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

	- - -	
UNITED STATES OF AMERICA,	.	Case No. 5:20-CR-00063-1
	.	5:20-CR-00063-2
Plaintiff,	.	
	.	Lexington, Kentucky
- v -	.	
	.	Tuesday, October 4, 2022
DOUGLAS WILLIAM VANCE and	.	
MOLLY IRENE MCKINNON,	.	
	.	JURY TRIAL DAY 1 OF 7
Defendants.	.	
	- - -	

TRANSCRIPT OF JURY TRIAL PROCEEDINGS
BEFORE THE HONORABLE DANNY C. REEVES
UNITED STATES DISTRICT COURT JUDGE

For the United States:	JAMES T. CHAPMAN, ESQ.
	GREGORY ROSENBERG, ESQ.
	Assistant U.S. Attorney
	United States Attorney's Office
	260 West Vine Street, Suite 300
	Lexington, Kentucky 40507

For the Defendant	JEFFREY A. DARLING, ESQ.
Douglas William Vance:	Nichols Walter PLLC
	3120 Wall Street, Suite 210
	Lexington, Kentucky 40513

For the Defendant	BRANDI N. LEWIS, ESQ.
Molly Irene McKinnon:	Baldani Law Group
	300 West Short Street
	Lexington, Kentucky 40507

Court Reporter:	LINDA S. MULLEN, RDR, CRR
	Official Court Reporter
	101 Barr Street
	Lexington, Kentucky 40507

Proceedings recorded by mechanical stenography, transcript produced by computer.

1 (Voir dire was conducted on October 4, 2022, the jury was duly
2 empaneled and sworn, transcript not requested. Proceedings in
3 open court, October 4, 2022, 11:00 a.m.)

4 THE COURT: Now, at this time, ladies and gentlemen, we
5 will proceed with opening statements. The United States, by
6 rule, does proceed first.

7 And, Mr. Rosenberg, you'll be presenting the opening for
8 the government.

9 Before you start, does everyone have a notepad if you want
10 one and something to write with? If at any point you need a
11 pen, if your pens run out, signal for me and we will make sure
12 you have whatever you need.

13 Thank you, you may proceed.

14 MR. ROSENBERG: May it please the Court.

15 THE COURT: Mr. Rosenberg.

16 MR. ROSENBERG: Good morning. This is a case about lies,
17 telling lies to get money from other people. Telling lies to
18 keep that money and telling lies to try to get even more money.
19 Because that's what fraud is, telling lies to get money from
20 someone. And when you use bank transactions to cover up those
21 lies and keep your scheme going, that's money laundering.

22 The evidence in this case will show that Mr. Vance and
23 Ms. McKinnon are guilty of both, fraud and money laundering.

24 The testimony you will hear in this trial will tell the
25 story of how the defendants, Vance and McKinnon, concocted a

1 string of lies surrounding a business that was started in
2 Virginia but they were moving over to Chavies, Kentucky, that's
3 near Hazard.

4 The business, which they called Nex-Gen, was basically to
5 run coal or wood pieces through a high temperature dryer,
6 sometimes referred to as a rotary kiln or a calciner, and the
7 goal was to produce a high energy content char product that
8 could be sold to energy companies or industrial or agricultural
9 companies at a higher price.

10 You will hear how Vance was running the operations while
11 Ms. McKinnon was in charge of the finances. At one point, she
12 had the title of chief financial officer.

13 Now, I can't tell you whether charring wood and coal was a
14 good idea or a bad idea for a business. If the story of
15 Nex-Gen were simply a couple of folks who got some investors,
16 took out some loans and, you know, worked hard at it but the
17 business just didn't work out, well, none of us would be here
18 today. Because there's nothing wrong with that. There's
19 nothing wrong with trying out a new idea and trying to make it
20 succeed. New businesses are part of what drives this economy
21 forward.

22 And the witnesses you will hear from, the folks who were
23 investing in Nex-Gen, they will tell you that they understood
24 new businesses carry the risk that it just won't work out.

25 But here's what you can't do when you're starting up a new

1 business. You can't tell people lies to get them to hand over
2 their money to you, even if you think you'll be able to take
3 that money and have a lot of success with it. Even if you
4 think eventually you'll get everyone paid back and it all work
5 out, you can't tell lies to get their money.

6 You also can't get a loan from someone by saying that
7 you'll use the money for a business purpose when, in fact, you
8 know you're going to keep a bunch of it for yourself and use
9 some of it to pay off personal debts. The evidence will show
10 that's exactly what happened here.

11 So what are the lies you're going to hear about in this
12 case? Well, you're going to hear how Vance and McKinnon
13 promised two different sets of investors the same basic deal.
14 The investor puts in cash, Vance contributes his existing
15 equipment and his technical know-how, and they will form a
16 company together that the investor owns 51 percent of, a
17 controlling stake of the company.

18 I'll show you an example from an agreement you'll see that
19 Mr. Vance and Ms. McKinnon signed with three people from the
20 Shumard Foundation, a nonprofit based in Georgia, that used
21 money from investment returns to support various charities.
22 And this was an agreement that was signed in September of 2016.

23 Kenneth Shumard, Mendie Hogan and Gary Chamblee will tell
24 you how, under that agreement, their investments together
25 amounted to 51 percent. That's a controlling stake in the new

1 company, which was called NexGen Energy Partners.

2 Now, this company, they will each tell you, that they were
3 led to believe that they were the only investors in Vance and
4 McKinnon's business. Indeed, their agreement specifically
5 required Vance or McKinnon to give them written notice if
6 either of them were to engage in any business that would be
7 competitive with NexGen Energy Partners.

8 If I can ask my assistant to advance the slide? Thank
9 you. Go ahead, go ahead through.

10 So you see there, 51 percent from the Shumard Group,
11 49 percent to Doug Vance.

12 Well, the evidence will show that these promises didn't
13 mean much, because Vance and McKinnon were already lining up
14 another investor who was promised the same kind of deal. You
15 put up the money, Vance will put up the equipment, and we'll
16 form a new business to manufacture char products. That other
17 investor was Allan Deware.

18 We'll go and advance the side again.

19 Now, Mr. Deware, he was a veteran of our Armed Forces who
20 had already established a successful business of his own. He
21 signed on with Vance and McKinnon and started contributing
22 money within a month of the Shumard Group signing their deal.

23 Mr. Deware will tell you how, before he invested, he was
24 told about other potential investors out there and how Vance
25 and McKinnon used that to put pressure on him to invest

1 quickly.

2 But Mr. Deware will tell you, when he invested it was the
3 clear understanding from Mr. Vance and Ms. McKinnon that he was
4 the sole partner with Vance in the new company that they
5 promised to create.

6 He will also tell you how, about nine months later and
7 \$370,000 poorer, he got a tip from someone inside the Nex-Gen
8 company. This person saw how Vance and McKinnon were operating
9 and knew that something just wasn't right. It was that insider
10 tip that set Mr. Deware on a path of learning that Vance and
11 McKinnon did not set up the company they promised to create,
12 that the two of them were in business with other investors that
13 he didn't know about, and that his hundreds and thousands of --
14 hundreds of thousands of dollars were being put into a business
15 that he didn't even own.

16 You will hear directly from that insider at Nex-Gen very
17 soon.

18 And just like Mr. Deware didn't know about the Shumard
19 Group, the Shumard folks didn't know about Allan Deware.

20 And neither of them knew about yet another investor, Joan
21 Faybik. But you'll see her name all over the Nex-Gen bank
22 records and you'll hear how Mr. Vance admitted to Special Agent
23 Hubbuch that Ms. Faybik had also invested money in the
24 business.

25 All right. Let me pause here because you might be

1 wondering, well, how do we know this all just wasn't some big
2 misunderstanding? Maybe Vance and McKinnon thought it was fine
3 to run the same business at the same location with the same
4 equipment but apply two different company names to it and it's
5 all okay. We will have two companies, one that's the Shumard
6 company and one that's the Allan Deware company.

7 Well, you will see how Ms. McKinnon sent falsified bank
8 statements to the Shumard Group. These were documents made to
9 look like genuine bank statements from Wells Fargo, but they
10 had been meticulously fabricated to hide the fact that Allan
11 Deware and other investors had contributed lots of money to the
12 business, because remember, the Shumards thought they were the
13 only investors.

14 At the end of this trial, we'll ask you to think about,
15 why would there be falsified bank statements if Vance and
16 McKinnon really thought there was nothing wrong with the way
17 they were operating?

18 But bank statements aren't the only falsified documents
19 that you will see in this case. You'll see evidence of Vance
20 and McKinnon falsifying and then emailing out purchase orders,
21 customer lists, sales records, specification sheets, and weigh
22 scale tickets for shipping coal for a large sale that just
23 didn't exist.

24 Lies. They told lies to get money from folks. And they
25 lied to hide what they did so they could keep that money.

1 I want to show you another example of that. If we could
2 advance a couple of slides? This is from Government's
3 Exhibit 720. And this is a copy of a cashier's check that
4 Mr. Vance provided to the Shumard Group, claiming that it was
5 payment from a large steel manufacturer called AK Steel.

6 You can see in the top left corner where it says the
7 remitter is AK Holdings. You will hear how this claim from
8 Mr. Vance that Nex-Gen was making large sales to a
9 well-established steel company, well, that was designed to keep
10 the Shumard folks committed to further supporting Nex-Gen.

11 But as you pay close attention to this trial, I think
12 you'll be able to figure out where that money was actually
13 coming from, and it wasn't from selling a single pound of coal
14 to AK Steel.

15 You will see clear evidence that Ms. McKinnon repeated the
16 lie about Nex-Gen selling to AK Steel. She lied about this to
17 a contact at another company that was considering loaning money
18 to Nex-Gen.

19 She sent false customer lists and false sales reports that
20 helped Nex-Gen get more than \$600,000 from that company. Vance
21 and McKinnon never paid back a dime of it.

22 Now, the thing about lies is they eventually catch up to
23 you. Thanks to that Nex-Gen insider that tipped off
24 Mr. Deware, the whole scheme started to unravel. Genuine bank
25 records were compared against the false bank records.

1 Witnesses were contacted from companies that Vance and McKinnon
2 claimed Nex-Gen was selling to. You will hear from some of
3 those witnesses this week.

4 You will also hear from Nex-Gen employees who will tell
5 you they never saw large shipments of processed coal going out
6 to customers.

7 By the end of this trial you will see through all of the
8 lies, and you'll be given instructions by Judge Reeves on the
9 law to apply to this case.

10 You'll be asked if the facts presented meet the criteria
11 for wire fraud and money laundering. Because the evidence will
12 leave no reasonable doubt that Vance and McKinnon lied to take
13 money, lied to disguise the true source of the money they took,
14 and lied to keep the scheme going as long as they could.

15 The United States will ask you to find both defendants
16 guilty on all counts.

17 Thank you.

18 THE COURT: Thank you, Mr. Rosenberg.

19 Mr. Darling.

20 MR. DARLING: Thank you, Your Honor. If it please the
21 Court.

22 THE COURT: Mr. Darling.

23 MR. DARLING: Ladies and gentlemen of the jury, I'm not
24 going to spend a lot of time with you here. Mr. Rosenberg, on
25 behalf of the United States, has made several allegations. I

1 think -- I'm not going to sit here and refute them, I'm going
2 to ask that the jury do what the Court will instruct it to do,
3 and decide whether or not it believes, beyond a reasonable
4 doubt, that what Mr. Rosenberg promised he would show you
5 actually happened.

6 Because what we have here are people who invested money,
7 did not get the return they had hoped and are upset. And
8 that's it. And there's nothing illegal about investing money,
9 not getting the return you had hoped and being upset. That
10 doesn't mean anybody did anything wrong, it doesn't mean that
11 there's any fraud.

12 What I am going to ask you to do is, they've -- the
13 government has listed some 23 witnesses who it says will
14 support their claims, and they will all have something to say.
15 But what you, the jury, need to do is determine whether or not
16 what these people have to say actually support criminal action
17 and not bad investment, not badly run companies. It's not
18 illegal to run a company badly, and the instructions will tell
19 you that.

20 You will also have an instruction that's called a good
21 faith exception. And if what these people were doing in their
22 business they were doing in a good faith, regardless of the
23 outcome, it's not a crime. You will find that the Court will
24 instruct you that the government must prove beyond a reasonable
25 doubt that they were not acting in good faith.

1 And Mr. Rosenberg decided that his theme of this case was
2 going to be lies. And once again, when this case is over,
3 you'll need to ask yourself, has the government proven to you
4 beyond a reasonable doubt that these people lied to investors
5 in order to get them to do something?

6 I'm going to ask you to do something in this case with
7 these 23 witnesses. First thing Mr. Rosenberg said is that
8 Doug Vance ran the operations of the company, Ms. McKinnon ran
9 the financials.

10 I'm going to ask you -- and after that, everything he said
11 was Vance and McKinnon, Vance and McKinnon, Vance and McKinnon.
12 And I'm going to ask you what you will need to do in this case
13 is you will need to determine who did what, whose role was what
14 role and make separate decisions. Because there are some
15 things that, you know, one or the other is not involved in.

16 Some of these supposed lies were made by one or the other,
17 according to the government. But you need to keep everything
18 separate. And you need to not let the government make global
19 statements without supportive proof. Global statements of
20 lies, global statements of who did what without proof beyond a
21 reasonable doubt.

22 That's going to be what this case is about. And you're
23 going to hear from these witnesses. And what you are going to
24 hear are people who had some axe to grind, either because they
25 lost money, because of some relationship issue, because they

1 didn't like somebody.

2 You're going to see people who did not get the return on
3 their investment that they had hoped to get, or did not get the
4 opportunity to invest that they were hoping to have.

5 You are going to find after however many days this takes,
6 however many people that testify, the government will have
7 sorely failed in proving to you beyond a reasonable doubt that
8 Mr. Vance did anything fraudulent, laundering, that he did
9 nothing more than attempt to run a company doing what he does.

10 And one of the things you will see is that Mr. Vance and
11 Ms. McKinnon, if all this money came in, they don't have it.
12 The business didn't work out. And sometimes that happens.
13 That doesn't mean it's a crime. When this case is over, you
14 won't believe that it is.

15 Thank you for your time.

16 THE COURT: Thank you, Mr. Darling.

17 And Ms. Lewis.

18 MS. LEWIS: May it please the Court.

19 THE COURT: Ms. Lewis.

20 MS. LEWIS: Ladies and gentlemen of the jury, thank you
21 for your attention throughout this morning. Molly McKinnon was
22 terror filled and traumatized, but she did as she was told or
23 else she was going to be threatened, her family members were
24 going to be threatened, and they were.

25 She now finds herself accused of crimes she did not

1 commit. The government wants to tell you one story, but there
2 is a completely -- another part of that story that I'm -- I
3 don't think they are even aware of.

4 Molly McKinnon is 59 years old. She's always lived a
5 modest life. She's worked hard and made an honest living.

6 That life was upset when Gary Chamblee came into her
7 professional world. You will hear from Mr. Chamblee. He is a
8 CPA, he is a businessperson, he was an investor with
9 Mr. Vance's company.

10 He asked her to change bookkeeping records, he later would
11 ask her to change bank records. She refused this, she thought
12 he was joking at first. She continued to refuse and he
13 continued to apply the pressure, he continued to threaten her,
14 he started making accusations and threats of everyone she held
15 dear to her.

16 She eventually succame to those threats and did his
17 bidding, and she followed what he wanted her to do because she
18 was in fear. Again, she was in fear for herself and those she
19 cared about.

20 Molly was introduced to Doug Vance back in 2016. She was
21 brought on board to help him find investors and lenders for his
22 business.

23 During that time, she also was introduced to what we'll
24 call the Shumard Group, that consists of Ken Shumard, Mendie
25 Hogan and Gary Chamblee. They invest with Mr. Vance.

1 You will also hear about Allan Deware and another
2 investor, Kentucky River Properties. There will be emails that
3 you will see between Ms. McKinnon and Mr. Deware. He was
4 perfectly aware of this group from Atlanta and that they were
5 also investors with Mr. Vance.

6 Now, the Shumard Group, as the government has already
7 touched upon, had 51 percent ownership of this new entity,
8 NexGen Energy Partners, in which Nex-Gen Industries was
9 48 percent owner and Mr. Vance had 1 percent ownership.

10 The Shumard Group was the first to invest, but Mr. Deware
11 was aware of them and they were aware of him.

12 It was Mr. Deware's plan to eventually buy out the Shumard
13 Group, but until that time that he did so, he was going to be
14 the marketing arm for this carbon business. But he soon found
15 out sales were hard to make despite his best efforts.

16 Profits weren't being made as quickly as he thought they
17 would be, so he didn't get the return on that investment as
18 soon as he thought.

19 There is that, we'll say, insider, as the government used,
20 that started raising red flags to Mr. Deware. We will point
21 out that many of those red flags are basically made up. I
22 don't even want to call them half truths.

23 So a lot of these red flags that that insider, which will
24 be April Francis, brings up, Mr. Deware already knew about.
25 They weren't red flags to him, and those weren't sufficient.

1 So then she piles on more so-called red flags. So here we have
2 a nervous investor falling for some of these red flags that
3 really aren't red flags.

4 But to back up, the problems between Molly and Gary
5 Chamblee began back in about November of 2016. He asked her to
6 change some bookkeeping records for NexGen Energy Partners. He
7 wanted to show more carbon sales. Again, sales weren't
8 happening that much.

9 Mr. Vance also had a logging business that was doing
10 really well. But it also created liability problems for Ken
11 Shumard, which is basically Mr. Chamblee's boss, so he wanted
12 Molly to change this logging income in the books to reflect
13 that as carbon sales. She didn't agree with this, she thought
14 it was wrong. She refused. He threatened her, she essentially
15 changes this information.

16 Along the way, he is reporting carbon sales to her over
17 and over, saying I sold this much, I sold that much. She
18 dutifully records it, it's her job to do that. Later on, she
19 learns these sales weren't even real. He wasn't making these
20 sales that he was telling her to record. The problem gets
21 worse, and then there is a ripple effect because he then has to
22 show that income on the bank records.

23 He then asks her to modify bank statements. Who would do
24 that? She thinks he's completely joking, she knows she can't
25 do that. But he puts the pressure on yet again. The threats

1 increase. The threats to those she loves increases as well.
2 She feels she has no choice other than to change these records.
3 She emails these out under the assurance it's just going to be
4 for internal purposes of the company only, but she follows
5 through.

6 And then in September of 2017, you will hear about she's
7 mugged and she's robbed of cash that she's taking to the plant
8 to pay employees. And then later on, her home burns down.

9 And then she's also assaulted in her hotel room in Hazard.
10 That was in June of 2018.

11 Later on in September of 2018, she will tell you as she's
12 out walking her dog in her neighborhood in Georgia, she's
13 approached by an individual who passes on more threats from
14 Mr. Chamblee to do his final bidding, and this is to email
15 purchase orders and other information to Mr. Vance.

16 He also directs her to tell him to send a cashier's check
17 to the Shumard Group and list AK Holdings on the record. You
18 will learn that AK Holdings isn't related to AK Steel, but it's
19 also a company in Georgia. So she was still being threatened
20 to do Chamblee's bidding.

21 You will again hear from April Francis, who will quickly
22 point out that many of her red flags weren't red flags at all.

23 You will hear from Mike Miller, Charles Mike Miller, we
24 believe he will testify that oftentimes the company did use
25 cash to make payments to employees and vendors.

1 You will also hear from Jean Lacy, she will testify that
2 Mr. Vance did have a legitimate marketable product.

3 In the end, for reasons we'll get into, you will see that
4 the business didn't have the best plan, but it was a product
5 that was viable, could be sold. The problem was getting those
6 sales and getting the amount of production necessary to make
7 that profitable.

8 A business failing to be profitable in not providing
9 returns is not a crime.

10 In the end, Molly was ultimately let go by NexGen Energy
11 Partners. She was still owed part of her salary and
12 unreimbursed expenses that she incurred.

13 Now, the government wants you to believe that she lied and
14 cheated to investors for her own personal gain. That is
15 absolutely not true. The evidence will show that she didn't
16 personally profit at all. As had been stated, she was still
17 owed part of her salary.

18 Now, it will take some time to go through all of this and
19 there is a lot of detail, and I appreciate your continued
20 attention. Please wait until you've heard all of the evidence
21 before you make a judgment.

22 And at the end, you will see that Molly was left
23 terrorized and traumatized by Gary Chamblee. She was
24 threatened, those she loved were threatened if she didn't do
25 what he told her to do.

APRIL FRANCIS - DIRECT

1 After you've heard all of the evidence, I'll come back
2 before you in closing statements and ask you to return a
3 verdict of not guilty on all counts because Molly is not a
4 criminal here.

5 Thank you.

6 THE COURT: Thank you, Ms. Lewis.

7 Let's go ahead with the first witness if the parties are
8 ready.

9 You may call your first witness, Mr. Chapman.

10 MR. CHAPMAN: Thank you, Your Honor. The United States
11 calls April Francis.

12 THE COURT: Thank you.

13 **APRIL FRANCIS, GOVERNMENT WITNESS, SWORN**

14 THE COURT: Ladies and gentlemen, we may not be able to
15 complete the direct of this witness before the lunch break, so
16 we'll go until a few minutes before 12, and then we'll take a
17 break at that time for our lunch. Thank you.

18 Mr. Chapman, you may proceed.

19 MR. CHAPMAN: Thank you, Your Honor.

20 APRIL FRANCIS

21 DIRECT EXAMINATION

22 BY MR. CHAPMAN:

23 Q. Good morning, ma'am.

24 A. Good morning.

25 Q. Would you please state your name and spell your last name?

APRIL FRANCIS - DIRECT

1 A. April Francis, last name is F-r-a-n-c-i-s.

2 Q. Ms. Francis, what county do you currently live in?

3 A. Breathitt County.

4 Q. Here in Kentucky?

5 A. Yes.

6 Q. And, Ms. Francis, how are you presently employed?

7 A. I am employed through Go Time C stores, a convenience
8 store chain primarily in Eastern Kentucky.

9 Q. Can you tell the jury very generally speaking what you do
10 for Go Time?

11 A. Office manager, accounts receivable, payable,
12 receptionist. Kind of the office assistant. Whatever they
13 need me to do, cashier sometimes.

14 Q. Kind of a catch-all position?

15 A. Yes.

16 Q. How long have you been employed for Go Time?

17 A. A little over four years now.

18 Q. How were you employed before that?

19 A. Before that, I was a secretarial assistant for Robbie D.
20 Trucking and Perry Vinyl.

21 Q. Okay. How about before that?

22 A. Before that, it was Nex-Gen Industries.

23 Q. What is Nex-Gen Industries?

24 A. It was supposed to be a carbon-based clean product
25 company, manufacturing company.

APRIL FRANCIS - DIRECT

1 Q. Where was it located?

2 A. In Hazard, Kentucky.

3 Q. What was your position within Nex-Gen Industries?

4 A. I had a title of office manager. Again, it was kind of a
5 catch-all. I tracked incoming trucks, weighed trucks,
6 receptionist, secretarial, office.

7 Q. Ma'am, through your employment with Nex-Gen Industries,
8 did you come to meet two individuals named Doug Vance and Molly
9 McKinnon?

10 A. Yes.

11 Q. Do you see them here in the courtroom today?

12 A. Yes.

13 Q. Could you please describe what Mr. Vance is wearing?

14 A. A gray jacket.

15 THE COURT: The record will reflect the witness has
16 identified the defendant, Douglas Vance.

17 MR. CHAPMAN: Thank you, Your Honor.

18 BY MR. CHAPMAN:

19 Q. Ms. Francis, could you identify what Ms. McKinnon is
20 wearing?

21 A. Gray jacket as well. I can't see her top.

22 THE COURT: The Court will recognize that the witness has
23 identified the defendant, Molly McKinnon.

24 Q. Ms. Francis, how did you come to meet Mr. Vance and
25 Ms. McKinnon?

APRIL FRANCIS - DIRECT

1 A. I heard that they had a job opening and I was unemployed
2 at the time, so I went and interviewed with Molly. And she
3 offered me a position with the company.

4 Q. How had you heard about the job opening?

5 A. My uncle, who was hauling wood in and out of the plant.

6 Q. And so you came into employment at Nex-Gen?

7 A. Yes.

8 Q. And do you remember approximately the time period you
9 started at Nex-Gen?

10 A. I believe it was October or November of '16. I don't
11 remember the exact date.

12 Q. Could you describe for the jury, Ms. Francis, the physical
13 location of Nex-Gen and the layout of the site?

14 A. It's in the industrial park. As you come up the hill in
15 the industrial park, you just drive straight and the first
16 thing you see is the scale house, and that's what we operated
17 out of, which is basically three rooms. There was a front
18 room, a middle meeting room, and there was a back office and it
19 had a bathroom.

20 And then the plant or former Trus Joist plant was on over
21 the hill, which had an old office building in need of repair.

22 Then there was three huge buildings that they used to
23 manufacture product in before.

24 Q. So if a visitor were to drive onto the site, what is the
25 first building they would encounter?

APRIL FRANCIS - DIRECT

1 A. The scale house.

2 Q. Is that where you personally worked?

3 A. Yes.

4 Q. Could you go into a little more detail about the layout of
5 the scale house?

6 A. The front room, which is primarily where I was at, was all
7 glass so you could see who was coming. There was a door on the
8 left which had a -- well, former gate on it like a parking
9 gate.

10 And then on the right was the scales that the trucks would
11 go across.

12 Q. Describe for the jury what you mean by that, the scales
13 that the trucks would go across.

14 A. There were scales, it weighs trucks, it's just -- it's
15 just a giant scale. And they drive up on it and it gives their
16 weight. And then they -- that way we know how much the truck
17 weighs when they come in. And then when they empty, we weigh
18 them again on their way back out and that way we can calculate
19 the tonnage.

20 Q. What was your understanding of the nature of the business
21 that was occurring there?

22 A. We were supposed to do char, which is a coal-based
23 product. But primarily we were dealing in wood and wood chips.

24 Q. So when you say you were supposed to be dealing in char,
25 what do you mean by that?

APRIL FRANCIS - DIRECT

1 A. We were supposed to have coal delivered in and then
2 produce a char product, which is eliminating the bad stuff in
3 coal to make a clean coal product, and then ship that out, is
4 my understanding.

5 Q. Was it your understanding that there was a machine on-site
6 designed for that purpose?

7 A. Yes.

8 Q. What, if anything, do you remember about that?

9 A. It was a big machine, circular. I think it -- I think it
10 was coal fired to heat up the product and get it to the right
11 temperature to produce the char product --

12 Q. Ms. Francis --

13 A. -- like a barrel.

14 Q. -- a few moments ago, you used the term Trus Joist.

15 A. Yes.

16 Q. Explain to the jury what that means.

17 A. It's the former Trus Joist plant. Trus Joist was a wood
18 manufacturing company that would make trusses for homes. They
19 were one of the first industrial factories to go into our
20 industrial park in Hazard.

21 And when they shut down, nothing was in there for years
22 until Nex-Gen, as far as I'm aware.

23 Q. Would people commonly refer to the site as the Trus Joist
24 site?

25 A. Still do, the name stuck.

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1 Q. Now, ma'am, I believe you indicated that you started there
2 around October of 2016; is that your memory?

3 A. Yes.

4 Q. How did your job go at the beginning?

5 A. It was good. It was, you know, normal secretarial job for
6 a company just getting started. You know, answering calls, you
7 know, you do your normal day-to-day, you know, business trying
8 to get things off the ground.

9 Q. Did things continue to go well?

10 A. No.

11 Q. What happened?

12 A. Just a lot of things happened. No product was going out,
13 not -- there was no income coming in so there was no money to
14 pay employees. There was no money being paid for payroll taxes
15 or the wood manufacturing -- the wood hauler truckers that's
16 coming in and then going back out, there was no money to pay
17 them.

18 Again, the primary product was not being produced.

19 Q. You mentioned there was no money to pay employees.

20 A. Yes.

21 Q. Tell the jury a little more about that.

22 A. Our checks would frequently bounce, and then it would take
23 two to three weeks before we would -- two to three additional
24 weeks before we would get promises to be paid. And then those
25 checks would bounce. And then we would be paid sometimes

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1 partially in cash. And there was always back pay owed to us.

2 But they continued -- you know, they wanted us to show up
3 every day and work and continue to put in, you know, eight
4 hours a day.

5 Q. Did that happen to you personally?

6 A. Yes, it did.

7 Q. Do you remember approximately how many times?

8 A. Four to five times.

9 Q. Ms. Francis, did it appear that the business was growing
10 and expanding?

11 A. No.

12 Q. What did it appear like?

13 A. That nothing that was supposed to happen was actually
14 happening. Again, there was no product being made. There were
15 wood trucks coming in and out, and we were primarily like a
16 wood processing -- we would bring pulp wood in, chip it up and
17 then ship it back out. There was no char, promises of char.
18 There was no companies to even buy a char product.

19 Q. During your time at Nex-Gen, did you ever see any coal or
20 carbon product produced in bulk?

21 A. Not in bulk. We had samples produced and shipped out to a
22 few companies.

23 Q. What do you mean by a "sample"?

24 A. Like a five-gallon bucket or Ziploc bags.

25 Q. In the industry, is that a lot of product?

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1 A. No.

2 Q. How would you describe it?

3 A. Like the product itself? Or --

4 Q. The quantity.

5 A. The quantity? I mean, we were supposed to ship out
6 truckloads, like a full tractor-trailer truckload of product.

7 Q. And instead, you used five-gallon buckets?

8 A. Yes, samples.

9 Q. There is obviously a difference between a five-gallon
10 bucket and a truck.

11 Do you agree with that?

12 A. Yes.

13 Q. Ms. Francis, can you tell the jury the schedule you would
14 work at Nex-Gen?

15 A. Typically 8 to 4, Monday through Friday.

16 Q. So essentially a typical business day?

17 A. Yes.

18 Q. Did you get the impression you were seeing a true sample
19 of the operations of Nex-Gen?

20 A. Yeah. The scale house, we were the point, nobody came in
21 or out without -- between the hours that I was there, without
22 me seeing, you know, what was coming in and what was going out.

23 Q. Were there times that visitors would come to the property?

24 A. Yes.

25 Q. Do any of those visits stick out in your mind?

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1 A. There were investors that would come from time to time,
2 different investors. Sometimes when they would come, some of
3 the guys at the plant were asked not to come into work that
4 day, and I'm not sure why that is, but they were asked not to
5 be there.

6 Q. What else do you remember about those investor visits?

7 A. It would just be specific investors, not a group of
8 investors at one time. They would meet with Doug and Molly in
9 the middle room of the scale house usually.

10 Q. Ms. Francis, was there an incident that specifically keyed
11 you off on some potential concerns with the business?

12 A. There was a company, it's called Carbon Partners, out of
13 Knoxville, that came to check out the plant, check out the
14 product. And when they came, they took some samples back and
15 said that it's a good product, but they didn't have a market in
16 the United States for it, so it would have to be shipped
17 overseas. And it was just not feasible to do that, because it
18 would have to be hauled from Hazard to Ashland, from Ashland to
19 Louisiana, from Louisiana to England, Denmark.

20 MR. DARLING: Excuse me, Your Honor. Can we approach the
21 bench, please?

22 THE COURT: Yes, sir.

23 (Bench conference on the record.)

24 MR. DARLING: I have a real concern that she's getting
25 into areas outside her personal knowledge. I think she's

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1 making some assumptions. And if she is going to be testifying
2 as to what these people did or said, it would be hearsay.

3 And I think she's just starting to say things that she
4 assumed or she may have heard from other places.

5 It does not seem that, from her position in the company,
6 that she would be privy to specific conversations as she seems
7 to be relating to the business. I'm going to ask her testimony
8 be limited to what's in her personal knowledge.

9 THE COURT: Mr. Chapman, did you anticipate that this
10 information is information she gained from one or both
11 defendants under 801(b)(2)(E)?

12 MR. CHAPMAN: Your Honor, on this specific question I most
13 recently asked, no. And I will move on from this topic.

14 THE COURT: All right. Very well.

15 MR. DARLING: Thank you.

16 THE COURT: Thank you.

17 (Bench conference concluded.)

18 BY MR. CHAPMAN:

19 Q. Ms. Francis, were you also involved in finances in
20 Nex-Gen?

21 A. To a degree.

22 Q. Explain that degree to the jury.

23 A. Any checks written out, I would log those checks and send
24 those weekly to Molly to pay truckers that came in. And I
25 would send in payroll hours and track those for Molly to be

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1 able to write the checks each week or -- well, every other
2 week, yeah, but I would send it weekly.

3 Q. Who would you work most closely with on any financial
4 matters?

5 A. Closer with Molly.

6 Q. What was your understanding of Ms. McKinnon's role in
7 Nex-Gen?

8 A. CFO.

9 Q. What does CFO mean?

10 A. Chief financial officer.

11 Q. What was your understanding of Mr. Vance's role?

12 A. Owner, operator.

13 Q. Now, on the finances, would you from time to time see bank
14 statements?

15 A. From time to time.

16 Q. Is there an incident that sticks out in your mind about a
17 bank statement?

18 A. There was one Doug was having trouble being able to print
19 it out, a bank statement from the Wells Fargo account. So I
20 helped him to be able to print that out. And then I could see
21 all the incoming and out coming -- outgoing.

22 Q. What did that reveal to you, if anything?

23 A. There was a lot of money going out of the account, a lot
24 of wires going out of the account.

25 Q. Were you previously aware of those outgoing expenditures?

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1 A. No.

2 Q. Did Ms. McKinnon become aware that you had seen this bank
3 statement?

4 A. Yes, she had.

5 Q. What was her reaction?

6 A. She was irate. You know, she did not want anybody else
7 seeing any of the financial details of what's coming in and
8 what's going out.

9 Q. Ms. Francis, do you know an individual named Allan Deware?

10 A. Yes.

11 Q. Who was he?

12 A. He was one of the investors.

13 Q. In Nex-Gen?

14 A. At Nex-Gen -- well, I think he was with V4 Carbon was his
15 partnership with.

16 Q. What is your understanding of V4 Carbon?

17 A. That's what the company was actually supposed to be named
18 with his investments. That he was the primary investor or the
19 only investor in V4 Carbon.

20 MR. DARLING: Excuse me, Your Honor. I have the same
21 objection.

22 THE COURT: If she has a basis for knowledge.

23 MR. CHAPMAN: I'm asking her to the best of her knowledge
24 what the company was. And if she has that knowledge, I believe
25 she can express it.

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1 THE COURT: Yes, sir. She can explain her knowledge and
2 it's subject to cross-examination. Thank you.

3 Objection is overruled.

4 BY MR. CHAPMAN:

5 Q. Ms. Francis, have you met Mr. Deware in person?

6 A. On a few occasions when he came in, two that I can
7 remember.

8 Q. What were the circumstances of you meeting him?

9 A. He was coming in just to visit and review and have a
10 meeting with Molly and Doug about how things were going.

11 Q. Did you ultimately have separate conversations with
12 Mr. Deware?

13 A. Yes.

14 Q. Explain to the jury how those came about.

15 A. I suspected that things were not on the up and up, so I
16 reached out to Mr. Deware and found him on the site LinkedIn,
17 messaged him. And that turned into email and phone call
18 conversations about everything that was going on.

19 Q. What do you mean by that, "everything that was going on"?

20 MR. DARLING: I'm sorry, Your Honor, I've got to object.

21 THE COURT: All right.

22 Counsel, why don't you come up, if you would, please.

23 (Bench conference on the record.)

24 THE COURT: I'm assuming this is foundational for
25 exhibits that are about to be introduced.

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1 Is that in error or am I missing something?

2 MR. CHAPMAN: Your Honor, I do not intend to introduce the
3 emails.

4 THE COURT: All right.

5 MR. CHAPMAN: I am offering this just simply to provide
6 narration of the case, not for the truth of any matter
7 asserted.

8 MR. DARLING: I am unaware that that's -- it appears that
9 she's getting ready to get into conversations with Mr. Deware,
10 phone calls. She's already talked about that she has reached
11 out to him about things that were not on the up and up.

12 But she can't testify as to conversations she's had with
13 him. And he's already indicated he's not going to show any
14 supporting emails. I don't see how he can go any further.

15 THE COURT: Yes, sir.

16 She will be allowed to testify that she had conversations,
17 but not the details of those conversations, based on her
18 concerns. And whether she exchanged emails or whatever it may
19 be, she can describe the nature of the communication but not
20 the details of it. I'll sustain the objection to it.

21 MR. CHAPMAN: Thank you.

22 (Bench conference concluded.)

23 THE COURT: Thank you.

24 BY MR. CHAPMAN:

25 Q. Ms. Francis, did you send Mr. Deware documents?

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1 A. I did.

2 Q. What were those documents?

3 A. I sent him everything that I had sent to Molly and Doug
4 recently, like the payroll hour sheets; what they called the
5 feedstock reports, which was the tonnage weighed for trucks
6 coming in and out, who was owed on those. I sent him a copy of
7 the check register that I was given access. And that's all I
8 can remember right now.

9 Q. Do you remember approximately when you sent him those
10 documents?

11 A. I believe it was around May and June, April, May, June of
12 2017.

13 Q. Ms. Francis, through your role with Nex-Gen, were you
14 aware whether Mr. Vance and Ms. McKinnon would also send
15 Mr. Deware documents?

16 A. I was not aware until I spoke with Mr. Deware, and he said
17 that he was also --

18 MR. DARLING: Objection.

19 THE COURT: I'll sustain the objection to the statements
20 made by a third party at this point.

21 Is this a good place to take our lunch break before we get
22 into the next area?

23 MR. CHAPMAN: Your Honor, I'm actually close to ending.

24 THE COURT: Why don't you go ahead, and you can let me
25 know when you're ready to move to a different area.

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1 BY MR. CHAPMAN:

2 Q. Ms. Francis, what happened from your point of view after
3 you had your conversations with Mr. Deware and sent him
4 documents?

5 A. He compared those documents to what he was --

6 MR. DARLING: Objection to what he did, Your Honor.

7 THE COURT: If she observed it or has other knowledge of
8 it, she can describe it. But don't speculate unless you know
9 for sure.

10 A. No, sir, no speculation. He told me in a verbal
11 conversation --

12 THE COURT: Don't discuss your conversations with him.

13 THE WITNESS: Got you.

14 THE COURT: Yes, ma'am.

15 A. Can you repeat the question one more time?

16 Q. Yes, ma'am.

17 My question was, what happened from your perspective after
18 you had your conversations and disclosed those documents to
19 Mr. Deware?

20 A. He decided to --

21 MR. DARLING: Objection, Your Honor.

22 A. Never mind. Sorry.

23 MR. DARLING: Objection to anything he decided.

24 THE COURT: Hold it. Whoa, whoa, whoa. Okay.

25 Don't discuss what he said to you. If you observed

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1 something that he did, you can describe it. But you can't
2 relay the third-party conversation with him, if you would.

3 All right. Thank you. Objection is sustained.

4 A. Through our conversations, I started looking for other
5 employment.

6 Q. Did you ultimately find other employment?

7 A. I did.

8 Q. Do you remember approximately how long after your
9 conversations with Mr. Deware you left Nex-Gen?

10 A. Within a couple of months.

11 Q. Why did you leave, Ms. Francis?

12 A. Financial concerns because we weren't getting paid. The
13 company was not turning into a company, there were apparently
14 companies, and I wanted to seek gainful employment, steady
15 employment.

16 Q. After you left your employment with Nex-Gen, have you had
17 any further contact with Mr. Vance or Ms. McKinnon?

18 A. No.

19 MR. CHAPMAN: Your Honor, if I may have one moment?

20 THE COURT: Oh, yes, sir.

21 MR. CHAPMAN: Thank you, Your Honor. Nothing further at
22 this time.

23 THE COURT: All right. Thank you.

24 Ms. Francis, we're going to take a break for lunch. When
25 we come back from lunch, we will go through any questions that

1 the attorneys have for the defendants in the case.

2 Ladies and gentlemen, as we do take our lunch break, let
3 me remind you, please don't discuss the case with each other
4 while we are in recess and don't allow anyone to approach you
5 to discuss the case. Of course, if that should ever happen,
6 you should report it to the Court promptly.

7 So outside the courtroom, just don't discuss the case.
8 Put it out of your mind. Don't speak to any of the parties,
9 any witnesses, or any of the attorneys in this matter.

10 During the course of the trial, don't read, watch or
11 listen to any accounts of the case if there should ever be any.
12 Don't do any type of research or investigation on your own,
13 that would include you should not visit any locations that you
14 may hear about in the course of the trial.

15 One of the matters I didn't talk to you about earlier that
16 I want to mention now is social media. I'm not sure if anyone
17 is active in social media, whether you communicate in any way,
18 Facebook, whatever it may be, Twitter. But if you are, please
19 don't talk about the case in any forms of social media, and
20 don't communicate your position as a juror in any way.

21 And, of course, don't make up your mind about this matter
22 until it's finally submitted to you at the very end of the
23 case.

24 When you go out for lunch, you all will be able to go out
25 through the front doors there. You can leave your notebooks

1 there on the chair in front of you. When you come back, if you
2 will assemble down in that jury assembly room? When everybody
3 gets together, when you are all together, all 14, I'll ask one
4 of the security officers then to bring you upstairs and take
5 you into the jury deliberation room, which is over to my left.

6 When we finish proceedings at the end of the day or even
7 when you come in in the morning, there is a stairwell back
8 here. If you all have been here before, you know it's a steep
9 stairwell that goes up to the third floor.

10 If anybody wants to use the stairwell you can do that, but
11 if anybody has a problem with stairs, if you have bad knees,
12 for example, and you don't want to climb the stairs, let the
13 security officers know that and you can go out these front
14 doors here in the courtroom.

15 So you can just let them know which way you want to handle
16 that and then they will pass that along to me. I'll have a
17 little bit better information when we break for the evening.

18 So with that admonition, since we're right at 12:00, we
19 will be break until 1:10 this afternoon and we will continue at
20 that time with further testimony.

21 The jury will be excused until 1:10 this afternoon.

22 (Jury left courtroom at 12:02 p.m.)

23 THE COURT: Ms. Francis, you will be excused until
24 1:10 this afternoon.

25 THE WITNESS: Okay.

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1 THE COURT: Thank you. Before we take our break, let me
2 see if counsel has any issues that we need to take up outside
3 the presence of the jury.

4 Anything for the government or the defense?

5 MR. CHAPMAN: No, Your Honor.

6 MR. DARLING: Not at this time, Your Honor.

7 MS. LEWIS: No, Your Honor.

8 THE COURT: Thank you. We will be in recess until 1:10.

9 (A recess was taken from 12:04 p.m. to 1:11 p.m.)

10 THE COURT: Thank you. The record will reflect all
11 members of the jury are present. Parties and counsel
12 are present in the courtroom.

13 We will continue at this time with cross-examination of
14 Ms. Francis, and she is reminded she is still under oath.

15 Mr. Darling.

16 MR. DARLING: Thank you, Your Honor.

17 CROSS-EXAMINATION

18 BY MR. DARLING:

19 Q. Ms. Francis, my name is Jeff Darling and I represent Doug
20 Vance in this case.

21 You got hired on to Nex-Gen to do what?

22 A. To be Molly's assistant.

23 Q. Did you have any specific, laid-out duties that you would
24 have?

25 A. In time, they developed like tracking feedstock reports

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1 and sending those in and payroll hours on employees.

2 Q. So at the time that you got the job, you were unemployed,
3 correct?

4 A. Yes.

5 Q. How long had you been unemployed?

6 A. Six or seven months.

7 Q. And what did you do before that?

8 A. I was payroll coordinator for a restaurant company,
9 restaurant management company.

10 Q. Okay. Where?

11 A. In Hazard, Kentucky.

12 Q. And why did you stop working there?

13 A. The company was relocating to Lexington, and I couldn't
14 relocate so I quit.

15 Q. And after you left Nex-Gen, how long was it before you
16 found another job?

17 A. I started the week after I left Nex-Gen working for Robbie
18 D. Trucking and Perry Vinyl.

19 Q. How long did you work for them?

20 A. Until August of 2018.

21 Q. So less than a year after you left Nex-Gen?

22 A. Yes.

23 Q. And why did you stop working there?

24 A. Two different jobs. It was easier to have one job, so
25 when I saw an advertisement for Go Time, I applied.

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1 Q. Do you still work at Go Time?

2 A. Yes.

3 Q. So to recap what you are offering this jury, you one day
4 saw the check register and decided to look at it, correct?

5 A. I mean, I looked at it, yes.

6 Q. It was just -- it was left out or left open on the
7 computer?

8 A. It was printed off and left on the desk.

9 Q. And you took it upon yourself to go through this check
10 register?

11 A. Yes.

12 Q. That wasn't part of your duties, right?

13 A. No. Doug asked me to print it off, so

14 Q. I'm sorry?

15 A. I said, Doug did ask me to print it off.

16 Q. Right. But did Doug say to you, print it and look through
17 this and make a determination as to how the company's doing?

18 A. No.

19 Q. You would agree that was not really part of your job
20 description, correct?

21 A. Correct.

22 Q. Then you took it upon yourself to send that, along with
23 various other items that belonged to the company, to Allan
24 Deware, correct?

25 A. He was an investor.

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1 Q. I know he was. The question is, you took it upon yourself
2 to take company property and divulge it and send it outside the
3 company to third parties, right?

4 A. No, I saw him as an investor. He was part of the company.

5 Q. Did either Doug or Molly ask you to send him that
6 material?

7 A. No.

8 Q. That is something you decided to do on your own, correct?

9 A. Yes.

10 Q. And for the next significant period of time, you reported
11 to Allan Deware on a regular basis through email what Doug and
12 Molly were doing in the company, right?

13 A. Yes.

14 Q. You kept him apprised of Doug's comings and goings and
15 Molly's comings and goings, correct?

16 A. Correct.

17 Q. You didn't tell Molly or Doug you were doing that?

18 A. No.

19 Q. Would you agree that you were not acting in the best
20 interest of the principals of the company, Molly and Doug, by
21 doing that?

22 A. Not in Molly and Doug's best interest, but in the
23 investor's and in the employees, I felt that I was.

24 Q. Would you agree with me that was not your job?

25 A. No, it was not my job.

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1 Q. Not in your job description, correct?

2 A. Correct.

3 Q. So basically what you were doing is you were telling an
4 investor, a potential investor that the company was not doing
5 well, correct?

6 A. He was an investor. But yes, I was telling him how the
7 company was doing from my perspective.

8 Q. From the perspective of somebody who is an assistant to
9 one of the principals?

10 A. Yes.

11 Q. And not somebody whose job description had anything to do
12 with the financials of the company, the day-to-day operations
13 of the company, or even how to deal with or seek investors,
14 correct?

15 A. Not deal with or seek investors, but you know, as far as
16 day to day, I was central in that.

17 Q. Okay. But not the financial aspect?

18 A. No, not financial.

19 Q. Because really, the only financial information you had is
20 what you stole from the company and sent out to other people,
21 correct?

22 MR. ROSENBERG: Objection, Your Honor.

23 THE COURT: Sustained as to Counsel's characterization.

24 BY MR. DARLING:

25 Q. Only the information that you took for yourself that

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1 belonged to the company and sent on to Mr. Deware, correct?

2 A. Can you rephrase that or repeat it?

3 Q. Sure. The financial aspect that you dealt with in the
4 company was, you took financial information in the form of bank
5 records, you took those that belonged to the company and sent
6 them to Mr. Deware?

7 A. One month of transactions, or maybe a month and a half of
8 transactions that I was privy to was all that I had sent him.

9 But --

10 Q. So --

11 A. -- I did track checks.

12 Q. -- that's a yes, you did that?

13 A. I did send that to him, yes.

14 Q. When you say you were privy to, you say you were privy to
15 it because Mr. Vance asked you in a clerical manner to run a
16 copy of it, correct?

17 A. Yes. He asked me to help him print off the statement for
18 that month and a half of transactions.

19 Q. Would you agree with me, that was a clerical duty?

20 A. Yes.

21 Q. It had nothing to do with you analyzing the bank
22 statements or making a value judgment regarding the strength or
23 weakness of the company, correct?

24 A. Correct.

25 Q. You took that on upon yourself, correct?

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1 A. I did.

2 Q. For how long a period of time did you report to Mr. Deware
3 what was going on in the company, particularly the comings and
4 goings of Doug and Molly?

5 A. Probably a month and a half.

6 Q. How often did you report to him?

7 A. Once every couple of weeks, maybe.

8 Q. So for a month and a half you reported regularly to
9 somebody outside the company, to an investor, as to the private
10 comings and goings of the principals of the company?

11 A. Yes.

12 Q. All to show Mr. Deware that the company was not doing
13 well, correct?

14 A. That -- that's what I believed, yes.

15 Q. All right.

16 MR. DARLING: That's all I have. Thank you.

17 THE COURT: Ms. Lewis.

18 CROSS-EXAMINATION

19 BY MS. LEWIS:

20 Q. Good afternoon, Ms. Francis. I'm Brandi Lewis, I
21 represent Ms. McKinnon.

22 You started out by saying Molly was the one that
23 interviewed you, but actually it was Doug, isn't that correct?

24 A. No. To my recollection, it was Molly who interviewed me.

25 Q. Did Doug make the decision to hire you?

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1 A. I -- all decisions came through Doug.

2 Q. Okay. And you went through at the beginning about what
3 your job duties were. So you did handle financial statements
4 and do some accounting for the business?

5 A. Only tracking what checks were written on a -- just on a
6 spreadsheet. And then the couple of months of -- well, the
7 month and a half of bank -- that bank statement, I think it was
8 maybe December through -- mid December through February,
9 something like that.

10 Q. That was 2016 and 2017?

11 A. Yes.

12 Q. Okay. So you kept a weekly report of, I guess, checks
13 that were going out, income that was coming in?

14 A. No income coming in. I was not given any information on
15 that.

16 Q. You kept track of bills --

17 A. Just checks going out, yes.

18 Q. You kept track of bills that needed to be paid and the
19 checks that were written for them?

20 A. Yes.

21 Q. And you made mistakes on some of those checks at one
22 point, didn't you?

23 A. Possibly.

24 Q. And you also kept track of time cards and weekly payroll?

25 A. Yes.

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1 Q. And you prepared a report for Doug to look at?

2 A. Yeah, Doug and Molly.

3 Q. Was that an Excel spreadsheet?

4 A. It was.

5 Q. And it had multiple tabs on that, correct?

6 A. Yes.

7 Q. It was about 40 to 50 separate tabs?

8 A. I don't believe so. I think there was only four or five.

9 Q. And Mr. Vance didn't regularly check that, did he?

10 A. I sent it to him, that's all I can testify to.

11 Q. You've talked about how checks would bounce, but Doug
12 typically paid those people or paid those vendors or employees
13 with cash, right?

14 A. To repay the bounced checks.

15 Q. All right. So he did make good on those, that's fair to
16 say?

17 A. On some, to my knowledge. I'm not sure if all were made
18 good or not. I don't know.

19 Q. So you don't know one way or another, all could have been
20 made good or some weren't?

21 A. Exactly.

22 Q. All right. Some of these bills that you kept track of and
23 issued checks for, some of that was to Hazard Petroleum, right?

24 A. Yes.

25 Q. And that was used for fuel to run the machine for this

APRIL FRANCIS - CROSS

1 carbon product or coal product, right?

2 A. Correct.

3 Q. So it was --

4 A. And the equipment.

5 Q. All right. So something was happening there, some product
6 was being produced?

7 A. Well, there was -- there was --

8 Q. It's a yes or no.

9 A. The machine was being run, yes.

10 Q. And you sent samples of this coal product or carbon
11 product to potential buyers, correct?

12 A. I assisted in creating labels to ship out.

13 Q. So you were part of that shipping process of sending --

14 A. Yes.

15 Q. -- product out to potential buyers?

16 A. Yes.

17 Q. So is it fair to say that Doug was trying to get his
18 formula correct, so you don't want to ship out a whole
19 truckload of this product, you may want to send some
20 five-gallon buckets at a time?

21 A. That's fair to say.

22 Q. All right. And different -- or potential purchasers may
23 have different criteria, right?

24 A. Of course.

25 Q. So he was possibly making this in those small batches to

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1 meet their needs?

2 A. To see if it met, yes.

3 Q. So he was producing a product, correct?

4 A. Yeah, that's fair to say, that there was product coming
5 out.

6 Q. And you saw lab reports coming in that provided analysis
7 of the product that was being produced?

8 A. I remember seeing one lab report. I may have seen two,
9 but I do remember one coming in that was -- that was a good
10 report on what a good carbon product would be.

11 Q. All right. That analyzes different qualities of that
12 product to see if it meets the needs of the potential
13 purchaser, right?

14 A. Yes.

15 Q. Now, you talked a little bit about the different
16 companies. You weren't privilege to any information as to what
17 exactly Mr. Vance's relationship was with any of his investors
18 or partners, were you?

19 A. No. I knew there were several.

20 Q. You didn't know exactly what agreement he had with the
21 people from Georgia, the Shumard Group, did you?

22 A. No.

23 Q. You didn't exactly know what his agreement with Mr. Deware
24 was, did you?

25 A. No.

APRIL FRANCIS - CROSS

1 Q. All right. And Mr. Darling identified Molly as a
2 principal of the business, but she wasn't an owner, was she?

3 A. Not that I'm aware of.

4 Q. And, in fact, she was only supposed to be there for a few
5 months to help him get investors in and get the company going.
6 You were there for perhaps the long haul; is that fair to say?

7 A. As far as I'm aware, Molly was chief financial officer and
8 I was to report to her and it was supposed to be long term.

9 Q. Your job was supposed to be long term; is that right?

10 A. Yes.

11 Q. So Molly was only supposed to be there on a temporary
12 basis?

13 A. Not that I'm aware of. As far as I'm aware, she was there
14 indefinitely as CFO.

15 Q. Do you recall seeing anything with that title on there?

16 A. Yes. Some emails that we exchanged, she had that in her
17 title as chief financial officer.

18 Q. There was an email signature line where she's listed as
19 president, but that is a different business that she had prior
20 to working with Mr. Vance, correct?

21 A. I'm not aware.

22 Q. Is it possible that you could be getting the email you're
23 thinking of confused with one of those?

24 A. The email address that she sent it was
25 Molly@NGIcarbon.com.

APRIL FRANCIS - CROSS

1 Q. It wasn't her, I believe it was PS3 or P3 email, if you
2 recall?

3 A. I don't recall, no. But the ones that we exchanged with
4 her email address as NGIcarbon.com, she was listed as CFO on
5 that or chief financial officer, it was spelled out.

6 Q. Again, to your knowledge, she wasn't an owner?

7 A. To my knowledge, she wasn't an owner.

8 Q. So basically Doug had you and Molly to assist with any
9 financial dealings of businesses, right?

10 A. Yes.

11 Q. Are you aware that the Shumard Group also paid some of the
12 taxes as part of their role?

13 A. No.

14 Q. I believe you mentioned in one of your emails to
15 Mr. Deware about one of the machines going down. That was one
16 of the machines that created this carbon product, right?

17 A. Yes, it was the only machine that I was aware of.

18 Q. All right. So again, that machine was operating in an
19 attempt to produce some product?

20 A. It was.

21 Q. Since you saw the bills coming in and worked with payroll,
22 from your recollection, is it fair to say that more money was
23 going out than was coming in?

24 A. Yes. But I wasn't, you know, given any knowledge of
25 income or very little of what income.

APRIL FRANCIS - CROSS

1 Q. But from what you saw, that's a fair statement to make?

2 A. Yes.

3 Q. You weren't aware that Molly and Doug had frequent
4 meetings with Mr. Deware to talk about the business, are you?

5 A. No. I just know he came to the plant on at least two
6 occasions while I was working there.

7 Q. He lived out of the United States, right?

8 A. Yes.

9 Q. So if they frequently talked via email or phone, that's
10 certainly possible, right?

11 A. That's possible, yes.

12 Q. You wouldn't be privileged to all or possibly any of those
13 communications?

14 A. No.

15 Q. Have you ever worked for any start-up companies?

16 A. No.

17 Q. All right. So this would be the first time?

18 A. Yes.

19 Q. Do you know that they oftentimes fail?

20 A. Yes.

21 Q. Do you know that some of the reasons they fail is perhaps
22 a bad business plan?

23 A. Yes.

24 Q. And difficulty making sales?

25 A. That's a possibility.

APRIL FRANCIS - CROSS

1 Q. Were you aware that Allan Deware was supposed to be in
2 charge of marketing and sales?

3 A. No.

4 Q. Were you aware that he and his partner tried for about
5 eight months to make sales but never made one?

6 A. No.

7 Q. And you're not aware of the exact operating costs that it
8 takes to produce this carbon product, are you?

9 A. No, not exact.

10 Q. Do you recall saying to Mr. Deware that you would do
11 anything and everything for Mr. Vance to be locked up?

12 A. No.

13 Q. You don't recall that at all?

14 A. No, I don't recall that.

15 Q. Maybe it refreshes your memory if I mention it was in an
16 email from June 29th, 2017, I believe, that you were talking
17 about a comment that Mr. Vance had made to you, and you say to
18 Mr. Deware, "The only reason" --

19 MR. ROSENBERG: Your Honor?

20 THE COURT: Yes, sir.

21 MR. ROSENBERG: An objection here. If Counsel wishes to
22 refresh the witness's memory, there is a way to do that, but it
23 is not reading it into the record.

24 THE COURT: You're correct. The objection is sustained.

25 MS. LEWIS: May I have a moment, Your Honor?

APRIL FRANCIS - CROSS

1 THE COURT: Yes, ma'am. If you wish, you may show the
2 witness the document.

3 MS. LEWIS: Thank you.

4 THE COURT: Ask if it refreshes her memory.

5 MS. LEWIS: May I approach?

6 THE COURT: Yes, ma'am.

7 BY MS. LEWIS:

8 Q. Ms. Francis, do you recognize that document?

9 MR. CHAPMAN: Your Honor, I --

10 MR. DARLING: Here, James.

11 MR. CHAPMAN: Thank you.

12 BY MS. LEWIS:

13 Q. I believe the comment I'm referring to is in the bottom of
14 that email.

15 A. Yes.

16 Q. Okay. What is your comment there? If that refreshes your
17 memory now.

18 THE COURT: Sustain the objection. You can rephrase the
19 question if you like and ask if the document refreshes her
20 memory in response to your question.

21 MS. LEWIS: Yes, Your Honor.

22 BY MS. LEWIS:

23 Q. Does that document now refresh your memory, Ms. Francis?

24 A. Yes.

25 Q. So you did make that comment to Mr. Deware?

APRIL FRANCIS - REDIRECT

1 A. Yes, I did.

2 Q. All right.

3 THE COURT: If you would like to retrieve the document?

4 MS. LEWIS: Yes, Your Honor.

5 THE COURT: All right. Yes, ma'am.

6 BY MS. LEWIS:

7 Q. So this email to Mr. Deware follows a string of emails
8 that you had sent him; is that correct?

9 A. Yes.

10 Q. So you throw that in at the end, right, that you would do
11 anything --

12 A. I did.

13 Q. -- anything and everything to have Mr. Vance locked up?

14 A. I was upset, yes. And so I threw that in, I did.

15 MS. LEWIS: Nothing further, Your Honor.

16 THE COURT: All right. Thank you.

17 Mr. Chapman, any redirect on matters brought out on cross?

18 REDIRECT EXAMINATION

19 BY MR. CHAPMAN:

20 Q. Ms. Francis, a few topics to explore with you on redirect.

21 First, I want to return to this incident with the bank
22 statement that you observed. Do you remember the incident I'm
23 referring to?

24 A. Yes.

25 Q. Did Mr. Vance forbid you from looking at this bank

APRIL FRANCIS - REDIRECT

1 statement?

2 A. No, he did not. And it was left on the desk where anybody
3 could see it, any truck drivers coming in, you know, anyone.

4 Q. Why did you send that document to Mr. Deware?

5 A. It was a few months later when I did send it in, just as a
6 history on what was coming in and what -- you know, what I saw
7 in that document going out.

8 Q. Did you consider Mr. Deware to be someone outside of this
9 company?

10 A. No, I did not.

11 Q. Why is that?

12 A. Investors, they are part of the company. They are
13 financially invested. They get documents sent to them about,
14 you know, the company's invoices, their bills, their income,
15 their profit that they are making. So they are part of the
16 company.

17 Q. Who was your employer, Ms. Francis?

18 A. Technically, it was Dendron. I was paid out of Nex-Gen
19 Industries most of the time.

20 Q. Were you employed by Doug Vance personally?

21 A. Personally, no.

22 Q. Were you employed by Molly McKinnon personally?

23 A. No.

24 Q. So who did you consider to -- that you owed a loyalty to?

25 A. Molly, because I was hired in to be her assistant. And

APRIL FRANCIS - REDIRECT

1 then, of course, you know, Doug as owner above her.

2 Q. Ms. Francis, we talked a little about checks that bounced.

3 A. Yes.

4 Q. Do you recall that? And there was discussion on cross
5 about, that at least on occasion, those checks would be made
6 good in cash.

7 Do you remember that conversation?

8 A. Yes.

9 Q. Did checks bouncing cause a hardship even in the meantime?

10 A. It did.

11 Q. Explain that.

12 A. Well, with employees personally, you know, your check
13 bounces, you can't pay your bills that you need to. With your
14 vendors, your truck haulers coming in and out, they expect
15 payment. And when the check bounces, it creates a hardship on
16 them, their business and their livelihoods.

17 And I, being the center and receptionist and everything,
18 would get the brunt of those calls and face to face.

19 Q. On cross-examination, there were also questions about
20 product being produced --

21 A. Yes.

22 Q. -- at Nex-Gen. Explain again for the jury the level of
23 product production that you observed.

24 A. There was very little. There was just samples basically,
25 not even -- like on a dozer, not even a scoopful would be done

APRIL FRANCIS - REDIRECT

1 in two weeks, let alone a week.

2 And none of that, other than samples, would go out. And
3 those would not go out every week.

4 Q. Did you ever observe a truck of product, of coal product
5 leaving?

6 A. No.

7 Q. The most you ever saw was what?

8 A. It was five-gallon buckets. There was just a few that
9 went out.

10 Q. Finally, Ms. Francis, I want to turn to the topic that you
11 had your memory refreshed on just a moment ago.

12 Do you remember what your comment was in reference to?

13 A. There was -- I don't remember the exact words now, it's
14 been some time ago. But I was the only female in the office at
15 the time, and there was some very sexual comments made towards
16 me and made me extremely uncomfortable.

17 So in my email to Mr. Deware, I had mentioned that. And I
18 had made the comment after that, because I was very upset, that
19 I would do anything to have him locked up.

20 Q. Did you ever file a sexual harassment claim?

21 A. No.

22 Q. Did you ever take any action related to that or that
23 comment?

24 A. No, I just started looking for other employment.

25 Q. And again, before your memory was refreshed here in court

APRIL FRANCIS - RECROSS

1 today, did you even remember making that comment?

2 A. I did not.

3 Q. Ms. Francis, are you here today with an axe to grind
4 against Mr. Vance?

5 A. No.

6 Q. Thank you, ma'am.

7 THE COURT: All right.

8 Any other questions on cross on matters just brought up on
9 redirect?

10 MR. DARLING: No, Your Honor.

11 MS. LEWIS: Briefly, Your Honor.

12 THE COURT: Yes, Ms. Lewis.

13 RECROSS-EXAMINATION

14 BY MS. LEWIS:

15 Q. Ms. Francis, you stated that you were very upset and
16 that's why you made that comment in this email from 2017,
17 right?

18 A. That's correct.

19 Q. And this alleged comment that Mr. Vance made happened back
20 in April, some months prior, right?

21 A. I don't remember exactly when it was made, but it was --
22 it was uncomfortable.

23 Q. Okay. But you're claiming you were still upset about it
24 months later?

25 A. When you recall of an incident that happened that was

APRIL FRANCIS - RECROSS

1 humiliating and derogatory, when you remember that, you are
2 upset.

3 Q. But you don't remember exactly when the comment was made
4 now, right?

5 A. That's been five years ago now. No, ma'am, I do not.

6 MS. LEWIS: Nothing further. Thank you.

7 THE COURT: Thank you.

8 Anything else of the witness?

9 MR. CHAPMAN: No, Your Honor.

10 THE COURT: All right. Thank you.

11 Ms. Francis, you may step down. You are excused, ma'am.

12 THE WITNESS: Thank you.

13 THE COURT: Mr. Chapman, will you be calling the next
14 witness?

15 MR. CHAPMAN: I will, Your Honor.

16 THE COURT: Thank you. You may proceed.

17 MR. CHAPMAN: The United States calls Allan Deware.

18 THE COURT: Thank you.

19 MR. CHAPMAN: As he is coming in the courtroom, may we
20 approach?

21 THE COURT: Yes, sir, you may.

22 (Bench conference on the record.)

23 THE COURT: Yes, sir.

24 MR. CHAPMAN: Your Honor, I thought we could get out ahead
25 of a potential issue with Mr. Deware. It's going to be a very

1 similar topic from what I asked Ms. Francis about the content
2 of their communication.

3 Obviously, I was not able to get into that with
4 Ms. Francis, so I want -- I want to go ahead and have that
5 conversation now so maybe we can hash that out before his
6 testimony.

7 I do believe his answer to that question can come in, I do
8 not believe it's hearsay. I don't believe it to be offered for
9 the truth of the matter, I believe it's being offered to show
10 Mr. Deware's reaction to that and the steps he took as a result
11 of that communication.

12 THE COURT: All right.

13 Response?

14 MR. DARLING: I guess I'm not sure what it is that you're
15 going to be asking him. Are you talking about what April
16 Francis told him?

17 MR. CHAPMAN: Yes.

18 MR. DARLING: I think as long as it's clear what he is
19 bringing that in for is to show why Mr. Deware did what he did,
20 I think it's okay.

21 I guess if it were significant enough, I might ask the
22 Court for some sort of clarifying instruction to the jury, but
23 I think I understand what Mr. Chapman is saying is probably
24 correct.

25 THE COURT: If either party seeks a limiting instruction,

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1 I'll certainly consider it at the time. You're obviously more
2 familiar with this particular conversation than I am, but I'll
3 be looking for a request for a limiting instruction after I
4 hear it.

5 MR. DARLING: I'm guessing that he's going to read,
6 basically talking about things that Ms. Francis has already
7 said.

8 MR. CHAPMAN: Yes.

9 MR. DARLING: Yeah.

10 THE COURT: All right. Thank you.

11 MR. DARLING: Thank you.

12 (Bench conference concluded.)

13 THE COURT: Thank you.

14 Mr. Deware, you can come up and be sworn before you
15 testify.

16 **ALLAN DEWARE, GOVERNMENT WITNESS, SWORN**

17 THE COURT: Thank you.

18 Mr. Chapman, you may proceed.

19 MR. CHAPMAN: Thank you, Your Honor.

20 ALLAN DEWARE

21 DIRECT EXAMINATION

22 BY MR. CHAPMAN:

23 Q. Good afternoon, sir.

24 A. Good afternoon.

25 Q. Would you please state your name and spell your last name

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1 for our court reporter?

2 A. Allan Deware, D-e-w-a-r-e.

3 Q. Mr. Deware, where do you currently live?

4 A. I live in Honduras.

5 Q. Are you a United States citizen?

6 A. Yes, sir.

7 Q. And are you bilingual?

8 A. Yes, sir.

9 Q. What languages do you speak?

10 A. English and Spanish.

11 Q. For the past few years, what has been your dominant
12 language in day-to-day conversation?

13 A. Spanish, sir.

14 Q. And is that because of where you live?

15 A. Yes, sir.

16 Q. Now, Mr. Deware, how are you currently employed?

17 A. I have a company in the U.S. called Dragon Head
18 Technologies and that company pays my salary.

19 My day-to-day business that I run is in Honduras, and it's
20 called Pinturas Americana. I founded that company in 2004, and
21 now we're the largest paint company in Honduras, so larger than
22 Sherwin Williams, larger than all of our other competitors.

23 Q. Will you tell the jury a little bit about what you do with
24 this paint company?

25 A. Yes, sir. When we started, I had a -- I had been in the

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1 U.S. Army, and I went to West Point and eventually was assigned
2 down to JTFB in Honduras.

3 When I was there as a soldier, I opened up a cigar store
4 on base. So I would visit the cigar store every once in a
5 while while I was still in the Army.

6 And eventually when I was shipping down some items, hats
7 and lighters and whatnot, doing logistics, one of the people I
8 was doing business with said, hey, I have access to liquidated
9 paint, like Sherwin Williams, Valspar, Benjamin Moore. They
10 have paint that, for whatever reasons, off spec, it -- they
11 can't sell it in the U.S. or they don't want to sell it in the
12 U.S.

13 And so they had the access to that, and they said, hey, do
14 you think you can do anything with it down there? And I said,
15 I know nothing about paint but I can go down over Christmas
16 break and see if we can make a business of it.

17 And so I did that December 2003, and I did a market study,
18 liked it, so I bought some paint and we started selling it. As
19 time went on, we opened up more stores.

20 And in liquidated paint, you don't always have white or
21 yellow or whatever you need to sell, so we ended up learning
22 how to manufacture.

23 And so now we -- we have a paint company and manufacturing
24 plant, so actually manufacture the paint as well as still
25 bringing in the liquidated paint out of the U.S.

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1 So Dragon Head Technologies, what it does, it solves
2 problems for large companies of their liquidation issues. So
3 the U.S. companies, instead of having to dispose of this paint,
4 we can actually turn it into a reusable product so it actually
5 gets onto someone's wall instead of being thrown out and
6 filling up a landfill, so

7 Q. Has the paint company been successful?

8 A. Yes, sir. We have 84 stores now. I mean, we started off
9 on a dirt road and no street signs, and now we have 84 stores
10 in Honduras and four in Nicaragua.

11 Q. Mr. Deware, you've brought up Dragon Head Technologies.

12 A. Yes, sir.

13 Q. Give the jury a little detail about what Dragon Head
14 Technologies is.

15 A. What Dragon Head Technologies does is that's my U.S.-based
16 company. When I started off the Honduran company, no one would
17 give us lines of credit. We had difficulty shipping and
18 whatnot.

19 So Dragon Head Technologies buys paint in the U.S. and
20 elsewhere. And as the owner of the paint, is able to ship it,
21 I think it's USPPPI, U.S. private property -- private party of
22 interest, so we can actually ship out our own paint.

23 So I guess in summing it up, Dragon Head Technologies
24 purchases and sells and facilitates those transactions.

25 Q. What is your title within Dragon Head Technologies?

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1 A. I'm the owner.

2 Q. How long have you owned it?

3 A. About 20 years.

4 Q. Similar question with the paint company. What's your
5 title?

6 A. I'm the head -- I'm the general manager and the owner.

7 And I don't know if that answered the question.

8 Q. It does.

9 A. Okay.

10 Q. How long have you held that position?

11 A. Since we opened in 2004.

12 Q. Now, before that, what did you do?

13 A. I joined the Army. When I was 17, I went to West Point.

14 So I was in the Army. I graduated from West Point, I went into
15 the infantry. I was in the U.S. Army Rangers. I was a Ranger
16 instructor. Went to OEF two times, so

17 Q. Will you tell the jury a little about your service in the
18 Army?

19 A. Just basically that, I was in the infantry, had the
20 opportunity to serve pre- and post-September 11th. And I got
21 out as a captain in the Army, so

22 Q. How many years were you in the Army?

23 A. Just less than 12.

24 Q. Mr. Deware, through the various business ventures that
25 you've described, did you come to know two individuals named

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1 Doug Vance and Molly McKinnon?

2 A. Yes, sir.

3 Q. Do you see them in the courtroom today?

4 A. Yes, sir.

5 Q. Could you describe what Mr. Vance is currently wearing?

6 A. A nice suit with -- color gray, I believe, and blue shirt.

7 THE COURT: The record will reflect that the witness has
8 identified the defendant, Doug Vance.

9 Q. And, Mr. Deware, similar question for Ms. McKinnon. Can
10 you describe what she's wearing?

11 A. Molly's got, I believe, a black -- I don't know what's
12 that called, thing on her hair, and kind of grayish, brownish
13 suit on.

14 THE COURT: All right. The record will also reflect the
15 defendant has identified the defendant Molly McKinnon.

16 Q. How did you come to meet Mr. Vance and Ms. McKinnon?

17 A. A former business associate of mine, David Smith,
18 presented me to Molly first via email and then through phone
19 calls.

20 Q. Who is Mr. Smith?

21 A. When I was stationed at Fort Benning, Georgia, I had the
22 opportunity to buy a franchise from him for A1 Wholesale. I
23 opened up a company called A1 Distribution, where I bought a
24 franchise from him to distribute novelty items to gas stations.
25 Those were the same novelty items I was trying to ship down to

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1 Honduras. And so I had met him that way.

2 Q. And he facilitated an introduction to whom?

3 A. To Molly.

4 Q. Do you remember approximately when you were introduced to
5 Ms. McKinnon?

6 A. That was summer of 2016.

7 Q. What was the context of Mr. Smith introducing you?

8 A. He shot me over an email. It looked like Molly was
9 looking to finance a company that was going to make clean coal.

10 Q. Would you receive solicitations like that with some degree
11 of frequency?

12 A. Maybe almost weekly.

13 Q. Why is that? Give the jury some context on that.

14 A. When you start having a successful business, more and more
15 people come up to you asking you for advice or asking to
16 participate or to help them or to invest with them. It becomes
17 a fairly frequent normal thing that people are like, hey, I
18 have this idea. What do you think, Allan? Can you invest in
19 this? Or do you think you could help me out with this? That
20 becomes a more and more normal thing to happen.

21 Q. So did you begin conversations with, at first,
22 Ms. McKinnon?

23 A. Yes, sir.

24 Q. And did she introduce you to anyone else?

25 A. Yes, sir. Eventually she introduced me to Doug.

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1 Q. And so would you -- did you end up having conversations
2 with both Ms. McKinnon and Mr. Vance?

3 A. Yes, sir.

4 Q. What were those initial conversations about?

5 A. They were looking for investment -- you know, over the
6 course of what they were talking about investing in changed,
7 but they were basically looking for an investment to get a
8 clean coal company up and going off the ground.

9 Q. Do you remember if they had any business already lined up?

10 A. Yes, sir. That was -- that was key. They had a purchase
11 order from a company called Carbonox. And they represented
12 that they had that purchase order, and what they were looking
13 for was -- basically they were saying they had this technology
14 called -- probably not going to say it right -- paralysis,
15 where they heat it up -- you heat up either coal or wood in a
16 non-oxygenated environment.

17 So basically you take coal or wood, which is usually
18 flammable, and you heat it up. And that process removes
19 supposedly all the contaminants. And so they would be able to
20 clean out these contaminants and then be able to sell the
21 carbon product to various end sources or end users, like
22 electric companies so that electric companies could have lower
23 emissions.

24 Or to like Kingsford coal to make charcoal, or to an
25 agricultural company where they can use carbon to basically

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1 enrich soil and make your plants grow better.

2 So this -- they had this -- a machine set up that makes --
3 that would heat that up in that process. And I was able to see
4 that when I visited them.

5 And so what they presented was that they had this purchase
6 order for Carbonox. And so they had the technology, they had
7 the know-how. They had the knowledge of where to source all
8 the raw materials. They knew how to manufacture it. They had
9 a customer for it, and all they really needed was somebody to
10 be able to finance the operation so they could execute that
11 purchase order.

12 So for me -- and the numbers were very attractive, so it
13 looked like a really good business opportunity.

14 Q. Sir, you used the term "purchase order." For someone not
15 familiar, what is a purchase order?

16 A. If my company wants to buy something from your company,
17 I'll say, hey, we're interested, we want to buy from you. So
18 what makes it formal is a purchase order. You will send a
19 purchase order and say, hey, this is what we want to order,
20 these are the terms and this is how the transaction will work.

21 Q. And what significance did it have to you that there was a
22 purchase order?

23 A. Usually when someone's coming to you asking for an
24 investment, they have a great idea. And they are like, hey, we
25 have a great idea. We think we can find a market for it, we

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1 think we can bring this idea to market. We think people will
2 like it, we think people will want it.

3 So usually those are great ideas, but then it's very --
4 usually people invest in that kind of thing and then they don't
5 actually find market. So you know, you're speculating, are we
6 going to find market for that.

7 So this was a unique opportunity in that -- I've been on
8 the other side where I've had a business, I've asked for
9 investment and I actually had customers. That's a very
10 different thing, to actually have a customer wanting your
11 product and investing in something where there are no customers
12 yet or you're trying to develop a market base.

13 Q. I believe you mentioned a moment ago, sir, that you
14 visited Mr. Vance and Ms. McKinnon; is that accurate?

15 A. Yes, sir.

16 Q. Will you describe for the jury how your communication with
17 them developed and the modes that it took?

18 A. Sure. So again, initially swapping a couple of emails,
19 and then we agreed to meet. Emails and a couple of phones
20 calls, and then we agreed to meet.

21 So I flew up to the U.S. and met with them in Virginia at
22 basically an open shed that Doug had this model, I don't know,
23 prototype, but a big prototype. It was, you know, a good size
24 trailer length model of how to do paralysis.

25 And so I was able to see that with them in Virginia. And

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1 that's where we made the agreement to go into business
2 together.

3 Q. What company did you understand Mr. Vance to be operating
4 at that time?

5 A. Nex-Gen Industries Incorporated in Virginia.

6 Q. That was physically located in Virginia?

7 A. Yes, sir.

8 Q. Did you ultimately visit a site in Kentucky?

9 A. Yes, sir, the Trus Joist facility in Chavies, Kentucky.

10 Q. Explain how that came about.

11 A. They had a site that they wanted to move the operation to.
12 There is -- there had previously been -- again, the name of the
13 company Trus Joist, they make big trusses for buildings made
14 out of wood. So that wood needed to be dried, so they had huge
15 industrial dryers there.

16 And so what they were talking about was being able to
17 convert those drying machines, that they would be able to do
18 the same function as paralysis, being able to heat up the coal
19 or the wood to be able to create this clean coal. So they
20 wanted to move there, on the one hand.

21 And it also had a lot of other area and space where you
22 could receive the raw material and process it. They would be
23 able to fit their -- the other machines, the smaller machines
24 there in the meanwhile.

25 So it had the ability to start the business there and to

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1 grow. And it was advantageous, logistically, to be in that
2 spot, at least that's what they presented to me.

3 Q. What was your understanding of Mr. Vance's role in this
4 process?

5 A. He was key. He had been the -- like the intellectual
6 property. Like the guy that invented this -- he didn't invent
7 paralysis. You know, when I got there, he said, hey, go look
8 it up on Wikipedia, what it is.

9 So, you know, he didn't invent it, but he was able to find
10 market for an existing technology.

11 So he had a really good idea. He had his experience in
12 lumber and his experience in coal and contacts. And was
13 presenting that he had, through his contacts, through years of
14 experience, that he had a market for a product that he was able
15 to produce. I don't know if I answered the question.

16 Q. What was your understanding of Ms. McKinnon's role?

17 A. Finish up with Doug. So he was going to basically operate
18 it. Basically, he was going -- he had going to operate it.

19 With Molly, she presented herself as a person with a lot
20 of business contacts, really high-end person that could meet
21 with government officials and get grants or get support.
22 Someone who is used to putting together large deals and
23 making -- making large business transactions happen.

24 And her role in the company was to be the administrator,
25 basically run legal, administration, everything for the

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1 company.

2 Q. What was your understanding of what your own role would
3 be?

4 A. I was the investor in the company, sir.

5 Q. Mr. Deware, can you tell the jury again the type, the
6 general type of business that it was your understanding that
7 this company would be?

8 A. We would be making clean coal. Also a byproduct of that
9 could be wood chips.

10 Q. Did you ultimately choose to invest?

11 A. Yes, sir.

12 Q. What led to that decision?

13 A. I think any decision, especially of that magnitude, is
14 multifactorial. So obviously Doug and Molly, I trusted them.
15 They generated trust and confidence. I liked the idea, the
16 idea seemed reasonable. And it was kind of -- in that time
17 period, clean coal was a really big -- or at least had a lot of
18 visibility in the news, or I could see that a lot in the news,
19 that there was a demand for it.

20 The numbers looked right. They -- it seems like what they
21 were presenting seemed reasonable. And what really made it
22 attractive was the purchase order from Carbonox. That was --
23 if there was a single key thing that changed it from being a,
24 hey, we would like to do something and maybe we can find a
25 market for it, it was that they specifically had that purchase

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1 order ready to go and needed to fund it.

2 Q. Do you remember the amount of your initial investment?

3 A. Yes, sir.

4 Q. What was that?

5 A. I made two investments quickly, \$30,000 and \$50,000.

6 Q. Sir, I would like to show to you a document there on your
7 screen, the exhibit previously marked as Government's
8 Exhibit 108.

9 A. I'll let you know when it's up here.

10 Q. Can you see that document?

11 A. No, sir.

12 Q. Can you see?

13 A. My eyesight after 40 isn't what it used to be. There you
14 go. Thank you.

15 Q. Take a moment and read that document, and let me know once
16 you've had a chance to.

17 A. Yes, sir, that's an email I sent. I sent that to Molly at
18 her email address, and then David Smith and also to Doug at the
19 nexgen.industries@yahoo.com address.

20 Q. Is this a true and accurate copy of an email you sent to
21 Mr. McKinnon and Mr. Vance?

22 A. Yes, sir.

23 MR. CHAPMAN: Your Honor, I would move the admission of
24 Government's Exhibit 108.

25 THE COURT: Any objection?

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1 MS. LEWIS: No objection, Your Honor.

2 THE COURT: United States Exhibit 108 is admitted.

3 (United States Exhibit 108 was admitted.)

4 MR. CHAPMAN: May it be displayed to the jury?

5 THE COURT: Yes, sir.

6 For future reference, when a document is admitted, you may
7 proceed then to display that to the jury if you wish.

8 BY MR. CHAPMAN:

9 Q. Mr. Deware, let's start at the top of the email, the email
10 header. The "from" line, who is indicated there?

11 A. That's me, sir.

12 Q. And is the email listed an email that you used?

13 A. Yes, sir.

14 Q. And who is the email addressed to?

15 A. To Molly McKinnon.

16 Q. And would you read the email address listed for
17 Ms. McKinnon?

18 A. Molly@p3connection.com.

19 Q. Was that an email address that knew Ms. McKinnon to use at
20 the time?

21 A. Yes, sir.

22 Q. And the cc line, who is listed there?

23 A. Mr. David Smith at the
24 david@paintdynamicsinternational.com. And
25 nexgen.industries@yahoo.com was Doug.

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1 Q. Who did you know to use the nexgen.industries@yahoo.com?

2 A. That was Doug.

3 Q. Mr. Vance?

4 A. Yes.

5 Q. What is the date of this email?

6 A. The 26th of September, sir.

7 Q. Of what year?

8 A. 2016.

9 Q. Now, Mr. Deware, I don't want you to read the email
10 verbatim, but can you summarize the -- what you are expressing
11 to Ms. McKinnon and Mr. Vance in this email?

12 A. Yes, sir. I just sent them \$30,000 via wire transfer.

13 The other thing that I did was I showed them what I had in
14 the bank account at that moment. Because they were asking for
15 an investment over \$200,000, so I wanted to show them that I
16 had that in my account.

17 Because when you're doing investment, the investor wants
18 to know that the other party is real, what they are presenting
19 is real. And what the receptor of the money wants to know is
20 that the investor really has the money that they say they have.
21 So that was my way of proof of funds so they would know that I
22 was a qualified investor, or an investor that was capable of
23 actually giving them the funds that they were requesting.

24 Q. Does this email and the \$30,000 transfer that you
25 described, does that represent your initial investment?

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1 A. Yes, sir.

2 Q. Now, was that initial investment followed by other
3 demands?

4 A. Yes, sir.

5 Q. Okay. Describe those.

6 A. We came up with an agreement for a -- what Molly called a
7 draw schedule. I had never seen that term before, but it made
8 sense to me that as the company grew, they would need money for
9 cash flow to cover expenses.

10 And so as -- as those needs arose, she would write to me
11 saying hey, we need you to send money for X or Y or Z. And so
12 I would send money upon each request.

13 Q. Do you know approximately how much money in total you
14 invested?

15 A. Roughly \$400,000, sir.

16 Q. Now, Mr. Deware, was there -- were there negotiations
17 about forming an LLC with Mr. Vance and Ms. McKinnon?

18 A. Yes, sir.

19 Q. What is an LLC?

20 A. The LLC to be formed was Nex-Gen Industries, LLC of
21 Kentucky.

22 Q. Just in general terms, to the best of your knowledge, what
23 is an LLC in general?

24 A. A limited liability company. There's a couple of
25 different ways that you can form a company, like a sole

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1 proprietor or a partnership or a corporation or an LLC.

2 An LLC is an easy way to form a partnership that still
3 gives you limited liability, hence the name. So it allows you
4 to basically form a partnership in terms of like taxes, but
5 it's a -- but it gives you that liability that if the company
6 does something, you have some kind of protection as an
7 individual.

8 Q. Were you successful in your negotiations with Mr. Vance
9 and Ms. McKinnon to form an LLC?

10 A. We agreed to form an LLC, yes. I'm not aware of that LLC
11 actually ever getting formed.

12 Q. In your mind, what were the key elements of your agreement
13 with Mr. Vance and Ms. McKinnon?

14 A. We signed a bill of sale where he sold me Nex-Gen
15 Industries Inc. Virginia, plus all of his intellectual
16 property, any of his present or future sales, the machines that
17 he had made in exchange for my investment in his company.

18 And so the idea was that he was -- I was putting in money
19 and he was putting in his existing company, and together we
20 were going to form the LLC in Kentucky.

21 Q. Was there a division of control in the company?

22 A. Yes, sir. There was four of us, myself and David Smith,
23 Molly and Doug. So Molly put forth a concept that I had never
24 seen before, and I had agreed to, to have two companies.

25 Basically that Molly, David and I would form one company,

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1 and that company would own 51 percent of the shares of that new
2 Kentucky LLC. So that company was to be divided up initially
3 60 percent to me, 20 percent to Molly and 20 percent to David.

4 That was proposed because everyone wanted to have a piece
5 of the shares and I don't think Doug was willing to accept less
6 than 49 percent. And I wasn't willing to accept less than
7 51 percent, I wanted to have control of the company.

8 So Molly came up with that proposal to make sure that I
9 could theoretically have control by controlling the 60 percent
10 of a controlling company, or the majority of the controlling
11 company that had a majority of the final company. And so in
12 theory, that would give me some kind of control over the
13 entity.

14 Q. Why was it important to you to maintain control?

15 A. I wanted to have input. And you know, I'm putting money
16 up, you didn't want to say, hey, take my money, do whatever you
17 want with it. So you want to have the ability to say, hey, you
18 know, is this something reasonable to spend my investment on or
19 not.

20 So you want to be able to have some kind of -- I don't
21 know if control is the right word, but you want to be able to
22 influence that. And so that structure in theory would have
23 given me some kind of influence over those decisions.

24 Q. Mr. Deware, I would now like to show you what's previously
25 marked as Government's Exhibit 612.

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1 Do you see a document there on your screen, sir?

2 A. Yes, sir.

3 Q. Take all the time you need to review it.

4 A. I have read it.

5 Q. Do you recognize this document, sir?

6 A. Yes, sir.

7 Q. What is it?

8 A. An email from Molly to me.

9 Q. And is this a true and accurate copy of an email that
10 Ms. McKinnon sent to you?

11 A. Yes, sir.

12 MR. CHAPMAN: Your Honor, I would move the admission of
13 Government's Exhibit 612.

14 THE COURT: Thank you. Any objection?

15 MR. DARLING: No objection.

16 MS. LEWIS: No objection.

17 THE COURT: United States Exhibit 612 is admitted.

18 (United States Exhibit 612 was admitted.)

19 BY MR. CHAPMAN:

20 Q. Now, Mr. Deware, first of all, in the header of the email,
21 what is the date of this?

22 A. The 25th of September, sir.

23 Q. Of 2016?

24 A. Yes, sir.

25 Q. Can you again summarize for the jury Molly's -- excuse me,

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1 Ms. McKinnon's message to you?

2 A. She was indicating to me that she would send me an
3 operating agreement so we can form that Kentucky LLC.

4 Q. Now, sir --

5 MR. CHAPMAN: If you would scroll down in the document?

6 Q. Do you see the email that was forwarded as part of this
7 message?

8 A. Yes. Yes, sir.

9 Q. Would you please read the second sentence of this email?
10 Would you read it aloud for the jury?

11 A. Yes, sir. "Molly, attached is a simple operating
12 agreement for Allan. Of course it is contingent on a minimum
13 \$30,000 deposit made to NGI" Nex-Gen Industries "Wells Fargo
14 account first thing in the morning. As Allan makes deposits I
15 will transfer via bill of sale equipment to the new company."

16 Q. What did the phrase "first thing in the morning" indicate
17 to you when you received this forwarded email?

18 A. He was asking me to send the money the following day for
19 \$30,000.

20 Q. Was it your understanding this was time sensitive?

21 A. Yes, sir. The idea was the Carbonox order, we had to
22 fulfill that if we wanted it to go through. And that was the
23 basis of the investment, was to get that Carbonox order to be
24 fulfilled.

25 So basically if it wasn't fulfilled on time, if we didn't

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1 get going, then the opportunity would no longer be there. So
2 it was important to send the money as quickly as possible.

3 Q. And if I may ask one question about the "from" line of
4 this forwarded email? Do you recognize that email address?

5 A. Yes, sir, dw.vance@yahoo.com, that was another email Doug
6 would use.

7 Q. Sir, I would now like to show you a document previously
8 marked as Government's Exhibit 613.

9 Do you see that document, sir?

10 A. Yes, sir.

11 Q. What is this?

12 A. This is a note that I sent the morning of September 26th,
13 the following day after the previous email, and where I let him
14 know that I had sent the \$30,000 that they requested. And I
15 sent over, it looks like I attached three documents, the
16 operating agreement, nondisclosure, and bill of sale that had
17 been requested that I sign.

18 Q. Is this a true and accurate copy of the email that you
19 sent?

20 A. Yes.

21 MR. CHAPMAN: Your Honor, I would move the admission of
22 Government's Exhibit 613.

23 THE COURT: Any objection?

24 MR. DARLING: No objection.

25 MS. LEWIS: No objection.

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1 THE COURT: Exhibit 613 is admitted.

2 (United States Exhibit 613 was admitted.)

3 BY MR. CHAPMAN:

4 Q. Mr. Deware, would you explain to the jury the meaning of
5 this email?

6 A. So they had asked me for \$30,000. I sent it over. And
7 then the other part is to make sure you have the agreement
8 signed. So I sent over the signed operating agreement,
9 nondisclosure, noncircumvent and noncompetition agreement, and
10 the bill of sale. All of that was -- so I sent over all the
11 signed documents and I sent the money to start the business
12 off.

13 Q. What significance did this trio of signed documents have
14 to you?

15 A. For me, we had made an agreement, so we had a handshake.
16 And then after that handshake, they had asked me to complete a
17 deposit, so I did that. And I sent over all the documents
18 signed.

19 So I understood that we had made an agreement and I had
20 done my part of confirming -- or I don't know what the right
21 word is, but I had sent over the money to -- I don't know what
22 the right word is, but you finish the -- the transaction.

23 Q. Sir, I would now like to show you a document previously
24 marked as Government's Exhibit 617.

25 Can you see that document on your screen, sir?

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1 A. Yes, sir.

2 Q. What is this document?

3 A. I'm going to read it real quick.

4 Q. Please.

5 A. This is the Operating Agreement that I understood was
6 going to get formed for Nex-Gen Industries LLC. Molly had sent
7 that over to me for signature.

8 Q. Is this a true and accurate copy of the operating
9 agreement that you described?

10 A. Yes, sir.

11 MR. CHAPMAN: Your Honor, I would move the admission of
12 Government's Exhibit 617.

13 THE COURT: All right. Any objection?

14 MS. LEWIS: No objection.

15 MR. DARLING: No objection.

16 THE COURT: United States Exhibit 617 is also admitted.

17 (United States Exhibit 617 was admitted.)

18 BY MR. CHAPMAN:

19 Q. Now, sir, if I could direct your attention to the first
20 paragraph at the very top. Who are the individuals and the
21 entities involved in this transaction?

22 A. The only two that signed on that was Doug and me.

23 Q. And is there a -- what is the company name being formed
24 here?

25 A. Nex-Gen Industries LLC in the state of Kentucky.

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1 MR. CHAPMAN: If we could scroll down to section 4.

2 Q. Would you please read the purpose of this entity for the
3 jury?

4 A. For biochar production, hybrid fuels production, and
5 activated carbon production, as long as any other -- as well as
6 any other lawful act or activity.

7 MR. CHAPMAN: If we could scroll to section 6.

8 Q. Would you summarize this section for the jury?

9 A. Yes, sir. Basically Doug and I had each put in a value
10 estimated at 250. Mine to be put in all cash as a promise and
11 his to be put in as a -- or in his case, the equipment valued
12 there at 500,000.

13 MR. CHAPMAN: If we could scroll to section 8?

14 Q. Again, could you summarize this section for the jury?

15 A. Yes, sir. We agreed that I would have 51 percent of the
16 company and he would have 49.

17 MR. CHAPMAN: If we could scroll to the very end?

18 Q. Do you recognize your own signature there?

19 A. Yes, sir.

20 Q. And do you recognize that signature -- that signature by
21 Mr. Vance?

22 A. Yes, sir.

23 Q. With your memory, does that appear consistent with
24 Mr. Vance's signature?

25 A. Say that again.

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1 Q. To the best of your memory, does that appear consistent
2 with Mr. Vance's signature?

3 A. Yes, sir.

4 Q. Mr. Deware, now I would like to show you an exhibit
5 previously marked as Government's Exhibit 618. Take all the
6 time you need and look through this document.

7 A. Yes, sir.

8 Q. Do you recognize this document?

9 A. Yes, sir.

10 Q. What is it?

11 A. This is a Non-Disclosure, Non-Circumvent and
12 Non-Competition Agreement between me and Doug and his existing
13 company at that time, Nex-Gen Industries Incorporated.

14 Q. Is this a true and accurate copy of the nondisclosure,
15 noncircumvention, and noncompetition agreement that you signed?

16 A. Yes, sir.

17 MR. CHAPMAN: Your Honor, I'd move the admission of
18 Government's Exhibit 618.

19 THE COURT: Any objection?

20 MS. LEWIS: No objection.

21 THE COURT: United States Exhibit 618 is also admitted.

22 (United States Exhibit 618 was admitted.)

23 BY MR. CHAPMAN:

24 Q. Mr. Deware, the very first paragraph of this document,
25 would you, first of all, tell the jury the date of the

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1 document?

2 A. It says the 26th of September, 2016, the same date as my
3 email and the same date as the wire transfer.

4 Q. The \$30,000 transfer?

5 A. Yes, sir.

6 Q. And will you tell the jury the entities and the
7 individuals involved in this agreement?

8 A. Those are myself and Mr. Doug Vance and Nex-Gen
9 Industries, his -- Nex-Gen Industries, Incorporated, his
10 Virginia company.

11 That was -- that was to form the basis for Nex-Gen LLC, a
12 Kentucky LLC that had not yet been formed. But that was the
13 same operating agreement that we just saw a moment ago.

14 Q. And, sir, I'm not going to ask you to read this document
15 word for word, but can you generally describe your
16 understanding of what this document would do?

17 A. Sure. Nondisclosure, basically I shouldn't share it with
18 anyone else. You're keeping your private documents private.

19 Noncircumvent basically is you don't want a business
20 partner to go around you. So basically like if I were to
21 invest in this company, then my expectation is that my business
22 partner isn't going to take his idea and then go sell it out
23 either directly himself or through another company. Basically
24 I would not be gone around. So you make an investment, the --
25 the profits of that investment and those ideas should be --

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1 should go through that entity and not through some other entity
2 or through himself.

3 Q. Okay.

4 A. And likewise it's both, so I wouldn't be able to take that
5 technology and those ideas and also be able to maybe create
6 another company that did it and go around him. So it's a
7 mutual protection.

8 Q. What was your understanding of the noncompetition part of
9 the agreement?

10 A. Likewise, the competition would be anyone else that's in
11 your -- you know, selling your same type of product into a
12 market.

13 So he wouldn't be able to compete with our company, form
14 yet another company, for example, to sell the same type of
15 products. Or to go with our customers and sell any kind of
16 other products. You just -- so you're saying you're not going
17 to compete against this entity.

18 MR. CHAPMAN: Ms. Poynter, if we could scroll to the
19 signature line of the document?

20 Q. Same question as before, Mr. Deware.

21 Do you recognize your own signature on this document?

22 A. Yes, sir.

23 Q. And do you recognize the signature by Mr. Vance?

24 A. Yes, sir.

25 Q. And again, to the best of your memory, is that signature

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1 consistent with Mr. Vance's signature?

2 A. Yes, sir.

3 Q. Sir, I would like to show you another exhibit previously
4 marked as Government's Exhibit 619.

5 A. Yes, sir.

6 Q. Do you recognize this?

7 A. Yes, sir.

8 Q. What is it?

9 A. This is a bill of sale of Doug selling to me/the new
10 entity, the Kentucky LLC, his current fixed assets and sales.

11 So basically if he had any pending sales, any of his
12 intellectual property on this, any of his inventory, any of the
13 machines, all of that equipment. Specifically it says: "All
14 intellectual property, patents, know-how, all associated tools
15 and equipment, all inventory," all the machines that he has
16 would be transferred over to the new company.

17 Q. Is this a true and accurate copy of the bill of sale that
18 you signed with Mr. Vance?

19 A. Yes, sir.

20 MR. CHAPMAN: Your Honor, move the admission of
21 Exhibit 619.

22 THE COURT: Any objection?

23 MS. LEWIS: No, sir.

24 MR. DARLING: No.

25 THE COURT: United States Exhibit 619 is also admitted.

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1 (United States Exhibit 619 was admitted.)

2 BY MR. CHAPMAN:

3 Q. Mr. Deware, would you summarize for the jury on the very
4 first line of this bill of sale, the two entities involved in
5 this transaction?

6 A. Yes, sir. It says this bill of sale is from Nex-Gen, a
7 Virginia C-Corp, to Nex-Gen a Kansas -- Kentucky LLC.

8 Q. And Nex-Gen, a Virginia C-Corp, what did you understand
9 that to be?

10 A. That was -- I understood that to be Doug's existing
11 Nex-Gen company in Virginia.

12 Q. And Nex-Gen a Kentucky LLC, same question, what did you
13 understand that to be?

14 A. That was the Kentucky LLC that was to be formed that I
15 signed the operating agreement for.

16 Q. Can you summarize for the jury the various items and other
17 things that the Virginia company was selling via this document?

18 A. Yes, sir. So three large mobile machines capable of
19 producing char, he represented that he had three machines that
20 were able to produce char. I only saw one of those, but it was
21 represented that there was three.

22 One scale model machine that he had on site there in
23 Virginia.

24 The Carbonox purchase orders specifically that I had
25 referred to previously, that those purchase orders were a part

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1 of this sale. And again, that for me was key.

2 And then all the other associated purchase orders and
3 sales, all internet sales. He had apparently sold a machine
4 and had not received the funds for that yet. So of those -- I
5 wasn't going to get 51 percent of that, I would get 10 percent
6 of that.

7 And then all inventory produced up to that point.

8 All of his tools and equipment, and all intellectual
9 patents, know-how, would go towards the company.

10 So basically he was saying he would put his knowledge, his
11 know-how and work into this one entity. And then combined with
12 a noncircumvent, he wouldn't go around us and compete and use
13 that knowledge with any other entity. All of that would come
14 into this one entity that he was forming with me.

15 Q. The very last paragraph there, do you see there,
16 Mr. Deware? Would you read that for the jury?

17 A. "The purpose of this agreement is to sell any and all
18 assets of Nex-Gen a Virginia C-Corp to Nex-Gen LLC a Kentucky
19 LLC. Any and all assets belonging to Nex-Gen Virginia will be
20 moved to the Kentucky location and Belong to Nex-Gen LLC. This
21 agreement is consummated on the 26th day of September 2016."

22 Q. So in general terms, what was your understanding of what
23 this document was accomplishing?

24 A. So in the first case, we were forming the company. And
25 this was consummating -- that was the word I was looking for

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1 earlier -- the company and him saying that he would put his
2 assets toward the company. And those assets, after signing
3 this agreement, now would belong to the Kentucky LLC that we
4 would be forming together.

5 Q. And similar questions I've asked you before, do you
6 recognize your own signature on this document?

7 A. Yes, sir.

8 Q. And do you see Mr. Vance's signature?

9 A. Yes, sir.

10 Q. And again, is that consistent with your knowledge of what
11 Mr. Vance's signature looks like?

12 A. Yes, sir.

13 Q. Now, Mr. Deware, I would like to shift topics with you
14 slightly. I would like to go back to your general interactions
15 with Mr. Vance and Ms. McKinnon. How would you generally
16 communicate with them?

17 A. Via email and via phone call.

18 Q. Approximately how often would you communicate with them?

19 A. Initially, fairly frequently, at least once a week. And
20 then as time went on, that was less.

21 Q. I believe you mentioned earlier that you made at least one
22 in-person visit?

23 A. Yes, sir.

24 Q. Did you make more than one?

25 A. Yes, sir. I went in September of 2016, and then I went

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1 again in the winter of 2016, and then again in the spring of
2 2017.

3 Q. I would like to show you a document previously marked as
4 Government's Exhibit 602.

5 A. Yes, sir.

6 Q. Do you recognize this?

7 A. Yes, sir.

8 Q. What is this?

9 A. Is it a document that Molly sent to me initially in order
10 to start the conversation about what the investment was.

11 Q. Is this a true and accurate copy of a document that
12 Ms. McKinnon sent to you?

13 A. Yes, sir.

14 MR. CHAPMAN: Your Honor, move the admission of
15 Government's Exhibit 602.

16 THE COURT: Any objection?

17 MR. DARLING: No objection.

18 MS. LEWIS: No objection.

19 THE COURT: United States Exhibit 602 is admitted.

20 (United States Exhibit 602 was admitted.)

21 BY MR. CHAPMAN:

22 Q. Mr. Deware, would you read the title of this document for
23 the jury?

24 A. "Nex-Gen Industries, Inc. Investment Summary."

25 Q. Do you remember there being anything especially

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1 significant to you in this document?

2 A. Yeah, a number of things. They mention specific customers
3 that they have relationships with, Kingsford Charcoal, which
4 is, at least for me, a very well-known name brand. I've done a
5 bunch of barbecues and bought that charcoal, so it makes it
6 kind of understandable for me what the product is.

7 It basically outlined that they were going to make this --
8 this biochar product and how they were going to take it to
9 market.

10 Q. The paragraph that mentions Kingsford Charcoal, do you see
11 there sort of in the middle of your screen?

12 A. Yes, sir.

13 Q. Would you read that sentence to the jury, the one that
14 begins "Due to the fact"?

15 A. Yes, sir. "Due to the fact that sales have exceeded the
16 production capabilities, Kingsford Charcoal recently issued
17 verbal commitments to purchase a variety of wood and coal-based
18 products from" Nex-Gen Industries. "Kingsford has indicated
19 that they will initially purchase small amounts of charcoal,
20 wood chips and other products to give Nex-Gen Industries time
21 to build and deploy their mobile machines to several locations
22 to take advantage of a variety of feedstocks, but will quickly
23 ramp up afterwards. NGI has also received commitments from
24 other charcoal companies and can fill those orders
25 simultaneously."

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1 So they were making a claim here that they had this --
2 they were already far along in discussions to be able to start
3 supplying Kingsford charcoal with char.

4 Q. Did it have significance to you that there was a claim
5 that sales have exceeded their production capabilities?

6 A. I believe that what they were trying to say there is that
7 it exceeded production capabilities of Kingsford Charcoal. So
8 Kingsford Charcoal had a demand. So there was a -- they were
9 presenting that they had a need for that product.

10 Q. Mr. Dewater, I would like to show you a document
11 previously marked as 601.

12 A. I would also say it's really normal for a large company to
13 outsource. So you know, the fact that they would outsource
14 that isn't -- didn't -- that was not abnormal to me.

15 Q. Do you see the document up on your screen now?

16 A. I can see it. Yes, sir, I have read it.

17 Q. Do you recognize this document?

18 A. Yes, sir.

19 Q. What is it?

20 A. So Molly sent to me and to David a note saying a number of
21 things here.

22 That they have a -- an opportunity for an investment where
23 you can send them a hundred thousand dollars and then you get
24 that hundred thousand dollars back in 90 days and then continue
25 to get \$40,000 a month after that.

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1 Q. I'll stop you there for now.

2 Is this a true and accurate copy of the communication that
3 you received?

4 A. Yes, sir.

5 MR. CHAPMAN: Your Honor, I'll move the admission of
6 Government's Exhibit 601.

7 THE COURT: Any objection to its admission?

8 MR. DARLING: No objection.

9 MS. LEWIS: No objection.

10 THE COURT: United States Exhibit 601 is admitted.

11 (United States Exhibit 601 was admitted.)

12 BY MR. CHAPMAN:

13 Q. Mr. Deware, in the header of the email, will you please
14 read to the jury the date?

15 A. That's August 19th, 2016.

16 Q. So does that precede your initial investment?

17 A. Yes, a little over a month prior to me investing. So this
18 is some of the information they are sending me to convince me
19 to make an investment with them.

20 Q. The second paragraph, and there appears to be a break in
21 the middle of the paragraph, where it starts with "I have
22 attached," would you please read that section for the jury?

23 A. Yes, sir. I have attached a redacted copy from the other
24 group that already provided one, you can obviously come up with
25 your own verbiage, if you still want to -- until there or you

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1 want me to keep going?

2 Q. Keep going.

3 A. Okay. "If you...want to provide one, you would be first
4 in line if the first group decides not to move forward. They
5 are visiting his Virginia facility next week as well as the
6 Kentucky site. I think I'll have a pretty good indication of
7 how things will go after that meeting."

8 Q. What was your understanding of the sentence that says,
9 "You would be first in line if the first group decides not to
10 move forward"?

11 A. Molly in this communication is presenting that they have a
12 really good business opportunity. If we don't move quick,
13 someone else is going to have the opportunity. So it's --
14 yeah.

15 Q. All right. Thank you, sir.

16 I would now like to show you a document marked as
17 Government's Exhibit 603.

18 Do you see that document, sir?

19 A. I can see the document.

20 Q. What is this document?

21 A. Molly had sent a message to David Smith, and David Smith
22 forwarded it to me, it references an attached PO that was a
23 Carbonox PO, saying that "Here is the PO that Doug needs
24 financing for right now."

25 So they were saying, hey, we have this purchase order with

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1 this company that wants to buy from us, they've been willing to
2 put it in writing, and we want to execute this purchase order
3 that they have sent to us. This is what we're asking you to
4 send money to finance. Please finance this.

5 Q. Is this a true and accurate copy of the email that you
6 received forwarded from Mr. Smith?

7 A. Yes, sir.

8 MR. CHAPMAN: Your Honor, I will move the admission of
9 Government's Exhibit 603.

10 THE COURT: Any objection?

11 MR. DARLING: No objection.

12 THE COURT: United States Exhibit 603 is admitted.

13 (United States Exhibit 603 was admitted.)

14 BY MR. CHAPMAN:

15 Q. If you look down in the message, sir, do you see the email
16 that Mr. Smith was forwarding to you?

17 A. Yes, sir.

18 Q. Who is that from?

19 A. It says David Smith, alligatorfreedom@hotmail.com. That
20 was David's.

21 Q. The email that he was forwarding to you, who was that
22 email from?

23 A. That was from Ms. Molly.

24 Q. And will you read to the jury the single sentence in this
25 email?

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1 A. "Here's the PO that Doug needs financing for right now."

2 Q. What did that indicate to you?

3 A. So among other conversations, this was just confirmation,
4 hey, I'm sending you proof that we have this purchase order and
5 this is what we're asking you to finance.

6 Q. Was there some urgency to it?

7 A. It says "right now."

8 Q. What was the date of this email?

9 A. That was the 23rd of August, 2016, three days prior to me
10 sending the money.

11 Q. Now, sir, I would like to show you a document marked as
12 Government's Exhibit 604.

13 A. Can we go back to that, please, the last document?

14 Q. Do you have -- we can.

15 A. I just want to make sure I didn't misspeak.

16 Q. Okay.

17 A. That was sent in August, I didn't send the money until
18 September. So that wasn't three days prior.

19 Q. But it was before your initial investment?

20 A. That was a month.

21 Q. Okay. Thank you for that clarification.

22 All right. I would now like to show you the document
23 marked as Government's Exhibit 604.

24 Do you recognize this document?

25 A. Yes, sir.

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1 Q. What is this?

2 A. This is the Carbonox purchase order that the previous
3 email referenced and the bill of sale referenced.

4 Q. Is this a true and accurate copy of the Carbonox purchase
5 order you received?

6 A. Yes, sir.

7 MR. CHAPMAN: Your Honor, I'd move the admission of
8 Government's Exhibit 604.

9 THE COURT: Any objection?

10 MS. LEWIS: No objection.

11 THE COURT: United States Exhibit 604 is admitted.

12 (United States Exhibit 604 was admitted.)

13 THE COURT: When we get a good place to break, we will
14 take our afternoon recess.

15 BY MR. CHAPMAN:

16 Q. Mr. Deware, when you received this purchase order, what
17 was significant to you?

18 A. It was significant to me that they -- they are presenting
19 that this Carbonox company had a demand for the product and
20 they were willing to pay for it. They wanted 45-day terms and
21 they had a price established at \$95 per ton.

22 Q. What is the quantity of product at issue in this purchase
23 order?

24 A. 2,000 tons.

25 Q. So what is the total value of this purchase order listed?

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1 A. That's \$190,000.

2 Q. Mr. Deware, do you see a bullet point below that chart?

3 A. Yes, sir. They presented that it was going to be
4 initially 2,000 tons per month, and then it would increase to
5 4,000 tons a month or double after 90 days. And then they
6 expected the volume to increase to 10,000 tons, or five times
7 the volume, in the short term after that.

8 Q. Was that significant to you?

9 A. Yes, sir. It was growth. It was also, in terms of
10 investment, it made it a lot easier to invest. Because having
11 to come up with the money to create 10,000 tons initially would
12 be a whole lot more investment than having to come up with
13 money for 2,000 tons initially. So it made kind of a more
14 bite-size -- it made it an investment, whereas a smaller amount
15 for upfront investment, so it was more attractive.

16 And then you could create a cash flow from that. And with
17 the profits from the same sales, actually start growing the
18 company and growing the volume. So it was -- it made it
19 extremely attractive.

20 So basically it was attractive because they had a purchase
21 order, and it was attractive the way it was set up to be able
22 to grow.

23 Q. Just one final question on this purchase order, the
24 product description that's listed there?

25 A. Yes, sir.

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1 Q. What sort of -- what sort of product is this?

2 A. It's talking about char. It doesn't say that there
3 directly. What it says is, "one-eighth inch minus sizing," so
4 it's talking about the size of the char.

5 And that the sulfur content will be less than 1 percent.

6 The carbon content of this product would be greater than
7 80 percent.

8 Ash content less than 12 percent.

9 Moisture content less than 1 percent.

10 And grind no lower than 45.

11 Although it didn't exactly say that the product was char,
12 it gave the technical description of what the product is.

13 Q. Was char a product like this what -- was that your
14 understanding of what your company would be manufacturing?

15 A. Yes, sir. I'm not an expert in char, that was Doug. But
16 in terms of what was presented to me, I understood that to be a
17 technical description of the product, yes, sir.

18 Q. To your understanding, is char a carbon-based product?

19 A. Yes, sir.

20 MR. CHAPMAN: Your Honor, I believe this would be a good
21 time to take a break.

22 THE COURT: Ladies and gentlemen, we'll take about a
23 15-minute recess at this time. Please keep in mind the
24 admonitions that you were given previously. Please don't
25 discuss the case among yourselves while we are in recess. The

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1 jury will be excused for 15 minutes.

2 (Jury left courtroom at 2:53 p.m.)

3 THE COURT: Any matters to take up outside the presence of
4 the jury?

5 MR. CHAPMAN: No, Your Honor.

6 MR. DARLING: No, Your Honor.

7 MS. LEWIS: No, sir.

8 THE COURT: We will be in recess for 15 minutes, until 10
9 after.

10 (Recess taken from 2:54 p.m. to 3:11 p.m.)

11 THE COURT: Thank you.

12 The record will again reflect all members of the jury are
13 present, the defendants and all counsel are present as well.

14 Let's see. We were still in the direct examination of
15 Mr. Deware. He is reminded he is still under oath, of course.
16 Mr. Chapman, you may continue.

17 MR. CHAPMAN: Thank you, Your Honor.

18 BY MR. CHAPMAN:

19 Q. Mr. Deware, I would like to show you a document previously
20 marked as Government's Exhibit 605.

21 A. Yes, sir.

22 Q. Do you recognize this, sir?

23 A. Yes, sir.

24 Q. What is it, generally?

25 A. This is an email from Molly to me, with David and herself

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1 in cc, courtesy copy.

2 Q. Is this a true and accurate copy of an email that you
3 received from Ms. McKinnon?

4 A. Yes, sir.

5 MR. CHAPMAN: Your Honor, I would move the admission of
6 Government's Exhibit 605.

7 THE COURT: Any objection?

8 MS. LEWIS: No objection.

9 THE COURT: United States Exhibit 605 is admitted.

10 (United States Exhibit 605 was admitted.)

11 BY MR. CHAPMAN:

12 Q. Mr. Deware, in the header of the email, who does this
13 indicate the email is from?

14 A. This is from Molly McKinnon.

15 Q. And the date of the email?

16 A. It is the 24th of August, 2016.

17 Q. Again, does that precede your initial investment?

18 A. Yes, sir.

19 Q. Will you describe for the jury in general terms what the
20 email is conveying to you?

21 A. She was conveying some of the needs that the company would
22 have in order to achieve their goals. So it mentions there a
23 draw schedule, or basically this is when we would need the
24 money in this order -- this amount of money in this amount of
25 time.

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1 Q. The second bullet point there, do you see the word "pro
2 forma"?

3 A. Yes, "pro forma for two units at Richlands." This is
4 based on one purchase order.

5 Q. What is a pro forma, to the best of your knowledge?

6 A. I would have to look at this further. But I think a pro
7 forma in this instance is they are saying that they are going
8 to need an investment to put some more units online, and this
9 is their estimate of how much it's going to cost.

10 Q. Again, in the first bullet point, explain to the jury what
11 a draw schedule is.

12 A. Again, this is -- that was the first time I had heard that
13 concept, but it was what Molly presented in terms of like we
14 have a fund and we want to draw funds from that, or we want to
15 draw money from that fund every so often.

16 So she sent me, basically there's like -- these are like
17 eight weeks out and these are -- the money that we will need
18 every week, and the reason we'll need the money every week, as
19 an idea for coming up with the amount of the original
20 investment.

21 Q. And the source of these funds would be who?

22 A. Me.

23 Q. Now I would like to show you a document previously marked
24 as Government's Exhibit 606.

25 A. Yes, sir.

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1 Q. Do you recognize this?

2 A. Yes, sir.

3 Q. What is this generally?

4 A. This was an initial idea of what -- the proposed draw
5 schedule, this was not the final one. It has on there a
6 proposed salary for Doug, Molly, David and me. I refused to
7 take a salary. And also if I remember correctly, David also
8 didn't take a salary, just Doug and Molly.

9 Q. Who did you receive this document from?

10 A. I received this from Molly.

11 Q. As part of that previous email?

12 A. Yes, sir.

13 Q. Is this a true and accurate copy of the draw schedule that
14 you received?

15 A. Yes, sir.

16 MR. CHAPMAN: Your Honor, I would move the admission of
17 Government's Exhibit 606.

18 THE COURT: Any objection?

19 MS. LEWIS: No objection, Your Honor.

20 THE COURT: United States Exhibit 606 is admitted.

21 (United States Exhibit 606 was admitted.)

22 BY MR. CHAPMAN:

23 Q. Mr. Deware, do you see on the left-hand side of this
24 document a column labeled Date?

25 A. Yes, sir.

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1 Q. What is the first entry under date?

2 A. Immediate.

3 Q. And what did that mean to you?

4 A. There was an urgency to get the money now. We have to
5 move fast.

6 MR. CHAPMAN: And if we can scroll down in the document?

7 Q. How many other draws are listed in this document?

8 A. Eight weeks.

9 Q. Withdrawals weekly?

10 A. Yes.

11 Q. So eight total?

12 A. Yes, sir.

13 Q. And at the bottom of the document, is there a total
14 amount?

15 A. Yes, sir.

16 Q. What is that?

17 A. A total of \$209,000 is what they were asking for.

18 Q. I would now like to show you a document previously marked
19 as Government's Exhibit 607.

20 Do you recognize this document?

21 A. Yes, sir.

22 Q. And what is this generally?

23 A. This was a projected cash flow and sales projection. So
24 the top line is tons produced, and then based off those tons
25 produced, the sale amount, recognize the same \$190,000 that we

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1 saw on the other document.

2 Q. Okay. We'll get into the numbers in just a moment. Is
3 this a document that you received?

4 A. Yes, sir.

5 Q. From whom?

6 A. From Molly.

7 Q. Is this a true and accurate copy of that document?

8 A. Yes, sir.

9 Q. Okay.

10 MR. CHAPMAN: Your Honor, I would move the admission of
11 Government's Exhibit 607.

12 THE COURT: Any objection?

13 MS. LEWIS: No objection.

14 THE COURT: United States Exhibit 607 is admitted.

15 (United States Exhibit 607 was admitted.)

16 BY MR. CHAPMAN:

17 Q. Now, Mr. Deware, if you would please explain what you were
18 explaining, the general significance of this document?

19 A. Yes, sir. The top line is the tons produced. I believe
20 there is another one that was before this that started off with
21 2,000 tons in the last trimester of the previous year, 2016.

22 So this was starting off January 2017 and talking about
23 4,000 tons being produced, which the Carbonox purchase order
24 that we saw previously had \$95 a ton. But what the revenues
25 would be, and it looks like there is a math issue there.

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1 But it says the -- it looks like it's corrected in
2 February, you can see where February is 380,000. But the cost
3 of the materials of that.

4 And then the -- or actually, that's actually probably
5 correct. Because the 190 would have been coming from December.
6 So 45 day -- 45 days out, so that would have been the amount
7 deposited from the previous. So it's doing cash flow.

8 It's not, you know, saying that we're going to produce
9 this much and this is the amount of money we're going to
10 receive.

11 So it says, "Cost of materials 90,000," "Cost of labor"
12 about 24,000. So a "Total Cost of Goods Sold," roughly
13 114,000. Sale price 190. So a net profit of \$76,000 for that
14 particular month.

15 MR. CHAPMAN: If we could scroll over to the far
16 right-hand side of the revenue section?

17 Q. Do you see the total amounts listed there?

18 A. Yes, sir. Total projected sales of 108,000 tons, and a
19 total profit projected at \$5.4 million.

20 MR. CHAPMAN: Now, if we stay on the right-hand side and
21 scroll down to the bottom?

22 Q. We can zoom back out if you need to, sir, but do you know
23 the significance of the final number there?

24 A. Could we go to the left and see what the title is, please?

25 Q. Absolutely.

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1 A. So that's a net profit and loss after taxes.

2 Q. What is your understanding of net profit/loss?

3 A. So it means that's what is really going to be the number
4 that gets divided. Because you have to pay the government
5 first. And then the company, that's the money that's available
6 for either reinvestment in the company or dividends or
7 splitting among the partners.

8 Q. Was it significant to you that the net profit or loss
9 number was over \$3.3 million?

10 A. The fact that you could invest \$200,000 and be able to
11 make \$3.3 million? Well, I mean, you would have to get paid
12 back. But to make \$3.3 million to be split among the partners?
13 That was a very significant amount of money to me.

14 Q. Mr. Deware, next I would like to show you a document
15 previously marked as Government's Exhibit 620.

16 Can you see that document, sir?

17 A. Yes, sir.

18 Q. Do you recognize it?

19 A. Yes, sir.

20 Q. What is this, generally speaking?

21 A. It's an email from me to Molly on the 29th of September,
22 2016, saying that I had sent out \$50,000.

23 Q. Is this a true and accurate copy of an email exchange
24 between you and Ms. McKinnon?

25 A. Yes, sir.

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1 MR. CHAPMAN: Your Honor, I would move the admission of
2 Government's Exhibit 620.

3 THE COURT: Any objection?

4 MS. LEWIS: No objection.

5 THE COURT: United States Exhibit 620 is admitted.

6 (United States Exhibit 620 was admitted.)

7 BY MR. CHAPMAN:

8 Q. Mr. Deware, your email at the top here, what is the date
9 on this email?

10 A. This is September 29th, 2016.

11 Q. So is that after your initial investment?

12 A. Yes, sir.

13 Q. And what is this email conveying to Ms. McKinnon?

14 A. This is saying that I've sent her \$50,000. Specifically,
15 I sent it to the Nex-Gen, Inc. account of Doug.

16 Q. If you remember, why did you send \$50,000 on
17 September 29th, 2016?

18 A. It was part of that initial draw that they were
19 requesting.

20 Q. I would now like to show you a document marked as
21 Government's Exhibit 621.

22 A. Yes, sir.

23 Q. Do you recognize this document?

24 A. Yes, sir.

25 Q. Again, generally speaking, what is this?

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1 A. This is an email from Molly to me. I don't read the
2 context on this. It says, "Okay, let me know when." And then
3 down below --

4 Q. Based on your review, is this a true and accurate copy of
5 an email exchange between you and Ms. McKinnon?

6 A. Yes.

7 MR. CHAPMAN: Your Honor, I would move the admission of
8 Government's Exhibit 621.

9 THE COURT: Any objection?

10 MS. LEWIS: No objection.

11 THE COURT: United States Exhibit 621 is admitted.

12 (United States Exhibit 621 was admitted.)

13 Q. Now, if we can --

14 MR. CHAPMAN: If we can scroll down to around that
15 portion?

16 BY MR. CHAPMAN:

17 Q. Take all the time you need to read this, sir. And after
18 you read it, if you could summarize for the jury what is being
19 expressed here.

20 A. So this is -- if we can go up a little bit? This is in
21 May, I believe. This is in May of 2017, so this is right
22 before I made my last wire transfer to Molly and Doug.

23 Specifically what it's talking about, the context is
24 they -- they expressed to me that they were selling to a
25 company called Koch, I don't know if that's Koch Brothers. And

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1 they say there, as you see, the second check is almost totally
2 accounted for.

3 So what they are implying is that they had sent me -- that
4 they had received a first check for sales completed and that
5 they were waiting for a second check to come in.

6 Specifically, they said that this second check was about,
7 roughly, a quarter of a million dollars, the first check and
8 the second check. And so they were waiting for that check to
9 come in.

10 And since it hadn't come in yet, hey, Allan, can you spot
11 the company \$87,000 to pay bills while that second check is
12 coming in?

13 So they are representing that there was a first check and
14 that a second check is coming. And that's referencing a -- in
15 the account register where they showed funds being deposited
16 for that first check.

17 Q. What was your understanding of the business's relationship
18 with Koch?

19 A. I understand that we were making sales to that company.

20 Q. Sales of what, do you know?

21 A. Char.

22 Q. Now, Mr. Deware, I'm going to shift away from the document
23 at this point.

24 Were you aware of any other potential investors in this
25 project with Mr. Vance and Ms. McKinnon?

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1 A. At the beginning, like the email that we reviewed earlier,
2 she was presenting that there was another potential investor.
3 Shumard was another potential investor in the company.

4 Q. What do you remember Ms. McKinnon or Mr. Vance represented
5 to you about Shumard?

6 A. It changed over time. So there was different moments in
7 time, different things were said. At the beginning, it was a
8 competing bid to invest with them.

9 And at another point in time, Molly said that they had
10 lent her money. When companies are starting off, it's frequent
11 for someone to get money from friends or family. And so Molly
12 represented that they had lent her or her and Doug money and
13 that she needed to pay that back.

14 At no point in time did -- go ahead.

15 Q. No, please finish your thought.

16 A. Just at no point in time did they ever say, hey, this
17 is -- you know, this is money going to like as a partner in the
18 company.

19 Q. Is a potential investor the same as an actual investor?

20 A. No, sir.

21 Q. What's the difference?

22 A. An actual investor has actually invested money. And a
23 potential investor is someone who has not.

24 Q. What side of that line did you understand the Shumard
25 Group to fall on?

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1 A. In the communications to me, it was a potential investor.
2 And then later she clarified that they had given her money but
3 it was a loan.

4 Q. How does a loan differ from an investment?

5 A. A loan is something that you have to pay back, versus an
6 investment being something that's money that's going to the
7 company that's at risk.

8 Q. Does one give you a stake in the company, so to speak?

9 A. No, sir. And I had signed that document with Doug for the
10 ownership where I was 51 and he was 49 percent. And that's who
11 was in the company as far as I knew.

12 Q. If an entity only lent money, would they be entitled to
13 any sort of ownership or control?

14 A. No, sir.

15 Q. Did either Mr. Vance or Ms. McKinnon ever disclose an
16 operating agreement with the Shumard Group to you?

17 A. No, sir.

18 Q. If Mr. Vance or Ms. McKinnon had disclosed a separate
19 operating agreement with the Shumard Group with you, would that
20 have impacted your decision to invest?

21 A. Absolutely.

22 Q. Why?

23 A. How would Doug be able to enter into an agreement with me
24 where he's signing a noncircumvent, noncompete? How could he
25 sign that bill of sale giving me all of that property if he

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1 either previously or posteriorly had committed that to someone
2 else?

3 I mean, you can't say this is all yours and then go and
4 tell someone else, this is for you. I mean -- I mean, you
5 can't give all of one thing to two different places. It's --

6 Q. What would have changed about your decision-making if that
7 has been disclosed?

8 A. I don't believe I would have made the investment. Or on
9 the other hand, we -- I mean, they would have to be a partner
10 and that was -- they were not my partners.

11 Q. It was your understanding that the Shumard Group was not a
12 partner?

13 A. At no point in time.

14 Q. Sir, do you know who Heather Vance is?

15 A. No, sir.

16 Q. So, Mr. Deware, to go back, think about this holistically,
17 at the beginning of your relationship with Mr. Vance and
18 Ms. McKinnon, what did you think of the business they were
19 pursuing?

20 A. I thought it was innovative. I thought it was a really
21 fun idea, it was a great and simple way to solve a big problem.
22 And I was happy to be a part of that, of creating clean coal.

23 And I thought that the numbers of the business were
24 extremely attractive, being able to invest a couple hundred
25 thousand dollars and to be able to recoup that money and make

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1 millions in a matter of a year or so, that seemed to be a very
2 attractive offer.

3 Q. Were you excited about it?

4 A. Absolutely.

5 Q. Did that perspective you just described ultimately change?

6 A. Yes, sir.

7 Q. What happened?

8 A. In the spring of 2017, I got an email from an April
9 Francis asking me to contact her. So I contacted her, and she
10 let me know that effectively everything that I understood about
11 the company was a -- was not true, that the sales that were
12 being represented to me as being true were not true. They
13 didn't exist.

14 The production numbers that were being sent to me did not
15 exist. There was cash -- lots of cash coming into the company
16 and going out without explanation.

17 That the company was doing logging, which was something
18 they never even talked to me about.

19 It was -- it was delinquent with -- I mean, just
20 everything that I understood the company to be, nothing was
21 true.

22 In particular, in that I had never had access to the
23 banks. And I -- she showed me a bank statement from Wells
24 Fargo, and it showed that everything that Molly had presented
25 to me as books was not true at all, and what was really going

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1 on was far different than the information that they were
2 sending to me.

3 Q. You mentioned an individual named April Francis; is that
4 correct?

5 A. Yes, sir.

6 Q. Who was Ms. Francis, to your understanding?

7 A. She was the office manager, or I don't know the exact
8 title, but she functioned as the office manager.

9 Q. For Nex-Gen?

10 A. For what I understood to be Nex-Gen.

11 Q. Did she send various documents to you?

12 A. Yes, sir.

13 Q. What were your next steps after communicating with
14 Ms. Francis?

15 A. Various. One of the things that she communicated to me,
16 there was a lot of other people that were in my situation, that
17 Molly and Doug had taken a lot of money from a lot of different
18 people.

19 So the -- after contacting me, the first thing I did was
20 ask her for information. I wanted to make -- you know, if
21 someone comes up and they just make an accusation, you know,
22 you want to find out more to find out how true that accusation
23 is.

24 So the information from me that made it -- that I
25 understood that it was true, what she was saying, was the bank

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1 statement from Wells Fargo, and comparing that to the -- to the
2 books that Molly was sending to me.

3 So after doing that, I -- after seeing that, I consulted
4 with David Smith. And then I called up a buddy of mine from
5 the Rangers, Dan Weisman. After leaving the Rangers, he went
6 back to the University of Florida, became a lawyer, he became
7 AUSA, I forget that -- your same job but in Tampa.

8 So I called him up and said, hey Dan, this is going on,
9 what do you recommend?

10 He said, Allan --

11 MS. LEWIS: I would object, Your Honor.

12 THE COURT: Sustained based on hearsay.

13 Q. Mr. Deware, we'll return --

14 A. Okay. So you asked me what I did. That's what I did.

15 Q. We'll return to that general topic in a moment.

16 I want to go back to Ms. Francis providing you with a bank
17 statement.

18 A. Uh-huh.

19 Q. Again, did that occur?

20 A. Yes.

21 Q. Did Ms. Francis provide you with a bank statement?

22 A. Yes, sir.

23 Q. I would like to show you what's previously been marked as
24 Government's Exhibit 628.

25 Do you recognize this, sir?

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1 A. Yes, sir.

2 Q. Is this the bank statement that Ms. Francis sent you?

3 A. Yes, sir.

4 Q. Is it a true and accurate copy of that statement?

5 A. Yes, sir.

6 MR. CHAPMAN: Your Honor, I move the admission of
7 Government's Exhibit 628.

8 THE COURT: Any objection?

9 MS. LEWIS: No.

10 THE COURT: United States Exhibit 628 is admitted.

11 (United States Exhibit 628 was admitted.)

12 MR. CHAPMAN: If we can scroll down to the transactions?

13 BY MR. CHAPMAN:

14 Q. Mr. Deware, there appears to be some handwritten notations
15 on this bank statement. Do you know where those handwritten
16 notations came from?

17 A. Yes, sir, those are mine.

18 Q. Just, for example, the very first transaction, what have
19 you written to the right of this?

20 A. "No."

21 Q. And what did that mean to you?

22 A. When I compared that against the books that Molly was
23 sending to me, that was not in the books that she sent to me.

24 So there was a deposit from this Suffolk Avenue or --
25 apparently, cash or checks, deposited in there \$5,105 and that

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1 was not in the books that Molly sent to me.

2 Q. If you would look down a few entries to the entry that
3 appears to be highlighted?

4 A. Yes, sir.

5 Q. Do you see that, sir?

6 A. Yes, sir.

7 Q. And there appear to be two checkmarks to the right-hand
8 side.

9 Do you see those?

10 A. Yes, sir.

11 Q. What did that indicate to you?

12 A. That was in the books. That was a wire that I sent for
13 \$22,000, and that was in the books that Molly sent to me. So
14 the books that Molly sent to me had the wire transfers that I
15 sent, but it didn't have any of the other transactions on this
16 page.

17 Q. The memo line of the \$22,000 transaction mentions an
18 organization, Dragon Head Technologies LLC?

19 A. Yes, sir. That's my U.S.-based company.

20 Q. Is that the same Dragon Head Technologies we discussed
21 earlier in your testimony?

22 A. Yes, sir.

23 Q. If there is a transaction from Dragon Head Technologies,
24 is that you?

25 A. Yes, sir. That's me sending the money.

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1 Q. Now I would like to specifically direct your attention to
2 the February 13th, 2017 transaction for \$39,850.

3 Do you see that one, sir?

4 A. Yes, sir.

5 Q. Do you see a name listed in the memo line?

6 A. Yes, sir, a Mr. Kenneth M. Shumard.

7 Q. And do you know Mr. Kenneth M. Shumard?

8 A. I have never met him, sir.

9 Q. And again, were you aware that Mr. Shumard was depositing
10 over \$39,000 into this account?

11 A. No, sir.

12 Q. Does that indicate anything to you?

13 A. For me, and with the explanation of April, he was one of
14 the other people that Molly and Doug were receiving money from.

15 Q. And prior to --

16 A. And specifically receiving it into a Nex-Gen Industries
17 account that Doug managed.

18 Q. Prior to receiving this document, were you aware of that?

19 A. No, sir.

20 MR. CHAPMAN: If we can scroll down to the top of the next
21 page?

22 Q. The very first transaction there, sir, do you see another
23 \$10,000 deposit from Mr. Shumard?

24 A. Yes, sir.

25 Q. A few lines down from that, do you see another one?

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1 A. Yes, sir.

2 Q. What's the amount at issue in that transaction?

3 A. 15,200.

4 Q. Now, the transaction listed directly underneath that
5 transaction for \$20,000, who is the individual listed in that
6 memo line?

7 A. It says a Mr. Shpakoff.

8 Q. Do you know who Mr. Keith Shpakoff is?

9 A. No, sir.

10 Q. Had you ever heard his name before receiving this
11 document?

12 A. No, sir.

13 Q. And the fact that Mr. Shpakoff deposited \$20,000 into this
14 account, what did that indicate to you?

15 A. Again, in the context of what April explained, that was
16 another person sending money to this Nex-Gen entity that Doug
17 and Molly were controlling.

18 MR. CHAPMAN: If we could go down a few more lines to
19 January 19th?

20 Q. Same question there, sir. Whose name do you see in this
21 memo line?

22 A. Ms. or Mrs. Joan L. Faybik.

23 Q. Do you know who Ms. Joan L. Faybik is?

24 A. No, sir.

25 Q. Before you received this document, had you ever heard her

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1 name?

2 A. No, sir.

3 Q. How much does it indicate that she deposited into this
4 account?

5 A. \$3,500, sir.

6 Q. And again, did that have any significance to you?

7 A. Again, with the context of April, that was another person
8 that was sending money to Molly and Doug.

9 Q. On January 9, 2017, who do you see listed in this
10 transaction?

11 A. Mr. Kenneth M. Shumard.

12 Q. What is the amount of the transaction?

13 A. \$27,357.

14 Q. In all the transactions we've gone over on this page, they
15 all appear to have the word "no" written next to them; is that
16 correct?

17 A. That's correct.

18 Q. And again, explain to the jury the significance of your
19 notation.

20 A. So this bank account was receiving money from people or
21 entities and "no" means I was not aware of it, and it was not
22 in the books that Molly was sending to me.

23 So I understood the books that Molly was sending to me was
24 representing all the money coming in and out of the company.
25 And the bank statement is extremely different than the books

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1 she was sending to me.

2 So she's giving me false information about what money is
3 coming in and out of the company, who it's coming from, when
4 it's coming in. They're receiving money from other people and
5 not telling me about that.

6 And contrarily, putting a bunch of other information in
7 the books to me that's not here, like the deposit for \$287,000
8 of a supposed sale and that's not here.

9 So on the one hand, we're supposedly selling and it's not
10 here. On the other hand, there's other people giving money to
11 them and none of that is being revealed to me.

12 Q. I have one final transaction I would like to ask you
13 about.

14 MR. CHAPMAN: If we could go to the last page?

15 Q. Mr. Deware, the very last entry, November 21, 2016, who is
16 the individual you see listed in the memo line of this
17 transaction?

18 A. A Mr. Gary G. Chamblee.

19 Q. Do you know who Mr. Chamblee is?

20 A. No, sir.

21 Q. At the time that you received this document, had you ever
22 heard his name?

23 A. No, sir.

24 Q. And what is the amount listed in this transaction?

25 A. \$11,675.

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1 Q. Now I would like to show you a separate document. I would
2 like to show you what's been previously marked as Government's
3 Exhibit 627.

4 Do you recognize this document, sir?

5 A. Yes, sir.

6 Q. What is this, generally speaking?

7 A. This is the books that Molly was sending me that I
8 previously mentioned.

9 Q. Is this a true and accurate copy of a document that you
10 received from Ms. McKinnon in this case?

11 A. Yes, sir.

12 MR. CHAPMAN: Your Honor, I move the admission of
13 Government's Exhibit 627.

14 THE COURT: Any objection?

15 MS. LEWIS: No objection.

16 THE COURT: United States Exhibit 627 is admitted.

17 (United States Exhibit 627 was admitted.)

18 BY MR. CHAPMAN:

19 Q. Mr. Deware, what are the words that you see in the top
20 center of this page?

21 A. V4 Carbon.

22 Q. What is V4 Carbon?

23 A. V4 is Vance and four, so it would be the four of us. Doug
24 Vance, Molly McKinnon, David Smith and I were the four and we
25 put Doug's name up there as the V.

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1 Q. And do you see a date range that this document covers?

2 A. Yes, sir. That's from the 17th of September, 2016 through
3 the date of May 2017.

4 Q. Now, even though this document is labeled V4 Carbon, what
5 did you understand this to be?

6 A. These were the books for Nex-Gen Industries LLC, the
7 Kentucky company, is what I understood.

8 Basically what you can see there in the first line --
9 first two lines is my first \$30,000 that I sent to them and the
10 \$50,000. So this was the accounting that she was sending me
11 from my very first investment forward.

12 Q. Why did you understand this document to represent the
13 books of Nex-Gen?

14 A. Because she had been sending this to me during that period
15 of time, and this was just the most recent one.

16 At the very end, that company that we initially said that
17 we would set up, we finally got that set up to be able to
18 receive money, so we -- that got opened.

19 Q. In the first two entries there, the label on them says
20 "Partner Contribution;" is that correct?

21 A. Yes, sir.

22 Q. What did you understand that to mean?

23 A. I was the partner and I was contributing.

24 Q. And are the two amounts listed consistent with your first
25 two investments?

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1 A. Yes, sir.

2 MR. CHAPMAN: Now, if we can go -- if we can scroll on
3 this document to page 8, toward the bottom there, if we could
4 zoom in?

5 Q. Do you see a partner contribution listed there,
6 Mr. Deware?

7 A. Yes, sir, for \$22,000.

8 Q. And what's the date on that?

9 A. The 7th of February, 2017.

10 Q. And so just by way of example, is that consistent with the
11 bank statement that we previously looked at that showed a
12 \$22,000 deposit from Dragon Head Technologies?

13 A. Yes, sir, that would have been marked as yes, or no mark
14 on the other one.

15 MR. CHAPMAN: If we can now scroll to the top of the next
16 page? Ms. Poynter, if you can scroll down a little bit from
17 there?

18 Q. We previously discussed a February 13, 2017 deposit from
19 Mr. Shumard.

20 Do you remember our conversation about that?

21 A. Yes.

22 Q. Do you see an indication on this document of a deposit
23 from Mr. Shumard on February 13th, 2017?

24 A. If there was one, it would be on the right column that's
25 empty. There's nothing there.

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1 Q. How many transactions on February 13th do you see?

2 A. I see two transactions.

3 Q. Do they both appear to be expenditures?

4 A. Yes, sir.

5 Q. For feedstock?

6 A. Yes, sir.

7 Q. And, Mr. Deware, based on your comparison of these two
8 documents, is this pattern consistent with the other investors
9 that we previously talked about and with your own investments?

10 A. I don't know what they may have given to other folks. But
11 to me, this document only shows income from my deposits and
12 some supposed sales.

13 But there's zero information here of other investors
14 depositing money into the account. So with this document, I
15 have no idea or any idea that these folks are making deposits.

16 Q. Is there any indication in this document of any
17 investments or infusions of money from Mr. Shumard?

18 A. No, sir.

19 Q. What about Mr. Shpakoff?

20 A. No, sir.

21 Q. What about Ms. Faybik?

22 A. No, sir.

23 Q. What about Mr. Chamblee?

24 A. No, sir.

25 Q. Are the only partner contributions in this document from

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1 you?

2 A. Yes, sir.

3 Q. If I could direct your attention to page 7 of this
4 document? In the middle of the page there, do you see a
5 transaction on January 24th, 2017 that purports to involve Koch
6 Carbon?

7 A. Yes, sir.

8 Q. And what is the memo line next to that?

9 A. Accounts receivable.

10 Q. What did accounts receivable mean to you?

11 A. For me, an account receivable means that we sold to them
12 on credit.

13 Q. What is the amount listed there?

14 A. \$6,300.

15 Q. And you said "sold to them on credit." What was your
16 understanding of what was being sold to Koch?

17 A. An account receivable means that they owe you money. In
18 this case, they owed -- according to these books, they owed the
19 company \$6,300 for selling what -- the product the company
20 sells, which the only product we had was char, char or wood
21 chips.

22 Q. Finally, on this document, I would like to direct your
23 attention to page 13. Toward the top, do you see a -- an entry
24 from April 11th of 2017?

25 A. Yes, sir.

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1 Q. What is the memo line or the account name for this
2 transaction?

3 A. Undeposited Funds.

4 Q. Did you know what that meant?

5 A. Based off context with talks with Molly, that email that
6 we read earlier where she said the first check had come through
7 from Koch and she was waiting for the second check to come
8 through, that was in there as the first check, \$285,059.

9 Q. So it was your understanding that the 285,000 came from
10 Koch Industries?

11 A. Yes, sir.

12 Q. Again, from the sale of product?

13 A. Yes, sir.

14 Q. Now, Mr. Deware, was it your understanding that Mr. Vance
15 and Ms. McKinnon would be paid salaries for their work?

16 A. Yes, sir.

17 Q. Can you explain that to the jury?

18 A. I believe we agreed for them to earn \$3,000 a month for
19 their labor.

20 As business partners, you know, in my way of thinking,
21 you're starting off a business, you don't have any other
22 income, you're going to dedicate yourself to something, I
23 thought it was fair to them to have compensation.

24 And you know, you've got to pay your bills, you have to
25 buy food, you have a bill for rent or pay for your house, so I

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1 thought that was fair for them to earn compensation additional
2 to sharing of profits.

3 Q. Aside from that agreement to pay salaries, did you ever
4 agree for there to be disbursements to Mr. Vance or
5 Ms. McKinnon outside of their salaries?

6 A. No, sir. In any of those advancements? Yeah -- so the
7 answer is no, sir.

8 Q. What about any other business or entity that may have been
9 owned or controlled by them?

10 A. We had a noncompete and noncircumvent, so all of the
11 business activities should have gone through one entity.

12 Q. Is it important to you as an investor to know if there are
13 other investors in the same business endeavor?

14 A. Absolutely.

15 Q. Why is that?

16 A. Well, transparency. You -- when you're in a business,
17 particularly a small business like this, if I think I'm doing
18 business with Doug, or if I think I'm doing it with Doug and
19 Molly and David, and that's what's discussed, you should -- and
20 that's who is in the business, that's who you understand is in
21 the business, there shouldn't be anyone else in there.

22 I don't know if that answers the question.

23 Q. Would it impact your ability to manage or control the
24 organization?

25 A. Well, if you think that you're 51 percent owner or you can

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1 control 51 percent of the shares, and then it turns out that
2 what you think it is and what you've paid money, and you've
3 signed documents to make it be, if it's actually something
4 else, how -- I mean, you should have a clear and transparent
5 operating environment. Like how are you going to control an
6 entity and you don't even know who the business partners are?
7 You don't know who the other investors are. I mean, you can't
8 operate that way.

9 Q. I believe we spoke earlier about representations of sales
10 to Koch Industries; is that correct?

11 A. Yes, sir.

12 Q. Did Mr. Vance or Ms. McKinnon make other representations
13 about sales of coal products?

14 A. One name that pops up is Feldman.

15 Q. What do you remember about Feldman?

16 A. Apparently, I was being informed that we were selling to
17 Feldman.

18 Q. Turning back to the representation about Koch Industries,
19 if any money that had come in from Koch was actually a loan, as
20 opposed to income from sale of products, would that be
21 important to you as an investor?

22 A. Absolutely. One is a sale that's generating profit and
23 income, and the other one is a commitment that you have to
24 repay, which is an obligation. So one's on the asset line at
25 the end of the day, and the other one is on the -- on the line

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1 that you owe.

2 So it's a complete 180-degree difference. I mean, they
3 are completely opposite. Hey, we're selling, we're having
4 income coming in from sales versus hey, we took out a loan and
5 the company is going to have to pay that back. That's
6 completely different.

7 Q. Is it important to you as an investor to know the level of
8 debt that an entity that you're investing in is in?

9 A. Yes.

10 Q. Why is that?

11 A. You should know what the income is, what the expenses are,
12 what the debts are. That's -- I mean, that's basic information
13 for the company.

14 Q. Would it impact the value of your investment?

15 A. If you had sales going on for hundreds of thousands of
16 dollars, your company will be worth far more than if you were
17 accumulating debt of hundreds of thousands of dollars, yes.

18 Yes, sir, that would dramatically -- it would change the
19 company from being -- making sales and being profitable, which
20 is the information that was being presented, that sales were
21 happening, versus the situation that you're asking me about
22 where, if that was going on, the company would not have sales
23 and, in fact, would be accumulating more debt.

24 Q. Okay. Mr. Deware, I would like to return to a topic that
25 we left a little while ago, and that is what steps you took

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1 after learning this information from Ms. Francis.

2 So without saying what anyone else said to you, I believe
3 you approached a person you described as an AUSA?

4 A. Yes, sir.

5 Q. What happened from there?

6 A. I went to the FBI with David, we both went together to the
7 FBI in Florida.

8 Q. Do you remember approximately when you first made contact
9 with the FBI?

10 A. It was the summer of 2017.

11 Q. Mr. Deware, what involvement have you had in this business
12 endeavor after you contacted the FBI?

13 A. Aside from a couple of notes of maybe Merry Christmas to
14 Molly or Doug, no more active involvement.

15 Q. No more active involvement in the running of the business?

16 A. Correct, sir.

17 Q. Did you make any further investments after that point?

18 A. No, sir.

19 Q. I believe you estimated earlier in your testimony that you
20 had invested approximately \$400,000; is that correct?

21 A. Yes, sir.

22 Q. Have you ever seen any return on that investment?

23 A. No, sir, not one penny.

24 Q. Has any money been returned to you based on that
25 investment?

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1 A. No, sir.

2 Q. What were you relying on when you invested roughly
3 \$400,000 in this business endeavor?

4 A. Again, multifactoral, but that the information that my
5 business partners give me is true and accurate.

6 You expect to get a set of books, and that those books
7 will be an accurate description of the financial activity going
8 on. So if you get a set of books that say there was a deposit
9 and who it's from and what it's for, you expect that to be
10 true. And you expect it to be complete. If there is deposits
11 going on, you expect to know about those deposits and that to
12 be reported to you.

13 So in order to make good decisions, you have to have good
14 data, good information. So the basis for any relationship is
15 trust and confidence. So you know when someone says, hey,
16 we're -- we need money for X activity, you expect X activity to
17 be real and not something that's not something else.

18 Q. If you were provided false financial documents in this
19 case, would that -- if you knew that, would that impact your
20 decision to invest?

21 A. Absolutely. Someone tells you they are making sales and
22 they're getting income from that, and they send you books
23 saying, hey, we're making sales, we have another check coming
24 in, cover us until the next check comes in, you understand
25 because they are making sales, you're going to get to

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1 profitability, and what they're having an issue with is cash
2 flow.

3 So hey, you know, I need money in order to pay the payroll
4 to keep the operation going, I need money to continue to make
5 sure we have equipment rented in order to keep the operation
6 going while we're waiting for this money to come in from the
7 sale that we've made.

8 So if that sale is not actually happening and they are
9 asking you for money, why are they asking you for that money?
10 So how can you make an accurate decision of sending money if
11 the information that you have is not true?

12 Q. So were you depending on the accuracy of representations
13 from Mr. Vance and Ms. McKinnon?

14 A. Yes, sir.

15 Q. Including such topics as the sale of product?

16 A. Yes, sir.

17 Q. Mr. Deware, we discussed a lot about your business
18 history. You're an investor, correct?

19 A. Yes, sir.

20 Q. What has been your general attitude toward investing?

21 A. I think it's fun. I enjoy it. It's been a passion and a
22 hobby of mine since I was a little kid, so

23 And I have invested a number of times.

24 Q. Does investing come with risks?

25 A. Yes, sir.

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1 Q. What are some of those risks?

2 A. You can lose all of your money.

3 Q. Sometimes investments fail?

4 A. Yes, sir.

5 Q. It's a fairly risky business to be in?

6 A. It is, yes, sir.

7 Q. Have you ever reported anyone that you had previously been
8 involved in business in to the FBI?

9 A. No, sir. I've lost money in businesses, I've had some
10 businesses fail. I've never reported any of my former business
11 partners to the FBI.

12 Q. So you've had previous projects or previous businesses
13 that have failed?

14 A. Yes, sir.

15 Q. Mr. Deware, what risks do you not expect to take when you
16 join a business endeavor?

17 A. You don't expect your business partners to go and take
18 money from a lot of other people, in excess of hundreds of
19 thousands of dollars, and not tell you about it.

20 You don't expect them to tell you that there are sales and
21 that those don't exist.

22 You don't expect them to give you false books, and based
23 off those false books and false purchase orders to create an
24 expectation of profit so you can send them money and none of
25 those things be true.

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1 MR. CHAPMAN: Thank you, Your Honor. Your Honor, may I
2 have one moment?

3 THE COURT: Yes, sir.

4 MR. CHAPMAN: Thank you. Thank you, Your Honor, that's
5 all I have at this time.

6 THE COURT: Thank you.

7 Mr. Darling, before you begin your questions, I have just
8 one matter I needed to clear up with the witness. I may have
9 missed your answer to this, but I believe in response to
10 Mr. Chapman's questions, he asked you about other
11 representations regarding other coal products. And you made
12 reference to Feldman, I believe?

13 THE WITNESS: Yes, sir.

14 THE COURT: Who would have made that representation to
15 you? I didn't recall who, hearing who said that.

16 THE WITNESS: Molly.

17 THE COURT: All right. Ms. McKinnon?

18 THE WITNESS: Yes.

19 THE COURT: All right. Thank you.

20 Mr. Darling.

21 MR. DARLING: Your Honor, I'm going to defer to Ms. Lewis
22 to begin cross-examination.

23 THE COURT: All right. Yes, sir.

24 CROSS-EXAMINATION

25 BY MS. LEWIS:

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1 Q. Mr. Deware, I'm Brandi Lewis and I represent Molly
2 McKinnon.

3 A. Good afternoon, Ms. Brandi.

4 Q. Good afternoon.

5 So just to start off, you receive this email from April
6 Francis in 2017 alerting you to some issues.

7 A. Yes, ma'am.

8 Q. And some of that information you actually already knew
9 about and knew to be true.

10 A. That's very vague.

11 Q. Well, for instance, she mentions V4 Carbon. And you
12 already knew what that entity was, correct?

13 A. I knew what V4 Carbon was, yes.

14 Q. You were part of that business?

15 A. I understood V4 Carbon to be -- yes, Doug, Molly, David
16 and I, yes.

17 Q. Is it possible at that time she approached you, you were
18 already having second thoughts about investing further with
19 Mr. Vance?

20 A. I don't know that that's accurate. At that point in time,
21 Molly and Doug had asked me for money. They requested that
22 last advance of 87,000, I believe I sent them 60.

23 And I talked with both of them and said, hey, we need to
24 get to profitability. So I expect that after we get this next
25 Koch check in for 200-something thousand dollars for sales,

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1 that the company should then start being profitable. That was
2 my understanding of where we were at at the time.

3 Q. All right. And then you were approached by Molly through
4 David Smith, correct?

5 A. Yes, ma'am.

6 Q. And that was prior to your knowledge of the Shumard Group
7 investing with Mr. Vance?

8 A. I don't know that I understood the question. But the very
9 first connection with David and Molly was there was no mention
10 of any other group. It was just the email that she said that
11 there was competing groups trying to invest.

12 Q. And in some of your emails with Molly, you reference the
13 Atlanta group.

14 Do you recall that?

15 A. Yes, ma'am.

16 Q. And then one of the emails that Mr. Chapman showed you,
17 there was a portion from Molly where she stated Vance needs to
18 refund money to the Shumard Group.

19 Do you recall that?

20 A. Yes, ma'am.

21 Q. So you were aware of them?

22 A. There is different levels of awareness of different things
23 and how that was presented to me. So the fact that Molly or
24 Doug had some kind of personal loan out with another company,
25 and they had a personal relationship with Mr. Shumard, that had

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1 been expressed to me, yes, ma'am.

2 Q. So you were aware of them, yes?

3 Do you recall indicating to Mr. Vance or Molly that you
4 wanted to buy out the Shumard Group?

5 A. No, ma'am.

6 Q. You don't recall wanting -- or expressing that you wanted
7 to buy them out as far as their investment went with Mr. Vance?

8 A. There was no investment. The answer, Mr. Doug Vance was
9 the owner of this company and that's who I signed the document
10 with to buy it, was with Mr. Vance.

11 Q. So there was never discussion that you were going to
12 eventually buy out the Shumard Group's investment?

13 A. I was not aware of Shumard Group having an investment. I
14 was aware of Molly and Doug having some kind of relationship
15 with them.

16 And at the time of the investment, Molly represented that
17 she had received money from them, that I was aware of. But she
18 said that she had contacted them, they were personal friends,
19 and that she would be able to pay that money back to them and
20 that was her debt.

21 Q. You agreed with Mr. Vance and Molly that you would help
22 handle the marketing part of the business.

23 Do you recall that?

24 A. There was some internet sales. And I had a friend, Mark
25 Howard, and he is very talented with, you know, making

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1 websites. So I volunteered to have Mr. Mark meet them to try
2 to create marketing. Yes, that's true, ma'am.

3 Q. And did any sales ever come to fruition out of that?

4 A. Mark requested information multiple times from Molly in
5 order to get the website up and running, and was never able to
6 get information. So he was unable to complete because that
7 information was never sent to him.

8 Q. And is your business Lucky Dog as well?

9 A. Yes, ma'am.

10 Q. Is that with some form of marketing and sales as well?

11 A. Lucky Dog was selling -- oh, what's it called? Like
12 scratch and dent refrigerators and appliances. We had some --
13 I don't remember what kind of online presence that we may have
14 had there.

15 Q. So you didn't utilize that business to help with sales of
16 this carbon product?

17 A. There is no sales.

18 I mean, did I bring up Mark to attempt to create sales?

19 Yes. Did Mark ever actually create a website? No.

20 But you need the information in order to do that and that
21 was never provided to him.

22 Q. Your partner, David Smith, that you mentioned, he was also
23 going or supposed to help with sales, correct?

24 A. Yes, ma'am.

25 Q. And no sales were ever made by him either?

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1 A. No, ma'am. We went to a company, DMI, which is a -- I
2 don't know, a foundry, I guess? They make steel.

3 So apparently, I'm not an expert on this, but apparently
4 you take iron, you put in some kind of clean carbon and you can
5 make steel out of that.

6 So the general manager of several plants in the southeast
7 is David Smith's brother, if I remember right his name is Mike.
8 And so we went and visited him at the plant to try to get some
9 sales for him to purchase. He was open to that. But whenever
10 we tried to get samples or anything from Molly and Doug, there
11 was never -- it was never able to get completed and sent to DMI
12 to actually become their supplier.

13 So there were sales that were attempted to be made, but
14 they were -- it was never able to come to fruition, at least on
15 any attempts that I made. Or those -- whenever we asked for
16 those kind of things to get done, the follow-through didn't
17 happen in order to close the sale.

18 Q. And you initially signed off on handwritten agreements
19 with Mr. Vance and Molly.

20 Do you recall that?

21 A. Yes, ma'am.

22 Q. Do you recall what organizations that set out?

23 A. Yes, ma'am. There is an -- the original one was Egen, and
24 that was where we talked about -- again, Molly presented this
25 structure that I had never seen before, but it made sense to

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1 me.

2 That we could have one entity be owner of the 51 percent.

3 And so we laid out, between Molly, David and I, this Egen

4 company that would become owner of the 51 percent that I was

5 signing for.

6 Q. So it was supposed to be Egen, not Nex-Gen Industries?

7 A. Correct. Molly was responsible for getting that

8 registered and she was never able to get that registered.

9 Q. You indicated in emails along the way that your attorney
10 would draft any corporate documents.

11 Do you recall that?

12 A. Yes, ma'am.

13 I'll give you more context. After visiting in Virginia
14 and Kentucky with Molly and Doug, I flew to my brother's place
15 in Kansas and talked with our lawyer. And he was extremely
16 busy at that time and couldn't attend to me. So he basically
17 sent me -- like he pointed me in the right direction to get
18 like a draft or just like a rough idea.

19 And so I had sent over to Molly some options of how it
20 could be. But Molly said that she would be able to get the
21 company registered, so

22 Q. To back up, wasn't it David Smith's idea actually to make
23 it into two separate entities?

24 A. I'm not aware of that being the case, ma'am. When you go
25 back through the emails, you'll see that Molly sent that

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1 structure to David in an email, and then David forwarded that
2 to me. So the information I know, that was Molly's idea.

3 Q. Now, the operating agreement that was eventually executed,
4 it didn't reflect the terms that was in the handwritten
5 agreements, correct?

6 A. Can you say that again, please.

7 Q. Ultimately, when the operating agreement is formalized, it
8 no longer reflected what was actually in the handwritten
9 agreements.

10 Do you recall that?

11 A. When I -- you're talking about what I signed with Doug,
12 the 51-49?

13 Q. Yes, sir.

14 A. Yes, we -- the document that we signed was 51-49
15 understanding that Egen was going to get formed, Molly was
16 responsible for forming it, she never got it formed.

17 But I understand that the 51 that I signed was to be split
18 between David, Molly and I. That would be true.

19 Q. And Egen actually goes on to be V4, correct?

20 A. Yes, ma'am.

21 Q. So you wouldn't agree that the operating agreement that
22 was executed between you and Mr. Vance was intended to act as a
23 placeholder for when you bought out the Shumard Group?

24 A. I would not understand that, because there was no
25 understanding that I was going to buy out the Shumard Group, so

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1 that is not true.

2 Q. Back to V4, you were the signer on the V4 bank account,
3 correct?

4 A. I went there with Molly, I don't remember if she signed or
5 not, but I believe I signed on that.

6 Q. So you would have readily had access to those bank records
7 since you were on the account?

8 A. So there's a couple of different things that are there.
9 So all of the wire transfers that I had been sending to Doug's
10 account, the Nex-Gen Inc. account at Wells Fargo, I had no
11 visibility on that. And I wanted to have visibility.

12 So and they -- so when I asked for that, to have access,
13 they wouldn't give me access to the bank accounts. So because
14 they wouldn't give me access to the banks accounts, I said all
15 right, you want more money, I'm going to open up a new bank
16 account.

17 And so we went with Molly to the bank at the base of the
18 hill by the hotel and opened an account there. And that's
19 where I sent the last \$60,000.

20 So it would not be accurate to say that I had access to
21 the bank accounts because that's not true. That entire time,
22 up until I opened that last account, I did not have access.
23 And when I asked for the information, they didn't send it to
24 me.

25 Q. But you would have possibly had access to the V4 Carbon

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1 account since you were a signer?

2 A. Yes, ma'am. That was like somewhere around April in 2017.
3 So everything that happened prior to that, I had no visibility
4 whatsoever.

5 Q. But you had not asked for any of the bank statements?

6 A. Yes, I did.

7 Q. Back to sales. Do you recall Molly reaching out to you
8 several times to try to encourage David to make sales?

9 A. I'm sorry, I missed that. Go ahead.

10 Q. Do you recall Molly reaching out to you several times to
11 try to encourage David to make sales?

12 A. David had several leads that he was following up on. And
13 he had -- he was looking for sales. And Molly was following up
14 with him, that would be accurate, yes.

15 Q. Is it fair to say you were growing dissatisfied with him
16 and you were buying up his shares of his portion of V4?

17 A. I don't think that's true. I think that I was -- so David
18 and Molly, they each had 20 percent of this other entity that
19 we formed. If I was 60, they were 20 each.

20 David -- we weren't having any income, David didn't have a
21 salary. And so he said hey, Allan, could you buy out the
22 shares that I have? I can live off of that, but give me an
23 agreement where I can buy them back at a fair price, so that
24 way I can live and I can go do sales right now. Because he
25 didn't -- unlike Molly and Doug, he didn't have an income.

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1 So the way that he had an income was selling out the
2 shares to me. So we came up with an agreed-upon price, and I
3 was buying him out with the promise that he could buy back in.
4 My understanding was that he was interested in wanting to come
5 back into the company when he could and when sales started
6 happening.

7 So I would not describe it as being the word that you
8 used.

9 Q. Thank you.

10 This pro forma that Mr. Chapman showed you, that was based
11 on the potential projection of sales, correct?

12 A. Which particular document?

13 Q. The pro forma that I believe at the end showed potential
14 earnings of 3.3 million.

15 A. That was a document where, if I'm not mistaken, Molly and
16 I actually sat down and she said, hey, these are the projected
17 sales, these are the projected costs. And if I'm not mistaken,
18 we sat down and went through that together to make sure that I
19 would understand, as an investor, these are the costs involved,
20 these are the expenses, these are -- and so that was a document
21 that I was familiar with, yes.

22 Q. All right. So cost of production, labor, materials, one
23 can pretty much gauge that, correct?

24 A. You would think so, yes, ma'am.

25 Q. Those are relatively known values that you can account

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1 for?

2 A. Yes, ma'am.

3 Q. But then projected sales, that's what they are, they are
4 projected, right?

5 A. Well, one depends on the other. Particularly in our
6 business, we weren't going to produce something without a sale.
7 It was basically you get an order and then you produce it. We
8 weren't just going to produce something and see if someone was
9 going to buy it.

10 So the first number, what would create the entire
11 projection is actually the sales number. And based off the
12 sales number, everything else follows. So no sales, there's no
13 production. If there is no sales, there's no, you know, need
14 for production line or -- so everything follows from the sales
15 number.

16 Q. All right. But there's -- the sales are the variable in
17 that pro forma, because you don't know if your company is going
18 to be able make those projected sales, right?

19 A. What was presented to me at the time was that we had a
20 purchase order from Carbonox. So that wasn't a, you know,
21 we'll see if somebody is going to buy from us or, you know, we
22 think that 1 percent of the country is going to buy this
23 product from us. So you know, 1 percent of 300-something
24 million people is -- it wasn't that kind of a speculation.

25 They presented me with a purchase order from Carbonox

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1 saying we have this specific company giving us this specific
2 purchase order for this specific amount of product, 2,000 tons
3 a month. After three months, 4,000 tons a month. And then
4 after that, 10,000 tons a month at a specific price, being \$95
5 a ton.

6 So it was -- those numbers were very specific off of very
7 specific information that they presented to me.

8 Q. You sent Ms. McKinnon -- or Molly an email back in
9 December of 2016, and it was about a list of capital expenses
10 that you and her had discussed.

11 MS. LEWIS: Can I get --

12 A. Can we put that on the screen? Or can I --

13 Q. Yes, it's coming, sir.

14 A. Thanks.

15 Q. We're trying to find it, sir.

16 Do you recall that a boom truck was listed in that? Do
17 you ever recall that communication?

18 A. I don't recall. I would have to see it. But I know that
19 in order to -- I'll try to help you. In order to make char or
20 wood chips, which were the two products that I understood could
21 be produced, you had to have some kind of -- you could get
22 there through two products. You can either start with coal or
23 get there from wood.

24 So either you can take coal and you heat it up in this
25 process and all the -- I don't know the technical terms, but

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1 all the bad stuff comes out.

2 And on the -- or you can start from wood. You lose a lot
3 more in moisture, but you can get there through wood also.

4 So I understand that if you're buying wood, you're either
5 going to buy trees or you're going to buy wood chips.

6 If you're buying trees, you need to chip it and then put
7 it in a machine. If you're going to have trees, big pieces of
8 lumber, you need the ability to move that.

9 So if there was some kind of list of equipment needed to
10 pick up a big piece of lumber, I would have thought that would
11 be normal in the operation. I don't know if that answers your
12 question.

13 Q. It does. Thank you.

14 So you were aware that logging was going on and wood
15 products were being used as well?

16 A. No, those are two different things. For me, if you're
17 going to buy an end product or a raw material, I understood
18 that we were purchasing raw material.

19 But logging, going out and cutting down trees, that is a
20 completely different activity that was never expressed to me at
21 any given time.

22 Q. As you described, if wood chips are used to create a char
23 product as well, you knew that was going on?

24 A. Yes, ma'am. There is a big difference between buying
25 what -- you know, a used telephone pole or buying lumber versus

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1 actually going out and cutting down trees. Cutting down trees
2 is logging. And that was never something that was ever
3 presented to me at any given time.

4 Q. Yes. Exhibit Number 83, that's been marked.

5 MS. LEWIS: May I approach the witness, Your Honor?

6 THE COURT: Yes, ma'am.

7 BY MS. LEWIS:

8 Q. Do you recall --

9 A. Thank you.

10 Q. -- this email, Mr. Deware?

11 A. I'm familiar with this, yes, ma'am.

12 Q. Is a boom truck listed on there?

13 A. Yes, ma'am.

14 Q. Okay. That's used in logging and not coal business; is
15 that correct?

16 A. I'm not familiar with that.

17 Q. You're not familiar with a boom truck being used for
18 logging?

19 A. I don't know what a boom truck is. For me, I don't know
20 exactly how that works or what that is.

21 But what I understand, that they needed equipment to move
22 logs on the property to create wood chips. And the wood chips
23 would go into the kiln and it would be turned into carbon
24 products.

25 Q. So they did make you aware that that was going on?

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1 A. I knew that we had -- we were purchasing wood and that
2 wood was being turned into two products, wood chips and char.
3 At no given time was I being made aware that there was some
4 kind of a logging operation going on.

5 I mean, if you showed me -- from -- I don't know exactly
6 what a boom truck is, but I understand that's what they were
7 using to move trees on the property. So if that's --

8 Q. Thank you.

9 MS. LEWIS: May I retrieve the exhibit, Your Honor?

10 THE COURT: Yes, ma'am.

11 MS. LEWIS: I would move to introduce this as Defense
12 Exhibit Number 83, Your Honor.

13 THE COURT: Any objection?

14 MR. CHAPMAN: No, Your Honor.

15 THE COURT: Defense Exhibit 83 will be admitted.

16 (Defense Exhibit 83 was admitted.)

17 BY MS. LEWIS:

18 Q. Do you recall in about March of 2017 and April 2017, there
19 were two separate workers' comp accidents?

20 A. I was never made aware of that until after April told me
21 about it.

22 Q. So Molly never notified you of that?

23 A. I'm not aware of that, ma'am.

24 Q. So speaking of April, she made many claims that concerned
25 you; is that fair to say?

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1 A. Yes, ma'am.

2 Q. Were you aware that she believed Mr. Vance was interested
3 in a personal relationship with her?

4 A. She mentioned something about that, yes, ma'am. But being
5 specific, that was when she contacted me, she mentioned
6 something about that, yes, ma'am.

7 Q. Were you aware that Mr. Vance later contacted her to make
8 sure they could still have a good working relationship?

9 A. I'm not aware of all those details, ma'am.

10 Q. So she shared a lot of information with you but not that
11 piece?

12 A. If she did, it wasn't something that was -- I think I was
13 mostly focused on the fact that there was information that --
14 where the money was going, and I don't know that -- I don't
15 know that there was -- like she didn't express like she was
16 trying to like pursue that or anything. It wasn't -- so had
17 she mentioned it? Yes.

18 Did she say at some point that it made her feel
19 uncomfortable? Yes.

20 Was she like pursuing that as her main point? She was
21 pretty focused on the fact that there was multiple people that
22 were -- that Doug and Molly were getting money from. That
23 there was -- and that she saw that basically everything was
24 weird. When the investors would come, telling people not to
25 say things, trying to -- you can't say this, you can't -- like

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1 just that they were pushing lack of transparency and that it
2 was -- I mean, that was really the gist of it.

3 So did she mention that? Yes.

4 Was that the focal point of her communication? No.

5 Q. Do you recall her stating to you that she would try to
6 think of anything and everything that could help in getting him
7 locked up?

8 A. I think that she was -- that could have been something
9 that would have been in the gist of something she may have
10 said. That doesn't -- that's not really my focus though.

11 Q. So is it possible these claims she was making was coming
12 from having a personal grudge or vendetta against Mr. Vance?

13 A. I can't speak to Ms. April. What I can speak to is facts
14 that, you know, they sent me a bank document -- you know, they
15 sent me the books saying one thing and the bank document says
16 something else, I can speak to that.

17 But speaking to some kind of personal relationship there
18 or what her state of mind was, you would have to ask her.

19 Q. All right. As to the books, since you just hit upon that,
20 what we saw was for V4 Carbon, correct?

21 A. That was for the entire operation. For example, V4 Carbon
22 wasn't formed when I made that very first investment of 30 and
23 then \$50,000. That wasn't formed until the spring of 2017.
24 But the books that you'll see there go back to the very
25 beginning. So that would be a description of the entire

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1 operation from start to finish.

2 Q. But the handwritten operating agreement did precede you
3 sending your initial deposit of the 30,000, correct?

4 A. Yes, I formed -- we signed a document -- there was a
5 number of documents signed. So I'll try to be a little more
6 specific on that.

7 When I was in here with Molly and Doug, with David, Molly
8 and I and Doug, we signed documents previous to my first
9 investment. And that was done on like a yellow lined sheet of
10 paper with the idea to have, you know, a gentlemen's agreement
11 or ladies and gentlemen's agreement of how the business was
12 going to operate.

13 I felt pretty comfortable with that. I'm not a lawyer but
14 I understand that, you know, what people put in writing and
15 sign, that's a fair representation of an agreement.

16 Q. I'm going to show you what's been marked as Defense
17 Exhibit 106, just a handwritten agreement. I apologize for the
18 clarity, sir.

19 A. No worries. I have to say it is a little hard to read.
20 But I recognize the document. I don't know that I'll be able
21 to read it very well. I think there is a second one, it looks
22 like it's the same thing.

23 Q. Do you recognize those documents?

24 A. Yes, ma'am.

25 Q. What are those?

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1 A. This is basically our agreement of how we would operate.
2 Thanks for giving me a second to read through it. I
3 appreciate it.

4 Q. I believe the first page is the letter of intent for the
5 operating agreement?

6 A. Let me -- if you don't mind, I would like to read it,
7 please.

8 Yeah, the first one says Letter of Intent and Operating
9 Agreement, yes, ma'am.

10 Q. And that was between you and Mr. Vance, Mr. Smith and
11 Ms. McKinnon?

12 A. Yes, ma'am.

13 Q. And what was the purpose of this document?

14 A. This was basically saying we were going forward, that
15 myself, Mr. Smith and Ms. McKinnon together would own
16 51 percent of the company, and Doug would own 49 percent of the
17 company.

18 So where you see collectively here, and it says the word
19 collectively, the 51 percent, when I signed, I was doing that
20 on behalf of that group. That's why we later were going to
21 open up that Egen, for whatever reason we couldn't get opened,
22 and I believe we opened that other entity.

23 Q. You couldn't register Egen because there was a company by
24 that same name already, wasn't there?

25 A. Molly was in charge and I believe that's the reason she

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1 gave to me.

2 Q. So this agreement that you have in your hand, that
3 handwritten agreement, was for Egen, which basically becomes V4
4 Carbon.

5 A. Yes, ma'am. So this has a couple of parts to it. So this
6 is the entire Nex-Gen LLC is what this represents, and what
7 would be the owners of it. 49 percent being Doug and
8 51 percent being the future entity between David Smith, Molly
9 McKinnon and myself. Yes, ma'am.

10 Q. But you, Molly, and David Smith are the ones that formed
11 V4, correct?

12 A. Yes, ma'am, that is what's represented here. And I
13 understand that the document on the -- for the account
14 statement said V4. But really, if you go through what the
15 transactions are that Molly's sending me, it's my initial
16 investment from the very beginning all the way through.

17 And what she's sending me is really, although it says that
18 on the top, it's really Nex-Gen that she was sending to me.
19 Because it shows all of my -- the money that I sent there and
20 what she was representing is the other income and expenses of
21 Nex-Gen.

22 Q. Then there is another part to the handwritten document?

23 A. Yes, ma'am.

24 THE COURT: When you get to the end of this document,
25 we'll take a break for the evening, Ms. Lewis.

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1 A. Give me a moment, please, to read it. I appreciate it.

2 Q. Of course.

3 A. Yes, ma'am, I've read it.

4 Q. And these agreements were your understanding of what you
5 wanted these entities to be, being V4, and then your
6 partnership with V4 with Nex-Gen Industries?

7 A. At that point in time, we thought it was going to be
8 opened up as Egen. And we understood -- and although it wasn't
9 my idea, I came on board and believed that there would be two
10 entities, one that was Doug and the rest of us, and then the
11 other one that was the rest of us.

12 And that rest of us was going to be called Egen. I would
13 be 60 percent owner of that, Molly 20 and David 20. And that
14 entity would own 51 percent of the Nex-Gen Industries LLC
15 Kentucky corporation, that I signed the bill of sale for and
16 all the other documents with Doug.

17 Q. So it's not your testimony that Egen, which becomes V4,
18 was to be the partnership with Nex-Gen Industries, which is
19 Mr. Vance?

20 A. I need to con -- I'm a little confused on the entities.

21 Q. It's confusing.

22 A. Which is why, if you see my email responding when they
23 first came up to this, I was like, why would we want to do
24 that? It's -- so because it's very confusing.

25 Q. So basically it's two different entities. You have, we'll

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1 just call it V4, that is you, Mr. Smith, and Molly. V4 was
2 intended to be a partner with Nex-Gen Industries, which is
3 owned by Mr. Vance.

4 A. It was intended to be the -- one of the two partners in
5 Nex-Gen, Mr. Vance and the Egen entity, which consisted of
6 Molly, David and me.

7 Q. All right. So there was still Nex-Gen Industries over
8 here, and V4, which you were a part of, that then came
9 together?

10 A. And I wish I could check my notes. I would have to go
11 back. I don't remember the details on that right now.

12 Q. All right. I'll move along.

13 So it's your testimony that Molly was the one that
14 registered V4, correct?

15 A. She was in charge of all the administration and finances
16 and that was her responsibility, yes, ma'am.

17 Q. Did your attorney eventually draft the operating
18 agreements for these entities?

19 A. I don't recall, ma'am. I know that at the beginning we
20 couldn't get ahold of him and there was an urgency to send the
21 money, so I sent that. I ended up signing what Molly sent to
22 me.

23 Q. All right.

24 MS. LEWIS: I would move to introduce that exhibit, Your
25 Honor.

1 THE COURT: Well, we're going to take a break for the
2 evening before we do that. I promised or indicated to the jury
3 that when we finished this last document, we would go ahead and
4 recess. So we'll take that up tomorrow morning.

5 MS. LEWIS: Yes, sir. Thank you.

6 THE COURT: Ladies and gentlemen, we will break for the
7 evening. Please be back and be ready to go tomorrow morning,
8 we'll start at 9:00.

9 Before you leave this evening, make sure you put your
10 juror numbers on the front of those notebooks so you'll know
11 which one is which. It will be a little bit easier to get
12 those tomorrow when you come back in.

13 Also, when you leave you can stick your badges on those
14 notebooks.

15 Does anyone need to go back to the jury deliberation
16 before you leave?

17 Do you have any problems going up the stairwell? All
18 right.

19 Dan, is there someone that can accompany them up?

20 All right. If you don't need to go back to the
21 deliberation room and you just want to go ahead out the front
22 door, you can do that, but leave your notebook on your chair.
23 Again, put your number on it. Put your badge -- attach that to
24 your notebook and you can leave those on your seat, and the
25 clerk will collect those and she will bring those back into the

1 deliberation room tomorrow morning before you get here.

2 If you do need to go back, of course go on back and we'll
3 let those jurors go out up through the third floor.

4 Please keep in mind all of those admonitions that you were
5 given previously. I'm not going to repeat all those, but they
6 all do remain in effect.

7 I will remind you that when you go home tonight, I'm sure
8 you are going to have someone in your family that may ask you
9 what you've been doing today. You know you can't talk about
10 the case. You can certainly advise that you've been selected
11 in the jury but you shouldn't talk about the case. And you
12 shouldn't talk to anyone else about the matter and don't, of
13 course, allow anyone to approach you to discuss it.

14 With that admonition, we will see you back tomorrow
15 morning at 9:00. Jury will be excused at this time.

16 (Jury left courtroom at 4:50 p.m.)

17 THE COURT: All right. Let's see if we have any issues to
18 take up outside the presence of the jury tonight.

19 MR. CHAPMAN: Not from the United States, Your Honor.

20 THE COURT: Mr. Darling?

21 MR. DARLING: No, Your Honor.

22 THE COURT: Ms. Lewis, anything else?

23 MR. DARLING: No, Your Honor.

24 MR. CHAPMAN: I'm sorry, Your Honor. I apologize.

25 THE COURT: Yes, sir.

1 MR. ROSENBERG: I did want to bring to the Court's
2 attention a juror that looked to be nodding off a little bit
3 this afternoon. Juror 812, I believe. It was the woman who
4 actually just exited the room, so

5 THE COURT: I didn't notice that, but I will certainly pay
6 very close attention tomorrow to make sure that's not a
7 problem. I'll remind the jury, while the case may seem boring
8 at times, that it's necessary that they fully pay attention.
9 And if necessary, I'll start dropping books, that's my second
10 action I'll take, but I did not notice that this afternoon.

11 Any other issues to take up?

12 MR. ROSENBERG: None, Your Honor.

13 MS. LEWIS: No, sir.

14 THE COURT: The witness will be excused until 9:00
15 tomorrow morning, and we'll start promptly at that time.

16 THE WITNESS: 9:00?

17 THE COURT: 9:00 a.m. tomorrow.

18 THE WITNESS: Yes, sir.

19 THE COURT: We will be in recess.

20 (Proceedings adjourned at 4:53 p.m.)

21 C E R T I F I C A T E

22 I, Linda S. Mullen, RDR, CRR, do hereby certify that
23 the foregoing is a correct transcript from the record of
24 proceedings in this above-entitled matter.

25 /s/Linda S. Mullen
Linda S. Mullen, RDR, CRR
Official Court Reporter

April 20, 2022
Date of Certification

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