

SUPERIOR COURT OF ARIZONA

COUNTY OF MARICOPA

PETER S. DAVIS, as Receiver of)
DenSco Investment Corporation, an)
Arizona corporation,)
)
Plaintiff,)

vs.) NO. CV2017-013832
)

CLARK HILL, PLC, a Michigan limited) ***CONFIDENTIAL***
liability company; DAVID G.)
BEAUCHAMP and JANE DOE BEAUCHAMP,)
husband and wife,)
)
Defendants.)

ORAL DEPOSITION OF
YOMTOV SCOTT MENAGED
SEPTEMBER 24, 2019
Volume 2 OF 2

ORAL DEPOSITION of YOMTOV SCOTT MENAGED,
produced as a witness at the instance of the Defendants
and duly sworn, was taken in the above-styled and
numbered cause on September 24, 2019, from 8:17 a.m. to
3:42 p.m., at the La Tuna Federal Correction
Institution, Anthony, Texas, pursuant to the Arizona
Rules of Civil Procedure.

Reported by:

Rhonda McCay, CSR, CCR, RPR, CLR

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A P P E A R A N C E S

FOR THE PLAINTIFF:
Mr. Geoffrey M.T. Sturr
OSBORN MALEDON, PA
Attorneys at Law
2929 North Central Avenue, 21st Floor
Phoenix, Arizona 85012
gsturr@omlaw.com

FOR THE DEFENDANTS:
Mr. John DeWulf
and
Mr. Marvin C. Ruth
COPPERSMITH BROCKELMAN, PLC
Attorneys at Law
2800 North Central Avenue, Suite 1900
Phoenix, Arizona 85004
jdewulf@cblawyers.com

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1 YOMTOV SCOTT MENAGED,
2 having been first duly sworn, testified as follows:

3 EXAMINATION

4 BY MR. DeWULF:

5 Q. Let's go back on.

6 So, Mr. Menaged, this is the second day of
7 your deposition. And you're under oath to tell the
8 truth still. Do you understand that?

9 A. I do.

10 Q. And all those things we talked about yesterday
11 apply today again.

12 A. I understand.

13 Q. All right. Well, let me just follow up on a
14 couple of things that we talked about yesterday. I
15 wasn't clear about some things.

16 So you were indicating in your testimony
17 yesterday that you understood that David Beauchamp was
18 communicating to Denny Chittick that he could wait some
19 period of time before he disclosed information to his
20 investors in this formal document. It was called a POM,
21 a private offering memorandum. Was that your testimony?

22 A. Yes.

23 Q. I think -- I just wanted to clarify that I
24 think what you told us was that you understood that that
25 advice was being given in that time frame between the

1 end of 2013 and when the forbearance agreement was
2 signed by the parties.

3 A. The first time I heard it was between that
4 period on a conference call. The second time I heard it
5 was from Denny after that period. I would probably say
6 it was about three months after the forbearance
7 agreement was signed. So maybe July.

8 Q. All right. And when you say "the second time I
9 heard it was from Denny," what did he tell you in, I
10 guess, mid-2014?

11 A. That he spoke to his attorney, and his attorney
12 said he would give him until possibly the end of the
13 year to do this memorandum, or whatever you call it.
14 And then they would meet up and review how the progress
15 had went, and then they would decide from there what
16 they were going to do.

17 Q. So we -- you've testified about the forbearance
18 agreement.

19 A. Yes.

20 Q. Do you recall that when you began negotiating
21 that forbearance agreement that the belief was that it
22 would get completed within a few weeks?

23 MR. STURR: What is "it"?

24 A. What completed?

25 MR. STURR: Object to the form.

1 Q. (BY MR. DeWULF) Let me rephrase it.

2 The forbearance agreement that you began
3 negotiating in early 2014, was the belief by everyone
4 that you could get that finalized and signed within a
5 few weeks?

6 A. The forbearance itself?

7 Q. Yes.

8 A. I believe so.

9 Q. Because you thought that you and Mr. Chittick
10 had already reached an agreement on the broad terms of
11 what that was going to say, right?

12 A. We did.

13 Q. And you and Mr. Chittick, on behalf of DenSco,
14 were already performing under the agreement in 2013
15 before you even started negotiating the forbearance
16 agreement, right?

17 A. Correct.

18 Q. You testified yesterday that, in connection
19 with my questioning about that second fraud involving
20 the banks, that when I was asking you, for example, why
21 you took pictures of the cashier's checks, you indicated
22 that Mr. Chittick had told you that Mr. Beauchamp
23 advised him that Mr. Chittick needed to get proof of
24 payment to the trustee, right?

25 A. Correct.

1 Q. Now, do you recall that earlier, that is, in
2 January of 2014, when Mr. Beauchamp learned that
3 Mr. Chittick was lending directly to his borrowers, that
4 Mr. Beauchamp was upset about that?

5 A. He was.

6 Q. And do you remember him swearing and getting
7 angry with Mr. Chittick about that?

8 A. Yes. I believe that was my bankruptcy
9 testimony as well.

10 Q. It was.

11 Because he had advised Mr. Chittick that
12 Mr. Chittick needed a loan -- I'm sorry. Let me
13 rephrase.

14 Mr. Beauchamp was upset because he had
15 advised Mr. Chittick that Mr. Chittick needed to loan
16 the money or pay the money directly to the trustee,
17 correct?

18 A. Mr. Beauchamp was upset because he wasn't
19 following his own loan documents. His loan documents
20 say "I provided a check to XYZ trustee in the amount of
21 XYZ for purchase of property XYZ." And that didn't
22 happen.

23 Q. Did you -- I understand what you just said is
24 that the documents provided specifically for that. And
25 did you also understand that that was the advice

1 Mr. Chittick was being given, that the monies needed to
2 be provided directly to the trustee as opposed to being
3 given to the borrowers?

4 MR. STURR: Object to the form,
5 foundation.

6 A. The first time we met, yes.

7 Q. (BY MR. DeWULF) You testified yesterday that
8 at some point in time, you told Denny Chittick that the
9 loans you were getting from DenSco were being used, at
10 least in part, to pay off previous loans that you had
11 taken out from DenSco. Do you remember that testimony?

12 A. Yes.

13 Q. When do you think you told Denny Chittick that?

14 A. I can't recall what year that was.

15 Q. All right. Can you tie it to any events?

16 A. It was at some point during the second -- what
17 they consider the second fraud or the second chain of
18 events. So it was after 2014.

19 Q. In other words, do you think it was during 2014
20 or do you think it was --

21 A. No.

22 Q. -- so you think it's 2015 going forward?

23 A. Probably.

24 Q. All right. So the record is clear. You think
25 that you disclosed to Mr. Chittick that the monies you

1 were taking from DenSco for loans were being used to pay
2 off previous DenSco loans, and you think you
3 communicated that in 2015 or later?

4 A. What I told him, just to clear the record,
5 is -- I originally told him -- his belief originally was
6 auction.com -- there was a fraud involved with
7 auction.com, and that I was taking money from
8 auction.com and putting it towards the loans.

9 What I also told him is, "Look, some of
10 these things, they don't pay anything on. So I take
11 that money -- for instance, they are not providing any
12 funds when I provide the money to them. So I'm taking
13 that money, I'm paying it to old things. But, really,
14 what does it matter. It's the same money?"

15 "Yeah. I agree with you."

16 In reality, it really wasn't the same money
17 because -- the difference is 18 percent for a month. So
18 that is the difference. You're talking on \$100,000,
19 \$1800.

20 Q. And you think you had those communications
21 sometime after the beginning of 2015?

22 A. I believe it was sometime in 2015.

23 Q. I told you, I was going to ask about your
24 tattoos. I always think that they tell something. Can
25 you explain what your tattoos are.

1 A. Here I have the twin towers because I'm from
2 New York, and here I have something that says
3 "Serenity."

4 Q. "Serenity"?

5 A. Yes.

6 Q. When did you get them?

7 A. 2012, maybe.

8 Q. Let me go through a few documents with you.
9 Maybe it will refresh your memory about some things.

10 This is an exhibit that is previously
11 marked as 648. It is from 2011.

12 Q. And you'll see it's a multipage document,
13 Mr. Menaged, and if you go to -- let me ask a general
14 question. You'll see that this is -- these are dated in
15 September of 2011. Do you see that?

16 A. Yes.

17 Q. And there is a group of recipients on this
18 series of emails that include you, correct?

19 A. Yes.

20 Q. And there are bunch of other folks who look to
21 be in the hard money lending business?

22 A. Yes.

23 Q. If you'd look at those email addresses, could
24 you confirm that for me. Do you see that?

25 A. Yes.

1 Q. Reichman is on this?

2 A. Yes. I can't confirm all of them, but I do
3 know some of them.

4 Q. You know Mr. Gould?

5 A. I do.

6 Q. Mr. Koehler and Mr. Reichman are all involved
7 in the lending business, right?

8 A. Dan Diethelm, yes. Uh-huh.

9 Q. It looks like, in 2011, you may have been a
10 party to email communications about kind of industry
11 issues or things that were going on in the marketplace.
12 Do you recall that, sitting here today?

13 A. I used to get spam like this all the time. I
14 mean, that's what it is.

15 Q. All right. So if you see the third page, it
16 starts out where Denny Chittick is being critical of
17 what I think is a particular borrower, Aaron Morris. Do
18 you know who Aaron Morris is?

19 A. I've heard of him.

20 Q. He says some unkind things there, but then it
21 goes on. If you read, there's -- the next email as we
22 go later in time, on the back of this second page at the
23 bottom is from Noah Brocious. Do you know who Noah
24 Brocious is?

25 A. I do.

1 Q. Is he a lender?

2 A. He is.

3 Q. And he is raising the issue of Tiffany & Bosco
4 as trustees giving less than what had formerly been
5 given in terms of information to a successful bidder.
6 Do you see that?

7 A. I do.

8 Q. Do you remember this event?

9 A. No.

10 Q. In response, Kevin McKiernan says "I will talk
11 to bidders and see what I can come up with."

12 Do you know who Mr. McKiernan is?

13 A. I think he's with Posted Properties, if I'm not
14 mistaken. He's a wholesaler.

15 Q. Let's go to the first of this exhibit. At the
16 bottom of the first page is Dan Diethelm, who is also a
17 lender, right?

18 A. Yes.

19 Q. And he was one of the ringleaders in late 2013,
20 early 2014, working with litigation counsel where there
21 were competing liens between other lenders and DenSco
22 loans, right?

23 A. Yes.

24 Q. So here he is saying, on September 22, 2011,
25 "This opens up a greater possibility of the return of

1 kiting of deeds of trust which was somewhat prevalent in
2 the mid '70s and the late '80s."

3 Do you what he's referring to there?

4 A. I don't.

5 Q. Let's look at the very top. Well, Noah
6 Brocious says "Can you explain what that is?"

7 Then, at the top, Mr. Diethelm says
8 "Borrowers borrow money for the same property from
9 multiple lenders giving each a deed of trust while
10 telling each they are the only lender. Like kiting
11 checks, they are kiting deed of trust. The lenders can
12 all argue about priority, but at the end of the day, it
13 matters little as the money is long gone on hookers and
14 blow."

15 Did I read that correctly?

16 A. Yes.

17 Q. Do you remember this email?

18 A. Specifically, no. But it's --

19 Q. Was it an issue that was being discussed by
20 lenders in that 2000- -- the fall of 2011 time frame?

21 MR. STURR: Form.

22 A. I don't think so. Not that I recall.

23 Q. (BY MR. DeWULF) All right. Let me ask a
24 little different question. Was it discussed among
25 borrowers that this was occurring within the

1 marketplace?

2 A. I've never discussed it with anyone, and I've
3 never heard anyone discuss it with me.

4 Q. Okay. The problems that occurred in 2012 and
5 2013 that you and Mr. Chittick had to address arose from
6 multiple deeds of trust securing different loans on the
7 same property, correct?

8 A. Correct.

9 Q. Is that the issue that is being described in
10 this Exhibit 648?

11 MR. STURR: Form, foundation.

12 A. It seems to be.

13 Q. (BY MR. DeWULF) I'm showing you Exhibit 1138.

14 (Exhibit 1138 marked)

15 A. Yes.

16 Q. This is an email -- the bottom of the first
17 page of Exhibit 1138 is an email to you from Denny
18 Chittick at 3:54 a.m. Do you see that?

19 A. Yes.

20 Q. Do you remember this email?

21 A. Not specifically.

22 Q. So it's dated November 23rd, 2013. This would
23 have been around the time that this issue with Active
24 Funding Group and the competing liens became the subject
25 of your and Mr. Chittick's conversation in terms of how

1 to address that, right?

2 A. Yes.

3 Q. Mr. Chittick is saying "Half the time I record
4 first, half the time he records first." Did you
5 understand this to be referring to Mr. Reichman and
6 Active Funding Group?

7 A. Yes. That's what it's about.

8 Q. Were you able to arrive at a conclusion in
9 November of 2013 whether that was correct, that is, half
10 the time DenSco was in a superior position on its lien
11 to Active Funding and half the time Active Funding was
12 in a superior position?

13 A. I will say that's correct.

14 Q. So if that were true, Denny Chittick could
15 have -- how to phrase this -- Denny Chittick had the
16 option of fighting Active Funding about priority on
17 these loans, didn't he?

18 A. He had that option, yes.

19 Q. Do you know why he chose not to?

20 A. I can't discuss why he chose to pay off Active
21 \$11 million, no.

22 Q. And when you say \$11 million, that's the amount
23 of payments that DenSco made to Active Funding Group?

24 A. Yes.

25 Q. That was predicated upon Denny Chittick and

1 DenSco choosing to acquiesce in Active Fundings
2 assertion that they should be treated as a superior
3 lender?

4 MR. STURR: Form.

5 A. Say that again.

6 Q. (BY MR. DeWULF) Yeah. It was bad.

7 The \$11 million that was paid by DenSco to
8 Active Funding Group was paid as a part of DenSco
9 choosing not to fight Active Funding Group on Active
10 Funding Group's assertion that Active Funding Group was
11 in superior lien position on the loans where they were
12 competing with DenSco loans?

13 A. I can't get into the reasons of why Denny
14 Chittick really decided to pay off Active Funding Group.
15 So on that question, I have to take the Fifth.

16 Q. You think that that may relate to Active
17 Funding Group?

18 A. I have to take the Fifth.

19 Q. All right. But you are in a position where you
20 would have been communicating both to Gregg Reichman on
21 the Active Funding side and with Denny Chittick on the
22 DenSco side regarding the accommodation or the
23 understanding that they reached in late 2013, right?

24 A. I was the only one involved, yes.

25 Q. Were you in that role advocating for Active

1 Funding's position against DenSco?

2 A. No.

3 Q. Were you communicating on behalf of Active
4 Funding their position to Denny Chittick?

5 A. No.

6 Q. Do you know how it came to be that DenSco and
7 Denny Chittick chose to roll over or not challenge
8 Active Funding's assertion that they had superior
9 position on all these loans?

10 MR. STURR: Form.

11 A. I do.

12 Q. (BY MR. DeWULF) Can you answer that question?

13 A. I cannot. I have to take the Fifth on that.

14 Q. When you say to -- if you look at the email in
15 response to Mr. Chittick's email on November 23rd at
16 7:54 a.m., you say "No one, especially me, would try and
17 screw you. I am out of town, but will have all chains
18 Monday and we will meet Tuesday and get it all cleared
19 up. I am sorry for all the work I have made you do
20 now."

21 Did I read that correctly?

22 A. Yes.

23 Q. When you wrote this email, you would have known
24 already that there were competing liens on a whole slew
25 of loans taken out by your companies, right?

1 A. Yes.

2 Q. Did you really believe that by looking at the
3 chains of title you could clear everything up?

4 A. I believed I could go through the values of the
5 properties, make sure that these values with one or two
6 mortgages did not go over 120 percent of the loan's
7 value.

8 Q. So let me break that down so I understand.

9 A. Sure.

10 Q. The jury might not understand that concept.

11 What you are saying is, in those events
12 where there were competing loans between DenSco and
13 Active Funding Group, the total value of those loans,
14 you believed, would not exceed 120 percent of the fair
15 market value of the property that was the security for
16 those loans?

17 A. Not only was that my belief, it was Denny's as
18 well, which is why it's in the forbearance agreement.

19 Q. So the belief is that, because of that fact,
20 there is -- that the total value of those two loans was
21 not that much greater than the value of the property
22 itself, you could work through that process in
23 satisfying those loans?

24 A. Correct.

25 Q. And, ultimately, by the end of 2013, you and

1 Mr. Reichman and Mr. Chittick agreed that DenSco would
2 submit to Active Funding's assertion that they had
3 superior loan positions -- superior lien positions and
4 pay off Active Funding over time?

5 MR. STURR: Object to form.

6 A. I don't know that I would say specifically that
7 Denny Chittick believed he was in second position on
8 half or even more than half of these loans. However, it
9 was his decision to pay off Active Funding Group based
10 on other factors.

11 Q. (BY MR. DeWULF) So that clarification makes me
12 think that Denny Chittick believed that he may have been
13 in first position or superior position to Active Funding
14 on most of the loans he made. Is that fair?

15 A. Based on this email, it says that he's at least
16 50/50.

17 Q. Based on what you knew, did you think he had
18 more loans in the superior position to Active Funding
19 Group?

20 A. I'm unsure. I'm not a title agent. I'm unsure
21 of that.

22 Q. So do you know why Denny Chittick didn't put up
23 a bigger fight with Active Funding about asserting that
24 he had a senior position or a better position than
25 Active Funding Group had on these competing loans on the

1 same property?

2 A. The question was do I know why?

3 Q. Yes.

4 A. I do know why.

5 Q. Can you share with us why?

6 A. I cannot.

7 Q. And in connection with that subject matter, you
8 are invoking the Fifth Amendment?

9 A. Yes, I am.

10 Q. All right. And if -- we talked a little about
11 this yesterday. If we were to -- and I think you deemed
12 this deposition testimony confidential already.

13 A. I have.

14 Q. So the fact that we are deeming this
15 confidential still does not allow you to testify about
16 the subject matter?

17 A. Correct. Because there wasn't a stipulated
18 agreement as to this being confidential, which means
19 this may not be confidential ultimately. And prior to
20 me speaking to the U.S. Attorney's Office, I can't talk
21 about the subject.

22 Q. Let me go one step further, and that is, if you
23 were assured that this deposition would remain
24 confidential and that the court would order it so, would
25 you be willing to talk more about the subject matter

1 regarding these -- this Active Funding arrangement?

2 A. I can't answer that at this time.

3 Q. So as we finish this series of emails on 1138,
4 there is a belief that this would all get worked out.
5 Did you believe the workout would be based on this idea
6 that the collective value of the loans did not exceed
7 fair market value by more than 120 percent? That's
8 misphrased.

9 The belief, in this time frame, November of
10 2013, that everything would get cleared up was based on
11 the belief that the total value of the two loans between
12 Active Funding and DenSco did not exceed 120 percent of
13 the market value of the properties securing the loans?

14 A. That's correct. I sat down with Denny on all
15 these properties. We went through each and every one.
16 We did a comparison market value of every property. We
17 came up with the values, which is how the spreadsheet
18 came about that he prepared for the forbearance
19 agreement, showing the values, amount owed and
20 everything else.

21 When I went into this whole first and
22 second situation, I knew that the property was not going
23 to be upside down by more than 20 percent. But what
24 would happen is it would allow me to get rid of a lot of
25 the debts that DenSco had in the beginning for the first

1 loans, the upside-down loans. As I testified yesterday,
2 that was my belief.

3 I understand that Denny's policy was that
4 he does not lend or have a loan to value of more than I
5 think it was 70 percent, which is what that POM says.
6 That wasn't -- that was a loose number throughout the
7 books. It was not only loose for me, it was loose for
8 every borrower.

9 There were times that he would lend a
10 hundred percent on a property. My personal residence I
11 bought for \$2.2 million, he lent a hundred percent of
12 the money.

13 Now, ultimately, I paid him back the \$2.2
14 million. But if you are just basing everything off the
15 POM, well, that's not supposed to happen. You are
16 supposed to lend up to 70 percent of what you believe
17 the value of the property is.

18 So because of that, I felt, whether we are
19 at 100 percent loan to value or 120 percent, if these
20 things are being held for years to come, that's not a
21 concern. Whether it's 100 or 120, it's not a concern.

22 In three years from now, if that same
23 property was worth the same thing that I bought it for
24 three years before, this world is in big, big problem,
25 buying \$50,000 homes -- brand-new homes,

1 2000-square-foot homes for \$50,000. There was no
2 possible way in my mind that that could have happened,
3 that there was not going to be a major appreciation,
4 which I proved myself right. There was a major
5 appreciation because \$50,000 homes are now selling for
6 180- and 190-.

7 So that was my initial thoughts on all of
8 this.

9 Q. Let me break that down a little bit. Thanks.

10 You said "when I went into this" -- that
11 was the phrased you used -- by that, are you saying
12 "when I started knowingly taking loans from two
13 different lenders on the same piece of property," that
14 that was your mindset?

15 A. Yes. When I took a first deed of trust
16 position and a second deed of trust position on every
17 property or the ones going forward that I was
18 purchasing, that was my mindset at the time.

19 Q. And that process, you think maybe started in
20 2011, but certainly in 2012?

21 A. Certainly in 2012.

22 Q. All right. But this idea that there will be
23 sufficient value to cover both competing loans was based
24 on the belief that the property values would appreciate
25 in 2012, 2013, 2014 and later?

1 A. Correct. As proven by some of the properties.
2 By the time we sold some of the last properties, Active
3 and DenSco were paid in full with some surplus.

4 Q. So a couple of other things you said. You knew
5 that Denny Chittick was telling his investors in his
6 private offering memorandum, which is this formal
7 document that he gave to them, that he would be loaning
8 based on a 70 percent loan-to-value ratio. Do you
9 recall that?

10 A. I do.

11 Q. And you are saying that he did not follow that
12 in practice?

13 A. No.

14 Q. And I know you know that from your own
15 experience because he was loaning money to you where you
16 said, in some cases, the loan was a hundred percent of
17 the value of the property, including your personal
18 residence, right?

19 A. Correct.

20 Q. You know that Denny Chittick was also doing
21 that with other borrowers where he was not -- where he
22 was giving loans where the value of the loan may have
23 been close to the hundred percent of the fair market
24 value of the property?

25 A. Yes. This was not a special arrangement for me

1 only, no.

2 Q. How do you know that?

3 A. I've spoken to all the borrowers.

4 Q. Okay. Do you remember who they were?

5 A. John Ray is one of them.

6 Q. Anybody else?

7 A. I don't want to involve anyone else. You can
8 look through the documents, look at the loan to value
9 and figure it out.

10 Q. Let me show you -- moving on to another topic.
11 This is Exhibit 502.

12 So let me clarify about some earlier
13 testimony you gave a moment ago, Mr. Menaged. When we
14 talked about you telling Denny Chittick that you
15 believe, in 2015 and going forward, you would have
16 shared with Denny Chittick the fact that you were using
17 DenSco loans to pay off the debts on earlier DenSco
18 loans -- do you recall that testimony?

19 A. I do.

20 Q. Did that -- those discussions also include
21 explaining that you had intentionally double-liened,
22 that is, taking competing loans out on the same property
23 in order to pay off earlier DenSco loans?

24 A. No.

25 Q. When do you think, if at all, you would have

1 told Denny Chittick that you had double-liened
2 properties intentionally, that is, taking two loans from
3 two different borrowers, DenSco and one other lender, on
4 the same property?

5 A. We did not have that conversation.

6 Q. So he -- as far as you know, at the time of his
7 suicide, he did not know that you intentionally
8 double-liened properties with competing loans from
9 different lenders?

10 A. I can't say that we had that conversation. We
11 have sat down. I showed him where the funds went to.
12 He realized a lot of funds went back to him.

13 It was kind of the un- -- it was kind of
14 the thing that we didn't speak about, but I think we
15 both knew what was going on.

16 Q. Why do you say that?

17 A. It's a feeling I got.

18 Q. Did you ever tell him that the cousin story was
19 not true?

20 A. I didn't have to.

21 Q. Then I've got to ask that question. Why did
22 you not have to?

23 A. I did not have to because, as I said, we sat
24 down. We discussed where the money went. I showed him
25 my spreadsheets. We went through the previous loans.

1 Without him -- without us talking about it, because that
2 would open up a can of worms, he understood, I believe,
3 what was going on.

4 Q. Don't you think it would have mattered to him
5 whether you were doing something intentionally or you
6 were a victim of someone else?

7 A. I think he saw that the intention -- my
8 intention was not bad. I didn't go into this with any
9 bad intentions, and I think that's what he saw.

10 Q. You think he also saw the fact that if he was
11 going to work his way through the difficult problem, he
12 had to do it through you?

13 A. Probably.

14 Q. I mean, as of the fall of 2013, if he couldn't
15 work some sort of an arrangement with you -- and
16 Mr. Reichman characterized that as a partnership, but if
17 you and Denny Chittick hadn't reached an agreement in
18 the fall of 2013, he would have had -- "he" being Denny
19 Chittick -- would have had a real difficult time trying
20 to work his way out, right?

21 A. I don't know if that's a true statement.
22 Ultimately, if you think this through, without me -- if
23 I got hit by a bus the following day -- what would they
24 do? The properties would go to foreclosure if they
25 can't work it out.

1 Whoever the courts would decide was in
2 first position or second position would have the
3 majority of the funds. The other lender would get the
4 remainder of the funds. Life would move on. Or the
5 lenders would be forced to work with each other.

6 Q. We know that now. I guess, what I'm trying to
7 do is put you back in that mindset in the fall of 2013.
8 At that time, with the belief that the properties were
9 appreciating, there was a good faith belief by you and
10 Mr. Chittick that you would work your way through this
11 competing lien situation, right?

12 A. Yes.

13 Q. In that time frame, his mindset would have
14 been -- the agreement with you would have been key to
15 working his way through this problem?

16 A. Or an agreement with the lenders. He didn't
17 specifically need me is what I'm saying. He could have
18 went to one of the lenders or the other lender would
19 have went to him and say, "Let's get rid of this
20 borrower, let's take over the property, let's hold it
21 for two years and let's sell it."

22 He didn't specifically need me is what I'm
23 saying, legally or otherwise.

24 Q. If he were to go to these other lenders, they
25 would have insisted, as they did, on being paid first,

1 right?

2 A. They could insist on what they want. They
3 could insist to stand on their head. What's going to
4 really happen is going to be they are both going to file
5 a notice of foreclosure. They're going to file a notice
6 of trustee sale. Ultimately, it's going to end up in a
7 litigation.

8 But while it's in litigation for years, the
9 properties are still appreciating. No matter what
10 happens, the property appreciates. This is not a case
11 that would be decided in 90 days.

12 Q. Let me pursue that with you. You did not want
13 to litigate, did you?

14 A. No.

15 Q. In the fall of 2013, right?

16 A. No. I was trying to fix the problem.

17 Q. And Mr. Chittick didn't want to litigate,
18 right?

19 A. Correct.

20 Q. Because lawyers and legal fees drove him crazy?

21 A. Crazy.

22 Q. So your hypothetical about the what-ifs, they
23 could have just told the other lenders, we're not going
24 to work it out with you, that would have led to
25 litigation, right? Probably?

1 A. Probably.

2 Q. That's not what Mr. Chittick wanted?

3 A. No.

4 Q. Let's look at Exhibit 502 together.

5 A. Got it.

6 Q. You can look at this. This is a series of
7 emails between you and Mr. Reichman.

8 I mentioned to you yesterday that
9 Mr. Reichman had required of you to set up a lockbox to
10 deposit rental payments. Do you recall that testimony?

11 A. I do.

12 Q. And let me focus you on that second page. At
13 the bottom of that second page, Mr. Reichman is writing
14 you August 26, 2013. "Good afternoon, Scott. The loan
15 application just received," paren, "1:31 p.m.," paren,
16 "is the fourth since we discussed the need for lockbox
17 for rents. Please let us know when you have decided.
18 Please do not hesitate to contact me if you would like
19 to discuss this further."

20 Is he telling you that he won't loan you
21 any more money unless you put a lockbox in place to
22 deposit rental payments?

23 A. I asked him that in the email right above that.

24 Q. I'm getting there. So let's read that
25 together.

1 So the next email is from you to Reichman,
2 August 26th, 2013 at 1:58 p.m. "I said I would meet
3 with you later this week about that. Just to be clear,
4 if I decide not to do the lockboxes, you are not wanting
5 to lend anymore? I don't know what fourth application
6 has to do with it. Please let me know."

7 If you read his response on the first page,
8 he's telling you, "If you don't put a lockbox in place,
9 I'm not going to loan you any money."

10 A. Yes.

11 Q. Do you recall that independent of this email,
12 that that's what he imposed upon you?

13 A. I don't remember that specifically being the
14 case because, clearly, we never utilized a lockbox, and
15 I continued to take loans after this time. So I don't
16 remember this email. This may have been Gregg just
17 being Gregg, trying to get exactly what he wants.

18 Q. "Gregg being Gregg." And say it again?

19 A. What he wants.

20 Q. He's aggressive, in other words?

21 A. Yes.

22 Q. All right. You recall -- and you probably
23 remember from Mr. Reichman's deposition that he was also
24 asking you -- he created three different categories of
25 properties and payoffs. Do you recall that as a part of

1 the workout with him?

2 A. Not from the deposition, but I do recall
3 something like that.

4 Q. What do you remember about that?

5 A. I can't specifically recall. I do remember him
6 breaking things down. He was pretty meticulous as far
7 as paperwork.

8 He broke everything down into -- it may
9 have been what he perceived as him being in superior
10 lien position or Denny being -- I don't really remember,
11 but I do remember that it was broken down into three
12 different categories.

13 Q. Was that in order to put in place safeguards to
14 make sure that he was getting the money from you on the
15 loans he had made to you?

16 A. You mean the spreadsheet? The categories?

17 Q. Yeah.

18 A. I think he was telling me his position. If you
19 have it, I'll review it. I just don't remember.

20 Q. I don't think we are saying anything different.

21 A. Okay.

22 Q. I just want to make sure. And I don't want to
23 go back through all those documents, but you do remember
24 that in the time frame where these double-lien issues
25 arose, Mr. Reichman put in place certain safeguards to

1 make sure that AFG was getting paid by you on the loans
2 they had made to you, right?

3 A. Yes. AFG always got paid from me.

4 Q. Right. And one of those was putting in place
5 this structure of breaking the loans down to three
6 categories and making sure that the monies were paid to
7 AFG over time. Do you remember that?

8 A. I really don't. I could review it, though, and
9 it will probably jog my memory.

10 Q. Do you remember anything about three different
11 categories?

12 A. I don't remember three categories. I don't
13 even remember what the categories were, but I do
14 remember that email.

15 Q. Let's look at 506. So this is -- the email we
16 just saw was in August of 2013. This is now in December
17 of 2013. And Mr. Reichman is saying to you "We are
18 informed today from Alliance that the BofA issue still
19 had not resolved and the lockbox account will not be
20 functional until three weeks after the BofA issue is
21 resolved. We were under the impression that this was
22 taken care of already. We are shocked to hear that it
23 is not. Could you please give us a call to discuss."

24 Did I read that correctly?

25 A. Yes.

1 Q. Do you remember what the BofA issue was?

2 A. There was something about -- I remember a
3 customer making a deposit into one of my BofA accounts.
4 Their check bouncing. From what I remember, at least,
5 out of memory, the check bounced -- one of the
6 customer's checks bounced, and that was when we moved
7 our bank to Chase, or something like that. So the
8 account had a negative \$1200 or something. So we went
9 into the BofA, paid it off. But BofA gave a bad review
10 to Alliance about my account.

11 When I got proof from BofA that everything
12 was paid off, way before all of this Alliance thing came
13 up, then Alliance said, "Okay. Once we get whatever
14 documents we need from BofA, we'll settle up," something
15 to that effect.

16 I don't exactly remember, but it was
17 something stupid I remember.

18 Q. Whose bank was Alliance Bank? Was that AFG's
19 bank?

20 A. Alliance Bank was AFG's. I never had a
21 relationship with them.

22 Q. Was Alliance Bank where you were supposed to
23 deposit these rental payments you were receiving?

24 A. Alliance Bank was where he wanted to open the
25 lockbox account.

1 Q. And you are still talking to him in December of
2 2013 about that issue, correct?

3 A. Correct.

4 Q. Do you know whether it ever got established?
5 The lockbox account.

6 A. I don't remember. I don't believe so, though.

7 Q. All right. Do you remember any other safeguard
8 or account requirement or procedure that AFG put in
9 place with you to make sure that they got paid on their
10 loans that they had made to you when this double-lien
11 issue came up?

12 A. I do.

13 Q. What other things do you remember?

14 A. I can't discuss that. I'll have to take the
15 Fifth on that.

16 Q. Would those requirements or procedures have
17 been implemented in 2013?

18 A. Yes.

19 Q. Did it go beyond 2013?

20 A. Yes.

21 Q. Do you remember how long those requirements or
22 procedures were in place with AFG?

23 A. Until the death of Mr. Chittick.

24 Q. I'm showing Exhibit 1139.

25 (Exhibit 1139 marked)

1 Q. Why don't you look through this real quick, and
2 I'll ask you some questions about it.

3 A. Okay.

4 Q. So these series of emails are in early of 2014.
5 Do you see that?

6 A. Yes.

7 Q. And at the bottom of that first page or the
8 bottom of the front of this document, you're promising
9 to have monies to contribute to resolving this issue on
10 the double-lien issue, right?

11 A. Yes.

12 Q. And this ended up being, at least in part,
13 reflected in the forbearance agreement, right? That you
14 were going to bring more monies in.

15 A. That it was going to be my best effort to do
16 so.

17 Q. And this references \$4 million, right? That's
18 what your intentions were?

19 A. \$4 million?

20 Q. A million on March 1, a million April 15, and 2
21 million July 15.

22 A. Yes.

23 Q. And then Denny Chittick is excited, and he
24 responds "That changes the whole ballgame." Do you see
25 that?

1 A. Yes.

2 Q. So he was excited about the fact that you
3 believed you were able to bring this money in?

4 A. Yes.

5 Q. This was as of the beginning of 2014. It was
6 going to be a part of the forbearance agreement
7 addressing trying to pay off these other lenders, right?

8 A. Correct. I explained to them that I would do
9 my best effort to do so, and they could put it in the
10 forbearance agreement, but I couldn't guarantee it.

11 Q. Here, you're not -- this doesn't qualify it,
12 though. You are representing "I will have the money,"
13 right?

14 A. Yes.

15 Q. But the forbearance agreement gives you more
16 leeway, right?

17 A. Well, I explained to them prior to this, "Hey,
18 I'm going to try to come up with this kind of money.
19 When I get dates involved, I'll let you know." But what
20 I talked to Denny about, which is why it went to the
21 forbearance agreement, I said, "I can't guarantee
22 anything. I'll do my absolute best to do that."

23 Q. So let's look at your email that is just above
24 Denny Chittick's email where he says "That changes the
25 whole ballgame." It looks like there is -- there are

1 communications by both you and by him in the context of
2 this January 1, 2014, 4:36 p.m. email. Am I right in
3 that?

4 A. Yes.

5 Q. Can you go through that and tell us what is
6 your writing and what is Denny Chittick's writing?

7 A. What do you mean, "what is my writing"?

8 Q. Well, it says, "What are your thoughts about
9 subordination?" Are you asking that?

10 A. I'm asking Denny, "What are your thoughts about
11 subordination?"

12 Q. And then who writes "Active is now saying as
13 we'll they want that or will begin foreclosures." It's
14 poorly written.

15 Who wrote that? You?

16 A. Yeah. It's in the same email.

17 Q. So you are telling Denny Chittick on January 1,
18 2014, that Active is insisting upon subordination
19 agreements from DenSco or they'll begin foreclosures,
20 right?

21 A. Correct. Just like other lenders.

22 Q. Correct. So Active Funding beginning
23 foreclosures mean they would notice trustee sales on all
24 of those properties where they have loaned money in
25 competition with DenSco --

1 A. Correct.

2 Q. -- unless they get subordination?

3 A. Putting Active Funding in first position.

4 Q. And subordination is this idea that if one
5 lender subordinates to another, it means that they're
6 willing to take a second position to the other lender,
7 right?

8 A. Correct.

9 Q. All right. So Active Funding is saying, "For
10 all those loans where we're competing with DenSco, we
11 want DenSco to subordinate to our lien and our loan,"
12 right?

13 A. Yes.

14 Q. And you communicated that to Denny Chittick
15 through this email and probably in other ways as well,
16 right?

17 A. We discussed it, yes.

18 Q. So was there any doubt in your mind that Denny
19 Chittick believed in as early as January 1, 2014,
20 perhaps earlier, that if he didn't subordinate to Active
21 Fundings loans -- if DenSco didn't subordinate, that
22 there were going to be foreclosures and perhaps
23 litigation?

24 A. I don't believe that was his major concern.

25 Q. I'm not asking if it was a major concern. Was

1 it his concern?

2 A. Was it a concern? Sure.

3 Q. Right. So I've got to ask this question: What
4 do you think his concern was?

5 A. I can't discuss that.

6 Q. All right. So the next paragraph, you -- is
7 this you saying "I'm wiped out in my mind already"?

8 A. Yes.

9 Q. And then you say "They all say they could care
10 less how long the loans stay outstanding as long as I am
11 current on payments and there is no dispute on lien
12 position."

13 A. Correct.

14 Q. So you are communicating on behalf of Active
15 Funding to Denny Chittick about this subordination
16 issue, right?

17 A. Yes.

18 Q. And then you say "I don't think it is in
19 anyone's benefit to spend the money in court, and then
20 all the properties will be tied up for at least a year,
21 and I won't be able to dispose of them according to my
22 attorney." Did you write that?

23 A. I did.

24 Q. Did you believe that at the time?

25 A. Yes.

1 Q. And then Denny Chittick writes above, in
2 response, "This is wonderful. I am the one that did
3 things right. I am the one fronting the money to help
4 solve the problem, and I'm getting in weaker and weaker
5 position." Did I read that correctly?

6 A. Yes.

7 Q. And was that a fair -- as you were
8 understanding Denny Chittick's state of mind or what he
9 was communicating to you, is that a fair summary of how
10 he believed in the beginning of 2014?

11 A. That's probably what he believed. I don't know
12 that he was getting in a weaker and weaker position. I
13 think the position stayed the same for everyone
14 involved.

15 Q. When he's saying he did things right, he's
16 referring to the fact that he believes he was in a
17 superior or first position, meaning those properties
18 where he had competing loans with AFG, right?

19 A. I think he believed -- no. I believe that he
20 was referring to him paying off AFG or beginning to pay
21 off AFG.

22 Q. So he thinks doing the right thing was paying
23 off AFG the \$11 million?

24 A. I believe that -- yeah. That's what he did.

25 MR. STURR: John, before you go further. I

1 ask that you wrap up. You said you were doing
2 follow-up. We had a previous agreement that we would
3 divide the day. So you would question the witness on
4 the first day. I would question the witness on the
5 second day. By my count, we spent at least five hours
6 with the witness yesterday.

7 You told me you would do some brief
8 follow-up this morning. We've gone almost an hour. I'd
9 like you to finish questioning within the hour, let's
10 say, by 9:15, so I can ask questions, and then you can
11 have whatever time remains.

12 MR. DeWULF: So you are making a record of
13 this. I told you I thought it would take me an hour. I
14 think it will take me an hour this morning.

15 For the record, you never wanted to depose
16 this witness. We chose to depose this witness. We
17 chose to arrange all the logistics to have Mr. Menaged
18 under oath so we could hear his story. If we hadn't
19 noticed this, you never would have taken this
20 deposition, and now you're claiming that you need all
21 this time with him.

22 You have a cooperation agreement with this
23 witness. You could talk to him at any time, either
24 through counsel or the receiver can talk to him directly
25 through his counsel.

1 So I get your point, and I'm going to work
2 with you professionally on this. But I think I'm being
3 fair to you as I'm arranging time for you. And I do
4 believe I can get done in a few minutes.

5 MR. STURR: John, we had exchanged emails
6 after you arranged this deposition where we specifically
7 discussed dividing the time. I subsequently received an
8 email from Marvin proposing a different allocation of
9 time. This was just about a week ago. And I told him
10 then we had a previous agreement that we could divide
11 the days. He did not object.

12 So I just simply don't want to be limited
13 in my ability to ask questions of this witness following
14 your examination because your examination has gone on
15 longer than we had agreed.

16 So I'd appreciate it if you would wrap up
17 by 9:15.

18 MR. DeWULF: What I proposed to you as -- I
19 do want to divide the time fairly. What I proposed to
20 you, I would go four hours and allow you four hours, and
21 then we each have two hours set aside for redirect or
22 recross, and you rejected that idea.

23 So what I'm going to try to do is wrap up
24 now -- I'm just about finished. It hasn't been an hour
25 yet from the time we started this morning.

1 MR. STURR: We started at 8:17. I'd like
2 you to get finished by 9:17.

3 MR. DeWULF: I'll do what I can do.

4 Q. (BY MR. DeWULF) Let me try to get back on
5 track of wrapping this up.

6 Do you recall in January of 2014, you
7 telling Mr. Chittick that you had an investor available
8 to you?

9 A. No.

10 Q. There's is some emails where Mr. Chittick is
11 talking to Mr. Beauchamp about informing Mr. Miller, who
12 is the counsel or the lawyer for all these competing
13 lenders, including Mr. Diethelm and others, about --
14 telling him about an investor you have. Does that ring
15 a bell at all to you?

16 A. It doesn't.

17 Q. I'll show you Exhibit 1140.

18 (Exhibit 1140 marked)

19 Q. I want to just identify these are emails
20 between you and Denny Chittick, January 20th of 2014.

21 A. Okay.

22 Q. There are emails from you to Mr. Chittick in
23 that time frame, right?

24 A. I don't recall it, but I agree with it.

25 Q. That's your email address?

1 A. That's my email address, yes.

2 Q. And you're communicating about the subjects
3 that were being addressed, including the Active Funding
4 arrangement, right?

5 A. Yes.

6 Q. I'm showing you Exhibit 1141.

7 (Exhibit 1141 marked)

8 Q. Again, just confirm for me that this is a
9 document that would have been a communication between
10 you and Denny Chittick by email on or about April 3rd,
11 2014?

12 A. Yes.

13 Q. Your email to Denny Chittick that begins at the
14 bottom of that page, that second paragraph, "So lots of
15 this is no longer valid or true, but I signed it, so at
16 least you have it for what you need it for and not to
17 have Dave change it again and again with every move we
18 make."

19 Did I read that correctly?

20 A. Yes.

21 Q. Does this refer to the forbearance agreement
22 that's now been signed by the parties, right?

23 A. Correct.

24 MR. STURR: Object to form.

25 A. As I previously testified, the forbearance

1 agreement was something for the file.

2 Q. (BY MR. DeWULF) Right. And you're saying that
3 by the time you signed this thing in April of 2014, it
4 was no longer valid or true?

5 A. It's not that it was no longer valid or true.
6 I was already in default. It said I will bring in this
7 money that, by the time I signed it, I didn't bring in
8 the money; and by the date it said, I didn't do that.
9 So I was already in default.

10 Q. And that's what you're referring to in that
11 last sentence, when you say "As long as you don't put me
12 in default for not bringing in the full million yet.
13 Because technically I'm already in default," right?

14 A. Correct.

15 Q. I'm showing you Exhibit 1142.

16 (Exhibit 1142 marked)

17 Q. Just confirm for me that those are emails
18 between you and Denny Chittick dated in August of 2015.

19 A. I see this.

20 Q. And are those communications between you and --
21 email communications between you and Denny Chittick on
22 the dates indicated?

23 A. Yes.

24 Q. I'm showing you Exhibit 1143.

25 (Exhibit 1143 marked)

1 Q. I just want to confirm that this is an email
2 from Cody Jess to Ryan Anderson, dated August 28th,
3 2016. Do you see that?

4 A. Yes.

5 Q. Cody Jess was your counsel in that time frame,
6 correct?

7 A. Yes.

8 Q. And Ryan Anderson was counsel for the receiver?

9 A. Yes.

10 Q. This would have been prior to -- and there's a
11 series of emails you can see. But these emails would
12 have been before you actually entered into a settlement
13 agreement with the receiver, right?

14 A. Yes.

15 Q. All right. Let me ask you to identify one last
16 document and we'll be finished.

17 (Exhibit 1144 marked)

18 Q. Showing you Exhibit 1144.

19 A. Yes.

20 Q. Is this your handwriting?

21 A. No.

22 Q. Let's look at page 3.

23 A. Yes.

24 Q. Is there a signature there?

25 A. It is.

1 Q. Is that your signature?

2 A. Yes.

3 Q. It's dated February 4, 2019?

4 A. Yes. I believe that's when I met with that
5 counsel, Kenneth Frakes.

6 Q. Okay. So do you know who drafted -- whose
7 handwriting actually appears in Exhibit 1144?

8 A. I don't know. It was just given to me to sign.

9 Q. Did you read the document?

10 A. I believe I did.

11 Q. Did you understand that you were signing it
12 under penalty of perjury?

13 A. Yes.

14 Q. Did you actually see anyone write this up?

15 A. I think it was the attorney. This was -- this
16 wasn't supposed to be anything that was -- what he told
17 me was that he was going to make his notes here, and
18 that he was going to get back to me when he got back to
19 the office. He was going to type it all up, get it
20 revised, and he was going to send me a hard copy for me
21 review and sign.

22 He then emailed me a month later and said,
23 "Hey, I just want to let you know I'm still working on
24 getting everything revised." I have that email. And I
25 said, "Okay."

1 And then about a month ago, he emailed me
2 and said he's shortly going to be mailing me out a
3 declaration for me to sign based on our conversation. I
4 said, "Okay."

5 But at that point, I started asking him
6 about why am I not hearing back from the receiver in
7 regards to this deposition and stuff. I never got a
8 response from him nor did I get anything in the mail to
9 review or anything.

10 So from what I understood from him, this
11 declaration here was going to be the notes of what the
12 real declaration was going to be.

13 Q. I understand what you just said. But this
14 declaration was accurate, right?

15 A. Yes.

16 Q. And you signed it because the language and the
17 content was accurate, right?

18 A. Yes.

19 Q. And you understood that the purpose of this
20 declaration was to at least set out some of the facts
21 surrounding your interactions with the bank as it
22 related to the workout involving DenSco?

23 A. I did.

24 Q. Let me rephrase it.

25 Exhibit 1144 is a declaration you gave in

1 connection with the conduct of the bank and its
2 representatives, right?

3 A. Correct.

4 MR. DeWULF: No further questions.
5 Do you want to sit over here?

6 THE REPORTER: Yes, please.

7 MR. STURR: Let's take a break.

8 (Recess from 9:19 a.m. to 9:25 a.m.)

9 EXAMINATION

10 BY MR. STURR:

11 Q. Back on the record.

12 Mr. Menaged, you know I'm Geoffrey Sturr.
13 I represent the receiver.

14 A. Yes.

15 Q. What I'd like to do in the time I have with you
16 today is to make sure we have a complete and accurate
17 record from you of what you recall about certain events.
18 So I'm going to spend some time going back over some
19 questions Mr. DeWulf asked you and try to be as
20 efficient as I can in the process, okay?

21 A. Okay.

22 Q. The first thing I want to ask you is how often
23 did you see Denny Chittick? How often did you meet in
24 person?

25 A. Once every four to six weeks, maybe.

1 Q. Was there a place where you usually met?

2 Typically met.

3 A. At what time frame are we talking about?

4 Q. Let's say in the 2012 to 2016 time frame?

5 A. There would be reasons why we'd meet for
6 special -- specific things, and then there would be
7 reasons that we just would meet for no reason at all
8 during that time frame.

9 Q. Did you meet at his home office?

10 A. On occasion, yes.

11 Q. So you have spent time in his home office?

12 A. I have.

13 Q. Did you talk with Denny Chittick at any time
14 about his -- how he kept records and ran his business?

15 A. No.

16 Q. Did you get a chance to observe any way in
17 which he conducted his business with respect to records
18 and recordkeeping?

19 A. No.

20 Q. Okay. Did Denny Chittick ever tell you that he
21 kept a corporate journal, where he kept a record on a
22 daily or regular basis of his business activities?

23 A. I don't believe so.

24 Q. You were asked yesterday by Mr. Mr. DeWulf
25 about events in 2015, recording double encumbrances on

1 certain properties. Do you recall that?

2 MR. RUTH: 2012, actually.

3 MR. STURR: 2012, excuse me.

4 Thank you, Marvin.

5 Q. (BY MR. STURR) 2012. Can you look at Exhibits
6 of 491 and 494 and 495.

7 A. Yes.

8 Q. And start with 491, please.

9 A. Okay.

10 Q. That's an email from Denny Chittick to you
11 September 24, correct?

12 A. Correct.

13 Q. And this is an email where he's recording on a
14 call he has received from Gregg Reichman?

15 A. Yes.

16 Q. Exhibit 494 is an email that Denny Chittick
17 sent to you on -- later that day?

18 A. Yes.

19 Q. On September 24; is that correct?

20 A. Correct.

21 Q. And he's asking about the outcome of research.
22 Do you see that?

23 A. Yes.

24 Q. And he said "I never heard back from Gregg,
25 either."

1 And then Exhibit 495 is an email that
2 Mr. Chittick sent to you on September 26th, two days
3 later, correct?

4 A. Yes.

5 Q. He says "He just blamed his past employees and
6 quickly got off the phone," correct?

7 A. Correct.

8 Q. Is it fair to say that Mr. Chittick believed,
9 in September of 2012, that the double-encumbrance issue
10 that was identified in Exhibit 491 was the result of
11 employee misconduct, based on this email?

12 A. No.

13 Q. Why do you say that?

14 A. That's not what Denny is saying.

15 Q. What is Denny saying?

16 A. What Denny is saying is that Gregg blamed his
17 past employees, basically, accounting, and that there
18 was no issue in regards to double encumbering.

19 Q. Was Mr. Chittick aware of a problem with the
20 double encumbrance, in September of 2012, that had not
21 been resolved to his satisfaction, to your knowledge?

22 A. I don't believe so. Not afterwards, no.

23 Q. I'm sorry. You don't believe --

24 A. I don't believe so. Not after he got
25 confirmation from Gregg that everything was okay.

1 Q. That he was okay with that?

2 A. Everybody was okay with that.

3 Q. That's what I wanted to confirm.

4 A. Yes.

5 Q. So as far as you understood, as of September
6 2012, whatever issue had arisen with the double
7 encumbrance on DenSco loans, to your understanding,
8 Mr. Chittick believed it had been resolved? In
9 September of 2012.

10 A. As per the September 26th email, yes.

11 Q. Thank you.

12 I want to ask you about a different time
13 period. So we're going to move forward into June of
14 2013. And I want to hand you a couple of documents.
15 I'm going to first hand you what is marked as Exhibit
16 111, and then I'm going to hand you what was marked as
17 Exhibit 112.

18 Just for the record, Exhibit 112 is an
19 email from Denny Chittick to David Beauchamp copied to
20 Mr. Menaged, dated June 24 -- June 14th, 2013, and
21 Exhibit 112 is an email that Mr. Menaged sent to
22 Mr. Chittick and Mr. Beauchamp on the same date.

23 A. Yes.

24 Q. Do you have a memory of the lawsuit that is
25 referenced in Exhibit 111, which was brought by FREO

1 Arizona?

2 A. Vaguely.

3 Q. Looking at Exhibit 112, this was -- in the
4 bottom part of the email, Mr. Chittick is forwarding
5 information to Mr. Beauchamp, correct? About the
6 lawsuit.

7 A. Correct.

8 Q. And he says "Easy" -- in the last paragraph --
9 "Easy Investments has his attorney working on it. I'm
10 okay to piggyback with his attorney to fight it. Easy
11 Investments willing to pay the legal fees to fight it.
12 I just wanted you to be aware of it and talk to his
13 attorney. Contact information is below."

14 Did I read that correctly?

15 A. Yes.

16 Q. And then you wrote at the top "David" -- that's
17 addressed to David Beauchamp, correct?

18 A. Correct.

19 Q. "Please bill me for your services and utilize
20 my attorney for anything you may need." Correct?

21 A. Correct.

22 Q. Before this time, had you had any contact with
23 David Beauchamp that you can recall?

24 A. I can't recall.

25 Q. Do you know -- why were you -- why was Easy

1 Investments, your company, offering to pay legal fees
2 that DenSco would incur in the lawsuit, if you can
3 recall?

4 A. DenSco had nothing to do with the lawsuit.
5 They were only on there because they were on the chain
6 of title.

7 Q. Okay.

8 A. I was going to fight this with FREO. I would
9 profit from the lawsuit I believed; so, therefore, I
10 would pay for the attorney fees.

11 Q. Can I ask you a question about the -- if you
12 look at Exhibit 111. 111 has a number of things
13 attached to it, including parts of the complaint. So if
14 you look at the page that is Bates numbered DIC64 at the
15 bottom. Do you see that?

16 A. Yes.

17 Q. Paragraph 20 in the complaint says "Easy
18 attempted to encumber the property with deeds of trust
19 to Active and DenSco." Do you see that?

20 A. Yes.

21 Q. Were you aware at the time of the lawsuit that
22 there was an allegation in it that the property had been
23 double encumbered with liens to Active and DenSco?

24 MR. DeWULF: Object to form.

25 A. DenSco and Active were advised as well. They

1 all knew.

2 Q. (BY MR. STURR) What do you mean they knew?

3 A. They were aware that there were two loans on
4 this property.

5 Q. Tell me what discussions you had with Denny
6 Chittick on that issue that you can recall.

7 A. I have to take the Fifth on that.

8 Q. You can't tell me what you discussed with Denny
9 Chittick?

10 A. I cannot tell you what I discussed with regards
11 to the two loans on this property.

12 Q. You can't tell me anything that doesn't involve
13 Active Funding?

14 A. No. Because it goes into Active Funding, I'm
15 not going to open that can of worms.

16 Q. So you won't talk at all about this?

17 A. No.

18 Q. But can you confirm to me that you did have a
19 conversation with Mr. Chittick?

20 A. I did.

21 Q. Did Mr. Chittick tell you anything about what
22 he planned to do as a result of the lawsuit?

23 A. I think it's pretty self-explanatory on the
24 email where he says he'll piggyback with my attorney.
25 He didn't have any risk involved in it. He was just a

1 lender, like I said.

2 So anyone on the chain -- when there's a
3 lawsuit brought by a trustee, anyone on the chain of
4 title is included in that lawsuit.

5 Q. And your attorney identified here is Jeffrey
6 Goulder.

7 A. Yes.

8 Q. Without telling me any communications you had
9 with Mr. Goulder, had he been your attorney for some
10 time or had he been retained just for this lawsuit?

11 A. I think he was retained for this lawsuit. I
12 don't remember if I had dealings -- I actually had
13 dealings with him prior -- confidential dealings with
14 him prior, but -- that's how I got to know him. But I
15 believe I hired him just for this lawsuit.

16 Q. Did Mr. Chittick tell you that he had had any
17 discussions at all with Mr. Beauchamp about this email
18 or the lawsuit?

19 A. He did say he spoke to David, yes.

20 Q. And do you have any memory about what he told
21 you that -- about that conversation?

22 A. It was short and sweet, okay? If I incur any
23 fees, I'll bill them.

24 Q. And that was the end of it?

25 A. Yeah. That was the end.

1 Q. Did you have any other discussions that you can
2 remember with Mr. Chittick about the FREO lawsuit?

3 A. No. I don't recall.

4 Q. What I'd like to do now is turn to -- you were
5 asked a lot of questions yesterday and today,
6 Mr. Menaged, about the timing of your conversations with
7 Mr. Chittick about the double-encumbrance issue that
8 arose in the latter half of 2013. I'm not asking a
9 question. I just want to put this in context so you
10 understand where my questions are coming from.

11 What I'd like to do is put some timing on
12 this, if that's okay. Would you agree with me that
13 Mr. Chittick did not become aware of the
14 double-encumbrance issue relating to Active Funding
15 until November of 2013?

16 MR. DeWULF: Object to form.

17 A. I'm not sure when he became aware of it.
18 That's when I became aware of -- that he brought it up
19 to me.

20 Q. (BY MR. STURR) So you learned of it in
21 November of 2013?

22 MR. DeWULF: Object to form.

23 A. Yes.

24 Q. (BY MR. STURR) And you learned about it from
25 Mr. Chittick. Is that your testimony?

1 A. I did.

2 Q. Take a look at Exhibit 486.

3 A. 486?

4 Q. That's Mr. Jess's letter.

5 Did you find Mr. Jess's letter to Mr.

6 Anderson?

7 A. I did.

8 Q. Go to page 3 of that letter.

9 A. Got it.

10 Q. Second full paragraph --

11 A. Yes.

12 Q. -- "as you are aware, in November 2013,
13 Mr. Chittick discovered the priority issues." Do you
14 see that?

15 A. Yes.

16 Q. Is that an accurate statement?

17 A. I think I just testified, from my belief, from
18 what -- from when he told me he was aware of it. I
19 don't know when he was aware of anything.

20 Q. Do you recall having a meeting with
21 Mr. Chittick on November 27, 2013, to discuss the
22 double-encumbrance issue?

23 A. Yes.

24 Q. What I'd like to do is walk through
25 chronologically if I can, step by step, what occurred.

1 And you've testified before in your 2004
2 exam about that meeting.

3 A. I was going to say I'd like to just refer to
4 that testimony. Nothing has changed.

5 Q. I'm happy to do that. Would you be comfortable
6 looking at the testimony rather than having me read it
7 to you?

8 A. I don't care. Yeah. Sure.

9 Q. Mr. Menaged, did you testify truthfully in that
10 examination?

11 A. Yes.

12 Q. I'm going to mark as Exhibit 1145, a copy of
13 Mr. Menaged's testimony that he gave in the 2004
14 Examination on October 20, 2016.

15 (Exhibit 1145 marked)

16 Q. Did you get a chance to review the transcript
17 after you testified?

18 A. I don't recall.

19 Q. Turn to page -- it's a little hard to see, but
20 in the bottom-right corner, you'll see where it says
21 pages 70 to 73.

22 A. Okay.

23 Q. On page 71, beginning on line 19, you were
24 questioned about whether you met with Mr. Chittick on
25 November 27, 2013. You agreed you did?

1 A. Yes.

2 Q. And Mr. Anderson asked you -- said to you: You
3 explained to him that DenSco's loans that DenSco
4 believed were in first position were, in fact, second
5 position deeds of trust; is that right?

6 And you said: Correct.

7 Is that right?

8 A. Right.

9 Q. That was an accurate statement.

10 QUESTION: And that those second deeds of
11 trust were spread across at least a hundred real
12 properties, right?

13 ANSWER: Correct.

14 Is that a truthful statement?

15 A. Yes.

16 Q. And QUESTION: What did you tell Mr. Chittick?

17 ANSWER: I told him that he was in second
18 position on a lot of loans. The thinking behind it was,
19 you know, property values were on the rise. He asked me
20 what involvement -- he asked me what involvement
21 because -- like, what involvement I knew of all of this.
22 I told him that it was a -- I told him I -- I told him
23 that one of my family members or family member employees
24 was doing it without my knowledge.

25 Did I read that correctly?

1 A. You did.

2 Q. Was that a truthful statement?

3 A. No. It's truthful what I told him, yes.

4 Q. What I'd like to do, Mr. Menaged -- so we have
5 a date of November 27. Mr. Chittick, I mentioned
6 before -- I asked if you knew he kept a corporate
7 journal, and you said he did not.

8 A. No.

9 Q. You weren't aware of that?

10 A. I don't believe I was.

11 Q. What I'd like to do is ask you some questions
12 about whether what Mr. Chittick recorded in his
13 journal -- and I don't have a copy for you today, but
14 it's been marked as an exhibit in this litigation as
15 Exhibit 20. So I want to ask you a couple of questions.

16 Mr. Chittick wrote -- I'm going to go back
17 to Exhibit 1138. This is what you were just shown this
18 morning by Mr. Mr. DeWulf.

19 A. Okay.

20 Q. Are you there?

21 A. Yes.

22 Q. This was an email exchange you had with
23 Mr. Chittick on the 23rd of November 2013, right?

24 A. Correct.

25 Q. And is it fair to say, from this email, that

1 Mr. Chittick was aware of the double-encumbrance issue
2 with Active Funding as of that date?

3 A. Yes.

4 Q. And in this email, you say "We will meet
5 Tuesday and get it all cleared up," correct?

6 A. Correct.

7 Q. Mr. Chittick wrote in his journal two days
8 later, on November 25, "I talked to Scott. He talked to
9 Gregg. Gregg was just what I thought he would be. No,
10 not going to do a thing. So now Scott is going to talk
11 to his partner who is the money behind the deals. He
12 kept reassuring me he'll get it all straightened out."

13 Do you have a memory of telling
14 Mr. Chittick by telephone on November 25, that you were
15 going to get -- you would talk to your partner that has
16 money and you would get it all straightened out?

17 MR. DeWULF: Object to form.

18 A. No. He knows I didn't have any partner.

19 Q. (BY MR. STURR) "So now Scott was going to talk
20 to his partner." Was he going to talk to Mr. Reichman's
21 partner?

22 MR. DeWULF: Object to form.

23 A. That's possible, I guess.

24 Q. (BY MR. STURR) And did you reassure
25 Mr. Chittick you'll get it all straightened out at that

1 time?

2 MR. DeWULF: Object to form.

3 A. I don't remember the conversation, to be
4 honest.

5 Q. (BY MR. STURR) Okay.

6 A. It's possible.

7 Q. Let me now -- I want to read to you what
8 Mr. Chittick wrote in his journal for November 27, the
9 day that you met.

10 A. Okay.

11 Q. He says "Scott came to meet with me. It's way
12 worse than I thought. He sat here for two hours telling
13 me how his wife has cancer. He turned the day-to-day
14 operations of running his company over to a cousin. His
15 cousin double-liened all the properties and then lost
16 all the money in Vegas."

17 Do you dispute anything Mr. Chittick wrote?

18 A. No.

19 MR. DeWULF: Object to form.

20 Q. (BY MR. STURR) "He's upside down about 8.7
21 million of which nearly all of it is on my properties
22 that I believed I was in first position."

23 Would you dispute what Mr. Chittick wrote?

24 MR. DeWULF: Object to form.

25 A. Maybe the dollar amount, but that's it.

1 Q. (BY MR. STURR) "I was sitting here shaking and
2 nearly throwing up the entire time."

3 Do you remember Mr. Chittick's physical
4 reaction or his appearance during your meeting?

5 MR. DeWULF: Object to form.

6 A. No.

7 Q. (BY MR. STURR) "His solution is for me to lend
8 him more money to make money to pay off Gregg's liens."

9 Is that something that you discussed during
10 that meeting?

11 MR. DeWULF: Object to form.

12 A. I don't remember if it was that meeting or a
13 different meeting, but we discussed going forward what
14 we were going to do.

15 Q. (BY MR. STURR) And that would be for DenSco to
16 lend you more money to make money to pay off the Active
17 Funding loans?

18 MR. DeWULF: Object to form.

19 A. Yes.

20 Q. (BY MR. STURR) Is that correct?

21 A. Yes.

22 Q. On the 28th, Mr. Chittick wrote that he had
23 exchanged emails with you and that you planned another
24 meeting. And he said "He told me he discovered it a
25 month ago."

1 Is that consistent with your memory?

2 MR. DeWULF: Object to form.

3 A. I don't recall.

4 Q. (BY MR. STURR) For December 2, Mr. Chittick
5 recorded that he met with Scott for another three hours.
6 Do you recall another lengthy meeting with Mr. Chittick
7 after the meeting of the 27th?

8 MR. DeWULF: Object to form.

9 A. I don't.

10 Q. (BY MR. STURR) He wrote "I told him he needs
11 to come up with a million from daddy. He needs to
12 concentrate on flips. We will not work off the worst
13 property but the ones that can be sold that produce the
14 most cash. He has got some work to do on his side. I
15 don't have another plan to get out of this."

16 Do you recall any discussion with
17 Mr. Chittick where you would be bringing in a million
18 dollars or try to bring in a million dollars?

19 MR. DeWULF: Object to form.

20 A. I remember him asking me to ask my father for a
21 loan, but that was it.

22 Q. (BY MR. STURR) On December 5, a few days
23 later, Mr. Chittick wrote "I talked to Scott. He can't
24 get money from daddy, so I'm going to have to bankroll
25 this whole situation. I fucking hate it. But what else

1 am I going to do?"

2 Did you tell Mr. Chittick that you were not
3 able to get a loan from your father?

4 A. Around that time period --

5 MR. DeWULF: Object to form.

6 Mr. Menaged, would you just wait for the
7 last, so I can get Rhonda -- she can record my
8 objection.

9 THE REPORTER: Thank you.

10 And I'm sorry. What was your answer?

11 A. I did.

12 Q. (BY MR. STURR) On December 6th, he wrote "I
13 talked to Scott more. I gave him my offer. One million
14 at 3 percent, defer all interest. Based on doing my
15 math, I think we can knock out half the 8 million by
16 April if he throws in" -- "throws some cash in plus the
17 rent payments. I think we can make the rest by end of
18 the year."

19 Do you recall having that conversation
20 around December 6th where you and Mr. Chittick discussed
21 he would advance a million dollars at 3 percent, defer
22 interest and -- the terms of the agreement between the
23 two of you?

24 A. I remember the --

25 MR. DeWULF: Object to form.

1 A. I remember the million dollars at 3 percent. I
2 don't remember the whole deferring of interest because
3 clearly, that didn't happen as we have \$15 million in
4 interest accumulated. I really don't remember. I don't
5 recall so many years ago.

6 Q. (BY MR. STURR) So the same thing would be
7 true -- Mr. Mr. DeWulf was asking questions about what
8 was agreed to in December of 2013. Your memory is not
9 very clear on that?

10 MR. DeWULF: Object to form.

11 A. No. My memory is clear on how we planned on
12 getting out of this mess, and I did testify to that
13 already.

14 Q. (BY MR. STURR) And that was, with respect to
15 Active Funding, DenSco would advance money to you so you
16 could make money to pay off the Active Funding loans?

17 MR. DeWULF: Object to form.

18 A. We were going to purchase additional
19 properties, and a portion of the profits were going to
20 go back to DenSco.

21 Q. (BY MR. STURR) We'll see some documents that
22 put that in writing.

23 December 9, "I heard back from Scott. He's
24 agreement with my plan" -- "in agreement with my plan.
25 Now he has to execute."

1 That's consistent with your memory that you
2 and Mr. Chittick at some point in December of 2013
3 reached an agreement on how to move forward?

4 MR. DeWULF: Object to form.

5 A. I believe, yes, there was an agreement in
6 December of 2013.

7 Q. (BY MR. STURR) December 16, "I talked to
8 Scott. He sold some in New York and has 1.2 million
9 coming in January. That will be a huge help. He's also
10 headed to Israel tonight, so he's hoping to come back
11 with money too."

12 Do you recall telling Mr. Chittick in
13 December of '16 those facts?

14 MR. DeWULF: Object to form.

15 A. I did. However, none of those facts were true.
16 What I was trying to do was put Mr. Chittick at ease and
17 try to figure out in my mind how we wanted to clear all
18 this up. So if he wanted to think a million was coming
19 from New York or a million was coming from the sky, he
20 could think whatever he wanted.

21 I was trying to keep this man calm because
22 he was not -- as I testified in the past, he was not
23 really anything I'm used to dealing with. So he was a
24 very nervous person, and I did want to keep him at ease.

25 Q. (BY MR. STURR) Is that -- when you talked with

1 him on the phone or met with him about these issues in
2 December of 2013, was his nervousness or anxiety evident
3 to you?

4 A. Physically, no. But I knew -- I mean, after
5 dealing with someone for such a long period of time, you
6 kind of know their reactions to things.

7 Q. Okay. In December -- now the last entry for
8 this journal is December 31, 2013. He wrote "All day
9 long, I had phone calls and emails for deals and
10 payouts. Then Scott calls me telling me this meeting
11 with Dan on Monday is for four lenders that bought the
12 paper. They think they are in first position. My
13 positions are invalid and they want to foreclose on
14 everything. This could be a nightmare. Scott and I
15 will talk again tomorrow or Thursday or some point to
16 figure this nightmare out."

17 Do you have a memory, Mr. Menaged, that in
18 very late December you had communications with a group
19 of lenders that included Dan Diethelm about
20 double-encumbered properties?

21 MR. DeWULF: Object to form.

22 A. I do remember having a conversation with them.
23 I don't remember the time frame.

24 Q. (BY MR. STURR) Would you dispute that,
25 according to Mr. Chittick's journal, it was the very

1 last day of the month, December 31?

2 MR. DeWULF: Object to form.

3 Q. (BY MR. STURR) I'm going to show you the
4 email --

5 A. I'm looking for the letter coming from their
6 attorney. What date was that?

7 Q. That was January -- let me get that. We can
8 see that. This is Exhibit 942.

9 A. That is January 6th. So I wouldn't dispute
10 that date.

11 Q. If you could take a look at Exhibit 1139 that
12 Mr. Mr. DeWulf showed you this morning.

13 A. Yes.

14 Q. This is January 1, so the next day after
15 Mr. Chittick's entry of 12/31. This is an email where
16 you and Mr. Chittick were talking about Active Funding;
17 is that correct?

18 A. Yes.

19 Q. Now, I'm going to ask you just a few questions.
20 Mr. Chittick also checked -- kept a corporate journal
21 for 2014. That is marked as Exhibit 21 in this
22 litigation.

23 On January 2, he wrote "I spent an hour on
24 the phone with Scott telling me all the shitty choices
25 in front of me. These guys want to pin me against the

1 wall. We just want to continue doing our plan, and they
2 want to subordinate."

3 Do you recall that as of January 1, January
4 2, there was a group of lenders -- hard money lenders
5 represented by Bryan Cave, which included Mr. Diethelm,
6 that were demanding subordination at that point?

7 A. I do recall that.

8 Q. And as of that date, was it your understanding
9 that Active Funding Group was not making demands for
10 subordination as of that date?

11 MR. DeWULF: Object to form.

12 A. That's correct.

13 Q. (BY MR. STURR) Now, I want to ask you what you
14 can recall -- I want to lead up to -- you've already
15 been asked questions by Mr. Mr. DeWulf about the meeting
16 that you and Mr. Chittick had with Mr. Beauchamp on
17 January 9. So I want to set the stage for this.

18 So January 9, 2014, was a Thursday. Do you
19 have any memory -- before you went in to meet with
20 Mr. Beauchamp and with Mr. Chittick on January 9, do you
21 have that much of a memory of the discussions you had
22 with Mr. Chittick in the few days before that?

23 MR. DeWULF: Object to form.

24 Q. (BY MR. STURR) Sitting here today.

25 A. I do.

1 Q. What can you recall?

2 A. As I testified prior, we came up with an
3 agreement on how we were going to clean up this mess.
4 Denny decided to -- based on certain factors, to pay off
5 some of these lenders. He already started executing
6 that. He wanted me to go with him to the attorney to
7 discuss all of this.

8 And although he was doing it, he wanted
9 legal advice to make sure how we were going to
10 memorialize all that transpired and how to legally deal
11 with it. Although, he was doing it already, and he was
12 putting liens on these properties, additional liens. So
13 let me back up so there's no confusion.

14 Let's just assume that Active Funding was
15 owed a hundred thousand dollars and Denny was owed -- so
16 Denny decides to go ahead and pay off Active Funding on
17 123 Main Street. What Denny does is he goes and records
18 a second lien on his own property. So now he has a
19 first and a second to memorialize the payment that he
20 made to Active Funding Group.

21 So there will always be that second lien on
22 there. So there may be one, two -- sometimes Denny
23 would put three or four liens on a property
24 memorializing the money that went out.

25 So the big question to Dave Beauchamp was,

1 really, once -- once he does that, is there anything
2 further that he needed to do to make sure everything was
3 valid and correct?

4 Q. Okay. We'll get to that in a second.

5 So, chronologically, we've already talked
6 about Exhibit 942. That's the letter that was sent --
7 that was hand-delivered to Mr. Chittick on January 6th.

8 A. I recall that.

9 Q. Did Mr. Chittick give you a copy of this?

10 A. He did.

11 Q. Do you remember any discussions you had with
12 Mr. Chittick about this group of lenders?

13 A. I do.

14 Q. What do you recall discussing?

15 Again, I want to keep this before you went
16 in to meet with Mr. Beauchamp. If you have a memory.

17 A. We discussed what he was going to do. He said
18 that he couldn't, according to his investment memorandum
19 or POM, he was not allowed to subordinate, and that was
20 his major concern, was violating the POM.

21 So he said, "I couldn't do what they want
22 me to do. I would prefer to just pay them off."

23 Q. Anything else?

24 A. We discussed lien positions at that time. We
25 looked at everything. We asked a title company to send

1 us lien information on every single one of these
2 properties with these lenders and Active Funding Group.
3 We reviewed them together.

4 At some point -- I'm not pinpointing a
5 date. But at some point here, we reviewed -- prior to
6 meeting with Mr. Beauchamp, we reviewed the lien
7 positions that title companies had sent us. That's what
8 I recall.

9 Q. And do you have a memory that when you and
10 Mr. Chittick reviewed those recorded documents, the lien
11 history, that there were -- there were circumstances in
12 which DenSco was -- would have been recorded in first
13 position and some instances in which DenSco would have
14 been recorded in second position?

15 A. I do recall that.

16 Q. Any memory today -- I think you may have
17 testified about this earlier, but I want to be clear
18 about the mix. Roughly, how many might have been in
19 first or second, if you have a memory?

20 A. It was our opinion at that time that DenSco was
21 in first position more than 50 percent of the time.

22 Q. Was it difficult, Mr. Menaged, to obtain those
23 documents?

24 First, I want to just make note, this
25 exhibit, Exhibit 942, lists a number of properties.

1 A. Yes.

2 Q. And you were aware that Active Funding Group
3 had claims on a larger number of properties. Is that
4 fair to say?

5 A. Yes.

6 Q. Would you say it was in total more than 150
7 properties? More or less.

8 A. More or less.

9 Q. Was it difficult to obtain lien information,
10 recorded title information, from the title company that
11 would show you the history of those liens and who was in
12 first or second position?

13 A. Describe "difficult."

14 Q. How quickly could it be done?

15 How did you do it? Let me ask that
16 question.

17 A. A couple days.

18 Q. How was it done?

19 A. I asked the title to run it for me. I don't
20 remember if I asked them or Denny asked them. We may
21 have collectively asked them in a email. I don't
22 remember how that happened, but we did ask the title
23 company to run everything.

24 Q. It is something that can be accomplished
25 relatively quickly and without a lot of expense. Would

1 that be fair to say?

2 A. Yes. There's even services out there without a
3 title company that will show you that information.

4 Q. I want to show you another document that's been
5 previously marked, Mr. Menaged. This is Exhibit 144.

6 For the record, Exhibit 144 is -- the
7 bottom is an email from Mr. Chittick to Mr. Beauchamp,
8 copied to Mr. Menaged, dated January 7, 2014, and above
9 it is an email from Mr. Beauchamp to a Lindsay Stringer
10 on January 9, 2014.

11 Take a moment, if you would, and just look
12 through the exhibit, please.

13 A. Yes. I see that.

14 Q. And this is an email that you received from
15 Mr. Chittick on January 7; is that correct?

16 A. Yes.

17 Q. Did you read it when you received it?

18 A. Of course.

19 Q. Mr. Chittick, in this email, is informing
20 Mr. Beauchamp -- he's providing information before the
21 planned meeting with him; is that correct?

22 A. Yes.

23 Q. And he says he's bringing you with him to the
24 meeting, correct?

25 A. Yes.

1 Q. Second paragraph says -- he's referring to you,
2 Mr. Menaged. And he says "I've lent him \$50 million,
3 and I've never had a problem with payment or issue that
4 hasn't been resolved."

5 Is that a true statement?

6 A. Yes.

7 Q. The next two paragraphs refer to, in part, your
8 issue of your wife having cancer and your cousin coming
9 into the business. Do you see that?

10 A. Yes.

11 Q. You look on next page about -- right near the
12 top, first full -- second sentence -- "Because of our
13 long-term relationship," comma, "when Scott needed
14 money," comma, "I would wire the money to his account
15 and he would pay the trustee. I do this same thing with
16 several borrowers and bidding companies."

17 Is that a true statement?

18 A. It is.

19 Q. You testified in the 2004 exam -- I don't need
20 to mark it, but I want to make sure -- you are not aware
21 of any other hard money lender that had that practice of
22 giving you or other borrowers money directly; is that
23 correct?

24 A. There is no other lender that would do that.

25 Q. And you testified in that examination -- and I

1 can show you if you like -- that it was this practice of
2 wiring money directly to you that allowed for you to
3 double encumber the DenSco properties?

4 A. That's correct.

5 Q. Okay. Now, if you go on to the third page of
6 Exhibit 144, he wrote "Scott figured this out in
7 mid-November. He came to me and told me what was
8 happening. He said he had talked to the other lenders
9 and they agreed this was a mess, and as long as they got
10 their interest and were being paid off, they wouldn't
11 foreclose, sue or anything else."

12 Is that a correct statement that, as of
13 January 7, Mr. Chittick understood that some of these
14 lenders would not sue so long as they got their interest
15 and were paid off?

16 A. Some of these lenders, yes.

17 Q. And then he goes on to talk about the plan.
18 "Our plan is simple. Sell off the properties and pay
19 off both liens with interest and make everyone whole."

20 Is that consistent with your understanding?

21 A. It is.

22 Q. And he goes on to say "Our plan is a
23 combination of injecting capital and extending cheaper
24 money along with continuing the business as he's run it
25 for years, by flipping homes which will generate

1 profits."

2 Is that consistent with your understanding?

3 A. It is.

4 Q. And then he has bullet points on the plan. Do
5 you see that?

6 A. I've reviewed this document. You can go ahead
7 and keep reading.

8 Q. So point 1, "All lenders would pay their
9 interest except me. I'm allowing my interest to
10 accrue."

11 So he was agreeing not to charge your
12 entities interest by DenSco. Is that correct?

13 A. That's right. He was going to let it accrue,
14 which is different than what the journal said. See,
15 that's where I was getting confused.

16 Q. We'll keep going because there are documents
17 that will show --

18 A. Okay.

19 Q. -- how things may have changed along the way?

20 A. Okay.

21 Q. Two, "I'm extending him a million dollars
22 against the home at 3 percent."

23 A. I recall.

24 Q. "He is bringing in 4- to 5 million dollars over
25 the next 120 days from liquidating some assets, as well

1 as getting some money back that the cousin stole and
2 other sources."

3 A. Yes.

4 Q. You did represent that to him at the time?

5 A. I believe so.

6 Q. Four, "He has got a majority of his houses
7 rented. This brings in a lot of money every month."

8 A. It does.

9 Q. Five, "The houses that he's buying now and are
10 flipping will bring in money every week, starting next
11 week or two." Correct?

12 A. Yes.

13 Q. And six, "As the houses become vacant, either
14 because of ending the lease or tenant leaves, Scott will
15 fix up the house and sell at retail. This will drive
16 the order in which houses will be sold."

17 Is that consistent with your memory?

18 A. That's consistent, yes.

19 Q. "He also owns dozens of houses that only have
20 one lien on them and has substantial equity in them, and
21 he'll be selling these as the tenants vacate." Is that
22 correct?

23 A. I did.

24 Q. So this was your plan as of January 7? That's
25 a correct statement of what you understood you and

1 Mr. Chittick had agreed to?

2 A. Yes.

3 Q. He goes on to say "We have been proceeding with
4 this plan since November and we've already cleared up 10
5 percent of the total dollars in question." Was that
6 accurate?

7 A. We did.

8 Q. Back in November, does that refer to the Active
9 Funding loans or the other lenders?

10 A. That refers to me liquidating some of my
11 properties and giving him all the profits, which was the
12 problem.

13 Q. And then he goes on to say "Dan" -- excuse me.
14 "The gentleman that handed me the paperwork believes he
15 physically paid the trustee, that he's in first position
16 but agrees it's messy. He wants me to subordinate to
17 him no matter who recorded first."

18 Do you understand that to be a reference to
19 the Diethelm group? Dan Diethelm.

20 A. I do.

21 Q. And then he says "I know I can't sign the
22 subordination because that goes against everything that
23 I tell my investors."

24 That is consistent with what you've already
25 testified to?

1 A. It is.

2 Q. "And what we need is an agreement that as long
3 as the other lenders are being paid their interest and
4 payouts continue to come, no one initiates foreclosure
5 for obvious reasons, which will give us time to execute
6 our plan."

7 That's where you were on January 7,
8 correct?

9 A. Correct.

10 Q. Now, I want to ask you about the meeting you
11 had on January 9. You went to Clark Hill's office,
12 correct?

13 A. Correct. On Scottsdale Road.

14 Q. And I think you testified that you were -- in
15 the 2004 exam, you were the first to arrive?

16 A. I was. I was waiting in the reception area.

17 Q. And then did you meet with Mr. Chittick?

18 A. Mr. Chittick came in, told the receptionist
19 that he was there, and then we sat together in the
20 reception area.

21 Q. What happens after that? Do you remember?

22 A. We wait for David Beauchamp to come out.

23 Q. Okay.

24 A. He does, and we went into the conference room.

25 Q. What do you remember the first thing being

1 said? Who spoke first? If you can remember.

2 A. I don't remember who spoke first.

3 Q. What is your memory of what Mr. Beauchamp said
4 in that meeting?

5 A. I remember him sweating profusely, meaning
6 David Beauchamp.

7 I remember him asking Denny why he would
8 ever wire to a borrower instead of complying with the
9 loan agreement terms which says that he will pay the
10 trustee directly. He referred to him -- himself, David
11 Beauchamp, drafting that agreement for DenSco.

12 I remember Denny telling him -- telling him
13 that this was a normal practice for him with many
14 different borrowers.

15 I also believe -- I don't believe. I do
16 know that I remember Denny telling Beauchamp that he has
17 told him about this in the past.

18 Beauchamp, I think, said he didn't recall
19 having a conversation with him about this.

20 Beauchamp asked what the solution was, and
21 what he was going to tell his investors.

22 Denny said he was not going to. He had no
23 intention of telling his investors anything.

24 Beauchamp said he needed to go get some
25 water to think about things. He left the room for a

1 little while.

2 Me and Denny stayed in the conference room.

3 He, probably about 15 minutes later, he
4 came back, and said, "Okay. So how do you see this
5 whole thing playing itself out?"

6 Denny explained the plan of what you just
7 discussed on that email to him.

8 He asked how long we thought we could get
9 this whole thing resolved.

10 Denny said less than a year.

11 Denny -- David Beauchamp asked how we would
12 keep this from the investors for that long a period of
13 time.

14 Denny said his books looked fine. His
15 accounting looked fine. His accounting didn't reference
16 him being in first or second position. So everything
17 looked perfect.

18 Beauchamp was sweating a little bit more.

19 Ultimately, he said -- we talked about the
20 forbearance agreement. Beauchamp recommended that we
21 get a forbearance agreement.

22 Denny asked what the point was.

23 He explained it was to memorialize
24 everything that had taken place.

25 Denny asked if that had to get out to his

1 investors.

2 Beauchamp said, no, it did not, but it was
3 something that would summarize, basically, our agreement
4 that we were making in that room -- in the conference
5 room that day.

6 Go ahead.

7 Q. Anything else you can remember?

8 A. No.

9 Q. Let me step back at the beginning. Did
10 Mr. Beauchamp say anything to you at the outset of the
11 meeting about -- did he ask whether you had a lawyer?

12 A. Yes. I'm sure he did.

13 Q. What did you tell him?

14 A. That I did not.

15 Q. Okay. Did he say anything at all to you or to
16 Mr. Chittick about the attorney-client privilege, the
17 fact that you were not a client and you were in a
18 meeting with his client? Anything at all at the
19 beginning of the meeting about your presence in the
20 meeting?

21 A. No. Not that I recall.

22 Q. There's -- I've seen a reference in an email --
23 and I'll show you in a minute -- an email going to spam.
24 Do you remember a conversation where -- anything about
25 this meeting where Mr. Beauchamp indicated he hadn't

1 received Exhibit 144, the email with the plan because it
2 had gone to a spam folder?

3 A. No. He was well aware. When he came in, he
4 had the email in his hand.

5 Q. Did he, Mr. Beauchamp, express any surprise to
6 you that you had received that email?

7 A. That I had been copied on that email?

8 Q. I'm going to read you Mr. Beauchamp's testimony
9 and tell me if this is consistent with that.

10 "I asked questions about the plan from
11 Denny's email, but I didn't want to show it there at the
12 meeting. And then, finally, Scott said he has already
13 seen it. Then Scott said, quote, Oh, it doesn't matter.
14 You can bring it out. I've already seen the email.
15 Which I was shocked about."

16 Do you remember that exchange at all in
17 that meeting?

18 A. I don't. I'm not saying it's not true. I just
19 don't recall it.

20 Q. Did -- how was -- how do you remember
21 Mr. Chittick appearing in the meeting? Was he nervous?
22 Was he anxious?

23 A. Nervous, anxious, yes.

24 Q. Who did more of the talking? You or
25 Mr. Chittick.

1 A. Mr. Chittick.

2 Q. Mr. Beauchamp has testified that Mr. Chittick
3 was deferential to you. Would you describe Mr. Chittick
4 in that meeting.

5 A. What does "deferential" mean?

6 Q. He was deferring to you.

7 Would you agree that, in that meeting that
8 you had with Mr. Beauchamp and Mr. Chittick,
9 Mr. Chittick was deferring to you about matters that
10 were discussed?

11 A. We discussed them together. I don't know that
12 he was deferring to me, no.

13 Q. So it's your understanding that this was a
14 joint agreement that was being presented to
15 Mr. Beauchamp that you both spoke of and approved of?

16 MR. DeWULF: Object to form.

17 A. Yes. That's what it was.

18 Q. (BY MR. STURR) Did you say in the meeting --
19 and I'm quoting here from Mr. Beauchamp's deposition --
20 "Menaged represented he was going to make everything
21 right. He was worth, you know, 10-, 20 million.
22 This -- 'We are going to take care of it and your DenSco
23 investors are not going to be hurt at all. We have got
24 to get it cleaned up.'"?
25 Did you make that statement?

1 A. I don't recall ever making that statement, no.

2 Q. I want to have you take a look, if I could,
3 please, at -- I'm going to show you what has previously
4 been marked as Exhibit 145. These are Mr. Beauchamp's
5 notes from the meeting. And I just want to use this as
6 a reference point to see if you can recall things were
7 discussed.

8 The first bullet point says "Put cousin in
9 charge." Do you remember questions or discussions with
10 Mr. Beauchamp present about how this arose and the
11 explanation you had given that your cousin was put in
12 charge?

13 A. He wasn't really into -- he really didn't care
14 about that stuff. He didn't care about how it happened.
15 He wanted to know more of what happened and where we're
16 at today.

17 Q. Did he ask any questions about the double
18 encumbrance? Did he ask if you had -- you or
19 Mr. Chittick had investigated or done research on
20 whether or not DenSco was, in fact, in second position?

21 A. No. Not at that meeting. We didn't discuss
22 anything like that.

23 Q. Did he ask Mr. Chittick to provide records that
24 would show the number of loans that were at issue?

25 A. Surprisingly, no. Surprisingly to Denny, too.

1 Q. So there is a -- if you go to the second page,
2 at the top, it says "60 total properties, approximately
3 6 million of guys from Bob Miller's letter and the other
4 lenders that they are talking to."

5 Is that a reference to -- I called them
6 before the Diethelm group -- but the group that was
7 represented by Bryan Cave in that Exhibit 942?

8 A. It is.

9 Q. Then there's a note below that "Gregg
10 Reichman - Active Funding. Scott met up with him. If
11 there's a subordination agreement, Gregg wants to be
12 protected. If none, he is okay. Understands the plan."

13 Do you recall Mr. Beauchamp being told
14 that, that Active Funding would be -- understands the
15 plan?

16 A. Yes.

17 Q. Did -- so as to these two groups of lenders,
18 your testimony is Mr. Beauchamp did not inquire about
19 the number of loans, details, et cetera, about the
20 double encumbrance?

21 MR. DeWULF: Object to form.

22 A. He did not.

23 Q. (BY MR. STURR) And he did not ask Mr. Chittick
24 if he could provide title documents relating to these
25 loans?

1 A. He did not.

2 Q. On the first page, he wrote "Plan. To pay off
3 on the other lenders through" -- it looks like the
4 sentence didn't finish. "Denny to raise coverage and
5 loan amount from 75 percent to 90 percent. Other
6 investors to help Scott to come up with the balance."

7 Is that something that was discussed at the
8 meeting? Do you remember?

9 A. Probably. I don't recall it, but I don't see
10 any reason why it wouldn't be accurate.

11 Q. What I would like to do now is show you another
12 document. So this meeting was on Thursday, January 9.
13 I'm going to show you what was previously marked as
14 Exhibit 150.

15 Exhibit 150 is an email -- begins with an
16 email that Denny Chittick sent on Sunday, January 12th,
17 to Mr. Beauchamp, and he copied you. Do you see that?

18 A. I do see that.

19 Q. And above that is Mr. Beauchamp's response to
20 Mr. Chittick.

21 I just want to touch on a couple of points.
22 He says "I spent the day contacting every investor that
23 has told me they want to give me more money."

24 Were you aware -- did Mr. Chittick tell you
25 around the time of this meeting that he was raising

1 additional money from investors to implement this plan?

2 MR. DeWULF: Object to form.

3 A. In the meeting, we discussed him raising
4 additional money.

5 Q. (BY MR. STURR) In the meeting with
6 Mr. Beauchamp?

7 A. Yes.

8 Q. What do recall about that discussion?

9 A. I recall Denny explaining that that was what
10 the plan was, that he was going to raise more money to
11 pay off this 60 -- this group of investors.

12 Q. And then, if you -- at the bottom of this page,
13 it says "The idea which Scott and I talked about Friday
14 night would be to have the opposing group give a list of
15 addresses and dollar amounts to us and to Debbie Pihl."
16 -- P-i-h-l -- "She works at Magnus."

17 Do you see that?

18 A. Yes.

19 Q. "And we'll start knocking them off. That way
20 it's all documented. It's through a neutral third party
21 and everyone is secure in their positions and dollars."

22 Is that something that you and Mr. Chittick
23 agreed to after the meeting with Mr. Beauchamp? This
24 mechanism to use Magnus Title.

25 A. Yes. It was at the recommendation of

1 Mr. Beauchamp.

2 Q. Mr. Beauchamp recommended it?

3 A. Yes.

4 Q. What do you recall him saying?

5 A. Him saying that in order to do what we want to
6 do, he recommends using a third party who at that point
7 can provide title insurance that DenSco would, for sure,
8 be in first lien position.

9 Q. Okay.

10 A. In other words, if he pays off XYZ lender, he
11 wants to know that by spending \$200,000 to pay that off,
12 that now, for sure, he is in first position.

13 Q. Next paragraph says "As far as Scott and I, we
14 would like to meet with Dave and Scott's attorney, all
15 four of us. Create terms sheet and have it written up
16 as far as what needs to be in there to both make me
17 secure, terms are understood, conditions, costs, et
18 cetera."

19 At this point, you wanted to have a meeting
20 to prepare a terms sheet; is that fair to say?

21 A. Yes.

22 Q. And then he says "If both Scott and I can raise
23 enough money, we should be able to have this all done in
24 30 days easy. Less than three weeks would be my goal."

25 Was that your understanding, that this

1 could be worked through relatively quickly?

2 A. When you say "worked through," you mean pay off
3 that group of lenders?

4 Q. Correct.

5 A. Yes.

6 Q. He goes on to say -- sorry -- I thank you for
7 clarifying it.

8 He then says, two paragraphs down, "Then
9 that should leave us with just me and Gregg on all of
10 Scott's loans. Gregg has confirmed with Scott and has
11 told me, as long as he gets his interest and payoffs
12 come, he's happy, which he should be, because he claims
13 he's run title on every loan and he's in first position
14 on all of them but two of the loans."

15 So am I correct in understanding that the
16 plan was to pay off the Diethelm group first, and then
17 work through the Active Funding loans?

18 A. Yes.

19 Q. And then it says "The plan that Scott and I
20 sent forth to you in my email that went to spam folder
21 would then be pursued to pay off these loans that I'm 95
22 percent LTV and to pay off Gregg's loans." Correct?

23 A. Yes.

24 Q. Did you have a discussion, either -- part of
25 the plan that you agreed to with Mr. Chittick would be

1 for DenSco to loan more money to you so you could
2 generate profits to pay off the double-encumbered
3 properties; is that right?

4 A. Yes.

5 Q. Did you have a conversation with Mr. Chittick
6 about changing the procedures for DenSco advancing
7 monies to you that would involve -- you testified to us
8 a little earlier -- I'm just trying to put a context on
9 here. You testified earlier about Mr. Beauchamp
10 recommending that you provide a copy of the cashier's
11 check. Do you recall that?

12 MR. DeWULF: Object to form.

13 A. Yes.

14 Q. (BY MR. STURR) Did that conversation take
15 place in the meeting on January 9 with Mr. Beauchamp?

16 MR. DeWULF: Object to form.

17 A. I don't recall when it took place.

18 Q. (BY MR. STURR) Let me show you -- maybe this
19 will help your recollection. I'm going to show you what
20 has been previously marked as Exhibit 36. You are not
21 copied on the email, but I want to put this in context,
22 Mr. Menaged.

23 Exhibit 36 begins with an email from Denny
24 Chittick to Mr. Beauchamp on January 9. That's the
25 evening of the meeting that you and he had with

1 Mr. Beauchamp, okay?

2 He says "If I cut a cashier's check and
3 take it to the trustee myself, I don't get a receipt
4 that DenSco paid for it."

5 And then he says, in the next paragraph, "I
6 could wire Scott the money. He could produce a
7 cashier's check that says remitter is DenSco, and it
8 would have the same exact effect as if I got a cashier's
9 check that said I'm the remitter."

10 Do you recall having a conversation with
11 Mr. Chittick in which he told you that he had received
12 advice from Mr. Beauchamp about obtaining a copy of a
13 cashier's check?

14 A. Yes.

15 MR. DeWULF: Object to form.

16 Q. (BY MR. STURR) What do you recall about the
17 conversation?

18 MR. DeWULF: Object to form.

19 A. He said that he wanted -- on every property, he
20 should have a copy of the check that was used to pay the
21 trustee.

22 Q. (BY MR. STURR) And do you have a memory of
23 when you had that conversation with Mr. Chittick?

24 A. I don't.

25 Q. Did he say why he wanted to have the copy of

1 the cashier's check?

2 A. He did not.

3 Q. You testified earlier that no hard money lender
4 other than DenSco would give money, in your experience,
5 directly to a borrower, correct?

6 A. Correct.

7 Q. Did you believe that this practice of having
8 you provide a copy of a cashier's check was different
9 than what other hard money lenders would require?

10 A. Ask that again.

11 Q. Were you surprised that after what had been
12 discovered because of the double encumbering -- and you
13 testified that occurred because funds were given
14 directly to you -- did it surprise you that DenSco
15 continued to wire money directly to you on the
16 understanding you would provide a copy of the cashier's
17 check?

18 MR. DeWULF: Object to form.

19 Q. (BY MR. STURR) Did that seem to you to be an
20 unusual practice for a hard money lender?

21 MR. DeWULF: Object to form.

22 A. Yes.

23 Q. (BY MR. STURR) Did that practice, Mr. Menaged,
24 in any way enable or allow you to take the activities
25 that had been described in this case that you referred

1 to as the second fraud?

2 MR. DeWULF: Object to form.

3 A. Yes.

4 MR. DeWULF: Object to form.

5 Q. (BY MR. STURR) I want to move on as quickly as
6 I can, Mr. Menaged. We talked yesterday about a terms
7 sheet. I want to mark a couple of documents and talk to
8 you about how that developed.

9 So a meeting with Mr. Menaged -- with
10 Mr. Beauchamp was January 9. The following week you had
11 some communications with Mr. Beauchamp. I'm going to
12 hand you what has been marked as Exhibit 155.

13 Exhibit 155 is an email that begins with an
14 email from you to Mr. Beauchamp and Mr. Beauchamp's
15 response to you and a subsequent exchange. Do you see
16 that?

17 A. Yes.

18 Q. At this point in time, had you retained
19 Mr. Goulder to represent you?

20 A. I believe this was the day I retained him.

21 Q. And Mr. -- the bottom, Mr. -- you state "Dave,
22 I understand the other side wants to know my agreement
23 with my friend who will provide some capital." And you
24 state "I will be able to borrow up to a million dollars
25 as a personal loan with a balloon in December of '15."

1 Do you see that?

2 A. Yes.

3 Q. And Mr. Beauchamp then responds that --
4 "According to Bob Miller, his clients" -- that's the
5 Diethelm group, correct?

6 A. Correct.

7 Q. -- "they want enough information about the
8 availability of your funds to know that the funds are
9 real and will be available in a timely manner. What are
10 you comfortable providing with respect to your investor,
11 the timing for those funds, and what is your transaction
12 with your investor?"

13 Do you see that?

14 A. I do.

15 Q. And you say -- at this point, you hadn't
16 retained counsel. And you say, at the top, "I am
17 meeting with my attorney Wednesday at 10:30," correct?

18 A. Correct.

19 Q. Were you at all uncomfortable that
20 Mr. Beauchamp was communicating with you and he was not
21 your lawyer about representations that would be made on
22 your behalf?

23 MR. DeWULF: Object to form.

24 A. I didn't know any different.

25 Q. (BY MR. STURR) And you say "I am meeting with

1 my attorney Wednesday at 10:30 a.m. I will discuss with
2 him about what to provide and what not to." Quote, "Me,
3 you and Denny are on the same side here. I just know
4 you can't advise me legally. So I ask to meet with my
5 attorney."

6 Did I read that correctly?

7 A. You did.

8 Q. Your understanding at this time was that, based
9 on the meeting you had with Mr. Beauchamp on the 9th,
10 that you, Mr. Chittick and Mr. Beauchamp were in
11 agreement with the plan that had been discussed?

12 MR. DeWULF: Object to form.

13 A. Yes.

14 Q. (BY MR. STURR) I'm going to hand you what was
15 previously marked as Exhibit 158.

16 Exhibit 158, these are Mr. Beauchamp's
17 notes from January 14, 2014, a day after your email
18 exchange with him. Correct?

19 A. I'm sorry?

20 Q. These appear to be Mr. Beauchamp's notes from a
21 phone call he had with you on January 14?

22 MR. DeWULF: Object to form.

23 A. I can't confirm or deny that.

24 Q. (BY MR. STURR) They appear to be. I say that
25 because "TCW," for lawyers, typically means telephone

1 conference with.

2 Do you recall having this conversation with
3 Mr. Beauchamp?

4 A. I recall having a conversation with him
5 sometime in January, so yes.

6 Q. I think you testified yesterday -- and I'll
7 show you some other notes -- there were multiple
8 conversations with Mr. Beauchamp that you recall.

9 MR. DeWULF: Object to form.

10 A. There were.

11 Q. (BY MR. STURR) I'm going to hand you what's
12 been marked -- let's mark this.

13 (Exhibit 1146 marked)

14 Q. I'm going to hand you what's been marked as
15 Exhibit 1146, Mr. Menaged. These are notes from Clark
16 Hill's files. And they reflect -- if you look in the
17 middle of the page -- "Conference call with Denny
18 Chittick, Scott Menaged, 1/16/14."

19 A. Okay.

20 Q. Do you have a memory of being in a conference
21 call with Mr. Beauchamp and Mr. Chittick in mid-January
22 2014?

23 A. I do.

24 Q. His notes refer to waiver, non-disclosure,
25 conflict, terms sheets. Does this refresh your memory

1 of what was discussed in that call?

2 MR. DeWULF: Object to form.

3 A. Yes.

4 Q. (BY MR. STURR) What do you recall?

5 A. I remember we talking about -- I remember us
6 talking about the confidentiality agreement, a
7 non-disclosure to his investors, that he didn't have
8 to -- he did not have to disclose to his investors, and
9 he wasn't actually even allowed to disclose to anyone
10 prior to I think he said formal -- unless it was, like,
11 the government or something, some formal federal agency
12 or state agency.

13 Q. You are not certain when that conversation
14 occurred?

15 A. No.

16 Q. I'm going to show you some other notes that it
17 may have been a different point in time.

18 A. Okay.

19 Q. But just to be clear, at some point, you
20 remember being in a conference call with Mr. Beauchamp
21 and Mr. Chittick, correct?

22 A. Yes.

23 Q. Tell me again, what do you recall Mr. Beauchamp
24 saying with respect to confidentiality?

25 MR. DeWULF: Object to form.

1 A. Denny's concern was this not get out to the
2 investors. Beauchamp said, to protect both of us, we
3 would do a confidentiality agreement, which is what we
4 did. I didn't want it to get out. He didn't want it to
5 get out.

6 And that's what I remember. I don't
7 remember exact words, but I do remember that was the
8 gist of this whole thing. The confidentiality agreement
9 was to protect both of us.

10 Q. You also testified there was some discussion
11 about delaying or not making disclosures to investors?

12 A. That wasn't here.

13 Q. That's later?

14 A. That's later on, yes.

15 Q. I'll get to that then.

16 Okay. I'm going to show you what's been
17 previously marked as -- I'm done with that exhibit --
18 Exhibit 180.

19 Exhibit 180 is an email that you sent to
20 Mr. Beauchamp on January 16. About the terms of the --
21 about the term sheet, correct?

22 A. Yes.

23 Q. And you wrote "Per Jeff, I can sign the term
24 sheet as long as par 1 and par 3 are changed." Correct?

25 A. Yes.

1 Q. Let me just ask. At this point, you had hired
2 Mr. Goulder?

3 A. When was the second meeting between all of us?

4 Q. February 20. I'll get to that.

5 A. Then, yes.

6 Q. All right. Were you -- did you have any
7 thought in your mind about whether you should be
8 communicating directly with Mr. Beauchamp who you knew
9 represented DenSco and share with him your discussions
10 that you had with your lawyer?

11 A. No.

12 Q. Had you ever used lawyers much before?

13 A. No.

14 Q. And Mr. Beauchamp didn't give you any cautions
15 or warnings that you can remember about not providing
16 information to him?

17 A. Only that he couldn't give me legal advice.

18 Q. And so you're conveying the changes that you
19 want in the term sheet?

20 A. Yes.

21 Q. And you wrote "The verbiage in both paragraphs
22 need to change to state DenSco believes he should be in
23 first position. Not that I'm saying he should be in
24 first position or me stating who should be in what
25 position."

1 A. Correct.

2 Q. Can you expand on that? What was your thought
3 about your view about the mortgage documents and what
4 should be said about them in the term sheet?

5 A. I just remember Jeff saying that's what he
6 wanted changed.

7 Q. Okay. I'm going to show you -- and let's mark
8 this as Exhibit 1147.

9 (Exhibit 1147 marked)

10 Q. 1147, Mr. Menaged, is a document from Clark
11 Hill's files which includes a chain of communication
12 beginning on the back side between you, Mr. Beauchamp
13 and Mr. Menaged [sic]. And this relates to the term
14 sheet and a confidentiality agreement. Is that the best
15 of your memory?

16 A. Yes.

17 Q. And this is -- this is Denny forwarding to
18 you -- "my signed doc." It says "We have to do
19 everything we can to keep this out of litigation. Your
20 attorney, according to David and Bob's interpretation,
21 isn't inclined to assist and thinks you could just BK
22 and walk away."

23 If you see above that, Mr. Beauchamp wrote
24 "Please understand that Jeff did not use the BK word,
25 but he said that this seems to be DenSco's problem

1 because Scott has an easy way out."

2 Do you recall having any discussions about
3 the possibility that you could file for bankruptcy
4 protection? Discussions with Mr. Chittick and
5 Mr. Beauchamp in January of 2014.

6 A. I don't recall.

7 Q. And at the top part of this email -- this is at
8 11:00 p.m. on Thursday, January 16 -- Mr. Beauchamp
9 wrote to you about finalizing -- or regarding terms of
10 the term sheet; is that correct?

11 A. Yes.

12 Q. Take a look, if you would, at Exhibit 1133 that
13 was marked yesterday. It's the term sheet. Here it is.

14 I just wanted to make sure -- we can sort
15 of -- this would have been signed, you testified
16 yesterday, at some point in January. You weren't sure
17 exactly when.

18 A. Yes.

19 Q. It's reasonable it was after January 16, which
20 is the date of the email we just looked at, correct?

21 A. Yes.

22 Q. Paragraph 3 refers to certain lenders who had
23 retained Bryan Cave to represent them, and they are
24 referred to as the "other lenders," correct?

25 A. Yes.

1 Q. That's what I'm referring to as the Diethelm
2 group?

3 A. Yes.

4 Q. And paragraph 5 discusses a process for selling
5 the properties that they claim an interest in through an
6 escrow, correct?

7 A. Yes.

8 Q. And it states that borrower, meaning your
9 entities, would pay any shortfall of funds to satisfy
10 the liens of the other lenders and DenSco before
11 closing, correct?

12 A. Yes.

13 Q. Paragraph 6, however, if you look at 6A,
14 there's a reference to Magnus arranging for the closing
15 of the additional funding from DenSco pursuant to a
16 modification of its existing loan, correct?

17 A. Yes.

18 Q. Am I understanding this correctly that the
19 funding for this would come from your entities but also
20 from an increase in the loans -- DenSco increasing the
21 loan-to-value ratio on your existing loan?

22 A. Correct.

23 Q. Paragraph E says borrower and DenSco agree to
24 deliver adequate funds to pay off all of the loans from
25 the other lenders on or before February 28th.

1 Is that consistent with your memory that as
2 of this time in January, the plan was to pay off the
3 Diethelm loans, that group, by the end of February?

4 A. Yes.

5 Q. And then it says, after all of the other
6 lenders have been paid off -- this is paragraph E --
7 DenSco and borrower shall proceed to resolve the lien
8 disputes between DenSco and other similarly situated
9 lenders. Do you see that?

10 A. Yes.

11 Q. Is that a reference to the Gregg Reichman and
12 the Active Funding Group liens?

13 A. Only Denny's.

14 Q. Okay. And in terms of what you were committing
15 to at that point, Mr. Menaged, paragraph B says borrower
16 has arranged for private outside financing in the amount
17 of approximately \$1 million, which is to be provided on
18 or before February 28th, 2014, correct?

19 A. Yes.

20 Q. And borrower has agreed to inform DenSco of all
21 the terms of borrower's transaction to obtain the
22 outside funds and the security, correct? That's C.

23 A. Yes.

24 Q. Now, that didn't happen, right?

25 A. No.

1 Q. At any time, do you remember being questioned
2 by Mr. Beauchamp about your -- the fact that that didn't
3 happen?

4 A. No.

5 Q. D, borrower agrees to provide any additional
6 security to DenSco as may be requested, correct?

7 A. Yes.

8 Q. Paragraph F, borrower agrees to use good faith
9 efforts to liquidate other assets, expected to generate
10 4- to 5 million, correct?

11 A. Yes.

12 Q. And you testified yesterday that you insisted
13 on "good faith efforts."

14 A. Yes.

15 Q. You weren't going to promise to do that,
16 correct?

17 MR. DeWULF: Object to form.

18 Q. (BY MR. STURR) Is that right?

19 A. That's correct.

20 Q. G, borrower agrees to provide DenSco and
21 maintain an effective life insurance policy.

22 A. Yes.

23 Q. Is that something that you agreed to do?

24 A. I did.

25 Q. Did you, in fact, get a life insurance policy?

1 A. We began the process. And then once we figured
2 out what the cost was, me and Denny -- Denny decided it
3 wasn't needed.

4 Q. Do you recall being questioned to Mr. Beauchamp
5 about why that life insurance policy hadn't been
6 obtained?

7 A. No.

8 Q. Borrower agrees to provide DenSco with a
9 personal guarantee from Scott Menaged. Did you give
10 one?

11 A. I did.

12 Q. On the DenSco side, their agreement was DenSco
13 will forbear from taking any action to accelerate its
14 loans and to commence foreclosure against your entities,
15 correct?

16 A. Correct.

17 Q. B, DenSco will defer but not waive the
18 collection of interest from the borrowers on DenSco's
19 loans during the process to fund the amount due to the
20 other lenders, correct?

21 A. Yes.

22 Q. And then C, DenSco will provide a new loan to
23 borrower in the amount of up to one million U.S.
24 dollars, which is to be provided from multiple advances,
25 earn 3 percent annual interest to be secured by a first

1 lien against certain real property to be approved by
2 DenSco, correct?

3 A. Yes.

4 Q. Now, is that something that you and
5 Mr. Chittick had agreed to back in the November/December
6 time frame?

7 A. Yes.

8 Q. Had you -- had you firmed up the details of
9 that? Had you identified the property that you would
10 put up as security?

11 A. No. I think there's some confusion. The
12 million dollars was not to go into a new property. The
13 million dollars was to go into the existing properties,
14 in which he was going to take a new loan on, that DenSco
15 was going to have a new deed of trust on.

16 Q. The understanding was DenSco would advance a
17 million dollars more, and they'd take a lien on the
18 property to secure it, and it would be -- it would earn
19 3 percent?

20 A. DenSco would pay off, let's just say, one of
21 those other lenders, a million dollars of their
22 properties. I would owe DenSco a million dollars at 3
23 percent, and DenSco would take a full lien on that
24 property. Irrespective to what this paragraph says,
25 that's what the agreement was.

1 Q. Okay. I'm trying to see how -- I'm going to
2 see if it changed.

3 A. No.

4 Q. So my question to you is, at least this piece
5 of it was part of the understanding you had back in
6 November/December?

7 A. Yes. And that did change.

8 Q. How did it change?

9 A. It changed in which I just explained to you
10 what happened with the million dollars. It went into
11 paying off one of the other lenders' properties, in
12 which they were in first or second position, whatever
13 position.

14 Q. And so those funds were dispersed in let's call
15 it December.

16 A. Yes. Approximately.

17 Q. Is that correct?

18 A. Yes.

19 Q. And then how was that loan secured?

20 A. It was not secured.

21 Q. It says here to be secured by a first lien
22 position against certain real property to be approved by
23 DenSco?

24 A. It was not secured.

25 Q. We'll walk through this again. This -- that

1 term continues on in the forbearance agreement.

2 But your understanding was -- what was your
3 understanding in December about that million dollar
4 advance? Was it unsecured?

5 A. It was an unsecured loan, yes.

6 Q. In December. And that was used to pay off --
7 to pay off existing encumbrances, correct?

8 A. Correct.

9 Q. Then paragraph D says, so long as each borrower
10 is in compliance with the terms of the forbearance and
11 workout agreement, et cetera, the amount of loans shall
12 be increased to 95 percent LTV, as indicated above.

13 Do you recall that part of this, that there
14 was an agreement by DenSco to give more capital to your
15 entities by increasing the loan-to-value ratio?

16 A. In the beginning, that was the agreement, yes.

17 Q. That's how the Diethelm group would be paid
18 off? DenSco would increase loan to value on a property
19 up to 95 percent so you could pay off those encumbered
20 properties.

21 A. Correct.

22 Q. All right. Now, the term sheet is signed.

23 Are you okay on time?

24 A. I need to use the restroom.

25 Q. Let's take a break.

1 (Recess from 10:49 a.m. to 10:55 a.m.)

2 Q. Mr. Menaged, I just want to mark a few
3 documents. Now we are into the February time period.
4 We're going to look at the term sheet, which is in
5 January. So I have some questions about February of
6 2014.

7 I'm going to hand you what was previously
8 marked as Exhibit 341, Mr. Menaged, which are
9 Mr. Beauchamp's notes from the Clark Hill file. And
10 you'll see about a quarter of the page down "Conference
11 call with Scott Menaged and Denny Chittick, 2/7/14." Do
12 you see that?

13 A. Yes.

14 Q. And, again, do these notes -- these are
15 Mr. Beauchamp's notes -- refresh your memory at all?

16 They state "Denny explained conversation
17 with DGB and Scott." That would be a reference to you
18 presumably?

19 A. Yes.

20 Q. And then it says "Scott cannot." Then it says
21 "DGB explained problem." "DGB" is a reference to
22 Mr. Beauchamp?

23 A. Yes.

24 Q. There's what appears to be a quote from you.
25 It says "Scott dash." And there's some discussion there

1 about the time required to pay off Gregg's loans.

2 That's a reference to Active Funding Group?

3 A. Yes.

4 Q. Do these notes refresh your memory at all about
5 that phone call?

6 A. I do recall the phone call, yes.

7 Q. Sitting here today, do you remember anything
8 about it?

9 A. This is all accurate.

10 Q. Accurate in the sense that there was a
11 discussion about the time required to pay off the Active
12 Funding liens or loans?

13 A. Yes.

14 Q. And there's a -- at the bottom, it says
15 "Explain in email to Jeff what are the changes." Do you
16 see that?

17 A. Yes.

18 Q. Does this appear to reflect a conversation
19 about the terms of a forbearance agreement?

20 MR. DeWULF: Object to form.

21 A. I don't recall.

22 Q. (BY MR. STURR) Because the term sheet has been
23 done, and I'm just -- if you don't recall, that's fine.

24 A. This would have to do with the forbearance
25 agreement, yes.

1 Q. Let me show you a document I'm going to mark,
2 even though it was marked before. I'm going to show
3 you -- these notes are from February 7. I'm going to
4 show you what has been marked as Exhibit 1148 in this
5 deposition. It was marked as Exhibit 2 in the 2004
6 exam.

7 (Exhibit 1148 marked)

8 MR. DeWULF: What did you mark? I'm
9 sorry.

10 MR. RUTH: 1148.

11 Q. (BY MR. STURR) 1148 is an email that
12 Mr. Goulder forwarded to you that he had received from
13 Mr. Beauchamp; is that correct?

14 A. Yes.

15 Q. And this is Mr. Beauchamp commenting on
16 revisions to the forbearance agreement. If you look at
17 the first line, "Based on your previous changes," comma,
18 "the forbearance agreement would be prima facie evidence
19 that Denny Chittick had committed securities fraud
20 because the loan documents he had Scott sign did not
21 comply with DenSco's representations to DenSco's
22 investors in his securities offering documents."

23 Did I read that correctly?

24 A. Yes.

25 Q. So this is an email about the forbearance

1 agreement, would you agree?

2 A. It is.

3 Q. The question I had for you was -- and, again, I
4 want you to be careful at this point. I don't want you
5 to reveal any privileged communications that you had
6 with Mr. Goulder.

7 But at this point, Mr. Goulder was your
8 counsel, correct?

9 A. Yes.

10 Q. His task at this time was to represent you in
11 the negotiation of the forbearance agreement; is that
12 correct?

13 A. Yes.

14 Q. And you understood that he was communicating
15 with Mr. Beauchamp about the terms of the forbearance
16 agreement?

17 A. Yes.

18 Q. Okay. There's a reference in the third
19 paragraph of what Mr. Beauchamp wrote. The one that
20 begins "In addition to the business points," do you see
21 that?

22 A. Yes.

23 Q. It says "I had been informed that since,"
24 quote, "Dan's litigious group had agreed to get paid
25 off, Scott was not as concerned with stating facts and

1 legal conclusions in the document, but the changes" --
2 "your changes indicate that you are still very
3 concerned."

4 I want to focus on that. As of this time,
5 February 8, 2014, was it your understanding that the
6 Diethelm group wasn't planning on litigating or suing or
7 initiating any lawsuits?

8 A. Correct.

9 Q. Without revealing any privileged
10 communications -- I don't want to do that. Let me go to
11 the next exhibit.

12 You were asked before about a meeting that
13 had you at Mr. Beauchamp's office. I'm going to turn to
14 that now. Just to be clear, you only recall two
15 in-person meetings with Mr. Beauchamp, correct?

16 A. Correct.

17 Q. The first we talked about was January 9,
18 correct?

19 A. Yes.

20 Q. And the second was a meeting at Mr. Beauchamp's
21 office in which you, Mr. Goulder and Mr. Chittick
22 participated, correct?

23 A. Yes.

24 Q. I know you don't recall the date of that, but
25 I'm going to possibly refresh your recollection. I'm

1 going to hand you what was previously marked as Exhibit
2 352. These are Mr. Beauchamp's notes from Clark Hill's
3 files about a meeting that took place on February 20,
4 2014, and they appear to relate to the meeting that you
5 recall.

6 Before you look at the notes, let me ask
7 you, today, sitting here, what was the purpose of the
8 meeting, in your mind?

9 A. To firm up the forbearance agreement.

10 Q. Do you have a memory, sitting here today, of
11 what was discussed and what occurred at that meeting?

12 A. Yes.

13 Q. Share with us what you can recall.

14 A. I remember Jeff making certain requests,
15 certain changes, requests to change certain things in
16 the forbearance agreement that Beauchamp was not okay
17 with. He was not happy about. I can't remember what
18 those exact items were.

19 Q. Okay.

20 A. He left the room for a little while with Denny
21 to talk to him in private. Probably a good 20, 30
22 minutes. They came back into the room. He agreed to
23 make most of the changes.

24 Q. Who is "he"?

25 A. David Beauchamp agreed to make most of the

1 changes, if not all of the changes, because I don't
2 remember a dispute after that.

3 We talked again a little bit more about the
4 plan of how to get all these things paid off. I
5 remember we talked about the investors and what
6 knowledge they were going to have of all this. That's
7 what I recall, without looking at these notes.

8 Q. And as to the specific terms of the agreement,
9 you don't have a memory of those particular --

10 A. I don't.

11 Q. Do you have a specific memory of the
12 discussions about the plan, as you just referred to?

13 A. I just remember it was basically the same terms
14 as what we agreed to in the forbearance agreement.

15 Q. Meaning the term sheet?

16 A. In the term sheet, except I remember one of the
17 changes was that the loan to value was going to go up
18 from 95 percent to I think 120 percent or 125 percent,
19 in that vicinity. So that changed a little bit.

20 Jeff didn't want me making any -- we agreed
21 not to make any foregone conclusions of exactly how much
22 I would bring into this project, and so that was agreed
23 to be changed to reflect a best will effort, or
24 something to that effect.

25 That's what we agreed to.

1 Q. With respect to investors, what do you recall
2 about that discussion? What would they be told?

3 A. As long as everything went smoothly with the
4 plan, the investors were not going to know what was
5 going on.

6 Q. Looking at these notes, if you would, about a
7 third of the way up from the bottom, it says, J, does
8 not want to give more collateral, negative equity for
9 loans is 8 million. Do you see that?

10 A. For 122 loans.

11 Q. 122.

12 A. Yes.

13 Q. Is that consistent with what you just told us,
14 that you didn't want to put any more collateral in
15 the --

16 A. Yes.

17 Q. What does "negative equity for 122 loans is 8
18 million" mean?

19 A. What they come up with or -- what I think Denny
20 came up with is, if you paid off all 122 loans, which I
21 believe included -- which did include Active Funding and
22 the other lenders, that there would be an 8 million
23 dollars balance. Negative equity.

24 Q. Meaning that's the amount that would be
25 advanced to pay off those?

1 A. No.

2 Q. No?

3 A. If Denny decided to pay off or did pay off
4 Active Funding and the other lenders -- Denny then was
5 the sole lienholder -- and those properties were then
6 sold, there would be an \$8 million balance between me
7 and Denny.

8 Q. Okay. When you say "negative equity," that
9 means --

10 A. It would be upside down by \$8 million.

11 Q. And your understanding was that would be
12 divided evenly between the two of you?

13 A. Between me and Denny?

14 Q. Yeah.

15 A. No.

16 Q. Who is responsible for the negative equity?

17 A. I would.

18 Q. Got it.

19 Okay. If you go to the middle of the next
20 page, there's a reference -- a couple of references to a
21 release. Do you see that?

22 A. Yes.

23 Q. In the middle, it says "No. They want full
24 release now."

25 At the bottom, it says "Scott offered to

1 not have release be effective if Scott files BK." Do
2 you see that?

3 A. Yeah. Yes, I see it.

4 Q. In the last page -- Mr. Menaged, flip to the
5 very last page, it says "Jeff wants full release now.
6 Right to sue for fraud being resurrected." Do you see
7 that? The last page. Flip it over.

8 A. Yes.

9 Q. Just to sum up, then, this reflects there was
10 discussion at the meeting about whether or not you and
11 your entities would receive a release?

12 A. Yes.

13 Q. Did I understand that correctly?

14 A. Yes.

15 Q. That is something that Mr. Beauchamp and
16 Mr. Chittick, did they express an opinion in that
17 meeting about whether they could agree to that?

18 A. They decided that they would agree to that.

19 Q. That's your understanding from that meeting?

20 A. Yes.

21 Q. If you go to the third page of the exhibit, the
22 page that begins DIC5446, it says "Approximately 31
23 million outstanding to Scott's entities." Do you recall
24 that being discussed in the group meeting?

25 A. Yes.

1 Q. And it says "Problem loans down to about 17
2 million for 122 loans." Is that information consistent
3 with your memory at the time?

4 A. I believe so.

5 Excuse me?

6 Q. Yeah.

7 A. At this meeting -- now I'm remembering. This
8 is the first time -- when I said that Beauchamp and
9 Denny left the room, I remember Denny telling me
10 afterwards, that this was the first time that he
11 explained to him the magnitude of dollar amounts of the
12 issues at hand.

13 Q. So the information on this sheet may have been
14 communicated to Mr. Beauchamp by Mr. Chittick in their
15 separate meeting?

16 A. That's what he told me.

17 Q. What did he tell you that Mr. Beauchamp
18 discussed in that meeting?

19 A. That he didn't -- that Mr. Beauchamp didn't
20 realize the majority or a big portion of DenSco funds
21 were lent to one borrower. That is in violation of
22 everything that he has agreed to in his POM. That he
23 didn't realize how big of an issue this was, and that's
24 what took so long for them to come back into the
25 meeting. Denny was actually explaining everything to

1 him.

2 Q. Did he tell you anything more about how
3 Mr. Beauchamp reacted to that news?

4 A. Angry. I remember him saying, "This is a
5 humongous problem." I remember Denny telling me that he
6 said this would not be good if this did get out. He
7 thought we were talking about a couple of million
8 dollars. He didn't realize that \$30 million was lent to
9 one entity. That's what I recall.

10 Now I remember because I'm thinking why are
11 we talking about these numbers here. But now I remember
12 why we were talking about them. It's because that's --
13 when they left the room, that was when they actually
14 went through -- I think Denny brought a spreadsheet or
15 brought something with him with numbers, and that was
16 the first time that he actually saw the total numbers.

17 Q. And Mr. Chittick told you this at or shortly
18 after this meeting?

19 A. After the meeting. I don't know if it was that
20 night, but at some point when we talked after that.

21 Q. I just want to check quickly. I'm going to ask
22 you -- I referenced before the corporate journal
23 Mr. Chittick kept for 2014. And I want to read this
24 account he wrote of that meeting. See if this refreshes
25 your memory.

1 "David lost his temper more than once. We
2 went back and forth for three hours."

3 Did the meeting last that long?

4 MR. DeWULF: Object to form.

5 A. It was a long meeting, yes.

6 Q. (BY MR. STURR) Do you recall Mr. Beauchamp
7 losing his temper?

8 A. Yes.

9 Q. "We broke up and came together. Finally, we
10 are down to one point about the release. The lawyers
11 are trying to word it to make each other happy."

12 Is that consistent with your memory of how
13 this meeting ended?

14 A. Yes.

15 MR. DeWULF: Object to form.

16 Q. (BY MR. STURR) He wrote "I told David the
17 dollars today. He about shit a brick. I explained to
18 him how I got there and how far we have come and how
19 much better we are today than in November."

20 MR. DeWULF: Object to form.

21 Q. (BY MR. STURR) That is consistent with what
22 Mr. Chittick relayed to you about his conversation with
23 Mr. Beauchamp, right?

24 MR. DeWULF: Object to form.

25 A. Yes. I'm now remembering all this.

1 Q. (BY MR. STURR) He also wrote that day -- "I'm
2 more concerned about telling my investors and their
3 reaction to the problem. I have to tell them and hope
4 they stick with me. If I get a run on the bank, I'm in
5 deep shit. I won't be able to fund new deals, I won't
6 be able pay off investors, and I won't be able to
7 support Scott. The whole thing craters."

8 Do you remember Mr. Chittick ever saying
9 words to that effect to you?

10 MR. DeWULF: Object to form.

11 A. Yes.

12 Q. (BY MR. STURR) On more than one occasion?

13 A. Yes. And to David Beauchamp.

14 Q. When did he say it to David Beauchamp?

15 A. On the first meeting, the one we talked about
16 when we talked about the investors, he said that that
17 was a very big concern of his, a run on the bank.

18 Q. I'm going to hand you -- we've seen that you
19 were meeting with Mr. Goulder and Mr. Beauchamp and
20 Mr. Chittick on the 20th of February.

21 I'm going to hand you, Mr. Menaged, what
22 will be marked as Exhibit 1149.

23 (Exhibit 1149 marked)

24 Q. Mr. Menaged, Exhibit 1149 comes from Clark
25 Hill's files. It's not copied to you, but it's an email

1 that Mr. Goulder, your lawyer, sent to Mr. Beauchamp on
2 the 25th of February. Do you see that?

3 A. Yes.

4 Q. And he writes "Attached is a clean and redlined
5 copy of the revised version of the forbearance. In an
6 effort to bring these negotiations to a close, you will
7 see that we agreed to your language on several of the
8 points we debated at your office." Do you see that?

9 A. Yes.

10 Q. I just want to ask, if we could sort of tick
11 through really quickly to see where things stood. If
12 you'd go to page 2350. Do you see that lower-right
13 corner?

14 A. Yes.

15 Q. I want to start with your actions. See
16 Borrower's Action, section 6?

17 A. Yes.

18 Q. "Borrower agrees to use good faith efforts to
19 liquidate other assets." Do you see that?

20 A. Yes.

21 Q. And that's consistent with your position that
22 you wouldn't commit to more than good faith?

23 A. Yes.

24 Q. B, Life Insurance Policy, that was in the term
25 sheet, correct?

1 A. Yes.

2 Q. Let me go back to the notes. Your memory is
3 that life insurance policy was never put into effect?

4 A. Correct. I remember them coming to my office
5 and taking blood and saying, "Even being healthy, the
6 rate was extremely high," I remember.

7 Q. So let me just -- the next item is C, Personal
8 Guarantee. That's in the term sheet, correct?

9 A. Yes.

10 Q. D, borrower agrees to provide lender with a
11 separate corporate guarantee, is that new?

12 A. If it wasn't in the term sheet, then, yes.

13 Q. F, borrower is to arrange for private outside
14 financing which is to be provided to borrower. And here
15 you have a million dollars by March 20, 2014, and
16 another million by May 26, 2014, one million by July 15,
17 2014, 1.2 million by September 2014.

18 A. Yes.

19 Q. Was it your intention to try to provide those
20 funds by those dates?

21 A. It was.

22 Q. If you go to the next page, Lender's Actions,
23 there's an increase in the -- 7A, lender agrees to
24 increase the loan amount to 95 percent of LTV. Is that
25 your understanding of where things were at that time?

1 A. At that time, I believe so, yes.

2 Q. And paragraph C, there is still the reference
3 to the million dollar loan, which would be secured.
4 That was in the term sheet, correct? We looked at that.

5 A. Yes.

6 Q. And other than that, there are no other
7 obligations that -- with respect to your commitments or
8 DenSco's actions for funding that changed from the term
9 sheet. Is that your understanding?

10 A. Correct.

11 Q. That wasn't a great question.

12 Paragraph 9, the next page, Mutual Release,
13 Waiver of Claims and Defenses.

14 A. Yes.

15 Q. This is language that Mr. Goulder proposed to
16 resolve the discussion about the release, correct?

17 A. Yes.

18 Q. And then go to the last two pages. There's a
19 whole new section on confidentiality I'm curious
20 about -- are you there?

21 It's page 2355. It's not the last page.
22 Forgive me, it's not 2355 either. Then 2356.

23 You testified earlier that both DenSco and
24 you wanted confidentiality; is that right?

25 A. Yes.

1 Q. Do you remember whose language -- this is from
2 your attorney. But was there a discussion at that
3 meeting about a confidentiality provision?

4 A. There was.

5 Q. What do you remember about who asked for it
6 first?

7 A. Jeff Goulder I believe asked for it first.

8 Q. And do you recall if Mr. Beauchamp said
9 anything on that?

10 A. He was okay with it. He was okay with it.

11 Q. All right.

12 A. There wasn't a big fight to it is what I'm
13 saying. I don't remember.

14 Q. I'll try to move as fast as I can.

15 So now this was Mr. Goulder's email. This
16 is February 25.

17 It appears from the file that -- and I
18 think you testified to this yesterday -- while these
19 discussions between Mr. Goulder and Mr. Beauchamp were
20 going on, you and Mr. Chittick were still exchanging
21 ideas about the workout plan?

22 A. Yes.

23 Q. So I want to show you what was previously
24 marked -- let me mark this.

25 (Exhibit 1150 marked)

1 Q. This is going to be 1150. Mr. Menaged, I have
2 handed you what is marked as 1150. This is an email
3 that -- it wasn't sent to you, but I'm using it because
4 I want to see if you have a recollection of what
5 Mr. Chittick said about your discussions.

6 It's a February 25 email from Mr. Chittick
7 and Mr. Beauchamp. And it says "Scott and I have been
8 talking about how do we eliminate as many as these loans
9 as fast as possible." And he talks about the benefit
10 for doing that.

11 He goes on to ask some questions. Take a
12 minute to read through it.

13 A. Go ahead. Keep talking.

14 Q. He goes on to ask some questions about how to
15 secure advance -- it sounds like advancing additional
16 money to you to sell off the properties faster.

17 And he says -- go to the very second to the
18 last paragraph. "He" -- that's a reference to you.
19 "He's throwing out all sorts of ideas in how this could
20 be done. I would be willing to release the UCC if he
21 was able to secure the funds and use them to pay some of
22 these loans. We've got about three more ideas, but what
23 both of us are really concerned about is that when I
24 tell my investors the situation, they request their
25 money back, I want to be able to say this was the

1 problem, we've eliminated this much of the problem and
2 this is what is left. I want to be able to say what is
3 left is as small as possible."

4 That's consistent with what you've
5 testified to. You had that type of conversation with
6 Mr. Chittick on numerous occasions?

7 MR. DeWULF: Object to form.

8 A. Yes.

9 Q. (BY MR. STURR) Do you recall having a
10 discussion around this time about getting an additional
11 advance from DenSco so you could buy more properties?

12 A. Yes.

13 Q. Let me -- I want to ask you about your memory,
14 but let me show you another email that may relate to the
15 same period. This is previously marked as 362, and this
16 is an email exchange between Mr. Chittick and
17 Mr. Beauchamp, February 26.

18 And he begins by saying "I just talked to
19 Scott for 90 minutes," and then there's some commentary
20 about how to amend the forbearance agreement. And then,
21 in the third paragraph, there's another discussion about
22 selling all of these properties to accelerate the
23 process.

24 A. Yes.

25 Q. Does this refresh your memory that, in late

1 February, there was a discussion about advancing --
2 DenSco advancing additional monies to you to more
3 quickly get through the workout process?

4 A. I do remember that.

5 Q. What do you remember about that?

6 A. Everything I've been testifying to this whole
7 day. I mean, he was going to advance more money for me
8 to purchase more properties, and the profits from
9 that -- a portion of that would go towards the balances
10 owed.

11 Q. The reason I'm asking this, Mr. Menaged, this
12 is different than what was in the term sheet. So we are
13 now at a new term, correct?

14 A. Yes. I don't remember, though, how that
15 changed or when that changed.

16 Q. That's why I want to show it to you. Because
17 one of the things you testified to yesterday was --
18 looking back in hindsight, looking back in 2016, you
19 thought you were doing the right things in 2014 to work
20 out the problem, but that 18 percent interest became an
21 unbearable burden for you. I'm paraphrasing. Is that
22 correct?

23 A. Yes.

24 Q. So I'm trying to pinpoint, in the course of
25 your negotiation with DenSco, when that term was added

1 because it appears to me that it was an additional term
2 as you went along.

3 I'm not asking a question. I just want to
4 explain where we are.

5 So if I could -- let me show you one more
6 exhibit. This is Exhibit 366, and this is an email,
7 again, from Mr. Chittick to Mr. Beauchamp reporting on a
8 conversation with you.

9 February 27, 2014, he says -- with respect
10 to the forbearance agreement, it says "Scott agreed to
11 the three paragraphs," paren, "after Jeff left. We
12 eliminate the release paragraph Jeff added, and only
13 give release once problem is over."

14 A. Okay.

15 Q. And then he says "We have a separate promissory
16 note. Can't give you the terms or numbers right now,
17 but basically he's agreeing to pay back any shortage on
18 any loan that gets paid off as we sell these properties
19 that are in question. There will be monthly interest
20 and principal payments scheduled."

21 Is this consistent with your memory that
22 you and Mr. Chittick got to a point where you agreed to
23 sign a promissory note for additional monies to be used
24 in the workout?

25 A. Yes.

1 Q. And my next question to you -- again, I'm going
2 to put this in context for now. This was in late
3 February. I'm going to hand you what's been marked as
4 Exhibit 368.

5 Exhibit 368 is an email that Mr. Chittick
6 sent to Mr. Beauchamp on March 4, 2014. Just take a
7 minute to look at it. I'm looking at the bottom part of
8 the email, not Mr. Beauchamp's response.

9 A. Okay.

10 Q. Mr. Chittick reported to Mr. Beauchamp, quote,
11 "He" -- that's a reference to you -- "says he's not
12 going to have Jeff review because Jeff already told him
13 not to sign anything."

14 Is that -- did you tell Mr. Chittick in
15 early March that you were not going to have Mr. Goulder
16 review any documents any further?

17 A. I'm pretty sure that this was about the time
18 that Jeff was no longer representing me, that I released
19 him.

20 Q. And, again, without disclosing privileged
21 information -- I want to be clear about this -- you
22 released him. So he was no longer acting as your
23 counsel in early March 2014?

24 A. In this matter, no.

25 Q. In this matter.

1 So this information that Mr. Chittick
2 conveyed to Mr. Beauchamp is correct? "He's not going
3 to have Jeff review."

4 A. Correct.

5 Q. Okay. Again, I don't want to get into
6 privileged communication that you had with Mr. Goulder.
7 At this point forward, Mr. Menaged, you didn't have
8 counsel in finalizing the forbearance agreement?

9 A. Correct.

10 Q. To the best of your knowledge, did
11 Mr. Beauchamp know that you did not have counsel as of
12 March 14th going forward?

13 MR. DeWULF: Object to form.

14 A. He did.

15 Q. (BY MR. STURR) He did.

16 I'm going to show you what was previously
17 marked as Exhibit 370. And this is a document you
18 didn't receive, Mr. Menaged, but it's an email that
19 Mr. Beauchamp sent to Mr. Chittick on March 7, 2014, of
20 changes to the forbearance agreement.

21 A. Okay.

22 Q. And if you look on page -- the page that's
23 numbered CH0002961.

24 A. Okay.

25 Q. There's a paragraph under 7A. Do you see that?

1 MR. DeWULF: 370?

2 MR. STURR: 2961, John.

3 THE WITNESS: 370.

4 MR. DeWULF: I missed that. 2961.

5 Q. (BY MR. STURR) I'm on section 7. Do you see
6 that?

7 A. Yes.

8 Q. A has a lot of new underlining. It's
9 underlined. It's new text. Do you understand that?

10 A. Yes.

11 Q. I see that there's what appears to be a new
12 section. It says "The additional funds by lender to
13 borrower shall be evidenced by a new loan, jointly and
14 severally, borrower and guarantor, in an amount up to
15 blank million, which loan is to provide for multiple
16 advances earning 18 percent, et cetera, payable on or
17 before February 1, 2016." Do you see that?

18 A. Yes.

19 Q. Does that reflect that, as of this time, early
20 March 2014, you and Mr. Chittick had agreed that DenSco
21 would advance additional funds to you payable at 18
22 percent interest?

23 A. Yes.

24 Q. I'm going to hand you what was previously
25 marked as -- do you have a memory, Mr. Menaged, after

1 you discharged Mr. Goulder in, I assume, early March
2 2014, were you receiving information from Mr. Chittick
3 that he received from Mr. Beauchamp?

4 A. Yes.

5 Q. Was he forwarding -- what did you receive --
6 what information were you receiving?

7 A. Most of it -- I mean, any emails that Beauchamp
8 would send to Denny, I believe, a good majority of those
9 I saw. They were forwarded to me.

10 Q. Okay. Let me take a quick look at -- take a
11 look at Exhibit 371, if you would.

12 Exhibit 371 is a document that came from
13 Clark Hill's files. It's an email from Denny Chittick
14 to David Beauchamp. It's an email exchange, actually.

15 And if you go to the second page, the one
16 that's marked 6875, do you see that it says
17 "confidentiality"?

18 A. Yes.

19 Q. This is Mr. Chittick recording -- or stating
20 "only time I can disclose info is if I'm legally
21 requirement by investors. He wants me to not say a word
22 unless I'm legally required to, because the reputation
23 of his investors and buyers, clients, et cetera, could
24 be harmed."

25 A. Yes.

1 Q. Is that something you asked for at that time?

2 A. Yes.

3 Q. And then, on the first page -- I'm going to not
4 take any more time on that.

5 Now, if I could -- so you had a
6 communication with Mr. Chittick about confidentiality,
7 correct?

8 A. Yes.

9 Q. Now, I'm going to hand you Mr. Beauchamp's
10 notes from a telephone conversation that occurred on
11 March 11, 2014. I've handed you what has been marked as
12 Exhibit 372.

13 A. Yes.

14 Q. This is a document that came from Clark Hill's
15 files.

16 And I'm reading from the top, Mr. Menaged.
17 It says "TCW Denny Chittick. Scott is on the other
18 line. Go through issues and then have conference call
19 of the three people." Do you see that?

20 A. Yes.

21 Q. And below that, the term "confidentiality"
22 appears. Do you see that?

23 A. Yes.

24 Q. And then below that, Mr. Beauchamp wrote
25 "Conference call with Denny Chittick and Scott Menaged."

1 Do you see that?

2 A. Yes.

3 Q. These are notes of a call that Mr. Beauchamp
4 had with you and Mr. Chittick, which one of the topics
5 was confidentiality. Is this the call you were
6 recalling where you heard Mr. Beauchamp make statements
7 about confidentiality and disclosures to investors?

8 A. Yes.

9 Q. I know you testified about that previously, but
10 do these notes refresh your memory in any way in
11 addition to what you've already testified to that
12 Mr. Beauchamp said during that call?

13 A. No. This is as I remember it.

14 Q. Just to be clear, your understanding from this
15 call was Mr. Beauchamp was advising Mr. Chittick that
16 the information needed to be disclosed to investors but
17 could be delayed? The disclosure could be delayed.

18 MR. DeWULF: Object to form.

19 A. He said that, yes, the investors needed to be
20 aware of this, but, yes, it could be delayed, and
21 ultimately, if the problem was completely resolved
22 without disclosing to the investors, well, then, there
23 was no reason to have to disclose it.

24 Q. (BY MR. STURR) At this time -- we're now --
25 this is March 11, 2014, and you brought this up before,

1 Mr. Menaged. One of the terms of the forbearance
2 agreement that had been exchanged for some time was
3 paragraph 6F that required you to make these payments, a
4 million dollars in March, et cetera.

5 A. Yes.

6 Q. Do you recall Mr. Beauchamp asking, on this
7 call, if you were on track to make those payments?

8 A. He did not.

9 Q. And your memory is you were never, ever
10 questioned by Mr. Beauchamp about whether you had made
11 those payments?

12 MR. DeWULF: Object to form.

13 A. No.

14 Q. (BY MR. STURR) By the time the forbearance
15 agreement was signed in April, you were in default of
16 that provision, correct?

17 A. Yes.

18 Q. I'm going to hand you what was marked as
19 Exhibit 373. This is an email that Mr. Chittick sent to
20 Mr. Beauchamp on March 12, 2014. He appears to be
21 conveying to Mr. Beauchamp the substance of your
22 conversations with him about the workout; is that
23 correct?

24 A. Yes.

25 Q. And, again, I want to make sure I'm

1 understanding this. He says "We are down to about 90
2 properties of Gregg's. We are going to concentrate on
3 those now." Is that consistent with your memory?

4 A. Yes. He decided to pay them off.

5 Q. Let me step back. I'm sorry.

6 At the bottom of the email, it says "Just
7 so you know, the Dan's/Chris's list of loans that I've
8 been slowly paying off will be done this week. Three
9 are left."

10 So does that -- is that a reflection that
11 as of mid-March 2014, Mr. Chittick had caused DenSco to
12 pay off all of the Diethelm group loans?

13 A. Yes.

14 Q. With respect to the Acting Funding Group loans,
15 as of that date, he says we're down to about 90
16 properties; is that correct?

17 A. Correct.

18 Q. Is that consistent with your memory?

19 A. Yes.

20 Q. Then he says "We have some options based on the
21 workout agreement and business practices. We could sell
22 them as quickly as possible. Then I would have the big
23 personal note for millions."

24 Is that a reference to this idea of an
25 additional advance at 18 percent that you have been

1 discussing?

2 A. Yes. And that it would be an unsecured
3 personal loan.

4 Q. I'm going to hand you what's been marked as --
5 previously marked as Exhibit 380. Exhibit 380 are
6 Mr. Beauchamp's notes from Clark Hill's files for a
7 conference call with you and Mr. Chittick on March 12,
8 2014. Do you see that?

9 A. Yes.

10 Q. And it says "Explained confidentiality." His
11 notes say "Explained paragraph 9 release. Scott wants
12 confidentiality to provide no names to be disclosed."
13 Do you see that?

14 A. Yes.

15 Q. This is a second call you've had with
16 Mr. Beauchamp that addressed confidentiality, correct?

17 A. Yes.

18 Q. Do these notes refresh your recollection about
19 your requesting changes to the confidentiality
20 provision?

21 A. I remember -- I remember asking for changes. I
22 don't remember what it means, "provide no names." I'm
23 not really positive. I don't remember the specifics. I
24 don't even remember what I asked to change. I remember
25 that there was something in there that I wanted changed,

1 which were changed.

2 Q. I'm going to show you what was previously
3 marked as Exhibit 374. Exhibit 374 is -- this is the
4 same date, March 12th, 2014, and it's an email from
5 Mr. Beauchamp's assistant to Mr. Chittick forwarding the
6 latest version of the forbearance agreement redlined
7 changes. I just want to take a look at page 2617, 7A.

8 A. Okay.

9 Q. It appears there's a blank for millions. It
10 says "an amount up to blank million." Is it fair to say
11 you and Mr. Chittick were still discussing the amount of
12 the advance?

13 MR. DeWULF: Object to form.

14 A. Yes.

15 Q. (BY MR. STURR) Go to the next page. Page --
16 section C, do you see that?

17 A. Yes.

18 Q. There's some language there about this -- we
19 talked about this before, Mr. Menaged. This is that
20 million dollar loan.

21 A. Yes.

22 Q. There's some new language in here that says the
23 loan would be secured by a first lien position against
24 certain real property in Paradise Valley, Arizona. On
25 the sale of such property, borrower and guarantor will

1 arrange for the new loan to be secured by a first lien
2 position against certain real properties, et cetera. Do
3 you see that?

4 A. Yes.

5 Q. Do you have a memory of having a discussion
6 with Mr. Chittick at this time about firming up the
7 language on security for that million dollar loan?

8 A. I don't recall, but I'm sure it happened. I
9 mean, I just don't recall it.

10 Q. Go to page 2621.

11 A. Yeah.

12 Q. There is some new language in the
13 Confidentiality section. Do you see that?

14 A. Yes.

15 Q. It says "Lender agrees to limit such disclosure
16 as much as legally possible and to provide borrower with
17 a copy of the applicable disclosure prior to
18 dissemination to lender's investors." Do you see that?

19 A. Yes.

20 Q. Does that appear to be something you requested
21 in that conference call?

22 A. Yes.

23 Q. Let me hand you what has been previously marked
24 as Exhibit 381. 381 was previously marked. Again, it
25 wasn't shared with you, but it's an email from

1 Mr. Chittick to Mr. Beauchamp, dated March 13, 2014, in
2 which he's conveying a call he had with you.

3 A. Yes.

4 Q. Do you see that?

5 A. Yes.

6 Q. It's a reference to you may be able to get
7 inventory financing at 78 percent of value, et cetera.
8 Does this refresh your election -- your recollection,
9 rather, on what you and he were talking about at that
10 point?

11 A. It really doesn't. I don't remember.

12 Q. Okay. Mr. Chittick wrote "I know we keep
13 changing the way we are doing this, but ignoring some of
14 the legal stuff, we are trying to figure out the best
15 way to do this for us."

16 Is that fair? Is that your sense of what
17 was going on at this time?

18 A. Yes. We were back and forth and back and
19 forth, day in and day out, month in and month out, and
20 continuing to make changes along the way.

21 Q. Let me hand you what was previously marked as
22 Exhibit 384.

23 Exhibit 384 is an email exchange that
24 Mr. Chittick and Mr. Beauchamp had regarding the
25 confidentiality provision of the forbearance agreement

1 down at the bottom. Do you see that?

2 A. Yes.

3 Q. In the center, Mr. Chittick wrote "Scott says
4 it works for him."

5 A. Yes.

6 Q. Is it likely that Mr. Chittick simply quoted
7 Mr. Beauchamp's email to you? You said you were okay
8 with it --

9 A. I believe he did.

10 Q. -- and he conveyed it back?

11 I'm going to hand you what was previously
12 marked as Exhibit 385. Look with the first page.

13 This is an email from Mr. Beauchamp to
14 Mr. Chittick with the revisions to the forbearance
15 agreement. Do you see that?

16 A. Yes.

17 Q. And he says "Please review the changes
18 carefully and call with any questions before you send it
19 to Scott. If you are fine with these changes, please
20 send it to Scott and copy me so that I know it has been
21 sent." Do you see that?

22 A. Yes.

23 Q. Is that consistent with your understanding of
24 how you, Mr. Chittick and Mr. Beauchamp were
25 communicating -- that is a bad question. Let me -- I'll

1 withdraw that question.

2 If you could -- on that same exhibit, if
3 you could go to page 2914. They're revisions to the
4 confidentiality agreement, correct?

5 A. Yes.

6 Q. And you'll see, at the very end of the very
7 last line, "allow borrower to have blank hours to review
8 and comment upon such disclosures."

9 A. Yes.

10 Q. Those were changes that Mr. Beauchamp added to
11 the agreement?

12 A. Yes.

13 Q. If you look at -- I'm going to hand you what
14 was previously marked as Exhibit 386. This is an email
15 that Mr. Chittick sent to Mr. Beauchamp on March 17,
16 2014, and Mr. Beauchamp's response; is that correct?

17 A. Yes.

18 Q. If you look at the email, Mr. Chittick writes
19 "Paragraph 7A, I'm going to extend funds up to 120
20 percent of value." Do you see that?

21 A. Yes.

22 Q. Does that reflect that you and he had agreed to
23 by that point to increase the LTV to 120 percent of
24 value?

25 A. We did.

1 Q. "Paragraph B, I think the max number will be 5
2 million." Do you see that?

3 A. Yes.

4 Q. Was this reflected on or about March 17, 2014,
5 you and he agreed that DenSco would advance \$5 million?

6 A. Unsecured loan, yes.

7 Q. You said "unsecured"?

8 A. Yes.

9 Q. And it's an unsecured loan but it was payable
10 at 18 percent interest, correct?

11 A. Correct. Everything was always done at 18
12 percent interest. So what threw me off was the journal
13 entry where it said that interest was going to be
14 waived. I don't ever remember having that conversation.

15 Q. Did you have to think twice in March of 2014 to
16 take on a new loan of \$5 million that was payable at 18
17 percent?

18 A. I don't feel like -- I wasn't taking on any new
19 loan. He wasn't writing a check to me for \$5 million.

20 Q. Could it be anything else?

21 A. It wasn't anything -- it was -- I was going to
22 be ultimately responsible anyway for the losses that
23 occurred. So this money -- this \$5 million was not him
24 writing a check or any of that. This is -- he's talking
25 about any losses that occurred by paying off AFG or any

1 other lender, that this negative equity was rolling into
2 this \$5 million.

3 Q. Did you have any conversations with
4 Mr. Beauchamp and Mr. Chittick collectively where you
5 talked about the terms?

6 A. We talked about -- yes. Collectively, we did
7 talk about the unsecured loan.

8 Q. And do you recall when that occurred?

9 A. I don't.

10 Q. Let me hand you what was previously marked as
11 Exhibit 387. This is a March 17, 2014, email exchange
12 between Mr. Beauchamp and Mr. Chittick, correct?

13 A. Yes.

14 Q. If you look at the bottom of the page and carry
15 over to the second page, Mr. Chittick writes "We are
16 banking on about 50 properties." And then he says --
17 and then he talks about increasing the LTV to 120
18 percent.

19 He says "I know this is a bit of a risk,
20 however, I feel like, one, getting rid of Gregg's loan
21 is a hundred percent necessary. I'd rather control
22 property 120 percent LTV worse case than have no control
23 and be in second position."

24 Again, is this consistent with what you had
25 heard from Mr. Chittick all along, is that he wanted to

1 pay off these loans, the Active Funding loans, so he
2 could be in first position and control the situation; is
3 that correct?

4 A. For whatever reason, Mr. Chittick decided he
5 wanted to pay off those loans, yes.

6 Q. Thank you.

7 I'm going to hand you what has been marked
8 as Exhibit 391. Exhibit 391, Mr. Menaged, is an email
9 from Mr. -- it's an internal email within Clark Hill,
10 and it's forwarding a redlined version of the
11 forbearance agreement to Mr. Chittick on March 20, 2014.

12 If you could just flip through. If you go
13 to page 37- --

14 MR. DeWULF: What page did you say?

15 MR. STURR: I'm sorry. I'm not quite
16 there, John.

17 Q. (BY MR. STURR) -- 3702, there's some
18 additional language regarding the additional loan. Do
19 you see that?

20 A. Towards the bottom?

21 Q. At the top.

22 MR. DeWULF: On 3702?

23 A. How would I see that?

24 Q. (BY MR. STURR) Sorry. Strike that.

25 Let me ask you -- I'll just ask one

1 question on this. This draft was sent on March 20,
2 2014, correct?

3 A. Yes.

4 Q. In paragraph -- what is now paragraph 6F on
5 page 3701 --

6 A. Yes, sir.

7 Q. -- states that borrower would pay approximately
8 1 million on or about March 20, 2014, correct?

9 A. Yes.

10 Q. And that had not occurred?

11 A. No.

12 Q. In the interest of time, Mr. Menaged, I am not
13 going to ask you much about the forbearance agreement.
14 You've already testified about that.

15 Do you have any memory of the -- strike
16 that. See if I can wrap up. I have a few more
17 questions and I'll be done.

18 You were asked about Exhibit 550 yesterday.

19 A. Okay.

20 Q. And that was the email exchange that you and
21 Mr. Chittick had in March of 2015 regarding his planned
22 lunch or coffee with Mr. Beauchamp. Do you recall that?

23 A. I do.

24 Q. What I'd like to know is, do you have a memory
25 of speaking with Mr. Chittick after the lunch to hear

1 his account of what occurred?

2 A. Yes.

3 Q. What is your memory?

4 A. He said that David was very happy with the
5 progress that we made. He was happy everything was
6 going in the right direction. He was glad that -- that
7 they didn't have to alarm the investors. Denny was
8 grateful that he left him alone for so long.

9 And I think Mr. Beauchamp's -- the big --
10 the main reason why he wanted to meet with him, to begin
11 with, was just to kind smooth the waters over a little
12 bit. Denny wasn't happy about all these legal fees. He
13 felt he was just milking -- milking this whole thing.
14 And so he just kind of wanted to get his friendship back
15 with him.

16 Q. Did Mr. Chittick ever tell you that
17 Mr. Beauchamp had fired him as a client in May of 2014?

18 A. That Mr. Chittick -- that Denny fired
19 Mr. Beauchamp?

20 Q. No, no. Let me go back.

21 Did Denny ever tell you, any time before
22 March of 2015, which is when Mr. Beauchamp and
23 Mr. Chittick met for lunch -- did he tell you that
24 Mr. Beauchamp had resigned as DenSco's security lawyers
25 because Denny wouldn't follow his advice?

1 A. Absolutely not.

2 Q. I'm going to --

3 A. In fact, there were a lot of emails between me
4 and Denny where Denny was shocked that he had not heard
5 from Mr. Beauchamp for a long period of time. He said,
6 "Wow. This guy must love me by leaving me alone for a
7 while to continue to let the process go through." He
8 wouldn't be looking for a call or an email from
9 Mr. Beauchamp if he resigned as his counsel.

10 Q. I want to go back to your memory of that
11 conversation that you had with Mr. Chittick after his
12 meeting with Mr. Beauchamp. And I'm going to quote from
13 a 2015 journal that Mr. Chittick maintained that's been
14 marked as Exhibit 22.

15 He wrote "I had lunch with Dave
16 Beauchamp" -- on March 24, 2015, "I had lunch with Dave
17 Beauchamp. I was nervous he was going to put a lot of
18 pressure on me. However, he was thrilled to know where
19 we were at. And I told him, by April 15, we'll be down
20 to 16 properties with seconds on them, and by the end of
21 June, we hope to have all retail houses sold by then and
22 just doing wholesale."

23 Is that consistent with your memory of your
24 conversation with Mr. Chittick?

25 MR. DeWULF: Object to form.

1 A. That was exactly my conversation.

2 Q. (BY MR. STURR) "He said he would give me 90
3 days. I just hope we can sell them all by then and darn
4 near be done with it. I'm going to slow down the whole
5 memorandum process too. Gives us as much time as
6 possible to get things in better order."

7 Is that consistent with what he told you in
8 that --

9 MR. DeWULF: Object to form.

10 A. Yes.

11 Q. (BY MR. STURR) Now, as of March of 2014, where
12 were you and DenSco in the workout?

13 A. I can't -- I really don't know as far as dollar
14 figures at that period of time.

15 Q. There's a reference to --

16 A. I think most of the properties were paid off
17 to -- I know all the properties were paid off to the Dan
18 Diethelm group. I think most of the properties were
19 paid off to AFG. A handful left maybe. That's where I
20 think we were at.

21 Q. And I'm still trying to understand how
22 auction.com fits in. Explain that to me. What was your
23 connection to auction.com, and when did that
24 relationship arise?

25 A. I didn't have a relationship with auction.com.

1 Q. I've heard references to auction.com.

2 A. Yes.

3 Q. I think you talked about a fraud earlier.

4 A. Auction.com, what Denny believed is that I
5 was -- I had an agreement with auction.com to basically
6 defraud them. And auction.com would sell me properties
7 that they knew were invalid properties, and that
8 auction.com would go to their clients, collect some
9 money from them, pay me, and that money would be turned
10 over to Denny.

11 Basically, he was -- basically, he believed
12 that there was -- there was a fraud occurring to
13 auction.com that wasn't occurring. There was no fraud
14 with auction.com.

15 Q. Because you told him that?

16 A. Yes.

17 Q. Do you know roughly when you began -- you told
18 him about that? What time period?

19 A. I do not.

20 Q. I'm going to hand you what -- I'm going to hand
21 you what is marked as Exhibit 1151.

22 (Exhibit 1151 marked)

23 Q. This is an email obtained from Mr. Chittick's
24 files. It's an email from Mr. Chittick to you, dated
25 September 14, 2015. Do you see that?

1 A. Yes.

2 Q. Let me -- before we talk about the first two
3 paragraphs, let me go to the bottom.

4 "I got an email from David Beauchamp last
5 night at 11:00 p.m. I about wet my pants." Do you see
6 that?

7 A. Yes.

8 Q. And he goes on to explain how he received it.
9 And he says "I never got a response from him, so
10 hopefully that doesn't prompt any kind of response."

11 First of all, can you confirm that you
12 received the email from Mr. Chittick in September of
13 2015?

14 A. Yes.

15 Q. And his statement at the end, "hopefully that
16 doesn't prompt any kind of response," is that consistent
17 with your recollection that Mr. Chittick believed
18 Mr. Beauchamp was giving him more time to work out the
19 problem?

20 MR. DeWULF: Object to form.

21 A. Yes.

22 Q. (BY MR. STURR) In the interest of time, I'm
23 not going to ask any further questions on that. Let me
24 just look at my notes.

25 Mr. Menaged, thank you for your time.

1 MR. STURR: Those are my questions.

2 MR. DeWULF: I do have some questions. I
3 want to keep -- are you okay with not having lunch?

4 THE WITNESS: I'd like to have some lunch
5 first.

6 MR. DeWULF: Okay. So why don't you have
7 lunch.

8 THE WITNESS: Yeah. That sounds good.

9 (Recess at 12:02 p.m. to 12:29 p.m.)

10 FURTHER EXAMINATION

11 BY MR. DeWULF:

12 Q. Mr. Menaged, I'm going to start with kind of a
13 big picture question. And in response I think to both
14 questions I was asking you and Mr. Sturr was asking you,
15 you had said that you and Denny Chittick believed that
16 if the forbearance agreement went as planned, there
17 would ultimately be a deficit of about \$8 million,
18 right?

19 A. Yes.

20 Q. And so the -- you understood the real estate
21 market in Phoenix, right?

22 A. We both did.

23 Q. Both of you, collectively, are trying to figure
24 out how do we work our way out from all the double loans
25 on these properties, what are the loan values, and

1 perhaps estimating what you think will happen in terms
2 of appreciation of property, right?

3 A. Correct.

4 Q. And so you're anticipating, with the
5 forbearance agreement, that if you and Mr. Chittick were
6 cooperatively together, DenSco loans money to you, you
7 and Denny use your wisdom and knowledge in the
8 marketplace, you are going to get to a point where there
9 would be an \$8 million deficit, that is, between all the
10 payoffs of all the loans and the values of the
11 properties that were sold to generate money to pay the
12 loans, there would still be about 8 million owed, right?

13 A. Correct.

14 Q. Now, you were going to contribute about \$5
15 million under the forbearance agreement, right?

16 A. I was going to use my best effort to do that.

17 Q. But it was your intention. You believed you
18 were going to do that, right?

19 A. I believed I was going to do my best to do it.

20 Q. If you had fulfilled what those intentions
21 were, that is contribute 5 million, would that have
22 reduced the 8 million by 5 million?

23 MR. STURR: Object to form.

24 A. Yes.

25 Q. (BY MR. DeWULF) So if the forbearance

1 agreement were to work as planned, based on what your
2 and Denny Chittick's calculations and collective
3 knowledge were, you're talking about a \$3 million
4 deficit at the end of the day, right?

5 A. Correct.

6 Q. And you were -- you, Scott Menaged, would be
7 the individual that would be responsible for making up
8 that \$3 million to DenSco on the monies that they had
9 lent to you, right?

10 A. Correct.

11 Q. And you had -- through your skills, your
12 knowledge, your contacts, you could access and pay off
13 \$3 million to DenSco if you needed to, right?

14 A. Possibly.

15 Q. All right. But that was certainly the plan in
16 2014 when you entered the forbearance agreement, right?

17 A. Right.

18 Q. Okay. So I'm going to try to buzz through some
19 of these documents that were asked of you. It may not
20 be in the same order.

21 Mr. Sturr was asking you questions about
22 when this double-lien issue arose. I wanted to clarify
23 that. There were actual double-liening issues arising
24 in the fall of 2012. Do you recall that?

25 A. Yes.

1 Q. That involved Active Funding having loans on
2 the same properties that DenSco had loans on, right?

3 A. Yes.

4 Q. And so as of September of 2012, there were
5 issues that had arisen of competing liens between DenSco
6 and Active Funding Group on loans that you had taken
7 out, right?

8 A. Yes.

9 Q. Let me ask you to look at 145.

10 MR. STURR: What's the date?

11 MR. DeWULF: Exhibit 145, January 9, 2014.

12 MR. STURR: Thank you.

13 Q. (BY MR. DeWULF) So Exhibit 145 are notes of
14 David Beauchamp's relating to the January 9, 2014,
15 meeting. Do you see that?

16 A. Yes.

17 Q. All right. And you've talked extensively with
18 both sides about what was said and done during this
19 conversation. Let me ask you to look at the second
20 page.

21 And just a little bit down on that second
22 page, it says "Jeff Goulder, attorney for Scott." Do
23 you see that?

24 A. Yes.

25 Q. So did you identify in January 9, 2014, that

1 you had a lawyer?

2 A. What I told him was that I would get -- I
3 believe I said I would have someone review everything.

4 Q. You knew at this point that David Beauchamp was
5 not your lawyer, right?

6 A. Yes.

7 Q. And you knew he could not give you advice?

8 A. I did, yes.

9 Q. Did you understand the purpose of this January
10 9 meeting to basically just you and Denny Chittick
11 trying to share with David Beauchamp the facts, what was
12 basically going on at that point in time and the history
13 of the problems?

14 MR. STURR: Object to form.

15 A. Yes.

16 Q. (BY MR. DeWULF) All right. There were
17 questions asked of you about the FREO lawsuit. Do you
18 recall that?

19 A. I do.

20 Q. And I think that you indicated that you
21 anticipated being able to use that litigation as a way
22 to make some money for yourself; is that right?

23 A. Yes.

24 Q. Do you recall that the FREO lawsuit involved a
25 false trustee sale?

1 A. A false trustee sale?

2 Q. Yeah. An unauthorized trustee sale, if you
3 will.

4 A. Yes. From my recollection, it involved the
5 trustee selling a property that should have never went
6 to sale.

7 Q. It was not a case about competing liens between
8 two different lenders, was it?

9 MR. STURR: Object to form.

10 A. No. It had nothing to do with that at all.

11 Q. (BY MR. DeWULF) So how did you think you were
12 going to make money on the FREO lawsuit that arose out
13 of this falsely noticed trustee sale?

14 A. If property goes to sale -- goes to trustee
15 sale and it's not authorized, at that point you make a
16 negotiation with the bank -- and it's happened multiple
17 times throughout my career. Actually, dozens of times.
18 Typically, you'll pick up between 20- and 50,000 dollars
19 for the mistake.

20 Q. Who do you collect that from?

21 A. I would talk to the trustee. The trustee will
22 talk to the bank. There will be a negotiation back and
23 forth, and they'll send usually a release where neither
24 party can sue each other, along with a check.

25 Q. Do you remember the conversation between you

1 and Denny where you said, "I'll have my lawyer take care
2 of this"?

3 A. Yes.

4 Q. And did -- was it also discussed that David
5 Beauchamp was not to be involved in the FREO lawsuit
6 matter?

7 A. I can't say I remember that part.

8 Q. But the understanding was that you would take
9 over the defense of that litigation with your own
10 counsel?

11 A. Correct.

12 Q. Was that Mr. Jeff Goulder?

13 A. That was Mr. Goulder, yes.

14 Q. I know you've indicated that in early 2014, you
15 weren't sophisticated with respect to using lawyers.
16 Was that your testimony?

17 A. Yes.

18 Q. But you did know you could use lawyers if you
19 wanted to, right?

20 A. Yes.

21 Q. And you understood, generally, what lawyers
22 would do in connection with either negotiating an
23 agreement or litigating a matter, right?

24 A. I knew, by me getting a lawyer, it would cost
25 hundreds of thousands of dollars. That's what I knew,

1 and that's the reason why, in the beginning, I didn't.

2 Q. Right. But the reason they cost money is
3 because they're making efforts for you to try to help
4 you, right?

5 A. Yes.

6 Q. And in connection with the negotiation of the
7 forbearance agreement, you knew -- even before that, as
8 it related to negotiating the term sheet, you knew you
9 could have counsel if you wanted to, right?

10 A. Yes.

11 Q. Why did you choose not to have counsel
12 negotiating early on, in early 2014?

13 A. Before --

14 Q. Let me back up. Do you remember when you
15 actually formally retained Mr. Goulder?

16 A. Yes.

17 Q. When was that?

18 A. Do I remember a date? No.

19 Q. Yeah.

20 A. I remember doing it, though.

21 Q. Could you tie it to anything?

22 A. It was after the first meeting and before the
23 second.

24 Q. I got it. So early January 2014?

25 A. Correct.

1 Q. We've seen and Mr. Sturr showed you some of
2 these emails that went back and forth. Were there
3 instances where Mr. -- I think you've already testified
4 that at times, Mr. Chittick would send the emails he got
5 from his lawyer, David Beauchamp, directly to you for
6 your review, right?

7 A. Correct.

8 Q. Were there times when you have shared with
9 Mr. Chittick what your lawyer, Mr. Goulder, was telling
10 you?

11 A. No.

12 Q. Did you ever share with Mr. Chittick what
13 Mr. Goulder would have communicated to you in writing?

14 A. Yes.

15 Q. Would you be forwarding an email, then, from
16 Mr. Goulder to Mr. Chittick?

17 A. No. I would type my version of it and send it
18 to him.

19 Q. I see. Do you think you ever shared with
20 Mr. Chittick what would have been confidential
21 communications you had with Mr. Goulder?

22 A. If confidential information is what Mr. Goulder
23 told me or suggested, then, yes.

24 Q. So, at some point, you decide to terminate the
25 relationship with Mr. Goulder, right?

1 A. I did.

2 Q. And that wasn't because of money, was it?

3 A. No.

4 Q. It was simply you didn't think you needed his
5 help?

6 A. No. That wasn't it. Mr. Goulder decided that
7 I didn't need his help.

8 Q. Okay. And you didn't disagree?

9 A. At that point, no.

10 Q. Okay. And so you felt comfortable from that
11 point forward that you could protect your own interests
12 in conversations with Mr. Chittick and, if necessary,
13 Mr. Beauchamp?

14 A. Yes.

15 Q. Was it your testimony that Mr. Beauchamp was
16 recommending to Mr. Chittick that y'all get a
17 third-party title company involved so that when you're
18 doing the workouts with the lenders, you're making sure
19 that DenSco is in a first position on the loans?

20 A. It was his suggestion, yes.

21 Q. Did you end up doing that?

22 A. We did.

23 Q. I wanted to cover this issue of using cashier's
24 checks because I'm a little bit confused.

25 The second fraud, which we talked about in

1 detail, involves money being wired by DenSco into your
2 bank account and cashier's check being cut with the help
3 of a bank representative, correct?

4 A. Correct.

5 Q. And the face of the cashier's check would
6 reference DenSco being the source of the funds and the
7 real estate property that the monies represented by the
8 cashier's check were to be used to buy?

9 A. That's correct.

10 Q. Now, you would take a picture of those
11 cashier's checks and send them back to Denny Chittick,
12 correct?

13 A. Correct.

14 Q. Was it Denny Chittick who told you he wanted
15 evidence of those cashier's checks?

16 A. It was.

17 Q. Wasn't it David Beauchamp's advice to Denny
18 Chittick that was relayed to you that David Beauchamp
19 was telling Denny Chittick, "You need proof that the
20 money is being paid to the trustee"?

21 A. Yes.

22 Q. The term sheet -- it's 1133. But I think
23 you'll remember this. You may not need to look at it.

24 A. Okay. Go ahead.

25 Q. The million dollar loan was going to be secured

1 in a first lien position against real property, right?

2 A. No.

3 Q. So we should look at it. It's 1133.

4 Okay. If we look at paragraph 8C --

5 A. Yes.

6 Q. -- it says "DenSco will provide a new loan to
7 borrower in the amount of \$1 million, which loan is to
8 provide for multiple advances, earn 3 percent annual
9 interest to be secured by a first lien position against
10 certain real property to be approved by DenSco in its
11 sole discretion, and the obligation to be personally
12 guaranteed by Scott Menaged."

13 A. Yes. That was the intention.

14 Q. And the intention of the term sheet -- or at
15 least as it's set out here -- was that that million
16 dollar loan would be secured, right?

17 A. The \$1 million would be secured.

18 Q. It would be secured by your personal residence,
19 right?

20 A. Yes. And it was.

21 Q. It was?

22 A. He did put a lien on it, yes.

23 Q. Was that going to be part of the forbearance
24 agreement?

25 A. No. He released the lien. I can't remember

1 why, but there was something going on. I don't remember
2 what that was, but the lien was released.

3 Q. When in time?

4 A. After all this was signed.

5 Q. After the forbearance agreement was signed?

6 A. Yes.

7 Q. So let's talk about the term sheet for a
8 minute. If you look at the paragraph -- you may recall
9 this -- it was an expression of intent, but it wasn't
10 intended to be legally binding. Do you recall that?

11 A. Yes.

12 Q. So it was to flesh out what would be
13 memorialized in the forbearance agreement, but it was
14 really just to identify what each party intended to do?

15 A. Correct.

16 Q. I'm trying to find a document here. I'm going
17 to ask you about Exhibit 158. If you can try to find
18 that.

19 MR. STURR: What's the date?

20 MR. DeWULF: January 14, 2014.

21 Q. (BY MR. DeWULF) If we can look at that for a
22 minute.

23 I don't need to ask you about that. I'll
24 ask you about 1146.

25 MR. STURR: What's the date?

1 MR. DeWULF: 1/16/2014.

2 MR. STURR: Thank you.

3 Q. (BY MR. DeWULF) So this is -- Exhibit 1146
4 begins the discussion of this confidentiality agreement
5 that would be governing how the parties communicate
6 about the agreement between you and Mr. Chittick. Do
7 you understand that?

8 A. Yes.

9 Q. And Mr. Goulder was representing you at least
10 for some period of time with respect to how that
11 confidentiality provision would read, right?

12 A. Yes.

13 Q. You wanted to protect against the disclosure in
14 the community because of your reputation, right?

15 A. Correct.

16 Q. And do you recall that Mr. Chittick was sharing
17 with you that he had concerns about confidentiality as
18 well, but he and his lawyer had concerns about being
19 able to tell the investors about what was going on?

20 MR. STURR: Object to form.

21 A. Yes.

22 Q. (BY MR. DeWULF) It looks like there was some
23 series of emails where Denny Chittick and you would be
24 communicating by email, and then Denny would loop David
25 Beauchamp into the conversation. Do you remember that

1 happening?

2 A. Yes.

3 Q. I'd ask you to look at 1148.

4 A. Yes.

5 Q. Exhibit 1148, you testified about earlier, is
6 an email from David Beauchamp to your attorney, Jeff
7 Goulder. Do you see that?

8 A. Yes.

9 Q. And the subject of the communication, which is
10 dated February 8, 2014, are the terms -- or the subject
11 is the terms of the forbearance agreement. Do you
12 recall that?

13 A. Yes.

14 Q. Let me ask you to look at the third paragraph
15 down on the second page of this exhibit?

16 A. Okay.

17 Q. The paragraph begins "In addition to the
18 business points." Do you see that?

19 A. Yes.

20 Q. Mr. Beauchamp is saying "In addition to the
21 business points, we had intended to make the document as
22 balanced as possible. We wanted the document to set
23 forth the necessary facts for Denny to satisfy his
24 securities obligations to his investors," paren,
25 "including that the original loans had to have

1 been written and secured by a first lien on real
2 property and that the workout agreed to by Denny
3 complied with this workout authorization," paren,
4 "without having Scott have to admit facts that could
5 cause trouble to him."

6 Did I read that correctly?

7 A. Yes.

8 Q. And was that in your -- was it consistent with
9 your memory that that was part of the goal on the DenSco
10 side with their lawyer, Mr. Beauchamp, to try to fashion
11 this forbearance agreement in a way that Denny was
12 complying with his obligations to his investors under
13 the POM?

14 A. Yes.

15 Q. Look at Exhibit 1149.

16 A. Okay.

17 Q. I'm sorry, Mr. Menaged.

18 A. That's all right.

19 Q. I thought I had it here, and I'll try to put
20 this in order.

21 A. Do you want to look at my copy?

22 Q. I got it. Thank you.

23 Let's go to 1150 --

24 A. Okay.

25 Q. -- the email from Denny Chittick, on the first

1 page of 1150, to David Beauchamp. Let's go to the last
2 paragraph -- next to the last paragraph.

3 MR. DeWULF: It says "He's throwing out all
4 sorts of ideas." Is that the paragraph?

5 MR. RUTH: Yes.

6 Q. (BY MR. DeWULF) It reads -- again, this is an
7 email dated February 25, 2014, and Mr. Chittick is
8 talking to Mr. Beauchamp about your and his
9 conversation. Do you understand that?

10 A. Yes.

11 Q. It says "He's throwing out all sorts of ideas
12 of how this can be done. I would be willing -- release
13 the UCC if he was able to secure the funds and use them
14 to pay some of these loans. We've got about three more
15 ideas. But what both of us are really concerned about
16 is that when I tell my investors the situation, they
17 request their money back, I want to be able to say this
18 was the problem, we've eliminated this much of the
19 problem, and this is what is left. I want to be able to
20 say what is left is as small as possible."

21 So in this time frame, February 25, 2014,
22 this topic of how and what Mr. Chittick discloses to his
23 investors is a topic of conversation between you and
24 him, correct?

25 A. Yes.

1 Q. And he understands that he's going to have to
2 disclose to his investors what's going on at some point,
3 right?

4 A. At some point, yes.

5 Q. He's talking to his lawyer about that
6 disclosure obligation, correct?

7 MR. STURR: Foundation.

8 A. That's what it seems like.

9 Q. (BY MR. DeWULF) Let's look at the first email
10 that's from David back to -- David Beauchamp back to
11 David Chittick at the top of that first page.

12 MR. STURR: Where are you?

13 MR. DeWULF: Exhibit 1150.

14 Q. (BY MR. DeWULF) Mr. Beauchamp is saying "Good
15 ideas and probably something that we might need to work
16 on. We will probably need to focus on an alternative
17 approach because Jeff's demands and changes have pretty
18 much killed your ability to sign the forbearance
19 agreement, which I believe Jeff wanted to do from the
20 beginning."

21 Let me ask you. Did you and Mr. Goulder
22 not want you to sign the forbearance agreement?

23 A. No. To the contrary.

24 Q. There wasn't a point in time where you were
25 either dragging things out or proposing changes that you

1 thought would result in no forbearance agreement at all?

2 A. No. Not at all.

3 Q. Let me ask you about Exhibit 371. It's going
4 to be in your stack, I think.

5 A. Okay.

6 Q. So I'm looking at the first page of 371,
7 paragraph 3.

8 A. Yes.

9 Q. This is relating to the confidentiality
10 provision of the forbearance agreement, correct?

11 A. Yes.

12 Q. And it's in response to an email from Denny
13 Chittick asking David questions, right?

14 A. Yes.

15 Q. So the language from -- or what David is
16 telling Denny Chittick is "The confidentiality change is
17 a problem because who makes the decision if the
18 disclosure is required? I had language that you could
19 disclose it if such disclosure is reasonably needed to
20 be disclosed to your investors or if a government agency
21 requires such disclosure," paren, "after you give Scott
22 notice and an opportunity to get the agency to change
23 its mind," paren. "Those are standard confidentiality
24 exceptions. I will look at them again to see if there's
25 anything we can do to make this tighter."

1 I know you didn't receive this email. But
2 in this time frame of March of 2014, was it being
3 communicated to you that Denny Chittick needed the
4 ability to disclose to his investors, and so he provided
5 himself that right under the confidentiality provision?

6 A. I don't recall that.

7 Q. But you remember we talked yesterday about the
8 fact that the confidentiality provision does have this
9 exception where he can, in compliance with Reg D
10 requirements, disclose information to his investors,
11 correct?

12 A. Yes.

13 Q. Let me ask you to look at 372, which are
14 handwritten notes.

15 A. Okay.

16 Q. I understand -- I think that the way you
17 testified about 372 was that about halfway down the
18 document, there is -- there are notes based on a
19 conference call between you, Denny Chittick and David
20 Beauchamp, correct?

21 A. Yes.

22 Q. And then later there are -- looks to be
23 telephone conferences between David Beauchamp and just
24 Denny Chittick. Do you see that? Up above on that
25 first page.

1 A. Yes.

2 Q. So under the topic of -- or in these notes
3 relating to your conversation with Mr. Chittick and
4 David Beauchamp, he has the phrase "Confidentiality."
5 Do you see that?

6 A. Yes.

7 Q. Underneath it, it says "Info to investors.
8 Cover email to POM. Materiality requires disclosure of
9 the risks." Did I read that correctly?

10 A. Yes.

11 Q. And do you recall either Mr. Chittick or
12 Mr. Beauchamp telling you that Denny had an obligation
13 and DenSco had an obligation to disclose to investors
14 material information?

15 A. Yes.

16 Q. And did you understand "material information"?
17 Although it's a term of art under securities law, it's
18 important information that an investor would reasonably
19 want to know, right?

20 A. Okay.

21 Q. Is that right?

22 A. I'm not an attorney.

23 Q. That's fine.

24 As of March 11, 2014, Mr. Beauchamp is
25 expressing the concern that they need to make sure that

1 DenSco is able to give material information to its
2 investors, right?

3 A. Yes.

4 Q. One of the questions Mr. Sturr was asking you
5 in the negotiation of the forbearance agreement was
6 whether Mr. Beauchamp was asking you about your
7 performances that you were committing to. Do you recall
8 some of those questions?

9 A. Yes.

10 Q. Is it fair to say that the deal you struck with
11 Denny Chittick was a business deal between you and him?

12 A. Yes.

13 Q. And he was -- "he" being Denny Chittick -- was
14 monitoring your performance under that agreement?

15 MR. STURR: Form.

16 A. Yes.

17 Q. (BY MR. DeWULF) And you were communicating
18 with him on a daily basis about what you were doing to
19 comply with what your obligations were?

20 A. Yes.

21 MR. STURR: Form.

22 Q. (BY MR. DeWULF) That continued after the
23 forbearance agreement was signed, right?

24 A. Yes.

25 Q. I'll ask you to look at Exhibit 384.

1 A. Okay.

2 Q. This is a document that Mr. Sturr had asked you
3 about. You are not included in any of these emails,
4 correct?

5 A. Correct.

6 Q. I want to know as of -- so the email from
7 Mr. Beauchamp to Mr. Chittick at the bottom of this
8 page, March 13, 2014, he is again talking about the need
9 to comply with securities disclosure requirements. Do
10 you see that?

11 A. Yes.

12 Q. And that you can't have the right to determine
13 how DenSco fulfills its obligations, right?

14 A. Right.

15 Q. Do you remember that being communicated to you
16 in that time frame?

17 A. I remember Mr. Beauchamp saying, "You have an
18 obligation to inform the investors, and I will give some
19 time to do that."

20 Q. Let me ask you to look at Exhibit 386.

21 A. Okay.

22 Q. So Exhibit 386, at the top, there's an email
23 from David Beauchamp to Denny Chittick dated March 17,
24 2014. Do you see that?

25 A. Yes.

1 Q. It says "Glad you had a good weekend. You
2 deserve it. I will make the changes and get it
3 circulated. Have you run the numbers to see how the
4 loans at 120 percent of LTV and the unsecured loans will
5 affect your overall ratios? Best, David."

6 Did I read that correctly?

7 A. Yes.

8 Q. So there were -- as you stated or testified in
9 response to Mr. Sturr's questions, you were certain of
10 the workout loans that you were taking out with DenSco,
11 there would be 120 percent loan-to-value ratio, correct?

12 A. Correct.

13 Q. And then there were other perhaps unsecured
14 loans that you might be taking out, right?

15 A. Correct.

16 Q. Did you recall that the private offering
17 memorandum that DenSco issued to its investors provided,
18 when you talk about the loan-to-value ratio, it was the
19 overall loan-to-value ratio across all of their loans?

20 MR. STURR: Form and foundation.

21 A. It is.

22 Q. (BY MR. DeWULF) And -- did you say "It is"?

23 A. It is.

24 Q. So when Mr. Beauchamp was asking about the
25 overall ratios, do you read that to say, have you done

1 the calculations as it relates to the overall
2 loan-to-value ratios of all outstanding loans?

3 MR. STURR: Form.

4 A. I have.

5 Q. (BY MR. DeWULF) Do you know whether you or
6 Denny Chittick ever did that, calculate what the total
7 loan-to-value ratios were for all loans by DenSco?

8 A. I do.

9 Q. Do you know, as of March 2014 or around then,
10 what it would have been?

11 A. Around -- at some point in 2014, I know it was
12 over 90 percent.

13 Q. Over 90 percent?

14 A. Yes.

15 Q. Do you know -- you said 2014?

16 A. At some point in 2014, I remember having this
17 conversation.

18 Q. If we were to take the forbearance agreement
19 being signed originally in April of 2014, do you think
20 it would have been before or after, or can you estimate
21 for us?

22 A. I really can't. I don't want to give you wrong
23 information. I just remember having this conversation
24 with him. And then, obviously, me signing the unsecured
25 promissory note, taking that into account as well.

1 Q. So let me ask you to look at Exhibit 387.

2 A. Okay.

3 Q. Again, there are -- if we look at the bottom of
4 the first page, there is an email from Denny Chittick to
5 David Beauchamp, and it is talking about what the status
6 of things is, and it does talk about loan-to-value
7 ratios. Do you see that?

8 A. Yes.

9 Q. And then, above it, David Beauchamp, on March
10 17, 2014, is saying to Mr. Chittick -- "I completely
11 agree that it makes a lot of sense, but I am concerned
12 about the disclosure to your investors." Did I read
13 that correctly?

14 A. Yes.

15 Q. Do you remember, in this time frame, did
16 Mr. Chittick ever tell you that Mr. Beauchamp was
17 bugging him about disclosures?

18 A. Yes.

19 Q. You, in my direct questioning of you yesterday,
20 were talking about the number of times you spoke to
21 David Beauchamp, and you shared with us that you had two
22 meetings. And we've talked about that in detail. And
23 you think you may have had as many as three conference
24 calls with him?

25 A. If not a few more.

1 Q. Do you know when was the last time you ever
2 spoke to Mr. Beauchamp?

3 A. I don't recall.

4 Q. Do you think it would have been around
5 mid-2014?

6 A. After the forbearance agreement was done, I had
7 no reason to talk to him.

8 Q. You don't think you spoke to Mr. Beauchamp
9 after the forbearance agreement was done?

10 A. I don't believe I did.

11 Q. So let me clarify that. So the forbearance
12 agreement was signed -- originally signed in April of
13 2014, but there was cleanup items you saw regarding some
14 signatures and updating?

15 A. I may have talked to him during the cleanup
16 time.

17 Q. You did?

18 A. I may have. I'm saying that I don't recall.
19 Whenever everything was "finalized" finalized, I
20 definitely didn't talk to him -- I don't believe I
21 talked to him after everything was signed and done. I
22 had no reason to talk to him.

23 Q. So everything would have been -- well,
24 everything was originally signed in April. Do you think
25 you spoke to him after that? April of 2014.

1 A. I don't recall.

2 Q. You don't know?

3 A. No.

4 Q. But definitely after everything was signed off
5 on, you never spoke to him again?

6 A. I don't believe I did.

7 Q. If that were all signed off in late summer of
8 2014, you don't think you would have spoken to him after
9 that?

10 A. I don't believe I had any reason to.

11 Q. All right. You testified in response to
12 questions by Mr. Sturr, as of February 20th, 2014, that
13 Mr. Chittick shared and you shared with Mr. Beauchamp
14 the volume, the amount of the dollars involved in this
15 loan dispute. Do you recall that?

16 A. At the second meeting?

17 Q. Yeah. The February 20th, 2014, meeting.

18 A. Yes.

19 Q. And do you believe that's the first time that
20 Mr. Chittick ever told Mr. Beauchamp the magnitude of
21 the dollar amounts and the number of loans involved in
22 this dispute with these competing lenders?

23 MR. STURR: Foundation.

24 A. I think that's the first time that he told him
25 the overall problem in comparison to his total

1 outstanding portfolio.

2 Q. (BY MR. DeWULF) Do you know why he didn't tell
3 him that earlier?

4 A. I don't think he asked. I don't think
5 Mr. Beauchamp asked. I vaguely remember Denny being
6 surprised that he didn't ask.

7 But at some point at that second meeting,
8 whatever Denny came in with, whatever documents he
9 printed off, it did show the total outstanding problem
10 and his total outstanding receivables, and this being a
11 very, very large portion of it. And I know that that's
12 what -- that's what -- that's what got David Beauchamp
13 frazzled by this whole thing.

14 Q. I understand.

15 You said you don't think David Beauchamp
16 ever asked. But as the client, to your knowledge,
17 Mr. Chittick never told his lawyer the magnitude of the
18 problem on these outstanding loan issues until February
19 20th, 2014?

20 A. I don't believe he did. If he did, he gave him
21 a dollar amount but never told him the percentage of the
22 entire portfolio, meaning, hey, this is 96 percent of my
23 portfolio. He never portrayed that.

24 Q. On the date of the -- when the FREO lawsuit
25 came to your awareness and you learned of the lawsuit,

1 was Denny Chittick aware at that point of there being
2 double-lien issues between DenSco and Active Funding?

3 A. Yes.

4 Q. So that's mid-2012, right? No. That's
5 mid-2013?

6 A. Correct.

7 Q. So as to AFG, DenSco knew -- Denny Chittick
8 knew before November of 2013 that there were double-lien
9 issues?

10 A. No. I mean, Denny Chittick gave permission on
11 this property that there were going to be two liens,
12 knowing this was going to a lawsuit.

13 Q. On this property?

14 A. On the FREO lawsuit property.

15 Q. So you're saying Denny Chittick agreed with
16 Active Funding Group to have two loans on the property?

17 A. They both agreed, yes.

18 Q. How did that happen?

19 A. I can't get into it because it involves AFG. I
20 have to take the Fifth on that.

21 Q. So prior to November of 2013, is that the only
22 property that Denny Chittick knew was double-liened?

23 A. Well, no. Because weren't we reviewing emails
24 in September of 2013?

25 Q. Yeah. September of 2012. Aside from the small

1 2012 issues that had arisen, were there any other issues
2 before November 2013 regarding double-liening?

3 A. I don't recall.

4 MR. DeWULF: No further questions. Thanks.

5 MR. STURR: Mr. Menaged, you have the right
6 to review the transcript. Do you want to exercise that
7 right?

8 THE WITNESS: I do.

9 MR. STURR: He'll read and sign.

10 (Deposition concluded at 1:19 p.m.)

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C E R T I F I C A T E

STATE OF TEXAS)
COUNTY OF EL PASO)

I, Rhonda McCay, Certified Shorthand Reporter in
and for the State of Texas, State of New Mexico and
Registered Professional Reporter, hereby certify that
this transcript is a true record of the said
proceedings, and that said transcription is done to the
best of my ability.

GIVEN UNDER MY HAND AND SEAL OF OFFICE on this
1st of October, 2019.



Rhonda McCay, CSR, CCR, RPR
Texas Certification Number 4457
Date Of Expiration: 1/31/2021
REPORTERS INK, LLC
Firm Registration Number 420
221 N. Kansas, Suite 1101
El Paso, Texas 79901
Ph.: 915.544.1515

1 I, YOMTOV SCOTT MENAGED, have read the
2 foregoing deposition and hereby affix my signature that
3 same is true and correct, except as noted above.

4

5

6

YOMTOV SCOTT MENAGED

7

THE STATE OF _____)

8

COUNTY OF _____)

9

10 Before me, _____, on this
11 day personally appeared YOMTOV SCOTT MENAGED known to me
12 (or proved to me under oath or through _____)
13 (description of identity card or other document) to be
14 the person whose name is subscribed to the foregoing
15 instrument and acknowledged to me that they executed the
16 same for the purposes and consideration therein
17 expressed.

18 Given under my hand and seal of office this
19 _____ day of _____, 2019.

20

21

NOTARY PUBLIC IN AND FOR
THE STATE OF _____

22

23

24 My commission expires: _____

25