

CONFIDENTIAL

Subject to the Nondisclosure Provisions of H. Res. 895 of the 110th Congress as Amended

OFFICE OF CONGRESSIONAL ETHICS
UNITED STATES HOUSE OF REPRESENTATIVES

REPORT

Review No. 21-9221

The Board of the Office of Congressional Ethics (hereafter “the Board”), by a vote of no less than four members, on July 16, 2021, adopted the following report and ordered it to be transmitted to the Committee on Ethics of the United States House of Representatives (hereafter “the Committee”).

SUBJECT: Representative Mike Kelly

NATURE OF THE ALLEGED VIOLATION: Rep. Mike Kelly’s wife purchased stock in Cleveland-Cliffs Inc. on April 29, 2020. If this stock purchase was based upon confidential or material nonpublic information that Rep. Kelly learned during his official job duties, then Rep. Kelly may have violated House rules, standards of conduct, and federal law.

RECOMMENDATION: The Board recommends that the Committee further review the above allegation concerning Rep. Kelly because there is substantial reason to believe that this April 29, 2020 stock purchase was based upon confidential information that Rep. Kelly learned during his official job duties.

VOTES IN THE AFFIRMATIVE: 6

VOTES IN THE NEGATIVE: 0

ABSTENTIONS: 0

MEMBER OF THE BOARD OR STAFF DESIGNATED TO PRESENT THIS REPORT TO THE COMMITTEE: Omar S. Ashmawy, Staff Director & Chief Counsel.

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FINDINGS OF FACT AND CITATIONS TO LAW

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OFFICE OF CONGRESSIONAL ETHICS
UNITED STATES HOUSE OF REPRESENTATIVES

FINDINGS OF FACT AND CITATIONS TO LAW

Review No. 21-9221

On July 16, 2021, the Board of the Office of Congressional Ethics (hereafter “the Board”) adopted the following findings of fact and accompanying citations to law, regulations, rules, and standards of conduct (*in italics*). The Board notes that these findings do not constitute a determination of whether or not a violation actually occurred.

I. INTRODUCTION

A. Summary of Allegations

1. Rep. Mike Kelly’s wife purchased stock in Cleveland-Cliffs Inc. on April 29, 2020. If this stock purchase was based upon confidential or material nonpublic information that Rep. Kelly learned during his official job duties, then Rep. Kelly may have violated House rules, standards of conduct, and federal law.
2. The Board recommends that the Committee on Ethics of the United States House of Representatives (“Committee”) further review the above allegation concerning Rep. Kelly because there is substantial reason to believe that this April 29, 2020 stock purchase was based upon confidential information that Rep. Kelly learned during his official job duties.

B. Jurisdictional Statement

3. The allegations that were the subject of this review concern Rep. Mike Kelly, a Member of the United States House of Representatives from the 16th District of Pennsylvania. The Resolution the United States House of Representatives adopted creating the Office of Congressional Ethics (“OCE”) directs that, “[n]o review shall be undertaken ... by the [B]oard of any alleged violation that occurred before the date of adoption of this resolution.”¹ The House adopted this Resolution on March 11, 2008. Because the conduct under review occurred after March 11, 2008, review by the Board is in accordance with the Resolution.

C. Procedural History

4. The OCE received a written request for preliminary review in this matter signed by at least two members of the Board on March 8, 2021. The preliminary review commenced on March 9, 2021.²
5. On March 9, 2021, the OCE notified Rep. Kelly of the initiation of the preliminary review, provided him with a statement of the nature of the review, notified him of his right to be

¹ H. Res. 895 of the 110th Congress § 1(e) (2008) (as amended) (hereafter “the Resolution”).

² A preliminary review is “requested” in writing by members of the Board of the OCE. The request for a preliminary review is received by the OCE on a date certain. According to the Resolution, the timeframe for conducting a preliminary review is 30 days from the date of receipt of the Board’s request.

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6. At least three members of the Board voted to initiate a second-phase review in this matter on April 7, 2021. The second-phase review commenced on April 8, 2021.⁴ The second-phase review was scheduled to end on May 22, 2021.
7. On April 7, 2021, the OCE notified Rep. Kelly of the initiation of the second-phase review in this matter, and again notified him of his right to be represented by counsel in this matter, and that invoking that right would not be held negatively against him.⁵
8. The Board voted to extend the second-phase review by an additional period of fourteen days on May 7, 2021. The additional period ended on June 5, 2021.
9. The Board voted to refer the matter to the Committee for further review and adopted these findings on July 16, 2021.
10. The report and its findings in this matter were transmitted to the Committee on July 23, 2021.

D. Summary of Investigative Activity

11. The OCE requested documentary and in some cases testimonial information from the following sources:
 - (1) Rep. Mike Kelly;
 - (2) Victoria Kelly, Rep. Kelly's wife;
 - (3) Matt Stroia, Rep. Kelly's Chief of Staff;
 - (4) Witness 1, a Rep. Kelly employee with knowledge;
 - (5) Witness 2, a Rep. Kelly employee with knowledge;
 - (6) Witness 3, Former Acting Assistant Secretary for Legislative and Intergovernmental Affairs, U.S. Department of Commerce;
 - (7) Cleveland-Cliffs Inc.;
 - (8) AK Steel Corporation;
 - (9) Witness 4, Vice President, Government Relations, Cleveland-Cliffs;
 - (10) Witness 5, Corporate Manager of Government & Public Relations, AK Steel;
 - (11) The U.S. Department of Commerce; and
 - (12) Former U.S. Secretary of Commerce Wilbur Ross.
12. The following individuals and entities refused to cooperate with the OCE's review:
 - (1) Rep. Mike Kelly;

³ Letter from Omar S. Ashmawy, Chief Counsel and Staff Dir., Office of Cong. Ethics, to Rep. Mike Kelly (March 9, 2021).

⁴ According to the Resolution, the Board must vote (as opposed to make a written authorization) on whether to conduct a second-phase review in a matter before the expiration of the 30-day preliminary review. If the Board votes for a second phase, the second phase commences the day after the preliminary review ends.

⁵ Letter from Omar S. Ashmawy, Chief Counsel and Staff Dir., Office of Cong. Ethics, to Rep. Mike Kelly (April 7, 2021).

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- (2) Victoria Kelly;
- (3) Matt Stroia; and
- (4) Wilbur Ross.

II. REP. MIKE KELLY’S WIFE MAY HAVE PURCHASED CLEVELAND-CLIFFS STOCK BASED UPON CONFIDENTIAL INFORMATION REP. KELLY LEARNED IN THE COURSE OF HIS OFFICIAL DUTIES

A. Applicable Law, Rules, and Standards of Conduct

13. Code of Ethics of Government Service

*“Any person in Government service should: . . . (8) Never use any information coming to him confidentially in the performance of governmental duties as a means for making private profit.”*⁶

14. House Rules

Pursuant to House Rule 23, cl.1: “A Member, Delegate, Resident Commissioner, officer, or employee of the House shall behave at all times in a manner that shall reflect creditably on the House.”

Pursuant to House Rule 23, cl.2: “A Member, Delegate, Resident Commissioner, officer, or employee of the House shall adhere to the spirit and the letter of the Rules of the House and to the rules of duly constituted committees thereof.”

Pursuant to House Rule 23, cl. 3: “A Member, Delegate, Resident Commissioner, officer, or employee of the House may not receive compensation and may not permit compensation to accrue to the beneficial interest of such individual from any source, the receipt of which would occur by virtue of influence improperly exerted from the position of such individual in Congress.”

15. House Ethics Manual

*The House Ethics Manual opens by broadly stating that “Members, officers, and employees of the House should: [c]onduct themselves at all times in a manner that reflects creditably on the House; [a]bide by the spirit as well as the letter of the House rules; and [a]dhere to the broad ethical standards expressed in the Code of Ethics for Government Service. They should not in any way use their office for private gain.”*⁷ *The Manual reiterates on several occasions the prohibition against using an official position to secure private gain.*⁸

⁶ Code of Ethics for Government Service, ¶ 8, H. Cong. Res. 175, 72 Stat., Part 2, B12 (1958).

⁷ House Ethics Manual (2008) at 1.

⁸ See e.g., *id.* at 186 (“It is fundamental that a Member, officer, or employee of the House may not use his or her official position for personal gain”), 187 (quoting ¶ 8 of the Code of Ethics of Government Service), 247 (“[A]ll Members, officers, and employees are prohibited from improperly using their official positions for personal gain”).

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The Manual further states: “The Code of Ethics for Government Service was adopted as a concurrent resolution expressing the ‘sense of Congress’ rather than as a statute. [The Committee] has concluded, however, that the ethical precepts set forth in this code ‘represent continuing traditional standards of ethical conduct to be observed by Members of the House at all times.’”⁹ Additionally, the Manual explains the Code of Ethics for Government Service “not only state[s] aspirational goals for public officials, but violations of provisions contained therein may also provide the basis for disciplinary action in accordance with House rules.”¹⁰

16. House Committee on Ethics Guidance

In a 2011 memorandum regarding personal financial transactions, the Committee stated the following: “The House Code of Official Conduct prohibits employees from receiving compensation ‘by virtue of influence improperly exerted’ from a congressional position. The Code of Ethics for Government Service, which was adopted by the 85th Congress in 1958, states that no one in government service shall use ‘information coming to him confidentiality in the performance of government duties as a means for making private profit.’ The Code of Ethics for Government Service was adopted by the House as a concurrent resolution and this Committee concluded that the ethical standards set forth in the code ‘represent continuing traditional standards of ethical conduct to be observed by Members of the House at all times.’ Therefore, the Committee’s guidance has been that House rules prohibit Members and employees from entering into personal financial transactions to take advantage of any confidential information obtained through performing their official government duties.”¹¹

⁹ *Id.* at 20 (citations omitted).

¹⁰ *Id.* at 3.

¹¹ House Committee on Ethics, Press Release, *Rules Regarding Personal Financial Transactions* at 2 (Nov. 29, 2011) (citations omitted). In 2012, after the Committee issued the above guidance, Congress passed the Stop Trading on Congressional Knowledge Act of 2012 or “STOCK Act,” Pub. L. No. 112-105, 126 Stat. 291 (2012), which set forth the following:

Section 3: Prohibition of the Use of Nonpublic Information for Private Profit

The Select Committee on Ethics of the Senate and the Committee on Ethics of the House of Representatives shall issue interpretive guidance of the relevant rules of each chamber, including rules on conflicts of interest and gifts, clarifying that a Member of Congress and an employee of Congress may not use *nonpublic information* derived from such person’s position as a Member of Congress or employee of Congress or gained from the performance of such person’s official responsibilities as a means for making a private profit.

STOCK Act, Pub. L. No. 112-105, 126 Stat. 291 (2012) (emphasis added). The Committee issued further interpretive guidance in the wake of this directive and focused on misuse of *material* nonpublic information. In an April 4, 2012 pink sheet, the Committee incorporated its previous guidance from November 2011 regarding nonpublic information, but also more clearly delineated how the use of material nonpublic information by Members and congressional staff can qualify as insider trading under Section 10(b) of the Securities and Exchange Act of 1934 and Rule 10b-5. House Committee on Ethics, Press Release, *New Ethics Requirements Resulting from the STOCK Act* (April 4, 2012). As discussed below, because the OCE did not conclude that the nonpublic information at issue in this case was necessarily material, the OCE did not consider this case under the STOCK Act or other federal insider trading theories. *See infra* n.119. Instead, the OCE considered whether the use of confidential nonpublic information could violate House rules and standards of conduct articulated above, consistent with the

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B. Rep. Mike Kelly’s Wife May Have Purchased Cleveland-Cliffs Stock Based Upon Confidential Information Rep. Kelly Learned in the Course of His Official Duties

17. Rep. Mike Kelly was raised in Butler, Pennsylvania, currently resides there with his wife, Victoria Kelly, and represents the citizens of Butler in Congress.¹² Butler is home to the Butler Works, an AK Steel-owned steel plant which employs approximately 1,400 individuals from Rep. Kelly’s congressional district and is an integral part of the Butler economy.¹³
18. AK Steel is the only remaining domestic producer of grain oriented electrical steel (“GOES”), a type of steel used in U.S. power grid transformers.¹⁴ Because GOES is an essential component of the U.S. power grid, the ability to domestically produce GOES has national security implications.¹⁵
19. AK Steel produces GOES at the Butler Works facility and at one other plant in Zanesville, Ohio, which is located in Rep. Troy Balderson’s congressional district.¹⁶ In early 2020, in anticipation of its pending acquisition of AK Steel, Cleveland-Cliffs Inc. (“Cleveland-Cliffs”) threatened to close AK Steel’s Butler, Pennsylvania and Zanesville, Ohio plants unless the U.S. government intervened and either extended existing Section 232 steel tariff protections to transformer lamination and cores – GOES-based steel products used in power grid transformers¹⁷ – or instituted standalone Section 232 tariffs for GOES products used in the transformer supply chain.¹⁸

Committee’s November 2011 guidance and other rules prohibiting Members from using their official positions to try and secure personal gain.

¹² See Rep. Mike Kelly, *Full Biography*, <https://kelly.house.gov/about-me/full-biography> (last visited July 20, 2021).

¹³ See AK Steel, *Butler Works*, <https://www.aksteel.com/about-us/locations/ak-steel/butler-works> (last visited July 20, 2021); Letter from Butler Board of Commissioners to President Donald Trump (March 9, 2020) (Exhibit 1 at 21-9221_0002-03); Transcript of Interview of Witness 1 (“Witness 1 Transcript”), May 20, 2021 (Exhibit 2 at 21-9221_0011-12); Letter from Lourenco Goncalves, Cleveland-Cliffs CEO to Sec. of Commerce Wilbur Ross (Jan. 15, 2020) (Exhibit 3 at 21-9221_0077-78).

¹⁴ See e.g., AK Steel, *Our Products, Electrical Steel: Grain Oriented*, <https://www.aksteel.com/our-products/electrical-steel/grain-oriented-electrical-steels> (last visited July 20, 2021); Letter from Lourenco Goncalves, Cleveland-Cliffs CEO to Sec. of Commerce Wilbur Ross (Jan. 15, 2020) (Exhibit 3 at 21-9221_0077-78); Letter from Reps. Kelly & Balderson to President Trump (March 6, 2020) (Exhibit 4 at 21-9221_0080-81).

¹⁵ See e.g., Press Release, Rep. Mike Kelly, *Rep. Kelly Welcomes Local Steel Company to Congressional Hearing on Tariffs* (April 13, 2018); Press Release, Rep. Mike Kelly, *Kelly, Kaptur, and Balderson Lead Bipartisan Group of Lawmakers Urging President Trump to Preserve American Electrical Steel Industry* (April 15, 2020); Letter from Lourenco Goncalves, Cleveland-Cliffs CEO to Sec. of Commerce Wilbur Ross (Jan. 15, 2020) (Exhibit 3 at 21-9221_0077-78).

¹⁶ Letter from Lourenco Goncalves, Cleveland-Cliffs CEO to Sec. of Commerce Wilbur Ross (Jan. 15, 2020) (Exhibit 3 at 21-9221_0077-78); AK Steel, *Butler Works*, <https://www.aksteel.com/about-us/locations/ak-steel/butler-works> (last visited July 20, 2021); AK Steel, *Steel Production in Zanesville, Ohio* <https://www.aksteel.com/about-us/locations/ak-steel/zanesville-works> (last visited July 20, 2021); Letter from Reps. Kelly & Balderson to President Trump (March 6, 2020) (Exhibit 4 at 21-9221_0080-81); see also *New owner of AK Steel Warns lawmakers that without stiffer tariffs plants could close*, BUTLER EAGLE (March 6, 2020).

¹⁷ Simply put, laminations and cores are GOES that have been cut or shaped, *i.e.*, slightly altered, for use in electrical transformers.

¹⁸ Letter from Lourenco Goncalves, Cleveland-Cliffs CEO to Sec. of Commerce Wilbur Ross (Jan. 15, 2020) (Exhibit 3 at 21-9221_0077-78); Excerpt of March 5, 2020 Steel Caucus Hearing (Exhibit 5 at 21-9221_0083-85);

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20. Section 232 of the Trade Expansion Act of 1962 allows the President of the United States “to impose restrictions on certain imports based on an affirmative determination by the Department of Commerce . . . that the product(s) under investigation ‘is being imported into the United States in such quantities or under such circumstances as to threaten to impair the national security.’”¹⁹ In 2018, the Trump administration enacted 25% tariffs on certain steel imports under Section 232.²⁰ The administration expanded those tariffs to certain derivative steel products in January 2020, but not GOES-based derivative products (including transformer laminations and cores).²¹
21. According to Cleveland-Cliffs’ CEO, without government intervention in the form of additional Section 232 tariffs, the Butler and Zanesville plants would remain unprofitable and need to be shuttered.²² In support of its request for additional GOES-focused Section 232 tariff protections, Cleveland-Cliffs argued that preserving electrical steel production capabilities in the U.S. should be an imperative for the federal government if it wanted to maintain the security and integrity of its electrical grid.²³ According to Cleveland-Cliffs, the additional tariff protections were required because U.S.-based transformer manufacturers had been buying cheap GOES from foreign countries, importing it into Canada and Mexico, and then slightly altering it in those countries – into laminations and cores – before importing it into the United States.²⁴ By doing this, these transformer manufacturers avoided purchasing more expensive electrical steel in the U.S. and circumvented the Section 232 steel tariffs.²⁵ In short, Cleveland-Cliffs argued that transformer manufactures exploited a loophole in the Section 232 steel tariffs in order to secure transformer lamination and cores made of cheaply produced foreign GOES.²⁶ Cleveland-Cliffs argued this was especially problematic since

Daniel Moore, *Steel CEO to Trump administration: Tariffs ‘loophole’ threatens Butler plant*, PITTSBURGH POST-GAZETTE (Sept. 12, 2020) (“Lourenco Goncalves, chairman and CEO of Cleveland-Cliffs Inc., said in an interview he would ‘shut that plant down,’ doubling down on a ‘promise’ he made last week before a Congressional panel to cut those jobs should U.S. officials not act swiftly to stem the flow of [GOES] imports.”).

¹⁹ See CRS Report, *Section 232 Investigations: Overview and Issues for Congress* (May 18, 2021) (citing 19 U.S.C. §1862(b)(3)(A)).

²⁰ *Id.* at 6-8.

²¹ *Id.* at 6-8, 21; see also Press Release, Mayer Brown, *Commerce Department Announces Sec. 232 Investigation into Imports of Key Electrical Transformer Components* (May 6, 2020).

²² Excerpt of March 5, 2020 Steel Caucus Hearing (Exhibit 5 at 21-9221_0083-85); see also Letter from Lourenco Goncalves, Cleveland-Cliffs CEO to Sec. of Commerce Wilbur Ross (Jan. 15, 2020) (Exhibit 3 at 21-9221_0077-78); Excerpt of March 5, 2020 Steel Caucus Hearing (Exhibit 5 at 21-9221_0083-85); Moore, *supra* n.18.

²³ See e.g., Letter from Lourenco Goncalves, Cleveland-Cliffs CEO to Sec. of Commerce Wilbur Ross (Jan. 15, 2020) (Exhibit 3 at 21-9221_0077-78).

²⁴ See e.g., Letter from Lourenco Goncalves, Cleveland-Cliffs CEO to Sec. of Commerce Wilbur Ross (Jan. 15, 2020) (Exhibit 3 at 21-9221_0077-78); see also Excerpt of March 5, 2020 Steel Caucus Hearing (Exhibit 5 at 21-9221_0083-85).

²⁵ Letter from Lourenco Goncalves, Cleveland-Cliffs CEO to Sec. of Commerce Wilbur Ross (Jan. 15, 2020) (Exhibit 3 at 21-9221_0077-78); see also Excerpt of March 5, 2020 Steel Caucus Hearing (Exhibit 5 at 21-9221_0083-85).

²⁶ Letter from Lourenco Goncalves, Cleveland-Cliffs CEO to Sec. of Commerce Wilbur Ross (Jan. 15, 2020) (Exhibit 3 at 21-9221_0077-78); see also Excerpt of March 5, 2020 Steel Caucus Hearing (Exhibit 5 at 21-9221_0083-85); Moore, *supra* n.18; Scott Suttell, *CEO of Cleveland-Cliffs wants tariff fix. Fast*, CRAIN’S CLEVELAND BUSINESS (March 6, 2020).

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part of the justification for the Section 232 steel tariffs originally enacted in 2018 was concern for the domestic electrical steel market.²⁷

22. In the wake of Cleveland-Cliffs' threat to shutter its electrical steel operations in Butler, Pennsylvania and Zanesville, Ohio, numerous Members of the Pennsylvania and Ohio House and Senate delegations – including Rep. Kelly – actively lobbied the Trump administration to take action on Cleveland-Cliffs' behalf.²⁸ Likewise, Cleveland-Cliffs urgently lobbied the Trump administration for Section 232 relief.²⁹ These lobbying efforts culminated in April 2020, just as the COVID-19 pandemic took hold in the U.S. and began consuming much of the federal government's attention.³⁰
23. On April 28, 2020, the Department of Commerce agreed to take action in support of AK Steel.³¹ On that day, Secretary of Commerce Wilbur Ross called Cleveland-Cliffs CEO and advised him that the Department of Commerce intended to announce publicly in the near future that the Department would be self-initiating a new Section 232 investigation covering transformer laminations and cores.³² Cleveland-Cliffs, as owner of the last remaining domestic producer of GOES (AK Steel), could potentially benefit from the results of the investigation. Given Commerce's decision, Cleveland-Cliffs opted not to close the Butler and Zanesville plants.³³
24. Rep. Kelly's staff was apprised of these developments on April 28, 2020 by both Cleveland-Cliffs and a senior Commerce Department official.³⁴
25. The day after Rep. Kelly's office learned about these developments, Victoria Kelly purchased between \$15,001 and \$50,000 of stock in Cleveland-Cliffs.³⁵ As discussed in more detail below, the timing of this stock purchase suggests that it may have been made based on nonpublic information that Victoria Kelly learned from her husband, Rep. Mike Kelly – specifically, that the Department of Commerce intended to initiate the Section 232 investigation in support of AK Steel's electrical steel business and Cleveland-Cliffs' decided

²⁷ Letter from Lourenco Goncalves, Cleveland-Cliffs CEO to Sec. of Commerce Wilbur Ross (Jan. 15, 2020) (Exhibit 3 at 21-9221_0077-78). For additional discussion of the tariff issues at stake for Cleveland Cliffs, see e.g., Press Release, Rep. Mike Kelly, *Rep. Kelly Commends Department of Commerce for Opening 232 Investigation on Imported Electrical Steel Components* (May 4, 2020); Letter from Reps. Kelly & Balderson to President Trump (March 6, 2020) (Exhibit 4 at 21-9221_0080-81); Rep. Kelly AK Steel Constituent Letter (Exhibit 6 at 21-9221_0087-89); Moore, *supra* n.18; Suttell, *supra* n.26; *New owner of AK Steel Warns lawmakers that without stiffer tariffs plants could close*, BUTLER EAGLE (March 6, 2020); CRS Report, *Section 232 Investigations: Overview and Issues for Congress* (May 18, 2021).

²⁸ As Witness 3 told the OCE, numerous members of the Pennsylvania and Ohio delegations were contacting the Department of Commerce on Cleveland-Cliffs' behalf and arguing for Section 232 protections. Transcript of Interview of Witness 3 ("Witness 3 Transcript"), May 27, 2021 (Exhibit 7 at 21-9221_0105, 111, 133). With specific respect to Rep. Kelly's efforts, see *infra*.

²⁹ See *infra* Section II.B.i-ii.

³⁰ See Witness 3 Transcript (Exhibit 7 at 21-9221_0118).

³¹ See *infra* Section II.B.ii.

³² *Id.*

³³ *Id.*

³⁴ *Id.*

³⁵ See Rep. Mike Kelly Periodic Transaction Report (May 15, 2020).

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not to close its electrical steel operations in Pennsylvania and Ohio in the wake of this
decision.

26. Rep. Kelly and his wife refused to cooperate with this review. Accordingly, the OCE could not interview them about the extent to which they were aware of and decided to trade on nonpublic information. They also refused to produce documents requested by the OCE.³⁶
27. The OCE did secure cooperation and documents from various third parties with information concerning Victoria Kelly's stock purchase and the Department of Commerce's decision to assist Cleveland-Cliffs' subsidiary through a self-initiated Section 232 investigation. Below is a timeline of events leading up to Victoria Kelly's purchase of Cleveland-Cliffs' stock and a discussion regarding the anomalous nature of her April 29, 2020 trade.

i. Cleveland-Cliffs Publicly Seeks Section 232 Assistance for AK Steel

28. Founded in 1847, Cleveland-Cliffs describes itself as “the largest and oldest independent iron ore mining company in the United States.”³⁷ On December 3, 2019, in an effort to vertically integrate its business, Cleveland-Cliffs announced a definitive merger agreement with AK Steel, in which AK Steel would become a direct, wholly-owned subsidiary of Cleveland-Cliffs, but would retain its branding and corporate identity.³⁸ Soon after this announcement, Cleveland-Cliffs began lobbying the Trump administration to enact tariff protections for AK Steel's GOES products.³⁹
29. For example, on January 15, 2020, Witness 4, Cleveland-Cliffs' then-Senior Director of Government Relations, sent an email to the Department of Commerce's Assistant Secretary for Industry and Analysis, Nazak Nikakhtar.⁴⁰ In that email, Witness 4 attached a letter from Cleveland-Cliffs' CEO Lourenco Goncalves to Secretary Ross regarding “the challenges confronting the Grain Oriented Electrical Steel (GOES) market.”⁴¹

³⁶ The OCE was initially told by Rep. Kelly's lawyers to expect cooperation and the production of requested materials. It appears that Rep. Kelly's staff was asked to collect documents in response to the OCE's Request for Information, which they did, *see* Witness 1 Transcript (Exhibit 2 at 21-9221_0063); however, Rep. Kelly opted not to produce those materials to the OCE.

³⁷ Cleveland-Cliffs, *About Us*, <http://www.clevelandcliffs.com/English/about-us/default.aspx> (last visited July 20, 2021).

³⁸ Press Release, AK Steel, *Cleveland-Cliffs to Acquire AK Steel* (Dec. 3, 2019). The acquisition would not be finalized until March 13, 2020. *See* Acquisition Announcement (Exhibit 8 at 21-9221_0154).

³⁹ Below are some prominent actions taken by Cleveland-Cliffs on these issues, but this is not an exhaustive recitation of Cleveland-Cliffs' lobbying efforts on the issue of GOES.

⁴⁰ January 15, 2020 – April 22, 2020 Emails between Witness 4, Nazak Nikakhtar, Talat Goudarzi, and Mikell Hay (Exhibit 9 at 21-9221_0163-64). As Assistant Secretary for Industry and Analysis, Ms. Nikakhtar served as the “Department's primary liaison with U.S. industry and trade associations to help address industry concerns and support American competitiveness.” Department of Commerce, *Leadership - Nazak Nikakhtar*, <https://www.commerce.gov/about/leadership/nazak-nikakhtar> (last visited July 20, 2021).

⁴¹ January 15, 2020 – April 22, 2020 Emails between Witness 4, Nazak Nikakhtar, Talat Goudarzi, and Mikell Hay (Exhibit 9 at 21-9221_0163-64); Letter from Lourenco Goncalves, Cleveland-Cliffs' CEO to Sec. of Commerce Wilbur Ross (Jan. 15, 2020) (Exhibit 3 at 21-9221_0077-78). In the email, Witness 4 explained that “addressing the trade challenges facing electrical steel must be a top priority” for Cleveland-Cliffs given its acquisition of AK Steel. January 15, 2020 – April 22, 2020 Emails between Witness 4, Nazak Nikakhtar, Talat Goudarzi, and Mikell Hay (Exhibit 9 at 21-9221_0163-64).

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30. In the letter, Goncalves: 1) explained that AK Steel is the last remaining U.S. producer of GOES; 2) argued that “preserving this industry within the United States must be an imperative for the federal government” given “the importance of maintaining the security and integrity of our electrical grid”; and 3) detailed the manner in which certain GOES products – namely transformer lamination and cores – are being imported through Canada and Mexico in a manner that circumvents the Section 232 steel tariffs enacted by the Trump administration in 2018.⁴² Goncalves concluded the letter by requesting:

[Secretary Ross’] support of a standalone Section 232 on the transformer supply chain or a supplemental Section 232 (under the existing steel tariff structure) covering transformer laminations and cores. ... Please be assured that Cleveland-Cliffs is committed to the success of the AK Steel acquisition irrespective of what becomes of its electrical steel division. However, for the sake of U.S. national security and the fate of roughly 1,500 direct jobs in Pennsylvania and Ohio, I urge your support for action to address this blatant tariff circumvention as soon as possible. I hope to meet with you very soon to discuss the future of electrical steel production in the United States. Thank you for your consideration of this most important matter.⁴³

31. Goncalves did meet with Secretary Ross to discuss these issues further. On February 19, 2020, Goncalves, Witness 4, and Witness 5 (AK Steel’s Corporate Manager of Government & Public Relations), traveled to Washington, DC and personally lobbied Secretary Ross regarding the issues raised in Goncalves’ January 15, 2020 letter.⁴⁴

32. Goncalves continued to press these circumvention concerns following his in-person meeting with Secretary Ross. At a public congressional steel caucus hearing held in Washington, DC on March 5, 2020, Rep. Kelly asked Goncalves to testify about “the danger we have of losing our ability to make grain oriented electrical steel in the United States.”⁴⁵ In response to Rep. Kelly’s invitation to speak, Goncalves told lawmakers that he would be closing down AK Steel’s GOES producing plants in Butler, Pennsylvania and Zanesville, Ohio, unless the federal government addressed GOES tariff circumvention.⁴⁶ Specifically, Goncalves said:

⁴² Letter from Lourenco Goncalves, Cleveland-Cliffs CEO to Sec. of Commerce Wilbur Ross (Jan. 15, 2020) (Exhibit 3 at 21-9221_0077-78).

⁴³ *Id.*

⁴⁴ January 15, 2020 – April 22, 2020 Emails between Witness 4, Nazak Nikakhtar, Talat Goudarzi, and Mikell Hay (Exhibit 9 at 21-9221_0158-64). Emails indicate Goncalves, Witness 4, and Witness 5 all planned to attend the February 19, 2020 meeting with Secretary Ross. *Id.* While Witness 4 and Witness 5’s attendance was not definitive, the OCE gathered no evidence suggesting they did not attend, and both Witness 4 and Witness 5 remained on emails with the Department of Commerce during the day of the visit. *Id.*

⁴⁵ Excerpt from March 5, 2020 Steel Caucus Hearing (Exhibit 5 at 21-9221_0083-85). Before providing Goncalves with the opportunity to speak, Rep. Kelly described AK Steel’s electrical steel business as being in “a death situation right now.” *Id.*

⁴⁶ *Id.*

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“I’m talking [1,400]⁴⁷ jobs in Butler, PA and 100 jobs in Zanesville, Ohio that will be gone. I promise they will be gone if I don’t get help.”⁴⁸

33. The following week, Goncalves personally addressed his concerns with Joseph Semsar, the Department of Commerce’s Undersecretary for International Affairs.⁴⁹ Goncalves also publicly reiterated his plans to shutter AK Steel’s electrical steel business – including the Butler Works.⁵⁰ These closures would have resulted in almost 13% of the companies’ combined workforce being terminated.⁵¹
34. The possibility of closing the Butler Works plant was significant to the Butler community and Rep. Kelly. As the Butler Board of Commissioners explained in a March 9, 2020 letter to President Trump, “the loss of this plant would be devastating to the Butler County economy.”⁵² Witness 1, a Rep. Kelly employee working on Cleveland-Cliffs matters, similarly described the potential plant closure as a “huge issue” for Rep. Kelly’s congressional office given the “incredibly important” role that the plant plays in the Butler community.⁵³ According to Witness 1, the potential plant closure was one of the most pressing issues for the congressional office in 2020.⁵⁴
35. As discussed more fully below, as the close of the Butler Works plant became more imminent, Rep. Kelly’s office began more actively assisting Cleveland-Cliffs with its efforts to secure Section 232 relief from the Trump administration.⁵⁵

⁴⁷ *Id.* During his testimony, Goncalves said that the plant closure in Butler would affect 1,500 jobs, but other evidence collected by the OCE indicates that 1,400 jobs would have been lost in Butler, PA and 100 jobs in Zanesville, OH. *See e.g.*, Letter from Lourenco Goncalves, Cleveland-Cliffs CEO to Sec. of Commerce Wilbur Ross (Jan. 15, 2020) (Exhibit 3 at 21-9221_0077-78); Letter from Rep. Kelly (and other Members) to President Trump (April 15, 2020) (Exhibit 11 at 21-9221_0169-71). Accordingly, the OCE altered the text of the quote above for accuracy and consistency.

⁴⁸ Excerpt of March 5, 2020 Steel Caucus Hearing (Exhibit 5 at 21-9221_0083-85).

⁴⁹ *See Moore, supra* n.18.

⁵⁰ *Id.*

⁵¹ In his January 15, 2020 Letter to Sec. Ross, Goncalves says the combined workforce of AK Steel and Cleveland-Cliffs after the acquisition would be approximately 11,700 employees. Letter from Lourenco Goncalves, Cleveland-Cliffs CEO to Sec. of Commerce Wilbur Ross (Jan. 15, 2020) (Exhibit 3 at 21-9221_0077-78). A layoff of 1,500 individuals of the combined workforce of 11,700 employees is 12.82%.

⁵² Letter from Butler Board of Commissioners to President Donald Trump (March 9, 2020) (Exhibit 1 at 21-9221_0002-03). The commissioners implored President Trump to “take action on the request by Cleveland-Cliffs Inc. CEO Lourenco Goncalves to close the loophole in the ‘Section 232’ steel tariffs to protect electrical steel laminations and cores.” *Id.*

⁵³ Witness 1 Transcript (Exhibit 2 at 21-9221_0011-13); *see also* Rep. Kelly AK Steel Constituent Letter (Exhibit 6 at 21-9221_0087-89). Rep. Kelly’s lawyers similarly echoed these points in their correspondence with the OCE, stating that “without [the Butler Works], there would be no Butler.” *See* Letter from Thomas W. King, Partner, Dillon, McCandless, King, Coulter & Graham, LLP to Omar S. Ashmawy, Chief Counsel and Staff Dir., Office of Cong. Ethics (April 5, 2021).

⁵⁴ Witness 1 Transcript (Exhibit 2 at 21-9221_0012-13).

⁵⁵ Rep. Kelly has actively worked with AK Steel for several years to address unfair trade practices in the electrical steel market. *See e.g.*, Press Release, Rep. Mike Kelly, *Rep. Kelly Commends Department of Commerce for Opening 232 Investigation on Imported Electrical Steel Components* (May 4, 2020); Moore, *supra* n.18. For example, in April 2018, Rep. Kelly invited AK Steel’s then-CEO to testify before the House Ways and Means Committee on the effects that tariff increases were having on AK Steel’s electrical steel business. Press Release,

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ii. The Department of Commerce Acts in Support of Cleveland-Cliffs & Victoria Kelly Buys Cleveland-Cliffs Stock

36. The Department of Commerce took action in support of Cleveland-Cliffs in late April 2020, just as Cleveland-Cliffs' decision to close the Butler Works plant and lay off its 1,400 workers was coming to a head.⁵⁶ Victoria Kelly purchased stock in Cleveland-Cliffs just after the Commerce Department advised Cleveland-Cliffs about its planned support – in the form of a self-initiated Section 232 investigation – but before the Department publicly announced this course of action. Below is a detailed timeline of these events that the OCE was able to reconstruct based upon evidence collected during this review.

Wednesday April 22nd – Friday April 24th

37. On Wednesday, April 22, 2020, Cleveland-Cliffs “informed Rep. Kelly of potential layoff notices at the Butler Works and Zanesville Works operations.”⁵⁷ It appears Cleveland-Cliffs attempted to relay this information to Secretary Ross on the same day,⁵⁸ and that the company intended to provide layoff notices to its employees on April 29th.⁵⁹

38. This disclosure by Cleveland-Cliffs led to a flurry of activity by Rep. Kelly and his congressional staff. On Wednesday, April 22nd, Matt Stroia contacted Witness 3, the most senior political official in the Department of Commerce's Office of Legislative and Intergovernmental Affairs,⁶⁰ seeking an update “on any potential developments from [the Department of Commerce]?”⁶¹ In that email he described the situation as “getting dire at the Butler, PA plant.”⁶² Witness 3 responded later in the day, saying:

I know this issue is a priority for [Congressman Kelly] as I was on a call with him and Nazak [Nikakhtar] from ITA several weeks back. As you know, the Department [of Commerce] is familiar with

Rep. Mike Kelly, *Rep. Kelly Welcomes Local Steel Company to Congressional Hearing on Tariffs* (April 13, 2018). In 2019, Reps. Kelly and Balderson wrote a letter to U.S. Trade Representative Lighthizer regarding the challenges AK steel faced in the electrical steel market. Letter from Reps. Kelly and Balderson to Hon. Robert Lighthizer (Nov. 20, 2019) (Exhibit 10 at 21-9221_0166-70). More recently, as the close of the Butler Works plant became more imminent, Rep. Kelly – along with other Members of Congress – sent a variety of letters to President Trump and Trump administration officials urging action on behalf of Cleveland-Cliffs and AK Steel. *See e.g.*, Letter from Reps. Kelly & Balderson to President Trump (March 6, 2020) (Exhibit 4 at 21-9221_0080-81); Letter from Rep. Kelly (and other Members) to President Trump (April 15, 2020) (Exhibit 11 at 21-9221_0169-71). Rep. Kelly also directly raised GOES concerns during this timeframe with administration officials. *See e.g.*, April 23, 2020 Email from Matt Stroia to Natalie Joyce (Exhibit 12 at 21-9221_0173); Moore, *supra* n.18. As discussed below, Rep. Kelly and his staff's efforts became more active as the plant's closure appeared more imminent.

⁵⁶ On March 13, 2020, Cleveland-Cliffs officially completed its acquisition of AK Steel. *See* Acquisition Announcement (Exhibit 8 at 21-9221_0154).

⁵⁷ Cleveland-Cliffs Call Summaries (Exhibit 13 at 21-9221_0175).

⁵⁸ January 15, 2020 – April 22, 2020 Emails between Witness 4, Nazak Nikakhtar, Talat Goudarzi, and Mikell Hay (Exhibit 9 at 21-9221_0157).

⁵⁹ April 28, 2020 Email between Witness 1 and Erin Collins (Exhibit 14 at 21-9221_0177); *see also* April 28, 2020 Text Messages between Witness 1 and Erin Collins (Exhibit 15 at 21-9221_0179).

⁶⁰ Witness 3 Transcript (Exhibit 7 at 21-9221_0097-98).

⁶¹ April 22, 2020 Emails between Witness 3 and Matt Stroia (Exhibit 16 at 21-9221_0181-82).

⁶² *Id.*

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[Cleveland-Cliffs'] concerns and has been engaged with them over many meetings and discussions. . . . DOC continues to look into this matter. As soon as there is additional information to share, you have my commitment that I will let you know immediately.⁶³

39. On Thursday, April 23rd, Rep. Kelly and his staff continued their efforts to assist Cleveland-Cliffs and prevent the shutdown of the Butler Works facility. On the morning of Thursday, April 23rd, Matt Stroia sent Natalie Joyce, Minority Leader Kevin McCarthy's Deputy Chief of Staff, a detailed email about the issues confronting Cleveland-Cliffs and the Butler Works plant.⁶⁴ The goal of this email was to schedule a meeting for Reps. Kelly and Balderson to "speak with the Leader for a few minutes on the phone at some point soon to brief him on the issue and ask for his advice on the strategy with the administration. Simply put...we need the administration to extend the 232 tariffs to [GOES] coming into the US."⁶⁵ Joyce responded by setting up a call between Reps. McCarthy, Kelly, and Balderson for the following week.⁶⁶
40. Later in the day, Rep. Kelly also directed his staff to set up telephone calls between him and Secretary Ross, Ambassador Robert Lighthizer (the United States Trade Representative), and Peter Navarro (trade advisor to President Trump).⁶⁷ On Friday, April 23rd, Rep. Kelly's staff began scheduling those calls.⁶⁸
41. On Friday, April 23rd, Rep. Kelly also reached out to Mark Meadows, President Trump's then-Chief of Staff, about Cleveland-Cliffs' request for GOES-specific tariff protections.⁶⁹ Before Rep. Kelly contacted Meadows, Matt Stroia contacted individuals in the White House to give them background on the underlying issues and advise them that Rep. Kelly would be contacting Meadows for assistance.⁷⁰ As of Friday, April 23rd at 9:30AM, Stroia described the Cleveland-Cliffs situation as such:⁷¹

⁶³ *Id.*

⁶⁴ April 23, 2020 Email from Matt Stroia to Natalie Joyce (Exhibit 12 at 21-9221_0173).

⁶⁵ *Id.*

⁶⁶ April 23, 2020 – April 27, 2020 Emails between Reps. McCarthy, Kelly & Balderson Staffs (Exhibit 17 at 21-9221_0184-87).

⁶⁷ April 24, 2020 Scheduling Request Emails between Witness 2, James Marsh, and Jill Burke (Exhibit 18 at 21-9221_0189-90).

⁶⁸ *Id.*; Ross, Lighthizer, and Navarro Scheduling Emails (Exhibit 19 at 21-9221_0192-98).

⁶⁹ April 24, 2020 Stroia Outreach Regarding Mark Meadows Contact (Exhibit 20 at 21-9221_0200-01); April 24, 2020 Email from Witness 2 to Cleveland-Cliffs (Exhibit 21 at 21-9221_0203); Cleveland-Cliffs Call Summaries (Exhibit 13 at 21-9221_0175).

⁷⁰ April 24, 2020 Stroia Outreach Regarding Mark Meadows Contact (Exhibit 20 at 21-9221_0200-01).

⁷¹ *Id.*

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Mike is going to be texting Mr. Meadows about an issue this morning. We have a non-coronavirus related issue that is critical to Mike's district and Troy Balderson's district. AK Steel/Cleveland Cliffs employs over 1400 people in Mike's hometown and a large amount in Mr. Balderson's district. Unfortunately, the CEO has declared he plans to shut down both locations IF the government doesn't extend the 232 tariffs to grain oriented electrical steel, a type of steel that goes into transformers used in our electrical grid. The company has shown that Russian, Japan, S. Korea have been shipping electrical steel into Canada and Mexico. Once in Canada/Mexico, these two countries superficially enhance the product and then send it into the US. Obviously, this rages against the spirit of the USMCA.

The issue for our offices is two fold. One, jobs obviously, but two, AK Steel is the last American maker of electrical steel. This is a national security issue.

The CEO has had meetings with Secretary Ross. Our bosses have had calls with the Secretary and follow up calls with his assistants. They are very well aware of the issue and have alerted CPB and USTR about the issues within their jurisdiction as well. Mike has personally spoken to Amb. Lighthizer about this issue and he is supportive but doesn't want to get into anyone else's lane. We have had conversations with Peter Navarro's office. Most recently, Mike, Troy and Marcy Kaptur sent a letter to the President on this issue and gathered 20 others to join. I have attached those letters to this email. We believe that Sec. Ross is assembling his senior team to discuss next steps related to his issue as well?

Simply put...we need the administration to extend the 232 tariffs to Grain Oriented Electrical Steel coming into the US.

42. Later in the day, Witness 2, another Rep. Kelly employee working on matters involving Cleveland-Cliffs, informed Cleveland-Cliffs about this White House outreach and other efforts that Senator Rob Portman and Rep. Balderson were making on Cleveland-Cliffs' behalf.⁷² Witness 2 concluded the email by saying that Rep. Kelly and others on the Hill will "continue to keep up the drum beat" in support of Cleveland-Cliffs.⁷³
43. During this same time, Cleveland-Cliffs was also actively lobbying the Department of Commerce for action and keeping Rep. Kelly's staff informed of its contacts with senior Commerce Department officials.⁷⁴

⁷² April 24, 2020 Email from Witness 2 to Cleveland-Cliffs (Exhibit 21 at 21-9221_0203).

⁷³ *Id.*

⁷⁴ On Wednesday, April 22, 2020, as detailed above, Cleveland-Cliffs advised Rep. Kelly of pending layoffs at the Butler and Zanesville Works and also sought out a call with Secretary Ross on this issue. *See supra* par. 37. On Thursday, April 23, 2020, Cleveland-Cliffs had discussions with Department of Commerce officials and updated Rep. Kelly's staff about these contacts. *See e.g.*, Cleveland-Cliffs Call Summaries (Exhibit 13 at 21-9221_0175); April 23, 2020 Emails between Witness 4, Witness 5, and Reps. Kelly and Balderson Staffs (Exhibit 22 at 21-9221_0205-06). On Friday, April 24, 2020, Cleveland-Cliffs had additional discussions with the Department of Commerce and again alerted Rep. Kelly's staff to these developments. *See e.g.*, Cleveland-Cliffs Call Summaries (Exhibit 13 at 21-9221_0175); April 24, 2020 Emails between Deborah Curtis and Witness 4 (Exhibit 23 at 21-9221_0208-090); April 24, 2020 Emails between Witness 4, Witness 5 and Reps. Kelly and Balderson Staffs (Exhibit 24 at 21-9221_0211-12).

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44. Ultimately, however, during the afternoon of Friday, April 23rd, the Department of Commerce informed Cleveland-Cliffs that it was “declin[ing] to pursue coverage of laminations and cores as ‘derivative products’ under the existing steel Section 232 tariffs/quotas.”⁷⁵ This information was relayed to Rep. Kelly’s staff on Friday afternoon as a part of a conference call initiated by Cleveland-Cliffs.⁷⁶

Saturday April 25th – Monday April 27th

45. While the Department of Commerce declined to extend the existing Section 232 tariffs to GOES products the day before, the Department of Commerce remained engaged on these issues with Cleveland-Cliffs and various interested parties on Capitol Hill, including Rep. Kelly and his staff. On Saturday, April 25th, Secretary Ross requested his Chief of Staff set up a phone call with Cleveland-Cliffs later in the day.⁷⁷ The following day, Sunday, April 26th, Witness 3 invited various congressional staffers, including Matt Stroia and Witness 2, to attend an April 27th Commerce Department “staff briefing on Cleveland-Cliffs.”⁷⁸

46. Likewise, Rep. Kelly and his staff continued to assist Cleveland-Cliffs. On Monday, April 27th, Rep. Kelly left a voicemail for Cleveland-Cliffs’ CEO Goncalves, noting that he had contacted Mark Meadows, who would be speaking with President Trump that afternoon about the company’s GOES concerns.⁷⁹ Goncalves called Rep. Kelly back and the two men further discussed the company’s GOES concerns.⁸⁰

Tuesday April 28th – Wednesday April 29th

47. At around noon on April 28th, Cleveland-Cliffs CEO received a call from Secretary Ross. On that call, Secretary Ross informed Goncalves that the Department of Commerce intended to announce publicly in the near future that the Department would be self-initiating a new Section 232 investigation covering transformer laminations and cores.⁸¹ Additionally, Secretary Ross conveyed to Goncalves that (1) the Department believed the prospective new Section 232 investigation could be handled in an expedited fashion, meaning that it could be completed in as little as four months; (2) the investigation would be overseen by Under Secretary of Commerce for International Trade Joe Semsar; and (3) Secretary Ross would be given regular updates that he would pass along to the Company to the extent legally

⁷⁵ Cleveland-Cliffs Call Summaries (Exhibit 13 at 21-9221_0175).

⁷⁶ *Id.*; April 24, 2020 Emails between Witness 4, Witness 5 and Reps. Kelly and Balderson Staffs (Exhibit 24 at 21-9221_0211-12).

⁷⁷ April 25, 2020 Email from Wilbur Ross Regarding Cleveland Cliffs (Exhibit 25 at 21-9221_0214); *see also* Witness 3 Transcript (Exhibit 7 at 21-9221_0124-26).

⁷⁸ April 26, 2020 DOC Staff Briefing Email (Exhibit 26 at 21-9221_0216).

⁷⁹ Cleveland-Cliffs Call Summaries (Exhibit 13 at 21-9221_0175).

⁸⁰ April 27, 2020 Emails between Witness 4, Patricia Persico, and Lourenco Goncalves (Exhibit 27 at 21-9221_0218).

⁸¹ Statement of Witness 4 (Exhibit 28 at 21-9221_0220); Statement of Witness 5 (Exhibit 29 at 21-9221_0222); *see also* Cleveland-Cliffs Call Summaries (Exhibit 13 at 21-9221_0175).

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permissible.⁸² Given this development, Cleveland-Cliffs opted not to lay off its Butler and Zanesville workforces.⁸³

48. Goncalves recounted the details of this call with Witness 4, who in turn shared the update with Witness 5.⁸⁴ Witness 4 and Witness 5 then set about sharing the news with interested parties on Capitol Hill, including Rep. Kelly's staff.⁸⁵
49. At 2:45 PM on Tuesday, April 28th, Witness 2, Witness 4 and Witness 5 all joined a conference call.⁸⁶ On that call, Witness 4 and Witness 5 updated Witness 2 on the Department of Commerce's intent to initiate a Section 232 investigation covering transformer laminations and cores.⁸⁷ Witness 2 would later describe this Department of Commerce communication as a "verbal commitment" to proceed with the Section 232 investigation.⁸⁸
50. While it is unclear exactly when Stroia and Witness 1 were informed of the Department of Commerce's decision, documents obtained by the OCE suggest that Stroia and Witness 1 called into the Witness 2-Witness 4-Witness 5 conference call at around 2:52PM, and were likely alerted to Commerce's decision at or around that time.⁸⁹
51. Additionally, it appears Stroia was directly informed by the Department of Commerce of its decision to self-initiate the Section 232 investigation. Consistent with his prior commitment to contact Stroia when developments arose relative to Cleveland-Cliffs, Witness 3, in his role as Assistant Secretary for Legislative and Intergovernmental Affairs at the Commerce Department, contacted Stroia at 2:51PM on April 28th asking for the "best # to reach [him on]?"⁹⁰ Witness 3 and Stroia appear to have spoken sometime after 3:14PM about the Department's decision to initiate the Section 232 investigation.⁹¹
52. Throughout the remainder of the day, Rep. Kelly's staff communicated about the Department of Commerce's decision to self-initiate the Section 232 investigation. Documents suggest that Rep. Kelly's staff originally expected the Department of Commerce to issue a press

⁸² Statement of Witness 4 (Exhibit 28 at 21-9221_0220); Statement of Witness 5 (Exhibit 29 at 21-9221_0222).

⁸³ It appears Cleveland-Cliffs intended to provide layoff notices on April 29, 2020, *see* April 28, 2020 Email between Witness 1 and Erin Collins (Exhibit 14 at 21-9221_0177); April 28, 2020 Text Messages Witness 1 and Erin Collins (Exhibit 15 at 21-9221_0179); however, those layoffs never materialized given the Department of Commerce's action on April 28th. Witness 1 Transcript (Exhibit 2 at 21-9221_0025, 45); Transcript of Interview of Witness 2 ("Witness 2 Transcript") (Exhibit 30 at 21-9221_0303).

⁸⁴ Statement of Witness 4 (Exhibit 28 at 21-9221_0220); Statement of Witness 5 (Exhibit 29 at 21-9221_0222).

⁸⁵ Statement of Witness 4 (Exhibit 28 at 21-9221_0220); Statement of Witness 5 (Exhibit 29 at 21-9221_0222).

⁸⁶ Statement of Witness 4 (Exhibit 28 at 21-9221_0220); Statement of Witness 5 (Exhibit 29 at 21-9221_0222); Cleveland-Cliffs Call Summaries (Exhibit 13 at 21-9221_0175); April 28, 2020 Emails between Witness 1, Witness 2, Witness 4, Witness 5, and Matt Stroia 5 (Exhibit 31 at 21-9221_0328).

⁸⁷ Statement of Witness 4 (Exhibit 28 at 21-9221_0220); Statement of Witness 5 (Exhibit 29 at 21-9221_0222); Cleveland-Cliffs Call Summaries (Exhibit 13 at 21-9221_0175).

⁸⁸ September 2, 2020 – September 4, 2020 Emails between Witness 1 and Daniel Moore (Exhibit 32 at 21-9221_0330-32).

⁸⁹ *See* April 28, 2020 Emails between Witness 1, Witness 2, Witness 4, Witness 5, and Matt Stroia 5 (Exhibit 31 at 21-9221_0328).

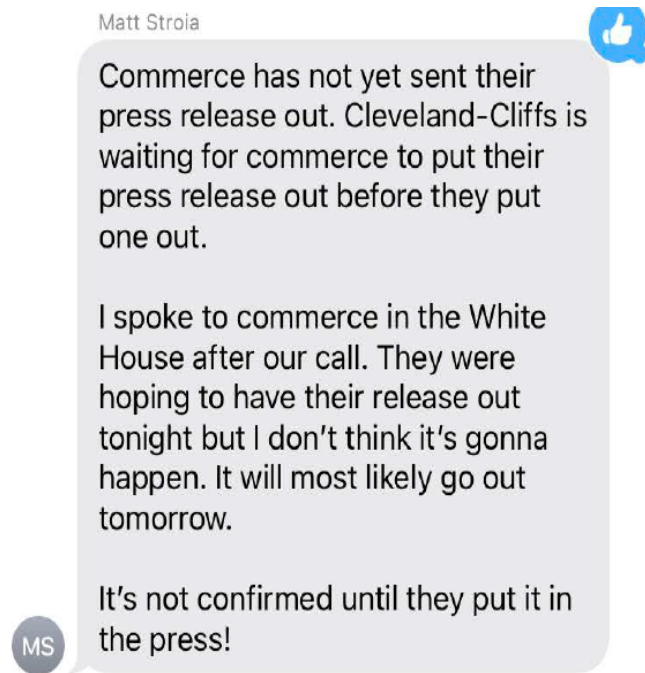
⁹⁰ April 28, 2020 – April 30, 2020 Emails between Witness 3 and Matt Stroia (Exhibit 33 at 21-9221_0334-35).

⁹¹ *Id.*; *see also* Witness 3 Transcript (Exhibit 7 at 21-9221_0134-45).

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release announcing the investigation on the 28th.⁹² Later that evening, when the investigation had not been publicly announced, Rep. Kelly's staff texted about the status of the pending announcement.⁹³

53. At approximately 8:05PM, Stroia texted Witness 1 and Witness 2 that he spoke with Witness 3 earlier in the day, and while he understood that Commerce intended to announce the Section 232 investigation on the 28th, it will most likely be announced the following day.⁹⁴



54. The following morning at 9:04AM, Witness 1 responded to the above text by noting that he still did not see an announcement from the Department of Commerce, which he had been expecting to see.⁹⁵ At approximately 9:05AM, Witness 2 responded to Stroia and Witness 1's texts, noting that she spoke with Witness 5 at AK Steel, and explained that the announcement of the Section 232 investigation is now "likely to come later in the week. Hopefully by Friday based upon a late night conversation [Witness 4] had with [Secretary of Commerce Wilbur] Ross' Chief [of] Staff."⁹⁶

⁹² April 28, 2020 – April 29, 2020 Text Messages between Witness 1, Witness 2, and Matt Stroia (Exhibit 34 at 21-9221_0337-39); *see also* Witness 1 Transcript (Exhibit 2 at 21-9221_0033-34).

⁹³ April 28, 2020 – April 29, 2020 Text Messages between Witness 1, Witness 2, and Matt Stroia (Exhibit 34 at 21-9221_0337-39).

⁹⁴ *Id.*; Witness 3 Transcript (Exhibit 7 at 21-9221_0134-45) (while he could not definitively recall speaking with Stroia about the Section 232 investigation, Witness 3 acknowledged that the reference in the above text message appeared to be a reference to him).

⁹⁵ April 28, 2020 – April 29, 2020 Text Messages between Witness 1, Witness 2, and Matt Stroia (Exhibit 34 at 21-9221_0337-39); *see also* Witness 1 Transcript (Exhibit 2 at 21-9221_0033-34).

⁹⁶ April 28, 2020 – April 29, 2020 Text Messages between Witness 1, Witness 2, and Matt Stroia (Exhibit 34 at 21-9221_0337-39).

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55. Because Rep. Kelly, Victoria Kelly, and Matt Stroia refused to cooperate with the OCE's review, the OCE cannot definitively say what Rep. Kelly and his wife knew about these developments and when they knew them. However, when asked whether Rep. Kelly would have been alerted to these key developments on April 28th as they occurred, Witness 1 and Witness 2 both said they believed Rep. Kelly would have been informed by Stroia given their significance to Rep. Kelly personally and to the Butler community.⁹⁷ Rep. Kelly's personal involvement with this issue also suggests he would have been fully apprised on April 28th of the day's developments.

56. On April 29th, Victoria Kelly purchased between \$15,001 and \$50,000 of stock in Cleveland-Cliffs.⁹⁸ This purchase occurred just after Rep. Kelly's office learned the Department of Commerce planned to self-initiate the Section 232 investigation, but before a public announcement was made. This purchase also occurred just after Cleveland-Cliffs opted not to issue termination notices to 13% of its workforce.⁹⁹ Further, and as discussed more fully below, this purchase by Rep. Kelly's wife was anomalous in several respects, suggesting that the confidential information available to Rep. Kelly may have played a role in her decision to purchase the stock.

Thursday April 30th – Monday May 4th

57. On Thursday, April 30th, Matt Stroia emailed Witness 3: "Just checking in, any word from your comms team on getting out the [Section 232 press] release?"¹⁰⁰ Consistent with prior information provided to Rep. Kelly's staff, Witness 3 responded: "Slipped a few days. But the decision has been made. Just internal clearing process still going."¹⁰¹

58. On Friday, May 1, 2020, at 3:30PM, Rep. Kelly, Matt Stroia, Witness 1, and Witness 2 had a phone call with Secretary Ross regarding Cleveland-Cliffs and the Butler Works steel plant.¹⁰² On that call Secretary Ross directly confirmed to Rep. Kelly and his staff what had been previously conveyed to Cleveland-Cliffs – a Section 232 announcement was forthcoming.¹⁰³

59. Finally, on Monday, May 4th, the Department of Commerce announced its Section 232 investigation.¹⁰⁴ Specifically, the Department announced that it had launched an investigation under Section 232 of the Trade Expansion Act of 1962 into whether imports of transformer laminations and cores, electrical transformers, and transformer regulators "are

⁹⁷ Witness 1 Transcript (Exhibit 2 at 21-9221_0012-13, 38-39); Witness 2 Transcript (Exhibit 30 at 21-9221_0279-81).

⁹⁸ Rep. Mike Kelly Periodic Transaction Report (May 15, 2020).

⁹⁹ See *supra* n.51.

¹⁰⁰ April 28, 2020 – April 30, 2020 Emails between Witness 3 and Matt Stroia (Exhibit 33 at 21-9221_0334).

¹⁰¹ *Id.*

¹⁰² Calendar Invite for May 1, 2020 Call between Sec. Ross and Rep. Kelly (Exhibit 35 at 21-9221_0341); May 1, 2020 Text Messages between Rep. Kelly, Matt Stroia, Witness 1, and Witness 2 (Exhibit 36 at 21-9221_0343); Witness 1 Transcript (Exhibit 2 at 21-9221_0041-42, 68-71).

¹⁰³ May 1, 2020 Text Messages between Rep. Kelly, Matt Stroia, Witness 1, and Witness 2 (Exhibit 36 at 21-9221_0343); Witness 1 Transcript (Exhibit 2 at 21-9221_0041-42, 68-71).

¹⁰⁴ May 4, 2020 Dept. of Commerce Section 232 Investigation Press Release (Exhibit 37 at 21-9221_0345-46); see also May 4, 2020 Dept. of Commerce Section 232 Investigation Tweet (Exhibit 38 at 21-9221_0348).

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being imported into the United States in such quantities or under such circumstances as to threaten to impair the national security [of the U.S.].”¹⁰⁵ Rep. Kelly, through his staff, was provided with advance notice of the announcement.¹⁰⁶

60. Cleveland-Cliffs praised the Department of Commerce’s announcement in a May 4, 2020 press release:

Cleveland-Cliffs Inc. (NYSE: CLF) today praised the U.S. Department of Commerce’s self-initiation of an urgent Section 232 investigation The outcome of this investigation will be critical to addressing circumvention of existing national security tariffs covering Grain Oriented Electrical Steel (GOES) using laminations and cores cut in Mexico and in Canada as means for tariff evasion. Cleveland-Cliffs’ wholly-owned subsidiary AK Steel is the last remaining producer of GOES in North America. This blatant circumvention activity has degraded the domestic electrical steel market and now threatens the viability of Cleveland-Cliffs continuing to produce GOES, a critical element to the security of America’s electric grid.

Lourenco Goncalves, Chairman, President and Chief Executive Officer said, “We are confident that this self-initiated investigation will reinforce the critical nature of ensuring a reliable domestic supply of GOES to support electric power distribution, and will address the circumvention of national security tariffs involving transformer laminations and cores of GOES. Cleveland-Cliffs greatly appreciates the bipartisan leadership of Senator Rob Portman (OH), Senator Bob Casey (PA), Senator Sherrod Brown (OH), Congressman Mike Kelly (PA), Congressman Troy Balderson (OH), Congresswoman Marcy Kaptur (OH) and other Congressional leaders who helped facilitate this path forward, as well as the great support from our Union partners with the United Auto Workers. The integrity of America’s electric grid and over 1,400 family-sustaining jobs at AK Steel’s Butler Works in Pennsylvania and Zanesville Works in Ohio depend on speedy resolution of this investigation.”¹⁰⁷

61. Likewise, Rep. Kelly also lauded the announcement of the investigation in a May 4th press release:

¹⁰⁵ May 4, 2020 Dept. of Commerce Section 232 Investigation Press Release (Exhibit 37 at 21-9221_0345-46).

¹⁰⁶ May 4, 2020 Email from Eileen Dombrowski to Witness 2 and Matt Stroia (Exhibit 39 at 21-9221_0350).

¹⁰⁷ Press Release, Cleveland-Cliffs, *Cleveland-Cliffs Applauds U.S. Department of Commerce’s Self-Initiation of a Section 232 Investigation on Transformer Laminations and Cores, Electrical Transformers and Transformer Regulators* (May 4, 2020).

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As the last American producer of electrical steel products that are key components of the electrical grid, Cleveland-Cliffs owned AK Steel is a bedrock of our national security and the Butler economy. Thank you to President Trump, Secretary Ross, and U.S. Trade Representative Robert Lighthizer for hearing our community's concerns and taking action to end the unfair trade practices that threaten AK Steel's ability to continue production of electrical steel.¹⁰⁸

62. Following the initiation of the Section 232 investigation, Rep. Kelly and his staff continued to work with Cleveland-Cliffs in an effort to secure a favorable investigation result from the Department of Commerce.¹⁰⁹ Victoria Kelly maintained her Cleveland-Cliffs holdings during this timeframe.¹¹⁰

iii. Victoria Kelly's Stock Purchase Anomalies

63. In this review, the OCE employed an expert consultant to analyze Victoria Kelly's April 29, 2020 stock purchase. In making these findings, the OCE relied on the evidence obtained during the review and the expert's opinions regarding Victoria Kelly's trading activities.

64. Victoria Kelly's stock purchase appears to be anomalous in certain respects. First, the timing of the trade suggests that nonpublic information may have formed the basis for this trade.¹¹¹ As detailed above, Victoria Kelly purchased stock in Cleveland-Cliffs the day after her husband was informed that 1) the Department of Commerce would be initiating a Section 232 investigation that could benefit Cleveland-Cliffs, and 2) Cleveland-Cliffs would not be shuttering its electrical steel business and terminating 13% of its workforce.¹¹² The OCE's expert concluded that this information was nonpublic, and thus confidential, at the time of Victoria Kelly's trade.¹¹³

65. Second, Victoria Kelly's purchase is also atypical when considered in conjunction with her prior investment activities. At the end of 2018, Victoria Kelly held 61 individual stocks.¹¹⁴ By June 2019, Victoria Kelly liquidated all her individual stock holdings and appears to have converted any profits into bond and mutual fund holdings.¹¹⁵ Then, on April 29, 2020, Victoria Kelly purchased individual stock in Cleveland-Cliffs.¹¹⁶ This was her first individual stock purchase in eleven months and is the only single corporate stock purchased

¹⁰⁸ Press Release, Rep. Mike Kelly, *Rep. Kelly Commends Department of Commerce for Opening 232 Investigation on Imported Electrical Steel Components* (May 4, 2020).

¹⁰⁹ See e.g., Sample Witness 2 and 3 Emails Regarding Post-232 Investigation Announcement Work (Exhibit 40 at 21-9221_0352-60).

¹¹⁰ See *infra* par. 67.

¹¹¹ See *supra* Section II.B.ii.

¹¹² *Id.*

¹¹³ Expert Report (on file with OCE).

¹¹⁴ Rep. Mike Kelly 2018 Annual Financial Disclosure Report (June 11, 2019).

¹¹⁵ Compare Rep. Mike Kelly 2018 Annual Financial Disclosure Report (June 11, 2019) with Rep. Mike Kelly 2019 Annual Financial Disclosure Report (Aug. 13, 2020).

¹¹⁶ Rep. Mike Kelly Periodic Transaction Report (May 15, 2020).

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or held by the Kellys between May 2019 and the date of this report.¹¹⁷ As the OCE's expert explained, "Victoria Kelly's investment in Cleveland-Cliffs represented a clear departure from her investment practices at the time."¹¹⁸

66. The OCE's expert ultimately concluded that "Ms. Kelly's purchase of Cleveland-Cliffs stock on April 29, 2020 represented a sharp departure from her investment behavior, leading to the inference that this investment was due to some special event or consideration."¹¹⁹

67. Victoria Kelly sold her Cleveland-Cliffs investment on January 11, 2021 for a profit.¹²⁰ She had purchased Cleveland-Cliffs' stock for approximately \$4.70/share on April 29, 2020 and sold it for approximately \$18.11/share.¹²¹

iv. Rep. Kelly's Public Statements

68. While Rep. Kelly and his wife refused to produce documents to or interview with the OCE, Rep. Kelly did address the April 29, 2020 stock purchase publicly in response to press inquiries.¹²² As discussed below, the public response appears inconsistent with the evidence uncovered by the OCE in its review.

69. In September 2020, various news outlets raised questions about the timing and appropriateness of Victoria Kelly's stock purchase in Cleveland-Cliffs.¹²³ In response to press inquiries, Rep. Kelly, through Witness 1, issued the following statement:

¹¹⁷ See Rep. Mike Kelly 2018 Annual Financial Disclosure Report (June 11, 2019); Rep. Mike Kelly 2019 Annual Financial Disclosure Report (Aug. 13, 2020). Rep. Kelly's publicly available periodic transaction reports from 2020 and 2021 do not include any corporate stock purchases, aside from Cleveland-Cliffs. See Rep. Mike Kelly Periodic Transaction Report (Feb. 25, 2020); Rep. Mike Kelly Periodic Transaction Report (April 10, 2020); Rep. Mike Kelly Periodic Transaction Report (April 29, 2020); Rep. Mike Kelly Periodic Transaction Report (May 15, 2020); Rep. Mike Kelly Periodic Transaction Report (July 14, 2020); Rep. Mike Kelly Periodic Transaction Report (Jan. 25, 2021); Rep. Mike Kelly Periodic Transaction Report (Feb. 12, 2021); Rep. Mike Kelly Periodic Transaction Report (April 9, 2021).

¹¹⁸ Expert Report (on file with OCE).

¹¹⁹ Expert Report (on file with OCE). Put differently, the expert said: "Victoria Kelly made what was for her a highly unusual investment in Cleveland-Cliffs stock on April 29, 2020 . . . [and this] investment occurred one day after Cleveland-Cliffs informed Rep. Kelly's staff that the [Department of Commerce] would be initiating an investigation into downstream GOES products, information that was not yet public." *Id.* While the expert concluded that the trade could have been based on nonpublic information, the expert stopped short of finding that nonpublic information was necessarily material. *Id.* Given the expert's conclusions regarding materiality, the OCE did not consider this matter under federal insider trading law.

¹²⁰ Compare Rep. Mike Kelly Periodic Transaction Report (May 15, 2020) with Rep. Mike Kelly Periodic Transaction Report (Feb. 23, 2021).

¹²¹ On April 29, 2020, Cleveland-Cliffs stock price closed at \$4.70/share, and on January 11, 2020, it closed at \$18.11/share.

¹²² While Rep. Kelly did not cooperate with this review, his lawyers responded to the OCE's requests for information and interviews by reiterating the same statements he provided to news outlets inquiring about Victoria Kelly's stock purchase. See Letter from Thomas W. King, Partner, Dillon, McCandless, King, Coulter & Graham, LLP to Omar S. Ashmawy, Chief Counsel and Staff Dir., Office of Cong. Ethics (April 5, 2021); Letter from Thomas W. King, Partner, Dillon, McCandless, King, Coulter & Graham, LLP to Omar S. Ashmawy, Chief Counsel and Staff Dir., Office of Cong. Ethics (April 20, 2021).

¹²³ See e.g., Daniel Moore, *Experts say stock buy may be ethics issue*, PITTSBURG POST-GAZETTE (Sept. 20, 2020). This matter first came to the attention of the Pittsburgh Post-Gazette because Witness 2 was providing background to

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At a time when the entire Butler community is rallying to save the AK Steel plant and its 1,400 jobs, Representative Kelly's wife made a small investment to show her support for the workers and management of this 100-year old bedrock of their hometown, where they both are life-long residents.¹²⁴

70. While this statement suggests the stock purchase was intended to be a “show [of] support for the workers and management” of AK Steel, the OCE found no public announcement by the Kellys about this purchase that would have elicited or demonstrated support for the plant employees. Witness 1 was unaware of Rep. Kelly or his wife making any public announcement of this stock purchase on or around April 29th.¹²⁵ Witness 1 first learned about the stock purchase when a local reporter brought it to his attention and raised questions about the propriety of the trade.¹²⁶ Similarly, Witness 2 was also unaware of the purchase prior to this press inquiry.¹²⁷ Rep. Kelly appears to acknowledge that prior to these press reports, the only disclosure of this purchase was on his Periodic Transaction Report, filed May 15, 2020.¹²⁸

the paper on Rep. Kelly's role in securing the Section 232 investigation. *See* September 2, 2020 Email from Daniel Moore to Witness 1 Regarding 232 Timeline (Exhibit 41 at 21-9221_0362-63); September 2, 2020 Email from Daniel Moore to Witness 1 Regarding Verbal Commitment (Exhibit 42 at 21-9221_0365); *see also* September 3, 2020 Texts Messages between Witness 1 and Matt Stroia (Exhibit 43 at 21-9221_0367-68) (noting that staff provided background to the Post-Gazette to ensure Rep. Kelly got “credit” for his part in the Section 232 achievement). As a part of that back and forth, Witness 2 advised the Pittsburgh Post-Gazette reporter that the Department of Commerce had made a “verbal commitment on or around April 28” to self-initiate the Section 232 investigation. September 2, 2020 Email from Daniel Moore to Witness 1 Regarding Verbal Commitment (Exhibit 42 at 21-9221_0365). The reporter realized, looking at Rep. Kelly's May 15, 2020 Periodic Transaction Report, that Victoria Kelly purchased stock in Cleveland-Cliffs the day after this “verbal commitment” was made. This led the reporter to seek information from Rep. Kelly's congressional office about the timing of and basis for the stock purchase. August 31, 2020 – September 1, 2020 Emails between Witness 1 and Daniel Moore Regarding Call (Exhibit 44 at 21-9221_0370-71); September 1 Email from Daniel Moore to Witness 1 (Exhibit 45 at 21-9221_0373-74); September 2, 2020 – September 4, 2020 Emails between Witness 1 and Daniel Moore (Exhibit 46 at 21-9221_0376-78). It also led Rep. Kelly's office to internally strategize on how to respond to the reporter's inquiries. *See e.g.*, September 2, 2020 – September 4, 2020 Emails between Witness 1 and Daniel Moore (Exhibit 46 at 21-9221_0376-78). The OCE asked Witness 1 about Rep. Kelly's response when initially confronted with allegations that his wife purchased stock based upon nonpublic information. Witness 1 Transcript (Exhibit 2 at 21-9221_0046-51). Witness 1 could not recall the specifics of his conversation with Rep. Kelly and did not recall discussing with Rep. Kelly whether Rep. Kelly and his wife discussed the stock purchase. *Id.*

¹²⁴ *See e.g.*, Moore, *supra* n.123; *see also* September 2, 2020 – September 4, 2020 Emails between Witness 1 and Daniel Moore (Exhibit 46 at 21-9221_0377).

¹²⁵ Witness 1 Transcript (Exhibit 2 at 21-9221_0049-50).

¹²⁶ *Id.* (Exhibit 2 at 21-9221_0045-46).

¹²⁷ Witness 2 Transcript (Exhibit 30 at 21-9221_00303-04, 306-07). Rep. Kelly's lawyers also appear to acknowledge that no public “show of support” was ever made, and the purchase was first publicly reported on May 15, 2020, when Rep. Kelly filed his Periodic Transaction Report for the April 29, 2020 purchase. Letter from Thomas W. King, Partner, Dillon, McCandless, King, Coulter & Graham, LLP to Omar S. Ashmawy, Chief Counsel and Staff Dir., Office of Cong. Ethics (April 20, 2021). Witness 2 described the “show [of] support” quote as “wordsmithing” by Rep. Kelly's press team. Witness 2 Transcript (Exhibit 30 at 21-9221_0307).

¹²⁸ *See* Letter from Thomas W. King, Partner, Dillon, McCandless, King, Coulter & Graham, LLP to Omar S. Ashmawy, Chief Counsel and Staff Dir., Office of Cong. Ethics (April 5, 2021); Letter from Thomas W. King,

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71. When specifically asked whether Rep. Kelly and his wife knew at the time of Victoria Kelly's stock purchase that the "Commerce Department had verbally confirmed a Section 232 investigation" would be announced, Witness 1 told reporters: "Whether the 232 investigation would be launched was uncertain until Secretary Ross confirmed the plan in a private phone conversation with the congressman on May 1."¹²⁹ As discussed above, this statement is inconsistent with the evidence uncovered by the OCE.¹³⁰ In fact, on April 28, 2020, the Commerce Department alerted Cleveland-Cliffs and Rep. Kelly's staff that it would be self-initiating a Section 232 investigation in the immediate future.¹³¹ Indeed, Witness 2 described the Department of Commerce's April 28th conversation with Cleveland-Cliffs as a "verbal commitment" to self-initiate an investigation,¹³² and at no point in time after April 28, 2020 did anyone suggest to Rep. Kelly's staff that this decision to self-initiate was altered or being rescinded.¹³³

72. In summary, Victoria Kelly made an uncharacteristic stock purchase in Cleveland-Cliffs on April 29, 2020 and profited from this purchase. The purchase occurred just after her husband, in the course of his official job duties, learned confidential information about the company.

Partner, Dillon, McCandless, King, Coulter & Graham, LLP to Omar S. Ashmawy, Chief Counsel and Staff Dir., Office of Cong. Ethics (April 20, 2021).

¹²⁹ September 2, 2020 – September 4, 2020 Emails between Witness 1 and Daniel Moore (Exhibit 46 at 21-9221_0376).

¹³⁰ *See supra* Section II.B.i-ii.

¹³¹ *See supra* Section II.B.ii.

¹³² *See id.*

¹³³ Despite confirmation from Cleveland-Cliffs and the Department of Commerce that the investigation announcement was forthcoming, Rep. Kelly and his staff appeared to harbor some degree of internal concern about the issuance of the announcement. *See e.g.*, April 28, 2020 – April 29, 2020 Text Messages between Witness 1, Witness 2, and Matt Stroia (Exhibit 34 at 21-9221_0337-39); April 28, 2020 Email from Witness 2 to Cleveland-Cliffs (Exhibit 47 at 21-9221_0380); May 1, 2020 Text Messages between Rep. Kelly, Witness 1, Witness 2 and Matt Stroia (Exhibit 36 at 21-9221_0343). This concern appears unfounded as neither the Department of Commerce nor Cleveland-Cliffs ever suggested to Rep. Kelly or his staff that investigation announcement was in jeopardy. Witness 1 Transcript (Exhibit 2 at 21-9221_0036-38, 40-41, 68-71); Witness 2 Transcript (Exhibit 30 at 21-9221_0293-97, 317-18); *see also* Witness 3 Transcript (Exhibit 7 at 21-9221_0148-49). Instead, the staffs' real concern appears more fairly characterized as an effort to keep the Section 232 investigation announcement "on track." *See* April 28, 2020 – April 29, 2020 Text Messages between Witness 1, Witness 2, and Matt Stroia (Exhibit 34 at 21-9221_0337-39) (discussing a need to keep the Section 232 announcement "on track" and staying engaged until the announcement occurs); April 28, 2020 Email from Witness 2 to Cleveland-Cliffs (Exhibit 47 at 21-9221_0380) (discussing the need for press "assuming everything stays on track"); May 1, 2020 Text Messages between Rep. Kelly, Witness 1, Witness 2 and Matt Stroia (Exhibit 36 at 21-9221_0343). Indeed, Witness 1 and Witness 2 acknowledged to the OCE that their real concern was more about *when* the announcement would be made, not *if* it would be made. Witness 1 Transcript (Exhibit 2 at 21-9221_0036-38, 40-41, 68-71); Witness 2 Transcript (Exhibit 30 at 21-9221_0293-97, 317-18). This is consistent with the fact that Matt Stroia was told by the Department of Commerce on both April 28th and April 30th that the announcement would be forthcoming. April 28, 2020 – April 29, 2020 Text Messages between Witness 1, Witness 2, and Matt Stroia (Exhibit 34 at 21-9221_0337-39); April 28, 2020 – April 30, 2020 Emails between Witness 3 and Matt Stroia (Exhibit 33 at 21-9221_0334-35) ("[The Section 232 press release by the Department of Commerce] [s]lipped a few days. But the decision has been made.").

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73. Based on the foregoing information, the Board finds that there is substantial reason to believe that Victoria Kelly's April 29, 2020 stock purchase was based upon confidential information that Rep. Kelly learned from his official job duties.

III. CONCLUSION

74. Based on the foregoing information, the Board finds that there is substantial reason to believe that Victoria Kelly's April 29, 2020 stock purchase was based upon confidential information that Rep. Kelly learned from his official job duties.

75. Accordingly, the Board recommends that the Committee further review the above allegation that Victoria Kelly's April 29, 2020 stock purchase was based upon confidential information that Rep. Kelly learned from his official job duties.

IV. INFORMATION THE OCE WAS UNABLE TO OBTAIN AND RECOMMENDATION FOR THE ISSUANCE OF SUBPOENAS

76. The following witnesses, by declining to provide requested information to the OCE, did not cooperate with the OCE review:

- a. Rep. Kelly;
- b. Victoria Kelly;
- c. Matt Stroia; and
- d. Wilbur Ross.

77. The Board recommends that the Committee issue subpoenas to Rep. Kelly, Victoria Kelly, Matt Stroia, and Wilbur Ross.