

IN THE SUPERIOR COURT OF THE STATE OF ARIZONA

IN AND FOR THE COUNTY OF MARICOPA

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

Plaintiff,

vs.

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

Defendants.

NO. CV2017-013832

VIDEOTAPED DEPOSITION OF NEIL J. WERTLIEB

Phoenix, Arizona
October 17, 2019
9:05 a.m.

Prepared by:
KELLY SUE OGLESBY, RPR
Arizona CR No. 50178
Registered Reporting Firm R1012

JD REPORTING, INC.
1934 East Camelback Road
No. 428
Phoenix, Arizona 85016

NEIL J. WERTLIEB, 10/17/2019

INDEX				
WITNESS:				PAGE
1	NEIL J. WERTLIEB			
2	EXAMINATION			
3	By Mr. DeWulf			
4	6			
EXHIBITS				
EXHIBIT:	DESCRIPTION			MARKED/REF'ED
5	1171	Letter from Geoffrey M.T. Sturr to John E. DeWulf dated 10/16/2019 with enclosures		5 7
6	1172	Invoices from Wertlieb Law Corp (Bates Nos. RECEIVER_005601-5627)		5 7
7	1173	Printout from website of Wertlieb Law		5 24
8	1174	Plaintiff's Disclosure of Expert Witness Report Re Standard of Care		5 37
9	1175	Plaintiff's Disclosure of Rebuttal Expert Witness Report Re Standard of Care		5 37
10	1176	Written materials for discussion regarding New Rules of Professional Conduct (Part One)		46 51
11	1177	Written materials for discussion regarding New Rules of Professional Conduct (Part Two)		46 51
12	1178	Written materials for discussion regarding New Rules of Professional Conduct (Part Three)		46 51
13	1179	United States' Motion in Limine to Exclude the Testimony of Neil Wertlieb		75 76
14	1180	Email string (Bates Nos. CH_REC_CHI_0060457-60458)		91 96

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

PREVIOUSLY REFERENCED EXHIBITS

EXHIBIT	PAGE
423.....	15
111.....	79
113.....	89
112.....	91

REQUESTS TO PRODUCE DOCUMENTS

Page	Line
8	20

QUESTIONS INSTRUCTED NOT TO ANSWER

Page	Line
(None.)	

RECESSES TAKEN

	PAGE
Recess taken from 10:06 a.m. to 10:16 a.m.	46
Recess taken from 11:03 a.m. to 11:14 a.m.	76
Recess taken from 12:08 p.m. to 12:50 p.m.	116
Recess taken from 2:24 p.m. to 2:32 p.m.	180
Recess taken from 3:38 p.m. to 3:47 p.m.	225

NEIL J. WERTLIEB, 10/17/2019

1 VIDEOTAPED DEPOSITION OF NEIL J. WERTLIEB,
2 commenced at 9:05 a.m. on October 17, 2019, at the law
3 offices of Coppersmith Brockelman, PLC, 2800 North Central
4 Avenue, Suite 1900, Phoenix, Arizona, before KELLY SUE
5 OGLESBY, a Certified Reporter, CR No. 50178, in and for
6 the County of Maricopa, State of Arizona, pursuant to the
7 Rules of Civil Procedure.

8 * * *

9 APPEARANCES

10 FOR PLAINTIFF:

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

19 FOR DEFENDANTS:

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

ALSO PRESENT:

Mary Onuschak, Legal Video Specialists

NEIL J. WERTLIEB, 10/17/2019

1 Phoenix, Arizona
2 October 17, 2019
3 9:05 a.m.

4 * * *

5 (Deposition Exhibits No. 1171 through 1175 were
6 marked for identification.)

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

13 Today is October 17th. The year is 2019. The
14 time is 9:05 a.m. Our location is 2800 North Central
15 Avenue, Phoenix, Arizona.

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

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

24 MR. STURR: Geoffrey Sturr, Osborn Maledon,
25 representing the plaintiff, Peter Davis, as receiver of
DenSco Investment Corporation.

NEIL J. WERTLIEB, 10/17/2019

1 MR. DeWULF: John Dewulf, Coppersmith
2 Brockelman, representing defendants.

3 VIDEOGRAPHER: You may swear the witness.
4

5 NEIL J. WERTLIEB,
6 called as a witness herein, having been first duly sworn,
7 was examined and testified as follows:
8

9 EXAMINATION
10

11 Q. (BY MR. DeWULF) Good morning, Mr. Wertlieb.

12 A. Good morning.

13 Q. You are here for today's deposition in a matter
14 DenSco versus Clark Hill, et al.

15 Do you understand that?

16 A. I do.

17 Q. You have been deposed numerous times before,
18 right?

19 A. I have.

20 Q. So I'm going to dispense with what would
21 generally be the kind of the lay of the land and the rules
22 that I want you to be aware of, but I want to ask you
23 questions that you will understand so that I can get
24 meaningful answers. So if my questions are difficult to
25 understand, will you please tell me?

NEIL J. WERTLIEB, 10/17/2019

1 A. I will.

2 Q. And if you answer the question I ask you, I'll
3 assume you understood the question.

4 Is that fair?

5 A. That's fair.

6 Q. All right. I have marked already a couple of
7 exhibits. Showing you 1171, 1172. So let's look at 1172
8 first.

9 1172 are invoices from your law firm, wertlieb
10 Law Corp.?

11 A. I'm sorry. Are you asking me?

12 Q. I'm asking you to agree with me that
13 Exhibit 1172 is a grouping of invoices from your entity,
14 wertlieb Law Corp., to the direction of Osborn Maledon,
15 but it's in connection with the services you are providing
16 in this case, correct?

17 A. It certainly appears to be the case, yes.
18 Looking through it, I don't have any reason to believe
19 it's not.

20 Q. All right. So -- and let's look at 1171
21 together.

22 Starting on the second page, there are two
23 invoices from wertlieb Law Corp., right, one on the second
24 page and one on the third page of this exhibit?

25 A. Correct.

NEIL J. WERTLIEB, 10/17/2019

1 Q. And did you participate -- well, let me ask.

2 Do you know whether these are the last two
3 invoices that you have sent to Osborn Maledon in
4 connection with the services you are providing?

5 A. These are the most recent --

6 Q. Okay.

7 A. -- two invoices, yes.

8 Q. And would it be fair for us, assuming 1172 is
9 the compilation of the invoices provided to us up to
10 yesterday and then the two invoices contained in 1171,
11 those would be all of the invoices that represent the work
12 you have done and the charges that you have submitted to
13 Osborn Maledon in connection with your services in this
14 case?

15 A. Correct. As of the date of the invoices, those
16 would be current.

17 Q. Okay. And do you have a formal written retainer
18 agreement in this case?

19 A. I do.

20 MR. DeWULF: Could we get a copy of that --

21 MR. STURR: Uh-huh.

22 MR. DeWULF: -- Geoff?

23 Q. And I understand, from looking at the invoices,
24 that you charge an hourly rate of \$1,000 an hour?

25 A. That's correct.

NEIL J. WERTLIEB, 10/17/2019

1 Q. And does that rate vary depending on what you do
2 in this case? For example, if you testify in deposition
3 or testify at trial, does that rate increase?

4 A. No.

5 Q. So the thousand dollars an hour is your rate for
6 all of your efforts under your retention with Osborn
7 Maledon, right?

8 A. It certainly has been. I haven't looked at my
9 retention agreement in a while. I think there is a
10 provision for an annual increase, but I have not increased
11 my rate.

12 Q. And you probably won't?

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

14 Q. All right. And I added up the invoices,
15 including the ones we got yesterday that are in 1171, and
16 I came up with a number of a little over \$365,000.

17 would that be in line with what you believe your
18 bills have totaled so far in this case?

19 A. I haven't -- I haven't added them precisely. I
20 took a quick look at them I believe yesterday or the day
21 before, and I think it was slightly lower by my rough
22 calculation, but in the same ballpark.

23 Q. All right. Thank you.

24 In your reports you reference a woman, Christa
25 Chanpak.

NEIL J. WERTLIEB, 10/17/2019

1 Did I pronounce that correctly?

2 A. Chanpak.

3 Q. Chanpak?

4 A. Yes.

5 Q. And she helped you with the preparation of your
6 opinions in your reports?

7 MR. STURR: Objection to the form.

8 THE WITNESS: She -- there were limited services
9 that she provided related to reviewing the record and --
10 and doing some preliminary analysis, yes.

11 Q. (BY MR. DEWULF) I saw a number of entries
12 associated with her name indicating that she did some
13 drafting of the reports.

14 Is that your memory?

15 A. I think she did a rough outline, as I recall.
16 Maybe -- maybe she did an initial draft of certain --
17 certain provisions in the report.

18 Q. Is she an associate of Wertlieb Law Corp. or
19 does she have some other relationship with them?

20 A. She is -- she is what I would consider to be an
21 independent contractor. She maintains her own legal
22 practice. She -- I believe she was based in New York when
23 I first engaged her on this matter. She is now in
24 Florida. And I have worked with her on a number of
25 different engagements.

NEIL J. WERTLIEB, 10/17/2019

1 Q. When did you start working with her?

2 A. Well, just to be clear, she was an associate of
3 mine when I was at Milbank, so I think I first started
4 working with her maybe a decade ago, but in my -- in my
5 capacity now as principal of wertlieb Law Corp., starting
6 January 1st, 2017, I believe I engaged with her shortly
7 after I formed wertlieb Law Corp., within the first few
8 months.

9 Q. Are there any other lawyers in wertlieb Law
10 Corp. other than yourself?

11 A. No.

12 Q. Are there any other independent contractors that
13 you use, other than Ms. Pak?

14 A. Not so far, no.

15 Q. And when you indicated --

16 A. I'm sorry. If I could clarify. Independent
17 contractors providing legal services and doing kind of the
18 expert witness related work. I obviously have other --

19 Q. Yeah.

20 A. -- an accountant and other service providers,
21 but --

22 Q. I appreciate the clarification. Thanks.

23 So the only lawyer that you utilize at wertlieb
24 Law Corp., at least since 2017, to help you in your
25 efforts would be Ms. Chanpak?

NEIL J. WERTLIEB, 10/17/2019

1 A. Correct.

2 Q. Did -- did you know any lawyers at Osborn
3 Maledon before you were retained in this case?

4 A. I had met one, yes.

5 Q. Who?

6 A. You are testing my memory. I forget the
7 gentleman's name. If somebody were to mention it, I
8 presumably would recall, but I think I met him at a -- at
9 a conference before I was -- I was approached on this
10 engagement.

11 Q. You had never worked with Osborn Maledon on any
12 matters prior to being engaged in this case?

13 A. No.

14 Q. How did you come to work with them in this case?

15 A. I received a phone call from Geoffrey Sturr, who
16 was calling to inquire if I might be interested and
17 available in working with him and Osborn Maledon on this
18 matter.

19 Q. And I think that, if you look at the
20 Exhibit 1172, the first entry on the first page of 1172 is
21 a date of 6/23/2017.

22 Do you see that?

23 A. I do.

24 Q. Do you think that that's the first contact you
25 had with Osborn Maledon in connection with the services

NEIL J. WERTLIEB, 10/17/2019

1 you are providing in this case?

2 A. I think that's the first communication after I
3 was formally engaged. I don't think I would have billed
4 or invoiced for the preliminary calls.

5 Q. So do you think there may have been calls before
6 this that just isn't entered in your -- in your invoices
7 because you hadn't been formally retained?

8 A. I think that's correct.

9 Q. Okay. So you think you would have been formally
10 retained sometime prior to June 23rd, 2017?

11 A. I -- frankly, I don't -- I don't recall. I'd
12 have to look at my initial engagement letter and the date
13 on that, but I think it's probably around this time. But
14 my -- my practice generally is that the preliminary calls,
15 in which I explore with counsel the nature of the case,
16 conflicts, what assistance is being asked of me and my
17 analysis of whether I am even available, those are things
18 I normally would not have charged for. So I think, I'm
19 assuming, but I'm not 100 percent certain that there were
20 one or several calls prior to this June 23rd, 2017, entry.

21 Q. So it looks like on June 26, 2017, you began
22 reviewing appendices.

23 Do you see that?

24 A. I do.

25 Q. And would these be appendices of documents for

NEIL J. WERTLIEB, 10/17/2019

1 your review?

2 A. I don't recall. This is over -- over two years
3 ago now.

4 Q. All right. Does it look as though -- so you
5 don't know whether the appendices referenced contain
6 documents or not?

7 A. I assume they are documents, but I -- I don't
8 recall what they were.

9 Q. Independent of this entry that references
10 appendices, do you recall that you would have started
11 reviewing documents in this case in June of 2017?

12 A. Well, without being -- I'm not sure I understand
13 your question. Without being reminded by looking at
14 this -- this initial, my first invoice, I wouldn't have
15 been able to pinpoint the time when I started reviewing
16 documents.

17 Q. And the entries on the invoices doesn't refresh
18 your memory that you would have started reviewing
19 documents in June of 2017?

20 A. Well, looking at this, I have no reason to
21 believe otherwise. I think this is accurate. I would
22 have input these on the date that I spent the time doing
23 the work.

24 So I think this is accurate, but it doesn't
25 refresh my memory, independent of looking at this, that I

NEIL J. WERTLIEB, 10/17/2019

1 started reviewing documents in June of 2017.

2 Q. Let me show you what's previously been marked as
3 Exhibit 423.

4 Have you seen Exhibit 423 before?

5 A. I think I have, yes.

6 Q. Do you remember when?

7 A. I don't recall specifically, no.

8 Q. It's a declaration of Mark T., and I may not
9 pronounce it correctly, but Hiraide, or it may be
10 pronounced differently, but H-i-r-a-i-d-e.

11 And do you understand that this is his
12 declaration?

13 A. I do.

14 Q. And do you understand what purpose it served in
15 this case?

16 A. I did at the time. I don't recall now. I think
17 it had to do with the -- supporting the initial filing of
18 the complaint, but I don't recall specifically.

19 Q. Do you recall reviewing the contents of this
20 declaration before it was filed with the court?

21 MR. STURR: Object to the form.

22 THE WITNESS: I -- I don't recall. I don't
23 recall seeing it. I may have. I just don't remember.

24 Q. (BY MR. DEWULF) I'm going to ask kind of a lazy
25 question, because I'm going to try and cut this short.

NEIL J. WERTLIEB, 10/17/2019

1 Did you have any involvement or input in
2 Exhibit 423 before it was filed in the court?

3 MR. STURR: Form.

4 THE WITNESS: I was involved in the sense that
5 Mark Hiraide is a -- somebody that I know. I believe I
6 introduced Mr. Sturr to Mr. Hiraide. Beyond that, I don't
7 think I had any involvement at all in the preparation of
8 the declaration.

9 Q. (BY MR. DEWULF) Have you ever reviewed the
10 declaration for its accuracy or whether it's -- it's a
11 valid summary of the facts or the law or the rules of
12 professional responsibility?

13 A. I don't believe I reviewed it for that purpose.
14 I think I read it. I may have read it before it was
15 filed. I believe I read it after it was filed, but I --
16 it was around that time. And I didn't review it for the
17 purpose of evaluating it or judging its accuracy, as I
18 recall.

19 Q. And you don't have any opinion today as to
20 evaluating Exhibit 423 or its accuracy, right?

21 A. I'd have to read it again and refresh my memory.
22 It's probably been about a year and a half since I have
23 looked at it.

24 Q. So is your answer you don't have any opinion
25 today?

NEIL J. WERTLIEB, 10/17/2019

1 A. Certainly nothing I recall, no.

2 Q. All right. Did you actually talk to Mr. Hiraide
3 about his declaration before it got filed?

4 A. I don't believe I have had any communications
5 with Mr. Hiraide about his engagement on this matter.

6 Q. Do you know why, if you were retained in
7 sometime prior to June of 2017, it was Mr. Hiraide who
8 submitted this declaration to the court as opposed to you?

9 MR. STURR: Form.

10 THE WITNESS: I don't recall. I may have known
11 at the time. I think it was explained to me, but my
12 recollection is it was more procedural, had something to
13 do with the rules related to the submission of the initial
14 complaint, but I -- that's as far as I remember.

15 Q. (BY MR. DeWULF) You can't be any more --

16 A. No.

17 Q. -- precise or specific than that?

18 A. No. In fact, until you showed this to me, I had
19 forgotten that Mr. Hiraide was involved in this at all.

20 Q. Do you know Mr. Hiraide professionally?

21 A. I do.

22 Q. Did you refer him to Osborn Maledon?

23 A. I did.

24 Q. What were you asked in connection with the
25 referral?

NEIL J. WERTLIEB, 10/17/2019

1 MR. STURR: Just a second, John. I'm going to
2 object. I think you are inquiring about work product
3 which is -- which is protected from disclosure under
4 Rule 26, communications we have had with an expert. Other
5 than the categories that are specified in Rule 26.

6 MR. DeWULF: Doesn't -- don't I have the right
7 to explore what your testifying expert says about his
8 communications with another expert you have identified for
9 the court in connection with standard of care?

10 MR. STURR: No, because the purpose of a
11 preliminary expert affidavit, under 12-2602, is simply
12 that, to provide a preliminary affidavit and nothing more.
13 And that is distinct from the role of a testifying expert
14 who has been disclosed, as Mr. Wertlieb has, pursuant to
15 Rule 26.

16 MR. DeWULF: Right. And what this witness has
17 told us is that he introduced this expert to you, and I'm
18 trying to explore what he was asked in that regard, what
19 he was asked in connection with that referral, and that's
20 this expert's referral and he is the testifying expert.

21 You don't think I can ask that question?

22 MR. STURR: I think, John, my concern is, as I
23 have listened -- I let some of these questions go, but as
24 I have listened to you ask them, I think you are inquiring
25 about communications that Mr. Wertlieb had with my office,

NEIL J. WERTLIEB, 10/17/2019

1 which I think are work product, and then -- so I'm raising
2 the work product objection, because I think this is
3 outside the bounds of what you are allowed to ask the
4 expert about.

5 You are allowed to ask about his report, the
6 documents that were produced with the report, but the rule
7 expressly protects work product communications between
8 counsel and a retained testifying expert.

9 Q. (BY MR. DEWULF) Let me ask a little bit of a
10 different question.

11 Did what Mr. Hiraide say in any way impact what
12 you did as an expert in this case?

13 A. By "say," you are referring to what he says
14 here?

15 Q. By what he says in declaration or otherwise.

16 A. So my -- as I believe I testified to just a
17 minute ago, I don't think I -- to my recollection, I had
18 no communications with Mr. Hiraide at all about this --
19 his engagement in this matter. So I think my -- the only
20 information that I have about his involvement is
21 discussions with Osborn Maledon and reading the
22 declaration itself.

23 Q. Did you read the declaration to make sure it was
24 consistent with the opinions you were expressing in your
25 reports?

NEIL J. WERTLIEB, 10/17/2019

1 A. I -- I don't believe so. As I said, I actually
2 forgot that Mr. Hiraide was involved in this. I think
3 when I was fully engaged and started working on my review
4 of the materials and the preparation of my report, I don't
5 recall going back and looking at this declaration at all.

6 Q. In Exhibit 1171, if you could look at that --

7 A. Yes.

8 Q. -- Mr. Wertlieb.

9 Starting in on the fourth page of this document
10 is a typed summary heading "Private Placements."

11 Do you see that?

12 A. I do.

13 Q. Who created this document?

14 A. I did.

15 Q. When did you create it?

16 A. I think sometime within the last month or so.

17 Q. You provided this, through your counsel. If you
18 look at the cover sheet, it's October 16, 2019.

19 MR. STURR: Form.

20 Q. (BY MR. DeWULF) Are you aware of that?

21 A. I'm sorry?

22 Q. Let me rephrase it.

23 The cover letter from Mr. Sturr containing this
24 private placement summary by you is dated October 16,
25 2019, correct?

NEIL J. WERTLIEB, 10/17/2019

1 A. Correct.

2 Q. And are you aware that this information was
3 first provided to us on October 16, 2019?

4 A. What's the date today? So yesterday?

5 Q. Yeah.

6 A. I believe I heard that, yes.

7 Q. Okay. But you actually provided it to Counsel
8 much earlier than yesterday?

9 A. No. I think I provided it to Counsel within the
10 last few days.

11 Q. Okay. And why did you provide this to him?

12 A. This -- this is a list that I -- that I prepared
13 in thinking about my testimony and my report.

14 THE WITNESS: And I mentioned to Mr. Sturr, and
15 perhaps I shouldn't be talking about our communications,
16 so, Geoff, tell me if I should stop here.

17 MR. STURR: I think, John, just I can say that
18 you and I have had communications in the past about
19 Mr. Wertlieb's experience in certain securities matters.
20 We have shared those with Mr. Wertlieb, and he can -- he
21 can tell you why this list was prepared, but I can -- the
22 foundation for this were your requests.

23 Q. (BY MR. DeWULF) Yeah. And my question is, why
24 did you prepare this?

25 A. That's your question now?

NEIL J. WERTLIEB, 10/17/2019

1 Q. Correct.

2 A. I understood you were asking a different
3 question just a second ago.

4 Q. That's the question now.

5 A. The -- the -- based on the information that I
6 had heard and questions that you had raised, I thought it
7 would be helpful to, perhaps to both of us, if I were to
8 refresh my memory about my work in Reg D offerings,
9 Regulation D offerings, and in private placements over the
10 course of my -- my practice as a lawyer. So that's --
11 that's why I decided this would be helpful, and I started
12 to generate this list.

13 Q. So were you aware we began asking for this type
14 of information in April of this year?

15 A. I -- I don't recall.

16 Q. You don't recall talking to Mr. Sturr about
17 resisting providing us this information on confidentiality
18 grounds?

19 MR. STURR: I'm going to object to the form.

20 THE WITNESS: I think there were, as I -- as I
21 recall, there were inquiries regarding matters that
22 encroached upon attorney-client privilege materials and
23 confidential materials. I prepared this list in an effort
24 to be responsive without providing what I consider to be
25 client protected information, either as confidential or

NEIL J. WERTLIEB, 10/17/2019

1 attorney-client privileged.

2 Q. So --

3 A. And by the way, I have labeled -- intentionally
4 labeled this document as confidential. I have shared it
5 with counsel with the intention that it could be produced.
6 My understanding is that it has been produced pursuant to
7 some understanding as to its treatment as confidential.
8 And that was the basis on which I -- that was the
9 assumption on which I prepared this.

10 MR. STURR: And to be clear, John, I didn't put
11 this in the cover letter, but it's marked confidential.
12 It has been produced pursuant to the protective order
13 entered in the case.

14 MR. DeWULF: I understand that. I see that.

15 Q. So Mr. Wertlieb, have these parties identified
16 here consented to you discuss -- to discuss the matters
17 upon which you provided legal services?

18 A. I have had no connection with the clients that
19 are listed on this list in connection with my testimony.

20 Q. So may you disclose to us what you specifically
21 did on the matters identified?

22 A. I think there are -- there are probably things
23 that I can discuss. It depends on the nature of your
24 questions and I would have to evaluate those on a
25 question-by-question basis.

NEIL J. WERTLIEB, 10/17/2019

1 I am bound, as former counsel to these clients,
2 I am bound by my obligations with respect to
3 confidentiality and attorney-client privilege. So there
4 is only so much I can share, but subject to the manner in
5 which this was produced, I was comfortable with at least
6 sharing this information with you.

7 Q. Let me show you Exhibit 1173.

8 MR. STURR: I already have it. Thank you, John.

9 Q. (BY MR. DEWULF) This is from your website.

10 Do you recognize it?

11 A. I do. Yes.

12 Q. And so the title is "Big Law" Law Firm Partner.

13 Do you see that?

14 A. I do.

15 Q. And then it talks about Representative
16 Transactions.

17 Do you see that?

18 A. Yes, I do.

19 Q. And it goes through, by bullet point, describing
20 certain matters upon which you served as counsel?

21 A. Yes.

22 Q. And were you the lead counsel on each of those
23 matters?

24 And I know in some cases you are getting an
25 award or you are being recognized for something, but in

NEIL J. WERTLIEB, 10/17/2019

1 those instances where you are describing legal
2 representation, were you the lead counsel?

3 A. Let me take a quick look at this, if I may.

4 It appears that the bottom of the first page and
5 the top of the second page are cut off, so I'm not certain
6 that I could comment on -- on everything that's included
7 in this category from my website.

8 Q. I think it just says "and a hair care company."
9 It continues on to the second page.

10 A. Okay.

11 Q. So I think between the two lines, you can make
12 out the word -- words.

13 A. There are -- I believe, if I recall your
14 question, was I the lead attorney, I believe that's the
15 case for most of these. There are two or three where I
16 was the lead with respect to corporate or securities
17 matters, but there were one or more partners at Milbank
18 who were also involved who took the lead in other
19 aspects --

20 Q. Okay.

21 A. -- of the matter.

22 Q. And did you, in those matters described, obtain
23 the approval of the client for whom you provided the
24 services in order to be able to describe what you did for
25 them?

NEIL J. WERTLIEB, 10/17/2019

1 A. I did not seek their approval in order to
2 publish this anonymous description of the matters I worked
3 on.

4 Q. Looking back at the listing that you have done
5 in 1171 of matters for which you served as counsel, would
6 you have been lead counsel for all these matters
7 described?

8 A. I'd have to go through them one -- one by one,
9 but looking -- and I'm not sure precisely what you are
10 referring to, because this, this list has different
11 categories. But I would say for most of them I was -- I
12 was what I would consider to be the lead counsel. There
13 are probably some on here where there might have been a
14 lead, another partner at my law firm, my former law firm,
15 who took the lead either in terms of the client engagement
16 or -- or other material aspects of -- of the
17 representation.

18 Q. So I had a law professor tell me once that I
19 would spend my professional career trying to convince
20 people two things are the same or two things are
21 different.

22 So with that as a framework, I'm looking at your
23 listing here, and knowing that what you know about DenSco
24 as a family-owned, small business, making modest
25 offerings, less than 50 million, obviously, or around

NEIL J. WERTLIEB, 10/17/2019

1 50 million or less, with accredited investors, could you
2 share with us which of the matters you have identified
3 here would be similar or like the DenSco representation?

4 MR. STURR: When you say "here," John, do you
5 mean in 1173 or --

6 MR. DeWULF: The whole shootin' match.

7 MR. STURR: -- the list?

8 MR. DeWULF: Everything that's in his list of --

9 MR. STURR: Okay.

10 MR. DeWULF: -- private placement descriptions.

11 MR. STURR: So that includes Exhibit 1171 and
12 1173. Thank you, John.

13 THE WITNESS: I'm sorry. Is that -- is that
14 what you are asking?

15 MR. DeWULF: I was only asking about 1173.

16 MR. STURR: Okay.

17 MR. DeWULF: I presumed that that was not
18 involving Reg D work.

19 MR. STURR: I apologize.

20 Q. (BY MR. DeWULF) But if any of the things in
21 1173 involved Reg D work, you can -- you can share that as
22 well. I was just mainly focusing on 1171, but with the --

23 MR. STURR: I apologize, John. I thought the
24 question was 1171 and 1173.

25 MR. DeWULF: That's fine. That's fine. No.

NEIL J. WERTLIEB, 10/17/2019

1 Broader is better.

2 Q. Go ahead.

3 A. You are asking a very -- a very broad question,
4 and I'm certainly glad to answer it to the extent I can,
5 but I would just like to receive a little more direction,
6 if I could.

7 So the Exhibit 1171 contains a variety of
8 different information broken down into different
9 categories. The list of clients is separate from what
10 I've identified as typical context. I assume what you are
11 asking me is with respect to the clients that are
12 specifically listed here. If it's broader than that,
13 maybe we could start with the list, but I'm just trying to
14 understand how you would like me to respond to your
15 question.

16 Q. Well, let's -- let's put ourselves in trial and
17 the jury wants to know, when they are examining what
18 happened with DenSco, whether you have the expertise to
19 talk to them as it relates to their private offering and
20 private offering memorandum and the services provided as
21 counsel for them. It's a small entity owned, managed by
22 one individual.

23 And so what I want to anticipate with you is
24 what you might tell them from this private placements
25 description, puts you in a position of being able to opine

NEIL J. WERTLIEB, 10/17/2019

1 about that subject matter.

2 So what I understand this document was generated
3 for was under the requests that I was making for that very
4 reason.

5 A. Right.

6 Q. And so if you could share with me, of the
7 information contained in Exhibit 1171 and 1173, if it
8 helps, if it relates, which of these described matters,
9 clients, relationships, would have been like what DenSco
10 did.

11 MR. STURR: Form.

12 THE WITNESS: So there are -- there are
13 elements, based -- based on my understanding of this, this
14 case, and DenSco's business and its activities, I think
15 there are -- there are similarities across many of these.

16 So with that in mind, maybe what I should do is
17 just where the clients are listed, I could briefly
18 describe what I consider to be the similarities, subject
19 to --

20 Q. (BY MR. DEWULF) That would be --

21 A. -- my confidentiality requirements, privilege
22 requirements and memory, since some of these go back more
23 than 30 years.

24 Q. Just do your best.

25 A. Okay. So under the -- on the first page under

NEIL J. WERTLIEB, 10/17/2019

1 the category of Partial List of Clients, subcategory fund
2 issuers and investors, and then under that it says V/C
3 investors. That refers to venture capital investors, all
4 five of these that are listed here were venture capital
5 funds, at least for my purposes of my involvement, where
6 they were investing relatively small amounts of money in
7 startup ventures or closely held companies or companies
8 that were raising relatively small amounts of funds, such
9 that the work that I was doing, generally speaking, for
10 these five clients involved investments that were either
11 six figures, in the hundreds of thousands, perhaps low
12 seven figures. Rarely more than that. So these were
13 relatively small investments by what might be
14 characterized as large investors in -- in private
15 placements.

16 Q. They weren't the issuers; they were the
17 investors?

18 A. They were -- they were the investors, yes,
19 correct.

20 Q. Go ahead.

21 A. But their investments were in -- in companies
22 that were raising relatively small amounts of money, and
23 the amounts being invested were what I would consider to
24 be perhaps equivalent to what DenSco was raising from
25 individual investors as well.

NEIL J. WERTLIEB, 10/17/2019

1 So --

2 Q. Go ahead.

3 A. -- under the next subcategory for angel
4 investors, these two, without identifying who they are,
5 these two clients were basically the holding companies for
6 two individuals. So they were making investments through
7 these -- these entities on their own behalf.

8 so unlike the category above, venture capital
9 investors, these were relatively large funds making small
10 investments.

11 The next category was, these were -- these were
12 individuals making investments through -- through these
13 entities. And I don't recall the size of the investments,
14 but my -- I don't recall the relative size of the
15 investments here.

16 But these also were investments in -- in
17 privately held companies that were -- that were either
18 issued pursuant to Regulation D of the securities laws or
19 in private placements more generally.

20 Q. If -- I know I asked you a broad question --

21 A. Yes.

22 Q. -- but we only have so much time, and so -- and
23 maybe we can come back to this later in your deposition if
24 we have the time, but if I could ask you to focus on the
25 heading "Issuers" on the second page.

NEIL J. WERTLIEB, 10/17/2019

1 Because in this case DenSco was an issuer,
2 correct?

3 A. Correct.

4 Q. Okay. So if you could share with me and the
5 jury what -- in the description under "Issuers," which of
6 those matters would have been comparable to the situation
7 of DenSco --

8 MR. STURR: Form.

9 Q. (BY MR. DeWULF) -- as an issuer?

10 MR. STURR: Form.

11 THE WITNESS: So really it's really dependent
12 on -- on what is similar. But when I look at the category
13 under "Issuers," beginning at -- toward the bottom of
14 page 2, there are three subcategories, start-ups &
15 early-stage companies, or "Start-ups & early stage." The
16 second is "Private companies." The third is "Public
17 companies."

18 Beginning with the first, "Start-ups & early
19 stage," to my recollection, I think all -- all of these
20 were clients of mine. I believe I was lead counsel on --
21 on all of them, as I recall, or virtually all of them.
22 And my recollection is that they were raising relatively
23 small amounts of money, in the hundreds of thousands or
24 low millions, and they were doing so pursuant to private
25 placements.

NEIL J. WERTLIEB, 10/17/2019

1 Q. (BY MR. DEWULF) And were they doing so with all
2 accredited investors?

3 A. The test of whether they were soliciting
4 accredited investors was, I would say was key to all of
5 them. Some of them I believe were exclusively accredited
6 investors, but under the securities laws, you are
7 permitted, under Regulation D, to have a limited number of
8 nonaccredited investors. And I don't recall specifically,
9 but some of these may have also involved nonaccredited
10 investors.

11 Q. You don't recall?

12 A. I don't. I don't recall.

13 Q. Anything else? I mean, under "Private
14 companies" and "Public companies," any further testimony
15 as it relates to comparing to DenSco?

16 A. Okay. So under -- under the next category,
17 "Private companies," these are issuers that were more
18 established --

19 Q. Okay.

20 A. -- than the first category that I just covered.

21 Q. So let me -- could I stop you there?

22 A. Yeah, please.

23 Q. I don't want to interrupt, but I -- just to
24 focus a little.

25 So you are saying that the list of private

NEIL J. WERTLIEB, 10/17/2019

1 companies were probably larger, more substantial than
2 DenSco?

3 A. No. That's -- this is -- the distinction is
4 between, in my list, private companies and start-ups
5 versus -- and early stage.

6 Private companies, at least as I have
7 categorized it here in my list, these are companies that
8 were not early stage. It really didn't necessarily relate
9 to the size of the company.

10 So I would -- I think there are definitely
11 similarities with -- with DenSco and DenSco's activities
12 in both of these categories so far.

13 Q. So under "Private companies," which of those
14 entities, in your view, would have been, although
15 established, a smaller entity for capitalization purposes?

16 A. I'm not sure that I can answer that question.
17 But what I would say is that these -- that, to my
18 recollection, many, if not most, of the companies listed
19 in this category engaged in securities offerings that were
20 relatively small. Again, in the hundreds of thousands or
21 low millions.

22 Q. Okay. Let me ask, are any of the entities
23 identified or matters identified under the heading
24 "Issuers," are any of them companies owned, managed by a
25 single individual?

NEIL J. WERTLIEB, 10/17/2019

1 (Mr. Campbell joins the proceeding.)

2 THE WITNESS: I don't specifically recall, but
3 looking at the list, there are a number of them that were
4 owned and controlled by two or three individuals.

5 There -- there are -- there are a couple that despite
6 being owned by two or three individuals, there was one
7 very dominant owner.

8 Q. (BY MR. DEWULF) Did you ever represent clients
9 where they did not have an in-house counsel?

10 A. Yes.

11 Q. Do you remember who? I mean, on the listing
12 here, are any of these entities that didn't have in-house
13 counsel?

14 A. When you say "these," are you referring to a
15 specific subcategory?

16 Q. I'm talking about references under the heading
17 "Issuers."

18 A. I -- so I don't want to be specific by name of
19 client, again, for confidentiality and privilege reasons,
20 but under the category of "Start-ups & early stage," I
21 don't recall any of them. Well, let me put it this way.
22 Most, if not all of them, did not have in-house counsel or
23 a general counsel.

24 Under the category of "Private companies," a
25 number of these did, but certainly some of them did not.

NEIL J. WERTLIEB, 10/17/2019

1 Q. Did --

2 A. To the best of my recollection.

3 Q. Let me ask about legal budgets, budgets for
4 legal fees.

5 Did any of these matters under the heading
6 "issuers" involve legal budgets of less than a half
7 million dollars?

8 A. Depends what you mean by "legal budgets." If
9 you are talking about forecasts or allowed fees as opposed
10 to fees incurred, I'm not sure I would know.

11 Q. You wouldn't know? Is that what you said?

12 A. If you are asking about their internal budget
13 for legal fees on a -- on a prospective basis, I'm not
14 sure I would know. That would be their information.

15 Q. No. I understand. I wouldn't ask you to know
16 that, because they likely wouldn't share with you
17 necessarily.

18 I'm talking about the communicated budget
19 between counsel and the client. Would any of these
20 involve less than \$500,000 in legal fees for the work to
21 be performed by lawyers?

22 A. I'm -- let me try to answer it in a way that I'm
23 comfortable with, because I'm not sure I can respond
24 directly to your question. I can tell you that for a
25 number of these, especially -- let me break it down a

1 little further.

2 Under "Private companies" and even under the
3 category of "Public companies," there were securities
4 offerings that -- that I worked on, where I was the lead
5 counsel, where the bills for legal services that we
6 provided to these clients were in the tens of thousands of
7 dollars.

8 Q. That's helpful.

9 So let me ask you to identify Exhibits 1174 and
10 1175.

11 Can you identify 1174, please?

12 A. I don't believe I have seen 1174 in this form;
13 that is, the first three pages, I don't believe I have
14 seen before. This is the filing of Plaintiff's Disclosure
15 of Expert Witness Report Re Standard of Care. However,
16 attached to this document, after the first three pages, it
17 appears to be a copy of my expert report, together with
18 exhibits.

19 Q. And 1175 has your rebuttal report attached to
20 the pleading, beginning on page 3?

21 A. It -- it appears to, yes.

22 Q. Okay. So your reports in 1174 and 1175 would
23 summarize the opinions that you would be expressing to a
24 jury in this case?

25 A. I would say that's correct.

NEIL J. WERTLIEB, 10/17/2019

1 Q. Can you precisely tell me what you were asked to
2 do in this case?

3 A. I'm not sure how to best respond to that. I
4 think my -- as I understood my engagement, I was asked to
5 review documents, consider the facts and the law as
6 applicable, to explore the conduct of the defendants, and
7 to analyze and reach conclusions, formulate opinions, to
8 document those in my reports, and to be prepared to
9 testify at deposition and trial on those matters.

10 Q. Exhibit 1174 has attached to it as Exhibit C the
11 documents provided or made available to you.

12 Do you see that?

13 A. I do.

14 Q. This is the only listing I have seen of
15 documents that, and materials that have been provided to
16 you.

17 Are there any other matters, documents,
18 materials that have been provided to you that are not
19 listed as in Exhibit C of Exhibit 1174?

20 A. Well, there have certainly been a few documents
21 that were provided to me since the preparation of this
22 list, so obviously this list doesn't include those.

23 If you are asking me whether I can -- I can
24 testify as to the accuracy of this list, I believe it to
25 be correct, but...

NEIL J. WERTLIEB, 10/17/2019

1 Q. Who compiled it?

2 A. Counsel did.

3 Q. Okay. What did you rely on counsel to do in
4 connection with you generating your opinions and reports?

5 A. Primarily they were my source of information on
6 which to -- on which my report was based.

7 Q. When -- and I have -- we have looked at 1175,
8 which is your rebuttal expert witness report. It does not
9 identify any documents or materials provided to you in
10 connection with that report, right?

11 A. I think that's correct, yes.

12 Q. And would it be fair to say that in generating
13 your rebuttal expert report in 1175, you are relying on
14 the same materials as identified in Exhibit C in your
15 original report in 1174?

16 A. In addition to the expert reports of the
17 defendants, yes.

18 Q. So you would have -- in connection with
19 generating your rebuttal report, would have, beyond what
20 you reviewed as identified in 1174, you would have also
21 reviewed the expert reports of Kevin Olson and Scott
22 Rhodes?

23 A. Correct.

24 Q. And did you also represent (sic) the depositions
25 of those gentlemen?

NEIL J. WERTLIEB, 10/17/2019

1 A. I reviewed the depositions of both gentlemen,
2 yes.

3 Q. Did you review anything else in creating
4 Exhibit 1175?

5 A. I don't specifically recall. Certainly nothing
6 that I remember.

7 Q. Sitting here today, do you remember any other
8 documents that were provided to you beyond those
9 identified in Exhibit 1174?

10 A. Yes. There were a number of documents and
11 deposition transcripts that were provided to me since the
12 date of my expert report.

13 Q. Have you listed those anywhere?

14 A. Have I listed them anywhere? I don't have a
15 supplement to my report, if that's what you are asking.

16 Q. Would you provide that to us so we know what
17 additional things you looked at or reviewed in connection
18 with your opinions?

19 A. I'd be glad to.

20 Q. Is the depositions that have been identified, do
21 you recall what additional depositions you reviewed beyond
22 those identified in your report in Exhibit 1174?

23 A. Well, of course in addition to what's identified
24 in Exhibit 1174, there are the two depositions of the
25 defendants' experts. I believe I have seen at least two

NEIL J. WERTLIEB, 10/17/2019

1 additional deposition transcripts, maybe more. I reviewed
2 a deposition transcript of Mr. Menaged that I believe was
3 taken last month. I reviewed a deposition transcript of a
4 Clark Hill attorney. I believe her name is Michelle Tran.

5 And off the top of my head, that's all -- that's
6 all I recall.

7 Q. Let me ask, have you reviewed the deposition of
8 Victor Gojcaj?

9 A. That name doesn't sound familiar.

10 Q. Have you looked at the deposition of Robert
11 Koehler?

12 A. I'm familiar with that name. I don't believe
13 that I have -- I don't believe that I have looked at his
14 deposition, no.

15 Q. Have you reviewed the deposition of Kevin
16 Potempa?

17 A. Not that I recall.

18 Q. Have you looked at the deposition of John Ray?

19 A. I'm sorry. Say the last name again.

20 Q. Ray, R-a-y.

21 A. I don't believe so.

22 Q. Have you reviewed the deposition of Peter Davis?

23 A. I don't recall.

24 Q. Did you review the deposition of Scott Gould?

25 A. I don't recall.

NEIL J. WERTLIEB, 10/17/2019

1 Q. Did you review the deposition of David Preston?

2 A. I don't recall.

3 Q. Did you review the deposition of Gregg Reichman?

4 A. I don't recall.

5 Q. Were there any opinions you were asked to
6 express in this case that you declined to express?

7 A. I'm not sure I understand your question. What I
8 was asked to do was to formulate opinions. I don't
9 believe I was asked to formulate specific opinions.

10 Q. Okay. So the answer would be no, you weren't
11 asked for -- to express any particular opinions in this
12 case. You arrived at your opinions based on your own
13 analysis. Fair?

14 A. Fair.

15 Q. And are there any opinions that you arrived at
16 from your analysis of the facts in this case that are not
17 contained in your reports?

18 A. Not that I recall off the top of my head. I
19 think the -- certainly the material opinions are all
20 reflected in my report.

21 Q. If we could go to Exhibit 1174, page 32.

22 So you see that heading under applicable
23 standard of care, Roman numeral III, there is a heading A,
24 General Application?

25 A. I do.

NEIL J. WERTLIEB, 10/17/2019

1 Q. And you reference, among other things, the Model
2 Rules of Professional Conduct adopted by the American Bar
3 Association.

4 Do you see that?

5 A. I do.

6 Q. And were you relying on those rules in
7 connection with expressing opinions in this case?

8 A. I was. Not exclusively, but yes, I was.

9 Q. Are the ABA Model Rules the same as the Arizona
10 Rules of Professional Responsibility?

11 A. They are remarkably similar.

12 Q. How are they different?

13 A. Well, I -- I assume they may be different in a
14 number of respects. In terms of my work, I actually
15 footnote what I thought was a material difference, if I
16 could find it.

17 This is in my footnote 143 on the bottom of
18 page 35. Other than that one difference, I think for
19 purposes of -- of my analysis as the rules apply to the
20 conduct that I -- that I have examined here, I believe the
21 Model Rules are substantially the same as the Arizona
22 rules, as pertains to this case.

23 Q. Your -- as I read your resumé, wertlieb Law
24 Corp. primarily provides expert services, correct?

25 A. I'd say that's probably correct, yes.

NEIL J. WERTLIEB, 10/17/2019

1 Q. Since starting in 2017, what percentage of the
2 time you spend at Wertlieb Law Corp. would be dedicated to
3 serving as an expert?

4 A. Maybe half of my time. Very rough estimate, but
5 perhaps half my time.

6 Q. I know you talk about serving as, I think as a
7 trial counsel for the State Bar.

8 Am I -- am I remembering that correctly?

9 A. Yes, sir. It's -- my title is Special Deputy
10 Trial Counsel.

11 Q. How much of your time do you dedicate to those
12 efforts, as a percentage?

13 A. Very hard to estimate. Perhaps 10 percent of my
14 time, maybe more.

15 Q. Have you evaluated the conduct of an Arizona
16 lawyer prior to your retention in this case?

17 A. I'm sorry. In what capacity?

18 Q. As an expert.

19 A. Yes.

20 Q. When?

21 A. I would say in the last four or five years.

22 Q. Were you a consulting expert or a testifying
23 expert?

24 A. I never testified in that matter, so I don't
25 recall if I was -- if I was designated as a testifying

NEIL J. WERTLIEB, 10/17/2019

1 expert, but I -- I was retained as an expert.

2 Q. Did you generate an expert report in that case?

3 A. I did.

4 Q. Can you share with us any more detail about
5 that?

6 A. I don't -- I don't think I can. Unless --
7 unless I was designated or unless there is something, some
8 public document filed in the case that references my
9 engagement, I'm not sure I'm at liberty to share any of
10 the details.

11 Q. Can you share with us the practice of that
12 lawyer, what type of practice he engaged in?

13 A. I would say corporate and securities work
14 generally, as I recall.

15 Q. Are there any other matters you can recall where
16 you have served as an expert in evaluating the conduct of
17 an Arizona lawyer?

18 A. Not that I recall off the top of my head, no.

19 MR. STURR: John, when you get a chance for just
20 a quick five-minute break.

21 MR. DeWULF: Yeah.

22 MR. STURR: It's been an hour. Just my usual
23 nudge.

24 MR. DeWULF: Let me just ask a couple of
25 questions, and then we will break.

NEIL J. WERTLIEB, 10/17/2019

1 Q. Do you do any transactional work at Wertlieb Law
2 Corp.?

3 A. Some.

4 Q. Can you share with us what that is?

5 A. What the -- what the work is?

6 Q. Yeah, the type of work.

7 A. I have -- I'd rather not get into the specifics.

8 I have consulted on a few matters related to M&A
9 activities, mergers and acquisitions, and securities work.

10 MR. DeWULF: Yeah, why don't we break.

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

13 (A recess was taken from 10:06 a.m. to
14 10:16 a.m.)

15 (Deposition Exhibit No. 1176 and 1178 were
16 marked for identification.)

17 VIDEOGRAPHER: My name is Mary Onuschak with the
18 firm of Legal Video Specialists, Phoenix, Arizona. This
19 begins media two of the videotaped deposition of Neil J.
20 Wertlieb. The time is 10:16 a.m. We are now back on the
21 record.

22 Q. (BY MR. DeWULF) While we were on break,
23 Mr. Wertlieb, you indicated that you wanted to clarify
24 something or add to your testimony when we came back on.
25 So go ahead and share what you think you should share.

NEIL J. WERTLIEB, 10/17/2019

1 A. Yes. Thank you.

2 So you had inquired about my transactional work
3 at Wertlieb Law Corp., and I mentioned two, two matters.
4 On reflection, I think it's been more than that, maybe a
5 half dozen matters, but I also wanted to share that the
6 work that I had done on those matters was as a -- in
7 consultation with lead counsel and perhaps with the
8 client, but where I did not play the lead, the lead role
9 in a transactional matter.

10 Q. And your testimony is the same, that
11 approximately half of your time at Wertlieb Law Corp. is
12 dedicated to serving as an expert?

13 A. I -- roughly speaking, I believe that's correct.

14 Q. All right. And you do that all over the
15 country?

16 A. I have done that in a number of jurisdictions
17 and also in Canada.

18 Q. Okay. Can you estimate for us how many times
19 you have served as an expert on a matter outside of
20 California?

21 A. I'm sorry. Just to clarify, where the -- where
22 the dispute is being heard outside of the State of
23 California?

24 Q. Yeah.

25 A. Maybe half a dozen.

NEIL J. WERTLIEB, 10/17/2019

1 Q. Okay. And would that include the matter you
2 mentioned involving the Arizona attorney?

3 A. Correct.

4 Q. So you graduated law school at Boalt Law School,
5 correct?

6 A. Now called Berkeley School of Law, but yes.

7 Q. Okay. And you began practicing in California
8 after graduation, right?

9 A. Correct.

10 Q. And have you been practicing in California ever
11 since you graduated law school?

12 A. I have been based in California the entire time.
13 I am also licensed in -- to practice in New York and in
14 the District of Columbia.

15 Q. And as it relates to practicing in New York, do
16 you -- have you, over your career, had a significant
17 portion of your practice dedicated to serving clients in
18 New York?

19 A. Yes.

20 Q. And would that be true now?

21 A. Well, it depends what you mean by that. What I
22 was referring to is, with respect to New York, in my
23 practice as an attorney, quite a few of my clients were
24 based in New York. The law firm that I was at, and a
25 partner at for two decades, was based in New York, so a

NEIL J. WERTLIEB, 10/17/2019

1 lot of -- a lot of the work was New York related.

2 Now at Wertlieb Law Corp., with roughly half of
3 my time being spent on expert witness work, my clients
4 generally are law firms, and it's not terribly relevant to
5 my practice as an expert as to where those law firms are
6 based.

7 Q. So let me come at it in a little bit of a
8 different direction.

9 Have you utilized your New York license in
10 connection with serving as a lawyer?

11 A. I -- I would say yes.

12 Q. Okay. And would that be true now?

13 A. Well, I think it's -- I think it's less relevant
14 today, because half of my practice is not in an
15 attorney-client relationship.

16 Q. And as it relates to your license to practice
17 law in the District of Columbia, have you used that
18 license in connection with your practice over your career?

19 A. Much less so, yes.

20 Q. Have you ever officed outside of California in
21 connection with providing legal services?

22 A. While I was at Milbank, I did have a virtual
23 office, if you will, at Milbank's New York headquarters.

24 Q. Over what period of time?

25 A. I don't recall. Maybe five years.

NEIL J. WERTLIEB, 10/17/2019

1 Q. So California changed its rules of professional
2 conduct recently, correct?

3 A. Correct.

4 Q. And that occurred in November, November 1 of
5 2018?

6 A. The new rules became effective on that date,
7 yes.

8 Q. And prior to that date, California had not
9 followed the ABA Model Rules, correct?

10 A. The -- prior to that date, California's rules
11 were not based on the ABA Model Rules, correct --

12 Q. And in some cases --

13 A. -- generally speaking. I'm sorry.

14 Q. In some -- no, that's fine. I interrupted you.

15 In some cases they were very different. That is
16 California's rules were very different from those
17 contained in the ABA Rules of -- Model Rules, correct?

18 A. Certainly prior to November 1st of last year,
19 yes.

20 Q. All right. So as you evaluate the conduct of
21 Clark Hill in this case, you practicing in California,
22 the -- well, in California the former rules would have
23 been in effect during the critical times and events in the
24 DenSco history, correct?

25 A. Correct.

NEIL J. WERTLIEB, 10/17/2019

1 Q. And the new rules as adopted as of November 1,
2 2018, largely track the ABA Model Rules, correct?

3 A. I think that's a fair statement.

4 Q. Let me just show you marked, exhibits marked
5 1176, 1177, and 1178.

6 These are written materials created by you in
7 connection with presenting a discussion about the new
8 Rules of Professional Conduct in California, correct?

9 A. Well, let me -- let me -- let me see if I can
10 come at your question a different way.

11 These appear to be, in substance, three articles
12 that I wrote that were published in the Daily Journal. I
13 don't recognize this format or what these particular
14 documents are, but I did write a series of articles that
15 were -- that were published in the Daily Journal and
16 they -- it appears that that's in substance what you have
17 handed me.

18 Q. And what is the Daily Journal?

19 A. It's a -- it's a publication, I believe, in
20 California that is subscribed to by lawyers and business
21 people and other interested persons.

22 Q. And were you asked to provide the articles that
23 are represented in 116 -- 1176, 77 and 78?

24 A. I was in contact with one of the -- one of the,
25 I don't know what his title is, authors, publishers,

NEIL J. WERTLIEB, 10/17/2019

1 editors, at the Daily Journal, and I offered to write a
2 series of articles.

3 Q. And as titled, 1176 is your discussion of "The
4 disruptive and controversial new rules," and you are
5 referencing the new California Rules of Professional
6 Responsibility, correct?

7 A. Correct.

8 Q. And the second, 1177, is your discussion of "The
9 uncontroversial, but important new rules," correct?

10 A. Correct.

11 Q. And 1178 is "The entirely new rules" that went
12 in effect as of November 1, 2018?

13 A. Correct.

14 Q. Okay. And beyond the articles that are
15 identified -- and do you have any question in your mind
16 that these are actual copies of the articles that appeared
17 in the Daily Journal?

18 A. I haven't read them. I don't -- I don't dispute
19 that. I have no reason, you know, without reading them
20 carefully, I have no reason to disagree with that. But
21 the format is very different, and it doesn't, at least the
22 first half of the top page on all three of these
23 documents, I don't recognize that content. It looks like
24 they were printed from a different source than the Daily
25 Journal, but I -- so that's my only qualification.

NEIL J. WERTLIEB, 10/17/2019

1 Otherwise, they appear to be the articles I wrote.

2 Q. Are you talking about the portion that has your
3 picture and your name, that part doesn't look like
4 something that appeared in the publication?

5 A. Well, I'm looking at the very top of the page
6 that says Law Practice, Ethics/Professional
7 Responsibility, October 17, 20 -- it looks like 2018. I
8 don't -- that date I don't believe is accurate for the
9 publication date of the three articles, and that doesn't
10 look like the format in which you could print out articles
11 from -- from the Daily Journal website.

12 So my only -- my only hesitancy on this is I
13 don't recognize the format, but in substance it appears to
14 be the articles I wrote.

15 Q. Well, let me ask, do you think that you created
16 these articles that appear in 1176, 1177, and 1178 prior
17 to November 1, 2018, when the rules changed?

18 A. I believe I wrote these in anticipation of the
19 effective date of the new rules, yes.

20 Q. But not that far in advance of that date. Fair?

21 A. Well, let me put it this way. My recollection
22 is the new rules in California were approved by the
23 California Supreme Court in May of 2018. We knew what the
24 rules were going to be and when they would go effective,
25 and I believe I wrote my articles and they were published

NEIL J. WERTLIEB, 10/17/2019

1 between May and November 1st of 2018.

2 Q. Thank you.

3 And you have, beyond the materials shown in
4 1176, 1177, and 1178, you have lectured and provided
5 presentations to lawyers' groups on the new rules.

6 A. Correct.

7 Q. True?

8 A. Correct.

9 Q. So I want to go briefly through your career.

10 You were an associate for O'Melveny, an
11 associate at O'Melveny & Myers from 1984 to 1992?

12 A. Correct.

13 Q. Were you considered for partner there?

14 A. I was never presented as a partner candidate.

15 Q. When would you have been considered as a partner
16 candidate in the timeframe of O'Melveny?

17 A. Yeah, there is -- my recollection is that there
18 wasn't a fixed partnership track. It was -- it was
19 flexible. I think the first, the earliest time that I
20 could have been considered to become a partner was in
21 1992.

22 Q. That was the eight-year period?

23 A. That was, right, that was about eight years
24 after I started.

25 Q. And that's when you left?

NEIL J. WERTLIEB, 10/17/2019

1 A. Yes.

2 Q. But you hadn't been considered as of the time
3 you left?

4 A. No. Well, it depends what you mean by
5 "considered." I had not been -- I had not been introduced
6 into the process to be considered.

7 Q. Thank you for the clarification.

8 And you joined Milbank in 1995, correct?

9 A. Correct.

10 Q. And you were there through 2016?

11 A. Correct.

12 Q. At the beginning of Exhibit 1174, your report,
13 page 5 --

14 A. Yes, sir.

15 Q. -- at the very top of the page, you say, "I
16 would estimate that in the course of my 34 years of
17 practicing law, I have worked on securities offerings that
18 raised over \$20 billion in proceeds."

19 Did I read that correctly?

20 A. Yes.

21 Q. That would have been, when you say "I have
22 worked on," those would involve matters where you weren't
23 always the lead counsel?

24 A. Potentially, but I -- I think when I was trying
25 to calculate this estimate, I was focused on those matters

NEIL J. WERTLIEB, 10/17/2019

1 where I was lead counsel. But I think, I think certainly
2 the bulk of that, if not in excess of 20 billion, I was
3 lead counsel.

4 Q. So I did the math on this. Over 34 years,
5 that's an average of over \$588 million worth of securities
6 offerings a year.

7 would that be consistent with your memory of
8 what you did over those years?

9 A. I'll trust you on the math. I'm not doing it in
10 my head.

11 Q. That's a lot, I'm just saying, but you think you
12 would have been the primary and lead counsel on matters
13 over that 34 years of over \$20 billion?

14 A. I believe that's correct, yes.

15 Q. Okay. Do you remember ever representing a small
16 family-owned business during the time that you were
17 counsel at Milbank or since you have had your own firm?

18 A. Yes.

19 Q. Can you share with us who that client was or
20 those clients were?

21 A. I prefer not to give you specific names in the
22 interest of confidentiality and attorney-client privilege.
23 I can tell you that there have been a number of those
24 where my clients were very closely held companies, as I
25 testified earlier, that were owned and controlled by two

NEIL J. WERTLIEB, 10/17/2019

1 or three people, and there -- there are two in my list of
2 private placements that were family-owned companies.

3 Q. So as we look at your listing in Exhibit 1171,
4 can you share with us which of those identified entities
5 that would relate to or apply to?

6 A. I'm sorry. That what would relate to?

7 Q. That you --

8 A. Family owned?

9 Q. -- were representing a small family-owned
10 business?

11 A. On the first page of my list of private
12 placements, under "Angel investors," Ampersand Ventures
13 and Atlas Communications, those were the two that I was
14 thinking of.

15 Q. Okay. And how about on the "Issuers" that
16 appears on the second page of your summary of the
17 start-ups, early stage, are any of those entities small
18 family-owned businesses?

19 A. At least a couple of them, to my recollection,
20 at least a couple of them, if not more, were closely held
21 businesses that were -- that were owned and controlled by
22 two or three individuals.

23 Q. And can you share with us which ones of those
24 entities that would apply to?

25 A. I don't think that would be appropriate.

NEIL J. WERTLIEB, 10/17/2019

1 Q. How about under the heading "Private companies"?
2 Are any of those small, family, privately owned companies?

3 A. Yes.

4 Q. Can you share with us which ones?

5 A. Well, again, I think there are a number on here
6 that were owned and controlled by a relatively small
7 number of people, two or three people.

8 I think this is public information, so I can
9 share that Alagem Capital is the investing arm of a
10 gentleman by the name of Benny Alagem. There are others
11 on here as well, but I don't think I can share the
12 information with you.

13 Q. So -- and I want to make sure I have explored
14 the parameters of what you can share with us.

15 So as it relates to the identification of
16 issuers, I understood your testimony to be that you have
17 provided as much detail as you can as it relates to your
18 representation of those entities in connection with what
19 you did for them, the amount of money they raised, who ran
20 the businesses, that kind of thing.

21 Fair?

22 A. Certainly on a client-by-client basis, I don't
23 think I can share anything further. And I think what I
24 testified to earlier before our break is generally what
25 I'm comfortable testifying as to them in the aggregate.

NEIL J. WERTLIEB, 10/17/2019

1 It really depends on the question you want to ask. I'd be
2 glad to --

3 Q. So you would tell a jury, so that I'm clear, you
4 have direct knowledge and experience in the areas of Reg D
5 financings involving accredited investors where the entity
6 is owned, the issuer's entity -- the issuer entity is
7 owned by a few individuals, correct?

8 A. Correct.

9 Q. But you can't share with the jury which entity
10 that was that you represented, what the securities
11 offering or issuance was about, and who managed or ran the
12 company.

13 True?

14 A. I think absent publicly available information, I
15 am not at liberty to share those details, correct.

16 Q. And so that I'm clear about your testimony, you
17 have not reached out to any of the parties that are
18 identified in Exhibit 1171, under the heading private
19 placements, to get their permission to share with the jury
20 what you specifically did for them?

21 A. That's correct.

22 Q. So -- but I have heard you say that you have in
23 instances served as counsel for small issuances or small
24 private offerings involving hundreds of thousands of
25 dollars, or small, in the lower millions of dollars.

NEIL J. WERTLIEB, 10/17/2019

1 True?

2 A. Correct, both on behalf of issuers and on behalf
3 of investors.

4 Q. And so you -- have you drafted private offering
5 memoranda for clients?

6 A. I have.

7 Q. How many times do you think you have done that?

8 A. I have been involved in it I'm certain dozens of
9 times. Whether I have actually taken pen to paper and
10 wrote them from cover to cover myself, probably not that
11 many, but as --

12 Q. Any estimate you can share, how many would you
13 have been the primary drafter of?

14 A. It depends what you mean by "primary drafter."
15 I think there -- I think I have been involved in dozens.
16 It's hard to estimate over the last 35 years, but I have
17 no doubt it's in the dozens.

18 I would imagine many of those I was lead counsel
19 where I was ultimately responsible for the work that was
20 done by my legal team. Whether I was the principal
21 draftsman, though, or not, I just -- I don't have
22 enough of a recollection to give you a more precise
23 number, but it certainly wouldn't have been all or even,
24 perhaps even most of those.

25 Q. I'm just trying to understand.

NEIL J. WERTLIEB, 10/17/2019

1 Are you -- are you saying you were the primary
2 draftsman on some POMs, but you don't recall how many?

3 A. Correct.

4 Q. All right. So how much, in your experience,
5 does it cost to do a POM?

6 A. It really -- it depends on so many different
7 factors that it's hard to give you an estimate.

8 Q. What are the factors?

9 A. So one is what is the regulatory constraint on
10 the document. Is it strictly a Private Offering
11 Memorandum that's designed to satisfy the specific
12 requirements under Regulation D for disclosure purposes.

13 The term Private Offering Memorandum, though, is
14 not limited to Regulation D, so I have worked on Private
15 Offering Memorandum that is not strictly in compliance
16 with Regulation D.

17 Q. Thank you for that clarification.

18 So let me narrow my question to the cost or the
19 factors that go into the cost of a Private Offering
20 Memorandum issued under Regulation D involving all
21 accredited investors under Section 506.

22 A. So no non-accredited investors --

23 Q. That's right.

24 A. -- just so I understand?

25 So continuing with the list of factors that

NEIL J. WERTLIEB, 10/17/2019

1 would impact the cost, often there is a precedent that the
2 same issuer has used in the past, and there may be a
3 distinction between, and certainly relevant in terms of
4 cost, between doing an update or markup of a prior POM, as
5 opposed to creating one from scratch. Very significant
6 difference in terms of cost. So that would be a factor.

7 Another factor is with respect to the business
8 itself, if it's a new venture and investors are investing
9 on a prospective basis to, in effect, create the business,
10 there are disclosures about the anticipated business
11 itself. And the costs involved in that are -- are, I
12 would say, much less than the costs involved in preparing
13 a disclosure document for an existing business that is
14 also raising money, because you have got historical data
15 and descriptive information about the current state of
16 affairs at the business, in addition to its prospective
17 use of funds being raised. That would be more expensive.

18 The complications with respect to the business,
19 how -- how complex its activities are, the nature of its
20 business, whether it's regulated, the riskiness of the
21 investment itself and the business activities of the
22 issuer. I mean, there are so many different factors --

23 Q. That's fine.

24 A. -- you know, it's hard to generalize as to the
25 cost.

NEIL J. WERTLIEB, 10/17/2019

1 Q. No. That's fine. That's a fine answer.

2 So let me ask, I'm going to just ask about your
3 experience.

4 Have you represented banks and financial
5 institutions?

6 A. Yes.

7 Q. Have you represented them in connection with
8 serving as a lender against a borrower?

9 A. Yes.

10 Q. How many instances of that?

11 A. Dozens.

12 Q. And I saw that your resumé talks about
13 representing -- representing unaccredited or, I'm sorry,
14 unsecured creditors.

15 Do you recall that description in your resumé?

16 A. I don't recall, but I --

17 Q. Okay.

18 A. -- recall doing that work, yes.

19 Q. So have you -- and we have asked in discovery as
20 well. Have you represented a hard-money lender?

21 A. Well, I have -- I have represented lenders. I
22 have represented lenders in distress situations where they
23 might be characterized as hard-money lenders, in the sense
24 that they are a lender of last resort or a lender that
25 charges a relatively high interest rate or -- or lends on

NEIL J. WERTLIEB, 10/17/2019

1 terms that are very aggressive against the borrower. It
2 really depends on what you mean by "hard-money lender."

3 Q. Have you represented a hard-money lender in
4 connection with lending money secured by residential real
5 estate?

6 A. I don't recall. I may have. I don't
7 specifically recall, though.

8 Q. Have you ever -- and I take it by your answer
9 that you don't recall whether you have ever provided
10 advice or counseling to an entity that served as a
11 hard-money lender in residential real estate, correct?

12 A. I -- I don't recall.

13 Q. All right. Did you ever represent a borrower in
14 connection to a workout?

15 A. Can you define "workout" for me?

16 Q. Where the buyer -- strike that.

17 where the borrower is in default on a loan and
18 is working out the default with the lender?

19 A. Yes.

20 Q. How many times have you done that?

21 A. Certainly dozens, if not in excess of 100.

22 Q. Have you worked with a client to enforce a loan
23 against a borrower?

24 A. Well, it depends what you mean by "enforce," but
25 I have represented lenders in the exercise of their rights

NEIL J. WERTLIEB, 10/17/2019

1 as lender vis-a-vis a borrower, yes.

2 Q. Have you ever negotiated or drafted a
3 forbearance agreement?

4 A. Yes.

5 Q. How many times?

6 A. Boy, it's hard to estimate. I have certainly
7 worked on matters involving forbearance agreements in many
8 dozens of times. As to whether I have actually been
9 involved in drafting that many or negotiating them, I'd
10 say certainly more than a dozen.

11 Q. So did any of those involve real estate as the
12 primary asset?

13 A. I don't recall.

14 Q. When you say you don't recall something, you are
15 doing your best to try to remember and nothing is coming
16 to mind? Is that what you are saying?

17 A. That's correct. I have been -- I have been
18 practicing for 35 years, so --

19 Q. Right.

20 A. -- and much of the work that I did, in what I
21 would characterize as the area you are questioning me
22 about, was at Milbank, where I don't have access to my
23 records. And I worked on a huge variety of different
24 matters, so my -- my memory is being tested here today.

25 Q. So when I look at your resumé, it doesn't appear

NEIL J. WERTLIEB, 10/17/2019

1 that you dedicated much of your practice to commercial or
2 residential real estate transactions.

3 would that be fair?

4 A. I would say that was not a significant part of
5 my practice, is correct.

6 Q. So you would not have significant experience
7 either in drafting loan documents or purchase and sale
8 documents?

9 A. Well, I'm sorry.

10 Q. In commercial or residential real estate?

11 A. Can you ask the question again, please?

12 Q. Yeah.

13 You would have minimal experience in connection
14 with drafting real estate loan documents or purchase and
15 sale agreements?

16 A. I'd have to -- well, I was going to say I'd have
17 to -- I'd have to think about it or review material, but
18 I'm not sure what I have that I could possibly review to
19 refresh my memory on this.

20 I would -- I would say that the bulk -- I had a
21 varied practice at Milbank and prior to my time at
22 Milbank, where I worked on a wide variety of different
23 matters. I would say that was not the focus of my
24 practice, but as to whether I never worked on it or I
25 worked on very few matters related to purchase and sale

NEIL J. WERTLIEB, 10/17/2019

1 agreements related to real estate, I -- I don't know how I
2 could character -- you know, quantify that.

3 Q. Well, I'm just trying to explore with you,
4 because a jury is going to be trying to evaluate your
5 opinions, and so I'm giving you an opportunity now to
6 share with us, in those subject matters, whether you have
7 had experience or training or have any expertise.

8 So I know you are trying as best you can. I
9 know you practiced law for a long time, but just so that I
10 understand your testimony, sitting here today, real estate
11 was not a major part of your practice?

12 A. At various times, real estate was actually a key
13 part of my practice.

14 Q. Okay. So on commercial and residential real
15 estate, do you have experience doing purchase and sale
16 contracts?

17 A. I have some experience, yes.

18 Q. And what is that?

19 A. So part of -- part of the work that I have done
20 on behalf of clients involved real estate related
21 properties. For a number of years I had a number of
22 clients that were in the hospitality space. Some of those
23 are listed on the list. Their primary assets were real
24 estate based.

25 Q. So you would have -- for those clients, you

NEIL J. WERTLIEB, 10/17/2019

1 would have negotiated purchase and sale contracts?

2 A. Some.

3 Q. Okay. And those -- those are on your list,
4 right, those clients? So you would have done that type of
5 work for -- as I recall, you identified -- The Resort
6 Group, for example, you would have done that kind of work
7 for that entity?

8 A. Well, let me -- if I may, let me be a little
9 more general. The Resort Group, Westin San Francisco,
10 Alagem -- Alagem Capital, and perhaps others, and
11 certainly others not on this list, I would have been
12 involved in real estate related work for those.

13 Q. And you would have been -- you also would have
14 drafted loan documents?

15 A. I --

16 Q. Negotiated loan documents for real estate
17 entities?

18 A. For entities whose significant assets were real
19 estate, yes.

20 Q. And let me just narrow that to residential real
21 estate, what you have identified for me as resort work,
22 buying properties, those kinds of things.

23 Did you do any work in your career involving
24 residential real estate purchase contracts?

25 A. So one of the -- one of the matters that I can

NEIL J. WERTLIEB, 10/17/2019

1 talk about, because it's listed here under "Public
2 Companies," is William Lyon Homes. William Lyon Homes, at
3 the time of my involvement with them, I believe their
4 business was focused on real estate related investments
5 that were primarily residential. They involved purchases
6 and sales of residential real estate and financing of --
7 of real estate, of residential real estate and residential
8 communities.

9 It's been a few years since I have worked with
10 them, so I may have mischaracterized it slightly, but I
11 was --

12 Q. How long ago?

13 A. I think maybe five or six years ago. Maybe
14 perhaps more. They were -- they were a company that went
15 through -- they were a public company, as I recall. They
16 were taken private. They went through bankruptcy and then
17 they went public again, and I believe before they went
18 public, they did a private placement. I was involved in
19 the bankruptcy, the private placement, and the initial
20 public offering.

21 Q. And would you have drafted their form contracts
22 for them?

23 A. I'm sorry. Their form contracts for?

24 Q. For -- you said it was a homebuilder, so the
25 form contracts they used with their customers?

NEIL J. WERTLIEB, 10/17/2019

1 A. I -- they would have -- they had in-house
2 counsel, as I recall --

3 Q. Okay.

4 A. -- so I would not have been, I would have not
5 been the principal draftsman for their form contracts.

6 Q. So let me jump to another topic. Let's go to
7 1175. And there are a couple of occasions, Mr. Wertlieb,
8 where you use -- you describe the conduct of Mr. Beauchamp
9 as "knew or should have known."

10 And, for example, on page 10 and 12, you use the
11 term "knew or should have known." On page 10 you use it
12 in the second bullet point toward the end, and in page 12
13 you use it at the very top of the page.

14 And so my question is general. When you use
15 that term "knew or should have known," what ethical rule
16 does that characterization or that description apply to?

17 A. I don't know that I can answer that in the
18 abstract. It depends on the particular context and
19 whether I'm referencing a rule as opposed to standard of
20 care.

21 Q. All right. So in your case, in this rebuttal
22 report when you use it on pages 10 and 12, in what context
23 are you using it? Are you talking about standard of care
24 or are you talking about ethical rule application?

25 A. I -- I'd have to read this. Would you like me

NEIL J. WERTLIEB, 10/17/2019

1 to take the time to read it?

2 Q. Well, you know what? I really have so much
3 ground to cover with you, maybe we will circle back.

4 You don't recall, sitting here today, for
5 example, in the bullet point on page 10, you say, the
6 language is, "Further, as described in my Expert Report,
7 Mr. Beauchamp knew or should have known that Mr. Chittick
8 was not providing the disclosures (whether orally or in
9 writing) that would have been required in order to update
10 and correct the information contained in the 2011 POM."

11 Are you saying there that it has to do with
12 standard of care, as opposed to applying an ethical rule?

13 A. Specifically in this bullet point, I don't see
14 that I'm referring to either the rules or standard of
15 care. I think the -- it is -- based on the record that I
16 reviewed, it was quite clear that -- that updated
17 disclosures were not being provided, and that
18 Mr. Beauchamp knew that, or if he didn't actually know,
19 there was more than sufficient evidence where he should
20 have known. I --

21 Q. So when you -- when you use the term "should
22 have known," you are evaluating the evidence?

23 A. I am -- I am -- I am rendering what I consider
24 to be an expert opinion, based on the record that I have
25 reviewed.

NEIL J. WERTLIEB, 10/17/2019

1 Q. So when you are saying Mr. Beauchamp should have
2 known something, what you are doing is you are looking at
3 the facts and interpreting them.

4 Fair?

5 A. Well, ultimately, all factual determinations
6 should be made by the trier of fact, but what I'm -- what
7 I'm doing in terms of evaluating the conduct of
8 Mr. Beauchamp -- I'm not in his head. I don't -- there is
9 no way for me to know precisely what he knew.

10 If he -- if he has received a communication
11 where a factual statement is made to him in so many words,
12 I think it's reasonable to assume that he knew that, and
13 if he didn't know that, he should have known that. And I
14 think that's the gist of what I'm saying here.

15 Q. So what you are saying is you are not certain
16 that he knew something, so you are providing the
17 additional language, "or he should have known."

18 Fair?

19 A. In the instances where I use that phraseology,
20 and certainly here on page 10, I think what I'm saying is
21 that is knowledge that he either had or he had sufficient
22 information where he should have, he should have known
23 that information.

24 Q. And that would be true at the top of page 12 as
25 well when you use that phrase?

NEIL J. WERTLIEB, 10/17/2019

1 A. I'm sorry. This is the carryover from 11?

2 Q. Yeah. From the prior page 11.

3 A. Yes. In this context, I think it is quite clear
4 that objectively, anybody who looked at this would have
5 known that Mr. Chittick and DenSco were continuing to
6 offer securities, that they were doing it without adequate
7 information being provided to investors, and therefore
8 Mr. Beauchamp should have known, or in fact knew, that his
9 client was committing securities fraud.

10 Q. Providing the qualifier "should have known,"
11 because you can't say with certainty what he knew at that
12 time?

13 A. I think -- well, I'd have to dig around a little
14 bit more to see if that's specifically what I meant in
15 this instance, but generally speaking, I think that's
16 what -- what I would intend with that phrase. Either --
17 either I have come to the conclusion that he either knew,
18 or there is sufficient evidence that he would have seen at
19 the time that he should have known.

20 Q. Let me switch topics, if I could. I wanted to
21 ask you about opinions you have rendered in other cases.

22 Have you ever had a court or an arbitrator
23 either limit or exclude opinions in any matters?

24 A. So I assume you are asking about Daubert
25 challenges?

NEIL J. WERTLIEB, 10/17/2019

1 Q. Well, not just Daubert challenges --

2 A. Okay.

3 Q. -- but that would be included.

4 what I'm really asking for is, do you recall,
5 sitting here today, any instances where you were a
6 testifying expert and a court determined that your
7 opinions should be either limited or excluded, either for
8 Daubert or other reasons?

9 A. So my -- my recollection is that I have never
10 had testimony excluded or -- or opinions excluded on the
11 basis of Daubert.

12 There was one case that I was involved in where
13 there was -- there was an objection to my testimony about
14 the specific conduct of a -- of a defendant in a criminal
15 matter, and I -- my understanding is that a portion of my
16 opinions were -- were excluded on the basis that I would
17 have been testifying as to hearsay.

18 Under California law, there is the Sanchez
19 decision that touches on expert testimony that introduced
20 what would be otherwise excluded as hearsay statements,
21 and I -- my recollection is there is a -- there was an
22 exclusion of or a prohibition on my testifying as to the
23 specific state of mind of the individual, but no
24 limitation on my opinions generally as to the context, the
25 documents that he was a party to and corporate governance,

NEIL J. WERTLIEB, 10/17/2019

1 which was really the core of --

2 Q. What was the name of that case? Do you
3 remember?

4 A. I don't. It was a criminal case. I think it
5 might have been United States versus Miller, if I am
6 remembering correctly.

7 Q. Any other matters where your opinions were
8 either limited or excluded by a court or an arbitrator?

9 A. So the only other thing, which I don't -- I
10 don't think really addresses the question you are getting
11 at, but of course I have been on the stand testifying in
12 court where questions were posed to me, objections were
13 raised by opposing counsel, and the judges have upheld the
14 objections. In those circumstances, that happens.

15 Q. Yeah. And I'm not asking about that. I'm
16 really asking about a formal court ruling based on counsel
17 argument.

18 A. Yeah.

19 Q. Do you recall any other instances where a judge
20 limited what you could say at trial?

21 A. That's the only one that I can remember.

22 Q. Okay.

23 A. I believe that's the only one that -- where
24 that's happened.

25 (Deposition Exhibit No. 1179 was marked for

NEIL J. WERTLIEB, 10/17/2019

1 identification.)

2 Q. (BY MR. DeWULF) Is this the Miller matter you
3 are referring to?

4 A. Yes.

5 Q. And this is where the court made rulings as to
6 what you could and couldn't testify about?

7 A. I'm not sure I have seen this before, but I --
8 but I trust that this is the order that I was referring
9 to.

10 Q. Well, let me just ask.

11 Was the judge Judge Wu in your matter?

12 A. Perhaps.

13 Q. You don't remember?

14 A. I don't recall.

15 Q. But do you recall that it involved U.S. versus
16 Miller?

17 A. That was my recollection, yes.

18 Q. And this does appear to be a decision in that
19 case, right?

20 A. Yes.

21 Q. And it's -- the proceedings are United States'
22 Motion in Limine to Exclude the Testimony of Neil
23 wertlieb, correct?

24 A. Correct.

25 Q. All right. Any reason to believe this isn't the

NEIL J. WERTLIEB, 10/17/2019

1 court's ruling as it related to your ability to testify at
2 trial on certain matters?

3 A. Right. This -- just to clarify, this only
4 pertained to certain of the matters that I was -- I was
5 engaged to testify. This did not preclude me from
6 rendering opinions and offering testimony in other areas,
7 but, yes, it appears to be that order that you are
8 referring to.

9 MR. DeWULF: Let's take a short break. It's
10 been about an hour.

11 VIDEOGRAPHER: The time is 11:03 a.m. We are
12 going off the record, ending media two.

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

15 VIDEOGRAPHER: My name is Mary Onuschak with the
16 firm of Legal Video Specialists, Phoenix, Arizona. This
17 begins media three of the videotaped deposition of Neil J.
18 Wertlieb. The time is 11:14 a.m. We are now back on the
19 record.

20 Q. (BY MR. DeWULF) Mr. Wertlieb, could we look at
21 Exhibit 1174, which contains your initial report, and I
22 want you to go to page 10 of the report.

23 A. Yes, sir.

24 Q. Toward the top of that page, about six lines
25 down, a sentence begins "The Freo Lawsuit."

NEIL J. WERTLIEB, 10/17/2019

1 Do you see that?

2 A. I do.

3 Q. And you have referenced the Freo lawsuit as the
4 first red flag in this case, right?

5 A. Right.

6 Q. And the sentence reads, "The Freo Lawsuit put
7 Mr. Beauchamp on notice that DenSco's 2011 POM may be
8 materially misleading because, if the allegations in the
9 complaint were correct, DenSco was not following the
10 methodology and procedures stated in the 2011 POM for
11 funding its loans."

12 Did I read that correctly?

13 A. You did.

14 Q. What about the lawsuit would have informed
15 Mr. Beauchamp that DenSco was not following its
16 methodologies and procedures?

17 A. My recollection is that the complaint itself
18 alleged that there were -- there were two liens that were
19 placed on a property that Mr. Menaged or one of his
20 borrowing entities purportedly acquired; that -- that the
21 DenSco lien had been recorded days after a lien that was
22 recorded for the benefit of Active, another lender, and
23 that that should have put or did put Mr. Beauchamp on
24 notice that there were multiple liens placed on the
25 property in connection with a purported acquisition of

NEIL J. WERTLIEB, 10/17/2019

1 that property.

2 Q. When you say "multiple liens," what you are
3 saying is that in the Freo lawsuit there is a reference to
4 two liens being placed on the property that's the subject
5 of litigation, correct?

6 A. Correct.

7 Q. One from DenSco and one from Active Funding?

8 A. Correct.

9 Q. And you are saying that -- well, let's --
10 let's -- let me show you Exhibit 111 previously marked in
11 this case, and let's just thumb to the lawsuit. I think
12 you are referencing, in the complaint, paragraph 20. It's
13 a few pages back in Exhibit 111.

14 A. I see paragraph 20, yes.

15 Q. Is that the paragraph you are referring to that
16 relates to the concern about multiple liens on the
17 property?

18 A. It certainly relates to that. I -- I'm not sure
19 I would say that's the only paragraph that's relevant, but
20 certainly that makes -- that paragraph does make the
21 statement you are summarizing.

22 Q. What other paragraph in this complaint would
23 have raised concerns or should have raised concerns for
24 Mr. Beauchamp?

25 A. I'd have to look at it more closely, but...

NEIL J. WERTLIEB, 10/17/2019

1 Q. In your review, would you confirm for me that
2 the complaint does not specify which loan had a prior
3 position or a superior position over the other?

4 A. That paragraph does not, but as I recall, I
5 saw -- I saw evidence of the recording dates. I don't
6 recall where I pulled that from.

7 Q. All right. So --

8 A. But I --

9 Q. -- let's look at this from the perspective of
10 Mr. Beauchamp. Exhibit 111 is informing him of a lawsuit
11 that's been -- recently been filed.

12 Is there anything in this packet that would have
13 told Mr. Beauchamp that there were issues with respect to
14 DenSco having an inferior lien to another lender on this
15 property?

16 A. Well, the fact that there are multiple liens,
17 there are two liens on the property, indicates that there
18 is at least a conflict. It doesn't necessarily suggest
19 it's an inferior lien that would relate to the priority as
20 between the two liens. But the fact that there are two
21 liens, that would be -- that is a troubling situation.

22 Q. Having two liens on a property could be
23 explained in a whole number of ways, right?

24 A. There -- there could be reasons for multiple
25 liens on a single property, correct.

NEIL J. WERTLIEB, 10/17/2019

1 Q. Would you agree with me it wouldn't necessarily
2 reflect a larger issue at DenSco? Fair?

3 In other words, the lawsuit talks about one
4 instance on one property. It does not indicate that there
5 are problems on any other properties. Fair?

6 A. In and of itself, it does not. It really goes
7 to the question of how could it be that there are two
8 liens competing for priority on a single property.

9 Q. If there were, if it were clear that the DenSco
10 lien had priority, then it wouldn't be a problem?

11 A. No, not necessarily. There still may be issues
12 as to -- my understanding is that there is a presumption,
13 if there are competing liens on the same collateral or
14 same piece of real property here, that the priority would
15 go to the lienholder who filed first. At least that's the
16 presumption, but that doesn't mean that that's necessarily
17 the end result, nor does it mean that there is not going
18 to be a challenge as to the priorities. So the fact that
19 there are two liens in and of itself is troubling,
20 regardless of the sequence.

21 Q. And what is your understanding based on, what
22 you just said?

23 A. My understanding of the law as it relates to
24 secured lending.

25 Q. In Arizona?

NEIL J. WERTLIEB, 10/17/2019

1 A. Under the UCC, which -- which, as I understand
2 it, is followed to a large extent in Arizona.

3 Q. So you think that Arizona follows UCC as it
4 relates to the priority of real estate liens?

5 A. I think for this particular issue, that's --
6 that's my understanding.

7 Q. Okay. And who told you that?

8 A. I --

9 Q. Just your own research?

10 A. I don't recall. I think that's generally the
11 law, as I understand it. Whether that's specific to
12 Arizona or not, I'm not aware that Arizona has a -- has a
13 different view on what I just summarized.

14 Q. Have you looked at the area of purchase money
15 mortgages and what might apply there in terms of
16 priorities?

17 A. I don't know that that would be any different.

18 Q. What do you understand that area of the law to
19 mean?

20 A. Well, if you are asking in terms of priority of
21 competing liens, if a -- if the liens are legitimately --
22 if the collateral interest is legitimately granted, if
23 it's held by a legitimate lienholder, if a filing is
24 promptly and -- promptly made in compliance with the
25 regulatory requirements, priority is typically given to

NEIL J. WERTLIEB, 10/17/2019

1 that lender or lienholder that filed first, on the basis
2 that by filing they put all the other lienholders, all
3 subsequent lienholders, on notice that there is a
4 priority.

5 Q. What if one lender's money was used to purchase
6 the property and the other lender's money was not? Would
7 that affect the priority of liens?

8 A. Regardless of the sequence of the filing?

9 Q. Regardless of the timing of the liens being
10 recorded.

11 A. Well, it would -- it would depend on -- depends
12 on -- I mean, it's -- I don't think I could answer that
13 hypothetical without more information.

14 If somebody asserts a lien on a property where
15 they have made a loan that has nothing to do with the
16 property or the borrower, then that's not a valid lien.

17 Q. Now let me change the facts. What I'm asking
18 you is, does it make a difference whether one lender,
19 their money was actually used to purchase the real
20 property, and the other lender is just secured by the
21 property?

22 A. I'm not sure it matters. Dollars generally are
23 fungible, so it's really a question of who files first.

24 Q. Okay. So your opinion is that, or at least your
25 knowledge which you bring to bear in this case, is that

NEIL J. WERTLIEB, 10/17/2019

1 the timing of the recording of the lien governs, no matter
2 what?

3 A. That's not what I said, no.

4 Q. Didn't you just say that if one lender has
5 recorded their lien representing their deed of trust
6 before another lender and their deed of trust, it will
7 have a superior position?

8 A. Well, assuming that they are valid liens, that
9 they are supported by proper documentation, that they are
10 recorded properly. I mean, there are a number of
11 assumptions, but assuming that all other things being
12 equal, then I think it's fair to say that priority goes to
13 the first lienholder, but that doesn't mean there is not
14 going to be a challenge by the subsequent lienholder.

15 Q. When you say "first lienholder," you mean the
16 one that has the superior or the earlier recorded lien?

17 A. Correct.

18 Q. All right. So let me ask, back to your report,
19 did you review the pleadings in the Freo lawsuit beyond
20 the pleadings that are attached in Exhibit 111?

21 A. Well, I recall seeing the dates of the filings,
22 the recordings, and I don't recall where that information
23 came from.

24 Q. My question is a little different. It has to do
25 with your research.

NEIL J. WERTLIEB, 10/17/2019

1 Beyond looking at the documents that are
2 attached to Exhibit 111, which are the summons, a portion
3 of the complaint, and a certificate of compulsory
4 arbitration, did you review any other pleadings in the
5 Freo matter?

6 A. Yeah, I don't recall. I did -- I did see other
7 information. It may have come from other pleadings, but I
8 don't recall.

9 Q. Okay. So I've looked at your report and I have
10 looked at the matters and materials that you identified as
11 having been reviewed and upon which you relied. I didn't
12 see anything in the Freo litigation beyond this initial
13 set of emails.

14 But do you remember one way or the other whether
15 you reviewed anything else?

16 A. I don't specifically recall.

17 Q. Okay.

18 A. I do recall seeing information about the
19 dates --

20 Q. All right.

21 A. -- of the recording of the liens, and I -- I
22 don't recall where that came from.

23 Q. Okay. You see in this email on the cover of 111
24 that the client is telling Mr. Beauchamp that
25 Mr. Beauchamp has a lawyer who is working on it and it's

NEIL J. WERTLIEB, 10/17/2019

1 okay to piggyback.

2 Do you see that language?

3 A. That Mr. Menaged has a lawyer, right?

4 Q. Right. Mr. Menaged has a lawyer, and it's okay
5 for DenSco to piggyback on the work of Menaged's lawyer.

6 Is that a fair reading?

7 A. I see Mr. Chittick saying that he is okay to
8 piggyback, yes.

9 Q. Right.

10 And you say in your report that this is a clear
11 conflict of interest.

12 Do you recall that?

13 A. Yes.

14 Q. It's on page 10.

15 whose conflict is it?

16 A. I think it's a conflict -- there is not an
17 alignment of interests between DenSco's and Easy
18 Investments. So relying on Easy Investments' defense of
19 this lawsuit and Easy Investments' or Mr. Menaged's
20 counsel to represent both Easy Investments and DenSco,
21 there is an inherent conflict.

22 Q. So Mr. Menaged's counsel has a conflict?

23 A. Well, I think it's broader than that. I
24 think -- my statement isn't related to the Rules of
25 Professional Conduct that would apply to Easy Investments'

NEIL J. WERTLIEB, 10/17/2019

1 counsel. It's more generally there is a conflict between
2 DenSco's interests and the -- and the interests of Easy
3 Investments, and to rely on the defense that's being
4 presented by Easy Investments and Easy Investments'
5 counsel, creates a conflict of interest for DenSco going
6 forward.

7 Q. And why are the interests not aligned between
8 Easy Investments and DenSco in connection with the Freo
9 lawsuit?

10 A. I think the Freo lawsuit presents evidence, just
11 based on the one paragraph we were looking at in the
12 complaint, that suggests that Mr. Menaged and Easy
13 Investments may be double liening properties, may be
14 taking loans on properties in excess of the purchase
15 price, that perhaps there are -- there is a defect in the
16 work that Mr. Chittick is doing on behalf of DenSco which
17 helped to facilitate that.

18 But in any event, there is a conflict, because
19 this case at least in part relates to a double-liened
20 property, and which implies potentially wrongdoing on the
21 part of Easy Investments or -- and/or improper lending
22 procedures on the part of DenSco. And in my opinion,
23 there is an inherent conflict in -- in how both those
24 parties should interact with each other in the defense of
25 the Freo lawsuit.

NEIL J. WERTLIEB, 10/17/2019

1 Q. Did the Freo lawsuit and the ultimate court
2 order in that case relate at all to the priority of liens
3 between DenSco and Active Funding Group?

4 A. My understanding is that the law -- that the
5 claim was being made to expunge both liens, but there were
6 still -- there were still two loans that had been provided
7 to Mr. Menaged in connection with his purported
8 acquisition of the property.

9 where that money went, how and whether it's ever
10 going to be returned to DenSco is -- is a fundamental part
11 of the case that Mr. Beauchamp should have been focused
12 on.

13 And if Mr. Menaged is engaged in fraud or some
14 kind of improper behavior, which limits or restricts
15 DenSco's ability to get a full refund of the loan
16 proceeds, then Easy Investments and Mr. Menaged's
17 interests, and therefore the representation by Mr. Goulder
18 on their behalf, is in conflict with the interests of
19 DenSco.

20 Q. Let me go back to my question.

21 My question is, whether the litigation and the
22 court's ultimate determination had anything to do with a
23 priority of liens between the Active Funding Group loan
24 and the DenSco loan?

25 A. As I'm suggesting, it's implicit in the lawsuit

NEIL J. WERTLIEB, 10/17/2019

1 more generally, but the end result of expunging both
2 liens, from the court's perspective, I think probably
3 didn't matter as to the priority of those two liens.

4 Q. So you are saying the court's determination in
5 that case didn't relate to the priority of liens.

6 Is that fair?

7 A. My understanding of the case is that
8 the prior -- the priority as between Active and Easy, I'm
9 sorry, Active and DenSco, as to each other, was not
10 relevant to the court in its -- in its final resolution of
11 the case, but that is separate and apart from the interest
12 of DenSco in the case.

13 Q. Let me show you Exhibit 113. It's been marked
14 previously. I think you probably have seen this.

15 A. Yes, sir.

16 Q. This is kind of a follow-up set of emails after
17 the Freo litigation email we saw a moment ago, where David
18 Beauchamp is saying, "we will need to disclose this in
19 POM."

20 Do you see that?

21 A. I do.

22 Q. And do you know why he thought it was
23 appropriate to put this -- report this lawsuit in the POM?

24 A. It's impossible for me to know with certainty,
25 because he doesn't say here and I'm not in his head. I

NEIL J. WERTLIEB, 10/17/2019

1 think he must have -- my -- my assumption, which I think
2 is reasonable, is he must have -- he must have determined
3 that it was material to DenSco, which is why it would
4 generally need to be included or added to the POM.

5 So I think it's a reasonable inference that
6 he -- he, based on his understanding of the case, whether
7 it's from the attachment or information that Mr. Chittick
8 shared with him, he determined that this was a material
9 event.

10 Q. Did you note, from reviewing the various
11 versions of the POM for DenSco, that any litigations would
12 be revealed as a part of the disclosures?

13 A. I don't recall.

14 Q. Would it be material that DenSco was in
15 litigation?

16 A. Not necessarily. The mere filing of a lawsuit
17 against an issuer is not necessarily a material event that
18 rises to the level of a mandatory disclosure under
19 Rule 10b-5, for example, of the securities laws.

20 Q. Okay. So a matter where DenSco is a defendant
21 in a litigation would not necessarily be a material event
22 for disclosure?

23 A. That's correct.

24 Q. Okay.

25 A. Like, for example, if DenSco had failed to pay a

NEIL J. WERTLIEB, 10/17/2019

1 janitorial bill of \$100 and was sued for collection, I
2 would -- I would venture to say that's not material and
3 probably not something Mr. Beauchamp correctly would have
4 determined needed to be in the POM.

5 Q. So let me show you Exhibit 112. It wasn't
6 clear. I don't believe this was in the matters that you
7 reviewed or that were a part of your report, as far as we
8 could tell.

9 But let me ask you, if you look at it, it's --
10 part of this email chain we have been looking at in the
11 very top, Menaged is communicating to Chittick on June 14,
12 "Please bill me for yours services and utilize my attorney
13 for anything you may need."

14 Do you remember seeing this email?

15 A. I do, and it's referenced in footnote 37 on
16 page 10 of my report.

17 Q. Great. So then let's go to exhibit -- actually,
18 we have got to mark this.

19 (Deposition Exhibit No. 1180 was marked for
20 identification.)

21 Q. (BY MR. DEWULF) I'm going to -- before I ask
22 you about that, let me ask you a background question, if I
23 could, Mr. wertlieb.

24 Your -- do you recall David -- David Beauchamp's
25 testimony about his follow-up with Mr. Chittick after they

NEIL J. WERTLIEB, 10/17/2019

1 learned of the Freo litigation?

2 A. I don't recall. My report may refer to it, but
3 I don't --

4 Q. Do you remember --

5 A. -- specifically recall.

6 Q. Do you remember Mr. Chittick in effect telling
7 Mr. Beauchamp to stand down on it; that he wanted -- he
8 didn't want him to do any work on it?

9 A. I -- I don't recall.

10 Q. Okay. would that affect your opinion at all if
11 that were true?

12 I know there are many times when you don't find
13 what Mr. Beauchamp says as credible. I have seen it in
14 your report.

15 A. Right.

16 Q. But if Mr. Beauchamp were to testify that
17 Mr. Chittick told him to stand down and not do any further
18 work on the Freo matter, would that affect your opinion in
19 any way?

20 A. Affect -- well, I -- let me state it this way.
21 My -- my opinion is, the core of my opinion, where we
22 started on this topic, is this is the first of four red
23 flags.

24 I think the Freo lawsuit, regardless of whether
25 he follows up with Mr. Menaged's counsel or not, this is

NEIL J. WERTLIEB, 10/17/2019

1 the first indication that I'm aware of in the record where
2 Mr. Beauchamp is on notice that there may be a
3 double-liening problem, which evidences either
4 Mr. Menaged's fraud and/or Mr. Chittick's lax -- lax
5 lending procedures.

6 So it's a red flag warning in that sense, just
7 based on -- on the email correspondence we have previously
8 looked at.

9 Q. If the client, Mr. Chittick, told Mr. Beauchamp
10 that he wanted to be aware of the Freo litigation, but not
11 to perform any further work on it, should he have followed
12 that instruction?

13 A. I would need to know more in order to properly
14 evaluate that. I think the -- I think the complaint
15 itself indicates a problem, and I'd like to think if I
16 were in that situation, I would want to inquire more.

17 I find it odd that a client is saying you need
18 to know about this issue, but don't give any thought to
19 it. Very strange behavior in and of itself. And there is
20 a counter party who is -- who is offering to provide
21 assistance and to pay for that.

22 So it seems like an open invitation and perhaps
23 one that should be pursued. I don't know how to better
24 answer your question, though.

25 Q. When you say "this issue" --

NEIL J. WERTLIEB, 10/17/2019

1 A. Yeah.

2 Q. -- you are talking about the existence of the
3 lawsuit?

4 A. The existence of the lawsuit and the allegation
5 in the lawsuit that there are -- there were two apparently
6 competing liens on the same property.

7 Q. But Mr. Chittick is not communicating that
8 aspect of the lawsuit to Mr. Beauchamp, right?

9 A. Well, I'm not sure what he is communicating.

10 Q. Okay.

11 A. Again, I find it odd that he is communicating
12 the existence of a lawsuit, but potentially also saying
13 don't do anything about it.

14 Q. Because he doesn't view the lawsuit really as
15 affecting his business, right?

16 MR. STURR: Form.

17 THE WITNESS: Well, Mr. Beauchamp clearly viewed
18 it as material, based on the exchange that we saw earlier.
19 He is -- he is telling his client this is a material event
20 that's material to DenSco that requires disclosure to
21 DenSco's investors, and Mr. Chittick readily agrees that
22 yes, let's disclose it. And yet nothing more is done,
23 either in terms of disclosure, nor Mr. Beauchamp following
24 through on the clear offers by both his client and
25 Mr. Menaged to do further work.

NEIL J. WERTLIEB, 10/17/2019

1 Q. (BY MR. DEWULF) So it's your belief that
2 Mr. Beauchamp considers the Freo lawsuit a material event
3 for disclosure because of the language in the lawsuit
4 about there being two loans?

5 A. Well, the email correspondence doesn't --
6 doesn't necessarily link the two.

7 Q. I'm asking about your belief.

8 A. I -- I don't know what else would be material
9 about the lawsuit.

10 Q. Okay. So you --

11 A. The existence of a -- as I suggested earlier,
12 the existence of an immaterial lawsuit is not necessarily
13 a disclosure item.

14 So Mr. Beauchamp presumably, as a securities
15 lawyer, would have come to the conclusion that there is
16 something material about this lawsuit that requires
17 disclosure. And based on what I have seen, there is a
18 material allegation in the lawsuit, which is that a
19 significant borrower of DenSCO is double liening
20 properties.

21 Q. You are speculating as to why he would believe
22 that this would need to be reported, right?

23 A. Correct. I have -- I haven't seen anything that
24 directly connects those dots, but I also don't see
25 anything else that's material in the Freo lawsuit.

NEIL J. WERTLIEB, 10/17/2019

1 Q. Let's look at Exhibit 1180.

2 A. Yes.

3 Q. Do you have it in front of you?

4 A. I do.

5 Q. The top of the page. I don't think this
6 document was in the matters that you referred to or
7 reviewed, and they are not -- it's not identified.

8 If you look at the top of the first page on
9 Exhibit 1180, Denny Chittick, on June 14, is saying to
10 Menaged: I'm going to keep him from running up
11 unnecessary bills. Just talk to your guy and hand it off
12 to him. Thanks, DC.

13 Do you see that?

14 A. I do.

15 Q. Have you seen this document before?

16 A. I don't recall seeing this, no. It may have
17 been included in the materials provided to me, but I don't
18 specifically recall.

19 Q. There is nothing in the lawsuit itself which
20 would reveal, other than the fact that there are two
21 different loans, that DenSco was not following the
22 methodology and procedure stated in their 2011 POM,
23 correct?

24 A. I think that's probably correct.

25 Q. You also, I think, are opining that the Den --

NEIL J. WERTLIEB, 10/17/2019

1 or the Freo lawsuit reveals that DenSco was not doing its
2 due diligence in connection with making loans.

3 Is that -- were you surmising that from the
4 existence of the Freo lawsuit?

5 A. I'm sorry. Can I ask you where you are reading
6 from?

7 Q. I'm just asking, is that your opinion? Is it
8 your opinion or not?

9 A. Can I have the question again, please?

10 MR. DeWULF: Yeah. Would you read it back,
11 Kelly.

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

13 THE WITNESS: well, to put it in the context,
14 again, the Freo lawsuit is the first of four red flags. I
15 think there is over -- over the time period from June of
16 2013 to January of 2014, it becomes more and more clear to
17 Mr. Beauchamp that Mr. Chittick is not following proper
18 procedures. This is the first red flag that provides
19 evidence that there is a double-liening issue with respect
20 to DenSco's loans.

21 And, again, there may be other explanations for
22 it, but the principal concerns that would -- that would go
23 to materiality, which is the conclusion Mr. Beauchamp
24 reaches, is either that Mr. Menaged is doing something
25 improper and/or Mr. Chittick is doing something improper.

NEIL J. WERTLIEB, 10/17/2019

1 Q. (BY MR. DEWULF) So -- and I did. It is a
2 footnote, but I think you are referencing the plaintiff's
3 disclosure statement. I think that the -- it's
4 footnote 34, page 10.

5 But going back to my question, is it your
6 testimony that the Freo -- the presence of the Freo
7 litigation revealed that DenSco was not performing due
8 diligence on its loans?

9 A. Again, the existence of -- the allegation of
10 double liens, if true, suggests that there is a problem,
11 that Mr. Menaged is either committing fraud and/or
12 Mr. Chittick is not following procedures.

13 Q. And by your testimony, "Mr. Chittick is not
14 following procedures," you are saying Mr. Chittick must
15 not have been doing his due diligence as it related to
16 appraisals and securing superior lien positions?

17 A. Well, yes as to the second part of that.
18 Appraisals is -- I'd have to think about that. I'm not
19 sure that's directly implicated by the -- by the Freo
20 lawsuit. It may be, if the value of the property exceeds
21 the amount lent under both competing loans. So maybe it
22 implicitly deals with appraised values, but primarily it
23 has to do with -- with the procedures to be followed in
24 ensuring that DenSco's loans are in a first-lien position,
25 as disclosed in the 2011 POM.

NEIL J. WERTLIEB, 10/17/2019

1 Q. Let's go to page 51 of your report, the top of
2 the page.

3 A. Yes, sir.

4 Q. Is it your opinion that, at the top of the
5 page 51, "Upon becoming aware of the Freo lawsuit,
6 Mr. Beauchamp should have advised Mr. Chittick of the
7 following action items, and should have assisted him in
8 the completion of these action items," and you are saying
9 as of that date, June 2013, he should have done all of
10 these itemized bullet points?

11 A. That's my opinion, yes.

12 Q. All right. And that's as of having received,
13 then, the exhibits we just saw a moment ago, 111 and 112,
14 that should have prompted him to do all these things?

15 A. Correct.

16 Q. All right. So let's go through them.

17 "Investigate the policies and procedures, and
18 the trustworthiness, of Mr. Menaged and his affiliated
19 entities," that's bullet point number one, correct?

20 A. Correct.

21 Q. So the client has to pay for this work, right?

22 A. Well, what this is referring to is actions that
23 Mr. Chittick can and should take, and Mr. Beauchamp should
24 have assisted him in the completion of these items.

25 Q. Right.

NEIL J. WERTLIEB, 10/17/2019

1 A. So Mr. Chittick is not paying for his own
2 services, but to the extent that Mr. Beauchamp would have
3 been involved, yes, you are right, that would be an
4 incremental expense.

5 Q. So when you say Mr. Beauchamp should have
6 assisted him, that would have been legal efforts he would
7 have expended, upon which he would have rendered a bill?

8 A. That incremental piece, yes.

9 Q. Okay. So Mr. Beauchamp should have told
10 Mr. Chittick to investigate his own policies and
11 procedures regarding making loans?

12 Is that what your testimony is?

13 A. I'm sorry. Which bullet point are you on?

14 Q. First bullet point.

15 A. The first bullet point relates to Mr. Menaged,
16 not Mr. Chittick.

17 Q. Good. Thank you for the clarification.

18 So Mr. Chittick should investigate the policies
19 and procedures and trustworthiness of Mr. Menaged and his
20 entities?

21 A. His affiliated entities, yes.

22 Q. How would he do that?

23 A. Well, I think the problem here is there -- there
24 appears to be two liens on the same property that were put
25 in place by Mr. Menaged. I think as at a starting point,

NEIL J. WERTLIEB, 10/17/2019

1 Mr. Chittick should have reached out to Mr. Menaged and
2 asked him: How can this be? How did that happen?
3 Provide me with an explanation so that I can evaluate my
4 lending procedures and my ability to trust you on a
5 go-forward basis. You are a significant borrower of mine,
6 a significant portion of my business. Help me understand
7 how this could possibly happen.

8 Q. What if he just says it was a mistake and I'll
9 clear it up.

10 Is that enough?

11 A. I don't think that simply saying it was a
12 mistake that won't happen again, I don't think is
13 sufficient.

14 Q. What more should he have done?

15 A. I -- I would want to understand the paperwork.
16 I mean, these are interrelated bullet points. If you look
17 at the second to last bullet point, "contact the other
18 lender to investigate the allegations." If Mr. Menaged
19 said it's just a paperwork issue, communicating with
20 Active would have demonstrated, no, that's incorrect.
21 There were actually two loans, and it wasn't a paperwork
22 issue.

23 So, yes, the initial inquiry could have simply
24 been Mr. Chittick picking up the phone and asking
25 Mr. Menaged, how do you explain this problem, but then he

NEIL J. WERTLIEB, 10/17/2019

1 had the ability to reach out to Active to verify what
2 Mr. Menaged might have told him.

3 Q. What if -- I know there is a lot of detail here
4 and we have got a lot of subject matter to cover, but you
5 are saying that Mr. Beauchamp should have advised
6 Mr. Chittick to do each of these bullet-pointed items,
7 correct?

8 A. Correct.

9 Q. And he should have assisted him, assisted
10 Mr. Chittick in that process, right?

11 A. Correct.

12 Q. Now, one of the bullet points is that he
13 should -- it's the third bullet point. Well, let me go
14 back.

15 The second one says: Investigate where the
16 excess funds from two different mortgages -- mortgage
17 loans went.

18 Are you asking there, or are you pointing out
19 that Menaged needed to explain what he did with the money?

20 A. Yes.

21 Q. Okay. And then the next point is, "suspend
22 making any further loans to Mr. Menaged and all entities
23 managed by Mr. Menaged."

24 You are saying he should stop lending money to
25 Menaged based on the existence of the Freo lawsuit?

NEIL J. WERTLIEB, 10/17/2019

1 A. Correct.

2 Q. And then the next point is: Review all other
3 outstanding loans and his affiliated entities to confirm
4 that DenSco was the only lender on the property with the
5 first lien deed of trust.

6 Did I read that correctly?

7 A. Yes.

8 Q. Next point is: Review and reevaluate DenSco's
9 internal procedures; contact the other lenders, the next
10 bullet point; and the final one is evaluate the accuracy
11 of the disclosures in the 2011 POM, and update and correct
12 them as may be necessary, based on whatever the
13 investigation revealed, right?

14 A. Correct.

15 Q. So what does Mr. Beauchamp do if Mr. Chittick
16 says: This is way too much, way too soon. I'm not ready
17 to do all this. I don't think that the existence of this
18 Freo lawsuit justifies me to do any of those things?

19 what does he -- what does Mr. Beauchamp do?

20 A. He should push back on Mr. Chittick in that
21 situation.

22 Q. And what if that doesn't do any good?

23 A. Well, you are posing a hypothetical where he
24 didn't even do the basic actions that Mr. Beauchamp and
25 Mr. Chittick apparently agreed to, which was to supplement

NEIL J. WERTLIEB, 10/17/2019

1 the 2001 POM to include some disclosure of the Freo
2 lawsuit. That doesn't even happen, so you are asking --

3 Q. But there is no timing on that, right? That --
4 you think that that POM has to be updated immediately
5 because of the Freo lawsuit?

6 A. I think when there is -- when you have -- when
7 you are engaging in a continuous offering, as DenSco was,
8 if there is a material event that occurs, updated
9 disclosures should be made immediately, and certainly
10 before the next investor commits another dollar.

11 Q. And can that disclosure be made orally?

12 A. Depends on the circumstances.

13 Q. Can it in this case? Can -- could the existence
14 of the Freo lawsuit be shared with the investors orally
15 without having to update the POM?

16 A. I -- I would say based on the language contained
17 in the 2011 POM and possibly the language contained in the
18 applicable subscription agreements, no.

19 Q. Okay. So is it your opinion that Mr. Beauchamp
20 could never advise the client, Mr. Chittick, to orally
21 disclose any material information because of the language
22 in the 2011 POM and the language in the subscription
23 agreements?

24 A. It's not -- it's not a question of whether or
25 not disclosures can be made orally. The issue for me is

NEIL J. WERTLIEB, 10/17/2019

1 whether oral disclosures satisfy the 10b-5 requirement
2 under the securities laws.

3 So of course disclosures can be made orally all
4 the time, and they should be. There should be
5 communications between Mr. Chittick and the investors.
6 That's good business relationships. That's -- that
7 promotes the comfort, if you will, of the investors, but
8 that does not -- under these circumstances, that does not
9 satisfy the disclosure requirements imposed under federal
10 securities laws on DenSco as the issuer.

11 Q. So putting aside the language in the POM, 2011
12 POM, putting aside the language in the Subscription
13 Agreement, you agree that the securities laws would allow
14 oral disclosures of material information. It need not
15 always be in writing.

16 True?

17 A. Well, it depends on the circumstances. There --
18 there -- under -- under the -- under Regulation D in
19 offering securities solely to accredited investors where
20 no disclosures are made, there is no affirmative
21 obligation to make further disclosures when you haven't
22 made any disclosures.

23 So there is nothing -- there is nothing that
24 mandates, in the absence of any context, disclosures to
25 accredited investors.

NEIL J. WERTLIEB, 10/17/2019

1 Q. That confuses me.

2 Let me ask a --

3 A. Yeah.

4 MR. STURR: I'm sorry. Did you get a chance to
5 finish your --

6 He was still finishing.

7 Q. (BY MR. DeWULF) Are you finished?

8 A. I'm fine. Thank you.

9 Q. Let me just ask maybe a better question.

10 The securities laws, as long as the issuer is
11 complying with 10b-5, allow the issuer to disclose
12 information orally and not in writing.

13 Fair?

14 A. Let me think about this. You are asking whether
15 oral disclosure, solely providing oral disclosures,
16 complies with the securities laws, as long as it --
17 assuming that there is not a 10b-5 issue?

18 Q. Yes.

19 A. I would say, solely looking at the federal
20 securities laws, that that may be correct, but that does
21 not mean that that's not a violation of the standard of
22 care by a securities lawyer. I think there is compelling
23 reasons why things should be in writing for the benefit of
24 the client.

25 Q. And I'm not asking -- you are going beyond my

NEIL J. WERTLIEB, 10/17/2019

1 question, and I --

2 A. I just wanted to clarify that.

3 Q. -- think you are agreeing with me that as long
4 as the disclosures, oral disclosures, comply with
5 restrictions of 10b-5, they can be made orally to
6 investors?

7 A. That may be correct. I would want to ponder
8 that a little more --

9 Q. Okay.

10 A. -- but I'm not -- it's not immediately occurring
11 to me that that's incorrect.

12 Q. Okay. And -- but you may have standard of care
13 concerns --

14 A. Correct.

15 Q. -- and we will talk about that in a moment, but
16 that's just, as a matter of law, that is the case.

17 And I guess taking the other side of it, the
18 securities laws in a Reg D issuance where you have all
19 accredited advisors under 506, does not require that all
20 material disclosures be in writing.

21 Fair?

22 A. The term is accredited investors. If under
23 Regulation D, Rule 506, if the -- and Rule 502 read
24 together, if the only investors are accredited investors
25 and no disclosures are provided -- I'm sorry. Let me take

NEIL J. WERTLIEB, 10/17/2019

1 that back -- and the only disclosures are made orally --
2 I'm sorry. I lost the train of thought on your question.

3 Q. It would comply with the securities laws, so
4 long as it doesn't violate 10b-5, right?

5 A. There is -- right. The -- when you solely have
6 accredited investors in an offering where there has been
7 no written disclosures, and therefore no reason to correct
8 written disclosures, I think -- I think it is correct to
9 say that Regulation D would not mandate a written
10 disclosure, Regulation D read in isolation, not
11 considering any other aspects of federal securities laws.

12 Q. All right. So let me go back to your report,
13 page 51, your footnote 206.

14 A. Yes.

15 Q. You say, "If, instead, the Defendants had
16 investigated and done proper due diligence with respect to
17 the red flag warning raised by the Freo Lawsuit at or
18 around the time that Mr. Beauchamp transitioned from Bryan
19 Cave to Clark Hill, they would have discovered the
20 magnitude of the damage caused by the Menaged fraud and
21 Mr. Chittick's failure to follow proper funding
22 procedures."

23 Did I read that correctly?

24 A. Yes.

25 Q. Now, the Freo lawsuit comes to light in June of

NEIL J. WERTLIEB, 10/17/2019

1 2013, right?

2 A. Right.

3 Q. He does the transition over to Clark Hill in
4 September of 2013, correct?

5 A. That's my understanding, yes.

6 Q. But you are saying after Mr. Beauchamp learned
7 of the existence of the Freo lawsuit, he should have then
8 done -- investigated and done proper due diligence with
9 respect to what DenSco was doing on its loans?

10 A. You are -- I'm not sure what you are referring
11 to. My bullet points above refer to advice that he should
12 have provided to Chittick. The footnote assumes a certain
13 level of knowledge that Mr. Beauchamp would have had, had
14 he done an investigation.

15 Q. Would the investigation have required
16 Mr. Beauchamp to review the entire DenSco loan portfolio?

17 A. Well, that is, essentially that is one of the
18 bullet points that I have above. At least the loans to --
19 to Mr. Menaged and his affiliated borrowing entities.

20 So upon discovering the magnitude of the
21 double-lien problem with Mr. Menaged, I think that would
22 have led Mr. Beauchamp to understand that Mr. Chittick
23 wasn't following proper lending procedures, which then
24 should have led him to investigate loans made to other
25 borrowers in addition to Mr. Menaged and his affiliated

NEIL J. WERTLIEB, 10/17/2019

1 entities.

2 Q. I want to give you a hypothetical.

3 Let's assume, on these bullet points on page 51,
4 Mr. Beauchamp advises Mr. Chittick to perform all of these
5 activities and tells him: I will assist you in whatever
6 way I can. And Mr. Chittick comes back and says: I have
7 done all of those things and everything is fine. This one
8 Freo matter was an anomaly. Don't worry.

9 Is that enough?

10 A. If I were -- if I were in the shoes of
11 Mr. Beauchamp in that situation, I'd want to know what are
12 the results of -- what did you learn? Was there a loan
13 provided by Active? Were there two liens, two loans
14 related to this -- to the acquisition of the property? If
15 so, what happened to the second set of loan proceeds?

16 I'd want to get more answers from my client than
17 simply "don't worry about it."

18 Q. Mr. Chittick says I did all those things, and he
19 goes into detail. All of these things that are bullet
20 pointed on your page 51 of your report: I did all those
21 things. There are no problems with my procedures or
22 practices or my loans. There are no other issues. This
23 Freo is one isolated incidence -- instance, and don't
24 worry.

25 Is that enough for Mr. Beauchamp?

NEIL J. WERTLIEB, 10/17/2019

1 A. Well, it still doesn't answer the question of
2 how there is two liens on a single piece of property.

3 Q. He will just say Menaged screwed up.

4 A. Again, if I were in the shoes of Mr. Beauchamp
5 in that situation, I would want to know what does -- what
6 does that mean? Did he pocket the money that DenSco
7 loaned for the acquisition of the property? What happened
8 to that money?

9 Q. So he says Menaged took the money and he is
10 going to undo it. He is going to fix it.

11 A. That sounds like a fraud on the part of
12 Mr. Menaged, and I would be concerned on my -- on behalf
13 of my client, DenSco.

14 Q. So your testimony or your opinion about standard
15 of care is that in this instance, Beauchamp needs to
16 require the client to do all these things, and if he -- if
17 the client comes back and gives him some short explanation
18 that everything is fine, he ought not to accept that? He
19 needs to go further?

20 A. Well, I think the starting point is he needed
21 to -- he needed to do something. Mr. Beauchamp needed to
22 advise his client to do something. Figure out what
23 happened here. Walk through these bullet points with
24 Mr. Chittick. Get answers to these questions: I will
25 assist you, "I" being the attorney involved, I will assist

NEIL J. WERTLIEB, 10/17/2019

1 you, but you need to get answers to these questions.

2 And if the answers that are presented back from
3 Mr. Chittick, based on his own investigation, excluding
4 counsel, are not credible or they don't answer the
5 question, they don't explain what happened to the money, I
6 mean, that's kind of the key issue, what happened to the
7 money, then if I were in that position, I would be deeply
8 troubled by the responses I was getting.

9 Q. Okay. Let me narrow the hypothetical to this:
10 That Mr. Beauchamp is told by Mr. Chittick, after he gives
11 him all of this advice to do all of these bullet points
12 you have identified, Mr. Chittick comes back and says:
13 There is one problem. It's the Freo problem. There are
14 two loans. Mr. Menaged told me it was a mistake and he is
15 going to return the funds on the DenSco loan.

16 Is that sufficient, in your view, for
17 Mr. Beauchamp to accept what Mr. Chittick is telling him,
18 the client?

19 A. I don't know. I'd still be very troubled,
20 because it appears that Mr. Menaged stole money from
21 DenSco.

22 Q. Is there a scenario under which you believe, in
23 your opinion, as of June of 2013 and the learning of the
24 Freo lawsuit, that Beauchamp was required to evaluate the
25 entire DenSco loan portfolio?

NEIL J. WERTLIEB, 10/17/2019

1 A. No. I think you would have to build to that.
2 So the first, first line of inquiry is what happened with
3 respect to this particular property that's the subject of
4 the Freo lawsuit. And maybe -- maybe perhaps there is a
5 simple, an innocent explanation, and if that's the case,
6 then perhaps that's the end of the inquiry. But as we
7 know, that's not the case.

8 So the more you learn in the course of the
9 investigation that's outlined by these bullet points, the
10 more compelled you are to go to the next level to do a
11 further inquiry and to ultimately find out the magnitude
12 of the problem.

13 Q. Footnote 206 on page 51, which I read from a
14 moment ago, you are indicating that had Mr. Beauchamp done
15 an investigation, he would have learned of the magnitude
16 of the problem, correct?

17 A. Correct.

18 Q. But you are not saying that as of this date, he
19 was required to do his own investigation, right?

20 A. Well, I am saying he should have -- he should
21 have advised his client to -- to do the things outlined in
22 the bullet points. That's what -- that's what he should
23 have done, and assisted Mr. Chittick in doing so.

24 Q. So he could rely on the client to do that work?

25 A. With his assistance and --

NEIL J. WERTLIEB, 10/17/2019

1 Q. Right.

2 A. Just to be clear, and I think I have said this
3 already, it's not just the client doing the work.
4 Mr. Beauchamp should have offered up his assistance, but
5 at the end of the day, he should have heard back from
6 Mr. Chittick as to what actually happened. And if there
7 is a -- a reasonable and legitimate explanation that's
8 credible, that might have been the end of the story, but I
9 think in hindsight we know that's just not -- that
10 couldn't have happened, because that's --

11 Q. Well, in hindsight is not -- we don't have the
12 ability to do that, do we?

13 As an expert, you are here to testify about the
14 conduct of the lawyer, given the facts and circumstances
15 presented to him at that time, correct?

16 A. Correct. But you are asking me a hypothetical,
17 and I'm telling you with respect to that hypothetical,
18 which is not the facts in this case, we know that's not a
19 correct scenario.

20 Q. Well, of course it's a hypothetical. I realize
21 that. I'm giving you facts upon which I am asking you to
22 render an opinion.

23 So let me ask you, is -- is your opinion, as
24 referenced or evidenced in footnote 206, that if
25 Mr. Chittick had not followed the advice as outlined in

NEIL J. WERTLIEB, 10/17/2019

1 these bullet points that you think Mr. Beauchamp should
2 have given, Mr. Beauchamp should have terminated the
3 relationship?

4 A. I think that was one of his -- one of his
5 alternatives, yeah. I think --

6 Q. Is that -- I'm sorry. Go ahead.

7 A. I'm sorry. I was just going to say I think -- I
8 think he was required to take action. And if at the end
9 of the day he had a totally unresponsive client who was
10 continuing to offer securities on the basis of what
11 appears to be a materially deficient POM and there is
12 nothing more he could do about it, I think he should have
13 threatened to resign, and then ultimately resign if
14 nothing changed.

15 MR. STURR: John, I don't want to cut you off,
16 but just passed another hour. It's past noon. When were
17 you thinking of a lunch break?

18 MR. DeWULF: I can do whatever you want. I have
19 got a long ways to go, so -- but I can take a short break.
20 I can take a long break. You -- it's really up to you all
21 in terms of you wanting to eat.

22 MR. STURR: I want to make sure he gets fed.
23 How about if we break now -- and you are the most
24 important person. I always forget that -- and get back
25 here.

NEIL J. WERTLIEB, 10/17/2019

1 How much time do you need?

2 COURT REPORTER: 30 minutes.

3 MR. STURR: 30 minutes?

4 COURT REPORTER: Is that enough?

5 MR. STURR: You want to get back at quarter of?
6 Is that okay, John?

7 MR. DeWULF: Sure. That works for me.

8 MR. STURR: Is that enough time for you, Kelly?

9 VIDEOGRAPHER: Off the record now, Counsel?

10 MR. STURR: Oh, sorry.

11 VIDEOGRAPHER: The time is 12:08 p.m. We are
12 going off the record, ending media three.

13 (A recess was taken from 12:08 p.m. to
14 12:50 p.m.)

15 VIDEOGRAPHER: My name is Mary Onuschak with the
16 firm of Legal Video Specialists, Phoenix, Arizona. This
17 begins media four of the videotaped deposition of Neil J.
18 Wertlieb. The time is 12:50 p.m. We are now back on the
19 record.

20 Q. (BY MR. DeWULF) Thank you.

21 Mr. Wertlieb, we took a little bit of a break
22 just now. I went back through my notes. I have tried to
23 condense them a little bit.

24 My goal is to try to finish everything in about
25 two hours' time, and I think that will still fit your

NEIL J. WERTLIEB, 10/17/2019

1 flight schedule, right?

2 A. That should work.

3 Q. All right.

4 A. Thank you.

5 Q. So let me -- let me ask for you to go to page 11
6 of your report, Exhibit 1174.

7 And at the top of the page, there is a heading
8 "Mr. Chittick's Instruction (the Second of Four 'Red Flag'
9 warnings)."

10 Do you see that heading?

11 A. I do.

12 Q. And this is, in your view, the second of the red
13 flags that Mr. Beauchamp should be aware of, correct?

14 A. Correct.

15 Q. And then you discuss it. And what you are
16 describing is a conversation that occurred on the phone
17 between Mr. Chittick and Mr. Beauchamp, where Mr. Chittick
18 is indicating that he doesn't want to work on the PM --
19 POM for some period of time as of August 2013, correct?

20 A. Right. That's -- that's my understanding from,
21 I believe, Mr. Beauchamp's testimony.

22 Q. Right.

23 And the second paragraph under that heading
24 says: In his deposition, Mr. Beauchamp asserted that the
25 delay in updating the POM was caused by Mr. Chittick, and

NEIL J. WERTLIEB, 10/17/2019

1 that Mr. Chittick instructed Mr. Beauchamp to stop working
2 on the POM in August '13 ("Mr. Chittick's instructions").
3 Based on the record I have reviewed, it appears there is
4 no evidence confirming Mr. Beauchamp's assertion.

5 So let me stop there.

6 You mean no evidence other than Mr. Beauchamp's
7 testimony?

8 A. Correct.

9 Q. All right. And the fact that the POM was not
10 completed within that -- by the end of 2013, correct?

11 A. It was not worked on at all and never completed.

12 Q. So the next sentence reads: while I do not find
13 Mr. Beauchamp's assertion credible under the
14 circumstances, for the reasons discussed below, any such
15 instruction from Mr. Chittick would not believe
16 Mr. Beauchamp -- would not relieve Mr. Beauchamp of his
17 obligation to take some form of corrective action.

18 Did I read that correctly?

19 A. Yes.

20 Q. And so you have -- you do not believe that
21 Mr. Beauchamp's testimony, about this conversation with
22 Mr. Chittick he describes, is credible.

23 Is that your -- is that your opinion?

24 A. I have doubts about it, yes.

25 Q. Well, you say: I don't find it credible, right?

NEIL J. WERTLIEB, 10/17/2019

1 A. Correct.

2 Q. And why don't you find it credible?

3 A. Well, the -- at that point in time, the 2011 POM
4 is already out of date. It expired by its own terms.
5 There is no disclosure document that -- that satisfies the
6 requirements under Rule 10b-5 that exists. Mr. Beauchamp
7 knows that. He is the one who created the -- prepared the
8 2011 POM that has essentially an expiration date on it.

9 He knows there is a material event that's
10 occurred that needs to be included and it's not included.

11 He knows that Mr. Chittick is continuing to
12 raise funds with new investors and rollover investors, and
13 yet he is -- he appears to simply accept Mr. Chittick's --
14 Mr. Chittick's instruction to not do any further work.

15 I find that -- under the circumstances, I find
16 that very odd. One, that Mr. Chittick would make the
17 request, and, two, that Mr. Beauchamp would simply accept
18 it.

19 Q. So your view of the facts is that Mr. Chittick
20 wanted to get a POM done on the two-year anniversary, but
21 Mr. Beauchamp stood in the way?

22 A. I'm sorry. Are you asking about in this August
23 time period?

24 Q. Yeah.

25 No. I'm asking generally, is it your view of

NEIL J. WERTLIEB, 10/17/2019

1 the facts that Mr. Chittick was wanting to update his POM
2 on either the two-year anniversary or before the end of
3 2013, and somehow Mr. Beauchamp was standing in the way of
4 that?

5 A. Yeah. I think I have seen two emails from
6 Mr. Chittick at just prior to the expiration of the POM
7 and then at the end of the year in 2013 where he is
8 prompting Mr. Beauchamp to move forward with the
9 preparation of the POM, and that simply doesn't happen.

10 Q. Do you have any view as to why Mr. Beauchamp
11 wouldn't want to update the POM in 2013?

12 A. Why he would not?

13 Q. Yes.

14 A. No. I'm baffled as to why he didn't actually do
15 the work.

16 Q. The lawyer could not finalize the POM without
17 the client's involvement.

18 True?

19 A. Well, there is clearly work that he could have
20 and should have done in updating the 2011 POM, with or
21 without client input. But the ultimate sign-off of the
22 document and updated financial information, for example,
23 or statistical information about what's occurred over the
24 last two years, that presumably would have to come from
25 Mr. Chittick, but there is still the bulk of the work,

NEIL J. WERTLIEB, 10/17/2019

1 certainly some of the work should have been done by Mr. --
2 Mr. Beauchamp. And I don't have any explanation or
3 understanding as to why he wouldn't do what he knew needed
4 to be done under the securities laws.

5 Q. Okay. Your question went -- your answer went
6 way beyond my question.

7 A. Yeah.

8 Q. And it really was -- let me -- let ask it again.

9 A POM cannot be finalized for a client without
10 the client's involvement.

11 True?

12 A. Well, I think it depends on -- I mean, as a
13 general statement, perhaps, but if there -- if there is no
14 data that needs to come from the client in order to
15 finalize the POM, then a lawyer could do that.

16 Ultimately, the client, I suppose, should sign
17 off on the fact that it's completed, but if there is no
18 information that needs to be updated, that has to be
19 provided by the client that the attorney doesn't have,
20 then I don't see why the attorney couldn't revise the POM
21 and present a completed POM to the client.

22 Q. With DenSco?

23 A. Yeah.

24 Q. The POM could not be finalized without DenSco's
25 involvement, correct?

NEIL J. WERTLIEB, 10/17/2019

1 A. There -- as I recall, and I don't have the POM
2 in front of me, but as I recall, it had historical
3 information in it that -- that would have been needed to
4 be updated in a -- in a new POM, and I don't know whether
5 Mr. Beauchamp had that information or not.

6 Q. Well, the updated POM would require detailed
7 financial information of the company, performance
8 information, and historical information for the time since
9 the last POM was done. True?

10 A. I don't recall how much detail along those lines
11 was included in the POM, but I -- I think generally
12 speaking, that's probably correct.

13 Q. So you don't remember what's in the POM? Is
14 that what you are saying?

15 A. It's been a while since I have looked at that
16 specific information --

17 Q. Okay.

18 A. -- but yeah.

19 Q. If that is true, that would require the client's
20 involvement, right?

21 A. Correct. If there is historical financial or
22 other statistical information that the attorney doesn't
23 have that needs to be updated, because it's at that point
24 over two years stale, then, yes, the client would need to
25 be involved.

NEIL J. WERTLIEB, 10/17/2019

1 Q. So one of the items you referenced in response
2 to my quoting your report on page 11, and what you are
3 saying regarding the credibility is that as of this date,
4 there had not been a disclosure of a material event.

5 Do you recall that testimony?

6 A. Regarding --

7 Q. Mr. Beauchamp had not disclosed a material event
8 as of August 2013 --

9 A. Correct.

10 Q. -- correct?

11 And the material event is the existence of the
12 Freo lawsuit?

13 A. Correct. That's what I was referring to.

14 Q. Are you aware of any other material events as of
15 August of 2013 that required disclosure?

16 A. Well, in addition to updating the financial and
17 other data that's -- that's -- that was contained in the
18 2011 POM, that should have been updated as well. Frankly,
19 I think that should have been updated on an annual basis,
20 not every two years. But in any event, I'm assuming that
21 that data, having not looked at it recently, but that data
22 was also out of date and needed to be updated.

23 Q. Beyond the Freo lawsuit and updating financials,
24 is there any other material information that should have
25 been put in the POM as of August of 2013?

NEIL J. WERTLIEB, 10/17/2019

1 A. There are two other categories of information.
2 One is, in addition to the financial information, there
3 may be statistical information about the -- the loans
4 themselves, which may or may not be characterized as
5 financial information; and the other is the potential
6 results of the investigation that should have been
7 conducted with respect to the Freo lawsuit.

8 Q. Okay. If there were no investigation done on
9 the Freo lawsuit, because right now, sitting here today,
10 that is your understanding of the facts, right?

11 A. Correct.

12 Q. There wasn't any?

13 So as of August 2013, the things that would be
14 contained in an updated POM would be updated financials of
15 any history regarding or performance or the status of the
16 loans, and the existence of the Freo litigation, correct?

17 A. Correct. As I'm sitting here, without looking
18 at the POM, it occurs to me those -- those are the
19 categories, yes.

20 Q. Okay. As of June 2013, had there been any
21 securities disclosure problems with DenSco that you are
22 aware of?

23 A. Not specifically, but I -- again, and I do refer
24 to this, I don't understand Mr. Beauchamp's position that
25 the POM needed to be updated every two years. I think it

NEIL J. WERTLIEB, 10/17/2019

1 required more frequent updates. If the financial
2 information that's contained in the POM -- and stop me if
3 I'm speaking too quickly -- is -- is annual financial
4 information, I don't know how you wait two years to update
5 annual financial information.

6 so I think there is -- there are additional
7 things that -- that may have been required in terms of
8 disclosures, but I'm -- I haven't specifically seen
9 things, aside from the Freo lawsuit, at this point in time
10 that Mr. Beauchamp would have been aware of that was --
11 that was not disclosed.

12 Q. Sitting here today, do you have an understanding
13 as to whether Mr. Chittick, prior to June of 2013, was
14 good at communicating with his investors or not good at
15 communicating with his investors?

16 A. I wouldn't characterize it either way. My --
17 my -- my understanding from my review of the record is
18 that there were some communications, that there was a
19 website, there were meetings, there is an allegation that
20 he had an advisory council. And -- and those may have
21 constituted communications that were provided to existing
22 holders of notes, but that's separate and apart from
23 disclosures that are made to new investors.

24 Q. I'm not quite following your answer.

25 so are you saying he was not disclosing

NEIL J. WERTLIEB, 10/17/2019

1 information that he should have prior to June of 2013?

2 A. I don't have any information one way or another.

3 Q. So sitting here today, you don't have an opinion
4 as to whether Mr. Chittick was a good communicator, a bad
5 communicator with his investors prior to June of 2013,
6 correct?

7 A. Well, I'm -- I'm not sure how to answer the
8 question.

9 First of all, the term "investors" I think is
10 ambiguous. There are investors who are prospective, that
11 is, they haven't yet bought notes, and then there are
12 investors who have already acquired notes.

13 The investors who have already acquired notes
14 and aren't -- aren't rolling them over or buying
15 additional notes, those investors, as far as I'm
16 concerned, are not relevant for purposes of evaluating the
17 quality of Mr. Chittick's disclosures.

18 My understanding is he did communicate with his
19 existing noteholders, but I don't think that has any
20 significance, for me at least, under the securities laws
21 as to whether his communications were adequate and
22 appropriate to prospective investors. Those were people
23 who were making a decision whether to give money to
24 DenSco.

25 He is clearly not disclosing his -- his updated

NEIL J. WERTLIEB, 10/17/2019

1 financials, which should have been included presumably by
2 2012, and certainly by July of 2013. And he is not
3 disclosing any of what we now know are material problems
4 in terms of his loan-to-value ratio, his concentration on
5 or lack of concentration on particular lenders, the due
6 diligence that he is doing and his funding procedures.

7 So those are things that he should have
8 disclosed, but he didn't.

9 Q. As of June 2013 or prior?

10 A. If -- if he were engaged in inappropriate
11 lending procedures and there were double liens on
12 properties, those are -- and he was not in compliance with
13 the loan-to-value ratio or the concentration or first-lien
14 position, which I think may have predated June of 2013,
15 then, yes, those are -- those are material misstatements
16 that were contained in the 2011 POM and they should have
17 been corrected.

18 Q. And that couldn't be done in any other way than
19 an updated written POM, correct?

20 A. The POM, the 2011 POM could have been
21 supplemented in writing, but it didn't -- it didn't
22 necessarily need to be replaced.

23 Q. And you don't know what was being told to
24 investors between the POM being issued in 2011 and June of
25 2013?

NEIL J. WERTLIEB, 10/17/2019

1 A. Well, I assume none -- none of what I just
2 said --

3 Q. Right.

4 A. -- what I just identified was being disclosed.

5 Q. You are assuming that, but you don't know?

6 A. I think it's a reasonable inference, given the
7 record I have -- I have reviewed.

8 Q. It's a reasonable inference.

9 So you don't know, but you are inferring from
10 what you do know.

11 Is that fair?

12 A. Correct.

13 Q. All right. And you haven't talked to any
14 investors, and I don't think you have read their
15 depositions, correct?

16 A. I have not talked to any investors, and I don't
17 recall if I reviewed any depositions.

18 Q. Okay.

19 A. Perhaps not. I don't recall.

20 Q. All right. So the POM, because it contains
21 information as of the date of its issuance, for example,
22 on financials and performance history, is outdated almost
23 immediately after its issuance, right?

24 A. Well, the question is whether it's -- you are
25 asking by July or August of 2011?

NEIL J. WERTLIEB, 10/17/2019

1 Q. No, I'm not giving a point in time.

2 I'm just saying as a practical matter, a POM is
3 accurate as of the date it's issued as it relates to
4 financials, loan performances, what's going on with the
5 company, but because a company is not static, those facts
6 change, so the POM would be outdated in some respects
7 shortly after it's issued.

8 Fair?

9 A. Well, to me, outdated in this context suggests
10 that there is material information that's not presented in
11 the 2011 POM. And it's a judgment call as to as the
12 financials develop, as the statistical information
13 changes, at what point do -- are those changes so
14 significant that they become material, and I haven't
15 evaluated that.

16 Q. But you said the status of the financials was
17 material information, right?

18 A. Well, certainly as -- if annual financial,
19 annual financials are presented in the POM, then within a
20 year or a year later, there are updated financial
21 statements, and that that would be material.

22 Q. Do you know whether Denny Chittick ever shared
23 the corporate financial information with David Beauchamp?

24 A. I assume he must have at some point in time in
25 the preparation of the prior POMs, yes.

NEIL J. WERTLIEB, 10/17/2019

1 Q. Okay. So beyond whatever was provided to
2 Mr. Beauchamp in connection with the POMs done every two
3 years, are you aware of whether Mr. Chittick shared
4 corporate financials with him?

5 A. I don't recall.

6 Q. When, in your opinion, should Mr. Beauchamp have
7 concluded that Mr. Chittick wasn't a reliable source of
8 information?

9 A. You are going to have to refer me to the part of
10 my report where I addressed that. I don't recall reaching
11 that conclusion at any point in time.

12 Q. Well, that's why I'm asking. I'm not saying you
13 did. I mean, you talk about various events and how it
14 might have affected how Mr. Beauchamp viewed Mr. Chittick
15 as a client, but my question is a broad one.

16 Do you not have an opinion about it?

17 A. Not -- not in the abstract, no. I'm --

18 Q. Well, I'm asking about the facts as you know
19 them. Not in the abstract.

20 Based on the facts as you know them, when, in
21 your view, should Mr. Beauchamp have concluded that he
22 couldn't rely on Mr. Chittick for reliable information?

23 A. It's a -- it's a fair question. I'm not sure I
24 can -- I can answer. I -- I'd have to look back at my --
25 at my report and the evidence of the communications from

NEIL J. WERTLIEB, 10/17/2019

1 Mr. Chittick to Mr. Beauchamp, but I'm not -- I'm not
2 sure -- I don't recall seeing anything specifically
3 that -- that information provided by Mr. Chittick to
4 Mr. Beauchamp was incorrect.

5 I may be wrong about that, but that's what I
6 meant by in the abstract without looking at specific
7 language here or specific communications.

8 Q. So is it -- I'm sorry. I don't know if you were
9 finished.

10 A. Yeah. I'm trying to say that I -- I am not
11 aware that Mr. Beauchamp at any point in time should have
12 concluded that Mr. Chittick was a liar or not providing
13 him with accurate information.

14 There are clearly things or may be things that
15 he is not sharing, but that's -- I think that's different
16 from concluding that the information that's provided by
17 Mr. -- that's different from Mr. Beauchamp concluding that
18 the information provided by Mr. Chittick is inaccurate or
19 unreliable.

20 Q. Do you --

21 A. So I'd have -- I'd have to address it in a
22 specific instance, but off the top of my head, I can't
23 think of any instance.

24 Q. After your review of the record and based on
25 what you know, when do you believe Mr. Beauchamp should

NEIL J. WERTLIEB, 10/17/2019

1 have concluded that Mr. Chittick was not following his
2 advice?

3 A. Well, certainly by the time he directly admits
4 in early January that he has not been following
5 Mr. Beauchamp's advice.

6 Q. Any time earlier than that?

7 A. Well, I think beginning with the Freo lawsuit,
8 there is -- there is indications that something is wrong
9 here, that -- that the double-liening issue, which he
10 becomes more and more aware of with each succeeding red
11 flag warning, that that suggests that Mr. Menaged is
12 committing fraud and/or that Mr. Chittick is not following
13 the advice that -- that Mr. Beauchamp has given him.

14 Q. But as you view the facts, as you understand
15 them, you don't think Mr. Beauchamp would have known
16 Mr. Chittick was not following his advice until
17 January 6th of 2014, when they received this letter from
18 Bob Miller, the lawyer from Bryan Cave?

19 A. That -- that's -- at that point in time it
20 becomes abundantly clear. Whether he knew or should have
21 known prior to that, I'm not -- I'm not sure I have an
22 opinion on that.

23 Q. And my question really is known, not should have
24 known.

25 A. Right.

NEIL J. WERTLIEB, 10/17/2019

1 Q. I'm asking whether he -- there was a date he
2 knew Mr. Chittick was not following his advice.

3 In your view of the facts, the first date that
4 that would have been, was January 6th, 2014?

5 A. He certainly knows by that point in time. I
6 think he is on notice that there -- that there is a
7 potential risk, that is that Mr. Chittick is not following
8 Mr. Beauchamp's advice going back to June of 2013. But as
9 to whether he knew specifically that that was the cause of
10 the double-lien problem or a contributing factor, I
11 don't -- I'm not sure I have an opinion on that.

12 Q. You recall that in connection with this meeting
13 on January 9, 2014, that Mr. Menaged and Mr. Chittick had
14 with Mr. Beauchamp, they revealed to him this story about
15 Menaged's cousin being put in charge of Menaged's
16 business, and that was how these double-lien problems
17 arose.

18 Do you recall that?

19 A. Yes.

20 Q. And is it your opinion that Mr. Beauchamp should
21 not have accepted that story from Menaged and Chittick,
22 that is, that explanation that the problems occurred
23 because Menaged had assigned the job of running his
24 businesses to his cousin while he attended to his sick
25 wife?

NEIL J. WERTLIEB, 10/17/2019

1 A. I don't think he should have simply accepted
2 that and proceeded to act as securities counsel to DenSco,
3 no. I think --

4 Q. What should -- I'm sorry. Go ahead.

5 A. No. Go ahead.

6 Q. Were you finished?

7 A. I apologize. I didn't -- I forgot what I was
8 going to say. Sorry.

9 Q. All right. So you said he, David Beauchamp,
10 should not have accepted the Menaged cousin story?

11 A. Right.

12 Q. Is that your opinion?

13 A. Correct.

14 Q. What should he have done about that?

15 A. He should have -- he should have looked into it.
16 I mean, the problem for a person who is in the position of
17 Mr. Beauchamp, when he hears this story, it should -- it
18 should raise a series of questions that he should -- he
19 should investigate.

20 One is, is this plausible? And a simple review
21 of the records, which are publicly available, it's
22 apparent that Mr. Menaged, and not some third party or
23 imaginary cousin, signed the trust deeds that were -- that
24 were recorded. So had he looked into it, he would have
25 discovered that.

NEIL J. WERTLIEB, 10/17/2019

1 But at a minimum, even if he is inclined to
2 believe the story as being truthful, it demonstrates that
3 Mr. Menaged is -- has a problem in his office. If
4 somebody acting on his behalf within his office can double
5 lien properties and steal what amounts to millions of
6 dollars and disappear with that money, there are some
7 serious problems with DenSco doing business with
8 Mr. Menaged and his -- and his affiliated borrowing
9 entities.

10 Q. But you understood that Mr. Menaged was saying
11 he had fixed the cousin problem and he was in charge of
12 the business going forward, right?

13 MR. STURR: Form.

14 THE WITNESS: I don't -- I don't recall that
15 statement, but in any event, I -- if there is reason to
16 believe that fraud has been committed, a statement by
17 the -- by the potential fraudster that there is no longer
18 fraud going on, that's not sufficient, to -- to simply
19 accept the story and turn a blind eye to it.

20 Q. (BY MR. DeWULF) So your opinion is that
21 Mr. Beauchamp should not have accepted the cousin story
22 and should have investigated it.

23 True?

24 A. He should have had serious doubts about the
25 veracity of that story and acted accordingly.

NEIL J. WERTLIEB, 10/17/2019

1 Q. And acting accordingly would have required him
2 to go to the public records to check what the public
3 records show about the double lienings on the Menaged
4 properties?

5 A. Among other things. That's -- that was a very
6 easy thing to do. It's something that I did. I think it
7 took less than five minutes to do.

8 Q. And how did that review or research prove that
9 the Menaged cousin story was false?

10 A. Well, I think a review of the records would have
11 shown the -- the documents that were signed by
12 Mr. Menaged. And had he seen Mr. Menaged's signature on
13 anything up to that point, which presumably he would,
14 since this is one of the largest borrowers of DenSco, the
15 signature was by Mr. Menaged or the purported signer is
16 Mr. Menaged to those documents, and a comparison of the
17 signatures presumably would have shown it's the same --
18 same person signing.

19 Q. And so how does that fact demonstrate that the
20 cousin story is false?

21 A. Well, it -- that would mean that, that would
22 demonstrate that Mr. Menaged himself signed the paperwork
23 that created the double-lien problem and that it wasn't
24 solely the work of some third party.

25 Q. And you think that the Menaged cousin story was

NEIL J. WERTLIEB, 10/17/2019

1 that the cousin had signed all these documents as opposed
2 to Menaged?

3 A. I -- based on the record I have reviewed, I
4 don't know that Mr. Beauchamp did any inquiry into the
5 details of that fraud, so I don't -- I don't know how to
6 answer that question, because it's not apparent from the
7 record I have reviewed.

8 But to entirely blame a third party or the
9 imaginary cousin suggests that it's the cousin's fault and
10 Mr. Menaged had nothing to do with it. And I think -- and
11 what I'm saying is a review of the public record would
12 show that Mr. Menaged in fact did have something to do
13 with it. He signed the documents that created the
14 double-lien problem.

15 Q. And my question is, as you understand the cousin
16 story, the cousin story involved other people signing
17 those documents, not Mr. Menaged, and that's why the
18 public search would reveal the falsity of the story?

19 A. Well, if the -- if the story -- if the
20 explanation, purported explanation is that the cousin is
21 the sole cause of this problem, a review of the public
22 records would demonstrate that that's untrue, because
23 Mr. Menaged appears to have signed those documents, and
24 not -- not a third party.

25 Q. And you are saying under these circumstances,

NEIL J. WERTLIEB, 10/17/2019

1 because it sounded so sketchy, Mr. Beauchamp should have
2 gone and done that work, whether or not Mr. Chittick asked
3 him to do that?

4 A. I think there -- yes, I -- I do think that. And
5 whether it was that particular review which I did or some
6 other investigation, it -- what I did was a very simple
7 task and it took minutes and it's free. So the only
8 charge would have been for five minutes of Mr. Beauchamp's
9 time, if that's -- if that's what he were to do. It's
10 not -- it's not a big effort nor a costly effort on behalf
11 of the client.

12 But at that point in time, he is -- he is --
13 Mr. Beauchamp has -- has clear evidence that a fraud has
14 been committed. Perhaps it's unclear which individual
15 committed the fraud, but this is a fraud that's been
16 committed clearly on behalf of one of the most significant
17 borrowers to DenSco, and to simply accept an implausible
18 story that it's the other guy, you know, is insufficient
19 from a standard of care perspective for an attorney in
20 Mr. Beauchamp's position.

21 Q. Is it your understanding that Menaged was
22 telling him this story as well and believed the story?

23 I'm sorry. I apologize. I misspoke.

24 Is it your understanding that in this January 9,
25 2014, meeting, Mr. Chittick is conveying to Mr. Beauchamp

NEIL J. WERTLIEB, 10/17/2019

1 he believes the Menaged cousin story?

2 A. That's my understanding, yes.

3 Q. All right. But you are saying that even though
4 the client, Mr. Chittick, is not asking Mr. Beauchamp to
5 do the work, and to accept the story he is telling him,
6 Mr. Beauchamp should doubt what he is being told and do
7 separate work to question what the client is telling him?

8 A. Yes.

9 Q. Okay.

10 A. Yeah.

11 Q. And bill for that time?

12 A. Mr. Beauchamp is responsible, as the securities
13 lawyer for DenSco, to -- to ensure that the -- that the
14 investors in DenSco are -- for whom DenSco has a fiduciary
15 relationship.

16 DenSco is taking and is accepting and investing
17 money on behalf of investors. By June -- by January of
18 2014, the disclosures being provided to those investors is
19 already out of date and inadequate, and now Mr. Beauchamp
20 is clearly on notice that a serious fraud has been
21 committed on DenSco with respect to the money that these
22 investors have invested.

23 And simply accepting the word of Mr. Chittick
24 and Mr. Menaged that it's some third party and it's taken
25 care of and you shouldn't worry about it, is not enough

NEIL J. WERTLIEB, 10/17/2019

1 for an attorney in Mr. Beauchamp's position. It's
2 inadequate to ignore that and not take some action.

3 Q. And is it your view that he should have, after
4 he found out this public information that you are saying
5 research would have revealed, at that point told
6 Mr. Chittick to fire Menaged?

7 A. I think even without that he should have -- he
8 should have terminated all relations with Mr. Menaged.

9 Q. In other words, as of January 9, 2014, or
10 probably even earlier, Mr. Beauchamp should have told
11 Mr. Chittick to terminate the relationship with
12 Mr. Menaged?

13 A. Correct.

14 Q. And if he didn't do that, Mr. Beauchamp should
15 have withdrawn as his counsel?

16 A. Just to clarify, if Mr. Chittick didn't
17 terminate the relationship with Mr. Menaged? Is that what
18 you are asking?

19 Q. Yes.

20 A. So I think at that point in time, Mr. Beauchamp
21 had a variety of options that he could have pursued.

22 So the principal ones are immediately update the
23 disclosures to investors, have DenSco stop soliciting
24 money from investors, or resign, or at least threaten to
25 resign. And he had to do one of those three or four, if

NEIL J. WERTLIEB, 10/17/2019

1 you include the threat. But if the threat itself
2 doesn't -- doesn't induce Mr. Chittick to make the proper
3 disclosures or stop offering securities, then he has no
4 choice but to resign.

5 Q. So if he stops, if Menaged -- Strike that.

6 If Chittick tells Beauchamp that he is going to
7 stop soliciting funds from investors while they
8 investigate the Menaged situation, that's sufficient?

9 A. I'm sorry. Sufficient for --

10 Q. Sufficient, when faced with this issue of the
11 cousin story and there being more than a few loans that
12 are in trouble, is it sufficient that they -- that DenSco
13 puts things on hold, no longer solicits any investor
14 funds, and investigates the Menaged situation, is that
15 your opinion, that would be sufficient for some period of
16 time?

17 A. Well, I -- what I have been focused on, as the
18 expert witness here, is on Mr. Beauchamp's
19 responsibilities as the securities lawyer for DenSco.

20 If DenSco is no longer offering securities,
21 selling securities, which includes rollover securities, if
22 that is terminated, then -- then there is no violation
23 thereafter of the Securities Act of 1933.

24 So that, if he gave that advice and Mr. Chittick
25 complied with that advice and immediately ceased accepting

NEIL J. WERTLIEB, 10/17/2019

1 new money and rollovers, then I would be less troubled, if
2 I were in Mr. Beauchamp's shoes, I would be less troubled
3 about the continuing commission by DenSco of securities
4 fraud.

5 But there are still other issues that must be
6 addressed. There is a fraud that's been perpetuated on
7 DenSco that implicates its fiduciary responsibilities as
8 the holder of monies that are invested by -- by its
9 noteholders. That's a separate issue that would need to
10 be addressed.

11 And the fraud itself is something that needs to
12 be addressed on behalf of DenSco and the investors in
13 DenSco, and there doesn't seem to be any effort to do that
14 as well. And I think Mr. Beauchamp, as counsel for an
15 organization, has a responsibility to the organization,
16 regardless of what Mr. Chittick wants or doesn't want.

17 Q. The problems that were ultimately suffered by
18 DenSco in connection with Mr. Menaged were, at a general
19 level, a result of Mr. Chittick's lax lending practices.

20 Is that fair?

21 A. I think it's a combination of his lax lending
22 and Mr. Menaged's fraud.

23 Q. But if Mr. Chittick had been more careful with
24 his lending practices and procedures and making sure that
25 the monies -- the monies being lent by DenSco were

NEIL J. WERTLIEB, 10/17/2019

1 properly handled, either by trustees or escrows or third
2 parties as opposed to being provided directly to the
3 borrowers, that would have solved most of the problems
4 DenSco suffered from, right?

5 MR. STURR: Form.

6 THE WITNESS: It doesn't fully address the
7 concerns that I would have if I were in that situation. I
8 think the -- had Mr. Chittick followed the proper lending
9 procedures, that would have helped to ensure that DenSco
10 was in a first-lien position.

11 But he should not have been -- I mean, given,
12 given Mr. Menaged's propensity for fraud, he probably
13 should -- Mr. Chittick should not have been doing any
14 business with Mr. Menaged. Even if DenSco were in
15 first-lien positions, it's possible that other lenders
16 might have been duped in the same way that DenSco was, and
17 then there would still be fight, a fight over priority of
18 liens because of the fraud that Mr. Menaged was inclined
19 to commit.

20 But I think there are other issues on top of
21 that as well. Even -- even at that point in time,
22 regardless of the fraud, there is a loan concentration
23 with Mr. Menaged that seems to be out of compliance with
24 the disclosures that are in the 2011 POM, and that's
25 problematic, and there may be other things as well.

NEIL J. WERTLIEB, 10/17/2019

1 Q. (BY MR. DeWULF) So what I'm hearing you say is
2 that the DenSco problems and their losses are associated
3 with two things. Number one, Mr. Chittick's decision to
4 do business with Menaged; and number two, Mr. Chittick's
5 lax lending practices with Menaged and others.

6 Is that fair?

7 MR. STURR: Form.

8 THE WITNESS: Well, what I included in my prior
9 answer was the fraud committed by Mr. Menaged himself.

10 Q. (BY MR. DeWULF) Right. So it's doing business
11 with Menaged, number one; and having lax lending
12 practices, number two?

13 A. I'm sorry. So your question is what?

14 Q. Yeah. Let me start again.

15 The problems that DenSco suffered from and the
16 losses that they suffered were a result primarily of two
17 things. Number one, Mr. Chittick chose to do business
18 with Scott Menaged; and number two, Mr. Chittick chose to
19 follow lax lending practices?

20 A. Those -- those are two factors that are very
21 problematic. I would not say those are the only factors.
22 I think if Mr. Beauchamp had stepped in earlier and
23 successfully caused DenSco to stop issuing notes, the
24 problem would not have gotten as bad as it did. If he had
25 convinced Mr. Chittick and actually prepared the updated

NEIL J. WERTLIEB, 10/17/2019

1 disclosures that disclosed the problems associated with
2 Mr. Menaged, presumably there would have been less
3 investors investing in DenSco.

4 So there is -- in terms of where the problems
5 lie, I think you have identified two of the central ones,
6 but I think I can't ignore Mr. Beauchamp's conduct in that
7 mix as well.

8 He had -- he was on notice as early as June of
9 2013 that there were problems, and he could have, and
10 perhaps successfully, put an end to the continuation of
11 those problems.

12 Q. If Mr. Beauchamp -- Strike that.

13 If Mr. Chittick had chosen never to do business
14 with Menaged, there would never have been a problem with
15 DenSco, right?

16 MR. STURR: Form.

17 THE WITNESS: I'm sorry. From day one?

18 Q. (BY MR. DeWULF) From day one.

19 A. I don't know about that either.

20 Q. You can't say that?

21 A. Well, no, I don't know that I could say that. I
22 think there are -- there are so many other factors
23 involved.

24 The Menaged problem is -- is clearly a very
25 troubling aspect of this whole case, but Mr. Chittick is

NEIL J. WERTLIEB, 10/17/2019

1 engaged in securities fraud by July of 2013. He is -- he
2 is selling securities without adequate disclosures,
3 without updated disclosures. He is using an outdated POM.

4 And to the extent he is engaged in lax lending
5 practices, to my knowledge, you know, as far as I know,
6 only Mr. Menaged took advantage of that, but any other
7 lender could have done the same as well. So I can't -- I
8 can't say that but for Menaged, you know, none of the
9 problems would have existed. I can't --

10 Q. So I want you --

11 A. I can't go there.

12 Q. I want you to eliminate lax business practices
13 or lending practices. So Mr. Chittick is careful about
14 his loan practices and procedures and does them correctly,
15 and he never does business with Menaged.

16 Doesn't DenSco look entirely different as of
17 January 2014 if those two things were true?

18 A. It's still been offering and selling securities
19 with an outdated and inaccurate POM for seven months.

20 Q. Outdated and inaccurate because it hasn't been
21 updated with more recent financials, and whatever has gone
22 on in the business practices of DenSco in the meantime.

23 A. Correct.

24 Q. Fair?

25 A. Correct.

NEIL J. WERTLIEB, 10/17/2019

1 Q. All right. Those may or may not be material
2 pieces of information, right?

3 A. Yeah, I can't make that determination, but I
4 think it's a reasonable assumption that the financial
5 statements that were included in the 2011 POM are woefully
6 stale by July of 2013, and probably already stale from a
7 securities law standpoint in July of 2012.

8 Q. All right. So --

9 A. And that's in addition to the other information
10 about DenSco's operations and loans that I assume were
11 contained in the POM.

12 Q. Your testimony is that DenSco is a high-risk
13 client, correct?

14 A. Correct.

15 Q. And part of that was because it was a one-man
16 show, right?

17 A. One-man shop is the term I used.

18 Q. One-man shop. Okay.

19 was the fact that it was a high-risk client --
20 well, and I think it's also your opinion that because it
21 was a high-risk client, it required extreme monitoring or
22 more -- more involved monitoring.

23 Fair?

24 A. Correct.

25 Q. And that's monitoring as it relates to Clark

NEIL J. WERTLIEB, 10/17/2019

1 Hill, right?

2 A. Correct.

3 Q. Because DenSco was a high-risk client, what, in
4 terms of monitoring, should it have been doing that it
5 wouldn't have done or wouldn't necessarily have done for
6 other clients?

7 A. I think we have talked about these already. It
8 should have -- given that DenSco was a high-risk client,
9 upon receiving notice of the Freo lawsuit, Mr. Beauchamp
10 should not simply have relied on Mr. Menaged's counsel to
11 handle DenSco's problem. That was a mistake, especially
12 because DenSco was a high-risk client.

13 And I think with each succeeding event, and
14 certainly with respect to the red flag warnings, because
15 DenSco was a high-risk client and Mr. Beauchamp couldn't
16 simply accept Mr. Menaged's assertion that this was my
17 cousin's problem and I have dealt with it, that's not
18 enough for a high-risk client.

19 Q. And page 40 --

20 A. And I think there are numerous examples of
21 things that Mr. Beauchamp should have been more proactive
22 on because he was dealing with a high-risk client.

23 Q. Page 40, I think, of your opinion, talks about
24 this, and it -- about halfway down the page, it says: In
25 my experience, certain clients may require extraordinary

NEIL J. WERTLIEB, 10/17/2019

1 monitoring and counseling due to the nature of their
2 business operations, the regulatory environment in which
3 they operate, a lack of critical resources (manpower) or
4 internal controls, an inability (or unwillingness) to
5 comply with legal obligations and attorney advice, and
6 other factors.

7 Did I read that correctly?

8 A. Yes.

9 Q. And the problems that arose ultimately with
10 DenSco, that is, that they did business with Menaged,
11 Chittick having a lax lending practice, and perhaps other
12 issues, how do those associate with the fact that DenSco
13 was a high-risk client?

14 A. How do they associate with those?

15 Q. Well, you are saying that DenSco is a high-risk
16 client, but the risks that were realized don't relate to
17 them being a high-risk client, do they?

18 A. I think they absolutely do. I mean, if DenSco
19 had a couple of dozen employees, as I would have expected
20 in, you know, a situation like this, if not more
21 employees, there may have been people, staff people at
22 DenSco who could easily ensure that -- that the funding of
23 loans was provided directly to a trustee.

24 The lax lending procedures that -- that
25 Mr. Chittick engaged in were almost by necessity, because

NEIL J. WERTLIEB, 10/17/2019

1 he didn't have the manpower to do what really was
2 required. But I can't necessarily say that that's why he
3 didn't lend to trustees, but had he -- had DenSco been
4 formed with numerous people who had job responsibilities
5 and the entire operations of DenSco was on the shoulders
6 of Mr. Chittick and Mr. Chittick alone, Mr. Beauchamp
7 should have expected that Mr. Chittick was incapable, just
8 because there are only 24 hours in the day, Mr. Chittick
9 was incapable of doing all the things that were required
10 in order for DenSco to operate effectively and lawfully,
11 and more importantly, as represented to its investors.

12 So something like Mr. Chittick funding loan
13 proceeds directly to a borrower rather than to a trustee
14 is exactly the kind of thing that Mr. Beauchamp should
15 have been sensitive to, because DenSco was a high-risk
16 client and, in particular, because it was a one-man shop.

17 Q. Are you aware of Mr. Chittick not being able to
18 run DenSco prior to June 2013?

19 In other words, any -- any ways that you are
20 aware of that he was failing, paying money, monitoring
21 loans, anything prior to June of 2013?

22 A. I'm not sure I really reviewed any -- any -- any
23 evidence of what had occurred prior to June of 2013, so
24 I'm not sure --

25 Q. So the answer to my question is you are not

NEIL J. WERTLIEB, 10/17/2019

1 aware of any problems, prior to June of 2013, as it
2 relates to Mr. Chittick running DenSco?

3 A. Well --

4 MR. STURR: Form.

5 THE WITNESS: -- yeah, I think I am aware of
6 things that, in my experience, I would have expected a
7 company like DenSco to do.

8 Like, for example, as I understand it from
9 reviewing the record, there were no written updates
10 provided to any of the prior POMs. An issuer who is
11 engaged in a continuous offering should be providing
12 updated information on a regular basis. There should have
13 been an update providing the annual financial statements
14 by -- by mid-2012, and based on the record I've reviewed,
15 that did not occur.

16 Had DenSco been better staffed, that may have
17 been something that they should have done more regularly.
18 But certainly they should have been watching their
19 operations and making written disclosures or -- or
20 reaching out to Mr. Beauchamp and telling him it's time to
21 do an update to the POM or supplement to the POM. And to
22 my knowledge, that never happened.

23 Q. (BY MR. DeWULF) Updated and supplemented the
24 POM between the two-year anniversaries, is what you are
25 saying?

NEIL J. WERTLIEB, 10/17/2019

1 A. Correct.

2 Q. And they should have also been updating the
3 financial statements.

4 what financial statements are you referring to?

5 A. Well, you were referring to the annual financial
6 or the financial statements that were included in the 2011
7 POM. I don't have it in front of me, so I don't -- I
8 don't know what's in there. But a year later, those
9 financials are out of date.

10 Financial statements are updated on an annual
11 basis, so by July of 2012, there is a full year's worth of
12 financial information that's available, that DenSco would
13 have, that's not been disclosed in the POM that's being
14 used to solicit investors from that point forward.

15 Q. So that should have also been in supplemental
16 POMs within the two years of the formal POMs?

17 A. Yes.

18 Q. Okay.

19 A. Or a new POM.

20 Q. Okay. Let me ask you, page -- for reference,
21 the bottom of page 12, the top of page 3 -- 13, I'm sorry,
22 you say that Mr. Menaged was the apparent cause of the
23 Freo lawsuit.

24 Is that your opinion?

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

NEIL J. WERTLIEB, 10/17/2019

1 Q. Going up to the top of page 13.

2 A. Yes, I see that language.

3 Q. Do you believe that to be the case, that
4 Mr. Menaged caused the Freo lawsuit?

5 A. I think if he had not solicited DenSco's loan in
6 addition to Active's loan, DenSco wouldn't -- which was --
7 which was basically fraud, if he had not engaged in that
8 fraud, DenSco would not have been -- would not have been a
9 party to the lawsuit. It wouldn't have been a lender. It
10 wouldn't have a lien on the property.

11 Q. So you believe that the Freo lawsuit was filed
12 because of the double loans, the Active Funding loan and
13 the DenSco loan?

14 MR. STURR: Form.

15 THE WITNESS: I think DenSco was named as -- as
16 a defendant in that lawsuit, because of the actions of
17 Menaged.

18 Q. (BY MR. DeWULF) But do you think the lawsuit
19 was filed because of that fact --

20 A. Well --

21 Q. -- that DenSco and Active Funding had loans on
22 the property?

23 A. If DenSco were not a lender, presumably the Freo
24 lawsuit still would have been filed with respect to
25 Active, but it would not have been a lawsuit filed against

NEIL J. WERTLIEB, 10/17/2019

1 DenSco.

2 Q. But DenSco could have been the only lender,
3 right?

4 A. It could have been.

5 Q. Let's take -- let's take Active Funding out of
6 it.

7 A. Yeah.

8 Q. Let's say Active Funding was in an inferior
9 position to DenSco.

10 If they were a lender, they would have been
11 named as a defendant because they were an interest holder
12 in the property that was the subject of the litigation,
13 right?

14 A. I'm sorry. If --

15 COURT REPORTER: Could you say the last part
16 again?

17 MR. DeWULF: Yeah. I'm sorry. I --

18 Q. (BY MR. DeWULF) If DenSco were a lender, it
19 would have been a defendant because it would have shown up
20 on the record, right?

21 A. If it were the only lender?

22 Q. Yes.

23 A. Is that what you are asking?

24 Yes. I presume, I mean --

25 Q. Right.

NEIL J. WERTLIEB, 10/17/2019

1 A. Presumably that would have been the case. I
2 don't know. I mean, the case, as I understand it, is
3 primarily focused on the removal of all liens related to
4 the trustee sale, and DenSco's was one of those two.

5 But the point I'm making here is, but for the
6 Menaged fraud, I don't think DenSco would have been a
7 lender, or the opportunity, wouldn't have had the ability
8 to lend, and -- and DenSco wouldn't have been named as a
9 party in the Freo lawsuit. So the Freo lawsuit would have
10 been irrelevant from DenSco's perspective.

11 Q. So is it your understanding that the Freo
12 lawsuit had to do with the removal of the liens from the
13 property?

14 A. That's my understanding, yes.

15 Q. Let's go to page 20. You say at the top of
16 page 20, a sentence that begins on the second line, it
17 says, "Mr. Beauchamp could not have reasonably believed
18 that the completion of the Forbearance Agreement itself
19 would prompt Mr. Chittick to make appropriate
20 disclosures."

21 Did I read that correctly?

22 A. Yes, but that's the second half of a sentence,
23 not a complete sentence.

24 Q. Oh, I'm sorry. I apologize. You are right.
25 There is a comma there. Let me start at the very

NEIL J. WERTLIEB, 10/17/2019

1 beginning. Thanks for pointing that out.

2 Okay. So let's start on the bottom of page 19:
3 In other words, Mr. Chittick had explained to
4 Mr. Beauchamp that he did not want to make disclosures
5 until much of the double-lien problem had been resolved,
6 Mr. Beauchamp could not have reasonably believed that the
7 completion of the Forbearance Agreement itself would
8 prompt Mr. Chittick to make appropriate disclosures.

9 Did I read that correctly on the second try, or
10 did I miss this again?

11 A. You missed the word "because" at the beginning
12 of the sentence, but other than that, it was accurate.

13 Q. So you are saying because of that expression by
14 Mr. Chittick to Mr. Beauchamp that he wanted to eliminate
15 as much of the problem as he could before he made
16 disclosure, that's the basis for your opinion that
17 Mr. Beauchamp could not have reasonably believed that the
18 completion of the Forbearance Agreement would prompt
19 Mr. Chittick to make disclosures?

20 A. Correct.

21 Q. No other reason?

22 A. That's -- that's the only reason I'm expressing
23 here, yes.

24 Q. Thank you.

25 Do you agree with me that as of June of 2013, or

NEIL J. WERTLIEB, 10/17/2019

1 actually for the entire time that Mr. Chittick ran DenSco,
2 he knew how to properly make a loan as a hard-money
3 lender?

4 A. I don't know.

5 Q. You don't know?

6 A. I don't know.

7 Q. Okay. would you agree with me that as of
8 certainly 2013, he understood the importance of making
9 material disclosures to his investors?

10 A. I -- I -- I don't think I have seen any evidence
11 of the -- aside from Mr. Beauchamp's testimony, I don't
12 think I have seen any evidence that suggests one way or
13 another what Mr. Chittick knew about material disclosures
14 or proper lending procedures. I just don't -- I don't
15 recall from the record I have seen.

16 Q. So you don't recall ever seeing any of
17 Mr. Chittick's emails where he discusses his obligations
18 to disclose?

19 A. I don't recall.

20 Q. Okay.

21 A. I mean, we did look at an email earlier where
22 he -- he agreed to the disclosure of the Freo lawsuit.
23 But I think, if I understand your question correctly, I
24 don't have any information, that I -- that I recall at
25 least, that demonstrates that Mr. Chittick understood

NEIL J. WERTLIEB, 10/17/2019

1 Rule 10b-5 and the disclosure requirements under
2 Rule 10b-5.

3 Q. But it's not your opinion that he did not
4 understand the obligations under 10b-5 or Reg D. You just
5 haven't seen evidence one way or the other?

6 A. I think that's right.

7 Q. You talked earlier in your testimony about your
8 experience with forbearance agreements.

9 Do you recall that testimony?

10 A. I do.

11 Q. You said you probably were involved in many of
12 those, right?

13 A. Right.

14 Q. Would it be common in your experience in a
15 forbearance agreement to defer interest owed by a
16 borrower?

17 A. It could be. I mean, it really depends on the
18 circumstances and -- and the cash flow requirements of the
19 borrower.

20 Q. Would it be common to waive default fees in
21 connection with a forbearance agreement?

22 A. I think that's less likely. In fact, I don't --
23 I don't understand the benefit of that, actually.

24 It's -- the forbearance -- forbearance
25 agreements, in my experience, are more about cash flow

NEIL J. WERTLIEB, 10/17/2019

1 than incurred obligations. You are giving the borrower an
2 opportunity to -- to recover from a cash flow perspective
3 so it can start to make good on its obligations, but
4 that -- that's not a reason to forgo default interest.
5 That would be a reason to defer default interest --

6 Q. So if the --

7 A. -- if anything.

8 Q. That wouldn't be uncommon, then, to defer
9 default interest on a loan in connection with a
10 forbearance agreement?

11 A. It really depends on -- it's very fact specific.

12 Q. And it's true that every forbearance agreement
13 is just going to be a product of the negotiation between
14 the parties, correct?

15 A. Just -- well, those kinds of specifics are --
16 are determined by the circumstances, and then I suppose
17 the negotiation between borrower and lender.

18 Q. And in your experience, is it common that in a
19 forbearance agreement, a lender might advance further
20 funds to the borrower?

21 A. I think that's less likely. I wouldn't say that
22 it's unheard of, but I think that's less likely. I think
23 the context of a forbearance agreement dictates otherwise.

24 Q. Do you -- I think it's your opinion that you
25 felt it was inappropriate to do a forbearance agreement at

NEIL J. WERTLIEB, 10/17/2019

1 all under the circumstances of this case.

2 Is that right?

3 A. Basically that's -- I think that's -- that's
4 similar to my opinion as expressed in my report.

5 Q. The gist of your opinion?

6 A. The gist of it, yeah.

7 Q. So -- and your further opinion is that if you
8 look critically at the Forbearance Agreement, you didn't
9 think it was a good agreement for DenSco --

10 A. Correct.

11 Q. -- fair?

12 And the fact that monies were --

13 A. It was -- from DenSco's perspective, it was
14 pointless.

15 Q. The fact that monies were advanced to the
16 borrower was something you were critical of, correct?

17 A. Correct.

18 Q. Does your opinion change if those funds came
19 from Mr. Chittick individually, as opposed to from DenSco?

20 A. I'm sorry. My opinion that the Forbearance
21 Agreement --

22 Q. Should not have contained a provision where it
23 advanced funds to -- further funds to Mr. Menaged.

24 A. Well, I want to make sure I understand your
25 question. Let me try this as my answer, and you tell me

NEIL J. WERTLIEB, 10/17/2019

1 if I haven't quite addressed what you are getting at.

2 I think if -- from my perspective, the
3 Forbearance Agreement imposed more burdens on DenSco than
4 provided benefits to DenSco. One of those burdens was the
5 obligation to lend more funds.

6 If those funds in fact were provided by,
7 directly by Mr. Chittick and not through DenSco, that
8 would -- that would have relieved one of the burdens
9 imposed on DenSco under the Forbearance Agreement, but it
10 doesn't tip the balance in any way sufficiently so that
11 the Forbearance Agreement would still make sense from the
12 perspective of DenSco.

13 Q. Your opinion is that it didn't matter if the
14 client, Mr. Chittick, had entered into an oral agreement
15 with Mr. Menaged in 2013 to address the double-lien issue.
16 All of that should have been stopped, right?

17 A. I'm sorry. I don't understand your question.

18 Q. Bad question. Let me try again.

19 Your opinion is that a forbearance agreement was
20 inappropriate, under these circumstances, of DenSco,
21 right?

22 A. Correct.

23 Q. And that even if there were an oral agreement
24 entered into between Menaged and Chittick in 2013, it
25 should have been disregarded.

NEIL J. WERTLIEB, 10/17/2019

1 True?

2 MR. STURR: Form.

3 THE WITNESS: Yeah, I still don't -- I don't
4 quite understand the question. I disregard it --

5 Q. (BY MR. DEWULF) Let me ask it -- I'll ask it a
6 different way.

7 A. I'm sorry.

8 Q. Did you understand that Mr. Chittick was sharing
9 with Mr. Beauchamp, in early January 2014, that he and
10 Menaged had already entered into an agreement to address
11 the double-lien problem that they had discovered?

12 A. Yeah. I think -- if we are talking about the
13 same thing, I think my report addresses what Mr. Chittick
14 referred to as the plan.

15 Q. Right.

16 A. Yeah.

17 Q. So you knew that?

18 A. Yes.

19 Q. And so is it your testimony that Mr. Beauchamp
20 should have advised Mr. Chittick not to go any further
21 with that plan, but should stop immediately at the
22 beginning of January of 2014 and not go forward with
23 Menaged?

24 A. You are asking -- I'm confused. Are you -- this
25 has nothing to do with the Forbearance Agreement, right?

NEIL J. WERTLIEB, 10/17/2019

1 Q. Yeah, it has nothing to do with the Forbearance
2 Agreement.

3 A. Okay.

4 Q. It -- really what I'm trying to pursue with you
5 is, is it your opinion that notwithstanding the fact that
6 there was some sort of a plan or oral agreement in place,
7 Mr. Beauchamp should have put the kibosh on that and
8 stopped it all in January of 2014?

9 A. Well, again, I think -- I think certainly by
10 that point in time, and -- and most likely earlier,
11 Mr. Beauchamp had three choices in front of him. Stop the
12 offering of notes, update the disclosure, or resign or
13 threaten to resign.

14 This -- this plan between Mr. Chittick and
15 Mr. Menaged, I don't know how that fits in to that
16 equation. I think it's irrelevant. Mr. Beauchamp needed
17 to take -- needed to pursue one of those three things. If
18 he couldn't -- if he couldn't get DenSco to stop offering
19 securities or get an updated POM in the hands of
20 investors, he needed to walk away from the representation.

21 So as to this plan between Mr. Menaged and
22 Mr. -- Mr. Chittick, I -- I think it's, you know, from the
23 perspective of the attorney in Mr. Beauchamp's shoes, I
24 think it's largely irrelevant. I don't think it has any
25 significance in terms of those three options.

NEIL J. WERTLIEB, 10/17/2019

1 So I'm not sure I'm understanding your -- or
2 answering your question.

3 Q. I'm not sure you are, but it may be my question.

4 So I think your report says that as early as the
5 presence of the Freo litigation, Mr. Beauchamp should have
6 been advising Mr. Chittick not to do business with
7 Menaged, fair?

8 A. Correct. At least not without doing some
9 investigation --

10 Q. Right.

11 A. -- and getting comfortable that Mr. Menaged is a
12 trustworthy borrower.

13 Q. Do you think as of January 9, 2014,
14 Mr. Beauchamp possessed sufficient information to do an
15 updated POM with all the material information necessary?

16 A. I think he had -- he had more than enough
17 information to do a fairly comprehensive rewrite of the
18 POM.

19 Q. And in order to do the rewrite, it would have
20 required, as we talked earlier, obtaining finances, loan
21 history and performance details from Mr. Chittick?

22 A. Right. In order -- in order to provide that
23 information, it would have -- it would have needed
24 additional data and information from Mr. Chittick.

25 Q. You remember that in January, on January 6th,

NEIL J. WERTLIEB, 10/17/2019

1 2014, there was this letter written by Bob Miller on
2 behalf of a group of lenders.

3 Do you recall that?

4 A. Yes.

5 Q. I'm trying to move on this, so I'm not going to
6 show that exhibit to you, unless you need to look at it.

7 But you are not going to opine about whether
8 DenSco's loans were superior or not to other lenders'
9 loans, right?

10 Let me rephrase it, because I can see you are
11 kind of wrestling with it.

12 A. Yeah.

13 Q. You are not going to be talking to a jury about
14 having evaluated all the DenSco loans and determined
15 whether in some instances those DenSco loans were superior
16 to loans from other lenders and in some instances they
17 weren't, right?

18 MR. STURR: You mean just with respect to the
19 Miller letter or generally?

20 Q. (BY MR. DEWULF) Generally. Are you going to be
21 talking about whether these loans were in superior
22 position or not with these other lenders?

23 A. Well, I don't know what I'm going to testify to
24 in front of a jury, but I do think that based on what I
25 have seen, that there -- there is a great likelihood that

NEIL J. WERTLIEB, 10/17/2019

1 many of those double-lien properties were such that DenSco
2 was in a second-lien position, or had filed its -- its
3 lien after the date of the other lender, and therefore
4 would have been -- would have been junior. But I think as
5 to whether that's most or all or only a small portion of
6 the loans, I -- I don't have an opinion.

7 Q. So you -- you haven't looked at all the DenSco
8 loans, you haven't gone to the public records, you haven't
9 determined the priority of liens on those loans, correct?

10 A. No.

11 Q. Does this -- you indicated early in your
12 testimony, Mr. Wertlieb, that you had done some matters
13 where your -- the amount you billed for your legal
14 services was in the tens of thousands of dollars.

15 Do you recall that testimony?

16 A. Yes.

17 Q. Does the amount -- does the size of the client's
18 matter, in term of dollars, affect in any way the amount
19 of work that the lawyer should do for the client?

20 A. I'm not sure how to answer that. I think it --
21 obviously the bigger the offering, the bigger the
22 financial risk is to the client, so they may want to be
23 more protective. But I think the basic legal work that an
24 attorney needs to do in a securities offering and ensure
25 that the disclosures are compliant with Rule 10b-5, and

NEIL J. WERTLIEB, 10/17/2019

1 the offering is otherwise, if it's a Reg D offering, in
2 compliance with Rule 506, for example, that the basic work
3 required to ensure compliance with the client is not in
4 any way dependent on the size of the offering.

5 Q. So for a securities lawyer, the client's budget
6 should not bear on what that lawyer does for the client?

7 A. Well, I think there is a certain basic level of
8 work that a securities lawyer needs to do in a private
9 placement that is independent of the budget.

10 Q. And then beyond that, it may vary, according to
11 the budget?

12 A. Well, I think beyond that, it's -- it's then
13 less a question of standard of care and more a question of
14 client service, what the client wants, what the client
15 expects, what the lawyer is capable of providing. But at
16 a basic level, the attorney has to ensure compliance with
17 the securities laws.

18 Q. Were you able to gain any opinions as to whether
19 Mr. Chittick was able to appraise and value properties?

20 A. Whether he was able to? I think, as I describe
21 in the section of my report on a one-man show, I think the
22 amount of work that was required to engage in DenSco's
23 business would have required or would have mandated that
24 insufficient work would be done to achieve all of the
25 necessary functions, including appraisals, but I have no

NEIL J. WERTLIEB, 10/17/2019

1 specific opinion about --

2 Q. Okay.

3 A. -- work done on appraisals.

4 Q. Because that's my next question obviously is, do
5 you have any evidence today that you would share with a
6 jury that Mr. Chittick failed to do proper appraisals on
7 the properties that were the subject of his loans --

8 A. No.

9 Q. -- at DenSco?

10 A. No, I don't.

11 Q. Any evidence today that you are aware of that
12 Mr. Chittick was unable to pay the investors on their
13 investments in a timely way?

14 A. You mean prior to DenSco falling apart?

15 Q. Of course.

16 A. I haven't looked at that.

17 Q. When you say falling apart, you mean after his
18 suicide, Mr. Chittick's suicide?

19 A. I -- I assume at some point in time, I don't
20 know if it's before or after Mr. Chittick's suicide,
21 DenSco would have been unable to satisfy its obligations
22 on its -- on its own.

23 Q. All right. So use that as a timeframe.

24 Before that date, are you aware of any occasion
25 where DenSco was not able to pay its investors in a timely

NEIL J. WERTLIEB, 10/17/2019

1 way on their investments?

2 A. I have no information on that.

3 Q. Okay. Are you aware of, other than the problems
4 associated with Menaged, that Mr. Chittick was unable to
5 maintain the proper loan-to-value ratios at DenSco?

6 A. No, I haven't looked at that either.

7 Q. Whether a lender charges default interest,
8 penalties or pursues collection or forecloses, that's --
9 that's a lender's business decision to make, right?

10 A. Well, no, not -- not when you have investors you
11 are responsible to and you have made disclosures about
12 what you are going to do and what their expectations might
13 be.

14 Q. So as it relates to what Mr. Chittick did in
15 connection with a loan in default, that would be governed
16 by what he is representing in his POM?

17 A. Right. It's a combination of what the
18 contractual rights are under his loan agreements, an
19 assessment of the situation at hand, and what the proper
20 remedies would be, and ensuring that DenSco, as a lender,
21 is engaging in lending activities that are consistent with
22 the disclosures that are made to investors in the POM.

23 Q. If the POM doesn't go to that granular a level
24 when it's talking about how DenSco would enforce its loan
25 rights, would you agree with me that that would be a

NEIL J. WERTLIEB, 10/17/2019

1 business decision for Mr. Chittick to make?

2 A. Well, he still has -- he still has a fiduciary
3 responsibility, both as in his capacity as -- as sole
4 shareholder, director and officer of DenSco, and also as a
5 fiduciary in the sense that he and DenSco are handling
6 investor money. So he is responsible in that sense to the
7 investors.

8 A late payment, for example, affects cash flow,
9 which may impact the rate of return or the financial
10 health of DenSco, which then indirectly may affect the
11 rate of return to noteholders.

12 I think Mr. Chittick had a responsibility to do
13 his -- exercise his fiduciary duties to ensure that there
14 was proper cash flow. If borrowers were not paying on a
15 timely basis, to charge default interest or a late fee, or
16 ultimately to take action so as to take the property away
17 from that borrower and sell it or refurbish it and then
18 sell it.

19 His job was to make money for his investors, and
20 if a lender is not acting in accordance with the loan
21 documents, his -- his fiduciary obligation, as well as the
22 obligation to comply with the disclosures, would have
23 mandated certain behavior. It's not purely discretionary
24 on Mr. Chittick's part.

25 Q. But the decision about how he approaches a

NEIL J. WERTLIEB, 10/17/2019

1 default loan would be covered by his business judgment,
2 right?

3 A. Well, there is no -- there is nobody else there,
4 so it's his business judgment, but that doesn't excuse a
5 misrepresentation in his POM nor a breach of his fiduciary
6 duties.

7 Q. Okay. So let me ask -- let me switch topics. I
8 think it was one-man show was the term you used, right?

9 A. Correct.

10 Q. His investors knew DenSco and Mr. Chittick was a
11 one-man show, right?

12 A. I --

13 Q. That's made clear in the POMs?

14 A. I think it's made pretty clear, yeah.

15 Q. Let me ask you to look at page 53 of your report
16 in Exhibit 1174.

17 A. Yes.

18 Q. Under Conduct Due Diligence heading, do you see
19 that, letter a.?

20 A. Yes.

21 Q. You reference Ethical Rule 1.3, diligence for
22 this discussion, right?

23 A. Yes.

24 Q. Due diligence in the context of following up on
25 the information provided to him, that is Mr. Beauchamp,

NEIL J. WERTLIEB, 10/17/2019

1 due diligence is a different concept than diligence as
2 described under 1.3, right?

3 A. In -- in this context, I'm not sure that there
4 is a difference.

5 Q. So you think they are synonymous, that due
6 diligence and reviewing what information the client is
7 providing you as it relates to historical information,
8 falls under the category of diligence under 1.3?

9 A. I believe that to be the case, yes.

10 Q. Okay. So that paragraph, the second paragraph
11 under letter a. reads, "The Defendants themselves should
12 have investigated the claims involving Mr. Menaged and his
13 affiliated entities, which were raised in the Freo
14 Lawsuit, the December 2013 Phone Call and the Bryan Cave
15 Demand Letter, including Mr. Menaged's fabricated story
16 involving his 'cousin.'"

17 Did I read that correctly?

18 A. Yes.

19 Q. And that is your opinion, correct?

20 A. Yes. Yes, it is.

21 Q. "As part of such investigation, the Defendants
22 should have looked into where the proceeds from DenSco's
23 loans went."

24 And by defendants, you are talking about Clark
25 Hill, right, and its lawyers?

NEIL J. WERTLIEB, 10/17/2019

1 A. Clark Hill and Mr. Beauchamp, yes.

2 Q. So "looked into where the proceeds from DenSco's
3 loans went," is that -- are you opining that for all of
4 the DenSco loans, Clark Hill and Mr. Beauchamp should have
5 reviewed what happened to each of those loans and where
6 they went?

7 A. Here I'm referring to the loans to
8 Mr. Menaged --

9 Q. So are you saying --

10 A. -- and his affiliated borrowers.

11 Q. Are you saying that Mr. Beauchamp and Clark Hill
12 should have looked at every one of the Menaged loans and
13 determined what happened to the monies, the proceeds from
14 those loans?

15 A. Well, I think the principal concern is with
16 respect to the double-lien properties, because there is --
17 as I understand it, DenSco has loaned money from
18 Mr. Menaged to acquire a property where the funding for
19 the acquisition has been provided by another lender.

20 So DenSco's money was funded to Mr. Menaged and
21 that money was not used as was contemplated, so I think
22 it's incumbent upon the defendants to try to find out
23 where that money is. I'm talking about the money on the
24 double-lien properties.

25 Q. So I think you are answering my question. I

NEIL J. WERTLIEB, 10/17/2019

1 think your answer is yes.

2 Your opinion is that for all of those Menaged
3 loans from DenSco, the lawyers should have reviewed every
4 one of those loans and determined where those monies went?

5 A. The double-liened properties.

6 Q. The double-liened properties.

7 A. If there were Menaged loans that were not double
8 liened, then I would not -- there is nothing to
9 investigate there.

10 Q. Right. All the DenSco loans where there was a
11 competing loan from another lender, your opinion is that
12 Mr. Beauchamp and the Clark Hill lawyers should have
13 investigated every one of those loans to determine where
14 the monies went, right?

15 A. Yeah. I think they were obligated to do
16 something. It's DenSco's money. It has disappeared.
17 It's not been applied to the purchase of a property.
18 Where is the money? Is it recoverable?

19 Q. And they should have done that whether or not
20 the client directed them to?

21 A. Or resigned.

22 Q. Okay.

23 A. I mean, again, it's -- there is a choice of
24 actions. If they are going to continue to be the
25 securities counsel for DenSco, there are certain things

NEIL J. WERTLIEB, 10/17/2019

1 that they must do. And if -- if their client or if
2 Mr. Chittick himself would not allow them to do that, then
3 in my opinion they should have withdrawn from the
4 representation.

5 Q. The due diligence as of that date, it's pretty
6 clear as of January of 2014 that DenSco was not following
7 the practices of getting always a first-lien deed of
8 trust. True?

9 A. True.

10 Q. And -- but you are saying that that's not
11 enough. They should have also determined what happened to
12 the money that was provided?

13 A. I think on behalf of DenSco, they had that
14 obligation, yes.

15 Q. And if they had advised Mr. Chittick that that's
16 what they thought they should do, that is, the lawyers
17 thought they should do, and Mr. Chittick said I don't want
18 to pay for that, then the lawyer should have withdrawn?

19 A. Well, I don't think it's quite that simple. I
20 think the -- the -- that statement by Mr. Chittick, if
21 that's what happened, in your hypothetical, that should
22 have provoked a dialogue between Mr. Beauchamp and
23 Mr. Chittick as to Mr. Chittick's responsibilities as
24 shareholder, director and officer, his responsibilities as
25 a fiduciary, and, you know, ultimately it should have led

NEIL J. WERTLIEB, 10/17/2019

1 to a threat to resign. And if still nothing was
2 happening, then, yes, it should have -- it should have --
3 the end result should have been a withdrawal from the
4 representation.

5 Q. Do you recall in your report you expressed the
6 opinion that in your experience, the threat to withdraw
7 often induces an otherwise reluctant client to abide by
8 one of the options that you provide?

9 Let me ask you specifically on page 57, end of
10 the first paragraph, the top of the page.

11 A. Yes.

12 Q. You state: In my experience, the threat to
13 withdraw often induced an otherwise reluctant client to
14 abide by one of the options -- one of the other options,
15 you say.

16 Do you think that knowing what you know about
17 Mr. Chittick and Mr. Menaged and Mr. Beauchamp, that
18 Mr. Beauchamp's threatened or threat to withdraw as his
19 counsel would have caused Mr. Chittick to take all the
20 actions he was advising him to take?

21 A. I -- I don't know the answer to that. I think
22 that's beyond the scope of -- of what an expert can offer
23 in this situation.

24 what I would say, though, is it is clear that
25 Mr. Beauchamp's experience with Mr. Chittick is that he --

NEIL J. WERTLIEB, 10/17/2019

1 he had a relationship with a client who he thought was
2 consistently following his advice. He learned otherwise
3 in early January of 2014 with respect to his lending
4 procedures, but with that exception, my sense is that the
5 defendants thought they had a -- a client who adhered to
6 their advice.

7 So to the extent that's accurate, then the
8 threat to withdraw and the advice that this is what you
9 are obligated to do, and if you fail to do it, I will
10 withdraw, that demonstrates to the client how serious you
11 are about the advice you are giving, and presumably, for
12 Mr. Chittick that would have been sufficient. But as to
13 whether it would definitively or not, I can't -- I don't
14 think anybody could opine on that.

15 Q. So you are not and you don't feel like you are
16 qualified to express an opinion as to whether if
17 Mr. Beauchamp had threatened to withdraw as counsel, it
18 would have caused Mr. Chittick to do anything one way or
19 the other in January of 2014?

20 MR. STURR: Form.

21 THE WITNESS: Yeah, I think the only thing I can
22 opine to is my own experience, which is what I have done
23 in this parenthetical.

24 I have been in that situation where a client
25 is -- is refusing to do something that I think they are

NEIL J. WERTLIEB, 10/17/2019

1 obligated to do. I have had it happen in securities
2 offerings, where a client does -- obviously I'm not going
3 to name names, but a client refuses to disclose what I
4 consider to be material negative information about the
5 issuer, and I have shared with them, in my opinion, it has
6 to -- has to be disclosed.

7 Sometimes clients think that's a judgment call
8 and they call into question the judgment of the attorney,
9 but by threatening to resign, that demonstrates to the
10 client how serious you are and how convinced you are of
11 your position. And with -- with virtually no exceptions,
12 when I have done that with my clients, they have -- they
13 have acceded to my demands and made the proper disclosures
14 or otherwise complied with my advice.

15 Q. (BY MR. DeWULF) So as of January 2014, it
16 becomes clear that DenSco has not been following the
17 advice given to it by counsel in connection with loan
18 practices and procedures.

19 Fair?

20 A. That appears to be the case, yes.

21 Q. Given that, do you think it is likely that
22 Mr. Chittick would have followed Beauchamp's advice if
23 Beauchamp threatens to withdraw as his counsel?

24 A. Well, again, I -- not being there and not
25 knowing Mr. Chittick, it's hard for me to evaluate that.

NEIL J. WERTLIEB, 10/17/2019

1 I do -- just a couple thoughts on this, though.
2 I'm -- I think the only evidence that I have seen that
3 Mr. Beauchamp in fact instructed Mr. Chittick on proper
4 lending procedures is his own testimony. So I can't --
5 I'm not going to verify from my own review that that was
6 something that Mr. Chittick knew and understood.

7 But when he pushed back on his lending
8 procedures, which were lax and in my opinion
9 inappropriate, Mr. Beauchamp in fact agreed to explore
10 alternatives internally at -- at his law firm, and to not
11 insist on the proper lending procedures, but rather to see
12 what other hard-money lenders were doing, which strikes --

13 Q. That's the one email you are talking about? You
14 are now observing based on an email, the language of an
15 email, right?

16 A. I believe that's right, yeah.

17 Q. All right. So let me ask a related question to
18 this.

19 Did -- did you review DenSco loan documents, or
20 have you reviewed them?

21 A. I don't remember. I think I might have looked
22 at them, but --

23 Q. Do you remember anything about them, sitting
24 here today?

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

NEIL J. WERTLIEB, 10/17/2019

1 MR. STURR: Can we, at some point, John? We
2 have gone almost about an hour and a half now. Whenever
3 you are ready.

4 MR. DeWULF: Let me just wrap up this --

5 MR. STURR: Sure.

6 MR. DeWULF: -- for a moment.

7 MR. STURR: And we can be quick. I know you
8 want to keep moving.

9 Q. (BY MR. DeWULF) I just want to make sure I
10 understand your opinion.

11 Your opinion is that even if this cousin story
12 had been true that was being told by Menaged, counsel for
13 DenSco should have advised them not to continue doing
14 business with Menaged?

15 A. Yes.

16 MR. DeWULF: All right. Let's break for --

17 MR. STURR: Okay.

18 MR. DeWULF: -- a few minutes.

19 VIDEOGRAPHER: The time is 2:24 p.m. We are
20 going off the record, ending media four.

21 (A recess was taken from 2:24 p.m. to 2:32 p.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 Neil J.
25 wertlieb. The time is 2:32 p.m. We are now back on the

NEIL J. WERTLIEB, 10/17/2019

1 record.

2 Q. (BY MR. DeWULF) Let me just cover something,
3 Mr. Wertlieb, we talked about a moment ago, and if you can
4 just say yes or no to this question.

5 Is it your opinion that DenSco could not update
6 the POM, except in writing, because of the language of the
7 POM and the Subscription Agreement?

8 A. Yes.

9 Q. All right. Let me ask you to look at page 56 of
10 your report, right above withdraw from the Representation
11 of DenSco.

12 Do you see that?

13 A. Yes.

14 Q. The sentence reads, "Because the Defendants were
15 obligated to protect their client against Mr. Chittick, in
16 my opinion the standard of care applicable to them would
17 have obligated them to report Mr. Chittick's inappropriate
18 actions to either the proper authorities or the
19 noteholders or both."

20 Did I read that correctly?

21 A. Yes.

22 Q. And this -- do you know what the term "reporting
23 out" refers to?

24 A. Yes.

25 Q. And do you think in the -- under these

NEIL J. WERTLIEB, 10/17/2019

1 circumstances, when and if Mr. Beauchamp and Clark Hill
2 withdrew as DenSco's counsel, they should have provided
3 written notice to proper authorities?

4 A. I'm sorry. Can you ask that again?

5 Q. Well, let me ask you, under what circumstance do
6 you think that the defendants should have reported
7 Mr. Chittick's -- well, let me step back.

8 Under the circumstances that were presented to
9 Clark Hill in January of 2014, were those circumstances
10 sufficient to support an obligation to both withdraw and
11 report DenSco's activity to proper authorities?

12 A. So you are asking whether my opinion here on
13 page 56, whether that applied in early January of 2014?

14 Q. Yes.

15 A. I think that I would need to know more
16 information to be able to answer that question. Assuming
17 that the -- that DenSco is continuing to offer notes, that
18 Mr. -- which I believed to be the case, that Mr. Beauchamp
19 instructs Mr. Chittick to stop offering notes and
20 accepting rollover notes, and he refuses to do that, if
21 there is no opportunity, because of a lack of cooperation
22 on the part of Mr. Chittick or otherwise, to update the --
23 to properly update the POM, then I think that -- and there
24 is a threatened withdrawal and that doesn't provoke a
25 response either to shutting down or -- or disclosing,

NEIL J. WERTLIEB, 10/17/2019

1 then, yes, I think at that point in time the defendants
2 were obligated to withdraw and, in my opinion, it was a
3 violation of the standard of care to not report out.

4 Q. To whom should they or would they report?

5 A. The choices are the noteholders or the Arizona
6 regulators or both.

7 Q. Arizona regulators being the Securities Division
8 of the Corporation Commission?

9 A. Yeah, presumably.

10 Q. Okay. And the basis for that opinion is Ethical
11 Rule 1.2?

12 A. Correct. well, actually, I think it's more than
13 that. I think 1.2 is the -- is the framework within the
14 Rules of Professional Conduct.

15 I think the other problem which the defendants
16 have is that 2011 POM is their POM. It's the -- it's the
17 document that Mr. Beauchamp created. It's the document
18 that was -- that had been continued to be used. Certainly
19 by January of 2014, the defendants knew that that was
20 materially inadequate, it did not disclose what it needed
21 to disclose, and that they had a responsibility for
22 ensuring, at least with respect to the noteholders, that
23 noteholders weren't going to rely on kind of the Clark
24 Hill stamp of approval, if you will, on that document, so
25 disclaiming it in a -- in a notice to noteholders by

NEIL J. WERTLIEB, 10/17/2019

1 saying we are out, and there are material events that you
2 should know about that aren't reflected in the POM.

3 Q. So what you have just said, contemplates the
4 fact that the noteholders/investors are reading the 2011
5 POM in connection with decisions they are making to invest
6 in 2014, correct?

7 A. Or -- or that they have read it, yes.

8 Q. All right. And if they were to have read it --

9 A. Well, I'm sorry. Let me step back. If that's
10 the disclosure document on which their investment was
11 premised, whether they read it or not, then I think that
12 creates -- that's what creates the obligation on the part
13 of the defendants.

14 Q. But your observation is based on the 2011 POM
15 being read by that party, right? By the investor?

16 A. I don't think that's a prerequisite under the --
17 under the securities laws. The prerequisite to selling
18 securities is to make adequate disclosures. There is no
19 requirement that the investors in fact read the
20 disclosure.

21 Q. No. And I -- my question is inartful.

22 what I'm really -- the point I'm trying to make
23 is that you're concerned that the information contained in
24 the 2011 POM that might still be in circulation or might
25 still be reviewed by investors in 2014 is inaccurate

NEIL J. WERTLIEB, 10/17/2019

1 because it doesn't contain material information covering
2 what has occurred since 2011.

3 Fair?

4 A. No.

5 Q. Okay. You are just saying that from the
6 issuer's standpoint and from counsel's standpoint,
7 securities counsel's standpoint, they have an obligation
8 to update disclosures no matter whether or not the
9 investor is reading the materials or not.

10 Is that what you are saying?

11 A. No. There is -- there is no way for counsel or
12 an issuer to know whether or not an investor has read a
13 disclosure document.

14 The securities laws obligate the issuer, under
15 the right circumstances, when analyzing Regulation D and
16 Rule 10b-5, when disclosure is required, issuers are
17 obligated to provide that disclosure, and securities
18 counsel for those issuers are obligated by the standard of
19 care to ensure that that happens.

20 Whether or not it's read by an investor is
21 something that issuers and their counsel never know. It
22 has nothing to do with the compliance with the securities
23 laws.

24 But to your question, the issue is not whether
25 an investor, in January of 2014, has looked at that 2011

NEIL J. WERTLIEB, 10/17/2019

1 POM before they invest in January. The issue is whether
2 that investor ever received or should have received the
3 2011 POM.

4 So, for example, somebody who invested in
5 September of 2011 and was delivered the 2011 POM, if that
6 investor in January is rolling over their notes, they may
7 not even still have the 2011 POM. They may not look at
8 it. But that -- that fact is irrelevant. The fact is
9 that they invested on the basis of DenSco providing them
10 or making available to them the 2011 POM. That 2011 POM
11 is -- now creates a 10b-5 violation, and that 10b-5
12 violation must be corrected before that note can be rolled
13 over.

14 Q. If they were to have read the 2011 POM, they
15 would see that the POM, by its terms, is effective for two
16 years. True?

17 A. If they read that, those words and understood
18 what those words meant, then presumably so.

19 Q. Those words are contained in the POM, correct?

20 A. That's correct.

21 Q. And the -- the analysis under Ethical Rule 1.2
22 is that there is an obligation to disaffirm the 2011 POM
23 because it's still out there and it contains the law
24 firm's name and it's a representation being made by
25 DenSco.

NEIL J. WERTLIEB, 10/17/2019

1 Is that fair?

2 A. I'm not sure it actually contains the law firm's
3 name, but it references legal counsel, and I think there
4 is -- there is transmittal correspondence which does
5 indicate who the lawyer is.

6 Q. So with that qualification, are you agreeing
7 with me?

8 A. You would have to ask your question again. I
9 got distracted by the qualifications.

10 Q. I'm asking whether your Ethical Rule 1.2
11 analysis under comment 11 is that there has to be a
12 disaffirming of that 2011 POM. Correct?

13 A. Well, I think the -- I think the important
14 thing, and this is what I say on page 56, is that there is
15 a reporting out obligation. Whether that is providing
16 basic information to investors of a problem that DenSco,
17 or at least alerting them to the fact that there may be a
18 problem, or that is a statement that we -- we do not, we
19 no longer stand behind the 2011 POM, I haven't -- I
20 haven't considered specifically what they would need to
21 say, but it falls within one of those two categories or
22 both.

23 Q. Page 58, about halfway down the page there is a
24 paragraph there that begins "Further."

25 Do you see that?

NEIL J. WERTLIEB, 10/17/2019

1 A. I do.

2 Q. It reads, "Further, the Defendants apparently
3 took no effort to investigate the magnitude of the
4 double-lien issue, relying instead only on those issues
5 and properties specifically identified in the Freo
6 Lawsuit, the December 2013 Phone Call, and the Bryan Cave
7 Demand Letter."

8 Did I read that correctly?

9 A. Yes.

10 Q. Were there no other loans from any other lenders
11 being considered in this timeframe, by January of 2014?

12 A. I don't understand. I'm sorry.

13 Q. Well, let me be specific.

14 Do you remember that there were loans by Active
15 Funding as a lender that were also being reviewed and
16 analyzed?

17 A. Yes.

18 Q. You don't mention that here, right?

19 You said they made no effort to investigate the
20 magnitude of the double-lien issues, but there were
21 discussions between the client and the lawyers about the
22 Active Funding issues, correct?

23 A. Correct. I'm getting at something different
24 here.

25 Q. All right. And -- but let me just, for my line

NEIL J. WERTLIEB, 10/17/2019

1 of questioning --

2 A. Yeah.

3 Q. -- there were discussions beginning in January
4 of 2014 between counsel and the client DenSco about not
5 only the loans being made by DenSco, but the loans that
6 were made by other lenders to Menaged, including the ones
7 that were represented by Bryan Cave and the ones that were
8 made by the lender Active Funding, correct?

9 A. Correct.

10 Q. All right. In investigating the magnitude of
11 the double-lien issue, that is, the lawyers doing that,
12 how would they have gone about doing that? As a practical
13 matter, how does David Beauchamp and the lawyers at Clark
14 Hill investigate the double-liening problem at DenSco?

15 A. Are we talking about that sentence that you
16 referred to me?

17 Q. Yeah, I am talking about that sentence, but I'm
18 talking generally as well.

19 A. Yeah.

20 Q. They have -- do they originally go to the client
21 and ask the client to provide them that detail?

22 A. I think what this is referring to, what I
23 intended with this -- with this sentence is that the
24 defendants are on -- certainly by this point in time the
25 defendants are on notice that Menaged is committing fraud

NEIL J. WERTLIEB, 10/17/2019

1 and -- and Mr. Chittick is not following proper lending
2 procedures.

3 The information that they have received up to
4 that point in time, and by January 9th, at least, of 2014,
5 they have the specific information that's raised in the
6 Bryan Cave demand letter, as well as the act of the
7 competing loans with Active.

8 What they didn't do is inquire as to whether
9 Mr. Chittick's lax lending procedures created other
10 problems, either with Mr. Menaged or other borrowers. It
11 appears that they -- they -- that based on the information
12 that was provided, there was no inquiry as to whether
13 there were other double-lien properties with -- that
14 Mr. Menaged had acquired, that nobody -- that the lender,
15 the other lender was complaining of yet. Right? So that
16 was -- that was an inquiry.

17 They are on notice that there are problems here,
18 and they don't look around to figure out how big those
19 problems are. They only focus on the ones that are
20 brought to Mr. Beauchamp's attention. And if Mr. -- and
21 there are lots of loans being made to Mr. Menaged.

22 Were there other loans that were not competing
23 with Active, nor the subject of the Bryan Cave demand
24 letter, that were also subject to double liens, either
25 because of the Menaged fraud or because of Mr. Chittick's

NEIL J. WERTLIEB, 10/17/2019

1 improper lending procedures, that inquiry never, to my
2 knowledge, never happened, and yet Beauchamp, at least,
3 and his law firm were on notice that both areas created
4 this potential problem.

5 Q. So what you are saying as of January of 2014, as
6 it relates to this paragraph on page 58, that they were,
7 "they" the lawyers, were on notice, that should have then
8 caused them to do further investigation?

9 That's a yes-or-no question.

10 A. Yes.

11 Q. And the investigation would have been both into
12 the loan practices and procedures of DenSco, and to the
13 actual loans that are double liened, correct?

14 A. Yes, including -- including potential
15 double-lien properties that they -- that they weren't
16 already on notice about.

17 Q. And if they went to the client to ask for that
18 information and the client refused to provide it to them,
19 they should have withdrawn as their counsel?

20 A. Perhaps. I think that that's information,
21 though, that was publicly available. There would have to
22 be recorded liens, so...

23 Q. But wouldn't the client have to authorize that
24 work to be done?

25 A. Well, I'm sorry, I thought your prior question

NEIL J. WERTLIEB, 10/17/2019

1 was what if he refused to provide that information.

2 Q. Right.

3 A. I think the information is available otherwise
4 than from just the client.

5 Q. Poor question. Let me ask it a different way.
6 what if the client refused to pay the lawyer to
7 do all -- undertake all those efforts to do all this
8 investigation work?

9 A. I don't know that payment is necessarily the
10 issue. It's work that -- if they are going to continue as
11 counsel to DenSco, it's work that the defendants were
12 required to do. And if they -- if they refused to do it
13 because they weren't being paid, or Mr. Chittick said, you
14 know, if you do it, you are fired, they, under all these
15 circumstances, certainly beginning January 2014, if not
16 earlier, they had three choices: Make sure that DenSco
17 stopped offering, make proper disclosures, or withdraw.
18 And this -- this fits into one of those things.

19 They needed the information in order to update
20 the POM to properly represent DenSco, to protect the
21 interests of the investors in DenSco. If they couldn't do
22 their job because Mr. Chittick was preventing them from
23 doing it either by withholding funds or otherwise, then
24 they had no choice but to withdraw.

25 Q. Do you remember when, if ever, Mr. Beauchamp and

NEIL J. WERTLIEB, 10/17/2019

1 Clark Hill possessed detailed information as to how many
2 loans were involved with Menaged and what dollars those
3 represented?

4 A. I don't recall.

5 Q. Okay. Do you remember whether they ever got
6 that information?

7 A. Well, I think -- I think there is information
8 that's provided in the Bryan Cave demand letter, or at
9 least enough information to put them on notice that they
10 could have investigated it. By -- certainly by the time
11 that the Forbearance Agreement is completed, that
12 agreement contained financial information.

13 Q. So you -- is it your opinion that Mr. Beauchamp
14 should have concluded at some point that DenSco was
15 insolvent?

16 A. Either insolvent or in the zone of insolvency,
17 yes.

18 Q. When should he have concluded that?

19 A. I can't give you an exact date. I think the --
20 the investigation that should have been done as a result
21 of the Freo lawsuit may have provided sufficient
22 information to the defendants, or to Mr. Beauchamp in
23 particular, so as to cause him to advise DenSco to file in
24 bankruptcy.

25 And as to technically whether DenSco was

NEIL J. WERTLIEB, 10/17/2019

1 insolvent at that point in time, I think it would not be
2 unreasonable to assume that if they had to shut down on
3 their offerings or make proper disclosures and run what I
4 view as the substantial risk that no one would continue to
5 invest, that's effectively the same as shutting down the
6 business of DenSco, which I assume would very quickly lead
7 to insolvency or an insolvency analysis that would show
8 that their obligations to their lenders, to their
9 noteholders, exceed their -- their potential value in
10 their properties.

11 Q. I think you have just maybe answered my
12 question, but let me ask you, how do you define
13 insolvency?

14 A. So generally speaking, insolvency means that the
15 value of the assets held by a person or entities is less
16 than the value or amount of its obligations.

17 Q. That's like a balance sheet analysis, right?

18 A. Yeah, sort of.

19 Q. Sometimes they call it that.

20 so the value of the assets would be the real
21 properties in which they had security for the loans?

22 A. It would -- it would be based off of those
23 values, but it's a question of -- you know, it's much more
24 complicated than that. It's what is their security
25 interest, what is the realizable net value that they

NEIL J. WERTLIEB, 10/17/2019

1 could -- they could achieve on a foreclosure of
2 properties, what's the discounted cash flow analysis for a
3 property that's not in default, but, you know, isn't going
4 to be -- their maturity date on that loan is years out.
5 what's -- what's the risk of a foreclosure in the future.
6 what are the costs of pursuing a foreclosure.

7 So many different factors that would discount
8 the value of the assets that DenSco had at the time, but
9 its obligations to its -- to its noteholders I think was
10 relatively easy to determine.

11 Q. What you have just described is a lot of work,
12 right?

13 A. Yes.

14 Q. Are you -- is it your opinion that Mr. Beauchamp
15 should have done all of that work and made a determination
16 of insolvency at some point in time?

17 A. I think -- I think under the circumstances, if
18 DenSco cannot continue to raise money, I think it would
19 have been reasonable for Mr. Beauchamp to try to evaluate
20 the situation, but to quickly come to the conclusion that
21 DenSco was -- was soon to be insolvent, if it wasn't
22 already, but certainly was entering into the zone of
23 insolvency.

24 Q. To do that, he would need the authority of the
25 client, correct?

NEIL J. WERTLIEB, 10/17/2019

1 A. Well, again, it's -- you know, it's a question
2 of how much he could do based on the information he had,
3 and should he resign if the client is not cooperative.

4 Q. I don't think that answers my question.

5 My question is, to do a determination of
6 insolvency at DenSco, you would need the cooperation of
7 the client, right?

8 A. It depends how much information he had at the
9 time. I don't know.

10 Q. Well, is there ever a time when he knows the
11 details that you have described, that is, the fair market
12 values of all the properties, the amount of equity in the
13 properties, the cash flow in the properties, the numbers
14 of loans, the amounts of loans, the possibility of default
15 and foreclosure? Does he ever possess all this
16 information, to your knowledge?

17 A. I don't know that he does. I don't know what
18 information he has, based on the prior POM and what
19 Mr. Chittick has provided to him.

20 I assume it's not a lot of detailed information,
21 but he has been working with this client for a long time.
22 He under -- he should understand its -- its cash flow to
23 some extent. It's a company that's been engaged in
24 continuous offerings from, I believe, 2001, if not
25 earlier, but 2001 at least with Mr. Beauchamp as counsel.

NEIL J. WERTLIEB, 10/17/2019

1 If that spigot, that inflow of cash coming from
2 noteholders were to suddenly stop, which is really what
3 should have happened, that would have been disastrous for
4 DenSco, and presumably, you know, looking at it from that
5 perspective, I think Mr. Beauchamp should have readily
6 concluded that DenSco would be insolvent or in the zone of
7 insolvency.

8 Q. Let me go back to the question I was asking.

9 You are not aware of any point in time where
10 Mr. Beauchamp possessed sufficient information to draw a
11 conclusion that there was -- that DenSco was either
12 insolvent or in the zone of insolvency, correct?

13 A. I think it's a reasonable inference based on the
14 information he should have known at the time, yes.

15 Q. Should have known when?

16 A. Should have known once he realized that DenSco
17 either needed to shut down its operations or needed to
18 make disclosures to its investors that would have
19 effectively shut it down, because investors wouldn't
20 invest, or because the loans that were provided to
21 Mr. Menaged were -- were under water and potentially not
22 recoverable, or at least not recoverable from --

23 Q. Can you provide a date on that when, or
24 circumstances when he should have possessed that
25 information?

NEIL J. WERTLIEB, 10/17/2019

1 A. Certainly by -- by January of 2014, but if not
2 earlier.

3 Q. Do you think he should have possessed sufficient
4 information to make a determination of insolvency or zone
5 of insolvency when the Freo lawsuit was filed?

6 A. Well, it's similar, but not the same analysis.
7 But my opinion, when the -- when he is on notice of the
8 Freo lawsuit is -- he should have explored a liquidation
9 of DenSco, because if the problems were sufficiently bad,
10 DenSco could not survive, which is another way of saying
11 it was insolvent.

12 Q. So the zone of insolvency is something short of
13 insolvency, correct?

14 A. Correct.

15 Q. How did the duties of DenSco or how would the
16 duties of DenSco change if it were determined to be in the
17 zone of insolvency?

18 A. So the question for me focuses more on
19 Mr. Chittick than on DenSco. Mr. Chittick, as
20 controlling, as the sole shareholder, sole director, sole
21 officer, owes fiduciary duties to DenSco, and through
22 DenSco to the equity holder, which is himself.

23 As a company, when a company is insolvent or in
24 the zone of insolvent -- insolvency generally, those
25 fiduciary positions -- controlling shareholder, director,

NEIL J. WERTLIEB, 10/17/2019

1 officer -- shift so that the fiduciary duties are to the
2 entity and through the entity to its creditors, rather
3 than to its equity holders.

4 Q. Right.

5 A. So...

6 Q. And how are the creditors different than the
7 equity holders?

8 Let me -- I think I understand.

9 So what you are saying is the equity holder is
10 only Mr. Chittick, but the creditors are the investors,
11 right?

12 A. Right.

13 Q. So you are saying with the zone of insolvency,
14 that DenSco's duties are owed to its creditors, the
15 investors?

16 A. DenSco always has obligations to its investors.

17 Q. Right.

18 A. What I'm talking about is Mr. Chittick, in his
19 capacity, his fiduciary duty capacity.

20 Q. Okay. So you are saying his fiduciary duty
21 shifts in the zone of insolvency from owing a fiduciary
22 duty to the company DenSco to owing a fiduciary duty to
23 the investors?

24 A. Essentially, yes.

25 Q. Okay. All right. So let me ask you, is it your

NEIL J. WERTLIEB, 10/17/2019

1 opinion that at some point in time Mr. Beauchamp should
2 have advised Mr. Chittick to get separate counsel?

3 A. I think that probably would have been advisable.

4 Q. When? Either provide me a date or shortly just
5 provide me the circumstances when you think that would
6 have been appropriate.

7 A. I -- I think when it becomes -- when it becomes
8 clear to Mr. Beauchamp, or should become clear to him,
9 that the -- that the interests of Mr. Chittick are no
10 longer aligned with the interests of DenSco.

11 Q. And when is that?

12 A. It could be when DenSco is insolvent or in the
13 zone of insolvency. That's one trigger. It could be
14 when -- for example, when I believe, you know, there might
15 be a benefit to Mr. Chittick in -- in delaying disclosures
16 for his own personal benefit, rather than in protecting
17 the interests of DenSco. So that would be, I suppose, in
18 the January 2014 time period.

19 But any time Mr. Beauchamp knew or should have
20 known that there was a divergence of interest between
21 Mr. Chittick protecting himself or Mr. Chittick's
22 fiduciary duties and DenSco's interests, he should have --
23 he should have made abundantly clear that he was not
24 counsel to Mr. Chittick. He probably should have done
25 that repeatedly. That was one of the problems with a

NEIL J. WERTLIEB, 10/17/2019

1 high-risk client. But it -- but it became significant and
2 material once Mr. Chittick's interests diverged from
3 DenSco's interests.

4 Q. To your knowledge, Mr. Beauchamp never did a
5 financial analysis of DenSco to determine whether it may
6 have been insolvent at any one point in time.

7 True?

8 A. As far as I know, correct.

9 Q. And you may have testified, and I apologize, I
10 wasn't following: Is it your opinion that there is a
11 point in time wherein Mr. Beauchamp should have known
12 DenSco was insolvent?

13 A. I think there -- I think he should have
14 considered the issue and tried to evaluate it, and I --
15 it's certainly clear that by -- by the time that DenSco
16 should have stopped soliciting money, that it effectively
17 would become, at that point in time it was either
18 insolvent or would soon become insolvent, because it no
19 longer had the inflow of investment proceeds from its
20 investors. And that would have -- that would have very
21 rapidly led to an insolvency, as I understand the business
22 operations of DenSco.

23 Q. So when should DenSco have stopped soliciting
24 investors?

25 A. July of 2013.

NEIL J. WERTLIEB, 10/17/2019

1 Q. And so is it your opinion that as of July of
2 2013, DenSco should have --

3 A. Or possibly June.

4 Q. I'm sorry. So June or July of 2013, DenSco
5 should have stopped soliciting investors, correct?

6 A. That was one of the limited options.

7 Q. That's fine. I'm just taking your testimony.

8 A. Yes.

9 Q. The answer is yes?

10 A. Yes.

11 Q. So my follow-up question is, then, because
12 there -- they should be stopping soliciting investors,
13 Mr. Beauchamp should have then concluded that the company
14 was either insolvent or was in the zone of insolvency?

15 A. Well, I'm not sure I follow your question.

16 Q. Well, isn't your opinion that the company should
17 have stopped soliciting investors as of the Freo
18 litigation?

19 A. Yes.

20 Q. And --

21 A. Or made corrective disclosures.

22 Q. And if they -- okay.

23 So they might have continued to solicit
24 investors after that date, if they made written
25 supplemental disclosures in their POM?

NEIL J. WERTLIEB, 10/17/2019

1 A. If they were 10b-5 compliant thereafter, they
2 could have continued to raise money.

3 Q. You -- and I don't want to belabor this, I want
4 to move on to another topic, but you would agree with me
5 that in order to make a determination of insolvency, it
6 would require quite a bit of work, because you would have
7 to look at all of the loans that DenSco had made, right?

8 A. Yeah, but I don't think that's what
9 Mr. Beauchamp needed to do.

10 Q. Okay. But determining whether a company is
11 insolvent, in this case a hard-money lender, you would
12 have had to look at all of those individual loans to
13 determine the amount of the loan, equity, the status of
14 each loan, right?

15 A. Correct. But, again, I don't think that's what
16 Mr. Beauchamp was required to do.

17 Q. Okay. In the world that we know it as it
18 relates to DenSco and what happened, not the what if's or
19 should have's, was there a point in time where you believe
20 Mr. Beauchamp should have known DenSco was insolvent, even
21 though he didn't do all of that analysis of looking at
22 each loan and determining what the equity was and the fair
23 market value and all those kinds of things?

24 A. I think among other things, he should have -- he
25 should have insisted that DenSco stop soliciting money;

NEIL J. WERTLIEB, 10/17/2019

1 that soliciting money was committing securities fraud.

2 Q. But answer, please --

3 A. And if they had stopped at that point in time,
4 that would have -- that would have quickly rendered DenSco
5 insolvent.

6 Q. But I'm asking you as you know the facts, and
7 that didn't occur, solicitation didn't stop in June of
8 2013.

9 I'm asking you when you believed that even
10 though Mr. Beauchamp never performed that detailed
11 analysis of the finances of DenSco, nonetheless he should
12 have known that the company was insolvent, when was that?

13 MR. STURR: Form.

14 THE WITNESS: I don't think I could give you a
15 date on that.

16 Q. (BY MR. DEWULF) All right. So let's talk about
17 events that occurred after Mr. Chittick committed suicide.
18 He committed suicide in late July of 2016.

19 You recall that?

20 A. Yes.

21 Q. And after his suicide, was DenSco doing any
22 business?

23 A. Yes.

24 Q. What was it doing?

25 A. It -- it still owned its interests as a lender.

NEIL J. WERTLIEB, 10/17/2019

1 Q. So there were loans outstanding from DenSco to
2 borrowers, so the business of DenSco would be to try to
3 collect the money on those loans?

4 A. Well, there was -- until Mr. Beauchamp stepped
5 in, I don't know that there was anybody doing that --

6 Q. Right.

7 A. -- but there was -- but that was an asset of
8 DenSco.

9 Q. No. That's a good distinction.

10 So Mr. Beauchamp actually helped DenSco collect
11 money on its loans, correct?

12 A. I think he attempted to do that. I don't
13 know -- I have no evidence of his success or
14 effectiveness.

15 Q. One way or the other?

16 A. One way or the other. As I say in my report,
17 though, I find it very unusual that he stepped in to do
18 that. That is, in my experience that is far beyond the
19 type of work that lawyers would do under the
20 circumstances.

21 Q. So you think it's improper that he helped DenSco
22 at all after Mr. Chittick's suicide?

23 A. I find it -- yeah, I think it's improper for him
24 to step in without a client, without a conflict waiver,
25 and do the work that he was doing in winding down DenSco.

NEIL J. WERTLIEB, 10/17/2019

1 Yes.

2 Q. And even though you knew he was asked by Shawna
3 Heuer, Denny Chittick's surviving sister, to help, right?
4 You knew that?

5 MR. STURR: Form.

6 THE WITNESS: I don't recall that as a factual
7 matter, but I don't -- I don't know that that makes any
8 difference.

9 Q. (BY MR. DEWULF) Okay. You don't recall it as a
10 factual matter?

11 A. No.

12 Q. So you don't know how Mr. Beauchamp got involved
13 in helping DenSco after Mr. Chittick's death?

14 A. I don't -- I don't -- I'd have to look at my
15 report.

16 Q. Okay.

17 A. I don't specifically recall.

18 Q. That's fine.

19 So -- and what you do know, though, is DenSco is
20 a hard-money lender, after Mr. Chittick's death, because
21 Mr. Chittick did all the work there, it's languishing,
22 right? It isn't doing anything?

23 A. I assume that's the case, yes.

24 Q. Right.

25 And so -- but it does have outstanding loans to

NEIL J. WERTLIEB, 10/17/2019

1 various borrowers, right?

2 A. Right.

3 Q. And so the assets that it possesses really are
4 in the form of the right to payment on loans from
5 borrowers, right?

6 A. I -- I would -- I would assume that is a
7 material portion of its assets. I assume it may own
8 property as well that it's foreclosed on and then trying
9 to flip. There may be other material assets there as
10 well, but, yes, the right to receive principal and
11 interest from borrowers.

12 Q. And I think you testified earlier that you did
13 meet -- read Gary Clapper's deposition, right?

14 A. I may have. I think what I said is I'm familiar
15 with who he is, but I don't recall if I --

16 Q. All right.

17 A. -- specifically --

18 Q. So you don't recall what Mr. Clapper testified
19 to as to when the Corporation Commission got involved with
20 DenSco and when it started communicating with
21 Mr. Beauchamp?

22 A. I'm sorry. I was thinking of Mr. Koehler, I
23 think the name is. So you're -- Clapper from the -- I
24 did -- I think I did read that, yes.

25 Q. Okay. What do you recall Mr. Clapper saying as

NEIL J. WERTLIEB, 10/17/2019

1 to when the Corporation Commission got involved in working
2 with DenSco?

3 A. I don't recall.

4 Q. Do you remember when Shawna Heuer got appointed
5 personal representative for the Chittick estate?

6 A. Yes.

7 Q. When do you remember that? What's the date?

8 A. I want to say August of 2016.

9 Q. Do you remember when, what date?

10 A. I don't recall the exact date. I believe I
11 refer to it in my report, but I don't recall.

12 Q. Do you remember when the receiver got appointed?

13 A. I believe September of 2016.

14 Q. Do you remember what date?

15 A. I don't recall.

16 Q. Do you remember whether -- do you remember how
17 the Corporation Commission ended up getting involved with
18 DenSco?

19 A. I don't. Unless it's in my report, I don't
20 recall.

21 Q. But even if it's in your report, you don't
22 remember right now anyway, right?

23 A. I might refresh my recollection.

24 Q. Really quickly.

25 okay. well, let me ask a different question.

NEIL J. WERTLIEB, 10/17/2019

1 Do you know when Gammage & Burnham, the law
2 firm, got involved representing the estate of Chittick?

3 A. I believe that was after the appointment of
4 Mr. Chittick's sister as the representative of the estate.

5 Q. Can you be any more specific than that?

6 A. I assume that was late August of 2016.

7 Q. You assume Gammage & Burnham got involved in
8 late August of 2016? Is that what you said?

9 A. That's what I said, yes.

10 Q. Okay.

11 A. But, again, these are -- these are factual
12 matters that I think I -- I spell out in my report.

13 Q. Well, I don't know that you do, but -- but let
14 me -- let me pursue --

15 MR. STURR: It's page 27, if you want it.

16 Q. (BY MR. DEWULF) -- let me pursue your testimony
17 as it relates to the conflict.

18 You -- well, let me ask a more specific
19 question. I think you express the opinion that Clark Hill
20 should have issued a termination letter to Shawna Heuer in
21 connection with the end of its representation of the
22 estate.

23 Is that your opinion?

24 A. Well, before I even get to that, my opinion is
25 they should never have taken on that representation in the

NEIL J. WERTLIEB, 10/17/2019

1 first place.

2 Q. I understand that.

3 But as it relates to -- well, let me ask you,
4 what -- who was injured by Clark Hill helping Shawna Heuer
5 get appointed as personal representative?

6 A. I'm not sure I address that in my analysis, but
7 it -- to me, it's a clear violation of Rule 1.7 of the
8 Arizona Rules of Professional Conduct, so it's an ethical
9 breach, regardless of whether anybody is actually damaged
10 by it.

11 Q. So how was Clark Hill's representation of DenSco
12 materially limited by helping Shawna Heuer get appointed
13 as personal representative?

14 A. Well, the engagement was on behalf of the estate
15 of Denny Chittick. At that point in time and certainly,
16 based on my report, much earlier as well, I think it's
17 clear that DenSco has claims against or had claims against
18 Mr. Chittick, and following his death had claims that
19 could and should be pursued against the Chittick estate.
20 Certainly that's -- that is something that Mr. Beauchamp
21 should have done as part of his wind-down work on behalf
22 of DenSco.

23 So accepting a representation on behalf of the
24 Chittick estate was directly contrary to the obligations
25 that -- that the defendants had in favor of DenSco.

NEIL J. WERTLIEB, 10/17/2019

1 Q. When did DenSco know it had claims against
2 either Mr. Chittick or his estate?

3 A. I would say probably in 2014.

4 Q. Let me ask, after Mr. Chittick's suicide, when
5 did DenSco know that it had claims against either
6 Mr. Chittick or Mr. Chittick's estate?

7 A. When did the defendants know?

8 Q. When did DenSco know?

9 A. Well, I don't know what that means. Following
10 the death of Mr. Chittick, there is nobody that is DenSco.
11 It's an empty shell with no employees.

12 Mr. Beauchamp steps in to perform wind-down
13 efforts, but he -- he knows as long ago as 2014 that there
14 has been a breach of protocols and fiduciary duties by
15 Mr. Chittick and that DenSco would have claims against
16 Mr. Chittick.

17 Q. Let me ask a question I forgot to ask earlier.

18 Assuming that Clark Hill terminated its work on
19 the POM and the securities work for Clark Hill or, I'm
20 sorry, for DenSco in May of 2014, they should have
21 memorialized that in a termination letter.

22 Isn't that your opinion?

23 A. Yes.

24 Q. And if there were a termination in that
25 timeframe, is it your opinion that they should have done,

NEIL J. WERTLIEB, 10/17/2019

1 under Ethical Rule 1.2, a disaffirmance or disaffirming of
2 the POM in 2011?

3 A. Yes.

4 Q. If the -- does your opinion of that change if
5 Mr. Chittick had indicated that he was getting new
6 securities counsel to advise him to replace Clark Hill?

7 A. The disaffirming, you are asking specifically
8 disaffirming?

9 Q. No. That's a good clarification.

10 Putting aside the disaffirming issue for a
11 minute, if -- if the client, Mr. Chittick, is telling
12 Mr. Beauchamp you may not be willing to serve as my
13 counsel anymore and I'm getting new counsel to take your
14 place, does that affect your opinion as to whether Clark
15 Hill had an obligation to report out or do a noisy
16 withdrawal or anything like that?

17 A. It's a hypothetical where I would need much more
18 information. I think by that point in time, over three
19 months have been wasted on a Forbearance Agreement. Over
20 a year or a year has transpired with -- with no update to
21 the POM. DenSco is continuing to solicit investors and
22 essentially engaging in violation of Rule 10b-5, which is
23 the equivalent of securities fraud.

24 I think if Mr. Chittick simply said I will get
25 new counsel, first of all, I'm not sure that that would be

NEIL J. WERTLIEB, 10/17/2019

1 credible, but I'm not -- even if it were credible, I don't
2 know that that would relieve the defendants of their
3 obligation to report out.

4 Q. Okay.

5 A. And certainly not relieve them of their
6 obligation to disavow the POM, which, you know,
7 essentially was their work product.

8 Q. So you think they should have, even if -- even
9 if new counsel were coming on board, they should have, in
10 connection with a withdrawal or termination, under Ethical
11 Rule 1.2, given a written notification to the Corporation
12 Commission?

13 A. Perhaps. Again, it's -- as a hypothetical, I
14 would need to know more facts. If reputable counsel was
15 coming in with full knowledge of the situation and
16 Mr. Beauchamp legitimately could trust that they would
17 handle the situation appropriately, perhaps that would
18 relieve the defendants of that obligation. But just the
19 mere statement by Mr. Chittick that he is getting new
20 counsel and nothing more, and no identification of
21 counsel, I don't think that's nearly enough.

22 Q. All right. So let me ask you to look at page 66
23 of your opinion. You say, in other words, on this second
24 full paragraph, that Mr. Beauchamp took it upon himself to
25 act as a quasi receiver or liquidator for DenSco.

NEIL J. WERTLIEB, 10/17/2019

1 Is that your view in this case?

2 A. Yes.

3 Q. Did -- so you -- you looked at that as
4 Mr. Beauchamp not being requested to serve in that role,
5 but rather insinuating himself into that position?

6 A. He -- he didn't have a client to ask him to do
7 that, so, yes, I think he stepped in and did it on his own
8 initiative.

9 Q. Did you review in this case the communications
10 between David Beauchamp and the group of investors after
11 Mr. Chittick's suicide?

12 A. I -- I certainly saw some of the correspondence,
13 yes.

14 Q. Do you have any criticism of the contents of any
15 of those?

16 A. I don't know what you mean by that.

17 Q. I don't know how to be more clear about that.

18 Are there anything in those communications that
19 you have a problem with?

20 A. Well, some -- some of the -- as I recall, some
21 of the investors were inquiring as to Mr. Beauchamp's
22 conflicts of interest, asking the right question, how can
23 you be working on behalf of DenSco when you were involved,
24 you know, in the problems much earlier. Isn't this a
25 conflict for you?

NEIL J. WERTLIEB, 10/17/2019

1 Those were -- I think I saw at least one or two
2 letters to that effect. I think those are -- those were
3 valid questions to pose to Mr. Beauchamp, stepping in in
4 this wind-down role.

5 Q. Anything else?

6 A. Off the top of my head, that's -- that's all I
7 can think of.

8 Q. So at one point in one of his communications he
9 talks about the --

10 A. Oh, I'm sorry. You were talking about
11 communications by Mr. Beauchamp to the investors --

12 Q. Yes.

13 A. -- or from the investors?

14 Q. Yes.

15 A. Oh, I'm sorry. I misunderstood. I was talking
16 about communications from the investors to Mr. Beauchamp.

17 Q. Okay. Then with clarification, in terms of the
18 communications from Mr. Beauchamp to the investors, do you
19 have any criticisms of those?

20 A. Yes.

21 Q. And can you be very short and concise in your
22 answer? Can you tell us what those problems were?

23 A. One is I think he -- it's dealt with in my
24 report. I think he -- he conveys information to
25 discourage the appointment of a receiver, to discourage

NEIL J. WERTLIEB, 10/17/2019

1 the investigation by -- by the regulators. He advises
2 against investors becoming board members, and instead to
3 be part of an advisory council, so he is distancing the
4 investors and anybody else who is going to look over his
5 shoulder as to his conduct from his go-forward work as the
6 wind-down person for DenSco.

7 Q. Did you say he discouraged investors from
8 becoming board members?

9 A. Yes.

10 Q. The advice about the costs of trustee in
11 bankruptcy, you have dealt with bankruptcy trustees
12 before, right --

13 A. Yes.

14 Q. -- in your practice?

15 A. Yes.

16 Q. Have you ever served as a bankruptcy trustee?

17 A. I never have, no.

18 Q. Okay. It is true to say that a bankruptcy
19 trustee can be expensive and chew up a lot of the assets
20 of a company. True?

21 A. No question.

22 Q. All right.

23 A. You pay for what you get, though.

24 Q. Right.

25 And as it relates to being a receiver, have you

NEIL J. WERTLIEB, 10/17/2019

1 ever served as a receiver?

2 A. I have not.

3 Q. Have you done legal work where you have dealt
4 with receivers?

5 A. I have.

6 Q. Okay. They also can be expensive as it relates
7 to the outlay of money from a company. True?

8 A. Again, you get what you pay for.

9 Q. Right.

10 A. Right. They are performing a service. Without
11 a receiver or a trustee or somebody in that capacity, you
12 don't have somebody who is -- who is effectively stepping
13 in and trying to recover funds and preserve funds for the
14 benefit of investors.

15 Q. Would you agree with me that after
16 Mr. Chittick's death, no one really knew what the status
17 at DenSco was, in terms of its finances or its business,
18 right?

19 MR. STURR: Form.

20 THE WITNESS: I don't know that for sure.

21 Q. (BY MR. DEWULF) Do you --

22 A. I'm not aware of anybody who would have had the
23 same depth of understanding about DenSco's business that
24 Mr. Chittick did at the time.

25 Q. Right.

NEIL J. WERTLIEB, 10/17/2019

1 And no one knew its finances, right?

2 A. Again, same answer.

3 Q. You don't know?

4 A. I don't know.

5 Q. Okay. But wasn't -- would you agree with me
6 that for the days and actually for a couple of weeks after
7 Mr. Chittick's death, the primary goal was just to try to
8 get their -- everyone who was involved, investors and
9 otherwise, trying to get their hands around what DenSco's
10 status was, what its financial status was, what its
11 business status was?

12 A. I'm sorry. Whose goal?

13 Q. Everyone. Investors, everyone who had any
14 interest.

15 A. I don't know what anybody's goal was.

16 Q. Well, wasn't it --

17 A. I would --

18 Q. For the investors, they were certainly
19 interested in knowing what was going on at the company,
20 right?

21 A. Yeah. If you are asking me what I know, I
22 don't -- you know, I haven't -- I have seen
23 correspondence.

24 I would expect the investors are quite
25 concerned, because they knew DenSco was a one-man shop and

NEIL J. WERTLIEB, 10/17/2019

1 the one man was gone, so they -- they must be legitimately
2 concerned about their source of recovery on their
3 investment. I don't dispute that at all, but I -- but I
4 don't know how to better answer your question.

5 Q. Yeah. I'm trying to get my arms around your
6 conflict analysis, when no one really knows what's
7 happening.

8 Are you -- you are just saying David Beauchamp
9 should have stayed away from the company because there was
10 a possibility either DenSco could come after him, right?
11 That's part of your opinion?

12 A. Correct.

13 Q. And as of late July, early August of 2014 -- or
14 2016, I'm sorry, do you believe that David Beauchamp
15 possessed sufficient information to know that DenSco would
16 bring claims against him?

17 A. Would in fact bring claims?

18 Q. Yes.

19 A. I don't know how he could know that with
20 certainty.

21 Q. But you --

22 A. Certainly not while he is the wind-down officer.

23 Q. Well, but they theoretically would have claims
24 at some point against him, right? They may possess a
25 right to bring a claim after Mr. Chittick's death, right?

NEIL J. WERTLIEB, 10/17/2019

1 A. I think DenSco had that right probably in June
2 of 2013.

3 Q. Right.

4 So as of July/August of 2016, is it your opinion
5 that Mr. Beauchamp should have not done any further work
6 for DenSco or the estate, because there was a possibility
7 of a claim that DenSco could possess against him and Clark
8 Hill?

9 A. I don't think the possibility of the claim, I
10 don't think that's the correct analysis. He had -- he had
11 a conflict of interest under Rule 17 -- 1.7.

12 His personal interests were -- were --
13 materially would have impacted his performance on behalf
14 of DenSco, and I see evidence of that in his
15 communications to the investors and his behavior
16 otherwise.

17 I find it very odd that he is the one who is
18 stepping into this -- this role as wind-down officer or
19 quasi receiver or liquidator. That is typically not what
20 attorneys do as attorneys. I'm shocked at that behavior,
21 frankly.

22 If he -- if he wanted to have any involvement at
23 all, it should have been -- or let me put it this way. If
24 I were in this situation and the one-man shop, the
25 individual of my client had -- had died, I would want a

NEIL J. WERTLIEB, 10/17/2019

1 receiver in there immediately. I would want the state
2 regulator in there immediately.

3 It's not my job as a lawyer to engage in
4 functions that are winding down a business and liquidating
5 investments, especially for a complicated business like
6 this, with complicated assets. This is far beyond the
7 experience and knowledge of most attorneys who simply
8 practice securities law.

9 So I think he -- I think he self-appointed
10 himself in that role and he should not have done that,
11 especially given his conflict of interest under Rule 1.7.
12 That was inappropriate.

13 Q. Do you -- sitting here today, do you remember
14 any of Mr. Gary Clapper's testimony about the role that
15 David played, David Beauchamp played at DenSco?

16 A. As I recall, you may have gotten him to admit
17 that Mr. Beauchamp was helpful, or something to that
18 effect.

19 Q. Do you remember anything else?

20 A. No, that's all I remember.

21 Q. I didn't -- I've got to object to the way you
22 characterized that. I asked him the questions and he gave
23 me answers.

24 Are you suggesting that somehow I influenced
25 Mr. Clapper?

NEIL J. WERTLIEB, 10/17/2019

1 A. No, I am not suggesting that at all.

2 Q. So do you possess any evidence today that Mr. --
3 that Ms. Heuer considered Clark Hill to be her counsel,
4 the estate's counsel, after Gammage & Burnham got
5 involved?

6 A. I'm sorry. That she --

7 Q. Let me rephrase it. I'll rephrase it.

8 A. Okay.

9 Q. I've got to -- I'll be maybe a little more
10 clear.

11 Do you have any evidence today, that you are
12 aware of, that after Gammage & Burnham commenced its
13 representation of the estate, that the estate continued to
14 view Clark Hill as its counsel?

15 A. Not that I recall.

16 Q. And you don't know, sitting here today, whether
17 Mr. Beauchamp's efforts during the period of time that he
18 helped DenSco were helpful to DenSco in terms of bringing
19 money in the door?

20 A. I -- I can't -- I have no opinion on the quality
21 or success of his work in winding down DenSco's affairs,
22 other than my concerns about his conflict of interest and
23 the communications that he shared with investors to
24 discourage an investigation.

25 Q. Your view is that unlike Scott Rhodes' opinion,

NEIL J. WERTLIEB, 10/17/2019

1 you do not believe that Ethical Rule 1.3 applies to the
2 situation post-Chittick's suicide?

3 A. Are you referring to the emergency --

4 Q. Right.

5 A. -- provision?

6 I -- I think it's clear from the context of the
7 rules and my understanding of the interplay between the
8 rules that the emergency exception applies to competence;
9 that is, if your client has an emergency situation, the
10 quality of your work may suffer because it -- because of
11 the emergency situation, and under the circumstances your
12 lack of competence may be excused by that exception.

13 That exception does not apply to Rule 1.7, and
14 nor should it. If an attorney is prohibited from taking
15 on a new client, then the emergency situation pertaining
16 to that -- that prospective client is irrelevant, because
17 it really just goes to the quality of work that you would
18 do for that new client, that is, by virtue of 1.7, which
19 has no emergency exception, 1.7 precludes the attorney
20 from taking on that -- that new client, without exception.

21 Q. Do you know how that Ethical Rule 1.3 came
22 about? Do you remember the circumstances surrounding its
23 creation?

24 A. I don't.

25 Q. Were you aware that Mr. Beauchamp had

NEIL J. WERTLIEB, 10/17/2019

1 recommended to the investors that they hire a forensic
2 accountant to evaluate what had gone on at the company?

3 A. I don't -- I don't recall that.

4 Q. You don't?

5 Were you aware that there were discussions
6 between him and the investors about getting the FBI
7 involved in investigating?

8 A. I -- I don't recall that either.

9 Q. No?

10 Do you remember that -- well, let me look at my
11 notes for a minute.

12 You don't know, sitting here today, how the
13 corporation, Arizona Corporation Commission came to be
14 involved with DenSco, right?

15 A. Are you talking about before Mr. Chittick's
16 death?

17 Q. No. You know what? Let me be more precise in
18 the timing.

19 After Mr. Chittick's suicide, do you know what
20 the circumstances were which led the Corporation
21 Commission to get in contact or be in contact with DenSco?

22 A. I don't recall. It may -- I may have it in my
23 report and this may refresh my memory, but I don't recall.

24 Q. Before you testified today, did you read your
25 report?

NEIL J. WERTLIEB, 10/17/2019

1 A. Several times, yes. I did. It's -- it's 68
2 pages, though, not even counting the exhibits.

3 Q. Nobody's fault but yours.

4 So the --

5 A. I'm sorry. I take exception to that. I think
6 there are some defendants in this case.

7 MR. DeWULF: All right. So let's take a short
8 break. I'm going to kind of look at my notes. I think
9 I'm about finished.

10 VIDEOGRAPHER: The time is 3:38 p.m. We are
11 going off the record, ending media five.

12 (A recess was taken from 3:38 p.m. to 3:47 p.m.)

13 VIDEOGRAPHER: My name is Mary Onuschak with the
14 firm of Legal Video Specialists, Phoenix, Arizona. This
15 begins media six of the videotaped deposition of Neil J.
16 Wertlieb. The time is 3:47 p.m. We are now back on the
17 record.

18 Q. (BY MR. DeWULF) I didn't cover this earlier,
19 Mr. Wertlieb.

20 I think it's your opinion that Clark Hill did
21 not withdraw as counsel for DenSco in May of 2014.
22 Correct?

23 A. That -- I believe that to be the case, yes.

24 Q. All right. Assuming that they did withdraw as
25 counsel in May of 2014, would it have been appropriate to

NEIL J. WERTLIEB, 10/17/2019

1 do cleanup work on the Forbearance Agreement after that
2 date, as it related to updating the number of loans and
3 getting espousal, approval?

4 A. I don't -- I think the circumstances of the
5 mandatory withdrawal, in my opinion, are such that you
6 must walk away from this client and not assist them in
7 anything.

8 Q. And did you find it inappropriate for Clark Hill
9 to have done work in connection with compliance with
10 Department of Financial Institution's regulations in 2016?

11 A. Well, I -- I don't know how to answer that.
12 I -- my view is that that is evidence that they didn't
13 withdraw in the first place, at least that's part of the
14 evidence.

15 If they hadn't withdrawn, you know, they are
16 continuing to be in violation of their obligations
17 throughout 2014 and into 2016 when they take on that new
18 engagement.

19 So I'm not sure how to -- how to better answer
20 that question, other than to say they should have simply
21 walked away, terminated all work on behalf of this
22 noncompliant client.

23 Q. The -- if you look at the top of page 9 of your
24 rebuttal, which is 1175.

25 A. I'm sorry. Which page?

NEIL J. WERTLIEB, 10/17/2019

1 Q. Page 9. And there is a bullet point at the very
2 top of the page. It reads "No person."

3 Do you see that?

4 A. I do.

5 Q. And so if you go back to page 8, it's -- this is
6 an excerpt from the 2011 POM, correct?

7 A. I'm sorry. "This" referring to what?

8 Q. Yeah. Let me make a clean record of this. I
9 apologize.

10 Page 8, at the bottom of page 8, you reference
11 certain statements contained in the 2011 POM. Do you see
12 that in their bullet points, at the very -- toward the
13 bottom of page 8?

14 A. I do.

15 Q. And then if you go to the top of page 9, the
16 third bullet point reads, "No person has been authorized
17 to give any information or to make any representations
18 concerning the Company other than as contained in this
19 Confidential Private Offering memorandum, and if given or
20 made, such other information representations must not be
21 relied upon."

22 Did I read that correctly?

23 A. Yes.

24 Q. And that's the language that you were referring
25 to earlier in your testimony as a basis for your belief

NEIL J. WERTLIEB, 10/17/2019

1 that DenSco could not supplement or provide disclosure
2 information beyond the POM that was -- let me rephrase
3 that.

4 This is the basis for your opinion that
5 disclosures could not be oral after the POM?

6 A. Correct.

7 Q. All right. And --

8 A. I'm sorry. That they -- oral disclosures are
9 not prohibited ever, but they don't necessarily satisfy
10 the 10b-5 requirement.

11 with this language, this bullet point at the top
12 of page 9, this -- this is not saying we are not going to
13 make oral disclosures. It's saying you should not take
14 those into account, and therefore only, from a 10b-5
15 perspective, take into account a supplemental POM or a
16 written addendum to this POM.

17 Q. So you know Kevin Olson's opinion in this case
18 is that that's boilerplate language and it would not
19 prevent the owner, manager, director of DenSco to be able
20 to provide material disclosures orally to his investors.

21 Do you understand that to be his opinion?

22 A. I understand that to be his opinion.

23 Q. And you disagree with that?

24 A. I -- I don't think that complies with 10b-5.
25 Again, you can make oral disclosures all you want, but

NEIL J. WERTLIEB, 10/17/2019

1 when you have a framework that's spelled out in your POM
2 that says we are only going to -- we are only going to
3 provide disclosures by this authorized method, and that's
4 all you are to rely on, you -- you have -- you have set up
5 a procedure by which you must comply going forward. And
6 failure to so comply either renders the statement that's
7 made orally ineffective, or it renders this statement
8 materially false. Either way, you have got a 10b-5
9 violation.

10 Q. So what if Mr. Chittick were to tell an investor
11 after the 211 -- 2011 POM: Listen, I know that that POM
12 contains this language, but I am authorized as the
13 owner/manager of this company to tell you what's going on
14 in the company, and I'm going to tell you the following
15 material information.

16 You are saying he would be prohibited from doing
17 so because it violates 10b-5?

18 A. That's information that should be provided in
19 writing.

20 Q. Okay. So the company is really hamstrung, after
21 it issues its POM, to do anything other than provide a
22 written supplement, right?

23 A. That's -- that's how the disclosure -- that's
24 actually, regardless of this language, that's generally
25 how disclosures are made anyway. You want to have a paper

NEIL J. WERTLIEB, 10/17/2019

1 trail that shows that you have -- you have shared
2 information with your investors. Otherwise, you have the
3 potential for a subsequent dispute, as I think we have
4 here, as to the adequacy of disclosures that might
5 possibly have been made orally. That's -- that's why you
6 don't make oral disclosures.

7 MR. DeWULF: All right. I have no further
8 questions. Thank you. I appreciate you coming in today.

9 MR. STURR: Okay.

10 THE WITNESS: Thank you.

11 MR. STURR: We will read and sign.

12 VIDEOGRAPHER: The time is 3:55 p.m. This
13 concludes the deposition with media six.

14 (3:55 p.m.)

15

16

17

NEIL J. WERTLIEB

18

19

20

21

22

23

24

25

NEIL J. WERTLIEB, 10/17/2019

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

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

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

- Review and signature was requested.
- Review and signature was waived.
- Review and signature was not requested.

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

<i>Kelly Sue Oglesby</i>	11/3/2019
Kelly Sue Oglesby	Date
Arizona Certified Reporter No. 50178	

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

<i>Jane M. Doyle</i>	11/3/2019
JD REPORTING, INC.	Date
Arizona Registered Reporting Firm R1012	