

**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,**

**Case No. 3:18-cv-000679**

**Arising out of Case No. 3:18-cv-252,  
*Securities Exchange Commission v.  
Arthur Lamar Adams and Madison Timber  
Properties, LLC***

**VS.**

**Hon. Carlton W. Reeves, District Judge  
Hon. F. Keith Ball, Magistrate Judge**

**MICHAEL D. BILLINGS and  
MDB GROUP, LLC;  
TERRY WAYNE KELLY, JR. and  
KELLY MANAGEMENT, LLC;  
and WILLIAM B. MCHENRY, JR. and  
FIRST SOUTH INVESTMENTS, LLC,**

**Defendants.**

**SUPPLEMENTAL MOTION OF WILLIAM B. MCHENRY, JR. AND  
FIRST SOUTH INVESTMENT, LLC FOR ACCESS TO EXHIBITS  
INTRODUCED AT ARTHUR LAMAR ADAMS' SENTENCING HEARING**

William B. McHenry, Jr. and First South Investments, LLC (“Bill McHenry”), pursuant to the Court’s directive, submit this Supplemental Motion for Access to Exhibits Introduced at Arthur Lamar Adams (“Adams”) Sentencing Hearing on October 29 and 30 and in support, submit the following:

1. Bill McHenry has cooperated with the Receiver, provided to the Receiver a detailed financial disclosure, made a good faith offer of settlement which was rejected out of hand with no counteroffer and a suggestion of bankruptcy was preferred. As a condition of settlement discussions, Bill McHenry agreed to summarize proceedings and has twice agreed to injunctions related to his assets. He is essentially forced into this litigation with the Receiver. While he

seems to be favorite person to castigate for Lamar Adams' fraudulent scheme, he is entitled to a defense to both liability and damages.

2. The Receiver seeks funds paid to Bill McHenry by Madison Timber Properties, LLC during the period 2010 through 2018. According to filings at the Mississippi Secretary of State's office, Madison Timber Properties, LLC did not exist prior to August 2012. See Exhibit A, Madison Timber Properties, LLC filing of Certificate of Formation.

3. According to the Receiver's August 21, 2018 Report to the Court (updated August 29, 2018), Adams had substantial assets. The Report, however, has no information on when those assets were obtained. Accordingly, Adams' assets would likely or could likely show, for example, prior to the formation of Madison Timber Properties, LLC, he was solvent, thus refuting the Receiver's Ponzi scheme presumption of insolvency for the earlier pre-2013 time period.

4. Adams had an incentive to push the formation of his scheme as far back in time as possible. He used this "total time period" to try to reduce the "loss" for federal sentencing guideline calculation purposes. He attempted to show more payments to investors were made, thus reducing this "loss." Accordingly, it was in his interest to include all investments and related payments as part of his sentencing "Ponzi scheme" loss in calculation without considering solvency. As discussed below, Adams' chart starts in 2011, thus suggesting he was likely solvent in the earlier time period.

5. Bill McHenry is entitled to review Adams' April 19, 2018 interview in its entirety to determine what is said about the start of his fraudulent scheme, formation of Madison Timber Properties, payments to investors, his assets and all related matters that might aid in his defense of liability and damages and response to Receiver's Summary Judgment motion.

6. The Receiver has the Adams' interview and identifies it as a relevant document in her disclosures. For that additional reason, Bill McHenry is entitled to review it. Moreover, this

Court previously noted Adams would be reporting to jail after the New Year thus available locally for deposition prior to reporting. Review of Adams' interview is cost-effective manner to determine if the expense and inconvenience of a deposition is needed. Minimizing this expense and delay is consistent with the Court's concern, shared by us, about litigation costs.

7. With respect to the Government's Exhibits G-2 through G-6 introduced at Adams' hearing, from the transcript, they appear to be primarily focused on the last twelve (12) month prior to May 1, 2018 (April 2017-April 2018). There can be little doubt at that point Madison Timber Properties, LLC, even when considering Adams' assets, was insolvent. Thus, if the Government objects to giving access to G-2 through G-6 then Bill McHenry's need for these exhibits at this time is not necessary.

8. The sentencing hearing transcript leads one to the conclusion that Adams' fraudulent scheme mushroomed by 2017-May 2018. It appears, for example, in 2017-2018 some individual investors were putting millions of dollars each into the fraudulent scheme. It is not reasonable to presume from the April 2017-April 2018 numbers, however, that insolvency existed in the period prior to the formation of Madison Timber Properties, LLC in August 2012 or immediately thereafter.

9. In short, the existence of a proof of a Ponzi scheme in 2017 and 2018 is not automatically proof of its existence prior to the formation of Madison Timber Properties, LLC or in the time period immediately thereafter.

10. Bill McHenry is entitled to question and defend against the extent of liability. For example, if the funds received in 2010-August 2012 or later were not subject to the Receiver's Ponzi scheme insolvency presumption, then the Receiver's rejection of Bill McHenry's settlement proposal out of hand might be deemed to merit reconsideration.

11. From review of the transcript of the sentencing hearing, Defendant Exhibit D-1 purports to be a “summary of every investment and every payment” from 2011 through April 2017. See Exhibit B, excerpt from sentencing hearing, pages 57-59 and 214-215. The transcript indicates a redacted copy of Exhibit D-1 was to be placed in the Court record. Exhibit D-1 appears to be highly relevant to the formulation of Bill McHenry’s defense. Thus, Bill McHenry renews his request for Defendant Exhibit D-1.

12. Defendant Exhibits D-2 through D-4 appear to relate to particular individuals and a “summary on hardship.” Exhibit D-5 appears to related to the April 2017-April 2018 period and D-6 appears to related to a specific victim witness. Accordingly, Bill McHenry does not, at this time, request access to these exhibits, but reserves the right to renew his request for these exhibits.

Bill McHenry respectfully renews his request that the Court grant access to a copy of Adams’ interview transcript being Government Exhibit G-1, Defendant Exhibit D-1 and the other Government exhibits for which there is no objection.

THIS the 14th day of December, 2018.

Respectfully submitted,

PHELPS DUNBAR LLP

BY: /s/ Frank W. Trapp

Frank W. Trapp MB #8261  
4270 I-55 North  
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ATTORNEY FOR WILLIAM B. MCHENRY  
AND FIRST SOUTH INVESTMENTS, LLC

**CERTIFICATE OF SERVICE**

I certify that I have this day filed this documents with the Clerk of the Court using the ECF system, which sent notification of such filing to all counsel of record.

This the 14th day of December, 2018.

*/s/ Frank W. Trapp* \_\_\_\_\_  
FRANK W. TRAPP

3115935

**RAWLINGS & MACINNIS, P.A.**

ATTORNEYS AT LAW

1296 HIGHWAY 51 NORTH  
MADISON, MISSISSIPPI 39110

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**MICHAEL S. MACINNIS\***  
\*ALSO ADMITTED IN GEORGIA  
EMAIL: [MIKEMS@BELLSOUTH.NET](mailto:MIKEMS@BELLSOUTH.NET)

August 15, 2012

Office of the Mississippi Secretary of State  
P.O. Box 136  
Jackson, MS 39205-0136  
Attn: Corporations/LLC's

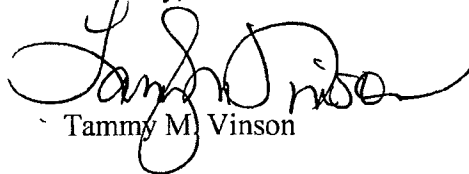
RE: Madison Timber Properties, LLC – Certificate of Formation

To Whom It May Concern:

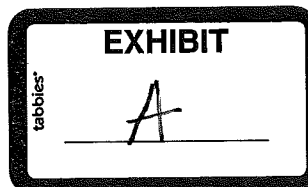
Enclosed please find an original of your form F0100-Certificate of Formation for the above-referenced matter, along with a check in the amount of \$50.00 for filing fees associated therewith. Please return a filed copy to us at your earliest convenience.

Thank you for your assistance in this matter.

Sincerely,

  
Tammy M. Vinson

/TMV  
Enclosure



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Business ID: 1006857  
Date Filed: 08/17/2012 08:00 AM  
C. Delbert Hosemann, Jr.  
Secretary of State

11 F0100

Page 1 of 2



DELBERT HOSEMANN  
Secretary of State

OFFICE OF THE SECRETARY OF STATE  
P O BOX 1020, JACKSON, MS 39215-1020 (601)359-1633

**Mississippi LLC Certificate of Formation**

The undersigned hereby executes the following document and sets forth:  
(fields marked with an asterisks are required)

1. Name of the Limited Liability Company: (The name must include the words "Limited Liability Company" or the abbreviation "LLC" or "L.L.C.")

⇒ \* Madison Timber Properties, LLC

2. The future effective date is  
(Complete if Applicable)

Business Email Address: lamar@timberzone.net

3. Federal Tax ID if available (Do not put Social Security Number in the box)

⇒ Applied For

4. Name and Street Address of the Registered Agent and Registered Office is (must be in Mississippi)

⇒ \*Name Lamar Adams

⇒ \*Physical Address 742 Magnolia Street

⇒ P.O. Box 1381

\*City Madison \* State MS \* Zip5 - Zip4 39130-1381

5. If the Limited Liability Company is to have a specific date of dissolution, the latest date upon which the Limited Liability Company is to dissolve is

⇒ \_\_\_\_\_

6. Other matters the managers or members elect to include: (Attach additional pages if necessary)

⇒ \_\_\_\_\_

⇒ \_\_\_\_\_

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Page 2 of 2

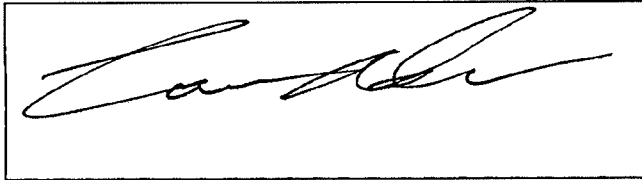
OFFICE OF THE SECRETARY OF STATE  
P O BOX 1020, JACKSON, MS 39215-1020  
(601)359-1633

Certificate of Formation

7. Signatures: This certificate must be signed by at least one member, manager, or organizer. The name, title, and address of each signer should be included in the spaces indicated. This page may be duplicated for additional signatures.

\* Printed Name Lamar Adams \* Title Manager

\* By: Signature



(please keep writing within blocks)

Street and Mailing Address

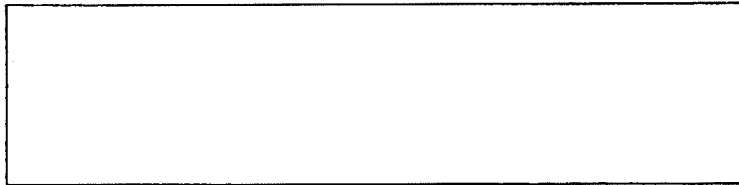
⇒ \* Physical Address 742 Magnolia Street

⇒ P. O. Box 1381

⇒ \* City Madison State MS Zip5 - Zip4 39130-1381

Printed Name \_\_\_\_\_ Title \_\_\_\_\_

By: Signature



(please keep writing within blocks)

Street and Mailing Address

⇒ Physical Address \_\_\_\_\_

⇒ P. O. Box \_\_\_\_\_

⇒ City \_\_\_\_\_ State \_\_\_\_\_ Zip5 - Zip4 \_\_\_\_\_



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

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

EXHIBIT

tabbies®

B

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.

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 2

BEFORE THE HONORABLE CARLTON W. REEVES  
UNITED STATES DISTRICT JUDGE  
OCTOBER 30, 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

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

1 A Right, because that's the time period that we were using to  
2 calculate the loss amount for the fraud conviction.

3 Q Have you ever seen D-1 before, which is a summary of every  
4 investment and every payment in this case? Have you ever seen  
5 that before?

6 A Was this included in your objections to the PSR? Was this  
7 chart included?

8 Q No, I don't think that one was, Kim, but I think that we  
9 had other charts in there.

10 A I saw everything that was included -- I saw all of your  
11 objections in your binder, but I don't recall seeing this one  
12 particular.

13 Q Okay. That is a compilation, I'd represent to you, of  
14 every investor --

15 MR. FULCHER: Your Honor, I'm going to object to any  
16 questioning --

17 MR. COLETTE: It's in evidence.

18 MR. FULCHER: -- about a document that this witness  
19 has not seen, and it's also outside the scope of her direct on  
20 this issue.

21 THE COURT: Objection overruled.

22 BY MR. COLETTE:

23 Q -- Kim, and again without disclosing who those people's names  
24 are -- and make sure that -- what we've done, by the way, so  
25 that the court knows, we've eliminated the names on these last

1 documents that you put in this G-3 and 4. Right? We're using  
2 the numbers.

3 A Right. We took the names out.

4 Q But the numbers track the numbers assigned on Appendix A.

5 Is that correct?

6 A That's correct.

7 Q Okay. And what we've done on this document, D-1, shows the  
8 same people that are numerically included. It just shows their  
9 principal invested over the entire time of this crime. Is that  
10 correct?

11 A I believe that's what Mr. Adams' testimony was about this  
12 document.

13 Q You did not -- therefore, I guess my question becomes,  
14 then, you looked at the one-year snapshot because that's all  
15 they told you to do. Right?

16 A That's -- that was my understanding for the loss amount.  
17 That's what I was instructed to do.

18 Q Tell the court exactly what you were instructed to do about  
19 trying to come up with the loss amount. That's what I'm  
20 looking for.

21 A Well, we took the contracts for --

22 Q I don't want to know what you were told. I want what you  
23 did. What did they tell you that they wanted you to do to  
24 determine the loss amount?

25 A I was to review the Appendix A that was already in the PSR,