

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF MISSISSIPPI
NORTHERN DIVISION**

ALYSSON MILLS, IN HER CAPACITY
AS RECEIVER FOR ARTHUR LAMAR
ADAMS AND MADISON TIMBER
PROPERTIES, LLC,

Plaintiff,

v.

BUTLER SNOW LLP; BUTLER SNOW
ADVISORY SERVICES, LLC; MATT
THORNTON; BAKER, DONELSON,
BEARMAN, CALDWELL & BERKOWITZ
PC; ALEXANDER SEAWRIGHT, LLC;
BRENT ALEXANDER; and JON
SEAWRIGHT,

Defendants.

Case No. 3:18-cv-00866-CWR-BWR

Hon. Carlton W. Reeves

ORAL ARGUMENT REQUESTED

**BAKER, DONELSON, BEARMAN, CALDWELL & BERKOWITZ PC'S
MOTION FOR SUMMARY JUDGMENT**

Baker, Donelson, Bearman, Caldwell & Berkowitz P.C. (“Baker Donelson”) moves for summary judgment on all claims asserted against it by the Receiver pursuant to Federal Rule of Civil Procedure 56 because there is no genuine dispute that Madison Timber Properties, LLC was not an honest business separate and distinct from Lamar Adams’s Ponzi scheme. In support of this motion, Baker Donelson relies on its memorandum of law filed contemporaneously herewith as well as the exhibits identified below and attached hereto:

Ex. A – Trial Transcript, Vol. 2, *USA v. William B. McHenry, Jr.* (December 4, 2019)

Ex. B – Sentencing Hearing, Vol. 1, *USA v. Arthur Lamar Adams* (October 29, 2018)

Ex. C – Mississippi Secretary of State Record for Madison Timber Properties, LLC

Dated this 14th day of May, 2024

Respectfully submitted,

**BAKER, DONELSON, BEARMAN,
CALDWELL & BERKOWITZ PC**

/s/ Craig D. Singer

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CERTIFICATE OF SERVICE

I hereby certify that on May 14, 2024, I caused the foregoing to be electronically filed with the Clerk of the Court using CM/ECF, which will send notification of such filing to all registered participants.

/s/ Craig D. Singer
Craig D. Singer (*pro hac vice*)

Exhibit A

UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF MISSISSIPPI
NORTHERN DIVISION

UNITED STATES OF AMERICA

VS. CRIMINAL NO. 3:19-cr-00020-CWR-LRA

WILLIAM B. MCHENRY, JR.

TRIAL TRANSCRIPT
VOLUME 2

BEFORE THE HONORABLE CARLTON W. REEVES
UNITED STATES DISTRICT JUDGE
AND A JURY
DECEMBER 4, 2019
JACKSON, MISSISSIPPI

APPEARANCES:

FOR THE GOVERNMENT: MR. THEODORE M. COOPERSTEIN
MR. ANDREW W. EICHNER

FOR THE DEFENDANT: MS. ABBY BRUMLEY
MR. TOM TURNER

REPORTED BY: CHERIE GALLASPY BOND
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1 THE COURT: All right. This is the case of *United*
2 *States v. William McHenry*. We're going to get the jury in here
3 in a second, but I did fail to ask at the beginning of this
4 case and each day of this case but to the extent -- this is to
5 the government. To the extent that there are victims in this
6 case, have they been notified by the government that this trial
7 would be going forward? Did the victim witness coordinator
8 contact the victims?

9 MR. COOPERSTEIN: Yes, they have, Your Honor.

10 THE COURT: Anything further from the government or
11 the defendant before we bring in the jury?

12 MS. BRUMLEY: Your Honor, the only thing that I would
13 advise the court that we are going to be calling Lamar Adams
14 first, and I wasn't sure if Your Honor wanted him to already be
15 on the witness stand when the jury gets here or if you want me
16 to just -- I will call him either way, but if you want him to
17 already be on the stand since I know he will be in restraints.

18 THE COURT: We can bring him in now. This going to
19 take one minute. I do want to state on the record I know we
20 have a number of victims, I believe, who have been attending
21 this particular trial, and I know this is very sensitive to us
22 all.

23 I want to make sure everyone continues to treat this
24 as a court proceeding. We don't need any outbursts or anything
25 else. I know that the feelings are raw based on the guilty

1 plea that was -- the guilty plea and the sentence that was
2 entered through this court some time ago.

3 So I want the parties and I want the participants --
4 not the participants. I want the persons here who are
5 eyewitnesses to this proceeding to please if you feel like you
6 have to say something or do something, please step outside of
7 the courtroom. We don't want anything to affect this jury's
8 right to determine the issues in this case and to remain fair
9 and impartial. So that's my instruction to us as participants
10 in this proceeding.

11 All right. Did everyone understand me? A nod of
12 heads. Did everyone -- I see nods of heads. Thank you so very
13 much. You may get the jury.

14 (Jury In)

15 THE COURT: Ladies and gentlemen of the jury, I thank
16 you for arriving at the appropriate time this morning. I'm
17 sorry about the delay. We had to take care of matters in
18 another proceeding.

19 It is the court's plan to continue along the schedule
20 that we sort of -- there will have to be one interruption this
21 morning at some point in time. It has nothing to do with the
22 parties. It has all to do with the court and yet another issue
23 on another matter that has come up.

24 But as I do every time we leave and come back, do you
25 recall the instructions that I left you with on yesterday

1 afternoon, yesterday evening? If so, raise your hand. Each
2 has raised their hand. Did you follow those instructions?
3 Each has raised their hand. Thank you.

4 Yesterday the government rested its case and the
5 defendant announced that it would -- that he would be putting
6 on a case. Is that still the case?

7 MS. BRUMLEY: It is, Your Honor.

8 THE COURT: All right. Is the defendant ready to call
9 its first witness?

10 MS. BRUMLEY: We are, Your Honor.

11 THE COURT: You may proceed.

12 MS. BRUMLEY: At this time we would call Lamar Adams
13 to the stand.

14 (Witness Sworn)

15 THE COURT: Mr. Adams, before you is the microphone.
16 Please speak directly into it, directly into it loudly and
17 clearly enough for the ladies and gentlemen of the jury to hear
18 you.

19 The court reporter is taking down everything that is
20 being said. So it's important that you speak at a pace at
21 which she can keep up with you, that you allow the lawyers to
22 finish their questions before you begin to speak so that the
23 two of you will not be talking at the same time.

24 Make sure, sir, that all your responses verbal. If
25 you're going to nod or shake your head, give me a yes or no and

1 try to avoid using uh-huh and unh-unh. I'll try to manage
2 that. Those could be spelled the same, and we need to make
3 sure that the record is accurate.

4 If you will, though, starting off, if you will state
5 and spell your name.

6 THE WITNESS: It Arthur Lamar Adams L-A-M-A-R
7 A-D-A-M-S.

8 THE COURT: You may proceed.

9 MS. BRUMLEY: Thank you, Your Honor.

10 ARTHUR LAMAR ADAMS,
11 having first been duly sworn, testified as follows:

12 DIRECT EXAMINATION

13 BY MS. BRUMLEY:

14 Q Mr. Adams, good morning. My name is Abby Brumley. I'm an
15 Assistant Federal Public Defender, and I represent William B.
16 McHenry.

17 Mr. Adams, are you familiar with a company knowed as
18 Madison Timber Properties?

19 A Yes.

20 Q And how do you know that company?

21 A It's my company.

22 Q Were you the sole owner of that company?

23 A Yes.

24 Q And I -- where are you currently residing?

25 A Forest City Arkansas at an CFI low facility.

1 Q And what are you incarcerated for?

2 A One count of wire fraud.

3 Q And was that fraud associated with your owning of Madison
4 Timber Properties?

5 A Yes.

6 Q Did you plead guilty to that charge?

7 A Yes.

8 Q Did you enter into an agreement with the government?

9 A Yes.

10 Q What were the terms of that agreement?

11 A They recommended a sentence that I agreed to, and I agreed
12 to cooperate.

13 Q And I want you to explain to the jury how you went
14 committing this fraud that you pled guilty to.

15 A What do you mean explain?

16 Q I mean explain what the fraud entailed.

17 A It would have entailed drawing up timber deeds and
18 promissory notes, and investors would invest in a timber track
19 that may or may not exist and the terms of the promissory note
20 that would be paid back over a 12-month period.

21 Q And how long did this fraud go on?

22 A I was charged by the government for going on since 2011.

23 Q How did you go about getting investors to invest in this
24 fraud?

25 A They typically came from, you know, other people that would

1 bring investors to me.

2 Q Who were those other people?

3 A That would be various people, you know, like Mr. McHenry or
4 Mr. Kelly, Mr. Billings.

5 Q What about Pinnacle Trust?

6 A They did for a while, yes.

7 Q And explain to the jury what Pinnacle Trust is.

8 A From my understanding, they are a wealth management
9 company.

10 Q Did Butler, Snow bring you investors?

11 A Butler, Snow -- I can't recall if they did or one of their
12 representatives did. I can't recall.

13 Q Did Michael Billings bring you investors?

14 A Yes.

15 Q Did John Seawright bring you investors?

16 A Yes.

17 Q Did Brent Alexander?

18 A Yes.

19 Q Did Reeves Neblett?

20 A Yes.

21 Q Did Ed Coleman?

22 A Yes.

23 Q Did Terry Wayne Kelly?

24 A Yes.

25 Q And Mr. McHenry I think you already said.

1 A Yes.

2 Q Did all of these people get compensated for bringing you
3 investors?

4 A They did.

5 Q Did Bill McHenry get compensated for bringing you
6 investors?

7 A Yes.

8 Q Did any of these people know that this investment was a
9 fraud?

10 A I don't know.

11 Q Did you tell anybody this investment was a fraud?

12 A No.

13 Q Did you ever tell your wife or your kids that this
14 investment was a fraud?

15 A No.

16 Q Did you ever tell Bill McHenry that this investment was a
17 fraud?

18 A Not that I recall.

19 Q Well, how did you meet Bill?

20 A A mutual acquaintance named Grady McCool introduced us.

21 Q Did you and Bill ever do any legitimate business deals?

22 A We did.

23 Q And explain to the jury what kind of -- what kind of deals
24 y'all did.

25 A We would buy recreational hunting land and sell it and also

1 timber tracts.

2 Q And this was all legitimate?

3 A Yes.

4 Q And did the two of you make money doing this?

5 A Yes.

6 Q Was Bill an owner of Madison Timber Properties?

7 A No.

8 Q Do you know Gleb Ostrovsky?

9 A I do.

10 Q And how did you meet Gleb?

11 A I met Gleb through Mr. McHenry.

12 Q And did you explain to Gleb how the investment into Madison
13 Timber Properties worked?

14 A I recall he came by the office, and Bill and I sat down and
15 explained it to him.

16 Q And explain to the jury what you told people regarding how
17 the investment worked.

18 A I would tell them we had a contract with mills and we would
19 buy the timber, and the mills would pays us over a certain
20 period of time and we would share that exactly the same way
21 with the investor.

22 Q And would the investor receive the return on their
23 principal along with a profit within about 12 months?

24 A Yes, over a 12-month period.

25 Q And since this was a fraud, how did you go about paying

1 that money back to investors? Where did you get the money?

2 A From other investors.

3 Q And who drafted the paperwork that was involved with this
4 fraud?

5 A Most of it was printed out in the office in our office.

6 Q And who drafted it?

7 A I did.

8 Q Explain to the jury how you got the land descriptions that
9 you put in these fraudulent deeds.

10 A There are ownership maps for every county in Mississippi,
11 and you use an ownership map.

12 Q At any time did Bill draft any of these documents?

13 A Not that I recall.

14 Q Did he ever assist you in drafting any of the documents?

15 A Other than if my printer wasn't working, using his printer.

16 Q But would he know what you were printing?

17 A Yeah. I mean, he would know if it was a promissory note or
18 a timber deed.

19 Q Would he know if the document contained false information?

20 A I can't answer that.

21 Q Did you ever tell him it contained false information?

22 A No.

23 Q Did you -- will you explain to the jury what you told
24 everyone to do with the fake deeds.

25 A I told them to hold them and not file them at the

1 courthouse.

2 Q Did Gleb Ostrovsky make a profit and get back his principal
3 from his investment in 2014?

4 A I assume he did. That's a long time ago, and I can't
5 remember every --

6 Q Let me ask it like this. When did people stop getting a
7 return on their investment?

8 A I believe it was May of 2018.

9 Q Before that, did everyone get a return on what they
10 invested?

11 A Yes.

12 Q Before that, had you told anybody that this was a Ponzi
13 scheme?

14 A No.

15 Q Did you share office space with Bill?

16 A Yes.

17 Q And for how long did y'all share office space?

18 A I would guess seven or eight years.

19 Q Did anyone else ever share space with y'all?

20 A We had someone in there named Brad Branscome at one time.
21 He did. I don't remember how long. It wasn't very long.

22 Q Do you remember what Bill's normal working hours were?

23 A I mean, I usually I think around 9 to 2 or 3 or 4 o'clock.

24 Q What were your working hours?

25 A Just sometimes never in the office, you know, out on the

1 road. And sometimes in the office until noon, sometimes until
2 6:00.

3 Q To your knowledge, did any of the investors ever have
4 lawyers review the paperwork you provided?

5 A I don't know.

6 Q And you've been interviewed by the government and the FBI.
7 Right?

8 A I have.

9 Q How many times?

10 A Once.

11 Q In those interviews, did you tell them that Bill McHenry
12 knew about this scheme?

13 A I don't recall. That was the day I turned myself in. My
14 head was spinning, and I don't remember. But I know it's in a
15 transcript somewhere.

16 MS. BRUMLEY: Court's indulgence, Your Honor.

17 THE COURT: Yes.

18 (Short Pause)

19 MS. BRUMLEY: May I approach, Your Honor?

20 THE COURT: You may.

21 BY MS. BRUMLEY:

22 Q Mr. Adams, I've handed you a document, and I ask you to
23 read it to yourself. You may need to go to the next page. And
24 once you're finished reading that, if you'll look up.

25 A Okay.

1 Q Does that refresh your memory about what you told the
2 government about Bill McHenry's involvement?

3 A Yes, I do remember that.

4 Q What did you say?

5 A I said he didn't have a clue that it was illegitimate and
6 that he brought timber tracts we did go buy that were
7 legitimate. And he knew my forester real well, and he's been
8 on properties. He's in the office with me about half a day
9 probably four days a week and brings smaller investors in the
10 100,000 to \$200,000 range, and I pay him, and he gets
11 10 percent.

12 MS. BRUMLEY: That's all I have, Your Honor. May I
13 approach, Your Honor?

14 THE COURT: You may. Any cross-examination of this
15 witness?

16 MR. COOPERSTEIN: Oh, yes, Your Honor. Thank you.

17 CROSS-EXAMINATION

18 BY MR. COOPERSTEIN:

19 Q Hello, Mr. Adams.

20 A Good morning.

21 MR. COOPERSTEIN: Court's indulgence. May I ask for
22 the exhibits?

23 (Short Pause)

24 BY MR. COOPERSTEIN:

25 Q Mr. Adams, I'm going to show you what's already in evidence

1 as Government's Exhibit 3. That's marked as Exhibit 3. It's a
2 promissory together with timber deed and cutting agreement.
3 We've already had testimony that these were provided to Gleb
4 Ostrovsky. I'd like to turn your attention to the last page of
5 Exhibit 3.

6 THE COURT: Just make sure you're always speaking into
7 the microphone. You can turn it towards you.

8 MR. COOPERSTEIN: Thank you, Your Honor. That's
9 helpful.

10 BY MR. COOPERSTEIN:

11 Q Do you see the signature of the grantor?

12 A I do.

13 Q Now, you never authorized anyone else to sign a timber deed
14 for Madison Timber Properties, did you?

15 A No, sir.

16 Q And specifically you never authorized Bill McHenry to sign
17 a timber deed, did you?

18 A Never authorized anyone. No, I did not.

19 Q Did Bill McHenry ever sign another one of these timber
20 deeds?

21 A Not that I'm aware of.

22 Q And you were the one who always typed in the signature line
23 for Madison Timber.

24 A I did.

25 Q Such as I'm indicating now. So over the years that you ran

1 Madison Timber Properties, you created over 1,000 of these
2 fraudulent timber deeds, didn't you?

3 A Yes.

4 Q And you kept tight control over these documents.

5 A Right.

6 Q And isn't it true that's because you needed to be able to
7 keep track of everything as the scam went on?

8 A That's correct.

9 Q Now, you didn't type in the typewritten "Bill McHenry" on
10 the signature line on Exhibit 3, did you?

11 A No, I didn't -- I wouldn't not have anybody else sign the
12 timber deed other than me.

13 Q Bill McHenry entered shared office space with you.
14 Correct?

15 A That's correct.

16 Q And he saw you in the office. Right?

17 A Right.

18 Q And he also saw you printing documents for Madison Timber
19 Properties. Correct?

20 A Correct.

21 Q And he listened to you talk on the phone, didn't he?

22 A He did.

23 Q And in fact, when you met Bill McHenry in 2010, Madison
24 Timber Properties was already in operation, wasn't it?

25 A Yes, it was.

1 Q And that was when McHenry told you he wanted to be in on
2 your business with Madison Timber, didn't he?

3 A Yes.

4 Q And Bill McHenry handled his investors himself, didn't he?

5 A He did.

6 Q Now, you also personally heard Bill McHenry make his sales
7 pitch to his investors, didn't you?

8 A I did.

9 Q And you heard McHenry say that the timber was presold.
10 Right?

11 A I have, yes.

12 Q And that was false, wasn't it?

13 A That was false.

14 Q And McHenry also said that Madison Timber was paid once a
15 month by the lumber mills, didn't he?

16 A That's correct.

17 Q And that was false too, wasn't it?

18 A That was false.

19 Q Now, you never heard Bill McHenry tell any of his investors
20 about McHenry's 10 percent commission, did you?

21 A No.

22 Q Isn't it true you once heard an investor asked Bill
23 McHenry, "What about tornadoes?"

24 A Yes. In our office an investor asked that.

25 Q And isn't it also true that you heard McHenry reply that

1 there was insurance?

2 A That's correct.

3 Q But there was no insurance on the timber, was there?

4 A There was not.

5 Q So that was a lie.

6 A That it was a lie.

7 Q Now, you've also heard McHenry give his investors McHenry's
8 only personal guarantee, haven't you?

9 A I have.

10 Q Including Gleb Ostrovsky?

11 A Correct.

12 Q Now, do you remember when FBI Agent Culpepper showed you
13 this deed that's on the screen?

14 A Yes. It was in my attorney's office.

15 Q Weren't you surprised that Bill McHenry had signed it?

16 A I was surprised, and I told Agent Culpepper I was
17 surprised. I had never seen that document.

18 Q Isn't it true it looked to you like McHenry was running a
19 separate side deal?

20 A If you look at that, that's what it looks like.

21 Q In fact, you thought McHenry was trying to cut you out,
22 didn't you?

23 A Yes.

24 Q I'd like to establish a couple of elements of the regular
25 routine of the Madison Timber scam if I may. First of all,

1 there were a number of LLCs formed. Correct?

2 A There were.

3 Q Madison Timber Fund, LLC, that was a Mississippi Limited
4 Liability Company. Correct?

5 A Right.

6 Q And that was formed in 2009?

7 A Right.

8 Q That was wholly-owned by you?

9 A Correct.

10 Q Lamar Adams.

11 A Correct.

12 Q And that with administratively dissolved in 2019. Correct?

13 A That correct.

14 Q There was also Madison Timber, LLC, wasn't it?

15 A Yes, sir.

16 Q That too was a Mississippi limited liability company?

17 A Right.

18 Q And that was formed in 2011, was it?

19 A Right.

20 Q And that too was wholly-owned by Arthur Lamar Adams.

21 Correct?

22 A Correct.

23 Q That also was administratively dissolved in 2017. Is that
24 right?

25 A Correct.

1 Q And finally there's the Madison Timber Properties, LLC.

2 Correct?

3 A Right.

4 Q That too was a Mississippi Limited Liability Company?

5 A Yes.

6 Q And that had offices at 742 Magnolia Street, Madison
7 Mississippi, didn't it?

8 A Correct.

9 Q Now, continuing with the specific routine with investors,
10 isn't it true that you would first give Bill McHenry the
11 paperwork of the timber deeds and promissory note? Correct?

12 A I would give them to him to take to his people to have them
13 sign.

14 Q And next Bill McHenry would take an investor's check and
15 deposit it to the Madison Timber Properties account. Correct?

16 A Right.

17 Q And then Madison Timber Properties would cut a 10 percent
18 commission check to Bill McHenry. Correct?

19 A Right. I would normally give him that check when I gave
20 him the paperwork for his investors to sign.

21 Q And that commission was immediate, wasn't it?

22 A It was.

23 Q The commission was cut before any so-called investment of
24 the principal. Correct?

25 A Correct.

1 Q And that payment wasn't based on any profit from any sales
2 of timber to mills, was it?

3 A No, it wasn't.

4 Q Now, the 10 percent rate of the commission payment, Bill
5 McHenry demanded that from the start, didn't he?

6 A He did.

7 Q And isn't it true that you felt you had no choice but to
8 pay whatever Bill McHenry demanded?

9 A That's how I felt, yes.

10 Q And that's because you needed to keep making the monthly
11 payments to past investors, didn't you?

12 A Correct.

13 Q Now, that percentage was a higher commission than you paid
14 to any of your other recruiters, wasn't it?

15 A It was.

16 Q Most other recruiters only took 2 or 3 percent. Isn't that
17 right?

18 A That's correct.

19 Q And you and Madison Timber Properties, you both used the
20 Trustmark Bank until about 2016. Is that correct?

21 A That's correct.

22 Q Now, you, sir, you are the sole officer or owner of LLC,
23 the limited liability company that is Madison Timber
24 Properties. Is that right?

25 A That's correct.

1 Q You never told Bill McHenry he was a partner, did you?

2 A No.

3 Q And you never told Bill McHenry he was a co-owner, did you?

4 A No.

5 Q But you heard McHenry tell his investors that he was a
6 partner in Madison Timber Properties, didn't you?

7 A Yeah, I've heard him say, yeah, "My partner and I," and,
8 "We're partners," and "We have this," and "My partner and I
9 have that."

10 Q Didn't McHenry even scold you once to say, "You need to say
11 'we,' not 'I'"?

12 A Yeah, I would say, "I'm trying to buy this tract of timber
13 or that tract." And when the investor would leave, he'd say,
14 "We need so say 'we,' not 'I.'"

15 Q You would hear McHenry on the phone pitch to his investors
16 saying, "We got a tract" or "We have an investment for you,"
17 didn't you?

18 A Correct. That's correct.

19 Q So McHenry referred to you as "my partner." Correct?

20 A That's correct.

21 Q And that was a lie, wasn't it?

22 A That was not true; that was a lie.

23 Q Now Bill McHenry never said a word to you about checking on
24 Madison Timber Properties related land or the timber to see if
25 it was there, did he?

1 A No.

2 Q Or about going to see the county records of the deeds and
3 titles for the Madison Timber Property deals? Did he ever ask
4 about that?

5 A Never.

6 Q Now, wasn't it your biggest fear that someone would check
7 the deed records of the county title office?

8 A Yeah. If one had ever been checked, it would be exposed as
9 a fraud.

10 Q But Bill McHenry never checked, did he?

11 A No.

12 Q Or asked you?

13 A No.

14 Q Or told anyone else to check.

15 A No.

16 Q So you heard McHenry say to his investors, "the mill is
17 locked in for 12 months," didn't you?

18 A Correct.

19 Q But you never told McHenry to say that, did you?

20 A No, his pitched followed, you know, I guess what he had
21 heard me say to other people, the same pitch.

22 Q And it was your idea, wasn't it, to tell investors, "Don't
23 file the timber deed," that you gave them as security?

24 A Right, because I knew it was an illegitimate timber deed.

25 Q So that was in order to avoid detection, wasn't it?

1 A Right, correct.

2 Q Because if they did check, the fraud would be revealed.

3 Right?

4 A If they filed the timber deed, it would be filing a false
5 timber deed.

6 Q But Bill McHenry never objected, never questioned why you
7 told that to investors, did he?

8 A No.

9 Q You he said that McHenry never invested any of his own in
10 Madison Timber Properties, haven't you?

11 A Correct.

12 Q But you heard McHenry tell investors he did invest his own
13 money in Madison Timber, didn't you?

14 A Yes.

15 Q You knew that was a lie.

16 A Correct.

17 Q Now, generally McHenry would bring older more local
18 investors to you. Is that correct?

19 A Right. That's correct.

20 Q Now, you and Bill McHenry did have this legitimate land
21 deals together in the past. Correct?

22 A That's correct.

23 Q But in all those legitimate land deals you shared, you and
24 McHenry, you both visited the property. Correct?

25 A That's correct. We would go to the property.

1 Q And you sent a forester and timber crews to inspect the
2 site, didn't you?

3 A We did. We would have the forester always go and cruise
4 the timber to get a value of it.

5 Q All right. You had title reports on the land, didn't you?

6 A We did, to make sure the title was clear.

7 Q And you both also did a lot of diligent work before pulling
8 the trigger to make a land deal, didn't you?

9 A That's correct, we did.

10 Q And that's how a legitimate land deal is supposed to work,
11 to your knowledge. Correct?

12 A That's correct.

13 Q So based on your knowledge and observation, Bill McHenry
14 knew how to properly vet and prepare a land deal, didn't he?

15 A Oh, yeah. He was familiar with the land business.

16 Q But in those cases together with him, there were no
17 third-party investors, were there?

18 A No, there would may be partners that we would go in all
19 together and we all borrow money at the bank, but we're all on
20 the note, you know, but --

21 Q In those cases, as far as Bill McHenry was concerned, that
22 was McHenry's money on the line. Correct?

23 A Right, right.

24 Q When it was his money, Bill McHenry took all the right
25 steps, didn't he?

1 A Right.

2 Q But once there was the third-party investment for Madison
3 Timber, things changed, didn't they?

4 A We didn't go through all of that, no.

5 Q Then there was no personal visit. Right?

6 A No.

7 Q And then there was no title check. Right?

8 A No.

9 Q And then there was no forester. Correct?

10 A No.

11 Q And then was no timber cruise. Correct?

12 A No, none.

13 Q And Bill McHenry was happy to take his 10 percent
14 commission in those instances, wasn't he?

15 A Right. I think he had one investor that we would type
16 up -- I would type up a timber cruise to put with the
17 paperwork, but that was it.

18 MR. COOPERSTEIN: Can I get one moment, Your Honor?

19 THE COURT: You may.

20 MR. COOPERSTEIN: Thank you, Your Honor. That's all
21 my questions for this witness.

22 THE COURT: All right.

23 REDIRECT EXAMINATION

24 BY MS. BRUMLEY:

25 Q Mr. Adams, did Bill McHenry bring you investors?

1 A Yes.

2 Q Did he receive a commission for bringing you these
3 investors?

4 A If they invested, he received a commission.

5 Q Was he involved any other way than bringing you investors
6 with Madison Timber Properties?

7 A Other than having them execute the paperwork, maybe deposit
8 checks.

9 Q And that was all?

10 A Right.

11 Q And did any investor ever request to go look at the timber?

12 A I don't recall.

13 Q Did you ever take an investor to look at the timber?

14 A I just -- I can't remember that. I don't recall.

15 Q Did you ever tell anyone when you were talking on the
16 telephone that this was a fraud?

17 A No.

18 Q Did you ever tell anyone when you were talking on the phone
19 that the deeds were fake?

20 A No.

21 Q Was Bill able to overhear your sales pitch to people?

22 A Sure.

23 Q And what you told people to get them to invest?

24 A Right.

25 Q Now, the government showed you what has been admitted into

1 evidence as Government's Exhibit 3, and it starts with a
2 promissory note. And whose signature is that?

3 A That's mine.

4 Q And then it also contains a timber deed and cutting
5 agreement. Is that right?

6 A Yes.

7 Q And what is this in this area?

8 A That's what's called the legal description of the property.

9 Q You have used this legal description in more than one
10 timber deed?

11 A I'm sure.

12 Q And this is the one that is signed by Bill McHenry.

13 A Right.

14 Q And I believe you told the government that Bill had cut you
15 out of the deal. Is that right?

16 A No, I said that was -- just came across my mind.

17 Q Do you know where that investment -- that investment check
18 was deposited?

19 A I don't.

20 Q If Bill was trying to cut you out of the deal, wouldn't you
21 think it would have gone into his account?

22 A Ma'am, I don't know.

23 Q Well, if someone was trying to cut you out of the deal,
24 they wouldn't put it in your bank account.

25 A I would assume.

1 Q This is your bank account?

2 A Yes.

3 Q And what's the date of that deposit?

4 A 9/3.

5 Q And for how much?

6 A For \$100,000.

7 THE COURT: For the record, could you tell us what
8 exhibit that is.

9 MS. BRUMLEY: I'm sorry, Your Honor. This is
10 Government's Exhibit 10, and it's the bank statement of Madison
11 Timber Properties from Trustmark bank.

12 BY MS. BRUMLEY:

13 Q Did you ever tell Bill McHenry that these deeds were fake?

14 A No.

15 Q Did you ever tell Bill McHenry that this was a scam?

16 A No.

17 Q And the government tries to make a big deal about Bill
18 receiving a commission. Was Bill being paid for services
19 rendered? Did he do a service for you?

20 A He was bringing investors. Yes, I paid him a commission.

21 Q You compensated him. Right?

22 A I did.

23 Q Did you compensate everyone else who brought you business?

24 A I did.

25 MS. BRUMLEY: That's all I have, Your Honor.

1 THE COURT: All right. Is this witness finally
2 excused?

3 MS. BRUMLEY: Yes, Your Honor.

4 THE COURT: All right. Thank you for your testimony,
5 Mr. Adams. Is the defendant ready to call its next witness?

6 MS. BRUMLEY: We are, Your Honor. At this time we
7 would call Ricky Davis.

8 (Witness Sworn)

9 THE COURT: Mr. Davis, before you is the microphone.
10 I just ask that you speak loudly and clearly enough for all of
11 us to hear you.

12 The court reporter is taking down everything that is
13 said so please speak at a pace at which she can keep up with
14 you, Mr. Davis.

15 Make sure all your responses are verbal. If you're
16 going to nod or shake your head, give me a yes or no as well.

17 Allow the lawyers to finish their questions or
18 statements before you begin to speak so that the two of you
19 will not be speaking at the same time. And try your best to
20 avoid using uh-huh or unh-unh, but I'll try to monitor that as
21 well.

22 But for the record, could you please state and spell
23 your name.

24 THE WITNESS: Yes, sir, Ricky Davis,
25 R-I-C-K-Y D-A-V-I-S.

Exhibit B

UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF MISSISSIPPI
NORTHERN DIVISION

UNITED STATES OF AMERICA

VS.

CRIMINAL NO. 3:18cr00088CWR-LRA-1

ARTHUR LAMAR ADAMS

SENTENCING HEARING
VOLUME 1

BEFORE THE HONORABLE CARLTON W. REEVES
UNITED STATES DISTRICT JUDGE
OCTOBER 29, 2018
JACKSON, MISSISSIPPI

APPEARANCES:

FOR THE GOVERNMENT: MR. DAVID H. FULCHER

FOR THE DEFENDANT: MR. JOHN M. COLETTE
MR. SHERWOOD A. COLETTE

REPORTED BY: CHERIE GALLASPY BOND
Registered Merit Reporter
Mississippi CSR #1012

501 E. Court Street, Ste. 2.500
Jackson, Mississippi 39201
(601) 608-4186

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1 THE COURT: Is the government ready to call the case?

2 MR. FULCHER: Yes, Your Honor.

3 THE COURT: You may proceed.

4 MR. FULCHER: Thank you, Your Honor. We have for the
5 court this morning the case of United States v. Arthur Lamar
6 Adams, Criminal Number 3:18CR88. We're before the court this
7 morning for sentencing in this matter, the defendant having
8 pled guilty to Count 1 of the criminal information filed
9 against him, charging him with violation of 18 United States
10 Code, Section 1343, and that is a scheme and artifice to commit
11 fraud using interstate wire. The defendant is present in the
12 courtroom with his attorney, Mr. Colette.

13 THE COURT: Okay. Thank you, Mr. Fulcher.

14 MR. COLETTE: Good morning, Your Honor.

15 THE COURT: Good morning, Mr. Colette.

16 MR. COLETTE: Do you want my client up here right now,
17 or do you want to do the presentence report?

18 THE COURT: Just for a couple of questions real quick.
19 Mr. Adams, you're here with your attorney, Mr. Colette. The
20 government has -- excuse me, the probation office has prepared
21 a presentence report in this matter. Did you read that report
22 yourself?

23 THE DEFENDANT: Yes, sir.

24 THE COURT: Did you discuss that report with your
25 lawyer?

1 THE DEFENDANT: Yes, sir.

2 THE COURT: Did your lawyer give you the opportunity
3 or allow you to ask all the questions you thought you needed to
4 ask about that report?

5 THE DEFENDANT: Yes, sir.

6 THE COURT: And was he able to answer the questions to
7 your satisfaction?

8 THE DEFENDANT: Yes, sir.

9 THE COURT: Do you understand all the explanations he
10 may have given you about -- in response to any questions that
11 you asked?

12 THE DEFENDANT: Yes, sir.

13 THE COURT: Mr. Colette, I turn to you and ask, do you
14 agree with what your client has told the court?

15 MR. COLETTE: Yes, I do, Your Honor.

16 THE COURT: All right. At this time, because the
17 report is lengthy, and I do understand there will be
18 objections, Mr. Adams, I'll allow you to go back to your seat,
19 but just so that we can be all on -- so that I'm sure we have
20 received the same report, this defendant, according to the
21 report, has pled guilty to Count 1 of a multiple-count
22 indictment or information, wire fraud, a violation of Title 18,
23 United States Code, 1334 (sic).

24 According to paragraph 63 of the PSR, the base offense
25 level under the guidelines is -- and the guidelines look to

1 Section 2B1.1, the base offense level is 7. Paragraph 54
2 suggested that or indicates that there's to be a 24-level
3 increase because of what the probation office has calculated to
4 be a loss which exceeds \$65 million but is not more than 100 --
5 and less than \$150 million. Paragraph 65 indicates that there
6 should be a six-level increase because the offense resulted in
7 substantial financial hardship for 25 or more victims.

8 Paragraph 66 adds an additional two-level increase
9 because the probation office indicates that the defendant has
10 used sophisticated means, and defendant intentionally engaged
11 in or caused the conduct constituting sophisticated means.

12 There's an additional two-level increase at paragraph
13 68, which indicates that the defendant abused a position of
14 public or private trust or used a special skill in a manner
15 that significantly facilitated the commission or concealment of
16 the offense.

17 The adjusted offense level, therefore, becomes a 41,
18 but because this defendant entered a plea of guilty and
19 accepted responsibility, a total of three levels will be
20 decreased according to paragraph 72 and 73 of the PSR. His
21 total offense level, according to this version of the PSR, is
22 38.

23 The criminal history is reflected at paragraphs 76 and
24 77 of the -- which is part B of the PSR. There are no points
25 with respect to that, so therefore, the total criminal history

1 is zero. And therefore, his criminal history category would
2 be I. So that leaves this defendant with a total offense level
3 of a 38 as the report was prepared and submitted to the court.
4 And I do understand there are objections pending. Total
5 offense level of 38, criminal history category of I.

6 If this court were to sentence this defendant
7 according to the statute, he could be sentenced to up to 20
8 years in prison. Under the guidelines, according to the
9 calculations so far, the guidelines indicate a guideline range
10 of 235 months to 240 months. Once the defendant serves any
11 sentence under the statute, he could receive a supervised
12 release for up to three years under the guidelines. Supervised
13 release obligations would be from a period of one to three
14 years.

15 He could receive probation under the statute for one
16 to five years. However, under the guideline, he's ineligible
17 for probation.

18 A fine may be imposed under the statute for up to
19 \$250,000, and under the guidelines, a fine may be imposed
20 between the range of \$50,000 and \$250,000.

21 Restitution, according to -- under the guidelines or
22 the statute, would be an amount of \$97,592,197.06. He will
23 have to pay a special assessment under either the statute or
24 under the guidelines.

25 I turn to the government. Have I indicated what's in

1 the PSR as currently drafted and that's before the court at
2 this moment?

3 MR. FULCHER: Yes, sir.

4 THE COURT: To the defendant, does the defendant
5 agree?

6 MR. COLETTE: Yes, Your Honor.

7 THE COURT: All right. Now, that's what it looks like
8 at this point in time. The parties have -- the defendant has
9 raised some objections to which the government has responded,
10 so I turn to the defendant. How would you like to proceed with
11 the presentation of your objections, if any, Mr. Colette?

12 MR. COLETTE: May it please the court, as I understand
13 the law, Judge, and you correct me if I'm wrong, is the court
14 can consider the presentence report as accurate unless and
15 until I rebut it. I would ask the court to make a part of this
16 record, which it normally does, my objections that I previously
17 filed.

18 Also, I had sent probation a binder that is my
19 rebuttal computation and/or calculations on the methodology I
20 believe should have been used in generating the presentence
21 report that we submit is inaccurate, and also a reply to the
22 government's response that highlights the current two cases
23 that seem to suggest different results, but I think they're
24 distinguishable, dealing with loss. If those documents are and
25 can be made part of the record, I assume, as with the

1 presentence report, that would be under seal.

2 But given that, I'm ready to proceed as far as in
3 terms of substantiating what we've submitted that we -- that we
4 believe rebuts it.

5 Before I begin, if it's okay to just sort of highlight
6 what our objections are -- did you want --

7 THE COURT: Hold on one second, Mr. Colette. I've
8 left something on my desk back in chambers. I need to get it.

9 (Short Pause)

10 MR. FULCHER: Your Honor, this may be a good time --

11 THE COURT: Let me -- it will be a good time for me,
12 since we're at a lull, let me ask you this question that I
13 always fail to ask. To the extent that there are victims in
14 this case, Mr. Fulcher, have any victims been notified of these
15 proceedings today?

16 MR. FULCHER: Yes, Your Honor. We've made extensive
17 efforts to contact all of the victims throughout the course of
18 this case. That has included two weeks ago or so sending a
19 letter to all known victims letting them know about the
20 sentencing that is occurring today and their right to
21 allocution, as well as any other related matters.

22 There are several victims who are present today who
23 wish to be heard. And, Your Honor, there is one victim who
24 wishes to be heard and would like to speak. He has a doctor's
25 appointment at 11:30. If there's a way we could take him out

1 of turn and allow him to speak first, and then that way he can
2 hopefully make his doctor's appointment.

3 There's another victim who has a -- also has a medical
4 appointment this afternoon. I'm not sure that -- in terms of
5 the flow of things, but as we approach that time, if we are
6 reaching that point, I'll bring that to the court's attention
7 with your permission.

8 THE COURT: Mr. Colette.

9 MR. COLETTE: Judge, since this presentence report, of
10 course, is but one factor for you to consider, and it could
11 be --

12 THE COURT: Make sure you're speaking into the
13 microphone.

14 MR. COLETTE: Since the issues that we're about to
15 embark on, as far as the issues of the presentence report, are
16 technical and they could be lengthy, I have no objection to one
17 or any of the victims speaking to you now if that will work
18 with their schedules, because this is a lot of technical stuff,
19 as we all know. They may not know. But if you want to take up
20 any victims, as far as their allocution, I certainly have no
21 objection to considering that testimony at this time.

22 THE COURT: Okay. Thank you, Mr. Colette.

23 The court is also aware, based on communication with
24 the parties, that there is a possibility that this sentencing
25 proceeding may last more -- may not be completed today. Is

1 that correct, Mr. Fulcher?

2 MR. FULCHER: Yes, sir.

3 THE COURT: Okay. Now, in that regard, do we have any
4 -- and you may at a break point or at some point -- if we have
5 any victims who are from out of state or who have traveled a
6 long distance who may not be able to stay around, it will be a
7 hardship for them to stay around for a period exceeding today,
8 the court is willing to take any testimony, any victim
9 statement or anything that they might want to provide. I'll
10 take that out of turn, if you will.

11 MR. FULCHER: Yes, sir.

12 THE COURT: And help me coordinate that so as not to
13 inconvenience anyone. And the court, for the record, has
14 received from the victim witness coordinator in the Department
15 of Justice dozens and dozens and dozens of victim witness
16 statements that was -- were sent to the U.S. Attorney's Office.
17 And is it your understanding, Mr. Fulcher, that all of those
18 witness statements have been provided to the defendant?

19 MR. FULCHER: Your Honor, that's my understanding.

20 THE COURT: Okay.

21 MR. FULCHER: And as to -- I know of at least one
22 victim who is here from out of town that does need to be heard
23 today. There may be at least one other that also falls into
24 that category.

25 Okay. Well, at this time, for the particular victim

1 who has the earlier doctor appointment, you may allow that
2 person to come forward and to provide his or her testimony.

3 MR. FULCHER: Thank you, Your Honor. Your Honor, my
4 understanding is this will be the victim's allocution.

5 THE COURT: Right.

6 MR. FULCHER: Also, with regard to any victims that
7 are involved in this case, obviously, we take their privacy
8 very seriously. We've taken steps, obviously, to make sure --
9 to the extent that there are any documents that would reflect
10 victims' names or identifiers in any of the documents that are
11 submitted, we're making sure that that's being done. We would
12 ask, to the extent possible as we go forward with this
13 proceeding, that those names and identifiers remain protected
14 consistent with the local rules.

15 All right. Your Honor, Eric Orth, I believe, is the
16 victim.

17 THE COURT: Mr. Fulcher and Mr. Colette, could you
18 come forward, please.

19 (At the Bench off the record.)

20 (At the Bench:)

21 THE COURT: Okay. We're going back on the record now
22 because we were talking procedurally how to move forward with
23 respect to having these witnesses testify, quote-unquote,
24 in camera. We have determined that any witness who testifies
25 in open court will state their name, and there really probably

1 should be as little identifying information after that point.

2 And then the issue turns to how the victim allocution
3 should be presented, and that's at the point that we are now.

4 The government intends to allow one witness to testify now out
5 of turn because he has a doctor's appointment. We don't know

6 exactly what that witness is going to say, but it's an

7 allocution, and Mr. Colette has asked that he have the right --

8 he should have the right to cross-examine that witness with

9 respect to his loss amount and other things, and to

10 cross-examine the witness to show, at least in part, that the

11 amount of loss is not what this witness and others might say it

12 is, based on information that Mr. Colette has been able to get.

13 The government disagrees that he should have that right to

14 cross-examine these witnesses. And now, Mr. Fulcher, for the

15 record, I'll hear from you on that point.

16 MR. FULCHER: Thank you, Your Honor. These are

17 victims who have -- who have contacted us under the Victims

18 Rights Act and who have stated that they wish to allocute at

19 sentencing. This will be a victim who, because of a medical

20 appointment, wishes to do so out of turn, and as such, under

21 the Victims Rights Act, they are allowed to do so without being

22 cross-examined.

23 If Mr. Colette wishes to call witnesses or put on

24 evidence, certainly he has that right, but that does not

25 include a right to cross-examine a victim who is allocuting

1 under the Victims Rights Act, which is what we have here. This
2 man is not here under subpoena and has a right to speak to the
3 court about matters to be considered at sentencing.

4 THE COURT: Okay. You mentioned the case of *United*
5 *States v. Fields*.

6 MR. FULCHER: Yes, sir. I can get the citation.
7 *United States v. Fields* is a Fifth Circuit case from 2007.
8 I'll have to get the citation from counsel's table. It states
9 that there is no Sixth Amendment right of confrontation at
10 sentencing, and that was a death penalty case. So in a death
11 penalty case at sentencing, the Fifth Circuit held that there
12 is no right under the Sixth Amendment, that that only extends
13 to the determination of guilt or innocence.

14 THE COURT: Okay.

15 MR. FULCHER: And several other cases have followed
16 that ruling since that time.

17 THE COURT: Okay. Mr. Colette, I'll hear from you.

18 MR. COLETTE: I've not read the case, but in the broad
19 sense, I can see where there are times when there may not be a
20 Sixth Amendment right to cross. In a murder case, you killed
21 my mother. I get to tell you how sorry you are.

22 In this case, it's a little different. This is an
23 economic case, and the victim impact statement, if he were just
24 to testify he's upset with what the sentence should be, it may
25 not rise to the Sixth Amendment. However, this individual also

1 filed a written victim impact statement with you, as we've seen
2 at least on 90 of them that we got a week ago. The credibility
3 of those statements I think are suspect in some cases. Whether
4 this particular witness, I don't know. So if his testimony --
5 what if he testifies today contrary to what's in his impact
6 statement and/or his impact statement we believe has a
7 credibility issue? I believe I'm entitled to inquire as to the
8 veracity of any information before you under due process.

9 This is a sentencing hearing. Presentence reports
10 have to contain accurate material, and then for the court to
11 consider something that we -- and again, we're shooting in the
12 blind. As you mentioned earlier, Judge, I don't know what he's
13 going to say. I may not have any objection with it whatsoever.

14 But the other part of this is that none of these
15 people can be utilized, in my opinion, their testimony for any
16 enhancements in the guidelines. One of these enhancements
17 you're going to be looking at is substantial hardship. If I
18 can't cross-examine him as to whether that is a substantial
19 hardship, it doesn't come in under that enhancement, because
20 now we're talking about, in addition to what sentence he should
21 give you, also giving this enhancement. The man says, *I lost*
22 *my life savings*, when I know for a fact he's got \$10 million in
23 the bank. So --

24 MR. FULCHER: And that's not the case with this
25 particular person.

1 MR. COLETTE: Yeah, but this one may have lost money.
2 I don't know what he's going to say.

3 THE COURT: Right. Which raises an interesting
4 question because the court has reviewed, I believe, all the
5 victim impact statements, and all the victim impact statements
6 were signed under penalty of perjury. Suppose the probation
7 office has included in their PSR 34 people, but there are
8 clearly more than 34 --

9 MR. COLETTE: That claim that --

10 THE COURT: -- victim statements. To the extent the
11 court relies on statements of those that are not in the PSR
12 report and just relies on what was submitted under penalty of
13 perjury, indicia of reliability, I believe, how do you intend
14 to confront those, Mr. Colette, if they are not here to
15 testify.

16 MR. COLETTE: Right.

17 THE COURT: And if the court relies on some of
18 those -- because I know some of them were submitted by LLCs,
19 for example, and those LLCs have 15 members, some of them 13 or
20 15 members, again, trying to get the substantial hardship,
21 number of victims and all that stuff. How do you intend to
22 rebut?

23 MR. COLETTE: I don't -- well, I can rebut some of the
24 numbers by documents we're going to put in. I don't get to the
25 other -- anybody -- I don't get to anybody more than 34 because

1 of Rule 32(c). I've got to have notice of what they urge you
2 to utilize to impose this specific -- this two-level specific
3 offense characteristic. Probation has picked out 34. We've
4 worked for the last couple of weeks saying if I get it below
5 25, that doesn't apply. So I just need nine. If the court's
6 telling me we're going to consider ones that I'm not prepared
7 for, then we're going to ask for a continuance because the
8 guidelines say these 34 -- or the probation and the government
9 said these 34 are the ones we're going to use as our basis upon
10 which we are going to ask the court to give us a two-level
11 enhancement. We have now -- we believe we've prepared for
12 those 34.

13 THE COURT: So with those 34, assuming some of the 34
14 are here to testify as victims --

15 MR. COLETTE: To give their allocutions --

16 THE COURT: -- to give their allocutions --

17 MR. COLETTE: Then because they are riding two horses,
18 because they are riding the allocution horse and because they
19 are riding the substantial hardship horse, then I would urge
20 the court to allow me to cross-examine them and get them to
21 admit these are the documents that show they made money.

22 For those who are just coming here to allocute, again,
23 I don't think I have a strong enough argument to cross, but if
24 any of these witnesses are going to be used for any other
25 purpose, then I do.

1 THE COURT: I mean, if all of them come here and
2 allocute and say --

3 MR. COLETTE: Give him 20 years.

4 THE COURT: -- *Your Honor, give him 20 years. I lost*
5 *a million dollars* --

6 MR. COLETTE: Okay.

7 THE COURT: -- and you saw your information shows they
8 lost zero, at the time when they say, *I lost a million dollars*,
9 are you going to seek to cross-examine them on that point, that
10 *I lost a million dollars*?

11 MR. COLETTE: Yeah, I mean, I guess at that point,
12 I've got to correct the record. You've got -- I'm now sitting
13 in the courtroom -- whether I have a right to cross-examine or
14 not, but I'm now sitting in the courtroom, and I just heard
15 this man say he lost a million dollars, and I've got the actual
16 checks and accounting of the actual checks of every check he
17 invested and every check he got paid, and his contracts, and I
18 know exactly what he's out, and I've got his impact statement,
19 I think then I have to cross-examine him. Yes, sir.

20 You've got a victim impact statement that I can show
21 you where he says he only invested 3 million, and he got back
22 3.5. I show he invested 5 million, but the bottom line still
23 is he got back half a million. But yeah, I mean, how can I
24 just let him say, *I lost a million dollars*, when I know that's
25 not the case? I think the government would also be offended

1 with that too.

2 THE COURT: Well, presumably the government stands by
3 what's in the PSR. If the PSR reflects that he lost a million
4 dollars, that's the government's position that they would
5 argue, I presume.

6 MR. COLETTE: Well -- and you correct me, Dave -- in
7 the PSR, there's an Appendix A. That Appendix A came from my
8 accountant. The government has not done any independent
9 financial examination or forensic accounting. They took the
10 last year snapshot, and they said, *This is the balance on the*
11 *contract, as the terms show.* What we did was we went back and
12 looked at 15,000 pages of documents and show the true financial
13 condition. For example, there's a guy on the Exhibit A that
14 has a claim for 500,000. The individual invested 3 million by
15 his own victim impact statement. He got back 3.5 million. He
16 says, *I've lost 500,000.* And that's on Appendix A. Again,
17 that's the true state of record. I don't have a lot of
18 cross-examination for that individual because that is my law
19 argument. You can't have a loss when that wasn't your money,
20 but we'll get to that later.

21 MR. FULCHER: Can I interrupt for one second? Two
22 quick things. Number one, I'm concerned that Mr. Orth is going
23 to miss his medical appointment. May I suggest that we let him
24 allocute, and if there's -- he lives here locally. If there's
25 an issue of bringing him back, then I think we can take that up

1 at -- at another time.

2 MR. COLETTE: I don't have a problem with that, Judge.
3 And he may not hurt me as bad as maybe somebody else.

4 THE COURT: Okay.

5 MR. FULCHER: And the second thing I have that I'm
6 curious about, you mentioned an accountant. It's my
7 understanding at our conference with the probation officer that
8 those documents, you were going to put them on through Lamar
9 Adams himself.

10 MR. COLETTE: Oh, yeah, yeah, yeah. No, no, no. The
11 Appendix A came from my client's accountant. I don't have an
12 expert for today. Lamar will put them in. I'm not calling an
13 accountant.

14 MR. FULCHER: Those are documents from his CPA --

15 MR. COLETTE: Yeah, yeah.

16 MR. FULCHER: -- that she hasn't done an independent
17 analysis --

18 MR. COLETTE: No, no, no. I wanted to make sure the
19 government didn't do an independent analysis, but we're not
20 calling an accountant. I do intend to call my client.

21 THE COURT: Let's go ahead and get Mr. Orth on.

22 MR. FULCHER: Thank you, Your Honor.

23 (Bench Conference Concluded)

24 THE COURT: Mr. Orth, I apologize to you. We're
25 trying to clear up a couple of matters, but we're trying to

1 make sure you are allowed to speak so that you can make your
2 appointment as best as possible. I realize time is gone.

3 MR. ORTH: I understand. Thank you.

4 COURT REPORTER: Spell your name, please.

5 MR. ORTH: E-R-I-C O-R-T-H.

6 THE COURT: You may proceed, sir.

7 MR. ORTH: Thank you, Your Honor. I just wanted to
8 say that I'm a disabled Veteran, and I was in the first Gulf
9 War, and I became disabled after that. My family and I had
10 been living off of the VA disability and the interest that I
11 received from Madison Timber Properties. Additionally, we
12 thought it well to cash in our -- I had a disability policy,
13 and we made an agreement with my disability company to cash it
14 in and invest it with Madison Timber Properties also because we
15 would get a better return on the money and be able to live
16 better than just taking my VA disability and my medical
17 disability plan.

18 We had everything set up so we could take care of us
19 for the rest of our lives. My wife, in the meantime, had a
20 stroke, and the whole left side of her body was disabled. She
21 was unable to move it.

22 Once all this happened, all we had was my VA
23 disability. With all the doctors I was seeing, I didn't --
24 VA -- it was too hard to get each and every one of them onto
25 the VA plan. So what I did is, I took an insurance policy out

1 on myself through Blue Cross. I had to pay for one for my wife
2 and one for my son. My VA disability payment barely covered
3 that. Then I had all of my household income expenses that I
4 couldn't pay. Thankfully, my mother and stepfather were able
5 to step in and help me. They would loan me monthly the
6 payments to take care of my insurance, and we were able to just
7 about stay even without going too much under water. So then
8 they started giving me a little more and -- just to try to keep
9 us afloat.

10 And I was pretty much destitute at that time, because
11 on my own, I couldn't work. I no longer had my disability
12 insurance. I no longer -- my wife could no longer work. My
13 son, at the time, was 15. I had to have insurance on him and
14 my wife and myself. I could have used the VA, but VA couldn't
15 cover all of the doctors. They didn't have all the
16 specially -- specialists I needed.

17 Between myself and my parents, we lost approximately
18 \$1.2 million in this, and the income I was getting was allowing
19 me to do everything. When I lost the income from Madison
20 Timber Properties, we went -- we were destitute until my mother
21 was able to work something out and bail us out.

22 When I finally -- in July, I believe, of this year, I
23 finally got approved for SSDI, and my entire back pay went to
24 my mother to pay her back. So I finally have that, but it
25 barely keeps us afloat. And it's just left me in a terrible

1 position.

2 I lost a lot of money. My parents lost a lot of
3 money. And, I mean, it pretty much took -- most of what I had,
4 I lost in this. And it just got me to the point where I didn't
5 know what I was going to do to help my family. That's what I
6 have to say.

7 THE COURT: Thank you, Mr. Orth. Let me ask you just
8 a couple of questions.

9 MR. ORTH: Yes, sir.

10 THE COURT: What is your age?

11 MR. ORTH: I'm 49.

12 THE COURT: What is your wife's age?

13 MR. ORTH: She's 46.

14 THE COURT: Is she still suffering from her -- you
15 indicated that she had a stroke and she's mostly paralyzed on
16 the left side?

17 MR. ORTH: Yes.

18 THE COURT: Has she recovered from that or is she
19 still --

20 MR. ORTH: She's going through PT and OT.

21 THE COURT: And how old is your son now?

22 MR. ORTH: He's 17 now.

23 THE COURT: Is he enrolled in high school?

24 MR. ORTH: Yes.

25 THE COURT: What grade?

1 MR. ORTH: Eleventh. He has straight As, so hopefully
2 he will get a scholarship. But he, when he gets home, has to
3 help us do things. He cleans the house. He cooks a lot. He
4 has to help us get to the grocery or get to the pharmacy and
5 things like that. I mean, he just does so much, and he had to
6 grow up really young.

7 THE COURT: You indicated also that you get -- back in
8 July, you got SSDI?

9 MR. ORTH: Correct.

10 THE COURT: And you got back -- back pay, and all of
11 that went to reimburse your mother. Now, I assume you're
12 continuing to receive SSDI every month now?

13 MR. ORTH: Yes.

14 THE COURT: I said back pay, but retroactive, I
15 guess --

16 MR. ORTH: Yes, I understand.

17 THE COURT: The amount that you receive now based on
18 that finding, does it allow you to meet all your existing
19 obligations?

20 MR. ORTH: Barely. I mean, we were to a point
21 where -- and when my mother began helping, we were to a point
22 where we were deciding if we should put our house up for sale
23 or start just disposing of our jewelry and all the things we
24 had in our house. And then my mother stepped in and said she
25 would do what she could to help.

1 THE COURT: Okay. Anything else you want to add,
2 Mr. Orth?

3 MR. ORTH: It's just I've been left in a terrible
4 position. It put me in a terrible position.

5 THE COURT: Thank you.

6 MR. ORTH: You're welcome.

7 MR. COLETTE: Your Honor, before you excuse Mr. Orth,
8 can we approach for just a second?

9 THE COURT: Yes, you may. If you are having
10 difficulty standing up, you can sit down, Mr. Orth, if you --
11 and you can remain seated because we have a microphone at that
12 table.

13 (At the Bench:)

14 MR. COLETTE: All right. We're now at the problem
15 that you had anticipated. This man has just told you him and
16 his family lost \$1.2 million, and they have lost -- are barely
17 making it. Mr. Orth filed a declaration of loss. His loss, he
18 says, was 85,000, only which 79 applies because you can't get
19 interest back in these cases. Mr. Orth invested \$300,000 with
20 my client. He received back 254,250. So barely getting by, my
21 question would be, *What did you do with the quarter of a*
22 *million that my client paid you back?*

23 His parents, who are so destitute and lost
24 1.2 million, his parents invested \$3 million. They received
25 \$2.7 million back. Neither him or his parents lost one and a

1 half million dollars, Judge.

2 And that's what we're going to have with each and
3 every one of these people, and I don't think it's fair to leave
4 the impression that my client scammed this poor veteran out of
5 a million dollars. And I don't know how else to do it other
6 than to take each individual one -- and these are either based
7 on victim impact statements or these are based on actual checks
8 received by these people, and the bank statements show it.

9 One of the documents that the government has in its
10 possession, Judge, shows the amount of investment of a hundred
11 with a rate -- a 21-percent rate of return -- it was really
12 13 percent -- that this is what these people were counting on,
13 and these are the payments that my client made, \$10,000,
14 10,000. So when you get to the end of the day, these people
15 kept investing because they were making 13 percent, when no one
16 in the world was paying more than 2. But when the FBI stopped
17 the party, now they come up and say, *I lost a million two*, when
18 the record reflects he lost, this one, about 79,000, but he
19 got -- and that's not even including the interest he got paid
20 back. That's just a rough number. So I don't know how -- it's
21 not an accurate reflection upon which you can sentence somebody
22 on these inflated figures.

23 THE COURT: Let me hear from the government.

24 MR. FULCHER: Mr. Orth is identified in paragraph 33
25 of the presentence report which has been in the possession of

1 the parties for at least a couple of months now. If there was
2 a problem to be addressed, then the defense should have taken
3 further steps other than coming up here and trying to use fuzzy
4 math, inaccurate numbers, and using their own client, who has
5 committed one of the largest frauds in the history of the state
6 of Mississippi, in order to try to argue that this man is
7 somehow lying to the court. And it should be -- it should be
8 pretty clear from his testimony that he's not just discussing
9 his own financial condition but that of his parents, his wife.

10 THE COURT: He did say that. He did say.

11 MR. FULCHER: Yes, sir.

12 THE COURT: He did refer to his parents and said -- he
13 either said he or we lost \$1.2 million. And I took that as
14 understanding of what everybody had lost.

15 MR. COLETTE: I mean, if we're worried about letting
16 him go and we're not going to cross-examine him, I certainly
17 can put forth the evidence of where we're getting our numbers.
18 We're not pulling them out of the air. But this is the type
19 of -- this is what I've got to deal with. If the court's under
20 the impression 1.2 million versus 79,000, I don't know how that
21 equates in terms of months, but -- and let me address this. We
22 objected to paragraph 34, and we had an informal conference.
23 Rarely do I -- rarely have I done informal conferences in my
24 whole life, but in this one, I said these people don't account.

25 The problem, Judge, goes back to the beginning. The

1 federal government did not do a financial analysis on each
2 individual victim. All they took was a summary spreadsheet,
3 Appendix A, that was prepared by my client's accountant of the
4 status of the scheme at that date. They didn't go back and say
5 to Joe, *How much did you invest over the course of this?* No
6 one interviewed him. The FBI didn't interview this guy or his
7 family and say, *How many times did you invest with Mr. Adams?*
8 *Twenty times. Twenty times and you got 13 percent each time?*
9 *Yes, sir. And so you've made 100,000 or 200,000. Yes, sir.*
10 *That's why we kept investing without filing the deed. They*
11 *didn't do that, Judge. They took one year's snapshot and said,*
12 *This is what we're going to sentence him to.*

13 You know, if it was a couple hundred thousand, I
14 wouldn't mind, but, again, two levels is big. They're saying
15 the loss is 80 million. I'm saying it's less than 65. But
16 they are trying to sentence this guy based on an inaccurate,
17 insufficient charge is my position.

18 THE COURT: Okay. I've heard enough. I'm going to
19 let him go. We'll let him go. We'll take up these issues as
20 we go through this. I read the victim impact statements to
21 say, for example, *I invested \$100,000. I was told I would get*
22 *6,000 or 8,000 or \$10,000 a month back, and I got it. For ten*
23 *months, I got it. For 12 months, I got \$10,000 each month, and*
24 *I made \$120,000, but then I put it back in.*

25 MR. COLETTE: Right.

1 THE COURT: And that's when they caught it.

2 MR. COLETTE: Right.

3 THE COURT: And so now I've lost all of that. Now
4 I've lost what I earned, and I've lost my principal too, some
5 of them.

6 MR. COLETTE: Some did.

7 THE COURT: Some of them put money in, got their
8 \$120,000 out and didn't invest any more.

9 MR. COLETTE: Didn't play anymore.

10 THE COURT: So we're going to have to figure out how
11 all of that plays out in what the total loss is.

12 MR. COLETTE: Right. And I think the court's correct.
13 And our position is, again, looking at it, is, again, for the
14 single or one or two investors, you can do the loss pretty
15 quick. Put in 100, you got 8 payments, there's 30,000 whatever
16 left. The trick becomes when you have someone who's played the
17 game for 60 times or 50 times because that 13 percent interest
18 out of 100 grand times ten, you know, what they lost is, they
19 end up -- they lost the interest, which cannot be considered as
20 a loss under the guidelines. I don't care how you look at it.
21 But anyway, that's -- you're right.

22 MR. FULCHER: Briefly, and the disagreement here is,
23 we and probation have followed the Fifth Circuit case of
24 *Setser*. Mr. Colette is arguing for a different standard, and I
25 know the court's going to take it up later, but just during the

1 break, that's the issue.

2 MR. COLETTE: They make mistakes in New Orleans every
3 once in a while.

4 (Bench Conference Concluded)

5 THE COURT: Mr. Orth, thank you for your testimony. I
6 understand you do have a doctor's appointment. You may go to
7 your doctor's appointment. These proceedings are open to you
8 after your appointment. You may return, if you wish, and sit
9 through any portion or all of the portions of the proceedings
10 if you wish.

11 MR. ORTH: Thank you.

12 THE COURT: Thank you.

13 You mentioned the *Setser* case. Let me get your
14 citation for *U.S. v. Fields* --

15 MR. FULCHER: Yes, sir.

16 THE COURT: -- and the other case.

17 MR. FULCHER: Your Honor, *United States v. Fields* is a
18 Fifth Circuit case. It's 483 F.3d 313, and that is a Fifth
19 Circuit case out of 2007. And the *Setser* case is also a Fifth
20 Circuit case. It is 568 F.3d 482, and that's a Fifth Circuit
21 case out of 2009. Those are the two cases mentioned. I
22 believe the *Setser* case is also cited in the probation
23 officer's --

24 THE COURT: PSR.

25 MR. FULCHER: Yes, sir.

1 MR. COLETTE: Your Honor, we had a couple we cited to
2 that we wanted the court to look at.

3 THE COURT: Mr. Colette, the case -- are you talking
4 about *U.S. v. Snelling*? Is that --

5 MR. COLETTE: Yes, Your Honor. That was my strongest
6 case out of the Sixth Circuit, which is newer than *Setser*.
7 Plus, you've got to look at how the commentary has looked at
8 the *Setser* case. *Setser* is factually distinguishable than
9 this, and this basically, of course, is our entire loss
10 argument.

11 In *Snelling*, the court referred everybody to look at
12 the application notes to this section and indicated that you've
13 got to reduce the loss by the amounts, you know, repaid. What
14 *Snelling* says you can't do is if I have investor 1, who got his
15 investment repaid, plus \$50,000 interest, I can't use that
16 50,000 to offset Mr. Orth's loss, but it is reduced. That's
17 what *Snelling* and the commentary to the guidelines suggest. In
18 fact, in the guideline they give you three different examples
19 on how you compute this.. *Setser* ignores Section 2B1.1, App
20 Note 3(D)(i) that excludes interest. I have *the Snelling* cite.
21 You have that, Judge? I guess we've given it to you already.

22 THE COURT: Yeah, but if you want to -- I had it right
23 before me --

24 MR. COLETTE: 768 F.3d 509, Sixth Circuit 2014.

25 Of course, *Setser* was 2009 by Justice Southwick. And

1 even in *Setser*, we can't proceed with what you have, because
2 even in *Setser*, it says, "The defendant is given credit for
3 money returned to investors." Stop. "The defendant is given
4 credit for money returned to investors." You don't have a
5 document before you by the government that shows you credit for
6 money returned to the investors.

7 A lot of these investors got checks. There's no doubt
8 about that. We have submitted that to a degree. That's why
9 our 83 -- the government's 83 million doesn't coincide with our
10 40-something million. But *Setser* itself that they now want you
11 to rely on, which I think is a little distinguishable, but at
12 least the first part of *Setser* I agree with, as did the
13 commentary to the guideline handbook. It says, "The defendant
14 is to be given credit for money received."

15 Where the government is traveling on *Setser* is the
16 second part, and that's where he said, *Well, credits are offset*
17 *by the money reinvested*. Well, the problem that a commentator
18 said that the Fifth Circuit may not have been right on that,
19 because you can't reinvest profits because the guidelines
20 prohibit you from sentencing somebody for a promised rate of
21 return or for interest. Section 2B1.1, App Note 3(D)(i) is
22 clear that it excludes interest of any kind.

23 I guess the example that my son suggested this morning
24 was this, Your Honor. And we have multiple investors here.
25 Investor A invests \$3 million, and Investor B invests 500,000.

1 Mr. Adams took the 500,000 and the 3 million and repaid
2 Investor A. So Investor A, when the FBI took over, had
3 received \$3.5 million, and there's a victim impact statement
4 exactly on point. The guy put in 3 million. Over the course
5 of it, he got back 3.5 million. He reinvested that 500,000.
6 So let's hold for a second.

7 The investor in my example paid 500,000, but that
8 money went and paid Investor No. 1. So what's the status of
9 the individuals? The first guy has got 500,000 extra in his
10 pocket, in addition to his 3 million. The second guy is out
11 500,000.

12 Under *Snelling* and the commentary to the guidelines,
13 which the guidelines adopted *Snelling's* rationale, and it says
14 that the loss to the first guy, the 3.5 million, is zero. The
15 loss to the second investor is 500,000. To do otherwise is
16 erroneous. If you took the government's argument that the guy
17 who made the 500,000 but reinvested his interest, well, he lost
18 500,000, even though the guidelines say you can't include the
19 500,000. And the other guy with the five -- so the loss is a
20 million. It's not. It's the same 500,000. It's like you're
21 double counting.

22 Setser didn't go that far. And the reason they didn't
23 go that far is because in *Setser*, there were some legitimate
24 deals in that case. This was, after the first one, basically
25 your typical unfortunate Ponzi scheme.

1 So, you know, there is a difference, Judge, and I
2 think that the guidelines 3(D)(i) excludes it. *Setser's*
3 distinguishable. But the bigger problem you have is all you
4 have is an Appendix A to the presentence report that is not a
5 forensic financial accounting. It's a one-shot what does
6 everybody do as of, what was it, April of 2018. And I think
7 that that's an erroneous number and insufficient -- I think
8 what you have to do is you have to look at each person. How
9 much did you invest through your life savings? How much did
10 you get back?

11 I mean, again, the prime example is there's a man in
12 here in this case that had a \$3 million inheritance, by his own
13 victim impact statement. He received back \$3.5 million. Just
14 before this thing was exposed, he invested another 500,000. He
15 was making 13 percent all along. So that entire profit, that
16 entire makeup of the last investment was illegal money, for
17 lack of a better word.

18 THE COURT: So he would have to -- would he -- should
19 the court not count it? Would he have to disgorge it? Would
20 he have to get rid of it or --

21 MR. COLETTE: Under *Snelling* and under the guidelines,
22 because of the nature of that 500,000, because that 500,000 was
23 interest or really somebody else's money, then you don't get
24 that back. You profited from an illegal scheme.

25 We see this all the time in forfeiture and drug cases.

1 You can't keep the money. It's bad money.

2 THE COURT: But all of this money is bad, then.
3 Right? There is no good money in this whole scheme, then.

4 MR. COLETTE: No, the person who -- no, I don't
5 think -- no, there is good money. The person who comes in just
6 before this thing come up with a life savings of \$100,000 and
7 they didn't get a penny back, they lost \$100,000. That's real
8 money. But the person who's played the game for 50 times, and
9 he started out at 100,000 increments, or whatever they were,
10 and over the course of time because -- of 13-percent interest
11 over ten years, everybody else paying too, he had a bunch of
12 money that he otherwise wouldn't have made.

13 THE COURT: Let's deal with suppose it wasn't
14 13 percent. If it was a regular bank account that pays less
15 than 1 percent. Puts in \$100,000, get all of his, after a
16 year, 100,000 -- \$101,000, which is more than what you would
17 get, but \$101,000, and he turns over and invests that \$101,000
18 back into it, because he made \$1,000 the last time, so maybe
19 I'll make 2,000 this time. Are you saying that he would not be
20 entitled to the 100,000, or that the 2,000 -- what would be
21 restitution? What would be the loss amount?

22 MR. COLETTE: I don't want to get into restitution
23 because that's got some other curve balls that we're going to
24 address. The true loss, Judge, is whatever they invested minus
25 whatever they got paid back. That's what the case law says.

1 Period.

2 Now, *Setser* again goes off without consideration of
3 the makeup of the money, and *Setser* says the reinvestment, if
4 he reinvested, that's the law. So that's where the difference
5 is, is how do you arrive at the proper number given the
6 commentary to the guidelines under 3(B) and 3(D), and the
7 ruling in *Snelling*, and the provisions -- I think it's 5(F)(2),
8 Judge. There's a provision in *Snelling* -- hang on one second.
9 Right. Okay. The court in *Snelling* said that "Thus, the
10 Sentencing Commission," who gave us these, "while contemplating
11 that loss figures should be reduced according to the amount of
12 money returned, does not want a single investor's returns to be
13 deducted beyond the amount originally invested." I've got no
14 problem with that. But you don't have documents showing today
15 how much was invested and how much was returned by each
16 individual person. All you've got is a summary chart and that
17 person saying, I lost this plus interest.

18 But the court goes on that "The gain," obviously of an
19 individual, "shall not be used to offset the loss of another."
20 However, it cites App Note 3(F)(iv) and says that *Snelling's*
21 argument is persuasive. "The fact that the application notes
22 limit deductions from loss figures to no more than the sums
23 originally invested implies quite strongly that the loss
24 figures are to be reduced in the first place."

25 So I don't know how that court could have gotten it so

1 wrong, and ours -- I think the distinguishing issue is that it
2 ignored Application Note 3(D)(i) to 2B1.1. That's all I've got
3 as far as the loss.

4 THE COURT: Okay.

5 We're at the lunch hour now. And I know we got
6 started a little bit late. We're going to break for lunch.
7 Mr. Fulcher, when you come back, I know there was another
8 witness who might need to be excused this afternoon. We might
9 take up that witness first. I don't know what time. I mean,
10 so check into that during this lunch break. And that will give
11 me an opportunity to look at a couple of things. And then
12 we'll be able to proceed. If you want to tell me anything
13 about how I should look at *Setser*, this is probably a good time
14 to do that, which is Fifth Circuit law.

15 MR. FULCHER: Yes, sir. And I think I can be fairly
16 quick on this as well. Just to clarify a couple of things. I
17 mean, you said it pretty clearly, we're in the Fifth Circuit.
18 *Setser* is Fifth Circuit law. That's the law that applies here.
19 To the extent that there's a different holding or there's some
20 disagreement by the Sixth Circuit in some way, that's to be
21 taken up with people who are in cases that are in the Sixth
22 Circuit.

23 The probation officer said it best, "As we are in the
24 Fifth Circuit, the writer contends the approach developed in
25 *Setser* was appropriately utilized in this case." And I don't

1 think, from our previous conference with the probation officer,
2 with defense counsel and the defendant, I don't think that
3 there is any disagreement that if *Setser* is correct, then it
4 has been correctly applied. The argument as raised in the
5 objections by the defense is that the court should ignore
6 *Setser* and follow a different ruling from a different circuit
7 and look at it a different way.

8 There are a couple of underlying principles also that
9 the court should take a look at during the lunch hour and
10 consider. And one -- I'm going to just say this as straight as
11 I can -- no victims were playing the game, as Mr. Colette has
12 said. These were people who put their life savings and their
13 retirement and money that they needed to live on in many, many
14 instances. There's no indication whatsoever that anybody, at
15 least none of the people that have been identified in the PSR
16 as for the enhancement that we're discussing, had any clue
17 whatsoever that there was any fraud whatsoever. So to stand up
18 here and say that people were playing the game is to minimize
19 greatly and to try to somehow soften the blow to these victims,
20 and it's just not appropriate.

21 The second underlying principle is, while these people
22 were told that they were receiving interest, there was no
23 legitimate money that they were receiving. And the court has
24 been very clear on this, and I don't think I need to pound that
25 too much more, but there is no legitimate -- there was no

1 profit. There was no interest. These were all fraudulent
2 transactions.

3 With regard to what's before the court, what is before
4 the court is the presentence report. The presentence report
5 has been submitted to the court by the probation officer after
6 objections have been made and responses have been made. Under
7 *United States v. Ollison*, 555 F.3d 152, that's a Fifth Circuit
8 case from 2009, "The presentence report has sufficient indicia
9 of reliability, and the court can rely upon it in sentencing."

10 Under *United States v. Odom*, 694 F.3d 544, also a
11 Fifth Circuit case, 2012, "A defendant cannot merely say, I
12 disagree with the presentence report. And mere objections do
13 not suffice." So a defendant can't just stand up here and say,
14 *We disagree, Your Honor. So, therefore, you shouldn't follow*
15 *what the presentence report says.*

16 It's the job of the defense and the defense counsel at
17 this point to come forward and to put something into the record
18 that the court can consider to -- in an attempt to persuade the
19 court that the presentence report is not otherwise correct as
20 to its application of the law and as to the facts that have
21 been presented. I know you know this, but I just need to make
22 sure that the record is clear on that.

23 THE COURT: Mr. Colette had submitted a whole
24 notebook. Is that what -- I mean, I assume he's suggesting
25 that this is -- the court should consider all of this stuff as

1 a part of his written objection and everything else because his
2 objections are based on extrapolations of whatever that are
3 contained here, and which Mr. Colette has asked that it be made
4 a part of the record, and we'll make it a part of the record in
5 some way. But yes.

6 MR. COLETTE: Yes, sir.

7 MR. FULCHER: That is correct. And as the court
8 knows, that's a notebook that was put together by Mr. Adams
9 himself. So we don't have a forensic accountant that's going
10 to come in and provide any kind of insight or anything into
11 what those documents mean. That's what the court will be
12 looking at. And I know we'll be taking that up at a later
13 point.

14 There is a principle also from *U.S. v. Dowl*, D-O-W-L,
15 619 F.3d 494, Fifth Circuit 2010. That was not a Ponzi scheme
16 case, but from that case that involved fraud on the government
17 on, I believe it was on the SBA, but the principle there is
18 that money paid back after the scheme is discovered cannot be
19 used to offset the amount of the intended loss for sentencing
20 guideline purposes. So as we're going forward, anything
21 recovered or anything, at least for sentencing guideline
22 purposes for the intended loss amount, anything that's been
23 recovered by the receiver, for example, shouldn't offset any
24 payments.

25 I'll certainly be glad to add additional issues either

1 now or at whatever point the court chooses.

2 THE COURT: Yeah. Thank you. Thank you, Mr. Fulcher.
3 I think this is an appropriate time for us to take our lunch
4 recess.

5 MR. COLETTE: Judge, before we do, I know we've done
6 it, but again, I feel like -- I didn't mean that this -- it may
7 be a wrong statement, but people who kept participating in
8 it -- this is not a game. This is serious business. A lot of
9 people lost money. But again -- and I know my obligation. I'm
10 going to call Mr. Lamar and tell you the basis for it. But I
11 wanted to give you the cite. It's Application Note 3(D)(i)
12 that excludes from loss calculations any interest of any kind
13 or an agreed upon return or rate of return. That's number one.

14 Number two, we're not talking about another fraud.
15 We're talking specifically about a Ponzi scheme, so those other
16 cases don't bother me.

17 Again, go on to the next page, which would be (F)(iv),
18 which is Ponzi and other fraudulent investment schemes. That's
19 a guideline issue.

20 And then, finally, in the actual guideline book, it
21 talks about the 2B1.1, App Note 3(D)(i) that excludes interest
22 again.

23 So if the court just will consider those in those two
24 cases, which I know it will, that will then make the
25 determination as far as the credits -- what's to be credited

1 and what's to be loss. Thank you, Judge.

2 THE COURT: All right.

3 We will break for lunch. Ladies and gentlemen, as you
4 can tell, it's probably going to be a long and complicated
5 process. The court wants to make sure, though, that everything
6 that we do is done as correct as I know how to do it. We
7 realize that this impacts a lot of you on many different
8 levels, but the justice system -- I ask for your patience
9 today, and we are going to continue this matter and will stay
10 with it until it's completed. So -- and again, that may take
11 more than just today.

12 If there is any victim who is here right now, and you
13 feel like you cannot sit around for the entire proceeding and
14 you wish that the court hears from you, please convey that to
15 the victim witness coordinator with whom you've been in contact
16 with throughout this proceeding and/or Mr. Fulcher or someone
17 else from the U.S. Attorney's Office so that that information
18 can be conveyed to Mr. Fulcher and me so we can do everything
19 to make the process as less onerous to each and every one of
20 you as possible.

21 The court will be in recess until 1:30, and we'll
22 resume at 1:30. Thank you.

23 (Recess)

24 THE COURT: Let me start with you, Mr. Fulcher, about
25 whether or not the court needs to take any other testimony at

1 this time.

2 MR. FULCHER: Yes, sir. Your Honor, we have two
3 victims who are here from out of state, and with your
4 permission, we'd like for them to have the opportunity for
5 allocution. If we could do that now, that would be very
6 helpful to them in being able to return home in time.

7 MR. COLETTE: Procedurally, I don't have any objection
8 to calling them early, Your Honor. I guess my same concern
9 would be that we had this morning with the other witness, and I
10 would reurge that position maybe for you to rule on it at a
11 later point, I would assume, if we're accommodating schedules.

12 THE COURT: Okay. I'll give you my preliminary
13 ruling, and I'm going to give you some cases to look at,
14 Mr. Colette. I agree with the government on this allocution
15 stuff. In *U.S. v. Fields* -- the government has cited a Fifth
16 Circuit case, that is, *U.S. v. Fields*, but I've found a couple
17 of other cases that might be closer on point but out of
18 circuit. I mean, the language is much more favorable to the
19 government. One is *United States v. Hagerman*, H-A-G-E-R-M-A-N,
20 506 F.App'x 14. It's a Second Circuit case, December 20th,
21 2012.

22 There's a sentence at page 5 when they're talking
23 about the sentencing phase, "At the sentencing phase of a
24 criminal proceeding," that's a quote, "a defendant has no right
25 to a hearing at which to cross-examine his victims." And

1 that's -- again, that's a quote. They are quoting *United*
2 *States v. Morrison* 153 F.3d 34 at 54, Second Circuit 1988.

3 From the Third Circuit, *United States v. Benoit*, if
4 that's how you pronounce it, B-E-N-O-I-T, 545 F.App'x 171,
5 Third Circuit 213. At page 176, they cite *United States v.*
6 *Robertson -- Robinson*, 482 F.3d 244 at 246, Third Circuit 2007,
7 noting that the confrontation clause does not apply to
8 sentencing. And that particular defendant was not deprived of
9 her right to confront and cross-examine the victims.

10 Similarly, *U.S. v. Deangelis*, D-E-A-N-G-E-L-I-S, 243
11 F.App'x 471, from the Eleventh Circuit 2007. It notes that the
12 holding there, "The district court did not violate defendant's
13 confrontation clause right by not permitting him to
14 cross-examine the victims of his crimes at his sentencing. The
15 district court did not violate the defendant's" -- this is from
16 headnote 2 -- "district court did not violate defendant's
17 confrontation clause right by not permitting him to
18 cross-examine the victims of his crimes at his sentencing for
19 mail fraud and conspiracy to commit mail fraud."

20 The *U.S. v. Fields* case, as the government noted, is
21 one that dealt with capital sentencing, I believe, and so it
22 seems, you know, that mail fraud and all of that is apropos, I
23 think.

24 And then the last case that the court saw -- it's just
25 those three for right now. So I think that gives me sufficient

1 advice on how to proceed with listening to the allocution and
2 the testimony that's going to be provided by any of the
3 victims. And, you know, before the court hands down its
4 sentencing, Mr. Colette, you'll be given free opportunity to
5 convince me otherwise, but right now I'm going to proceed and
6 allow Mr. Fulcher to call those witnesses, particularly those
7 two or three who need to be heard today.

8 MR. FULCHER: Thank you, Your Honor.

9 Your Honor, the first victim for this afternoon will
10 be Ms. Birdie Cooperwood. If she could come forward to provide
11 allocution.

12 THE COURT: Good afternoon. Will you state and spell
13 your name, please.

14 MS. COOPERWOOD: My name is Birdie L. Cooperwood.
15 B-I-R-D-I-E L. C-O-O-P-E-R-W-O-O-D.

16 THE COURT: Thank you, Ms. Cooperwood. You may
17 proceed.

18 MS. COOPERWOOD: I was introduced to Madison Timber
19 through --

20 THE COURT: Hold on. Let me get them to put the mic
21 up a little closer to you. And if you're going to read --

22 MS. COOPERWOOD: I'm going to try --

23 THE COURT: No, no -- speak at a pace -- you can talk
24 as slowly as you want to -- so that the court reporter can keep
25 up with you.

1 MS. COOPERWOOD: Okay. I was introduced to Madison
2 Timber through Mr. Stewart Patrick in 2012. I had my money
3 invested in annuities, and he told me that Madison Timber will
4 pay me more interest than the bank would, than the annuities
5 would. So since he was working at the bank, I thought it was a
6 good idea, so I decided to go that way. And after Mr. Patrick
7 left, Jason Cowgill took his place.

8 THE COURT: Do you know how Jason spells his last
9 name?

10 MS. COOPERWOOD: J-A-S-O-N. And Cowgill,
11 C-O-W-G-I-L-L. He took Mr. Patrick's place. And I was dealing
12 with Mr. Cowgill, Mr. Wayne Kelly, Mr. Lamar Adams, through
13 Jason Cowgill. And the money that I had invested came from my
14 four deceased kids. Yes, I lost four kids. I lost three in
15 ten years, and I lost another one in '15. And the impact it
16 had on my life is that I had to sell my house, move in with my
17 daughter, because I could no longer afford to keep my house and
18 pay my doctor bills. I have to pay 20 percent of my doctor
19 bill and buy all of my medication because I don't have a
20 secondary insurance company. So God forbid if anything should
21 happen to my daughter, I don't know what will happen to me
22 because her house isn't paid for, and Mr. Lamar done took all
23 of of my money. So what am I supposed to do?

24 And the part what really hurts so bad, him and his
25 family is prospering off of my four deceased kids, and I don't

1 think that's fair. And the money I get every month don't come
2 to \$600 a month. And like I said, I have to pay 20 percent of
3 my doctor bills. I have quite a few health problems. I take
4 quite a bit of medicine every day, and I have to buy all of my
5 medication. And if I had known this was a scam, I never would
6 have took my money out of my annuity because my annuity was
7 paying me interest, plus I wasn't losing anything.

8 THE COURT: How much -- if I may ask, how much were
9 your annuities paying you approximately each month?

10 MS. COOPERWOOD: Oh, God, I really don't know because
11 that's been ever since 2012.

12 THE COURT: Was it more than \$600?

13 MS. COOPERWOOD: I don't think so. So that's all I
14 have to say.

15 THE COURT: You indicated that Mr. Patrick was working
16 at a bank?

17 MS. COOPERWOOD: Yes, sir.

18 THE COURT: What bank was that?

19 MS. COOPERWOOD: BankPlus in Southaven, Mississippi,
20 and so was Mr. Cowgill when he took over.

21 THE COURT: And you indicated you were introduced to
22 Mr. Kelly -- to a Mr. Kelly?

23 MS. COOPERWOOD: I talked to Mr. Kelly over the phone
24 but never in person.

25 THE COURT: Okay.

1 MS. COOPERWOOD: All of my kids took out insurance
2 policies. They said when they die, if they die before I did, I
3 would have something to live on. But Mr. Lamar living off of
4 it, not me, and I don't think it's fair.

5 THE COURT: Anything else?

6 MS. COOPERWOOD: No, sir.

7 THE COURT: Thank you, Ms. Cooperwood.

8 MS. COOPERWOOD: Thank you.

9 THE COURT: Who's your next witness, Mr. Fulcher?

10 MR. FULCHER: Your Honor, the next victim that we have
11 that is from out of state is Ms. Patricia Gallina,
12 G-A-L-L-I-N-A.

13 THE COURT: Ms. Gallina, G-A-L-L-I-N-A?

14 MR. GALLINA: Yes, sir. You must have Dago in you.

15 THE COURT: Thank you. I was just repeating that for
16 my courtroom deputy. You may proceed as you wish, ma'am.

17 MS. GALLINA: Thank you. First, I want to ask Mr.
18 Lamar, how are you getting the money to pay for your attorneys?
19 Is it with our money?

20 I was given the question Friday, how has this impacted
21 me? At first I thought, I have to be happy. I have no choice.
22 I've got my health. I need to be happy. Then last night, when
23 I was driving 45 minutes to work on a rainy night, with my
24 eyesight -- from the stroke and heart attack, it's not what it
25 used to be. I can't have cataract surgery anymore. I've

1 already had cataract. I've got Fuchs disease, but I have no
2 choice but to go to work. Thank God I love what I do, but
3 working every Friday and Saturday night -- I've worked 33 and a
4 half years in a row every weekend. I have saved my money to
5 retire. My dream was to be able to retire and to have enough
6 money to be able to live comfortably.

7 THE COURT: Slow down just a little bit for the court
8 reporter.

9 MS. GALLINA: Okay.

10 THE COURT: I can hear you fine.

11 MS. GALLINA: Yes, I'm kind of -- the northern part of
12 me.

13 THE COURT: All right.

14 MS. GALLINA: But I was forced to quit because of my
15 health, and now I have to go back to work. I have no choice.
16 While he drives new cars, I have to drive an \$18,000 van out
17 the door that's an '11 model. It just doesn't seem to be fair
18 that I've worked all my life, banked on me, didn't bank on the
19 government, banked on -- get a whole \$752 a month, Social
20 Security. I was banking to working, putting money in the bank
21 so I could go to a concert on the weekend. I could be with my
22 sister. I could go fly with her and be with her on the
23 weekend, because she can't take off during the week. And I can
24 only take off during the week. I mean, it's just not fair to
25 the rest of us.

1 I mean, I've never gotten to take over a three-day
2 vacation in 33 and a half years, and that's during the week.
3 Well, everybody else is going and having a good time. Has
4 depression hit me? Oh, yeah, it's hit me. Because \$341,000
5 later, I stay more in the red, having to go to work.

6 Anyway, that's what I've got to say. I just ask the
7 courts to please give this man as much injustice as he's given
8 us injustice. Thank you.

9 THE COURT: Let me ask you one question, ma'am. I
10 want -- I did not -- you indicated that you suffer from some
11 disease.

12 MS. GALLINA: I do. I have Fuchs disease, and then I
13 had a heart attack and a stroke.

14 THE COURT: Could you either pronounce that again or
15 spell it for me?

16 MS. GALLINA: F-U-K-E-S.

17 THE COURT: Okay.

18 MS. GALLINA: No, F-U-C-H-E-S. But it is called the
19 Fuchs when you're in the eye doctor's office. Fuchs disease
20 is, I have deteriorating eye corneas, so I'll have to get some
21 dead person's eye corneas one of these days. They have already
22 wanted to give me the surgery, and I've said no, not yet. But
23 I have to drive at night. That's the way I make my living.
24 I've been doing it 33 and a half years.

25 THE COURT: And what type of work do you do?

1 MS. GALLINA: I have a home party business. I do have
2 a college education, but I do have a home party business.

3 THE COURT: Thank you, ma'am.

4 MS. GALLINA: Thank you.

5 MR. FULCHER: Your Honor, if can I have one minute to
6 confer.

7 THE COURT: Yes, you may.

8 (Short Pause)

9 MR. FULCHER: Your Honor, I'm informed by Ms. Emily
10 Endris, who is a victim, that she has something, a medical
11 matter that's unavoidable. And I don't want to get too far
12 into someone's personal business, and as a result, her son
13 is -- she has asked that her son be allowed to speak on her
14 behalf. And she would like to be present for that.

15 So I think the next order of business, with the
16 court's permission, would be for Mr. John Endris to speak on
17 behalf of his parents. And obviously, I think he could go
18 ahead and speak on behalf of himself as well.

19 THE COURT: Okay. That's permissible.

20 MR. FULCHER: Thank you, Your Honor.

21 MR. ENDRIS: My name is John Craig Endris,
22 E-N-D-R-I-S.

23 THE COURT: Excuse me. Spell Craig for the record.

24 MR. ENDRIS: C-R-A-I-G. I go by Craig. I don't go by
25 John. That's my dad's name.

1 THE COURT: You may proceed, sir.

2 MR. ENDRIS: First of all, I'd like to say that Lamar
3 Adams was supposed to be a friend of mine. I thought he was.
4 And his so-called promoter, Bill McHenry, who worked with Lamar
5 in the same office, got me and my dad and my mother involved.
6 And I assure you, we did not know this was a Ponzi scheme or a
7 game. It's no game to me.

8 My dad and I worked with our hands on a farm of about
9 200 acres, and we sold it. And Lamar and Bill McHenry have
10 about \$900,000 that doesn't belong to them.

11 Trust. They gained our trust, took us hunting,
12 fishing. I became a close friend to the promoter, Bill
13 McHenry. I probably went hunting two or three times a week
14 with him. They took our comfort level. They took my parents'
15 lifelong savings of hard work.

16 My parents are living off of Social Security, and we
17 don't know how much longer they can make it on what they make.
18 They will never be able to recoup what they have taken from
19 them. And I ask that you give him as much time, hard time --
20 he don't know what hard time is. Go over there and feel his
21 hands, and you go over there and feel my daddy's hands.

22 I just ask that you give him as much time as he can
23 get, and everybody else that's involved in stealing that money
24 needs to go right along with him. I appreciate your time.
25 I've got to get my mama to dialysis.

1 THE COURT: Thank you, Mr. Endris.

2 As I indicated earlier, to the extent any other victim
3 wishes to testify what we call out of turn, please let
4 Ms. Futvoy or Mr. Fulcher know, and we'll do that. These
5 proceedings, again, may go beyond today, and I'm not rushing
6 anybody. I'm not suggesting that everybody jump up now and do
7 it out of turn, but I don't want anybody to feel like that
8 you're bothering the court if you're not. So -- but as of now,
9 Mr. Fulcher has indicated to me those are the only ones who
10 wish to testify at this time.

11 All right. There are currently some objections before
12 the court that we haven't gone into detail with. I've had an
13 opportunity to look again at the *Setser* case and to some degree
14 the *Snelling* case. I know those are the cases that I believe
15 that the parties say require a different determination.

16 MR. COLETTE: Judge, before we get into that --

17 THE COURT: Yes.

18 MR. COLETTE: -- based on your prior ruling, I'd like
19 to make a proffer with respect to what I would have asked the
20 witnesses that I was not allowed to cross, just for record
21 purposes.

22 THE COURT: Yes, sir.

23 MR. COLETTE: With respect to --

24 MR. FULCHER: Your Honor, I believe that Mr. Colette
25 is going to be presenting evidence. My understanding is he was

1 going to put his client on the stand to discuss these matters.

2 MR. COLETTE: I'm going to do that.

3 MR. FULCHER: I see no need to proffer when he's about
4 to put on evidence at a later point. It seems redundant at
5 this point.

6 MR. COLETTE: You may be right. I can do it through
7 him, and if there's still something I need for record purposes,
8 I'll revisit it. How's that?

9 THE COURT: Okay. Thank you.

10 MR. COLETTE: Court's indulgence just one second.

11 THE COURT: The court looked at *Setser* and *Dowl*. *Dowl*
12 is 619 F.3d 494 at 503, Fifth Circuit 2010. I guess we'll take
13 this issue up now. If you need any more argument, Mr. Colette
14 and/or Mr. Fulcher, the probation office has prepared a PSR
15 that basically tracks the language in *Setser*. And, of course,
16 I've looked at the defendant's reply to the government's
17 objection, I think it was, where the defendant raises the
18 *Snelling* case.

19 I'll give you an opportunity, Mr. Colette. I realize
20 we talked about this before lunch, but if there's anything you
21 wish to tell me as to why I should not follow the route of the
22 probation officer in coming to this calculated loss through the
23 use of -- of his interpretation of *Setser* and others, why I
24 shouldn't do that.

25 MR. COLETTE: All right. And I can do it one or two

1 ways, but we'll have to do it anyways. It may make more sense
2 if I go ahead and call my client, and then let's revisit this
3 loss argument at the conclusion of his testimony. How about
4 that? Because I have rebutted it. We can argue it again, but
5 maybe after the court hears how we arrived at the figures we
6 arrived at, I think, then, in terms of argument, we're going to
7 look at the language -- I would urge the court to look at the
8 language in *Snelling* about the procedural and also, you know,
9 the application of those two.

10 Setser's right -- Setser is halfway correct, but we'll
11 get to that. I think, to save time, let me call the client if
12 I could, Judge.

13 THE COURT: That would be great.

14 MR. COLETTE: Thank you. Defense calls Lamar Adams.

15 (Witness Sworn)

16 BY MR. COLETTE:

17 Q Please state your name for the record.

18 THE COURT: Hold on for one second. Mr. Adams, you
19 are there before the microphone. Just speak loudly and clearly
20 enough for the lawyers and me to hear you, and particularly the
21 court reporter. You have to speak at a pace at which she can
22 keep up with you. Make sure all your responses are verbal, and
23 try to avoid using uh-huh and unh-unh. And if you're going to
24 nod or shake your head, just make sure you make an oral
25 statement with that. Allow the lawyers to complete their

1 question before you begin to speak so that the two of you will
2 not be speaking at the same time.

3 THE DEFENDANT: Yes, sir.

4 MR. COLETTE: May I proceed?

5 THE COURT: You may.

6 ARTHUR LAMAR ADAMS,
7 having first been duly sworn, testified as follows:

8 DIRECT EXAMINATION

9 BY MR. COLETTE:

10 Q State your full name, sir.

11 A Arthur Lamar Adams.

12 Q You're the defendant in this case. Is that correct?

13 A Yes, sir.

14 Q You've come in here and you pled guilty in front of Judge
15 Reeves at a previous date?

16 A Yes, sir.

17 Q Since that time, you've received what's known as a
18 presentence report. Is that correct?

19 A Yes, sir.

20 Q And then a revised presentence report?

21 A Yes, sir.

22 Q And you received what we call Appendix A. Is that correct?

23 A Yes, sir.

24 Q All right. And can you tell the court what is your
25 understanding and/or where Appendix A to your presentence

1 report came from?

2 A My understanding is it -- well, it's obvious it came from
3 my accountant.

4 Q Okay. And what is on Appendix A?

5 A It is the outstanding balance of notes from April of 2017
6 through April of 2018.

7 Q All right. Say that again. It's an accounting of all the
8 current status from April of 2017?

9 A Yes, sir.

10 Q To May of 2018?

11 A Yes, sir.

12 Q You were in business from when?

13 A From the early '90s. Late '80s, early '90s.

14 Q Without saying their names, several people that are
15 contained in Appendix A were not first-time investors. Is that
16 correct?

17 A No, sir.

18 Q And you had been getting investments from back several
19 years. Is that correct?

20 A Yes, sir.

21 Q On Appendix A, it purported to show 164,000 in --
22 164 million in amount of promissory notes. Is that correct?

23 A For that year.

24 Q Yeah. And that you had paid back everything but
25 95 million. Is that correct?

1 A Correct.

2 Q That was just for one year?

3 A Yes, sir.

4 Q Over the course of Madison Timber, though, you had dealt
5 with quite a bit more. Is that correct?

6 A That's correct.

7 Q What were your -- well, let me ask you this. Have you gone
8 back and recomputed the total business of Madison Timber?

9 A From 2011 until the government balanced the notes of April
10 '17.

11 Q So you've computed the history of investments with many of
12 these same investors in Appendix A. Is that correct?

13 A Yes, sir. I went to bank statements and we added those
14 numbers.

15 Q All right. I want to -- you prepared a chart with the
16 overview recently, did you not?

17 A Yes, sir.

18 Q And you have that with you? You have it in front of you?
19 This is a summary chart that you prepared based on what?

20 A On over 15,000 pages of bank statements.

21 Q And those -- all those statements, bank statements, were
22 turned over to the government on your arrest. Is that correct?

23 A Yes, sir.

24 Q So they have all the supporting documentation?

25 A Yes, sir.

1 Q And tell us how you actually constructed this. You went in
2 and you looked -- let's say individual -- don't say their names
3 because we're concerned with identifying issues, but
4 individual --

5 THE COURT: You can give initials, if that -- because
6 the court, I believe, has a sheet with -- since I'll know --

7 MR. COLETTE: You don't have this yet, but I'm going
8 to give you -- this is a summary.

9 BY MR. COLETTE:

10 Q All right. But this summary chart was prepared by you
11 based on bank records that were seized and/or the FBI has. Is
12 that correct?

13 A Yes, sir.

14 MR. COLETTE: At this time, Your Honor, I'd ask that
15 this be Exhibit D-1 for sentencing purposes only.

16 MR. FULCHER: I would ask that it be redacted
17 consistent with the local rules or placed under seal, as may be
18 appropriate.

19 THE COURT: Okay. The one that will be admitted into
20 the record will be a redacted one, and I'll just rely on the
21 defendant to make sure we get the redactions done.

22 MR. COLETTE: For purposes of this hearing, so that we
23 can track along, I'm going to give you an unredacted, if
24 that's --

25 THE COURT: Right, and it will be placed under seal

1 for purposes --

2 MR. COLETTE: Then I can substitute.

3 MR. FULCHER: Thank you, Your Honor.

4 (Exhibit D-1 marked)

5 MR. COLETTE: May I proceed?

6 THE COURT: You may.

7 BY MR. COLETTE:

8 Q So, Mr. Adams, the truth of the matter, Appendix A has
9 167 million and a \$95 million loss. Your summary, looking at
10 the actual records, shows that you got \$494 million from
11 investors. Is that correct?

12 A Yes, sir.

13 Q And you paid them back \$452 million. Right?

14 A Yes, sir.

15 Q And there's a \$40 million loss?

16 A Yes, sir.

17 Q And that's based on individual -- each investor's records.
18 Is that correct?

19 A That's correct.

20 Q Now, without mentioning any names, look at the front page,
21 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16. You see
22 the 16th entry, BC?

23 A Yes, sir.

24 Q That individual had almost \$2 million invested with you?

25 A Yes, sir.

1 Q And you paid her \$2 million -- 1.99, and she got back 1.99.
2 Right?

3 A Yes, sir.

4 Q And there was testimony about a loss, and what was -- what
5 would that loss possibly be if you paid back almost \$2 million
6 of an original investment?

7 A That loss would be interest gained.

8 Q Over the course of time?

9 A Yes, sir.

10 Q And do you recall how many times that person invested with
11 you?

12 A I believe it was almost 40.

13 Q Okay. But that individual got all of her investment back?

14 A Correct.

15 Q Is that not pretty much similar to a lot of these, that
16 they got the investment back, they lost the interest?

17 A They got all of their principal back.

18 Q I'm sorry. That's correct. Thank you for correcting me.

19 All right. So that chart also lists everybody -- in other
20 words, everybody on this summary chart, D-1, are also used to
21 compromise -- or make up the loss number, Appendix A, right?

22 A Correct.

23 Q Appendix A does not reflect any repayments other than
24 during that little period of time. Is that correct?

25 A Only for that one year, a snapshot.

1 Q Now, tell the court, as to verification, this chart, D-1,
2 does not include what? What's not included on here?

3 A On this chart that I'm looking at?

4 Q Right, D-1. You prepared it.

5 A It does not include any interest that was paid.

6 Q So at the top of the column, the first 4,900,000, that
7 would be principal paid in to you?

8 A Principal invested.

9 Q And then the next column would be actual canceled checks
10 you have and the government has showing what you paid that
11 entity back. Right?

12 A Principal repaid, yes, sir.

13 Q So the very first one lost 400,000. Right?

14 A Correct.

15 Q And if we went through that, that's every individual --
16 every other one -- let's see, one, two, three, four. The
17 fourth one is a \$23 million investment that you paid back
18 \$23 million. I mean, 23 nine o five, and you paid back 23
19 five hundred. So it was a \$400,000 loss on \$23 million
20 invested.

21 A Correct.

22 Q Now, as part and parcel to this, you've also reviewed --
23 wait a minute. Let me check. We also -- going back to
24 Appendix A, there were some errors, were there not, in the
25 computation?

1 A Yes, sir.

2 Q Can you tell the court what we discovered, at least with
3 respect to three or four individuals? Where are the errors --
4 what other additional errors in Appendix A did you find?

5 A Well, there were duplicates that were in there, and there
6 was also interest that was added in.

7 Q Okay. And none of it -- nowhere on A does it show any
8 repayments. Is that correct?

9 A I don't have A with me.

10 Q Appendix A. That's a summary provided by the government.

11 A It just shows the amount of the monthly payment.

12 Q Okay. Hang on to that. Now, we also heard from another
13 individual that I believe is listed on this chart. I'm not
14 sure the numbers -- you have them on there if you can find them
15 for me. This chart is not numbered. Is that correct?

16 A It is not.

17 Q Do you recall -- hang on.

18 MR. COLETTE: Court's indulgence, Judge.

19 BY MR. COLETTE:

20 Q On the front page, the first page, 1, 2 -- right before the
21 last one I asked you about, 1, 2, 3, 4, 5, 6 -- entry number
22 15. Do you see entry number 15?

23 A Yes, sir. That's not pertinent to the one.

24 Q That's not the same individual family? How about --

25 A It's down a little further.

1 Q Okay. Blake? No. I'm sorry. BE -- down further or no?

2 A Ninth from the bottom is one.

3 Q All right. That's -- all right. Ninth from the bottom
4 indicates that that person invested 1.7 -- \$1,750,000 with you.
5 Right?

6 A Correct.

7 Q How much did you pay them back?

8 A 1,750,000.

9 Q So if he came in and said he lost a bunch of money, then he
10 lost what?

11 A He lost interest.

12 Q Okay. And if that person said -- let's find the mom and
13 dad some place on there. I believe it was 4.8 million.

14 A Third page, third from the top.

15 Q Third page, third from the top, JE invested \$4,800,000 with
16 you, and how much did you pay them back?

17 A \$4,800,000.

18 Q So their loss, if anything, would have been interest on
19 what they thought they were going to make on this last
20 investment, or whatever. Is that right?

21 A Correct.

22 Q You've reviewed victim impact or victim loss statements.
23 Is that correct?

24 A Yes, sir.

25 Q Are all of those accurate and correct?

1 A You're asking my opinion?

2 Q No. Let me ask you -- well, I don't want your opinion.
3 Have you reviewed all the victim impact statements?

4 A Yes, sir.

5 MR. COLETTE: May I approach, Judge.

6 THE COURT: Yes, you may.

7 BY MR. COLETTE:

8 Q With respect to one of these investments, declaration of
9 victim losses, do you recognize that one?

10 A I do.

11 Q Without saying that person's name, that person told the
12 court that he lost either a million five or a million seven,
13 right?

14 A Correct.

15 Q And that he suffered substantial loss of retirement,
16 education and other savings. Is that right?

17 A Yes, sir.

18 Q Do you agree with that?

19 A No, sir.

20 Q Why is that? Without saying the name, that person is a
21 Hollywood TV producer who made \$40 million.

22 A Right.

23 MR. FULCHER: Your Honor --

24 A Sold a production company for 40 million.

25 BY MR. COLETTE:

1 Q How do you know that?

2 A His wealth management advisors told me that.

3 Q Told you that this person made \$40 million a year or two
4 ago, and he's telling this court on June 5 of 2018 that he lost
5 a million five and that he suffered a substantial loss of
6 retirement, education or other savings investment funds. Is
7 that correct?

8 A Yes, sir.

9 Q Mr. Adams, again, without saying any name, do you recognize
10 this type of document?

11 A Yes, sir.

12 Q And what is this?

13 A That is an income tax basis amortization schedule that
14 comes from my accountant.

15 Q And do you recall if we've provided these to the government
16 in that binder on each and every person in here or both of
17 them?

18 A I believe the government has those, yes. Yes, sir.

19 Q And this document would reflect a -- it says "loan," but
20 that's an investment reflected by a promissory note?

21 A Correct. Correct.

22 Q And now, it says, "nominal annual rate 22 percent," but
23 that's incorrect. It should be like 13 or something?

24 A The rate is 13, and that's the internal rate of return is
25 what my accountant told me.

1 Q All right. And on these it would show various payments.

2 Is that correct?

3 A Correct.

4 Q And we have one of these in every one, tracking it, and
5 when they invested, they got money back?

6 A Right.

7 Q Right?

8 A Correct.

9 Q And those should be contained in all of these so far.

10 Right?

11 A Yes, sir.

12 Q And based on those is what you went through when we looked
13 at the group of individuals who are claiming a hardship. Is
14 that correct?

15 A Yes, sir.

16 Q And the majority of those have recovered most of their
17 investment, and the ones that didn't, it's an interest issue.
18 Is that correct?

19 A Yes, sir.

20 Q In fact, there's an individual on there, MP. Do you
21 remember that one invested -- let me get it for you.

22 A Yes, sir, I do.

23 Q That individual claims -- he did a victim impact statement.
24 Is that correct?

25 A Yes, sir.

1 Q And he claims he invested \$3 million with you, and he got
2 back 3.5 million. Is that correct?

3 A Yes, sir. That's in his writing.

4 Q But in reality, you went back and you pulled all the bank
5 checks. Right?

6 A Correct.

7 Q And you found out he really invested \$5,313,000 with you.
8 Right?

9 A Yes, sir.

10 Q And you, in fact, paid him \$5,313,000 back. Right?

11 A Yes, sir.

12 Q So this -- he filed, though, a claim for about 50 -- for
13 about 500,000. Right?

14 A Correct.

15 Q And he even said in that --

16 MR. FULCHER: I've been letting this go on for a
17 while. We're getting leading after leading after leading.
18 We're getting more testimony from Mr. Colette than we are from
19 Mr. Adams.

20 THE COURT: Okay. Re-ask your questions, Mr. Colette.
21 Objection sustained.

22 BY MR. COLETTE:

23 Q With respect to that individual, MP --

24 A Uh-huh.

25 Q -- how much did you -- how much did he invest over his

1 dealings with you, sir, that's on your chart?

2 A He invested over \$5 million with me.

3 Q How much did you pay him back?

4 A Over \$5 million.

5 Q And he claims a loss of approximately how much, if you
6 recall?

7 A He claims to have lost 500,000.

8 Q What exactly -- what is that 500,000? Is that principal?

9 A Well, he has -- on his impact statement, he stated that he
10 invested 3 million, and he said this was an estimate. He
11 invested 3 million and received 3-and-a-half million back, and
12 so the 500,000 was interest profit. But on the government
13 Appendix A, balance of notes table, they are showing him with a
14 \$400,000 loss. And we went back through every deposit and
15 every check individually, page by page. He actually had, over
16 time, he invested \$5 million and got 5 million back.

17 Q All right. Now, how -- can you -- tell the court how this
18 investment worked, typical average investor with respect to
19 both losses and then the sophistication of it.

20 A Yeah. Most of the times a wealth management advisor or
21 individual or one of the recruiters would say someone wants to
22 invest this amount of money, and we would do up a standard
23 timber deed from the landowner to Madison Timber, which was
24 false, and we would make an exact copy of that timber deed from
25 Madison Timber to the investor. And then we would do a simple

1 promissory note and then hand 12 post-dated checks to the
2 investor.

3 Q All right. Now, as an example, after how many deals -- was
4 there any bottom line that after so many deals, they've got
5 their principal back, or what was your average in review --

6 A Some people, after 7.7 investments, would have all of their
7 principal back, plus some profit, and they would just continue
8 to invest, and some once a year, some four to six times a year.
9 But after 7.7 deals, they have all of their principal back in
10 their pocket, and then they are operating their investments on
11 interest only.

12 Q So the basis for the chart that's attached to your
13 presentence report, Appendix A, is it correct or incorrect?

14 A It is not correct.

15 Q And it's not correct, and you went back and utilized what
16 system to come up with what number?

17 A We went back through -- we were just trying to find out did
18 this person lose money, did this person break even, did this
19 person make money.

20 Q Right.

21 A And it's over 15,000 pages of bank statements and deposits
22 that we went through, and it took a long time to calculate it.
23 And when you look at the principal that was invested by the
24 people listed on Appendix A and the principal that was repaid
25 to the people listed on Appendix A, the loss, just principal to

1 principal, is \$40,958,836.

2 Q All right.

3 Mr. Adams, let me ask you if you've seen these two U.S.
4 District Court declaration of victim losses on Joe Herring
5 and/or Lee Herring.

6 A I have never heard --

7 Q Have you seen these documents?

8 A I have seen them.

9 Q Do you know these people?

10 MR. FULCHER: Just as a reminder concerning names, I
11 would ask that that be stricken from the record.

12 MR. COLETTE: Oh, I'm sorry.

13 THE COURT: We'll strike it as best from the record as
14 we can. Just a reminder that you should use pseudonyms or
15 initials.

16 BY MR. COLETTE:

17 Q This document, JH in D-2 -- individual JH.

18 THE COURT: Which will be D-2?

19 MR. COLETTE: Yes, sir.

20 THE COURT: All right.

21 BY MR. COLETTE:

22 Q Do you know Mr. JH?

23 A No, sir.

24 Q Have you ever heard of Mr. JH?

25 A Never have.

1 Q In any of the records about payments in, payments out, did
2 you find anything reflecting JH, his purported loss in this
3 case?

4 A No, sir, I've never sent that person a check, documents.
5 I've never done anything with them.

6 Q The amount on this statement of 493,979, is that included
7 in Appendix A, that total? Do you know?

8 A I do not know. I do not know.

9 MR. COLETTE: I move this be admitted as D-2.

10 THE COURT: Any objection?

11 MR. FULCHER: Yes, Your Honor, they should be
12 redacted.

13 THE COURT: Okay.

14 MR. COLETTE: I'll get somebody to do that after we
15 finish today, if that's okay.

16 THE COURT: All right. D-2 is admitted subject to it
17 being redacted.

18 (Exhibit D-2 marked)

19 BY MR. COLETTE:

20 Q Mr. Adams, will you tell the court what specialized
21 training you have in the timber or forestry industry?

22 A I don't have any specialized training or education in the
23 forestry industry.

24 Q How far did you go in school?

25 A High school.

1 Q Do you hold any professional degrees?

2 A No, sir.

3 THE COURT: Make sure you are speaking into the
4 microphone. You can speak from where you are.

5 BY MR. COLETTE:

6 Q Do you hold any professional degrees?

7 A No, sir.

8 Q Now, a great many of these investors, did you deal with
9 them personally or not?

10 A No, sir.

11 Q Who did?

12 A I dealt with very few, and it was either Bill McHenry or
13 Wayne Kelly or Michael Billings or several different wealth
14 management companies.

15 Q There were some stamps we had spoken to the FBI about. Do
16 you recall that?

17 A Yes, sir. I told them at some point, I don't know, first,
18 second or third interview, Michael Billings had a client, a big
19 foundation in Los Angeles, and they were doing 20, \$25 million
20 a year in investments, and their back office was going through
21 documents that we had sent to send some back and put some in
22 their file, and they noticed two of the signatures on two
23 different deeds looked just alike, and they said something to
24 Mike Billings about it. So Mike asked me if I would get a copy
25 of the file timber deeds and send it to them.

1 Q The stamps I'm referring to were purported to be valid
2 chancery court clerk stamps. Is that correct?

3 A Yes, sir, I had to order some stamps because the timber
4 deeds weren't filed.

5 Q And how many times did you use those stamps?

6 A Those were used, like, four times for that one foundation
7 that Michael Billings requested, and that's it. And that's by
8 memory, but I believe it was four. It was very few times, but
9 I know about those four.

10 Q We were talking about the stamps. You've answered that.

11 Now, Mr. Adams, since this thing has occurred, you have --
12 what have you been doing with respect to the FBI?

13 A Everything that I could to help them and give them
14 information.

15 Q How about, do you know Alysson Mills?

16 A Yes, sir.

17 Q And who is she?

18 A She is the court-appointed receiver.

19 Q Have you met with and assisted Alysson Mills in maximizing
20 recovery of any money whatsoever?

21 A Yes, sir. We've met on several occasions, and I've done
22 everything I could to try to help her.

23 Q You continue to do that?

24 A Absolutely. Yes, sir.

25 Q Have you voluntarily surrendered everything you own in the

1 world to the federal government?

2 A I have. I don't have anything in the world, not a penny to
3 my name.

4 Q Do you have a place to stay until you go to prison?

5 A Yes, sir.

6 Q You don't own a thing, do you?

7 A No, sir.

8 Q Just a general number. We looked at 34 individuals that
9 have been designated on the presentence report for an
10 additional enhancement under what's termed substantial
11 hardship. Is that correct?

12 A Yes, sir.

13 Q Have you gone over the records of each of those
14 individuals?

15 A Yes, sir, I have.

16 Q Have you prepared a chart on those?

17 A Yes, sir.

18 Q And of the 35, how many, approximately, are -- in fact
19 qualify, as far as your opinion, for substantial hardship?

20 A In my opinion --

21 MR. FULCHER: Your Honor, that, of course, calls for a
22 legal conclusion.

23 MR. COLETTE: I'll strike that. Let me do it this
24 way.

25 BY MR. COLETTE:

1 Q Do you recognize this chart?

2 A Yes, sir.

3 Q The first individual, MP --

4 MR. FULCHER: I'd like to see that chart.

5 THE COURT: I'm a little concerned everybody can see
6 these two monitors at counsel table.

7 MR. COLETTE: I selected names off --

8 The names are not -- now, you'll just have to keep up
9 with what row it is.

10 COURT REPORTER: Mr. Colette, I can't hear you.

11 THE COURT: And not only that, the recording is part
12 of the record.

13 BY MR. COLETTE:

14 Q Mr. Adams, do you recognize this chart?

15 A I do.

16 Q And this is a chart of purportedly the 34 individuals that
17 the probation office is urging the court to consider to enhance
18 your sentence by two levels under a specific guideline
19 provision, whatever it is. Right?

20 A Yes, sir.

21 Q Okay. Now, with respect to the first individual -- and

22 it's not shown, but that's MP, this individual that

23 according -- this is your report, and you went back -- how did
24 you generate this?

25 A We went back through all the bank statements, and each time

1 there was a deposit from that individual and there was a check,
2 and the checks were numbered 1 through 12, so check number 1
3 would mean that was a new -- check number 1 would mean that's a
4 new investment that they started, and so we could count up the
5 deposits that were made and how many checks had cleared the
6 bank.

7 Q All right, sir.

8 A And each deal that's -- the first check numbered 1
9 represented a new investment.

10 Q So based on the actual checks, this person, over the course
11 of 61 investments with you, had a net profit of \$161,250.
12 Right?

13 A Yes, sir.

14 Q But this person, based on your review, filed a claim under
15 declaration of victim losses for \$534,395. Right?

16 A Yes, sir.

17 Q And he also said that he's become insolvent and that he had
18 substantial loss of retirement. Right?

19 A Yes, sir.

20 Q Did he ever say what he did with the 5 million?

21 A No, sir. I've never met him or never spoken to him.

22 Q He's a police officer. Right?

23 A Yes, sir.

24 Q Mr. Adams, I hand you a four-page document that purports to
25 be a declaration of victim losses by MP. Is that correct?

1 A Yes, sir.

2 Q And that was part of what we received from the government
3 and reviewed in preparation for this sentencing hearing. Is
4 that correct?

5 A Yes, sir.

6 MR. COLETTE: Your Honor, at this time I'd move that
7 to be Defense Exhibit 3.

8 THE COURT: Any objection?

9 MR. FULCHER: Yes, sir. Subject to redaction,
10 obviously.

11 THE COURT: All right. D-3 will be admitted subject
12 to it being appropriately redacted so it can remain anonymous.

13 MR. COLETTE: Thank you.

14 (Exhibit D-3 marked)

15 BY MR. COLETTE:

16 Q Now, how many victim impact statements have you received or
17 reviewed over the last couple of weeks?

18 A All of -- approximately over 90.

19 Q How many have you seen that are in this format, other than
20 this one, that actually asks questions about how much money did
21 you invest with MTP, and how much did you receive? Have you
22 seen more of those other than that one?

23 A Maybe two. I don't recall. Very, very few.

24 Q This form was sent out at some point, and it specifically
25 asks for investments with Madison Timber, when you first

1 invested, when did you last invest, how much did you invest and
2 how much did you receive. And we only got those on two out of
3 a couple of hundred or a hundred. Is that your testimony?

4 A Yes, sir.

5 Q Thank you.

6 Now, recently -- recently we received some additional
7 charts from the government in addition to Appendix A. Is that
8 correct?

9 A Yes, sir.

10 Q And the numbers are basically the same. Is that your
11 opinion? Are the numbers changed any?

12 A The numbers were the same. It was just -- it looked like
13 my same accountant's Excel sheet, that instead of listing it
14 one way, they listed one by date and one by alphabetical order
15 and one another way, but all the same numbers.

16 Q And they don't -- they did not -- they didn't include
17 interest in the recent chart?

18 A I don't think -- from what I saw, I don't think they
19 changed any of their numbers.

20 Q This chart --

21 MR. COLETTE: I'm sorry. I didn't move this into
22 evidence, Your Honor. I'll make this D-5, I guess is what it
23 is. Is that right, Twana?

24 THE CLERK: D-4.

25 MR. COLETTE: D-4? D-4. This was the summary on the

1 hardship.

2 MR. FULCHER: Subject to redaction, Your Honor.

3 THE COURT: All right.

4 D-4 will be received into evidence subject to the
5 identifiers being redacted.

6 (Exhibit D-4 marked)

7 BY MR. COLETTE:

8 Q What's still wrong with the recent revised amendments from
9 the government? It doesn't include what?

10 A It was just no change in their original Appendix A, the
11 one-year snapshot.

12 Q Let me hand you what's been previously marked as
13 Government's Exhibit 2. Do you recognize that?

14 A Yes, sir.

15 Q Do you recognize that as their summary of what they purport
16 the loss to be?

17 A Yes, sir.

18 Q These are the numbers -- you recognize that as what the
19 government has purported to be the loss, somewhat variation of
20 Appendix A, but pretty much as a basis of Appendix A. Is that
21 correct?

22 A Yes, sir.

23 Q And you prepared that binder that was given to the court
24 earlier that rebuts that and/or, in your opinion, should be the
25 proper loss?

1 A Correct.

2 MR. COLETTE: Judge, at this time, I have no problem
3 moving Government's Exhibit 2 into evidence.

4 MR. FULCHER: Your Honor, I have six exhibits,
5 actually, I'd like to move into evidence. I don't think
6 Mr. Colette has any objection to all six of them. At this
7 time, I can go ahead and --

8 THE COURT: Will they be -- okay. Tell me what
9 numbers. G-what?

10 MR. FULCHER: Your Honor, I have Government's Exhibit
11 1, which is the redacted transcript interview of Arthur Lamar
12 Adams from April 19, 2018. Exhibit 2 is the summary of
13 investor losses, April 1, 2018 to April 30, 2018. It's the
14 two-page document that is in front of the witness now. Third,
15 I have a redacted spreadsheet of investor losses, April 1st,
16 2018 -- it should say 2017 on both of these. It does on the
17 actual document. April 1, 2017 to April 30th, 2018. Then I
18 have Exhibit 4 is a link analysis of cash flow of Lamar Adams
19 and Madison Timber Properties for that one-year period.
20 Exhibit 5 is a link analysis of expenditures of Lamar Adams,
21 April 1, 2017 to April 30, 2018. And then, finally, Exhibit 6
22 is -- consists of photographs of counterfeit stamps used by
23 Lamar Adams to create fraudulent documents.

24 THE COURT: Okay. G-1 through 6 will be received into
25 evidence.

1 MR. FULCHER: I've provided copies of all of these to
2 counsel prior to this hearing, and I have a copy for the court
3 clerk and also have a copy for Your Honor.

4 THE COURT: Okay.

5 MR. FULCHER: If I may approach.

6 THE COURT: You may.

7 (Exhibits G-1 through G-6 marked).

8 MR. FULCHER: Your Honor, 1 through 6 has been
9 received?

10 THE COURT: G-1 through 6 are received into evidence.

11 MR. FULCHER: Thank you, Your Honor. For the record,
12 I have already redacted each of these consistent with the local
13 rules, so they are compliant.

14 THE COURT: Okay. Thank you.

15 BY MR. COLETTE:

16 Q Mr. Adams, the government has prepared a chart and those
17 stamps, but let me ask you something and see if we can clear
18 something up. Not that I believe everything I read in the
19 paper, but did you invest -- did you give Ole Miss \$400,000?

20 A No, sir, I gave them partial of that. There were seven
21 groups of us that were -- that made that contribution. It just
22 had to be registered in one person's name, so it was registered
23 in mine.

24 Q So you and a group of seven other people contributed to
25 whatever programs that totaled that amount that was in the

1 paper?

2 A Yes, sir, over a period of years.

3 Q Over a period of time?

4 A Yes, sir.

5 Q All right. Now, there were several investments that have
6 all been forfeited to the United States government. Is that
7 correct?

8 A Yes, sir.

9 Q Tell us about Oxford Springs.

10 A Oxford Springs is about 2500 acres of prime real estate
11 property just north of Oxford, and --

12 Q What were you doing with that?

13 A We were going to develop that. I had a partner out of
14 Dallas, Texas, and we were going to develop that property. And
15 it's just about ten minutes north of the Oxford Square.

16 Q All right. And there were various other investments. Is
17 that correct?

18 A Yes, sir.

19 Q Let me hand you what's been previously marked G-5. It
20 purports to be -- it is a chart of various entities and/or
21 expenditures by you in that one-year period. Is that correct?

22 A Yes, sir. That's what it looks like.

23 Q Okay. And those expenditures, Oxford Springs, Mash Farms,
24 Delta Farm, NOAH, Kapa Breeze Condominium, Mallard Park, all
25 those now are in the hands of the United States government?

1 You voluntarily surrendered every right, claim, to those
2 parcels, have you not?

3 A Yes, sir, I have.

4 Q And, in fact, the night you were arrested or confronted, we
5 had a couple of million dollars in the bank, and you agreed not
6 to move that and let the government seize that, did you not?

7 A Yes, sir.

8 Q Have you had any -- you didn't -- did you do any of the
9 financial accounting in this, or you had somebody that did all
10 of that, as far as how you broke these repayments down?

11 A I did none of that. The accountant did all of that.

12 MR. COLETTE: Court's indulgence.

13 (Short Pause)

14 BY MR. COLETTE:

15 Q On one of the documents in evidence, Mr. Adams, there are
16 references to 61 investments, or ten investments, or like you
17 said, seven times or eight times. Did you assign a
18 different -- or do you know if anybody assigned a different
19 identifier or account number to that individual?

20 A No one that I know of.

21 Q And did you have any role in encouraging or insisting that
22 people reinvest?

23 A No, that was 99.9 percent done voluntarily.

24 Q Was there any fear, if you know, of any investor that if
25 they didn't reinvest, they wouldn't get their money?

1 A No.

2 Q Because this system worked totally different. Is that
3 correct?

4 A Right.

5 Q Tell the judge, if I were to give you \$100,000 today, what
6 was your promise, and what did you do for my \$100,000
7 investment? Let's take it real simple.

8 A I would give you a timber deed and a copy of a timber deed
9 and a promissory note and 12 checks dated either the first or
10 the 15th of the month, to be paid out 12 times. And at the end
11 of that investment, your \$100,000, you had 113,000.

12 Q And it would take me how long to get that?

13 A Thirteen months.

14 Q All right. Now, wasn't there something else? Did you tell
15 me -- what did you tell me to do about the deed I got?

16 A There were certain individuals, like wealth management,
17 some wealth management and firms in Los Angeles and some firms
18 here in town that there would be a little simple half-page
19 agreement that said they agreed not to file the timber deed
20 unless we defaulted on paying them.

21 Q All right. But Ms. Birdie that was here earlier, if she
22 just went and filed a deed, you'd have been busted that
23 afternoon or very shortly after, wouldn't you?

24 A That's correct.

25 Q If anybody would have filed the deed?

1 A Correct.

2 Q If any of the lawyers would have filed the deed?

3 A Filed it or checked the copy of the timber deed from the
4 landowner to Madison Timber, they would.

5 Q You didn't do anything to conceal. You gave a description
6 of a piece of property that purportedly contained pine trees,
7 for lack of a better --

8 A We had the name of the landowner and the legal description
9 on the property on the front page of the timber deed.

10 Q So I got that for my 100,000?

11 A Right. And one of the things that we told people, it's a
12 very simple transaction. You can go look on an ownership map
13 and drive to this person's piece of property and look at it.

14 Q All right.

15 A No one ever did.

16 Q So I could have gone -- as the investor, I could have gone
17 to the courthouse to make sure that I had something that was
18 valid?

19 A Yes, sir.

20 Q To make sure that those stamps that are stamped were valid?

21 A You could have gone online and looked.

22 Q If I was investing through a lawyer or a wealth management
23 individual, then those people could have done it?

24 A Yes, sir.

25 Q Did you do anything to conceal any aspect of this?

1 A No, sir. There's nothing to conceal.

2 Q You used primarily one bank for a long period of time, and
3 then at some point you changed banks?

4 A Right.

5 Q You and a broker or somebody that worked for you at the
6 time?

7 A We were using Trustmark Bank and putting all the deposits
8 in one checking account and paying all the investors out of
9 that same checking account, and Trustmark had the account
10 closed.

11 Q So you moved it?

12 A To River Hills Bank, and then to First National Bank of
13 Clarksdale. And the majority of deposits went to First
14 National Bank in Clarksdale, and then we would just transfer
15 money to River Hills Bank. And we had deposits come in on one
16 bank, and we paid out to the investors from the other bank.

17 Q All right. You testified earlier that you did \$500 million
18 worth of business, and you paid back 400 -- 494 million, paid
19 back 452 million, and there was a 40 million loss. Tell us how
20 many airplanes you purchased.

21 A None.

22 Q How many offshore bank accounts do you have?

23 A None.

24 Q Are you aware of whether or not you can take a deduction
25 for a loss in a Ponzi scheme? Do you know that, or are you

1 aware of that?

2 A No, sir, I don't know.

3 Q Mr. Adams, some of these individuals, investors, would
4 reinvest before the payout. Is that correct?

5 A Yes, sir, some that were even here today would come to,
6 like, Mr. McHenry, and they would have, like, two payments
7 left, and they would ask if they could turn their last two
8 checks in and have those credited toward a new
9 hundred-thousand-dollar investment and then write a check for
10 the 81,000 difference.

11 Q Take me with that real slow. Somebody has put in 100,000
12 and they have received eight repayments from you. Right?

13 A Uh-huh.

14 Q And then at that point, they still have two or three checks
15 remaining?

16 A Yeah, if they get 12 checks, and they --

17 Q Two left.

18 A Right. They have gotten ten payments. They have got two
19 checks remaining.

20 Q So they would come in early. Did you -- did you convince
21 them to do that? Did you have anything to do with it?

22 A No, they would always approach us.

23 Q Okay. And then they would want to put that -- those --
24 cancel those two -- I don't understand how you cancel --

25 A They would just want to hand the two checks they had

1 remaining back to us and have that credited toward the \$100,000
2 new investment, and they would write a check for the
3 difference, which if those two checks were \$9,000 each, they
4 would want to write a check for 82,000 and hand the two \$18,000
5 checks back to us, not deposit them in their account.

6 Q So when you received their money, you physically gave them
7 12 handwritten hard checks?

8 A That, or set up 12 wire payments.

9 Q Or 12 wire payments. All right. And they then decided to
10 turn them in, or whatever, ahead of time. Is that correct?

11 A Yes.

12 Q How old are you now, Mr. Adams?

13 A I am two months from being 59.

14 Q Can you tell the court about your medical issues, if any?

15 A I've got a congenitive disc failure and vertigo and really
16 bad heart history in my family. My dad had his first heart
17 attack at 53 and died at 65 of a heart attack. My 57-year-old
18 brother has had four heart attacks. My sister has had heart
19 surgery, and my mother has had heart surgery. So we have
20 pretty serious heart disease in our family.

21 Q All right.

22 MR. COLETTE: Court's indulgence, Judge, one second.

23 BY MR. COLETTE:

24 Q I think I've asked you this, but you have no license,
25 timber or timber crews, nothing like that, any special

1 skills --

2 A No, sir.

3 Q -- or awards or none of that training?

4 A No, sir.

5 MR. COLETTE: I think that's all I have of this
6 witness at this time, Judge. I tender the witness.

7 THE COURT: Okay. Before you come up, Mr. Fulcher, I
8 have a question. I just want to make sure I'm right. And then
9 if Mr. Colette wishes to follow up at that point, he may.
10 Mr. Colette gave you an example, if he's ready to do business
11 with you, give you \$100,000.

12 THE DEFENDANT: Yes, sir.

13 THE COURT: And part of that \$100,000 with you, you
14 were given a deed, a promissory note, and 12 checks, and you
15 would agree to pay him about \$113,000.

16 THE DEFENDANT: Yes, sir.

17 THE COURT: These are post-dated checks?

18 THE DEFENDANT: Yes, sir.

19 THE COURT: So he's -- that person who you're doing
20 business with is told to either deposit the check on the first
21 or the 15th?

22 THE DEFENDANT: Right.

23 THE COURT: Okay. So those checks are already, like I
24 said, post-dated, so one would be dated February -- assuming
25 the transaction occurred on January 1st, 2018, you'll have

1 post-dated checks for either February 1st or February 15th and
2 each month after that?

3 THE DEFENDANT: Yes, sir. If it was -- the first
4 check was on the 1st, they were all on the 1st of each month.

5 THE COURT: And he's told that you can only deposit
6 the check on or around the first of the month?

7 THE DEFENDANT: Right.

8 THE COURT: Okay. And I think you said that some
9 people, by the time October or November rolled around, talked
10 to whoever the recruiter was?

11 THE DEFENDANT: Right.

12 THE COURT: And said, *Look, instead of me getting -- I*
13 *don't want to deposit my check for November and December. I'd*
14 *rather roll it over into a new investment.*

15 THE DEFENDANT: Yes, sir.

16 THE COURT: All right. What would happen if someone
17 were to deposit the check that's dated April 1, what if they
18 tried to deposit it March 1, or for that matter, take all the
19 checks, May or June, and say, *I need this money now*, and try to
20 deposit it then? Do you know?

21 THE DEFENDANT: Depending on how much money was in the
22 account, either none or some or all of the checks would have
23 cleared the account. It could be zero if they deposit them
24 all, or one or two may be -- it may be enough money in the
25 account that one or two cleared, and sometimes it may be enough

1 in there that all of them would clear, but probably somewhere
2 in between.

3 THE COURT: Okay. All right. Mr. Colette, do you
4 have any follow-up question based on what I've asked?

5 BY MR. COLETTE:

6 Q Just the timing of it. Lamar, again, this whole -- all the
7 money in, basically, except for like 10 percent, went right out
8 to feed it every two weeks?

9 A 99.5 percent of the money that came in went back out, 99.5
10 percent or more.

11 Q And you had to get -- you had to keep going every two weeks
12 because you had payments -- you paid on the 1st and the 15th, I
13 think is what it was?

14 A Correct.

15 Q They had all the checks. It may or may not have been an
16 issue on the deposit, like the judge said, but certainly had
17 anybody just recorded the deed or gone to a courthouse six,
18 seven, eight, nine years ago, we wouldn't be sitting here
19 today?

20 A Correct.

21 Q We may have been sitting here eight or nine years ago.

22 A Right.

23 THE COURT: All right. At this time, we're going to
24 take a 15-minute break for the court reporter and for us too.
25 Then we'll tender the witness to you, Mr. Fulcher. You may

1 step down, Mr. Adams.

2 (Recess)

3 THE COURT: Mr. Adams, you may return to the stand.
4 You may proceed, Mr. Fulcher, whenever you're ready.

5 MR. FULCHER: Thank you, Your Honor.

6 CROSS-EXAMINATION

7 BY MR. FULCHER:

8 Q Mr. Adams, obviously, we've met before. Now, you recall
9 being interviewed by the FBI on the night of Thursday,
10 April 19th?

11 A I recall having it. Not a good night.

12 Q And have you seen a copy of the transcript of that
13 interview?

14 A I did, yeah.

15 Q And have you had an opportunity to read through it before
16 you came into court today?

17 A I think I read it back in June or July.

18 Q Okay. So during that interview, you explained pretty
19 clearly that this entire fraudulent scheme was a Ponzi scheme.

20 A Uh-huh.

21 Q And that's still your testimony here today?

22 A Yes.

23 Q Okay. Also, with regard to the investors who were given
24 investment contracts or timber contracts and gave money to you,
25 those investors did not receive any actual valuable asset.

1 Isn't that correct?

2 A Correct.

3 Q So there was no timber actually pledged against their money
4 that they gave to you?

5 A Correct.

6 Q And during the course of this Ponzi scheme, all of the
7 money received back by people who invested with you was money
8 that came from other people who entrusted you with their money.
9 Right?

10 A Uh-huh.

11 Q So there's no such thing as profit when it comes to Madison
12 Timber, is there?

13 A I don't know what you mean by profit.

14 Q Madison Timber didn't make money on any kind of product or
15 any kind of sales of timber, did it?

16 A No, Madison Timber did not.

17 Q So all the money that these investors received was money
18 that came from other investors?

19 A Right.

20 Q Okay. So no one made interest. It was just payments of
21 other people's money in excess of what they had invested?

22 A I don't know what you would call that, but yeah, if
23 somebody invested 100,000 and got 113,000 back, I don't know
24 how you would classify that.

25 Q But that \$13,000 came from somebody else. Right?

1 A It came from other investors.

2 Q Came from other investors. So can we agree that people
3 didn't receive any profits of Madison Timber's -- Madison
4 Timber. They only received other investors' money?

5 A Yeah, it flowed through Madison Timber.

6 Q And what flowed through Madison Timber, not to belabor the
7 point, but what flowed through Madison Timber was other
8 people's money?

9 A Correct.

10 Q I'm going to show you what's already in evidence here as
11 Government's Exhibit 2. Obviously, this is rounded up, but
12 you've seen the documents and you've seen the presentence
13 report. Is that correct?

14 A Yes.

15 Q You don't disagree with this number right here? Investor
16 money in was \$164.5 million during the last year of the
17 operation of the Madison Timber Ponzi scheme?

18 A I don't disagree with that.

19 Q And you also don't disagree that the money paid back to
20 those investors who invested in that year was \$79.5 million,
21 rounded up?

22 A It would have been more than that if it had been a 12-month
23 period.

24 Q Okay. What's your basis for disagreeing with that number?

25 A Well, over a typical 12-month period, if you had

1 \$164 million come in, you probably had 150 million go back out.
2 So that number for a one-year period is not correct.

3 Q Do you have any calculations that you brought with you that
4 show that?

5 A No, I didn't. But if you look at the checking account of
6 money in and money out, I think you would see that. And I know
7 y'all have got my checking accounts.

8 Q And so page two of that same document shows money in and
9 money out of the different accounts, and it shows money paid
10 back to current investors of \$79,577,373.34.

11 A If that's what it shows in that one-year period of going
12 out, but I would be highly suspicious of that. That number is
13 a lot bigger than that over a 12-month period.

14 Q Okay. Again, you have nothing with you to dispute that
15 number?

16 A I don't have my checking accounts with me, no, sir.

17 Q I'll show you what's already in evidence as Government's
18 Exhibit 3, which was sent last week, I believe it was, or at
19 least a few days ago. Have you had a chance to see this?

20 A I did look at that.

21 Q Okay. And looking at the total amount repaid, going down
22 to the last column at the end of the page, do you see that
23 total?

24 A I do.

25 Q Okay. And that total is \$79,424,073.34. Do you see that?

1 A I do.

2 Q And then the additional payments, those two add up to that
3 same number we just saw?

4 A Okay.

5 Q Okay. Do you disagree with this?

6 A No, I don't think there's any question that money right
7 there was paid back.

8 Q Okay. So that's the same number here we just talked about?

9 A Right. I figured that's where you got it.

10 Q Okay. So you don't disagree then?

11 A No, I definitely think there was 79 whatever paid back.

12 Q So 164-and-a-half million dollars came in during that
13 one-year period, and 79.5, and, of course, we're rounding,
14 came -- was paid back to investors, leaving 85 million of money
15 that came in that did not get paid back to any of these current
16 investors during that time frame. You would agree with that?

17 A I just don't know. I mean, I don't have the statements to
18 look at. I'm not saying it's right or wrong.

19 Q Were you involved in putting together the objections to the
20 presentence report?

21 A I was.

22 Q Do you remember seeing this document, the total return and
23 profit summary?

24 A I do.

25 Q And were you part of that, of putting that together?

1 A Yes.

2 Q All right. Do you remember putting that number at
3 83,232,460?

4 A Yes.

5 Q Okay. So if you disagree with 85, you at least will admit
6 that 83,232,460 would be this number here?

7 A I'm not questioning that that's a balance of notes on the
8 government sheet. I'm not questioning that.

9 Q And you don't disagree that that's the amount -- or
10 somewhere in the 80s is the amount of money that didn't go back
11 to the current investors during the past year?

12 A Very possible.

13 Q So as I understand it, your claim, then, is that -- your
14 position is that the court should take into account the
15 interest, as you have labeled it, but really it's other
16 people's money, as we've established. So it's going to be the
17 payments made to other investors that was more than what they
18 initially invested in the past, and that's what you think the
19 court should credit to you in this instance. Is that right?
20 Does that make sense?

21 A I'm not sure I'm understanding what you're saying.

22 Q Okay. How do you get to a lower number than 85 or 83
23 million?

24 MR. COLETTE: Your Honor, I object. This is calling
25 for a legal conclusion as to the application of the guidelines.

1 I mean, Mr. Adams certainly testified about the process of the
2 sheets, but what the court should use is really a legal
3 argument. I object to the form of the question.

4 THE COURT: Objection overruled.

5 BY MR. FULCHER:

6 Q You can answer.

7 A Okay. Explain -- ask me again.

8 Q You're saying that the number that the court should use, or
9 at least the number that should be attributed to loss is lower
10 than 85 or 83 million. What calculations did you make to reach
11 that point?

12 A I just didn't take a one-year snapshot picture of from
13 April of 2017 to April of 2018. We tried to go back and take
14 every investment and every payment that someone has gotten.
15 And if someone started out and they invested \$100,000, and they
16 did that ten times and got 1,130,000 back and put their hundred
17 thousand in their pocket and invested their profit or interest,
18 100,000 on their next deal, we were just trying to get a
19 complete picture of what someone really lost.

20 Q To be clear, you're using reinvestment money and trying to
21 credit it back, or are you using all the money that was paid to
22 people in excess of what they invested?

23 A No, we just took each individual investor, and we went
24 through, and every deposit that that person made and every
25 check that they put in their bank, and we did our calculation

1 based on each individual person.

2 Q You've used an interesting word. You keep saying "we."

3 Who's the we?

4 A Well, I had some family helping me add things up. It was a
5 lot of work.

6 Q Which family members?

7 A My daughter.

8 Q Who else?

9 A Pretty much it. And it took a couple of months, 12-hour
10 days.

11 Q So you didn't personally do all these calculations?

12 A No, I made sure that, you know, I looked at everything.

13 And then I had asked her to help just add some things up.

14 MR. FULCHER: Can I see Exhibit D-2, with the court's
15 permission?

16 THE COURT: You may.

17 BY MR. FULCHER:

18 Q Now, you were asked questions about different people who
19 invested, and there was somebody whose initials we used that
20 was MP. Do you recall that?

21 A I do.

22 Q And that person you said had invested several million
23 dollars, was your testimony?

24 A Correct.

25 Q Isn't it really the case that that person had an investment

1 that they continued to reinvest over a number of years?

2 A Well, what that person did is they invested, and after like
3 7.7 investments, they put their principal in their pocket and
4 they invested their interest. And then after another seven,
5 they did the same thing. They did it over and over and over 61
6 times.

7 Q Isn't it the case, though, that that person invested
8 really, instead of millions, their initial principal investment
9 was around \$500,000?

10 A I don't remember their initial principal investment, but I
11 know that they made interest on about \$5 million.

12 Q But that's adding all of the different times that they
13 reinvested, isn't it?

14 A Yeah.

15 Q Now, with regard to each of these folks -- well, let me
16 back up for just a second. You were also asked about some
17 other people whose declaration you mentioned that you did not
18 recognize. Isn't it the case that there were a lot of people
19 who invested through -- either through LLCs or invested in this
20 as a group?

21 A As a group --

22 Q Or through a group.

23 A Yeah, there were people invested through wealth management
24 companies, and some had LLCs, and some had trusts, and they
25 invested a lot of different ways.

1 Q So you didn't necessarily know most of your investors, did
2 you?

3 A No, I never met probably 95, 90 percent of them.

4 Q And if there was an LLC that invested, you didn't
5 necessarily know how many people were investing through that
6 particular LLC either?

7 A No, I didn't.

8 MR. FULCHER: May I approach, Your Honor.

9 THE COURT: Yes, you may.

10 BY MR. FULCHER:

11 Q Now, isn't it the case that you presented this investment
12 as a safe investment that was backed by collateral?

13 A That was part of the simplicity of the deal. We showed
14 them here is a timber deed with a landowner name and a legal
15 description, and you can drive to the property and see it.

16 Q But you also used a series of documents to make it look
17 legitimate, didn't you?

18 A What do you mean? I don't --

19 Q You used a timber deed?

20 A Right.

21 Q Is that correct? And these were all documents that you
22 falsified?

23 A Yes.

24 Q So for each transaction, you had to put together, for
25 example, a false document purporting to convey timber rights

1 from a landowner to Madison Timber Properties. Correct?

2 A (Witness nods affirmatively).

3 Q Then you also had to --

4 THE COURT: For the record, make sure you --

5 A Yes.

6 THE COURT: -- respond orally.

7 MR. FULCHER: Thank you, Your Honor.

8 BY MR. FULCHER:

9 Q So the first document was a timber deed from a fictitious
10 or false timber deed that purported to be from a landowner to
11 Madison Timber Properties?

12 A Right.

13 Q And then you would take that information and present it
14 along with what's called a timber cruise in some situations to
15 potential investors?

16 A That was 5 percent of the situations of the timber cruise.

17 Q And the point of a timber cruise, though, would be to hold
18 out to more sophisticated investors that there was timber
19 actually on that land that was worth what you said it was
20 worth?

21 A Yeah, it was just -- you know, it was a short, short
22 statement and said the timber is worth about this, and about
23 5 percent of the investors got that.

24 Q And you also had at least one licensed forester that you
25 were paying during this time?

1 A Yes.

2 Q And that was someone that would also, perhaps unknowingly,
3 but would lend credibility to your being in the timber
4 business?

5 A Yeah, he only cruised real timber.

6 Q Were there in fact times that you went and took people out
7 into the woods and walked around with timber maps and took a
8 forester with you to go look at different properties?

9 A I recall twice riding in a vehicle with the group from Los
10 Angeles, the wealth management guys that came in, and we rode
11 in a truck and just rode through Yazoo County and Madison
12 County. We didn't get out and walk around. And then there was
13 another group that we did the same thing.

14 Q Okay. And with regard to -- so back to the transactional
15 documents. You had a timber deed that was forged by you or
16 completely made up by you purporting to convey timber rights to
17 Madison Timber. You had a timber cruise that was also
18 fictitious?

19 A Very rarely a timber cruise. That was rare.

20 Q In some cases, though?

21 A Maybe 5 percent.

22 Q And then you would present also a false document purporting
23 to have a timber cutting contract with a lumber mill on that
24 same piece of property?

25 A No, we never gave that. We may have given that to one

1 investor that was a very high-end wealth management company.

2 No, it was a billionaire out of Dallas. And that's a --

3 Q Now, didn't you also --

4 I'm sorry. I didn't mean to interrupt you. Go ahead.

5 A No, we did not give a contract of -- a copy of a contract
6 with a timber mill with Madison Timber.

7 Q With regard to the fraudulent bank loan you obtained from
8 First National Bank of Clarksdale, you presented them with a
9 false timber cutting contract as well, didn't you?

10 A It was a real timber cutting contract because I bought the
11 timber. The amount that we paid for the timber is what was
12 false.

13 Q I'm talking about with a lumber mill, purporting to have a
14 lumber mill contract.

15 A Dave, I may have. I just don't remember. That's very
16 possible. We were scrambling because Trustmark had closed that
17 account and trying to open and get funds to cover checks.

18 Q And isn't it the case that you were -- and we'll move to
19 that in just a second. You were also presenting documents and
20 then reporting falsely to convey timber rights from Madison
21 Timber Properties to the investors to hold as their collateral
22 for their investments?

23 A Yes.

24 Q And you also had a promissory note as an additional
25 document?

1 A Correct.

2 Q And so these were all documents that were fraudulent and
3 false that you created for every single investor contract that
4 you had?

5 A I created the three-quarters page or made a copy of it,
6 promissory note. The two-page promissory note, that was
7 created by a law firm, and I just started using it for the
8 wealth management people and the billionaire in Dallas.

9 MR. FULCHER: One second, Your Honor.

10 A So it was two sets of documents for different people.

11 BY MR. FULCHER:

12 Q Isn't it the case that you had, during the last year of the
13 operation of this Ponzi scheme, you had over 500 or about 501
14 different contracts that were outstanding?

15 A I would assume that's true. I figured you have them. I
16 don't know the exact amount.

17 Q And you also had somebody who was keeping up with all of
18 the different accounts for you, without knowing that it was
19 fraudulent? You had a CPA?

20 A Yes, I had a CPA. That's correct.

21 Q And the CPA was preparing 1099s?

22 A Right.

23 Q So all of your investors also got a 1099 in connection with
24 what was conveyed to them as being interest, but really it was
25 just other people's money being paid in excess of their

1 investment?

2 A Yeah. My accountant told us three or four years ago that
3 we needed to start doing 1099s. I think it was a tax law
4 change or something.

5 Q So with regard to the different timber deeds that you put
6 together and the other documents, just to be clear, you went
7 out and purchased different stamps, fraudulent stamps?

8 A Correct.

9 Q And these are ones that you used to -- and this is
10 Government's Exhibit 6, which is already in evidence.

11 A I don't know that I used all of them, but I did use some.

12 Q Okay. I believe the earlier testimony was that you used
13 them only in four different instances.

14 A Well, I said that's what I could remember. I remember that
15 Mike Billings wanted to get copies of filed timber deeds for
16 the Booth Foundation out in California because he had said a
17 couple of the signatures looked alike, but that's just what I
18 recall.

19 Q So let's just look at a few examples, then. This is a
20 timber deed. This is a timber deed that has a Madison County
21 chancery clerk stamp at the top.

22 A Uh-huh.

23 Q Is that correct?

24 A Correct.

25 Q And that's the stamp that you used that's in Exhibit 6?

1 A Correct.

2 Q Here's another timber cutting agreement, and that has the
3 chancery clerk of Holmes County?

4 A Yeah, these are -- look like the ones that went to the
5 Booth Foundation that were requested.

6 Q Okay. But that's two different counties so far, Madison
7 and Holmes?

8 A Yeah, I think they got four total, the Booth Foundation,
9 and these are those.

10 Q All right. Here's another one from Holmes County, and
11 that's using a different book and page number. Is that
12 correct?

13 A Correct. That's, I believe, to the Booth Foundation also.

14 Q Another one that purports to come from Lawrence County?

15 A I believe that's to the Booth Foundation.

16 Q You don't recall specifically who this went to, do you,
17 particular ones?

18 A These stamped ones? I believe they all went to the Booth
19 Foundation.

20 Q Isn't it the case and didn't you tell us that most -- most
21 of these timber deeds and contracts were used for multiple
22 investors, five or six different investors per timber contract?

23 A Uh-huh. Correct.

24 Q So there might be five or six people who believe, falsely,
25 that they have an investment in the same timber tract?

1 A Right.

2 Q And those timber tracts didn't even necessarily have timber
3 worth what you were telling them it had?

4 A No. I mean, it may have more; it may have less.

5 Q Back to the initial time when a bank approached you and
6 told you that they were concerned about your business practices
7 and you were no longer allowed to remain a customer of that
8 bank, during that time, didn't you have a significant number of
9 pay/no-pay situations where you had to scramble to get money to
10 put into the account?

11 A Yes.

12 Q And part of that was -- part of that money that you used to
13 help keep things afloat was a home equity line of credit in
14 your house on St. Andrews Drive?

15 A Yes. I had put my house up to help pay timber notes.

16 Q And then as investor money came back in, you would use that
17 money to pay the home equity line of credit off?

18 A Yeah, I had got the home equity line of credit and used it
19 to pay investors, and when money would come in, I would pay it
20 down and then use it again to pay investors.

21 Q So after you were no longer allowed to remain a customer of
22 that bank, you were having to scramble at that point?

23 A Right.

24 Q And didn't you say at the time that the mistake you made
25 was paying investors out of the same account that you were

1 receiving investor money into?

2 A I don't remember what I said, but that was pretty dumb.

3 Q Well, it almost got you caught at that point. Right?

4 A Yeah. Making the investor deposits in the same account and
5 then paying the investor out of the same account is pretty
6 obvious.

7 Q Now, with regard to what you did after that, isn't it the
8 case that -- isn't it the case that after you were no longer a
9 customer of that bank, you then went and opened multiple
10 accounts at multiple banks so that you would no longer be
11 paying investors out of the same account that their money was
12 coming into?

13 A Well, I went to River Hills Bank and First National Bank of
14 Clarksdale, but originally, it was River Hills Bank. And so
15 the money that was deposited in River Hills Bank was also paid
16 out of River Hills Bank until I got the Clarksdale account
17 open.

18 Q Then you also opened an account at Southern Bancorp?

19 A Yeah, I had already had it for a while.

20 Q But you started using it --

21 A I just didn't use it a ton. I used it for maybe some
22 deposits from time to time.

23 Q But then as the Ponzi scheme progressed, you did use it for
24 a significant amount of money?

25 A Used it for some deposits.

1 Q And do you recall how much?

2 A I don't.

3 Q Would it surprise you to hear that that number is
4 approximately \$28 million in Southern Bancorp in 2018?

5 A Yes, that would.

6 Q Let's back up for just a second. On the night that you
7 were interviewed in our office and with the FBI, didn't you
8 tell us at that time that the amount of money outstanding, the
9 amount of money that investors had in it that you were unable
10 to pay at that time was 85 to 90 million?

11 A Yeah, I think I guessed that that's what the balances were
12 at that point in time.

13 Q So if these numbers are correct, you were pretty much right
14 on it, weren't you?

15 A Yeah. I mean, I just took a guess.

16 Q Well, you had some time to think about it before you talked
17 to us, though, right?

18 A Well, I don't know if my head was thinking or not during
19 that time, so... It was spinning.

20 Q You said, "I've had time to think about that today, and
21 about 85 to 90 million, and it started out at about 75,000."

22 Is that correct?

23 A Yes.

24 Q And that was in response to the question of "How much money
25 do all the investors have into it right now?"

1 A Yeah, that was my guess, doing a quick calculation based on
2 how much was going out each month and multiplying it.

3 THE COURT: Could you tell the court what page of the
4 document that is?

5 MR. FULCHER: Yes. Thank you, Your Honor. That's
6 Exhibit 1, page 12.

7 THE COURT: Thank you.

8 MR. FULCHER: Yes, sir.

9 BY MR. FULCHER:

10 Q Did you have a chance to look at Government's Exhibit 4, by
11 any chance?

12 A Yeah. I don't know that I understand a lot of it, but I
13 did.

14 Q Well, just briefly, let's talk about this, then. You had
15 an account at First National Bank of Clarksdale for Madison
16 Timber Properties?

17 A Right.

18 Q And you also had an account at Southern Bancorp Bank for
19 Madison Timber Properties?

20 A Uh-huh.

21 Q I mean, there's another account at Southern Bancorp Bank.
22 Here's another one. You had the River Hills Madison Timber
23 Properties account. These are all things that you had as part
24 of this -- and used as part of this scheme?

25 A It was basically River Hills and First National Bank of

1 Clarksdale.

2 Q Okay. Well --

3 A I just put money in one account and then paid people their
4 checks or wires out of the other account.

5 Q So, for example, we've got 117 million, or more than
6 117 million going into First National Bank of Clarksdale, and
7 then 95 million going to River Hills Bank?

8 A I'm trying to see where your -- okay. I see it there.
9 Okay. Yeah, I see what you're showing.

10 Q Okay. So there was a lot going on as far as moving money
11 around. Correct?

12 A Typically, it was -- if you look at the bank records, it
13 was basically mostly moving money from First National Bank of
14 Clarksdale to River Hills Bank, you know, usually right before
15 the 1st and the 15th of each month.

16 Q Okay. Would it surprise you to find that there was
17 \$155,000, or more than \$155,000 that was paid out of the First
18 National Bank of Clarksdale Madison Timber Properties account
19 to American Express?

20 A No, because we used -- I mean, I used that card a ton for
21 everything.

22 Q That included --

23 A Being on the road a lot.

24 Q -- trips with your family?

25 A I think we took a trip right after Christmas, yes.

1 Q What about -- did you take a trip out to go skiing?

2 A Yeah, that was right after Christmas.

3 Q What about a trip to Houston?

4 A Yes, that was to go out to my church, yeah.

5 Q Do you recall spending several thousand dollars on jewelry
6 in Houston?

7 A I remember Christmas shopping out there. I don't recall
8 what I bought.

9 Q You don't dispute that \$155,000 to American Express?

10 A I don't have any way to dispute it. I don't have any
11 documents. The government has all those.

12 Q With regard to each of the different people that
13 experienced hardship, first of all, isn't it the case that you
14 didn't really know about 75 percent of the people that were
15 investing in your company or investing with your scheme?

16 A I did not know most of them.

17 Q And you had recruiters out there who were bringing in
18 investors to you in exchange for a commission?

19 A Correct.

20 Q And with regard to these people that have provided
21 statements to FBI agents and to the court concerning the effect
22 of the loss of their money, you don't have any personal
23 knowledge upon which to dispute whether or not it has, in fact,
24 caused them some sort of hardship?

25 A No. All I have is the numbers to go by on what they have

1 invested and what they've been paid back. So I don't know
2 anything other than that.

3 Q So all you've done is look at the numbers to reach those
4 conclusions you reached earlier?

5 A Yes, that's all I've tried to do is get an accurate number.

6 Q The entire time of this entire scheme, you were making an
7 attempt to conceal the fact that it was not legitimate. Isn't
8 that right?

9 A Yeah. I mean, I didn't -- I mean, that would end the deal.
10 So I was trying to do what I could to preserve it and figure
11 out a way to get out of it.

12 Q In terms of your being able to pull this off, you said that
13 that you were able to take advantage of the fact that you knew
14 the timber business, and the people you were dealing with as
15 investors did not know the timber business. Is that correct?

16 A Well, I said that, and I think it was the question about
17 the recruiters, Wayne Kelly and Mike Billings, and being in a
18 truck and riding. I think that's who I was referring to on
19 that.

20 Q But at least in that instance, you took advantage of the
21 fact that you knew the timber business, and you knew it well,
22 and they didn't know anything about the timber business?

23 A Well, yeah, I know the lingo and how to buy and sell
24 timber.

25 Q And what the documents should look like?

1 A Yeah, because those had been around since the mid to late
2 '80s. And so you just used the standard documents that any
3 landowner selling his timber would use or anybody in the timber
4 business would use.

5 Q And you were able to fool both highly educated people and
6 people that were not so educated?

7 A You know, I used documents that highly educated people
8 created and said, *Let's use these*. And then I used very basic
9 documents that anybody would use selling their personal timber
10 or could pull off online. It's nothing fancy about it. If
11 anybody had ever checked them, they would have known.

12 Q And isn't it the case that there have been instances where
13 friends of yours have come and sought your assistance in
14 selling timber?

15 A Timber or land, yes.

16 Q So you're someone who has the knowledge of how to do that
17 that a lot of other people, including your friends, don't have?

18 A Yeah. I just told them, let's bid it out to different
19 timber companies.

20 Q Okay. And isn't it also the case that you set up a way to
21 make it easier for people to reinvest who had invested and
22 wanted to reinvest their money?

23 A I don't know what you mean by that.

24 Q Well, you made it easier for them to do that. If someone
25 came to you and said, *I'm reinvesting money*, you made that

1 happen, easy for them to do that?

2 A Yeah, we just said yes. I mean, there were some people
3 that we had to put off, you know, three or four weeks or a
4 month or something. They weren't happy about it, but that's
5 what we told them.

6 Q Earlier you testified, I believe, that 99.9 percent of the
7 money that you had taken in from investors had been paid back
8 to investors. Is that correct, or did I hear that wrong?

9 A I think I said like 99.5 or something in the last -- and I
10 was referring to the last year or two.

11 Q Oh, in the last year or two?

12 A Yeah. The numbers had gotten so big.

13 Q Okay.

14 A I don't know -- I haven't looked at what the percentage
15 would be before that.

16 Q Okay. So I'm trying to understand this, and I've got a
17 calculator I'm trying to look at. You're saying of the
18 \$164.5 million that came in in the last year, that you paid
19 back 99.5 percent of that money?

20 A Well, if it had continued on for that 12-month period.

21 Q But wouldn't that require you to also acquire new investor
22 money to pay them with?

23 A Well, I think the 164 million that you showed on your sheet
24 is the money that came in in one year from 4/17 to 4/18. What
25 I don't know and this isn't showing is I don't know how much

1 was totally paid out during that period of time. I know what
2 the balance is that you're showing here, but I don't know how
3 much was paid out during that four --

4 Q You didn't do any calculation, then, on that?

5 A Unh-unh.

6 Q Okay.

7 MR. FULCHER: One moment, Your Honor.

8 A Dave, on that part when I said "paid out," I'm also
9 referring to commissions that were paid out.

10 BY MR. FULCHER:

11 Q And do you recall how much money you received during that
12 time period?

13 A I don't have a clue. I'd have to look at my tax
14 statements, tax return and see.

15 Q But, I mean, other than tax returns, we know, for example,
16 there's 155,000 that went to American Express alone.

17 A Yeah, but I think that would show on the tax returns.

18 Q But you don't know what that number is?

19 A I don't.

20 Q With regard to commissions, how much did you pay in
21 commissions, if you know?

22 A You know, I've read what y'all put together, and I think in
23 the last year, it was like 4 or \$5 million. That's all I've
24 looked at. And it may have been more; it may have been less.
25 I don't know.

1 Q You just don't have that number before you?

2 A I don't.

3 Q Okay.

4 MR. FULCHER: I tender the witness, Your Honor.

5 REDIRECT EXAMINATION

6 BY MR. COLETTE:

7 Q Mr. Adams, you were asked about how much you made or
8 reported on your taxes. Do you recall reading in the
9 presentence report, page 21, paragraph 95, that reflected that
10 you have paid your taxes for '13 and '14, and it reflected the
11 various amount of gross income of 85,000 and 125,000. Do you
12 recall that?

13 A Yes, sir.

14 Q Did you turn over all your tax returns to the IRS?

15 A Yes, sir.

16 Q Did you report all the money that you made in this
17 situation?

18 A Yes, sir.

19 Q So in 19 -- for the tax return ending in 2013, from a
20 multi-million-dollar Ponzi scheme, you had a gross income of
21 85,000?

22 A Yes, sir.

23 Q And you had 125,000 the next year. Right?

24 A Yes, sir.

25 Q The government has all your returns. Right?

1 A Yes, sir.

2 Q Now, he asked you about these percentages. Do you have G-4
3 in front of you where he was talking about the money going
4 different places? Do you have that right there?

5 A Yes, sir.

6 Q Yeah. Look at the top of that. Does that purport to show
7 that the investors sent \$117 million to the bank? Right?

8 A Yes, sir.

9 Q That's 117 million. Keep going across. You got 133,000.

10 A Yes, sir.

11 Q What percent is that?

12 A Not much.

13 Q One percent. And then 155,000 on American Express. Again,
14 what is that? One percent?

15 A Yeah.

16 Q So out of that 117 million, I mean, the whole issue with
17 this case is where did the majority of the money --

18 MR. FULCHER: Object to what the issue is in this
19 case. If he wants to ask him questions, he can ask him, but I
20 think we're getting into argument.

21 MR. COLETTE: I'll rephrase it.

22 THE COURT: Rephrase your question.

23 BY MR. COLETTE:

24 Q Of the whatever million dollars invested that the
25 government alleges, where did the majority of the money go,

1 sir?

2 A That's why I said earlier that high percentage of
3 99 percent went back to the investors or 99 plus.

4 Q All right. Now, you had a document. The government
5 cross-examined you. You had a document with these people as
6 part of this Ponzi scheme. Right? And the Ponzi scheme was,
7 you promised what? If I gave you money, what did you promise
8 to do for this investor?

9 A To pay you back over 12 payments and with a profit -- with
10 the interest.

11 Q Interest, profit, whatever. Right?

12 A Yes, sir.

13 Q And as with every Ponzi scheme, do you know where that
14 interest and profit comes from?

15 A Yes, sir. It came from other people.

16 Q So however you want to call it today, it was an inducement.
17 It was an interest on my money. Right?

18 A Correct.

19 Q Your Exhibit D-1, Lamar, tracks every check that came in
20 and every check that went out for not one year but for the
21 entire existence of this conspiracy. Right?

22 A Yes, sir.

23 Q And you didn't know that it was \$450 million when we went
24 up to the U.S. Attorney's Office at 6:00 that night they called
25 you, did you?

1 A No, sir.

2 Q They asked you a lot about this 83 million. Tell the judge
3 how fast this happened as far as the time between you knew you
4 were in trouble and the time you decided to go in there and
5 cooperate with the government.

6 A I got a phone call about 1:45 or 2:00 on a Thursday and it
7 was a lady that I've handled her timber for many years, and she
8 said the FBI had just been there and that she was going to tell
9 them that I was her friend, and she was going to tell me that
10 they came by. And so Agent Culpepper and -- Agent Culpepper
11 went and saw her son and visited with him, and she called me
12 after they visited with her son, and I drove to Bentonina and
13 met them, and they told me the FBI had been there and here's
14 what they asked. And I was with them about 30 minutes.

15 And so I was driving back to Madison, and I called the law
16 firm that's handled real estate transactions for years, and I
17 went and met with them and said, *I need a criminal defense*
18 *attorney. I want to turn myself in since the FBI is looking at*
19 *me.* And they called and got John on the phone, and John was in
20 his car, and he was going to be back in his office about 4:45
21 or 5:00. And so I went straight to his office. I had never
22 met him before. And at about 5:00, I told him what I've done,
23 and I think he made the phone call to either Mr. Fulcher or the
24 FBI. And I think about 5:45 or 6:00, we were sitting in the
25 federal building talking to the FBI and Mr. Fulcher.

1 Q Well, did you have any idea what the guidelines were at
2 that point?

3 A No, sir.

4 Q Moments before you mentioned you think that the notes total
5 about 80 something million dollars that he put in the exhibit,
6 did you know anything about what loss meant in terms of the
7 guideline issues?

8 A No, sir, I didn't.

9 Q That 80 something million dollars was balance on promissory
10 notes that included interest and other issues. Is that
11 correct?

12 A Correct.

13 MR. FULCHER: That's a misstatement of facts that are
14 already in evidence.

15 THE COURT: Rephrase your question, Mr. Colette.

16 BY MR. COLETTE:

17 Q The night that this thing first developed, your first
18 meeting with the government, when you said you thought the loss
19 was about -- whatever it says on the transcript, did that
20 number include rate of return or promised interest to these
21 investors, sir?

22 A I think it did, yes, sir.

23 Q At that point --

24 A My head was spinning, and I was just trying to guess.

25 Q Did you have any idea what the guidelines meant at that

1 point?

2 A I didn't have a clue.

3 Q Now, there was an issue about this past year and the
4 summary chart, 164 million, and we paid back 79. Where's the
5 rest of the money? Did you hide it?

6 A No, sir.

7 Q Have you seen a calculation by the federal government on
8 either that one year or on the entire existence of this
9 conspiracy that shows all the checks in and all the checks out?

10 A No, sir.

11 Q So that we could show the court or everybody exactly that,
12 *Oh, you absconded with \$80 million.* You've not seen it. But
13 what we do have is you have this D-1. How did you prepare D-1
14 again, sir? What did you look at?

15 A We went through over 15,000 pages of bank statements
16 individually, each individual person, and every deposit and
17 every check that they had clear the bank and deposits they made
18 into our account.

19 MR. FULCHER: Your Honor, I'm going to object to the
20 extent that this witness is now trying to testify what he has
21 admitted on cross was a product not of his own work but of the
22 work of someone else as well. So he's in here trying to now
23 elicit testimony from this witness as if it is his personal
24 knowledge, when he's testified that he had his daughter do a
25 substantial part of the work. So I'm going to object on that

1 basis.

2 A I just had her add up.

3 THE COURT: The objection is sustained, unless you
4 can --

5 MR. COLETTE: Well, Your Honor --

6 THE COURT: Did they work on it together?

7 MR. COLETTE: Yes. Number one, Your Honor. And
8 number two, this is sentencing. Hearsay doesn't apply. I
9 can't cross-examine witnesses. I mean, this is -- no one
10 has -- he didn't call a witness to challenge the accuracy of
11 any of this. Now they want to come in and say, *Well, truth of*
12 *the matter asserted*. I mean, I don't think that's a proper
13 objection at sentencing. Everything in here -- every one of
14 these 302s are hearsay. Those aren't witness statements.

15 THE COURT: That's fine. That's fine. Okay.
16 Objection overruled. Objection overruled.

17 MR. FULCHER: Thank you, Your Honor.

18 BY MR. COLETTE:

19 Q So, Mr. Adams, you don't have a breakdown from the federal
20 government of the 164 million, do you?

21 A No, sir.

22 Q Okay. That was a compilation of what? Of what your
23 accountant had, I think you said?

24 A Right.

25 Q Now, they asked you about -- and again, make sure that I

1 have this. On the MP example that we've talked about -- and by
2 the way, have you become a little more fluent with the
3 guidelines over the past several months?

4 A I have.

5 Q On the MP example, whatever -- you have looked at the
6 records, and you've looked at his victim impact statement, and
7 he talked about -- how much principal did he tell the court he
8 invested, principal?

9 A He said he invested \$3 million principal.

10 Q And he also said he got how much of that principal back?

11 A He said he got 3-and-a-half million dollars back.

12 Q So he got all of his principal back, according to Mr. MP?

13 A Correct.

14 Q Right? And Mr. MP is listed as a hardship individual. Is
15 that correct?

16 A Yes, sir.

17 Q Used to enhance. But he got all of his principal back?

18 A Yes, sir.

19 Q We talked about the meeting at Trustmark. And again, you
20 voluntarily disclosed all of this that evening. Is that
21 correct?

22 A Yes, sir.

23 Q Did you do anything to prevent Trustmark, or whoever
24 confronted you, from turning you in to the FBI that day that it
25 happened?

1 A No, sir.

2 Q Did you do any multiple bank -- did you do anything
3 sophisticated to conceal whatever Trustmark told you you were
4 doing?

5 A No, sir. It was very simple.

6 Q Now, we did a chart, and I'm not sure it's the hardship
7 chart. D-4 maybe. This is the hardship chart, D-4. I asked
8 you about D-4 and if you know these individuals or whatever and
9 whatever. How do you -- why do you object to some of those
10 people being listed as a substantial hardship enhancement in
11 this case?

12 A Well, you had --

13 Q Don't say their names.

14 A Okay. You had a good many of these people that did not
15 lose any money, and they made net interest gain. You have some
16 people, a good many on here, that are independently wealthy.

17 MR. FULCHER: Your Honor, same objection as before.
18 We had testimony from this witness that he doesn't know these
19 people or know their situation. He only looked at the records.
20 And now he's being asked to testify --

21 THE COURT: You need to be more specific, then, to the
22 ones he knows then.

23 MR. FULCHER: Yes, sir.

24 THE COURT: Thank you.

25 BY MR. COLETTE:

1 Q All right. On the one -- let's go over it one by one.

2 On MP, do you know MP?

3 A I do not.

4 Q And any -- how about?

5 THE COURT: Make sure you are speaking into the
6 microphone. You can stand there. You can stand there,
7 Mr. Colette. You can stand at the witness podium.

8 BY MR. COLETTE:

9 Q All right. On the ones that are listed, who made this
10 chart?

11 A I made this chart.

12 Q Okay. And when you -- what you've reflected on there was
13 the profit or loss of that individual. Is that correct?

14 A Correct.

15 Q Whether you knew them or you didn't know them?

16 A Correct.

17 Q And who on there do you know -- how about Dr. DF? You know
18 Dr. DF, don't you?

19 A I do not, but I know that his father had been in our office
20 and stated about him and his wealth and where he lives and what
21 kind of home and --

22 Q Let me ask you this. Maybe the proper question is, you may
23 not have met this one individually or that one, but you've
24 been, through brokers or other people, you've been advised as
25 to their financial well-being?

1 A Correct.

2 Q And as to their lifestyle?

3 A Correct.

4 Q Is there anyone in particular that stands out that you do
5 know, that you know --

6 A Well, BS handled --

7 THE COURT: Hold on.

8 A I'm sorry.

9 BY MR. COLETTE:

10 Q There's one on there, BS, that not only did she work for
11 one of the brokers --

12 A She worked and handled the books for Madison Timber for the
13 accountant, for our accountant.

14 Q Didn't she write a letter on your behalf to the judge?

15 A She did.

16 Q And yet the government wants to use her as a substantial
17 hardship to enhance your sentence. Is that correct?

18 A Correct.

19 Q Okay. How about on the second page? Are there some on
20 there that you know or know about their background, financial
21 history, incomes?

22 A There's --

23 MR. FULCHER: Without saying the name, Your Honor.

24 MR. COLETTE: Yeah, I said letters.

25 A There's two or three, like GO, and I do know him, a very

1 successful insurance business.

2 BY MR. COLETTE:

3 Q Don't say a lot. You know him. I don't guess maybe they
4 could -- go ahead.

5 A And financially independent. His spouse is a doctor.

6 Q Okay. And that particular person had a profit of 35,000?

7 A Correct.

8 Q And the government is using that one as a basis for a
9 substantial hardship enhancement?

10 A Right. And then this BF.

11 Q Right.

12 A Wealthy landowner.

13 Q Okay.

14 A And did not lose any principal.

15 Q Made \$366?

16 A Right.

17 Q \$366. Didn't make a big deal.

18 A And this --

19 Q MJ?

20 A -- retired veterinarian. Spouse, retired attorney.

21 Q Let's do this. Without a lot of identifiers, you know that
22 individual, about that individual?

23 A Right.

24 Q And financially, in your opinion?

25 A Financially, very secure.

1 Q And they have an \$81,000 loss as a substantial hardship.

2 A And stated nothing is going to change in his lifestyle, or
3 it doesn't affect anything in his living in life.

4 Q That's basically what he told the FBI?

5 A It's on his sheet.

6 Q Okay. Anybody else on that page?

7 A That's just some that I know.

8 Q On that page?

9 A And the only thing I know about this is his friend who
10 referred him, DN, he was one of the top executives at Belk
11 Corporation, Belk department stores in North Carolina, and when
12 they sold for \$3 billion in 2016, his friend said he made
13 multi-multi-million dollars cashing out on that sale.

14 Q So while you might have not spoken to each one of these,
15 you've been advised by either of your brokers and/or others as
16 to some of the financial stability of these people. Is that
17 correct?

18 A They are brokers, a wealth management person or a friend.

19 Q Have we received anything from the government as to the
20 financial condition of any of these people other than what's
21 listed in the presentence report in paragraphs 25 to 57
22 alleging hardship?

23 A No, sir.

24 Q So we don't know if that's accurate or not?

25 A That's correct.

1 Q On one of them, in fact --

2 MR. FULCHER: I want to make sure the record is clear,
3 Your Honor. They did receive the FBI 302 interviews. So to
4 the extent that there's any claim that we didn't provide those
5 to them, they did receive those.

6 THE COURT: Okay. I don't think that's a claim at
7 all, but your objection is noted.

8 MR. FULCHER: I just simply want to make sure there's
9 not some allegation that we failed to give them documents that
10 we, in fact, gave them.

11 MR. COLETTE: They have given me every document -- the
12 question was, and I think the court heard me correctly, any
13 financial information that we received based on these
14 individual -- individual hardship people. But as far as I
15 understand, I've got victim impact statements, at least some of
16 them, I mean victim -- on some of the individuals. I've got
17 302s on some of them. I have no financial records on any of
18 the individuals.

19 THE COURT: But there's no claim that the government
20 has withheld any document?

21 MR. COLETTE: No, sir, not by me. They give me
22 everything I ask for.

23 MR. FULCHER: Thank you, Your Honor.

24 BY MR. COLETTE:

25 Q Mr. Adams, with one of the individuals, did you see a

1 conflict between what was alleged in the presentence report and
2 the 302, as to how it affected or didn't affect the individual
3 JEG? Let me approach.

4 A Oh, yes, sir. Yes, sir.

5 Q And that individual, I believe, had over a \$3.6 million
6 investment. Is that right?

7 A That's correct.

8 Q So of all the documents we've been provided, including the
9 Appendix A, have you seen credit for the money that was
10 returned to investors?

11 A No, sir.

12 Q Nor any calculation as to an offset of those credits based
13 on the new money invested. Is that correct?

14 A No, sir.

15 MR. COLETTE: That's all I have of this witness, Your
16 Honor.

17 THE COURT: Thank you. I have some follow-up
18 questions. And, Mr. Colette, you'll be able to go behind me,
19 and Mr. Fulcher behind him. I think your testimony was, Mr.
20 Adams, that you paid commissions to different individuals?

21 THE DEFENDANT: Yes, sir.

22 THE COURT: And those commissions might have been as
23 much as a million dollars or more?

24 THE DEFENDANT: Each year, yes, sir.

25 THE COURT: Each year?

1 THE DEFENDANT: Yes, sir.

2 THE COURT: And during those same years, you claim
3 that you only made about, like -- from the year April 2017 to
4 April 2018, you only made about 133,000, plus whatever you paid
5 to the -- on your American Express?

6 THE DEFENDANT: Well, I don't know what my tax returns
7 say because we didn't have our -- I wasn't able to have my
8 accountant -- she said she could not do my taxes for 2017, so I
9 don't know what that amount is because the government had all
10 of our files and information, and we had no way to do our
11 taxes.

12 THE COURT: Was it your practice to pay your, I forget
13 what you call them, recruiters more than what you made?

14 THE DEFENDANT: Yes, sir.

15 THE COURT: That was your practice?

16 THE DEFENDANT: Yes, sir, they made much more money
17 than I did.

18 THE COURT: Now, during 2017 and 2018, because that's
19 sort of the year that the government, according to Mr. Colette,
20 has been focused on, did you have health insurance?

21 THE DEFENDANT: Yes, sir.

22 THE COURT: Did your health insurance -- did you have
23 to pay copays, or did you have to buy your own medicine?

24 THE DEFENDANT: I bought my own medicine.

25 THE COURT: You bought your own medicine?

1 THE DEFENDANT: Yes.

2 THE COURT: Did you have any problem buying your own
3 medicine based on the income you received?

4 THE DEFENDANT: No, sir.

5 THE COURT: You indicated that you have a daughter?

6 THE DEFENDANT: Yes, sir.

7 THE COURT: Do you have any other children?

8 THE DEFENDANT: I have a son.

9 THE COURT: Do you have any grandchildren?

10 THE DEFENDANT: I have five grandchildren.

11 THE COURT: Okay. During 2017 and 2018, or any time
12 before then, have you undertaken any promises to assist in the
13 payment of their -- I don't know if they are in college, or any
14 sort of tuition arrangements for either elementary, high school
15 or college?

16 THE DEFENDANT: No, sir, I haven't told them I would
17 help them with any schooling.

18 THE COURT: Have you paid for any of their schooling?

19 THE DEFENDANT: No, sir.

20 THE COURT: The -- your current address is St. Andrews
21 Drive?

22 THE DEFENDANT: Yes, sir.

23 THE COURT: How long have you lived at that address?

24 THE DEFENDANT: Since 2009.

25 THE COURT: 2009?

1 THE DEFENDANT: Yes, sir.

2 THE COURT: And prior to that, where did you live?

3 THE DEFENDANT: I lived in Madison since 1993.

4 THE COURT: Okay. In 2009, I think your testimony was
5 that this -- this business started back in the '80s and '90s,
6 but I think the PSR shows stuff goes back to 2012, at least.
7 But in 2009, were you engaged in what you -- what you've pled
8 guilty to here today?

9 THE DEFENDANT: Yes, sir.

10 THE COURT: When you lived in -- I guess when you
11 moved to the St. Andrews Drive, did you move to a bigger house
12 or a better house or --

13 THE DEFENDANT: I moved to a smaller house that the
14 value was about probably 60 percent of the home we sold in
15 Madison.

16 THE COURT: Okay.

17 THE DEFENDANT: It was less.

18 THE COURT: Is your spouse employed?

19 THE DEFENDANT: She is.

20 THE COURT: She is? Has she always been employed?

21 THE DEFENDANT: She's not always. She had a part-time
22 job, and then -- the last ten or 15 years. She's full-time
23 now.

24 THE COURT: Full-time now?

25 THE DEFENDANT: Yes, sir.

1 THE COURT: Did she have any intentions to retire any
2 time?

3 THE DEFENDANT: She was not expecting to go back to
4 full-time work.

5 THE COURT: When did she go back to full-time work?

6 THE DEFENDANT: Since this happened.

7 THE COURT: Oh, since this happened.

8 THE DEFENDANT: Yes, sir.

9 THE COURT: Okay. Okay. Like some of the other
10 victims, they've had to go back to work.

11 THE DEFENDANT: Right. She worked part-time and --
12 before this, and now she's gone back full-time.

13 THE COURT: Do you consider that as a hardship on her?

14 THE DEFENDANT: Yes, sir. Just because we've lost
15 everything, and I haven't had access to a penny of money since
16 April, and I don't have any assets or any money. So that's
17 definitely a hardship for her.

18 THE COURT: And you're not eligible for Social
19 Security yet?

20 THE DEFENDANT: No, sir.

21 THE COURT: And your wife isn't either, right?

22 THE DEFENDANT: No, sir.

23 THE COURT: I have no further questions. Mr. Colette,
24 you can follow up based on what I've asked.

25 REDIRECT EXAMINATION

1 BY MR. COLETTE:

2 Q As far as your current home, you don't own it anymore, do
3 you?

4 A No, sir.

5 Q Your wife was not on that deed?

6 A No, sir.

7 Q She don't have a home.

8 A No, she doesn't.

9 Q And that you voluntarily surrendered to the government
10 without any forfeiture, without any fight. Is that correct?

11 A Correct.

12 Q It is a bigger house than you had before, but you had to
13 put some money into it?

14 A It's actually smaller than the house we had before, and it
15 was a lot less, but we did have to put some money in it because
16 it was built in 1966.

17 Q You have lost everything you've ever owned in this
18 situation?

19 A I've lost everything.

20 THE COURT: All right. And just so my question could
21 be better phrased, the house at St. Andrews, is it valued -- is
22 it -- does it have a greater value than the house that you had
23 in Madison, should be a more appropriate question, I guess.

24 THE DEFENDANT: It does after we did the renovations
25 on it and updated it.

1 THE COURT: And you used monies and earnings that you
2 had from -- derived either from this scheme or whatever?

3 THE DEFENDANT: Well, then it was -- I had a lot of
4 legitimate land and timber deals also.

5 THE COURT: Okay.

6 THE DEFENDANT: And I don't know what the house in
7 Madison is worth right now, but it may be worth more than the
8 home that we just turned over.

9 THE COURT: Okay. Thank you. Mr. Colette, you can
10 follow up if you wish.

11 MR. COLETTE: I have nothing further.

12 THE COURT: All right. Mr. Fulcher.

13 MR. FULCHER: Thank you, Your Honor. Just a little
14 bit of follow-up.

15 RECROSS-EXAMINATION

16 BY MR. FULCHER:

17 Q You mentioned, in response to the questions about your
18 income, you mentioned that you had income of how much during
19 this particular time frame in the last --

20 THE COURT: Is your microphone on, Mr. Fulcher?

21 MR. FULCHER: It is.

22 BY MR. FULCHER:

23 Q In response to the question concerning your income, how
24 much was your income? What was your response to the judge's
25 question about your income?

1 A Well, I told him I didn't know for 2017, because the taxes
2 haven't been done, because my accountant sent a letter that she
3 couldn't do taxes, and we didn't have all the records and all
4 from my office.

5 Q During 2017, you had invested and you were making payments
6 on the Oxford Springs, LLC investment?

7 A Right.

8 Q And you made payments on your behalf of \$375,000?

9 A To Oxford Springs in 2017?

10 Q Uh-huh.

11 A That seems high, but that's possible.

12 Q Do you recall how much you were paying a month to Oxford
13 Springs to keep it going, as an investor?

14 A I do not. I thought it was an annual bank note payment on
15 it.

16 Q How much was your annual bank note, if you recall?

17 A I think two of us maybe split \$200,000.

18 Q For how many years?

19 A I think we had had that property for about two-and-a-half
20 years.

21 Q And all that money came from investors at Madison Timber
22 Properties in the scheme. Correct?

23 A Right.

24 Q Okay. With regard to hunting clubs that you were a member
25 of or owner of, how many were there during this same time

1 frame?

2 A Well, in 2009, there was Mash Farms. And then I think in
3 2016, Mallard Park.

4 Q In terms of money --

5 A But there were other, you know, land, timber deals during
6 that period from 2009 on.

7 Q How many timber deals were there?

8 A I don't know, David.

9 Q Now, with regard to these hunting clubs that you were a
10 part of, you were making payments to be part of these -- to be
11 an owner in these particular hunting clubs. Correct?

12 A Correct.

13 Q How many acres for each one of them?

14 A One of them is like 810 acres, and there's four of us in
15 it. And then the other one, it's a WRP track, so the value is
16 diminished being that. And it's like 1700 acres, and there's
17 four of us that were in that.

18 Q During this time frame that we're talking about in the last
19 year or so of the Ponzi scheme, how much money did you pay
20 towards Mallard Park, LLC, if you recall?

21 A Probably 200,000 or so.

22 Q And during this same time frame, you also had an investment
23 in Kapa Breeze, LLC. Let me back up. Mallard Park, that was
24 Madison Timber Ponzi scheme money. Correct?

25 A Yeah. We had about a \$3 million bank note, I think.

1 Q On Kapa Breeze?

2 A And upkeep on it. On Mallard Park.

3 Q Mallard Park? Okay.

4 A Then I think Kapa Breeze had like a \$1.5 million bank note.

5 Q With regard to Kapa Breeze, you had an investment down in
6 the Panhandle of Florida, a development you were working on,
7 and you were making payments during that time frame using
8 Madison Timber Properties Ponzi scheme investor money. How
9 much did you pay during the last year on Kapa Breeze, if you
10 recall?

11 A I just don't remember.

12 Q Okay. You wouldn't dispute if the numbers show it was
13 around \$282,600?

14 A I wouldn't dispute that.

15 Q So we've got well over \$600,000 being paid to Mallard Park,
16 Kapa Breeze and Oxford Springs. We also had Delta Farmland.
17 Payments were being made by you on that investment using the
18 money from Madison Timber Properties Ponzi scheme investors?

19 A Some of it. Some of it was used from the farm rent on that
20 and the CRP income.

21 Q So you were asked about your income. You weren't including
22 these particular payments that were being made by you on these
23 investments as your definition of income, were you?

24 A Unh-unh.

25 MR. FULCHER: No further questions.

1 THE COURT: When you say CRP --

2 THE DEFENDANT: That's a conservation reserve program
3 that you put your land in.

4 THE COURT: All right. Mr. Colette, you have any
5 follow-up?

6 MR. COLETTE: Based on that.

7 THE COURT: I'll allow it.

8 MR. COLETTE: Just very limited.

9 FURTHER REDIRECT EXAMINATION

10 BY MR. COLETTE:

11 Q All these payments with investor money to these different
12 equities, every one of those, Kapa Breeze, Oxford, Mash, they
13 were on the government's exhibit that we just asked about, were
14 they not?

15 A Right.

16 Q And you've signed over -- these are valid interests, right?

17 A Yeah, they are valuable properties, very valuable.

18 Q I mean, your interest in one of the hunting clubs, that
19 membership --

20 MR. FULCHER: Sounds like argument, Your Honor. It's
21 not a question.

22 THE COURT: Hold on. You may ask a question.

23 BY MR. COLETTE:

24 Q Do you have valuable interest in any of these entities that
25 Mr. Fulcher just asked you about?

1 A Yes, there's very valuable interest in those.

2 Q And payments, certainly from the investors, were paid to
3 that. And all of those entities, each and every one of them,
4 you have transferred to who?

5 A They have been transferred to the government, and those
6 entities are still there, and the money that went in them was
7 credited to those entities, so it gives it more value.

8 Q So at some point, based on what Judge Reeves and what
9 you've done with the receiver --

10 A Right.

11 Q -- the intent is to what? What are they going to do with
12 those entities, or your interest in those entities?

13 A I'm sure they are going to sell my interest in them.

14 Q Had the Oxford Springs entity worked out like you planned,
15 how much would they have gotten, the government gotten back out
16 of that?

17 MR. FULCHER: This is way beyond the scope, Your
18 Honor.

19 A They would have gotten --

20 THE COURT: Hold on. He may answer.

21 A Over, you know, a seven to ten-year period, their
22 percentage, had it been developed like it was on the verge of
23 doing, I think anywhere from 30 to \$60 million.

24 BY MR. COLETTE:

25 Q Last one. Kapa Breeze, it's a condo. Right?

1 A It's a -- yeah, it's land on Highway 30-A.

2 Q Oh, it's land.

3 A Yeah.

4 Q And how much is it worth, approximately?

5 A I can't remember all these numbers in my head, but I think
6 we had about a two and a half to \$3 million profit projection
7 on it. I was talking to the receiver last week, and I think
8 that's what I told her.

9 Q And that's down in Destin, Florida. Right?

10 A Correct.

11 Q And the receiver's job would have been, as far as you know,
12 to sell it, and whatever they sell it for, that money will come
13 to repay investors?

14 A Correct.

15 MR. COLETTE: Nothing further, Judge.

16 THE COURT: For -- I just want to be clear. One thing
17 that the court was trying to glean through its questionings
18 that the government might have followed up and cleared my mind
19 on is the amount of income Mr. Adams has earned in the last 12
20 -- during this period between April 2017 and April 2018. That
21 straight-through line that you indicated on G-4, \$117 million,
22 investors to Mr. Adams, as you asked him the question,
23 Mr. Colette, shows only \$133,000, and then it shows another
24 payment to American Express as \$186,000. So that's about
25 \$400,000, that \$300,000 there.

1 So now I've had Mr. Fulcher follow up, and it appears
2 that on that income, he's been able to pay \$200,000 to keep his
3 interest in Mallard Timber, \$282,000 to keep his interest in
4 Kapa Breeze, and \$200,000 or so to keep his interest in Oxford
5 Springs. His income -- he could not have paid those without
6 any income. And, I mean, that's the path I was going down. I
7 think your path was a little bit different.

8 MR. COLETTE: Let me see if I can clear it up. I
9 understand, because I don't know how he paid it. I mean, I
10 don't know how -- these were LLCs -- does that make a
11 difference? I don't have his tax returns. We've turned them
12 in as part of the presentence -- pre-presentence report. So
13 whether it shows those various LLCs and/or was that income to
14 him or -- I'm not sure on how you arrive at it.

15 THE COURT: I think in response to Mr. Fulcher's
16 questions, he said he paid it. I think that was the response.

17 MR. FULCHER: I think in response to questions, it was
18 clear that this was Madison Timber Ponzi scheme investor money.

19 THE COURT: Right.

20 MR. FULCHER: So I would even --

21 MR. COLETTE: If that's the case, then I don't have to
22 worry about income tax --

23 THE COURT: Okay. All right. And I'm sorry. I just
24 wanted to make sure you understood the questions that I was
25 asking in relation to what you closed out with. Is this

1 witness finally excused for these purposes at least?

2 MR. FULCHER: I'll defer to Mr. Colette, but I believe
3 so.

4 THE COURT: Okay.

5 MR. FULCHER: As far as we're concerned.

6 MR. COLETTE: I think so, Judge. I called him, and
7 he's crossed him. I think we've had enough.

8 THE COURT: All right. You may step down, Mr. Adams.

9 MR. FULCHER: Your Honor, I think this may be the
10 appropriate point to inform the court that I've also been
11 informed by another victim that she would like to speak, if
12 possible.

13 THE COURT: Today?

14 MR. FULCHER: Yes, sir.

15 THE COURT: Okay.

16 MR. FULCHER: She is here.

17 THE COURT: All right. We'll take that, and it's
18 likely that that will be -- well, we'll see. It might be the
19 last witness for today.

20 MR. FULCHER: Yes, sir.

21 THE COURT: Or argument on anything else because it's
22 close to five, and we can start back up tomorrow.

23 MR. FULCHER: Yes, sir. I'll just ask Ms. Dulaney --

24 THE COURT: Could you state and spell your name for
25 the record?

1 MS. DULANEY: Dana Dulaney, D-A-N-A D-U-L-A-N-E-Y.

2 THE COURT: Thank you, Ms. Dulaney. You may proceed.

3 MS. DULANEY: Your Honor, I addressed my statement --

4 THE COURT: Pull the mic down just a little bit.

5 MS. DULANEY: I addressed my statement to Mr. Adams.

6 I will read it because I don't want to say something I don't

7 want to say, but I don't want to forget something, if that's

8 okay.

9 THE COURT: That's fine. Just read at a pace at which
10 the court reporter can keep up with you.

11 MS. DULANEY: Lamar, I hardly know where to start. I

12 almost backed out of coming here because I'm not sure that

13 anything I say will affect you, but you need to hear this.

14 My heart goes out to your family. I can't imagine the

15 pain they are suffering due to your actions. I believed that

16 you are a family man, but now I question that. You sent me

17 texts about the importance of trips and time spent with

18 grandchildren. You sent me photos of your wife and

19 grandchildren. Now I wonder if this was part of the scam, an

20 effort to build false trust. I'll never know.

21 Andy and I have worked hard and honestly for the money

22 that God blessed us with. We have not lived the high life.

23 We've chosen to practice sacrifice and delayed gratification.

24 By doing this, we accumulated a reasonable amount of money for

25 our future. You took advantage of that to live a life that you

1 didn't work for. You stole our money to benefit yourself.

2 But the main reason I came here today is because of my
3 children. You stole from my children. You knew that I was
4 investing money that my father left to them. I talked to you
5 about how he worked hard and how important it was for him to
6 leave something for his grandchildren. I cannot imagine how
7 you looked me in the eye and took that money. You knew what it
8 was.

9 You also stole from them individually. You knew that
10 they're young adults trying to get a start in life, but that
11 didn't keep you from taking their money. I'm most angry about
12 Olivia. She's my youngest child. She's been frugal and
13 responsible and saved her money since she was 11 years old, and
14 yet three weeks before her wedding, we found out all her money
15 was gone, stolen by you. I believe if you really love your
16 family, you wouldn't have been able to treat my family this
17 way. I'm not sure you're the family man that I thought you
18 were.

19 Lamar, you're the worst kind of thief. You gained our
20 trust, and then you stole from us. You have truly been a wolf
21 in sheep's clothing. The Bible tells us in 1 Timothy that the
22 love of money is the root of all kinds of evil, and you're a
23 living example of this. I don't know your heart, only God
24 knows that, but your actions show that your desire for money
25 was enough to lead you to commit crimes that hurt a lot of

1 people. And a lot of people in this room have been hurt in
2 greater amounts than I have.

3 I would like to believe that you started the timber
4 business honestly and had no evil intentions. I would like to
5 believe that you know -- that you got yourself in over your
6 head and didn't know how to get out. But whatever the truth,
7 you had opportunities to do the right thing, and you did not.
8 You could have told me that you didn't deal with trust funds,
9 but you didn't. You could have turned down the money from
10 anyone under 21 years old, but you didn't. You took the money,
11 knowing it was a scam, and for that, shame on you. Your desire
12 for money that you didn't have led you to steal what we worked
13 and sacrificed to save.

14 I could talk a lot longer about the damage that you've
15 caused, but you already know that. My situation is not as dire
16 as some others here, but that's not the point. You stole money
17 that was not yours. It doesn't matter if it's all we had or
18 some of what we had or whether we can afford to lose it or not
19 afford to lose it. The point is, it wasn't yours.

20 If you expected me to come here and say how you've
21 ruined our lives, I'm sorry to disappoint you, but you haven't
22 ruined our lives. We have suffered loss, but our lives are not
23 ruined. We have lost only money. You have lost so much more.
24 And I hate that for you.

25 One thing I want to say, lastly, is you need to know

1 that I pray for you and your family. I pray that you're going
2 to use your time to be sure that you're right with God and that
3 all of the consequences that you suffer will be on this world
4 and not eternally. Thank you.

5 THE COURT: You're welcome, Ms. Dulaney.

6 Could counsel approach.

7 (At the Bench:)

8 THE COURT: I'm trying to figure out where we are with
9 respect to tomorrow. I intend to start up about 9:30. I don't
10 have anything before that, but that will just give us a time
11 other than 9:00, but I do intend to start at 9:30.

12 What evidence, if any, does the government want to put
13 on with calling any witnesses?

14 MR. FULCHER: I'm assuming that the defense is
15 finished. I don't know that for sure. Are you going to put
16 anybody on?

17 MR. COLETTE: I don't -- I didn't intend on calling
18 anybody else, unless you do, somebody to rebut. My job is
19 rebuttal. If you're going to call Jamie -- but, I mean, I'm
20 probably okay. Any more victims?

21 THE COURT: Were you going to ask him all the
22 questions you thought you needed to ask him about the
23 substantial hardship?

24 MR. COLETTE: Yes, sir.

25 THE COURT: The number of victims?

1 MR. COLETTE: Yeah. We don't have -- we're abandoning
2 number of victims. Then the enhancement -- just two
3 enhancements -- well, three that you've got to look at. One is
4 the amount of loss -- how you use loss, *Setser*, whatever.

5 MR. FULCHER: And I hate to interrupt you here. I
6 just -- I do need to let you know some of the victims have
7 inquired about what we're talking about up at the bench, and
8 I'm a little concerned with the Victims Rights Act. I mean, I
9 think if we're talking about administrative stuff, that's one
10 thing, but they've got a right to access to everything we do
11 here, and I don't want that to get brought up. I just want to
12 let you be aware of that before we get too far into --

13 THE COURT: You're right. You're right. Let's go
14 back. Let's go back on.

15 MR. FULCHER: But as far as witnessed, I believe we'll
16 call Kim Mitchell tomorrow to provide financial insight, and I
17 think that will be it, as far as witnesses, and that will be in
18 rebuttal to what we've heard today.

19 THE COURT: Okay.

20 MR. COLETTE: If he calls Kim, I may or may not have
21 to call Lamar back, but I doubt it. If you call Kim -- it's in
22 your chart. You got any more victims?

23 MR. FULCHER: There are more victims who will -- but
24 those are not witnesses. They are going to allocute.

25 MR. COLETTE: You don't plan on putting any victim on

1 the witness stand?

2 MR. FULCHER: I do not, but there are several who want
3 to allocute.

4 THE COURT: Okay.

5 MR. COLETTE: Maybe lunch or one, maybe, I'm hoping
6 tomorrow. You think? It's up to you. Talk too long.

7 (Bench Conference Concluded)

8 THE COURT: Just trying to hammer out what the
9 schedule will be like tomorrow. We will start tomorrow morning
10 at 9:30 to continue this sentencing hearing for Mr. Adams.

11 I know the government will be calling at least one
12 witness, and that will be Ms. Kim Mitchell, there's no secret,
13 to talk about the investigation and other things. And then,
14 obviously, we'll have some discussion, communication, argument,
15 or whatever, on the objections, and I expect that we'll have
16 more testimony from other victims, and the court is here to
17 hear whatever anyone would like to say.

18 And depending on what hour that is in the day that we
19 complete all the things that we have to complete with respect
20 to the presentence report, the court will be in a place to
21 impose sentence. So -- but we're going to continue this
22 hearing from day to day until it's completed. And that may be
23 tomorrow, but we will complete it when we complete it.

24 Is there anything we need to take up before we leave
25 for the day, Mr. Fulcher, from the government?

1 MR. FULCHER: Not from the government, Your Honor.

2 THE COURT: All right. Mr. Colette?

3 MR. COLETTE: Not on behalf of the defense, Your

4 Honor.

5 THE COURT: All right. The court is adjourned. Thank

6 you.

7 (Recess)

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1 CERTIFICATE OF REPORTER

2
3 I, CHERIE GALLASPY BOND, Official Court Reporter, United
4 States District Court, Southern District of Mississippi, do
5 hereby certify that the above and foregoing pages contain a
6 full, true and correct transcript of the proceedings had in the
7 aforementioned case at the time and place indicated, which
8 proceedings were recorded by me to the best of my skill and
9 ability.

10 I certify that the transcript fees and format comply
11 with those prescribed by the Court and Judicial Conference of
12 the United States.

13
14 This the 13th day of November, 2018.

15
16 s/ *Cherie G. Bond*
17 Cherie G. Bond
18 Court Reporter
19
20
21
22
23
24
25

Exhibit C



Michael Watson

SECRETARY OF STATE

This is not an official certificate of good standing.

Name History

Name	Name Type
Madison Timber Properties, LLC	Legal

Business Information

Business Type:	Limited Liability Company
Business ID:	1006857
Status:	Dissolved
Effective Date:	08/17/2012
State of Incorporation:	Mississippi
Principal Office Address:	742 MAGNOLIA STREET , po box 1381 MADISON, MS 39130

Registered Agent

Name
Adams, Lamar 742 Magnolia Street PO Box 1381 Madison, MS 39130

Officers & Directors

Name	Title
Lamar Adams 742 MAGNOLIA STREET PO BOX 1381 MADISON, MS 39130	Manager

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF MISSISSIPPI
NORTHERN DIVISION**

ALYSSON MILLS, IN HER CAPACITY
AS RECEIVER FOR ARTHUR LAMAR
ADAMS AND MADISON TIMBER
PROPERTIES, LLC,

Plaintiff,

v.

BUTLER SNOW LLP; BUTLER SNOW
ADVISORY SERVICES, LLC; MATT
THORNTON; BAKER, DONELSON,
BEARMAN, CALDWELL & BERKOWITZ
PC; ALEXANDER SEAWRIGHT, LLC;
BRENT ALEXANDER; and JON
SEAWRIGHT,

Defendants.

Case No. 3:18-cv-00866-CWR-BWR

Hon. Carlton W. Reeves

ORAL ARGUMENT REQUESTED

**MEMORANDUM OF LAW IN SUPPORT OF BAKER, DONELSON, BEARMAN,
CALDWELL & BERKOWITZ PC'S MOTION FOR SUMMARY JUDGMENT**

INTRODUCTION

Baker Donelson brings this motion for summary judgment because discovery and recent developments in the law have confirmed that the Receiver cannot prevail on her claims against Baker Donelson on behalf of the Receivership Estate.

The Eleventh Circuit recently held in *Wiand v. ATC Brokers Ltd.*, 96 F.4th 1303 (11th Cir. 2024), that a receiver for an entity controlled by Ponzi schemers could not recover in tort against an alleged co-conspirator. *Wiand* followed *Isaiah v. JPMorgan Chase Bank, N.A.*, 960 F.3d 1296 (11th Cir. 2020), which also was decided after the parties completed briefing on Baker Donelson’s motion to dismiss. The Eleventh Circuit’s reasoning applies fully here because discovery has confirmed the Receiver’s allegation that Lamar Adams fully controlled Madison Timber as a Ponzi scheme entity—Madison Timber was not a legitimate company with innocent decisionmakers. Summary judgment therefore is warranted on two separate grounds.

First, the Receiver lacks standing to assert common-law torts. The Eleventh Circuit explained that there is a material difference between (i) an “honest corporation with rogue employees” and (ii) “a sham corporation created as the centerpiece of a Ponzi scheme.” *Wiand*, 96 F.4th at 1310 (citing *Isaiah*, 960 F.3d at 1307). A receiver for the former has standing to bring “common-law tort claims” for “the torts of rogue insiders and their accomplices.” *Id.* But a receiver for a sham company “lacks standing to maintain the [common-law] tort claims” against third parties for damages that arose “from its *own* fraudulent scheme.” *Id.* The receiver for a Ponzi scheme entity may sue to recover fraudulent transfers, but not for common-law torts.

Second, while following *Isaiah*’s binding standing analysis, the panel in *Wiand* issued a unanimous concurrence offering a separate and independent reason for its decision: Putting aside standing, a receiver for a Ponzi scheme corporation simply lacks “a cause of action to sue in common-law tort on behalf of a Ponzi corporation.” 96 F.4th at 1315. A fraudster cannot sue

others for conspiring in his fraud, or for negligence in failing to stop him. Where the corporate entity in the receivership estate was just an instrument of the fraud, the corporate entity and the fraudster are treated the same—and a receiver that stands in their shoes therefore cannot establish the elements of a tort claim.

This Court’s analysis at the motion-to-dismiss stage addressed different arguments and, in all events, presents no bar to summary judgment. The analytical question here is distinct—not whether the Receivership Estate has suffered an injury, but whether Madison Timber was a Ponzi company controlled by a wrongdoer, Adams. In any event, the Court made clear that its decision at the motion to dismiss stage was “without prejudice to . . . re-urging at the summary judgment stage.” ECF No. 70 at 18.

The Receiver cannot seriously contend that she needs further discovery on the issues in this motion.¹ Although Baker Donelson has other grounds for summary judgment that it will raise, if necessary, after further discovery, the issues in this motion are ripe for resolution now. The only facts that matter pertain to Adams’s control over Madison Timber as an instrument of fraud, which existing discovery fully establishes.

The Court should follow the Eleventh Circuit’s reasoning in *Wiand* and grant summary judgment on all claims the Receivership Estate asserts against Baker Donelson. Adams committed a massive fraud. Madison Timber was an instrument of his fraud. It was not an honest business “separate and distinct” from the Ponzi scheme. Those facts are not contested, and further discovery could not change them. And on those facts, the Receiver cannot prevail.

¹ Much less will she be able to identify that discovery with the specificity Rule 56(d) requires.

STATEMENT OF FACTS

Lamar Adams operated a Ponzi scheme, deceiving investors with fake timber deeds. Adams testified under oath that he did not “tell anybody this investment was a fraud.”² He alone “drafted the paperwork that was involved with this fraud” and developed the false descriptions of timber tracts that were included.³ Adams used “fake timber deeds for thousands of investments . . . ; in all instances, Adams forged the signatures.”⁴ Adams “admit[ted] to all of the conduct of the entire scheme and artifice to defraud.”⁵

Adams conducted his fraud “through his wholly-owned company, Madison Timber Properties, LLC,”⁶ which is part of the Receivership Estate. Adams was the sole owner and director of Madison Timber, which was established in August 2012.⁷ Adams began his fraud many years earlier, “in approximately 2004.”⁸ In 2011, Adams “took in approximately \$10 million from investors,” and “the Madison Timber Ponzi scheme had been perfected.”⁹ Madison Timber was not a preexisting or otherwise legitimate business, and it “had no revenues whatsoever” outside the Ponzi scheme.¹⁰ “Madison Timber didn’t make money on any kind of product or any kind of sales of timber[.]”¹¹ Adams created and used Madison Timber exclusively as an instrument of his fraud.

The Receiver stands in the shoes of Adams and Madison Timber, and she sues Baker Donelson in their name. In this case, the Receiver alleges that Baker Donelson is responsible for

² Mot. Ex. A (McHenry Trial Tr.) at 130:11–12.

³ Mot. Ex. A (McHenry Trial Tr.) at 132:3–11.

⁴ *Mills v. UPS Store, Inc.*, No. 3:19-cv-364, Amend. Compl. at 1, ECF No. 14.

⁵ Am. Compl. ¶ 24 (quoting *USA v. Adams*, No. 3:18-cr-88, Plea Agmt., ECF No. 11).

⁶ *SEC v. Adams*, Case No. 3:18-cv-252, Compl., ECF No. 3 ¶ 2; *see also* Am. Compl. at 2.

⁷ *See* Mot. Ex. A (McHenry Trial Tr.) at 142:22–25; Mot. Ex. C (Secretary of State Record).

⁸ Am. Compl. ¶ 2 (internal quotation marks omitted).

⁹ Am. Compl. ¶¶ 38–39.

¹⁰ Am. Compl. ¶ 20.

¹¹ Mot. Ex. B (Adams Sentencing Tr.) at 93:14–19.

the acts of Jon Seawright and Brent Alexander, and on that basis brings four counts against the firm: civil conspiracy (Count I); aiding and abetting (Count II); “recklessness, gross negligence, and at a minimum negligence” (Count III); and negligent supervision and retention (Count VIII). All of these counts are based in tort. The Receiver brings fraudulent transfer claims against other parties, but not against Baker Donelson—presumably because the Receiver knows Baker Donelson received no payments of any kind related to Madison Timber.

STANDARD OF REVIEW

Federal Rule of Civil Procedure 56(a) requires the court to grant summary judgment “if the movant shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law.” Fed. R. Civ. P. 56(a). Where, as here, the relevant facts are undisputed and the “only issue before the court is a pure question of law,” summary judgment is appropriate. *Sheline v. Dun & Bradstreet Corp.*, 948 F.2d 174, 176 (5th Cir. 1991).

ARGUMENT

The Court should grant summary judgment for two reasons. *First*, the Receiver lacks standing to assert common-law claims against third parties, like Baker Donelson, arising out of the fraudulent scheme that Adams perpetrated. That is because Madison Timber was not a legitimate business, separate and distinct from the Ponzi scheme, that was subverted by rogue employees. It was a pure Ponzi company controlled by the perpetrator, Adams. *Second*, the Receiver also cannot prevail on the merits because she stands in the shoes of the fraudsters, and in that capacity cannot prove the elements of the common-law torts she asserts.¹²

¹² This motion does not address the claims the Receiver alleges to have been assigned by investors. Any such claims were inadequately pleaded, and the Court previously declined to consider whether the Receiver could assert those claims. *See* ECF No. 70 at 7 n.5.

I. The Receiver Lacks Standing to Sue Alleged Wrongdoers for Tort Claims.

The relationship between the Ponzi scheme perpetrator and the Ponzi scheme company limits the types of claims a Ponzi scheme receiver has standing to assert. As a general matter, “tort and fraudulent-transfer claims must be treated differently for standing purposes: fraudulent transfers are ‘cleansed through receivership’ as a matter of course, but common-law torts by third parties are not.” *Wiand*, 96 F.4th at 1310 (quoting *Isaiah*, 960 F.3d at 1306). Thus, “receivers who assert common-law tort claims must meet a heightened standard to establish their standing.” *Id.*

When a receiver sues for a common-law tort, “[t]he crux of the standing inquiry is whether the receivership estate—the [] corporate entity—was ‘separate and distinct’ from the Ponzi scheme.” *Id.* (quoting *Isaiah*, 960 F.3d at 1306). Where the corporate entity is an “‘honest corporation with rogue employees,’ the corporate entity can complain that it was injured by the torts of rogue insiders and their accomplices.” *Id.* (quoting *Isaiah*, 960 F.3d at 1307). By contrast, where the corporate entity was “a sham corporation created as the centerpiece of a Ponzi scheme,” a receiver representing the estate of that entity “lacks standing to maintain the [common-law] tort claims” against third parties for damages that arose “from its *own* fraudulent scheme.” *Id.* (internal quotation marks omitted; emphasis in original); *see also O’Halloran v. First Union Nat’l Bank of Fla.*, 350 F.3d 1197, 1203 (11th Cir. 2003) (a receivership estate “whose primary existence was as a perpetrator of the Ponzi scheme, cannot be said to have suffered injury from the scheme it perpetrated”). Here, the Receiver stands in the shoes of the fraudster Adams *and* his Ponzi scheme entity Madison Timber.

This issue is analytically distinct from the Court’s analysis at the motion-to-dismiss stage. Baker Donelson previously argued the Receiver lacks Article III standing because “an estate’s unpaid debts do not ‘injure’ the estate.” ECF No. 60 at 6 (citing *Latitude Sols., Inc. v. DeJoria*,

922 F.3d 690, 696–97 (5th Cir. 2019)). The Court disagreed, holding that an allegation of “unsustainable liabilities inflicted by the Ponzi scheme” sufficed to state an injury. ECF No. 70 at 7. But that analysis does not address the question here—i.e., whether Adams and Madison Timber are separate and distinct under the Eleventh Circuit’s analysis in *Wiand* and *Isaiah*.

“To establish that a receivership estate is separate and distinct from a Ponzi scheme,” a receiver must clear several evidentiary hurdles. *Wiand*, 96 F.4th at 1311. For one, “the receiver must allege the presence of innocent decision-makers within the corporation to whom fraudulent conduct could be reported.” *Id.* at 1311–12. The requirement that “[e]ntities must have ‘at least one innocent officer or director’” to be “‘honest corporations’ for standing purposes,” *Perlman v. PNC Bank, M.A.*, 38 F.4th 899, 901 (11th Cir. 2022) (quoting *Isaiah*, 960 F.3d at 1308), is “necessary but not sufficient to establish that [the corporate entity] was separate and distinct from the Ponzi perpetrators,” *Wiand*, 96 F.4th at 1311. A receiver must also establish that the innocent shareholders actually “exercised any decision-making power” to direct the conduct of the corporate entity. *Id.* Finally, where a corporate entity did not “engage[] in any legitimate activities,” the evidence is clear that the entity was not separate and distinct from the Ponzi scheme—and the receiver will lack standing to assert common-law torts against third parties. *Id.*

Here, Madison Timber was not separate and distinct from Adams and the Ponzi scheme. There were no innocent shareholders or directors.¹³ And Madison Timber had no legitimate business—it was established in August 2012, after the Receiver claims “the Madison Timber Ponzi scheme had been perfected,” and it “had no revenues whatsoever” outside the Ponzi scheme.¹⁴ Adams created and used Madison Timber exclusively as an instrument of his fraud.

¹³ See Mot. Ex. A (McHenry Trial Tr.) at 142:22–25.

¹⁴ Am. Compl. ¶¶ 20, 39.

Thus, the Receiver, standing in the shoes of Adams and Madison Timber, lacks standing to assert common-law torts against third parties like Baker Donelson relating to the Ponzi scheme.

II. The Receiver Cannot Establish the Elements of Her Tort Claims.

Entirely separate from the question of standing, the Court should grant summary judgment because the Receiver cannot prove the elements of the four counts she asserts against Baker Donelson, all of which are based in common-law tort. In a unanimous concurrence, the three-judge panel in *Wiand* concluded that a receiver for a “corporation used for Ponzi schemes” does not have “a cause of action to sue in common-law tort on behalf of a Ponzi corporation.” *Wiand*, 96 F.4th at 1315 (Marcus, W. Pryor, J. Pryor, JJ., concurring). The *Wiand* case concerned Florida law, but Florida law is no different in relevant respects from Mississippi law or any other state’s law of which we are aware.

Because the Receiver stands in the shoes of Adams and Madison Timber, she “occup[ies] substantially the same relation which was occupied by the original parties” with respect to her claims. High on Receivers § 205 (2d ed.); see *Cashin v. Murphy*, 96 So. 747, 749 (Miss. 1923) (citing High). “[A] receiver obtains only the rights of action and remedies that were possessed by the person or corporation in receivership.” *Isaiah*, 960 F.3d at 1306. For a corporate entity like Madison Timber, which was created and operated exclusively by the confessed fraudster as an instrument of the Ponzi scheme, the Receiver has no cause of action.

The analysis here is distinct from the *in pari delicto* doctrine, which the Court considered at the motion-to-dismiss stage. “*In pari delicto* is an equitable, affirmative defense[.]” ECF No. 70 at 17 (quoting *Jones v. Wells Fargo Bank, N.A.*, 666 F.3d 955, 965 (5th Cir. 2012)). Applying it requires the Court to exercise its equitable discretion. And when considering whether to dismiss the complaint on that ground, the Court concluded that doing so at that early stage would “undermine one of the primary purposes of the receivership established in this case,

and would thus be inconsistent with the purposes of the [*in pari delicto*] doctrine.” *Id.* But the equitable purposes of a receivership are irrelevant here because the Receiver’s claims fail not because of an affirmative defense but because she cannot establish, as a matter of law and undisputed fact, the prima facie elements of her claims.

In any event, the Court made clear that its decision at the motion to dismiss stage was “without prejudice to . . . re-urging at the summary judgment stage.” ECF No. 70 at 18. Discovery has crystallized that there is no genuine dispute of fact on the essential issue: Adams and Madison Timber are not separate and distinct because the latter was an instrument of Adams’s fraud.

First principles of tort liability demonstrate that the Receiver cannot sustain her claims: A fraudster like Adams cannot sue others in tort for conspiring with him to commit his fraud, or for negligently failing to stop him. Adams pleaded guilty to “knowingly and intentionally devis[ing] a scheme and artifice to defraud investors by soliciting millions of dollars of funds under false pretenses[.]” *USA v. Adams*, Case No. 3:18-cr-88, Information ¶ 5, ECF No. 1. It is “a fundamental principle” that “[t]he law does not afford a criminal conspirator the right to sue his coconspirator for civil damages arising out of a criminal conspiracy.” *Bolton v. John Lee, P.A.*, --- So.3d ----, 2023 WL 140980, at *4 (Miss. Ct. App. Jan. 10, 2023). Because “the facts on which the Government based its prosecution” of Adams are the same facts on which Adams’s estate “base[s] [its] damages claims in th[is] civil matter,” the law forecloses any recovery. *Id.* Because there is no daylight between Adams and the corporate entity he created to perpetrate his fraud, Madison Timber, the Ponzi scheme entity, cannot sue on those grounds either. That conclusion is also apparent from a more granular analysis of the elements of the Receiver’s claims, as discussed below.

A. The Receiver Cannot Establish the Derivative Claims of Civil Conspiracy or Aiding and Abetting.

The Receiver, standing in the shoes of Adams and Madison Timber, cannot establish the elements of civil conspiracy or aiding and abetting because those claims are derivative of common law fraud, and Adams and Madison Timber were not defrauded.

Under Mississippi law, both civil conspiracy and aiding and abetting are derivative claims. They require an underlying tort that the defendant conspired or abetted. “[A] derivative tort . . . cannot stand alone.” *Jackson v. Monsanto Co.*, 2018 WL 3995799, at *2 (S.D. Miss. Aug. 16, 2018). Thus, “claims for conspiracy and aiding and abetting should be dismissed . . . [when] the underlying substantive claims . . . upon which the claims are based are themselves incapable of achieving relief.” *Bowden v. Young*, 120 So. 3d 971, 981 (Miss. 2013).¹⁵

In the Amended Complaint, the Receiver identifies the underlying wrong (her predicate tort) as “fraud.” See Am. Compl. at 1 (alleging Adams “defrauded hundreds of investors”). But the fraud alleged is fraud *against investors*, not against Madison Timber. Adams did not defraud Madison Timber. Madison Timber was not an honest corporation harmed by a rogue employee; it was a creature of, and instrument for, his fraud. See *Wiand*, 96 F.4th at 1311. Madison Timber and Adams are one and the same. And Madison Timber could not have committed a fraud against itself.

To establish a fraud claim, Mississippi law requires a plaintiff to establish a false representation, along with the plaintiff’s “ignorance of its falsity,” “reliance on its truth,” and “right to rely thereon.” *Gulf Coast Hospice LLC v. LHC Grp. Inc.*, 273 So. 3d 721, 742 (Miss.

¹⁵ See also *Haney v. Cont’l Cas. Co.*, 2010 WL 235025, at *3 n.1 (S.D. Miss. Jan. 15, 2010) (“[C]ivil conspiracy and/or aiding and abetting . . . are merely derivative of the remaining claims. Thus, if no duty exists as to the remaining claims, there is no duty to defend with respect to [the derivative claims.]”); *Wells v. Shelter Gen. Ins. Co.*, 217 F. Supp. 2d 744, 755 (S.D. Miss. 2002) (collecting cases).

2019). Madison Timber cannot prove any of these elements because Madison Timber was Adams's fraudulent instrument. Adams did not lie to himself. Madison Timber could never claim ignorance of the falsity of Adams's statements or a belief in their truth. *See Whalen v. Bistes*, 45 So. 3d 290, 293 (Miss. Ct. App. 2010). Nor could Madison Timber ever prove a right to rely on the fraudulent claims of Adams, its controlling sole owner.

For similar reasons, Adams and Madison Timber cannot recover for aiding and abetting their own fraud. *See Wiand*, 96 F.4th at 1308, 1310–11 (dismissing aiding and abetting claims, including claim for aiding and abetting fraud). The Receiver relies on the Restatement (Second) of Torts for the elements of this claim, which creates liability “[f]or harm resulting *to a third person* from the tortious conduct of another,” where the defendant “knows that the other’s conduct constitutes *a breach of duty* and gives substantial assistance or encouragement to the other so to conduct himself[.]” Restatement (Second) of Torts § 876 (1979) (emphases added). But Madison Timber is not a “third person”; it is coextensive with Adams, the fraudster.

Thus, because Madison Timber could not establish the elements of the causes of action required for the derivative torts of conspiracy and aiding and abetting, neither can the Receiver who stands in Adams's and Madison Timber's shoes.

B. The Receiver Cannot Establish Negligence or Negligent Retention.

The Receiver, standing in the shoes of Madison Timber, cannot establish the elements of negligence.¹⁶ *See Wiand*, 96 F.4th at 1310–11 (dismissing negligence claims). Under Mississippi law, as elsewhere, the foundation of a negligence claim is “[a] duty, or obligation, recognized by law, requiring the person to conform to a certain standard of conduct, for the

¹⁶ Because Madison Timber has no cause of action for negligence, it also has no cause of action for “gross negligence” or “recklessness,” *see* Am. Compl. at 40 (Count III), which entail more stringent standards. *See, e.g., Maldonado v. Kelly*, 768 So. 2d 906, 910 (Miss. 2000).

protection of others against unreasonable risks.” *Carpenter v. Nobile*, 620 So. 2d 961, 964 (Miss. 1993).

Baker Donelson owed no duty to Adams or Madison Timber that could support a negligence claim. That is because there exists no “duty by the defendants to blow the whistle on [a fraudster] by disclosing [his tortious conduct]” to the corporate entity he created and used as an instrument of his fraud. *Freeman v. Dean Witter Reynolds, Inc.*, 865 So. 2d 543, 552 (Fla. Dist. Ct. App. 2003). Both *Wiand* and *Isaiah* “cit[ed] extensively to *Freeman*” in dismissing receivers’ claims for negligence and other common-law torts. *Wiand*, 96 F.4th at 1315. The common law in Mississippi on this point is the same as in Florida. *See Bolton*, --- So.3d ----, 2023 WL 140980, at *8 (finding no authority for the proposition that banks have “a duty to report any suspicious activity” to the person who committed the fraud). Thus, neither Adams nor Madison Timber can sue anyone for negligence in failing to “discover[] Adams’s fraud.” Am. Compl. ¶ 152 (Count III). Absent a duty, there can be no breach.

Put another way, a fraudster does not have a viable claim against someone whose “negligence facilitated [the fraudster’s] fraud.” *Troelstrup v. Index Futures Grp., Inc.*, 130 F.3d 1274, 1276 (7th Cir. 1997). And a receiver cannot “sue [the allegedly negligent facilitator] on behalf of either [the entity in receivership], the defrauder, who has no possible claim against [the alleged facilitator], or on behalf of the investors, the victims of the fraud, because he [i]s not *their* receiver.” *Id.* at 1277 (citing *Scholes v. Lehmann*, 56 F.3d 750, 753–54 (7th Cir. 1995)).

For the same reasons, Madison Timber cannot recover against Baker Donelson for negligent retention of Alexander and Seawright as law firm employees. Where Adams and Madison Timber, the defrauder and Ponzi scheme entity in receivership, “ha[ve] no possible claim” under a negligence theory against the alleged facilitators, *Troelstrup*, 130 F.3d at 1276–

77, their claim for negligence against the firm that employed the alleged facilitators is even farther removed. Thus, in *Wiand* the Eleventh Circuit dismissed all common-law claims against the firm that allegedly assisted the fraudsters, whether based on a negligence or a fraud theory. 96 F.4th at 1310; *accord id.* at 1316 (concurrence).

Because Madison Timber could not establish the elements of the tort of negligence or negligent retention, neither can the Receiver who stands in Madison Timber's shoes.

CONCLUSION

For these reasons, Baker Donelson respectfully requests the Court enter summary judgment in its favor on all counts asserted against it because the Receiver both lacks standing and cannot establish those common-law torts as a matter of law and undisputed fact relating to Adams the fraudster and Madison Timber the Ponzi scheme entity.

Dated this 14th day of May, 2024

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on May 14, 2024, I caused the foregoing to be electronically filed with the Clerk of the Court using CM/ECF, which will send notification of such filing to all registered participants.

/s/ Craig D. Singer
Craig D. Singer (*pro hac vice*)