

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF MISSISSIPPI
NORTHERN DIVISION

ALYSSON MILLS, IN HER CAPACITY
AS RECEIVER FOR ARTHUR LAMAR
ADAMS AND MADISON TIMBER
PROPERTIES, LLC,

Plaintiff,

v.

THE UPS STORE, INC.; HERRING
VENTURES, LLC d/b/a THE UPS STORE;
AUSTIN ELSER; TAMMIE ELSER;
COURTNEY HERRING; DIANE LOFTON;
CHANDLER WESTOVER; RAWLINGS &
MACINNIS, PA; TAMMY VINSON; and
JEANNIE CHISHOLM,

Defendants.

Case No. 3:19-cv-00364-CWR-FKB

Arising out of Case No. 3:18-cv-252,
Securities and Exchange Commission v.
Arthur Lamar Adams and Madison
Timber Properties, LLC

Hon. Carlton W. Reeves, District Judge
Hon. F. Keith Ball, Magistrate Judge

**RECEIVER’S RESPONSE TO RAWLINGS & MACINNIS’S
MOTION TO STAY, OR IN THE ALTERNATIVE,
MOTION TO EXTEND OR CONTINUE DEADLINES**

Alysson Mills, in her capacity as the court-appointed receiver for Arthur Lamar Adams and Madison Timber Properties, LLC (the “Receiver”), through undersigned counsel, respectfully submits this response to the “Motion to Stay, or in the Alternative, Motion to Extend or Continue Deadlines” filed by Defendants Rawlings & MacInnis, P.A., Tammy Vinson, and Jeannie Chisolm [Doc. 258].

The Court already extended expert deadlines in this case until further order of the Court. Because the Court already addressed Rawlings & MacInnis's primary concern, the instant motion is largely moot.

The Receiver nevertheless responds to the motion to point out a few facts and to correct others.

1. The Receiver and Rawlings & MacInnis have the same things.

Rawlings & MacInnis wants to see original timber deeds. It represents that “the Receiver has viewed and inspected, or at least has had an opportunity to view and inspect, any original timber deeds from purported landowners that may exist in the possession of the FBI/USAO”—the suggestion being that the Receiver has had an unfair advantage. The representation is not true.

Shortly after her appointment, the Receiver personally visited Madison Timber's office with the intention of collecting records, including timber deeds, but not much was there. The FBI had already searched the office and seized Madison Timber's files. The Receiver never viewed or inspected the original files.

Much later the Receiver obtained an electronic copy of Madison Timber's files from the FBI, pursuant to court order. She made that electronic copy available to all defendants. The Receiver and Rawlings & MacInnis have the same things.

Presumably the FBI still has the original files, which contain original timber deeds. The Receiver has never objected to Rawlings & MacInnis's viewing and inspecting those original files.

2. Rawlings & MacInnis waited a full year to make its *Touhy* request.

The Receiver would not object to a reasonable extension of time to permit a party to discover facts that it has diligently pursued. But it is debatable whether that is what is going on here.

In fact, the Receiver anticipated this dilemma in spring of last year and personally arranged a teleconference between the Government and counsel for Rawlings & MacInnis. By its own account, Rawlings & MacInnis apparently waited a full year to make its *Touhy* request of the Government.

3. Rawlings & MacInnis has had Lamar Adams's computer since December 2020.

Rawlings & MacInnis points repeatedly to Lamar Adams's purported "admission" that he "manipulated" (Rawlings & MacInnis's word) timber deeds and their notary acknowledgements.

A little context is important here: Adams and Jeff Rawlings and Mike MacInnis are old friends. When Adams suspected that he was in trouble, he called Rawlings and MacInnis first. As news of the Ponzi scheme spread, presumably victims began studying their timber deeds closely and identified Rawlings & MacInnis's employees as the notaries. In a text message that Adams allegedly sent to Rawlings and MacInnis on May 22, 2018, Adams appears to try to absolve his old friends of responsibility. In the text message he represents that he used his computer to "change" the notary acknowledgements to suit his purposes. Rawlings & MacInnis attach the text message to their motion but do not quote it. This is what it says:

If I ever get access to my computer again I can show y'all the document transfer program I used to change the Notary part of a timber Deed from my signature to "the within named two". It changed Documents from PDF to Word and therefore I could change Tammy notarizing my signature to two signatures. I will also show this to the Government when we start meeting.¹

Rawlings & MacInnis rely on Adams's "admission" to justify their request for a stay of discovery, but Adams's alleged text message says the evidence Rawlings & MacInnis seeks is on his computer, not in files that were seized by the FBI.

¹ Doc. 258-2.

The Receiver, aware of the alleged text message, understood the import of Adams's computer to Rawlings & MacInnis. She also understood the importance of its chain of custody. The FBI seized Adams's computer but returned it to Adams so that he could use it to prepare for his sentencing hearing. After Adams was sentenced, Mike MacInnis attempted to obtain the computer from Adams's lawyer. The Receiver heard about that, objected, and retrieved the computer herself. She still has it; it's in her office.

Relevant here, the FBI made a forensic image of Adams's computer before it returned the computer to him. That forensic image is an unaltered snapshot of the computer on the date it was seized and is the best evidence of whether Adams "manipulated" timber deeds. The Receiver obtained a copy of the forensic image and made it available to Rawlings & MacInnis in December 2020. To the extent Rawlings & MacInnis's defense depends on Adams's alleged text message, they have long had what they need.

4. This case is straightforward.

It is no secret that defendants do not want to try this case. They resent that theirs is the first of the Receiver's cases to go to trial. They have filed motions to stay (this is not the first, nor the only pending) and they have grossly maligned the Receiver and her fulfillment of her discovery obligations (UPS more than Rawlings & MacInnis). The reality is this case is not complicated, *see* Doc. 49 (discovery "in a case about notarization should not be overly complex"), and the Court ordered the parties to proceed with discovery two years ago.

The only genuine dispute between the parties is victims' privacy. The Receiver has, for two years now, asked that everyone respect victims' privacy and treat victims' personal identifying information (PII) as confidential. The issue is the subject of several pending motions, including

the Receiver and the S.E.C.'s joint motion for protective order.² No one can credibly blame victims' privacy for defendants' own refusal to produce documents³ or, more recently and incredibly, refusal to sit for depositions.⁴

It is also patently untrue that the Receiver has refused to provide "critical information." The Receiver long ago gave defendants any information relevant to this case and, about a month ago, tried to give them much, much more. The Madison Timber Receivership virtual data room has in it, with few exceptions, all the records that the Receiver obtained in the course of her investigation, whether relevant to this case or not. Until yesterday (August 18, 2021), defendants refused to look at any of the more than 353,000 pages of documents because they would rather argue about whether victims' PII should be treated as confidential pending this Court's ruling on the Receiver and the S.E.C.'s joint motion for protective order.⁵

² Everyone, except defendants, wants to protect victims' privacy. See, e.g., *Response of the United States to the Motion of the UPS Store, Inc.*, Doc. 55, *United States v. Adams*, No. 3:18-cr-00088 (S.D. Miss) (citing authorities including the Crime Victim's Rights Act); *S.E.C.'s Reply to Objections to Joint Motion for Protective Order*, Doc. 308, *Securities & Exchange Commission vs. Adams, et al.*, No. 3:18-cv-00252 (S.D. Miss). The FBI, when the Receiver informed it that she would be making documents she obtained from the FBI available to you, asked that she protect victims' PII.

Courts have broad discretion to protect victims' PII in cases such as these. See, e.g., *Duff v. Central Sleep Diagnostics*, 801 F.3d 833, 844 (7th Cir. 2015) (affirming receivership court's decision to treat names of victims as confidential). See also Docs. 1766, 1877, *Securities and Exchange Commission v. Stanford Int'l Bank Ltd., et al.*, No. 3:09-cv-0298 (N.D. Tex.) (after the Stanford receiver was made aware "that confidentiality concerns exist[ed]," the court granted the receiver's request to use claim ID numbers in public filings so as not to disclose "information from which the individual Investor CD Claimants can be identified"); *Caxton Int'l Ltd. v. Rsrv. Int'l Liquidity Fund, Ltd.*, No. 09-cv-782, 2009 WL 2365246, at *6-7 (S.D.N.Y. July 30, 2009) (redacting information "reflecting the identity of actual or potential [non-party] investors" and directing the parties "to file their motion papers under seal and then, to the extent those papers identify any non-party investor, file copies in the public court files with the minimum amount of redactions necessary to protect the identity of non-party investors"); Doc. 75, *Securities and Exchange Commission v. Joseph F. Forte, et al.*, No. 09-63 (E.D. Penn.) (protective order required the use of numbers to identify victims); *Druck Corp. v. The Macro Fund (U.S.) Ltd.*, No. 02-cv-6163, 2002 WL 31415699, at *1 (S.D.N.Y. Oct. 28, 2002) (requiring that "any reference to the non-party investors shall identify them only as John Doe, Richard Roe, etc."; that affidavits or exhibits be filed under seal "to the extent they identify any non-party investor"; and that copies be filed "in the public court files with the minimum amount of deletions necessary to protect the identity of the non-party investors").

³ Doc. 167 ("Motion to Compel The UPS Store, Inc. to Respond to Discovery" filed February 25, 2021).

⁴ Doc. 258-9 (letter from defense counsel dated August 3, 2021 refusing to make defendants available for deposition).

⁵ See August 17, 2021 email exchange with Mark McDonald, attached as Exhibit 1.

That leaves, then, defendants' complaint that, because of the COVID-19 pandemic, they can only depose Lamar Adams on Fridays, therefore to use all of the four days allotted to them, they will have to travel to Bastrop, Texas "on four separate occasions." Everyone has been inconvenienced by the pandemic. For what it is worth, the Receiver's team is vaccinated and ready to go.

5. Coordination makes sense—but what defendants want is delay.

The Receiver raised the possibility of coordinated discovery in June, after UPS served 32 victims with subpoenas duces tecum and deposition subpoenas without conferring with the Receiver regarding dates.⁶ Following a discovery conference and acting on what she believed to be the Court's suggestion, the Receiver more fully described her idea in a letter to the Court dated July 26, 2021. The letter explained that coordinated discovery could be helpful without requiring a continuance of the trial date in this case. The Receiver's letter was a good faith effort to have a meaningful conversation.

Unfortunately, defendants have used the prospect of coordinated discovery as a tool for delay. Now, just two months' shy of the discovery cutoff in this case, they demand that all the Receiver's cases be consolidated and, effectively, indefinitely stayed.⁷

Rawlings & MacInnis contends "[a] stay of this case ... would not in any way prejudice or injure the Receiver." That is not true. The prejudice from another delay ought to be obvious; the purpose of this lawsuit is to recover money for the benefit of Madison Timber's victims, many of whom lost their life savings. The Receiver is sympathetic to Rawlings & MacInnis's requests for

⁶ Doc. 207.

⁷ Admittedly, Rawlings & MacInnis's arguments are less bold than UPS's self-styled "Motion's (1) to Consolidate Related Actions, and (2) to Stay or to Modify Case Schedule" which it filed three times in four cases. The Receiver is preparing a timely response to that motion.

information it believes is relevant to its case, but it remains that Rawlings & MacInnis waited a full year before formally requesting that information from the Government.

Be that as it may, the Receiver understands that the Court intends to coordinate discovery and extend deadlines in this case as necessary to resolve outstanding issues. The Receiver agrees that some extensions of time are warranted, but this case is distinct and straightforward. A consolidation that unnecessarily prolongs trial here is unjust and unnecessary.

August 19, 2021

Respectfully submitted,

/s/ Lilli Evans Bass

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/s/ Kristen Amond

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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.

Date: August 19, 2021

/s/ Kristen Amond



Kristen Amond <kamond@millsamond.com>

Re: [EXT] Re: Madison Timber Receivership Virtual Data Room

1 message

Kristen Amond <kamond@millsamond.com>

Tue, Aug 17, 2021 at 4:11 PM

To: "McDonald, Mark R." <mcdonald@mofo.com>, "Hunt, Adam J." <adamhunt@mofo.com>, "LaToya Merritt (3749)" <LaToya.Merritt@phelps.com>, "Mallory Bland (3334)" <mallory.bland@phelps.com>, Todd Burwell <tburwell@gtbpa.com>, Scott Wells <swells@rushingguice.com>, Billy Guice <bguice@rushingguice.com>, "Bieck, Rob" <rbieck@joneswalker.com>, "Cc: Breckinridge, Alexander" <abreckinridge@joneswalker.com>, "Slattery, Thomas" <tslattery@joneswalker.com>, tom684@bellsouth.net, kpickett@joneswalker.com, "Buchanan, Stacey Moore" <sbuchanan@joneswalker.com>, Bobby Thompson <bobby.thompson@mgclaw.com>, Laura Givens <laura.givens@mgclaw.com>, Walter Newman <wnewman95@msn.com>, Miles Forks <mforks@danielcoker.com>, tpeeples@danielcoker.com, Trey Byars <wbyars@danielcoker.com>, robertsmurphree@gmail.com, "Singer, Craig" <csinger@wc.com>, bgraham@wc.com, James Crongeyer <jcrongeyer@watkinseager.com>, mulmer@watkinseager.com, David Kaufman <DKaufman@brunini.com>, Cody Bailey <cbailey@brunini.com>, Mike Bolen <rmb@hoodbolen.com>, Kelly Simpkins <ksimpkins@wellsmar.com>, "Walter D. Willson" <wwillson@wellsmar.com>, abaker@wlj.com, ccoleman@wlj.com, Scott Jones <Scott.Jones@arlaw.com>, Adam Griffin <adam.griffin@arlaw.com>

Cc: Alysson Mills <amills@millsamond.com>, Brent Barriere <bbarriere@fishmanhaygood.com>, Lilli Evans Bass <bass@bbjlawyers.com>, "Donnelly, Jeanette" <jdonnelly@fishmanhaygood.com>

Counsel, there has been a clarifying question about the virtual data room and I am copying everyone here to be on the same page.

Mark - we are trying to make these documents available to everyone as quickly as possible. To do as you suggest would substantially prolong the production to you and to all. We previously physically marked all documents as confidential, and other defense counsel complained. The Receiver and the S.E.C.'s joint motion is pending. We trust that in the interim you will in good faith respect the Receiver's designation of investors' PII as confidential.

Kristen Amond
d: 504-556-5523
kamond@millsamond.com

On Tue, Aug 17, 2021 at 1:45 PM McDonald, Mark R. <MMcDonald@mofo.com> wrote:

As I said, we aren't agreeing to new terms. The court ordered protective order provides: "The producing party may designate documents as containing Confidential Information and therefore subject to protection under this Order by marking or placing the words "CONFIDENTIAL" (hereinafter "the marking") on the document and on all copies in a manner that will not interfere with the legibility of the document." We will treat pages we notice as having an investor's name on them as confidential, but without a "CONFIDENTIAL" designation, it's possible we will miss pages. You need to tell us what specific docs you designate as confidential.

MARK MCDONALD

Partner | Morrison & Foerster LLP

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From: Kristen Amond <kamond@millsamond.com>
Sent: Tuesday, August 17, 2021 10:55 AM
To: McDonald, Mark R. <MMcDonald@mofo.com>
Cc: Hunt, Adam J. <AdamHunt@mofo.com>; Brent Barriere <bbarriere@fishmanhaygood.com>; Todd Burwell <tburwell@gtbpa.com>; Billy Guice <bguice@rushingguice.com>; LaToya.Merritt@phelps.com
Subject: Re: [EXT] Re: Madison Timber Receivership Virtual Data Room

External Email

Yes, you are bound by your protective order, but for the avoidance of doubt the Receiver designates any victim PII as confidential. If you have any questions whether information is victim PII, please just ask first.

I will re-send the SecureDocs invitations shortly.

Kristen Amond
d: 504-556-5523
kamond@millsamond.com

On Tue, Aug 17, 2021 at 11:55 AM McDonald, Mark R. <MMcDonald@mofo.com> wrote:

To avoid any doubts, TUPSS, Inc.'s position is that the protective order entered in this case in July 6, 2020 governs this production just like, and to the same extents as, any other production. By accessing your production, TUPSS, Inc. and the other defendants are not agreeing to any additional terms.

If you disagree, let us know.

Thanks

MARK MCDONALD

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From: Hunt, Adam J. <AdamHunt@mofo.com>
Sent: Tuesday, August 17, 2021 9:49 AM
To: Kristen Amond <kamond@millsamond.com>
Cc: McDonald, Mark R. <MMcDonald@mofo.com>; Brent Barriere <bbarriere@fishmanhaygood.com>
Subject: RE: [EXT] Re: Madison Timber Receivership Virtual Data Room

Kristen—

Will you please re-send the invitation from SecureDocs with the link to access the Virtual Data Room?
The link that you previously sent has expired.

Thanks,

Adam

ADAM HUNT

Associate | Morrison & Foerster LLP

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P: +1 (212) 336-4341

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From: Kristen Amond <kamond@millsamond.com>

Sent: Monday, August 16, 2021 4:41 PM

To: Bieck, Rob <rbieck@joneswalker.com>; Cc: Breckinridge, Alexander <abreckinridge@joneswalker.com>; Slattery, Thomas <tslattery@joneswalker.com>; kpickett@joneswalker.com; Buchanan, Stacey Moore <sbuchanan@joneswalker.com>; Bobby Thompson <bobby.thompson@mgclaw.com>; Laura Givens <laura.givens@mgclaw.com>; Walter Newman <wnewman95@msn.com>; Miles Forks <mforks@danielcoker.com>; tpeoples@danielcoker.com; Trey Byars <wbyars@danielcoker.com>; tom684@bellsouth.net; robertsmurphree@gmail.com; Singer, Craig <csinger@wc.com>; bgraham@wc.com; James Crongeyer <jcrongeyer@watkinseager.com>; mulmer@watkinseager.com; David Kaufman <DKaufman@brunini.com>; Cody Bailey <cbailey@brunini.com>; Mike Bolen <rmb@hoodbolen.com>; McDonald, Mark R. <MMcDonald@mofo.com>; Hunt, Adam J. <AdamHunt@mofo.com>; LaToya Merritt (3749) <LaToya.Merritt@phelps.com>; Mallory Bland (3334) <mallory.bland@phelps.com>; Reuben Anderson <reuben.anderson@phelps.com>; Scott Wells <swells@rushingguice.com>; Billy Guice <bguice@rushingguice.com>; Todd Burwell <tburwell@gtbpa.com>; Emily Lindsay <elindsay@gtbpa.com>; William Ray <wray@watkinseager.com>; Collins Wohner <cwohner@watkinseager.com>; Matt Tyrone <mtyrone@watkinseager.com>; Paul Stephenson III <pstephenson@watkinseager.com>; Stephanie M. Rippee <srippee@watkinseager.com>; Kelly Simpkins <ksimpkins@wellsmar.com>; Walter D. Willson <wwillson@wellsmar.com>; abaker@wlj.com; ccoleman@wlj.com; Scott Jones <Scott.Jones@arlaw.com>; Adam Griffin <adam.griffin@arlaw.com>

Cc: Brent Barriere <bbarriere@fishmanhaygood.com>; Lilli Evans Bass <bass@bbjlawyers.com>; Alysson Mills <amills@millsamond.com>; Donnelly, Jeanette <jdonnelly@fishmanhaygood.com>

Subject: [EXT] Re: Madison Timber Receivership Virtual Data Room

Counsel:

Please find attached a letter from Brent Barriere about the Madison Timber Receivership virtual data room along with updated terms of access and the protective order issued in the Receiver's lawsuit against The UPS Store, Inc., et al.

Kristen Amond
d: 504-556-5523
kamond@millsamond.com

On Wed, Jul 28, 2021 at 11:09 AM Kristen Amond <kamond@millsamond.com> wrote:

Counsel,

Please see the attached letter from Trustmark's counsel. Since Trustmark has requested Alexander Seawright's records and BankPlus's internal emails, we thought it appropriate to let counsel for Alexander Seawright and BankPlus respond, and so are putting everyone on the same page.

Kristen Amond
d: 504-556-5523
kamond@millsamond.com

On Mon, Jul 26, 2021 at 11:44 AM Kristen Amond <kamond@millsamond.com> wrote:

Counsel,

The Receiver has created a virtual data room to provide to defendants all documents in her possession. An explanation of the records in the data room is attached. Any defendant's counsel who agrees to straightforward terms of access shall be permitted to access the data room.

Shortly each of you will be receiving an invitation from SecureDocs with a link to access the virtual data room. If you do not agree to the attached terms of access, we ask that you not access the virtual data room.

Please contact me if you have any questions.

Kristen

Kristen Amond

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