

GARY CLAPPER, 9/16/2019

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1 VIDEOTAPED DEPOSITION OF GARY CLAPPER, commenced
2 at 1:01 p.m. on September 16, 2019, at the offices of the
3 Arizona Corporation Commission, PLC, 1300 West Washington,
4 Phoenix, Arizona, before KELLY SUE OGLESBY, a Certified
5 Reporter, CR No. 50178, in and for the County of Maricopa,
6 State of Arizona, pursuant to the Rules of Civil
7 Procedure.

8 * * *

9 APPEARANCES

10 FOR PLAINTIFF:

11 OSBORN MALEDON, P.A.
12 BY: MR. GEOFFREY M.T. STURR
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14 21st Floor
15 Phoenix, Arizona 85012-2793
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17 FOR DEFENDANTS:

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

24 FOR WITNESS:

25 ARIZONA CORPORATION COMMISSION
BY: MR. PAUL KITCHIN
Enforcement Attorney, Securities Division
1300 West Washington Street
Phoenix, Arizona 85007
pkitchin@azcc.gov

ALSO PRESENT:

Chris Eichler, Legal Video Specialists

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Phoenix, Arizona
September 16, 2019
1:01 p.m.

* * *

(Deposition Exhibit No. 1096 was marked for
identification.)

VIDEOGRAPHER: We are on the record. This is
the videotaped deposition of Gary Clapper, taken by the
plaintiff in case number CV2017-013832, styled Peter S.
Davis versus Clark Hill, PLC, et al., filed in the
Superior Court of the State of Arizona, in and for the
County of Maricopa.

Today's date is September 16th, 2019, at
1:01 p.m. Our location is 1300 West Washington Street,
Phoenix, Arizona.

Kelly Oglesby is the certified reporter with
JD Reporting, located in Phoenix, Arizona. My name is
Chris Eichler. I'm the certified legal video specialist
with Legal Video Specialists, 3033 North Central Avenue,
Phoenix, Arizona.

Counsel, would you please identify yourself for
the record at this time, starting with the plaintiff's
counsel first, please.

MR. STURR: Geoffrey Sturr from Osborn Maledon,
representing the plaintiff, Peter Davis, as receiver for
DenSco Investment Corporation.

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1 MR. DeWULF: John Dewulf of Brockelman --
2 Coppersmith Brockelman, representing defendants David
3 Beauchamp and the law firm Clark Hill.

4 MR. KITCHIN: Paul Kitchin of the Arizona
5 Corporation Commission for the deponent.

6 VIDEOGRAPHER: Thank you, Counsel.

7 The court reporter will now swear in the
8 witness.

9

10 GARY CLAPPER,
11 called as a witness herein, having been first duly sworn,
12 was examined and testified as follows:

13

14

EXAMINATION

15

16 Q. (BY MR. DeWULF) would you please state your
17 name for the record.

18 A. Gary Clapper, c-l-a-p-p-e-r.

19 Q. Gary, you are currently the chief investigator
20 for the Securities Division of the Arizona Corporation
21 Commission?

22 A. That's correct.

23 Q. How long have you been in that position?

24 A. Since February of 2014.

25 Q. And what did you do prior to that, career-wise?

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1 A. I was an investigator here. I was hired
2 September 24th of 2001, and then promoted to the chief
3 investigator in February 2014.

4 Q. So did you join the Securities Division in 2001?

5 A. Correct.

6 Q. What did you do prior to that?

7 A. Prior to that I worked as an investigator for
8 Phil Hineman & Associates, a local law firm.

9 Q. And how long were you an investigator for
10 Hineman & Associates?

11 A. Approximately three years.

12 Q. And before that, what did you do from a career
13 standpoint?

14 A. I was an officer with the City of Tempe Police
15 Department for 20 years, hired in January of '78, and
16 retired later in January of '98.

17 Q. Could you summarize for us -- I want to ask a
18 little bit about your educational background, if I could.
19 Did you graduate high school?

20 A. Yes. I graduated from Trevor Brown High School
21 here in Phoenix in 1974.

22 Q. Did you attend any post-high school institutions
23 or get any sort of post-high school education?

24 A. Yes. I received a Bachelor of Science in
25 Criminal Justice from Northern Arizona University in May

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1 of 1977, and started the master's program until December
2 of '77, where I was hired by Tempe in January of 1978.

3 Q. You said you started it. Did you complete it?

4 A. No, I did not complete the master's program.

5 Q. And was that in criminal justice?

6 A. Yes, it was.

7 Q. Thanks.

8 Have you been deposed before, Mr. Clapper?

9 A. A number of times.

10 Q. Okay. And you probably have testified in court
11 a number of times, right?

12 A. Yes, sir.

13 Q. Let me just go through a couple of things.

14 You are represented by Mr. Paul Kitchin here
15 today?

16 A. Yes, sir.

17 Q. Okay. And I understand he is the enforcement
18 attorney with the Arizona Corporation Commission?

19 A. Correct.

20 Q. The -- you are under oath to tell the truth.

21 You understand that, right?

22 A. Yes, sir.

23 Q. And the things we say today are being recorded
24 by the court reporter and can be used in later court
25 proceedings.

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1 Do you understand that?

2 A. Yes, sir.

3 Q. You are under possible penalty of perjury if
4 what you were to say proves to be inaccurate or
5 misleading.

6 Do you understand that?

7 A. Yes, sir.

8 Q. My goal is to ask questions that you will
9 understand, and -- but if you don't understand them, will
10 you let me know and I will rephrase them?

11 A. Yes, sir, I will.

12 Q. If you answer the question I ask, I'll assume
13 you understood the question I asked.

14 Is that fair?

15 A. That's fair.

16 Q. I try to break about every hour or so, but if
17 you need something more frequent than that, just let me
18 know.

19 Is there anything today that would prevent or
20 inhibit your ability to understand and answer questions?

21 A. No, sir.

22 Q. Okay. Did you do anything to prepare for your
23 deposition today?

24 A. Just meeting with my counsel.

25 Q. Okay. And your counsel being Mr. Kitchin?

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1 A. Correct.

2 Q. How long did you meet?

3 A. Probably 15, 20 minutes at the most.

4 Q. Did you review any documents?

5 A. He provided me with documents that the Division
6 had provided. I am not sure to which side, but were
7 provided.

8 Q. Okay. As we said at the outset, I represent the
9 defendants in this litigation. It's a law firm, David
10 Beauchamp and his law firm, Clark Hill.

11 You understand that?

12 A. Yes, sir.

13 Q. On the -- the plaintiff in the case is a
14 receiver appointed by court.

15 Do you understand that?

16 A. Yes, sir.

17 Q. And it's Peter Davis.

18 Did you understand that?

19 A. Yes.

20 Q. And Peter is represented in this litigation by
21 the law firm Osborn Maledon.

22 Did you understand that?

23 A. Yes, sir.

24 Q. Have you, prior to today, interviewed with
25 anyone at Osborn Maledon in connection with the services

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1 you provided on the DenSco matter?

2 A. Not that I recall, sir. Not interviewed, no.

3 Q. Okay. So let me ask, did you communicate with
4 him in some other form?

5 A. I received a phone call, and I couldn't even
6 tell you what attorney's firm it was, requesting a
7 deposition, but, again, I can't tell you who that was
8 from.

9 Q. But you didn't talk substantively to anyone
10 about this case before today, any lawyer?

11 A. No, sir.

12 Q. Okay. And did you communicate with Peter Davis
13 in his capacity as receiver in this matter?

14 A. Back shortly after he was appointed, yes, sir.

15 Q. Did you just share with him what you knew about
16 the facts? What do you recall about it?

17 A. It's been so long, I don't recall a lot. I --
18 and I hate to speculate. I could have told him what I
19 knew at the time, but, again, I don't remember what it
20 was.

21 Peter Davis also requested that I go out to one
22 of Mr. Menaged's furniture stores when they were trying to
23 take control of it in Glendale and be there, as there was
24 possibly going to be a dispute with the landlord, but that
25 was all.

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1 Q. Did you go out there?

2 A. Yes, I did.

3 Q. Was there any dispute or problem?

4 A. I -- no, sir, there wasn't. And, I'm sorry, I
5 need to let you finish asking the question first.

6 No, sir, there wasn't. And I had contacted the
7 Glendale Police Department prior to that day to have an
8 officer stand by in case there was any dispute.

9 Q. Did you ever communicate with this Menaged,
10 Mr. Menaged?

11 A. Not that I recall at all.

12 Q. In looking at the file, and we are going to go
13 through some documents this afternoon, but as I look at
14 the file, I see that Wendy Coy was also involved on behalf
15 of the Securities Division of the Corporation Commission
16 as it relates to DenSco.

17 Do you recall that?

18 A. Yes, sir.

19 Q. And her title is director of enforcement for the
20 Securities Division?

21 A. I believe at the time it was. The title is now
22 the assistant director of securities/enforcement.

23 Q. Did her duties change when her title changed --

24 A. I don't --

25 Q. -- if you know?

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1 A. I don't know, sir --

2 Q. Okay.

3 A. -- exactly what the duties would have changed
4 to.

5 Q. I have seen a reference to a William Woerner,
6 W-o-e-r-n-e-r, in the file.

7 Did Mr. Woerner work with you in connection with
8 the DenSco matter?

9 A. He was the investigator I assigned to the
10 matter.

11 Q. So if you could explain for us kind of how you,
12 Ms. Coy, and Mr. Woerner worked together in connection
13 with getting involved with this DenSco matter.

14 MR. KITCHIN: Gary, before you answer, be sure
15 not to discuss the substance of the communications between
16 you and them.

17 Do you understand?

18 THE WITNESS: No.

19 MR. KITCHIN: Okay. So I'm going to object to
20 the extent that the question seeks attorney-client
21 privileged information. I don't know that it does, but I
22 just want to caution you that what you say to Wendy, what
23 you say to Bill, what they say to you isn't -- don't
24 answer about that.

25 THE WITNESS: Okay. I recall Ms. Coy getting

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1 with me some morning, I don't recall if it was a Monday
2 morning or what morning of the week it was, and she said
3 she had talked to --

4 MR. KITCHIN: Hold on. Stop there.

5 Can you -- can you repeat what the question is?

6 Q. (BY MR. DEWULF) I think I was just asking for
7 how the team worked together in doing this job, but I
8 could be wrong. And let me ask that question, what roles
9 you, Mr. Woerner, and Wendy Coy played in connection with
10 the DenSco matter.

11 A. My role would have been, after receiving
12 information that Denny Chittick had possibly committed
13 suicide in I believe it was Chandler, contacting the
14 Chandler Police Department to attempt to verify that.

15 I later requested copies of their reports
16 regarding the matter and photographs, absent any
17 photographs that included any shots of the body itself in
18 the matter.

19 Q. Do you recall, Mr. Clapper, that his body was
20 discovered on July 28th of 2014 -- 2016?

21 A. I don't recall the date.

22 Q. Okay. Were you able to confirm through your
23 review or research that Mr. Chittick had committed
24 suicide?

25 A. Yes, sir.

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1 Q. I'm going to show you a document that's been
2 marked 1096. I think it's right in front of you. It
3 shows that there is an email from you to David Beauchamp,
4 dated August 3rd, 2016, giving your contact information.

5 Do you see that?

6 A. Yes, sir, I do.

7 Q. Does this refresh your memory that you would
8 have gotten involved in investigating the DenSco matter on
9 or about August 3rd, 2016?

10 A. It could have been before that date. I don't
11 know the exact date, sir.

12 Q. All right. Let me -- let me send you or show
13 you another document, and this is marked Exhibit 217.

14 MR. DeWULF: Did I give you a copy, Paul?

15 MR. KITCHIN: I just have this 1096.

16 MR. DeWULF: All right. Let me see if I have
17 got a copy for you.

18 MR. STURR: Here you go. Previously marked as
19 217?

20 MR. DeWULF: Yeah.

21 Q. (BY MR. DeWULF) All right. So this -- why
22 don't you look at that really quickly, and I'm going to
23 ask you a question about it, that is Exhibit 217. The
24 letter --

25 MR. KITCHIN: It's two-sided.

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1 Q. (BY MR. DEWULF) So the letter from Ms. Coy to
2 David Beauchamp, dated August 4, 2016, could you look at
3 that really quickly, and...

4 A. Yes, sir.

5 Q. All right. So the first sentence of this letter
6 says to Mr. Beauchamp, "Thank you for contacting the
7 Securities Division yesterday."

8 Do you recall that David Beauchamp contacted the
9 Securities Division of the Corporation Commission on or
10 about August 3rd in connection with the DenSco matter?

11 A. I don't recall if we called him or he called us.
12 I don't recall.

13 Q. If Ms. Coy, the director of enforcement, were to
14 say or at least the letter would reflect that he contacted
15 you, you wouldn't disagree with it, right?

16 A. I would not disagree with that, no.

17 Q. It says, "I appreciate your willingness to speak
18 with us and to take control of a very sad and problematic
19 situation."

20 Did I read that correctly?

21 A. Yes, sir.

22 Q. Did you understand -- and I'm trying to get a
23 feel for things here, but did you understand when you
24 first got involved in this matter that it was sad and
25 traumatic for the family because of the circumstances, the

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1 suicide and those things?

2 A. Yes, sir.

3 Q. Is it -- would it be consistent, at least not
4 inconsistent with your memory, that you got actively
5 involved in investigating the matter about August 4th,
6 August 3rd or August 4th?

7 A. It's going to be somewhere around that time.

8 Q. All right.

9 A. Again, I don't know the exact date.

10 Q. Okay. And other than you mentioned a moment ago
11 that you did some research in connection with the Chandler
12 Police Department records, beyond that, what did you do
13 when you first got involved in the DenSco matter, if you
14 can recall?

15 A. I don't recall offhand exactly what I did.

16 Q. Okay. Do you know whether -- this letter seems
17 to indicate that there had been an actual communication
18 either on the 4th or on the 3rd between Mr. Beauchamp and
19 Wendy Coy.

20 Do you know whether or not that's true?

21 A. Again, I don't know. I could have been present
22 during the phone call. I just don't know.

23 Q. Do you remember when you first met David
24 Beauchamp?

25 A. The only time I have met him in person was at

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1 his office.

2 Q. And do you remember when that was?

3 A. I don't recall the exact date of the meeting.

4 Q. Do you remember the circumstances?

5 A. We had wanted to meet with Mr. Beauchamp, "we"
6 meaning Wendy Coy and William Woerner and myself, to go
7 over some details of the matter.

8 Q. So we will see in a moment that there was a
9 meeting on August 10, done shortly after you all sent out
10 a subpoena for documents.

11 Do you think that the meeting that you would
12 have had with Mr. Beauchamp would have been on or about
13 August 10?

14 A. Yes, sir.

15 Q. It was early in the process, right?

16 A. Very early, yes, sir.

17 Q. Okay. So before you had this meeting on
18 August 10 with David Beauchamp -- let me ask, who was in
19 attendance at the meeting?

20 A. Myself, William Woerner, and Wendy Coy. Shawna,
21 I believe -- I don't recall her last name offhand -- was
22 in another room at the law firm listening on a speaker.

23 Q. Do you remember how long the meeting went?

24 A. Not offhand, no, sir.

25 Q. You indicated it was Mr. Woerner, Ms. Coy,

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1 yourself, and was David Beauchamp in that meeting?

2 A. Yes, he was.

3 Q. Okay. Do you remember what was said by anyone
4 at that meeting?

5 A. Not directly, no, sir.

6 Q. Do you have any memory at all you can share with
7 us?

8 A. Not independent, no, sir. I do remember we
9 were -- there were boxes of documents that were in the
10 photographs that were in the Chandler house that somehow
11 were tied to DenSco, that we were trying to get those
12 boxes to go through the records.

13 Q. And did -- that's helpful. Thanks.

14 So did you ever visit the Chandler house?

15 A. No, sir, I did not.

16 Q. All right. So other than the meeting that you
17 would have had at Mr. Beauchamp's law office that you have
18 described on August 10, and the request or the attending
19 the Menaged furniture store, did you go to any location
20 during the time you served as an investigator on the
21 DenSco matter other than those two locations, that you can
22 recall?

23 A. No, sir.

24 Q. All right. And could you estimate for us how
25 many meetings you would have had with Mr. Woerner and

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1 Ms. Coy, or Ms. Coy, in connection with serving as an
2 investigator?

3 MR. KITCHIN: Objection; attorney-client
4 privilege. Please don't answer.

5 MR. DeWULF: The number of meetings is
6 privileged?

7 MR. KITCHIN: I think so.

8 MR. DeWULF: I'm not asking for what was
9 communicated. Let me just make sure, because I don't -- I
10 don't want to waste time. I just want to be clear what
11 the State's position is.

12 Are you saying that any communication between
13 Mr. Woerner and Mr. Clapper is privileged?

14 MR. KITCHIN: Yes.

15 MR. DeWULF: Even if counsel is not present?

16 MR. KITCHIN: Yes. They are coworkers who
17 jointly work as agents for counsel.

18 MR. DeWULF: And whose counsel?

19 MR. KITCHIN: The Securities Division as an
20 organization and various individuals.

21 MR. DeWULF: So is the -- and I'm just trying to
22 figure this out, Paul. I want to make sure I understand.

23 So is it your position that the privilege is
24 owned by the Securities Division?

25 MR. KITCHIN: The privilege is owned by the

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1 Corporation Commission, and the Securities Division
2 represents the Corporation Commission. And --

3 MR. DeWULF: And -- go ahead.

4 MR. KITCHIN: And they are agents of the law
5 firm working for the client.

6 Q. (BY MR. DeWULF) Okay. Let me ask, Mr. Clapper,
7 do you know, are there any formal or informal
8 understandings as it relates to you or your office
9 cooperating with the receiver in this matter?

10 MR. KITCHIN: Objection; attorney-client
11 privilege.

12 So you may have some understanding apart from
13 what you have been told by anyone who works at the
14 Securities Division, but please don't answer with respect
15 to any communications within the Securities Division.

16 THE WITNESS: Can you ask the question again,
17 sir?

18 Q. (BY MR. DeWULF) Yeah.

19 Are you aware of any formal or informal
20 understanding between the Securities Division and the
21 receiver in this matter appointed on behalf of DenSCO?

22 MR. STURR: Object to the form.

23 THE WITNESS: I'm not --

24 MR. KITCHIN: The Commission will join that
25 objection. Sorry to interrupt you.

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1 Q. (BY MR. DeWULF) Go ahead.

2 THE WITNESS: Answer?

3 MR. KITCHIN: Yes, please.

4 THE WITNESS: I am not aware of any formal
5 agreement between the receiver and the commission. In
6 past receivership cases, it has always been informal to
7 cooperate with the receiver.

8 Q. (BY MR. DeWULF) And is there, to your
9 knowledge, such an agreement in this case to cooperate
10 with the receiver?

11 MR. STURR: Object to the form.

12 MR. KITCHIN: Objection; form. Also objection
13 attorney-client privilege. And, again, please don't
14 answer with respect to any understanding that was told to
15 you by anyone within the Securities Division.

16 THE WITNESS: My knowledge is it's still the
17 same informal agreement with the receiver.

18 Q. (BY MR. DeWULF) And your understanding
19 generally as to how these informal cooperation agreements
20 work, can you describe for us what it would entail?

21 A. It was just cooperating to get the receiver
22 information they would need to be able to run the company,
23 recover assets. General things such as that.

24 Q. Does it extend to helping in legal matters,
25 being available to testify, serve as a witness, that kind

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1 of thing?

2 MR. KITCHIN: Objection.

3 Please don't answer.

4 Objection; attorney-client privilege. I don't
5 think there is any way he is going to be able to answer
6 that question without revealing privileged communications.

7 MR. DeWULF: I don't understand how the
8 existence of an agreement is privileged at all.

9 MR. KITCHIN: Well, you asked what's his
10 understanding. His understanding might have been
11 communicated to him by someone in the office.

12 MR. DeWULF: But it's predicated upon his answer
13 that he believes that the cooperation agreement in this
14 case is consistent with the agreements in other cases, so
15 I'm asking for his general knowledge of how that works.

16 MR. KITCHIN: And I'm saying his general
17 knowledge of how that works, it has to do with how it's
18 been communicated to him by counsel and the folks within
19 the Securities Division.

20 MR. DeWULF: Well, he would gain an
21 understanding of that by a variety of things, and he has
22 been doing this job now for many, many years. I don't see
23 how his telling us what the broad terms of an informal
24 agreement are reveals any sort of communication with
25 counsel.

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1 MR. KITCHIN: I think it does.

2 MR. DeWULF: So are you instructing this witness
3 that he cannot, on his general knowledge and experience,
4 talk at all about the informal agreements that typically
5 are entered into between the investigation unit and
6 receivers?

7 MR. KITCHIN: Yes.

8 MR. DeWULF: All right.

9 MR. KITCHIN: Unless you are asking about his
10 communications directly with the receiver, but I don't
11 understand that to be the limit of your question.

12 MR. DeWULF: I'm just trying to get an idea of
13 the general parameters of what it is that he understands
14 may be an arrangement, either formal or informal, with the
15 receiver. I think that we have a right to explore that
16 with him.

17 I'm not asking for the communications. It
18 would -- it seems to me that even at some point a lawyer
19 were to tell him there was such an arrangement, he would
20 ultimately learn about that outside of them anyway,
21 because he would have been acting pursuant to whatever it
22 was. So I don't see it revealing any sort of privileged
23 communication.

24 I respect your, you know, your ability to assert
25 it if you wish. I just don't see it applying in this

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1 case. And let me just ask the question in a broad way and
2 you can instruct him not to answer.

3 Q. (BY MR. DEWULF) So, Mr. Clapper, as I
4 understand it, you have been serving as in the
5 investigative unit since 2001 at the Corporation
6 Commission, right --

7 A. That is --

8 Q. -- the Securities Division?

9 A. That is correct, sir.

10 Q. And you have been the chief of that division
11 since February of 2014, right?

12 A. Correct.

13 Q. Okay. And during that entire time, would it be
14 fair to say that there were a number of receiverships that
15 would have been appointed to oversee companies that had
16 become insolvent?

17 A. Yes, sir.

18 Q. Okay. How many would you guess over that period
19 of time?

20 A. That I have been involved with, probably two or
21 three.

22 Q. Okay. And then as it relates to the two or
23 three that you would have been involved in, what is your
24 general understanding as to how the investigative unit in
25 the Securities Division would work with the receiver to

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1 aid the receiver in its efforts?

2 MR. KITCHIN: Same objection. Please don't
3 answer.

4 MR. DeWULF: Don't you think that he would have
5 to reveal that to juries and judges and third parties?
6 That's not something that would ever be maintained as
7 completely privileged, right?

8 MR. KITCHIN: Maybe some aspects of it wouldn't,
9 but the question you are asking I think is.

10 MR. DeWULF: I'm asking generally, as it relates
11 to these matters where he has had cooperation agreements
12 or informal understandings, what that meant.

13 Q. (BY MR. DeWULF) Let me ask it: Can you testify
14 about what you understood that arrangement was without
15 disclosing something a lawyer told you?

16 MR. KITCHIN: Or anyone in the Securities
17 Division told you.

18 THE WITNESS: I believe so.

19 Q. (BY MR. DeWULF) Could you share that with us?

20 MR. KITCHIN: Please -- please don't yet.

21 I need to discuss with him what he thinks the
22 answer is so that I make sure that his understanding is
23 correct.

24 MR. DeWULF: All right.

25 MR. KITCHIN: Can we pause for a few minutes?

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1 MR. DeWULF: Yeah, we can do that.

2 VIDEOGRAPHER: Off the record. The time is
3 1:28 p.m. This is the end of media one.

4 (A recess was taken from 1:28 p.m. to 1:41 p.m.)

5 (Deposition Exhibits No. 1097 and 1098 were
6 marked for identification.)

7 VIDEOGRAPHER: Back on the record. The time is
8 1:41 p.m. This begins media two.

9 MR. DeWULF: Did you want to say anything?

10 MR. KITCHIN: No.

11 Q. (BY MR. DeWULF) Okay. Is there, Mr. Clapper,
12 any sort of understanding or informal agreement with the
13 receiver going forward as to the -- yourself or others in
14 the enforcement division helping in connection with the
15 litigation?

16 MR. KITCHIN: And, again, just to clarify,
17 please don't answer about what you have just been told by
18 other people.

19 THE WITNESS: Are you talking currently going
20 forward or in the past?

21 Q. (BY MR. DeWULF) well, let's step back. Let's
22 say in the past, and then we'll -- and then I'll ask you
23 about going forward.

24 A. I would give you the same answer. We would
25 provide the information to the receiver so they could run

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1 the business or possibly gather assets.

2 Q. Okay. And going forward, do you have some
3 understanding with the receiver?

4 A. I have no understanding with them. William
5 Woerner is my investigator who is assigned to the case. I
6 have not been involved in some time.

7 Q. Okay. So you don't know one way or the other
8 whether you are -- whether the investigative portion of
9 the Securities Division or others have any sort of
10 understanding with the receiver to help them in the
11 litigation?

12 A. I don't know of any agreement to help in
13 litigation, per se. If there is still information the
14 receiver would need and we have it, pertaining again to
15 the business or assets, we would give that to them.

16 Q. And how would they go about getting that
17 information?

18 A. They would most likely contact Mr. Woerner, if
19 they had specific things they needed to ask, if he had it.

20 Q. Is Mr. Woerner the main interface with the
21 receiver at this point in the -- with respect to the
22 Securities Division's efforts in the DenSco matter?

23 A. I believe he would be, but I don't know if he
24 has had any contact in some time with them.

25 Q. Okay. If the receiver wished to get information

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1 from Mr. Woerner, do they need to go through counsel,
2 Mr. Kitchin, or others, or can they do so directly?

3 MR. KITCHIN: Objection; attorney-client
4 privilege.

5 Please don't answer if you have to reveal your
6 communications with us or anyone within the office.

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

8 A. Can you ask it again?

9 Q. When we wanted to talk to you about what you
10 knew in the case, it was made clear to us that we needed
11 to work through counsel and we ended up working through
12 Mr. Kitchin.

13 I'm asking whether the receiver has a similar
14 obligation that if they want to speak to either you or
15 Mr. Woerner in connection with DenSco matters, they can do
16 so directly or whether they have to go through counsel?

17 A. To my understanding, they could contact
18 Mr. Woerner directly.

19 Q. Okay. So let me follow up on an earlier
20 question and answer.

21 MR. DeWULF: I'm off this topic, unless you want
22 to have -- do you want to say something?

23 MR. KITCHIN: If it's a convenient point. Could
24 we go off the record for a moment?

25 MR. DeWULF: Sure.

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1 VIDEOGRAPHER: We are off the record at 1:44,
2 ending media two.

3 (A recess was taken from 1:44 p.m. to 1:46 p.m.)

4 VIDEOGRAPHER: We are back on the record. The
5 time is 1:46 p.m. This begins media three.

6 Q. (BY MR. DEWULF) Mr. Clapper, I just wanted to
7 confirm an off-the-record discussion we had with
8 Mr. Kitchin, and it was that to the effect that if anyone
9 were to seek to communicate with you, whether it's the
10 receiver or counsel in this case, they needed to contact
11 Mr. Kitchin first and work through him to -- to speak to
12 you or others from the Securities Division.

13 Does that fairly summarize?

14 A. Yes.

15 Q. Okay. So let me go back to an earlier comment
16 you made when we talked about the August 10 meeting, which
17 you believe was the one meeting you had with David
18 Beauchamp.

19 Do you recall that testimony?

20 A. Yes, sir.

21 Q. And I asked you if you remembered what was said
22 in that meeting, and you said not directly, I think was
23 your answer, and so I have got to follow up and I should
24 have at the time.

25 Do you remember anything about what was said by

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1 anyone in that meeting?

2 A. Not specifically. I know we were asking what
3 the relationship was between DenSco and Mr. Beauchamp, but
4 as to specifically what was said, I don't recall, sir.

5 Q. Do you remember what Mr. Beauchamp said about
6 the relationship between him and DenSco, what it was?

7 A. I don't directly recall.

8 Q. All right. So -- and when -- when you say
9 "directly," I just want to make sure I -- indirectly or
10 generally, you don't have a memory either?

11 A. No, sir.

12 Q. All right. And do you think you ever met with
13 Mr. Beauchamp on any other occasion, other than this
14 August 10 meeting at his office?

15 A. I don't recall.

16 Q. All right.

17 A. We could have gone back to the office to see if
18 we could get the boxes. I don't recall.

19 Q. Do you remember, you mentioned Shawna Heuer --
20 I'm not sure you remembered her last name, but her last
21 name is Heuer -- who was Denny Chittick's surviving
22 sister.

23 Do you recall that?

24 A. Yes, sir.

25 Q. And you mentioned that you believe she was on

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1 a -- listening in in another location in the law office.

2 Do you recall that?

3 A. Correct.

4 Q. Did she participate in the conversation?

5 A. I don't recall her participating in the
6 conversation, but she did come in after we were done
7 talking. And, again, discussion is over boxes and being
8 able to get access to things.

9 Q. So are you saying that she came in to meet with
10 you in the room you were in at the law office?

11 A. Correct.

12 Q. Okay. And the discussion then was primarily
13 about getting information to the Securities Division?

14 A. Correct.

15 Q. All right. Do you remember what she described
16 in terms of documents and where they were?

17 A. I don't recall where the boxes actually were, if
18 they were still at the house, at the law firm. She also
19 had a computer that we wanted to get access to.

20 Q. Okay. You identified a meeting with
21 Mr. Beauchamp.

22 Do you remember any phone calls with
23 Mr. Beauchamp?

24 A. There were phone calls with him. I can't tell
25 you how many. It would have been under ten.

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1 Q. Do you remember the substance of any
2 conversations you may have had with Mr. Beauchamp during
3 any one of those phone calls?

4 A. Again, specifically, no, I do not.

5 Q. Do you know whether you spoke to Shawna Heuer
6 other than this occasion on August 10 after the formal
7 meeting, but when she came in to the room to meet you?

8 A. I don't recall.

9 Q. All right. Did you have any meetings or
10 discussions with anyone you understood to be a Clark Hill
11 lawyer, other than David Beauchamp?

12 A. Involving this case, no, sir.

13 Q. All right. Did you ever speak to an individual
14 named Robert Koehler, that's K-o-e-h-l-e-r?

15 A. I don't know if I spoke with him directly or
16 Mr. Woerner would have.

17 MR. DeWULF: Counsel, if I were to ask him about
18 what Mr. Woerner told him, are you going to object to
19 that?

20 MR. KITCHIN: Yeah.

21 MR. DeWULF: So in the gathering of facts in
22 connection with the DenSco matter where two nonlawyers are
23 talking about what their investigation reveals, you think
24 that's privileged?

25 MR. KITCHIN: Yes, because they are

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1 communicating only for the purposes of passing that
2 information on to the lawyer to be passed on to the
3 client, to represent the client.

4 Q. (BY MR. DeWULF) Is there any way you can tell
5 me what Mr. Woerner may have learned in his discussion
6 with Mr. Koehler without revealing something that may be
7 privileged?

8 A. I can tell you my understanding was Mr. Koehler
9 had a box of documents pertaining to active loans that
10 DenSco had, and that the Division wished to get that box
11 back.

12 Q. Do you recall when your involvement with regard
13 to investigating DenSco terminated?

14 A. It would not have been long after the receiver
15 is appointed, and they basically took charge at that
16 point, that my involvement would have ended shortly after.

17 Q. So there was an observation by David Beauchamp,
18 and there actually by a lawyer named Jim Polese, that
19 receiverships can be expensive matters because of the
20 number of professionals involved and their fees.

21 Do you agree with that, do you disagree with
22 that, or do you have no opinion about that?

23 A. What I have been told is receiverships --

24 MR. KITCHIN: Hold on. Before you tell him what
25 you were told, don't tell him if it was something you were

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1 told by anyone within the office.

2 Sorry to interrupt.

3 MR. STURR: And object to the form.

4 Q. (BY MR. DeWULF) Can you answer the question?

5 A. I can't tell you where I have heard the
6 information, but I have heard receiverships can be
7 expensive.

8 Q. And have you had any involvement, while you were
9 with the Corporation Commission, in bankruptcies of
10 entities?

11 A. I am sure I have. I don't recall specifics, no.

12 Q. Was it your experience that bankruptcies can
13 also be expensive?

14 A. That, I don't know, sir.

15 MR. STURR: Object to the form.

16 Q. (BY MR. DeWULF) Would it -- would it be true
17 that -- I think this is true, but I just want to make
18 sure -- you typically don't get involved as an
19 investigator in a matter unless the matter involves
20 corporations with potential securities law issues?

21 A. There would be a security nexus either with the
22 organization or individual.

23 Q. And so there would be typically investors for
24 those entities, right?

25 A. Correct, sir.

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1 Q. And when you talked earlier about you gaining an
2 understanding that receiverships or bankruptcies can be
3 expensive, were you talking about the cost relative to the
4 recovery for the investors?

5 MR. STURR: Object to the form.

6 THE WITNESS: I don't know. I'm talking total
7 cost.

8 Q. (BY MR. DEWULF) Okay.

9 A. I have no idea who it would cost.

10 Q. All right. Did you -- and we will look at some
11 emails, but I'm just asking generally, do you recall
12 interviewing any investors in DenSco in connection with
13 your duties?

14 A. I did interview some. I don't recall how many.

15 Q. Do you remember anything about what you learned
16 from those interviews?

17 A. Again, it's been so long since I interviewed
18 them, it would be hard to be specific about it.

19 Q. Can you be general? Can you help us at all on
20 that?

21 A. The general understanding was the investors put
22 money into DenSco that was going to be lent out for
23 individuals doing fix and flips on residences.

24 Q. Did any of the investors share with you any
25 information that they had been provided by either DenSco

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1 or Mr. Chittick?

2 A. There was some loan-to-value ratios. I don't
3 recall exactly what they, DenSco, put as their benchmark.

4 Q. Did you learn at some point in time that David
5 Beauchamp, that his relationship with DenSco wasn't --
6 that he was out of the loop on some of the information at
7 the company for some period of time?

8 MR. STURR: Object to the form.

9 Q. (BY MR. DEWULF) Let me rephrase it.

10 when you first talked to Mr. Beauchamp and may
11 have communicated to him on the phone, did he ever convey
12 to you that he had been out of the loop on what was going
13 on at the company for some period of time?

14 A. I don't recall.

15 Q. Do you remember dealing with any lawyers
16 representing investors in DenSco?

17 A. I don't recall.

18 Q. And you may -- I may have asked this, and I
19 apologize.

20 Do you recall whether you spoke to Shawna Heuer
21 on the phone at any point in time?

22 A. I don't recall if I did or not, sir.

23 Q. Did you ever learn that Mr. Koehler, who had --
24 had had a friendship with Denny Chittick, chose to kind of
25 back out of having an active role in gathering information

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1 after Mr. Chittick's death, or do you have any knowledge
2 of that one way or the other?

3 A. I don't know, sir.

4 Q. All right. Would it be fair to say that, well,
5 did you learn at some point in time that Denny Chittick
6 had been the sole shareholder, officer, director of
7 DenSco?

8 A. Best that I remember, he was the sole
9 individual.

10 Q. Do you recall that at some point in time either
11 you or Ms. Coy wanting Mr. Beauchamp to stay involved in
12 connection with DenSco matters, in order to help before a
13 receiver got appointed?

14 MR. STURR: Form and foundation.

15 THE WITNESS: I believe so, but I don't recall
16 the exact discussions.

17 Q. (BY MR. DEWULF) Okay. Looking back on it,
18 based on your own experience, was David Beauchamp helpful
19 in connection with what you were trying to accomplish with
20 the Securities Division?

21 MR. STURR: Object to the form.

22 MR. KITCHIN: Objection; work product.

23 Please don't answer with respect to your mental
24 impressions or interpretations of your observations.

25 THE WITNESS: Could you ask the question again?

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1 MR. DeWULF: Can you read it again, Kelly.

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

3 THE WITNESS: For the brief time I was involved,
4 he did communicate.

5 Q. (BY MR. DeWULF) We will look at this in a
6 little bit, but do you recall that David Beauchamp, before
7 the receiver got appointed, helped in collecting money on
8 some of the loans that DenSco had made?

9 A. Yes, I do.

10 Q. And that was helpful to DenSco in the sense it
11 brought monies in?

12 A. Well, I should back up. He said that there were
13 escrow companies who needed some of the files out of the
14 box that Mr. Koehler had given to Mr. Woerner, that the
15 Division then possessed, to be able to close escrow on the
16 houses. How much of an involvement Mr. Beauchamp had
17 outside of requesting the files, I don't know.

18 Q. So you were never able to confirm that some of
19 those loans actually got paid, the money got collected?

20 A. We never saw that, no. We just gave the files
21 up that the escrow companies needed.

22 Q. But the belief was that that information was
23 released so that loans could be closed, right? That
24 payments, the final payments on the loan could be made?

25 A. That's correct, sir.

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1 Q. Okay. Any reason, sitting here today, to
2 believe that on those loans where the loan files were
3 conveyed and the releases were provided, that those loans
4 were not collected upon?

5 A. I would not have any information on that.

6 Q. Would anyone within the Corporation Commission
7 know the answer to that question? Do you know?

8 A. I don't believe so.

9 Q. Okay. Sitting here today, Mr. Clapper, do you
10 have any criticism of David Beauchamp in connection with
11 what he did to work with you and the Corporation
12 Commission?

13 MR. KITCHIN: Objection. Again, work product.
14 It sounds like you are asking for his conclusions. And if
15 you have questions about, like, specific things that were
16 or weren't done, I have got no objection to that, but
17 questions about his mental impression and interpretation
18 of the events, I'm going to be objecting to as work
19 product.

20 MR. DeWULF: I'm asking for --

21 MR. STURR: Object to the form. Sorry. Belated
22 objection to form.

23 MR. DeWULF: He is the person who is in charge
24 of the investigation, subject, I guess, to some direction
25 by Ms. Coy. And I'm asking if Mr. Beauchamp, if he has

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1 any complaints about what Mr. Beauchamp did in that
2 connection. I -- I don't see how that's work product.
3 It's just what his experience was.

4 MR. KITCHIN: Right. Well, you are asking, when
5 you ask for his complaints, you are asking him to make
6 value judgments about things that were or weren't done,
7 and work product includes the mental impressions of the
8 attorney and the mental impressions of the investigators
9 who worked for the attorney and passed them along to the
10 attorney.

11 MR. DeWULF: No, I'm not asking anything about
12 the lawyers. I'm not asking about Ms. Coy. I am asking
13 for this witness's impressions --

14 MR. KITCHIN: Yes.

15 MR. DeWULF: -- and I have the right to explore
16 this. These are facts.

17 MR. KITCHIN: This witness gathers mental
18 impressions for the purpose of relaying them to attorneys.

19 Q. (BY MR. DeWULF) All right. Then let me -- let
20 me home in on a little bit of what I think may allow you
21 to answer the question.

22 As I understand it, Mr. Clapper, for a period of
23 time, certainly before the receiver got appointed, you
24 were seeking to gather information and documents in
25 connection with your duties at the Corporation Commission.

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1 Fair?

2 A. Correct.

3 Q. In connection with your specific duties and what
4 you were trying to accomplish while you were in that role
5 as an investigator for the Corporation Commission, did you
6 have any experience with David Beauchamp that you were
7 dissatisfied with or unhappy with?

8 MR. KITCHIN: Don't answer.

9 same objection. work product. If you are
10 asking for his satisfaction, you are asking for what would
11 satisfy him, you are asking for his impressions about the
12 interaction and not just the facts of what it were -- what
13 it was.

14 Q. (BY MR. DeWULF) Did you ever ask for
15 information for Mr. Beauchamp that you weren't able to
16 get?

17 A. We asked Mr. Beauchamp, again, documents in the
18 computer, which we were told that Mr. Polese was then
19 representing Shawna and we hit a roadblock there.

20 Q. Okay. Before Shawna Heuer retained counsel for
21 the estate, and you mentioned Mr. Polese, that's the law
22 firm of Gammage & Burnham?

23 A. I don't know what law firm, sir.

24 Q. Okay. For the record, Mr. Polese is a lawyer
25 with Gammage & Burnham.

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1 You understood that Mr. Polese was in a firm
2 that was different than Mr. Beauchamp's law firm, right?

3 A. Correct.

4 Q. All right. And did you understand from
5 Mr. Polese's involvement that the estate was asserting
6 certain claims to privilege?

7 A. It was as to who actually had the estate at that
8 point, and then were they asserting the privilege, yes.
9 So there were a number of things up in the air at that
10 point.

11 Q. Have you -- and I know you are not a lawyer,
12 trained and educated as a lawyer, but I'm guessing you
13 have been around the attorney-client privilege before in
14 connection with your job.

15 Is that fair?

16 A. Yes, sir.

17 Q. And so you understood that when Mr. Polese got
18 involved representing the estate, they were asserting
19 certain privileges?

20 A. Yes, sir.

21 Q. And that slowed down the process of you getting
22 documents?

23 A. Yes, sir.

24 Q. Before Mr. Polese got involved, was -- was it
25 your experience that Shawna Heuer and David Beauchamp were

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1 cooperative in getting you information?

2 MR. KITCHIN: Objection; work product.

3 Please don't answer.

4 Same thing. If you are asking for -- you are
5 asking for his characterization about cooperativeness.

6 MR. DeWULF: What would you like me to ask --

7 MR. KITCHIN: I'd be --

8 MR. DeWULF: -- besides -- tell me why not.

9 what would you like me to ask so that I can find out what
10 his experience was?

11 MR. KITCHIN: You -- you asked a question
12 about -- about Polese, did you ask Polese for anything
13 that you didn't get, and that's strictly a factual
14 question. That does involve his impression.

15 MR. DeWULF: All right. Let me ask it that way.

16 Q. (BY MR. DeWULF) Mr. Clapper, I'm sorry. This
17 is going to take a lot longer today than I had hoped, but
18 I understand Counsel's concerns.

19 So were there, other than when Mr. Polese got
20 involved and there was a slowdown of the document
21 production, before he got involved, was there information
22 that you were seeking from David Beauchamp or Shawna Heuer
23 that you were not able to get?

24 A. Again, we were looking for the boxes and the
25 computer. Mr. Polese, to my remembering, had not been

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1 retained, but Shawna was looking for counsel.

2 Q. Okay. Were you able to get some information
3 before Mr. Polese got involved?

4 A. I don't recall.

5 Q. Do you remember Mr. Koehler giving you some
6 information, or do you remember that?

7 A. Well, again, from Mr. Beauchamp, I don't recall.
8 We did get the one box from Mr. Koehler.

9 Q. Okay. When you released files, loan files back
10 to Mr. Beauchamp so that he could pursue the collection on
11 some loans that DenSco had made, that makes me believe you
12 possess some loan files.

13 Do you recall that?

14 A. I would agree with that.

15 Q. Do you remember how you got the loan files?

16 A. I believe Mr. Woerner picked them up from
17 Mr. Koehler.

18 Q. Okay. Do you remember if Mr. Woerner collected
19 any other documents or information from DenSco or
20 Mr. Chittick, Mr. Chittick's files before Mr. Polese got
21 involved?

22 A. I don't recall, sir.

23 Q. Was it your understanding that in connection
24 with Mr. Beauchamp providing information, that he was
25 deferring to Mr. Polese in his role as counsel for the

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1 estate?

2 MR. STURR: Object to the form.

3 MR. KITCHIN: Go ahead. Sorry.

4 THE WITNESS: Could you ask that again, sir?

5 Q. (BY MR. DEWULF) Yeah.

6 You indicated a moment ago that your
7 understanding was that Mr. Polese was concerned about
8 privileged information being provided, and so that slowed
9 the document production down.

10 Is that fair?

11 A. I would agree with that.

12 Q. Did you understand that Mr. Beauchamp was
13 deferring to Mr. Polese on those concerns as it related to
14 the production of information?

15 A. Well, initially I think he was deferring to
16 Shawna to retain counsel, and eventually Mr. Polese when
17 he was retained.

18 Q. Okay. Do you recall there was some concern by
19 Shawna about what would be personal or confidential
20 information of Denny Chittick's that might be on his
21 computer in the files?

22 A. I do recall that.

23 Q. Okay. Let me show you Exhibit 1097.

24 MR. KITCHIN: Here you go.

25 MR. STURR: Thanks.

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1 Q. (BY MR. DEWULF) So at the top it looks like
2 there is an email to you and Wendy Coy, dated August 5,
3 2016.

4 Do you see that?

5 A. Yes, sir, I do.

6 Q. And it looks -- so it's right up at the very
7 top. It says, "Sorry for the delay. Here is the email
8 that I sent to the DenSco's investors."

9 Do you see that?

10 A. Yes, sir, I do.

11 Q. And do you recall that once you and Ms. Coy got
12 involved with respect to investigating DenSco, that
13 Mr. Beauchamp was copying you on communications that he
14 was sending to his -- to the DenSco investors?

15 A. I can speak to the ones we received. I don't
16 know if there were other ones.

17 Q. Did you ever become aware that there were
18 communications, after you and Ms. Coy got involved in
19 early August of 2016, that Mr. Beauchamp had with the
20 investors that he did not share with you?

21 A. I am not aware of any, sir.

22 Q. Okay. So it's your understanding that, at least
23 as far as you know, he was sharing those communications
24 with you after you and Ms. Coy got involved?

25 MR. STURR: Object to the form.

GARY CLAPPER, 9/16/2019

1 THE WITNESS: Yes, sir.

2 Q. (BY MR. DeWULF) Do you recall when you received
3 the emails, did you ever review them for their content?

4 A. I would have read through them, but I don't
5 recall doing anything with them.

6 Q. Do you remember ever concluding that the
7 contents of any of the emails that Mr. Beauchamp was
8 sending to the investors was inaccurate?

9 A. I would have no knowledge if they were
10 inaccurate, sir.

11 Q. All right. Well, I guess to the extent that he
12 might be describing what role the Corporation Commission
13 might play, that would be something you would know about,
14 right?

15 A. Yes, sir.

16 Q. Okay. And sitting here today, do you remember
17 ever reading an email that David Beauchamp sent to
18 investors which you concluded was inaccurate and
19 communicated to someone about that?

20 A. No, sir.

21 Q. All right. Let me ask you to look at
22 Exhibit 1098.

23 Let me ask, Mr. Clapper, do you recall that in
24 this meeting that you had with Mr. Beauchamp on
25 August 10 -- well, let me back up.

GARY CLAPPER, 9/16/2019

1 Do you recall -- this example, 1098, is an email
2 dated August 5.

3 Do you see that?

4 A. Yes, sir, I do.

5 Q. And so did you gain an understanding that as
6 early as August 5, Mr. Beauchamp was going to share with
7 you his communications with the investors?

8 A. I don't recall if he told me he was going to or
9 just started doing it. I don't recall.

10 Q. Okay. But you do remember that after you and
11 Ms. Coy got involved, Mr. Beauchamp was sending you copies
12 of his communications with the investors?

13 A. Yes, sir.

14 Q. Okay. And when you got involved in your
15 investigation of DenSco, what -- what were you trying to
16 accomplish?

17 MR. KITCHIN: Objection; work product and
18 privilege potentially.

19 Please don't answer.

20 MR. DeWULF: We know he is an investigator.

21 MR. KITCHIN: He investigates for an attorney to
22 relay what he does to the attorney. I mean --

23 MR. DeWULF: But this is not -- these are not
24 mental impressions of the attorney. These are this
25 individual basically investigating and gathering facts, so

GARY CLAPPER, 9/16/2019

1 I'm asking about what he is doing in that role. Not
2 serving as a lawyer. Not giving advice as a lawyer.

3 MR. KITCHIN: So this -- I don't -- I think your
4 question was what were you looking for, not what did you
5 do.

6 Q. (BY MR. DEWULF) All right. Let me ask it a
7 different way then.

8 Go ahead and drink.

9 A. Go ahead.

10 Q. You should grab it when you can.

11 A. You can.

12 Q. All right. What did you understand, what did
13 you do in your role? What did you understand your
14 responsibilities?

15 A. From what we had gathered, Mr. Chittick had
16 taken money from investors, as I had stated, to fund fix
17 and flips on houses. And our role as a regulator was to
18 determine if securities violations had occurred, to gather
19 the information, but, again, Mr. Chittick being the sole
20 individual with DenSco, passing away, gathering the
21 information, because a receiver had been appointed, to
22 pass that information along.

23 Q. So this email, which is 1098, Mr. Clapper, it
24 says, "Please see the email to the DenSco's investors that
25 I sent this evening with the updated (and bad) news."

GARY CLAPPER, 9/16/2019

1 Do you see that?

2 A. I see that, sir.

3 Q. And does this refresh your memory that there was
4 bad news being conveyed to the investors as a result of
5 determining that the finances were not good at the
6 company?

7 A. I would have to read through the whole email to
8 determine that, sir, but I believe that would be the
9 context.

10 Q. If you -- if you just skim it, you will see --
11 and this is a document from Mr. Woerner's files that we --
12 so I thought it might be helpful so you knew it was
13 gathered, but obviously you are copied on the email. But
14 if you kind of skim through it, you see that there is some
15 summary of what's gone on with the DenSco loan portfolio.

16 Do you see that?

17 A. Correct, sir.

18 Q. All right. Do you recall when it was concluded
19 that it made sense to appoint a receiver for DenSco? And
20 that's just a yes or no.

21 MR. STURR: Object to the form.

22 THE WITNESS: I don't recall, sir.

23 Q. (BY MR. DeWULF) Okay. Do you remember the
24 circumstances surrounding the conclusion that a receiver
25 needed to be appointed?

GARY CLAPPER, 9/16/2019

1 MR. STURR: Object to the form.

2 MR. KITCHIN: And objection, attorney-client
3 privilege.

4 Please don't answer that.

5 Q. (BY MR. DeWULF) would it be fair to say,
6 Mr. Clapper, that if there is a determination, in your
7 experience at the Corporation Commission, that a company
8 is insolvent, it would be a candidate for the appointment
9 of a receiver?

10 A. That would depend on a number of circumstances,
11 sir.

12 Q. Okay. Do you remember that in this case, at the
13 time that you got involved or shortly thereafter, that you
14 concluded that DenSco was insolvent?

15 A. I don't believe I ever concluded that.

16 Q. Okay. Do you think that decision was made by
17 others within the Corporation Commission?

18 MR. KITCHIN: Objection; privileged,
19 attorney-client privilege.

20 Please don't answer.

21 Q. (BY MR. DeWULF) You can go ahead and answer, I
22 think he said.

23 MR. KITCHIN: No, please don't.

24 MR. DeWULF: Oh.

25 Q. (BY MR. DeWULF) well, let me ask this question.

GARY CLAPPER, 9/16/2019

1 Someone did conclude within the Corporation Commission
2 that a receiver ought to be appointed. Fair?

3 A. Yes, sir.

4 Q. Okay. And was that decision based on the fact
5 that the company was insolvent --

6 MR. KITCHIN: Objection.

7 Q. (BY MR. DeWULF) -- or do you know?

8 MR. KITCHIN: Objection; attorney-client
9 privilege. I'm trying to think about the second part of
10 that question.

11 MR. DeWULF: The Corporation Commission applies
12 for the appointment of a receiver, so it has to go public
13 with the court as the basis for appointment, right? So
14 how does that become a privileged communication?

15 MR. KITCHIN: The basis for the decision is a
16 different question than what the stated grounds were
17 potentially.

18 And I don't -- I don't have the petition in
19 front of me. If you want to show me what it states in the
20 petition, I don't know how that would change the
21 situation, but you are asking about the mental process of
22 the attorneys here.

23 MR. DeWULF: No, I'm not. I'm not at all.

24 MR. KITCHIN: Can you -- can you read back what
25 the last question was, please?

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

2 MR. KITCHIN: So the question is about the basis
3 of a decision made by --

4 MR. DeWULF: It's a fact question. Was the
5 company insolvent or not and did it connect to the
6 decision to appoint a receiver? That was it.

7 MR. KITCHIN: So the first question is a fact
8 question. I agree. The second question is not a fact
9 question. I would object to the second question, not the
10 first question.

11 MR. DeWULF: All right. So, you know, Paul, we
12 were working cooperatively with you, and you offered
13 Mr. Clapper because you thought he would be a helpful
14 witness for us, but if you are going to instruct him not
15 to answer all these questions, we are going to have to
16 take other people's depositions, including Ms. Coy,
17 because I'm not getting any information that I think is
18 pertinent to the facts in the investigation.

19 MR. KITCHIN: If you ask the same question of
20 Ms. Coy, I'm going to make the same objection.

21 MR. DeWULF: All right. Well, then we may have
22 to go through that exercise, too. It just seems like we
23 are wasting a lot of time here. I don't think -- I
24 understand that the concern is about protecting privilege.
25 I just think you are interpreting it more broadly than the

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1 circumstances present, but you --

2 MR. KITCHIN: why would --

3 MR. DeWULF: -- you have a job to do.

4 MR. KITCHIN: why would the answer matter to
5 you? what --

6 MR. DeWULF: Because this is the individual that
7 is representing, in my view, the Corporation Commission
8 and what the Corporation Commission did. And I'm trying
9 to get an idea of what led to what in terms of the
10 appointment of the receiver. And to me, it's an important
11 aspect. And it's certainly an important aspect to the
12 plaintiff's case, because they made allegations about what
13 my client did in connection with working with the
14 Corporation Commission, so --

15 MR. KITCHIN: The Commission filed a petition
16 for the appointment of a receiver that should answer that
17 question, right, in detail?

18 MR. DeWULF: And there --

19 MR. KITCHIN: And he has got an affidavit.

20 MR. DeWULF: There is an appointment, but before
21 it -- I wanted his input and his knowledge of what he did
22 as an investigator. You are instructing him not to
23 answer, you know, but I don't want to waste any more time.
24 We have wasted far too much time on these issues.

25 Let me move -- I think I understand what you are

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1 saying, and I'm just going to have to make a determination
2 whether we need to get the Court's guidance on it, because
3 I -- I don't want to deny the jury the ability to know
4 what this individual has done, and you are instructing him
5 not to answer on fundamental things, I think, and I have
6 just got to make a determination of what I need to do to
7 try to get the facts.

8 MR. KITCHIN: I realize the clock is ticking.
9 I'm happy to talk more about how to get you what you need,
10 but I'm concerned about the questions you are actually
11 posing.

12 MR. DeWULF: Yeah. I wish -- I wish you would
13 have reached out to me before we took the deposition to
14 give me some sense that you were going to take these
15 positions, because you are right, we are wasting the court
16 reporter and the videographer's time and Counsel's time.

17 MR. KITCHIN: We talked about what the questions
18 were going to be, and of course you said you were
19 interested in his interactions with Beauchamp. You didn't
20 say you were interest in the internal discussions that led
21 to taking a legal position.

22 MR. DeWULF: No. What I said was I was
23 interested in his conduct as an investigator and what he
24 did, and his interactions with David Beauchamp, both. And
25 his conduct as an investigator I have asked repeatedly

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1 about, and you are telling him not to answer.

2 So, again, the record will reflect what you and
3 I have talked about, and I respect that you have got a job
4 to do. I just think it's -- it's creating hindrances here
5 that I didn't anticipate, and I think I have just got to
6 figure out how to address, so -- but let me move on,
7 because I don't -- I don't want to waste Mr. Clapper's
8 time or anyone else in the room's time, so I think I
9 understand your position.

10 Q. (BY MR. DEWULF) Did -- did Mr. Beauchamp ever
11 indicate to you that he was resistant to the Corporation
12 Commission getting involved in investigating DenSco?

13 A. No.

14 Q. And in your experience, to the extent that he
15 could, he cooperated with you in your -- in your personal
16 involvement?

17 MR. STURR: Object to the form.

18 THE WITNESS: Yes, he did.

19 Q. (BY MR. DEWULF) All right. There have been
20 allegations in this litigation against my client,
21 Mr. Clapper, that Mr. Beauchamp knew certain information
22 historically about DenSco that he failed to disclose or he
23 misrepresented.

24 Did you ever get to a point where you concluded
25 that there was something that Mr. Beauchamp should have

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1 told you that he didn't?

2 MR. KITCHIN: Objection; work product.

3 Please don't answer.

4 Again, if you are asking about what should have
5 or shouldn't have been told, then you are asking for his
6 value judgment and mental impressions about the
7 interaction, not just what the interaction was.

8 MR. STURR: Objection.

9 Q. (BY MR. DeWULF) So --

10 MR. STURR: Sorry, John. Belated objection on
11 foundation and form.

12 Q. (BY MR. DeWULF) Sitting here today, did you --
13 looking back on it, did you ever experience a time where
14 you felt like Mr. Beauchamp was not being forthright with
15 you?

16 A. No, sir.

17 Q. Did you ever learn that there was any sort of
18 representative of a group of investors at DenSco with whom
19 to communicate?

20 A. I vaguely recall a group of investigators did
21 band together, but I don't know any more about that.

22 Q. Okay. Sir, there is some reference in some of
23 the documents about perhaps a group of an -- an advisory
24 group of investors.

25 Do you remember anything about that?

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1 A. No more than that.

2 Q. Okay. And do you specifically remember, I know
3 you said you spoke to some investors, but you don't recall
4 what any of them told you, right?

5 A. Not specifically, no.

6 Q. Okay.

7 A. Just the generalities I have already discussed.

8 Q. Okay. Did you take any notes on the interviews
9 that you did or the communications you had with the
10 investors?

11 A. I would have done memos to those, but the notes
12 would have been destroyed because they would have been
13 in -- the memos would have been done in a short period of
14 time.

15 Q. And to whom were the memos directed?

16 A. They were directed to the file.

17 Q. Okay. And were they for the purpose of Ms. Coy
18 or others within the Securities Division to guide their
19 actions?

20 A. They could use those for those, but they were
21 generally just interviewing the investors as to their
22 general understanding.

23 MR. DeWULF: I'm going to ask for that, Paul.
24 Are you going to object to the production of that?

25 MR. KITCHIN: We will.

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1 MR. DeWULF: And what's your basis for
2 objection?

3 MR. KITCHIN: They are work product and they are
4 privileged.

5 Q. (BY MR. DeWULF) Okay. And to prepare for
6 today, you didn't look at any of those materials, right --

7 A. No. No, sir --

8 Q. -- to give testimony?

9 A. -- I did not.

10 Q. Showing you what's been marked as Exhibit 238
11 previously.

12 A. Yes, sir.

13 Q. The cover page of Exhibit 238 shows a letter
14 from you to the custodian of records for DenSco.

15 Do you see that?

16 A. Correct.

17 Q. And the second page is what looks to be the
18 beginning of a subpoena for production of documents?

19 A. Yes, sir.

20 Q. And do you recall that you served a subpoena
21 upon DenSco on or about August 8, 2016?

22 A. Yes, sir.

23 Q. And the Exhibit A, which is the third page of
24 the document, Mr. Clapper, is an identification of the
25 documents that the Securities Division was seeking?

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1 A. Yes, sir.

2 Q. And it goes on to page 4, right?

3 A. That is correct, sir.

4 Q. There are 18 numbered items?

5 A. Correct.

6 Q. And you are seeking a production of this
7 information on August 10, two days later?

8 A. Yes, sir.

9 Q. But you understood that there was going to have
10 to be some flexibility in terms of production, right? It
11 wouldn't -- you wouldn't be able to get everything within
12 two days?

13 A. I believe that would be correct, sir.

14 Q. Do you remember with whom you communicated in
15 connection with getting the documents you were seeking on
16 or about August 8?

17 A. The subpoena would have been with Mr. Beauchamp.

18 Q. Okay. And did -- did you understand that with
19 Mr. Chittick having passed away, there were no
20 representatives of the corporation alive to deal with
21 issues like subpoenas as of August 8, 2016?

22 A. I don't know. My feeling was Mr. Beauchamp was
23 still representing the corporation at that point. As to
24 who legally did, that was our understanding.

25 Q. Yeah. Let me -- maybe the better question would

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1 be, do you know if there was anyone on behalf of the
2 company who could communicate on behalf of the company in
3 connection with its interests in August 8 of 2016?

4 A. Again, I felt Mr. Beauchamp could at that point.

5 Q. As counsel for DenSco?

6 A. I believe he was considered counsel for DenSco.

7 Q. Do you know whether there was anyone, as of
8 August 9 or August 8, 2016, at the company to make
9 decisions on behalf of the company?

10 A. I don't believe there was. I believe
11 Mr. Chittick was the sole person.

12 Q. Do you remember that the goal was to get Shawna
13 Heuer in a position that she could act on behalf of the
14 Chittick estate and perhaps address some of the DenSco
15 issues?

16 MR. STURR: Object to form and foundation.

17 THE WITNESS: Are you saying that was our goal
18 to get her in?

19 Q. (BY MR. DEWULF) No. I misspoke. Let me
20 rephrase it.

21 Do you recall that one of the goals that -- in
22 your communications with Mr. Beauchamp, was that they were
23 trying to get Shawna Heuer appointed to be in a position
24 to act on behalf of the Estate of Denny Chittick?

25 A. I believe so, sir.

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1 Q. Okay. And did you -- did you understand that
2 that was an objective so that they could work with the
3 Corporation Commission to get them information?

4 A. I believe so.

5 Q. All right. Do you remember at that meeting on
6 August 10 that Wendy Coy had communicated to David
7 Beauchamp and Shawna Heuer that she did not want investors
8 in attendance at that meeting?

9 A. I don't recall that, sir.

10 Q. Okay. Let me show you what's previously been
11 marked as Exhibit 240.

12 Let me focus your attention on the second
13 paragraph of this Exhibit 240. It reads: Wendy Coy also
14 said that she did not want any of the investors to be at
15 this first meeting with her on Wednesday. Wendy wants
16 this to be a meeting where all thoughts can be shared and
17 she agreed with the suggestion that if investors are
18 present that might add a "chilling effect." I will send
19 an email to each of the investors who have asked to attend
20 that meeting. There have been several of them who have
21 asked. I would like to have Brian attend, but I do not
22 see how we can have him attend and not have the others
23 attend. If you have any questions, please let me know.

24 So does that refresh your memory at all about
25 what Wendy Coy's preference might have been?

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1 MR. KITCHIN: And let me just say I understand
2 to be about the preference that she expressed at the
3 meeting, correct? That's all you are asking about?

4 MR. DeWULF: Yes.

5 MR. KITCHIN: Okay.

6 MR. DeWULF: Actually, it's before the meeting,
7 because it's anticipating the investors not being at the
8 meeting, so it's not --

9 MR. KITCHIN: But expressed to Beauchamp
10 directly?

11 MR. DeWULF: Yes, in the meeting on the 10th.
12 strike that. That can't be the case. Let me rephrase it.

13 Q. (BY MR. DeWULF) Did you gain an understanding
14 of what Wendy Coy wanted to accomplish in the early
15 meeting and not wanting to have investors present?

16 MR. STURR: Object to the form.

17 THE WITNESS: Again, I believe our --

18 MR. KITCHIN: Hold on. If I -- please stop.

19 THE WITNESS: Okay.

20 MR. KITCHIN: I thought the --

21 MR. DeWULF: Let me rephrase it. Maybe it will
22 fix --

23 MR. KITCHIN: Okay.

24 MR. DeWULF: -- the concerns both of you might
25 have.

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1 Q. (BY MR. DeWULF) So this email, which is
2 Exhibit 240, is dated August 8, 2016, and David Beauchamp
3 is relaying to Ms. Heuer the understandings he gained from
4 speaking with Wendy Coy.

5 Let me ask you, do these comments that he
6 attributes to Wendy Coy, are those consistent with your
7 memory as to setting up this meeting without investors?

8 MR. KITCHIN: And specifically are they
9 consistent with what Ms. Coy said to Mr. Beauchamp?

10 MR. DeWULF: He would have shared -- she would
11 have shared this information, so, yeah, go ahead.

12 MR. KITCHIN: So if I understand the question
13 correctly, he -- I think he is asking about things that
14 Wendy said to Beauchamp, not things that Wendy said not to
15 Mr. Beauchamp, so please only say the things that she said
16 to Beauchamp --

17 THE WITNESS: Okay.

18 MR. KITCHIN: -- in his presence.

19 THE WITNESS: This does refresh my memory that
20 we had not wanted investors there. We had wanted to find
21 out details of DenSco, Denny Chittick, and investors I
22 think, being very emotional on the issue, would not have
23 been good to have at the meeting.

24 Q. (BY MR. DeWULF) Okay. And how did you learn
25 that?

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1 A. I'm just remembering, from what is written here,
2 that that was our general feeling.

3 Q. Okay. Let me ask you to look at that last
4 paragraph, the third sentence. It begins, "As we
5 discussed, we will need to provide as much of the
6 financial information of DenSco as possible."

7 Do you see that sentence?

8 A. Yes, I do.

9 Q. And had by this time, I think by August 8 you
10 had sent out the subpoena, right, on that date?

11 A. Correct.

12 Q. But had you anticipated before that date with
13 Mr. Beauchamp that you were going to be seeking the DenSco
14 financial information, do you recall?

15 MR. KITCHIN: Please don't answer that.

16 Objection; attorney-client privilege and work
17 product.

18 Q. (BY MR. DeWULF) well, Exhibit 238 is your
19 letter, right?

20 A. That's correct.

21 Q. And you are the one seeking the information?

22 A. That is correct, sir.

23 Q. So I'm asking you, in your seeking information
24 from DenSco, had you communicated before the subpoena to
25 Mr. Beauchamp that you were seeking the financial records

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1 of DenSco?

2 A. Prior to the subpoena?

3 Q. Yeah.

4 A. I don't know if it was prior to the subpoena or
5 not, sir.

6 Q. Okay. Do you remember if you spoke to
7 Mr. Beauchamp after the subpoena was served?

8 A. Directly, I don't recall, sir.

9 Q. All right. Again, when you say "directly," I
10 need to ask the question, do you remember indirectly or
11 generally talking to Mr. Beauchamp about the subpoena?

12 A. I would have to speculate on that, and it is
13 possible I talked to him after it and he voiced the
14 concern that it would not be all provided on that date,
15 because of the short turnaround.

16 Q. All right. And this paragraph goes on and says
17 that, "We will also have to provide a list of names,
18 addresses and email addresses for all the investors in
19 DenSco."

20 That was information that you and the Division
21 had requested, right?

22 A. I would have to go back and look at the
23 Exhibit A, but that is pretty standard to ask for.

24 Q. Okay. The -- if you go down about one, two,
25 three, four, five -- seven lines in that last paragraph,

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1 it reads, "I have told them that after wednesday's meeting
2 with the Director of Enforcement of the Securities
3 Division, that you will be either retaining counsel for
4 this or you will be turning everything over to the
5 Securities Division and the Securities Division will be
6 handling this going forward."

7 Do you see that sentence?

8 A. Yes, sir, I do.

9 Q. Do you remember, in communications on or before
10 August 8, 2016, learning that Shawna Heuer would likely
11 get counsel to represent her?

12 A. Again, I don't recall the date of that, when it
13 actually occurred.

14 Q. Okay. And I think I may have asked this
15 question, Mr. Clapper, but I want to make sure.

16 Did you ever speak to any other lawyers who
17 purported to represent investors before the receiver was
18 appointed?

19 A. You did ask and I don't recall any.

20 Q. Okay. I thought that's what you said.

21 Did you have any involvement or communications
22 with an individual named Kurt Johnson, who is a lawyer?

23 A. I don't recall.

24 Q. Let me show you what's been -- let's mark this.

25 (Deposition Exhibit No. 1099 was marked for

GARY CLAPPER, 9/16/2019

1 identification.)

2 Q. (BY MR. DeWULF) I'm showing you this exhibit
3 marked 1099, not because you are copied on it, but as
4 context for what I want to ask you.

5 If you look at the email that begins halfway
6 down the page, Mr. Beauchamp is saying to Kurt Johnson: I
7 have a very limited representation of the company until
8 Wednesday when I turn over everything over to the ACC
9 Securities Division. There is no officer or director of
10 the company. The family has been advised by other counsel
11 not to have any family member to become an officer or
12 director of DenSco. The ACC will have to decide how they
13 want to proceed. So far, they are not sharing their
14 thoughts with me.

15 This is again on August 8, 2016.

16 Do you -- does this refresh your memory as to
17 any conversations you had with David Beauchamp about his
18 representation in that timeframe --

19 A. No.

20 Q. -- of DenSco?

21 A. No, sir, it doesn't.

22 Q. Do you remember communicating with an investor
23 named Marlene Pearce? Does that ring a bell?

24 A. Not offhand, it doesn't.

25 Q. Maybe this will refresh your memory.

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1 (Deposition Exhibit No. 1100 was marked for
2 identification.)

3 Q. (BY MR. DEWULF) Mr. Clapper, I'm showing you
4 Exhibit 1100. This is not, I don't think, copied to you,
5 and it's early. Let me start on the second page at the
6 bottom.

7 Do you remember -- David Beauchamp is writing to
8 another investor. I'm trying to remember what the name of
9 this investor is. Anyway, his first name is Craig, but he
10 says that, "The Securities Division has made it clear that
11 they would like to have a Receiver appointed with its own
12 legal counsel and they will handle all the communications
13 with the Investors going forward."

14 Do you remember whether as early as August 8,
15 2016, you were communicating that you believed that you
16 would have a receiver appointed over DenSco?

17 MR. KITCHIN: Do you mean communicating to
18 Mr. Beauchamp?

19 MR. DEWULF: Yes.

20 THE WITNESS: I don't recall, sir.

21 Q. (BY MR. DEWULF) Okay. So I have to ask, and I
22 know that time has passed and you have to remember a lot
23 of information in the job you do, do you think you may
24 have said that? You just don't remember for sure one way
25 or the other?

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1 A. It's possible. I just don't recall.

2 Q. Okay. There is a reference up above that
3 Mr. Woerner was with the FBI.

4 Was Mr. Woerner formerly with the FBI?

5 A. Yes, he was, sir.

6 Q. Do you remember any discussions with
7 Mr. Beauchamp or any one of the investors about them
8 considering getting the FBI involved in this DenSco
9 matter?

10 A. I don't recall any discussion of that.

11 Q. Okay. Do you remember Mr. Beauchamp ever
12 sharing with you that they were considering getting a
13 forensic accountant involved to try to get at the heart of
14 what had gone on at the company?

15 A. Not offhand, I don't recall.

16 Q. Do you remember any discussions about having a
17 forensic accountant look at DenSco's finances and
18 determine what had happened, with Mr. Beauchamp?

19 A. I don't recall, and if a receiver was going to
20 be appointed, they would be doing the accounting on it, so
21 I don't recall.

22 Q. All right. So let's go to the first page of
23 Exhibit 1100. This is Marlene Pearce's email. The first
24 paragraph talked about her actually speaking with
25 Mr. Woerner, and then the second paragraph, she says, "I

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1 just received a phone call this morning from the chief
2 investigator for the DenSco case in the securities
3 division at the Arizona Corporation Commission. His name
4 is Gary Clapper and he spent at least 15 minutes on the
5 phone with me. He is very interested in speaking with
6 each of the investors, but not necessarily in tomorrow's
7 meeting, which I understand. He said they are not able to
8 broadcast the meeting tomorrow for confidentiality reasons
9 and also because they are still gathering information."

10 Did I read that correctly?

11 A. Yes, sir, you did.

12 Q. You know, I may be wrong. You may be included
13 in this. I didn't look at the --

14 A. I am at the very bottom.

15 Q. There you go.

16 A. Okay.

17 Q. So you are gclapper@azcc.gov, right?

18 A. Correct.

19 Q. And Mr. Woerner is also copied on this?

20 A. Yes, sir, he is.

21 Q. So you would have -- you believe you would have
22 received this email on or about August 9, 2016?

23 A. Yes, sir, if I'm listed on there.

24 Q. Okay. I don't see, I have not seen a follow-up
25 from you.

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1 Do you believe the information she is conveying
2 is accurate?

3 A. I have no reason to believe it's not. That
4 would be a standard answer, that we would not broadcast
5 things like that.

6 Q. I understand.

7 So in it she references the fact that you were
8 interested in speaking with each of the investors. There
9 are I think over 100 investors. And you earlier testified
10 you weren't really -- you couldn't recall with whom you
11 talked, right?

12 A. Correct.

13 Q. Do you think you talked with as many as 100
14 people?

15 A. No, sir, I would not have talked to 100. I
16 would say five or less, most likely.

17 Q. Do you know, and I'm not looking for work
18 product here, but was there any sort of process you went
19 through in determining with whom to discuss the DenSco
20 matter, in terms of investors?

21 MR. KITCHIN: Objection; work product and
22 privileged.

23 Q. (BY MR. DeWULF) Let me ask the question, were
24 you the one that decided which investor to communicate
25 with, which DenSco investor to communicate with?

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1 MR. KITCHIN: Objection; privileged.

2 Please don't answer.

3 Even answering no is going to reveal
4 discussions. And his -- as to the earlier question, his
5 thought process about how to contact, again, is mental
6 impressions generated for the sake of the attorney. They
7 are the same as the attorney's mental impressions.

8 Q. (BY MR. DEWULF) Do you know why you chose just
9 to interview five and not all of the investors or a larger
10 number?

11 MR. KITCHIN: Objection; privileged, work
12 product.

13 Please don't answer.

14 (Deposition Exhibit No. 1101 was marked for
15 identification.)

16 Q. (BY MR. DEWULF) On the third page of
17 Exhibit 1101, Mr. Clapper, is a letter to Ms. Coy from
18 David Beauchamp.

19 Do you see that?

20 A. Yes, sir, I do.

21 Q. Now, it doesn't show you as being a recipient
22 of -- I'm sorry. The first page would indicate that it
23 was sent to Ms. Coy, and then it looks like it was then
24 forwarded to you as well.

25 Do you recall receiving -- and perhaps

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1 Mr. Woerner. Do you recall receiving this letter?

2 A. I don't recall offhand, sir.

3 Q. Okay. Do you generally recall receiving a
4 letter from David Beauchamp in connection with a subpoena
5 that you had served on DenSco?

6 A. Again, I don't recall. It's very possible I
7 did.

8 Q. Do you recall that there were items in your
9 subpoena that were seeking what might be considered
10 information of Mr. Chittick personally?

11 A. I don't recall. I'd have to look at the
12 Exhibit A.

13 Q. Do you remember Mr. Beauchamp drawing a
14 distinction between representing Mr. Chittick individually
15 and representing Mr. Chittick in his capacity as president
16 and director of the corporation DenSco?

17 A. I know there was some. I don't recall what the
18 discussion actually was.

19 Q. Okay. Were you a party to those discussions or
20 would that have been handled by someone else at the
21 Securities Division? Do you recall?

22 A. I don't recall, sir.

23 MR. DeWULF: Okay. Would you mark this.

24 (Deposition Exhibit No. 1102 was marked for
25 identification.)

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1 Q. (BY MR. DEWULF) I'm showing you Exhibit 1102.
2 And I'm sorry the way this prints out, but it is an
3 investor letter that is forwarded to you and Ms. Coy on
4 August 10, 2016.

5 Do you see that?

6 A. Yes, sir, I do.

7 Q. "wendy and Gary," it reads, "Thank you again for
8 taking the time to come to my office and to discuss
9 DenSco, the status and some options to deal with this
10 matter."

11 Do you recall what options were being discussed?

12 A. Not directly, but, again, we go back to the
13 discussions of Shawna wanting to get counsel, if she would
14 be the personal representative. I don't recall anything
15 outside of that, no, sir.

16 Q. Did you later learn that she did get appointed
17 as the personal representative for the Chittick estate?

18 A. I believe she did.

19 Q. I'll show you that in a moment.

20 The -- this email, Exhibit 1102, goes on and
21 says: As I agreed to do, please see the email that I just
22 sent to the DenSco investors. I tried to answer
23 several -- several of the specific questions from the
24 investors about the meeting while trying to keep the email
25 general. Difficult balancing act. Best regards, David.

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1 Do you recall receiving this email that's
2 attached on or about August 10, 2016?

3 A. I believe I did, yes, sir.

4 Q. Okay. And when you would have read the emails
5 that were forwarded to you, if you had a problem or a
6 concern, did you or someone else at the Securities
7 Division communicate that to either Mr. Beauchamp or
8 Ms. Heuer?

9 A. I don't recall expressing any concern.

10 Q. So just -- I'm clear, you think in terms of the
11 emails that you were copied on that were provided to the
12 investors, you do not think you had any concern about the
13 contents of those emails?

14 A. I don't believe so, sir.

15 Q. Okay. So it -- this cover email that's sent to
16 you is August 10, and in the body of the email, and it's
17 the fourth paragraph down, Mr. Beauchamp is saying that
18 it's -- the Securities Division is likely to take charge
19 of DenSco.

20 Do you think as of this date -- you can read
21 that if you would like.

22 A. Are you talking the paragraph that begins with
23 "We all --

24 Q. Yes.

25 A. -- discussed"?

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1 Q. Yes. Why don't you read that to yourself.

2 A. Okay.

3 Q. Does this refresh your memory, Mr. Clapper, that
4 as of August 10 you were communicating to Mr. Beauchamp,
5 and perhaps others, that the Securities Division was going
6 to exercise its statutory rights and take over DenSco?

7 A. I don't recall if I said it or somebody else in
8 the meeting would have said it or conveyed that, no, sir.

9 Q. So whether it was you or someone else from the
10 Securities Division that may have conveyed it, do you
11 recall that information being conveyed, that it was likely
12 that the Corporation Commission would step in through the
13 Securities Division to file an action and have a receiver
14 appointed?

15 A. I believe so, sir.

16 Q. Do you remember in communicating that whether
17 you communicated the basis for that? In other words, did
18 you or someone at the Securities Division communicate why
19 the Corporation Commission would be moving forward with
20 the appointment of a receiver?

21 A. I don't recall that.

22 MR. DeWULF: Why don't we -- is this a good time
23 to take a break? Why don't we break for ten minutes or
24 so. It's approaching 3:00 o'clock.

25 VIDEOGRAPHER: We are off the record. The time

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1 is 2:51 p.m. This is the end of media three.

2 (A recess was taken from 2:51 p.m. to 3:03 p.m.)

3 (Deposition Exhibits No. 1103 through 1109 were
4 marked for identification.)

5 VIDEOGRAPHER: Back on the record. The time is
6 3:03 p.m. This begins media four.

7 Q. (BY MR. DeWULF) Showing you what's been marked
8 as 1103 to your deposition, it's an email from you to
9 David Beauchamp, dated August 11, 2016, asking for the EIN
10 number.

11 Do you see that?

12 A. Yes, I do, sir.

13 Q. The -- David says he doesn't know the EIN, and
14 he says the accountant should have that information.

15 The corporate accountant in that timeframe was a
16 guy named David Preston.

17 Does that ring a bell with you?

18 A. Not at all.

19 Q. Do you think you ever talked to Mr. Preston?

20 A. Not to my knowledge, no, sir.

21 Q. Okay. Were you able to get the EIN for DenSco
22 at some point, do you remember?

23 A. I don't recall if we ever got that or not.

24 Q. All right. Let's look at 1104. This email
25 is -- there is an email back and forth between you, at the

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1 very top of page 1104, about getting the paperwork
2 assigning Shawna as the personal representative.

3 Do you see that?

4 A. Yes, sir, I do.

5 Q. Okay. And let's look at 1105. Mr. Beauchamp is
6 responding on August 11 to you, attaching the letters of
7 appointment.

8 Do you see that?

9 A. Yes, I do.

10 Q. And do you recall receiving these letters of
11 appointment on or about August 11, 2016?

12 A. I don't recall directly. I could have.

13 Q. All right. Well, the email address that's
14 shown -- well, it doesn't show, I guess, your email
15 address, but do you recall asking for the letters of
16 appointment and getting them?

17 A. I probably did ask for them, and the emails
18 addressed to Bill Woerner, but the original email is David
19 Beauchamp to myself.

20 Q. Right. I think this came from Mr. Woerner's
21 files, which Mr. Woerner is a part of the team at the
22 Securities Division, right?

23 A. Correct.

24 Q. Any reason to believe that you did not get the
25 letters of appointment of personal representative on or

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1 about August 11, 2016?

2 A. No, sir.

3 Q. Okay. And what was the significance of this for
4 you?

5 A. Trying to find out who we could deal with for
6 DenSco and Denny -- Denny Chittick.

7 Q. And once you were given evidence of the fact
8 that Shawna Heuer was appointed as personal representative
9 of the Chittick estate, how did that affect how you went
10 about doing your job?

11 A. I don't believe it changed anything, because I
12 don't know the timeframe of Mr. Polese being retained as
13 counsel, and if he was retained as counsel at this time,
14 any communication would have gone to him.

15 Q. Okay. Do you remember that after Ms. Heuer got
16 appointed as personal representative for the Chittick
17 estate, she retained Mr. Polese and his firm to represent
18 the estate?

19 A. Again, I don't know if it was before or after,
20 but at some point Mr. Polese was assigned.

21 Q. Okay. There is something -- so let me ask you
22 to look at Exhibit 1106.

23 A. Okay.

24 Q. Why don't you look that -- there are two emails
25 on this front page of 1106. Why don't you look it over,

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1 and then I'm going to ask you about them.

2 A. Okay.

3 Q. So your email is following up with David
4 Beauchamp about getting documents in connection with
5 DenSco, correct?

6 A. Correct.

7 Q. And I think you are saying "we have the files
8 Robert Koehler had."

9 Is that what your statement is?

10 A. Correct.

11 Q. So this would confirm at least whatever he had,
12 you were able to obtain?

13 A. Correct, the Division did. I believe Bill
14 Woerner is the one who picked them up.

15 Q. Do you remember the nature of that information
16 that you got from Mr. Koehler?

17 A. Again, in that box I recall they were active
18 files of loans that DenSco had.

19 Q. Okay. And then Mr. Beauchamp is responding to
20 you at the top of the page on August 11, 2016, saying, "I
21 have reached out to Shawna but I have not yet been able to
22 talk to her. With respect to the boxes in my office,
23 those boxes will be available after 8:00 a.m. tomorrow
24 morning."

25 And then he goes on, "I need to receive

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1 confirmation from Shawna or her attorney concerning the
2 computer and her availability at the house for the
3 investor files. When you are able to get the files from
4 Shawna, please bring boxes, because I forgot to give
5 banker's boxes to Shawna yesterday. In addition, we will
6 need signed receipts signed to evidence your receipt of
7 the boxes and the files from Shawna (and hopefully the
8 computer)."

9 At least as of this email, Mr. Beauchamp was
10 communicating to you that you were going to be provided
11 the boxes containing the DenSco information, right?

12 A. Correct.

13 Q. Okay. And let me show you 1107. The
14 communication at the very top of that first page, you are
15 saying to him, "Sounds good. Are you doing the receipt
16 for us to sign or do you want me to do one?"

17 This was a receipt for the -- for receiving the
18 documents?

19 A. Correct.

20 Q. Okay. Then let's look at 1108.

21 A. But if I can add one other thing, I --

22 MR. KITCHIN: No need to add anything.

23 Q. (BY MR. DeWULF) Sure. Go ahead.

24 MR. KITCHIN: No need to add anything.

25 THE WITNESS: Okay.

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1 MR. DeWULF: Well, gee, I wouldn't be doing my
2 job if I didn't ask if he wanted -- the witness wanted to
3 add something.

4 Q. (BY MR. DeWULF) So do you have something to
5 add?

6 A. It's just, very briefly, I don't know if we ever
7 received those boxes the next day at 8:00 a.m. or not.

8 Q. Right. Right. And I'm going to get to that.

9 A. Okay.

10 Q. At least you were on course to get the
11 information as of August 11?

12 A. Okay. Yes, sir.

13 Q. And Mr. Beauchamp was cooperating with you? At
14 least sitting here today, that's what you believe is the
15 case?

16 A. Yes, sir.

17 Q. All right. Now, then at the top of that
18 Exhibit 1108, is you communicating, "I can use our
19 evidence sheets that we use when we do search warrants if
20 that is acceptable. I will bring the boxes for the
21 records at the house."

22 Was that your statement?

23 A. Yes, sir.

24 Q. And the evidence sheets was just as a way of
25 recording the fact that documents had been provided?

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1 A. Yes, sir.

2 Q. And then let's look at Exhibit 1109.

3 Do you remember receiving this email on or about
4 August 11, 2016?

5 A. I know it's addressed to me, yes, sir.

6 Q. And I'm not going to go into detail with you
7 about it, but the email tells you, among other things,
8 that Shawna has gotten counsel, right?

9 A. Correct.

10 Q. And that those are Mr. Polese and Mr. Merritt?

11 A. Correct.

12 Q. Okay. And you can look at the email if you
13 wish, but do you recall this communicating a concern about
14 privilege, and information may not be able to be provided
15 until a privilege review had been done?

16 A. That's correct, sir.

17 Q. Let me -- and do you remember, and I think we
18 talked about this early in your testimony, Mr. Clapper,
19 that when Mr. Polese and Mr. Merritt began representing
20 Shawna Heuer in her role as personal representative for
21 the estate, that they were expressing a concern about
22 privilege and making sure that it wasn't waived in
23 production documents?

24 A. Do I remember it from Mr. Polese and
25 Mr. Merritt?

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1 Q. Do you remember that being the case, that is
2 that when they got involved, they were communicating to
3 you about a concern regarding privilege?

4 A. Directly from them or relayed from Mr. Beauchamp
5 to me?

6 Q. Well, let me -- let me mark -- let me show you
7 this exhibit. This might help you and I can clarify my
8 question. So I'm showing you Exhibit 273.

9 So 273 is an August 12, 2016, email on behalf of
10 Jim Polese to you and others at the Corporation
11 Commission, correct?

12 A. Correct.

13 Q. And attached is a letter from Gammage & Burnham
14 and Mr. Polese about DenSco documents?

15 A. Correct.

16 Q. Do you remember receiving this letter?

17 A. It's addressed to me. I would have to go
18 through the file. I have nothing to say I didn't get it.

19 Q. Right.

20 Do you remember generally that the lawyers for
21 Shawna Heuer, in her capacity as a personal representative
22 for the estate, getting involved about August 12, 2016, or
23 at least communicating with you about that date?

24 A. I would agree with that.

25 Q. All right. And do you remember that in

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1 connection with your collection of information from
2 DenSco, they took the lead in terms of getting you
3 information at that point?

4 A. Yes, sir.

5 Q. Did you remember, sitting here today,
6 Mr. Clapper, that as of August 12 you had gotten
7 information from Mr. DenSco and Mr. Chittick or not?

8 A. Outside of the documents that Mr. Koehler had, I
9 can't say that we did receive anything else.

10 Q. All right. And later in this letter, there is a
11 discussion about making sure that loans can be collected
12 on behalf of the company.

13 Do you see that? If you look at the second
14 page, about two-thirds of the way down the page, documents
15 from Mr. Koehler.

16 A. Yes, sir, I see that.

17 Q. Okay. And we talked earlier in your testimony,
18 but you and the Corporation Commission agreed to release
19 some of these loan files so that collections could be made
20 on the loans for DenSco.

21 Do you recall that?

22 A. Correct, as Mr. Beauchamp emailed us what files
23 they were, they were released.

24 Q. Okay.

25 MR. DeWULF: why don't you mark this.

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1 (Deposition Exhibit No. 1110 was marked for
2 identification.)

3 Q. (BY MR. DEWULF) So 1110 is Wendy Coy's email to
4 Messrs. Polese, Merritt and Beauchamp.

5 Do you see that?

6 A. Yes, sir.

7 Q. And you are copied on it as well, correct?

8 A. Yes, sir.

9 Q. And did -- when the letter from the Gammage &
10 Burnham lawyers, Mr. Polese and Mr. Merritt, was received,
11 did Ms. Coy take a more active role in dealing with
12 getting the documents? Do you recall?

13 MR. KITCHIN: Objection. Hold on for a moment.
14 work product. You are asking for his mental impression of
15 the degree of her role.

16 Q. (BY MR. DEWULF) All right. Then let me
17 specifically ask you, because this will take longer but I
18 will do that, when the letter that -- from Gammage &
19 Burnham was received by the Securities Division, what did
20 you do in response to that and what did Ms. Coy do in
21 response to that, as communicated to Mr. Beauchamp and the
22 lawyers at Gammage & Burnham?

23 A. I don't recall what directly anyone did, outside
24 of the emails that you presented me.

25 Q. All right. Do you recall what continued

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1 involvement you had after Mr. Polese and Mr. Merritt got
2 involved working with Shawna Heuer and the estate?

3 A. I don't recall, sir.

4 Q. Do you remember, in communications with
5 Mr. Beauchamp around October, I'm sorry, around August 12,
6 what role he was going to play going forward? Did he
7 communicate to you about that?

8 A. I don't recall offhand, unless it's in an email
9 somewhere, sir.

10 Q. Okay. But you do recall that at least as it
11 related to collecting money on some of the DenSco loans,
12 he was going to play a role in that?

13 MR. STURR: Object to the form.

14 THE WITNESS: Going forward as of the 12th, I --
15 I don't remember as to a timeline, sir.

16 Q. (BY MR. DEWULF) All right. I think I may have
17 asked you this question, but I may not have.

18 Did any of the investors at any point share with
19 you any criticisms or complaints that they had about David
20 Beauchamp or his law firm?

21 A. I don't recall any, sir.

22 Q. I'm showing you what's previously been marked as
23 Exhibit 275.

24 So Exhibit 275 is an email from Jim Polese,
25 dated August 12, 2016, to Wendy Coy with a copy to you.

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1 Do you see that?

2 A. Yes, sir, I do.

3 Q. Do you think you would have received this email
4 on or about August 12, 2016?

5 A. I believe so.

6 Q. And the first paragraph reads, "As my letter
7 made clear, we are counsel for the estate. As we
8 understand it, Mr. Beauchamp remains as counsel for
9 DenSco, if for no other reason than there is no mechanism
10 in place to make any change."

11 Did I read that correctly?

12 A. Yes, sir, you did.

13 Q. And then the next paragraph reads, "Your email
14 states that the subpoena is directed to DenSco but in your
15 meeting with our client you apparently stated that you
16 intended any documents that were personal to Mr. Chittick
17 relating to investors, whether or not corporate records,
18 to be within the scope of the subpoena, including his
19 personal laptop."

20 Did I read that correctly?

21 A. Yes, sir, you did.

22 Q. The fourth paragraph begins, "The reason the
23 estate has taken the lead with respect to compliance with
24 the subpoena is that Mr. Beauchamp and Clark Hill find
25 themselves in somewhat of an awkward position, given the

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1 wild allegations being made." Let me stop there.

2 Did you have any sense, when you saw this email
3 on or about August 12, 2016, what allegations were being
4 made about Mr. Beauchamp or Clark Hill?

5 A. I don't recall any, sir.

6 Q. Do you remember anything -- well, as it related
7 to communications about the appointment of the receiver
8 and who would be the best candidate to serve, were you
9 involved in those communications at all?

10 Let me rephrase that.

11 A. Between who?

12 Q. Yeah. Let me rephrase that.

13 Do you recall there being communications between
14 Mr. Polese and Mr. Merritt on the one hand and
15 representatives of the Securities Division on the other
16 hand about the appointment of a receiver?

17 A. I do remember there was differing opinion as to
18 who the receiver should be.

19 Q. Were you involved in those communications or
20 would those have been more the responsibility of someone
21 else?

22 A. Someone else.

23 Q. Okay. Do you -- looking at that fourth
24 paragraph, it talks about the privilege and it talks about
25 a privilege log and those kinds of things.

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1 Do you remember how that all played out, that
2 is, documents being provided, privilege log being
3 provided? Do you have any knowledge about that?

4 A. Not that I recall offhand, sir.

5 Q. All right. Showing you Exhibit 276. This is
6 again an email from Ms. Coy to Mr. Polese with a copy to
7 you.

8 Do you see that?

9 A. Yes, sir, I do.

10 Q. It's dated October 12, 2016.

11 Do you think you would have received a copy of
12 this at that time?

13 A. Yes, sir.

14 Q. As it related to the communications with
15 Mr. Polese, as it related to representation issues,
16 privilege issues, the production of documents, would that
17 have been the responsibility of someone else within the
18 Securities Division other than yourself?

19 A. Yes, sir.

20 Q. Okay. Do you think it would have been Ms. Coy
21 or it would have been her, primarily her responsibility?

22 A. Yes, sir.

23 MR. DeWULF: I'll let you mark that.

24 (Deposition Exhibit No. 1111 was marked for
25 identification.)

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1 Q. (BY MR. DeWULF) Let me ask you to look at the
2 top of this page. Mr. Polese writes an email of
3 October -- or August 12 to Wendy Coy, and it's copied to
4 you.

5 Do you see that?

6 A. Yes, I do.

7 Q. Do you think you would have received this email
8 on or about that day?

9 A. Yes, sir, I do.

10 (Deposition Exhibit No. 1112 was marked for
11 identification.)

12 Q. (BY MR. DeWULF) Showing you what's been marked
13 as 1112, it's an email from David Beauchamp, dated
14 August 12, 2016, to Wendy Coy, with a copy to you and
15 Kevin Merritt.

16 Do you see that?

17 A. Yes, I do.

18 Q. And it says, "Wendy: Borrowers have requested
19 pay-off amounts due and for releases for the loans secured
20 by the houses at the following addresses."

21 Did I read that correctly?

22 A. Yes, you did.

23 Q. Do you remember receiving this email on or about
24 August 12, 2016?

25 A. It's addressed to me. I have nothing to say I

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1 didn't get it, no, sir.

2 Q. You earlier testified you remember generally
3 there being written communications about loans outstanding
4 from DenSco that borrowers wanted to pay off on.

5 Do you remember that?

6 A. Correct.

7 Q. Do you recall that DenSco possessed documents
8 having to do with the release of those loans that needed
9 to be provided to borrowers?

10 A. Yes, sir.

11 Q. Okay. And do you recall that Mr. Beauchamp
12 helped in communicating with the borrowers in getting
13 those releases provided so that those loans could get
14 finalized and closed?

15 A. Correct.

16 Q. All right. Showing you Exhibit 279. I want to
17 focus your attention on the top of the first page, email
18 from Shawna Heuer to Jim Polese, with a copy to you, dated
19 August 12, 2016.

20 Do you see that?

21 A. Yes, sir, I do.

22 Q. Do you recall Shawna Heuer communicating to you
23 and Ms. Coy about the DenSco computers?

24 A. In what regard?

25 Q. About what -- what existed and whether there was

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1 a personal computer, there was a corporate computer, that
2 kind of thing?

3 A. I believe there was only one computer, and her
4 concern was personal records could be on that record also.

5 Q. Okay. In this email, Mr. Clapper, Shawna Heuer
6 seems to be saying that she had expressed to the
7 representatives of the Corporation Commission in a meeting
8 that she was concerned about the personal information
9 contained on Mr. Chittick's computer.

10 Do you independently remember that being
11 expressed by her when you spoke to her?

12 A. This would have been after the meeting, I
13 believe, on the 10th at Mr. Beauchamp's office. She came
14 in. She did talk to us. Exactly what she talked about, I
15 don't recall offhand.

16 Q. So you don't remember there being a concern
17 about what personal information might be contained on
18 Denny Chittick's computer?

19 A. I know she had concerns about personal
20 information being on the computer. Was it discussed at
21 that time? I don't recall the exact discussion.

22 Q. Did you ever learn that there were letters that
23 Mr. Chittick had written to various people before his
24 suicide?

25 A. Yes, there were some.

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1 Q. Do you remember how you learned about that?

2 A. I don't recall if it was the police report, but
3 there were, I think, Post-it notes left on his desk, and I
4 believe there was a letter to Shawna. And I -- again, I
5 don't remember. It could have been the police report.

6 Q. Do you remember reviewing those letters at any
7 point?

8 A. I know I probably saw it at one point, but I
9 don't recall.

10 Q. Do you remember how you would have obtained
11 them? I think you just maybe said that, but I just want
12 to be clear. You don't know how you got your hands on
13 them?

14 A. I don't, no.

15 Q. All right.

16 (Deposition Exhibit No. 1113 was marked for
17 identification.)

18 Q. (BY MR. DEWULF) This looks like it's a series
19 of emails having to do with the giving releases to
20 borrowers on loans that were made by DenSco.

21 Does it appear that you are copied on the emails
22 in Exhibit 1 -- 1113?

23 A. Yes, sir, it does.

24 Q. Okay. And do you think he would have been a
25 party to these communications about getting the

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1 information to Mr. Beauchamp so that he can try to collect
2 on those monies?

3 A. I do recall him requesting information, yes,
4 sir.

5 Q. Okay.

6 (Deposition Exhibit No. 1114 was marked for
7 identification.)

8 Q. (BY MR. DEWULF) Just look at the top of the
9 first page of Exhibit 1114. You are copied on the
10 August 12, 2016, email from Wendy Coy to David Beauchamp
11 and Kevin Merritt?

12 A. Yes, I am.

13 Q. Okay. Let me show you what was previously
14 marked as Exhibit 282, Mr. Clapper.

15 This is an August 15, 2016, email to David
16 Beauchamp from you, correct?

17 A. Yes, sir, it is.

18 Q. And you are saying, "Hi David, we are getting
19 the documents together on the files you requested and hope
20 to get them to you this morning. A couple of questions.
21 Can we please get a copy of the forbearance agreement.
22 Since the offering document is updated every two years can
23 we please get copies of all of them. Please give me a
24 call if you have any questions."

25 Did I read that correctly?

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1 A. Yes, sir, you did.

2 Q. So do you remember whether you got a copy of the
3 Forbearance Agreement?

4 A. I believe I did.

5 Q. Okay. Do you remember how you became aware of
6 there being a Forbearance Agreement?

7 A. No, sir, I don't.

8 Q. The offering documents, did you gain an
9 understanding that there was a history of DenSco having
10 done private offering memoranda on a periodic basis?

11 A. Yes, sir.

12 MR. DeWULF: would you mark that.

13 (Deposition Exhibit No. 1115 was marked for
14 identification.)

15 Q. (BY MR. DeWULF) Showing you Exhibit 1115. This
16 appears to be a response to that earlier email that you
17 sent, which was Exhibit 282. And it says: Gary, I only
18 have access to some of DenSco's files. Despite my
19 requests, Denny Chittick did not request for All of
20 DenSco's previous files to be transferred to me. In
21 addition, Denny stopped our efforts to do an updated
22 offering memorandum in 2013, so the initial work on that
23 was never finalized. Denny also did not engage us to
24 prepare an amendment to the offering memorandum -- I'm
25 sorry -- to the offering document or to prepare a new

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1 disclosure document despite several conversations about
2 that issue.

3 Did I read that correctly?

4 A. Yes, you did.

5 Q. Do you -- sitting here today, do you remember
6 this email?

7 A. I do remember that, and Mr. Beauchamp stating
8 things to that effect, yes.

9 Q. Do you remember being able to get the Private
10 Offering Memorandum from the years earlier than 2013?

11 A. I don't recall.

12 Q. Okay. Do you -- do you know whether you ever
13 confirmed, independently of this email, whether in fact
14 Denny had not engaged David Beauchamp or Clark Hill to
15 complete the POM in 2013?

16 A. All's I have is the information Mr. Beauchamp
17 provided.

18 Q. Okay. Let me show you what's previously been
19 marked as Exhibit 283.

20 MR. KITCHIN: Do you have an exhibit for me?

21 MR. DeWULF: Oh, I apologize.

22 MR. KITCHIN: That's all right. Thank you.

23 Q. (BY MR. DeWULF) Do you recall your email to
24 David Beauchamp indicating you have a copy of the offering
25 documents from 2009 and 2011 from investors?

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1 A. I see that in the email, yes, sir.

2 Q. Okay. It says, "what is your number and I will
3 call you." And he says, "I am in a meeting."

4 Do you remember if you had a follow-up phone
5 call about the offering documents?

6 A. I don't recall.

7 Q. Okay. Sitting here today, do you remember that
8 subject ever being discussed between you and
9 Mr. Beauchamp, that is the offering documents for DenSco?

10 A. I do recall a discussion that he said that they
11 wanted to, and I don't know if this is Mr. Chittick or
12 Mr. Beauchamp to Mr. Chittick, saying that they would
13 update them every two years, but there was some delay or
14 problem in updating.

15 Q. Do you remember what the problem was?

16 A. To the best of my recollection, that
17 Mr. Chittick didn't follow through on doing the updates.

18 Q. Do you remember, did -- Mr. Beauchamp ever
19 telling you that he had terminated his relationship as
20 securities counsel for DenSco at some point in time?

21 A. I don't recall offhand.

22 Q. To just follow up on what you said a moment ago,
23 you indicated it was your understanding that Mr. Beauchamp
24 had advised Mr. Chittick and DenSco to update their POM?

25 MR. STURR: Object to the form.

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1 THE WITNESS: Again, I don't know if it was
2 Mr. Chittick wanting to update it or Mr. Beauchamp. I'm
3 not sure which direction that went.

4 Q. (BY MR. DeWULF) All right. But your
5 understanding was it ultimately did not get updated for
6 2013?

7 A. That is my understanding, yes, sir.

8 Q. Okay. And you don't recall -- well, did you
9 ever gain an understanding that Mr. Beauchamp and his
10 relationship with DenSco changed as a result of DenSco's
11 not updating the 2013 POM?

12 A. I just can't recall what was said.

13 Q. Okay. And I think I asked you this earlier in
14 another form, but let me ask just to clarify for context.

15 You don't recall one way or the other whether
16 Mr. Beauchamp told you that his knowledge and involvement
17 with DenSco had changed sometime in 2014?

18 A. I don't recall, sir.

19 Q. All right. And as of 2016, you don't recall him
20 telling you that he did not have up-to-date information on
21 some of the things in DenSco because of his relationship
22 changing?

23 A. Well, I can't say it's a relationship change,
24 but he didn't have the complete information to even make
25 the changes to that every two-year update, so apparently

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1 he didn't have all the information he needed.

2 Q. And how do you know that?

3 A. Because of the emails that Mr. Beauchamp had
4 said, saying that he didn't have the 2013 update.

5 Q. Did you -- did you talk to anyone about that
6 other than Mr. Beauchamp, that is, the inability to update
7 the 2013 POM?

8 A. I don't recall speaking with anybody else.

9 Q. Okay.

10 (Deposition Exhibit No. 1116 was marked for
11 identification.)

12 Q. (BY MR. DEWULF) Showing you 1116. At the very
13 top there is an email from Kevin Merritt, dated August 15,
14 2016, to Mr. Polese, Wendy Coy, with a copy to you and
15 others.

16 Do you see that?

17 A. Yes, sir, I do.

18 Q. And it references a Scott Menaged.

19 Do you see that?

20 A. Yes, I do.

21 Q. And do you recall learning about this
22 individual, Scott Menaged, on or about August 15, 2016?

23 A. I know his name came into it. I don't know at
24 what point.

25 Q. Do you remember -- I know you indicated early on

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1 in your testimony that the receiver had asked you to go to
2 Mr. Menaged's furniture store in connection with gathering
3 information, right?

4 A. Well, it was seizing the furniture that was
5 inside of the store.

6 Q. I see.

7 Did -- did -- I should have asked this at the
8 time, but did you seize the furniture or did the sheriff?

9 A. I believe it was the receiver who seized the
10 furniture.

11 Q. Did you at some point learn that Scott Menaged
12 had done a large amount of borrowing from DenSco?

13 A. At some point, yes.

14 Q. And did you learn that there were a large number
15 of loans that had been fraudulently obtained from DenSco
16 by Mr. Menaged?

17 A. Yes.

18 Q. How did you learn that?

19 A. I don't recall exactly where it came from.

20 Q. Do you remember whether you would have learned
21 that before the receiver was appointed or after?

22 A. I don't recall.

23 Q. Okay. We have seen a bunch of emails for the
24 last half an hour, 40 minutes in this mid-August
25 timeframe. It seems like there was a lot of activity

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1 going on.

2 Is that your memory, that there were a lot of
3 back and forths and trying to figure out what was going on
4 at DenSco?

5 A. Yes.

6 Q. And, again, in this timeframe, although you were
7 dealing with new counsel for the estate, did you find
8 Mr. Beauchamp to be fulfilling whatever you were asking
9 him to do?

10 A. Well, the Division was dealing with new counsel,
11 not so much me directly, but Mr. Beauchamp I believe at
12 that point would send us requests for files, and we would
13 provide those files.

14 Q. And those files were, in that time, primarily
15 having do with these loan collections, right?

16 A. Correct.

17 Q. Did you have any -- once -- once Mr. Polese and
18 Mr. Merritt got involved working with Ms. Heuer and the
19 estate, was your involvement with Mr. Beauchamp just
20 limited to communicating regarding those loan collections?

21 A. I believe so at that point.

22 Q. I'm showing you Exhibit 286. This, at the very
23 top of the first page, is an email from David Beauchamp to
24 an individual named Hyman, Chris Hyman, with a copy to you
25 and others.

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1 Do you see that?

2 A. Yes, sir, I do.

3 Q. And it was a communication about the status of
4 the representation of the estate.

5 Do you independently remember this email,
6 sitting here today?

7 A. I'm reading through it --

8 Q. All right.

9 A. -- for just a second --

10 Q. Yeah, please do.

11 A. -- Counsel.

12 Q. Please do.

13 A. Yes.

14 Q. I've lost track of what yes is the answer to.

15 A. I was going to say what was your question again?

16 Yes, I remember the email.

17 Q. I'm sure it was really a great question, but I
18 don't remember what it was.

19 So this is minor, but I think I was asking about
20 the email and do you recall there being communications
21 about what role Mr. Polese and Mr. Merritt were playing
22 versus what role Mr. Beauchamp was playing.

23 A. In seeing the email, yes, there was
24 communication.

25 Q. All right. He says, the second paragraph:

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1 Since I have previously represented DenSco Investment
2 Corporation, I have been asked to continue to work on
3 behalf of DenSco with respect to certain administrative
4 matters on an interim basis until a Receiver is appointed
5 for the company.

6 Did I read that correctly?

7 A. Yes, you did.

8 Q. Is that consistent with what you understood at
9 the time that Mr. Beauchamp was doing?

10 A. I believe so. This clarifies whether he was the
11 personal representative.

12 Q. Or representing the estate, right?

13 A. Correct.

14 Q. In other words, there is counsel for the estate
15 and David Beauchamp is not it, right?

16 A. Correct.

17 Q. All right.

18 (Deposition Exhibit No. 1117 was marked for
19 identification.)

20 Q. (BY MR. DEWULF) So I'm showing you
21 Exhibit 1117, and I think these are just more
22 communications as it relates to the handling of loan --

23 MR. STURR: John, we previously marked this.

24 THE WITNESS: Is this one that was marked
25 earlier?

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1 MR. DeWULF: Oh, did we?

2 MR. STURR: Yeah.

3 MR. DeWULF: Then I apologize. Then let's not.
4 Thanks for the clarification. So let's not mark that
5 1117, but let's mark this 1117.

6 (Deposition Exhibit No. 1117 was marked for
7 identification.)

8 Q. (BY MR. DeWULF) So now I'm showing you a new
9 and improved Exhibit 1117, and it is -- the front of the
10 document indicates it's an Order Granting Motion for
11 Expedited Hearing on Application for Preliminary
12 Injunction and Application for the Appointment of a
13 Receiver and Setting Hearing date, and it's dated
14 August 18, 2016.

15 Do you see that?

16 A. Yes, sir.

17 Q. Do you think that you would have received a copy
18 of this on or about August 18?

19 A. I doubt if I would have received a copy. The
20 file may have a copy from Ms. Coy, being the person I
21 believe who filed this with the court.

22 Q. Would -- this would have been outside your
23 responsibilities, right, the legal matters?

24 A. That is correct.

25 Q. You would have known generally that the court

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1 process had begun, right?

2 A. Correct.

3 Q. All right. So if we are using a timeframe for,
4 and I think that the appointment gets done shortly after
5 this, but do you -- do you think that the appointment of
6 the receiver then diminished your responsibilities as it
7 related to the role you were playing for DenSco?

8 A. We still were pursuing any securities angle to
9 it, but the receiver wouldn't take it over as the
10 corporation at that point.

11 Q. All right. And that was, again, Mr. Davis,
12 right, Peter Davis?

13 A. Correct.

14 Q. The -- there was a counsel for Mr. Davis named
15 Ryan Anderson.

16 Did you have any dealings with Mr. Anderson?

17 A. I have spoken with Mr. Anderson, yes.

18 MR. DEWULF: Okay. Counsel, would you consider
19 that privileged?

20 MR. KITCHIN: Not that I know of.

21 Q. (BY MR. DEWULF) All right. Do you remember
22 what you discussed with Mr. Anderson?

23 A. Not directly, no, sir.

24 Q. All right. The issue of privilege, that is the
25 court's ruling about privilege, the debate about privilege

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1 as it related to DenSco and Mr. Chittick, you did not have
2 direct involvement in those issues, right?

3 A. No, sir.

4 Q. All right. Those would have been handled by
5 lawyers within the Securities Division?

6 A. Yes, sir.

7 Q. All right. I'm just going to mark a couple of
8 these, and then I think we will be about finished.

9 (Deposition Exhibit No. 1118 was marked for
10 identification.)

11 Q. (BY MR. DEWULF) You are copied on these emails,
12 Mr. Clapper. This is just more of the work that was being
13 done to try to collect on some of the DenSco loans with
14 Mr. Beauchamp?

15 A. I believe so, yes, sir.

16 MR. DEWULF: All right. Mark this.

17 (Deposition Exhibit No. 1119 was marked for
18 identification.)

19 Q. (BY MR. DEWULF) Same thing with 1119. More
20 efforts as it related to collecting monies for the
21 company?

22 A. Yes, sir.

23 MR. DEWULF: Mark that.

24 (Deposition Exhibit No. 1120 was marked for
25 identification.)

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1 Q. (BY MR. DEWULF) Mr. Clapper, you are copied
2 again on these emails having do with loan closings?

3 A. Yes, sir.

4 (Deposition Exhibit No. 1121 was marked for
5 identification.)

6 Q. (BY MR. DEWULF) If you look at the top email on
7 the first page of Exhibit 1121, you are sending an email
8 to this real estate agent and others having do with loan
9 closings, correct?

10 A. That's correct.

11 Q. And you say, "I gave the file to David later
12 this morning so he will handle it from there."

13 You are referencing David Beauchamp handling the
14 release of the lien on the property on the loan, right?

15 A. Right. And I believe that's relating back to
16 Exhibit No. 1119, because we were trying to find the file
17 number specifically for that property.

18 Q. And I think that's right.

19 (Deposition Exhibit No. 1122 was marked for
20 identification.)

21 Q. (BY MR. DEWULF) I'd like you to focus on the
22 email at the top of that first page. It's Exhibit 1122.

23 A. Yes, sir.

24 Q. This is a communication with David Beauchamp,
25 talking about the work he is doing and then moving it over

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1 to the receiver.

2 You can read it, and then I'm going to ask you a
3 question about it.

4 A. Okay.

5 Q. Do you remember that David Beauchamp served in
6 the role of trying to collect monies for DenSco loans and
7 providing releases of liens until he could transfer it
8 over to the receiver?

9 A. Correct.

10 (Deposition Exhibit No. 1123 was marked for
11 identification.)

12 Q. (BY MR. DeWULF) And here Ms. Coy is conveying
13 to Mr. Beauchamp that Mr. Davis has now been appointed to
14 position of receiver?

15 A. Yes, sir.

16 Q. And you are copied on that email?

17 A. Yes, I am.

18 (Deposition Exhibits No. 1124 through 1126 were
19 marked for identification.)

20 Q. (BY MR. DeWULF) Let me just look at 1124, 1125,
21 and 1126 with you, Mr. Clapper, just confirming that these
22 are emails where you are in the loop on David Beauchamp
23 seeking to communicate and work with borrowers in getting
24 final payoffs on loans for DenSco.

25 A. Correct.

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1 Q. I mean, to the extent that he would have, "he,"
2 David Beauchamp, would have helped the company collect
3 monies, that would have been helpful for the company?

4 MR. STURR: Object to the form.

5 THE WITNESS: I believe it would have been, yes,
6 sir.

7 Q. (BY MR. DeWULF) It just adds to the assets that
8 they have available to pay investors, et cetera, right?

9 A. Correct.

10 Q. The -- you were aware of what Mr. Beauchamp was
11 doing because you were providing him some of these files
12 he was asking for, that could then be utilized to close
13 the loans, right?

14 A. Correct.

15 Q. And I use "close the loans," but what I mean is
16 provide for the final payoff on the loans.

17 Is that how you understood that?

18 A. Yes, sir.

19 Q. And you had a form where you would provide him
20 the documents and then there would be some recording,
21 either through a receipt or otherwise, to show that those
22 documents had been provided?

23 A. I don't know if we had a signed receipt. We --
24 I believe Mr. Woerner kept a copy of the file, but the
25 original file would have gone back.

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1 MR. DeWULF: What's the new -- would you mark
2 this?

3 (Deposition Exhibit No. 1127 was marked for
4 identification.)

5 Q. (BY MR. DeWULF) Again, Exhibit 1127 is just
6 communications between you and Mr. Beauchamp and this
7 third party about a loan closing?

8 A. Correct.

9 (Deposition Exhibit No. 1128 was marked for
10 identification.)

11 Q. (BY MR. DeWULF) Showing you 1128, Mr. Clapper,
12 this is an email from Mr. Beauchamp to a Keith wettering
13 with a copy to you, again, August 19, 2016?

14 A. Yes, it is.

15 (Deposition Exhibit No. 1129 was marked for
16 identification.)

17 Q. (BY MR. DeWULF) Exhibit 1129, again, a series
18 of emails you are copied on, having to do with loan
19 closings?

20 A. Correct.

21 MR. DeWULF: Let me -- let's take a brief break.
22 Let me look in my files. I'll try to see if I have got
23 any issues I've got to cover. I know Geoff wants to ask
24 some questions as well. So let me look at my documents
25 and my notes, and you can use the restroom really quick.

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1 Maybe ten minutes? Is that good?

2 MR. KITCHIN: Sure.

3 MR. DeWULF: All right.

4 VIDEOGRAPHER: Off the record at 4:03 p.m. This
5 is the end of media four.

6 (A recess was taken from 4:03 p.m. to 4:08 p.m.)

7 VIDEOGRAPHER: We are back on the record. The
8 time is 4:08 p.m. This begins media five.

9 Q. (BY MR. DeWULF) Mr. Clapper, do you remember
10 when the Securities Division obtained the -- all the
11 DenSco files?

12 A. I don't recall.

13 Q. Were you still involved when that happened or do
14 you know?

15 A. At that point, Bill Woerner would have taken
16 over that completely and receiving the files and what was
17 done with them.

18 Q. Do you remember, in terms of the chronology,
19 when you would have taken a lesser role and Mr. Woerner
20 would have taken a greater role in connection with the
21 DenSco related matters?

22 A. It would have been after, most likely after the
23 receiver was appointed.

24 Q. All right. Which we have seen is sometime
25 around August 19 or August 18, 2016?

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1 A. Correct. He was involved up until that point
2 also, but more so, from his point of view, from that point
3 forward.

4 Q. All right. Do you know when Mr. Beauchamp
5 was -- terminated all involvement with respect to trying
6 to help DenSco?

7 A. I do not know, sir.

8 Q. Okay. And do you remember the circumstances of
9 that?

10 A. No, sir.

11 Q. All right. Do you recall whether David
12 Beauchamp helped you, that is helped in your
13 responsibilities with the Securities Division, in
14 gathering information about Mr. Menaged?

15 A. I don't recall gathering information on
16 Mr. Menaged.

17 Q. Okay. Do you know if anyone did gather
18 information at the Securities Division, without revealing
19 any privileged communications?

20 A. I don't know.

21 MR. DeWULF: Okay. No further questions. Thank
22 you.

23

24 XXX

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EXAMINATION

Q. (BY MR. STURR) Mr. Clapper, I hate to keep you here, but I've got a few questions.

A. That's okay.

Q. All right. Just to introduce myself again, I'm Geoffrey Sturr. I represent the receiver.

You said early on in the deposition that your, when Mr. Dewulf was asking you about your job, generally, and I wrote down "to determine if securities violations had occurred."

Did I hear you correctly?

A. I believe so.

Q. Okay. To -- and I don't want to get into any privileged information or any internal information, but just generally speaking, in determining if securities violations have occurred, is one step in the process obtaining copies of an offering document that an issuer has issued to investors?

A. We attempt to do that, yes, sir.

Q. Okay. Is another step in that process determining the dates on which securities were in fact sold?

A. Yes, sir.

Q. And then is it fair to say that part of to

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1 determine if securities violations have occurred, you
2 would want to know if sales had been made without adequate
3 disclosures or misleading disclosures?

4 Is that a fair summary?

5 A. Yes, sir.

6 Q. Okay. In this case, I'm going to go ahead and
7 mark this as a separate exhibit. It was part of a larger
8 exhibit that Mr. DeWulf --

9 MR. STURR: Kelly, can you mark that, please?

10 (Deposition Exhibit No. 1130 was marked for
11 identification.)

12 Q. (BY MR. STURR) This was part of 1117, but I
13 wanted to focus on this portion of it.

14 Could you take a look at Exhibit 1130? Do you
15 have it in front of you, Mr. Clapper?

16 A. Yes, sir, I do.

17 Q. This is that document that was filed in court
18 called Application for Preliminary Injunction and
19 Appointment of Receiver.

20 Do you see that?

21 A. Yes, sir.

22 Q. And if you go to the last two pages, it's
23 double-sided, so the last couple of pages, there is an of
24 affidavit that you gave. Is that correct?

25 A. That's correct, sir.

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1 Q. If you haven't reviewed it recently, take a
2 minute and look at it. I have just got a few general
3 questions for you.

4 A. Yes, sir.

5 Q. And you signed this on August 17th, is that
6 correct?

7 A. That is correct, sir.

8 Q. So as I look at this, in paragraph 7 you refer
9 to obtaining a copy of the DenSco 2009 Private Placement
10 Offering Memorandum, correct?

11 A. Correct.

12 Q. And you describe that as an offering document.
13 Paragraph 8 you describe and paragraph 9 some of the terms
14 of the offering document, is that right?

15 A. Correct.

16 Q. And then if you go to the next page,
17 paragraph 12, you wrote: According to investor
18 interviews, in about 2013, DenSco stopped accepting new
19 investor money. Since September of 2015, DenSco began
20 accepting new investors and additional investments,
21 correct?

22 A. Correct.

23 Q. And then was it -- do I read that correctly to
24 state that you understood that DenSco had stopped raising
25 money in 2013 and did not begin again until September of

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1 2015?

2 A. Correct.

3 Q. Now I want to go back to your interactions with
4 Mr. Beauchamp, and I will do it very briefly.

5 Mr. DeWulf was questioning you about a meeting
6 that occurred in his office on August 10.

7 Does that refresh your memory, you were asked
8 about that meeting?

9 A. Yes, sir.

10 Q. That was a meeting at which Ms. Coy was present,
11 you were present, and I'm forgetting the name of your --

12 A. William Woerner.

13 Q. -- Woerner. And you met with Mr. Beauchamp.

14 Was anyone else present in the room, other than
15 Mr. Beauchamp and the three representatives for the
16 Division?

17 A. No. It was just the three of us with
18 Mr. Beauchamp.

19 Q. Do you have any memory today of anything
20 Mr. Beauchamp may have said about who he represented in
21 that meeting?

22 A. I don't recall offhand the discussions that
23 occurred.

24 Q. Okay. Do you remember him saying anything at
25 all about representing Shawna Heuer?

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1 A. I believe he said that Shawna was trying to find
2 her own counsel.

3 Q. Okay. Take a look at Exhibit 1105, if you
4 would, in that pile.

5 A. Yes, sir.

6 Q. Okay. 1105 is the powers of -- letters of
7 appointment that Mr. Beauchamp sent on August 11, correct?

8 A. Correct.

9 Q. If you look at the -- the letter of appointment,
10 the second document, do you see that?

11 A. Yes.

12 Q. In the upper left corner it identifies Clark
13 Hill as the attorney for Shawna Heuer, is that correct?

14 A. That's correct.

15 Q. Do you remember Mr. Beauchamp saying anything to
16 you at all at the beginning of that meeting on August 10,
17 2016, about the fact that his law firm represented
18 Ms. Heuer at that time?

19 A. I don't recall that, no, sir.

20 Q. I would also -- now I would like you to look at
21 Exhibit 1102.

22 Exhibit 1102 is an email Mr. Beauchamp sent on
23 August 10 to DenSco investors after the meeting that he
24 had with you and others, correct?

25 A. Yes, sir.

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1 Q. If you go to the second page under the heading
2 Today's Meeting with the Securities Division, do you see
3 that?

4 A. Yes, I do.

5 Q. Second paragraph, quote, "Based on information
6 from Denny's notes and files, we were able to provide the
7 Securities Division a preliminary assessment of how the
8 perceived fraud occurred and the timing of such fraud."

9 If you go down and skip the next two sentences,
10 it says, "The information we provided supplemented the
11 information that many of the DenSco investors have already
12 shared with the Investigators for the Securities
13 Division."

14 sitting here today, Mr. Clapper, do you have any
15 memory of the information that Mr. Beauchamp provided in
16 the meeting that's described here, a preliminary
17 assessment of how the perceived fraud occurred?

18 A. I don't recall if this is where Mr. Menaged's
19 name came up. I -- I don't recall exactly what was said,
20 no, sir.

21 Q. Do you remember Mr. Beauchamp offering --
22 providing a copy of a letter that Mr. Chittick had written
23 to his investors shortly before his death?

24 A. I don't recall any letter, no, sir.

25 MR. STURR: I'm going to -- John, forgive me,

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1 but I didn't bring a copy, so I'm going to just show the
2 witness on my iPad, I'll show you, a copy of Exhibit 413.

3 MR. DeWULF: I understand.

4 Q. (BY MR. STURR) Mr. Clapper, if you could take a
5 look at what was marked as Exhibit 413 in this matter.
6 You can just scroll up with your thumb. And you don't
7 need to read it in detail. I just want to see if you
8 recognize it.

9 A. I don't know if I have seen that. It's
10 possible.

11 Q. Okay. would it -- would it -- would a letter
12 that Mr. Chittick wrote describing his operation of DenSco
13 and his dealings with investors have been relevant to you
14 or of interest to you in your investigation?

15 A. Yes, it would have been.

16 Q. If that letter is not in the ACC's files, can we
17 assume that it wasn't provided to your office in the
18 course of your investigation?

19 MR. DeWULF: Object to form.

20 THE WITNESS: I would say yes.

21 Q. (BY MR. STURR) Did Mr. Chittick, excuse me, did
22 Mr. Beauchamp tell you in that meeting that in May of
23 2014, he had, quote, fired DenSco for failing to make the
24 requisite disclosures to its investors?

25 MR. DeWULF: Could I read that -- could you read

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1 that back, Kelly?

2 THE WITNESS: I need to hear it.

3 Q. (BY MR. STURR) Let me start again.

4 Did Mr. Beauchamp tell you, to the best of your
5 memory, anything at all about -- in that August 10
6 meeting, did he tell you anything at all about his
7 involvement in assisting Denny Chittick in drafting
8 private offering memoranda?

9 A. I know he said that he had been involved in some
10 paperwork and the two-year updates, but there was some
11 issue.

12 Q. Did he say that in that meeting?

13 A. I don't recall if it was that meeting or not.

14 Q. Do you remember him telling you at any time that
15 in May of 2014 he had fired DenSco as a client because
16 Mr. Chittick was refusing to make requisite disclosures to
17 investors?

18 A. I don't recall he said he fired them. I don't
19 recall.

20 Q. Would that have been a material fact in
21 conducting a securities investigation, that a lawyer had
22 fired a client for not -- failing to make requisite
23 disclosures?

24 MR. DeWULF: Object to form.

25 MR. KITCHIN: Objection. Please don't answer.

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1 work product. You are asking for his legal analysis.

2 Q. (BY MR. STURR) Mr. Clapper, have we exhausted
3 your memory of anything that David Beauchamp may have told
4 you on August 10 in that meeting?

5 A. I don't recall anything else.

6 Q. Okay. And I want to go back, then, if you could
7 take a look at Exhibit 283.

8 A. Yes, sir.

9 Q. Exhibit 283 is the email you received from
10 Mr. Beauchamp on August 15th, is that correct?

11 A. Correct.

12 Q. And I just want to have you focus on his email
13 to you in the center of the page, where he wrote, "In
14 addition, Denny stopped our efforts to do an updated
15 offering memorandum in 2013," et cetera.

16 Do you see that?

17 A. Yes, I do.

18 Q. Okay. Can you think of any information that
19 Mr. Beauchamp gave you about his involvement in updating
20 DenSco's Private Offering Memorandum in 2013, other than
21 what's stated in that paragraph?

22 A. I know there were some problems. I don't know
23 what the problems were.

24 Q. Did Mr. Beauchamp leave you with the impression
25 that DenSco had stopped raising money after 2013, if you

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1 recall?

2 MR. KITCHIN: Objection. Please don't answer.
3 work product.

4 Q. (BY MR. STURR) Did Mr. Beauchamp tell you that
5 DenSco had stopped soliciting investors in 2013?

6 A. I don't recall if they stopped -- I don't recall
7 the exact conversation, if they had stopped and restart --
8 I don't know.

9 Q. Did Mr. Beauchamp tell that you in 2014 DenSco
10 was continuing to solicit investors? Do you remember him
11 saying that to you?

12 A. I don't recall.

13 MR. STURR: Okay. Those are the only questions
14 I have. Thank you.

15

16 RE-EXAMINATION

17

18 Q. (BY MR. DeWULF) So let me ask just a couple of
19 follow-up questions, and then I promise I'll let you go.
20 Thank you for your patience today.

21 Exhibit 1130, Mr. Sturr asked you some questions
22 about your declaration. It's at the very end of that
23 exhibit, or it's an affidavit.

24 Affidavit, paragraph 12, it says: According to
25 investor interviews, in or about 2013, DenSco stopped

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1 accepting new investor money.

2 So are -- are you saying in your sworn statement
3 here that your conclusion that DenSco stopped accepting
4 new investor money was based on what the investors told
5 you?

6 A. That's according to the investors.

7 Q. Okay. So the investors were telling you that
8 they -- that DenSco stopped accepting new investor money
9 in 2013?

10 A. Correct.

11 Q. And then it goes on and says, "Since September
12 of 2015, DenSco began accepting new investors and
13 additional investments from current investors."

14 Do you think that information was based on what
15 the investors told you in their interviews, or do you
16 think it was based on some other source?

17 A. It could have been either. It could have been
18 documents, emails, or what investors had said.

19 Q. And do you have any idea sitting here today what
20 happened between 2013 and 2015 with respect to investors?

21 A. No, sir.

22 Q. So Mr. Sturr asked a question about whether
23 something would appear in the Corporation Commission's
24 files, that is, he was referring to a letter.

25 Are the Corporation Commission's files available

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1 for public review?

2 MR. KITCHIN: I think you know the answer.

3 THE WITNESS: Our files are confidential unless
4 they are used in the course of a hearing that we put on.

5 Q. (BY MR. DEWULF) Okay. And so are you aware of
6 whether the Corporation Commission has chosen to open
7 their files for public review in connection with -- and
8 that's just a yes or no -- in connection with any action
9 it's taken regarding the DenSco matter?

10 A. We have not filed an action, so, no, the files
11 would not be open.

12 Q. So the seeking the appointment of a receiver was
13 not -- I see what you are saying -- it wasn't bringing a
14 matter against someone for securities violations, right?

15 A. That's correct, sir.

16 Q. Okay. So in connection with the activities that
17 the Corporation Commission did undertake in the DenSco
18 matter, you are not aware of the files being made public?

19 A. No, sir.

20 MR. DEWULF: All right. The -- Peter, I just
21 wanted to clarify something, because it will help us, I
22 think, as we go forward.

23 MR. KITCHIN: Uh-huh.

24 MR. DEWULF: We had considered deposing Ms. Coy
25 in connection with her responsibilities and what she did

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1 in connection with the DenSco matter, but I just want to
2 confirm with you, if we were to ask her what work she did,
3 you would instruct her not to answer on work-product
4 grounds?

5 MR. KITCHIN: For some of it. I mean, some of
6 her work is going to be talking to other people, but
7 certainly, you know, I imagine a significant amount of it,
8 but, I mean, we can talk in more detail if you have got
9 specific areas in mind.

10 MR. DeWULF: Whatever conclusions she reached
11 based on the work that she and her team did, would that
12 be, in your view, protected by the work-product privilege?

13 MR. KITCHIN: Yes.

14 MR. DeWULF: And as it relates to information
15 that was gathered by the Corporation Commission leading up
16 to the determination to have a receiver appointed, would
17 you take the position that that would be work product as
18 well?

19 MR. KITCHIN: I don't think so, as to simply
20 what the information is generally.

21 MR. DeWULF: Okay. The information that would
22 have been gathered by her and her team would be work
23 product or would not be?

24 MR. KITCHIN: I don't think so, if I'm
25 understanding you correctly. Although if you are asking,

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1 you know, which pieces of information were relied on, then
2 yes.

3 MR. DeWULF: would the basis for her decision or
4 the Division's decision to -- the video is going to be
5 great on this. Everybody was falling asleep already.

6 MR. KITCHIN: We're all still and calm.

7 MR. DeWULF: So would -- would her analysis and
8 conclusions before the appointment of the receiver be
9 protected by work product?

10 MR. KITCHIN: And afterward, yes.

11 MR. DeWULF: All right. No further questions.
12 Thanks.

13 VIDEOGRAPHER: This concludes the videotaped
14 deposition of Gary Clapper, and we are off the record at
15 4:30 p.m.

16 (4:30 p.m.)

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GARY CLAPPER

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1 BE IT KNOWN that the foregoing proceeding was
 2 taken before me; that the witness before testifying was
 3 duly sworn by me to testify to the whole truth; that the
 4 questions propounded to the witness and the answers of the
 5 witness thereto were taken down by me in shorthand and
 thereafter reduced to typewriting under my direction; that
 the foregoing is a true and correct transcript of all
 proceedings had upon the taking of said deposition, all
 done to the best of my skill and ability.

6 I CERTIFY that I am in no way related to any of
 7 the parties hereto nor am I in any way interested in the
 outcome hereof.

8 [X] Review and signature was requested.
 9 [] Review and signature was waived.
 10 [] Review and signature was not requested.

11 I CERTIFY that I have complied with the ethical
 12 obligations in ACJA Sections 7-206(F)(3) and
 7-206-(J)(1)(g)(1) and (2).

13
 14 Kelly Sue Oglesby 9/26/2019
 Kelly Sue Oglesby Date
 15 Arizona Certified Reporter No. 50178

16 I CERTIFY that JD Reporting, Inc. has complied
 17 with the ethical obligations in ACJA Sections
 7-206(J)(1)(g)(1) and (6).

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