UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF MISSISSIPPI
NORTHERN DIVISION

UNITED STATES OF AMERICA

v. **CRIMINAL NO. 3:20-CR-0031 CWR-LGI**

TED BRENT ALEXANDER

RESPONSE IN OPPOSITION TO MOTION IN LIMINE TO EXCLUDE "EXPERT" TESTIMONY BY GOVERNMENT WITNESSES [Dkt. No. 51]

The United States submits this Response in Opposition to Alexander's Motion in Limine to Exclude Expert Testimony [Dkt. 51]. The government has not designated expert witnesses to give opinion testimony pursuant to FRE 702 and 703. The government will not call any experts in its case in chief, nor does the government need to.

Alexander's motion is not about expert testimony. Instead, it is an attempt to characterize ordinary words as having a meaning only an expert could interpret and then seeking to exclude otherwise admissible evidence of fraud as so called "expert" testimony.

Alexander stands accused of fraud as a result of his soliciting investors in a timber loan scheme over a period of years during which he made false material statements to persuade others to invest in this scheme, from which he profited considerably. As part of the solicitation, investors were given documents entitled "Equity Term Sheets" that included the following statement:

> Additional Information: Company will inspect the property related to the Timber Rights, must receive the original, executed Note and timber deed and will inspect the executed agreement(s) with the timber mill(s).

The government expects that the evidence will show that in almost all instances, neither Alexander nor Seawright inspected the property related to the Timber Rights. The government

also anticipates that the evidence will show that Alexander knew that this was a false statement or that he made this statement with reckless indifference as to its truth or falsity. This statement was in fact false - if Alexander or Seawright had inspected the property as they claimed, they would have discovered that in many instances the property underlying their "investment" did not contain marketable timber.

In the face of this evidence, Alexander argues that the meaning of the word "inspect" requires expert interpretation. However, this language is easily within the understanding of the average person, and no expert testimony is required to understand what the words "inspect the property" means. The average person can clearly understand that this statement is false.

Alexander stands accused of fraud. One of the elements that the government must prove to convict Alexander is that the scheme to defraud employed false material representations, false material pretenses, or false material promises. *See* Fifth Circuit Pattern Criminal Instructions 2.57. "A representation, pretense, or promise is 'false' if it is known to be untrue or is made with reckless indifference as to its truth or falsity. A representation, pretense, or promise would also be 'false' if it constitutes a half truth, or effectively omits or conceals a material fact, provided it is made with the intent to defraud. A representation, pretense, or promise is 'material' if it has a natural tendency to influence, or is capable of influencing, the decision of the person or entity to which it is addressed." *Id.*

Fifth Circuit Pattern Criminal Instruction No. 1.40 clarifies what a material statement is:

> As used in these instructions, a representation, statement, pretense, or promise is 'material' if it has a natural tendency to influence, or is capable of influencing, the decision of the person or entity to which it is addressed.
>
> The Government can prove materiality in either of two ways. First, a representation [statement] [pretense] [promise] is "material" if a reasonable person would attach importance to its existence or nonexistence in determining his [her] choice of action in the transaction in question.

> Second, a statement could be material, even though only an unreasonable person would rely on it, if the person who made the statement knew or had reason to know his [her] victim was likely to rely on it.
>
> In determining materiality, you should consider that naivety, carelessness, negligence, or stupidity of a victim does not excuse criminal conduct, if any, on the part of the defendant.

The question for the jury, therefore, is not what the terms in documents involved in Alexander's scheme to defraud mean to an expert, such as someone who works in the financial or investment industry. The question is what impact did the language have on the victims who were persuaded to invest in Alexander Seawright Timber Fund I – whether they were reasonable or unreasonable in doing so.

"Company will inspect the property related to the Timber Rights" has an ordinary meaning. The Court should reject Alexander's attempt to cloak his "pitch" to investors as something only an expert could understand or interpret. The law says otherwise. Any attempt to exclude this language or any other language used by Alexander to solicit investors as requiring expert opinion testimony should be rejected.

Alexander is attempting impermissibly to exclude otherwise admissible evidence by characterizing ordinary words as "terms of art" that only an expert can interpret. The Court should reject this argument and deny the motion.

Date: August 2, 2022

Respectfully submitted,

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CERTIFICATE OF SERVICE

I, DAVID H. FULCHER, Assistant U.S. Attorney, hereby certify that I have this date electronically filed the foregoing motion with the Clerk of the Court using the ECF system which sent notification to all counsel of record.

Dated: August 2, 2022

/s/ Dave Fulcher
David H. Fulcher
Assistant United States Attorney