Clerk of the Superior Court
*** Electronically Filed ***
M. De La Cruz, Deputy
4/12/2019 11:04:00 AM
Filing ID 10350455

Colin F. Campbell, 004955
Geoffrey M. T. Sturr, 014063
Joshua M. Whitaker, 032724
Osborn Maledon, P.A.
2929 North Central Avenue, 21st Floor
Phoenix, Arizona 85012-2793
(602) 640-9000
ccampbell@omlaw.com
gsturr@omlaw.com
jwhitaker@omlaw.com

Attorneys for Plaintiff

IN THE SUPERIOR COURT OF THE STATE OF ARIZONA

IN AND FOR THE COUNTY OF MARICOPA

Peter S. Davis, as Receiver of DenSco Investment Corporation, an Arizona corporation, Plaintiff, v. Clark Hill PLC, a Michigan limited liability company; David G. Beauchamp and Jane Doe Beauchamp, husband and wife, Defendants.	No. CV2017-013832 **MOTION FOR DETERMINATION THAT PLAINTIFF HAS MADE A PRIMA FACIE CASE FOR PUNITIVE DAMAGES FOR AIDING AND ABETTING BREACH OF FIDUCIARY DUTY** (Assigned to the Honorable Daniel Martin) (**Oral Argument Requested**)

/ / /

/ / /

/ / /

/ / /

/ / /

/ / /

Plaintiff moves for the Court to determine that he has made a *prima facie* case for punitive damages based on Defendants Clark Hill and David Beauchamp aiding and abetting breaches of fiduciary duty. The determination of a *prima facie* case entitles Plaintiff to seek financial information from Defendants.[1] *See Larriva v. Montiel*, 143 Ariz. 23, 24 (App. 1984). This motion and memorandum are supported by the expert reports of Neil Wertlieb, dated March 26, 2019 ("Wertlieb Report," attached hereto as **Exhibit A**), and Fenix Financial Forensics, dated April 4, 2019 ("Fenix Financial Report," attached hereto as **Exhibit B**). These two reports describe the two frauds perpetrated upon DenSco and Clark Hill's intentional misconduct in aiding and abetting breaches of fiduciary duty by Denny Chittick, DenSco's only officer and director. This motion is also supported by an accompanying Statement of Prima Facie Facts and Appendices of exhibits.

To recover punitive damages at trial, the Receiver must prove that the defendant engaged in aggravated and outrageous conduct with an 'evil mind.' "A defendant acts with the requisite evil mind when he intends to injure or defraud, or deliberately interferes with rights of others, 'consciously disregarding the unjustifiable substantial risk of significant harm to them.' Important factors to consider when deciding whether a defendant acted with an evil mind include (1) the reprehensibility of defendant's conduct and the severity of the harm likely to result, (2) any harm that has occurred, (3) the duration of the misconduct, (4) the defendant's awareness of the harm or risk of harm, and (5) any concealment of it." *Hyatt Regency Phoenix Hotel Co. v. Winston & Strawn*, 184 Ariz. 120, 132 (App. 1995) (citations omitted).

For this motion, only a *prima facie* case needs to be shown—that is, evidence sufficient to establish a fact or raise a presumption. Plaintiff can present a *prima facie*

[1] Although Defendant Clark Hill publicly releases its gross revenue and profits per partner to the National Law Journal and American Lawyer, Clark Hill has refused to produce further financial information in this case, even under a protective order. Plaintiff's forensic damage experts requested this information before trial to conduct net profits analysis.

case that Clark Hill aided and abetted Chittick's breaches of fiduciary duty when he caused DenSco to borrow investor monies without disclosing material facts to its investors and other breaches of fiduciary duty described below. This misconduct resulted in $24,000,000 in losses over the course of several years.[2] Clark Hill knew DenSco's president, Denny Chittick, owed fiduciary duties to DenSco, and that DenSco owed fiduciary duties to investors requiring disclosure of material facts. It also knew that the interests of DenSco and Chittick were in conflict. Then, when the dam of hidden information broke, Clark Hill strived to conceal its misconduct. Punitive damages are appropriately awarded when, as here, a law firm and its partner aids and abets a client's breach of fiduciary duties to its investors, breaches fiduciary duties owed by the attorney to the corporate client and acts out of self-interest and attempts to conceal its misconduct. *See, e.g., Elliott v. Videan*, 164 Ariz. 113 (App. 1989) (punitive damages were appropriate where attorney had conflict of interest, concealed it from client, and acted to benefit at client's expense); *Asphalt Engineers, Inc. v. Galusha*, 160 Ariz. 134 (App. 1989) (affirming award of punitive damages against attorney who breached ethical duties to his client and concealed his misconduct). Further, when breaches of fiduciary duty are compounded by intentional misconduct, punitive damages are appropriate. *See, e.g., Gov't of Rawanda v. Johnson*, 409 F.3d 368, 376 (D.C. Cir. 2005) (holding that the district court's determination that a lawyer's 'serious fiduciary breaches' warranted an award of punitive damages was not an abuse of discretion); *Asa-Brandt, Inc. v. ADM Inv'r Servs., Inc.*, 344 F.3d 738-746-747 (8th Cir. 2003) (operator of a grain elevator that owed fiduciary duty to farmers who relied on operator's advice was subject to liability for compensatory and punitive damages for fraudulent misrepresentations).

[2] *See* Fenix Financial Report at pp. 2-10.

The Prima Facie Case

A. Clark Hill, Denny Chittick and DenSco

DenSco was a hard money lender for buyers of foreclosed properties. DenSco raised capital by borrowing money from investors and issuing them promissory notes, 12% interest for two-year loans, and less for loans under two years.[3] DenSco would then turn around and loan money to buyers at foreclosure sales at interest rates generally at 18%. DenSco would secure their loans with a deed of trust on the property, and loan at a 70% loan-to-value ratio to ensure sufficient equity to cover the loan.[4]

Although DenSco's investor promissory notes were usually two years in length, DenSco would honor earlier requests to withdraw funding if it had the capital. Investors could roll over their investments at the end of a promissory note into a new note, and most investors did. New money and rollovers provided for DenSco's capital needs and fueled its growth. By 2013, its loan volume had grown to $50,000,000, more or less.[5]

DenSco, as a company, was a one-man band.[6] Denny Chittick was its sole shareholder and employee. As DenSco's loan volume increased, Chittick was overwhelmed and became more lax in his lending practices. For example, rather than deliver purchase monies directly to the trustee who was conducting the home foreclosure sale, Chittick forwarded monies directly to DenSco's borrowers and trusted the borrower to pay the trustee.[7]

Chittick's trust was misplaced. One of DenSco's borrowers, Scott Menaged, took advantage of this practice of giving loan monies directly to the borrower. Over a

---

[3] Wertlieb Report at pp. 7-8; Statement of Facts, ¶¶ 16 to 18.

[4] Wertlieb Report at pp. 7-8; *See also* Statement of Facts, ¶¶ 1 to 7.

[5] Statement of Facts ¶¶ 16, 25, 58, 61, 177; Wertlieb Report at pp. 8-9, 45-46, 60.

[6] DenSco was a "One-Man Shop" and "High-Risk" client. Wertlieb Report at pp. 40–50.

[7] Wertlieb Report at pp. 14 to 15.

course of years, Menaged perpetuated two separate frauds on DenSco, each damaging DenSco by millions of dollars. The first fraud consisted of Menaged double liening the foreclosed properties.[8] Menaged would take monies from DenSco to purchase a foreclosed property, and also take monies from a second hard money lender for the same property. He would use DenSco's money for his own personal purposes, purchase the property using monies from the second lender, and place two separate recorded deeds of trust: one for DenSco and one for the second lender on the property. Although the double-lien fraud should have been discovered by Clark Hill sooner than it did, it was admittedly known by Clark Hill in mid-December 2013 and early January 2014.[9]

The second fraud started on the heels of the discovery of the first fraud in January 2014. In the second fraud scheme, DenSco, relying on Clark Hill's advice, continued to send money directly to Menaged for the purchase of foreclosed property. Menaged would then completely fabricate to DenSco documents that he was buying foreclosure properties when, in truth and fact, he was not. Menaged would obtain certified checks, send DenSco copies of the certified checks to document the purchase of properties, then turn around and deposit the certified checks in his own account.[10]

In July 2016, Denny Chittick committed suicide and Plaintiff was appointed as DenSco's Receiver. A quick review of the books disclosed that DenSco was sitting on over $29,000,000 in unsecured loans to Menaged. In December 2016, the Receiver filed his first report on the first and second Menaged frauds. However, over time the Receiver discovered more than a financial fraud. Clark Hill was DenSco's attorney at the concluding months of the first fraud and throughout the course of the second fraud. If Clark Hill had done what it was supposed to do when it was retained in September

[8] Wertlieb Report at pp. 14-15; Statement of Facts, ¶¶176 to 182.

[9] Statement of Facts ¶¶ 138, 268, 358-359.

[10] Statement of Facts ¶¶ 97-99, 194-199, 308-322; Wertlieb Report at pp. 14-17.

2013, or when it was told about the first fraud in December 2013, the second fraud would never have taken place. Instead, rather than doing what they should have done, Clark Hill and David Beauchamp aided and abetted Chittick in an egregious breach of fiduciary duties he owed DenSco and duties DenSco owed its investors.[11]

DenSco owed its investors a fiduciary duty to make full disclosure of facts related to their promissory note investments before it took any money from them. Clark Hill aided and abetted DenSco in continuing in business, and continuing to raise monies, without full disclosure of the first Menaged fraud to the investors. Further, Clark Hill aided and abetted Denny Chittick in negotiating and obtaining a Forbearance Agreement which was not in DenSco's best interests and was designed to protect Chittick from investor claims and fool investors that the damages of the first fraud were being worked out. Then, Clark Hill sat back and did nothing from May 2014 until July 2016, while Chittick tried to work DenSco out of the consequences of the first fraud.[12]

When Chittick died in July 2016, Clark Hill was still representing DenSco. Clark Hill, with full knowledge it would be a target of lawsuits for its role in representing DenSco as to Menaged's frauds, opened new files in August 2016 to represent DenSco and the Estate of Denny Chittick, using its position to try to cover up what it did. Clark Hill told investors that a Receiver was not in their interests as it would decrease any recovery they might obtain. Clark Hill and David Beauchamp did not disclose to either the Receiver after his appointment or the Arizona Corporation Commission who was present soon after Chittick's death, what they knew, and delayed disclosure of the corporate records to the Receiver and Arizona Corporation Commission by supporting a claim made by the Estate of Denny Chittick that Clark Hill represented both DenSco and Denny Chittick individually. This resulted in a false

[11] Statement of Facts ¶¶ 155-160; Wertlieb Report at pp. 57-64.

[12] Statement of Facts ¶¶218-257, 275-304; Wertlieb Report at pp. 20-26; Fenix Financial Report at pp. 2-10.

claim of privilege by the Estate. In deposition, Dave Beauchamp testified that his affidavit to the Court stating that Chittick believed Clark Hill was his lawyer was a misrepresentation to the Court.[13]

After offsetting payments, the second fraud resulted in $24,000,000 in damages to DenSco.[14]

B. Clark Hill

Defendant David Beauchamp represented DenSco for over 20 years at several different law firms.[15] In September 2013, Beauchamp left Bryan Cave and joined Clark Hill. DenSco followed Beauchamp and became a client of Clark Hill.[16] Clark Hill is a large law firm with many national offices, including Phoenix, and two international offices.[17]

The promissory notes that DenSco gave to its investors for money lent are securities. As counsel for DenSco, Beauchamp gave securities advice to DenSco and prepared Private Offering Memorandums ("POMs") so that DenSco could raise monies privately from accredited investors without a public securities offering filed with the Securities and Exchange Commission. Each POM was for a two-year term, and Beauchamp prepared and updated new POMs every two years from the beginning of his representation.[18] The 2011 POM was done while he was employed at Bryan Cave, and Mr. Beauchamp commenced work on a 2013 POM in the summer of 2013 while still at Bryan Cave. When he joined Clark Hill in September 2013, the 2013 POM was not

---

[13] Statement of Facts pp. 330-342, 362-373 and SOF Ex. 2, SOF Ex.6, SOF Ex. 31, SOF Ex. 38, SOF Ex's. 144-150; Wertlieb Report at pp. 26-31; Fenix Financial Report at pp. 3-4.

[14] Fenix Financial Report at p. 3 ¶16.

[15] Statement of Facts ¶¶ 8-11 and SOF Exs. 4-5.

[16] Statement of Facts ¶ 10 and SOF Ex. 5.

[17] Wertlieb Report at pp. 7-8.

[18] Statement of Facts ¶¶ 12-14 and SOF Exs. 5-6.

finished. Indeed, it had barely begun.[19] Upon starting work at Clark Hill, Mr. Beauchamp opened a new matter file for DenSco, labeled "2013 POM," and did an engagement letter listing DenSco as a Clark Hill client.[20]

C. Fiduciary Duty and Standard of Clark Hill's care

The Court need not linger on whether DenSco owed fiduciary duties to its investors during Clark Hill's representation. In discovery, Clark Hill admitted multiple times that DenSco owed a fiduciary duty to its investors. It is admitted in the Rule 26.1 statements of both David Beauchamp and Ed Hood,[21] Clark Hill's general counsel, in interrogatory answers under oath by David Beauchamp, in deposition testimony of both David Beauchamp and Ed Hood, and stated in multiple emails written by David Beauchamp to Denny Chittick. Indeed, in discussing a forbearance agreement that David Beauchamp prepared in 2014, David Beauchamp told Denny Chittick they were walking a fine line between DenSco's fiduciary duty to its investors and making a deal with Scott Menaged.[22]

As a fiduciary, DenSco owed its investors the highest duties under Arizona law. "Where a relation of trust and confidence exists between two parties so that one of them places peculiar reliance in the trustworthiness of another, the latter is under a duty to make a full and truthful disclosure of all material facts and is liable for misrepresentation or concealment." *Rhoads v. Harvey Publications, Inc*., 145 Ariz. 142, 148-49 (App. 1984). In addition to this duty of care, there is also a duty of loyalty, which is an "obligation to act with the utmost loyalty and integrity." *Taeger v. Catholic Family & Community Services* 196 Ariz. 285, 293 (App. 1999). "The burden is on the

---

[19] Statement of Facts ¶¶ 52-60, 100-108, 109-112; SOF Exs. 36-37, SOF Exs. 39-55, SOF Ex. 65, SOF Ex. 72.

[20] Statement of Facts ¶¶ 121-128 and SOF Exs. 73-75.

[21] Statement of Facts ¶¶ 225, 227, 231, 358; SOF Ex. 5 at pp.12-15; SOF Ex. 108; SOF Ex. 109; SOF Ex. 111.

[22] Statement of Facts ¶¶ 213-268; SOF Ex. 82; SOF Exs. 93-98; SOF Exs. 106-109; SOF Exs. 113-119; SOF Exs. 121-127.

persons occupying such fiduciary relations to show that the transaction has been fair, open and conducted in the utmost good faith." *Hughes v. Caden de Cobre Min. Co.,* 13 Ariz. 52, 63 (1910). As set out below, with Clark Hill's aid and assistance, Chittick caused DenSco to egregiously and intentionally violate each of these duties.

The Court also need not linger over the standard of care. Clark Hill admits that when it learned of material omissions or misstatements in the 2011 POM, the standard of care required Clark Hill to tell DenSco:

> (a) DenSco was not permitted to take new money without full disclosure to the investor lending the money; (b) DenSco was not permitted to roll over existing investments without full disclosure to the investor rolling over the money; and (c) DenSco needed to update its POM and make full disclosure to all its investors.[23]

Clark Hill says it gave that advice in January 2014, and repeated it thereafter.[24] Further, if Denny Chittick was not following that advice on behalf of DenSco, Clark Hill admits that it had a duty to terminate its representation of DenSco.

Prima facie evidence establishes that Clark Hill not only failed to follow the standard of care, but aided and abetted Denny Chittick in violating DenSco's fiduciary duties to its investors. With Clark Hill's help, DenSco continued without interruption to raise new investor monies and roll over monies ***without full disclosure of material facts*** from the date of its retention in September 2013 until Chittick's death in July 2016. Moreover, Clark Hill did not terminate its representation of DenSco, but gave Chittick time to work himself out of the "mess" before making full disclosure. DenSco was still trying to work itself out of the fraud when Chittick committed suicide in July 2016. Even after Chittick's death, Clark Hill did not disclose its involvement with the

---

[23] Clark Hill Initial Rule 26.1 Disclosure at page 10, attached as SOF Ex. 5.

[24] Clark Hill Initial Rule 26.1 Disclosure at pp. 9-14, attached as SOF Ex. 5; Neil Wertlieb describes a broader standard of care including the duty to conduct due diligence, the duty to terminate all dealings with Mr. Menaged, the duty to cease all solicitations and update the POM, the duty to advise Mr. Chittick of his fiduciary duties, the duty to protect DenSco from reckless and disloyal actions of Mr. Chittick including reporting out, and the duty to withdraw from representation. Wertlieb Report at pp. 53-57.

Menaged fraud, and actively tried to cover up its role.

D. The Factual Background of Clark Hill's Aiding and Abetting Breach of Fiduciary Duty

As set forth in Mr. Wertlieb's report, there is much to fault Clark Hill for in its representation of DenSco. He notes several severe deviations from the standard of care.

1. When Menaged's first fraud was discovered, Clark Hill allowed DenSco to borrow money without full disclosure.

In January 2014, the floodgates opened. Clark Hill and Beauchamp received clear, unequivocal evidence of the double lien fraud from a demand letter to DenSco from another hard money lender asking DenSco to subordinate 50 plus liens to the other hard money lender's liens.[25]

Chittick forwarded the demand letter to Clark Hill and met with Clark Hill. He disclosed to Clark Hill his egregiously lax lending practices to Menaged, and repeated Menaged's story that his "cousin" had misappropriated DenSco's money. Chittick did not want a lawsuit and wanted to work the issue out with Menaged. He did not want to disclose these facts to his investors for fear it would trigger a run on the bank and the demise of the business.[26]

Clark Hill contends that on January 9, 2014—but not before—it gave the required standard of care advice to DenSco that DenSco had to stop taking new money, stop taking rollover money and make a full disclosure to investors. The documentary, contemporaneous evidence is to the contrary.[27] This advice is not documented in a letter, an email, a handwritten note, or even a text. Indeed, an email from Mr. Beauchamp to Chittick in January 2014 compliments him for being able to raise new monies.[28]

---

[25] Wertlieb Report at pp. 13-15.

[26] Wertlieb Report at pp. 15-17.

[27] Wertlieb Report at pp. 20-24.

[28] Statement of Facts ¶¶ 272-274, SOF Ex. 129.

Based on the documentary evidence, Clark Hill and Beauchamp advised Chittick that: (1) he could pursue a "work out" with Menaged that was documented in a Forbearance Agreement; (2) The Forbearance Agreement would assist Denny Chittick in calming investors from a panic; and (3) DenSco could continue to sell promissory notes and take rollover money without issuing a new POM while the Forbearance Agreement was negotiated.[29]

In Mr. Chittick's daily business journal on January 10, 2014, Chittick wrote: "at 5pm Dave called, said they would give us time to clean it up. I talked to [Menaged]; he is going to try to bring in money. I can raise money according to Dave."[30] On February 21, 2014, Chittick wrote: "I talked to Dave, he found out what we already suspected, there is no way we can give what [Menaged] wants. I'm not sure where this will lead us. We talked about telling my investors, we are going to put that off as long as possible so that we can improve the situation as much as possible. We've got another 15 more that are closing next few weeks. We could be close to under a 100 problem loans within a month. I just have to keep telling myself I'm doing the right thing to fix it, no matter [how] much an[]xiety I have over this issue."[31]

With Clark Hill's advice and knowing assistance, Chittick breached fiduciary duties to DenSco by causing DenSco, in breach of its fiduciary duties to investors, to continue selling more than $5 million of promissory notes between January and May 2014 to investors who did not receive a new POM, and were unaware of DenSco's perilous financial condition, Chittick's gross mismanagement of DenSco's loan portfolio, and his pursuit of a "work out" with Menaged. Those investors would not have purchased promissory notes if they had known those facts. Without those funds, and millions more DenSco raised thereafter through Clark Hill's assistance, DenSco

[29] Statement of Facts ¶¶ 275-304, SOF Ex. 6, SOF Ex. 82, SOF Ex. 120, SOF Exs. 131-136.

[30] Statement of Facts ¶¶269-271; SOF Ex. 82 at RECEIVER_000045.

[31] Statement of Facts ¶¶ 269-271, 234-238, SOF Ex. 82 at RECEIVER_000051.

could not have continued operating.

2. The Forbearance Agreement

Clark Hill negotiated between January 2014 and April 2014 for a Forbearance Agreement between DenSco and Scott Menaged. The purpose of the Forbearance Agreement was to "improve the situation as much as possible" before a disclosure had to be made.[32]

In as much as Chittick did not want to tell investors what had happened, Scott Menaged had negotiating leverage on DenSco. His demands for the Forbearance Agreement led David Beauchamp to comment that the Forbearance Agreement as contemplated by Menaged would breach fiduciary duties DenSco owed to its investors.[33]

The Forbearance Agreement was not in DenSco's best interest.[34] Even though Clark Hill knew that subordinating DenSco's notes to another hard money lender was a breach of the POM, David Beauchamp testified under oath that the Forbearance Agreement, in effect, did just that. It subordinated all of DenSco's loans on double liened property to other hard money lenders.[35]

Mr. Wertlieb has concluded that to "the extent that Mr. Beauchamp's pursuit of the Forbearance Agreement was motivated by . . . a personal conflict of interest, such conduct was so reckless and irresponsible that, in my opinion, it constituted a gross departure from the applicable standard of care."[36] Mr. Beachamp's personal conflict of interest was his negligent delay in providing updated POM disclosures.[37]

---

[32] Statement of Facts ¶ 237, SOF Ex. 82 at RECEIVER_000051.

[33] Statement of Facts ¶ 213-217, SOF Ex. 6 at pg. 405:5- 408:9, SOF Ex. 81, SOF Exs. 93-98.

[34] Wertlieb Report at pp. 17-20.

[35] Statement of Facts ¶¶ 216-217, SOF Ex. 6 at p. 405:5- 408:9.

[36] Wertlieb Report at p. 59.

[37] Wertlieb Report at p. 59.

3. The May 2014 Termination

After the Forbearance Agreement was concluded in April 2014, Clark Hill claims it then completed the 2013 (now 2014) POM for DenSco. The POM was not completed. The POM produced by Clark Hill is partial and incomplete, and, even then, does not give a full and fair disclosure of Menaged's first fraud and Chittick's mismanagement of DenSco. Clark Hill states that even before a full POM was prepared, Chittick refused to send out a new POM at all.[38]

Clark Hill then claims it terminated its representation of DenSco for DenSco's failing to follow its advice. Clear and convincing prima facie evidence demonstrates that this is simply not true.[39] Clark Hill did not terminate its representation. Among other things:

- There is no termination letter. The termination is not documented at all, either by correspondence, email, memo to the file, handwritten note or any document whatsoever. When a termination is made because a client is violating fiduciary duties, securities law and not following legal advice, it is inconceivable that a law firm would fail to document this fact. Moreover, the legal file for the POM was not closed until after this lawsuit was filed and only then after Plaintiff served an interrogatory asking about the status of the file.
- There is not one document, email, note to the file or internal memorandum that corroborates that David Beauchamp met with Chittick to give him a proposed POM or even had a phone call with him. There is nothing on the billing statement about a meeting or a termination. There is no email forwarding a draft of a proposed POM to Chittick in May

[38] Statement of Facts ¶ 357, SOF Ex. 5 at pg. 15, ln. 3-20, SOF Ex. 167.

[39] Wertlieb Report at pp. 20-26.

2014.[40]

- Mr. Beauchamp testified he dropped the POM off at Mr. Chittick's home on the way back to the office after visiting another client in Chandler. He admitted, however, that he has no billing record of meeting a client in Chandler or meeting with Chittick. Though his office and Chittick's office were on other ends of town, Beauchamp cannot explain why a draft was not even emailed to Chittick.
- After the termination, Clark Hill continued to work for DenSco on the Forbearance Agreement, which was to be disclosed in the POM and was the whole reason the POM was delayed, in June and July 2014, two-and-a-half months after the alleged termination in mid-May 2014. DenSco paid for the work.[41]
- Chittick's daily corporate and personal journals make no mention of a termination at all. To the contrary, in his daily corporate journal and in emails to Menaged, Chittick states that Clark Hill was giving him time to fix the problem before disclosure. He expresses in his suicide notes to the investors and to his sister that Clark Hill had given him time to fix the problem before making a full disclosure in a new POM.[42]
- Beauchamp sent an email in March 2015 to Chittick soliciting new work and setting up a lunch meeting. There is no mention at all of a termination in this email even though it talks about other frustrations

[40] Statement of Facts ¶¶ 291-294, SOF Ex. 6 at p. 201:12-202:10, SOF Ex. 24 at CH_0005226, SOF Ex. 24.

[41] Statement of Facts ¶¶ 353-360, SOF Ex. 6 at pp. 158:9-161:24; 180:7-183:22; 195:11-199:14, SOF Ex's 23-25, SOF Ex. 77, SOF Ex. 86, SOF Exs. 168-171.

[42] Statement of Facts ¶¶ 110-112, 234-237,243-245, 257, 269-271, 301-304; *See* also SOF Ex. 65, SOF Ex. 71, SOF Ex. 82 at RECEIVER_000051, SOF Ex. 114 at DIC0005446, SOF Ex. 115, SOF Ex. 136 at RECEIVER_000101-102 and RECEIVER_000112.

Chittick had about the negotiations for the Forbearance Agreement.[43]

- Clark Hill took on a new work assignment from DenSco in 2016, again after the purported termination, and worked for DenSco for several months prior to Chittick's death. DenSco continued to pay Clark Hill for legal work after the termination.[44]
- The first time that termination of DenSco as a client is mentioned by Clark Hill is after Denny Chittick's suicide in response to questions asked by the Securities Division of the Arizona Corporation Commission.[45]

Far from terminating DenSco as a client, the prima facie evidence is overwhelming that in May 2014, at Chittick's request, Clark Hill agreed to stop the minimal steps it had taken to prepare a new POM and assured Chittick that DenSco could continue its operations, including the sale of promissory notes, while indefinitely delaying the issuance of a new POM. This would give DenSco time to fix the problem.

Clark Hill continued to represent DenSco, awaiting his decision to finally direct the firm to finish preparing a new POM. Chittick continued to operate DenSco, selling still more promissory notes to investors who did not receive a new POM and were not given information about DenSco's financial condition and Chittick's gross mismanagement of the company.

As to these actions, Mr. Wertlieb expresses the following opinions:

> The Defendants fell below the applicable standard of care by, in effect, aiding and abetting Mr. Chittick's wrongful conduct by focusing their attention on the Forbearance Agreement rather than on DenSco's rights and remedies in connection with the Menaged fraud and on updating and correcting the 2011 POM. In other words, by failing to terminate the attorney-client relationship, the Defendants provided substantial assistance in Mr. Chittick's wrongful conduct. The Defendant' conduct in this regard was so reckless and irresponsible that such conduct, in my

[43] Wertlieb Report at p. 25, Statement of Facts ¶¶ 297-303, SOF Exs. 135-137.

[44] Statement of Facts ¶¶ 323-339, SOF Exs. 27-31, SOF Ex. 38, SOF Ex. 138, SOF Exs. 143-146.

[45] Statement of Fact ¶¶ 353 to 357, SOF Ex. 164 at DIC0011375, SOF Ex. 165 at p. 2 ¶7, SOF Exs. 166-167.

opinion, constituted a gross departure from the applicable standard of care.[46]

4. Chittick's suicide and Clark Hill's coverup

After Chittick's death, within days, Beauchamp received suicide notes that Chittick had written to the investors (and did not send) and to his sister Shauna.[47] Those letters contain clear statements of facts putting Clark Hill on notice that it would be a target in any lawsuit over the fraud. In his letter to his sister, Chittick states: "Dave my attorney even allowed us to do the wholesaling . . . . [H]e let me get the workout signed[,] not tell the investors[,] and try to fix the problem. That was a huge mistake . . . . Dave did a workout agreement with [Menaged], we were executing to it and making headway, yet Dave never made me tell the investors." [48] Chittick further writes: "I talked Dave my attorney in to allowing me to continue without notifying my investors. Shame on him. He shouldn't have allowed me. He even told me once I was doing the right thing."[49]

In his never-sent letter to investors, Chittick wrote: "[Menaged] and I worked for months on an agreement that was pounded out between our lawyers. It was a work out agreement with outline of what we were doing and how it was to happen. Why I didn't let all of you know what was going on at any point? It was pure fear. . . . I have 100 investors. I had no idea what everyone would do or want to do or how many would just sue, justifiably. I also feared that there would be a classic run on the bank. . . . I truly believe we had a plan that would allow me to continue to operate, my investors would receive their interest and redemptions as a normal course of business, and the rest of my portfolio was performing. Dave blessed this course of action. We signed this workout

---

[46] Wertlieb Report at p. 63.

[47] Statement of Facts ¶ 336, SOF Ex. 6 at 86:23-87:13, SOF Ex. 38, SOF Ex. 138.

[48] Statement of Facts ¶ 328, SOF Ex. 38.

[49] Statement of Facts ¶ 327, SOF Ex. 38 at DIC0009482 and DIC0009484.

agreement and began executing it." In the letter, Chittick wrote: "I know I made wrong decisions. I did consult my lawyer for the first year on each step of the way." [50]

These letters would put any lawyer on notice that DenSco had claims against the law firm. Despite these letters, after Chittick's death, Clark Hill and Beauchamp undertook to affirmatively represent DenSco in its business wind down! Their internal engagement form said there was no conflict.[51] There clearly was a conflict.[52]

If that is not bad enough, Clark Hill and Beauchamp agreed to also represent the Estate of Denny Chittick! DenSco had substantial claims against the Estate arising from Chittick's multiple breaches of fiduciary duty that he owed DenSco and the investors. This representation was also a conflict of interest.[53]

Why? Clark Hill's actions answer that question. Clark Hill and Beauchamp wrote two emails to the DenSco investors without ever disclosing the first fraud done by Menaged, Chittick's mismanagement of DenSco, or Clark Hill's involvement in covering up the first fraud.[54] Clark Hill even told investors not to seek the appointment of a receiver as a receivership could result in them getting less monies![55] Clark Hill also told other investors that they should avoid another "Mortgages Limited" situation.[56] What Clark Hill did not tell them is that Clark Hill would be a likely target of any Receiver investigating what happened. "[I]t appears that Mr. Beauchamp actively tried to protect himself and Clark Hill."[57]

Once the Securities Division of the Arizona Corporation Commission became

---

[50] Statement of Facts ¶ 325, SOF Ex. 38 and SOF Ex. 138.

[51] Wertlieb Report at p. 26.

[52] Wertlieb Report at p. 65.

[53] Wertlieb Report at p. 64 – 65.

[54] Statement of Facts ¶ 347, SOF Ex. 31, SOF Exs. 93-98.

[55] Wertlieb Report at pg. 28; Statement of Facts ¶ 349, SOF Ex. 6 at p. 472:9-476:4, SOF Ex. 163.

[56] Wertlieb Report at p. 29.

[57] Wertlieb Report at p. 66.

involved, Clark Hill stated for the first time that it had terminated its representation of DenSco because of Chittick's alleged failure to follow their advice. This is not true and it is simply a story told to hide Clark Hill's culpability.

Clark Hill and Beauchamp also colluded with the Estate of Chittick and its new counsel after Clark Hill withdrew from representing the Estate to conceal material information from the Receiver and/or delay his receipt of that information by, among other things, making material misrepresentations to the Receivership Court. David Beauchamp told the Receivership Court that he represented Chittick personally, creating an attorney-client privilege issue that held up production of documents.[58]

"One could reasonably infer that Mr. Beauchamp wanted to control the wind down so as to protect himself because if a receiver were to be appointed, he or she would file a claim against the Defendants on behalf of DeSnco – which is exactly what happened in this case."[59] Clark Hill's conduct, after Mr. Chittick's suicide, in Mr. Wertlieb's opinion, is, under the circumstances, "so reckless and irresponsible that such conduct . . . constituted a gross departure from the applicable standard of care."[60]

E. Conclusion

The facts present a prima facie case that Clark Hill aided and abetted Chittick's and DenSco's breaches of fiduciary duty, that Clark Hill violated fiduciary duties it owed to its client DenSco, and that Clark Hill acted to cover up its fault. The Court should conclude that Plaintiff Receiver has made a prima facie case for punitive damages.

[58] Statement of Fact ¶¶ 362-373, SOF Ex. 6 at pp. 122:8-127:1 and pp. 140:21-143:12, SOF Exs. 173-180.

[59] Wertlieb Report at p. 67.

[60] Wertlieb Report at p. 67.

RESPECTFULLY SUBMITTED this 12th day of April, 2019.

OSBORN MALEDON, P.A.

By /s/Colin F. Campbell
Colin F. Campbell
Geoffrey M. T. Sturr
Joshua M. Whitaker
2929 North Central Avenue, 21st Floor
Phoenix, Arizona 85012-2793

Attorneys for Plaintiff

This document was electronically filed
and served via AZTurboCourt and
hand-delivery this 12th day of April, 2019, on:

Honorable Daniel Martin
Maricopa County Superior Court
101 West Jefferson, ECB-412
Phoenix, Arizona 85003

John E. DeWulf
Marvin C. Ruth
Vidula U. Patki
Coppersmith Brockelman PLC
2800 North Central Avenue, Suite 1900
Phoenix, Arizona 85004
jdewulf@cblawyers.com
mruth@cblawyers.com
vpatki@cblawyers.com
Attorneys for Defendants

/s/Karen McClain
7941260

EXHIBIT A

WERTLIEB LAW

EXPERT REPORT OF NEIL J WERTLIEB

In the matter of

Peter S. Davis, as Receiver of DenSco Investment Corporation

v.

Clark Hill PLC, David G. Beauchamp and Jane Doe Beauchamp

Submitted on March 26, 2019

TABLE OF CONTENTS

EXPERT REPORT OF NEIL J WERTLIEB

In the matter of

Peter S. Davis, as Receiver of DenSco Investment Corporation
v.
Clark Hill PLC, David G. Beauchamp and Jane Doe Beauchamp

Submitted on March 26, 2019

I. INTRODUCTION

By letters dated June 15, 2017 and October 3, 2017, the law firm of Osborn Maledon, P.A. ("Osborn Maledon") retained me (through Wertlieb Law Corp, where I am principal) to serve as an expert witness in the matter of *Peter S. Davis, as Receiver of DenSco Investment Corporation v. Clark Hill PLC, David G. Beauchamp and Jane Doe Beauchamp* (this "Case").[1]

This Expert Report of Neil J Wertlieb (this "Report") contains my opinions, together with the facts and analysis upon which my opinions are based and the reasons for my conclusions.

A. My Background and Qualifications

I am the principal of Wertlieb Law Corp, where (among other things) I have served as an expert witness in disputes involving business transactions and corporate governance, and in cases involving attorney malpractice and attorney ethics. I also serve as a Special Deputy Trial Counsel on behalf of the State Bar of the State of California, in which capacity I investigate and, when appropriate, prosecute attorney misconduct in certain matters where the State Bar's Office of Chief Trial Counsel has determined that it may have a conflict of interest.

Prior to founding Wertlieb Law Corp in 2017, I was a partner at the law firm of Milbank, Tweed, Hadley & McCloy LLP ("Milbank"), where for over two decades my practice focused on corporate transactions, primarily securities offerings, acquisitions and restructurings. I have represented clients in a wide variety of business matters, including formation and early round financings, mergers and acquisitions, private placements and public offerings, international securities offerings and other international transactions, fund formations, joint ventures, real estate and hospitality matters, partnerships and limited liability companies, reorganizations and restructurings, independent investigations, and general corporate and contractual matters.

[1] See Plaintiff's Disclosure of Areas of Expert Testimony dated September 7, 2018 ("the [Receiver] discloses the following areas of expert testimony he anticipates offering at trial: … The applicable standard of care, Defendants' departure from the standard of care and how that departure caused injury to DenSco. Departure from the standard of care will encompass all allegations in the Complaint, both legal malpractice and breaches of fiduciary duty, and will be premised on all actions described in Plaintiff's Rule 26.1 statement of facts. Expert testimony may also address whether the departures from the standard of care are gross departures from the standard of care.").

I would estimate that in the course of my 34 years of practicing law, I have worked on securities offerings that raised over $20 billion in proceeds. Such offerings have included: initial public offerings and other securities offerings registered with the Securities and Exchange Commission (the "SEC"); international and intrastate securities offerings which have been outside of the jurisdictional scope of federal securities regulation; and venture capital and early stage financings, fund financings, real estate related financings, and private placements and other offerings which have been exempt from SEC registration. My responsibilities in such offerings included the following tasks: evaluating compliance with federal, state and foreign securities regulations; preparing, reviewing and advising with respect to disclosures and SEC filings; preparing, reviewing and advising with respect to other documentation, including subscription agreements and investor suitability questionnaires; rendering legal opinions and conducting due diligence; assessing the risks associated with non-compliance, conducting internal compliance investigations, and advising with respect to rescission offers and other remedies; and other tasks associated with the offer and sale of securities. I have also advised securities issuers and other entities, as well as their directors, officers and managers, with respect to their fiduciary duty obligations.

Prior to joining Milbank in 1995, I was the general counsel for a public telecommunications and broadcast company. I also served as the General Counsel and a member of the Board of Directors of the Los Angeles Kings Hockey Team. And before that, I worked for eight years at the law firm of O'Melveny & Myers LLP, as a transactional associate in the firm's Corporate Department.

I am also an Adjunct Professor of Law at the UCLA School of Law where (since 2002) I teach a transaction skills course, entitled "Life Cycle of a Business," which focuses on business transactions, negotiation, contract drafting and attorney ethics. The course subjects include fiduciary duties, securities offerings, disclosure documents and materiality.

I have been engaged by Harvard Law School Executive Education as Senior Advisor, Milbank@Harvard. This professional development program provides Milbank associates with immersive week-long programs to build leadership and business skills each year for four years, as they progress from mid-level associates to senior associates. Led by Harvard Law and Business School faculty, the program covers topics such as business, finance, accounting, marketing, law, management skills, client relations and personal and professional development. As Senior Advisor, I provide input, guidance and assistance in formulating the program and connecting it to the practice of law.

I am a former Chairman of each of the following committees of the California State Bar: the Executive Committee of the Business Law Section; the Corporations Committee; and the Committee on Professional Responsibility and Conduct. I am currently the Chairman of the Professional Responsibility and Ethics Committee of the Los Angeles County Bar Association. I also served as a Judicial Extern for Justice Stanley Mosk on the California Supreme Court.

I am the general editor of the legal treatise *Ballantine & Sterling: California Corporation Laws*. I have been recognized in *The Legal 500* for my mergers and acquisitions work and was

recognized as one of the top 100 most influential lawyers in California (*California Law Business*, October 30, 2000).

I received my law degree in 1984 from the UC Berkeley School of Law, and my undergraduate degree in Management Science from the School of Business Administration also at the University of California at Berkeley. I am admitted to practice law in California, New York and Washington, D.C.

My qualifications are described in more detail in my curriculum vitae, a current copy of which is attached as Exhibit A to this Report. A list of all cases in which I have testified as an expert at a deposition, hearing or trial during the past four years is attached as Exhibit B to this Report.

B. Description of this Case

This Case was initiated by the filing of a Complaint on October 16, 2017, by Peter S. Davis, as the court-appointed receiver (the "Receiver") of DenSco Investment Corporation, an Arizona corporation ("DenSco"), following the death of Denny Chittick, DenSco's sole owner, shareholder and operator. In the Complaint, the Receiver states two claims for relief against the law firm of Clark Hill PLC ("Clark Hill") and David G. Beauchamp (collectively, the "Defendants")[2]: (1) legal malpractice; and (2) aiding and abetting breach of fiduciary duties. The claims arise from the legal representation of DenSco by the Defendants.

C. Scope of Engagement

In the course of this engagement, I have reviewed certain documents provided or made available to me by, and have been in communication with, Osborn Maledon, the law firm representing Peter S. Davis, as Receiver of DenSco in this Case. The documents which have been provided or made available to me are listed on Exhibit C attached to this Report. In the event new information becomes available to me, I reserve the right to modify my opinions and conclusions accordingly.

At times during the course of this engagement, I have utilized the services of Christa Chan-Pak, who has acted an associate attorney at Wertlieb Law Corp during the preparation of this Report.

For purposes of this engagement, Wertlieb Law Corp charges Osborn Maledon an hourly rate of $1,000 for my time. The compensation Wertlieb Law Corp receives for the services provided in formulating the opinions stated herein is not in any way contingent upon the conclusions I have reached in, or on the final outcome of, this Case.

D. Summary of Opinion

It is my opinion, as detailed below and based on the record that I have reviewed, that the Defendants violated the applicable standard of care in their representation of DenSco.

[2] Mr. Beauchamp's wife, identified as Jane Doe Beauchamp, is also named as a defendant in the Complaint.

II. SUMMARY OF FACTS

A. The Defendants and DenSco

Mr. Beauchamp started his legal career in 1981 and has practiced at no less than seven different law firms, starting as an associate at Fennemore Craig.[3] Following Fennemore Craig, he moved to Storey & Ross, then to Moya Bailer Bowers & Jones, then to Quarles & Brady, then to Gammage & Burnham, then to Bryan Cave.[4] In September 2013, Mr. Beauchamp joined Clark Hill,[5] where he is currently a Member.[6] His primary practice areas are corporate law, securities, venture capital and private equity transactions.[7]

Defendant Clark Hill is an international law firm. According to its website, it is "one of the largest firms in the United States - with more than 650 attorneys and professionals in 25 offices, spanning the United States as well as Dublin and Mexico City."[8]

Denny Chittick formed DenSco in April 2001.[9] Prior to forming DenSco, Mr. Chittick worked at Insight Enterprises, Inc. ("Insight"), a publicly traded company, for approximately 10 years. When he left Insight, he began investing his own money, and subsequently established DenSco where he invested his own money and solicited money from other investors.[10]

DenSco made "high-interest loans with defined loan-to-value ratios to residential property remodelers … who purchase[d] houses through … foreclosure sales all of which [were] secured by real estate deeds of trust ('Trust Deeds') recorded against Arizona residential properties."[11] "From April, 2001, through June, 2011 [DenSco] engaged in 2622 loan transactions."[12] Mr. Chittick was the sole shareholder, director, officer and employee of DenSco.[13] Mr. Chittick raised money from investors by issuing general obligation notes (the "Notes") at variable interest rates. The Notes were "secured by a general pledge of all assets owned by or later acquired by"

---

[3] See page 33, line 21, Deposition of David G. Beauchamp on July 19 and 20, 2018 ("Deposition of Mr. Beauchamp").
[4] See page 33, lines 9-17, Deposition of Mr. Beauchamp.
[5] See page 33, lines 17-18, Deposition of Mr. Beauchamp.
[6] See Clark Hill website, https://www.clarkhill.com/people/david-g-beauchamp (retrieved March 2, 2019).
[7] See Clark Hill website, https://www.clarkhill.com/people/david-g-beauchamp (retrieved March 2, 2019).
[8] Clark Hill website, https://www.clarkhill.com/pages/about (retrieved March 2, 2019).
[9] See page 1, *Arizona Corporation Commission v. DenSco Investment Corporation* (Case No. CV 2016-014142), Preliminary Report of Peter S. Davis, as Receiver of DenSco Investment Corporation, dated September 19, 2016.
[10] See page 40, DenSco's Confidential Private Offering Memorandum dated July 1, 2011 (the "2011 POM"); printout of the "Company Management" page from the DenSco website dated June 17, 2013.
[11] Page 1, 2011 POM.
[12] Page 1, 2011 POM.
[13] Pages 40-41, 2011 POM.

DenSco.[14] DenSco's largest assets were the Trust Deeds,[15] which were intended to be secured through first position trust deeds.[16]

Mr. Beauchamp began providing securities advice to DenSco in the early 2000s.[17] As DenSco's securities lawyer, Mr. Beauchamp, among other things, drafted DenSco's Private Offering Memoranda ("POMs")[18] and related investor documents.[19] The POMs offered Notes according to the terms set forth therein. In addition, Mr. Beauchamp advised DenSco on federal and state securities laws, mortgage broker regulations and rules and regulations promulgated by state and financial lending authorities.[20]

Mr. Beauchamp "advised DenSco regarding its Private Offering Memoranda, which DenSco generally updated every two years. He helped draft the 2003, 2005, 2007, 2009 and 2011 POMs."[21]

B. Events from Mid-2013 to Mid-2014

1. DenSco's 2011 POM Expired

The 2011 POM provided for a two-year offering period.[22] Thus, by its own terms, the 2011 POM expired on July 1, 2013. However, the Defendants never finalized and provided DenSco with an update to the 2011 POM or a replacement POM.

---

[14] Page (i), 2011 POM.
[15] Page (i), 2011 POM.
[16] Page 37, 2011 POM.
[17] Page 3, lines 2-3, Defendants' Sixth Supplemental Rule 26.1 Disclosure Statement dated March 12, 2019 ("Defendants' DS").
[18] As discussed below, a private offering memorandum is a disclosure document used to solicit investment in private securities transactions. A POM is provided to prospective investors to provide such investors with information regarding the issuer and the securities it intends to issue. Generally, a POM describes the business, the investment opportunity, the associated risks, the management team, historical performance and expected performance of the business. Disclosures made in a POM are regulated under the federal securities laws by, among other laws and rules, Rule 10b-5 promulgated under the Securities Exchange Act of 1934.
[19] See pages 3-4, lines 25-1, Defendants' DS.
[20] Page 4, lines 2-4, Defendants' DS.
[21] Page 5, lines 7-8, Defendants' DS; see, also, pages 256-257, lines 22-3, Deposition of Mr. Beauchamp (Mr. Beauchamp testified that it was his practice to revise the POM every two years based on a suggestion "made by a former SEC official, that given the nature of this industry, two years would be an appropriate time. However, if something material happened before then, you need to tell your client this has to be disclosed.").
[22] See page (i), 2011 POM ("The Company intends to offer the Notes on a continuous basis until the earlier of (a) the sale of the maximum offering, or (b) two years from the date of this memorandum.").

In early May 2013, Mr. Chittick prompted Mr. Beauchamp (who was then at Bryan Cave) to begin work on an updated POM.[23] On May 9, 2013, Mr. Beauchamp met with Mr. Chittick. However, when Mr. Beauchamp learned that DenSco was close to issuing $50 million of Notes,[24] he ceased working on an updated POM.[25] Because of his concern that DenSco was approaching the maximum offering size, he began reaching out to his colleagues at Bryan Cave for advice on federal and state laws.[26] It appears that Mr. Beauchamp's concerns were misplaced, as no such legal issues existed.[27]

Ultimately, the Defendants *never* completed the updated disclosure.[28]

2. The Freo Lawsuit (the First of Four "Red Flag" Warnings)

On June 14, 2013, Mr. Chittick emailed Mr. Beauchamp to alert him that a lawsuit had been filed against DenSco (the "Freo Lawsuit"), and included the first four pages of the complaint.[29] Mr. Chittick stated that DenSco was being sued along with one of its borrowers – a borrower that DenSco "had done a ton of business with, millions in loans and hundreds of loans for several years."[30] The borrower was Scott "Yomtov" Menaged, together with the businesses he operated through two Arizona limited liability companies, Easy Investments, LLC and Arizona Home Foreclosures, LLC.

---

[23] See email dated May 1, 2013 from Mr. Chittick to Mr. Beauchamp ("it's the year when we have to do the update on the memorandum, when do you want to start?").
[24] See DIC0003345, Mr. Beauchamp's handwritten notes, dated May 9, 2013, that state "$50MM (what is this a threshold for)."
[25] See email dated June 25, 2013 from Mr. Beauchamp to Elizabeth Kearny Sipes, his then colleague at Bryan Cave ("*We stopped updating [the POM]* when we were told that the investments from the investors had jumped to approximately $47.5 million. Given that significant increase I have been asking for help to determine what other federal or state laws might be applicable. Bob Pederson out of NY has said that the Trust Indenture Act will not be applicable so long as the client is under the Regulation D, Rule 506 exemption. The other big issues have waited for your help to discern if we need to comply with the Investment Advisors Act of 1940 and the Registered Investment Advisors requirements." [italics added]).
[26] Ibid.
[27] See email dated July 1, 2013 from Ms. Sipes to Mr. Beauchamp ("I don't believe DenSco would … need to register as an investment adviser…. It is also not necessary to count accredited investors at this time. DenSco is offering the notes under [SEC Rule] 506 which permits an unlimited number of accredited investors.").
[28] See page 53, lines 11-13, Deposition of Mr. Beauchamp ("We never … issued a private offering memorandum at Clark Hill for DenSco"); see, also, pages 178-179, lines 22-3 ("Q: So you made a decision with Mr. Chittick that you would not disclose anything until we had a private offering memorandum, irregardless of fiduciary duties? … A. I did not have that agreement with Mr. Chittick. Over time, that's what evolved.").
[29] Email dated June 14, 2013 from Mr. Chittick to Mr. Beauchamp, copying Mr. Menaged ("David: I have a borrower, to which I've done a ton of business with, million in loans and hundreds of loans for several years, he's getting sued along with me.").
[30] Ibid.

The complaint in the Freo Lawsuit alleged that Mr. Menaged had secured two mortgages on one property: "Easy [Investments] attempted to encumber the property with deeds of trust to Active [Funding Group, LLC, an Arizona limited company, the other lender] and DenSco."[31] Mr. Beauchamp recognized that the Freo Lawsuit was material to DenSco's investors, and immediately told Mr. Chittick, "we will need to disclose this in POM."[32] Mr. Chittick readily agreed.[33] The Freo Lawsuit put Mr. Beauchamp on notice that DenSco's 2011 POM may be materially misleading because, if the allegations in the complaint were correct, DenSco was not following the methodology and procedures stated in the 2011 POM for funding its loans.[34] Based on the record I have reviewed in this Case, it appears that such disclosure was never made to DenSco's investors nor included in any draft updates to the 2011 POM prepared by the Defendants.

Mr. Chittick also informed Mr. Beauchamp that Mr. Menaged's attorney was working on the defense of the Freo Lawsuit, and that Mr. Chittick intended to "piggy back" on his borrower's defense.[35] Despite this clear conflict of interest, and Mr. Chittick's instruction that he speak with Mr. Menaged's attorney[36] – and Mr. Menaged's offer to pay for his time[37] – Mr. Beauchamp apparently took no action with respect to the Freo Lawsuit.[38]

The Freo Lawsuit was the first of what I consider to be four "red flag" warnings, as discussed below.

---

[31] See paragraph 20, Complaint dated May 24, 2013, *Freo Arizona, LLC v. Easy Investments, LLC, Active Funding Group, LLC, DenSco Investment Corporation, et al.*, brought in The Superior Court for the State of Arizona in and for the County of Maricopa.
[32] Email dated June 14, 2013 from Mr. Beauchamp to Mr. Chittick.
[33] Email response dated June 14, 2013 from Mr. Chittick to Mr. Beauchamp ("ok 1 sentence should suffice!").
[34] See page 6, Defendants' DS ("DenSco and Mr. Chittick were both advised, and understood, … that DenSco was representing to its investors that DenSco's loans would be in first position, and … that it was of fundamental importance that DenSco safeguard the use of its investors' funds in conjunction with properly recording liens, in order to ensure that DenSco's loans were in first position."). See also paragraph 121 of Plaintiff's Fifth Disclosure Statement dated November 14, 2018 ("Plaintiff's DS") ("It was apparent from the Freo complaint that Chittick had not conducted any due diligence before loaning money to Easy Investments to acquire this particular home, since the property had been sold, according to public records, five days before a trustee's sale.").
[35] Email dated June 14, 2013 from Mr. Chittick to Mr. Beauchamp, copying Mr. Menaged ("Easy Investments, has his attorney working on it, I'm ok to piggy back with his attorney to fight it.").
[36] See Ibid ("Easy Investments [sic] willing to pay the legal fees to fight it. I just wanted you to be aware of it, and talk to his attorney. Contact info is below.").
[37] Reply email dated June 14, 2013 from Mr. Menaged ("David Please bill me for your services and utilize my attorney for anything you may need.").
[38] Mr. Beauchamp testified that he did not speak to the borrower's attorney, Mr. Goulder, at this time. See page 240, lines 9-19, Deposition of Mr. Beauchamp.

3. Mr. Chittick's Instruction (the Second of Four "Red Flag" Warnings)

Although Mr. Beauchamp did some work on an updated POM in July and August of 2013 (after the 2011 POM had expired),[39] he was also preoccupied with changing law firms.[40] In late August 2013, he informed Mr. Chittick that he was leaving Bryan Cave for Clark Hill.[41]

In his deposition, Mr. Beauchamp asserted that the delay in updating the POM was caused by Mr. Chittick, and that Mr. Chittick instructed Mr. Beauchamp to stop working on the POM in August 2013 ("Mr. Chittick's Instruction").[42] Based on the record I have reviewed, it appears there is no evidence confirming Mr. Beauchamp's assertion.[43] While I do not find Mr. Beauchamp's assertion credible under the circumstances, for the reasons discussed below, any such instruction from Mr. Chittick would not relieve Mr. Beauchamp of his obligation to take some form of corrective action.

In September 2013, Mr. Beauchamp left Bryan Cave and moved to Clark Hill. An engagement letter dated September 12, 2013 was signed by Mr. Beauchamp on behalf of Clark Hill, and by Mr. Chittick on behalf of DenSco as a new client at Clark Hill. Mr. Beauchamp requested that Mr. Chittick have certain DenSco files transferred from Bryan Cave to Clark Hill, including

---

[39] See Bryan Cave invoice dated August 14, 2013 to DenSco for legal services rendered through July 31, 2013 (Mr. Beauchamp billed 9.7 hours for work on the DenSco POM in July); Bryan Cave invoice dated September 14, 2013 to DenSco for legal services rendered through August 31, 2013 (0.4 hours regarding subscription documents and procedures in August).

[40] See pages 46-47, lines 22-1, Deposition of Mr. Beauchamp ("I don't remember when I first talked to Clark Hill … but you are talking I believe the end of June – to mid-August [2013] was the time period where I explored different options and tried to deal with it.").

[41] See Mr. Beauchamp's handwritten notes dated August 26, 2013 ("TCW Denny Chittick (8/26/13) – left message – need to work on the latest version of POM that Denny has w/ the prior experience charts – need to discuss timing + update. TCW Denny Chittick (8/26/13) – explained delay w POM – need to get copy of Denny's latest POM make changes to it – BC will be sending a letter to Denny + letting Denny decide if he wants files kept at BC or move to CH").

[42] Page 289, lines 15-25, Deposition of Mr. Beauchamp ("Q. And you write, in your handwriting: Explained delay with POM. Did you write that? A. Yes, I did. … I believe it was a reference, again, to his decision to put it on hold for the time being, because he wasn't able to focus on it and get us the information. Q. You weren't explaining your delay on the POM, Mr. Beauchamp? A. No."); page 290, lines 11-14 ("Q. But unequivocally, it's your testimony under oath that by August 26, 2013, he told you to stop working on the POM? A. That is correct."). But see Deposition of Mr. Hood, page 101, lines 17-22 ("Q. So would you agree with me that in September 2013, *while he is working at Clark Hill*, Mr. Beauchamp is ordered by Mr. Chittick to stop working on the POM? A. Well, that's what appears to have been the case, according to Mr. Beauchamp's interrogatory answers, yes." [italics added]).

[43] See page 288, lines 5-7, Deposition of Mr. Beauchamp ("Q. And again, this wasn't by letter or email. You think this was a telephone conversation? A. That's how Denny preferred it.").

"2011 and 2013 Private Offering."[44] Although he asserts that Mr. Chittick directed him to stop all work on the POM just two weeks earlier,[45] Mr. Beauchamp also completed a "New Client/Matter Form" at Clark Hill to "Finish Private Offering Memorandum."[46]

Despite taking on DenSco as a client in September 2013, the Defendants appear to have done no work in updating the expired 2011 POM, nor made any effort to provide DenSco with a replacement POM, for over three months. By mid-December 2013, Mr. Chittick apparently had to prompt Mr. Beauchamp to resume work on an updated POM.[47]

Mr. Chittick's Instruction was the second of four "red flag" warnings, as discussed below.

4. The December 2013 Phone Call (the Third of Four "Red Flag" Warnings)

In December 2013, Mr. Chittick informed Mr. Beauchamp that certain properties DenSco had lent against had other liens competing for priority (the "December 2013 Phone Call"): "In December 2013, Mr. Chittick … told Mr. Beauchamp over the phone that he had run into an issue with some of his loans to Menaged, and specifically, that properties securing a few DenSco loans were each subject to a second deed of trust competing for priority with DenSco's deed of trust."[48] When Mr. Beauchamp found out about the double lien issue, he advised Mr. Chittick to document a "plan" with Mr. Menaged to resolve the double lien issue.[49] Based on the record I have reviewed, and despite this potentially material problem with a borrower that Mr. Beauchamp knew to be very important to DenSco's business (and the very same borrower that

---

[44] See email dated September 12, 2013 from Mr. Beauchamp to Mr. Chittick ("Denny: There should not be a cost associated with transferring your files. However, to be safe, we should just do the following: AZ Practice Review (contains previous research); Blue Sky Issues; Garnishments; General Corporate; 2011 and 2013 Private Offering.").

[45] Page 289, lines 15-25, and page 290, lines 11-14, Deposition of Mr. Beauchamp.

[46] See DIC0008653, Clark Hill New Client/Matter Form signed by Mr. Beauchamp on September 13, 2013.

[47] See email dated December 18, 2013 from Mr. Chittick to Mr. Beauchamp ("Since you moved, we've never finished the update on the memorandum."). The Defendants attempt to contradict the clear implication of this email by asserting that it was Mr. Beauchamp who reminded Mr. Chittick. See Defendants' DS, page 8 ("Mr. Beauchamp reminded Mr. Chittick that he still needed to update DenSco's private offering memorandum."). While I do not find Defendants' assertion credible under the circumstances, for the reasons discussed below, the Defendants were still obligated to take some form of corrective action.

[48] Defendants' DS, page 8.

[49] Defendants' DS, page 8 ("After briefly discussing the allegedly limited double lien issue, Mr. Chittick emphasized to Mr. Beauchamp that Mr. Chittick wanted to avoid litigation with other lenders. Mr. Chittick, however, did not request any advice or help. Rather, Mr. Chittick indicated that he wanted to continue working on a plan with Menaged to resolve the double-lien issue. Accordingly, Mr. Beauchamp suggested that Mr. Chittick and Menaged document their plan.")

was the apparent cause of the Freo Lawsuit),[50] there was no discussion or effort to update the POM to disclose this fact, nor does it appear that the Defendants did any investigation into the matter.

The December 2013 Phone Call was the third of four "red flag" warnings, as discussed below.

5. The Bryan Cave Demand Letter (the Fourth of Four "Red Flag" Warnings)

On January 6, 2014, Mr. Beauchamp received a copy of a demand letter sent by Bryan Cave to DenSco (the "Bryan Cave Demand Letter").[51] The letter stated that Bryan Cave represented certain lenders and lienholders that had loaned money to Easy Investments, LLC and/or Arizona Home Foreclosures, LLC (both entities owned and controlled by Mr. Menaged), to enable such borrowers to purchase various properties. The letter asserted that DenSco engaged in a practice of recording a mortgage on those same properties on or around the same time that the Bryan Cave lenders were recording their deeds of trust. The Bryan Cave Demand Letter demanded that DenSco agree to sign subordination agreements in favor of such lenders and lienholders with respect to the properties.

It is clear that, despite this very serious and material problem with a borrower that Mr. Beauchamp knew to be very important to DenSco's business (and the very same borrower that was the apparent cause of both the Freo Lawsuit and the December 2013 Phone Call),[52] there was no effort made to update the POM to disclose this fact, nor does it appear that the Defendants did any investigation into the matter. In fact, as discussed below, once the Bryan Cave Demand Letter came to his attention, Mr. Beauchamp's priority became drafting and negotiating the Forbearance Agreement (as defined below),[53] not updating the 2011 POM.

The Bryan Cave Demand Letter was the fourth of four "red flag" warnings, as discussed below.

6. The Defendants' Efforts to Paper Over the Menaged Problem

---

[50] Email dated June 14, 2013 from Mr. Chittick to Mr. Beauchamp, copying Mr. Menaged ("I've done a ton of business with [Mr. Menaged], million in loans and hundreds of loans for several years").

[51] Email dated January 6, 2014 from Mr. Chittick to Mr. Beauchamp, attaching letter dated January 6, 2014 from Bryan Cave to DenSco, re: "Mortgage Recordation; Demand for Subordination."

[52] Email dated June 14, 2013 from Mr. Chittick to Mr. Beauchamp, copying Mr. Menaged ("I've done a ton of business with [Mr. Menaged], million in loans and hundreds of loans for several years").

[53] See page 59, lines 19-24, Deposition of Mr. Beauchamp ("I was giving him clear advice as far as what to do, he would not let me independently confirm that he was giving that advice, which I – he said I've never lied to you, and on that basis, that was true, so we proceeded *the priority was the Forbearance Agreement at that time.*" [italics added])

a. Mr. Beauchamp Learned of the Menaged Fraud and DenSco's Improper and Risky Lending Practices

The day after receiving the Bryan Cave Demand Letter, Mr. Beauchamp was told that Mr. Chittick had not been following proper funding procedures to ensure DenSco's first lien position, and instead "would wire the money to [Mr. Menaged's] account and [Mr. Menaged, not DenSco] would pay the trustee."[54] Mr. Chittick explained his funding procedure, and also admitted that he did the same thing with several other borrowers and with respect to every auction property.[55] By funding directly to a borrower, rather than to a trustee or escrow company or in some other manner so as to ensure that DenSco had a perfected first lien priority position on the property securing its loan, DenSco was taking significant and unnecessary risk that it might not be in a first lien position with respect to such loans.[56] In fact, because DenSco was funding directly to borrowers *in anticipation* of a property acquisition, there was no way for DenSco to even ensure that the loan proceeds were actually used for such purpose. Mr. Beauchamp was well aware of the risks associated with this funding procedure as he had "provided advice to DenSco regarding proper loan documentation procedures since at least 2007."[57]

---

[54] Email dated January 7, 2014 from Mr. Chittick to Mr. Beauchamp, copying Mr. Menaged ("I've been lending to Scott Menaged through a few different LLC's and his name since 2007. I've lent him 50 million dollars and I have never had a problem with payment or issue that hasn't been resolved. … Because of our long term relationship, when Scott needed money, I would wire the money to his account and he would pay the trustee.").

[55] Ibid ("I do this same thing with several borrowers and bidding co's. As an example, he would buy a property at auction for 100k it's worth 145k, he would ask me for 80k. I would wire it to him, he would pay the trustee with my 80k and his 20k and he would sign the RM, which I've attached (all docs you have reviewed and have been reveiwed [sic] by a guy at your last law firm, maybe two firms ago in 2007). I've attached them. I would record the RM the day he paid for the property. Then once the trustee's deed was recorded, which during the last few years has been at times 6 weeks from the auction date to the recorded date, I then would record my DOT. This is a practice that I have done for 14 years. It's recognized by all the escrow co's. Some title agents won't see anything before the trustee's deed recording as a valid lien, some look at the whole chain. For me to be covered, I would record the RM to muddy up title then record the DOT after the trustee's deed to ensure my first position lien. … Again, *this is what I do on every single auction property no matter who is the borrower*." [italics added]). See, also, Plaintiff's DS ¶ 211.

[56] Mr. Menaged testified in his Rule 2004 Examination conducted on behalf of the Receiver on October 20, 2016 that: DenSco's lending practices were not as uniform or *careful* as other lenders (page 27); DenSco *never* declined a loan amount proposed by Mr. Menaged (page 38); "There was never anything not approved" (page 53); DenSco would wire the funds directly to Mr. Menaged (pages 43-44); DenSco would wire funds before receiving signed documents (page 54); DenSco did not require proof of insurance (page 56); "The only way that DenSco ended up in this position is because he wired the money to the borrower, me, and did not pay the trustee directly" (page 74); and "I guess in general terms, *it was just a very laxed hard money lending practice*, very, very, laxed" (page 39 [italics added]).

[57] See page 6, Defendants' DS ("Mr. Beauchamp … provided advice to DenSco regarding proper loan documentation procedures since at least 2007. DenSco and Mr. Chittick were both advised,

These improper and risky funding procedures were not disclosed in the 2011 POM. In fact, the 2011 POM incorrectly stated that DenSco's loans were funded so as to ensure first lien positions on such properties.[58]

Mr. Menaged fabricated a story to explain the double lien issue – a story which we now know to be false. As told by Mr. Menaged, because he was distracted with his wife's illness, he turned over certain business operations to his "cousin." The cousin would obtain a loan from DenSco, which DenSco wired directly, and the cousin would also obtain a loan from another lender, which lender would wire funds directly to the trustee. The cousin would file deeds of trust on behalf of both lenders, and then ultimately absconded with DenSco's funds.[59]

In fact, there was no such cousin. A simple search of records available on the County of Maricopa website showed that it was Mr. Menaged who executed those deeds of trust in the presence of a notary, and not any "cousin."[60]

b. Mr. Chittick and Mr. Menaged Create the "Plan"

Mr. Chittick shared with Mr. Beauchamp that he thought his options were limited. Mr. Chittick claimed that DenSco could not sign the subordination agreements demanded by the Bryan Cave

---

and understood, (a) that DenSco should fund loans through a trustee, title company or other fiduciary, (b) that DenSco was representing to its investors that DenSco's loans would be in first position, and (c) that it was of fundamental importance that DenSco safeguard the use of its investors' funds in conjunction with properly recording liens, in order to ensure that DenSco's loans were in first position.").

[58] See, e.g., page 37, 2011 POM ("All real estate loans funded by the Company have been and are intended to be secured through first position trust deeds.").

[59] See email dated January 7, 2014 from Mr. Chittick to Mr. Beauchamp, copying Mr. Menaged ("Sometime last year, [Mr. Menaged's] wife became ill with cancer. His cousin was working with him and took on a stronger day to day role as scott [sic] was distracted with his wife. Scott always was the one that determined what properties to buy, how much etc. his cousin doing paperwork, checks and management of the day to day. At some point his cousin decided to take advantage of our relationship and started to steal money. Scott would request a loan from me, his cousin would request a loan from another borrower (I would say there are as many as ½ dozen different lenders in total.) … What his cousin was doing was receiving the funds from me, then requesting them from the other lenders. These other lenders would cut a cashiers [sic] check for the agreed upon loan amount and then take it to the trustee and receive the receipt. … The cousin absconded with the funds."). See, also, Plaintiff's DS ¶ 215.

[60] See, e.g., Exhibit 103 (Deed of Trust and Security Agreement with Assignment of Rents, recorded in the Official Records of Maricopa County Recorder March 25, 2013, for property located at "7089 W Andrew Lane Peoria, AZ 85383." The Trustor is Easy Investments, LLC. The Beneficiary is Active Funding Group, LLC.); see, also, Exhibit 104 (Deed of Trust and Assignment of Rents, recorded in the Official Records of Maricopa County Recorder April 2, 2013, for property located at "7089 W Andrew Lane Peoria, AZ 85383." The Trustor is Easy Investments, LLC. The Beneficiary is DenSco.).

Demand Letter, because doing so would be contrary to the disclosures made by Mr. Chittick to DenSco's investors.[61] Further, Mr. Chittick claimed that DenSco could not litigate with the other lenders over the priority issue because doing so would somehow limit its ability to collect high interest on its loans.[62]

Mr. Chittick also shared with Mr. Beauchamp that he did not want to disclose the problem to DenSco's investors until the problem had been addressed and DenSco's exposure had been minimized.[63] Otherwise, DenSco would start to "unravel."[64] Mr. Chittick was concerned that when investors learned of the situation, there would be a "run on the bank."[65] Presumably, any such disclosure would also be viewed as an acknowledgment that Mr. Chittick failed in his responsibilities to properly manage DenSco's mortgage loans and investor funds, and thus he fell prey to Mr. Menaged's fraud.

Instead, Mr. Chittick shared with Mr. Beauchamp that he and Mr. Menaged had come up with a plan (the "Plan") to get the other lenders paid off, which would keep them satisfied,[66] avoid

---

[61] Email dated January 7, 2014 from Mr. Chittick to Mr. Beauchamp, copying Mr. Menaged ("I know that I can't sign the subordination because that goes against everything that I tell my investors.").

[62] See pages 169-170, lines 25-9, Deposition of Mr. Beauchamp ("He had expressed that if we ended up in litigation, that he would have limitations on his ability to collect the high interest on his loans to his borrowers, so he would not be able to make the payments to his investors, which would in fact cause it to unravel. He had a very specific thought that he was concerned with, and that is why he wanted to be able to show: We have a plan to work this out. We have thought it through. And that was his whole focus, get the forbearance done first.").

[63] See Exhibit 360, email dated February 25, 2014 from Mr. Chittick to Mr. Beauchamp ("what both of us [Mr. Menaged and Mr. Chittick] are really concerned about is that when I tell my investors the situation, they request their money back. I want to be able to say, this was a problem, we've eliminated this much of the problem and this is what it left. I want to be able to say what is left is as small as possible."). See, also, pages 169-170, lines 25-9, Deposition of Mr. Beauchamp.

[64] See pages 169-170, lines 25-9, Deposition of Mr. Beauchamp.

[65] See excerpt from DIC0009464, Chittick Investor Letter dated July 28, 2016 ("Why I didn't let all of you know what was going on at any point? It was pure fear … I have 100 investors, I had no idea what everyone would do or want to do … I also feared that there would be a classic run on the bank.").

[66] See, e.g., email dated January 12, 2014 from Mr. Chittick to Mr. Menaged, copying Mr. Beauchamp ("Greg [Reichman, Principal of Active Funding Group, LLC, an Arizona corporation, the other lender with a deed of trust on the property that was the subject of the Freo lawsuit] has confirmed with Scott and has told me, as long as he gets his interest and payoffs come, he's happy.").

litigation,[67] and give Mr. Chittick time to minimize the damage caused by Mr. Menaged's fraud.[68]

Mr. Chittick's Plan was to be memorialized in a forbearance agreement, which Mr. Beauchamp spent over three months negotiating until it was finalized and executed on April 16, 2014 (the "Forbearance Agreement").[69]

Despite learning of the very serious issues raised by the Bryan Cave Demand Letter (which were consistent with the problems Mr. Beauchamp learned about earlier in the Freo Lawsuit and the December 2013 Phone Call), the material deficiencies in DenSco's funding procedures, the significant deficiencies in DenSco's first lien positions, and the fraud perpetrated on DenSco, the Defendants appear to have done no work in updating the 2011 POM, nor made any effort to provide DenSco with a replacement POM, for the entire period of time that Mr. Beauchamp was working on the Forbearance Agreement.

c. The Forbearance Agreement

[67] See, e.g., email dated January 7, 2014 from Mr. Chittick to Mr. Beauchamp, copying Mr. Menaged ("What we need is an agreement that as long as the other lenders are being paid their interest and payoffs continue to come (we have 12 more houses in escrow currently, all planned to close in the next 30 days), that no one initiates foreclosure for obvious reasons, which will give us time to execute our plan").

[68] Ibid ("The Plan: 1. All lenders will be paid their interest, except me, I'm allowing interest to accrue. 2. I'm extending him a million dollars against a home at 3%. 3. He is bringing in 4-5 million dollars over the next 120 days from liquidating some assets as well as getting some money back that the cousin stole, and other sources. 4. He's got a majority of these houses rented, this brings in a lot of money every month. 5. The houses that he's buying now and will be flipping will bring in money every week starting next week or two. 6. As the houses become vacant either because of ending the lease or the tenant leaves, scott [sic] will fix up the house and sell it retail. This will drive the order in which the houses will be sold. 7. He owns dozens of houses that only have one lien on them and have substantial equity in them, and he'll be selling these as the tenants vacate.").

[69] Forbearance Agreement dated April 16, 2014 by and among Arizona Home Foreclosures, LLC, Easy Investments, LLC (collectively defined therein as the "Borrower"), Mr. Menaged and DenSco (as "Lender").

The magnitude of the problems with Mr. Menaged are readily apparent from the Forbearance Agreement, which recited that as of April 16, 2014, "the total principal sum now due and payable under the [scheduled] Loans, in aggregate, is $35,639,880.71."[70]

Although the Forbearance Agreement required Mr. Menaged to "acknowledge and agree that the Loans are in Default,"[71] the principal economic commitment made by Mr. Menaged was for the Borrower to "use its *good faith efforts*" to pay off the other lenders, with "*any balance* to be paid to [DenSco] to reduce the amount of [DenSco's] Additional Loan … to Borrower as provided herein."[72] As Mr. Menaged testified, he was unwilling to make an unconditional commitment to do so.[73]

On the other hand, the Forbearance Agreement imposed material obligations and economic burdens *on DenSco*, including:

- DenSco agreed to forbear from collecting on the loans to Mr. Menaged and his affiliated entities (the "Menaged Loans"), or otherwise exercising any of its rights or remedies under the Loan Documents and applicable law, for so as long as Mr. Menaged and the Borrower were in compliance with the Forbearance Agreement.[74]

- DenSco agreed to extend the maturity date on all of the Menaged Loans to February 1, 2015 and reserved the right to further extend the maturity date for another year.[75]

---

[70] Section 1, Forbearance Agreement. See also pages 9-10, lines 25-2, Defendants' DS ("by the end of 2013, more than half of [DenSco's] loan portfolio was tied up with Menaged--well in excess of the promised loan concentrations DenSco had set forth in its disclosures to investors").
[71] Section 2, Forbearance Agreement.
[72] Sections 6(A) and 6(H), Forbearance Agreement [italics added]. The Forbearance Agreement did provide DenSco with a separate corporate guaranty from Furniture King, LLC (see Section 6(D)); however, Mr. Beauchamp failed to cause a UCC-1 to be filed against the new guarantor, and such entity ended up having no value. See email dated August 5, 2016 from Mr. Beauchamp to DenSco's Noteholders.
[73] See pages 117-119, lines 23-9, Mr. Menaged's Rule 2004 Examination conducted on behalf of the Receiver on October 20, 2016 ("Q. And did -- so at the time, when you signed [the Forbearance Agreement], did you believe that this was never going to happen? A. I said that I would make my best effort to do so, and in front of Beauchamp and DenSco I did explain to him -- what they both told me, both of them told me was, 'Hey, this is all really best efforts. You do your best, but we're going into this forbearance agreement. It's protecting everyone. End of story.' That's all I really know about this forbearance agreement. Q. Okay. But these funds were not delivered on these dates and times, right? A. Correct. Q. And the reason for that was why? A. Like I said, it was best effort. My best effort couldn't deliver those funds.").
[74] Section 4, Forbearance Agreement.
[75] Section 5, Forbearance Agreement.

- DenSco committed to fund not less than an additional $6 million to the Borrower, most of which would be used to pay off the other lenders.[76]

- DenSco agreed to defer the collection of interest on all Menaged Loans,[77] and to waive its right to charge default interest on all defaulted loans.[78]

- Contrary to the disclosures made in the 2011 POM, DenSco agreed to increase its loan-to-value ratio to up to 120% for loans on the double lien properties (meaning that the debt on such properties was materially in excess of the realizable value of such properties).[79]

- DenSco committed, for the benefit of Mr. Menaged, to limit the information that DenSco could disclose to its investors (including omitting the names of Mr. Menaged and his entities), and granted Mr. Menaged the right to review and comment on any disclosure prior to it being released.[80]

As a result, the benefit of the Forbearance Agreement to DenSco (as opposed to Mr. Menaged and perhaps Mr. Chittick individually) is unclear.[81] In substance, because it had the effect of subordinating DenSco's recovery to the recovery of the other lenders (by conceding the priority of the other lenders' liens), the Forbearance Agreement was essentially the same as the subordination agreements that Mr. Chittick rejected as being inconsistent with assurances made to DenSco's investors. By allowing the other lenders to be paid off before DenSco, Mr. Chittick's Plan, as effectuated by the Forbearance Agreement, had the effect of worsening DenSco's financial position by increasing the leverage on the double lien properties such that there was insufficient residual equity value to repay DenSco's loans in full.

It does not appear to be the case that execution of the Forbearance Agreement itself (as opposed to the speculative benefits DenSco might possibly receive going forward, when and if so received) would provide Mr. Chittick with the positive message he wanted to share with investors that DenSco's exposure had been minimized (especially since DenSco committed to extend at least another $6 million to Mr. Menaged). In other words, because Mr. Chittick had

---

[76] Sections 7(B) and 7(D), Forbearance Agreement.
[77] Section 7(C), Forbearance Agreement.
[78] Section 7(E), Forbearance Agreement.
[79] Section 7(A), Forbearance Agreement.
[80] Section 18, Forbearance Agreement ("With respect to the limitation on Lender's disclosure to its investors … Lender agrees … to limit such disclosure as much as legally possible").
[81] See page 92 of Mr. Menaged's Rule 2004 Examination conducted on behalf of the Receiver on October 20, 2016, in which his testimony suggests that Mr. Chittick proposed the Forbearance Agreement in order to protect Mr. Chittick ("Q. … Was it -- you know, when you learn or when you tell him that he's in second position, how does this forbearance agreement come to light? How does this get negotiated and drafted and prepared? A. He said to me that he was going to contact his attorney and *have an agreement drawn up to protect him*. That's how it came to light." [italics added]). See, also, page 98 ("He needed, the attorney, he needed to draft the agreement in a way that will *protect Denny* from any kind of liability with the investors." [italics added]).

explained to Mr. Beauchamp that he did not want to make disclosures until much of the double lien problem had been resolved,[82] Mr. Beauchamp could not have reasonably believed that the completion of the Forbearance Agreement itself would prompt Mr. Chittick to make appropriate disclosures. In fact, the Defendants pursuit of the Forbearance Agreement had the effect of further delaying and limiting required disclosures to DenSco's investors.

7. Defendants Allege They Withdrew from Representing DenSco in May 2014

Mr. Beauchamp claimed he was not aware that DenSco had been continuing to offer Notes until after completion of the Forbearance Agreement, at the end of April or May 2014. Mr. Beauchamp further claimed that the Defendants withdrew from the attorney-client relationship with DenSco in May 2014 when Mr. Chittick refused to send updated disclosures to investors.[83]

However, based on the record I have reviewed, and for the following reasons, it is clear that Mr. Beauchamp was aware that DenSco was continuing to offer Notes without updated disclosures, after the expiration of the 2011 POM, and despite his knowledge of the problems revealed in the Freo Lawsuit, the December 2013 Phone Call and the Bryan Cave Demand Letter.

First, despite his initial delay in updating the 2011 POM due to unfounded legal concerns about the size of the offering, there is no evidence that Mr. Beauchamp communicated to Mr. Chittick to cease offering Notes until an updated POM could be provided to investors.[84]

---

[82] See email dated February 25, 2014 from Mr. Chittick to Mr. Beauchamp ("I want to be able to say, this *was* a problem, *we've eliminated this much of the problem and this is what it left. I want to be able to say what is left is as small as possible*." [italics added]). See, also, Mr. Chittick's entry in his DenSco Journal on February 21, 2014 ("I talked to Dave … we talked about telling my investors, we are going to put that off as long as possible so that we can improve the situation as much as possible.").

[83] See page 81, lines 1-8, Deposition of Mr. Beauchamp ("I was not aware that he was taking any new money from new investors or rollovers … until the end of April or May [2014] which forced us to give him the disclosure … for the Forbearance Agreement and say … we have to finish this thing … we need to send this to everybody before you proceed. … And he did not do it so we quit."); Defendants' DS, page 23 ("In May 2014, ... Mr. Beauchamp informed Mr. Chittick that Beauchamp and Clark Hill could not and would not represent DenSco any longer.").

[84] I note, however, that Mr. Beauchamp asserted in his deposition testimony that he told Mr. Chittick that "he could not take any money from any new client [and]; he could not take any rollover money from an existing client, without giving them full disclosure." See page 78, lines 16-19, Deposition of Mr. Beauchamp. For the reasons stated herein, I do not find this assertion credible. However, even if true, such statement appears to simply be paying lip service to proper advice. See also Deposition of Mr. Hood, pages 83-84, lines 24-10 ("Q. Mr. Beauchamp never gave that advice prior to January 9th, 2014.… Clark Hill verified he gave the advice starting on January 9, 2014, and thereafter. True? … THE WITNESS: … I think that was right at the time that this issue was presented to Mr. Beauchamp."), pages 85-86, lines 21-5 ("Q. All right. In December 2013, Mr. Beauchamp did not tell Mr. Chittick he had to stop lending money. True? … THE WITNESS: I - - I don't believe that he told Mr. Chittick that, no. Q. And in December

Second, Mr. Beauchamp knew that between June and December 2013, DenSco had 60 Notes that were scheduled to mature and that, consistent with Mr. Chittick's practice, a significant portion of those outstanding Notes would be rolled over into the issuance of new Notes.[85]

Third, several days *after* receipt of the Bryan Cave Demand Letter and Mr. Chittick's explanation of his funding procedures, the Menaged fraud, and his Plan to address the problem, Mr. Chittick specifically informed Mr. Beauchamp that he was soliciting new investors. On January 12, 2014, Mr. Chittick emailed Mr. Beauchamp, stating that he had "spent the day contacting every investor that [had] told [him] they want[ed] to give [him] more money," and that he expected to raise between $5 million and $6 million from the sale of Notes.[86] Mr. Chittick further inquired whether such actions were acceptable to Mr. Beauchamp: "that's my plan, shoot holes in it."[87] Mr. Beauchamp responded that same day, and not only did he fail to "shoot holes it" (e.g., by instructing Mr. Chittick to not sell Notes without updated and corrected disclosures), he congratulated Mr. Chittick for his ability to "raise that amount of money that quickly."[88]

Fourth, shortly after receipt of the Bryan Cave Demand Letter, Mr. Chittick made a statement to such effect in the corporate journal that he maintained (the "DenSco Journal"). On January 10, 2014, he wrote in the DenSco Journal: "I can raise money according to Dave."[89]

2013, he didn't tell Mr. Chittick that he couldn't take any rollover monies. True? … THE WITNESS: I - - I don't believe so.").

[85] See email dated June 20, 2013 from Mr. Beauchamp to several colleagues at Bryan Cave ("According to his note schedule, Denny has approximately 60 investor notes that are scheduled to expire in the next 6 months (and to probably be rolled over into new notes)"). See also Plaintiff's DS ¶ 18 ("Beauchamp knew that the vast majority of DenSco's investors purchased two-year promissory notes. For example, Beauchamp's notes reflect that Chittick told him during a May 3, 2007 meeting that 90% of the promissory notes DenSco had issued to investors were two-year notes."); Plaintiff's DS ¶ 19 ("Beauchamp also knew that the vast majority of DenSco's investors did not redeem their promissory notes when those notes matured, and instead 'rolled over' their investments by executing a subscription agreement and buying a new promissory note when a previous promissory note matured. As Beauchamp wrote in a June 15, 2007 e-mail to Richard Carney, who was then doing 'Blue Sky' work for DenSco, 'DenSco has regular sales of roll-over investments' and an 'ongoing roll-over of the existing investors every 6 months or so.'").

[86] Email dated January 12, 2014 from Mr. Chittick to Mr. Beauchamp ("*I've spent the day contacting every investor that has told me they want to give me more money… I feel like if all goes well, I'll have my money in total of … 5-6 million in this time frame*. … that's my plan, shoot holes in it." [italics added]).

[87] Ibid.

[88] Email response dated January 12, 2014 from Mr. Beauchamp to Mr. Chittick ("You should feel very honored that you could raise that amount of money that quickly.").

[89] See, also, Mr. Chittick's entry in the DenSco Journal on February 21, 2014 ("I talked to Dave … we talked about telling my investors, we are going to put that off as long as possible so that we can improve the situation as much as possible.").

Fifth, although Mr. Beauchamp claimed that he believed Mr. Chittick provided full disclosure to every investor about the fraud,[90] that is implausible based on the record I have reviewed. Mr. Beauchamp knew that Mr. Chittick did not want to make *any* disclosures until the Plan had been implemented and the damage contained. Further, although the Defendants assert to the contrary,[91] Mr. Beauchamp knew that there was no proper disclosure mechanism other than pursuant to a new or supplemental POM, and Mr. Beauchamp had neither provided nor reviewed any such documentation – oral disclosures by Mr. Chittick would have been insufficient (as Mr. Beauchamp acknowledged in his deposition).[92] Mr. Beauchamp's claim that Mr. Chittick had provided full disclosure about the fraud is also inconsistent with the purported rationale for withdrawing from the representation of DenSco. In other words, had Mr. Chittick on his own in fact prepared and actually made such disclosures (as Mr. Beauchamp asserted he believed at the time, according to his deposition testimony), then presumably Mr. Beauchamp would have no reason for withdrawing based on Mr. Chittick's supposed failure to have done so.

Sixth, it does not appear that the Defendants in fact provided DenSco with the necessary disclosures that they claim Mr. Chittick refused to send to investors. Although the Defendants prepared a draft markup of the 2011 POM (the "Draft 2014 POM"),[93] that draft – which failed to even mention the Menaged fraud – did not contain adequate disclosure of the problems that DenSco had suffered, nor of its failures to comply with the commitments made in the 2011 POM, nor of the magnitude of DenSco's potential losses.[94] Further, it is not clear from the

---

[90] See pages 343-344, lines 12-2, Deposition of Mr. Beauchamp ("Q. Mr. Beauchamp, are you telling me under oath that you thought from … the end of January that he … talked [to] every investor who had money in DenSco and told them about the fraud? … A. Yes, I did believe he had."); see, also, page 79, lines 3-6 ("he had assured me he wasn't taking any new money or any rollover money, which was deemed new under the circumstances, from any investor without telling them exactly what was going on.").

[91] See page 15, lines 1-2, Defendants' DS ("There was no reason for Mr. Beauchamp to question whether Mr. Chittick was in fact providing disclosures to limited investors.").

[92] See page v, 2011 POM ("No person has been authorized to give any information or to make any representations concerning the Company other than as contained in this Confidential Private Offering memorandum, and if given or made, such other information or representations must not be relied upon." [quoted text was upper case bold in original]). See, also, page 161, lines 7-24, Deposition of Mr. Beauchamp ("His representations that he had advised everybody and told them to the contrary, we needed something much more formal than that.").

[93] See Exhibit 11, Clark Hill invoice dated June 19, 2014 for services rendered through May 31, 2014 ("5/14/14 [Daniel A. Schenck]… Additional revisions to Private Offering Memorandum; finish first draft."); pages 92-95, lines 7-8, Deposition of Daniel Schenck on June 19, 2018 ("Q. So it looks like you finished the first draft on May 14th, 2014, right? A. Yes."). See, also, Exhibit 407 to the Deposition of Mr. Beauchamp, draft Confidential Offering Memorandum dated May 2014.

[94] While the Draft 2014 POM added a detailed (although incomplete) summary of the terms of the Forbearance Agreement, in my opinion such disclosure was inadequate for the following reasons. First, the added disclosure was buried on pages 39 and 40 of the 63-page Draft 2014 POM. Second, in neither the added disclosure nor anywhere else in the Draft 2014 POM did the

record I have reviewed that the Draft 2014 POM prepared by the Defendants was ever shared with Mr. Chittick.[95]

Seventh, in a letter Mr. Chittick sent to his sister, Shawna Heuer (also known as "Iggy"; the "Iggy Letter"),[96] Mr. Chittick repeatedly stated that Mr. Beauchamp never made him tell investors about the Menaged fraud.[97] The letter also stated, "Shame on him. He shouldn't have allowed me. He even told me once I was doing the right thing."[98]

Defendants include any mention of either of the following material facts: (a) DenSco's improper and risky funding procedures (i.e., wiring funds directly to the borrower instead of a trustee or escrow agent) led to the Menaged fraud; and (b) DenSco had been named as a defendant in the Freo Lawsuit. Third, although the added disclosure may have suggested otherwise, the remainder of the Draft 2014 POM remained unchanged from the 2011 POM with respect to the following material and prominent disclosures: (i) "[t]he proceeds of the offering will be used as working capital primarily for lending secured by, and the purchase of, Trust Deeds" (see page 2, Draft 2014 POM), even though the additional loans to Mr. Menaged and his affiliated entities under the Plan were being used to pay off the other lenders; (ii) "[t]he Company does not intend to exceed a maximum loan size of $1,000,000.00" (see page 1, Draft 2014 POM), even though DenSco agreed in the Forbearance Agreement to loan Mr. Menaged and his affiliated entities up to $6 million; (iii) "[t]he Company intends to maintain a loan-to-value ratio below 70% in the aggregate for all loans in the portfolio" (see page 1, Draft 2014 POM), even though presumably most if not all of the properties subject to the Forbearance Agreement had a loan-to-value ratio well in excess of 100% (see pages 39-40, Draft 2014 POM: "many of the Forbearance Properties having an aggregate loan-to-value ratio in excess of 100%"); and (iv) "one borrower [would] not comprise more than 10 to 15 percent of the total portfolio" (see page 37, Draft 2014 POM), even though it was apparent that Mr. Menaged and his affiliated entities materially exceeded that cap. And, fourth, the "Risk Factors" section of the Draft 2014 POM (beginning on page 12) was not updated to address any of the foregoing risks nor to add any disclosure of the risks associated with the prior sale of Notes pursuant to materially inaccurate and outdated disclosures, including potential exposure to claims for rescission and securities fraud.

[95] See Plaintiff's DS ¶ 326 ("Neither the Clark Hill file nor Clark Hill's billing statement reflect that Beauchamp ever sent the draft POM to Chittick or discussed it with him.").

[96] DIC0009476, the Iggy Letter dated July 28, 2016, the date Mr. Chittick committed suicide. On that date, Mr. Chittick also prepared, but did not send out, a letter to investors. Instead, he sent the investor letter to Mr. Beauchamp and Ms. Heuer, instructing Ms. Heuer to let Mr. Beauchamp "handle it." See Iggy Letter dated July 28, 2016 ("I decided not to send the investor letter out, but I sent it to my attorney and you … Don't share it with anyone. Let Dave Beauchamp – 480-684-1100, handle it (keep his name and number you may need it later. [sic] The legal consequences are going to be huge.").

[97] Ibid ("Dave did a work out agreement with Scott … yet Dave never made me tell the investors"; "I talked Dave my attorney in to allowing me to continue without notifying my investors."; "Dave my attorney … let me get the workout signed not tell the investors and try to fix the problem. That was a huge mistake.").

[98] Ibid. See, also, excerpt from DenSco Journal dated July 31, 2014, maintained by Mr. Chittick ("It's all going in the right direction, just not sure if it's going fast enough. *As long as David doesn't bug me*, I feel like we are doing the right thing." [italics added]).

Eighth, because Mr. Chittick would have been required to disclose, among other things, DenSco's failures with respect to its first lien positions, loan-to-value ratios, and diversity of its borrowers, and the cause of such failures (including Mr. Chittick's negligence), as well as its exposure to civil and criminal consequences for securities fraud (including the possible right of all Noteholders to demand rescission), Mr. Beauchamp could not have reasonably believed that the sophisticated accredited investors targeted by DenSco would have been inclined to invest in Notes.

As to Mr. Beauchamp's claim that the Defendants withdrew in May 2014 when Mr. Chittick refused to send updated disclosures to investors, the record I have reviewed does not contain any written communication or other documentation to corroborate such claim.[99] In my experience, based on custom and practice, I would have expected under these circumstances that the Defendants would have communicated the fact of their withdrawal in writing to Mr. Chittick, and would have also had some form of internal documentation as well (i.e., to close the file).[100] In addition, although they were no longer working toward updating the POM,[101] the Defendants continued to provide, and bill for, legal services to DenSco through mid-July 2014,[102] and solicited additional legal work from DenSco as late as August 20, 2014[103] – which further suggests that they did not withdraw at the time they assert they did.

---

[99] See Arizona Rules of Professional Conduct, Rule 1.3, Comment [4] ("If a lawyer has served a client over a substantial period in a variety of matters, the client sometimes may assume that the lawyer will continue to serve on a continuing basis unless the lawyer gives notice of withdrawal. Doubt about whether a client-lawyer relationship still exists should be clarified by the lawyer, *preferably in writing*, so that the client will not mistakenly suppose the lawyer is looking after the client's affairs when the lawyer has ceased to do so." [italics added]).

[100] Not only did the Defendants not close their files, but Mr. Beauchamp continued to bill his time in 2016 to the "General" and "Business Matters" file matters that Clark Hill established in January 2014. See Plaintiff's DS ¶¶ 393(c) & 393(d).

[101] See pages 218-219, lines 24-1, Deposition of Mr. Beauchamp ("Q. Were you bugging [Mr. Chittick] to do a private offering memorandum in July 2014? A. No.").

[102] See Exhibit 12, Clark Hill invoice dated July 19, 2014 for services rendered through June 31, 2014 (e.g., "06/11/14 DGB [David G. Beauchamp] Review and respond to multiple emails; transmit information to D. Chittick"; and "06/13/14 DAS [Daniel A. Schenck] Revise Authorization form and prepare new slip sheets for updated figures; attorney conference regarding Authorization form; prepare instruction letter to client"); Exhibit 13, Clark Hill invoice dated August 19, 2014, for services rendered through July 31, 2014 (e.g., "07/15/14 DGB Review, work on and respond to several emails; review documents, spread sheets and outline issues and additional schedule needed"; and "07/15/14 DAS Multiple correspondence regarding loan balance spreadsheets.").

[103] See letters dated May 23, June 25, July 16 and August 20, 2014, from Mr. Beauchamp to Mr. Chittick, transmitting invoices for legal services ("Thank you again for allowing Clark Hill and me to provide legal services to DenSco Investment Corporation. If you have any question or *if we can assist you with any other matter(s), please let me know*." [italics added]).

Although it is not at all clear from the record that the Defendants in fact withdrew, it is apparent that Mr. Chittick and Mr. Beauchamp had limited or no contact between July 2014 and March 2015. On March 13, 2015, Mr. Beauchamp emailed Mr. Chittick, expressing a desire to meet with Mr. Chittick, to discuss "how things have progressed for [Mr. Chittick] since [the prior] year."[104] Mr. Beauchamp informed Mr. Chittick that he had been reflecting on the events surrounding the Menaged fraud, that he had second guessed himself about many things in the process, and that he wanted to protect Mr. Chittick as much as he could during the forbearance settlement process.[105] Mr. Beauchamp's email suggests that the Defendants did not in fact withdraw, but rather Mr. Beauchamp just stopped calling Mr. Chittick so as to avoid any concerns Mr. Chittick might have had that he "was just trying to add more attorneys fees."[106]

Mr. Chittick's entries in the DenSco Journal regarding Mr. Beauchamp's invitation to meet and their subsequent lunch meeting suggest that the Defendants did not in fact withdraw from representing DenSco, but rather were simply giving him time to implement his Plan. Mr. Chittick wrote in his DenSco Journal on March 13, 2015, "At 11pm I got an email from Dave my attorney wanting to meet. *He gave me a year to straighten stuff out we'll see what pressure I'm under to report now*."[107] In a further entry dated March 24, 2015 (the date of their lunch meeting), Mr. Chittick wrote, "I had lunch with David Beauchamp, *I was nervous he was going to put a lot of pressure on me*. However, he was thrilled to know where we were at and I told him by April 15th, we'll be down to 16 properties with seconds on them … *He said he would give me 90 days* … I'm going to slow down the whole memorandum process too."[108]

---

[104] Email dated March 13, 2015 from Mr. Beauchamp to Mr. Chittick ("Denny: I would like to meet for coffee or lunch … so we can sit down and talk about how things have progressed for you since last year. I also would like to <u>listen</u> to you about your concerns, and frustrations with how the forbearance settlement and the documentation process was handled … I have second guessed myself concerning several steps in the overall process, but I wanted to protect you as much as I could. When I felt that your frustration had reached a very high level, I stopped calling you about how things were going so that you did not feel I was just trying to add more attorneys fees. I planned to call you after about 30 days, but then I let it slip all of last year because I kept putting it off. I even have tried to write you several different emails, but I kept erasing them before I could send them. I acknowledge you were justifiably frustrated and upset with the expense and how the other lenders (and Scott at times) seemed to go against you as you were trying to get things resolved last year for Scott. I have tried to let time pass so that we can discuss if you are willing to move beyond everything that happened and still work with me. If not, I would like you to know that I still respect you, what you have done and I would like to still consider you a friend. You stood up for Scott when he needed it and I truly believe it was more than just a business decision on your part.").

[105] Ibid. Notably, Mr. Beauchamp did not state that he wanted to protect DenSco.

[106] Ibid ("When I felt that your frustration had reached a very high level, I stopped calling you about how things were going so that you did not feel I was just trying to add more attorneys fees."). Had the Defendants in fact withdrawn, there would have been no basis for Clark Hill to charge DenSco for any such calls.

[107] Excerpt from DenSco Journal dated March 13, 2015 [italics added].

[108] Excerpt from DenSco journal dated March 24, 2015 [italics added].

Mr. Chittick and Mr. Beauchamp resumed actively working together again in 2016, when Mr. Beauchamp began helping Mr. Chittick with an issue involving an audit by the Arizona Department of Financial Institutions.[109] Mr. Beauchamp testified that, at that time, Mr. Chittick confirmed he had made full disclosure to DenSco's investors.[110] However, it does not appear that Mr. Beauchamp asked any questions or took any action to verify Mr. Chittick's alleged statement, and I have seen no evidence that such alleged statement was in fact true.

C. Events Following Mr. Chittick's Suicide

In the months following Mr. Chittick's suicide on July 28, 2016, the Defendants continued representing DenSco.[111] Based on Clark Hill's invoices, it appears that beginning on July 30, 2016, and continuing at least through September 23, 2016, Mr. Beauchamp billed DenSco for matters relating to the wind down or transition of DenSco's business.[112] In August 2016, Mr. Beauchamp completed a New Business Intake Form to open a new matter for DenSco, entitled "Business Wind Down."[113] In completing the Form, Mr. Beauchamp affirmed that "a check [had] been run for any client, issue or business conflict," and checked the box indicating "no" in response to the inquiry "Is there any potential for a client, issue or business conflict?".

During this same time period, the Defendants began representing the Estate of Denny J. Chittick (the "Chittick Estate").[114] Also in August 2016, Mr. Beauchamp completed a New Business

---

[109] See page 23, Defendants' DS ("Clark Hill stopped working with DenSco and Mr. Chittick in any capacity until 2016, when Mr. Chittick requested that Mr. Beauchamp assist with a very limited issue involving an audit by the Arizona Department of Financial Institutions.").

[110] See page 230, lines 4-8, Deposition of Mr. Beauchamp ("Q. Before you took him on as a client and billed him, did you ask him if he had ever complied with your advice and issued a new private offering memorandum? A. I had asked him if he had done full disclosure to his investors and he said yes.").

[111] See, e.g., Exhibit 425, Affidavit of Ryan Lorenz dated June 21, 2017 (in which Mr. Lorenz, a "member in the firm of Clark Hill," confirmed that after Mr. Chittick's death, "the Firm transitioned the subject matter of its work to advice and guidance to DenSco to assist it in winding down its business.").

[112] See Clark Hill invoices dated August 10, 2016 (e.g., time entry on July 30, 2106 referencing "Telephone call … regarding transition after death of D. Chittick"), September 12, 2016 ("RE: Business Wind Down") and October 18, 2016 ("RE: Business Wind Down"). Such invoices reflect that Mr. Beauchamp recorded 164.8 hours of services from July 30, 2016 through September 23, 2016.

[113] Clark Hill New Business Intake Form, Exhibit 708 to Deposition of Edward Joseph Hood, the Co-General Counsel of Clark Hill, on February 8, 2019. Although the Form appears to have been approved by Mr. Beauchamp on August 23, 2016, as indicated in the Clark Hill invoices Mr. Beauchamp began billing his time to this new matter on August 1, 2016.

[114] See Exhibit 213 to Deposition of Mr. Beauchamp, email dated August 3, 2016 from Mr. Beauchamp to DenSco investors ("As part of the plan moving forward, we have filed the Will of Denny J. Chittick ('Denny's Will') and the necessary filings with the Probate Court to have Shawna designated as the Personal Representative of Denny's Estate, which is what Denny's Will provides.").

Intake Form for the Chittick Estate as a new client.[115] In completing this Form, Mr. Beauchamp also affirmed that "a check [had] been run for any client, issue or business conflict," and checked the box indicating "no" in response to the inquiry "Is there any potential for a client, issue or business conflict?". Clark Hill entered into an engagement letter with Mr. Chittick's sister, Shawna Heuer, dated August 2, 2016, with respect to the Chittick Estate.[116]

Despite the fact that Mr. Beauchamp indicated on both New Business Intake Forms that there was no potential for a conflict of interest, Mr. Beauchamp testified that he had "extensive" discussions with Ms. Heuer regarding the attorney-client relationship, including potential conflicts that he and Clark Hill had with respect to representing DenSco, and that Clark Hill was concerned about potential claims that could be made against it regarding Mr. Beauchamp's representation of DenSco.[117] In addition, Edward Joseph Hood, the Co-General Counsel of Clark Hill, testified that, as of early August 2016, "it was a possibility" that Clark Hill could reasonably anticipate that a receiver for DenSco might sue the firm for damages.[118] I have seen no evidence in the record I have reviewed of any conflict waivers provided by or on behalf of either DenSco or the Chittick Estate.

With the assistance of Clark Hill as counsel to the Chittick Estate, Ms. Heuer was appointed the personal representative of the Chittick Estate on August 4, 2016.[119] Mr. Beauchamp testified that the Defendants resigned from representing the Chittick Estate immediately after the probate proceeding,[120] although the record I have reviewed does not contain any paperwork terminating

---

[115] Exhibit 707 to Deposition of Mr. Hood, Clark Hill New Business Intake Form. This Form appears to have been approved by Mr. Beauchamp on August 3, 2016.
[116] Exhibit 707, Deposition of Mr. Hood.
[117] See pages 447-448, lines 19-15, Deposition of Mr. Beauchamp ("Q. Did you have a discussion with Shawna about what the attorney/client relationship was with her, with respect to your representation of DenSco? A. Yes, extensive. Q. Did you discuss with her potential conflicts of interest that you and Clark Hill would have with respect to representing DenSco? A. Yes. … Q. Did you disclose to her that Clark Hill was concerned about potential claims that could be made against Clark Hill regarding your representation of DenSco? A. Yes.").
[118] See page 140, lines 10-20, Deposition of Mr. Hood ("Q. All right. On August 2nd, August 3rd, 2016, with all of the information that Clark hill [sic] knew, could Clark Hill reasonably anticipate that a receiver might sue Clark Hill for damages? … THE WITNESS: … I suppose it was a possibility"). See also page 145, Deposition of Mr. Beauchamp (referring to a letter dated August 9, 2016 from Kevin Merritt of Gammage & Burnham to Mr. Beauchamp: "Since you are meeting with Wendy, for the moment it seems that you are still representing DenSco in some capacity. *While you have conflict issues, do you expect Clark Hill to have to resign from all representations* or do you think Clark Hill can continue to represent the estate since your firm filed the probate, or is it still being sorted through?" [italics added]).
[119] See Exhibit 216, Deposition of Mr. Beauchamp, Letters of Appointment of Personal Representative and Acceptance of Appointment as Personal Representative, submitted by Clark Hill, signed by Clerk of the Superior Court on August 4, 2016.
[120] See page 476, lines 5-20, Deposition of Mr. Beauchamp ("Let's turn to Exhibit 216. And just to get it in our timeframe, this is the probate petition … for the appointment of a personal representative for Mr. Chittick's estate. A. Correct. Q. So it's filed on August 4th, and Clark Hill is representing the petitioner, right? A. And we resigned immediately after this. Q. Right. And

the attorney-client relationship with the Chittick Estate. However, on August 15, 2016, Mr. Beauchamp, in responding to an email inquiry from a title insurance company, stated that the Defendants were no longer counsel to the Chittick Estate, and that they had resigned "*[d]ue to potential conflicts of interest*."[121] Mr. Beauchamp's former firm, Gammage & Burnham, became legal counsel for the Chittick Estate.

Despite concerns with respect to such conflicts of interest, on August 3, 2016, Mr. Beauchamp began corresponding directly with DenSco's investors stating his intent "to determine the best procedure to close down DenSco's business and return the capital contributed by DenSco's investors."[122]

In his email to investors on August 3, 2016, Mr. Beauchamp suggested that it was not in the financial interests of the investors to have a receiver or trustee appointed to conduct the wind down of DenSco (nor in the financial interests of any investor to have a supervisory role by being appointed to DenSco's board of directors):

> "If whoever is in charge of DenSco does not work with the Investors, then DenSco will either be put into bankruptcy or have a Receiver appointed, which will incur costs on behalf of the Investors and DenSco that will *significantly reduce what will be available to return to the Investors*. For example, one of the recent reports concerning liquidation of companies owing money to investors indicated that *the costs associated with a bankruptcy or a Receiver can reduce the amount to be paid to investors by almost half or even a much more significant reduction*…. In order to maximize the available return to all of the Investors … we would like to keep DenSco out of a protracted bankruptcy or a contentious Receivership proceeding… As indicated above, various studies have shown that the third party costs and legal and other professional fees and costs and the inherent delays in bankruptcy and / or Receivership proceedings can consume more than 35% of the available money that should or would otherwise be available to be returned to Investors…. If we are going to proceed informally to keep costs down, … we would like to create an 'Advisory Board' of 5 Investors to meet with and to advise DenSco with respect to the information obtained and how that information can be used to cost-effectively help DenSco recover funds that are owed to DenSco. *We intend to structure*

---

this was the issue you said you had a discussion with her about the conflict of interest and she waived it. True? … A. I had the discussion, Michelle Tran had the discussion, and, yeah, that was one of the several conversations.").

[121] Exhibit 288A to Deposition of Mr. Beauchamp, email dated August 15, 2016 from Mr. Beauchamp to Chris Hyman, Executive Vice President, American Title Service Agency ("Given the need to move quickly on certain items, we only represented the Estate so that a Personal Representative would be appointed for The Estate right away. Due to potential conflicts of interest, we have resigned as counsel to the Estate and new counsel has been appointed or is being appointed for the Estate. … Gammage & Burnham will be representing the Estate going forward.").

[122] Exhibit 213 to Deposition of Mr. Beauchamp, email dated August 3, 2016 from Mr. Beauchamp to DenSco investors (in which Mr. Beauchamp also indicates that part of the DenSco wind down includes the "need to better understand … claims that DenSco has against either Auction.com or Scott Menaged (*or some other parties*)" [italics added]).

> *this as an Advisory Board to protect the members of this Advisory Board from any potential liability* based upon their role with DenSco. Specifically, the Advisory Board would only have an advisory position with DenSco as opposed to a full authority position, which is to distinguish this situation from having these Investors appointed to the Board of Directors."[123]

Similarly, in his email correspondence with investors on August 8 and 9, 2016, Mr. Beauchamp suggested that it was not in the financial interests of the investors to have the Securities Division of the Arizona Corporation Commission take an active role either:

> "We need to be willing but not overly anxious to turn it over to the Securities Division. Several people in government made names and careers with the Mortgages Ltd. matter and we do not want this to turn into anything like that."[124]

> "With respect to your question concerning the Wednesday meeting, the Director of Enforcement had someone from her office relay a message to me that they do not want any Investors (or attorneys for Investors) at the Wednesday meeting."[125]

In contrast, at the court hearing to appoint a receiver little more than one week later, both new counsel for Chittick's Estate's, Mr. Polese of Gammage & Burnham, and Wendy Coy, Director of Enforcement, Securities Division, Arizona Corporation Commission, testified that it was urgent that a receiver be appointed.[126]

---

[123] See Exhibit 213, email dated August 3, 2016 (11:35 pm) from Mr. Beauchamp to DenSco investors [italics added]. Curiously, it appears that earlier in the day, Mr. Beauchamp was instructed by the Director of Enforcement, Securities Division, Arizona Corporation Commission, that a receiver in fact may need to be appointed. See Exhibit 217 to Deposition of Mr. Beauchamp, letter dated August 4, 2016 from Wendy Coy, Director of Enforcement, Securities Division, Arizona Corporation Commission, to Mr. Beauchamp ("Thank you for contacting the Securities Division yesterday. I appreciate your willingness to speak with us and to take control of a very sad and problematic situation. We look forward to working with you to resolve any issues that may arise.… In addition, we discussed that *no assets should be dissipated until a receiver and/or a forensic accountant has reviewed the books and records of DenSco Investments Corporation and a plan is in place regarding the business*." [italics added]).

[124] Exhibit 256, Deposition of Mr. Beauchamp, email dated August 9, 2016 from Mr. Beauchamp to investor Craig Hood, copying other investors.

[125] Exhibit 256, Deposition of Mr. Beauchamp, email dated August 8, 2016 from Mr. Beauchamp to investor Craig Hood, copying other investors.

[126] See Reporter's Transcript of Digital Recording (pages 5-6, Mr. Polese: "In fact, we think the receiver needs to be appointed as soon as possible.… Everybody knows that we need to get somebody in place to protect the good notes that are out there that -- that are going to be collected"; page 6, Ms. Coy: "We, too, agree and believe that a receiver needs to be immediately appointed.").

Mr. Beauchamp continued communicating directly with investors.[127] In addition, it appears that Mr. Beauchamp took it upon himself to act as a quasi-receiver or liquidator with respect to the wind down of DenSco. The time entries in the Clark Hill invoices for August and September 2016 (especially prior to the appointment of the Receiver) suggest that Mr. Beauchamp was much more involved in the wind down aspects of DenSco's business than, in my opinion, attorneys normally would be, and doing so with limited supervision or oversight by, or instruction from, an authorized and competent representative of his client DenSco.[128] Further, in the absence of a receiver or trustee, Mr. Beauchamp should have reasonably expected that he would bear considerable responsibility for the multitude of non-legal tasks required to liquidate DenSco's assets and wind down its business – e.g., collecting, properly handling, and accounting for funds received from borrowers; negotiating with borrowers and/or pursuing foreclosure proceedings; monitoring, analyzing and monetizing all other loans; completing projects and selling properties where appropriate; valuations; allocating and distributing funds to investors; and maintaining books and records, preparing financial statements, filing tax returns and paying taxes, reporting interest income of investors, and numerous other tasks.[129]

On August 17, 2016, the Arizona Corporation Commission filed legal action alleging that DenSco violated various Arizona securities laws.[130] The Arizona Corporation Commission requested that the court appoint a receiver to preserve DenSco's assets for the benefit of its

[127] See, e.g., email dated August 20, 2016 from an investor, Robert Brinkman ("Mr. Beauchamp … Can you please let me know if there was a POM for 2013 and 2015 or if 2011 was the last POM?), to which Mr. Beauchamp responds one day later ("My law firm started preparing the 2013 POM, but we were put on hold. After the Forbearance agreement [sic] was signed by Scott Menaged, we started to amend the 2013 draft POM, but we stopped and withdrew as securities Counsel [sic] for DenSco. Denny was supposed to get other counsel and finish the POM in 2014, but I do not know if that happened. After that issue, I only was asked to help DenSco with the audit by the AZ Department of Financial Institutions.")). See also Exhibit 709, Deposition of Mr. Hood, letter dated August 9, 2016 from Scott A. Swinson (attorney for Mr. Brinkman) to Michelle Tran at Clark Hill ("I represent Rob Brinkman, as an investor/creditor of DenSco Investment Corporation. He has forwarded to me the various e-mails regarding Densco [sic] generated by Mr. Beauchamp. From some of the statements Mr. Beauchamp has made in his e-mails, it sounds as though your firm represented either Mr. Chittick and/or Densco prior to Mr. Chittick's death. If this is in fact the case, *I would appreciate a confirmation from your firm that you have considered the potential of a conflict of interest in your representation of the Chittick estate and you [sic] determination that no conflict exists*." [italics added]).

[128] See, e.g., Clark Hill invoice time entries for 8/17/16 ("several telephone calls … regarding loan payoffs, issues and procedure"); 8/19/16 and 8/23/16 ("several telephone calls with escrow agents, borrowers and real estate agents concerning loan payoffs, issues and procedure"). See also page 27, lines 2-3, Defendants' DS ("Ms. Heuer had no knowledge of DenSco's business, records, or hard money lending in general.").

[129] See section entitled "DenSco was a 'One-Man Shop" below.

[130] Verified Complaint dated August 17, 2016 *Arizona Corporation Commission, Plaintiff v. DenSco, Defendant*.

investors.[131] On August 18, 2016, the court held a receivership hearing and appointed Peter Davis as the Receiver for the assets of DenSco.[132]

Although he made a contrary statement only one week prior,[133] at the receivership hearing Mr. Beauchamp testified that "he concurrently represented both DenSco and Denny Chittick personally."[134] That assertion created certain joint attorney-client privilege issues that complicated and delayed the Receiver's ability to obtain and utilize DenSco's files from Clark Hill.[135] Accordingly, to obtain and utilize certain DenSco files in this Case, the Receiver needed to obtain a waiver of privilege from the Chittick Estate, which delayed the Receiver's receipt of DenSco's files and its ability to bring claims against the Defendants.

On December 9, 2016, the Receiver filed a Notice of Claim against the Chittick Estate based on the frauds perpetrated by Mr. Menaged and asserted, among other things, claims that Mr. Chittick breached his fiduciary duties owed to DenSco.[136]

---

[131] See paragraph 23, Verified Complaint dated August 17, 2016 *Arizona Corporation Commission, Plaintiff v. DenSco, Defendant* ("The ACC requests this Court appoint a Receiver on an interim basis to take control of the assets of DenSco and to marshal and preserve its assets for the benefit of the defrauded investors.").

[132] See page 1, Preliminary Report of Peter S. Davis, as Receiver of DenSco dated September 19, 2016 ("On August 18, 2016, Peter Davis ('Receiver') was appointed the Receiver for the assets of DenSco by the Honorable Lori Horn Bustamante of the Maricopa County Superior Court.").

[133] See Mr. Beauchamp's letter dated August 10, 2016 to Ms. Coy, in which he claimed "I have not previously represented Denny Chittick." But see pages 118-119, lines 23-9, Deposition of Mr. Beauchamp (Mr. Beauchamp asserted that he took action to correct the statement made to Ms. Coy).

[134] See Exhibit 317, email dated August 30, 2016 from Kevin Merritt (attorney for the Chittick Estate, and also Mr. Beauchamp's former colleague at Gammage & Burnham) to Mr. Beauchamp and Ryan Anderson (an attorney representing the Receiver), copying the Receiver, Mr. Polese (attorney for the Chittick Estate), among others ("I would like to remind everyone that David testified at the receivership hearing that he concurrently represented both DenSco and Denny Chittick, personally."); see also email dated August 15, 2016 from Mr. Polese to Ms. Coy, copying Mr. Beauchamp, among others ("It is my view and that of Dave Beauchamp, Denny viewed David as both his company attorney and personal attorney."). See pages 133-134, lines 7-11, Deposition of Mr. Beauchamp ("Based on the information that I have now … I would say it's not true [that "Mr. Chittick considered that I was his counsel as well as counsel for DenSco"]. … At the time I did this declaration [draft received August 17, 2016], I had a different understanding of what counsel was, … I have since understood that, no, I'm representing the company").

[135] See, e.g., Order Appointing Receiver dated August 18, 2016 ("It is further ordered the Receiver may not waive the attorney-client privilege as to Chittick's communications with Beauchamp without the Estate's consent. The Receiver must obtain court approval before waiving the privilege as to DenSco if the Estate does not consent to the waiver.").

[136] See Notice of Claim Against Estate of Denny J. Chittick filed December 9, 2016 ("the Receiver has the following claims against Chittick: Conversion, common law fraud, breach of fiduciary duty as director and officer of DenSco, fraudulent transfer (both actual and

On September 14, 2017, the Receiver filed a petition seeking to initiate this Case. That petition was granted on October 10, 2017, and the Complaint in this Case was filed on October 16, 2017.[137]

III. APPLICABLE STANDARD OF CARE

The standard of care generally applicable to the Defendants required the exercise of that degree of skill, care and knowledge commonly exercised by a member of the legal profession in similar circumstances.

A. General Application

Both the Model Rules of Professional Conduct adopted by the American Bar Association and the Restatement of the Law (Third), The Law Governing Lawyer's Civil Liability, adopted by the American Law Institutes, provide guidance in this regard:

- § 50 Duty of Care to a Client, Restatement of the Law (Third): "For purposes of liability …, a lawyer owes a client the duty to exercise care within the meaning of § 52 in pursuing the client's lawful objectives in matters covered by the representation."

- § 52 The Standard of Care, Restatement of the Law (Third): "a lawyer who owes a duty of care must exercise the competence and diligence normally exercised by lawyers in similar circumstances."

- § 16A Lawyer's Duties to a Client – In General, Restatement of the Law (Third): "To the extent consistent with the lawyer's other legal duties and subject to the other provisions of this Restatement, a lawyer must, in matters within the scope of the representation: (1) proceed in a manner reasonably calculated to advance a client's lawful objectives, as defined by the client after consultation; (2) act with reasonable competence and diligence; [and] (4) fulfill valid contractual obligations to the client."

- Rule 1.1 (Competence) of the Model Rules of Professional Conduct: "A lawyer shall provide competent representation to a client. Competent representation requires the legal knowledge, skill, thoroughness and preparation reasonably necessary for the representation."[138]

---

constructive) pursuant to A.R.S §§ 44-1004 et seq., unjust enrichment, or, alternatively, gross negligence or negligence as an officer or director of DenSco."). See also Plaintiff's DS ¶ 408.

[137] See Plaintiff's DS ¶¶ 413 & 415.

[138] See, also, Model Rules of Professional Conduct, Rule 1.1, Comment [1] ("In determining whether a lawyer employs the requisite knowledge and skill in a particular matter, relevant factors include the relative complexity and specialized nature of the matter, the lawyer's general experience, the lawyer's training and experience in the field in question, the preparation and study the lawyer is able to give the matter. … Expertise in a particular field of law may be required in some circumstances."); and Comment [5] ("Competent handling of a particular matter includes inquiry into and analysis of the factual and legal elements of the problem, and

- Rule 1.3 (Diligence) of the Model Rules of Professional Conduct: "A lawyer shall act with reasonable diligence and promptness in representing a client."[139]

- Preamble (A Lawyer's Responsibilities) [20] to the Model Rules of Professional Conduct: "since the Rules do establish standards of conduct by lawyers, a lawyer's violation of a Rule may be evidence of breach of the applicable standard of conduct."

Further, lawyers may not assist a client in conduct the lawyer knows is fraudulent. This prohibition is contained in paragraph (d) of Rule 1.2 (Scope of Representation and Allocation of Authority between Client and Lawyer), and illuminated in certain of the Comments to the Rule:

- "Comment [10]: When the client's course of action has already begun and is continuing, the lawyer's responsibility is especially delicate. The lawyer is required to avoid assisting the client, for example, by drafting or delivering documents that the lawyer knows are fraudulent or by suggesting how the wrongdoing might be concealed. A lawyer may not continue assisting a client in conduct that the lawyer originally supposed was legally proper but then discovers is criminal or fraudulent. The lawyer must, therefore, withdraw from the representation of the client in the matter. See Rule 1.16(a). …

- Comment [11]: Where the client is a fiduciary, the lawyer may be charged with special obligations in dealings with a beneficiary."

Lawyers take on enhanced responsibilities when the client is an organization, because an organization can only act through its individual representatives, who are not the client. See, for example, Rule 1.13 (Organization as Client) of the Model Rules of Professional Conduct:

- "(a) A lawyer employed or retained by an organization represents the organization acting through its duly authorized constituents.

---

use of methods and procedures meeting the standards of competent practitioners. It also includes adequate preparation. The required attention and preparation are determined in part by what is at stake; major litigation and complex transactions ordinarily require more elaborate treatment than matters of lesser consequence.").

[139] See, also, Model Rules of Professional Conduct, Rule 1.3, Comment [3] ("A client's interests often can be adversely affected by the passage of time …."); and Comment [4] ("Unless the relationship is terminated as provided in Rule 1.16, a lawyer should carry through to conclusion all matters undertaken for a client. … If a lawyer has served a client over a substantial period in a variety of matters, the client sometimes may assume that the lawyer will continue to serve on a continuing basis unless the lawyer gives notice of withdrawal. Doubt about whether a client-lawyer relationship still exists should be clarified by the lawyer, *preferably in writing*, so that the client will not mistakenly suppose the lawyer is looking after the client's affairs when the lawyer has ceased to do so." [italics added]).

- (b) If a lawyer for an organization knows that an officer, employee or other person associated with the organization is engaged in action, intends to act or refuses to act in a matter related to the representation that is a violation of a legal obligation to the organization, or a violation of law that reasonably might be imputed to the organization, and that is likely to result in substantial injury to the organization, then the lawyer shall proceed as is reasonably necessary in the best interest of the organization."[140]

Lawyers must also be sensitive to conflicts of interest, both among clients and between clients and themselves. See, for example, Rule 1.7 (Conflict of Interest: Current Clients) of the Model Rules of Professional Conduct:

- "(a) Except as provided in paragraph (b), a lawyer shall not represent a client if the representation involves a concurrent conflict of interest. A concurrent conflict of interest exists if: (1) the representation of one client will be directly adverse to another client; or (2) there is a significant risk that the representation of one or more clients will be materially limited by the lawyer's responsibilities to another client, a former client or a third person or by a personal interest of the lawyer.[141]

---

[140] See, also, Model Rules of Professional Conduct, Rule 1.13, paragraph (c) ("[…] if (1) despite the lawyer's efforts in accordance with paragraph (b) the highest authority that can act on behalf of the organization insists upon or fails to address in a timely and appropriate manner an action, or a refusal to act, that is clearly a violation of law, and (2) the lawyer reasonably believes that the violation is reasonably certain to result in substantial injury to the organization, then the lawyer may reveal information relating to the representation whether or not Rule 1.6 permits such disclosure, but only if and to the extent the lawyer reasonably believes necessary to prevent substantial injury to the organization."); and Comment [3] ("Paragraph (b) makes clear, however, that when the lawyer knows that the organization is likely to be substantially injured by action of an officer or other constituent that violates a legal obligation to the organization or is in violation of law that might be imputed to the organization, *the lawyer must proceed as is reasonably necessary in the best interest of the organization*. As defined in Rule 1.0(f), knowledge can be inferred from circumstances, and *a lawyer cannot ignore the obvious*." [italics added]).

[141] See, also, Model Rules of Professional Conduct, Rule 1.7, Comment [1] ("Loyalty and independent judgment are essential elements in the lawyer's relationship to a client. Concurrent conflicts of interest can arise from the lawyer's responsibilities to another client … or from the lawyer's own interests."); Comment [2] ("Resolution of a conflict of interest problem under this Rule requires the lawyer to: 1) clearly identify the client or clients; 2) determine whether a conflict of interest exists; 3) decide whether the representation may be undertaken despite the existence of a conflict, i.e., whether the conflict is consentable; and 4) if so, consult with the clients affected under paragraph (a) and obtain their informed consent, confirmed in writing."); Comment [3] ("A conflict of interest may exist before representation is undertaken, in which event *the representation must be declined*, unless the lawyer obtains the informed consent of each client …."); Comment [6] ("… absent consent, a lawyer may not act as an advocate in one matter against a person the lawyer represents in some other matter, *even when the matters are wholly unrelated*." [italics added]); Comment [8] ("Even where there is no direct adverseness, *a conflict of interest exists if there is a significant risk that a lawyer's ability to consider, recommend or carry out an appropriate course of action for the client will be materially limited*

- (b) Notwithstanding the existence of a concurrent conflict of interest under paragraph (a), a lawyer may represent a client if: … (4) each affected client gives informed consent, confirmed in writing."

Under certain circumstances, a lawyer must withdraw from an attorney-client representation. See, for example, Rule 1.16 (Declining or Terminating Representation) of the Model Rules of Professional Conduct:

- "(a) … a lawyer shall not represent a client or, where representation has commenced, shall withdraw from the representation of a client if: (1) the representation will result in violation of the rules of professional conduct or other law; …."[142]

The Rules of Professional Conduct in Arizona (where DenSco was based and Mr. Beauchamp was admitted to practice) are consistent with such Model Rules of Professional Conduct adopted by the American Bar Association.[143]

In the course of working on a matter, lawyers sometimes make mistakes. However, not every mistake made by a lawyer is considered a violation of the standard of care. Instead, a violation of the standard of care happens when a lawyer handles a matter inappropriately due to a failure to exercise the ordinary care of a reasonably competent lawyer in the same or similar circumstances. The mistake must be viewed within the context of the facts and circumstances of the particular engagement, specifically considering whether the mistake made under such circumstances rises to the level of violating the standard of care. A lawyer may be liable only if the mistake rises to the level of violating the standard of care.

---

as a result of the lawyer's other responsibilities or interests. … The conflict in effect forecloses alternatives that would otherwise be available to the client. … The critical questions [include] whether [the difference in interests] will … *foreclose courses of action that reasonably should be pursued on behalf of the client*." [italics added]); and Comment [10] ("The lawyer's own interests should not be permitted to have an adverse effect on representation of a client. For example, *if the probity of a lawyer's own conduct in a transaction is in serious question, it may be difficult or impossible for the lawyer to give a client detached advice*.").

[142] See, also, Model Rules of Professional Conduct, Rule 1.16, Comment [2] ("A lawyer ordinarily must decline or withdraw from representation if the client demands that the lawyer engage in conduct that is illegal or violates the Rules of Professional Conduct or other law."). See also Model Rules of Professional Conduct, Rule 1.2, Comment [10] ("In some cases, withdrawal alone might be insufficient. It may be necessary for the lawyer to give notice of the fact of withdrawal and to disaffirm any opinion, document, affirmation or the like.").

[143] See Arizona Rules of Professional Conduct, https://www.azbar.org/ethics/rulesofprofessionalconduct/. One difference between the Model Rules of Professional Conduct and the Arizona Rules of Professional Conduct is worth noting here: Comment [11] of Rule 1.2 of the Arizona Rules of Professional Conduct makes clear that "a lawyer may be required to disclose information relating to the representation to avoid being deemed to have assisted the client's crime or fraud."

It is important to evaluate compliance with the standard of care in each instance where relevant. The facts and circumstances of each engagement, and with respect to each task within each engagement, are different and often unique, and compliance must be measured by taking into account the particular facts and circumstances of each such engagement and task. And because the proper exercise of the standard of care is dependent on the knowledge of the lawyer, the particular facts and circumstances should take into account the information that the lawyer knew or should have known at all relevant times.

Further, in evaluating compliance with the standard of care, it is important to note the distinction between standard of care and best practices. While standard of care refers to the exercise of that degree of skill, care and knowledge commonly exercised by a member of the legal profession in similar circumstances, best practices is a much higher standard, one to which lawyers should aspire. Lawyers may be liable for failing to meet the standard of care, but not for failing to engage in best practices.

In my experience, when a lawyer or law firm takes on a new client engagement, there is an allocation of tasks and other responsibilities as between the lawyers, on the one hand, and the client or the client's other advisors, agents and representatives, on the other hand. Sometimes such allocations are expressly addressed in an engagement letter or some other documentation, but quite frequently such allocations are casually discussed, or even implicitly understood, between lawyers and their clients based on prior history, course of conduct and/or reasonable expectations. And when the client is an entity with limited personnel, and no in-house legal team, the lawyer should reasonably expect that he or she may need to play a more active role in the course of the attorney-client relationship, than under other circumstances.

Regardless of the allocation of responsibilities between the client and the lawyer, an experienced lawyer engaged on a legal matter is expected to have greater experience and expertise in that particular area of the law, especially where the lawyer has worked on similar matters in the specific area of the law many times, such as in securities offerings. The applicable standard of care may require that the lawyer take the time to ensure that the client understands its responsibilities and that it is capable of performing such responsibilities, and that the lawyer properly coordinates the client's responsibilities with the lawyer's responsibilities. For example, the applicable standard of care may require that the lawyer pay special attention to the adequacy of disclosures made in a securities offering, particularly when the offering is done on a continuous basis.

In addition, a law firm is generally subject to civil liability for the acts or omissions of any principal of the firm who was acting in the ordinary course of the firm's business.[144] "When a client retains a lawyer with [an affiliation with a law firm], the lawyer's firm assumes the

[144] Restatement (Third) of the Law Governing Lawyers § 58 (2000) ("A law firm is subject to civil liability for injury legally caused to a person by any wrongful act or omission of any principal or employee of the firm who was acting in the ordinary course of the firm's business or with actual or apparent authority.").

authority and responsibility of representing that client, unless the circumstances indicate otherwise … and the firm is liable to the client for the lawyer's negligence."[145]

B. Securities Laws

From the early 2000s to at least mid-2014,[146] Mr. Beauchamp provided securities advice to DenSco in connection with its offer and sale of Notes.[147] He "advised DenSco regarding its Private Offering Memoranda, which DenSco generally updated every two years. He helped draft the 2003, 2005, 2007, 2009 and 2011 POMs."[148] Because of his role as securities counsel for DenSco, the standard of care applicable to Mr. Beauchamp required a basic understanding of securities law applicable to DenSco's offering of Notes, including the following.

The issuance of securities is regulated by federal and state law. Under both the federal Securities Act of 1933 and the Arizona Securities Act, the offer and sale of securities must be registered with the appropriate regulatory agency (i.e., the SEC or the Arizona Corporation Commission, respectively), or be subject to an exemption from such registration. Issuers must strictly adhere to the requirements of an exemption, as the failure to do so results in an unlawful offering, with the accompanying penalties and liabilities, including potential criminal liability. DenSco's offerings were intended to fall within the "private placement" exemption from registration pursuant to Regulation D promulgated under the Securities Act of 1933.[149]

Although Regulation D itself does not mandate that any specific disclosures be provided to investors that are "accredited investors,"[150] other provisions of the securities laws regulate disclosures provided to investors, including pursuant to a private placement. For example, SEC

---

[145] *Staron v. Weinstein*, 701 A.2d 1325 (N.J. Super. Ct. App. Div. 1997) at 1328 (citing Restatement (Third) of the Law Governing Lawyers § 79 (Tentative Draft No. 8, 1997) [ellipses in original]).

[146] See pages 3-4, Defendants' DS.

[147] See pages 2-3, Defendants' DS.

[148] Page 5, lines 7-8, Defendants' DS; see, also, pages 256-257, lines 22-3, Deposition of Mr. Beauchamp (Mr. Beauchamp testified that it was his practice to revise the POM every two years based on a suggestion "made by a former SEC official, that given the nature of this industry, two years would be an appropriate time. However, if something material happened before then, you need to tell your client this has to be disclosed.").

[149] See page ii, 2011 POM ("The Notes are offered pursuant to exemptions provided by Section 4(2) of the [Securities Act of 1933], Regulation D thereunder, certain state securities laws and certain rules and regulations promulgated pursuant thereto." [quoted text was upper case bold in original]).

[150] Defined in Rule 501(a) of Regulation D to include high net worth individuals and certain other persons or entities. Rule 502(b) of Regulation D specifies the type of information that must be furnished "a reasonable time prior to sale" to any purchaser that is not an accredited investor. It is good practice to provide such information to accredited investors in addition to non-accredited investors.

Rule 10b-5, promulgated under Section 10(b) of the Securities Exchange Act of 1934,[151] provides that it is unlawful, in connection with the sale of securities, "to make any untrue statement of a material fact or to omit to state a material fact necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading."[152]

Disclosures that are provided to investors in a private placement offering are typically contained in a written document, often called a private offering memorandum. Such a POM is a disclosure document used to solicit investment in private securities transactions. A POM is provided to prospective investors to provide such investors with information regarding the issuer and the securities it intends to issue. Generally, a POM describes the business, the investment opportunity, the associated risks, the management team, historical performance and expected performance of the business. Disclosures made in a POM are regulated under the federal securities laws by, among other laws and rules, Rule 10b-5. DenSco's POMs offered Notes according to the terms set forth therein.

An important concept to bear in mind in private placement offerings is called "integration." Essentially, Regulation D provides that all sales that are part of the same private placement offering are integrated, such that each and every sale of a security must meet all of the requirements for offerings pursuant to Regulation D.[153] In other words, unless the offerings of Notes by DenSco pursuant to its various sequential POMs were not of the "same or a similar class" as the Notes offered pursuant to the immediately prior POM, or such offerings were separated by at least six months, then under Regulation D ***all*** sales of Notes by DenSco would be integrated and treated as a single continuous offering (notwithstanding language to the contrary in the POMs).[154] As a result, if the sale of even a single Note was not made in compliance with the requirements of Regulation D, then by virtue of integration, the private placement exemption

---

[151] The 2011 POM prepared by Mr. Beauchamp incorrectly refers to this provision of federal securities laws as "Section 10b-5." See page 24.

[152] 17 CFR 240.10b-5 [Employment of manipulative and deceptive devises]; see also Arizona Revised Statutes Section 44-1991 [Fraud in purchase or sale of securities] ("It is a fraudulent practice and unlawful for a person, in connection with a transaction or transactions within or from this state involving an offer to sell or buy securities, or a sale or purchase of securities, … directly or indirectly to do any of the following: … 2. Make any untrue statement of material fact, or omit to state any material fact necessary in order to make the statements made, in the light of the circumstances under which they were made, not misleading.").

[153] Rule 502(a) of Regulation D ("All sales that are part of the same Regulation D offering must meet all of the terms and conditions of Regulation D. Offers and sales that are made more than six months before the start of a Regulation D offering or are made more than six months after completion of a Regulation D offering will not be considered part of that Regulation D offering, so long as during those six month periods there are no offers or sales of securities by or for the issuer that are of the same or a similar class as those offered or sold under Regulation D, other than those offers or sales of securities under an employee benefit plan as defined in rule 405 under the [Securities Act of 1933].").

[154] See page (i), 2011 POM ("The Company intends to offer the Notes on a continuous basis until the earlier of (a) the sale of the maximum offering, or (b) two years from the date of this memorandum.").

may have been rendered unavailable – resulting in an unlawful offering with respect to the sale of all Notes.

Continuous offerings, such as those conducted by DenSco, are especially challenging due to the continuous and uninterrupted obligation to be compliant with the exemption and other legal requirements. For example, under both federal and Arizona law, there is a risk that issuers may be committing securities fraud if they fail to provide current and accurate disclosures to investors in connection with the sale of securities. As a result, because of the continuous nature of its securities offerings, DenSco needed to be able to timely update the disclosures provided to investors so as to correct any material misstatement or omission before such investors purchased (or committed to purchase) DenSco securities.[155] This would require both the constant monitoring of the accuracy of the content of the POMs and the ability to promptly correct and distribute updated disclosures.

In my opinion, the applicable standard of care would require that Mr. Beauchamp be aware of at least the following requirements under the federal securities laws and advise his client DenSco accordingly:

- The offer and sale of all Notes was subject to compliance by DenSco with Regulation D and Rule 10b-5.

- If at any point in time, the applicable POM was no longer in compliance with Rule 10b-5, DenSco must immediately cease offering and selling Notes (whether to new or existing investors, and whether for new monetary consideration or in consideration of the rollover of Notes).

- In the event that the applicable POM was no longer in compliance with Rule 10b-5, DenSco must not resume offering or selling Notes unless and until updated and compliant disclosures are provided to investors.

- Because of the continuous nature of the offerings, both pursuant to each individual POM and presumably across all POMs, the apparently arbitrary two-year time period limitation imposed by Mr. Beauchamp and as set forth in the POMs would have had no impact on integration or compliance under Regulation D and Rule 10b-5.

---

[155] See page 24, 2011 POM ("In order to continue offering the Notes during this [two year] period, the Company will need to update this Memorandum from time to time. Keeping the information in the Memorandum current will cause the Company to incur additional costs. *A failure to update this Memorandum as required could result in the Company being subject to a claim under Section 10b-5 [sic] of the Securities Act for employing manipulative or deceptive device in the sale of securities, subjecting the Company, and possibly the management of the Company, to claims from regulators and investors*." [italics added]). See, also, pages 92-95, lines 7-8, Deposition of Daniel Schenck on June 19, 2018 ("My understanding would be that [the POM] needs to be amended, you know, when there is new information or a change in circumstances from what's described in there. That was my understanding").

- DenSco's failure to comply at all times with Regulation D and Rule 10b-5 could result in material penalties and liabilities, including potential criminal liability.

IV. ANALYSIS AND OPINIONS

A. DenSco was a "High-Risk" Client

Prior to engaging with a new client and forming an attorney-client relationship with that new client, an attorney should evaluate the goals and requirements of the client and the ability of the attorney to reasonably address those requirements. This is implicit in the duties owed by attorneys to their clients once the attorney-client relationship is formed, including the obligation to "provide competent representation to a client"[156] and "act with reasonable diligence and promptness in representing a client."[157] In making such evaluation, it is important for the attorney to do an "analysis of the factual and legal elements"[158] and consider "the relative complexity and specialized nature of the matter."[159] Consistent with such obligations, in my opinion attorneys should, and in accordance with custom in practice do, evaluate and assess whether, and to what extent, the client is able to understand and comply with its legal obligations and the advice of the attorney in the particular matter.

In my experience, certain clients may require extraordinary monitoring and counseling due to the nature of their business operations, the regulatory environment in which they operate, a lack of critical resources (including manpower) or internal controls, an inability (or unwillingness) to comply with legal obligations and attorney advice, and other factors. Such a client poses a material risk to both itself and to its attorneys in the event of failure, crises or other material adverse events. Such risks to the client may include civil or criminal liability, financial losses or other damages to the client and its various constituencies (including investors), and an inability to achieve the goals of the subject of the representation. Attorneys should be aware that such a client also creates an enhanced risk of malpractice and related claims against the attorney, brought by or on behalf of the client. As a result, for purposes of this Report, I refer to such clients as "high-risk" clients.

In accepting DenSco as a client, and continuing to represent DenSco thereafter, the Defendants should have recognized that DenSco was a high-risk client. The factors that indicate DenSco was a high-risk client include the following:

1. DenSco was Engaged in a Highly Regulated Business

A core element of DenSco's business was raising money from investors, which in turn would be used to make mortgage loans. As noted above, the issuance of securities is regulated by federal

[156] Rule 1.1 of the Arizona Rules of Professional Conduct. See also ABA Model Rule 1.1.
[157] Rule 1.3 of the Arizona Rules of Professional Conduct. See also ABA Model Rule 1.3.
[158] Comment [5] to Rule 1.1 of the Arizona Rules of Professional Conduct. See also Comment [5] to ABA Model Rule 1.1.
[159] Comment [1] to Rule 1.1 of the Arizona Rules of Professional Conduct. See also Comment [1] to ABA Model Rule 1.1.

and state law. Under both the federal Securities Act of 1933 and the Arizona Securities Act, the offer and sale of securities must be registered with the appropriate regulatory agency (i.e., the SEC or the Arizona Corporation Commission, respectively), or be subject to an exemption from such registration. Issuers must strictly adhere to the requirements of an exemption, as the failure to do so results in an unlawful offering, with the accompanying penalties and liabilities, including potential criminal liability. DenSco's offerings were intended to fall within an exemption from registration.[160]

Further, under Rule 10b-5, because of the continuous nature of its securities offerings, DenSco needed to be able to timely update the disclosures provided to investors so as to correct any material misstatement or omission before such investors purchased (or committed to purchase) DenSco securities.[161] This would require both the constant monitoring of the accuracy of the content of the POMs and the ability to promptly correct and distribute updated disclosures.

Activities related to DenSco's mortgage lending business were also subject to regulation and licensing.[162] DenSco potentially may have been subject to regulation and licensing under the Investment Advisers Act of 1940,[163] the Investment Company Act of 1939,[164] the Truth in Lending Act, the Homeownership and Equity Protection Act of 1994, the Equal Credit

---

[160] See page ii, 2011 POM ("The Notes are offered pursuant to exemptions provided by Section 4(2) of the [Securities Act of 1933], Regulation D thereunder, certain state securities laws and certain rules and regulations promulgated pursuant thereto." [quoted text was upper case bold in original]).

[161] See page 24, 2011 POM ("In order to continue offering the Notes during this [two year] period, the Company will need to update this Memorandum from time to time. Keeping the information in the Memorandum current will cause the Company to incur additional costs. A failure to update this Memorandum as required could result in the Company being subject to a claim under Section 10b-5 [sic] of the Securities Act for employing manipulative or deceptive device in the sale of securities, subjecting the Company, and possibly the management of the Company, to claims from regulators and investors."). See, also, pages 92-95, lines 7-8, Deposition of Daniel Schenck on June 19, 2018 ("My understanding would be that [the POM] needs to be amended, you know, when there is new information or a change in circumstances from what's described in there. That was my understanding").

[162] See page 8, 2011 POM ("The financing of construction loans and other types of real estate transactions are regulated by various federal and state government agencies, including the Arizona Department of Financial Institutions."). See, also, Arizona Revised Statutes, Chapter 9 [Mortgage Brokers, Mortgage Bankers and Loan Originators].

[163] See page 9, 2011 POM (The Company's management believes that it is not required to register or be licensed as an investment adviser with the State of Arizona or with the U.S. Securities Exchange Commission ('SEC') pursuant to the Investment Advisers Act of 1940"); page 23, 2011 POM ("The Company intends to take all reasonable steps to avoid such classification.").

[164] See page 22, 2011 POM ("If the Company was subject to the Investment Company Act of 1940, the Company would be required to comply with significant ongoing regulation which would have an adverse impact on its operations. … The Company intends to take all reasonable steps to avoid such classification.").

Opportunity Act, the Fair Credit Reporting Act, the Real Estate Settlement Procedures Act, and the Home Mortgage Disclosure Act,[165] and similar state laws and regulations. To the extent applicable, such activities would require monitoring, periodic reporting and other documentation, and compliance generally.[166]

2. DenSco was Handling High Volumes of Investor Money

At its core, DenSco was soliciting money from investors, which would be transferred to borrowers as mortgage loans. Such borrowers would pay interest and principal back to DenSco, which in turn would then use such funds to pay interest and principal back to its investors (with DenSco profiting from the arbitrage due to the difference in such interest rates). Rather than providing goods or services, DenSco was in the business of handling large sums of money. As of the date of the 2011 POM, DenSco had funded *over $300 million* in loans.[167] As a result, DenSco was acting in a fiduciary capacity with its investors, and would have required prudent internal controls, careful accounting and secure money management.

3. DenSco was a "One-Man Shop"

Based on the record I have reviewed, it is clear that DenSco had only a single shareholder, director, officer and employee: namely, Denny Chittick.[168] The regulatory environment in which DenSco operated, as well as the volume of its business, would have necessitated active involvement by the management team at DenSco. Having only one member in its management team (its sole employee), would suggest that DenSco's ability to manage its business operations and compliance obligations was severely constrained.

---

[165] See page 19, 2011 POM.

[166] Although DenSco may have concluded that it was not subject to such regulation and licensing, it was still required to take action to *avoid* the application of such regulation and licensing to its lending activities. See page 8, 2011 POM ("The Company's management believes that it is not required to be licensed by the Arizona Department of Financial Institutions as a mortgage broker or mortgage banker nor under certain federal laws, such as Truth-In-Lending Act or the Real Estate Settlement Procedures Act. The Company intends to take the necessary steps to ensure that the borrowers it lends to and the projects covered by such loans will not fall within the requirements imposed by the foregoing agency and acts."); page 19, 2011 POM ("If it is determined that the Company has not structured its operations so that it is exempt from regulation, *the Company could become subject to extensive regulation*" [italics added]).

[167] Page 39, 2011 POM ("Since inception through June 30, 2011, the Company has participated in 2622 loans, with an average loan amount of $116,000, with the highest single loan being $800,000 and the lowest being $12,000. *The aggregate amount of loans funded is $306,786,893* with property values totaling $470,411,170." [italics added]).

[168] Page 40, 2011 POM ("The Director and Executive Officer of the Company are [sic]: Denny J. Chittick, 4_, President, Vice President, Treasurer, and Secretary. … With the assistance of outside consultants on an as-needed basis, *Mr. Chittick intends to operate the Company as its primary employee, analyzing, negotiating, originating, purchasing and servicing Trust Deeds by himself*." [italics added]).

On the mortgage lending side of its business, DenSco made on average one loan every single weekday since its formation in 2001.[169] The level of its lending activity increased over the years, such that during the six months leading up to the 2011 POM, DenSco was making on average nearly three loans every single weekday,[170] and was seeking to further increase the volume of its lending business.[171] These statistics are particularly significant in light of the required tasks to support that volume of business (as described below), which suggests an inordinate burden on Mr. Chittick in managing just the mortgage lending side of DenSco's business.

As described in the 2011 POM, before purchasing a trust deed or funding a loan, DenSco would "conduct a due diligence review by interviewing its owner, verifying the documentation and performing limited credit investigations … and visiting the subject property in a timely manner."[172]

The 2011 POM also describes certain standards for each loan to be made by DenSco.[173] Because of its stated goal of having each loan be secured by a first lien deed of trust,[174] DenSco would need to ensure that the loan documentation for each of its loans was properly prepared and timely recorded. Because of its stated goal of maintaining a loan-to-value ratio of between 50% and 65% across its portfolio of loans,[175] DenSco would need to conduct adequate and reliable property appraisals prior to consummating each loan, update such property appraisals periodically, and calculate the portfolio's loan-to-value ratio on a continuous basis. Because of its stated goal of maintaining diversity among its borrowers and the properties under

---

[169] See page 37, 2011 POM (2622 loans funded from April 2001 through June 2011).
[170] See page 37, 2011 POM (378 loans funded in 2011 through June 30, 2011).
[171] See page 15, 2011 POM ("Success of the Company depends to a large extent on its ability to achieve growth in the number of applications and closings, the due diligence and servicing of these loans and the ability to manage growth effectively.").
[172] Page 6, 2011 POM. Although DenSco disclosed that such work could be done on its behalf by "an authorized representative," Mr. Chittick himself would still need to spend the time to select and engage with the representative, direct the work of the representative, and review and evaluate the reports, conclusions and recommendations of the representative.
[173] Although DenSco reserved the right "to amend or revise [certain] policies, or approve transactions that deviate from these policies, from time to time without a vote of the Noteholders" (see page 25, 2011 POM), such reservation of rights and lack of Noteholder control had little relevance to a change in circumstances that may have occurred *prior* to the time an investor committed to become a Noteholder, thus potentially rendering the disclosures made in the POM materially misleading.
[174] See page 37, 2011 POM ("All real estate loans funded by the Company have been and are intended to be secured through first position trust deeds.").
[175] See page 37, 2011 POM ("The loan to value ratio of the Company's overall portfolio has averaged less than 70% and the Company intends to maintain a loan to value ratio of 50% to 65%."); page 10, 2011 POM ("the Company intends to maintain general loan-to-value guidelines that currently range from 50 percent to 65 percent (but it is intended not to exceed 70%), to help protect the Company's portfolio of loans.").

mortgage,[176] DenSco would need to monitor and track the identity of its borrowers (and their affiliates), and the location and type of properties in which it was taking an interest. And because of its goal of avoiding certain licensing requirements, DenSco would need "to take the necessary steps to ensure that the borrowers it lends to and the projects covered by such loans will not fall within [such licensing] requirements."[177]

In addition to the work involved with the initiation of each mortgage loan, DenSco's mortgage lending business also required the servicing and monitoring of all loans.[178] As described in the 2011 POM, if a borrower were to become delinquent in making a payment, DenSco would contact the borrower within three to five days, and closely monitor the account until payment was made.[179] If a payment was late by more than five days, the company could impose a late charge, and if a payment was more than 30 days delinquent, the company could impose a default rate of interest and begin foreclosure proceedings.[180] Alternatively, DenSco could request the borrower execute a deed in lieu of foreclosure. Whether by virtue of a foreclosure sale or a deed in lieu of foreclosure, once DenSco gained control of the property, it would either "market the subject property at retail, which may require additional monies to improve the property to retail ready condition, or to wholesale the subject property 'as is.' The Company may also decide to rent the subject property as an investment property."[181] In addition, the repossessing of a property may require that DenSco "complete a project so repossessed by it, … [and] inject additional capital."[182]

---

[176] See pages 36-37, 2011 POM ("The Company has endeavored to maintain a large and diverse base of borrowers as well as a diverse selection of properties as collateral for its loans to the borrowers…. The Company continues to strive to achieve a diverse borrower base by attempting to ensure that *one borrower will not comprise more than 10 to 15 percent of the total portfolio*." [italics added]). See, also, page 10, 2011 POM ("The Company will attempt to maintain a diverse portfolio of Trust Deeds and loans by seeking a large borrowing base …. Currently, the Company's base of borrowers exceed [sic] 150 approved and qualified borrowers. It is the Company's plan that the base of borrowers eventually will exceed 250 qualified contractors and foreclosure specialists.").

[177] See page 8, 2011 POM ("The Company's management believes that it is not required to be licensed by the Arizona Department of Financial Institutions as a mortgage broker or mortgage banker nor under certain federal laws, such as Truth-In-Lending Act or the Real Estate Settlement Procedures Act. The Company intends to take the necessary steps to ensure that the borrowers it lends to and the projects covered by such loans will not fall within the requirements imposed by the foregoing agency and acts.").

[178] See page 7, 2011 POM ("The Company services the contracts it purchases and originates."); page 13, 2011 POM ("The Company's ability to generate cash in amounts sufficient to pay interest on the Notes and to repay or otherwise refinance the Notes as they mature depends upon the Company's receipt of payments due under the loans that are in the Company's portfolio.").

[179] Ibid.

[180] Ibid. See, also, page 13, 2011 POM ("The Company is responsible for collecting payments from loan obligors and for foreclosing under an applicable Trust Deed in the event of default by an obligor.").

[181] See page 7, 2011 POM.

[182] See page 18, 2011 POM.

On the fund-raising side of its business, DenSco was conducting continuous offerings. Mr. Chittick himself was "making the private placement of the Notes on behalf of the Company."[183] In my experience, such work would entail, at a minimum: (a) identifying, meeting with, and soliciting existing and new investors, and responding to their inquiries;[184] (b) preparing, distributing, collecting and reviewing all the necessary paperwork to accept new investors;[185] and (c) consummating each investor's investment by the acceptance of payment and the issuance of a Note.

In order for DenSco's offerings to fall within the private placement exemption from registration, the 2011 POM stated that Notes were "offered only to persons who are: (1) 'Accredited Investors' within the meaning of Rule 501(a) of Regulation D promulgated under the [Securities Act of 1933] and applicable state securities law; (2) able to bear the economic risk of an investment in the Notes, including a loss of the entire investment; and (3) sufficiently knowledgeable and experienced in financial and business matters to be able to evaluate the merits and risks of an investment in the Notes …."[186] It was Mr. Chittick's responsibility to devote the time, energy and resources to ensure that each investor in DenSco satisfied each of these requirements.[187]

The 2011 POM also references a number of additional tasks to be completed by DenSco in connection with the issuance of each Note to investors. Because each POM offering was limited in size,[188] Mr. Chittick would need to monitor the aggregate proceeds received under each offering. Because each Note may have different terms, including principal amount, maturity

[183] Page iii, 2011 POM.
[184] See page 49, 2011 POM ("The offer to sell Notes must be directly communicated to the investor by [Mr. Chittick]"); page vi, 2011 POM ("Prior to the sale of any Notes offered hereby, the Company will make available to each investor the opportunity to ask questions of and receive answers from Mr. Chittick") [quoted text was upper case bold in original]); page 50, 2011 POM ("The Company must have furnished and made available for inspection all documents and information that the investor has reasonably requested relating to an investment in the Company, including its Articles of Incorporation, stock records and financial account records."); page 11, 2011 POM.
[185] Such paperwork would include a subscription agreement and suitability questionnaire for each investor. See pages vi and 55-57, 2011 POM.
[186] Page iv, 2011 POM [quoted text was upper case bold in original].
[187] See page iv, 2011 POM ("The Notes are not offered and will not be sold to any prospective investor unless such investor has established, *to the satisfaction of Denny J. Chittick*, that the investor meets all of the foregoing criteria." [italics added; quoted text was upper case bold in original]).
[188] See cover page of 2011 POM ("The Company intends to offer the Notes on a continuous basis until the earlier of (a) the sale of the maximum offering [$50 million in the case of the 2011 POM], or (b) two years from the date of this memorandum").

date, interest rate, and timing and method of interest payments,[189] such terms would need to be carefully documented and monitored to ensure DenSco's compliance with all payment terms.

Because DenSco's offerings of Notes were continuous offerings, the applicable POMs would need to be updated from time to time. As acknowledged in the 2011 POM, "*failure to update this Memorandum as required could result in the Company being subject to a claim under Section 10b-5 [sic] of the Securities Act for employing manipulative or deceptive device in the sale of securities*, subjecting the Company, and possibly the management of the Company, to claims from regulators and investors."[190] As a result, Mr. Chittick would need to constantly monitor the activities of DenSco, and the environment in which it operated, to ensure that the POM was up to date and accurate.

Even once Notes were issued, DenSco (and therefore Mr. Chittick) had continuing responsibilities with respect to investors who became Noteholders. For example, in addition to timely and appropriately making interest and principal payments to Noteholders (as discussed

---

[189] See page 2, 2011 POM ("The interest rates of the Notes will vary and will depend on the denomination of the Note and the term selected by the investor. The Notes are offered in denominations ranging from $50,000 to $1,000,000.00 …. Investors may elect to have interest paid monthly, quarterly or at maturity."); page 17, 2011 POM ("Notes … may be issued at higher or lower interest rates and shorter or longer maturities, depending upon market conditions and other factors."); pages 45-46, 2011 POM ("Interest is payable on the last day of each period to the investors of the Notes at the principal office of the Company in Chandler, Arizona. At the option of the Company, interest payments may be paid by check mailed to the address of the investor entitled thereto as it appears on the Subscription Agreement for the Notes. An investor may request in writing to the Company that a deposit be made to a designated bank or investment account.").

[190] Page 24, 2011 POM ("Until the maximum offering proceeds are attained or the Company terminates this Offering, *the Company expects to offer the Notes for placement on a continuing basis* for two years from the date of this Memorandum unless the Company changes its operations or method of offering in any material respect prior to the expiration of the two year offering period. … *In order to continue offering the Notes during this period, the Company will need to update this Memorandum from time to time.* Keeping the information in the Memorandum current will cause the Company to incur additional costs. *A failure to update this Memorandum as required could result in the Company being subject to a claim under Section 10b-5* [sic] *of the Securities Act for employing manipulative or deceptive device in the sale of securities*, subjecting the Company, and possibly the management of the Company, to claims from regulators and investors. In addition, an investor might seek to have the sale of the Notes hereunder rescinded which would have a serious adverse effect on the Company's operations." [italics added]). See, also, page 45, 2011 POM ("If the Company changes it operations … in any material respect, *the Company will update the Memorandum as necessary to provide correct information to investors*." [italics added]).

above), Noteholders were entitled to request from DenSco certain information and certifications,[191] permission to transfer their Notes,[192] and early redemption of their Notes.[193]

In addition to the specific responsibilities associated with mortgage lending and fund-raising, DenSco would have had the same general responsibilities of any business, such as maintaining books and records, preparing financial statements, filing tax returns and paying taxes, reporting interest income of its Noteholders, and other tasks.

In my experience, the volume of business being conducted by DenSco, and the responsibilities of a single individual to adequately manage that business, are quite striking. There was no deep bench or internal team to support Mr. Chittick's enormous responsibilities, no one to cover in the event Mr. Chittick were to become ill or otherwise become unavailable, and no meaningful succession plans to replace Mr. Chittick.[194]

4. Significant Risk of Confusion as to the Identity of the Defendants' Client

Although the engagement letter between Clark Hill and DenSco only identified DenSco as the client,[195] the nature of the attorney-client relationship with such a "one-man shop" was subject to an enhanced risk of confusion and conflict.

---

[191] See page 46, 2011 POM ("On an annual basis and upon written request from an investor, the Company will certify to the requesting investor(s) that the aggregate outstanding principal amount of all cash accounts, other property and Trust Deeds is at least equal to the principal amount of outstanding Notes as of the date of the request.").

[192] See page 46, 2011 POM ("The Notes are not transferable without the prior written consent of the Company").

[193] See page 47, 2011 POM ("the Company intends to use its good faith efforts to accommodate written requests from an investor to prepay any Note prior to maturity").

[194] Although the 2011 POM (under the heading "Contingency Plan in the Event of Death or Disability of Mr. Chittick") references a "written agreement with Robert Koehler … to provide or arrange for any necessary services for the Company" should Mr. Chittick become "unable to perform his duties to continue the operation of the Company in any capacity," such agreement does not constitute a succession plan. In fact, the only action expected of Mr. Koehler pursuant to such agreement was "to close down the Company's business by collecting all of the monies due on the Trust Deeds and … return all of the principal and interest owed to the investors pursuant to the Notes." Page 41, 2011 POM. It is unclear whether such agreement was enforceable (e.g., due to a lack of consideration), but it is apparent that Mr. Koehler in fact did not perform as described. See page 68, lines 18-23, Deposition of Shawna Chittick Heuer (Mr. Chittick's sister) on August 22, 2018 ("I remember … Robert saying … I don't want to be a part of this. I don't feel comfortable. … I have my own business. This is too much for me to take on, is what I believe I remember him telling me.").

[195] Engagement Letter dated September 12, 2013, executed by Mr. Beauchamp on behalf of Clark Hill, and Mr. Chittick on behalf of DenSco ("This letter serves to record the terms of our engagement to represent DenSco Investment Corporation (the 'Client'), with regard to the legal matters transferred to Clark Hill PLC from Bryan Cave, LLP."). Such Engagement Letter was

As the only shareholder, director, officer and employee of DenSco, Mr. Chittick was the only point of contact for the Defendants in interacting with their client, DenSco. Based on the record I have reviewed, it does not appear that Mr. Chittick had separate legal counsel to represent him and his interests in his capacity as shareholder, director, officer or employee of DenSco. This situation could easily lead Mr. Chittick to reasonably believe that the Defendants were not only DenSco's attorneys, but his own as well.

Mr. Beauchamp himself appears to have been confused as to the identity of his client, as reflected in the 2011 POM which he prepared: "Legal counsel to the Company will represent the interests solely of the Company *and its President.*"[196] Further, at the hearing to determine the appointment of the Receiver, Mr. Beauchamp testified that "he concurrently represented both DenSco and Denny Chittick personally."[197] In addition, as he testified in his deposition, Mr. Beauchamp apparently understood that Mr. Chittick was also his client, at least in some capacity, and that Mr. Chittick considered he was his attorney.[198]

---

expressly "supplemented by our Standard Terms of Engagement for Legal Services, attached, which are incorporated in this letter and apply to this matter and the other matter(s) for which you engage us." The attached Standard Terms of Engagement for Legal Services, under the caption "Whom We Represent," provided: "The person or entity whom we represent is the person or entity identified in our engagement letter and *does not include any affiliates or related parties of such person or entity such as … employees, officers, directors, shareholders of corporation*, … and/or other constituents of named client unless our engagement letter expressly provides otherwise" [italics added].

[196] See page 30, 2011 POM [italics added].

[197] See Exhibit 317, email dated August 30, 2016 from Kevin Merritt (attorney for the Chittick Estate) to Mr. Beauchamp and Ryan Anderson (an attorney representing the Receiver), copying the Receiver, Mr. Polese (attorney for the Chittick Estate), et al. ("I would like to remind everyone that David testified at the receivership hearing that he concurrently represented both DenSco and Denny Chittick, personally."); see, also, email dated August 15, 2016 from Mr. Polese to Ms. Coy, copying Mr. Beauchamp, et al. ("It is my view and that of Dave Beauchamp, Denny viewed David as both his company attorney and personal attorney."). Although Mr. Beauchamp claimed that he corrected the statement made to Ms. Coy (see pages 118-119, lines 23-9, Deposition of Mr. Beauchamp), there appears to be no evidence of such action, and it appears to be contrary to his other testimony. See pages 133-134, lines 7-11, Deposition of Mr. Beauchamp ("Based on the information that I have now … I would say it's not true [that "Mr. Chittick considered that I was his counsel as well as counsel for DenSco"]. … At the time I did this declaration [draft received August 17, 2016], I had a different understanding of what counsel was, … I have since understood that, no, I'm representing the company").

[198] See page 3, Defendants' DS ("Mr. Beauchamp averred in an August 17, 2016 declaration under oath that he represented DenSco and 'Mr. Chittick as the President of DenSco.' Mr. Beauchamp did not represent Mr. Chittick outside of his role as a corporate officer at DenSco."). See, also, pages 133-134, lines 7-11, Deposition of Mr. Beauchamp (counsel quotes from Exhibit 435 (paragraph 5, draft Declaration of David Beauchamp, dated August 27, 2016): "Q. … 'During my involvement with Mr. Chittick and DenSco, I understood that Mr. Chittick considered that I was his counsel as well as counsel for DenSco.' That is not true, correct? A.

It is important to note that the interests of an entity client are not always aligned with, and are often in conflict with, the interests of the client's shareholders, directors, officers and employees, even when only one individual occupies all of those roles. As noted above, the Rules of Professional Conduct make clear that, when representing an entity as client, the attorney *must* recognize that it is the entity whose interests are to be protected, and *not* the interests of the individual or individuals through whom the entity acts.[199] As a result, it is important for the attorney to properly identify his or her client, and to ensure that when the client is an entity, such individual(s) understand who is and who is not the client of the attorney.[200]

This situation creates a material risk that each of the entity client, such individual(s) and perhaps even the attorney – in this Case, DenSco, Mr. Chittick and the Defendants, respectively – may be confused or conflicted with respect to the attorney-client relationship.

5. Implications

For the above reasons, in my opinion the applicable standard of care dictates that the Defendants should have recognized that DenSco was a high-risk client. To be clear, I am not suggesting that it was a violation of the standard of care for an attorney to engage with a high-risk client. However, in accepting and continuing to represent DenSco as a client, the Defendants should have recognized the enhanced risks associated with such representation, including the substantial risk (if not likelihood) that: (1) DenSco may be unable to comply with applicable law and the other requirements and guidelines as set forth in the 2011 POM; (2) investors may bring claims for securities fraud and/or breach of fiduciary duties; (3) disabling conflicts of interest may arise between DenSco and Mr. Chittick, thereby jeopardizing the role of the Defendants; and (4) malpractice and related claims may be brought against the Defendants by or on behalf of DenSco.

Based on the information that I have now … I would say it's not true. Q. Did you ever think it was true? A. At the time I did this declaration, I had a different understanding of what counsel was, *and it was if you are providing advice to somebody as an officer or director of a company, then you represent them too*. And – Q. Individually? A. – *and that they would have the right to rely upon it and object*. ... Q. Okay but during the time you were representing DenSco at the material events in this case, you thought Mr. Chittick was your individual client? A. Not as an individual client. … as an officer or director of DenSco … And my analysis was based upon the right to rely upon the information provided, which I understand is not the appropriate standard now, determining who is your individual client." [italics added]).

[199] See Arizona Rules of Professional Conduct, Rule 1.13 [Organization as Client] ("A lawyer employed or retained by an organization represents the organization acting through its duly authorized constituents."); see also ABA Model Rule 1.13.

[200] See Deposition of Mr. Hood, page 110, lines 8-19 ("Q.… To your knowledge, from what you have reviewed, did Mr. Beauchamp ever clarify with Mr. Chittick that he was representing only DenSco? A. I don't know. Q. Okay. He should have, if there was any confusion. Don't you agree? … THE WITNESS: If there was confusion, then I agree that the Rule 1.13 would require that David have a discussion with Mr. Chittick.").

As a result, the applicable standard of care dictates that the Defendants should have: (a) engaged in extraordinary monitoring and counseling with respect to DenSco; (b) maintained clear documentation of advice provided and actions taken; and, most importantly, (c) been prepared to recognize, and quickly act in response to, "red flag" warnings or indications of any problems (such as those described below). In my opinion, failure to do so would constitute a violation of the Defendants' duties under the Rules of Professional Conduct, including but not limited to Rules 1.1 (Competence), 1.3 (Diligence) and 1.13 (Organization as Client) of the Arizona Rules of Professional Conduct and the ABA Model Rules.

B. The Four Red Flag Warnings that DenSco Needed Immediate and Focused Attention and Protection

1. The Freo Lawsuit

The Freo Lawsuit put Mr. Beauchamp on notice of allegations that one of DenSco's major borrowers, Mr. Menaged and his affiliated entities, was taking money from DenSco and another third-party lender to purchase the same property and provide both lenders with a deed of trust on that same property – thereby potentially having the effect of subordinating DenSco's interest in the property to that of the other lender (and diminishing the value of DenSco's interest).

Mr. Beauchamp knew, or should have known, that DenSco's interests (as lender) and Mr. Menaged's interests (as borrower) were not aligned in the Freo Lawsuit and that, as a result, DenSco needed to have independent legal counsel, and not simply "piggy back" on Mr. Menaged's defense.[201] Despite this clear conflict of interest, and Mr. Chittick's instruction that he speak with Mr. Menaged's attorney,[202] Mr. Beauchamp took no action with respect to the Freo Lawsuit.[203]

Had Mr. Beauchamp investigated the allegations in the complaint in the Freo Lawsuit, "he would have found within minutes, by reviewing records available through the Maricopa County Recorder's website relating to the property described in the Freo lawsuit: (i) a Deed of Trust and Security Agreement With Assignment of Rents given by Easy Investments in favor of Active Funding Group, that Menaged had signed on March 25, 2013; and (ii) a Deed of Trust and Assignment of Rents given by Easy Investments in favor of DenSco, that Menaged had signed on April 2, 2013. Both signatures were witnessed by the same notary public."[204]

---

[201] Email dated June 14, 2013 from Mr. Chittick to Mr. Beauchamp, copying Mr. Menaged ("Easy Investments, has his attorney working on it, I'm ok to piggy back with his attorney to fight it.").
[202] See Ibid ("Easy Investments [sic] willing to pay the legal fees to fight it. I just wanted you to be aware of it, and talk to his attorney. Contact info is below.").
[203] Mr. Beauchamp testified that he did not speak to the borrower's attorney, Mr. Goulder, at that time. See page 240, lines 9-19, Deposition of Mr. Beauchamp.
[204] Plaintiff's DS ¶ 129.

Upon becoming aware of the Freo Lawsuit, Mr. Beauchamp should have advised Mr. Chittick of the following action items, and should have assisted him in the completion of these action items:

- investigate the policies and procedures, and the trustworthiness, of Mr. Menaged and his affiliated entities;
- investigate where the excess funds from two different mortgage loans went;
- suspend making any further loans to Mr. Menaged and all entities managed by Menaged;
- review all other outstanding loans to Mr. Menaged and his affiliated entities to confirm that DenSco was the only lender on the property with a first lien deed of trust;
- review and reevaluate DenSco's internal procedures to ensure that it was not vulnerable to the type of double lien issue alleged in the Freo Lawsuit;
- contact the other lender to investigate the allegations; and
- evaluate the accuracy of the disclosures made in the 2011 POM, and update and correct them as may be necessary.

Based on the record I have reviewed, Mr. Beauchamp provided no such advice or assistance following the Freo Lawsuit. In fact, from mid-June 2013 when Mr. Beauchamp first learned of the significant allegations in the Freo Lawsuit,[205] until at least January of the following year, Mr. Beauchamp took no such action to protect his client, DenSco.[206]

---

[205] See email dated June 14, 2013 from Mr. Beauchamp to Mr. Chittick ("we will need to disclose this in POM").

[206] If, instead, the Defendants had investigated and done proper due diligence with respect to the red flag warning raised by the Freo Lawsuit at or around the time that Mr. Beauchamp transitioned from Bryan Cave to Clark Hill, they would have discovered the magnitude of the damage caused by the Menaged fraud and Mr. Chittick's failure to follow proper funding procedures. Because of the materially inaccurate and incomplete disclosures made in the expired 2011 POM, upon such discovery the Defendants should have then instructed DenSco to immediately cease the offer and sale of all Notes. Any Rule 10b-5 compliant disclosures at that time would be required to disclose, among other things, DenSco's failures with respect to its first lien positions, loan-to-value ratios, and diversity of its borrowers, and the cause of such failures (including Mr. Chittick's negligence), as well as its exposure to civil and criminal consequences for securities fraud (including the possible right of all Noteholders to demand rescission). Because such disclosures would by necessity be so negative (especially in comparison to the disclosures contained in the 2011 POM), it appears to me unlikely that the sophisticated accredited investors targeted by DenSco would have been inclined to continue to invest in Notes. Further, because DenSco's business model was based on soliciting and investing money provided by Noteholders, and because many of the double lien properties were overleveraged, in my opinion the proper advice to be given to DenSco at that time would have been to conduct an

2. Mr. Chittick's Instruction

At the time of Mr. Chittick's Instruction to stop working on updating the POM, the 2011 POM was already out of date, had expired by its own terms, and contained no information regarding the Freo Lawsuit. As discussed above, because I have seen no evidence that Mr. Beauchamp communicated to Mr. Chittick to cease offering Notes until an updated POM could be provided to investors, he should have expected that Mr. Chittick would continue to solicit new investors. Further, Mr. Beauchamp knew that DenSco had dozens of Notes that were scheduled to mature, and that a significant portion of those Notes would be rolled over into new Notes.[207]

However, rather than take corrective action (such as insisting that Mr. Chittick cooperate in updating the POM or cease offering new Notes and/or terminating the attorney-client relationship), the Defendants instead accepted DenSco as a new client at Clark Hill, and continued to do no work in updating the expired 2011 POM for over three months.

In my opinion, Mr. Chittick's Instruction is an inflection point, in that it evidenced both (a) an inability or unwillingness on the part of Mr. Chittick to work with the Defendants in complying with applicable securities laws, and (b) a willingness on the part of the Defendants to knowingly accept and tolerate as a new client one that was failing to comply with applicable securities laws.

3. The December 2013 Phone Call

The December 2013 Phone Call once again put Mr. Beauchamp on notice that there were serious lien priority problems in connection with DenSco's dealings with Mr. Menaged and his affiliated entities.

Once again, following the December 2013 Phone Call, Mr. Beauchamp should have advised and assisted Mr. Chittick with respect to the above action items – this time with more urgency given the prior Freo Lawsuit and Mr. Chittick's Instruction. Instead, Mr. Beauchamp simply advised Mr. Chittick to document a "plan" to resolve the double lien issue.[208]

4. The Bryan Cave Demand Letter

The cumulative effect of the Freo Lawsuit, Mr. Chittick's Instruction, the December 2013 Phone Call and the Bryan Cave Demand Letter put the Defendants on notice that there were very serious problems at DenSco, especially with respect to Mr. Menaged and his affiliated entities (borrowers that the Defendants knew were material to DenSco's business). Further, it should

---

orderly liquidation (presumably in a Chapter 7 bankruptcy proceeding) for the benefit of its Noteholders.

[207] See email dated June 20, 2013 from Mr. Beauchamp to several colleagues at Bryan Cave ("According to his note schedule, Denny has approximately 60 investor notes that are scheduled to expire in the next 6 months (and to probably be rolled over into new notes)").

[208] Defendants' DS, page 8 ("Mr. Beauchamp suggested that Mr. Chittick and Menaged document their plan … to resolve the double-lien issue.")

have become clear to Mr. Beauchamp that Mr. Chittick's strategy to "piggy back" on Mr. Menaged's defense in the Freo Lawsuit,[209] and Mr. Chittick's Plan to resolve the double lien issue raised in the December 2013 Phone Call, had not only failed to address those problems, but were inappropriate actions to take on behalf of DenSco.

5. Call to Action

In my opinion, under such circumstances a reasonably prudent attorney would have immediately taken the following measures to protect DenSco and its Noteholders – none of which were taken by the Defendants:

a. Conduct Due Diligence

As discussed above, Arizona's Rules of Professional Conduct, Rule 1.3 (Diligence) would obligate such an attorney to "act with reasonable diligence and promptness in representing a client."[210]

The Defendants themselves should have investigated the claims involving Mr. Menaged and his affiliated entities, which were raised in the Freo Lawsuit, the December 2013 Phone Call and the Bryan Cave Demand Letter, including Mr. Menaged's fabricated story involving his "cousin." As part of such investigation, the Defendants should have looked into where the proceeds from DenSco's loans went. The Defendants should have also reviewed all other outstanding loans to Mr. Menaged and his affiliated entities – and all other borrowers – so as to determine whether the problem was limited to the properties identified in the Freo Lawsuit, the December 2013 Phone Call and the Bryan Cave Demand Letter.

The Defendants themselves should have reviewed and reevaluated DenSco's internal procedures to ensure that it was not vulnerable to the type of double lien issue raised in the Freo Lawsuit, the December 2013 Phone Call and the Bryan Cave Demand Letter. As part of such review, the Defendants should have investigated the funding procedure used by DenSco to ensure that it was in fact obtaining first lien deeds of trust in properties owned by its borrowers (as it disclosed in the 2011 POM).

b. Terminate All Dealings with Mr. Menaged

The Defendants should have urged DenSco to sever its relationship with Mr. Menaged and his affiliated entities, and to immediately stop providing any additional funds to Mr. Menaged and his affiliated entities.

---

[209] Email dated June 14, 2013 from Mr. Chittick to Mr. Beauchamp, copying Mr. Menaged ("Easy Investments, has his attorney working on it, I'm ok to piggy back with his attorney to fight it.").

[210] See, also, Comment [1] to Arizona Rule 1.3 ("A lawyer should pursue a matter on behalf of a client despite opposition, obstruction or personal inconvenience to the lawyer, and take whatever lawful and ethical measures are required to vindicate a client's cause or endeavor. A lawyer must also act with commitment and dedication to the interests of the client.").

The Defendants should have also researched, and advised DenSco with respect to, its rights and remedies with respect to Mr. Menaged and his affiliated entities and with respect to the double lien properties and the other lenders, and should have urged DenSco to take appropriate action against Mr. Menaged and his affiliated entities for fraud.

c. Update the 2011 POM Immediately and Cease All Solicitations

By the time of the Bryan Cave Demand Letter, the 2011 POM had already expired by its own terms over a half year earlier. In addition, it did not include any information about the Menaged fraud or DenSco's exposure in the Freo Lawsuit or pursuant to the Bryan Cave Demand Letter, nor did it describe Mr. Chittick's Plan. And, based on the information contained in the Freo Lawsuit, the December 2013 Phone Call and the Bryan Cave Demand Letter, the Defendants knew that the disclosures made in the 2011 POM were materially inaccurate,[211] especially with respect to DenSco's first lien position,[212] its loan-to-value ratio,[213] and the diversity of its borrowers.[214]

The Defendants knew that the "failure to update [the 2011 POM] as required could result in the Company being subject to a claim under Section 10b-5 [sic] of the Securities Act for employing *manipulative or deceptive device in the sale of securities*, subjecting the Company, and possibly the management of the Company, to claims from regulators and investors."[215] Further, as Mr. Beauchamp acknowledged in February 2014, he was concerned that Mr. Chittick had committed securities fraud because the loan documents he had Mr. Menaged sign did not comply with DenSco's representations in the 2011 POM.[216] In addition, as Mr. Beauchamp testified, by "the end of April, beginning of May of 2014 … *I believed he had committed a securities violation, and it was paramount that we get the disclosure statement out in writing to all of the investors as quickly as possible*."[217]

---

[211] See Mr. Beauchamp's handwritten notes of a telephone call with Mr. Chittick on February 11, 2104 ("Material Disclosure – exceeds 10% of the overall portfolio").
[212] See page 37, 2011 POM.
[213] See pages 10 & 37, 2011 POM.
[214] See pages 10 & 36-37, 2011 POM. See also pages 9-10, lines 25-2, Defendants' DS ("by the end of 2013, more than half of [DenSco's] loan portfolio was tied up with Menaged--well in excess of the promised loan concentrations DenSco had set forth in its disclosures to investors").
[215] Page 24, 2011 POM.
[216] Exhibit 70, email dated February 7, 2014 from Mr. Beauchamp to Mr. Goulder (Mr. Menaged's attorney), copying Mr. Chittick ("Based on your previous changes, the Forbearance Agreement would be prima facie evidence that Denny Chittick had committed securities fraud because the loan documents he had Scott sign did not comply with DenSco's representations to DenSco's investors in its securities offering documents.").
[217] See, also, page 161, lines 7-24, Deposition of Mr. Beauchamp ("Q. Was there any point in time, sir, where you learned that Mr. Chittick was continuing to raise money? A. … the *end of April, beginning of May of 2014*. … Q. And once you learned that, you knew he was committing a securities violation? … A. I – *at that point in time, I believed he had committed a securities violation, and it was paramount that we get the disclosure statement out in writing to all of the*

For the reasons stated above,[218] it is clear that Mr. Beauchamp was aware that DenSco was continuing to offer Notes without updated disclosures, after the expiration of the 2011 POM, and despite his knowledge of the problems revealed in the Freo Lawsuit, the December 2013 Phone Call and the Bryan Cave Demand Letter.

Under these circumstances, and notwithstanding Mr. Chittick's Instruction, the Defendants should have insisted that DenSco immediately cease all solicitations of investors (including new investors and rollover investors) unless and until an updated and corrected POM, in compliance with Rule 10b-5, was prepared and provided to all such investors.

d. Advise Mr. Chittick of His Fiduciary Duties to DenSco and its Investors

As a result of the problems revealed in the Freo Lawsuit, the December 2013 Phone Call and the Bryan Cave Demand Letter, the Defendants should have advised Mr. Chittick of his fiduciary duties both to DenSco and to its Noteholders. For example, the duty of loyalty mandated that Mr. Chittick, as director,[219] officer[220] and sole shareholder[221] of DenSco, act in the best interests of DenSco. Among other things, the Defendants should not have merely accepted and followed Mr. Chittick's Instruction, but rather urged Mr. Chittick of his obligations to update the POM.

And, to the extent that such problems may have rendered DenSco insolvent, Mr. Chittick would owe fiduciary duties to its creditors, and would be obligated to treat all assets of DenSco as "existing for the benefit" of the Noteholders and other creditors.[222] As a result, the Defendants should have assessed whether DenSco was insolvent or in the "zone of insolvency."

Because of such duties, the Defendants also should have urged Mr. Chittick, on behalf of their client DenSco, to protect and preserve the corporation's assets, and to not pursue a Plan that

---

investors as quickly as possible. His representations that he had advised everybody and told them to the contrary, we needed something much more formal than that." [italics added]).

[218] See the section entitled "Defendants Allege They Withdrew from Representing DenSco in May 2014" above in this Report.

[219] See Arizona Revised Statutes, Section 10-842 ("an officer's duties shall be discharged … [i]n a manner the officer reasonably believes to be in the best interests of the corporation.").

[220] See Arizona Revised Statutes, Section 10-830 ("a director's duties … shall be discharged … [i]n a manner the director reasonably believes to be in the best interests of the corporation.").

[221] See *Sports Imaging of Arizona, L.L.C. v. 1993 CKC Trust*, No. 1 CA-CV 05-0205, 2008 WL 4448063,*12 (unpublished opinion, Ariz. Ct. App. 2008) ("shareholders that have the ability to control a corporation owe a fiduciary duty to the corporation").

[222] See *A.R. Teeters & Assocs. v. Eastman Kodak Co.*, 172 Ariz. 324, 836 P.2d 1034 (Ariz. Ct. App. 1992) ("all of the assets of a corporation, immediately on its becoming insolvent, exist for the benefit of all of its creditors" [internal citation omitted]). See, also, *Dooley v. O'Brien*, 226 Ariz. 149, 244 P.3d 586 (Ariz. Ct. App. 2010); *Dawson v. Withycombe*, 216 Ariz. 84, 163 P.3d 1034 (Ariz. Ct. App. 2007).

would benefit Mr. Chittick individually (such as to preserve his reputation and/or equity stake in DenSco) at the risk of DenSco or the Noteholders.

Further, as legal counsel to DenSco, the Defendants should have advised Mr. Chittick as to how to best protect and preserve the corporation's assets, especially with respect to those outstanding loans that were not adequately protected by first lien mortgages. In order to render such advice, the Defendants would have needed to conduct due diligence and research in order to properly consider available alternatives.

e. Protect DenSco from the Negligent, Reckless and Disloyal Actions of Mr. Chittick

Because DenSco, and not Mr. Chittick, was the client, the Defendants owed duties to DenSco exclusively.[223] Because the Defendants knew, or should have known, that Mr. Chittick was acting in a manner that violated his legal obligations to DenSco (e.g., breach of fiduciary duties), and that constituted a violation of the law that would be imputed to DenSco (e.g., securities fraud), in both instances that was likely to result in substantial injury to DenSco, the Defendants were obligated to "proceed as is reasonably necessary in the best interest of the organization."[224] In accordance with Arizona's Rules of Professional Conduct, Rule 1.13 (Organization as Client), paragraph (c), such obligation may have included reporting Mr. Chittick to the proper authorities and/or the Noteholders in order protect DenSco against Mr. Chittick.[225]

Here, again, is an issue that arises because DenSco is a high-risk client with only one person making all decisions. The Defendants did not have an opportunity to report to anyone else at DenSco that Mr. Chittick was causing harm to DenSco. Although Rule 1.13(c) itself does not mandate "reporting out," Rule 1.2 makes clear that, under the right set of circumstances, "a lawyer may be required to disclose information relating to the representation to avoid being deemed to have assisted the client's crime or fraud."[226] Because the Defendants were obligated to protect their client against Mr. Chittick, in my opinion the standard of care applicable to them would have obligated them to report Mr. Chittick's inappropriate actions to either the proper authorities or the Noteholders or both.

f. Withdraw from the Representation of DenSco

---

[223] See Arizona's Rules of Professional Conduct, Rule 1.13 (Organization as Client).
[224] Arizona's Rules of Professional Conduct, Rule 1.13(b).
[225] Arizona's Rules of Professional Conduct, Rule 1.13(c) ("if (1) despite the lawyer's efforts in accordance with ER 1.13(b) the highest authority that can act on behalf of the organization insists upon or fails to address in a timely and appropriate manner an action or refusal to act, that is clearly a violation of law, and (2) the lawyer reasonably believes that the violation is reasonably certain to result in substantial injury to the organization, then *the lawyer may reveal information relating to the representation* ... only if and to the extent the lawyer reasonably believes necessary to prevent substantial injury to the organization." [italics added]).
[226] Comment [11] of Rule 1.2 (Scope of Representation and Allocation of Authority between Client and Lawyer) of the Arizona Rules of Professional Conduct.

Once it becomes clear that disclosures being provided to investors in DenSco fail to comply with Rule 10b-5, a reasonably prudent attorney would have three options: (1) cause DenSco to immediately update and correct the disclosures made available to all investors; (2) cause DenSco to immediately cease soliciting investors (including rollover investors); or (3) withdraw from the representation of DenSco. (In my experience, the threat to withdraw often induces an otherwise reluctant client to abide by one of the other options.)

Under the circumstances, because the Defendants failed to cause DenSco to update and correct the 2011 POM or cease soliciting investors, the Defendants had no option but to immediately withdraw from the representation of DenSco. Arizona's Rules of Professional Conduct, Rule 1.16 (Mandatory Withdrawal from the Representation), mandates that a lawyer "*shall withdraw from the representation of a client if the representation will result in violation of the Rules of Professional Conduct or other law*."[227] Further, because the Defendants were aware that DenSco was committing securities fraud by continuing to solicit investors without adequate disclosures, in my opinion such withdraw should have been made clear by written notice to Mr. Chittick on behalf of DenSco, together with a statement disaffirming the 2011 POM.[228]

C. The Defendants' Conduct Fell Below the Standard of Care

In my opinion, the Defendants' conduct fell below the applicable standard of care in each of the following respects:

1. The Defendants' Failures with Respect to the Menaged Fraud

a. The Defendants Failed to Recognize that DenSco was a High-Risk Client

For all the reasons stated above under "DenSco was a 'High-Risk' Client," the Defendants should have recognized that DenSco was a high-risk client, and apparently failed to do so. Had they recognized that DenSco was a high-risk client, the applicable standard of care dictates that they would have (a) engaged in extraordinary monitoring and counseling with respect to DenSco, (b) maintained clear documentation of advice provided and actions taken, and (c) been prepared to recognize, and quickly act in response to, red flag warnings or indications of any problems.

b. The Defendants Failed to Conduct any Due Diligence on Mr. Menaged or on DenSco's Funding Procedure

[227] Italics added.

[228] Comment [11] to Rule 1.2 of Arizona's Rules of Professional Conduct ("In some cases, withdrawal alone might be insufficient. It may be necessary for the lawyer to give notice of the fact of withdrawal and to disaffirm any opinion, document, affirmation or the like."). See also Model Rules of Professional Conduct, Comment [10] to Rule 1.2 (Scope of Representation and Allocation of Authority Between Client and Lawyer).

The Defendants were put on notice of the Menaged fraud by each of the four red flag warnings: the Freo Lawsuit, Mr. Chittick's Instruction, the December 2013 Phone Call, and the Bryan Cave Demand Letter. However, based on the record I have reviewed, at no point in time did the Defendants conduct any due diligence or investigation into the claims involving Mr. Menaged and his affiliated entities. A simple search of records available on the County of Maricopa website would have called into question the veracity of Mr. Menaged's fabricated story about his "cousin."[229]

Even if Mr. Menaged's story were credible, the fraud supposedly committed by his "cousin" still reflected gravely on Mr. Menaged's reliability, management and supervision – all issues that should have been investigated by the Defendants. Further, there appeared to be no inquiry into where the proceeds from DenSco's loans disappeared to.

The Defendants should have reviewed and reevaluated DenSco's internal procedures to ensure that it was not vulnerable to the type of double lien issue raised first in the Freo Lawsuit, then in the December 2013 Phone Call, and again in the Bryan Cave Demand Letter. As part of such review, the Defendants should have investigated the funding procedure used by DenSco to ensure that it was obtaining first lien deeds of trust in properties owned by its borrowers (as it disclosed in the 2011 POM).

Further, the Defendants apparently took no effort to investigate the magnitude of the double lien issue, relying instead only on those issues and properties specifically identified in the Freo Lawsuit, the December 2013 Phone Call, and the Bryan Cave Demand Letter.

In my opinion, these failures violated Rule 1.3 (Diligence) of the Arizona Rules of Professional Conduct and violated the standard of care applicable to the Defendants.

c. The Defendants Failed to Protect DenSco from Mr. Menaged

[229] See, e.g., Exhibit 103 (Deed of Trust and Security Agreement with Assignment of Rents, recorded in the Official Records of Maricopa County Recorder March 25, 2013, for property located at "7089 W Andrew Lane Peoria, AZ 85383." The Trustor is Easy Investments, LLC. The Beneficiary is Active Funding Group, LLC.); see, also, Exhibit 104 (Deed of Trust and Assignment of Rents, recorded in the Official Records of Maricopa County Recorder April 2, 2013, for property located at "7089 W Andrew Lane Peoria, AZ 85383." The Trustor is Easy Investments, LLC. The Beneficiary is DenSco.). See also Plaintiff's DS ¶ 228 ("Beauchamp also knew from his January 6 review of the demand letter and the hours he had devoted on January 7 and 8 to analyzing Chittick's email and other information he had received from Chittick, that Menaged's 'cousin' story was implausible and that by accepting the story without investigation and planning to continue DenSco's lending relationship with Menaged, Chittick was breaching his fiduciary duties to DenSco."). See also Plaintiff's DS ¶¶ 207(b) & 207(c) ("In January 2014, the Maricopa County Recorder's Office had a free "Recorded Document Search" function. The same tool is available today. If Beauchamp had used that tool, two brief searches would have shown that … Menaged, not 'a guy in his office,' had secured both loans.").

The Defendants failed to advise DenSco to severe its relationship with, and immediately stop providing additional funds to, Mr. Menaged and his affiliated entities. The Defendants also failed to advise DenSco of its rights and remedies with respect to either Mr. Menaged or the other lenders. Instead of urging DenSco to take appropriate action against Mr. Menaged and his affiliated entities for fraud, the Defendants did just the opposite – by encouraging and facilitating Mr. Chittick's Plan.

The Defendants failed to recognize that the Forbearance Agreement provided little or no benefit to DenSco. In my experience, a forbearance agreement is utilized to provide short-term relief to a borrower that is experiencing a temporary hardship (such as a cash flow issue). As the name of the agreement suggests, a lender sometimes agrees to *forbear* from exercising its remedies, and delay exercising its right to institute foreclosure proceedings, for a limited period of time in order to provide the borrower with an opportunity to recover.[230] However, the Forbearance Agreement here further acerbated DenSco's risk and exposure by essentially conceding that Mr. Menaged's other lenders had a superior lien position and allowing them to extract value out of the mortgaged properties ahead of DenSco.

Mr. Beauchamp's failures with respect to the Forbearance Agreement raise a troubling question as to whether he simply fell below the applicable standard of care by failing to appreciate the potential damage to DenSco caused by pursuing the agreement, or whether he was in fact motivated by other interests, such as a conflicted desire to give Mr. Chittick's Plan a chance to work so as to minimize the problems caused by Mr. Beauchamp's negligent delay in providing updated and corrected disclosures.[231] To the extent Mr. Beauchamp's pursuit of the Forbearance Agreement was motivated by such a personal conflict of interest, such conduct was so reckless and irresponsible that, in my opinion, it constituted a gross departure from the applicable standard of care.

2. The Defendants' Failures with Respect to Disclosures

a. The Defendants Failed to Timely Update the 2011 POM

Because the 2011 POM provided for a two-year offering period,[232] by its own terms it expired on July 1, 2013. However, based on the record I have reviewed, it appears that the Defendants

[230] It appears that the Defendants believed that it was in DenSco's interest to forbear from exercising its remedies. See page 12, lines 21-26, Defendants' DS ("As Mr. Beauchamp explained in a February 10, 2014 email to his colleagues, "we advised our client that *he needs to have a Forbearance Agreement in place to evidence the forbearance* and the additional protections he needs.'" [italics added]).
[231] See Plaintiff's DS ¶ 249.
[232] See page (i), 2011 POM ("The Company intends to offer the Notes on a continuous basis until the earlier of (a) the sale of the maximum offering, or (b) two years from the date of this memorandum.").

never finalized and provided DenSco with an update to the 2011 POM nor a replacement POM.[233]

The July 1, 2013 deadline for updating the 2011 POM was known to Mr. Beauchamp, as he was the one who prepared the 2011 POM and advised DenSco with respect to such matters. The applicable standard of care obligated Mr. Beauchamp to be diligent in preparing an updated POM prior to July 2013 in order that DenSco could timely distribute the updated POM to investors. Mr. Beauchamp's apparent concern about DenSco being close to issuing $50 million of Notes was misplaced,[234] and in no event excused him from updating the 2011 POM as DenSco remained obligated to provide required disclosures to its investors.

Further, with each red flag warning, the Defendants were increasingly aware of the significance of the Menaged fraud and DenSco's inadequate funding procedures, and yet never provided DenSco with any Rule 10b-5 compliant disclosure document that described the facts and circumstances – and material consequences – of the Freo Lawsuit, the December 2013 Phone Call and the Bryan Cave Demand Letter. Even with the first red flag warning, Mr. Beauchamp recognized that the Freo Lawsuit needed to be disclosed to investors, and Mr. Chittick was cooperative,[235] but no such disclosure was ever prepared by Mr. Beauchamp nor provided to Mr. Chittick.

Mr. Beauchamp appears to assert in the alternative that the Defendants were not obligated to update or correct the 2011 POM because either (1) Mr. Chittick on his own was providing the required disclosures to investors or (2) Mr. Beauchamp had advised Mr. Chittick to discontinue offering Notes to investors. In my opinion, under the circumstances described above, neither assertion is plausible nor in compliance with the standard of care applicable to the Defendants. Further, the Defendants' conduct in this regard was so reckless and irresponsible that such conduct, in my opinion, constituted a gross departure from the applicable standard of care.

---

[233] Further, it does not appear that Mr. Beauchamp *ever* prepared, or advised DenSco to prepare, any update to any of DenSco's POMs during the two-period when such POMs were in effect. See Plaintiff's DS ¶¶ 28 & 29 ("DenSco's records do not reflect that DenSco ever took steps to '[k]eep[] the information in the [POMs DenSco issued in 2007, 2009 and 2011] current' by issuing updates to those POMs during the two-year period each of those POMs was in effect. The files that Beauchamp maintained, and the billing statements issued to DenSco by his respective law firms, do not reflect that Beauchamp ever advised DenSco to '[k]eep[] the information in the [POMs DenSco issued in 2007, 2009 and 2011] current' by issuing updates to those POMs during the two-year period each of those POMs was in effect."). Also see Plaintiff's DS ¶¶ 161 & 162 ("Clark Hill's records show that neither Beauchamp nor any other Clark Hill attorney performed any work on a new POM during September, October, or November 2013. The records also show that neither Beauchamp nor any other Clark Hill attorney even attempted to contact Chittick about the new POM.").

[234] See DIC0003345, Mr. Beauchamp's handwritten notes dated May 9, 2013; email dated June 25, 2013 from Mr. Beauchamp to Ms. Sipes; email dated July 1, 2013 from Ms. Sipes to Mr. Beauchamp.

[235] See email exchange dated June 14, 2013 between Mr. Beauchamp and Mr. Chittick.

b. The Defendants Failed to Conform DenSco Policies and Procedures to Those Disclosed in the POM – and Vice Versa

With each red flag warning, the Defendants became increasingly aware that material statements contained in the 2011 POM were no longer in compliance with Rule 10b-5, especially with respect to DenSco's first lien position,[236] its loan-to-value ratio,[237] and the diversity of its borrowers.[238] In addition, the 2011 POM touted DenSco's historical success rate, including that "no Noteholder has sustained any diminished return or loss on their investment."[239]

In my opinion, the Defendants should have recognized that each of these statements was materially inaccurate in light of the Menaged fraud and DenSco's improper and risky funding procedure, and yet the Defendants failed to make any effort to update or correct these statements until after the Forbearance Agreement was completed in mid-April 2014. And even in the Draft 2014 POM which the Defendants prepared after the Forbearance Agreement was executed, the Defendants failed to modify or correct such statements.

3. The Defendants' Failures with Respect to Mr. Chittick

a. The Defendants Failed to Recognize that DenSco, and not Mr. Chittick, was the Client

The record is replete with evidence that the Defendants considered Mr. Chittick to be their client and/or that it was their responsibility to protect him. For example, in February 2014, Mr. Beauchamp communicated to Mr. Goulder (Mr. Menaged's attorney) that the Forbearance Agreement "needs to comply with *Denny's* fiduciary obligation to his investors as well as not become evidence to be used against *Denny* for securities fraud."[240] Shortly thereafter, Mr. Beauchamp communicated to Mr. Chittick that the Forbearance Agreement "has to have the necessary and essential terms to protect *you* from potential litigation from investors and third parties."[241]

---

[236] See page 37, 2011 POM.
[237] See pages 10 & 37, 2011 POM.
[238] See pages 10 & 36-37, 2011 POM. See also pages 9-10, lines 25-2, Defendants' DS ("by the end of 2013, more than half of [DenSco's] loan portfolio was tied up with Menaged--well in excess of the promised loan concentrations DenSco had set forth in its disclosures to investors").
[239] See page 39, 2011 POM ("Since inception through June 30, 2011, … [e]ach and every Noteholder has been paid the interest and principle due to that Noteholder in accordance with the respective terms of the Noteholders Notes. Despite any losses incurred by the Company from its borrowers, no Noteholder has sustained any diminished return or loss on their investment in a Note from the Company.").
[240] Email dated February 7, 2014 from Mr. Beauchamp to Mr. Goulder (Mr. Menaged's attorney), copying Mr. Chittick [italics added].
[241] Email dated February 9, 2014 from Mr. Beauchamp to Mr. Chittick [italics added]. See, also, email dated March 13, 2015 from Mr. Beauchamp to Mr. Chittick ("I wanted to protect *you* as much as I could." [italics added]); Mr. Beauchamp's handwritten notes of his telephone call with

Mr. Beauchamp failed to understand or recognize that it was DenSco, and not Mr. Chittick, that was his client and that of Clark Hill, even though the Clark Hill Engagement Letter that he signed made expressly clear that Mr. Chittick was *not* the client.[242] In my opinion, such failure was in violation of Rule 1.13 of the Arizona Rules of Professional Conduct and in violation of the applicable standard of care.

b. The Defendants Failed to Properly Advise Mr. Chittick as an Officer and Director of DenSco

The Defendants failed to properly advise Mr. Chittick that he was causing DenSco to engage in securities fraud by continuing to sell Notes based on disclosures in the outdated, incorrect and expired 2011 POM.

For the reasons stated above,[243] the Defendants' conduct fell below the standard of care to the extent that they were relying on any purported claim by Mr. Chittick that he was making proper disclosures to investors without an updated and corrected POM.

The Defendants failed to properly advise Mr. Chittick that the Defendants would be required to withdraw from the attorney-client relationship unless he caused DenSco to either cease soliciting investors or provide investors with Rule 10b-5 compliant disclosures.

The Defendants failed to properly advise Mr. Chittick of his fiduciary duties to DenSco. The Defendants further failed to assess whether DenSco was insolvent (or in the zone of insolvency) as a result of the Menaged fraud, in which case Mr. Chittick should also have been advised of his fiduciary duties to the Noteholders.

The Defendants failed to properly advise Mr. Chittick that it was his obligation to protect and preserve DenSco's assets, and to not pursue a Plan that would benefit Mr. Chittick individually (such as to preserve his reputation and/or equity stake in DenSco) at the risk of DenSco or the Noteholders. The Defendants failed to promptly and definitively instruct Mr. Chittick to not fund loan proceeds to borrowers. When Mr. Chittick informed Mr. Beauchamp by email that he provides funds directly to Mr. Menaged and most other borrowers to acquire properties at auctions,[244] rather than reaffirm the "fundamental importance" of adhering to the advice that he

---

Mr. Chittick on February 27, 2014 ("will need Forbearance Agmt to … protect *Denny*" [italics added]).

[242] Engagement Letter dated September 12, 2013 (referenced above).

[243] See "Defendants Allege They Withdrew from Representing DenSco in May 2014" above.

[244] Email dated January 9, 2014 from Mr. Chittick to Mr. Beauchamp ("If i cut cashiers check and take it to the trustee myself, i dont' get receipt that DenSco Paid for it. i get a receipt saying that property was paid for, for X $'s vested in borrower's name. my name doesn't appear on it. other than having a cashiers check receipt saying that i made a check out for it, there isn't anything from the trustee saying that it was my check. i could wire Scott the money, he could produce cashiers check that says remitter is DenSco and it would have the exact same affect as if

had been giving since 2007,[245] Mr. Beauchamp simply replied "Let me see what the other lenders got from the Trustee and we can make a better decision."[246] There is nothing in the record that I have reviewed that indicates Mr. Beauchamp followed up with Mr. Chittick on this exchange or took appropriate action to ensure that Mr. Chittick ceased this improper and risky funding procedure.

And the Defendants failed to advise Mr. Chittick as to how to best protect and preserve the corporation's assets, especially with respect to those outstanding loans that were not adequately protected by first lien mortgages. Nor did they conduct the requisite due diligence and research in order to properly consider available alternatives.

The Defendants conduct fell below the applicable standard of care by, in effect, aiding and abetting Mr. Chittick's wrongful conduct by focusing their attention on the Forbearance Agreement rather than on DenSco's rights and remedies in connection with the Menaged fraud and on updating and correcting the 2011 POM. In other words, by failing to terminate the attorney-client relationship, the Defendants provided substantial assistance in Mr. Chittick's wrongful conduct. The Defendants' conduct in this regard was so reckless and irresponsible that such conduct, in my opinion, constituted a gross departure from the applicable standard of care.

4. The Defendants Failed to Protect DenSco from Mr. Chittick

The Defendants' conduct fell below the applicable standard of care by failing to realize, and act on the fact, that Mr. Chittick's interests conflicted with those of DenSco's. As the director, officer and sole shareholder of DenSco, Mr. Chittick had a fiduciary duty to act in the best interest of DenSco, and not in his own self-interest.

The Defendants failed to recognize that, while Mr. Chittick's Plan and the Forbearance Agreement benefited Mr. Menaged and perhaps Mr. Chittick, the speculative benefit to DenSco (if any) was greatly outweighed by the burdens to DenSco. As discussed above, the Forbearance Agreement imposed material obligations and economic burdens on DenSco, including the obligation (in accordance with Mr. Chittick's Plan) to misuse DenSco's funds by throwing good

---

i got cashiers check that said I'm the remitter. i don't just do this with scott, i do this with 90% of the guys that i fund at the auctions." [SIC]),

[245] See page 6, Defendants' DS ("Mr. Beauchamp … provided advice to DenSco regarding proper loan documentation procedures since at least 2007. DenSco and Mr. Chittick were both advised, and understood, (a) that DenSco should fund loans through a trustee, title company or other fiduciary, (b) that DenSco was representing to its investors that DenSco's loans would be in first position, and (c) that it was of fundamental importance that DenSco safeguard the use of its investors' funds in conjunction with properly recording liens, in order to ensure that DenSco's loans were in first position.").

[246] Email dated January 9, 2014 from Mr. Beauchamp to Mr. Chittick. See, also, Plaintiff's DS ¶ 213(a) ("Chittick had been grossly negligent in managing DenSco's loan portfolio, by not complying with the terms of the Mortgage, which called for DenSco to issue a check payable to the Trustee, and instead wiring money to Menaged, trusting Menaged to actually use those funds to pay a Trustee.").

money after bad in a manner that was inconsistent with the disclosures made to investors in the 2011 POM.

The Defendants fell below the applicable standard of care by allowing and assisting Mr. Chittick in protecting his own self-interest, by among other things: (1) continuing to provide additional funds to Mr. Menaged; (2) delaying disclosure to investors; (3) implementing Mr. Chittick's Plan before making appropriate disclosures to investors; and (4) negotiating and entering into the Forbearance Agreement to the detriment of DenSco and its Noteholders.

Under the circumstances, in accordance with Rules 1.13(b) and 1.2 of the Arizona Rules of Professional Conduct, the Defendants could have – and in my opinion should have – reported Mr. Chittick's breaches to the proper authorities and/or the Noteholders in order protect DenSco against Mr. Chittick.

5. The Defendants' Conflicts of Interest

The Defendants fell below the standard of care, and violated the applicable Rules of Professional Conduct, by failing to recognize and properly address two conflicts of interest: first, the conflict of interest created by concurrently representing both DenSco and the Chittick Estate, when DenSco had potential claims against the Estate for malfeasance by Mr. Chittick; and second, the conflict of interest in representing DenSco in wind down matters when DenSco had potential claims against the Defendants for malfeasance.

a. The Defendants Failed to Recognize the Concurrent Conflict of Interest Between DenSco and the Chittick Estate

For the reasons stated above, the Defendants knew that Mr. Chittick had violated his fiduciary duties to DenSco, and that as a result DenSco had potential claims against Mr. Chittick and, following his death, against the Chittick Estate.[247] However, rather than consider and pursue such claims against the Chittick Estate, the Defendants concurrently took on the representation of the Chittick Estate. Such representation was in violation of Rule 1.7 of the Arizona Rules of Professional Conduct: "a lawyer shall not represent a client if … the representation of one client will be directly adverse to another client." It would have been contrary to the interests of the Chittick Estate for DenSco to consider or pursue claims against the Chittick Estate for Mr. Chittick's malfeasance, and yet, as wind down counsel to DenSco, it was the obligation of the Defendants to consider and pursue such claims (as independent legal counsel to DenSco would have done, and as the Receiver in fact has done).[248]

---

[247] See, e.g., Exhibit 288A to Deposition of Mr. Beauchamp, email dated August 15, 2016 from Mr. Beauchamp to Mr. Hyman ("Due to potential conflicts of interest, we have resigned as counsel to the Estate and new counsel has been appointed or is being appointed for the Estate.").

[248] See Arizona Rules of Professional Conduct, Rule 1.7, Comment [3] ("A conflict of interest may exist before representation is undertaken, in which event the representation must be declined"); Comment [4] ("If a conflict arises after representation has been undertaken, the lawyer ordinarily must withdraw from the representation"); Comment [6] ("Loyalty to a current client prohibits undertaking representation directly adverse to that client …. a lawyer may not act

The Defendants failed to secure informed consent, confirmed in writing, to such conflict, as required by Rule 1.7. In fact, it's not clear that anyone could have provided such consent on behalf of the Chittick Estate prior to the appointment of Ms. Heuer as the personal representative of the Chittick Estate (which appointment was done during the course of the Defendants' representation of the Chittick Estate), and even after Ms. Heuer was appointed, it does not appear that the Defendants sought or received the required consent from her.

b. The Defendants Failed to Recognize the Conflict of Interest Between Wind Down Work for DenSco and the Defendants' Interests

For all the reasons stated above, the Defendants' conduct fell below the standard of care, resulting in potential claims that DenSco may bring against the Defendants for malfeasance. The Defendants were well aware of such risk and the resulting conflict of interest.[249] Despite such conflict of interest, the Defendants actively stepped into the role as legal counsel to DenSco in connection with wind down and transition matters, and Mr. Beauchamp took it upon himself to act as a quasi-receiver or liquidator with respect to the wind down of DenSco.

Such representation was in violation of Rule 1.7 of the Arizona Rules of Professional Conduct: "a lawyer shall not represent a client if … there is a significant risk that the representation … will be materially limited … by a personal interest of the lawyer." It would have been contrary to the personal interests of the Defendants for DenSco to consider or pursue claims against the Defendants for their malfeasance, and yet, as wind down counsel to DenSco, it was the

---

as an advocate in one matter against a person the lawyer represents in some other matter"); Comment [8] ("a conflict of interest exists if there is a significant risk that a lawyer's ability to consider, recommend or carry out an appropriate course of action for the client will be materially limited as a result of the lawyer's responsibilities …. The conflict in effect forecloses alternatives that would otherwise be available to the client. … The critical questions [include] whether [the difference in interests] will … foreclose courses of action that reasonably should be pursued on behalf of the client.").

[249] See, e.g., DIC0009476, the Iggy Letter dated July 28, 2016 ("Dave never made me tell the investors"; "I talked Dave my attorney in to allowing me to continue without notifying my investors."; "Dave my attorney … let me get the workout signed not tell the investors and try to fix the problem. That was a huge mistake."); email dated March 13, 2015 from Mr. Beauchamp to Mr. Chittick ("I have second guessed myself concerning several steps in the overall process, but I wanted to protect you as much as I could."); pages 447-448, lines 19-15, Deposition of Mr. Beauchamp ("Q. Did you discuss with [Ms. Heuer] potential conflicts of interest that you and Clark Hill would have with respect to representing DenSco? A. Yes. … Q. Did you disclose to her that Clark Hill was concerned about potential claims that could be made against Clark Hill regarding your representation of DenSco? A. Yes."); page 140, lines 10-20, Deposition of Mr. Hood ("Q. … On August 2nd, August 3rd, 2016, with all of the information that Clark hill [sic] knew, could Clark Hill reasonably anticipate that a receiver might sue Clark Hill for damages? … THE WITNESS: … I suppose it was a possibility").

obligation of the Defendants to consider and pursue such claims (as independent legal counsel to DenSco would have done, and as the Receiver in fact has done).[250]

The Defendants failed to secure informed consent, confirmed in writing, to such conflict, as required by Rule 1.7. In fact, it's not clear that anyone could have provided such consent on behalf of DenSco following the death of Mr. Chittick, and even after Ms. Heuer was appointed as the personal representative of the Chittick Estate (not that such appointment would have necessarily given her the authority to consent to the conflict of interest on behalf of DenSco), it does not appear that the Defendants sought or received the required consent from her.

Following Mr. Chittick's death, rather than consider and pursue claims that DenSco might have against the Defendants, it appears that Mr. Beauchamp actively tried to protect himself and Clark Hill. As discussed above, it appears that Mr. Beauchamp took it upon himself to act as a quasi-receiver or liquidator with respect to the wind down of DenSco, despite not necessarily having the requisite skills to do so nor having an authorized and competent client representative from whom to take instruction, receive approvals or seek guidance. Further, Mr. Beauchamp advocated against each of the following: (1) having a receiver or trustee appointed to conduct the wind down of DenSco;[251] (2) having any investor become an authorized representative of DenSco;[252] and (3) having the state regulator take any active role.[253]

In my opinion, these actions violated the standard of care applicable to Mr. Beauchamp, and suggest that Mr. Beauchamp was attempting to persuade the investors to support him as the

---

[250] See Arizona Rules of Professional Conduct, Rule 1.7, Comment [8] ("a conflict of interest exists if there is a significant risk that a lawyer's ability to consider, recommend or carry out an appropriate course of action for the client will be materially limited as a result of the lawyer's … interests. … The conflict in effect forecloses alternatives that would otherwise be available to the client. … The critical questions [include] whether [the difference in interests] will … foreclose courses of action that reasonably should be pursued on behalf of the client."); Comment [10] ("The lawyer's own interests should not be permitted to have an adverse effect on representation of a client. For example, if the probity of a lawyer's own conduct in a transaction is in serious question, it may be difficult or impossible for the lawyer to give a client detached advice.").

[251] See, e.g., Exhibit 213, email dated August 3, 2016 from Mr. Beauchamp to DenSco investors ("the costs associated with a bankruptcy or a Receiver can reduce the amount to be paid to investors by almost half or even a much more significant reduction").

[252] See, e.g., Exhibit 213, email dated August 3, 2016 from Mr. Beauchamp to DenSco investors ("We intend to structure this as an Advisory Board to protect the members of this Advisory Board from any potential liability based upon their role with DenSco. Specifically, the Advisory Board would only have an advisory position with DenSco as opposed to a full authority position, which is to distinguish this situation from having these Investors appointed to the Board of Directors").

[253] See, e.g., Exhibit 256, Deposition of Mr. Beauchamp, email dated August 9, 2016 from Mr. Beauchamp to investor Craig Hood, copying other investors ("We need to be willing but not overly anxious to turn it over to the Securities Division. Several people in government made names and careers with the Mortgages Ltd. matter and we do not want this to turn into anything like that.").

appropriate person to wind down the business, thereby avoiding or delaying the pursuit of claims that DenSco might have against the Defendants. One could reasonably infer that Mr. Beauchamp wanted to control the wind down so as to protect himself because if a receiver were to be appointed, he or she would file a claim against the Defendants on behalf of DenSco – which is exactly what happened in this Case.

In addition, Mr. Beauchamp's testimony at the receiver appointment hearing that he represented both DenSco and Mr. Chittick, together with his former law firm's assertion of a joint attorney-client privilege premised on that testimony, further complicated and delayed the Receiver's ability to obtain and utilize DenSco's files from Clark Hill. One could also reasonably infer that Mr. Beauchamp intended such result so as to protect himself, especially with respect to preventing disclosure of the Iggy Letter, the Chittick Investor Letter dated July 28, 2016, and the DenSco Journal, all of which implicate the Defendants.

Under the circumstances, the Defendants' conduct in this regard was so reckless and irresponsible that such conduct, in my opinion, constituted a gross departure from the applicable standard of care.

6. The Defendants Failed to Withdraw from Representing DenSco

Finally, in my opinion, the Defendants failed to properly withdraw from the representation of DenSco on a timely basis, as required by Rules 1.16 and 1.2 of the Arizona Rules of Professional Conduct.

V. CONCLUSION

It is my opinion, as detailed above and based on the record I have reviewed, that the Defendants violated the applicable standard of care in their representation of DenSco.

* * *

I reserve the right to supplement, update or amend my opinions as new information becomes available or is brought to my attention.

March 26, 2019

Neil J Wertlieb

Exhibit A

Curriculum Vitae of Neil J Wertlieb

NEIL J WERTLIEB

15332 Antioch Street, Unit 802
Pacific Palisades, CA 90272
(424) 265-9659
Neil@WertliebLaw.com

CURRENT PROFESSIONAL ACTIVITIES

Wertlieb Law Corp 2017 – Present
Principal

- Wertlieb Law Corp provides expert witness and expert consulting services to attorneys in their litigation and arbitration matters
  - Our engagements have been focused primarily in two areas:
    - Disputes involving business transactions, corporate governance and fiduciary duties
    - Cases involving attorney ethics and attorney malpractice
  - I have served as an expert in dozens of such disputes and cases
  - I have testified numerous times, in court (both bench and jury trials), in arbitration and in depositions
- Other services provided by Wertlieb Law Corp include:
  - Mediation services for business disputes
  - Board of director appointments
  - Ethics consulting
  - MCLE presentations
  - Legal services
- For more detailed information, see www.WertliebLaw.com

UCLA School of Law 2002 – Present
Adjunct Professor / Lecturer in Law

- I teach a transaction skills course entitled "Life Cycle of a Business," a course of my own design focusing on deals, negotiation, contract drafting and ethics
- 3-unit course satisfies one of the requirements for students seeking a Business Law and Policy Specialization

Ballantine & Sterling: California Corporation Laws 2012 – Present
General Editor

- 7-volume treatise on the laws governing businesses in the State of California
- In-depth practical guidance concerning the formation, operation and dissolution of corporations, partnerships, limited liability companies and other business entities
- Cited as authority in over 500 federal and state court opinions, 25 SEC No-Action Letters and other administrative reference materials, and 50 law review articles

Milbank@Harvard 2018 – Present
Senior Advisor

- Engaged by Harvard Law School Executive Education
- This professional development program provides attorneys at Milbank, Tweed, Hadley & McCloy LLP with immersive week-long programs to build leadership and business skills each year for four years, as they progress from mid-level associates to senior associates
- Led by Harvard Law School and Harvard Business School faculty, the program covers topics such as business, finance, accounting, marketing, law, management skills, client relations and personal and professional development
- As Senior Advisor, I attend program sessions at Harvard and provide input, guidance and assistance in formulating the program and connecting it to work at Milbank

State Bar of California, Office of Chief Trial Counsel 2017 – Present
Special Deputy Trial Counsel

- The State Bar Office of Chief Trial Counsel must recuse itself when it receives a disciplinary complaint against an attorney who has a close professional, personal, family or financial connection with the State Bar of California
- To avoid an appearance of impropriety under such circumstances, an independent Special Deputy Trial Counsel is appointed, with all the powers and duties of the Chief Trial Counsel, to investigate and, if warranted, prosecute alleged misconduct by such an attorney
- Since my appointment as a Special Deputy Trial Counsel, I have worked on several such matters

EMPLOYMENT HISTORY

Milbank, Tweed, Hadley & McCloy LLP, Los Angeles 1995 – 2016
Partner

- General Practice Areas: Business transactions, primarily acquisitions, finance, securities offerings and restructurings
- Representative transactions:
  - Represented an NYSE-listed company as regular outside corporate counsel in numerous transactions, including IPO, acquisitions, financings and a change-in-control transaction
  - Represented underwriters in the initial public offering of a California-based home builder, considered by *The Daily Journal* to be one of the Top 10 IPOs of 2013
  - Led the restructuring of a social network company for which Milbank received an "M&A Advisor" Award for Deal of the Year (2014) from *The M&A Advisor*
  - Represented the finance subsidiary of one of the world's largest automotive companies in numerous debt financings totaling almost $20 billion

  - Represented the venture capital investing subsidiaries of three major public companies – a multinational conglomerate, a leading telecom company and a large U.S. bank – in over 50 different investments in early stage companies
  - Represented two different alternative energy companies in sale transactions for which Milbank received the "Top Legal Advisor Award for M&A" from *Bloomberg New Energy Finance*
  - Represented family owners in disposition transactions for a fashion optical company, a broadcast company and a hair care company
  - Represented unsecured lenders in the restructuring of a print media company with over $10 billion in debt
- Administrative Responsibilities:
  - Chair of Ethics Group for California Practices
  - Corporate Governance Group
  - Professional Development Committee
  - Milbank@Harvard (training program for associates)
  - Hiring Partner for Los Angeles Office

IDB Communications Group, Inc., Culver City, CA 1992 – 1995
Vice President, General Counsel & Secretary

- IDB was the fourth-largest U.S.-based provider of international telephone service when it was acquired by WorldCom, Inc. in December 1994
- As General Counsel, responsible generally for all legal matters, including acquisitions, financings and loan transactions, securities law compliance, litigation and crisis management, employment disputes, real estate transactions, board of director meetings, corporate records and customer contracts
- Responsibilities included what was then the second largest equity offering by a NASDAQ-listed company
- Named Executive Officer & Member of Executive Committee
- Established and supervised legal department of nine attorneys and five legal assistants

Los Angeles Kings Hockey Team, Culver City, CA 1994 – 1995
General Counsel (part-time) & Director

- Responsible for the acquisition transaction in which the Chairman of IDB Communications Group, Inc. acquired a controlling interest in the Kings
- General ongoing responsibilities included management, player and broadcast contracts and interaction with the National Hockey League and lenders
- Member of Board of Directors

O'Melveny & Myers, Los Angeles, CA 1984 – 1992
Associate

- Practice Areas: Transactional work focused on public and private securities financings (including initial public offerings), mergers and acquisitions, joint ventures and general corporate and contractual matters

- Administrative Responsibilities: Monitoring of legislative developments in California, training seminars, summer committee, executive compensation group, and "blue sky overseer"

California Supreme Court, San Francisco, CA 1983
Judicial Extern for Associate Justice Stanley Mosk

- Responsible for reviewing and evaluating Petitions for Hearing and drafting judicial opinions for the longest-serving justice on the California Supreme Court

EDUCATION

UC Berkeley School of Law, Berkeley, CA 1982 – 1984
Juris Doctor Degree

- Juris Doctor awarded 1984
- Associate Editor, *International Tax & Business Lawyer*

UC Hastings College of the Law, San Francisco, CA 1981 – 1982

- Top 1% (ranked number 5 in first-year class of 503 students)
- Transferred to UC Berkeley School of Law after first year
- Law Review (awarded based on both grades and writing competition)

UC Berkeley School of Business Administration, Berkeley, CA 1976 – 1980
Bachelor of Science Degree

- Bachelor of Science awarded 1980 in Management Science
- Honor Students Society
- Alumni Scholarship Award
- Dormitory Government Chairman

LEADERSHIP POSITIONS

STATE BAR OF CALIFORNIA & CALIFORNIA LAWYERS ASSOCIATION

- **Committee on Professional Responsibility and Conduct** 2008 – 2014
  Chairman
  - COPRAC is a standing committee of the Board of Trustees of the State Bar of California, whose primary charge is the development and issuance of advisory ethics opinions to assist attorneys in understanding their professional responsibilities under the California Rules of Professional Conduct
  - Chair during 2012-2013, Vice Chair during 2011-2012, Advisor during 2013-2014
  - Organized, moderated and participated on numerous panel presentations on various ethical issues, including at the Annual Meeting of the State Bar and at the Annual Ethics Symposium

- Authored several ethics opinions and, as Chair of COPRAC's Rules Revision Commission Subcommittee, led COPRAC's efforts in reviewing and commenting on proposed new rules of professional conduct

- **Business Law Section** 2003 – 2008
  Chairman
  - The Business Law Section serves as a forum to educate attorneys on recent developments and current issues in all fields of business law
  - Chair during 2006-2007, Vice Chair for Legislation during 2005-2006, and Member of the Executive Committee the remaining duration of my 5-year term

- **Corporations Committee** 1999 – 2003
  Chairman
  - The Corporations Committee is a standing committee of the Business Law Section, focused on the laws relating to corporations and business transactions
  - Co-Chair during 2001-2002, Vice Chair for Legislation during 2000-2001
  - As Vice Chair for Legislation, responsible for the Section's efforts to prepare and advocate for legislative proposals to amend the California Corporations Code

- **Business Litigation Committee** 2016 – Present
  Vice Chair
  - The Business Litigation Committee is a standing committee of the Business Law Section, focused on the laws relating to business disputes in California
  - Co-Vice Chair during 2018-2019

- **Business Law News** 2008 – Present
  Editorial Advisor
  - The *Business Law News* is the official publication of the Business Law Section of the California Lawyers Association (formerly the California State Bar)
  - Providing advice and guidance to the Editorial Board of the *Business Law News*

LOS ANGELES COUNTY BAR ASSOCIATION

- **Professional Responsibility and Ethics Committee** 2013 – Present
  Chairman
  - PREC is a standing committee of the Board of Trustees of the Los Angeles County Bar Association, whose primary mission is to prepare written opinions and responses to questions concerning the ethical duties and responsibilities of lawyers
  - Chair during 2018-2019, Vice Chair during 2017-2018, Secretary during 2016-2017
  - As Chair of PREC's Rules Revision Commission Subcommittee, led PREC's efforts in reviewing and commenting on proposed new rules of professional conduct

BOARD APPOINTMENTS

- **Windward School** 2013 – Present
  Chair & Member, Board of Trustees
  - Windward School is an independent middle and high school in Los Angeles

- Also served on Executive Committee and as Co-Chair of Committee on Trustees and Chair of Strategic Planning Committee

- **Los Angeles Arts Association** 2010 – 2018
  Member, Board of Directors
  - As a 501(c)(3) nonprofit organization, LAAA's mission since 1925 is to provide opportunities, resources, services and exhibition venues for Los Angeles artists, with an emphasis on emerging talent

- **Village School** 2008 – 2014
  Member, Board of Trustees & Executive Committee
  - Village School is a TK through Sixth Grade independent school in Los Angeles
  - Also served on the Finance Committee and as Chair of the Legal Committee

- **Los Angeles Kings Hockey Team** 1994 – 1995
  Member, Board of Directors
  - Also served as General Counsel of this National Hockey League team

- **821 Bay Street Homeowners Association, Inc.** Early 1990s
  President & Member, Board of Directors
  - Homeowners association for 15-unit condominium complex in Santa Monica

- **Co-Opportunity Consumers Cooperative, Inc.** Late 1980s
  Member, Board of Directors
  - The "co-op" is a community owned and operated market based in Santa Monica

RECOGNITIONS, SPEAKING ENGAGEMENTS & PUBLICATIONS

Recognitions & Honors

- "AV Preeminent" peer review rated (5.0 out of 5.0) on Martindale-Hubbell (Present)
- Profiled in *The Lexis Practice Advisor Journal*: "An Overview of Corporate Transactional Practice & Expert Witnessing: Q&A with Neil J Wertlieb" (Spring 2016)
- Led transactions for which Milbank received an "M&A Advisor" Award for Deal of the Year and an "M&A Advisor Turnaround" Award from *The M&A Advisor* (2014)
- Advised underwriters on an initial public offering selected by *The Daily Journal* as one of the Top 10 IPOs (2013)
- Recognized in *The Legal 500* for M&A work (2012)
- Led two transactions for which Milbank received the "Top Legal Advisor" Award for M&A from *Bloomberg New Energy Finance* (2009)
- Recognized by *Super Lawyers* as a Top Rated Mergers & Acquisitions Attorney and for his Corporate Finance work (2004)
- Profiled in *California Law Business*: "The 100 Most Influential Lawyers in California" (October 30, 2000)
- Profiled in *Los Angeles Business Journal*: "Who's Who Banking & Finance: Roadkill Warriors" (October 16, 2000)

- Profiled in *California Law Business*: "Dealmaker of the Week" (October 9, 2000)
- Profiled in *Los Angeles Business Journal*: "Wall Street West: Cyber Lawyer" (September 20-26, 1999)

Speaking Engagements (since 2000)

- Presenter, "California's New Rules of Professional Conduct," presentations to various law firms and other organizations in Southern California (2018 – Present)
- Moderator, "Ethical Issues for In-House Counsel," Lowell Milken Institute for Business Law and Policy at UCLA School of Law, Palo Alto, CA (January 30, 2019)
- Presenter, "The New Rules of Professional Conduct," California Lawyers Association, Webinar (January 29, 2019)
- Presenter, "The New Rules of Professional Conduct," J. Reuben Clark Law Society, Irvine, CA (January 17, 2019)
- Presenter, "The New Rules of Professional Conduct (for Transactional Lawyers)," Los Angeles County Bar Association's Business and Corporations Law Section, Webinar (January 15, 2019)
- Panelist, "Ethics – All You Need to Know: Conflicts, Conflicts, Conflicts – What the New Rules and the *Sheppard Mullin v. J-M* Case have To Say," Los Angeles County Bar Association's Annual Program on Ethics, Los Angeles, CA (January 13, 2019)
- Moderator, "How to Keep Your Expert In and Their Expert Out," California Lawyers Association's Business Law Section, Webinar (November 6, 2018)
- Presenter, "A New Chapter in Professional Responsibility," Lowell Milken Institute for Business Law and Policy at UCLA School of Law, Los Angeles, CA (October 30, 2018)
- Presenter, "Trials and Tribulations – Tactics, Strategies and Updates for the Business Litigator: The Ethical Use of Expert Witnesses," California Lawyers Association's Solo and Small Firm Section, Los Angeles, CA (October 18, 2018)
- Panelist, "Conflict Waivers, Mediation Waivers, New Rules - Oh My! Avoiding Ethical Traps Triggered by Recent Developments Under California Law," Beverly Hills Bar Association, Los Angeles, CA (October 11, 2018)
- Presenter, "New Rules of Professional Conduct go into Effect on November 1, 2018 – Are You Ready?," California Lawyers Association Annual Meeting, San Diego, CA (September 14, 2018)
- Panelist, "New Rules of Professional Conduct go into Effect Later this Year – *ARE YOU READY?*," Los Angeles County Bar Association, Los Angeles, CA (August 21, 2018)
- Panelist, "Brave New World: What Business Lawyers Need to Know About the Sea Change to New Rules Of Professional Conduct," Beverly Hills Bar Association, Beverly Hills, CA (July 12, 2018)
- Presenter, "Contracts 101: The Contract of the Year – *But is it Enforceable?*" presentations to various law firms and other organizations in Southern California (2018)
- Presenter, "Teach the Basics of Contract Drafting, Corporate Governance & Transactional Law . . . *in One Single Sentence!*" Emory Law's 6th Biennial Conference on Teaching Transactional Law and Skills, Atlanta, GA (June 1, 2018)

- Panelist, "Advising Clients on the Formation of Legal Entities in California – Ethical Issues," California Lawyers Association's Business Law Section, Los Angeles, CA (March 30, 2018)
- Presenter, "The Proposed Rules of Professional Conduct – What Every Litigator Should Know," California Lawyers Association's Litigation Section, Webinar (March 1, 2018)
- Presenter, "Proposed Changes to California Professional Conduct Rules for Transactional Attorneys," Los Angeles County Bar Association's Business and Corporations Law Section, Webinar (January 29, 2018)
- Presenter, "The Proposed Rules of Professional Conduct," presentations to various law firms in Southern California (2017 – 2018)
- Moderator, "Conflicts of Interest: Guidelines for Every Lawyer's Success," American Bar Association's Center for Professional Development, Webinar (July 20, 2017)
- Panelist, "Ethics Issues Relating to the Use of Expert Witnesses," American Bar Association's National Conference on Professional Responsibility, St. Louis, MO (June 2, 2017)
- Panelist, "Ethics in, and Negotiating and Preserving Privilege in, M&A Transactions," American Bar Association's Business Law Section Spring Meeting, New Orleans, LA (April 6, 2017)
- Moderator, "Venture Capital Panel," Law and Entrepreneurship Association of UCLA School of Law, Los Angeles, CA (April 4, 2017)
- Panelist, "Ethics – All You Need to Know: The Ethical Use of Expert Witnesses," Los Angeles County Bar Association's Annual Program on Ethics, Los Angeles, CA (January 14, 2017)
- Presenter, "The Ethical Use of Expert Witnesses," presentations to various litigation groups in Southern California (2016 – Present)
- Panelist, "The Effective and Ethical Use of Expert Witnesses," Annual Meeting of the California State Bar, San Diego, CA (September 30, 2016)
- Presenter, "Key Ethical Issues When Ending the Attorney-Client Relationship," Bloomberg BNA Ethics, Webinar (April 12, 2016)
- Panelist, "Phantom Clients and How to Exorcise Them," LMRM Conference, Chicago, IL (March 3, 2016)
- Presenter, "How to Be, and How to Use, an Expert Witness," California State Bar, Webinar (November 4, 2015)
- Presenter, "Ethics for the In-House Attorney," presentations to 15 legal departments in California and New York, approximately 1,000 in-house attorneys (2011 – 2014)
- Panelist, "Ethics Update 2014: Significant Developments in the Law of Lawyering," Annual Meeting of the California State Bar, San Diego, CA (September 12, 2014)
- Panelist, "Ethics Update 2013: Significant Developments in the Law of Lawyering," Annual Meeting of the California State Bar, San Jose, CA (October 11, 2013)
- Moderator, "Doing Good Made Easy (or at Least Easier): Ethical Issues Arising in *Pro Bono* Representations," Annual Ethics Symposium of the California State Bar, Los Angeles, CA (April 20, 2013)
- Panelist, "Ethics Update 2012: Significant Developments in the Law of Lawyering," Annual Meeting of the California State Bar, Monterey, CA (October 12, 2012)
- Moderator, "The No Contact Rule: Up Close and Personal," Annual Ethics Symposium of the California State Bar, San Francisco, CA (May 19, 2012)

- Co-Teacher, "Negotiations: Creating and Claiming Value," Harvard University, Cambridge, MA (February 16, 2012 & November 17, 2011)
- Co-Teacher, "Negotiations: Strategies of Influence," Harvard University, Cambridge, MA (November 15, 2011)
- Moderator & Panelist, "Dealing with Difficult Clients While Maintaining Your Professional Responsibility," Annual Meeting of the California State Bar, Long Beach, CA (September 17, 2011)
- Moderator, "Ethics on the Inside (Ethical Issues Faced by In-House Attorneys)," Annual Ethics Symposium of the California State Bar, Irvine, CA (April 9, 2011)
- Moderator & Panelist, "Conflicts for Lawyers: How to Get Yourself Disqualified, Sued and Disciplined," Annual Meeting of the California State Bar, Monterey, CA & San Diego, CA (September 24, 2010 & September 11, 2009)
- Panelist, "When Private Equity Comes Calling: The Role of Corporate Counsel in Takeover Transactions," 2007 Institute for Corporate Counsel, Los Angeles, CA (December 6, 2007)
- Presenter, "Basics of Mergers & Acquisitions," Southern California Chapter of ACCA, Los Angeles & Orange Counties, CA (November 8, 2006)
- Panelist, "Developments in Corporate Governance: Revisiting Director Voting and other Hot Potatoes," ABA Business Bar Leaders Conference, Chicago, IL (May 10, 2006)
- Panelist, "Legislation: Turning Ideas into Law: Effective Legislative Strategies for Business Law Organizations," ABA Business Bar Leaders Conference, Chicago, IL (May 10, 2006)
- Panelist, "Mergers & Acquisitions: Growth, Access to Capital and Liquidity through Mergers, Acquisitions and Strategic Alliances," The Investment Capital Conference 2004, Los Angeles, CA (April 27, 2004)
- Guest Lecturer, "Corporate Governance," USC Business School, Course on Advanced Finance, Los Angeles, CA (July 26, 2004)
- Moderator & Panelist, "Doing Business Online: Financing Online Operations," Law Seminars International, Los Angeles, CA (August 25, 2000)

Publications (since 2004)

- *Ballantine & Sterling: California Corporation Laws*, General Editor (2012 – Present)
- *Life Cycle of a Business: Transaction Skills,* UCLA Law Course Reader, Editor (2002 – Present)
- *Lexis Practice Advisor: Ethics For In-House Counsel*, Contributing Author (2015 – Present)
- "Teach the Basics of Contract Drafting, Corporate Governance & Transactional Law in One Sentence," *20 Tennessee Journal of Business Law 387* (2019)
- "An Update: Rules of Professional Conduct," *The Practitioner* (Summer 2018)
- "New Rules of Professional Conduct," *Business Law News* (2018)
- "New Rules: The Entirely New Rules," *The Daily Journal* (Part 3 of 3-part series) (June 1, 2018)
- "New Rules of Conduct: The Uncontroversial, But Important," *The Daily Journal* (Part 2 of 3-part series) (May 25, 2018)

- "New Rules of Conduct: The Disruptive and Controversial," *The Daily Journal* (Part 1 of 3-part series) (May 18, 2018)
- "Proposed New Ethics Rules, and Their Impact on Solo Practitioners," *The Practitioner* (Spring 2018)
- "The Proposed Rules of Professional Conduct," *Business Law News* (2018)
- "Proposed New Ethics Rules: What You Need to Know," *Family Law News* (2018)
- "Best Behavior: Proposed Conduct Rules," *Los Angeles Lawyer* (November 2017)
- "Ethics Issues in the Use of Expert Witnesses," *The Professional Lawyer* (2017)
- "Special Coverage – Proposed Rules of Professional Conduct: Lawyer as Third-Party Neutral (Rule 2.4)," *The Daily Journal* (September 11, 2017)
- "Special Coverage – Proposed Rules of Professional Conduct: Organization as Client (Rule 1.13)," *The Daily Journal* (April 24, 2017)
- "What Transactional Lawyers Should Know About Conflicts of Interest," *Business Law News* (with Nancy T. Avedissian) (2016)
- "The No Contact Rule Actually DOES Apply to Transactional Lawyers," *Business Law News* (with Nancy T. Avedissian) (2015)
- "The Rules of Professional Conduct DO Apply to In-House Lawyers," *Business Law News* (with Adam S. Bloom) (2015)
- "Ethical Issues for the In-House Transactional Lawyer," *Business Law News* (with Adam S. Bloom) (2010)
- "Ex Parte Communications in a Transactional Practice," *Business Law News* (with Nancy T. Avedissian) (2009)
- "Addressing Conflicts of Interest in a Transactional Practice," *Business Law News* (with Nancy T. Avedissian) (2008)
- "Hostage Situation: Holders of Preferred Stock Can Become the Victims of Legal Blackmail by Common Stockholders When an Early-Stage Firm Fails – Unless They Take a Simple Step Up Front," *The Deal* (October 25, 2004)

Quoted as Authority (since 2017)

- "Rules of Professional Conduct Approved by the Supreme Court," *Ethics News*, State Bar of California website (2018 – Present)
- "Avenatti Saga Spotlights Attorney Ethics, When to Draw Lines," *Bloomberg Law* (March 26, 2019)
- "Women on board: California law requiring female corporate directors could be unconstitutional," CBC News (March 8, 2019)
- "Michael Avenatti's Ex Mareli Miniutti Got Money Allegedly Hidden From Bankruptcy Court," *The Daily Beast* (February 18, 2019)
- "Former Client Accuses Michael Avenatti of Operating Law Firm Like a 'Ponzi Scheme,'" *The Daily Beast* (January 22, 2019)
- "Michael Avenatti Preps for Two Weeks of Hell: Child Support, Debts, and Abuse Allegations," *The Daily Beast* (December 3, 2018)
- "Raging Wildfires Bring Concerns of Legal Fraud in California," *Bloomberg Law* (November 16, 2018)
- "California Rules of Professional Conduct Update," *Legal Talk Network* (October 16, 2018)

- "Media Companies Could Run Afoul of California Law Banning All-Male Boardrooms," *The Hollywood Reporter* (October 4, 2018)
- "California is One of Few States Implementing New Anti-Harassment Rule," *The Daily Journal* (September 27, 2018)
- "Judge Puts Brief Pause on CBS-Shari Redstone Legal Battle," *Variety* (May 16, 2018)
- "Trump Boasts NDAs a Common Practice for 'Celebrities and People of Wealth,'" *NBC News* (May 3, 2018)
- "Hidden Expert-Pay Ruling Won't Improve J&J Odds at Retrial," *Law360* (April 30, 2018)
- "Federal Judge Rejects Stormy Daniels' Request for Expedited Trial," *ABC News* (March 29, 2018)
- "Porn Star Raising Funds for Legal Expenses in Trump Disclosure Fight," *ABC News* (March 14, 2018)
- "Corporations Must Embrace Diversity to Prevent Misconduct and Liability Costs from Sexual Harassment," *Variety* (December 13, 2017)
- "Weinstein Scandal Triggers Questions of Corporate Liability and Even Complicity," *Variety* (October 25, 2017)
- "California Cases To Watch In 2017," *Law360* (January 2, 2017)

MISCELLANEOUS

Bar Admissions & Memberships

- Admitted to practice in California, New York & District of Columbia
- Member:
  - American Bar Association
  - Association of Professional Responsibility Lawyers
  - California Lawyers Association
  - Los Angeles County Bar Association

Personal

- Married; father to 3 teenage boys
- Marathon runner: New York, Los Angeles, Ventura, Long Beach . . . and still going!

Exhibit B

List of Cases in Which I Have Testified as an Expert During the Past Four Years

Robert Hayman v. Michael Treiman

- Arbitration, Los Angeles County; Arbitrator Barbara A. Reeves (JAMS Case No. 1210035620)

Feldman v. GearShift Inc., T. Blinn, N. Safyurtlu, E. Cwiertny & N. Tribe

- Superior Court of the State of California for the County of Orange, Civil Complex Center; Judge Ronald L. Bauer (Case No. 30-2017-00951741)

Kenneth D. Rickel v. Martin W. Enright, Littman Krooks, LLP, et al.

- Superior Court of the State of California for the County of Los Angeles, Central District; Honorable Frederick C. Shaller (Case No. BC595770)

Jeffrey I. Golden, Trustee of Aletheia Research and Management, Inc., v. O'Melveny & Myers LLP, Steven J. Olson and J. Jorge deNeve

- Arbitration, Orange County; Arbitrator Honorable Gary A. Feess (Phillips ADR)

Adam Levin v. Weingarten Brown LLP et al.

- Arbitration, Los Angeles Courty; Arbitrator Edward J. Wallin (JAMS Ref. No. 1200051061)

William Atkins, Gregory Smith, and John Waite v. Allen Z. Sussman

- Arbitration, Los Angeles County; Arbitrator Irma E. Gonzalez (JAMS Ref. No. 1240054486)

Sork v. Slaughter

- Superior Court of the State of California for the County of San Diego, North County District; Honorable Timothy M. Casserly (Case No. 30-2015-00783369-CU-MC-CJC)

Marino, et al. v. Greenberg Traurig, P.A.

- Florida Circuit Court, Palm Beach County (Case No. 50-2016-CA-007297)

EQT Production Company v. Vorys, Sater, Seymour and Pease LLP and John Keller

- United States District Court, Eastern District of Kentucky, Southern Division (Case No. 6:15-CV-00146-DLB)

Brezoczky v. Domtar Corporation and Polsinelli PC

- United States District Court, Northern District of California (Case No. 5:16-CV-04995-EJD)

Drake Kennedy v. Regency Outdoor Advertising, Inc. et al.

- Superior Court of the State of California, Los Angeles County (Case No. BC522560)

Association for Los Angeles Deputy Sheriffs v. Armando Macias, Bruce Nance, et al.

- Superior Court of the State of California, Los Angeles County (Case No. BC540789)

Thomas A. Vogele, Gimino Vogele Associates, LLP v. Richard D. Williams, Susan D. Lintz, Kelly Lytton & Williams, LLP

- Superior Court of the State of California, Orange County*;* Honorable Michael Brenner, Judge Presiding *(*Case No. 30-2012-00558522-CU-NP-CJC)

Wood River Capital Resources, LLC, et al. v. CapitalSource, Inc., et al. (Asset Real Estate & Investment Company Consolidated Cases)

- Superior Court of the State of California, Los Angeles County; Honorable Elihu M. Berle (Case No. JCCP-4730)

Dyadic International, Inc. v. Ernst & Young, LLP, et al.

- Florida Circuit Court, Palm Beach County; Circuit Judge Richard Oftedal (Case No. 50 2009 CA 010680 XXXXMBAA)

maxIT Healthcare Holdings, Inc. v. Acumen Technology Solutions for Healthcare, LLC

- Arbitration, Orange County; Honorable Gary L. Taylor (JAMS Ref. No. 1200046297)

Exhibit C

Documents Provided or Made Available

1. Verified complaint of Arizona Corporation Commission ("ACC") against DenSco Investment Corporation (8/17/16)
2. ACC's Memorandum of Points and Authorities in Support of Application for Preliminary Injunction and Appointment of Receiver (8/17/16)
3. Receiver's Preliminary Report (9/19/16)
4. Receiver's Status Report (12/23/16)
5. Declaration of David Beauchamp (8/17/16)
6. Letter from D. Beauchamp to D. Chittick (5/7/07)
7. DenSco Confidential Private Offering Memorandum (6/1/07)
8. Letter from D. Beauchamp to D. Chittick (3/18/08)
9. E-mail exchanges between D. Beauchamp and D. Chittick and e-mail exchange between D. Beauchamp and M. McCoy (4/1/09)
10. D. Beauchamp handwritten notes (4/9/09)
11. E-mail exchanges between D. Beauchamp and R. Burgan (4/22/09)
12. E-mail exchanges between D. Beauchamp, D. Chittick and R. Burgan (4/23/09)
13. E-mail exchanges between D. Beauchamp and D. Chittick (5/15/09)
14. D. Beauchamp handwritten notes (6/30/09)
15. DenSco Confidential Private Offering Memorandum (7/1/09) w/ handwritten notes from 2011
16. E-mail exchanges between D. Beauchamp and D. Chittick (4/6/11)
17. D. Beauchamp handwritten notes (4/13/11)
18. E-mail exchanges between D. Beauchamp, D. Chittick and G. Schneider (5/3/11)
19. E-mail exchanges between D. Beauchamp, D. Chittick and G. Schneider (5/25/11)
20. E-mail exchanges between D. Beauchamp, D. Chittick and G. Schneider (6/10/11)
21. E-mail exchanges between D. Beauchamp, D. Chittick and G. Schneider (6/14/11)
22. E-mail exchanges between D. Beauchamp, D. Chittick and G. Schneider (6/20/11)
23. E-mail exchanges between D. Beauchamp and D. Chittick (7/11/11)
24. DenSco Confidential Private Offering Memorandum (7/1/11)
25. E-mail from D. Chittick to D. Beauchamp, DenSco investors (7/19/11)
26. Letter from Arizona Department of Financial Institutions ("ADFI") to DenSco (8/11/11)
27. Letter from D. Beauchamp to ADFI (8/22/11)
28. E-mail exchanges between D. Beauchamp and D. Chittick (5/1/13)
29. D. Beauchamp handwritten notes re mtg. w/ D. Chittick (5/9/13)
30. Excerpt from DenSco corporate journal maintained by D. Chittick (5/9/13)
31. Draft DenSco Confidential Private Offering Memorandum (5/XX/13)
32. E-mail from D. Beauchamp to R. Pederson (6/10/13)
33. E-mail exchange between D. Beauchamp and M. Weakley (6/10/13)
34. E-mail exchanges between D. Beauchamp and D. Chittick (6/11/13)
35. E-mail from D. Chittick to D. Beauchamp (6/14/13)
36. E-mail from S. Menaged to D. Beauchamp, D. Chittick (6/14/13)
37. E-mail exchanges between D. Beauchamp and D. Chittick (6/14/13)
38. E-mail exchanges between D. Beauchamp and R. Wang (6/17/13)

39. Excerpt from DenSco website (6/17/13)
40. D. Beauchamp handwritten notes re call w/ D. Chittick (6/17/13)
41. E-mail from D. Beauchamp to R. Wang (6/17/13)
42. D. Beauchamp handwritten notes re call w/ R. Wang (6/17/13)
43. E-mail from D. Beauchamp to M. Weakley (6/17/13)
44. Excerpt from DenSco corporate journal maintained by D. Chittick (6/17/13)
45. D. Beauchamp handwritten notes re call w/ R. Wang (6/18/13)
46. D. Beauchamp handwritten notes re call w/ M. Weakley (6/18/13)
47. E-mail exchanges between D. Beauchamp, R. Wang, K. Henderson, R. Endicott, G. Jensen (6/20-21/13)
48. E-mail from D. Beauchamp to E. Sipes (6/25/13)
49. D. Beauchamp handwritten notes re E. Sipes (6/25/13)
50. D. Beauchamp handwritten notes re call w/ E. Sipes (6/27/13)
51. D. Beauchamp handwritten notes re call w/ D. Chittick (6/27/13)
52. E-mails from D. Chittick to D. Beauchamp (6/27/13)
53. E-mail exchange between E. Sipes and D. Beauchamp (7/1/13)
54. E-mail exchanges between D. Beauchamp and D. Chittick (7/10/13)
55. E-mail exchanges between D. Beauchamp and D. Chittick (7/11/13)
56. Draft DenSco Confidential Private Offering Memorandum (7/XX/13)
57. E-mail exchanges between D. Beauchamp and G. Jensen (8/6/13)
58. D. Beauchamp handwritten notes re calls w/ D. Chittick (8/26/13)
59. Letter from D. Beauchamp and J. Zweig to D. Chittick (8/30/13)
60. E-mail exchanges between D. Beauchamp and D. Chittick (9/12/13)
61. Letter from D. Beauchamp to D. Chittick (9/12/13)
62. E-mail exchanges between D. Beauchamp and D. Chittick (9/12/13)
63. Clark Hill New Client/New Matter form (9/13/13)
64. E-mail from S. Brewer to L. Stringer (9/17/13)
65. E-mail from D. Chittick to D. Beauchamp re “few things” (12/18/13)
66. E-mail from D. Chittick to D. Beauchamp re “2011 memorandum” (12/18/13)
67. E-mail from D. Beauchamp to D. Chittick re “2011 memorandum” (12/18/13)
68. E-mail exchange between D. Chittick and D. Beauchamp (1/5/14)
69. E-mail from D. Chittick to D. Beauchamp (1/6/14)
70. E-mail from D. Chittick to D. Beauchamp (1/7/14)
71. D. Beauchamp handwritten notes from meeting with D. Chittick and S. Menaged (1/9/14)
72. E-mail exchange between D. Chittick and D. Beauchamp (1/9/14)
73. Clark Hill New Client/Matter form (1/10/14)
74. D. Beauchamp handwritten notes from telephone call with D. Chittick (1/10/14)
75. Excerpt from DenSco corporate journal (1/10/14)
76. E-mail exchange between D. Chittick and D. Beauchamp (1/12/14)
77. E-mail from D. Beauchamp to D. Chittick (1/15/14)
78. E-mail from S. Menaged to D. Beauchamp and D. Chittick (1/16/14)
79. E-mail exchange between D. Chittick and D. Beauchamp (1/16/14)
80. E-mail exchange between D. Chittick, D. Beauchamp, S. Menaged, J. Goulder (1/17/14)
81. Executed Term Sheet (1/17/14)
82. E-mail exchange between D. Chittick and D. Beauchamp (1/21/14)
83. E-mail exchange between D. Chittick and D. Beauchamp (1/21/14)

84. E-mail exchange between D. Chittick and D. Beauchamp (1/21/14)
85. Excerpt from DenSco corporate journal (1/10/14)
86. E-mail exchange between D. Chittick and D. Beauchamp (1/23/14)
87. E-mail exchange between D. Chittick and D. Beauchamp (1/31/14)
88. E-mail from D. Beauchamp to D. Chittick (2/4/14)
89. E-mail from D. Beauchamp to D. Chittick (2/4/14)
90. D. Beauchamp handwritten notes from call with D. Chittick (2/6/14)
91. E-mail exchange between D. Beauchamp and D. Chittick (2/7/14)
92. E-mail exchange between D. Beauchamp and D. Chittick (2/7/14)
93. D. Beauchamp handwritten notes from call with D. Chittick and S. Menaged (2/7/14)
94. D. Beauchamp handwritten notes from calls with D. Chittick (2/7/14)
95. Excerpt from DenSco journal (2/7/14)
96. E-mail exchange between D. Beauchamp and D. Chittick (2/9/14)
97. E-mail exchange between D. Beauchamp and D. Chittick (2/10/14)
98. D. Beauchamp handwritten notes from calls with D. Chittick (2/11/14)
99. E-mail exchange between D. Beauchamp and D. Chittick (2/14/14)
100. E-mail exchange between D. Beauchamp and D. Chittick (2/15/14)
101. E-mail exchange between D. Beauchamp and D. Chittick (2/20/14)
102. E-mail exchange between D. Beauchamp and D. Chittick (2/20/14)
103. D. Beauchamp handwritten notes from meeting with D. Chittick, S. Menaged, J. Goulder (2/20/14)
104. Excerpt from DenSco journal (2/20/14)
105. D. Beauchamp handwritten notes from call with D. Chittick (2/21/14)
106. Excerpt from DenSco journal (2/21/14)
107. D. Beauchamp handwritten notes from call with D. Chittick (2/24/14)
108. Excerpt from DenSco journal (2/24/14)
109. E-mail exchange between D. Beauchamp and D. Chittick (2/25/14)
110. Excerpt from DenSco journal (2/25/14)
111. E-mail exchange between D. Beauchamp and D. Chittick (2/26/14)
112. E-mail exchange between D. Beauchamp and D. Chittick (2/26/14)
113. E-mail exchange between D. Beauchamp and B. Price (2/26/14)
114. Excerpt from DenSco journal (2/26/14)
115. D. Beauchamp handwritten notes from call with D. Chittick (2/27/14)
116. E-mail exchange between D. Beauchamp and B. Price (2/27/14)
117. Excerpt from DenSco journal (2/26/14)
118. D. Beauchamp handwritten notes from call with D. Chittick (3/3/14)
119. Excerpt from DenSco journal (3/3/14)
120. E-mail exchange between D. Beauchamp and D. Chittick (3/4/14)
121. D. Beauchamp handwritten notes from call with D. Chittick (3/7/14)
122. Excerpt from DenSco journal (3/7/14)
123. E-mail exchange between D. Beauchamp and D. Chittick (3/10/14)
124. D. Beauchamp handwritten notes from calls with D. Chittick (3/11/14)
125. Excerpt from DenSco journal (31/14)
126. D. Beauchamp handwritten notes from calls with D. Chittick (3/12/14)
127. D. Beauchamp handwritten notes from calls with D. Chittick and S. Menaged (3/12/14)
128. E-mail exchange between D. Beauchamp and D. Chittick (3/12/14)

129. E-mail exchange between D. Beauchamp and D. Chittick (3/12/14)
130. E-mail exchange between D. Beauchamp and D. Chittick (3/13/14)
131. E-mail exchange between D. Beauchamp and D. Chittick (3/13/14)
132. E-mail exchange between D. Beauchamp and D. Chittick (3/13/14)
133. E-mail exchange between D. Beauchamp and D. Chittick (3/14/14)
134. Excerpt from DenSco journal (3/17/14)
135. E-mail exchange between D. Beauchamp and D. Chittick (3/17/14)
136. E-mail exchange between D. Beauchamp and D. Chittick (3/18/14)
137. E-mail exchange between D. Beauchamp and D. Chittick (3/19/14)
138. Excerpt from DenSco journal (3/20/14)
139. Forbearance Agreement (4/16/14)
140. Excerpt from DenSco journal (4/16/14)
141. E-mail exchange between D. Beauchamp and D. Chittick (4/18/14)
142. D. Beauchamp handwritten notes from call with D. Chittick (4/24/14)
143. E-mail from D. Chittick to D. Beauchamp (4/24/14)
144. Copy of DenSco Confidential Private Offering Memorandum dated July 2011 with handwritten notes (4/24/14)
145. E-mail exchange between D. Beauchamp and D. Chittick (4/25/14)
146. E-mail exchange between D. Beauchamp and D. Chittick (4/28/14)
147. E-mail exchange between D. Beauchamp and D. Chittick (4/28/14)
148. E-mail exchange between D. Beauchamp and D. Chittick (4/28/14)
149. D. Beauchamp handwritten notes from calls with D. Chittick (4/29/14)
150. D. Beauchamp handwritten notes re private offering memorandum (4/29/14)
151. Excerpt from DenSco journal (4/29/14)
152. D. Beauchamp handwritten notes re private offering memorandum (5/13/14)
153. E-mail from D. Schenck to D. Beauchamp (5/14/14)
154. Draft of DenSco Confidential Private Offering Memorandum (5/14/14)
155. Draft of DenSco Confidential Private Offering Memorandum (5/14/14)
156. E-mail exchanges between D. Beauchamp and D. Chittick (6/12/14)
157. E-mail exchange between D. Beauchamp and D. Schenck (6/13/14)
158. Authorization to Update Forbearance Documents (6/18/14)
159. Excerpt from DenSco journal (7/2/14)
160. Excerpt from DenSco journal (7/25/14)
161. Excerpt from DenSco journal (7/31/14)
162. E-mail exchange between D. Beauchamp and D. Chittick (3/13/15)
163. E-mail exchange between D. Chittick and S. Menaged (3/13/15)
164. Excerpt from DenSco journal (3/13/15)
165. Excerpt from DenSco journal (3/24/15)
166. Excerpt from DenSco journal (6/18/15)
167. Letter to Investors (7/28/16)
168. Iggy List (7/28/16)
169. E-mail from D. Beauchamp to DenSco investors (8/3/16)
170. E-mail from D. Beauchamp to DenSco investors (8/5/16)
171. E-mail exchange between D. Beauchamp and K. Johnson (8/8/16)
172. E-mail exchange between D. Beauchamp and R. Brinkman (8/21/16)
173. E-mail exchange between D. Beauchamp and R. Brinkman (8/21/16)

174. Letter from D. Beauchamp to D. Chittick with enclosed invoices (2/20/14)
175. Letter from D. Beauchamp to D. Chittick with enclosed invoices (3/14/14)
176. Letter from D. Beauchamp to D. Chittick with enclosed invoices (4/24/14)
177. Letter from D. Beauchamp to D. Chittick with enclosed invoices (5/23/14)
178. Letter from D. Beauchamp to D. Chittick with enclosed invoices (6/25/14)
179. Letter from D. Beauchamp to D. Chittick with enclosed invoice (7/16/14)
180. Letter from D. Beauchamp to D. Chittick with enclosed invoice (8/20/14)
181. Plaintiff's Initial Disclosure Statement w/ Appendices (3/9/18)
182. Defendant's Initial Disclosure Statement (3/9/18)
183. Notice of Service of Preliminary Expert Opinion Declaration – M.Hiraide (3/9/18)
184. Plaintiff's Second Disclosure Statement documents (3/27/18), [RECEIVER_000001-1497]
185. Plaintiff's Third Disclosure Statement documents (5/15/18), [RECEIVER_000001-1497]
186. Defendant's Third Supplemental Disclosure Statement documents (6/13/18), [AF000001-002448, AZBEN000001-005248, CH_0013387-0013616, GE000001-000257, SELL000001-000766]
187. Beauchamp's Responses to Plaintiff's First Set of Non-Uniform Interrogatories No.1 thru 14; including breakdown of each NUI with the referenced documents (6/21/18)
188. Plaintiff's Fourth Disclosure Statement documents (7/11/18), [RECEIVER_001498-001548]
189. Daniel Schenck Deposition Transcript, Exhibits, Errata sheet (6/19/18)
190. Robert Anderson Deposition Transcript and Exhibits (6/21/18)
191. David Beauchamp Deposition Transcript, Exhibits, Errata sheet and video deposition (7/19-20/18)
192. Shawna Heuer Deposition Transcript (8/22/18)
193. Mark Sifferman Deposition Transcript (8/31/18)
194. Scott Menaged 2004 Exam Transcript
195. Edward Hood Deposition Transcript and Exhibits (2/8/19)
196. Letter from R. Miller to D. Chittick w/ attachment re Mortgage Recordation; Demand for Subordination (1/6/14), [CH_0000828-0000848]
197. Notice of Claim Against Estate of Denny J. Chittick (12/9/16)
198. Exhibits A thru H re Motion to Modify Receivership Order re Alleged Joint Privilege (12/7/17)
199. Receiver's Petition No. 48 for Reconsideration of the Order Appointing Receiver with Respect to Alleged Joint Attorney Client Privilege (12/11/17)
200. Chittick Estate's Response to Receiver's Petition No. 48 re Attorney-Client Relationship (1/3/18)
201. Chittick Estate's Sur-Response to Receiver's Petition No. 48 re Attorney-Client Relationship (1/9/18)
202. Receiver's Reply in Support of Petition No. 48 for Reconsideration of the Order Appointing Receiver with Respect to Alleged Joint Attorney Client Privilege (1/12/18)
203. Plaintiff's Third Set of Requests for Production of Documents to Defendant Clark Hill (8/1/18)
204. Defendants' Sixth Supplemental Disclosure Statement (3/13/19)
205. Blackline Fifth Supplemental Disclosure Statement to Sixth Supplemental Disclosure Statement (3/13/19)

206. Signed Verification to Defendants' Sixth Supplemental Disclosure Statement (3/12/19)

EXHIBIT B

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

Plaintiff,

v.

Clark Hill PLC, a Michigan limited liability Company; David G. Beauchamp and Jane Doe Beauchamp, husband and wife,

Defendants.

In the Superior Court of the State of Arizona
In and For the County of Maricopa

Case No. CV2017-013832

Expert Report of:

David B. Weekly
Fenix Financial Forensics LLC

April 4, 2019

Peter S. Davis, as Receiver of DenSco Investment Corporation
v.
Clark Hill PLC, et al.
(Case No. CV2017-013832)

Expert Report of David B. Weekly
April 4, 2019

Background[1]

1. DenSco Investment Corporation ("DenSco") is an Arizona corporation that began operating in April 2001. DenSco's primary business was making short-term, high-interest loans to foreclosure specialists, usually through a trustee's sale. Denny Chittick ("Chittick") was DenSco's sole shareholder and only employee.

2. David G. Beauchamp ("Beauchamp") is an attorney who advised DenSco on general business, securities transactions and other legal matters. He worked at several law firms while advising DenSco, including Clark Hill from September 2013 through 2016.

3. DenSco issued promissory notes to private investors under Private Offering Memoranda (POM) prepared by Beauchamp in 2003, 2005, 2007, 2009 and 2011. Each POM expired two years after issuance. The 2011 POM expired July 1, 2013, and no new POM was ever finalized after that date.

4. Yomotov "Scott" Menaged ("Menaged") borrowed money from DenSco to purchase foreclosed homes at trustees' sales. Menaged operated several companies, including Easy Investments, LLC and Arizona Home Foreclosures, LLC.

5. In November 2013, Chittick learned from Menaged that a number of his DenSco loans were double encumbered, making it uncertain whether DenSco had sufficient collateral value in these loans. Menaged informed Chittick his cousin perpetrated a fraud against Menaged and absconded with the funds DenSco lent to him. When Chittick learned about the double encumbering of loans, he and Menaged created a plan in an attempt to resolve the issue.

6. On January 6, 2014, Chittick learned from an attorney at Bryan Cave, there were over 50 properties with deeds of trust with a first position security interest in which DenSco also had recorded mortgages. On January 7, 2014, Chittick outlined his plan in an email to Beauchamp. Chittick and Menaged met with Beauchamp on January 9, 2014 to discuss the plan, which led to the development of a Forbearance Agreement dated April 16, 2014.

7. On July 28, 2016, Chittick committed suicide, and on August 18, 2016, Peter S. Davis was appointed as the Receiver of DenSco ("Receiver"). The Receiver reviewed DenSco's files and other books and records and concluded DenSco had claims against Beauchamp and Clark Hill (collectively referred to herein as "Defendants").

[1] Statements in the Background section are sourced from the Complaint and various Disclosure Statements or other documents provided to F3. These statements are made to provide a brief overview of this matter and are not intended to be an exact summary of facts or to provide any legal determinations or conclusions.

8. The Receiver disclosed two frauds were perpetrated against DenSco and its investors (also referred to as two Ponzi schemes by the Receiver). The First Fraud ("First Fraud" or "First Ponzi") occurred when DenSco made certain loans to Menaged expecting to be in first position, when in fact DenSco held a second position lien on many properties. The Second Fraud ("Second Fraud" or "Second Ponzi") occurred when DenSco continued to loan funds to Menaged, but Menaged created fictitious documents giving the impression DenSco actually held liens. Menaged stole additional funds during the Second Fraud without ever buying properties.

9. On October 16, 2017, the Receiver filed a Complaint against the Defendants. The Receiver (also referred to as "Plaintiff") alleges the Defendants committed legal malpractice and aided and abetted Chittick in breaching his fiduciary duties. The Receiver is seeking damages related to DenSco's financial losses associated with loans made to Menaged, and recovery of legal fees paid to Defendants.

The Role of F3

10. Fenix Financial Forensics LLC ("F3") was retained by Osborn Maledon, P.A. ("Counsel") on behalf of the DenSco Receiver to quantify the financial losses to DenSco. In performing our work to date we have: 1) considered the documents listed in Exhibit A; 2) held discussions with the Receiver, and analyzed the work performed by the Receiver related to four status reports issued between September 19, 2016 and March 11, 2019; 3) analyzed relevant DenSco financial records including information related to DenSco loans and DenSco's QuickBooks file; 4) reviewed numerous DenSco bank account statements, analyzed relevant property records, deeds of trust and closing statements; 5) reviewed certain depositions, testimony transcripts and Chittick's corporate journal (2013 to 2016); and 6) prepared this expert report.

11. This expert report summarizes the opinions of David B. Weekly, a Senior Managing Director for F3. Mr. Weekly is a Certified Public Accountant, a Certified Fraud Examiner, a Certified Insolvency and Restructuring Advisor, a Certified Internal Controls Auditor, a Certified Global Management Accountant and is Certified in Financial Forensics. A copy of Mr. Weekly's resume and recent testimony experience is attached as Exhibit B.

12. We express no opinion regarding liability in this matter. The opinions and conclusions expressed in this report are Mr. Weekly's, and are based on the information made available as of the date of this report. Mr. Weekly was assisted by other F3 professionals, working under his direction and supervision. This report refers to Mr. Weekly and other F3 professionals involved in the work collectively as "we", "us", "our", and/or F3.

Summary of Opinion

13. Menaged perpetrated two frauds against DenSco. In the First Fraud, Menaged used DenSco and a second lender to obtain two separate loans against the same property. DenSco wired the borrowed funds directly to Menaged's bank account instead of delivering the funds directly to the trustee handling the sale. Had DenSco followed the practice other hard money lenders used of delivering the borrowed funds directly to the trustee, Menaged would not have been able to steal DenSco's

funds. Menaged stated during a bankruptcy examination, "The only way that DenSco ended up in this position is because he [Chittick] wired the money to the borrower, me, and did not pay the trustee directly."[2]

14. In an attempt to recover the loan losses created by Menaged from the First Fraud (the additional funding paid by DenSco to resolve the double encumbered properties from the First Fraud are referred to as "Workout Loans"), Chittick continued making loans to Menaged to buy foreclosed properties (these loans commenced on January 22, 2014 and are referred to as "Non-Workout Loans"). Chittick, Menaged and Beauchamp were all aware of the plan to continue making loans and use expected profits from these new loans to recover the losses from the First Fraud. The Non-Workout Loans are the basis of the Second Fraud.

15. When funding Non-Workout Loans, Chittick continued to wire money directly to Menaged's bank account. Chittick instructed Menaged to provide a copy of a cashiers' check and trustees' receipt for each transaction. Menaged sent Chittick copies of cashiers' checks and fictitious trustees' receipts, giving Chittick the impression Menaged was actually acquiring properties.[3] During the Second Fraud, Menaged typically returned funds DenSco previously loaned him, to continue to give Chittick the false impression he was actually purchasing properties, generating profits and paying off the loans.

16. DenSco's total losses related to Workout Loans from the First Fraud were over $14 million by the time of Chittick's death. The net impact of the fictitious Non-Workout Loans during the Second Fraud resulted in over $24 million in losses.

17. F3 calculated DenSco's loan losses related to Workout Loans for transactions where the economic damages occurred after September 30, 2013.[4] Loan loss damages for Workout Loans represent cash paid by DenSco to resolve their Menaged loan shortfalls ("Cash Out") less payments made by Menaged to DenSco on these loans ("Cash In").

18. F3 calculated DenSco's loan losses related to Non-Workout Loans beginning on January 22, 2014. These damage amounts were also calculated by determining the total "Cash Out" minus "Cash In" for Non-Workout Loans.

19. The total loan losses were reduced by applicable Receiver recoveries and increased by costs and expenses the Receiver incurred to obtain recoveries as of the date of this report. Table 1 summarizes DenSco's net Loan Loss Damages.

---

[2] Menaged sworn testimony dated October 20, 2016, page 74.

[3] Menaged obtained actual cashiers' checks, sent photos of the checks to Chittick, and then redeposited the checks.

[4] Based on advice from Counsel.

Table 1: DenSco Net Loan Loss Damages (excluding prejudgment interest)

Description	Amount
Workout Loans	$ 69,123
Non-Workout Loans	24,436,100
Total Loan Losses	$ 24,505,223
Less: Menaged-Related Recoveries	(667,585)
Add: Menaged-Related Costs and Expenses	875,581
Net Loan Losses	$ 24,713,219

Opinion

DenSco's net financial losses related to Workout Loans and Non-Workout Loans total $24,713,219 (before prejudgment interest) as of April 4, 2019.

Detailed Findings in Support of Opinion

20. There were deficient business practices and a lack of compliance with DenSco's POMs that created red flags. Plaintiff claims DenSco's loan losses could have been limited had Defendants not breached their legal standard of care or aided and abetted DenSco and Chittick. Some of these deficiencies are summarized in Table 2.

Table 2: Deficiencies

Description	Source	Deficiency/Red Flag
[1] Loaned funds should be evidenced by check payable to "Trustee"	Mortgage document used by DenSco	Funds were wired to Menaged and were not paid directly to Trustee; Mortgage document required this procedure
[2] Lien priority (required first position)	Menaged Testimony; 2011 POM (BC_002957)	Chittick did not validate whether DenSco was in a first position on loans; Freo Lawsuit and other notifications were red flags
[3] Loan-to-value ratios (not to exceed 70%)	2011 POM (BC_002924)	Menaged double encumbumbered properties causing LTV ratio to be exceeded; LTV ratio exceeded for unsecured workout loans
[4] One borrower will not comprise more than 10 to 15% of total portfolio	2011 POM (BC_002957)	Loans to Menaged exceeded 15% beginning in 2013 and reached nearly 90% by 2016 (refer to Exhibit C for history of Menaged loan %)
[5] Offering Maximum of $50 million	2011 POM (BC_002915)	Investor balance exceeded $50 million April 2013, reached a high point of $61.9 million May 2014 and stayed above $50 million in every month but one after April 2013

21. Delivering funds directly to the trustees and verification of lien positions would have prevented Menaged from double encumbering properties, and would have prevented Menaged from borrowing more than 15% of the $50 million offering maximum. The 15% borrowing limit itself, would have prevented DenSco from loaning Menaged more than $7.5 million, therefore the Second Fraud could not have occurred.

22. The double encumbering of properties caused DenSco to become insolvent. In the Receiver's December 23, 2016 Status Report, the Receiver concluded, "As a result of the First Fraud and the Second Fraud, DenSco became insolvent as of December 31, 2012 and remained insolvent through June 30, 2016."[5] Based on our review and analysis of the Receiver's calculations and DenSco's QuickBooks file, we agree with the Receiver's conclusion that DenSco was insolvent on a Balance Sheet basis by at least the end of 2012.

Workout Loans

23. When Chittick learned about the double encumbering of loans in November 2013, he and Menaged created a plan in an attempt to recover the expected losses. Chittick outlined his plan in an email to Beauchamp dated January 7, 2014. Chittick and Menaged met with Beauchamp on January 9, 2014 to discuss the plan, which lead to the development of a Forbearance Agreement dated April 16, 2014.

24. The plan included DenSco loaning Menaged: a) $1 million at 3% interest (referred to as the "Work Out 1 Million"), and b) $5 million at 18% interest (referred to as the "Work Out 5 Million"). The plan contemplated if Menaged continued flipping properties, the expected profits would allow DenSco to recover the funds to pay-off the $1 million and $5 million Workout Loans. Between January and April of 2014, Beauchamp continued to work with Chittick and Menaged to finalize the Forbearance Agreement.

25. The plan was to either refinance the loans or sell the properties in order to pay off the additional lien held by another lender.[6] Any deficit between the property value or sales price and the combined liens on the property were recorded by DenSco as new borrowing by Menaged, and were put on the DenSco books under either the "Work Out 1 Million" account or the "Work Out 5 Million" account.

Example of actual Workout Loan – 18146 W. Puget Ave.

26. This property was double encumbered by DenSco and Sell Wholesale Funding, LLC ("SWF"). DenSco's original loan on October 16, 2013 was $90,000 and SWF's original loan was $95,200 on the same day. On March 14, 2014, DenSco and Menaged refinanced the property. To remove the SWF lien, DenSco wired $98,861.07 to the title company at closing. This cleared SWF's lien, but left DenSco with an outstanding loan to Menaged of $188,861.07.[7] DenSco recorded $125,000 in the Menaged loan account (by adding $35,000 to the existing $90,000 loan balance) and recorded

---

[5] Receiver Status Report dated December 23, 2016, page 11.

[6] There were instances where DenSco actually held a first position lien on a property, but wanted to avoid action by other lenders or issues with DenSco's investors learning of the fraud.

[7] This amount equals the original loan of $90,000 plus DenSco's refinancing payment of $98,861.07.

$63,861.07 in a separate account called "Work Out 5 Million". DenSco was now the sole lienholder and Menaged's debt on DenSco's books was $188,861.07.

27. On October 9, 2014, Menaged sold the property for $132,000. To complete this transaction at closing, Menaged paid $23,355.12 and received a credit for assessments of $270.99, for total settlement proceeds of $155,626.11. The total settlement proceeds were used to pay: 1) DenSco's recorded loan amount of $125,000 (excluding the Workout Loan), 2) DenSco's accrued interest of $18,542.50 and 3) other closing costs of $12,083.61. Once the transaction was complete, DenSco was left with the unsecured "Work Out 5 Million" loan of $63,861.07, which was never repaid. We subtracted the interest received at closing of $18,542.50, to calculate DenSco's Workout Loan loss of $45,318.57.

Summary of F3's Analysis and Calculations of DenSco's "Work Out 1 Million" Damages

28. There were 14 properties either: 1) sold or 2) refinanced and sold, where the deficit between the property value and DenSco loan amount was recorded in the "Work Out 1 Million" account. Chittick started making entries into QuickBooks on December 13, 2013 to record these losses. The original loan dates for these properties (when they became double encumbered) were between April 22, 2013 and October 7, 2013. The total unpaid balance in the "Work Out 1 Million" account on DenSco's books was $1,002,533.

29. To calculate damages related to the "Work Out 1 Million" loans, we identified original loans made by DenSco after September 30, 2013 where DenSco lost money as a result of eliminating the property double encumbrance. DenSco originated two loans in this time period that were recorded in the "Work Out 1 Million" account. DenSco's losses on these two loans totaled $236,307.[8]

Summary of F3's Analysis and Calculations of DenSco's "Work Out 5 Million" Damages

30. There were 107 properties either: 1) sold or 2) refinanced and sold, where the deficit between the property value and the DenSco loan amount was recorded in the "Work Out 5 Million" account. Chittick started making entries into QuickBooks on March 7, 2014 to record these losses. The original loan dates for these properties (when they became double encumbered) were between August 20, 2012 and December 5, 2013. The gross unpaid balance in this account on DenSco's books was $15,059,652. Menaged made principal payments periodically to DenSco which reduced the "Work Out 5 Million" account.[9] These payments totaled $1,722,845 leaving a net unpaid "Work Out 5 Million" account balance of $13,336,807.

31. To calculate damages related to the "Work Out 5 Million" account, we identified loans made by DenSco after September 30, 2013 where DenSco lost money as a result of eliminating the property double encumbrance. DenSco originated 22 loans in this time period that were recorded in the "Work Out 5 Million" account. DenSco's losses on these 22 loans totaled $1,663,266.

[8] DenSco's losses represent the amount paid at closing to resolve the double encumbrance reduced by loan interest.
[9] F3 found no payments recorded by DenSco in the "Work Out 1 Million" account.

Summary of DenSco's Workout Loan Damages

32. DenSco's net loan losses related to Workout Loans are $69,123. The net loan losses include the $236,307 for the "Work Out 1 Million" account plus $1,663,266 for the "Work Out 5 Million" account reduced by Menaged principal and interest payments of $1,830,450.

33. In addition to the losses on Workout Loans, we identified several additional Menaged loans where losses were likely incurred when DenSco made workout payments. These workout payments were not recorded in the Workout Loan accounts, and they involved complex transaction entries by Chittick to allocate the losses from these workout payments to other Menaged loans. This resulted in the full extent of certain losses being transferred to other Menaged loans as opposed to being recorded in the Workout Loan accounts.

34. We continue to review these complex loan transactions to identify whether the ultimate loss amounts should be added to our calculation of Workout Loan losses, and we may amend our calculations in this report as a result of this additional analysis.

Non-Workout Loans

35. The Non-Workout Loans represented new borrowings by Menaged under the plan Chittick and Menaged communicated to Beauchamp. The plan contemplated if Menaged continued flipping properties, Menaged's expected profits would allow DenSco to recover the funds lost from the First Fraud. With minimal exception, no properties were ever acquired related to the Non-Workout Loans. During the Second Fraud, Menaged typically returned funds Chittick previously loaned him, giving Chittick the false impression he was actually purchasing properties, generating profits and paying off the loans.

36. Beginning in January 2014, Chittick continued to wire money directly to Menaged's bank account. Chittick instructed Menaged to provide a copy of a cashiers' check and trustees' receipt for each transaction. Menaged sent Chittick copies of cashiers' checks and fictitious trustees' receipts, giving Chittick the impression Menaged was actually acquiring properties. Menaged testified he redeposited the cashier's checks into his bank account.

37. Between January 22, 2014 and October 24, 2014, Chittick and Menaged wired millions of dollars back and forth for what Menaged represented were individual and group loan transactions and pay-offs. On October 23, 2014, Chittick's corporate journal noted Bank of America expressed concerns regarding the dollar amount of activity in his accounts. For example, in September 2014, over $58 million was deposited and over $61 million was withdrawn from DenSco's two Bank of America accounts.

38. On October 24, 2014, Chittick and Menaged began to net their banking transaction activity (the "Netting Process"). For example, on October 27, 2014, Menaged requested $804,200 from DenSco to allegedly purchase six properties. On the same date, Menaged planned to pay-off four loans from DenSco totaling $1,054,584. Chittick and Menaged agreed to net this transaction and Menaged wired $250,384 into DenSco's bank account. Chittick recorded each individual property loan in DenSco's books, even though the bank account activity showed only the actual net transaction.

39. On November 6, 2014, Chittick's corporate journal noted Bank of America requested DenSco to close its accounts. On November 18, 2014, Chittick opened a new account at First Bank. Bank of America records show all account activity stopped for DenSco on November 21, 2014. Beginning December 1, 2014, Chittick's corporate journal noted he and Menaged stopped the Netting Process and resumed exchanging transactions via bank wires. This process continued until July 8, 2015. Chittick's corporate journal noted on July 7, 2015, "I'm so low on cash, we are going to have to go back to wiring the difference instead of the whole thing."[10]

40. On November 4, 2015, the wire activity between DenSco and Menaged stopped.[11] Chittick did not mention this change in his corporate journal, but our review of DenSco's bank records confirmed the wire activity did not continue. On November 23, 2015, Chittick noted, "the ins and outs to [Scott] are so one sided my way this month." Chittick was referring to a new process where no cash changed hands related to his transactions with Menaged. After November 4, 2015 DenSco's records reflected 809 "loans" were originated totaling approximately $255.4 million and Menaged "paid" DenSco approximately $260.2 million, even though no cash changed hands.

41. Exhibit D summarizes the transaction activity between DenSco and Menaged from January 22, 2014 through June 21, 2016. During this time period DenSco's QuickBooks reflects 2,718 loans were originated with Menaged totaling $735.5 million. With minimal exception, all of these loans were fictitious.

Summary of F3's Analysis and Calculations of DenSco's Non-Workout Loan Damages

42. The first Non-Workout Loan was made by DenSco on January 22, 2014, approximately two weeks after Chittick and Menaged met with Beauchamp. Between January 22, 2014 and November 4, 2015, DenSco bank records show hundreds of wire transfers between DenSco's and Menaged's bank accounts related to originations and pay-offs of Non-Workout Loans. Since there were no cash transactions between DenSco and Menaged after November 4, 2015, our calculation of losses was based on transactions recorded on DenSco's books between January 22, 2014 and November 4, 2015 where actual cash transactions were traced to bank statements and reconciled with entries made by Chittick in DenSco's books.

43. To calculate damages related to the Non-Workout Loans, we analyzed Menaged transactions using: 1) the Receiver Reports and various loan activity schedules prepared by the Receiver's staff; 2) DenSco's QuickBooks; 3) Bank of America and First Bank account statements; 4) Chittick's corporate journal; and 5) relevant communications from Chittick's email file. We also reconciled our analysis with what the Receiver did to ensure we had considered all Non-Workout Loan transactions in DenSco's books and bank statements.

44. Table 3 summarizes the principal amount of all Menaged Non-Workout Loans reduced by principal pay-offs recorded by DenSco. In addition, DenSco collected and recorded $5,053,796 of interest

[10] Chittick corporate journal (RECEIVER_000114).

[11] There was one minor transaction totaling $12,600 that was reflected in the DenSco bank account on 2/4/2016 and 3/18/2016, but all regular activity ceased on 11/4/2015.

payments on paid off loans. We reduced the net unpaid principal amount by the interest payments to determine the net financial loss (Cash In minus Cash Out) for Non-Workout Loans.

Table 3: Non-Workout Loans Transaction Summary

Description	Timeframe	Number [1]		Amount
Loans Originated:				
Non-Workout Loans-Fully Repaid	1/22/14 - 7/7/15	1,229	$	290,179,835
Non-Workout Loans-Not Fully Repaid	10/7/14 - 11/4/15	680	$	189,959,906
Subtotal Loans Originated		**1,909**	**$**	**480,139,741**
Payoffs Received:				
Non-Workout Loans-Fully Repaid	1/22/14 - 7/7/15	1,229	$	(290,179,835)
Non-Workout Loans-Not Fully Repaid	10/7/14 - 11/4/15	589	$	(160,458,706)
Subtotal Payoffs Received		**1,818**	**$**	**(450,638,541)**
Net Unpaid Principal			**$**	**29,501,200**
Less: Interest Payments/Adjustments				**(5,065,100)**
Non-Work Out Loan Losses, net			**$**	**24,436,100**

[1] - The number column represents individual properties. DenSco combined multiple properties and grouped loan originations and principal and interest pay-offs when recording transactions.

45. Exhibit E is a summary of amounts paid by DenSco to Managed for fictitious property loans (Cash Out) minus the principal and interest amounts Menaged returned to DenSco from these same monies (Cash In). We traced each transaction to DenSco bank accounts and reviewed other receipts of cash to ensure amounts received from Menaged have been properly considered or offset against DenSco's Non-Workout Loan losses.

Recoveries net of Costs and Expenses

46. When Plaintiff was appointed as Receiver, he set-up a new bank account and began recording all DenSco transactions in a new set of books. The Receiver Status Report dated March 11, 2019 ("March 2019 Status Report") identifies "Menaged-Related Recoveries" and "Menaged-Related Disbursements" as of March 11, 2019. The March 2019 Status Report discloses the Plaintiff has recovered $667,585 from Menaged related enterprises. Plaintiff has also incurred $875,581 of costs and expenses to recover these amounts, which consists of $292,809 of direct costs and $582,772 of Receiver allocated costs and expenses.

47. The March 2019 Status Report describes settlements with Menaged and the Chittick Estate along with potential claims against Financial Institutions, Active Funding Group, LLC and Property of Joseph Menaged. We understand that these settlements and claims could impact the damages we have computed. We express no opinion in this report regarding apportionment of damages. However, we will amend this report if necessary, for any net recoveries or other costs and expenses that may impact our calculations.

Prejudgment Interest

48. At Counsel's direction, we calculated prejudgment interest on the total loan losses, net of recoveries, costs and expenses using both 10% simple interest based on A.R.S. 44-1201(A) and the current rate of 6.5% based on A.R.S. 44-1201(B). We also calculated a range of prejudgment interest using two different time periods. The first time period is from August 31, 2016[12] through the date of this report, and the second time period is from October 17, 2017[13] through the date of this report. Prejudgment interest using 10% is between $3.62 million and $6.41 million, and the daily rate of interest beyond our report date is approximately $6,770. Prejudgment interest using 6.5% is between $2.35 million and $4.16 million, and the daily rate of interest beyond our report date is approximately $4,400 (See Exhibit F for interest calculations).

49. *Damage Summary as of April 4, 2019*

Table 4: DenSco Net Loan Loss Damages (excluding prejudgment interest)

Description	Amount
Workout Loans	$ 69,123
Non-Workout Loans	24,436,100
Total Loan Losses	$ 24,505,223
Less: Menaged-Related Recoveries	(667,585)
Add: Menaged-Related Costs and Expenses	875,581
Net Loan Losses	$ 24,713,219

Other Matters

50. This expert report is based on information provided to F3 as of the date of this report. We reserve the right to modify or supplement this report should additional information become available to us or if we are requested to perform additional tasks including, but not limited to updated recoveries reduced by costs and expenses, updated calculations of prejudgment interest, analyses performed as a result of the production of additional documents, or matters related to additional discovery. In addition, F3 may prepare illustrative or demonstrative exhibits for use during testimony from the information contained in this report, any supplemental report, our work papers, or the documents considered.

51. F3 is being compensated for Mr. Weekly's time at $450 per hour. F3's other professional staff billing rates range between $100 and $375. F3's compensation is not contingent on the conclusions contained herein or any supplemental report(s) prepared pursuant to this engagement, or the ultimate resolution of this matter.

[12] Per Geoffrey M.T. Sturr letter to John E. DeWulf dated January 17, 2018, August 2016 represents the date Defendant's received Chittick's pre-suicide writings blaming Clark Hill for the losses.

[13] The date Plaintiff filed the Complaint against Defendants.

52. The report has been prepared only for the purposes stated herein and shall not be used for any other purpose. Neither this report nor any portions thereof shall be disseminated to third parties by any means without the prior written consent and approval of F3.

Respectfully submitted,

David B. Weekly
Senior Managing Director
Fenix Financial Forensics LLC

Expert Report of David B. Weekly
Peter S. Davis, Receiver v. Clark Hill PLC, et al.

EXHIBIT A

List of Documents Considered

Purpose: To list the documents considered by F3.

Item	*Description*	*Bates Start [1]*	*Bates End [1]*
1	Complaint	-	-
2	Plaintiff's Disclosure of Areas of Expert Testimony	-	-
3	Defendants' Disclosure of Areas of Expert Testimony	-	-
4	Plaintiff's Initial Disclosure Statement	-	-
5	Plaintiff's Second Disclosure Statement	-	-
6	Plaintiff's Third Disclosure Statement	-	-
7	Plaintiff's Fourth Disclosure Statement	-	-
8	Plaintiff's Fifth Disclosure Statement	-	-
9	Defendants' Initial Rule 26.1 Disclosure Statement	-	-
10	Defendants' First Supplemental Rule 26.1 Disclosure Statement	-	-
11	Defendants' Second Supplemental Rule 26.1 Disclosure Statement	-	-
12	Defendants' Third Supplemental Rule 26.1 Disclosure Statement	-	-
13	Defendants' Fourth Supplemental Rule 26.1 Disclosure Statement	-	-
14	Defendants' Sixth Supplemental Rule 26.1 Disclosure Statement	-	-
15	Defendants' Sixth Supplemental Rule 26.1 Disclosure Statement (Blackline Fifth Supplemental to Sixth Supplemental)	-	-
16	Deposition of David Beauchamp and Exhibits	-	-
17	Deposition of Peter Davis and Exhibits	-	-
18	Deposition of Shawna Chittick Heuer	-	-
19	Deposition of Victor Gojcaj and Exhibits	-	-
20	Rule 2004 Examination of Scott Menaged and Exhibits	-	-
21	Schenck Deposition Exhibit 20 (Chittick DenSco Corporate Journal)	-	-
22	Schenck Deposition Exhibit 51 (Chittick Email to Beauchamp dated 1/7/14)	-	-
23	Preliminary Report of Peter S. Davis, as Receiver of DenSco Investment Corporation dated 9/19/16	-	-
24	Status Report of Peter S. Davis, as Receiver of DenSco Investment Corporation dated 12/23/16	-	-
25	Status Report of Peter S. Davis, as Receiver of DenSco Investment Corporation dated 12/22/17	-	-
26	Status Report of Peter S. Davis, as Receiver of DenSco Investment Corporation dated 3/11/19	-	-
27	DenSco Investment Corporation QuickBooks File (Backup Dated 7/27/16)	-	-
28	Receiver Work Product - Excel file, "Schedules Supporting Receiver's Solvency Analysis.xlsx"	-	-
29	Receiver Work Product - Excel file, "Analysis of Menaged Loan Transactions Per QuickBooks that Did Not Clear the Bank.xlsx"	-	-
30	Receiver Work Product - Excel file, "Analysis of Menaged Loans as of 01.09.14 - Property Details.xlsx"	-	-
31	Receiver Work Product - Excel file, "Data for Interest Calculation.xlsx"	-	-
32	Receiver Work Product - Excel file, "Receiver's QuickBooks Adjustments.xlsx"	-	-
33	Receiver Work Product - Excel file, "Densco-Menaged Cash Disbursements & Receipts.xlsx"	-	-
34	Receiver Work Product - Excel file, "Analysis of Menaged Loans - Per F3 Request.xlsx"	-	-
35	Receiver Work Product - Excel file, "Menaged Loans 10.02.13-01.21.14.xlsx"	-	-
36	Receiver Work Product - Excel file, "Densco-Menaged Cash Disbursements & Receipts 03 05 19.xlsx"	-	-
37	Selected emails, Denny Chittick Outlook file	-	-
38	Selected emails, Scott Menaged Outlook file	-	-
39	2015 First Bank Records.PDF	D100857	D100930
40	2006 Bank of America Records.PDF	D107539	D107819

Item	*Description*	*Bates Start [1]*	*Bates End [1]*
41	2007 Bank of America Records.PDF	D107973	D108276
42	2008 Bank of America Records.PDF	D108601	D109119
43	2009 Bank of America Records.PDF	D109199	D109857
44	2010 Bank of America Records (Acct 7509).PDF	D110295	D110630
45	2010 Bank of America Records (Acct 8555).PDF	D110631	D110952
46	2011 Bank of America Records (Acct 7509).PDF	D111124	D111674
47	2011 Bank of America Records (Acct 8555).PDF	D111675	D111795
48	2012 Bank of America Records (Acct 8555).PDF	D147530	D147764
49	2013 Bank of America Records (Acct 8555).PDF	D147765	D147961
50	2014 Bank of America Records (Acct 8555).PDF	D147962	D148176
51	2012 Bank of America Records (Acct 7509).PDF	D148177	D148877
52	2013 Bank of America Records (Acct 7509).PDF	D148878	D149352
53	2014 Bank of America Records (Acct 7509).PDF	D149353	D149699
54	2014 First Bank Records.PDF	D150089	D150101
55	First Bank Statements 11.18.14-09.30.16.pdf	-	-
56	Various HUD-1 Statements produced by Receiver in folder "Docs from Denny Chittick's Computer (Box 96) - HUD Statements"	-	-
57	Various property documents produced by Receiver in folder "Property Documents Re Selected Menaged Loans - Public Records"	-	-
58	Letter from Geoffrey M.T. Sturr to John DeWulf dated 1/17/18 re: Davis V. Clark Hill,	-	-
59	DenSco Investment Corporation in Receivership Profit & Loss Statement (All Transactions) dated 3/5/19	-	-
60	Expert Report of Neil J. Wertlieb dated 3/26/19	-	-
61	Receivership Fees and Costs Allocable to Scott Menaged 8/2016-2/2019	-	-

[1] - Documents listed without bates labels indicate the documents were produced without them, except for deposition exhibits. Due to the volume and nonconsecutive nature of deposition exhibits, the corresponding bates labels have not been identified within.

Fenix Financial Forensics LLC

10565 N. 114th Street, Suite 100, Scottsdale AZ 85259
www.F3AZ.com

David B. Weekly, CPA, CFE, CFF, CIRA, CICA, CGMA

Senior Managing Director

Tel: 480.717.6789 *Fax: 480.717.6759* *Email: dweekly@F3AZ.com*

David's experiences include expert witness testimony on a wide range of commercial damage issues in U.S. district, state and bankruptcy courts as well as arbitrations and mediations, with particular emphasis on accounting and financial issues, commercial disputes, constructions claims, internal controls and investigations of fraud matters.

David has additional expertise with complex financial investigations, contract compliance, theft and misappropriation of assets, bankruptcy, and workout services. He has conducted numerous investigations in connection with failed companies, including evaluating financial reporting controls and causes of business failure. These investigations typically require the assessment of a business enterprise or an alleged scheme, the quantification of losses or diverted funds, and the identification of potentially responsible parties.

David's industry experience includes aerospace and airlines, construction, financial services, banking, commodities, distribution, manufacturing, mining, real estate, healthcare, insurance, golf course operations, multilevel marketing, and retail bowling centers. Specific case experience includes class actions, Ponzi schemes, criminal allegations, stock option backdating, internal investigations, post-acquisition disputes, breach of fiduciary duty, deepening insolvency, leveraged buyouts, fraudulent transfers, and insurance claims.

Prior to establishing F3, David was a member of the national Forensic and Litigation Consulting team for FTI Consulting, Inc. He was also the partner-in-charge of KPMG's U.S. Dispute Advisory Services practice. Before joining KPMG, David served as the worldwide director of Litigation Services, partner-in-charge of the U.S. Complex Claims and Events practice and partner-in-charge of National Law Firm Relationships for Arthur Andersen LLP.

David has been a frequent speaker at conferences on such topics as expert witness issues, damage analysis, construction claims and alternative billing methods. In addition, he is the founder of the Arizona Corporate Counsel Forum, which hosts meetings quarterly on topics of interest to its members. David also serves on the professional advisory board of Arizona State University's School of Accountancy.

Professional History

- Fenix Financial Forensics LLC (F3) – Senior Managing Director – Scottsdale, AZ (10/08 – Present)
- Independent Contractor – FTI Consulting, Inc. – Phoenix, AZ (09/06 – 09/08)
- FTI Consulting, Inc. – Senior Managing Director, National Forensic and Litigation Consulting Leadership Team member and Forensic Services leader for Western and Central Regions – Phoenix, AZ (11/03 – 09/06)
- KPMG LLP – Partner in Charge of U.S. Dispute Advisory Services Practice – Phoenix, AZ (05/02 – 10/03)
- Arthur Andersen LLP – Partner in Charge of National Law Firm Relationships and Arizona Claims and Disputes Practice – Phoenix, AZ (09/01 – 05/02)

- Arthur Andersen LLP – Partner in Charge of Business Consulting (Desert Southwest) and Partner in Charge of Pacific Region Claims and Disputes Practice – Phoenix, AZ (02/00 – 08/01)
- Arthur Andersen LLP – Firmwide Director of Litigation Services and Partner in Charge of the U.S. Complex Claims and Events Practice – Phoenix, AZ (09/95 – 09/00)
- Arthur Andersen LLP – Partner in Charge of Strategy, Finance & Economics (SFE) in the Desert Southwest – Phoenix, AZ (08/88 – 02/00)
- Arthur Andersen LLP – Manager, Litigation & Bankruptcy Consulting; Audit Manager – Phoenix, AZ (11/84 – 08/88)
- North American Coin & Currency, Ltd. (Public Company – Reorganized) – Executive Vice President, Secretary and Treasurer. Also served as General Manager for Court Appointed Trustee from September 1982 through November 1983. Acquired Series 7, 24 and 63 Securities licenses and acted as Principal for NASD Broker/Dealer operation formed during reorganization – Phoenix, AZ (09/82 – 11/84)
- North American Coin & Currency, Ltd. – Controller – Phoenix, AZ (04/80 – 09/82)
- Arthur Andersen LLP – Audit Division Senior Accountant, Financial Institutions and Construction Industry emphasis – Phoenix, AZ (12/76 – 04/80)
- United States Navy (Vietnam veteran) – (05/70 – 05/74)

Education

- Bachelor of Science in Accounting, Arizona State University (1976)

Certifications

- Certified Public Accountant (CPA) licensed in both Arizona and Missouri
- Certified Fraud Examiner (CFE)
- Certified in Financial Forensics (CFF)
- Certified Insolvency and Restructuring Advisor (CIRA)
- Certified Internal Controls Auditor (CICA)
- Chartered Global Management Accountant (CGMA)

Professional Affiliations

- American Institute of Certified Public Accountants
- Arizona Society of Certified Public Accountants
- Association of Certified Fraud Examiners
- American Bankruptcy Institute
- Association of Insolvency and Restructuring Advisors
- The Institute for Internal Controls
- American Bar Association Litigation Section, Associate Member and former Co-Chair of Corporate Counsel Subcommittee on Expert Witnesses
- Professional Advisory Board, ASU School of Accountancy

Civic Affiliations

- Served on two Maricopa County Bar Association committees to recommend judicial salaries in Arizona
- Served on Board of Directors and Executive Committee – Junior Achievement of Arizona
- Served on Valley Citizens League
- Consultant to Team USA Bowling and Young Bowling Alliance (YABA)
- Coordinated/coached numerous youth activities

Publications and Presentations

- None in last 10 years

Deposition and Testimony Experience (2015 – Present)

- Santosh George Kottayil v. Insys Therapeutics, Inc., Superior Court of Arizona, County of Maricopa, Testimony (2015)
- Pivotal 650 California St., LLC v. Dickinson Wright PLLC, Superior Court of Arizona, County of Maricopa, Deposition (2015)
- Cardiovascular Consultants, Ltd. v. David R. Sease, et al. and David R. Sease, et al. v. Andrei Damian, Superior Court of Arizona, County of Maricopa, Deposition (2015)
- Pam Case Bobrow v. Kenmark Deeds, LLC et. al., Superior Court of Arizona, County of Maricopa, Deposition (2016)
- John J. Hurry et al. v. Financial Industry Regulatory Authority, Inc. et al., US District Court for the District of Arizona, Deposition (2017)
- Responsive Data, LLC v. Isagenix International, LLC, AAA Arbitration – Phoenix, Arizona, Deposition (2017)
- John C. Pritzlaff III, et al. v. Ann Pritzlaff Symington, et al., Superior Court of Arizona, County of Maricopa, Deposition (2017)
- Frost Management Company, LLC, et al. v. Hollencrest Bayview Partners L.P., et al., JAMS Arbitration – Orange County, California, Testimony (2018)
- Wision Investments, LLC v. Hirschler Fleischer, et al., US District Court for the District of Arizona, Deposition (2018)
- eMove, Inc. et al. v. Hire A Helper LLC, et al., US District Court for the Southern District of California, Deposition (2018)
- Premier CM, LLC, dba Level CM, Claimant/Counter-Respondent, vs. Great Wash Park, LLC, Respondent/Counter-Claimant – Dispute Resolution Board – Las Vegas, Nevada, Deposition (2018); Testimony (2018)

Expert Report of David B. Weekly

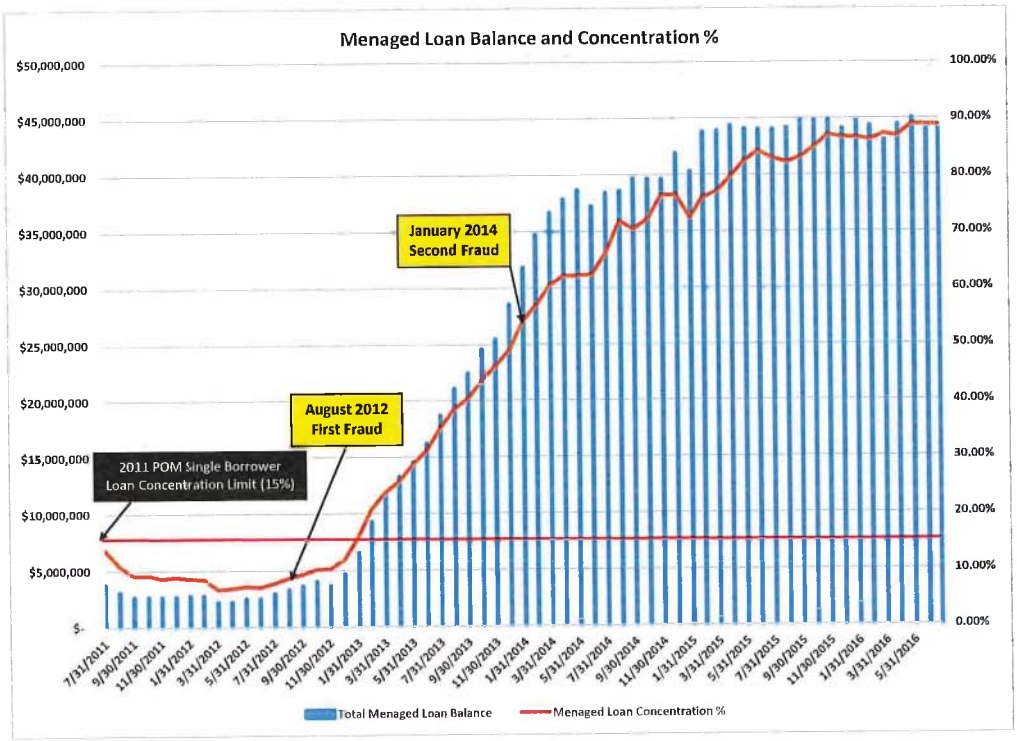
EXHIBIT C

Peter S. Davis, as Receiver v. Clark Hill PLC, et al.
Menaged Loan Concentration

Purpose: To summarize DenSco's Menaged loan concentration.

Source: DenSco QuickBooks file

Period		Average Menaged Loan Balance	Average DenSco Total Loan Portfolio	Menaged Loan Concentration Range
Begin	End			
November 2007	April 2010	$ 1,065,280	$ 16,414,765	Less than 10%
May 2010	August 2011	$ 2,733,063	$ 22,781,244	Above 10%
September 2011	October 2012	$ 2,805,179	$ 34,536,309	Less than 10%
November 2012	December 2012	$ 4,205,000	$ 38,569,212	10% - 15%
January 2013	August 2013	$ 13,897,625	$ 49,826,271	16% - 38%
September 2013	March 2014	$ 29,100,693	$ 58,004,385	40% - 60%
April 2014	July 2016	$ 42,373,377	$ 54,095,638	62% - 89%



Expert Report of David B. Weekly

EXHIBIT D

Peter S. Davis, as Receiver v. Clark Hill PLC, et al.

PURPOSE: To summarize the Non-Workout Loan activity between DenSco and Menaged between January 2014 and June 2016.

SOURCE: Bank of America and First Bank Statements; Chittick Journal; DenSco QuickBooks; Various emails between Chittick and Menaged

Loan Category	Number	Amounts	Loan Activity Time Period
Fully Repaid Loans [1]	1,229	$290,179,834	1/22/2014 - 10/24/2014
Not Fully Repaid Loans [2]	680	$189,959,906	10/7/2014 - 12/1/2014
Non-Cash Loans [3]	809	$255,401,500	12/1/2014 - 7/7/2015
Total	2,718	$735,541,240	7/8/2015 - 11/4/2015
			11/2/2015 - 6/21/2016

[1] - Loans during these periods were disbursed and paid off (aggregate CASH OUT equals CASH IN), excluding interest paid.
[2] - Loans made and paid off during these time periods were made in groups either using Gross Cash Transactions or Net Cash Transactions (see definitions on Exhibit E).
[3] - Loans were recorded as disbursed and recorded as paid, but no cash transactions took place. None of these transactions are included in F3's damage calculations.

Expert Report of David B. Weekly

Peter S. Davis, as Receiver v. Clark Hill PLC, et al.

EXHIBIT E

PURPOSE: To calculate DenSco damages for Non-Workout Loan Losses.

SOURCE: Simon Consulting Prepared Transaction Report, Bank of America and First Bank Statements

Definitions of terms used in this analysis

Gross Cash Transactions - Groups of loans combined into one banking transaction amount. Payoffs under this caption relate to one property per banking transaction.

Net Cash Transactions - Groups of loans netted against loan payoffs in one banking transaction (e.g. multiple transactions result in one banking transaction).

A	B	C	D	E	F	G	H = F - G	I	J = G + I	K = F - J (Net Cash Only)	L	M = K + L (Net Cash Only)	N
#	Bank Statement Date	Loan No.	Property Address	Transaction Amount [2]	Loan Amount (CASH OUT) [3]	Principal Payment (CASH IN) [4]	Cumulative Principal CASH OUT/(CASH IN) [5]	Interest/Fee Payments (CASH IN)[6]	Total Payment (Principal + Interest) (CASH IN) [7]	Net Transaction Before Adjustment [8]	Transaction Adjustment [9]	Reconciled Transaction Amount [10]	Notes
			Gross Cash Transactions										
1	10/07/2014	5650	8340 W Cavalier Dr	361,100.00	361,100.00	-	361,100.00	-	-	-	-	1,159,400.00	Total loan amount was $1,159,400 made up of Loan 5647 ($302,700), 5648 ($117,700), 5649 ($377,900) and 5650 ($361,100). All loans were subsequently paid off except loan 5650.
2	10/08/2014	5652	31055 W Black Hill Rd	1,217,900.00	342,400.00	-	703,500.00	-	-	-	-	1,424,300.00	Total loan amount was $1,424,300 made up of loan 5652 ($342,400), 5653 ($206,400), 5654 ($229,600), 5655 ($277,500), 5656 ($184,700), and 5657 ($183,700). Only loan 5653 was paid off.
3	10/08/2014	5657	1776 E Morgan Dr		183,700.00	-	887,200.00	-	-	-	-	-	Total loan amount was $1,424,300 made up of loan 5652 ($342,400), 5653 ($206,400), 5654 ($229,600), 5655 ($277,500), 5656 ($184,700), and 5657 ($183,700). Only loan 5653 was paid off.
4	10/08/2014	5656	31867 E Magdalena Dr		184,700.00	-	1,071,900.00	-	-	-	-	-	Total loan amount was $1,424,300 made up of loan 5652 ($342,400), 5653 ($206,400), 5654 ($229,600), 5655 ($277,500), 5656 ($184,700), and 5657 ($183,700). Only loan 5653 was paid off.
5	10/08/2014	5654	31135 E Calle De Flores		229,600.00	-	1,301,500.00	-	-	-	-	-	Total loan amount was $1,424,300 made up of loan 5652 ($342,400), 5653 ($206,400), 5654 ($229,600), 5655 ($277,500), 5656 ($184,700), and 5657 ($183,700). Only loan 5653 was paid off.
6	10/08/2014	5655	3230 E Shangri La Rd		277,900.00	-	1,579,000.00	-	-	-	-	-	Total loan amount was $1,424,300 made up of loan 5652 ($342,400), 5653 ($206,400), 5654 ($229,600), 5655 ($277,500), 5656 ($184,700), and 5657 ($183,700). Only loan 5653 was paid off.
7	10/09/2014	5660	170 E Guadalupe Rd #156	1,033,900.00	117,300.00	-	1,696,300.00	-	-	-	-	1,033,900.00	
8	10/09/2014	5659	1223 N 92nd Dale		132,500.00	-	1,828,800.00	-	-	-	-	-	
9	10/09/2014	5661	28768 N 68th Ave		384,700.00	-	2,213,500.00	-	-	-	-	-	
10	10/09/2014	5658	8080 S Larkspur St		378,400.00	-	2,591,900.00	-	-	-	-	-	
11	10/10/2014	5664	30960 W Madison St	923,600.00	189,400.00	-	2,600,300.00	-	-	-	-	923,600.00	
12	10/10/2014	5662	8363B W Sagovia Dr		247,100.00	-	2,847,400.00	-	-	-	-	-	
13	10/10/2014	5663	17467 W Calavar Rd		389,700.00	-	3,237,100.00	-	-	-	-	-	
14	10/10/2014	5665	5044 W Mercer Ln		143,300.00	-	3,381,000.00	-	-	-	-	-	
15	10/10/2014	5666	8133 S Kyle Crt		154,500.00	-	3,535,500.00	-	-	-	-	-	
16	10/14/2014	5670	15286 W Shaw Butte Dr	1,330,400.00	134,400.00	-	3,669,900.00	-	-	-	-	1,330,400.00	
17	10/14/2014	5671	19744 E Via de Arboles		247,500.00	-	3,917,400.00	-	-	-	-	-	
18	10/14/2014	5668	341 N Greenwood		183,700.00	-	4,101,100.00	-	-	-	-	-	
19	10/14/2014	5667	5577 E Galvin St		446,900.00	-	4,548,000.00	-	-	-	-	-	
20	10/14/2014	5669	6687 S Balboa Dr		277,900.00	-	4,825,900.00	-	-	-	-	-	
21	10/15/2014	5674	10040 E Happy Valley Rd #249	3,101,400.00	515,700.00	-	5,341,600.00	-	-	-	-	3,101,400.00	
22	10/15/2014	5676	38608 N 87th Drive		286,700.00	-	5,628,300.00	-	-	-	-	-	
23	10/15/2014	5677	1943 E Vista Dr		328,200.00	-	5,956,500.00	-	-	-	-	-	
24	10/15/2014	5675	2149 E Crest Ln		152,600.00	-	6,109,100.00	-	-	-	-	-	
25	10/15/2014	5673	39823 N 56th Street		818,200.00	-	6,927,300.00	-	-	-	-	-	
26	10/16/2014	5683	30202 N 31st Street	1,223,800.00	189,100.00	-	7,116,400.00	-	-	-	-	1,223,800.00	
27	10/16/2014	5680	2412 W Yahoo ...		292,100.00	-	7,408,500.00	-	-	-	-	-	
28	10/16/2014	5681	26247 S Power Rd		183,700.00	-	7,592,200.00	-	-	-	-	-	
29	10/16/2014	5682	7466 E Cochise Rd		558,900.00	-	8,151,100.00	-	-	-	-	-	
30	10/17/2014	5685	1204 S Arroya Cir	1,320,900.00	224,300.00	-	8,375,400.00	-	-	-	-	1,320,900.00	
31	10/17/2014	5687	3335 S 95th Ave		158,100.00	-	8,533,500.00	-	-	-	-	-	
32	10/17/2014	5686	8107 W Campo Bello Dr		138,400.00	-	8,671,900.00	-	-	-	-	-	
33	10/17/2014	5688	4921 S Wildflower Pl		411,700.00	-	9,083,600.00	-	-	-	-	-	
34	10/17/2014	5684	8758 W Buckhorn Trl		388,400.00	-	9,472,000.00	-	-	-	-	-	
35	10/20/2014	5690	30016 N 17th Drive	993,900.00	204,300.00	-	9,676,300.00	-	-	-	-	993,900.00	
36	10/20/2014	5693	15036 N Maple Dr		248,100.00	-	9,924,400.00	-	-	-	-	-	
37	10/20/2014	5692	1942 N 78th Glen		104,300.00	-	10,028,700.00	-	-	-	-	-	
38	10/20/2014	5689	2848 N 107th Lane		132,400.00	-	10,161,100.00	-	-	-	-	-	
39	10/20/2014	5691	6735 E Delcoa Ave		304,800.00	-	10,465,900.00	-	-	-	-	-	
40	10/21/2014	5696	125 N 22nd Place #106	1,080,600.00	113,700.00	-	10,579,600.00	-	-	-	-	1,080,600.00	
41	10/21/2014	5695	13515 N 18th Drive		207,100.00	-	10,786,700.00	-	-	-	-	-	
42	10/21/2014	5698	2835 E Mallory St		227,200.00	-	11,013,900.00	-	-	-	-	-	

Expert Report of David B. Weekly

Peter S. Davis, as Receiver v. Clark Hill PLC, et al.

EXHIBIT E

PURPOSE: To calculate DenSco damages for Non-Workout Loan Losses.

SOURCE: Simon Consulting Prepared Transaction Report, Bank of America and First Bank Statements

Definitions of terms used in this analysis

Gross Cash Transactions - Groups of loans combined into one banking transaction amount. Payoffs under this caption relate to one property per banking transaction.

Net Cash Transactions - Groups of loans netted against loan payoffs in one banking transaction (e.g. multiple transactions result in one banking transaction).

A	B	C	D	E	F	G	H=F-G	I	J=G+I	K=F-J (Net Cash Only)	L	M=K+L (Net Cash Only)	N
#	Bank Statement Date	Loan No.	Property Address	Transaction Amount [2]	Loan Amount (CASH OUT) [3]	Principal Payment (CASH IN) [4]	Cumulative Principal CASH OUT/(CASH IN) [5]	Interest/Fee Payments (CASH IN)[6]	Total Payment (Principal + Interest) (CASH IN) [7]	Net Transaction Before Adjustment [8]	Transaction Adjustment [9]	Reconciled Transaction Amount [10]	Notes
43	10/21/2014	5697	3800 E Lincolin Dr #30		409,800.00	-	11,423,700.00	-	-	-	-	-	
44	10/21/2014	5699	3838 S 54th Glen		122,800.00	-	11,546,500.00	-	-	-	-	-	
45	10/22/2014	5702	12633 W Avalon Dr	1,101,900.00	183,100.00	-	11,729,600.00	-	-	-	-	1,101,900.00	
46	10/22/2014	5704	1637 E Calle de Caballos		392,800.00	-	12,122,400.00	-	-	-	-	-	
47	10/22/2014	5703	4642 E Blue Spruce Ln		264,600.00	-	12,387,000.00	-	-	-	-	-	
48	10/22/2014	5705	4742 N Greenview Cir W		261,400.00	-	12,648,400.00	-	-	-	-	-	
49	10/23/2014	5707	1006 S Portland Ave	1,032,400.00	178,400.00	-	12,826,800.00	-	-	-	-	1,032,400.00	
50	10/23/2014	5709	1053 N Dresden		174,900.00	-	13,001,700.00	-	-	-	-	-	
51	10/23/2014	5708	1382 S Ponderosa Dr		184,300.00	-	13,186,000.00	-	-	-	-	-	
52	10/23/2014	5711	1728 N Cherry St		196,700.00	-	13,382,700.00	-	-	-	-	-	
53	10/23/2014	5710	2917 E Preston St		298,100.00	-	13,680,800.00	-	-	-	-	-	
54	10/24/2014	5713	2725 E Mine Creek Rd #1003	993,200.00	126,700.00	-	13,807,500.00	-	-	-	-	993,200.00	
55	10/24/2014	5714	28437 N 112th Way		489,400.00	-	14,296,900.00	-	-	-	-	-	
56	10/24/2014	5715	3934 E Aquarius Pl		377,100.00	-	14,674,000.00	-	-	-	-	-	
57	12/01/2014	5759	10484 E Acacia Dr	(514,411.40)	-	507,800.00	14,166,200.00	6,611.40	514,411.40	-	-	(514,411.40)	Payoff made in 2 separate banking transactions. The combined transaction amount is shown in Column E.
58	12/01/2014	5776	23879 W Pecan Cir	(133,259.80)	-	131,800.00	14,034,400.00	1,459.80	133,259.80	-	-	(133,259.80)	
59	12/02/2014	5809	15424 W Mescal St	(154,785.90)	-	153,700.00	13,880,700.00	1,085.90	154,785.90	-	-	(154,785.90)	
60	12/02/2014	5757	1912 E Redfield Rd	(224,509.60)	-	221,400.00	13,659,300.00	3,109.60	224,509.60	-	-	(224,509.60)	
61	12/02/2014	5772	3140 S Beverly Cir	(170,043.15)	-	168,100.00	13,491,200.00	1,943.15	170,043.15	-	-	(170,043.15)	
62	12/02/2014	5767	406 W Oregon Ave	(234,418.20)	-	231,400.00	13,259,800.00	3,018.20	234,418.20	-	-	(234,418.20)	
63	12/02/2014	5762	596 N Soho Ln	(152,469.80)	-	151,100.00	13,108,700.00	1,369.80	152,469.80	-	-	(152,469.80)	
64	12/02/2014	5808	829 E Manor Dr	(153,149.85)	-	151,400.00	12,957,300.00	1,749.85	153,149.85	-	-	(153,149.85)	
65	12/03/2014	5777	19279 W Adams St	(156,566.40)	-	154,700.00	12,802,600.00	1,866.40	156,566.40	-	-	(156,566.40)	
66	12/03/2014	5775	435 W Harwell Rd	(159,804.80)	-	157,900.00	12,644,700.00	1,904.80	159,804.80	-	-	(159,804.80)	
67	12/03/2014	5806	5608 N 76th Place	(198,890.50)	-	197,400.00	12,447,300.00	1,490.50	198,890.50	-	-	(198,890.50)	
68	12/03/2014	5766	5946 E Sandra Terrace	(410,274.80)	-	404,800.00	12,042,500.00	5,474.80	410,274.80	-	-	(410,274.80)	
69	12/03/2014	5778	7124 E Dreyfus Ave	(313,015.60)	-	309,600.00	11,732,900.00	3,415.60	313,015.60	-	-	(313,015.60)	
70	12/04/2014	5779	26140 N Wrangler Rd	(443,957.35)	-	438,900.00	11,294,000.00	5,057.35	443,957.35	-	-	(443,957.35)	
71	12/04/2014	5781	658 N Emery	(166,300.60)	-	164,400.00	11,129,600.00	1,900.60	166,300.60	-	-	(166,300.60)	
72	12/04/2014	5780	890 E Kaibab Pl	(592,142.10)	-	585,400.00	10,544,200.00	6,742.10	592,142.10	-	-	(592,142.10)	
73	12/05/2014	5785	16661 W Belleview St	(125,638.30)	-	124,200.00	10,420,000.00	1,438.30	125,638.30	-	-	(125,638.30)	
74	12/05/2014	5829	3136 E Larkspur Dr	(257,413.35)	-	123,700.00	10,296,300.00	752.20	124,452.20	-	-	(257,413.35)	
75	12/05/2014	5796	3242 E Emile Zola Ave		-	131,700.00	10,164,600.00	1,261.15	132,961.15	-	-	-	
76	12/05/2014	5800	3729 N 295th Ave	(124,986.10)	-	123,800.00	10,040,800.00	1,186.10	124,986.10	-	-	(124,986.10)	
77	12/05/2014	5782	8144 E Del Barquero Dr	(596,188.10)	-	589,400.00	9,451,400.00	6,788.10	596,188.10	-	-	(596,188.10)	Payoff made in 2 separate banking transactions. The combined transaction amount is shown in Column E.
78	12/08/2014	5789	15469 W Corrine Dr	(255,970.00)	-	252,800.00	9,198,600.00	3,170.00	255,970.00	-	-	(255,970.00)	
79	12/08/2014	5793	280 S Evergreen Rd #1328	(148,948.75)	-	147,100.00	9,051,500.00	1,848.75	148,948.75	-	-	(148,948.75)	
80	12/08/2014	5837	5606 S 30th Lane	(105,491.20)	-	104,800.00	8,946,700.00	691.20	105,491.20	-	-	(105,491.20)	
81	12/08/2014	5788	6332 W Tether Trail	(231,379.20)	-	228,400.00	8,718,300.00	2,979.20	231,379.20	-	-	(231,379.20)	
82	12/08/2014	5784	7386 E Quien Sabe Way	(287,803.30)	-	284,100.00	8,434,200.00	3,703.30	287,803.30	-	-	(287,803.30)	
83	12/09/2014	5791	20802 N Grayhawk Dr #1084	(368,640.70)	-	363,900.00	8,070,300.00	4,740.70	368,640.70	-	-	(368,640.70)	
84	12/09/2014	5790	4648 W Elgin St	(187,313.70)	-	184,900.00	7,885,400.00	2,413.70	187,313.70	-	-	(187,313.70)	
85	12/09/2014	5792	4701 E Michigan Ave	(302,998.30)	-	299,100.00	7,586,300.00	3,898.30	302,998.30	-	-	(302,998.30)	
86	12/09/2014	5826	617 S 119th Ave	(162,701.20)	-	161,400.00	7,424,900.00	1,301.20	162,701.20	-	-	(162,701.20)	
87	12/10/2014	5834	15860 W Tasha Dr	(155,947.60)	-	154,700.00	7,270,200.00	1,247.60	155,947.60	-	-	(155,947.60)	
88	12/10/2014	5799	25241 S 154th Street	(217,387.60)	-	214,800.00	7,055,400.00	2,587.60	217,387.60	-	-	(217,387.60)	
89	12/10/2014	5795	2932 E Shady Spring Trl	(187,128.80)	-	184,900.00	6,870,500.00	2,228.80	187,128.80	-	-	(187,128.80)	
90	12/10/2014	5798	3630 E Flamingo Way	(189,456.40)	-	187,200.00	6,683,300.00	2,256.40	189,456.40	-	-	(189,456.40)	
91	12/11/2014	5835	4618 W Bethany Home Rd	(105,648.40)	-	104,800.00	6,578,500.00	848.40	105,648.40	-	-	(105,648.40)	
92	12/10/2014	5836	4803 W Carol Ave	(154,963.50)	-	153,800.00	6,424,700.00	1,163.50	154,963.50	-	-	(154,963.50)	
93	12/11/2014	5797	10363 W Cameo Dr	(136,393.75)	-	134,700.00	6,290,000.00	1,693.75	136,393.75	-	-	(136,393.75)	
94	12/11/2014	5820	1228 E Verlea Dr	(155,222.80)	-	153,600.00	6,136,400.00	1,622.80	155,222.80	-	-	(155,222.80)	
95	12/11/2014	5841	15651 N 29th Way	(105,648.40)	-	104,800.00	6,031,600.00	848.40	105,648.40	-	-	(105,648.40)	
96	12/11/2014	5844	17624 W Lilac St	(457,234.25)	-	171,300.00	5,860,500.00	951.05	172,051.05	-	-	(457,234.25)	
97	12/11/2014	5838	2631 W Nancy Ln		-	118,100.00	5,742,400.00	954.80	119,054.80	-	-	-	

Expert Report of David B. Weekly

Peter S. Davis, as Receiver v. Clark Hill PLC, et al.

EXHIBIT E

PURPOSE: To calculate DenSco damages for Non-Workout Loan Losses.

SOURCE: Simon Consulting Prepared Transaction Report, Bank of America and First Bank Statements

Definitions of terms used in this analysis

Gross Cash Transactions - Groups of loans combined into one banking transaction amount. Payoffs under this caption relate to one property per banking transaction.

Net Cash Transactions - Groups of loans netted against loan payoffs in one banking transaction (e.g. multiple transactions result in one banking transaction).

A	B	C	D	E	F	G	H = F - G	I	J = G + I	K = F - J (Net Cash Only)	L	M = K + L (Net Cash Only)	N
#	Bank Statement Date	Loan No.	Property Address	Transaction Amount [2]	Loan Amount (CASH OUT) [3]	Principal Payment (CASH IN) [4]	Cumulative Principal CASH OUT/(CASH IN) [5]	Interest/Fee Payments (CASH IN)[6]	Total Payment [Principal + Interest] (CASH IN) [7]	Net Transaction Before Adjustment [8]	Transaction Adjustment [9]	Reconciled Transaction Amount [10]	Notes
98	12/11/2014	5839	2923 W Bluefield Ave		-	164,800.00	5,577,600.00	1,328.40	166,128.40	-	-	-	
99	12/11/2014	5804	4531 E Via Dona Rd	(298,246.40)	-	294,700.00	5,282,900.00	3,546.40	298,246.40	-	-	(298,246.40)	
100	12/12/2014	5803	21321 N 73rd Way	(570,553.75)	-	563,500.00	4,719,400.00	7,053.75	570,553.75	-	-	(570,553.75)	Payoff made in 2 separate banking transactions. The combined transaction amount is shown in Column E.
101	12/12/2014	5802	2935 E Lynx Way	(290,698.75)	-	287,100.00	4,432,300.00	3,598.75	290,698.75	-	-	(290,698.75)	
102	12/15/2014	5810	10319 W Robin Ln	(207,372.10)	-	204,600.00	4,227,700.00	2,772.10	207,372.10	-	-	(207,372.10)	
103	12/15/2014	5814	11843 N 146th Ave	(202,458.05)	-	199,850.00	4,027,850.00	2,608.05	202,458.05	-	-	(202,458.05)	
104	12/15/2014	5818	1829 E Redfield Rd	(186,512.50)	-	184,200.00	3,843,650.00	2,312.50	186,512.50	-	-	(186,512.50)	
105	12/15/2014	5817	20834 N 7th Place	(203,117.50)	-	200,600.00	3,643,050.00	2,517.50	203,117.50	-	-	(203,117.50)	
106	12/15/2014	5811	31622 N 54th Place	(400,950.60)	-	395,600.00	3,247,450.00	5,350.60	400,950.60	-	-	(400,950.60)	
107	12/16/2014	5815	11212 N 128th Place	(443,618.95)	-	437,700.00	2,809,750.00	5,918.95	443,618.95	-	-	(443,618.95)	
108	12/16/2014	5816	6326 E Alta Hacienda Dr	(680,169.85)	-	671,100.00	2,138,650.00	9,069.85	680,169.85	-	-	(680,169.85)	Payoff made in 2 separate banking transactions. The combined transaction amount is shown in Column E.
109	12/17/2014	5807	1520 W Calle Escoda	(376,795.30)	-	371,400.00	1,767,250.00	5,395.30	376,795.30	-	-	(376,795.30)	
110	12/17/2014	5828	18201 W Westpark Blvd	(150,190.80)	-	148,400.00	1,618,850.00	1,790.80	150,190.80	-	-	(150,190.80)	
111	12/17/2014	5821	30602 N 45th Place	(298,688.45)	-	294,700.00	1,324,150.00	3,988.45	298,688.45	-	-	(298,688.45)	
112	12/17/2014	5819	6417 N 84th Lane	(180,311.65)	-	177,900.00	1,146,250.00	2,411.65	180,311.65	-	-	(180,311.65)	
113	12/17/2014	5824	8133 E Whitton Ave	(199,981.20)	-	197,600.00	948,650.00	2,381.20	199,981.20	-	-	(199,981.20)	
114	12/18/2014	5840	1226 E Gwen St	(314,363.25)	-	218,900.00	729,750.00	95,463.25	314,363.25	-	-	(314,363.25)	
115	12/18/2014	5822	2327 S 161st Avenue	(201,902.50)	-	163,900.00	565,850.00	38,002.50	201,902.50	-	-	(201,902.50)	
116	12/18/2014	5827	3577 S Halsted Cir	(383,848.75)	-	379,100.00	186,750.00	4,748.75	383,848.75	-	-	(383,848.75)	
117	12/18/2014	5825	4223 E Park Ave	(221,427.35)	-	199,400.00	(12,650.00)	22,027.35	221,427.35	-	-	(221,427.35)	
118	12/19/2014	5832	1623 W Kaibab Dr	(496,945.00)	-	490,800.00	(503,450.00)	6,145.00	496,945.00	-	-	(496,945.00)	
119	12/19/2014	5833	4412 E Maplewood St	(308,721.25)	-	304,900.00	(808,350.00)	3,821.25	308,721.25	-	-	(308,721.25)	
120	12/22/2014	5845	31204 N 169th Ave	(651,801.70)	-	644,700.00	(1,453,050.00)	7,101.70	651,801.70	-	-	(651,801.70)	Payoff made in 2 separate banking transactions. The combined transaction amount is shown in Column E.
121	01/30/2015	6111	12221 N 58th Way	361,700.00	361,700.00	-	(1,091,350.00)	-	-	-	-	1,282,500.00	Total loan amount was $1,282,500 made up of loan 6108 ($170,800), 6109 ($186,400), 6110 ($133,100), 6111 ($361,700), 6112 ($229,500), 6113 ($101,200), and 6114 ($99,800). All loans were paid off except loan 6111.
122	02/03/2015	6125	5601 E Sweetwater Ave	298,566.00	298,566.00	-	(792,784.00)	-	-	-	-	298,566.00	
123	06/10/2015	6637	5901 E Sharon Dr	394,200.00	394,200.00	-	(398,584.00)	-	-	-	-	1,153,700.00	Total loan amount was $1,153,700 made up of Loan 6636 ($476,700), 6637 ($394,200), and 6638 ($282,800). All loans were paid off except loan 6637.
124	06/12/2015	6658	334 E Horseshoe Ave	1,580,500.00	231,700.00	-	(166,884.00)	-	-	-	-	1,580,500.00	
125	06/12/2015	6659	6301 W Kings Ave		194,500.00	-	27,616.00	-	-	-	-	-	
126	06/12/2015	6656	6807 E Peak View Rd		886,400.00	-	914,016.00	-	-	-	-	-	
127	06/12/2015	6657	771 S Sean Dr		267,900.00	-	1,181,916.00	-	-	-	-	-	
128	06/15/2015	6660	11087 E Mission Ln	1,621,900.00	713,400.00	-	1,895,316.00	-	-	-	-	1,621,900.00	
129	06/15/2015	6662	12323 W Rovey Ave		152,800.00	-	2,048,116.00	-	-	-	-	-	
130	06/15/2015	6663	14426 W Lexington Ave Unit B		187,900.00	-	2,236,016.00	-	-	-	-	-	
131	06/15/2015	6661	2405 S El Dorado		238,700.00	-	2,474,716.00	-	-	-	-	-	
132	06/15/2015	6664	3133 E Harvard Ave		329,100.00	-	2,803,816.00	-	-	-	-	-	
133	06/16/2015	6669	20006 E Pecan Ln	1,594,000.00	349,500.00	-	3,153,316.00	-	-	-	-	1,594,000.00	
134	06/16/2015	6668	2848 E Menlo St		296,500.00	-	3,449,816.00	-	-	-	-	-	
135	06/16/2015	6667	4502 E Douglas Ave		164,800.00	-	3,614,616.00	-	-	-	-	-	
136	06/16/2015	6666	4513 E Dartmouth St		341,400.00	-	3,956,016.00	-	-	-	-	-	
137	06/16/2015	6665	824 W Azalea		441,800.00	-	4,397,816.00	-	-	-	-	-	
138	06/17/2015	6674	3002 E Edgewood Ave	1,573,200.00	151,200.00	-	4,549,016.00	-	-	-	-	1,573,200.00	
139	06/17/2015	6673	364 E Baylor Ln		278,900.00	-	4,827,916.00	-	-	-	-	-	
140	06/17/2015	6675	3702 N 35th Street		353,200.00	-	5,181,116.00	-	-	-	-	-	
141	06/17/2015	6672	3916 E Vallejo Dr		364,700.00	-	5,545,816.00	-	-	-	-	-	
142	06/17/2015	6676	4408 W Hopi Trl		251,800.00	-	5,797,616.00	-	-	-	-	-	
143	06/17/2015	6671	635 W Aviary Way		173,400.00	-	5,971,016.00	-	-	-	-	-	
144	06/18/2019	6679	13681 W Ventura St	1,615,000.00	213,700.00	-	6,184,716.00	-	-	-	-	1,615,000.00	
145	06/18/2019	6682	14446 N 184th Avenue		251,100.00	-	6,435,816.00	-	-	-	-	-	
146	06/18/2019	6683	14611 N 83rd Avenue		246,700.00	-	6,682,516.00	-	-	-	-	-	

EXHIBIT E

Expert Report of David B. Weekly

Peter S. Davis, as Receiver v. Clark Hill PLC, et al.

PURPOSE: To calculate DenSco damages for Non-Workout Loan Losses.

SOURCE: Simon Consulting Prepared Transaction Report, Bank of America and First Bank Statements

Definitions of terms used in this analysis

Gross Cash Transactions - Groups of loans combined into one banking transaction amount. Payoffs under this caption relate to one property per banking transaction.

Net Cash Transactions - Groups of loans netted against loan payoffs in one banking transaction (e.g. multiple transactions result in one banking transaction).

A	B	C	D	E	F	G	H = F - G	I	J = G + I	K = F - J (Net Cash Only)	L	M = K + L (Net Cash Only)	N
#	Bank Statement Date	Loan No.	Property Address	Transaction Amount [2]	Loan Amount (CASH OUT) [3]	Principal Payment (CASH IN) [4]	Cumulative Principal CASH OUT/(CASH IN) [5]	Interest/Fee Payments (CASH IN)[6]	Total Payment (Principal + Interest) (CASH IN) [7]	Net Transaction Before Adjustment [8]	Transaction Adjustment [9]	Reconciled Transaction Amount [10]	Notes
147	06/18/2019	6678	1691 W Maplewood St		227,400.00	-	6,909,906.00	-	-	-	-	-	
148	06/18/2019	6681	17586 W Gelding Dr		204,100.00	-	7,114,006.00	-	-	-	-	-	
149	06/18/2019	6680	3905 E Sierra Madre Ave		297,100.00	-	7,411,106.00	-	-	-	-	-	
150	06/18/2019	6684	610 W Kent Pl		174,900.00	-	7,586,006.00	-	-	-	-	-	
151	06/19/2015	6690	11218 W Vernon Ave	1,341,400.00	182,300.00	-	7,768,306.00	-	-	-	-	1,341,400.00	
152	06/19/2015	6686	1401 W Colt Rd		183,800.00	-	7,952,106.00	-	-	-	-	-	
153	06/19/2015	6685	2519 E Geneva Dr		211,100.00	-	8,163,206.00	-	-	-	-	-	
154	06/19/2015	6688	3830 Lakewood Pkwy E #1017		133,900.00	-	8,297,106.00	-	-	-	-	-	
155	06/19/2015	6687	6760 E Venue St		241,100.00	-	8,538,206.00	-	-	-	-	-	
156	06/19/2015	6689	9553 W Keyser Dr		389,200.00	-	8,927,406.00	-	-	-	-	-	
157	06/22/2015	6692	16825 E Happy Rd	1,611,000.00	423,600.00	-	9,351,006.00	-	-	-	-	1,611,000.00	
158	06/22/2015	6694	3115 N Mansfield Dr		319,700.00	-	9,670,706.00	-	-	-	-	-	
159	06/22/2015	6693	3153 E Powell Way		346,800.00	-	10,017,506.00	-	-	-	-	-	
160	06/22/2015	6695	4210 S Carmine		286,800.00	-	10,304,306.00	-	-	-	-	-	
161	06/22/2015	6696	8045 E Windsor Ave		234,100.00	-	10,538,406.00	-	-	-	-	-	
162	06/23/2015	6698	1358 E Shannon St	1,563,600.00	324,200.00	-	10,862,606.00	-	-	-	-	1,563,600.00	
163	06/23/2015	6701	17833 N Country Club Dr		186,300.00	-	11,048,906.00	-	-	-	-	-	
164	06/23/2015	6702	2535 S 227th Avenue		210,200.00	-	11,259,106.00	-	-	-	-	-	
165	06/23/2015	6697	3267 E Happy Rd		428,300.00	-	11,687,406.00	-	-	-	-	-	
166	06/23/2015	6699	6954 S Scott Dr		241,100.00	-	11,928,506.00	-	-	-	-	-	
167	06/23/2015	6700	7729 W San Juan Ave		173,500.00	-	12,102,006.00	-	-	-	-	-	
168	06/24/2015	6706	1244 N Ithica St	1,634,800.00	257,800.00	-	12,359,806.00	-	-	-	-	1,634,800.00	
169	06/24/2015	6703	18626 E Purple Sage Dr		304,500.00	-	12,664,306.00	-	-	-	-	-	
170	06/24/2015	6705	2548 E Wescott Dr		210,300.00	-	12,874,606.00	-	-	-	-	-	
171	06/24/2015	6708	6907 W Carson Dr		192,500.00	-	13,067,106.00	-	-	-	-	-	
172	06/24/2015	6704	7828 S 20th Lane		185,600.00	-	13,252,706.00	-	-	-	-	-	
173	06/24/2015	6709	8043 E Indianola Ave		227,900.00	-	13,480,606.00	-	-	-	-	-	
174	06/24/2015	6707	908 N Swallow Ln		256,200.00	-	13,736,806.00	-	-	-	-	-	
175	06/25/2015	6710	1745 S Parkcrest St	1,593,100.00	154,800.00	-	13,891,606.00	-	-	-	-	1,593,100.00	
176	06/25/2015	6711	18911 E Canary Way		272,800.00	-	14,164,406.00	-	-	-	-	-	
177	06/25/2015	6714	7317 E Folley St		142,100.00	-	14,306,506.00	-	-	-	-	-	
178	06/25/2015	6713	3513 S Siesta Ln		184,500.00	-	14,491,006.00	-	-	-	-	-	
179	06/25/2015	6716	6441 E Crocus Dr		502,700.00	-	14,993,706.00	-	-	-	-	-	
180	06/25/2015	6715	7735 E Verde Ln		162,400.00	-	15,156,106.00	-	-	-	-	-	
181	06/25/2015	6712	950 E Glenmere Dr		173,800.00	-	15,329,906.00	-	-	-	-	-	
182	06/26/2015	6719	10415 W Odeum Ln	1,587,700.00	147,300.00	-	15,477,206.00	-	-	-	-	1,587,700.00	
183	06/26/2015	6724	1099 S 223rd Lane		130,100.00	-	15,607,306.00	-	-	-	-	-	
184	06/26/2015	6725	1138 W Vera Ln		314,800.00	-	15,922,106.00	-	-	-	-	-	
185	06/26/2015	6723	213 W Villa Rita Dr		123,400.00	-	16,045,506.00	-	-	-	-	-	
186	06/26/2015	6720	3209 S 63rd Lane		110,100.00	-	16,155,606.00	-	-	-	-	-	
187	06/26/2015	6722	4321 W Saint Kateria Dr		151,700.00	-	16,307,306.00	-	-	-	-	-	
188	06/26/2015	6721	532 E Harrison St		133,800.00	-	16,441,106.00	-	-	-	-	-	
189	06/26/2015	6717	7265 W Gardenia Ave		162,100.00	-	16,603,206.00	-	-	-	-	-	
190	06/26/2015	6718	7684 E Balo Dr		314,400.00	-	16,917,606.00	-	-	-	-	-	
191	06/29/2015	6731	13256 S 183rd Avenue	1,502,000.00	277,700.00	-	17,195,306.00	-	-	-	-	1,502,000.00	
192	06/29/2015	6727	14034 N 44th Place		287,100.00	-	17,482,406.00	-	-	-	-	-	
193	06/29/2015	6729	28837 N 45th Street		323,900.00	-	17,806,306.00	-	-	-	-	-	
194	06/29/2015	6728	3624 E Dahlia Dr		207,600.00	-	18,013,906.00	-	-	-	-	-	
195	06/29/2015	6726	5139 S Marbel St		281,400.00	-	18,295,306.00	-	-	-	-	-	
196	06/29/2015	6730	7616 S 26th Way		124,300.00	-	18,419,606.00	-	-	-	-	-	
197	06/30/2015	6735	1421 N Freestone Cir	976,600.00	141,500.00	-	18,561,106.00	-	-	-	-	976,600.00	
198	06/30/2015	6736	18210 W Desert Willow Dr		259,400.00	-	18,820,506.00	-	-	-	-	-	
199	06/30/2015	6734	18601 E Via Del Jardin		157,800.00	-	18,978,306.00	-	-	-	-	-	
200	06/30/2015	6732	5008 W Pedro Ln		234,700.00	-	19,213,006.00	-	-	-	-	-	
201	06/30/2015	6733	924 W Plata Ave		183,200.00	-	19,396,206.00	-	-	-	-	-	
202	07/01/2015	6740	12514 W Rancho Crt	1,193,800.00	278,200.00	-	19,674,406.00	-	-	-	-	1,193,800.00	
203	07/01/2015	6738	15965 W Statler St		124,300.00	-	19,798,706.00	-	-	-	-	-	

Expert Report of David B. Weekly

Peter S. Davis, as Receiver v. Clark Hill PLC, et al.

EXHIBIT E

PURPOSE: To calculate DenSco damages for Non-Workout Loan Losses.

SOURCE: Simon Consulting Prepared Transaction Report, Bank of America and First Bank Statements

Definitions of terms used in this analysis

Gross Cash Transactions - Groups of loans combined into one banking transaction amount. Payoffs under this caption relate to one property per banking transaction.

Net Cash Transactions - Groups of loans netted against loan payoffs in one banking transaction (e.g. multiple transactions result in one banking transaction).

A	B	C	D	E	F	G	H = F - G	I	J = G + I	K = F - J (Net Cash Only)	L	M = K + L (Net Cash Only)	N
#	Bank Statement Date	Loan No.	Property Address	Transaction Amount [2]	Loan Amount (CASH OUT) [3]	Principal Payment (CASH IN) [4]	Cumulative Principal CASH OUT/(CASH IN) [5]	Interest/Fee Payments (CASH IN)[6]	Total Payment (Principal + Interest) (CASH IN) [7]	Net Transaction Before Adjustment [8]	Transaction Adjustment [9]	Reconciled Transaction Amount [10]	Notes
204	07/01/2015	6739	2507 W Palomino Dr		357,500.00	-	20,156,206.00	-	-	-	-	-	
205	07/01/2015	6737	9562 E Cavalry Dr		433,800.00	-	20,590,006.00	-	-	-	-	-	
206	07/02/2015	6748	1152 E Westchester Dr	1,486,300.00	219,700.00	-	20,829,706.00	-	-	-	-	1,486,300.00	
207	07/02/2015	6742	13006 N 130th Lane		100,200.00	-	20,929,906.00	-	-	-	-	-	
208	07/02/2015	6747	17019 S 27th Drive		280,400.00	-	21,210,306.00	-	-	-	-	-	
209	07/02/2015	6741	21038 W Ridge Rd		189,800.00	-	21,400,106.00	-	-	-	-	-	
210	07/02/2015	6746	27840 N 31st Avenue		169,200.00	-	21,569,306.00	-	-	-	-	-	
211	07/02/2015	6744	3927 W Cactus Wren Dr		134,300.00	-	21,703,606.00	-	-	-	-	-	
212	07/02/2015	6743	4008 E Tanglewood Dr		184,900.00	-	21,888,506.00	-	-	-	-	-	
213	07/02/2015	6745	8227 S Calle Moctezuma		187,800.00	-	22,076,306.00	-	-	-	-	-	
214	07/06/2015	6753	1117 W Stella Ln	1,377,100.00	334,700.00	-	22,411,006.00	-	-	-	-	1,377,100.00	
215	07/06/2015	6754	1310 W Amberwood Dr		329,500.00	-	22,740,506.00	-	-	-	-	-	
216	07/06/2015	6751	1625 E Montoya Ln		273,800.00	-	23,014,306.00	-	-	-	-	-	
217	07/06/2015	6752	18638 E Seagull Dr	-	181,300.00	-	23,195,606.00	-	-	-	-	-	
218	07/06/2015	6755	6064 E Beck Ln		257,800.00	-	23,453,406.00	-	-	-	-	-	
219	07/02/2015	6757	15936 E Trevino Dr	1,690,900.00	555,700.00	-	24,009,106.00	-	-	-	-	1,690,900.00	
220	07/07/2015	6758	6029 E Smokehouse Trl		354,800.00	-	24,363,906.00	-	-	-	-	-	
221	07/07/2015	6759	9218 E Pershing Ave		347,200.00	-	24,711,106.00	-	-	-	-	-	
222	07/07/2015	6760	9423 N Summer Hill Blvd		433,200.00	-	25,144,306.00	-	-	-	-	-	
			Net Cash Transactions [1]										
223	10/24/2014	5650	8340 W Cavalier Dr	(73,790.30)	10,300.00	-	25,154,606.00	9,390.30	9,390.30	909.70	(74,700.00)	(73,790.30)	Transaction included a $75,000 Workout Loan payoff minus a $300 math error for a net payoff of $74,700. Net payment has been removed from Workout Loan Losses.
224	10/27/2014	5655	3230 E Shangri La Rd	(250,383.80)	-	240,100.00	24,914,506.00	10,283.80	250,383.80	(250,383.80)	-	(250,383.80)	
225	10/28/2014	5661	7878 N 68th Ave	269,150.55	276,700.00	-	25,191,206.00	7,549.45	7,549.45	269,150.55	-	269,150.55	
226	10/29/2014	5666	533 E Kyle Crt	(223,624.30)	-	213,100.00	24,978,106.00	11,524.30	224,624.30	(224,624.30)	1,000.00	(223,624.30)	DenSco received $1,000 less than it recorded in its books. Loan Losses will be increased by $1,000.
227	10/30/2014	5669	6687 S Balboa Dr	211,535.30	217,000.00	-	25,195,106.00	5,464.70	5,464.70	211,535.30	-	211,535.30	
228	10/31/2014	5673	39823 N 56th Street	(59,664.70)	22,300.00	-	25,217,406.00	6,964.70	6,964.70	15,335.30	(75,000.00)	(59,664.70)	Menaged made a $75,000 payment on the Workout Loan balance. This $75,000 has been removed from Workout Loan Losses.
229	11/03/2014	5689	2848 N 107th Lane	69,361.00	81,400.00	-	25,298,806.00	12,039.00	12,039.00	69,361.00	-	69,361.00	
230	11/04/2014	5684	8758 W Buckhorn Trl	155,878.80	170,800.00	-	25,469,606.00	14,921.20	14,921.20	155,878.80	-	155,878.80	
231	11/05/2014	5688	4921 S Wildflower Pl	(39,886.15)	-	29,000.00	25,440,606.00	10,876.15	39,876.15	(39,876.15)	(10.00)	(39,886.15)	Net payoff included a $10 math error. DenSco received $10 more than what was recorded. Loan Losses will be decreased by $10.
232	11/06/2014	5752	919 N Shannon Cir	212,880.05	70,200.00	-	25,510,806.00	10,453.40	10,453.40	59,746.60	153,133.45	212,880.05	There was a net wiring difference of $233.45 which will be adjusted to increase Loan Losses. DenSco also loaned an additional $152,900 to Menaged. This loan was paid off by Donald Kimble on 11/14/14, so there is no impact on Loan Losses for this amount.
233	11/07/2014	5697	3800 E Lincoln Dr #30	(102,112.95)	5,400.00	-	25,516,206.00	7,512.95	7,512.95	(2,112.95)	(100,000.00)	(102,112.95)	Menaged made a $100,000 payment on the Workout Loan balance. This $100,000 has been removed from Workout Loan Losses.
234	11/10/2014	5705	4742 N Greenview Cir W	(144,925.55)	-	128,500.00	25,387,706.00	16,425.55	144,925.55	(144,925.55)	-	(144,925.55)	
235	11/12/2014	5710	2917 E Preston St	384,720.15	398,000.00	-	25,785,706.00	13,279.85	13,279.85	384,720.15	-	384,720.15	
236	11/14/2014	5720	4138 W Crocus Dr	44,590.55	145,100.00	-	25,930,806.00	19,509.45	19,509.45	125,590.55	(81,000.00)	44,590.55	$81,000 adjustment represents a Menaged pay down on the Workout Loans. $75,000 was recorded against the Workout Loans and $6,000 to Interest Income. The $75,000 has been removed from Workout Loan Losses, and Non-Workout Loan Losses will be decreased by $6,000.
237	11/17/2014	5725	850 W Whitton Ave	(69,821.10)	-	59,300.00	25,871,506.00	10,521.10	69,821.10	(69,821.10)	-	(69,821.10)	
238	11/18/2014	5735	9865 Wanda Dr	337,107.15	252,300.00	-	26,123,806.00	10,092.85	10,092.85	242,207.15	94,900.00	337,107.15	The $94,900 represented new borrowing, but it was paid off by 1/27/15 and has no impact on Loan Losses.
239	11/19/2014	5728	2646 E Bear Creek Ln	(88,130.60)	-	78,250.00	26,045,556.00	11,883.60	90,133.60	(90,133.60)	2,003.00	(88,130.60)	Net payoff was recorded as $90,133.60, but due to a $3 math error and a $2,000 adjustment booked by Chittick, DenSco only received $88,130.60. The underpayment of $2,003 will be adjusted to increase Loan Losses.
240	11/20/2014	5768	7446 S 40th Lane	163,412.05	170,400.00	-	26,215,956.00	6,987.95	6,987.95	163,412.05	-	163,412.05	

Expert Report of David B. Weekly

Peter S. Davis, as Receiver v. Clark Hill PLC, et al.

EXHIBIT E

PURPOSE: To calculate DenSco damages for Non-Workout Loan Losses.

SOURCE: Simon Consulting Prepared Transaction Report, Bank of America and First Bank Statements

Definitions of terms used in this analysis

Gross Cash Transactions - Groups of loans combined into one banking transaction amount. Payoffs under this caption relate to one property per banking transaction.

Net Cash Transactions - Groups of loans netted against loan payoffs in one banking transaction (e.g. multiple transactions result in one banking transaction).

A	B	C	D	E	F	G	H = F - G	I	J = G + I	K = F - J (Net Cash Only)	L	M = K + L (Net Cash Only)	N
#	Bank Statement Date	Loan No.	Property Address	Transaction Amount [2]	Loan Amount (CASH OUT) [3]	Principal Payment (CASH IN) [4]	Cumulative Principal CASH OUT/(CASH IN) [5]	Interest/Fee Payments (CASH IN)[6]	Total Payment (Principal + Interest) (CASH IN) [7]	Net Transaction Before Adjustment [8]	Transaction Adjustment [9]	Reconciled Transaction Amount [10]	Notes
241	11/21/2014	5729	9251 E Bajada Rd	(19,364.40)	92,600.00	-	26,308,556.00	11,964.40	11,964.40	80,635.60	(100,000.00)	(19,364.40)	Menaged made a $100,000 payment on the Workout Loan balance. This $100,000 has been removed from Workout Loan Losses.
242	11/24/2014	5783	7229 N 181st Ave	58,730.10	69,100.00	-	26,377,656.00	10,369.90	10,369.90	58,730.10	-	58,730.10	
243	11/24/2014	5740	3009 W Via De Pedro Miguel	247,665.20	255,600.00	-	26,633,256.00	7,934.80	7,934.80	247,665.20	-	247,665.20	
244	11/26/2014	5753	27647 N 70th Street	(45,278.70)	-	35,900.00	26,597,356.00	9,378.70	45,278.70	(45,278.70)	-	(45,278.70)	
245	02/13/2015	6125	5601 E Sweetwater Ave	(445,538.25)	-	660,256.00	25,937,100.00	3,832.25	664,088.25	(664,088.25)	218,550.00	(445,538.25)	The $218,550 represented net new borrowing, but it was paid off on 6/16/15 and has no impact on Loan Losses.
246	07/08/2015	6657	771 S Sean Dr	49,002.50	68,600.00	-	26,005,700.00	19,597.50	19,597.50	49,002.50	-	49,002.50	
247	07/09/2015	6671	635 W Aviary Way	(34,560.80)	-	19,500.00	25,986,200.00	15,060.80	34,560.80	(34,560.80)	-	(34,560.80)	
248	07/10/2015	6675	3702 N 35th Street	(8,681.80)	10,800.00	-	25,997,000.00	19,481.80	19,481.80	(8,681.80)	-	(8,681.80)	
249	07/13/2015	6665	824 W Azalea	(19,643.75)	400.00	-	25,997,400.00	20,043.75	20,043.75	(19,643.75)	-	(19,643.75)	
250	07/14/2015	6680	3905 E Sierra Madre Ave	240,436.15	259,400.00	-	26,256,800.00	18,963.85	18,963.85	240,436.15	-	240,436.15	
251	07/15/2015	6684	610 W Kent Pl	(72,924.85)	-	56,500.00	26,200,300.00	16,424.85	72,924.85	(72,924.85)	-	(72,924.85)	
252	07/16/2015	6687	6760 E Venue St	(58,519.60)	-	41,600.00	26,158,700.00	16,919.60	58,519.60	(58,519.60)	-	(58,519.60)	
253	07/17/2015	6689	9553 W Keyser Dr	50,303.45	68,000.00	-	26,226,700.00	17,696.55	17,696.55	50,303.45	-	50,303.45	
254	07/20/2015	6700	7729 W San Juan Ave	(36,640.85)	-	18,900.00	26,207,800.00	17,740.85	36,640.85	(36,640.85)	-	(36,640.85)	
255	07/21/2015	6730	7616 S 26th Way	34,070.30	48,800.00	-	26,256,600.00	14,729.70	14,729.70	34,070.30	-	34,070.30	
256	07/22/2015	6709	8043 E Indianola Ave	31,312.25	44,000.00	-	26,300,600.00	12,687.75	12,687.75	31,312.25	-	31,312.25	
257	07/23/2015	6712	950 E Gleesmere Dr	(32,291.55)	-	16,900.00	26,283,700.00	15,391.55	32,291.55	(32,291.55)	-	(32,291.55)	
258	07/24/2015	6718	7684 E Balo Dr	146,310.75	165,200.00	-	26,448,900.00	18,889.25	18,889.25	146,310.75	-	146,310.75	
259	07/27/2015	6715	7735 E Verde Ln	(139,897.35)	-	117,800.00	26,331,100.00	22,097.35	139,897.35	(139,897.35)	-	(139,897.35)	
260	07/28/2015	6743	4008 E Tanglewood Dr	83,477.80	101,400.00	-	26,432,500.00	17,923.20	17,923.20	83,476.80	1.00	83,477.80	Menaged received $1 more than the calculated net amount. Loan Losses will be increased by $1.
261	07/29/2015	6737	9562 E Cavalry Dr	(73,723.50)	-	53,900.00	26,378,600.00	19,823.50	73,723.50	(73,723.50)	-	(73,723.50)	
262	07/30/2015	6745	8227 S Calle Moctezuma	66,751.40	85,600.00	-	26,464,200.00	18,848.60	18,848.60	66,751.40	-	66,751.40	
263	07/31/2015	6762	688 E Gail Dr	(74,377.50)	-	59,100.00	26,405,100.00	15,277.50	74,377.50	(74,377.50)	-	(74,377.50)	
264	08/03/2015	6759	9218 E Pershing Ave	78,819.65	98,200.00	-	26,503,300.00	19,389.35	19,389.35	78,810.65	9.00	78,819.65	Menaged received $9 more than the calculated net amount. Loan Losses will be increased by $9.
265	08/04/2015	6758	6029 E Smokehouse Trl	(96,391.90)	-	81,000.00	26,422,300.00	15,391.90	96,391.90	(96,391.90)	-	(96,391.90)	
266	08/05/2015	6760	9423 N Summer Hill Blvd	76,170.65	90,300.00	-	26,512,600.00	14,129.35	14,129.35	76,170.65	-	76,170.65	
267	08/06/2015	6768	6408 N Florence Ave	(46,583.90)	-	28,200.00	26,484,400.00	18,384.40	46,584.40	(46,584.40)	0.50	(46,583.90)	Menaged received $0.50 more than the calculated net amount. Loan Losses will be increased by $0.50
268	08/07/2015	6771	6701 E Mockingbird Ln	172,694.20	191,000.00	-	26,675,400.00	18,305.80	18,305.80	172,694.20	-	172,694.20	
269	08/10/2015	6774	34315 N 140th Street	(77,541.00)	-	55,800.00	26,619,600.00	21,741.00	77,541.00	(77,541.00)	-	(77,541.00)	
270	08/11/2015	6776	7136 W Kings Ave	(17,329.60)	2,700.00	-	26,622,300.00	20,029.60	20,029.60	(17,329.60)	-	(17,329.60)	
271	08/12/2015	6786	4643 E Laredo Ln	27,748.45	47,400.00	-	26,669,700.00	19,651.55	19,651.55	27,748.45	-	27,748.45	
272	08/13/2015	6791	4608 E Kelly Dr	38,548.35	67,200.00	-	26,736,900.00	19,651.65	19,651.65	47,548.35	(9,000.00)	38,548.35	Due to a wiring error, DenSco loaned $9,000 less than planned. An adjustment will be made to decrease Loan Losses by $9,000.
273	08/14/2015	6800	650 S Bay Dr	31,959.85	45,100.00	-	26,782,000.00	13,140.15	13,140.15	31,959.85	-	31,959.85	
274	08/17/2015	6805	7722 N Via De Calma	(9,985.75)	12,000.00	-	26,794,000.00	21,985.75	21,985.75	(9,985.75)	-	(9,985.75)	
275	08/18/2015	6815	4343 E Bluefield Ave	(35,274.95)	-	13,500.00	26,780,500.00	21,774.95	35,274.95	(35,274.95)	-	(35,274.95)	
276	08/19/2015	6827	7232 N 16th Avenue	56,930.45	76,400.00	-	26,856,900.00	19,469.55	19,469.55	56,930.45	-	56,930.45	
277	08/20/2015	6829	8729 W Potter Dr	(38,731.80)	-	19,400.00	26,837,500.00	19,331.80	38,731.80	(38,731.80)	-	(38,731.80)	
278	08/21/2015	6842	6839 W Highland Ave	60,568.15	81,300.00	-	26,918,800.00	17,931.85	17,931.85	63,368.15	(2,800.00)	60,568.15	Net new borrowing was recorded as $63,368.15, but one property was misreported in an email by $7,800. DenSco loaned $2,800 less than it recorded so Loan Losses will be decreased by $2,800.
279	08/24/2015	6867	315 E Pebble Beach Dr	(51,167.65)	-	22,100.00	26,896,700.00	19,167.65	41,267.65	(41,267.65)	(9,900.00)	(51,167.65)	DenSco received $9,900 more than the payoff amount recorded in DenSco's books. Loan Losses will be decreased by $9,900.
280	08/25/2015	6845	8819 N 85th Place	84,131.80	91,700.00	-	26,988,400.00	20,268.20	20,268.20	71,431.80	12,700.00	84,131.80	DenSco paid $12,700 more to Menaged than the amount recorded in DenSco's books. Loan Losses will be increased $12,700.
281	08/26/2015	6920	6950 W Luke Ave	357,297.70	373,600.00	-	27,362,000.00	16,302.30	16,302.30	357,297.70	-	357,297.70	
282	08/27/2015	6914	9252 S Sanna Cir	316,628.05	335,100.00	-	27,697,100.00	18,771.95	18,771.95	316,328.05	300.00	316,628.05	Menaged received $300 more than the calculated net amount due to a math error. Loan Losses will be increased by $300.
283	08/28/2015	6855	520 N Mammoth Way	11,844.90	30,800.00	-	27,727,900.00	18,955.10	18,955.10	11,844.90	-	11,844.90	
284	08/31/2015	6864	7812 E Via Del Futuro	118,026.40	138,000.00	-	27,865,900.00	19,973.60	19,973.60	118,026.40	-	118,026.40	
285	09/01/2015	6868	525 E Muriel Dr	(17,410.50)	1,800.00	-	27,867,700.00	19,210.50	19,210.50	(17,410.50)	-	(17,410.50)	

EXHIBIT E

Expert Report of David B. Weekly

Peter S. Davis, as Receiver v. Clark Hill PLC, et al.

PURPOSE: To calculate DenSco damages for Non-Workout Loan Losses.

SOURCE: Simon Consulting Prepared Transaction Report, Bank of America and First Bank Statements

Definitions of terms used in this analysis

Gross Cash Transactions - Groups of loans combined into one banking transaction amount. Payoffs under this caption relate to one property per banking transaction.

Net Cash Transactions - Groups of loans netted against loan payoffs in one banking transaction (e.g. multiple transactions result in one banking transaction).

A	B	C	D	E	F	G	H=F-G	I	J=G+I	K=F-J (Net Cash Only)	L	M=K+L (Net Cash Only)	N
#	Bank Statement Date	Loan No.	Property Address	Transaction Amount [2]	Loan Amount (CASH OUT) [3]	Principal Payment (CASH IN) [4]	Cumulative Principal CASH OUT/(CASH IN) [5]	Interest/Fee Payments (CASH IN)[6]	Total Payment (Principal + Interest) (CASH IN) [7]	Net Transaction Before Adjustment [8]	Transaction Adjustment [9]	Reconciled Transaction Amount [10]	Notes
286	09/02/2015	6879	8737 E Chaparral Rd	14,810.05	36,400.00	-	27,904,100.00	21,589.95	21,589.95	14,810.05	-	14,810.05	
287	09/03/2015	6875	908 E Waltann Ln	(1,631.00)	19,100.00	-	27,923,200.00	20,731.00	20,731.00	(1,631.00)	-	(1,631.00)	
288	09/04/2015	6882	4109 E Devon Dr	24,899.90	45,800.00	-	27,969,000.00	20,900.10	20,900.10	24,899.90	-	24,899.90	
289	09/08/2015	6915	4202 E Everett Dr	(27,124.40)	-	4,000.00	27,965,000.00	23,124.40	27,124.40	(27,124.40)	-	(27,124.40)	
290	09/09/2015	6905	7033 W Beverly Rd	29,503.15	50,300.00	-	28,015,300.00	20,796.85	20,796.85	29,503.15	-	29,503.15	
291	09/10/2015	6906	8894 E Rusty Spur Trl	206,805.90	226,500.00	-	28,241,800.00	19,694.10	19,694.10	206,805.90	-	206,805.90	
292	09/11/2015	6936	855 E Greenway St	(24,820.20)	-	6,600.00	28,235,200.00	18,220.20	24,820.20	(24,820.20)	-	(24,820.20)	
293	09/14/2015	6916	530 W Bay Rd	30,809.80	51,400.00	-	28,286,600.00	20,590.20	20,590.20	30,809.80	-	30,809.80	
294	09/15/2015	6923	2416 E Libra Pl	(28,472.40)	-	6,900.00	28,279,700.00	21,572.40	28,472.40	(28,472.40)	-	(28,472.40)	
295	09/16/2015	7001	4358 W Bluefield Ave	27,359.95	45,500.00	-	28,325,200.00	18,140.05	18,140.05	27,359.95	-	27,359.95	
296	09/17/2015	7006	9632 N 55th Avenue	211,883.00	229,200.00	-	28,554,400.00	17,317.00	17,317.00	211,883.00	-	211,883.00	
297	09/18/2015	6946	9818 E Acacia Dr	(27,257.40)	-	8,400.00	28,546,000.00	18,857.40	27,257.40	(27,257.40)	-	(27,257.40)	
298	09/21/2015	6974	6902 W Sunnyside Dr	102,731.05	121,500.00	-	28,667,500.00	19,128.95	19,128.95	102,371.05	360.00	102,731.05	Net new borrowing was calculated and recorded as $102,371.05, but there was a math error of $360. DenSco loaned $360 more than it recorded, so Loan Losses will be increased by $360.
299	09/22/2015	6956	9074 E Janice Way	(101,364.40)	-	80,800.00	28,586,700.00	20,564.40	101,364.40	(101,364.40)	-	(101,364.40)	
300	09/23/2015	6957	6127 E Calle Del Pasisano	30,589.70	52,100.00	-	28,638,800.00	21,510.30	21,510.30	30,589.70	-	30,589.70	
301	09/24/2015	6964	57 Biltmore Estates Dr	193,536.65	215,200.00	-	28,854,000.00	21,663.35	21,663.35	193,536.65	-	193,536.65	
302	09/25/2015	6992	903 W Oxford Dr	(32,969.15)	-	12,100.00	28,841,900.00	20,869.15	32,969.15	(32,969.15)	-	(32,969.15)	
303	09/28/2015	6989	6437 E Menlo St	36,888.50	58,000.00	-	28,899,900.00	21,111.50	21,111.50	36,888.50	-	36,888.50	
304	09/29/2015	7000	6608 S 44th Street	(41,925.30)	-	22,600.00	28,877,300.00	19,325.30	41,925.30	(41,925.30)	-	(41,925.30)	
305	09/30/2015	6999	7226 E Fillmore St	54,423.20	75,100.00	-	28,952,400.00	20,676.50	20,676.50	54,423.50	(0.30)	54,423.20	Menaged received $0.30 less than the calculated net amount due to a math error. Loan Losses will be decreased by $0.30.
306	10/01/2015	7015	9916 W Edward Dr	(26,948.55)	-	5,300.00	28,947,100.00	21,648.55	26,948.55	(26,948.55)	-	(26,948.55)	
307	10/02/2015	7026	6609 W Superior Ave	28,731.45	46,800.00	-	28,993,900.00	18,068.55	18,068.55	28,731.45	-	28,731.45	
308	10/05/2015	6998	9390 E Thompson Peak Pkwy #242	(12,353.95)	10,100.00	-	29,004,000.00	22,453.95	22,453.95	(12,353.95)	-	(12,353.95)	
309	10/06/2015	7019	5440 W Grove St	18,760.05	37,100.00	-	29,041,100.00	18,393.95	18,393.95	18,706.05	54.00	18,760.05	Net new borrowing was calculated and recorded as $18,706.05, but there was a math error of $54. DenSco loaned $54 more than it recorded, so Loan Losses will be increased by $54.
310	10/07/2015	7031	3409 W Orchid Ln	(32,053.50)	-	14,400.00	29,026,700.00	17,653.50	32,053.50	(32,053.50)	-	(32,053.50)	
311	10/08/2015	7030	5945 N 73rd Drive	31,204.15	48,100.00	-	29,074,800.00	16,895.85	16,895.85	31,204.15	-	31,204.15	
312	10/13/2015	7034	2907 E Chambers St	20,607.50	40,600.00	-	29,115,400.00	19,992.50	19,992.50	20,607.50	-	20,607.50	
313	11/04/2015	7040	6759 W Crabapple Dr	93,900.14	385,800.00	-	29,501,200.00	291,345.85	291,345.85	94,454.15	(554.01)	93,900.14	Menaged received $554.01 less than the calculated net amount due to a math error. Loan Losses will be decreased by $554.01.
					47,837,956.00	18,336,756.00	29,501,200.00	2,142,681.25	20,479,437.25	Total Adj:	30,046.64		
										Adjustments Excluded:	(41,350.00)		
										Total Adjustments:	(11,303.36)		

Total Unpaid Loan Balance	$	29,501,200
Less: Interest Payments (Above)	$	(2,142,681)
Less: Interest Payments on Fully Paid Loans [11]	$	(2,911,115)
Less: Adjustments see Notes	$	(11,303)
Unpaid Loan Balance Net of Interest Payments	$	24,436,100

[1] - For transactions that were done in the "Netting Process" the Loan Number/Property Address represents one of the loan numbers/property addresses referenced in the records of DenSco.
[2] - Represents the amount of the transaction on the DenSco bank statement unless "Notes" column indicates otherwise. Positive numbers are loans and negative numbers are payments.
[3] - For Gross Cash Transactions, this is the property loan amount (CASH OUT). For Net Cash Transactions, the amount in this column is the CASH OUT portion of the netted transaction.
[4] - For Gross Cash Transactions, this is the property principal payoff amount (CASH IN). For Net Cash Transactions, the amount in this column is the CASH IN portion of the netted transaction.
[5] - Represents the cumulative unpaid loan principal balance.
[6] - Represents the amount of interest/fee payments (CASH IN) made by Menaged to DenSco.
[7] - Represents sum of principal and interest payments (CASH IN).
[8] - For Net Cash Transactions only. Represents the net difference between CASH OUT and CASH IN before any adjustment.
[9] - For Net Cash Transactions only. Represents an adjustment to the Net Cash Transaction to reconcile to the DenSco bank statement amount. See "Notes" for an explanation of the applicable adjustment.
[10] - Transaction amount ties and agrees to the DenSco bank statement.
[11] - Represents interest received by DenSco on Non-Workout Loans that were fully repaid, therefore the loans and related interest payments are not included in this listing.

Expert Report of David B. Weekly

EXHIBIT F

Peter S. Davis, as Receiver v. Clark Hill PLC, et al.
Calculation of Prejudgment Interest

PURPOSE: To calculate prejudgment interest on damages associated with the DenSco Workout and Non-Workout Loan Losses.

SOURCE: F3 Expert Report; Letter from Geoffrey M.T. Sturr to John E. DeWulf dated January 17, 2018 ("Sturr Letter"); A.R.S 44-1201; Receiver March 2019 Status Report

Report Date	04/04/2019	Date of F3 Report
Prejudgment Interest Rate	10.0%	ARS 44-1201(A)
Prejudgment Interest Rate	6.50%	ARS 44-1201(B)

Prejudgment Interest Calculation @ 10%

Description	Interest Start Date	Interest End Date [3]	# of Days	Daily Interest Rate	Workout Loan Losses	Non-Work Out Loan Losses	Total Loan Losses	Net Receiver Recoveries	Loan Losses net of Recoveries	Prejudgment Interest	Damages including Interest	Daily Interest Amount
Interest Starts August 31, 2016 [1]	08/31/2016	04/04/2019	946	0.0274%	$ 69,123	$ 24,436,100	$ 24,505,223	$ 207,996	$ 24,713,219	$ 6,405,125	$ 31,118,344	$ 6,771
Interest Starts on the Complaint Date [2]	10/17/2017	04/04/2019	534	0.0274%	$ 69,123	$ 24,436,100	$ 24,505,223	$ 207,996	$ 24,713,219	$ 3,615,578	$ 28,328,797	$ 6,771

Prejudgment Interest Calculation @ 6.50%

Description	Interest Start Date	Interest End Date [3]	# of Days	Daily Rate	Work Out Loan Losses	Non-Work Out Loan Losses	Total Loan Losses	Net Recoveries	Loan Losses net of Recoveries	Prejudgment Interest	Total Damages	Daily Interest
Interest Starts August 31, 2016 [1]	08/31/2016	04/04/2019	946	0.0178%	$ 69,123	$ 24,436,100	$ 24,505,223	$ 207,996	$ 24,713,219	$ 4,163,331	$ 28,876,550	$ 4,401
Interest Starts on the Complaint Date [2]	10/17/2017	04/04/2019	534	0.0178%	$ 69,123	$ 24,436,100	$ 24,505,223	$ 207,996	$ 24,713,219	$ 2,350,126	$ 27,063,345	$ 4,401

[1] - Approximate date Defendants received Chittick's pre-suicide writings blaming Clark Hill for the losses (see Sturr Letter).
[2] - Date Plaintiff filed the Complaint against Defendants.
[3] - Date of the F3 Report.