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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 -	.	
	.	Friday, October 7, 2022
DOUGLAS WILLIAM VANCE and	.	8:59 a.m.
MOLLY IRENE MCKINNON,	.	
	.	JURY TRIAL DAY 4 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.

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1 (Proceedings in open court, October 7, 2022, 8:59 a.m.)

2 THE COURT: Good morning, everyone. The record will again
3 reflect that all members of the jury are present. Defendants
4 and all counsel are present as well.

5 I believe yesterday we were in direct examination of
6 Mr. Barker before we recessed.

7 Mr. Barker, you are still under oath, of course.

8 And, Mr. Rosenberg, you may continue with your questions.

9 MR. ROSENBERG: Thank you, Your Honor.

10 STEPHEN BARKER

11 DIRECT EXAMINATION

12 BY MR. ROSENBERG:

13 Q. Good morning, Mr. Barker.

14 A. Good morning, sir.

15 Q. I believe when we left off we were looking at Government's
16 Exhibit 801, which is already in evidence. And we were looking
17 at the security agreement provision, and specifically the
18 reference therein to production equipment listed in Exhibit A.

19 Do you recall that?

20 A. Yes, sir.

21 Q. And just remind the jury what that equipment was, if you
22 recall.

23 A. It was two calciners.

24 Q. Two calciners? All right.

25 I believe we left off with a question about whether KRP --

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1 if KRP had known someone else had ownership interest in those
2 equipment, would that have been important for KRP to know?

3 A. Sure. These were going to be built. I'm not sure how
4 anybody else could have an interest in them at the time.

5 Q. And was -- I believe you referenced a separate security
6 agreement that KRP obtained with Nex-Gen related to the
7 \$170,000 loan.

8 A. Well, there was a series of documents. There was a
9 security agreement. There was -- I believe there was a pledge
10 of stock. There was an overriding royalty agreement. Personal
11 note -- a personal guarantee, a promissory note. A series of
12 documents.

13 MR. ROSENBERG: Your Honor, could we tender just to the
14 witness Government's Exhibit 809?

15 THE COURT: Yes, sir.

16 BY MR. ROSENBERG:

17 Q. Sir, let me know if that's on your screen.

18 MR. ROSENBERG: I apologize, Your Honor. We'll have to
19 come back to that.

20 Could we go to -- bring 801 back up? And we'll look at
21 page 2 of the Overriding Royalty Agreement. If we can go to
22 page 2?

23 Q. All right. Do you see a Section Number 5 titled Optional
24 Reversionary Interest?

25 A. Yes, sir.

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1 Q. Please take a moment just to review that to refresh
2 yourself on that provision. Let me know once you've done that.

3 A. Yes, sir.

4 Q. So according to this section of your agreement with
5 Nex-Gen, what choice would KRP have once Nex-Gen fully repaid
6 the \$170,000 with interest?

7 A. Well, sort of an exchange for a low base rent for the
8 property. And we had the option to -- once the loan was paid,
9 we had the option to either retain an overriding royalty
10 interest on production as set out in the agreement, or to
11 relinquish that overriding royalty interest and receive an
12 assignment of 50 -- undivided 50 percent in the ownership of
13 Nex-Gen.

14 Q. Undivided 51 percent ownership of Nex-Gen. So would that
15 be a controlling interest in Nex-Gen?

16 A. Yes.

17 Q. Now, if Mr. Vance had already transferred all the assets
18 of Nex-Gen Industries to another company at the time of the
19 signing of this agreement, is that something that you would
20 have wanted to know from him?

21 A. Certainly.

22 Q. And why is that?

23 A. Well, it would made this provision, I guess, impossible in
24 the event we elected to take the 51 percent.

25 MR. ROSENBERG: Could we tender just to the witness

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1 Government's Exhibit 803?

2 Q. Is that on your screen, sir?

3 A. Yes.

4 Q. All right. Do you recognize this document?

5 A. I do.

6 Q. Can you tell the jury what it is?

7 A. It's a demand note or promissory note for the \$170,000
8 loan that we made to Nex-Gen.

9 Q. So this is related to the \$170,000 loan?

10 A. Yes.

11 Q. And what's the purpose of a demand note?

12 A. Well, the demand note or promissory note is the actual
13 document that says that Nex-Gen owed Kentucky River Properties
14 \$170,000, and we'd be paid upon demand or according to the
15 terms of the agreement.

16 MR. ROSENBERG: Your Honor, the government moves to admit
17 Exhibit 803.

18 THE COURT: Any objection?

19 MR. DARLING: No objection.

20 MS. LEWIS: No objection.

21 THE COURT: United States Exhibit 803 is admitted.

22 (United States Exhibit 803 was admitted.)

23 BY MR. ROSENBERG:

24 Q. Do you see KRP listed as an entity in that first
25 paragraph?

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1 A. Yes.

2 Q. And there is a description of what type of entity it is
3 and where its principal office is?

4 A. Yes, sir.

5 Q. And then after that, how is KRP referred to throughout
6 this agreement?

7 A. I think it would be referred to as lender.

8 Q. Is that in quotation marks after the --

9 A. Yes.

10 Q. -- the address?

11 A. Yes, lender.

12 Q. So if the \$170,000 that KRP sent to Nex-Gen was for a
13 purchase of a machine rather than a loan, would there be a need
14 for this demand note to exist?

15 A. No.

16 Q. Would someone who purchases equipment from Nex-Gen be
17 referred to as a lender?

18 A. No.

19 Q. So if someone were to represent that KRP bought a machine
20 for \$170,000 rather than lent money, would that be an accurate
21 statement?

22 A. No, that's not accurate.

23 MR. ROSENBERG: Your Honor, may we tender just to the
24 witness Government's Exhibit 153?

25 THE COURT: Yes, sir.

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1 BY MR. ROSENBERG:

2 Q. Is the document on your screen, sir?

3 A. No. It's open.

4 Q. What type of document is this?

5 A. This appears to be an email.

6 Q. Do you recognize any of the parties on this email?

7 A. It says it's from Doug Vance to Dell Jagers.

8 Q. What's the email address there of Mr. Jagers?

9 A. The email address of Dell Jagers is deljag@gmail.com.

10 Q. Is that an email that you're familiar with in your
11 communications with Mr. Jagers?

12 A. Yes, sir.

13 Q. And what's the general subject of this email?

14 A. The email says, "Attached is 5 months of statement. I'll
15 be heading back to Hazard in the morning and will be sending
16 you a moving forward doc sometime tomorrow."

17 MR. ROSENBERG: Your Honor, the government moves to admit
18 Exhibit 153.

19 THE COURT: All right. Any objection?

20 MS. LEWIS: Same objection from yesterday, Your Honor.

21 THE COURT: Is this one of the documents covered by the
22 parties' stipulation as to admissibility?

23 MR. ROSENBERG: It is, Your Honor.

24 THE COURT: The objection is overruled. The document will
25 be admitted.

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1 (United States Exhibit 153 was admitted.)

2 BY MR. ROSENBERG:

3 Q. Do you see a series of attachments to this email?

4 A. Yes.

5 Q. How did Mr. Vance describe these attachments?

6 A. They were, it looks like, a series of bank statements.

7 MR. ROSENBERG: Let's go to page 2 of the exhibit.

8 Q. In your experience in business, are these consistent with
9 bank statements?

10 A. Generally speaking, I don't do business with Wells Fargo,
11 but yeah, that appears to be.

12 MR. ROSENBERG: Looking back at page 1 of the exhibit.

13 Q. What does Mr. Vance tell Mr. Jagers that he was sending
14 sometime tomorrow?

15 A. He says he "will be sending a moving forward doc sometime
16 tomorrow."

17 Q. And when was this email sent?

18 A. September 16th, 2017.

19 Q. All right.

20 MR. ROSENBERG: So now I would like to show just the
21 witness Exhibit 159.

22 Q. And once that's on your screen, let me know what the date
23 of this email is.

24 A. Sunday, 17 September, 2017.

25 Q. Is that the following date from the email we just

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1 reviewed?

2 A. Yes.

3 Q. And who is this email between?

4 A. It's from Doug Vance to Dell Jagers.

5 MR. ROSENBERG: Government moves to admit 159.

6 THE COURT: Same objection?

7 MS. LEWIS: Yes, Your Honor.

8 MR. DARLING: Yes, Your Honor.

9 THE COURT: Noted for the record. It's overruled and the
10 exhibit will be admitted.

11 (United States Exhibit 159 was admitted.)

12 BY MR. ROSENBERG:

13 Q. So the following day, what type of document did Mr. Vance
14 send to Dell Jagers?

15 A. It says it's a "Nex-Gen financing request for TJ
16 purchase."

17 Q. And remind me what the site that Nex-Gen rented, what was
18 it commonly referred to as?

19 A. Trus Joist facility.

20 Q. TJ is consistent with Trus Joist?

21 A. Yes, sir.

22 MR. ROSENBERG: Let's go to page 3 of the exhibit, please.

23 And if we look at the third paragraph, if we can make that
24 bigger?

25 Q. Do you see the last sentence of that paragraph, starting

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1 with the words, "Due to the product line expansion"?

2 A. Yes.

3 Q. And I'm just going to read here. It says, "his sales have
4 increased from 365k in 2015 to \$787,528 in 2016 and \$846,789 as
5 of April 15, 2017."

6 When particular dollars amounts are attached to sales
7 figures, in your experience, are those mere projections or
8 reports of actual sales?

9 A. If it's historical, I would presume it would be actual
10 sales.

11 Q. I believe we said this was sent to Mr. Jagers
12 September 17th of 2017, correct?

13 A. Was this attached to the email? Yes.

14 Q. So is 2015, 2016 and April 15th, 2017 all historical at
15 that point?

16 A. They were from the time we made the loan to him, yes.

17 Q. And from the time this email was sent to Mr. Jagers?

18 A. Yes.

19 MR. ROSENBERG: Let's go to paragraph -- page 4, excuse
20 me. We'll look at the second full paragraph.

21 Q. Do you see the sentence starting with -- it's the last
22 sentence of this second paragraph, "Vance had self-funded"?

23 A. Yes.

24 Q. Again, just follow along with me.

25 "Vance has self-funded the business since 2013 but feels

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1 the need to access additional capital at this point in order to
2 fulfill current orders and continue forward momentum."

3 So I believe we've covered this email to Mr. Jagers was
4 sent in 2017, correct?

5 A. Correct.

6 Q. What does "self-funded the business since 2013" mean to
7 you?

8 A. I would assume it means he put his own money in or money
9 that he acquired to fund his operations.

10 Q. In considering any kind of transaction with Mr. Vance,
11 would it be important to know whether there had, in fact, been
12 other investors taking a majority stake of Mr. Vance's company
13 prior to this point?

14 A. Yes.

15 Q. And why would that be important?

16 A. Well, we were dealing with Nex-Gen Industries, which our
17 understanding was Doug Vance as the principal owner.

18 Q. When entering into any kind of transaction with a company,
19 do you want to know who the actual owner of the company is?

20 A. You want to know who has control of the company, who has
21 the authority to bind the company. We deal with a lot of
22 companies that are -- you know, shares are owned by a lot of
23 folks. But you want to know that the person who's signing the
24 documents has the authority to sign the documents, yes.

25 MR. ROSENBERG: Your Honor, we would like to tender just

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1 to the witness Government's Exhibit 124.

2 THE COURT: Yes, sir.

3 BY MR. ROSENBERG:

4 Q. Sir, do you see that document on your screen yet?

5 A. Yes.

6 Q. What type of document is this?

7 A. Again, this appears to be an email.

8 Q. Who is it between?

9 A. It's from Doug Vance to Dell Jagers.

10 Q. And what's the date of this email?

11 A. Thursday, 19 October, 2017.

12 MR. ROSENBERG: And if we could just go to the bottom of
13 page 2 briefly?

14 Q. Do you see a reference to "KRP Investment"?

15 A. Yes.

16 Q. And what do you understand KRP to refer to?

17 A. Kentucky River Properties, yes.

18 MR. ROSENBERG: Government moves to admit Government's
19 Exhibit 124.

20 THE COURT: Same objection?

21 MS. LEWIS: Yes, sir.

22 THE COURT: Noted for the record as to both defendants.
23 Objection is overruled. The exhibit is admitted pursuant to
24 the parties' stipulation and admission.

25 (United States Exhibit 124 was admitted.)

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1 MR. ROSENBERG: First, let's go back up to the top of the
2 email, first page. And we'll look in the middle section there.

3 Q. Mr. Barker, do you see on October 18th where Mr. Jagers
4 said, "Please help make some changes to this email...so I can
5 send to Will."

6 Do you know of a Will involved in Kentucky River
7 Properties?

8 A. Yes.

9 Q. Who would that be?

10 A. That's Will Langhorne, he is the chairman of our
11 management committee, chairman of the board.

12 Q. Chairman of the board -- management committee, excuse me.

13 And is that board or management committee the
14 decision-making body for KRP?

15 A. Yes.

16 MR. ROSENBERG: Now let's go back to the bottom of page 2.

17 Q. Do you see where it says, "KRP Investment"?

18 A. Yes.

19 Q. Does the email continue below that on the next page?

20 MR. ROSENBERG: So let's go to page 3.

21 Q. What was being discussed with respect to KRP in this
22 email?

23 A. It appears to be asking if Kentucky River or KRP would
24 invest another 170,000, be willing to split the 170,000 for
25 60 to 80.

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1 Interested in partnership.

2 Doug's budget is for two operating units next year but
3 intends to build the third.

4 Two operating units next year is 10 million gross and
5 4 million net.

6 When would you plan to add an operating guy on staff.

7 Q. So the original 170k, 170,000 that KRP loaned, that was
8 for -- to build an additional calciner or rotary kiln, right?

9 A. Yes, two.

10 Q. So your understanding is this email is about the potential
11 of loaning additional money for an additional unit?

12 A. I think that's correct.

13 MR. ROSENBERG: Let's go back up to page 2.

14 Q. Do you see a bullet point that says Koch towards the
15 bottom?

16 A. Yes.

17 Q. Did you ever have any discussions with Mr. Vance where he
18 talked about Koch or Koch Industries or Koch Carbon?

19 A. Yes.

20 Q. What do you recall from Mr. Vance's statements?

21 A. Generally, my recollection is that Koch Industries or one
22 of their subsidiaries had visited the site, talked to him about
23 some type of off-take agreement or sales agreement to purchase
24 the production from his facility.

25 Q. And is an off-take agreement with Koch referenced in this

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1 email?

2 A. Yes.

3 Q. Can you explain to the jury what is meant by off-take
4 agreement?

5 A. Well, it's basically, I guess, a purchase agreement.

6 If you're producing a product, you want to have a contract
7 to sell that product to someone. And in the coal industry,
8 sometimes these are referred to as off-take agreements, but
9 it's really a purchase/sale agreement to purchase the product
10 that you're producing.

11 Q. And to be clear for the jury, when Mr. Vance was talking
12 to you about Koch's interest in an off-take agreement, who
13 would be the buyer and who would be the seller in that?

14 A. Well, presumably, based on this email, it would be Koch
15 Industries or one of their subsidiaries would be the purchaser,
16 and I'm assuming Nex-Gen would be the seller of the product.

17 Q. Would you agree, is that relationship different than the
18 relationship of a lender and borrower?

19 A. Yes.

20 Q. In your experience, what is more beneficial to a company,
21 having a large company that wants to buy a lot of product from
22 them, or a large company that's merely lending money? What's
23 better for the bottom line?

24 A. Well, you want to have -- you want to have a sales
25 agreement to sell your product, of course. You know, it's

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1 possible that Koch would have, you know, fronted some money or
2 provided some up-front money to help a new business start up.
3 But yeah, you want -- if you don't have a sales agreement for
4 your product, it's pretty tough to produce it for a spot sale,
5 on-the-spot market.

6 MR. ROSENBERG: Let's move forward to Government's Exhibit
7 126 to show just to the witness.

8 Q. Is that on your screen?

9 A. No.

10 Q. Okay.

11 A. There it is.

12 Q. What sort of document is this?

13 A. That's another email.

14 Q. And who is on this email?

15 A. This is from Doug Vance to Dell Jagers, Will Langhorne,
16 me and Molly. It says Molly.

17 Q. So were you copied on this email?

18 A. It appears I was, yes.

19 Q. And so was Will Langhorne of KRP?

20 A. Yes.

21 Q. What's the date of this email?

22 A. This is Wednesday, 3 January 2018.

23 MR. ROSENBERG: The government moves to admit Exhibit 126.

24 THE COURT: Any objection?

25 MS. LEWIS: No objection.

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1 MR. DARLING: No objection.

2 THE COURT: Exhibit 126 is admitted.

3 (United States Exhibit 126 was admitted.)

4 BY MR. ROSENBERG:

5 Q. Do you see at the very top a subject for this email?

6 A. Yes.

7 Q. What is that?

8 A. "100k advance."

9 Q. What do you understand 100k advance to refer to?

10 A. \$100,000.

11 Q. A hundred thousand dollars? And who -- who was sending
12 this email?

13 A. It was Doug Vance.

14 Q. Now, did Mr. Vance provide a breakdown of the hundred K
15 advance referenced?

16 A. Yes.

17 Q. And how did he break that down?

18 A. Well, the email says, "Please see use of the funds below:
19 30k payroll and taxes, 35k sizing and bagging equipment, 20k
20 property improvements, 15k fuel, supplies, et cetera."

21 Q. And by quick math, does that add up to 100k?

22 A. I believe it does.

23 Q. Should have warned you, I would ask you to do math on the
24 stand.

25 Was Mr. Vance seeking additional funding from KRP at this

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1 point?

2 A. Yes.

3 Q. And did you understand this to be the purpose of the money
4 he was seeking, the breakdown?

5 A. Yes.

6 Q. What did Mr. Vance tell you about Kingsford under that
7 breakdown?

8 A. Well, email says, "Please keep in mind Kingsford wants to
9 do a site visit this month. It is to our benefit that we do
10 some property improvements beforehand."

11 Q. What did you understand him to be telling you there?

12 A. He had been in discussions, I think, with Kingsford
13 charcoal to buy charcoal product. And he felt like that the
14 property, the facility needed to be upgraded, improved a bit
15 before they came to do the site visit.

16 Q. Did this put some type of time pressure on his request?

17 A. Well, it says they want to do a site visit this month, so
18 yes, I guess in that sense, yes.

19 Q. And did Kentucky River Properties agree to advance this
20 hundred thousand dollars?

21 A. No.

22 MR. ROSENBERG: Let's go now to Government's Exhibit 121,
23 just to show the witness.

24 Q. Do you have that on your screen?

25 A. No, sir. Now it's up.

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1 Q. What sort of document is this one?

2 A. It's another email.

3 Q. And who's on this email?

4 A. This is from me to Doug Vance.

5 Q. And what's the date of this email?

6 A. This is 25 October 2018.

7 MR. ROSENBERG: Government moves to admit Exhibit 121.

8 THE COURT: Any objection?

9 MR. DARLING: No objection.

10 MS. LEWIS: No objection.

11 THE COURT: United States Exhibit 121 is admitted.

12 (United States Exhibit 121 was admitted.)

13 BY MR. ROSENBERG:

14 Q. Did you have an attachment to this email?

15 A. It shows an attachment, yes.

16 Q. And looking to the body of the email, could you read just
17 that first sentence for us?

18 A. "As you requested, attached is a proposed term sheet for a
19 potential lease between KRP and Nex-Gen Industries LLC for
20 industrial space at the former Trus Joist facility."

21 Q. Now, at this point had KRP and Nex-Gen already entered
22 into previous lease agreements?

23 A. Yes.

24 Q. So what was being discussed here?

25 A. I don't recall exactly. I think it was to either increase

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1 the space or to -- there was some talk about the -- there's two
2 large dryers out there and that might have been for that.

3 MR. ROSENBERG: We'll go to the proposed term sheet now,
4 let's go to page 2. Can we bring up that first full paragraph?

5 Q. What does the first sentence indicate about this term
6 sheet proposal?

7 A. It says, "Nex-Gen Industries has requested that Kentucky
8 River Properties consider a new 'long-term' lease of that
9 certain portion of the Trus Joist facility that" they
10 "currently" have "leased on a short-term basis."

11 Q. Is it true that the prior leases were short-term leases?

12 A. Yes, they were.

13 Q. Were you involved in the preparation of this proposed term
14 sheet?

15 A. Yes.

16 Q. And to be clear, was this an actual agreement entered into
17 with Nex-Gen?

18 A. I don't believe we ever entered into this agreement.

19 Q. But this document specifically, what is it doing?

20 A. It sets out proposed terms for a lease to be negotiated.
21 It's pretty common if you're negotiating with someone, you want
22 to set out some basic terms. Because if you can't agree to
23 those basic terms, then the deal is probably off.

24 Q. Understood. I want to look at one of the terms that KRP
25 set forth.

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1 In paragraph 1, what was one of the terms KRP wanted?

2 A. We wanted the \$170,000 loan to be fully repaid.

3 Q. Was that the loan from July of 2017?

4 A. Yes, sir.

5 Q. At this point had that loan been repaid by Nex-Gen?

6 A. No.

7 Q. To your memory, how much repayment did Nex-Gen ever make
8 on that \$170,000 loan?

9 A. It would be a few hundred dollars. I can't give you the
10 exact number, but a few hundred dollars.

11 Q. And did you receive any royalty payments or royalty
12 reports showing or reflecting a significant volume of sales
13 from Nex-Gen?

14 A. No significant volume, no.

15 Q. How did KRP's relationship with Vance and Nex-Gen end?

16 A. I would probably characterize it as a gradual ending, I
17 suppose. You know, it became apparent after awhile that what
18 we all had hoped would happen was not happening.

19 And then, you know, at some point we received a call from
20 the FBI. That pretty much ended the relationship.

21 MR. ROSENBERG: Thank you, sir.

22 Subject to redirect, I'll pass the witness.

23 THE COURT: All right. Thank you, Mr. Rosenberg.

24 Mr. Darling?

25 CROSS-EXAMINATION

STEPHEN BARKER - CROSS

1 BY MR. DARLING:

2 Q. Good morning, Mr. Barker.

3 A. Good morning, sir.

4 Q. My name is Jeff Darling, I represent Doug Vance. I have a
5 few questions, not a whole lot for you here this morning.

6 The lease between Kentucky River Properties on that piece
7 of property was between Kentucky River Properties, LLC and
8 Nex-Gen Industries Incorporated, correct?

9 A. I believe that's correct.

10 Q. At no time were there any other parties added to this
11 lease?

12 A. Not that I recall, no.

13 Q. Have you ever heard of an entity, NexGen Industry
14 Partners?

15 A. I heard about them later.

16 Q. They were never a party to this lease, correct?

17 A. That's correct.

18 Q. Now, it's my understanding, much of this came from
19 Mr. Mullins yesterday, how did Kentucky River Properties
20 acquire this piece of property?

21 A. The Trus Joist facility?

22 Q. Yes, sir.

23 A. We -- the property -- the property was constructed by a
24 company called Trus Joist MacMillan, and they made laminated
25 strand lumber. When they came in, we were very instrumental in

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1 getting them to come there. Brought a lot of jobs, used a lot
2 of timber.

3 At some point Weyerhaeuser acquired the facility.
4 Weyerhaeuser operated it probably until about the time of the
5 housing crash, then they closed it.

6 There was a gentleman who acquired the facility, he
7 acquired it to scrap it, to tear it down for the scrap value.
8 He had started doing that.

9 We had been contacted by this group called Arbaflame that
10 I mentioned yesterday. At the time I thought the property was
11 owned by the Perry County Industrial Authority. So we met with
12 the county judge and the mayor to say, can we show Arbaflame
13 this facility? They may be going to build a wood processing
14 facility in it.

15 After we landed the helicopter tour there and talked a
16 little more specifically with the judge, found out that it was
17 owned by, I think the company was Berry Enterprises. So we
18 contacted Berry Enterprises to see if we could acquire the
19 property.

20 Q. And did you?

21 A. We did.

22 Q. What was on the property when you all acquired it?

23 A. Basically what's there today. It's about 90 acres under
24 chain link fence. Some of the buildings had been torn down by
25 Berry Enterprises.

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1 There's two large dryers there that are multistory tall
2 buildings that Weyerhaeuser and Trus Joist had used. There is
3 about four, sort of, connected buildings, we call them
4 buildings 1, 2, 3, 4, 5, warehouse space that the wood
5 processing facility used.

6 Q. Any business being operated on the property when you
7 acquired it?

8 A. Mr. Vance was there.

9 Q. So he was already there when you -- he kind of came with
10 the property, right?

11 A. He did, yes.

12 Q. What was your plan when you all purchased the property?

13 A. Well, several. Several ideas. One, of course, was to try
14 to use the facility as an industrial base to bring in something
15 that could add value to either our coal, our timber. And, of
16 course, with the government's effort to shut down fossil fuels,
17 we started looking at biomass. We planted some we call it
18 Kentucky fiber, it's actually arundo donax, to grow, to process
19 through a facility down there.

20 You know, we were -- you hate to see a big industrial
21 facility, fairly unique in Eastern Kentucky, completely
22 destroyed by salvaging the buildings, so

23 Q. Did you have any concrete plans when you acquired it? Was
24 anything in the works?

25 A. Well, we were working with the Arbaflame group. When you

STEPHEN BARKER - CROSS

1 say "concrete," there were no signed agreements, but they were
2 in looking at that. They brought an engineering company in
3 and -- an international engineering company in to lay out the
4 design of the facilities and that sort of thing.

5 Q. Do you have an estimate from the time that you purchased
6 the property how long it would be before anything of
7 significance would be operating on that property?

8 A. Had Arbaflame worked out, it was probably a two-year
9 project.

10 Q. And it didn't?

11 A. It did not.

12 Q. Was there anything else --

13 A. No.

14 Q. -- in the works?

15 So at the time when you got the property, the only
16 business was Doug Vance?

17 A. The only business that was there, yes.

18 Q. Right. Okay. So in discussions with Mr. Vance, you all
19 worked out this lease that we've talked about, which is
20 Government's Exhibit 805, in which the rent was going to be
21 based on a royalty percentage?

22 A. Yes.

23 Q. So if he didn't make anything on the property, you got no
24 rent?

25 A. Correct.

STEPHEN BARKER - CROSS

1 Q. And in order to work -- in order to facilitate the
2 arrangement, KRP loaned Mr. Vance \$170,000?

3 A. That's correct.

4 Q. For two calciners?

5 A. Yes.

6 Q. In order to produce two calciners?

7 A. Yes.

8 Q. To your knowledge, were they manufactured?

9 A. Yes.

10 Q. I believe you already testified that Mr. Vance has not
11 paid significant money back on that \$170,000 note, correct?

12 A. That's correct.

13 Q. And you all still own this property, correct?

14 A. Yes.

15 Q. Are those two calciners still on the property?

16 A. To my knowledge, yes. I haven't been down there and
17 looked at the facility in a while, but -- where the calciners
18 are.

19 Q. And Mr. Vance is not operating those calciners at this
20 point?

21 A. No. There is a company that's operating it, I think it
22 was one of his former customers that are using those.

23 Q. Somebody -- somebody is using those calciners, operating a
24 business on that piece of property?

25 A. Yes.

STEPHEN BARKER - CROSS

1 Q. So you loaned Mr. Vance \$170,000 to -- in order that he
2 could manufacture two calciners, he did so. He left the
3 property, the business left the property. And he left the
4 calciners behind. And you are now using them?

5 A. We're not.

6 Q. The company -- I'm sorry, a company is now using them
7 that's operating a business on that property, and I presume
8 that business is paying you rent?

9 A. Yes, we leased the property, the space to Cambro, and they
10 are paying us rent.

11 Q. And you've gone through at length with Mr. Rosenberg, and
12 I'm going to leave it alone, the royalties.

13 But the calciner that -- do you know, of that \$170,000,
14 how much of that was spent to build the calciners?

15 A. No, I don't remember. I don't know exactly. I know that
16 we required paid receipts or invoices. And when we would get
17 those, we would issue a distribution of that 170,000.

18 Q. So as far as you know, those calciners cost \$170,000 to
19 manufacture?

20 A. Yes.

21 Q. And you now own them -- well, I guess you own them, right?

22 A. Well, we don't own them. They are on our property.

23 Q. On your property, and somebody is using them --

24 A. That's right.

25 Q. -- to conduct a business to pay you rent?

STEPHEN BARKER - REDIRECT

1 A. That's right.

2 MR. DARLING: Thank you, sir. That's all I've got.

3 THE COURT: Ms. Lewis?

4 MS. LEWIS: Briefly, Your Honor.

5 THE COURT: Yes, ma'am.

6 CROSS-EXAMINATION

7 BY MS. LEWIS:

8 Q. Good morning, Mr. Barker. I'm Brandi Lewis, I represent
9 Molly McKinnon.

10 A. Good morning.

11 Q. Are you aware of Mr. Jagers ever meeting with
12 representatives from Koch?

13 A. I can't say for certain. I think he may have, but I can't
14 say for certain.

15 Q. All right.

16 MS. LEWIS: That's all I have. Thank you.

17 THE COURT: See if there is any redirect.

18 Mr. Rosenberg?

19 REDIRECT EXAMINATION

20 BY MR. ROSENBERG:

21 Q. Mr. Barker, you were asked some questions about the entity
22 that was on the lease or the loan, excuse me, being Nex-Gen
23 Industries rather than NexGen Energy Partners, correct?

24 A. I think that's correct.

25 Q. Would it have been important for you to know whether

STEPHEN BARKER - REDIRECT

1 Nex-Gen Industries had been -- committed all of its assets to
2 NexGen Energy Partners before you entered into that agreement?

3 A. Yes.

4 Q. And why would that have been important?

5 A. Well, the -- our security documents required that we were
6 making the loan to Nex-Gen Industries and taking a lien on two
7 calciners that Nex-Gen Industries was building. So we would
8 want to make sure that we have all the rights to those
9 calciners, lien rights to those calciners.

10 Q. And Mr. Darling asked you, or I guess -- asked you whether
11 KRP owned the two calciners today. I believe your answer was
12 no.

13 A. That's correct.

14 Q. Why did you say no?

15 A. Well, we don't own them. I mean, we have -- we have a
16 first lien position on them, but we haven't executed on that.
17 We haven't foreclosed on them. We don't have title to those
18 calciners.

19 Q. And if Nex-Gen or Mr. Vance had agreed to commit that
20 property to one or maybe multiple other entities before the KRP
21 loan, would that impact KRP's ability to foreclose on it?

22 A. I would have to talk with the lawyers about that. I'm not
23 sure.

24 Q. Fair enough. Would KRP have wanted to know whether or not
25 Mr. Vance had committed those assets, indeed all of the assets

STEPHEN BARKER - RECROSS

1 of Nex-Gen Industries to other entities before entering into
2 this loan?

3 A. Yes.

4 Q. And would KRP have entered into the loan if they knew
5 Mr. Vance had provided falsified bank statements or production
6 and sales numbers?

7 A. No. I mean, that would have been part of the dynamics of
8 the data points we would have looked at, obviously. If we knew
9 they were false, that would have been a serious factor.

10 We made the loan really based on the fact that he had a
11 calciner on the property working at the time.

12 Q. And you believed that calciner to belong to Nex-Gen
13 Industries?

14 A. Yes.

15 MR. ROSENBERG: Nothing further, Your Honor.

16 THE COURT: All right. Let's see if there is any other
17 questions about matters brought out on redirect.

18 MR. DARLING: Yes, I do.

19 THE COURT: Yes, sir.

20 RECROSS-EXAMINATION

21 BY MR. DARLING:

22 Q. You say KRP has a first lien on the calciners?

23 A. Yes, sir.

24 Q. That you just have not enforced?

25 A. Correct.

STEPHEN BARKER - RECROSS

1 Q. There's nothing stopping you from doing that. Mr. Vance
2 is clearly in default of the loan, correct?

3 A. Yes.

4 Q. And there are -- Mr. Rosenberg talked about Nex-Gen
5 Industry Partners, they have never filed any UCC lien or any
6 other type of lien or demand on the calciners, have they?

7 A. Not that I'm aware of.

8 Q. So you have the first lien. There is nothing to stop you
9 from enforcing that lien and taking possession of those
10 calciners through a legal process?

11 A. That's my understanding.

12 Q. Mine too. Thanks.

13 A. Okay.

14 THE COURT: Ms. Lewis?

15 MS. LEWIS: Nothing, Your Honor.

16 THE COURT: Anything else of this witness? All right.

17 Thank you.

18 Mr. Barker, thank you, sir. You may step down. You are
19 excused.

20 THE WITNESS: Thank you very much, sir.

21 THE COURT: Mr. Rosenberg or Mr. Chapman, you may call
22 your next witness.

23 MR. ROSENBERG: The United States calls David Chmielewski.

24 **DAVID CHMIELEWSKI, GOVERNMENT WITNESS, SWORN**

25 THE COURT: Thank you. You may proceed.

DAVID CHMIELEWSKI - DIRECT

1 DAVID CHMIELEWSKI

2 DIRECT EXAMINATION

3 BY MR. ROSENBERG:

4 Q. Good morning, sir.

5 A. Hello.

6 Q. Could you please state your full name and spell the last
7 name for the court reporter?

8 A. David Francis Chmielewski, C-h-m-i-e-l-e-w-s-k-i.

9 Q. Sir, can you tell the jury where you're from?

10 A. Originally, I was born in the Pittsburgh area.

11 Q. Where do you live now?

12 A. Cincinnati.

13 Q. And how are you currently employed?

14 A. I work for Cleveland-Cliffs steel company.

15 Q. Did Cleveland-Cliffs acquire a company that you had been
16 employed with?

17 A. They did. It was AK Steel.

18 Q. And around what time was that acquisition of AK Steel?

19 A. I believe it was March of 2019.

20 Q. So if we're referring to events prior to 2019, is it fair
21 if I just refer to AK Steel as your employer?

22 A. Yes.

23 Q. What was your role or what has been your role at AK Steel?

24 A. My most recent position has been procurement of coal,
25 carbon, and coke, the manager thereof.

DAVID CHMIELEWSKI - DIRECT

1 Q. Can you explain to the jury what coke is?

2 A. Coke is the result of baking coal in an oven. It's called
3 a coke oven, not burning it but baking it. So the volatiles
4 are driven off and what remains is a carbon structure, porous
5 carbon structure, that is used in blast furnaces to make iron.

6 Q. Can you tell the jury what sort of products AK Steel was
7 in the business of producing?

8 A. AK Steel primarily made flat-rolled steel products for
9 automobile, appliances, and construction.

10 Q. About how long would you say you've been in the
11 procurement role or anything related to raw material
12 procurement with AK Steel?

13 A. Since my original hiring in July of 1990, I was involved
14 with the procurement. Although I was in research then, I still
15 directed the coal and coke buys, and didn't actually enter the
16 raw materials procurement department until 2007 -- or '6. I'm
17 sorry, 2006.

18 Q. Were you in that raw material procurement role at least
19 through -- 2015 through 2018?

20 A. Yes.

21 Q. What is the role of carbon products in the steel-making
22 process at AK Steel?

23 A. Basically they are used in the initial charging of a
24 steel-making furnace to add carbon. Carbon removes the -- some
25 impurities. It turns into carbon monoxide and carbon dioxide,

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1 stirs the steel, and also removes the oxides from the iron
2 turning it into steel.

3 It is also added after the steel is tapped, so to speak,
4 to adjust the carbon levels to the specification that you're
5 trying to make.

6 Q. Is coal or carbon products also used to provide energy to
7 an AK Steel plant or feed a furnace in an AK Steel plant?

8 A. We inject pulverized coal into blast furnaces for the
9 replacement of coke as a less expensive energy source. Other
10 than in the blast furnace itself, coke is used. It's an energy
11 source there.

12 Q. So is it fair to say there is carbon products that are
13 used to actually go into the finished steel product and then
14 other carbon products that are used in the furnace?

15 A. Yes.

16 Q. Were you responsible for acquiring the materials for both
17 of those uses?

18 A. Yes.

19 Q. Can you give me some examples of carbon products that
20 AK Steel was purchasing in 2017?

21 A. Well, primarily I purchased coal for coke-making purposes.
22 Also I would purchase furnace coke itself if we required more
23 than we made.

24 Then for the steel-making side, I would purchase
25 anthracite, which was used in the electric furnaces as a carbon

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1 additive, or petroleum coke, which was calcified. That is the
2 remains of petroleum after it's -- everything is driven out of
3 it. And I purchased that also for steelmaking.

4 Q. You have you heard of the term charge carbon?

5 A. Yes.

6 Q. Can you tell the jury what charge carbon is?

7 A. It's -- it's carbon that's added to the furnace when the
8 furnace is first charged. As I mentioned earlier, to add more
9 reducing -- the ability to reduce the iron in the scrap and
10 such in the furnace by producing carbon monoxide, carbon
11 dioxide, and also to stir the furnace through its evolution of
12 gases.

13 Q. What are some examples of charge carbon?

14 A. In electric furnaces, we use anthracite. In the BOF, we
15 used the petroleum coke calcite.

16 Q. Of the carbon products that you acquired for AK Steel,
17 what was the largest or highest volume product that you had to
18 acquire?

19 A. Coal, by far.

20 Q. Can you explain how you went about acquiring coal at
21 AK Steel?

22 A. Primarily we buy coal on an annual basis. It's usually
23 sometime during the late summer to early fall whenever the
24 market is, we feel, at the lowest point so we can get the best
25 deal.

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1 And what we do is we go out with a solicitation to all the
2 known coal suppliers and wait for their return on what they
3 have available. And then from then, we can either buy their
4 coal. We can -- if it's a coal we don't know, we would test
5 it. But from that, we would eventually buy the coal for the
6 following year.

7 Q. The suppliers of this coal, is there any sort of approval
8 process they have to go through? Or can you just pick up the
9 phone and start ordering coal from a new supplier that AK Steel
10 hasn't used before?

11 A. Well, number one, I couldn't do that.

12 And number two, I wouldn't do that. Coal -- despite what
13 most people think, there is a lot of differences between
14 different types of coal, different ranks of coal, especially
15 the coal we use in making coke. It's got metallurgical
16 properties where the coal actually softens and becomes a
17 molasses-type constituent in the coke oven. That's where it
18 all blends together and makes the coke structure. Most coals
19 won't do that.

20 So it is something that yes, we definitely would test
21 before we would ever consider using. Not only on laboratory
22 scales, but in the oven scale.

23 Q. Does AK Steel's financial or accounting department have
24 any role in approving a new supplier?

25 A. Only to the fact of their credit worthiness.

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1 Q. Credit worthiness?

2 A. Yes, uh-huh.

3 Q. Do you ever conduct site visits for potential suppliers of
4 coal to AK Steel?

5 A. Typically, our current suppliers, I would visit at least
6 once a year, maybe twice. And also a new supplier, I would
7 definitely visit their operation.

8 Q. So if a company wanted to be a new supplier of coal to
9 AK Steel, what steps would be taken?

10 A. First step would be to send me information on their coal
11 to see if it's even worthwhile to pursue. If it -- if it was
12 something we would have interest in, then I would start to look
13 at the company and their ability to furnish the coal.

14 After that, we would probably do some laboratory testing,
15 followed by a visit to the plant, to the mine. And then go on
16 to commercial oven tests. And finally okay it for, you know,
17 suitability to our use.

18 Q. Roughly speaking, how long does that process take?

19 A. Well, probably accelerated, by far would be three months,
20 but it generally takes six to nine months.

21 Q. Do you have to work with, I'll call them operations staff
22 at AK Steel plants in order to bring in a new coal supplier?

23 A. Yes, definitely. They ultimately have the responsibility
24 for their operation for their coke batteries, and they would
25 definitely have the last say over using a new product.

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1 Q. In your experience with AK Steel, how receptive are those
2 folks, typically, to taking on a new coal supplier?

3 A. Some are more leery than others. A lot of them, depending
4 on how well they know me, I've worked with them for -- some of
5 them for years and others not so long. But they -- you know,
6 definitely would, you know, be leery.

7 Q. Leery?

8 A. Yeah.

9 Q. And why is that?

10 A. Well, again, it's their operation. They have
11 responsibility for it, and they would want to know everything
12 they can about the supplier also, not just take it on my word.

13 MR. ROSENBERG: Your Honor, I would like to tender to the
14 witness Government's Exhibit 122.

15 THE COURT: Yes, sir.

16 BY MR. ROSENBERG:

17 Q. Sir, let me know when that appears on your screen.

18 A. It's on the screen.

19 Q. Sir, can you just tell me generally what type of document
20 is this?

21 A. It appears to be an email.

22 Q. And when is the email dated?

23 A. September 19th, 2017.

24 Q. And who are the parties on the email?

25 A. It's from Doug Vance to Dave Chmielewski.

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1 Q. Is there an email addresses associated with your name?

2 A. Yes, there is.

3 Q. Is that an email address that you recognize and used?

4 A. That was my AK Steel address, yes.

5 MR. ROSENBERG: Your Honor, the government moves to admit
6 Government's Exhibit 122.

7 THE COURT: Any objection?

8 MR. DARLING: No objection.

9 MS. LEWIS: No objection.

10 THE COURT: United States Exhibit 122 is admitted.

11 (United States Exhibit 122 was admitted.)

12 BY MR. ROSENBERG:

13 Q. Now, do you have any independent memory of receiving this
14 email?

15 A. No, I do not.

16 Q. But you recognize your email address there, correct?

17 A. Yes.

18 Q. Any reason to doubt the fact that you received this email?

19 A. Yes.

20 Q. What would that be?

21 A. I went back through all my email on file and I could not
22 find this email.

23 Q. Can you say with certainty that your email account would
24 have 100 percent of every email that was sent or received?

25 A. I cannot say it would, no. I don't know why it wouldn't

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1 be, but I can't say it would be.

2 Q. All right. Looking to the body of the email, are there
3 some references to temperatures in the email or a temperature
4 in the email?

5 A. Yes, there is.

6 Q. Do you have any understanding of what that's referring to?

7 A. I'm not sure.

8 Q. Would looking at the reference attachment give further
9 context?

10 A. Was something supposed to come up?

11 Q. I'm just asking, would it perhaps give you further context
12 to look at the attachment?

13 A. Oh, yes.

14 Q. All right.

15 MR. ROSENBERG: Let's go to the next page then.

16 Q. Sir, are you able to see that on your screen?

17 A. Yes, I can.

18 Q. Now do you recognize the type of analysis that is being
19 reported in this document?

20 A. Those are typical properties that are tested in coal and
21 coke.

22 Q. In what?

23 A. Coal and coke.

24 Q. Coal and coke?

25 A. Uh-huh.

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1 Q. And do you see a company name indicated here?

2 A. Yes.

3 Q. And again here?

4 A. Yes.

5 Q. What is that?

6 A. Nex-Gen.

7 Q. Can you just explain to the jury what some of these
8 measurements are?

9 A. Moisture is what you would think it would be, would be the
10 water that's in the material.

11 Ash would be the remaining mineral matter after all the
12 organic matter was removed by heat.

13 Volatile matter is the -- is a measurement of the organic
14 volatiles that are in the coal or coke or material that are
15 driven off at a temperature of 900 centigrade.

16 Fixed carbon is the aromatic difference of a hundred minus
17 the ash and the vol.

18 Sulfur is the analysis of the sulfur.

19 BTU is the measurement of the energy in the coal.

20 MAF BTU is the mineral ash free, it's correction. In
21 other words, you have the BTU as is, as received. And then you
22 can correct it mathematically to remove the mineral matter and
23 moisture to give you a number of what it would be on a dry
24 basis.

25 Q. Are these the type of properties you would consider when

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1 looking to -- whether to use a supplier of coal or coke?

2 A. That's some.

3 Q. Not all of it, but some relevant factors?

4 A. Yes.

5 MR. ROSENBERG: If we could bring back up the first
6 page of Exhibit 122?

7 A. Okay.

8 Q. Do you see the very first sentence where it says, "Thanks
9 for your time today"?

10 A. Yes.

11 Q. In your role as a materials buyer for AK Steel, have you
12 ever received calls from companies wanting to be suppliers for
13 AK Steel?

14 A. Yes.

15 Q. Have you ever made an agreement to actually purchase
16 steel -- coal or other carbon products based on such an initial
17 call?

18 A. No.

19 Q. The product that we reviewed that analysis of, is that a
20 semi-coke product? We can look back at it, if you need.

21 A. The first one appeared to be a coal. The other ones
22 looked more like a semi-coke, because they still had volatile
23 matter in them.

24 Q. Is semi-coke a product that you would purchase for
25 AK Steel?

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1 A. No.

2 Q. Have you ever had AK Steel purchase any product from Doug
3 Vance or Nex-Gen?

4 A. No.

5 Q. Do you know of anyone at AK Steel purchasing any product
6 from Doug Vance or Nex-Gen?

7 A. No.

8 Q. Do you know how AK Steel pays its suppliers for carbon
9 products?

10 A. Nowadays we pay by ACH, electronic transfer. But in the
11 past, it was paid by check.

12 Q. When paid by check, would that be a check issued by
13 AK Steel or a cashier's check?

14 A. AK Steel.

15 MR. ROSENBERG: Will you bring up Government Exhibit 205A?
16 Go to page 9. I believe this has been admitted.

17 Q. Can you see that on your screen, sir?

18 A. Yes.

19 MR. ROSENBERG: If it we could zoom in on the front of the
20 cashier's check?

21 Q. Can you make out what the remitter line says?

22 A. AK Holdings.

23 Q. Is this a -- are you -- did you order or acquire \$9,472
24 worth of coal or any carbon product from Nex-Gen in May of
25 2018?

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1 A. No.

2 Q. Did you make such a purchase at any point?

3 A. No.

4 MR. ROSENBERG: Let's move to page 7 of the exhibit.

5 Q. Again, can you make out the remitter listed on this
6 cashier's check?

7 A. Looks like AK Holdings.

8 Q. At any point did you purchase \$63,270 worth of any type of
9 coal or carbon product from Nex-Gen?

10 A. No.

11 Q. Did you purchase any sort of product in that amount from
12 Nex-Gen?

13 A. No.

14 MR. ROSENBERG: Go to page 2 of the exhibit.

15 Q. Once again, who's the remitter on this cashier's check?

16 A. AK Holdings.

17 Q. Did you have AK Steel purchase \$31,214 of any sort of
18 product from Nex-Gen?

19 A. No.

20 Q. To your knowledge, was AK Holdings even an entity related
21 to AK Steel?

22 A. AK Holdings was the mother company over AK Steel. I don't
23 believe it owned anything other than the steel company.

24 Q. And do you recall whether AK Holdings was the official
25 name of that entity?

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1 A. I don't remember. I think it may have been something else
2 in there, but I'm not sure.

3 MR. ROSENBERG: Your Honor, may we approach briefly?

4 THE COURT: Yes, sir.

5 (Bench conference on the record.)

6 MR. ROSENBERG: Your Honor, as we did yesterday, I would
7 like to conditionally admit an exhibit that we intend to lay
8 the foundation for through Dave Severson. This is Exhibit 171,
9 we would be showing page 5, which is a customer list. This
10 email was from May 11, 2018. The customer list references
11 AK Steel, and so we think it would be relevant to ask a
12 question of this witness.

13 THE COURT: All right. What's the defendants' position?

14 MR. DARLING: I'm sorry, Your Honor. I haven't seen -- I
15 haven't seen the exhibit he's talking about.

16 THE COURT: Let me see if I can locate it.

17 MR. DARLING: I haven't seen it. I don't know offhand
18 what he's talking about.

19 THE COURT: 171.

20 MR. ROSENBERG: 171. And I believe it was -- it would be
21 this page.

22 THE COURT: Let counsel look at the whole thing.

23 MS. LEWIS: I'll object to it because he's not on this
24 email.

25 MR. ROSENBERG: It's going to be entered into evidence

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1 with Dave Severson. That's why I'm moving to conditionally
2 admit it at this point.

3 MR. DARLING: Doug is copied on it. So based on the
4 Court's previous rulings, I think, over our --

5 THE COURT: My previous ruling was not based upon that.
6 It was based upon the fact that you admitted --

7 MR. DARLING: You're correct. But what we admitted was
8 the Yahoo account of Doug Vance.

9 THE COURT: Right.

10 MR. DARLING: And this is from that. So it seems that
11 while we have an objection to it, because he's not on it, and
12 that it would seem consistent with the Court's previous
13 rulings.

14 THE COURT: So what we'll do is I won't admit it at this
15 point. The witness will not be finally excused. You can call
16 Mr. Severson, and you can bring him back and you can ask him
17 about the document based on the defendants' objections.

18 Objecting to it being conditionally admitted subject to
19 further foundation being laid.

20 MR. ROSENBERG: So we'll hold this witness until after
21 Mr. Severson's testimony?

22 THE COURT: Yes. Yes. Thank you.

23 MS. LEWIS: Thank you.

24 MR. ROSENBERG: Just one other brief question. Is there
25 a -- does the defense have a question as to the admissibility

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1 of that exhibit with respect to Mr. Severson?

2 MR. DARLING: Not based on the Court's previous ruling.

3 We have an objection to it, but --

4 MR. ROSENBERG: No, my question -- Your Honor, my question
5 is, Mr. Severson is being called to testify.

6 THE COURT: Right.

7 MR. ROSENBERG: And I guess previously we had been allowed
8 to conditionally admit --

9 THE COURT: I understand that.

10 MR. ROSENBERG: -- an exhibit.

11 THE COURT: Right.

12 MR. ROSENBERG: Subject to the --

13 THE COURT: There was not an objection by the defendants
14 to that procedure.

15 MR. ROSENBERG: So is there -- I guess I'm -- just to try
16 to further not have a delay with Mr. Severson's testimony, I'm
17 questioning whether there's a particular issue with this
18 exhibit.

19 THE COURT: I don't think there is based on what they've
20 said to this point. They are just objecting, so you'll have to
21 lay the foundation first through another witness before you can
22 then ask him about the document. Because this was not one of
23 the Yahoo documents.

24 MR. ROSENBERG: This is a Yahoo document, the entire 100
25 series.

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1 MR. DARLING: I'm sorry, that's what I was saying, it is a
2 Yahoo document.

3 THE COURT: You said it was not.

4 Wait a minute. If it's a Yahoo document, you agreed to
5 its admission previously.

6 MR. DARLING: Correct.

7 THE COURT: And you indicated just a moment ago that no,
8 this was not one of those documents, that you already admitted
9 to.

10 MR. DARLING: If I did, I was mistaken. I thought I was
11 telling the Court that it is a Yahoo document, but it's covered
12 by the stipulation, and that based on the Court's prior
13 rulings, it could come in now without having to release him.
14 We have objected to it previously based on him not being --

15 THE COURT: Hold on a second. Let's talk about this for
16 just a moment.

17 This document is admitted pursuant to the stipulation.
18 The parties have agreed to its admission.

19 MR. DARLING: Correct.

20 THE COURT: So you can take any document that's been
21 admitted, you can show it to a witness and you can ask the
22 witness questions about the document.

23 On cross-examination, opposing counsel can then say, this
24 is not your document, you didn't produce this, you don't know
25 anything about it, right?

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1 MR. DARLING: I agree.

2 THE COURT: Right. So that's the procedure that's being
3 followed here.

4 MR. DARLING: Right.

5 THE COURT: The document's admitted per the stipulation.
6 They are wanting to ask him questions about it. And you're
7 objecting to that because he's not on the document.

8 MR. DARLING: Your Honor --

9 THE COURT: Right?

10 MR. DARLING: -- the only objection that I made was the
11 same objections that I had made previously, which this Court
12 has overruled. I was just pointing out that, because it's a
13 Yahoo document, I don't think that the government needs to
14 admit it conditionally because I think it's admissible pursuant
15 to the Court's ruling and our stipulation.

16 THE COURT: But you are objecting to its admission.
17 That's why we're up here talking about this.

18 MR. DARLING: We have objected to any -- the admission of
19 any document through any witness where that witness is not a
20 party to it and the Court has overruled that objection.

21 THE COURT: With regard to documents for which you've
22 already agreed to their admission. The Yahoo documents, you
23 have already agreed to their admission, already agreed to that,
24 so they are admissible, right?

25 MR. DARLING: Yes.

DAVID CHMIELEWSKI - DIRECT

1 THE COURT: So witnesses can be asked questions about
2 those documents?

3 MR. DARLING: I agree.

4 THE COURT: All right.

5 MR. DARLING: That's what they've been doing.

6 THE COURT: All right. Document is admitted, you can show
7 it to him. It's not a conditional admission, it is admitted.

8 MR. ROSENBERG: Thank you, Your Honor.

9 (Bench conference concluded.)

10 THE COURT: Exhibit 171 is admitted.

11 (United States Exhibit 171 was admitted.)

12 BY MR. ROSENBERG:

13 Q. Sir, we're going to display to you what's been admitted as
14 Government Exhibit 171. I'm going to show you page 5 of that
15 exhibit. I would like to first ask you, can you see this on
16 your screen?

17 A. Yes.

18 Q. What is listed in the left-most column, what's the header
19 there?

20 A. Customer.

21 Q. And in that column, do you recognize the company that
22 you've worked for?

23 A. AK Steel.

24 MR. ROSENBERG: If we could zoom to the top half of this
25 document?

DAVID CHMIELEWSKI - DIRECT

1 Q. What's the next column over?

2 A. Product.

3 Q. And what does this table indicate with respect to product
4 as to AK Steel?

5 A. There are two listed, recarburizer and charge carbon.

6 Q. Moving to the right, what is indicated about those
7 products?

8 A. Anticipated sales per month.

9 Q. All right. And continuing over, do you see two more
10 columns over to the right, what does that one say?

11 A. The load sold to date.

12 Q. What is indicated with respect to recarburizer and
13 AK Steel?

14 A. It's says two loads of recarburizer, zero charge carbon.

15 Q. And with respect to the recarburizer, what does it say
16 about tons sold to date?

17 A. 32.

18 Q. Next to that, do you see total outstanding AR?

19 A. Yes.

20 Q. Are you familiar with the term AR or that used as an
21 acronym in this context?

22 A. Accounts receivable.

23 Q. Moving over to the column Location. What is indicated
24 about this sale of recarburizer to AK Steel?

25 A. Ashland location.

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1 Q. Was there a time where AK Steel operated a plant in
2 Ashland, Kentucky?

3 A. Yes.

4 Q. What sort of operations were going on at that plant?

5 A. At one point, it was an integrated steel producer,
6 included coke ovens, blast furnace, steel shop, caster, rolling
7 mill, and then a finishing line.

8 Q. In your answer you said "at one point." Why did you
9 phrase it that way?

10 A. It's shut down now.

11 Q. That plant is shut down?

12 A. Yes.

13 Q. Do you recall approximately when that plant shut down?

14 A. December of 2015.

15 Q. Did you visit the Ashland plant after production stopped
16 in 2015?

17 A. Yes.

18 Q. What was the purpose of your visit?

19 A. Mainly to recover any raw materials that were still there,
20 coal, coke, or any of the steel products.

21 Q. And what were you doing with the raw materials, the coal
22 and coke, that you were recovering?

23 A. What we could use, we would send by rail or truck to one
24 of the other plants. Sold some of it as a, you know, lesser
25 grade material basically.

DAVE CHMIELEWSKI - CROSS

1 Q. So if the Ashland, Kentucky plant stopped operations in
2 2015, and you actually took raw materials, carbon, coke
3 products away from the plant, would AK Steel have any reason to
4 buy more recarburizer for that shut-down plant in 2018?

5 A. No.

6 MR. ROSENBERG: Subject to redirect, I'll pass the
7 witness.

8 THE COURT: All right. Thank you.

9 MR. DARLING: I don't have any questions, Your Honor.

10 THE COURT: Thank you.

11 Ms. Lewis?

12 MS. LEWIS: Yes, Your Honor.

13 THE COURT: Yes, ma'am.

14 CROSS-EXAMINATION

15 BY MS. LEWIS:

16 Q. Good morning, Mr. Chmielewski. I represent Molly
17 McKinnon.

18 A. Hello.

19 Q. I have a brief question for you. On that chart you were
20 just shown by the prosecutor, the amount attributed to AK Steel
21 was 19,200, correct?

22 A. Yes.

23 Q. This doesn't match the amounts that they showed you
24 previously in those cashier's checks, was it?

25 A. I would have to look at them again.

DAVE CHMIELEWSKI - CROSS

1 Q. I believe one was 31,000-something?

2 A. Yeah.

3 Q. All right. But your recollection, it wasn't the same?

4 A. I don't think so. But like I said, to be sure, I would
5 have to look at them again.

6 Q. Understand. Thank you.

7 A. Uh-huh.

8 THE COURT: See if there is any redirect of the witness.

9 MR. ROSENBERG: No, Your Honor.

10 THE COURT: All right.

11 Thank you, sir. You may step down. You are excused at
12 this time.

13 THE WITNESS: Thank you.

14 THE COURT: Yes, sir.

15 Counsel, would now be a good time to take our morning
16 break before the next witness is called?

17 MR. CHAPMAN: I believe so, Your Honor.

18 THE COURT: All right. We will take approximately a
19 15-minute recess.

20 Ladies and gentlemen, please keep in mind the admonitions
21 that you were given previously. Please don't discuss the case
22 among yourselves while we are in recess. The jury will be
23 excused at this time.

24 (Jury left courtroom at 10:29 a.m.)

25 THE COURT: Thank you. Any issues to take up, Counsel?

1 MS. LEWIS: No, Your Honor.

2 THE COURT: Who will be the United States' next witness?

3 MR. CHAPMAN: Nancy Gates, Your Honor.

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

6 (Recess taken from 10:30 a.m. to 10:45 a.m.)

7 THE COURT: The record will reflect the jury is not
8 present at this time. I wanted to take up an issue with
9 counsel. I was just advised during the break that counsel for
10 Ms. McKinnon had filed a motion in limine raising a *Bruton*
11 issue, I guess this morning at some point. I wanted to see if
12 this matter could be addressed during the lunch hour or whether
13 this issue would come up prior to lunch?

14 MR. CHAPMAN: Your Honor, I do not expect the issue to
15 arise prior to lunch.

16 THE COURT: All right. We will plan to address this
17 matter.

18 Have you had a chance to look at this motion, Counsel?

19 MR. CHAPMAN: No, Your Honor.

20 THE COURT: All right. Well, I'll give you time to do
21 that when we take our lunch break, and then we'll resume around
22 12:30 to address the issue. It was one that was raised earlier
23 with regard to the interview of Mr. Vance in which he
24 implicates Ms. McKinnon. But it looks like that there is
25 transcription of part of that interview that forms the basis of

NANCY GATES - DIRECT

1 the motion itself.

2 And so we will discuss the best manner in which to address
3 the issues raised around 12:30 this afternoon.

4 All right. Let's see if we have any other issues counsel
5 needs to raise before the jury comes back in.

6 MR. CHAPMAN: No, Your Honor.

7 MR. DARLING: No, Your Honor.

8 MS. LEWIS: No, Your Honor.

9 THE COURT: All right. Thank you.

10 We will bring the jury in at this time, Jason.

11 (Jury entered courtroom at 10:48 a.m.)

12 THE COURT: Please be seated. All members of the jury are
13 present at this time. Defendants and all counsel are also
14 present. I believe we're ready for the next witness.

15 MR. CHAPMAN: Yes, Your Honor. The United States calls
16 Nancy Gates.

17 THE COURT: Thank you.

18 **NANCY GATES, GOVERNMENT WITNESS, SWORN**

19 THE COURT: Thank you.

20 Mr. Chapman, you may proceed.

21 MR. CHAPMAN: Thank you, Your Honor.

22 NANCY GATES

23 DIRECT EXAMINATION

24 BY MR. CHAPMAN:

25 Q. Good morning, ma'am.

NANCY GATES - DIRECT

1 A. Good morning.

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

4 A. My name is Nancy Gates, G-a-t-e-s.

5 Q. Ms. Gates, where do you currently live?

6 A. In New York state.

7 Q. How are you currently employed?

8 A. I'm currently general counsel for Washington Mills
9 company.

10 Q. Can you tell the jury generally speaking what you do as
11 general counsel for Washington Mills?

12 A. Sure. As general counsel for Washington Mills, which is
13 an abrasive grain manufacturer, I oversee our litigation, I
14 oversee our insurance purchases, and I oversee our HR and our
15 business records department.

16 Q. How long have you been in that role?

17 A. Since 2001.

18 Q. So over 20 years?

19 A. Yes.

20 Q. Will you give the jury a little more detail about the type
21 of business Washington Mills engages in?

22 A. Sure. Washington Mills is a manufacturer of abrasive
23 grain. We have two major products, brown aluminum oxide and
24 black silicone carbide.

25 To give you just a consumer reference, brown aluminum

NANCY GATES - DIRECT

1 oxide is the grit that goes on your sandpaper. 3M is a major
2 customer of ours. And that's what brown aluminum oxide is, it
3 goes on your emery boards, it goes on your sandpaper.

4 Black silicone carbide, which is the other abrasive grain
5 that we manufacture, has primarily only industrial uses. It
6 has over 200 different industrial applications, primarily used
7 as an additive in the steel industry. It's used in the
8 automotive industry.

9 So both of the grains that we make are primarily for
10 grinding, refractory purposes, things of that nature, with
11 primarily industrial applications.

12 Q. Where is Washington Mills headquartered?

13 A. We're headquartered in North Grafton, Mass, but we have
14 five other North American sites.

15 Q. Is one of those in New York state where you live?

16 A. Yes, two of them are in New York state. We have two
17 facilities, one in Niagara Falls, New York, and one in
18 Tonawanda, New York, which is about 20 minutes outside Buffalo,
19 New York.

20 Q. Through your employment with Washington Mills, are you
21 generally familiar with Washington Mills' purchase orders?

22 A. I am.

23 Q. Explain for the jury, generally speaking, what a purchase
24 order is.

25 A. A purchase order is the way in which a customer would

NANCY GATES - DIRECT

1 place their order as to what product they would be looking to
2 purchase from us. They would go either directly to our
3 customer service representatives, if they were a long-standing
4 customer, or the purchase orders would potentially come in
5 through a salesperson if it was a new customer that they were
6 establishing.

7 Q. Through your employment with Washington Mills, are you
8 generally familiar with Washington Mills' record retention
9 policy?

10 A. I am. I created it.

11 Q. Could you explain to the jury the sort of key elements of
12 that policy?

13 A. Yes. Our records retention policy in a company such as
14 Washington Mills is a policy by which each department is
15 required to maintain records for a certain period of time.

16 Typically, the records retention policy follows what
17 you're statutorily obligated to produce, for example, with
18 respect to an IRS audit or in a litigation matter.

19 So yes, we have financial records where we have statutory
20 obligations that those records are maintained in secure areas.
21 Payroll records, for example, employment records, things of
22 that nature.

23 But every department has a records retention policy.
24 Every major department has a records retention policy by which
25 documents would have to be preserved so that they would be

NANCY GATES - DIRECT

1 discoverable in the event of a litigation matter.

2 Q. How many years does Washington Mills retain records for?

3 A. At a minimum, seven years is the requirement. Some of the
4 departments go longer than that with some of their records.

5 Q. So if we were concerned about 2018 records, would those
6 still be in Washington Mills' possession?

7 A. Absolutely, electronically and physically, yes.

8 Q. When is the last time you changed record retention
9 systems?

10 A. It's 15 years, potentially. At least 15 years, early as
11 15 years ago, we would have gone -- that really would have been
12 an upgrade to our purchasing system, that wasn't a complete
13 change to our ERP system or to our purchasing system.

14 Q. So again, if we were concerned with 2018 records, that
15 would cause no concern about the retention of 2018 records?

16 A. No, we have full access to all of our 2018 records.

17 Q. Ma'am, through your employment with Washington Mills, have
18 you heard of an individual named Doug Vance?

19 A. I have.

20 Q. Have you heard of a business named Nex-Gen?

21 A. I have.

22 Q. How are you familiar with Mr. Vance and the company
23 Nex-Gen?

24 A. In 2019, Washington Mills received a subpoena and was
25 contacted by the FBI regarding whether we had ever been

NANCY GATES - DIRECT

1 contacted by Doug Vance or Nex-Gen for the potential purchase
2 of any product.

3 Q. So are you familiar with Washington Mills' business
4 records related to Mr. Vance and Nex-Gen?

5 A. Yes, I am.

6 Q. What do those records reveal?

7 A. The records reveal that in February 2018, Doug Vance
8 reached out to our vice president of logistics and purchasing.
9 He sent an email offering product, calcined coal, to Washington
10 Mills, and he attached a flyer regarding what products were
11 available and he attached a flyer regarding his company,
12 Nex-Gen.

13 Q. So Mr. Vance was soliciting business?

14 A. Correct.

15 Q. Was that email followed up on?

16 A. The vice president of logistics indicated to me that he
17 then forwarded it to our purchasing, our chief operating
18 officer of our facility out in Hennepin, Illinois, which
19 produces silicone carbide, and asking whether he had any
20 interest in pursuing any type of purchase of this alternative
21 form of coke.

22 Q. Are you aware what happened from there?

23 A. The -- yes. I've had personal conversations with the vice
24 president, and he indicated that calcined coal is not a product
25 that can be used in the process that we have out at our

NANCY GATES - DIRECT

1 Hennepin facility. We primarily use petroleum coke, and that
2 is a -- coke and coal are two different raw materials for our
3 product. And so he had no interest in pursuing this
4 opportunity, and so he never responded to the emails or went
5 any further.

6 Q. So the email was moved forward within Washington Mills'
7 internal structure?

8 A. Correct.

9 Q. But never followed up on with Mr. Vance?

10 A. Correct.

11 Q. Do Washington Mills' record reflect any history of sales
12 or purchase orders to Mr. Vance?

13 A. No.

14 Q. To Nex-Gen?

15 A. No.

16 Q. Ma'am, I would like to show you a document previously
17 marked as Government's Exhibit 142.

18 Do you see a document on your screen, ma'am?

19 A. I do.

20 Q. Generally speaking, what type of document is this?

21 A. The first page that I'm seeing is a "to" and "from." It's
22 to Doug Vance from Molly McKinnon with a date of September 9th,
23 2018.

24 Q. An email, correct?

25 A. An email, correct, yes.

NANCY GATES - DIRECT

1 Q. And what is the subject line at the top of this document?

2 A. Washington Mills PO.

3 MR. ROSENBERG: Your Honor, I will move the admission of
4 Government's Exhibit 142.

5 MS. LEWIS: No objection.

6 THE COURT: Exhibit 142 is admitted.

7 (United States Exhibit 142 was admitted.)

8 BY MR. CHAPMAN:

9 Q. Now that the jury can see the document, please read the
10 subject line at the top of the email.

11 A. Washington Mills PO.

12 Q. Who does it indicate the email is from?

13 A. From Molly McKinnon.

14 Q. Who does it indicate the email is to?

15 A. To Doug Vance.

16 Q. What is date of this email?

17 A. September 9, 2018.

18 Q. And what is the name of the attachment indicated?

19 A. Washington Mills PO doc.

20 Q. Does there appear to be any text in the email aside from a
21 signature block?

22 A. No, none that I can see.

23 Q. What is the title listed for Molly McKinnon?

24 A. It indicates CFO of Nex-Gen Industries.

25 Q. Through your general business experience, what do you know

NANCY GATES - DIRECT

1 CFO stands for?

2 A. Chief financial officer.

3 MR. CHAPMAN: If we could go to page 2, please?

4 Q. Did you see this document?

5 A. I do.

6 Q. What does this document purport to be?

7 A. It purports to be a Washington Mills purchase order dated
8 9/7/2018.

9 Q. Based on your experience with Washington Mills, is this a
10 true and correct Washington Mills purchase order?

11 A. It is not.

12 Q. Why do you say that?

13 A. For several reasons. It does not follow our template,
14 which is automatically generated for every purchase order that
15 we have. It lacks a specific purchase order number, which
16 would be the first thing that would be generated on a purchase
17 order.

18 It lacks indication as to where the invoice is going to in
19 terms of an address of one of our six North American sites and
20 it lacks an address where it would be shipped to. All of our
21 products, whenever we do purchase orders, specifically get
22 shipped to one of our sites.

23 Q. Okay. Let's walk through some of that. So do you see the
24 line that says Purchase Order?

25 A. I do.

NANCY GATES - DIRECT

1 Q. What is listed underneath that line?

2 A. Five question marks.

3 Q. Would a true Washington Mills purchase order ever list
4 five question marks under purchase order?

5 A. No. The system would automatically -- when a purchase
6 order is being created, the system would automatically generate
7 a number assigned to that purchase order. It's a mandatory
8 field.

9 Q. Similar question on the Freight Terms. You see a series
10 of question marks there as well?

11 A. Correct. Freight Terms would be determined in every
12 purchase order.

13 Q. And similar question, ma'am, as to Ship Via. You also see
14 a series of question marks there?

15 A. Correct. There would be terms underneath how the product
16 was going to be shipped as well.

17 Q. You see the line Ship To Washington Mills?

18 A. I do.

19 Q. I believe you indicated earlier in your testimony that
20 Washington Mills has several locations?

21 A. We do, yes.

22 Q. Would a purchase order ever simply indicate Ship To
23 Washington Mills?

24 A. No. That would --

25 Q. What would happen?

NANCY GATES - DIRECT

1 A. It would have one of our six North American locations if
2 the product was being shipped to us. And it would indicate the
3 quantity that was going to be -- the quantity that would be
4 shipped. And it would have specific addresses as well as a
5 telephone number for a customer service representative that
6 they could reach.

7 MR. CHAPMAN: If we could scroll down slightly in the
8 document?

9 Q. Do you see a series -- paragraphs 1 through 4 in the
10 middle of the page there?

11 A. I do.

12 Q. And the first paragraph indicates, "Terms and conditions
13 of the contract reference herein."

14 Do you see that?

15 A. I do.

16 Q. Is that consistent with how Washington Mills would lay out
17 terms and conditions?

18 A. No. Our terms and conditions are typically not referenced
19 in that way because our terms and conditions are attached to
20 our purchase orders. They are physically on the purchase
21 orders. They get generated when the purchase order gets
22 generated.

23 MR. CHAPMAN: If we could scroll down slightly more,
24 please?

25 Q. Ms. Gates, what is the product that is purported to be at

NANCY GATES - DIRECT

1 issue in this purchase order?

2 A. Calcined coal.

3 Q. And the quantity?

4 A. 5,000 tons.

5 Q. And the total PO amount?

6 A. The \$1,750,000.

7 Q. Did Washington Mills ever purchase 5,000 tons of calcined
8 coal from Mr. Vance or from Nex-Gen?

9 A. No.

10 Q. If Washington Mills had purchased something of this
11 magnitude, do you believe Washington Mills would have record of
12 that?

13 A. Absolutely.

14 Q. Does Washington Mills regularly purchase calcined coal?

15 A. We do not.

16 Q. Why?

17 A. Because in our furnacing process that we use, we use
18 petroleum coke, which is very different from calcined coal.
19 They are not substitutes in our process.

20 Q. To sum up, do you believe this purchase order is a true
21 Washington Mills purchase order?

22 A. No, I do not.

23 Q. I would like to now show you a document previously marked
24 as Government's Exhibit 175.

25 Do you see a document on your screen, ma'am?

NANCY GATES - DIRECT

1 A. I do.

2 Q. Again, generally speaking, what type of document is this?

3 A. It looks to be an email to Doug Vance from Molly McKinnon.

4 Q. And the subject line at the top of the email?

5 A. Washington Mills PO.

6 MR. CHAPMAN: Your Honor, I will move the admission of

7 Government's Exhibit 175.

8 THE COURT: Any objection?

9 MS. LEWIS: No objection.

10 THE COURT: United States Exhibit 175 is admitted.

11 (United States Exhibit 175 was admitted.)

12 BY MR. CHAPMAN:

13 Q. Okay, ma'am, I would like to walk through this email
14 message with you.

15 Again, the subject line appears to be WM PO?

16 A. Correct.

17 Q. What would be your understanding of WM?

18 A. Washington Mills.

19 Q. And what is your understanding of PO?

20 A. A purchase order.

21 Q. Who does this indicate the email is from?

22 A. From Molly McKinnon.

23 Q. And to whom?

24 A. To Doug Vance.

25 Q. And the date of this email?

NANCY GATES - DIRECT

1 A. September 10th, 2018.

2 Q. Would that be the day after the previous email, which was
3 September 9th, 2018?

4 A. Yes.

5 Q. And does there appear to be a jpeg attached?

6 A. There does, yes.

7 Q. Is that a photo?

8 A. Correct, yes.

9 Q. I would now like to show you that attachment.

10 MR. CHAPMAN: If we could go to page 2?

11 Q. Ma'am, what does this document purport to be?

12 A. It purports to be a Washington Mills purchase order.

13 Q. As before, does this document appear to be a true and
14 correct Washington Mills purchase order?

15 A. It does not.

16 Q. Why do you say that?

17 A. It lacks the customer number, the customer order number
18 that would be generated automatically with a purchase order
19 initially. Again, the Ship To is not completed. And the Ship
20 Via FOB Dante, Virginia, has no relevance to Washington Mills.
21 It simply is not the template that we use.

22 Q. Is there a purchase order number listed here at all?

23 A. There is not.

24 Q. Would there always be a purchase order number on a true
25 Washington Mills purchase order?

NANCY GATES - DIRECT

1 A. Yes, there would.

2 Q. Is there any address listed under Nex-Gen as vendor?

3 A. There is not, no.

4 Q. Would there be an address for a vendor on a true
5 Washington Mills purchase order?

6 A. Yes, they would be put into our system before we could
7 purchase from them.

8 Q. Is there an address listed under the Ship To Washington
9 Mills?

10 A. No, there is not.

11 Q. And again, for the reasons you explained previously, would
12 there always be an address listed for Washington Mills?

13 A. Always. We would determine which site would take in the
14 product.

15 MR. CHAPMAN: If we could scroll down slightly?

16 Q. Similar question as before, do you see the five numerical
17 paragraphs in the middle of the document?

18 A. I do.

19 Q. Again, is that consistent with how Washington Mills would
20 express its terms and conditions?

21 A. It is not.

22 Q. And finally, what is the product purported to be at issue
23 in this purchase order?

24 A. 5,000 tons of calcined coal.

25 Q. Again, for \$1.75 million?

NANCY GATES - DIRECT

1 A. Correct.

2 Q. And again, Washington Mills has no record of this purchase
3 or this purchase order?

4 A. No, not at all.

5 Q. So, ma'am, do you believe this is a true and correct
6 purchase order from Washington Mills?

7 A. I do not.

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

9 THE COURT: Yes, sir.

10 BY MR. CHAPMAN:

11 Q. That's all I have at this time. Thank you, ma'am.

12 A. Thank you.

13 THE COURT: Thank you, Mr. Chapman.

14 Mr. Darling?

15 MR. DARLING: I have no questions, Your Honor.

16 THE COURT: Thank you.

17 Ms. Lewis?

18 MS. LEWIS: No questions, Your Honor.

19 THE COURT: Thank you, ma'am. You may step down. The
20 witness is excused.

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

22 MR. CHAPMAN: I will, Your Honor.

23 THE COURT: You may proceed.

24 MR. CHAPMAN: The United States calls Tim Surmeier.

25 **TIM SURMEIER, GOVERNMENT WITNESS, SWORN**

TIM L. SURMEIER - DIRECT

1 THE COURT: Thank you.

2 Mr. Chapman.

3 MR. CHAPMAN: Thank you, Your Honor.

4 TIM L. SURMEIER

5 DIRECT EXAMINATION

6 BY MR. CHAPMAN:

7 Q. Good morning, sir.

8 A. Good morning.

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

11 A. Tim L. Surmeier, S-u-r-m-e-i-e-r.

12 Q. Mr. Surmeier, where do you currently live?

13 A. Bellville, Illinois.

14 Q. And how are you currently employed?

15 A. I'm self-employed through Carbonox, eco recycling, major
16 recycling.

17 Q. Does that go by the name Carbonox?

18 A. Yes.

19 Q. Give the jury some detail on the type of business Carbonox
20 is in.

21 A. Okay. We process carbon for the steel and foundry
22 industry. Carbon is one of the ingredients that goes into the
23 steel.

24 We make two different products, one is called an injection
25 carbon, which is designed to help to -- the furnace that it

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1 goes into, that acts as a buffer to save the refractory that's
2 on the side wall. It's more of an agent to help the equipment
3 during the process of the -- because these are electric arc
4 furnaces, that's one of the products that we make.

5 And then charge carbon is another product that is put
6 actually in with the scrap steel, that's an additive to the
7 steel.

8 Both of those products we derive from, we purchase raw
9 materials and we blend them. We size them, dry them and blend
10 them, and then ship them back out. So we kind of cut out the
11 middleman in our business, we both recover. And A lot of them
12 are byproducts from the aluminum industry and other coking
13 products.

14 But we purchase them, process them and direct sell them
15 back to the mills, and that's been our business for the last
16 nine years at Carbonox.

17 Q. Where is Carbonox headquartered?

18 A. The office is in Mascoutah, Illinois, and the processing
19 facility is in St. Louis.

20 Q. And do you have a position or a title within Carbonox?

21 A. I am actually head of operations. I do -- I oversee
22 everything there.

23 Q. Can you give the jury a little more detail about what you
24 do on a day-to-day basis?

25 A. We started this out, my -- our main business is

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1 construction and recycling, and we got into carbon. And I,
2 myself, we built our own dryers and our mixing process for what
3 we do. It's a little different. Metcoke is one of the
4 materials that's kind of difficult to dry and to utilize in
5 this process. And so in doing that, I was more hands-on
6 because we had to develop the process and we build our own
7 equipment to do this.

8 So that's pretty much -- I handle the purchasing, I
9 oversee pretty much everything from start to finish. It has
10 grown quite a bit since we started, but I still oversee pretty
11 much everything on the day-to-day operations.

12 Q. How long have you been in that role for Carbonox?

13 A. Since we started, for nine years. I've been in business
14 for 35 years. It derived from the other businesses.

15 Q. Does Carbonox work with any nationally well-known
16 companies the jury might recognize?

17 A. Yes. One of our -- well, several of them. Nucor Steel is
18 one of our steel mills that we sell to. Steel Dynamics is
19 another one. SSAB. And then Waupaca Foundry, they are one of
20 the largest foundries in the U.S.

21 Q. Mr. Surmeier, through your work with Carbonox, did you
22 come to know an individual named Doug Vance?

23 A. Yes, I did.

24 Q. How did you come to know him?

25 A. I came to know Doug through one of my salesmen. When we

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1 just started, one of our -- SunCoke, they have a division in
2 Virginia, and we were screening material on their property.
3 And part of the material was sold to an alloy company that
4 wasn't far from there. And Doug had an operation just up the
5 road from there.

6 And we were just looking into this drying process of the
7 metcoke. And we were developing ours. And my salesman said,
8 hey, this gentleman has piece -- he has the equipment to -- he
9 says he knows how to dry steel. He was in the process of
10 drying to gasify carbon -- or wood to make it into carbon.

11 But in my meeting with him, all's I wanted at the
12 beginning was for him to build me a dryer. He said that would
13 be no problem. And that was where our relationship started.

14 Q. Okay. We'll return to that dryer in a moment.

15 A. Okay.

16 Q. Did you know Mr. Vance to be operating at a site in --
17 here in Eastern Kentucky?

18 A. Did I -- pardon?

19 Q. Did you know Mr. Vance to be operating a business at a
20 site here in Eastern Kentucky?

21 A. At that time, no, I did not.

22 Q. When you first met him you didn't?

23 A. No, no.

24 Q. Where was he operating when you first met him?

25 A. He was operating in Virginia, just up the road from where

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1 our material was. He was running a facility right just up from
2 Vansant.

3 Q. Do you know what business name he was operating under?

4 A. I don't have it in front of me, but we -- I don't -- I
5 don't recall.

6 Q. Did Mr. Vance at some point move his operations to
7 Kentucky?

8 A. He did.

9 Q. Are you familiar with a site called the Trus Joist site?

10 A. I -- the site that -- I don't know what the name of it
11 was. It was a facility that had been -- they had used it at
12 one time, it was built to -- with a big dryer on it. It had
13 been a demo site where he was and he was operating at that
14 facility.

15 Q. Did you personally visit that facility?

16 A. I did.

17 Q. If you could estimate, how many times did you visit?

18 A. I was there twice.

19 Q. Twice.

20 Sir, I would like to show you a document that previously
21 has been marked as Government's Exhibit 604.

22 Do you see this document?

23 A. Yes.

24 Q. Very generally speaking, what is this document?

25 A. This is a purchase order. A purchase order in our

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1 industry is used for -- if I -- I wanted to obtain a type of
2 material, metcoke in this instance, you would -- somebody like
3 Doug or somebody that was in -- that I purchase material from,
4 in order for them to acquire material, I would reach out with a
5 purchase order to say, hey, I want 10,000 tons of this type of
6 material. This is what I'm willing to pay.

7 And with that purchase order, if they didn't have the
8 material at that time, they would acquire it from somebody
9 under their direction where they could buy and sell material
10 from.

11 Purchase orders are -- it's an instrument that shows
12 you're serious about a purchase. It's a tool. Sometimes you
13 give somebody a purchase order and not a hundred percent of the
14 time they can fulfill it. It shows that I have intent to
15 purchase that material.

16 Q. Do you see your company name in the top left corner?

17 A. Yes, I do.

18 MR. CHAPMAN: Your Honor, I will move the admission of
19 Government's Exhibit 604.

20 THE COURT: Any objection?

21 MR. DARLING: No objection.

22 MR. CHAPMAN: I'm informed it's already admitted. I
23 apologize.

24 THE COURT: All right.

25 BY MR. CHAPMAN:

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1 Q. Now, Mr. Surmeier, so you've just indicated your company
2 name is in the top left, correct?

3 A. Uh-huh.

4 Q. What is the date listed under PO Date?

5 A. The date is September 1, 2016.

6 Q. And what is the quantity and product at issue in this
7 purchase order?

8 A. The quantity was 2,000 tons of eighth inch minus. That's
9 the size material that's sized for injection carbon.

10 Q. So this is a carbon product?

11 A. Yes.

12 Q. And I neglected to ask, to whom was the purchase order?

13 A. That's Nex-Gen. That's Doug's company.

14 Q. Now that you see the name of that company, do you
15 recognize that --

16 A. Yes, I do.

17 Q. -- as Mr. Vance's company?

18 A. Uh-huh.

19 Q. What is the total cost associated with this purchase
20 order?

21 A. At that point, \$95 a ton would have been \$190,000.

22 Q. Now, Mr. Surmeier, was Mr. Vance able to fulfill this
23 purchase order?

24 A. No.

25 Q. What happened?

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1 A. It was -- he had called me and said hey, I've got this
2 material that could be purchased for \$95 a ton. Would you be
3 interested? And if so, how much?

4 And I said 2,000 tons, because that was -- that's about
5 what we -- we normally blend this material with others, so the
6 carbon content, that would have been enough for three to five
7 months for us. So I agreed to that and forwarded the purchase
8 order on to him. And it never became available.

9 Q. He was never able to make the --

10 A. No.

11 Q. -- product available to you?

12 A. No.

13 Q. Was there a time that you stored some metcoke at one of
14 Mr. Vance's properties?

15 A. Yes, that was early on.

16 Q. Okay.

17 A. He rented a facility just up from -- like I said, from
18 SunCoke, where we were -- our process started with there.
19 That's a byproduct from their coking operation.

20 And he brought it to my attention that not only could he
21 dry material for us, because I had a customer close, I didn't
22 have to bring it back to St. Louis, but he could screen and
23 size it, and I wouldn't even have to bring it to St. Louis,
24 which he was never able to do that. And so I had moved
25 6,000 tons of material onto that property and ended up having

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1 to move it back off over time because he couldn't produce that.

2 Q. Do you remember approximately when that occurred?

3 A. That would have been in probably September or August of
4 2015.

5 Q. What ended up happening with that coke?

6 A. Well, he tried to screen it and he said he was going to
7 process it. We shipped one load out of there that I didn't --
8 that got rejected by my buyer. And the material sat while he
9 was working on building a dryer for me, which never came to
10 fruition.

11 And then somebody purchased the property. He was leasing
12 it from the -- for the building there. A gentleman purchased
13 it from the owner and then I had to move that material off and
14 onto another piece of property.

15 Q. Do you remember approximately when you moved the coke off?

16 A. It would have been sometime in 2016, late '16, early '17.

17 Q. Now, you've mentioned this dryer.

18 A. Uh-huh.

19 Q. Tell the jury what happened about this dryer.

20 A. The dryer, we agreed on for 48,000 -- \$45,000 and change,
21 that he would build it and ship it within 60 days. And I made
22 payments from -- I think from the first part of August through
23 the end of September, where they were six payments total,
24 totaling just a little less than 48,000.

25 It was paid for. And then it was -- everything was delay,

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1 delay, delay. Finally, I did receive a truckload of some parts
2 that were not usable for the operation. So that was -- come to
3 the conclusion that I was never going to get this dryer from
4 him.

5 Q. So you received an unusable product?

6 A. Correct. It was -- it's basically about \$6,000 worth of
7 scrap metal.

8 Q. Now, do you remember approximately when that transaction
9 was occurring?

10 A. The -- when he was paid or when we received what -- the
11 metal itself?

12 Q. How about both of those.

13 A. He was paid -- like I said, the first payment was in
14 August of 2015. And they were spread out over six payments to
15 the end of September of 2015.

16 And we received -- I think it was December when we finally
17 received the truckload that had been promised, you know,
18 back -- we were supposed to have it the end of the August,
19 middle of September.

20 So it was always an excuse that there was something. And
21 when the truck finally showed up, it was -- it was just -- it
22 was nothing that could be used.

23 Q. Mr. Surmeier, you referenced making two visits to
24 Mr. Vance's Kentucky site.

25 A. Uh-huh.

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1 Q. When you visited, were you able to observe what was going
2 on at the site?

3 A. Yes. He was -- he was gasifying, basically cooking
4 woodchips to turn into carbon. That's -- everybody, for a
5 little bit of education, wood, when it's put under temperature
6 and basically burned under controlled burn, they call it
7 gasifying. It comes out a carbon, similar to charcoal, but
8 it's pulled -- you actually pull a tar-like substance from it.

9 And the end product is a type of carbon. But it's -- it's
10 like styrofoam. It's too light to be used, so it has to be
11 produced at the source.

12 To truck it -- for instance, in a regular truck of carbon,
13 we get 24 tons. A truckload of gasified wood might weigh three
14 to three and a half tons. It's super light.

15 But he was producing that. He had built two of what they
16 call gasifiers, but they were not done in a fashion that was
17 very safe.

18 Q. What do you mean by that, they weren't done in a fashion
19 that was very safe?

20 A. When you gasify something, there again, it's a controlled
21 burn inside a chamber. And that pulls -- that reverses how
22 basically wood is made. And so you're pulling -- turning gas
23 from the burn factor that elevates it into a liquid.

24 And during that separation, if the chamber isn't built
25 correctly, too much oxygen in the chamber can cause what they

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1 call a flash.

2 And in a high-end, better built system, that's made that
3 nobody can get hurt. What he had done was, he had the process
4 together, but the structure, without somebody knowing what they
5 were doing or somebody standing too close could basically --
6 could get somebody burned really bad during a flash.

7 Q. What level of production output did you ever see?

8 A. You know, that's a while back. But it was -- he was
9 running consistently I think two to three tons an hour of
10 input.

11 So your exput -- you know, you're drawing a liquid that's
12 derived from that. So in that type of an environment, if
13 you're putting three tons of wood in there, the actual char
14 that's coming out, you are probably ending up with 750 to a
15 thousand pounds, which is probably 30 percent, 33 percent of
16 that comes out as char, that's a carbon-like product.

17 Q. Did you ultimately end your business relationship with
18 Mr. Vance?

19 A. Did what?

20 Q. Did you ultimately end your business relationship?

21 A. Yes. Yes. In the process -- and the reason why, I mean,
22 while I -- you probably -- while I didn't get my dryer from
23 him, I was intrigued with the gasification because of the whole
24 green thing with carbon.

25 And I think his idea was in the right direction, but the

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1 process, it was way more involved. And he did make the char.
2 And he had several, I'm going to call it 1200 tons of it in a
3 building there that he had made over time.

4 It was just so light. I explained to him, I said, this
5 has -- the freight, and what you save by using wood, it would
6 take so much of it, and you would have way -- a bunch of
7 expense to get it logistically shipped to the steel mill, it
8 wouldn't make any sense. The savings in charring the wood was
9 lost in logistics.

10 And my personal thought was the risk of danger to somebody
11 getting hurt, it was not worth the risk of that whole type of
12 an operation.

13 Q. So it sounds like you think he had a good idea.

14 A. Hmm?

15 Q. It sound like you think he had a good idea.

16 A. Well, yes and no.

17 Q. Not executed well?

18 A. It was not executed properly. That's -- the reason why
19 this facility was so important to him, the equipment that he
20 used and built was a fraction of the scale of what this great
21 big dryer that was left on the property.

22 You know, at the beginning of when he was so drawn to that
23 property, one, it was the cost, but his vision was to use
24 that -- it was a dryer as long as this room, probably longer,
25 and 20 foot in diameter. It would have taken so much energy to

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1 run it, but that was never to be with what he was doing.

2 Q. You didn't see the large dryer in operation?

3 A. No, no, it never came to that. He -- at that time the
4 State of Kentucky had funded some of his employees, I assume --
5 that's what he told me, where he got the labor -- the money for
6 the labor. And so he had four or five guys running two of
7 these prototype little dryers that he was gasifying in.

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

9 THE COURT: Yes, sir.

10 BY MR. CHAPMAN:

11 Q. Mr. Surmeier, just another question or two.

12 A. Sure.

13 Q. Did you see -- so you talked a little about wood being
14 feedstock --

15 A. Uh-huh.

16 Q. -- is that right, woodchips?

17 A. Uh-huh.

18 Q. Did you ever see coal as feedstock?

19 A. I think he used that in the first facility he was at.

20 Q. The Virginia facility?

21 A. Yes.

22 Q. Did you ever see coal as feedstock in the Kentucky
23 facility?

24 A. No, I did not.

25 Q. So you wouldn't have seen any calcined coal coming out of

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1 those machines?

2 A. No, not -- not the two times I was there, I didn't. It
3 was all wood.

4 Q. That's all at this time, thank you, sir.

5 A. Uh-huh.

6 THE COURT: Thank you.

7 Mr. Darling?

8 MR. DARLING: I have no questions.

9 THE COURT: No questions?

10 Ms. Lewis?

11 MS. LEWIS: No questions, Your Honor.

12 THE COURT: All right. Thank you.

13 Mr. Surmeier, you may step down. You are excused at this
14 time.

15 THE WITNESS: Okay.

16 THE COURT: Thank you, sir.

17 Mr. Rosenberg.

18 MR. ROSENBERG: Your Honor, the United States calls Adam
19 Horrex.

20 **ADAM HORREX, GOVERNMENT WITNESS, SWORN**

21 THE COURT: Thank you.

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

23 MR. ROSENBERG: Thank you, Your Honor.

24 ADAM HORREX

25 DIRECT EXAMINATION

ADAM HORREX - DIRECT

1 BY MR. ROSENBERG:

2 Q. Good morning, sir.

3 A. Good morning.

4 Q. Please tell us your full name and spell the last name for
5 the court reporter.

6 A. Yes, sir. It's Adam Zachary Horrex, H-o-r-r-e-x.

7 Q. Mr. Horrex, where do you currently reside?

8 A. Elizabethtown, Kentucky.

9 Q. What's your profession?

10 A. I work as a manager in a steel mill.

11 Q. And which steel mill is that?

12 A. Nucor Steel Brandenburg.

13 Q. How long have you been with Nucor?

14 A. I joined them in December of 2006.

15 Q. And what sort of work experience, if any, did you have
16 before that?

17 A. I worked for one of Nucor's competitors as an engineer and
18 a supervisor prior to joining Nucor.

19 Q. So overall, what's your total amount of time in the steel
20 industry?

21 A. I started in -- it's 23 years now, almost 23 years.

22 Q. What sort of duties have you had in your time with Nucor?

23 A. I've worked in a variety of positions. I've worked as an
24 operational team member produce -- actually producing steel.

25 I've worked as an engineer, basically a process engineer.

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1 And I've been involved in a variety of different
2 leadership positions, from on-shift supervisor to a day
3 supervisor role, to my current role as a department manager.

4 Q. Is there a particular department that you oversee?

5 A. Yes, sir. I work in the melting -- what is called the
6 melt shop or melting department, melting and casting
7 department.

8 Q. For those of us not familiar with a steel plant, what's a
9 melt shop?

10 A. So for the -- the company that I work for, we take
11 recycled steel or scrap steel, and that can be a variety of
12 things from shredded automobiles to obsolete structural steel,
13 anything out of the manufacturing process that uses steel.

14 We take it, we melt it, we add alloys to achieve a
15 specific chemistry for a desired grade that our customer
16 would -- is purchasing. Then we take that liquid steel and
17 cast it back into a solid. That piece is later, in our
18 process, rolled into whatever the final product is.

19 Q. What are some of those final products that Nucor makes?

20 A. It could be rebar that's used in the construction process.
21 What's called merchant bar quality, which is things like angle
22 iron, rounds, squares that are used in a variety of different
23 applications.

24 Sheet that's used, some common applications are
25 appliances, automobiles, things like that.

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1 Plate steel, which is the facility that I work at
2 currently.

3 And also structural steel.

4 Q. What are your primary responsibilities as a melt shop
5 manager?

6 A. Primary responsibility is a resource to the team, the
7 operating team that we have.

8 Some of the more common things are acquiring talent,
9 hiring, leading the team, setting vision, strategy for what
10 we -- what our department wants to accomplish to the overall
11 facility.

12 Responsibility for cost, which is consumption, efficient
13 use of supplies to produce the product, and the labor that's a
14 part of it.

15 Also a technical resource to help with my team.

16 Q. Now, in your prior positions with Nucor, before you
17 reached kind of this management position, were you also working
18 in the melt shop?

19 A. Uh-huh, yes. Prior to joining Nucor, I was -- actually in
20 the prior company that I worked for, I was actually one of the
21 team members on the deck actually making steel in the process,
22 directly involved with converting liquid steel to a final
23 product.

24 In some of the leadership roles, you know, whatever needed
25 to be done on that shift to be able to help. So it would have

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1 been very involved with the process to the point we're
2 responsible for shift operations and production, and production
3 of our products.

4 Q. Does a melt shop require the use of any kind of carbon
5 product?

6 A. Yes, sir, it does.

7 Q. Could you explain that for the jury?

8 A. There is -- there is two what I would say predominant uses
9 for it in the steel-making process. The first, and I would say
10 the most common is as a chemical element for a finished -- to
11 achieve a finished chemistry of the steel grades. There is a
12 variety of different grades depending on the application that
13 it's going to be used in. And that chemical requirement
14 changes for each of those different grades.

15 So carbon is used, that's one of the common elements
16 that's used for steel production.

17 Q. I apologize. In that use, the carbon itself goes into the
18 steel product?

19 A. Uh-huh, yes. Maybe a common way of saying, it's almost
20 like an ingredient into the steel.

21 Q. All right. Please continue.

22 A. Yes, sir. The second common application that it's used
23 for is more in the process side of it, the production side of
24 it. It's used as an additive for energy in the production, as
25 well as to help facilitate the process, specifically on the arc

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1 furnace side.

2 And what we do at the company I work at, so we use it, it
3 helps with yield, it helps with energy, and it helps create an
4 efficient process for us. So there is that application as
5 well.

6 Q. So in that case, is the -- does the carbon broad actually
7 end up in the steel?

8 A. It does. And some of it ends up in the steel and some of
9 it ends up in the byproduct of the steel-making process.

10 Q. What sort of materials or types of carbon products are
11 used for each of those two different types of uses you just
12 described?

13 A. Uh-huh. There is -- there is a variety of different ones.
14 You know, on the arc furnace side or the process side is
15 anthracite coal, is one of the common ones. Petroleum coke is
16 another common product that's used on that side.

17 And on the chemical side, there is a variety of different
18 products that are used, metallurgical coke. Anthracite can be
19 used as well as some forms of petroleum coke in that part of
20 the process as well.

21 Q. So when you're overseeing a melt shop, does that include
22 overseeing the necessary ingredients that makes the melt shop
23 work?

24 A. I'm responsible for the overall process. So responsible
25 for ensuring that our team can achieve those final chemistries,

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1 I would say, you know, indirectly, but I'm aware of what that
2 process requires and I do it at times, see and help the team
3 make decisions as needed on that.

4 Q. In your prior roles, have you been directly involved in
5 the acquisition of raw materials?

6 A. I have, yes. And current -- and currently also on the --
7 more on the approval side of it.

8 Q. Does that include acquisition of carbon materials?

9 A. Yes, sir.

10 Q. How do Nucor plants acquire the -- any carbon-based
11 products such as coal for the steel-making process?

12 A. Okay. You know, what we do at the facility that I work at
13 is we -- we actually will -- we identify the product that we
14 need, we typically have product requirements details which are
15 key elements of -- it could be, for example, the carbon content
16 being one of them.

17 We will send out a request for a quote that says, okay, we
18 are looking to buy -- there is a couple of different ways it
19 can be done -- a certain amount of product. Typically that's
20 in tons over a time period, okay?

21 So we'll do a request for quote. It goes out to suppliers
22 that we've identified as potential candidates. And then we
23 look for a proposal to come back for what they can supply, you
24 know, that includes, you know, the quantity and typically the
25 price of it.

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1 Q. So once the supplier -- so if I understand, Nucor sends
2 out the request for quote that specifies quantities, time line,
3 things like that?

4 A. Yeah. And I forgot one other key element is packaging.
5 You know, transportation, whether it comes in by rail, whether
6 it comes in by truck, whether it comes in bulk or it comes in
7 in different weight quantities, okay? That request for quote
8 is typically sent out and there is a date typically that says
9 okay, quotes due by X date.

10 Q. So once the suppliers respond with a quote --

11 A. Uh-huh.

12 Q. -- what does Nucor do at that point?

13 A. Okay. Once they come back, we'll evaluate the quotes from
14 the suppliers. And based off of, you know, what the quotes --
15 you know, typically it's -- you know, cost is a big deciding
16 factor, prior relationships with Nucor and, you know, the
17 product that they have available, the quality aspects of the
18 product are some of the key items that are used in the
19 decision-making process.

20 A decision is made. Our team will enter in a purchase
21 requisition that is entered in that has the supplier that has
22 been selected, the weight and quantity and pricing is all added
23 into that. And that requisition then goes through an approval
24 process to issue a purchase order.

25 A purchase order is provided to the selected supplier at

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1 that point to be able to begin -- to begin delivering the
2 product into our plant site to be used.

3 Q. Is there a -- a process that Nucor uses to approve a
4 supplier in its internal systems?

5 A. Yes. I can speak to the plant that I work at. There is
6 an actual supplier -- a request packet that goes out that
7 has -- that the supplier completes. It has, you know, some tax
8 information on it, banking information, things like that, that
9 that is used to generate -- you know, to enter that supplier
10 into our -- into our system to be able to have them in the
11 system to initiate the requisition.

12 So when the requisition is prepared, you have to select
13 the supplier. That packet, the potential supplier fills it out
14 and they are in our system after that.

15 Q. Would that be required before a purchase order could be
16 approved?

17 A. Yes. At our facility, absolutely, it would be.

18 MR. ROSENBERG: Your Honor, I would like to show the
19 witness Government's Exhibit 166.

20 THE COURT: All right.

21 MR. ROSENBERG: If we could show the second page of the
22 exhibit?

23 BY MR. ROSENBERG:

24 Q. Do you see that on your screen, sir?

25 A. Yes, sir.

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1 Q. What's the logo at the top of that?

2 A. It's a Nucor logo.

3 MR. ROSENBERG: Pursuant to the stipulation already
4 entered, the United States moves to admit Government's
5 Exhibit 166.

6 THE COURT: Any objection?

7 MS. LEWIS: No objection.

8 THE COURT: 166 is admitted.

9 (United States Exhibit 166 was admitted.)

10 MR. ROSENBERG: If we can go and just show the witness
11 166A. Again, the second page of the exhibit.

12 BY MR. ROSENBERG:

13 Q. Do you see that on your screen, sir?

14 A. Yes, sir.

15 Q. What is the logo at the top of the document?

16 A. It's a Nucor logo, the company I work for.

17 MR. ROSENBERG: Your Honor, we would move to admit
18 Government Exhibit 166A.

19 THE COURT: Any objection?

20 MS. LEWIS: No objection.

21 MR. DARLING: No objection.

22 THE COURT: 166A is admitted as well.

23 (United States Exhibit 166A was admitted.)

24 BY MR. ROSENBERG:

25 Q. We'll start with 166A here since we've already got that

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1 up.

2 MR. ROSENBERG: Let's go to the first page of the exhibit.

3 Q. Sir, do you know either of these two names, Doug Vance or
4 Dave Severson?

5 A. I don't recognize the names, no.

6 Q. Let's go to the second page again. Now, this logo at the
7 top, is that a logo you are familiar with?

8 A. It is, yes.

9 Q. Who is that a logo for?

10 A. For Nucor Steel, the company I work for.

11 Q. That particular lettering and font, is that something that
12 you've seen Nucor use?

13 A. In the past, yes.

14 Q. Where are some examples that that logo may have been used?

15 A. It was a very common logo, badge. I mean, we used it on
16 T-shirts, letterhead, email signature. I mean, it was a very
17 common logo across the company for a variety of different
18 reasons.

19 Q. Would it have been on public facing areas like websites?

20 A. Yeah, I would believe so. Yes.

21 Q. Are you familiar with the term specification sheet?

22 A. Yeah.

23 Q. And does this look to be a specification sheet?

24 A. This is -- the term that I've used probably more often is
25 a product data sheet.

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1 Q. Uh-huh.

2 A. This looks very similar to what a product data sheet would
3 be in my experience.

4 Q. In your time with Nucor, did you ever use or issue a
5 specification sheet or a product data sheet like this?

6 A. I can't recall ever using one like this, like the one that
7 we have here on the sheet -- or on the screen here, I'm sorry.

8 Q. Now, you talked to us earlier about the request for
9 quote --

10 A. Uh-huh.

11 Q. -- that Nucor issues. Could you just explain to the jury
12 how this document in front of you differs from the request for
13 quote that Nucor actually uses?

14 A. Yeah. I mean, what my experience of a request for quote
15 is, it's more of a -- I would say typically a little bit more
16 formal in almost a letter style, I would say.

17 Some specific things where this would differ from that is,
18 there is usually a time period and a quantity, and it could be
19 either/or. You know, that's one of the common things you see.

20 This sheet, just from my experience, looks more like what
21 I would expect from a supplier, provided back to the company as
22 this is what we provide as review. So this typically, in my
23 experience, would come back with a proposal from a company as
24 what they are offering -- you know, they have offered to be
25 able to sell.

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1 I will say there are a couple of things here that
2 typically you would see in our RFQ but not this form, things
3 like ash, volatile matter, sulfur, moisture, fixed carbon,
4 those are very common terms or specifications for purchasing
5 and decision-making in carbon. So those are accurate.

6 I would expect to see those in a request for quote, but
7 again, in more of a letterhead. This would be kind of what I
8 would typically see coming back from the supplier to say this
9 is what we provide per what you've asked for a quote.

10 Q. When -- in your experience, when you receive a response
11 from the supplier, which I think you described this is the kind
12 of information you would expect to see in the response from the
13 supplier, do the suppliers put that on Nucor's letterhead?

14 A. Not that I've seen, no. No.

15 Q. Whose letterhead would that typically be on?

16 A. Typically it would be the supplier's brand logo, you know,
17 letterhead, their company letterhead -- or their company logo,
18 I'm sorry.

19 Q. What does the use of Nucor's logo at the top suggest about
20 the origin of this document?

21 A. I would say if I saw this, it would suggest that it's a
22 Nucor document.

23 Q. Are you aware of anyone at Nucor issuing specification
24 sheets like this?

25 A. I'm not aware of anybody.

ADAM HORREX - DIRECT

1 Q. Are specification sheets a part of the process that you're
2 familiar with Nucor using for acquiring coal?

3 A. In the ones that I have seen, no. Could it be -- again,
4 the ones we've used, I haven't seen us use one that looks like
5 this.

6 Q. 166A, second page, does that appear to be a genuine Nucor
7 document?

8 A. The one on the screen here? If I were to look at it, it
9 would look like a genuine Nucor document because of the badge
10 at the top of it.

11 Q. Knowing what you know as a melt shop manager and your
12 prior duties at Nucor, do you believe this to be a genuine
13 Nucor document?

14 A. Do I believe it? No. I mean, just because I haven't seen
15 it in this form.

16 MR. ROSENBERG: Can we switch over to Government's
17 Exhibit 166, page 2, please?

18 Q. Does this look pretty similar to 166A?

19 A. It does, yeah, it looks very similar, maybe a different
20 product, but layout looks the same.

21 Q. And the term "ladle carbon," is that something you're
22 familiar with?

23 A. I am, yes.

24 Q. What is ladle carbon?

25 A. That is used as a -- what we call a recarburizer. Or in a

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1 more generic way of explaining it, it's used to raise the
2 carbon content in the steel, in the process. It's specifically
3 used to change the chemical content.

4 Q. And again, 166, if this were a true Nucor document issued
5 from a melt shop, what other information would you expect to
6 see on it?

7 A. I would expect to see time frame for the supply. I would
8 also expect to see tons -- or quantity, I should say. I
9 shouldn't say tons, it can be bought in different aspects.

10 But I would definitely expect to see time and quantity
11 involved in that. You know, as we purchase, we typically
12 purchase for a period of time and for a quantity of -- you
13 know, a quantity of material.

14 And probably a little more specific on the packaging, what
15 the packaging and delivery arrangements would be.

16 Q. Mr. Horrex, are you familiar with a company called
17 Nex-Gen?

18 A. I am not.

19 Q. To your knowledge, was a company called Nex-Gen a supplier
20 of coal products to Nucor plants?

21 A. To my knowledge, no.

22 MR. ROSENBERG: Nothing further, Your Honor. We will pass
23 the witness.

24 THE COURT: All right. Thank you.

25 Mr. Darling?

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1 MR. DARLING: I have no questions.

2 THE COURT: Ms. Lewis?

3 MS. LEWIS: No questions, Your Honor.

4 THE COURT: Mr. Horrex, you will be excused at this time.

5 Thank you, sir.

6 THE WITNESS: Thank you.

7 THE COURT: Let's see. We will go ahead and take our
8 break for lunch, ladies and gentlemen, until 1:00 this
9 afternoon.

10 Please keep in mind the admonitions that you were given
11 previously. Please don't discuss the case among yourselves
12 while we are in recess.

13 I understand maybe one or more of you want to stay back in
14 the deliberation room during lunch, you can certainly do that.
15 So we'll have to -- for those of you that want to go out the
16 front, we'll go out that way and then you can come back around
17 here when we recess.

18 I do have a couple of matters I need to take up. I have a
19 phone conference at 12:15 and I have another matter to take up
20 in this case at 12:30. So you'll need to come in through the
21 third floor, if you would, ladies and gentlemen.

22 But you'll be excused and we will be in recess until 1:00
23 in this case.

24 (Jury left courtroom at 11:53 a.m.)

25 THE COURT: Just one moment.

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1 The jury is not present. Mr. Chapman and Mr. Rosenberg,
2 have you had an opportunity to -- have you seen the motion in
3 limine that was filed this morning?

4 MR. CHAPMAN: We have pulled it up, Your Honor. I do not
5 believe we have reviewed it substantively.

6 THE COURT: All right.

7 MS. LEWIS: Your Honor, not to interrupt the Court, but
8 based upon further discussions with Ms. McKinnon, I'm agreeable
9 to withdrawing the motion.

10 THE COURT: All right. The motion will be withdrawn.
11 Then we will not need to have a conference at 12:30.

12 So we will be in recess until 1:00, unless there are other
13 issues to take up?

14 MR. CHAPMAN: No.

15 MS. LEWIS: No issues to take up, Your Honor.

16 THE COURT: Thank you.

17 (A recess was taken from 11:55 a.m. to 1:00 p.m.)

18 THE COURT: All right. Once again, all members of the
19 jury are present. Defendants and counsel are present.

20 I believe we're ready for the next witness, Mr. Rosenberg.

21 MR. ROSENBERG: The United States calls Dave Severson.

22 THE COURT: Thank you.

23 **DAVID SEVERSON, GOVERNMENT WITNESS, SWORN**

24 THE COURT: Thank you.

25 Mr. Rosenberg, you may proceed.

DAVID SEVERSON - DIRECT

1 DAVID SEVERSON

2 DIRECT EXAMINATION

3 BY MR. ROSENBERG:

4 Q. Good afternoon, sir.

5 A. Good afternoon.

6 Q. Could you please state your full name for the record and
7 spell the last name?

8 A. David Severson, S-e-v-e-r-s-o-n.

9 Q. And, Mr. Severson, where did you travel from today?

10 A. Wichita, Kansas.

11 Q. Is that where your home is?

12 A. It is.

13 Q. And are you currently employed?

14 A. No, retired this past February.

15 Q. And what career are you retired from?

16 A. I was at Koch Industries for 35 years.

17 Q. Could you describe what Koch Industries is and give the
18 jury a little bit of background on what your role in that
19 company was?

20 A. Sure. Koch Industries is a privately held company. They
21 are invested in many businesses across many industries.

22 And in my time there, I was responsible for managing some
23 of those businesses in the recent years.

24 Q. What sort of kind of day-to-day job duties did you have?

25 A. My day-to-day job duties, let's say toward the end there,

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1 generally involved oversight of certain businesses and
2 understanding how they are performing relative to our
3 expectations, helping them improve, looking for opportunities
4 to invest in new areas. So more of a little bit of a high
5 level management of the business.

6 Q. And what about earlier in your career, did you have a
7 different function?

8 A. Yeah. Earlier in my career, I was actually in Lexington
9 for part of the time in the coal business. We had the C. Reiss
10 Coal Company, which was a marketing distribution business. We
11 would buy coal from places in Kentucky and then transport it up
12 to the Great Lakes, sell it to paper mills and power plants and
13 so on and so forth.

14 Q. You described Koch having a variety of businesses and
15 investments in different areas. Was there a particular
16 industry or business area that you focused on?

17 A. Well, I was in the carbon division. So generally that
18 meant I was in businesses that were coal or petroleum coke,
19 which is a byproduct of the refining process, it looks like
20 coal. And generally over the years I was in those businesses.

21 I also spent some time in the steel industry, we had a
22 minority investment in Big River Steel. But primarily in the
23 carbon business.

24 Q. As part of your job function, did you make recommendations
25 for Koch to either invest or make loans to other businesses?

DAVID SEVERSON - DIRECT

1 A. I did.

2 Q. Can you tell the jury just generally how that would work?

3 A. Generally, an idea or an opportunity would come forward,
4 and a group of individuals at the company would get together
5 and analyze it and look at whether they felt it was worth
6 pursuing further.

7 And then ultimately a writeup would be done, taken to
8 management for approval, and either get approval or not
9 approval to go forward with the opportunity.

10 Q. In your experience there, how often would Koch go -- the
11 decision-makers at Koch go forward with an investment or a loan
12 if it didn't have your support or your backing?

13 A. Mine in particular?

14 Q. Uh-huh.

15 A. Well, I think for any project there has to be a sponsor.
16 And so if the sponsor is not willing to go forward, then the
17 company's not likely to go forward.

18 My involvement at the company was, you know, just a tiny
19 piece of overall Koch Industries so I didn't have, you know,
20 oversight over a lot of the company, most of the company in
21 fact.

22 But yeah, you need a sponsor. And if the sponsor isn't
23 willing to bring it forward, then the company generally
24 wouldn't go forward with it. A sponsor within the company I
25 was referring to.

DAVID SEVERSON - DIRECT

1 Q. Thank you. So if you were considering an investment on
2 behalf of Koch and you ultimately decided it wasn't a good fit
3 or a good idea, is that typically where it ended?

4 A. Yeah, it would.

5 Q. Through your role at Koch, did you meet a man named Doug
6 Vance?

7 A. I did.

8 Q. And did you meet a woman named Molly McKinnon?

9 A. I did.

10 Q. And how did you come to meet Mr. Vance and Ms. McKinnon?

11 A. My recollection was that Doug Vance reached out to me and
12 ultimately a meeting took place -- the first meeting I recall
13 was myself and Vance Holtzman, who I reported to at the time,
14 at the location of the potential business.

15 Q. Was that here in Eastern Kentucky?

16 A. It was, yes.

17 Q. What about Ms. McKinnon, do you recall meeting her in
18 person?

19 A. At that same meeting, yes.

20 Q. And what was the purpose of that meeting?

21 A. Generally, to understand the business proposition and talk
22 about Koch as a possible person to loan that business some
23 startup capital.

24 Q. Is the name Nex-Gen familiar to you?

25 A. It is.

DAVID SEVERSON - DIRECT

1 Q. What do you associate Nex-Gen with?

2 A. Nex-Gen that I'm familiar with was the business that Doug
3 Vance was working to get going.

4 Q. Did you see through your meetings Mr. Vance and
5 Ms. McKinnon playing different roles within Nex-Gen?

6 A. Yes.

7 Q. Could you describe that for the jury?

8 A. I would say generally Doug Vance was the business leader,
9 I would call it, oversaw the ongoings of the business: sales,
10 production, supply, feedstock to make their products.

11 And Ms. McKinnon was more on the financial side, the money
12 coming in, the money going out, making sure there's enough cash
13 to run the business basically.

14 Q. What was your understanding at that time of what the
15 Nex-Gen business was?

16 A. Generally it was to take coal and upgrade it to a higher
17 value product that would be used by, largely the steel
18 industry, as part of the steelmaking process. Coal is -- a big
19 component of coal is carbon, and carbon is needed to make
20 certain attributes of steel.

21 Q. What was the methodology for upgrading that coal?

22 A. It was run through a heating unit, could be called a
23 calciner. But it was a long tube that you run the product --
24 the coal through it, and it would come out on the other end
25 with a more pure form of carbon, basically.

DAVID SEVERSON - DIRECT

1 Q. Who did you believe to be the owner of Nex-Gen?

2 A. Mr. Vance.

3 Q. At any point did Mr. Vance or Ms. McKinnon disclose to you
4 that anyone else owned the majority of Nex-Gen?

5 A. I don't recall that they did.

6 Q. When considering whether to have Koch loan money to a
7 business, was it important to you to know who owned the
8 majority shares of that business?

9 A. Certainly as Koch contemplates investments or loans, try
10 to understand if there are other contributors. And then there
11 is certain rights to assets and so on that go with that. So
12 that's something the company tries to understand.

13 Q. When you were in negotiation with Mr. Vance and
14 Ms. McKinnon, did you rely upon them to be honest with you
15 about who owned the business?

16 A. We did.

17 Q. At any point in your discussions with them, did either of
18 them disclose to you that Nex-Gen had already borrowed \$170,000
19 from another company?

20 A. I don't recall that, that that was disclosed.

21 Q. Is that a piece of information you wanted to know before
22 deciding whether to have Koch loan money to Nex-Gen?

23 A. Again, it's important for the company to understand the
24 parties involved, because ultimately it will have an impact on,
25 say, liens on assets or security of the loan. So yes, that's

DAVID SEVERSON - DIRECT

1 something that's important to understand.

2 Q. You mentioned liens on assets or securities on loan, could
3 you explain a little more to the jury why a lender would want
4 to know whether someone else has already loaned money to a
5 company with respect to liens and security interests?

6 A. Well, I guess if there is like a first lien, the person
7 that has a first lien has first dibs, so to speak, on the
8 assets to try to recoup some of the money they invested. If
9 there is not enough assets to cover all the loans, then the
10 people that aren't first may not get recovery of their
11 investment by selling the assets of the business or claiming
12 some of the assets of the business.

13 Q. So generally speaking, is it better to be the first lender
14 or a subsequent lender?

15 A. First.

16 Q. Are you familiar with a company called Onyx Coal?

17 A. I am.

18 Q. How are you familiar with that company?

19 A. So Koch -- well, I should say I retired in February, so as
20 of my retirement, they were a minority investor in that coal
21 company.

22 Q. So Koch was a minor investor in Onyx?

23 A. That's correct.

24 Q. And is that O-n-y-x?

25 A. It is.

DAVID SEVERSON - DIRECT

1 Q. Did Onyx come up in any of the discussions you had with
2 Mr. Vance about Nex-Gen?

3 A. It did. There was an opportunity potentially for Onyx to
4 supply some of the coal that would be upgraded then into this
5 other product, the coal coming from Onyx.

6 Q. So in that aspect of the relationship, who would be the
7 buyer and who would be the seller?

8 A. Seller would be Onyx and the buyer would be Nex-Gen.

9 Q. That's distinct from any loan or --

10 A. Correct.

11 Q. -- aspect of the relationship?

12 A. That's separate, that's right.

13 Q. Was there any -- ever any agreement for Onyx to purchase a
14 finished coal product from Nex-Gen?

15 A. None that I was aware of.

16 Q. Are you aware of any agreement by a Koch entity to
17 purchase a finished coal product from Nex-Gen?

18 A. I am not.

19 Q. Did Koch eventually decide to provide money to Nex-Gen?

20 A. It did.

21 Q. Was any of that money for the purchase of products from
22 Nex-Gen?

23 A. No.

24 Q. If that money was not for purchases, why did Koch send
25 money to Nex-Gen?

DAVID SEVERSON - DIRECT

1 A. The money was to be used for the capital needs of the
2 business, so buying equipment, funding working capital.
3 Meaning from the time that customers pay them for their product
4 versus the time they have to pay for their feedstock, so there
5 is enough cash to run the business. So it was working capital,
6 basically cash to run the business.

7 Q. Did Koch acquire equity or ownership of Nex-Gen in return
8 for that money?

9 A. Koch did not.

10 Q. So what was the nature of the provision of this money?

11 A. It was a loan with liens on the equipment basically.

12 Q. Is there --

13 A. You know, I'm sure the receivables and assets of the
14 business, generally.

15 Q. Is there -- was there any document that made it clear what
16 the relationship between Koch and Nex-Gen was?

17 A. There was a loan document.

18 MR. ROSENBERG: Your Honor, we would like to tender just
19 to the witness Government's Exhibit 301.

20 THE COURT: Yes, sir.

21 BY MR. ROSENBERG:

22 Q. Do you see the document on your screen, sir?

23 A. I do.

24 Q. Do you recognize what that is?

25 A. I do.

DAVID SEVERSON - DIRECT

1 Q. Can you just describe it generally?

2 A. Generally, this is the agreement under which a loan was
3 provided to Nex-Gen.

4 MR. ROSENBERG: Your Honor, the government moves to admit
5 Exhibit 301.

6 THE COURT: Any objection?

7 MS. LEWIS: No objection.

8 THE COURT: United States Exhibit 301 is admitted.

9 (United States Exhibit 301 was admitted.)

10 BY MR. ROSENBERG:

11 Q. Looking at the very top, what's the title of this
12 document?

13 A. Loan Agreement.

14 Q. If the relationship between Koch and Nex-Gen was that of
15 customer and seller, would you have need for a document
16 entitled Loan Agreement?

17 A. No.

18 Q. And below that, what's the date of this agreement?

19 A. March 17th -- sorry, March 7th, 2018.

20 Q. And who are the parties?

21 A. Nex-Gen and KCC Holdings.

22 Q. And how is Nex-Gen LLC referred to throughout this
23 agreement after that point?

24 A. Borrower.

25 Q. And how is KCC Holdings?

DAVID SEVERSON - DIRECT

1 A. The lender.

2 Q. What is KCC Holdings?

3 A. That's a division or entity within Koch that this was done
4 through.

5 Q. Did the loan agreement contain a series of amendments?

6 A. It did.

7 Q. And do you recall just generally what the purpose of those
8 amendments were?

9 A. Generally, they were about increasing the amount of the
10 loan.

11 Q. Did that occur as time went along?

12 A. That occurred at time went along.

13 MR. ROSENBERG: If we can turn to page 14?

14 Q. Who signed this agreement on behalf of Koch?

15 A. That's my signature.

16 Q. Who was the signer for Nex-Gen LLC?

17 A. Doug Vance.

18 MR. ROSENBERG: Go to page 15, the next page of the
19 exhibit.

20 Q. Do you see this portion of the agreement entitled
21 Exhibit A?

22 A. I do.

23 Q. Does this again identify who the borrower and lender is?

24 A. It does.

25 Q. And who is the borrower?

DAVID SEVERSON - DIRECT

1 A. Borrower is Nex-Gen LLC and the lender is KCC Holdings,
2 LLC.

3 Q. Do you see the next line down where it says Principal
4 Amount?

5 A. I do.

6 Q. Can you first explain to the jury what a principal amount
7 is?

8 A. That's the amount of money to be loaned.

9 Q. And what was that in this case?

10 A. \$50,000.

11 Q. Below that, what is the Interest Rate?

12 A. 10 percent per year.

13 Q. What does that require under the loan agreement?

14 A. Sorry?

15 Q. What does a 10 percent interest rate require? How does
16 that work in the loan?

17 A. That would mean over a year's period of time, the interest
18 would be \$5,000, which is 10 percent of the \$50,000.

19 Q. Is that money owed from the borrower to the lender?

20 A. That's correct.

21 MR. ROSENBERG: If it we can scroll down a little bit?

22 That's good.

23 Q. Do you see a portion that says Use of Proceeds?

24 A. Let's see. Yes.

25 Q. Could you just read for the jury what the use of proceeds

DAVID SEVERSON - DIRECT

1 were?

2 A. That is to "sustain its working capital needs," the cash
3 needed to run the business.

4 Q. What are some examples of working capital?

5 A. One example would be the gap between when a purchase of
6 the raw material is made, so cash goes out to the supplier, but
7 then there is a period of time before you receive payment from
8 a customer. So you may have paid out X dollars. And then
9 until you get the payment in from the customer, there is a gap
10 that you still need to have cash to pay your employees, your
11 electric bill, buy your feedstock. So that's just the cash to
12 keep the business going as it has ups and downs as the cash
13 comes and goes.

14 Q. Would working capital include the personal,
15 nonbusiness-related debts of one of the company's owners?

16 A. No.

17 Q. Would working capital include payments to prior investors
18 in the company?

19 A. No.

20 Q. Below that section, do you see the word Exclusivity?

21 A. Uh-huh.

22 Q. And if you need to, take a moment to review this, and then
23 I'm going to ask you to just generally describe what this
24 aspect of the agreement requires.

25 A. Essentially as part of the loan agreement, the lender

DAVID SEVERSON - DIRECT

1 would be the sole provider of the feedstocks for the business,
2 which was potentially petroleum coke or coal. And also the
3 source of the funding for the capital needs.

4 Q. Can you just explain what equity refers to?

5 A. Equity generally means some ownership in something.

6 Q. Under this provision, should Nex-Gen have any debt owed to
7 another entity other than Koch?

8 A. Not according to this agreement.

9 Q. And under this provision, should Nex-Gen have any other
10 owners, other than Doug Vance?

11 A. Correct, no.

12 Q. Would it have been important for you to know if Nex-Gen
13 did, in fact, have other equity owners or lenders at this time?

14 A. It would have.

15 MR. ROSENBERG: Can we go to page 17 of the exhibit?

16 Q. Do you see this aspect of the agreement, Mr. Severson?

17 A. Yes.

18 Q. What's the header on this part of the agreement?

19 A. First Amendment to Loan Agreement.

20 Q. What's the date of this First Amendment to Loan Agreement?

21 A. April 25th, 2018.

22 Q. And what was the purpose of this First Amendment to the
23 agreement?

24 A. To increase the loan amount.

25 Q. And do you see under the Recitals how much the loan was

DAVID SEVERSON - DIRECT

1 being increased by?

2 A. Yes.

3 Q. How much was that?

4 A. Let's see. It was being increased by 50,000.

5 Q. If the initial principal was 50,000 and we've got a 50,000
6 increase, what's the total loan amount at this point?

7 A. The total after the increase would be \$100,000.

8 Q. Is that reflected in subsection 1, under Agreement?

9 A. It is.

10 Q. Under -- take a moment, please, to read numeral 2 on your
11 screen.

12 A. Uh-huh.

13 Q. Do you see there is a little sub-numeral little (i)?

14 A. Uh-huh.

15 Q. What did that part of this agreement require?

16 A. So all the representations and warranties of the borrower
17 previously made were still in effect.

18 Q. And is it agreed that those representations are still true
19 and correct on the date of this amendment?

20 A. That was the understanding.

21 Q. And so if something had changed with respect to any of
22 those representations, what was Nex-Gen obligated to do?

23 A. Certainly let Koch know.

24 MR. ROSENBERG: If we could go to page 18?

25 Q. On the next page, who signed for Koch?

DAVID SEVERSON - DIRECT

1 A. Myself.

2 Q. And who signed for Nex-Gen?

3 A. Ms. McKinnon.

4 Q. And what did she write next to her signature?

5 A. A-t-t-y in fact for Doug Vance.

6 Q. And are you familiar with the abbreviation a-t-t-y?

7 A. Attorney.

8 Q. Attorney in fact for Doug Vance, is that consistent with
9 your understanding?

10 A. Yes.

11 MR. ROSENBERG: Can we go to page 21?

12 Q. Is this another amendment to this same loan agreement?

13 A. It is.

14 Q. This would be the third such amendment, correct?

15 A. Correct.

16 Q. What's the date of this third amendment to the loan
17 agreement?

18 A. July 3rd, 2018.

19 Q. And how much of an increase was agreed to in this
20 amendment?

21 A. \$175,000.

22 Q. And scrolling down under number 1, under agreement, what's
23 the new total, overall total of the loan at this point?

24 A. New total, \$350,000.

25 Q. Now, is there an additional bit of information in this

DAVID SEVERSON - DIRECT

1 section that we didn't see in the first amendment to the
2 agreement?

3 A. There is a payment -- repayment schedule.

4 Q. Can you explain what's being described there?

5 A. As part of the amendment, there is an understanding that
6 these payments would be made by these dates.

7 Q. So who would be making and who would be receiving the
8 payments on this schedule?

9 A. Nex-Gen would be making and KCC Holdings would be
10 receiving.

11 Q. Again, if the money from Koch to Nex-Gen were for
12 purchases instead of a loan, would there be any need for the
13 repayment schedule listed here?

14 A. No.

15 Q. And why not?

16 A. Well, generally with purchases, if Koch is purchasing from
17 Nex-Gen, there is an agreed-upon period which the payment has
18 to be paid in the purchase agreement.

19 Q. In your experience, do sellers of products have to repay
20 the money they are receiving for their products?

21 A. No.

22 MR. ROSENBERG: Can we now show Government's Exhibit 627?
23 I believe it's already in evidence.

24 Q. Sir, have you ever heard of a company called V4 Carbon?

25 A. It doesn't ring any bells, no.

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1 MR. ROSENBERG: Let's go to page 7 of the exhibit. If we
2 can bring up the middle?

3 Q. Do you see a transaction listed for January 24th, 2017
4 with an entity named Koch Carbon?

5 A. I do.

6 Q. Do you see the term accounts receivable?

7 A. I do.

8 Q. Do you know what accounts receivable is as a general
9 matter?

10 A. Generally that is an amount that's owed a business for
11 product they sold to an individual. So if Nex-Gen sold to
12 someone, there would be an accounts receivable owed Nex-Gen
13 what was sold to them.

14 Q. And what number is listed on this line item of Koch Carbon
15 accounts receivable?

16 A. \$6,300.

17 Q. Are you aware of any type of purchase made by Koch Carbon
18 from any Vance-related entity that would have created an
19 obligation to pay \$6,300?

20 A. I don't recall anything on that.

21 MR. ROSENBERG: Let's go to Exhibit 621. I believe it's
22 already been admitted.

23 Q. Look at the bottom half of this exhibit.

24 First, do you recognize the name in the sender line, Molly
25 McKinnon?

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1 A. I do.

2 Q. And do you see the date below that?

3 A. May 3rd, 2017.

4 Q. All right. Now, the loan agreement we just looked at,
5 what year did Koch enter into that loan with --

6 A. 2018.

7 Q. 2018? So fair to say almost a year after the date of this
8 email?

9 A. Correct.

10 Q. Read with me, if you would, the second paragraph in this
11 email where it says, "I have been holding off on many of the
12 bills just waiting on the Koch checks to come in. As you can
13 see, the second check is already almost totally accounted for."

14 Was -- to your knowledge, was Koch sending any checks to
15 any Nex-Gen entity in 2017?

16 A. In 2017? I don't believe so. Again, I don't have purview
17 over all of Koch Industries, but I am not aware of any.

18 MR. ROSENBERG: Can we tender to this witness Government
19 Exhibit 160?

20 Q. Sir, let me know if that's on your screen.

21 A. It is.

22 Q. What type of document is this?

23 A. It's an email.

24 Q. Who are the parties on the email?

25 A. Mr. Vance and myself, and then Onyx Coal.

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1 Q. And when is this email from?

2 A. This email is from October of 2017.

3 MR. ROSENBERG: We'll move to admit Government's
4 Exhibit 160.

5 THE COURT: Any objection?

6 MS. LEWIS: No objection.

7 THE COURT: Exhibit 160 is admitted.

8 (United States Exhibit 160 was admitted.)

9 BY MR. ROSENBERG:

10 Q. So I wanted to back up to October of 2017, before the
11 initial loan agreement. I want to look, scroll down to look at
12 your initial email to Mr. Vance.

13 Can you explain to the jury the general purpose of this
14 email? We'll try to make it bigger for you.

15 A. This was a request to essentially describe the business
16 opportunity that Mr. Vance was putting forward.

17 Q. Was this -- these sort of questions and discussion a
18 typical thing you would do when considering a potential loan or
19 investment?

20 A. It is.

21 Q. And why do you want to gather this kind of information?

22 A. So we can judge whether we think the business opportunity
23 might be viable.

24 Q. Could you read out loud for us the second bullet from the
25 start that -- from the bottom that starts with, "Do you have

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1 any firm purchases"?

2 A. It says, "Do you have any firm purchase orders for
3 calcined coal to be delivered to any customers? If so who are
4 the customers, where are they located, and what is the volume
5 for each of them, and what would the price and coal quality
6 specification be to Onyx?"

7 Q. What did you mean by "firm purchases"?

8 A. What that meant was if they had transacted a sale to an
9 actual customer for their product. There is a binding
10 commitment.

11 Q. Why is that something you would ask about?

12 A. Really to understand how far along in the development of
13 the business they were. If they had sold product, that meant
14 they were further along than if they had never sold product.

15 Q. Through the course of your dealings with Nex-Gen, did you
16 believe Nex-Gen had a number of customers who made actual
17 purchases of calcined coal?

18 A. We did.

19 Q. Why did you believe that?

20 A. We had a process, Koch set up a process to understand the
21 projections, and then also how the business performed against
22 those projections that were given to the Koch folks regularly.
23 So it would be a spreadsheet that basically said here's what
24 happened in the business.

25 Q. So who was providing that kind of information to you with

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1 respect to Nex-Gen?

2 A. Generally, a combination of Ms. McKinnon and Mr. Vance.

3 Q. When you're collecting this type of information, is your
4 expectation that the information you're being provided is true
5 and accurate?

6 A. It is.

7 Q. Now, you asked in this highlighted section, "If so who are
8 the customers?" Did the identity of Nex-Gen's customers matter
9 to you?

10 A. It did.

11 Q. Why would that be something you would want to know?

12 A. Well, it was helpful if the customer was a large,
13 respected company as opposed to a very small startup operation.
14 Not that it would necessarily be precluded if it was a startup,
15 but it gave it more credence if it was a large, respected
16 company.

17 Q. What would be some of the advantages from Koch's
18 perspective if a business has customers that are
19 well-established, larger companies?

20 A. Really, their ability to pay and continue as an ongoing
21 business.

22 Q. And would the existence of large, well-established
23 customers impact Koch's assessment of whether to provide money
24 to a business?

25 A. It was a definite consideration.

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1 Q. Would Koch be more likely or less likely to provide
2 funding if the business had large, well-established customers?

3 A. Generally more.

4 MR. ROSENBERG: We would now like to show the witness
5 Government Exhibit 161.

6 Q. Can you see this document on your screen?

7 A. I can.

8 Q. What type of document is this?

9 A. An email.

10 Q. And tell us when it's from.

11 A. March 16, 2018.

12 Q. So I believe the last email we looked at was October of
13 2017, correct?

14 A. Correct.

15 Q. So after the discussions referenced in that email, did
16 negotiations go forward between yourself and Mr. Vance and
17 Ms. McKinnon?

18 A. Please repeat that.

19 Q. Did the negotiations continue forward after October of
20 2017?

21 A. Yes.

22 Q. And what type of arrangement was being contemplated by
23 March of 2018?

24 A. A loan.

25 Q. Who is this email between?

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1 A. Between Mr. Vance and myself.

2 MR. ROSENBERG: Your Honor, we move to admit Government
3 Exhibit 161.

4 THE COURT: Any objection?

5 MS. LEWIS: No objection.

6 THE COURT: United States Exhibit 161 is admitted.

7 (United States Exhibit 161 was admitted.)

8 BY MR. ROSENBERG:

9 Q. All right. What was the general topic of this email
10 exchange?

11 A. The loan.

12 MR. ROSENBERG: Can we go to the bottom of page 1?

13 Q. What did Mr. Vance ask you on March 18, 2018?

14 A. He's asking clarification on the loan amount.

15 Q. "50k total or are you guys extending as we need...?" What
16 did "50k total" mean?

17 A. \$50,000, that references the initial \$50,000.

18 Q. If we move up in the chain, could you tell us what your
19 response was? Again, I won't ask you to read it in full, but
20 give us the general sense of what your response was.

21 A. Generally, there would be more opportunity for increasing
22 loans to the extent the business was successful.

23 Q. Do you see in that first paragraph a sentence starting
24 with "Seeing those steady shipments"?

25 A. Yes.

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1 Q. Could you read that out loud for us?

2 A. "Seeing those steady shipments happening week in and week
3 out will be key."

4 Q. Could you explain to us what you meant?

5 A. Again, evidence that the business is successful, that they
6 are selling product and so their shipments are occurring on an
7 ongoing basis, week in and week out. They are selling product
8 to customers.

9 Q. From the Koch end of this deal, what would be more likely
10 to happen if Koch saw these steady shipments happening?

11 A. More likely to continuing to increase the loan.

12 Q. If Vance wanted to get more money from Koch, was it in his
13 interest to send you data indicating that Nex-Gen was making
14 more sales?

15 A. It was.

16 Q. I would like to show you what is Government's Exhibit 171,
17 which has been admitted.

18 Sir, who sent you this email?

19 A. Ms. McKinnon.

20 Q. Do you see a variety of attachments that were included?

21 A. I do.

22 Q. And do you see one titled Customer List as of 05/08/2018?

23 A. I do.

24 Q. Do you recall Ms. McKinnon from time to time sending you
25 Nex-Gen customer lists?

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1 A. I do.

2 Q. What was the purpose of that?

3 A. Keeping us up to date on the sales opportunities for the
4 product.

5 Q. Was a customer list something -- a list of customers
6 something that you had asked for from Doug early in the
7 negotiation process?

8 A. It was.

9 Q. Do you recall taking that information and putting it
10 basically into spreadsheets?

11 A. Yes, Koch did do that, yes.

12 Q. Will you read with me point number 5 in Ms. McKinnon's
13 email? If you'll read that out loud for us?

14 A. "Customer List - this is the list you provided. I just
15 made a few changes. Doug needs to review this one as well. I
16 will forward a new one for our Monday call."

17 Q. So who provided the original information for this customer
18 list?

19 A. Combination of Mr. Vance and Ms. McKinnon.

20 Q. In other words, did you add any entities to this list that
21 were not told to you by Mr. Vance or Ms. McKinnon?

22 A. No, we did not. This was about formatting.

23 MR. ROSENBERG: Let's go to page 5 of the exhibit, I
24 believe.

25 Q. Are you familiar with this document?

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1 A. Generally, yes.

2 Q. What does this document reflect?

3 A. This reflects the ongoing sales activity of Nex-Gen
4 listing the customers and the products and the volumes. Now,
5 this appears to be one of the projections, anticipated sales,
6 tons per month.

7 THE COURT: Counsel --

8 A. And it also includes tons sold to date.

9 THE COURT: -- could you all come up for just a moment,
10 please?

11 MR. ROSENBERG: Yes, Your Honor.

12 THE COURT: Anyone need to take a break? All right.

13 Thank you.

14 Counsel, come on up.

15 (Bench conference on the record.)

16 THE COURT: Just making sure everyone is paying attention
17 in the jury box. Thank you all.

18 Sorry for the interruption, Mr. Rosenberg, please proceed.

19 MR. ROSENBERG: Thank you, Your Honor.

20 (Bench conference concluded.)

21 BY MR. ROSENBERG:

22 Q. Let's just walk through the column headers here,

23 Mr. Severson.

24 So the left-most column, what information is provided
25 there?

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1 A. The name of the customer.

2 Q. And then moving over to the right, what do we have?

3 A. The type of product they would purchase.

4 Q. And now the next column over, do you see where it says
5 Anticipated Sales, Tons Per Month?

6 A. That's the estimate of sales opportunity for a given
7 customer.

8 Q. Would it be fair to say that's a projection?

9 A. Projection.

10 Q. Is there also information about historical actual sales?

11 A. Yes. In the column Tons Sold to Date, it lists the
12 volumes that have actually been sold.

13 Q. All right. And do you see next to that, Total Outstanding
14 AR?

15 A. From those sales, that's the payment due from the customer
16 for those sales.

17 Q. What does AR stand for?

18 A. Accounts receivable.

19 Q. Do you see Total Pending AR? What would that be?

20 A. The total amount that's owed, still owed.

21 Q. And do you see a Location column?

22 A. That would be the location of the customers' facility.

23 Q. And who do all these customers pertain to?

24 A. Nex-Gen.

25 Q. So looking at the bottom, do you see an entry for

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1 Washington Mills?

2 A. I do.

3 Q. So was Washington Mills listed in the customer column?

4 A. They were a customer that had received two loads of
5 product from Nex-Gen.

6 Q. How much was for that?

7 A. \$46,200.

8 Q. Again, that column reflects actual sales, correct?

9 A. That was our understanding, yes.

10 Q. Moving up, do you see second from the top, Nucor?

11 A. I do.

12 Q. And what company is Nucor, what type of company?

13 A. They are a steel-producing company.

14 Q. And again, why was Nucor listed in the customer column?

15 A. They had actual sales to Nucor as well.

16 Q. And above that, AK Steel, why was AK Steel listed here?

17 A. It is another steel-producing company.

18 Q. And did AK Steel, was that reported to you that AK Steel
19 had actually made purchases from Nex-Gen?

20 A. Two loads, according to this document.

21 Q. And where did those loads purportedly go, what location?

22 A. For AK, went to Ashland.

23 Q. This was provided to you in what year, this document?

24 A. Is it dated?

25 Q. We'll go back to page 1 of the email. See the customer --

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1 A. Attached to that. It would be 2018.

2 Q. And the -- does the title of the document itself reflect
3 the date, Customer List as of 05.08.2018?

4 A. It does.

5 Q. Mr. Severson, were you aware whether AK Steel had a
6 functioning plant in Ashland, Kentucky in May of 2018?

7 A. Generally, yes, we were aware that AK had a plant in
8 Ashland.

9 Q. But did you know whether it had been idled by that point?

10 A. No, not particularly. No, we did not.

11 Q. All of the customers listed in that document, did all of
12 that information come from Mr. Vance and Ms. McKinnon?

13 A. It did.

14 Q. At the time you received it, did you believe it to be true
15 information?

16 A. We did.

17 Q. At the time you received it, had -- was Koch considering
18 further extensions of loan money to Nex-Gen?

19 A. We were.

20 Q. And did the existence of those customers and those actual
21 sales impact decision-making for whether to extend further
22 money to Nex-Gen?

23 A. It did.

24 MR. ROSENBERG: Can we go to Government's Exhibit 139 and
25 show just to the witness?

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1 Q. Is that up on your screen, sir?

2 A. It is.

3 Q. What type of document is this?

4 A. An email.

5 Q. Who sent that email?

6 A. Ms. McKinnon.

7 Q. Was Mr. Vance copied on it?

8 A. He was.

9 Q. And was there an attachment to it?

10 A. There is.

11 Q. Can you tell us the subject line of that email?

12 A. It says "P-L Proforma with Actuals as of July 16, 2018."

13 Q. Is that the attachment?

14 A. Yes.

15 MR. ROSENBERG: Your Honor, we move to admit Government's

16 Exhibit 139.

17 THE COURT: Any objection?

18 MS. LEWIS: No objection.

19 MR. DARLING: No objection.

20 THE COURT: United States Exhibit 139 is admitted.

21 (United States Exhibit 139 was admitted.)

22 BY MR. ROSENBERG:

23 Q. All right. Could you read the first line of the email

24 starting with, "Attached please find"?

25 A. "Attached please find the latest update with Actual

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1 numbers through last week."

2 Q. What did "actual numbers" mean here?

3 A. Our understanding was that meant the shipments that
4 occurred, the receivables that were owed through actual sales
5 of product.

6 Q. Now, that attachment, I believe you told us the name of
7 it. Could you read that again?

8 A. "Three month P-L, Proforma with actuals as of July 16,
9 2018."

10 Q. Can you tell the jury the difference between pro forma and
11 actuals in this context?

12 A. Pro forma generally means projections and estimates. And
13 the actuals are what did actually occur in terms of sales. So
14 it would be an ongoing process to compare how the projections
15 were made versus how the actuals occurred, if they were meeting
16 their plan, essentially.

17 Q. And do you know what "3 Mo P-L" referred to?

18 A. Three-month profit and loss.

19 Q. Turning back to the body of the email, what did you
20 understand Ms. McKinnon to mean by, "I have approximately 50k
21 in AR coming in between this week and next week"?

22 A. What that was understood to be was they had made sales to
23 customers and those customers owed \$50,000. And that \$50,000
24 was expected to be coming in that particular week or the
25 following week.

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1 MR. ROSENBERG: Can we go to page 5 in the attachment?

2 Q. Was this part of the document sent to you by Ms. McKinnon?

3 A. Yes, it looks familiar.

4 Q. What is being represented generally here?

5 A. Generally, it's a record of the tons that were shipped and
6 the price of the product and the due date of the payments for
7 the products shipped to the customers.

8 Q. Now, we talked about the difference between pro forma and
9 actual sales. What is being reflected here?

10 A. This is reflected as actual sales and shipments.

11 Q. So not a projection or estimate?

12 A. Not a projection or estimate, correct.

13 Q. Do you see some color coding in this document?

14 A. I do.

15 Q. Can you explain to the jury how that worked?

16 A. The color coding at the bottom, those are lists of
17 customers. And so the color coding, for example, highlighting
18 Bushing in green, that green reflects to the dark green above
19 that Bushing had 23 tons at \$1,550 per ton.

20 So that was a color scheme to understand which customers
21 were receiving which products at what volumes and at what
22 prices.

23 Q. Is there -- as part of this representation of actual
24 sales, was AK Steel listed?

25 A. It was.

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1 Q. Do you see that in a light purple?

2 A. I do.

3 Q. And were there corresponding sales reflected for AK Steel?

4 A. Yeah. Color's a little hard to read, but it looks like
5 it's the 19.

6 Q. Are there additional ones in April 20th and 27th of 2018?

7 A. Yes.

8 Q. Was there also sales recorded to Nucor?

9 A. Yes.

10 Q. Based on your receipt of this document from Ms. McKinnon,
11 what was your understanding about the existence of sales from
12 Nex-Gen to Nucor and AK Steel?

13 A. That actual sales had occurred to those companies at those
14 prices and those volumes.

15 Q. Did you have the same understanding with respect to
16 Washington Mills?

17 A. We did.

18 Q. Look with me now to the table in the bottom left corner.

19 Do you see that?

20 A. I do.

21 Q. Can you tell the jury what's being reported there?

22 A. It is a listing of the outstanding amounts owed to
23 Nex-Gen, the accounts receivable, and when the payments are
24 due. And also noting when payments were actually received.

25 Q. What does accounts receivables indicate about the

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1 existence of actual sales?

2 A. Actual sales occur, then you will have an accounts
3 receivable or money owed.

4 Q. Sir, did you receive other emails with similar sales
5 reports?

6 A. Yes.

7 Q. And who did you receive those from, typically?

8 A. Generally, it was Ms. McKinnon, perhaps Mr. Vance some
9 too.

10 MR. ROSENBERG: Can we tender to the witness Government's
11 Exhibit 134?

12 Q. Do you have that on your screen?

13 A. I do.

14 Q. What is Government's Exhibit 134?

15 A. It's an email.

16 Q. And who is that from?

17 A. From Ms. McKinnon to myself and copied a number of people.

18 Q. Are those other people folks you're familiar with?

19 A. They are.

20 Q. In what way?

21 A. So on the "to" line, those folks are all Koch employees or
22 were at the time. And the cc line is Mr. Vance.

23 MR. ROSENBERG: Your Honor, we move to admit Government's
24 Exhibit 134.

25 THE COURT: Any objection?

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1 MS. LEWIS: No objection.

2 THE COURT: Exhibit 134 is admitted.

3 (United States Exhibit 134 was admitted.)

4 MR. ROSENBERG: Could we go to page 4 of the exhibit?

5 Q. Is this another example of a sales report that we had
6 already reviewed?

7 A. It is.

8 MR. ROSENBERG: If we could go back to page 1?

9 Q. What was the date of this email?

10 A. May 31, 2018.

11 MR. ROSENBERG: If we could go to Government's Exhibit 135
12 to show just to the witness?

13 Q. Do you have that on your screen?

14 A. I do.

15 Q. Again, could you describe what this email is?

16 A. This is another set of updates of sales from the business.

17 Q. And who sent that?

18 A. Ms. McKinnon.

19 Q. And what's the date of this one?

20 A. June 8, 2018.

21 Q. Did you regularly receive these kind of updates?

22 A. We did.

23 MR. ROSENBERG: Your Honor, we move to admit Government's
24 Exhibit 135.

25 THE COURT: Any objection?

DAVID SEVERSON - DIRECT

1 MS. LEWIS: No objection.

2 THE COURT: Government Exhibit 135 is admitted.

3 (United States Exhibit 135 was admitted.)

4 MR. ROSENBERG: Briefly, we will go to page 5. Let's go
5 up -- sorry, maybe page 3.

6 Q. Once again, are there sales to AK Steel and Nucor and
7 Washington Mills reflected in this report?

8 A. Nucor, AK, and Washington. Yes.

9 Q. All right.

10 MR. ROSENBERG: You can take that down.

11 Q. In addition to keeping you informed about sales, did Vance
12 and McKinnon send you information about how Nex-Gen was
13 spending money?

14 A. Yes. There was generally a plan for capital investment
15 and equipment. And also expenses, employees, electricity,
16 payroll, et cetera, yes.

17 MR. ROSENBERG: We will tender to the witness Government's
18 Exhibit 129.

19 Q. Can you see that, sir?

20 A. I do.

21 Q. Tell us what is in Government's Exhibit 129.

22 A. That is their, Nex-Gen's, budget.

23 Q. And who provided this, if you know?

24 A. Well, in this case, it came from Mr. Vance.

25 MR. ROSENBERG: Your Honor, we move to admit Government's

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1 Exhibit 129.

2 MR. DARLING: No objection.

3 MS. LEWIS: No objection.

4 THE COURT: United States Exhibit 129 is admitted.

5 (United States Exhibit 129 was admitted.)

6 Q. And when did Mr. Vance send you this NGI monthly budget?

7 A. April 18th, 2018.

8 MR. ROSENBERG: Let's move to page 2 of the exhibit.

9 Q. What's listed under the left-hand column in this budget?

10 A. The anticipated expenses of the business.

11 Q. And on what basis, what periodic basis is this reported?

12 A. Monthly.

13 Q. And do you see a line item for Doug's salary and Molly's
14 salary?

15 A. I do.

16 Q. What was your understanding when you received this?

17 A. It was -- there wasn't a salary.

18 Q. Was there any item in this budget indicating that Nex-Gen
19 money would be used to pay off any past personal debts of Doug
20 Vance?

21 A. I don't recall that that was the case.

22 Q. Do you see anything reflected in this budget to that
23 effect?

24 A. I do not.

25 Q. Did Mr. Vance or Ms. McKinnon ever disclose to you they

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1 intended to use Nex-Gen money for that purpose?

2 A. I do not recall that they did.

3 Q. If they had told you that, how would that have impacted
4 your decisions on whether to support Koch lending more money to
5 Nex-Gen?

6 A. It would have -- it would have been factored in to the
7 decision.

8 Q. Is Koch generally in the business of lending money to pay
9 off their past personal debts?

10 A. I mean, not speaking for the company, but I would say
11 generally no.

12 Q. Do you recall the loan agreement between Koch and Nex-Gen
13 stating that the loan money was to be used only as working
14 capital?

15 A. Yes.

16 Q. And would a pay-off of personal debts fall within that
17 category?

18 A. No.

19 MR. ROSENBERG: Take that down.

20 Q. Sir, did you ever do a site visit to Nex-Gen's facility?

21 A. Yes.

22 Q. Do you recall whether that was before loaning money or
23 after?

24 A. I believe we did both.

25 Q. So you made multiple visits?

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1 A. We made -- yes, we made multiple visits.

2 Q. What was the purpose of those visits, generally?

3 A. Well, the initial visit was to hear about the opportunity
4 and further hear about the opportunity and the amount of
5 funding that would be needed.

6 And then the follow-up visits were to understand how the
7 business was coming along.

8 Q. Did you observe any coal piles, coal feedstock when you
9 were there?

10 A. We did.

11 Q. And what was your understanding or impression from what
12 that -- those coal piles were?

13 A. That was coal to be used in their business, to produce
14 their product.

15 Q. Did you understand it to be coal belonging to Nex-Gen?

16 A. Yes.

17 MR. ROSENBERG: Can we please show the witness
18 Government's Exhibit 143?

19 Q. Is that on your screen, sir?

20 A. It is.

21 Q. Can you tell us what this document is?

22 A. This is with respect to increasing the loan by \$125,000.

23 Q. Is it an email?

24 A. Oh, it's an email, beg your pardon, yes.

25 Q. Who is it between?

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1 A. From myself to Mr. Vance and copies a number of Koch
2 employees.

3 MR. ROSENBERG: Your Honor, we move to admit Government's
4 Exhibit 143.

5 THE COURT: Any objection?

6 MS. LEWIS: No objection.

7 MR. DARLING: No objection.

8 THE COURT: United States Exhibit 143 is admitted.

9 (United States Exhibit 143 was admitted.)

10 Q. On the "to" line, is there someone in addition to Doug
11 Vance?

12 A. Ms. McKinnon.

13 Q. When did you send this email?

14 A. September 10th, 2018.

15 Q. And at the very top, what is the subject of the email?

16 A. Increase the loan amount by \$125,000.

17 Q. Was a \$125,000 loan increase under consideration at this
18 time?

19 A. Yes.

20 MR. ROSENBERG: Let's go back to Government's Exhibit 301,
21 page 27.

22 Q. Do you see a Fifth Amendment to the loan agreement on the
23 screen.

24 A. Yes.

25 MR. ROSENBERG: If we could enlarge the top half there?

DAVID SEVERSON - DIRECT

1 Q. In the first paragraph, when was this Fifth Amendment to
2 the loan agreement entered into?

3 A. September 12, 2018.

4 Q. Is that fairly close in time to the email we just looked
5 at?

6 A. It is, yes.

7 Q. And looking down at the recitals, how much is the loan
8 being increased by?

9 A. \$125,000.

10 MR. ROSENBERG: Let's go back to Government's Exhibit 143.

11 Q. So a couple of days before that 125k was approved, did you
12 ask for some specific pieces of information?

13 A. We did.

14 MR. ROSENBERG: Let's look at number 1 first.

15 Q. What did you ask for there?

16 A. Analysis from the coal and pet coke feedstock and product
17 samples that were taken during one of our employee's visit
18 recently.

19 Q. And why were you interested in this information?

20 A. Trying to understand what their needs were in that regard.

21 Q. Backing up to the first sentence of your email there, did
22 you condition the increase of the loan on any action?

23 A. Yeah, they are listed here.

24 Q. So items 1, 2, and 3, were these things that needed to be
25 done by Nex-Gen before the money would be approved?

DAVID SEVERSON - DIRECT

1 A. That's correct.

2 Q. Items 2 and 3 refer to official specifications sheets.

3 What is a specification sheet?

4 A. It's a document that customers, potential buyers of
5 Nex-Gen product will provide letting the supplier, in this case
6 Nex-Gen, know what type of material they would need for their
7 place, specifications of the product.

8 Q. I noticed in number 3, it specifies a specification sheet
9 from Nucor. Was Nucor a business that you were already
10 familiar with at this time?

11 A. Generally, yes.

12 Q. Would you describe them as a large and established
13 company?

14 A. Indeed.

15 Q. Why were you specifically asking for the spec sheet from
16 Nucor?

17 A. Again, by having a large established customer, it provided
18 more credence to the viability, potential viability to the
19 business opportunity.

20 Q. And do you see the statement in parentheses in the end of
21 number 3? What did you say there?

22 A. "Spec sheets similar to what you sent via text would be
23 fine."

24 Q. Do you recall whether Mr. Vance had sent you spec sheets
25 from Nucor via text?

DAVID SEVERSON - DIRECT

1 A. I do, uh-huh.

2 Q. But were you requesting it by email now?

3 A. Uh-huh.

4 Q. Would you have recommended that Koch loan an additional
5 \$125,000 if Vance and McKinnon did not provide the
6 specification sheets you requested?

7 A. I don't think we would have gotten support from management
8 to do that, that's correct.

9 Q. In the bottom paragraph of this email, what did you say
10 about Nex-Gen selling 200 tons per week?

11 Do you see that?

12 A. I do.

13 Q. Can you describe what you were -- to the jury what you
14 were saying here?

15 A. This was a figure that we put forward to Nex-Gen as
16 evidence that the business was successfully selling its product
17 to customers.

18 Q. Now, prior to this point, had you seen evidence of Nex-Gen
19 actually producing 200 tons per week?

20 A. No, apparently not.

21 MR. ROSENBERG: Your Honor, I would like to now display
22 Government's Exhibit 166. This has already been admitted.

23 Q. Sir, who sent you this email?

24 A. Mr. Vance.

25 Q. And what was the date of that email?

DAVID SEVERSON - DIRECT

1 A. September 11, 2018.

2 Q. Would this be the day after the email we just reviewed
3 requesting the Nucor spec sheets?

4 A. Correct.

5 Q. Is there a jpeg attachment?

6 A. There is.

7 MR. ROSENBERG: Go to page 2.

8 Q. Do you recognize that?

9 A. That looks familiar, yes.

10 Q. What type of document does this purport to be?

11 A. A spec sheet from Nucor for the product that Nucor would
12 buy potentially from Nex-Gen.

13 Q. So when Mr. Vance sent this to you, what did you think the
14 original source of this document was?

15 A. Nucor.

16 Q. Was this the type of item you were requesting as a
17 prerequisite to approving another \$125,000?

18 A. It was.

19 Q. What made you think this document came from Nucor?

20 A. It has the Nucor brand at the top.

21 MR. ROSENBERG: Can we switch over to 166A?

22 Q. Again, was this also sent to you on the 11th of September
23 by Mr. Vance?

24 A. Yes.

25 Q. It also has an image attached?

DAVID SEVERSON - DIRECT

1 A. Yes.

2 MR. ROSENBERG: Let's go to that image on page 2.

3 Q. And same question, when you received this, what did you
4 think it was?

5 A. Another specification sheet for a different type of
6 product that Nucor would purchase.

7 Q. And again, who did you think the original source of this
8 document was?

9 A. Nucor.

10 Q. What, if anything, would you have done differently if you
11 had learned that these two Nucor specification sheets had
12 actually been created by Mr. Vance and Ms. McKinnon?

13 A. There would be no more loan.

14 Q. Why would there be no more loan?

15 A. Because they couldn't provide the real sheets and having
16 made one up.

17 Q. Would learning this have called into question other
18 representations Mr. Vance and Ms. McKinnon made to you?

19 A. Most definitely.

20 Q. At any point did they disclose to you that these spec
21 sheets did not, in fact, come from Nucor?

22 A. No.

23 Q. After receiving these spec sheets you thought were from
24 Nucor, what did you do with respect to Nex-Gen's request for
25 another \$125,000?

DAVID SEVERSON - DIRECT

1 A. Ultimately, the loan was approved, a loan increase.

2 MR. ROSENBERG: Your Honor, we would like to display
3 what's been admitted as Government's Exhibit 205G.

4 THE COURT: Yes, sir.

5 BY MR. ROSENBERG:

6 Q. Do you see a bank statement before you?

7 A. I do.

8 Q. Who is the entity on the bank statement?

9 A. Nex-Gen LLC.

10 Q. Is that the entity Koch had loaned money to?

11 A. It is.

12 Q. Do you see a date range on top of this statement?

13 A. September 1, 2018 to September 30, 2018.

14 MR. ROSENBERG: Can we go to page 2? Zoom in on the
15 middle portion.

16 Q. Do you see a transaction on September 11th, 2018?

17 A. Yes.

18 Q. And do you recognize any of the details of that
19 highlighted transaction?

20 A. That looks to be the increased loan amount of \$125,000
21 payment.

22 Q. The entity circled there, Koch Minerals, LLC. What is
23 that?

24 A. That would be ultimately a parent of the entity, of the
25 Koch entity that's in the loan document.

DAVID SEVERSON - DIRECT

1 Q. And to the left you see a bank listed there?

2 A. JP Morgan Chase.

3 Q. Was that a bank you knew Koch to use?

4 A. It is, or was.

5 Q. When Koch was sending this money to Nex-Gen, what was the
6 method of sending it?

7 A. Wire, generally a wire.

8 Q. Now, after this transfer, did Koch lend any further money
9 to Nex-Gen?

10 A. I don't believe so.

11 Q. Why not?

12 A. Ultimately the business wasn't performing and the payments
13 weren't being made back.

14 MR. ROSENBERG: Can we go back to the loan agreement,
15 Government's Exhibit 301? Go to page 27.

16 Q. Under paragraph number 1, under agreement --

17 MR. ROSENBERG: You can scroll down.

18 Q. -- what was the total principal amount lent to Nex-Gen?

19 A. \$605,000.

20 Q. Was there, again, a table or a schedule of repayments
21 listed here?

22 A. There is.

23 Q. Were any of those scheduled payments met by Nex-Gen?

24 A. I don't believe any of them were met.

25 Q. How much of the \$605,000 are you aware of Nex-Gen repaying

DAVID SEVERSON - CROSS

1 to Koch Industries?

2 A. I'm not -- I don't believe -- I'm not aware that any of it
3 was repaid.

4 Q. To your knowledge, how many tons of coal product did Koch
5 purchase from Nex-Gen?

6 A. I'm not aware of any.

7 MR. ROSENBERG: Your Honor, may I have just a moment?

8 THE COURT: Yes, sir.

9 MR. ROSENBERG: Your Honor, we'll pass the witness subject
10 to redirect.

11 THE COURT: All right. Thank you.

12 Mr. Darling.

13 MR. DARLING: Thank you.

14 CROSS-EXAMINATION

15 BY MR. DARLING:

16 Q. Mr. Severson, my name is Jeff Darling. I represent Doug
17 Vance. Just a few questions for you.

18 The original loan to Nex-Gen was \$50,000, correct?

19 A. Correct.

20 Q. And how long after that was there a request for that to be
21 increased?

22 A. I don't remember exactly. Weeks.

23 Q. Relatively soon, correct?

24 A. Relatively soon.

25 Q. Okay. What information did you have when Koch -- I'm just

DAVID SEVERSON - CROSS

1 going to say Koch generically.

2 Let me say this, do you personally approve the loans?

3 A. No, I have to go through a management approval process.

4 Q. I'm going to refer to it as Koch.

5 A. Right.

6 Q. If there is somebody specific, please let me know.

7 What information did you have about Nex-Gen when the first
8 \$50,000 was approved?

9 A. Generally, we made a visit, met with Ms. McKinnon,
10 Mr. Vance, saw the site, heard the opportunity. Had some
11 samples, as I recall. Discussed the business opportunity. It
12 was -- it was at the very beginning.

13 Q. And did the loan agreement, the initial loan agreement
14 contain any language that required any auditing of information
15 or verification of information prior to any amendments?

16 A. I would have to review the document, I can't say for
17 certain.

18 Q. I didn't see any, I'm just wondering if -- I mean,
19 typically would you -- would you ask for something -- some sort
20 of auditing procedure?

21 A. You know, I don't know about all of Koch loan documents,
22 so I can't really say.

23 Q. At the time, within a matter of weeks when Nex-Gen
24 requested a \$50,000 increase, were you provided any other
25 information about the business that would justify this

DAVID SEVERSON - CROSS

1 increase?

2 A. Again, that was some time ago. Specifically, a lot of
3 conversations and communication back and forth about how things
4 were progressing with customer sales.

5 Q. So at this point you were relying on verbal information
6 given to you by either Mr. Vance or Ms. McKinnon?

7 A. Verbal or written, yes. But information from them.

8 Q. Then this number, which started at \$50,000 and then went
9 to \$100,000 relatively quickly, got up to, I believe, 175,000
10 not too far into the future of that, you all -- when I say "you
11 all," I mean Koch, must have still at that point felt that
12 there was potential in this business?

13 A. We had no reason to believe otherwise or we wouldn't have
14 continued to loan.

15 Q. Right. You testified that the total amount that Koch has
16 loaned Nex-Gen is \$605,000?

17 A. Yeah. It's been four years, I believe that's correct.

18 Q. I'm not going to quarrel --

19 A. I'm sure it's verifiable with documents and whatnot.

20 Q. Right. What was it that made you stop -- Koch, I mean,
21 loaning money?

22 A. Again, nonperformance on repayments, and generally the
23 business not performing.

24 Q. Just so I've got this right, Koch finally decided to stop
25 payment or stop increasing or contributing loan amounts because

DAVID SEVERSON - CROSS

1 nonperformance of payments, payments weren't being made, and
2 the business was not performing?

3 A. Yes.

4 Q. Okay.

5 MR. DARLING: Thank you. That's all.

6 THE COURT: Ms. Lewis?

7 CROSS-EXAMINATION

8 BY MS. LEWIS:

9 Q. Good afternoon, Mr. Severson. I'm Brandi Lewis, I
10 represent Ms. McKinnon. I just have a couple of questions for
11 you.

12 Just so we're clear, Koch's agreement was with Nex-Gen
13 LLC?

14 A. Yes.

15 Q. It wasn't NexGen Energy Partners?

16 A. It's on the loan document.

17 Q. Which was Nex-Gen LLC?

18 A. Correct.

19 Q. All right. Not Nex-Gen Industries?

20 A. It was on the loan document.

21 Q. All right. And then you talked about the chart that
22 showed, I believe it was the monthly budget, it has zero for
23 the salary for Mr. Vance and Molly.

24 Do you recall seeing that?

25 A. Yes.

DAVID SEVERSON - REDIRECT

1 Q. All right. And to your knowledge, Molly didn't personally
2 profit from any of the monies Koch sent to Nex-Gen LLC?

3 A. I would have no way of knowing that.

4 Q. But it would have possibly been in that chart if there was
5 some money allotted to her?

6 A. I just know they didn't get a salary.

7 Q. All right.

8 MS. LEWIS: Thank you.

9 THE COURT: All right. Thank you. Let's see if there is
10 any redirect.

11 Mr. Rosenberg?

12 REDIRECT EXAMINATION

13 BY MR. ROSENBERG:

14 Q. Briefly, Mr. Severson. You were asked whether the
15 agreement was with Nex-Gen LLC versus NexGen Energy Partners.
16 So let's just bring up the document to make that clear.

17 MR. ROSENBERG: Exhibit 301, please. Can we have that
18 shown to the jury?

19 Q. Going back, what is the entity that received the loan?

20 A. Nex-Gen LLC.

21 Q. So it is not NexGen Energy Partners, correct?

22 A. Correct.

23 Q. At any time did Ms. Vance -- Mr. Vance or Ms. McKinnon
24 disclose whether an entity called NexGen Energy Partners owned
25 the assets, equipment, and other property of Nex-Gen?

DAVID SEVERSON - REDIRECT

1 A. I don't recall that.

2 Q. And did they disclose the existence of other investors who
3 controlled -- had a controlling stake in Nex-Gen?

4 A. I don't recall that either.

5 MS. LEWIS: Your Honor, can we approach?

6 THE COURT: Yes, ma'am, you may.

7 (Bench conference on the record.)

8 THE COURT: Yes, ma'am.

9 MS. LEWIS: I would object to this line of questioning.
10 Mr. Rosenberg is being very broad and loose with the Nex-Gen
11 terminology. We have multiple entities, which I asked about
12 those. And I think he's still generalizing.

13 MR. DARLING: May I add, Your Honor?

14 THE COURT: Yes, sir.

15 MR. DARLING: What Mr. Vance just told me is that this
16 particular entity is not the same corporate entity that was
17 folded into Nex-Gen Partners, LLC. This is a separate --

18 THE COURT: He created a separate entity to compete
19 against the other two entities.

20 MR. ROSENBERG: Your Honor, I also phrased the question as
21 the assets, which I think refers back to the fact that the
22 assets were committed both to the entity before by NexGen
23 Energy Partners as well as the entity that was not created but
24 was supposed to be created with respect to Mr. Doyle.

25 THE COURT: Well, counsel can clear that up if they want

DAVID SEVERSON - REDIRECT

1 on cross-examination. I'll overrule the objection. I think
2 your question was sufficiently clear.

3 MR. ROSENBERG: Thank you.

4 (Bench conference concluded.)

5 THE COURT: Please proceed.

6 BY MR. ROSENBERG:

7 Q. Do you need me to restate the question or do you recall
8 it?

9 A. Please do.

10 Q. Yeah. Did Mr. Vance or Ms. McKinnon ever disclose to you
11 that the assets of Nex-Gen, including equipment, accounts
12 receivable, items like that, had been committed to entities
13 controlled by other investors?

14 A. I do not recall that.

15 Q. Counsel for Mr. Vance asked you whether you felt there was
16 potential in the Nex-Gen business when recommending Koch to
17 increase the loan amounts.

18 Do you recall that question?

19 A. Yes.

20 Q. And what was your answer?

21 A. Early on, generally, based on the information we had
22 received from Mr. Vance and Ms. McKinnon, it seemed promising.

23 Q. So why, overall, did you think there was potential in the
24 business?

25 A. The information we were provided from -- by Mr. Vance and

DAVID SEVERSON - REDIRECT

1 Ms. McKinnon that showed actual shipments, receivables
2 outstanding, prices per ton, ongoing business.

3 Q. Did you believe that information to be true?

4 A. We did.

5 MR. ROSENBERG: Nothing further, Your Honor.

6 THE COURT: All right.

7 See if there is any recross, Counsel?

8 MR. DARLING: No, Your Honor.

9 THE COURT: Ms. Lewis?

10 MS. LEWIS: No, Your Honor.

11 THE COURT: Thank you, sir, you may step down. You are
12 excused.

13 Counsel, would you like to take a break before the next
14 witness is called?

15 MR. CHAPMAN: Yes, Your Honor.

16 THE COURT: All right. We will take -- we're going to
17 take about a 20-minute recess.

18 Ladies and gentlemen, please keep in mind the admonitions
19 that you were previously given not to discuss the case among
20 yourselves and please follow all other admonitions. You will
21 be excused for 20 minutes.

22 (Jury left courtroom at 2:33 p.m.)

23 THE COURT: Please be seated. I want to check on our
24 schedule before we take our break, see how we're doing. I
25 certainly understand we won't finish tonight, but it looks like

1 there's maybe three, four additional witnesses by the
2 government?

3 MR. CHAPMAN: Your Honor, I think we're down to two
4 witnesses.

5 THE COURT: Two?

6 MR. CHAPMAN: The two FBI witnesses.

7 THE COURT: All right. So there's a likelihood then, that
8 even with cross-examination, we could finish Tuesday with the
9 government's case?

10 MR. CHAPMAN: Yes, Your Honor.

11 THE COURT: All right. So defendant should be ready to go
12 on Tuesday at the earliest.

13 See if we have any other issues we need to take up in the
14 matter.

15 MR. ROSENBERG: One item, Your Honor. I just wanted to
16 kind of clarify the status of the potential *Bruton* issues.

17 THE COURT: I'm sorry, with what?

18 MR. ROSENBERG: The potential *Bruton* issues --

19 THE COURT: I'm sorry.

20 MR. ROSENBERG: -- with the recordings, because I do
21 believe we probably will get to some of those being played this
22 afternoon.

23 THE COURT: All right.

24 MR. ROSENBERG: As I take it, the motion was made that
25 referenced some specific sections of the audio, and that motion

1 has been withdrawn.

2 THE COURT: Yes, sir.

3 MR. ROSENBERG: I just want to be sure that if the
4 government plays portions that were included in that motion,
5 we're not running afoul of --

6 THE COURT: You would not be a running afoul of any order
7 of the Court. And specifically, it would not be in error for
8 you to play those sections that are listed specifically in the
9 memorandum filed in support.

10 Now, of course I have not listened to all of these
11 recordings and don't know if you'll be playing more or less
12 than what's been listed. But by withdrawing the motion, it
13 would be my understanding that the defendant, Defendant
14 McKinnon is not objecting to these portions of the recording
15 being played.

16 Is that correct, Ms. Lewis?

17 MS. LEWIS: That's correct, Your Honor. Withdrawn is
18 withdrawn.

19 THE COURT: It's kind of like objecting to an exhibit
20 that's already been admitted by stipulation, but I understand
21 your point. Yes.

22 MR. ROSENBERG: Thank you, Your Honor.

23 THE COURT: Any other issues to take up?

24 MR. ROSENBERG: No, Your Honor.

25 THE COURT: Thank you. We will be in recess for the

1 balance of our 20 minutes.

2 (A recess was taken from 2:36 p.m. to 2:55 p.m.)

3 THE COURT: Thank you. Let's see. I believe we have just
4 completed a witness. All members of the jury are present.
5 Defendants and counsel are present. We'll proceed then with
6 the next government witness.

7 MR. CHAPMAN: Your Honor, the United States calls Troy
8 McCracken.

9 THE COURT: Thank you. Just to remind the parties, we
10 will need to stop at 4:30 today, so we have an hour and
11 35 minutes.

12 **TROY MCCRACKEN, GOVERNMENT WITNESS, SWORN**

13 THE COURT: Thank you.

14 Mr. Chapman, you may proceed.

15 MR. CHAPMAN: Thank you, Your Honor.

16 TROY MCCRACKEN

17 DIRECT EXAMINATION

18 BY MR. CHAPMAN:

19 Q. Good afternoon, sir.

20 A. Hello.

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

23 A. Troy McCracken, M-c-C-r-a-c-k-e-n.

24 Q. Mr. McCracken, where do you live?

25 A. I live in Louisville, Kentucky.

TROY McCracken - DIRECT

1 Q. How are you currently employed?

2 A. I work for the FBI as a forensic accountant.

3 Q. Please explain for the jury, generally speaking, what a
4 forensic accountant for the FBI does.

5 A. A forensic accountant does a lot of different things but
6 mostly it's financial, and we support the agents in
7 investigations.

8 Q. How long have you been employed in that position?

9 A. 18 years.

10 Q. So you would have come to the FBI around 2004?

11 A. Yes, sir.

12 Q. What is your educational background, sir?

13 A. I have a bachelor's in business administration, a
14 bachelor's in accounting, and a master's in business.

15 Q. An MBA?

16 A. Yes, sir.

17 Q. Before you came to the FBI in 2004, what was your prior
18 professional experience?

19 A. Prior to working for the FBI, I was in banking for
20 12 years as a branch manager, a commercial loan officer, as
21 well as a fraud investigator.

22 Q. Was that a fraud investigator with the Commonwealth of
23 Kentucky?

24 A. That is correct.

25 Q. In your role as a forensic accountant with the FBI, did

TROY McCracken - DIRECT

1 you become involved in an investigation that involved Doug
2 Vance and Molly McKinnon?

3 A. Yes, sir.

4 Q. What has your involvement been in this case?

5 A. My scope of my involvement was to take the bank records
6 that we received and scan them in and trans -- put them into an
7 Excel spreadsheet.

8 Q. So you processed some financial information?

9 A. I did.

10 Q. And you said you put that information into a spreadsheet?

11 A. Yes, sir.

12 Q. Did you provide that spreadsheet to Special Agent
13 Christopher Hubbuch?

14 A. Yes, sir.

15 Q. Was that at his request?

16 A. It was.

17 Q. Did you perform any independent analysis of this data?

18 A. I did not.

19 Q. You mentioned the data came from bank records; is that
20 correct?

21 A. That's correct.

22 Q. Did that include Bank of America?

23 A. Yes, it did.

24 Q. Community Trust?

25 A. Yes, sir.

TROY McCracken - DIRECT

1 Q. Wells Fargo?

2 A. Yes, sir.

3 Q. Whitaker Bank?

4 A. Yes, sir.

5 Q. Do you remember if that included corporate as well as
6 personal banking records?

7 A. It did.

8 Q. Did it include Mr. Vance's personal banking records?

9 A. Yes, sir.

10 Q. And then entities such as Carbon Holdings?

11 A. Yes.

12 Q. Dendron?

13 A. Yes.

14 Q. Nex-Gen?

15 A. Yes.

16 Q. NexGen Energy Partners?

17 A. Yes.

18 Q. Nex-Gen Industries?

19 A. Yes.

20 Q. V4 Carbon?

21 A. Yes.

22 Q. And generally as to all of those bank records, were the
23 years roughly 2016 to '19?

24 A. Yes, sir.

25 Q. Now, sir, you mentioned earlier that you scanned bank

TROY McCRACKEN - DIRECT

1 statements; is that correct?

2 A. That's correct.

3 Q. Did you use a program to do that?

4 A. We did, or I did. We use what's called BankScan, and what
5 it does is you scan the statements that we received from the
6 banks and that turns the descriptions and the items into a text
7 file, and that gets put into an Excel spreadsheet. At that
8 time I basically, for lack of a better word, prettied it up and
9 it looks good and presentable and that's what -- that's what I
10 did.

11 Q. Is BankScan a program that you're familiar with?

12 A. It is. I worked with it for 12 years.

13 Q. Do you use BankScan in essentially any investigation that
14 you're involved in?

15 A. Yes, sir.

16 Q. Do you find it to be reliable?

17 A. It is.

18 Q. Could you estimate for the jury how many investigations
19 you've used it in?

20 A. It's at least probably a hundred, at least a hundred
21 investigations I've used it in.

22 Q. And in your experience in those hundred investigations,
23 it's proved reliable?

24 A. It has.

25 Q. Did you organize these spreadsheets in any particular way?

TROY McCracken - DIRECT

1 A. I did. Normally, what I would do is I would have the main
2 spreadsheet, which was all the transactions from the
3 statements, and then I would take from that, do two different
4 tabs, one would be all debits, which are withdrawals, and then
5 all credits, which are deposits.

6 And then I would sort those based on the amount, on
7 withdrawals lowest to highest. And then on deposits, highest
8 to lowest. So that kind of gives you an idea of where the
9 money came from and where the money went.

10 Q. And again, after you compiled those spreadsheets, you
11 simply passed them along to Special Agent Hubbuch?

12 A. That's correct.

13 MR. CHAPMAN: Your Honor, I believe that's all the
14 questions I have.

15 THE COURT: All right. Thank you.

16 See if there's cross-examination.

17 Mr. Darling?

18 MR. DARLING: I don't have any questions.

19 THE COURT: Ms. Lewis?

20 MS. LEWIS: No questions, Your Honor.

21 THE COURT: Thank you, sir. You may step down.

22 THE WITNESS: Thank you.

23 THE COURT: Mr. Chapman or Mr. Rosenberg?

24 MR. ROSENBERG: United States calls Special Agent
25 Christopher Hubbuch.

CHRISTOPHER HUBBUCH - DIRECT

1 THE COURT: We'll need to swear him again, please.

2 **CHRISTOPHER HUBBUCH, GOVERNMENT WITNESS, SWORN**

3 THE COURT: Thank you.

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

5 MR. ROSENBERG: Thank you, Your Honor.

6 CHRISTOPHER HUBBUCH

7 DIRECT EXAMINATION

8 BY MR. ROSENBERG:

9 Q. Sir, can you remind the jury who you are and what your job
10 is?

11 A. Again, I'm the case agent in this matter, special agent
12 with the FBI.

13 Q. Agent Hubbuch, I think in your last testimony we talked
14 about some initial steps that you took in this investigation.
15 Can you just remind us what those initial steps were?

16 A. Initially, it was opening the investigation, assessing
17 what bank records I needed to obtain, conducting a couple of
18 brief interviews, a few interviews, and then obtaining bank
19 records.

20 Q. And did you develop enough information to apply for a
21 search warrant on some email accounts?

22 A. I did.

23 Q. Whose email accounts did you have the search warrants on?

24 A. They were both for accounts used by Doug Vance. They were
25 dw.vance@yahoo.com and nexgen.industries@yahoo.com.

CHRISTOPHER HUBBUCH - DIRECT

1 Q. Now, in the course of your investigation, did you have
2 occasion to speak with or interview Mr. Vance?

3 A. I did.

4 Q. How did that come about?

5 A. Initially, I attempted an interview. I did do a brief
6 interview out at the Chavies site first. It wasn't all
7 encompassing, it was my first -- my first attempt at talking to
8 Mr. Vance.

9 And then as a follow-up, Mr. Vance reached out to me on a
10 couple of occasions, and finally he reached out to me and I had
11 a recorded conversation with him.

12 Q. Is recording conversations with people under
13 investigation, is that a tactic you've used before?

14 A. Absolutely. It's actually our policy now to record
15 interviews with subjects of investigation.

16 Q. When you served that warrant for the email records, did
17 you receive a number of records in response to that from Yahoo?

18 A. Correct.

19 Q. And have you had a chance to review many of those emails?

20 A. Quite a few of them.

21 Q. And generally speaking, were there conflicts or
22 inconsistencies between statements Mr. Vance made to you and
23 information you gleaned from those emails?

24 A. Yes.

25 Q. That recorded interview, do you recall roughly the time

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1 period that was?

2 A. On or about December 17th of 2018.

3 Q. And where were you when that conversation with Mr. Vance
4 took place?

5 A. I believe I was actually sitting in my office there in
6 London.

7 Q. If you heard the beginning of that recording, would you
8 recognize the recording you made?

9 A. I would.

10 MR. ROSENBERG: Your Honor, we would ask permission to
11 play the beginning of Government's Exhibit 401.

12 THE COURT: All right. Any objection to playing that
13 document or playing that recording?

14 You may proceed.

15 (Audio played.)

16 BY MR. ROSENBERG:

17 Q. So Agent Hubbuch, do you recognize the voices we heard in
18 that portion of the recording?

19 A. I do, that's myself and Doug Vance.

20 Q. Did he identify himself as Doug Vance?

21 A. Doug.

22 Q. And had you spoken to Mr. Vance prior to that?

23 A. I had, on a couple of occasions.

24 Q. Did you have any doubt at the time that you were speaking
25 with Doug Vance?

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1 A. No.

2 MR. ROSENBERG: Your Honor, we're going to move for
3 admission of Government's Exhibit 401.

4 THE COURT: All right.

5 MR. ROSENBERG: We can play selected portions therefrom.

6 THE COURT: Any objection?

7 MS. LEWIS: No objection.

8 MR. DARLING: No objection.

9 THE COURT: Exhibit 401 had been admitted.

10 (United States Exhibit 401 was admitted.)

11 BY MR. ROSENBERG:

12 Q. In your conversation with Mr. Vance, did you discuss a
13 woman named Joan Faybik?

14 A. I did.

15 Q. And had you discussed Ms. Faybik in your earlier
16 conversation with Mr. Vance?

17 A. I'm not sure if I addressed that or not.

18 Q. Broadly speaking, what do you recall Mr. Vance telling you
19 about Ms. Faybik?

20 A. That she was -- that he didn't want her to be brought into
21 this, to try to leave her out.

22 Q. And did you discuss with him any funds being provided by
23 Ms. Faybik?

24 A. Yes.

25 Q. Based on your conversation with Mr. Vance, what was his

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1 position with respect to why Ms. Faybik was providing money?

2 A. If I could review the transcript, or need a little
3 recollection on exactly what he said about that, that would be
4 helpful.

5 Q. We'll go through. Let me ask, did you see Ms. Faybik's
6 name in any of the bank records you obtained?

7 A. I did.

8 Q. Did you see funds going from Ms. Faybik to any Nex-Gen
9 accounts?

10 A. I did, incoming transfers.

11 Q. And did you also see money going the other way?

12 A. Yes. Although I had already identified Ms. Faybik as a
13 potential victim in the case.

14 Q. I want to call your attention to a portion of your
15 conversation.

16 MR. ROSENBERG: For the record, we'll play at 12:59. And
17 I'll ask you to listen to the recording.

18 (Audio played.)

19 BY MR. ROSENBERG:

20 Q. What did Mr. Vance tell you about real bank statements?

21 A. Basically anyone he was involved with would have gotten
22 real bank statements.

23 MR. ROSENBERG: Can we show the witness what's already
24 been admitted as Government's Exhibit 153?

25 THE COURT: Yes, sir.

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1 BY MR. ROSENBERG:

2 Q. Have you seen this email before, Agent Hubbuch?

3 A. I have.

4 Q. What is this email?

5 A. It's an email dated September 16, 2017 from Doug Vance to
6 Dell Jagers of the KRP board.

7 Q. And what sort of documents are attached?

8 A. They are NGI, which is Nex-Gen Industries, bank statements
9 for March, April, May, June, and July of 2017.

10 Q. Based on the recorded statement we just heard from
11 Mr. Vance, should these bank statements be true, real, accurate
12 bank statements?

13 A. Yes.

14 Q. That was his claim?

15 A. Yes.

16 MR. ROSENBERG: Can we bring up Government's Exhibit 203C?

17 Q. Agent Hubbuch, what is Government's Exhibit 203C?

18 A. Those are the Wells Fargo bank records for account ending
19 in 7383 that we received from Wells Fargo bank in response to a
20 subpoena.

21 Q. So the version on your screen now came directly from the
22 bank?

23 A. Yes.

24 Q. And what time period is reflected at least on this first
25 page?

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1 A. That statement is March 1st through March 31st of 2017.

2 MR. ROSENBERG: Your Honor, to facilitate this testimony,
3 may I pass a physical copy of 203C to the witness?

4 THE COURT: Yes, sir.

5 BY MR. ROSENBERG:

6 Q. Sir, if you could flip through and let us know, are there
7 additional months of statements from Wells Fargo?

8 A. Those include the statements through July of 2017, March
9 through July of 2017.

10 Q. And what's the account number on this?

11 A. You want me to read just the last four?

12 Q. Last four, thank you.

13 A. 7353.

14 Q. And the --

15 A. I said 7383 earlier just because I can't see, but 7353.

16 Q. What is the name on the account?

17 A. It is Nex-Gen Industries.

18 Q. So Nex-Gen Industries, 7353, March through July of 2017;
19 is that a fair description?

20 A. Yes.

21 Q. So let's turn back on the screen to Government's 153.

22 These statements from Doug Vance to Dell Jagers, do they cover
23 the same period we just discussed from Exhibit 203C?

24 A. They do.

25 Q. All right.

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1 MR. ROSENBERG: Let's go to the next page, top half there.

2 Q. What account number is indicated?

3 A. That is Wells Fargo account ending in 7353.

4 Q. And the name on the account?

5 A. Nex-Gen Industries.

6 Q. So far, does this match up to the records provided
7 directly from the bank?

8 A. It does.

9 MR. ROSENBERG: Can we take a look at the beginning
10 balance on this page?

11 Q. Do you see that activity summary?

12 A. I do.

13 Q. What does the beginning balance say?

14 A. 85,694.45.

15 Q. What is the ending balance?

16 A. Ending balance is \$230,048.78.

17 Q. How does that compare to the genuine records you have in
18 front of you?

19 A. The genuine records indicate a beginning balance on
20 March 1st of \$27,917.08. And an ending balance on March 31st
21 of 2017 as a negative \$1,936 56.

22 Q. So between the version sent to Dell Jagers of Kentucky
23 River Properties and the actual version sent directly by the
24 bank, how would you compare those ending balances?

25 A. Obviously significantly different.

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1 Q. And which one reflects a better financial picture?

2 A. The one that was sent to Dell Jagers.

3 MR. ROSENBERG: Can we go to the next page? Bring up the
4 top half of the statement.

5 Q. Now, on March 6th, what is the only transaction reflected
6 in this version that was sent to Dell Jagers?

7 A. On March 6th, it was an authorized purchase of \$40 to, I'm
8 not sure exactly what that is, OMRI.

9 Q. What is the ending balance?

10 A. \$71,121.24.

11 Q. All right. I'm going to have you look on the hard copy
12 but we're going to bring it up for the jury as well.

13 MR. ROSENBERG: So let's go back to Government's
14 Exhibit 203C, and the second page. If we could -- let's go
15 down another page, get to March 6th. Zoom to the bottom half
16 there, bottom two-thirds, little bit higher.

17 Q. And just scrolling up here, and you can look at your hard
18 copy as well, is there more than one transaction on March 6th
19 in the genuine Wells Fargo bank records?

20 A. It appears to be there's at least 15 to 20 transactions on
21 that date, on the original -- on the correct statement.

22 Q. Do those transactions appear in the version that Mr. Vance
23 sent to Dell Jagers?

24 A. They do not. I'll also note that the pages, there were
25 14 pages of this statement that were from the original records.

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1 And the statement that was sent to Dell Jagers only contained
2 nine pages.

3 Q. I want to look at the item for \$4,000 a third of the way
4 down the screen.

5 Do you see that?

6 A. I do.

7 Q. Can you describe for the jury what that transaction is?

8 A. That is an online transfer to Doug Vance everyday
9 checking -- well, Vance D. everyday checking account ending in
10 7357, in the amount of \$4,000.

11 Q. And via grand jury subpoena, did you receive records
12 pertaining to an account ending in 7357 for Douglas Vance?

13 A. I do.

14 Q. Did that -- did those records indicate Mr. Vance as the
15 owner of that account?

16 A. Mr. Vance and his wife, yes.

17 Q. Is there another transaction on March 6th in the amount of
18 \$8,000?

19 A. That is a similar transaction to Doug Vance's everyday
20 checking account.

21 Q. Is there another transaction in the amount of \$3,000?

22 A. On the same day, yes, same description.

23 MR. ROSENBERG: Let's go down to March 16th through 24th.
24 We'll just start with -- make it a little bigger.

25 Q. Do you see a deposit or credit on March 16th, the first

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1 one in this list?

2 A. I do.

3 Q. What was that amount and where it did come from?

4 A. It's \$15,000, it came from Dragon Head Technologies, LLC,
5 which is the stateside company for Allan Deware.

6 MR. ROSENBERG: If we could, Ms. Poynter, switch back to
7 Government's Exhibit 153, and go to March 16th? Make that
8 bigger.

9 Q. Now, on March 15th, is there a deposit indicated?

10 A. Yes.

11 Q. Is that different than what we saw on March 16th in the
12 true Wells Fargo records?

13 A. It's a different date and a different description, it just
14 says deposit made in branch store.

15 Q. Do you see roughly half a dozen or so entries for
16 March 16th?

17 A. I do.

18 Q. Are any of them a \$15,000 wire transfer from Dragon Head
19 Technologies?

20 A. No.

21 MR. ROSENBERG: If we go further up in the document, the
22 previous page, for the records concerning March 10th?

23 Q. In the bank records that Doug Vance sent to Dell Jagers,
24 was there a significant deposit on March 10th?

25 A. Yes, a deposit made in a branch store of \$285,000 --

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1 \$285,059.

2 Q. And looking at the running balance on the right-hand side
3 there for March 10th, what did that seem to bring it up to?

4 A. \$341,974.07.

5 Q. Agent Hubbuch, if you would, look on that paper copy from
6 the genuine records from Wells Fargo. And let us know, are
7 there some transactions from March 10th?

8 A. A number of checks and a withdrawal.

9 Q. Is there a deposit in the amount of \$285,059?

10 A. No.

11 Q. In the genuine Wells Fargo records, are there additional
12 transfers to Vance's personal checking account on March 16th,
13 March 20th, and March 24th? Take a moment.

14 A. Sure. On the 16th, there was a transfer to 7357 in the
15 amount of \$2,500.

16 Q. On March 20th?

17 A. On March 20th, stand by. A transfer of \$2,000 to 7357.

18 Q. On March 24th?

19 A. On the 24 -- you say which day again, please?

20 Q. March 24th.

21 A. 24th, a transfer in the amount of \$5,000.

22 MR. ROSENBERG: Ms. Poynter, if we could go to the next
23 page? We'll take one example, March 24th.

24 Q. So in the records sent to Dell Jagers, is there any
25 indication of Mr. Vance transferring \$5,000 to his own personal

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1 checking account?

2 A. No.

3 Q. Let's move forward to April. We will bring that up in the
4 version sent to Dell Jagers by Mr. Vance, and if you could
5 have the corresponding genuine records in front of you.

6 Again, could you compare the beginning and ending balances
7 for the jury?

8 A. Yes. On the original Wells Fargo bank statements, the
9 beginning balance on 4/1 of 2017 was a negative \$1,936.56. The
10 ending balance was \$984.67.

11 On the bank records that were sent to Mr. Jagers, the
12 beginning balance on 4/1 of '17 was \$230,000 -- \$230,048.78,
13 with an ending negative balance of \$1,778.30.

14 MR. ROSENBERG: Let's go to the next page.

15 Q. Mr. Hubbuch, in the genuine records you have, were there
16 deposits in the amount of 35,000 and 25,000 on April 7th and
17 April 10th respectively?

18 A. Yes.

19 Q. Who were those deposits from?

20 A. Keith Shpakoff.

21 Q. Turning to the records provided to Dell Jagers by
22 Mr. Vance, do you see either of those deposits reflected here?

23 A. No.

24 Q. In the records you have, is there a trans -- are there a
25 series of transfers to Mr. Vance's checking account on

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1 April 7th and April 10th?

2 A. On April 7th, there was a \$7,500 transfer to 7357.

3 And then on April 10th, 2017, there was a transfer of
4 \$15,000 to 7357.

5 Q. Was there also an additional 14,000 sent to Vance's
6 checking on or about that date?

7 A. On the same date, 14,000 and 2,200.

8 Q. So more than \$30,000 on that date?

9 A. Yes.

10 Q. Again, looking back to the records sent to Mr. Jagers, do
11 you see any of those transactions, any of those transfers to
12 his personal checking account?

13 A. No.

14 Q. Let's go to one more from this month, April 21st. If you
15 look at April 21st and let us know if there was any transfers
16 to Mr. Vance's personal checking account.

17 A. On the originals?

18 Q. On the originals.

19 A. On the 21st, there is a \$9,500 transfer to 7357.

20 Q. What about on April 21st in the version sent to
21 Mr. Jagers?

22 A. No.

23 Q. Let's move forward to May of 2017.

24 MR. ROSENBERG: Ms. Poynter, if we can find the
25 transactions for May 26th?

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1 Q. Agent Hubbuch, I'll ask you to do the same. Was there a
2 substantial deposit in the genuine bank records on May 26th?

3 A. Yes, there is a \$65,000 incoming wire transfer from
4 Kenneth Shumard from Bank of America.

5 Q. Was Mr. Shumard one of the investors in Nex-Gen?

6 A. Yes.

7 Q. Could you go forward to May 31st? Just let us know if you
8 see any transfers to Mr. Vance's personal checking.

9 A. Yes. There is a \$14,000 transfer to his personal account,
10 7357.

11 Q. Do you see any others on or around that date?

12 A. On the 31st?

13 Q. Or anywhere, you know, close to, between the 31st and the
14 26th.

15 A. On the 26th, the \$5,000 transfer.

16 Q. Now turning to the version sent to Dell Jagers. Is there
17 a \$65,000 wire from Kenneth Shumard's Bank of America account
18 here?

19 A. No.

20 Q. And do you see the \$5,000 transfer you just described?

21 A. No.

22 Q. Or the \$14,000 transfer on May 31st?

23 A. No.

24 MR. ROSENBERG: Can we scroll up to May 4th, at the top
25 there? Go back. Thank you. Perfect.

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1 Q. What sort of deposit's reflected on May 4th in the version
2 sent to Dell Jagers?

3 A. To Dell Jagers, a \$253,750 deposit.

4 Q. And could you tell us whether that's in the genuine bank
5 records?

6 A. It is not.

7 Q. We'll move forward to July of 2017.

8 Now, Agent Hubbuch, do you recall the testimony concerning
9 KRP making a loan to Nex-Gen in July of 2017?

10 A. I believe so.

11 Q. So would that be the monies that Dell Jagers and others
12 from KRP knew about?

13 A. Their loan, yes.

14 MR. ROSENBERG: Can we go to July 14th in the version sent
15 to Dell Jagers?

16 Q. Now, is there a wire transfer from Fifth Third Bank in
17 this version?

18 A. Yes.

19 Q. And who is that from?

20 A. Kentucky River Properties, LLC.

21 Q. And what was the amount?

22 A. \$43,350.

23 Q. Now, the genuine bank records, does that transaction
24 appear in the genuine bank records?

25 A. It does.

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1 Q. It does. So unlike the money from Shumard and Deware --
2 or what's the difference between the -- how the Kentucky River
3 Properties money was reflected in the Dell Jagers version and
4 the accurate version versus money from KRP?

5 A. Well, in this case, they chose to include the KRP money in
6 the statements --

7 Q. And that didn't happen with -- I'm sorry.

8 A. -- with the other loans and investors.

9 Q. We'll look at July 17th, I think you can see that on your
10 screen, from the version sent by Mr. Vance.

11 Do you see any transfers to Mr. Vance's checking account?

12 A. I do not.

13 Q. What about in the version from Wells Fargo?

14 A. On July 17th, 2017, there is a \$5,000 transfer and a
15 \$15,000 transfer.

16 Q. Both on the 17th?

17 A. Yes.

18 Q. Both to Mr. Vance's checking account?

19 A. Yes.

20 Q. How many days after the initial money from Kentucky River
21 Properties were those transfers?

22 A. Three days.

23 Q. You're unable to find those in the version sent to
24 Mr. Jagers of KRP?

25 A. No.

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1 Q. Let's go to the 27th of July. And is there another wire
2 transfer from Kentucky River Properties here in the version?

3 A. Yes, on the one sent to Dell Jagers, \$91,842.97, on
4 July 27th.

5 Q. Will you please tell us if that transaction occurs in the
6 genuine bank records?

7 A. It does.

8 Q. Same date?

9 A. Yes.

10 Q. Same wire transfer details?

11 A. Stand by. Definitely the amount is the same.

12 Q. Sure, that's fine. Same amount?

13 A. Yes.

14 Q. Now, on the version we see on your screen sent to Dell
15 Jagers, there are no transactions for July 28th. Does that
16 correspond to the genuine bank records?

17 A. It does not.

18 Q. What happened on July 28th with respect to Mr. Vance's
19 personal checking account?

20 A. Among other transactions, there was an online transfer to
21 his personal account on July 28th of \$15,000. And a number of
22 withdrawals made and other debits from the account.

23 Q. Given the repeated discrepancies between the version sent
24 to Dell Jagers by Mr. Vance and the records you received from
25 Wells Fargo, can the version sent to Mr. Jagers be described

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1 as true or real bank statements?

2 A. No, they cannot.

3 Q. So when Mr. Vance told you if anyone got bank statements
4 from him, they were real statements, was that a true statement
5 from Mr. Vance?

6 A. It was not.

7 MR. ROSENBERG: Your Honor, I would like to show just the
8 witness what's been marked as Government's Exhibit 128.

9 THE COURT: Yes, sir.

10 BY MR. ROSENBERG:

11 Q. Let me know if that's on your screen.

12 A. I can see it.

13 Q. Are you familiar with this document?

14 A. I am.

15 Q. Can you tell the jury generally what it is?

16 A. It's an email from Doug Vance using the Nex-Gen.Industries
17 account to Stephen W. Gooch, Esquire., dated April 13, 2018.

18 Q. Have you reviewed this document before?

19 A. Yes.

20 Q. Does it pertain to money transfers that occurred around
21 the same time Nex-Gen was receiving money from Koch Industries?

22 A. Yes.

23 MR. ROSENBERG: Your Honor, we move to admit Government's
24 Exhibit 128.

25 THE COURT: Any objection?

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1 MS. LEWIS: No objection.

2 MR. DARLING: No objection.

3 THE COURT: It is admitted.

4 (United States Exhibit 128 was admitted.)

5 MR. ROSENBERG: Now, if we could zoom out one moment? Can
6 we go down to the bottom of the email chain -- sorry, the next
7 pages. All right. Is that the last page of the exhibit?

8 Q. All right. Can you read for us what Mr. Vance's statement
9 to Mr. Gooch was on April 5th?

10 A. It says, "Mr. Gooch, our check finally cleared last night.
11 My plan is to try to make it back to Virginia tomorrow after
12 lunch. If I can't make it to you tomorrow, my wife will bring
13 it down Monday."

14 MR. ROSENBERG: If we can scroll up to the next email in
15 the chain?

16 Q. What was Mr. Gooch's response on April 10th?

17 A. He said, "Mr. Vance, on February 28 we met and you made a
18 promise to pay \$24,000 by March 20th. You are delinquent on
19 your payment plan. You did not stop by the office on Friday
20 nor did your wife come to the office yesterday (Monday) as you
21 said would happen. If we do not receive this payment by
22 Friday, April 13, 2018, in the form of a cashier's check or
23 other certified funds, I will have no other choice but to move
24 forward with enforcing the judgment. I hope you understand and
25 I look forward to your response."

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1 Q. All right.

2 MR. ROSENBERG: Scroll up in the email chain.

3 Q. Did Mr. Vance give some assurance that arrangements were
4 being made for tendering a check of some sort?

5 A. Yes.

6 Q. Going further up in the chain, did that arrangement for
7 his wife to bring the check happen, according to Mr. Gooch?

8 A. No.

9 Q. And what alternative did he propose at this point?

10 A. He proposed that it could be processed via an ACH or
11 automated clearinghouse transfer.

12 Q. Did Mr. Vance agree to that?

13 A. He said "okay, let me round up the account info."

14 Q. So at the top of this chain, is there a reference to Molly
15 McKinnon?

16 A. Yes.

17 Q. And how did Mr. Vance refer to her?

18 A. It refers to her as his CFO.

19 Q. What does he say she would do?

20 A. "My CFO Molly McKinnon will be filling out the form you
21 forwarded and sending back to you."

22 MR. ROSENBERG: Let's go to Government's Exhibit 168,
23 which will be shown just to the witness.

24 Q. Can you see that, sir?

25 A. Yes.

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1 Q. Again, can you just describe for us what this is?

2 A. That is an email from Stephen Gooch to Molly McKinnon
3 using the molly@ngicarbon.com email account and carbon copied
4 Doug Vance using the nexgen.industries account on April 25th,
5 2018.

6 Q. You reviewed this document before?

7 A. Yes.

8 Q. Does it pertain to the same topics we were just reviewing?

9 A. Yes.

10 MR. ROSENBERG: Move to admit Government's Exhibit 168.

11 THE COURT: Any objection?

12 MR. DARLING: No objection.

13 MS. LEWIS: No objection.

14 THE COURT: United States Exhibit 168 is admitted.

15 (United States Exhibit 168 was admitted.)

16 MR. ROSENBERG: Keep scrolling down. All right. Here.

17 BY MR. ROSENBERG:

18 Q. This email from Mr. Gooch on the 16th of April, what does
19 he describe?

20 A. He's talking about the current balance on whatever
21 particular debt this is in the amount of \$159,273.76.

22 Q. Is there also a proposed payment schedule?

23 A. Yes.

24 MR. ROSENBERG: Scrolling up.

25 Q. What did Ms. McKinnon tell Mr. Gooch?

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1 A. Asked if it is possible to schedule the next two payments
2 for \$52,000 on May 20th and June 20th and the remainder on
3 July 20th.

4 MR. ROSENBERG: And scrolling up from that, let's continue
5 up the chain to the top here.

6 Q. What did Mr. Gooch report to Ms. McKinnon and Doug Vance
7 at this point?

8 A. He stated, "I have initiated the ACH withdrawal for
9 \$25,000. It will be effective tomorrow the 26th."

10 MR. ROSENBERG: If we could show what's already been
11 admitted as Government's Exhibit 205? We'll scroll to the next
12 page.

13 Q. What account does this bank record pertain?

14 A. That's the Wells Fargo bank Nex-Gen account ending in
15 8404.

16 Q. In the name of Nex-Gen LLC?

17 A. That's correct.

18 MR. ROSENBERG: If we could go to page 30?

19 Q. Do you see on April 25th, a wire coming in?

20 A. Yes, that is a \$50,000 incoming wire transfer from the JP
21 Morgan Chase account of Koch Minerals, LLC on April 25th.

22 Q. And we heard testimony this afternoon with respect to
23 these wire transfers from Koch, correct?

24 A. Yes.

25 Q. Those were for a loan?

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1 A. Yes.

2 Q. And the loan was to be used for what purpose?

3 A. For basically furthering the business.

4 Q. What happened in this account that received \$50,000 from
5 Koch the next day on April 26th?

6 A. There was an ACH transfer to Stephen W. Gooch of \$25,000.

7 MR. ROSENBERG: Can we go now tender Government's
8 Exhibit 172, just to the witness?

9 Q. When that appears, please describe for us what it shows.

10 A. That is an email titled Gooch update/5k ACH on Friday. It
11 is an email from Molly McKinnon at the ngicarbon account to
12 Doug Vance at the nexgen.industries and cc Molly.

13 Q. Does this exhibit address the same topics we've been
14 discussing?

15 A. It does.

16 MR. ROSENBERG: Move to admit Government's Exhibit 172.

17 THE COURT: Any objection?

18 MR. DARLING: No objection.

19 MS. LEWIS: No objection.

20 THE COURT: Exhibit 172 is admitted.

21 (United States Exhibit 172 was admitted.)

22 BY MR. ROSENBERG:

23 Q. On May 15th, is there an email from Mr. Gooch to Molly
24 McKinnon?

25 A. Yes.

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1 Q. And what is discussed there?

2 A. They talk about planning an ACH withdrawal of \$5,000 on
3 5/18. And then a follow-on payment of \$20,000.

4 Q. Did Ms. McKinnon forward that email to Mr. Vance?

5 A. She did.

6 Q. What did she tell him about the ACH form that Mr. Gooch
7 had?

8 A. Basically telling him that what he has is for the Wells
9 account ending in 8404.

10 Q. Is that the account for Nex-Gen, LLC?

11 A. It is.

12 Q. Was it clear from this email that the transfer to
13 Mr. Gooch is coming from the Nex-Gen account?

14 A. The Nex-Gen LLC account, yes.

15 MR. ROSENBERG: Now let's go back to Exhibit 205. Go to
16 page 36 first. If we could first just zoom in on the account
17 number at the top?

18 Q. Agent Hubbuch, how does that compare to the account number
19 in the email we just referenced?

20 A. It's the same one.

21 Q. Now let's go down to a transaction on May 18th.

22 A. Yes, that is a -- an ACH transfer to Stephen W. Gooch in
23 the amount of \$5,000.

24 MR. ROSENBERG: All right. And can we go to page 42?

25 Q. Agent Hubbuch, let me know if you see any transfers to

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1 Mr. Gooch on this page.

2 A. Yes. On June 28th, a \$5,000 transfer.

3 Q. What was the deposit that occurred less than a week prior
4 to that transfer to Mr. Gooch?

5 A. On June 22nd, there was a \$100,000 incoming wire transfer
6 from Koch Minerals.

7 Q. In between that deposit and the transfer to Mr. Gooch,
8 were there any transfers to Mr. Vance's checking account?

9 A. Yes, on 6/22, the same day, there was a \$7,500 transfer.

10 MR. ROSENBERG: You can take that exhibit down.

11 Q. I'm going to switch gears. Thinking back to your
12 conversation with Mr. Vance in December of 2018, was there a
13 point where you all discussed the KRP and the Koch dealings?

14 A. Yes.

15 MR. ROSENBERG: Your Honor, we would like to play a
16 portion of Government's Exhibit 401, beginning at 23:23.

17 THE COURT: Yes, sir.

18 (Audio played.)

19 BY MR. ROSENBERG:

20 Q. What were you asking Mr. Vance about?

21 A. If the Shumard Group was aware that he was taking out a
22 loan from Koch Brothers.

23 Q. What was his response?

24 A. They were absolutely aware.

25 Q. How does that compare to the testimony from Dave Severson?

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1 A. That doesn't match.

2 MR. ROSENBERG: Let's continue playing.

3 (Audio played.)

4 BY MR. ROSENBERG:

5 Q. Were you here for the testimony of Mr. Shumard and
6 Mr. Chamblee?

7 A. Yes.

8 Q. Did either of them testify they were aware of a loan from
9 Koch?

10 A. They testified they were not.

11 MR. ROSENBERG: Let's go to 24:26.

12 (Audio played.)

13 MR. ROSENBERG: Pause there.

14 BY MR. ROSENBERG:

15 Q. What was Mr. Vance's statement to you about the money from
16 Kentucky River Properties?

17 A. Basically saying that he was -- that it was to -- the
18 money was to build a piece of equipment for them.

19 Q. Did he deny that it was a loan?

20 A. Yes.

21 MR. ROSENBERG: Your Honor, may we display Government's
22 Exhibit 801?

23 THE COURT: Yes, sir.

24 MR. ROSENBERG: I apologize, 803.

25 BY MR. ROSENBERG:

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1 Q. Have you seen this document before?

2 A. I have.

3 Q. And what is it?

4 A. It's the demand note from KRP for loaning Doug Vance
5 \$170,000, and the date of it is July 27th, 2017.

6 Q. And how is KRP described after the address is listed in
7 that first paragraph?

8 A. As the lender.

9 MR. ROSENBERG: Can we now switch to Government's
10 Exhibit 121? Which has been admitted.

11 Q. Agent Hubbuch, what was the date of this email?

12 A. October 25th of 2018.

13 Q. Is that less than two months before your interview that
14 we're listening to?

15 A. Yes.

16 MR. ROSENBERG: If we can go to the second page containing
17 the attachment? Just zoom in on the top half there.

18 Q. In item number 1, what is described that Nex-Gen will have
19 to fully repay?

20 A. It says "Nex-Gen will fully repay to KRP the \$170,000 loan
21 given to it."

22 Q. Any ambiguity here in the nature of that \$170,000?

23 A. No.

24 Q. Have you seen -- have you reviewed the various transaction
25 documents between Nex-Gen and KRP?

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1 A. Yes.

2 Q. Do any of them describe KRP purchasing a unit or equipment
3 from Nex-Gen?

4 A. No, only having a lien interest in it.

5 Q. In your conversation that was recorded with Mr. Vance, was
6 there discussion of Allan Deware?

7 A. Yes.

8 MR. ROSENBERG: Can we play Government's Exhibit 401,
9 starting at 26:38?

10 (Audio played.)

11 BY MR. ROSENBERG:

12 Q. Now, when you asked about the money put in by Allan
13 Deware, what did Mr. Vance tell you about that money?

14 A. His immediate response was that was a loan.

15 MR. ROSENBERG: Can we show Government's Exhibit 617?
16 Which has been admitted.

17 Q. Have you reviewed Government's Exhibit 617 before?

18 A. Yes.

19 Q. What is it?

20 A. It's the operating agreement between Nex-Gen Industries --
21 or the operating agreement of Nex-Gen Industries LLC.

22 Q. Anywhere in this document is it referred to as a loan?

23 A. No.

24 Q. Is there any interest rate specified?

25 A. No.

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1 Q. Any repayment schedule?

2 A. No.

3 MR. ROSENBERG: Scroll down in the document.

4 Q. Under section 5, what is that section titled?

5 A. Owners.

6 Q. And who are the owners listed?

7 A. Allan Deware and Doug Vance.

8 Q. And under section 8, how are the profits and losses
9 attributed between Mr. Vance and Mr. Deware?

10 A. 49 percent to Vance and 51 percent to Deware.

11 Q. Any of that consistent with a loan?

12 A. No.

13 MR. ROSENBERG: Can we scroll to the bottom?

14 Q. Who signed this document?

15 A. Allan Deware and Doug Vance.

16 Q. And do you see a set of initials on the bottom right
17 corner of each page --

18 A. I do.

19 Q. -- of this exhibit? What are those initials?

20 A. Well, the letters are D.V., and what appears to be A.D.

21 MR. ROSENBERG: If we could scroll up?

22 Q. Do you see that throughout the document?

23 A. Correct.

24 Q. I would like to -- well, let me ask. In your conversation
25 that was recorded with Mr. Vance, did the two of you discuss

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1 anything about AK Steel?

2 A. I believe we did.

3 MR. ROSENBERG: Can we start with 15:14 in the recording?

4 (Audio played.)

5 Q. All right. What was this cashier's check you were asking
6 about?

7 A. It was basically the three cashier's checks that I believe
8 have been touched on that were from Mr. Vance's Wells Fargo
9 account to NexGen Energy Partners, and the remitter line it
10 said AK Holding or AK Holdings.

11 Q. And in this conversation, what did Mr. Vance say that
12 money represented or came from?

13 A. Well, he said it didn't come from AK.

14 Q. Did not come from AK? Did he refer to it as borrowed
15 money?

16 A. If you could replay that again?

17 Q. Sure.

18 MR. ROSENBERG: Go back to --

19 A. The jury would probably appreciate that as well.

20 MR. ROSENBERG: -- 15:14.

21 (Audio played.)

22 A. Borrowed money.

23 Q. Borrowed money.

24 MR. ROSENBERG: Can we go forward to 31:02?

25 (Audio played.)

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1 MR. ROSENBERG: Pause there.

2 BY MR. ROSENBERG:

3 Q. All right. Again, did you give Mr. Vance a chance to
4 explain the actual source of the AK Holdings money?

5 A. Yes.

6 Q. And what did he describe it as?

7 A. Still basically going back to the original statement of
8 the loan, that he was instructed to put AK Holdings.

9 MR. ROSENBERG: Now let's turn to Government's
10 Exhibit 152, which has already been admitted. If we look at
11 the bottom half of the exhibit?

12 Q. Who is this email from?

13 A. It's from Molly McKinnon, from her P3 Connection account
14 to Gary Chamblee.

15 Q. And Mr. Vance's copied on it?

16 A. Copied Doug, yes. Date of the email was March 20th, 2018.

17 Q. What did Ms. McKinnon state in line number 3?

18 A. "AK Steel started hauling and should have accepted
19 delivery of their 500 tons within the week and we can invoice
20 then."

21 Q. Any references to loans or borrowed money?

22 A. No.

23 Q. What does this describe in terms of the relationship with
24 AK Steel?

25 A. That they've been shipped product and are just waiting to

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1 pay for it.

2 Q. Who is waiting for payment?

3 A. Doug Vance and Molly McKinnon, Nex-Gen.

4 Q. Who was this information reported to?

5 A. Molly reported it to Gary Chamblee and copied Doug.

6 MR. ROSENBERG: Ms. Poynter, if we could, maybe scroll
7 back 10 or 15 seconds from where we left off.

8 (Audio played.)

9 MR. ROSENBERG: Pause there.

10 All right. Go ahead. Sorry. Pause there.

11 BY MR. ROSENBERG:

12 Q. That last statement when he referred to borrowing money --

13 A. Uh-huh.

14 Q. -- what sort of debts did he say he was going to pay back?
15 Did you catch that?

16 A. I didn't. If you would play it again?

17 (Audio played.)

18 Q. Whose debts did he say he was borrowing money to pay back?

19 A. He didn't.

20 MR. ROSENBERG: Play it one more time then.

21 Q. And I'll ask, did he refer to paying back company debts,
22 corporate debts, Nex-Gen debts, or not?

23 (Audio played.)

24 MR. ROSENBERG: Go back.

25 (Audio played.)

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1 A. I hear to pay back some of my debts.

2 Q. Some of my debts?

3 A. Yes.

4 Q. Not Nex-Gen debts?

5 A. No.

6 Q. Not corporate debts?

7 A. No.

8 MR. ROSENBERG: Can we keep playing from that point?

9 (Audio played.)

10 BY MR. ROSENBERG:

11 Q. Was there a back and forth about some letter?

12 A. Apparently so.

13 Q. What was this letter Mr. Vance kept referring you to?

14 A. It was my understanding that it was a letter that Molly
15 had.

16 MR. ROSENBERG: If we could go to 13:17?

17 (Audio played.)

18 BY MR. ROSENBERG:

19 Q. Did you hear a reference from Mr. Vance of, my attorney
20 has a letter from Molly?

21 A. Yes.

22 Q. At various points in your conversation, did Mr. Vance
23 refer you to this letter for answers to your questions?

24 A. Yes.

25 Q. But did he ever answer the question straight out?

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1 A. No.

2 Q. And did you ever receive this letter that was referred to?

3 A. No.

4 Q. Did he ever give you a credible explanation for why he
5 wouldn't just provide the information that's in this letter?

6 A. No.

7 MR. ROSENBERG: Could we bring up Government's
8 Exhibit 166? Which has already been admitted.

9 Q. I believe we saw this exhibit earlier today, Mr. Hubbuch,
10 but remind us who is the sender and recipient on this.

11 A. Email from Doug Vance to Dave Severson at Koch.

12 MR. ROSENBERG: And could we look at the attachment again
13 on page 2?

14 Q. Remind us what this was.

15 A. This was an alleged spec sheet from Nucor regarding some
16 type of carbon product.

17 Q. Had this spec sheet been requested by Mr. Severson?

18 A. Yes.

19 MR. ROSENBERG: Can we show 166A?

20 Q. And was this sent on the same date as 166?

21 A. Yes.

22 Q. Also to Mr. Severson?

23 A. Yes.

24 Q. Look at the attachment briefly.

25 A. Similarly, another spec sheet.

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1 MR. ROSENBERG: I would now like to show just to the
2 witness Government's Exhibit 148.

3 Q. Is that on your screen, sir?

4 A. It is.

5 Q. What type of document is this?

6 A. It's an email.

7 Q. Who are the parties on it?

8 A. Molly McKinnon using the ngicarbon account, and Doug
9 Vance, nexgen.industries account.

10 Q. Is Mr. Severson on this email?

11 A. No.

12 Q. Is anyone from Koch on this email?

13 A. No, just Doug and Molly.

14 Q. What is the date of it?

15 A. It is September 11th, 2018.

16 Q. Same date as the emails we just reviewed to Mr. Severson?

17 A. Yes.

18 Q. Is there a subject line?

19 A. Nucor specs.

20 Q. Nucor specs?

21 A. Yes.

22 MR. ROSENBERG: Your Honor, we would move to admit
23 Government's Exhibit 148.

24 THE COURT: Any objection?

25 MS. LEWIS: No objection.

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1 THE COURT: 148 is admitted.

2 (United States Exhibit 148 was admitted.)

3 BY MR. ROSENBERG:

4 Q. Does this email have attachments?

5 A. Yes.

6 Q. Can you just tell us some of the names of the attachments
7 that you see there?

8 A. Sure, ladle carbon 2.5, ladle carbon 3.

9 Q. And could you please read into the record this brief
10 email?

11 A. "The spec sheet you sent looks like it came from a seller
12 instead of a buyer, so I" can't -- "so I changed it up a
13 little. If you need me to make it exactly like that one, I
14 can. And if you need me to add or delete anything, let me
15 know. Also I used the logo that is on their website instead of
16 one in text."

17 Q. Please continue.

18 A. "Saved as Word doc and PDF. Mac."

19 Q. Have you seen the name or nickname Mac used?

20 A. In reference to Molly McKinnon, yes.

21 Q. So first, spec sheet, have you heard that term or --

22 A. It's a shortened version of specification sheet.

23 Q. How did Ms. McKinnon describe the spec sheet that came
24 from Mr. Vance?

25 A. She indicated it looked like it came from a seller instead

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1 of a buyer.

2 Q. So did she do something to address that?

3 A. So she changed it.

4 Q. What does she ask with respect to any edits to the
5 document?

6 A. Basically if you need me to add or delete anything, let me
7 know.

8 Q. If a Nucor spec sheet had actually come from Nucor, would
9 any of this discussion between Mr. Vance and Ms. McKinnon make
10 sense?

11 A. No.

12 MR. ROSENBERG: Go to the first page the spec sheet.

13 Q. What do you see here?

14 A. I see a Nucor, it's what appears to be a Nucor
15 specification sheet for ladle carbon 2.5.

16 MR. ROSENBERG: Ms. Poynter, if we could just page through
17 each page of the attachment?

18 A. Same, ladle carbon 3.0.

19 Q. Is there requested properties listed?

20 A. Yes.

21 Q. And requested packaging?

22 A. Yes.

23 MR. ROSENBERG: Ms. Poynter, if we could bring up side by
24 side Exhibit 148 and Exhibit 166A, I believe.

25 Q. So remind us, 166A, who received that spec, Nucor spec

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1 sheet?

2 A. Dave Severson.

3 Q. And that was on what date?

4 A. On September 11th, 2018.

5 Q. And the spec sheet on the left, when was that sent?

6 A. Same day.

7 Q. Go back to the ladle carbon 3.0. Do these appear to be
8 the same document?

9 A. They do, one appears to be maybe a PDF -- I mean, a
10 photograph of the one on the left.

11 Q. After Mr. Severson received this purported Nucor spec
12 sheet, what financial transaction took place?

13 A. Part of the justification for another loan, another
14 increase in their loan.

15 Q. Do you recall how much that was?

16 A. You would have to refresh my memory on which one this was.

17 Q. Sure.

18 A. I believe it was the 125, but you would have to show me
19 the actual.

20 MR. ROSENBERG: Can we go to Exhibit 301? I believe it's
21 page 27.

22 A. That's correct. It was for the last installment, which
23 was \$125,000.

24 Q. Now, you've been present throughout the testimony in this
25 case, correct?

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1 A. Yes.

2 Q. And do you recall a number of questions being put to
3 Mr. Chamblee about threats that he made or involvement in
4 fabricating documents?

5 A. Yes.

6 Q. I want you to think back to your conversation with Doug
7 Vance in December of 2018. Was Mr. Chamblee brought up at
8 various points in that interview?

9 A. Yes.

10 Q. What did -- what did Doug Vance tell you about
11 Mr. Chamblee making threats to Molly McKinnon?

12 A. Nothing. He just referred to -- didn't make any comments
13 on that.

14 Q. What did Mr. Vance tell you about Mr. Chamblee's
15 involvement in Ms. McKinnon's house burning down?

16 A. Nothing.

17 Q. What did he tell you about Mr. Chamblee's involvement in
18 fabricating bank statements?

19 A. Nothing.

20 Q. What did he tell you about his involvement in fabricating
21 sales reports?

22 A. Nothing.

23 Q. Did you have a fairly lengthy conversation with Mr. Vance?

24 A. Not incredibly long, somewhere around 30 minutes.

25 Q. But that wasn't the only time the two of you spoke, right?

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1 A. No, I also talked to him in person prior to that at the
2 Trus Joist facility.

3 Q. When you were there at the Trus Joist facility, did he
4 bring up anything about Mr. Chamblee making threats or
5 committing act of violence?

6 A. No.

7 Q. Anything about Mr. Chamblee being involved in fabricating
8 bank statements or other documents?

9 A. No.

10 Q. You visited that Nex-Gen site, correct?

11 A. I have.

12 Q. What sort of operation did you see going on there?

13 A. Minimal at best. I believe when I first went there for my
14 first discussion with Mr. Vance, there appeared to be one -- I
15 didn't -- I don't think -- I don't recall if I coordinated that
16 with him in advance or not. But there appeared to be one of
17 the rotating kilns, and maybe another one, I don't know if they
18 were working on it or what, but it was a minimal operation.

19 Q. Did you see much in the way of finished product?

20 A. I saw a couple of piles of different things inside that --
21 the warehouse where they were operating. But otherwise, no.

22 Q. Did you see any trucks being filled up to load product
23 out?

24 A. No.

25 Q. Any railcars or tractor-trailers being brought in to take

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1 product out?

2 A. No.

3 THE COURT: We about at a good place to break for the
4 evening, Mr. Rosenberg?

5 MR. ROSENBERG: Thank you, Your Honor.

6 THE COURT: Ladies and gentlemen, we will resume on
7 Tuesday. Keep in mind, if you come in on Monday, we won't be
8 here.

9 So you can put this case out of your mind. And please
10 keep in mind all of the admonitions that you have been given
11 about this matter. Don't read, watch or listen to any accounts
12 of this case, don't discuss the matter with anyone. Don't
13 visit any of the sites or locations or do any type of research.
14 Don't communicate your position as a juror or anything about
15 the case on any forms of social media. And, of course, don't
16 make up your mind about the case until it is finally submitted
17 to you.

18 Does anyone need to go back into the jury room? All
19 right. We will see you at 9:00 on Tuesday morning. You all
20 have a good weekend.

21 (Jury left courtroom at 4:30 p.m.)

22 THE COURT: Thank you. Please be seated just a moment.

23 Let's see where we stand on our schedule, Mr. Rosenberg or
24 Mr. Chapman, either.

25 MR. CHAPMAN: I missed the question, Your Honor.

1 THE COURT: Just checking on our schedule to see where we
2 stood to try to figure out the calendar for next week.

3 MR. ROSENBERG: I would anticipate no more than another
4 hour on direct.

5 THE COURT: All right.

6 MR. ROSENBERG: Maybe I should say 90 minutes just in
7 case, but I do endeavor to narrow things down over the weekend.

8 THE COURT: Very well. And with cross-examination, we
9 should be able to complete the testimony of this witness and
10 proceed with any proof that the defendants wish to offer.

11 At this time, without holding you to it, are you able to
12 estimate the time for completion of your proof?

13 MR. DARLING: The one area of proof that we may introduce
14 is Mr. Vance if he testifies.

15 THE COURT: Yes, sir.

16 MR. DARLING: If he does, I would say that that would
17 take, on direct, at least two or three hours.

18 THE COURT: All right. So half a day, perhaps, with
19 cross? All right.

20 Ms. Lewis?

21 MS. LEWIS: I would expect the same of Ms. McKinnon, if
22 she testifies, Your Honor.

23 THE COURT: All right. All right. Thank you.

24 Any other issues to take up before we recess? I do have a
25 matter at 4:30, and so we'll need to make sure we have the

1 tables cleared off of all the exhibits before that time.

2 Nothing else? This case will be in recess until Tuesday
3 at 9:00 a.m.

4 (Proceedings adjourned at 4:33 p.m.)

5

6 C E R T I F I C A T E

7 I, Linda S. Mullen, RDR, CRR, do hereby certify that
8 the foregoing is a correct transcript from the record of
9 proceedings in this above-entitled matter.

10 /s/Linda S. Mullen April 20, 2023
11 Linda S. Mullen, RDR, CRR Date of Certification
12 Official Court Reporter

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