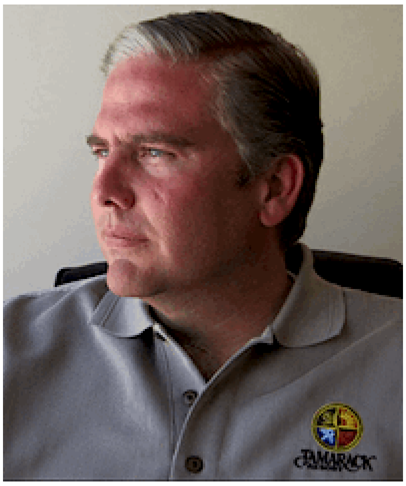
A Man of Conviction

By Kerry Pechter *Wed, Apr 17, 2013*

How did Matthew Hutcheson, once a poster boy for fiduciary rectitude, turn into the wanted-poster man for fiduciary misconduct? But his ill-fated deal for the Osprey Meadows golf course (pictured) in Idaho was just a subplot within a subplot of the 2008 real estate bust.

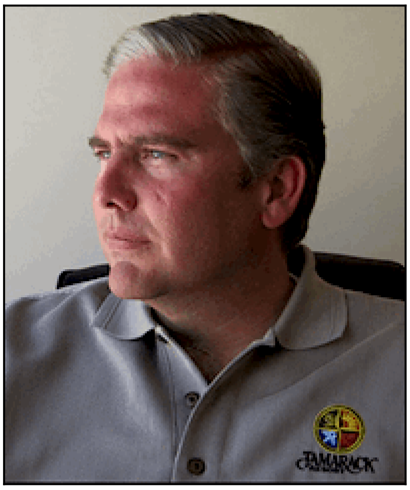


Even as a federal jury in Boise, Idaho found him guilty Monday of wire fraud related to the misuse of million of dollars taken from the retirement plans he managed, Matthew Hutcheson claimed that he was innocent and was only trying to help the participants in the plans.

Perhaps for that reason, there's something about Hutcheson's case that still feels unresolved—even though he now faces the possibility of spending several years in prison, probably in a minimum-security federal penitentiary.

How and why did the earnest, fresh-faced man who had once been the poster boy for fiduciary rectitude, testifying on Capitol Hill, turn so quickly into the wanted-poster boy for fiduciary misconduct. How did he go from the guardian of retirement plan participants to the convicted exploiter of those participants?

It's possible that Hutcheson's behavior didn't actually change. His activities in Idaho are consistent with what some had noticed earlier as those of an ambitious self-promoter. His desire to do well seemed at least as strong as his desire to do good, and the former may have simply have had an opportunity to exceed the latter. Or maybe he was not able to see a clear line between the two.



If Hutcheson had merely flubbed an investment of participants' money in an underpriced golf course at a bankrupt resort, jurors might have been believed that his motivations were pure. But his documented purchases of mid-life toys—a Land Rover, a BMW convertible, a Subaru, two motorcycles, two all-terrain vehicles and a John Deere tractor—can only have cost him friends on the jury.

Interestingly, Hutcheson's story is a relatively small-stakes subplot within a larger subplot of the last decade’s epic real estate boondoggle. The unfinished resort that Hutcheson purportedly hoped to buy was one of four troubled properties, all involved in a separate federal lawsuit, that were used as collateral for hundreds of millions of dollars in ill-fated loans that Credit Suisse arranged for their owners or developers through its Caymans branch. (More on that below.)

Ambitious and idealistic

Less than three years ago, Hutcheson, a boyish 42, was a high-profile advocate of higher fiduciary standards in the trusteeship of retirement plans. He had testified before members of Congress. He was a member of the Committee of the Fiduciary Standard. He was building a National Retirement Security Plan, a multi-employer plan for small companies. His plans were ambitious and idealistic. He was, if not well known, widely known and not unadmired by prominent people in the retirement industry.

But, incongruously, in April 2012, news broke that he had been indicted by a federal grand jury in Boise. (He lives in the nearby suburb of Eagle, Idaho.) Hutcheson was accused of using about $5 million from two retirement plans to buy the $3.4 million secured by the Osprey Meadows golf course at the bankrupt Tamarack Resort on Lake Cascade, a large reservoir in the mountains about 90 miles north of Boise in west central Idaho.

By all accounts he cooperated with the investigation. Last October, he was offered but apparently did not accept a plea bargain agreement offered by federal prosecutors, according to local press reports. During the trial, Hutcheson took the stand and reportedly testified that he was merely to make investments that would benefit the plans he managed and their participants. His lawyer, assistant federal public defender Robert Schwarz, said that if Hutcheson truly intended to steal, he would have diverted money to offshore accounts and made plans to flee the country.

“No matter how the government wants to spin it, they cannot tell you what his intent is, what was going on in his mind. But he can, and he did,” he said. “People are not infallible, but what’s important in this case is Mr. Hutcheson was trying to do the right thing.” Calls to the public defender were not returned before deadline.

But the jurors didn’t buy it. On Monday, after deliberating for 3 ½ hours, they found him guilty on 17 counts of wire fraud. After the trial, Judge Edward Lodge released Hutcheson pending a July 23 sentencing hearing, saying that he did not consider Hutcheson a flight risk. Hutcheson, who declined to comment after the verdict, faces a punishment of up to 20 years in prison on each count.

“We’re pleased with the jury’s verdict,” Assistant U.S. Attorney Ray Patricco told reporters Monday. “We believe justice was done and that the victims of the pension plans have been vindicated.” It was not immediately clear if or how the plan participants will recoup the money spent on the golf course and on Hutcheson’s personal property.

Tamarack and Credit Suisse

But there’s much more to the story of the Tamarack Resort. In November 2010, when Hutcheson called a press conference in Boise announcing his intention to buy the entire resort complex for $40 million, it was already a victim of the financial crisis and the collapse of the real estate market.

Tamarack, along with the Yellowstone Club in Montana, the Lake Las Vegas project in Nevada, and the Ginn sur Mer resort in the Bahamas, were part of a billion-dollar lending project structured by Credit Suisse that is the subject of complex, ongoing litigation.

A federal class action suit filed in Idaho in July 2011 claims that Credit Suisse, through a Cayman Islands branch, arranged large loans to owners or developers of luxury resorts based on inflated appraisals of the equity in their properties. The loans, or loans with an option to own, were financed with money raised from third-party investors.

The suit charges that Credit Suisse inflated the values of the properties to justify over-sized loans against them, knew that the owners of the properties wouldn't repay the loans or finish the projects, and positioned itself to take possession of the properties when they were foreclosed on. Credit Suisse denies the charges.

One of the developers who received a nine-figure loan from Credit Suisse was then-billionaire Tim Blixseth, owner of the Yellowstone Club at Big Sky, Montana, and now a plaintiff in the suit against Credit Suisse. According to a December 2012 Associated Press story, "beginning in 2005, Blixseth diverted most of a $375 million loan to the club to himself and then-wife Edra Blixseth. They used the money to buy up luxury estates around the world, a pair of jets, cars, furniture, art and jewelry.

"When the resort started to founder, Tim Blixseth turned it over to Edra Blixseth during their 2008 divorce and took most of their remaining assets. The Yellowstone Club went bankrupt months later. It was later sold and is now under new ownership."

Regarding the Ginn sur Mer resort in the Bahamas, a November 2012 report in a Caribbean newspaper said, "a Credit Suisse-led lending syndicate took possession of the remaining 1,476 acres at the former Ginn sur Mer project after Ginn Development Company defaulted on its $276 million loan. It effectively inherited the real estate component of the Ginn project, and is looking to develop that in partnership with its own master planner, Replay Resorts."

The real estate crisis of the past decade evidently isn't dead. It's not even past.