

## Insufficient Evidence of Actual Losses Frustrates Company's Restitution Bid under MVRA (Mandatory Victims Restitution Act)

Article By:

Ramsay C. McCullough

---

The ***Mandatory Victims Restitution Act of 1996*** ("MVRA") provides that defendants convicted of crimes committed by "fraud or deceit" to compensate victims for the full amount of their losses.

The federal court of appeals in Denver has held that mere estimates of a company-victim's expenses in investigating the defendant's theft of approximately \$50,000 worth of cell phones supported only by the unverified signature of a company officer were not sufficient for the district court to order restitution, even if those expenses appeared to be reasonable. *United States v. Ferdman*, No. 13-2196 (10th Cir. Feb. 13, 2015). Accordingly, it vacated the lower court's award of restitution.

Defendant Joshua Ferdman and three co-conspirators schemed to fraudulently obtain cellular phones from the company-victim's stores in Arizona, California, and New Mexico, and resell them. Ferdman illicitly obtained the account information of numerous the victim's corporate customers, then used that information to impersonate corporate account representatives and buy cell phones, charging the price of the phone to the corporate account. After being arrested by Albuquerque police, Ferdman pled guilty to a two-count indictment.

As part of his sentence, the trial court ordered Ferdman to pay the company-victim \$48,715.59 in restitution pursuant to the MVRA. The court calculated this amount based on what the company referred to as the "retail unsubsidized price" of 86 cell phones Ferdman fraudulently procured between May 15 and May 25, 2011, plus its shipping and investigative costs. Ferdman appealed the district court's restitution order, arguing the government's proof of loss was insufficient to support the award.

In reversing the district court's order of restitution, the appellate court found the government's and the victim's evidence of actual loss was insufficient. The Court pointed out although the MVRA does not require a court to calculate a victim's actual loss with "exact" precision; however, the MVRA does require some precision when calculating restitution. The Court then held the company's unverified or unsworn two-page letter purporting to list the estimated amount of the phone losses it sustained as a result of the defendant's fraud was insufficient for the court to base its losses on the "retail unsubsidized price" of the cell phones as opposed to the "retail subsidized price" (which is approximately \$300.00 less per phone).

Ferdman shows the importance of conducting an internal investigation of any actual losses caused by the fraud of an employee or a third party in order to ensure that a court will order the criminal defendant to pay the company-victim full restitution.

Jackson Lewis P.C. © 2025

---

National Law Review, Volume V, Number 56

Source URL: <https://natlawreview.com/article/insufficient-evidence-actual-losses-frustrates-company-s-restitution-bid-under-mvra->