



DANIEL ALLEN SCHENCK, 6/19/2018

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| EXHIBITS (CONT.) |          |  |               |     |
|------------------|----------|--|---------------|-----|
|                  | EXHIBIT: | DESCRIPTION  | MARKED/REF'ED |     |
| 1                |          |  |               |     |
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| 19               | 98       | Email string   | 216           |     |
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| 21               | 99       | Email from Denny Chittick to David Beauchamp dated 4/24/2014; Confidential Private Offering Memorandum   | 216           | 84  |
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| 25               |          |  |               |     |

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| EXHIBIT: | DESCRIPTION   | MARKED/REF'ED |
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## REQUESTS TO PRODUCE DOCUMENTS

| Page    | Line |
|---------|------|
| (None.) |      |

## QUESTIONS INSTRUCTED NOT TO ANSWER

| Page    | Line |
|---------|------|
| (None.) |      |

## RECESSES TAKEN

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|--|------|
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| Recess taken from 11:19 a.m. to 11:39 a.m. | 104  |
| Recess taken from 12:22 p.m. to 1:12 p.m.  | 135  |
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| Recess taken from 3:19 p.m. to 3:22 p.m.   | 214  |

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1 DEPOSITION OF DANIEL ALLEN SCHENCK, commenced at  
2 9:05 a.m. on June 19, 2018, at the law offices of Osborn  
3 Maledon, P.A., 2929 North Central Avenue, 21st Floor,  
4 Phoenix, Arizona, before KELLY SUE OGLESBY, a Certified  
5 Reporter, CR No. 50178, in and for the County of Maricopa,  
6 State of Arizona, pursuant to the Rules of Civil  
7 Procedure.

8 \* \* \*

9 APPEARANCES

10 FOR PLAINTIFF:

11 OSBORN MALEDON, P.A.

12 BY: MR. COLIN F. CAMPBELL

13 MR. GEOFFREY M.T. STURR

14 MR. JOSHUA M. WHITAKER

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17 Phoenix, Arizona 85012-2793

18 ccampbell@omlaw.com

19 gsturr@omlaw.com

20 jwhitaker@omlaw.com

21 GUTTILLA MURPHY ANDERSON

22 BY: MR. RYAN W. ANDERSON

23 5415 E. High Street, Suite 200

24 Phoenix, Arizona 85054

25 FOR DEFENDANTS:

COPPERSMITH BROCKELMAN, PLC

BY: MR. JOHN E. DEWULF

2800 North Central Avenue

Suite 1900

Phoenix, Arizona 85004

jdewulf@cblawyers.com

ALSO PRESENT:

Mary Onuschak, Legal Video Services

DANIEL ALLEN SCHENCK, 6/19/2018

Phoenix, Arizona  
June 19, 2018  
9:05 a.m.

\* \* \*

VIDEOGRAPHER: This is the videotaped deposition of Daniel A. Schenck, taken by the plaintiff in cause No. CV2017-013832, styled Peter Davis, as Receiver of DenSco Investment Corporation, versus Clark Hill, PLC, et al. filed in the Superior Court of the State of Arizona, in and for the County of Maricopa.

Today is June 19th. The year is 2018. The time is 9:05 a.m. Our location is 2929 North Central Avenue, Phoenix, Arizona.

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

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

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

MR. ANDERSON: Ryan Anderson for -- general counsel for the court-appointed receiver Peter Davis.

MR. WHITAKER: Josh Whitaker for plaintiff.

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

3 VIDEOGRAPHER: You may swear the witness.  
4

5 DANIEL ALLEN SCHENCK,  
6 called as a witness herein, having been first duly sworn,  
7 was examined and testified as follows:  
8

9 EXAMINATION  
10

11 Q. (BY MR. CAMPBELL) Could you state your full  
12 name for the record, please.

13 A. Daniel Allen Schenck.

14 Q. We just met. When were you born?

15 A. When was I born? In 1975.

16 Q. And where were you born?

17 A. Ephrata, Washington.

18 Q. And where -- where is Ephrata?

19 A. It's towards the center of the state. More the  
20 farm country, orchard country.

21 Q. I have a son that works in Pasco.

22 A. Oh, okay.

23 Q. So did you grow up in Washington?

24 A. Yeah, until I was about ten years old.

25 Q. And then where did you move to?

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1 A. St. George, Utah.

2 Q. And then did you go to high school in  
3 St. George?

4 A. Yes.

5 Q. And then where did you go to college?

6 A. Well, I went to some different colleges for my  
7 undergrad, but I ended up at Arizona State, and that's  
8 where I graduated.

9 Q. What year did you graduate from ASU?

10 A. 2001.

11 Q. And what did you get your degree in?

12 A. In marketing.

13 Q. Did you go right to law school?

14 A. No.

15 Q. What did you do?

16 A. I worked for a telecommunications company named  
17 Alltell. I worked for them in Raleigh, North Carolina,  
18 for less than a year, so then I started law school well  
19 after that.

20 Q. Where did you go to law school?

21 A. University of Connecticut.

22 Q. And what year did you graduate from law school?

23 A. 2005.

24 Q. And then have you been with Clark Hill the  
25 entire time since you have graduated from law school?

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1 A. No.

2 Q. Where have you been?

3 A. I started in Las Vegas at a firm that, well, was  
4 then called Rawlings, Olson, Cannon, Gormley &  
5 Desruisseaux. I can't spell those. I'm sorry. I was  
6 there for about a year. And then from there I moved to --  
7 back to St. George, Utah, and I worked for a firm there  
8 called Gallian, Wilcox, Welker & Beckstrom, and then I  
9 came to Clark Hill.

10 Q. When did you come to Clark Hill?

11 A. August of 2011, I believe.

12 Q. And Clark Hill here in Phoenix?

13 A. Yes.

14 Q. If you will to Exhibit No. 1. There is a book  
15 next to you and all the exhibits are tabbed.

16 A. Okay.

17 Q. So Exhibit No. 1 has a nice picture of you.

18 A. Thank you.

19 Q. So is this your -- is this your sort of current  
20 resumé on the website for Clark Hill?

21 A. I think -- it looks familiar. I think it  
22 probably is, yes.

23 Q. All right. Are you still a senior attorney?

24 A. Yes.

25 Q. What is -- I don't know how Clark Hill is

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1 organized. Every firm is organized differently.

2 A. Yeah.

3 Q. What is a senior attorney at Clark Hill?

4 A. It's just one step up from being an associate.

5 And so just with that, then you are allowed to be a  
6 supervising attorney on some matters for intake purposes,  
7 and then it can be the billing attorney as well for some  
8 of them, and it's kind of a step to then becoming a  
9 partner.

10 Q. Okay. So if people stay within the firm, they  
11 move from senior attorney to being a partner?

12 A. Yes. It's -- it's not always guaranteed.  
13 It's -- well, a lot of people may just stay senior  
14 attorneys for the duration of their career.

15 Q. In 2013 and 2014, when you did work on DenSco --

16 A. Uh-huh.

17 Q. -- were you a senior attorney then?

18 A. I believe I was an attorney -- a regular  
19 associate at that time.

20 Q. Okay. Your resumé indicates, in corporate  
21 transactions, that you had significant transactional  
22 experience, including private securities offerings.

23 Is that true?

24 A. Today I have done a lot more of those, but I'm  
25 not an expert or portray myself to be an expert in it, but

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1 I have been on different projects where there has been  
2 private securities and I have worked under the direction  
3 of partner on those.

4 Q. In 2013 and 2014 when you did work for DenSco,  
5 did you consider yourself expert in private securities  
6 offerings?

7 A. I have never considered myself an expert in  
8 private security offerings.

9 Q. Had you had experience with private securities  
10 offerings before the work you did in DenSco in 2013 and  
11 2014?

12 A. Limited experience, but, yes.

13 Q. Just describe your limited experience for me.

14 A. It could have been a matter -- well, probably  
15 less than half a dozen private offerings I was asked to  
16 help in one capacity or another to either drafting  
17 documents or editing documents.

18 Q. And would that have been at your firms in Nevada  
19 and Utah?

20 A. With Clark Hill.

21 Q. You also indicate in your resumé that you manage  
22 clients' prelitigation disputes by conducting claims  
23 analysis and, when advisable, settlement negotiations.

24 A. Yes.

25 Q. When you did your work for DenSco in 2013 and

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1 2014 --

2 A. Uh-huh.

3 Q. -- were you familiar with claims analysis?

4 MR. DeWULF: Object to form.

5 THE WITNESS: Yeah, I'm sure not -- I'm not sure  
6 I understand your question.

7 Q. (BY MR. CAMPBELL) well, I'm just reading from  
8 your resumé. You will see on Exhibit No. 1 you say that  
9 you conduct claims analysis.

10 I assume you were involved in writing this  
11 resumé.

12 A. Yes.

13 Q. What do you mean by "claims analysis"?

14 A. Depending on each situation, that -- what the  
15 allegations were from the other side, and then look at the  
16 relevant facts and then be able to, you know, give some  
17 sort of assessment to the client on the risk of continuing  
18 or what -- you know, what -- continuing through litigation  
19 or continuing through the dispute or their likely -- how  
20 do I put it -- their potential liability, what it looked  
21 like.

22 Q. With respect to the work you did for DenSco in  
23 2013 and 2014 --

24 A. Uh-huh.

25 Q. -- do you consider any of the work you did a

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1 claims analysis?

2 A. Any of the work is pretty difficult to pinpoint,  
3 but I don't think I was ever charged with, like, doing a  
4 claims analysis. But maybe, you know, I was more given  
5 distinct tasks to work on, rather than look at the overall  
6 situation and make an analysis there.

7 Q. All right. Is this the first time you have ever  
8 testified under oath?

9 A. Yes. Yeah.

10 Q. All right. And you -- as a lawyer, you  
11 certainly understand the significance of an oath, correct?

12 A. Yes.

13 Q. Litigators sometimes ask crazy questions. Geoff  
14 and I had a witness who, after his deposition, asked to  
15 change his entire deposition because of sleep apnea, so  
16 you need to understand our experience when I ask  
17 questions.

18 So the question I have for you, is there  
19 anything that would prevent you from testifying truthfully  
20 today?

21 A. No.

22 Q. No sleep apnea, no medicine, nothing like that?

23 A. No.

24 MR. DEWULF: So if he falls asleep, it will be  
25 from natural causes. Not --

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1 MR. CAMPBELL: You can blame me.

2 Q. (BY MR. CAMPBELL) In your prior experience,  
3 sir, have you had experience representing hard-money  
4 lenders?

5 A. Prior to DenSco? No. I think more my  
6 experience would be representing borrowers with hard-money  
7 lenders. I can't recall one where I would represent the  
8 hard-money lender.

9 Q. Was DenSco the first time you represented a  
10 hard-money lender?

11 A. I -- from my recollection, it probably -- it may  
12 have been. I -- I can't really say today with much  
13 certainty.

14 Q. In 2013 and 2014, did you understand how  
15 hard-money lenders operate in Maricopa County?

16 A. That's --

17 MR. DeWULF: Object to form.

18 THE WITNESS: That's -- I don't know. It's --  
19 each one I think operate a little differently, so I can't  
20 make an opinion about the general business practices of  
21 that large of a group.

22 Q. (BY MR. CAMPBELL) I want to ask you a few  
23 questions about Clark Hill.

24 A. Okay.

25 Q. So how many lawyers were at Clark Hill when you

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1 went to work with them in, was it 2005?

2 A. 2011.

3 MR. DeWULF: '11.

4 Q. (BY MR. CAMPBELL) 2011. Thank you.

5 A. How many attorneys were there? I think there  
6 was around 250 at the time, I think.

7 Q. Okay. I was thinking at the Phoenix office.

8 A. Oh, sorry.

9 Q. That wasn't very -- I'm sorry. I wasn't very  
10 clear.

11 A. That, I can't recall. I think the number, I can  
12 give you kind of an estimate where the range has been.  
13 It's usually probably been about 20 to 30.

14 Q. And how was the firm in Phoenix organized?

15 A. I don't think I understand the question.

16 Like --

17 Q. Do you have sections? Do you have a litigation  
18 side, a transactional side? Is there any sort of  
19 organization to the firm in Phoenix?

20 A. In Phoenix. The organization is at a firm-wide  
21 as far as practice groups. It's not per office.

22 Q. And what practice group were you in in  
23 2013/2014?

24 A. It's the corporate practice group.

25 Q. And that's also the practice group that

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1 Mr. Beauchamp was in?

2 A. I -- yes, as far as I -- yeah -- yeah, he is.

3 Q. Do you have electronic files for cases?

4 A. Electronic, yes.

5 Q. When you were working on DenSco, were you able  
6 to access all the electronic files with respect to DenSco?

7 MR. DeWULF: Object to form.

8 THE WITNESS: No. Just maybe those which were  
9 created at Clark Hill. So anything that was from DenSco  
10 before, I didn't usually have access to those.

11 Q. (BY MR. CAMPBELL) All right. With respect to  
12 all the emails that Mr. Beauchamp wrote during the  
13 representation of DenSco when you were working on  
14 DenSco --

15 A. Okay.

16 Q. -- did you have access to all those emails?

17 A. No.

18 Q. You don't have a shared file site?

19 A. We have a shared file site, but some -- there is  
20 multiple steps you have to go through within our system to  
21 have a particular email get filed in a particular client's  
22 file. And then so -- so there are several emails which  
23 may go in or out which are not in our -- it's called  
24 FileSite is our -- is the computer system we use. So what  
25 is there in FileSite may not be every email that was --

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1 went in or out with the client.

2 Q. Okay. When you were working on DenSco --

3 A. Uh-huh.

4 Q. -- fair to say that you had access to the DenSco  
5 FileSite on the system at Clark Hill?

6 A. Yes, that's fair to say.

7 Q. And did it have a folder for emails?

8 A. It's a communications folder.

9 Q. And you could go into the communications folder  
10 and look at anything that was there?

11 A. Yes, I could.

12 Q. Do you recall going in and seeing emails from  
13 Mr. Beauchamp?

14 A. I don't recall going and looking for emails for  
15 any particular issue.

16 Q. What are the other folders with respect to one  
17 of the corporate clients? You said there was a  
18 communications folder.

19 A. There is one of those, like, agreements,  
20 settlements, minutes, book entries, I think due diligence  
21 is another. Yeah.

22 Q. All right.

23 A. There are some others, but I just can't remember  
24 them off the top of my head.

25 Q. How do you bill with respect to a client?

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1 what's the procedural way you do your bills?

2 A. I personally?

3 Q. Yes.

4 A. I -- it's on an hourly basis, and I'll put down  
5 the time that I worked on something and then give a  
6 description of the work that was done.

7 Q. When you say you take down, do you do that in  
8 writing or do you keep an email to yourself? I just want  
9 to know how you track your time.

10 A. Oh, how I personally track my time?

11 Q. Yes.

12 A. A lot of times I will write it down, and then my  
13 secretary will input it into our system.

14 Q. All right. With respect to DenSco in 2013 and  
15 2014, was it your habit to write down your time on a piece  
16 of paper and give it to your secretary?

17 A. I -- to be honest, I can't remember at that time  
18 what I did. I have gone back and forth from doing it on  
19 the screen myself to sometimes putting it down on paper,  
20 and I don't remember what my practice was during DenSco.

21 Q. Were you the billing attorney for DenSco?

22 A. No.

23 Q. Who was the billing attorney?

24 A. It's my understanding it was David Beauchamp,  
25 but I wasn't there to really see who was or wasn't on

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1 that.

2 Q. Do you know if any of your time was written off?

3 A. I do not know.

4 Q. Have you reviewed your billing records in  
5 preparation for your deposition?

6 A. I can't remember. We reviewed some different  
7 records, but I don't remember if they were the billing  
8 records.

9 Q. Well, let's jump to that.

10 what did do you to prepare for your deposition  
11 today?

12 A. Met with counsel and reviewed some different  
13 documents that seemed to be either referred to me or from  
14 me.

15 Q. When did you meet with counsel?

16 A. Probably two or three weeks ago.

17 Q. And where did you meet?

18 A. At his office.

19 Q. And was anyone present besides counsel?

20 A. His associate.

21 Q. Anyone else?

22 A. No.

23 Q. So just Mr. DeWulf, his associate.

24 Was that Mr. Wolf?

25 MR. DeWULF: Ruth.

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1 MR. CAMPBELL: Ruth.

2 THE WITNESS: Ruth. I think so.

3 MR. DeWULF: Marvin Ruth.

4 THE WITNESS: Marvin Ruth.

5 Q. (BY MR. CAMPBELL) And you?

6 A. Yes.

7 Q. How many people were there? Just the three of  
8 you?

9 A. Yes.

10 Q. How long did you meet?

11 A. It was probably about four or five hours, maybe.

12 Q. And you say you looked at documents?

13 A. Uh-huh.

14 Q. That's a yes? She can't --

15 A. I'm sorry.

16 Q. -- take down a nod.

17 A. Sorry. Yes.

18 Q. Did your documents refresh your recollection?

19 A. I think not on specific issues, but more just  
20 helping remember the context, kind of the timeline.

21 Q. Did you leave with a set of the documents you  
22 reviewed?

23 A. Yes, I did.

24 Q. And where is that set of documents?

25 A. It's with me. It's in my vehicle.

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1 Q. It's in your vehicle?

2 A. Uh-huh.

3 Q. And have you reviewed them from the time you met  
4 with counsel until today?

5 A. No.

6 Q. Is it one volume or is it two volumes?

7 A. I think it's like -- well, volumes, it would  
8 probably be -- like say this right here is probably, what,  
9 a 3-inch binder? I think it's maybe -- there is two  
10 binders, and the second one is probably maybe half full.

11 Q. All right. Have you -- do you know what a Rule  
12 26.1 statement is?

13 A. I would have to look it up.

14 Q. Okay. Look at Exhibit No. 4 in your book.

15 A. No. 4? Oh, Initial Disclosure Statement, yes.

16 Q. Have you reviewed the Initial Disclosure  
17 Statement in this case?

18 A. I have not.

19 Q. Were you interviewed by anyone prior to the  
20 filing of the Initial Disclosure Statement on March 12th,  
21 2018?

22 A. I don't recall, like, a formal interview, no.

23 Q. All right. Does Clark Hill have a risk  
24 management department?

25 A. We have a general counsel. I don't know if

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1 they -- it's titled or referred to as a risk management  
2 office, but we do have a general counsel office.

3 Q. All right. I'm going to ask you some yes-or-no  
4 questions.

5 A. Okay.

6 Q. Did someone from Clark Hill's general counsel's  
7 office sit down and talk with you about this case?

8 A. No.

9 Q. Has anyone from the insurance company rep -- who  
10 has coverage for Clark Hill sat down and talked with you  
11 about this case?

12 A. No.

13 Q. Again, this is just a yes-or-no question.

14 Has anyone from the law firm representing Clark  
15 Hill in this case interviewed you --

16 A. No.

17 Q. -- putting aside your preparation for this  
18 deposition.

19 A. There hasn't been anything interviewed. Just to  
20 almost inform me that there was a lawsuit, and just, you  
21 know -- you know, maybe a couple minutes just describing  
22 sort of the circumstances, the lawsuit and the allegations  
23 of the lawsuit, but not, like, an interview going over the  
24 facts that -- from what I could remember at that time.

25 Q. So fair to say that Exhibit No. 4, which you

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1 will see we received on March 12th, 2018, no one  
2 interviewed you prior to this document being given to  
3 us --

4 MR. DeWULF: Object to form.

5 Q. (BY MR. CAMPBELL) -- on your side of the case?

6 MR. DeWULF: Object to form.

7 THE WITNESS: I can't recall when -- you know,  
8 when I was asked different questions and such, but I --  
9 yeah, it's hard to say.

10 Q. (BY MR. CAMPBELL) well, who asked you different  
11 questions and stuff?

12 A. Well, no. It would just be, like, general  
13 counsel was in the interview, but they may just say: Hey,  
14 do you remember anything about this, do you remember  
15 anything about that, do you know where these documents are  
16 at, things like that.

17 Q. When did you have a conversation with general  
18 counsel when he asked you things like that?

19 A. I can't remember the -- it was after the  
20 complaint was filed. That's about all I could tell you.

21 Q. Was it on the phone?

22 A. Yes.

23 Q. Did you have a face-to-face meeting with general  
24 counsel?

25 A. Not about this case, no.

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1 Q. Did you have one or more than one conversations  
2 with the general counsel?

3 A. It might have been one or two, but it's always  
4 very short.

5 Q. Okay. Other than general counsel talking to  
6 you, did anyone else talk to you about the case?

7 A. I think there is someone in the general  
8 counsel's office that was just following up with me on  
9 questions about different documents or where they were  
10 just trying to gather documents.

11 Q. Is there someone in Clark Hill who, if there is  
12 an ethics issue, people go and talk to this person?

13 A. There is -- yeah, within the general counsel  
14 office, there will be different attorneys assigned to help  
15 them with the ethics questions, yes.

16 Q. Is there anyone in particular in Phoenix or are  
17 they all located somewhere else?

18 A. Mark Sifferman has been the one in the Phoenix  
19 office at that time that I think would have been the  
20 designated attorney.

21 Q. Do you have any recollection with respect to  
22 your work on DenSco of having any conversation regarding  
23 an ethics issues with Mr. Sifferman?

24 A. Sifferman? I don't recall myself personally  
25 having any conversations with him about it.

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1 Q. Do you have knowledge of whether anyone involved  
2 in the DenSco case brought ethics issues to Mr. Sifferman?

3 A. I don't know either way, yes or no; and from  
4 what I knew of what was happening, no.

5 Q. Do you know, do you have personal knowledge  
6 whether or not Mr. Beauchamp ever talked to Mr. Sifferman  
7 about client ethics issues involving the DenSco case?

8 A. I don't recall.

9 Q. Do you know if there are any internal committees  
10 at Clark Hill who look at private offering memorandums?

11 A. I don't think we have a committee for that, no.

12 Q. Are there any policies and procedures an  
13 attorney at Clark Hill has to follow before issuing a  
14 private offering memorandum?

15 MR. DeWULF: Object to form.

16 THE WITNESS: Policies and procedures, I'm not  
17 aware of any, like, written policies and procedures.

18 Q. (BY MR. CAMPBELL) Are you aware of any  
19 traditions, customs, or practices before a private  
20 offering memorandum is issued?

21 A. They are usually -- no, I am not aware of, like,  
22 any formal type of policies and procedures. They are  
23 usually just referred to or handled by someone that is one  
24 of the securities attorneys.

25 Q. Is there any practice that private offering

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1 memorandums are reviewed by anyone else than the attorney  
2 that wrote it before it goes on?

3 MR. DeWULF: Object to form.

4 THE WITNESS: That, I'm not sure if that is the  
5 standard practice or procedure. I don't know.

6 Q. (BY MR. CAMPBELL) All right. So you are not  
7 aware of any particular requirements an attorney has to  
8 follow, other than the legal requirements applicable, with  
9 respect to issuing a private offering memorandum?

10 A. As I said, because I'm not one of the securities  
11 attorneys that would be the one issuing out a private  
12 offering, I can't speak to what their common practice is  
13 that I just don't see. So they may. I just can't speak  
14 for them.

15 Q. When did you learn of the lawsuit in this case?

16 A. I don't remember the date. It was probably  
17 shortly after the law firm was served.

18 Q. Other than your communications with the general  
19 counsel's office that you have talked with me about, have  
20 you had any conversations with David Beauchamp about the  
21 case?

22 A. Just kind of in general, that, you know, we are  
23 being -- that there is a lawsuit, maybe a little  
24 description of the allegations, but I think we have tried  
25 to not dive into it or anything. It's just been more very

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1 kind of at the surface type discussions about it.

2 Q. Okay. Fair to say you have had no substantive  
3 discussion about the representation in 2013 and 2014?

4 A. Since the lawsuit?

5 Q. Since the lawsuit.

6 A. I think that would be accurate to say. We  
7 haven't, like, gone and looked through old notes together  
8 or anything like that.

9 Q. Certainly in 2013 and 2014 when you were working  
10 on DenSco, you had substantive communications with  
11 Mr. Beauchamp. True?

12 A. That would be -- I think that would be fair to  
13 say.

14 Q. Do you remember when Mr. Chittick died?

15 A. I don't recall when it was. I -- I could say it  
16 was probably, you know, a few months before or six months  
17 or so before the lawsuit was filed, just trying to  
18 reference.

19 Q. All right. Do you recall having any  
20 conversations with Mr. Beauchamp on or about the time  
21 Mr. Chittick died?

22 A. Yeah, I think he -- just where he told me a  
23 little bit about his death and sort of what happened with  
24 it.

25 Q. Did he talk with you about what prompted

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1 Mr. Chittick to take his life?

2 A. Yeah, I think he mentioned about where -- that  
3 everything with Scott had -- actually didn't get resolved,  
4 and that there were some other problems with it that  
5 happened after we were involved, and that, you know, Denny  
6 took his life.

7 Q. Anything else you remember about your  
8 conversations with Mr. Beauchamp about Mr. Chittick's  
9 death?

10 A. Not that I can recall now, no, but that's kind  
11 of the -- the substance.

12 Q. Do you recall having any conversation with  
13 Mr. Beauchamp, on or about the time Mr. Chittick took his  
14 life, that the firm may be at risk?

15 A. I don't recall that, no.

16 Q. Any conversations with Mr. Beauchamp, on or  
17 about the time Mr. Chittick took his life, that the firm  
18 may have a conflict of interest?

19 A. I don't recall if he and I talked about that or  
20 not.

21 Q. Do you recall any conversations in 2013 and  
22 2014, when you were working on the DenSco case, about  
23 whether or not Clark Hill had a conflict of interest?

24 A. Regarding the DenSco matter?

25 Q. Yes.

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1 A. I don't recall a conversation about that.

2 Q. Going back to Exhibit No. 4, just so I'm  
3 clear --

4 A. Yes.

5 Q. -- you haven't read Exhibit No. 4 at all?

6 A. No, I have not.

7 Q. All right. So you have no opinions as to its  
8 truthfulness or untruthfulness. Fair?

9 A. That would be fair to say, yeah.

10 Q. Going back to 2013 and 2014, what was your role  
11 in representing DenSco?

12 A. I was an associate that was asked to perform  
13 specific tasks from Mr. Beauchamp, and I performed those  
14 tasks or assignments and then reported back to him or gave  
15 it to him.

16 Q. Okay. You told me you were not the billing  
17 attorney. True?

18 A. True.

19 Q. Fair to say you were not involved in strategic  
20 decision-making with respect to DenSco?

21 A. Correct. I would wait, maybe give, you know,  
22 what -- thoughts about it or something, but I was never  
23 really involved in the strategic discussions with the  
24 client.

25 Q. Did you ever meet with the client face to face?

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1 A. Yes, I recall meeting with him, I think, on one  
2 or two occasions.

3 Q. At Clark Hill?

4 A. Yes.

5 Q. Tell me, so would that have been in 2014 that  
6 you met with him?

7 A. I can't remember the dates.

8 Q. When you -- when you met with him, was  
9 Mr. Beauchamp with you?

10 A. Yes.

11 Q. Do you recall anyone else being present at that  
12 one or two times you met with him?

13 A. I'm pretty sure David was there.

14 The first time was more just with Denny alone,  
15 and I think it was just to kind of go over the situation  
16 with -- with Scott. And then there was a meeting later,  
17 after -- days or weeks later, which Scott was there with  
18 Denny and Mr. Beauchamp and myself. And I can't remember  
19 if there was anyone else there or not.

20 Q. Okay. Let's go to the first one --

21 A. Uh-huh.

22 Q. -- the first meeting.

23 So you met with Mr. Chittick alone?

24 A. No. I think David was there for all or most of  
25 it. I can't recall.

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1 Q. And where was the meeting at?

2 A. Our -- the Clark Hill office in Phoenix.

3 Q. Was this, from your perspective, early on in the  
4 representation?

5 A. Well --

6 MR. DeWULF: I object to form.

7 THE WITNESS: Yeah, that's difficult to say,  
8 because it was early on with that issue with Scott, from  
9 what I understood, but I believe I was under -- it was my  
10 understanding, though, that David had represented DenSco  
11 prior to joining Clark Hill.

12 Q. (BY MR. CAMPBELL) All right. And just David  
13 Beauchamp joined Clark Hill on or about September 1st of  
14 2013, right, if you recall?

15 A. I don't recall, but that sounds about right.

16 Q. Is this the first case you worked on with David  
17 Beauchamp?

18 A. I -- it was one of the early ones, but I can't  
19 say it was the first. I don't know.

20 Q. Where is your office in relation to his office?

21 A. It's a few doors down.

22 Q. You would see him every day?

23 A. Most days.

24 Q. Tell me everything you can recall at that first  
25 meeting with Mr. Chittick that Mr. Beauchamp you think was

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1 probably at.

2           A.     It was the first time I have ever met Denny, and  
3 so I remembered that he was -- he was a likable person,  
4 seemed -- seemed sharp, but, you know, like any  
5 entrepreneur, he -- he wanted to make the decisions and  
6 to -- to take some risk there to -- you know, to get  
7 things done, so to speak.

8                     I remember, though, talking about, you know,  
9 getting a little more information about the situation with  
10 Scott and the double mortgages or deeds of trusts on  
11 properties, but I -- you know, I can't remember the  
12 specifics that was said, but my -- my recollection in  
13 general was, though, that Denny wanted to get something  
14 resolved on it.

15                    He was worried that Scott was going to file  
16 bankruptcy or to just walk away and disappear, and so he  
17 felt that he needed to work out something with him, and  
18 what almost seemed, you know, that -- committed to that  
19 task rather than to go and do, like, a litigation analysis  
20 or to go through and, you know, look at every single deed  
21 and to decide how we would fight it, and against the --  
22 fight the prior issue on each and every deed.

23                    He was just more resolved that he thought he  
24 could quickly resolve something with Scott and make it so  
25 that it would be a workable solution and that would be

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1 best for everybody.

2 Q. What was the situation with Scott?

3 A. That's a hard question to answer. It was, in  
4 short, that Scott had been a borrower from DenSco and  
5 that -- well, the story at the time was that Scott would,  
6 you know, he would buy homes at foreclosures, and then he  
7 would borrow money from DenSco to pay for the homes and  
8 that, but -- and that he had done a lot of business with  
9 DenSco in the past on this where it was without issue on  
10 both sides, and it seemed to be good business on both  
11 sides.

12 But that Scott -- it was reported to us from  
13 Denny that Scott's wife had become very ill and that Scott  
14 would -- had essentially almost delegated responsibility  
15 for a lot of the business, of Scott's business, to Scott's  
16 cousin. I can't remember his name, but that that cousin  
17 was a crook and took advantage of the situation with Scott  
18 being distracted, and had taken out multiple loans on  
19 single properties and had put multiple mortgages or deeds  
20 of trust in front of Scott to sign on behalf of Scott's  
21 company.

22 And Scott, just being distracted with his wife's  
23 situation, was signing whatever the cousin put in front of  
24 him, and that resulted in getting two liens, two purported  
25 first liens on single properties. And then the cousin was

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1 able to take the money from one of them, and he left for  
2 Israel or something like that.

3 And so it was kind of the sense was, yes, Scott  
4 was duped. He was in a desperate situation with his wife  
5 and distracted, and his cousin had taken advantage of him.

6 Denny felt sorry for him, for Scott. You know,  
7 I think that he had, you know, good business relations  
8 with him in the past, and thought that was a sad situation  
9 and wanted to work with him to try to dig out of the hole,  
10 dig out of the situation.

11 It was interesting, too. I do recall my  
12 impression that, you know, we -- I can't remember if it  
13 was that meeting or not, kind of talking like: Hey, well,  
14 you are the lender and you have a lot of rights and stuff  
15 on this type of situation. Regardless of the back story,  
16 you know, you have lots of rights and remedies that you  
17 could pursue on this as the lender.

18 But Denny wanted to work with them and to  
19 compromise with them rather than to do what -- you know, I  
20 think some lenders would just, you know, be aggressive and  
21 look at each of the remedies and kind of press the  
22 borrower. Here he wanted to compromise and work with him.

23 Q. So you are telling me -- you have been telling  
24 me what's happened at this meeting with you and Denny  
25 Chittick and Mr. Beauchamp.

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1 Is there anything else you can remember that was  
2 said in that meeting?

3 A. I don't recall the specifics, but I'm sure then  
4 we talked more like, okay, well, kind of based on that,  
5 here is the direct -- here is kind of our, I don't want to  
6 say marching orders on trying to negotiate and do a  
7 forbearance agreement. And then that was kind of the, you  
8 know, let's work on that, and what would that maybe look  
9 like. So there was some of that discussion. I can't  
10 remember the specifics.

11 Q. Okay. I want to make sure I have exhausted your  
12 recollection.

13 A. Okay.

14 Q. Is there anything else you remember about that  
15 meeting with Mr. Chittick and -- Mr. Chittick and  
16 Mr. Beauchamp?

17 A. That's -- I think we have exhausted what I can  
18 recall today.

19 Q. After that meeting, immediately after the  
20 meeting, do you remember meeting with Mr. Beauchamp about  
21 a plan of action or a course or a strategy?

22 A. Immediately afterwards, I can't say if we talked  
23 immediately afterwards or not, but we talked sometime  
24 after about a little more in specifics of what my task  
25 would be, you know, as a result of that meeting.

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1 Q. All right. You may or may not know this, but  
2 Mr. Beauchamp has a habit of taking notes.

3 A. Uh-huh.

4 Q. Do you take notes?

5 A. I take loose notes.

6 Q. Do you have any loose notes with respect to this  
7 meeting you have just described?

8 A. I do not.

9 Q. Have you looked?

10 A. I have and I couldn't find any.

11 Q. You mentioned a second meeting.

12 A. Yes.

13 Q. So tell me the circumstances of the second  
14 meeting.

15 A. I can't remember when it happened, but it --  
16 Scott was at this meeting and I believe Denny, you know,  
17 and David and myself, and I think there might have been  
18 one other person, but I can't remember. And it was more  
19 talking about the Forbearance Agreement and trying to  
20 bridge the gap, so to speak, on some of the deal points  
21 where they hadn't reached an agreement.

22 Q. And do you have any recollection of where this  
23 meeting -- how long after the first meeting was it that  
24 this second meeting took place?

25 A. I can't say.

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1 Q. It was at Clark Hill?

2 A. Yes.

3 Q. Do you remember who this other person was?

4 A. No. I can't remember if there was someone else  
5 or not, but I -- yeah, I can't. I'm not sure if there was  
6 or wasn't. I can't remember.

7 Q. Your best recollection is that it had something  
8 to do with negotiations for the Forbearance Agreement?

9 A. Yes, and talking about it. And Scott didn't  
10 say -- you know, he wasn't the most engaging person in,  
11 like, casual conversation or anything, but he would then  
12 tell, you know, part of the conversations, gave a little  
13 kind of recap on his cousin and was kind of blasting what  
14 his cousin had done to him and those kind of comments.

15 Q. When you got involved with -- well, I assume  
16 Mr. Beauchamp invited you to that first meeting. Right?

17 A. Yes. I didn't know Denny to just invite myself  
18 to a meeting or set up a meeting with him like that.

19 Q. Did he tell you who the client was?

20 A. DenSco.

21 Q. And on your FileSite, the client name was  
22 DenSco?

23 A. I believe so, yes.

24 Q. Did you ever form the impression that you were  
25 representing Mr. Chittick individually?

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1 A. No.

2 Q. Did Mr. Beauchamp ever suggest to you that you  
3 were representing Mr. Chittick individually?

4 A. I don't recall him ever doing that.

5 Q. All right. Crystal clear in your mind that the  
6 client was DenSco?

7 A. Yes.

8 Q. Do you recall ever having any discussions with  
9 Mr. Beauchamp, whether there was a conflict of interest  
10 between Mr. Chittick's interests and DenSco's interest?

11 A. I think we talked about it. I don't recall,  
12 getting into the conflict of interest issues with David.

13 Q. Okay. Well, did you ever consider during the  
14 time you were representing DenSco that there may be a  
15 conflict of interest between Mr. Chittick's interest and  
16 DenSco's interest?

17 A. I don't recall myself doing that, no.

18 Q. And you never had a conversation with anyone at  
19 Clark Hill, during the time you were representing DenSco,  
20 about whether there was a conflict of interest between  
21 Mr. Chittick's interest and DenSco's interest?

22 A. I don't recall that, no.

23 Q. As a corporate attorney --

24 A. Uh-huh.

25 Q. -- you were aware, of course, that Mr. Chittick

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1 may have interests that are adverse to DenSco's interests?

2 MR. DeWULF: Object to form.

3 THE WITNESS: I just know that with any  
4 corporation, there is that always potential conflict  
5 between the company and its officers.

6 Q. (BY MR. CAMPBELL) You understood that Den --  
7 from your very first meeting that DenSco had borrowed  
8 money from investors?

9 A. To be honest, I don't know if I understood that  
10 at the beginning or not, where DenSco got its money,  
11 funding and such like that. I was more just brought in,  
12 like, there was a situation with Den -- DenSco, it's  
13 loaned out a lot of money to this borrower, and things  
14 have gone badly with that borrower. Somewhere along the  
15 lines, I learned that DenSco had taken -- had had  
16 investors.

17 Q. All right. Well, in fact, you certainly knew  
18 that by the time you drafted a private offering  
19 memorandum. True?

20 A. I understood by then, yes.

21 Q. Somewhere along the road when you learned there  
22 were investors to DenSco --

23 A. Uh-huh.

24 Q. -- did you -- do you recall any conversations  
25 with Mr. Beauchamp about whether DenSco owed fiduciary

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1 duties to the investors?

2 A. Yeah. We had discussions about that, you know,  
3 that there needed to be reporting and updating to the  
4 investors about the situation and let them know what had  
5 happened, yes.

6 Q. Do you recall having conversations with  
7 Mr. Beauchamp where the word fiduciary duty was  
8 specifically used with respect to the investors?

9 A. I don't recall a conversation specifically with  
10 that word being used, no.

11 Q. Do you recall any conversation at any time when  
12 you were representing DenSco that the fiduciary duties  
13 that DenSco owed to the investors conflicted with what  
14 Mr. Chittick wanted to do?

15 A. I don't recall a specific conversation with  
16 that, no.

17 Q. And that never occurred to you?

18 MR. DeWULF: Object to form.

19 THE WITNESS: I can't recall at this point.

20 Q. (BY MR. CAMPBELL) Okay. The entire time you  
21 represented DenSco --

22 A. Yes.

23 Q. -- it never crossed your mind --

24 A. I'm saying I don't recall.

25 Q. -- that the fiduciary duty that DenSco owed the

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1 investors may conflict with what Mr. Chittick wanted to  
2 do?

3 A. At this time, I can't recall having that -- that  
4 thought or concern, no. I may have, but today I don't  
5 recall.

6 Q. If you had that thought or concern, what would  
7 you have done as a course of normal habit and custom  
8 within the firm?

9 MR. DeWULF: Object to form.

10 THE WITNESS: That is very difficult to say.  
11 Each case is unique. I can't say there is a standard  
12 practice of what I may have done or not done. There is  
13 several different scenarios what I would do in that  
14 situation.

15 Q. (BY MR. CAMPBELL) well, what are the several  
16 different scenarios you would do in that situation?

17 MR. DeWULF: Object to form.

18 THE WITNESS: I know that it's just hard to say,  
19 depending on the situation, but I may have talked to  
20 another colleague about it. I may have talked to general  
21 counsel or to Mark Sifferman about it. Things like that.

22 Q. (BY MR. CAMPBELL) what I want you to do is turn  
23 to Exhibit No. 51.

24 A. 51?

25 Q. It's in that first volume.

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1 Exhibit No. 1 -- 51, excuse me, Exhibit No. 51,  
2 at the top is Mr. Beauchamp sending to you on or about  
3 January 17th, 2014, an email he had received from  
4 Mr. Chittick on January 7th, 2014.

5 Have you read this email in preparation for your  
6 deposition?

7 A. I -- this is -- I would assume this is one of  
8 them that I had seen before, seen one of the emails.

9 Q. Why don't you take a moment and review it to  
10 refresh your recollection.

11 A. Is your question whether or not I recall  
12 reviewing this, like, the last few weeks ago, or do I  
13 recall this email from back in the 2014 --

14 Q. The question I asked you, if you recalled  
15 reviewing it in preparation for your deposition.

16 A. Yeah. Yeah, this looks familiar.

17 Q. And do you recall receiving this on or about  
18 January 17th of 2014?

19 A. I remember, yeah, receiving or reviewing it,  
20 which is probably January 2014. That's the date on here.

21 Q. Now, if you look at the email, it sort of talks  
22 about the things you were telling me happened in your  
23 meeting --

24 A. Uh-huh.

25 Q. -- with David and Mr. Chittick. True?

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1 A. That this seems --

2 Q. Yes.

3 A. From what I have read of the email right now,  
4 yeah, I see some of the background regarding Scott and his  
5 cousin and Scott's wife being ill.

6 Q. Okay. I want you to look at the second page.  
7 The very top of it says "and started to steal money."

8 Do you see that? I want to make sure we are on  
9 the same part.

10 A. "Started to steal money," yes.

11 Q. Now I want go down a few lines. He is  
12 discussing his procedure for when he does a deal.

13 Do you see that?

14 A. Yes.

15 Q. And do you see the line where -- this is going  
16 to be maybe eight or nine lines down -- he says "I would  
17 wire it to him."

18 Do you see that?

19 A. This one, like the fifth line down, "wire the  
20 money to his account"?

21 Q. Right. And then if you go down a few more  
22 lines, you say: Let's say he would buy a property in  
23 auction for 100K, it's worth 145K, he would ask me for  
24 80K. I would wire it to him.

25 A. Yeah.

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1 Q. Do you see that?

2 A. I see that.

3 Q. Fair to say you understood, from your first  
4 involvement in representing DenSco, that Mr. Chittick  
5 would wire money to the borrower for the property?

6 A. I understood that that was happening, at least  
7 in some of these loans, based on this.

8 Q. Do you recall having any discussions with  
9 Mr. Beauchamp at any time during your representation of  
10 DenSco about giving advice to Mr. Chittick about his  
11 lending procedures?

12 A. Yeah, I remember -- I can't remember if it was  
13 after reading this or finding out more, like, the  
14 procedures talking with Mr. Beauchamp, like, about that,  
15 that that was something that I hadn't seen with other --  
16 it was not my understanding with what most lenders did,  
17 that they would usually wire or send the money directly to  
18 the trustee.

19 Q. All right. So when do you recall having this  
20 conversation with Mr. Beauchamp?

21 A. I -- I'm terrible with dates. It was probably  
22 around the time that maybe I saw this for the first time,  
23 but I can't remember the specific dates or...

24 Q. Other than having a conversation with  
25 Mr. Beauchamp, did you do anything else yourself with

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1 respect to this procedure that Mr. Chittick was doing?

2 A. I think we mentioned it or talked to Denny about  
3 it briefly, but then we also said we should involve or  
4 call Robert Anderson and to have him dive in deeper into  
5 it, and then to, you know, confirm what had or hadn't been  
6 done maybe, and then to give advice.

7 Q. When you say I think "we" talked to  
8 Mr. Chittick, when did "we" talk with Mr. Chittick?

9 A. Well, "we" is being more like -- well, David  
10 would have been the one to talk to Denny about it.

11 Q. All right. So you never had a conversation with  
12 Denny about this lending procedure. True?

13 A. I don't know. You know, we had lots of  
14 conversations and they would kind of -- lots of different  
15 topics would come up, so I -- I think it's something  
16 which -- to be honest, I just don't know if I did or  
17 didn't at this time.

18 Q. All right. You have no memory of talking to  
19 Mr. Chittick about his lending procedures. True?

20 A. Yeah. Today, I can't remember a specific  
21 conversation.

22 Q. Were you present when Mr. Beauchamp talked to  
23 Mr. Chittick about his lending procedures?

24 A. Not that I can recall.

25 Q. So when you said earlier that "I think we

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1 talked," what is that based on?

2 A. That was based on, like, from my conversations  
3 with David about this, the practices, and then saying --  
4 and then I think David probably reporting, or not  
5 reporting back to me, but then a conversation later on  
6 where David had explained to me: Okay, I have talked with  
7 him about this. And then -- so from there, I guess "we"  
8 would be the firm or the group.

9 Q. Do you recall where you had this conversation  
10 with David where he talked to you about this?

11 A. It was probably in his office, but, again, I  
12 don't remember the specifics of the conversation, but most  
13 conversations about DenSco were in David's office.

14 Q. Go down to the bottom of that paragraph on the  
15 second page.

16 A. Second page?

17 Q. Yeah.

18 You will see he says at the bottom of that  
19 paragraph, and I quote, "Again, this is what I do on every  
20 single auction property no matter who is the borrower."

21 Did I read that correctly?

22 A. You read that correctly.

23 Q. All right. So fair to say that on or about  
24 January 17th of 2014, you knew everything that's set forth  
25 in this letter, Exhibit No. 53; you read it?

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1 A. I have read it, but I'm not going to say I knew  
2 it, all of it. I remember reading it, but I wouldn't be  
3 able to recite it or tell --

4 Q. Do you recall not understanding anything you  
5 read?

6 A. No. I remember probably understanding what it  
7 was, but not that I knew.

8 Q. And one of the reasons that Mr. Beauchamp sent  
9 this to you was he wanted you to see the forms that were  
10 attached, correct?

11 A. Correct.

12 Q. And do you remember reviewing the forms?

13 A. Correct.

14 Q. All right. Let's turn to Exhibit No. -- let me  
15 just -- one of the forms has Mr. Chittick filing a  
16 mortgage document as opposed to a deed of trust.

17 Had you ever seen that before in your prior  
18 practice?

19 A. I have, but I don't remember if it had been in  
20 Arizona that I had seen that.

21 Q. Well, I want you to turn to Exhibit No. 53.

22 A. Okay.

23 Q. This is an email from Mr. Beauchamp to  
24 Mr. Anderson, with a copy you to, dated January 17th,  
25 2014, correct?

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1 A. Uh-huh.

2 Q. And attached to it is a letter from Bob --  
3 Robert Miller at Bryan Cave, dated January 6, 2014.

4 A. Correct.

5 Q. Do you remember -- I'm trying to sort of find  
6 out what you knew --

7 A. Okay.

8 Q. -- when you started working on DenSco.  
9 You reviewed this letter from Mr. Miller when  
10 you began your work on DenSco, correct?

11 A. Yeah, I would have read the letter.

12 Q. All right. And Mr. Miller is representing some  
13 lenders that have properties that they believe they have a  
14 deed of trust on that DenSco is also claiming it has some  
15 sort of interest in. True?

16 A. That's accurate.

17 Q. And the properties are listed on Exhibit A to  
18 this letter.

19 Do you see that?

20 A. I see that.

21 Q. After you reviewed Exhibit 51 and 53, did you  
22 form any opinion on whether DenSco had committed  
23 securities fraud?

24 MR. DeWULF: Object to form.

25 THE WITNESS: Myself, no. I didn't know enough

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1 about DenSco. At this time I only think I may have  
2 understood that it had investors.

3 Q. (BY MR. CAMPBELL) Do you recall having any  
4 conversation with Mr. David Beauchamp during your  
5 representation of DenSco where he expressed the opinion  
6 that DenSco had committed securities fraud?

7 A. No, I don't recall a conversation like that.

8 Q. Did you have any conversation with Mr. Beauchamp  
9 at any time where he expressed the opinion that he was  
10 worried that either the investors, the Securities and  
11 Exchange Commission, or the Arizona Corporation Commission  
12 could sue Mr. Chittick for securities fraud?

13 MR. DeWULF: Object to form.

14 THE WITNESS: I don't recall a conversation like  
15 that.

16 Q. (BY MR. CAMPBELL) In January 2014, did you form  
17 any opinion that the loan procedures used by DenSco were  
18 wrong and should not be used?

19 MR. DeWULF: Object to form.

20 THE WITNESS: Were wrong and should not be used.  
21 I remember being concerned about them and thought it was  
22 risky, but I -- where I brought it up to say is this what  
23 he is really doing. So at least enough that I raised  
24 concerns, but I'm not the lending expert, but I at least  
25 raised it as a concern.

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1 Q. (BY MR. CAMPBELL) Turn to Exhibit No. 52.

2 A. 52?

3 Q. Yes.

4 A. Okay.

5 Q. 52 is an email from Mr. Beauchamp to you dated  
6 January 17th, 2014, correct?

7 A. Correct.

8 Q. I assume -- is Lindsay Stringer, is she a  
9 secretary?

10 A. Yes.

11 Q. Do you share a secretary with Mr. Beauchamp?

12 A. Yes.

13 Q. And you see that Mr. Beauchamp is sending a new  
14 version of a term sheet.

15 Do you see that?

16 A. Yes.

17 Q. And then he says, specifically to you, "Dan: We  
18 also need to talk to Bob Anderson about the procedures  
19 used by DenSco to refute research from Bob Miller or to  
20 change DenSco's procedures."

21 Do you see that?

22 A. Uh-huh.

23 Q. Is that a yes?

24 A. Yes. Sorry.

25 Q. All right.

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1 A. Yes.

2 Q. After getting this instruction from  
3 Mr. Beauchamp about, quote, "the procedures used by DenSco  
4 to refute research from Bob Miller or to change DenSco's  
5 procedures," end of quote, what did you do?

6 A. I think it was shortly after this that I talked  
7 with Bob Anderson and gave him kind of the summary of what  
8 was going on and what we had known, and asked him to, you  
9 know, to review it.

10 Q. All right. So you handed it off to  
11 Mr. Anderson?

12 MR. DeWULF: Object to form.

13 THE WITNESS: I -- well, I had asked him to get  
14 involved with it, as David asked me here.

15 Q. (BY MR. CAMPBELL) What was Mr. Anderson's  
16 position at the firm?

17 A. Senior counsel.

18 Q. So he was senior to you at that time?

19 A. Yes.

20 Q. So you would not assign work to a senior  
21 attorney?

22 A. I don't really go around assigning work to  
23 people that are, yeah, senior to me.

24 Q. What did you do with respect to analyzing  
25 procedures and advising the client after this email, other

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1 than talking to Mr. Anderson?

2 A. I don't recall me specifically analyzing it, but  
3 I may have talked to Bob more about it, but I don't recall  
4 doing my own independent analysis.

5 Q. Back in January of 2014, did you form an opinion  
6 whether or not DenSco owed a fiduciary duty to its  
7 investors?

8 A. Did I form my own opinion? That's difficult to  
9 say. It's more like in general that there is -- when I  
10 found out there was investors, I just know there is that  
11 fiduciary duty with corporations. But as of that time,  
12 then I was instructed to work on the amendment to the  
13 offering documentations, which was my understanding that  
14 that would, you know, be what was needed to comply with  
15 the fiduciary duties.

16 Q. All right. It was your opinion that the  
17 Forbearance Agreement was needed to conform to fiduciary  
18 duties?

19 A. No.

20 MR. DeWULF: Object to form.

21 THE WITNESS: The amendment to the private  
22 offering memorandum or something like that.

23 Q. (BY MR. CAMPBELL) I'm sorry. I misheard you.

24 MR. DeWULF: Colin, it's been about an hour or  
25 so. I would love to stretch, when you get a chance.

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1 whatever works for you.

2 MR. CAMPBELL: Let me just ask one more question  
3 and we will break. When lawyers say one more question,  
4 that's never true.

5 Q. (BY MR. CAMPBELL) In January 2014, did you form  
6 any opinion about whether Scott Menaged was being truthful  
7 about this story that the cousin took the money?

8 A. It was my own opinion whether or not he was  
9 being truthful? I don't recall going into it or not. I  
10 didn't have reason to suspect it or to ask to -- I was not  
11 asked to go and confirm if the allegations were true.

12 MR. CAMPBELL: All right. I'm going to keep my  
13 word and we are going to take a break.

14 THE WITNESS: Okay.

15 MR. CAMPBELL: So -- we break about every hour.

16 VIDEOGRAPHER: The time is 10:06 a.m. We are  
17 going off the record, ending media one.

18 (A recess was taken from 10:06 a.m. to  
19 10:21 a.m.)

20 VIDEOGRAPHER: My name is Mary Onuschak with the  
21 firm of Legal Video Specialists, Phoenix, Arizona. This  
22 begins media two of the videotaped deposition of Daniel A.  
23 Schenck. The time is 10:21 a.m. We are now back on the  
24 record.

25 Q. (BY MR. CAMPBELL) Mr. Schenck, I want you to go

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1 back to Exhibit No. 4. That's the Rule 26.1 statement.

2 A. Okay.

3 Q. And I want you to turn to page 10. And there is  
4 a section entitled "Mr. Beauchamp tells DenSco it cannot  
5 accept new funds or roll over prior funds."

6 I want to go back to this meeting you had where  
7 you were present, Mr. Chittick was present, Mr. Beauchamp  
8 was present in January of 2014, and Mr. Chittick says what  
9 the problem is with Scott.

10 Are you with me?

11 A. Yes.

12 Q. Okay.

13 A. The first time I met Denny, that one?

14 Q. Right.

15 A. Okay.

16 Q. Face to face.

17 A. Uh-huh.

18 Q. I want you to look at line 9, and I'm going to  
19 read what the disclosure statement says. Quote, "After  
20 receiving Mr. Chittick's January 7th, 2014 email, Mr.  
21 Beauchamp was alarmed that DenSco may be taking on new  
22 investors or rolling over prior investments without  
23 disclosing the double lien issue or the workout to which  
24 Mr. Chittick and Menaged had agreed," end of quote.

25 Did I read that correctly?

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1 A. Yes.

2 Q. Did Mr. Beauchamp ever express that alarm to you  
3 at the meeting you had with Mr. Chittick?

4 A. At that meeting, I don't recall that this came  
5 up.

6 Q. Prior to that meeting, had he expressed that  
7 alarm to you?

8 A. I don't recall when he had expressed that  
9 concern to me.

10 Q. Sometime later on this concern was expressed?

11 A. At some point, but I just don't recall when.

12 Q. Okay. And then let's continue.

13 Quote, "Mr. Beauchamp's advice to Mr. Chittick  
14 regarding disclosures Mr. Chittick had to make to  
15 investors was immediate, clear, practical, consistent with  
16 his practice and experience, and consistent with the  
17 standard of care; (a) DenSco was not permitted to take new  
18 money without full disclosure to the investor lending the  
19 money; (b) DenSco was not permitted to roll over existing  
20 investments without full disclosure to the investor  
21 rolling over the money; and (c) DenSco needed to update  
22 its POM and make full disclosure to all its investors,"  
23 end of quote.

24 Did I read that correctly?

25 A. Yes.

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1 Q. In the meeting you were at with Mr. Chittick and  
2 Mr. Beauchamp that you have been describing, were those  
3 words said?

4 A. I don't recall these words at that meeting, no.

5 Q. Do you recall anything similar to these words at  
6 that meeting, expressing what these words express?

7 A. No, I don't recall at that meeting if we  
8 discussed the securities issues. And kind of as a point  
9 of clarification, too, I -- here is what you read before,  
10 talking about taking in new investors, that was something  
11 which I did not know that they were -- was happening or  
12 would be happening.

13 Q. All right. You have no recollection, at that  
14 meeting with Mr. Chittick and Mr. Beauchamp, anything  
15 expressing these concerns about raising money. True?

16 A. I do not recall that.

17 Q. Do you recall being at any meeting where this --  
18 with Mr. Beauchamp where this was stated by Mr. Beauchamp?

19 A. I did not recall that, no.

20 Q. It says here, and let's go back to that  
21 paragraph, quote, "Mr. Beauchamp provided this advice to  
22 DenSco starting with his January 9, 2014 meeting with  
23 Mr. Chittick, and repeated it routinely over the next few  
24 months."

25 Were you present at any time with Mr. Beauchamp

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1 when he repeated this advice routinely over the next few  
2 months?

3 A. I would -- no, I don't recall being with him  
4 when he repeated this advice, but I do recall  
5 Mr. Beauchamp kind of telling me that he had talked with  
6 Denny and given him this kind of advice, and that he was  
7 going to meet with him again to continue the discussion.

8 Q. When did you have this meeting with  
9 Mr. Beauchamp where he told you this?

10 A. When? I -- it would have been after I prepared  
11 the amendment to the private offering memorandum.  
12 Probably shortly after that.

13 Q. All right. And so it's after you prepared a  
14 draft of the private offering memorandum. True?

15 A. Well, I remember, like, getting into that then,  
16 but we might have talked about it before then. But I do  
17 remember, because it related to what I had done on that  
18 private offering memorandum amendment, you know, saying  
19 that yet -- he has talked with Denny about it, Denny  
20 doesn't like it and doesn't -- doesn't know if Denny is  
21 going to do it, and he is going to have to talk with Denny  
22 more about that, because it needs to be done.

23 Q. Okay. So let's go to this conversation you had  
24 with Mr. Beauchamp.

25 A. Uh-huh.

DANIEL ALLEN SCHENCK, 6/19/2018

1 Q. Do you know -- you said it was around the time  
2 you were doing this private offering memorandum. True?

3 A. Yes, the one I can recall.

4 Q. Who was present between -- you were present, he  
5 was present. Was anyone else present?

6 A. I don't think so, no.

7 Q. And it took place in the Clark Hill offices?

8 A. It probably was in David's office.

9 Q. Probably was in David's office.

10 Tell me everything you recall being said about  
11 this conversation with respect to the POM in David's  
12 office?

13 A. The private offering memorandum, excuse me, I  
14 just remember talking to David about the amendment to the  
15 POM, and, you know, David saying, yeah, he has talked with  
16 Denny about it and that Denny was not happy about it, and  
17 that he thought it said too much and that he didn't want  
18 to do it and was going to -- that David was saying I'm  
19 going to have to talk with him about this, because it  
20 needs to be done, and if he doesn't do it, then we are  
21 going to have to stop representing him.

22 And so, again, I can't remember, this is through  
23 one or multiple conversations, but that was my take-away  
24 from that. And then -- and then at some point he said,  
25 yeah, that he was going to meet with him and go over it.

DANIEL ALLEN SCHENCK, 6/19/2018

1 Q. All right. Have you told me everything you can  
2 recall about this conversation?

3 A. David made some comment that he thought I had  
4 done a good job of, you know, summarizing part of it, and  
5 then, you know, kind of identifying where more information  
6 was needed.

7 Q. Anything else you remember at that meeting?

8 A. That's all I can remember today.

9 Q. Did you have any conversation with him about the  
10 POM after that?

11 A. Yeah. I think we would have -- again, it's kind  
12 of the same thing about it, whether or not it's going to  
13 get done and Denny is going to agree to it and provide the  
14 information to complete it.

15 Q. So you had more than one conversation?

16 A. Yeah. I would think we probably -- today I  
17 can't remember in my head this one, this one, this one,  
18 but I'm -- I think that we, yeah, must have had multiple  
19 conversations about it, because it was kind of a  
20 developing situation. And so, like, you know, saying  
21 afterwards he talked to me about how he had talked to  
22 Denny, and still Denny didn't want to do it.

23 Q. All right. You bill your time?

24 A. Yes.

25 Q. Would you have written down on your time

DANIEL ALLEN SCHENCK, 6/19/2018

1 "conversation with Mr. Beauchamp re POM"?

2 A. I don't know if I would have put that  
3 description down or not. It might have been "attorney  
4 conference," or sometimes I forget to put bill and put  
5 down everything that happens with it.

6 Q. How many conversations did you have?

7 A. That's --

8 MR. DeWULF: well, object to form.

9 Q. (BY MR. CAMPBELL) About this POM that we have  
10 been talking about. You said multiple --

11 A. Yeah.

12 Q. -- but you seem only to remember the first one.

13 A. Oh, no. I'm saying I remember talking with him  
14 about it. well, multiple conversations regarding DenSco,  
15 but it's just hard for me to pinpoint which ones were  
16 about the POM.

17 Q. Let's turn to Exhibit No. 35.

18 A. 35?

19 Q. 35.

20 Exhibit No. 35 is an email from you to  
21 Mr. Beauchamp on January 9th.

22 Do you remember that?

23 A. I don't remember this email, but it looks to be  
24 from me.

25 Q. what's the email about?

DANIEL ALLEN SCHENCK, 6/19/2018

1           A.     It's giving David Beauchamp a link to a website  
2 with discovery.com about the show Property Wars, and it  
3 appears to be the bio of Scott -- I'm sorry, I'm terrible  
4 with his last name -- Menaged, or I usually just refer to  
5 Scott, because I'm terrible pronouncing his last name, but  
6 this appears to be link to the bio of Scott Menaged for  
7 this TV show.

8           Q.     Why were you sending him this email?

9           A.     Well, I think it was around the -- I'm trying to  
10 figure out who the Scott was and, in other words, he is on  
11 this TV show. So I think to let David know, hey, this  
12 Scott is on this TV show, and here is a little information  
13 about him.

14          Q.     Well, fair to say that -- well, how did you  
15 undertake the obligation -- well, strike that.

16                   Did you go on Google to find something out about  
17 Mr. Menaged?

18          A.     No. I think I recalled seeing that show once or  
19 twice or something, and then the name -- I can't remember  
20 if, like, Denny said that he is on the show or it came up,  
21 and then I think I put two and two together that that's  
22 one of the guys on that show. And then just letting David  
23 know, that, hey, this is -- this guy is on this show with  
24 this kind of business.

25          Q.     All right. Just to help us do our timeline, you

DANIEL ALLEN SCHENCK, 6/19/2018

1 did this after you had the meeting with Mr. Beauchamp and  
2 Denny Chittick?

3 A. It could have been, yeah. I don't have the  
4 dates in front of me.

5 Q. All right. Well, how would you find out the  
6 date you met with Denny and Mr. Beauchamp?

7 A. I probably would have to look at either billing  
8 entries or it might be on my calendar or, you know, maybe  
9 a calendar invite.

10 Q. Did you ever go to the County Recorder's website  
11 to pull out the loan documents on any of these properties  
12 that had been double-liened?

13 A. I don't recall if I had. I think we received  
14 copies of some, but I can't remember if it's ones I had  
15 pulled from the County Recorder's or they were given to  
16 us, like, from opposing counsel or something.

17 Q. Did you do anything to determine whether Menaged  
18 himself was culpable with respect to these double liens?

19 MR. DeWULF: Object to form.

20 THE WITNESS: Did I do anything myself if he was  
21 culpable?

22 Q. (BY MR. CAMPBELL) Did you do any sort of  
23 investigation to determine whether Mr. Menaged was a  
24 crook?

25 MR. DeWULF: Object to form.

DANIEL ALLEN SCHENCK, 6/19/2018

1 THE WITNESS: No, I was not asked to do that,  
2 and we were basically given the information from Denny of:  
3 This is our situation with him. I trust him and I want to  
4 do a workout with him, so let's get that done.

5 You know, I do recall that there was, like, some  
6 conversations. You know, again, more like, hey, we can  
7 look at these double liens and see which ones you should  
8 have first priority in or that we might have a fight on.

9 And Denny at that point was like: No, that's  
10 not where the effort is at right now. I want us to focus  
11 on a Forbearance Agreement and working this out, rather  
12 than diving into which double lien we need.

13 Q. (BY MR. CAMPBELL) Did it cross your mind,  
14 Mr. Schenck, that it might be in the best interests of the  
15 investors to DenSco to determine whether or not  
16 Mr. Menaged was a crook?

17 MR. DeWULF: Object to form.

18 THE WITNESS: At this time I don't recall if I  
19 knew there were investors.

20 Q. (BY MR. CAMPBELL) And you were certainly not  
21 present at any time when Mr. Beauchamp said don't get any  
22 new money from investors, right?

23 MR. DeWULF: Object to form.

24 THE WITNESS: I might have been, but I don't  
25 recall those conversations.

DANIEL ALLEN SCHENCK, 6/19/2018

1 Q. (BY MR. CAMPBELL) If you had have, you would  
2 have known there were investors. True?

3 A. If he had used those words, I probably would  
4 have known it, yeah.

5 Q. If you knew there were investors, did it cross  
6 your mind that it might be in the best interests of the  
7 investors to know if Menaged was a crook?

8 MR. DeWULF: Object to form.

9 THE WITNESS: That's -- can you rephrase that  
10 question? It's if I had known...

11 Q. (BY MR. CAMPBELL) You are representing DenSco,  
12 correct?

13 A. Yes. We have established that.

14 Q. And DenSco is different from Mr. Chittick. We  
15 have established that, too, correct?

16 A. Correct.

17 Q. And at least as I understand your testimony, as  
18 of January 2014, you don't even know that DenSco is  
19 raising money from borrowers. True?

20 MR. DeWULF: Could I have that read back,  
21 please.

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

23 MR. DeWULF: Object to form.

24 THE WITNESS: My testimony is more I don't  
25 recall if I knew at that time that he did have investors.

DANIEL ALLEN SCHENCK, 6/19/2018

1 Q. (BY MR. CAMPBELL) whether you recall or not --

2 A. Okay.

3 Q. -- it never crossed your mind whether, in the  
4 best interests of the investors to DenSco, you should  
5 investigate whether Mr. Menaged is a crook. True?

6 MR. DeWULF: Object to form.

7 THE WITNESS: If I should investigate the  
8 investors -- again, that's assuming that I knew there were  
9 investors even that there would be that duty to.

10 And, no, I -- no, I did not feel that that was  
11 an obligation that I had to investigate that from the  
12 information I had, and it was not something I was asked to  
13 do.

14 Q. (BY MR. CAMPBELL) Do you think Clark Hill, in  
15 representing DenSco, as a matter of the standard of care,  
16 should have found out whether DenSco had borrowed any  
17 money from investors?

18 MR. DeWULF: Object to form.

19 THE WITNESS: I can't render that opinion. I  
20 don't know everything that everyone at the firm knew about  
21 the situation.

22 Q. (BY MR. CAMPBELL) Mr. Beauchamp knew everything  
23 about the situation. True?

24 MR. DeWULF: Object to form.

25 THE WITNESS: I don't know that.

DANIEL ALLEN SCHENCK, 6/19/2018

1 Q. (BY MR. CAMPBELL) Assuming Mr. Beauchamp knew  
2 that DenSco has raised its money through private offering  
3 memorandums and that he had written every single private  
4 offering memorandum they had ever used --

5 A. Uh-huh.

6 Q. -- do you have an opinion as to whether the  
7 standard of care required Mr. Beauchamp to consider the  
8 best interests of the investors in determining whether or  
9 not Mr. Menaged is a crook?

10 MR. DeWULF: Object to form.

11 THE WITNESS: I did not make an opinion about  
12 that.

13 Q. (BY MR. CAMPBELL) One way or the other?

14 A. To me, I don't know all the circumstance of what  
15 information David was given. I know he can tell me he  
16 wrote a lot of different documents, but I don't know what  
17 David did or didn't know about Menaged or what he was told  
18 about him, or if the client was just saying I just want  
19 this to be done.

20 Q. I think my question is simple.

21 Do you have an opinion whether the standard of  
22 care required Mr. Beauchamp to take into account the best  
23 interests of the investors of DenSco as to whether they  
24 should do a deal with someone who may be a crook?

25 MR. DeWULF: Object to form.

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1 THE WITNESS: Do I have an opinion about that?

2 I don't think I can answer that question on whether or not  
3 I could make an opinion on that. There is too many other  
4 circumstances and information behind it.

5 Q. (BY MR. CAMPBELL) Turn -- go back to Exhibit  
6 No. 4, the disclosure statement.

7 A. Okay.

8 Q. So are you on page 14?

9 A. Sorry. Page 14 of Exhibit 4. Okay.

10 Q. I want you to -- I'm going to read from line 3.

11 A. Okay.

12 Q. "Nevertheless, Mr. Beauchamp at one point became  
13 concerned enough at Menaged's intransigence and the  
14 apparent influence he held over Mr. Chittick, that he  
15 reached out to third parties in late January 2014 to  
16 inquire about Menaged. Those third parties informed him  
17 that Menaged was generally somebody to be distrusted and  
18 not someone to do business with," end of quote.

19 Did I read that correctly?

20 A. You read it correctly.

21 Q. Did Mr. Beauchamp ever come to you in  
22 January 2014 and tell you that he had talked to third  
23 parties about Mr. Menaged?

24 A. I don't recall that.

25 Q. Did he ever come to you and tell you that

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1 Menaged was someone to be distrusted and not someone to do  
2 business with?

3 A. I don't recall Mr. Beauchamp ever telling me.

4 Q. Did Mr. Beauchamp ever come to you and say that  
5 because Menaged was someone to be distrusted and not to do  
6 business with, there was a conflict of interest between  
7 what Mr. Chittick wanted to do and what was in the best  
8 interests of DenSco and its investors?

9 MR. DeWULF: Object to form.

10 THE WITNESS: I did not recall him ever using --  
11 referring to Mr. Menaged, Scott, as a crook, and so the  
12 answer would be no to that question. I do not recall any  
13 of those kind of statements.

14 Q. (BY MR. CAMPBELL) All right. So with respect  
15 to your involvement, am I right that you did nothing to  
16 determine whether this cousin even existed? True?

17 MR. DeWULF: Object to form.

18 THE WITNESS: I actually could tell you, from  
19 what little I had seen of that TV show, I do remember that  
20 there was a cousin that worked with Scott, at least in the  
21 TV show. At least, like, they said his cousin or some guy  
22 that I thought worked with him.

23 Q. (BY MR. CAMPBELL) Do you know anything about  
24 the criminal case against Mr. Menaged?

25 A. No. I didn't know there was a criminal case.

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1 Q. You don't know he is in prison?

2 A. No.

3 Q. Assuming Mr. Beauchamp knew that Mr. Menaged was  
4 a bad guy, did you have any conversations with  
5 Mr. Beauchamp about putting in place full-proof procedures  
6 so that Mr. Menaged would not do something bad to DenSco?

7 MR. DeWULF: would you read it back, please.

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

9 MR. CAMPBELL: I'm going to withdraw the  
10 question. It's a poor question. I'll save you the  
11 objection.

12 MR. DeWULF: All three of them are bad, I think.

13 Q. (BY MR. CAMPBELL) Did you have any conversation  
14 with Mr. Beauchamp at any time that loan procedures should  
15 be put in place so that Mr. Menaged could not take  
16 advantage of DenSco?

17 A. We had conversations about -- after learning  
18 more of what DenSco's practices were, about some of the  
19 procedures, but we didn't -- I don't know if we referred  
20 specifically to Scott, but just more in general about, you  
21 know, that what they were doing was not what we would  
22 expect of normal conventional lenders to do.

23 And that I know that there were conversations, I  
24 believe, between David and Denny about that, but the  
25 take-away was more of Denny saying in this niche of

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1 lending and foreclosures, we can't do things -- or he said  
2 it wasn't -- that it couldn't be just the way that  
3 conventional lenders did things because of the timing, the  
4 pricing, and that they had to be a little more, in other  
5 words, loose or more aggressive on how they went about  
6 their procedures.

7           And again, those -- saying like that, is that  
8 he -- I'm saying I heard the warnings, but that he said,  
9 like, he is in there day to day and so he understands it  
10 better than we do.

11           Q.    You had this conversation with Chittick?

12           A.    No, but I recall conversations, like, with David  
13 about this is what we have talked about the procedures and  
14 like, you know, what's -- you know, what was done and what  
15 needs to be done, and what does Denny have to say about  
16 this.

17           Q.    So you are getting this all secondhand from  
18 Mr. Beauchamp?

19           A.    I think most of it would have been probably  
20 secondhand from Mr. Beauchamp. It might have been Scott  
21 some in the conversations that I had with Denny directly,  
22 like, with Mr. Beauchamp, but I -- to be honest, I don't  
23 remember exactly where it came from, but that's just my  
24 recollection of the conversations.

25           Q.    Just so I'm clear --

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1 A. Okay.

2 Q. -- it's your recollection that Mr. Beauchamp  
3 knew that Mr. Chittick was continuing to wire money to  
4 borrowers rather than going and presenting it at the deed  
5 of trust sale?

6 MR. DeWULF: Object to form.

7 THE WITNESS: No. It was that what had happened  
8 in the past, at the past practices, that we had talked to  
9 Denny about it, saying that it was rife with risks, and  
10 that it, you know, essentially led to this situation, that  
11 some other procedures could have even prevented this  
12 situation, but that Denny still felt, though, that the way  
13 he had been doing things was kind of necessary for the  
14 niche lending that he was doing.

15 Q. (BY MR. CAMPBELL) Okay.

16 A. And so it didn't seem that he was going to heed  
17 any advice on changing the -- well, not necessarily, but  
18 he was at least going to be resistant to changing.

19 Q. This was not a conversation you had. This is  
20 what Mr. Beauchamp told you, right?

21 A. To be honest, it might have been. I might have  
22 been present in one of those conversations. I don't  
23 recall. But that was kind of my understanding of what was  
24 happening, but I'm sure a lot of that probably did come  
25 from Mr. Beauchamp telling me that.

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1 Q. So you and Mr. Beauchamp knew that Denny was  
2 going to continue wiring money to his borrowers,  
3 regardless of the advice you gave him. True?

4 A. No.

5 MR. DeWULF: Object to form.

6 THE WITNESS: I didn't know what Denny was going  
7 to do.

8 Q. (BY MR. CAMPBELL) You just told me that your  
9 understanding was he was resistant to the advice, and  
10 that's what Mr. Beauchamp told you. True?

11 A. That he was resistant to the advice, but I  
12 didn't know what he was going to do.

13 Q. At that moment in time did it cross your mind,  
14 Mr. Schenck, that there might be a conflict of interest  
15 between what Mr. Chittick wanted to do and what might be  
16 in the best interests of DenSco?

17 MR. DeWULF: Object to form.

18 THE WITNESS: I do not recall having that  
19 thought.

20 Q. (BY MR. CAMPBELL) Are you aware that wiring  
21 money to Mr. Menaged is what led to the fraud that  
22 resulted in Mr. Menaged going to prison and Mr. Chittick  
23 hanging himself?

24 MR. DeWULF: Object to -- come on. That goes  
25 way beyond the pale.

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1 MR. CAMPBELL: I will withdraw. I will  
2 withdraw.

3 MR. DeWULF: Let's be professional here. I'll  
4 object to the form of the question. He has now withdrawn  
5 it.

6 Q. (BY MR. CAMPBELL) Do you understand that it was  
7 wiring money to the borrower that resulted in the fraud?

8 MR. DeWULF: Object to form.

9 THE WITNESS: which fraud? It sounds like there  
10 is --

11 Q. (BY MR. CAMPBELL) The fraud that happened after  
12 the work you did for DenSco, Mr. Schenck.

13 A. I have learned that after the fact, that that  
14 still occurred.

15 Q. When you learned it after the fact, did it even  
16 cross your mind then that there was a conflict of interest  
17 between what Mr. Chittick wanted to do and what was in the  
18 best interests of DenSco?

19 MR. DeWULF: Object to form.

20 THE WITNESS: I don't recall thinking about  
21 that. I more, I think, focused on what Denny had done to  
22 himself and that it was unfortunate.

23 Q. (BY MR. CAMPBELL) As a corporate lawyer, are  
24 you familiar with the phrase zone of insolvency?

25 A. Zone of insolvency, I don't -- no, I don't know

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1 what that is.

2 Q. Have you ever studied the duties that a  
3 corporation owes to its creditors when it is within the  
4 zone of insolvency?

5 A. Off the top of my head, I don't know what zone  
6 of insolvency is, so I can't answer that.

7 Q. All right. Did you ever have conversations with  
8 Mr. Beauchamp that DenSco was within the zone of  
9 insolvency?

10 MR. DeWULF: Object to form.

11 THE WITNESS: It might help if you tell me,  
12 define what zone of insolvency is. I think I understand  
13 it, but I want to make sure that we are thinking of the  
14 same thing.

15 Q. (BY MR. CAMPBELL) well, unfortunately, I get to  
16 ask the questions.

17 what does zone of insolvency mean to you?

18 A. I would think it -- this would be my best, at  
19 the time, way of describing it. It would probably be when  
20 a company is close to insolvency.

21 Q. Did you have any discussions with Mr. Beauchamp  
22 that DenSco was close to insolvency?

23 A. I don't recall those conversations, no.

24 Q. At any time?

25 A. No, I don't recall that.

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1 Q. Did you ever investigate how many of the loans  
2 DenSco had made and what percentage of them were affected  
3 by the double liens?

4 A. No, actually, I did not. Denny really was  
5 not -- he said he had the information. We were asking for  
6 it. He said: I'll get that to you later. I'll get that  
7 to you later. We can -- that will be part of, like, the  
8 Forbearance Agreement. We will plug in the numbers there.

9 But he wasn't giving us all the information on  
10 what loans there were that this was impacted, and  
11 certainly not what other loans were outside of the  
12 double for -- double-lien problem.

13 Q. So you never at any time in your representation  
14 of DenSco formed an opinion that DenSco was close to  
15 insolvency?

16 A. I did not make that opinion, no.

17 Q. Did Mr. Beauchamp ever express to you his  
18 opinion of whether they were close to insolvency?

19 A. I don't recall him expressing that to me.

20 Q. Do you remember in the Forbearance Agreement you  
21 listed all the loans that were affected by the double  
22 liens?

23 A. The exhibit included it?

24 Q. Correct.

25 A. It's my understanding that it was an exhibit

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1 that Denny added to the agreement, like, around the time  
2 of the execution.

3 Q. And you understood the exhibit listed all the  
4 liens that were impacted by the double-lien issue or all  
5 the loans that were impacted by the double-lien issue?

6 A. I think it was -- the list included homes that  
7 were impacted by it, but I don't know if it was the ones  
8 that were currently still not paid or satisfied or if it  
9 was all of them that ever had a problem, but at least I  
10 think it was the ones that were, at that snapshot in time,  
11 essentially, still had double liens on them.

12 Q. Do you remember what they added up to?

13 A. I don't recall at this time, no.

14 Q. Do you remember, after you did the Forbearance  
15 Agreement, there was an issue because numbers had been  
16 used that weren't the current numbers?

17 A. Yeah, I do recall that there was -- on that  
18 that, again, that the numbers were something we were  
19 asking for Denny on. And I think the number he had given  
20 us wasn't one that I think was plugged into the agreement,  
21 was not then the same number at the bottom of, like, the  
22 exhibit that he had added -- added to it. So I would,  
23 like, ask for some explanation or we need to reconcile  
24 that.

25 Q. I want you to assume that the total value of the

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1 loans impacted by the double lien was between 35 and  
2 \$39 million.

3 A. Okay.

4 Q. It never crossed your mind that DenSco was close  
5 to insolvency?

6 MR. DeWULF: As of what point in time is the  
7 question?

8 Q. (BY MR. CAMPBELL) Let's say at the time you did  
9 the Forbearance Agreement.

10 MR. DeWULF: Object to form.

11 THE WITNESS: Yeah. No, it never crossed my  
12 mind -- well, I wouldn't say it crossed my mind, but I  
13 never had that concern, that I can recall.

14 I do recall as part of, though, I think the  
15 Forbearance Agreement that DenSco was going to do some  
16 other kind of loans or had other funding to pay off some  
17 of the stuff, so it seemed to me that DenSco still had  
18 funds.

19 Q. (BY MR. CAMPBELL) They still had funds.  
20 Did you ever do an insolvency analysis of  
21 DenSco?

22 MR. DeWULF: Object to form.

23 THE WITNESS: No. I never had the information  
24 to perform one, nor was I asked to do one.

25 Q. (BY MR. CAMPBELL) Let's go to Exhibit No. 99.

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1 That's going to be in the second volume.

2 A. Is this it right here?

3 Q. It's going to be this one.

4 A. Okay.

5 Q. Exhibit No. 99 is an email from Mr. Chittick to  
6 Mr. Beauchamp enclosing the private offering memorandum of  
7 2011.

8 Do you see that?

9 A. I see that.

10 Q. Have you seen this email before?

11 A. Yes.

12 Q. And when did you see the email?

13 A. It would have been around April 24th, 2014,  
14 according to the information on here.

15 Q. All right. If you flip the page to Exhibit  
16 No. 100 --

17 A. Uh-huh.

18 Q. -- do you recognize Mr. Beauchamp's handwriting?  
19 Exhibit 100, please.

20 A. Oh, 100.

21 Q. I'm sorry.

22 A. I -- no, I don't recognize his handwriting.

23 I --

24 Q. Do you remember finding this on your desk?

25 MR. DeWULF: You are talking about this exhibit?

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1 Q. (BY MR. CAMPBELL) Exhibit No. 100.

2 You see where it says, "Dan: Use this to mark  
3 up. Add updates/forbearance, etc."

4 A. I -- I recognize this document, but I can't  
5 specifically tell you I remember receiving this copy with  
6 his notes on it.

7 Q. All right. Well, the only notes are the notes  
8 on the first page to you.

9 Do you recall getting these instructions from  
10 him?

11 A. Getting, yeah, these kind of instructions from  
12 him, but I'm saying I can't remember getting this sheet of  
13 paper or something with that on it. I probably did, but I  
14 do remember him asking me to review it and to work on an  
15 amendment to be consistent with.

16 Q. Tell me about what you remember about the  
17 instructions you received. How did you get them?

18 A. Regarding the POM?

19 Q. Yes.

20 A. I remember David, you know, sending it to me and  
21 saying please review it, and then, you know, look for  
22 where we need information that should be updated or  
23 corrected on here, and then, you know, make some revisions  
24 and then get that back to me.

25 Q. Was this just sort of an oral instruction?

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1 A. Yeah, I think it -- we had met in his office and  
2 he, you know, told me about the POM and that we are going  
3 to work on revising it or amending it.

4 Q. Did he give you any written documents other than  
5 the POM itself?

6 A. I don't recall him giving me other documents at  
7 that time.

8 Q. Do you remember what you did when you got these  
9 instructions?

10 A. I think we may have actually talked about it  
11 before he e-mailed it to me and said it's going to be  
12 coming and that I can send it to --

13 Then what I did after that -- sorry. Was that  
14 the question?

15 Q. I lost track of my question.

16 A. I'm sorry. I could answer that question,  
17 assuming it was.

18 Q. Well, let's go back.

19 So you do know you got the 2011 POM, right?

20 A. Yes.

21 Q. And you do know that he instructed you to amend  
22 it --

23 A. Correct.

24 Q. -- correct?

25 Prior to this time, you were not an expert in

DANIEL ALLEN SCHENCK, 6/19/2018

1 private offering memorandums?

2 A. No.

3 Q. Do you know why he gave the task to you?

4 A. I did not know why he gave it to me, no.

5 Q. Did you tell him that you were not expert in  
6 private offering memorandums?

7 A. I did not probably tell him that I was, but I  
8 think he knew that I had limited experience with  
9 securities.

10 Q. I want to go to Exhibit 10.

11 A. Oh, that's in the first volume?

12 Q. Yeah.

13 MR. DEWULF: It should be.

14 THE WITNESS: Thank you.

15 Q. (BY MR. CAMPBELL) So Exhibit 10 is a letter  
16 dated May 23rd. It enclosed an invoice for all work  
17 through the end of April.

18 Do you see that?

19 A. Yes.

20 Q. All right. And looking at this invoice, you  
21 will see that the first invoice has to do with the workout  
22 of lien issue.

23 Do you see that? That's at CH514 Bates stamp.

24 A. Workout lien issue, yes.

25 Q. Okay. And then if you turn to CH520, and this

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1 says re private offering memorandum.

2 Do you see that?

3 A. Yes.

4 Q. And if you look over at the detail description  
5 of services, you notice you do not have any time entries,  
6 is that correct?

7 A. Correct.

8 Q. All right. You see that Mr. Beauchamp has time  
9 entries, though, correct?

10 A. Yes.

11 Q. And you will see that on April 25th he has a  
12 notation: outline revisions and issues for revision.

13 Do you see that?

14 A. I see that.

15 Q. And on April 29th, he has: outline issues and  
16 information for inclusion.

17 Do you see that?

18 A. Yes.

19 Q. And then he has: Review notes and revise  
20 description.

21 Do you see that?

22 A. I see that.

23 Q. Did he ever give you an outline?

24 A. I don't recall getting an outline, no.

25 Q. And you don't recall getting any notes or

DANIEL ALLEN SCHENCK, 6/19/2018

1 anything in writing from him, correct?

2 A. Not that I can recall.

3 Q. All right. Turn to Exhibit No. 11.

4 Exhibit 11 are the billing invoices for all time  
5 through the end of May, correct?

6 A. One moment.

7 Q. Correct?

8 A. It appears to be, yes.

9 Q. And then if you turn to CH5225, this is going to  
10 be the invoice with respect to the private offering  
11 memorandum, right?

12 A. Oh, 225. Sorry. Yes.

13 Q. And if you turn to 5226, it looks like you  
14 worked on the private offering memorandum from May 8th, it  
15 looks like through May 13th and then on May 14th, right?

16 A. Uh-huh.

17 Q. Is that a yes?

18 A. Sorry. Yes.

19 Q. So you say: Revise private offering memorandum,  
20 notes and legal research regarding same.

21 Do you see that?

22 A. At the top on May 8th?

23 Q. Yeah.

24 A. Yes.

25 Q. Did you keep your notes and research?

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1 A. Notes and re -- I don't know where they are if I  
2 did.

3 Q. Did you look for them?

4 A. Yes.

5 Q. And you couldn't find any?

6 A. No.

7 Q. And then on May 12th you do additional research  
8 and revisions.

9 Did you keep your research?

10 A. I probably did. It was mostly like printing  
11 things out, and then the notes probably would have  
12 been on -- a lot of times would have been on the  
13 printouts.

14 Q. Did you look for it?

15 A. Yes.

16 Q. Did you find it?

17 A. No, but all of this could just still be online  
18 research, not things that were printed out.

19 Q. May 13th, again, you appear to be doing, you  
20 call it extensive legal research, right?

21 A. On May 13th, yes.

22 Q. Do you have your research?

23 A. I don't have it with me now, no.

24 Q. Do you have notes of your research?

25 A. This particular research, no.

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1 Q. Did you look for it?

2 A. I was asked to look for what notes and such I  
3 had, and it's either in the file, but it's --

4 Q. Did you find them?

5 A. This particular one, I can't tell you if I found  
6 it or not.

7 Q. So it looks like you finished the first draft on  
8 May 14th, 2014, right?

9 A. Yes.

10 Q. Let's go back to the second volume and go to  
11 Exhibit No. 101.

12 And Exhibit 101 is an email from you to  
13 Mr. Beauchamp, enclosing a draft.

14 Do you see that?

15 A. Yes.

16 Q. Now, this is not a completed POM, is it?

17 A. This one?

18 Q. Yeah.

19 A. Sorry. You are referring to what's attached?

20 Q. The one that's attached.

21 MR. DeWULF: You mean Exhibit A to 101?

22 Q. (BY MR. CAMPBELL) I don't know if it's marked  
23 Exhibit A. I just have it in -- it's 8874 is the Bates  
24 stamp number I have.

25 So there is the email on 101, and then the

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1 second page starts the Confidential Private Offering  
2 Memorandum.

3 So maybe I should ask you is, following your  
4 email, there is a Confidential Private Offering  
5 Memorandum, and if you look at it, there are comments in  
6 it.

7 A. Correct.

8 Q. So is this the draft you prepared?

9 A. I believe it is.

10 Q. All right. Let me -- look at your private  
11 offering memorandum. 8876 is the Bates stamp number.

12 A. I'm sorry. 88 --

13 Q. 76. You see there is a comment up there?

14 A. Yes.

15 Q. Okay. There is a statement that talks about two  
16 years from the date of this memorandum.

17 Do you see that?

18 A. Uh-huh.

19 Q. And then could you read your comment to me?

20 A. "DGB," which references David Beauchamp's  
21 initials, "what is the maximum duration we can use here?"

22 Q. What's your understanding of when a private  
23 offering memorandum needs to be amended?

24 MR. DeWULF: Object to form.

25 THE WITNESS: When it needs to be amended? Is

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1 that the question? Sorry.

2 Q. (BY MR. CAMPBELL) Yes.

3 A. No. My understanding would be that it needs to  
4 be amended, you know, when there is new information or a  
5 change in circumstances from what's described in there.  
6 That was my understanding.

7 Q. Okay. You understand that you can't have a  
8 private offering memorandum and say that I'm not going to  
9 amend it for two years?

10 A. I'm not going to amend it?

11 Q. Right. You understand it has to be amended as  
12 soon as there is new material facts. True?

13 MR. DeWULF: Object to form.

14 THE WITNESS: Do I understand that? Is that  
15 what the question is? I'm sorry. We are looking at the  
16 two years thing about the date of the memorandum versus --

17 Q. (BY MR. CAMPBELL) Well, in your resumé you say  
18 you have experience in private offering memorandums.

19 A. Today, yes.

20 Q. Based on your experience, as of today --

21 A. Yeah.

22 Q. -- when do you have to amend a private offering  
23 memorandum?

24 MR. DeWULF: Object to form.

25 THE WITNESS: From my understanding today, is

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1 that you need to amend it when there is new information or  
2 changes to the circumstances that's described in there.

3 Q. (BY MR. CAMPBELL) Did you understand that in  
4 May of 2014 when Mr. Beauchamp instructed you to make  
5 amendments?

6 A. I think I had a general understanding that,  
7 yeah, and that's why I was being asked to make this  
8 amendment.

9 Q. All right. Prior to the time Mr. -- now, from  
10 your billing records, you start working on this in May  
11 2014. True?

12 A. According to the billing records, yes.

13 Q. All right. Is this the first time you learned  
14 there was a private offering memorandum in this case?

15 A. I -- to being honest, I can't say that. It  
16 might have been brought up sometime, but I just don't  
17 remember when I learned that there was a private offering  
18 memorandum.

19 Q. Well, we know conclusively you knew in May of  
20 2014.

21 A. We know conclusively I know there was one. I  
22 received it. When I knew there was one, I -- I can't tell  
23 you on that one. I learned it somewhere along the way.

24 Q. Well, and when you got it, you did apparently  
25 extensive research regarding it?

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1 A. Research more in trying to understand, you know,  
2 what it entailed, and then what other kind of information  
3 needed to be updated.

4 Q. Did you have any conversation with Mr. Beauchamp  
5 about why there had been no amendment from 2011, which was  
6 the date of the prior POM you received, until the time you  
7 got it in May 2014?

8 A. I don't recall a conversation about that, no.

9 Q. When you got the private offering memorandum,  
10 you knew conclusively that DenSco had raised monies  
11 through securities offerings. True?

12 A. At some point that it had, very clear to me,  
13 yes. I didn't know how much.

14 Q. Well, it was clear to you they had been doing it  
15 since 2011. True?

16 A. Well, at least trying to since 2011, yes.

17 Q. Did you have any conversation with Mr. Beauchamp  
18 about whether DenSco had violated the securities laws by  
19 raising money without amending the POM?

20 MR. DeWULF: Object to form.

21 THE WITNESS: No, I don't recall having that  
22 conversation, and I -- I wasn't aware of the timing of the  
23 investments.

24 Q. (BY MR. CAMPBELL) Did you inquire?

25 MR. DeWULF: Object to form.

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1 THE WITNESS: I may have, but I don't recall.

2 Q. (BY MR. CAMPBELL) Did it cross your mind,  
3 Mr. Schenck, with this company DenSco that you were  
4 representing, that you now conclusively knew had  
5 investors, that maybe you should want -- maybe we should  
6 look at whether the securities laws had been violated?

7 MR. DeWULF: Object to form.

8 THE WITNESS: I don't recall having that one,  
9 but I remember being asked to do this because of  
10 securities laws issues.

11 Q. (BY MR. CAMPBELL) Okay. You just did what you  
12 were asked to do in this case?

13 A. I was asked -- yeah. On this one, I was given  
14 specific tasks on this case, and I definitely didn't know  
15 all the information and -- but I was given information  
16 that was relevant to what I needed to work on.

17 Q. Did you ever have a question that you went back  
18 to Mr. Beauchamp and said: You know, maybe we should look  
19 at some of these issues?

20 MR. DeWULF: Object to form.

21 THE WITNESS: Yeah, that would be things like  
22 the practices with the lending. From what I saw in some  
23 emails about it, I talked to him about, and he says yeah.  
24 And David agreed that it should be looked at more further  
25 and that's why we brought in Bob. And you know, I have

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1 lots of different questions that I was presenting to David  
2 in this memorandum as well -- this draft here as well.

3 Q. (BY MR. CAMPBELL) So with respect to the  
4 private offering memorandum, you recall going to David and  
5 talking to him?

6 A. Yeah. We talked about what -- this amendment  
7 that I had done and -- and where was it -- what -- what  
8 still needed -- information needed to be gathered for it  
9 and questions that needed to be answered.

10 Q. Now, normally when you confer with an attorney,  
11 you put that in your billing records, right?

12 A. Most often.

13 Q. All right. Would you agree with me there is  
14 no -- nothing in your billing records from May of you  
15 having a conference with Mr. Beauchamp about issues you  
16 had with respect to securities law?

17 MR. DeWULF: Why don't we go back and look at  
18 that. Is that --

19 MR. CAMPBELL: Exhibit No. 11.

20 THE WITNESS: 11?

21 Q. (BY MR. CAMPBELL) Bates stamped 5226.

22 A. I don't see a specific reference to an attorney  
23 conference in these descriptions, but I have lots of  
24 attorney conferences that are not in my billing.

25 Q. So as I look at the POM you prepared, you have a

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1 lot of comments in it about whether certain things are  
2 accurate or not.

3 A. Correct.

4 Q. So I take it you didn't do anything to go out  
5 and determine whether you were accurate. You are just  
6 asking Mr. Beauchamp if they are accurate, correct?

7 MR. DeWULF: Object to form.

8 THE WITNESS: Yeah. I am pointing out that we  
9 need to confirm if these are accurate.

10 Q. (BY MR. CAMPBELL) well, let me give you an  
11 example. Turn to 8877.

12 A. 8877. Yes.

13 Q. You have a comment "is this accurate," right?

14 A. Correct.

15 Q. Go to 8883.

16 You were trying to find out how many loans were  
17 done in the 13-year period, right?

18 A. Correct.

19 Q. And you don't have the answer to that. True?

20 A. Correct.

21 Q. Turn to 8886.

22 There is a statement here about the  
23 loan-to-value ratio is no greater than 70 percent with an  
24 objective goal of 50 to 60 percent, and you say "Is this  
25 still accurate?"

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1 A. Correct.

2 Q. All right. Sir, you did the Forbearance  
3 Agreement, didn't you?

4 A. I did.

5 Q. You know in the Forbearance Agreement they are  
6 giving 95 percent loan to value?

7 MR. DeWULF: Object to form.

8 THE WITNESS: Loan to value for --

9 Q. (BY MR. CAMPBELL) To send out a POM that said  
10 the loan-to-value ratio is no greater than 70 percent  
11 would be completely untrue, correct?

12 A. That they -- well, on this one, I'm not sure  
13 on -- if this is kind of going overall or on specific  
14 loans.

15 Q. Turn to page 8887.

16 You ask again, "Is this still accurate?" loan to  
17 value ratios?

18 A. Uh-huh. And that's the reason there was -- in  
19 the previous draft of this, I think this was the  
20 information that was there, and this is me more calling  
21 out that, hey, we need to revise this to what the numbers  
22 currently are, and --

23 Q. So you never prepared a completed POM, did you?

24 A. No. I was asked to revise the old one with  
25 updated information, and this is more me flagging where

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1 there is specific information from the last draft that I  
2 don't know if is -- know or assume that it's probably not  
3 currently accurate, and that it should be confirmed before  
4 it's released in whatever form to investors.

5 Q. All right. But, sir, this is just really a  
6 draft. It's not a completed POM that's ready to go out.

7 You didn't find out this information and correct  
8 it. True?

9 A. Correct.

10 MR. DeWULF: It's been a little over an hour,  
11 Colin. Whenever is a good time to break.

12 Q. (BY MR. CAMPBELL) All right. Let's go to 8925.

13 Okay. I'm trying to find. Let me see if I can  
14 just find where it is. Let's go to 8920.

15 Actually, 8919, you are commenting on the  
16 diversity of the borrower base, and you are asking whether  
17 this is still accurate, right?

18 A. 8919?

19 Q. 8919. You are on the right page.

20 A. Yeah. This is me flagging where that  
21 information needed to be updated.

22 Q. And then on 8921 and 8922, you are describing  
23 the Forbearance Agreement?

24 A. 8921, 8922, yes.

25 Q. All right. So going back to the first page, you

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1 send this to Mr. Beauchamp on May 14th, 2014, right?

2 A. That sounds correct. May 14th?

3 Q. Correct.

4 A. Yes.

5 Q. You never did any more work on the POM at all.  
6 True?

7 A. I -- I don't know if I did or not after this.

8 Q. Well, let's go back to -- let's go to 12,  
9 Exhibit 12.

10 A. Exhibit 12? Okay.

11 Q. These are the billing records through the end of  
12 June.

13 Do you see that?

14 A. Yes.

15 Q. Do you see anything billed to the POM on the  
16 billing record for June?

17 A. No, I did not.

18 Q. Let's go to Exhibit No. 13. This is all work up  
19 to the end of July 2014.

20 Do you see that?

21 A. Yes.

22 Q. Did you do any work on the POM in July 2014?

23 A. None of it was recorded in these statements. If  
24 I did, I guess just a clarification, this doesn't show  
25 that I did. I probably didn't, but I may have either not

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1 billed, or at least it's not in here.

2 Q. Okay. I don't want you to guess or speculate.

3 Do you have a particular memory of doing work  
4 that you did not bill?

5 A. Not a particular memory, no.

6 Q. Turn to Exhibit 14.

7 Oh, wait, that's the last -- I think we have  
8 the -- the new bills then jump to 2016.

9 So after May 14, 2014, you would agree with me  
10 that there is no billing entry of you doing any work on  
11 the POM, right?

12 A. From what we reviewed here, correct.

13 Q. And there is no billing entry of anyone at Clark  
14 Hill doing work on the POM. True?

15 A. I --

16 MR. DeWULF: Object to form.

17 THE WITNESS: -- don't know that from what -- if  
18 there is any from what we have seen or not. I didn't  
19 review it that closely.

20 Q. (BY MR. CAMPBELL) You didn't review the billing  
21 records?

22 A. I didn't review the billing records, and we were  
23 just here skimming through one and asking about what my  
24 billing was.

25 Q. Did -- you never did a next draft after that one

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1 you did May 14th. True?

2 A. Not that I can recall today.

3 Q. And all those questions you had about whether  
4 something was accurate, those were never answered. True?

5 MR. DeWULF: Object to form.

6 THE WITNESS: I don't -- no, I did not receive  
7 an answer to all those questions.

8 MR. CAMPBELL: All right. Let's take our break.

9 VIDEOGRAPHER: The time is 11:19 a.m. We are  
10 going off the record, ending media two.

11 (A recess was taken from 11:19 a.m. to  
12 11:39 a.m.)

13 VIDEOGRAPHER: My name is Mary Onuschak with the  
14 firm of Legal Video Specialists, Phoenix, Arizona. This  
15 begins media three of the videotaped deposition of  
16 Daniel A. Schenck. The time is 11:39 a.m. We are now  
17 back on the record.

18 Q. (BY MR. CAMPBELL) So going back to Exhibit 101,  
19 you had indicated that, I think you told me that your  
20 understanding was that Mr. Chittick was resistant to Clark  
21 Hill's advice regarding wiring money to the borrower.

22 MR. DeWULF: Could I -- could you read that  
23 back? I didn't get the last part.

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

25 THE WITNESS: Yes.

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1 Q. (BY MR. CAMPBELL) Did you put that in the  
2 private offering memorandum you drafted?

3 A. I would have to go through it here page by page.  
4 I don't recall if I did or not.

5 Q. Take your time.

6 MR. DeWULF: Object to form.

7 THE WITNESS: Is there a redlined version of  
8 this?

9 MR. CAMPBELL: I don't know.

10 THE WITNESS: And the question is whether or not  
11 he refused our advice on it or that he was not doing --  
12 I'm sorry.

13 Q. (BY MR. CAMPBELL) All right. Before we  
14 broke --

15 A. Correct.

16 Q. -- you told me that it was your understanding  
17 that Mr. Chittick was resistant to Clark Hill's advice --

18 A. Yes.

19 Q. -- that he not wire monies to the borrower.  
20 True?

21 A. Correct.

22 Q. That would be a very material fact for someone  
23 investing in this company. True?

24 A. That he was resistant to our counsel? I can't  
25 say that. I don't know if he was or wasn't doing it or if

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1 he was going to heed it. And that's just it.

2 Q. If he was wiring money to the borrower --

3 A. Okay.

4 Q. -- that would be a very material fact for an  
5 investor. True?

6 A. I can't say that.

7 Q. You can't say that?

8 How did the first fraud take place?

9 MR. DeWULF: Object to form.

10 THE WITNESS: well, there was a problem with the  
11 way that he was sending the money to him.

12 Q. (BY MR. CAMPBELL) He was wiring the money to  
13 the borrower, correct?

14 A. Right.

15 Q. And that allowed Mr. Menaged or his cousin to  
16 hold the money, fund the property from another lender --

17 A. Uh-huh.

18 Q. -- and steal the money that he got from  
19 DenSco --

20 MR. DeWULF: Object to form.

21 Q. (BY MR. CAMPBELL) -- right?

22 A. That sound like the scenario that happened, but,  
23 again, I don't know all the facts on it. But I -- I guess  
24 my concern with the way you have worded the question is  
25 it's assuming that we knew that Denny was not going to

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1 change his practices and that he was still going to  
2 continue to do it that way, and we did not know what Denny  
3 was going to do still going forward with his practices.

4 Q. How do you draft a private offering memorandum  
5 without knowing that?

6 A. Well, that's when this is a draft and we are  
7 identifying some of the first issues that needed to be  
8 identified. But then we are going to have to go, you  
9 know, confirm with the client if it's still accurate.

10 Q. Turn to Exhibit No. 4 again. This is the  
11 Rule 26.1 statement from your law firm.

12 A. Okay.

13 Q. Turn to page 14. You will see on line 19 --

14 A. Yes.

15 Q. -- it starts, and let me see if I can quote this  
16 correctly: Mr. Beauchamp and his associate, Daniel  
17 Schenck, began drafting the updated POM in April and May  
18 2014. Specifically, the draft 2014 POM would have:  
19 Provided a description of the Forbearance Agreement  
20 (including all the parties' funding obligations), the  
21 reason it was necessary, its effect on DenSco's books;  
22 updated DenSco's goals for intended loan-to-value ratios;  
23 updated the descriptions regarding DenSco's loan funding  
24 and securitization procedures; updated the number of loan  
25 defaults triggering foreclosure; and amended the

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1 descriptions regarding DenSco's borrower base, among other  
2 things.

3 Do you see that?

4 A. I see that.

5 Q. Mr. Beauchamp never gave you written  
6 instructions listing those things, correct?

7 A. The -- what information? To update these things  
8 we just listed? No, he did not give me those.

9 Q. And in fact you didn't have this guidance in  
10 amending the private offering memorandum that's set forth  
11 in this Rule 26.1, correct?

12 MR. DeWULF: Object to form.

13 THE WITNESS: My instructions were to update it  
14 with whatever information I had and to flag what other  
15 information would probably need to be updated.

16 Q. (BY MR. CAMPBELL) well --

17 A. And so we never treated it like this checklist  
18 of things that needed to be done.

19 Q. You see where it says loan funded and  
20 securitization procedures?

21 A. Yes, I see that. Line 24.

22 Q. Those procedures encompass whether you are  
23 wiring money to the borrower. True?

24 A. It probably would, yes.

25 Q. You are supposed to update the loan-to-value

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1 ratios?

2 A. Oh. well, I flagged it that that's something  
3 that needed to be updated, yes.

4 Q. But you are telling me you didn't know what the  
5 loan-to-value ratios were when you did the private  
6 offering memorandum?

7 A. I didn't know what the overall ones were, no.  
8 As I say, Denny kept the books and he never shared to us,  
9 like, what really all the loans and the overall picture of  
10 the company, so we couldn't ourselves go and make that  
11 analysis and then plug in the numbers ourselves.

12 This -- the purpose of this draft was more to  
13 flag, like, okay, here is where we need to get the  
14 information, a lot of these numbers, on where we need to  
15 get this information from the client.

16 Q. All right. So just so I understand,  
17 Mr. Schenck, what you drafted is nowhere near anything  
18 that would go out to the public. You didn't have the  
19 information you needed to prepare it, correct?

20 MR. DeWULF: Object to form.

21 THE WITNESS: No, I would not think it would go  
22 out to the public from what information I had. And, like  
23 I said, a lot of the information which I lacked was not  
24 what I understood to be the current information, but was  
25 information that needed to be updated.

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1 Q. (BY MR. CAMPBELL) Was the fact that the first  
2 fraud was a result of lax lending procedures a material  
3 fact for investors?

4 MR. DeWULF: would you read that back, please.

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

6 MR. DeWULF: Object to form.

7 THE WITNESS: To be honest, I couldn't -- at  
8 this time, I could not have made that assumption. I  
9 wasn't the securities expert. I didn't understand what  
10 the different levels of, you know, what exactly was  
11 securities fraud or not. I was asked to update it with  
12 the information I knew.

13 Q. (BY MR. CAMPBELL) Did you ever form an opinion,  
14 sir, when you were drafting the forbearance agreements in  
15 this case, which we will go through --

16 A. Okay.

17 Q. -- that DenSco had lax lending procedures?

18 A. Yes. I told you that we have had that concern  
19 and brought that up.

20 Q. That was the opinion you had from the very  
21 beginning. True?

22 A. Well, when I saw that, what the practices were,  
23 yeah, I was concerned about that. Lax is a good word to  
24 use for it.

25 Q. Why did you not put that opinion in the draft

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1 private offering memorandum you drafted?

2 A. As I sit here today, I don't know. And part of  
3 it could have been I didn't know if the practices were  
4 changing or not. Again, this was a first draft.

5 Q. Did Mr. Beauchamp ever come to you and tell you  
6 he had terminated DenSco as a client?

7 A. Yes.

8 Q. When did he do that?

9 A. It probably was within a week or a couple weeks  
10 at least -- I'm trying to frame up -- after this initial  
11 draft was, I think gave it to David, and then I think he  
12 then was working with Denny on, you know, starting to fill  
13 it in more and to update it with the correct information  
14 and such. It was around that time period.

15 Q. So you think -- we know from your billing  
16 records that you gave it to Mr. Beauchamp on May 14th, so  
17 you think within one week, by May 21st, Mr. Beauchamp came  
18 to you and said we are terminating DenSco as a client?

19 MR. DeWULF: I think that's a  
20 mischaracterization of what he said, Counsel. I'll object  
21 to form.

22 MR. CAMPBELL: Let him say -- he can correct me  
23 if I'm wrong.

24 THE WITNESS: Okay. I would say it was probably  
25 within days or weeks after that. I don't -- I can't

DANIEL ALLEN SCHENCK, 6/19/2018

1 pinpoint when it was.

2 Q. (BY MR. CAMPBELL) Days or weeks?

3 A. Yeah.

4 Q. How many times have you terminated a client?

5 A. Me? Only a handful of times.

6 Q. How many times has a partner come to you and  
7 said we are terminating a client, cease work?

8 A. Just a handful of times.

9 Q. What are Clark Hill's procedures when a client  
10 is terminated?

11 A. I don't know that there are actually set  
12 procedures on -- firm-wide on how to do that.

13 Q. Do you terminate work?

14 A. Since this, I have done a couple of that, yeah.

15 Q. So once Mr. Beauchamp came and talked to you,  
16 you did no further work on the case?

17 A. No, I don't think that would be accurate.

18 Q. How can you terminate a client and do no further  
19 work for them and then continue working for them?

20 A. Well, I think on this particular situation, I  
21 think we understood that we were no longer representing  
22 them and going to continue this, but that it would be  
23 handed off to another counsel.

24 So we were trying essentially to put it in the  
25 best shape possible so that the new counsel that was going

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1 to get it would kind of see the road map of what still  
2 needed to be done.

3 And so, you know, more work was probably done,  
4 maybe not on the POM, but maybe on the Forbearance  
5 Agreement, that, you know, just for ourself. I don't know  
6 if I even billed for it or was told to bill for it or we  
7 wrote it off, but there was more work that was done just  
8 trying to make it in better shape to hand it off to the  
9 next counsel.

10 Q. Let me see if I have this right.

11 A. Okay.

12 Q. The reason Mr. -- did Mr. Beauchamp tell you the  
13 reason he was terminating the client?

14 A. Yeah. It was over the POM issues, that Denny  
15 was not going to make the amendments -- that wasn't going  
16 to amend the POM, or at least, you know, work with us to  
17 amend it and -- or was going to try to get someone else to  
18 do it or something, as though he didn't like already, in  
19 the first draft, the issues we were spotting, he thought  
20 it was not what he was going to prepare to do. And then  
21 because of that said, well, for us to work on this, we are  
22 going to have to do at least this, that's in this first  
23 draft.

24 Q. I'm confused.

25 MR. DeWULF: I'm sorry?

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1 Q. (BY MR. CAMPBELL) I'm confused.

2 A. That's a long -- that was a long response.

3 Q. You are telling me now that Mr. Beauchamp came  
4 to you before you started doing a private offering  
5 memorandum and said he was getting resistance from  
6 Mr. Chittick and that's why you prepared the draft?

7 MR. DeWULF: Object to form.

8 THE WITNESS: No, no, no. I thought you said  
9 after --

10 MR. DeWULF: Here, read his answer back to me.

11 THE WITNESS: It's a long answer.

12 MR. DeWULF: Let's read the -- can we read the  
13 question first too?

14 MR. CAMPBELL: Let's read the answer, please.

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

16 Q. (BY MR. CAMPBELL) I need to understand  
17 something.

18 Do you know why -- did Mr. Beauchamp tell you  
19 the ethical reasons why he was terminating the  
20 representation?

21 MR. DeWULF: Object to form.

22 THE WITNESS: He told me why we were terminating  
23 the representation, but I don't know if he put it in the  
24 context of this is the ethical rules or reason why we were  
25 doing it.

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1 Q. (BY MR. CAMPBELL) Did you have a conversation  
2 with Mr. Beauchamp that it would be securities fraud if  
3 Mr. Chittick were to raise monies without a new POM?

4 MR. DeWULF: Object to form.

5 THE WITNESS: I don't know if he used those  
6 exact words, but I do remember -- my understanding from  
7 conversations with Mr. Beauchamp was that this needed to  
8 be done, and if it wasn't done, then, yeah, it would be  
9 noncompliant or maybe a securities violation, and that's  
10 why we were insisting that something -- that it be done.

11 Q. (BY MR. CAMPBELL) All right. And then he came  
12 to you and told you we are terminating our work for  
13 DenSco?

14 A. Yes. But, again, the timing of it, it's -- I'm  
15 not sure if I misspoke or misunderstood your question  
16 before. That was after the POM was amended and after  
17 Mr. Beauchamp had talked to Denny about it and Denny said  
18 he was not going to follow our advice regarding the POM.

19 Q. This is all what Mr. Beauchamp told you?

20 A. Correct.

21 Q. Did you ask Mr. Beauchamp if he wrote a letter  
22 setting all this out to Mr. Chittick?

23 A. I don't recall asking him that.

24 Q. Did you tell Mr. -- or talk to Mr. Beauchamp  
25 about maybe it would be a good idea if we put this in

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1 writing and send it to the client?

2 A. I don't recall doing that. And as an associate,  
3 I don't know if I would go around talking to the partners  
4 about what they should do with the client.

5 Q. Did you suggest to Mr. Beauchamp, let's go talk  
6 to Mr. Zimmer --

7 what's his name?

8 A. Sifferman.

9 Q. -- Sifferman, let's go talk to Mr. Sifferman and  
10 make sure we are doing everything we have to do to  
11 terminate our relationship with the client?

12 A. I don't recall that kind of a conversation.

13 Q. Did you talk to anyone else in the firm that  
14 Mr. Beauchamp had told you to terminate work on the  
15 client?

16 A. Probably our secretary, Lindsay, but I don't  
17 recall specifically, but I think it would have made sense  
18 that I would have, but I don't recall a specific one.

19 And then just maybe -- maybe another associate  
20 or something that's asking what we are working on or not  
21 working on I may have mentioned something to, but I don't  
22 recall specifically.

23 Q. which associate would that be?

24 A. I'm saying I don't recall. I'm saying I don't  
25 have a specific recollection of it, but I'm saying it

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1 would be normal for me to mention it to someone if they  
2 were just asking what we have been working on and how a  
3 project went.

4 Q. But you were told to terminate work on the  
5 client, right?

6 A. I don't know if it was expressed as terminate  
7 work for the client, but more that we were no longer going  
8 to be working with them, at least on the POM. That he  
9 wasn't working with us on it, and so that we weren't going  
10 to be his counsel on at least the POM.

11 I think I kind of inferred from that that we  
12 were probably not representing him on other matters, but I  
13 don't think that was -- you know, I'm not -- I can't  
14 recall if that was crystal clear to me at that time.

15 Q. In your -- you realize, sir, that you continued  
16 and your firm continued to do work for Mr. Chittick with  
17 respect to workout issues in June and July of 2014?

18 A. Yeah, I understand that we did some work towards  
19 that when we were, again, waiting, thinking that he was  
20 getting new counsel and that's why we were getting it in  
21 shape for that, to do some cleanup.

22 Q. You did no further work on the POM. You  
23 understand that?

24 A. I don't think I did, no. Yeah, I don't recall  
25 doing more work on the POM.

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1 Q. You did do work, along with Mr. Beauchamp, on  
2 the Forbearance Agreement.

3 A. Is that a question?

4 Q. In June and July of 2014. Do you recall that?

5 A. Yeah, I do recall doing some more work on trying  
6 to clean up and wrap up the Forbearance Agreement. Again,  
7 trying to get ready to hand off to next counsel.

8 Q. Did Mr. Beauchamp come to you and say: We are  
9 not going to represent him on the POM, but we are going to  
10 continue to represent him on the Forbearance Agreement?

11 A. Like I said -- like I said, I don't recall that  
12 specificity with it. I do recall that we were not going  
13 to represent him with the POM, and I think I inferred from  
14 that that we weren't going to be working on other matters  
15 as well as he was hiring new counsel for everything, but  
16 then later on I was asked to do some cleanup work on the  
17 Forbearance Agreement.

18 Q. Well, I'm confused what Mr. Beauchamp told you.  
19 Are you saying --

20 A. I'm saying I don't recall exactly what he told  
21 me.

22 Q. Okay. Well, do you recall exactly, sir --

23 A. No.

24 Q. -- that he said: We are terminating DenSco as a  
25 client?

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1 A. As a client, as an across-the-board client, I  
2 don't recall that.

3 Q. Because you know that in truth and in fact, you  
4 continued to do work on the Forbearance Agreement, right?

5 A. Yeah, we later on did some more work on the  
6 Forbearance Agreement.

7 Q. Did he come to you and say: We just can't do  
8 anything more on the POM. Stop working on the POM?

9 A. Yeah. I wasn't doing more work on the POM. I  
10 was waiting for -- but, yeah, we are not doing any more  
11 work on the POM. It's not that I had, like, pending work  
12 or was continuing to work. I was waiting for a response  
13 on some of these questions and then would work on the next  
14 version of the draft.

15 Q. So he came to you and said: Just don't do any  
16 more work on the POM. There is going to be no next  
17 version?

18 A. I don't think he put it that way, but that we  
19 were not going to be representing him anymore with the POM  
20 at least.

21 Q. All right. But you were going to continue to  
22 represent them with respect to the workout part of it, the  
23 Forbearance Agreement?

24 A. I think I've answered that.

25 MR. DeWULF: Object to form.

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1 THE WITNESS: I think I have answered that a  
2 couple of times, that I didn't -- I inferred that, but I  
3 didn't know.

4 Q. (BY MR. CAMPBELL) I'm sorry. You inferred  
5 that, but --

6 A. That I didn't know for sure what -- what we were  
7 going to do, work for them in the future, if anything. If  
8 the work that we were ceasing to do is limited just to the  
9 POM, or would we not do any work for them altogether, at  
10 that point in time was not clear to me.

11 Q. Let's go back to Exhibit 13. Actually, excuse  
12 me. Exhibit 12.

13 A. 12?

14 Q. 12.

15 Exhibit 12 is the billing memos for June, right?

16 A. Correct.

17 Q. And you will see that on the -- for the invoice  
18 for the workout of lien issue, both you and Mr. Beauchamp  
19 continued to bill time to the client in June of 2014,  
20 right?

21 A. Correct.

22 Q. And then if you turn to Exhibit No. 13, this is  
23 through July, you and Mr. Beauchamp continued to bill time  
24 to DenSco through July 15th, 2014. True?

25 A. Correct.

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1 Q. And then actually turn to Exhibit No. 14. And  
2 here we are going to jump ahead to April of 2016, and you  
3 will see that Mr. Beauchamp is again representing DenSco,  
4 commencing in March of 2016?

5 MR. DeWULF: Object to form.

6 THE WITNESS: I see that there is a bill to  
7 DenSco for April of 2016.

8 Q. (BY MR. CAMPBELL) Were you aware that  
9 Mr. Beauchamp had started representing DenSco again in  
10 March of 2016?

11 A. I don't recall knowing that.

12 Q. Well, do you know he was representing DenSco up  
13 till the time of Mr. Chittick's death?

14 A. No.

15 MR. DeWULF: Object to form.

16 Q. (BY MR. CAMPBELL) Just so I'm clear, because  
17 you have told me that sometimes you don't have a  
18 recollection --

19 A. Correct.

20 Q. -- you do not have a recollection whether he  
21 used the word terminate the client or not, correct?

22 MR. DeWULF: Object to form.

23 THE WITNESS: Refer -- I do not have a  
24 recollection of using those words like that, no. He may  
25 have, but I don't recall it today.

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1 Q. (BY MR. CAMPBELL) Okay. I'm going to switch  
2 topics with you. I just need to find my notes on it.

3 I want you to turn to Exhibit No. 70. It's  
4 going to be in the second notebook.

5 Now, Exhibit No. 70 is an email from  
6 Mr. Beauchamp to Mr. Goulder.

7 Do you see that?

8 A. I see that.

9 Q. And it's dated February 7th, 2014.

10 A. Okay.

11 Q. I want you to look at Exhibit No. 71. And you  
12 will see Exhibit No. 71 is Mr. Beauchamp sending this  
13 email to you.

14 You see that?

15 A. Oh, yes.

16 Q. All right. So this is February 7th, 2014. And  
17 do you remember getting this email and reading it?

18 A. To be honest, I don't remember specifically  
19 getting this email and reading it.

20 Q. All right. Let's turn back to 70, because I --  
21 it's just a cleaner copy for me.

22 A. Okay.

23 Q. Mr. Beauchamp starts out: Based on your -- this  
24 is to Jeff Goulder.

25 You understand that Mr. Goulder is representing

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1 Scott Menaged?

2 A. That sounds accurate, from what I recall.

3 Q. Did you ever meet Mr. Goulder?

4 A. No.

5 Q. Was he ever at any of the meetings you had at  
6 Clark Hill when Scott Menaged was there?

7 A. I don't know if he was. I don't think he was.  
8 He was no longer in the picture when we met with Scott.

9 Q. Do you have some recollection that Mr. Goulder,  
10 as a lawyer, was trying to water down the Forbearance  
11 Agreement?

12 A. Yeah, that was my general take on it, yeah. He  
13 was representing Scott and wanted it to, again, be more  
14 favorable for his client.

15 Q. That second meeting you were talking about where  
16 there was talk about the negotiation for the Forbearance  
17 Agreement and there was someone there you don't remember,  
18 could it have been Mr. Goulder?

19 A. No. I said I can't remember if there was  
20 another person there or not.

21 Q. Okay. Mr. Beauchamp says to Mr. Goulder, "Based  
22 on your previous changes, the Forbearance Agreement would  
23 be prima facia evidence that Denny Chittick had committed  
24 securities fraud because the loan documents he had Scott  
25 sign did not comply with DenSco's representations to

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1 DenSco's investors in its securities offering documents."

2 Did I read that correctly?

3 A. You did.

4 Q. You have no recollection of reading this in  
5 February of 2014?

6 A. No. I -- this looks familiar to me, but I don't  
7 remember specifically when I would have read it.

8 Q. Do you have any recollection of having  
9 conversations with Mr. Beauchamp that if Chittick had  
10 committed securities fraud against the investors, we had a  
11 conflict of interest from representing DenSco?

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

13 MR. DEWULF: Object to form.

14 THE WITNESS: I don't recall the conversation  
15 with that.

16 Q. (BY MR. CAMPBELL) All right. Look at the  
17 second sentence in that first paragraph, where  
18 Mr. Beauchamp says, "Unfortunately, this agreement needs  
19 to not only protect Scott from having this agreement used  
20 as evidence of fraud against him in a litigation, the  
21 agreement needs to comply with Denny's fiduciary  
22 obligations to his investors as well as not become  
23 evidence to be used against Denny for securities fraud."

24 A. That was accurate, what you read.

25 Q. Did you read that, sir, in February of 2014?

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1 A. I most likely did. I, again, don't specifically  
2 recall reading it.

3 Q. Did you understand that Mr. Beauchamp was asking  
4 you to work on a Forbearance Agreement that would protect  
5 Mr. Chittick from being sued for securities fraud by his  
6 investors?

7 A. No --

8 MR. DeWULF: Object to form.

9 THE WITNESS: -- that was not my understanding.  
10 what I thought was, from this, is that Jeff  
11 Goulder was trying to have the way it was worded and what  
12 he is proposing, that it went too far, and like I said,  
13 would be -- could be used as evidence of securities fraud,  
14 somebody like overstated what happened or try to put the  
15 blame on DenSco rather than Scott.

16 Q. (BY MR. CAMPBELL) Sir, read the beginning of  
17 the next paragraph.

18 "The previous version that I had sent to you was  
19 basically a complete rewrite of our standard Forbearance  
20 Agreement that I have used in almost 200 forbearance  
21 agreements over the last 10 years."

22 Did I read that correctly?

23 A. You read it correctly.

24 Q. Did Mr. Beauchamp tell you he had never in his  
25 career done a Forbearance Agreement like this?

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1 MR. DeWULF: Object to form.

2 THE WITNESS: I don't recall that.

3 Q. (BY MR. CAMPBELL) Did Mr. Beauchamp tell you  
4 that this is different than any Forbearance Agreement he  
5 had done in 200 -- 200 prior forbearance agreements?

6 MR. DeWULF: Object to form.

7 THE WITNESS: I don't recall that -- that type  
8 of statement.

9 Q. (BY MR. CAMPBELL) Tell me how the Forbearance  
10 Agreement complies with Mr. Chittick's fiduciary  
11 obligations to his investors.

12 MR. DeWULF: Object to form.

13 THE WITNESS: You are asking me to make an  
14 opinion about how the Forbearance Agreement complies with  
15 his fiduciary duties?

16 Q. (BY MR. CAMPBELL) Sir --

17 A. Could you rephrase it?

18 Q. -- Mr. Beauchamp says that the agreement needs  
19 to comply with Denny's fiduciary obligations.

20 Do you see that?

21 MR. DeWULF: You are talking about the first  
22 paragraph --

23 MR. CAMPBELL: Yes.

24 MR. DeWULF: -- Colin?

25 THE WITNESS: Okay.

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1 Q. (BY MR. CAMPBELL) Did Mr. Beauchamp, when he  
2 was giving you instruction, sir, and telling you to work  
3 on this Forbearance Agreement, did he tell you: I wanted  
4 you to draft it so it complies with Denny's fiduciary  
5 obligations to DenSco's investors?

6 A. I don't recall those type of instructions. It  
7 was more on here is what the deal terms are, and let's  
8 have the Forbearance Agreement say that. But I didn't get  
9 into the fiduciary duty obligations issues with -- with  
10 how -- with the instructions I received.

11 Q. Did Mr. -- well, Mr. Beauchamp sent you this  
12 email.

13 Did you understand Mr. Beauchamp was trying to  
14 draft the Forbearance Agreement to comply with Denny's  
15 fiduciary obligations to the investors?

16 MR. DeWULF: Object to form.

17 THE WITNESS: I can see where that's -- can be  
18 inferred from what he said here, but I'm saying -- you are  
19 asking me what my specific instructions were. We didn't  
20 get into fiduciary obligations.

21 Q. (BY MR. CAMPBELL) We are going to go through  
22 the Forbearance Agreement.

23 A. Okay.

24 Q. You were involved in very many drafts of the  
25 Forbearance Agreement, were you not?

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1 A. I believe so, yeah.

2 Q. All right. In doing any of your work, did you  
3 ever say to yourself: Does this comply with the fiduciary  
4 obligations to DenSco's investors?

5 A. I don't recall saying that to myself, no.

6 Q. Turn to the third paragraph.

7 A. Okay.

8 Q. Second sentence, quote, "We wanted the document  
9 to set forth the necessary facts for Denny to satisfy his  
10 securities obligations to his investors."

11 You see that?

12 A. Uh-huh.

13 Q. Did Mr. Beauchamp come to you and say: Draft  
14 the Forbearance Agreement to set forth the necessary facts  
15 for Denny to satisfy his securities obligations to his  
16 investors?

17 A. No, he didn't give me those kind of  
18 instructions.

19 Q. Fair to say, sir, that as of February 7th, 2014,  
20 you were aware that there were investors in DenSco?

21 A. Well, based on this, I probably understood that  
22 then, yes.

23 Q. And you understood that DenSco owed securities  
24 obligations to those investors?

25 MR. DeWULF: Object to form.

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1 THE WITNESS: I most likely did, based on this,  
2 yeah.

3 Q. (BY MR. CAMPBELL) Turn to the last paragraph.

4 A. Okay.

5 Q. "To try to balance the respective interest, I  
6 have inserted sections from the loan documents into the  
7 Forbearance Agreement. Referencing the language of the  
8 Loan Documents is needed to satisfy Denny's fiduciary  
9 obligations."

10 Did I read that correctly?

11 A. You did.

12 Q. And, again, with the work you did, you never  
13 thought about fiduciary obligations to the investors.  
14 True?

15 A. I am telling you I did not recall having those  
16 concerns or bringing that up. I may have at the time, but  
17 I don't recall it today.

18 Q. It would be pure guess or speculation that you  
19 may have, because you don't remember it at all. True?

20 A. I don't recall it.

21 Q. Turn to page 71.

22 A. Exhibit 71?

23 MR. DeWULF: Exhibit 71?

24 Q. (BY MR. CAMPBELL) Exhibit 71, yes. I'm sorry.  
25 Is that your handwriting?

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1 A. At the bottom of 6663?

2 Q. Yes.

3 A. That does not look like my handwriting.

4 Q. Is it Mr. Beauchamp's handwriting?

5 A. I do not know.

6 Q. Okay. Turn to page 72.

7 So first of all, have you ever seen Exhibit  
8 No. 72 before?

9 A. I -- no, I don't recall seeing this.

10 Q. Turn to, it's going to be the second page, 6703  
11 Bates stamp.

12 A. Okay.

13 Q. You see this is an email between Mr. Beauchamp  
14 and Denny. It's dated February 9th, 2014.

15 And Mr. Beauchamp writes, "Denny: Please  
16 understand that you are limited in what risk or liability  
17 you can assume. Your fiduciary duty to your investors  
18 makes this a difficult balancing act."

19 Do you see that?

20 A. I see that.

21 Q. Did you ever have any conversations with  
22 Mr. Beauchamp that he was trying to balance the fiduciary  
23 duties to the investors with what Mr. Menaged was asking  
24 for?

25 MR. DeWULF: Object to form.

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1 THE WITNESS: I don't recall the conversation.  
2 It may have happened, but I don't recall it.

3 Q. (BY MR. CAMPBELL) And in your mind, you never  
4 even considered a balancing act between the fiduciary duty  
5 to the investors and Mr. Menaged. True?

6 A. No, that's not true.

7 Q. Oh, you did?

8 A. No. I said I don't recall if I did or not.

9 Q. Okay. Well, if you don't recall it, you are  
10 telling me you don't recall it but you may have?

11 A. Yes.

12 Q. If you may have considered the difficult balance  
13 between the fiduciary duties to the investors and  
14 Mr. Menaged, how did you resolve that difficult balance  
15 that you don't recall?

16 MR. DeWULF: Object to form.

17 THE WITNESS: I don't know how I can answer.  
18 That one has too many hypotheticals with it.

19 Q. (BY MR. CAMPBELL) Turn to the first page.

20 A. The first page of 72?

21 Q. Yes.

22 A. Okay.

23 Q. You see Mr. Beauchamp is writing to  
24 Mr. Chittick. This is the February 9th at 9:12 p.m.  
25 email. And he says, "Denny: Your point is understood.

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1 If possible, please recognize and understand that you will  
2 'use' the document even if you and Scott never refer to it  
3 again. It has to have the necessary and essential terms  
4 to protect you from potential litigation from investors  
5 and third parties."

6 Did Mr. -- did I read that correctly?

7 A. You read it correctly.

8 Q. Did Mr. Beauchamp ever tell you that the purpose  
9 of the Forbearance Agreement was to protect Mr. Chittick  
10 from litigation from DenSco's investors?

11 MR. DeWULF: Object to form.

12 THE WITNESS: No.

13 Q. (BY MR. CAMPBELL) was there anyone at Clark  
14 Hill that was representing the interest of the investors  
15 against Mr. Chittick?

16 MR. DeWULF: Object to form.

17 THE WITNESS: I don't know if there was or not.

18 Q. (BY MR. CAMPBELL) was there -- was there anyone  
19 in the case that was protecting the investors, from Clark  
20 Hill?

21 MR. DeWULF: Object to form.

22 THE WITNESS: I don't know.

23 Q. (BY MR. CAMPBELL) Did you at any time think  
24 that what you were doing was damaging to the interests of  
25 the investors of DenSco?

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1 MR. DeWULF: Object to form.

2 THE WITNESS: Did I -- I don't recall ever  
3 feeling that way, no.

4 Q. (BY MR. CAMPBELL) Turn to Exhibit No. 75.

5 A. Okay.

6 Q. And then -- you are not copied on this. I'm  
7 going to ask you if you have ever seen this email before.

8 A. I don't recall seeing this.

9 Q. Okay. Turn to page 2 and 3 and tell me if you  
10 have seen this email.

11 A. 803?

12 Q. 804 and 805, there is a long email from  
13 Mr. Beauchamp to Mr. Chittick.

14 A. Okay. Do you want me to review it and see if I  
15 can recognize it?

16 Q. Yeah.

17 A. I don't recognize it.

18 Q. All right. I want you to go to Bates stamp  
19 6805. So this is within an email Mr. Beauchamp wrote on  
20 February 14th, 2014, to Mr. Chittick, and I want you to  
21 look at, I think it's the fifth line down.

22 It starts, "In addition, you could face an  
23 action by the SEC."

24 Are you with me?

25 MR. DeWULF: I'm not. Did you --

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1 Q. (BY MR. CAMPBELL) Bates stamp 6805, top of the  
2 page. It's going to be like the fifth line down. It  
3 starts "in addition."

4 A. Okay.

5 Q. Tell me if I am reading this right. Quote, "In  
6 addition, you could also face an action by the SEC or the  
7 Securities Division of the ACC if an investor is able to  
8 convince someone in a prosecutor's office that you somehow  
9 assisted Scott to cover up this fraud or you were guilty  
10 of gross negligence by failing to perform adequate due  
11 diligence (on behalf of your investors' money) to  
12 determine what was going on."

13 Did I read that correctly?

14 A. You read it correctly.

15 Q. Did you ever have a conversation with  
16 Mr. Beauchamp about that subject matter?

17 A. I do not recall.

18 Q. Did Mr. Beauchamp ever express a concern to you  
19 that Clark Hill may be aiding and abetting Mr. Menaged?

20 A. I don't recall any of those kind of  
21 conversations.

22 Q. I want you to turn to Exhibit No. 81.

23 So at some point in time in February,  
24 Mr. Beauchamp consults with people within the bankruptcy  
25 department of Clark Hill.

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1           Were you aware of that?

2           A.    I -- no, I don't recall that.

3           Q.    All right.  Were you involved in any discussion  
4 with the bankruptcy attorneys, Mr. Beauchamp, about this  
5 case?

6           A.    No, I don't remember if I was or not.

7           MR. CAMPBELL:  This would be a good place to  
8 break for lunch.

9           MR. DeWULF:  Okay.

10          MR. CAMPBELL:  And then I think I probably have  
11 another hour or a little less.

12          VIDEOGRAPHER:  The time is 12:22 p.m.  We are  
13 going off the record, ending media three.

14          (A recess was taken from 12:22 p.m. to  
15 1:12 p.m.)

16          VIDEOGRAPHER:  My name is Mary Onuschak with the  
17 firm of Legal Video Specialists, Phoenix, Arizona.  This  
18 begins media four of the videotaped deposition of  
19 Daniel A. Schenck.  The time is 1:12 p.m.  We are now back  
20 on the record.

21          Q.    (BY MR. CAMPBELL)  All right.  Mr. Schenck, I  
22 want to go back now to DenSco lending practices.  We will  
23 move on to that topic.  And I would like you to look at  
24 Exhibit 51.

25          Now, you have seen Exhibit No. 51 before.  This

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1 is when Mr. Beauchamp sends you Mr. Chittick's email where  
2 he is describing the problem with Mr. Menaged. And I want  
3 you to turn to the second page. It's Bates stamped 5791  
4 at the bottom.

5 A. Okay.

6 Q. And you see in the first long paragraph on this  
7 page, he is describing how he does his business, how he  
8 wires the money, right?

9 A. Yeah, I see a reference to "I would wire it to  
10 him."

11 Q. Yeah.

12 Now, what I want you to look at is just two  
13 lines below that. You will see there is a parentheses and  
14 he says something in parentheses, and I will quote it,  
15 "(all docs you have reviewed and have been reviewed by a  
16 guy at your last law firm, maybe two firms ago 2007)."

17 Were you aware that Mr. Chittick had taken the  
18 position that Mr. Beauchamp had approved his lending  
19 practices prior to this problem with Mr. Menaged?

20 MR. DeWULF: Object to form.

21 THE WITNESS: I was not aware of that.

22 Q. (BY MR. CAMPBELL) Did Mr. Beauchamp ever talk  
23 to you that Mr. Chittick was taking the position that  
24 David had approved the lending practices?

25 MR. DeWULF: Object form.

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1 THE WITNESS: NO.

2 Q. (BY MR. CAMPBELL) All right. I would like you  
3 to turn to Exhibit No. 21.

4 A. Oh, sorry. The same -- same binder.

5 Q. Now, and I don't think -- Exhibit No. 21 is  
6 Mr. Chittick's business journal. He would keep notes.

7 Have you seen his business journals at all?

8 A. This Exhibit 21?

9 Q. Right.

10 A. Is that what this is?

11 Q. Yeah.

12 A. I don't recognize it.

13 Q. Okay. I want you to turn to the second page.  
14 It's got Bates stamp 45 on the bottom.

15 A. Okay.

16 Q. And I want you to look at the -- there is a  
17 notation for January 10th. It's 1-10.

18 A. Okay.

19 Q. Now, the first thing I want to bring to your  
20 attention, if you look at the first maybe eight lines,  
21 there is a statement, quote, "I can raise money according  
22 to Dave," end of quote.

23 Do you see that?

24 A. I see that.

25 Q. Did Mr. Beauchamp ever tell you that he had told

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1 Mr. Chittick he could continue to raise money?

2 MR. DeWULF: Object to form.

3 THE WITNESS: I don't recall. I have never seen  
4 that.

5 Q. (BY MR. CAMPBELL) Okay. Go down -- I want you  
6 to go down to the bottom of 1-10.

7 A. Oh.

8 Q. And there is a sentence that starts with, "The  
9 one thing that is helping us..."

10 Do you see that?

11 A. Yes.

12 Q. The one thing that is helping us is the  
13 procedure that I follow to fund the properties, was  
14 blessed by the attorney's right hand man that is  
15 threatening me. He's now worried I can come after his law  
16 firm for damages. I just know I would rather have control  
17 of the properties in a worse LTV than have them wrapped up  
18 in lawsuits, end of quote.

19 Did -- did Mr. Beauchamp ever discuss with you  
20 that subject matter?

21 MR. DeWULF: What subject matter?

22 Q. (BY MR. CAMPBELL) The subject matter of  
23 "blessed by the attorney's right hand man."

24 MR. DeWULF: Object to form.

25 THE WITNESS: No, I never -- I do not recall

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1 that kind of a conversation.

2 Q. (BY MR. CAMPBELL) Did Mr. Beauchamp ever tell  
3 you that Mr. Chittick said that Mr. Beauchamp had blessed  
4 these loan practices?

5 MR. DeWULF: Object to form.

6 THE WITNESS: Not that I recall, no.

7 Q. (BY MR. CAMPBELL) Did Mr. Beauchamp ever tell  
8 you that he was concerned that there may be a lawsuit  
9 against him because of what Mr. Menaged had done?

10 MR. DeWULF: Object to form.

11 THE WITNESS: I don't recall him ever saying  
12 that.

13 Q. (BY MR. CAMPBELL) Okay. Turn to Exhibit 36.  
14 Have you seen No. Exhibit 36 before?

15 A. I don't recognize it.

16 Q. Okay. Well, you see in the email, reading  
17 backwards, the first e-mail from Chittick to Beauchamp is  
18 telling him about his lending procedures, right?

19 A. On what?

20 MR. DeWULF: Object to form.

21 Q. (BY MR. CAMPBELL) Well, do you see he is  
22 talking about how if he were to cut a cashier's check and  
23 take it to the trustee himself, he wouldn't get a receipt  
24 that DenSco had paid for it?

25 Do you see that?

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1 A. Yeah. He says if I do this, I don't get a  
2 receipt.

3 Q. Right.

4 And then he goes on in the second paragraph and  
5 says: I could wire Scott the money, he could produce a  
6 cashiers check that says remitter is DenSco and it would  
7 have the exact same affect as if I got the cashiers check  
8 that said I'm the remitter.

9 Do you see that?

10 A. I see that.

11 Q. And then he goes on and says he does this with  
12 90 percent of the guys that he funds at auctions.

13 Do you see that?

14 A. I see that.

15 Q. All right. And do you see on the top of Exhibit  
16 No. 36 Mr. Beauchamp's response?

17 A. I do.

18 Q. He is saying: Let me see what other lenders got  
19 from the Trustee and we can make a better decision.

20 Do you see that?

21 A. Yes.

22 MR. DeWULF: Object to form, belatedly.

23 Q. (BY MR. CAMPBELL) Turn now to Exhibit No. 52.

24 So Exhibit No. 52 at the top is an email from  
25 Mr. Beauchamp you to and Lindsay, correct?

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1 A. At the top, yes.

2 Q. All right. Do you remember getting this email?

3 A. I don't specifically remember seeing this one.

4 Q. And do you see the second paragraph is to you?

5 A. Yes.

6 Q. And he says, quote: we also need to talk to Bob  
7 Anderson about the procedure used by DenSco to refute  
8 research from Bob Miller or to change DenSco's procedure,  
9 end of quote.

10 Do you remember getting that from Mr. Beauchamp?

11 A. I said I don't specifically remember getting  
12 this email.

13 Q. Fair to say as of January 17th, 2014,  
14 Mr. Beauchamp is looking at it but hasn't made any  
15 recommendation to Mr. Chittick yet?

16 MR. DeWULF: Object to form.

17 THE WITNESS: I can't say whether or not he was  
18 making recommendations or not.

19 Q. (BY MR. CAMPBELL) All right. Well, there is  
20 nothing in this email where he tells Mr. Chittick to stop  
21 what he is doing, correct?

22 MR. DeWULF: Object to form.

23 THE WITNESS: I think the email is to me and  
24 Lindsay.

25 Q. (BY MR. CAMPBELL) Well, go back to Exhibit

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1 No. 36.

2 Is there anything in Exhibit No. 36 where he  
3 tells Mr. Chittick to stop what he is doing?

4 MR. DeWULF: Object to form.

5 THE WITNESS: He says there is another way to do  
6 it.

7 Q. (BY MR. CAMPBELL) Does he tell him to stop what  
8 he is doing in Exhibit No. 36?

9 MR. DeWULF: Object to form.

10 THE WITNESS: I don't see him specifically  
11 saying to stop.

12 Q. (BY MR. CAMPBELL) Turn to Exhibit No. 53. So  
13 Exhibit No. 53 is an email to Mr. Anderson with a copy to  
14 you.

15 Do you recall receiving this? It's dated  
16 January 17th, 2014.

17 A. I don't specifically remember receiving this.

18 Q. All right. And Mr. Beauchamp is sending to  
19 Mr. Anderson the demand letter from Bryan Cave, correct?

20 A. Correct.

21 Q. And he says, quote, "If this claim has any  
22 merit, we need to advise DenSco to change its internal  
23 procedures," end of quote.

24 Do you see that?

25 A. I see that.

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1 Q. Are you aware of any time prior to January 17th,  
2 2014, that Mr. Beauchamp told DenSco to change its  
3 internal procedures?

4 A. As I sit here today, I can't recall him doing  
5 that before January 17.

6 Q. Is it fair to say from this email that  
7 Mr. Beauchamp is saying we need to look at this and give  
8 advice to DenSco?

9 MR. DeWULF: Object to form.

10 THE WITNESS: I think that's a decent summary of  
11 what he is saying here.

12 Q. (BY MR. CAMPBELL) That's why Mr. Anderson was  
13 brought in, to determine whether there should be advice  
14 Clark Hill was going to give to DenSco on its internal  
15 procedures, correct?

16 MR. DeWULF: Object to form.

17 THE WITNESS: I know that was at least one of  
18 the reasons that I was asked to talk with Bob about it.

19 Q. (BY MR. CAMPBELL) Fair to say that prior to  
20 January 17th, 2014, no advice had yet been given to DenSco  
21 about its internal procedures?

22 MR. DeWULF: Object to form.

23 THE WITNESS: I can't speak to that. I don't  
24 know.

25 Q. (BY MR. CAMPBELL) All right. Turn to Exhibit

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1 No. 6. These are the billing records.

2 A. The same one. I keep thinking we are switching  
3 binders.

4 Q. Okay. So Exhibit No. 6 is the billing records  
5 through the end of January of 2014.

6 A. Correct.

7 Q. So I want you to -- I want you to turn to the --  
8 let me make sure it's in the right one here.

9 Okay. So it's going to be -- you will see the  
10 first invoice, which is on Bates stamp 2309, is just  
11 general business matters.

12 Do you see that?

13 A. I see that.

14 Q. And then if you go to Bates stamp 2312, this is  
15 the invoice for the workout of the lien issue.

16 Am I with you there?

17 A. Yep. Yes.

18 Q. Now, I want you to turn to January 17th of 2014,  
19 and you will see on January 17th of 2014, RGA.

20 That's Mr. Anderson, right?

21 A. Yes.

22 Q. And you will see he writes, quote: Meeting with  
23 Dan Schenck regarding history of loans and fraud; review  
24 Bryan Cave documents.

25 Do you see that?

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1 A. I see that.

2 Q. He bills an hour for it. True?

3 A. True.

4 Q. And then you have DAS. That's your initials for  
5 billing, right?

6 A. Yes.

7 Q. And you show, "Attorney conference regarding  
8 procedures with B. Anderson; attorney conference with D.  
9 Beauchamp regarding same."

10 so first of all, it's pretty clear that as of  
11 January 17th, you know there has been a fraud involving  
12 loans, right?

13 MR. DEWULF: Object to form.

14 THE WITNESS: I know there has been allegations  
15 of double liens.

16 Q. (BY MR. CAMPBELL) Well, what did you tell  
17 Mr. Anderson regarding the history of loans and fraud,  
18 which he describes as your conference?

19 A. I think I -- from what I recall, it was more  
20 like summarizing the story that Denny had relayed to us  
21 about how the cousin had put double or two different  
22 versions of mortgages on single properties in front of  
23 Scott, and from there multiple -- there is multiple liens,  
24 and that, you know, and how the money wasn't being paid  
25 directly to the trustee. I'm kind of summarizing that.

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1 Q. And you describe it as "conference regarding  
2 procedures."

3 what was -- what did you tell him about the --  
4 in the conference regarding procedures?

5 MR. DeWULF: Object to form.

6 THE WITNESS: The procedures I think would have  
7 been kind of describing what we understood that DenSco had  
8 done with Scott on how he would accept the loans or fund  
9 loans to him.

10 Q. (BY MR. CAMPBELL) All right. So what was  
11 Mr. Anderson asked to do with respect to DenSco's  
12 practices, practice of wiring money to Scott Menaged?  
13 what was his job?

14 A. Well --

15 MR. DeWULF: Object to form.

16 THE WITNESS: -- I don't know if it was just  
17 specifically just for that, but it was to, you know,  
18 review the procedures, review the allegations and then to,  
19 you know, look more into that to see, one, how much of the  
20 allegations maybe were probably true, and then, you know,  
21 what -- and then make advice on what may need to be  
22 changed.

23 Q. (BY MR. CAMPBELL) All right. So he was  
24 supposed to assist Mr. Beauchamp in formulating advice for  
25 DenSco with respect to procedures. True?

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1 MR. DeWULF: Object to form.

2 THE WITNESS: That was my understanding.

3 Q. (BY MR. CAMPBELL) Fair to say that as of  
4 January 17th, 2014, no advice had yet been transmitted to  
5 DenSco?

6 MR. DeWULF: Object to form.

7 THE WITNESS: I don't know that.

8 Q. (BY MR. CAMPBELL) It's fair to say that you had  
9 transmitted no advice to DenSco regarding their procedures  
10 as of January 17th, 2014?

11 A. I don't recall having done any before that.

12 Q. Turn to Exhibit 61. Exhibit No. 61 appears to  
13 be like an appointment calendar.

14 Have you seen documents like this at Clark Hill?

15 A. Yeah, I have seen ones where they would be like  
16 a calendar invite.

17 Q. Okay. That's what I was going to ask. What is  
18 the purpose of this? Is this like to invite people to a  
19 meeting?

20 A. Yeah. Through -- we use Microsoft Outlook. You  
21 can, on your personal calendar, write down an event or  
22 like a meeting and it will show up on your calendar, but  
23 then you can do an invite to other persons for them to  
24 accept, and then it will have all the details and  
25 information on it.

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1 Q. All right. You will see here the subject --  
2 well, this is some appointment that went out from  
3 Mr. Anderson, right?

4 A. Yes, it appears so.

5 Q. And do you know, how do you know who it goes to?  
6 Who is being -- how do you know who is being invited to  
7 the meeting?

8 A. I'm looking at this. I can't tell.

9 Q. Well, do you see -- read for me what the subject  
10 matter of the meeting is.

11 A. The subject matter is "David B, rev DenSco loan  
12 docs and procedures re closely 1st lien position, title  
13 co."

14 Q. All right. So this would appear to be a  
15 follow-up to that conference you had with him on  
16 January 17th regarding procedures. True?

17 A. It appears to be, yes.

18 Q. Do you recall attending any meeting with him  
19 about this subject matter?

20 A. I don't recall a subsequent meeting, no.

21 Q. Do you know whether or not as of January 30th,  
22 2014, Mr. Beauchamp had given any advice to DenSco  
23 regarding its loan procedures?

24 A. I don't recall if he had or hadn't at that time.

25 Q. Okay. Turn to Exhibit No. 62. This is another

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1 meeting on January 31st from Mr. Anderson regarding a  
2 DenSco loan document review.

3 Do you know anything about this meeting?

4 A. You know, the way our system works, if you -- I  
5 don't recall anything about this, this meeting. But the  
6 way our system works, I think Bob Anderson could have put  
7 something on his own personal calendar, just as -- saying  
8 he is going to work on this on that time, and it may  
9 appear this way even if he doesn't invite someone else,  
10 like, to a meeting, but just something that he has put on  
11 his calendar that he is going to work on -- on this. I  
12 know I do that sometimes.

13 Q. Okay. Well, we can ask him Thursday.

14 But you don't recall attending any meeting?

15 A. Correct, I don't recall.

16 Q. Turn to Exhibit No. 78.

17 Have you seen Exhibit No. 78 before?

18 A. I don't recall seeing this before.

19 Q. Do you know if this was done by Mr. Anderson?

20 A. I do not know.

21 Q. This just looks like a checklist of things to do  
22 on a loan, but did anyone sit down and go through this  
23 with you?

24 A. I don't recall someone going through this with  
25 me.

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1 Q. I want you to turn to the second page. You will  
2 see closing documentation.

3 A. Yes.

4 Q. And then you see number 3 is wiring  
5 instructions?

6 A. Yes.

7 Q. Do you know what those wiring instructions are?

8 MR. DeWULF: Object to form.

9 THE WITNESS: I don't know on specifically this  
10 document, because I'm not familiar with it, but I know  
11 what wiring instructions are generally.

12 Q. (BY MR. CAMPBELL) Okay. Well, it doesn't say  
13 wiring -- it doesn't refer who the money was to be wired  
14 to. Am I right? I don't see anything here on that.

15 MR. DeWULF: Object to form.

16 THE WITNESS: It says "wiring instructions."

17 Q. (BY MR. CAMPBELL) Okay. Have you seen any  
18 document from Mr. Anderson to DenSco that says money  
19 should be wired only to the person doing the foreclosure  
20 sale?

21 MR. DeWULF: Object to form.

22 THE WITNESS: I don't recall if I have or  
23 haven't seen that.

24 Q. (BY MR. CAMPBELL) Did you see any written  
25 document from Mr. Anderson to DenSco saying you should

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1 personally deliver the monies to the auction, to the  
2 person selling the property?

3 A. I don't recall seeing that either way.

4 Q. Do you recall any discussion with Mr. Anderson  
5 about DenSco being a one-man shop?

6 A. I think Bob and I had talked about that DenSco  
7 is like a small operation, not like a conventional lender  
8 or anything with its own different loan departments or  
9 anything. I don't know if we ever referred to it as like  
10 a one-man shop. I don't think I knew that.

11 Q. Well, you were -- were you aware at any time  
12 that DenSco consisted of Mr. Chittick and Mr. Chittick  
13 only?

14 A. I learned that, but I can't recall when I  
15 learned that.

16 Q. Do you think you learned it late in the case  
17 when you were doing the POM or you learned it early in the  
18 case?

19 A. I can't say at this point.

20 Q. Do you recall having any discussion with  
21 Mr. Anderson about the difficulty of Mr. Chittick doing  
22 everything he would need to do to comply with this  
23 preliminary legal closing list on every loan?

24 A. I don't recall a conversation like that.

25 Q. Was there any concern at all at Clark Hill about

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1 Mr. Chittick -- whether Mr. Chittick by himself could  
2 handle the volume of loans he was doing?

3 MR. DeWULF: Object to form.

4 THE WITNESS: I can't speak to the opinion of  
5 all Clark Hill. I don't know.

6 Q. (BY MR. CAMPBELL) Did you ever have any thought  
7 or think about whether the investors were at risk because  
8 DenSco was being run by only one person and was handling  
9 over \$50 million of loans?

10 MR. DeWULF: Object to form.

11 THE WITNESS: That the investors were being at  
12 risk. I don't recall ever going through that assessment  
13 myself.

14 Q. (BY MR. CAMPBELL) All right. Let's switch to  
15 your work on the Forbearance Agreement.

16 Did you have any discussion with Mr. Beauchamp  
17 about why the Forbearance Agreement was in the best  
18 interests of DenSco's investors?

19 A. I don't recall specifically talking about that,  
20 but we have talked about, like, the need to get the --  
21 well, not the need, but where the client desired to get a  
22 Forbearance Agreement versus pursuing litigation.

23 Q. By "the client," you are referring to  
24 Mr. Chittick?

25 A. DenSco.

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1 Q. You are referring to DenSco?

2 A. Correct.

3 Q. The only person speaking for DenSco is  
4 Mr. Chittick, right?

5 A. Correct, as the president, yes.

6 Q. So when you say the client wanted to do  
7 something, you are referring to what Mr. Chittick told  
8 you?

9 A. Yes. He was the voice of the client.

10 Q. Now, was it in Mr. Chittick's interest to get a  
11 Forbearance Agreement?

12 MR. DeWULF: Object to form.

13 THE WITNESS: That, I can't speak to. I don't  
14 know.

15 Q. (BY MR. CAMPBELL) Did you ever analyze whether  
16 it was in Mr. Chittick's best interest to get a  
17 Forbearance Agreement?

18 A. For him personally, no, I never have done that.

19 Q. Did you ever separate Chittick from DenSco and  
20 in any of the work that you did with Clark Hill, with all  
21 the people you work with, did you ever have a discussion  
22 whether DenSco's best interests might be different than  
23 Chittick's best interests?

24 MR. DeWULF: Object to form.

25 THE WITNESS: I don't remember a conversation

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1 that got to that specificity, no.

2 Q. (BY MR. CAMPBELL) The Forbearance Agreement  
3 changed over time, correct?

4 A. Yes. It was revised.

5 Q. You started working on it in January of 2014.  
6 It doesn't get signed until April of 2014, correct?

7 A. It sounds accurate. I'm not sure on the exact  
8 dates, but it sounds about right.

9 Q. And you are aware that Scott Menaged was  
10 represented by Jeff Goulder.

11 A. Early on I knew that -- it was my understanding  
12 that, yeah, he was represented by Mr. Goulder.

13 Q. And in the course of your discussions, you know  
14 he was asking for a confidentiality agreement?

15 A. Mr. Goulder or Scott?

16 Q. Their side of the case. Ring a bell with you?

17 A. Yeah, it sounds familiar. I think there was.

18 Q. Do you recall at one time he wanted releases?

19 A. That, I don't recall.

20 MR. DeWULF: Do you -- object to form.

21 THE WITNESS: Yeah. Could you rephrase that?

22 Q. (BY MR. CAMPBELL) Do you recall that  
23 Mr. Goulder and/or Scott Menaged at one point in these  
24 negotiations wanted to be released from any claims by  
25 DenSco?

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1 A. I don't recall that.

2 Q. You do recall that from the time of your  
3 original Forbearance Agreement to the one you finally  
4 signed, that it was a much more watered-down version than  
5 the first one?

6 MR. DeWULF: Object to form.

7 THE WITNESS: That I signed? You said we --

8 Q. (BY MR. CAMPBELL) That the parties signed.

9 A. That the parties signed. I would say that it  
10 was negotiated down, yeah, from the original -- the first  
11 form.

12 Q. And throughout this negotiation, from January  
13 through April when it was first signed, did you ever  
14 consider at some point that there may have been a  
15 divergence between Mr. Chittick's interest and DenSco's  
16 interest?

17 MR. DeWULF: Object to form.

18 THE WITNESS: I do not recall having that  
19 opinion.

20 Q. (BY MR. CAMPBELL) In negotiating the  
21 Forbearance Agreement, did you ever consider that you  
22 should put things this into the Forbearance Agreement that  
23 would prevent Mr. Menaged from committing a new fraud?

24 MR. DeWULF: Object to form.

25 THE WITNESS: I wasn't involved directly in the

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1 negotiations of the Forbearance Agreement. I was asked to  
2 make changes.

3 Q. (BY MR. CAMPBELL) You just did what you were  
4 asked to do?

5 A. I was just --

6 MR. DeWULF: Object to form.

7 THE WITNESS: I was an associate asked to make  
8 changes and did that, but I wasn't involved in the  
9 different intricacies of the negotiations.

10 Q. (BY MR. CAMPBELL) Did you ever suggest to  
11 Mr. Beauchamp, because you were an ambitious associate,  
12 that maybe he should put into the agreement something to  
13 prevent Mr. Menaged from doing a fraud?

14 MR. DeWULF: Object to form.

15 THE WITNESS: I don't recall specifically saying  
16 that to him, no.

17 Q. (BY MR. CAMPBELL) Okay. What I want to do is  
18 go through your billing agreements and emails and just go  
19 through the work you did on this case next. Okay?

20 A. Okay.

21 Q. So let's turn to Exhibit No. 6.

22 Actually, let me, before -- let's turn to  
23 Exhibit 24. Let me set the stage before we go to 6.

24 So Exhibit No. 24 is an email from Chittick to  
25 Mr. Beauchamp, dated December 18th, 2013.

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1 Have you seen this email before?

2 A. I don't recognize this.

3 Q. All right. You notice at the top of the email,  
4 Mr. Chittick is inquiring of Mr. Beauchamp, "we've never  
5 finished the update on the memorandum."

6 Do you see that?

7 A. I see that.

8 Q. Did Mr. Beauchamp ever talk to you about the  
9 fact that he had not done any work on the 2011 POM as of  
10 December 18th, 2013?

11 MR. DeWULF: Object to form.

12 THE WITNESS: I don't recall him telling me  
13 that.

14 Q. (BY MR. CAMPBELL) All right. The second part  
15 of this has to do with whether he can do business in  
16 Florida.

17 Do you see that?

18 A. Yes.

19 Q. All right. Does that ring a bell with you at  
20 all?

21 A. Yes, it does.

22 Q. Okay. And why does it ring a bell?

23 A. Mr. Beauchamp asked me to research some issues  
24 regarding lending regulation in Florida.

25 Q. So let's turn to Exhibit No. 6. And look at --

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1 look at Exhibit No. 6, look at the invoice from business  
2 matters that starts on 2309.

3 A. Okay.

4 Q. And you see on December 26 -- actually, I'm  
5 trying to think. Actually, December 23rd. Strike that.

6 You are actually doing work in December with  
7 respect to this whole issue of being a hard-money lender  
8 in Florida, right?

9 A. Yes. The first entry is December 20th.

10 Q. All right. So -- and you are finding out  
11 information, it looks like you have worked on it on  
12 December 20th, December 23rd, December 26th, January 2nd,  
13 on this issue of whether you can work in Florida.

14 Am I correct?

15 MR. DeWULF: Object to form.

16 THE WITNESS: The January 2nd entry is  
17 Mr. Beauchamp.

18 Q. (BY MR. CAMPBELL) I'm sorry. I misspoke.

19 A. But other than that, yes.

20 Q. Okay. And let's just look at your work on this.  
21 Turn to Exhibit No. 30. Exhibit No. 30 is an email from  
22 Mr. Beauchamp to you.

23 Do you see that?

24 A. Yes.

25 Q. And actually it's an email string, and he is

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1 trying to get you to do some research on Florida, right?

2 A. Correct.

3 Q. So -- and then turn to Exhibit No. 31. It looks  
4 like you are communicating to Mr. Beauchamp the research  
5 with respect to a mortgage lender.

6 A. Exhibit 31?

7 Q. Yeah, Exhibit 31. I thought there was an email  
8 from --

9 A. I don't see an email from me on 31.

10 Q. I guess you are right. It's an email from  
11 Mr. Beauchamp to Denny.

12 Do you see that?

13 A. Yes.

14 Q. I assume this is information you gave him?

15 MR. DeWULF: Object to form.

16 Q. (BY MR. CAMPBELL) If you know.

17 A. I don't know.

18 Q. All right. But you remember working on the  
19 Florida issue, right?

20 A. Correct.

21 Q. And then turn to Exhibit No. 32. You will see  
22 there is an email you wrote on January 6 to Mr. Beauchamp  
23 about this whole issue of the Florida mortgage lender,  
24 right?

25 A. On the bottom, yes.

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1 Q. All right. So this refreshes your memory of the  
2 work you did?

3 A. Yes.

4 Q. Okay. Turn to -- let's go back to Exhibit 6.  
5 And you will see Exhibit No. 6, starting on Bates stamp  
6 2312, is going to have services done on a workout of the  
7 lien issue.

8 Do you see that?

9 A. I see that.

10 Q. And it looks like the first work you do on this  
11 is on January 9th of 2014.

12 A. Yes.

13 Q. Now, you see that Mr. Beauchamp puts down for a  
14 meeting he had with Chittick and Scott Menaged?

15 A. On the same page?

16 Q. January 9th, 2014.

17 A. I see notes about a meeting with D. Chittick and  
18 S. Menaged.

19 Q. Were you at that meeting?

20 A. I don't know if I was at this meeting or if  
21 that's the -- the first meeting I was involved with.

22 Q. So this -- it's going to be the first meeting  
23 Mr. Beauchamp has with Chittick about this problem with  
24 Scott.

25 MR. DeWULF: Object to form.

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1 Q. (BY MR. CAMPBELL) Do you remember if you were  
2 at this meeting or --

3 A. I don't -- I'm not sure which meetings I was at  
4 or if this is the one.

5 Q. If your time was written off, I guess that would  
6 be in a pre-bill, right?

7 MR. DeWULF: Object to form.

8 THE WITNESS: Yes, it would usually be in a  
9 pre-bill.

10 Q. (BY MR. CAMPBELL) All right. And then it looks  
11 like you are doing some research on a purchase money lien  
12 issue.

13 Do you see that?

14 A. I see that.

15 Q. What do you remember about the research you did  
16 on a purchase money lien issue?

17 A. I don't recall what the research was I did on  
18 that day.

19 Q. Well, you know that the problem with Scott is  
20 there is two liens on a piece of property, right?

21 A. With -- with Scott, yes, that is my  
22 understanding.

23 Q. All right. If you look at Exhibit No. 33 and  
24 34, these are simply copies of statutes on purchase money  
25 mortgages.

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1 Does that reflect your recollection on what you  
2 did?

3 A. To be honest, no. I'm not sure if this is what  
4 I did on that research or not, but it probably is.

5 Q. Do you know, do you have any recollection  
6 whether there was a problem with respect to DenSco having  
7 a first lien because of the way their documents were  
8 drafted?

9 A. Do I -- I do not recall that being the problem  
10 with them, because the way their documents were drafted.

11 Q. And do you recall discussions that maybe DenSco  
12 didn't have a right to a first lien because of the way the  
13 documents were drafted?

14 MR. DeWULF: Object to form.

15 THE WITNESS: I don't recall those  
16 conversations.

17 Q. (BY MR. CAMPBELL) I'm skipping some ones we  
18 have already covered.

19 A. Sorry.

20 Q. So let's go back to Exhibit No. 6 regarding the  
21 workout.

22 On January 14th, 2014, you list "Legal research  
23 regarding qualification language for Forbearance Terms  
24 Sheet; email same to Dave Beauchamp."

25 Do you recall what that work was about?

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1 A. I don't recall that, no.

2 Q. You see on January 14th, 2014, you also put down  
3 an attorney conference regarding an NDA, and I assume  
4 that's a nondisclosure agreement?

5 A. That's the abbreviations, yes.

6 Q. Prepare NDA; attorney conference regarding same;  
7 email to David Beauchamp, review draft of Forbearance Term  
8 Sheet; attorney conference regarding same, you billed 4.3  
9 hours.

10 Do you see that?

11 A. I see that.

12 Q. What do you remember about this?

13 A. Well, as it describes, yeah, that there was  
14 going to be a nondisclosure agreement, and then I was  
15 asked to prepare it.

16 Q. Okay. Turn to Exhibit No. 39.

17 So Exhibit No. 39 is an email chain. If you  
18 turn to the second page, there is an email from you to  
19 Mr. Beauchamp on January 15th, attaching an NDA of DenSco.

20 A. Okay.

21 Q. And if you turn the page, there is a  
22 Confidentiality and Non-Disclosure Agreement, correct?

23 A. Correct.

24 Q. Does that refresh your memory of doing all this?

25 MR. DeWULF: Object to form.

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1 THE WITNESS: It -- yeah, this looks familiar.

2 Q. (BY MR. CAMPBELL) All right. And then  
3 Mr. Beauchamp forwards that on to Mr. Chittick.

4 Do you see?

5 A. Yes.

6 Q. Now, do you recall that, you know, the letter  
7 that was written by Robert Miller at Bryan Cave, that that  
8 was Mr. Beauchamp's prior firm?

9 A. I knew that, yeah, it was his prior firm, yes.

10 Q. And you are aware there were some issues whether  
11 Bryan Cave had a conflict of interest because of its prior  
12 representation of Densco, him being involved in the  
13 matter?

14 A. I remember that there was some mention of that,  
15 yes.

16 Q. Turn to Exhibit No. 40.

17 So Exhibit No. 40 is an email chain. You will  
18 see that attached to it is a Term Sheet.

19 Did you draft the Term Sheet?

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

21 Q. Okay. So we know on the 14th you did some work  
22 regarding qualification language for the Forbearance Term  
23 Sheet, when you say you review a draft of the Forbearance  
24 Term Sheet.

25 Do you recall who drafted the Term Sheet?

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1 A. I do not.

2 Q. You reviewed this, though, correct?

3 A. I must have.

4 Q. You would agree with me that the Term Sheet  
5 would reflect what you knew about the case on  
6 January 15th, 2014?

7 MR. DeWULF: Object to form.

8 THE WITNESS: No, it's not everything that I  
9 knew about it.

10 Q. (BY MR. CAMPBELL) I didn't mean to say it was  
11 all of it. You certainly knew what was on the Term Sheet,  
12 correct?

13 A. Well, I can say I can see what was there, but  
14 I'm not saying that I knew all the details of it.

15 Q. Okay. You billed the client money for reviewing  
16 it.

17 what did you do when you reviewed it?

18 A. I reviewed it, but I'm not saying I memorized it  
19 and knew all the details in it.

20 Q. Well, what does it mean when you bill a client  
21 for reviewing a document? what do you do?

22 A. I usually review the document and --

23 Q. Does that mean you read it?

24 A. Yes.

25 Q. All right. And you read it so that you can

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1 understand it, correct?

2 A. Sometimes the review is not for me to  
3 understand, but just to understand what is happening in a  
4 transaction.

5 Q. Okay. So you read this to understand what was  
6 happening in the transaction. Am I right?

7 A. Yeah. I'm sure I probably reviewed it to try to  
8 get a better understanding what was happening in it.

9 Q. What's your recollection of getting a priority  
10 list of conflict properties? How was the Forbearance  
11 Agreement going to work?

12 MR. DeWULF: Are those two questions?

13 MR. CAMPBELL: Yeah, it is. I will ask one.

14 MR. DeWULF: Answer one or the other.

15 MR. CAMPBELL: I will ask one.

16 MR. DeWULF: Maybe both.

17 Q. (BY MR. CAMPBELL) On January 15th, 2014, what  
18 was your understanding as to how the Forbearance Agreement  
19 was supposed to work?

20 A. I'm not sure I can say as of that day what my  
21 understanding was.

22 Q. Well, was your understanding set forth in this  
23 Term Sheet that you reviewed?

24 A. As of that date, I'm not sure exactly if that  
25 was my understanding of it. I know what the -- I can see

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1 what the Term Sheet said, but it's hard for me to pinpoint  
2 what my understanding was on a specific date.

3 Q. Okay. Do you remember what you were tasked to  
4 do by Mr. Beauchamp at this time?

5 A. Not at this specific time, no.

6 Q. Let's go to Exhibit 6 again.

7 A. Okay.

8 Q. Let's turn to January 16th.

9 You see on January 16th, 2014 -- this is going  
10 to be page 4 of the workout lien invoice, Bates stamp  
11 2315 -- you see where it says DAS?

12 A. On January 16th, yes.

13 Q. Yes.

14 Multiple attorney conferences regarding Term  
15 Sheet; review and revise Term Sheet; multiple  
16 correspondence regarding the same; email same to client;  
17 multiple attorney conferences regarding Forbearance  
18 Agreement.

19 Tell me, as best you can recall, what was said  
20 during these multiple conferences regarding the Term Sheet  
21 and the Forbearance Agreement.

22 A. I don't recall what was said at those  
23 conferences on those dates.

24 Q. Turn to Exhibit No. 41.

25 Do you see that Mr. Beauchamp is emailing

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1 Mr. Chittick and he is telling Denny that: I want to  
2 again check your standard loan documents and package that  
3 you used with Scott's lien. I discussed Scott's comment  
4 to file BK with one of our BK specialists. He agreed with  
5 me that we would need to show Scott and Borrower's actions  
6 constituted "fraud against DenSco and the other lenders"  
7 so this obligation cannot be discharged through  
8 bankruptcy. That will force Scott to work with us and not  
9 just say he could walk away.

10 Do you recall that discussion during your  
11 multiple conferences regarding the Forbearance Agreement  
12 on January 16th?

13 A. I do not recall this conversation in this email.

14 Q. Would you agree with me that the borrower's  
15 actions constituting fraud against DenSco and the other  
16 lenders is a material fact for investors?

17 MR. DeWULF: would you read that back, please.

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

19 MR. DeWULF: Object to form.

20 THE WITNESS: I'm not a securities expert, so I  
21 cannot say.

22 Q. (BY MR. CAMPBELL) When you were drafting the  
23 private offering memorandum and you had done your research  
24 regarding private offering memorandums, so putting you in  
25 that time forward, would you agree with me that the

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1 borrower's actions constituting fraud against DenSco and  
2 the other lenders is a material fact for investors to  
3 know?

4 A. I cannot --

5 MR. DeWULF: Object to form.

6 THE WITNESS: Sorry. I cannot at this point  
7 give an opinion on that from what I was thinking at that  
8 time with the material facts and such.

9 My research was limited and it was a limited  
10 first draft. But I was not the securities -- I was not  
11 the securities expert on deciding what should and  
12 shouldn't be in there. I was asked to make a draft based  
13 on what knowledge I had.

14 Q. (BY MR. CAMPBELL) with everything you know  
15 today, sir --

16 A. Uh-huh.

17 Q. -- as a senior attorney, would the borrower's  
18 actions constituting fraud against DenSco and the other  
19 lenders be a material fact that would have to be put in a  
20 private offering memorandum?

21 MR. DeWULF: Object to form.

22 THE WITNESS: I am not the legal expert on that  
23 field. I have some of it, but I would think it's  
24 something which you would want in there, but I don't know  
25 if it's -- creates legal liability if it's there or not.

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1 Q. (BY MR. CAMPBELL) When Mr. Beauchamp tasked you  
2 to amend the private offering memorandum, did you tell him  
3 that you weren't expert in this and you didn't even know  
4 what was material or not for purposes of drafting a  
5 private offering memorandum?

6 MR. DeWULF: Object to form.

7 THE WITNESS: I don't recall having that  
8 conversation, no.

9 Q. (BY MR. CAMPBELL) Turn to Exhibit No. 42.

10 Does Exhibit No. 42 ring a bell for you?

11 A. It looks familiar.

12 Q. All right. Exhibit No. 42 is an email from you  
13 directly to Mr. Chittick dated January 16th, 2014,  
14 correct?

15 A. Correct.

16 Q. And you are sending him a Term Sheet with the  
17 black-lined revisions, correct?

18 A. Correct.

19 Q. And attached to it is a Term Sheet, and it has,  
20 at least it has some things -- it looks like it has  
21 black-lined revisions in it.

22 Am I right?

23 A. Yes.

24 Q. Did you -- did you do this work?

25 MR. DeWULF: You mean the revisions?

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1 Q. (BY MR. CAMPBELL) well --

2 MR. DeWULF: Object to form.

3 Q. (BY MR. CAMPBELL) -- there is a Term Sheet.

4 This Term Sheet with its revisions, is this your  
5 work product?

6 MR. DeWULF: Object to form.

7 THE WITNESS: I don't know if all of it was or  
8 if it's just my -- I probably made the revisions, but I  
9 don't think I was the one that started the Term Sheet.

10 Q. (BY MR. CAMPBELL) Okay. But at least at this  
11 point, you are doing revisions with respect to it, right?

12 A. It appears so, yes.

13 Q. So let's just go through it.

14 So this is the Term Sheet that you tried to get  
15 to agreement on that would be the basis for a Forbearance  
16 Agreement, right?

17 A. Yeah.

18 Q. Now, let's look at the terms.

19 DenSco has advanced several loans to the  
20 Borrower entities --

21 A. I'm sorry.

22 Q. -- and these loans are secured by a  
23 Mortgage/Deed of Trust, which was intended to be in a  
24 first lien position on each of the properties owned by the  
25 Borrower.

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1 That's the first team -- term, right?

2 A. Correct.

3 MR. DeWULF: I'm sorry. Are we looking at the  
4 recitals or the terms?

5 MR. CAMPBELL: The terms, 957 Bates stamp,  
6 paragraph number 1 under terms.

7 MR. DeWULF: Thank you. I apologize.

8 MR. CAMPBELL: Are you with me there?

9 MR. DeWULF: I'm with you.

10 Q. (BY MR. CAMPBELL) And then paragraph 2 says:  
11 Certain of Borrowers properties were used as security for  
12 loans from other lenders, right?

13 A. Correct.

14 Q. And that Bryan Cave is representing them, right?

15 A. Correct.

16 Q. And they have liens -- they are claiming they  
17 have first liens on property, right?

18 A. This says: In which they are supposed to be in  
19 first lien position.

20 Q. All right. I'm going to ask you the same  
21 question. If you don't know, you can just tell me you  
22 don't know.

23 with respect to terms 1, 2, and 3, these are all  
24 material terms an investor would like to know before  
25 investing in DenSco, correct?

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1 MR. DeWULF: Object to form.

2 THE WITNESS: I don't know.

3 Q. (BY MR. CAMPBELL) You don't know.

4 Term 4 says: DenSco and the Borrower are going  
5 to work together to assist each other in resolving the  
6 dispute, correct?

7 A. That's what it says.

8 Q. And it says here that Borrower is to pay --  
9 well, strike that.

10 The properties are going to be sold, and the  
11 Borrower is to pay any shortfall of funds required to  
12 satisfy the liens of other lenders and DenSco, correct?

13 A. I'm sorry. Which paragraph are you looking at?

14 Q. Paragraph 5.

15 A. It says: As the Conflict Properties sold,  
16 Borrower is to pay any shortfall of funds required to  
17 satisfy the liens of the other Lenders and DenSco.

18 Q. Okay. So was the original idea in the Term  
19 Sheet that when a property would be closed, both the other  
20 lender and DenSco were to be paid off on their loans?

21 A. I think that was going to happen at least in  
22 some of the properties.

23 Q. So I assume that monies were going to come from  
24 somewhere else to do that, right?

25 A. Yes, if the sales price wasn't enough.

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1 Q. All right. And then in paragraph 6, it talks  
2 about a priority list of conflict properties.

3 Do you see that?

4 A. I see that.

5 Q. And the parties are going to set some order in  
6 which they are going to be sold.

7 A. It says: In which the Other Lenders want each  
8 Conflict Party to be refinanced.

9 Q. So on some properties, the other lender is going  
10 to get paid by a refinance and DenSco is going to remain  
11 on the property?

12 A. Let me review this.

13 Here it says that they will be refinanced, but  
14 it doesn't say who will -- whether or not DenSco will  
15 remain.

16 Q. You were working on this.

17 What was your understanding of what it was  
18 supposed to do?

19 A. I -- well, I think, from what I recall, it was  
20 as you described, that maybe DenSco had refinanced the  
21 loan.

22 Q. Why was everything going to go through Magnus  
23 Title and someone by the name of Debbie Pihl?

24 A. I have no idea. I don't know who she is.

25 Q. Turn to the next page. Here DenSco is going to

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1 submit funds to Magnus to modify and increase DenSco's  
2 outstanding loan to a loan-to-value of approximately  
3 95 percent.

4 Do you see that?

5 A. I see that.

6 Q. All right. Now, you reviewed the 2011 POM,  
7 right?

8 A. At some point, but I don't know if it was at  
9 this time, yes.

10 Q. Well, you actually revised the 2011 POM in May.

11 A. Okay.

12 Q. We just went through it. Do you remember it?

13 A. I remember that.

14 Q. Okay. Do you remember that the loan-to-value  
15 ratios were much less than 95 percent?

16 A. Yes. That's why I flagged it in the POM.

17 Q. Okay. But you knew, at least from this Term  
18 Sheet, there was going to be loan-to-value ratios of at  
19 least 95 percent. I think you told me earlier you didn't  
20 know what they were.

21 A. Well, on these loans I knew -- well, from this,  
22 it was told to me that some of these loans would have that  
23 ratio, but I think in the POM, the one from 2011, it had  
24 some lower numbers. I thought it was more on -- well, I  
25 can't remember if it was on an overall or just specific

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1 loans were going to be on that one. But I remember seeing  
2 that these numbers probably were not accurate, and so I  
3 flagged it that this needs to be confirmed with the client  
4 and reviewed with the client.

5 Q. You would agree with me that an investor would  
6 be entitled to know that the loan-to-value ratio was  
7 95 percent, if in truth and in fact that's what the ratio  
8 was, is that right?

9 MR. DeWULF: Object to form.

10 THE WITNESS: I can't give you that opinion.  
11 I'm not a securities expert.

12 Q. (BY MR. CAMPBELL) would that be a material fact  
13 for an investor in a private offer memorandum?

14 A. I do not know if that would be a material fact.

15 Q. Turn to paragraph E. This is Bates stamped 958.

16 A. Correct. Okay.

17 Q. Aside from the lenders that Mr. Robert Miller  
18 was representing at Bryan Cave, there were other lenders  
19 who had properties that were in this dual-lien position,  
20 right?

21 A. Today I can't recall if there were other lenders  
22 that were represented outside of Bryan Cave or if all of  
23 them were represented with Bryan Cave.

24 Q. Well, in the Term Sheet you reviewed and  
25 revised, you indicated there were other lenders, right?

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1 MR. DeWULF: Object to form.

2 Q. (BY MR. CAMPBELL) You see it says, in paragraph  
3 E: DenSco and Borrowers shall proceed to resolve their  
4 lien disputes between DenSco and with other similarly  
5 situated lenders.

6 what does "similarly situated lenders" mean?

7 MR. DeWULF: Object to form.

8 THE WITNESS: I can't speak to that.

9 Q. (BY MR. CAMPBELL) Sir, fair to say that when  
10 you -- at the time you reviewed and revised this Term  
11 Sheet, you were aware that a substantial number of  
12 DenSco's loans were under water?

13 MR. DeWULF: Object to form.

14 THE WITNESS: No, I didn't know that.

15 Q. (BY MR. CAMPBELL) Fair to say that you were  
16 aware, when you did this Term Sheet, that DenSco was close  
17 to insolvency?

18 MR. DeWULF: Object to form.

19 THE WITNESS: That is inaccurate, and I didn't  
20 prepare the Term Sheet.

21 Q. (BY MR. CAMPBELL) When you reviewed and revised  
22 the Term Sheet and forwarded it to Mr. Beauchamp --

23 A. Uh-huh.

24 Q. -- fair to say, sir, that you were aware that  
25 DenSco was close to insolvency?

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1 MR. DeWULF: Object to form.

2 THE WITNESS: That would not be fair to say.

3 Q. (BY MR. CAMPBELL) Did you ever suggest to  
4 Mr. Beauchamp that you should look at whether DenSco was  
5 close to insolvency?

6 A. I don't recall having that conversation.

7 Q. Can you tell me why DenSco would forbear doing  
8 any enforcement action?

9 MR. DeWULF: Object to form.

10 THE WITNESS: I can't tell you exactly. Only  
11 just what Denny would -- was conveying to us.

12 Q. (BY MR. CAMPBELL) why would -- why would DenSco  
13 and DenSco's best interest forbear doing any enforcement  
14 action in the future, if DenSco thought it was in its best  
15 interest?

16 MR. DeWULF: Object to form.

17 THE WITNESS: Can you -- I'm sorry. Can you  
18 repeat the question?

19 Q. (BY MR. CAMPBELL) Yes.

20 Your client is DenSco, right?

21 A. Correct.

22 Q. DenSco is a business entity. True?

23 A. Yes.

24 Q. Why would DenSco, as a business entity, ever  
25 forbear enforcement action?

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1 A. I would have to --

2 MR. DeWULF: Object to form.

3 THE WITNESS: I would have to -- I would -- I'm  
4 not -- I can't speak for DenSco on it, but I could say why  
5 I could -- would assume different companies would forbear  
6 rather than go to enforcement actions.

7 Q. (BY MR. CAMPBELL) On these facts --

8 A. Yes.

9 Q. -- where they have lent money and someone has  
10 absconded and stolen the monies --

11 A. Uh-huh.

12 Q. -- and they do not have a first lien on the  
13 properties, why would DenSco agree to forbear?

14 MR. DeWULF: Object to form.

15 THE WITNESS: That's something which I -- why  
16 they would agree to forbear, I can only tell you what  
17 Denny told us and why his decision was to pursue  
18 forbearance rather than enforcement.

19 Q. (BY MR. CAMPBELL) Denny Chittick was concerned  
20 that if the investors learned about this fraud, there  
21 would be a run on the bank and that would be the end of  
22 his business. True?

23 MR. DeWULF: Object to form.

24 THE WITNESS: No, I don't know that.

25 Q. (BY MR. CAMPBELL) Did you ever ask Denny

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1 Chittick why he wanted to forbear?

2 A. I don't know if I specifically asked him, but I  
3 heard his reasons on why he wanted to forbear.

4 Q. What were -- well, when you say you heard the  
5 reasons, is this something you, once again, heard through  
6 Mr. Beauchamp?

7 A. Well, I would say it happened multiple occasions  
8 where -- I know where, you know, someone, probably -- I  
9 think David probably explained to me what he has heard  
10 from the client, as he is giving me some more information  
11 on this.

12 But I think Denny himself, you know, in part of  
13 the conversations going over it, would explain that, yeah,  
14 he, too, directly from him, yeah, he wants to pursue  
15 forbearance. He doesn't want to pursue enforcement. He  
16 doesn't even want us to research the viability of an  
17 enforcement action. He just wants us to focus on the  
18 Forbearance Agreement.

19 Q. All right. I showed you before lunch the emails  
20 from Mr. Beauchamp talking about fiduciary duties to the  
21 investors.

22 Do you remember those?

23 A. I remember those.

24 Q. Did it ever occur to you or to Mr. Beauchamp to  
25 ask whether forbearance, because Mr. Chittick wanted it,

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1 might conflict with the best interests of DenSco and the  
2 investors?

3 A. I can't speak to what David was thinking.

4 Q. You never thought about it?

5 A. I didn't know -- I can't recall today if I knew  
6 there were investors. I would have learned at some point,  
7 but as you are pinpointing a certain point in time, I  
8 can't tell you if I knew that at that time.

9 Q. Turn to Exhibit 43.

10 This is an email from you to Mr. Chittick, dated  
11 January 16th, 2014, right?

12 A. At the top of it, yes.

13 Q. And you wrote this email?

14 A. Yes.

15 Q. And you say, "Attached is the revised Term Sheet  
16 with the changes that Scott requested and that David  
17 discussed with you. As requested, we revised the language  
18 so that the Borrower is not expressing its intent on which  
19 lender was supposed to be in the first position."

20 Do you see that?

21 A. I see that.

22 Q. "As David mentioned, we don't recommend that you  
23 accept these changes because it still leaves open the  
24 question of whether Scott intended for DenSco to be in the  
25 first position."

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1 Do you see that?

2 A. I see that.

3 Q. What was the outcome of this?

4 A. From what I recall, it was that we were -- that  
5 Denny capitulated on that, and we were recommending  
6 stronger language, almost an admission from the borrower,  
7 but then Scott, talking with Denny, basically convinced  
8 him that he can't or won't do that. And then I believe  
9 David and Denny talked some more about it, but Denny, the  
10 instructions from him was to move away from trying to get  
11 that admission from the borrower.

12 Q. Fair to say that on January 16th, 2014, you and  
13 Mr. Beauchamp agreed it was in the best interests of  
14 DenSco and its investors not to have that language in the  
15 Term Sheet?

16 A. Not to have that language. I think we were --  
17 we -- we were recommending to the client that there be  
18 language in there about an admission about the first  
19 position.

20 Q. I'm phrasing it wrong.

21 Fair to say that on January 16th, 2014,  
22 Mr. Beauchamp and you both believed it was in the best  
23 interests of DenSco and its investors to have language in  
24 the Term Sheet where the borrower admitted that DenSco was  
25 supposed to be in a first position?

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1           A.    I think it's accurate that we felt that the  
2 client should have that.  Again, my only qualification on  
3 that is that whether or not the investors is part of that  
4 assessment, I don't recall if at that point that was on my  
5 radar.

6           Q.    All right.  Did it cross your mind on  
7 January 16th that there may be a conflict of interest  
8 between what was in DenSco's best interests and what  
9 Mr. Chittick was trying to do?

10          A.    I don't recall having that opinion.

11          Q.    In retrospect --

12          A.    Uh-huh.

13          Q.    -- do you think you should have thought about  
14 that?

15                MR. DeWULF:  Object to form.

16                THE WITNESS:  Should I have thought about it?  I  
17 don't know if I should have on that one.  with what  
18 limited information I have had, I -- yeah, it's something  
19 that might have crossed my mind.  I don't know if it  
20 should have, but based on the incomplete information at  
21 the time, I can't give an opinion on whether or not I felt  
22 that I should have.

23          Q.    (BY MR. CAMPBELL)  Let's turn to Exhibit No. 44.

24                So Exhibit No. 44, there is a lot going on on  
25 January 16th, 2014.  This is an email from Robert Miller

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1 to David Beauchamp, and he is wanting a waiver of conflict  
2 from DenSco because of this issue of conflict because they  
3 used to represent DenSco.

4           were you involved in this discussion at all?

5           A.    No.

6           Q.    Let's turn to Exhibit No. 45.

7           So Exhibit No. 45 is an email between  
8 Mr. Chittick and Mr. Beauchamp. And if you go back, it's  
9 an email chain, you are part of the email chain, but it  
10 looks like -- well, yeah, you are copied on the one that's  
11 on the bottom of the first page.

12           Do you see that?

13           A.    I see that.

14           Q.    So Mr. Beauchamp is saying, "What I am saying is  
15 that the whole consideration to DenSco (and protection to  
16 you) is for Scott to acknowledge he is in default. In  
17 exchange, DenSco agrees not to take certain actions and to  
18 provide funding to Borrowers to assist Borrower to resolve  
19 these disputes."

20           Do you see that?

21           A.    I see that.

22           Q.    So David is still trying to urge Mr. Chittick to  
23 get an admission in the Forbearance Agreement from Scott  
24 Menaged, right?

25           A.    That's what it appears to be, yes.

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1 Q. In fact, David even says: It's not in your  
2 legal best interests to agree to all of your commitments  
3 in this term sheet without getting this admission from  
4 Scott.

5 Do you see that?

6 A. I see that.

7 Q. And then turn the page.

8 And then you see at the bottom, that's your  
9 email to Mr. Chittick where you are recommending him not  
10 to accept a change that does away with the admission,  
11 right?

12 A. At the bottom, yes, that's my email.

13 Q. Okay. So, again, this is again a situation  
14 where, fair to say -- and this is a continuation of your  
15 prior email -- you and Mr. Beauchamp believed it was not  
16 in the best interests of DenSco to forego getting an  
17 admission from Scott Menaged?

18 A. Correct.

19 Q. It never crossed your mind there might be a  
20 conflict of interest between what was in DenSco's best  
21 interests and what Mr. Chittick was trying to do?

22 MR. DeWULF: Object to form.

23 THE WITNESS: I don't recall if I did have that  
24 opinion.

25 Q. (BY MR. CAMPBELL) Did you know at this time

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1 whether -- had Mr. Chittick ever told you he was worried  
2 that if the truth was known, his business would fold?

3 A. I don't recall Denny telling me that.

4 Q. Did you ever consider that if the investors knew  
5 about what had happened between Chittick and Menaged in  
6 January 2016, they would all want their money back?

7 A. I -- at this point, I'm not sure if I even knew  
8 that there were investors.

9 MR. DeWULF: How are you doing on time? If you  
10 are going to go a while, I would like to take a break for  
11 the restroom when it's good for you.

12 MR. CAMPBELL: Yeah. I'm just --

13 MR. DeWULF: If you think you are about  
14 finished, we can hang.

15 MR. CAMPBELL: Well, there is a number of --  
16 once we get through this first volume, there is less  
17 emails in the next volume, so why don't we go ahead and  
18 take a break.

19 VIDEOGRAPHER: The time is 2:20 p.m. We are  
20 going off the record, ending media four.

21 (A recess was taken from 2:20 p.m. to 2:35 a.m.)

22 VIDEOGRAPHER: My name is Mary Onuschak with the  
23 firm of Legal Video Specialists, Phoenix, Arizona. This  
24 begins media five of the videotaped deposition of  
25 Daniel A. Schenck. The time is 2:35 p.m. We are now back

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1 on the record.

2 Q. (BY MR. CAMPBELL) All right. Let's turn to  
3 Exhibit 47.

4 Exhibit No. 47 is another email chain on  
5 January 16th, 2014. And I just wanted to draw your  
6 attention to the one at the bottom of the first page. And  
7 this is from Beauchamp to Mr. Chittick, and it's copied  
8 you to on January 16th.

9 And do you see where he says, "Do your loan  
10 documents require Borrower to have your Deed of Trust in  
11 first position?"

12 A. I see that.

13 Q. You see that?

14 Do you remember doing research on that issue and  
15 discovering that the deed of trust did not require the  
16 lien to be in a first position?

17 MR. DeWULF: Object to form.

18 THE WITNESS: I don't recall doing that  
19 research.

20 Q. (BY MR. CAMPBELL) Let's turn to Exhibit No. 49.

21 This is another email chain on January 16th, a  
22 busy day in this case. I want you to turn to page 2 of  
23 Exhibit 49, Bates stamp 6365.

24 So this is Mr. Chittick emailing Mr. Beauchamp  
25 and copying you on January 16th. And do you see that

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1 Mr. Chittick is saying he was paid off on four loans  
2 today?

3 A. Yes, I see that.

4 Q. Did you have any understanding of what  
5 Mr. Chittick was -- as loans were paid off and money came  
6 in, what he was doing with that money?

7 A. AS -- I'm not sure I understand the question.

8 Q. Do you understand that in Mr. Chittick's  
9 business --

10 A. Uh-huh.

11 Q. -- loans were paid off on a weekly basis and  
12 monies would flow into his accounts?

13 A. Okay.

14 Q. Do you know what he did with the monies that  
15 came into his accounts?

16 A. I don't know specifically what he did with it.  
17 I would just have to assume that he did what most people  
18 would do, and --

19 MR. DeWULF: Don't assume.

20 THE WITNESS: Sorry. I don't know.

21 Q. (BY MR. CAMPBELL) I was going to say, what do  
22 you assume most people would do?

23 A. That you put it in your account.

24 Q. All right. Do you know he was rolling over the  
25 money into new loans?

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1 A. I don't know if he was rolling the money over  
2 into loans or not.

3 Q. Did you ever have a discussion with  
4 Mr. Beauchamp about whether Mr. Chittick was receiving  
5 monies from loan payoffs and then putting them into new  
6 loans?

7 A. I don't recall that conversation, no.

8 Q. And do you know whether under the securities  
9 laws if you take money on a loan and then you reinvest it,  
10 whether you have to comply with the private offering  
11 memorandum requirements?

12 MR. DeWULF: Object to form.

13 THE WITNESS: I don't know that, can't give an  
14 opinion on that.

15 Q. (BY MR. CAMPBELL) Okay. Turn to Exhibit  
16 No. 50. I want you to look at page 2 of Exhibit No. 50.  
17 At the bottom is an email from you to Russell Craig, dated  
18 Thursday, January 16th, 2014.

19 Do you see that?

20 A. I see that.

21 Q. Who is Russell Craig or Craig Russell?

22 A. He is a partner in our banking practice group  
23 out of Pittsburgh, Pennsylvania.

24 Q. Okay. You are emailing him and asking him for a  
25 Forbearance Agreement.

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1 A. Correct.

2 Q. why?

3 A. I knew that he, you know, again what practice  
4 group he was in, and that he would be a person that should  
5 have a good form to start from.

6 Q. Did you ask Mr. Beauchamp for a Forbearance  
7 Agreement?

8 A. I'm pretty sure I did, but I think there was an  
9 issue, too, where he did not have an electronic version of  
10 some of his old files, so --

11 Q. Okay. So I think we saw the email earlier where  
12 he said he has done 200 Forbearance Agreements.

13 He didn't have a single copy of a Forbearance  
14 Agreement with him?

15 MR. DeWULF: Object to form.

16 THE WITNESS: He may have, but I didn't get one  
17 from him.

18 Q. (BY MR. CAMPBELL) Okay. But you asked him for  
19 one. Do you recall that?

20 MR. DeWULF: Object to form.

21 THE WITNESS: No, I do not.

22 Q. (BY MR. CAMPBELL) You don't recall asking him  
23 for one?

24 A. I don't.

25 Q. Okay. If you look on the first page --

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1 A. Exhibit 50?

2 Q. -- you are emailing Mr. Beauchamp and you are  
3 telling him that you spoke with Troy and he has a form he  
4 is going to send you, right?

5 A. Correct.

6 Q. And he is even willing to draft the Forbearance  
7 Agreement?

8 A. Yes.

9 Q. Was Troy used to draft the Forbearance  
10 Agreement?

11 A. I don't think he was.

12 Q. I'm going to skip some ones we have already  
13 discussed. Let's turn to Exhibit No. 54.

14 So do you recall discussions that the DenSco was  
15 going to forgo interest on its loans?

16 A. I don't recall those conversations.

17 Q. Do you recall that under the Forbearance  
18 Agreement that you were working on, DenSco would collect  
19 no interest on its loans, while the other lenders would  
20 get all their interest?

21 MR. DEWULF: Object to form.

22 THE WITNESS: I would have to review the  
23 document to confirm.

24 Q. (BY MR. CAMPBELL) All right. Take a look at  
25 Exhibit No. 54. See if that refreshes your recollection.

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1 A. 54?

2 Q. 54.

3 A. I see emails from Denny talking about the  
4 deferred interest rate.

5 Q. All right. And Mr. Beauchamp emailed you saying  
6 he forgot to include the dates for the deferred interest  
7 in the Term Sheet, right?

8 A. I was carbon-copied on the email.

9 Q. Does that refresh your recollection that DenSco  
10 was going to defer its interest?

11 A. Just that this was discussed, but I don't  
12 remember if it was -- ultimately became part of the deal  
13 terms or not, but I would say it probably did.

14 Q. And you remember that DenSco was going to get a  
15 lien on Furniture King?

16 A. Yes.

17 Q. And what's Furniture King?

18 A. It was a furniture store that was owned by  
19 Scott.

20 Q. All right. And was DenSco going to get a first  
21 lien on Furniture King?

22 A. That was what I was told at first, is that it  
23 was going to have a first lien on Furniture King, but then  
24 when I researched, did a UCC-1 research, I saw that there  
25 were other UCC-1s were already filed, so I let Denny know

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1 that we would not be in first position on Furniture King.

2 Q. All right. Turn to Exhibit No. 55.

3 And is Exhibit No. 55 your email to Mr. Chittick  
4 telling him about the UCC filings on Furniture King's  
5 inventory?

6 A. It appears to be, yes.

7 Q. It looks like you are still working on the  
8 Forbearance Agreement on January 21st.

9 A. It looks that way, yes.

10 Q. And you are asking him for forms of the loan  
11 documents, right?

12 A. Yes.

13 Q. Turn to Exhibit No. 57.

14 Exhibit No. 57, this is Mr. Chittick sending to  
15 you his deeds and notes that he uses on every loan?

16 A. Yes.

17 Q. Do you recall if you looked at those deeds and  
18 notes to see if they entitled DenSco to a first lien  
19 position?

20 A. I don't remember if I did that or not.

21 Q. Do you recall that originally you were going to  
22 use Magnus Title on the Forbearance Agreement and that you  
23 ended up going out and getting another title company in  
24 addition?

25 A. I don't remember that.

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1 Q. Okay. Well, just to refresh your memory, let's  
2 turn to Exhibit No. 58.

3 A. Okay.

4 Q. Does this refresh your memory that on or about  
5 January 21st, another title company was brought on board?

6 A. Actually, it does not, no.

7 Q. You just have no memory of it at all?

8 A. I don't remember that, that detail.

9 Q. Do you remember that Mr. Anderson drafted a  
10 Forbearance Agreement for a single loan, and that you took  
11 it and then drafted it for all the loans?

12 MR. DeWULF: Object to form.

13 THE WITNESS: That sounds familiar.

14 Q. (BY MR. CAMPBELL) Okay. Look at -- so Exhibit  
15 No. 59 has a 59A after it, and I want you to look at 59A.  
16 It's an email you wrote to Mr. Beauchamp and copied to  
17 Mr. Anderson on January 23rd, and you attach a Forbearance  
18 Agreement that can be applied to all loans between the  
19 parties.

20 A. Sir, are you at 59?

21 Q. 59A.

22 MR. DeWULF: A.

23 THE WITNESS: Oh. Yeah, that's what it looks  
24 like.

25 Q. (BY MR. CAMPBELL) All right. I want you to

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1 turn -- we are going to switch books for you. I just want  
2 to know if I asked you about this. Turn to Exhibit No. 4,  
3 though.

4 MR. DeWULF: Which one?

5 Q. (BY MR. CAMPBELL) Exhibit 4, the 26.1  
6 statement, and I want you to turn to page 11.

7 MR. DeWULF: What page did you say?

8 MR. CAMPBELL: Page 11.

9 MR. DeWULF: Okay. Thank you.

10 Q. (BY MR. CAMPBELL) And I want you to turn on  
11 line 7, the second paragraph, quote, "Mr. Chittick assured  
12 Mr. Beauchamp repeatedly that he was making the requisite  
13 disclosures to investors on an as needed basis, and that  
14 he had informed a select group of investors as to the  
15 double lien issue and proposed workout," end -- end of  
16 quote.

17 Did you ever have a conversation with  
18 Mr. Beauchamp where he told you that he believed  
19 Mr. Chittick was making oral disclosures to investors on  
20 an as-needed basis?

21 A. I have a vague recollection of David telling me  
22 something that this -- Denny told him that he has talked  
23 to some of the investors, but I don't remember when --  
24 when David told me that.

25 Q. Okay. Well, so far you have told me at least as

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1 of January, you didn't even know there were investors.

2 A. Not that I can recall at that time, if I knew  
3 that there were investors.

4 Q. So when you say a vague recollection, how good  
5 is this vague recollection?

6 MR. DeWULF: Object to form.

7 THE WITNESS: well, I can recall him doing it,  
8 but I can't remember the specifics of what he said, but  
9 that I can remember that was the impression or the  
10 information that I took away from the conversation. But I  
11 am not sure when it happened.

12 Q. (BY MR. CAMPBELL) Here, let's go back to  
13 Exhibit 7. And you'll find that after January, your work  
14 sort of tapers off here a bit.

15 So Exhibit 7 is going to be the billing  
16 statements that end -- through the end of February.

17 Do you see that?

18 A. Yes.

19 Q. And I want you to look at the -- like most  
20 billing statements, if you turn to 2678, the Bates stamp  
21 is going to be a Timekeeper summary. And if you look, you  
22 will see it looks like you only worked 4.8 hours that  
23 month on DenSco.

24 A. At least that one matter, that invoice, yes.

25 Q. This is going to be on the workout of lien

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1 issue?

2 A. Yes.

3 Q. Do you have a recollection that you were heavily  
4 involved in the case in January and then it dropped off in  
5 February?

6 A. Yeah, it sounds familiar. I know there is a lot  
7 going on at one point, and I'm not sure if it was January  
8 or not, but then my involvement tapered down quite a bit.

9 Q. Okay. Remember I have asked you now whether if  
10 you looked at the issue of whether the deed of trust  
11 actually gave DenSco a right to a first lien?

12 Do you remember that?

13 A. Yeah, I remember you asking me.

14 Q. I want you to look at your time for  
15 February 5th, 2014.

16 Do you see it says, "Review Deed of Trust for  
17 lien issues; prepared memo regarding findings."

18 Do you see that?

19 A. I see that.

20 Q. So what were you doing there?

21 A. Well, I must have been -- from this, I can only  
22 assume that I did that.

23 Q. And it said you did a memo on the findings.  
24 Have you looked for your memo?

25 A. Not specifically this memo, no.

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1 Q. When you do a memo, what does that mean to you?

2 A. I usually write a summary of what -- what the  
3 issues are, the findings are.

4 Q. All right. But you haven't looked to see  
5 whether that memo is in your electronic file somewhere?

6 A. I don't know if I have been asked to look for  
7 this specific memo.

8 Q. All right. Turn to Exhibit No. 66.

9 So Exhibit No. 66 is a message, it's a message  
10 thing.

11 A. Yeah.

12 Q. Do you know what this is about? Is this like  
13 setting an appointment, or what's it for?

14 A. No. The reference on from, phxcanon2, I think,  
15 is one of our scanners or copy machines --

16 Q. Okay.

17 A. -- so it might have been --

18 Q. Well, attached to it is a Deed of Trust.

19 A. I'm sorry. 66?

20 Q. At least my 66. Do you have a different one?

21 MR. CAMPBELL: Do you have a Deed of Trust  
22 attached to yours?

23 MR. DeWULF: No. I just have an email.

24 MR. CAMPBELL: Here, I am going to hand this to  
25 you.

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1 THE WITNESS: 67 has that.

2 MR. CAMPBELL: 67 has it? Maybe it just got  
3 misfiled.

4 MR. STURR: What are you looking for?

5 MR. CAMPBELL: 67.

6 MR. STURR: 67 is the Deed of Trust. Is that  
7 what you're looking for?

8 THE WITNESS: 67 appears to also.

9 MR. STURR: No, no. Here is the other exhibit,  
10 if that's what you are looking for.

11 MR. CAMPBELL: Is it September 21st, 2010?

12 MR. STURR: No.

13 Q. (BY MR. CAMPBELL) This is another Deed of  
14 Trust.

15 Okay. So under your Exhibit 67 --

16 A. Okay.

17 Q. -- you have a Deed of Trust that's dated  
18 September 21st, 2010?

19 A. I see that, yes.

20 Q. And on Exhibit 67, in my folder I have an email  
21 that you write to Mr. Beauchamp dated February 5th, 2014.

22 A. I'm sorry. Your 67 is an email from me?

23 MR. STURR: It should be 66, Colin. I think --

24 MR. CAMPBELL: Is it in your 66? Do you have an  
25 email?

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1 MR. DeWULF: There is an email on 66.

2 MR. CAMPBELL: There is? They are transposed on  
3 mine.

4 Q. (BY MR. CAMPBELL) So on your Exhibit 66, do you  
5 see an email from you to Mr. Beauchamp dated February 5th,  
6 2014?

7 A. Yes.

8 Q. Why don't you read to me what you write  
9 Mr. Beauchamp.

10 A. The entire email?

11 Q. Just the first -- just the first two lines.

12 A. "David, The Deed of Trust is intended to be a  
13 first priority lien. Albeit, the Deed of Trust does not  
14 state that it has to be recorded as a first-position lien,  
15 Paragraph 5 does require the Borrower to discharge any  
16 prior liens unless."

17 Q. So does this refresh your recollection that you  
18 reached the conclusion the Deed of Trust does not require  
19 a first-lien position?

20 MR. DeWULF: Object to form.

21 THE WITNESS: I -- no, it does not.

22 Q. (BY MR. CAMPBELL) And you recall that this was  
23 part of the negotiating dispute between your side of the  
24 case and Menaged and Goulder that DenSco wasn't entitled  
25 to a first lien?

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1 A. I wasn't part of the negotiations with Goulder,  
2 so I can't speak to that.

3 Q. Okay. This does refresh your recollection that  
4 you looked at the issue?

5 A. Correct.

6 Q. And do you recall that Mr. Chittick said it was  
7 Mr. Beauchamp who approved the documents he was using?

8 MR. DeWULF: Object to form.

9 THE WITNESS: I recall seeing or you telling me  
10 or seeing it in something here or there.

11 Q. (BY MR. CAMPBELL) I'm just going to run through  
12 some things just to refresh your recollection. Turn to  
13 Exhibit No. 68.

14 Do you remember working on the Guaranty  
15 Agreement on this case?

16 A. Yes.

17 Q. Turn to Exhibit No. 74. This is February 13th,  
18 2014. It's an email from you and attaches a draft of the  
19 Forbearance Agreement.

20 Do you recall working on this draft of the  
21 Forbearance Agreement?

22 MR. DeWULF: In Exhibit 74?

23 MR. CAMPBELL: It's in exhibit -- yeah, it's  
24 attached to Exhibit 74.

25 THE WITNESS: I see -- I don't recall if I did

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1 the revisions on this one, or David might have just asked  
2 me to run a redline from what someone else had done,  
3 revisions.

4 Q. (BY MR. CAMPBELL) All right. Now, according to  
5 your testimony, you weren't involved in any of the  
6 negotiations at this point?

7 MR. DeWULF: On the Forbearance Agreement?

8 Q. (BY MR. CAMPBELL) On the Forbearance Agreement.

9 A. I was more of told what, even on the Term Sheet,  
10 like saying here is the changes that have been negotiated  
11 and now we need you to go in to make those changes to it  
12 and send it back.

13 Q. All right. Let's turn to Exhibit No. 9. I want  
14 to go to the month of March.

15 So if you look at the month of -- this is the  
16 billing statement ending as of March 21, 2014. It looks  
17 like you are busier in the month of March. You have 16.7  
18 hours billed to the workout matter.

19 A. That's correct.

20 Q. So if you look at March 20th, 2014, you see you  
21 prepare a revised Guaranty Agreement.

22 A. I see that.

23 Q. Let's see what else -- other work you did.

24 On March 24th, you prepared notes for an  
25 additional loan and additional funds loan.

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1 Do you see that?

2 A. I see that.

3 Q. What was the additional funds loan?

4 A. I think there was a defined terms in the  
5 Forbearance Agreement about one or two loans that DenSco  
6 was going to do, and I think that's how we referred to  
7 them, as one is additional and one is called additional  
8 funds loan.

9 Q. And then if you look at March 26, it looks like  
10 you do multiple additional revisions to documents.

11 Do you see that?

12 A. I see that.

13 Q. Look at Exhibit No. 90.

14 A. Okay.

15 Q. Exhibit No. 90 is an email from Mr. Beauchamp to  
16 you regarding this additional funds loan, and he  
17 apparently left a copy of it on your chair.

18 But does this refresh your recollection of what  
19 the additional funds loan was?

20 A. No, it does not.

21 Q. All right. Do you recall that Mr. Menaged was  
22 going to get a revolving fund loan from DenSco in the  
23 amount of \$5 million?

24 A. I remember something about a loan. I think it  
25 was 5 million. I can't recall if it was a revolving loan

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1 or not.

2 Q. Does that refresh your recollection any more  
3 about what this is about?

4 A. It doesn't. It's -- I think that's what it's  
5 referring to, but I can't say with certain -- I can't  
6 remember what defined term I saw in the Forbearance  
7 Agreement for the loan that you described.

8 Q. Here, let's turn back to Exhibit 10. This is  
9 the billing invoice from the end of April.

10 A. Okay.

11 Q. So do you see on April 3rd, 2014, you do work on  
12 the case?

13 A. I see that.

14 Q. And you do work regarding review of a  
15 confidentiality provision.

16 Do you recall what that was about?

17 A. I would be guessing. I don't.

18 Q. You have no recollection of it at all?

19 A. I think that we -- the confidentiality provision  
20 was being added to the Forbearance Agreement that Scott  
21 had insisted on. I have a vague recollection of that.  
22 That would be what I think it's referring to.

23 Q. Do you recall having any discussions with  
24 Mr. Beauchamp where the confidentiality agreement proposed  
25 by Menaged would conflict with DenSco's duty to advise

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1 investors of relevant and material facts?

2 MR. DeWULF: Object to form.

3 THE WITNESS: I don't recall a specific  
4 conversation with David about that, but I do recall  
5 something about where I think that there is going to be a  
6 carve-out or something in the confidentiality agreement or  
7 a discussion about the carve-out in the confidentiality  
8 provisions that would allow for disclosure to investors.

9 Q. Do you recall anything else about the  
10 confidentiality agreement?

11 A. Not at this time.

12 Q. Turn to Exhibit No. 95.

13 Do you recall being involved in getting these,  
14 all these documents with respect to their Forbearance  
15 Agreement, all in final shape to be signed?

16 MR. DeWULF: You mean the documents referenced  
17 in the exhibit?

18 MR. CAMPBELL: Well, I'm going to turn to that  
19 next.

20 MR. DeWULF: Okay.

21 THE WITNESS: It's a difficult question, because  
22 it seemed like that happened in -- yes, I was involved in  
23 preparing some of the documents for the signature and  
24 such, but it's almost like it happened at different  
25 phases, like here is the first set or here is what we

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1 think needs to be done for the first part, and then  
2 changes had to be made later on or slip sheets type stuff,  
3 so yeah.

4 Q. (BY MR. CAMPBELL) Look at Exhibit No. 95.

5 A. Okay.

6 Q. This is an email you write to Mr. Beauchamp. It  
7 sort of seems like a to-do list.

8 A. Yeah. I think this was -- we were working on  
9 all the slip sheets that were going to be needed, and I  
10 think this is kind of a list of where all the different  
11 changes were needed for slip sheets.

12 Q. All right. Turn to Exhibit -- well, first of  
13 all, turn to Exhibit No. 96.

14 Have you seen Exhibit No. 96 before?

15 A. I think I have.

16 Q. Do you recall that you were gathering the loans  
17 to attach as an exhibit to the Forbearance Agreement?

18 A. Not the actual loans. I don't think I was doing  
19 that.

20 Q. A list of loans?

21 A. A list of loans. This, I wasn't gathering, but  
22 that Denny said that he would provide the exhibit that  
23 would include the list.

24 Q. Do you remember seeing this before?

25 A. I think this is the list that Denny provided.

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1 Q. Turn to the last page of Exhibit No. 96.

2 A. Okay.

3 Q. You will see a total value of the loans.

4 A. I do.

5 Q. What's the amount?

6 A. \$37,657,625.48.

7 Q. Do you remember seeing that number?

8 A. I remember not this -- it probably was this  
9 number, but I can't remember specific as that was the  
10 number I remember seeing. Assuming this was the document,  
11 that's probably the number I saw.

12 Q. Did it cross your mind they may be close to  
13 insolvency?

14 MR. DeWULF: Object to form.

15 THE WITNESS: No, I don't remember thinking  
16 that.

17 Q. (BY MR. CAMPBELL) Turn to Exhibit No. 97.

18 Have you seen this document before?

19 A. I don't recall seeing this before.

20 Q. Well, look at the attachments. Do you remember  
21 seeing these documents with respect to the Forbearance  
22 Agreement?

23 A. These look familiar, yes.

24 Q. Turn to Bates stamp 10769. Okay?

25 A. Okay.

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1 Q. Do you see Exhibit A?

2 A. I see Exhibit A.

3 Q. These are lender loans and encumbered  
4 properties?

5 A. Yes.

6 Q. Turn to the last page of that, which will be  
7 Bates stamped 10772.

8 A. Okay.

9 Q. Do you see a total value of the loans?

10 A. I'm not sure which column has that.

11 Q. Turn to the last page. On the very last line,  
12 do you see a number?

13 A. I see multiple numbers on the very last line, so  
14 I'm trying to see which column has the total amounts of  
15 the loans. It looks like the last column to the far right  
16 says total -- total owed, at the top.

17 Q. Do you see the fourth column on the first page  
18 says amount of loan?

19 A. Amount of loan, yes, I see that.

20 Q. And then turn to the back.

21 A. Okay.

22 Q. If you look at the fourth column, is there a  
23 number?

24 A. At the bottom of the fourth column, yes.

25 Q. What's that number?

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1 A. 37,456,620.47.

2 Q. When you say saw that number, did you ask the  
3 question whether DenSco was close to insolvency?

4 MR. DeWULF: Object to form.

5 THE WITNESS: I don't recall seeing that  
6 specific number, and I don't recall having that thought  
7 about insolvency.

8 Q. (BY MR. CAMPBELL) Do you recall after the  
9 documents were signed that it was discovered that the  
10 amount of -- well, that the loan amounts that were put in  
11 the Forbearance Agreement were not the loan amounts that  
12 were due on the date the agreement was signed?

13 A. Yeah, I recall something about that.

14 Q. And then that had to be fixed?

15 A. Correct.

16 Q. Did you fix it?

17 A. I think I prepared the revisions that would be  
18 to fix it, but I think it may be one of those things which  
19 was a correction page, which we were still trying to get  
20 approved from both sides to do a slip sheet.

21 Q. And do you recall that Mr. Chittick was upset  
22 that there was a mistake made and the wrong numbers were  
23 used?

24 A. I don't recall him being upset. Well, I think  
25 he actually gave us the number, like, over the phone, and

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1 then he is the one that added the exhibit later that, that  
2 different figure in it. So we saw it after the fact. We  
3 are like, hey, the exhibit you put in there has a  
4 different number than what was -- you told us before and  
5 what we put in the agreement.

6 Q. Turn to Exhibit No. 101.

7 A. 101?

8 Q. Yeah. This is your draft of the POM, if you  
9 will remember.

10 A. Okay.

11 Q. And I want to look at -- will you point out to  
12 me where you wrote about the Forbearance Agreement after  
13 the POM?

14 A. I am missing some pages.

15 Q. You want some help?

16 A. Yeah, if you wouldn't mind.

17 Q. Go to page 39.

18 A. I think I have some pages that got stuck  
19 together.

20 Q. 39 is going to be Bates stamped 8921.

21 A. Thank you.

22 Q. So do you see on page 39 you have a paragraph  
23 that starts in April 2014, "the Company agreed to a  
24 Forbearance Agreement"?

25 A. I see that.

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1 Q. Now, am I right that you were trying to draft a  
2 description of what had happened in this case in the POM  
3 and disclose all material facts to the investors?

4 MR. DeWULF: Object to form.

5 THE WITNESS: That is inaccurate. I was -- I  
6 don't know about the material facts level, but I was -- I  
7 had to make a description of my understanding of the  
8 Forbearance Agreement.

9 Q. (BY MR. CAMPBELL) All right. Well, what were  
10 your instructions from Mr. Beauchamp with respect to what  
11 you did with the Forbearance Agreement and the POM?

12 A. There were a lot of instructions regarding both  
13 of those documents.

14 Q. How did Mr. Beauchamp describe to you you should  
15 put the Forbearance Agreement in the private offering  
16 memorandum?

17 A. Well, to describe the transaction.

18 Q. Did he tell you to put in all facts that would  
19 be material to an investor?

20 A. I don't recall him giving me those instructions.

21 Q. How did you decide what to put in?

22 A. Just a summary of what I was -- my understanding  
23 of what happened. I knew this was, again, a first draft  
24 and expected that someone else would be reviewing it or  
25 David would be reviewing it, and if changes were needed or

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1 additional information was needed, they would be added  
2 later.

3 Q. Well, look at page 39. Do you say anything in  
4 your description about Mr. Menaged's cousin stealing money  
5 from DenSco?

6 A. On page 39?

7 Q. Page 39, page 40, page 41.

8 A. I don't see a reference to the cousin here.

9 Q. Okay. But in truth and in fact, what happened,  
10 you believed, was that Mr. Menaged's cousin had double  
11 liened these homes and stolen DenSco's money, right?

12 MR. DeWULF: Object to form.

13 THE WITNESS: That was the information that was  
14 presented to me.

15 Q. (BY MR. CAMPBELL) Okay. But you didn't put it  
16 in the private offering memorandum. True?

17 A. I don't see that here.

18 Q. Is there somewhere in this private offering  
19 memorandum you mention that DenSco was wiring money to the  
20 borrower?

21 A. Being that you asked the question, I'm going to  
22 assume it's not in here.

23 Q. I need you to answer.

24 A. Okay. I -- one minute then.

25 I did not see a reference to the practice of

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1 wiring funds to the borrower.

2 Q. In your description of the Forbearance  
3 Agreement, do you advise the investors on how the  
4 loan-to-value ratio has changed under their Forbearance  
5 Agreement?

6 A. I think I have blanks here. The bottom of  
7 page 40 talks about the value ratio of the Company's  
8 overall portfolio averaged, and I have a blank.

9 Q. In this disclosure statement do you talk about  
10 the fact that Mr. Menaged doesn't even admit he did  
11 anything wrong?

12 MR. DeWULF: Object to form.

13 THE WITNESS: I -- I would have to go through  
14 the entire document to see if there is ever that  
15 reference, and being that it's here, I just made revisions  
16 to one. I said if I made references to that. I don't  
17 know.

18 Q. (BY MR. CAMPBELL) Sir, in light of everything  
19 you know today, would you agree with me that this draft  
20 POM you prepared doesn't even meet the minimum  
21 requirements of a private offering memorandum in terms of  
22 disclosing material facts?

23 MR. DeWULF: Object to form.

24 THE WITNESS: I'm not a securities expert, so I  
25 can't say, but it's my understanding that this was a draft

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1 and it was going to be revised and additional conditions  
2 were going to be added.

3 Q. (BY MR. CAMPBELL) It was your understanding  
4 that there was no way this draft was ever going to be  
5 public, right?

6 MR. DeWULF: Object to form.

7 THE WITNESS: It has blanks all over the place  
8 and incomplete information, so I did not think that this  
9 would be going to the public, and as you see here.

10 MR. CAMPBELL: Let's take -- let's take a short  
11 break. I'm just about done.

12 VIDEOGRAPHER: The time is 3:19 p.m. We are  
13 going off the record, ending media five.

14 (A recess was taken from 3:19 p.m. to 3:22 p.m.)

15 VIDEOGRAPHER: My name is Mary Onuschak with the  
16 firm of Legal Video Specialists, Phoenix, Arizona. This  
17 begins media six of the videotaped deposition of Daniel A.  
18 Schenck. The time is 3:22 p.m. We are now back on the  
19 record.

20 Q. (BY MR. CAMPBELL) I want you to turn to Bates  
21 stamp No. 8888 of your POM, 101. And you have a section  
22 here on limited due diligence, am I correct?

23 A. There is a section here on limited due  
24 diligence, but I will disagree with the reference that  
25 this is my POM. I was asked to make revisions.

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1 Q. This is the POM you were asked to review, and  
2 you were going to give your best work product back to  
3 Mr. Beauchamp, correct?

4 A. Correct.

5 Q. And that's what you did, correct? You --

6 A. I --

7 Q. -- gave your best work product back to  
8 Mr. Beauchamp?

9 A. Yeah, I believe I did.

10 Q. If you look at limited due diligence, you are  
11 trying to tell an investor in truth and in fact that the  
12 company is not going to do full due diligence, correct?

13 MR. DeWULF: Object to form.

14 THE WITNESS: It just describes what -- DenSco's  
15 practice on due diligence.

16 Q. (BY MR. CAMPBELL) All right. You don't have  
17 anything in here about what you consider to be lax lending  
18 practices of the company. True?

19 MR. DeWULF: Object to form.

20 THE WITNESS: I -- as I recall here, I don't  
21 know if it's in there or not.

22 Q. (BY MR. CAMPBELL) I don't see it. I just read  
23 it.

24 Do you see it in here, the lax lending  
25 practices?

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1 A. Not on page 6, no.

2 Q. There is nothing in here about the dispute about  
3 wiring money to the borrowers?

4 A. Not on page 6, no.

5 Q. There is nothing in here that wiring money to  
6 the borrowers resulted in the fraud that resulted in the  
7 Forbearance Agreement. True?

8 MR. DeWULF: Object to form.

9 THE WITNESS: Not on page 6.

10 Q. (BY MR. CAMPBELL) Is it somewhere else?

11 A. I -- to be honest, I don't know what this --  
12 everything that's in this, like, 50-, 60-page document, I  
13 can't recall what is or isn't in here right now.

14 MR. CAMPBELL: We don't have any further  
15 questions.

16 MR. DeWULF: All right. Thanks.

17 VIDEOGRAPHER: The time is 3:24 p.m. This  
18 concludes the deposition with media six.

19 (Deposition Exhibits No. 1 through 102 were  
20 marked for identification.)

21 (3:24 p.m.)

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DANIEL ALLEN SCHENCK

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

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

- Review and signature was requested.
- Review and signature was waived.
- Review and signature was not requested.

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

|                                      |          |
|--------------------------------------|----------|
| <u>Kelly Sue Oglesby</u>             | 7/3/2018 |
| Kelly Sue Oglesby                    | Date     |
| Arizona Certified Reporter No. 50178 |          |

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

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|---|----------|
| <u>JD REPORTING, INC.</u>               | 7/3/2018 |
| JD REPORTING, INC.                      | Date     |
| Arizona Registered Reporting Firm R1012 |          |