

BUSINESS

BMO ordered to pay \$563M in Petters fraud in largest financial penalty by a Minnesota jury

The award represents the largest single amount recovered for people who were hurt in Minnesota's worst business fraud.

By **Evan Ramstad** (<https://www.startribune.com/evan-ramstad/6370513/>) Star Tribune |

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BMO Financial Group must pay bankruptcy trustees of Tom Petters \$563.7 million in damages for the role a predecessor bank played in the multibillion-dollar fraud by the Minnesota businessman, a federal jury in St. Paul ruled Tuesday.

The judgment is believed to be the largest financial penalty ever handed out by a jury in a Minnesota courtroom, attorneys said. It's also the largest single verdict or settlement connected to the Petters fraud, which was the largest in Minnesota history.

"Today's a good day. This is fantastic outcome," said Michael Collyard of Robins Kaplan, the Minneapolis law firm representing Doug Kelley, court-appointed receiver in the bankruptcy that ensued after the Petters fraud scheme collapsed in 2008.

Kelley has been trying to recover about \$3.7 billion lost in the Petters fraud. In the BMO case, his attorneys asked the jury for a penalty of \$1.9 billion.

"This money will go to the creditors of the estate and will greatly enhance their recoveries," Kelley said.

BMO said late Tuesday that it will appeal the verdict and penalty. "We are confident we have strong grounds for an appeal," the company said.

When prejudgment interest is added, stretching back to when the case was filed in 2012, BMO could be liable for about \$1 billion. The Montreal-based company said it would immediately set aside \$1.12 billion Canadian dollars and take a charge against its fourth quarter results in accordance with accounting standards.



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Tom Petters, right, is serving 50 years in federal prison for one of the largest Ponzi schemes in U.S. history.

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The jury found BMO liable for actions by Milwaukee-based Marshall & Ilsley Bank, which it acquired in 2011. From about 2002 to 2008, Petters moved about \$37 billion through a small business checking account at an M&I branch in Edina.

Petters is serving a 50-year prison sentence for an elaborate Ponzi scheme that defrauded hundreds of people.

Evidence in the month-long trial showed that the Petters account repeatedly triggered the bank's internal alarm for money laundering activity over 39 months, but that bankers did not notify regulators.

"If they had reported this to the Feds, I believe the FBI would have investigated and shut Petters' Ponzi scheme down immediately," Kelley said. "If the bank had blown the whistle, they may have stopped this dead in its tracks."

The FBI raided Petters' Minnetonka office just weeks after his business partner reported the fraud in 2008.

In the scheme, Petters convinced investors that he was financing the purchase of consumer electronics that he would then resell to retailers. But he used money from new investors to repay old ones.

The case involving BMO was complicated by the size of the fraud and difficulty of dealing with digital documents and evidence dating back to the mid-1990s. In 2019, a bankruptcy judge sanctioned BMO for destroying e-mails and other data related to M&I's interactions with Petters.

In the trial that began last month before U.S. District Judge Wilhelmina Wright, the two sides called about two dozen witnesses, including former M&I bankers. The 11-person jury took the case Friday afternoon and returned a verdict at mid-morning Tuesday.

The jury found that BMO was not liable on three of the four counts. But it found the bank liable for "aiding and abetting breach of fiduciary duty."

Kelley said he thought that count would be "most defensible" on appeal.

"When they came back with that verdict, we felt very, very good," he said. "Of course, there are many, many decisions that are made in the course of a trial that the other side can point to, but we feel this a solid verdict."

After being appointed as receiver in the Petters bankruptcy, Kelley placed several of Petters' largest business entities in bankruptcy, including Sun Country Airlines and Polaroid Corp. He also liquidated property and filed several "clawback" lawsuits against hedge funds that profited from Petters' crimes.

In July 2021, a federal judge ended the receivership and discharged \$722 million that Kelley had up to then recovered on behalf of Petters' victims and creditors.

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