IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF MISSISSIPPI
NORTHERN DIVISION

SECURITIES AND EXCHANGE COMMISSION **PLAINTIFF**

vs. **Case No. 3:18-cv-252-CWR-FKB**

ARTHUR LAMAR ADAMS AND MADISON TIMBER PROPERTIES, LLC
DEFENDANTS

OBJECTION TO SETTLEMENT WITH BUTLER SNOW PARTIES

COME NOW Sherry Russell, individually and on behalf of the Estate and Wrongful Death Beneficiaries of Harold Russell; Birdie Cooperwood; James S. Nutt; Kathy Nutt; Col. James Garner; Mary Ellen Garner; Eric W. Orth; Lori Orth; Robert L. Bond; Patricia Gallina; Estate and/or wrongful death heirs of John Endris; Emily Endris; Craig Endris; John Blake Endris; Macey Endris Hawkins; Larry Moorehead; Vicki Moorehead; Anna Kathryn Moorehead; Marvin Tip Jacob; Jean Jacob; Dr. Harry Gibson; and Mynette Jacob Gibson (collectively "Objectors") and file this Objection to the proposed settlement with Butler Snow LLP; Butler Snow Advisory Services, LLC; and Matt Thornton (collectively the "Butler Snow Parties") and state as follows:

INTRODUCTION

1. For over a decade, Arthur Lamar Adams ("Adams"), through his companies Madison Timber Company, LLC and Madison Timber Properties, LLC ("Madison Timber"), defrauded investors over through what has become the largest Ponzi

scheme in Mississippi's history. But Adams did not act alone. Adams' scheme flourished, month after month, year after year, for over ten years, because of the assistance from sophisticated parties—such as the Butler Snow Parties— without whom the scheme would never have gotten off the ground, much less grown to over $164 million. As noted by the Receiver, the Butler Snow Parties "lent their influence, their professional expertise, and even their clients to Adams. ***They made a fraudulent enterprise a fraternity***." *See Alysson Mills v. Butler Snow, LLP et al*, 18-cv-866 (S.D. Miss. 2018) ("*Mills v. Butler Snow*"), [Doc. 1] p. 2 (emphasis added). The Butler Snow Parties were actively engaged in the propagation of this fraud for nearly a decade and likely received many millions of dollars for role.

2. The Objectors have filed actions pending in the Hinds County Circuit Court asserting, *inter alia*, claims against Adams, Madison Timber, and related persons and entities for intentional infliction of emotional distress (and wrongful death as to Sherry Russel). Once the stay is lifted, the Objectors will be adding claims for negligent infliction of emotional distress, civil conspiracy, and aiding and abetting fraud, among other causes of action. (Hereinafter, Objectors' pending and future claims for intentional/negligent infliction of emotional distress, wrongful death, civil conspiracy and aiding and abetting are collectively referred to as the "Emotional Distress Claims"). The Objectors intend to include the Butler Snow Parties as defendants and pursue their claims vigorously, particularly aiding and abetting, where they will seek emotional distress and other damages.

3. The Receiver now seeks permission to settle the Receivership Estate's claims with the Butler Snow Parties for no consideration whatsoever for the Objectors'

Emotional Distress Claims, and further asks the Court to forever bar the Objectors from bringing those claims in the future. Stated differently, the Receiver's proposed settlement with the Butler Snow parties asks the Objectors to settle their Emotional Distress claims against the Butler Snow Parties for zero compensation. Such inequitable terms are categorically unacceptable to the Objectors.

4. Further, the Receiver asks the Court to approve the settlement without sufficient information that would allow the Court to determine if the proposed settlement is otherwise fair, reasonable and adequate. Because the threadbare record before the Court regarding how the parties reached the proposed settlement offers no meaningful information from which the Court can determine the adequacy of the settlement, it must be rejected until more information is produced.

5. The Objectors now ask that the Court reject the proposed settlement until: (1) the Receiver provides additional information about how it was reached, and (2) exceptions are made to the proposed bar order.

BACKGROUND

6. From 2009 to 2018, Adams orchestrated the largest Ponzi scheme in Mississippi history, defrauding hundreds of investors. *See*, *e.g.*, *Mills v. Billings*, No. 3:18-cv-679, 2019 WL 3877853, *1 (S.D. Miss. Aug. 16, 2019). Those defrauded included many sophisticated investors with means, and even included Senator Roger Wicker.

7. The Objectors are also victims of the Ponzi scheme, but they are neither sophisticated nor wealthy, and many are elderly and/or are in poor health and qualify as vulnerable adults. *See* Motion to Clarify [Doc. 156], pp. 4-7. For example, as detailed in

Objectors' (then-Intervenors') Motion for Clarify, Objector Sherry Russell's husband, Harold, died seven months after learning that his family's life savings were lost to the Ponzi scheme. *Id*. at 4-5, [Doc. 156-4] pp 3-4. The emotional impact of the fraud and emotional distress caused or contributed to his death. [Doc. 156] p. 5. Objector Birdie Cooperwood also lost her only savings (which she received following the death of her four children), was forced to sell her house and move in with her daughter. *Id*. at 5-6. Objector Eric Orth is a disabled veteran who converted his long-term disability policy (worth approximately $2 million over his lifetime) into a lump sum for the purpose of investing in the Ponzi scheme. Once the scheme collapsed, Mr. Orth was left in financial ruin and without the means to live independently. *Id*. at 6.

8. On June 22, 2018, the Court appointed the Receiver to oversee the estate of Adams and Madison Timber. [Doc. 33]. That order broadly stayed all civil legal proceedings of any nature involving any Receivership Property, including actions against third parties. *Id*. at 12–13; [Doc. 134 at 3-4]. The Court has described the Receiver's role thusly:

> In the simplest terms, the Order positions the Receiver as if she was the first person in line to board a Southwest Airlines flight, where there is limited capacity and there are no reserved seats. If someone cuts in front of the Receiver, her choices become more limited. The Order also prevents victims from jostling for a position closer to the front of the line.

[Doc. 133, p. 3].

9. Consequently, victims of the Ponzi scheme, including Objectors, have refrained from pursuing claims against Adams, Madison Timber, or third parties whom the victims would allege caused them harm by intentionally or negligently furthering the Ponzi scheme and aiding and abetting the fraud, thereby causing the victims' losses and

damages, including their damages for emotional distress. In so refraining, Objectors are left to recover their losses and damages from the eventual distribution of the Receivership Estate or from third parties after the Receiver has completed her investigation and related litigation.

10. The above notwithstanding, and out of an abundance of caution solely to protect the statute of limitations, the Objectors filed actions in the Hinds County Circuit Court asserting, *inter alia*, claims against Adams, Madison Timber, and related persons and entities for intentional infliction of emotional distress and, as to Sherry Russell and her husband, wrongful death. *See* [Doc. 156]. All Objectors will also be making claims for negligent infliction of emotional distress, civil conspiracy, and aiding and abetting, which are protected under a three-year statute of limitations. Objectors will be seeking damages under these theories for, *inter alia*, their extreme emotional distress. (Hereinafter, Objectors' pending and future claims for intentional/negligent infliction of emotional distress, wrongful death, civil conspiracy and aiding and abetting are collectively referred to as the "Emotional Distress Claims").

11. Once the Court's stay is lifted, the Objectors intend to add the Butler Snow Parties (and others) as party defendants to assert, among other things, claims for aiding and abetting fraud.

12. Per the Receiver's December 31, 2020 Report [Doc. 219], her efforts thus far have recovered around $11.8 million for the Receivership Estate. Victims of the Ponzi scheme lost at least $85 million on their investments. *See* the Court's 9/12/19 Order in *Mills v. Butler Snow* [Doc. 48] p. 2.

13. On January 11, 2021, the Receiver moved the Court for an order

approving her settlement with the Butler Snow Parties. [Doc. 221]. Under the terms of the proposed settlement, Butler Snow will pay $9.5 million to the Receivership Estate. In exchange, the Butler Snow Parties will receive a channeling injunction, or "bar order," prohibiting their victims from pursuing lawsuits against them for their role in the Ponzi scheme. *Id*. ¶10; [Doc. 221] pp. 2-3. Including the $9.5 million to be paid by the Butler Snow Parties, the amount recovered by the Receiver (now over 2.5 years since her appointment) will total approximately $21.3 million.

14. Given the remaining litigation, it appears nearly certain that far less than half of the amounts scammed from investors will ultimately be recovered in the Receivership Estate. In that case, Objectors will seek recovery from third parties to be made whole and seek damages related to their Emotional Distress Claims.

15. The proposed settlement with the Butler Snow Parties, which includes a bar order and thus settles their Emotional Distress claims for $0.00, is unacceptable to the Objectors.

ARGUMENT

A. The Proposed Bar Order Will Settle the Objectors' Emotional Distress Claims for $0.00.

16. The proposed bar order will improperly extinguish Objectors' Emotional Distress Claims. *See Sec. & Exch. Comm'n v. Stanford Int'l Bank, Ltd.,* 927 F.3d 830, 836 (5th Cir. 2019), *cert. denied sub nom. Becker v. Janvey,* 140 S. Ct. 2567, 206 L. Ed. 2d 497 (2020) (held that district court abused its discretion by approving a bar order as part of a settlement between the receiver and insurance underwriters, which extinguished certain insureds' extracontractual tort claims).

17. The Receiver is not seeking, and cannot seek, recovery for Objectors' emotional distress because such damages are unique to the Objectors and are not property of the Receivership Estate. "Like a trustee in bankruptcy or for that matter the plaintiff in a derivative suit, an equity receiver may sue *only to redress injuries to the entity in receivership*, corresponding to the debtor in bankruptcy and the corporation of which the plaintiffs are shareholders in the derivative suit." *Id.* at 841 (emphasis original) (quoting *Scholes v. Lehmann*, 56 F.3d 750, 753 (7th Cir. 1995)). "It is axiomatic that a receiver obtains only the rights of action and remedies that were possessed by the person or corporation in receivership." *Isaiah v. JPMorgan Chase Bank*, 960 F.3d 1296, 1306 (11th Cir. 2020). A receivership's claims do not include "common law tort claims against third parties to recover damages for the fraud perpetrated by the [estate's] own insiders." *Id.*

18. The proposed settlement provides the Butler Snow Parties with the benefit of extinguishing Objectors' Emotional Distress Claims—completely absolving it of any liability for such claims—without any corresponding payout toward the claims for Objectors' emotional distress. And while the proposed bar order provides that Objectors' claims would be channeled through the Receivership Estate, even if the Objectors could recover for their Emotional Distress Claims through the Estate, the Receiver will not likely recover funds sufficient to pay back all of the investors' actual contractual losses, much less amounts payable toward Objectors' Emotional Distress Claims, which are of equal or greater value to Objectors.

19. The proposed bar order thus effectively settles Objectors' Emotional Distress Claims without any payment toward Objectors' emotional distress damages. *See Stanford*, 927 F.3d at 847 ("receivership courts have no authority to dismiss claims that

are unrelated to the receivership estate. That the district court was looking only to the fairness of the settlement…and ignoring third-party rights contravenes a basic notion of fairness.") (internal quotations omitted).

20. The Objectors have viable aiding and abetting claims against the Butler Snow Parties. *See Dale v. Ala Acquisitions, Inc.,* 203 F. Supp. 2d 694, 697 (S.D. Miss. 2002) (held that, based on the court's review of Mississippi decisions in the context of the general prevailing rule and legal treatises and commentary, Mississippi would recognize a claim for aiding and abetting). *Id*. As more recently noted by the Northern District of Mississippi:

> ***All who actively participate in any manner in the commission of a tort, or who command, direct, advise, encourage, aid or abet its commission, are jointly and severally liable therefor***. *Hutto v. Kremer*, 76 So. 2d 204, 208 (Miss. 1954) (quoting Cooley on Torts § 85 (4th Ed.)). Thus, rather than existing as an independent cause of action, Mississippi appears to treat aiding and abetting as a theory for imposing liability against a defendant for an underlying tort. *See Fikes v. Wal–Mart Stores, Inc*., 813 F.Supp. 2d 815, 822 (N.D. Miss. 2011).

Myles v. Domino's Pizza, LLC, No. 14-cv-00107-DMB, 2015 WL 2092689, at *4 (N.D. Miss. 2015) (emphasis added). Importantly, ***"[r]ecovery for emotional distress and mental anguish, as well as punitive damages, is allowed for fraud cases***." *Parsons v. Walters*, 297 So. 3d 250, 258 (Miss. 2020) (quoting *Cook v. Children's Med. Group, P.A.*, 756 So. 2d 734, 740 (Miss. 1999)) (emphasis added). "[T]he elements of civil aiding and abetting are laid out in § 876(b) and § 876(c) [in the Restatement (Second) of Torts]". *In re Evans*, 467 B.R. 399, 409 (Bankr. S.D. Miss. 2011). "Under § 876(b), liability exists when a party knows that another tortfeasor's conduct constitutes a breach of duty and gives substantial assistance or encouragement to the other." *Id*. Consequently, the Butler

Snow Parties may be liable to the Objectors for their emotional distress damages as a result of their aiding and abetting the fraud committed by Adams, Madison Timber Bill McHenry and others.

21. As alleged by the Receiver in her Complaint, the Butler Snow Parties "aided and abetted Adams in committing breaches of duties owed by Adams to Madison Timber and in other tortious conduct" and "[i]n view of the numerous red flags described in this complaint, Defendants knew or should have known that Madison Timber was a Ponzi scheme." *Mills v. Butler Snow*, 18-cv-866 at ¶¶ 128-29. The Receiver continued: "Numerous red flags notwithstanding, [the Butler Snow Parties] gave substantial assistance and encouragement to Adams. [The Butler Snow Parties] lent their influence, their professional expertise, and even their clients to Adams. They made a fraudulent enterprise a fraternity." *Id*. ¶130.

22. The proposed settlement with the Butler Snow Parties almost certainly encompasses payment toward the Receiver's claims for aiding and abetting (how much, however, remains a mystery because, as noted below, the Receiver offers insufficient information about how the settlement was reached). Yet the Receiver did not (because she could not) receive any value for emotional distress damages in her settlement with the Butler Snow Parties. The Receiver instead ***seeks to settle and extinguish the Objectors' Emotional Distress Claims for nothing and bar them forever***. Such a result is neither equitable nor conscionable, and certainly not on the bare record before the Court.

23. Not only will the Objectors' viable, unique Emotional Distress Claims be dismissed for zero value if the settlement is approved, the issuance of a bar order would all but extinguish Objector's future prospects for recovery against the remaining third

parties. If a bar order is entered here, such orders will no doubt be sought and presumably issued in all cases against third parties. The routine issuance of future bar orders against third parties would effectively prohibit *any recovery* by Objectors for their unique emotional distress damages: such damages would be rendered unrecoverable from the Receivership Estate, the insolvent fraudsters, and the third parties that created the environment in which the scheme could flourish. Stated differently, "a permanent bar order is a death knell" that will end the Objectors' Emotional Distress Claims before they have the opportunity to be heard. *Stanford Int'l Bank, Ltd.,* 927 F.3d at 848.

24. The Emotional Distress Claims are significant, likely more valuable than Objectors' actual investment losses, and reflect very serious harm. Carving such claims out from the proposed bar order, and future bar orders against third parties, would serve the interests of equity. Objectors therefore request that the Court modify the proposed bar order to exclude claims—such as Objectors' Emotional Distress Claims and other extracontractual claims—that the Receiver cannot recover for the Receivership Estate.

B. The Receiver Has Provided Insufficient Information for the Court to Determine the Fairness, Reasonableness, or Adequacy of the Proposed Settlement.

25. The proposed settlement provides insufficient information for the Objectors (or the Court) to determine whether its terms are fair, adequate or reasonable. *See Sterling v. Steward*, 158 F.3d 1199 (11th Cir. 1998) (a district court has the power to approve a settlement that is fair, adequate and reasonable, and is the product of good faith after an adequate investigation by the receiver). Although a receivership is not a class action, "the Court applies the standard developed in class action cases for review of" a receiver's settlement. *Newman v. Sun Capital, Inc.,* No. 09-cv-445-FTM-29, 2012 WL

3715150, at *10 (M.D. Fla. 2012). In reviewing such settlements, courts look to:

> (1) the likelihood of success at trial; (2) the range of possible recovery; (3) the range of possible recovery at which a settlement is fair, adequate, and reasonable; (4) the anticipated complexity, expense, and duration of litigation; (5) the opposition to the settlement; and (6) the stage of proceedings at which the settlement was achieved.

Id. (quoting *Faught v. Am. Home Shield Corp.,* 668 F.3d 1233, 1240 (11th Cir. 2011)); *see also Stanford Int'l Bank, Ltd.,* 927 F.3d at 838 (noting district court's review of settlement to determine whether it was "in all respects, fair, reasonable, and adequate, and in the best interests of all Persons claiming an interest in, having authority over, or asserting a claim against Underwriters, Underwriters' Insureds, the Stanford Entities, the Receiver, or the Receivership Estate"); *S.E.C. v. Stanford Int'l Bank, Ltd.*, No. 3:09-cv-00298-N, 2017 WL 9989250, at *3 (N.D. Tex. 2017) ("Courts utilize bar orders if they are both necessary to effectuate a settlement and fair, equitable, reasonable, and in the best interest of the Receivership Estate") (internal quotes omitted).

26. The Receiver has not given this court adequate information to scrutinize its fairness, adequacy, or reasonableness. Regarding the first four prongs—likelihood of success at trial; range of possible recovery; range at which possible recover is fair, reasonable and adequate; and the anticipated complexity, expense and during of litigation—the Receiver offers no meaningful information. She instead generically cites the risks of "drawn-out litigation," "adverse rulings," and the potential expenditure of "considerable time and money litigating" the claims ([Doc. 221] ¶¶4, 7), while failing to describe the value of her claims if successfully prosecuted in litigation versus the risks of establishing liability in litigation, the potential expense in litigation.

27. The Court (and Objectors) cannot begin to assess the propriety of the

settlement if the Receiver does not provide some assessment of the extent of the Buter Snow Parties' liability. Instead, the Receiver baldly asserts that a settlement with the Butler Snow Parties is in the Receivership Estate's best interest because of the inherent risks in litigation and because the "Receiver and the Butler Snow Parties have undertaken extensive and thoughtful negotiations, including private mediation, and the Receiver is now satisfied that settlement with the Butler Snow Parties is in the Receivership Estate's best interest." [Doc. 221] ¶3.

28. Such broad statements are so lacking in detail that they are rendered practically meaningless. More information is necessary. Of particular interest to Objectors is how much the Butler Snow Parties benefitted from ill-gotten gains arising from the Ponzi scheme, all insurance information that is automatically discoverable under Fed. R. Civ. P. 26(a)(1), and the substance and fruits of the investigation which the Receiver engaged in to determine why settlement was proper and appropriate now. Only then can the Objectors assess the value of the case and, by extension, the reasonableness of the settlement.

CONCLUSION

WHEREFORE, PREMISES CONSIDERED, the Objectors request that the Court order the Receiver to: (1) disclose her analysis of the likelihood of her success at trial; (2) the range of possible recovery from the Butler Snow Parties; (3) her analysis of the expenses of litigating and trying her case against the Butler Snow Parties; (4) all amounts received by the Butler Snow Parties during their involvement in the Ponzi scheme; (5) disclose all documents which form the basis of prior items (1)-(4); and (6) exclude from the bar order claims, such as Objectors' Emotional Distress Claims, that were not part of

the consideration to be received from the Butler Snow Parties.

Respectfully submitted, this the 18th day of February 2021.

Sherry Russell, et al. – Plaintiff Objectors

By: */s/ John F. Hawkins*
John F. Hawkins

OF COUNSEL:

John F. Hawkins, Esquire (MSB# 9556)
HAWKINS LAW P.C.
Post Office Box 24627
Jackson, MS 39225-4627
Telephone: (601) 969-9692
Facsimile: (601) 914-3580

Edward Gibson, Esquire (MSB# 100640)
GIBSON LAW
153 Main Street
Bay St. Louis, MS 39520
Telephone: (228) 467-4225
Facsimile: (228) 467-4212

CERTIFICATE OF SERVICE

I, John F. Hawkins, do hereby certify that on this date, I electronically filed the foregoing document with the Clerk of this Court using the ECF System, which will send notification to all counsel of record.

So certified: February 18, 2021.

/s/ John F. Hawkins
John F. Hawkins