UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF MISSISSIPPI
NORTHERN DIVISION

SECURITIES AND EXCHANGE COMMISSION Plaintiff, v. ARTHUR LAMAR ADAMS AND MADISON TIMBER PROPERTIES, LLC Defendants.	Case No. 3:18-cv-252 Hon. Carlton W. Reeves, District Judge Hon. F. Keith Ball, Magistrate Judge

OBJECTION AND COMMENT TO BUTLER SNOW SETTLEMENT AND ORDER

BankPlus and BankPlus Wealth Management LLC (collectively "BankPlus") object to the Proposed Order ("Order") Approving Settlement with Butler Snow LLP; Butler Snow Advisory Services, LLC; and Matt Thornton (collectively, "Butler Snow").[1] BankPlus joins and adopts, to the extent it is applicable to BankPlus, the February 16-filed "Comment and Conditional Objection of Baker, Donelson, Bearman, Caldwell & Berkowitz P.C. to Motion for Approval of Proposed Settlement" ("Baker Donelson Objection").[2]

Before the Court is the Motion for Approval of Proposed Settlement with Butler Snow ("Proposed Settlement") filed by Alysson Mills (the "Receiver") in two capacities: (1) as the court-appointed receiver for Arthur Lamar Adams ("Adams") and Madison Timber Properties, LLC ("Madison Timber"), and (2) "as the holder of assignments executed by investors."[3]

[1] Doc. 221-2.

[2] Doc. 230.

[3] Doc. 221-2 at p. 6, ¶ 4.

On January 11, 2021, the Receiver served on BankPlus the Order Setting Hearing in Securities and Exchange Commission v. Adams, No. 3:18-cv-252 (S.D. Miss.), (the "SEC Case"), Doc. 223 filed January 11, 2021, and the Motion for Approval of Proposed Settlement, including the Butler Snow-Receiver Settlement and a Proposed Order Approving Settlement, SEC Case Docs. 221, 221-1 and 221-2, inviting "interested parties" and as yet unidentified "Notice Parties," to be heard before approval of the Proposed Settlement.

BankPlus does not object to the Receiver and Butler Snow settling their dispute. BankPlus is not a party to that litigation or to the Proposed Settlement. Because the Proposed Settlement and Order contain unusual and unclear provisions, and out of an abundance of caution to waive no rights by failing to do so, BankPlus objects to the Proposed Settlement and Order to the extent they affect BankPlus' rights.

Several provisions of the Proposed Settlement and Order could affect BankPlus' rights.

Paragraph 2 of the Proposed Settlement provides for the confidentiality of the Notice Parties' identity. This unusual provision prevents inquiry into the Receiver's assertion of standing as holder of assignments executed by investors, per Paragraph 4—and implicitly Paragraph 3 of the Proposed Order Approving Settlement. Further, will the Order and Settlement Agreement prevent related discovery into the identity of the assignors in related cases?

BankPlus proposes the addition of the following sentence to the end of Paragraph 5 of the Order as clarification:

> **The Settlement Agreement's confidential treatment of the Notice Parties shall not constitute a basis for any objection to discovery in any other suit regarding the identity of the Receivers' assignors or the terms of those assignments.**

The Order at Paragraph 4 states the Receiver has standing both as a federal equity receiver and as assignee of investors' claims. Arguments about the Receiver's standing lie before the Court

elsewhere, however, because they form part of BankPlus' Motion to Dismiss the Receiver's Amended Complaint against it.[4] Does Paragraph 4 of the Order affect BankPlus or its motion, or bind the Court in any way? The Proposed Settlement and Order do not address this. BankPlus agrees with the Baker Donelson Objection's treatment of this matter and urges the Court to adopt its recommendations.

Additionally, the Order contains a complete bar order with uncertain terms that may affect BankPlus.[5] BankPlus does not object to the concept of a settlement bar. A settlement bar is common in settlements in cases involving multiple parties. Relevant case law applicable to Ponzi receiverships, however, does not provide sufficient guidance to determine the effect of the Proposed Settlement and Order on related claims across cases, nor how to credit the settlement amount to the Receiver's remaining targets.[6] The terms of the Order also do not set forth how the

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[4] Doc. 77, *Alysson Mills vs. BankPlus, et al.*, No. 3:19-cv-00196 (S.D. Miss.). *See also* Baker Donelson Objection at 2-4.

[5] Doc. 221-2 at p. 8, ¶ 12.

[6] *See generally Ill. Cent. R.R. Co. v. Oakes*, 237 So. 3d 149 (Miss. 2018) (discussing fault apportionment under Federal Employers' Liability Act and analyzing relevant common law principles); *Hill v. Gen. Ins. Co. of Am.*, 456 F. Supp. 2d 757, 759 (N.D. Miss. 2006) (examining "lamented" absence of contribution cause of action in Mississippi law); *Krieser v. Hobbs*, 166 F.3d 736 (5th Cir. 1999) (discussing changes to Mississippi liability apportionment regime).
For co-defendants in a single case, the three standard methods for reducing judgment against non-settling defendants after a partial settlement are:

> 1. *pro rata* (court divides the amount of the total judgment by the number of settling and non-settling defendants, regardless of each defendant's culpability),
> 2. proportionate fault (after a partial settlement and trial of the non-settling defendants, the jury determines the relative culpability of all the defendants and the non-settling defendant pays a commensurate percentage of the total judgment), and
> 3. *pro tanto* (the court reduces the non-settling defendant's liability for the judgment against him by the amount previously paid by the settling defendants, without regard to proportionate fault).

Newby v. Enron Corp. (In re Enron Corp. Sec), No. MDL-1446, 2008 U.S. Dist. LEXIS 48516, at *19-21 n.5 (S.D. Tex. June 24, 2008) (*citing In re Enron Corp. Sec., Derivative & "ERISA" Litig.,* 228 F.R.D. 541, 558-63 (S.D. Tex. 2005)) (concluding Private Securities Litigation Reform Act and Ohio state law provided applicable judgment reduction methodologies) (numbering added).

complete bar order will affect the liability of parties who remain in litigation against the Receiver This is of particular concern because the Receiver has asserted BankPlus is jointly and severally liable for the debts of the Receivership estate.[7] Thus, as an interested party to Proposed Settlement and Order, BankPlus has a right to know how it will operate.

Because the promissory notes at the center of the Adams scheme were unregistered securities, BankPlus proposes that the Court adopt the methodology used in the Private Securities Litigation Reform Act ("PSLRA") to determine the appropriate reduction for all parties remaining in litigation against the Receiver across cases.[8] The PSLRA provides a reduction credit representing the greater of (1) the settling defendant's percentage of responsibility, or (2) the amount paid to the plaintiff by that settling defendant. As all the Receiver's cases arise from the same Adams scheme, BankPlus proposes the Court apply the PSLRA methodology to all defendants across the Receiver's cases by adding the following after Paragraph 12 of the Order:

> **The Court shall apply the provisions of the Private Securities Litigation Reform Act at 15 U.S.C. 78u-4(f)(7)(B) to determine the appropriate credit to any party remaining in litigation against the Receiver. For the avoidance of doubt, the Court will apply the PSLRA methodology both to the defendants remaining in *Alysson Mills v. Butler Snow LLP, et al*., No. 3:18-cv-866-CWR-FKB (S.D. Miss.) and to all other defendants in cases against the Receiver arising out of the Lamar Adams-Madison Timber Ponzi Scheme.**

For these reasons, BankPlus joins in the Baker Donelson Objection and its recommendations, and objects to anything in the Proposed Settlement or Order purporting to affect

[7] Case 3:19-cv-00196-CWR-LRA, Doc. 71 at ¶¶ 95 and 104. *See generally* Miss. Code § 85-5-7(4) ("Joint and several liability shall be imposed on all who consciously and deliberately pursue a common plan or design to commit a tortious act, or actively take part in it. Any person held jointly and severally liable under this section shall have a right of contribution from his fellow defendants acting in concert.").

[8] 15 U.S.C. 78u-4(f)(7)(B).

BankPlus' defense of the Receiver's claims against it. BankPlus will withdraw its objection if the parties clarify how the provisions of the Proposed Settlement and Order affect interested parties, and if BankPlus is able to determine after clarification that the Proposed Settlement and Order will not harm its rights.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that a copy of the above and foregoing pleading has been served on all parties and/or their counsel of record, by e-mail, by ECF, facsimile, by-hand, and/or by United States mail.

New Orleans, Louisiana, this 18th day of February, 2021.

/s/ Alexander N. Breckinridge, V
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