Mediation Statement:

John Smith
adv.
Dewey Makem

July 21, 2020

Privileged, Confidential and Inadmissible

The Lang Legal Group LLC
HELPING PEOPLE WE CARE ABOUT SOLVE PROBLEMS AND ACHIEVE GOALS.

July 21, 2020

elang@langlegal.com

VIA ELECTRONIC MAIL -- rmayer@mayerharper.com

Randy Mayer
Mayer & Harper
50 Hurt Plaza SE #1640
Atlanta, GA 30303

Re: Confidential Mediation Statement of John Smith

Randy:

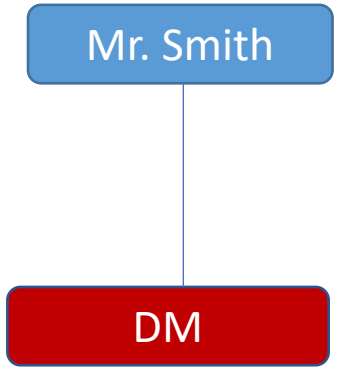
Thank you for agreeing to mediate this matter for us. I am supplying this mediation statement to you in advance so that everyone may be familiar with my clients' contentions and desires. Obviously, it is confidential and inadmissible for any purpose. I am choosing a different format than I usually choose because there is some complexity that would otherwise bog us down in the mediation sessions. Consider this blended slide show and letter, if you will.

Part One:
The Parties and Other Key Players

Part One: The Parties and Other Key Players

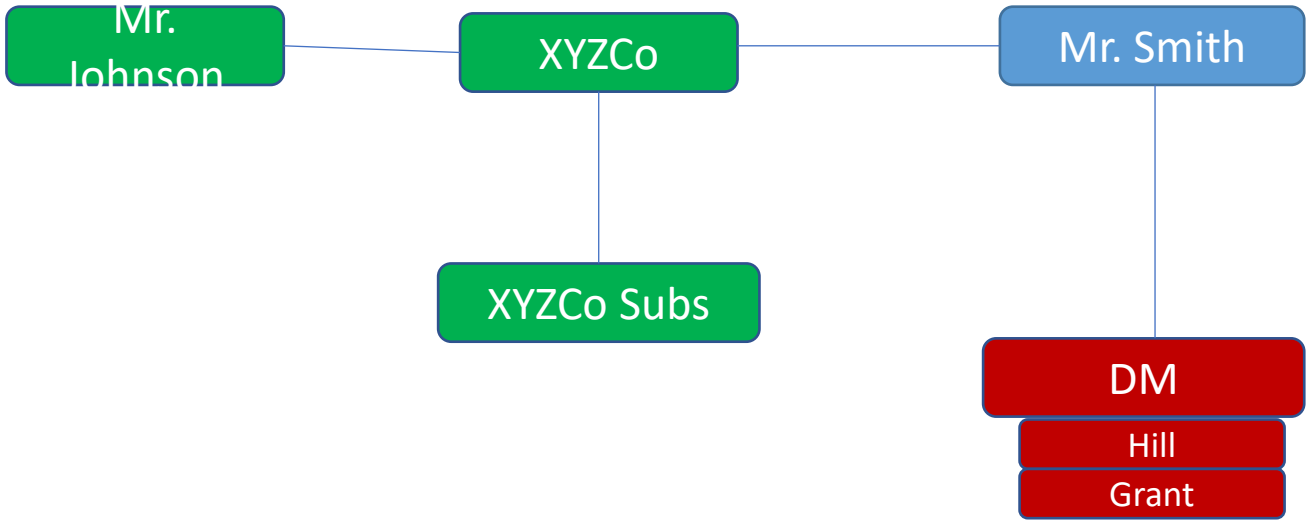
This section identifies the names you will hear at the mediation and puts those names in their proper context. This will require the inclusion of some chronological and factual information, but there will be greater detail in that regard later in this document.

The relationship at the center of this dispute is the attorney-client relationship between my client Mr. Smith and his former attorneys at Dewey Makem ("DM"):



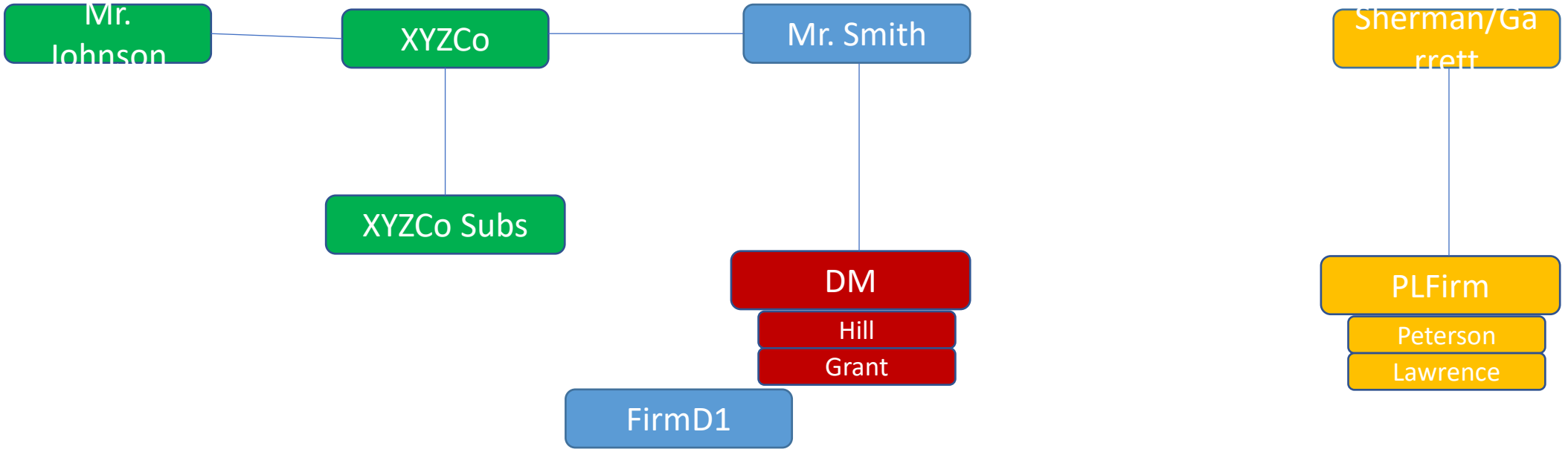
This relationship began in the Spring of 2017 when DM took on the representation of Mr. Smith (and others) in litigation and ended in May 2018 after DM resigned to represent one of the other clients in a bankruptcy

Mr. Smith was one of the founders of XYZCo Corporation ("XYZCo") along with Brian Johnson. XYZCo had a number of subsidiaries, the names of which are not material here. XYZCo engaged in the business of automated stock trading.



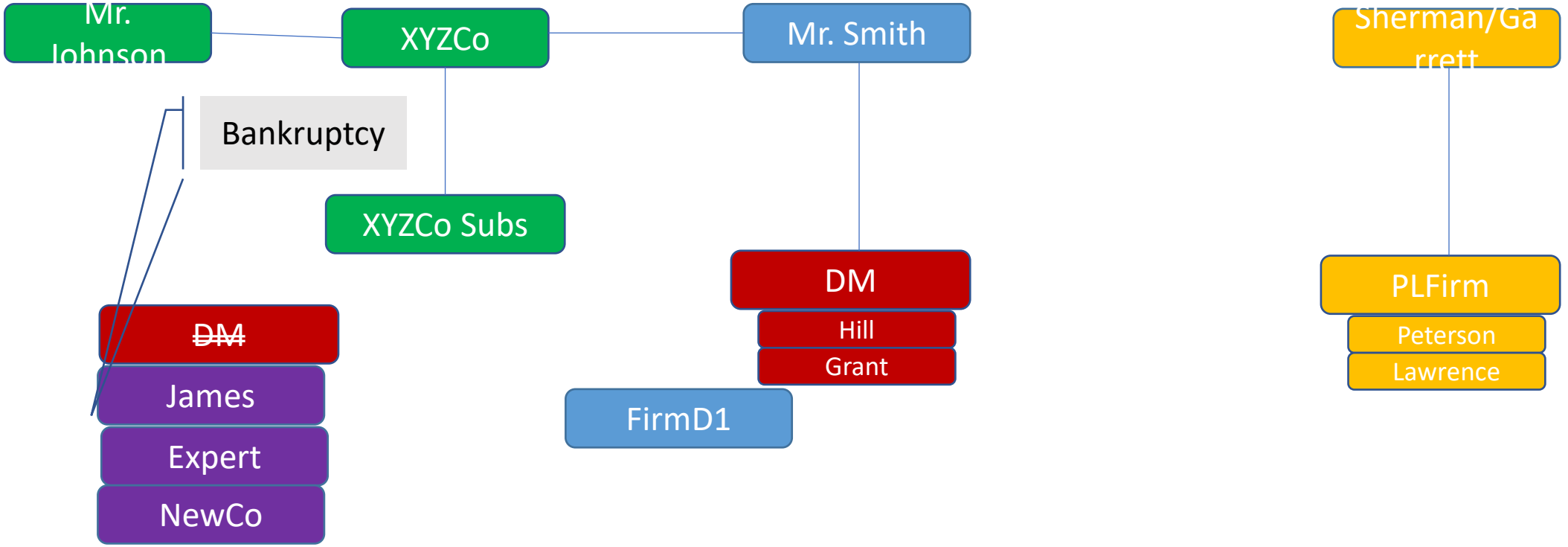
Dewey Makem represented all of these individuals and entities in litigation, though the only engagement letter was with XYZCo. The "relationship" partner was Michael Hill, a XYZCo shareholder. The "working" partner was Sherman Grant.

I have been using the word "litigation" as shorthand to refer to a series of events in which two XYZCo shareholders – Sara Sherman and Gary Garrett – decided they were dissatisfied with their investment in XYZCo. After hiring Andy Peterson of PLFirm, they threatened and brought an SEC investigation and Federal securities litigation against Mr. Smith, Mr. Johnson, XYZCo, and its subsidiaries. Paul Lawrence of PLFirm was lead litigation counsel



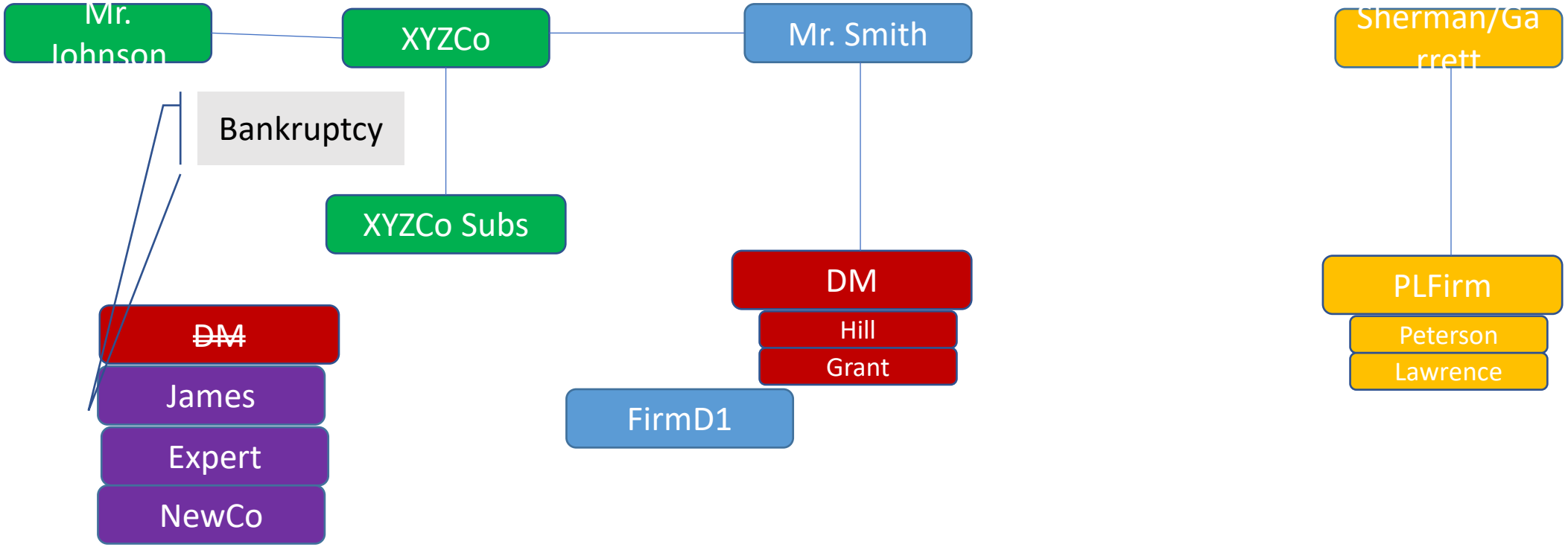
Of significance in this mediation is that the only allegations against Mr. Smith were secondary allegation: respondeat superior and control person. Mr. Smith himself was not accused of any wrongful activity. Eventually, FirmD1 joins the fray for Mr. Johnson and Mr. Smith.

The final piece of the puzzle is the bankruptcy. XYZCo could find no new investors because of the SEC/litigation overhang and was hemorrhaging cash both to keep alive and to fund a defense. In May 2018, XYZCo and its subsidiaries – represented by DM – filed Chapter 11.



DM resigned days after being confronted with the conflict (arising from, among other things, representing Debtor XYZCo against Creditor Mr. Smith. DM handpicked its replacement (David James), the stalking horse bidder for XYZCo's assets (Mr. Johnson's employer NewCo) and financial consultant to opine on fairness (Expert). The bankruptcy process has not been completed.

This is the same chart as the one on the preceding page. I have set it out on its own, and offer the suggestion that, in the event you don't print this entire document out, that you print this page out to make your life easier. I will make that suggestion again, regarding a timeline.



Part Two:
Progression of Events

A. A Very Abbreviated History of XYZCo

XYZCo, a company engaged in automated stock trading, was founded in 2014 by John Smith and Brian Johnson. Mr. Smith and Mr. Johnson had worked together since the 1990's, laying the groundwork for the business that would become XYZCo. XYZCo represented the scaled-up version of their past businesses – one designed to make large profits from funds provided by investors.

Mr. Smith and Mr. Johnson had a clear division of skills and duties. Mr. Johnson developed and operated the trading software and interfaced with investors. Mr. Smith ran the operations side of the company, a very significant role when the loss of small fractions of a second in processing and telecommunications translates directly into large sums of money.

In 2015, XYZCo conducted a "friends and family" round of investment. Based on the success of that round, and according to already existing goals, XYZCo conducted a broader round in 2016. Tara Sherman and Wilson Garrett invested in that round. When the 2016 round was closed, XYZCo had approximately $9,500,000 in various accounts and subsidiary accounts.

B. Sherman and Garrett Become Dissidents

Then, an investor named Tara ("Mimi") Sherman began to manifest dissatisfaction with her investment and bombarded Mr. Johnson with questions, all of which had been answered either in what she provided at the time she invested or over time by Mr. Johnson. She demanded her investment be refunded. Though under no obligation to do so, Mr. Johnson buyers to purchase some of her stock from her (at, it should be noted, the same price at which she bought it). Next, Wilson Garrett made similar but not identical complaints to the ones made by Ms. Sherman. Neither Mr. Garrett nor Ms. Sherman had any dealings with Mr. Smith. Another investor was coincidentally selling XYZCo shares, and these shares were purchased by Michael Hill, a partner at DM.

In early 2017, Sherman and Garrett (as well as another shareholder, not relevant here) hired Peter Peterson at PLFirm to assist them in their dispute with XYZCo. Peterson's strategy was simple – unless his clients received a full refund of their investment, he would pursue the "nuclear option" of going to the SEC and filing litigation (which would take place, through a forum selection clause, in Delaware.

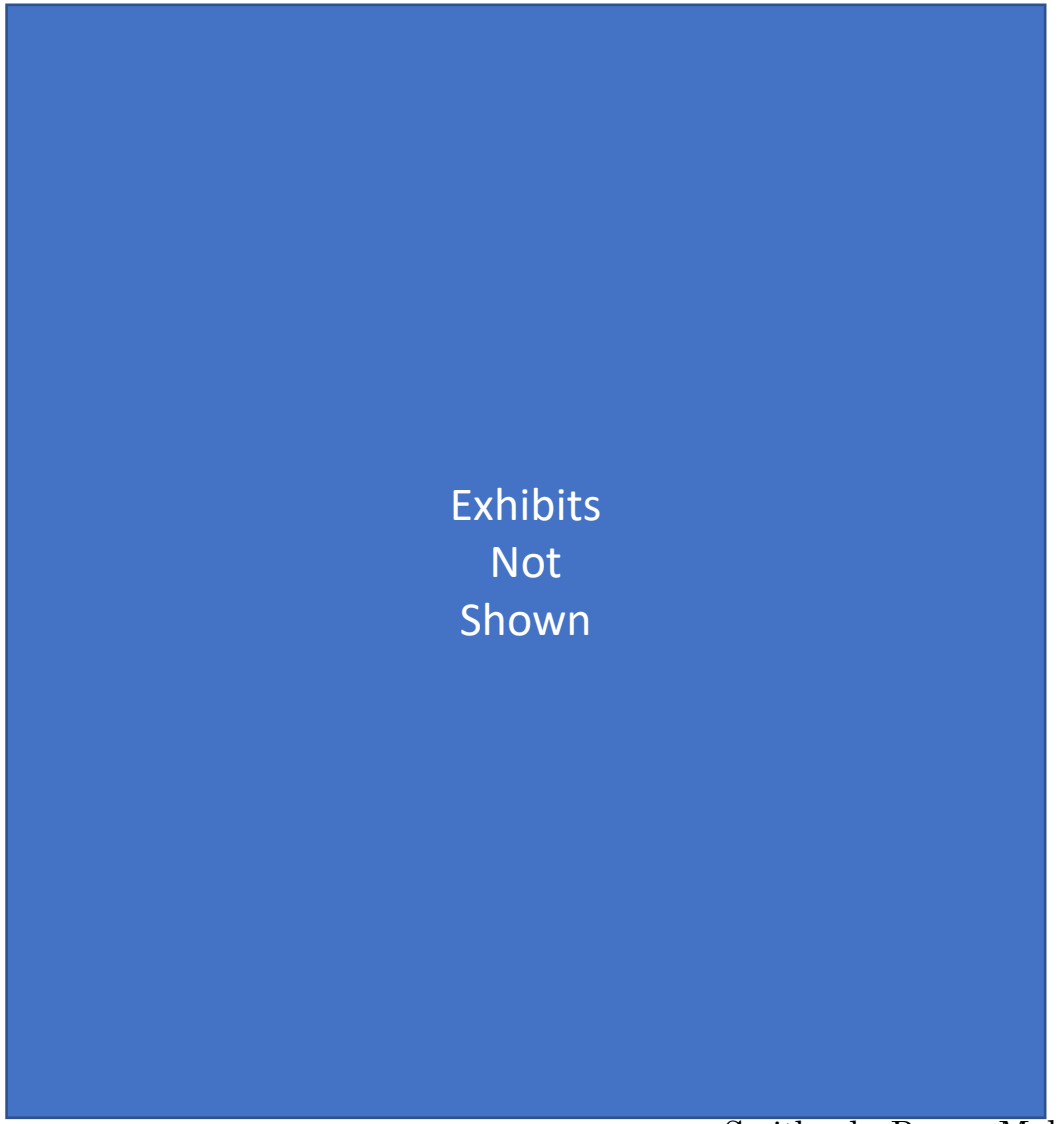
C. Dewey Makem Foretells Destruction and Threatens More Destruction: Sherman Grant to Peter Peterson, February 23, 2017

Exhibits Not Shown

Even more disturbing than the expectation of your client demanding this preferential right is that your demand is premised on a potential nuclear outcome that if my client does not relent to your clients' threats (even after all the options presented above and even after my client has clearly offered your client accurate facts that clearly refute their false beliefs), your clients are threatening to make these allegations to the SEC - allegations that will damage every other shareholder, the overall ability of the company to move forward and expand its platform, result in my client using its financial resources on legal as opposed to its business operations and will clearly negate any ability for my client to find buyers to take your clients shares in XYZCo.

Should your client go to the SEC my client will of course be forced to pursue its defamation claim and seek recovery of all damages as provided for in a defamation per se action and the legal fees incurred in having to deal with this situation. Again, I feel your client should know this is not what my client seeks. My client knows no one wins a legal war. We trust calmer heads prevail so that all parties are able to achieve their desired outcomes. It is the only way.

D. The Strategy Fails, and DM is Retained By XYZCo



Though only portions of the engagement letter are shown to the left, the entire document creates problems for DM:

1. Only XYZCo (not even its subsidiaries) is engaged as a client. Mr. Smith is not engaged as a client, even though at this time he was clearly a named target.

2. The engagement letter contains no language that identifies a conflict or potential conflict arising from the representation of multiple parties.

3. The engagement letter does not identify any issue with respect to DM partner Hill being a shareholder of XYZCo.

4. The engagement letter does not mention (much less advise) the need or option to consult with other counsel to evaluate conflicts.

E. The Litigation and SEC Battle Kills The Company

It didn't take long for a dispute, with lawyers on both sides promising scorched earth, began to take its toll on XYZCo. This toll was especially strong because XYZCo did not have any insurance coverage for the litigation. Greatly condensed, the litigation, while DM was involved, went as follows:

- There was an opening round of pleadings, followed by motions to dismiss. The net outcome is that claims against all parties survived these motions, and discovery began.
- Discovery involved the production of a great number of documents and disputes between large firm litigators over the adequacy of production.
- An additional firm (FirmD1) had to be brought in to help DM, causing extra expense.
- The two plaintiffs were deposed.
- DM withdrew as counsel when it took XYZCo into bankruptcy.

From the time the case was filed (April 2017) to the time bankruptcy was filed, XYZCo paid DM approximately $645,000 in attorney's fees (in addition to another $95,000 paid before then).

It should be noted that Mr. Smith (but not Mr. Johnson) fully succeeded at summary judgment, but still had to incur the cost of a five-day jury trial in some state not mentioned here, and is still defending an appeal. (Sherman and Garrett lost completely – the claims that were not eliminated at summary judgment resulted in defense verdicts at trial.)

Finally, all this happened at the same time the Company had to pay multiple sets of lawyers to handle (successfully) the SEC investigation.

F. By September, DM Is Giving XYZCo Bankruptcy Advice

09/20/17 Teleconference and email exchanges regarding potential restructuring; review of documents and financiers regarding same. S.G. BILLER 3.40 hrs. 540.00/hr $1,836.00

09/21/17 Exchange emails with client regarding potential path forward and review of strategy document. S.G. BILLER 1.00 hrs. 540.00/hr $540.00

09/22/17 Teleconference and email exchanges regarding potential restructuring; review of documents and financiers regarding same. S.G. BILLER 1.40 hrs. 540.00/hr $756.00

09/23/17 Draft letter to client regarding documents and information necessary to prepare bankruptcy filing. S.G. BILLER 1.00 hrs. 540.00/hr $540.00

09/24/17 Review and analysis of issues related to pre-bankruptcy filing requirements and strategy. S.G. BILLER 1.30 hrs. 540.00/hr $702.00

09/24/17 Revise XYZCo Bankruptcy Filing Introduction Letter. J.T. GRUNT 0.20 hrs. 310.00/hr $62.00

09/25/17 Teleconferences and email exchanges regarding potential restructuring. S.G. BILLER 0.90 hrs. 540.00/hr $486.00

09/28/17 Teleconferences and email exchanges regarding potential restructuring. S.G. BILLER 0.60 hrs. 540.00/hr $324.00

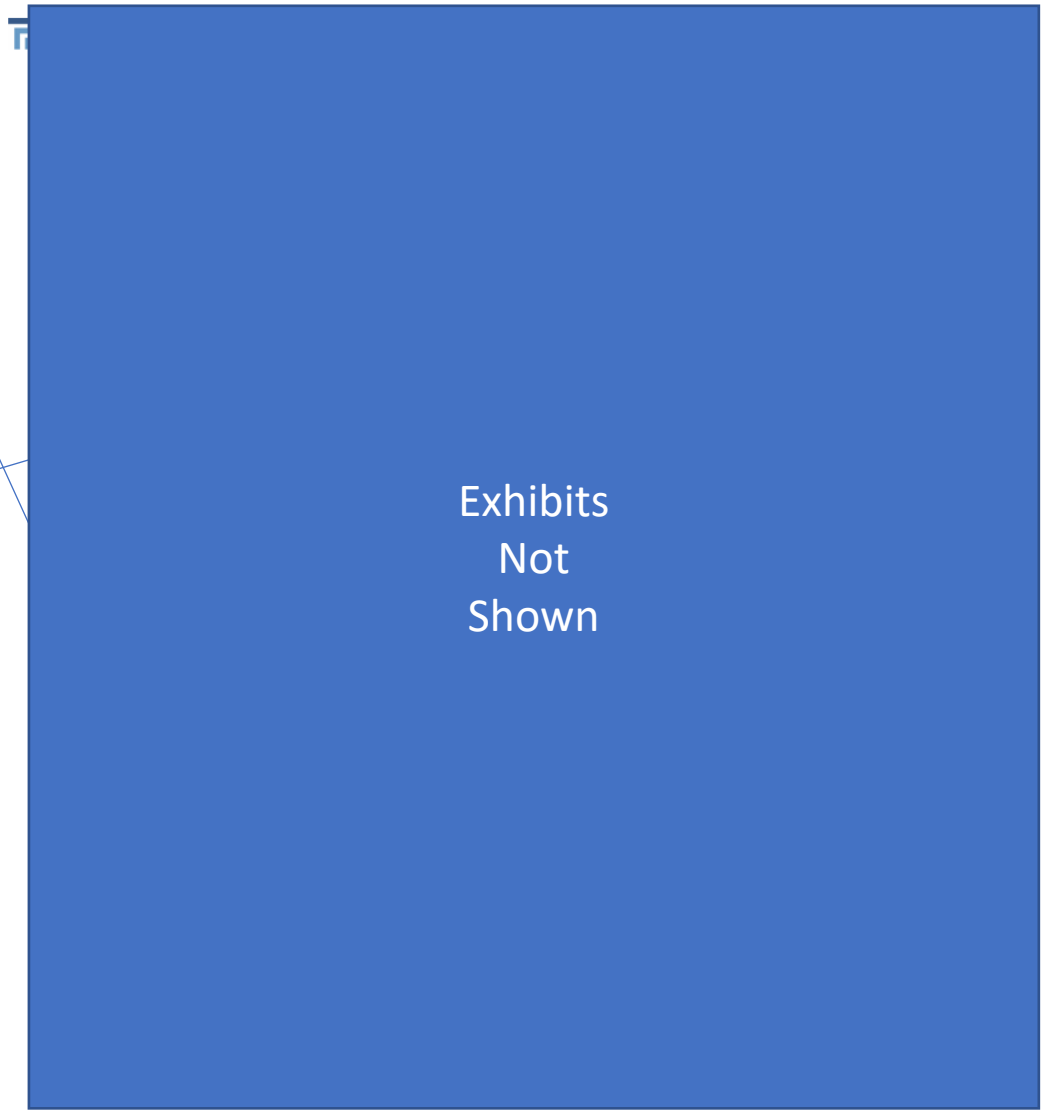
Despite this clear shift of purpose, DM did not issue a new engagement letter, and did not advise Mr. Smith of the potential consequences of this facet of the representation.

G. Early 2018 Saw DM Providing XYZCo a Plan A and Plan B to Deal With Finance: Plan A Required Unanimous Shareholder Approval, Plan B was Bankruptcy, and Both Involved NewCo

Ultimately DM crystalized its advice into the creatively named "Plan A" and "Plan B." Plan A (the precise details of which are not relevant here) involved a restructuring that required the approval of all shareholders (including Sherman and Garrett, who were at that point suing the Company for millions). Plan A went nowhere.

Plan B was to file for bankruptcy protection. Nothing is that simple, though. Plan B included going through all of XYZCo's cash and paying DM (but not FirmD1) off in full.

Both plans had a common element: NewCo. NewCo was a new entity, formed by a very wealthy business contact of Mr. Johnson, whose sole purpose was to acquire the assets of XYZCo either in the Plan A reorganization or out of the Plan B bankruptcy. To ease this process, NewCo was given unfettered access to XYZCo for the last few months before bankruptcy.



H. DM is Engaged For Bankruptcy …

On May 3, 2018, XYZCo and DM formalize the bankruptcy engagement that began the preceding September. The words they used to do so are in stark contrast to the terse engagement letter for the litigation.

The bankruptcy engagement mentions the entire corporate family ("XYZCo Corporation and certain of its subsidiaries, XYZCo Advisory Management, LLC, XYZ LP, XYZLogic, LLC and XYZVue, LLC") whereas the litigation engagement letter does not.

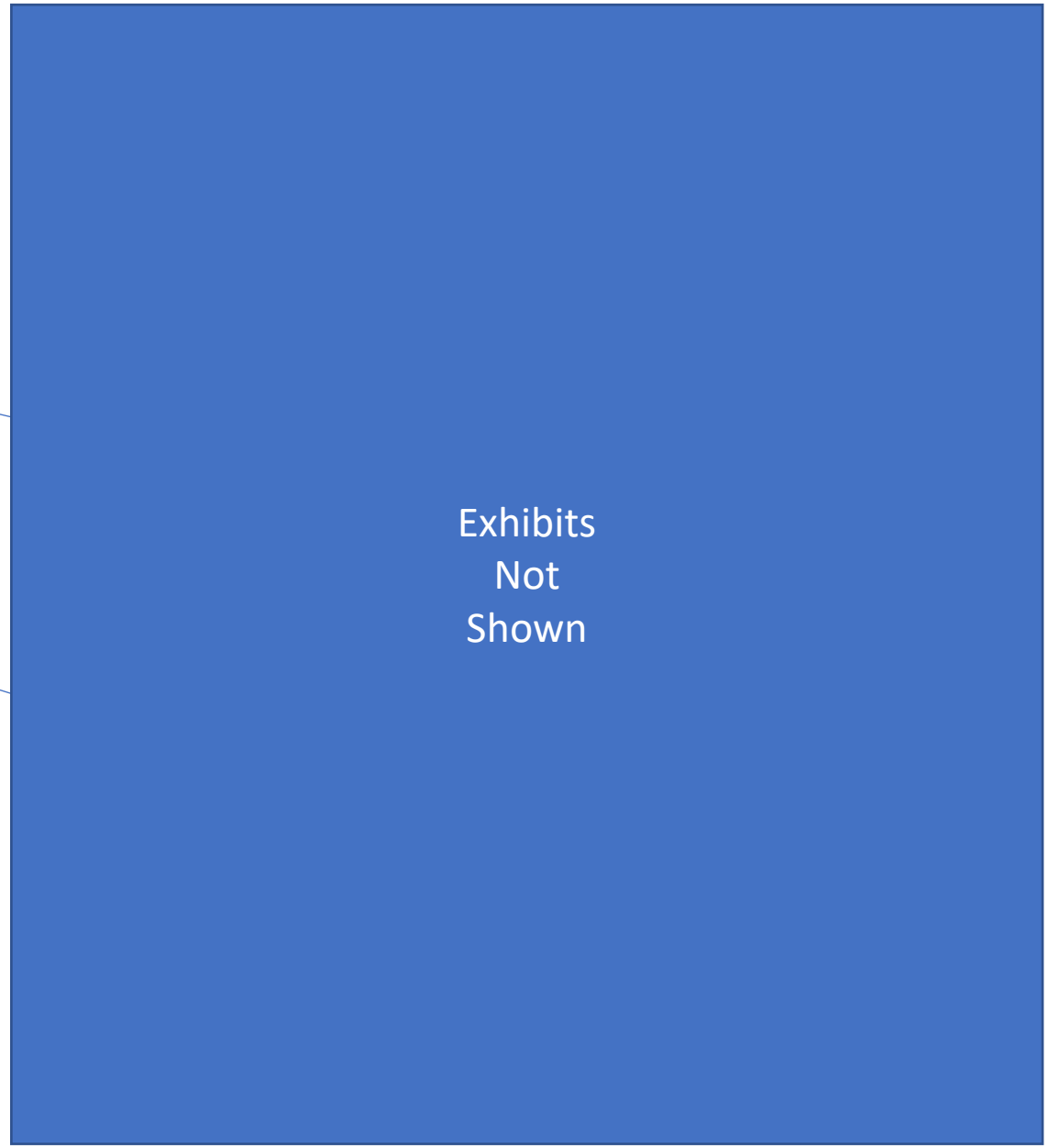
The bankruptcy engagement gives voice to the general concept of not representing the company and its individuals ("We will represent the Company, as set forth above, in connection with the engagement and we will not be representing any other related or affiliated or associated persons or entities other than those identified above, or the Company's officers, directors, shareholders, investors, agents, partners, members, or employees (collectively, "Agents"), in connection with the engagement.") The litigation engagement letter contains no such language.

The bankruptcy engagement then explicitly notes the tension between the corporate representation and the individual representation (of Mr. Smith), and resolves it in favor of XYZCo: "As you are aware, the Firm has represented the Company (except for Trade Vue that was not named), . . . and John Smith in connection with certain pending securities litigation. . .. We will not represent . . ..Mr. Smith with respect to the conduct of the Bankruptcy Case.) No such language is contained in the litigation engagement letter.

The bankruptcy engagement takes the necessary step with respect to Michael Hill that the litigation engagement letter did not: "Additionally, one of the partners at Dewey Makem, Michael Hill, is a stockholder in XYZCo Corporation."

The bankruptcy engagement contains the very advice DM should have given at the start: "**We believe that we can adequately represent the Company with respect to the conduct of the Bankruptcy Case, however, we urge you to review the matter with independent counsel.**" This concept was completely absent in the litigation letter.

The Bankruptcy was filed on May 4. Five days later, DM told Mr. Smith: "**Due to these bankruptcy filings, our law firm cannot represent both you and the Debtors at the same time.** As a result, we hereby withdraw from any further representation of you individually in any matter relating to the Debtors, including, without limitation, before the Bankruptcy Court, the District Court for the District of Delaware in Tara Sherman and Wilson Garrett, et al v. XYZCo Corporation, et. al., D. Del. C.A. No. 17- 447-MPT, and in any other such matter."



Part Two: Progression of Events – Short Reference Version For Printing

2014: Mr. Smith and Mr. Johnson form XYZCo after years of predecessor businesses.
2015: XYZCo completes friends and family capital raise.
2016: First few months, XYZCo capital raise (investors include Sherman, Garrett)
2016: DM begins representing XYZCo.
2016: Last few months, Sherman and Garrett asking for money back.
2016: September, Hill of DM buys XYZCo stock directly from dissatisfied shareholder
2017: January, PLFirm makes demands and threats – SEC reports and lawsuits
2017: February, DM declares (essentially) "bring it on."
2017: March, DM engagement letter with XYZCo only.
2017: March, SEC report
2017: April, Lawsuit
2017: September, DM begins bankruptcy work for XYZCo
2017: December, Mr. Smith begins deferring monthly pay
2018: Early, bankruptcy planning intensified, deal document for stalking horse bidder to employ Mr. Johnson
2018: Early, DM works out Plan A and Plan B for XYZCo finances
2018: April, XYZCo pays DM in full, leaves $180K unpaid at FirmD1
2018: May, XYZCo files bankruptcy
2018: May, DM fires Mr. Smith as client
2018: DM resigns as XYZCo counsel, handpicks James as replacement.
2018: XYZCo assets sold to DM's handpicked buyer NewCo, blessed by DM's handpicked expert Expert.

Part Three: Consequences

A. The Failure to Identify the Conflicts at the Engagement Stage Was Improper and Had Disastrous Consequences for Mr. Smith in the Litigation, Costing Him Dearly

Showing that DM did not disclose any conflict to Mr. Smith at the time of engagement is a simple thing: DM did not enter into an engagement letter with Mr. Smith. Moreover, the only engagement letter that did exist made no reference to any of the conflicts permeating this case. DM also made no disclosure of any actual or potential conflict during the representation. (All of this is based on informal and formal discovery from DM during the bankruptcy proceedings. I do not believe DM disputes this.)

The first conflict that went undisclosed and unanalyzed was the conflict arising out of joint representation. Comment [18] to Rule 1.7 describes but some of the dangers of joint representation, and Rule 1.7 itself defines the elements of disclosure, which must be confirmed in writing: "(1) consultation with the lawyer, pursuant to Rule 1.0 (c); (2) having received in writing reasonable and adequate information about the material risks of and reasonable available alternatives to the representation, and (3) having been given the opportunity to consult with independent counsel." Not to belabor the point, but every major malpractice insurer and most state bar associations have *forms* that can be used to meet these standards. Even the engagement letter DM used for bankruptcy came close to meeting these standards.

The second conflict related to Mr. Hill's equity holdings in XYZCo. Because of these interests, Mr. Hill's interests were different that Mr. Smith's. All Mr. Hill could be perceived as caring about would be the value of his holdings in XYZCo. This could either cause Mr. Hill to take positions that would benefit XYZCo at the expense of Mr. Smith (i.e. "if we fire Mr. Smith will you drop the claim" type positions) or to be overzealous in protecting his own investment. It is not important that either of these things happened, rather, it is important that these things were not disclosed to Mr. Smith, and that Mr. Smith was not advised to consult with other counsel.

These conflicts were not theoretical. Every allegation made to the SEC and made in the litigation concerned Mr. Johnson and two other individuals. Mr. Smith had no culpability for his own actions – all allegations regarding Mr. Smith were secondary (respondeat superior or control person). He stood on completely different ground than DM's other clients.

Thus, when the time came for a motion to dismiss, instead of highlighting Mr. Smith's lack of culpability either in a separate brief or making it a lead argument in a joint brief, the arguments relating to Mr. Smith were at the rear of a brief filed on behalf of all defendants. The motion was denied.

Could a motion devoted to Mr. Smith, or focused on Mr. Smith, have prevailed? DM was not around for summary judgement, and the summary judgment brief (which I drafted) did separate out Mr. Smith from the rest of the case. Mr. Smith was granted summary judgment on all counts, claims and allegations made against him.

If Mr. Smith did prevail on an early motion to dismiss, rather than be dragged through discovery and trial, he would have avoided a significant amount of attorney's fees. At the time of the motion to dismiss (2017), XYZCo was paying defense costs under the indemnity provisions of the bylaws. However, Mr. Smith was on the hook, personally, for legal fees after bankruptcy (and those left owing upon filing). Mr. Smith has *spent* $348,000 and still *owes* $430,000. Had he been advised of the conflicts, their implications, and the need to consult other counsel, he would have done so, and found his own representation. (I know this because this is how he got to me, once FirmD1 identified the conflict to him.)

B. DM's Debtor/Creditor Counseling of XYZCo (and Mr. Johnson) Caused Mr. Mr. Smith Great Losses

When DM began to advise XYZCo (and Mr. Johnson) on debtor/creditor matters, DM did not advise Mr. Smith of the conflict that brought to the forefront, nor did DM advise Mr. Smith to get counsel on the issue. DM's debtor/creditor representation harmed their client Mr. Smith in three ways: it compounded the legal fee hole already being dug; it cost Mr. Smith $175,000 in deferred compensation; and it rewarded Mr. Johnson value at Mr. Smith's expense.

1. Legal Fees

The legal fee issue is relatively straightforward. Recall that by not focusing on Mr. Smith's unique status in the case, DM possibly cost Mr. Smith all legal fees incurred after what would have been his dismissal. That exposure would not matter if XYZCo were in a position to honor its indemnity obligation. But, while the plan to sap every bit of cash out of XYZCo may protect XYZCo by allowing it to sell its assets in bankruptcy, and benefit Mr. Johnson by setting him up with the purchaser, it left Mr. Smith unprotected as to these legal fees. (Legal fees he never would have incurred had DM disclosed the conflict at engagement.)

2. Deferred Compensation

The deferred compensation is even simpler. In late 2017, when XYZCo was trying to find every last ounce of liquidity, Mr. Smith proposed deferring his monthly compensation of $35,000. DM did not advise Mr. Smith that he would be extremely unlikely to recoup this compensation in bankruptcy. To this day Mr. Smith has not seen a penny of the $175,000 owed to him.

3. Destruction of Mr. Smith's Investment by Protecting XYZCo and Paying Mr. Johnson

DM's endgame for XYZCo – Chapter 11 bankruptcy – was designed to allow XYZCo to sell its assets to a "friendly" buyer who would then hire Mr. Johnson (and every other XYZCo employee other than Mr. Smith). While Mr. Johnson was being paid annual compensation of $420,000 under this plan, Mr. Smith was left out in the cold, owing spending hundreds of thousands of dollars, and receiving nothing. Had DM informed Mr. Smith of this possible consequence of conflicted representation either at original engagement in March 2017 or when the debtor creditor representation began in September 2017, Mr. Smith could have protected his interests against this outcome.

As noted above, DM's plans were dependent upon some outside entity purchasing XYZCo's assets – basically the software that ran the trading platform. This entity would also employ the people who knew the software best, XYZCo's employees. This entity (and the eventual purchaser in bankruptcy) was NewCo (referred to as NewCo even when referring to individuals and related entities, for the sake of simplicity).

Beginning in 2017, NewCo – under the guise of forming a joint venture relationship with XYZCo – was given unfettered access to everything at XYZCo, including demonstrations and uses of the software. Indeed, significant XYZCo employee time (and therefore expense) was devoted to customizing XYZCo's algorithms (which were written for equity investments) to NewCo's specialized needs (which concerned energy trading). In essence, XYZCo funded NewCo's due diligence for any investment NewCo might make in XYZCo. NewCo's dealings were exclusively through Mr. Johnson.

When it became clear that investors suing the company for millions of dollars would not consent to a voluntary reorganization, the focus shifted entirely to bankruptcy. The bankruptcy concept was simple: XYZCo would file a Chapter 11 proceeding to sell off its assets (i.e. the software) to the highest bidder. In addition, a lender would fund XYZCo's operations until the sale could be completed, to be paid off with the proceeds of the sale.

Conveniently enough, NewCo agreed to be the lender, and to step forward as the initial "stalking horse" bidder. The deal was structured such that the amount loaned ($500K), XYZCo's operating costs ($500K) and the amount of the stalking horse bid ($500K) were identical. (Note: it was not that simple, there were fees and other transaction costs involved, but the concept is correct.) In the end, NewCo, if the successful bidder, could "pay" for the assets by forgiving the loan. Basically, after XYZCo funded NewCo's due diligence, all NewCo had to do was pay three months of XYZCo's operating expenses and it would own the assets. Upon the completion of the transaction, Mr. Johnson (and every other employee of XYZCo, except Mr. Smith) would be on NewCo's payroll, and XYZCo would have nothing. For all of this to materialize, the transaction would have to be supported by expert testimony. DM referred that task to Expert Partners.

Things did not work out exactly that way because somewhere between Mr. Johnson, DM, NewCo, and Expert, no one checked the numbers. The three-month budget of $500,000 for operating expenses was nearly twice as high as the actual operating expenses (for example, Mr. Johnson's compensation was doubled). But, NewCo had already entered its bid of $500,000 – it could not lower it to the actual expenses. When NewCo's CEO was asked about this at the hearing to confirm the sale, he testified that the bid was designed to be equal to the operating expense, and if he could have rebid lower, he would have.

Expert, as noted, was brought into the sale process by DM. (DM's Peter Attorney: "Person I referenced over the weekend. http://notarealurlbecausthisisredacted/"). Expert's supposed role was to generate interest in the purchase of XYZCo's assets by advertising the sale and reaching out to contacts. Expert was given a $35,000 retainer for its work. Expert's "information memorandum" was a copy-paste project from existing XYZCo documents. Expert ran one ad, and sent out a few dozen emails *including emails to DM partners*, to promote the sale. No interest was generated, and Expert opined, therefore, that the $500,000 offered by NewCo was fair. Expert incredulously sought $68,000 for this work (that is, an additional $33,000) and XYZCo agreed to this request. Mr. Smith stepped up and the Court refused the additional $33,000 and awarded Mr. Smith his legal fees for mounting the opposition.

How did DM harm Mr. Smith through the bankruptcy plan and sale to NewCo? It's simple. DM achieved the goals of two of its three joint clients while destroying the third client.

XYZCo's goal was simple: get out from under the costs of litigation and find a way, in some form or another, to continue operating its business and paying its employees, without exposing the purchaser of its assets to a fraudulent conveyance claim. Chapter 11 achieved that goal. The litigation was stayed against XYZCo; XYZCo's assets moved to NewCo blessed by a bankruptcy sale, and everyone (except Mr. Smith) was getting paid. (Further pursuit of litigation against an asset-free and non-operating XYZCo would be futile.)

Mr. Johnson's goal was also straightforward: maintain compensation and upside from the business concept he has been a part of since the 1990s, and lose the albatross of XYZCo. bankruptcy did that. It took XYZCo out of the picture and provided him a perfect landing place, at $420,000 per year (plus possible incentives unknown to Mr. Smith). Mr. Johnson is believed to be "judgment proof," and is worried less about the litigation as a result.

Nature abhors a vacuum, so Mr. Smith became the one who pays. Whether it's actual out of pocket loss of $175,000 in deferred compensation or $367,000 paid to attorneys since 2018; or, whether it is debt to law firms that existed before and after the bankruptcy of $430,000, DM left Mr. Smith wholly unprotected, to the amount of $972,000.

Such loss (whether out of pocket or money owed) is not the just and fair measure of harm to Mr. Smith. Before DM got involved, Mr. Smith owned roughly 30% of a company with a $50 million valuation. Now he owns nothing. That needs to be addressed.

Mr. Smith is not going to take the position that DM killed XYZCo. However, Mr. Smith does contend that DM did not advise him that he needed to protect himself against the dire financial consequences of XYZCo's destruction.

Calculating the value of that – the failure to tell Mr. Smith to get protection – might in any other circumstance be a difficult task. Here, however, we have a direct comparable, as the real estate appraisers like to say. Mr. Smith and Mr. Johnson were identically situated when DM got involved. When it was all over, DM put Mr. Johnson in a job paying $420,000 a year, and left Mr. Smith with a mountain of loss. It would not be unreasonable to compensate Mr. Smith for a five year period, reduced to present value at a pre-COVID discount rate of 3%, yielding a one time payment of $1,900,000.

What follows is the third page that I would recommend printing out: a simple summary of the categories of damage. Please note these figures exclude any allocation for punitive damages or attorney's fees for pursuit of this claim, both of which would be in play at trial.

1. Deferred Compensation	$175,000
2. Legal Fees / Expenses Paid	$367,000
3. Legal Fees Owing	$430,000
4. Present Value of Brian Johnson's Deal, Five Years	$1,900,000
TOTAL	**$2,872,000**

Though statements like this cut both ways at a mediation, DM needs to give great thought to the various costs of litigating against Mr. Smith, who has literally nothing left to lose. Aside from legal fees and expert expenses, DM has to consider how this might play out. To establish standards of care there will be discovery of internal policies and procedures as well as memos from insurers. Having lived the big firm life for so many years, I am certain those writings are unambiguous and would disapprove of the way this representation was documented. (I am not ashamed to say that, having read plenty of those memos, my reaction was usually along the lines of "I am going to mess this up.") Perhaps this discovery will lead to redacted versions of other multi-client engagement letters.

Though I don't try to play the publicity game, we know the press does like these sort of disputes. The facts on the duty/liability side, ranging from a shareholder-partner to multiple instances of nondisclosure, are the types that end up in the paper. I would not threaten that, but it is something to consider beyond the dollars and cents at stake.

A successful voluntary outcome eliminates the risk of a runaway verdict, the cost of defense, and the unquantifiable costs that may occur due to adverse publicity. We believe both sides are coming to the table in good faith and in recognition of all these factors and hope for success. If there is any further information you need, please let me know.

Sincerely,

Eric C. Lang