

DAVID WEEKLY, 10/2/2019

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RECESSES TAKEN

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Recess taken from 10:56 a.m. to 11:06 a.m.	34
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DAVID WEEKLY, 10/2/2019

1 VIDEOTAPED DEPOSITION OF DAVID WEEKLY, commenced
2 at 10:12 a.m. on October 2, 2019, at the law offices of
3 Coppersmith Brockelman, PLC, 2800 North Central Avenue,
4 Suite 1900, Phoenix, Arizona, before KELLY SUE OGLESBY, a
5 Certified Reporter, CR No. 50178, in and for the County of
6 Maricopa, State of Arizona, pursuant to the Rules of Civil
7 Procedure.

8 * * *

9 APPEARANCES

10 FOR PLAINTIFF:

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

17 FOR DEFENDANTS:

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

ALSO PRESENT:

Peter Davis
Chris Eichler, Legal Video Specialists

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1 Phoenix, Arizona
2 October 2, 2019
3 10:12 a.m.

4 * * *

5 (Deposition Exhibit No. 1152 was marked for
6 identification.)

7 VIDEOGRAPHER: We are on the record. This is
8 the videotaped deposition of David weekly, taken by the
9 defendants in Case No. CV 2017-013832, styled Peter S.
10 Davis versus Clark Hill, PLC, et al., filed in Superior
11 Court of the State of Arizona, County of Maricopa.

12 Today's date is October 2nd, 2019, at 10:12 a.m.
13 Our location is 2800 North Central Avenue, Suite 1900,
14 Phoenix, Arizona.

15 Kelly Oglesby is a certified reporter with
16 JD Reporting, 1934 East Camelback Road, Phoenix, Arizona.
17 My name is Chris Eichler. I'm a certified legal video
18 specialist with Legal Video Specialists, 3033 North
19 Central Avenue, Phoenix, Arizona.

20 Counsel, would you please identify yourself for
21 the record at this time, starting with the plaintiff's
22 counsel, first, please.

23 MR. STURR: Geoffrey Sturr, Osborn Maledon, on
24 behalf of the plaintiff, the receiver Peter Davis.

25 MR. RUTH: Marvin Ruth and John Dewulf on behalf
of the defendants.

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1 MR. STURR: I also note Mr. Davis is present.

2 VIDEOGRAPHER: Thank you, Counsel.

3 The court reporter will now swear in the
4 witness.

5

6 DAVID WEEKLY,
7 called as a witness herein, having been first duly sworn,
8 was examined and testified as follows:

9

10 EXAMINATION

11

12 Q. (BY MR. RUTH) Good morning, Mr. Weekly. My
13 name is Marvin Ruth. I represent the defendants Clark
14 Hill and David Beauchamp in this matter.

15 You have been deposed before, I take it?

16 A. Yes, sir.

17 Q. So I'll dispense with the usual instructions and
18 formalities about how we can best conduct ourselves in a
19 deposition, because I'm guessing you have heard them
20 before.

21 Just to note, however, that if you need to take
22 a break at any time, please let me know and we will take a
23 break.

24 A. Thank you.

25 Q. Mr. Weekly, you work for Fenix Financial

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1 Forensics, is that correct?

2 A. Yes.

3 Q. That's sometimes known as F3?

4 A. Correct.

5 Q. And you prepared an expert report on behalf of
6 the plaintiff in this case, correct?

7 A. Yes, sir.

8 Q. That report assesses the damages caused by the
9 defendants' alleged misconduct?

10 A. It assesses and calculates the damages suffered
11 by DenSco.

12 Q. As a result of the defendants' alleged
13 misconduct?

14 A. Yes.

15 Q. Who assisted you at F3 in preparing your report?

16 A. Primarily two other colleagues of mine. One is
17 Brent Taylor, T-a-y-l-o-r, and the other is Andrew Short.

18 Q. Thank you.

19 was there, between Mr. Taylor, Mr. Short, and
20 yourself, an allocation of responsibility with respect to
21 preparing this report?

22 A. Well, I prepared and wrote the report, but they
23 assisted in the analysis of the underlying information for
24 the calculations.

25 Q. And the scope of their work would be captured in

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1 the invoices that you generated for the plaintiff in this
2 case?

3 A. Yes.

4 Q. Can I ask that when I refer to work that you
5 did, that you refer as to both yourself and Mr. Taylor and
6 Mr. Short and anyone else at F3 who may have contributed
7 to this report?

8 A. If I understand your question, yes.

9 Q. In other words, when I ask if you did something,
10 I'm not referring to just you specifically, but to the
11 entity that you work for.

12 A. That's what I understand, yes.

13 Q. Mr. Weekly, how long have you been at F3?

14 A. I think this is about our 11th -- it's about the
15 11th year anniversary on the button we formed that firm.

16 Q. I don't want to belabor your background or your
17 resumé. Where were you at immediately prior to F3?

18 A. I was -- I had left FTI Consulting, where I was
19 on their management team, and I had a two-year noncompete,
20 except for existing clients, so I worked from my home for
21 a couple of years.

22 Q. What was your title at FTI at the time you left?

23 A. I was a senior managing director.

24 Q. What were your job responsibilities as senior
25 managing director at FTI?

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1 A. I had client responsibilities for some of my
2 time, but I also had responsibility for our major account
3 relationships and our law firm relationships throughout
4 the world.

5 Q. Was one of those account relationships with
6 Osborn Maledon?

7 A. No.

8 Q. Was one of those account relationships with
9 Mr. Ryan Anderson's law firm, Guttilla Murphy Anderson?

10 A. No.

11 Q. Since -- did you form F3?

12 A. I did, with two other partners.

13 Q. Who were those two other partners?

14 A. Brent Taylor, who I mentioned earlier, and David
15 Knopf, which is K-n-o-p-f.

16 Q. Mr. Knopf is still with you at F3?

17 A. Yes.

18 Q. And you said you formed FTI about 11 years ago,
19 correct?

20 MR. STURR: No.

21 THE WITNESS: No. F3.

22 Q. (BY MR. RUTH) I'm sorry. F3, yes.

23 Is that correct?

24 A. Yes.

25 Q. And have your responsibilities at F3 changed

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1 since its founding?

2 A. Not really, no. I have served clients
3 predominantly during that time.

4 Q. During that time have any -- has Osborn Maledon
5 ever been an F3 client, or have you ever -- let me
6 rephrase that.

7 Have you ever been retained by Osborn Maledon to
8 provide as a consulting or testifying expert?

9 A. Yes.

10 Q. And how many times is that?

11 A. I looked back at our prior engagements. I think
12 about four or five over that timeframe.

13 Q. What's the last such retention you can recall?

14 A. I think in my CV, which was attached to my
15 report as Exhibit B, it shows two cases in the last five
16 years.

17 Q. Why don't we go ahead and flip to that. And I'm
18 afraid -- does yours have Bates numbers on it?

19 MR. STURR: Do you want to mark this?

20 I'm sorry. It's been marked as --

21 MR. RUTH: Why don't we put that on the record.

22 It's been marked as Exhibit 1152. Is that
23 correct?

24 COURT REPORTER: Yes.

25 MR. STURR: Thank you.

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1 Q. (BY MR. RUTH) And Exhibit 1152 is plaintiff's
2 disclosure of your expert report, and it attaches a copy
3 of your expert witness report, is that correct?

4 A. Yes, sir.

5 Q. And if we look at Exhibit B to 1152, we have got
6 a copy of your resumé or CV, is that correct?

7 A. Yes.

8 Q. And if we look at the last page, page 3 of
9 Exhibit B, it lists your deposition and testimony
10 experience from 2015 to the present?

11 A. Yes.

12 Q. And if you could, could you identify which of
13 these deposition and testimony experiences relate or were
14 done while retained by Osborn Maledon as an expert?

15 A. Yes, sir. There are two. The third bullet
16 point down, Cardiovascular Consultants versus David Sease,
17 S-e-a-s-e; and the next one, Pam Case Bobrow, B-o-b-r-o-w,
18 versus Kenmark Deeds.

19 Q. Any others?

20 A. No, not on this list.

21 Q. Not on this list.

22 I believe you testified before that you had done
23 maybe four or five engagements with Osborn Maledon?

24 A. Yes, sir.

25 Q. I take it, then, those other two or three

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1 predated 2015?

2 A. Correct.

3 Q. Do you recall what any of those engagements
4 were?

5 A. We had an engagement for Honeywell. There was
6 an engagement involving a company. I'm trying to remember
7 the name of the company. It was -- the principal was a
8 Mr. Ernst. And I believe one other with an air ambulance
9 company. I think that's the only others in that
10 timeframe.

11 Q. Starting with the pre-2015 representations, you
12 mentioned work done retained by Osborn Maledon with
13 respect to an air ambulance litigation?

14 A. Correct.

15 Q. What was the nature of your involvement in that
16 case?

17 A. It was a post-acquisition dispute.

18 Q. What was the nature of the opinion, if any, you
19 were asked to render?

20 A. It was a combination of evaluating an accounting
21 opinion and a damage calculation by the plaintiff in that
22 case.

23 Q. Did the damages concern -- what did the damages
24 concern? What were the allegations?

25 A. Various issues related to the purchase agreement

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1 and adjustments to that.

2 Q. Would it be fair to say that your opinion
3 related to the valuation of the company or the valuation
4 of what was purchased?

5 A. No.

6 Q. Can you be more specific as to what type of
7 damages you were evaluating?

8 A. I reviewed the damages of the plaintiff that
9 related to mostly receivables disputes at the time of the
10 acquisition.

11 Q. So you were assessing their value or their
12 collectability?

13 A. The calculations of damages that were made by
14 the plaintiff.

15 Q. And you issued a report in that case?

16 A. The report was never issued. The case settled.

17 Q. I take it, then, you also did not testify in
18 that case?

19 A. That's correct.

20 Q. Nor did you sit for a deposition in that case?

21 A. I don't believe I had a deposition.

22 Q. With respect to the engagement related to
23 someone you identified as Mr. Ernst, do you recall what
24 the nature of your involvement was?

25 A. Yes. That case was Tera Funding, now I recall,

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1 and it was a hard-money lender. A very similar business
2 to DenSco.

3 Q. Do you recall who Osborn Maledon represented in
4 that matter?

5 A. Tera Funding.

6 Q. And was Tera Funding the hard-money lender?

7 A. Yes.

8 Q. And what was the nature of your engagement in
9 that matter?

10 A. There were a number of issues there related to
11 disputes. I can't remember all the details.

12 Q. Do you remember the general nature of the
13 dispute?

14 A. I should remember that, but I -- I can't
15 remember that detail. It had to do with the continuation
16 of Tera Funding after the real estate collapse, and the
17 continuation of that entity to try to pay off the
18 investors.

19 Q. Did you provide a damage analysis or damage
20 assessment on that?

21 A. I issued an expert report on a number of
22 different issues and I testified in an arbitration
23 hearing.

24 Q. Do you recall what your expert report concerned?
25 I mean, are you assessing collectability of loans,

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1 valuation of the hard-money lender --

2 A. It had to do with a number of things, including
3 assessing the operating agreement and provisions of the
4 operating agreement, as well as reviewing the activity in
5 the delinquent loans and the ultimate resolution of those
6 loans. It was a pretty comprehensive series of analyses.

7 Q. During your engagement through Osborn Maledon
8 for Tera Funding, did you provide any expert analysis or
9 opinion as to the -- let me strike that.

10 Did you assess proper hard-money lending
11 procedures and practices?

12 A. I don't know that I'd say I assessed them. I
13 certainly understood those and evaluated any impact they
14 may have had on any of the claims.

15 Q. But you weren't assessing the propriety of those
16 hard-money lending practices?

17 A. I didn't issue any opinions related to that,
18 that I recall.

19 Q. Were you asked to evaluate lien priority or --

20 A. I'm sure there was certainly a lot of that type
21 analysis done on various loans, but I can't recall the
22 specifics.

23 Q. Do you recall what year that litigation was?

24 A. Well, it was before 2015. I think 2013.

25 Q. And you issued a report in that matter, correct?

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1 A. Yes, sir.

2 Q. And did you also end up testifying in a
3 deposition?

4 A. I believe I was deposed, and as I said, I
5 testified in an arbitration.

6 Q. Do you still have a copy of that report?

7 A. No.

8 Q. What's your -- what's F3's retention policy for
9 retaining expert reports at issue?

10 A. In our arrangement letter, we typically return
11 all materials to counsel at the completion. We sometimes
12 maintain a copy of the report, but I don't believe we have
13 a copy of that report.

14 Q. Would you have a copy of your deposition
15 transcript?

16 A. No. We don't retain those.

17 Q. In Honeywell, what was the nature of your
18 engagement?

19 A. Honeywell was a defendant in a matter involving
20 a company who helped manufacture certain parts that were
21 being used by Honeywell in a number of the aircraft that
22 they supplied parts for. And it was a disagreement or it
23 was a lawsuit by the manufacturer, I think, for I believe
24 it was wrongful termination or something, a breach of
25 contract.

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1 Q. And what do you recall being asked to opine on?

2 A. A pretty substantial lost profits calculation by
3 the plaintiff primarily.

4 Q. So the plaintiff's, to put it broadly,
5 allegation was that due to Honeywell's conduct, whatever
6 it was, plaintiff lost money?

7 A. I believe it was that Honeywell terminated their
8 supplier contract, and they sued Honeywell and then
9 prepared a damage claim on what they believed their lost
10 profits were.

11 Q. Did you prepare an alternative damage claim or
12 did you merely rebut the plaintiff's damage claim?

13 A. It was not an alternative calculation, as I
14 recall, but it was a pretty comprehensive rebuttal of the
15 assumptions and the calculations of those lost profits.

16 Q. I take it you issued a report in that matter?

17 A. Yes, sir.

18 Q. Do you have a copy of that report?

19 A. I don't, no.

20 Q. Were you deposed in that matter?

21 A. I believe so.

22 Q. Do you remember the name of the plaintiff?

23 A. I want to say MicroTech, but I may be wrong on
24 that. I can't remember precisely.

25 Q. Well, then moving on to some of your more recent

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1 representations involving Osborn Maledon, the first one on
2 this list is Cardiovascular Consultants versus Davis R.
3 Sease, Sease -- I'm not sure how to pronounce it -- in
4 2015.

5 Do you see that?

6 A. Yes, sir.

7 Q. Who did Osborn Maledon represent in that matter?

8 A. They represented Mr. Sease, I'm pretty sure.

9 Q. And what was the nature of your engagement?

10 A. It was a dispute between a hospital group and
11 individual doctors over the management of the physician
12 group.

13 Q. And what were you asked to opine on?

14 A. Best I recall, it was the calculation of the
15 partner distributions and activity that was charged to or
16 accredited to their capital accounts.

17 Q. So the dispute centered on whether the partners
18 had received appropriate, proper distributions?

19 A. I think the partners, and I think there was a
20 claim and then a counterclaim, because I think the
21 partners left the group and then they counterclaimed back
22 that the managing partner had mismanaged the group and had
23 failed to pay the proper amounts to the physicians.

24 Q. And you issued an opinion in that matter?

25 A. I did.

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1 MR. STURR: Do you mean a report?

2 Q. (BY MR. RUTH) I'm sorry, yes.

3 You issued a report in that matter?

4 A. An opinion in the report.

5 Q. And do you have a copy of that report?

6 A. I don't know.

7 Q. Were you deposed in that matter?

8 A. Yes.

9 Q. And do you know if you testified at trial in
10 that matter?

11 A. I did not testify, or it would be on this resumé
12 summary.

13 Q. Do you recall who specifically at Osborn Maledon
14 you worked for or interacted with in the Cardiovascular
15 Consultants matter?

16 A. Yes.

17 Q. Who was that?

18 A. Colin Campbell.

19 Q. Did you work with Mr. Sturr in that matter as
20 well?

21 A. No, sir.

22 Q. What about the Pam Case Bobrow versus Kenmark
23 Deeds matter? Who at OM did you work with on that matter?

24 A. Mr. Campbell also.

25 Q. Was Mr. Sturr involved in that matter?

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1 A. Not that I recall.

2 Q. Before we go back to the Bobrow, before I
3 forget, in the Honeywell matter, who at Osborn Maledon did
4 you primarily work with?

5 A. Bill Maledon.

6 Q. Was Mr. Campbell involved in that?

7 A. No, sir.

8 Q. What about the Tera Funding matter? Who was
9 the --

10 A. That was Mr. Campbell also.

11 Q. And the air ambulance dispute?

12 A. Mr. Maledon.

13 Q. Was Mr. Campbell involved in that case?

14 A. No, sir.

15 Q. What was the nature of your engagement in the
16 Pam Case Bobrow versus Kenmark Deeds matter listed on this
17 exhibit?

18 A. This was a dispute between the wife of one of
19 the owners of Kenmark Deeds and a -- related to a company
20 that was a hard-money lender in real estate matters.

21 Q. I'm sorry. Ms. Pembrow or Ms. Bobrow --
22 I don't know how to pronounce it. Do you know
23 how to pronounce it?

24 A. I think it's Bobrow.

25 Q. -- Bobrow, was she the OM's client, Osborn

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1 Maledon's client?

2 A. No. Kenmark Deeds.

3 Q. Okay. And Ms. Bobrow was suing Kenmark Deeds.

4 Can you explain that again to me?

5 A. You are really taxing my memory, but I'll do the
6 best I can. It's -- it had to do with her agreements with
7 Kenmark Deeds. Her husband was one of the principals.
8 She worked there. She had some notes that she had entered
9 into with that company that were in default, and they were
10 disputing the resolution of those defaulted notes.

11 Q. So Ms. Bobrow had lent money to Kenmark or
12 Kenmark had lent money to her?

13 A. Ms. Bobrow had -- I believe she was -- she was
14 either an investor -- I believe she was an investor, but I
15 think the investor equity, some was converted to notes.
16 So there was a note at some point. I just don't remember
17 the exact details, but she disputed the payoff and the
18 interest rates.

19 Q. And Kenmark Deeds was a hard-money lender?

20 A. Yes.

21 Q. What was the nature of the opinion you were
22 asked to render?

23 A. It was, again, a rebuttal of the claims that
24 were brought by Ms. Bobrow, Bobrow.

25 Q. In rendering that opinion, were you asked to

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1 assess the value of the hard-money lender?

2 A. No.

3 Q. Were you asked to assess the value of any equity
4 interests in the hard-money lender?

5 A. I don't believe so. I think they had some
6 disputes over the ownership between the wife and the
7 husband, but I don't know that that ended up being part of
8 the dispute.

9 Q. So do you recall what the nature of your
10 economic analysis was?

11 A. It was a rebuttal of the plaintiff's damage
12 claim for the amount that was due, based on the operating
13 agreement and the interest rates that were used.

14 Q. As part of that engagement, were you asked to
15 assess hard-money lending practices?

16 A. I don't recall any opinions related to that. I
17 certainly reviewed those practices as part of the
18 underlying work that we did.

19 Q. Do you recall if that entity, Kenmark Deeds, was
20 local? was this --

21 A. It is local, or was. I don't know if it's still
22 active.

23 Q. And, again, your primary contact at OM on this
24 matter was Mr. Campbell?

25 A. That's correct.

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1 Q. And did you end up issuing a report in that
2 matter?

3 A. I did, yes.

4 Q. Do you still have a copy of that report?

5 A. I don't know.

6 Q. On all these matters where you have issued a
7 report but you are not sure whether you still have a copy
8 of the report, is that something I can ask you to check
9 your files --

10 A. Certainly.

11 Q. -- to see if those reports are still in
12 existence?

13 A. Certainly.

14 Q. All of these engagements that we have just
15 discussed, these four or five, these were while you were
16 with F3, correct?

17 A. That is correct.

18 Q. Prior to F3, while you were at FTI, did you do
19 expert consulting or testifying work --

20 A. While I --

21 Q. -- engaged by Osborn Maledon?

22 A. While I was at FTI?

23 Q. Yes.

24 A. It's possible. I don't recall. We did a lot of
25 work for Honeywell.

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1 Q. Since you have been at F3, have you ever been
2 engaged by Ryan Anderson's law firm, Guttilla Murphy
3 Anderson, to render or consult?

4 A. No, sir.

5 Q. Have you previously worked with Peter Davis or
6 Simon Consulting?

7 A. I have not previously worked with him, no.

8 Q. I take it by the way you say that, that you have
9 been perhaps on opposing sides or --

10 A. We were on opposing sides on one -- one matter
11 that I recall.

12 Q. What matter is that?

13 A. That would be the Tera Funding matter.

14 Q. Do you recall what Mr. Davis's role was in the
15 Tera Funding matter?

16 A. He represented the other side in that case.

17 Q. Any other matters that you recall being involved
18 or working with Peter Davis?

19 A. Not directly, no.

20 Q. What about indirectly?

21 A. Well, I say that because I, you know, I have
22 known of and I have known Mr. Davis for many years, but
23 we -- I don't recall working on any matters for or
24 against.

25 Q. In the years in which you have known Mr. Davis,

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1 have you found him to be professional?

2 A. Mr. Davis is a very professional person and very
3 ethical.

4 Q. Careful and accurate in his work?

5 A. Everything I have seen.

6 Q. And although he was opposed to you in the Tera
7 Funding case, nothing in that case would have changed your
8 opinion of his work or the --

9 A. No.

10 Q. -- manner in which he prepared it?

11 A. No, sir.

12 Q. Have you reviewed -- well, strike that. We will
13 come back to it later.

14 When were you engaged in this matter that brings
15 us here today?

16 A. I did look back at our arrangement letter, and I
17 think it was dated November of 2017.

18 Q. So that would be shortly after this lawsuit was
19 filed?

20 A. I believe that's correct.

21 Q. Was there an engagement letter?

22 A. Yes, sir.

23 Q. I don't believe we have a copy of that. Is that
24 something you could provide?

25 A. Yes.

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1 Q. What do you recall the scope of your engagement
2 being?

3 A. We were engaged to calculate the damages that
4 were suffered by DenSco as a result of their claims
5 against Clark Hill.

6 Q. Were you asked to review or critique any of
7 Mr. Davis's work for the receivership?

8 A. We certainly reviewed a substantial amount of
9 work. Anything related to completing the damage
10 assessment.

11 Q. Were you asked to provide critiques or input on
12 Mr. Davis's work?

13 MR. STURR: Form.

14 THE WITNESS: I wouldn't describe it that way.
15 We had interaction with Mr. Davis and his staff to
16 understand the underlying document, and we cooperated with
17 them and they cooperated with us.

18 Q. (BY MR. RUTH) For example, did you see draft
19 reports issued by the receiver and asked to comment or
20 provide input on them before they were submitted?

21 A. Are you referring to --

22 MR. STURR: Form. What reports are you
23 referring to, Marvin?

24 MR. RUTH: Any reports issued by the receiver in
25 the receivership.

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1 MR. STURR: So the reports that had been issued
2 through the receivership court, any of those reports?

3 MR. RUTH: Correct.

4 THE WITNESS: That's what I was going to say,
5 did you refer to the status reports, and the answer is no.
6 We saw them when they were issued.

7 Q. (BY MR. RUTH) Okay. Mr. Weekly, if you recall,
8 do you know what your total billings are in this matter so
9 far?

10 A. I think through -- the most recent billings
11 would be through the end of August, and they are just over
12 400,000.

13 Q. And all of those billings relate to your work in
14 assessing the damages as part of the opinion you have
15 rendered and report you have issued in this case?

16 A. Yes, sir.

17 (Deposition Exhibit No. 1153 was marked for
18 identification.)

19 Q. (BY MR. RUTH) I'm not going to go through this
20 invoice, these invoices in much detail, Mr. Weekly. I
21 just wonder if you could flip to the page 5598,
22 RECEIVER 5598 on Exhibit 1153.

23 A. If it's all right, could I just --

24 Q. Of course. Please do.

25 A. -- flip through the whole package first?

DAVID WEEKLY, 10/2/2019

1 Okay. I'm sorry.

2 Q. Page 5598 of Exhibit 1153.

3 And before I ask you about this page, you have
4 had a chance to generally or briefly review this document?

5 A. I reviewed these invoices when they went out,
6 but I haven't looked at them since.

7 Q. Okay. But these are invoices submitted by F3 --

8 A. Yes, sir.

9 Q. -- for its work as an expert in this matter,
10 correct?

11 A. Yes, sir.

12 Q. And who were they submitted to?

13 A. There is a cover letter that's not included on
14 these. There is a transmittal letter that generally
15 accompanies, unless these were sent by email, but I doubt
16 that. They should have been sent with a cover letter,
17 so -- and they would have been sent to Mr. Sturr or
18 Mr. Campbell, or both.

19 Q. Is it -- is Osborn Maledon paying your fees in
20 this matter?

21 A. Yes.

22 Q. Going to that page, page 5598, I'm really just
23 trying to understand how to read this.

24 So page 5598 of Exhibit 1153 covers the period
25 May 1st, 2009, through May 31st, 2009?

DAVID WEEKLY, 10/2/2019

1 A. Yes, sir. 2019.

2 Q. I'm sorry. Yes, 2019. This case has been going
3 on a long time, but not that long.

4 And then it says professional fees this period,
5 29,287.50, correct?

6 A. Correct.

7 Q. And then it says unpaid fees prior period,
8 189,475, is that correct?

9 A. Correct.

10 Q. For total fees outstanding of 218,762, correct?

11 A. Correct.

12 Q. Can you explain the nature of the reconciliation
13 that comes below that?

14 A. That's just a tie-out of the 218,000.

15 Q. Okay. So as of May 31st, 2019, you were still
16 owed \$218,760.50.

17 Is that -- am I reading that correctly?

18 A. That's correct.

19 Q. Do you know if that balance has been brought
20 current?

21 A. It's almost current. There was a monthly
22 retainer amount that -- that was being paid, and that
23 increased to the point where most of the invoices are
24 current as of now. There are some outstanding. I just
25 don't know the amount.

DAVID WEEKLY, 10/2/2019

1 Q. And that original monthly retainer was a \$20,000
2 retainer?

3 A. Correct.

4 Q. So you would bill against that retainer, and
5 then charge Osborn Maledon for the difference every month?

6 A. We would send them an invoice for the activity
7 in each month, and they would remit the retainer amount,
8 which I think increased in -- sometime in 2019 to \$40,000
9 as the work ramped up, but the amount paid through the
10 monthly retainer would be compared to the amount of the
11 outstanding billings.

12 Q. As part of that work, were you asked to provide
13 an opinion on whether certain DenSco deeds of trust were
14 in first or second lien position?

15 A. No.

16 Q. Were you ever asked to evaluate or provide an
17 opinion on when DenSco was insolvent?

18 A. We didn't provide an opinion, but in my report I
19 commented that we had reviewed the calculations that
20 Mr. Davis and his team had made, and that we agreed with
21 his conclusions. But it's -- I only had one opinion in
22 this case, and it's on the damages.

23 Q. Was the date of insolvency material to your
24 opinion?

25 A. Well, I know there were some other legal issues

DAVID WEEKLY, 10/2/2019

1 around that, and we were asked to look at the calculations
2 that Mr. Davis's team had made. They are not relevant to
3 my calculation, so I didn't really spend much time on it.

4 Q. What legal issues surrounded the date of
5 insolvency?

6 A. I don't know. I didn't really inquire about
7 that.

8 Q. Did you ask why you were being asked to review
9 the insolvency analysis?

10 MR. STURR: Form.

11 THE WITNESS: I think there was a discussion
12 that there had been a calculation made. We were provided
13 with a copy of that calculation and told that it had to do
14 with other issues that we weren't being asked to provide
15 opinions on, so we simply reviewed those calculations. I
16 did that work, or a lot of it.

17 Q. (BY MR. RUTH) Those calculations, if you
18 recall, were done on a balance sheet basis, the
19 determination of insolvency?

20 A. They were. They were done based on the balance
21 sheet method.

22 Q. And what is the balance sheet method for
23 determining insolvency?

24 A. It's -- it's a process of looking at the fair
25 value of the assets and the fair value of the liabilities

DAVID WEEKLY, 10/2/2019

1 to see if there is positive or negative equity.

2 Q. In reviewing the receiver's insolvency analysis,
3 did you form your own opinion as to the fair value of
4 DenSco's assets?

5 A. We did.

6 Q. And what was your opinion?

7 A. Our opinion was that DenSco was more insolvent
8 than even Mr. Davis had calculated it. His calculations
9 were conservative, but we certainly agreed with the dates
10 that were part of that analysis.

11 Q. Which assets or what assets were you evaluating
12 as part of that analysis?

13 A. Most of the work had to do with the fair value
14 of the underlying collateral for the loans to determine if
15 they had assets that were at a negative equity.

16 Q. And how did you go about determining the fair
17 value of the collateral?

18 A. We actually looked at -- for a number of the
19 early calculations, because after a certain period of
20 time, it was pretty obvious that no matter which way you
21 looked at it, they were well under water.

22 But the only difference between what we did and
23 what Mr. Davis's team did was they assessed the value
24 based on the ultimate sale in most places, in most cases,
25 where we looked at other data that was closer to the date

DAVID WEEKLY, 10/2/2019

1 that the calculation was made that we believed was known
2 or knowable.

3 Q. When you say that most of the collateral was
4 under water, is that as a result of there being more liens
5 on the property, securing debt in excess of what the
6 property was worth?

7 A. That's correct.

8 Q. And if my recollection is correct, this would
9 have been as of September; this would have been as of fall
10 2012?

11 A. I think the earliest calculations were in August
12 of 2012.

13 Q. And your assessment was that that was a
14 conservative view of insolvency?

15 A. Yes.

16 Q. Under your analysis, DenSco was actually
17 insolvent prior to that date?

18 A. We didn't -- we didn't actually determine a
19 date. What we did determine was that the negative equity
20 was larger than what Mr. Davis's team calculated.

21 Q. Did you also do a cash flow test for insolvency?

22 A. We did not.

23 Q. Was there a reason why not?

24 A. Well, we weren't asked to do that, and the
25 company was still operating and, you know, that generally

DAVID WEEKLY, 10/2/2019

1 is the best test you can have.

2 Q. You said you are not providing an opinion as
3 part of your damage assessment with respect to the date of
4 insolvency, correct?

5 A. That's correct.

6 Q. Have you reviewed Mr. David Perry's analysis of
7 insolvency in his report?

8 A. Yes.

9 Q. Are you providing a rebuttal to that analysis?

10 A. No.

11 Q. Why don't we take a real quick break. It's been
12 about an hour.

13 VIDEOGRAPHER: We are off the record. The time
14 is 10:56 a.m. This is the end of media one.

15 (A recess was taken from 10:56 a.m. to
16 11:06 a.m.)

17 VIDEOGRAPHER: We are back on the record. The
18 time is 11:06 a.m. This begins media two.

19 Q. (BY MR. RUTH) welcome back, Mr. Weekly.

20 A. Thank you.

21 Q. If we could go back to Exhibit 1152, which is
22 your expert report. Go ahead and keep that handy. We
23 will be going back to it a fair amount.

24 If you could flip to page 1 of 11 of your
25 report.

DAVID WEEKLY, 10/2/2019

1 A. Okay.

2 Q. This page includes some background, correct?

3 A. That's correct.

4 Q. It looks like at the bottom you stated in the
5 footnote that the, "Statements in the Background section
6 are sourced from the Complaint and various Disclosure
7 Statements or other documents provided to F3."

8 Do you see that?

9 A. Yes, sir.

10 Q. Did I read that correctly?

11 A. Yes.

12 Q. Let me ask you in general, are you opining to
13 the veracity of any of these alleged facts?

14 A. No.

15 Q. Are you simply accepting them as true for the
16 context of your report?

17 A. Yes. As footnote 1 says, they are just to
18 provide an overview and they are not intended to be an
19 exact summary of the facts.

20 Q. Understood. Let me just ask you about a couple
21 of them.

22 In paragraph 2, you write: David G. Beauchamp
23 is an attorney who advised DenSco on general business,
24 securities transactions and other legal matters.

25 Do you see that?

DAVID WEEKLY, 10/2/2019

1 A. Yes.

2 Q. Do you recall what the basis was for your
3 statement that Mr. Beauchamp advised DenSco on general
4 business matters?

5 A. It was most likely referenced directly to one of
6 the disclosure statements.

7 Q. Is the scope of Mr. Beauchamp's representation
8 of the defendants material to your opinion?

9 A. Not really, because I'm not -- I don't have any
10 opinions related to liability issues at all.

11 Q. Paragraph 5 you state, "In November 2013,
12 Chittick learned from Menaged that a number of DenSco
13 loans were double encumbered, making it uncertain whether
14 DenSco had sufficient collateral value in these loans."

15 Do you see that?

16 A. Yes, sir.

17 Q. Did I read that correctly?

18 A. Yes.

19 Q. Let me ask you first, what do you mean by the
20 phrase "double encumbered," just so we're on the same
21 page?

22 A. It means there were two loans on the same
23 property.

24 Q. Two loans secured by deeds of trust recorded
25 against the same piece of collateral?

DAVID WEEKLY, 10/2/2019

1 A. Correct.

2 Q. Is the date on which Chittick allegedly learned
3 about the double encumbrance material to your opinion?

4 A. No.

5 Q. If the facts -- if it were to be shown that
6 Mr. Chittick was aware in the summer of 2013 that a number
7 of his DenSco loans were double encumbered, would that
8 change or affect your opinion at all?

9 A. No.

10 Q. If the facts were that Mr. Chittick learned in
11 September of 2012 that in fact a number of his properties
12 were double -- a number of his loans were double
13 encumbered, would that change or alter your opinion at
14 all?

15 A. No, sir.

16 Q. In assessing the receiver's solvency analysis, I
17 believe you testified that you looked at, you evaluated
18 DenSco's assets, primarily the value of its collateral
19 securing its loans.

20 Is that accurate?

21 A. Yes. Those wouldn't -- their assets were the
22 loans.

23 Q. Right.

24 A. The underlying collateral value compared to the
25 loan balance was what we assessed.

DAVID WEEKLY, 10/2/2019

1 Q. And part -- as part of doing that analysis, did
2 you come to any conclusions as to whether DenSco was aware
3 that it had negative equity in some of these loans?

4 A. For purposes of that analysis, I didn't consider
5 that.

6 Q. Did you review any communications between DenSco
7 or its principal Mr. Chittick and Mr. Menaged in assessing
8 the value of its assets?

9 A. It's likely we did, to the extent that there was
10 documentation for the value that would have been known or
11 knowable as of the time of the assessment.

12 Q. But you didn't reach any conclusions or opinions
13 as to whether DenSco was aware of its insolvency at that
14 time?

15 A. No, sir.

16 Q. Go to paragraph 10 on page 2. Actually, let's
17 go up to 8, please, paragraph 8.

18 A. Okay.

19 Q. Paragraph 8 states, "The Receiver disclosed two
20 frauds were perpetrated against DenSco and its investors
21 (also referred to as two Ponzi schemes by the Receiver)."
22 And then it describes the first fraud and the second
23 fraud.

24 Do you see that?

25 A. Yes, sir.

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1 Q. Are you aware of any other additional frauds
2 perpetrated by Mr. Menaged on DenSco or Mr. Chittick?

3 A. I'm not aware of any that were identified and
4 asserted.

5 Q. Are all the losses that DenSco suffered as a
6 result of Mr. Menaged, the result of either the first or
7 the second fraud?

8 MR. STURR: Form.

9 THE WITNESS: I didn't look at anything besides
10 the activity in the first fraud and the second fraud, so I
11 don't know.

12 Q. (BY MR. RUTH) For example, do you know whether
13 there were any non-performing loans to Menaged that were
14 not part of the first fraud or the second fraud?

15 A. I don't know.

16 Q. Let's go to paragraph 10 under Role of F3.

17 In the second sentence you write: In performing
18 our work to date we have: 1) considered the documents
19 listed in Exhibit A; 2) held discussions with the
20 Receiver, and analyzed the work performed by the Receiver
21 related to four status reports issued between
22 September 19th, 2016, and March 11th, 2019; 3) analyzed
23 relevant DenSco financial records including information
24 related to DenSco loans and DenSco QuickBooks file.

25 Do you see that?

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1 A. Yes.

2 Q. I believe I asked you this with respect to the
3 four status reports. But you didn't provide any comment
4 or critiques with respect to those reports before they
5 were issued, correct?

6 A. That's correct.

7 Q. The documents listed in Exhibit A include
8 several Excel spreadsheets that you received from the
9 receiver.

10 would that be accurate?

11 A. Yes.

12 Q. We can look at Exhibit A, if you want.

13 For example, I think if we look at items 28
14 through 36, those all appear to be spreadsheets, starting
15 with the title Receiver Work Product.

16 Do you see that?

17 A. Yes.

18 Q. Do you recall whether the receiver -- did the
19 receiver make any changes to any of this work product as a
20 result of your analysis?

21 MR. STURR: Form.

22 THE WITNESS: Not that I know of.

23 Q. (BY MR. RUTH) So you took these documents to be
24 true and accurate as provided to you?

25 A. No.

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1 Q. You independently verified all the information
2 in those spreadsheets?

3 A. Not all of it, but a substantial amount of it,
4 and we worked very closely with members of his staff to
5 understand the underlying data.

6 Q. Why did you feel the need to verify the
7 information in the spreadsheets?

8 A. To the extent we used any of that information as
9 a basis for our calculations, it's my responsibility, my
10 professional responsibility to, at a minimum, test the
11 underlying data for accuracy, which I did.

12 Q. In testing that data, did any of it come back as
13 inaccurate?

14 A. Not that I remember.

15 Q. You don't recall going back to Mr. Davis and
16 saying it looks like something is off here on one of these
17 spreadsheets?

18 A. I don't recall doing that, but we worked, as I
19 said, very closely with his staff. Sometimes there may
20 have been additional information we asked for and that
21 type of thing, but I don't recall anything that was not
22 correct.

23 Q. You say you reviewed numerous, I'm sorry,
24 reviewed numerous DenSco bank account statements and
25 analyzed relevant property records.

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1 MR. STURR: Where are we? Back on 2 --

2 MR. RUTH: I'm sorry.

3 MR. STURR: -- paragraph 10? Sorry.

4 Q. (BY MR. RUTH) We are back on paragraph 2 of
5 Exhibit 1152. Item number 4 in paragraph 10.

6 A. Okay.

7 Q. Among other things, you reviewed relevant
8 property records, deeds of trust and closing statements.
9 Do you see that?

10 A. Yes.

11 Q. Can you explain to me how your review of those
12 documents affected your analysis of DenSco's damages or
13 losses suffered?

14 A. Yes. The calculations of the workout loans
15 predominantly involved refinancing of properties, involved
16 payoffs of properties, and that was essential to the
17 analysis of the ultimate recovery on those properties and
18 how the funds from the settlement statements were then
19 accounted for through the QuickBooks.

20 Q. Had the receiver already performed such an
21 analysis?

22 A. I believe they certainly performed some
23 analysis, but not that we relied on. We did our own
24 calculations.

25 Q. Do you recall those calculations differing from

DAVID WEEKLY, 10/2/2019

1 the receiver's analysis?

2 A. Well, they differ in the sense that we used a
3 certain starting date and only opined on certain of these
4 workout loans, and I don't believe there were any
5 differences. The underlying data was the same.

6 Q. So if our expert, Mr. Perry, relied on
7 Mr. Davis's data and analysis, you wouldn't think that
8 that reliance was unfounded or misplaced?

9 MR. STURR: Form.

10 THE WITNESS: I'm not sure I understand the
11 question. I haven't seen anything in Mr. Perry's report
12 related to that, but I can only speak to the work we did
13 and -- and the documentation that we put together to
14 support each of our conclusions.

15 Q. (BY MR. RUTH) And you found no mistakes in
16 Mr. Davis's analysis, correct?

17 A. No, I did not. I found his staff to be very
18 knowledgeable and very cooperative.

19 Q. You write, back in paragraph 10 of Exhibit 1152,
20 your expert report, that you reviewed certain depositions,
21 testimony transcripts and Mr. Chittick's corporate
22 journals.

23 Do you see that?

24 A. Yes, sir.

25 Q. Do you recall what deposition transcripts you

DAVID WEEKLY, 10/2/2019

1 reviewed?

2 A. Wow.

3 Q. Because I don't --

4 A. I think there is a list on Exhibit A of the
5 depositions.

6 Q. You are right. I'm sorry. Items 16 through 19?

7 A. Items 16 to 19, yes.

8 Q. How did you decide which depositions to review?

9 A. Conversations with counsel, conversations with
10 the receiver's staff or with Mr. Davis, and our own
11 decisions on what we thought was necessary.

12 Q. Since issuing this report, have you reviewed any
13 additional depositions?

14 A. I'd have to see my Exhibit A on my supplemental
15 report, but I -- if there were additional sessions, for
16 instance, of Mr. Davis's or Mr. Beauchamp's, I might have
17 looked at those. I don't recall for sure.

18 Q. You also said that you reviewed Chittick's
19 corporate journal.

20 Do you see that?

21 A. Yes, sir.

22 Q. Why did you review Mr. Chittick's corporate
23 journal?

24 A. I found it to be a very important resource to
25 confirm some of the activity that he was entering into the

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1 QuickBooks files, and to also understand what in my report
2 I identify as the different phases of the fraud activity.

3 Q. And I think, having read your report, I think
4 when you say the different phases, are you talking about
5 the -- Mr. Menaged's and DenSco's practice at one point of
6 simply setting off amounts owed versus amounts being lent
7 as opposed to actual cash changing hands?

8 A. That's part of it. It's the -- you are
9 referring to the second fraud and the transitions back and
10 forth between what we call gross transactions and net
11 transactions.

12 Q. So if I understand you correctly, and correct me
13 if I'm wrong, but primarily you looked at Chittick's
14 corporate journal to verify the manner in which he was
15 recording his financial transactions in QuickBooks?

16 A. It was more than that. He revealed his
17 thinking, his strategies, his ideas. There was a lot of
18 helpful and relevant underlying corroboration for what the
19 documents told us.

20 Q. So you found Mr. Chittick's journals to be
21 reliable?

22 A. For certain aspects of our findings where his
23 writings would help clarify or corroborate the activity.

24 Q. Did you turn to Mr. Chittick's journals for
25 corroboration because you were concerned that his

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1 QuickBooks perhaps were not true and accurate?

2 A. I wouldn't describe it like that. It was simply
3 additional evidence that has to be considered when you are
4 reaching conclusions and calculating damages.

5 Q. Your Exhibit A to your expert report generically
6 lists selected emails, Denny Chittick Outlook file, and
7 selected emails, Scott Menaged Outlook file, in items 37
8 and 38.

9 Do you see that?

10 A. Yes, sir.

11 Q. You don't provide a Bates number for those
12 emails.

13 Do you have a more specific description of what
14 emails you received and what you looked at?

15 A. Very fair question. The email files, as I
16 understand it, were provided in one large, for each of
17 these, in one large Outlook file. If there was a Bate
18 number, it would have been only on the first page or the
19 transmittal, and it was essentially a dump of their email
20 file, which had hundreds and if not more --

21 Q. I'm sure thousands.

22 A. -- emails, and --

23 Q. Yeah.

24 A. -- to the extent there were emails in those
25 groups of files that were relevant to what we were doing,

DAVID WEEKLY, 10/2/2019

1 we indicated it there.

2 Q. Indicated it where?

3 A. On this Exhibit A as selected emails.

4 Q. Okay. But there is nothing that would point me
5 to which emails you selected?

6 A. Nothing that I -- that I could think of right
7 now. I'd be happy to try to identify those.

8 Q. Let me -- let me break that down a little bit
9 further as well.

10 So you said you received an Outlook file with
11 Mr. Chittick's emails and a separate Outlook file with
12 Mr. Menaged's emails, or --

13 A. I don't remember if it was two separate files.
14 I know I spoke to Mr. Taylor about this this week, that --
15 just to clarify in my mind, because they were large files
16 with hundreds and thousands maybe of pieces of information
17 with no index and no table of contents, and --

18 Q. Understood. Let me ask you this.

19 Were -- was the file -- who did you receive the
20 file from? Was it from Mr. Campbell and Mr. Sturr, or did
21 you receive it from Mr. Davis and his shop?

22 A. I'm pretty sure it came through counsel. I
23 don't think we got anything directly without counsel being
24 involved.

25 Q. And -- and the emails that you received, is it

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1 your understanding that those were all of Mr. Chittick's
2 emails or had someone already done a culling down before
3 they provided it to you?

4 A. My understanding was it was a complete, I'll use
5 the word "dump" of the file, but it also would have
6 included emails that might have been exhibits in some of
7 the deposition transcripts. There were a number of
8 emails, for instance, in Mr. Davis's, so we might have
9 gone in and pulled those and looked for emails around the
10 same date to make sure we had the context.

11 Q. Okay. Did you do a general review of those
12 email files and those emails or --

13 A. I didn't personally. I did look at the file and
14 saw how enormous it was, and I asked my colleagues to go
15 through, and then I relied more on the emails that were
16 part of the exhibits to depositions.

17 Q. Okay. But someone at F3 reviewed those, all
18 those emails?

19 A. Not every single one of them, but they scanned
20 the entire file and did at least a high-level review of
21 what it contained.

22 Q. Let's go back to your report, paragraph 13,
23 under summary of opinion.

24 So this is now an opinion that you are offering
25 in this testimony, correct, under --

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1 A. Yes. This next series of paragraphs lead to the
2 opinion that's stated.

3 Q. You write, "Had DenSco followed the practice
4 other hard money lenders used of delivering the borrowed
5 funds directly to the trustee, Menaged would not have been
6 able to steal DenSco's funds."

7 Do you see that?

8 A. Yes.

9 Q. Are you offering an expert opinion in this
10 matter as to the loan procedures that DenSco used and
11 whether they were appropriate or not?

12 A. No, sir.

13 Q. Do you know whether any other hard-money lenders
14 other than DenSco sent money or sent loan funds directly
15 to a borrower?

16 A. That's a pretty general question. I know there
17 was some communication or correspondence that said that
18 most others don't. I haven't had any experience with any
19 that did this.

20 Q. You have previously represented or rendered
21 opinions for hard-money lenders, correct?

22 A. In cases involving hard-money lenders, yes.

23 Q. And in those engagements, you haven't seen any
24 instances where hard-money lenders provided their loan
25 funds directly to the borrower?

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1 A. I have not.

2 Q. Let's go to paragraph 16. You write that
3 DenSco's total losses related to the Workout Loans -- I'm
4 sorry. Let me start that again.

5 "DenSco's total losses related to workout Loans
6 from the First Fraud were over \$14 million by the time of
7 Chittick's death. The net impact of the fictitious
8 Non-Workout Loans during the Second Fraud resulted in over
9 \$24 million in losses."

10 Did I read that correctly?

11 A. Yes.

12 Q. So in your opinion, there are \$38 million in
13 losses attributable to the first fraud and second fraud?

14 A. Those were the total losses from the workout
15 accounts that were unpaid and the estimate of the losses
16 on the second fraud, although we made a precise
17 calculation of that.

18 Q. Sure.

19 And with respect to the total losses related to
20 workout loans from the first fraud of over 14 million, I
21 believe your opinion is that Clark Hill is responsible for
22 \$69,000 of that?

23 A. Well, my calculation of damages includes only
24 loans originated in those categories after November -- or
25 September 30th, 2013.

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1 Q. You are aware, correct, that the receiver has
2 likewise issued documents setting forth what he believes
3 the losses caused to DenSco by Menaged are, correct?

4 MR. STURR: Form.

5 THE WITNESS: I wouldn't describe it like that.
6 I'm aware in his status reports that he provided
7 information as to what he believed the records indicated
8 were the balances in those accounts related to Menaged,
9 but he also has made it clear in his deposition that my
10 firm was retained to make the calculation of damages.

11 Q. (BY MR. RUTH) Understood.

12 Are you suggesting that his representations as
13 to the -- what the records indicated the balances were in
14 those accounts is incorrect?

15 A. No. In fact we found it to be correct as a
16 starting point for our calculations.

17 Q. I'm handing you what's been previously marked
18 Exhibit 510. This is the receiver's Petition No. 32 filed
19 in the DenSco receivership, titled Petition for Order
20 Approving Settlement Agreement with Yomtov Scott Menaged
21 and Francine Menaged, is that correct?

22 A. Yes.

23 Q. And my understanding, based on your report and
24 your rebuttal report, is this is a document you reviewed
25 after you issued your initial report?

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1 A. After the initial report, correct.

2 Q. Prior to issuing your initial report, were you
3 aware of this petition?

4 A. I was aware of the settlement. I don't know if
5 I was aware -- I believe it was disclosed in one of
6 Mr. Davis's status reports, but I don't know if I actually
7 knew there was a petition.

8 Q. If you could turn to paragraph 20 of
9 Exhibit 510.

10 Paragraph 20 states that: A total of
11 \$16,652,090.59 is due from Menaged under the Forbearance
12 Agreement as of April 20th, 2016, the day Menaged filed
13 for relief under Chapter 7 of the United States Bankruptcy
14 Court.

15 Do you see that?

16 A. Yes.

17 Q. As part of the your engagement here, were you
18 asked to determine if that figure was accurate?

19 A. No.

20 Q. Are you offering an opinion on its accuracy?

21 A. I did not offer a separate opinion on this,
22 except in my rebuttal report where I comment that I don't
23 agree with Mr. Perry's calculations that involve the
24 numbers that are in this document.

25 Q. Understood.

DAVID WEEKLY, 10/2/2019

1 But you are not providing an opinion as to
2 whether in fact \$16,652,090.59 was or was not due from
3 Menaged under the Forbearance Agreement as of April 20th,
4 2016?

5 A. That is correct.

6 Q. And the amounts due under the Forbearance
7 Agreement, are those what you would consider the workout
8 loans?

9 A. I don't think they are. They certainly involve
10 most of, if not all of those, but that Forbearance
11 Agreement, Exhibit A, included many more loans than what
12 were in the workout loan categories.

13 Q. When you say Exhibit A, what are you referring
14 to?

15 A. The Exhibit A to the Forbearance Agreement that
16 had the list of loans.

17 Q. It's my recollection that Exhibit A to the
18 Forbearance Agreement listed the outstanding loans from
19 DenSco to Menaged.

20 Is that correct?

21 A. All loans.

22 Q. Loans.

23 And not all of those loans were subject to
24 double encumbrances, correct?

25 A. That's correct.

DAVID WEEKLY, 10/2/2019

1 Q. And the workout loans, as you refer to them in
2 your report, only refers to those double-encumbered loans?

3 A. That's correct.

4 Q. Are you aware of any non -- I don't want to use
5 the word non-workout loans, because we have used that as a
6 different term.

7 Are you aware of any loans listed on Exhibit A
8 to the Forbearance Agreement, that were not double
9 encumbered, that remained unpaid at the time the
10 receivership was filed?

11 A. That were not double encumbered?

12 Q. Correct.

13 A. I know there were five loans that were in a
14 separate account that are summarized in all the status
15 reports. I can't remember if those were on the
16 forbearance list. I think they were. But other than
17 those, I don't. All other loans were gone by the end
18 of -- or by the time Mr. Chittick took his life.

19 Q. So then safe to say that other than perhaps
20 those five loans referenced in the various receiver
21 reports, that this total here in paragraph 20 represents
22 workout loans, correct?

23 A. I don't know. I haven't really looked at the
24 detail of that 16 million.

25 Q. Let's look at paragraph 31.

DAVID WEEKLY, 10/2/2019

1 Paragraph 31 starts, "Soon thereafter, the
2 Receiver and Menaged began preliminary settlement
3 negotiations and the Receiver began to conduct an
4 independent analysis of the myriad of Menaged bank
5 accounts in an effort to determine the source and use of
6 the DenSco funds that were provided to Menaged and attempt
7 to determine the uses of DenSco's funds were paid to
8 Menaged and then returned to DenSco."

9 Do you see that?

10 A. I do.

11 Q. Do you have any reason to believe that
12 Mr. Davis's work in performing this analysis was less than
13 independent?

14 A. I didn't evaluate or look at his work on this
15 analysis.

16 Q. Have you seen any evidence that Mr. Menaged had
17 any say-so in Mr. Davis's analysis?

18 A. I don't know. I didn't look at any of this.

19 Q. Have you seen any determination by Menaged as to
20 what he thinks he actually owes DenSco?

21 A. Not that I recall.

22 Q. Let's go to paragraph 33. If you look at the
23 last sentence, starting with the word "however."

24 By the way, if you feel like you need to look at
25 any other aspect of this document, please do so.

DAVID WEEKLY, 10/2/2019

1 A. I -- thank you. I will just scan the first part
2 of this.

3 Okay.

4 Q. It says: However, analyzing DenSco's financial
5 information in detail enabled the Receiver to calculate
6 all interest payments received from Menaged. From this
7 analysis the Receiver was able to determine that if you
8 subtract the total interest paid by Menaged to DenSco
9 (15,328,635) from the Menaged loan balance (46,288,983),
10 then DenSco's net loss from Menaged's fraudulent
11 activities is 30,960,348.

12 Do you see that?

13 A. Yes.

14 Q. Do you have any reason to dispute the Menaged
15 total loan balance was 46,288,983?

16 A. I think I referenced in my rebuttal report that
17 I had seen the calculations of this, and certainly the
18 interest calculation portion, but I didn't evaluate
19 whether that was complete as part of my work.

20 Q. Any reason to doubt its accuracy?

21 A. I don't have any opinion one way or the other.
22 My experience with Mr. Davis and his staff is that they
23 are very good at what they do, but I didn't evaluate those
24 numbers.

25 Q. Any reason to believe that this number, the

DAVID WEEKLY, 10/2/2019

1 total amount due from Menaged, was calculated as a result
2 of some sort of negotiation with Mr. Menaged?

3 A. My understanding is that that 31 million was
4 exactly that. It was a negotiation and settlement.

5 Q. My question was a little bit different, though.

6 A. Okay.

7 Q. We will get to the underlying conclusion.

8 with respect to the total Menaged loan balance
9 of 46,288,983, do you have any reason to believe that that
10 total, the analysis that concluded that was the total loan
11 balance, was the result of some kind of negotiation with
12 Mr. Menaged?

13 A. Just that loan balance amount?

14 Q. Correct.

15 A. I don't know.

16 Q. It also states that if you subtract the total
17 interest paid by menaged to DenSco, 15,328,635 --

18 You see that, right?

19 A. Yes.

20 Q. That number, the total interest paid, do you
21 have any reason to dispute that that was the, in fact the
22 total interest paid by Menaged to DenSco?

23 A. I have no reason to dispute it. I saw the
24 spreadsheet where it was calculated, I believe, but I
25 didn't test it or review it beyond that.

DAVID WEEKLY, 10/2/2019

1 Q. Any reason to believe that that number was
2 reached as a result of a negotiation with Mr. Menaged?

3 A. I don't know.

4 Q. Have you seen anything that would suggest that
5 it was?

6 A. The 15 million interest number?

7 Q. Correct.

8 A. I have not seen anything one way or the other.

9 Q. So if you subtract the 15 million, roughly,
10 interest number from the 46 million, roughly, loan
11 balance, you get 30,960,348, is that correct?

12 A. I think that's correct.

13 Q. I believe you said before that you think that
14 number was reached as a result of a settlement between the
15 receiver and Mr. Menaged, correct?

16 MR. STURR: Form.

17 THE WITNESS: That's my understanding, based on
18 conversations with the receiver, as well as the things
19 that I have looked at, that that was a settlement amount.

20 Q. (BY MR. RUTH) That is in fact an amount that
21 results from simple arithmetic of subtracting the
22 interest, which you have testified you have seen no
23 evidence is the result of a negotiation, correct, being
24 subtracted from the loan balance, which we have also seen
25 no evidence as being subject of a negotiation, correct?

DAVID WEEKLY, 10/2/2019

1 A. I testified I didn't know how those numbers were
2 derived, that I didn't have any opinion on them one way or
3 the other, but math is correct.

4 Q. Tell me what your conversations were with the
5 receiver with respect to how he came up with the
6 \$30,960,348 amount.

7 A. It wasn't a direct conversation of that number.
8 It was more a conversation once I saw Mr. Perry's report
9 where he -- he identifies that as a number that should be
10 considered in the damage calculations, which I disagree
11 with and which I said in my rebuttal report. So I think I
12 had a brief conversation with Mr. Davis about how that
13 \$31 million number for the settlement was determined.

14 Q. And what did Mr. Davis tell you as to how that
15 number was determined?

16 A. He said it was a settlement negotiation, and
17 then I think he provided those documents that I referred
18 to where the interest was calculated.

19 Q. You would agree with me that net loss would
20 require an evaluation of the total amount owed, less the
21 amount paid?

22 A. Cash out, cash in, exactly what I did.

23 Q. And your understanding is that the resulting
24 number, this 30,960,348, was a negotiated amount?

25 A. I think the number was 31 million. That's the

DAVID WEEKLY, 10/2/2019

1 agreement, not 30,960,348.

2 Q. So the negotiated amount was actually higher
3 than the amount actually due?

4 A. It looks like that's correct, yes.

5 Q. So you don't have any evidence that Mr. Davis
6 negotiated a discount on the total amount due from
7 Mr. Menaged, do you?

8 A. I don't have any other information, other than
9 what we have discussed.

10 Q. Is it your understanding that Mr. Davis
11 negotiated a discount as to the total amount due from
12 Mr. Menaged, the losses caused by Mr. Menaged's fraudulent
13 activities?

14 A. I don't think he negotiated anything but a
15 settlement amount, that if there were any recoveries
16 against, had to be considered in my work.

17 Q. And that settlement amount represents the amount
18 that the receiver determined was the net loss from
19 Menaged's fraudulent activities, correct?

20 A. I don't think that's an exact or an accurate
21 summary, at least my understanding of it. It is a
22 settlement amount that has been agreed to in a signed
23 agreement, and would be used to the extent that the
24 receiver could get any recovery from that.

25 Q. Is it possible it was agreed to because that's

DAVID WEEKLY, 10/2/2019

1 the amount that the receiver determined was DenSco's net
2 loss from Menaged's fraudulent activities?

3 A. Well, I think there was some calculation of how
4 to get to that settlement amount, but --

5 Q. Do you know, sitting here today, whether in fact
6 the receiver is incorrect in asserting that DenSco's net
7 loss from Menaged's fraudulent activities is 30,960,348?

8 A. As I said, I don't have an opinion on that
9 statement.

10 Q. You understand that his net loss amount is about
11 \$7 million less than the net loss amount you have set
12 forward, correct, in paragraph 16 of your expert report?

13 A. I'm not following your question. Are you
14 comparing it to the 24 million?

15 Q. And the 14 million from the workout, which would
16 total \$38 million in losses arising as a result of the
17 first and second fraud, correct?

18 A. Well, there are clear differences between what
19 these calculations are and what I did.

20 Q. And what are those?

21 A. Well, the biggest is that interest from the
22 entire inception of the Menaged relationship is included
23 in this calculation, and it's not in the 24 million or the
24 14 million that I stated.

25 Q. So is it your opinion that Mr. Davis's inclusion

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1 of the entire interest amount paid by Mr. Menaged,
2 Mr. Menaged to DenSco, was improper in calculating
3 DenSco's net loss from Menaged's fraudulent activities?

4 A. I have no opinion on that.

5 (Deposition Exhibit No. 1154 was marked for
6 identification.)

7 MR. RUTH: Let's go ahead and mark this one as
8 well.

9 (Deposition Exhibit No. 1155 was marked for
10 identification.)

11 MR. RUTH: So 1154, Exhibit 1154 I will
12 represent to you is receiver's 5545.

13 MR. STURR: Sorry. You are giving me a Bates
14 number?

15 MR. RUTH: Yes. I didn't print the -- this was
16 an Excel spreadsheet.

17 MR. STURR: So what is the number?

18 MR. RUTH: 5545. And Exhibit 1155 is receiver
19 5554. Let me make sure I got that right.

20 THE WITNESS: Okay.

21 Q. (BY MR. RUTH) Yes.

22 Do you recognize these documents, Mr. Weekly?

23 A. I certainly recognize 1155, and I believe 1154
24 also. Both of them I think were listed on my Exhibit A in
25 my supplemental report or my rebuttal report.

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1 Q. That's correct.

2 were these documents created at your request?

3 A. No.

4 Q. These were previously existing documents that
5 the receiver provided to you?

6 A. They were provided to Mr. Short, I believe.
7 That's my best recollection.

8 Q. Okay. If we look at Exhibit 1155, did you do
9 any independent analysis or calculations to determine
10 whether the figures on here are accurate?

11 A. No.

12 Q. I believe one of your, I don't know if it's a
13 criticism or not, one of your assessments as to how what
14 Mr. Davis terms DenSco's net loss from Menaged's
15 fraudulent activities differs from your assessment of net
16 loss, is that Mr. Davis included all of the interest paid
17 from the beginning of Menaged's relationship with DenSco.

18 MR. STURR: Form.

19 THE WITNESS: Yeah, that's not exactly what I
20 said, but I mention that this -- the reason there was a
21 difference between our numbers --

22 Q. (BY MR. RUTH) Yes.

23 A. -- at least part of it has to do, a large part
24 of it has to do with a calculation that spans from 2007
25 through 2016, whereas my calculations only cover the

DAVID WEEKLY, 10/2/2019

1 period from October 1, 2013, until the end of July, I
2 think it is, of '16.

3 Q. Sure.

4 You just said a large part of the difference is
5 attributable to that.

6 what -- what else attributes or what else is --
7 what else can that difference be attributed to, other than
8 just the --

9 A. Since I didn't do any calculations of any total
10 losses, I only focused on the losses within the timeframe
11 that I cite in my report, I don't know what other
12 differences there are.

13 Q. If we look at Exhibit 1155, which is
14 RECEIVER 5544, the way I understand this, if you look
15 under the "allocation" heading, this lists the amount of
16 interest paid by Mr. Menaged year over year from 2007 to
17 2015.

18 Is that your reading of this document?

19 A. It's a summary of the QuickBooks file
20 information related to the interest for Mr. Menaged's loan
21 accounts, is my understanding.

22 Q. Interest paid, right?

23 A. I would -- I would disagree with that, because I
24 know that from my work, that during the second fraud there
25 are interest payments that were not paid, that were just

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1 non-cash. So I haven't done the analysis, but I couldn't
2 tell you that those were all paid.

3 Q. Okay. So we don't know, for example, where it
4 says under 2015, 5,918,942.11, you are telling me you
5 don't know whether that represents interest actually paid
6 by Menaged?

7 A. In that year, some portion of that year, there
8 were a lot of non-cash transactions, so I don't know the
9 answer to that.

10 Q. And the same with 2014, correct? We don't --
11 you don't know whether that represents interest actually
12 paid and properly credited to DenSco?

13 A. During 2014, I believe all the transactions were
14 either cash or net transactions, so there is some real
15 complexities there that I would have to look at, but I
16 don't have any conclusion one way or the other.

17 Q. If we assume for purposes of this question that
18 this represents interest paid to DenSco or properly
19 credited to DenSco, in 2014 and 2015, we see more than
20 \$11 million in interest paid.

21 Do you agree?

22 MR. STURR: Form.

23 THE WITNESS: That's what this schedule shows.

24 Q. (BY MR. RUTH) Those interest payments would be
25 almost entirely for the workout and non-workout loans,

DAVID WEEKLY, 10/2/2019

1 correct?

2 A. Well, that's what they should be for, but there
3 were other loans that Menaged had during those timeframes
4 that were not in those categories.

5 Q. And have you made a determination or analysis as
6 to how many of those loans exist?

7 A. It's not in our calculations of damages, but we
8 also reduced all of our damages by these payments. So we
9 didn't treat them as interest, and as you know, there
10 was -- there were refiled tax returns to recover that tax
11 that was paid on them as if they were treated as interest.
12 So we treated them as a reduction of principal, not as
13 interest.

14 Q. Does it make a difference to the total damage
15 amount owed whether you treat these payments as a
16 reduction of principal versus a payment of interest?

17 A. In my calculation, it does.

18 Q. It would appear, based from this document,
19 however, that the vast majority of interest paid by
20 Mr. Menaged to DenSco was paid in 2014 and 2015, right?

21 A. Well, those are the two largest numbers, and
22 they represent two-thirds of, maybe even more.

23 Q. Yeah.

24 A. And to me they look very high, based on the
25 information that's included in my report. But, again,

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1 this includes any other loans, other than the ones that I
2 was looking at, so I didn't really evaluate it.

3 Q. And if we go to Exhibit 1154, which is
4 RECEIVER 5545, this is where you see that the receiver has
5 calculated the Menaged loan balance of \$46,288,982.84.

6 You see that, right?

7 A. Yes, sir.

8 Q. And, again, you have no -- you haven't seen
9 anything to suggest that this number arrived at here in
10 the receiver's report, receiver's spreadsheet, was the
11 result of a negotiation with Mr. Menaged, correct?

12 A. No. It looks like, again, a summary from the
13 QuickBooks files and the loan balances for the accounts
14 before adjustment, are numbers that I agree with.

15 Q. And in fact if we look at Exhibit 1155, the
16 total amount of interest allocated to Mr. Menaged of
17 15,328,634.51 is also something pulled from the QuickBooks
18 files, correct?

19 A. That's what the source is. That's what it says.

20 Q. That's not a negotiated amount?

21 A. Not that I know of.

22 Q. Going to 1154, while we are on an this document,
23 there is a, at the top, an original QuickBook balance
24 column.

25 Do you see that?

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1 I'm sorry. The top is overstating it, yes.

2 A. One of the columns --

3 Q. In the middle of the document.

4 A. Okay. Sorry. Yes, I see that.

5 Q. And one of those balances is for something
6 described as Arizona Home Foreclosures, LLC.

7 Do you see that?

8 A. Yes.

9 Q. Do you know what that balance refers to?

10 A. I believe so, although it's higher because there
11 with an adjustment to it, but it's basically the five
12 loans that were left that I think related to Menaged's
13 family member transactions.

14 Q. So that balance is neither what you have termed
15 the workout loans nor the non-workout loans? It exists
16 outside of that?

17 A. That balance in and of itself is not part of the
18 workout loans, although that account was used to record
19 transactions at some point during the frauds.

20 Q. Understood.

21 Let's go back to Exhibit 510, which is the
22 petition for order approving settlement agreement.

23 A. Okay.

24 Q. Look at paragraph 34.

25 A. Okay.

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1 Q. It says, "After negotiations, the Menageds
2 agreed to a Settlement Agreement which included the
3 consent to the entry of a nondischargeable civil judgment
4 in favor of the Receiver in the amount of \$31,000,000."

5 Do you see that?

6 A. Yes.

7 Q. And we -- I think we have walked through this,
8 but that amount is actually greater than the amount shown
9 on the DenSco's QuickBooks as the net amount due from
10 Menaged?

11 A. Well, it's greater than the amount in the
12 calculations that are from the QuickBooks.

13 Q. Okay. The calculations the receiver has
14 described as DenSco's net loss from Menaged's fraudulent
15 activities, correct?

16 A. That's what the document says, yes.

17 Q. If we go to paragraph 36, the second sentence
18 says, "First, the amount that the judgment, \$31,000,000,
19 is the amount that the Receiver has determined that
20 Menaged owes DenSco, after conducting a detailed analysis
21 of the loan transactions between Menaged and DenSco."

22 Do you see that?

23 A. Yes.

24 Q. You have no reason to disagree with that
25 statement, do you?

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1 A. I have no opinion one way or the other.

2 Q. Well, you do have an opinion, though, that you
3 have rendered in this case that in fact the amount that
4 Menaged owes DenSco as a result of the fraudulent conduct
5 is 38 million, correct?

6 MR. STURR: Form.

7 THE WITNESS: I don't have an opinion that
8 Menaged owes the company 38 million.

9 Q. (BY MR. RUTH) Fair enough.

10 You do have an opinion in this case that the
11 losses DenSco suffered as a result of the fraudulent
12 conduct is 38 million? Isn't that what it says in
13 paragraph 16 of your report?

14 A. I make a statement in paragraph 16 that leads to
15 my opinion of what I believe the losses are in this case,
16 and I used the amounts that were on the books at that
17 point in time, so -- but I don't indicate that those are
18 the losses for purposes of my damage calculation. These
19 two calculations are just totally different.

20 MR. STURR: Are you okay?

21 THE WITNESS: Maybe take just a quick break.

22 MR. RUTH: Sure.

23 MR. STURR: Should we do -- it's noon. Should
24 we take a lunch break?

25 MR. RUTH: Yeah.

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1 MR. STURR: How long do you think you are going
2 to go?

3 MR. RUTH: I've still have a little bit.

4 MR. STURR: I figured.

5 MR. RUTH: I'll pick up the pace here a little
6 bit. I mean --

7 MR. STURR: Sure. Why don't we take a lunch
8 break.

9 MR. RUTH: Yeah.

10 MR. STURR: Let's go off the record.

11 VIDEOGRAPHER: We are off the record at
12 12:04 p.m. This is the end of media two.

13 (A recess was taken from 12:04 p.m. to
14 1:01 p.m.)

15 VIDEOGRAPHER: We are back on the record. The
16 time is 1:01 p.m. This begins media three.

17 Q. (BY MR. RUTH) Welcome back, Mr. Weekly.

18 A. Thank you.

19 Q. Just to clean up a couple -- a couple questions
20 and a couple aspects of your report, if you could go back
21 to paragraph 16 of your report, which is Exhibit 1152.

22 I'm just wondering, where did you get those --
23 do you recall where you got these figures from?

24 A. Yes. And this is meant to be a lead-in to the
25 actual opinion --

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1 Q. Sure. I understand.

2 A. -- that's at the end of this section, but the
3 14 million is the approximate amount of the two accounts
4 that were labeled workout loans. One of them was the
5 \$1 million workout loans, which was about a million
6 dollars, and the other one was the \$5 million workout
7 loans, which was a little over 13 million, so I said over
8 14 million. And the 24 million is the amount in the
9 second fraud case minus the interest, essentially.

10 Q. And are those figures that you derived or were
11 those pulled from a report or analysis done by the
12 receiver?

13 A. The 14 million comes right from the QuickBooks
14 and it agrees with the receiver's summaries, and the
15 24 million is just a calculation of the approximate amount
16 using the QuickBooks balance minus an interest adjustment.

17 Q. Thank you.

18 while we are talking about the first fraud, the
19 workout loans, you mentioned accurately that DenSco
20 allocated the workout loans to a \$1 million workout and a
21 \$5 million workout.

22 Is that accurate?

23 A. Accounts with those labels, yes.

24 Q. Were you able to determine what the rhyme or
25 reason was for the allocation of loans to one of those two

DAVID WEEKLY, 10/2/2019

1 accounts?

2 A. I have -- I have an observation on how that
3 occurred --

4 Q. Okay.

5 A. -- and it's based on reviewing various things,
6 including depositions and documents. But the 1 million
7 workout was the amount that I understand Mr. Chittick and
8 Mr. Menaged talked about in the fall of 2013 that -- when
9 Mr. Menaged, I think, suggested that was the magnitude of
10 the fraud; and the \$5 million account didn't get started
11 until sometime in 2014, when it was determined that there
12 were many more loans than the million dollars' worth of
13 loans.

14 Q. So the allocation of loans to the million dollar
15 account or the \$5 million account, based on your review of
16 the documents, is mostly a function of time?

17 A. I believe time and then the initial estimate of
18 a million dollars. So once the \$1 million account got to
19 a million dollars, there were no other new entries into
20 that account. Everything went through the 5 million
21 account.

22 Q. And the \$5 million account, you are aware also
23 vastly exceeded 5 million ultimately, correct?

24 A. Correct. Over 13 million by the end.

25 Q. That 13 million wasn't part of the Forbearance

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1 Agreement, was it?

2 A. I think the loans that were -- the original
3 entries into those accounts or that gave rise to the
4 entries because of the shortages were on the Forbearance
5 Agreement attachment.

6 Q. Of course the Forbearance Agreement contemplated
7 that Mr. Menaged would also contribute funds to this
8 endeavor, correct?

9 A. Yes.

10 Q. He never -- as far as you could tell from your
11 analysis, did not contribute any money to this?

12 A. I saw nothing that showed that he made
13 contributions that were identified in the Forbearance
14 Agreement.

15 Q. The \$1 million note or \$1 million, yeah,
16 \$1 million note bore interest at a lower rate than the
17 \$5 million note, correct?

18 A. I wouldn't call them notes, but the loans that
19 ended up or the balances that ended up in the \$1 million
20 account had a lower interest rate. Substantially lower.

21 Q. Do you know why Mr. Chittick didn't allocate
22 some of the additional loans to the \$1 million account
23 instead of the \$5 million account?

24 A. I don't know for sure.

25 Q. Have you seen anything that would suggest his

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1 rationale for allocating the loans from one account versus
2 the other account?

3 A. Yes. I would say it's based on the interest
4 rates. The fact that one was 3 percent, I think, and the
5 other was more like 18 percent.

6 Q. So you believe that based on his desire to
7 obtain a higher interest rate, he allocated the loans to
8 the \$5 million workout?

9 A. I'm not sure if it was that rationale, but
10 because the original conversations indicated that the
11 problem was only about a million dollars, that it was
12 agreed that they would loan up to a million dollars to
13 solve the problem at a very low interest rate. But once
14 it was known that that number was going to be much greater
15 than a million, I think Mr. Chittick said I'm not going to
16 agree to the 3 percent anymore.

17 Q. It sounds like you came to that understanding
18 based on your review of Chittick emails or...

19 A. I don't know the precise -- it's a collection of
20 things. There may have been some entries in the journals
21 that could have been from the deposition transcripts of
22 Mr. Menaged or others. I don't know precisely, but it was
23 several indicators.

24 Q. Handing you what's been marked as Exhibit 1156.
25 (Deposition Exhibit No. 1156 was marked for

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1 identification.)

2 Q. (BY MR. RUTH) 1156 is a series of emails
3 between Ryan Anderson, who represents Mr. Davis as the
4 receiver in this matter, and Jennifer Giaimo, who is a
5 Chapter 7 trustee, U.S. Bankruptcy Court in Arizona.

6 Do you see that?

7 A. Yes.

8 Q. On October 25th, 2017, Ms. Giaimo writes to
9 Mr. Anderson: Hi Ryan, In the criminal case against
10 Menaged, we need to submit documentation reflecting
11 Scott's total debt owed.

12 Do you see that?

13 A. Yes.

14 Q. And then she asks him: Do you have other
15 documentation reflecting the amount of the DenSco loss?
16 If so, please email me and the Agents, Denise Lucero and
17 Byron Anderton, who are being copied here. Thanks very
18 much.

19 Do you see that?

20 A. Yes.

21 Q. And those agents are IRS agents, based on their
22 email addresses?

23 A. This is the first time I am seeing this, so
24 I'm -- it looks like they are. Irs.gov.

25 Q. So that would suggest they are IRS agents?

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1 A. It seems that way, yes.

2 Q. So Mr. Anderson responds to Ms. Giaimo and says,
3 in the last two sentences: However, we have obtained the
4 attached judgment against Menaged for 31 million. The
5 31 million number is more accurate and should be the
6 DenSco loss amount.

7 Do you see that?

8 A. Yes.

9 Q. Presumably the receiver would want to provide
10 the most accurate information available to the IRS?

11 MR. STURR: Form.

12 THE WITNESS: I don't know, but it's reasonable
13 to assume that.

14 Q. (BY MR. RUTH) Knowing Mr. Davis as you do and
15 as I do, there is no reason to think he would want to
16 misrepresent the amount owed by Mr. Menaged to DenSco?

17 A. Again, this deals with Mr. Menaged and DenSco as
18 opposed to my calculations, which are DenSco's losses
19 after a certain date. So I didn't really evaluate that,
20 other than what we talked about previously.

21 Q. And so based on your analysis, the DenSco losses
22 that should be attributed to my clients are actually
23 greater than the DenSco losses that are -- the receiver is
24 attributing to Menaged?

25 A. If you mean by that the 31 million compared to

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1 mine, my numbers are lower than the 31 million by quite a
2 bit.

3 Q. You are correct. That was a bad question.

4 Let's go back to your report, Exhibit 1152.

5 Let's go to paragraph 18.

6 A. Okay.

7 Q. You say that: F3 calculated DenSco's loan
8 losses -- I'm sorry. Let's go to paragraph 17 first.

9 A. Okay.

10 Q. F3 calculated DenSco's loan losses related to
11 Workout Loans for transactions where the economic damages
12 occurred after September 30th, 2013.

13 Do you see that?

14 A. Yes.

15 Q. And then in the footnote 4, you indicate that
16 the September 30th, 2013, date was arrived at, quote,
17 based on advice from counsel, close quote.

18 Do you see that?

19 A. Yes.

20 Q. And that's accurate, right?

21 A. Well, that was the assumption that we accepted,
22 but it was initially a -- based on advice from counsel.

23 Q. Do you know why that date was chosen by counsel
24 and provided to you?

25 A. Yes.

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1 Q. And what is that?

2 A. Because it was a date that took into account the
3 fact that Mr. Beauchamp had joined Clark Hill in
4 September 2013; that there had been a request to
5 Mr. Chittick as to whether he wanted to move his files
6 over to Clark Hill from Bryan Cave, which Mr. Chittick
7 agreed to, because the expert report of the standard of
8 care expert for -- for our side of the case --

9 Q. Mr. Wertlieb?

10 A. -- yes, sir, Mr. Wertlieb, indicated that he
11 also believed certain actions should have been taken in
12 September. All of those led to my conclusion that that
13 was an assumption that was reasonable, which is what my
14 professional responsibility requires.

15 Q. You then go on to state that the: Loan loss
16 damages for Workout Loans represent cash paid by DenSco to
17 resolve the Managed loan shortfalls ("Cash Out") less
18 payments made by Managed to DenSco on these loans ("Cash
19 In").

20 And you go on to state in paragraph 18 that you
21 have calculated DenSco's loan losses related to the
22 non-workout loans beginning January 22nd, 2014, based on
23 the same cash-out/cash-in analysis.

24 Is that accurate?

25 A. Yes, sir.

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1 Q. Who -- whose idea was it to use a
2 cash-in/cash-out approach to determine DenSco losses?

3 A. Mine.

4 Q. Did you consider any other potential approaches
5 to analyzing DenSco losses after this date?

6 A. I did consider other approaches, basically
7 because there were very complete and detailed QuickBooks
8 files, and other records that existed at the time of
9 Mr. Chittick's death, that provided a starting point for
10 what ultimately was my decision to go that route.

11 So in other words, we could have used what was
12 on the books and records and made adjustments, but I
13 believed the most accurate way and the most precise way
14 was to identify exactly what cash went out of DenSco after
15 September 30th, 2013, minus what cash was returned to
16 DenSco during that same period.

17 Q. Can you please explain to me how that differs
18 from the books and records approach you have just
19 referenced?

20 A. It differs because the books and records would
21 identify properties that were associated with the balances
22 that were the starting point in each of the accounts. And
23 we know in the second fraud there were no properties, for
24 the most part. There were a few real transactions. And
25 so the books and records, by identifying the dollar amount

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1 attributed to an individual property, couldn't be traced
2 to any verifiable data, since the property was never
3 purchased in the second fraud.

4 But by validating every cash deposit and cash
5 disbursement or wire during the second fraud and even
6 during the workout loan resolution, I could not only make
7 a calculation that economically identified what happened,
8 but I could support it with bank records and closing
9 statements and other documents that evidenced the sale of
10 properties to generate cash that ended up being deposited
11 into the bank accounts.

12 Q. So with respect to the workout loans, those
13 loans were secured by property, correct?

14 A. Initially the loans were double encumbered,
15 meaning that there were two owners, two deeds of trust,
16 but eventually the dollar amounts in those two accounts,
17 the \$1 million and the \$5 million account, had no
18 properties associated with them. They represented the
19 residual dollars that hadn't been paid on those original
20 loans once they were sold or disposed of.

21 Q. Okay. And I think I'm going to try and get back
22 to the process they used once we actually get into the
23 workout loan discussion, but thank you.

24 Did you consider using a cash-in/cash-out
25 approach with respect to the net investor losses?

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1 A. We did, but that wouldn't necessarily -- well,
2 it wouldn't have allowed us to calculate the full extent
3 of the loss, because of the extent of activity that
4 Mr. Menaged created between predominantly the net cash
5 transactions and the non-cash transactions.

6 Q. So it sounds like the -- in your opinion, doing
7 a cash in, cash out on net investor loss would have
8 underrepresented the losses suffered by DenSco?

9 A. I think it would have, but I didn't do the
10 calculation so I don't know for sure. I don't think it
11 would have been accurate.

12 Q. And explain again why it wouldn't have been
13 accurate.

14 A. Well, because there were funds other than the
15 funds coming from the investors, for instance, the
16 proceeds of the sale of properties that might result in a
17 profit would be additional funds, or other adjustments
18 that occurred from the sale of the profits (as spoken),
19 the funds used to pay the closing costs and things like
20 that. In my opinion, you had to look at each transaction
21 in order to get an accurate accounting.

22 Q. With respect to your analysis on the non-workout
23 loans --

24 A. Okay.

25 Q. -- cash out represents the additional loans that

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1 DenSco made to Menaged or his entities, correct?

2 A. It's a little more complicated than that, but
3 that -- that's the first starting point, that is the
4 primary cash out would be the original disbursement of
5 cash for new loans.

6 Q. What else would go into the cash out, other than
7 disbursement of loans?

8 A. When they started the netting process, the
9 complexity of that is about as intricate as I have seen in
10 my career.

11 Q. Something that would require an expert to --

12 A. A lot of forensic analysis, because you might
13 have five or six loans being originated, which would
14 generate cash out, but at the same time you might have
15 five or six other loans that were being paid off, and
16 instead of the cash changing hands on a gross basis, in
17 other words, transaction by transaction, the net -- the
18 net transaction for that series of loans would be the only
19 cash that changes hands.

20 So the only way to trace the true cash in and
21 out on that transaction is to find the result of the net
22 transaction and then trace that deposit or that wire to
23 the bank statement when the transaction took place on a
24 net basis.

25 Q. Did those wires or deposits always identify a

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1 loan number or a property address? How were you able to
2 tie the deposit to the loan in the first place?

3 A. Great question. It involved a lot of analysis.
4 On the gross loans, what we call the gross loans in our
5 report, each property is identified, and the audit trail,
6 I will call it, of how much cash went out is pretty easy
7 to determine, because each loan, when it's made, has a
8 reference to the property address in the QuickBooks memo
9 file, and you can reconstruct a group of loans being made
10 to a single dollar disbursement amount by following that
11 trail.

12 Q. Okay.

13 A. When it's a net transaction, it's much more
14 challenging. And it's effectively, I describe it as
15 blowing out the net number back to its components, meaning
16 that you have to identify every single loan, every single
17 payoff, all the interest payments that netted.

18 And because Mr. Chittick was meticulous about
19 posting entries to his QuickBooks on a gross basis,
20 meaning that even if a transaction was netted, he recorded
21 the gross components of the transaction.

22 For example, if he made a loan for \$100,000, and
23 at the same -- on the same date he paid off a loan for
24 \$80,000, the net transaction would be a \$20,000 wire to
25 Mr. Menaged, but the QuickBooks would reflect that as a

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1 \$100,000 disbursement for the loan that was made and an
2 \$80,000 payment for the loan that was paid off. So all
3 the detail was there, but it was very difficult to
4 reconstruct.

5 Q. So Mr. Chittick kept track of which loans each
6 payment, quote/unquote, for Menaged related back to?

7 A. That's correct.

8 Q. And was that -- did he keep track of that
9 information -- let me strike that question.

10 when Menaged made the payment, was there some
11 identifier in the wire or the check, or whatever his
12 method of payment was, that would allow Mr. Chittick to
13 tie that payment to the loan amount?

14 A. Another good question. Sometimes. The process
15 involved going back to the bank statements and identifying
16 every single deposit and every single disbursement or wire
17 that was related to Menaged, and then using that dollar
18 amount, going back to that date, and if we had a property
19 address, looking in the memo field of that and essentially
20 reconstructing what properties made up that net
21 transaction.

22 Q. So let's take a net transaction.

23 If I'm understanding this correctly, Chittick
24 lends money with respect to five different properties at
25 the same time Menaged wants to pay off loans on four other

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1 properties. Let's say it's 500,000 out for DenSco,
2 400,000 in from Menaged.

3 Is there something with respect to the 400,000
4 in that identifies the four properties that relates to, or
5 did you have to sort of run out the loan balances on all
6 these various loans to see which one of those added
7 together would end up resulting in \$400,000?

8 A. The steps were similar to what you just
9 described, except because you knew the date of the entry
10 to the bank statement, and because the QuickBooks files
11 were very meticulously recorded by date, you could in some
12 cases have a reference to a property, which would help.

13 In most other cases you had to go to that date
14 in the QuickBooks file for the Menaged loan accounts and
15 then find the loans that totaled that dollar amount. So
16 it's a puzzle.

17 Q. I think I understand.

18 By -- by piecing this together on the
19 non-workout loans, this cash in/cash out, would you say
20 that you were effectively unwinding the second fraud,
21 putting DenSco back where it would be, had the second
22 fraud not taken place?

23 A. No, I wouldn't describe it that way. We are
24 simply identifying for each transaction, whether it was a
25 gross transaction or a net transaction, how much money was

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1 deposited into the bank account for cash in and how much
2 money was disbursed out of the bank accounts for the cash
3 out. But to validate the amount on the bank statement,
4 which is a true independent source of the cash, you had to
5 identify each property that was involved in that
6 transaction, no matter how complex.

7 Q. Sure.

8 So I guess my question is, the end result of all
9 that, let's say your analysis is -- I don't know. If you
10 look at Table 3 on page 9 of your expert report, Exhibit
11 1152, you end up calculating the non-workout loan losses
12 at 24,436,100, correct?

13 A. Yes, sir.

14 Q. So that takes into account money that went out
15 on loans where those loans were fully repaid, correct?

16 A. Correct.

17 Q. Money that went out on loans where those loans
18 were not fully repaid, leaving a difference owed?

19 A. Correct.

20 Q. And then subtracting out the interest that was
21 paid, correct?

22 A. That's correct.

23 Q. So if, for example, Mr. Menaged or my client or
24 someone else paid \$24,436,100 to DenSco, it would be as if
25 those loans that were part of the second fraud did not

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1 happen, were unwinding the second fraud, putting DenSco
2 back to where it was in January of 2014?

3 A. Yeah, I would describe it a little differently,
4 but I think we are getting to the same answer. If he had
5 paid back 24,436,100, then all of those loans, the cash
6 out and the cash in, would be equal --

7 Q. Got it.

8 A. -- and therefore no damage.

9 Q. No damage on the second fraud?

10 A. If that -- under that hypothetical.

11 Q. Correct.

12 Were some of the loans that were made in the
13 second fraud used by Menaged to pay off workout loans?

14 A. There were some payments made in the
15 transactions in the second fraud that were posted to the
16 \$5 million workout loan account. And I think the total
17 was about 1.8 million, which I summarize in my report.

18 All of those payments, even if they could have
19 been for loans prior to our cutoff date, were deducted
20 from the damages. So we were able to identify if a
21 payment, like the one you just described where there was
22 an additional payoff that was to be attributed to a
23 workout loan, we accounted for all of those.

24 Q. Did you ever consider doing an analysis as to
25 what DenSco was worth in January 2014 when the scope of

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1 the problem was first revealed and compare it to what
2 DenSco was worth at the end of the fraud?

3 A. You mean like a valuation?

4 Q. Yes.

5 A. No, never considered that.

6 Q. Did you ever consider doing a liquidation
7 analysis on DenSco as of early January 2014?

8 A. I didn't consider that either, because I didn't
9 think that would give you an accurate quantification of
10 damages, either one of those approaches.

11 Q. Why wouldn't that be accurate?

12 A. Because -- well, a valuation would involve far
13 more than just Menaged's loans, and so would a
14 liquidation, so it wouldn't be apples to apples.

15 Q. Do you understand that part of the receiver's
16 allegations against the defendants in this case is that
17 had the defendants acted as the receiver asserts they
18 should have, that DenSco would have stopped doing business
19 with Menaged in January 2014?

20 MR. STURR: Form.

21 THE WITNESS: well, I know there is a lot of
22 liability issues in this case.

23 Q. (BY MR. RUTH) Sure. And I'm not asking you to
24 opine on those.

25 You understand that that's sort of one of the

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1 constructs?

2 MR. STURR: Form.

3 THE WITNESS: My understanding is that but for
4 the fact that -- that -- that the company did continue,
5 that you could make that determination, but I think that's
6 what this is -- that's what my calculation is about. I --
7 I calculated what did happen.

8 Q. (BY MR. RUTH) And did you feel any need to
9 compare what did happen to what would have happened, had
10 the defendants acted as the receiver asserts they should
11 have?

12 MR. STURR: Form.

13 Q. (BY MR. RUTH) So, for example --

14 A. I think that's what my calculation does as of
15 October 1st. In other words, by calculating what actually
16 occurred, cash in/cash out for workout loans and
17 non-workout loans, from October 1, 2013, to the end, and
18 simply saying that nothing -- none of those loans would
19 have been made, therefore the alternative universe is
20 zero, that that's what that calculation is.

21 Q. As of January 2014, your opinion is that DenSco
22 has already been insolvent for more than a year, correct?

23 MR. STURR: Form.

24 THE WITNESS: I didn't -- I didn't render an
25 opinion on solvency, but clearly --

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1 Q. (BY MR. RUTH) You did not see --

2 A. -- the balance sheet would reflect that they are
3 significantly under water by well before that time.

4 Q. And you don't dispute the receiver's analysis
5 that DenSco was insolvent as of August of 2012?

6 A. Yeah, my statement on that says, in
7 paragraph 22, "Based on our review and analysis of the
8 Receiver's calculation and DenSco's QuickBooks files, we
9 agree with the Receiver's conclusion that DenSco was
10 insolvent on a Balance Sheet basis by at least the end of
11 2012."

12 Q. And I think based on your analysis, we can look
13 at Exhibit C real quick to your report, as of the end of
14 2013, DenSco's loan concentration to Menaged was over
15 50 percent.

16 A. At the end of '13?

17 Q. Yes.

18 A. Yes.

19 Q. And as of January 2014, most of those loans to
20 Menaged are in second position, correct?

21 MR. STURR: Form.

22 THE WITNESS: I don't -- I don't know if it's
23 most of them, just based on thinking about the Forbearance
24 Agreement and the exhibit, because that Forbearance
25 Agreement attachment I think added up to over \$35 million,

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1 and the workout loans weren't that high. So I don't know
2 for sure, but I think it was far less than what was on the
3 Forbearance Agreement.

4 Q. (BY MR. RUTH) Let's go to footnote 6 on your
5 expert report, Exhibit 1152.

6 You say there were instances -- I'm sorry. Are
7 you there?

8 A. Page 5?

9 Q. Yes.

10 A. Okay.

11 Q. You state in footnote 6, "There were instances
12 where DenSco actually held a first position lien on a
13 property, but wanted to avoid action by other lenders or
14 issues with DenSco's investors learning of the fraud."

15 Do you see that?

16 A. Yes.

17 Q. Are you rendering that opinion or is this
18 just --

19 A. It's informational that although they were
20 double encumbered, they weren't always in a second
21 position.

22 Q. And how do you know that?

23 A. We know that from looking at the filing dates of
24 the deeds of trusts on the loans in the workout side.

25 Q. Did you do any other sort of analysis, other

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1 than looking at the filing date, to determine whether one
2 loan was in first position or second position?

3 A. Well, that is -- that is the most significant
4 factual thing that you can look at, but beyond that, there
5 is also I think testimony in I believe Mr. Menaged's --
6 maybe not his depo, but his hearing.

7 MR. STURR: 2004 exam?

8 THE WITNESS: 2004 exam, yes. But I know I have
9 seen other information that indicated that they knew they
10 were in a first position on some loans, but they didn't
11 want to reveal that because that would get into the
12 marketplace pretty quickly, and then the rest of their
13 scheme would be under covered -- uncovered.

14 Q. (BY MR. RUTH) But you are not opining on the
15 accuracy of their assessment that they were in first
16 position on some of these loans or second position on some
17 of these loans?

18 A. No. I am just pointing them out, because they
19 essentially treated them all as if they were in second
20 position.

21 Q. And you didn't do any independent work to
22 determine whether DenSco was in first position on
23 double-encumbered loans?

24 MR. STURR: Form.

25 THE WITNESS: well, we did. we did look at some

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1 loans, a lot of them, if not all of them, to determine
2 that, but it wasn't relevant because they made the
3 determination to take out the other owner either through
4 refinancing or through selling the property and providing
5 an amount of money necessary to take out the other lender.

6 (Deposition Exhibit No. 1157 was marked for
7 identification.)

8 MR. STURR: Is this --

9 MR. RUTH: RECEIVER 5543. I should have
10 attached that.

11 MR. STURR: 5543.

12 MR. RUTH: Yes.

13 MR. STURR: Thank you, Marvin.

14 MR. RUTH: This is Exhibit 1157?

15 COURT REPORTER: Yes.

16 Q. (BY MR. RUTH) Handing you what's been marked as
17 Exhibit 1157, which is receiver's 5543, this is a
18 spreadsheet prepared, appears to have been prepared by
19 Simon Consulting.

20 Do you see that?

21 A. That's what the header says.

22 Q. Yes.

23 If you look in the far right corner, there is a
24 column called priority lender?

25 A. Yes.

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1 Q. And then it lists either DenSco or other, with
2 "other" presumably being the other lender?

3 A. I see that.

4 Q. Do you have any recollections of whether this
5 document or analysis was what you used to assess lien
6 priority for DenSco loans?

7 A. This may have been one of the documents. I
8 think this was what the receiver used in their solvency
9 calculations to determine the value of the collateral.
10 That's my recollection of this document.

11 Q. If a lender records a security document but
12 doesn't actually lend the money until after someone else
13 records their security documents, do you have an opinion
14 as to whether that lender is in first or second position?

15 A. I don't have an opinion in my report, but I
16 believe that would put them in second position if they
17 waited.

18 Q. If they waited to fund the loan, right?

19 A. Correct.

20 Q. If a lender provides money to a trustee who is
21 selling the property, but records their deed of trust
22 after another lender who provided the money directly to
23 the borrower, do you have an opinion on which one is in
24 first or second position?

25 A. Again, I don't have a formal opinion in my

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1 report, and I -- I wouldn't say I'm -- I'm an expert that
2 would give that opinion, but my understanding is that the
3 date that the deed is recorded is the determining factor.

4 Q. Irrespective of whether the funds were actually
5 used to purchase the property or not?

6 A. I'm -- I'm not quite sure of that, but I think
7 that's true.

8 Q. So as of January 2014, would it be at least fair
9 to suggest there are numerous properties that DenSco is
10 undersecured on?

11 A. I'm just struggling with the word "numerous." I
12 don't know. There are certainly a lot of different loans
13 that it turns out are double encumbered by that time. I
14 don't think they had all been identified yet, which is
15 another issue with the date, but by the time -- I think by
16 the time you get to the Forbearance Agreement, most of
17 those had been identified.

18 Q. If DenSco ceases doing business with Menaged in
19 January 2014, did you assess whether DenSco would be
20 forced to liquidate or to file for bankruptcy?

21 A. No.

22 Q. Did you assess what it could collect on its
23 loans to Menaged at that point, if in fact it was forced
24 to turn to its collateral?

25 A. No. Our assumption was what occurred after

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1 September 30th, 2013.

2 Q. And what occurred after September 30th, 2013,
3 affected the amounts owed by Menaged to DenSco before
4 September 30th, 2013, did they not?

5 A. Although not in my calculation, to the extent
6 that some of the loans that were originated prior to
7 October 1st of 2013, it would have likely had an effect,
8 yes.

9 Q. It helped to pay those loans off, correct?

10 A. Not all the loans were paid off, is why I
11 hesitated. It helped to resolve the ultimate balance that
12 ended up in the workout loan accounts for the
13 double-encumbered loans.

14 Q. Correct.

15 So after January 2014, we have the bad
16 associated with the second fraud, but the transactions
17 after January 2014 made the first fraud look better, did
18 they not?

19 A. I don't look at it that way. The -- what
20 happened happened, and the loans that were originated
21 prior to October 1 of '13 are not in my calculations. Any
22 payments would have been considered in my calculation as
23 an offset, even though the loans weren't there, but only
24 new loans originated, which I detail in my report, I think
25 there are 22 total loans in the 5 million bucket and two

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1 loans in the 1 million bucket.

2 Q. So your testimony and my understanding is to the
3 extent any lending between DenSco and Menaged after
4 September 2013 was used to pay off loans prior to
5 September, DenSco loans to Menaged originated prior to
6 September 2013, that benefit is captured in your analysis?

7 A. It is, because we calculated those payments and
8 offset them. That's why the workout portion is only
9 \$69,000, because it has a \$1.8 million reduction.

10 Q. I don't have this as an exhibit, but I just want
11 to read you something from Mr. Wertlieb's expert report.
12 This is contained in his footnote 206.

13 He writes: Because of the materially inaccurate
14 and incomplete disclosures made in the expired 2011 POM,
15 upon such discovery the defendant should have then
16 instructed DenSco to immediately cease the offer and sale
17 of all notes. Any Rule 10b-5 compliant disclosures at
18 that time would be required to disclose, among other
19 things, DenSco's failures with respect to its first-lien
20 positions, loan-to-value ratios, and diversity of its
21 borrowers, and the cause of such failures, including
22 Mr. Chittick's negligence, as well as its exposure to
23 civil and criminal consequences for securities fraud,
24 including the possible right of all note holders to demand
25 rescission. Because such disclosures would, by necessity,

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1 be so negative, especially in comparison to the
2 disclosures contained in the 2011 POM, it appears to me
3 unlikely that the sophisticated accredited investors
4 targeted by DenSco would have been inclined to continue to
5 invest in notes.

6 Further, because DenSco's business model was
7 based on soliciting and investing money provided by note
8 holders and because many of the double-lien properties
9 were overleveraged, in my opinion, the proper advice to be
10 given to DenSco at that time would have been to conduct an
11 orderly liquidation, presumably in a Chapter 7 bankruptcy
12 proceeding, for the benefit of its note holders.

13 I know that was a lot.

14 A. Yeah.

15 Q. But do you understand the gist of what
16 Mr. Wertlieb was saying there to be, in his opinion, my
17 client should have advised DenSco to liquidate?

18 A. Well, to not make any new loans and to go down
19 whatever path was necessary to dissolve the company.

20 Q. Which in his opinion, right, would have included
21 potential liquidation?

22 A. That's what he says. That's what you just read
23 to me, yes.

24 Q. Don't you think it would be proper, as part of a
25 damage analysis, to consider what would have happened had

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1 my clients done what Mr. Wertlieb here says he should have
2 done?

3 A. No.

4 Q. And why not?

5 A. Because I think that a proper measure of damages
6 is what occurred after September 30th of '13. Or said
7 differently, what -- what should not have occurred. And
8 we calculated what did occur, and had nothing been done,
9 had they not operated during that time, then there would
10 have been -- none of those loans would have existed.

11 Q. Had they liquidated, they also would have lost
12 money on a lot of properties?

13 A. They probably would have, yes. I don't know for
14 sure, but --

15 Q. Properties that they didn't have to liquidate as
16 a result of continuing to do business with Menaged,
17 correct?

18 A. Unless you did the calculation, you wouldn't
19 know. Because if they were in first position on some of
20 the workout loans, they wouldn't have lost. If they had
21 profits in other outstanding loans, that would have been
22 realized money.

23 There is a lot of information there which would
24 have to be analyzed to come up with that calculation, and
25 there is no way to predetermine what the outcome would

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1 have been.

2 Q. But you didn't do any of those calculations?

3 A. No, sir, we did not.

4 Q. Can you go back and look, I know this isn't your
5 document, but Exhibit 1157, which is RECEIVER 5543. If
6 you go to the last page --

7 A. And the last page, just for clar -- is where the
8 exhibit is --

9 Q. I'm sorry.

10 A. -- identified --

11 Q. No.

12 A. -- or is it the first page?

13 Q. That's a good question. Mine might be stapled
14 together differently than you. The last page will say
15 page 4 of 4.

16 A. That has the footnotes?

17 Q. Yes.

18 A. Okay. That's where the exhibit references.

19 Q. Okay. I apologize.

20 A. No problem.

21 Q. If you look at the -- part of your assessment, I
22 think this is in paragraph 18 of your expert report, is
23 that the non-workout loans started January 22nd, 2014?

24 A. That's correct.

25 Q. Do you know or did you analyze what transpired

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1 with these loans identified here at loan number 4780,
2 4783, where there was no purchase information?

3 Do you see there is a bunch of non-applicables
4 all across the row?

5 So, for example, loan 4780 at address 3308 west
6 Apollo, it looks like DenSco made a loan. There is no
7 third-party loan data, so this isn't a double-encumbered
8 property.

9 A. I'm still trying to find the loan. I'm sorry.
10 I had to put my glasses on.

11 Q. There aren't line numbers. Otherwise, I would
12 direct you.

13 A. What was the loan number again?

14 Q. 4780.

15 A. Oh, 4780. Okay. I see it.

16 Q. So there is no third-party loan data here, which
17 would suggest this isn't a double-encumbered issue,
18 correct?

19 A. It doesn't indicate that it is. There is a
20 footnote.

21 Okay. Those all -- those all have the same
22 footnote 1 reference, which is an indication the receiver
23 isn't sure if a property was purchased, but then he
24 determined they were not purchased or were sold to third
25 parties.

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1 Q. Right.

2 A. I haven't analyzed those.

3 Q. Okay. Is it possible the second fraud, this is
4 the beginning of the second fraud? That these are
5 properties that DenSco was loaning on but that Menaged
6 doesn't actually purchase?

7 A. Well, I don't know that you can reach that
8 conclusion from this note without looking at it further.
9 But either -- I don't believe that's true, but even if it
10 were, these loans, since they were originated after
11 9:30 of '13, would be in our analysis. They may be
12 classified as workout loan instead of non-workout.

13 Q. That's my question, yeah.

14 A. They could be in that. And I just have to
15 double-check those loan numbers against the detail of the
16 loans that are in the 5 million bucket.

17 Q. Okay. Let's go to paragraph 20 of your report,
18 which is Exhibit 1152.

19 A. Yes, I have it.

20 Q. You state in that first paragraph that, "There
21 were deficient business practices and a lack of compliance
22 with DenSco's POMS that created red flags," and then you
23 go on to identify various deficiencies.

24 Do you see that?

25 A. Yes, sir.

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1 Q. When you say they created red flags, created red
2 flags for who?

3 A. It should have created red flags for -- for
4 Mr. Beauchamp, for Mr. Chittick, for anybody who looked at
5 the processes that were going on. Mr. Menaged, of course
6 I don't think he cared.

7 Q. So is this part of your opinion? Are you
8 opining that these issues should have been a red flag for
9 counsel?

10 A. No. There is only one opinion here, and it's
11 just above paragraph 20. But this is -- this is
12 background that's indicating in the next sentence, that
13 you didn't read, it says, "Plaintiff claims DenSco's loan
14 losses could have been limited had Defendants not breached
15 their legal standard of care or aided and abetted DenSco
16 and Chittick."

17 I'm simply listing what those deficiencies are,
18 even though I'm not providing any opinions on liability or
19 causation.

20 Q. So you are summarizing the receiver's
21 allegations as to the defendants' misconduct?

22 A. Not just the receiver's, but these came up in
23 other various ways in various other evidence, and I just
24 summarized them in one place.

25 Q. It's not part of your opinion that the

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1 defendants are responsible for any of these alleged
2 deficiencies, correct?

3 A. That's correct.

4 Q. And are you attributing any losses suffered by
5 DenSco specifically to any of these deficiencies?

6 A. There is no allocation or any attempt to
7 allocate the losses in any way, as I mention in my report.
8 There is no apportionment, in other words.

9 Q. Okay. The same in paragraph 21 --

10 A. Yes.

11 Q. -- where you write, "Delivering funds directly
12 to the trustees in verification of lien positions would
13 have prevented Menaged from double encumbering properties,
14 and would have prevented Menaged from borrowing more than
15 15% of the \$50 million offering maximum."

16 Do you see that?

17 A. Yes, sir.

18 Q. Again, you are not providing an opinion on this.
19 This is your summary of allegations included elsewhere?

20 A. These are findings that I have analyzed and
21 included in the narrative of my support for my opinions,
22 but they are not intended to be separate opinions.

23 Q. I just want to clarify something real quick.
24 Let's go back to paragraph 17.

25 A. Okay.

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1 Q. Where you state: F3 calculated DenSco's loan
2 losses related to workout Loans for transactions where the
3 economic damages occurred after September 30th, 2013.

4 Do you see that?

5 A. Yes.

6 Q. What do you mean when you say "economic
7 damages"?

8 A. To me that's the expression of cash.

9 Q. Okay.

10 A. Real damages doesn't involve estimates, doesn't
11 involve anything but cash that went out, which I describe
12 in the next sentence in that paragraph.

13 Q. Okay. So that's synonymous with loans made
14 after that date?

15 A. Yes, sir.

16 Q. Okay. So then in paragraphs 26 and 27 of your
17 expert report, you walk through an example of a workout
18 loan, correct?

19 A. Yes, sir.

20 Q. So if we start in paragraph 26, you describe a
21 transaction where ultimately, last sentence on that page,
22 quote: DenSco recorded \$125,000 in the Menaged loan
23 account (by adding 35,000 to the existing \$90,000 loan
24 balance) and recorded \$63,861.07 in a separate account
25 called "work out 5 million."

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1 Do you see that?

2 A. Yes.

3 Q. Do you know why Chittick recorded those
4 differing amounts due in different accounts?

5 A. I think so.

6 Q. Why do you think he did that?

7 A. Some of this comes from the journal, some of
8 this comes from looking at how the transactions were done,
9 but he has got a loan that's double encumbered. He knows
10 he has an additional almost \$100,000 that he has to bring
11 to the closing, and he has to pay off the other
12 lienholder, and so he has got close to a \$100,000 loss.

13 He decides to put 25,000 of that into the
14 original loan because he believes that the underlying
15 collateral value is worth more than his original loan, and
16 therefore he can absorb that loss through the ultimate
17 sale of that property.

18 For the amount that he doesn't think he can
19 recover, in this case 63,861, he puts it into the
20 5 million workout account, where it sits with no
21 collateral.

22 Q. Okay. Do those two accounts accrue interest at
23 the same rate?

24 A. Well, first of all, there is no interest --
25 there is interest on the original loan at whatever the

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1 rate was, so that extra 25,000 does accrue interest.

2 And the 63,000, once it gets into that
3 account -- I'm trying to remember how he does, whether he
4 does interest on just the account balance as a whole,
5 since there is no individual loans. I think that's how
6 it's done, but I do think there is some interest. I just
7 can't remember.

8 But remember, those interest payments, if there
9 are payments, when he ultimately sells the property, we
10 treat that as a reduction of principal and that lowers the
11 loss that we have in our calculation. It's a very
12 conservative calculation methodology.

13 Q. And ultimately with respect to this property,
14 your total workout loss ascribed to the defendants is
15 69,123? I think that's in paragraph 32.

16 well, wait. I'm sorry.

17 A. 27.

18 Q. Yeah.

19 A. It's \$45,318.57.

20 Q. On this one property?

21 A. Correct. And that's after deducting the
22 interest at closing on the ultimate sale. So when he
23 sells the property, he takes the proceeds, pays off the
24 first loan, which is now the only loan, and the extra
25 25,000 that he had already transferred and the interest on

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1 those loans, and then he ends up with a loss of 63,000,
2 and then we offset the 63 by the 18,000 of interest. And
3 so in our records and in the calculation of damages, it's
4 45,000 --

5 Q. Yeah.

6 A. -- of loss.

7 Does that make sense?

8 Q. Yes.

9 And your total workout loss that you ascribe to
10 the defendants is 69,000 and change, right?

11 A. That's correct. That's both workout loan
12 accounts minus -- and this is paragraph 32 --

13 Q. Correct.

14 A. -- it's two loans from the 1 million workout
15 that totaled 236,307; 22 loans from the work out 5 million
16 that totaled 1,663,266; reduced by the payments of
17 principal and interest that totaled 1,830,450.

18 Q. So if I'm reading this correctly, that one
19 property accounts for roughly 65 percent of the total
20 workout loan damages?

21 A. You can't look at it that way, because that one
22 property would be part of the total of the 236 and the
23 1 million 663, and then whatever portion of the interest
24 or principal payments is in the 1 million 8.

25 Q. Why would that one property be part of both the

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1 work out 1 million and the work out 5?

2 A. Well, it's part of one or the other.

3 Q. Okay. Right.

4 In this case, that one property would be part of
5 the work out 5 million, correct?

6 A. That's most likely where it is, because there
7 were only two loans in the other one. And so it would be
8 part of the 1 million 663 minus its -- and minus its share
9 of the interest and principal payments. Remember, 24
10 loans make up that total.

11 Q. Right. And we will get to that in a second.

12 But if the defendants had convinced DenSco to
13 stop lending to Menaged in January of 2014, would the
14 resulting loss of \$43,000 on this property have been
15 different?

16 A. Hard to say. Depends on when they sold that
17 property, because they did have collateral.

18 Q. Right.

19 A. And by the date you just described, they hadn't
20 refinanced the property, so there were still two --

21 Q. Right.

22 A. -- liens on the property.

23 Q. So it's entirely possible they would have simply
24 collected in second position whatever is left after --

25 A. They could have -- they could have had a profit,

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1 depending on when they sell it.

2 Q. Right.

3 So in paragraph 29 --

4 MR. STURR: I was going to suggest, Marvin, when
5 you get a chance, I'm not trying to interrupt you, if we
6 could take a break. It's been about an hour.

7 MR. RUTH: Yeah. Let me -- I'm almost done --

8 MR. STURR: Sure. Take your time.

9 MR. RUTH: -- with the workout loan portion.

10 THE WITNESS: Yeah. I'm okay right now.

11 MR. STURR: Okay. If he's fine, go on.

12 MR. RUTH: That's not to suggest that we can't
13 take a break whenever you want. I'm not going to belabor
14 this much longer.

15 Q. (BY MR. RUTH) So paragraph 29, you have
16 mentioned this a couple times, you calculate damages
17 related to the work out 1 million loans and you identified
18 two loans that were originated after September 30th, 2013?

19 A. Yes.

20 Q. Where can I find what those two loans are?

21 A. I don't know why Mr. Perry had that in his
22 report, but he said he couldn't find it. It comes right
23 from their QuickBooks, which he has a copy of. It shows
24 what loans were generated in that account. All he has to
25 do is go to that control account and look at the two loans

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1 that were originated after September 30th. It's a very
2 simple process. The same is true of the 5 million
3 workout. He goes to that account and he can see the
4 entries.

5 Q. Okay.

6 A. And he can match them up against the totals that
7 are in my paragraph 32.

8 MR. RUTH: Okay. Let's take a break.

9 VIDEOGRAPHER: We are off the record. The time
10 is 2:05 p.m. This is the end of media three.

11 (A recess was taken from 2:05 p.m. to 2:13 p.m.)

12 VIDEOGRAPHER: We are back on the record. The
13 time is 2:13 p.m. This begins media four.

14 Q. (BY MR. RUTH) All right. Let's go back to
15 paragraph 32, Mr. Weekly.

16 A. Okay.

17 Q. And you talk about the -- you made a reduction
18 for Menaged principal and interest payments, 1,830,450.

19 Do you see that?

20 A. Yes, sir.

21 Q. Where can I find a log of those payments? Is
22 that in QuickBooks, too?

23 A. It is.

24 Q. And in the QuickBooks it attributes the
25 principal and interest payments to the individual workout

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1 loans?

2 A. It doesn't. It --

3 Q. So how do I match up the payments to the loan?

4 A. In the 5 million account, for instance, which is
5 really the only place where they recorded these entries,
6 there are lump sum payments. We saw those payments in the
7 bank statements, which is why I know we picked them all
8 up, and so they might make -- in a net transaction, he
9 might do four, five loans out, four or five loans paid,
10 interest, and then he might make a \$100,000 payment on the
11 workout loans. And then that gets posted in QuickBooks as
12 a one-line entry and doesn't get applied to an individual
13 loan.

14 Q. Okay.

15 A. And there are hundreds of thousands of dollars
16 that are recorded that way. So you just look in the
17 QuickBooks account.

18 Q. In paragraphs 33 and 34 of your expert report,
19 you mention that there are some additional workout
20 payments that were not recorded in the workout loan
21 accounts, that they involve what you term complex
22 transaction entries by Chittick.

23 Do you see that?

24 A. Yes, sir.

25 Q. And then in 34 you note that you are going to

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1 continue to review those transactions.

2 Do you see that?

3 A. Yes.

4 Q. Have you continued to review those and has that
5 review resulted in any change to your opinion?

6 A. We are still reviewing them, and the trust or
7 the receiver is -- their staff is looking at some things.
8 We haven't finished the review. It looks like there could
9 be some additional losses, but we haven't concluded that
10 yet.

11 And that -- that arises, the example that we
12 went through earlier where the \$25,000 got added to a loan
13 balance --

14 Q. Uh-huh.

15 A. -- and then the other 60,000 went into the
16 5 million workout, when you start unraveling or blowing
17 out all of these net transactions, it's not unusual to see
18 the loss from certain sales get allocated to multiple
19 loans to try to spread it out, including loans that are
20 non-Managed loans, where Chittick, we believe, thinks
21 there is enough equity in a loan to ultimately absorb that
22 loss when that property does sell, even if it's a
23 legitimate performing loan. But we want to make sure we
24 are not double counting anything, so I haven't reached a
25 final conclusion yet.

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1 Q. Okay. We have talked before about your use and
2 reliance on the Chittick corporate journal.

3 Can I ask, when there is a time or an instance
4 where you rely on the Chittick corporate journal to
5 support an aspect of your analysis of your opinion, is
6 that specifically cited in the report?

7 A. If we relied predominantly or solely on it, it
8 would be, but I don't think there are any instances of
9 that.

10 what we used that journal for was, as I said
11 before, to corroborate the activity that was happening in
12 a timeframe with what the transactions that were being
13 recorded reflected, to see if it made sense.

14 Q. And the reason I ask that is because if you look
15 at paragraphs 37 through 40 of your report, you mention
16 the reliance on the corporate journal several times,
17 largely with respect to changes in how Menaged and DenSco
18 treated their lending and paying of loans?

19 A. That's right. And that's shown also in
20 Exhibit D. For instance, when they started the second
21 fraud, they did gross loans, one to one. Much easier to
22 track.

23 But when their actual transactions in Bank of
24 America in September of '14 went to 58 million cash in and
25 51, 61 million cash out, the bank said hold on. And

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1 that's when they went to net, because the bank wasn't
2 comfortable processing that level. I mean, that's
3 \$120 million for just one customer in one month.

4 And so when you look in the journal, you see
5 that that is discussed. Why did we go to net? Because
6 the bank is concerned.

7 Q. And you are aware that ultimately Bank of
8 America said this is all just a little too suspicious for
9 us?

10 A. They closed their accounts and they opened the
11 other First Bank account, I think it is, One First.

12 Q. Okay.

13 A. First Bank.

14 Q. Let's go to Exhibit E to your report. And you
15 know what? Instead of flipping to that, I have actually
16 printed it off in large format.

17 A. Okay. That's what I did.

18 Q. I usually don't think ahead this well, so I'm
19 proud of myself.

20 Go ahead and mark this.

21 A. Perfect. That's what I did, too.

22 (Deposition Exhibit No. 1158 was marked for
23 identification.)

24 MR. RUTH: Let's go ahead and mark this as well.

25 (Deposition Exhibit No. 1159 was marked for

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1 identification.)

2 Q. (BY MR. RUTH) Can you give me your -- and feel
3 free to take a look at any of these. I will represent
4 that what I have handed you as Exhibit 1159 is
5 RECEIVER 5196.

6 MR. STURR: I'm sorry.

7 MR. RUTH: 5196.

8 MR. STURR: Thank you.

9 Q. (BY MR. RUTH) Was -- Exhibit E summarizes your
10 analysis with respect to the non-workout loans. Is that
11 accurate?

12 A. The damages from --

13 Q. Arising from --

14 A. -- the non-workout loans, that's correct.

15 Q. And it looked to me like a fair amount of that
16 was based on or pulled from Exhibit 1159, which is
17 RECEIVER'S 5196.

18 would that be accurate?

19 A. That is accurate. That is the starting point,
20 but with that are all of the bank statements.

21 Q. Okay. And that was going to be my question.

22 So if we look at Exhibit 1159, there is a column
23 of transaction type, and it looks like the receiver has
24 done a gross cash versus net cash transaction analysis as
25 well?

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1 A. This is simply a transaction listing by the
2 receiver, by one of Peter's staff, Sara, that lists all
3 transactions from January 22nd of '14 to the end.

4 Q. Correct.

5 And I think when you look at the last page of
6 Exhibit 1158, the last page of Exhibit E to your expert
7 report --

8 A. Exhibit E.

9 Q. -- there is a total unpaid loan balance of
10 29,501,200?

11 A. Correct.

12 Q. And if you look at the last page of
13 Exhibit 1159, which is the receiver's document, do you see
14 that number reflected as well in the cash transaction
15 line, where it says net loan increase or decrease?

16 A. That's correct, under transaction number.

17 Q. Correct.

18 A. It's the next to last column.

19 Q. Correct.

20 A. That's right.

21 Q. And in fact, you then subtract out interest
22 payments, less interest payments, fully paid?

23 A. That's correct.

24 Q. And that ties out to the receiver's analysis as
25 well, right, interest fees of \$5,053,796.39. I think if

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1 we --

2 A. Those two numbers added together, yes --

3 Q. Correct.

4 A. -- is the interest.

5 Q. Correct.

6 So your analysis ties out with the receiver's
7 analysis?

8 A. That's always good.

9 Q. So can you explain to me what the difference is
10 in your analysis versus the receiver's analysis?

11 A. I will. This is going to take a couple minutes.

12 Q. Okay. I've got time.

13 A. Okay. The best way I think to frame this is to
14 first look at Exhibit D to my report --

15 Q. Okay.

16 A. -- which is a timeline. So that's included in
17 Exhibit 1152 under Exhibit D.

18 So in this table on the left side in the box,
19 you see three different loan categories. The first one is
20 fully repaid loans, the second one is not fully repaid
21 loans, and the third one is non-cash loans.

22 Now, if you look at the amounts column, the
23 total of all of those is \$735,541,240. That number is
24 also on Exhibit 1159 on the last page. There is a slight
25 adjustment to that, but it's in the first column. It says

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1 loans, withdrawals --

2 Q. Yes.

3 A. -- 735,528,640. There is a small adjustment.

4 But the reason I point that out is there were
5 three types of loan activity that occurred during the
6 second fraud, which I just tried to describe in my report
7 narratively.

8 The top line, fully repaid loans, represents
9 loans between January 22nd, 2014, and October 24th of
10 2014. It then stops and it later starts up again on
11 December 1st of 2014 and ends on July 7th of 2015.

12 The second category, non-fully repaid loans,
13 starts up in October 7th, 2014, and goes to December 1st,
14 2014, then it stops. And then starting July 8th of 2015
15 to November 4th of 2015, and then it stops for good.

16 And then the third category is non-cash loans,
17 and it starts on November 2nd, 2015, and goes to 6/21 of
18 '16, the end.

19 The reason these are identified this way is
20 because, as you can imagine, with \$735 million worth of
21 activity in a 21-month period and an average loan balance
22 of \$250,000, it is thousands and thousands of
23 transactions.

24 Q. Right.

25 A. So what we wanted to do first was simplify what

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1 needed to be analyzed. So the first thing we did was we
2 looked at all the loans that we could determine were fully
3 paid off.

4 Now, they are shown on your Exhibit 1159, but
5 they are not matched up.

6 Q. Okay.

7 A. You can see a little bit of it. If you look on
8 Exhibit 1159, the very first line is a loan 4822 --

9 Q. Uh-huh.

10 A. -- for 146,000, right? That's the loan
11 withdrawal. If you look about four entries down, you see
12 an entry for 146,000, right?

13 Q. I do.

14 A. And it's the same address, 2282 East Palm Beach
15 Drive. That's the payoff for the exact same amount.
16 There is also an interest payment. Okay?

17 So the first thing we did is we went through
18 this document and electronically matched up all of the
19 transactions with the same address, so that we could
20 identify where a loan was made and paid off, and then we
21 traced those cash transactions back to the bank statement.
22 So we know that a wire went out for the disbursement, and
23 a wire came in or a receipt came in for the other one,
24 including the interest.

25 When we added all those up, going back to

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1 Exhibit D, it totaled \$290,179,834. So we said those
2 loans don't have any loss, there is no economic loss.
3 They were made and they were paid. Cash out equals cash
4 in, and we verified the cash out and the cash in,
5 transaction by transaction. Not just from what the book
6 and records say, because that's the source of 1159,
7 Exhibit 1159, but also based on what the bank statement
8 says. So we are now able to carve that group out.

9 We also looked at the third group, non-cash
10 transactions, which was 255,401,500. We know from looking
11 at that -- those transactions, from reading other
12 documents, that there was no trans -- not only was there
13 no property, there was no cash involved.

14 So they had gotten to the point where the banks
15 wouldn't let them run the volume through the bank, so they
16 started netting. They changed banks. They went back to
17 the way they did it for a while. Then the bank didn't
18 like that or they ran out of money to do it on a gross
19 basis, so they went back to net.

20 And then they said, you know what? Let's just
21 have a score card. Let's let -- we will put the debits
22 and the credits, and we will figure out -- we will run a
23 tab, is how I describe it. And so we know that when they
24 started running a tab, that there was no cash being paid.

25 So Managed might say I need you to fund these

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1 five loans with these fictitious addresses, and I'm going
2 to pay off these five loans and there was no cash that
3 changed hands. So we would go to the -- we would go to
4 those loans and the entries in the books, we would
5 validate the amount. Then we would go to the bank
6 statements and we would make sure there were no
7 transactions in the bank statement for those loan
8 activities. And we checked every day, every month from
9 the time period of November 2nd, 2015, to June 21st.

10 And you can see visually that the bank
11 statements, which used to be 10 or 15 pages long or more,
12 are now three pages or two pages. Right?

13 Q. Right.

14 A. So we were able to carve those out.

15 So now what we have done is we have taken away
16 the bread to the sandwich and we are getting to the
17 middle, the meat, what's been disbursed that isn't fully
18 paid. That is what's on Schedule E, if that makes sense.

19 Q. It does.

20 A. I wanted to make sure we had that understanding
21 before we got to Schedule E.

22 Q. Yes.

23 A. Does that help?

24 Q. It does. Because one of my questions was going
25 to be, for example, wondering where the loan transactions

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1 were prior to October 2014.

2 A. And the answer is all of the ones prior to then
3 were loans that were made and paid off in this category.
4 And it totaled -- they averaged about \$22 million a month.
5 So you can imagine. So if you look at that 290 million,
6 right?

7 There is also some of that going on where there
8 are other gaps --

9 Q. Right.

10 A. -- when they go back to a gross basis, but we
11 tied down all those dates, because you are right, you have
12 to make sure that there isn't a transaction in that time
13 period.

14 So we validated that and we checked every
15 receipt and every deposit during that time period from
16 January 22nd, '14, to 10/6 of '14, to make sure that we
17 had accounted for every cash in and cash out, and that
18 they equaled the numbers that we show on Exhibit D. Okay?

19 So that's why this schedule starts October 7th,
20 2014. That is the first loan that ends up having an
21 unpaid amount. Even though there is no property, it's
22 identified to that loan number.

23 So I'll let you ask -- I'm just trying to help
24 us along.

25 Q. No. I appreciate that. Thank you.

DAVID WEEKLY, 10/2/2019

1 So these gross cash transactions, none of these
2 listed on here are fully repaid loans?

3 A. That is correct. Although an individual loan
4 number may be on there, it's not fully paid in the sense
5 that there was a grouping --

6 Q. Correct. Okay.

7 A. -- and it didn't get fully repaid.

8 Q. When we look at Exhibit 1159, which is RECEIVER
9 5196, in the column transaction type --

10 A. Yes.

11 Q. -- do you know how the receiver managed to
12 identify the transaction type?

13 A. Yes.

14 Q. How was that?

15 A. The receiver, which was predominantly Sara
16 Beretta --

17 Q. Yes.

18 A. -- I think is her last name, very nice lady,
19 she -- we collectively identified the type of transaction
20 and the definition of it, which we included on our
21 exhibits.

22 what -- what the designation here was, was
23 because she believed that you could find a one-to-one
24 relationship between the loan disbursement and the loan
25 payoff. Even if it was made in groups, remember,

DAVID WEEKLY, 10/2/2019

1 Mr. Chittick entered each loan individually.

2 So best example of that is the very first
3 transaction on Exhibit E where you can see that we have a
4 loan number with an address, which we now know is
5 fictitious, but 361,100, but if you go all the way to the
6 right to column M, the actual transaction in the bank,
7 which is in that column, is 1,159,400. Okay?

8 What that means is when that loan was made, one
9 wire was sent to Mr. Menaged for this total of 1,159,400,
10 but if you look in the notes column, it included four
11 different loans.

12 We know from following the payments for those
13 loans in here and on the bank statement that all of those
14 were paid off. So three of those four loans end up in the
15 fully paid loans, but this one never got paid off, and
16 that's why it's a not fully repaid loan.

17 Q. Understood.

18 A. But in order to find that, we had to go through
19 and unwind, if you will, or understand each piece of the
20 transaction.

21 So think of the Exhibit 1159 as the ultimate
22 detail of the books, and Exhibit E is the result of things
23 that aren't matched up or proven to have been repaid.

24 Q. Okay.

25 A. Okay?

DAVID WEEKLY, 10/2/2019

1 So gross type there, because that's the way most
2 of the transactions, if you look at the dates on
3 Exhibit 1159, it says chronological, you will see gross
4 cash in that transaction type all the way down to page 20
5 of 95.

6 On page 20 of 95 you see the word net cash for
7 the first time. Every transaction before then was a gross
8 cash, and you can see that the first net cash transaction
9 takes place on October the 24th. Okay?

10 If you go to page 5 of Exhibit E -- I'm sorry.
11 That's the big one.

12 Q. Okay.

13 A. I'll stop and let you ask questions. I just
14 wanted to help the process.

15 Q. No.

16 A. Do you see where net transactions?

17 Q. Yes.

18 A. Do you see the first date?

19 Q. Yes.

20 A. 10/24/14.

21 Q. Okay.

22 A. So there were no net transactions before that.
23 And that also agreed with Exhibit --

24 Q. D.

25 A. -- D.

DAVID WEEKLY, 10/2/2019

1 Q. Okay.

2 A. So just so you can sort of follow. So they are
3 not all chronological. In other words, we listed all the
4 gross transactions first and then all the net
5 transactions, even though some of the net -- there was an
6 overlap.

7 Okay. Sorry.

8 Q. No need to apologize. I appreciate the
9 explanation.

10 In terms of the interest payments that were made
11 by Menaged to DenSco, it sounded like, based on your prior
12 testimony, that those payments weren't always made or
13 were -- often were not made with an identifier tying the
14 payment to a specific loan or property address?

15 A. That was only for those payments that went into
16 the workout loan.

17 Q. Okay.

18 A. If it --

19 Q. Okay.

20 A. For these loans, they were attached. So, again,
21 if you go to line 57 on Exhibit E, which is page 2, you
22 will only see an interest payment when there is a payoff.

23 Q. I see.

24 A. Right? There is no interest payment unless
25 there is a payoff. So you begin to see on 12/1 of '14, at

DAVID WEEKLY, 10/2/2019

1 line 57, a payoff for 507,800, but the total bank
2 transaction is 514,411. That's because the interest
3 has -- has been included in that payment.

4 Q. Okay.

5 A. And it's that interest that gets added up and
6 deducted. And the reason the deduction for interest is
7 two pieces, is because the other interest deduction is
8 coming from the workout loan or the payoff loans or
9 wherever else it's coming from.

10 Q. Got it.

11 A. Okay.

12 Q. All right. Let's go to page -- paragraph 46 of
13 your expert report.

14 A. Okay.

15 Q. Here you have -- you have calculated some costs
16 and expenses that the receivership has incurred that you
17 believe the defendants should be responsible for.

18 Is that accurate?

19 A. Yes. They are costs and expenses that are
20 related to the recoveries of monies from the Menaged
21 activities.

22 Q. So what did you include in the Menaged-related
23 activities, Menaged-related recoveries?

24 A. In the recoveries. Okay. Those recoveries, I
25 think they are in paragraph 46.

DAVID WEEKLY, 10/2/2019

1 Q. Here, this might help.

2 A. It's -- there is -- there is a worksheet from
3 the -- there is a balance sheet from the receiver that
4 lists -- that has a column that shows what the recoveries
5 are, and we cite that it's \$667,585 in paragraph 46 for
6 the recovery amount. And that's been updated. I think we
7 just produced the current version.

8 MR. STURR: We did.

9 MR. RUTH: Did you?

10 MR. STURR: Yeah, we served it. We served it
11 last week. There has been an updated statement similar --
12 is this marked as Exhibit --

13 MR. RUTH: No, it's not marked as anything yet,
14 but it will be.

15 THE WITNESS: Those are costs. That's not
16 recoveries. That's recoveries.

17 (Deposition Exhibit No. 1160 was marked for
18 identification.)

19 MR. STURR: So we have, sorry --

20 THE WITNESS: 1160.

21 MR. STURR: -- 1160 is the costs.

22 Q. (BY MR. RUTH) And 1160 is also RECEIVER 5195.

23 MR. STURR: That's not got a number on it.

24 Thank you, Marvin. Both of them are numbered.

25 Q. (BY MR. RUTH) And then 1161 are the recoveries.

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1 COURT REPORTER: I don't have one.

2 THE WITNESS: Yeah, you don't have recoveries.
3 She doesn't have that exhibit.

4 (Deposition Exhibit No. 1161 was marked for
5 identification.)

6 MR. STURR: And, Marvin, just before we go on,
7 as Mr. Weekly mentioned, there is an updated version of
8 Exhibit 1161, the profit and loss statement --

9 MR. RUTH: Okay.

10 MR. STURR: -- which we produced last week.

11 MR. RUTH: Okay.

12 MR. STURR: I just wanted to make sure you knew
13 that that was served.

14 MR. RUTH: I appreciate it. I may have missed
15 it, but I will take you at your word.

16 Q. (BY MR. RUTH) Did the update to the profit and
17 loss statement increase the amount of recoveries allocable
18 to Menaged?

19 A. It did.

20 Q. I assume, did it also increase the amount of
21 expenses related to those recoveries?

22 A. It did.

23 Q. And the net effect was?

24 A. A net decrease, or a net decrease of damages, an
25 increase in recoveries. There was a 700 and I think

DAVID WEEKLY, 10/2/2019

1 nine-thousand-dollar recovery related to Joseph Menaged
2 that had been withheld by some government agency.

3 Q. Yes.

4 A. So that increased the recoveries, and there were
5 some updated expenses. I haven't really examined that new
6 balance sheet, I haven't had time, but I know it's been
7 updated. And this will continue to be updated as
8 recoveries and costs over time change, which I point out
9 in my report.

10 Q. What you don't include in the Menaged-related
11 recoveries, for example, though, are monies recovered from
12 the Chittick estate, for example, correct?

13 A. That's right. That's correct. They are not in
14 there at this point.

15 Q. Did you make that determination or did counsel
16 tell you not to include those?

17 A. No. I made that determination at this point.

18 Q. And why are the defendants not getting credit
19 for the money collected from the Chittick estate?

20 A. Well, because the components of it, the biggest
21 piece is the Chittick defined benefit plan of 1,842,833,
22 and in my opinion, that's not part of the fraud or the
23 Menaged activity. Those are -- those are Mr. Chittick's
24 personal defined benefit deposits. They were a part of
25 the settlement with the Chittick estate. And as you know,

DAVID WEEKLY, 10/2/2019

1 there was a payment by the estate, I think it was
2 \$675,000, that they got to keep.

3 But based on what I have seen to date, I believe
4 that that is not related to the Menaged losses, that it
5 was otherwise funded, and much of that was funded well
6 before certainly the date of our calculation or the
7 damages are.

8 Q. So have you seen the notice of claim that the
9 receiver has filed or the receiver did file against the
10 Chittick estate?

11 A. I don't know if I have seen -- I probably have.
12 I know he has reported that in his status reports and that
13 information is there.

14 Q. Part of that notice of claim states that
15 Mr. Chittick improperly withdrew funds from DenSco.

16 Are you aware of that?

17 A. I can't remember, but --

18 Q. And part of that notice of claim is that
19 Mr. Chittick is liable for fraud and misrepresentation and
20 for breach of fiduciary duties owed to DenSco.

21 Are you aware of that?

22 A. Again, if it was in the report, I would be aware
23 of it, but if it was in the -- in a legal pleading, I
24 wouldn't necessarily remember it.

25 Q. And you understand that part of the receiver's

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1 allegations against the defendants is that they aided and
2 abetted Chittick's breach of his fiduciary duty to DenSco?

3 A. And I understand that, and that other issues
4 related to recoveries and costs --

5 Q. Sure.

6 A. -- are going to be determined by the trier of
7 fact most likely, and --

8 Q. Right. I'm getting at something a little
9 different, though.

10 A. Okay.

11 Q. Isn't the collection of money from the Chittick
12 estate -- you mentioned this was due to a result of a
13 settlement. Correct?

14 A. My understanding is there was a settlement
15 between the receiver and the Chittick estate.

16 Q. Which resolved the receiver's claim against the
17 estate, correct?

18 A. That's my understanding.

19 Q. Which claim included allegations that
20 Mr. Chittick breached his fiduciary duty to DenSco, for
21 example?

22 A. And that's the part that I'm not 100 percent
23 sure of, but I'm not surprised.

24 Q. And in order to collect on that claim against
25 the estate, there are only certain assets within that

DAVID WEEKLY, 10/2/2019

1 estate that the receiver could collect from, correct?

2 MR. STURR: Form.

3 THE WITNESS: I mean, that makes sense. Again,
4 I haven't really examined that, other than to say that my
5 understanding is there is a settlement that the estate --
6 that everything except the 675,000 was taken by the
7 receiver, and it's included in their books as other
8 recoveries, not Menaged recoveries.

9 Q. (BY MR. RUTH) Right. which gets back to my
10 original question, which is: But you are opining that
11 these Chittick-related recoveries should not be credited
12 to the defendants?

13 A. That's my position at this point, yes.

14 Q. Even though those -- some of these Chittick
15 recoveries were as the result of a settlement of a claim
16 that includes the allegation that Mr. Chittick breached
17 the same fiduciary duty defendants are alleged to have
18 aided and abetted?

19 A. Again, I will take your word for that, but to
20 me, that's a legal issue that may have an impact on
21 whether those should or shouldn't be included as
22 recoveries.

23 Q. You also see that there is a -- an account
24 balance. It says cash from Chittick estate.

25 Do you see that on the profit and loss

DAVID WEEKLY, 10/2/2019

1 statement, Exhibit 1161?

2 A. Yes.

3 Q. \$551,000 and change?

4 A. Correct.

5 Q. Those represent funds that were in DenSco's or
6 Chittick's bank account, correct?

7 A. I think it included some other things, including
8 some cash that was found, and I'm trying to see if there
9 is a separate line for that. But it's -- it's at least
10 part what you just said, but it is cash, whether it was
11 cash or bank account balances.

12 Q. And in your opinion, none of that should
13 properly be credited to the defendants in this matter?

14 MR. STURR: Form.

15 THE WITNESS: As I said before, my opinion as it
16 stands right now, and it's based on how this has been
17 handled by the receiver and those discussions, but my
18 understanding of what the source of those funds are
19 relative to the losses that we are calculating, I don't
20 believe they belong as an offset.

21 Q. (BY MR. RUTH) I mean, it sounds to me like you
22 are basing that opinion largely on how the receiver has
23 already allocated these recoveries.

24 A. Well, that's certainly one of the inputs, and
25 I'm trying to in my mind, which I did, decide whether I

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1 believe that those are related to the losses and should be
2 an offset to the losses, and I don't believe they should
3 be.

4 Q. Have you assessed at all whether Mr. Chittick is
5 responsible for some of the losses caused by Menaged?

6 A. As I say in my report, I have not done any
7 apportionment or allocation of liability.

8 Q. If we look at Exhibit 1160 --

9 A. Okay.

10 Q. -- these are the expenses the receivership
11 incurred collecting the Menaged recoveries, correct?

12 A. Yes, sir.

13 Q. And we have got -- if we look at paragraph 46 of
14 your report, you break those expenses out into \$292,809 of
15 direct costs and \$582,772 of allocated costs.

16 Do you see that?

17 A. Correct.

18 Q. What -- what are the direct costs?

19 A. The direct costs come from the P & L.

20 Q. Okay.

21 A. And they are in the --

22 Q. I see here total expense, under total Menaged?

23 A. Yeah. It's under total expenses under Menaged,
24 292,809. If you look at the page 3, at the bottom of
25 page 3 --

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1 Q. Yes.

2 A. -- where it totals the column, totals under
3 Menaged, it's 292,809, which is the number in my report.
4 And it's detailed as to how much of those relate to the
5 recoveries of the Furniture King. Most of those come from
6 the Furniture King settlement or resolution of that
7 entity.

8 Q. Sure.

9 A. As you can tell, all the detail amounts.

10 Q. The receiver ultimately put Furniture King into
11 receivership as well, right?

12 A. That's my understanding. I believe that's
13 right. I'd have to --

14 Q. And in your opinion, the defendants are
15 responsible for the expenses incurred in collecting from
16 Furniture King?

17 A. Well, because in the recoveries are -- there is
18 a line item for the recoveries on the Furniture King, and
19 I'm just trying to find. I don't have my glasses. That's
20 why I can't see. Here we go.

21 Okay. There is \$273,663 of recovery in the
22 income side. That's part of that 667, and that's on
23 page 2.

24 Q. Correct.

25 A. So they recovered \$273,663 from Furniture King,

DAVID WEEKLY, 10/2/2019

1 but it cost \$218,189 for the auctioneers, the moving, the
2 receivership, the rent, et cetera. So that's all
3 detailed. That's what's in there, yes.

4 Q. If the receiver ends up collecting money from
5 Chase Bank, for example -- are you aware that the receiver
6 has filed a complaint against Chase Bank?

7 A. They have a number of complaints, and I do point
8 that out, that all the numbers we are talking about now,
9 recoveries and expenses are going to continue to update
10 and have to be finalized before this case is resolved.

11 Q. If the receiver collects money against Chase
12 Bank for its involvement in the second fraud, would those
13 recoveries properly be credited to the defendants, in your
14 opinion?

15 A. There is a good chance they would, but until I
16 see them and what they are based on, I -- I can't tell
17 you, but they have to be considered. There is no
18 question. All recoveries have to be considered.

19 Q. In terms of going back to Exhibit 1160 and the
20 receiver's expenses, we see, for example, receivership
21 fees billed by Simon Consulting, that's Mr. Davis's
22 company, receiver versus Yomtov Menaged, 210,048.30, and
23 Furniture King receivership, \$136,678.

24 Do you see that?

25 A. Yes, sir.

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1 Q. Have you reviewed the invoices that make up
2 those totals?

3 A. We have not.

4 Q. Okay.

5 A. We reviewed the process that they used to record
6 those, that they set up separate accounts, that they
7 tracked their time and expenses to those specific cost
8 codes, but we haven't reviewed the detail behind them
9 because we've basically been told at this point there is
10 still some potential privileged information, but I would
11 like to see that.

12 Q. And I take it that's a 100 percent allocation,
13 correct?

14 A. It's -- it's -- I wouldn't describe it that way.
15 It is the allocation of all of their costs that go to
16 those two account numbers, so it is a percentage of what
17 their overall cost is.

18 Q. That was a bad question.

19 Everything that the receiver puts in code number
20 105 is included in this total as an expense that should be
21 borne by the defendants in this matter?

22 A. That's my understanding, yes.

23 Q. And you are not rendering an opinion on whether
24 some of those fees should properly be allocated to the
25 Chittick estate, for example?

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1 A. Ultimately, I have to be comfortable that the
2 amounts of recoveries and expenses are supported. So I
3 know this is going to continuously change.

4 Q. Okay.

5 A. At some point I hope to be able to do some
6 additional analysis of those. But -- but based on what I
7 have done, which is have conversations with them,
8 understand how they record those costs and get their
9 representations that these are the costs, that's all I
10 have at this point.

11 Q. What additional information would you need, for
12 example, with respect to the Chittick estate, to decide
13 that the Chittick estate should be responsible for some
14 portion of the receiver's expenses in pursuing Menaged?

15 A. I'm not following that question, the Chittick
16 estate. That question isn't about 1160. That's about --

17 Q. It is about 1160.

18 A. Okay.

19 Q. So right now, 100 percent of the fees that the
20 receiver has billed to code 105, you are including in the
21 damage analysis for the defendants?

22 A. Right, because they are attributed to recovery
23 of Menaged-related activities, whereas the Chittick estate
24 is -- is not -- there are no costs for the Chittick estate
25 here. Maybe that's where I'm confused.

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1 Q. My question is, why aren't some of these fees
2 being allocated to other actors, like the Chittick estate?

3 A. Well, my understanding is they keep track of
4 those separately. They are just not being added to the
5 damage calculation, because there is no recoveries. If
6 there were recoveries from the Chittick estate settlement
7 that were going to be an offset to damages, then I would
8 look to the expenses that relate to those recoveries. You
9 would need to look at both.

10 Q. You state in paragraph 47 of your expert report
11 that you express no opinion regarding apportionment of
12 damages.

13 Do you see that?

14 A. Yes, sir.

15 Q. So it's possible the correct apportionment with
16 respect to the defendants could be zero percent?

17 A. Hypothetically, that's possible.

18 Q. You are not opining one way or the other as to
19 defendants' fault?

20 A. No, sir.

21 Q. Have you asked the receiver for an estimate of
22 future expected recoveries from other sources?

23 A. We talked about it and he has no credible way to
24 estimate that, and I don't think an estimate is the
25 appropriate way to do it at this point. If that became

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1 necessary, we might have some further discussions, but at
2 this point, no.

3 Q. Let's go to paragraph 48. I'm just curious,
4 because I couldn't quite tell.

5 Are you providing an opinion that prejudgment
6 interest is appropriate in this matter, or are you just
7 doing the calculations in the event the factfinder or the
8 judge determines that prejudgment interest is appropriate?

9 A. Ultimately the factfinder is going to have to
10 make that. That's not my decision. But I do point out
11 that, and I think I do it in my supplemental report, while
12 not a legal conclusion, my professional standards do
13 provide guidance on whether something is a liquidated
14 claim or not. And I believe these are sum certainties for
15 the damages, not necessarily, you know, some of the other
16 items that are in the offsets. If -- I mean, at this
17 point we know what they are, but we know they are going to
18 change.

19 Q. So they are sum certain, notwithstanding, for
20 example, the complex workout transactions that you have
21 yet to analyze and put in your report?

22 A. That would be one type of adjustment. What I'm
23 saying is ultimately the trier of fact is going to make
24 that determination, not me. It's a legal conclusion, but
25 I believe there is enough work that's been done by me and

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1 my team, that the amounts of the damages that we have
2 calculated so far are a sum certain, because it's based on
3 actual cash out and actual cash in.

4 Q. One of the time periods you run prejudgment
5 interest from is August 31st, 2016, is that correct?

6 A. Correct.

7 Q. But part of the damages that you assess to
8 defendants, as part of your sum certain, include net
9 recoveries, do they not?

10 A. Meaning the things we were just talking about --

11 Q. Yes.

12 A. -- from -- some of them do, yes.

13 Q. Had the receivership had any recoveries as of
14 August 31st, 2016?

15 A. I don't know. I think they started about that
16 time, so I doubt they had any, but --

17 Q. If the receiver hadn't had any recoveries as of
18 this date -- and to be clear, your net recoveries are
19 actually negative, correct, or at least as of the time of
20 this report they were negative?

21 A. Yeah. I believe they are not any longer --

22 Q. Okay.

23 A. -- but I think --

24 Q. So this might be mooted.

25 So your current analysis would suggest there is

DAVID WEEKLY, 10/2/2019

1 going to be a credit due to defendants for net recoveries?

2 A. It looks like it, yes. But also those dates, as
3 my footnote says, those were determined between a letter
4 between Mr. Sturr and Mr. DeWulf, and all we did was make
5 the calculation as of those dates, understanding that the
6 trier of fact is going to determine is it even allowable,
7 and if so, over what time period.

8 MR. RUTH: All right. Let's take a quick break.
9 I think I'm almost done.

10 VIDEOGRAPHER: We are off the record. The time
11 is 3:03 p.m. This is the end of media four.

12 (A recess was taken from 3:03 p.m. to 3:10 p.m.)

13 VIDEOGRAPHER: We are back on the record. The
14 time is 3:10 p.m. This begins media five.

15 Q. (BY MR. RUTH) Thank you, Mr. Weekly.

16 Looking back on both -- you have issued a
17 rebuttal report in this matter as well, correct?

18 A. Yes, sir.

19 Q. Looking back on your rebuttal report and the
20 initial report that you issued, are you aware of any
21 errors in any of the reports?

22 A. I'm not aware of any errors. I'm aware that
23 there have to be updates, but I'm not aware of any errors
24 at this point.

25 Q. Did you review both of those reports before your

DAVID WEEKLY, 10/2/2019

1 deposition today?

2 A. Both of my reports?

3 Q. Yes.

4 A. I read them, yes.

5 Q. Okay. So you would be up to date on what they
6 say and the opinions expressed therein?

7 A. I hope so.

8 Q. You say that you anticipate making some updates.
9 When do you anticipate having those updates
10 done?

11 A. I haven't had that conversation with counsel,
12 but I know that we just got the most recent balance sheet
13 and P & L from the receiver, as I mentioned. We are still
14 looking at the 15 transactions that I mentioned that may
15 or may not have any revisions.

16 There is no other new information that I'm aware
17 of that I have to consider, so it's just -- it depends on
18 when I am asked to do it by counsel. There may be a
19 couple of updates, depending on when information is
20 provided, if there are settlements that are significant
21 that need to be considered.

22 Q. Having reviewed your reports and the opinions
23 therein, do you still hold today all the same opinions
24 that are expressed in those reports?

25 A. Yes.

DAVID WEEKLY, 10/2/2019

1 Q. Do you have any opinions that you are going to
2 testify about to the -- to the jury that are not contained
3 in either of your reports?

4 A. Not as of now, I don't. If I do more work and
5 I'm asked to do more things, I could, but I'm not
6 anticipating any new opinions.

7 MR. RUTH: I have got nothing else.

8 MR. STURR: I have no questions.

9 We will read and sign. We can go off the record
10 now.

11 VIDEOGRAPHER: This concludes the videotaped
12 deposition of David weekly, and we are off the record at
13 3:13 p.m.

14 (3:12 p.m.)

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DAVID WEEKLY

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DAVID WEEKLY, 10/2/2019

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 10/11/2019
 Kelly Sue Oglesby Date
 15 Arizona Certified Reporter No. 50178

16
 17 I CERTIFY that JD Reporting, Inc. has complied
 with the ethical obligations in ACJA Sections
 18 7-206(J)(1)(g)(1) and (6).

19
 20 Jane M. Doyle 10/11/2019
 JD REPORTING, INC. Date
 21 Arizona Registered Reporting Firm R1012