you see that?

22 A. You said there was a response from Michelle Tran
23 to Scott Swinson?

24 Q. Yes. That's Exhibit 460.

25 Do you have that?

MARK SIFFERMAN, 8/31/2018

1 A. Oh, okay.

2 Q. Okay. The Exhibit 459, let me just spend a
3 moment on that, if you could look at the second page, this
4 is a letter from a lawyer Scott Swinson, representing Rob
5 Brinkman, an investor/creditor of DenSco Investment
6 Corporation. And he poses the question, he says he notes
7 that he has -- his client has forwarded to him the various
8 emails regarding DenSco generated by Mr. Beauchamp. From
9 some of the statements Mr. Beauchamp has made in his
10 emails, it sounds as though your firm represented either
11 Mr. Chittick and/or DenSco prior to Mr. Chittick's death.

12 Did I read that correctly?

13 A. Yes.

14 Q. And he asks whether or not the firm had
15 considered the potential of a conflict of interest in your
16 representation of the Chittick estate.

17 Do you see that?

18 A. Yes.

19 Q. And the Exhibit 460 is Ms. Tran's response. And
20 she says: Thank you for your letter. We are in the
21 process of addressing this concern.

22 Do you see that?

23 A. Yes.

24 Q. Okay. One other document I want to ask you to
25 look at, and forgive me, can you pull out Exhibit 434.

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1 Oh, are they not tabbed?

2 A. That's okay. It's an August 10 letter?

3 Q. Yes. This is an August 10, 2016, letter that --

4 MR. STURR: Sorry, John.

5 MR. DeWULF: No. You are --

6 MR. STURR: Let me describe it for the record
7 while you're looking for it. August 10, 2016, letter that
8 Mr. Beauchamp sent to Wendy Coy of the Arizona Corporation
9 Commission.

10 THE WITNESS: I have it.

11 Q. (BY MR. STURR) Okay. And the sentence I just
12 want to draw your attention to is the second line of
13 Mr. Beauchamp's letter: Although we were previously
14 special counsel to DenSco, our status as ongoing counsel
15 has been questioned and we will likely withdraw as counsel
16 depending on how the courts and the interested parties
17 elect to proceed to collect and distribute the recoverable
18 assets of DenSco.

19 And the letter goes on to address the subpoena
20 that the ACC had delivered to Mr. Beauchamp, and he
21 writes: I have not previously represented Denny Chittick
22 and I do not have authority to accept the service of the
23 subpoena on Mr. Chittick or his Estate.

24 Did I read that correctly?

25 A. Yes.

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1 Q. Now, I wanted to review those documents and then
2 I want to go back to 454, your time entry.

3 You -- you have a time entry on August 10, 2016,
4 Mr. Sifferman.

5 Are you there?

6 A. Not quite. What exhibit number?

7 Q. 454. It's the -- it's one of the first exhibits
8 we marked today that had your time entries.

9 MR. DeWULF: It's right there.

10 THE WITNESS: Okay.

11 Q. (BY MR. STURR) The first time entry on that
12 first page of the exhibit is August 10, 2016, correct?

13 A. Yes.

14 Q. And it's -- you described it as DenSco issues
15 and you spent, is it 1.9 hours, correct?

16 A. Yes.

17 Q. Okay. Do you have a present memory of what
18 issues you were addressing that day?

19 A. Not exactly on that day, but in that time
20 period, yes.

21 Q. Okay. And what were the issues you were
22 addressing in that time period?

23 A. There was -- the Arizona Corporation Commission
24 was going to or had filed an application for appointment
25 of a receiver over DenSco. There was the --

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1 Q. And, again, I don't want you to reveal -- I know
2 you're going to be careful. I don't want you to reveal
3 any privileged communications. I'm just trying to
4 understand the list of issues that you are aware would
5 have been the topic of these meetings.

6 A. The engagement by the personal representative of
7 the estate of Gammage & Burnham. Gammage & Burnham's
8 attorney's concern about privileged communications.
9 That's generally what --

10 Q. And then you said in this time period?

11 A. Yeah.

12 Q. Okay. I want to be as precise as we can. Let
13 me go back to the exhibits we were just looking at. And
14 I'm asking this only because you have the time entry on
15 the same date, August 10.

16 If you look at Exhibit 434, Mr. Beauchamp's
17 letter to Ms. Coy, do you have a memory of seeing this
18 letter or having a role in its drafting on August 10,
19 2016?

20 A. I do not believe I had a role in drafting this
21 letter, and I do not believe I saw it at that time.

22 Q. Going back to the Exhibits 459 and 60, the email
23 that Ms. Tran received and Ms. Tran's response to
24 Mr. Swinson.

25 A. Yes.

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1 Q. Do you have a present memory of having any role
2 in preparing the communication or giving advice relating
3 to the letter and the response?

4 MR. DeWULF: Object to form.

5 THE WITNESS: I'm sorry. Could you state that
6 again?

7 Q. (BY MR. STURR) I'm trying to see if I can
8 understand if you -- one of the matters that you addressed
9 on August 10, as reflected in your billing statement,
10 would have been the communication received from
11 Mr. Swinson and the firm's response from Ms. Tran.

12 A. I don't remember specifically Mr. Swinson's
13 letter or the response, but I do remember addressing the
14 issue that Mr. Swinson raised.

15 Q. The -- whether or not there was a conflict?

16 A. Correct.

17 Q. Okay. I'm going to ask you to take a look at
18 what was marked as Exhibit 263.

19 Mr. Sifferman, these are notes that were in
20 Clark Hill's files that we believe were drafted by
21 Mr. Beauchamp. And he wrote, this appears to be a
22 conference with you on August 10, 2016, and there is just
23 a brief reference to Mark Winkleman, receiver for
24 Mortgages Ltd.

25 Do you have a memory of discussing with

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1 Mr. Beauchamp anything about the receivership that would
2 not be privileged, as reflected in these notes?

3 A. I remember discussing with Mr. Beauchamp that
4 there was an application for a receiver. I might have
5 been aware of who was being proposed by the Corporation
6 Commission or I can't remember if Gammage & Burnham
7 proposed someone.

8 I don't think this is seeking legal advice.
9 David asked me if I knew anybody else who might serve in
10 that role, and I have known Mark Winkelman since the '80s,
11 and his name popped into my head and I said --

12 Q. Okay.

13 A. -- maybe Mark Winkelman.

14 Q. Okay. Going back to Exhibit 454 again, your
15 time records, you don't have anything entered between
16 August 10 and August 18, 2016, correct?

17 A. Correct.

18 Q. And I think I understand you.

19 If you had spent some time on the matter, you
20 may have and it wouldn't have been recorded?

21 A. Correct.

22 Q. Okay. What I would like to get an understanding
23 of is, and you have already referenced it earlier, that
24 you had conversations regarding Gammage & Burnham's
25 concerns regarding privilege, and I want to make sure I

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1 have an understanding of what information you were
2 receiving in the time period before the hearing on
3 August 18th in front of Judge Bustamante.

4 Are you able to separate that time period out
5 today? Do you have a present memory of communications
6 that -- first of all, do you have a present memory of that
7 hearing?

8 A. Yes.

9 Q. Okay. Are you able to sort of separate out any
10 discussions or communications you had before the hearing
11 in the week before?

12 A. I believe I can.

13 Q. Okay. What do you -- what do you recall?

14 A. Gammage -- Gammage & Burnham was taking the
15 position or raising the issue about whether -- whether
16 there was communications that were privileged with Dennis
17 Chittick, and they asked David to sign a declaration. I
18 reviewed the declaration, it was modified, and David
19 submitted it.

20 Q. Okay. Do you recall receiving, before the
21 declaration came, any other communications regarding that
22 issue?

23 MR. DeWULF: Object to form.

24 Q. (BY MR. STURR) Let me show you a document.

25 A. Sure.

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1 Q. And maybe it's easier to start that way. Take a
2 look at Exhibit 267.

3 Exhibit 267, Mr. Sifferman, is an email dated
4 August 11th, 2016, that Mr. Beauchamp sent to Gary Clapper
5 of the ACC, which was copied to Kevin Merritt and James
6 Polese of Gammage & Burnham and to you, is that correct?
7 And also to Wendy Coy of the ACC, is that correct?

8 A. I am copied on this email.

9 Q. And in the -- do you have a memory of receiving
10 this email?

11 A. I don't.

12 Q. Okay. In the second -- in the first paragraph,
13 second sentence, Mr. Polese is referring to his
14 conversation with Mr. Polese and Mr. Merritt. And he goes
15 on to say --

16 A. I think you said Mr. Polese was referring to.

17 Q. I'm sorry. Mr. Beauchamp is referring to his
18 conversation with Mr. Polese and Mr. Merritt, correct?

19 A. Yes.

20 Q. Okay. And he goes on to say, and it references:
21 Statements from a couple of the attorneys, from investors
22 and other attorneys for other related parties. All of
23 them want us to follow a different procedure with respect
24 to the DenSco documents. Jim Polese will be sending a
25 letter to you with the specifics of the procedure that we

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1 would like to follow concerning the documents and
2 information that has been requested, including what has
3 already been provided. Correct?

4 A. Yes.

5 Q. Take a look at Exhibit -- and that was sent on
6 August 11. Take a look at Exhibit 274.

7 A. I'm there.

8 Q. And this is an email Mr. Beauchamp sent to a
9 legal assistant at Gammage & Burnham regarding boxes of
10 documents. And in the second line he writes: Our firm's
11 General Counsel wants me to get a Receipt signed for the
12 boxes, so I have a document trail.

13 A. Yes.

14 Q. And do you recall having that conversation with
15 Mr. Beauchamp?

16 A. I don't.

17 Q. If you go to Exhibit 285 --
18 are you there?

19 A. Yes.

20 Q. -- Exhibit 285 is an email Mr. Polese sent to
21 Ms. Coy. It's copied to, among others, Mr. Beauchamp.

22 You are not copied on it, but I wanted to draw
23 to your attention, at the very bottom of the page, the one
24 captioned Privilege.

25 A. Yes.

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1 Q. Mr. Polese wrote: Privilege. It is my view and
2 that of David Beauchamp that Denny viewed David as both
3 his company attorney and personal attorney.

4 Do you see that?

5 A. Yes.

6 Q. Did Mr. Beauchamp forward or share this email
7 with you, if you can recall?

8 A. I don't remember one way or the other.

9 Q. Okay. Did you know that Mr. Polese was taking
10 the position with the ACC that Clark Hill, through
11 Mr. Beauchamp, was both DenSco's attorney and Denny
12 Chittick's personal attorney?

13 MR. DEWULF: Object to form.

14 THE WITNESS: I don't remember -- I don't
15 remember anyone -- anyone taking the position that Clark
16 Hill was Mr. Chittick's personal attorney, but Mr. Polese
17 was taking the position that Mr. Chittick, as president of
18 DenSco, might have privileged communications that somehow
19 were separate and protectable from the corporation.

20 Q. (BY MR. STURR) And how do you know that?
21 What's the basis for that belief or memory?

22 A. From the -- from the declaration that was signed
23 by David and the statements made at the receivership
24 hearing.

25 Q. Okay. Well, we will get to that in a second.

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1 Take a look at -- all right. If you could just
2 take a look at Exhibit 435. Keep that book out, but 435.

3 A. I'm there.

4 Q. Okay. Exhibit 435 is an email from Mr. Polese
5 to Mr. Beauchamp that was sent at 3:30 on Wednesday,
6 August 17th, attached to which is a draft declaration,
7 correct?

8 A. Yes.

9 Q. If you will go then to Exhibit 301.

10 A. Yes.

11 Q. Exhibit 301 is -- appears to be Exhibit 435
12 forwarded to you by Mr. Beauchamp at 5:39 p.m., correct?

13 A. Yes, it is.

14 Q. And he says: sorry for the delay in forwarding
15 this to you. The hearing concerning the Receiver and
16 whether the Receiver can waive the attorney-client
17 privilege with respect to all communications with Denny
18 Chittick is tomorrow at 10:00 o'clock. Since I have now
19 been told to expect to be called as a witness, would you
20 be able to attend with me tomorrow?

21 Correct?

22 A. You read that correctly.

23 Q. And he answered -- you said at 6:08 p.m.: Yes.
24 What judge is the hearing in front of?

25 A. Correct.

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1 Q. Okay. Do you remember receiving this -- let me
2 show you one other exhibit. If we could just look at
3 Exhibit 436, back to the other book.

4 A. Yes.

5 Q. Is -- is the -- an email from Mr. Beauchamp that
6 he sends at 6:53 that evening with a revised and signed
7 declaration. You are copied on that, correct?

8 A. Correct.

9 Q. Okay. Do you have a memory of -- were you -- in
10 being in the office when these communications occurred?

11 A. Yes.

12 Q. Okay. And tell me what you can recall.

13 A. At some point that day on August 17th, David had
14 told me that Gammage & Burnham were asking him to sign
15 some kind of declaration. He either asked me to look at
16 it or I told him to send it to me so I could look at it.

17 And David forwarded the email 5:39 p.m. My
18 memory is he came by my office to let me know that he had
19 forwarded it. I looked at the declaration, spoke with
20 David about the declaration. There was a misstatement in
21 the declaration. The format of the declaration didn't
22 comply with the Superior Court rules. I changed it, had
23 David review it, and he signed it and he sent it back.

24 Q. And so you believe that the declaration, based
25 on the information Mr. Beauchamp provided to you, was

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1 accurate?

2 A. The one that he signed?

3 Q. Yes.

4 A. Yes.

5 Q. Take a look at, if you go to Exhibit 436.

6 well, let me move on, in the interest of time.

7 Now, the next day was the hearing, and your
8 billing records, Mr. Sifferman, reflect that you spent 1.9
9 hours for DenSco issues. This is Exhibit 454, if you want
10 to look at that.

11 A. I saw that.

12 Q. Okay. Now, tell me what you can recall of the
13 hearing.

14 Let me ask you first, before I ask you about
15 that, the email that Mr. Beauchamp sent to you the
16 afternoon or evening before said he might be called as a
17 witness.

18 Did you discuss with Mr. Beauchamp his role as a
19 witness?

20 MR. DeWULF: The topic, I guess, yes or no.

21 THE WITNESS: I might have. I don't remember
22 that specifically.

23 Q. (BY MR. STURR) Okay. What I'm getting -- I
24 think what I'm getting at, is he asked you to attend the
25 hearing, if I remember what his email said, because he

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1 might be called as a witness.

2 And is that -- would that be standard practice
3 for you, as assistant general counsel, if a lawyer is
4 going to be testifying, someone from the firm should be
5 present?

6 A. It would be my procedure.

7 Q. Okay. So going to the morning of the hearing,
8 what do you remember about that day? Did you drive down
9 together with Mr. Beauchamp?

10 A. I don't believe so. I think I -- I believe I
11 met him there.

12 Q. Okay. And did you have a chance to speak with
13 him before the hearing?

14 A. I believe so.

15 Q. Did you speak with Mr. Polese or Mr. Merritt?

16 A. I don't think I did.

17 Q. Did you sit through the hearing?

18 A. Yes, I did.

19 Q. Okay. Do you recall that Mr. Polese at the
20 hearing gave the Court a document?

21 A. I don't remember that.

22 Q. Okay. You don't recall any submission that
23 Mr. Polese made that was based on or attached to which was
24 Mr. Beauchamp's declaration?

25 A. I don't remember that submission by Mr. Polese.

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1 Q. Okay. Do you have a memory of any statements
2 Mr. Polese made during the hearing regarding Clark Hill's
3 representation of DenSco and Mr. Chittick?

4 A. I remember Mr. Polese raising the issue that --
5 whether or not the receiver could waive privilege as to
6 communications that had been with Mr. Chittick.

7 Q. Okay. But beyond that, you don't remember the
8 specifics of what he said?

9 A. I believe he took the position that the receiver
10 could not waive that privilege.

11 Q. Because there was a joint privilege between the
12 entity and Mr. Chittick?

13 MR. DeWULF: Object to form.

14 THE WITNESS: I don't remember how we explained
15 it.

16 Q. (BY MR. STURR) But nothing Mr. Polese said to
17 the Court that day gave you any discomfort?

18 MR. DeWULF: Object to form.

19 THE WITNESS: I don't remember being
20 discomforted by anything that any of the appearing counsel
21 said.

22 Q. (BY MR. STURR) Okay. What do you remember
23 occurring after that hearing? I mean, what was your --
24 what's your next memory of any discussions you had on a
25 DenSco-related matter after that hearing?

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1 A. I remember that at the hearing, the judge saying
2 that she was not going to decide whether or not the
3 receiver could waive a privilege that Mr. Chittick would
4 have had, and said she would put, insert some stopgap
5 language into the receivership order.

6 David was not called as a witness. I don't
7 believe -- perhaps the potential receiver testified. The
8 hearing ended, and I returned to the office or went to a
9 client's. That's all I remember for that --

10 Q. Okay.

11 A. -- that day.

12 Q. Let me -- I'm going to try to get through a
13 couple of documents. Let me quickly hand these to you, if
14 I may.

15 I'm going to start with what's been marked as
16 Exhibit 461.

17 MR. DeWULF: Could I get a copy?

18 MR. STURR: Oh, gosh. I'm sorry, John.

19 MR. DeWULF: Thanks.

20 Q. (BY MR. STURR) All right. And I'm going to
21 hand you what's been marked as Exhibit 462.
22 Mr. Sifferman, I'm going to put in front of you
23 Exhibit 463. And the last one I want to put in front of
24 you is Exhibit 464.

25 All right. Let's --

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1 A. Hold on a second. Sorry.

2 Q. Okay. Thanks for keeping everything tidy.

3 So start with 461.

4 461 is an email that Mr. Beauchamp sent to you
5 on August 18, 2016. This is the day of the hearing,
6 correct?

7 A. Yes.

8 Q. And he is forwarding to you the Court's Order
9 and the email he received saying that Mr. Davis had been
10 appointed, correct?

11 A. Yes.

12 Q. 462 is an email from Mr. Anderson --
13 Mr. Anderson is counsel for Peter Davis, the appointed
14 receiver -- that he sent to Mr. Beauchamp on August 20,
15 2016. And attached to that is the receivership, Order
16 Appointing Receiver.

17 I don't see that you are copied on this
18 document, Mr. Sifferman, and I wanted to know if you have
19 a present memory of being advised by Mr. Beauchamp that he
20 had received from the receiver's counsel a copy of the
21 receivership order.

22 A. At some point I saw the receivership appointment
23 order. I believe David provided me with it. When he did
24 that, what specific day, I don't remember.

25 Q. Okay. And in this email, Mr. Anderson says he

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1 is inquiring about certain records of DenSco that are in
2 your position -- your possession, rather, referring to
3 Clark Hill's.

4 Do you see that?

5 A. He was -- he is referring to DenSco -- DenSco's
6 records that were delivered to the firm after
7 Mr. Chittick's death.

8 Q. And you understood at some point, and you don't
9 recall when, that the receiver was trying to obtain, from
10 Clark Hill, DenSco records in its possession?

11 A. I don't remember him, the receiver -- I don't
12 remember the receiver wanting DenSco's records. I
13 remember the receiver wanting Clark Hill's client files
14 for DenSco.

15 Q. Okay. I will get to that in a second. So you
16 don't have a memory of that. Let's go to 463.

17 Exhibit 463 is an email and attached letter that
18 Mr. Anderson, the receiver's counsel, sent to
19 Mr. Beauchamp on August 29, 2016. And it's captioned
20 Letter to Clark Hill demanding turnover of legal files, is
21 how the letter is identified.

22 Do you see that?

23 A. Yes.

24 Q. You are not copied on this and I don't see a
25 time entry in your records for this date.

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1 Do you recall becoming aware that the receiver
2 was demanding that Clark Hill turn over all of its files
3 relating to its representation of DenSco?

4 A. I remember -- I remember the receiver or the
5 receiver's attorney asking for Clark Hill to turn over
6 DenSco's client files. I don't know if I saw this
7 August 29 letter or not.

8 Q. Okay. Let's go to the next exhibit. This is
9 exhibit -- sorry. Take a look at Exhibit 317, if you
10 would.

11 Are you with me?

12 A. Yes.

13 MR. DeWULF: I'm not. If you would just hold on
14 a second. 317?

15 MR. STURR: 317, John.

16 MR. DeWULF: All right. I'm with you.

17 Q. (BY MR. STURR) Exhibit 317, Mr. Sifferman, is
18 an email from Kevin Merritt, one of the lawyers at
19 Gammage & Burnham representing the estate of Denny
20 Chittick, to Mr. Beauchamp and Ryan Anderson, the
21 receiver's counsel. It was sent on August 30, 2016. You
22 are not copied on it, but I wanted to ask you a question
23 about it.

24 In the first paragraph in the second sentence,
25 the first paragraph is -- states that, it references the

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1 demand the receiver had made on Clark Hill to turn over
2 all of its legal files relating to the representation of
3 DenSco, correct?

4 A. Yes.

5 Q. And Mr. Gammage says: while we do not object to
6 this delivery, I would like to remind everyone that David
7 testified at the receivership hearing that he concurrently
8 represented both DenSco and Denny Chittick personally, and
9 I believe the Court's order acknowledges as much.

10 Do you see that?

11 A. I see that. I see he said that.

12 Q. Do you recall Mr. Beauchamp forwarding this
13 email to you or discussing it with you on or about
14 August 30, 2016?

15 A. At some point David -- David informed me of
16 Gammage & Burnham's concerns or requests about the client
17 files and whether or not they should be copied or whether
18 or not Gammage & Burnham should have a first chance to
19 review them, but I'm not sure if it was in connection with
20 this e-mail or not.

21 Q. Let me show you one other document. Go to
22 Exhibit 464, which we have previously marked. It's one of
23 the newer documents.

24 A. Right.

25 Q. Exhibit 464 is an email that Mr. Polese sent on

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1 September 2, 2016, to the receiver's counsel, Ryan
2 Anderson, and to Mr. Beauchamp.

3 Do you see that?

4 A. Yes.

5 Q. And it's captioned Common Interest Agreement.
6 You were not copied on this.

7 If you will take a look at it, if you go to the
8 agreement itself, it's called a Common Claims and Common
9 Defense Agreement.

10 Do you see that?

11 A. Yes.

12 Q. And in the first paragraph, it states that
13 DenSco Investment Corporation, an Arizona corporation,
14 presently represented by Clark Hill.

15 Do you see that?

16 A. I'm sorry. Where is that?

17 Q. In the very first paragraph. It states that
18 DenSco is presently represented by Clark Hill.

19 Do you see that?

20 A. I see that reference, yes.

21 Q. And then in the recitals, if you look at the
22 one, two, three, four, the fifth recital.

23 Are you there?

24 A. Yes.

25 Q. Whereas, the Parties recognize and acknowledge

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1 there exists large overlap of attorney-client privilege
2 with respect to the activities involving Chittick
3 personally and those of DenSco and the representation of
4 Clark Hill as counsel for both.

5 Do you see that?

6 A. Yes.

7 Q. At any point, Mr. Sifferman, did you become
8 aware of the assertions that the estate was making that
9 the firm represented Denny Chittick personally and that
10 therefore there was a joint privilege?

11 Did you ever become concerned that the estate
12 was taking positions that were not accurate with respect
13 to the firm's representation of DenSco and Mr. Chittick?

14 MR. DeWULF: Object to form.

15 THE WITNESS: I was aware that Gammage & Burnham
16 was taking the position that -- that the estate had the
17 right to assert privilege as to some communications David
18 had with Dennis Chittick.

19 I don't remember whether or not it was specific
20 as to personal matters and non-DenSco matters. My concern
21 was that as lawyers, we don't have the right to waive the
22 privilege. We have to comply with the client's requests,
23 and here we have a receiver and a personal representative
24 who are taking different positions on privileges, and it
25 needed to be worked out between them or at the court.

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1 Q. (BY MR. STURR) So if I understand you
2 correctly, you were -- you, as assistant general counsel
3 of Clark Hill, were comfortable with Gammage & Burnham
4 making statements to the receiver and the court that Clark
5 Hill represented Mr. Chittick personally such that there
6 was a privilege that the estate could claim with respect
7 to Clark Hill's files.

8 MR. DeWULF: Object to form.

9 Q. (BY MR. STURR) Am I understanding you
10 correctly?

11 A. No. I don't believe that -- I don't remember
12 that Gammage & Burnham was taking the position that Clark
13 Hill had represented Mr. Chittick personally on non-DenSCO
14 matters. It was not, so there was nothing that either the
15 receiver said or Gammage & Burnham said that I thought was
16 inaccurate based upon whatever facts they thought existed.

17 Q. Okay. But I have just shown you Exhibit 317, an
18 August 30, 2016, email, in which Gammage & Burnham
19 expressly states to the receiver that David testified that
20 he concurrently represented both DenSCO and Denny Chittick
21 personally.

22 Can I assume that this was not brought to your
23 attention on August 30, 2016?

24 A. Well, David did not testify at this hearing.

25 Q. I understand that. I'm -- I'm just reading

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1 what's in an email, and it's an email in which Gammage &
2 Burnham is affirmatively stating that Clark Hill
3 represented Denny Chittick personally.

4 And my question to you is, can I assume that
5 this -- that Mr. Beauchamp did not bring this to your
6 attention at that time?

7 MR. DeWULF: Object to form.

8 Q. (BY MR. STURR) Because if he had,
9 Mr. Sifferman, would this not have caused you concern,
10 because it was a statement that the firm was personally
11 representing Mr. Chittick?

12 A. I don't remember whether or not Clark Hill ever
13 represented Dennis Chittick on a non-DenSCO matter. I did
14 not -- I have a vague recollection there was some question
15 about whether it had. And Gammage & Burnham was taking
16 the position that representing a corporate president, that
17 that president had the right to assert a privilege.

18 Q. How do you know that was the position Gammage &
19 Burnham was taking?

20 A. By reading the declaration that they drafted for
21 David.

22 Q. Is that all you did to determine Gammage &
23 Burnham's position?

24 MR. DeWULF: Object to form.

25 THE WITNESS: I think there was an email earlier

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1 from Jim Polese that said that also.

2 Q. (BY MR. STURR) The email I just showed you,
3 Mr. Sifferman, is -- doesn't refer to a privilege arising
4 from his role as a corporate officer. It refers to him as
5 Clark Hill having represented Denny Chittick personally.

6 And if you look at Exhibit 464, the Common
7 Claims and Common Defense Agreement, Gammage & Burnham was
8 taking the position that there was an overlap of privilege
9 with respect to the activities involving Chittick
10 personally and those of DenSCO, and those -- and the
11 representation of Clark Hill as counsel for both.

12 A. Oh, I didn't see --

13 MR. DeWULF: Wait, wait. I don't think there is
14 a question.

15 Q. (BY MR. STURR) The question there is, is -- in
16 these two statements that I have shown you, August 30 and
17 September 2, 2016, attorneys for Gammage & Burnham are
18 explicitly stating that the claim for privilege arises
19 from Clark Hill's personal representation of Denny
20 Chittick, not by virtue of his representation of the
21 corporation.

22 And my question to you is, if you had seen these
23 documents on those dates, would that have caused you any
24 concern about the position that Gammage & Burnham was
25 taking with respect to Clark Hill's representation of

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1 Mr. Chittick?

2 MR. DeWULF: Object to form.

3 THE WITNESS: Since I didn't see those documents
4 and have never seen them, I can't go -- I can't tell you
5 whether or not it would concern me or not.

6 My concern was as attorneys, we can't waive the
7 privilege, and it's up to the client or clients to
8 determine whether or not the privilege is to be waived.
9 My focus was making sure we didn't do anything that would
10 waive a privilege.

11 Q. (BY MR. STURR) Okay. And just to be clear, you
12 were depending on Mr. Beauchamp to provide you with
13 information about his discussions with the Gammage &
14 Burnham attorneys and the receiver with respect to
15 privilege issues?

16 MR. DeWULF: Object to form.

17 THE WITNESS: No. I believe I was copied on
18 some of the emails.

19 Q. (BY MR. STURR) Well, but you were not copied on
20 the two we just looked at, August 30 and September 2.

21 A. What was communicated by -- communicated to me
22 by David I think is within the privilege.

23 MR. DeWULF: And for the record, 464, I don't
24 know if it's ever been executed. I know that the email
25 references a draft, but I don't know what it -- I'm not

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1 seeing an executed copy of it.

2 MR. STURR: I wasn't implying that it was ever
3 executed.

4 MR. DeWULF: But what your question assumes that
5 somehow this either became effective or it was reviewed --

6 MR. STURR: No.

7 MR. DeWULF: -- in a way that it was effective.

8 MR. STURR: No, that was not my question. Let's
9 just go on, John.

10 Q. (BY MR. STURR) Mr. Beauchamp testified,
11 Mr. Sifferman, that the declaration that he signed was not
12 true and was misleading, but not intentionally so. He
13 said he learned the wording should have been different
14 based on a discussion with ethics counsel.

15 Is that you?

16 MR. DeWULF: So let me object to that. And his
17 deposition is not final yet. It's still being reviewed
18 and corrected. But you can use that as a predicate for
19 answering the question, but I just want you to know that
20 testimony isn't final.

21 THE WITNESS: I -- I haven't read David's
22 deposition, so I don't know what he said or in what
23 context. I can tell you that when it was signed, I
24 believed it was accurate and I assumed that he thought it
25 was accurate.

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1 I don't remember -- I don't think there was any
2 subsequent discussion with David about whether or not --
3 it being inaccurate in any way.

4 Q. (BY MR. STURR) So you -- let's be clear about
5 that.

6 You don't recall any discussions with
7 Mr. Beauchamp after the August 18 hearing about the
8 accuracy of the declaration that was submitted in
9 connection with that hearing?

10 A. Correct.

11 Q. Okay. Mr. Beauchamp also testified that someone
12 from Clark Hill did have a conversation in connection with
13 clarifying the issues for the receiver with respect to the
14 privilege: I do not know how it was resolved or any of
15 the details. I relied on counsel for that.

16 Did you have any communication with a
17 representative of the receiver to clarify the scope of
18 Clark Hill's representation of DenSco and Mr. Chittick?

19 MR. DeWULF: Object to form.

20 THE WITNESS: I don't remember such a
21 discussion.

22 Q. (BY MR. STURR) So to close this out, as I
23 understand your testimony, Mr. Sifferman, you believed the
24 declaration that Mr. Beauchamp submitted on August -- that
25 was -- that he signed on August 17th and was submitted to

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1 the Court on August 18th was accurate, correct?

2 A. Yes.

3 Q. You believe that the representations that you
4 heard Mr. Polese make to the Court regarding Clark Hill's
5 representation of DenSco and Mr. Chittick were accurate?

6 MR. DeWULF: Object to form.

7 THE WITNESS: I can tell you this. What I heard
8 at the hearing stated by the Gammage & Burnham attorney,
9 and I don't know if it was Mr. Polese or not, it was
10 nothing that they said that I thought was inaccurate.

11 Q. (BY MR. STURR) And you made no effort to -- let
12 me ask you this. You don't recall learning at the hearing
13 that Gammage & Burnham submitted a document to the Court
14 which made certain statements regarding the privilege and
15 which relied on Mr. Beauchamp's declaration?

16 A. I did not -- I know I did not see anything that
17 Gammage & Burnham presented at the hearing.

18 Q. Are you aware today that a submission was made
19 to the Court?

20 A. No. I don't know.

21 Q. And to be clear then, after the hearing, you
22 weren't concerned about any statements Mr. Beauchamp had
23 made to the Court or the receiver regarding the nature and
24 extent of Clark Hill's representation of DenSco and
25 Mr. Chittick with respect to privilege?

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1 MR. DeWULF: Object to form.

2 Q. (BY MR. STURR) Let me -- that's a long
3 question. Let me try it again.

4 A. Well, she can read it back. I think I can
5 answer it as long as I hear it back.

6 MR. STURR: Why don't you read it back.

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

8 THE WITNESS: Correct.

9 Q. (BY MR. STURR) I see that in your time records
10 there are no entries for the month of September. I will
11 tell you it's Exhibit 454.

12 A. Yes.

13 Q. Is that correct?

14 A. Yes.

15 Q. Sorry.

16 Okay. Let me -- I'm going to hand you a few
17 documents and ask you about them. I'm going to start with
18 what's been marked as Exhibit 465. I'm going to hand you
19 what has been marked as Exhibit 466.

20 MR. DeWULF: Thank you.

21 Q. (BY MR. STURR) I'm going to hand you what's
22 been marked at Exhibit 468.

23 A. You said 468. I think you meant 467.

24 Q. 7. Thank you, Mr. Sifferman. And I'm going to
25 hand you what's been marked as Exhibit 468.

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1 MR. DeWULF: Thanks, Geoff.

2 Q. (BY MR. STURR) Okay. Before I go back --
3 before we go to that, can I -- there is a question I
4 forgot to ask you.

5 I was asking you before, Mr. Sifferman, about
6 communications after the receivership hearing, and emails
7 that Mr. Beauchamp received from Mr. Merritt and
8 Mr. Polese.

9 Do you recall those questions I was asking you?
10 I just want to set the timeframe here.

11 A. I believe so.

12 Q. Okay. Take a look at Exhibit 18. I'm sorry to
13 have you pull out another book again, but if you -- are
14 you with me on Exhibit 18?

15 A. Yes.

16 MR. STURR: John?

17 Q. (BY MR. STURR) Let's wait for Mr. DeWulf to
18 catch up.

19 MR. DeWULF: I'm sorry.

20 MR. STURR: Blame Colin. He is the one that
21 marked all these exhibits. If it were me, we would have a
22 much smaller set.

23 MR. DeWULF: He did highlight things for me, so
24 that was nice.

25 Q. (BY MR. STURR) Mr. Sifferman --

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1 MR. STURR: Are you there, John?

2 Q. (BY MR. STURR) If you will go to the page
3 that's Bates marked CH_0008041.

4 Are you there?

5 A. Yes.

6 Q. These are time entries, including one on
7 August 30, 2016, by Mr. Beauchamp. And if you look in the
8 middle of that time entry, it says: Discussed issues and
9 procedures with Mr. Sifferman, with M. Sifferman.

10 Do you see that?

11 A. Yes.

12 Q. Does that refresh your memory about any -- that
13 you may have had -- it wasn't in your other timesheets, so
14 I'm wondering if you -- if that refreshes your memory
15 about any discussions you had with Mr. Beauchamp at the
16 end of August.

17 A. I don't remember.

18 Q. Okay. Thank you. All right.

19 And I'm close to wrapping up, John, so we should
20 be done, soon, and Mr. Sifferman.

21 Take a look at, if you would, then, at -- we
22 were looking at the documents I just had handed you that
23 were just marked, and Exhibit 465.

24 Are you there?

25 A. Yes.

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1 Q. This is an email exchange between Mr. Beauchamp
2 and Mr. Merritt. And if you look at the email chain
3 revolves or evolves from a request for files you can see
4 at the bottom, and Mr. Beauchamp writes to Mr. Merritt
5 about that process.

6 And he said in his last sentence: I was
7 really -- I was not really waiting for you. I just
8 received instructions on Friday from my firm's General
9 Counsel.

10 Do you see that?

11 A. I see that reference.

12 Q. Okay. If you go back to the billing statements
13 that we were just looking at, Exhibit 19. Sorry. I've
14 have got another exhibit in that book for you, that first
15 book.

16 Exhibit 19 is a letter with an accompanying
17 invoice. If you go to the third page marked 8030.

18 Are you there?

19 A. Yes.

20 Q. Mr. Beauchamp has a time entry on September 8,
21 2016, which states in part: Discuss issues and procedure
22 with M. Sifferman (2.8 no charge).

23 Do you see that?

24 A. Yes.

25 Q. Do you have a memory of having a lengthy meeting

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1 with Mr. Beauchamp in early September 2016 relating to
2 document production or other matters?

3 A. Not a lengthy one, no.

4 Q. Okay. You recall -- do you recall a meeting?

5 A. I remember discussing with David how to turn
6 over the client files.

7 Q. Okay. Is that all you recall discussing?

8 A. I'm sorry. Say that again.

9 Q. I don't want to delve any further into the
10 substance of the conversation, but that's what you can
11 recall was the substance of the conversation was about
12 turning over the client files?

13 A. Yes.

14 Q. Okay. If you go to Exhibit 466. We are done
15 with that.

16 Exhibit 466, Mr. Sifferman, is an email that
17 Mr. Beauchamp sent to Mr. Merritt on September 14. And at
18 the bottom of that email, he -- he states: My firm had
19 limited my review to the files concerning the update to
20 the POM and to the Loan workout file with Scott Menaged.

21 A. I'm sorry. Where are you?

22 Q. I'm sorry. I should have pointed it out. In
23 the bottom part of the page, Mr. Beauchamp wrote -- it's
24 the part that begins "Kevin."

25 Do you see that?

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1 A. Yes.

2 Q. In that first paragraph, three lines up from the
3 bottom: My firm had limited my review to the files
4 concerning the update to the POM, P-O-M, and to the Loan
5 workout file with Scott Menaged.

6 Do you see that?

7 A. Yes.

8 Q. And then he says below, in the next paragraph:
9 I had forwarded the DenSco files to your office before my
10 General Counsel approved sending them. I have now been
11 advised that I should have gone through them before
12 sending them to you.

13 Do you see that?

14 A. Yes.

15 Q. Is that -- are those among the subjects that you
16 discussed with Mr. -- Mr. Beauchamp in your meeting on
17 September 8th?

18 A. I don't remember.

19 Q. Okay. Exhibit 467, Mr. Sifferman.

20 Exhibit 467 is a letter and email that -- or an
21 email and letter, rather, that Mr. Anderson, the
22 receiver's counsel, sent to Mr. Beauchamp on
23 September 16th regarding the previous demand for Clark
24 Hill's files. I don't see that you are copied on it.

25 A. I'm not.

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1 Q. Okay. The -- the next -- if you turn to
2 Exhibit 325.

3 A. 325.

4 Q. I'm just trying, as best as I can, to recreate
5 your memory of certain events.

6 Are you there at 325?

7 A. Yes.

8 MR. STURR: I will wait for Mr. DeWulf.

9 MR. DeWULF: Thank you.

10 Q. (BY MR. STURR) Exhibit 325, Mr. Sifferman, was
11 previously marked, and it's another email exchange between
12 Mr. Beauchamp and Mr. Merritt. This is now September 23.

13 And Mr. Beauchamp wrote at the middle of the --
14 middle part of the email to Mr. Merritt, and this is
15 regarding the receiver's demand for documents, and he
16 says: I just talked to Mark Sifferman, who is just back
17 today after a couple weeks in Italy -- which may explain
18 why you have no memory of -- or was involved in those
19 earlier communications. Mark does not want me to spend
20 the money to digitize the files for the Receiver and he
21 does not want me to spend the time to review all the files
22 for attorney-client information. He just wants me to
23 review and make copies of the portions of the file that I
24 need to protect against a securities claim against me and
25 the firm. Since that is different than what you and I had

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1 discussed, I wanted to make sure that you knew what I am
2 being told to do.

3 Do you see that?

4 A. Yes.

5 Q. Is Mr. Beauchamp's statement of the instructions
6 or advice he received from you accurate?

7 A. Not completely. My memory is that Gammage &
8 Burnham wanted a copy of all the files or they wanted us
9 to digitize them, and I said we are not going to pay for
10 digitizing the files.

11 I don't remember -- I don't remember talking to
12 David about his review of the files or any limitation on
13 his review. I told him to have all the DenSco files
14 gathered, and I went through them.

15 Q. Well, we will get to that in a second, but did
16 you -- did you tell -- did you finish answering? I didn't
17 want to cut you off.

18 A. I did, but -- and I didn't tell him, I don't
19 remember telling him to make copies of the portions of the
20 file that I needed to protect against a securities claim.

21 Q. Take a look at Exhibit 468, if you would,
22 please, Mr. Sifferman.

23 Exhibit 468 is an email that Mr. Merritt sent to
24 Mr. Beauchamp on September 23, and he is responding to the
25 exhibit we just looked at with respect to Mr. Beauchamp

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1 had told Mr. Merritt about his communications with you.

2 And Mr. Merritt asked if he can disclose that
3 information, and Mr. Beauchamp writes: We should wait on
4 that until after my meetings on Monday and Tuesday in
5 Ohio. I will try to get some clarification on that
6 direction.

7 Do you see that?

8 A. Yes, I do.

9 Q. Did you take part in any meetings with
10 Mr. Beauchamp in Ohio around this time period?

11 A. No.

12 Q. Okay. Take a look at --

13 A. Well, hold on one second. The only reason I
14 hesitated, there was a firm retreat in Cleveland, Ohio,
15 but...

16 Q. It was around this time period?

17 A. It might have, but I don't -- it might not have
18 been then, but I had no meeting with David in Ohio about
19 anything about DenSco.

20 Q. At some point, Mr. Sifferman, did you have
21 occasion to have an in-depth interview of Mr. Beauchamp
22 about the representation of -- his representation of
23 DenSco and potential claims against the firm?

24 A. No.

25 Q. Okay. Let me ask you to take a look at 326, if

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1 you have that in front of you.

2 Do you have that in front of you, sir?

3 A. Yes, I do.

4 Q. This is an email that Mr. Merritt sent to
5 Mr. Anderson and Mr. Beauchamp and others on September 23,
6 2016.

7 Do you see that?

8 A. Yes.

9 Q. You are not copied on it.

10 A. Correct.

11 Q. And I want to draw to your attention the second
12 paragraph, where Mr. Merritt refers to his earlier email,
13 indicating: we did not object to the delivery of the
14 files to the Receiver, but requested copies of selected
15 items where advice was provided that we might characterize
16 as "dual" (i.e., delivered both to the corporation and to
17 Denny individually). David appears to have attempted to
18 define the nature of those matters.

19 Do you see that?

20 A. Yes, I do.

21 Q. This is another instance, Mr. Sifferman, in
22 which Gammage & Burnham appears to be taking the position
23 that Clark Hill represented Mr. Chittick individually.

24 was this email brought to your attention by
25 Mr. Beauchamp?

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1 A. No.

2 Q. Okay. Take a look at Exhibit 469.

3 Oh, we don't have it. Here it is.

4 And let me go ahead and just to speed things up,
5 I'm going to hand you 470.

6 A. Okay.

7 Q. Okay. Mr. Sifferman, Exhibit 469, let's start
8 with that, that's an email from the receiver's counsel,
9 Ryan Anderson, to Mr. Beauchamp and others that was sent
10 on October 7, 2016, and it's regarding the production of
11 files in -- DenSco's legal files in Clark Hill's
12 possession.

13 And the email concludes by saying: I have been
14 directed to seek the intervention of the Court, if a
15 complete production of the files is not made to the
16 Receiver on or before Tuesday October 11, 2016.

17 Do you see that?

18 A. Yes.

19 Q. Back at Exhibit 454, your time records, I see
20 that you have time entries in October that begin on
21 October 7, 2016.

22 A. Actually, October 4th.

23 Q. October 4. Excuse me.

24 But then at this time period you devote a
25 considerable amount of time to reviewing the files and

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1 producing them?

2 A. Yes.

3 Q. Okay. Was your work occurring in part because
4 of the demand made by the receiver's counsel through
5 Exhibit 469?

6 A. I am not sure I was aware of a demand. I was
7 aware that the receiver wanted -- the receiver's attorney
8 wanted to turn over the client files.

9 Q. Okay. And you -- I think you testified earlier
10 that -- did you personally review the files?

11 A. Yes.

12 Q. Okay. Tell me, what did -- how did you go about
13 doing that?

14 A. I instructed David to have himself or his staff
15 or both to gather all the DenSCO files, put them -- they
16 were put in an office so I could review them, make sure
17 they were complete.

18 Q. And that was the purpose of your review, was to
19 make sure they were complete?

20 A. Right.

21 Q. And did you actually personally go through and
22 review every file?

23 A. I -- I hesitate to use the word "review." I
24 looked at what was in the files to see if they appeared to
25 be complete, that there were no gaps in dates, but

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1 substantively, no, I didn't make that kind of review.

2 Q. Okay. And Exhibit 470, which I have just handed
3 to you, let me note for John's benefit that we have added
4 a receiver number to this. It will be included in our
5 next disclosure statement, which is going to come out in a
6 couple weeks, but this is -- I don't know where -- we
7 received it from the receiver, but it didn't previously
8 have a receiver on it, so...

9 MR. DeWULF: 470 you are talking about?

10 MR. STURR: Yes, 470. Okay?

11 Q. (BY MR. STURR) So Exhibit 470, Mr. Sifferman,
12 is a letter that you authored to Ryan Anderson?

13 A. Yes.

14 Q. And it includes a list of the files --

15 A. Yes.

16 Q. -- contained in six boxes.

17 And you state: we believe these are all the
18 firm's files regarding DenSco's legal work. However, you
19 are going to double-check, correct?

20 A. Correct.

21 Q. And then there is an accompanying index.

22 How did -- did you personally, were you
23 personally involved in -- let me ask you about the letter
24 on the index first.

25 As you went through the files and -- and -- and

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1 reviewed them, did you find any -- any documents that
2 indicated that the -- Clark Hill had represented Denny
3 Chittick in an individual capacity or given him advice in
4 an individual capacity?

5 MR. DeWULF: Object to form.

6 THE WITNESS: I don't remember seeing any
7 material about -- to Denny Chittick or about Denny
8 Chittick that wasn't related to DenSco.

9 Q. (BY MR. STURR) Okay. As you -- as you went
10 through the files, did that exercise cause you to question
11 the statements that Gammage & Burnham's attorneys had made
12 that there was a joint representation of DenSco and
13 Mr. Chittick individually?

14 MR. DeWULF: Object to form.

15 THE WITNESS: I don't -- I can't say that I made
16 that distinction, that I had that distinction in my mind
17 when I was reviewing the documents in October.

18 Q. (BY MR. STURR) Okay.

19 A. So, no, nothing I saw in the file made me
20 concerned.

21 Q. Okay. Did -- were you involved in causing the
22 files to be delivered to the receiver?

23 A. I dictated the index.

24 Q. I guess what I am getting at, did you personally
25 deliver the -- these files?

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1 A. No.

2 Q. You did not.

3 Did you ever meet with Mr. Anderson?

4 A. No.

5 Q. Did you speak with Mr. Anderson about delivering
6 the files to him?

7 A. I don't think so.

8 MR. STURR: Okay. I don't think I have any
9 other questions for you, Mr. Sifferman. Thank you.

10 MR. DeWULF: Thank you.

11 VIDEOGRAPHER: The time is 12:00 p.m. We are
12 ending the deposition with media two.

13 MR. DeWULF: We will read and sign.

14 (12:00 p.m.)

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MARK SIFFERMAN

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MARK SIFFERMAN, 8/31/2018

1 BE IT KNOWN that the foregoing proceeding was
 2 taken before me; that the witness before testifying was
 3 duly sworn by me to testify to the whole truth; that the
 4 questions propounded to the witness and the answers of the
 5 witness thereto were taken down by me in shorthand and
 thereafter reduced to typewriting under my direction; that
 the foregoing is a true and correct transcript of all
 proceedings had upon the taking of said deposition, all
 done to the best of my skill and ability.

6 I CERTIFY that I am in no way related to any of
 7 the parties hereto nor am I in any way interested in the
 outcome hereof.

8
 9 [X] Review and signature was requested.
 [] Review and signature was waived.
 [] Review and signature was not requested.

10
 11 I CERTIFY that I have complied with the ethical
 12 obligations in ACJA Sections 7-206(F)(3) and
 7-206-(J)(1)(g)(1) and (2).

13
 14 Kelly Sue Oglesby
 Kelly Sue Oglesby
 Arizona Certified Reporter No. 50178

9/9/2018

Date

15
 16 I CERTIFY that JD Reporting, Inc. has complied
 17 with the ethical obligations in ACJA Sections
 7-206(J)(1)(g)(1) and (6).

18
 19
 20 JD REPORTING, INC.
 Arizona Registered Reporting Firm R1012

9/9/2018

Date

NOV 20 2018

JD Reporting, Inc.

Certified Reporters

October 15, 2018

Mr. Geoffrey M.T. Sturr
OSBORN MALEDON, P.A.
2929 North Central Avenue
21st Floor
Phoenix, Arizona 85012

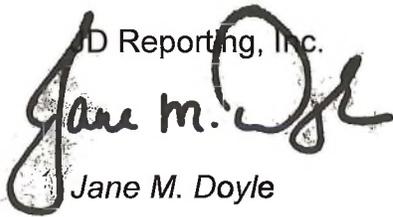
IN RE: DAVIS VS. CLARK HILL PLC
CASE NO.: CV2017-013832

Dear Mr. Sturr:

Attached please find the original transcript of the deposition of **Mark Sifferman**, taken in the above-referenced matter. The deponent signed the signature page and corrections were made.

If you have any questions, please don't hesitate to contact me.

Very truly yours,

JD Reporting, Inc.

Jane M. Doyle

Enclosure

MARK SIFFERMAN, 8/31/2018

1 A. No.

2 Q. You did not.

3 Did you ever meet with Mr. Anderson?

4 A. No.

5 Q. Did you speak with Mr. Anderson about delivering
6 the files to him?

7 A. I don't think so.

8 MR. STURR: Okay. I don't think I have any
9 other questions for you, Mr. Sifferman. Thank you.

10 MR. DeWULF: Thank you.

11 VIDEOGRAPHER: The time is 12:00 p.m. We are
12 ending the deposition with media two.

13 MR. DeWULF: We will read and sign.

14 (12:00 p.m.)

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