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-BWR**

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

BANKPLUS'S RESPONSE TO OBJECTIONS TO SETTLEMENT BAR ORDERS

Defendants BankPlus and BankPlus Wealth Management, LLC ("BankPlus") file this Response to the Objections to the Settlement Bar Order [Dkts. 377, 378] and ask the Court to overrule the Objections and approve the Proposed Settlement and Bar Order as filed by the Receiver [Dkts. 372-373].

INTRODUCTION

BankPlus and its carriers do **not** agree to pay the Receivership $6.5 million dollars in settlement without a Final Bar Order. They are paying for finality. That is why the Proposed Settlement makes entry of the Proposed Bar Order an express condition of settlement. BankPlus did not and will not settle less than *all* of the claims against it arising from the Madison Timber Ponzi scheme. The Receiver understands this, and she acted in the best interest of the Receivership Estate in reaching the Proposed Settlement. The Fifth Circuit has approved similar settlements and bar orders, and this Court should do the same.

BACKGROUND

The Proposed Settlements are nothing short of miraculous. Following an unsuccessful early private mediation, BankPlus doubted that the case could be resolved. But Judge Ball's generous guidance led the parties to achieve what looked impossible. After four years of the parties' disagreement over almost every substantive and procedural issue, the Receiver finally reached a proposed settlement with BankPlus and its carriers, as well as with Trustmark National Bank, RiverHills Bank, Tammy Vinson and Jeannie Chisholm (in full and complete settlement and release of them and their former employer Rawlings & MacInnis), and Southern Bancorp Bank ("Settling Defendants").

Negotiations began in March 2023 and stretched over six months. The parties met in Jackson with Judge Ball for multiple settlement conferences, including a conference with Defendants' expert witness, Donna Ingram. *E.g.*, Minute Entry for Settlement Conference held on 6/12/2023 (entered 6/20/2023). They then spent months after the settlement conferences negotiating the terms of the Proposed Settlements and, in particular, the Proposed Bar Order. Those negotiations were difficult and extensive, and the sheer number of revisions demonstrates this: BankPlus has *seventeen* versions of the Proposed Bar Order saved in its document management system. But none of those versions includes anything less than a complete bar of *all* claims arising from the Madison Timber Ponzi scheme against the Settling Defendants.

By deftly managing the negotiations between multiple parties at one time, Judge Ball facilitated the proposed settlement with all the Settling Defendants, for a total settlement amount of $19,200,000. *See* Motion for Approval of Proposed Settlements [Dkt. 372]. The Proposed Settlements make clear that entry of the Proposed Bar Order is a condition precedent to settlement. *E.g.*, BankPlus Settlement Agreement, Exhibit 1.1 to Motion for Approval of Proposed Settlements

and Bar Orders [Dkt. 372-2] p. 5 at ¶ 2; Trustmark Settlement Agreement, Exhibit 1.2 [Dkt. 372-3] p. 5 at ¶ 2; RiverHills Settlement Agreement, Exhibit 1.3 [Dkt. 372-4]; Vinson/Chisholm Defendants Settlement Agreement, Exhibit 1.4 [Dkt. 372-5] p. 5 at ¶ 2; Bancorp Settlement Agreement, Exhibit 1.5 [Dkt. 372-6] p. 5 at ¶ 2. Each Settling Defendant has the right to terminate the settlement if the Proposed Bar Order is not approved. *E.g.*, Dkt. 372-2, pp. 15-16; Dkt. 372-3, pp. 14-16; Dkt. 372-4, pp.14-16; Dkt. 372-5, pp. 14-15; Dkt. 372-6, pp. 14-15.

In accordance with the Proposed Settlements, the Receiver filed her Motion for Approval of Proposed Settlements and gave notice to all interested parties, including the Madison Timber investors. *See* Motion for Approval of Proposed Settlements [Dkt. 372]. Attorney John Hawkins filed an objection identical to the one he filed in response to the Butler Snow Settlement.[1] *Compare* Objections to the Settlement Bar Order ("Hawkins Objections") [Dkt. 377] *with* Objections to Butler Snow Settlement [Dkt. 238].[2] The filing now before the Court does not make clear which parties he represents: he states in a footnote a list of *potential* clients.[3] *See* Hawkins Objections [Dkt. 377] at p. 3, n.4. Dr. David Kaiser, who also profitably invested in Madison Timber through his IRA, submitted an objection to the Receiver, who filed it. *See* Notice of Objection [Dkt. 378].

[1] The Court's entry of a final judgment overruling those identical objections [Dkt. 250] should preclude re-litigation of these same issues. *See Boyd v. Allegiance Specialty Hosp. of Greenville,* 2023 U.S. Dist. LEXIS 125268, at *14 (N.D. Miss. July 18, 2023) (citing *Allen v. McCurry,* 101 S. Ct. 411 (1980)).

[2] Notably, in response to the Butler Snow objection, the Receiver responded that "…certain of … [Hawkins's] clients contacted the Receiver directly to express their support of the proposed settlement." *See* Receiver's Response to Objection to Butler Snow Settlement [Dkt. 241] p. 6 n.5.

[3] These "potential" clients include at least six, potentially more when counting spouses, net winners—investors who ultimately profited from their investment in Madison Timber and yet (presumably) object to a $19.2 million settlement—which calls into question their standing to object to a settlement that will benefit the net losers. Dr. David Kaiser is not a client of Mr. Hawkins and is not included in this count. Seven of the potential objectors (counting spouses) stated to be represented by Mr. Hawkins also executed assignments irrevocably assigning any and all claims arising from Madison Timber to the Receiver, as noted in the Proposed Settlement Agreement. The assignors, of course, have no right to object to the Receiver's settlement of the assigned claims.

His objection, however, is primarily aimed at the distribution process, which is not currently before the Court.

The Hawkins Objections ask that the Court carve out certain claims from the Proposed Bar Order. *See* Hawkins Objections [Dkt. 377] p. 9 at ¶ 19. To do so will kill the entire settlement, as shown below.

ARGUMENT

The Proposed Settlements set forth in no uncertain terms that "[t]he Settlement would not have occurred, and will not be consummated, absent entry of a Bar Order that becomes Final." *See, e.g.*, Proposed Settlement Agreement with BankPlus ("BankPlus Settlement"), Exhibit 2 to Motion for Approval of Proposed Settlements [Dkt. 372-2] p. 5 at ¶ 2. The settlements are contingent and conditioned on this Court's entry of the bar orders. Because of this condition, there are two paths forward: either settle the claims with a complete bar order or litigate until there is a final judgment. There will be no settlement among the parties with a partial bar order.

The Proposed Settlement and Bar Order repeat the necessity of the complete bar order as a condition precedent for the parties to settle any claims.[4] The Proposed Settlement states, "[t]he entry of a Bar Order in [] substantially the form attached . . . is an *integral* and *essential* part of this Settlement, and an *essential condition* to any obligation for the BP Defendants and the BP Carriers to perform under this Settlement Agreement." *See* BankPlus Settlement [Dkt. 372-2] p. 5 at ¶ 2 (emphasis added); *see also* Proposed Partial Final Judgment and Final Bar Order, Exhibit A to BankPlus Settlement [Dkt. 372-2] p. 38 ("Settlement with the BP Defendants, Federal, and Continental is conditioned on the Court's entry of a bar order for their benefit."); *Id.* at p. 43

[4] *E.g.*, Proposed Partial Final Judgment and Final Bar Order, Exhibit A to BankPlus Settlement [Dkt. 372-2] p. 38.

("[T]his Final Bar Order is an essential, integral part[] of the Settlement, and is a condition to the BP Defendants' and the BP Carriers' agreement to settle, and that the BP Defendants and the BP Carriers would not have agreed to the terms of the Settlement in the absence of this Final Bar Order and assurance of 'total peace' with respect to all claims that have been, or could be, asserted by any Person arising from any aspect of the BP Defendants' relationship with MTP and other Receivership Defendants . . . . The injunction against those claims as set forth here is therefore a necessary and appropriate order ancillary to the relief obtained for victims of the MTP Ponzi Scheme pursuant to the Settlement.").

The Settlement Agreement also gives each Settling Defendant the right to withdraw completely from the Settlement Agreement if there is no "entry by the Court of the Bar Order in the SEC Action in substantially the form attached as Exhibit A." *See, e.g.*, BankPlus Settlement, p. 14, ¶ 35. Any "carve out" to allow further litigation will make the Bar Order deviate substantially from what the parties agreed, and it will give the Settling Defendants the right to walk away from the settlement.

The parties agreed to this because everyone, including the Receiver, understood that BankPlus and the other Settling Defendants would never pay $19.2 million only to remain subject to potential lawsuits from 185 Madison Timber investors. The Settling Defendants are only willing to buy total peace. The Receiver has the authority to offer that peace, and this Court has the authority to approve it.

In *Zacarias v. Stanford Int'l Bank, Ltd.*, 945 F.3d 883 (5th Cir. 2019) (en banc), the Fifth Circuit affirmed approval of a settlement conditioned on the entry of bar orders enjoining suits filed against the settling defendants in that litigation substantively similar to the Partial Final Judgment and Bar Order. The Court held that approval of such a bar order is squarely within the

authority of the Court. *Id.* at 897; *see also SEC v. Stanford Int'l Bank* 2021 U.S. Dist. LEXIS 11901, *36-37 (N.D. Tex. Jan. 21, 2021. Since *Zacarias*, the Fifth Circuit and district courts within it have repeatedly approved bar orders in Ponzi scheme settlements involving multiple parties. *See Rotstain v. Mendez*, 986 F.3d 931, 941 (5th Cir. 2021); *SEC v. Stanford Int'l Bank*, 2021 U.S. Dist. LEXIS 11901, (N.D. Tex. Jan. 21, 2021); *SEC v. Faulkner*, 2021 U.S. Dist. LEXIS 167083 (N.D. Tex. Sep. 2, 2021).

Here, allowing any further litigation arising out of the Madison Timber Ponzi scheme will not only reduce the amount available for the Receiver to collect—it will totally defeat the settlement. The Court has the well-established authority to approve the Proposed Settlement and Bar Orders, and it is in the best interest of the Receivership Estate, the Madison Timber investors who suffered losses, and the Settling Defendants, for the Court to do so.

CONCLUSION

For the reasons set forth above and those set forth in the Receiver's Motion for Settlement Approval [Dkt. 272-273], BankPlus requests the Court to overrule the Objections raised by Dr. David L. Kaiser and any parties actually represented by John Hawkins and, furthermore, approve the Proposed Settlement and Bar Order.

Respectfully submitted this 3rd day of November 2023.

/s/Robert B. Bieck, Jr.

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CERTIFICATE OF SERVICE

I hereby certify that on November 3, 2023, I caused the foregoing to be electronically filed with the Clerk of the Court using CM/ECF, which will send notification of such filing to all registered participants.

/s/ Robert B. Bieck, Jr.
Robert B. Bieck, Jr.