

**IN THE UNITED STATES DISTRICT COURT
FOR THE 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-00252

Hon. Carlton W. Reeves

**COMMENT AND CONDITIONAL OBJECTION OF BAKER, DONELSON,
BEARMAN, CALDWELL & BERKOWITZ P.C. TO
MOTION TO APPROVE FIRST DISTRIBUTION**

Baker, Donelson, Bearman, Caldwell & Berkowitz P.C. (“Baker Donelson”) submits this comment and conditional objection pursuant to the Court’s order, ECF No. 266, inviting interested parties to submit “comments or objections to the Court” concerning the April 19, 2021 Motion to Approve First Distribution (the “Motion”), ECF No. 264.

1. The Motion seeks an order approving a distribution to “Madison Timber’s victims.” Mem., ECF No. 265, at 1. The Receiver proposes to return “any principal still due to the investor under the investor’s promissory notes after subtracting any interest the investor ever received” in payment from Madison Timber. *Id.* In other words, the Receiver proposes to make a distribution that would satisfy a portion of the Receivership Estate’s debts to investors.

2. In an action captioned as *Mills v. Butler Snow LLP et al.*, Case No. 3:18-cv-866-CWR-FKB (the “Receiver Action”), the Receiver seeks to recover debts of the Receivership Estate as damages from Baker Donelson. Baker Donelson denies that it is liable to the Receiver and denies the Receiver’s allegations concerning recoverable damages.

3. Baker Donelson's only interest in the present motion is to ensure that the proposed distribution will not impair its rights and defenses in the Receiver Action. In particular, any distributions the Estate may make, and the allocation of such distributions to particular recipients, should not result in any finding about the proper type or amount of damages the Receiver may recover against Baker Donelson in the Receiver Action. Solely by way of example, Baker Donelson may argue that the Receiver cannot recover "damages" from Baker Donelson measured by amounts (termed "interest" or otherwise) that Madison Timber allegedly owed to investors in excess of their actual out-of-pocket losses, any amounts received by investors or others who profited from the Ponzi scheme, or any principal invested in bad faith, and that such amounts should be subtracted from any alleged damages.

4. In short, Baker Donelson's defenses to the Receiver's claims, including the Receiver's damages theories, should be adjudicated in the action between the Receiver and Baker Donelson, and not in the context of the Receiver's proposed distribution of funds in an action to which Baker Donelson is not a party. Baker Donelson therefore seeks clarification that any order approving the equitable distribution will not impair such rights and defenses, and it conditionally objects *only* to the extent that any such impairment would occur.

5. Baker Donelson respectfully proposes that any order approving the equitable distribution include the following language: "For the avoidance of doubt, nothing in this Order shall impair any right or defense of any person who is a defendant in any action brought by the Receiver in connection with, or which is otherwise related to, the Madison Timber Ponzi scheme, including without limitation any defenses concerning the proper measure or amount of recoverable damages."

Dated this 12th day of May, 2021

Respectfully submitted,

**BAKER, DONELSON, BEARMAN,
CALDWELL & BERKOWITZ PC**

/s/ Craig D. Singer

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CERTIFICATE OF SERVICE

I certify that I filed the foregoing document with the Court's ECF system, which will send a true and correct copy to all counsel of record.

/s/ Craig D. Singer
Craig D. Singer