

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

ORDER APPROVING SETTLEMENT

Before the Court is the Motion for Approval of Proposed Settlement with Butler Snow LLP; Butler Snow Advisory Services, LLC; and Matt Thornton (collectively the “Butler Snow Parties”) filed by Alysson Mills, in her capacity as the court-appointed receiver (the “Receiver”) for Arthur Lamar Adams (“Adams”) and Madison Timber Properties, LLC (“Madison Timber”).

The motion asks the Court to approve the Receiver’s proposed settlement with the Butler Snow Parties. In exchange for the Receiver’s and Receivership Estate’s release of any claims against the Butler Snow Parties arising from the Butler Snow Parties’ alleged relationship with Adams and Madison Timber and any role that the Butler Snow Parties may be alleged to have had in the Madison Timber Ponzi scheme (which the Butler Snow Parties deny) and a bar order, the Butler Snow Parties will make a payment of \$9,500,000.00 to the Receivership Estate.

Most of the objections to this Order Approving Settlement¹ have been rendered moot by agreed changes to this Order's terms. The objections by those victims represented by attorney John Hawkins are overruled on the merits, however, as the Court finds that the proposed settlement is fair, equitable, reasonable, and in the best interests of the receivership estate and all of the victims of the Ponzi scheme. Accordingly,

After notice and hearing, and after having considered the filings and arguments of counsel, the Court **GRANTS** the motion.

BACKGROUND

The Receiver's complaint

On December 19, 2018, the Receiver filed a complaint against Butler Snow LLP; Butler Snow Advisory Services, LLC; Matt Thornton; Baker, Donelson, Bearman, Caldwell & Berkowitz, PC; Alexander Seawright, LLC; Brent Alexander; and Jon Seawright. The Receiver filed an amended complaint on November 22, 2019.

The Butler Snow Parties vigorously deny the allegations of the complaint and the amended complaint and that they have any liability to the Receiver or any other person arising out of their alleged relationship with Adams and Madison Timber. The Butler Snow Parties have further contended that the disputes arising in this litigation are subject to mandatory arbitration, an issue which is currently pending before the United States Court of Appeals for the Fifth Circuit.

The Receiver and the Butler Snow Parties nevertheless have engaged in good-faith negotiations that have resulted in the proposed settlement, summarized herein.

¹ Doc. 230 (Baker, Donelson, Bearman, Caldwell & Berkowitz P.C.); Doc. 231 (Alexander Seawright, LLC and Brent Alexander); Doc. 232 (Jon Seawright); Doc. 233 (BankPlus and BankPlus Wealth Management); Doc. 235 (Mutual of Omaha); Doc. 237 (RiverHills Bank and Jud Watkins); Doc. 238 (John Hawkins on behalf of his clients).

The proposed settlement with the Butler Snow Parties

Beginning last summer, the Receiver and the Butler Snow Parties engaged in a private mediation that included the exchange of various documents supporting their respective positions. After extensive months-long negotiations, the parties agreed that a payment of \$9,500,000.00 will be made on the Butler Snow Parties' behalf to the Receivership Estate in exchange for the release of any claims against the persons described in paragraph 5 of the Settlement Agreement and the bar order described in paragraph 4 of the Settlement Agreement [**Exhibit A to Doc. 221 ("Settlement Agreement")**].

The Receiver and the Butler Snow Parties have undertaken thoughtful negotiations and the Receiver believes that settlement with the Butler Snow Parties is in the Receivership Estate's best interest. If the Receiver were required to litigate her claims against the Butler Snow Parties to final judgment, she would spend considerable time and money litigating her claims and the Butler Snow Parties would spend considerable time and money defending against them, with neither party being guaranteed success.

A lawsuit's result is never guaranteed. A lawsuit can take a long time to litigate to final judgment, and often a final judgment is appealed. Settlement now avoids the likelihood of drawn-out litigation and the risk of adverse rulings. Settlement now also makes it possible for the Receiver to make a meaningful distribution for the benefit of Madison Timber's victims.

For these reasons, the Receiver recommends settlement with the Butler Snow Parties on the proposed terms now, and the Court accepts her recommendation.

In exchange for the Settlement Payment and any other value the Butler Snow Parties promise to give to the Receivership Estate, the Butler Snow Parties shall receive what is known as a "bar order" which shall bar any person or non-regulatory entity from asserting claims against the

Butler Snow Parties and related persons arising out of, in connection with, or relating to Lamar Adams or Madison Timber. Those claims instead shall be “channeled” through the Receivership Estate. “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.’” *S.E.C. v. Stanford Int’l Bank, Ltd.*, No. 3:09-cv-00298-N, 2017 WL 9989250, at *3 (N.D. Tex. Aug. 23, 2017) (quoting *S.E.C. v. Kaleta*, 530 Fed. App’x 360, 362 (5th Cir. 2013)). The Court finds that the bar order in this case is essential to the settlement and is an effective way to ensure maximum net recovery from the Butler Snow Parties that can be distributed equitably to Madison Timber’s victims through the Receivership Estate.

The public’s interest

The Court, mindful that victims of the Madison Timber Ponzi scheme have a substantial interest in the Receiver’s claims against the Butler Snow Parties and the proposed resolution of them, allowed interested parties an opportunity to be heard before the proposed settlement was approved.

The Court entered an Order Setting Hearing, filed in the Court’s public record for the case styled *Securities & Exchange Commission vs. Adams, et al.*, No. 3:18-cv-252 (S.D. Miss.). The Order Setting Hearing instructed the Receiver to provide via U.S. Mail the Order Setting Hearing, the proposed Settlement Agreement, the proposed Order Approving Settlement, and instructions for submitting comments or objections to all interested parties, as defined in the Settlement Agreement, and to publicize the same on her website and in any forthcoming Receiver’s Report.

Victims or other interested parties who wished to submit comments or objections were advised to do so at least five days prior to the Court’s hearing, either by submitting the comments or objections to the Court or to the Receiver, who submitted them to the Court. Victims or other

interested parties who wished to address the proposed settlement at the hearing were given an opportunity to be heard.

The Court is satisfied and finds that the notice and hearing provided victims and interested parties a full and fair opportunity to be heard and gave the Court the benefit of their opinions as the Court assessed the proposed settlement's merits. The notice and hearing provided was efficient, adequate, and desirable under the circumstances, given the particular interests at stake, and satisfies the requirements of due process.²

ORDER

After notice and hearing, and after having considered the filings and arguments of counsel, the Court finds that the terms of the Settlement Agreement are adequate, fair, reasonable, and equitable; and that a bar order is appropriate. The Settlement Agreement should be and is hereby **APPROVED**.

Accordingly, the Court hereby **ORDERS** as follows:

1. The terms used in this Order Approving Settlement that are defined in the Settlement Agreement between the Receiver and the Butler Snow Parties, unless expressly otherwise defined herein, shall have the same meaning as in the Settlement Agreement.

2. This Court has “broad powers and wide discretion to determine the appropriate relief in an equity receivership,” including the “inherent equitable authority to issue a variety of ‘ancillary relief’ measures in actions brought by the SEC to enforce the federal securities laws.” *S.E.C. v. Kaleta*, 530 Fed. App’x 360, 362 (5th Cir. 2013) (*Kaleta I*) (quoting *S.E.C. v. Wencke*, 622 F.2d 1363, 1369 (9th Cir. 1980)). These “ancillary relief” measures include “injunctions to

² The Court takes no position on whether notice or hearing is appropriate prior to the Court’s approval of possible future settlement with other parties.

stay proceedings by nonparties against the receivership” and “bar orders to secure settlements in receivership proceedings and to ‘preserve the property placed in receivership pursuant to SEC actions.’” *S.E.C. v. Stanford Int’l Bank, Ltd.*, No. 3:09-cv-00298-N, 2017 WL 9989250, at *2 (N.D. Tex. Aug. 23, 2017) (quoting *Kaleta I*, 530 Fed. App’x at 362). *See also Zacarias v. Stanford Int’l Bank, Ltd.*, 945 F.3d 883, 900 (5th Cir. 2019) (“By entering the bar orders, the district court recognized the reality that, given the finite resources at issue in this litigation, Stanford’s investors must recover Ponzi-scheme losses through the receivership distribution process.”); *see also id.* at 902 (“Again, the receivership solves a collective-action problem among the Stanford entities’ defrauded investors, all suffering losses in the same Ponzi scheme. It maximizes assets available to them and facilitates an orderly and equitable distribution of those assets. . . . It was no abuse of discretion for the district court to enter the bar orders to effectuate and preserve the coordinating function of the receivership.”); *see also S.E.C. v. Stanford Int’l Bank, Ltd.*, 927 F.3d 830, 840 (5th Cir. 2019) (“Courts have accordingly exercised their discretion to issue bar orders to prevent parties from initiating or continuing lawsuits that would dissipate receivership assets or otherwise interfere with the collection and distribution of the assets.”).

3. This Court has jurisdiction over the subject matter of this action, and the Receiver is a proper party to seek entry of this Order Approving Settlement.

4. The Receiver has standing to assert all the claims asserted or that could have been asserted in this action both in her capacity as Receiver and as the holder of assignments executed by investors.

5. The notice³ provided by this Court in the Order Setting Hearing and by the Receiver through U.S. Mail, her website, and any Receiver's Report was reasonably calculated, under the circumstances, to apprise all interested parties, and in particular, victims of the Madison Timber Ponzi scheme, of the Settlement Agreement and the releases and bar order provided therein. The notice was also reasonably calculated, under the circumstances, to apprise all interested parties, and in particular, victims of the Madison Timber Ponzi scheme, of their right to object to the Settlement Agreement and the releases and bar order provided therein and to appear at the hearing on the motion. The notice was adequate, sufficient, and the best notice practicable and met all applicable requirements of law. The Settlement Agreement's confidential treatment of the Notice Parties shall not constitute a basis for any objection to discovery in any related case regarding the identity of the Receiver's assignors or the terms of those assignments.

6. The Settlement Agreement was reached after a full investigation of the facts by the Receiver. The Settlement Agreement was negotiated, proposed, and entered into between the Receiver and the Butler Snow Parties in good faith and at arm's length. The parties were well-represented and competent to evaluate the strengths and weaknesses of all claims and defenses.

7. The proposed settlement provides substantial value to the Receivership Estate and will allow the Receiver to make a meaningful distribution to investors.

8. The bar order enjoining any person or non-regulatory entity⁴ from commencing or continuing any judicial, administrative, arbitration, or other proceeding, and/or asserting or prosecuting any claims or causes of action against any of the Butler Snow Parties, and/or their

³ Due to the COVID-19 pandemic, the Court held the hearing via zoom. The public was allowed to attend. The notice of the hearing was posted on the Court's website along with instructions for members of the public to attend via zoom or telephonically, and members of the public were present.

⁴ To be clear, the proposed settlement does not affect the U.S. Attorney's Office, the F.B.I., the S.E.C., or the Mississippi Secretary of State, among other law enforcement bodies. Neither the Receiver nor the Court purports to recommend any settlement that would interfere with their separate work, if any.

predecessors or successors, any of the current or former officers, directors, partners, employees, agents, independent consultants, representatives, insurers, accountants and attorneys, and any and all other person to or for whom the Butler Snow Parties might be liable or responsible including all such persons whether now or formerly employed or associated with any of the Butler Snow Parties, arising out of, in connection with, or relating in any way arising out of or relating to the Butler Snow Parties' alleged relationship with Adams or Madison Timber or any investment in the Madison Timber Ponzi scheme is necessary and appropriate ancillary relief to this settlement. *See Kaleta I*, 530 Fed. App'x at 362.

9. The parties and their counsel have at all times complied with the requirements of Rule 11 of the Federal Rules of Civil Procedure.

10. The Court finds that the Settlement Agreement is, in all respects, fair, reasonable, and adequate, and in the best interests of all parties claiming an interest in or asserting any claim against the Butler Snow Parties or the Receivership Estate in any way relating to the Receivership. The Court further finds that a bar order is a necessary and essential component to achieve the Settlement Agreement and to ensure maximum recovery to the Receivership Estate.

11. The Settlement Agreement, the terms of which are fully set forth in the document itself, is hereby fully and finally approved. The parties are directed to implement and consummate the Settlement Agreement in accordance with its terms and with this Order Approving Settlement.

12. The Court hereby permanently bars, restrains, and enjoins any and all persons or non-regulatory entity (other than the entities identified in footnote 2 above) and their respective officers, directors, representatives, agents, and attorneys from commencing or continuing any judicial, administrative, arbitration, or other proceeding, and/or asserting or prosecuting any claims or causes of action against any of the Butler Snow Parties, and/or their predecessors or successors,

any of the current or former officers, directors, partners, employees, agents, independent consultants, representatives, insurers, accountants, and attorneys, and any and all other person to or for whom the Butler Snow Parties might be liable or responsible including all such persons whether now or formerly employed or associated with any of the Butler Snow Parties, arising out of, in connection with, or relating or in any way arising out of or relating to the Butler Snow Parties' alleged relationship with Adams and/or Madison Timber, or any investment in the Madison Timber Ponzi scheme. Such claims and causes of action are instead channeled into the "receivership distribution process." *Zacarias*, 945 F.3d at 900.

13. Nothing in this Order Approving Settlement or the Settlement Agreement and no aspect of the Settlement Agreement or negotiation thereof is or shall be construed to be an admission, concession, or any finding of the Court, either express or by implication under the principles of collateral estoppel, res judicata, and/or issue preclusion, of any violation of any statute or law, of any fault, liability, or wrongdoing, or of any infirmity in the claims or defenses of any party in any proceeding involving the Receiver or the Butler Snow Parties. For the avoidance of doubt, nothing in this Order Approving Settlement or the Settlement Agreement shall impair or affect the right of any person to assert that the Receiver lacks standing to assert certain types of claims in any action brought by the Receiver related to the Madison Timber Ponzi scheme; however, this clarification does not affect the scope, effect, or construction of the bar order set forth herein.

14. The Butler Snow Parties shall deliver or cause to be delivered the Settlement Payment in accordance with the terms of the Settlement Agreement.

15. Following her receipt of the Settlement Payment, the Receiver shall file a motion to dismiss with prejudice her claims against the Butler Snow Parties, with each party to bear its respective costs.

16. Without in any way affecting the finality of this Order Approving Settlement, the Court retains continuing and exclusive jurisdiction over the parties for the purposes of, among other things, the administration, interpretation, consummation, and enforcement of the Settlement Agreement, including, without limitation, the releases and bar order described in the Settlement Agreement and set forth in this Order.

17. The Court expressly finds and determines, pursuant to Federal Rule of Civil Procedure 54(b), that there is no just reason for any delay in the entry of this Order Approving Settlement, which is both final and appealable, and immediate entry by the Clerk of the Court is expressly directed.

18. This Order Approving Settlement shall be filed in the Court's public record and shall be served by counsel for the Receiver, via email, first class mail, or international delivery service on any person or entity that filed an objection to approval of the Settlement Agreement. On or after the Effective Date as defined in the Settlement Agreement, the Court will enter an Order substantially similar to this one in the case docketed as *Alysson Mills v. Butler Snow LLP, et al.*, No. 3:18-cv-866-CWR-FKB (S.D. Miss.), and that case will be dismissed with prejudice as to the Butler Snow Parties.

SO ORDERED, this the 25th day of February, 2021.

s/ Carlton W. Reeves
UNITED STATES DISTRICT JUDGE