

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

RECEIVER'S RESPONSE TO OBJECTIONS

Alysson Mills, in her capacity as the court-appointed receiver (the "Receiver") for Arthur Lamar Adams ("Adams") and Madison Timber Properties, LLC ("Madison Timber"), respectfully responds to objections to her Motion to Approve First Distribution. [Doc. 264]

Introduction

The Receiver's motion to approve first distribution proposes to make \$17,500,000 available to Madison Timber's victims.

The Receiver mailed a copy of the motion to each of Madison Timber's victims (184 who hold Madison Timber promissory notes, plus 33 who invested in Madison Timber through the Alexander Seawright Timber Fund) and invited them to comment on or object to her proposal.

She heard from dozens of Madison Timber’s victims. With two exceptions,¹ no one objected to the proposed first distribution’s methodology—not even those victims who do not qualify for the proposed first distribution.

No one objected to the proposed equitable advance to victims with hardships. Overall, everyone believes it is the right thing to do.

Alexander Seawright Timber Fund investors’ objections

Two Alexander Seawright Timber Fund investors objected to, among other things, a distribution to any of the 33 Alexander Seawright Timber Fund investors who also are Baker Donelson partners or family members. They also request a complete accounting for discrepancies in how Alexander Seawright Timber Fund investors may have been treated differently from each other and from other Madison Timber victims (for instance, Alexander Seawright Timber Fund investors’ promissory notes paid 10% interest, not 13%).

The Receiver is sympathetic to these concerns and proposes to set aside \$337,707.02 pending a complete accounting and consensus regarding how to calculate Alexander Seawright Timber Fund investors’ shares of the Alexander Seawright Timber Fund’s distribution. The proposed set-aside is two-times the Alexander Seawright Timber Fund’s anticipated first distribution (\$168,853.51). That should provide sufficient assurance that Alexander Seawright Timber Fund investors will be treated fairly but it will not materially affect other Madison Timber victims’ distribution. Any funds that are not later distributed will be returned to the Receivership Estate.

¹ Two investors disagreed that the Receivership Estate should prioritize principal after interest (what the Receiver calls “Priority 1”). One argued everyone should receive the same “flat” distribution.

Importantly, this compromise would permit the Receiver to proceed with a first distribution to other Madison Timber victims; the contemplated accounting and calculation of Alexander Seawright Timber Fund investors' shares would not hold up other Madison Timber victims' first distribution.

The defendants' objections

Baker Donelson [Doc. 273]
Rawlings & MacInnis [Doc. 274]
BankPlus [Doc. 275]
Mutual of Omaha [Doc. 276]
RiverHills Bank [Doc. 277]
UPS [Doc. 278]
Jason Cowgill [Doc. 279]

Incredibly, the only objections filed in the Court's record were filed by defendants in the Receivership Estate's lawsuits—Baker Donelson, Rawlings & MacInnis, BankPlus, Mutual of Omaha, RiverHills Bank, UPS, and Jason Cowgill—the very institutions and individuals who are alleged to have aided and abetted the Madison Timber Ponzi scheme.

To be clear, these defendants are not interested parties here: They are not creditors of the Receivership Estate. They have not contributed any money to the Receivership Estate. They have no say-so whatsoever in how the Receivership Estate distributes its money to victims.

These same defendants objected to the Receivership Estate's settlement with Butler Snow. Apparently, they will object to everything the Receiver proposes, even if it has nothing to do with them.

Defendant BankPlus objects to an equitable advance to victims suffering financial hardship—many elderly or disabled. Even Madison Timber victims who stand to lose so that an equitable advance can be made are too decent to make such an objection. BankPlus's objection does not dignify a response.

If any of the objecting defendants have defenses to their own liability, or their own damages calculations, of course they can make those arguments in their own cases.

The Receiver nevertheless accepts defendant Baker Donelson's invitation to moot its objection by including in any order approving the proposed first distribution express language that makes clear that defendants may continue to make any arguments they wish in their own cases. The language is unnecessary, but if it removes a perceived obstacle to making a first distribution, the Receiver welcomes it.

Proposed order

In advance of the Court's upcoming hearing, the Receiver offers the attached Proposed Order Approving First Distribution [Exhibit A]. The proposed order accounts for the objections of the two Alexander Seawright investors and defendant Baker Donelson.

Conclusion

For the reasons stated here and in her Motion to Approve First Distribution [Doc. 264], the Receiver asks the Court to approve the proposed first distribution.

May 16, 2021

Respectfully submitted,

/s/ Lilli Evans Bass

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CERTIFICATE OF SERVICE

I certify that I electronically filed the foregoing with the Clerk of Court using the ECF system which sent notification of filing to all counsel of record.

May 16, 2021

/s/ Lilli Evans Bass _____

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Case No. 3:18-cv-252

Hon. Carlton W. Reeves, District Judge

Hon. F. Keith Ball, Magistrate Judge

PROPOSED ORDER APPROVING FIRST INTERIM DISTRIBUTION

Before the Court is the Motion to Approve First Distribution filed by Alysson Mills, in her capacity as the court-appointed receiver for Arthur Lamar Adams and Madison Timber Properties, LLC.

The Receiver proposes to make \$17,500,000 available to Madison Timber's victims. After notice and hearing, and after having considered the filings and arguments of counsel, the Court GRANTS the motion.

BACKGROUND

The Receivership Estate

This Court appointed the Receiver to take any action necessary and appropriate to preserve the assets of Adams and Madison Timber, for the benefit of the Receivership Estate. Over the past almost three years the Receiver and her counsel have seized and sold property, recovered "commissions" and gifts, and filed several lawsuits, some of which have settled.

These efforts make it now possible to make \$17,500,000 available to Madison Timber's victims. The proposed distribution would be a first and interim distribution to Madison Timber's victims.

Madison Timber's victims

Madison Timber's victims are its investors. Those investors hold promissory notes. The Receiver concluded that 184 investors hold 485¹ promissory notes with amounts still due.

According to the Receiver, the 485 promissory notes with amounts still due reflect \$155,822,000 in total principal investments and require Madison Timber to make approximately \$176,118,181 in total monthly payments. Before its accounts were frozen, Madison Timber made approximately \$75,919,744 in monthly payments pursuant to the 485 promissory notes. The total amount still due under the 485 promissory notes is approximately \$100,198,437.

While the first proposed distribution is substantial, it is not enough to pay all amounts still due under the 485 promissory notes. The Receivership Estate must spread the \$17,500,000 equitably across all investors.

The Receiver's proposal has two parts: first, an equitable distribution of \$17,000,000; and second, an equitable advance funded by \$500,000 set aside from proceeds of the Butler Snow settlement.

¹ Early accountings reflected 501 promissory notes with amounts due. The Receiver later determined that certain of those promissory notes were paid in full. For other promissory notes, the Receiver confirmed that the anticipated principal investments were not received before Madison Timber's accounts were frozen. For still other promissory notes, the Receiver obtained their forgiveness.

Equitable distribution

The Receiver proposes that for this first distribution the Receivership Estate prioritize repaying any principal still due to any investor under any promissory note, minus any interest the investor may have received under any promissory note. The Receiver calls this “Priority 1.”

According to the Receiver, Priority 1 accounts for approximately \$46,500,000 of the \$100,198,437 still due under the 485 promissory notes. If the Receiver applies \$17,000,000 to Priority 1, she estimates that she will pay back qualified investors 36% of their Priority 1 losses on a pro rata basis.

Equitable advance

Not all investors will qualify for Priority 1. Approximately 40 investors will not. These investors received, over time, interest that exceeds any principal still due to them under their promissory notes.

Many of these approximately 40 investors are elderly persons who invested comparatively small amounts in Madison Timber for years. They relied on (again, comparatively small) monthly checks to pay for basic living expenses. They entrusted substantially all of their savings to Madison Timber; they did not know that Madison Timber was a Ponzi scheme. They discovered the truth only when, after Madison Timber’s accounts were frozen, they could not cash their monthly checks.

These persons do not consider themselves “net winners.” To the contrary, they lost not only the monthly checks on which they relied but also, in some instances, their entire life savings. They are victims of Madison Timber.

The Receiver believes providing for these persons is the right thing to do given the circumstances of this case, and provision can be made with minimal cost to others.

The Receiver proposes to set aside \$500,000 from proceeds of the Butler Snow settlement for the benefit of investors who do not qualify for Priority 1 but who establish a financial hardship based on objective measures including their age and income. Qualified “hardship” investors would be entitled to a non-recourse “equitable advance” of up to 36% of any principal still due to the investor under the investor’s promissory notes, pro rata as funds allow. Any funds remaining if the \$500,000 is not equitably advanced to qualified hardship investors would be returned to the Receivership Estate.

Disqualified investors

The Receiver proposes that this first distribution exclude any investors who the Receiver has sued or settled with (not counting Alexander Seawright, LLC, addressed below). There are only four such investors. Given the scarcity of resources available for distribution, it is appropriate that the Receivership Estate subordinate these investors’ claims.

The Alexander Seawright Timber Fund

The Receiver sued Jon Seawright, Brent Alexander, and Alexander Seawright, LLC, along with Seawright’s and Alexander’s law firm and employer, Baker, Donelson, Bearman, Caldwell & Berkowitz, PC, for their roles in the Madison Timber Ponzi scheme. The Alexander Seawright Timber Fund, a fund created and controlled by Seawright and Alexander, is an investor in Madison Timber and holds 10 promissory notes with \$3,153,640 total amounts still due.

The Alexander Seawright Timber Fund separately has 33 investors. They invested in the Alexander Seawright Timber Fund, which invested solely in Madison Timber. They are victims of Madison Timber. Neither Seawright nor Alexander are among these 33 investors.

Two investors in the Alexander Seawright Timber Fund have objected to, among other things, a distribution to any of its 33 investors who are Baker, Donelson, Bearman, Caldwell &

Berkowitz, PC partners or family members. They also request a complete accounting for discrepancies in how Alexander Seawright Timber Fund investors may have been treated differently from each other and from other Madison Timber victims (for instance, Alexander Seawright Timber Fund investors' promissory notes paid 10% interest, not 13%).

The Receiver is sympathetic to these concerns and proposes to set aside \$337,707.02 pending a complete accounting and consensus regarding how to calculate Alexander Seawright Timber Fund investors' shares of the Alexander Seawright Timber Fund's distribution. The proposed set-aside is two-times the Alexander Seawright Timber Fund's anticipated first distribution (\$168,853.51). According to the Receiver, the set-aside should provide assurance that Alexander Seawright Timber Fund investors will be treated fairly but it will not materially affect other Madison Timber victims' distribution. Any funds that are not later distributed will be returned to the Receivership Estate.

Notice and hearing

The Court, mindful that Madison Timber victims have a substantial interest in the Receiver's proposed first distribution, allowed interested parties an opportunity to be heard before it 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 to Madison Timber's victims via U.S. Mail her motion, the Order Setting Hearing, and instructions for submitting comments or objections. It also instructed her 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 by submitting them to the Court or to the Receiver. The Court itself received only three such submissions from victims (two from the Alexander Seawright Timber Fund investors, described above). The Receiver advised that she heard from dozens of Madison Timber's victims. With two exceptions,² no one objected to the proposed first distribution's methodology. No one objected to the proposed equitable advance to victims with hardships.

Victims or other interested parties who wished to address the proposed first distribution at the hearing also 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 first distribution'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.³

ORDER

When considering a proposed distribution, the district court's "primary job" is simply "to ensure that the proposed plan of distribution is fair and reasonable." *S.E.C. v. Wealth Mgmt. LLC*, 628 F.3d 323, 332 (7th Cir. 2010) (citing *Official Comm. of Unsecured Creditors of WorldCom, Inc. v. S.E.C.*, 467 F.3d 73, 84 (2d Cir. 2006)). After notice and hearing, and after having

² Two investors disagreed that the Receivership Estate should prioritize principal after interest (what the Receiver calls "Priority 1"). One argued everyone should receive the same "flat" distribution.

³ The Court takes no position on whether notice or hearing is appropriate prior to the Court's approval of possible future distributions.

considered the filings and arguments of counsel, the Court finds that the Receiver's proposed first distribution is fair and reasonable.

The proposed first distribution should be and is hereby **APPROVED**.

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

1. The Receiver shall make \$17,500,000 available to Madison Timber's victims, its investors.

2. The Receiver shall attempt to issue checks to investors who qualify for a Priority 1 distribution within 30 days. The checks shall represent each qualified investor's pro rata share of \$17,000,000.

2. The Receiver shall set aside \$500,000 from proceeds of the Butler Snow settlement for the benefit of investors who do not qualify for Priority 1 but who establish a financial hardship based on objective measures including their age and income. The Receiver shall advise investors who do not qualify for a Priority 1 distribution that they may apply for an equitable advance as described herein; she shall mail instructions for such application to each such investor and also post them on her website. Following an initial 45-day application period, the Receiver shall make equitable advances to qualified applicants pro rata, as funds allow, on a rolling basis. Any funds that are not equitably advanced shall be returned to the Receivership Estate.

3. The Receiver shall exclude from any distribution or equitable advance any investors who the Receiver has sued or settled with. Given the scarcity of resources available for distribution, it is appropriate that the Receivership Estate subordinate these investors' claims.

4. The Receiver shall set aside \$337,707.02 pending a complete accounting and consensus regarding how to calculate Alexander Seawright Timber Fund investors' shares of the

Alexander Seawright Timber Fund's distribution. Any funds that are not later distributed to Alexander Seawright Timber Fund investors shall be returned to the Receivership Estate.

5. The contemplated accounting and calculation of Alexander Seawright Timber Fund investors' shares shall not hold up other Madison Timber victims' first distribution.

6. 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 in those respective actions.

SO ORDERED, this the _____ day of May 2021.

Honorable Carlton W. Reeves
United States District Judge