

**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**

**IN RE CONSOLIDATED CASES:**

**MILLS v. BAKER DONELSON, et al. 3:18-cv-866-CWR-BWR;  
MILLS v. BANK PLUS, et al. 3:19-cv-196-CWR-BWR;  
MILLS v. UPS STORE, et al. 3:19-cv-364-CWR-BWR;  
MILLS v. TRUSTMARK, et al. 3:19-cv-941-CWR-BWR**

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**OBJECTION TO SETTLEMENT BAR ORDERS**

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**COME NOW** objectors Birdie Cooperwood and other parties represented by undersigned counsel (see footnote 4) and file this Objection to the proposed settlements now before the Court for consideration 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.<sup>1</sup> But Adams did not act alone. Adams’ scheme flourished, month after month, year after

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<sup>1</sup> See <https://www.clarionledger.com/story/news/2018/10/31/what-know-largest-ponzi-scheme-mississippi-history/1831974002/>

year, for over ten years, because of the assistance from sophisticated parties—such as the proposed settling defendants — without whom the scheme would never have gotten off the ground, much less grown to over \$164 million. The Defendants now seeking to settle request a bar order prohibiting any individual from pursuing claims for their individual damages, including emotional distress damages unique to them. These defendants, as alleged by the Receiver, actively engaged in the propagation of this fraud for nearly a decade and likely received many millions of dollars for role.

2. The Objectors seek to preserve their rights and pursue their claims vigorously, particularly aiding and abetting, against settling defendants to seek emotional distress and other damages. Should some of the individuals represented by undersigned in this action inform undersigned that they no longer wish to object to a bar order being entered as part of any settlement approved by this Court, this response will be modified accordingly. This response/objection is being filed out of an abundance of caution to meet the Court’s deadline prior to the hearing. Please see footnote 4.

3. The Receiver now seeks permission to settle the Receivership Estate’s claims with the proposed settling defendants 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 asks the Objectors to settle their Emotional Distress claims against the putative settling defendants for zero compensation. Such inequitable terms are categorically unacceptable.

4. The Objectors now ask that the Court reject the proposed settlement until exceptions are made to the proposed bar order.

## BACKGROUND

5. 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,<sup>2</sup> and even included Senator Roger Wicker.<sup>3</sup>

6. 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.<sup>4</sup> *Id.* at 6.

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<sup>2</sup> *See, e.g.,* [Doc. 32] p. 3 in *Mills v. Butler Snow* ("dozens of [] sophisticated businesspersons and professionals [] were duped by Adams and became victims of his fraudulent scheme"); *see also* [Doc. 1] ¶14 in *Mills v. Butler Snow* ("Investors in Madison Timber delivered to Madison Timber large sums of money, typically in excess of \$100,000 dollars..."); *see also* [Doc. 79] pp. 1-2 in this action (noting that investor Jeanne M. Lehan Trust was advised to invest by its sophisticated fiduciary, Pinnacle Trust Co., LLC).

<sup>3</sup> <https://www.clarionledger.com/story/news/2018/05/03/madison-businessman-plea-guilty-wednesday-100-million-ponzi-scheme/577245002/>

<sup>4</sup> These are just a sample of the extreme emotional distress suffered by all the Objectors, each of whom has serious Emotional Distress Claims. Undersigned has during the course of this matter represented Sherry Russell, individually and on behalf of the Estate and Wrongful Death

7. 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].

8. 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. Ms. Cooperwood requested this Court to exercise its broad discretionary powers to lift the stay and allow her to pursue her claims for emotional distress damages against BankPlus, Stuart Patridge and Jason Cowgill (some of the proposed settling defendants before the Court seeking bar orders). [354]. The Magistrate Judge entered its Order denying Ms. Cooperwood’s Motion to Lift Stay on June 28, 2023. [364] Ms. Cooperwood filed an appeal pursuant to Uniform Local R. 72 within fourteen days of the Magistrate Judge’s Order. It is

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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”). This objection is being filed out of an abundance of caution to meet the deadline set by this Court. Should undersigned learn that parties who have been represented by him no longer wish to object to the bar order, this Objection will be modified as appropriate.

respectfully submitted that the Magistrate Judge's Order denying Ms. Cooperwood's Motion should be overturned because it contains findings of fact that are clearly erroneous and legal conclusions that are contrary to applicable law. This Court has not yet ruled on Ms. Cooperwood's appeal.

9. 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.<sup>5</sup> *See* [Doc. 156]. All (or some) Objectors also intend to make claims for negligent infliction of emotional distress, civil conspiracy, and aiding and abetting, which are protected under a three-year statute of limitations.<sup>6</sup> Objectors will be seeking damages under these theories for, *inter alia*, their extreme emotional distress.

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<sup>5</sup> Under Mississippi law, a defendant can be found liable for intentional infliction of emotional distress “[w]here there is something about the defendant's conduct which evokes outrage or revulsion, done intentionally ... even though there has been no physical injury. In such instances, it is the nature of the act itself—as opposed to the seriousness of the consequences—which gives impetus to legal redress....” *Bowden v. Young*, 120 So. 3d 971, 980 (Miss. 2013) (quoting *Sears, Roebuck & Co. v. Devers*, 405 So. 2d 898, 902 (Miss. 1981)).

Under Mississippi law, a defendant can be found liable for wrongful death where the defendant causes the death of any person by any wrongful or negligent act or omission. Miss. Code. Ann. § 11-7-13.

<sup>6</sup> Under Mississippi law, a defendant can be found liable for negligent infliction of emotional distress where the defendant's ordinary negligence causes “some sort of physical manifestation of injury or demonstrable harm, whether it be physical or mental, and that harm must have been reasonably foreseeable to the defendant.” *American Bankers' Ins. Co. of Florida v. Wells*, 819 So. 2d 1196, 1208 (Miss. 2001).

Under Mississippi law, a defendant can be found liable for civil conspiracy where plaintiff shows: (1) the existence of a conspiracy, (2) an overt act in furtherance of that conspiracy, and (3) damages arising therefrom. *See Delta Chemical & Petroleum, Inc. v. Citizens Bank of Byhalia*, 790 So. 2d 862, 877 (Miss. Ct. App. 2001).

As explained in *Dale v. Ala Acquisitions, Inc.*, 203 F. Supp. 2d 694, 700-01 (S.D. Miss. 2002) (*infra*), a cause of action for aiding and abetting presumptively exists in Mississippi. *See Jones v. KPMG LLP*, No. 17-cv-319-LG, 2018 WL 5018469, at \*2 (S.D. Miss. Oct. 16, 2018).

10. Under the terms of the proposed settlement, money will be paid to the Receivership Estate. In exchange, the settling Parties will receive a channeling injunction, or “bar order,” prohibiting their victims from pursuing lawsuits against them for their role in the Ponzi scheme.

11. The proposed settlement includes a bar order and thus settles victims’ Emotional Distress claims for \$0.00. This is unacceptable to the Objectors.

### **ARGUMENT**

#### **The Proposed Bar Order Will Settle the Objectors’ Emotional Distress Claims for \$0.00.**

12. 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).

13. 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

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The Restatement (Second) of Torts § 876(b) (1979) provides that a defendant is liable if he “knows that the other’s conduct constitutes a breach of duty and gives substantial assistance or encouragement to the other so to conduct himself.”

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.*

14. The proposed settlement provides the putative settling defendants with the benefit of extinguishing Objectors’ Emotional Distress Claims—completely absolving them 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.

15. 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).

16. The Objectors have viable aiding and abetting claims against the settling defendants. *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 settling defendants 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.

17. The proposed settlement with the Butler Snow Parties almost certainly encompasses payment toward the Receiver's claims for aiding and abetting. Yet the Receiver did not (because she could not) receive any value for emotional distress damages in her settlement. 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.

18. Objectors set forth their concern about this Court approving a bar order when Receiver proposed a bar order in her settlement with Butler Snow, stating: “[i]f 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.”

19. Given the proposed settlements before the Court, objectors had good reason to worry. 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 orders 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.

### CONCLUSION

WHEREFORE, PREMISES CONSIDERED, the Objectors request that the Court to exclude from the proposed bar order claims, such as Objectors’ Emotional Distress Claims, that were not part of the consideration to be received from the settling defendants.

Respectfully submitted, this the 30<sup>th</sup> day of October 2023.

**Birdie Cooperwood, et al. – Plaintiff  
Objectors**

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

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**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: October 30, 2023.

/s/ John F. Hawkins  
John F. Hawkins