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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF KENTUCKY
CENTRAL DIVISION AT LEXINGTON

- - -

UNITED STATES OF AMERICA,	:	Docket Nos. 20-63-1
	:	20-63-2
Plaintiff,	:	
	:	Lexington, Kentucky
	:	Monday, August 21, 2023
v.	:	9:00 a.m.
	:	
DOUGLAS WILLIAM VANCE AND	:	
MOLLY IRENE MCKINNON,	:	
	:	
Defendants.	:	

- - -

TRANSCRIPT OF EVIDENTIARY HEARING
BEFORE DANNY C. REEVES
UNITED STATES DISTRICT COURT JUDGE

- - -

APPEARANCES:	
For the United States:	JAMES T. CHAPMAN, ESQ. U.S. Attorney's Office 260 W. Vine Street Suite 300 Lexington, Kentucky 40507
For the Defendant Douglas William Vance:	JEFFREY A. DARLING, ESQ. Nichols Walter, PLLC 3120 Wall Street Suite 120 Lexington, Kentucky 40513
For the Defendant Molly Irene McKinnon:	GEORGE SCOTT HAYWORTH, ESQ. Hughes, Lowry, Milner & Hayworth 271 W. Short Street Suite 812 Lexington, Kentucky 40507
Court Reporter:	LAUREN I. GOOTEE, RMR, CRR Official Court Reporter 101 Barr Street Lexington, Kentucky 40507 (859) 469-7459

Proceedings recorded by mechanical stenography,
transcript produced by computer.

1 (Proceedings commenced in open court at 9:00 a.m.)

2 THE COURT: Madam Clerk, would you call the matter
3 scheduled for 9:00, please.

4 THE CLERK: Yes, Your Honor.

5 Lexington Criminal Action Number 20-63, United States of
6 America versus Douglas William Vance and Molly Irene McKinnon,
7 called for evidentiary hearing.

8 THE COURT: Thank you.

9 Would counsel state their appearances, please.
10 Mr. Chapman.

11 MR. CHAPMAN: Good morning, Your Honor. James
12 Chapman for the United States.

13 THE COURT: Thank you.

14 And Mr. Hayworth.

15 MR. HAYWORTH: Thank you, Your Honor. Scott Hayworth
16 here, and Molly McKinnon is seated to my right.

17 THE COURT: Thank you.

18 Mr. Darling.

19 MR. DARLING: Good morning, Your Honor. Jeff Darling
20 on behalf of Douglas Vance. He's seated directly to my right.

21 THE COURT: Thank you.

22 This matter is scheduled for a hearing this morning on
23 objections to the presentence reports of the defendants with
24 the sentencing hearings scheduled to follow resolution of the
25 objections.

1 Before we proceed, let me first identify the primary
2 objections that would impact both defendants in the case. I
3 understand the United States will be presenting some testimony
4 with respect to a number of the objections that have been
5 raised.

6 The presentence reports of both defendants do assess
7 certain enhancements under the guidelines under Section 2B1.1.
8 Initially, of course, the base offense level is a level 7 for
9 the initial offenses of conviction. There's a 16-level
10 increase under 2B1.1(b)(1)(I) if the loss amount is greater
11 than \$1.5 million. The defendants contest the loss amount.

12 There is also a two-level increase under 2B1.1(b)(2)(A)
13 if the offense involved ten or more victims or resulted in
14 substantial financial hardship to one or more victim. Again,
15 that would be a two-level increase.

16 And then there's also an increase under 2B1.1(b)(10) if
17 the offense involved sophisticated means and the defendant
18 intentionally engaged in or caused the conduct constituting
19 sophisticated means. In Chapter 3, 3B1.3, there's a two-level
20 increase for abuse of a position of public trust.

21 So I believe those objections do affect both defendants
22 in the case. If the parties wish, they may identify others
23 that jointly affect the defendants.

24 Is the United States ready to proceed with presentation
25 of proof?

HUBBUCH - Direct

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1 MR. CHAPMAN: Yes, Your Honor.

2 THE COURT: All right.

3 Mr. Chapman, have you identified any other common issues
4 to both defendants that will need to be resolved in this
5 hearing?

6 MR. CHAPMAN: No, Your Honor.

7 THE COURT: All right. Thank you. You may proceed.

8 MR. CHAPMAN: The United States calls Christopher
9 Hubbuch.

10 GOVERNMENT'S WITNESS, CHRISTOPHER HUBBUCH, SWORN

11 THE COURT: Thank you.

12 Mr. Chapman, you may proceed when you're ready.

13 MR. CHAPMAN: Thank you, Your Honor.

14 CHRISTOPHER HUBBUCH

15 DIRECT EXAMINATION

16 BY MR. CHAPMAN:

17 Q. Good morning, sir.

18 A. Good morning.

19 Q. Would you please state your name and how you're employed.

20 A. Christopher Hubbuch, H-U-B-B-U-C-H, and I am a special
21 agent with the FBI.

22 Q. What are your general duties and responsibilities as a
23 special agent with the FBI?

24 A. Primarily to investigate crimes. Primarily I work civil
25 rights, color of law, and complex fraud cases, white color.

HUBBUCH - Direct

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1 Q. How long have you been a special agent with the FBI?

2 A. For over 22 years.

3 Q. Agent Hubbuch, are you what we would refer to as the case
4 agent in this case?

5 A. I am.

6 Q. What does that mean?

7 A. That means it's basically assigned to me and my
8 responsibility to investigate it and to take the investigation
9 to the prosecutor.

10 Q. And were you present and did you observe the trial that
11 occurred in this matter?

12 A. I was.

13 Q. Agent Hubbuch, are you aware that the defendants have
14 filed various objections to the guideline calculations in this
15 case?

16 A. Yes.

17 Q. I'd like to ask you a few questions that are relevant to
18 those matters.

19 First, I believe you brought to the stand with you three
20 government exhibits; is that correct?

21 A. Yes.

22 Q. First, I'd like to direct your attention to a document
23 that was previously marked for trial purposes as Government's
24 Exhibit 116.

25 MR. CHAPMAN: And, Your Honor, I have Court copies of

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1 these. If I may approach?

2 THE COURT: Yes, sir. Thank you.

3 MR. CHAPMAN: And these have been provided to defense
4 counsel.

5 BY MR. CHAPMAN:

6 Q. Okay. Agent Hubbuch, are you looking at Exhibit 116 from
7 trial?

8 A. Yes.

9 Q. Very generally, what is this?

10 A. That is an email from Doug Vance that forwards another
11 email that was from Molly McKinnon to Doug Vance.

12 Q. Is it a true and accurate copy of an email that you
13 received in the investigation of this case?

14 A. Yes.

15 MR. CHAPMAN: Your Honor, for purposes of sentencing,
16 I'll move to admit this as a sentencing exhibit.

17 THE COURT: Any objection for purposes of this
18 hearing?

19 MR. DARLING: No, Your Honor.

20 MR. HAYWORTH: No objection.

21 THE COURT: United States Exhibit which was
22 previously marked as 116 --

23 Do you wish to continue with that designation?

24 MR. CHAPMAN: Yes, Your Honor.

25 THE COURT: All right. It's admitted.

HUBBUCH - Direct

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1 (Government's Exhibit 116 was admitted.)

2 BY MR. CHAPMAN:

3 Q. Agent Hubbuch, on the first page of this exhibit, if I
4 could direct your attention to the email that Ms. McKinnon
5 sent to Mr. Vance.

6 Do you see that on the first page?

7 A. I do.

8 Q. What is Ms. McKinnon's title that is listed in the
9 signature block?

10 A. Molly McKinnon, CFO, which is commonly used to designate
11 chief financial officer.

12 Q. Of what entity?

13 A. Of Nex-Gen Industries, Inc., at 610 Trus Joist Lane in
14 Chavies, Kentucky.

15 Q. And what is your understanding of the responsibilities of
16 a CFO in general?

17 A. To have overarching responsibility of handling the
18 financial matters of the entity.

19 Q. Agent Hubbuch, if I could direct your attention to page
20 number USA-3057. It's several pages into the document.

21 Do you see a paragraph labeled "Operations" toward the
22 bottom of the page?

23 A. I do.

24 Q. Would you simply read into the record the first sentence
25 of that paragraph?

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1 A. "As founder and chief executive officer of the company,
2 Mr. Doug Vance will oversee all aspects of the entire
3 operation."

4 Q. If you would then skip forward a few sentences. And do
5 you see a sentence that begins with, "Vance already has key
6 personnel...?"

7 A. Yes.

8 Q. Would you read that, please.

9 A. "Vance already has key personnel in place, but will
10 personally hire all company executives to ensure that their
11 skills and personalities mesh with others in the company."

12 Q. Will you keep going?

13 A. "All executives will report directly to Vance, and he
14 will work closely with each to monitor and provide his
15 expertise when necessary."

16 Q. Please keep going and finish out that paragraph.

17 A. "Vance will have the lead role in making decisions that
18 concern the well-being of the company and will be involved in
19 every new hire, assuring that dedicated people are recruited,
20 trained, and given all the tools necessary to produce quality
21 products for NGI. Vance will initially train all personnel
22 involved in the operations of the kilns and dryers until such
23 time as that role can be transferred to the operations manager
24 and production supervisors."

25 Q. Thank you, sir.

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1 I'd now like to direct your attention to a document that
2 you have on the stand with you that was previously marked as
3 Government's Exhibit 1.

4 Do you see that, sir?

5 A. Yes.

6 Q. What is this document?

7 A. This is a summary table that was extracted/derived from a
8 combination of investigation and spreadsheets that were
9 compiled by a forensic accountant with the FBI. It basically
10 shows the investor funds, lender funds that were infused into
11 the business, repayment of judgments, Ponzi returns, and gross
12 sales. So it's a summary -- it's a summary spreadsheet.

13 Q. Does this summary spreadsheet accurately summarize the
14 financial records that were introduced at trial in this case?

15 A. Yes.

16 MR. CHAPMAN: Your Honor, I would move the admission
17 of Government's Exhibit 1.

18 THE COURT: Any objection to its admission for this
19 hearing?

20 MR. HAYWORTH: No, Your Honor.

21 MR. DARLING: No, Your Honor.

22 THE COURT: United States Exhibit 1 is admitted for
23 purposes of this hearing.

24 (Government's Exhibit 1 was admitted.)

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1 BY MR. CHAPMAN:

2 Q. Now, Agent Hubbuch, I'd like to direct your attention to
3 the first table on this exhibit.

4 What does the first table represent?

5 A. The first table is what we have documented as what are
6 referred to as Ponzi-style returns. Basically, they're
7 returns to investors or lenders that infuse money into
8 Nex-Gen.

9 Q. Based on your review of the financial records and your
10 overall knowledge of the case, is there anything noteworthy
11 about the timing of some of these returns?

12 A. Yes. Especially when it comes to Joan Faybik and Keith
13 Shpakoff.

14 Q. All right. Before we get into it, first, who are Joan
15 Faybik and Keith Shpakoff?

16 A. So Joan Faybik, from my investigation, is one of the
17 early investors in Doug Vance, who appears to have had a
18 relationship with him from well preceding 2016, but then has
19 been infusing her own funds into the operations of Doug Vance
20 and Nex-Gen, believing that she was basically co-owners with
21 NexGen, with Doug Vance solely and no other investors and
22 lenders, or at least other investors and stakeholders.

23 Q. And who is Mr. Shpakoff?

24 A. Mr. Shpakoff is a friend of Joan Faybik. Refers to
25 himself as her nephew, but it's actually just a friend of

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1 hers.

2 Q. As far as you know, no actual family connection?

3 A. Not to my knowledge.

4 Q. All right. Let's go back to my original question, which
5 is: Is there anything noteworthy about the timing?

6 And you led in by saying there was with respect to
7 Ms. Faybik and Mr. Shpakoff?

8 A. That is correct.

9 Q. Would you please explain that?

10 A. Sure. So from reviewing the bank records and some of the
11 additional investigation that I did, we learned that some of
12 the monies that came in to Doug Vance into Nex-Gen were
13 subsequently immediately turned around and sent to Joan Faybik
14 and to Keith Shpakoff.

15 I'll describe a timeline of things that happened in my
16 investigation and the follow-up that we did.

17 So my first interaction with Doug Vance overtly was when
18 I placed a telephone call to him on or about August 22nd of
19 2018. That was a short telephone interview just to set up a
20 meeting, which I did about five days later on August 27th. I
21 met out at Trus Joist, Chavies, had a quick look around and
22 brief interview with Doug Vance. And then a couple days later
23 was my first telephone interview of Joan Faybik, who was one
24 of his -- was Doug Vance's business partner in this or
25 investor in this.

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1 About a month later, I received a follow-up call from
2 Mr. Vance, unsolicited, asking for, you know, status of the
3 investigation and if things had been cleared up to my
4 satisfaction, which they hadn't. So I don't believe that I
5 gave him any indication that it was resolved yet.

6 On the same day, there was a \$67,000 wire transfer that
7 was made into Doug Vance's Nex-Gen Wells Fargo account from
8 Aces High. And I know Aces High to be a company that's owned
9 and operated by Wendell Elza. And Wendell Elza had purchased
10 one of Doug's rotating dryers in the past, made some product,
11 but was never able to make a go of his investment. But that
12 was allegedly, according to Mr. Elza alone, that was made to
13 Doug Vance.

14 Immediately after, on the next day -- so that happened on
15 September 24th of 2018. The next day, Doug wire transferred
16 \$35,000 to Joan Faybik and \$10,000 to Keith Shpakoff. And
17 those are by far the largest and really the first substantial
18 return payments that I had seen come from Doug Vance to those
19 two investors.

20 Q. And that was the day after Mr. Vance called you to
21 inquire into the status of your investigation?

22 A. That is correct.

23 Q. And at that point, you had already spoken with Ms. Faybik
24 as well?

25 A. I had.

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1 So fast-forward another few months. Ms. Faybik was
2 uncomfortable talking to me on the phone, so what I did was
3 asked an agent or agents up in Philadelphia to go out and talk
4 to Ms. Faybik in person and try to learn a little more about
5 her involvement with Doug Vance. So that happened initially
6 on December 18th of 2018 and resulted in a telephone call and
7 then subsequently several interviews the next day of
8 Ms. Faybik.

9 Now, after Ms. Faybik was called by the agent up in
10 Philadelphia, the next day, I received yet another phone call
11 from Doug Vance. So this is the second unsolicited call to me
12 asking about the status of the investigation. So that's when
13 I decided to go ahead and record that conversation. And
14 Mr. Vance was, after admonishments, willing to tell me about,
15 you know, his knowledge of the questions that I had. So I
16 went ahead and interviewed him at that time.

17 Q. And is that the recorded conversation, excerpts of which
18 were played during the trial in this case?

19 A. That is correct.

20 Q. Continue on, please.

21 A. Okay. About a little less than a month later, there was
22 a wire transfer that came from Barbara Culberson to -- I had
23 to backtrack this.

24 Q. And who is Barbara Culberson?

25 A. Barbara Culberson is Molly McKinnon's sister.

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1 Q. Okay.

2 A. So basically I ended up having to backtrack a deposit
3 that I located. So what I learned was that about \$143,000 was
4 wire transferred from an account belonging to Ms. Culberson to
5 Wendell Elza of Aces High. And from that wire transfer, a
6 cashier's check for \$77,800 was made payable, not by Vance but
7 by Elza, to pay off Hamilton Carbon Products, which was one of
8 Nex-Gen's customers -- not customers, but lenders -- not
9 lenders. They owed for product. So Doug Vance owed Hamilton
10 Carbon Products for coal.

11 And then another check -- excuse me. Wendell Elza wire
12 transferred \$67,670 to Doug Vance's Nex-Gen, LLC account. The
13 very same day that that was made, another wire transfer went
14 to Joan Faybik in the amount of \$8,000.

15 Q. From whom?

16 A. From Doug Vance.

17 THE COURT: I'm sorry, what was the amount and the
18 date, please?

19 THE WITNESS: 8,000 on January 16th of 2019

20 BY MR. CHAPMAN:

21 Q. And that was the same day that Aces High or Wendell Elza
22 had wired Mr. Vance over \$67,000?

23 A. Correct.

24 Q. Okay.

25 A. And then about six days later, on January 25th of 2019,

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1 \$1,000 was wire transferred to Joan Faybik.

2 And mind you, from prior interviews of Joan Faybik, the
3 only returns of significance or the only returns really that
4 Vance had given back to her were enough money to make her
5 minimum payments on her credit cards and obligations that she
6 had.

7 Q. Is that a statement that she made to you?

8 A. Correct.

9 Q. Okay. Now, Agent Hubbuch, returning to Government's
10 Exhibit 1 and the first table listed there.

11 You see a total amount of returned funds of being a
12 little over \$143,000; is that accurate?

13 A. That's correct.

14 Q. Are you aware of the amount of that \$143,000 that was
15 returned to victims before June 7th of 2017?

16 A. Yes.

17 Q. What is that amount?

18 A. There were several transfers that were made -- payments
19 that were made. One was \$4,100 to Joan Faybik that occurred
20 before June 7th of 2017. And then there was also a payment to
21 Ken Shumard, who we'll talk about in a minute, for \$449.32
22 that occurred before June 7th.

23 Q. Okay.

24 A. And the significance of June 7th of 2017 was when April
25 Francis reported her suspicions of financial shenanigans to

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1 investor Allan Deware.

2 Q. So before that date, in very rough numbers, it would be
3 roughly \$4,550?

4 A. Correct.

5 Q. All right. Agent Hubbuch, let's turn to the second table
6 in Government's Exhibit 1.

7 What does that table represent?

8 A. These are what we have documented in the bank records as
9 repayment of Doug Vance's judgments. From my investigation, I
10 learned that Doug Vance in Virginia had a criminal judgment
11 against him and a civil judgment against him at or near his
12 home.

13 Q. And is there anything significant in your investigation
14 about the timing of the payments toward these judgments?

15 A. What I noticed was most of those lined up almost directly
16 with loans primarily from Koch Brothers, in which he used and
17 turned around and paid off some of his judgments.

18 Q. Agent Hubbuch, what does the third table in Government's
19 Exhibit 1 signify?

20 A. This is a summary table of the victims that we've
21 identified in the case.

22 Q. And the amount of money that they invested or lended?

23 A. Correct.

24 Q. All right. Agent Hubbuch, let's talk through each
25 specific victim that's listed here.

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1 So first is Kenneth Shumard. Who is he?

2 A. He is the now deceased principal of the Shumard family
3 foundation near Atlanta.

4 Q. Okay. You said "now deceased."

5 A. Correct.

6 Q. You're aware between the time of trial and today,
7 Mr. Shumard has, unfortunately, passed away?

8 A. Yes. I believe last fall he passed away.

9 Q. Okay. And do you recall him testifying at the trial in
10 this matter?

11 A. Yes.

12 Q. Do the bank records indicate that he infused \$801,819 in
13 Nex-Gen?

14 A. Yes.

15 Q. And going back up to the first chart. Do the records
16 indicate he received a little over \$48,000 total in return?

17 A. Based on what we have documented, yes.

18 Q. And so, Agent Hubbuch, would that be a substantial
19 monetary loss?

20 A. Correct.

21 Q. Second is Koch Minerals, LLC. What is that?

22 A. Koch was one of the investors/lenders basically that Doug
23 had convinced to lend him money for his operations to the tune
24 of 605,000 over the course of, I believe, three or four or
25 five different wire transfers.

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1 Q. And those came in the form of loans; is that correct?

2 A. Correct.

3 Q. Do you recall a representative of Koch Minerals, LLC
4 testifying at the trial in this matter?

5 A. Yes.

6 Q. Do the bank records indicate that Koch received any money
7 in return?

8 A. They did not.

9 Q. Third is Dragon Head Technologies. What is that?

10 A. That's the operating company for another one of the
11 victims, Allan Deware.

12 Q. Do you recall Mr. Deware testifying at trial?

13 A. Yes.

14 Q. Do the bank records indicate that his company, Dragon
15 Head Technologies, infused \$373,500 in Nex-Gen?

16 A. Yes.

17 Q. And do the bank records indicate that he or Dragon Head
18 received any money in return?

19 A. They indicate he did not.

20 Q. Fourth is Kentucky River Properties. What is that?

21 A. That is the current, I believe, owner of the Trus Joist
22 facility in Chavies. I believe during Mr. Vance's tenure
23 there, they had purchased the property and then leased it to
24 Vance for him to operate his Nex-Gen facility there, one of
25 the warehouses. So they were convinced by Doug to provide

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19

1 Doug with a loan of \$170,000.

2 Q. Do you recall, I believe, maybe two KRP representatives
3 testifying at trial?

4 A. Yes.

5 Q. So the bank records indicate 170,000 of KRP money into
6 Nex-Gen?

7 A. Correct.

8 Q. And do the bank records indicate that KRP received any
9 money in return?

10 A. No.

11 Q. Fifth is GGC Funding, LLC. What is that?

12 A. That is the operating company or funding company for Gary
13 G. Chamblee.

14 Q. And who is he?

15 A. He is an associate of Ken Shumard at the Shumard Family
16 Office.

17 Q. Are you also aware whether GGC Funding, LLC was used as a
18 funding mechanism for Mendie Hogan?

19 A. Yes.

20 Q. Please explain that.

21 A. She didn't -- Mendie was one of the three individuals
22 involved in this. She was basically the accountant there at
23 the Shumard Family Office. But she invested her own money
24 through GGC Funding. It was common for them to do that on
25 these investments. They would infuse a little bit of their

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1 own money into the main lender, who was Ken Shumard.

2 Q. So let's just talk a little about Ms. Hogan before we
3 move on.

4 Do you see Ms. Hogan listed on this chart as a victim?

5 A. I do not.

6 Q. Is that because she did not invest her money directly?

7 A. Yes. She invested it through GGC Funding.

8 Q. Do you recall her testifying at trial that she invested
9 \$10,000?

10 A. I believe that was the amount, yes.

11 Q. Now, in total, do the bank records indicate that
12 GGC Funding infused \$232,983.79?

13 A. By our accounting, yes.

14 Q. And do the bank records indicate that GGC Funding
15 received a little over 15,000 in return?

16 A. Yes.

17 Q. So would that be a substantial monetary loss to the
18 company?

19 A. Yes.

20 Q. Sixth is Mr. Shpakoff. You've already described a little
21 of who Mr. Shpakoff is. Do you recall that?

22 A. I do.

23 Q. Have you spoken with Mr. Shpakoff in this case?

24 A. Several times, yes.

25 Q. What did he tell you about his investments with Nex-Gen?

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1 A. So he was associated with Joan Faybik and learned that
2 Joan Faybik was investing in Doug Vance and this Nex-Gen
3 company. Initially, Joan didn't want him to invest in it
4 because it was hers, but eventually she and Doug allowed him
5 to invest. Initially he invested a small amount, and then
6 over time, by his statements, he invested approximately
7 \$130,000 into Nex-Gen.

8 Q. That was the amount he estimated to you?

9 A. Correct.

10 Q. And what is the amount that we could substantiate on the
11 bank records?

12 A. From the bank records, 98,000.

13 Q. Did Mr. Shpakoff make any statements to you about what
14 Mr. Vance said to him about his intent to pay him back?

15 A. Well, he intended to pay him back quickly.

16 Q. Did that occur?

17 A. No.

18 Q. Did the bank records indicate he was paid back a total of
19 18,000?

20 A. Yes.

21 Q. After investing 98,000?

22 A. Correct. And he did tell me that Doug Vance, when he
23 pressed him real hard, would send him small amounts of money
24 via some wire transfer, like a Western Union or other wire
25 transfer, but small amounts.

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1 Q. Okay. Seventh is Shannon Wells. Who is he?

2 A. Shannon Wells is a businessman in Eastern Kentucky who
3 ran across and got into business somehow with Doug Vance. But
4 ultimately Wells agreed to purchase two of these rotating
5 dryers, calciners, from Doug Vance for \$50,000.

6 Q. Okay. So Mr. Wells invested or was allegedly purchasing
7 some equipment for \$50,000?

8 A. Correct.

9 Q. And what happened from there?

10 A. No dryers were ever delivered to him. He stated that he
11 couldn't hold up his end of the bargain. He was supposed to
12 put these dryers on a barge, but wasn't able to either permit
13 or whatever these dryers, so he wasn't able to follow through
14 with that. But he did provide Doug with \$50,000 in two
15 different wire transfers, one for \$30,000 and one for \$20,000,
16 to purchase those dryers.

17 Q. Okay. So Mr. Vance never delivered the equipment that
18 Mr. Wells had ordered?

19 A. No.

20 Q. Did Mr. Vance return the 50,000?

21 A. No.

22 Q. All right. Now, you noted that Mr. Wells sent two
23 different wires, for 30 and 20; is that correct?

24 A. Correct.

25 Q. All right. Is there anything noteworthy about the timing

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1 of some of those or what happens after those transfers?

2 A. Absolutely.

3 Q. Please describe that.

4 A. So the first wire transfer from Shannon Wells was a
5 \$30,000 wire transfer on January 18th of 2018. On the same
6 day, Doug Vance made a \$5,000 branch withdrawal.

7 Q. That means cash withdrawal?

8 A. That could mean cash or a cashier's check or some other
9 mechanism, but basically took out \$5,000 at the branch.

10 Also on the same day wire transferred Joan Faybik \$9,000.

11 Also on the same day transferred to Keith Shpakoff \$8,000.

12 And then Heather Vance, who is Doug Vance's wife, made a
13 withdrawal at a branch of \$1,550. The next day, Heather Vance
14 made a withdrawal at the branch of \$2,900. A few days later,
15 another withdrawal at the branch of \$520 by Heather Vance.

16 Q. By Heather?

17 A. By Heather Vance.

18 Q. So over the course of a handful of days, approximately
19 how much of Mr. Wells' 30,000 did Doug Vance or Heather Vance
20 dissipate?

21 A. The majority of it in less than a week.

22 Q. All right. Let's talk about the \$20,000 wire from
23 Mr. Wells.

24 A. That was on February 6th of 2018. So the same day
25 Heather Vance made a \$5,000 branch withdrawal, the next day

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1 Heather Vance made a \$4,310 branch withdrawal, and then two
2 days later, on February 9th, Heather Vance made a \$5,000
3 branch withdrawal, along with a couple of cash ATMs for \$320.

4 Q. So, again, within a few days of Mr. Wells sending in
5 money, it was accounted for?

6 A. At least 75 percent of it was spent just in a couple of
7 days. This money obviously was for the purchase of two
8 calcining dryers.

9 Q. And do bank -- what was the phrase you used? What sort
10 of withdrawal?

11 A. Branch withdrawals.

12 Q. Are branch withdrawals consistent with steps to producing
13 a calciner?

14 A. No.

15 Q. All right. Agent Hubbuch, next up on the chart is Creola
16 Holdings.

17 A. Creola Holdings is another business entity of the Shumard
18 Family Office. Just another funding mechanism that they had.

19 Q. Do you recall testimony at trial about Creola Holdings?

20 A. Generally, yes.

21 Q. Do the bank records indicate that Creola Holdings infused
22 \$123,400?

23 A. Yes.

24 Q. And do the bank records indicate that Creola Holdings
25 received any money back?

HUBBUCH - Direct

25

1 A. They did not.

2 Q. Next is Gary Chamblee. Who is he?

3 A. He is the owner-principal of GGC Funding and an associate
4 of the Shumard Family Office.

5 Q. Do you recall him testifying at trial in this matter?

6 A. I do.

7 Q. Do the bank records indicate that he personally invested
8 \$53,938.11?

9 A. According to the records that I have, yes.

10 Q. And do the records indicate that he personally received
11 any money in return?

12 A. Not personally. I think there may have been testimony at
13 trial that he received return through some other -- some other
14 entity, but I don't have visibility into that right now.

15 Q. Next is Alan Rolfes. Who is he?

16 A. So Alan Rolfes is what I learned to be a prospective
17 business partner of Doug Vance who Doug had convinced to set
18 up an LLC in Indiana. I believe it was Nex-Gen Fuels Indiana.
19 I believe that's the name of it.

20 Anyway, I talked to him. He was not very forthcoming.
21 He didn't want to give up a whole lot of information. But we
22 have documented that he had sent Doug Vance \$17,500.

23 Q. And do the bank records indicate that he received any
24 money in return?

25 A. He did not.

HUBBUCH - Direct

26

1 Q. Finally on the chart is Richard Phillips. Who is he?

2 A. Richard Phillips is a business partner of Alan Rolfes who
3 also infused \$10,400 into the accounts of Doug Vance.

4 Q. And do the bank records indicate that Mr. Phillips
5 received any money back?

6 A. They do not.

7 Q. Now, we skipped one entry on the chart, and that is Joan
8 Faybik. You've already described a little about who
9 Ms. Faybik is, but would you please remind us?

10 A. So Joan Faybik was one of the earliest investors with
11 Doug Vance. She believed that she was majority owner of
12 shares or at least 50/50 owner in shares in Nex-Gen, it was
13 just her and her family and Doug Vance who were operating
14 Nex-Gen.

15 So over time she had loaned Vance -- provided Vance with
16 cash, she provided Vance with use of her personal credit cards
17 so that he could buy whatever he needed for the business.
18 Also provided monies from her investment accounts, her
19 Fidelity Investment accounts, would wire transfer money from
20 her Fidelity Investment accounts to Doug Vance.

21 And by her own admission the last time she was
22 interviewed, she finally came forward and said that she's good
23 for more than \$500,000 of investment into Doug Vance's entity
24 even though our records only show a tenth of that basically.

25 Q. Okay.

HUBBUCH - Direct

27

1 A. So she's a hairdresser. She spent all her life working
2 as a hairdresser. She scrimped and saved pennies and was
3 relying on this, from what she told us, to be her retirement.
4 So she was taking money and investing into Vance, and Vance
5 promised her that this would provide her with her retirement.

6 Q. You mentioned that she provided money from a Fidelity
7 Investment account?

8 A. Yes.

9 Q. Would that be commonly called a retirement account?

10 A. Yes.

11 Q. Now, the bank records alone, as you alluded to a moment
12 ago, show that she infused 42,500; is that correct?

13 A. That is correct.

14 Q. What is her own estimate of the true amount of money?

15 A. Over 500,000.

16 Q. Now, has Ms. Faybik been interviewed by you and by other
17 FBI agents?

18 A. She's been interviewed by me, she was interviewed by FBI
19 Philadelphia agents on three different occasions, and then she
20 was also interviewed back in 2013 on a separate matter by the
21 FBI. A case agent by the name of Joan Cronier interviewed
22 Joan Faybik regarding a fraud complaint or a fraud
23 investigation of Mike Mullen.

24 Q. Okay. Let's talk about that.

25 So who is Mr. Mullen?

HUBBUCH - Direct

28

1 A. Mr. Mullen is an associate of Doug Vance. I'm not sure
2 of the relationship early on. But Mike Mullen was offering up
3 these investments in clean energy, had a ticker symbol, a
4 penny stock that he convinced Joan Faybik to invest a
5 relatively small amount of money in.

6 Q. Okay. You say "a relatively small mount of money."
7 Compared to what?

8 A. Compared to the \$500,000 that she invested in Doug Vance.
9 I don't remember the exact number, but it was less than 50,000
10 that she invested.

11 Q. With Mr. Mullen?

12 A. Correct.

13 Q. Okay. Do you have a document up there previously marked
14 as Government's Exhibit 2?

15 A. I do.

16 Q. What is this document?

17 A. This is a handwritten letter from Joan Faybik to Joan
18 Cronier, the agent that was investigating Mike Mullen. And
19 it's dated March 11th of 2013.

20 Q. And was this maintained as part of the records of that
21 previous investigation?

22 A. Yes.

23 Q. Is it a true and accurate copy of the letter received by
24 the FBI from Ms. Faybik?

25 A. Yes.

HUBBUCH - Direct

29

1 MR. CHAPMAN: Your Honor, I will move the admission
2 of Government's Exhibit 2.

3 THE COURT: Any objection?

4 MR. HAYWORTH: No, Your Honor.

5 MR. DARLING: Yes, Your Honor, I do object to the
6 relevance of this. Agent Hubbuch has said that this was well
7 before the investigation began on Doug Vance. I don't see
8 Doug Vance's name anywhere in here, other than he's --
9 apparently Ms. Faybik said he did some business with Doug
10 Vance. But this doesn't seem to have anything to do with the
11 case against Mr. Vance.

12 THE COURT: All right.

13 What is the relevance, Mr. Chapman?

14 MR. CHAPMAN: The relevance is in the third
15 paragraph, Your Honor. It's relevant to whether Ms. Faybik
16 was caused substantial financial hardship in this case. We
17 can compare the likely outcome of this case to the known
18 outcome in 2013 at a relatively small amount of loss.

19 THE COURT: All right. So it does go to one issue in
20 the guidelines under 2B?

21 MR. CHAPMAN: Yes, it does.

22 THE COURT: All right. I'll overrule the objection
23 and we'll admit it for that purpose to the extent that it is
24 relevant to that issue.

25 MR. CHAPMAN: Thank you, Your Honor.

HUBBUCH - Direct

30

1 (Government's Exhibit 2 was admitted.)

2 BY MR. CHAPMAN:

3 Q. Agent Hubbuch, the letter is addressed to "Hi, Joan"; is
4 that correct?

5 A. That's correct.

6 Q. And who is that referring to?

7 A. Joan Cronier, the FBI agent that interviewed Joan Faybik
8 in 2013.

9 Q. And it's signed by whom?

10 A. Joan L. Faybik.

11 Q. And what is the date of the letter?

12 A. March 11 of 2013.

13 Q. All right. Agent Hubbuch, if I can direct you to the
14 third paragraph of the letter that begins "I'm losing."

15 Do you see that?

16 A. I do.

17 Q. Would you simply read that paragraph into the record?

18 A. "I'm losing all hope that he will come through. I have
19 applied for a nighttime cleaning job because of all the credit
20 cards that I tapped to come up with the cash for that con
21 artist."

22 Q. Now, the references to "he" and "that con artist," who is
23 she referencing?

24 A. Mike Mullen.

25 Q. Okay. So, again, you said a loss in the Mullen case

HUBBUCH - Direct

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1 of --

2 A. Correct.

3 Q. -- a tenth or less of the loss in this case?

4 A. Yes.

5 Q. And what is she saying that she had to do as a result of
6 that loss?

7 A. Tap her credit cards to come up with the money to make
8 that investment.

9 Q. And does she say she had to apply for another job?

10 A. That is correct. And I also know from my investigation
11 of Doug Vance during the time period of our indictment that
12 Doug was communicating with Mike Mullen, and at one point Mike
13 Mullen even asked Doug to come up with a purchase order to
14 help Mike Mullen backstop something that he was trying to do.

15 Q. Agent Hubbuch, have you or other FBI agents also
16 interviewed a son of Joan Faybik?

17 A. Yes.

18 Q. Who is he?

19 A. Jason Faybik. He's actually -- he works for one of the
20 big banks as a financial advisor up in Pennsylvania.

21 Q. Did he corroborate that his mother had lost money in this
22 venture?

23 A. He did. And I believe at the time I spoke with him, he
24 estimated around \$400,000 that he had pushed to Doug Vance
25 over the years.

HUBBUCH - Direct

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1 Q. That she had pushed?

2 A. I'm sorry. That she had pushed to Doug Vance over the
3 years.

4 Q. Did Jason Faybik make any statements about his mother's
5 financial well-being in the 2018 time period?

6 A. Well, suffice it to say that he said her financial status
7 was not good. She had recently gone through a divorce and was
8 back-due on her credit cards.

9 Q. Did Ms. Faybik make any statements about how much money
10 she had received back from Mr. Vance?

11 A. At the time that I interviewed her, she had not received
12 much. She said she would get just enough from Doug Vance in
13 order to make her minimum payments on her credit cards.

14 Q. Did she make any statements about what Mr. Vance had
15 promised her once the company got off the ground?

16 A. Basically she was relying on this, and it was promised
17 that this was going to be her retirement for her and her
18 family.

19 Q. And did that pan out?

20 A. It did not.

21 Q. Agent Hubbuch, I believe one final set of questions for
22 you.

23 We've reviewed that the bank records can establish a
24 total infusion of \$42,500 from Ms. Faybik?

25 A. That's correct.

HUBBUCH - Cross

33

1 Q. But we've also gone through why that is wildly
2 inaccurate; is that correct?

3 A. Yes.

4 Q. Do the bank records indicate that she received a total of
5 59,600 back?

6 A. They do. And then some of the things that I described
7 earlier with respect to wire transfers account for that.

8 Q. And so if she, by her own estimation, invested over
9 \$500,000 and received 59,600 in return, would that be a
10 substantial loss to Ms. Faybik?

11 A. Yes.

12 MR. CHAPMAN: Nothing further at this time.

13 THE COURT: Thank you.

14 Mr. Hayworth.

15 MR. HAYWORTH: Thank you, Your Honor. Please the
16 Court.

17 CROSS-EXAMINATION

18 BY MR. HAYWORTH:

19 Q. Agent Hubbuch, a few background questions about your
20 investigation.

21 When did your investigation start? What was the date?

22 A. Our initial complaint that came to the FBI office in
23 Florida, Jacksonville, was June 17th of 2017. That was the
24 first official complaint.

25 Q. Thank you.

HUBBUCH - Cross

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1 And the course of action that followed, when was the
2 case -- was that when it was assigned to you, on that date?

3 A. No. The way it works is, complaints that don't affect
4 the division where the complaint is taken are forwarded to
5 another FBI office and then opened up for investigation. Now,
6 there was a delay in that. There was an agent that received
7 the complaint that retired and reassigned that complaint to
8 me. So it took a little bit of time before I was able to get
9 bank records together -- open the case, request bank records,
10 be in a position to actually do anything overt, such as make
11 contact and interview.

12 Q. Okay. So you got the bank records of the case before you
13 started doing the interviews?

14 A. I got some of them, right, initially. I only know what I
15 know based on an opening. So we did follow on with additional
16 bank records as the investigation went along.

17 Q. At some point during the course of your investigation,
18 did you go to Trus Joist and observe it physically?

19 A. I did.

20 Q. Okay. About when would that have been?

21 A. It would have been the first time that I talked to Doug
22 Vance in person. I went out there to meet with him. That
23 would have been on August 27th of 2018.

24 Q. Of 2018?

25 A. Yes. So that's the first time that I went out and

HUBBUCH - Cross

35

1 actually talked to him. So there was some time that went by.

2 Q. Okay. At the time that you went out to interview him for
3 the first time, was this business in operation as far as you
4 could tell?

5 A. It was minimally operating, yes. There were piles of
6 product, what I believe were some type of product. People
7 were there -- a few people were there. Doug was there. There
8 was a rotating -- one of those rotating dryers, calciners,
9 that looked like it may have been operational. And then there
10 was another one that looked in pieces or partially operating.

11 Q. Okay.

12 A. And not a lot of other equipment besides that.

13 Q. Was Molly McKinnon there?

14 A. No.

15 Q. Was there finished product waiting to be hauled as far as
16 you know?

17 A. I honestly didn't -- at the time I didn't know the
18 difference between what was finished product and what was
19 feedstock, so I wouldn't know.

20 Q. Could have been either?

21 A. There wasn't significant amounts of anything. But it
22 could have been either, yes.

23 Q. Okay. When did Doug Vance stop being in charge of that
24 business?

25 A. That, I'm not sure. But at some point the Shumard Office

HUBBUCH - Cross

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1 who had took over the overarching operation and Gary Chamblee
2 started to manage or try to manage the day-to-day operations
3 through someone that he hired.

4 Q. Okay. So what would have been -- what would have been
5 the capital there at Trus Joist when the Shumard operation
6 took over from Doug Vance?

7 A. I would assume that just the calciners that they were
8 aware of being in operation.

9 Q. Do you know that?

10 A. I don't.

11 Q. Is that just an assumption?

12 A. That's an assumption.

13 Q. You don't know how much finished product was there?

14 A. No.

15 Q. You don't know how much product to be processed was
16 there?

17 A. No.

18 Q. Do you know what the equipment was that was there at the
19 time?

20 A. Not at that exact time, no, I do not. I know what used
21 to be there while he was making wood chips and doing the
22 logging operation, and that was a significantly expensive wood
23 chipper, but that was leased and then repossessed.

24 Q. Repossessed by?

25 A. By the lessor. By the company that leased it to him.

HUBBUCH - Cross

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1 Q. Who owned the rest of the equipment?

2 A. That's a good question. I'm not really sure how many
3 people had stake in those calciners, so I don't -- I don't
4 know. I know that, from testimony, Kentucky River Properties
5 had some interest in a calciner that was supposed to be built
6 for them. But, again, I don't know the true ownership
7 interest in most of those things. It seems like there were
8 competing interests in who owned what.

9 Q. Okay. Do you know, finally, what happened to the
10 equipment?

11 A. I have no idea.

12 Q. Okay. Molly McKinnon believes that the equipment could
13 have cost or been valued at a million and a half dollars at
14 one time.

15 Would you have any knowledge of that?

16 A. I'd have no insight into that. I wouldn't be an expert
17 in how to value that type of equipment anyway.

18 Q. Okay. With regard to Government Exhibit 1, on the
19 investor/lender funds portion of the chart, I see that
20 Mr. Shumard is listed and the amount attached to him. But I
21 think you said Creola Holdings was a Shumard company; is that
22 correct?

23 A. It's some related entity to the Shumard principals. Off
24 the top of my head, I don't recall who the principals are in
25 Creola, but that's related to the Shumard Family Office.

HUBBUCH - Cross

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1 Q. Okay. So do you have any insight as to how Creola would
2 get involved except through Mr. Shumard and his organization?

3 A. I have no insight or visibility into that.

4 Q. Okay. And is GGC Funding associated then also with
5 Mr. Chamblee?

6 A. Yes, it is.

7 Q. Okay. And what is that association?

8 A. That's his own funding mechanism. So it's my
9 understanding that Shumard provides the bulk of the funds in
10 these loans and business opportunities, and then the
11 principals that are there working with him, such as Gary
12 Chamblee, can put some of their money in as well to the
13 investment, which is how Gary Chamblee did it through GGC
14 Funding.

15 Q. Okay. But Mr. Chamblee is also listed on here
16 individually?

17 A. Yes.

18 Q. So he would have elected to do some of the funding
19 personally and some through his GGC Funding?

20 A. That's what it appears, correct.

21 Q. Okay. Would it seem like something similar to that took
22 place with Mr. Shumard and Creola Holdings?

23 A. I mean, that sounds reasonable to infer that.

24 Q. This was an entity used to provide funding to businesses
25 that they're interested in trying to develop?

HUBBUCH - Cross

39

1 A. Correct.

2 Q. Okay. With regard to Shannon Wells, I understood you to
3 say that Mr. Wells had lent \$50,000, I think, to Mr. Vance for
4 the purpose of purchasing some dryers; is that correct?

5 A. He gave him the \$50,000 to purchase the dryers, yes.

6 Q. And the idea was that the dryers were going to be
7 installed on some property that Mr. Wells owned?

8 A. Correct.

9 Q. And then, for whatever reason, licensing or permitting or
10 environmental or something, it turned out Mr. Wells wasn't
11 able to install those dryers on his property?

12 A. Correct.

13 Q. And I believe I heard you to say that he just sort of
14 wrote that off; he didn't seek to reacquire that \$50,000?

15 A. Yes.

16 Q. Probably thought that there could potentially be legal
17 action involved in that.

18 Was that one of the reasons he would have given?

19 A. I have no idea --

20 Q. Okay.

21 A. -- why he would have. I don't know his financial status.
22 I don't know the relationship between --

23 Q. Ultimately he wasn't able to follow through with his end
24 of the deal, correct?

25 A. That's my -- that's what he told me, right. He couldn't

HUBBUCH - Cross

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1 follow through; therefore, he never took possession and wrote
2 that 50,000 off.

3 Q. Okay. Can I ask about Government Exhibit 116, the email
4 and attached document?

5 A. Yes, sir.

6 Q. I see that this is a forwarded message from Molly
7 McKinnon to Doug Vance, and it appears that her name appears
8 with a comma and then title CFO, which we're interpreting to
9 mean chief financial officer, correct?

10 A. Reasonably, yes.

11 Q. And you've described generally the role of a chief
12 financial officer.

13 In the attached, I guess, business summary or proposal
14 for Nex-Gen Industries, is Ms. McKinnon featured in that?

15 A. No.

16 Q. The name of the chief executive officer, Mr. Vance, is
17 featured in here?

18 A. Yes.

19 Q. And the name of the chief operating officer, Mr. Miller,
20 is featured in here. I think it's Mr. Miller.

21 A. Mike Miller.

22 Q. Mike Miller featured in there.

23 But there's no description other than the idea that
24 people are going to be hired at some time in the future.

25 Ms. McKinnon is not referred to in this document?

HUBBUCH - Cross

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1 A. She's not, but I'm not sure exactly when this document
2 was created.

3 Q. The email was sent April 25, 2017.

4 A. Correct. I've seen various versions of this proposal
5 across the emails. So you are correct, her name is not in
6 there.

7 Q. So who prepared this document?

8 A. I don't know.

9 Q. The fact that somebody has "CFO" after their name in an
10 email does not make them a CFO, does it?

11 A. Well, it certainly makes you think that she is.

12 Q. A CFO has certain specific duties that you've described.
13 Wouldn't that be actually functioning as a CFO as opposed to
14 just appearing like a CFO?

15 A. She's communicated with a number of others involved in
16 Vance's operation as the CFO as well. It's not just this one
17 email.

18 Q. Okay.

19 MR. HAYWORTH: Can I have just a moment, please,
20 Your Honor?

21 THE COURT: Yes, sir.

22 MR. HAYWORTH: All right. I think that's all I have.
23 Thank you.

24 THE COURT: Thank you.

25 Mr. Darling.

HUBBUCH - Cross

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1 MR. HAYWORTH: I'm sorry.

2 THE COURT: Go ahead.

3 MR. HAYWORTH: I just remembered what I was going to
4 ask about. I apologize.

5 THE COURT: That's fine.

6 BY MR. HAYWORTH:

7 Q. Issues relating to monies or remuneration to be paid to
8 either Mr. Vance or Ms. McKinnon for services during their
9 employment, do you have any knowledge of that?

10 A. I know at some point the Shumard office took
11 responsibility for, you know, payroll, if that's what you're
12 after. I don't know that they ever --

13 Q. I guess what I'm asking -- I'm sorry. Go ahead.

14 A. I don't know that they ever agreed. And there was talk
15 of buyouts and other things, but I'm not sure they ever came
16 to an agreement on who would pay what. And that was,
17 obviously, during an ongoing investigation, so I'm not exactly
18 sure if that answers your question or not.

19 Q. Well, yes, it does. Thank you.

20 I guess a follow-up I would have is: Do you recall any
21 figures that were discussed in terms of a buyout or, you know,
22 parting agreement in terms of monies that might be owed to
23 Ms. McKinnon?

24 A. I recall seeing something. I can't -- unless I were to
25 see an email, I couldn't tell you the exact number. But there

HUBBUCH - Cross

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1 were discussions on what the Shumard office owed her for back
2 salary or whatever, that type of thing.

3 Q. Okay.

4 A. I can't give you exact numbers. It wasn't 1.5 million.

5 MR. HAYWORTH: All right. Very good. Thank you.

6 THE COURT: Thank you.

7 Mr. Darling.

8 MR. DARLING: Thank you, Your Honor.

9 CROSS-EXAMINATION

10 BY MR. DARLING:

11 Q. Good morning, Agent Hubbuch.

12 A. Good morning, Mr. Darling.

13 Q. Let me go ahead and get this out of the way real quick.

14 The forwarded business plan that was introduced through
15 an email, I think you've already said the document attached to
16 it, you don't know who prepared that, correct?

17 A. I don't.

18 Q. You don't know if it was Doug Vance? Did you ever ask
19 him?

20 A. I doubt it.

21 Q. Did you ever ask Molly McKinnon who prepared this?

22 A. I never had a chance to talk to Molly.

23 Q. Okay. Did you make any effort to find out who prepared
24 this document?

25 A. No.

HUBBUCH - Cross

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1 Q. And this was something that -- the best that we have in
2 terms of this document is that it was forwarded by Molly
3 McKinnon, who identified herself as the CFO to Doug Vance,
4 right?

5 A. "The best that we have"?

6 Q. Right. According to this email.

7 A. According to that email. That's not -- it's one email of
8 many where Molly used the title CFO.

9 Q. Okay. And I'm not quarreling with -- unlike
10 Mr. Hayworth, I'm not quarreling with the designation.

11 What I'm pointing out is, this document was sent by email
12 from Molly McKinnon to Doug Vance initially, correct?

13 A. Yes.

14 Q. Okay. Do we know why? Do we know what the purpose is?

15 A. No.

16 Q. We know then that Doug sent it to somebody named Jimmy
17 Wedge?

18 A. I know that this document was used over the years, or a
19 variation of the document, to present to potential investors.
20 So, yes, I do know that.

21 Q. Okay. I don't think I asked that at this point.

22 My question is going to be: Who is Jimmy Wedge?

23 A. Honestly, off the top of my head, I don't know.

24 Q. Was any effort made to find out who Jimmy Wedge was and
25 see what the purpose was in receiving this document?

HUBBUCH - Cross

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1 A. No.

2 Q. All right. Let me go ahead, again, to get this out of
3 the way before I get into more substantive things. Let me
4 talk about Joan Faybik for a minute.

5 This document that you introduced from -- and explain to
6 me again. Somebody was doing an investigation into this Mike
7 Mullen in 2013?

8 A. There was either a complaint or an open investigation
9 against Mike Mullen, a company that he was operating under --
10 I believe it was a penny stock basically. So they were
11 investigating the nature of that and the investors.

12 Q. Who's "they"?

13 A. FBI Jacksonville.

14 Q. Okay. And the best that you can determine during that
15 investigation in 2013, Doug Vance's name did not come up,
16 correct?

17 A. No, it did not.

18 Q. And, in fact, it wasn't until -- so how did you come
19 across this document?

20 A. Our databases, our FBI records. When you search for Joan
21 Faybik, it came up with this prior interview complaint.

22 Q. Okay. And Mr. Chapman indicates that he introduced this
23 to show that her credit cards in 2013 were tapped out due to
24 failure to come up with cash for that con artist, I guess,
25 maybe Mullen?

HUBBUCH - Cross

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1 A. Correct.

2 Q. What information do you have connecting Mullen with Doug
3 Vance?

4 A. As I said, they were involved in some coal clean energy
5 initiative back prior to this investigation. I don't know the
6 extent of their relationship. I know that they had a
7 relationship. I know that Doug broke away, started his own
8 thing.

9 Q. So Mr. Mullen never came up during the Doug Vance
10 investigation until this cross-referenced in with the previous
11 investigation?

12 A. Not true. It came up in the emails of Doug Vance.

13 Q. Okay. How so?

14 A. Doug Vance was -- Mike Mullen was asking Doug Vance to
15 create a purchase order for product so that -- and I'm
16 assuming it was the clean coal product or biochar.

17 Q. Well, let's not assume.

18 A. It was an email requesting Doug Vance come up with a --
19 create a purchase order for product so that Mike Mullen could
20 use it to present to a buyer or an investor.

21 Q. Okay. But he's not involved -- I mean, we don't see his
22 name in anything of substance in this case, right?

23 A. No.

24 Q. All right. Let's go ahead and stay on Ms. Faybik as long
25 as we're talking about her, because there's some interesting

HUBBUCH - Cross

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1 things about this.

2 The chart that you introduced, Government Exhibit 1, the
3 first name right out of the box is Joan Faybik, and you have,
4 it's Ponzi-style returns. Let me take issue with that title.

5 This is money that you can say people, investors received
6 back, correct?

7 A. Yes.

8 Q. Okay. Did you prepare this document?

9 A. I assisted in preparing it, yes.

10 Q. So when it says "Ponzi-style returns," that's either your
11 interpretation or Mr. Chapman's or whoever else worked on
12 this, right?

13 A. It's an interpretation based on the remaining -- on the
14 rest of the bank records, as in the description I talked
15 about.

16 Q. Okay. But the first one, Joan Faybik received, bank
17 records show, \$59,600, correct?

18 A. Yes.

19 Q. Now, all of these numbers that are in this chart, you've
20 testified that they all came from bank records, correct?

21 A. Yes.

22 Q. So that would be what you consider to be the best
23 evidence of payments in, payments out bank records?

24 A. In addition to their own testimony, if they could provide
25 documentation to support that.

HUBBUCH - Cross

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1 Q. Okay. Because, obviously, I'm going to talk about Joan
2 Faybik here, because it shows investor funds of \$42,500, which
3 you say you got from bank records, and money paid back to her,
4 \$59,600, which you say you got from bank records?

5 A. Correct.

6 Q. But you and Mr. Chapman now say that she made a statement
7 to you that she actually lost \$500,000, or she invested
8 \$500,000.

9 Where are the bank records to support that?

10 A. I only have -- I only have her statements to support that
11 in addition to a couple of Fidelity Investment transfers that
12 she was able to show the agent that interviewed her in
13 Philadelphia. Again, I don't have her credit card statements.
14 I don't have -- she claimed that she had saved money under the
15 mattress which she would provide to Doug as well.

16 So, no, I do not have beyond what we have to document
17 that. And, again, in that spreadsheet, there's some things
18 that predated our bank records that she discussed.

19 Q. Right. But I'm talking about just the bank records now.

20 As far as bank records go, Joan Faybik actually came out
21 ahead?

22 A. According to the bank records, yes.

23 Q. Right. And have you seen her victim impact statement?

24 A. I've probably seen it. I haven't read it recently. I
25 know she doesn't consider herself a victim.

HUBBUCH - Cross

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1 Q. Right.

2 A. She blames the government for ruining her investment. I
3 do know the general gist of Ms. Faybik.

4 Q. That she blames the government, she was not a victim,
5 that Doug Vance didn't do anything wrong?

6 A. And as with all the other victims in this, they had no
7 visibility into what the other victims were doing or not
8 doing.

9 Q. I understand. Right now, Joan Faybik.

10 A. Yes.

11 Q. That's it. Okay.

12 You go through some of these investor lender funds, and
13 you've got -- I don't know whether there are 12 or 13 listed
14 there. Let's look at -- Kenneth Shumard is also Creola
15 Holdings?

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

17 Q. Creola Holdings, did you do any investigation into what
18 Creola Holdings does?

19 A. Not really.

20 Q. You're familiar with holding companies?

21 A. Yes.

22 Q. Basically, they don't do anything, they just funnel
23 money?

24 A. Correct.

25 Q. Money in, money directly out. It's not like they do

HUBBUCH - Cross

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1 anything, produce anything, correct?

2 A. Correct.

3 Q. So we have Kenneth Shumard and Creola Holdings. And the
4 best you can tell, Kenneth Shumard is Creola Holdings?

5 A. Correct.

6 Q. We've got GGC Funding, LLC, and Gary Chamblee.

7 Did you do any investigation into what GGC Funding, LLC
8 does other than take money in and make investments out?

9 A. With your same argument, that would be correct as well.

10 Q. Okay.

11 A. Gary Chamblee is GGC Funding.

12 Q. Got it.

13 A. Except for when other folks would invest through him,
14 through GGC Funding.

15 Q. I understand we've got this \$10,000 Mendie Hogan thing.
16 I understand that.

17 You've got Dragon Head Technologies and Mr. Deware.

18 Of course, Mr. Deware is not listed on here personally,
19 correct?

20 A. No, because he always did business as Dragon Head
21 Technologies.

22 Q. Okay. Makes some degree of sense.

23 Koch Minerals. It's your understanding that they loaned
24 money to Doug Vance?

25 A. Yes.

HUBBUCH - Cross

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1 Q. Which you don't have reflected that they ever got
2 anything back, correct?

3 A. Correct.

4 Q. Did your investigation reveal, was the loan for anything
5 specific?

6 A. Just for his operations.

7 Q. Just for operations.

8 I'm going to ask you a question I know you can't answer.
9 Do you have any idea what effect the -- and if we want to call
10 it a loss of \$605,000, what that would have had on Koch
11 Industries?

12 A. For that individual victim, I would assume it's
13 negligible.

14 Q. In fact --

15 A. I'd say it would be negligible.

16 Q. In fact, because of the vast size of the company,
17 negligible, and the fact that they probably used these losses
18 in some way in their accounting? They figure out how to use
19 them, right?

20 A. I would guess so. But, again, at the end of the day, it
21 was still induced through fraud.

22 Q. Got it. Well said.

23 Kentucky River Properties. I remember Mr. Barker
24 testifying at trial. I assume you do as well?

25 A. I do.

HUBBUCH - Cross

52

1 Q. That \$170,000 was loaned to Doug Vance for a piece of
2 equipment, correct?

3 A. Yes.

4 Q. And --

5 A. In exchange for some type of ownership interest in that
6 piece of equipment.

7 Q. Right. And Mr. Barker testified at trial that when
8 Mr. Vance was put out of business, whether through arrest or
9 everything, they took the piece of equipment?

10 A. I assume they still had ownership. I don't know exactly
11 what they did with the piece of equipment. I mean, yes.

12 Q. I think he testified to that, and the Court will
13 remember.

14 A. Yes, they -- they have -- they have ownership interest in
15 the piece of equipment.

16 Q. Okay. So they got a \$170,000 piece of equipment for
17 their \$170,000 loan? That was the agreed-upon value?

18 A. If that was their agreement, then yes.

19 Q. All right. Shannon Wells made two wire transfers, one
20 for 30,000, one for 20,000, according to bank records?

21 A. Yes.

22 Q. And he didn't get anything back?

23 A. No.

24 Q. Did your investigation reveal what the purpose of that
25 \$50,000 was, or was there a specific purpose?

HUBBUCH - Cross

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1 A. According to him, to purchase two calciners.

2 Q. Okay. You laid out through -- and I assume that the
3 testimony that you gave about the money coming out is based on
4 bank records and not people telling you something?

5 A. No. That's a comprehensive spreadsheet of bank records,
6 correct.

7 Q. Okay. So most of this money was pulled out of which
8 account? Which company's account?

9 A. It would have been the Wells Fargo account of Nex-Gen.

10 Q. Did your investigation reveal or were you able to
11 discover what was done with that money? For example, you've
12 got several, you know, like close to \$20,000 taken out by
13 Heather Vance and then \$30,000 worth of withdrawals within a
14 week. Do you know what that money was used for?

15 A. I do know that the wire transfers that went to Joan
16 Faybik and to Keith Shpakoff, I know for sure those went back
17 to them. Otherwise, no, I can't tell you exactly what those
18 expenses went to.

19 Q. Okay. We keep talking about Nex-Gen here, and there are
20 at least a couple of iterations of a company with the Nex-Gen
21 name, correct?

22 A. Correct.

23 Q. Tell me about the original one.

24 A. Nex-Gen Industries, Inc.

25 Q. Okay. And who was that?

HUBBUCH - Cross

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1 A. That would be Doug Vance and Joan Faybik and -- I'm
2 assuming that's the two principals.

3 Q. Do you know, other than Joan Faybik saying so, that she
4 was an owner?

5 A. We have certificate -- corporate documents that show that
6 that she provided to us.

7 Q. Okay. I thought -- when you were talking about her
8 ownership, I got a little muddled there.

9 You said she believed she was a 50 percent owner, but it
10 may have been less than that.

11 A. It may have been more than that. There was -- her
12 ownership interest was agreed to between her and Doug in the
13 form of purchase of shares in the company where she had
14 equitable interest in the company.

15 Q. And do we know what percentage of ownership she would
16 have had, percentage of shares?

17 A. It's either 50 percent, 51, or 49. It's right there.
18 Honestly, I'd have to see the documents again, Jeff, to --

19 Q. Well, you understand there's a significant difference
20 between 49 and 51?

21 A. I do.

22 Q. So that Nex-Gen Industries, what happened to it?

23 There was another company formed with the Nex-Gen name,
24 correct?

25 A. Yeah. But Nex-Gen Industries, I don't know that it was

HUBBUCH - Cross

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1 ever -- officially ever dissolved as far as what Joan Faybik
2 would understand. The entity was still there. Another entity
3 was created with the Shumard Family Office, which was NexGen
4 Energy Partners, LLC, and then Doug created his own Nex-Gen,
5 LLC, I believe, in late 2017, early 2018, just Nex-Gen, which
6 he was able to get funding into that business. Then there was
7 Nex-Gen Indiana, LLC that never, according to the principals,
8 ever had any business go through that.

9 So there are all these little entities that were claiming
10 to be Nex-Gen, but from my investigation, Nex-Gen is just one
11 entity.

12 Q. NexGen Energy Partners, that was the company formed with
13 the Shumards?

14 A. Yes. They were supposed -- Doug was supposed to dissolve
15 his interest in those other entities and operate only under
16 NexGen Energy Partners, LLC rather than these other
17 preexisting entities.

18 Q. Who owned NexGen Energy Partners?

19 A. That was owned by Doug and the Shumard foundation and
20 Molly.

21 Q. But wasn't Nex-Gen Industries actually as an entity an
22 owner?

23 A. I believe it was, yes. But they were supposed to
24 dissolve their -- you know, again -- yes. Correct.

25 Q. Supposed to, but --

HUBBUCH - Cross

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1 A. I agree.

2 Q. With what we have as far as documents, Nex-Gen Industries
3 remained, at least in some part, an owner of NexGen Energy
4 Partners?

5 A. In name, correct.

6 Q. Right. Okay.

7 Going back to Exhibit 1. The bottom box, which I don't
8 believe you talked to Mr. Chapman about, "Gross Sales and
9 Service." You have various items, I guess, that came into
10 where? This is money collected by who?

11 A. This is money that came into the Nex-Gen Industries or
12 the Nex-Gen bank account, not the NexGen Energy Partners' bank
13 account.

14 And if you would like, I can elaborate, if you dare.

15 Q. You're challenging me. I don't know about that.

16 Well, the only thing I was -- you've scared me off. I'm
17 not going to ask.

18 You mentioned briefly repayment of judgments, your second
19 box, Stephen W. Gooch, \$37,500, and Tazewell County Circuit
20 Court, \$33,000.

21 Now, I'm generally familiar, but specifically, who is
22 Stephen Gooch?

23 A. He's the attorney.

24 Q. So, basically, those were attorneys' fees that Doug Vance
25 paid?

HUBBUCH - Cross

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1 A. No. Those were through Stephen Gooch to pay the
2 restitution.

3 Q. Okay.

4 A. He was only handling the collection of the judgment.

5 Q. Got you. Okay.

6 So this money was paid to deal with Mr. Vance's prior
7 court issues?

8 A. Correct.

9 Q. Did your investigation reveal whether Mr. Vance actually
10 got paid salary by any of these companies?

11 A. You're switching gears. Are you talking about was he
12 paid? Did he pay himself? Was he paid by Shumard Family
13 Office? Was he paid --

14 Q. Well, let's do it both ways. That's very valid. You
15 know, I get hung up on the Nex-Gens as well.

16 Did you look at Nex-Gen Industries? Did Doug Vance ever
17 receive payment from Nex-Gen Industries?

18 A. It appears from the bank records that he just took money
19 out as he needed.

20 Q. Do you have an indication how much, or do your bank
21 records reflect how much?

22 A. No. I can't differentiate in the huge amounts of cash
23 how much he was actually paid, how much he paid himself. No,
24 I do not know that.

25 Q. All right. Once everything folded into NexGen Energy

HUBBUCH - Cross

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1 Partners, what was Doug Vance's role in that company? Did he
2 have an office?

3 A. He was still performing the operations.

4 Q. Okay. My question is: Did he have an actual title or
5 office within the corporation?

6 A. I don't know how formal that was. For a while Molly
7 McKinnon was still the CFO and he was still the operations
8 officer, but Gary Chamblee was kind of the overseer of both
9 who would visit on occasion.

10 Q. Did your investigation reveal whether, under that
11 iteration of NexGen Energy Partners, Doug Vance was paid for
12 services provided to the corporation?

13 A. I believe he was. It wasn't significant, but there
14 were -- there were payrolls that appear to be payroll payments
15 for Doug Vance.

16 Q. As you investigated this case -- well, let me ask just
17 real quick. With regard to Kenneth Shumard and Creola
18 Holdings, you know, you add those two together, it's over
19 \$900,000, and according to what you have, the only thing that
20 Mr. Shumard got back was \$48,782?

21 A. I don't know what they would have withdrawn from the
22 other account that they were managing themselves. We did have
23 visibility in that account.

24 Q. What about equipment? Did they take ownership or control
25 of any equipment?

HUBBUCH - Cross

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1 A. It was my understanding they never really -- the only
2 thing they had a potential ownership interest in were the
3 dryers, were the calciners. And I don't think they were ever
4 able to secure those for sale. So, no.

5 Q. What about GGC Funding and Gary Chamblee?

6 A. Same there.

7 Q. You've got him getting -- them/him getting back a little
8 over \$15,000.

9 Did your investigation reveal that Mr. Chamblee got
10 anything else as far as control over equipment, business, or
11 anything?

12 A. I don't believe there was any other equipment.

13 Q. All right. When you began your investigation, did you
14 do -- or throughout the investigation, from the time that you
15 began until Mr. Vance was arrested, did you do any
16 investigation into his personal finances?

17 A. Just through his bank records and through the court. So
18 I knew generally his limited means.

19 Q. Well, describe what you found. I think you used the word
20 "limited means."

21 A. There was a lot of money going in and out of the
22 accounts. Again, I can't tell you where a lot of the cash
23 went. I know he was living with family. I never went there,
24 but he was living with his family in an apartment complex, not
25 a real nice one, had been there for a very long time. He

HUBBUCH - Cross

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1 didn't drive brand-new vehicles. I mean, it was my
2 understanding that he wasn't living large, if that's what
3 you're asking.

4 Q. It is. Any indication that he had a large -- I mean,
5 because the loss amounts here alleged are huge, but do you
6 have any indication that a significant amount of money went
7 into Doug Vance's pocket?

8 A. No. But there were many times at which Doug Vance tried
9 to get others to buy him out for multimillion dollars. In the
10 words of Aces High, Wendell Elza, I'm going to try to fake
11 it -- fake it till you make it.

12 Q. I'm not sure how that answered my question, but I get
13 what you're saying.

14 A. He did not have personal wealth, but he had what appeared
15 to be hopes to have personal wealth.

16 Q. Don't we all?

17 A. Correct.

18 MR. DARLING: Thank you, Agent Hubbuch. That's all I
19 have.

20 THE COURT: Thank you, Mr. Darling.

21 And before any redirect, I have just a couple questions
22 for clarification.

23 You testified at some length about Joan Faybik and her
24 position that she's not a victim in the case as she outlines
25 in her restitution information that she's filed and in the

1 statements that she's made to you. But you indicated that
2 she's invested approximately \$500,000 and she received \$59,600
3 according to bank records. But the 500,000 is based upon her
4 statements to you?

5 THE WITNESS: That is correct.

6 THE COURT: And she indicated that she did invest
7 some cash perhaps other than what would be --

8 THE WITNESS: Correct. She claimed that she saved
9 money under the mattress in cash and also provided Doug with
10 some of that.

11 THE COURT: And then Keith Shpakoff is a relative or
12 not a relative?

13 THE WITNESS: Not a relative, but considers himself
14 her niece -- I mean her nephew. I'm sorry.

15 THE COURT: And did you interview him personally?

16 THE WITNESS: I did.

17 THE COURT: Did he indicate, in the course of that
18 interview, that all the information he received was through
19 Ms. Faybik about the company?

20 THE WITNESS: He had visited there before. But, yes,
21 most of his initial information was through Ms. Faybik.

22 THE COURT: How did he describe the representations
23 that were made about his investment in the company?

24 THE WITNESS: He's a gambler. He was out to make
25 money and believed this was an investment that would make a

1 return.

2 THE COURT: All right. And then we have the two
3 individuals I believe you indicated were potential investors
4 or involved in the company in Indiana, Rolfes and Phillips?

5 THE WITNESS: Correct.

6 THE COURT: And Rolfes didn't really want to give you
7 any information?

8 THE WITNESS: He wouldn't talk to me over the phone,
9 other than generally noting his relationship with Doug.

10 THE COURT: Did he, at any point, tell you or any
11 other agent involved in the investigation the type of
12 representations that were made to him to get him to invest
13 \$17,500?

14 THE WITNESS: He did not.

15 THE COURT: And the same for Mr. Phillips?

16 THE WITNESS: No.

17 THE COURT: All right. During trial of this case,
18 Kentucky River Properties had two witnesses, and there was
19 testimony presented that in exchange for the loans that they
20 received security interest in certain property.

21 THE WITNESS: That's correct.

22 THE COURT: And is it your understanding that was the
23 same property that had been pledged or owned by some of these
24 other entities?

25 THE WITNESS: I believe -- I believe that multiple

1 dryers were made over time. Some were sold or potentially
2 sold, some were used as parts, one burned up. I'm not exactly
3 sure because I didn't have visibility into which calciners
4 were which. But they had ownership interest in a calciner
5 that Doug was supposed to have built and get those funds.

6 THE COURT: Did you ever receive any UCC filings that
7 would indicate who had filed security interest in that
8 property?

9 THE WITNESS: I have not.

10 THE COURT: All right. I believe you testified on
11 direct examination that prior to June 7th, 2017, the returns
12 that were made to the individuals or to the companies or
13 entities listed on this chart would include \$4,100 to Joan
14 Faybik and \$449.32 to Kenneth Shumard; is that correct?

15 THE WITNESS: According to the bank records that I
16 had access to, yes.

17 THE COURT: So the balance of the money that's listed
18 as Ponzi-Style Returns, the first chart on Exhibit 1, would
19 have been after that date, after -- to Ms. Faybik would have
20 been after June 7th, 2017?

21 THE WITNESS: Yes.

22 THE COURT: All right. Let's see if we have any
23 other redirect or follow-up questions.

24 Mr. Chapman?

25 MR. CHAPMAN: Briefly, Your Honor.

HUBBUCH - Redirect

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1 THE COURT: Yes, sir.

2 REDIRECT EXAMINATION

3 BY MR. CHAPMAN:

4 Q. Agent Hubbuch, just a few follow-up questions for you.

5 First, I'd like to take you up on your offer to explain
6 the fourth table of the chart. Can you please explain what
7 that represents?

8 A. Sure. So the top three are basically monies that were
9 paid to Nex-Gen Industries for products. Basically, Doug
10 appeared to be operating a logging and a chip industry out of
11 the Chavies location, hence him buying the wood chipper, which
12 apparently didn't create wood chips of the right size and
13 configuration to be used for the clean char. So he ended up
14 selling those out to different entities, Virginia Electric for
15 their power plants, Mountain Top Timber. He was logging.
16 They purchased raw product from him that he was processing
17 logging out of Chavies. And then BPM Lumbar similarly.

18 Now, the Clorox Company, Miller, and Cambro -- and I'll
19 correct my prior. They weren't all non-Nex-Gen clean coal
20 related necessarily. Clorox was a test run. We heard
21 testimony at trial where Clorox tried to make a go of it with
22 Doug, but Doug Vance -- Nex-Gen couldn't produce the product.

23 Miller was one of the later companies that what was
24 remaining of Nex-Gen was trying to process aluminum fines and
25 dry graphite. I believe Cambro, they were drying graphite

HUBBUCH - Redirect

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1 using the dryers for Cambro. So there were some follow-on
2 funds that had come in that weren't technically clean coal or
3 char products.

4 But those first three were basically a side business that
5 I believe, based on my investigation of the records, that Doug
6 was operating using investor and lender funds but then doing
7 something different on the side.

8 Q. And the first three entries add up to over 300,000 of the
9 369?

10 A. Yes.

11 Q. And that is not the industry that Nex-Gen represented
12 itself to be in; is that correct?

13 A. No.

14 Q. It is correct?

15 A. That is correct, it's not what he represented. I never
16 saw any disclosures for Virginia Electric to any of the
17 investors as a potential buyer of products.

18 Q. Agent Hubbuch, on cross-examination, you used the phrase
19 in reference to the various entities that have the word
20 "Nex-Gen" in them, you made a reference to that they are, in
21 reality, just one entity. What did you mean by that?

22 A. The same location, the same products, the same people
23 running them, just the investors or stakeholders didn't know
24 that there were multiple entities.

25 Q. Was there just one operation going on at Chavies?

HUBBUCH - Redirect

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1 A. Yes.

2 Q. And, finally, Agent Hubbuch, to turn back to Ms. Faybik
3 for a moment. Do you recall what year the Mullen
4 investigation was in, what year she wrote that letter?

5 A. That was 2013.

6 Q. And what year did her involvement with Mr. Vance begin?

7 A. I believe it was -- it was between that. So it was after
8 2013. I believe there's some investments that she made in
9 2015.

10 Q. So 2015. Certainly, by 2016?

11 A. Absolutely by 2016 she provided us with records where she
12 had made some investments.

13 Q. Is there any indication in your investigation, whether
14 from financial records or from her own statements, that
15 between 2013 and 2015 or '16 she came into some huge amount of
16 wealth?

17 A. No.

18 Q. And, finally, would it be an accurate summation of your
19 prior testimony that you don't just have her own statements,
20 you also have the corroborating statements of her son?

21 A. Yes.

22 Q. And remind us what he told the FBI.

23 A. He said that he believed that she had lost approximately
24 400,000.

25 MR. CHAPMAN: That's all I have. Your Honor.

HUBBUCH - Recross

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1 THE COURT: All right. Thank you.

2 Any other recross of the witness?

3 MR. HAYWORTH: No, Your Honor. Thank you.

4 THE COURT: Mr. Darling?

5 MR. DARLING: One question, Your Honor.

6 THE COURT: Yes, sir.

7 RECCROSS-EXAMINATION

8 BY MR. DARLING:

9 Q. Agent Hubbuch, since you were talking about the fourth
10 table that I was scared to go into, do you have in front of
11 you the email with the business plan attached?

12 A. I do.

13 Q. If you can just go to Bates Number 3051 at the bottom
14 right. It's page 3 of the business plan.

15 A. Yes.

16 Q. All right. First paragraph. It's Executive Summary.
17 "Who is Nex-Gen Industries?"

18 And does it not say that NGI currently manufactures and
19 operates equipment, proprietary technology to convert
20 renewable-based materials, coal --

21 THE COURT: Slow down a little bit for the court
22 reporter, Mr. Darling.

23 MR. DARLING: All right. I'm sorry.

24 BY MR. DARLING:

25 Q. It specifically mentions that what they do is coal and

HUBBUCH - Further Redirect

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1 wood waste, correct?

2 A. Yes.

3 Q. And underneath there is a listing of the product line,
4 and the first one is wood and coal-based carbon products,
5 correct?

6 A. Yes. Biochar.

7 MR. DARLING: All right. That's all. Thank you.

8 THE COURT: Anything else.

9 MR. CHAPMAN: May I ask one follow-up, Your Honor?

10 THE COURT: Yes, sir.

11 FURTHER REDIRECT EXAMINATION

12 BY MR. CHAPMAN:

13 Q. Agent Hubbuch, is chipping up wood creating a wood-based
14 carbon product?

15 MR. DARLING: Object to it being out of his realm.

16 THE COURT: All right. If you know, you may answer.

17 A. I don't know specifically, but it wouldn't be consistent
18 with the biochar statement of his business

19 BY MR. CHAPMAN:

20 Q. It would not be consistent?

21 A. Not be consistent with the biochar, which indicates he's
22 processing a material to create a char.

23 MR. CHAPMAN: All right. Thank you.

24 THE COURT: Let's see. Mr. Darling, do you want to
25 follow up on that last question?

1 MR. DARLING: No. Thank you, Your Honor.

2 THE COURT: All right, sir. You may step down.

3 (Witness excused.)

4 THE COURT: Thank you. I'll hear from counsel at
5 this time with respect to the objections that do affect the
6 guideline calculations that I have identified.

7 First, of course, any increase in offense level, the
8 burden of proof would be upon the United States. So in this
9 particular case, the government does have the burden of
10 establishing the loss amount in the case under the loss table.
11 2B1.1(b)(1)(I) is the loss amount that's set forth in the
12 presence investigation report.

13 And then there's also the issue under subsection (2)(a),
14 whether there's either ten or more victims or whether the
15 matter resulted in loss of substantial financial hardship to
16 one or more of the victims. It doesn't have to be both proven
17 under that particular section, it can be proven either with
18 the number of victims or the substantial financial hardship.
19 And then under subsection (b)(10), whether the matter involved
20 sophisticated means and the defendant intentionally engaged in
21 or caused the conduct constituting sophisticated means.

22 Before we get to that issue, I will also note
23 particularly for the record that the Court also considers
24 relevant conduct. And under 1B1.3(a)(1)(B), in a case of
25 jointly undertaken criminal activity, which would include a

1 criminal plan, scheme, endeavor, or enterprise undertaken by a
2 defendant acting in concert with others, whether or not the
3 charge is a conspiracy, the Court considers all acts and
4 omissions of others that were within the scope of the jointly
5 undertaken criminal activity in furtherance of the criminal
6 activity and reasonably foreseeable in connection with that
7 criminal activity that occurred during the commission of
8 offense of conviction, in preparation for the offense, or in
9 the course of attempting to avoid detection of responsibility
10 for the offense. So that's the relevant conduct section of
11 the guidelines.

12 Then after making a determination as to the loss amount
13 and the loss calculation under the guidelines, I'll ask the
14 parties to address 3B1.3, which is abuse of position of
15 private trust in this case.

16 Mr. Chapman.

17 MR. CHAPMAN: Thank you, Your Honor.

18 I'll begin with the loss enhancement. We believe that
19 the evidence presented at trial and the further evidence
20 introduced through Agent Hubbuch this morning proves a loss of
21 \$2,574,491.58. We get to that number by subtracting out the
22 4,100 and the 449.32 from the amount on the third table of the
23 chart. Obviously, a loss of over 2.5 million triggers the
24 enhancement that is set out in the PSR. That gives the
25 defendants credit for the amount returned prior to discovery

1 of their offenses by Mr. Deware. And, as the Court heard, the
2 true loss amount is likely even higher based on the loss to
3 Ms. Faybik.

4 THE COURT: The Court takes into account all the
5 evidence presented, and the evidence is evaluated under a
6 preponderance of the evidence standard. Of course, I can
7 consider hearsay testimony or evidence if there is sufficient
8 indicia of liability with respect to that testimony.

9 MR. CHAPMAN: Yes, Your Honor.

10 It doesn't affect the -- even if you counted 500,000 from
11 Ms. Faybik, it doesn't affect the guidelines. It wouldn't put
12 it over 3.5. So based on the fact that, you know, we don't
13 have financial records to support that, that's based on her
14 and her son's statements, we're comfortable moving forward
15 with a 2.5 loss. But I do think the Court can certainly know
16 that the true loss amount is likely even higher than that.

17 Your Honor, even if the Court gave the defendants credit
18 for the full amount listed in the first table in Exhibit 1,
19 you're still over 2.4 million, triggering the same
20 enhancement.

21 And I would note, simply counting the amounts from
22 Shumard, Koch, and Dragon Head alone, only those three, gets
23 you to 1.7 million, which triggers the same enhancement. So I
24 don't believe there's really any world that this enhancement
25 doesn't apply.

1 Would you like me to address the victims, or would you
2 like me to stop at that point, Your Honor?

3 THE COURT: Well, let me ask you a couple questions
4 about the victims first. Because while there may have been a
5 number of people that would have lost money in the course of
6 doing business with this company, the question is whether they
7 were victims of the conspiracy and of the counts of
8 conviction.

9 I do have four individuals in particular. First is
10 Mr. Shpakoff. And according to testimony presented, he would
11 have received information from Ms. Faybik -- we don't know
12 exactly what information he would have received -- but also
13 from Mr. Vance. But he's described as a gambler, and so,
14 based on the evidence that's been presented, I don't know that
15 there is sufficient evidence that misrepresentations were made
16 to him directly or indirectly through Ms. Faybik that would
17 have resulted in his investment.

18 And with regard to Mr. Wells, probably not as close a
19 question based upon the fact that he invested in machinery
20 that was never created or delivered to him as he requested,
21 but the question is, is that part of the conspiracy charged in
22 this particular case.

23 And then the last two individuals on your chart,
24 Mr. Rolfes and Mr. Phillips, the Indiana -- we'll just call
25 those people investors. Apparently they were reticent to

1 provide any information, so we really don't know what type of
2 representations were made to them in the course of the
3 conspiracy as well.

4 MR. CHAPMAN: What I'd say to that, Your Honor, is,
5 there is a definition of victim in the guidelines, of course,
6 and that's simply any person who sustained a part of the
7 actual loss. And in this case, I think the Court is well
8 aware from the trial that these Nex-Gen endeavors were really
9 fraudulent at the core. They were tainted at root with fraud.
10 The entire reason that they existed was to funnel one set of
11 investors' money to another set.

12 And, as Agent Hubbuch said on the stand, we think the
13 strategy is fake it till you make it. And ultimately the goal
14 would be to find an angel investor -- right? -- somebody to
15 buy you out and then you can wash your hands of the operation
16 and walk away with a big paycheck. So this is really just
17 tainted at root with fraud.

18 We cited case law in our memo to the effect of, anyone
19 who puts money into this fraudulent endeavor, even if there
20 wasn't a direct fraudulent misrepresentation to them, would
21 still be considered a victim.

22 THE COURT: All right. So first we look at the
23 definition of loss. And when we determine loss amount, it's a
24 different issue than the issue of restitution.

25 MR. CHAPMAN: Correct.

1 THE COURT: Loss is either actual loss or intended
2 loss. If we're looking at actual loss, it means reasonably
3 foreseeable pecuniary harm that resulted from the offense. So
4 the question would be whether the monies that were paid by,
5 for example, Mr. Wells of \$50,000 in two payments, whether
6 that would constitute actual loss, reasonably foreseeable
7 pecuniary harm that resulted from the offense, and whether he
8 would then be a victim as that term is defined in application
9 1, would include any person who sustained any part of the
10 actual loss determined under subsection (b)(1).

11 So the definition of victim, as you indicate in your
12 sentencing memo, is not limited to -- for example, if
13 Mr. Chamblee has an interest in another company, whether it's
14 a full interest, whether it's an LLC, the term 'victim' would
15 include entities as well as individuals. And I know, for
16 example, with GGC Funding, there were other investors, such as
17 Ms. Hogan. So it would include more than Mr. Chamblee.

18 But, again, getting back to Mr. Wells. Are we able to
19 separate out individuals that just didn't get the benefit of
20 their bargain when dealing with this particular company, or
21 does it have to be connected with the fraud itself?

22 MR. CHAPMAN: I don't believe there has to be a
23 direct fraudulent statement to Mr. Wells. So, you know, this
24 indictment charged, and I believe the jury found, an
25 overarching conspiracy to commit wire fraud and money

1 laundering through these Nex-Gen entities that went on for
2 several years.

3 So it would be our position that money put into this
4 effort by outsiders, like Mr. Wells, would be counted as loss
5 even if they did not make a direct misrepresentation to
6 Mr. Wells.

7 THE COURT: Now let's turn to Kentucky River
8 Properties for just a moment. And I'll just borrow some of
9 the arguments that were made from counsel on behalf of Koch
10 Minerals.

11 Of course, Kentucky River Properties could have a
12 legitimate business reason -- or I'll just say a business
13 reason for not seeking to be designated as a victim in this
14 particular case, either for tax or for other reasons, or
15 perhaps they did receive this calciner that may have been
16 pledged to other companies in exchange for the \$170,000.

17 Are they differently situated than these other
18 individuals or entities?

19 MR. CHAPMAN: Your Honor, I don't believe we really
20 know anything -- any details about this alleged piece of
21 equipment. We don't know what the status of it even is. We
22 don't know the fair market value in 2018 when this collapsed.
23 We don't know the fair market value today. I mean, if it was
24 purchased for 170, the value of it would certainly decline
25 over years. But, again, we don't know any of the details of

1 that.

2 THE COURT: All right.

3 Now, with respect to either number of victims or whether
4 the fraud resulted in substantial financial hardship to one or
5 more victims, I do understand that your position is that the
6 individuals are listed on the chart. I believe there are 12
7 listed in Chart 3 on Exhibit 1. Plus there's Mendie Hogan.
8 That would make 13 if they're all determined to be victims in
9 the case.

10 But I believe the focus of the alternative argument is
11 whether this resulted in substantial financial hardship to
12 Joan Faybik. Is that correct?

13 MR. CHAPMAN: That's correct, Your Honor.

14 THE COURT: And that's based upon not only the losses
15 she incurred if I do accept the statement and testimony that
16 it was in excess of the amount shown on the chart. If we only
17 look at what's referred to as the Ponzi-style returns, and if
18 she received more money than the amount listed for the fraud,
19 the \$42,500, would the argument be the same, that she incurred
20 substantial financial hardship?

21 And I do understand your argument that the vast majority
22 of the money she received, what would be over and above
23 \$4,100, was returned to her after the fraud was discovered.
24 But when we look at this particular section of the guidelines,
25 whether it resulted in substantial financial hardship, how

1 does that factor into the timing of when she would have
2 received the money?

3 I don't know if you're following my question.

4 MR. CHAPMAN: I believe I have, Your Honor.

5 So I'm certainly willing to concede. If the Court only
6 looks at the numbers on Exhibit 1, we would not be arguing
7 that substantial financial hardship resulted as to her. That,
8 candidly, does depend on the Court crediting the testimony as
9 to her.

10 THE COURT: All right.

11 MR. CHAPMAN: Does that answer the Court's question?

12 THE COURT: Yes, it does. All right, thank you.

13 MR. CHAPMAN: Thank you.

14 THE COURT: We'll address this issue, and then we'll
15 move on to abuse of private trust.

16 Mr. Hayworth.

17 MR. HAYWORTH: Thank you, Your Honor.

18 THE COURT: Yes, sir.

19 MR. HAYWORTH: With regard to loss amount, I had made
20 objections that there were credits against loss amount that I
21 think were not accounted for. Ms. McKinnon recalled equipment
22 valued at at least \$1.5 million being present on the premises
23 at the time that she was working there and the time Mr. Vance
24 was working there. I don't think that she could say for sure
25 who the title owners of those pieces of equipment were, but

1 they were there, dryers and chippers and other valuable items.
2 I think Agent Hubbuch testified that there were several items
3 and that they probably were pretty valuable, and he could not
4 discount the possibility that Ms. McKinnon was correct about
5 their value.

6 When the business passed from the control of Mr. Vance
7 and he and Ms. McKinnon were no longer working there, the
8 property was still there, the equipment was still there, and
9 other saleable items of value were still there. Something
10 happened to it. And I asked Agent Hubbuch, you know, what
11 happened to it, who did it end up with, and I guess at that
12 point, you know, there was no attempt made to quantify who
13 owned this, who ended up with it.

14 Because it seems to me that if it was -- if it was
15 collateral to one of the investors, that should be a credit
16 against loss. If it ended up being sold by one of the
17 investors, it should be a credit against loss. And I don't
18 know and I don't --

19 THE COURT: Are you mixing up issues of restitution
20 versus loss in making that argument, number one? Number two,
21 we don't know a value on anything that was there at the time
22 when -- at least when Vance and McKinnon were no longer
23 involved, so we don't have a value that could be attached to
24 it.

25 But I believe you're mixing up the issue of restitution

1 versus loss. Because we do know in looking at the guidelines,
2 loss is determined at the -- well, let's just look at the
3 specific definition.

4 Credits Against Loss. The money returned and the fair
5 market value of the property returned and the services
6 rendered by the defendant or other persons acting jointly with
7 the defendant to the victim before the offense was detected.
8 The time of detection of the offense is the earlier of the
9 time the offense was discovered by the victim or government
10 agency or the time the defendant knew or reasonably should
11 have known that the offense was detected or about to be
12 detected by a victim or government agency.

13 So in this particular case, if we look at the April 2017
14 time period when it became known to the defendants that there
15 were questions about their actions and then money started to
16 be returned to some of the investors but not others, but we
17 have this issue of collateral being pledged to various
18 entities, no one really knows who owns the property, no UCC
19 filings. You have Kentucky River Properties, which there's
20 some testimony that they'd taken the piece of property and
21 perhaps that's why they're not claiming to be a victim in the
22 case.

23 But there's no indication that any of these parties
24 listed as victims, other than Kentucky River Properties, might
25 have taken some of the property. Does an individual -- let's

1 just use Joan Faybik for example.

2 If we determine that she's a victim in the case or if I
3 determine that she's a victim, does she have an obligation to
4 go out, take that property and try to sell it to get some
5 value out of it? A retired person living over in Frankfort.
6 It doesn't make sense to pose that burden upon a victim, does
7 it?

8 MR. HAYWORTH: Well, so I just felt like there were a
9 lot of unanswered questions about the value of the property,
10 when it was there, when it was sold, when it was acquired, the
11 terms under which it were acquired. And the value, as
12 described to me, could exceed a million and a half dollars.

13 Similarly, there were discussions, according to Agent
14 Hubbuch, about the value of services rendered by Ms. McKinnon
15 during the time that she worked at the Trus Joist, whether it
16 was in terms of remuneration by way of salary, expenses. She
17 was traveling a lot. I believe that those expenses would be
18 reimbursed to her.

19 Apparently, at the end of the relationship, discussions
20 were had about the value of that, and obviously nothing ever
21 was worked out with that. Her own calculation is that with
22 regard to backpay, housing, like, motel expenses, travel
23 expenses, that that would have come to something in the
24 neighborhood of \$100,000 or a little more. That should be a
25 part of the calculation. Apparently, it was a part of the

1 discussion at one time, simply never resolved, and that's the
2 figure that she gives.

3 THE COURT: Isn't there case law in the Sixth Circuit
4 that would indicate that a person who engages in fraudulent
5 conduct can't recover a salary or reimbursement of expenses
6 based upon their status as a person engaging in fraud?

7 And I'm thinking specifically of the Gallion and
8 Cunningham cases that went to the Sixth Circuit. Gallion and
9 Cunningham, as you may recall, were attorneys that practiced
10 in this district, and they defrauded their clients in the
11 course of a settlement. Instead of taking their one-third
12 fee, they took, effectively, about two-thirds or greater of
13 the amounts in settlement, and I made a determination in that
14 case that they weren't entitled to any attorney fees as a
15 result of their conduct or reimbursement of expenses. And I
16 believe the Sixth Circuit upheld that.

17 MR. HAYWORTH: I don't know what other -- there may
18 have been some other expenses that didn't relate to salary.
19 Some of them may be attached to Mr. Vance, and I don't know if
20 he's contesting that issue or not.

21 It was my belief that the value of the property by
22 itself, if it were the value assigned by Ms. McKinnon, would
23 exceed the amount necessary to take a loss amount below 1.5
24 million.

25 THE COURT: All right. Thank you.

1 With regard to number of victims, I assume you take
2 the -- well, I do understand, based upon your memo, that you
3 take the position that if a company is related to an
4 individual, it should only be counted one time, and that some
5 of these individuals listed as victims are not truly victims
6 in the case if they have not asserted victim status, such as
7 Ms. Faybik, Shpakoff, Rolfes, Phillips, for example?

8 MR. HAYWORTH: Yes, Your Honor.

9 THE COURT: All right.

10 Now, with respect to Ms. Faybik, would there be a reason
11 that she would indicate -- after she's filed these submissions
12 in which she says, I'm not a victim, she takes that position.
13 Is there a reason, then, she would overstate the amount that
14 she invested in the company, saying to the agent in the course
15 of the investigation or her son saying in the course of the
16 investigation that she invested over \$500,000? I know he
17 estimated it to be less than that. But what would be her
18 rationale for claiming that she invested much more than the
19 amount listed on the sheet?

20 MR. HAYWORTH: Your Honor, my take on that is, I
21 don't have any reason to doubt the reporting of Agent Hubbuch
22 of Ms. Faybik.

23 I guess my question about that specifically is that
24 Ms. Faybik and Mr. Vance, they were friends and associates, to
25 my knowledge, for years before Ms. McKinnon ever met

1 Mr. Vance. And I can't tell exactly of the \$400,000 or
2 \$500,000 how much of that loss would have been incurred during
3 the period of time of this conspiracy as opposed to before,
4 because their association went for years before I think
5 Ms. McKinnon even ever met Mr. Vance. So at least a portion
6 of that I don't think that she should be held accountable for.
7 It's a separate thing.

8 THE COURT: All right. Thank you.

9 And Mr. Darling.

10 MR. DARLING: Your Honor, with regard to the loss, I
11 take a bit of an issue with what Mr. Chapman said about this
12 being a fraud at its core.

13 I firmly believe that initially this was Mr. Vance trying
14 to get a business together. He had experience in the biochar
15 industry. He had some equipment. It was pretty beat up, but
16 he had something, and he had an idea. He was trying to put
17 the business together. He got people who liked his idea, did
18 whatever due diligence and decided to invest with him.

19 It did not go well. And I understand that. And I
20 understand that at some point he was getting money from Peter
21 to pay Paul. But initially, with regard to the initial
22 investor, Mr. Deware, I think he was really trying. I mean, I
23 don't think -- I think it's important to realize that the one
24 thing Mr. Hubbuch said is that -- or Agent Hubbuch said is
25 that Mr. Vance has no money. He never really had any money.

1 Anything he had, he was pumping into the business to try and
2 keep the business going.

3 And I think Mr. Chapman's statement that what he was
4 ultimately looking for, he was doing this so he could find
5 some angel investor who was going to write him a big check, I
6 think, is just an incredible statement. There has been
7 nothing in any of the testimony that we've seen or any
8 investigation that Agent Hubbuch has related that Mr. Vance
9 ever was able to make any of these companies go, but there's
10 really no evidence that he wasn't trying.

11 Now, I understand that at some point he was taking money
12 from investors and probably not using it in the way that he
13 should. But I think, frankly, the two initial investors,
14 which would be -- well, if you include Mr. Deware, which is
15 Dragon Head, and Mr. Chamblee, and Mr. Shumard, I think those
16 were people who were investing, and I think Doug was at that
17 point really trying.

18 So it seems to me that just because that money came in
19 and they didn't get their money back at some point does not
20 mean that he was being fraudulent at the time. I think,
21 frankly, those amounts should be excised out because I think
22 they were -- or at least portions of them, because I think
23 that he was really trying to make a go of this.

24 You have the others -- and I understand what Mr. Chapman
25 says. I understand if what you've got, if there's some case

1 law that people lost money as a result of a conspiracy. But
2 it's not just that these people aren't identifying themselves
3 as victims. We have at least three, Mr. Rolfes, Ms. Faybik of
4 course, and Steve Barker from Kentucky River Properties, who
5 have affirmatively said they are not victims. They have
6 written -- Mr. Rolfes and Mr. Barker wrote letters to the
7 Court, which are in the record, and then Ms. Faybik with
8 this -- and I'll admit, it's kind of a wild victim impact
9 statement. But these people say that they weren't victims.
10 They've had the chance to either say that they were or be
11 silent.

12 For example, with, you know, Koch, Koch has not really
13 said much of anything --

14 THE COURT: With all due respect, though, they don't
15 get to determine the definition of victim under the
16 guidelines, do they? It's like you're asking me to look at
17 one piece of a puzzle and say that because you can't see the
18 entire puzzle that it wouldn't be fraud to that particular
19 victim in the case.

20 For example, a person goes to a nursing home and defrauds
21 everyone in the nursing home, takes their money, but is really
22 convincing to the really elderly people in the nursing home,
23 those over, let's say, 85. Does that mean that those people
24 over 85 who really believe that the person really is Elvis and
25 they're going to invest in Elvis that they're not victims of

1 the offense? I don't think so. And it certainly doesn't draw
2 that fine line in the application note to 2B1.1, does it?

3 MR. DARLING: I do not think that -- and I understand
4 what the guideline says and I understand what the case law
5 says. I don't think that somebody who has an opportunity --
6 and we're not talking about old people in the nursing home,
7 we're talking about the guy who runs Kentucky River
8 Properties.

9 THE COURT: We're talking about victims generally.
10 And as you made the argument, for example, with regard to
11 Koch Minerals, \$605,000 loss. Now, I know that you made the
12 argument in the context of whether they incurred a substantial
13 financial hardship, but the question is whether they're a
14 victim or not.

15 And they may have -- like you argue, they may have a
16 reason, they may have some gains they need to offset with the
17 losses, so there may be a reason that they don't stand up and
18 yell and claim I'm a victim in the case. The same for
19 Kentucky River Properties. They may have a reason not to take
20 that position. But ultimately the issue is whether they are a
21 victim as it's defined under the application note.

22 Whether they say it or not -- as a matter of fact, your
23 entire argument that Ms. Faybik isn't a victim because she
24 says she's not a victim undercuts some of the other arguments
25 that have been made, because what that victim impact statement

1 or her statement shows is that she's continuing to be told a
2 story by Mr. Vance and she's believing it in terms of she's
3 not a victim but he's a victim. So we have this argument
4 about who's a victim in the case, and everybody wants to be a
5 victim, because if you claim victim status, you're absolving
6 yourself of responsibility in a case.

7 So I think that the statement that Ms. Faybik submitted
8 doesn't help your argument, it hurts your argument
9 significantly because of what she says. It shows that she's
10 continuing to discuss this matter with Mr. Vance and she's
11 believing the line that he's giving to her.

12 MR. DARLING: I can only go by a statement that
13 somebody makes saying, I am not a victim. I mean, I'm not
14 going behind the reasons that she's doing it or saying, well,
15 it's because she's continuing to be, you know, influenced by
16 Mr. Vance. I'm just reading the piece of paper where she said
17 that he didn't do anything wrong and that -- no aspersions on
18 Agent Hubbuch whom I've known for a long time and I respect --
19 he bullied her into saying these things.

20 I mean, I can't say, well, because she said that, because
21 I know Agent Hubbuch and I don't think he would do that, I
22 can't sit here and not argue that she's not a victim.

23 And the same thing with Mr. Rolfes and with Mr. Barker.
24 I mean, these are smart businesspeople. I mean, if they do
25 not want to be considered victims for whatever reason, it's

1 either because they don't think they are, they thought these
2 were legitimate investments which just didn't work out, which
3 I believe goes back to the beginning with Mr. Deware,
4 Mr. Shumard, and Mr. Chamblee. I think at one point they
5 thought that these were legitimate investments, and obviously
6 it got out of hand.

7 THE COURT: Isn't that how most fraud starts, you
8 find someone who believes that it's a legitimate investment?
9 It's like quicksand. You step into the quicksand and you keep
10 getting deeper and deeper and deeper.

11 MR. DARLING: Well, I think there's a difference
12 between someone who starts something to specifically be a
13 fraud, the whole Michael Milken thing or Bernie Madoff, as
14 opposed to somebody who I believe was really trying, just
15 wasn't doing well. The business was failing not because he
16 was defrauding people, but because he just couldn't make it
17 work, then the fraud at some point started.

18 THE COURT: All right.

19 MR. DARLING: Thank you.

20 THE COURT: Thank you.

21 Let me make some findings, and then we'll turn to the
22 second issue of abuse of private trust.

23 Now, in this particular case, the United States has
24 outlined through Exhibit 1 the individuals that it believes
25 would be victims in this particular case. So there's an issue

1 about number of victims. There's an issue about whether, in
2 particular, Ms. Faybik was -- whether the loss to her resulted
3 in substantial financial hardship. And then we have the total
4 amount of loss. I actually calculate the total amount of loss
5 differently than is on the investors' summary chart.

6 It may not make a difference, Mr. Chapman, with respect
7 to the guideline calculation whether it's 16 levels. Of
8 course, if it's more than \$1.5 million, it's an added 16
9 levels to the base offense level of 7. But it does make a
10 difference in terms of the potential for the fine in the case,
11 because the fine is two times the loss amount in this
12 particular matter, so it does make a difference in how the
13 calculation is performed.

14 There are some individuals that I'm not going to include
15 as being victims in the case under the definition. I've
16 deferred to the definition as contained in application note 1
17 as to who would be a victim in the case.

18 But first, I do find that the two defendants in the case,
19 Mr. Vance and Ms. McKinnon, did work together and were
20 certainly aware of the activities of the other and that the
21 losses that occurred were reasonably foreseeable to both under
22 the relevant conduct section of the guidelines 1B.1.3 that I
23 referenced earlier.

24 Some of the actions that were taken in this case,
25 fraudulent actions were taken by Mr. Vance and others were

1 taken by Ms. McKinnon, but they did result in significant loss
2 which does exceed \$1.5 million.

3 I do find that the amounts of loss that should be
4 included in making that calculation do include Mr. Shumard.
5 And I also find that even though he was associated with other
6 entities, that does not mean that that should just be
7 considered to be one person or one victim in the case. That's
8 not the definition of victims. It's not limited as such.
9 Victims would include individuals, corporations, companies,
10 associations, firms, partnerships, societies, or joint stock
11 companies.

12 So even if it's a holding company or an LLC, I do find
13 that if the person or the individual or entity suffered a loss
14 as a result of being a victim in the case through the
15 fraudulent activities of one or both defendants that the
16 amount of loss should be included in this calculation.

17 And, again, the Court makes this determination that the
18 amount of loss, when it should have been discovered -- the
19 defendant was reasonably aware of the investigation -- was the
20 April 2017 date, which was referenced by the witness here
21 today.

22 So I do find that Mr. Shumard suffered loss as a victim
23 in the amount that is stated. However, some of the amount
24 that was returned to him, less than \$500, occurred before
25 detection of the loss, and so that should be subtracted in

1 determining the amount. \$449.32 should be subtracted from the
2 \$801,819.

3 I also find that Koch Minerals was a victim in the case
4 as well as a result of the misrepresentations that were made
5 by one or both defendants, as was Dragon Head Technologies,
6 \$373,500.

7 I don't find that Kentucky River Properties should be
8 considered as a victim in the case. I think this is a closer
9 question that is presented. They had a slightly different
10 business interest in this particular matter with the loans
11 that were given to one -- well, at least one variety of the
12 Nex-Gen entity. So I'm not going to include the \$170,000 in
13 the loss calculation or include Kentucky River Properties as a
14 victim in this particular case.

15 I do include GGC Funding, LLC as well as Mendie Hogan,
16 who was also an investor through that company in the full
17 amount of \$232,983.79.

18 I'm not going to include Keith Shpakoff as a victim in
19 the case based upon the fact that I don't have sufficient
20 evidence to conclude that there were misrepresentations that
21 were made to him either through Ms. Faybik or through one of
22 the defendants in the case, directly or indirectly, and the
23 characterization that he's basically a gambler and was
24 apparently willing to take significant risk in the case. So I
25 will not include Shpakoff as a victim or the amount of \$98,000

1 in making this determination.

2 With respect to Shannon Wells, I am going to include the
3 person as a victim. I do believe there's sufficient testimony
4 and evidence presented that he paid \$50,000 for equipment that
5 was never delivered, and there's no indication that this was
6 ever being constructed or there was any intention to construct
7 through the trial testimony in the case, but this was further
8 evidence of the defendant, Mr. Vance, engaging in fraudulent
9 conduct to acquire additional monies at a time when the
10 company was unable to pay some of its bills and was attempting
11 to generate additional cash through misrepresentations. So I
12 do find that that amount should be included and Mr. Wells
13 should be included as a victim.

14 Creola Holdings, as I've indicated earlier, although it's
15 associated with the Shumard entities, it is a separate entity
16 that was responsible for investing funds or loaning monies to
17 the tune of \$123,400. Mr. Chamblee also invested monies of
18 \$53,938.11.

19 For Ms. Faybik, I do find that there is sufficient
20 testimony and evidence in the record that does establish that
21 her investments were significantly larger than the \$42,500
22 listed. So I will include the total amount, the \$500,000
23 amount, rather than \$42,500, but that will be reduced by
24 \$4,100. So the total amount attributable as a loss to
25 Ms. Faybik will be \$500,000 minus \$4,100.

1 I'm not going to include Mr. Rolfes or Mr. Phillips as
2 victims in the case. There's insufficient evidence that the
3 money was invested or funds were provided as a result of
4 ongoing fraudulent conduct by one or more of the defendants in
5 this case. So those amounts will not be included.

6 And that will create an amount significantly in excess of
7 the \$1.5 million necessary to increase the offense level by 16
8 in the case.

9 So I will overrule the objections with regard to
10 2B1.1(b)(1)(I). I will make a new calculation before the
11 specific sentencing hearing for the defendants with respect to
12 the amounts attributed to each, which will affect the
13 potential fine in the case but it will not affect this part of
14 the guideline calculation.

15 With respect to the number of victims, there's a total of
16 nine victims that I've identified, including Ms. Hogan who is
17 not on this chart. I do find that the loss to Ms. Faybik did
18 result in financial hardship based upon the testimony
19 presented about not only her status, her job, the type of work
20 she had performed, the amount of money she'd invested, and
21 representations made to her that apparently were continued
22 after Mr. Vance was aware of the investigation. I do find
23 that the amount of monies that were then given to her have in
24 part caused her to take the position or believe that for some
25 reason she's not a victim in the case when, in fact, the Court

1 concludes that she was, and that was the result of Mr. Vance's
2 ongoing attempt to defraud Ms. Faybik and to prevent her from
3 asserting her status as a victim in the case.

4 So I do find that she has suffered substantial financial
5 hardship based upon her investments of approximately \$500,000.
6 And even when we consider the total amount that was returned
7 to her under, as the government has captioned it, Ponzi-style
8 returns of \$59,000, of course, that could affect restitution,
9 she's not making a claim for restitution. But while that
10 might certainly affect the amount of restitution, it does not
11 affect the loss amount under 2B1.1.

12 So according to my rough calculations, that would result
13 in loss amount of a little over \$2.7 million, and I do find
14 that the two-level increase is properly applied for a
15 substantial financial hardship.

16 I'll consider the parties' arguments with respect to
17 whether the loss involved or otherwise involved sophisticated
18 means and the defendant intentionally engaged in or caused the
19 conduct constituting sophisticated means. I do find that
20 there is sufficient evidence presented during the course of
21 the trial for this Court to make a determination that
22 sophisticated means was used in order to carry out the fraud.

23 This involved not only making misrepresentations by both
24 defendants to investors as well as to lenders about the status
25 of equipment, about their ability to sell the product,

1 representations about the ongoing sales, and then when they
2 were questioned about that, they created false documentation
3 to make it appear, number one, that there were not other
4 investors, for example, with regard to Ms. McKinnon's
5 activities, or to make it appear that there were purchasers
6 for the product, which did occur on several occasions to
7 induce others either to loan significant amounts of money or
8 to continue with their investments. So I do find that that
9 two-level increase is appropriate as well and will be applied
10 in the case.

11 Likewise, I do not find that there is a basis to credit
12 against the losses that the Court has found to have existed,
13 the possible value of any property that existed after the
14 scheme had been discovered or salaries or expenses that the
15 defendants now claim might have been incurred but were not
16 reimbursed either by some of the victims in the case or
17 otherwise in the course of operations.

18 I do find that that would be inappropriate to allow a
19 victim to make a claim in a case -- basically a credit or a
20 claim in a case based upon their own fraudulent conduct. So I
21 do find that, first, there's not been sufficient evidence to
22 establish the value of any equipment that remained or services
23 that were rendered by either defendant or expenses incurred by
24 either defendant. But in any event, as a matter of law, it
25 would be inappropriate to credit that against the loss

1 calculation in the case.

2 So now we'll turn to the additional objection that has
3 been made, abuse of a position of trust or use of special
4 skill. And in this particular case, the United States takes
5 the position that the two-level increase should be applied
6 under 3B1.3 for the defendant breaching a private trust.

7 Mr. Chapman.

8 MR. CHAPMAN: Thank you, Your Honor.

9 On this point, factually we would rely on all the
10 evidence presented at trial and then here this morning,
11 Exhibit 116, which we reviewed again setting out
12 Ms. McKinnon's role as CFO, chief financial officer, and
13 setting out Mr. Vance's role as essentially CEO, running all
14 aspects of the business. We would incorporate all our
15 arguments set out in our sentencing memorandum and simply
16 reiterate that the trial testimony was clear that the
17 defendants each exercised really tremendous discretion in
18 their positions as founder and CEO and as CFO.

19 The victims very consistently describe ceding to
20 Mr. Vance and Ms. McKinnon's judgment/control over their
21 affairs, specifically their financial affairs, when they all
22 parted with their money based on the defendants' lies and
23 falsehoods. Thank you.

24 THE COURT: Thank you.

25 Mr. Hayworth, would you like to respond on this issue?

1 MR. HAYWORTH: Yes, Your Honor, briefly.

2 THE COURT: Yes, sir.

3 MR. HAYWORTH: I guess it's essential here to
4 separate, not conflate, the act of committing the fraud with
5 the position of public trust or special trust. By definition,
6 having been found guilty of committing an act of wire fraud, I
7 mean, there was -- you know, the jury has found that there was
8 deception on the part of Ms. McKinnon. But the fact that the
9 fraud occurred does not mean that she was in a position of
10 public trust.

11 Putting the designation CFO to your name doesn't have
12 anything to do, in my estimation, with whether or not you
13 actually acted in a position of trust. I mean, that's
14 something that is defined by what you do, not what you call
15 yourself.

16 A bank teller can call themselves -- can represent to
17 somebody, Oh, by the way, I'm CFO of this bank, but they're
18 not. It really has to do with how much discretion that the
19 person has, how much ability they have to act independently
20 without supervision over decisions directing important things
21 like the flow of money or making important business financial
22 decisions.

23 I heard testimony today and heard at trial as well that
24 Mr. Chamblee essentially acted as an overseer of Molly
25 McKinnon during, you know, the portion of the case that he was

1 there. And if, as the jury found, she committed an act of
2 fraud, it was not because she was in some special or exalted
3 position to do that. Frauds are committed every day, I would
4 assume, by people who are not in a position of public trust,
5 and I would characterize this as one of those.

6 I don't think that there's anybody probably in the case
7 that said, Oh, well, she's got CFO on her name on the email;
8 therefore, I'm going to go ahead and disburse this money to
9 her. To me, that is not the same thing as what the guideline
10 would call for, which is somebody who is farther up the chain
11 of command.

12 There really wasn't a chain of command here. There were
13 a couple of people involved in a fraud, and there wasn't
14 really a hierarchy as I could tell, it's just people involved
15 in a fraud is what the jury found. I don't think that there
16 was anything with regard to Ms. McKinnon's position in and of
17 itself that did anything to enhance the fraud. And certainly
18 not having "CFO" on an email would be not sufficient proof to
19 establish that by a preponderance of the evidence.

20 THE COURT: All right. Thank you.

21 Mr. Darling.

22 MR. DARLING: I agree very much with Mr. Hayworth's
23 analysis of this. All the evidence in this case regarding
24 Doug Vance has been he's been the guy on the ground. He has
25 been the person to builds these machines and sells them in an

1 effort, as it turned out not a great effort, but in an effort
2 to create this biochar product. He was basically an operator.
3 He was basically the person who tried to physically make the
4 business go. He was not the person who was bringing in the
5 clients, the investors. That was not his role here. He
6 basically was trying to make these machines and do the
7 business.

8 Again, I firmly believe that his initial intent was to
9 actually make a go of the business and it didn't work out. So
10 I think that it does not rise to the level of the public or
11 private trust in what his role was with the investors, because
12 all he was doing was showing them these machines that he made
13 and trying to sell them or saying, I can do this with the
14 machines. That's not a role and a trust.

15 The other level of that guideline requires special skill,
16 which refers to a skill not possessed by members of the
17 general public, usually requiring substantial education, which
18 Mr. Vance doesn't have, training or licensing, which he
19 doesn't have. And they give examples of pilots, lawyers,
20 doctors, accountants, chemists, and demolition experts, none
21 of which is Mr. Vance.

22 His role in the company that turned into a fraud of some
23 significance was not one of a trust, it was one of getting
24 investors in and him working on the ground and, unfortunately,
25 doing a bad job. That doesn't rise to the level of trust.

1 THE COURT: All right. Thank you.

2 The guideline in issue 3B1.3 provides that if a defendant
3 abused a position of public or private trust or used special
4 skill in a manner that significantly facilitated the
5 commission or concealment of the offense, increase by two
6 levels. And then the application note gives further
7 information in defining these terms. It refers to a position
8 of public or private trust characterized by a professional or
9 managerial discretion, individuals that are subject to less
10 supervision, for example.

11 And for this to apply, the position must have contributed
12 in some significant way to facilitate in the commission or
13 concealment of the offense. And then it uses the example of a
14 bank executive engaged in a fraudulent loan scheme as opposed
15 to the bank teller, or a hotel clerk who either embezzles or
16 steal from the organization.

17 I do find that the -- well, first, let me also make
18 reference to relevant conduct once again, 1B1.3, because in
19 this particular case, there is sufficient evidence presented
20 during trial of the defendants' communications with each
21 other, that it was reasonably foreseeable that their
22 activities -- the fraudulent activities that were undertaken
23 by each one would be reasonably foreseeable to the other and
24 were engaged in to advance the fraudulent conduct, which did
25 include making representations to not only lenders but

1 potential investors with regard to this company.

2 Ms. McKinnon, for example, provided false bank
3 statements. I'm still not sure how she did it, but apparently
4 changed bank statements in very significant ways to make it
5 appear that some investors weren't on those statements or
6 monies from those investors were not on those statements and
7 it appeared that other monies were coming from the sale of
8 product, for example, as opposed to investments or loans, or
9 that there were individuals, that there were contracts or
10 potential contracts with individuals when in fact that wasn't
11 the case.

12 And it is true, as Mr. Darling points out, that Mr. Vance
13 was the person on the ground. He did take the Sergeant
14 Schultz approach during the trial of the case, and now, that
15 he had a very limited view of what was happening, and to do
16 that, you have to ignore a significant amount of evidence and
17 testimony presented during the course of the trial. That does
18 indicate that not only was Mr. Vance aware of and engaging in
19 fraudulent activities, but, again, just pointing back to his
20 conversations and his attempts to convince Ms. Faybik, for
21 example, that she's not a victim of his egregious conduct.

22 With regard to the discretion, these individuals did have
23 significant discretion in obtaining loans, obtaining
24 investors. They worked together in doing that. They were not
25 under supervision of others. And they did have an obligation

1 to provide true and accurate information to individuals from
2 whom they were seeking loans or individuals who they were
3 seeking to invest in the company, and they failed miserably in
4 providing truthful information. And not only truthful
5 information, but they withheld information that should have
6 been provided to persons that were willing to invest these
7 sums of money. And so I do find that the two-level increase
8 under 3B1.3 is properly applied with respect to both of these
9 defendants in the case.

10 I'll ask the parties if there are other objections that
11 have been raised through the presentence reports that should
12 be addressed jointly or whether at this time we can take a
13 brief recess and then we'll proceed with Mr. Vance's
14 sentencing hearing in approximately five minutes?

15 MR. CHAPMAN: Nothing further to raise jointly from
16 the United States.

17 THE COURT: Mr. Hayworth?

18 MR. HAYWORTH: Nothing further, Your Honor.

19 MR. DARLING: I just want to make sure, Your Honor.
20 I filed some supplemental objections dealing with factual
21 issues Mr. Vance asked me to file. They would not affect
22 guideline calculations. Strictly he wants that for appeal.
23 He would just like an acknowledgment from the Court that those
24 are in the record.

25 THE COURT: They have been filed in the record. But,

1 again, the Court only is required to make rulings on
2 objections that do affect guideline calculations. And I know
3 he does make arguments about one company versus another
4 company, names, when the various entities were formed, things
5 of that nature, but I don't believe that affects the guideline
6 calculations in the case.

7 MR. DARLING: I agree.

8 THE COURT: All right.

9 MR. DARLING: Thank you, Your Honor.

10 THE COURT: We'll take a brief recess. We'll return
11 in approximately five minutes. It will be with regard to --
12 Mr. Vance will proceed first with sentencing.

13 (Recess taken at 11:37 a.m. and sentencing for Mr. Vance
14 filed in separate transcript.)

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16
17 C E R T I F I C A T E

18 I, LAUREN I. GOOTEE, RMR, CRR, certify that the
19 foregoing is a correct transcript from the record of
20 proceedings in the above-entitled case.

21 /s/ Lauren I. Gootee
22 LAUREN I. GOOTEE, RMR, CRR
23 Official Court Reporter

24 October 9, 2023
25 Date of Certification

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