

IN THE SUPERIOR COURT OF THE STATE OF ARIZONA

IN AND FOR THE COUNTY OF MARICOPA

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

Plaintiff,

vs.

Clark Hill PLC, a Michigan
limited liability company;
David G. Beauchamp and Jane Doe
Beauchamp, Husband and Wife,

Defendants.

NO. CV2017-013832

VIDEOTAPED DEPOSITION OF PETER DAVIS

Phoenix, Arizona
November 16, 2018
9:07 a.m.

REPORTED BY:
KELLY SUE OGLESBY, RPR
Arizona CR No. 50178
Registered Reporting Firm R1012

PREPARED FOR:

PETER DAVIS, 11/16/2018

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1 VIDEOTAPED DEPOSITION OF PETER DAVIS, commenced
2 at 9:07 a.m. on November 16, 2018, at the law offices of
3 Osborn Maledon, P.A., 2929 North Central Avenue,
4 21st Floor, Phoenix, Arizona, before KELLY SUE OGLESBY, a
5 Certified Reporter, CR No. 50178, in and for the County of
6 Maricopa, State of Arizona, pursuant to the Rules of Civil
7 Procedure.

8 * * *

9 APPEARANCES

10 FOR PLAINTIFF:

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23 ALSO PRESENT:

24 Mary Onuschak, Legal Video Services

PETER DAVIS, 11/16/2018

Phoenix, Arizona
November 16, 2018
9:07 a.m.

* * *

(Deposition Exhibits No. 471 through 540 were marked for identification.)

VIDEOGRAPHER: This is the videotaped deposition of Peter S. Davis, taken by the defendant in cause number CV2017-013832, styled Peter Davis, as Receiver of DenSco Investment Corporation, versus Clark Hill, PLC, et al., filed in the Superior Court of the State of Arizona, in and for the County of Maricopa.

Today is November 16th. The year is 2018. The time is 9:07 a.m. Our location is 2800 North Central Avenue, Phoenix, Arizona.

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

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

MR. STURR: Oh, sorry. Geoffrey Sturr, Osborn Maledon, and with me is Ryan Anderson, counsel for the receiver.

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1 MR. DeWULF: John Dewulf, Coppersmith
2 Brockelman, for defendants Clark Hill and David Beauchamp.

3 VIDEOGRAPHER: You may swear the witness.
4

5 PETER DAVIS,
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. DeWULF) Please state your name.

12 A. Peter Davis.

13 Q. Peter, we are here today for your deposition as
14 receiver and as plaintiff in a litigation in Superior
15 Court filed against Clark Hill and David Beauchamp.

16 Do you understand that?

17 A. Yes.

18 Q. I want to go through -- well, let me just talk
19 about a couple things in a deposition.

20 You have been probably deposed many, many times,
21 right?

22 A. Yes.

23 Q. Let me just go through a couple things that will
24 abbreviate it.

25 I want to make sure that my questions are

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1 understood by you. So if I ask a question that you don't
2 understand, will you please tell me?

3 A. I will.

4 Q. And if you answer the question that I ask you,
5 I'm going to assume you understood the question I asked
6 you.

7 Is that fair?

8 A. Yes.

9 Q. We will need to give each other the courtesy to
10 allow the other to complete speaking before the other
11 speaks, because it's difficult to take down two people
12 speaking at the same time.

13 Do you understand that?

14 A. Yes, I do.

15 Q. I try to take a break about every hour or so,
16 but if you need to break more frequently than that, just
17 let me know. I'm happy to do that.

18 A. That would be great. I have a commitment this
19 evening that it would be good to get out of here at
20 5:00 o'clock, if that's possible.

21 Q. Yeah. I understand.

22 So your deposition is scheduled for seven hours
23 today, and I think that should be accomplishable. We will
24 break for lunch. I generally want witnesses to have a
25 break at lunch, and I like to take one as well.

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1 Let me ask some background questions of you. If
2 you could look at that top exhibit, 471. I think this is
3 an up-to-date resumé for you. I think we found this on
4 your website, the Simon Consulting website.

5 Could you confirm that this is an up-to-date
6 resumé for you?

7 A. This Exhibit 471 is not really what I call my
8 resumé. I have a document that's my curriculum vitae, and
9 then this is the website bio, is perhaps what I would
10 describe it as, of me from our website, it looks like from
11 our website. It doesn't have a date on it, so I'm not
12 certain of the date this was printed.

13 Q. Understand.

14 So let's look at 472. Now, I -- we located this
15 through court records, but I wanted to just focus your
16 attention on what is described as court appointments,
17 beginning on the second page. And I know this is as of
18 2008.

19 So I would like you to just look through there
20 and see if there are any receiverships you could share
21 with us where you were serving as a receiver after those
22 identified in this description or listing.

23 A. There are many.

24 Q. Are there? Can you share with us what you can
25 recall since 2008? You may not be able to remember them

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1 all, but if you could share with us what receiverships you
2 served as receiver in.

3 MR. STURR: I'm sorry, John, since 2008? Since
4 this?

5 MR. DeWULF: Yes, since this document, 472.

6 THE WITNESS: Several medical marijuana cases.
7 Three of them, All Greens, Absolute, and MMJ Apothecary.

8 There have been a lot since 2008. There have
9 been, I think, several school districts, public school
10 districts, a charter school district. There have been
11 several cases with the Federal Trade Commission. Some
12 cases as distribution agent, but court appointed with the
13 Securities and Exchange Commission.

14 Q. (BY MR. DeWULF) What does that mean, appointed?

15 A. As a distribution agent?

16 Q. Yeah. What is a distribution agent?

17 A. It's essentially disbursing money as a result of
18 the fraud.

19 Q. I see.

20 A. And there is a claims process typically
21 involved. There is some investigative work, but it's
22 minimal. It's more a disbursing agent.

23 Q. And the FTC matters, what would you be doing in
24 those matters?

25 A. Those are fraud cases, consumer fraud cases,

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1 brought by the Federal Trade Commission. They are
2 typically boiler room type operations located in Arizona
3 that involved different types of online and
4 telephone-based frauds.

5 Q. And is that a court-appointed position then --

6 A. Yes.

7 Q. -- on the FTC matters?

8 A. I'm sorry. Yes.

9 Q. And is that a wind down typically of the
10 entities?

11 A. There is a temporary order put in place, I think
12 it's a two-week period typically, and then I will, during
13 the two weeks, go in and investigate, investigate the
14 FTC's allegations and then report back to the court and
15 the court will decide to enter a permanent injunction in a
16 wind down, or a continuation of their operation and a wind
17 down of the receivership.

18 Q. Anything else you can recall today other than
19 those you have identified where you served as a
20 receiver --

21 A. Palo Verde --

22 Q. -- or a similar position since 2008?

23 A. Palo Verde Fund, which is investment fraud
24 through a -- through a private equity fund. There are
25 many, many more that I'm simply able not to recall, but

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1 many involving real estate. Some operating companies, a
2 brick manufacturer, a manufacturer of tile for
3 high-quality tile.

4 Q. So the CV that you identified earlier, can I
5 find that on your website?

6 A. No.

7 Q. Where would I find that?

8 A. I have it on my server.

9 Q. Okay.

10 A. I provide it to clients and to -- attach it to
11 expert reports frequently, so it's a document that could
12 be provided.

13 Q. Could you provide that to your counsel so he can
14 provide it to us?

15 A. Yes.

16 Q. And is that -- that presumably is up to date,
17 right, with regard to matters you have served as a
18 receiver in?

19 A. Yes, and other matters.

20 THE WITNESS: And if you don't mind, Geoff,
21 could you keep a list for me.

22 MR. STURR: Uh-huh.

23 THE WITNESS: I would appreciate it.

24 Q. (BY MR. DeWULF) Now, you have a firm you work
25 through called Simon Consulting, right?

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1 A. Yes.

2 Q. And in your role as receiver in this matter, do
3 you have individuals at Simon that are helping you on the
4 tasks you have been asked to perform?

5 A. Yes.

6 Q. Who are those individuals?

7 A. There are many, but primarily Sara Beretta.

8 Q. Is that B-e-r-e-t-t-a?

9 A. Yes.

10 MR. STURR: In this case?

11 THE WITNESS: In this case, correct, yes. I
12 assume you are speaking about this.

13 Q. (BY MR. DEWULF) That's what I'm asking about,
14 is this case.

15 A. Yes.

16 Q. Any other individuals you could name that would
17 be performing tasks in connection with the receivership
18 for the plaintiff?

19 A. Throughout the receivership, other staff people
20 helped with the project, but Sara has been the primary
21 person with Simon who -- who has helped. I know other
22 staff people have helped from time to time, but I don't
23 remember who and to the degree they did for a time.

24 Q. When a report is filed with the court in the
25 receivership, do you oversee the creation of that report?

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1 A. Yes.

2 Q. Explain that for us. What do you do with
3 respect to the reports?

4 A. Well, there is a lot of discussion and analysis
5 prior to the report beginning. Typically Sara Beretta
6 will take the lead on writing and drafting the report,
7 with input from me. And as the report is closing in on
8 completion, I will be involved in reviewing and providing
9 edits and comments along the way.

10 The same with the analysis, which would be
11 finished before the report is even started, is that the
12 analysis would be evaluated by me. It would be performed
13 at my request, and then evaluated by me. And we would
14 have discussions about that, and then the analysis would
15 be performed and I would be looking at it and oftentimes
16 suggesting edits, changes, and different ways of looking
17 at it and that sort of thing.

18 And when we get to a comfortable place, then the
19 report is prepared and written in part by Sara, and then I
20 review it and I provide comments to it, and then that
21 becomes the final report.

22 Q. Fair to say that whatever report is ultimately
23 submitted to the court, you have had an opportunity to
24 review and approve it?

25 A. Oh, yes. It's my report.

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1 Q. And you are comfortable with the information
2 contained in it, right?

3 A. Yes.

4 Q. It's accurate, at least as of the date that it's
5 created, right?

6 A. Correct.

7 Q. All right. And when you use the word
8 "analysis," are you talking about financial analysis?

9 A. Well, it is financial oftentimes, most of the
10 time, but there is other analysis in the reports, and so
11 getting myself comfortable with those other analyses.

12 Q. Could you explain for us -- and I have seen a
13 number of spreadsheets and we are going to show you and
14 talk about some today, but what other analysis would you
15 have done in your role as receiver other than financial
16 analysis?

17 A. Well, I have deposed individuals. I have
18 participated in meetings and interviews of individuals
19 conducted by phone and in person. I have looked at
20 documents that are not financial necessarily, for example,
21 emails, letters, the offering memorandums, legal
22 pleadings, background investigations, asset searches and
23 considered all that type of documentation.

24 And there is other things that come into play.
25 So it's not just a financial numbers based, bank statement

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1 based analysis, but rather a holistic analysis that takes
2 into account all the relevant records in what we are
3 doing, you know.

4 Q. Thank you.

5 You said you have deposed some people. Who have
6 you deposed?

7 A. Many individuals here. I don't know if I will
8 recall all of them, but Scott Menaged, Veronica Castro. I
9 believe we deposed Luigi. I am forgetting his last name.

10 Q. It's a name like Amoroso or something like that?

11 A. I want to say Amoroso, correct. And I'm not
12 100 percent sure if he was deposed or interviewed, but I
13 believe he was deposed.

14 And then -- well, David Beauchamp of course.
15 And, I mean, there was testimony taken at the bankruptcy
16 hearing for creditors for Scott Menaged's bankruptcy.

17 I'm trying to remember if there is other
18 depositions. There may be. I just don't remember all of
19 them.

20 Q. So when you say you have taken depositions, you
21 have had lawyers take them on your behalf, correct?

22 A. Correct. Yes.

23 Q. And you mentioned the deposition of Scott
24 Menaged. Is that the 2004 exam or is there some other
25 deposition or examination?

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1 A. I believe I'm referring to the 2004 exam, yes.

2 Q. And there also was an interview done of him as
3 well early in the case?

4 A. Correct, before the exam.

5 Q. Right.

6 And the Castro, Ms. Castro, do you recall if she
7 was actually deposed, and if so, where?

8 A. It was at Mr. Anderson's office, and I don't
9 remember if it was in exactly a deposition or an
10 interview, but I thought it was a deposition.

11 Q. In what matter?

12 A. In this matter. Now that I am remembering, it
13 may have been an interview. I know her lawyer was present
14 and I was on the phone listening in, so I'm sorry, I just
15 don't remember exactly, but I believe it was an interview.

16 Q. Was it under oath?

17 A. I don't think so.

18 Q. Was there a court reporter there to transcribe
19 what was asked and answered?

20 A. No.

21 Q. If we were to try to reconstruct what happened
22 in that interview or deposition of Ms. Castro, what would
23 we look for? Are there notes? What, in writing, would
24 evidence what occurred there?

25 A. I mean, in evidence, I don't have notes from

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1 that interview that I remember. There may be notes that
2 exist. I was listening in by phone. I recall there were
3 admissions and there were things that came out that were
4 concerning to me about her role in this.

5 Q. I don't think I have ever seen this, any sort of
6 notes or anything from that.

7 Do you know if you have provided that in this
8 case or put it in the repository?

9 A. I don't, no.

10 Q. And do you think that maybe the only written
11 evidence of what occurred is -- are notes by lawyers?

12 A. I think that's possible.

13 Q. And you think they are Mr. Anderson's notes?

14 A. Well, he was the one who was conducting the
15 interview.

16 Q. Okay. And was there any sort of written list of
17 questions or any sort of written answers to the questions
18 being asked?

19 A. I don't understand the question. Do you mean
20 like after the fact that was provided to me?

21 Q. Well, I'm wondering if there were any sort of,
22 either before the interview or during the interview, there
23 were any written -- there were questions put to writing
24 somewhere for Ms. Castro?

25 A. I don't remember.

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1 Q. Okay. And do you think that the answers that
2 she gave are reflected somewhere in writing?

3 A. I haven't -- that I remember, I have not seen
4 something to that effect.

5 Q. But you recall that there were some things she
6 said that were troubling to you?

7 A. Yes.

8 Q. All right. If there are notes of that
9 interview, will you provide those to us?

10 A. Yes.

11 MR. STURR: I'm going to object on the grounds
12 that they are -- they may be protected by work product.

13 MR. DeWULF: We will cross that bridge. I am
14 asking if he is willing to, and then subject to your
15 input.

16 Q. (BY MR. DeWULF) Do you know whether that
17 interview occurred before or after you entered into a
18 settlement agreement with Scott Menaged?

19 A. I don't remember.

20 Q. Okay. And you indicated that the individual
21 Luigi, and we are thinking maybe the name was Amoroso or
22 Amorosa, you think that similarly there was an interview
23 of that person?

24 A. Yes.

25 Q. And was that done by Ryan Anderson as well?

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1 A. That's my recollection.

2 Q. Let me just ask a question I forgot to ask a
3 moment ago.

4 In your role as receiver in the matters you have
5 identified, and I know there are a lot we haven't talked
6 about today, does Mr. Anderson and the Guttilla firm
7 typically serve as your counsel?

8 A. They have in many of my cases, yes.

9 Q. Do you work with any other counsel other than
10 Ryan Anderson and Guttilla in your role as receiver?

11 A. Yes, I have.

12 Q. Who else do you use?

13 A. I have worked with -- well, do you mean as
14 primary general counsel or special counsel?

15 Q. Primary general counsel, meaning your counsel in
16 your role as receiver.

17 A. So I have worked with Steve Jerome, Wade
18 Burgeson, Scott Jenkins, Bob Miller. I'm trying to
19 remember others. There may be some others that I just
20 don't remember.

21 Q. So what firm is Steve Jerome with?

22 A. Snell.

23 Q. Snell & Wilmer?

24 A. Yes.

25 Q. And Wade Burgeson, what firm is he with?

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1 A. Engelman Berger.

2 Q. Scott Jenkins?

3 A. He is at Quarles.

4 Q. And Bob Miller?

5 A. Bryan Cave.

6 Q. The interview with Mr. Amoroso, do you know
7 whether there are any notes or memorialization of what
8 occurred in that interview?

9 A. No.

10 Q. Are there any other individuals, other than the
11 folks you have identified that you believe have been
12 deposed, relative to your responsibilities in this matter?

13 A. I'm not recalling any others right now.

14 Q. Let me just ask to see if I might be able to
15 refresh your memory at all.

16 Any interviews of bank personnel?

17 A. I'm sorry. You were asking about depositions
18 earlier. I want to be clear.

19 Q. Yeah.

20 A. Did you mean interviews or depositions?

21 Q. Thanks for the clarification.

22 In your answers to me, you were including what I
23 understood to be interviews, so my question is a broad
24 one, depositions or interviews.

25 A. Okay.

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1 Q. Let me go back, because -- to make sure I
2 understand your testimony.

3 You think that the Castro and Amoroso folks were
4 deposed as opposed to interviewed, right?

5 A. I think I --

6 MR. STURR: Object to the form of the question.

7 Q. (BY MR. DeWULF) You don't know?

8 A. Well, I initially answered deposed because I was
9 thinking there were depositions of them. I wasn't
10 physically there, but in thinking about it and recalling
11 and the way the flow of the interview happened and the
12 involvement of Castro's counsel and everything, I started
13 to remember that actually was probably an interview.

14 Q. It was an interview?

15 A. Yes.

16 Q. And -- but Ms. Castro had a lawyer there?

17 A. Yes.

18 Q. Who was the lawyer, do you remember?

19 A. Yes. It was Ashley Adams.

20 Q. Okay. And was Ashley Adams there for the
21 interview of Mr. Amorosa or Amoroso?

22 A. I don't know.

23 Q. Did you listen in by phone on the Amoroso
24 interview?

25 A. No.

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1 Q. Are there any other individuals you can recall
2 that have been interviewed in connection with your job as
3 a receiver in this matter?

4 A. Oh, yes.

5 Q. Who?

6 A. A number of investors.

7 And let me be clear, are you asking by me or by
8 individuals on my team? I'm sorry.

9 Q. Thanks for the clarification.

10 When I am asking in your role as a receiver, I'm
11 assuming you are covering people who work with and for you
12 in that role as receiver, so it's meant to be a broad
13 question. Folks who are under your supervision or
14 direction.

15 A. Well, I'd like to, if it's okay, first answer
16 the question as for me, because my personal recollection
17 will be a little bit better than what other people did on
18 my behalf. And I specifically recall interviewing a
19 number of investors over time. Shawna Heuer, the counsel
20 for Shawna Heuer. And when I say interview, it was
21 perhaps more of a meeting, but it was an opportunity for
22 me to ask questions.

23 Q. And her lawyer, Greg Fairbourn, is that who the
24 individual was?

25 A. No. No. It was Mr. Polese and Kevin Merritt.

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1 Q. And do you remember when, approximately, that
2 occurred?

3 A. Well, there were several opportunities to talk
4 to them about the matter, including in the fall of 2016.

5 Q. You said "opportunities." I'm wondering, did
6 you take the opportunity to do the interview?

7 A. Well, I want to make sure I answer the question
8 clearly, because there were times when -- and I'm going
9 back to the first hearing in this matter -- where I talked
10 to Mr. Polese about the matter.

11 Q. So when you are talking about the first hearing,
12 you are talking about the hearing where you were appointed
13 by the court?

14 A. Yes.

15 Q. All right. And so you are saying before that
16 occurred, you actually spoke to Ms. Heuer and with her
17 counsel?

18 A. No, that's not what I said. But at that first
19 hearing, I spoke to Polese and David Beauchamp, okay,
20 briefly. I don't recall if I spoke to them beforehand. I
21 don't think I did. And there were some questions. I
22 don't remember all the details of what were exchanged at
23 that time. I remember some of them.

24 Subsequent to that, I was appointed in the
25 formal role, and then began various interviews. There was

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1 a time I met Shawna Heuer at Denny Chittick's home and had
2 an opportunity to talk to her and interview her. Prior to
3 that I recall speaking with her on the phone, and
4 subsequent to that I recall speaking with her on the
5 phone.

6 There were meetings held with her attorneys in
7 which I participated and had an opportunity to ask
8 questions. And, again, I'm answering all these questions
9 as to my personal specific experience, where I sat in the
10 interview, per se. And I'm interpreting interview as
11 pretty broadly here.

12 Q. And in these interviews you have identified, was
13 your counsel typically present or not?

14 A. Sometimes he was and sometimes he wasn't.

15 Q. So I'm wondering about this interview that
16 occurred at Mr. Chittick's house.

17 What were the circumstances surrounding that
18 occurring?

19 A. I don't remember exactly what prompted the
20 interview with specificity. I know part of the process
21 was to determine what assets may be there that would
22 belong to DenSco.

23 Also to understand the picture here. For
24 example, where was Denny's office? What things were in
25 his office? What did it look like? Were there hard-copy

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1 documents here? were there -- was there other
2 information?

3 And keep in mind, it wasn't easy getting
4 information early on in this case because of a bunch of
5 stuff that was happening out there in the legal area,
6 okay? But I wanted to gather as much information so I
7 could move like light speed into this investigation. And
8 so it was one step, but despite even having that
9 opportunity, I have a specific recollection of not having
10 the full ability to get what I wanted.

11 But while out there, we had discussions. I saw
12 the location of where Mr. Chittick killed himself. I saw
13 the place in the basement where he kept records in a
14 closet. I had an opportunity to look at it. I gathered
15 up some of the documents and information that were there.
16 As I recall some things were provided to me.

17 And Shawna had already been through everything,
18 but it was more like where she was saying you may want
19 this, you may want that, and I took everything that I
20 could take, that I was permitted to take at that point in
21 time, to accelerate my investigation.

22 Q. So you were appointed in August of 2016, right?

23 A. Yes.

24 Q. And the -- what you have just described, did
25 that occur after you were appointed as receiver?

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1 A. Yes.

2 Q. And when you viewed things at the Chittick
3 residence, were there documents of DenSco's and
4 Mr. Chittick's still at the residence?

5 A. Yes.

6 Q. And were those in the basement?

7 A. There wasn't much left in the basement. I think
8 most of those records, from my recollection, had already
9 been sent. It was more going down into the basement to
10 understand where records were kept and the nature of
11 things, like where -- where the records were kept, what
12 retention system. There were filing cabinets. There was
13 a closet in there where Shawna pointed to and said this is
14 where all the boxes were maintained.

15 And my recollection is that the boxes had
16 already been taken and removed from the location, and I
17 believe were in the control of Shawna's attorneys and/or
18 the Arizona Corporation Commission at the time that I got
19 in. Since then, they have been provided to me.

20 Q. So the Corporation Commission was already
21 involved by the time you were appointed as receiver,
22 correct?

23 A. Oh, yes. They had filed a complaint. That was
24 the basis for my appointment.

25 Q. Right. And so -- and they got involved days

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1 after Mr. Chittick's suicide, correct?

2 A. I don't know if it was days, but I know it was
3 soon after, because he killed himself in the summer, in
4 the middle of summer of '16, and by August I was
5 appointed. So it must have been fairly quick, but I don't
6 know exactly the number of days until they, you know, were
7 involved. Was it days or weeks, I just don't know --

8 Q. Okay.

9 A. But it was quick.

10 Q. The suicide occurred on July 28th.

11 Do you recall that?

12 A. Yes.

13 Q. Of 2016, right?

14 A. Yes.

15 Q. And if I were to tell you that the Corporation
16 Commission was in communication with parties that
17 following week, would that be a surprise to you?

18 A. No.

19 Q. All right. The description that you were given
20 by Ms. Heuer as to how documents were kept, did it strike
21 you that DenSco and Chittick were well-organized with
22 respect to recordkeeping, not well-organized, or did you
23 gain any impression at all?

24 A. Purely from that meeting with Heuer, I mean,
25 my -- what I recall sensing at that point in time, it's

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1 all right here in somebody's home, you know. One person.
2 It's all right here. It seemed vulnerable to me. You
3 know, \$50 million is being lent into this, and one guy,
4 one storage room in a basement and a small office, you
5 know.

6 Q. So there were still some boxes there of
7 documents when you actually viewed this after being
8 appointed receiver?

9 A. No, I don't think -- in the basement there were
10 not. In the office, she had already gone through
11 everything, but then had found certain things. Because
12 what they were doing is differentiating between what was
13 personal versus DenSco. Okay?

14 And it was a process, and there were large
15 filing cabinets in the office, not the basement, but there
16 were filing cabinets also in the basement, but those had
17 been emptied out, except for, like, a couple iPads and
18 some things that belonged to the kids, and she
19 specifically referenced that.

20 But upstairs in the home office, there was kind
21 of like -- it looked like it was a guest bedroom and it
22 had a closet. And in the closet and kind of next to the
23 closet was -- were cabinets that you could pull out, and
24 in those were still some records. And from those records,
25 she selected things that were relevant to DenSco.

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1 Q. Can you briefly describe for me what she
2 selected and provided to you on that occasion?

3 A. I have a recollection of an insurance issue that
4 was provided to me. The documents had Post-its on them
5 and they were her writing. Some of them were Denny's
6 writing.

7 And I apologize how this is not coming out as
8 organized as I'd like, because this is going back a long
9 time ago and I'm trying to remember all those details and
10 other things are popping in my mind. For example, the
11 detective who was involved in the criminal investigation
12 as to whether it was suicide or murder, for example, and
13 the Post-its and the suicide notes and such information,
14 where Denny had handwritten certain notes on things to
15 direct her on where to go, and I believe I ended up with
16 some of that information because it related to DenSco. So
17 it's Denny directing things and kind of at the end.

18 Q. The suicide notes you are referring to, were you
19 provided some suicide notes at that meeting?

20 A. So suicide notes, to be clear how I'm going to
21 look at that, if this is fair, and please correct me if
22 you disagree, is any notation by Denny directing anybody
23 on what to do after his death, or stating, you know, kind
24 of something at the -- at his time of his suicide or close
25 to it, that he is writing down.

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1 So there were notes on his desk that were on
2 Post-its, similar to this size right here, that were
3 little one-liners, three or four words, that were
4 directing somebody, and I believe it would have been
5 Shawna, to -- like it was attached to a document saying do
6 this with this, or this is what this is.

7 And so those documents, when I got there, okay,
8 because she had already been through all this, but many of
9 those were spread out throughout his desk. His computer
10 was there, his iPad was there, I believe his cell phone
11 was there, and all this paperwork on the desk, and certain
12 of those, not all of them, but just some, were provided to
13 me.

14 Q. Did you ask for the computer, iPad, and cell
15 phone?

16 A. Yes.

17 Q. And what was the response?

18 A. Well, they were not giving me stuff, okay, early
19 on.

20 Q. Who is "they"?

21 A. Her and Polese.

22 Q. Okay. So Mr. Polese was involved in the process
23 where you are at the Chittick residence talking to
24 Ms. Heuer?

25 A. No. He was not there. We had -- if my

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1 recollection is correct, we had had a meeting just prior
2 to that at his office, and then it was decided that Shawna
3 and I would go over to the residence together, so it was
4 just her and I.

5 Q. I see. So when you were meeting at the Chittick
6 residence, Gammage & Burnham was already serving as
7 counsel for the estate of Mr. Chittick?

8 A. Yes.

9 Q. Let me ask, one of the documents you have
10 identified as something that had been not provided to you
11 immediately is the so-called Iggy letter.

12 Do you recall that letter?

13 A. Yes.

14 Q. And that's a letter from -- that was written by
15 Mr. Chittick to his sister, Shawna Heuer?

16 A. Correct. Iggy is her nickname.

17 Q. Right. And you were frustrated with not being
18 able to get that right away.

19 Is that fair?

20 A. Yeah, but that's not the only thing I was
21 frustrated about, but yes.

22 Q. And we will talk about the other things. I'm
23 kind of just focusing on this for now.

24 Tell me what your experience was with regard to
25 the Iggy letter and why that was frustrating to you.

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1 A. The Iggy letter was a road map to this case. It
2 referenced the tax recovery issue. It referenced the
3 issues surrounding David Beauchamp and his involvement and
4 advice and Denny's perceptions of that. It referenced
5 significant information about the 401(k) and defined
6 benefit plan, all of which were significant assets.

7 And I believed it was meant as a confidential
8 road map to everything for his sister's eyes only, for
9 Denny's -- for Shawna Heuer's eyes only, to give her a
10 confidential road map.

11 And having that, as the receiver, was an
12 incredibly powerful tool, and had I had it earlier, it
13 would have been an even more powerful tool.

14 Q. Yeah. And I'm really focusing my question not
15 on its contents, because I understand that that speaks for
16 itself, and we will look at that letter at some point, but
17 what I am really asking for is what you experienced in the
18 delay in getting it.

19 what happened there --

20 A. Okay.

21 Q. -- if you can share with us.

22 A. And my perspective of it is first hearing, there
23 is all this talk about there is privilege on Denny
24 Chittick's personal stuff, so we have to segregate
25 everything out. It was, like, uber important at that

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1 first hearing.

2 And I was new to this case. I had seen a press
3 article. I had seen the complaint filed by the ACC. I
4 knew nothing else really about this case. This was all
5 sort of news to me, but there is this privilege and a
6 demand by Polese that that privilege be protected, and
7 there is all this argument and discussion about it during
8 the hearing, okay, most of which I won't be able to
9 remember right now. But they -- the judge handwrites
10 something in the order to protect this particular
11 privilege.

12 In getting the case started, the next day, you
13 know, when I am appointed, boom, green light, we are going
14 to get this done, let's move, I put my
15 receiver/investigator hat on. You have got millions of
16 dollars missing. Let's go find it.

17 Okay. And we are going to move fast and
18 strategic through this case. Fast and strategic with an
19 experienced team of people. This is not our first rodeo.
20 And we are going to go and we're going to do this, this,
21 this, and this. And I don't remember what the this's are
22 specifically, but it's what we would have assessed at that
23 point in time.

24 It's at that juncture that I wanted to get hard
25 drives, phones with text messaging, email history,

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1 documents. Don't give me the selected hand-picked
2 documents. I want to see it all, because I want to be
3 able to go through it all, and I can see it all and go
4 through it all, I can assess this situation better.

5 Q. Can I -- are you finished?

6 A. Yeah.

7 Q. Because you are a little bit off of what I'm
8 wanting you --

9 A. I'm sorry.

10 Q. -- to answer. I understand what your job is as
11 a receiver and what you are trying to accomplish.

12 Would it be fair to say that what frustrated you
13 and your ability to get the Ziggy letter or Iggy letter,
14 I'm sorry, and other matters that -- other documents that
15 you needed, was the Gammage & Burnham assertion of
16 privilege as it related to the Chittick estate?

17 A. Yes, that's it.

18 Q. And that held things up, right?

19 A. That's it right there, right.

20 Q. Okay. Now, let me ask on that topic, that is
21 the Gammage & Burnham lawyer's assertion of privilege on
22 behalf of the Chittick estate, was there anything
23 ultimately withheld from your view based on privilege?

24 A. As of now?

25 Q. Yes.

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1 A. That I'm aware of?

2 Q. Yes.

3 A. No.

4 Q. All right. And let me go back to the kind of
5 the process and procedure you follow as a receiver and the
6 folks who work with you do.

7 You have indicated that you did some interviews,
8 you have done some analyses.

9 Do you take notes of the things you do?

10 A. I often do, yes.

11 Q. Where do you put those notes?

12 A. Oftentimes on Post-its. Or I will communicate
13 with Sara Beretta about it and she will take the Post-it
14 or she will take an email from me, a text message or a
15 call from me that will communicate my thoughts on a
16 particular issue of what transpired. But, for example,
17 the Shawna Heuer visit, I didn't take notes of that when I
18 was out with her, you know, and --

19 Q. So if we were to -- if we were to try to
20 reconstruct the work you have done, are there any notes
21 that exist of the work you have done?

22 A. I don't keep like a journal or like -- I don't,
23 no. I mean, there may be, like I would take a Post-it out
24 and jot a few things down as to more like a to-do list and
25 a follow-up or write a couple facts down, but as this case

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1 was evolving, and I remember a couple things early on, and
2 if I could -- a Robert Koehler interview with him by
3 phone. I had a note with his phone number on it and it
4 was on my computer and I wanted to call him. I kept
5 wanting to call, but there were other fires I was putting
6 out. And so I would have things like that.

7 Now, his phone number, if I recall correctly,
8 got entered into my database. Okay? Shawna Heuer, I have
9 her phone number. I probably -- I don't remember -- I
10 don't have a specific recollection, but my pattern would
11 be to write it down, and write down Shawna Heuer and then
12 have a note of that, but --

13 Q. But then you just dispense with that note after
14 you --

15 A. Yeah. It got entered in the system or it got --
16 if there were things that were on my mind about what to
17 put in a report, for example, that were very relevant.

18 And my mind right now is in September and
19 October, okay, when -- when we are figuring this out and
20 I'm getting hit with thousands of factoids coming at me.

21 So there would be from time to time something
22 written down, but a lot of it was just sitting back and
23 trying to take it all in, because it's coming at me so
24 fast. And that's just sort of how I process in these
25 cases, where it's not like all, you know, written down on

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1 some sheet, and I know some people keep journals and
2 things like that, and I just -- I have never done that and
3 I don't do that.

4 Q. And you don't do, like confirming emails to
5 confirm something occurred or a conversation you have had?

6 A. No, like lawyers typically do.

7 Q. Yeah.

8 A. And I have seen those. No, not necessarily.

9 Q. And so --

10 A. With Shawna, I may have confirmed an
11 appointment.

12 Q. And so if there are events that have occurred
13 with respect to you serving as receiver, they are not
14 reflected anywhere in writing?

15 A. Events that occurred, yeah, like, for example,
16 the meeting with Shawna, but it may be in a report. And I
17 just don't remember if it is specifically referenced, but
18 everything that transpired during that would not be in
19 writing.

20 Q. Right.

21 A. And that's true, there is not a note of it.
22 That's true.

23 Q. So there are events that took place in regard to
24 you serving as receiver, as an officer of the court, that
25 there is no written evidence of?

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1 A. Like, just so I understand, when you are saying
2 there is no written evidence of me looking at Shawna
3 Heuer's desk and -- or Denny Chittick's desk and seeing
4 all the documents the way they were, no. I remember
5 speaking with Mr. Anderson --

6 Q. Right.

7 A. -- and Ms. Beretta about that, but there is
8 no -- yeah, I didn't make a note of that.

9 Q. So the reports that you file with the court may
10 or may not include all of the things that you undertook as
11 the receiver?

12 A. Yeah, that's correct. In fact, I know they
13 don't. There is a lot of little steps along the way, and
14 perhaps interviews with an investor and whatnot, the
15 content of which would not be in the report. Yes, that's
16 accurate.

17 Q. So if we were to need to reconstruct all of the
18 things you did in connection with being a receiver in this
19 matter, much of it would rely on your verbal testimony and
20 memory as opposed to something in writing, correct?

21 A. Well, I would just take issue with "much of it."
22 Some of it. A lot of it is -- well, you have got billing
23 records. You have -- in fact the billing records would
24 reflect a meeting, but maybe not all the content of it.
25 You have the reports, which there were several reports in

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1 2016.

2 Q. Right.

3 A. You have emails sent to investors. So you have
4 a lot of information.

5 And the way I look at information gathering like
6 this, and I don't mean to -- I want to stay on your
7 question, but it's like I would understand five or six
8 facts, and then that would lead me to a statement, which
9 would be issued in, for example, a report.

10 I wouldn't necessarily put every fact I knew
11 about it, but it would help me draw an ultimate conclusion
12 or an initial sense, you know, that I would want to
13 follow. And so all those facts may not be specifically
14 written down somewhere. They may exist in, for example,
15 in the financial records. By looking at them, that can be
16 inferred. Or you know in a background investigation or
17 otherwise, but they are not all kind of written down.

18 Q. So there would have been communications you had
19 and meetings that you had which would not be reflected in
20 notes or other documentation.

21 Fair?

22 A. Yes. Fair.

23 Q. And you typically don't do confirming emails,
24 like -- you said like a lawyer does, where you are
25 confirming what conversations or communications you had

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1 with individuals.

2 Fair?

3 A. That would be fair. The only exception would be
4 if there is some agreement that's reached.

5 Q. I understand.

6 And with respect to calendars, if we were to try
7 to reconstruct events or create a chronology of events in
8 connection with you serving as a receiver, do those exist?

9 A. I keep a calendar.

10 Q. In what form?

11 A. Outlook.

12 Q. So if you -- you could go back and provide that
13 for us, right, the Outlook calendar from your computer?

14 A. Yes. It would not necessarily be all inclusive.
15 Many of these meetings, it's like a fire drill when we get
16 started on these receiverships, so it's evolving and it's
17 not all entered in my calendar. But a meeting most likely
18 with Mr. Polese would be in my calendar. It would be set
19 in advance and it would be in my calendar.

20 Q. So I will try to keep that in mind, but today I
21 ought to be asking you details about what you recall,
22 because there may not be written records of some of the
23 things did you in connection with serving as receiver.

24 Fair?

25 A. Yes.

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1 Q. All right. Now --

2 A. Other than the things I stated.

3 Q. Right.

4 A. The billing records and things.

5 Q. Right.

6 And the calendar, just outlook, and there are no
7 other calendars you keep?

8 A. Right.

9 Q. All right. And the work papers that -- you are
10 a CPA, correct?

11 A. Yes.

12 Q. And is Ms. Beretta a CPA?

13 A. Yes.

14 Q. We have seen a lot of spreadsheets and financial
15 analyses.

16 Are there work papers for that work product?

17 A. So what do you mean by work papers?

18 Q. I mean that as broadly as I can possibly
19 describe it. I know as an accountant, frequently you will
20 have materials that consist of your calculations or the
21 work that leads up to the final analysis, or something
22 that explains the work that we were told in grade school.
23 Put it -- you know, show us your work.

24 So is -- if I wanted to see your work that leads
25 up to your final reports or analyses, do those exist

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1 somewhere?

2 A. It would be helpful for me to be -- have
3 something more specific, but I can tell you that, like --
4 and, I'm sorry, I'm going to look at, like, a document
5 here of mine, which this looks like an exhibit. I'm
6 looking at Exhibit 507. I just have to look at a
7 spreadsheet to be able to do this. Analysis of Menaged
8 loans. Okay?

9 Q. What exhibit number is that?

10 A. 507.

11 Q. All right.

12 A. And I'm sorry to just kind of grab this out of a
13 pile like this, but it's just I saw it.

14 So something like this, this would stand on its
15 own feet for us, typically. Okay? So I would expect an
16 analysis like this to stand on its own and be, you know,
17 especially if it's final.

18 Now, this says draft, subject to change on
19 there. Okay? So when it gets to be final, I want it to
20 stand on its own, and it's going to have the source
21 documents that it was based on, okay, and any relevant
22 note would be in there.

23 And so we don't create -- and I was an auditor
24 earlier in my career and I am familiar with audit work
25 papers, for example, where we kind of write out what we

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1 are doing. Well, in the forensic world, that my world has
2 been for over 20 years, and even in the receivership
3 space, it's not something common to create something like
4 that work paper.

5 And I'm sorry I'm taking so much time.

6 Q. No. I want your answers. I just -- I know we
7 have got some limited time today and I want to make sure,
8 but what you have just told me is that for this document,
9 which you have identified, you might also have source
10 documents and notes.

11 Is that fair?

12 A. Well, no. What I mean is there would be, for --
13 this Exhibit 507, this is based -- this is analysis of
14 Menaged's loans. Okay? And then on the last page it has
15 the sources, and it says QuickBooks, the QuickBooks file,
16 okay, which is the actual QBB file. Miscellaneous public
17 record research to determine Menaged loans, Maricopa
18 County Assessor's Office. So it's the public records
19 information. And then the DenSco Investment Corporation
20 loan files, which are contained in all those boxes that we
21 have in our depository.

22 So it was those three items that were
23 collectively analyzed to get this. So that's what I would
24 call -- we don't really use work paper. We use the
25 source, the bases of our opinion --

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1 Q. Understand.

2 A. -- or of the analysis.

3 Q. I understand.

4 And so if there were earlier drafts of that
5 document, for example, Exhibit 507, where would those
6 exist? Did they just get superseded with the more recent
7 iteration of that document?

8 A. Yes. The electronic document is retained on a
9 server, okay, and it is updated over time as new
10 information comes in. A new document is not created. We
11 don't stop at some point and then create a new electronic
12 document. It's a living document that's being worked with
13 and massaged, particularly early on as this case was
14 progressing.

15 The stopping point happens when we put a report
16 out. And so I stop the music at that point and then I
17 would retain what I have, which would be an analysis like
18 this, and then I would keep that and that would be the
19 final as of that date. It could be updated later, but
20 this would be retained.

21 Q. But if the document on its face says draft, that
22 would indicate it's not a final.

23 Is that fair?

24 A. That's correct.

25 Q. All right. And if we were to electronically try

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1 to determine what the history, for example, of 507 is,
2 could we do that in your computer?

3 A. I don't think so for a draft, because of the
4 nature that it would have been started -- again, if new
5 information came in, it wouldn't have been -- created a
6 new document necessarily.

7 Q. Okay. Do you know if Ms. Beretta kept notes of
8 any of the tasks that she performed, or reflecting any of
9 the things that she did or learned in this matter?

10 A. I don't know. I know she will create task lists
11 of everything that we talk about, all cases, and as she
12 completes them, she crosses them off. Because I'm often
13 in her office and she is writing down the five or six
14 things. I'll say can we do A, B, C and D, and then she
15 typically crosses them off. I don't think that's
16 something that's necessarily retained.

17 Q. And the tasks list, is that an electronic
18 document or is that a handwritten document?

19 A. It's handwritten by her.

20 Q. Okay. And you don't know whether she keeps
21 those or not?

22 A. I don't believe she keeps them.

23 Q. Okay. Do you believe that whatever there is in
24 terms of notes or any other documents which support
25 your -- either your reports or your analyses have been

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1 placed in the repository?

2 A. As far as the depository is concerned, I didn't
3 personally supervise that. Sara, Ms. Beretta, and Ryan
4 Anderson have been primarily tasked with that, so I don't
5 know what specifically landed in there or not.

6 I know there are some documents that are
7 considered work product and some that are attorney/client
8 communications, and I understand that those have not been
9 placed in there, at least for the receivership, that are
10 the receiver's work product prepared at the request of
11 counsel or with counsel, and communications with counsel.
12 And those pots are generally not in there, and the reasons
13 for that are because of the court process, the legal
14 process.

15 So I don't know if notes would have been deemed
16 work product versus, you know, I don't know if notes exist
17 in terms of other people creating them, and then whether
18 they were deemed work product or somehow privileged
19 communication. So I just don't know.

20 Q. We received a fifth supplemental disclosure from
21 you wednesday night.

22 Do you recall, were you a part of that process?

23 A. Yes.

24 Q. All right. And so you would have reviewed that
25 disclosure before it was provided to us, right?

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1 A. Yes.

2 Q. And you verified that document?

3 A. I did.

4 Q. And when you verify a document such as a
5 disclosure statement, in the way you approach how you do
6 what you do, did that involve you reviewing the document
7 from beginning to end and feeling comfortable with its
8 contents?

9 A. Yes.

10 Q. All right. And I presume you worked with your
11 lawyers in generating that document, right?

12 A. Yes.

13 Q. Now, I have seen some, in disclosure statements
14 that you have provided in this case, some damages
15 analysis. There is some damages analysis, correct?

16 A. So --

17 Q. In the disclosure statements?

18 A. Oh, attached to the disclosure statements?

19 Q. Either in the document under the section
20 relating to damages or in an attachment.

21 A. Yeah. Yes, there is attachments to the
22 disclosure statement that I prepared.

23 Q. Right.

24 A. That my office prepared.

25 Q. And so up to today, the damages analyses that

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1 have been provided to us, were performed either by you or
2 someone within Simon?

3 A. I want to be careful, because I don't know if I
4 am deeming that damages in my sense. It's a summary of
5 notes, if I recall correctly, broken up into three
6 different categories, and my office prepared that.

7 So I'm not serving as the damages expert here in
8 this case. I prepared those based on my knowledge of
9 the -- of the notes, direct knowledge of that, but not as
10 a damage calculation with specificity, but rather as what
11 I understood the notes that were problematic from -- from
12 the Menaged situation.

13 Q. Understand.

14 So there will be other individuals who will
15 serve as damages experts in this case. You won't -- you
16 will not be the damages expert?

17 A. Correct.

18 Q. All right. Now, as of today, whatever rights
19 that investors have, have been assigned to you as receiver
20 vis-a-vis what their interests are in DenSco.

21 Is that fair?

22 A. Yes.

23 Q. All right. And does that mean that whatever
24 claims these investors might have as it relates to DenSco
25 investments, they have provided to you?

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1 MR. STURR: Object to the form.

2 Q. (BY MR. DeWULF) What's your understanding of
3 that?

4 A. I didn't -- I didn't quite understand. So the
5 investor claims --

6 Q. So the investors are in effect creditors of
7 DenSco, right?

8 A. Yes. And the only reason I hesitate is because
9 in Ponzi schemes, and I want to be careful, I look at this
10 carefully, they may be deemed something a little different
11 than a creditor, like almost like a trust relationship.
12 And in trusts, at the time the money is put in, is put
13 into a fraud, so there is kind of a differentiation
14 sometimes we create. So I'm not sure, you know, how to
15 look at them, but effectively, yes, victims of a Ponzi
16 scheme.

17 Q. Let me just ask you about that while we are
18 talking about it.

19 You have asserted that there was a Ponzi scheme
20 in this case, right?

21 A. Yes.

22 Q. And that that Ponzi scheme started at least as
23 of the beginning of 2012, right?

24 A. I'm going from memory on that. I believe that's
25 accurate. I don't remember if it's the beginning of '12

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1 or the end of '12, and I'm sorry, but yes.

2 Q. And so you have asserted -- and we will look at
3 this in more detail.

4 And you have asserted that as part of the Ponzi
5 scheme, Mr. Chittick was committing broad fraud, right?

6 A. Chittick was operating what turned out to be a
7 Ponzi scheme.

8 Q. But for there to be a Ponzi scheme, a necessary
9 element of that is fraudulent conduct, correct?

10 A. Well, that is -- a fraud, for me, is a legal
11 determination because it involves intent. Okay? So I
12 don't investigate or opine typically on intent, okay, in
13 terms of the intent or knowledge of the individual
14 perpetrating those acts at that point in time.

15 The Ponzi scheme is based on my understanding
16 that DenSco was insolvent. DenSco was relying on other
17 investors' monies to pay returns to investors. Okay?
18 There was no equity based in DenSco anymore, and it was
19 basically stripping other investors of money every time it
20 was paying an interest payment out.

21 Q. I understand.

22 So I think it's your opinion that the DenSco
23 company was insolvent as of -- well, let me go back,
24 because I'll look at your report and we will go through
25 that together, but I want to make sure I understand.

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1 When you are asserting that there is a Ponzi
2 scheme, there is a fraudulent element to that, right?

3 A. Of course.

4 MR. STURR: Object to the form of the question.

5 Q. (BY MR. DeWULF) Yes?

6 A. Yes, of course. And I don't mean to find --

7 Q. And I'm not trying to make you an expert either,
8 but you had to surmise certain things and you have
9 asserted certain things vis-a-vis investors who got money
10 that, in your terms, were winners, right, and you had to
11 claw those monies back, right?

12 A. Correct.

13 Q. Correct?

14 A. Yes.

15 Q. And in order to do that, you were asserting that
16 there was a Ponzi scheme and that gave you a legal basis
17 for doing so. Fair?

18 A. Correct.

19 Q. And a Ponzi scheme requires some proof of fraud
20 with respect to the funds, right?

21 A. Yes. I mean, I assume. So the legal elements
22 may include a fraud element.

23 Q. And the fraud that existed with respect to the
24 Ponzi scheme was the fraud of Mr. Chittick, right?

25 MR. STURR: Object to the form.

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1 THE WITNESS: I mean, Mr. Chittick didn't do
2 what he was supposed to do. Menaged was stealing the
3 money. Okay? So in operating the Ponzi scheme, Chittick
4 is committing a fraud in that sense by continuing to do
5 it, and that's...

6 Q. (BY MR. DeWULF) So sitting today here, after
7 having done all these investigations and serving as a
8 receiver, did you gain any overall impressions of
9 Mr. Chittick?

10 A. Yes.

11 Q. What are they?

12 A. He wasn't following what he agreed to do with
13 his investors.

14 One investor, and I don't remember her name,
15 told me about his personal situation with his ex-wife,
16 that she was engaged in addictive behavior and that he
17 didn't seem to be aware of it, as if he put his head in
18 the ground. And that she felt that he may have done the
19 same thing with Scott Menaged.

20 And she was coming at this without direct
21 insider knowledge. She was a counselor. I don't remember
22 her name, but that type of information was shared with me.
23 And I have read his journals and I have spoken with his
24 neighbor, the largest investor, across the street, and
25 gained personal information that the investors absolutely

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1 adored him as a friend, were shocked that he would ever
2 intentionally hurt anyone, shocked to learn that,
3 purposefully, but that there was also this sense about
4 Denny that he was too trusting, trusted the words.

5 Even -- even Scott Menaged's statements about
6 Denny were similar. Very trusting. Menaged was able to
7 manipulate him, and Denny believed what people told him
8 and trusted them, and would honor his word to a T and do
9 what he had to do in a personal relational sense.

10 Not as to the -- not as to the specifics of the
11 offering memorandum requirements and things like that. I
12 mean that more in terms of the sense I got about him as a
13 human being from friends and people who knew him, that he
14 was honorable and high integrity and they liked him.

15 Q. Smart guy?

16 A. Reasonably, yes. His prior career, he had some
17 success at Insight, yes.

18 Q. Good with numbers?

19 A. Seemingly. He understood QuickBooks.

20 Q. Understood the mechanics of being a hard-money
21 lender?

22 A. Yes.

23 Q. Served as a hard-money lender since at least
24 2000, 2001?

25 A. I believe that's accurate.

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1 Q. Going back and breaking down a little bit about
2 what you just said a moment ago, Mr. Davis, you indicated
3 that one of the investors talked to you about the --
4 Mr. Chittick's wife.

5 That's Ranasha, right?

6 A. Yes.

7 Q. And that she had addictive behavior? Is that
8 what you were saying?

9 A. Yes.

10 Q. And I have seen references to her being a sex
11 addict.

12 Is that what you have seen as well?

13 A. I was told it by her.

14 Q. Told it by this particular investor?

15 A. Yes.

16 Q. You don't remember who it is?

17 A. I don't. I'm sorry.

18 Q. But you said that she -- that woman is also a
19 counselor?

20 A. Yes.

21 Q. And you said that that woman speculated that the
22 relationship between Chittick and Menaged was somehow
23 addictive.

24 Could you explain what she was suggesting to you
25 or sharing with you?

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1 A. No, no. That's not what she was saying. She
2 was saying --

3 Q. Oh, I misunderstood.

4 A. -- that in his personal life, Denny had kind
5 of -- somehow his wife is doing all this activity during
6 their marriage and he is somehow not aware of it. Like so
7 naive, is the impression I got from her. And she is
8 saying: well, then how could he have not been aware of
9 Menaged?

10 And so he fell into the same trap with Menaged.
11 In other words, he is -- I don't know the right word, but
12 has a naive side, a trusting side that can be taken
13 advantage of by people, and he was taken advantage by his
14 ex-wife and by Menaged.

15 Q. So you indicated that in your view, Menaged had
16 manipulated Chittick.

17 Is that your testimony?

18 A. Yes.

19 Q. And other than being someone who trusts perhaps
20 too much, have you arrived at any other conclusions as to
21 why Chittick appeared to be so susceptible to Menaged's
22 influence?

23 A. I want to be careful. What I stated to you
24 earlier is not my conclusion. Just what I understood.

25 Could you please repeat that question again?

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1 MR. DeWULF: Could you read it back, please.

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

3 THE WITNESS: I believe Menaged is quite a
4 character. A persuasive talker, manipulative. He had a
5 TV show. He had -- he said the right things at the right
6 time. He had stories that fit. I mean, he was someone
7 who seemed to have a way about manipulation in his life.

8 Q. (BY MR. DeWULF) So in other words, he is a
9 really good con man?

10 A. Yes, in his verbal expression, in his story
11 making. And I don't know if I would call it good, but he
12 does that in --

13 Q. Rather than a good con man, he is a capable,
14 very capable con man, right?

15 A. Yes. He has capability in that area, yes.

16 Q. And you spent time with him, right?

17 A. Yes.

18 Q. And the interviews with him, did you keep notes
19 of those interviews?

20 A. I -- I have notes, I have made notes of the
21 interview that I had with him, yes.

22 Q. And where are those notes?

23 A. They are work product, is my understanding,
24 so...

25 Q. So they exist. You are just saying you don't

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1 want to provide them?

2 MR. STURR: Object to the form.

3 THE WITNESS: I don't know where they are now at
4 this point in time.

5 Q. (BY MR. DEWULF) Did you provide them to your
6 lawyer?

7 A. No. I gave them to Ms. Beretta.

8 Q. Okay. Do you know what she did with them?

9 A. No.

10 Q. So how many interviews did you do with
11 Mr. Menaged?

12 A. One.

13 Q. And can you provide the circumstances? Was it
14 while he was in prison, before sentencing? When in the
15 chronology of things did it occur?

16 A. It was early on, before the 2004 exam and before
17 sentencing, before indictment.

18 Q. And was he represented by counsel?

19 A. Yes.

20 Q. And was that Cody Jess?

21 A. Yes.

22 Q. How long did the interview go?

23 A. Several hours.

24 Q. Could you be more specific?

25 A. It was long and very informative.

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1 Q. Who else was in attendance at this interview,
2 other than yourself, Cody Jess, and Mr. Menaged?

3 A. Mr. Anderson.

4 Q. And where did it occur?

5 A. At Mr. Jess's office.

6 Q. And you took notes of that interview?

7 A. I did.

8 Q. And were there any other forms of memorializing
9 what occurred at that meeting, other than the notes that
10 you took and perhaps Mr. Anderson took?

11 A. No, not that I am aware of.

12 Q. All right.

13 A. Maybe Mr. Jess took notes.

14 Q. We will look at this in a little bit, Mr. Davis,
15 but there is a -- as a part of the settlement agreement
16 that you entered into with Mr. Menaged, he has agreed to
17 cooperate with you, right?

18 A. Yes.

19 Q. Have you had any interviews with him since that
20 settlement agreement was entered into?

21 A. Me directly --

22 Q. Yes.

23 A. -- or counsel?

24 Q. You directly.

25 A. No.

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1 Q. Do you know whether Counsel has had any
2 interviews with him after you entered the settlement
3 agreement with him?

4 A. Yes.

5 Q. And was that Mr. Anderson?

6 A. I believe it was Mr. Frakes.

7 Q. Okay. And that's -- and I have seen a
8 memorialized interview. And is that the recording of the
9 interview that Mr. Frakes did of Mr. Menaged?

10 A. I don't know what form that interview has been
11 transcribed or recorded in, but there was an interview and
12 there is a document reflecting that interview.

13 Q. And Mr. Frakes is the individual that's been
14 hired in connection with potential claims against banks,
15 right?

16 A. Yes.

17 Q. And when did that interview occur?

18 A. I don't remember specifically.

19 MR. STURR: When you get to a convenient point,
20 it's been a little over an hour.

21 MR. DeWULF: Yeah. Let me just finish this line
22 and then we'll go.

23 MR. STURR: Sure.

24 Q. (BY MR. DeWULF) Was it in the last six months,
25 do you think?

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1 A. I would say in the last nine months.

2 Q. Do you know whether any other lawyers on the
3 receiver's behalf have interviewed Mr. Menaged after the
4 settlement agreement was entered into?

5 A. I have a recollection that Jack Edwards
6 interviewed Menaged.

7 Q. And who is Jack Edwards?

8 A. He is an attorney with the Ajamie law firm.

9 Q. And the Ajamie law firm is the firm that has
10 been hired by the receiver to pursue claims against Active
11 Funding, correct?

12 A. Yes.

13 MR. STURR: Object to the form.

14 Go ahead. Sorry. Belatedly.

15 MR. DeWULF: What was the problem with the
16 question?

17 MR. STURR: Hired to, you said, pursue.
18 Intention is to investigate.

19 MR. DeWULF: I understand.

20 Q. (BY MR. DeWULF) So with respect to claims that
21 the receiver might assert on behalf of the receivership
22 against Active Funding, the Ajamie firm is the firm hired
23 to do that, right?

24 A. To pursue the claims?

25 Q. To investigate and/or pursue.

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1 A. I mean, the answer is yes.

2 MR. DeWULF: All right. Good. Let's take a
3 break.

4 VIDEOGRAPHER: The time is 10:16 a.m. We are
5 going off the record, ending media one.

6 (A recess was taken from 10:16 a.m. to
7 10:29 a.m.)

8 VIDEOGRAPHER: My name is Mary Onuschak with the
9 firm of Legal Video Specialists, Phoenix, Arizona. This
10 begins media two of the videotaped deposition of Peter S.
11 Davis. The time is 10:29 a.m. We are now back on the
12 record.

13 Q. (BY MR. DeWULF) Mr. Davis, I wanted to follow
14 up on a couple of things you talked about before the
15 break. You indicated that you had interviewed a number of
16 the investors.

17 Do you recall that testimony?

18 A. Yes.

19 Q. And are there notes of those interviews?

20 A. There may be of some of them.

21 Q. Do you know where those would be?

22 A. I don't.

23 MR. DeWULF: I'm just going to ask, Counsel, we
24 want any notes that -- and I understand there may be a
25 work product issue here. We are going to have to work our

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1 way through that, but if there are notes with -- of
2 interviews with witnesses, we would ask for those.

3 Q. (BY MR. DEWULF) The -- do you think you have
4 interviewed all of the investors?

5 A. I personally have not.

6 Q. Do you know whether folks under your direction
7 at Simon have interviewed all the -- between you and all
8 of them, interviewed all the investor?

9 A. Not that I'm aware of.

10 Q. All right. Have you learned in either directly
11 interviewing, or from folks under your direction
12 interviewing, whether anyone among the investors knew
13 about the Scott Menaged problems on the loans?

14 A. No, I have no knowledge of that.

15 Q. So you are saying based on what you know,
16 investors did not know about Scott Menaged and the
17 problems associated with his loans?

18 A. Correct. Before the receivership, correct.

19 Q. Right. Okay.

20 A. Before Denny's suicide, I should say.

21 Q. Okay. And you mentioned earlier Mr. Koehler.
22 Did you interview Mr. Koehler?

23 A. I did.

24 Q. On how many occasions?

25 A. One.

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1 Q. And when? Do you recall?

2 A. Early in the case. Within the first few months.

3 Q. Okay. And what was the purpose of the
4 interview?

5 A. It was recommended that I interview him. He is
6 referenced in one of the letters, the suicide letters from
7 Denny Chittick, and I felt it would be important, but
8 in -- I mean, at least make sure I have covered that base,
9 but he didn't have a lot of knowledge.

10 Q. That's what I was going to ask.

11 Do you remember learning anything from that
12 interview?

13 A. Not really.

14 Q. Okay. He had some sort of historical
15 relationship with Mr. Chittick, correct?

16 A. Yes.

17 Q. And they had some sort of an arrangement where
18 if something were to happen to one of them, the other
19 would step in and help with business matters. I'm roughly
20 describing that, but is that your understanding?

21 A. There is a -- yeah, basically Koehler would step
22 in and help with business matters if something happened to
23 Denny.

24 Q. And did you understand that Mr. Koehler had
25 access to DenSco's books and records?

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1 A. At the time I interviewed him or prior to that
2 time?

3 Q. Well, did you -- at any time did you learn that
4 he had access to DenSco's books and records? That's --
5 I'm understanding, I think, your problem.

6 Do you know, sitting here today, whether
7 Mr. Koehler had access to the books and records of DenSco
8 at any time?

9 A. I don't know that.

10 Q. Okay. Even today you don't know? You didn't
11 talk to Mr. Koehler about that?

12 A. When you say "access," I'm not aware of him
13 having access to the book and records.

14 Q. Okay. You talked earlier about the Iggy letter
15 and I asked you a few questions about that. I just wanted
16 to follow up on a couple things.

17 One of the things you talk about in your newest
18 disclosure statement is that there was a frustration there
19 because you really wanted that letter, and you have
20 already described for us its importance to you, correct?

21 A. Yes.

22 Q. So I think it took you a couple of months to get
23 that letter, right? You didn't get it until October or so
24 of 2016?

25 A. Yes.

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1 Q. And you indicate in a general way that there
2 were some inefficiencies or having that letter would have
3 helped you in the tasks you performed as a receiver.

4 Is that fair?

5 A. Yes.

6 Q. Have you quantified in any way what the lack of
7 having that Iggy letter for a period of two months or so
8 has caused you to incur or caused the receivership to
9 incur?

10 A. No.

11 Q. Any estimate, sitting here today?

12 A. No.

13 Q. There were lots of things for you to do. You
14 have already identified and described that you were kind
15 of swimming in a lot of information in those first few
16 months of serving as a receiver, right?

17 A. Well, I was swimming because I didn't have that
18 letter.

19 Q. So you are saying the lack of that letter is
20 what caused you to have to swim?

21 A. Well, it was a road map.

22 Q. Okay.

23 A. In all sincerity, it was an absolute road map to
24 the heart of this case.

25 Q. Okay.

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1 A. The big recoveries are the money, the tax, the
2 defined benefit, and they are all laid out in that letter.
3 I mean, it was absent.

4 Q. Right. And all of those sources of funds were
5 ones that were ultimately a negotiation between you and
6 the estate, Chittick estate, right?

7 A. Yes.

8 Q. Okay. And those were resolved, those were all
9 identified, secured, and then became the subject of a
10 settlement agreement you entered into with the Chittick
11 estate, right?

12 A. Yes. But before getting the letter, their
13 posture was much different than what I ended up with. In
14 other words, the letter in part, my belief is, allowed me
15 to get a much better result, as a result.

16 Q. So you think you negotiated a better deal with
17 the Chittick estate having the Iggy letter?

18 A. In part.

19 Q. The ultimate settlement I think was \$675,000.
20 Is that what your memory was?

21 A. That was the payment back to, but it was --

22 Q. Right.

23 A. So we want to be careful here. There is about
24 3 million coming into the receivership, 675 going back,
25 and we started out with I was going to get just maybe some

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1 of the tax refunds and then they were going to keep
2 everything else. And so it really helped to shift that
3 significantly.

4 Q. The 3 million were the tax refunds primarily,
5 right?

6 A. No. It was primarily defined benefit plan.

7 Q. Oh, okay. Thank you.

8 The role that David Beauchamp played, and I know
9 you have talked about this in your disclosure statement
10 and we will review this together later in your deposition,
11 you have alleged some wrongdoing by David Beauchamp in
12 this case.

13 Fair?

14 A. Yes.

15 Q. And it primarily falls in two categories. One
16 having to do with the advice he gave with respect to
17 lending practices and documents?

18 That's one of them, right?

19 A. Lending practices. There is an issue with his
20 advice on lending practices.

21 Q. Okay. And then there is also an issue with
22 respect to the -- Mr. Beauchamp serving as
23 disclosure/securities counsel, correct?

24 A. Yes.

25 Q. Okay. Do you -- would you agree with me that

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1 David Beauchamp was not general counsel for DenSco? He
2 was not counsel, for all intents and purposes, of
3 everything the company did?

4 A. I mean, I don't know from a legal standpoint,
5 but my impression is he was the lawyer. He is DenSco's
6 lawyer.

7 Q. Did he handle litigation matters?

8 A. The one litigation matter, that FREO lawsuit, he
9 received a copy of it. I think Chittick's email said that
10 he was going to have Scott Menaged's lawyer handle it, and
11 Menaged offered to pay the fees of Beauchamp in that
12 email.

13 Q. But didn't -- didn't that email indicate that he
14 just, "he" being Chittick, just wanted Beauchamp to be
15 aware of the existence of the FREO lawsuit, but that
16 Menaged's lawyers would handle the defense of the matter?

17 A. Yes, but to me, you know, as a -- as a person in
18 the litigation area, but not an attorney, he is -- he is
19 the lawyer, I mean, so --

20 Q. Was he the litigator for DenSco?

21 A. Oh, I don't think David Beauchamp is a
22 litigator, but what I have seen and how he has conducted
23 himself, if he is not the expert in it, he seems to go to
24 other lawyers at the firm, you know, whether he is at
25 Bryan Cave or at Clark Hill.

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1 Q. So what did you see in your review of what
2 Mr. Beauchamp did? And I know you have got invoices. You
3 have reviewed his conduct.

4 Other than the areas of advising regarding
5 lending practices and procedures and documentation and
6 securities disclosure, what other things did you see him
7 perform in his role as counsel?

8 A. Well, he had the DFI issues, Department of
9 Financial Institution issues.

10 Q. Right.

11 A. There was the lawsuit, the FREO lawsuit
12 documentation. There is the workout. I mean, there may
13 be other things. I mean, I don't remember everything
14 that's in his billing records and such, but -- but he was
15 the guy Denny went to.

16 Q. Let's talk about the Department of Financial
17 Institution's work.

18 You have looked at that, right --

19 A. Yeah.

20 Q. -- the work that was performed by Mr. Beauchamp?
21 And this is the Arizona Department of Financial
22 Institutions? Is that what that stands for?

23 A. Yes.

24 And, I'm sorry, my last question, I would add to
25 it, my last answer, that the activities right around the

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1 time of Denny's suicide and his involvement in speaking
2 with investors and such at that point in time. So I
3 missed that chunk of activity that I just remembered. But
4 I'm sorry to throw off the flow.

5 Q. So what do you call that, the post-suicide work?
6 Just informing investors of what was going on? Is that
7 what you are talking about?

8 A. Yeah, but he was billing for his time. I think
9 he was doing much more than informing them.

10 Q. Okay. How do we want to -- how would we
11 describe that work? Just post-suicide work? Is that what
12 you -- is that fair for how we talk today?

13 A. Yes.

14 Q. Okay. And that's been a focus also of your
15 disclosure statement, so let me pursue that with you for a
16 moment.

17 Could you summarize for me for that timeframe,
18 after the suicide of Mr. Chittick and before Gammage &
19 Burnham became counsel to the estate, what injury did
20 DenSco suffer as a result of the role that David Beauchamp
21 and Clark Hill played in that timeframe, if you know?

22 A. Well, I mean, I'm not the expert determining
23 damages in terms of that, so --

24 Q. And I'm just looking from a -- from a
25 perspective of having done a number of disclosures on this

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1 subject, having evaluated the facts and circumstances in
2 your connection as receiver, what do you believe is the
3 nature of the injury -- I know you may not quantify it in
4 dollars --

5 A. Yeah.

6 Q. -- for that number of days between the suicide
7 and the Gammage & Burnham getting involved?

8 A. The frustrating thing for me about it, and not
9 to do damages, is Beauchamp has in his file that Iggy
10 letter. My understanding, Beauchamp is telling all the
11 investors it's Menaged, Menaged, Menaged.

12 Q. Can -- can you answer my question?

13 A. Okay. I'm sorry. I thought I was.

14 Q. Yeah. My question is how was the company
15 injured as a result of Mr. Beauchamp and Clark Hill
16 serving after the suicide of Mr. Chittick?

17 A. He wasn't independent. He was, you know, the
18 guy that had not filed the offering memorandums. He is
19 the guy that didn't do all the stuff laid out in the
20 disclosure statements that we filed in this case, and he
21 is coming in at that point in time.

22 which hat does he have on, is how I always look
23 at those things. Is he wearing the hat of DenSco's
24 attorney, is he wearing the hat of Denny Chittick's
25 attorney, or is he wearing the hat of kind of protecting

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1 his own self-interest, knowing that some things should
2 have been done that weren't done in the case.

3 So it's confusing to me when I look at it, but I
4 also look at it under a different microscope, having
5 experts involved and having, you know, the input from
6 counsel now.

7 Q. So let me go back to my question.

8 How was DenSco injured by that or how were the
9 investors injured by that during that period of time?

10 A. I'm not -- I'm not calculating damages and such.
11 It just depends.

12 Q. I'm not asking you to calculate damages. I'm
13 asking you for the nature of the injury being suffered.

14 Can you describe that for us?

15 A. I can look at it generally and how things maybe
16 should happen, in my view.

17 Q. But what was the impact of what did happen?

18 A. Well, in a way, I think David was not as
19 successful as he wanted to be in not having a receiver
20 appointed, for example, so -- but it seemed that that was
21 something that he was putting out there. I don't know
22 what that leaves in terms of recovery or what that would
23 look like, but --

24 Q. So sitting here today, is it fair to say that
25 you can't identify an injury actually suffered by DenSco

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1 or the investors as a result of what Mr. Beauchamp and
2 Clark Hill did between the suicide of Mr. Chittick and the
3 time that Gammage & Burnham took on the representation of
4 the Chittick estate?

5 A. And how long -- when did Gammage & Burnham come
6 on board? I'm just trying to understand that timeframe.

7 Q. In August of 2016.

8 A. So it's only a few weeks we are talking about
9 really?

10 Q. Right.

11 A. I mean, I just don't know.

12 Q. Don't know.

13 All right. Now, let's go back to the ADFI.

14 As I understand it, as receiver you are
15 complaining that Mr. Beauchamp and Clark Hill should not
16 have aided DenSco in connection with not having to be
17 licensed with the ADFI as a mortgage broker?

18 MR. STURR: Object to the form.

19 Q. (BY MR. DeWULF) Is that -- did you understand
20 my question?

21 A. I think I did, yes.

22 Q. And is that the position you have taken?

23 A. I mean, whatever it says in the disclosure
24 statement about that.

25 Q. You don't remember?

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1 A. I just don't remember, yeah.

2 Q. Well, as best you can recall, are you saying
3 that there was some fault in Mr. Beauchamp advising DenSco
4 in connection with not being licensed by ADFI?

5 MR. STURR: Object to the form.

6 THE WITNESS: Well, when I first started to see
7 some of this stuff, it seemed that I had wished the
8 company had been supervised by ADFI, because that would
9 have been a regulatory requirement that would have imposed
10 certain additional requirements on the company that
11 perhaps these investors would have lost less money, but I
12 just don't know. And that was my impression early on when
13 I took on this case and I was looking at that.

14 Q. (BY MR. DeWULF) I understand what you have just
15 said. Let me kind of try to refine this a little bit.

16 Is it your position as plaintiff in this case
17 that somehow Mr. Beauchamp or Clark Hill breached some
18 standard of care or some -- let me rephrase it.

19 Are you alleging that in connection with
20 Mr. Beauchamp and Clark Hill giving advice about licensure
21 under the ADFI, that they made some sort of a mistake?

22 A. I'm not aware of that.

23 Q. All right. And are you saying that they should
24 not have advised the company at all about that subject?

25 A. I mean, what they should have done and shouldn't

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1 have, I understand we are going to have an expert provide
2 that information, so I can't really say specifically
3 what --

4 Q. So you don't know?

5 A. As to AZDFI, correct.

6 Q. All right. So are you saying that the company
7 should have been licensed as a mortgage broker under the
8 statutes?

9 A. Coming into the case, I had that impression,
10 that's what I said. As a nonexpert on the requirements of
11 being monitored by AZDFI, that it was my wish for these
12 investors that that had happened, because those additional
13 regulatory requirements may have helped to discover this
14 fraud, but I don't have an opinion about whether David
15 Beauchamp's call or judgment on that was accurate or not.

16 Q. Well, in serving as the lawyer, wouldn't it be
17 his job to help the company avoid unnecessary expense and
18 regulation if he can do so?

19 A. I mean, as the lawyer, his job is to do what
20 lawyers do.

21 Q. Right.

22 A. And do you have to follow the regulation or not
23 and interpret law and such things, and that would be his
24 job, yes.

25 Q. And ultimately the ADFI agreed with the

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1 conclusion that DenSco did not need to be licensed as a
2 mortgage broker under the statutes, correct?

3 MR. STURR: Object to the form, foundation.

4 Q. (BY MR. DeWULF) Go ahead.

5 A. That was my recollection.

6 Q. Okay. Now, do you know what the consequences
7 are to DenSco if they had actually been licensed as a
8 mortgage broker?

9 A. Not specifically. I mean, I understand there is
10 some additional requirements, financial reporting and
11 such.

12 Q. What do you understand about that?

13 A. Well, if my recollection is correct in other
14 situations, that there is audited financials or some level
15 of financial statement that has to be provided to the DFI
16 on an annual basis.

17 Q. So you think there are some financial
18 obligations that are associated with being licensed as a
19 mortgage broker?

20 A. Yeah, I -- yes, that was my understanding.

21 Q. And how do you know that?

22 A. Well, just from other cases I have seen.

23 Q. You have had other cases involving mortgage
24 brokers?

25 A. Yes.

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1 Q. Okay. You understand that there is a compliance
2 audit that they do, right, on an annual basis?

3 A. That was the other part I was going to say, is
4 some sort of compliance requirements.

5 Q. Do you know what that consists of?

6 A. No, not the specifics.

7 Q. You really don't know what the consequences of
8 being licensed as a mortgage broker would require DenSco
9 to do, right?

10 A. No. All I know is it's higher than what they
11 were doing.

12 Q. And you are speculating that perhaps if they had
13 not been licensed, something would have been discovered
14 over time?

15 A. I'm not speculating now about that. I'm going
16 back to a position of as this case unfolded and I became
17 aware of what happened with the DFI, my thought at the
18 time was that, you know, wishing they had been involved
19 because we could have caught this earlier. You know, the
20 longer this stuff goes on, the more money.

21 Q. You think that the compliance audit that's done
22 pursuant to the statute for mortgage brokers would have
23 caught something?

24 A. I don't -- I don't have an opinion on that.
25 It's just a possibility that could have existed that I had

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1 wished for at that time.

2 Q. You don't really know one way or the other,
3 right?

4 A. No, if it would have certainly uncovered the
5 fraud.

6 Q. Let's look at Petition 3, which is the top
7 document on the list of documents there. It's
8 Exhibit 473.

9 This is a document -- so there is a petition
10 done by Mr. Anderson and his firm, and attached to it is
11 your preliminary report, dated September 19, 2016,
12 correct?

13 A. Yes.

14 Q. And this is a document that would have been
15 prepared under your direction, right?

16 A. Yes.

17 Q. You would have reviewed it for accuracy and
18 would have submitted it to the court so that it could be
19 relied upon, right?

20 A. Yes.

21 Q. Okay. Let's look at the actual report. If I
22 could go to page. At the top of the page, Mr. Davis,
23 there is a paragraph that says: Among other things, the
24 Receivership Order directed the Receiver to take exclusive
25 control, possession, and custody of all Receivership

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1 Assets (as defined therein); receive and collect any and
2 all sums due or owing to DenSco; liquidate Receivership
3 Assets; and engage professionals to assist the Receiver in
4 carrying out his duties and obligations.

5 Did I read that correctly?

6 A. Yes.

7 Q. Is that a fair summary of your role as receiver?

8 A. That's a fair summary of the order. Very
9 summarized.

10 Q. Say it again?

11 A. It's a fair summary of the order, the
12 receivership order.

13 Q. Oh. And so that -- and you are -- you are given
14 power by the order, right? That provides you what you can
15 do and can't do, right?

16 A. Yes.

17 Q. Okay. So are you saying it is a fair
18 description of your role?

19 A. Well, the order, right, correct.

20 Q. Okay. Let's go down to the discovery of DenSco
21 records.

22 You identify here the documents that you have
23 been able to obtain in connection with serving as
24 receiver, right?

25 A. Yes.

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1 Q. And you go through identifying the book -- boxes
2 of records, and you also indicate that you have -- about
3 four lines up, it reads: In addition the Chittick Estate
4 has produced to the Receiver numerous selected electronic
5 records extracted from the Chittick -- Chittick's laptop
6 computer, including DenSco's QuickBooks data, Chittick's
7 daily logs, loan documents, and other items.

8 Did I read that correctly?

9 A. Yes.

10 Q. And so there were -- there was an imaging done
11 of Mr. Chittick's electronic devices, right?

12 A. Yes. I have a recollection of that.

13 Q. Do you recall how that came to occur?

14 A. There was a discussion between my attorney and
15 their attorney, and I remember there being a lot about
16 that at the time.

17 Q. The electronic devices, that included, I think,
18 a laptop used by Mr. Chittick.

19 Do you remember when you first got your hands on
20 those devices?

21 A. No. I remember certain devices were discussed
22 with me and Shawna when I was at the residence --

23 Q. Right.

24 A. -- that were additional devices.

25 Q. Right. Those -- I think you identified earlier

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1 in your testimony that there were certain, the laptop, the
2 phone, and I think an iPad were there, right, when you
3 viewed the residence?

4 A. Yeah, and there was a laptop there. It may have
5 been an older version.

6 Q. Right.

7 A. I think the current laptop was not there. And
8 I'm going from recollection on that. And then there was
9 an iPhone that was at least discussed. I don't remember
10 if it was there, but there was an iPad there, and then
11 there were the kids' iPads. And the -- I was asking
12 questions about what was being used for business versus
13 the kids.

14 Q. And you don't remember, with respect to timing,
15 when you first got your hands on the laptop to review it?

16 MR. STURR: Object to the form.

17 MR. DeWULF: What's wrong with the question?

18 MR. STURR: He never -- sorry for interrupting,
19 John.

20 MR. DeWULF: It's not you?

21 MR. STURR: He never got it. I don't mean to
22 interrupt.

23 MR. DeWULF: Okay. That's fine.

24 MR. STURR: It was the estate that got it.

25 MR. DeWULF: No. That's good. That's good. I

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1 get it.

2 Q. (BY MR. DeWULF) So the -- did you ever get your
3 hands on the laptop?

4 A. No. That was --

5 Q. Okay. So you got the imaging of the laptop
6 ultimately. Is that fair?

7 A. That's -- well, okay, ultimately. We are
8 talking about at the time or now, but at the time it was
9 this whole, this "select" word is what was, for me,
10 upsetting, because this "selected electronic records," I
11 didn't get to select. Somebody else is doing the
12 selecting.

13 (Mr. Campbell joins the proceeding.)

14 Q. (BY MR. DeWULF) Okay. The -- let me go to
15 page 4, the top of the page.

16 The beginning of that sentence at the top of the
17 page, it says: In the interim period between Chittick's
18 death and the establishment of the Receivership, Koehler
19 and Beauchamp were facilitating certain operational
20 aspects of DenSco's loan portfolio, including preparing
21 and providing borrowers with payoff statements and
22 facilitating the release and reconveyance of liens that
23 were paid off.

24 Did I read that correctly?

25 A. Yes.

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1 Q. And is that a true statement?

2 A. That's what I understood at the time.

3 Q. So you understood that during that interim
4 period of time, Mr. Beauchamp was actually facilitating
5 the collection of monies on the loans that had been made
6 by DenSco?

7 A. I mean, I don't know if it was Koehler or
8 Beauchamp or both of them. I don't remember right now the
9 specifics of that, but he was -- Mr. Beauchamp was
10 involved in that process.

11 Q. So Mr. Beauchamp, either in concert with
12 Mr. Koehler or on his own, was helping the company collect
13 monies on loans the company had made?

14 A. I'm sorry. I want to just correct what I said,
15 because providing the borrowers with payoff statements and
16 facilitating the release and reconveyance of liens that
17 were paid off. It doesn't say he was actually collecting
18 money, so I don't know if he was actually collecting
19 money. I would think he was.

20 There was money in the bank account at the time
21 I took over; over a million dollars. So I just don't know
22 with specificity what was collected by Koehler and
23 Beauchamp, if anything, at that point in time, and what --
24 the reason that releases were being provided.

25 oftentimes, as you know, there were deeds of

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1 trust on properties that were improperly placed, and so
2 releases were having to be provided sometimes as a result
3 of the error, not because of collection.

4 Q. Understand.

5 The first part of that sentence, it talks about
6 preparing and providing, or earlier in that sentence,
7 preparing and providing borrowers with payoff statements.

8 Presumably that's to facilitate a payoff by the
9 borrower. Is that fair?

10 A. Preparing and providing with payoff statements.
11 Yes. Yes.

12 Q. And the last part of that paragraph, was that
13 those funds were deposited into DenSco's bank account.

14 Do you see that?

15 A. Yes.

16 Q. And so you understood that between
17 Mr. Chittick's death and the time that you took over,
18 there were monies collected that were put in the bank
19 account for DenSco loans, right?

20 A. Yes.

21 Q. And you believe that Mr. Koehler and
22 Mr. Beauchamp facilitated that?

23 A. Yes.

24 Q. All right. Let's go on to the last, one, two,
25 three, four, five paragraphs down: Based on

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1 communications with several borrowers.

2 Do you see that paragraph?

3 A. Yes.

4 Q. It says: Based upon -- I'm sorry. Let me start
5 again.

6 Based on communications with several borrowers,
7 the Receiver has concluded that Chittick was essentially
8 servicing the DenSco loan portfolio by himself and was
9 very relaxed with regard to enforcing the terms of the
10 DenSco loan documents.

11 Did I read that correctly?

12 A. Yes.

13 Q. And did you find that to be the case among a
14 number of the borrowers, that Mr. Chittick was choosing
15 not to enforce all of the terms of the loan documents
16 against them?

17 A. Yes.

18 Q. To the point where it was almost a systemic
19 thing at DenSco?

20 A. Yes.

21 Q. And those -- those included, and it goes on, it
22 says: For example, many borrowers have indicated that
23 DenSco did not enforce the maturity date stated in the
24 Promissory Note and allowed borrowers to continue to make
25 monthly interest payments at the stated interest rate.

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1 Did I read that correctly?

2 A. Yes.

3 Q. This is a part of the lax loan practice or
4 procedure that Mr. Chittick followed, right?

5 A. Yes.

6 Q. You -- you earlier indicated that he knew the,
7 he, "Chittick," knew the hard-money lending business.

8 That's a true statement, right?

9 A. Yes.

10 Q. He would have understood that his documents
11 allowed him to enforce things like defaults, right?

12 A. I don't want to speculate about what he would
13 have understood, but I think generally, you know, someone
14 in the hard-money lending business would understand the
15 documents.

16 Q. I mean, would you agree with me that it's pretty
17 fundamental as a hard-money lender that you would
18 understand things like what your rights are in the event
19 of a borrower's default?

20 A. I mean, from a business standpoint, yes.

21 Q. And would you also understand as a hard-money
22 lender that it was important that your loan be secured in
23 first position against the property that's being purchased
24 with the loan?

25 A. Yes.

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1 Q. And that's not newsworthy or extraordinary,
2 right? You would expect that's fundamental knowledge and
3 experience for any hard-money lender, right?

4 A. Well, I mean, there are many hard-money lenders
5 who do seconds, for example, but in the case of DenSco,
6 that was the understanding that was being put out there to
7 investors.

8 Q. And he would have known that from the time he
9 started that company in 2001, right?

10 A. Well, yes. Yeah. Well, at the time that he
11 decided to do business this way.

12 Q. And go back, go down about three lines. The
13 sentence beginning "However," do you see that sentence?

14 A. Yes.

15 Q. However, borrowers have reported that DenSco did
16 not declare the note in default and did not charge default
17 interest, despite having authority to do so pursuant to
18 the loan documents.

19 Did I read that correctly?

20 A. Yes.

21 Q. And you found that to be the case with a number
22 of borrowers?

23 A. Yes.

24 Q. And then the next sentence: One borrower
25 claimed that Chittick accepted less than the stated

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1 month -- monthly interest payment if the monthly payment
2 was paid in cash.

3 Did I read that correctly?

4 A. Yes.

5 Q. And that's a true statement?

6 A. Yes.

7 Q. Do you remember who the borrower was that was
8 paying in cash?

9 A. I don't remember the name.

10 Q. You don't remember?

11 A. I don't remember.

12 Q. Then the next sentence: As a result of
13 Chittick's historically lenient enforcement of the DenSco
14 loan terms, many borrowers are surprised when they were
15 provided with payoff statements from the Receiver that
16 precisely follow the terms of the loan documents.

17 Did I read that correctly?

18 A. Yes.

19 Q. In other words, you were communicating with --
20 once you became involved as the receiver, you were
21 communicating with the borrowers about your enforcement of
22 the terms under the loan documents and they were surprised
23 by that?

24 A. Yes.

25 Q. All right. This, the lax lending practice,

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1 loose, or Chittick's decision not to enforce the terms of
2 the loan documents, that's something Mr. Menaged talked
3 about as well in his interview.

4 Do you recall that?

5 A. His interview or his 2004?

6 Q. Probably both, but do you remember in either the
7 2004 or the interview that he talked about how loose Denny
8 Chittick was with respect to his enforcement of loan
9 terms?

10 A. Well, what I recall about that was the looseness
11 that Denny was with Menaged and their business dealings,
12 but not -- I don't have a specific recollection of Denny's
13 looseness with individual borrowers.

14 Q. Okay. Other than Menaged?

15 A. Right.

16 Q. But you do know that Mr. Menaged talked about
17 Mr. Chittick being loose with respect to enforcing the
18 loan terms against Mr. Menaged?

19 A. Loose in terms of how he conducted it, correct.

20 Q. Right. And loose in terms of him actually
21 sending money directly to Mr. Menaged and relying on
22 Mr. Menaged to do the right thing with that money as
23 opposed to sending it to trustees or third parties. Fair?

24 A. Correct. Menaged spoke about that.

25 Q. All right. The rest of this discussion,

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1 Mr. Davis, indicates that you -- you will choose not to
2 assess late charges and default interest because of the
3 historic practice that had been followed by Mr. Chittick
4 and you didn't think it was fair to the borrowers?

5 A. Right. That was a historic practice, correct.

6 Q. Okay. Let me take you to page 6. Kind of what
7 looks like the third paragraph, it begins "The Receiver
8 and the Trustee."

9 Do you see that?

10 A. Yes.

11 Q. This talks about the arrangement you reached
12 with Furniture King and their assets.

13 Do you recall that arrangement?

14 A. Yes.

15 Q. Furniture King was Menaged's company, right?

16 A. Yes.

17 Q. And you were obviously trying to collect monies
18 on behalf of the receivership, and one of the ways you
19 tried to do so was to see if you could get monies out of
20 Menaged's entities, right?

21 A. Yes.

22 Q. And what was the arrangement you reached with
23 respect to Furniture King?

24 A. Well, that I was going to liquidate it, pay for
25 the costs associated with it. They were an abandoned --

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1 they were in buildings not operating, but they had
2 furniture in them. They were retail locations and it was
3 also a warehouse. And I was going to try to get that
4 furniture liquidated, work with the landlords on landlord
5 lien issues, and get the furniture liquidated and moved,
6 if needed.

7 Q. And you were appointed as receiver over the
8 Furniture King, right?

9 A. Yes.

10 Q. Let's -- let me go to investor communications,
11 2.3.1. It talks about an investor conference call.

12 You periodically will have either conference
13 calls or will send emails to the investors to apprise them
14 of the status of things. Is that right?

15 A. Yes.

16 Q. And on the conference calls that occur, do you
17 take notes of what occurs in those or does someone at
18 Simon do that?

19 A. I don't. I'm usually speaking and focusing on
20 that. I'm not sure if anyone took notes of those calls.

21 Q. Do you have an agenda you follow or any sort of
22 anything in writing that would kind of guide you in
23 connection with those conference calls?

24 A. I do recall having topics I wanted to go over,
25 but then there usually was like a Q and A period. I don't

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1 recall having like a formal agenda, per se.

2 Q. And you don't remember giving something out to
3 receivers before you had the conference call or anything
4 that would kind of put in writing what you would talk
5 about?

6 A. You said receivers. I think you meant
7 investors.

8 Q. I did. I apologize.

9 A. There may have been -- there were emails to the
10 investors.

11 Q. Right.

12 A. And sometimes there was information attached.

13 Q. Right.

14 And let me look at the next page with you,
15 page 7 at the top. You indicated in that paragraph one
16 investor took notes during the call.

17 Do investors who take notes, based on
18 communications, provide you those notes?

19 A. They weren't necessarily provided to me. I may
20 have been on an email that received the notes, but the --
21 I have a recollection the investor, some investors
22 couldn't make the phone call, and they wanted to
23 understand what happened, and so one investor took notes
24 and then sent it around to either the entire group or sent
25 it just to that group. And I have a vague recollection of

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1 receiving or being cc'd on those emails.

2 Q. Are those handwritten or typed? Do you know?

3 A. I believe they were typed. They were emailed
4 around. But I don't remember specifically.

5 Q. Would you be willing to provide that to us?

6 A. I mean, investor notes, if they exist, yeah.

7 Q. All right. Thank you.

8 MR. DeWULF: Yeah. I would request, Counsel,
9 for those notes.

10 Q. (BY MR. DeWULF) Let's go to page 9, 3.1.3.1.
11 This references the MWM-AZ matter.

12 Do you see that?

13 A. Yes.

14 Q. And it goes on to talk about a Mr. Gojcaj or
15 Gojcaj.

16 A. Yeah. This gentleman paid in cash.

17 Q. Yeah. And he paid in cash in his mailbox or
18 something, right?

19 A. Yes.

20 Q. What do you recall about that, other than what
21 you have just told me?

22 A. When I went to the house with Shawna, I wanted
23 to see where the mailbox was. I wanted to understand
24 where did the cash go when it went from the mailbox. I
25 understood he had a safe in his closet, which was not

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1 there when I was there, and that the cash had been
2 retained in that safe.

3 It was my belief that some of the cash that was
4 found in the dryer was cash that had originated from
5 Gojcaj. That's what I remember about this, and I was just
6 concerned about cash.

7 Q. I understand.

8 Anything improper about what was going on with
9 him as a borrower, Gojcaj, or just that he was doing cash
10 instead of other means of payment?

11 A. I wasn't aware of anything. It's unusual
12 business practice to be dealing in that much cash. I
13 wondered about that, but I did not identify anything that
14 was, you know, a red flag in that specific relationship,
15 like I did with Menaged.

16 Q. I understand.

17 And was he paying at a discount because he was
18 paying cash?

19 A. That's right. That's my understanding.

20 Q. And what was the discount?

21 A. I think it was \$100 per payment. I think that's
22 what the footnote said.

23 Q. And that would be an example of lax lending
24 practices, right?

25 A. That is correct, because it's not consistent

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1 with the note.

2 Q. Let's go to page 13. The paragraph that begins
3 "Third," do you see that?

4 A. Yes.

5 Q. I'm not going to read that to you, but in this
6 paragraph you discuss the subject of the in pari delicto
7 defense to legal or equitable claims.

8 Are you with me?

9 A. Yes.

10 Q. Page 13. And this a part of a discussion as to
11 why you think the structuring of this is better as a
12 receivership and as to avoid bankruptcy and a bankruptcy
13 trustee.

14 Do you recall putting that in your report?

15 A. Yes.

16 Q. And do you recall one of the perceived
17 advantages of having a receivership as opposed to a
18 bankruptcy trustee, is that the in pari delicto defense,
19 in your view, does not apply to a receiver?

20 A. A state court receiver, yes.

21 Q. Right.

22 So if -- what effect would the in pari delicto
23 defense have if it did apply to a receiver in the state
24 action?

25 MR. STURR: Object to the form.

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1 THE WITNESS: From a legal standpoint, I mean,
2 there is nuances there that I am not a lawyer --

3 Q. (BY MR. DeWULF) I understand.

4 A. -- and able to talk about. But my understanding
5 and from past cases is that it's -- it's an advantage to
6 defendants sometimes, and I wanted to maximize recoveries
7 here --

8 Q. Right.

9 A. -- and I wanted to seek the venue that allowed
10 me to do that.

11 Q. If the in pari delicto defense applied, it would
12 bar you from benefitting from legal claims if DenSco was
13 equally at fault.

14 MR. STURR: Object to the form.

15 Q. (BY MR. DeWULF) Fair?

16 A. I don't know that to be the case.

17 Q. That's what you put in your report, right?

18 A. Does it say that?

19 Q. Yeah.

20 A. I don't know if it says bars.

21 Q. Let me read the sentence about halfway down this
22 paragraph. In talking about an in pari delicto defense to
23 a bankruptcy trustee, it says: This exposes the
24 bankruptcy trustee to the well-settled in pari delicto
25 defense, which bars a bankruptcy trustee from benefitting

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1 from any legal claims if DenSco was equally, if not more,
2 at fault.

3 Do you see that sentence?

4 A. Yes.

5 Q. Do you agree that that's a true statement?

6 A. Yes. Yes, correct.

7 Q. And so if the in pari delicto defense applied to
8 a receiver in a state court action, it would also bar the
9 receiver from benefitting from any legal claims if DenSco
10 was equally, if not more, at fault, correct?

11 A. If that, yes, correct.

12 Q. And by "fault," we are talking about the
13 improper actions of the corporate owners and officers,
14 correct?

15 MR. STURR: Object to the form.

16 THE WITNESS: I -- I don't know.

17 Q. (BY MR. DeWULF) Isn't that the fault that would
18 be visited upon DenSco, would be the conduct of its
19 officers and owners?

20 MR. STURR: Object to the form.

21 THE WITNESS: I don't know. I'm sorry. I don't
22 understand.

23 Q. (BY MR. DeWULF) The fault of DenSco would be
24 through the conduct of Mr. Chittick as the sole owner and
25 officer, right?

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1 MR. STURR: Object to the form.

2 THE WITNESS: "Fault" meaning? I'm sorry.

3 Q. (BY MR. DeWULF) "Fault" meaning wrongdoing,
4 meaning that there is something about the conduct which
5 would bar the -- in an in pari delicto situation from
6 asserting claims.

7 MR. STURR: Object to the form.

8 THE WITNESS: Who would be raising in pari
9 delicto defense in that case?

10 Q. (BY MR. DeWULF) Defendants?

11 A. Which would be the Estate of Denny Chittick? Is
12 that --

13 Q. Anybody that was sued by the receivership,
14 presumably.

15 A. Well, I don't know if in pari delicto deals with
16 any defendant. You know, I don't know. I know it's a
17 defense that's used in bankruptcy court.

18 Q. But when you talk about in your report the fact
19 that you couldn't benefit from a legal claim if DenSco
20 were at fault, you are talking about DenSco acting through
21 Mr. Chittick as the owner and officer, correct?

22 MR. STURR: Object to the form.

23 THE WITNESS: Yeah, I don't know.

24 Q. (BY MR. DeWULF) You don't know?

25 A. And I don't know if at that time I was thinking

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1 that, you know, in that regard.

2 I know my view is in pari delicto doesn't allow
3 certain claims and -- as a defense, and I want to seek the
4 best recoveries I can for the estate so I'm -- my
5 preference is not to go there.

6 Q. So let's look at that last sentence in that
7 paragraph. The "as a result" sentence. You are saying
8 that one of the benefits in structuring this as a
9 receivership is that the improper actions of the corporate
10 owners and officers would not be visited by -- upon you or
11 taint your efforts to collect money.

12 Isn't that a fair statement?

13 A. Well, that -- that last sentence, it says what
14 it says, and that is my understanding.

15 Q. Right.

16 So it would be the conduct of Mr. Chittick, as
17 an officer and owner, that would taint the receiver's
18 efforts to collect, if the in pari delicto defense
19 applied. Fair?

20 MR. STURR: Object to form.

21 THE WITNESS: Could you repeat that question?

22 MR. DEWULF: Could you read it back, please?

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

24 THE WITNESS: It would taint the corporate
25 owners, correct. I mean, my understanding of in pari

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1 delicto is I stand in the shoes and I am stuck. Denny
2 Chittick's shoes.

3 Q. (BY MR. DeWULF) Right.

4 A. And I don't want to stand in his shoes. I want
5 to be able to look at this neutrally.

6 Q. Right.

7 A. So --

8 Q. Right. Because if in pari delicto defense
9 applies, you stand in the shoes of Mr. Chittick and you
10 are bound by whatever bad stuff he did, right?

11 A. In a form.

12 MR. STURR: Object to the form.

13 THE WITNESS: In some form --

14 Q. (BY MR. DeWULF) Right.

15 A. -- it impacts my -- my ability to seek out
16 claims.

17 Q. I understand.

18 Okay. Let's look at 474. I'm going to try and
19 blow through this pretty quickly. This would have been a
20 letter you received on or about September 23rd, 2016, from
21 Jim Polese.

22 I wasn't going to ask you about the letter. I
23 was just asking whether you got the letter from him.

24 A. Oh, yes.

25 Q. Okay. Because really, we have got so much to

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1 look at, I'm going to try not to dwell on things that --

2 A. I'm sorry.

3 Q. -- I don't think are that important.

4 That's fine.

5 Exhibit 476, which is the next one in line.

6 Let me ask, just going to break my own rule
7 here, 475, which is this -- I'm sorry.

8 MR. ANDERSON: 475.

9 Q. (BY MR. DeWULF) Okay. 475. I'm sorry. I'm
10 referring to the wrong one.

11 474 appears to be providing you information in
12 connection with a report you are going to be submitting.
13 Fair?

14 A. Are we 474 now?

15 Q. Yes. I'm sorry. I'm confused there.

16 A. So -- well, it's -- the preliminary report had
17 already been filed by the court. Polese reads it and has
18 these comments.

19 Q. And the report we are talking about is the
20 Petition No. 3 report, 473, Exhibit 473?

21 A. Yes.

22 Q. Okay. And those are his comments after the
23 fact?

24 A. Yeah.

25 Q. And did you ask for his input with respect to

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1 that report?

2 A. No.

3 Q. I'm shocked.

4 I show you 475. So that is a letter from your
5 counsel, Mr. Anderson, to JP Morgan Chase Bank with
6 respect to your appointment of receivership, putting them
7 on notice. Fair?

8 A. Specific to the accounts listed, correct.

9 Q. And the accounts listed are ones that relate to
10 Menaged entities. Fair?

11 A. Yes.

12 Q. Okay. And in connection, Mr. Davis, with you
13 serving as receiver, you sent a number of letters like
14 this where you were telling people: Hey, I'm involved.
15 Don't do anything. Don't -- I mean, keep your funds
16 intact, things like that, right?

17 A. Correct.

18 Q. That was part of your job?

19 A. And this is particularly a banking letter. It's
20 a letter --

21 Q. Right.

22 A. -- to freeze the accounts.

23 Q. I understand.

24 476. This is a letter to you from Gammage &
25 Burnham, dated September 29, 2016, from Kevin Merritt?

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1 A. Yes.

2 Q. All right. Let's look at 477. This is a letter
3 from your lawyers to US Bank National Association, again,
4 informing them that you are -- have been appointed a
5 receiver?

6 A. Yes. Correct.

7 Q. And US Bank was the bank that had done some work
8 for DenSco?

9 A. Well, yeah. DenSco banked there for a period,
10 for -- wait a minute. I'm sorry. I want to make sure I
11 answer that question accurately.

12 This is a letter about a lien that US Bank had
13 on a particular property. Okay? And there is a separate
14 issue with US Bank that's different than what this letter
15 is regarding.

16 Q. And the separate issue has to do with how they
17 may have facilitated Menaged's fraud?

18 A. Correct.

19 Q. And that you have hired counsel, the Bergin
20 Frakes firm, to pursue that or investigate that claim,
21 right?

22 A. Yes.

23 Q. Okay. And we are going to talk about that in a
24 little bit. Let's look at 478, Petition No. 11.

25 So this is a petition filed by Gammage & Burnham

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1 with respect to, and you will see the title, Petition to
2 Fill Corporate Vacancies Created by Death of Denny
3 Chittick.

4 Do you recall this document?

5 A. Yes.

6 Q. Did anything happen as a result of this?

7 A. The tax returns were in fact amended. David
8 Preston amended them. I don't recall the specifics of
9 what happened with respect to filling the corporate
10 vacancy, but that issue went away at some point when it
11 was determined that the defined benefit plan didn't exist.

12 Q. So one of the things it talks about is that
13 Shawna Heuer, Mr. Chittick's sister, be appointed by a
14 newly elected board of directors and officers of DenSco to
15 serve as the plan administrator of the DB plan.

16 You don't know whether that happened or not?

17 A. I don't remember. I have no reason to believe
18 it didn't happen, at least for a short period there.

19 Q. During Mr. Chittick's life, he was the only
20 officer, director, and owner of DenSco, correct?

21 A. Yes.

22 Q. After his death, was there ever a new officer or
23 board of directors or anybody appointed for DenSco, to
24 your knowledge?

25 A. I don't believe so. I don't remember

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1 specifically. I know Koehler had a role of some sort.
2 I'm not sure if it was an official role.

3 Q. Let's look at Exhibit 15 or, I'm sorry,
4 Exhibit 479.

5 Let's go off the record for a minute.

6 VIDEOGRAPHER: The time is 11:22 a.m. We are
7 going off the record, ending media two.

8 (A recess was taken from 11:22 a.m. to
9 11:24 a.m.)

10 VIDEOGRAPHER: My name is Mary Onuschak with the
11 firm of Legal Video Specialists, Phoenix, Arizona. This
12 begins media three of the videotaped deposition of
13 Peter S. Davis. The time is 11:24 a.m. We are now back
14 on the record.

15 Q. (BY MR. DeWULF) Exhibit 479 is before you,
16 Mr. Davis. Would you identify this for the record?

17 A. This is my December 23rd, 2016, report.

18 Q. And attached to it is Petition No. 15, which was
19 filed by your counsel?

20 A. Yes.

21 Q. And this is a status report as of December 23rd,
22 2016?

23 A. Yes.

24 Q. Again, you reviewed it, approved it in its final
25 form?

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1 A. I did.

2 Q. All right. Let's go to page -- it's hard to
3 read pages on this, because of the exhibit. I think it's
4 page -- it's the page that begins text, and it has
5 Background and Appointment of Receiver at the top. It's
6 2.1.1.

7 Are you there?

8 A. Yes.

9 Q. It's called Non-Menaged Loans.

10 It would be fair to say that just a small
11 percentage of the total loans outstanding, as of the time
12 you took over as receiver, were non-Menaged loans, right?

13 A. Right.

14 Q. Like 8 percent or something, right? Small
15 percentage? I won't hold you to the percentage, but it's
16 small.

17 A. It was higher than that, but it was -- I think
18 it was 6 million.

19 Q. Okay.

20 A. But it was maybe closer to 12.

21 Q. And you were able to collect -- and we talked
22 earlier about Mr. Koehler and Mr. Beauchamp helping on the
23 collection, but ultimately you were able to collect on
24 almost all of the non-Menaged loans that became due,
25 right?

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1 A. Yes.

2 Q. And that amounted, in this case we are talking
3 about almost \$4 million in loan payoff proceeds, right?

4 A. At that point in time, yes.

5 Q. Right. Let's go to the next page, to the
6 heading Menaged Loans.

7 That first sentence says: Approximately
8 92 percent of DenSco's loans receivable are due from
9 Menaged or his related entities, related companies.

10 Did I read that correctly?

11 A. Yes.

12 Q. Does that kind of refresh your memory about
13 that?

14 A. It does, yeah. Thank you.

15 Q. And then what you do in this report is you go
16 through various loans outstanding due from Menaged where
17 there is actual security provided, right?

18 A. Yes, correct, but undersecured --

19 Q. Right.

20 A. -- or not properly secured, yes.

21 Q. So Mr. Menaged, over his time of shenanigans,
22 was using various entities through which to borrow,
23 correct?

24 A. Yes.

25 Q. One of them is Easy Investments, right?

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1 A. Correct.

2 Q. One of them is, I think, Arizona Home
3 Foreclosures?

4 A. Correct.

5 Q. Do you remember any others? We will get to it.
6 Do you remember any others off the top of your head?

7 A. No.

8 Q. These, the description under 2.1.2.1, are
9 properties in many cases that were owned by family members
10 of Menaged, right? Either Jess Menaged or others?

11 A. Yes.

12 Q. But let me just -- let me restate that.

13 There were instances where Menaged family
14 members were borrowers on loans from DenSco, correct?

15 A. Yes.

16 Q. Were you ever able to conclude whether the
17 family members knew what Scott Menaged was up to in terms
18 of his wrongdoing?

19 A. I've seen nothing that would indicate they knew.

20 Q. You think that they were just victims of
21 Menaged's fraud?

22 A. In the case of Michelle Menaged, that appears to
23 be the case, where he -- she alleges he forged her
24 signature.

25 Q. How about Jess Menaged?

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1 A. The lien shows up on his property. He never
2 receives the proceeds. The proceeds go to Scott Menaged.

3 Q. Were any of the Menaged family members folks
4 that you interviewed with respect to Menaged's wrongdoing?

5 A. No.

6 Q. Did they serve as witnesses in connection with
7 either his sentencing or his bankruptcy?

8 A. I don't know.

9 Q. Let's go to page 5, 2.2.

10 A. 2 point part?

11 Q. 2.

12 A. Okay.

13 Q. So Menaged filed for bankruptcy on August 22nd,
14 2016, right?

15 A. Yes.

16 Q. And the -- you did a 2004 -- a 2004 examination
17 was done on your behalf of Menaged in connection with the
18 bankruptcy?

19 A. Yes.

20 Q. Did you or lawyers on your behalf seek to have
21 all of his debts deemed non-dischargeable?

22 A. Yes.

23 Q. Were you successful in that?

24 A. Let me be clear. All of his debts owed to
25 DenSco.

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1 Q. Right.

2 A. Non-dischargeable.

3 Q. Appreciate the clarification.

4 And with that clarification, is that a true
5 statement?

6 A. Yes.

7 Q. All right. And then you talk about receivership
8 of Furniture King. We have already talked about that,
9 right? You got a -- got some recovery through Furniture
10 King, right?

11 A. Yes.

12 Q. The inventory was worth something in the 275,000
13 to 360,000 range?

14 A. Yeah. I got a little bit less than that, and
15 then there were costs.

16 Q. Okay. Let's go to 2.3, which is on page 6,
17 titled Claims Against the Chittick Estate.

18 Do you see that?

19 A. Yes.

20 Q. And the receiver, on December 9, 2016, filed a
21 Notice of Claim against the estate in the Chittick probate
22 matter. Is that right?

23 A. Yes.

24 Q. And the Notice of Claim, and I am reading from,
25 you can read along: The Notice of Claim is posted on the

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1 receivership website. The Receiver's preliminary analysis
2 indicate that the Chittick Estate is indebted to the
3 receiver in the amount of \$46,811,635.54 as a result of
4 the following. And then it goes on and talks about, among
5 other things, the point number one, fraud's perpetrated by
6 Menaged against DenSco due to Chittick's failure to
7 institute or follow proper management and control of
8 DenSco's business operations.

9 Did I read that correctly?

10 A. Yes.

11 Q. And then the second point you go on with respect
12 to monies that belong to Chittick individually that he has
13 disbursed to children and that kind of thing, right?

14 A. Yes.

15 Q. All right. So as of this date, which is end of
16 December 2016, you have determined that the Chittick
17 estate owes the receivership over \$46 million?

18 MR. STURR: Object to the form.

19 THE WITNESS: I mean, I have determined that's
20 the claim I am submitting.

21 Q. (BY MR. DEWULF) well, you say indebted to the
22 receiver, so that's what you are saying, right, is there
23 is a debt owed?

24 A. well, I mean, I don't know if that's the most
25 artful term. This is the claim and the basis of the claim

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1 that I submitted to their -- to their court.

2 Q. Okay. So if you were successful in your claims
3 against the Chittick estate and there were assets there,
4 you would seek to collect over \$46 million, correct?

5 A. I mean, yes.

6 Q. All right. And is that the totality of the
7 losses that DenSco had suffered as of that date, roughly?

8 A. Well, this number is based on a specific
9 information related to what Chittick withdrew for his
10 children and other benefits. So when you are saying
11 "losses," I'm not sure. I think this is a specific
12 calculation and claim being submitted just to that
13 particular trust, that particular estate.

14 Q. Let me understand what you are saying.

15 The \$46 million figure is comprised of not only
16 the Chittick individual stuff, but also the damages
17 suffered by virtue of the Menaged fraud, right?

18 A. The totality of losses.

19 Q. Right.

20 A. Correct.

21 Q. And so when you are saying the 46 million, it's
22 what you believed the company, DenSco, has suffered as a
23 result of Mr. Chittick's conduct.

24 Is that fair?

25 A. Yes. In making a claim against him, right.

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1 Q. And then it goes on in this discussion where you
2 hire lawyers at Ryan, Frazer Ryan to aid you as special
3 counsel in connection with prosecuting the estate?

4 A. Yes.

5 Q. And you also hire Snell & Wilmer to help you in
6 the prosecution of the estate?

7 A. Yes.

8 Q. Those folks did get hired and they got
9 reimbursed for their efforts in connection with collecting
10 money from the estate, right?

11 A. Yes.

12 Q. Okay. And then let's go to the next point,
13 which is on page 7, Investor Communications. This is an
14 identification of the communications that you have had
15 with the investors in connection with your efforts as
16 receiver?

17 A. Yes.

18 Q. And then let's look at the bottom heading,
19 number 3, Menaged Fraud Investigation.

20 Do you see that heading?

21 A. Yes.

22 Q. The first sentence under that heading reads:
23 The Receiver's investigation into the loan transactions
24 between DenSco and Menaged indicates that Menaged
25 perpetrated two distinct fraudulent schemes against

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1 DenSco, each of which is described in detail below.

2 Did I read that correctly?

3 A. Yes.

4 Q. And then you go on and you describe a first
5 fraud and a second fraud, right?

6 A. Yes.

7 Q. Roughly speaking, the first fraud consisted of
8 Menaged allowing there to be two loans secured against one
9 property, when he had a commitment to DenSco to put them
10 in first position.

11 Fair?

12 A. Yes.

13 Q. And the second fraud consists of Menaged taking
14 money from DenSco and not using it to buy anything at all?

15 A. Yes.

16 Q. And in connection with the second fraud, it was
17 perpetrated by getting help from the banks, right?

18 MR. STURR: Object to the form.

19 THE WITNESS: Using the cashier's checks?

20 Q. (BY MR. DeWULF) Yes.

21 A. By obtaining the cashier's checks --

22 Q. Right.

23 A. -- and take a picture of it, Menaged was able to
24 perpetrate this fraud, yes.

25 Q. So Menaged, on the second fraud, his fraud was

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1 facilitated by the banks from which he got the cashier's
2 checks. True?

3 MR. STURR: Object to the form.

4 THE WITNESS: It's my belief that the banks
5 assisted essentially in that process, correct, by allowing
6 that many cashier's checks to be issued and returned back
7 to them in short periods of time, but I'm still
8 investigating that claim.

9 Q. (BY MR. DeWULF) Right. And we're going to talk
10 about that in a moment.

11 There were over \$300 million in cashier's checks
12 that were drawn on JP Morgan Chase Bank and US Bank,
13 correct?

14 A. I don't -- it's a big number. That may be
15 right, but I just don't remember if it was 300 or
16 something.

17 Q. In your view, sitting here today, could Menaged
18 have pulled off the second fraud without the help of those
19 two banks?

20 MR. STURR: Object to the form.

21 THE WITNESS: In my profession as a fraud
22 investigator, you put on a hat and think like a thief.
23 Okay?

24 So if I'm going to put on the hat of Menaged, he
25 manipulated and did a pretty good job of manipulating

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1 trustee documents. Okay? If he can do that with
2 Tiffany & Bosco and law firms' names on them, can he
3 create a cashier's check and forge it and create a
4 document that looks like a cashier's check and mail it?

5 So if you are asking me, you know, is it
6 possible to do that, I think it is, you know, so...

7 Q. (BY MR. DeWULF) But it would be fair to say in
8 the -- on the facts as we know them, the banks played a
9 critical role in facilitating that second fraud?

10 MR. STURR: Object to the form.

11 THE WITNESS: I mean, the door was open because
12 of the lax procedures being followed, right, and all sorts
13 of issues described in the disclosure statement, but once
14 the door was opened, the bank participated in that role by
15 issuing those cashier's checks, allowing them to be
16 deposited back, yes.

17 Q. (BY MR. DeWULF) The banks participated in the
18 role of facilitating the second fraud?

19 A. Of allowing their platform as a bank to be used
20 in that way. I mean, it's yet to be determined the
21 knowledge that they had and what the individual bankers
22 knew and those details and the degree of that. I don't
23 know the full story with Chase, but -- and US Bank, but, I
24 mean, at initial glance, a striking number of cashier's
25 checks to come in and out of a bank.

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1 Q. So it's your belief sitting here today, subject
2 to further review and investigation, that the banks did
3 facilitate that second fraud. Fair?

4 MR. STURR: Object to the form.

5 THE WITNESS: well, I -- my previous answer,
6 once the door was open, they allowed their platform to be
7 used, their banking platform to be used and become a
8 component of the mechanism of which Menaged continued to
9 deceive DenSco.

10 MR. DeWULF: Right. And would you read that
11 back.

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

13 Q. (BY MR. DeWULF) So your testimony is that
14 theoretically, because Menaged was this kind of clever,
15 sinister guy, he might have been able to doctor up some
16 documents that looked like cashier's checks.

17 But putting that scenario aside, the way he was
18 able to convince Denny Chittick and DenSco that the monies
19 on the second fraud were being properly used is that he
20 had the cooperation of the banks in creating cashier's
21 checks, right?

22 MR. STURR: Object to the form.

23 THE WITNESS: I mean, in the facts that exist,
24 the banks issued thousands of cashier's checks over time,
25 and he photocopied them and used them in the deception of

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1 Denny Chittick, yes.

2 Q. (BY MR. DeWULF) Right.

3 And those cashier's checks in most cases were
4 then turned around and redeposited back into the bank
5 accounts, right?

6 A. Yes.

7 Q. So the banks would have known that there were
8 cashier's checks created by their personnel, earmarked to
9 be used for purchases of particularly identified
10 properties, and then redeposited back into their accounts,
11 right?

12 A. Yes. And I don't remember, when you said
13 earmarked for a particular property, if they had in the
14 memo section the property details, but they certainly
15 would have been aware that a check was issued and then
16 being redeposited hundreds of times.

17 Q. Yeah. The ones that I -- I have seen some
18 examples and it does appear to reference property,
19 specific properties.

20 A. Okay.

21 Q. And you have read the testimony of Mr. Menaged
22 in connection with his interaction with the bank personnel
23 on the second fraud, right?

24 A. I have a recollection of that, yes.

25 Q. And that he believes that those folks, the

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1 branch managers with whom he worked, did know what he was
2 doing.

3 Do you recall that testimony?

4 A. I don't recall all the specifics of that, like
5 what he was -- they knew what he was doing, the degree. I
6 just don't remember what specifically he thought, but they
7 had some knowledge, you know. And I'm not, right as I sit
8 here today, recalling the specific knowledge they had, but
9 Menaged is claiming they had some knowledge.

10 Q. We will probably look in a little bit to some of
11 the volume of those checks and the dollar figures we are
12 talking about, but it was a substantial number of
13 cashier's checks, and substantial in hundreds of millions
14 of dollars worth of transactions.

15 Fair?

16 A. Yes.

17 Q. And your belief as receiver was that the bank
18 either knew or should have known about that second fraud
19 problem, right?

20 A. The bank should have known about that second
21 fraud problem is the part I don't understand.

22 Q. Okay. They should have known about the -- what
23 Menaged was doing to facilitate the second fraud, that is
24 creating bogus cashier's checks and then turning around
25 and putting them right back into the account.

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1 They should have known about that?

2 MR. STURR: Object to the form.

3 THE WITNESS: They should have known something
4 was unusual that was happening there.

5 Q. (BY MR. DEWULF) Right. And that would have
6 caused them to ask more questions or to investigate,
7 correct?

8 A. Correct.

9 Q. Your belief in that regard rose to the level of
10 deciding that the receivership ought to dedicate time and
11 resources to hiring counsel to investigate and potentially
12 pursue claims against the banks, right?

13 A. Correct.

14 Q. And the banks are JP Morgan Chase Bank and
15 US Bank, correct?

16 A. Yes.

17 Q. And we will look at this in a minute, but you
18 have now entered into a tolling agreement with JP Morgan
19 Chase, correct?

20 MR. STURR: Object to the form.

21 THE WITNESS: I don't know if it's been actually
22 entered into. I don't think I have yet, but I am in the
23 process of getting that.

24 Q. (BY MR. DEWULF) Okay. Do you know if there is
25 also a tolling agreement with regard to US Bank?

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1 A. I am trying to secure that. I don't believe
2 that exists right now.

3 Q. We will look at what you guys have provided so
4 far.

5 All right. So looking at The First Fraud
6 description, 3.1, the first fraud you say commenced
7 sometime in 2011 or 2012, that first sentence?

8 A. Yes.

9 Q. Can you pinpoint that any better, sitting here
10 today?

11 A. No.

12 Q. I think we might be able to with some of the
13 documents we have.

14 The -- six lines down, I'm sorry, five lines
15 down, there is a sentence that begins "According to the
16 Forbearance Agreement."

17 Do you see that?

18 A. Yes.

19 Q. According to the Forbearance Agreement, Menaged
20 met with Chittick on or about November 7, 2013 to inform
21 him that certain properties had been used as security for
22 one or more loans from one or more other lenders, and that
23 the DenSco loans may not be in the first lien position on
24 these properties.

25 Did I read that correctly?

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1 A. Yes.

2 Q. Sitting here today, do you -- and I know you are
3 quoting from the Forbearance Agreement, but do you know,
4 independently of the Forbearance Agreement, that there
5 actually were double liens going on way before November of
6 2013?

7 A. Yes.

8 Q. What do you know about that?

9 A. Well, I know those liens were, double liens were
10 happening in 2011, 2012.

11 Q. Okay. Let's go to page 8. The paragraph that
12 begins "Based on Menaged's testimony," do you see that?

13 A. Yes.

14 Q. Based on Menaged's testimony during the
15 Rule 2004 examination as well as email correspondence
16 between Chittick and Menaged, the Receiver understands
17 that Menaged misled Chittick to believe that Menaged's
18 "cousin" had requested the loans from the third party
19 lenders without Menaged's knowledge, and that the cousin
20 had absconded with the proceeds from these fraudulent
21 loans.

22 Did I read that correctly?

23 A. Yes.

24 Q. And that in fact is what Menaged was telling
25 Mr. Chittick to explain away the existence of double

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1 liens, right?

2 A. Yes.

3 Q. And do you know, sitting here today, whether
4 Mr. Chittick believed what Menaged was telling him?

5 A. I mean, from all the documents, it seems he did.

6 Q. Let me go down to the next paragraph. Four
7 lines up from the bottom, the sentence begins "According
8 to documents located."

9 Do you see that sentence?

10 A. No.

11 MR. STURR: From the bottom?

12 Q. (BY MR. DeWULF) Yeah. Strike that. I don't
13 need to ask about that.

14 The paragraph that begins, I guess it's about
15 the four paragraphs down, "The DenSco records analyzed."

16 Do you see that paragraph?

17 A. Yes.

18 Q. And I know I am bouncing around. I'm sorry, but
19 I'm trying to get through this quickly.

20 The DenSco records analyzed to date indicate
21 that on December 13, 2013, DenSco began to loan Menaged
22 additional funds to repay the third party lenders.

23 Did I read that correctly?

24 A. Yes.

25 Q. And the records you are referring to, are those

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1 the QuickBook records of DenSco?

2 A. Well, that may include those. I mean, there are
3 a number of other records we have. The loan files, for
4 example, public records.

5 Q. When do you believe Mr. Chittick knew about the
6 double lien situation, first learned?

7 A. I don't remember specifically if it's late 2013
8 or at the time the Bryan Cave letter came in early '14,
9 but somewhere in that timeframe.

10 Q. The paragraph that begins "For example," which
11 is the last paragraph on that page, at the very end, the
12 last sentence reads: The 348,873.28 overage was not
13 allocated to another property, but was instead entered
14 into DenSco's books as an unsecured receivable due from
15 Menaged under the category "Work Out 5 Million."

16 Did I read that correctly?

17 A. Yes.

18 Q. So there is a lot of discussion about "work out
19 5 million" in this case, and we will talk about it in
20 detail in a moment, but is the -- it's the receiver's
21 position that the 5 million workout loan is what was
22 provided for under the Forbearance Agreement, right?

23 A. Yes.

24 Q. And that there are damages associated with the
25 making of that loan, correct?

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1 A. I'm sorry. Damages?

2 Q. There are damages associated with that loan
3 being provided for under the Forbearance Agreement?

4 A. Damages to who?

5 Q. Damages to DenSco.

6 A. DenSco was damaged as a result of putting
7 these -- the Forbearance Agreement --

8 Q. No. Let me rephrase it.

9 Am I correct that the receiver's position is
10 that the defendants are responsible for the \$5 million
11 loan and the loans that were made based on that \$5 million
12 loan?

13 A. The defendants in this case, so --

14 Q. Yes.

15 A. -- the Clark Hill law firm --

16 Q. Yes.

17 A. -- and David Beauchamp?

18 I'm not the damages expert. I'm not giving
19 opinions on that. I mean, I have views that are in the
20 disclosure statement about how the formation of this
21 Forbearance Agreement was not in DenSco's best interests
22 and those sorts of things, but I don't have opinions about
23 the damages.

24 Q. See, I understood your disclosure to actually
25 identify that there were 13 and a half million dollars in

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1 losses associated with the \$5 million loan.

2 Is that not your position?

3 A. That's correct, yes.

4 Q. And how do you arrive at -- how do you determine
5 that that 5 million grew to 13 and a half million?

6 A. Looking at the QuickBooks records and the other
7 financial information in terms of how Denny was paying
8 off, it was unsecured; when he was paying off those double
9 encumbrances, the extra amount that there was no security
10 for, it kept growing.

11 Q. So the \$5 million growing to 13 and a half
12 million dollars, is a function of how Mr. Chittick entered
13 the information in QuickBooks?

14 A. For -- I'm sorry.

15 MR. STURR: Sorry. Object to the form.

16 THE WITNESS: For certain, the QuickBooks
17 information, because it's easy to see it in there, but
18 there is also -- there is no loan file. Here is money
19 going out. There is no loan file. There is no other
20 information that is tells you that there is any security
21 related to that flow of funds.

22 It's being sent, if I recall correctly, to the
23 title company to bridge the difference, because there is a
24 second lien on the property and there is insufficient
25 assets from the sale of the home to cover both liens and

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1 so DenSco was covering that difference. And you have a
2 payment for which there is no security, no loan agreement,
3 no loan documents, other than the Forbearance Agreement
4 that's related to that.

5 Q. (BY MR. DEWULF) So in other words, Mr. Chittick
6 has determined that he is going to advance money to
7 Mr. Menaged without security.

8 Fair?

9 A. Other than what's in place in the Forbearance
10 Agreement.

11 Q. Right.

12 And the -- he could have chosen to use money
13 from the \$5 million provided under the Forbearance
14 Agreement or other monies within DenSco to advance to
15 Menaged, correct?

16 A. I'm not sure I understand. I mean, he would --
17 he is cleaning up the mess, as he called it, using and
18 under the Forbearance Agreement.

19 Q. He is using DenSco funds to correct the problems
20 associated with Menaged in the first fraud, right?

21 A. Yes.

22 Q. And he could have used, in fact, he did just use
23 DenSco funds. It wasn't earmarked in any way, right, to
24 address those problems?

25 A. Did you say he didn't just use DenSco money?

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1 Q. No. He used DenSco money, right?

2 A. Yes, correct.

3 Q. Okay. And although he has characterized those
4 as entries in QuickBooks as being related to the
5 5 million, it was just DenSco funds he is using to plug
6 back in to solve the first fraud problems, right?

7 A. Correct. And what we are calling DenSco funds
8 is the collection of all the capital available, either
9 from raising money --

10 Q. Right.

11 A. -- new investors or existing investor --

12 Q. Right.

13 A. -- rollovers, interest income coming in from
14 loans and principal repayments creates what we are calling
15 the DenSco funds.

16 Q. So Chittick is using those funds that have been
17 collected from investors, et cetera, to basically try to
18 solve this first fraud problem with Menaged, correct?

19 A. Yes.

20 Q. And the way he described it in QuickBooks is
21 that it was derivative or a function of that original
22 \$5 million loan under the Forbearance Agreement, right?

23 A. That's -- yeah, that's my recollection.

24 Q. But he could have characterized it in some other
25 way; he was just using DenSco funds to do this. Fair?

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1 A. I don't understand what you mean by "he could
2 have characterized."

3 Q. Well, those -- that \$5 million provided for
4 under the Forbearance Agreement wasn't money that was
5 somehow earmarked or set aside or in a separate account.
6 It was simply DenSco funds, right?

7 A. That's correct. It wasn't like a trust account
8 or a special account, no.

9 Q. So he could have used DenSco funds and not
10 described it as coming under the Forbearance Agreement for
11 the same purpose, right?

12 A. But what would he describe it as on the books?

13 Q. He could describe it as money to Menaged. I
14 don't know. Any way he wanted.

15 A. But, I mean, I think his view was based on what
16 I have seen in his conduct, is that it falls under the
17 Forbearance Agreement, because it's just increasing that
18 \$5 million amount, and then it would be repaid through the
19 Forbearance Agreement is what his --

20 Q. Why didn't he, maybe you don't know, stop after
21 \$5 million had been expended?

22 A. I don't know.

23 Q. But he could have done that, had he chosen,
24 right?

25 A. Yeah.

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1 MR. DeWULF: This is probably a good time to
2 break.

3 VIDEOGRAPHER: The time is 11:54 a.m. We are
4 going off the record, ending media three.

5 (A recess was taken from 11:54 a.m. to
6 12:43 p.m.)

7 VIDEOGRAPHER: My name is Mary Onuschak with the
8 firm of Legal Video Specialists, Phoenix, Arizona. This
9 begins media four of the videotaped deposition of Peter S.
10 Davis. The time is 12:43 p.m. We are now back on the
11 record.

12 Q. (BY MR. DeWULF) Mr. Davis, when we broke, we
13 were looking at Exhibit 479 together, and I ask you to go
14 to I think it's page 9. It's -- there is a section 3.2
15 that talks about The Second Fraud.

16 Are you on that page?

17 A. I am.

18 Q. Okay. So the paragraph at the very top of that
19 page is kind of the end of the discussion of the first
20 fraud. I just wanted to go through that with you for a
21 moment.

22 You say: As of the date of the receivership,
23 DenSco's book and records report two unsecured receivables
24 due from Menaged, including \$13,336,807.24 classified as
25 "Work Out 5 Million" and \$1,002,532.55 classified as "work

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1 Out 1 Million" for a total of \$14,339,339.79.

2 Did I read that correctly?

3 A. Yes.

4 Q. And this is what we talked before the break
5 about, is that in DenSco's books and records in --
6 particularly in QuickBooks, Mr. Chittick had classified
7 monies advanced to Menaged based on either the \$5 million
8 loan that was a part of the Forbearance Agreement or the
9 \$1 million workout loan that had been started before the
10 Forbearance Agreement, but was referenced in the
11 Forbearance Agreement, correct?

12 A. He classified money in those two categories,
13 correct.

14 Q. Right.

15 And the million dollar workout loan was
16 something that Mr. Chittick had started with Mr. Menaged
17 before Mr. Beauchamp even entered the picture, right?

18 MR. STURR: Object to the form.

19 THE WITNESS: I don't know.

20 Q. (BY MR. DeWULF) Well, money was advanced by
21 Mr. Chittick to Mr. Menaged pursuant to an agreement they
22 had reached before the January 9, 2014, meeting between
23 Mr. Beauchamp, Mr. Menaged, and Mr. Chittick, correct?

24 A. Yes, that's -- there is information about that
25 in this report, right.

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1 Q. Okay. And you indicate that the first fraud --
2 am I reading this correctly, that the first fraud occurred
3 between August 2012 and November of 2013?

4 Let me rephrase that, because I understand you
5 are struggling with it, and it wasn't --

6 At least as to dollars quantified for the
7 workout loans, those dollars represent transactions that
8 occurred between August 2012 and November 2013?

9 MR. STURR: Object to the form.

10 THE WITNESS: That's my recollection.

11 Q. (BY MR. DeWULF) Okay.

12 A. Yeah.

13 Q. And do you recall that the first fraud, that is
14 the double liening of properties where Menaged had
15 arranged for two loans on a particular piece of property,
16 one loan from DenSco and one -- a competing loan from
17 another lender, that first fraud had finished or been
18 completed or ended by November of 2013?

19 A. That's -- that's what I recall.

20 Q. Okay. So most of the first fraud had occurred
21 while Mr. Beauchamp was at the Bryan Cave firm, before he
22 came to Clark Hill?

23 A. I mean, I haven't done the actual calculation of
24 volume of double encumbering happening from one period to
25 the next. I mean, it's a big pot.

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1 Q. Assuming that for my question that Mr. Beauchamp
2 joined Clark Hill September 1, 2013, do you recall whether
3 most of the first fraud, in terms of the double liening of
4 properties, occurred before that date or do you know?

5 A. I don't know in terms of dollar amount. In
6 terms of time, more time that the fraud was going on was
7 during the pre-joining Clark Hill period.

8 Q. I understand. I think we are going to see some
9 documents. Maybe I can help you kind of clarify that
10 timing.

11 So let's talk about The Second Fraud, 3.2. In
12 it you talk about both the cashier's checks and the
13 trustee, falsified trustees' sales receipts.

14 Do you see that?

15 A. Yes.

16 Q. And do you recall that Menaged not only created
17 cashier's checks, took pictures of them and sent them to
18 Chittick to evidence that the money was being used to buy
19 property, but he also falsified trustees' receipts?

20 A. Yes.

21 Q. Have you talked to Mr. Menaged or have people at
22 your direction talked to Mr. Menaged to confirm that
23 that's in fact what he did?

24 A. When I deposed him, that was in his deposition.

25 Q. So this next paragraph is going to the point I

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1 was making a moment ago. The paragraph begins "Of the
2 2,712 loans."

3 Do you see that paragraph?

4 A. Yes.

5 Q. The second sentence of that reads: As shown in
6 Table 2 below, DenSco advanced a total of \$734,484,440.67
7 to Menaged for fraudulent loans resulting from the Second
8 Fraud.

9 Did I read that correctly?

10 A. Yes.

11 Q. And a large portion of those loans would have
12 been -- would have involved the cashier's check procedure
13 that we talked about a moment ago, right?

14 A. Yes.

15 Q. So when we were talking about hundreds of
16 millions of dollars, we weren't exaggerating; there was a
17 lot of money rolling in and out of those bank accounts,
18 right?

19 A. Yes.

20 Q. The footnote you drop, 26, it says: The
21 Receiver believes Menaged provided the false trustee's
22 sales receipts to DenSco; however, Menaged testified he
23 did not send DenSco the trustee's sales receipts and
24 didn't know what they -- that they were being sent.

25 Do you recall whether you -- did you ever

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1 conclude who actually sent the trustee's sales receipts?

2 A. I recall having an understanding, an estimation
3 of that. I just don't remember who.

4 Q. Okay.

5 A. Who or how.

6 Q. Do you think it was somebody other than Scott
7 Menaged that sent them?

8 A. I -- I don't want to guess completely, but
9 that's what I'm thinking. It evolved over time in terms
10 of who we thought was doing it at the end.

11 Q. Did you ever figure out who actually put them
12 together, that is, composed the receipts?

13 A. I don't remember.

14 Q. Let me -- I'm going to mark a couple of exhibits
15 that haven't been marked, because I think it might be a
16 good time to talk about these.

17 why don't you mark that as 542. That's 542,
18 that's 543, 544. This is 544.

19 (Deposition Exhibits No. 542 through 544 were
20 marked for identification.)

21 Q. (BY MR. DEWULF) All right. So let's go through
22 these together, if we could, very quickly, Mr. Davis. So
23 let's look at 542.

24 A. Okay.

25 Q. Now, I believe this is an example of a cashier's

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1 check that would have been created. In this case, it's
2 the US Bank account.

3 Do you see that?

4 A. Yes.

5 Q. And I just want to kind of confirm with you that
6 it does appear, in the remitter line it says DenSco
7 payment, I know it's small lettering, but -- and then it
8 references a property address.

9 Do you see that?

10 A. Uh-huh. Yes, I do.

11 Q. Okay. And would this refresh your memory at all
12 that in fact the cashier's checks that were cut by the --
13 by the bank would have identified the property that was
14 intended to be covered by the check or related to the
15 check?

16 A. Yes.

17 Q. And do you -- Strike that.

18 Let's look at 543. Again, another example.
19 This is on a Chase Bank account, right?

20 A. Yes.

21 Q. And this shows, again, this references a DenSco
22 payment, and then it also identifies a property.

23 Do you see that, 3349 East Isaiah Avenue?

24 A. I do.

25 Q. And is it your understanding that when a

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1 customer comes to the bank to cut a cashier's check, they
2 have to meet with bank personnel and the bank actually
3 creates the document, it types in the form?

4 A. My understanding is the bank types in the form.

5 Q. Right.

6 So the bank would have to be actively involved
7 in gathering information from Menaged or somebody at his
8 direction to put together a cashier's check, right?

9 A. Yes.

10 Q. Okay. And then let's look at 544. These are a
11 series of what I think are falsified receipts. Some of
12 them are better read than others, more easy to read than
13 others, but do these appear to be in the form that you
14 have seen before, that there is kind of a form that looks,
15 the title at the top, third party trustee sale,
16 instructions and receipt? Do you recall?

17 A. The ones I have spent time with were -- they
18 looked a little bit different.

19 Q. Yeah.

20 A. They were on the Tiffany & Bosco particularly.
21 I spent time looking at those.

22 Q. Yeah.

23 A. And then there were others that looked a little
24 different than these, but --

25 Q. Okay.

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1 A. I don't know and I can't speak to these specific
2 ones, but I have seen them before.

3 Q. And you do recall that there was some form of a
4 document that purported to be a trustee's receipt that was
5 created by Menaged or somebody at his direction, right?

6 A. Yes.

7 Q. That was false, right?

8 A. Yes.

9 Q. It was intended to show that in fact money had
10 been given to a trustee for the purchase of a particular
11 property, and it had not occurred at all?

12 A. Yes, correct.

13 Q. All right. So let's go back to where we were on
14 discussing the second fraud in Exhibit 479.

15 I was curious, after the Table 2, do you see
16 that on that page, Mr. Davis?

17 A. Yes.

18 Q. It says: On average, Menaged paid off the
19 fraudulent loans plus 18% accrued interest within
20 approximately three weeks.

21 Is this describing that Menaged was paying off
22 old loans with money from new loans?

23 A. I mean, that's what I believe happened.

24 Q. Okay. Let's look at the next page. And that's
25 the sentence that begins on the top of the page, it says:

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1 The records analyzed to date indicate that Menaged
2 essentially obtained new loans from DenSco in order to
3 repay DenSco the principal and interest due on the older
4 loans.

5 This is essentially the Ponzi scheme, right?
6 That's a part of a Ponzi scheme?

7 A. Yeah. It's not the Ponzi scheme. It's a second
8 Ponzi scheme being operated by Menaged.

9 Q. All right. Good.

10 So -- and what you go on in the next paragraph
11 to say is that the -- there were a total of 84 loans that
12 were the subject of the second fraud, totaling over
13 28 million?

14 A. Yes.

15 Q. All right. Let's go to the, I guess, I think
16 it's 11, but it could be -- it's the one that says DenSco
17 Became a Ponzi Scheme, and it's number 5.

18 A. I'm there.

19 Q. Right above that paragraph it says: As a result
20 of these adjustments -- and these are adjustments that you
21 have made to the books and records of DenSco, just take
22 that for the purpose of my question -- DenSco's
23 liabilities exceeded its assets at fair value by at least
24 December 31, 2012 (See Exhibit 1). Because negative
25 equity is a key indicator of insolvency, and because the

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1 losses resulting from the Managed frauds increased
2 exponentially from 2012 through 2016, it is reasonable to
3 conclude that DenSco was insolvent as of December 31,
4 2012.

5 Did I read that correctly?

6 A. Yes.

7 Q. And that is your conclusion, that DenSco was
8 insolvent as of December 31, 2012?

9 A. Yes.

10 Q. And is that how you define insolvency, the fair
11 market of the assets are exceeded by its liabilities, or
12 is there another definition for you for insolvency?

13 A. There is many definitions of insolvency.

14 Q. And what is yours, as it relates to this
15 statement?

16 A. The -- I looked at the fair value of assets,
17 less liabilities.

18 Q. Okay. Sometimes folks will describe insolvency
19 as the -- the insufficient financial assets to meet
20 financial obligations as they come due, or something like
21 that.

22 Is that another definition you have heard?

23 A. Yeah. These come from the Uniform Fraudulent
24 Transfer Act, and that is a second definition. There are
25 many others that we use.

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1 Q. Okay. And then in paragraph 5, you indicate
2 that DenSco became a Ponzi scheme, and I think I'm reading
3 that they became a Ponzi scheme as soon as it became
4 insolvent?

5 A. Where are you at? I'm sorry.

6 Q. Well, I'm just wondering, that first paragraph
7 says: As a result of the First Fraud and the Second
8 Fraud, DenSco became insolvent as of December 31, 2012 and
9 remained insolvent through June 30th, 2016. And then you
10 go on to discuss the Ponzi scheme.

11 Do you think that the Ponzi scheme commenced at
12 the point in time where the company became insolvent?

13 A. Yes.

14 Q. All right. If you look at this chart, do you
15 remember today, since this isn't colored, and I'm trying
16 to look at it with a view towards figuring out what line
17 relates to what, and you have got four different
18 descriptions. Do you know which of these lines relates to
19 which of those descriptions: Investor liabilities,
20 Menaged loans, secured Menaged secured, Menaged loans
21 unsecured? If you don't, that's fine.

22 A. I don't. I would be --

23 Q. Let's move on then.

24 Let me take you to the next page. Under
25 Modified Net Investment Analysis, there is a reference in

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1 the one, two -- fourth paragraph down, it says: Under
2 this methodology, twenty-one DenSco investors are net
3 investment "winners" who received cash in excess of the
4 net investment balance as of the date of insolvency.

5 Did I read that correctly?

6 A. Yes.

7 Q. And so there were 21 investors who you sought to
8 get funds returned from because they were winners at a
9 time when, in effect, there was a fraud going on, right?

10 A. Yeah. In summation, yeah.

11 Q. All right. Let's go to, it looks like 15. It's
12 at the very end of your report, Table 5, before we get to
13 the attachments.

14 Are you there?

15 A. Yes.

16 Q. So what you do is you are intending here to kind
17 of summarize the expenses of the receivership, right?

18 A. Yes.

19 Q. And then you go on and describe the professional
20 fees.

21 were there any other -- there was the Fredenburg
22 Beams law firm that was helping with foreclosures, right?

23 A. Yes.

24 Q. There was Snell & Wilmer that was helping you on
25 some of these estate matters, right?

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1 A. Correct.

2 Q. Frazer -- Frazer Ryan & Goldberg was also
3 helping on estate matters?

4 A. Correct.

5 Q. Any other lawyers, other than Mr. Anderson's
6 firm, that you have retained?

7 MR. STURR: As of this date?

8 Q. (BY MR. DEWULF) As of this date. As of today.
9 I should have been clearer.

10 A. Well, Osborn Maledon.

11 Q. Right.

12 A. The Ajamie law firm, Frakes firm.

13 Q. Got it. Anybody else?

14 A. I don't remember anybody else.

15 Q. If you think of it, just let me know.

16 So let's go to the Exhibit A. The first page of
17 this Solvency Analysis, you have a little blocked message
18 at the bottom of the right-hand column, which, again, is
19 referencing insolvency as of December 31, 2012, correct?

20 A. Yes.

21 Q. And then let's look at the next page. As I'm
22 reading the next page, there is, under assets, you have
23 references to the work out 1 million and the work out
24 5 million.

25 Do you see that, under assets?

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1 A. Yes.

2 Q. And if you go to the very last column, 12/31/13,
3 there is a number there related to the work out 1 million.

4 Do you see that?

5 A. Yes.

6 Q. 149,332.

7 So was this the commencement of payments by
8 DenSco on the work out 1 million?

9 A. That's what my recollection is.

10 Q. Okay. And then if you look at the bottom of
11 that page, there is a heading Equity Adjustments.

12 Do you see that?

13 A. Yes.

14 Q. And so if we look at, again, that column under
15 12/31/13, this would show that for total equity
16 adjustment, there is over \$13 million associated with the
17 first fraud?

18 A. Yes.

19 Q. Okay. And this would indicate to me that the
20 second fraud had not started as of the end of 2013.

21 Is that your memory?

22 A. I have a recollection of that, yes.

23 Q. Okay. And then let's look at the next page.
24 Again, at the bottom, Equity Adjustments, the heading,
25 there is the title Adjustment for First Fraud. Do you see

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1 that? And then you have got a line of numbers going
2 across?

3 A. Yes.

4 Q. That is -- what does that represent, adjustment
5 for first fraud? what does that mean?

6 A. It's the calculation I did to determine how much
7 of the first fraud was causing the company to lose assets
8 at that point in time --

9 Q. I see.

10 A. -- under various assumptions that are stated in
11 the report.

12 Q. Okay. And then the second, the description
13 right below that, the adjustment for the second fraud,
14 would your description be the same, except as it relates
15 to the second fraud and its impact on the company?

16 A. Yes.

17 Q. And that number grows, but am I correct in
18 saying that as of the end of May 2014, the amount of
19 losses suffered by the company associated with the second
20 fraud is 4,664,616?

21 A. Yes, based on the assumptions and calculation
22 that I used.

23 Q. All right. Let's go two pages back in this,
24 page 5 of 5, again, to the Equity Adjustments at the
25 bottom of these columns.

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1 When we get to 6/30/16, which is the end date on
2 your analysis, right?

3 A. Yes.

4 Q. You have indicated that the injury suffered by
5 the company as a result of the first fraud is \$14,739,340?

6 A. Correct.

7 Q. And the losses suffered by the company as a
8 result of the second fraud is \$28,122,300?

9 A. Yes.

10 Q. And then I just needed an explanation, the total
11 equity adjustment versus the adjusted equity, there is a
12 difference of roughly \$4 million there.

13 what does that reference or what does that
14 reflect?

15 A. Well, the adjusted equity is the total assets of
16 55 million minus the \$42 million adjustment. That's what
17 that should be.

18 Q. Oh, I see. Okay.

19 A. I believe that's what that is. Yeah.

20 Q. And the adjustment is the sum of the payroll
21 liabilities, first fraud and second fraud losses?

22 A. I got that a little bit incorrect. I'm sorry.

23 If -- the adjusted equity is the proper amount
24 of equity that should be shown on the books. Instead the
25 books, if we look above, the books -- the book equity as

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1 of 6/30/16 is \$3.9 million, but taking into account it
2 would flip to negative 38 million.

3 Q. Okay.

4 A. Okay. So you would have to do a little bit of
5 math to get how we get there specifically, but it's not as
6 simple as the 54 million minus the 42. It has to take
7 into account the existing other liabilities owed
8 investors.

9 Q. So if we were to try to figure out what the
10 negative equity in the company was as of June 30th, 2016,
11 which number would we choose?

12 A. Based on my determination --

13 Q. Your analysis.

14 A. -- calculation, you would take the adjusted
15 equity.

16 Q. Okay. So that's the \$38,882,064?

17 A. Yes.

18 Q. Okay. Let's look at the next kind of investor
19 transaction summary.

20 Just is this a summary of all of the financial
21 transactions with respect to each of the investors in the
22 company?

23 A. Yes.

24 Q. Earlier, I don't think I finished this line of
25 questioning. Let me go back.

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1 By virtue of the investors assigning their
2 claims to the receiver, do they give up rights to do
3 that --

4 MR. STURR: Object to the form.

5 Q. (BY MR. DeWULF) -- do you know, if you
6 understand?

7 MR. STURR: Sorry. Object to the form of the
8 question and foundation.

9 THE WITNESS: I don't know, I mean, legally.

10 Q. (BY MR. DeWULF) Yeah. That's what I was
11 wondering, if -- do they assign -- what do you understand
12 you have received from them in connection with that
13 assignment of claim?

14 MR. STURR: Object to the form of the question
15 and foundation.

16 THE WITNESS: I could be incorrect, but I didn't
17 understand I received assignment from each investor, but I
18 could be mistaken.

19 Q. (BY MR. DeWULF) Okay. How do you -- how would
20 you describe the fact that the investors have forgone
21 pursuing claims individually, but instead have provided
22 you some rights on their behalf? How would you describe
23 that?

24 MR. STURR: Object to the form of the question
25 and foundation.

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1 THE WITNESS: I mean, I don't know that they
2 have done that specifically. If there is a document to
3 refresh my memory, I just, I'm not having a specific
4 recollection of that.

5 Q. (BY MR. DeWULF) Okay.

6 A. But DenSco has claims, and I have those claims
7 on behalf of DenSco.

8 Q. Okay. So you don't -- you don't think that you
9 have actually gotten any rights from the investors. You
10 are simply representing DenSco's rights and their
11 creditors of the company?

12 A. That's -- that's what my understanding was. I
13 could be mistaken.

14 Q. I remember seeing something in one of these
15 reports about the rights that they got, but let me -- I
16 will try to chase that down. Let me go -- because I don't
17 want to waste your time. Let's go to the very last
18 document in describing the investors.

19 Are you there?

20 A. Yes.

21 Q. What I am understanding from this summary is
22 that starting on the next to the last page, which is the
23 second of three pages of this, is the beginning of the
24 listing of investors that were net winners, right?

25 A. Yes.

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1 Q. And this will -- there is a total of 21 net
2 winners from their loan transactions with DenSco. You
3 have identified them here, right?

4 A. Yes.

5 Q. And so either you or counsel on your behalf
6 would have reached out to each one of these net winners to
7 seek to have them put those monies back into the company
8 that were their net winnings, correct?

9 A. Yes, correct.

10 Q. And did you collect from each one of these
11 investors those monies?

12 A. No. I have collected some, and some I have
13 decided not to pursue for various reasons, and then some
14 I'm investigating and one I'm in a lawsuit with.

15 Q. Who are you in a lawsuit with?

16 A. I am in -- Fisher. And then Smith is -- I'm
17 investigating some documents that he provided me.

18 Q. What's the Fisher lawsuit about, in just brief
19 summary?

20 A. Ponzi winner. It's Ponzi winner clawback.

21 Q. And he doesn't want to pay it back?

22 A. Yeah, and I don't remember the specifics, but
23 they don't want to pay it back. They don't understand,
24 sometimes, the law on how that works and it's an education
25 process.

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1 But also, and I can't remember if this is the
2 one, but there are sometimes collectability issues have to
3 be evaluated.

4 Q. I see.

5 And is there any way you can describe for us,
6 for those investors that you chose not to pursue, why you
7 chose not to pursue it, or is it just a case by case?

8 A. There are some that are just very small, and
9 then -- so I can't warrant and justify the legal fees, and
10 then the other reason is collectability. I mean, records
11 are provided to me demonstrating that the individual or
12 entities that made the loans have no assets or have
13 limited assets, and so it's a negotiation at that point or
14 it's a decision about walking away from it.

15 Q. I understand.

16 All right. Let's look at Exhibit 480 together.

17 So this is a document titled Notice of Claim
18 Against Estate of Denny Chittick. It looks like it was
19 filed with the Superior Court December 9, 2016.

20 This was filed by your lawyers against the
21 estate?

22 A. Yes.

23 Q. And what was the purpose of the claim?

24 A. It would -- this was filed by my lawyers against
25 the estate of Chittick.

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1 Q. Right.

2 A. And the purpose of this claim is to put on
3 notice and comply with the legal requirements of the
4 claims process in an estate probate case that DenSco had a
5 significant claim against Denny Chittick's estate.

6 Q. I understand.

7 And so paragraph 2 says: The Estate of Denny
8 Chittick, Denny J. Chittick is indebted to the Receiver in
9 the amount of \$46,811,635.54 as detailed in paragraph 3
10 below.

11 Did I read that correctly?

12 A. Yes.

13 Q. So you are telling the Probate Court, and
14 everybody else that would look at this document, that you
15 think the estate is indebted to the receiver in that
16 amount of money?

17 A. I mean, that word indebted sometimes throws me
18 off, but it's a claim that I'm claiming that much.

19 Q. You are claiming you are owed that much money?

20 A. I have a claim for that much against -- at least
21 that much. I think the actual reading of it doesn't limit
22 it to that.

23 Q. Okay. So I'm just trying to understand.

24 This claim that you are making in court says
25 that the receiver believes that the Estate of Chittick

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1 owes over 46 million, right, to DenSco?

2 A. My words are that it's -- DenSco has a claim
3 against the Estate of Chittick that I have quantified in
4 that amount, correct.

5 Q. What am I saying that's wrong? I can't
6 understand the answer.

7 A. Well, I may be --

8 Q. Don't you -- aren't you saying if you are
9 successful, you would want to collect over \$46 million
10 against the estate, based on what you believe to be owed
11 to you or owed to DenSco, right?

12 A. Yeah, but it's contingent, right, so it's --
13 that's where -- because I -- when we say owed and
14 liability and indebtedness, I think in the accounting
15 world of what pot that fits in --

16 Q. Let me rephrase.

17 A. -- definable --

18 Q. I understand.

19 A. -- as opposed to a contingent claim.

20 Q. If there were sufficient assets to satisfy
21 claims such as yours, you would be seeking to have,
22 through the Probate Court, DenSco pay it over \$46 million
23 from the Chittick estate, right?

24 A. I would seek that. It's contingent, right.

25 Q. Contingent upon there being sufficient assets to

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1 satisfy that obligation?

2 A. Well, there is more than that, that it's
3 contingent on, right? It's contingent on winning on all
4 the assumptions and liability and causation and other
5 things --

6 Q. Right.

7 A. -- that I would set forth, and then
8 collectability would be like a secondary factor.

9 Q. Understand.

10 But you believe in good faith that you can prove
11 a claim, and if there were assets, you could collect on
12 the claim for over 46 million from the estate, right?

13 A. So when I filed this in good faith, that this is
14 my good faith contingent claim against that estate, yes.

15 Q. Okay. And the -- then the Complaint goes on and
16 describes then the basis for that 46 million, correct?

17 A. Yes.

18 Q. And there is discussion -- I'm not going to go
19 through it in detail. There is a discussion about the
20 Chittick personal investment account, right? There is a
21 discussion about his 401(k) plan, right?

22 A. Yes.

23 Q. There is a discussion about his defined benefit
24 plan, right?

25 A. Yes.

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1 Q. And then there is a discussion on page 4 of
2 claims to be brought against Chittick, right?

3 A. Yes.

4 Q. Beginning on line 9. And the claims against
5 Chittick, brought by you on behalf of DenSco, include
6 conversion, common law fraud, breach of fiduciary duty as
7 director and officer of DenSco, fraudulent transfer (both
8 actual and constructive) pursuant to A.R.S. §§ 44-1004
9 et seq., unjust enrichment, or, alternatively, gross
10 negligence or negligence as an officer or director of
11 DenSco, correct?

12 A. Yes.

13 Q. You believe that the allegations made in this
14 complaint were true and accurate?

15 A. Yes.

16 Q. All right. And then if we go to page 5, there
17 is a discussion about the specific numbers representing
18 the amounts owed, right?

19 A. Yes.

20 Q. All right. Did this claim ever get amended?

21 A. I don't recall. I don't believe so, but I don't
22 recall.

23 Q. All right. Then let's look at 481 and 482 and
24 483.

25 481 is a letter written to Judge Sanders by your

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1 counsel, dated August 8, 2017, correct?

2 A. You have 482, correct?

3 Q. Oh, I apologize. 482.

4 A. 482.

5 Q. 482.

6 A. Yes.

7 Q. All right. And if you look at the third
8 paragraph on the first page, you -- your counsel on your
9 behalf is telling Judge Sanders: During his appointment,
10 the Receiver has uncovered that DenSco was both the victim
11 of a series of fraudulent schemes perpetrated by one of
12 its lenders, but also was operating as a Ponzi investment
13 scheme while intentionally misleading its investors, as to
14 its financial insolvency.

15 Did I read that correctly?

16 A. Yes.

17 Q. Do you remember what the purpose of this letter
18 was?

19 A. If I recall correctly, we had a new judge and we
20 wanted to educate the judge about the status of the case.

21 Q. Okay. Was -- was it your practice or is it your
22 practice, Mr. Davis, that you review the letters your
23 lawyers write on your behalf before they go out?

24 A. Not always, no.

25 Q. Not always?

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1 Are you typically copied on the letters? Not
2 necessarily on the face of the document, but would you
3 generally be provided a copy?

4 A. Yes.

5 Q. All right. And if you -- and do you typically
6 read the letters that your lawyers write on your behalf?

7 A. Yes.

8 Q. If there were something in a letter, that you
9 didn't review prior to it being sent, that you thought was
10 inaccurate after you received it, would you notify your
11 lawyer about that?

12 A. Yes.

13 Q. And ask him to revise it or amend it?

14 A. I would do that, yeah.

15 Q. All right. So let's look at Exhibits 481 and
16 483.

17 481 is to a Carsyn Smith Trust. Do you see
18 that?

19 A. Yes.

20 Q. And was this a borrower?

21 A. No. No.

22 Q. Do you remember how she -- why you are sending
23 her a letter?

24 A. Well, this is Tom Smith, and it's a Ponzi
25 winner.

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1 Q. Oh, I'm sorry.

2 So it was an investor, right?

3 A. Right, yeah.

4 Q. Okay. So the investor received more money in
5 effect than they should have because they were a
6 beneficiary of the Ponzi scheme?

7 A. Yes.

8 Q. Okay. So let's look at the second page, next to
9 the last paragraph. It reads: You are expected to comply
10 with the Receivership Order and this demand made pursuant
11 to such order. You are responsible for returning the
12 profits you received from the fraudulent scheme,
13 regardless of whether you knew or had reason to know that
14 the scheme was illegal.

15 Did I read that correctly?

16 A. Yes.

17 Q. And so you are telling the recipient, in this
18 case Thomas Smith, that they received money as a result of
19 a fraudulent scheme and they have to return it?

20 A. Yes.

21 Q. And the fraudulent scheme, as we talked earlier,
22 was perpetrated both by Mr. Menaged and by Mr. Chittick,
23 right?

24 MR. STURR: Object to the form.

25 THE WITNESS: By virtue of operating a Ponzi

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1 scheme, yes.

2 Q. (BY MR. DeWULF) They were -- they were
3 deceiving investors?

4 MR. STURR: Object to the form.

5 Q. (BY MR. DeWULF) Or Mr. Chittick was deceiving
6 investors?

7 A. I mean, I -- like I answered before, I don't see
8 strong indicators that would tell me he knew he was
9 deceiving investors. I haven't seen that. I also
10 couldn't imagine him doing that to his friends and family,
11 the relationship they had, but as to Menaged, yes.

12 Q. So when you make your claim that we looked at a
13 moment ago, Notice of Claim Against the Estate of Denny
14 Chittick, and you say he is guilty of common law fraud,
15 what's the fraud?

16 A. Well, I mean, I think it's wrong to operate a
17 Ponzi scheme, so my assumption is that ends up being a
18 fraud, but is it something that he knew he was doing at
19 the time, as an intent and intentional?

20 Q. Well, so the claim against Chittick that you
21 bring in December 9, 2016, alleges against Chittick common
22 law fraud, which, as you know, requires nine elements,
23 which would include intent to deceive, right?

24 A. I'm sorry.

25 MR. STURR: Just to be clear, John, sorry, if

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1 you are referring to page 4 of this exhibit --

2 MR. DeWULF: I'm not. I'm talking about page 6.

3 THE WITNESS: Okay. Common law fraud --

4 MR. DeWULF: Well, they are both, I guess, they
5 both talk about common law fraud.

6 MR. STURR: They refer to two different types of
7 claims. That's why I was drawing it to your attention.

8 Q. (BY MR. DeWULF) Okay. Well, did you, in
9 Exhibit 480, assert that Mr. Chittick was guilty of common
10 law fraud?

11 A. It's -- it's the claim, the basis of the claim
12 listed here is that it's common law fraud, yeah.

13 Q. Okay. And assuming common law fraud includes an
14 intent to deceive, are you saying that Mr. Chittick was
15 intending to deceive investors?

16 A. I'm being asked to make an assumption about
17 common law fraud, including intent, and so --

18 Q. I'm asking you, when you say common law fraud,
19 I'm just telling you that requires a proving of nine
20 elements with clear and convincing evidence, and you have
21 asserted common law fraud.

22 So I'm asking you, did you believe when you
23 filed this December 9, 2016, claim that Mr. Chittick was
24 guilty of common law fraud, and that's why you asserted
25 it?

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1 MR. STURR: Object to the form.

2 THE WITNESS: I don't know from a legal basis
3 standpoint. Okay? He ended up operating a Ponzi scheme.
4 okay?

5 Did he know about it with this intent allegation
6 and such that you are stating? I haven't seen documents
7 to say he knew about it. Like he was out there
8 intentionally operating this thing? For what purpose? To
9 take from his family and friends?

10 I mean, he didn't really benefit significantly
11 financially. He took the money out for himself at the end
12 of '14, but --

13 Q. (BY MR. DEWULF) So why do you think he did what
14 he did?

15 A. I think he thought he was operating a business
16 and he was trying to get himself out of a hole that
17 Menaged had dug himself into, and he believed Menaged. I
18 mean, that's just my sense, based on all the records.

19 Q. So even today, you think that Chittick believed
20 Menaged?

21 A. Yes.

22 Q. Okay.

23 A. Yeah, in the recording and such, it seems
24 apparent.

25 Q. Let's look at 483. This is to a Stewart Gross,

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1 and it references monies from Four Futures Corporation,
2 the McKenna Trust, McKenna Smith Trust, and the Carsyn
3 Smith Trust.

4 Do you see that reference in the second
5 paragraph?

6 A. Yeah.

7 Q. And is this again a request for return of funds?

8 A. Yes.

9 Q. So let's look, then, at the first page, the
10 fourth paragraph. It says --

11 Are you there?

12 A. Yeah.

13 Q. -- As an initial matter, before the Receiver can
14 make claim for the return of any "Ponzi profits," the
15 Receiver must first determine that the DenSco fraud scheme
16 was in fact a Ponzi scheme.

17 Did I read that correctly?

18 A. Yes.

19 Q. In fact, as of this point, you had determined
20 that it was a fraud, a Ponzi scheme, right?

21 A. Yes.

22 MR. STURR: Object to the form.

23 Q. (BY MR. DeWULF) And then if you look at the
24 second page, at the paragraph that begins "As you may
25 suspect."

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1 Do you see that?

2 A. Yes.

3 Q. As you may suspect, the law supports the
4 recovery by a court-appointed Receiver of funds in
5 received excess of principal invested into a Ponzi scheme.

6 Did I read that correctly?

7 A. Yes.

8 Q. And then it goes on and talks about the fraud
9 that's involved in connection with the Ponzi scheme,
10 correct?

11 A. Yes.

12 Q. And did you think that these were accurate
13 descriptions of the case law as it addresses the issue of
14 Ponzi schemes?

15 A. I mean, I'm relying on my lawyers for that. I'm
16 familiar with some of the case law, but yeah.

17 Q. But you were comfortable with what was being
18 said here to third parties on your behalf, right?

19 A. I didn't find anything to cause me concern.

20 Q. I mean, for example, let's look at about --
21 there is a case called warfield versus Alaniz,
22 A-l-a-n-i-z, about 12 lines down.

23 Do you see that?

24 A. Yes.

25 Q. Parentheses after, it's a District Arizona case,

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1 it says: Proof of the existence of a Ponzi scheme showed
2 that there was actual intent to defraud and thus the
3 receiver, as a matter of law, had shown the existence of a
4 fraudulent transfer.

5 Does it in any way, looking at these cases and
6 how they reference Ponzi scheme, refresh your memory that
7 there actually is a fraudulent aspect as it relates to the
8 Ponzi scheme and that Mr. Chittick was involved in that
9 fraudulent scheme?

10 MR. STURR: Object to the form.

11 THE WITNESS: A Ponzi scheme is a fraud scheme.
12 They are just sort of inseparable. It's wrong to operate
13 one.

14 Q. (BY MR. DeWULF) And to the extent that
15 Mr. Chittick was operating the business, he was engaging
16 in that fraud scheme, right?

17 A. Yeah. But the question is as to intent and
18 knowledge and all that, but it still makes it a fraud
19 scheme if you are operating one.

20 Q. Let's look at 4 --

21 A. And I'm not a lawyer when I'm answering these
22 questions. I'm just giving you my gut.

23 Q. I don't want to make you a lawyer. Believe me.
24 I'm just wanting to know what you -- what your view is as
25 a receiver and a critical witness in this case.

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1 A. Okay.

2 Q. So I have got to ask you these questions, and I
3 understand if you are not in a position to answer all of
4 them.

5 Let's look at Exhibit 484.

6 Now, let me just confirm with you, 484 would
7 have been a financial analysis that was performed by you
8 in your role as a receiver?

9 A. Correct.

10 Q. And if you look at the left column, it says
11 DenSco Investment Corporation Loans to Yomtov Scott
12 Menaged, et al. - Transaction Details.

13 Did I read that correctly?

14 A. Yes.

15 Q. And so this is a summary of the loans that were
16 done with Menaged by DenSco?

17 A. Yes.

18 Q. And if you look at the lower left-hand corner,
19 it says Subject to Change.

20 So this is still a draft, right?

21 A. Yes.

22 Q. As of this date?

23 A. Actually, it says Draft - Subject to Change,
24 yes.

25 Q. Thanks.

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1 So let's go to page 5 of this document.

2 When -- when there is a reference to a workout
3 under the column Purchased Notes, does that mean that that
4 was a subject of double liening? If you don't know,
5 that's fine.

6 A. I don't remember on that.

7 Q. Okay. And under the column Purchased, it is --
8 when you have the word "yes," it means that there actually
9 was money purchased by Mr. Menaged, right?

10 I'm sorry. There was property purchased by
11 Mr. Menaged in connection with the loan made to him,
12 right?

13 A. Yeah, that's my recollection.

14 Q. Okay. And so there are times when that -- there
15 may be a -- for example, let's look at page 6. You look
16 at sort 324 on the left column, right? And I know this is
17 small writing.

18 Do you see that, sort 324? That first column
19 says 324?

20 A. Yes.

21 Q. All right. And it has a QB date, 7/31/14.
22 Do you see that?

23 A. Yes.

24 Q. And does QB mean QuickBooks?

25 A. Yes.

PETER DAVIS, 11/16/2018

1 Q. So does that mean that's the date that Chittick
2 enters this transaction in QuickBooks?

3 A. No. It means the date that was put into
4 QuickBooks. Not the date he entered it necessarily, but
5 the date he put in QuickBooks as the date of this
6 transaction.

7 Q. Oh. So he might have done it on a different
8 date. It's just that he is reflecting on the books that
9 this is when he believes it occurred?

10 A. Yes.

11 Q. All right. And so the next column is adjustment
12 date. What does that reference? Or maybe that -- it's
13 ADJ. Maybe that's --

14 A. No. That does stand for adjustment. That's a
15 common --

16 Q. Is that the date of the loan?

17 A. I don't -- I don't remember what that is.

18 Q. Okay. So that says there is a workout. Do you
19 see that?

20 A. Yes.

21 Q. And a total of 348,873.28.

22 Do you know if a workout references the fact
23 that there was actually -- and then you look under
24 classification, it says work out 5 Million.

25 Do you see that?

PETER DAVIS, 11/16/2018

1 A. Yes.

2 Q. So would you read this summary to be that that
3 is a workout where there were -- there was an
4 overencumbering of the property, and the company dedicated
5 funds to solve the problem?

6 A. Yes.

7 Q. And if you look at this document, it looks like
8 that's the first workout that occurred in the listing of
9 the documents or the loans over time.

10 Is that a fair observation?

11 A. Yes.

12 Q. Okay. Now, this, as we talked about, the ADJ
13 date is 8/20/2012.

14 Do you see that?

15 A. Yes.

16 Q. And do you think, as we look at this document,
17 that's probably the date of the loan?

18 A. That may very well be.

19 Q. That was my -- as I look at this document, and
20 I've looked at it quite a bit.

21 So if you look at the previous page, page 5, it
22 looks like there were, you know, if you look at the
23 balance statement period on the right side or if you look
24 at the adjustment date, as of the end of 2011, which is
25 sort 293, if you see that --

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1 Do you see sort 293?

2 A. Uh-huh.

3 Q. -- that looks like there is a date, not only a
4 QB date of 12/30/11, but an adjustment date of 12/30/2011.

5 Do you see that?

6 A. Uh-huh. Yes.

7 Q. And so it looks like there were no workout loans
8 prior to or workouts of loans prior to that date based on
9 your summary of all these loans.

10 Is that a fair observation of this document?

11 A. Yeah. Based on this document, yes.

12 Q. Okay. And are you aware of there being any
13 problem loans predating 2012?

14 A. Well, I mean, there were problem loans before
15 that date. They are discussed in the POM, 2011 POM, but
16 in terms of the double encumbrance Menaged was doing.

17 So as I sit here today, I don't remember, but I
18 have seen references to 2011 issues that were I thought
19 double encumbrances happening that year.

20 Q. You don't know one way or the other?

21 A. But I don't -- I just don't remember, you know,
22 the degree in 2011. I just don't remember and I don't
23 want to guess.

24 Q. Okay. Let's look at page 12.

25 A. Okay.

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1 Q. Actually, let's go to page 13. I think this
2 will be a better illustration.

3 When we look at the heading Loan Balance on the
4 right side, do you see that category Loan Balance?

5 A. Yes.

6 Q. It says Purchased, Not Purchased, Workout.
7 Do you see that?

8 A. Uh-huh. Yes.

9 Q. So -- and it looked like Not Purchased starts on
10 sort 784, correct, dated on the left side 1/22/14?

11 A. Yes.

12 Q. Are you with me?

13 A. I am.

14 Q. All right. So that, the Not Purchased is a
15 reflection of the fact that the second fraud has begun,
16 right?

17 In other words, you have described the second
18 fraud as being situations where Menaged takes the money
19 but doesn't buy any property, right?

20 A. Yes.

21 Q. So would you agree with me that the second fraud
22 started around January 22nd, 2014?

23 A. Yes, it looks like the case.

24 Q. Okay. So let's go back to page 6 or, I'm sorry,
25 page -- page 12, by sort 741.

PETER DAVIS, 11/16/2018

1 Okay. So 741 shows a date of 12/31/13, right?

2 A. Yes.

3 Q. So that would reflect loans as of December 31,
4 2013, the end of 2013, correct?

5 A. Yes.

6 Q. All right. And if you look, then, using that as
7 a starting point, if you look back in time, you will see
8 that by that timeframe there were a number of workouts,
9 right, as you have described them?

10 A. Well, I can't see the number here, but yeah.

11 Q. But -- and I'm not asking you for the number,
12 but there are a series of loans that were the subject of
13 workouts --

14 A. Correct.

15 Q. -- before that date?

16 A. Correct, yeah.

17 Q. And so it would be fair to say, in fact, we can
18 go back three pages and there are still -- there are
19 workouts that are occurring.

20 It would be fair as of the end of December 2013,
21 that there were a number of Menaged loans that were the
22 subject of problems, right?

23 A. Yes.

24 Q. And Chittick knew about that, right?

25 A. At that point in time, yes. At the end of '13,

PETER DAVIS, 11/16/2018

1 yeah, I believe so, right.

2 Q. So let's look at Exhibit 51 in that book. You
3 are going to find it in one of those volumes right next to
4 you.

5 A. 51?

6 Q. Yes.

7 Are you there?

8 A. Yes.

9 Q. All right. So this email has been referenced a
10 number of times in this case. It -- and I'm focusing on
11 the email from Denny Chittick to David Beauchamp, dated
12 January 7, 2014.

13 Do you see that?

14 A. Yes.

15 Q. And it begins: I thought I would give you
16 something to read. Right? Do you see how that starts
17 out?

18 A. Yes.

19 Q. And do you recall that this is the first written
20 information that Mr. Chittick is providing to
21 Mr. Beauchamp in connection with the Menaged problem?

22 A. I don't know.

23 Q. Okay.

24 A. It may be.

25 Q. All right.

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1 A. I just don't know if it was the first.

2 Q. Well, it certainly is the first substantive
3 communication I have seen, and I want -- I want to go
4 through this with you.

5 In the second paragraph he says: I've been
6 lending to Scott Menaged through a few different LLCs in
7 his name since 2007. I have lent him \$50 million and have
8 never had a problem with payment or issue that hasn't been
9 resolved.

10 Do you see that?

11 A. Yes.

12 Q. That's not a true statement, is it?

13 MR. STURR: Object to the form.

14 Q. (BY MR. DeWULF) Let me focus on this,
15 Mr. Davis, because I can help you. I'm not asking you to
16 add up the 50 million. Okay?

17 Let's assume that as of the end of 2013, the
18 total number of loans that have been done since 2007 with
19 Menaged and his entities is about \$50 million. Okay?

20 A. Okay.

21 Q. What I'm really focusing, is in the other part,
22 where he says there has never been a problem with payment
23 or an issue that hasn't been resolved.

24 In fact, we know from the exhibit that we just
25 looked at, which is Exhibit 484, there were a whole series

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1 of problems with loans with Menaged before the end of
2 2013, correct?

3 MR. STURR: Object to the form.

4 THE WITNESS: So I think when I read this line,
5 my assumption is what Denny was aware of. He can only
6 speak to what he is aware of.

7 Q. (BY MR. DeWULF) And do you think that Denny, as
8 of January 7, 2014, didn't understand that there were any
9 problems with Menaged loans?

10 A. Well, he became aware of it at that point in
11 time, but in their business dealings up until about that
12 time, within, you know, weeks or a month of this timeframe
13 of this writing, my understanding is Denny wasn't aware
14 that there were problem loans.

15 That -- and I'm going from my memory and, I'm
16 sorry, it's not perfect, but I thought it was
17 conversations in late 2013 between Denny and Menaged that
18 the cousin story started.

19 Q. Are you aware that in fact Chittick is aware of
20 problems with Active Funding lienning the same properties
21 that DenSco is lienning in December -- in 2012? Do you
22 know that?

23 A. That there is email communication going to Denny
24 indicating that, I'm aware that there is something going
25 to Denny, but the key part of my reading of this is that

PETER DAVIS, 11/16/2018

1 had a problem that hasn't been resolved.

2 Q. So you are saying that everything had been
3 resolved with respect to Menaged loans as of January 7,
4 2014?

5 MR. STURR: Object to the form.

6 THE WITNESS: Under my standard, no, but I
7 believe under the way Denny was looking at this, in his
8 view, from what I have read of everything, that things had
9 been sort of in working order and had been resolved.

10 Q. (BY MR. DeWULF) So the fact that there had been
11 double liening of Menaged loans -- let me rephrase that --
12 that there had been double liening of properties that were
13 the subject of DenSco loans to Menaged, those problems had
14 all been resolved by January 7, 2014?

15 MR. STURR: Object to the form.

16 THE WITNESS: No. No. Denny became aware of
17 that. I'm -- when I am reading this, just having been
18 familiar with this --

19 Q. (BY MR. DeWULF) Yeah.

20 A. -- I am thinking Denny is saying: Look, for
21 years I have been working with this guy. I've never had a
22 big problem that didn't get worked out. Now we've got a
23 big problem and, David, we need your help. That's how I'm
24 reading that.

25 Q. Okay. So you are saying this is really

PETER DAVIS, 11/16/2018

1 Mr. Chittick vouching for Mr. Menaged, right?

2 A. Yes.

3 Q. To Mr. Beauchamp?

4 A. Yes.

5 Q. So he is telling Mr. Beauchamp: This is a guy
6 that I worked with since 2007, he is reliable, he performs
7 on his loans, and you can trust him because I do.

8 Is that what you are saying?

9 A. Well, I mean, those are your words. I don't
10 know if he is going that far, but there is some of that
11 sense here.

12 Q. Okay.

13 A. I have been working with him. He says he -- I
14 have lent him 50 million. I have never had a problem with
15 payment, because Menaged was manipulating the situation to
16 ensure the payments happened, or issue that hasn't been
17 resolved. So all those, whatever issues were historically
18 there, had been resolved, but now we have got this big
19 problem.

20 Q. So it would have been reasonable for
21 Mr. Beauchamp to read this email to understand
22 Mr. Chittick is vouching for Mr. Menaged, right?

23 MR. STURR: Object to the form of the question.
24 Foundation.

25 THE WITNESS: I mean, we are using the word

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1 vouching. I think it would be reasonable for Beauchamp to
2 read it and say: Okay. So Denny had a client, you know,
3 a borrower who, since '07, has paid. And he hasn't had a
4 problem, Denny hasn't had a problem that he couldn't work
5 out with him.

6 Q. (BY MR. DeWULF) So there isn't a major problem
7 here. It's just something we have got to work our way
8 through because this guy is reliable?

9 MR. STURR: Object to the form of the question
10 and foundation.

11 THE WITNESS: I mean, there is a major problem,
12 because now Denny is aware of the double encumbrances,
13 right, through Menaged and the cousin theft, right? In
14 months earlier there was also the FREO lawsuit.

15 So there is a lot of stuff going on that, in my
16 mind, is alarming, you know, because how can you ever have
17 a double encumbrance and where did all the money go?

18 Q. (BY MR. DeWULF) Right.

19 That's what Chittick knows as of January 7,
20 2014, right?

21 A. Yes.

22 Q. But he doesn't tell Mr. Beauchamp that, does he?

23 MR. STURR: Object to the form.

24 THE WITNESS: well, he sent him the FREO
25 lawsuit. There was a Bryan Cave letter sent to Beauchamp.

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1 I haven't read the rest of this email, and I believe this
2 email is going to provide information that, to me, would
3 be alarming, you know, to many professionals looking at
4 this would be alarming, because my question is, where did
5 all that money go?

6 Q. (BY MR. DeWULF) So why didn't Mr. Chittick tell
7 Mr. Beauchamp what exactly was happening with
8 Mr. Menaged's loans? Do you know?

9 A. Well --

10 MR. STURR: Object to the form and foundation.

11 THE WITNESS: -- I can't get in Denny's head and
12 he is not with us. But from what I can tell, is Denny
13 believed Menaged.

14 Q. (BY MR. DeWULF) And he wanted Beauchamp to
15 believe in Menaged as well?

16 MR. STURR: Object to the form and foundation.

17 THE WITNESS: I don't know about that. I know
18 Denny was concerned about exposing all this to his
19 investors in a sense, in terms of what that run on the
20 money issue would be and those sorts of issues that he
21 talks about.

22 Q. (BY MR. DeWULF) So you think even though Denny
23 believed in Menaged, he didn't want Beauchamp to believe
24 in Menaged?

25 MR. STURR: Object to the form and foundation.

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1 THE WITNESS: I don't think that's accurate. I
2 think -- I think Denny was looking to Beauchamp to be the
3 police --

4 Q. (BY MR. DeWULF) A fair reading of --

5 MR. STURR: He is trying to finish his answer,
6 John.

7 Go ahead.

8 THE WITNESS: To be the policeman, you know, to
9 be the one to regulate him, and that's what he says in the
10 letter.

11 Q. (BY MR. DeWULF) But the client who writes
12 Exhibit 51, Mr. Chittick, a fair reading of this is, this
13 is a guy I've done business with since 2007 and I haven't
14 had any major problems with him.

15 Is that fair?

16 A. Yes.

17 Q. All right. Now let's look at what would be the
18 third page of this document. The third paragraph down
19 begins: Scott and I spent a great amount of time creating
20 a plan to fix this.

21 Do you see that sentence?

22 A. Yes.

23 Q. Did you understand that as of January 6, 2014,
24 Chittick and Menaged had already discussed a mechanism or
25 procedure by which they were going to solve whatever

PETER DAVIS, 11/16/2018

1 problems there were related to the Menaged loans?

2 A. Yes.

3 Q. And they were asking Mr. Beauchamp to
4 memorialize that in writing?

5 MR. STURR: Object to the form.

6 THE WITNESS: I mean, from a thousand miles up,
7 generally, yes. I know there is a lot of other nuance,
8 and I think Chittick was looking for advice from Beauchamp
9 along the way.

10 Q. (BY MR. DeWULF) All right. So let's look at
11 Exhibit 485.

12 So do you have it?

13 A. I do.

14 Q. And this is again a financial analysis that you
15 prepared or someone at Simon prepared at your direction,
16 right?

17 A. Yes.

18 Q. And it was issued by Simon Consulting as an
19 analysis of loans to Scott Menaged, right?

20 A. I say prepared. I don't know if it was issued
21 in the sense like --

22 Q. Oh, I'm sorry. That was an inartful phrase.

23 So how would you describe? Is prepared, is that
24 the word you want to use?

25 A. Yes.

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1 Q. All right. So Exhibit 485 is prepared by your
2 firm, intending to provide an analysis of loans to
3 Menaged, right?

4 A. Yes.

5 Q. And if you look at the left column, it's Loan
6 status, and then there is a question whether there is a
7 cashier's check that used to pay, right?

8 A. Yes.

9 Q. Whether there was a receipt, and then corrected
10 loan, original loan, and then there is in the middle,
11 there is a -- I'm not quite to the middle -- there is a
12 receivers prelim.

13 Do you see that?

14 A. Yes.

15 Q. And this is a reflection of whether there was
16 actual property purchased that was the subject of the
17 loan, right?

18 A. Yes.

19 Q. Okay. So let's look through this, and it looks
20 as though, if you go to page 8 of this document, if you go
21 about halfway down, there is the -- and under the column
22 Receiver's Prelim, it shows Never Purchased.

23 Do you see that?

24 A. Yes.

25 Q. So would this appear, based on your analysis, to

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1 be the first document or the first transaction that was
2 subject of the second fraud?

3 MR. STURR: I'm sorry, John. Can you -- where
4 are you?

5 MR. DeWULF: I'm sorry. Yeah. So it's about --
6 it's a little over halfway down. If you look under
7 Receiver's Prelim, just look at --

8 MR. STURR: Okay. Thank you.

9 MR. DeWULF: -- it says Not Purchased.

10 MR. STURR: I'm there. Thank you.

11 MR. ANDERSON: Palm Beach. East Palm Beach.

12 MR. DeWULF: Yeah, East Palm Beach Drive.

13 Are you there?

14 MR. STURR: Yes. Thank you.

15 Q. (BY MR. DeWULF) Okay. So it looks like, if you
16 go to the very end, it says the date funded, date paid.

17 Do you see that?

18 A. Yes.

19 Q. And that's a -- January 22nd, 2014, is the date
20 it was funded?

21 A. Yes.

22 Q. So that's when the loan was funded, right?

23 A. Correct.

24 Q. So that would be consistent with the document we
25 saw a moment ago, that second fraud started in late

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1 January of 2014, right?

2 A. Yes, that looks like the case.

3 Q. All right. Let's look at Exhibit 486.

4 A. Can we take a short break maybe?

5 Q. Yeah. Sure.

6 VIDEOGRAPHER: The time is 1:53 p.m. We are
7 going off the record, ending media four.

8 (A recess was taken from 1:53 p.m. to 1:59 p.m.)

9 VIDEOGRAPHER: My name is Mary Onuschak with the
10 firm of Legal Video Specialists, Phoenix, Arizona. This
11 begins media five of the videotaped deposition of Peter S.
12 Davis. The time is 1:59 p.m. We are now back on the
13 record.

14 Q. (BY MR. DeWULF) So Mr. Davis, could you look at
15 Exhibit 486?

16 A. Yeah.

17 Q. Do you have it in front of you there?

18 A. I do.

19 Q. So this is a letter to Ryan Anderson, dated
20 March 30th, 2017, from Cody Jess at Schian Walker.

21 Do you see that?

22 A. Yes.

23 Q. And have you seen this letter before?

24 A. Yes.

25 Q. And this is -- Cody Jess is the counsel for

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1 Menaged in connection with his bankruptcy?

2 A. Correct.

3 Q. This letter is a discussion about, among other
4 things, Active Funding Group, LLC.

5 Do you see that?

6 A. Yes.

7 Q. Chittick's awareness of Menaged's business
8 practices, number two; and number three, a supplemental
9 settlement offer.

10 Do you see that?

11 A. Yes.

12 Q. And was this letter written in connection with
13 negotiating some form of settlement agreement between
14 Menaged and DenSco or the receivership?

15 A. So if my recollection is right on the timeframe,
16 it is along that process, that timeline, pre-settlement
17 agreement with Menaged, but well along the way.

18 Q. Okay. And there was a settlement agreement
19 ultimately entered into between the receiver and Menaged?

20 A. Correct.

21 Q. This first page, if we look at it under Active
22 Funding group, LLC, now, for the record, you have hired
23 the Ajamie firm to investigate claims against Active
24 Funding, correct?

25 A. Yes.

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1 Q. And has Mr. Menaged been a provider of
2 information to the receivership in connection with claims
3 against Active Funding?

4 A. Yes.

5 Q. And this is, I guess it is the first example I
6 have seen of it, but this is a situation where Cody Jess,
7 on behalf of Menaged, is sharing information with you
8 through your counsel about Active Funding Group, right?

9 A. Yes.

10 Q. And if you look at that first page, it says, at
11 second paragraph under Active Funding Group, LLC, heading:
12 In September 2012, Active's principals discovered that
13 Mr. Menaged was double encumbering certain of the
14 properties he was purchasing at trustee sales and
15 requesting that Mr. Menaged meet with them to discuss the
16 same.

17 Did I read that correctly?

18 A. Yes.

19 Q. So is that news to you, that in fact Active
20 Funding was aware of there being double liens on
21 properties that were the subject of loans to Menaged, and
22 they knew that as early as September of 2012?

23 MR. STURR: Object to the form of the question.

24 MR. DeWULF: Is it confusing?

25 MR. STURR: Well, you said is that news --

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1 MR. DeWULF: All right. Let me rephrase it.

2 MR. STURR: -- and you previously said --

3 MR. DeWULF: I'll rephrase it.

4 MR. STURR: -- that he reviewed the letter more
5 than a year ago.

6 MR. DeWULF: That's such a clever objection.
7 I'm sorry I asked. Let me ask the question again.

8 MR. STURR: Sorry for the speaking objection.

9 MR. DeWULF: No. I was really -- I was
10 impressed.

11 Q. (BY MR. DeWULF) So looking at Exhibit 486,
12 Mr. Jess is sharing information about Active Funding and
13 its relationship with the client Menaged, right?

14 A. Yes.

15 Q. And whether it was through this letter or
16 otherwise, have you learned that Active Funding knew as of
17 September of 2012 that some of their loans were double
18 liened with loans from DenSco?

19 A. Yeah, I learned that.

20 Q. Okay.

21 A. That there was -- there were indicators of that,
22 correct.

23 Q. Okay. So let's look at 487. 487 is a series of
24 emails between Menaged and Denny Chittick. If you look at
25 the top of the first page, Chittick is writing to Menaged

PETER DAVIS, 11/16/2018

1 September 21, 2012.

2 Do you see that email at the very top of the
3 first page?

4 A. Yes.

5 Q. And in it he says: Ok. That's fine. Greg
6 Reichman called me saying that he and I have two loans on
7 three properties: Straight arrow, 46th way and 37209
8 North 12th Street. When you get back we need to
9 straighten that out. Thanks, DC.

10 Did I read that correctly?

11 A. Yes.

12 Q. Would this tell you that as of September 21,
13 2012, Mr. Chittick is aware of there being a double lien
14 situation with Menaged where Active Funding is actually
15 loaning on the same property that DenSco was loaning on?

16 A. That statement is accurate, but not as to fraud
17 scheme, like the first fraud that I have identified in the
18 report.

19 I state it's accurate as to Denny is aware there
20 is a problem on some liens on a couple of different
21 properties, and it involves Active, but this is one of the
22 issues that gets sorted out between him and Menaged.

23 Q. But the first fraud, as you have described it,
24 consists of Menaged double lienning properties where he has
25 a loan with DenSco, right?

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1 A. And deceiving Denny about it, right.

2 Q. Oh. So you think that during that entire first
3 fraud time, Denny Chittick didn't have any idea that
4 Menaged was double liening his properties?

5 A. No. I mean, I think this communication means
6 there is something, double liening, that's happening, but
7 there is explanations being given by Menaged and Menaged
8 is allegedly taking action to fix it.

9 Q. Do you know what explanation Menaged is giving
10 as of September of 2012?

11 A. I don't know for that specific time period. I
12 know I do -- am aware that he was giving explanations
13 along the way.

14 Q. All right. I'm confused then.

15 when does it become -- when does the first fraud
16 become actually fraudulent, if it's not because of the
17 double liens? Is it because there are no more excuses or
18 explanations given by Menaged?

19 MR. STURR: Object to the form.

20 THE WITNESS: Well, in my view or in --

21 Q. (BY MR. DEWULF) Yeah, in your view.

22 A. Oh, my view. It's fraudulent the entire time
23 that he does it, from the very first time he does it.

24 Q. So the fraudulent conduct of Menaged begins at
25 least as early as September of 2012, right?

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1 A. Yes.

2 Q. All right. Now, are you aware of any double
3 liening on loans to Menaged before September of 2012?

4 A. I mean, I would have to look at the exhibit we
5 just looked at --

6 Q. Right.

7 A. -- but whatever happened, those first liens,
8 those double liens that were happening, were happening.

9 Q. If -- does it fit with your recollection that
10 those began in 2012 or do you recall?

11 A. I think the documents we looked at showed it
12 beginning in '12.

13 Q. Okay. So -- and I'm trying to understand the
14 difference between what you have described as first fraud
15 and what you, in your view, was fraudulent.

16 And so do you think that that first fraud began
17 in September of 2012 with the double liening that occurred
18 or not?

19 A. Could I take a moment to look at the exhibit?

20 Q. Yeah. Just look at Exhibit 487. I have got
21 some other stuff you can look at, too.

22 A. Okay.

23 August of --

24 Q. You know what? Go ahead. I'm sorry.

25 A. I was just going to say August of 2012.

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1 Q. All right. So are you aware of any Menaged
2 fraud in 2011?

3 A. Not as I sit here today. Not being refreshed by
4 Exhibit 484.

5 Q. And to make it an even broader question, are you
6 aware of DenSco having any problems with Menaged loans
7 before 2012?

8 A. I don't know. I'm not specifically aware of
9 that. I know they had some issues with some loans
10 disclosed in the POM, but I'm not aware of whether that
11 was a Menaged loan or not.

12 Q. But you think that as it relates to double
13 liening and the first fraud, it did not start until 2012,
14 right?

15 A. That's what I've been -- my memory has been
16 refreshed, yes.

17 Q. All right. Good.

18 So let's -- I'm going to go through these
19 quickly, but before I do, let's stay with 486 for a
20 moment. Go to the second page.

21 well, let me --

22 A. Do you mean 486? Okay.

23 Q. 486.

24 A. Yeah.

25 Q. Is it fair to say that Mr. Jess is depicting for

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1 you and your counsel that he believes Active Funding was
2 participating with Menaged in a deception of DenSco?

3 A. Yes.

4 Q. Okay. And do you think that that's the case?

5 MR. STURR: Object to the -- well...

6 THE WITNESS: I -- I believe that's the case. I
7 believe they participated.

8 Q. (BY MR. DeWULF) Because they knew what Menaged
9 was committing to DenSco, and they knew that Menaged was
10 actually letting them lien those same properties on the
11 loans for which DenSco was owed money, right?

12 A. Yes, and they did it to advantage themselves.

13 Q. Right.

14 When do you think that fraud started, that is,
15 that conspiracy or the joint enterprise between Menaged
16 and Active Funding to deceive DenSco?

17 MR. STURR: Object to the form.

18 THE WITNESS: I just don't remember as I sit
19 here today.

20 Q. (BY MR. DeWULF) Do you think it's 2012?

21 A. It may be.

22 Q. Let me go through some letters with you really
23 quickly and then we are going to move on, but on this
24 topic, because I think it will maybe illuminate this issue
25 a little bit.

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1 So I'm going to ask you about, we are going to
2 489 now.

3 MR. STURR: John, can you identify -- it doesn't
4 have a Bates number on it. Can you identify the source of
5 the document?

6 MR. DeWULF: Which one?

7 MR. STURR: 489.

8 MR. DeWULF: It's the repository. I know we got
9 all this stuff out of your repository, but I can't tell --
10 or depository, however you want to identify.

11 Which is it?

12 MR. ANDERSON: Depository.

13 MR. DeWULF: Depository?

14 MR. STURR: Okay. Thanks.

15 MR. DeWULF: Repository is probably some sort of
16 a medical procedure.

17 Q. (BY MR. DeWULF) So we are going through -- we
18 are going to go through 489 through --

19 MR. ANDERSON: There is also a subpoena
20 production that actually -- he asked for.

21 MR. DeWULF: Yeah, it might be. I know we got
22 it from you all. So we are going to go through 488 to
23 506, so why don't you go grab all those.

24 MR. ANDERSON: Just for the record, though,
25 John, you subpoenaed --

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1 MR. DeWULF: Right.

2 COURT REPORTER: Can you speak up just a little
3 bit? I can't hear you.

4 MR. ANDERSON: Just for the record, John's firm
5 subpoenaed Active and got a document production, which is
6 also in the depository, but these may be from that as
7 well.

8 MR. DeWULF: Which reminds me of a question.

9 Q. (BY MR. DeWULF) When we subpoenaed Active
10 Funding for their documents, they indicated that pursuant
11 to document destruction policies they had, they hadn't
12 preserved correspondence.

13 Did you have a hard time getting correspondence
14 from them, do you know?

15 A. I don't know.

16 Q. Okay.

17 A. That's news to me.

18 Q. All right. So let's look at 488. Now, keep in
19 mind we just looked at 487, which had that date of
20 September 21, 2012, which is Chittick talking to Menaged
21 about the double liening, right, at the top of that page?

22 A. Yeah.

23 Q. And now here we have on 488 a series of emails
24 that talk about these same properties, which is Straight
25 Arrow, 46th way and 36 -- 37209 North 12th Street.

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1 And let's go to the first page. Email from
2 Menaged at the bottom of the first page to Reichman.

3 Now, Gregg Reichman is the principal in Active
4 Funding, right?

5 A. Yes.

6 MR. STURR: I'm sorry, John. What document are
7 you on now?

8 MR. DeWULF: 488.

9 MR. STURR: Thanks.

10 Q. (BY MR. DeWULF) Well, let me go back. I think
11 maybe a better way to ask this would be, let's go to the
12 second page of the document. The bottom of the page there
13 is a Menaged to Reichman email dated September 21. He
14 says: Don't remember them but it's possible. I'll look
15 at Monday. Sent by my iPhone.

16 And then right below that, Reichman says: OK.
17 It's an important matter. It looks like these three deals
18 of yours were double pledged by both AFG and DenSco.

19 Did I read that correctly?

20 A. Yes.

21 Q. And then you go up to the email that follows
22 that, Reichman is saying, September 21, 2012, 5:55 p.m.:
23 Not impossible. I'm looking at the chains of title
24 sitting in front of me. Both DenSco and AFG have loans on
25 those properties. Veronica told me that DenSco has been

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1 paid off and she was waiting for releases. I just spoke
2 to Denny. He indicated that he has not been paid off.
3 Please get this squared away as it is troubling. Best
4 regards, GR.

5 Would this indicate to you that Mr. Chittick was
6 in communication with Reichman about the three properties
7 that were the subject of loans by both entities?

8 A. Yes.

9 Q. And then the first page, Menaged seems to be
10 making light of it.

11 The bottom of that page, Reichman says: Very
12 funny. All of those loans are the same. All appear to be
13 double pledged. You probably used our money to fund those
14 silly furniture stores.

15 And Menaged says: Hahaha. Ok if you say so. I
16 will clear up Monday.

17 And then what you are going to see after this is
18 a series of communications between Menaged and Reichman
19 about the DenSco loans and the double lienning.

20 And I don't know. Do you recall seeing these
21 communications before? Does this ring a bell to you?

22 A. Some of these.

23 Q. All right. But it appears as though Reichman
24 and Active Funding is well aware of the double lienning.

25 And let's go to 489. Reichman is writing

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1 Menaged September 24. Second paragraph of that email
2 says: There are DOT's -- probably deeds of trust --

3 A. Uh-huh.

4 Q. -- from AFG and DOT's from DenSco on all of
5 them. They appear to be all double pledged. I spoke to
6 Denny on three of them and he indicates he has not been
7 paid off on them, and AFG has not been paid off on them
8 either. I have not yet been able to discuss the other
9 ones with him.

10 Now, there are at this point apparently
11 communications going on between Chittick and Reichman
12 about the double liening. Fair?

13 A. Yes.

14 Q. And then it goes on, the next one, Reichman is
15 saying to Menaged, this is 490, Exhibit 490: Scott, we
16 need to talk you to and it needs to be immediately. Thank
17 you.

18 And then 491, Chittick is saying to Menaged,
19 September 24th: He called me again. He has more
20 properties that he feels we -- that we both have loans on.
21 He swears you never gave him a check to pay off the first
22 three loans in question. The list has grown. He is
23 reviewing all your loans to see if there are more. Here
24 is what he gave me this morning. And then he lists
25 properties.

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1 This would indicate that Menaged and Chittick
2 and Reichman are talking about this double-lien issue in
3 September of 2012, right?

4 A. Yes.

5 Q. And you look at Exhibit 492, Reichman is
6 identifying a bunch of properties that are the subject of
7 potential problems. And I will just tell you there is 11
8 properties identified in this regarding chain of title,
9 and you will see that a number of them reference DenSco
10 loans that are also secured against the property. That's
11 as of September 24, 2012.

12 And then we will go to 493. If you look at the
13 top page, the email at the top of the page from Reichman
14 to Menaged, dated September 24th, he said: we should
15 propose -- I'm sorry. Let me read that again -- we should
16 proceed with the meeting and yes, we expect to have a
17 positive tone as acrimony does not serve any purpose in
18 this instance. We do have realistic expectations. We
19 would ask the same from you as this is a significant
20 problem with significant ramifications. At minimum we
21 would like payments and down payment brought current, and
22 we can't see any reason why they would be objectionable to
23 you. Is it? If you have any other assets which we
24 believe you do they should be offered to us as additional
25 collateral. Is there any reason you would have an

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1 objection to that? Please bring a list.

2 Were you aware that Menaged was providing extra
3 cattle -- extra --

4 A. Collateral.

5 Q. -- collateral to Reichman and AFG because of the
6 double-liening issue?

7 A. Yes.

8 Q. Okay. How did you know that?

9 MR. STURR: I'm going to caution the witness --

10 Q. (BY MR. DeWULF) If it's not from your lawyer.

11 MR. STURR: -- not to discuss what he learned
12 from Counsel, not to disclose that information.

13 THE WITNESS: What was your question again?

14 Q. (BY MR. DeWULF) How did you know that in fact
15 AFG was requiring additional capital from Menaged as a
16 result of the double liening?

17 MR. STURR: I'm going to caution the witness to,
18 if you can't -- if he can't answer the question without
19 revealing privileged information, then I instruct you not
20 to answer.

21 THE WITNESS: Okay. That came from counsel.

22 Q. (BY MR. DeWULF) Okay. 494, if we could look at
23 that together. Again, Chittick is talking to Menaged
24 about this issue with Reichman.

25 If you go to 495, Chittick talks to Menaged:

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1 Subject: I talked to Greg. He just blamed his to past
2 employees and quickly got off the phone. Trust me, my
3 books are golden, down to a gnats ass crack. Thanks, D.C.

4 And then Exhibit 496, it's just, again, a series
5 of discussions with Menaged about the loans Reichman has.

6 497 -- I'm going through this quickly because I
7 have got a lot of other things I want to talk to you
8 about. 497, a discussion of the collateral and trying to
9 work something out.

10 498, there is -- this is having to do with a
11 loan Menaged is seeking. And if you look at the last
12 email, which is the top of the first page, October 18,
13 2012, Reichman is saying to Menaged: Good. Thank you. I
14 am assuming Denny (or anyone else) has no knowledge of it
15 so we won't have to deal with him regarding deed of trust
16 in front of us, correct? Again, still the topic of
17 discussions with Menaged.

18 Exhibit 499, still trying to work things out on
19 this issue.

20 500, if you look at the reference in the top
21 email on that first page of Exhibit 500, it references:
22 scotty, if ok with you we will take Denny out of these
23 loans. Call me.

24 Do you know if, based on your research and
25 knowledge, Mr. Davis, if there ever was a situation where

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1 AFG paid money to DenSco?

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

3 Q. In fact, do you think the opposite is true, that
4 in fact DenSco paid money to AFG?

5 A. Yes.

6 Q. Let's look at 501. Again, this is a discussion
7 of collateral to be provided by Menaged.

8 502, more in the email chain.

9 503, more emails.

10 504, Reichman to Veronica Gutierrez and Scott
11 Menaged.

12 Do you know who Veronica Gutierrez is?

13 A. Castro.

14 Q. So she works with Menaged, right?

15 A. Yes.

16 Q. Okay. And then Exhibit 505 actually contains a
17 listing of properties that have been borrowed against by
18 Menaged from Active Funding.

19 506 talks about a lockbox account. Do you
20 recall that there was a lockbox account being discussed
21 between Menaged and AFG to secure payment on their loans?

22 A. The -- I recall an Alliance Bank lockbox account
23 being talked about, yeah.

24 Q. So let's look at Exhibit 507, which is the next
25 exhibit. You can -- let me just ask a question before I

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1 ask about this exhibit.

2 Are you aware of Mr. Chittick ever informing
3 Mr. Beauchamp about all of this history in 2012 between
4 him and Active Funding?

5 A. No, I don't believe so.

6 Q. In fact, the first indication that there was any
7 double-lien issue expressed by Mr. Chittick to
8 Mr. Beauchamp occurred in November of 2013, right?

9 MR. STURR: Object to the form.

10 THE WITNESS: The first -- what was that? I'm
11 sorry.

12 Q. (BY MR. DeWULF) First communication from
13 Mr. Chittick to Mr. Beauchamp about the double-lien issue
14 was in November of 2013, as far as you know?

15 MR. STURR: Object to the form.

16 THE WITNESS: There was the FREO lawsuit in the
17 summer.

18 Q. (BY MR. DeWULF) Okay. Let's put that aside for
19 a minute.

20 A. Okay.

21 Q. But beyond the FREO, the notification of a FREO
22 complaint, was there any other indication by Mr. Chittick
23 to Mr. Beauchamp about there being a double-lien issue
24 before November of 2013?

25 A. Besides the FREO lawsuit?

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1 Q. Yes.

2 A. Not that I am aware of.

3 Q. Wouldn't you have expected him to tell his
4 lawyer about that problem or not?

5 MR. STURR: Object to the form, foundation.

6 THE WITNESS: Menaged was playing him. He had
7 the game going, so Denny was believing it.

8 Q. (BY MR. DEWULF) Okay. Exhibit 507, this is a
9 document that was created by you or others at Simon,
10 correct?

11 A. Yes.

12 Q. Again, it's a draft subject to change, and it's
13 entitled DenSco Investment Corporation Analysis of Menaged
14 Loans as of January 9, 2014, Profit Details.

15 Did I read that correctly?

16 A. Yeah.

17 Q. And so this is -- the significance of the
18 January 9, 2014, date, that's the first date where
19 Chittick is providing the details of the Menaged issue to
20 Mr. Beauchamp, right?

21 A. In that email we referenced earlier? I'm sorry.
22 I got a little bit confused here.

23 Q. That's fine. I was asking you to do two things
24 at once. Let me just start again.

25 You pick a January 9, 2014, date as a critical

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1 date here.

2 A. Okay.

3 Q. And that's because a meeting occurred on that
4 date between Mr. Chittick and Mr. Menaged and
5 Mr. Beauchamp, right?

6 A. I mean, there is a meeting referenced I saw, but
7 I don't know if that's the reason that this date was
8 selected. It may very well be.

9 Q. Okay. So let's -- let's look at this document.
10 I wanted you to explain a couple things to me. I think at
11 I understand it, but I want to make sure.

12 This is a description of the Menaged loans up to
13 the January 9 date, right? January 9, 2014.

14 A. Yes.

15 Q. And there is a heading called 3rd Party Loan
16 Data in the middle of the spreadsheet, right?

17 A. Yes.

18 Q. And under it you have identified the name of a
19 lender that would have loaned on a property that was also
20 the subject of a DenSco loan, correct?

21 A. Yes.

22 Q. And so in this listing of third party loan data,
23 we see an identification of the lenders' names, right?

24 A. Yes.

25 Q. And so the first entry regarding Active Funding

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1 Group is an entry for loan number 3364, which is the
2 fourth entry down, right? Fifth entry down?

3 A. Yes.

4 Q. And that loan was dated 5/9/2012, right?

5 A. Yes.

6 Q. May 9, 2012.

7 And so we would take from this that as early as
8 May of 2012, Menaged was double lienning properties that
9 are subject to DenSco loans, right?

10 A. Based on this document, yes.

11 Q. And this is your document, right?

12 A. Yes, it is.

13 Q. All right. So it looks as though Active Funding
14 began -- they may have lent money to Menaged before May 9,
15 2012, but this is an indication of a double lienning of
16 property, right, where DenSco has loaned money to Menaged
17 and Active Funding has loaned money to Menaged on the same
18 property, right?

19 A. Yeah. But to clarify, the date that Active made
20 the loan isn't clear to me that it's necessarily the same
21 date as the loan date listed here.

22 Q. Well, this is all I have to go on, and all I see
23 are purchase dates and loan dates here. And the purchase
24 date is 5/7/12, so I was assuming that the loan date was
25 5/9/12.

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1 Isn't that a fair reading of this?

2 A. I don't know. That's why I am pointing that
3 out.

4 Q. Well --

5 A. If they were both on the same date, but I don't
6 know if that's necessarily true.

7 Q. Well, when you say loan date, what are you
8 referring to?

9 A. The column loan date.

10 Q. Right. But what's the date refer to?

11 A. That would be the date of the loan.

12 Q. Right. So I think we are saying the same thing
13 here.

14 A. Yeah, but in the dark highlighting -- and, I'm
15 sorry, I'm just not prepared --

16 Q. Right.

17 A. -- to go through all the details of this, but
18 the dark highlighting has that with DenSco, and I'm
19 concerned that the active loan, what the date is of that.
20 And I'm trying to read the numbers for --

21 Q. Oh.

22 A. -- the DOT. If you see the DOT, it says
23 2012/08. I could be mistaken, but that may mean August of
24 '08.

25 Q. I understand.

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1 Okay. All right. So I think for my purposes, I
2 don't think we have to worry about that to a significant
3 degree.

4 What I'm really trying to point out with this
5 document, is it looks like there is a whole slew, going
6 down under 3rd Party Loan Data, there is a whole slew of
7 loans from Active Funding to Menaged where DenSco is also
8 loaned money.

9 A. Yes.

10 Q. Fair?

11 A. Yes.

12 Q. And the thing that struck me is that we just saw
13 a series of documents that as of September of 2012,
14 Reichman and Active Funding are well aware of there being
15 double liens, right?

16 A. Yes.

17 Q. All right. So they know that they have got
18 loans on the same properties that serve as security for
19 DenSco loans, right?

20 A. Yes.

21 Q. And so -- but if you look on this column, this
22 document you have put together, it appears that they just
23 continued to loan money well after September of 2012,
24 right?

25 A. Yes.

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1 Q. In fact, there are -- this listing goes on the
2 entire document. I don't know how many loans there are,
3 but I bet there is over 100. And then later other lenders
4 get involved, right, Azben and others?

5 A. Yes.

6 Q. But Active Funding is still loaning money as
7 of -- if we use that loan date as an indicator, as of
8 November 22nd, 2013, right?

9 A. Yes.

10 Q. So is that a part of your claim against Active
11 Funding, is that they become aware of the double liening
12 and they continue to loan money because they are getting
13 some preferential treatment by Menaged to the expense of
14 DenSco?

15 MR. STURR: I'm going to object to the question,
16 the form of the question, and because it asserts there is
17 a claim, and I'm going to caution the witness that in
18 answering the question he not reveal information he has
19 obtained from counsel on the grounds that it's privileged,
20 and instruct the witness not to answer.

21 Q. (BY MR. DEWULF) Did you understand my question?
22 Do you want me to rephrase it?

23 A. No. I think I understand it. My understanding
24 of the claim against Active is stated in my report, and
25 the report goes through essentially something similar to

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1 that.

2 Q. Right.

3 And so have you been able to figure out -- and,
4 again, I'm not asking for communications from your lawyer,
5 so if you can't answer it, you can't answer it, but have
6 you figured out what happened after September 2012 that
7 caused Active Funding to continue to loan money, even
8 though they knew that there was a competing DenSco loan?

9 MR. STURR: Object to the form and foundation.

10 THE WITNESS: Yeah, I can't disclose that,
11 because it would waive attorney/client privilege to talk
12 about work product.

13 Q. (BY MR. DeWULF) But the answer to that question
14 would relate to your seeking to investigate and
15 potentially bring a claim against Active Funding, right?

16 A. Yes.

17 Q. And that's why you hired lawyers to do that?

18 A. Yes.

19 Q. And the amount of those loans, that ended up
20 oversecuring the properties, hurt DenSco, right?

21 Does that make sense, my question?

22 MR. STURR: Object. I'm going to object to the
23 form.

24 Q. (BY MR. DeWULF) Let me rephrase it.

25 The -- if DenSco's loan and Active Funding's

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1 loan are both secured by the same property, there is
2 insufficient security to cover both debts, right?

3 A. Yes.

4 Q. And to the extent that there was a deficiency in
5 security to cover the collective debt amount, in some
6 instances, DenSco was paying that difference, right?

7 MR. STURR: Object --

8 THE WITNESS: That's right.

9 MR. STURR: I'm going to object to the form.

10 Q. (BY MR. DeWULF) Is that what you understand?

11 A. Yes.

12 Q. All right. And that hurt DenSco, because that
13 was money that they could have used for some other
14 purposes, right?

15 MR. STURR: Object to the form.

16 THE WITNESS: It was more unsecured debt that
17 DenSco was carrying --

18 Q. (BY MR. DeWULF) Right.

19 A. -- by virtue of making the decision to pay
20 those.

21 Q. Right.

22 And it became an obligation of Menaged back to
23 DenSco, right?

24 A. Yes.

25 Q. And we all know that Menaged wasn't good for his

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1 debts, right?

2 A. We know that now.

3 Q. So that hurt the company, right?

4 A. I mean, looking back on it from now, yes.

5 Q. So the double liening that existed between the
6 Active Funding and DenSco loans to Menaged hurt DenSco?

7 MR. STURR: Object to the form.

8 THE WITNESS: The double liening, and when you
9 are saying that, I'm thinking the double liening fraud
10 scheme by -- perpetrated by Menaged hurt DenSco, yes.

11 Q. (BY MR. DeWULF) All right. So let's look at
12 the next to the last page of this document. About
13 two-thirds of the way down the page, the lender name, it
14 just stops.

15 Do you see that, under the heading Lender Name
16 under 3rd Party Loan Data, there is no further lender name
17 described?

18 MR. STURR: I'm sorry, John. What page are you
19 on? Page 4?

20 MR. DeWULF: The next to the last page. It's
21 page 4 of 5.

22 MR. STURR: Okay.

23 Q. (BY MR. DeWULF) And if you look down, Lender
24 Name column, under 3rd Party Loan Data --

25 Do you see that?

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1 A. Yes.

2 Q. -- there is a description of a lender name until
3 you get about two-thirds of the way down, and then it's
4 just not applicable, right?

5 A. Yes.

6 Q. So that -- would that mean that the loan
7 starting on December 3rd, 2013, going forward were loans
8 where -- well, describe what those loans relate to. What
9 happened there? Was it just DenSco loans or were there no
10 loans at all? Or, I'm sorry, were there just DenSco loans
11 or was there no security provided at all in those loans?

12 A. Well, this is not a full cut of data, because I
13 can't see some of the information here that's available in
14 other spreadsheets. But like, for example, there are some
15 properties for which there is no deed of trust.

16 Q. Right. Do you think that's what applies here?

17 A. What do you mean what --

18 Q. In other words, when it says not applicable to
19 lender name, is that a situation where there is no deed of
20 trust?

21 A. No, not necessarily. I think there is no second
22 lender.

23 Q. Okay.

24 A. That's what I think that says.

25 Q. Okay. So when it says -- okay. I got it.

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1 So there is just a DenSco loan and not another
2 lender?

3 A. Right.

4 Q. Okay.

5 A. But whether that's a real loan or something
6 else --

7 Q. Okay.

8 A. -- I can't say.

9 Q. So that would tell us, then, that assuming this
10 loan data is correct, that by December 3rd, 2013, the
11 first loan has finished, it's over, right?

12 MR. STURR: I'm sorry. What do you mean the
13 first loan?

14 MR. DeWULF: I'm sorry. I misspoke.

15 MR. STURR: Object to the form.

16 Q. (BY MR. DeWULF) I misspoke.

17 The last loan which identifies a lender, a
18 third-party lender, is the one dated November 22nd, 2013,
19 correct?

20 A. The last double encumbrance --

21 Q. That's right.

22 A. -- is that date, correct.

23 Q. And so the first fraud, as you have defined it,
24 ceased as of November 22nd, 2013, because that would have
25 been the last double-liened loan with Menaged, right?

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1 A. Based on this document, yes.

2 Q. Based on this document?

3 A. Yes.

4 Q. All right. So let's look at Exhibit 508.

5 So this is a document relating to the
6 representation of you by your counsel in this litigation,
7 correct?

8 A. Yes.

9 Q. And then Exhibit 509 is an election to proceed
10 with the contingency fee agreement, correct?

11 A. Yes.

12 Q. So is that telling us that your counsel in this
13 litigation is operating under a contingency fee agreement?

14 A. Yes.

15 Q. Meaning that they get a certain percentage of
16 whatever recovery you are able to achieve in this case?

17 A. Yes.

18 Q. And that's in the formula that's set forth in
19 Petition 22, Exhibit 508, right?

20 A. Yes.

21 Q. Let's look at Exhibit 32 or, I'm sorry,
22 Petition 32, Exhibit 510.

23 This is -- Petition 32 is entitled Petition for
24 Order Approving Settlement Agreement with Yomtov Scott
25 Menaged and Francine Menaged.

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1 I read that correctly?

2 A. Yes.

3 Q. And this is a document asking the court to
4 approve a settlement agreement you have with Menaged and
5 his wife?

6 A. Yes.

7 Q. And attached to the document is the actual
8 Settlement Agreement as Exhibit A, correct?

9 A. Yes.

10 Q. In the petition, you are describing the claims
11 against Menaged, his wrongdoing, the basis for the
12 Settlement Agreement.

13 Is that fair?

14 A. It's the claims against Menaged and the basis
15 for the settlement.

16 Q. Right.

17 And in exhibit or, I'm sorry, page 8 of this
18 document, under the title Settlement and Recent
19 Developments, it references a Verified Complaint to
20 Determine Dischargeability of Debt, and in that Verified
21 Complaint, you are seeking a judicial determination that
22 the amount of \$47,156,641.92 constitutes a
23 non-dischargeable obligation of the Menageds, correct?

24 A. Yes.

25 Q. And so you have -- and we will look at this in a

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1 minute, but in January of 2017, counsel on your behalf
2 filed a complaint in bankruptcy, in Menaged's bankruptcy,
3 claiming that Menaged owed DenSco or at least you are
4 making a claim for an amount in excess of \$47 million?

5 A. Yes.

6 Q. Okay. And then if we go to page 9, you indicate
7 that the loan balance, this is paragraph 33, the loan
8 balance owed on Menaged loans is over 46 million, correct?
9 That's at the end of paragraph 33.

10 A. It's stating if you subtract out the interest
11 against the 46 million, that leaves about 31 million.

12 Q. So the loan balance is 46 million, and then you
13 subtract interest to arrive at the 30,963.48, right?

14 A. Yes.

15 Q. So the loan balance includes principal and
16 interest?

17 A. Right.

18 Q. Okay. And so you arrive at --

19 A. Let me be clear. The loan balance, the
20 46 million is principal, okay, without doing net
21 investment offset, which is done in Ponzi schemes. Net
22 offset says when you are paying interest back, you are
23 basically paying back principal, because there really
24 isn't interest because it's a Ponzi scheme, and that's why
25 we net the interest.

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1 Q. Okay. So the 46 million is really the sum of
2 the face amounts of the loans that have been made to
3 Menaged?

4 A. That's exactly right, which is the --

5 Q. But you are providing credit for interest he
6 paid, even though he didn't pay down principal?

7 A. Right, because he was just returning the very
8 money that he got.

9 Q. Okay. So -- but the net of all that is that you
10 believed that Menaged owed DenSco over \$30 million, right?

11 A. Yes.

12 Q. Okay.

13 A. Under a net investment.

14 Q. And that leads to the non-dischargeable civil
15 judgment that you obtained for \$31 million, right?

16 A. Yes.

17 Q. Okay. Paragraph 10 or, I'm sorry, page 10,
18 paragraph 36 in effect says that, right?

19 It says, in the second sentence: First, the
20 amount of the judgment, 31 million is the amount that the
21 Receiver has determined that Menaged owes DenSco, after
22 conducting a detailed analysis of the loan transactions
23 between Menaged and DenSco.

24 I read that correctly?

25 A. Oh, boy. I'm sorry. I was reading the rest.

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1 Q. That's all right. I was just reading from
2 paragraph 36, page 10, line 9.

3 A. First, the amount of the judgment, 31 million is
4 the amount that the Receiver has determined that Managed
5 owes DenSco, after conducting a detailed analysis of the
6 loan transactions between Menaged and DenSco.

7 Q. Right.

8 A. Yeah.

9 Q. So the Settlement Agreement reflects that he is
10 allowing judgment against him for 31 million, right?

11 A. Yes.

12 Q. And I want to look at Exhibit A with you, which
13 is the Settlement Agreement. Paragraph C, it reads --
14 scott's Cooperation is the heading. It says: Scott
15 agrees to use his commercially reasonable best efforts to
16 cooperate with Receiver's ongoing investigations into
17 activities relating to DenSco except to the extent that
18 such cooperation and testimony does not violate his
19 privilege against self-incrimination under the Fifth
20 Amendment to the United States Constitution. Scott's
21 refusal to testify based on his assertion of this
22 privilege shall not be a breach of this Agreement.

23 Did I read that correctly?

24 A. Yes.

25 Q. And then paragraph D provides him an offset if

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1 he cooperates and his efforts result in DenSco and the
2 receiver getting money, right?

3 A. Yes.

4 Q. So the 31 million would be reduced if, through
5 Menaged's efforts, you receive money?

6 A. Yes.

7 Q. So Menaged has an incentive to try to collect
8 money for the receivership so they would have the effect
9 of reducing the money that he owes on the judgment, right?

10 MR. STURR: Object to the form.

11 THE WITNESS: Well, that's how it would work,
12 yes.

13 Q. (BY MR. DEWULF) Right.

14 And in the event that he is able to reduce the
15 amount owed under the judgment, it may affect his time
16 served, right?

17 A. I don't know.

18 Q. You don't know.

19 Paragraph E says Receiver's Cooperation. It
20 says: Receiver agrees to use his commercially reasonable
21 best efforts to provide the Menageds or their agents with
22 financial information and in sworn testimony relating to
23 the Receiver's investigations into activities relating to
24 DenSco and the Menageds' historical business and financial
25 activities.

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1 And so you are agreeing under this agreement to
2 provide him information that would facilitate his
3 cooperation with you, right?

4 A. I mean, that's perhaps something I would do, but
5 it's saying something a little different; that I'm going
6 to give him the information that I have discovered in my
7 investigation.

8 Q. Right.

9 But it's toward the end, the cooperation is to
10 allow him to help you do whatever you need to do, right,
11 in terms of collecting money?

12 A. Yeah. If he has information, I want his help.

13 Q. Right.

14 And in fact you have given him a slew of
15 information in this case, haven't you?

16 A. I don't know if it's a slew.

17 Q. I have seen stacks of information you have
18 provided to him.

19 Haven't you provided him or his lawyer a bunch
20 of records from this case?

21 A. I know there was information provided to him,
22 sources and uses of cash and that sort of information. I
23 didn't know it was bunches, and maybe it was and I just am
24 not aware of it.

25 Q. And he is available to you to interview or

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1 provide information to you and your counsel?

2 A. Yes, he has made himself available.

3 Q. And has he done that since he has been in
4 prison?

5 A. Yes.

6 Q. How many times?

7 A. At least once.

8 Q. Now, is that by phone or in person?

9 A. I'm not sure. I think there is issues in how to
10 reach him. You can go there by person and it's -- and
11 then it ends up being a phone call.

12 Q. You mean you go to the prison, but you can't
13 actually meet with him? You got to talk with a phone?

14 A. It's cumbersome.

15 Q. Can you actually see him?

16 A. I don't know.

17 Q. Is it like what we see on TV, where they put the
18 prisoners and you look through the glass?

19 A. It's in Texas, is my understanding.

20 Q. Oh.

21 A. And it's sort of a different way. And I think
22 there was an understanding that a meeting could happen and
23 unfortunately it didn't. It ended up being a phone call.

24 Q. And was the phone call between you and him or
25 your counsel and him?

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1 A. My counsel and him.

2 Q. And was that the counsel you talked about on the
3 claims against the banks?

4 A. That happened, and I believe also Jack Edwards.

5 Q. Refresh my memory again. Who is Jack Edwards?

6 A. A Jamie.

7 Q. A Jamie. Okay.

8 And that's the claim against Active Funding?

9 A. Correct.

10 Q. Okay. What's going on with the claim against
11 Active Funding? What can you tell us about the status of
12 that or potential claim?

13 MR. STURR: I'm just going to caution the
14 witness to not reveal information that's protected from
15 disclosure under the attorney/client privilege work
16 product doctrine. You can --

17 Q. (BY MR. DeWULF) These are facts. You can tell
18 me these facts. I don't think this is relating to any
19 privileged communication.

20 A. The engagement will probably not be contingent,
21 but modified contingent, and the -- I'm seeking a tolling
22 agreement.

23 Q. Why?

24 A. Advice of counsel.

25 Q. So you got a tolling agreement with -- or you

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1 are seeking tolling agreements with the banks, right?

2 A. Yes.

3 Q. And now you are trying to get a tolling
4 agreement with Active Funding?

5 A. Yes.

6 Q. Are you trying to get a tolling agreement with
7 anybody else?

8 A. Not that I recall.

9 Q. And the tolling agreement that I have seen, and
10 we will look at that time, it's an exhibit, has identified
11 as the tolling period to be through 2020.

12 Is that what you are seeking on these other
13 tolling agreements as well?

14 A. I don't -- I don't recall. I don't know.

15 Q. Is the timing of that tied to how well you do in
16 our case? In other words, you are waiting to litigate
17 this case before you go after those parties?

18 MR. STURR: Object to the form of the question
19 and caution the witness not to disclose information
20 protected by the privilege.

21 THE WITNESS: Yeah, I can't answer that without
22 waiving privilege.

23 Q. (BY MR. DeWULF) I'm asking for your view as to
24 why you picked that date.

25 why did you pick that date? That doesn't

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1 require you to tell me what your lawyers told you.

2 A. I don't have --

3 MR. STURR: Hang on a second.

4 Object to the form of the question and
5 foundation. I think the question does call for the
6 disclosure of privileged information, and I'm going to
7 instruct the witness not to answer.

8 MR. DeWULF: Why does a date in a tolling
9 agreement become the function of a privilege? It's his
10 decision. He signs the agreement. The agreement is a
11 public record.

12 MR. STURR: John, there is no agreement that has
13 been signed. A draft tolling agreement has been presented
14 and there is a date in it. You are asserting it's his
15 date.

16 MR. DeWULF: Let's talk about that when we get
17 to it.

18 Q. (BY MR. DeWULF) Let's look at 511.

19 How are you guys doing? You need a break?
20 You're doing good?

21 A. No. I'm good. Thank you.

22 Q. All right. Let's keep rolling.

23 511, this is your Verified Complaint in the
24 bankruptcy that was -- we referred to a moment ago in
25 Petition 32, right?

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1 A. Yes.

2 Q. And, again, this was a document filed by your
3 counsel on your behalf, making allegations against Menaged
4 that form the basis for a claim for in excess of
5 47 million, right?

6 A. Yes.

7 Q. Okay. Let's look at 512. This is a letter that
8 was sent to your counsel March 2, 2017, by Cody Jess,
9 Menaged's lawyer?

10 A. Yes.

11 Q. Do you remember reading this letter on or about
12 March 2nd, 2017?

13 A. I -- I don't specifically recall this letter.

14 Q. All right. But based on the practice you
15 described earlier, it's likely that you would have
16 received this and reviewed it on or about March 2nd, 2017?

17 A. Yes.

18 Q. All right. Let's look at 513. This is the
19 judgment against Menaged that your counsel recorded
20 pursuant to the Settlement Agreement?

21 A. Yes.

22 Q. Exhibit 514, this is a -- this is a pleading in
23 the U.S. Attorney's matter against Menaged.

24 And I'm just asking, have you seen this before?

25 A. I'm not as used to seeing the criminal

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1 documents, but I know I saw the indictment --

2 Q. There is --

3 A. -- and this may be it.

4 Q. I didn't mean to interrupt.

5 A. No, you are fine. I just didn't know if this
6 was the actual same document I saw.

7 Q. I don't think this is the original. This is the
8 information, and what I understand, is that there were
9 allegations added relating to DenSco and the wrongdoing of
10 Menaged against DenSco to the earlier allegations about
11 his defrauding of banks, so that's why I'm showing it to
12 you. But do you think you would have seen it on or about
13 October of 2017?

14 A. Yes.

15 Q. All right. Let me show you 515, the next
16 document. This is the Plea Agreement for Menaged.

17 Do you think you have seen this before?

18 A. Yes.

19 Q. And it looks as though the plea was entered into
20 in November of 2017. Would that be consistent with your
21 memory?

22 Maybe not. Let me see what the date is at the
23 end. No. It looks like October 2017.

24 A. I do recall around the holidays of that year
25 this all coming about.

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1 Q. Okay. Let's look at Exhibit 516. This is a
2 judgment in the criminal case, which reflects the time to
3 be served by Menaged.

4 Have you seen this document before?

5 A. I'm aware of it. I just don't remember reading
6 it, but I am very aware of this.

7 Q. Well, this document, Mr. Davis also references
8 the amount of restitution. If you look at the second page
9 at the top, it gives a restitution amount of
10 \$33,558,407.76.

11 Do you see that?

12 A. Yes.

13 Q. And of that number, the amount owed to DenSco is
14 31,000, I'm sorry, \$31,446,001.79, correct?

15 A. Yes.

16 Q. Let's look at 517. This is a communication from
17 you to Sara Beretta, which you share with the investors in
18 connection with the Menaged settlement.

19 A. Well, I think this is the Plea Agreement.

20 Q. 517?

21 A. Yeah.

22 Q. Okay. So it's identifying the Plea Agreement?

23 A. Right. It goes through the Plea Agreement that
24 we looked at a few exhibits ago.

25 Q. To let the investors know what's going on?

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1 A. Yes.

2 Q. All right. 518. I want to cover this issue
3 with you, and I don't -- I am only intending -- if you
4 look at the bottom of the first page, it references
5 Menaged Privileged Documents.

6 Do you see that?

7 A. Yes.

8 Q. And if you look at Exhibit 519, there was an
9 arrangement reached between your counsel and counsel for
10 Menaged where Menaged turned over documents, subject to an
11 understanding that the privilege would not be -- the
12 attorney/client privilege would not be waived, correct?

13 A. I have a recollection of that, yes.

14 Q. Okay. The documents that were provided were
15 reviewed by your counsel?

16 A. I am not certain of that. It may be.

17 Q. And a privilege log was created. Are you aware
18 of that?

19 A. I have a recollection of that.

20 Q. Okay. Did you review any of the documents that
21 were provided by Menaged or did just your counsel review
22 those documents?

23 A. I have looked at some of the Menaged records,
24 yes.

25 Q. Was it after your counsel had removed what he

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1 thought would be privileged or potentially privileged
2 information?

3 A. I don't know.

4 Q. Okay. Are you aware, sitting here today,
5 whether you have seen any privileged communications
6 between Menaged and his lawyers?

7 A. I don't believe so.

8 Q. Okay. Are you willing to work with us to try to
9 get access to that information which is privileged, that
10 is, the information identified in the log with Menaged?

11 MR. STURR: John, I think this is really -- I
12 don't know if there is a clear objection to this. This is
13 something we could have discussed and should have
14 discussed. I'm not sure it's an appropriate question to
15 ask Mr. Davis in a deposition. We have already
16 communicated to you on this very issue, in fact.

17 Q. (BY MR. DeWULF) So whatever your counsel
18 commits to, you are comfortable with, in terms of -- so to
19 the extent he said he would work with us to perhaps gain
20 some of that information, you wouldn't have any objection
21 to that, right?

22 A. No. I wouldn't, no.

23 Q. All right. Let's look at Exhibit 520. This is
24 your letter to Judge Snow, dated November 14, 2017.

25 Do you remember sending this letter?

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1 A. Yes.

2 Q. If you look at the last paragraph or the next to
3 last paragraph, it says "During my investigation"?

4 A. Yes.

5 Q. It's a description of all the information
6 provided to you by Menaged, and it includes his electronic
7 information.

8 Do you see that?

9 A. Yes.

10 Q. So you have imaged his computers, iPhone, and
11 other electronic devices?

12 A. Well, his AOL email account, yes.

13 Q. Okay. Let's look at Exhibit 521.

14 Do you understand that 521 is the privilege log
15 of the documents your lawyer reviewed of the Menaged
16 documents? Maybe you have seen -- maybe you haven't seen
17 this.

18 A. I can't say I have seen this before.

19 Q. Okay. Let's go to 522. Exhibit 522 is a
20 Petition 43, and it relates to the approval of a
21 settlement agreement with Shawna Heuer, individually and
22 as PR for the Chittick Estate and the guardians ad litem
23 for the Chittick children, right?

24 A. Yes.

25 Q. And did this get approved?

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1 A. Yes.

2 Q. And a Settlement Agreement is attached to the
3 petition, correct?

4 A. Yes.

5 Q. And it's a Settlement Agreement that you or
6 lawyers on your behalf negotiated with the estate?

7 A. Yes.

8 Q. Exhibit 523.

9 A. John, I just want to mention here that this
10 Exhibit A assignment to this document, because we talked
11 about assignments earlier of claims --

12 Q. Yeah, yeah, yeah.

13 A. -- and it wasn't as clear as I would have liked.
14 And this assignment is maybe the assignment you were
15 referencing. There has not been an assignment of other
16 claims by the investors, but there were assignments
17 related to the claims against the Chittick estate.

18 Q. I understand.

19 A. I wanted to clarify that.

20 Q. And that's because 40 or so made claims in the
21 Probate Court, right?

22 A. I don't remember the number, but some did.

23 Q. Okay. All right. So let me go back and ask
24 you, because I forgot to ask you, Mr. Davis, the
25 Settlement Agreement with Chittick provides -- Strike

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1 that.

2 The Settlement Agreement with Menaged provides
3 that you are providing him general releases and he is
4 providing you general releases, right?

5 A. Menaged.

6 Q. Do you remember?

7 A. I would have to look back at it. I didn't -- I
8 didn't -- I don't remember as I'm sitting here whether
9 there is a release in the Menaged settlement.

10 Q. I should have asked you when we were looking at
11 it. It's Exhibit 510, and it's paragraph H on Exhibit A.

12 A. Yes, there is a mutual release in the Settlement
13 Agreement, yeah.

14 Q. Let's look at 523. This is a Petition 45, which
15 has to do with approving the engagement of Ajamie law firm
16 to represent the receiver as special counsel in claims
17 against Active Funding, correct?

18 A. Yes.

19 Q. And in it you describe, or your counsel, on your
20 behalf, describes the basis upon which you think you
21 should be securing the help of counsel to pursue the
22 claims, right?

23 A. Yes.

24 Q. And you indicated earlier that this was a
25 contingency-fee arrangement, but it's now some sort of a

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1 blend or something else?

2 A. Correct.

3 Q. What is it now?

4 A. It's going to be a modified contingent
5 arrangement with a monthly cap.

6 Q. All right. Let's look at Exhibit 524.

7 You know, this is a December 18, 2017 letter to
8 your counsel, Geoff Sturr, from Gammage & Burnham,
9 Mr. Polese.

10 Do you know if you would have seen this on or
11 about December 18, 2017?

12 A. Yes, I recall this letter.

13 Q. Okay. Let's look at 525.

14 This is your counsel, on April 12, 2018,
15 informing Mr. Menaged that the Ajamie firm has been
16 retained in addressing these issues of privilege?

17 MR. STURR: I'm sorry. John, I think you
18 misspoke. Did I miss -- maybe I misheard you.

19 MR. DeWULF: It's a privilege log. Doesn't it
20 attach --

21 MR. STURR: Oh, I'm sorry.

22 MR. DeWULF: -- the privilege log?

23 MR. STURR: I thought I heard you say the Ajamie
24 firm had been retained to address issues regarding
25 privilege.

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1 MR. DeWULF: Oh, I may have said that. I tried
2 to combine two questions.

3 MR. STURR: Go ahead.

4 Q. (BY MR. DeWULF) So anyway, the letter relates
5 to Ajamie pursuing Active Funding claims and it also
6 addresses privilege, right?

7 A. Yes.

8 Q. Okay. Let's look at 526. This is Jack Edwards'
9 letter, who is an Ajamie lawyer, trying to schedule a
10 meeting with Menaged, right?

11 A. Yes.

12 Q. 527, again, talking about scheduling the
13 meeting?

14 A. Yes.

15 Q. 528, this is to approve the engagement of
16 Bergin, Frakes, Smalley & Oberholtzer in connection with
17 claims to be brought against, potentially be brought
18 against the banks, right?

19 A. Yes.

20 Q. And then 529 is an election to proceed on a
21 contingency-fee basis with the Bergin Frakes firm,
22 correct?

23 A. Yes.

24 Q. And is that continuing to be a contingency-fee
25 arrangement?

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1 A. Yes.

2 Q. Let's look at 530. This is a letter from your
3 counsel at Bergin Frakes to JP Morgan Chase, dated
4 August 21, 2018, which encloses a Tolling Agreement,
5 correct?

6 A. Yes.

7 Q. And the Tolling Agreement is not signed.
8 Has it been signed as of today?

9 A. No.

10 Q. Okay. So that's continuing to be negotiated?

11 A. Yes.

12 Q. In the paragraph 4, it says the agreement shall
13 terminate on August 22nd, 2020, if not earlier terminated
14 by notice, talking about the Tolling Agreement.

15 A. The Tolling Agreement?

16 Q. Paragraph 4, it's on the second page of the
17 Tolling Agreement. At the top. You got it?

18 Paragraph 4, the paragraph begins "Any party may
19 change."

20 Do you see that paragraph?

21 A. Oh, yes.

22 Q. The next sentence: If not earlier terminated by
23 notice, this Agreement shall terminate on August 22, 2020.

24 A. Yes.

25 Q. Do you see that?

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1 A. Yes, I do.

2 Q. All right. So is that date still the date being
3 negotiated in the Tolling Agreement negotiations?

4 A. I don't know the current status.

5 Q. Okay.

6 A. I know there is a new law firm involved and they
7 are talking to them.

8 Q. And you can't tell us why you chose that date,
9 because it would reveal communications you had with your
10 counsel?

11 MR. STURR: I'm going to object to the form of
12 the question. And you say "you chose that date." This
13 was a draft prepared by counsel. That's part of my
14 concern, John, the way you are asking the question.

15 MR. DeWULF: Well, okay. So let me address
16 that.

17 Q. (BY MR. DeWULF) This letter that was sent on
18 your behalf by Kenneth Frakes at Bergin Frakes would not
19 have been sent out without your approval, right?

20 A. I mean, I knew a Tolling Agreement was being
21 negotiated and I was aware of that. I don't think I
22 necessarily specifically, like, had a draft of this letter
23 to approve it.

24 Q. Have you looked at this letter since August 21,
25 2018?

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1 A. I don't remember.

2 Q. You know, something I forgot to ask you at the
3 very beginning of your deposition, Mr. Davis, what did you
4 review to prepare for your deposition?

5 A. I read my reports. I looked at parts of David
6 Beauchamp's deposition. I read a number of the pleadings
7 in the case, the critical pleadings, you know, the
8 settlement agreements and such. I looked at the
9 disclosure statement, the most recent one particularly.

10 Q. Your disclosure statement?

11 A. Yes, in this case, right. I looked at a handful
12 of other documents that sort of generally related to this
13 area, some financial information and such, like about --

14 Q. Can you be a little more precise about that?

15 A. Yeah, I can. Like the current amount of cash we
16 have in the bank, the gross settlements, gross
17 resolutions, payments out, status of various Ponzi winner
18 cases, status of other litigation and claims. So I looked
19 at those sort of things. The retention agreements for the
20 various special counsel in this case.

21 But there is a lot of records in this case, and
22 I didn't get near looking at all of them, you know, but --
23 and my sources and uses of cash solvency analysis.

24 Q. Did you meet with counsel?

25 A. Yes.

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1 Q. How long did you meet with counsel?

2 A. How long?

3 Q. And which time?

4 A. Probably about an hour, but it was over a couple
5 weeks. So there were three meetings, an hour each. No.
6 Maybe an hour and a half each.

7 Q. Three meetings that were an hour and a half
8 each?

9 A. Yes.

10 Q. Did you talk on the phone with him as well?

11 A. With Mr. Anderson, yes. And I'm trying to
12 remember if I talked to Mr. Sturr by phone. I don't think
13 I did.

14 Q. Okay. By Mr. Anderson, you are talking about
15 Ryan Anderson?

16 A. Yes.

17 Q. Okay. When you prepared for your deposition,
18 did you meet with both Mr. Sturr and Mr. Anderson or just
19 one of them?

20 A. Just one.

21 Q. Who was that?

22 A. Mr. Sturr.

23 Q. Okay. Back to Exhibit 530, do you believe you
24 authorized Mr. Frakes to send the letter which is
25 Exhibit 530?

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1 A. Well, I authorized getting a Tolling Agreement.

2 Q. Okay. And the draft Tolling Agreement, did you
3 read it before he sent it out?

4 A. I don't think so.

5 Q. Okay. Were you aware about the date of
6 termination before it went out?

7 A. I don't think so. I mean, we are going to toll
8 this, and that was it.

9 Q. Okay. Let me ask you to look at 531. It
10 references Rocket Science.

11 Do you know who Rocket Science is?

12 A. I'm sorry. 531? Exhibit 531?

13 Q. Yeah, 531.

14 A. I'm trying to remember. It's not coming to me
15 right now.

16 Q. That's all right.

17 Let me ask you, what has the receiver done to
18 determine whether Menaged has any assets outside of the
19 United States?

20 A. I have looked at his bank accounts, his
21 company's bank accounts. I have looked at the bank
22 accounts of some of the transferees from his accounts, so
23 people who received money or entities from his accounts.
24 I have traced money through all those accounts for every
25 bank statement, canceled check that I could get my hands

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1 on. I subpoenaed banks to get those. And cooperated with
2 the bankruptcy trustee. And I have scoured all of that,
3 and so there just aren't those type of transfers. I was
4 concerned about that -- that there may be money overseas,
5 yeah.

6 Q. Have you concluded today that there are no
7 assets of Menaged that reside outside of the United
8 States?

9 A. I haven't seen the kind of documentation or
10 information that would lead me to believe they exist.
11 They may, through sneaky mechanisms. And my investigation
12 is continuing. I have discovered that I am -- that's
13 ongoing, but I have not seen that.

14 Now, I have seen where a lot of the money has
15 gone, so I understand that.

16 Q. Okay. Let's look at 532. This is a Tolling
17 Agreement with the Smiths, Four Futures Corp., McKenna.

18 Is this -- I think we talked earlier about
19 disputes in terms of the Ponzi scheme and trying to claw
20 back monies.

21 Is this one of the -- or these are some of those
22 parties that you are seeking to get money back from and
23 then you have now entered a Tolling Agreement with?

24 A. Yes.

25 Q. All right. Let's look at 533. I don't know

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1 that we really need -- this just confirms you did a 2004
2 examination of and a production of documents from Menaged,
3 right?

4 A. Yes.

5 Q. And the documents -- this kind of goes to the
6 point I was asking you about a moment ago about the
7 assets.

8 The subpoena that was served upon him sought, in
9 numbered paragraphs, financial information from him,
10 right?

11 A. Yeah.

12 Q. Okay. Exhibit 534. Exhibit 534 is Petition
13 No. 50, which has attached to it your December 22nd, 2017,
14 Status Report, correct?

15 A. Yes.

16 Q. All right. And, again, this was something that
17 you would have reviewed the final report and approved it
18 for sharing with third parties and the court?

19 A. Correct.

20 Q. All right. So let's go through it and try and
21 be quick about this, if I can. Let's go to page 5.

22 The third paragraph under point 2.2, Creditor
23 Claims Process heading, begins on August 1, 2017.

24 Do you see that paragraph?

25 A. Yes.

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1 Q. The last sentence in that paragraph reads:

2 The Court signed the corresponding order on
3 October 27, 2017, approving 113 creditor claims totaling
4 \$31,446,001.79.

5 Did I read that correctly?

6 A. Yes.

7 Q. So that's the sum total of all of the monies
8 that all 113 investors claim to be owed to them?

9 A. Well, I think that's my initial calculation of
10 that.

11 Oh, yeah. I'm trying to figure out this time
12 period here. Give me a second here. That may have been
13 the approved claims that the creditors approved. I just
14 don't know if this is my preliminary or if this is the
15 post my claims process, after I have reviewed the claim
16 forms from all the investors and kind of matched my
17 numbers to their numbers.

18 Q. All right. Page 6 you talk about the
19 bankruptcy, we have talked about that already, and the
20 amount of money that's being sought, right, and the
21 judgment?

22 You see that?

23 A. Which paragraph?

24 Q. Section 2.3.2 at the bottom of page 6.

25 A. Oh, okay.

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1 Q. It's a discussion about the bankruptcy and the
2 settlement. And that whole section talks about the
3 settlement you achieved, right?

4 A. Yes.

5 Q. And it talks about your analysis in arriving at
6 the \$31 million figure for the judgment?

7 A. Oh, yes, on the next page.

8 Yes.

9 Q. 2.2.3 talks about his criminal indictment and
10 plea agreement, which we have already looked at documents
11 on.

12 2.4, claims against the Chittick estate. And
13 this is a summary of the settlement you reached with the
14 Chittick estate, right?

15 A. Correct.

16 Q. And then Tax Refunds, 2.4.1, talks about the
17 money, amount of monies being sought and for 2013 to 2015,
18 correct?

19 A. Yes.

20 Q. Have you been able to file amended tax returns
21 and get those monies in?

22 A. Yes.

23 Q. Okay. And so that's a total of 1,340,649,
24 roughly?

25 A. It's close to that number. We got it all.

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1 Q. Okay. And then you talk about the claims
2 against Ponzi winners, which we have talked about already.

3 Paragraph 2.6.1 is your claims in this case,
4 right?

5 A. 2.6.1, yes, it is. Yes.

6 Q. And then 2.6.2 are the claims against the
7 financial institutions, and here you are seeking to
8 describe for the reader your view of potential claims
9 against the banks, right?

10 A. Yes.

11 Q. And in it you describe, in the third paragraph,
12 the analysis that you have done on the bank accounts,
13 correct?

14 A. Yes.

15 Q. The second sentence reads: The Receiver's
16 analysis of Menaged's bank accounts reveal that Menaged
17 procured at least 1,383 legitimate cashier's checks
18 totaling \$319,292,828, including 1,340 cashier's checks
19 from Chase and 43 cashier's check from US Bank, during the
20 period from January 2014 to June 2015.

21 Did I read that correctly?

22 A. Yes.

23 Q. And then you describe how the -- what other
24 things you have learned in the investigation and the fact
25 you have retained counsel, right?

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1 A. Yes.

2 Q. Okay. Then let's go to 2.6.3. This is your
3 description of your claim, potential claim against Active
4 Funding Group, LLC, right?

5 A. Yes.

6 Q. If we look at the third paragraph, it begins:
7 The Receiver has since learned that after Active uncovered
8 Menaged's scheme to defraud DenSco and other lenders,
9 Active worked in concert with Menaged by taking actions to
10 protect its historical loans to Menaged and enabling him
11 to continue to defraud DenSco, while ensuring that
12 Active's future loans to Menaged were secured by
13 first-position liens.

14 Do you believe that is true?

15 A. Yes.

16 Q. Do you believe that today?

17 A. Yes.

18 Q. Have you been able to quantify what the result
19 in injury is to DenSco as a result of Active Funding's
20 actions?

21 A. No.

22 Q. Joseph Menaged, there is a reference to him.
23 Was he involved at all in the fraud? Did he know anything
24 about what was going on?

25 A. There is transfers between him and Menaged's, a

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1 significant number of them, through Menaged's personal
2 accounts. I don't have specific information telling me he
3 knew about the Menaged fraud against DenSco.

4 Q. Is -- how is he related to Scott Menaged?

5 A. He is his father.

6 Q. Did you ask for him to return funds?

7 A. Yes.

8 Q. Did he return them?

9 A. No. We are seeking the return of this 700,000.

10 Q. What's happening on that?

11 A. There is other claimants against the money, but
12 were 90-plus percent of it, and I'm in the process of
13 getting through that. I don't know where the legal --
14 where that legally is at, but it's there. The money is
15 still there, and we are in the process of getting it.

16 Q. You said 90 percent. Do you mean you think you
17 will recover 90 percent of 709,000?

18 A. That's what I'm trying to do. It's more than
19 90 percent.

20 Q. Okay. Does that in any way affect a credit on
21 Scott Menaged's sentencing or the judgment owed by him?

22 A. Based on the paragraph we read, I don't think
23 so.

24 Q. Good.

25 Page 15, paragraph or Section 2.7. The last

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1 sentence in that paragraph says: The Receiver -- and the
2 heading of the section is Other Investigations. The last
3 sentence says: The Receiver continues to receive and
4 follow up regarding missing documentation that is
5 necessary to identify and categorize certain transactions
6 and complete his investigation.

7 Can you explain that to us? What are you
8 referring to there?

9 A. I have looked at the bank accounts of Scott
10 Menaged going back as far as I could, and also his
11 companies. And these are numerous, and there is numerous
12 accounts involved. There is credit cards. There is
13 transfers to casinos and all sorts of stuff like that.

14 Now, these are mainly claims that the bankruptcy
15 estate would have, but I have looked at them, and at the
16 time this report was written there were holes, and I
17 directed my staff to go get the subpoenas to fill in some
18 of those holes. I want to know where that money went.

19 Q. And so you have subpoenaed who? Parties that
20 were related to Menaged?

21 A. No. I have subpoenaed recipients who received
22 large amounts of money, and then I have subpoenaed the
23 banks to get whatever account gaps I was missing in
24 statements.

25 Q. Any way to quantify the amount of money we are

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1 talking about on those transfers?

2 A. There is one individual, Griffin, who got
3 \$9 million.

4 Q. From Menaged?

5 A. Yes.

6 Q. The next paragraph, the next to the last
7 sentence -- well, the last two sentences in that
8 paragraph, the sentence begins "Moreover."

9 Do you see that sentence, next to the last
10 sentence?

11 A. Yes.

12 Q. Moreover, the Receiver is continuing to
13 investigate the civil liability of other third parties who
14 may have assisted Menaged in the series of fraudulent
15 schemes that were perpetrated upon DenSco. The Receiver
16 intends to explore all avenues for potential monetary
17 recoveries from these third parties.

18 Did I read that correctly?

19 A. Yes.

20 Q. And you mentioned Mr. Griffin just a moment ago.

21 Are there any other parties or entities that you
22 are investigating or pursuing right now that you can share
23 with us?

24 A. Well, there is the Ponzi winners.

25 Q. Anybody else?

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1 A. The bankruptcy estate is pursuing the family
2 members, Menaged family members for transfers received
3 from the Menaged company account and his personal
4 accounts.

5 Q. Bankruptcy estate in the Menaged bankruptcy?

6 A. Yes.

7 Q. Okay. Let's look at Exhibit 535.

8 MR. DeWULF: We looked at this, or did we look
9 at this? I don't think so.

10 MR. STURR: Something that looked like it, as
11 507.

12 MR. DeWULF: I think it actually does look a lot
13 like --

14 MR. STURR: Yeah, it's 507.

15 MR. DeWULF: Let me make sure that's the case.
16 Yeah, that's the case.

17 Q. (BY MR. DeWULF) All right. Let's look at 536.

18 MR. STURR: Hey, John.

19 MR. DeWULF: Yeah.

20 MR. STURR: We have gone about an hour and a
21 half. why don't we take a break.

22 MR. DeWULF: All right. That's great.

23 VIDEOGRAPHER: The time is 3:25 p.m. We are
24 going off the record, ending media five.

25 (A recess was taken from 3:25 p.m. to 3:37 p.m.)

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1 VIDEOGRAPHER: My name is Mary Onuschak with the
2 firm of Legal Video Specialists, Phoenix, Arizona. This
3 begins media six of videotaped deposition of Peter S.
4 Davis. The time is 3:37 p.m. We are now back on the
5 record.

6 Q. (BY MR. DeWULF) Mr. Davis, I am going to try to
7 go even quicker, because I know we are running out of time
8 and I have got a bunch of things I want to talk about.

9 So 536 is Petition 56, right? And this is just
10 asking for an approval of a distribution?

11 A. Yes.

12 Q. And when you say creditors, the people
13 identified are investors?

14 A. Yes.

15 Q. Are there creditors of DenSco today other than
16 the investors?

17 A. I mean, there is --

18 Q. Well, that was poorly phrased.

19 You obviously have counsel and professionals
20 that are helping you, right? You pay those folks?

21 A. Yes.

22 Q. Anybody else as creditors for DenSco, other than
23 the investors?

24 A. I mean, there were other claims presented as
25 creditors, including Clark Hill, that I dealt with along

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1 the way as I developed the claims process.

2 Q. Right.

3 So the Clark Hill lawyers submitted a claim on
4 the receivership, right, for the fees that they had
5 incurred associated with efforts for DenSco, correct?

6 A. Yes.

7 Q. And you declined paying those claims, right?

8 A. Yes.

9 Q. Why did you do that?

10 A. The rationale is set forth in the claim
11 documentation. I can't remember the specific reasons.
12 It's laid out there.

13 Q. Do you think, sitting here today, that Clark
14 Hill and David Beauchamp provided anything of value to
15 DenSco?

16 Let me narrow the timeframe on it. During the
17 2015/2016 timeframe.

18 A. It's difficult, because I think -- and I'm
19 giving you my common-person explanation as a receiver, but
20 not an expert -- when you are in a conflicted situation or
21 concerned about your own liability in a situation, I don't
22 know how you can serve in the true role, you know.

23 You may do some things and go from A to B that
24 helps, but you are not wearing the right hat it seems
25 like, but that's -- that's sort of my common way of

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1 looking at it in a simplistic way.

2 Q. Okay. Let me jump topics here for a moment.

3 The Active Funding claims that are being
4 evaluated by the Ajamie firm, have you been able to
5 surmise whether something occurred at some point in that
6 Active Funding relationship with Menaged where they agreed
7 to defraud DenSco?

8 MR. STURR: Let me just caution the witness. I
9 think you are asking for facts that you know personally,
10 and I don't want you to divulge information that came to
11 you from counsel or that involves counsel's advice or
12 thoughts, if you can do that.

13 THE WITNESS: My -- my response would be the
14 same as affirming what was in my report that I read
15 earlier with you.

16 Q. (BY MR. DEWULF) Nothing beyond that?

17 A. Not without disclosing attorney/client
18 communications.

19 Q. Okay. Let's look at 537. Just an agreement
20 reached with Menaged's sister Michelle, right?

21 A. Mother.

22 Q. Oh, mother is Michelle. Okay.

23 Did you -- did she get money advanced to her?

24 A. Through the Menaged entities. But this, the
25 DenSco money never went to her. It went to Scott Menaged,

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1 but she ended up with the lien.

2 Q. A lien?

3 A. On her home.

4 Q. I see.

5 Look at Exhibit 538, if you could. I think the
6 only reason I wanted to look at this with you is to just
7 confirm, and I think you have already covered it, that
8 there were communications with Robert Koehler, shortly
9 after you became receiver, as it related to what he knew
10 about DenSco, right?

11 A. Yes.

12 Q. Did Mr. Koehler indicate to you that he knew
13 anything about the Menaged-related problems?

14 A. No.

15 Q. He only found out about that after
16 Mr. Chittick's death, right?

17 A. I believe that to be accurate.

18 Q. Let's look at Exhibit 539. I just want you to
19 confirm that this is the Plaintiff's Fourth Disclosure
20 Statement.

21 A. Yes.

22 Q. Now, I know that you have verified this now, and
23 I don't think this is --

24 A. At the very end.

25 Q. -- the verification.

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1 MR. DeWULF: Is there a verification, Geoff?

2 MR. STURR: It's the last page.

3 MR. DeWULF: Great. Thank you. I appreciate
4 it.

5 Q. (BY MR. DeWULF) So the last page of this
6 document.

7 A. Are you on Exhibit --

8 Q. 539.

9 A. -- 539?

10 My last page looks different than your last
11 page.

12 Q. Oh, it does, doesn't it.

13 well, as long as your last page shows a
14 verification. Is it a verification by you of the Fourth
15 Disclosure Statement?

16 A. Yes.

17 Q. Okay. Thank you.

18 Exhibit 540 is your Fifth Disclosure Statement
19 redlined, correct?

20 MR. STURR: I think it's properly described as
21 Appendix F to the Fifth Disclosure Statement.

22 THE WITNESS: Yes.

23 Q. (BY MR. DeWULF) And it is a -- it's the Fourth
24 Disclosure Statement redlined to create the Fifth
25 Disclosure Statement, right?

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1 A. Yes.

2 Q. And then Exhibit -- and I think we have not a
3 verification on this from you. Well, let's look at the
4 final Fifth Disclosure Statement, which is 541.

5 And that is your Fifth Disclosure Statement,
6 541?

7 A. Yes.

8 Q. And again, 539, 540, and 541 are documents that
9 you reviewed before they were provided to us, right?

10 A. Yes.

11 Q. And in 541, you verified that document? It's in
12 a few pages from the last page, before the appendices.
13 Just confirm that that's your verification.

14 A. Confirmed.

15 Q. Okay. And let me ask you just about the
16 appendixes.

17 Appendix A, what is this intending to depict?

18 A. Appendix A. Okay. Appendix A is the detail
19 behind the 13,000,656 that's part of the \$5 million
20 workout loan.

21 Q. So these are the loans that are attributed to
22 the \$5 million workout loan by Mr. Chittick in his
23 QuickBooks?

24 A. Correct.

25 Q. Exhibit B is what?

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1 A. It's the loans attributable --

2 Q. Oh, I'm sorry, Appendix B. I apologize.

3 A. Yeah. Thank you. It's the loans associated
4 with the \$1 million workout loan.

5 Q. Okay. And then what is Appendix C?

6 A. It's all the other loans to Menaged or his
7 entities.

8 Q. Do you recall that Bank of America at a point in
9 time terminated their relationship with DenSco?

10 A. Was it Bank of America or US Bank?

11 Q. Well, US Bank may have as well, but I'm only
12 aware of Bank of America. Well, no, that is -- I think
13 US Bank did as well.

14 But are you aware of Bank of America having
15 terminated the relationship?

16 A. With DenSco or with Menaged?

17 Q. With DenSco.

18 A. I don't remember. I don't.

19 Q. Okay. Let me walk you through this.

20 MR. DeWULF: Kelly, let me mark some more
21 exhibits here. Mark this as one exhibit.

22 (Deposition Exhibit No. 545 was marked for
23 identification.)

24 THE WITNESS: I have -- this does refresh my
25 memory. I have a recollection.

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1 Q. (BY MR. DeWULF) what do you remember about Bank
2 of America terminating DenSco's accounts?

3 A. I mean, I remember that it -- that we looked at
4 this, me and my team, at one point in time. I just don't
5 remember the outcome of that. I don't recall a lot of
6 activity at B of A, but I just don't remember much more
7 than that.

8 Q. Do you remember that B of A was DenSco's primary
9 account for some period of time, or primary banker?

10 A. I don't. I'd have to go back and look.

11 Q. Who was the other bank that you mentioned that
12 you thought also served as a bank for DenSco?

13 A. Actually, not DenSco. I mixed that up. For
14 Menaged, one of his entities.

15 Q. Okay.

16 A. US Bank.

17 Q. There is -- I think First Bank may have done
18 work with DenSco as well.

19 Does that ring a bell for you?

20 A. Yes. And that, when I took over, that was the
21 bank I was working with.

22 Q. And did you ever investigate why Bank of America
23 terminated DenSco's bank accounts in the fall of 2014?

24 A. I know I looked into it. I know this issue was
25 brought up, but it was quite some time ago and I just

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1 don't remember where this landed.

2 Q. Did you conclude that there might be any claims
3 against Bank of America by DenSco for activities that went
4 on at -- in those accounts?

5 A. I didn't conclude that, no. I mean, I don't --
6 I don't have them on my current radar as claims.

7 Q. Yeah. Maybe my question ought to be a little
8 broader.

9 Have you taken an opportunity to review the Bank
10 of America relationship to see whether there might be
11 potential claims to be brought?

12 A. It was discussed a couple years ago. I mean,
13 this was something that came on very early on, and I
14 remember thinking it through and talking about it with
15 some of my team, but I didn't see -- I don't recall seeing
16 where there was a claim or there was something interesting
17 to pursue.

18 Q. Okay. And similar questions with regard to
19 First Bank. Did you ever look at the banking relationship
20 between DenSco and First Bank as to whether you might be
21 able to pursue claims against First Bank as the receiver?

22 A. I looked at the transfers and transactions
23 involving that bank as part of my sources and uses, and I
24 don't recall seeing anything that would lead me to believe
25 there was some claim or the bank had some actual

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1 knowledge.

2 Q. Okay. So Dave Preston served as the accountant
3 for DenSco, right?

4 A. Correct. Well, let's be clear. He is the tax
5 preparer.

6 Q. Tax preparer.

7 And so every year he would prepare taxes for
8 Mr. Chittick individually and for DenSco, right?

9 A. That's my understanding.

10 Q. And did you talk to Mr. Preston about that
11 process he followed, what he gathered in terms of
12 information to file the tax returns?

13 A. I -- I -- well, I looked at documents, including
14 his files, to understand, and I also looked at
15 communications with him and Denny Chittick. I looked at
16 the QuickBooks information he was provided with, so I have
17 studied that, and I have spoken with Mr. Preston.

18 Q. Did you consider bringing a claim against
19 Mr. Preston or his firm?

20 A. Yes.

21 Q. What was the basis for that claim or potential
22 claim?

23 A. Well, I mean, as an investigator coming into
24 this case, I'm looking at, you know, the professionals
25 involved and he is a tax accountant. But as I dug deeper,

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1 I didn't see his involvement to that degree.

2 I think Denny was intentionally providing him
3 with financial information that didn't disclose the degree
4 of the relationship with Menaged and how that had really
5 ballooned. Because, as you know, Preston was an investor,
6 as I'm sure you are aware.

7 Q. Right.

8 A. And then the Iggy letter and Scott Menaged were
9 informative to me that Denny had shared with him his
10 concern that if Preston became aware. I think one of the
11 things Menaged told me is that he -- he needed to show a
12 profit. He couldn't do a writeoff, a write-down for
13 loans, and so he had to keep the machine going.
14 otherwise --

15 Q. "He" being Chittick?

16 A. Chittick, yeah.

17 Q. So what was Chittick giving Preston for Preston
18 to generate a tax return in 2013, 2014, and 2015?

19 A. So he did financial statements, but I mentioned
20 earlier that they were changed. And the change was that
21 instead of showing the balances by borrower with borrower
22 name, it became kind of one consolidated group so you
23 couldn't see how big the Menaged piece was growing versus
24 the others.

25 Q. So it showed the loans as assets, but didn't

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1 show that they were in default, that kind of thing?

2 A. No. It's more that it didn't show the degree
3 that Menaged -- how big he was.

4 Q. All right. And was there, we know that the
5 company had QuickBooks, right? They used that for their
6 financial transactions --

7 A. Yes.

8 Q. -- right?

9 Was -- was there more than one version of
10 QuickBooks to allow Mr. Chittick to give false information
11 to Mr. Preston, or did he just doctor up some sort of a
12 financial statement to provide to him to generate the tax
13 returns?

14 A. I -- I don't think there was any doctoring or
15 multiple QuickBooks. I mean, there might have been old
16 QuickBooks data files that, you know, just were old
17 versions, but I think the accounting was changed so that
18 the Menaged loan was kind of packaged into the rest, so
19 how it showed up, I don't know how he did it exactly. I
20 don't know if it was a change within QuickBooks or an
21 export to Excel, but...

22 Q. Did Mr. Preston ever share with you at any point
23 him questioning what was being given to him by
24 Mr. Chittick and whether it was accurate or not?

25 A. No.

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1 Q. Do you think he should have questioned what was
2 being given to him by Mr. Chittick?

3 A. I didn't really see where he would necessarily.
4 From the standpoint of being an investor probably, but
5 from being a tax preparer, the standards are fairly low in
6 terms of it's not like he was an auditor or anything like
7 that.

8 Q. So you think as a tax preparer, he can just take
9 what Chittick gives him and generate a tax return based on
10 that information without questioning it?

11 A. Well, you do question, as a tax preparer, to
12 some degree and on the reasonableness, you know, of the
13 income and expenses for tax purposes, but I'm not aware of
14 an affirmative responsibility to identify an underlying
15 fraud being perpetrated against investors by a tax
16 preparer. But David also had an incentive. He was an
17 investor himself, so it would seem like he would, you
18 know, want to protect his investment.

19 Q. So were there any other professionals helping
20 Chittick in, say, from 2011 forward, other than Clark
21 Hill, Beauchamp, their lawyer, Bryan Cave obviously, his
22 previous firm, and David Preston?

23 A. There may have been. I'm not aware, off the top
24 of my head. I'm just thinking maybe --

25 Q. Right.

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1 A. -- Denny would have talked to somebody or
2 consulted with someone along the way. I just don't
3 remember, but I'm not aware of a material involvement by a
4 professional in that period.

5 Q. Menaged has alleged that Chittick actually
6 shared some information with other parties about what was
7 going on with Menaged, including that he shared some
8 information with Shawna Heuer.

9 Were you ever able to determine whether that was
10 true or not? Does the question make sense to you?

11 A. Yeah. I think what, if I am understanding
12 correctly, does Shawna, was she aware of the fraud with
13 Menaged --

14 Q. Right.

15 A. -- before Denny was.

16 Q. Right.

17 A. In the final, you know, in the final days, up --
18 before the final day, before his death. I'm not aware of
19 that.

20 Q. All right.

21 A. There have been stories about cash and Shawna
22 has cash and Denny would drive cash up there, and I have
23 looked into some of that in terms of feasibility and some
24 indirect analysis for cash, and I didn't identify that.

25 And from my discussions with Shawna and the

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1 emails that I have looked at and such, I didn't see where
2 Shawna was somehow a participant or aiding and abetting in
3 some way.

4 Q. Right. And I'm not, either. I'm not suggesting
5 that. I have deposed her, and I think she is honest and
6 forthright. I didn't.

7 But have you -- do you think anyone knew about
8 Menaged's fraud, other than Chittick?

9 A. I mean, the Active seems to have had some
10 knowledge that something is going on.

11 Q. Active Funding?

12 A. Oh, yeah.

13 Q. Anybody else?

14 A. Veronica Castro, I just don't remember the
15 detail of the interview, but she had -- she was helping in
16 parts of this. Whether she connected all the dots in
17 totality, I don't know, but she was there and involved.

18 As far as anybody else, I have given this much
19 thought before this. I don't think so.

20 Q. Is there anyone else that's still under criminal
21 investigation and potential indictment that worked with
22 Menaged, to your knowledge?

23 A. I mean, I wouldn't know that, you know, because
24 that's confidential information typically.

25 Q. Right. I just wondered, are you aware of anyone

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1 else being sentenced arising out of Menaged's fraud, other
2 than Menaged?

3 A. Castro.

4 Q. Castro was?

5 A. Yeah.

6 Q. Oh, yeah. Now I'm remembering.

7 Anyone else?

8 A. Well, Joseph has issues as a result of it, some
9 criminal issues. I just don't remember the details of it,
10 but that's the forfeiture.

11 Q. Joseph the father?

12 A. Correct.

13 Q. All right. Because money was transferred to him
14 by Menaged?

15 A. Yes --

16 Q. Okay.

17 A. -- that's what I am alleging.

18 Q. So earlier in your deposition, Mr. Davis, we
19 talked about this relationship between Menaged and
20 Chittick, and you talked about how Chittick could be naive
21 at times, maybe too trusting. You talked about Menaged
22 manipulating Chittick.

23 Do you recall that testimony?

24 A. Yes.

25 Q. Sitting here today, how would you describe the

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1 relationship between Chittick and Menaged?

2 A. Menaged said to me during the interview that he
3 was saving Denny's life, because if he had told Denny the
4 truth, Denny would have killed himself. And the way Denny
5 found out the truth was through the bankruptcy at a forced
6 moment, because the letter from the creditors went to him,
7 and Denny in fact killed himself.

8 But Menaged has a very distorted view of the
9 world, and believed, at least what he told me, I don't
10 know if it's what he really believed, but he was telling
11 me that he needed to lie to Denny.

12 It was a very odd relationship. I don't know if
13 you have had an opportunity to listen to the recording of
14 the relationship.

15 Q. Well, I was going to ask about that. That was
16 going to be my next question, because I have not read -- I
17 have not listened. I have read the transcript. I haven't
18 listened to it. I have spoken to people who have, and
19 it's disturbing because of the way Menaged kind of works
20 Chittick.

21 But what were you going to say?

22 A. Well, that's exactly it. It's the working and
23 the manipulation of Chittick, and Chittick seems to be, in
24 that recording, waking up to this. He sort of had a
25 sense, but he wanted to believe Menaged, and he let

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1 himself believe Menaged. He wanted to trust him, and he
2 allowed himself to do that.

3 Q. Do you think he really believed Menaged before
4 that meeting where he recorded the conversation?

5 A. I think Denny chose to believe him. I mean,
6 there is -- we all have an intuitive sense, and when I
7 look at it, I'm like how the hell could you let this guy
8 do this?

9 Look at the harm that happened here. People
10 lost their life fortune. His neighbor, his family
11 members. And the sadness of Denny, you know, killing
12 himself and his kids seeing that. Okay? People's lives
13 were affected. Okay?

14 No. Really, this is not good. But I don't
15 think Denny intentionally, like, with real knowledge, real
16 knowledge. I think he chose to believe and wanted to
17 believe Menaged, okay, and he trusted him.

18 Q. You talked about how trusting he is otherwise,
19 and maybe how naive he might be otherwise.

20 Was there something about his relationship with
21 Menaged that made him, or in that time of his life that
22 made him more susceptible to the influence of Menaged?

23 A. I have wondered about that a little bit, that he
24 was divorced, alone in the house, sharing custody with his
25 kids. He was a great dad from what I heard. But I

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1 couldn't help to think, you know, maybe he was depressed,
2 but I'm speculating.

3 I mean, I'm the guy that, you know, is living in
4 his shoes in a sense, and -- but I couldn't help to think
5 that, you know, it might have been tough for him in his
6 life, you know, in reading his journal and his suicide
7 notes.

8 But he wanted to believe. He -- he believed
9 Menaged at the end of the day. He trusted him.

10 Q. All right. So I'm going to show you some
11 exhibits.

12 (Deposition Exhibits No. 546 through 547 were
13 marked for identification.)

14 MR. STURR: John, these don't have Bates
15 numbers.

16 MR. DeWULF: These are from your depository.

17 MR. STURR: Okay. I just want to make sure they
18 are not from the computer you have imaged.

19 MR. DeWULF: No. I haven't -- I will talk to
20 you about that when we get a break, but, no, none of this
21 is from that.

22 (Deposition Exhibits No. 548 through 550 were
23 marked for identification.)

24 Q. (BY MR. DeWULF) Looking at Exhibit 546,
25 Mr. Davis.

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1 Have you got it?

2 A. Yeah.

3 Q. This is emails between Chittick and Menaged in
4 January of 2014.

5 You recall that meeting between Chittick,
6 Menaged, and Beauchamp occurred on January 9, 2014.

7 Do you remember that?

8 A. Yes.

9 Q. When Chittick was sharing all this information
10 regarding the Menaged problems.

11 I want you to focus on the email at the top of
12 the first page of Exhibit 546. The email from Chittick to
13 Menaged, not copied to Beauchamp, says: David is beating
14 me up about keeping it through title for multiple reasons.
15 He wants us to use multiple escrow companies if that's the
16 bottleneck.

17 Did I read that correctly?

18 A. Yes.

19 Q. Did you understand that Mr. Beauchamp was
20 telling Mr. Chittick that he needed to move the monies of
21 the loans through third parties like title companies and
22 trustees as opposed to directly funding to the borrower?

23 MR. STURR: Object to the form and foundation.

24 THE WITNESS: I'm not sure I'm reading that here
25 in this email.

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1 Q. (BY MR. DeWULF) Right. And I'm just using this
2 as a reference point, but did you understand that
3 Mr. Beauchamp and his partners were advising Mr. Chittick
4 to fund the money through third parties, like trustees, as
5 opposed to funding directly to borrowers?

6 MR. STURR: Object to the form and foundation.

7 THE WITNESS: Whatever is in the disclosure
8 statement. I just don't remember the specifics on that
9 issue. I would have to refresh my memory.

10 Q. (BY MR. DeWULF) You don't know.

11 Set aside the advice that Mr. Beauchamp and
12 other lawyers may have given to Mr. Chittick.

13 Mr. Chittick would have understood as a
14 hard-money lender that to secure the funds and make sure
15 that they are properly used, the best practice would be to
16 provide the money directly to the trustee in a trustee
17 sale, correct?

18 A. I mean, would he have known that --

19 Q. Yes.

20 A. -- is what you are asking for?

21 I mean, that is -- that is a better approach.

22 Q. Right.

23 A. He trusted the people he worked with.

24 Q. Right.

25 For some reason he chose not to do that, which

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1 would have been the most careful approach, right?

2 A. Yes. Correct.

3 Q. But he did know what the careful approach was,
4 as a hard-money lender, right?

5 A. It's hard to assume what he knew or didn't know,
6 you know, now. I would think he did, but I don't know for
7 sure. It's certainly a better practice. That's the
8 practice to use, the only practice.

9 Q. And we know that in his POMs he is representing
10 to the investors that he is providing first-position
11 security on the loans that are the subject of the
12 investment, correct?

13 A. Yes.

14 Q. So he has to know at least that, that is, he has
15 a commitment to provide first-position liens on the
16 properties that are the subject of the financings he is
17 giving, right?

18 A. He has to know that's what his requirement is --

19 Q. Right.

20 A. -- per the offering memorandum, yes.

21 Q. And that, again, would be the prudent and
22 careful practice that a hard-money lender would follow,
23 right?

24 A. To follow its offering memorandum, yes.

25 Q. Right. And to provide security for the loans

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1 that form the basis for the investment that the investors
2 are making, right?

3 A. Yes, when it's so stated in the offering
4 memorandum.

5 Q. Right.

6 And he, as of 2011, would have clearly known, or
7 2012, would have clearly known that he has made these
8 representations to his investors how he was handling these
9 loans.

10 Fair?

11 A. Yes, in the 2011 offering memorandum.

12 Q. Right. And we are going to go through your
13 disclosure statement in a minute, if we have time.

14 It would be accurate to say that he understood,
15 in hiring disclosure securities counsel and providing POMs
16 to his investors, that he needed to disclose material
17 information to his investors, right?

18 A. Do you mean by "material information" like a
19 fraud or material problems with loans?

20 Q. Important information. When I say "material," I
21 mean important information to investors. He needed to
22 provide them that information, right?

23 A. Yes. That's correct, yeah.

24 Q. And he had followed that procedure for years,
25 until 2013, at least as it related to disclosures, right?

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1 MR. STURR: Object to form and foundation.

2 THE WITNESS: I mean, there is no 2013 offering
3 memorandum --

4 Q. (BY MR. DeWULF) Right.

5 A. -- that's issued.

6 Q. Right. So maybe the better way to talk about it
7 is this way.

8 AS to -- as of the 2011 POM that went out to the
9 investors, it was his desire to disclose and he understood
10 his obligation to disclose material or important
11 information to investors.

12 Fair?

13 MR. STURR: Form and foundation.

14 THE WITNESS: There are disclosures in the
15 2011 --

16 Q. (BY MR. DeWULF) Right.

17 A. -- POM about loans that didn't pay and issues
18 like that. They were disclosed.

19 Q. Right. And he understood that he had an
20 obligation, in getting investments from investors, to
21 disclose to them important information relating to those
22 investments.

23 True?

24 MR. STURR: Form and foundation.

25 THE WITNESS: He, Denny, had -- there is emails

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1 and documentation that he, I think, understands there is
2 disclosure requirements, yeah.

3 Q. (BY MR. DeWULF) Okay. Let's look at 544.

4 MR. STURR: 544?

5 MR. DeWULF: 540 -- oh, I'm sorry. 547. I
6 can't read my own writing. 547.

7 Q. (BY MR. DeWULF) Again, here is a February 7,
8 2014, email to Denny Chittick from Menaged. Look at that
9 second paragraph.

10 Just to provide context, do you recall,
11 Mr. Davis, that in February of 2014, there is this
12 drafting and negotiation of a Forbearance Agreement
13 between Menaged and Chittick and DenSco and the lawyers?

14 A. Yes.

15 Q. Have you ever either negotiated or drafted a
16 Forbearance Agreement?

17 A. Yes.

18 Q. In what context?

19 A. I have negotiated them in receivership
20 situations. I sit on the board of companies where that's
21 been an issue. And I have worked on a number of matters
22 where Forbearance Agreements either exist or are being
23 negotiated by the underlying, you know, debtor, and I am
24 retained for some other purpose.

25 Q. How many times do you think you would have done

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1 Forbearance Agreements in the receivership context?

2 A. Maybe a couple.

3 Q. And when you said you were on a board of
4 directors of a company that had to deal with that, what
5 are you referring to?

6 A. Tungland Corporation.

7 Q. Say it again?

8 A. Tungland.

9 Q. Could you spell that?

10 A. T-u-n-g-l-a-n-d.

11 Q. And what -- how were they involved with a
12 forbearance agreement?

13 A. They were in distress and I was their chief
14 restructuring officer.

15 Q. So they were negotiating forbearance agreements
16 with their lenders?

17 A. Yes.

18 Q. And did you represent them in connection with
19 the negotiation of those?

20 A. I mean, not as a -- I'm not an attorney. The
21 lawyers managed that, but I was a part of the
22 restructuring and there is a Forbearance Agreement that we
23 are complying with. In fact, sometimes the requirements
24 in the Forbearance Agreement are that they continue to
25 retain a CRO, you know, and so that's how -- that's the

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1 context.

2 I'm not actually necessarily the guy saying this
3 is what terms should be in the agreement and this should
4 be out of the agreement and that sort of thing. I'm just
5 part of the general discussion and that sort of thing.

6 Q. Did you say CRO?

7 A. Correct.

8 Q. What does that stand for?

9 A. Chief restructuring officer.

10 Q. Okay.

11 A. And there is a few other cases I know it's come
12 up in.

13 Q. So were you the chief reconstructionist officer
14 for Tungland?

15 A. Yes.

16 Q. Okay.

17 A. And I also sit on their board.

18 Q. Does it still exist?

19 A. Yes.

20 Q. What's its business?

21 A. They are one of the largest operators of homes
22 for the developmentally disabled.

23 Q. So is it a nonprofit or a 501(c)(3)?

24 A. No. It's actually a for profit. Many are
25 nonprofits in that area, but they are for profit.

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1 Q. Okay. The purpose of the Forbearance Agreement
2 was to put to writing the commitments that the borrower,
3 who is in default on loans, is making to solve a problem
4 on the loan.

5 Is that fair?

6 A. Say that again, please. I'm sorry.

7 Q. Yeah.

8 Just what is your understanding of the purpose
9 of a Forbearance Agreement?

10 A. Well, the lender has rights under the loan
11 agreement, and they are going to agree not to exercise
12 those rights in exchange for something that they are going
13 to get. You know, hopefully a better position, more
14 collateral. Yeah, that's what we want to strive for.

15 I mean, in this case it's interesting, because
16 you have got millions of dollars missing, and Menaged
17 admits to it and Denny knows about it in the end of '13.
18 And, I mean, I'm scratching my head as where is all that
19 money?

20 Q. Uh-huh.

21 A. You know, where is the investigation?

22 Q. So your understanding is in this case, the
23 Forbearance Agreement was intended to address the Menaged
24 loan problems from DenSco's perspective as a lender on
25 those loans?

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1 A. That's how it was being played out, but there
2 was an 800-pound gorilla, in my view here, that was not
3 being dealt with. Where is all the money? What about the
4 internal controls? You know, how did that happen? Where
5 is the investigation? I mean, that's just striking, from
6 my standpoint.

7 Q. Do you know -- this is an important question I
8 forgot to ask a moment ago.

9 Do you know whether Denny Chittick ever shared
10 his books and records with anyone at any time?

11 A. I -- with Preston, what I wasn't certain about,
12 there is an ability in QuickBooks to send an accountant's
13 copy of the QuickBooks. I don't know if that's what he
14 sent Preston, or if he sent Preston a printout in kind
15 of -- a printout of a report.

16 I believe it was a printout, based on what
17 Ms. Beretta and I have discussed, but I would have to go
18 back to confirm. But he certainly provided, at the very
19 least, financial information to his accountant to prepare
20 tax returns. And like I said, there were some changes
21 made in that financial information.

22 As far as anybody else, I don't know. I'm not
23 aware of that, you know, right now as I sit here.

24 Q. So Exhibit 544 -- or 547, Chittick is
25 referencing in that second paragraph his deed of trust,

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1 his note, his documents.

2 Any doubt in your mind that he knew what his
3 loan document said --

4 MR. STURR: Form and foundation.

5 Q. (BY MR. DeWULF) -- as of 2014?

6 A. So which loan documents are we talking about?

7 Q. So he had a mortgage document. He had a deed of
8 trust. He had a note document. Sometimes he had
9 guarantees.

10 whatever the loan documents were, is there any
11 doubt in your mind that as of February of 2014, he knew
12 what his loan documents provided for in terms of his
13 rights?

14 A. I mean, in my view, that's a reasonable
15 conclusion, because he is running this business.

16 Q. Right.

17 A. These are his documents. He is using them over
18 and over again.

19 Q. And he has been doing -- he has been in the
20 lending business at this point for 13 years at least,
21 right?

22 A. Right, but he is someone who rides on trust a
23 lot, as we have seen.

24 Q. Let's look at 548.

25 MR. DeWULF: Mary, how much time do we have?

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1 VIDEOGRAPHER: Five hours and 51 minutes?

2 MR. DeWULF: Okay. So about an hour and ten
3 minutes left?

4 VIDEOGRAPHER: Correct.

5 MR. DeWULF: I'm not going to try and use it, if
6 I don't have to. I'm just trying to figure it out.

7 Q. (BY MR. DeWULF) Okay. 548, if we can look at
8 it.

9 This is an email. If you look at the bottom of
10 this page, Menaged is sending an email to Denny Chittick,
11 February 11, 2014. He writes: What are you paying your
12 investors? I have a couple people I can call to see if I
13 can get them to invest with you. They are family and the
14 family rule is we don't -- it says so, but probably means
15 do -- business together to keep everything good. However
16 I know they have funds they have been looking to put
17 somewhere.

18 And then Chittick responds, same day, about
19 three minutes later, saying: 12% interest can be paid
20 monthly, quarterly. However, I've not taken any new
21 investors, so if I do, I have to disclose a lot to them --
22 a lot to them, which is all about you. I might have 500K
23 in from someone. Know soon.

24 Did I read that correctly?

25 A. Yes.

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1 Q. This would be evidence of the fact that Chittick
2 is recognizing his need to disclose information to his
3 investors, right?

4 A. Yes.

5 Q. And mainly the disclosure has to do with
6 Menaged, right?

7 A. Yes.

8 Q. Let's look at 549.

9 So at the bottom of this first page of 549,
10 actually, the email continues on to that second page, but
11 the email from Menaged to Chittick says: what time later
12 will you be available to go over everything for today?
13 This is June 27th, 2014.

14 I'm sorry. And then it goes on: Remember --
15 let me start again.

16 So the email starting at the bottom of that
17 first page, Menaged says: what time later will you be
18 available to go over everything for today? I remember you
19 saying you had somewhere to go today. And that's dated
20 June 27, 2014.

21 And Chittick responds: I should be back here by
22 2:00 p.m. or so.

23 And then Menaged responds: Ok. Hope you are
24 not meeting with an investor who is looking for the
25 memorandum. Haha.

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1 And then Chittick responds: No, it's my mom's
2 meeting with my other borrowers.

3 Would this reflect to you that Menaged is making
4 a joke about -- when he says the memorandum, do you think
5 he is referring to the private offering memorandum?

6 MR. STURR: Form and foundation.

7 THE WITNESS: I mean, I think that could be.

8 Q. (BY MR. DeWULF) So he and Chittick are laughing
9 about the memorandum and how it's not being provided to
10 investors?

11 MR. STURR: Form and foundation.

12 Q. (BY MR. DeWULF) Would that be a fair reading of
13 this? Haha?

14 A. Menaged is doing the haha --

15 Q. Right.

16 A. -- but yeah.

17 Q. Yeah. So let's look at Exhibit 550.

18 A. I read this as manipulation.

19 Q. Manipulation?

20 So this is a continuation of an earlier email
21 that was an exhibit, but this has some more language to
22 it.

23 So this is a series of emails, and it's in the
24 aftermath of the -- and you reference this in your
25 disclosure, in your Fifth Disclosure Statement. David

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1 Beauchamp seeks to set up a lunch and he sends an email.
2 It begins on the third page, dated March 13, 2015. It's
3 about almost halfway down the page.

4 Do you see that heading? The subject is how are
5 you?

6 A. Yes.

7 Q. And he is asking to set up a lunch.

8 Let me -- let me digress for a minute, because I
9 do want to follow up on something, and I have looked at
10 your disclosure statement in this regard.

11 Is it the receiver's position that David
12 Beauchamp and Clark Hill did not terminate their
13 relationship with DenSco ever?

14 A. That's -- the file stays open all the way until
15 2016.

16 Q. As it relates to securities and disclosure
17 advice, is it your position that that relationship and the
18 advice that Beauchamp and Clark Hill were giving never
19 terminated?

20 A. I mean, there is no indication of that in the
21 records.

22 Q. Is there any indication otherwise?

23 A. What do you mean? That it's open?

24 Q. Well, let's assume that the May -- that May 2014
25 is the date of the termination as it relates to providing

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1 securities and disclosure advice. Okay?

2 A. What's the basis of that?

3 Q. Just assume it for my question.

4 A. Assume it.

5 Q. So what evidence is there that there is
6 securities and disclosure advice given after that date by
7 David Beauchamp or anyone else at Clark Hill, if you know?
8 If you don't, that's fine.

9 MR. STURR: I object to the form. I'm not sure
10 what you are asking him, John. If you assume --

11 Q. (BY MR. DeWULF) Do you understand my question?

12 A. I think I do.

13 Q. Okay. Go ahead and answer then?

14 A. I understand the question to be that what
15 securities advice is being given after an assumption that
16 there is a termination in securities representation in May
17 of '14, and the answer is I don't know, because I haven't
18 looked at all those records, you know.

19 Q. Okay. You are aware that there are still legal
20 invoices that postdate that May 2014 date, correct?

21 A. Yes.

22 Q. Are you aware of any of those invoices charging
23 DenSco for services in the area of securities or
24 disclosure?

25 A. I mean, I don't know. I haven't looked at all

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1 of them.

2 Q. And the work that was provided, there was some
3 cleanup work after May of 2014 on the Forbearance
4 Agreement.

5 Do you recall that?

6 A. Not specifically right now. Sorry.

7 Q. Okay. So let me ask, after May of 2014, other
8 than cleanup work on the Forbearance Agreement and the
9 work with respect to licensure with the Arizona Department
10 of Financial Institutions, before Mr. Chittick's suicide,
11 are you aware of any other work being performed by
12 Mr. Beauchamp and Clark Hill?

13 A. I don't remember specifically. I don't think
14 there was a lot more than that, but there may have been
15 and I just -- I haven't studied all those records myself.

16 Q. Okay. Well, let's look at this series of
17 emails. So we are on page 3. The follow-up to
18 Mr. Beauchamp's email to Mr. Chittick is he is responding:
19 Surprise surprise.

20 Do you see that?

21 MR. STURR: I'm sorry. Where are you?

22 Q. (BY MR. DeWULF) I'm on the third page of
23 Exhibit 550. There is an email from Beauchamp to Chittick
24 that begins about halfway down the page or so, and then
25 there is a response above it to the email from Chittick to

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1 Beauchamp.

2 Do you see that: Surprise surprise?

3 A. Yes. But is that a response? No. That's a
4 forward. Denny is forwarding this to Scott Menaged.

5 Q. Good point. Thank you for that clarification.

6 So Chittick is taking David Beauchamp's request
7 for lunch and forwarding it to Mr. Menaged, correct?

8 A. Yes.

9 Q. And then --

10 MR. STURR: Belated objection on foundation.

11 Q. (BY MR. DeWULF) And then Menaged responds:
12 schedule coffee in 18 months when our balance is close to
13 nothing. Haha. Right?

14 A. Yes.

15 Q. That would exhibit to you kind of a cavalier
16 attitude by Menaged with respect to Chittick's
17 relationship with Beauchamp.

18 Fair?

19 MR. STURR: Form and foundation.

20 THE WITNESS: I think it's manipulation of
21 Chittick.

22 Q. (BY MR. DeWULF) Manipulation of Chittick?

23 A. Yeah.

24 Q. Let's look at the page 2, the bottom of the
25 page. Chittick responds: I figure it's a miracle he left

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1 me alone this long.

2 Chittick is really in on the joke, right? He is
3 making fun of Beauchamp as well.

4 Isn't that a fair reading of this?

5 MR. STURR: Form and foundation.

6 THE WITNESS: I don't really read it that way.

7 Q. (BY MR. DeWULF) Really?

8 Okay. Let's keep going. And then Menaged says
9 to Chittick: He is not going to be happy I don't think,
10 but it is what it is and we are doing what we need to do
11 so we are out of this. He probably heard about the dinner
12 and wanted the free meal. Hahaha.

13 You still don't think that Menaged and Chittick
14 are having a joke at Mr. Beauchamp's expense?

15 MR. STURR: Form and foundation.

16 THE WITNESS: I think Menaged is, you know,
17 acting in this way as part of his manipulative strategy.
18 I don't see -- I see Denny as a more serious tone, but
19 that's just how I read it --

20 Q. (BY MR. DeWULF) Okay.

21 A. -- and just kind of my sense of him.

22 Q. All right. So let's look at the next comment by
23 Chittick. Chittick writes: I have some legal reporting
24 obligations that are the real rub. I will see what he has
25 to say.

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1 And then there are some discussions between
2 Menaged and Chittick about Menaged's mom being a bad
3 tipper.

4 Go to the first page of this document,
5 Exhibit 550, and go about halfway down. There is an entry
6 Menaged wrote on March 13, 2015, at 8:41.

7 Do you see that entry?

8 A. Yes.

9 Q. That email, it says: At least if you can delay
10 the reporting a bit more till the dealership opens, we can
11 make real headway on the workout.

12 Did I read that correctly?

13 A. Yes.

14 Q. So Menaged is telling Chittick, let's hold off
15 on the reporting until the dealership -- and presumably he
16 is talking about his own dealership, right? wasn't he
17 going to open a car dealership at some point?

18 A. Yes. I do recall that, yes.

19 Q. Okay: we can make real headway on the workout.

20 And then Chittick responds: That's what I have
21 to find out is the timing of the need to report and stay
22 in compliance and be able to show something that isn't
23 scary enough to start a stampede on the bank.

24 So here March 13, 2015, Mr. Chittick is
25 observing to Menaged he still is concerned about how he

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1 discloses information to his investors, right?

2 A. Yes.

3 Q. And then Menaged responds that same day:
4 Hopefully you can show things in general terms and not
5 specific. He will say no but there is no choice right
6 now. Remember if you listened to him a year ago we would
7 never be where we are now.

8 Did I read that correctly?

9 A. Yes.

10 Q. If you had listened to him a year ago, we would
11 never be where we are now.

12 So a year ago would have been March of 2014,
13 right?

14 A. Yes.

15 Q. Okay. And then the last comment by Chittick to
16 Menaged is: I will be as general as I can because I don't
17 want to get him on a roll.

18 Did I read that correctly?

19 A. Yes.

20 Q. This, at a minimum, would show that Menaged and
21 Chittick have some sort of an inside relationship or some
22 sort of a familiarity that Beauchamp does not have with
23 Chittick.

24 Is that fair?

25 MR. STURR: Form and foundation.

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1 THE WITNESS: I mean, I understood Beauchamp and
2 Chittick to be friends and to have a long-term
3 relationship. Okay? And it looks to me like they both
4 have something with each other. So in other words,
5 Chittick has a relationship with Menaged and Chittick has
6 a relationship with Beauchamp.

7 Q. (BY MR. DeWULF) The relationship with Menaged
8 was one, as you have described, that is Chittick's
9 relationship with Menaged is one where Chittick has in
10 effect disregarded of much of what Beauchamp has advised
11 him and is listening to Menaged instead?

12 MR. STURR: Object to the form.

13 THE WITNESS: I -- I see it that Menaged is
14 manipulating Chittick. Okay? But this email
15 correspondence makes it clear that he plans to talk to
16 David about the offering memorandum, you know.

17 Q. (BY MR. DeWULF) Right.

18 A. And this is in 2015.

19 Q. Right.

20 So in connection with your belief that Menaged
21 was manipulating Chittick, he was manipulating him in
22 connection with Chittick doing the right thing at DenSco.

23 Fair?

24 MR. STURR: Object to the form.

25 THE WITNESS: He was manipulating Chittick to

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1 get Chittick to give him more money so he could steal more
2 money from Chittick.

3 Q. (BY MR. DeWULF) Have you concluded that Menaged
4 was also manipulating Chittick to disregard what Beauchamp
5 was telling him?

6 MR. STURR: Object to the form.

7 THE WITNESS: I mean, other than this one line
8 in this email, I don't have a lot more information to say
9 that, so I don't know really.

10 Q. (BY MR. DeWULF) You have seen those emails that
11 where, during the negotiation of the Forbearance
12 Agreement, Menaged is going around the lawyers and working
13 Chittick, right? You have seen those?

14 A. Well, he terminates, I think, Jeff Goulder
15 during that process or --

16 Q. Right.

17 A. -- just decides to go solo, and Chittick and
18 Beauchamp are trying to take advantage of that
19 opportunity.

20 Q. But they don't, right?

21 MR. STURR: Object to the form.

22 THE WITNESS: I thought they did in a sense of
23 getting everything in the agreement that they wanted.
24 That was my understanding.

25 Q. (BY MR. DeWULF) So is the -- let me ask you on

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1 the Forbearance Agreements that you did do, how long did
2 they normally take to accomplish? Any -- any rule of
3 thumb?

4 A. Well, the bank holds all the cards usually --

5 Q. Yeah.

6 A. -- so they will threaten receivership and such,
7 so they get together pretty quick, unless the debtor does
8 bankruptcy or something like that.

9 Q. Is -- so weeks it takes to negotiate those --

10 A. It could.

11 Q. -- or does it vary?

12 A. A couple weeks at least, yeah.

13 MR. DeWULF: Okay. Let's -- let's stop right
14 now.

15 How much time do we have, Mary?

16 VIDEOGRAPHER: We have six hours and six
17 minutes.

18 MR. DeWULF: Okay. So we have got less than an
19 hour left. What I would like to do is just take a break.
20 I want to collect my notes and I want to try to figure out
21 what I still want to try to accomplish today. I don't
22 want to waste your time while I'm looking around.

23 VIDEOGRAPHER: The time is 4:34 p.m. We are
24 going off the record, ending media six.

25 (A recess was taken from 4:34 p.m. to 4:41 p.m.)

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1 VIDEOGRAPHER: My name is Mary Onuschak with the
2 firm of Legal Video Specialists, Phoenix, Arizona. This
3 begins media seven of the videotaped deposition of
4 Peter S. Davis. The time is 4:41 p.m. We are now back on
5 the record.

6 Q. (BY MR. DeWULF) Mr. Davis, have there been any
7 demand letters written by special counsel on the
8 receiver's behalf against either the banks or Active
9 Funding?

10 A. I don't believe there has been one on Active.
11 There have been communications in the Chase Bank/US Bank
12 matter. I don't believe they are a demand letter. I
13 think they are communications about getting a Forbearance
14 Agreement.

15 Q. Without disclosing privileged communications,
16 how far along is Ajamie in its investigation of claims
17 against Active Funding?

18 A. They have completed the initial investigation.

19 Q. Okay. And have they shared with you their
20 conclusions?

21 A. Yes.

22 Q. And do you consider that privileged or are you
23 willing to share that with us?

24 A. That's privileged.

25 Q. Okay. And based upon that, you have decided to

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1 go forward with claims against Active Funding?

2 A. Yes.

3 Q. All right. When did you get the analysis that
4 they provided to you?

5 A. I don't remember. Three weeks ago, maybe a
6 month ago.

7 Q. Okay. Now, as it relates to the claims by the
8 Bergin Frakes firm against the banks, did they write any
9 demand letters to the banks?

10 A. I told you I didn't --

11 Q. Don't know?

12 A. I wasn't absolutely clear.

13 Q. Okay.

14 A. It may have -- I don't think so.

15 Q. Where are they in the pursuit of claims against
16 the banks?

17 A. Well, they have completed an investigation, and
18 then we have completed their retention under the
19 contingency arrangement, and I'm seeking a tolling
20 agreement now.

21 Q. So they are prepared to file a complaint at this
22 point? They have done sufficient work to form the basis
23 for a complaint to be filed?

24 A. I believe that to be true.

25 Q. And is that also true with regard to Ajamie's

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1 claims against Active Funding, that they have -- with the
2 report that was provided to you, they are prepared to file
3 a complaint?

4 A. I think they would need to prepare the
5 complaint, but --

6 Q. But they have sufficient intelligence or factual
7 information upon which to justify filing a complaint?

8 A. Based on the investigation, yeah.

9 Q. Okay. Are there any other situations you can
10 think of where you have counsel that are prepared to file
11 additional complaints to recover assets for the
12 receivership?

13 A. There is a couple of winners, Ponzi winners
14 that --

15 Q. Anything else?

16 A. -- I am investigating.

17 I am observing what's happening in the
18 bankruptcy court, because those are -- we are a large
19 creditor in the bankruptcy, and there is still ongoing
20 work, lawsuits there that could create recoveries. And
21 I'm investigating additional areas in the Menaged accounts
22 and that realm and going to monitor what the trustee does.

23 Q. So is the bankruptcy trustee pursuing that
24 \$9 million claim against Griffin?

25 A. Yes.

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1 Q. So that's a potential asset of the bankruptcy?

2 A. Yes.

3 Q. And are there other substantial assets in the
4 bankruptcy? I haven't looked up the filings, but are
5 there -- is there money there to talk about?

6 A. You mean in the Griffins?

7 Q. No. I'm sorry. In the bankruptcy. In the
8 Menaged bankruptcy.

9 A. No.

10 Q. Nothing there?

11 A. Very little money.

12 Q. Okay. So let's look -- oh, one other thing.
13 The -- I know you have interviewed a number of the
14 investors. You indicated you had.

15 Are there any that you can identify today that
16 you think you will want to have testify at trial?

17 A. Oh, in this matter?

18 Q. Yes.

19 A. I don't know who would testify.

20 Q. Okay. Do you know whether any of those
21 investors had any interaction with David Beauchamp?

22 A. A lot of them seemed to know about Beauchamp. I
23 don't know the degree of the interaction. His name came
24 up a lot.

25 Q. You talked about talking to a neighbor who was

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1 also an investor.

2 Is that Brian Imdieke?

3 A. Correct.

4 Q. And what has he shared with you with respect to
5 his investment experience?

6 A. Well, I'm talking to him at Denny's house when I
7 was out there, and he just -- you wouldn't think he just
8 realized he'd lost millions of dollars. I mean, he just
9 adored Denny and continued his admiration of him, and just
10 absolute heartbreak about Denny's death.

11 He lived right across the street, and continued
12 to believe in Denny, believe in his honesty. I heard that
13 consistently from investors.

14 Q. Did he share with you his observations as to how
15 Chittick might have come under the spell of Menaged?

16 A. No.

17 Q. Let's look at Exhibit 540. That's the redlined
18 disclosure statement.

19 MR. ANDERSON: Oh, sorry.

20 MR. DeWULF: Did you get the redlined? Trying
21 to give it back to me?

22 MR. ANDERSON: You can have it.

23 Q. (BY MR. DeWULF) All right. Did you understand
24 that in order to finalize the POM for DenSco, Chittick
25 would have had to provide information to Beauchamp as it

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1 related to, for example, historical performance and
2 financial information?

3 A. I mean, I understand there is disclosures in the
4 POM, and that would have to come from the company, yeah.

5 Q. I mean, the detail as it related to the history
6 of what had gone on in the loans would have to come from
7 Chittick, because he is the only one that knew that
8 information, right?

9 A. Yes.

10 Q. Let's look at page 6, line 18. The line is,
11 Chittick's transmittal email stated, in part: "I update
12 this memorandum every two years. I work with David
13 Beauchamp (securities attorney) to review all the statutes
14 [sic] and laws in Arizona as it pertains to my business
15 and all the states that I have investors in. This is to
16 ensure that I'm filling -- I'm filing all the forms and
17 following all the rules.

18 Did I read that correctly?

19 A. Yes.

20 Q. And that was kind of a repetitive theme, right,
21 with -- between Chittick and his investors, is that he was
22 telling them: Listen, I'm looking to counsel and they are
23 advising me and I am disclosing information, trying to
24 comply with the rules and the -- and the laws?

25 MR. STURR: Object to foundation.

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1 Q. (BY MR. DeWULF) In newsletters and that kind of
2 thing, or do you know?

3 A. I don't know. This came from -- just so I'm
4 clear, this is Chittick's transmittal email with the 2011
5 POM, correct?

6 Q. Right.

7 A. That's what I'm understanding. Okay.

8 Q. I'm just asking whether that communication was
9 one you have seen --

10 A. I don't know.

11 Q. -- that he has made in other occasions?

12 A. I know he sent these newsletter updates. I
13 just -- I have looked at a couple. I haven't looked at a
14 ton of them, so I wouldn't know.

15 Q. But you knew that he understood an obligation to
16 disclose to his investors, and that's why he hired lawyers
17 to help him do that, right?

18 A. Right.

19 Q. And he did that periodically from the time he
20 started the company until 2011, right?

21 A. Well, he did disclose in 2011.

22 Q. Right. So --

23 A. But until 2013.

24 Q. Right.

25 So until 2011, he was doing POMs and he was

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1 disclosing information?

2 A. Right.

3 Q. Okay. So let's go to page 9, going on to 10.

4 You make a comment that you believe that the subscription
5 agreement wasn't updated by the lawyers.

6 Was there something wrong with the subscription
7 agreement that was being used?

8 A. I don't know.

9 Q. Let me ask you to go to page 13. Actually,
10 page 14. There is a heading on that page, Mr. Davis. It
11 reads: In Preparing the 2011 POM, Beauchamp Failed to
12 Investigate a "Red Flag" About DenSco's Lending Practices.

13 Do you see that?

14 A. No, I'm sorry.

15 Q. Page 14.

16 A. Oh, here in the middle? Yeah.

17 Q. Yeah.

18 I'm -- I'm not really clear what it is that is
19 the red flag. Can you explain it to me?

20 A. If I recall correctly, it's talking about the
21 investigation or due diligence of various assertions
22 within the POM. And there is these material facts that
23 are laid out in here about the large amount of money being
24 raised in 2011, particularly the first part of the year,
25 and the statement that there is 10 to 15 percent of the

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1 total portfolio as a representation to any one lender, and
2 yet in the due diligence file there is nothing that's
3 found.

4 Q. So the red flag that would have been something
5 that, I guess, Mr. Beauchamp should have seen, is it the
6 fact that there are a large increase of loans in 2011?

7 A. That's part of it, yes.

8 Q. And that somehow that was a problem?

9 A. There is a large, I think \$4.7 million of notes
10 sold in the first half of 2011, and there is no due
11 diligence being done on that large increase.

12 Q. What -- what is it about the increase in loans
13 that makes that something that is problematic? Why
14 couldn't -- why couldn't DenSco make more loans? Why is
15 that a problem?

16 A. Well, I don't know if it's necessarily in itself
17 a problem. I think the problem is where is the due
18 diligence.

19 Q. What is the red flag, though? What is -- what
20 is learning about a client increasing the number of loans
21 it makes a red flag? That's what I don't understand.

22 A. The way I'm interpreting it, and I'm not the
23 standard of care expert or anything like that, but is
24 that, you know, when you have a large increase in loans,
25 your risk, your business fundamentals change. You are now

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1 taking on more responsibility to more -- to more people
2 entrusting in you, and as a result of that, there is more
3 risk there. There is growth in the company, so that's
4 something that one may want to look at, you know.

5 Q. You are not saying that the standard of care
6 required that Beauchamp question the number of loans that
7 the client is making, are you?

8 A. I mean, not necessarily, but if there is, like,
9 large increases or decreases, that may be something one
10 would want to look at.

11 Q. Was there anything as of the end of 2011 that
12 was a problem with the loans that were being made?

13 A. I mean, there were problems that were talked
14 about in the POM.

15 Q. Right. And those are just -- those could be
16 routine problems, right? Because there are always going
17 to be some problems regarding defaults or inability to pay
18 or whatever. But there wasn't anything as of the end of
19 2011 that would have alerted anyone that there were any
20 sort of systematic or company-wide issues regarding its
21 loans, right?

22 A. I'm trying to remember the percentage that
23 Menaged was at the end of '11 or at the middle of '11, but
24 he may have been higher than the 10 to 15 percent stated
25 in the POM. I just don't remember.

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1 Q. You don't know. Okay. Other than that, let's
2 set that aside, are you aware of anything by the end of
3 2011 that would have been a problem regarding the DenSco
4 loans?

5 A. Denny was funding the -- making the payments
6 directly to the trustee. I mean, not to -- I'm sorry --
7 directly to the borrower instead of to the trustee.

8 Q. Okay. And are you saying somehow that the
9 lawyers should have discovered that?

10 A. No. That wasn't your question, though, right?

11 Q. Okay. So -- all right. So let me ask it a
12 different way.

13 was there anything that Beauchamp was aware of,
14 to your knowledge, as of the end of 2011, which would
15 reflect a problem with the DenSco loans?

16 A. I don't know. I don't know if he was aware of
17 some of these things or not at that time.

18 Q. Okay. And the only red flag you are talking
19 about is the fact that there is a -- an increase in loans
20 for that first six months of 2011, and that that should
21 have been some concern, right?

22 A. Well, yeah. And the other red flags listed here
23 about the percentages of 10 to 15 percent under paragraph
24 36 that's listed.

25 Q. So is it your position that the lawyer couldn't

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1 accept that representation from the client? He had to
2 double-check that or second-guess that?

3 A. I mean, my understanding is some due diligence
4 is required to be performed on material facts being stated
5 in the agreement.

6 Q. Okay. So it's your position that the client --
7 that the lawyer needs to look behind what the client is
8 telling them, and bill the client for that, right?

9 MR. STURR: Object to the form.

10 Q. (BY MR. DeWULF) In other words, the client is
11 going to be shouldered with the responsibility of paying
12 for whatever those lawyers' efforts are, right?

13 A. I mean, that sort of is like a Catch-22, isn't
14 it? I mean, the lawyer has due diligence to keep the
15 client safe, so that's part of the process, right?

16 Q. But isn't part of the process, as the lawyer for
17 the client, to do what the client is requesting you to do,
18 within ethical standards?

19 MR. STURR: Object to the form and foundation.

20 THE WITNESS: Well, I mean, and again, I'm
21 answering all this based on just me as the receiver and
22 not as the standard of care.

23 Q. (BY MR. DeWULF) But this is the report. This
24 is the disclosure that you have signed and verified, and
25 this is why we are asking you these questions, because we

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1 are going to go to trial on these issues and I need to
2 know what you are going to say. That's -- that's why I am
3 pursuing it with you.

4 So the red flag that is referenced here that, I
5 guess, arguably Beauchamp missed, is that there was
6 something in 2011 that he should have seen regarding these
7 loans, right?

8 MR. STURR: Object to the form of the question.

9 THE WITNESS: What's striking to me is the lack,
10 complete lack of due diligence. Okay? That's -- that's
11 what struck me.

12 Q. (BY MR. DeWULF) And what would the due
13 diligence have shown him in 2011?

14 A. The things I stated earlier.

15 Q. Would he have -- so the percentage of loans
16 associated with Menaged? Is that --

17 A. Yes.

18 Q. -- what you are saying is the main issue?

19 A. And maybe other things that I'm not aware of,
20 but they would have been -- that would have been a
21 material issue. And also to the extent information is
22 being asked and due diligence is being performed, would it
23 have come up about how he is funding the loans? You know,
24 that this is not a standard. This is not a practice
25 that's, you know, reasonable. Due diligence is required.

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1 It's in the -- it's in his file.

2 Q. Do you think that he could rely on Chittick for
3 that information?

4 MR. STURR: Object to the form --

5 THE WITNESS: That whether Beauchamp --

6 MR. STURR: -- and foundation.

7 THE WITNESS: I'm sorry.

8 Q. (BY MR. DeWULF) Beauchamp could ask Chittick
9 about that information?

10 A. I think he could.

11 Q. Okay. Do you think that's sufficient in his due
12 diligence activities, to ask Chittick what about this,
13 what about this, what about this?

14 MR. STURR: Object to form, foundation.

15 THE WITNESS: I have done due diligence before,
16 so it's a striking thing. Not in the securities context.
17 Well, actually, yeah, in the securities context. But
18 it's -- you dig pretty deep to verify facts. And so there
19 is documentation obtained. Sometimes even third-party
20 verification.

21 Q. (BY MR. DeWULF) And my question is, do you
22 think he could rely on Mr. Chittick for that information?

23 MR. STURR: Form and foundation.

24 Q. (BY MR. DeWULF) The due diligence information.

25 A. I believe Mr. Chittick would have given him the

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1 information he asked for.

2 Q. Okay. Page 35. The heading that's in the
3 middle of the page, says: During the Month of May, 2013,
4 Beauchamp Performed Minimal Work to Perform a New POM.

5 what's your basis for saying that, minimal work?
6 Is that just the invoices?

7 A. Most invoices, the emails. Specifically here
8 references the billing statements.

9 Q. So --

10 A. And there is -- there is a document that's like
11 the 2013 POM that has minimal changes.

12 Q. Okay. So the minimal comment here is a
13 reflection of what the invoices show?

14 MR. STURR: Object to the form.

15 Q. (BY MR. DeWULF) And then I guess the document
16 themselves, the POM drafts? Is that what you are saying?

17 A. Beauchamp's initial disclosure statement; Bryan
18 Cave's systems, accounting systems; the draft POM itself,
19 2013; emails within Bryan Cave; notes.

20 Q. So you are testifying that all those documents
21 reflect that there was minimal work done in May of 2014 on
22 the --

23 MR. STURR: '13.

24 Q. (BY MR. DeWULF) -- 2013 on the amended -- oh,
25 I'm sorry. I apologize.

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1 So the work done in May of 2013 was minimal, you
2 are saying?

3 A. Yes.

4 Q. I misread that. I misunderstood that. I
5 understand now. Okay.

6 A. It's hard to read because of the --

7 Q. Yeah.

8 A. -- the track changes.

9 Q. Got it. Understand.

10 All right. So let's go to -- do you know
11 whether there was -- let's look on page 37.

12 Was there ever any conclusion reached on whether
13 the DenSco website or DenSco's procedures violated federal
14 securities laws?

15 A. Yes.

16 Q. What was the conclusion?

17 A. Information was placed from the POM on DenSco's
18 website that should not have been, is my understanding of
19 Bryan Cave's conclusions.

20 Q. Anything else?

21 A. Beauchamp hadn't gone to that website, because
22 he had to find out from one of his partners.

23 Q. I was asking whether you are aware of any other
24 violations of federal securities laws.

25 Are you aware of anything else?

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1 A. Oh, other securities laws, federal securities
2 laws. I don't know if other laws were violated.

3 Q. Let's look at page 64, paragraph 186: Clark
4 Hill was negligent by never advising Chittick that DenSco
5 could not sell any promissory notes until it had issued a
6 new POM.

7 Did I read that correctly?

8 A. Yes.

9 Q. What -- what is your factual support for that
10 statement?

11 A. It's the lack of clear documentation stating so.

12 Q. Okay. So your position is that the lack of
13 documentary evidence stating that the advice had been
14 given or reflecting the advice, indicates that it was
15 never given?

16 A. Well, that, and then there is subsequent
17 communication, and I am trying to remember the exact time
18 period, that indicates that David's saying hurrah to
19 Chittick for raising more money and that sort of thing at
20 some later point. And so it just struck me that David is
21 aware more money is being raised.

22 Q. Anything else?

23 A. And so he is aware more money is being raised,
24 and where is the "put the brakes on, this is a disaster"?
25 And from a due diligence standpoint, where is the millions

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1 of dollars that this guy stole, you know, the cousin.
2 That's investors' monies that are stolen, and this machine
3 is continuing to operate.

4 Q. Right.

5 So the evidence that there was no advice given
6 is there is no -- you are saying there is no written
7 reflection of that, and then I think you are referencing
8 an email where Mr. Chittick is saying I've gone to all my
9 investors and have been able to raise some money, right?

10 A. Yeah.

11 Q. We don't know what he told his investors, do we?

12 A. I don't remember. There may be information
13 about that, but I don't remember.

14 Q. All right.

15 A. He may have had those conversations verbally
16 with investors.

17 Q. "He" being?

18 A. Oh, Denny. I mean, these --

19 Q. I want to understand what you are saying.

20 A. Yeah.

21 Q. You are saying that Denny may have talked to the
22 investors about what was going on in the company?

23 Is that what you are saying?

24 MR. STURR: Object to form and foundation.

25 THE WITNESS: No, I'm not saying that. I don't

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1 know what Denny was telling the investors to raise more
2 money.

3 Q. (BY MR. DEWULF) I understand.

4 A. But another fact to consider is all these notes
5 are rolling over, and I believe Beauchamp knows that these
6 notes are rolling over at some point in time. Investors
7 are just keeping their money.

8 Q. Right. Again, but we don't know what is being
9 communicated to the people who are rolling over, right?

10 A. I mean, other than Denny's emails that we have
11 available, we don't -- I don't know the verbal
12 conversations.

13 Q. So that's going to be testimony at trial,
14 basically?

15 A. Yeah. The emails would be evidence, yeah.

16 Q. The emails.

17 Let's go to page 64.

18 Oh, that's where we were, right? That's what we
19 were just talking about. Sorry.

20 Page 187. I want to kind of explore with you
21 this idea that if Beauchamp had given certain advice,
22 Chittick would have followed it.

23 Do you recall that topic?

24 A. Yeah.

25 Q. And here in 187, you are citing as evidence of

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1 the fact that Chittick would have followed Beauchamp's
2 advice, a statement from our disclosure statement and the
3 fact that he removed, "he" being Chittick, removed
4 information from his website based on advice from
5 Beauchamp, correct?

6 A. Yeah.

7 MR. STURR: Object to the form.

8 Q. (BY MR. DeWULF) Is there any other evidence you
9 can think of today, Mr. Davis, that would indicate to you
10 that whatever Mr. Beauchamp would have advised
11 Mr. Chittick to do, he would have followed that advice?

12 A. The Iggy letter. Just my overall reading of
13 everything here that I'm aware of, that if Beauchamp stood
14 his ground and didn't give kind of a, like, sweep it under
15 the rug mentality, that this wouldn't have happened. I
16 mean --

17 Q. Why didn't Mr. --

18 MR. STURR: Did you have a chance to finish your
19 testimony?

20 THE WITNESS: Well, I --

21 Q. (BY MR. DeWULF) I thought you were.

22 A. I was just going to add that, I mean, it's -- it
23 seems like there is a lack of a desire to really, you
24 know, push back, you know, against Denny on this for the
25 benefit of DenSco.

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1 And that's -- that's the -- that's what's
2 alarming. And there is a lot of different emails and
3 documents and information that sort of leads me to that,
4 but my read of the disclosure statement and the other
5 stuff is that we needed -- we needed Beauchamp to do his
6 job, and I'm saying "we" being DenSco, and he didn't. And
7 my understanding of his job is to have done the due
8 diligence and to look deeper at this.

9 I mean, this thing to me screams, okay, of
10 something bigger. And had someone looked at it, they
11 would have found there is something massive here and
12 Menaged is not trustworthy, and they would have gotten out
13 or pushed to the limit to get the changes that needed to
14 be made, including the disclosure.

15 I think there is Denny emails where he talks
16 about I could just start over new co, tell everybody and
17 all that, and that's what needed to happen at that point
18 in time. This thing became a monster after that. What
19 was small, or relatively, got gigantic.

20 Q. As of what date are you talking?

21 A. Well, like from the first fraud to the second
22 fraud, in the sense of January/December. I mean, to me,
23 it's the FREO lawsuit, the summer.

24 Q. January or December of what?

25 A. Okay. So -- and, I'm sorry, I'm not being very

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1 clear. I'm going from my gut here.

2 Q. No. That's fine. I want to hear what you have
3 to say. I just want to make sure I understand what you
4 are saying.

5 A. And it's -- the FREO lawsuit lays out something
6 that is undeniable, okay, in terms of fraud. And going
7 into the public records, which doesn't take a lot when you
8 have got that, and figuring it out. Calling the
9 plaintiff, what the heck happened here, you know.

10 And I'm not talking about the first part of the
11 FREO lawsuit. Not the plaintiff action. The fact that
12 there is disclosure at that point. And I'm not talking
13 about Denny. We know Denny, you know, overly trusting and
14 naive. I'm talking about Beauchamp has it in his inbox,
15 okay, and that's what's striking to me, because it's right
16 in that complaint. And I'm talking a few minutes on the
17 recorder's office, a few minutes with the phone call,
18 you'd start to know there is something here.

19 Q. Let me explore that with you --

20 A. Okay.

21 Q. -- because what you are saying is that the FREO
22 lawsuit would have revealed the existence of double liens,
23 right?

24 A. Yeah.

25 Q. And the double liens would reflect that Menaged

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1 is not honoring his commitment to DenSco, right?

2 A. Yes.

3 Q. And he has allowed another loan to be liened on
4 the same property, and that's -- that's the gist of the
5 dispute, right? There is competing interest as it relates
6 to a trustee sale that occurs?

7 A. It's a little bit different than that, because
8 there is a -- the sale happens to somebody else --

9 Q. Right. And they are claiming ownership.

10 A. -- but it pop -- and it pops up.

11 And I'm not -- and I'm talking about not from
12 Denny, because Denny we knew already got manipulated on
13 this topic, so he would be one more manipulation away
14 from -- you know, Menaged would get to him and he would
15 manipulate him, but I am talking about Beauchamp, because
16 this is in Beauchamp's email.

17 Q. I understand.

18 So the reveal is that there are two loans on the
19 same property, right?

20 A. Yes.

21 Q. That's the gist.

22 And so what you are saying is if you had gone to
23 public records, tax records and real property records,
24 ownership records, it would have disclosed that Menaged
25 signed two different deeds of trust on two different loans

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1 on that property?

2 A. On the same property, right.

3 Q. Does that disprove his story that his cousin was
4 in charge and had him signing documents that he didn't
5 really check out?

6 MR. STURR: Object to form and foundation.

7 THE WITNESS: I don't know if it necessarily on
8 its -- that alone disproves that, but to me it begs for
9 more.

10 Q. (BY MR. DeWULF) So you -- but you understand
11 what I'm saying.

12 The story that Menaged is telling Chittick and
13 you have already testified Chittick believed, because he
14 believed Menaged, and he is telling Beauchamp in effect
15 this is someone I believe, is that Menaged, because he was
16 tending to his ill, his cancer stricken wife, had put his
17 cousin in charge, and his cousin was then having him sign
18 documents and Menaged wasn't looking at them and they were
19 getting filed without him knowing.

20 So confirming that there were two different
21 loans, two different deeds of trust, wouldn't disprove the
22 cousin's story, would it?

23 MR. STURR: Object to the form.

24 THE WITNESS: I mean, I know now this cost
25 \$14 million, right, this issue.

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1 Q. (BY MR. DeWULF) Well, we all look at this now
2 and we are looking 20/20 hindsight --

3 A. But let me finish.

4 Q. -- right?

5 A. Because -- no. This is important, because this
6 goes right to the heart of it. Because I find one. Okay.
7 My first question is, where is the money? Because you got
8 double.

9 I mean, we saw AFG. What did they write? You
10 are using the money for your furniture business. And in
11 fact that's -- when I traced the money, some of that is
12 happening. He is right, the AFG guy.

13 My question is and my concern is, where is
14 Beauchamp when that's happening? Okay. Because shouldn't
15 he be the guy? Because Denny is naive, right? He is too
16 trusting. Where is Beauchamp when that's happening?
17 Because to me, that's -- that's the opening to identifying
18 a pattern.

19 Q. So --

20 A. Because when Beauchamp interviews the lawyer,
21 then what's the next step? You interview Menaged. Where
22 did it go? Or you direct Denny to go hire an investigator
23 or somebody to do a corporate investigation.

24 Q. So your position is that Beauchamp should not
25 have believed the client, Chittick, and should have gone

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1 around him and done his own work?

2 MR. STURR: Object to the form.

3 THE WITNESS: Not necessarily. I think Denny
4 was too trusting, and I think what Denny was really
5 looking for from Beauchamp is to be the bad guy, because
6 he needed somebody to be the bad guy.

7 He needed -- and by "bad guy," I mean the
8 resolute person who is going to follow the rule. And it's
9 okay to go a little after. That is going to be firm,
10 okay, about that issue. About --

11 Q. (BY MR. DEWULF) But my question is a little
12 different.

13 A. Okay.

14 Q. My question is, what you are suggesting to me is
15 even though the client, Chittick, is telling Beauchamp
16 this is the story and I believe the story, the lawyer
17 Beauchamp should not have believed the client and gone
18 around him to second-guess him on the story, right?

19 MR. STURR: Object to the form.

20 THE WITNESS: A slight difference. I'm saying
21 when Beauchamp hears that story, he should be saying bull,
22 okay? Because it sounds like bull to me. A cousin's
23 story? Because where is the \$14 million?

24 Q. (BY MR. DEWULF) Oh. So you are saying on its
25 face, the cousin's story is just unbelievable and no one

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1 should believe it?

2 A. Well, no, no. No. My -- I'm saying bring the
3 14 million back. So if your cousin took it, go get the
4 money, bring it back, because that's -- that 14 million
5 is -- belongs to those investors.

6 So what I'm saying, it's like -- I don't know
7 how -- I'm not doing the best describing it. It's -- it's
8 like once you start that investigative process and you
9 really peel this back, there is no other choice but
10 uncovering the entire fraud at that point in time. You
11 are going to get there, because money-wise or based on the
12 double encumbrances, you are going to get there. You are
13 going to discover something. And that's just my take on
14 it in terms of what I think somebody should have found at
15 that point.

16 Q. Understood. I wanted your take. So let me try
17 to move through this.

18 MR. DeWULF: How much time do we have, Mary?

19 VIDEOGRAPHER: We are at 6:45. Six hours, 45
20 minutes.

21 Q. (BY MR. DeWULF) All right. All right. Let me
22 just be quick, because I don't have a whole lot more, and
23 then we will finish.

24 Page 69, your heading looks like, D.1., do you
25 see that? It reads: Clark Hill Learned During the First

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1 Week of January 2014 That DenSco Had Suffered a
2 Substantially -- Substantial Loan Loss Because of
3 Chittick's Mismanagement and Failure to Follow the Lending
4 procedures DenSco Had Told Its Investors It Would Follow.

5 The reference there is that DenSco, through its
6 POMs, had told its investors the loan procedures it would
7 follow. Isn't that right?

8 A. Yes.

9 Q. And Chittick is aware of those loan procedures
10 and what he is telling his investors, right?

11 A. Oh, yeah.

12 Q. Okay. Let me explore with you for a moment, do
13 you think that Clark Hill and David Beauchamp are
14 responsible for the second fraud?

15 A. I think their negligence allowed it to happen.

16 Q. Because you think if they had done their job,
17 Chittick would have terminated his relationship with
18 Menaged?

19 A. I think that they would have pushed hard enough
20 with Chittick, and Chittick would have done the right
21 thing and shut the company down.

22 Q. So you are saying if Clark Hill and
23 Mr. Beauchamp would have done their job, they would have
24 advised Mr. Chittick to stop doing business with Menaged,
25 and Chittick would have followed that advice and shut it

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1 down?

2 A. Either that or they would have gotten out of
3 Dodge, because --

4 Q. Who is "they"?

5 A. The lawyers. They would have seen a house
6 burning down. Because, like I said, this \$50 million
7 lending program, 14 million is missing. That's the gist
8 of really what's happening in January and December.
9 December '13 and January '14. 50 million, 14 is gone.

10 Q. The redlines on this document 540 would indicate
11 new information, right? If it's -- if it's not crossing
12 something out, it's adding information. Fair?

13 MR. STURR: Object to the form.

14 THE WITNESS: I mean, some of it looks like it's
15 kind of semantics and different expressions.

16 Q. (BY MR. DeWULF) But it would be true that it's
17 different than the old draft, right?

18 MR. STURR: Object to the form.

19 Q. (BY MR. DeWULF) The old disclosure, right?

20 A. It's different.

21 Q. It's the redline?

22 A. Yeah.

23 Q. That's what it reflects?

24 So when we are seeing the redline here, we are
25 being -- the conclusion we would reach is this is new

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1 information or it's being described in a different way.

2 Fair?

3 Okay.

4 COURT REPORTER: Is that yes?

5 THE WITNESS: I'm sorry. Yes. It's late in the
6 day.

7 Q. (BY MR. DeWULF) Page 90, paragraph 249.

8 Is it the receiver's position now that part of
9 the wrongdoing by the lawyers was that they recommended
10 there be a Forbearance Agreement or at least facilitated
11 the entering of a Forbearance Agreement?

12 Is that your position?

13 A. I mean, I don't remember all the legal
14 positions, but my view is why would you ever do a
15 Forbearance Agreement when a guy stole \$14 million from
16 you?

17 Q. So the answer is yes?

18 A. Okay. Yes.

19 Q. And when you say that, you are saying as of
20 January, Menaged has stolen 14 million? Is that what --
21 to put a finer point to that, is that what you are saying,
22 Menaged has stolen 14 million? That's the first fraud you
23 are talking about?

24 A. It may have been a little more than that, but
25 the reason I say that, so he gets the money from DenSco,

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1 right? So he gets the money directly from DenSco.

2 Q. Right.

3 A. He gets to do what he wants with it. He can use
4 the Active money to buy the property. Okay?

5 So he has taken that money, and the question is
6 what's he doing with it? Well, in the sources and uses
7 that I have looked at of what he is doing with it, he is
8 spending it on all kinds of things. Gambling, personal
9 credit cards, all kinds of stuff.

10 Q. Right, but I want to limit your answer. We
11 don't know any of that. The lawyers don't know any of
12 that stuff. I see now what you have done in terms of
13 research, but what I am trying to do is get back to that
14 point.

15 You are saying as of the end of 2013, the loans
16 to Menaged that are bad loans are about \$14 million?

17 MR. STURR: Object to the form.

18 THE WITNESS: The eventual losses from that --

19 Q. (BY MR. DeWULF) Okay.

20 A. -- is 14 million. But when we really look at
21 the mechanics of it, you have the money going, the Active
22 money going to the trustee, and then the DenSco money
23 going directly to Menaged. And Menaged's story, that
24 David Beauchamp knows, is the money that is going to the
25 cousin, and the cousin steals the money.

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1 So if we look at all those transfers on the
2 second, because we are just looking at security, a lot of
3 people are just focusing on the security, but if you
4 follow the money, that's millions of dollars that goes
5 into the hands of Menaged's cousin, and yet there is,
6 like, a Forbearance Agreement. But I haven't seen
7 anything that talks about how we are going to -- what
8 investigation was done to actually recover that money.

9 I mean, the cousin is sitting on millions of
10 dollars, is what Menaged's own story is. That's what's
11 concerning me about kind of sitting in -- maybe I don't
12 know all the information about what they knew at that
13 time, but based on the emails and what I understand about
14 it, it seems like there is some, like, you know, massive
15 information about a cousin holding millions and millions
16 of dollars, and why isn't somebody going down that rabbit
17 hole? I mean, to me, Menaged's company should have been
18 shut down over this.

19 Q. Let me ask you to look at page 113. Heading a.
20 at the top of that page, Mr. Davis says: In early
21 January 2014, Clark Hill Advised DenSco It Could Sell
22 Promissory Notes Without First Issuing a New POM.

23 And is that based on the corporate journal? Is
24 that the basis for that statement?

25 A. So in 304 it says Chittick entered in his

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1 corporate journal "I can raise money," so yes.

2 Q. All right. So the basis for that statement is
3 the corporate journal?

4 A. Yes.

5 Q. And when we talk about --
6 I'm sorry. Was that answer yes?

7 A. Yes.

8 Q. Okay.

9 A. And there is other -- there may be other bases.

10 Q. So the corporate journal, so we are both talking
11 about the same thing, this is a series of entries by date
12 over a period of time where Mr. Chittick is reflecting on
13 certain events that occurred on that particular day. It's
14 a document that has been referred to in this case on other
15 occasions, right?

16 A. Yes.

17 Q. We are talking about the same thing?

18 A. Yeah.

19 Q. Okay. So let me ask you to look at page 124.

20 Let me go back just for a moment. 122, if I
21 could ask you a question about that. The heading --

22 A. Page 122?

23 Q. Yes, please. Heading 7: In Addition to Aiding
24 and Abetting Chittick's Breach of Fiduciary Duties, Clark
25 Hill Also Negligently Advised Chittick That DenSco Could

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1 Continue Giving Loan Proceeds to Menaged, Rather Than
2 Paying Them Directly to a Trustee.

3 And is the evidence of that also the entries in
4 the corporate journal?

5 A. I think it's emails from Beauchamp.

6 Q. And what paragraph are you referring to?

7 A. 349.

8 Q. So he is not actually saying in that email that
9 you can continue to give loan proceeds to Menaged, is he?

10 A. Right.

11 Q. He is just saying he is going to look at the
12 issue, right?

13 A. Yeah.

14 Q. Okay. What else is there that you think is
15 evidence of the fact that he actually gave advice in that
16 regard?

17 A. Paragraph 351, the journal.

18 Q. Right.

19 So the corporate journal is your primary source
20 for making that allegation?

21 A. I mean, it's the collection of all the records
22 in a sense, but, yeah, it's clearly quoted here several
23 times, yes.

24 Q. This idea of there being a red flag associated
25 with the 2011 loans, you remember we talked about that?

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1 A. Yes.

2 Q. That's in addition in this most recent closure,
3 right? That wasn't talked about in earlier disclosure?

4 A. I don't remember. It may be.

5 Q. When did you discover that that was a red flag?

6 MR. STURR: Object to the form.

7 Q. (BY MR. DeWULF) When did you arrive at the
8 conclusion that that was a red flag that David Beauchamp
9 should have seen?

10 MR. STURR: Object to the form.

11 THE WITNESS: I don't know.

12 Q. (BY MR. DeWULF) The -- let me talk generally
13 about the topic of punitive damages, Mr. Davis, because I
14 want to -- just using generally the -- kind of the
15 principle that punitive damages may be justified if there
16 is proof of an evil mind and outrageous conduct, in that
17 realm of kind of level of proof.

18 And there is a lot of case law that talks about
19 punitive damages, but can you share with me -- and I
20 understand you made arguments about negligence and you
21 made arguments about breaches of fiduciary duty and those
22 kinds of things, but what is it in this case about
23 Mr. Beauchamp's conduct or the conduct of the lawyers that
24 you think justifies punitive damages?

25 A. I mean, it has the feeling to me a little bit

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1 that there is kind of an attempt to cover things up at the
2 end.

3 Q. At the end? When precisely are you talking
4 about?

5 A. After Denny's suicide, to steer the investors
6 away from what was really going on within DenSco, but to
7 look to Menaged to -- to blame him and not look at the
8 realities within DenSco and the failures that DenSco had
9 over time to follow its own agreements and its loans. And
10 DenSco allowed this. I mean, they let the fox in the
11 henhouse.

12 And then the Iggy letter piece has really been
13 tough to swallow that piece. I don't understand why that
14 was not kept.

15 And then the whole idea of doing the privilege
16 for Denny personally, and that delays and headaches that
17 that created within the receivership.

18 I mean, I got a lot done by September. That
19 report was voluminous, but it would have been a lot more
20 had I had all the rest of that stuff.

21 Q. So you are saying that the basis for seeking
22 punitive damages against David Beauchamp and Clark Hill
23 are based on three things.

24 One, his post-suicide conduct, right?

25 A. Yeah.

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1 Q. Number two, the fact that the Iggy letter wasn't
2 provided to you for two months or so, right?

3 A. Yes.

4 Q. And three, that Clark -- strike that --
5 Gammage & Burnham was asserting certain privilege rights,
6 and Clark Hill and David Beauchamp facilitated that
7 assertion?

8 A. Yes, which were not valid.

9 Q. Okay. Anything else?

10 A. Oh, I don't remember. There may be other
11 things.

12 Q. Well, I'm asking you now, because I really want
13 to know. This is important. So if you can't think of
14 anything, that's fine, but if you can, I want you to share
15 it with me.

16 A. Okay. I think that's all, but there might be
17 more. I can't remember.

18 MR. DEWULF: I think I'm finished. Let me just
19 look really quickly at my notes here.

20 I'm finished. Thank you. Appreciate it.

21 MR. STURR: We will read and sign.

22 VIDEOGRAPHER: The time -- the time is 5:36 p.m.
23 We are ending this deposition with media seven.

24 (5:36 p.m.)

25


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

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

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

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

13
14 Kelly Sue Oglesby 11/28/2018
Kelly Sue Oglesby _____ Date
15 Arizona Certified Reporter No. 50178

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17 I CERTIFY that JD Reporting, Inc. has complied
18 with the ethical obligations in ACJA Sections
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