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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 -	.	
	.	Thursday, October 6, 2022
DOUGLAS WILLIAM VANCE and	.	
MOLLY IRENE MCKINNON,	.	
	.	JURY TRIAL DAY 3 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 Douglas William Vance:	JEFFREY A. DARLING, ESQ. Nichols Walter PLLC 3120 Wall Street, Suite 210 Lexington, Kentucky 40513
For the Defendant Molly Irene McKinnon:	BRANDI N. LEWIS, ESQ. 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 (Proceedings in open court, October 6, 2022, 8:50 a.m.)

2 THE COURT: All right. Thank you. I have a couple of
3 matters to bring up outside the presence of the jury. Counsel
4 for the United States had asked yesterday about introducing a
5 group of exhibits.

6 Have the parties been able to resolve that particular
7 issue?

8 MR. ROSENBERG: Your Honor, I heard no objection on any
9 specific exhibit at this point.

10 THE COURT: All right.

11 Mr. Darling or Ms. Lewis, what's the defendants' positions
12 on these exhibits? We can go through these individually if you
13 would like.

14 MR. DARLING: Well, there are certain exhibits, Your
15 Honor, I don't have any objection to obviously the authenticity
16 of them. The relevancy at this point, I presume that they will
17 be able to make, otherwise they wouldn't be presenting them.

18 But there are some emails between people that have not
19 testified, that I'm not sure are going to testify, and I'm not
20 sure they would be -- would be relevant just to put in without
21 some background to it or context.

22 I presume they are going to do that. But I would prefer
23 as Agent Hubbuch, if he's going to introduce them -- I don't
24 think that Agent Hubbuch can introduce them.

25 There are a lot of these emails that are between parties

1 that are not necessarily the defendant, or the information is
2 not something that is relevant to the charges that we have. So
3 I don't think Agent Hubbuch can just introduce them all.

4 THE COURT: All right. So we won't be able to introduce
5 these as a group then. We'll just proceed in the normal
6 course.

7 All right. I understand that the parties have been able
8 to agree that one of the witnesses in the case, Jean Lacy, who
9 has some health issues, will be testifying remotely today by
10 video right after the lunch break.

11 Is that still the parties' agreement?

12 MR. CHAPMAN: Yes, Your Honor.

13 MR. DARLING: Yes, Your Honor.

14 MS. LEWIS: Yes, sir.

15 THE COURT: All right. If we're not -- if we haven't
16 completed the witness that's testifying before trial, we'll
17 break. I'll tell the jury what we're planning to do this
18 morning so they won't be too surprised by that procedure.

19 MR. ROSENBERG: Your Honor, on that matter, we informed
20 the witness and the folks coordinating the logistics that our
21 typical lunch breaks have been 12 to 1, and so she's going to
22 be ready, arriving at the office at between 12:15 and 12:30, be
23 ready for a 1:00, at the earliest, we expect. But if the
24 schedule changes, we can inform them.

25 THE COURT: All right. Let me check one other matter.

1 I don't believe my notebook gets up to 114. Madam Clerk,
2 do you have Exhibit 114, Defendants' Exhibit?

3 THE CLERK: Yes, Your Honor.

4 THE COURT: Thank you.

5 All right. I also understand that there was some traffic
6 issues on one of the main arteries coming into the downtown
7 area on Broadway and that we were still waiting for three --
8 waiting for one juror at this point. So hopefully the juror
9 will arrive shortly, but we'll wait a little bit longer if
10 there's a problem getting that juror here.

11 Any other issues to take up before the jury comes in?

12 MR. CHAPMAN: Not from the United States.

13 MS. LEWIS: No.

14 MR. DARLING: No, Your Honor.

15 THE COURT: All right. Thank you. We will be in recess
16 to await all jurors being present.

17 (Recess taken from 8:55 a.m. to 9:06 a.m.)

18 THE COURT: Good morning, everyone. The record will
19 reflect that the defendants are present in the courtroom,
20 counsel are also present at this time.

21 I have just a couple of housekeeping matters to review
22 with you before we continue with the testimony in the case.

23 Yesterday there were a couple of exhibits that were shown
24 to witnesses. One was introduced after you had already left,
25 counsel asked that it be -- moved for its introduction, and

1 there's no objection to that. It's Defendants' Exhibit 114,
2 which is a checking account statement from Bank of America. So
3 that document has been admitted and it will be available for
4 your review when you deliberate on the case. Madam Clerk, I'm
5 going to return that to you.

6 And then second, we do have a witness that has some health
7 issues and won't be able to travel to testify live but will be
8 testifying later today by video. What we're planning to do is
9 during the lunch break, we'll set up the video connection here.
10 So if we're not finished with whoever is testifying when we
11 break for lunch, we'll resume that testimony after this witness
12 testifies by video. So it may be necessary to take the witness
13 out of order just a bit. I expect it will probably be an hour
14 or so for that video.

15 And so after we finish, we'll need to take another break
16 at that point to take the video screen out of the witness box
17 so the next witness will be able to testify. So we'll try not
18 to break things up too much for you, but I did want to alert
19 you that's the way we would be proceeding later today.

20 I believe we had just finished with a witness,
21 Mr. Chamblee, when we recessed last night. And I believe we're
22 ready for the next witness.

23 Mr. Chapman, will you be calling the next witness?

24 MR. CHAPMAN: Yes, Your Honor.

25 THE COURT: Thank you. You can proceed at this time.

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1 MR. CHAPMAN: The United States calls Mendie Hogan.

2 THE COURT: Thank you.

3 **MENDIE HOGAN, GOVERNMENT WITNESS, SWORN**

4 THE COURT: Thank you.

5 Mr. Chapman, you may proceed.

6 MR. CHAPMAN: Thank you, Your Honor.

7 MENDIE HOGAN

8 DIRECT EXAMINATION

9 BY MR. CHAPMAN:

10 Q. Good morning, ma'am.

11 A. Good morning.

12 Q. Would you please state your name and spell your last name
13 for our court reporter?

14 A. Mendie Hogan, spelled H-o-g-a-n.

15 Q. What city and state do you currently live in, Ms. Hogan?

16 A. I live in Dunwoody, Georgia.

17 Q. Is that near the Atlanta area?

18 A. It is.

19 Q. How are you employed?

20 A. I serve the Shumard Family Office as an accountant, as
21 unofficially their CFO.

22 THE COURT: Let's see if we can turn up the speaker a
23 little bit in case anyone is having a hard time hearing. Thank
24 you -- the microphone. Excuse me.

25 Q. Can you tell the jury in general terms what you do in your

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1 employment for the Shumard Family Office?

2 A. Yes. I do the accounting, most of the accounting. We
3 have a part-time accountant that also does accounting.

4 I coordinate investments with our attorney's office, with
5 our CPAs that do the tax returns. And being a small office, I
6 just do basically whatever needs to be done. I help make sure
7 things get done.

8 Q. What's your educational background?

9 A. I have a degree, a bachelor's in accounting.

10 Q. Are you a CPA?

11 A. I became a CPA out of college, but then I left the CPA
12 world so I did not keep it up.

13 Q. How long have you been employed there at Shumard Family
14 Office?

15 A. I've been working there for 15 years.

16 Q. Is there a core team of people there?

17 A. There is. Ken Shumard, Gary Chamblee and myself are the
18 core team, yes.

19 Q. How do the three of you all typically divide up your roles
20 and responsibilities?

21 A. Well, Ken Shumard is the patriarch of the family that we
22 serve. And he is -- he kind of sets the goals and how we --
23 how he would like for those to be achieved.

24 And Gary is more the operations person. He kind of sets
25 out how we're going to accomplish those goals and makes plans.

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1 And also troubleshoots when things don't go the right way.

2 And then I help administratively with keeping track of
3 things, making sure we have documents, making sure things are
4 recorded, and tax returns are done and filings are done on time
5 and things like that.

6 Q. Through your employment at Shumard, did you come to know
7 two individuals named Doug Vance and Molly McKinnon?

8 A. I did.

9 Q. How did you first come to know them?

10 A. I first was aware of them when they came in the office and
11 were meeting with Gary and Ken, but I did not meet them then.
12 I met them subsequent to that time, a meeting in our office
13 after we had already invested.

14 Q. So at some point you did meet them in person?

15 A. Yes.

16 Q. But that was after Shumard had invested?

17 A. Yes.

18 Q. What was your understanding of the business relationship
19 between the Shumard Office and Mr. Vance and Ms. McKinnon?

20 A. The business relationship was we created an LLC, and
21 Shumard -- the Shumard Group held 51 percent of that and Doug
22 and his interests held 49 percent of that.

23 And the goal was to -- to take product, wood or coal
24 products, and then Doug had created a process where you would
25 heat them and process them and turn them into a new product, I

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1 think we called it biochar. And then we would sell that for a
2 profit.

3 Q. The LLC that you mentioned --

4 A. Yes.

5 Q. -- do you remember the name of that?

6 A. NexGen Energy Partners.

7 Q. And you mentioned the Shumard Office held 51 percent?

8 A. Yes.

9 Q. Was that important?

10 A. Yes. We -- when we invest money, we like to make sure we
11 had some control over the entity.

12 Q. I would like to show you a document previously marked as
13 Government's Exhibit 702.

14 MR. CHAPMAN: Can we scroll through this document for her?

15 Q. Ms. Hogan, did you see those various documents there?

16 A. I did see them.

17 Q. Did you recognize those?

18 A. Yes.

19 Q. Those various legal documents related to the creation of
20 NexGen Energy Partners?

21 A. Uh-huh, yes.

22 Q. Were they true and accurate copies of those?

23 A. Yes.

24 MR. CHAPMAN: Your Honor, I would move the admission of
25 Government's Exhibit 702.

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1 THE COURT: Any objection?

2 MS. LEWIS: No objection.

3 MR. DARLING: No objection.

4 THE COURT: United States Exhibit 702 is admitted.

5 (United States Exhibit 702 was admitted.)

6 MR. CHAPMAN: If we could go back to the first page?

7 BY MR. CHAPMAN:

8 Q. Ms. Hogan, what is this document?

9 A. This is where the IRS issued our employee identification
10 number for the entity.

11 Q. Are you familiar with what an employer identification
12 number is?

13 A. Yes.

14 Q. What is it?

15 A. It's the number that -- a unique number to our LLC that
16 the IRS uses to identify us. And then we use that number to --
17 on our tax return and any filings with IRS.

18 Q. So it's a number you need for tax purposes?

19 A. Yes.

20 MR. CHAPMAN: Can we scroll to the next part of the
21 document?

22 Q. Ms. Hogan, what is this document?

23 A. This is where -- it was formed in the state of Delaware,
24 the LLC.

25 Q. And do you see the date that the LLC was formed?

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1 A. The 15th day of November, 2016.

2 MR. CHAPMAN: Can we scroll to the next document?

3 Q. Similar question here, Ms. Hogan. What is this?

4 A. This is the Certificate of Formation.

5 Q. Dated November 11th, 2016?

6 A. Yes.

7 Q. And same here, Ms. Hogan, what is this?

8 A. This is our certificate of authority for the state of
9 Georgia.

10 Q. So the first document indicated it had been legally formed
11 in the state of Delaware?

12 A. Yes.

13 Q. And so what purpose is a certificate of authority from
14 Georgia serving?

15 A. This is when -- I'm looking at the date, 2018. It means
16 we're kind of -- we have authority to run the business in
17 Georgia, in the state of Georgia.

18 Q. All right. Thank you.

19 Ms. Hogan, was there something additional?

20 A. We did this when we kind of took over running the business
21 from it being run up in Kentucky.

22 Q. Okay. And we'll come back to that later in your
23 testimony.

24 A. Okay.

25 Q. But this document is dated?

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1 A. April 18th, 2018.

2 Q. And the previous documents were in 2016?

3 A. '16, yes.

4 Q. Ms. Hogan, so you're aware that the Shumard Family Office
5 became involved in a business venture with Mr. Vance and
6 Ms. McKinnon?

7 A. Yes.

8 Q. How were you involved with that?

9 A. I was able -- it's common when the Family Office makes
10 investments, sometimes we can invest a little alongside. And I
11 was able to make a \$10,000 investment personally.

12 Q. As part of that business endeavor, would you have
13 communication with Mr. Vance and Ms. McKinnon?

14 A. Yes, primarily Ms. McKinnon.

15 Q. How would you typically communicate with either of them or
16 Ms. McKinnon specifically?

17 A. Typically through email.

18 Q. On average, how often would you say you exchanged emails?

19 A. Maybe -- maybe weekly or every two weeks or so.

20 Q. What was your understanding of the division of
21 responsibility between Mr. Vance and Ms. McKinnon in the
22 business?

23 A. My understanding was that he was operating the equipment
24 and managing the -- as they -- how much they would buy, how
25 much they would produce, and the sales relationships.

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1 And that Ms. McKinnon was managing administratively the
2 office, the accounting, paying bills. Making arrangements, any
3 arrangements they need to, filing with the local, state
4 authorities, like occupational tax, doing the payroll. All of
5 that.

6 Q. So it sounds like Ms. McKinnon's responsibilities lined up
7 more closely with your own responsibilities?

8 A. Yes.

9 Q. Would Ms. McKinnon periodically send you documents?

10 A. Yes.

11 Q. What would be some of those documents she would send you?

12 A. Typically the status of inventory. Also she created a
13 cost of goods sold report with a calculated -- how much it cost
14 to create those -- the goods that we sold.

15 Q. Would she send you things like bank statements?

16 A. Yes, she sent bank statements as well.

17 Q. I would like to show you a document previously marked as
18 Government's Exhibit 701.

19 Do you see this on your screen, ma'am?

20 A. Yes.

21 Q. Do you recognize this?

22 A. I do.

23 Q. What is this, generally?

24 A. This is a bank statement for the Nex-Gen Industries
25 account --

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1 Q. Is this --

2 A. -- at Wells Fargo.

3 Q. Is this a statement Ms. McKinnon would have sent to you?

4 A. Yes.

5 Q. Does this appear to be a true and accurate copy of what
6 Ms. McKinnon sent to you?

7 A. Yes.

8 MR. CHAPMAN: Your Honor, I would move the admission of
9 Government's Exhibit 701.

10 THE COURT: All right. Any objection?

11 MS. LEWIS: No objection.

12 THE COURT: United States Exhibit 701 is admitted.

13 (United States Exhibit 701 was admitted.)

14 MR. CHAPMAN: If we can focus in on the top area of the
15 document?

16 BY MR. CHAPMAN:

17 Q. Ms. Hogan, what bank is this statement from?

18 A. Wells Fargo.

19 Q. And is that a bank that you're familiar with?

20 A. Yes.

21 Q. How are you familiar with it?

22 A. It's a commonly known national bank.

23 Q. Do you have other business involving Wells Fargo?

24 A. No, we don't.

25 Q. Did the banking in this case at least in part involve

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1 Wells Fargo?

2 A. Well, this was not our account, this was the account of
3 Doug's LLC, his own company.

4 Q. So what is the account name indicated?

5 A. Nex-Gen Industries. That was Doug's company.

6 Q. That's a separate entity from the LLC that you were part
7 of?

8 A. Yes. It actually was an owner of our company, it was how
9 he owned part of our company. And then the assets of his
10 company were contributed to our LLC, so then it became owned by
11 our LLC. But it wasn't the bank account of our LLC.

12 Q. Why would Ms. McKinnon be sending you a bank statement of
13 this entity?

14 A. Well, because it was contributed as an asset to our LLC.
15 It was on our books, and so we needed to have the bank
16 statements to reconcile those.

17 MR. CHAPMAN: Ms. Poynter, if we could go to page 65 of
18 this exhibit?

19 Q. Ms. Hogan, do you see a date range listed on this bank
20 statement?

21 A. Yes, February 1st, 2017 to February 29th, 2017.

22 Q. Ms. Hogan, does the date February 29th, 2017 actually
23 exist?

24 A. No, it does not.

25 Q. I would now like to show you a document previously marked

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1 as Government's Exhibit 710.

2 Do you see the document on your screen?

3 A. Yes.

4 Q. Have you been able to review it?

5 A. Yes.

6 Q. Is this an email you received from Ms. McKinnon?

7 A. Yes.

8 Q. Is it a true and accurate copy of that email?

9 A. Yes.

10 MR. CHAPMAN: Your Honor, I would move the admission of
11 Government's Exhibit 710.

12 THE COURT: Any objection?

13 MS. LEWIS: No objection, Your Honor.

14 THE COURT: United States Exhibit 710 is admitted.

15 (United States Exhibit 710 was admitted.)

16 BY MR. CHAPMAN:

17 Q. Now, Ms. Hogan --

18 MR. CHAPMAN: If you'll scroll down?

19 Q. Do you see the email on your screen, Ms. Hogan?

20 A. I do.

21 Q. Who does it indicate it is from?

22 A. Molly McKinnon.

23 Q. And the email address listed there, do you recognize that
24 as one Ms. McKinnon would use?

25 A. Yes.

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1 Q. And the "to" line, who does it indicate it is to?

2 A. To Mendie Hogan.

3 Q. And that's you?

4 A. Yes.

5 Q. And is that email address listed there an email address
6 that you use?

7 A. Yes.

8 Q. Now, without reading the email word for word, can you
9 summarize for the jury what Ms. McKinnon is expressing to you
10 here?

11 A. She was getting bank statements to me and she was saying
12 there was some transactions that weren't posted to QuickBooks
13 and they are company related, and Doug had used his debit card
14 and she needed to get receipts for backup.

15 Q. So she is sending you those Nex-Gen Industries bank
16 statements via this email?

17 A. Yes.

18 MR. CHAPMAN: If we could go to page 8 of this exhibit?
19 Zoom in at the top again.

20 Q. Similar question here. Is this a bank statement that was
21 included in this email from Ms. McKinnon to you?

22 A. Yes.

23 Q. And as I asked you before, does the end of that date range
24 listed actually exist?

25 A. No, it does not.

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1 Q. I would now like to show you a document previously marked
2 as Government's Exhibit 707.

3 Can you see this document, ma'am?

4 Sorry. Do you now see the document on your screen, ma'am?

5 A. I do.

6 Q. Do you recognize this?

7 A. Yes. It looks like -- yeah, it's financial statements for
8 NexGen.

9 Q. Is this a true and accurate copy of one of those financial
10 statements?

11 A. It appears to be.

12 MR. CHAPMAN: Your Honor, I would move the admission of
13 Government's Exhibit 707.

14 THE COURT: Any objection?

15 MS. LEWIS: No objection.

16 THE COURT: United States Exhibit 707 is admitted as well.

17 (United States Exhibit 707 was admitted.)

18 BY MR. CHAPMAN:

19 Q. Ms. Hogan, if we can walk through this? First of all,
20 what is the date range listed at the top of this?

21 A. For the year 2017.

22 Q. The calendar year 2017?

23 A. Yes.

24 Q. Do you see a number indicated as income from sales?

25 A. Yes.

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1 Q. What is that number?

2 A. 1.7 million.

3 Q. What did that indicate to you?

4 A. That indicated we had sold product in the amount that
5 totaled 1.7 million for the year.

6 Q. Do you see a line marked gross profit?

7 A. I do.

8 Q. And what is that number?

9 A. 900,000.

10 Q. What does gross profit indicate to you?

11 A. That indicates the sales. And then you subtract the cost
12 of those sales, the cost that it took to create those sales,
13 and then you get your profit on that product.

14 MR. CHAPMAN: If we can scroll down to the end of this?

15 Q. Do you see the very last line of the spreadsheet,

16 Ms. Hogan?

17 A. Yes.

18 Q. Is that labeled Net Income?

19 A. Yes.

20 Q. What is the number there?

21 A. \$100,000.

22 Q. And what does that number indicate to you?

23 A. That means after all the other expenses were taken out,
24 that we still made \$100,000 for the year.

25 Q. I would now like to show you a document previously marked

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1 as Government's Exhibit 713.

2 Ms. Hogan, do you see that document on your screen?

3 A. Yes.

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

5 Ms. Hogan, have you been able to review it?

6 A. Yes.

7 Q. Do you recognize this document?

8 A. Yes.

9 Q. Generally speaking, what is this?

10 A. This is a copy of where Molly emailed me some invoices and
11 another bank statement.

12 Q. Is this a true and accurate copy of that communication?

13 A. Yes.

14 MR. CHAPMAN: Your Honor, I would move the admission of
15 Government's Exhibit 713.

16 THE COURT: All right. Any objection?

17 MS. LEWIS: No objection.

18 MR. DARLING: No objection.

19 THE COURT: United States Exhibit 713 is admitted.

20 (United States Exhibit 713 was admitted.)

21 MR. CHAPMAN: If we can focus on the email from
22 Ms. McKinnon?

23 BY MR. CHAPMAN:

24 Q. Ms. Hogan, what is Ms. McKinnon expressing to you here?

25 A. She's expressing that she wants to send me bank statements

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1 and some invoices she submitted for payment. And that Doug is
2 going to bring some more invoices when he goes home again, back
3 from when he goes home.

4 Q. We've talked quite a bit this morning about the bank
5 statements.

6 What was your understanding of the invoices?

7 A. That is -- they are bills, basically, that we bill people
8 when we sell them product, then they pay the invoice. And
9 that's how we get paid for the product.

10 Q. I would now like to show you a document previously marked
11 as Government's Exhibit 714.

12 Ms. Hogan, have you been able to see this document?

13 A. Yes.

14 Q. Is this another email from Ms. McKinnon to you?

15 A. Yes.

16 Q. With attachments?

17 A. Yes.

18 Q. Is this a true and accurate copy of that communication?

19 A. Yes.

20 MR. CHAPMAN: Your Honor, I would move the admission of
21 Government's Exhibit 714.

22 THE COURT: Any objection?

23 MS. LEWIS: No objection.

24 THE COURT: Exhibit 714 is admitted.

25 (United States Exhibit 714 was admitted.)

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1 BY MR. CHAPMAN:

2 Q. Now, similarly, Ms. Hogan, can you describe for the jury
3 what's being communicated to you in this email?

4 A. She's sending me more bank statements. And that's
5 essentially what she's doing.

6 Q. I would now like to show you a document previously marked
7 as Government's Exhibit 716.

8 Ma'am, do you recognize this document?

9 A. Yes.

10 Q. What is this, generally speaking?

11 A. It is a bank statement from Whitaker Bank.

12 Q. Who is the account holder?

13 A. NexGen Energy Partners.

14 Q. Is this a true and accurate copy of the banking records
15 for NexGen Energy Partners?

16 A. Yes.

17 MR. CHAPMAN: Your Honor, I would move the admission of
18 Government's Exhibit 716.

19 THE COURT: Any objection?

20 MR. DARLING: No objection.

21 MS. LEWIS: No objection.

22 THE COURT: Exhibit 716 is admitted.

23 (United States Exhibit 716 was admitted.)

24 BY MR. CHAPMAN:

25 Q. Ms. Hogan, at the very top of the page, do you see a bank

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1 listed there?

2 A. Yes, Whitaker Bank.

3 Q. And did you know NexGen Energy Partners, LLC to have an
4 account at Whitaker Bank?

5 A. Yes.

6 Q. And do you see NexGen Energy Partners listed there as the
7 account name?

8 A. Yes.

9 Q. I would now like to show you a document marked as
10 Government's Exhibit 717.

11 Do you recognize this document, ma'am?

12 A. Yes.

13 Q. Again, generally speaking, what is this?

14 A. It's a bank statement for NexGen Energy Partners, the bank
15 is Bank of America.

16 Q. And is this a true and accurate copy of the bank records
17 for NexGen Energy Partners at Bank of America?

18 A. It appears to be.

19 MR. CHAPMAN: Your Honor, I will move the admission of
20 Government's Exhibit 717.

21 THE COURT: Any objection?

22 MS. LEWIS: No objection.

23 THE COURT: Exhibit 717 is admitted.

24 (United States Exhibit 717 was admitted.)

25 BY MR. CHAPMAN:

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1 Q. Ms. Hogan, in the top left, do you see a bank listed?

2 A. Yes.

3 Q. Which bank is that?

4 A. Bank of America.

5 Q. And similarly, what is the account name on this?

6 A. NexGen Energy Partners.

7 Q. Now, why would NexGen Energy Partners have an account at
8 Whitaker Bank and an account at Bank of America?

9 A. It had to do with Whitaker Bank was a very small bank and
10 it was local. And we needed an account that -- where the
11 employees could get their checks cashed. Because a lot of them
12 did not have bank accounts so they wanted to just cash their
13 checks. So we needed to have an account at the local bank that
14 would enable them to do that.

15 The Bank of America account was supposed to be kind of our
16 main operating account.

17 Q. Now, Ms. Hogan, do you remember investing, I believe you
18 said, \$10,000 --

19 A. Yes.

20 Q. -- of your personal money; is that correct?

21 A. Yes. Yes.

22 Q. What was your relationship like with Mr. Vance and
23 Ms. McKinnon at the beginning of this business endeavor?

24 A. It was completely professional and cordial.

25 Q. How often would you all be in communication about the

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1 business?

2 A. Me -- Gary was more -- in communication more frequently.

3 Me, it was more on an as-needed basis for accounting and
4 moving money. When they needed -- when they needed money for
5 operating the business, they would request, usually it came
6 through an email from Molly.

7 Q. To you?

8 A. To me. Often, maybe me and Gary. Yeah.

9 Q. Were you under the impression that they were selling
10 product?

11 A. Yes.

12 Q. Why were you under that impression?

13 A. We were told, we were told they were selling product and
14 they were invoicing. And when the money came in, they said it
15 was from sales.

16 Q. Who specifically would represent to you that?

17 A. Let's see. I think it would be Molly with like the copies
18 of invoices. Yeah.

19 Q. I would like to show you an exhibit previously marked as
20 Government's Exhibit 152.

21 Do you see this document?

22 A. I do.

23 Q. Generally speaking, what is this?

24 A. This is where she's providing details on sales, either
25 trying to sell product or sales that had been made.

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1 Q. Is this a true and accurate copy of the email that you
2 referenced from Ms. McKinnon?

3 A. Yes.

4 MR. CHAPMAN: Your Honor, I would move the admission of
5 Government's Exhibit 152.

6 THE COURT: All right. Any objection?

7 MS. LEWIS: No objection.

8 MR. DARLING: No objection.

9 THE COURT: United States Exhibit 152 is admitted.

10 (United States Exhibit 152 was admitted.)

11 MR. CHAPMAN: If we can scroll ever so slightly?

12 BY MR. CHAPMAN:

13 Q. Ms. Hogan, do you see where it says forwarded message near
14 sort of the upper third of the screen?

15 A. Yes.

16 Q. That's indicating that you received this email; is that
17 correct?

18 A. Yes.

19 Q. From whom?

20 A. From Gary Chamblee.

21 Q. And is that an email address that you know Mr. Chamblee to
22 use?

23 A. Yes.

24 MR. CHAPMAN: If we can now scroll down?

25 Q. Do you see the email from Ms. McKinnon here?

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1 A. Yes.

2 Q. What is being communicated in this email?

3 A. That she's providing a spreadsheet with details about
4 sales and product and customers.

5 Q. If I could direct your attention specifically to
6 paragraph 3 of the email.

7 Could you read that into the record?

8 A. Line item number 3?

9 Q. Yes, ma'am.

10 A. Okay. "AK Steel started hauling and should have accepted
11 delivery of their 500 tons within the week and we can invoice
12 them."

13 Q. What did that mean to you?

14 A. That means that the customer, AK Steel, has purchased
15 500 tons, and they are picking it up and hauling it back to
16 their location, and that we're going to invoice them for the
17 sale.

18 Q. Ms. Hogan, through your role in the Shumard Family Office,
19 were you generally aware of the Shumard Office's various
20 monetary infusions into NexGen Energy Partners?

21 A. Yes.

22 Q. What form did those transfers typically take?

23 A. Typically a wire transfer.

24 Q. Explain to the jury what a wire transfer is.

25 A. It's a same day electronic transfer of money from one

MENDIE HOGAN - DIRECT

1 account to another.

2 Q. Were there advantages to using a wire transfer?

3 A. Yes. It's same day, there is no hold on the money. A lot
4 of times we're sending large amounts of money. And if it was
5 deposited as a check, the bank would hold it for, you know, a
6 while, ten days or so.

7 Q. Now, through your role in the Shumard Office, were you
8 aware that at times Mr. Vance or Ms. McKinnon would return
9 money?

10 A. Yes.

11 Q. What do you remember about that?

12 A. They would send a check and the checks were cashier's
13 checks.

14 Q. Explain for the jury what a cashier's check is.

15 A. That's where a bank in these cases would write the check.
16 And they -- so the funds are 100 percent guaranteed from the
17 bank. So when you get a cashier's check, you know it's fully
18 funded and it goes right into your account.

19 Q. Did either Mr. Vance or Ms. McKinnon make representations
20 about the source of the funds in those cashier's checks?

21 A. Yes, they said they were from sales.

22 Q. Do you remember any companies specifically mentioned?

23 A. I remember Cabot.

24 MR. CHAPMAN: If we could show to the witness Exhibit 201,
25 the specific page 163.

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1 Q. Do you recognize this, ma'am?

2 A. Yes.

3 Q. What is this?

4 A. This is a cashier's check for \$107,000.

5 Q. And it's paid to the order of whom?

6 A. NexGen Energy Partners.

7 Q. And what is the amount of the cashier's check?

8 A. \$107,342.

9 Q. Is this a cashier's check that you received from Mr. Vance
10 or Ms. McKinnon?

11 A. Yes.

12 Q. And do you remember specifically any representations about
13 the origin of the 107,000?

14 A. I do. I remember we were told it was from sales to Cabot.

15 Q. Sales of what, do you know?

16 A. Product, some of the product that we produced.

17 Q. If that 107,000 actually came from a loan from Koch
18 Industries, would that be something that you would want to
19 know?

20 A. Definitely.

21 Q. Would that impact your willingness to continue investing?

22 A. Definitely.

23 Q. Why is that?

24 MS. LEWIS: Object, Your Honor.

25 THE COURT: Overruled. You may answer.

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1 A. Well, we would -- we wouldn't have expected that. We
2 wouldn't have known what that was. We would have wanted to
3 know more about that relationship and what was -- what all was
4 going on there. We would have realized something else was
5 going on that we didn't know.

6 Q. Were you aware of any loans from Koch Industries?

7 A. No.

8 Q. As an investor, do you want to know the level of debt the
9 entity you're investing in is in?

10 A. Absolutely.

11 Q. Why is that?

12 A. Well, it's important to the success of the entity and the
13 business.

14 Q. Now, Ms. Hogan, I think you testified a moment ago, at the
15 beginning of your relationship, things were very professional,
16 I believe was the word you used; is that correct?

17 A. Yes.

18 Q. Did things ultimately change in your relationship with
19 Mr. Vance and Ms. McKinnon?

20 A. Yes.

21 Q. Please describe for the jury what happened.

22 A. Things just weren't going well after the first year. We
23 seemed to be having sales and making profit and things were
24 going well.

25 And then -- then there was this large stockpile of product

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1 created and then it was moved to the docks. It wasn't being
2 sold. And we were trying to find out -- you know, things just
3 weren't going like they used to go. So then we were trying to
4 find out where is this coal. And then it was reported that it
5 was put on a train and being shipped back to our -- our
6 location in Kentucky.

7 And that was basically where -- all of our investment was
8 tied up in that inventory.

9 So we were trying to get a handle on it, trying to find
10 out where it was, how much it was worth. We were able to get
11 Doug to hire, to engage someone to value the coal. And through
12 that process, we were able to locate the coal and then
13 subsequently learned that the coal was not our coal. So then
14 we found out that basically we had nothing.

15 And also Molly reported that she had taken all of the
16 records of the company and put them on a flash drive in the
17 house where she was living. And then she reported that the
18 house burned down so then all of our company records were gone.

19 When that all happened, we realized things were not well.

20 And also somewhere in this, the FBI called and said there
21 was a problem.

22 Q. What steps did you take after these incidents and after
23 being contacted by the FBI?

24 A. We -- we tried to reign in things. We decided not to put
25 any more money in the company. The only money that we would

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1 pay would be from money we got back from the company, and just
2 we needed it for payroll. Sales that came in, we used that to
3 pay payroll.

4 We also removed Molly from manager and put Gary as
5 manager. Those were the things that I can think of right now.

6 Q. Aside from the various individuals and entities associated
7 with Shumard and Mr. Vance and Nex-Gen Industries, were you
8 aware of any other investors in this project?

9 A. No.

10 Q. If there were other investors, would that have impacted
11 your willingness to invest?

12 A. Definitely.

13 Q. Why?

14 A. Well, we would have liked to have known who they were. We
15 like to try to do business with people that we know. We would
16 like to try to maintain control of the business, especially a
17 startup where it's very risky. So if there was another party
18 in there, we -- that would have changed all of those dynamics.

19 Q. Did you have an expectation that any documents or
20 financial statements sent to you were accurate?

21 A. Yes.

22 Q. Why is that?

23 A. Well, we trusted them, that they were who they said they
24 were and doing what they said they were doing.

25 Q. Do you depend on honesty?

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1 A. Yes.

2 Q. If alterations had been made to documents to disguise
3 money coming in as money from sales, would that have been
4 something you wanted to know?

5 A. Yes.

6 Q. Why?

7 A. Well, that would have meant that the business was not
8 really operating as we expected and we would have wanted to
9 know that to make decisions on whether to continue putting
10 money in and going forward with it.

11 Q. When you would be told that sales of product were
12 occurring, what effect did that have on you?

13 A. Well, it encouraged us to continue with the project and to
14 continue putting money into it.

15 Q. Ms. Hogan, have you made a calculation of the total amount
16 of money, the approximate amount of money, that entities
17 associated with the Shumard Family Office put into NexGen?

18 A. Uh-huh.

19 Q. What is that number?

20 A. Approximately \$1.1 million.

21 Q. Ms. Hogan, did things ultimately end in the business
22 relationship with Mr. Vance and Ms. McKinnon?

23 A. Yes.

24 Q. What do you remember about the end of the relationship?

25 A. Well, as I said before, we removed Molly from manager. We

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1 instructed Doug not to operate his machines anymore, but we
2 really could not control that.

3 It turned out that the lease we were paying was actually
4 in his company's name so he had control over the lease. So
5 he -- I don't know what he did, but we just really didn't have
6 the control that we thought we had. And we just quit sending
7 money. We filed tax returns. We filed final tax returns and
8 ended it.

9 Q. If you could pinpoint one thing above all others for the
10 reason you ended that business relationship, what would that
11 be?

12 A. Well, lack of trust and honesty in the relationship.

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

14 THE COURT: Yes, sir.

15 MR. CHAPMAN: Thank you. Nothing further at this time.

16 Thank you.

17 THE COURT: All right. Thank you, Mr. Chapman.

18 Mr. Darling.

19 CROSS-EXAMINATION

20 BY MR. DARLING:

21 Q. Good morning.

22 A. Good morning.

23 Q. I'm Jeff Darling, I represent Doug Vance. I have a few
24 questions for you about your relationship with them.

25 You're familiar with the operating agreement that was

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1 created and prepared?

2 A. Yes.

3 Q. What input did you have in that?

4 A. I did a lot of communicating with our attorney, between --
5 I would get emails from Molly and communicate between to set it
6 up.

7 Q. The date in the operating agreement indicates that was
8 effective August 26th, 2016.

9 Does that sound right?

10 A. That sounds right.

11 Q. The signatures at the end of the document, one of those
12 signatures is yours, correct?

13 A. Yes. Yes.

14 Q. Were all of those signatures affixed to that document on
15 August 26th?

16 A. I don't know that they were. A lot of times we get the
17 document and then we send it through email and people sign it
18 and then email it back. And it might be a few different days
19 that they are actually affixed.

20 Q. Would you agree that a completed operating agreement was
21 not sent to Doug Vance until December 2016?

22 A. It's possible. I don't recall.

23 Q. What I would like to ask you is, I want to talk about one
24 of the last things you and Mr. Chapman talked about. You
25 indicated you did a calculation of all the money that it was

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1 put into NexGen Partners, and it was from all sources.

2 A. Uh-huh.

3 Q. \$1.1 million?

4 A. Approximately.

5 Q. Break that down for me. How much each person, et cetera.

6 A. So for myself \$10,000. For Ken Shumard, approximately 7
7 or so, \$700,000. That's loans and equity.

8 Q. We're going to talk about that.

9 A. Okay. And then Gary Chamblee, I don't remember off the
10 top of my head how much he put in. So you're talking about the
11 1.1? Well, there was Creola Holdings.

12 Q. What I want to do is, I mean, you gave this global number,
13 \$1.1 million. You said you did a calculation.

14 A. Yes.

15 Q. I don't see that you have anything with you.

16 A. I don't, I don't have anything with me.

17 Q. And I certainly don't have that.

18 A. Yeah.

19 Q. But I'm very interested in what the breakdown is of that
20 \$1.1 million between Mr. Shumard, Mr. Chamblee, yourself.
21 There's Creola, I believe?

22 A. Creola Holdings is a C corp.

23 Q. And as you indicated, what I want to talk about is, much
24 of that input was in the form of loans?

25 A. Yes.

MENDIE HOGAN - CROSS

1 Q. Okay. Best you can tell me -- I mean, you gave me the
2 number, I would like for you to break it down. You said you
3 yourself \$10,000 in cash?

4 A. Uh-huh.

5 Q. Was that cash or was that a loan?

6 A. Cash.

7 Q. Okay.

8 A. That was equity, yeah.

9 Q. Equity. I'll use the right term.

10 You said Mr. Shumard, was that Mr. and Mrs. Shumard
11 together?

12 A. I think it was just Mr. Shumard.

13 Q. Okay. \$700,000?

14 A. Well, that was loans and equity.

15 Q. How much of each?

16 A. I don't have that in front of me. I really don't remember
17 off the top of my head. I did do a calculation, but I did the
18 calculation to come up with the total. And I just committed
19 the total to memory.

20 Q. Well, the best you can tell me, because --

21 A. I know he -- he was maybe 150,000 in equity, I don't
22 remember. But I know in total, his was about 700,000.

23 Q. So best you can say right now off the top of your head,
24 out of that 700,000, 150,000 of it was in equity?

25 A. Uh-huh.

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1 Q. And the remaining, which would be 600,000, would have been
2 in loans?

3 A. Yes, approximately.

4 Q. How about Mr. Chamblee?

5 A. I don't really think -- I'm guessing, because I don't have
6 the numbers in front of me. I'm guessing what he would put in,
7 so I hate to guess.

8 Q. Okay. Well --

9 A. And there was Creola -- go ahead.

10 MR. CHAPMAN: Your Honor, if she -- if it's just a guess,
11 I'm not sure that's an adequate basis for the testimony.

12 THE COURT: Is that an objection? If that's an objection,
13 I'll sustain the objection. Ask her not to guess.

14 BY MR. DARLING:

15 Q. Do you have an estimate -- well, it sounds like, if
16 600,000 of it was loans from Mr. Shumard, and I believe Gary
17 Chamblee testified yesterday he loaned the company \$200,000.

18 Does that sound about right?

19 A. That sounds about right.

20 Q. So that's about 800,000 in loans between those two
21 entities, Mr. Shumard and Mr. Chamblee --

22 A. Uh-huh.

23 Q. -- right? What about Creola?

24 A. About 300,000.

25 Q. Do you know if that was in equity or loan?

MENDIE HOGAN - CROSS

1 A. I don't remember.

2 Q. Do you remember that it was a combination?

3 A. Yes.

4 Q. What is Creola?

5 A. Creola Holdings is a C corporation. It's one of the
6 entities in the Shumard Family Office.

7 Q. So Creola is a Shumard entity?

8 A. Yes.

9 Q. Were there any other contributors that you are aware of or
10 that you can remember?

11 A. There were -- well, Doug Vance contributed his company,
12 Nex-Gen Industries contributed, not cash.

13 Q. I believe the agreed upon value of that was \$500,000?

14 A. For Doug Vance's part?

15 Q. Yes.

16 A. I don't recall exactly.

17 Q. Anyone else on -- and I'm going to call it the Shumard
18 side, anyone else contribute either equity or loans that you
19 remember?

20 A. No.

21 Q. So it's fair to say, based on your memory, it looks like a
22 significant majority of the money that went in went in as
23 loans?

24 A. Yes.

25 Q. Are loans allowable under the operating agreement?

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1 A. I would think so, yeah.

2 Q. Do you remember off the top of your head? I mean --

3 A. Usually -- I don't remember off the top of my head the
4 exact verbiage, but usually there is -- loans from members are
5 permitted.

6 Q. And if I told you that loans are allowed in section 14.6
7 on page 23 of the operating agreement, which reads, "Loans and
8 advances from Members to Company. In the event that any Member
9 shall lend money to the Company with the approval of the
10 Members by majority vote" -- So that seems to allow that,
11 correct?

12 A. Uh-huh. Uh-huh.

13 Q. Okay.

14 A. Yes.

15 Q. You are a member, correct, of the company? Or you were.

16 A. Excuse me, I remember what?

17 Q. No. Were you a member of the company?

18 A. Oh, yes. I was a member.

19 Q. Did you vote on each one of these loans?

20 A. No.

21 Q. Why not?

22 A. We didn't go through the formal process of voting.

23 Q. Why not?

24 A. Because they needed -- they requested funds and we
25 advanced them. And we said we would do it as a loan, but it

MENDIE HOGAN - CROSS

1 was not done in -- there was not a formal process done.

2 Q. So who are the members of the company?

3 A. Doug, Gary, Ken, Creola Holdings and myself.

4 Q. Who spoke on behalf of Creola, Inc.?

5 A. Ken Shumard.

6 Q. You, Gary Chamblee, and Ken Shumard were the core --

7 A. Yes.

8 Q. -- of your business, I think you put it. You all work out
9 of the same location?

10 A. Yes.

11 Q. Why would it have been difficult to vote on this?

12 A. It wouldn't have been difficult, we just --

13 Q. You just --

14 A. We don't do it in any of our operations. When they say
15 they need money, we advance money. And we just don't go
16 through the process of a formal vote each time.

17 Q. So is it your position that you advanced -- when I say
18 "you," I'm talking about the Shumard side, not just you,
19 advanced loans to the company at the request of whom?

20 A. The operators.

21 Q. And specifically whom?

22 A. It came usually from an email from Molly.

23 Q. And when the money was infused into the company in this
24 process, was Molly informed that it was through -- that it was
25 in the form of a loan?

MENDIE HOGAN - CROSS

1 A. Yes.

2 Q. How so?

3 A. I don't know exactly how so. But she would have needed to
4 know for the books, to record it properly on the books.

5 Q. Were there any -- were any of these supported by
6 promissory notes or other documents signed by people who would
7 benefit from receiving the loan?

8 A. Yes.

9 Q. And who would prepare those documents?

10 A. I did.

11 Q. Tell me about them. I mean, every time one of these loans
12 went through, you prepared -- what did you prepare?

13 A. Well, every time the loans went through, an advance went
14 through, we did not prepare anything. We did it, we recorded
15 it on the books as a loan. We were expecting to get paid back
16 through sales quickly.

17 When that didn't happen, and as part of trying to -- what
18 we did when we found out things were not going well and as we
19 expected, was drafted loan documents to document them.

20 Q. Do you have a listing of the loans that were provided and
21 the dates that that -- here's -- I'm sorry. That was very
22 awkward, I apologize.

23 Do you know the dates of the loans and the dates of any
24 documentation supporting those loans being sent to Molly
25 McKinnon?

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1 A. I do not.

2 Q. Did you ever receive back anything signed by Molly
3 McKinnon indicating that she acknowledged that these were
4 loans?

5 A. Probably not. I wouldn't have needed anything signed by
6 her.

7 Q. Typically wouldn't want a promissory note signed by Molly
8 or somebody on behalf of the company?

9 A. Well, we would have, but just -- I was just thinking as
10 every advance was made, I didn't need a -- something signed by
11 her.

12 But we did get loans eventually, and they were signed by
13 Gary Chamblee, who was the manager at that time.

14 Q. So nothing signed by Molly McKinnon or Doug Vance?

15 A. True, yes.

16 Q. You had a discussion with Mr. Chapman about receiving a
17 cashier's check, 100-and-some odd thousand dollars that was
18 your understanding was based on sales?

19 A. Yes.

20 Q. If you had known that that money was not based on sales,
21 would you have accepted it?

22 A. I -- that's speculative.

23 Q. I'm sorry?

24 A. That's speculative. I don't know. I would have had to
25 have known what the money was for and it would have been -- we

MENDIE HOGAN - CROSS

1 would have decided at that time.

2 Q. If you had not -- if you had known that that money was not
3 from sales, would you have continued the business?

4 A. I don't know. We would have had to reevaluate.

5 Q. How long after you received that money did you, I think
6 you described the process as remove Molly as manager,
7 instructed Doug not to do anything else, and then closed the
8 account and filed a final tax return?

9 A. I don't know the exact time line on when all those
10 happened.

11 Q. Ballpark it for me. I mean, was it within a few months
12 or --

13 A. Are you saying when did I remove -- when did we remove
14 Molly --

15 Q. Yes.

16 A. -- compared to those?

17 Q. We will start with that.

18 A. I know we removed Molly in June of 2018.

19 Q. What kind of time frame is that from when you received the
20 check?

21 A. I really don't remember.

22 Q. I know it was just introduced, but I don't think --

23 A. I don't remember when we received that check.

24 Q. Were any of these loans infused into the company after you
25 received the check, the cashier's check from Molly?

MENDIE HOGAN - CROSS

1 A. Not loans from our members, no.

2 Q. Was any other money infused into the company from the
3 Shumard side besides the loans?

4 A. No. Just the equity and the loans.

5 Q. Now, prior to receiving that cashier's check, Mr. Chamblee
6 testified that for a good length of time, everything seemed to
7 be going fine with the company.

8 Would you agree with that?

9 A. I would agree with that.

10 Q. At what point did you start having concerns?

11 A. We started having concerns, to my memory, when -- when
12 there was the big pile of coal inventory that had been created
13 and then we weren't selling it. And so we knew a lot of our
14 money was tied up in it. And we didn't know why they weren't
15 selling it, and then there was this, where is it? That's when
16 things really, you know, kind of seemed to not be going right.

17 Q. At that point, was that -- up to that point had the, I'll
18 use the global figure \$1.1 million, been infused by the Shumard
19 side, both in terms of equity and loan into the company?

20 A. Most of it would have been. I mean, there may have been
21 some more infusions to make sure payroll was met or some things
22 like that. But we weren't --

23 Q. Those would have been relatively insignificant amounts,
24 20, \$30,000 sort of payments?

25 A. Yes, I would think most of it had been infused by then.

MENDIE HOGAN - CROSS

1 Q. Okay. And you had a concern at the point where this coal
2 pile --

3 A. Uh-huh.

4 Q. We talked about it quite a bit yesterday with
5 Mr. Chamblee. At that point were you concerned enough that
6 there was discussion to stop this business?

7 A. No. Because we still thought we had this big pile of coal
8 that we could sell and do something with.

9 Q. At some point did you realize that big pile of coal was, I
10 don't want to say -- it was not available for sale to support
11 the company?

12 A. Yes, we learned it was not our coal.

13 Q. At the point that you learned that, did you become
14 concerned about the company and began having discussions about
15 wrapping it up?

16 A. We absolutely were concerned about the company.

17 Q. Okay. Other than possible relatively small amounts for
18 payroll and that -- I mean, I hate to talk about 20 or \$30,000
19 as being insignificant or small, other than that, there were no
20 further capital infusions of significant amounts, either
21 through equity or loans?

22 A. I would agree with that.

23 Q. Had Molly just -- I know Mr. Chamblee talked yesterday
24 about making requests for certain information and not getting
25 it and then this check came in. Had Molly told you, we don't

MENDIE HOGAN - CROSS

1 have any money, we're not making any sales, would you have just
2 wrapped up the company at that point?

3 A. We would have had discussions about it.

4 Q. Just to be fair, I want to make sure this is clear in my
5 head, although the operating agreement called for a vote before
6 a loan, you all didn't do that?

7 A. Correct.

8 Q. And you -- I mean, Mr. Vance was a member of the company.
9 Did you -- given that you didn't vote, I'm guessing you also
10 didn't give him any notice that there was going to be a vote
11 about a loan to the company?

12 A. You know, I was not involved in any notice to him. I
13 don't know what conversations Gary might have had with him
14 about money.

15 Q. But certainly you never provided Mr. Vance any written
16 notice of anything like that?

17 A. Not in -- no. I mean, it was in the books, the company
18 books, it was recorded as loans and recorded as equity. So it
19 was in the books. I don't know --

20 Q. But it was in the books after it was done?

21 A. Yes.

22 Q. I mean, there's nothing in the books that say, hey, we're
23 going to -- Mr. Chamblee is going to give this loan of
24 \$200,000 --

25 A. Uh-huh.

MENDIE HOGAN - CROSS

1 Q. -- and we notified Mr. Vance, and either he's okay or he
2 voted one way or the other?

3 A. Yeah.

4 Q. So when you say it's in the books --

5 A. It was recorded.

6 Q. -- it's after the fact?

7 A. Yes.

8 Q. Okay.

9 MR. DARLING: Thank you, ma'am.

10 THE COURT: All right. Thank you.

11 Ms. Lewis.

12 CROSS-EXAMINATION

13 BY MS. LEWIS:

14 Q. Good morning, Ms. Hogan. I'm Brandi Lewis and I represent
15 Ms. McKinnon.

16 A. Good morning.

17 Q. Now, to start in the beginning, isn't it typical when
18 someone creates a new business entity that they start with an
19 operating agreement, immediately obtain the employer
20 identification number?

21 A. Well, theoretically those should all be done at the same
22 time, yes.

23 Q. And registration of the business with whatever appropriate
24 state office?

25 A. Yes.

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1 Q. But that didn't happen here, did it?

2 A. It didn't seem to be.

3 Q. And Molly herself had to request the EIN number, correct?

4 A. I think that we -- I thought our attorney did it when he
5 set up the company. And then at some point it was necessary
6 for something, I don't know if it was a filing that she was
7 doing, and then she asked for it.

8 And then when I discovered that the attorney had not done
9 it, then I think I said, do you want to do it or I can do it,
10 and she said she would do it.

11 Q. And that wasn't done until February 2017, correct?

12 A. That's what I understand.

13 Q. And funding for this business started in August, several
14 months earlier?

15 A. Sure.

16 Q. Funds were being deposited into Mr. Vance's other business
17 account for Nex-Gen Industries, correct?

18 A. Right.

19 Q. So NexGen Energy Partners didn't open a business account
20 until about ten months later; is that your recollection?

21 A. Yes.

22 Q. Is it fair to say that's bad accounting practices or
23 unusual?

24 A. Oh, we had been asking them to open an account for all
25 that time. And we started the initial draws, they said well,

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1 we don't have time to open an account, we need the money right
2 away, so we sent it to the account that they had with the
3 expectation they would open a company account.

4 And then that went on. And we said you need -- you know,
5 after repeated comments that we need -- you need to open that
6 account, we finally opened an account at Bank of America.

7 Q. Were those communications via email? Because I don't
8 recall seeing anything.

9 A. I don't think so. I think it was usually phone call.

10 Q. Mr. Chamblee was considered the tax matters partner, would
11 you agree with that?

12 A. Yes.

13 Q. So wouldn't the onus be on him really to obtain that EIN
14 number?

15 A. You know, I mean the onus is on him to file -- make sure
16 the tax returns get filed, and that we obtained the number in
17 plenty of time to get the tax return filed on time.

18 Q. I want to show you what's been marked as Defense Exhibit
19 Number 93.

20 Can you see this document on your screen?

21 A. Yes.

22 MS. LEWIS: Move to introduce this, Your Honor.

23 THE COURT: Any objection to Exhibit 93?

24 MR. CHAPMAN: No objection.

25 THE COURT: Defense Exhibit 93 is admitted.

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1 (Defense Exhibit 93 was admitted.)

2 BY MS. LEWIS:

3 Q. Can you identify this document, Ms. Hogan?

4 A. It's an email from Molly saying that attached are W-2s and
5 1099s.

6 Q. What was the date of this email?

7 A. May 23rd, 2017.

8 Q. All right. And what -- you said attached are the W-2s and
9 1099s.

10 MS. LEWIS: Can we pull those up, please?

11 Q. What does it state in the employer block of this W-2 form?

12 A. Nex-Gen Industries.

13 Q. And this was supposed to be employees of NexGen Energy
14 Partners?

15 A. You know, I don't really know who the employees were. We
16 also -- our CPAs also did the tax return for Nex-Gen
17 Industries, so it could have been an email about that company.
18 I -- I do not know. This is a 2016 W-2.

19 Q. So wouldn't it have been more appropriate to list these
20 individuals for tax purposes under NexGen Energy Partners and
21 not a minority member's business?

22 A. Yes. If they were working for NexGen Energy Partners,
23 that would have been the appropriate way.

24 Q. Do you recall Molly asking early on for authority to set
25 up payroll service?

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1 A. I really don't.

2 Q. Next I want to show you what's been marked as Defense
3 Exhibit 92.

4 Do you recognize this document, Ms. Hogan?

5 A. Let me see. Yes.

6 Q. All right. What is this?

7 A. This is an email to me from Molly McKinnon.

8 MS. LEWIS: I would move to introduce this exhibit, Your
9 Honor.

10 THE COURT: Any objection?

11 MR. CHAPMAN: No.

12 THE COURT: Defense Exhibit 92 is admitted.

13 (Defense Exhibit 92 was admitted.)

14 BY MS. LEWIS:

15 Q. What is Ms. McKinnon requesting in this?

16 A. She is requesting that, of all the money that we had
17 advanced to the company, to know -- of the equity we had
18 advanced to the company, to know the breakdown by partner.

19 Q. And she attached some QuickBooks reports to this email? I
20 think that's coming up.

21 Do you recall this document?

22 A. It appears to be the 2016 profit and loss for NexGen
23 Energy Partners.

24 Q. And what was the accounting method used for this document?

25 A. Cash basis.

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1 Q. Is that typically what was done with the Shumard Family
2 Group?

3 A. Yes.

4 Q. This reflects sales of about 19,000; correct?

5 A. Correct.

6 Q. And then at the bottom, do you see the loss amount?

7 A. Yes.

8 Q. What is that?

9 A. It's a little blurry, it looks like 200 something 7 --
10 maybe 267,000 -- 280,000, 87,000.

11 Q. Thank you. Then she sends you a second report.

12 This is for the same time frame we just saw, correct?

13 A. Yes.

14 Q. What's the accounting method now?

15 A. Accrual basis.

16 Q. And that's going to affect the numbers --

17 A. Yes.

18 Q. -- significantly, correct? What is the total income now?

19 A. Now it's a loss of 230,000.

20 Q. What's the sales amount? I'm sorry.

21 A. Oh, \$62,000.

22 Q. And you stated the loss amount was 230,000?

23 A. Yes.

24 Q. Then she also sends a third report, that will be coming up
25 on your screen.

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1 This is the same date range as well --

2 A. Yes.

3 Q. -- for this profit and loss statement?

4 A. Yes.

5 Q. And is it still accrual basis?

6 A. Yes.

7 Q. Can you tell the jury now what the loss amount is?

8 A. The loss is \$38,000.

9 Q. Would you -- do you recall that Mr. Chamblee told Molly
10 that he didn't like the numbers and that's why they changed
11 three different times?

12 A. No, I don't recall that at all.

13 Q. But you received all these documents in one day, and you
14 didn't question why they kept changing?

15 A. I don't -- I don't consider them keep changing. There is
16 a cash basis and accrual basis and those are going to be
17 different anyway. That doesn't mean that anything was changed.

18 The two accrual, I mean, I would just have to see what the
19 differences were to know. A lot of times you get financial
20 statements and you see that something was accounted for
21 incorrectly and then you correct it.

22 And then after that, you run more financial statements and
23 it's different because you made changes.

24 Q. The last two we saw, you agree that those are both accrual
25 basis?

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1 A. The first one was cash basis, the second was accrual and
2 the third is accrual.

3 Q. So I understand there would be a difference between cash
4 and accrual basis and what the final numbers are. But the last
5 two reports, as you just stated, are both accrual.

6 A. Accrual, yes. So there had to be an accounting change.
7 And I don't know what the journal entry -- I don't know what
8 was changed.

9 Q. So it's possible Mr. Chamblee could have told her to
10 change something, since he's the tax matters partner, as you
11 established earlier?

12 A. It's possible that Gary said that something wasn't
13 accounted for correctly and to make a change.

14 Q. I'm going to show you next what's been marked as Defense
15 Exhibit Number 1.

16 What is this document, Ms. Hogan?

17 A. This is where I'm sending the NexGen -- the 2016 NexGen
18 Energy Partners tax return to Molly.

19 MS. LEWIS: I'd move to admit this exhibit, Defense
20 Exhibit Number 1.

21 THE COURT: Any objection?

22 MR. CHAPMAN: No.

23 THE COURT: Defendants' Exhibit 1 will be admitted.

24 (Defense Exhibit 1 was admitted.)

25 BY MS. LEWIS:

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1 Q. What is the date of this, Ms. Hogan?

2 A. September 8, 2017.

3 Q. And this email is to you and Mr. Chamblee?

4 A. This email is from me to Molly and it's copied -- Gary
5 Chamblee is copied on it.

6 MS. LEWIS: If we could go to page 1, the attachment?

7 Q. And you recognize this as the 2016 NexGen Energy Partners
8 tax return?

9 A. Yes.

10 Q. Molly didn't prepare this return, did she?

11 A. No.

12 Q. The accountant retained by the Shumard Group did so?

13 A. Yes.

14 Q. And at the end, this shows a profit of 17,000,
15 approximately, correct?

16 A. It shows ordinary business income of 17,000.

17 Q. All right. But then the profit and loss statements that
18 we just went over, all three of them, initially the company was
19 showing a loss, but here on a tax return that was filed with
20 the IRS, it's showing a profit.

21 A. Uh-huh.

22 Q. Don't you think that's a bit unusual?

23 A. Well, it's not really that unusual. Because in taxes,
24 they handle things sometimes differently than they are handled
25 on the books.

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1 Q. Shouldn't your tax return accurately reflect what's on the
2 books?

3 A. Not -- not always, no. I mean, our books -- because there
4 is special tax rules and depreciation changes and things like
5 that, sometimes they are not exactly the same.

6 Q. But the third profit and loss statement that we went over
7 showed a loss of 88,000. But now the tax return is showing
8 income of 17,000, which is a substantial difference.

9 Would you agree?

10 A. It's a substantial difference, yes. Probably has to do
11 with depreciation.

12 Q. Moving on. Mr. Vance's bank account with Wells Fargo for
13 Nex-Gen Industries was used for approximately ten months.

14 Do you recall that?

15 A. Say that again.

16 Q. Mr. Vance's Nex-Gen Industries account at Wells Fargo was
17 used for the first ten months of this operation.

18 Do you recall that?

19 A. Yes.

20 Q. I know you testified that you tried to get them to open
21 accounts, but --

22 A. NexGen.

23 Q. But still a whole ten months, and you're claiming there
24 were emails -- or there was communications about that?

25 A. It was phone conversations. It was in the middle -- you

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1 know, there would be another phone conversation and then I
2 think Gary would say, you've got to get an account opened, you
3 know. I don't -- I don't think it was all the time.

4 But it's just -- it was one of those things that just
5 stretched on. We kind of kept thinking they would do it and it
6 ended up stretching on further, longer than we expected.

7 Q. But you're an accountant, Mr. Chamblee is an accountant.

8 A. Uh-huh.

9 Q. Nobody took the initiative on that early on, and the
10 Shumard Group actually had majority ownership in this entity.

11 A. Uh-huh.

12 Q. Seems common sense to me that the Shumard side would have
13 taken the initiative there much earlier than ten months.

14 Was it possible because Mr. Chamblee wanted to hide the
15 logging income?

16 A. Not at all.

17 Q. Or he wanted to hide fake sales that he was reporting to
18 Ms. McKinnon?

19 A. Never.

20 Q. In the beginning, Mr. Vance actually asked the Shumard
21 people to handle accounting and administrative tasks, right?

22 A. Yes. That was -- I think I remember seeing an email and
23 the original intent was that we would do the accounting.

24 Q. So he wanted nothing to do with that role in the business,
25 correct?

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1 A. It appears.

2 Q. All right. So he was basically wanting to hand that over
3 to you all. So if he was trying to hide something or doing
4 something nefarious, he would have kept that close to him,
5 right? But he tried to give it to you all.

6 A. That was the original plan, that we would -- I don't know
7 if it was him pushing that or who came up with that idea at
8 first, but originally we were going to do the accounting.

9 Q. Now, at some point Mr. Vance received an email where his
10 consent was requested for NexGen Energy Partners to open
11 another bank account at Brand Bank.

12 Do you recall if that was ever opened?

13 A. I don't recall. We were transitioning to a new bank. All
14 of our Bank of America, with the Shumard entities, we were
15 transitioning to a new bank. And I think we were going to
16 transition that one over too. But we -- I don't believe we
17 did. I think we just kept the one at Bank of America.

18 Q. All right. But you're not really sure?

19 A. I can't remember right now. Brand was then sold,
20 Renasant. I don't believe we ever did -- did that.

21 Q. But you obtained his signed consent to do so?

22 A. I don't recall. It's been so long.

23 Q. Are you aware of Mr. Chamblee's affiliation or membership
24 with RJF Logistics?

25 A. Yes.

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1 Q. Are you aware that RJF did work for NexGen Energy
2 Partners?

3 A. I remember there was something about trucks missing and I
4 remember Gary said, I can get some trucks over there. And I
5 don't really know more than that.

6 MS. LEWIS: Can I see Defense Exhibit Number 115, please?

7 Q. Do you recognize this document, Ms. Hogan?

8 A. Yes.

9 Q. It's a Bank of America bank statement for NexGen Energy
10 Partners?

11 A. Yes.

12 MS. LEWIS: Move to introduce Defendants' Exhibit
13 Number 115, Your Honor.

14 THE COURT: Any objection?

15 MR. CHAPMAN: No, Your Honor.

16 THE COURT: Defendants' Exhibit 115 is admitted.

17 (Defense Exhibit 115 was admitted.)

18 MS. LEWIS: Thank you.

19 BY MS. LEWIS:

20 Q. And what is the date of this statement, Ms. Hogan?

21 A. July 2018.

22 Q. All right.

23 MS. LEWIS: And can you please pull up page 7 of this
24 statement?

25 THE COURT: Are we at a good place to take our morning

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1 break?

2 MS. LEWIS: We can do that, Your Honor.

3 THE COURT: All right. We'll take approximately a
4 15-minute recess at this time.

5 Ladies and gentlemen, please keep in mind the admonitions
6 that you were given -- bless you. Keep in mind the admonitions
7 that you were given previously, and the jury will be excused
8 for approximately 15 minutes. If you need longer, let the
9 security officer know that.

10 (Jury left courtroom at 10:37 a.m.)

11 THE COURT: Any issues to take up outside the presence of
12 the jury?

13 MR. CHAPMAN: No, Your Honor.

14 MS. LEWIS: No, Your Honor.

15 THE COURT: All right. Thank you. We will be in recess
16 for approximately 15 minutes.

17 (A recess was taken from 10:37 a.m. to 10:54 a.m.)

18 THE COURT: Thank you.

19 The record will again reflect all members of the jury are
20 present. Defendants and all counsel are present as well.

21 Ms. Hogan, you are reminded you are still under oath, of
22 course.

23 Ms. Lewis, you may continue with your questions.

24 MS. LEWIS: Thank you, Your Honor.

25 BY MS. LEWIS:

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1 Q. Ms. Hogan, we left off looking at Defendants' Exhibit
2 Number 115, which is the Bank of America statement. I directed
3 you to page 7 of that exhibit.

4 On the right column, do you see check number 1023?

5 A. Yes.

6 Q. And can you see who that check is paid to?

7 A. RF Logistics. It's a little blurry. RJF.

8 Q. All right. What is the amount of that check?

9 A. \$10,100.

10 Q. That's the same business we talked about earlier that
11 Mr. Chamblee is a part owner?

12 A. Yes.

13 Q. So they obviously did do some business with NexGen Energy
14 Partners?

15 A. Yes.

16 Q. So if he said yesterday that they weren't used, he was
17 possibly mistaken?

18 A. I don't know what was said yesterday.

19 Q. But obviously they were utilized, or at least they
20 received at least \$10,000?

21 A. Yes.

22 MS. LEWIS: Then we're going to go to the August statement
23 from the same account, page 7.

24 Q. Can you see?

25 A. Uh-huh. Yes.

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1 MS. LEWIS: I would move to introduce this exhibit, Your
2 Honor.

3 THE COURT: I'm sorry, is it a different number?

4 MS. LEWIS: 115.

5 THE COURT: You have already admitted it.

6 MS. LEWIS: Thank you, Your Honor.

7 THE COURT: Yes, ma'am.

8 BY MS. LEWIS:

9 Q. Who is this check payable to?

10 A. RJF Logistics.

11 Q. And what amount is this?

12 A. \$5,900.

13 Q. And again, they were obviously utilized by NexGen Energy
14 Partners, or at least received a check; is that fair to say?

15 A. Yes.

16 Q. Would you agree that NexGen Energy Partners had a lot of
17 outstanding bills?

18 A. There was a lot of stuff in accounts payable, yes.

19 Q. But RJF got paid, didn't they?

20 A. Oh, wait. Okay, I'm sorry, I thought you said RJF. RJF
21 did get paid here.

22 Q. All right. Now I want to direct your attention to what's
23 been marked as Defense Exhibit Number 114. It'll be coming up
24 on your screen.

25 Can you see that document, Ms. Hogan?

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1 A. Yes.

2 Q. What is this?

3 A. This is a NexGen Energy Partners Bank of America statement
4 for July of 2018.

5 MS. LEWIS: Move to introduce this exhibit, Your Honor.

6 THE COURT: That was the document that you asked me last
7 night to be introduced after the jury left, and this morning I
8 advised the jury that it had been admitted already. So it's
9 been admitted.

10 MS. LEWIS: Thank you, Judge.

11 BY MS. LEWIS:

12 Q. We'll look at page 3 of this exhibit, Ms. Hogan.

13 I want to direct your attention to the withdrawal on
14 July 3rd.

15 Do you see that?

16 A. Yes.

17 Q. And what is -- what is the description of that
18 transaction?

19 A. It says transfer NexGen Energy Partners.

20 Q. What's the amount?

21 A. \$5,600.

22 MS. LEWIS: Can we pull up Government's Exhibit Number
23 202B, please?

24 Q. Do you recognize this document, Ms. Hogan?

25 A. Yes.

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1 Q. What is that?

2 A. This is a NexGen Energy Partners bank statement for their
3 account at Whitaker Bank.

4 Q. And what is the date of this statement?

5 A. July 2018.

6 Q. All right. Do you see a deposit on July 5th?

7 A. Yes.

8 Q. What is that amount?

9 A. \$5,600.

10 Q. Who is that from?

11 A. It says Gary G. Chamblee.

12 Q. You don't see any other deposit at that time for \$5,600,
13 do you?

14 A. No.

15 Q. So it must have been the \$5,600 that was the intercompany
16 transfer from the Bank of America account?

17 A. Yes.

18 MS. LEWIS: Can we have Defense Exhibit Number 88, please?

19 Q. Do you recognize this document, Ms. Hogan?

20 A. Let's see.

21 Q. Is this reimbursement for expenses?

22 A. I see that it's interest, interest invoices. So this
23 would be payment of interest on the loan.

24 Q. That's for Mr. Chamblee; is that correct?

25 A. Yes, for his loan.

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1 Q. Is that -- is this document reflective of how you
2 typically accounted for payments he received?

3 A. Well, let's see. So payments received, that would be GGC,
4 and this is the deposit slip from where the check was deposited
5 into his account.

6 Q. And that's his personal account?

7 A. That is his GGC Funding account.

8 MS. LEWIS: I'd move to introduce this as Defense Exhibit
9 Number 88, Your Honor.

10 THE COURT: All right. Any objection?

11 MR. CHAPMAN: Your Honor, I don't believe she's
12 authenticated it. I don't believe she said it's a true or
13 accurate copy, or even one that she personally remembers.

14 MS. LEWIS: She's stated it's how they keep the normal
15 accounting procedures.

16 THE COURT: I'll sustain the objection.

17 BY MS. LEWIS:

18 Q. Ms. Hogan, does this truly and accurately reflect
19 documentation that you would keep in the course of your
20 employment to account for reimbursement of interest or expenses
21 reimbursed for members of the group?

22 A. This is something that -- I can tell you that this is Lisa
23 Woody, the part-time accountant in our office, this is
24 something she would have processed. And she typically made
25 checkmarks on them, so it appears to be something that she

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1 processed.

2 Q. But it's kept -- it's a document kept in the course of
3 accounting at the Shumard Group?

4 A. The thing is that Gary's is separate, his personal
5 business is separate from our accounting in the Shumard Group.
6 I don't do his personal accounting, so -- but Lisa Woody does,
7 so this is something that she processed.

8 Q. And she is part of the Shumard Group?

9 A. She is part time there, yes. Yes.

10 THE COURT: Based on that additional foundation, I'll
11 admit the exhibit, Defense Exhibit 88.

12 (Defense Exhibit 88 was admitted.)

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

14 THE COURT: Yes, ma'am.

15 BY MS. LEWIS:

16 Q. So you recognize that deposit ticket to be Mr. Chamblee's?

17 A. It appears to be.

18 Q. What is the amount of that?

19 A. \$8,597.

20 Q. I'm going to show you another bank statement in a second.
21 This has been marked as Defense Exhibit Number 76.

22 Do you recognize this document?

23 A. Yes.

24 Q. What is that?

25 A. This is a NexGen Energy Partners bank account -- bank

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1 statement from Bank of America for September 2018.

2 MS. LEWIS: I would move to introduce this as Exhibit
3 Number 76, Your Honor.

4 THE COURT: All right. Any objection?

5 MR. CHAPMAN: No, sir.

6 THE COURT: Defendants' Exhibit 76 is admitted.

7 (Defense Exhibit 76 was admitted.)

8 BY MS. LEWIS:

9 Q. I want to direct you to page 3, which will be coming up.
10 Do you see a transaction on September 17th for a
11 withdrawal?

12 A. I do.

13 Q. What is that amount?

14 A. \$30,000.

15 Q. All right. And is that going into Mr. Chamblee's personal
16 account ending in 7126?

17 A. It is going into his GGC Funding account.

18 Q. Was it normal business practice to just transfer money
19 from the business to a partner's account?

20 A. In the course of repaying loans, then yes, we would do
21 that.

22 Q. Were there any loan documents or votes taken?

23 A. Well, this was repayment of a loan, so it was an amount
24 that was due, it was on the books. And it was -- we -- as cash
25 came in, we repaid it as we could.

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1 Q. When was the last time you spoke with Mr. Chamblee?

2 A. Yesterday -- actually, this morning I saw them on the
3 shuttle to go to the airport.

4 Q. And you spoke with him yesterday as well?

5 A. Yes.

6 MS. LEWIS: Just to back up. Procedurally, Your Honor, I
7 would move to introduce that last exhibit.

8 THE COURT: 76?

9 MS. LEWIS: Yes, sir.

10 THE COURT: It's already been admitted.

11 MS. LEWIS: Oh.

12 BY MS. LEWIS:

13 Q. Do you recall what account your deposit of 10,000 was made
14 into?

15 A. What deposit now?

16 Q. Your investment of \$10,000.

17 A. I gave it to -- I sent it to Gary's account and then Gary
18 forwarded it on for me.

19 Q. There was -- you testified about receiving cashier's
20 checks from Mr. Vance. Is it fair to say that cashier's checks
21 make it into an account quicker?

22 A. Yes.

23 Q. You testified that Molly was removed as a manager and Gary
24 was put in. Gary was actually already a manager, correct?

25 A. I don't -- it seems like maybe -- I really don't know. I

MENDIE HOGAN - CROSS

1 would have to look at the operating agreement, who was
2 originally managers. I know Molly was, maybe they were both
3 managers. And than we removed her.

4 Q. Molly was actually kept on for several weeks, possibly
5 months, to train the new guy, Mr. Thomson.

6 Do you recall that?

7 A. Curtis?

8 Q. Yes.

9 A. Yes.

10 Q. Molly was involved when funding initially began in
11 August 2016, right?

12 A. Yes.

13 Q. And still with her involvement, Mr. Vance was wanting the
14 Shumard Group to handle accounting?

15 A. I mean, I don't remember who initiated wanting us to
16 handle. It could have been Ken saying he wanted us to handle
17 the accounting because he wanted us to have that control.

18 But I just remember it was part of the initial discussion
19 that we would do the accounting, but then it was decided we
20 would not.

21 Q. All right. So you don't specifically recall that was
22 Mr. Vance's request?

23 A. No, I don't know that I was involved in those
24 conversations early on like that.

25 MS. LEWIS: Nothing further. Thank you.

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1 THE COURT: Before redirect, I have just a couple of
2 questions for clarification, Ms. Hogan, so there is no
3 misunderstanding.

4 You testified about the formation of NexGen Energy
5 Partners, LLC.

6 THE WITNESS: Yes.

7 THE COURT: And the operating agreement and the percentage
8 ownerships of the various individuals.

9 THE WITNESS: Yes.

10 THE COURT: As I understand, when a company is formed,
11 there is a couple of ways that the company can receive capital
12 or monies to operate.

13 THE WITNESS: Uh-huh.

14 THE COURT: There can be equity interest in the company,
15 and that's basically a deposit of cash or equipment or other
16 assets --

17 THE WITNESS: Uh-huh.

18 THE COURT: -- by individuals.

19 THE WITNESS: Uh-huh.

20 THE COURT: So they have an ownership interest as a result
21 of their equity that they put into the company.

22 THE WITNESS: Yes.

23 THE COURT: And then there are loans in the company?

24 THE WITNESS: Yes.

25 THE COURT: Loans are different than equity contributions

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1 because loans are debts that must be paid back.

2 THE WITNESS: Right.

3 THE COURT: If a person or an entity contributes more
4 equity in the business, that changes the percentage ownership
5 of the various owners in the company.

6 THE WITNESS: Yes.

7 THE COURT: Is that accurate?

8 THE WITNESS: Yes. If you put more in equity, you would
9 adjust the percentages.

10 THE COURT: All right. Exactly. So if I own 51 percent
11 of a business, and I contribute more equity to the business and
12 other partners do not, or other entities do not, that would
13 increase my equity or my ownership interest in that business
14 and my percentage of the business?

15 THE WITNESS: Yes.

16 THE COURT: Whereas a loan would not necessarily do that.

17 THE WITNESS: Correct.

18 THE COURT: A loan would be paid back.

19 THE WITNESS: Correct.

20 THE COURT: Now, you also talked about the three profit
21 and loss statements. One was on a cash basis and two others
22 were on accrual --

23 THE WITNESS: Yes.

24 THE COURT: -- basis. Based upon your background as an
25 accountant and CPA, are you familiar with general principles of

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1 depreciation?

2 THE WITNESS: Appreciation?

3 THE COURT: Depreciation.

4 THE WITNESS: Oh, depreciation.

5 THE COURT: Yes. For example, of equipment that would be
6 used in a business.

7 THE WITNESS: Yes.

8 THE COURT: Particularly in a start-up business.

9 THE WITNESS: Yes.

10 THE COURT: Are you familiar with principles of
11 accelerated depreciation under the tax code?

12 THE WITNESS: I am not -- I know about them, but I am not
13 familiar with them.

14 THE COURT: Are you aware that new businesses can use
15 accelerated depreciation principles when they file their tax
16 returns? In other words, are you aware that they can take
17 greater percentages of depreciation initially?

18 THE WITNESS: Yes.

19 THE COURT: Are matters of depreciation, either
20 accelerated depreciation or otherwise, are they shown on profit
21 and loss statements, whether they are prepared on a cash or an
22 accrual basis?

23 THE WITNESS: Depreciation?

24 THE COURT: Depreciation, yes, ma'am.

25 THE WITNESS: Yes, that would be shown on a P&L.

MENDIE HOGAN - REDIRECT

1 THE COURT: Would it be regular depreciation or would it
2 be accelerated depreciation? If you know.

3 THE WITNESS: I would say regular.

4 THE COURT: But you're not sure?

5 THE WITNESS: I mean, it just depends on how you keep your
6 books. And your books are your books.

7 THE COURT: All right. Thank you. I think that clarifies
8 it, for me at least. Thank you.

9 THE WITNESS: Okay.

10 THE COURT: See if there is any redirect of matters
11 brought out on cross-examination.

12 MR. CHAPMAN: Yes, Your Honor.

13 REDIRECT EXAMINATION

14 BY MR. CHAPMAN:

15 Q. Ms. Hogan, to return to the topic of loans that has been
16 discussed.

17 A. Yes.

18 Q. Was the Shumard Group making loans to Mr. Vance
19 personally?

20 A. No.

21 Q. Were you making groups [sic] to Ms. McKinnon personally?

22 A. No.

23 Q. Were these loans to NexGen Energy Partners?

24 A. Yes.

25 Q. Who had the controlling stake in that entity?

MENDIE HOGAN - REDIRECT

1 A. The Shumard entities.

2 Q. Did Mr. Vance ever object when more money came in?

3 A. No.

4 Q. Did Ms. McKinnon?

5 A. No.

6 Q. I would like to show you the document that was introduced
7 as Defense Exhibit 93.

8 Ms. Hogan, do you recognize this document from a
9 discussion on cross-examination?

10 A. Yes.

11 Q. Do you remember the discussion concerning the 2016 W-2?

12 A. Yes.

13 Q. And the entity listed as the employer on that?

14 A. Yes.

15 Q. Who is sending the W-2 in this email?

16 A. Molly.

17 Q. So Molly provided that to you?

18 A. Yes.

19 Q. And then this is the W-2 you remember looking at on
20 cross-examination?

21 A. Yes.

22 Q. What year is it for?

23 A. 2016.

24 Q. So that would cover the calendar year of 2016?

25 A. Yes.

MENDIE HOGAN - REDIRECT

1 Q. Remind the jury, generally, when NexGen Energy Partners
2 was formed.

3 A. Late in 2016.

4 Q. Late in '16?

5 A. Yes.

6 Q. So based on your understanding of the business, did
7 Nex-Gen Industries, Inc. operate earlier in 2016?

8 A. Yes.

9 Q. Would that indicate to you that they would likely have a
10 need to issue W-2s?

11 A. Yes.

12 Q. Ms. Hogan, there's been a lot of discussion as well about
13 those three profit and loss statements that you were shown.

14 A. Yes.

15 Q. One on cash basis, two on accrual basis.

16 A. Yes.

17 Q. Let's talk about the two that were on accrual basis.

18 A. Uh-huh.

19 Q. There were obviously different numbers in those; is that
20 correct?

21 A. Yes.

22 Q. Are there legitimate reasons that would be the case?

23 A. Yes.

24 Q. What are some of those?

25 A. Well, you could decide to capitalize something that had

MENDIE HOGAN - REDIRECT

1 previously been expensed.

2 I do remember in the first accrual statement, there was an
3 amount in an account called ask my accountant, that's usually
4 done when you don't know what to do with that money. And that
5 was not in the last one.

6 So apparently that had been recategorized maybe as an
7 asset. I don't know.

8 But if you capitalize something, then it's on the -- then
9 it becomes an asset and it's no longer an expense which makes
10 more -- which makes a loss.

11 Q. If a change like that is made, is there anything
12 necessarily nefarious about that?

13 A. Not at all.

14 Q. Why is that?

15 A. Because you can -- as I said before, P&L, you look at it
16 and then you notice, oh, you know, maybe that wasn't accounted
17 for correctly and you make adjustments.

18 Q. Do you remember seeing on the top of the 2017 profit and
19 loss statement an amount of roughly \$1.7 million of sales?

20 A. Yes.

21 Q. If that number was inaccurate, would that affect the
22 bottom line?

23 A. Yes.

24 Q. If that number was falsely modified, would that affect the
25 bottom line?

MENDIE HOGAN - REDIRECT

1 A. Yes.

2 Q. Are you aware of Mr. Chamblee ever requesting Ms. McKinnon
3 to falsify numbers?

4 A. No.

5 Q. Are you aware of Mr. Chamblee ever requesting Ms. McKinnon
6 to exaggerate sales being made?

7 A. No.

8 Q. How long have you known Mr. Chamblee?

9 A. At least 15 years.

10 Q. 15 years?

11 A. Yes.

12 Q. And have you worked with him that entire time?

13 A. Yes.

14 Q. How closely have you worked with him?

15 A. Very closely. It's been the three, Ken, Gary, and I, the
16 three main people in the office for all of those years.

17 Q. Do you see him essentially on a daily basis?

18 A. Yes.

19 Q. For 15 years?

20 A. Yes.

21 Q. How well would you say you know him?

22 A. I know him very well.

23 Q. Based on your 15 years of experience with him, do you have
24 an opinion about his reputation for truthfulness?

25 A. Yes.

MENDIE HOGAN - RECROSS

1 Q. What would that be?

2 A. He has great character, truthful person. I trust him
3 implicitly.

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

5 THE COURT: Yes, sir.

6 MR. CHAPMAN: That's all I have on redirect, Your Honor.

7 Thank you.

8 THE COURT: All right.

9 Let's see if there is any recross on matters brought out
10 on redirect.

11 Mr. Darling?

12 MR. DARLING: No, Your Honor.

13 THE COURT: All right. Thank you.

14 Ms. Lewis, anything else?

15 MS. LEWIS: Just one brief question, Your Honor.

16 THE COURT: Yes, ma'am.

17 RECROSS-EXAMINATION

18 BY MS. LEWIS:

19 Q. Ms. Hogan, there is no reason that Ms. McKinnon would have
20 needed to send you 1099s or W-2s for Nex-Gen Industries,
21 correct?

22 A. I believe, if my memory serves me correct, we were having
23 our CPAs do the Nex-Gen Industries tax return as well, so that
24 would have -- that would have been why she would have sent it.

25 MS. LEWIS: Thank you.

CHRISTOPHER HUBBUCH - DIRECT

1 THE COURT: All right. Anything else? Thank you.

2 Ms. Hogan, you may step down, ma'am. Thank you.

3 You may call your next witness, Mr. Rosenberg.

4 MR. ROSENBERG: United States calls Special Agent

5 Christopher Hubbuch.

6 THE COURT: Thank you. We will go for about 30 minutes,

7 until about 10 minutes until 12.

8 MR. ROSENBERG: Thank you, Your Honor.

9 **CHRISTOPHER HUBBUCH, GOVERNMENT WITNESS, SWORN**

10 THE COURT: Thank you.

11 Mr. Rosenberg, you may proceed when you're ready.

12 MR. ROSENBERG: Thank you, Your Honor.

13 CHRISTOPHER HUBBUCH

14 DIRECT EXAMINATION

15 BY MR. ROSENBERG:

16 Q. Special Agent Hubbuch, would you please state your full
17 name and spell the last name for the court reporter?

18 A. Christopher Hubbuch, H-u-b-b-u-c-h.

19 Q. And how are you employed, sir?

20 A. I am a special agent with the FBI.

21 Q. How long have you served in that role?

22 A. A little less than 22 years.

23 Q. And what are the types of cases that you investigate?

24 A. I've investigated a wide variety of cases over my career.

25 But in the last several years, I've been working complex fraud

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1 and civil rights, color of law cases.

2 Q. Through that role, have you participated in an
3 investigation concerning Nex-Gen entities, Doug Vance and Molly
4 McKinnon?

5 A. Yes, I am the case agent on that.

6 Q. And what prompted that investigation?

7 A. An original complaint was taken down in Jacksonville
8 division from Mr. Deware and Mr. Smith, and the jury has heard
9 testimony about that. That complaint was forwarded to the
10 Louisville division, and my office is in London. So that
11 particular entity, Nex-Gen, at that time was located in our
12 territory.

13 So in the early part of 2018, I opened up a case and began
14 my investigation.

15 Q. Now, do you understand that you are going to be called to
16 the stand two different times in this case?

17 A. Yes, I do.

18 Q. The purpose of this initial testimony is limited to
19 explanation -- admission and explanation of a set of exhibits?

20 A. Yes.

21 Q. And you'll be testifying more to substance of exhibits and
22 your investigation at a later date?

23 A. That's my understanding, yes.

24 Q. As part of your investigation, did you seek the issuance
25 of grand jury subpoenas to several banks?

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1 A. Yes.

2 Q. Why did you do that?

3 A. In any fraud allegation where money is involved, that's
4 usually the first thing that we do, is identify any bank
5 accounts that are involved, subpoena those accounts, and then
6 try to get a handle basically on the accounting, as far as we
7 know it.

8 MR. ROSENBERG: Your Honor, may I tender to the witness a
9 binder that contains Government's Exhibit 201?

10 THE COURT: Yes, sir.

11 MR. ROSENBERG: Your Honor, for sake of efficiency, also
12 bring up Exhibit 202 as well.

13 THE COURT: All right. Yes, sir.

14 BY MR. ROSENBERG:

15 Q. Agent Hubbuch, in the first binder I handed you, could you
16 turn to Government's Exhibit 201?

17 A. Yes, sir.

18 Q. And do you recognize what that is?

19 A. I do.

20 Q. What is that?

21 A. Those are the bank records from Bank of America.

22 Q. For which account?

23 A. They are for NexGen Energy Partners, LLC, account ending
24 in 1079.

25 Q. And if you look at the second page, do you see a signature

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1 card?

2 A. I do.

3 Q. And who's indicated on those signature cards?

4 A. Gary G. Chamblee and Mendie Brown Hogan.

5 Q. Is there a date indicated?

6 A. 11/2 of 2017.

7 Q. Now, if we could switch you over to Government's
8 Exhibit 202, so that should be in the other binder.

9 A. Yes.

10 Q. And are these bank records as well?

11 A. They are.

12 Q. For what account?

13 A. They are a Whitaker Bank bank account in the name of
14 NexGen Energy Partners, LLC.

15 MR. ROSENBERG: If we could, Ms. Poynter, display page 11
16 of this on the screen for the witness?

17 Q. All right. Do you see indication of the account being
18 opened?

19 A. Yes, this is the account opening page.

20 Q. And who opened the account on what date?

21 A. Molly McKinnon. And if you scroll up? March 16 of 2017.

22 MR. ROSENBERG: Now if we could go to page 5 of this
23 exhibit?

24 Q. Do you see an authorized signer added to the account in
25 August of 2018?

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1 A. Yes, I believe -- scroll up -- the date was August 16th,
2 yes, of 2018. And Curtis Thomson was added as an authorized
3 signer on the account.

4 Q. Could I turn your attention to Government's Exhibit 202A?
5 We'll bring that up on the screen. Is that a subset or a part
6 of Government's Exhibit 202?

7 A. Yes, that is.

8 Q. And what aspect of the records in the Whitaker Bank
9 account of Exhibit 202 are shown in 202A?

10 A. It's the general ledger for the incoming wire transfers.

11 Q. If I could turn your attention now to 202B? Is this also
12 an extraction or subset of Exhibit 202?

13 A. Yes, it is.

14 Q. And is that a statement from this Whitaker Bank account?

15 A. It's an account statement dated July 31, 2018.

16 Q. All right. If we look at 202C, please?

17 A. That is also an account statement from October 31st, 2017
18 for the Whitaker Bank NexGen Energy Partners, LLC account.

19 Q. Then we'll turn to 202D, I'll ask you the same question.

20 A. Similarly, same account, account statement dated
21 June 30th, 2017.

22 MR. ROSENBERG: Your Honor, with your permission, may we
23 enter into the record the stipulations the parties have reached
24 with respect to Whitaker Bank and Bank of America?

25 THE COURT: All right. You can either read those

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1 stipulations to the jury and then I'll advise them of the
2 effect afterwards, or I can read those. It's your preference.

3 MR. ROSENBERG: I'll read it at this time.

4 THE COURT: All right. Yes, sir.

5 MR. ROSENBERG: Ladies and gentlemen, the parties
6 stipulate that the records received from Whitaker Bank are
7 authentic under the Federal Rules of Evidence 901 and 902, and
8 further stipulate that such records are admissible under
9 Federal Rule of Evidence 803(6) as an exception against
10 hearsay.

11 The parties stipulate that Whitaker Bank has branches in
12 the Eastern District of Kentucky, that the Whitaker Bank wire
13 room is located in Fayette County, in the Eastern District of
14 Kentucky, and that wire transfers and ACH deposits involving
15 the Whitaker Bank accounts in this case traveled through the
16 wire room in Fayette County, and constitute wire transmissions
17 that traveled in interstate or foreign commerce.

18 The parties stipulate that at all relevant times Whitaker
19 Bank was a financial institution insured by the Federal Deposit
20 Insurance Corporation.

21 The parties stipulate that the records received from Wells
22 Fargo -- excuse me -- the parties also stipulate that the
23 records received from -- excuse me. Got turned around.

24 I'm sorry, the stipulation was just with respect to
25 Whitaker Bank, I apologize.

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1 THE COURT: Whitaker Bank? All right.

2 Is that the conclusion of the stipulation at this point?

3 MR. ROSENBERG: It is, Your Honor. For efficiency, may I
4 read the Wells Fargo stipulation as well?

5 THE COURT: Yes, sir.

6 MR. ROSENBERG: And then the Community Trust?

7 THE COURT: Yes, sir.

8 MR. ROSENBERG: All right.

9 With respect to Wells Fargo, the parties stipulate that
10 the records received are authentic under the Federal Rules of
11 Evidence and stipulate that they are admissible under the
12 Federal Rules of Evidence as an exception to the rule against
13 hearsay.

14 The parties stipulate that Wells Fargo was a financial
15 institution insured by the FDIC.

16 I found my spot on Bank of America so I'll read that one
17 as well.

18 The parties stipulate that the records received from Bank
19 of America are authentic under the Federal Rules of Evidence
20 and that they are admissible under those rules as an exception
21 against -- to the rule against hearsay.

22 The parties stipulate that Bank of America was a financial
23 institution insured by the FDIC.

24 As to Community Trust Bank, the parties stipulate that
25 records received from that bank are authentic under the Federal

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1 Rules of Evidence and that they are admissible as an exception
2 to the rule against hearsay. And that Community Trust Bank was
3 also a financial institution insured by the FDIC.

4 Those are the whole of them from the United States.

5 THE COURT: Ladies and gentlemen, when parties stipulate
6 to certain facts, you may accept those facts as true without
7 any further proof being offered. And the parties -- and the
8 jurors should do so. And that is the effect of the parties'
9 stipulation.

10 MR. ROSENBERG: Thank you, Your Honor.

11 At this time the government moves to admit Exhibits 201,
12 202, including 202A through D.

13 THE COURT: All right.

14 Let's see if there is any objection to those exhibits
15 being admitted.

16 MR. DARLING: No, Your Honor.

17 MS. LEWIS: No objection, Your Honor.

18 THE COURT: United States Exhibits 201, as well as 202,
19 and 202 does contain subparts A, B, C, and D, which are
20 admitted at this time.

21 (United States Exhibit 201, 202, 202A-D were
22 admitted.)

23 MR. ROSENBERG: Thank you, Your Honor.

24 BY MR. ROSENBERG:

25 Q. Agent Hubbuch, I'll retrieve that from you to keep things

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1 organized up there.

2 Do you have in front of you in the binder Exhibit 203?

3 A. Yes.

4 Q. And can you tell the jury what Exhibit 203 is?

5 A. These are bank records from Wells Fargo for Nex-Gen
6 Industries bank account. Just to verify, the account ending in
7 7353.

8 MR. ROSENBERG: Ms. Poynter, could we pull up page 14 of
9 Exhibit 203?

10 Q. Do you have that before you, sir?

11 A. Yes.

12 Q. What part of the Wells Fargo records is reflected here?

13 A. This is the account opening document.

14 Q. And when is that dated?

15 A. It's dated July 27th of 2016.

16 Q. And does it indicate who opened this account?

17 A. It indicates Douglas W. Vance.

18 Q. If we could turn your attention to Exhibit 203A? As
19 before, is 203A a subset of Exhibit 203?

20 A. It is.

21 Q. And what aspect of the Wells Fargo Nex-Gen Industries
22 account records are in 203A?

23 A. If you can scroll down a little bit? That's the actual
24 wire transfer details.

25 Q. If we could go to Exhibit 203C? Is this also a subset of

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1 Exhibit 203?

2 A. It is.

3 Q. What type of -- what aspect of the bank records are in
4 203C?

5 A. That's a monthly statement for the account ending in 7353.

6 MS. LEWIS: Your Honor, may we approach?

7 THE COURT: Yes, ma'am, you can come on up.

8 (Bench conference on the record.)

9 MR. DARLING: I don't think this is a big deal, Your
10 Honor, we don't have C. We've got everything else, we've got
11 203A, B. It was provided electronically.

12 MR. ROSENBERG: I'm happy to re-pull the --

13 MR. DARLING: Yeah. Or if you have it electronically, you
14 can email it to us?

15 MR. ROSENBERG: Sure. We can email it to you.

16 MR. DARLING: You're not going to do anything more than
17 introduce it?

18 MR. ROSENBERG: Correct.

19 THE COURT: I'd ask you all, if you would, please direct
20 your comment to the Court as opposed to each other during bench
21 conferences.

22 MR. DARLING: Sorry, Your Honor.

23 MR. ROSENBERG: Yes, Your Honor.

24 THE COURT: Here is 203C. You're welcome to take that and
25 look at it. When you're ready to proceed, just let me know.

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1 MR. DARLING: Your Honor, it's my understanding that the
2 government is just going to introduce it at this point in time.
3 And Mr. Rosenberg had indicated he could email it to us and
4 that would be fine. He said he's not going to do much with it.

5 THE COURT: Okay.

6 MR. DARLING: If that's the case.

7 THE COURT: Thank you.

8 MS. LEWIS: Thank you, Judge.

9 (Bench conference concluded.)

10 THE COURT: Thank you.

11 Mr. Rosenberg, I believe you were asking the witness about
12 Exhibit 203C. You can continue.

13 MR. ROSENBERG: Yes.

14 BY MR. ROSENBERG:

15 Q. Agent Hubbuch, do you see statements from the Nex-Gen
16 Industries account 7353 from March of '17 through July of '17?

17 A. Yes.

18 Q. Let me see.

19 MR. ROSENBERG: May I approach with an additional exhibit,
20 Your Honor?

21 THE COURT: Yes, sir.

22 BY MR. ROSENBERG:

23 Q. Can you please turn your attention to Government's
24 Exhibit 204? Once you have seen this, please describe for the
25 jury what type of bank records these are.

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1 A. These are the bank -- excuse me, the Wells Fargo bank
2 records for account ending in 7357.

3 Q. And who is that account in the name of?

4 MR. ROSENBERG: Ms. Poynter, can we pull up page 12?

5 A. Account in the name of Douglas W. Vance.

6 Q. And if you turn your attention to page 12 of the exhibit,
7 was anyone added to this account in addition to Doug Vance?

8 A. It appears on July 16th, 2015, Heather Vance is noted as
9 being a customer on the account, joint owner of the account.

10 Q. And could we turn your attention now to 204A? I'll ask,
11 is this a subset of Exhibit 204?

12 A. Yes.

13 Q. What part of the record is reflected in 204A?

14 A. They are specific detail regarding cashier's checks
15 obtained from the account.

16 MR. ROSENBERG: If we could move to Exhibit 205?

17 Q. I'll ask you to identify the account reflected in these
18 Wells Fargo records.

19 A. These are the Wells Fargo bank records for account ending
20 in 8404 in the name of Nex-Gen, LLC.

21 MR. ROSENBERG: And if we could, Ms. Poynter, pull up
22 page 12 of that exhibit?

23 Q. Who is the sole signer on this Nex-Gen LLC account?

24 A. As of this date, March 6th of 2018, Douglas W. Vance.

25 MR. ROSENBERG: If we could pull up 205A?

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1 Q. Is this a subset of Exhibit 205?

2 A. Yes.

3 Q. What type of records?

4 A. It's copies of cashier's checks obtained from the account.

5 Q. Let's look at 205B. What portion of Exhibit 205 is
6 reflected in 205B?

7 A. These appear to be wire transfer details from the account.

8 Q. And is there a specific date indicated for this record of
9 wire transfer?

10 A. This was an April 25th, 2018 send date.

11 Q. And what was the amount?

12 A. \$50,000.

13 MR. ROSENBERG: If we could look at page 4 of 205B?

14 Q. Do you see who the sender of that wire was?

15 A. Yes. Koch Minerals, LLC.

16 MR. ROSENBERG: Can we turn to 205C now?

17 Q. What's reflected in 205C?

18 A. That's also an incoming wire transfer detail dated
19 May 15th, 2018, in the amount of \$75,000.

20 Q. Looking at page 3, do you recognize the sender of this
21 wire transfer?

22 A. Yes, the same sender, Koch Minerals, LLC.

23 Q. And have you had a chance to look at 205E through H?

24 A. I have.

25 Q. Are those similar wire transfers in 2018 from Koch?

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1 A. Yes, they are.

2 Q. Now I would like to turn to Exhibit 206.

3 Do you have that in front of you?

4 A. I do not.

5 MR. ROSENBERG: May I approach, Your Honor?

6 THE COURT: Yes, sir.

7 BY MR. ROSENBERG:

8 Q. Could you identify for the jury what is in Government's
9 Exhibit 206?

10 A. 206 are the Wells Fargo bank records for a company by the
11 name of Dendron, that's D-e-n-d-r-o-n, LLC.

12 MR. ROSENBERG: Ms. Poynter, if we start with page 12 of
13 the exhibit?

14 Q. Agent Hubbuch, do you see indication of the owner on this
15 account?

16 A. The customer owners are Heather Vance and Doug Vance.

17 Q. Can we turn now to Exhibit 207 and identify that for the
18 jury?

19 A. I would like to correct that. The owner is Dendron and
20 the signer, authorized persons are Doug Vance and Heather
21 Vance.

22 Q. Thank you for clarifying.

23 A. Yes.

24 Q. So Exhibit 207, what account is reflected there?

25 A. These are also Wells Fargo bank account records for

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1 account ending in 3316, I believe also in the name of Dendron.

2 But if you can give me that -- yes, it's Dendron, LLC.

3 Q. Is that the same company indicated in 206?

4 A. Yes.

5 MR. ROSENBERG: And again, if we could pull up PDF page 12
6 of the exhibit?

7 Q. Who are the individuals authorized on this account?

8 A. Authorized signers are Douglas W. Vance and Heather Vance.

9 MR. ROSENBERG: Your Honor, the United States at this time
10 moves to admit Government Exhibits 203, 204, 205, 206 and 207.
11 And this includes 203A and C, 204A, and 205A through H.

12 THE COURT: All right. Any objection?

13 MR. DARLING: No objection.

14 THE COURT: Those United States exhibits will be admitted.
15 Again, they are 203, which includes 203A and C subparts.

16 204, which includes 204A.

17 Also Exhibit 205, which includes subparts A through H.

18 206, and also 207.

19 Those are all admitted at this time.

20 MR. ROSENBERG: Thank you, Your Honor.

21 (United States Exhibits 203, 203A, 203C, 204, 204A, 205,
22 205A - 205H, 206 and 207 were admitted.)

23 BY MR. ROSENBERG:

24 Q. Agent Hubbuch, do you have Government's Exhibits 212 and
25 213 in front of you?

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1 A. I do.

2 Q. Start with 212 and identify that for the jury.

3 A. Exhibit 212 are bank records from Community Trust Bank in
4 Hazard for account ending in 3274.

5 Q. Do you see the name on that account?

6 A. The name on the account is Carbon Holdings, LLC.

7 MR. ROSENBERG: If we could pull up page 2 of the exhibit?

8 Q. Who was authorized on this account in April of 2017?

9 A. Molly McKinnon and Allan Deware.

10 MR. ROSENBERG: If I could turn now to Exhibit 213?

11 Q. And please identify that for the jury.

12 A. Similarly, that is Community Trust Bank records for an
13 account for V4 Carbon, LLC, account ending in 3282.

14 MR. ROSENBERG: Again, if we could pull up page 2?

15 Q. Who are the authorized individuals from April of 2017?

16 A. They are also, again, Molly McKinnon and Allan Deware.

17 MR. ROSENBERG: Your Honor, the government moves to admit
18 Exhibits 212 and 213.

19 THE COURT: Any objection?

20 MS. LEWIS: No objection.

21 THE COURT: Those exhibits will be admitted.

22 (United States Exhibits 212 - 213 were admitted.)

23 MR. ROSENBERG: May I approach again, Your Honor?

24 THE COURT: Yes, sir.

25 BY MR. ROSENBERG:

CHRISTOPHER HUBBUCH - DIRECT

1 Q. Switching gears, Agent Hubbuch. Are you familiar with a
2 couple of email addresses that Doug Vance was using in 2016 to
3 at least November of 2018?

4 A. Yes.

5 Q. What company did he have those email addresses with?

6 A. With Yahoo.

7 Q. I believe they've been seen in exhibits already, but do
8 you recognize nexgen.industries@yahoo.com?

9 A. Yes.

10 Q. Do you recognize DW.Vance@yahoo.com?

11 A. Yes.

12 Q. Through your investigation, were you able to obtain
13 records from these email accounts?

14 A. I did through a search warrant.

15 Q. Was that warrant issued in November of 2018?

16 A. I believe so.

17 Q. And did that warrant authorize seizure of records from May
18 2016 to the date of the warrant execution?

19 A. It did.

20 Q. Did you serve that warrant on Oath Holdings, which does
21 business as Yahoo?

22 A. Yes.

23 Q. And did Oath Holdings provide records in response?

24 A. Yes.

25 Q. Who, if anyone, did you provide copies of those records

CHRISTOPHER HUBBUCH - DIRECT

1 to?

2 A. To the U.S. Attorney's Office.

3 Q. In the binder before you, do you see a series of exhibits
4 numbered from 101 through 184?

5 A. I do.

6 Q. Are those exhibits copies of records provided by Yahoo or
7 Oath Holdings in response to your warrant?

8 A. Yes, I have reviewed them and they are.

9 Q. Do they all come from either the Nex-Gen Industries --
10 nexgen.industries account or the DW.Vance account that you
11 testified are associated with Doug Vance?

12 A. Yes.

13 MR. ROSENBERG: Your Honor, at this time may we enter into
14 the record the stipulation that the parties have reached
15 regarding communications, email communications from Oath
16 Holdings?

17 THE COURT: Yes, sir.

18 MR. ROSENBERG: Ladies and gentlemen, the parties
19 stipulate that email communications involving Oath Holdings,
20 Inc., Yahoo, servers were -- constitute wire transmissions and
21 traveled in interstate or foreign commerce through servers
22 located outside of Kentucky.

23 The parties also stipulate that records received from Oath
24 Holdings are authentic under Federal Rules of Evidence 901 and
25 902 and are admissible.

1 Thank you, Your Honor.

2 THE COURT: Again, the jury is advised when parties enter
3 into a stipulation, you are to accept those factual matters as
4 true without any further proof being offered.

5 MR. ROSENBERG: Your Honor, we will -- given the
6 foundation laid here, we will hold off on actually moving these
7 exhibits into evidence with subsequent witnesses.

8 THE COURT: All right.

9 Is this a good place to take our lunch break?

10 MR. ROSENBERG: I believe so, Your Honor.

11 THE COURT: All right. Thank you.

12 Again, ladies and gentlemen, we will take until 1:00 for
13 our lunch break. Please keep in mind all the admonitions that
14 you were given previously.

15 Also, if you need to go back into the deliberation room,
16 certainly you can do that. Otherwise, if you would like to
17 exit through the front.

18 Keep in mind when we come back, we will have that video
19 set up hopefully, and we will continue again with Mr. Hubbuch
20 after that video has been completed. But we'll take that out
21 of order.

22 So at this time, you'll be excused until 1:00 this
23 afternoon.

24 (Jury left courtroom at 11:52 a.m.)

25 THE COURT: Before we recess, let me see if we have any

1 issues to take up outside the presence of the jury at this
2 time.

3 MS. LEWIS: No, Your Honor.

4 MR. CHAPMAN: No, Your Honor.

5 MR. DARLING: No, Your Honor.

6 THE COURT: We will be in recess until 1:00 this
7 afternoon.

8 (A recess was taken from 11:53 a.m. to 1:00 p.m.)

9 THE COURT: Thank you. The record will again reflect all
10 members of the jury are present. The defendants and all
11 counsel are present as well.

12 Ladies and gentlemen, at this time, as we discussed
13 earlier today, the United States will be calling a witness
14 located remotely, I believe in Chattanooga, if I'm not
15 mistaken.

16 We will continue with the earlier witness's testimony
17 after both direct and cross-examination of this witness.

18 Mr. Rosenberg, will you be calling the witness?

19 MR. ROSENBERG: I will, Your Honor.

20 THE COURT: Thank you. You may proceed.

21 MR. ROSENBERG: The United States calls Jean Lacy.

22 THE COURT: Madam Clerk, if you could please administer
23 the oath to the defendant -- excuse me, to Ms. Lacy, who is
24 appearing remotely.

25 THE CLERK: Yes, Your Honor.

JEAN LACY - DIRECT

1 Can you hear me okay, Ms. Lacy?

2 THE WITNESS: Yes.

3 **JEAN LACY, GOVERNMENT WITNESS, SWORN**

4 THE COURT: Mr. Rosenberg, you may proceed.

5 MR. ROSENBERG: Thank you.

6 JEAN LACY

7 DIRECT EXAMINATION

8 BY MR. ROSENBERG:

9 Q. Good afternoon, Ms. Lacy. Can you hear me okay?

10 A. Yes, I can.

11 Q. And I think you should be able to see me now as well,
12 correct?

13 A. Yes, I can.

14 Q. Great. Starting out, could you please state your name and
15 spell the last name for the court reporter?

16 A. Yes, it is Jean, and last name is Lacy, L-a-c-y.

17 Q. And, Ms. Lacy, where are you from?

18 A. I reside in Acworth, Georgia.

19 Q. And how are you currently employed?

20 A. I'm employed by the Clorox Company.

21 Q. How long have you been with the Clorox Company?

22 A. Ten and a half years.

23 Q. And do you have any prior corporate experience before
24 working for Clorox?

25 A. Yes, I do. I worked 13 years in the steel industry. For

JEAN LACY - DIRECT

1 AK Steel for ten years, for Dow for three years. And prior to
2 that, six years with Parker Hannifin.

3 Q. Folks are probably most familiar with Clorox bleach, but
4 are there other brands and products that the Clorox Company
5 owns or runs?

6 A. Yes, there are quite a few, including Kingsford, Fresh
7 Step, and Scoop Away litter. Brita, Burt's Bees, Pine-Sol,
8 Poett, Glad bags.

9 Q. Now, some of the brands you just listed, are any of those
10 particular brands that you have responsibilities for?

11 A. I currently have responsibility for Kingsford and litter.

12 Q. And what exactly is your role at the Clorox Company?

13 A. Currently, I am the sourcing manager and I purchase raw
14 materials for the Kingsford and litter business units.

15 Q. Were you in that same role going back to at least 2016?

16 A. The same role, but I would have been either a buyer or
17 senior buyer at that time.

18 Q. At that time were you still responsible for acquiring raw
19 materials for Kingsford?

20 A. Yes, I was.

21 Q. And describe for us what are some of the raw materials
22 that Kingsford requires.

23 A. It is a bit proprietary, but I can tell you we primarily
24 use wood that goes through seven retour facilities that we
25 have. We also buy two different types of coal, purchase char,

JEAN LACY - DIRECT

1 starch, borax.

2 Q. What is the finished product that Kingsford makes?

3 A. It is a briquette, a formed briquette.

4 Q. How is the briquette used by consumers?

5 A. It is used for grilling food.

6 Q. Is charcoal a common name for the Kingsford product?

7 A. Yes, it is.

8 Q. Does Kingsford have any operations in Eastern Kentucky?

9 A. Yes, they have two, one in Burnside and one in Summer
10 Shade.

11 Q. Now, if a new company, a company that's never been a
12 supplier to Kingsford before, if they want to become a
13 supplier, what's the process that they go through?

14 A. It is a very long process of trying to become a qualified
15 supplier. We start off with samples being sent to our R&D
16 facility in Pleasanton, California, where they are initially
17 tested in a pilot plant that they have there.

18 If that passes and looks to be promising, we then move on
19 to a proof of manufacturability, which has to be run on a
20 larger scale within one of the manufacturing plants.

21 Q. And could you help us understand a little more what you
22 mean by "proof of manufacturability"?

23 A. Often raw materials will look like they perform on a small
24 scale in a pilot plant. But when you bring it to larger
25 production, you have to be able to have the capacity, and it

JEAN LACY - DIRECT

1 often behaves differently in real life than it does in a
2 research and development facility.

3 Q. How do the quantities required for the initial test
4 samples in California compare to the quantities of product
5 required for the testing in the real-world facilities?

6 A. They are much smaller for research and development. So it
7 would be either as little as a couple five-gallon pails to, you
8 know, 200 tons to run a sufficient amount for a test.

9 When you run it through a plant, it could be several
10 truckloads or railcar loads depending on the application.

11 Q. Is there also an accounting or credit review process when
12 a supplier -- a potential supplier is being reviewed by Clorox?

13 A. Yes, there is, there is a credit check. We all -- yes,
14 there is a credit check.

15 Q. Generally speaking, I understand that may not be your
16 department, but what's the purpose of that?

17 A. To help indicate if it's a viable company for Clorox to do
18 business with. We need to have regular, consistent supply.

19 Q. What -- have you heard of the term beneficiated coal?

20 A. Yes, I have.

21 Q. What's your understanding of what beneficiated coal is?

22 A. It's something that's been cooked or baked in a calciner
23 or a kiln, and it dries off some of the volatile matter in some
24 types of coal.

25 Q. Have a number of companies approached Clorox about

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1 supplying beneficiated or calcined coal?

2 A. Yes, at least a half a dozen.

3 Q. And have you observed any common challenges that those
4 companies have faced in actually producing a -- such a product
5 that would work for Clorox?

6 A. Yes, couple common challenges. One is producing the
7 product accurately and on spec, and also being able to have the
8 appropriate financing to get a facility up and running.

9 Q. When you refer to on spec or specifications, generally
10 speaking, what type of specifications are we talking about?

11 A. Volatile matter, fixed carbon, moisture, sulfur, things
12 like that, particle size distribution.

13 Q. Ms. Lacy, in your role as a raw material buyer at Clorox,
14 did you hear of a company called Nex-Gen Industries?

15 A. Yes, I did.

16 Q. Did you come to know of a man named Doug Vance?

17 A. Yes.

18 Q. And did you come to know of a woman named Molly McKinnon?

19 A. Yes.

20 Q. How did you come to know each of these two people?

21 A. I was introduced through a broker, Courtenay Taplin, who I
22 have known for many years in the business.

23 Q. And what did Mr. Taplin tell you about these folks?

24 A. That this was a potential opportunity for an alternate
25 source of raw material, which we had been investigating with

JEAN LACY - DIRECT

1 other companies.

2 Q. And were you introduced to Mr. Vance and Ms. McKinnon as
3 part of the Nex-Gen Industries company?

4 A. Yes.

5 Q. In your initial communications with Doug Vance, did he
6 ever ask you for a letter of intent?

7 A. Yes, I believe so.

8 Q. What's your understanding of a letter of intent?

9 A. It's a commitment to purchase, and it's something that
10 Clorox typically does not do.

11 Q. Why does Clorox typically not do those kinds of letters of
12 intent?

13 A. The qualification process for a supplier is very long, and
14 nine times out of ten it doesn't pan out.

15 Q. What was your response to Mr. Vance's specific request for
16 a letter of intent?

17 A. That's something that we can't -- that we don't do and we
18 can't do.

19 Q. Based on your memory, was your response in any way
20 ambiguous on that point?

21 A. Not to my memory, no.

22 Q. Did Clorox engage with Mr. Vance and Ms. McKinnon and
23 Nex-Gen Industries in trying to qualify Nex-Gen's product for
24 Clorox?

25 A. Yes, we did.

JEAN LACY - DIRECT

1 Q. And how did that process start out with Nex-Gen?

2 A. It started out with samples being requested to be sent to
3 our R&D facility in Pleasanton, California.

4 Q. And how did those initial testing -- sample testing go?

5 A. As I remember, they went fairly well. But the scientist
6 wanted to run further tests and had some questions, so that
7 this -- this is a many months process.

8 Q. Was that initial testing of the small samples a sufficient
9 basis for you to decide to use Nex-Gen as a supplier?

10 A. No.

11 Q. And why not?

12 A. It's just the first step. It's just a first step. So the
13 second step is proof of manufacturability. We have to be sure
14 that it runs on a larger scale in the plant, as well as being
15 sure that we can get enough, not to disrupt any plant's
16 operations, daily operation.

17 Q. Would insufficient or disruptions in supply to a plant
18 negatively impact the plant's operations?

19 A. Yes, it would.

20 Q. How so?

21 A. They would have to adjust the formula and have a
22 substitute material ready on hand to replace any material that
23 wasn't available. And once they set the formulas, it's time
24 consuming to change it. You want steady state.

25 Q. Ms. Lacy, did anyone from Clorox do a site visit to the

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1 Nex-Gen facility in Eastern Kentucky?

2 A. Yes, we did.

3 Q. Was this during the process of trying to qualify Nex-Gen's
4 product for use at Kingsford?

5 A. Yes, it is. We always do a site visit.

6 Q. Did you participate in the site visit to Nex-Gen?

7 A. Yes, I did.

8 Q. And who, if anyone, do you remember was there representing
9 Nex-Gen?

10 A. Doug Vance, and I believe Gary Chamblee.

11 Q. What were your impressions of the Nex-Gen facility?

12 A. It was -- did not look complete. It was a very large
13 warehouse which held a very small operation. There were a lot
14 of environmental and safety concerns that would have needed to
15 be addressed.

16 Q. Were those concerns shared with Mr. Vance?

17 A. Yes, they were.

18 Q. Why does Clorox have an interest in the safety and
19 environmental issues of its supplier?

20 A. We most often hold our suppliers to similar standards that
21 we hold ourselves and our operations, things like safety,
22 environmental, sustainability. We have requirements that our
23 suppliers hold.

24 Q. I would like you to think back to spring of 2018. Did
25 Clorox try to go forward with a plant trial run of Nex-Gen's

JEAN LACY - DIRECT

1 product at one of the Kingsford plants in Kentucky?

2 A. Yes, we did.

3 Q. Do you recall where that Kingsford plant was?

4 A. Burnside, Kentucky.

5 Q. Overall, how would you describe that experience with
6 Nex-Gen?

7 A. It was an experience like nothing I had ever had in all of
8 my corporate experience in purchasing. We had a very difficult
9 time getting the trucks to arrive. We had given Nex-Gen over a
10 month's notice of when we needed to run the trial, which is a
11 very coordinated event to test for EPA and have all the
12 appropriate folks at the plants during the trial.

13 And trucks kept getting lost, they were very light.
14 Ultimately, we did not get a sufficient amount of coal to run
15 all of the tests completely.

16 Q. When you say the trucks were light, what do you mean by
17 that?

18 A. Normally a truck will hold -- sorry.

19 Q. We'll pause to let the sirens go by.

20 A. Sorry about that. I wasn't driving the truck though.

21 So a normal truck will hold approximately 24 tons. And
22 these trucks were -- as I recall, were light, 14 or 17 tons,
23 the first truck that we received.

24 Q. All right. Ms. Lacy, do you have a set of documents in
25 front of you?

JEAN LACY - DIRECT

1 A. Yes, I do.

2 Q. And is there a document that's labeled Government's
3 Exhibit 180, 1-8-0?

4 A. Yes, there is.

5 Q. Could you tell us what type of document this is?

6 A. This is an email.

7 Q. And who is the email between?

8 A. The first email is from Doug Vance to Pritam, who is in
9 our R&D facility.

10 Q. And what's the date of that email?

11 A. The date of this email is Thursday, April 12, 2018.

12 MR. ROSENBERG: Your Honor, the government moves to admit
13 Government's Exhibit 180.

14 THE COURT: Any objection?

15 MS. LEWIS: No objection.

16 MR. DARLING: No objection.

17 THE COURT: United States Exhibit 180 is admitted.

18 (United States Exhibit 180 was admitted.)

19 BY MR. ROSENBERG:

20 Q. This has been admitted so we're all seeing the same
21 Government's Exhibit 180 that you have in front of you. Okay,
22 Ms. Lacy?

23 A. Yes.

24 Q. All right. I would like to turn your attention to the
25 sixth page of the exhibit.

JEAN LACY - DIRECT

1 A. Okay.

2 Q. Do you see an email from Pritam on March 27th, 2018?

3 A. Yes, I do.

4 Q. Briefly, could you just tell us the two -- the email
5 address in the "to" line, who did you know to use that email?

6 A. The "to" is nexgen.industries@yahoo.com.

7 Q. And did you know anyone who used that email address at
8 this time?

9 A. That was Doug Vance's email.

10 Q. And do you recognize the CTaplin@compasspointresources.com
11 email address in the cc line?

12 A. Yes, I do.

13 Q. Who used that email?

14 A. That was Courtenay Taplin, that was the broker.

15 Q. And are you listed on the cc line as well?

16 A. Yes, I am.

17 Q. Now, I believe your earlier testimony, you referenced
18 providing approximately one-month advanced notice of the need
19 for the truckloads of product to be delivered to Burnside for
20 testing, correct?

21 A. Correct.

22 Q. If you would, do you see a sentence in the second
23 paragraph, starting with "we would be needing"? If you could,
24 read just that single sentence out loud for us.

25 A. Sorry, in the second paragraph?

JEAN LACY - DIRECT

1 Q. I guess third.

2 A. I found it. Thank you. Sorry. I've got it.

3 "We would be needing the two truckload shipment, 50-plus
4 tons, to arrive at the Burnside facility April 23rd to do
5 preliminary testing. And please provide feedback on
6 specifications requested."

7 Q. Thank you. So does this corroborate your testimony of
8 approximate one-month advanced notice being provided?

9 A. Yes.

10 Q. Did two truckloads strike you as an unreasonable request
11 to make of Nex-Gen?

12 A. No, not at all.

13 Q. If Clorox were to have approved Nex-Gen as a supplier, how
14 frequently would it need a truckload of product delivered to
15 the Kingsford plant?

16 A. So as I stated earlier, consistency is very important. It
17 would at least be one truckload per day.

18 Q. Had Vance made any prior representations to you about
19 Nex-Gen's existing production capabilities?

20 A. They were getting started up, but felt very confident that
21 they could produce, I believe, 1,500 tons a month.

22 Q. Ms. Lacy, if you would please turn to the document labeled
23 Government Exhibit 184 that's in front of you?

24 A. I see it.

25 Q. What type of document is this?

JEAN LACY - DIRECT

1 A. It is an email.

2 Q. Who is that email between?

3 A. From Doug Vance to myself.

4 Q. And what was the date of that?

5 A. That date is Thursday, April 6th, 2017.

6 Q. And is there an attachment to that email?

7 A. Yes, there is.

8 MR. ROSENBERG: Your Honor, the government moves to admit
9 Government Exhibit 184.

10 THE COURT: Any objection?

11 MR. DARLING: No objection.

12 MS. LEWIS: No objection.

13 THE COURT: United States Exhibit 184 is admitted.

14 (United States Exhibit 184 was admitted.)

15 BY MR. ROSENBERG:

16 Q. I would like to turn to the attachment that we just
17 referenced. This attachment, does it appear to be a letter to
18 you?

19 A. It may have been a letter or an attachment in the email.

20 Q. The salutation is to Jean, correct?

21 A. Correct.

22 Q. Who is it from at the bottom of the note?

23 A. It is from Doug Vance.

24 Q. If you would, could you read the third sentence of that
25 paragraph at the top, starting with "our current production"?

JEAN LACY - DIRECT

1 A. "Our current production is 1500 tons per month and will be
2 increased over the next several months accordingly."

3 Q. When someone references their current production, what do
4 you take that to mean?

5 A. That that is what they are currently able to produce.

6 MR. ROSENBERG: If we could just go back to page 1 of this
7 exhibit?

8 Q. Remind the jury when --

9 A. Yes.

10 Q. -- this document from Doug Vance was sent to you.

11 A. Thursday, April 6, 2017.

12 Q. Would that be more than a full year before the testing
13 process that we were just discussing?

14 A. Yes, it is.

15 MR. ROSENBERG: Let's turn back to Government's
16 Exhibit 180, please.

17 Q. I'll ask you to go to page 4 of the exhibit.

18 A. I'm there.

19 Q. I would like you to look at the email at the bottom from
20 April 10th, 2018.

21 A. Okay, I see it.

22 Q. Remind us who this individual Pritam was.

23 A. Pritam is a scientist in our research and development
24 department.

25 Q. And did he reiterate the schedule for the delivery to the

JEAN LACY - DIRECT

1 Burnside plant from Nex-Gen?

2 A. Yes, he did.

3 Q. Did he restate the quantity required?

4 A. Yes, he did.

5 MR. ROSENBERG: If we could scroll up to the April 12th,
6 2018 email on page 1 of the exhibit?

7 Q. We will look at the April 12th email from Pritam.

8 A. Yes.

9 Q. All right. Could you please read the first sentence of
10 Pritam's email to Courtenay and Doug?

11 A. Yes.

12 "Before that, would you be able to provide me a
13 confirmation that you will be able to deliver the request at
14 the specifications requested?"

15 Q. And would you also read the last sentence that starts
16 with -- in that paragraph, that starts with "Please let me
17 know."

18 A. "Please let me know, with a successful trial, these
19 specifications will likely be the initial ongoing specs; thus
20 if you have concerns, they should be voiced as soon as possible
21 so we can converge on an appropriate solution."

22 Q. In your experience as a raw materials buyer, do you want
23 suppliers to be honest with you about their capabilities to
24 meet specifications early in the qualification process?

25 A. Yes, that's very important.

JEAN LACY - DIRECT

1 Q. Can you explain to the jury why that's so important?

2 A. We have a limited amount of resources. There are many
3 suppliers that come to us wanting to supply. And we -- you can
4 see how long this process takes. It's costly and it involves a
5 lot of people and resources, and we simply don't have those
6 resources, money, and time to waste on companies that aren't
7 viable.

8 Q. Now, the email from April 2017 represented Nex-Gen's
9 monthly capacity was 1,500 tons, correct?

10 A. Correct.

11 Q. And Pritam's request in this email chain was only
12 approximately 50 tons, correct?

13 A. Correct.

14 MR. ROSENBERG: Let's scroll up to the top of the exhibit.

15 Q. Ms. Lacy, what was Doug Vance's response to Pritam's
16 email?

17 A. He stated, "I confirm that we can deliver on spec and
18 delivery date."

19 Q. Based on that representation, did you have any
20 reservations at this point on going forward with the testing at
21 the Burnside plant?

22 A. No, we wanted to move forward with testing.

23 Q. Did Nex-Gen deliver the two truckloads on the date
24 promised?

25 A. No, they did not.

JEAN LACY - DIRECT

1 Q. Ms. Lacy, could I turn your attention to Government's
2 Exhibit 181?

3 A. I'm there.

4 Q. Again, I'll ask you to just describe what type of document
5 this is and who the sender and receiver is.

6 A. This is an email from myself to Matt Kremer, who was the
7 operations manager at Burnside at that time.

8 Q. And had Mr. Kremer sent you an initial email?

9 A. Yes, he did.

10 Q. And when was this email sent?

11 A. Friday, May 4th, 2018.

12 Q. What is the subject line or reference line of this email?

13 A. The subject is "NexGen material."

14 Q. Does this email pertain to the plant testing we had been
15 discussing?

16 A. Yes, it does.

17 MR. ROSENBERG: Your Honor, we move to admit Government's
18 Exhibit 181.

19 THE COURT: Any objection?

20 MS. LEWIS: No objection.

21 MR. DARLING: No objection.

22 THE COURT: United States Exhibit 181 will be admitted.

23 (United States Exhibit 181 was admitted.)

24 BY MR. ROSENBERG:

25 Q. Ms. Lacy, do you recall who Matt -- is it Kremer, who that

JEAN LACY - DIRECT

1 is?

2 A. Yes.

3 Q. Tell the jury.

4 A. Yes. At that time, he was the operations manager at the
5 Burnside, Kentucky Kingsford plant.

6 Q. What was Matt asking you on the 4th of May, 2018?

7 A. He asked, "Is NexGen planning on delivering material over
8 the weekend? We have the one load on the ground now, and want
9 to let our folks know if they should expect something over the
10 weekend?"

11 Q. Was the original target date from Pritam weeks earlier in
12 April of 2018?

13 A. Yes, I believe it was April 23rd at the latest.

14 Q. What was your response to Matt's inquiry?

15 A. I said, "Matt, two truckloads will go out Sunday morning
16 according to Molly."

17 Q. What did you mean by "according to Molly"?

18 A. I believe I had a phone call with Molly McKinnon and she
19 assured me that two truckloads would go out Sunday morning.

20 Q. So were you relying on Ms. McKinnon's representation?

21 A. Yes, I was.

22 Q. Did you copy both Molly McKinnon and Doug Vance on your
23 response to Matt?

24 A. Yes, I did.

25 Q. If, in fact, there were not two truckloads ready to go out

JEAN LACY - DIRECT

1 Sunday morning, could they have told everyone on this email?

2 A. Yes.

3 Q. If Friday was May 4th, would that make Sunday, May 6th?

4 A. Yes, it would.

5 Q. Then I would like to turn your attention to Government's
6 Exhibit 182. And does this appear --

7 A. I'm there.

8 Q. -- to be another email?

9 A. Yes, it appears to be an email.

10 Q. Is it from May 6th, 2018?

11 A. Yes, it is.

12 Q. And who is this email between?

13 A. It starts out between Molly McKinnon to Doug Vance. And
14 then the second part is from Doug Vance to Courtenay Taplin,
15 copying myself, Matt Kremer, Molly, and Pritam.

16 MR. ROSENBERG: Your Honor, the government moves to admit
17 Exhibit 182.

18 THE COURT: Any objection?

19 MR. DARLING: No objection.

20 MS. LEWIS: No objection.

21 THE COURT: United States Exhibit 182 is admitted.

22 (United States Exhibit 182 was admitted.)

23 BY MR. ROSENBERG:

24 Q. So on Sunday, May 6th, 8:02 email from Doug, what did he
25 report to everyone?

JEAN LACY - DIRECT

1 A. He reported that the "First truck is getting loaded now."

2 Q. Now could I turn your attention to Government Exhibit 183,
3 please?

4 A. Yes.

5 Q. Does this appear to be another email related to the same
6 topic we've been discussing?

7 A. Yes, it is.

8 Q. What's the date on this email?

9 A. This email is dated Monday, May 14th, 2018.

10 Q. Is that more than a week after the email we just reviewed?

11 A. Yes, it is.

12 Q. Is there an email from Mr. Taplin in this document?

13 A. Yes, there is.

14 Q. And who is he emailing to?

15 A. He emails Doug Vance.

16 MR. ROSENBERG: Your Honor, the government moves to admit
17 Exhibit 183.

18 THE COURT: Any objection?

19 MS. LEWIS: No objection.

20 MR. DARLING: No objection.

21 THE COURT: United States Exhibit 183 is admitted.

22 (United States Exhibit 183 was admitted.)

23 BY MR. ROSENBERG:

24 Q. Did Mr. Taplin describe a conversation that he had with
25 you?

JEAN LACY - DIRECT

1 A. Yes, he did.

2 Q. Could you read the sentence?

3 A. "Jean called this morning to advise that there is a desire
4 to complete the test which only had enough product to complete
5 the first (EPA) test."

6 Q. Is that consistent with a conversation that you had with
7 Mr. Taplin at the time?

8 A. Yes.

9 Q. As of May 4th, had Kingsford received the approximately
10 50 tons that were needed for completing all the testing?

11 A. No.

12 Q. Was this more than three weeks after the initial deadline
13 set by Pritam?

14 A. Yes.

15 Q. And more than a week after Mr. Vance said the first truck
16 is getting loaded now?

17 A. Yes.

18 Q. Did the loads eventually arrive at the Burnside plant?

19 A. Some loads did. They were light and had never amounted to
20 50 tons.

21 Q. What sort of excuses do you recall Mr. Vance giving for
22 these many delays?

23 A. There was a lot of subterfuge. The truck got lost, the
24 driver got lost. This is only about an hour or so drive from
25 Hazard to the plant. There were just -- it was one excuse

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1 after the other. The trucks just disappearing.

2 Q. Did you find these excuses to be credible?

3 A. No, we did not.

4 Q. Did Mr. Vance or Ms. McKinnon ever indicate to you that
5 the issue was with Nex-Gen's ability to produce sufficient
6 quantities of the product?

7 A. No.

8 Q. Now, despite all of those issues, did Clorox try to run
9 further testing on the Nex-Gen product in California?

10 A. Yes, we did.

11 Q. And why were you willing to try and still do some further
12 testing?

13 A. We had already invested so much time and energy in this,
14 to try to remain hopeful, though nobody was hopeful at this
15 point. The company is always looking for cost savings, the
16 product was good, the price was good. But we couldn't get the
17 product.

18 Q. Did that further testing in California require further
19 small samples to be sent out there?

20 A. Yes.

21 Q. And did Mr. Vance timely provide those small samples to
22 California?

23 A. No.

24 Q. Ultimately, did Clorox go further with approving Nex-Gen
25 as a supplier?

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1 A. No.

2 Q. And why not?

3 A. We simply couldn't get the material. And they proved to
4 be extremely untrustworthy, and we don't typically do business
5 with companies that we can't trust.

6 Q. Did Clorox ever commit to any purchases of coal products
7 other than those initial test loads?

8 A. No.

9 Q. And those test loads occurred in 2018, correct?

10 A. Yes.

11 Q. Have you ever heard of a type of document called an
12 investment summary?

13 A. Yes.

14 Q. Have you ever been asked to have Clorox or Kingsford
15 listed as a customer or client in some other company's
16 investment summary?

17 A. Occasionally.

18 Q. Do you agree to allow Kingsford or Clorox to be referenced
19 in that manner?

20 A. No, we don't.

21 Q. Why not?

22 A. It's not Clorox's policy to have our name listed or any
23 type of commitment referenced in that type of a document, or
24 any document for that matter.

25 Q. Ms. Lacy, I would like you to take a look at what's been

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1 admitted already as Government's Exhibit 602.

2 Do you have that?

3 A. Yes.

4 Q. Well, first let me ask, up until a couple of days ago, had
5 you ever seen this particular investment summary?

6 A. No, not to my knowledge.

7 Q. What was your reaction when you saw it?

8 A. I was shocked.

9 Q. Why were you shocked?

10 A. Because our name is listed several times in this document,
11 which again is something Clorox doesn't allow. And the
12 statements are not true.

13 Q. All right. Let's take a look at what you're referencing.

14 MR. ROSENBERG: Can we enlarge the middle of the first
15 page of the document? And actually, first, let's scroll to the
16 top.

17 Q. Ms. Lacy, what's the company listed at the top of this
18 development summary?

19 A. Nex-Gen Industries, Inc.

20 Q. All right.

21 MR. ROSENBERG: Now, if we could scroll to the middle of
22 the document?

23 Q. Do you see the sentence that reads, "Due to the fact that
24 sales have exceeded their production capabilities, Kingsford
25 Charcoal recently issued verbal commitments to purchase a

JEAN LACY - DIRECT

1 variety of wood and coal-based products from NGI."

2 Did you follow along with my reading?

3 A. Yes, I did.

4 Q. Did I read it accurately?

5 A. Yes, you did.

6 Q. Is that a false statement?

7 A. Yes, it is.

8 Q. Did you ever give the verbal commitments described in this
9 document?

10 A. No.

11 Q. Was anyone else at Clorox in a position to give such a
12 commitment to Nex-Gen?

13 A. No.

14 Q. To your knowledge, were Vance or McKinnon negotiating with
15 anyone else regarding sales to Kingsford?

16 A. Not -- not that I know of.

17 Q. Are there any other raw material buyers responsible for
18 the plant at Burnside?

19 A. Not for the products that I buy.

20 MR. ROSENBERG: Your Honor, may I have one moment?

21 THE COURT: Yes, sir.

22 Q. Thank you, Ms. Lacy.

23 MR. ROSENBERG: Your Honor, we'll pass the witness subject
24 to redirect.

25 THE COURT: Thank you.

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1 Mr. Darling.

2 MR. DARLING: Can I have just a moment?

3 THE COURT: You need just a moment? Yes.

4 CROSS-EXAMINATION

5 BY MR. DARLING:

6 Q. Good afternoon, Ms. Lacy.

7 A. Good afternoon.

8 Q. My name is Jeff Darling. I represent Doug Vance.

9 A. Nice to meet you.

10 Q. You too. So basically what we have here is a broker came
11 to you and mentioned that -- this is Mr. -- it is Tamplin or
12 Templin?

13 A. Taplin.

14 Q. Taplin, okay.

15 So Mr. Taplin came to you with a thought of putting
16 Clorox, Kingsford, whatever the part of the company is, with
17 Nex-Gen to provide calcinated coal, correct?

18 A. Yes.

19 Q. And you indicated that you have a -- when I say "you,"
20 your company has a long process that you have to go through in
21 order to do this. And I think you said nine out of ten
22 suppliers do not pan out?

23 A. I don't know if that's an accurate statistic, but very
24 often they do not pan out.

25 Q. Well, you said nine out of ten, I'm not going to hold you

JEAN LACY - CROSS

1 to that. But it's fair to say that a significant majority of
2 people that attempt to provide product to you do not pan out?

3 A. Correct.

4 Q. So Nex-Gen goes in that category of whatever percentage of
5 people don't pan out in forming a relationship with Clorox,
6 Kingsford, right?

7 A. Yes.

8 Q. And the initial samples that were provided to you --
9 again, when I say "you," I mean your company -- seemed pretty
10 good, right?

11 A. Yes.

12 Q. But you had concerns that -- you and the team that did the
13 site visit in Chavies had concerns about the facility that they
14 were planning on using, correct?

15 A. Yes. Yes.

16 Q. And you indicated you were there, Doug Vance, and you know
17 Gary Chamblee?

18 A. Yes.

19 Q. Did you know him outside of this relationship with
20 Nex-Gen?

21 A. No. This is the first time I had met him.

22 Q. And your thought or possibility of salvaging a
23 relationship was to do a trial run at a Clorox Kingsford plant
24 in Burnside, which is in Pulaski County, Kentucky, correct?

25 A. That is the normal due diligence process for any supplier.

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1 Q. Okay. But that was what you were working towards,
2 correct?

3 A. That would be the second phase after the R&D trial.

4 Q. Just the bottom line was, Nex-Gen could not get product to
5 the Burnside plant for that trial run as it turned out,
6 correct?

7 A. That's correct.

8 Q. And one of the reasons that was given to you by Doug Vance
9 was that they couldn't get the trucks to get to --

10 A. The drivers or the --

11 Q. Somehow --

12 A. The truck got lost.

13 Q. Right.

14 A. Disappeared.

15 Q. But whatever it was, they couldn't get the trucks to get
16 the product from them to the plant in Burnside, is what
17 Mr. Vance told you?

18 A. That's what he said, yes.

19 Q. Did he talk to you about who was responsible for the
20 trucks? Was there any discussion about that?

21 A. I'm not sure I follow.

22 Q. Well, was there any further explanation? Did he say who
23 was supposed to -- you know, who was supposed to handle the
24 trucks? Who owned the trucking company or anything like that?

25 A. I don't recall, but it's the supplier's responsibility to

JEAN LACY - CROSS

1 deliver to the facility.

2 Q. No question. I am not trying to say that it isn't.

3 Were you aware that Gary Chamblee was at least part owner
4 of the trucking company that was going to be responsible for
5 getting this material to Burnside?

6 A. I don't know that I was aware of the particulars, nor
7 would it matter to me.

8 Q. Again, I'm not saying it would matter. I'm just wondering
9 if you were aware of that, if that fact was ever communicated
10 to you.

11 A. I don't recall.

12 Q. Okay. So it appears that the problems with the
13 relationship -- and I know you didn't get very far into the
14 relationship, but it appeared that the problems weren't the
15 product itself, but getting sufficient product to Burnside?

16 A. Yes, we could not get product delivered.

17 Q. But with the limited amount of product that you did have,
18 that was provided to you, you didn't have a problem with the
19 product itself? Again, when I say "you," I'm talking about the
20 company.

21 A. No. No, that's what made it so sad.

22 Q. Ms. Lacy, thank you for your time.

23 MR. DARLING: Oh, I'm sorry. Can I ask one more question?

24 THE COURT: Yes, sir.

25 BY MR. DARLING:

JEAN LACY - REDIRECT

1 Q. Are you aware of whether Clorox, Kingsford ever purchased
2 any other product from Nex-Gen? In particular, sawdust?

3 A. Yes.

4 Q. Okay.

5 A. That's a different file, but yes.

6 Q. I understand that's different. But was that a significant
7 amount -- significant purchase from Nex-Gen, do you know?

8 A. No. No, it was not.

9 Q. It was not significant or you don't know?

10 A. It was not significant.

11 Q. And did the purchase of sawdust have anything to do with
12 the calcinated coal that you were attempting -- that was going
13 to be part of the relationship you tried to form?

14 A. No, it did not.

15 MR. DARLING: All right. Thank you, ma'am.

16 THE COURT: Thank you.

17 Ms. Lewis.

18 MS. LEWIS: I have no questions, Your Honor. Mr. Darling
19 covered it.

20 THE COURT: All right. Thank you.

21 See if there is any redirect of the witness.

22 MR. ROSENBERG: Briefly, Your Honor.

23 THE COURT: Yes, sir.

24 REDIRECT EXAMINATION

25 BY MR. ROSENBERG:

JEAN LACY - REDIRECT

1 Q. Ms. Lacy, you were asked by Mr. Darling a number of
2 questions about the trucking issues.

3 Do you recall that?

4 A. Yes.

5 Q. I'm curious if you are aware of any of the other suppliers
6 to that Kingsford plant in Burnside, any of those other
7 suppliers having these repeated issues where trucks just can't
8 find their way to the plant?

9 A. Never. As I said, I have never experienced anything quite
10 like this in all of my years of purchasing.

11 Q. Did that experience go into your assessment of whether you
12 believed the excuses Mr. Vance was giving you?

13 MR. DARLING: Objection.

14 THE COURT: Overruled.

15 BY MR. ROSENBERG:

16 Q. You may answer.

17 A. Yes. We talked amongst ourselves at Clorox and nobody
18 believed him or trusted anything that was said.

19 Q. Ms. Lacy, you were also asked by Mr. Darling about the
20 high number of companies that try to be qualified as a supplier
21 but don't pan out.

22 Do you remember those questions?

23 A. Yes.

24 Q. And it's fair to say Nex-Gen is one of those companies
25 that tried to be a supplier but didn't pan out?

JEAN LACY - CROSS

1 A. Yes.

2 Q. So why is Nex-Gen so unique in your mind?

3 A. Because it was an unforgettable experience of trucks
4 disappearing and the difficulty in trying to get this supplier
5 even on track to be qualified.

6 Q. So thinking of all those other companies that tried to be
7 a supplier but didn't pan out, did you leave that -- those
8 experiences not trusting them or finding them to be credible
9 companies?

10 A. No. No, typically companies will state things they are
11 unable to do.

12 Q. And that's what made Nex-Gen stand out, right?

13 A. Correct.

14 MR. ROSENBERG: Nothing further, Your Honor.

15 THE COURT: All right.

16 MR. ROSENBERG: Thank you, Ms. Lacy.

17 THE COURT: Mr. Darling, additional questions?

18 MR. DARLING: No, Your Honor.

19 THE COURT: Anything else?

20 MS. LEWIS: Just one question.

21 THE COURT: Yes, ma'am.

22 Ms. Lewis has a question.

23 CROSS-EXAMINATION

24 BY MS. LEWIS:

25 Q. Good afternoon, Ms. Lacy. I'm Brandi Lewis and I

JEAN LACY - CROSS

1 represent Molly McKinnon.

2 A. Nice to meet you.

3 Q. You too. Can you hear me okay?

4 A. Yes, I can.

5 Q. All right. Thank you. I just have one brief question.

6 You just testified that Mr. Vance wasn't trusted but yet
7 Kingsford still purchased or made several purchases of sawdust,
8 correct?

9 A. Yes, under -- that was separate. It was a pile that he
10 had, was trying to get rid of.

11 Q. But it was multiple purchases and multiple deliveries that
12 were successful in all respects?

13 A. It was a waste product he was trying to get rid of. Yes,
14 as far as I know they were shipped, but that wasn't my
15 purchase.

16 Q. So you're not --

17 A. So I don't have intimate knowledge of that.

18 Q. All right. That was going to be my next question. That
19 wasn't really in your purview, was it?

20 A. No.

21 Q. All right. Thank you.

22 THE COURT: Anything else of the witness? No?

23 Ms. Lacy, thank you for appearing here today. At this
24 time, there are no further questions and so you'll be excused
25 from further testifying in the case. Thank you, ma'am.

1 THE WITNESS: Thank you, Your Honor. And thank you for
2 accommodating me.

3 THE COURT: Yes, ma'am.

4 All right. We will take a brief recess, ladies and
5 gentlemen, we will remove the monitor during the recess.

6 We haven't been out quite an hour since lunch so we'll
7 take a 10- to 15-minute recess, but we'll take another later
8 on, because I know yesterday we had a long session at the very
9 end of the day, so I'll try not to do that again today.

10 We will be in recess for approximately 10 to 15 minutes.

11 (A recess was taken from 2:00 p.m. to 2:16 p.m.)

12 THE COURT: Thank you. We have eliminated the screen.
13 All members of the jury are present. Counsel and all
14 defendants are present.

15 Let's see. Let's continue with Special Agent Hubbuch. If
16 you would like to come back up to the witness stand? Let's
17 see. We'll need to return those exhibits to him he was looking
18 at before we took the break.

19 MR. ROSENBERG: Your Honor, we were actually at the
20 conclusion of the government's direct.

21 THE COURT: All right.

22 MR. ROSENBERG: We'll pass the witness.

23 THE COURT: All right. Very well.

24 Special Agent Hubbuch, of course you're still under oath.

25 Mr. Darling?

CURTIS THOMSON - DIRECT

1 MR. DARLING: I don't have any questions at this point
2 based on what Special Agent Hubbuch has offered so far.

3 THE COURT: All right.

4 Ms. Lewis?

5 MS. LEWIS: Nor do I, Your Honor.

6 THE COURT: All right. Well, I'm sorry. I'll let you go
7 back to counsel table and we'll continue with another witness.

8 THE WITNESS: Yes, Your Honor.

9 THE COURT: Thank you.

10 Mr. Rosenberg, if you would like to call the next witness,
11 please.

12 MR. ROSENBERG: Yes, Your Honor.

13 United States called Curtis Thomson.

14 THE COURT: Thank you.

15 **CURTIS THOMSON, GOVERNMENT WITNESS, SWORN**

16 THE COURT: Thank you. You may proceed.

17 MR. ROSENBERG: Thank you, Your Honor.

18 CURTIS THOMSON

19 DIRECT EXAMINATION

20 BY MR. ROSENBERG:

21 Q. Sir, could you please state your name and spell the last
22 name for the court reporter?

23 A. Yes, Curtis, last name T-h-o-m-s-o-n.

24 Q. And, Mr. Thomson, where are you from?

25 A. New Jersey.

CURTIS THOMSON - DIRECT

1 Q. Are you currently employed?

2 A. Yes.

3 Q. How so?

4 A. I work part time at a school and part time at a church.

5 Q. And are you familiar with a company called NexGen?

6 A. Yes.

7 Q. How are you familiar with that company?

8 A. So in about 2018, I started working for NexGen Energy
9 Partners, and I worked there for about six months.

10 Q. And how did you come to work for NexGen Energy Partners?

11 A. So I went to school in West Virginia and someone that
12 worked at the school knew Gary Chamblee. And he had hired me
13 to work at the Hazard plant. Went down and visited it, that's
14 where I met Doug and Molly and everybody, and then got a job
15 there.

16 Q. Was this your first job coming out of college?

17 A. Yes. I worked landscaping the summer, but yeah.

18 Q. So did you start at NexGen basically the summer coming out
19 of your graduation?

20 A. I think it was a couple of months after, maybe August or
21 so.

22 Q. And when did your job with NexGen Energy Partners end?

23 A. So in January of 2019, around there, I started getting the
24 severance package.

25 Q. When you were first being hired for NexGen, what did you

CURTIS THOMSON - DIRECT

1 think your job was going to be?

2 A. So I think I was like the middleman between Doug and Gary.
3 So Doug did more of the process and operations and then Gary
4 was the investor. So trying to get -- you know, be a
5 communicator between the two parties.

6 Q. What was your education background in college?

7 A. So my degree is energy management production engineering.
8 So basically project management, what does the process need,
9 you know, what does the investor need, and try to communicate
10 back and forth that way.

11 Q. Did Mr. Chamblee have a list of things or information that
12 he wanted you to work on getting?

13 A. Uh-huh. Yeah. So what I was told is that the process,
14 the company was going great, and then sales slowed up. And so
15 part of my job was figuring out what happened and getting us
16 back on track.

17 So yeah, he would ask me to find purchase orders, you
18 know. And another thing was getting like people on to Paychex,
19 which was like a payroll company. And inventory, stuff like
20 that.

21 Q. You mentioned Molly, is that Molly McKinnon?

22 A. Uh-huh.

23 Q. Was she still working at NexGen when you started?

24 A. She was. She was being phased out, yeah.

25 Q. What role did you see her playing when you overlapped?

CURTIS THOMSON - DIRECT

1 A. I think that she had a similar position to me,
2 communicating between Doug and Gary. And I think with stuff
3 that was happening, you know, they felt like maybe I would be a
4 better fit for that communication.

5 Q. Did she have a role with respect to payroll and finances?

6 A. I believe so.

7 Q. And did you take over some of those job functions?

8 A. Yeah, I took over the paychecks, getting employees on to
9 the payroll account.

10 Q. So could you describe to the jury what your day-to-day
11 work ended up being?

12 A. Yeah. It started off pretty slow. I would, you know, get
13 to the plant and, you know, if Gary had a list for me, you
14 know, some of the stuff I would talk to Doug about and he was
15 working on, stuff like that, getting purchase orders and
16 getting some of the things that Gary needed.

17 But a lot of it was cleaning. I did a lot of cleaning.
18 And yeah, small stuff. I think I ordered a printer and stuff
19 like that.

20 Q. When you were working for NexGen, where were you located?

21 A. I was mostly in the scale house, that area. There was a
22 little office in the back that I would set up shop at.

23 Q. And was that at the Trus Joist site in Chavies?

24 A. Uh-huh.

25 Q. From the scale house office, could you see whether a truck

CURTIS THOMSON - DIRECT

1 was entering or exiting the site?

2 A. Yeah.

3 Q. Was there basically one way in and out?

4 A. Yeah. There was a way on the scales and then a way, you
5 know, just for cars and whatever to drive by too.

6 Q. In your time at the NexGen site, what level of production
7 of calcined coal did you observe NexGen doing while you were
8 there?

9 A. I feel like a couple of test batches.

10 Q. Did you see raw coal feedstock being brought into the
11 site?

12 A. Yeah.

13 Q. How did that volume compare to the volume of finished
14 calcined coal you saw leaving the site?

15 A. We didn't really send out a whole lot.

16 Q. Were there times you observed raw coal come in and raw
17 coal go out?

18 A. Yeah, I would say so. I think there was some, yeah.

19 Q. If a representation had been made that NexGen was
20 producing 1,500 tons of calcined coal per month, would that be
21 consistent with your observations?

22 A. No.

23 Q. Could you tell the jury how payroll worked while you were
24 at NexGen?

25 A. Yeah. So if Gary approved of people working a certain

CURTIS THOMSON - DIRECT

1 shift, you know, I would put hours into that program called
2 Paychex, and then that would pay the employees.

3 Q. Were there times that employees didn't get paid?

4 A. Yeah.

5 Q. Did you observe that?

6 A. Yeah.

7 Q. What was your understanding of where the money for payroll
8 came from?

9 A. Well, if it was -- if it was from, like, Gary, if Gary had
10 approved, it would come from that bank where, you know, Gary
11 and Mendie and all of them would pay them.

12 But some people would be paid just either directly from,
13 you know, Doug or something like that.

14 Q. Did you ever see folks getting paid in cash?

15 A. I don't think so.

16 Q. In your time there, were there any paychecks that were
17 bouncing?

18 A. I don't think so. It was -- I don't know whether I
19 witnessed it, but I just heard it from the people, you know,
20 the employees that would talk about, hey, I didn't get paid
21 this week, or you know, something along those lines, or it
22 happening in the past.

23 Q. Did either Doug Vance or Molly McKinnon ever disclose to
24 you that they had obtained a loan from Koch Carbon?

25 A. Not to my knowledge.

CURTIS THOMSON - DIRECT

1 Q. Did anyone else tell you about the existence of such a
2 loan in 2018?

3 A. No.

4 Q. Thinking back to the type of items and information that
5 Mr. Chamblee was wanting you to collect, would the existence of
6 a loan from Koch Carbon be the type of information he was
7 seeking?

8 A. Uh-huh.

9 Q. I'm sorry --

10 A. Yeah, yeah.

11 Q. -- you have to give a verbal.

12 A. Yeah, yeah.

13 Q. Thank you.

14 Did Vance or Ms. McKinnon ever tell you that Nex-Gen
15 received \$75,000 from Koch on June 15th of 2018?

16 A. No.

17 Q. Or another \$100,000 from Koch on June 22nd, 2018?

18 A. Not to my knowledge.

19 Q. Did they disclose anything to you about receiving a
20 \$130,000 from Koch on August 2nd, 2018?

21 A. No.

22 Q. And what about another \$125,000 from Koch on
23 September 11th, 2018?

24 A. No.

25 Q. Have you ever heard of a business called Kentucky River

CURTIS THOMSON - DIRECT

1 Properties or KRP?

2 A. Yes.

3 Q. How did you hear about KRP?

4 A. I believe they were -- they owned the Trus Joist location
5 that we were at. Yeah.

6 Q. Fair to call them a landlord of NexGen?

7 A. Uh-huh.

8 Q. Did either Mr. Vance or Ms. McKinnon ever tell you that
9 NexGen owed royalty payments to KRP on any product it sold?

10 A. I didn't know that.

11 Q. Did they ever ask you to prepare royalty reports to send
12 to KRP?

13 A. No.

14 Q. Did they ever tell you that NexGen had borrowed \$170,000
15 from KRP?

16 A. No.

17 Q. Other than Mr. Vance and Gary Chamblee, did you know any
18 other owners of the NexGen business?

19 A. I don't believe so, no.

20 Q. Did either Mr. Vance or Ms. McKinnon tell you about an
21 investment from a man named Allan Deware for a controlling
22 stake in the company?

23 A. No.

24 MR. ROSENBERG: May I have just a moment, Your Honor?

25 THE COURT: Yes, sir.

CURTIS THOMSON - CROSS

1 MR. ROSENBERG: Thank you, Your Honor. We will pass the
2 witness.

3 THE COURT: Thank you.

4 Mr. Darling.

5 CROSS-EXAMINATION

6 BY MR. DARLING:

7 Q. Hi, Mr. Thomson.

8 A. Hello.

9 Q. My name is Jeff Darling, I represent Doug Vance. I've got
10 just a few questions for you.

11 You live in New Jersey right now?

12 A. Yes.

13 Q. For six months you worked at NexGen in Perry County,
14 Kentucky?

15 A. In -- yeah, something like that.

16 Q. About six months. And this was pretty much right out of
17 school, you were matched up through a friend with Gary
18 Chamblee?

19 A. Yes.

20 Q. What was your job, you said it was a middleman?

21 A. So I was the op -- the office manager and production
22 assistant. How I understood that was, I was communicating
23 between Doug and Gary.

24 Q. And I think you said you did a lot of cleaning?

25 A. Yeah, and the coal kept kind of piling back up.

CURTIS THOMSON - CROSS

1 Q. All right. You were asked a lot of questions about loans
2 and other companies and that sort of thing. And I think in
3 every one of them, you know, Mr. Rosenberg said, were you aware
4 of that or did you hear this? You said no, no, no, no. All
5 down the line, right?

6 A. Yeah.

7 Q. The job that you had, would you have been privy to those
8 types of financial transactions, either with Mr. Vance or
9 Mr. Chamblee?

10 A. How I understood my job was trying to build trust in the
11 two of them together. So you know, yeah, I mean, if we were to
12 get like a purchase order or something, then you know, he would
13 want to know that. But yeah, I don't know.

14 Q. Were you a spy?

15 A. I wasn't a spy.

16 Q. Okay.

17 A. Not to my knowledge.

18 Q. Did Mr. Chamblee ask you to report to him what's going on
19 at the facility?

20 A. I mean, I think from both ends they were -- you know,
21 because Doug, when I moved down there, actually he told me,
22 hey, he has nothing to hide so if Gary wants to know anything,
23 you know, share it with him. But to my knowledge, I just
24 wanted to see the company work out and people get employment.

25 So I don't think there was really something to hide. It

CURTIS THOMSON - CROSS

1 was just hey, let's get together, get people on payroll, get
2 some purchase orders, get product running. And you know, get
3 it back up and going, you know.

4 Q. Did it ever appear to be very successful?

5 A. Of getting things back up and running or --

6 Q. Yes.

7 A. No, that was tough to work together.

8 Q. And your understanding was the company -- you started in
9 August or so of 2018?

10 A. Uh-huh.

11 Q. And you were told by Mr. Chamblee that things had been
12 going pretty well for a couple of years and --

13 A. Yeah.

14 Q. -- were slowing down?

15 A. Yeah.

16 Q. Okay. I'm assuming when you moved to Chavies or Hazard,
17 Kentucky, you didn't know anybody.

18 A. I didn't.

19 Q. Okay. Did you and Doug become friendly or --

20 A. Yeah.

21 Q. Doug ever say to you that the Georgia people, meaning
22 Mr. Chamblee and that group, were living a nice life while he
23 was having trouble putting milk in the fridge?

24 MR. ROSENBERG: Objection, Your Honor.

25 THE COURT: Sustained.

CURTIS THOMSON - CROSS

1 A. Run that by me again.

2 THE COURT: I sustained the objection, so you're not
3 allowed to answer that.

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

5 THE WITNESS: Thank you.

6 THE COURT: All right.

7 Ms. Lewis.

8 CROSS-EXAMINATION

9 BY MS. LEWIS:

10 Q. Good afternoon, Mr. Thomson.

11 A. Hello.

12 Q. I'm Brandi Lewis, I represent Ms. McKinnon.

13 A. Uh-huh.

14 Q. First off, she was kept on to train you for a while; isn't
15 that correct?

16 A. Yes.

17 Q. She did a pretty good job at that?

18 A. Yeah, I would say so.

19 Q. All right. And even though she was the one training you,
20 you weren't necessarily there to be involved in any accounting
21 purposes?

22 A. Yeah, I was not.

23 Q. Most of that was then handed over to the people back in
24 Georgia with the Shumard Group?

25 A. Yes, Mendie and them.

CHARLES MILLER - DIRECT

1 Q. All right. So you wouldn't necessarily know about
2 lenders, investors, anything like that?

3 A. I would not.

4 Q. Same would go for any KRP royalty information?

5 A. Yeah, that would probably go to Mendie.

6 Q. All right.

7 MS. LEWIS: Nothing further. Thank you.

8 THE COURT: See if there is any redirect of the witness.

9 Mr. Rosenberg?

10 MR. ROSENBERG: No, Your Honor.

11 THE COURT: Thank you, sir. You may step down.

12 Mr. Rosenberg or Mr. Chapman, you may call your next witness.

13 MR. ROSENBERG: United States calls Charles Mike Miller.

14 THE COURT: Thank you.

15 **CHARLES MICHAEL MILLER, GOVERNMENT WITNESS, SWORN**

16 THE COURT: Thank you.

17 Mr. Rosenberg, you may proceed.

18 CHARLES MILLER

19 DIRECT EXAMINATION

20 BY MR. ROSENBERG:

21 Q. Sir, could you state your full name and spell the last
22 name for the court reporter?

23 A. Charles Michael Miller, M-i-l-l-e-r.

24 Q. Mr. Miller, tell the jury where you are from, please.

25 A. I'm from the town called Hazard, is where I'm from.

CHARLES MILLER - DIRECT

1 Q. And is that here in Eastern Kentucky?

2 A. In Eastern Kentucky, yes, uh-huh.

3 Q. Mr. Miller, at some point did you become familiar with a
4 man named Doug Vance?

5 A. Yes.

6 Q. How did you learn of Mr. Vance?

7 A. Well, I got -- there was a lady through, I think, LKLP
8 that said they was looking for people to work for the company,
9 so she got me in contact and I went out for an interview that
10 way.

11 Q. Is LKLP some type of organization that helps people find
12 employment?

13 A. Yes, it is, uh-huh.

14 Q. Okay. About roughly what time period would we be talking
15 about here?

16 A. Probably around 2017, somewhere in there.

17 Q. Did you pursue this job opportunity?

18 A. Yes.

19 Q. How did that unfold? Who did you --

20 A. I went out, done an interview, which I got a maintenance
21 background so that's what I went to interview for. And --

22 Q. Who was that interview with?

23 A. With Doug Vance.

24 Q. And where did that take place?

25 A. At the -- on the Trus Joist site at the scale house.

CHARLES MILLER - DIRECT

1 Q. And what was the nature of the position you were applying
2 for?

3 A. I thought I was applying for the maintenance position.

4 Q. Now, you said you thought you were applying for that. Did
5 that somehow change?

6 A. That changed, yeah.

7 Q. How so?

8 A. It was right at the same time I was put as general manager
9 at the time.

10 Q. So you applied for maintenance but were given the position
11 of general manager?

12 A. Right, uh-huh.

13 Q. Was Mr. Vance the only one there at the Trus Joist site
14 for your interview?

15 A. Best I remember, yes.

16 Q. At some point did you meet a woman named Molly McKinnon?

17 A. Yes.

18 Q. And how did that come about?

19 A. Just by working there. You know, she would come and take
20 care of the business side of it, yeah.

21 Q. So she was working with Nex-Gen as well?

22 A. Yes.

23 Q. Were there any other employees when you were first hired
24 for Nex-Gen?

25 A. Not that I know of, not from that area.

CHARLES MILLER - DIRECT

1 Q. About how long did you continue working at Nex-Gen?

2 A. Probably about -- let's see, let me back up here. Let me
3 think, let's see. Probably a couple, two to three years.

4 Q. All right. Was this your first time working at -- for a
5 company at the Trus Joist site?

6 A. No, I worked for Trus Joist.

7 Q. You worked there when it was actually run by Trus Joist?

8 A. Yes.

9 Q. Who was running the day-to-day operations for Nex-Gen?

10 A. Doug run the day to day.

11 Q. Who was more responsible for the financial aspects of the
12 company?

13 A. Molly was over the finances.

14 Q. Who signed the payroll checks?

15 A. They normally signed the payroll checks.

16 Q. Either Molly or Doug?

17 A. Yeah.

18 Q. Did someone have a power of attorney over Doug Vance?

19 A. Molly said she did at one time.

20 Q. Was Ms. McKinnon present at the Trus Joist facility
21 regularly?

22 A. Usually about every week she was there, but not every
23 week, but close to every week.

24 Q. Would she stay for multiple days at a time?

25 A. Yes.

CHARLES MILLER - DIRECT

1 Q. And when she was working there, where was she set up?

2 A. In the scale house also.

3 Q. From that scale house, are you able to see what trucks are
4 coming and going from the site?

5 A. Yes, uh-huh.

6 Q. Is there basically one way in and out?

7 A. One way in and out, yes.

8 Q. When you were working for Nex-Gen, did either Doug or
9 Molly tell you where the money was coming from to meet payroll?

10 A. Just investors, is what they was.

11 Q. I want you to think about the entire period, I think you
12 said between two to three years you were at Nex-Gen.

13 A. Uh-huh.

14 Q. And could you estimate for the jury over that entire time,
15 about how much finished calcined coal product you saw produced
16 at Nex-Gen?

17 A. There was not a lot of finished -- I mean, we made a lot
18 of product but it didn't really turn out good. So there was a
19 lot of ash and a lot of stuff just stacked up.

20 Q. In terms of product that could actually be sold to a
21 customer, estimate how much you think Nex-Gen produced.

22 A. Not -- I mean, there might have been four or five trucks.

23 Q. Let me ask this. Are you familiar with a railcar, a
24 railcar?

25 A. I know what they are, yes.

CHARLES MILLER - DIRECT

1 Q. A railcar, is that a common way that coal is transported?

2 A. In our area, yes, uh-huh.

3 Q. In your entire time at Nex-Gen, did they produce enough
4 product, finished product, to fill a single railcar?

5 A. I wouldn't think so, no.

6 Q. Did you see any level of operation in 2017 to suggest that
7 Nex-Gen had made more than \$1.4 million in sales?

8 A. No.

9 Q. Anything in the ballpark of \$1.4 million in sales?

10 A. Not that I could see, no.

11 MR. ROSENBERG: Your Honor, I would like to show this
12 witness what's been admitted as Government's Exhibit 184.

13 THE COURT: Yes, sir.

14 MR. ROSENBERG: We will go to page 2 of that document.

15 BY MR. ROSENBERG:

16 Q. Sir, do you recognize the name and address at the top of
17 this document?

18 A. Yes.

19 Q. What do you associate that address, 610 Trus Joist Lane
20 with?

21 A. That's the Trus Joist property.

22 Q. Do you recognize the name at the bottom of this document?

23 A. Yes, Doug Vance.

24 Q. What is it?

25 A. Doug Vance.

CHARLES MILLER - DIRECT

1 Q. Do you see the second sentence where it says, "our current
2 production is 1,500 tons per month and will be increased over
3 the several months accordingly"?

4 In your entire time with Nex-Gen, did you ever see Nex-Gen
5 produce 1,500 tons per month of their coal product?

6 A. No. No.

7 Q. Okay. Mr. Miller, did Doug Vance have a logging crew?

8 A. Yes.

9 Q. What was the purpose, as you understood it, of this
10 logging crew?

11 A. To get the lumber to make chips out of. To -- I think
12 they was originally going to try to sell them to Domtar, which
13 is a paper company.

14 Q. Was that the only way that logs were acquired to go into
15 the wood chipper?

16 A. To my knowledge, yes.

17 Q. Was from logging?

18 A. Was from logging, yes. Well, they bought some also.

19 Q. They bought some logs as well?

20 A. Uh-huh.

21 Q. Just because you're using a chipper doesn't mean you have
22 to log the feedstock, you can just buy it?

23 A. Right. Right.

24 Q. All right. Is the same thing true of coal, just because
25 you're using coal as a product doesn't mean you're the one

CHARLES MILLER - DIRECT

1 going out and mining it?

2 A. Right.

3 Q. Now, from what you observed, did that logging operation go
4 smoothly?

5 A. No.

6 Q. Why do you say that?

7 A. I mean, they -- there was a lot of -- with the contractors
8 that was doing the logging, they didn't -- they didn't do a
9 good job on it. So then there was some money left owing on the
10 equipment and stuff like that.

11 Q. Logging requires particular equipment to do?

12 A. Yes, sir. You've got to have good saw people, you got to
13 have a way to cut the logs and load the logs, stuff like that.

14 Q. And money was left owing on that equipment that was used?

15 A. Yes.

16 Q. And you mentioned a paper company that they were trying to
17 make wood chips for; is that right?

18 A. Yes.

19 Q. Did that business arrangement work out?

20 A. No.

21 Q. Why not?

22 A. The chipper they started off with had curved chips and
23 Domtar had to have straight chips.

24 Q. Were there ever visitors from outside the company that
25 would come to the Nex-Gen site?

CHARLES MILLER - DIRECT

1 A. Yes.

2 Q. Did Vance ever give any particular instructions with
3 respect to the equipment when there were visitors coming?

4 A. A lot of times we would have the equipment down doing
5 maintenance work or something like that on it at the time.

6 Q. Did Vance ever tell you why he wanted the equipment --

7 A. No.

8 Q. -- not operating when the investors -- when visitors were
9 there?

10 A. No.

11 Q. Was Ms. McKinnon ever present when there were these
12 visitors to the Nex-Gen site?

13 A. Yes.

14 Q. Are there a set of really large dryers that were remnants
15 from the Trus Joist days of operating at that facility?

16 A. Yes, they are still there.

17 Q. Was Nex-Gen using those dryers?

18 A. No.

19 Q. Did you ever observe raw, unprocessed coal coming into the
20 Trus Joist site?

21 A. Yes.

22 Q. And did you see raw, unprocessed coal leaving the site as
23 well?

24 A. Yes.

25 Q. What was your understanding of why there would be

CHARLES MILLER - DIRECT

1 unprocessed coal coming and going?

2 A. Just using it like a broker, brokering coal more or less.

3 Q. And is that a different business than the calcining?

4 A. Yes.

5 Q. -- operation?

6 A. To me, it's different, yes.

7 Q. Was there ever coal stored at Nex-Gen's facility at Trus
8 Joist that didn't belong to Nex-Gen?

9 A. I think so. I think it was -- there was another group
10 that there was -- they might have used it to broker coal also.

11 Q. Do you recall if any of these piles of coal were present
12 when there were outside visitors coming to the site?

13 A. I'm sure there was.

14 Q. In your time at Nex-Gen, was there ever periods when
15 employees were not being paid?

16 A. Yes.

17 Q. And were there periods where employee paychecks bounced?

18 A. Yes.

19 Q. Did that ever happen to you?

20 A. Yes.

21 Q. Were employees sometimes paid in cash?

22 A. Yes.

23 Q. In the -- what was going on in the month leading up to
24 your decision to leave Nex-Gen?

25 A. I just didn't -- just didn't feel right. It just -- I

CHARLES MILLER - CROSS

1 think it was -- it was time to go. It was a lot of work. I
2 mean, there wasn't really a lot of stuff to do, and it
3 wouldn't -- didn't look like -- seem like it was going to work
4 out good.

5 MR. ROSENBERG: Just one moment, Your Honor.

6 Q. Mr. Miller, thank you.

7 MR. ROSENBERG: I'll pass the witness.

8 THE COURT: All right. Thank you.

9 Mr. Darling?

10 MR. DARLING: I don't have any questions, Your Honor.

11 THE COURT: Thank you.

12 Ms. Lewis?

13 MS. LEWIS: Yes, Your Honor.

14 CROSS-EXAMINATION

15 BY MS. LEWIS:

16 Q. Good afternoon, Mr. Miller. I'm Brandi Lewis and I
17 represent Molly McKinnon.

18 A. Uh-huh.

19 Q. You sometimes helped do the payroll at Nex-Gen; is that
20 right?

21 A. Yes.

22 Q. Okay. And employees were always paid on Fridays?

23 A. Yes.

24 Q. And you put that payroll information together?

25 A. I usually give her the list of how many hours they worked

CHARLES MILLER - CROSS

1 during the week and stuff.

2 Q. And you sometimes wrote the payroll checks?

3 A. I would write it out and they would sign them.

4 Q. All right. Or there was a stamp available --

5 A. Yes.

6 Q. -- too; is that right?

7 A. Uh-huh.

8 Q. I want to show you what is part of Government's Exhibit
9 Number 202. It will be coming up on your screen hopefully.

10 MS. LEWIS: Go to page 90 of that exhibit.

11 Q. Can you see that document, Mr. Miller?

12 A. Yes.

13 Q. Do you recognize what that is?

14 A. It looks like a bank statement.

15 Q. And it's for NexGen Energy Partners, sir?

16 A. Yes, looks like.

17 MS. LEWIS: We'll go to the next page.

18 Q. That's going to show you some payroll checks, I believe.

19 Does that appear to be your handwriting, Mr. Miller?

20 A. The names -- yeah, that looks to be my handwriting, yeah.

21 That's not my signatures or nothing, but it's just me filling
22 the checks out.

23 Q. Do you need us to zoom on that so you can see a little bit
24 better?

25 A. If you could, please.

CHARLES MILLER - CROSS

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

2 THE COURT: Yes, ma'am.

3 BY MS. LEWIS:

4 Q. All right. Mr. Miller, we're going to page 93 of
5 Government's Exhibit Number 202, which is still part of that
6 same banking sequence.

7 Is this also your handwriting on these checks?

8 A. Yes, except for the signature.

9 Q. All right. And they are dated June 6th, 2018, correct?

10 A. Yes.

11 Q. What is the date, if you can see, that they actually
12 cleared the bank?

13 A. It looks like July 6th, a month later.

14 Q. All right. Is it possible you wrote the wrong date on
15 these?

16 A. I wouldn't think so.

17 Q. All right. June 6th wasn't a Friday, it was a Wednesday.

18 So it was that information, is it possible you wrote the
19 wrong date?

20 A. I mean, I don't think so. I mean, I don't -- I didn't --
21 I mean, I just wrote -- don't really know what date it was,
22 that I can see it now.

23 Q. Okay. We'll go through this and get back to that.

24 A. Uh-huh. I don't know why I would have wrote June 6th and
25 it had not been June 6th.

CHARLES MILLER - CROSS

1 MS. LEWIS: Can we go back to the previous page, please?

2 Q. In the top right corner of this check, do you see who
3 that's to? Top right corner.

4 A. That's Josh Moore -- top right corner? Ryan Sampsell.

5 Q. He was an employee?

6 A. He was, yes.

7 Q. On the next page, do you see check number 5550, top right
8 corner?

9 A. I don't see the number on the check, but I see one for
10 Danny White.

11 Q. He was an employee at that time as well?

12 A. Yes.

13 Q. Below that, check number 5552, who is that to?

14 A. Josh Moore.

15 Q. He was an employee as well?

16 A. Yes.

17 Q. And then below that, who is that check to?

18 A. Zon Johnson.

19 Q. And he is an employee as well?

20 A. Yes.

21 Q. This check cleared on July 6th.

22 Do you see that?

23 A. Yes.

24 Q. Even though it's dated June 6th?

25 A. Yes.

CHARLES MILLER - CROSS

1 Q. And then who receives the check below that?

2 A. Donovan Napier.

3 Q. Same question, sir. He was also an employee at that time?

4 A. Yes.

5 Q. When did that check clear the bank?

6 A. It looks like July the 9th.

7 Q. And you wrote it for June 6th?

8 A. Yes.

9 Q. All right.

10 A. Don't know why, would they all be June 6th and it not be
11 that date?

12 Q. Mistakes can happen.

13 And then the check below that, who is that one to?

14 A. Zenus Fields.

15 Q. And he was an employee at that time as well?

16 A. Yes.

17 Q. When did that check clear the bank?

18 A. I can't see it.

19 MS. LEWIS: Scroll down a bit.

20 A. July 6th.

21 Q. What's the date on that check?

22 A. June 6th.

23 Q. All right. And then the left column of that page, we'll
24 start at the top.

25 There is another check to, I believe it's Ryan Sampsell?

CHARLES MILLER - CROSS

1 A. Yes. There was one at the top I thought we seen earlier.

2 Q. We already established he was an employee at that time?

3 A. Yes.

4 Q. And then what about the check below that?

5 A. What check number is that?

6 Q. 5551, sir.

7 A. I'm not seeing that one.

8 MS. LEWIS: I think page 93, Amanda.

9 A. Did you say 5553?

10 Q. Yes.

11 A. I still don't see that one right off. 52, 51, there's 53.

12 Abner White.

13 Q. Was he an employee at that time?

14 A. Yes.

15 Q. And when did that check clear the bank?

16 A. 7/6 says is when it cleared. 6/6 is when I wrote the
17 check.

18 Q. All right. But just so we're clear, employees were paid
19 on Fridays, correct?

20 A. Supposed to be, yes.

21 Q. And typically the employees wanted their money that day --

22 A. Right.

23 Q. -- or soon thereabouts? So they would typically go and
24 cash the checks on payday?

25 A. Yes.

CHARLES MILLER - CROSS

1 Q. Not a month later?

2 A. No.

3 Q. All right. So it would make it quite possible you wrote
4 the wrong day perhaps?

5 A. I don't see my writing the wrong date on every check.

6 Q. Then we have one more below that. Who is the individual
7 on this?

8 A. Jeff Campbell.

9 Q. He was also an employee?

10 A. Yes.

11 Q. And when did this check clear the bank?

12 A. 7/9.

13 Q. And same date of June 6th, sir?

14 A. Yes.

15 Q. And the one below that, basically the same information
16 apply to that?

17 A. Yeah. I don't see the date that it cleared, 7/9.

18 Q. And then I believe we have you here at the bottom?

19 A. Uh-huh.

20 Q. You're Charles Miller?

21 A. Yes.

22 Q. All right. And this was your paycheck you cashed on
23 July 6th but it's dated June 6th?

24 A. Yeah, that's -- I mean, it could have been at that time
25 there was some of the checks that they wanted us to rerun

CHARLES MILLER - CROSS

1 through too.

2 Q. Okay. You testified that checks were typically written or
3 issued on Fridays?

4 A. They was. And there was times that they didn't clear
5 those days so we had to go back and re-do them, or go back and
6 try to send them back through the bank.

7 Q. I'm going to show you a calendar for June 2018.

8 THE COURT: Ms. Lewis, I don't have a copy of this
9 particular exhibit.

10 Do you have an extra copy, by any chance? If not, if you
11 could just scroll across the right on this page, one thing I
12 want to look at, please.

13 MS. LEWIS: It is part of Government's Exhibit Number 202.

14 THE COURT: 202? All right. Just one second.

15 MS. LEWIS: Then, Your Honor, I can show him a calendar or
16 will the Court take judicial notice that June 6th, 2018 was a
17 Wednesday?

18 THE COURT: Well, not without checking, I won't.

19 MS. LEWIS: Yes, sir.

20 THE COURT: But I want to look at this exhibit first.
21 It's 202?

22 Let's see. I can do this at a break. You can show him
23 the calendar, if you'd like, to speed things along.

24 BY MS. LEWIS:

25 Q. So, Mr. Miller, do you see this is a calendar?

CHARLES MILLER - CROSS

1 A. Yes.

2 Q. And what's the month and year?

3 A. June 2018.

4 MR. ROSENBERG: Your Honor?

5 THE COURT: Yes, sir.

6 MR. ROSENBERG: If this is being shown to the jury, we're
7 going to object because there's material beyond just the
8 calendar.

9 MS. LEWIS: I haven't admitted it.

10 THE COURT: Sustained. Don't show it to the jury.

11 BY MS. LEWIS:

12 Q. You can still see that information, Mr. Miller?

13 A. Yes.

14 Q. What day is June 6th on?

15 A. Wednesday.

16 Q. All right. The next document is information we went over
17 with those paychecks. I'll give you a minute to review that.

18 A. Okay.

19 Q. Mr. Miller, does that look like the information we just
20 reviewed from the bank records?

21 A. Best I can tell, yes.

22 Q. That's the same employees we just discussed?

23 A. Yes.

24 Q. Can you see the total at the bottom?

25 A. 5152. 5152.

CHARLES MILLER - CROSS

1 Q. That's the amount of payroll for those checks?

2 MR. ROSENBERG: Objection, Your Honor. May we approach?

3 THE COURT: Yes, come on up.

4 (Bench conference on the record.)

5 THE COURT: So I'm not too confused, where does this come
6 from?

7 MS. LEWIS: It is based off the bank records that we just
8 discussed.

9 THE COURT: Where does it come from, what exhibit?

10 MS. LEWIS: Government's Exhibit 202.

11 THE COURT: 202. All right. What page, specifically?

12 MS. LEWIS: Starts on page 90.

13 THE COURT: No, this document. This is on page 90?

14 MS. LEWIS: Oh, I'm sorry. That is a demonstrative that
15 we put together.

16 MR. ROSENBERG: Our objection is that this witness didn't
17 prepare this demonstrative. He's being asked to just agree to
18 calculations that he couldn't have possibly made in just the
19 testimony we've developed here.

20 Moreover, it makes an assertion that the witness has
21 expressly denied. It says the total checks written for
22 July 6th payroll. He has repeatedly rejected that contention.

23 THE COURT: All right. I'll sustain the objection to the
24 use of this document with this witness.

25 (Bench conference concluded.)

CHARLES MILLER - REDIRECT

1 BY MS. LEWIS:

2 Q. Mr. Miller, did you have access to a debit card with your
3 employment?

4 A. Did I have access? Not normally, no.

5 Q. None whatsoever?

6 A. Not that I remember, no.

7 Q. Okay. Do you recall a time when the scale house was
8 broken into?

9 A. Yes.

10 Q. Were checks stolen during that burglary?

11 A. I'm not a hundred percent sure on that.

12 Q. All right.

13 MS. LEWIS: I have nothing further, Your Honor.

14 THE COURT: All right. Thank you.

15 Let me see if we have redirect of the witness. Give
16 counsel just a moment.

17 MR. ROSENBERG: Briefly, Your Honor.

18 THE COURT: Yes, sir.

19 REDIRECT EXAMINATION

20 BY MR. ROSENBERG:

21 Q. Mr. Miller, you were walked through a series of checks
22 dated June 6th, the majority which cleared on -- appeared to
23 have cleared on July 6th.

24 A. Uh-huh.

25 Q. I believe you were asked a number of times whether you

CHARLES MILLER - REDIRECT

1 wrote the wrong date over and over and over again.

2 Do you recall those questions?

3 A. Yes.

4 Q. What is another possible explanation for the difference
5 between the date of the checks and when they cleared?

6 A. I mean, the only thing, if we wrote the checks, I don't
7 know why they would have been wrote on Wednesday. But if they
8 been wrote up and passed out on Friday, it might have took a
9 month for it to clear. We might have had to put them in the
10 bank more than multiple times to get them to go through the
11 bank to clear.

12 Q. Was that an issue that happened with paychecks at times,
13 not clearing when they were first written?

14 A. Yes, uh-huh.

15 MR. ROSENBERG: Nothing further, Your Honor.

16 THE COURT: All right.

17 Ms. Lewis, anything else?

18 MS. LEWIS: Yes, if I may, Your Honor.

19 THE COURT: Yes, ma'am.

20 MS. LEWIS: May I have just a moment, Your Honor, so we
21 can cue this up?

22 THE COURT: Yes, ma'am, you may.

23 MS. LEWIS: May I approach the witness, Your Honor?

24 THE COURT: Yes, ma'am, you may.

25 RE-CROSS-EXAMINATION

CHARLES MILLER - RECROSS

1 BY MS. LEWIS:

2 Q. Mr. Miller, do you recognize that document?

3 A. It looks like a bank statement.

4 Q. What is the date on that section?

5 MR. ROSENBERG: Your Honor, could we just have the record
6 reflect what's been handed to the witness?

7 MS. LEWIS: It's another portion of Government's Exhibit
8 202, Your Honor.

9 THE COURT: All right. Is there a page you can reference
10 or -- this is a multi-page document. Is there a page that you
11 can reference so the record is clear what you're referring to?

12 MS. LEWIS: I believe it's page 97, Your Honor. It's the
13 start of the June 2018 statement.

14 THE COURT: All right.

15 BY MS. LEWIS:

16 Q. Mr. Miller, do you see the checks that are written for
17 June 1st? I believe that would be on page 3.

18 MR. ROSENBERG: Your Honor, we'll object to questions that
19 are outside the scope of redirect.

20 THE COURT: Sustained. Limited to matters just on
21 redirect.

22 MS. LEWIS: I'll retrieve the exhibit, Your Honor.

23 THE COURT: Yes, ma'am.

24 MS. LEWIS: I have no questions.

25 THE COURT: Anything else?

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1 MS. LEWIS: No, sir. Thank you.

2 THE COURT: All right. Thank you.

3 Anything else of the witness? Thank you, sir. You may
4 step down.

5 THE WITNESS: Thank you.

6 THE COURT: Mr. Rosenberg, will you be calling the next
7 witness?

8 MR. ROSENBERG: I will.

9 United States calls Chuck Mullins.

10 THE COURT: Thank you.

11 **CHUCK MULLINS, GOVERNMENT WITNESS, SWORN**

12 THE COURT: Thank you.

13 Mr. Rosenberg, you may proceed.

14 MR. ROSENBERG: Thank you, Your Honor.

15 CHUCK MULLINS

16 DIRECT EXAMINATION

17 BY MR. ROSENBERG:

18 Q. Good afternoon.

19 A. Good afternoon.

20 Q. Sir, could you please state your full name and spell the
21 last name for the court reporter?

22 A. My name is Chuck Mullins, M-u-l-l-i-n-s.

23 Q. Mr. Mullins, how are you employed?

24 A. I'm the chief engineer for Kentucky River Properties.

25 Q. What is Kentucky River Properties?

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1 A. Kentucky River Properties is a land holding company. We
2 own a lot of acreage in and about the state of Kentucky and
3 Indiana and Illinois. And we act as landlords on that
4 property, we lease it out to production companies.

5 Q. And what sort of companies does Kentucky River Properties
6 typically lease out to?

7 A. We have coal mining companies, logging companies, oil and
8 gas companies, and such as that.

9 Q. Fair to say it's concentrated in natural resources?

10 A. Pretty much, yes, sir.

11 Q. What is your role or typical job duties with -- I'm going
12 to refer to it as KRP, if that's fair.

13 A. That's fine. My job duty is to act as, you know,
14 basically the manager of that property. I've got a staff under
15 me and we typically -- you know, we manage the natural
16 resources that we own. And lack of better words, we try to
17 make sure that each of the lessees is doing the jobs that they
18 were in agreement with us to do.

19 Q. Through your work with KRP, did you learn of a site in
20 Chavies, Kentucky, commonly referred to as Trus Joist?

21 A. Yes, sir.

22 Q. Why is it called Trus Joist?

23 A. It was a company that came into the region to build wood
24 trusses, and they built that plant to do that.

25 Q. Did they eventually leave that site?

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1 A. They were purchased by another company.

2 Q. Did that company eventually shut down operation?

3 A. Yes, sir. It shut down and moved the jobs to another area
4 of the country.

5 Q. Why did Trus Joist come to your attention at KRP?

6 A. We own a considerable amount of timber. And they of
7 course needed a wood basket in order to produce the materials
8 or the products that they were making out there.

9 Q. Did any of your lessees end up supplying Trus Joist when
10 it was operating on the site?

11 A. Yes.

12 Q. So did you -- was KRP aware when the subsequent company in
13 that facility shut down the operations?

14 A. Yes.

15 Q. What happened to the Trus Joist site after that?

16 A. It sat idle for a number of years. And then I think, I'm
17 not a hundred percent sure, but I think the -- it was auctioned
18 because of unpaid tax bills. And a scrapping company purchased
19 the property and proceeded to dismantle the buildings and the
20 equipment for scrap metal.

21 Q. Who owns the site today?

22 A. Kentucky River Properties owns the site.

23 Q. So who did KRP acquire it from?

24 A. We acquired it from the scrapping company. I think the
25 company's name was Berry Enterprises.

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1 Q. When KRP acquired the Trus Joist site, was there already a
2 tenant at the property?

3 A. Yes, sir.

4 Q. Who was that tenant?

5 A. Nex-Gen Industries.

6 Q. Did KRP evict Nex-Gen from the site when it acquired the
7 property?

8 A. No.

9 Q. What did KRP do instead?

10 A. We signed him, Nex-Gen, up on a formal lease agreement
11 with Kentucky River, one that we typically would have done.
12 I'm not sure he had a formal agreement with his former owner.

13 Q. What was the general purpose of KRP acquiring that site?

14 A. We had plans to use it as a site for a wood pellet
15 company, production company, to produce wood pellets for the
16 energy market.

17 Q. Did that plan pan out?

18 A. No. It -- the company we were in negotiations with was
19 trying to get a contract with Japan, and that contract never
20 came through, so it kind of went away.

21 Q. Have you been to the Trus Joist site yourself?

22 A. Yes, sir.

23 Q. Multiple times?

24 A. Yes.

25 Q. And are you familiar with the layout?

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1 A. Yes.

2 Q. Would a diagram or map assist your testimony explaining to
3 the jury the layout of that site?

4 A. I mean, I understand it fully. I'm not sure if it would
5 help the jury. I can certainly do so.

6 Q. Why don't we take a look?

7 A. Sure.

8 MR. ROSENBERG: Your Honor, may I display this to the
9 witness?

10 THE COURT: Yes, you may.

11 BY MR. ROSENBERG:

12 Q. Sir, can you see that on your screen?

13 A. Yes.

14 Q. Are you familiar with this diagram?

15 A. Yes, I am.

16 Q. What does this diagram reflect?

17 A. It reflects an exhibit map that we had attached to the
18 agreement that we signed with Nex-Gen showing the area that we
19 had actually leased to him.

20 MR. ROSENBERG: Your Honor, may we display this to the
21 jury for purposes of aiding the witness's testimony explaining?

22 THE COURT: See if there's any objection.

23 MS. LEWIS: No objection.

24 THE COURT: You can show him.

25 BY MR. ROSENBERG:

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1 Q. All right. Just above where it says Exhibit A here,
2 what's depicted on this map?

3 A. The area you just pointed at is what we call the scale
4 house, where logging trucks would come into the property and be
5 weighed. And they would -- it also acted as a guard building
6 for anyone entering the property would be obviously stopping
7 and be checked and so forth.

8 Q. What's above the scale house there?

9 A. Those are two retainment ponds that were full of water at
10 the time that Trus Joist was in operation. And those ponds
11 were used in their fire eradication efforts. The process that
12 Trus Joist used to build those beams, those wood beams was --
13 created fires from time to time and they needed a quick access
14 to water.

15 Q. Is this a road leading to the scale house?

16 A. Yes.

17 Q. Was that the primary access to the site?

18 A. Yes.

19 Q. Now, moving over here, do you see where it says dryers?

20 A. Yes.

21 Q. What is that indicating?

22 A. That is two -- there were two large dryers that Trus Joist
23 had built for drying the wood chips, to get moisture out of the
24 wood chips. And those dryers were left there by the scrapping
25 company. They didn't dismantle those.

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1 Q. Now, I believe you testified you've been out to this site
2 while Nex-Gen occupied it?

3 A. Yes.

4 Q. To your knowledge, was Nex-Gen using those large dryers?

5 A. No, they weren't using those, although it was their
6 intention if they could ever get their, you know, their
7 operation up to scale, then those dryers would be used.

8 Q. So where were the calciners or rotary kilns that Nex-Gen
9 was using, if you could indicate on the map?

10 A. On the top of your map, within the area called Building 3.

11 Q. And what did you observe inside Building 3?

12 A. Basically just his operation. He had a calciner in there
13 and his product that he was using in the calciner.

14 Q. Did that include piles of coal?

15 A. He had some piles of coal in there, yes.

16 Q. Was that map reflective of the entire Trus Joist property
17 that KRP owned?

18 A. No, it's a small part.

19 Q. A small portion of the total?

20 A. Yes.

21 Q. What kind of product did you understand Nex-Gen was trying
22 to produce as a business?

23 A. He was trying to produce, I think initially it was a
24 biochar that he was making, he was making it with a wood
25 product. And he later moved on to some other types of product,

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1 like he was trying to make, really, a carbon-based product
2 where he was taking the coal that you mentioned earlier and
3 burning off the volatile matter in the coal to produce like a
4 pure -- pure carbon.

5 Q. And when you say "he," who are you referring to?

6 A. Doug Vance.

7 Q. Mr. Mullins, do you know the name Molly McKinnon?

8 A. Yes.

9 Q. How are you familiar with Molly McKinnon?

10 A. Molly was introduced to me as a consultant working for
11 Doug. And her purpose was to get his startup company off the
12 ground.

13 Q. Did you ever see her when you were at the Trus Joist site?

14 A. I did.

15 Q. Thinking back to July of 2017, did KRP agree with Vance to
16 make a loan to Nex-Gen?

17 A. I don't know that I was part of that conversation, but we
18 did make a loan to Mr. Vance.

19 Q. And did you know what the purpose of making the loan was?

20 A. Yes, sir.

21 Q. What was that?

22 A. The purpose was to replace the calciner that he had been
23 using. It had become damaged in the operations that he was
24 doing. And in order for him to be able to continue his
25 operation, he needed to replace it. So the purpose of our loan

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1 was for him to build a new calciner.

2 Q. Was that loan formalized with written documents?

3 A. Yes, it was.

4 MR. ROSENBERG: Your Honor, may I approach the witness?

5 THE COURT: Yes, you may.

6 BY MR. ROSENBERG:

7 Q. Sir, in that binder, do you see a document marked 801?

8 A. Yes.

9 Q. All right. If you want to take just a moment to
10 page through that, and just let me know once you can tell
11 whether you recognize that document.

12 A. Yes.

13 Q. What is this document?

14 A. It's basically the agreement that we had with Nex-Gen when
15 we loaned the \$170,000.

16 Q. Is it signed by some individuals towards the back of the
17 agreement?

18 A. Yes.

19 Q. All right. Does that include one of your signatures?

20 A. It does include my signature, yes.

21 MR. ROSENBERG: Your Honor, we move to admit Government's
22 Exhibit 801.

23 THE COURT: Let's see if there is any objection.

24 MS. LEWIS: No objection.

25 THE COURT: United States Exhibit 801 is admitted.

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1 (United States Exhibit 801 was admitted.)

2 BY MR. ROSENBERG:

3 Q. We're going to call that up on your screen as well. On
4 page 1, do you see where it says capital -- well, let me start
5 at the top.

6 Do you see where it says, "This agreement"? Who are the
7 two entities that this agreement concerns?

8 A. Nex-Gen Industries and KRP.

9 Q. And next to Nex-Gen Industries, what type of corporation
10 is it described as?

11 A. Just says a Virginia Corporation.

12 MR. ROSENBERG: If we could scroll down to the section
13 called Capital Infusion?

14 A. Uh-huh.

15 Q. What is the amount that KRP agreed to contribute to
16 Nex-Gen?

17 A. 170,000.

18 MR. ROSENBERG: Scrolling back out, I want to first look
19 at the title where it says Agreement for Assignment of
20 Overriding Royalty.

21 Q. What is an overriding royalty?

22 A. An overriding royalty would be where we would receive a
23 royalty payment on the tonnage that was produced from the
24 calciner that was being replaced here.

25 Q. Is this a structure for repayment that KRP has used with

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1 other businesses it's dealt with?

2 A. We typically receive royalties as our income for most all
3 of our agreements.

4 MR. ROSENBERG: If we could go to page 2, please?

5 Q. Do you see the section titled Assignment of
6 Nonparticipating Overriding Royalty?

7 A. Uh-huh.

8 Q. Can you just explain to the jury what this section of the
9 agreement provides?

10 A. It's basically just saying that Nex-Gen will assign the
11 overriding royalty to us on a per ton basis.

12 Q. Is a royalty just another word for a payment?

13 A. Yes.

14 Q. Does that payment depend on the quantity of product that
15 is produced and sold?

16 A. Yes, it does.

17 Q. How does it work? What happens to the royalty payment if
18 the sales of product increases?

19 A. It goes up.

20 Q. The royalty goes up as well?

21 A. Yes.

22 MR. ROSENBERG: If we could go to page 3?

23 Q. Who signed on behalf of Kentucky River Properties?

24 A. Stephen G. Barker.

25 Q. Are you familiar with Mr. Barker?

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1 A. Yes, sir.

2 Q. How so?

3 A. I've worked with him for over 30 years.

4 Q. What's his role at KRP?

5 A. He is president and CEO.

6 Q. And who signed on behalf of Nex-Gen Industries, Inc.?

7 A. It says Doug Vance.

8 Q. When KRP enters into these royalty agreements, does it
9 require reporting from the company that is to pay the royalty?

10 A. Yes.

11 Q. Why does KRP need that reporting?

12 A. We need that in order to know the rate of production and
13 the sales price so that we can get an accurate estimate of what
14 the royalty payment should be.

15 Q. And is that required by KRP's agreement?

16 A. Uh-huh, yes, sir.

17 MR. ROSENBERG: We'll take that down, and I would like to
18 display just to the witness Government's Exhibit 125.

19 Q. Sir, let me know once you see that on your screen.

20 THE COURT: Mr. Rosenberg, we will be taking a break in
21 just a few moments whenever you get to a good spot to break.

22 MR. ROSENBERG: This might be a natural stopping point.

23 THE COURT: Why don't we do that?

24 We will take about a 15-minute recess. Ladies and
25 gentlemen, keep in mind the admonitions given previously. And

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1 again, if you need a little more time, just alert the security
2 officer of that.

3 Otherwise, we will be in recess for 15 minutes.

4 (Jury left courtroom at 3:34 p.m.)

5 THE COURT: All right. The jury is not present. Any
6 issues to take up?

7 MS. LEWIS: No, Your Honor.

8 MR. CHAPMAN: No, Your Honor.

9 THE COURT: We will be in recess.

10 (Recess taken to 3:35 p.m. to 3:50 p.m.)

11 THE COURT: I understand there is a question.

12 MR. ROSENBERG: Your Honor, maybe we should approach.

13 THE COURT: Yes, sir. Come on up.

14 (Bench conference on the record.)

15 MR. ROSENBERG: I plan to ask this witness about the
16 royalty reports and what was received, what payments were
17 received, and those were supposed to be commensurate with
18 sales.

19 I would like to conditionally -- move to conditionally
20 admit an exhibit, which was Exhibit 135, and specifically just
21 page 5 of the exhibit, which were sales reported to Koch
22 Industries.

23 Dave Severson is going to testify tomorrow he received
24 these -- the email with the attachment of that Exhibit 135. I
25 don't think there's really doubt as to the foundation and

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1 admissibility of this document, given the stipulations that
2 have already been put into place.

3 And so we think it would aid the jury's understanding of
4 Mr. Mullins' testimony if they could actually see the figures,
5 the sales figures that were represented in that Exhibit 135.
6 And then I'll ask him whether he received royalty payments
7 commensurate with that.

8 THE COURT: All right. Any objection to the exhibit being
9 conditionally admitted, subject to it being stricken if it's
10 not authenticated by the representative tomorrow?

11 MS. LEWIS: No objection from me.

12 MR. DARLING: None at all.

13 MR. ROSENBERG: Thank you, Your Honor.

14 (Bench conference concluded.)

15 THE COURT: Anything else before the jury comes in?

16 MR. ROSENBERG: No.

17 MR. DARLING: No, Your Honor.

18 THE COURT: Okay.

19 The jury has returned to the courtroom. Defendants and
20 all counsel are present.

21 Mr. Mullins, of course you are still under oath.

22 Mr. Rosenberg, you may continue with your questions.

23 MR. ROSENBERG: Thank you, Your Honor.

24 BY MR. ROSENBERG:

25 Q. I think we left off with tendering just to the witness

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1 Government's Exhibit 125.

2 Sir, can you see that on your screen?

3 A. Yes.

4 Q. All right. What type of document, just very generally
5 speaking, is this?

6 A. Email.

7 Q. And do you recognize any of the people either sending or
8 receiving the email?

9 A. Yes.

10 Q. Who are the folks on the email?

11 A. It was being sent by Molly McKinnon to myself, Steve
12 Barker, copied to Doug Vance, Dell Jagers, Will Langhorne, and
13 Molly McKinnon.

14 Q. Who is Dell Jagers?

15 A. Dell Jagers was a member of the Kentucky River board.

16 Q. What are the responsibilities, generally, of the board?

17 A. Our board is just a typical board of directors for the
18 company. They basically oversee the -- you know, the
19 activities of the company.

20 Q. Would the board be involved in decisions such as making
21 loans or other investments?

22 A. They would approve whether we did it or not, yes.

23 Q. And who is Will Langhorne?

24 A. Will is the chairman of the board.

25 Q. What's the date of this email?

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1 A. Thursday, 21st of December, 2017.

2 Q. Is there a subject line indicated?

3 A. Royalty report for November of 2017.

4 MR. ROSENBERG: Your Honor, the government moves to admit
5 Exhibit 125.

6 THE COURT: All right.

7 MS. LEWIS: No objection, Your Honor.

8 THE COURT: The exhibit will be admitted.

9 (United States Exhibit 125 was admitted.)

10 BY MR. ROSENBERG:

11 Q. You said this email was from Ms. McKinnon, correct?

12 A. Correct.

13 Q. Look with me if you would at her signature block. Do you
14 recognize the three letters following her name?

15 A. Yes.

16 Q. What are those?

17 A. CFO, stands for chief financial officer typically.

18 Q. And what company is listed below that?

19 A. Nex-Gen Industries.

20 Q. In your business experience, is a CFO something different
21 than just an outside consultant?

22 A. It would be, yes.

23 Q. What sort of responsibilities does a CFO have in your
24 experience?

25 A. Well, I'm an engineer. So I'm not an accountant, so I

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1 can't really speak to that to any factual thing. But a CFO
2 typically, in my understanding, would be over the financial
3 operations of the company, assets.

4 Q. Fair enough.

5 Now, under the royalty agreement that KRP had with
6 Nex-Gen, I believe you indicated the amount of money owed to
7 KRP varied with the amount of sales Nex-Gen made, correct?

8 A. Correct.

9 Q. And was it more sales meant higher royalty payment to KRP?

10 A. Yes.

11 Q. Did this email contain an attachment?

12 A. Yes.

13 Q. And do you see that attachment title in that line next to
14 the word attachments?

15 A. Yes, royalty report November 2017.

16 Q. Did Ms. McKinnon send you from time to time royalty
17 reports?

18 A. I think so, yes, a few.

19 MR. ROSENBERG: Let's go to the next page.

20 Q. Let's look at the title of this document that was
21 attached. What is that?

22 A. Just a typical report.

23 Q. What's the title of it?

24 A. Royalty report.

25 Q. Underneath the title, what does it say?

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1 A. "Send report to Chuck Mullins on or before the 25th of
2 each month."

3 Q. What is the production month indicated?

4 A. Production month of November '17.

5 MR. ROSENBERG: If we could zoom out?

6 Q. Do you see two different categories of feedstock on this
7 form?

8 A. Yes.

9 Q. What was the purpose of having these two different
10 categories of feedstock?

11 A. I'm assuming she's or Nex-Gen was separating what product
12 they were reporting.

13 Q. So in your earlier testimony, I believe you referenced
14 there being wood for biomass or biochar?

15 A. Yes.

16 Q. And then later coal?

17 A. Yes.

18 Q. Were those the types of product lines you understood
19 Nex-Gen was trying to operate?

20 A. Yes.

21 Q. Now, do you see an asterisk where it says Service Work?

22 A. Yes.

23 Q. And what is indicated there?

24 A. It says "Service Work - dry graphite/ No production
25 involved."

CHUCK MULLINS - DIRECT

1 Q. Is there also an asterisk under Product Produced, Dry
2 Graphite?

3 A. Yes.

4 Q. What, if anything, do you recall about graphite at
5 Nex-Gen?

6 A. The graphite was not a product that they created. So they
7 weren't really producing this product. It was brought in via
8 truck as a wet product and he ran it through his calciner to
9 dry it. And then it was shipped back out as a dry product.

10 Q. So what sales were reported on this November 2017 royalty
11 report?

12 A. It appears that he produced or dried 45 tons at a price of
13 \$50 per ton.

14 Q. How would you describe the level of sales reflected in
15 this royalty report?

16 A. I'm not sure I understand the question.

17 Q. Does this royalty report reflect a high level of economic
18 and productive activity at the site?

19 A. No.

20 Q. In reviewing this report, what impression did you have
21 about the level of productive activity at the Nex-Gen site?

22 A. It was low.

23 Q. Is there any indication that Nex-Gen sold any type of
24 coal-based product or biomass product?

25 A. No.

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1 Q. To your understanding, was Nex-Gen required to report
2 everything that they produced at the Trus Joist site?

3 A. Yes.

4 Q. Do you recall seeing reported sales ramping up after this
5 November 2017 report?

6 A. Reported sales of actual sales?

7 Q. On the royalty reports.

8 A. No.

9 Q. What was the amount of the royalty paid for November 2017?

10 A. \$225.

11 Q. Did the royalty checks from Nex-Gen ever increase
12 significantly above this \$225 check?

13 A. I don't think so. I don't recall for sure, but I don't
14 think so.

15 Q. If Nex-Gen was representing to other people that it was
16 making sales from Trus Joist, either coal product or biomass
17 product, would you expect to see those sales reflected in the
18 royalty reports?

19 A. They should have been, if that was being reflected -- I
20 mean, I don't know what he represented to anybody else, but it
21 wasn't reported to us.

22 Q. Maybe a more concrete example could help with that.

23 So if Nex-Gen had, in fact, sold more than \$60,000 of a
24 coal product to AK Steel in June of 2018, what should have been
25 reported in a royalty report to KRP?

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1 A. If it was produced on the Trus Joist site, it should have
2 been reported to our company.

3 Q. Should there have been a royalty check of at least \$6,000
4 to KRP?

5 A. Depending on what the product was sold for, then yes.

6 Q. Do you recall ever receiving a royalty report like that?

7 A. No, sir.

8 Q. Or a royalty check reflecting those levels of sales?

9 A. No.

10 MR. ROSENBERG: Your Honor, may we tender Government's
11 Exhibit 135? And we'll look at page 5. This is an exhibit we
12 are moving to conditionally admit.

13 THE COURT: It will be admitted conditionally subject to
14 further authentication by a separate witness.

15 (United States Exhibit 135 was conditionally
16 admitted.)

17 MR. ROSENBERG: May we display to the jury?

18 THE COURT: Yes, sir, you may.

19 MR. ROSENBERG: Go to page 5. Scroll up -- page 3, I
20 apologize. If we could zoom in as best as possible?

21 BY MR. ROSENBERG:

22 Q. Are you able to read that, sir?

23 A. Yes.

24 Q. Do you see the header at the top of this table where it
25 says Sales?

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1 A. Yes.

2 Q. And do you see a series of dates under the column on the
3 left-hand side where it says Shipped?

4 A. Yes.

5 Q. And those dates, do they run from March to roughly June of
6 2018?

7 A. Yes, sir.

8 Q. To your knowledge, was that a period in which the Nex-Gen
9 still had that royalty agreement with KRP?

10 A. Yes.

11 Q. And in the bottom right corner, do you see a Total
12 reflected?

13 A. I do.

14 Q. What is that figure?

15 A. 276,985.

16 Q. Maybe my eyes are a little bit -- I see 226, possibly.

17 A. No, I see -- oh, you're talking -- I was looking at the
18 bottom left.

19 Q. Sorry, bottom right corner.

20 A. They circled the one in the bottom --

21 Q. Sorry about that. Bottom right corner?

22 A. 226,530.

23 Q. All right. Did KRP ever receive royalty reports
24 reflecting this volume of sales?

25 A. No.

CHUCK MULLINS - DIRECT

1 Q. Did KRP ever receive royalty checks reflecting this volume
2 of sales?

3 A. No.

4 MR. ROSENBERG: We'll take that down.

5 Q. We talked about the multiple site visits you did while
6 Nex-Gen was there. What was your overall impression of the
7 operation at Trus Joist by Nex-Gen?

8 A. Basically just a startup.

9 Q. What do you mean by "just a startup"?

10 A. It was trying -- it was a business he was trying to get
11 off the ground. You know, it was scrambling for sales. You
12 know, it's typical, very difficult, you know, time of the --
13 our industry to get anything started, honestly, the coal
14 industry was in a really big recession during that time. So it
15 was just a struggle.

16 Q. How many calciners or rotary kilns did you see at the
17 site?

18 A. I think for the most part, the most I saw was maybe three.

19 Q. And how many did you see working at the same time, what's
20 the most?

21 A. Possibly two.

22 Q. When the rotary kilns or calciners were operating, what
23 was the output volume like?

24 A. It was low, but it was -- I mean, it was a new industry
25 for us so we really weren't familiar with that type of an

CHUCK MULLINS - DIRECT

1 operation. So I didn't know how to judge it, just to be
2 honest, but it was low.

3 Q. Based on what you observed, would the two functioning
4 calciners be sufficient to routinely produce something like
5 1,500 tons of finished product per month?

6 MR. DARLING: Your Honor, I object. I think he's already
7 said that's way outside of his --

8 THE COURT: I'll sustain.

9 BY MR. ROSENBERG:

10 Q. Did you observe trucks of finished product, truckloads of
11 finished product whenever you visited the site?

12 A. No.

13 Q. Did you ever see indication of Nex-Gen's production ramped
14 up to the level of commercial sales being made to customers?

15 MR. DARLING: Same objection, Your Honor.

16 THE COURT: If you can define "commercial sales," I'll
17 allow him to answer that based on observations. But the term
18 itself is a bit vague.

19 MR. ROSENBERG: I'll withdraw the question.

20 THE COURT: All right.

21 MR. ROSENBERG: May I have just a moment, Your Honor?

22 THE COURT: Yes, sir.

23 MR. ROSENBERG: Your Honor, we will pass the witness.

24 THE COURT: All right. Thank you.

25 Mr. Darling?

CHARLES MULLINS - CROSS

1 MR. DARLING: I don't have any questions.

2 THE COURT: Ms. Lewis?

3 MS. LEWIS: Just a couple, Your Honor.

4 THE COURT: Yes, ma'am.

5 CROSS-EXAMINATION

6 BY MS. LEWIS:

7 Q. Good afternoon, Mr. Mullins. I'm Brandi Lewis and I
8 represent Ms. McKinnon.

9 A. Good afternoon.

10 Q. I just have a few questions for you.

11 A. Sure.

12 Q. Based upon your testimony, the product had to be produced
13 at the Trus Joist site to then entail payment of royalties?

14 A. That's correct.

15 Q. So if somebody was selling coal from another area or
16 reportedly selling coal from another area, that's not going to
17 be included?

18 A. That would not be included.

19 Q. All right. And you stated that there were three
20 calciners, possibly two operating at the same time, correct?

21 A. Correct.

22 Q. Do you know that there is EPA permitting limitations on
23 how much can be produced per hour?

24 A. No, ma'am, I do not.

25 MS. LEWIS: That's all I have. Thank you.

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1 THE COURT: See if there is any redirect of the witness?

2 MR. ROSENBERG: No, Your Honor.

3 THE COURT: All right.

4 Thank you, Mr. Mullins. You may step down, sir.

5 Dan, if you wouldn't mind getting that notebook?

6 Mr. Rosenberg, is that yours?

7 MR. ROSENBERG: Yes, Your Honor.

8 THE COURT: Let's see. Who will be calling the next
9 witness, Mr. Rosenberg?

10 MR. ROSENBERG: The United States calls Stephen Barker.

11 THE COURT: Thank you.

12 **STEPHEN BARKER, GOVERNMENT WITNESS, SWORN**

13 THE COURT: Thank you.

14 Mr. Rosenberg, you may proceed when you're ready.

15 MR. ROSENBERG: Thank you, Your Honor.

16 STEPHEN BARKER

17 DIRECT EXAMINATION

18 BY MR. ROSENBERG:

19 Q. Good afternoon, sir.

20 A. Good afternoon.

21 Q. Please state your full name and spell the last name for
22 the court reporter.

23 A. Stephen G. Barker, B-a-r-k-e-r.

24 Q. Mr. Barker, how are you currently employed?

25 A. With Kentucky River Properties.

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1 Q. And we're going to refer to it as KRP, if that's all
2 right?

3 A. Sure.

4 Q. What's your role within KRP?

5 A. I'm president of the company.

6 Q. How long have you been with KRP?

7 A. I started in 1985.

8 Q. And were you the president back in 2016?

9 A. '16 or '17, yes.

10 Q. And what sort of role did you have before that?

11 A. I started the company as an attorney, staff attorney. And
12 then moved up to assistant general counsel, general counsel,
13 executive vice president, and then president.

14 Q. Does KRP own the Trus Joist property in Chavies, Kentucky?

15 A. Yes.

16 Q. What was the purpose of KRP buying that property?

17 A. Well, Kentucky River is a land holding company. We lease
18 properties for oil and gas, coal, timber development, that sort
19 of thing.

20 About that time, the coal industry was in decline. We had
21 some property on Pine Mountain that the Kentucky Natural Lands
22 Trust Company wanted, and so we did a 1031 exchange. We bought
23 the Trus Joist property with the idea of using it, it was an
24 industrial facility, using it to further develop coal, biomass,
25 things that would help us, maybe bring jobs into Eastern

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1 Kentucky.

2 Q. Do you know a man named Doug Vance?

3 A. I do.

4 Q. Do you recall how it was you came to meet Mr. Vance?

5 A. Yes. When we -- we were engaged with a company from --
6 called Arbaflame, which was based in Sweden, I think. This is
7 some time back. They were wanting to come into Eastern
8 Kentucky and create wood pellets for a market they had in
9 Japan.

10 So we gave a tour of the area. We landed a couple
11 helicopters there at the Trus Joist facility. Doug Vance was
12 there, he was a tenant of the owner at that time. And that's
13 when I met him.

14 Q. Did you learn what he was doing at that site?

15 A. Yes. The people that we were with actually were looking
16 at a similar process to convert biomass into wood pellets. And
17 when we were touring the facility, we saw what Doug Vance had
18 going there and it was -- it was a similar process, albeit more
19 of a homemade process, but a similar process to what Arbaflame
20 was looking at.

21 Q. When you say "more of homemade process," what do you mean
22 by that?

23 A. Well, Doug had built a calciner, a machine that you heat
24 the biomass or the coal, drives off volatiles, and he had
25 fabricated that and built it himself.

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1 Q. Was this interesting to you as the president of KRP?

2 A. Sure.

3 Q. And why is that?

4 A. Well, because it had the possibility of doing what we were
5 interested in doing. You know, if you are growing energy
6 crops, miscanthus or some of those, arundo donax, on some of
7 the reclaimed land in Eastern Kentucky, you have to process it.

8 We also were looking at wood residue from timber
9 harvesting operations that could be produced through a machine
10 like that. And so it sort of fit what we were looking to do at
11 the time with the Arbaflame group.

12 Q. Did you also come to know a woman named Molly McKinnon?

13 A. Yes.

14 Q. How did you come to know her?

15 A. She was, my understanding, a consultant or an adviser to
16 Doug Vance.

17 Q. Did KRP keep Nex-Gen as a tenant on the land when it
18 bought it?

19 A. Yes.

20 Q. Why did KRP make that decision?

21 A. Well, he was there. He had a machine that was similar to
22 things that we were looking at with the Arbaflame group.

23 Trus Joist is a 90-acre facility. It's a few miles
24 outside of Hazard. We had no other tenants there. So between
25 being able to try to see if this process would work further and

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1 having somebody, a tenant, at that facility, it made sense for
2 us to leave him there as a tenant.

3 Q. Did KRP charge very much rent to Nex-Gen and Mr. Vance for
4 staying there?

5 A. I don't think so, no.

6 Q. Why not?

7 A. Well, for two reasons. One, we were getting a live person
8 there at the property to make sure that, you know, you didn't
9 have theft and vandalism and that sort of thing going on.

10 And also we thought that his process might work. He was
11 struggling to get it up and going. My recollection is our
12 arrangement with him was a lease of the property for maybe a
13 small, flat fee and then a percentage of production.

14 Q. Did Vance ever propose building a calcining machine to
15 sell to KRP?

16 A. Yes.

17 Q. Did you agree to that?

18 A. Well, initially we talked about building it for KRP to
19 own. But after we investigated a little bit, we decided we
20 didn't want to own the machine, so we worked out a different
21 arrangement with him to help him build a machine that he would
22 own.

23 Q. Why did KRP not want to own the machine?

24 A. Well, the machine is a -- it's a large metal cylinder that
25 rotates and it is heated. As I recall what Doug was doing, was

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1 heating the machine with diesel fuel. And I was concerned that
2 you didn't have good control over the rotation speed, the fuel
3 mixture. It just -- it's a large machine that I was concerned
4 about potential liability or potential environmental issues,
5 those sort of things.

6 Q. So instead did KRP enter into a loan with Nex-Gen?

7 A. Yes.

8 Q. And what was the purpose of loaning the money to Nex-Gen?

9 A. To help him expand two additional calciners.

10 Q. Two new calciner units?

11 A. Yes.

12 MR. ROSENBERG: Can we show what's already been admitted
13 as Government's Exhibit 801?

14 Q. And, sir, do you see at the top who this agreement is
15 between?

16 A. Yes.

17 Q. Do you recognize those two entities?

18 A. Yes.

19 Q. Who are they?

20 A. Well, Nex-Gen Industries was the company that Doug Vance
21 owned, and of course Kentucky River Properties, LLC is our
22 company.

23 Q. At this time were you aware of any other owners of Nex-Gen
24 Industries?

25 A. No.

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1 Q. Did he ever disclose any entities who controlled Nex-Gen
2 Industries?

3 A. No.

4 MR. ROSENBERG: Let's go to page 3.

5 Q. If you'll look with me, what is the effective date of this
6 agreement?

7 A. It says it's effective as of July 1, 2017.

8 MR. ROSENBERG: If you'll scroll down?

9 Q. Do you see where the notary signed and dated?

10 A. Yes.

11 Q. And was that later in July?

12 A. It says July 27th, 2017.

13 Q. So I want to take a step back to the month prior to this
14 agreement.

15 MR. ROSENBERG: And tender to just the witness
16 Exhibit 119.

17 Q. Let me know if that's on your screen.

18 A. It is.

19 Q. Sir, what type of document is this, generally?

20 A. This is an email.

21 Q. And do you recognize any of the names on it?

22 A. Yes.

23 Q. What names do you see?

24 A. It says it's from Doug Vance and it's to Dell Jagers.

25 Q. Do you know who Dell Jagers is?

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1 A. Yes.

2 Q. Who is Dell Jagers?

3 A. Dell Jagers is an engineer that is on the Kentucky
4 River's board or management committee.

5 Q. A board member of KRP?

6 A. Yes.

7 Q. And what's the date of that email?

8 A. Tuesday, 20 June, 2017.

9 MR. ROSENBERG: Your Honor, we move to admit Government's
10 Exhibit 119.

11 THE COURT: All right. Any objection?

12 MR. DARLING: May I have a moment, please?

13 THE COURT: Yes, sir.

14 MR. DARLING: Yes. He's not part of the email chain.

15 THE COURT: He doesn't necessarily have to be for it to be
16 admitted. If counsel would like to come up, we can discuss it
17 further.

18 (Bench conference on the record.)

19 THE COURT: If the witness is able to authenticate that
20 he's familiar with the document as part of the business, based
21 on other materials he would have reviewed, and indicate that
22 this is something that would have been in the chain of
23 discussion, under several authorities, then he would be able to
24 sufficiently authenticate and have the document admitted, if it
25 is relevant in the case.

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1 It would appear to be relevant and it does seem he has
2 provided some authentication for the document.

3 MR. ROSENBERG: Your Honor, may I also note there is a
4 stipulation that covers this document as well from Yahoo, that
5 this is an authentic document from the defendant Vance's email
6 account. So I'm not sure there's any other authenticity
7 grounds. And I think the testimony has already developed the
8 relevance of it.

9 THE COURT: All right.

10 MR. DARLING: I'm not challenging it on authenticity
11 grounds. I understand the Court's ruling that if they can make
12 that foundation exclusive of the government showing him this
13 document prior to his testimony in preparation of testifying, I
14 think they would have to narrowly lay the foundation that he
15 was aware of this without being provided by the government in
16 preparation.

17 MS. LEWIS: I agree.

18 MR. ROSENBERG: I don't see what rule of evidence requires
19 that.

20 THE COURT: The authorities I would cite for the parties
21 would be three. First would be *United States versus Bertram*,
22 Robert Bertram. That's a case that Judge Van Tatenhove had
23 written. It was actually a published decision. It deals with
24 not government witnesses providing authentication, but it deals
25 with other individuals within the same company or business

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1 providing the authentication.

2 Second would be a document in which the agent, for
3 example, was able to authenticate. And that case would be the
4 Dale Emmons case, it's an unreported decision from Frankfort
5 docket 2019, again from Judge Van Tatenhove.

6 And then I summarize both of those opinions in a decision
7 that was written I 2021, *United States versus Randolph Morris*,
8 Lexington Criminal Action Number 21-14. The memo opinion that
9 addresses this issue in the context of a motion in limine is
10 record number 49. And I can provide the authorities for the
11 parties if they would like to review those materials.

12 MR. ROSENBERG: Your Honor, just for the government's
13 position, the stipulation we entered into, it was our
14 understanding, covered the full scope of authentication issues
15 as a means of trying to narrow the trial time so that
16 additional witnesses are not being needed solely on the issue
17 of authentication.

18 And if the document was then shown to be relevant to an
19 issue of the case, that would be the step required for
20 admission.

21 So I certainly agree that starting from a blank slate, the
22 authentication issues raised here would apply. But I believe
23 our stipulation is written broadly to cover all authentication
24 issues.

25 THE COURT: Let me look at the stipulation. I was trying

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1 to follow those earlier. I think there have been five or six
2 that have been submitted, the record entries number 90, 91,
3 118, 119 -- 17, 18, 19. Those would deal with Yahoo. I don't
4 have in my notebook --

5 MR. ROSENBERG: I have a copy.

6 THE COURT: Retrieve that.

7 The parties stipulated that the records received, Yahoo
8 records are authentic under Rule 901 and 902 and are admissible
9 at trial. So the parties have agreed to admissibility of these
10 documents. And this is a Yahoo document covered by the
11 stipulation.

12 Objection is overruled.

13 MR. DARLING: For the record, it's my understanding
14 Mr. Jagers is going to be here tomorrow and it would seem that
15 this should come in through him. And that --

16 THE COURT: So we should let this witness not testify and
17 let Mr. Jagers testify, and then bring him back to testify?
18 That would not seem to be the easiest way to do this.

19 Objection is noted, but it's overruled. And this document
20 is covered by the stipulation.

21 MR. ROSENBERG: I don't want there to be a misimpression,
22 the government does not intend to call Mr. Jagers.

23 THE COURT: All right.

24 (Bench conference concluded.)

25 THE COURT: Exhibit 119 is admitted per the parties' prior

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1 stipulation. It may be shown to the witness and to the jury.

2 BY MR. ROSENBERG:

3 Q. All right. In the email from Mr. Jagers, did he request
4 information about the total coal tonnage Mr. Vance would be
5 producing to make the product?

6 A. Yes.

7 Q. In looking at the first line of the email, do you see a
8 statement about being "currently sold out for June and July"?

9 A. Yes.

10 Q. And then it says, "(6000 tons) at a net of 100 per ton."

11 In your experience in this industry, do you have a sense
12 of what a net of 100 per ton refers to?

13 A. Well, yes. I'm not sure what they are talking about here.
14 But typically, the net would be after the cost of production of
15 the product.

16 Q. Is profit a fair synonym for the net?

17 A. Probably, yes.

18 Q. Looking down the sentence starting with, "The costs for
19 this initial project," what cost is indicated?

20 A. It says, "The costs for this initial project will be
21 175,000."

22 Q. And does that 175 get broken out?

23 A. Yes.

24 Q. How is it broken down?

25 A. It's 100,000 for the unit. 65,000 for bagging, sizing and

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1 conveying equipment. 10,000 for torch gas, welding supplies,
2 et cetera.

3 Q. Now, you were familiar with the loan that we just
4 discussed in July of 2017, right?

5 A. Yes.

6 Q. And what was the purpose of that loan money?

7 A. The 170,000 was to be used to build two additional
8 calciner machines.

9 MR. ROSENBERG: Let's go to Exhibit 120, please, to be
10 shown just to the witness.

11 Q. Can you see that, sir?

12 A. Yes.

13 Q. Do you recognize the folks on this email?

14 A. It says it's from Doug Vance and it says it's to Krystal
15 Houston.

16 MR. ROSENBERG: If you will scroll down in the email
17 chain?

18 Q. What's the underlying email that Mr. Vance forwarded?

19 A. The email from Molly McKinnon to Dell Jagers, yes.

20 Q. Is anyone copied on that email?

21 A. Copied Doug Vance, Molly McKinnon.

22 Q. And what's the date of that email?

23 A. June 26, 2017.

24 Q. Do you see any reference to an attachment of any kind in
25 this email?

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1 A. This email says, "Attached find the following 2017
2 financial reports for Nex-Gen, P&L and balance sheet."

3 MR. ROSENBERG: Your Honor, the government moves to admit
4 Exhibit 120.

5 THE COURT: All right. Based on the same rationale
6 discussed at the bench, the objection will be noted but it will
7 be admitted.

8 (United States Exhibit 120 was admitted.)

9 MS. LEWIS: Your Honor?

10 THE COURT: Yes, ma'am.

11 MS. LEWIS: Would you note my objection to that as well
12 for the record?

13 THE COURT: I just did. Yes, ma'am.

14 MS. LEWIS: Thank you.

15 THE COURT: Noted for both defendants.

16 MR. ROSENBERG: I would like to go to the next page, the
17 first of the attachment. If we could zoom in?

18 Q. Are you able to read that, sir?

19 A. Yes.

20 Q. Are you generally familiar with a profit and loss report?

21 A. Yes, I'm not an accountant, but generally, yes.

22 Q. Is that something you have had to review in the course of
23 your employment with KRP?

24 A. Yes.

25 Q. Now, on this report what is reported as sales of product

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1 income?

2 A. Sales of product income, 1,444,614.

3 Q. Do you see a line that says Gross Profit?

4 A. Yes.

5 Q. What amount is entered there?

6 A. \$634,795.02.

7 Q. All right.

8 MR. ROSENBERG: And going back to the first page of this
9 exhibit.

10 Q. How did Molly McKinnon describe these documents to Dell
11 Jagers?

12 A. The 2017 financial reports for Nex-Gen, P&L and balance
13 sheet.

14 MR. ROSENBERG: I would like to tender to this witness
15 what's been premarked as Exhibit 120A.

16 Q. Do you see that, sir?

17 A. Yes.

18 Q. Does this appear to be another email from Ms. McKinnon on
19 that same June 26, 2017 date?

20 A. Yes, Molly McKinnon to Dell Jagers, June 26, 2017 is on
21 this.

22 Q. Does the email also have an attachment?

23 A. Yes.

24 Q. Is there a name for the attachment, is that indicated?

25 A. It says, "Attached please find the following 2016 reports

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1 for Nex-Gen: P&L, Balance Sheet, Trial Balance."

2 MR. ROSENBERG: Your Honor, we move to admit Government's
3 Exhibit 120A.

4 THE COURT: Defendants, note their objection, both
5 defendants. It will be admitted.

6 (United States Exhibit 120A was admitted.)

7 BY MR. ROSENBERG:

8 Q. So the last email referred to 2017 reports, correct?

9 A. Correct.

10 Q. And this one is 2016?

11 A. Correct.

12 MR. ROSENBERG: Let's go to page 2 of the exhibit, the
13 first page of the attachment. If we could zoom at the top
14 again?

15 Q. What did this report indicate about Nex-Gen's Sales of
16 Product Income in 2016?

17 A. Sales of Product Income, 787,528.95.

18 Q. And what is the Gross Profit indicated?

19 A. Gross Profit is \$622,964.83.

20 Q. Does this statement reflect a profitable company in 2016,
21 generally?

22 A. Yes.

23 MR. ROSENBERG: You can take that down.

24 Q. These financial reports were shared with Dell Jagers,
25 correct?

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1 A. It's my understanding, yes.

2 Q. And he was on the board of KRP?

3 A. Yes, member of the management committee.

4 Q. And did this precede the loan from KRP to Nex-Gen?

5 A. I would have to go back and look at the dates, I believe
6 so.

7 MR. ROSENBERG: Let's go back to 801 then. This has been
8 admitted.

9 Q. Do you see on the first page, the bottom half where it
10 says Capital Infusion?

11 A. Yes.

12 Q. Do you note the date where it says the installments begin?

13 A. Yes. July 1, 2017.

14 Q. Does that confirm your understanding of the order between
15 the information provided to Dell Jagers and the timing of the
16 loan?

17 A. Yes, it does.

18 Q. Which one came first?

19 A. The loan came second.

20 Q. The loan came second. Okay. How did the disbursements
21 work in this agreement?

22 A. Well, generally we required submission of an invoice or
23 what the money was being spent for. For example, if he bought
24 steel to be used in the calciners, he would submit a receipt
25 for that steel to us and we would issue a draw off of this

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1 170,000 for that.

2 Q. What was the purpose of having it structured that way?

3 A. To try to ensure that the money that we were giving him
4 was used for the development of these two calciners.

5 Q. Did KRP take any other state -- steps to try to protect
6 its interest in terms of the money it was loaning to Nex-Gen?

7 A. Yes.

8 Q. What sort of steps, additional steps, did KRP take?

9 A. I really need to look at the documents. But generally
10 speaking, we had -- I'm sure we had a security agreement, a
11 UCC-1 filing on the two calciners.

12 I'm sure we had a promissory note. I think we had a
13 security agreement with respect to the stock of Nex-Gen.

14 We basically tried to take pretty much all the financial
15 documents we could to collateralize the loan.

16 Q. For folks who may not be familiar, when you say
17 "collateralize the loan," can you put that in just layman's
18 terms for us?

19 A. Well, similar to a bank. If you're borrowing money from a
20 bank, they take a mortgage on your house. What we were trying
21 to do here is to securitize or get security for the loan to try
22 to ensure we got the money paid back.

23 MR. ROSENBERG: If we scroll down to the section called
24 Security Agreement?

25 Q. I'm going to go with your analogy to a mortgage on a

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1 house. So in that situation, the bank takes a security
2 interest in the home, correct?

3 A. Right.

4 Q. So in this particular part of the agreement, what did KRP
5 take an interest in?

6 A. It says we had a first lien security interest in certain
7 production equipment listed on Exhibit A.

8 MR. ROSENBERG: Let's go to Exhibit A, I think that's
9 towards the end of the document.

10 Q. There on Exhibit A, what's the property that KRP took a
11 security interest in?

12 A. There were two. One was an In-Direct Fired Rotary
13 Calciner, serial number SN ngrc0415, including all associated
14 equipment, devices, mechanisms, processes and attachments.

15 And then number two was an In-Direct Fired Rotary
16 Calciner, serial number SC ngrc0817, including all associated
17 equipment, devices, mechanisms, processes and attachments.

18 Q. So two rotary calciners?

19 A. Correct.

20 Q. Did those calciners already have serial numbers on them?

21 A. No, these were -- building these calciners and he was to
22 etch the serial number into the machines.

23 Q. Did KRP request him to put those serial numbers on it?

24 A. Yes.

25 Q. And what was the purpose of having serial numbers?

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1 A. Well, to identify the machines that we were loaning money
2 to have built.

3 Q. So in the mortgage scenario, if you don't make good on
4 your mortgage, what can the bank do?

5 A. Well, they could foreclose on the property and ultimately
6 sell the property.

7 Q. Did that same concept apply to KRP's interest in these
8 calciners?

9 A. Yes.

10 Q. Now, if I take out a mortgage, does the bank want to know
11 if someone else actually owns the house that I'm offering up as
12 collateral?

13 A. Sure, yes.

14 Q. Same question here. If someone else owned these two
15 pieces of equipment, would that have been material to KRP?

16 A. Yes.

17 Q. Why would KRP want to know if someone else owned these
18 items?

19 A. Well, the agreement required that we had a first lien
20 position, that our mortgage was first in priority.

21 Q. If someone else had an ownership interest in these
22 calciners, would that make it more difficult for KRP to take
23 possession of them in the event the loan is defaulted?

24 A. Yes.

25 THE COURT: Mr. Rosenberg, are you about at a good place

1 to break for the evening?

2 MR. ROSENBERG: Yes, Your Honor.

3 THE COURT: All right. We'll go ahead and take our recess
4 for the evening.

5 Ladies and gentlemen, we'll begin at 9 tomorrow morning.
6 And, again, please keep in mind all the admonitions that you
7 were given.

8 For tomorrow, we will end no later than 4:30. I've got
9 another matter I'm going to have to schedule for hearing at
10 4:30 in the afternoon, so you'll be able to finish before that
11 time.

12 Monday is a federal holiday, Columbus Day, and so we won't
13 be in session on Monday. I'll remind you of that again
14 tomorrow. But don't plan to be here on Monday.

15 At this point I do anticipate we will complete the case
16 next week, but I do have to have a hearing in another matter
17 tomorrow at 4:30 and then probably Tuesday at 4:30 as well. So
18 for planning purposes, I wanted to advise you of that.

19 You can leave your notebooks in your chairs unless you
20 need to go back into the deliberation room.

21 With that, the jury will be excused until 9:00 tomorrow
22 morning.

23 (Jury left courtroom at 4:45 p.m.)

24 THE WITNESS: Thank you, Your Honor.

25 THE COURT: Yes, sir.

1 Let's see if anyone has issues to take up outside the
2 presence of the jury.

3 MR. ROSENBERG: Not for the United States.

4 THE COURT: Mr. Darling?

5 MR. DARLING: No, Your Honor.

6 THE COURT: Ms. Lewis?

7 MS. LEWIS: No, Your Honor.

8 THE COURT: All right. Thank you. We will be in recess
9 until 9:00 a.m. tomorrow morning.

10 (Proceedings adjourned at 4:47 p.m.)

11

12 C E R T I F I C A T E

13 I, Linda S. Mullen, RDR, CRR, do hereby certify that
14 the foregoing is a correct transcript from the record of
15 proceedings in this above-entitled matter.

16

17 /s/Linda S. Mullen
Linda S. Mullen, RDR, CRR
Official Court Reporter

April 20, 2023
Date of Certification

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	I N D E X	
		PAGE
1		
2	GOVERNMENT WITNESS	
3	MENDIE HOGAN	
	Direct Examination By Mr. Chapman	6
4	Cross-Examination By Mr. Darling	34
	Cross-Examination By Ms. Lewis	48
5	Redirect Examination By Mr. Chapman	74
	Recross-Examination By Ms. Lewis	79
6		
7	CHRISTOPHER HUBBUCH	
	Direct Examination By Mr. Rosenberg	80
8	JEAN LACY	
	Direct Examination By Mr. Rosenberg	100
9	Cross-Examination By Mr. Darling	125
	Redirect Examination By Mr. Rosenberg	129
10	Cross-Examination By Ms. Lewis	131
11	CURTIS THOMSON	
	Direct Examination By Mr. Rosenberg	134
12	Cross-Examination By Mr. Darling	142
	Cross-Examination By Ms. Lewis	145
13		
14	CHARLES MILLER	
	Direct Examination By Mr. Rosenberg	146
	Cross-Examination By Ms. Lewis	156
15	Redirect Examination By Mr. Rosenberg	166
	Recross-Examination By Ms. Lewis	168
16		
17	CHUCK MULLINS	
	Direct Examination By Mr. Rosenberg	169
	Cross-Examination By Ms. Lewis	193
18		
19	STEPHEN BARKER	
	Direct Examination By Mr. Rosenberg	194
20		
21	EXHIBITS	ADMITTED
22		
23	Defense Exhibit 1	55
	Defense Exhibit 76	68
24	Defense Exhibit 88	67
	Defense Exhibit 92	52
25	Defense Exhibit 93	51
	Defense Exhibit 115	60

1
2
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7
8
9
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13
14
15
16
17
18
19
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21
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24
25

EXHIBITS	ADMITTED
United States Exhibit 120	207
United States Exhibit 120A	209
United States Exhibit 125	184
United States Exhibit 135	189
United States Exhibit 152	26
United States Exhibit 180	109
United States Exhibit 181	116
United States Exhibit 182	118
United States Exhibit 183	119
United States Exhibit 184	112
United States Exhibit 201	87
United States Exhibit 202	87
United States Exhibit 202A - 202D	87
United States Exhibit 203	94
United States Exhibit 203A	94
United States Exhibit 203C	94
United States Exhibit 204	94
United States Exhibit 204A	94
United States Exhibit 205	94
United States Exhibit 205A - 205H	94
United States Exhibit 206	94
United States Exhibit 207	94
United States Exhibit 212 - 213	95
United States Exhibit 701	14
United States Exhibit 702	10
United States Exhibit 707	18
United States Exhibit 710	16
United States Exhibit 713	20
United States Exhibit 714	21
United States Exhibit 716	22
United States Exhibit 717	23
United States Exhibit 801	178