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. Bradley W. Rath, Magistrate Judge

MEMORANDUM IN SUPPORT OF MOTION FOR ATTORNEY'S FEES

Counsel for Alysson Mills, in her capacity as the court-appointed receiver for Arthur Lamar Adams and Madison Timber Properties, LLC, respectfully submit this memorandum in support of the foregoing motion for attorney's fees.

This motion for attorney's fees follows the settlements of claims against the UPS defendants in the separate civil action styled *Alysson Mills v. The UPS Store, Inc., et al.*, No. 3:19-cv-364 (S.D. Miss.) (hereafter the "UPS Litigation").

BACKGROUND

Madison Timber

For more than ten years, Lamar Adams, through Madison Timber, operated a Ponzi scheme that defrauded hundreds of investors.

Investors believed that Madison Timber used investors' money to purchase timber from Mississippi landowners; that Madison Timber sold the timber to Mississippi lumber mills at a higher price; and that Madison Timber repaid investors their principal plus interest with the proceeds of those sales. Investors received timber deeds that purported to secure their

investments—but the deeds were fake. There was no timber and no proceeds from sales of timber. The money used to repay existing investors came solely from new investors.

The Receiver

On June 22, 2018, the Court appointed Alysson Mills the Receiver of the estates of Adams and Madison Timber and appointed Brent Barriere, of the law firm Fishman Haygood, her primary counsel. [33]

The Receiver has a duty "to take custody, control, and possession of all Receivership Property, Receivership Records, and any assets traceable to assets owned by the Receivership Estate" and to investigate and "bring such legal actions based on law or equity in any state, federal or foreign court as the Receiver deems necessary or appropriate in discharging her duties as Receiver." [33]

Upon her appointment, the Receiver and her counsel, among other things, seized bank accounts belonging to Adams and Madison Timber; seized and sold property belonging to Adams and Madison Timber; recovered "commissions" paid by Adams and Madison Timber to "recruiters" in exchange for their assistance in recruiting new investors to the Madison Timber Ponzi scheme; recovered gifts that Adams made with proceeds from Madison Timber; and sold or otherwise resolved Adams's interests in six active LLCs.[1] The Receiver filed several lawsuits against "recruiters" and other persons and institutions who aided and abetted Adams and Madison Timber.

The Receiver documents her team's efforts, and the Receivership Estate's account balance, in reports that she provides every 90 days. These reports are filed in the Court's public record and the Receiver posts them to her website.

[1] Declaration of Brent B. Barriere, attached as Exhibit A.

Thus far, the Receiver and her counsel's efforts have resulted in distributions of $32,000,000 to Madison Timber's victims.

Aiding and abetting lawsuits

Immediately upon her appointment, the Receiver inspected Madison Timber's office and interviewed persons with knowledge of matters bearing on the Receivership Estate, including Adams. She obtained records relating to Adams and Madison Timber from professionals with whom Adams had relationships.

The Receiver and her counsel carefully reviewed the records that she obtained. Those records revealed facts that, they determined, warranted legal action. They began researching causes of action and drafting complaints.

Beginning in December 2018, the Receiver and her counsel filed four lawsuits against professionals who, they alleged, aided and abetted the Madison Timber Ponzi scheme. The four lawsuits and their respective defendants are:

Alysson Mills v. Butler Snow, et al., No. 3:18-cv-866 (S.D. Miss.) (the "Baker Donelson Litigation")	Butler Snow LLP; Butler Snow Advisory Services, LLC; and Matt Thornton ("Butler Snow") Baker, Donelson, Bearman, Caldwell & Berkowitz, PC; Alexander Seawright, LLC; Brent Alexander; and Jon Seawright ("Baker Donelson")
Alysson Mills v. BankPlus, et al., No. 3:19-cv-196 (S.D. Miss.)	BankPlus; BankPlus Wealth Management, LLC; Gee Gee Patridge, Vice President and Chief Operations Officer of BankPlus; Stewart Patridge; Jason Cowgill ("the BankPlus defendants") Martin Murphree
Alysson Mills v. The UPS Store, Inc., et al., No. 3:19-cv-364 (S.D. Miss.)	The UPS Store, Inc.; Herring Ventures, LLC d/b/a The UPS Store; Austin Elsen; Tammie Elsen; Courtney Herring; Diane Lofton;

	Chandler Westover (collectively the "UPS defendants")[2]
	Rawlings & MacInnis, PA; Tammy Vinson; and Jeannie Chisholm ("the Rawlings & MacInnis defendants)
Alysson Mills v. Trustmark, et al., No. 3:19-cv-941 (S.D. Miss.)	Trustmark National Bank, Bennie Butts, and Jud Watkins ("the Trustmark defendants")
	RiverHills Bank (with Jud Watkins, "the RiverHills defendants")
	Southern Bancorp Bank ("Southern Bancorp")

The lawsuits' complaints allege specific facts relevant to each defendant but generally include claims for civil conspiracy; aiding and abetting; recklessness, gross negligence, and at a minimum negligence; violations of Mississippi's Fraudulent Transfer Act; and negligent retention and supervision.

Butler Snow and Martin Murphree settled the Receiver's claims against them in 2021.

Following those settlements, the remaining defendants, including the UPS defendants, continued to vigorously litigate the Receiver's claims against them. That years-long litigation has been documented in the Receiver's regular reports, on her website, and in the Court's separate records for each of the four lawsuits and for the consolidated civil action styled *In re Consolidated Discovery in Cases Filed By Alysson Mills*, No. 3:22-cv-00036 (S.D. Miss.).

The BankPlus defendants, Rawlings & MacInnis defendants, Trustmark defendants, RiverHills defendants, and Southern Bancorp settled the Receiver's claims against them in 2023.

[2] The Receiver subsequently added American Casualty Company of Reading, PA ("American Casualty"). It issued multiple insurance policies providing coverage to the Notary Public Defendants.

The Receiver continued to litigate her claims against the remaining defendants in the UPS and Baker Donelson cases.

After extensive fact and expert discovery, including the depositions of approximately 50 victims, Magistrate Judge Rath held a settlement conference in the UPS case. That settlement conference resulted in a settlement, subject to the Court's approval, of all remaining claims against the UPS defendants. The details of the settlement with UPS, American Casualty, and the Notary Public Defendants are more fully set forth in the Motion to Approve Proposed Settlements and Bar Orders [433] which the Court heard on October 26, 2026. As proposed and approved, in exchange for the release of claims against them, The UPS Store, Inc. shall pay to the Receivership Estate the sum of $5,000,000; Herring Ventures, LLC d/b/a The UPS Store; Austin Elsen; Tammie Elsen; Courtney Herring; Diane Lofton; and Chandler Westover (collectively, "the notary defendants") shall provide to the Receivership Estate consideration worth up to $1,500,000, consisting of (i) a cash payment of $150,000, (ii) a release of $100,000 previously paid by American Casualty Company to Alexander Seawright LLC, (iii) a cash payment of $50,000 by American Casualty Company to the Receivership Estate of $50,000 and (iv) a promissory note in the amount of $1,200,000.[3]

Contingency fee arrangement

The Court's order of appointment contemplates that "litigation against third parties might be commenced on a contingent fee basis to recover assets for the benefit of the receivership." [33] Such arrangements are common and permit a receiver to pursue litigation without depleting a receivership estate's resources.

[3] The promissory note may be prepaid at a discount. Receiver's counsel is seeking a contingency fee of one-third only of the amount actually paid by the notary defendants.

The Court summarized the terms of the contingency fee arrangement with Fishman Haygood, the law firm of Brent B. Barriere, the Receiver's primary counsel, in a separate order filed in the Court's record:

> The contingency fee arrangement will proceed as follows: Fishman Haygood, LLP will advance all costs and expenses on behalf of the Receivership Estate. In the event of recovery, the Receiver and her counsel will be compensated with 33% of the gross recovery and the Receivership Estate will reimburse costs and expenses out of its proceeds. In the event there is no recovery, the Receiver will bear the entire risk and the Receivership Estate will not be responsible for any costs, expenses, or legal fees.
>
> In accordance with the Court's previous Order, any fees paid by the Receivership Estate as part of a contingency fee arrangement remain subject to the Court's review and approval at the close of the Receivership. Docket No. 33 at 14.

[154] Applied here, the contingency fee for the settlement with The UPS Store, Inc. is $1,666,666; the contingency fee for the settlement with the notary defendants is $500,000, but that fee may be adjusted should the notary defendants prepay the $1,200,000 promissory note they will deliver to the Receiver;[4].[5]

While the contingency fee arrangement is with Fishman Haygood, Fishman Haygood will allocate any attorney's fee award amongst counsel in a manner which is consistent with their respective contributions to the institution, prosecution, and settlement in question and with any agreement between them. *E.g.*, *Parmelee v. Santander Consumer USA Holdings Inc.*, No. 3:16-cv-00783, 2019 WL 2352837, at *1 (N.D. Tex. June 3, 2019) ("Lead Counsel shall allocate the attorneys' fees awarded amongst Plaintiffs' Counsel in a manner which it, in good faith, believes

[4] Again, the promissory note may be prepaid at a discount. Receiver's counsel is seeking a contingency fee of one-third only of the amount actually paid by the notary defendants. The $1,500,000 total consideration from the notary defendants includes the amounts paid by American Casualty.

[5] Fishman Haygood has also incurred substantial costs and expenses which are the subject of a separate application filed by the firm.

reflects the contributions of such counsel to the institution, prosecution, and settlement of the Action.").

LAW

"[A] lawyer who recovers a common fund for the benefit of persons other than himself or his client is entitled to a reasonable attorney's fee from the fund as a whole." *Boeing v. Van Gemert*, 444 U.S. 472, 478 (1980). A district court has discretion in determining a reasonable attorney's fee.[6] *E.g.*, *Union Asset Mgmt. Holding A.G. v. Dell Inc*., 669 F.3d 632, 642 (5th Cir. 2012).

Percentage-of-recovery

It is typical for a district court to award a percentage of the recovery in common fund cases. *Dell*, 669 F.3d at 644. Indeed, a percentage of the recovery is the preferred method for awarding attorney's fees in common fund cases. *Id.* at 643 ("[F]or some it is the 'preferred method'" quoting *e.g.*, *Batchelder v. Kerr–McGee Corp*., 246 F. Supp. 2d 525, 531 (N.D. Miss. 2003)). *See also Sec. & Exch. Comm'n v. Stanford Int'l Bank, Ltd.*, No. 3:09-cv-00298, 2018 WL 1558266, at *2 (N.D. Tex. Mar. 26, 2018) ("[B]oth the Fifth Circuit and district courts in the Northern District have recognized that the percentage method is the preferred method of many courts"); *Schwartz v. TXU Corp.*, No. 3:02-cv-2243, 2005 WL 3148350, at *26 (N.D. Tex. Nov. 8, 2005) (collecting cases) ([T]here is a "strong consensus in favor of awarding attorneys' fees in common fund cases as a percentage of the recovery").

In contrast to the lodestar method, which relies primarily on the number of hours spent on a case, the percentage method "reduces incentives to protract litigation." *Fairway Med. Ctr., L.L.C. v. McGowan Enterprises, Inc*., No. 16-cv-3782, 2018 WL 1479222, at *1 (E.D. La. Mar. 27, 2018) ("[D]istrict courts in [the Fifth] Circuit regularly use the percentage method," which "allows for

[6] A hearing is not required. *E.g.*, *In re: High Sulfur Content Gasoline Prod. Liab. Litig.*, 384 F. App'x 299, 301 (5th Cir. 2010) ("A district court is not required to hold a hearing on a motion for attorneys' fees in a class action.").

easy computation[,] . . . aligns the interests of class counsel with those of the class members" and "reduces incentives to protract litigation." (quoting *Dell*, 669 F.3d 632)); *Torregano v. Sader Power, LLC*, No. 14-cv-293, 2019 WL 969822, at *2 (E.D. La. Feb. 28, 2019) ("The percentage method provides more predictability to attorneys and class members or plaintiffs, encourages settlement, and avoids protracted litigation for the sake of racking up hours, thereby reducing the time consumed by the court and the attorneys."). *See also In re Xarelto (Rivaroxaban) Prod. Liab. Litig.*, No. cv-mdl-2592, 2020 WL 1433923, at *3–5 (E.D. La. Mar. 24, 2020) ("Many courts and commentators have noted problems with the lodestar method including potential for manipulation, disincentive for an early settlement, reward for excessive and wasteful attorney effort, and confusion and lack of predictability in setting fees."); *Schwartz*, 2005 WL 3148350, at *25 (In common fund cases the percentage method is "vastly superior to the lodestar method for a variety of reasons") and *29 ("One of the criticisms of the use of attorney time as a key factor in determining an attorney's fee award, which has led to the substantial abandonment of the lodestar method in common fund cases, is that it encourages delay, inefficiency and recalcitrance towards early settlement.").

"No general rule exists as for what is a reasonable percentage of a common fund." *Torregano*, 2019 WL 969822, at *2–3. "Fifty percent 'is the upper limit on a reasonable fee award to assure that fees do not consume a disproportionate part of the recovery obtained for the class, though somewhat larger percentages are not unprecedented.'" *Id.* (citations omitted). "However, awards commonly fall between a lower end of 20% and an upper end of 50%." *Hill v. Hill Bros. Constr. Co., Inc.*, No. 3:14-cv-213-SA-RP, 2018 WL 280537, at *2 (N.D. Miss. Jan. 3, 2018); *Heffernan Bryant v. United Furniture Indus., Inc.*, No. 1:13-cv-246-SA-DAS, 2017 WL 639320, at *4 (N.D. Miss. Feb. 16, 2017) (same). "The percentage should be informed by the facts and

circumstances of the particular case." *In re Xarelto*, 2020 WL 1433923, at *4. "For example, in settlements between $190 million and $900 million, common benefit fees between 10 percent and 12 percent have been allowed." *Id.* (citations omitted). "Whereas for settlements between $1 million and $2 million, common benefit fees between 32 percent and 37 percent have been awarded." *Id.* (citations omitted).

33%, or one-third, is typical

"If the request is relatively close to the average awards in cases with similar characteristics, the court may feel a degree of confidence in approving the award." *Klein v. O'Neal, Inc.*, 705 F. Supp. 2d 632, 675 (N.D. Tex. 2010) (quoting Theodore Eisenberg & Geoffrey P. Miller, *Attorneys Fees in Class Action Settlements: An Empirical Study*, 1 Journal of Empirical Legal Studies 1, 37–38 (2004)).

In the Fifth Circuit, 33%, or one-third, is a typical percentage-of-recovery award in a common fund case. Indeed, a 33% contingency is at the lower end of percentage recoveries awarded in this Circuit. *See, e.g., Ellis v. Baptist Mem'l Health Care Corp.*, No. 3:18-cv-73-SA-JMV, 2021 WL 1206408, at *3–4 (N.D. Miss. Mar. 30, 2021) (35%); *Parmelee v. Santander Consumer USA Holdings Inc.*, No. 3:16-cv-00783, 2019 WL 2352837, at *1 (N.D. Tex. June 3, 2019) (33 1/3%); *Al's Pals Pet Care v. Woodforest Nat'l Bank, NA*, No. 4:17-cv-3852, 2019 WL 387409, at *4 (S.D. Tex. Jan. 30, 2019) (collecting cases) ("The fee represents one-third of the $15 million settlement fund, which is an oft-awarded percentage in common fund class action settlements in this Circuit."); *Erica P. John Fund, Inc. v. Halliburton Co.*, No. 3:02-cv-1152, 2018 WL 1942227, at *9–10 (N.D. Tex. Apr. 25, 2018) (33⅓%) ("The 33⅓% requested by Class Counsel is within the range of typical awards, and is not the highest fee awarded in securities class action cases."); *Fairway Med. Ctr., LLC v. McGowan Enterprises, Inc.*, 2018 WL 1479222, *2–3

(E.D. La. Mar. 27, 2018) (one-third); *Hill v. Hill Bros. Constr. Co., Inc.*, No. 3:14-cv-213-SA-RP, 2018 WL 280537, at *2 (N.D. Miss. Jan. 3, 2018) (33%); *Legros v. Mud Control Equip., Co.*, No. 15-cv-1082, 2017 WL 925730, at *3 (W.D. La. Mar. 6, 2017) (40%); *Heffernan Bryant v. United Furniture Indus., Inc.*, No. 1:13-cv-246-SA-DAS, 2017 WL 639320, at *4 (N.D. Miss. Feb. 16, 2017) (40%); *Kemp v. Unum Life Ins. Co. of Am.*, No. 14-cv-0944, 2015 WL 8526689, at *9 (E.D. La. Dec. 11, 2015) (one-third); *Wolfe v. Anchor Drilling Fluids USA Inc.*, No. 4:15-cv-1344, 2015 WL 12778393, *3 (S.D. Tex. Dec. 7, 2015) (40%); *Frost v. Oil States Energy Servs.*, No. 4:15-cv-1100, 2015 WL 12780763, *2 (S.D. Tex. Nov. 19, 2015) (one-third); *In re Pool Prods. Distribution Mkt. Antitrust Litig.*, MDL No. 2328, 2015 WL 4528880, *23 (E.D. La. July 27, 2015) (one-third); *Campton v. Ignite Restaurant Group, Inc.*, No. 4:12-cv-2196, 2015 WL 12766537, *3 (S.D. Tex. June 5, 2015) (one-third); *Jenkins v. Trustmark Nat'l Bank*, 300 F.R.D. 291, 307 (S.D. Miss. 2014) (one-third); *In re Vioxx Prod. Liab. Litig.*, No. 11-1546, 2013 WL 5295707, at *4 (E.D. La. Sept. 18, 2013) (33%); *Burford v. Cargill, Inc.*, 2012 WL 5471985, *5 (W.D. La. Nov. 8, 2012) (one-third) ("[A] review of analogous precedent indicates that an award of one-third of the common fund is reasonable and typical"); *Collins v. Sanderson Farms, Inc.*, 568 F. Supp. 2d 714, 729 (E.D. La. 2008) ("It is not unusual for district courts in the Fifth Circuit to award percentages of approximately one third."); *In re Bayou Sorrel Class Action*, No. 6:04-cv-1101, 2006 WL 3230771 (W.D. La. Oct. 31, 2006) (36%); *In re Combustion, Inc.*, 968 F. Supp. 1116, 1139–40 (W.D. La. 1997) (36%); *In re Olicom Sec. Litig.*, No. 3:94-cv-0511-D (N.D. Tex. Aug. 30, 1996) (33⅓%); *In re Shell Oil Refinery*, 155 F.R.D. 552, 575 (E.D. La. 1993) (one-third); *Kleinman v. Harris*, No. 3:89-cv-1869 (N.D. Tex. 1993) (one-third); *Belman, et al. v. Warrington, et al.*, No. H-91-3767 (S.D. Tex. Nov. 16, 1993) (33%); *Sims v. Shearson Lehman Bros., Inc.*, Fed. Sec. L. Rep. (CCH) ¶ 98, 134, at 98,976 (N.D. Tex. Nov. 29, 1993) (33⅓%).

This Court has previously twice approved contingency fees for Receiver's counsel calculated at 33% of the amount of the total recovery. [292 and 408]

JOHNSON FACTORS

A district court may elect to cross-check any percentage-of-recovery award with the *Johnson* factors that it would otherwise use in an ordinary case. *Dell*, 669 F.3d at 644 ("[W]e endorse the district courts' continued use of the percentage method cross-checked with the *Johnson* factors") (referring to *Johnson v. Georgia Highway Express, Inc.*, 488 F.2d 714, 717 (5th Cir. 1974)). Those factors include (1) the time and labor required; (2) the novelty and difficulty of the questions; (3) the skill required to perform the legal service properly; (4) the preclusion of other employment by the attorneys due to acceptance of the case; (5) the customary fee; (6) whether the fee is fixed or contingent; (7) time limitations imposed by the client or circumstances; (8) the amount involved and the results obtained; (9) the experience, reputation, and ability of the attorneys; (10) the "undesirability" of the case; (11) the nature and length of the professional relationship with the client; and (12) awards in similar cases.

A district court need not "recite or even mention the *Johnson* factors, so long as 'the record clearly indicates that the district court has utilized the *Johnson* framework as the basis for its analysis.'" *Moench v. Marquette Transportation Co. Gulf-Inland, L.L.C.*, 838 F.3d 586, 596 (5th Cir. 2016) (quoting *Dell*, 669 F.3d at 642).

The Receiver's counsel address each *Johnson* factor in the declaration of primary counsel Brent B. Barriere, separately submitted,[7] and also summarize them here:

[7] Barriere Declaration at ¶¶ 23-72.

***JOHNSON* FACTOR 1:**

The time and labor required

The Receiver's counsel devoted considerable time and resources to the investigation, research, prosecution, and ultimately settlement of claims against of the settling defendants. Upon request, counsel can provide detailed time records for *in camera* review. A chronological summary of counsel's work over the past five years is as follows:

2018: Reviewed records and researched causes of action

Upon her appointment in 2018, the Receiver and her counsel obtained records from various sources relating to Madison Timber. They received tens of thousands of pages of materials.

Their review of those materials led them to believe that the Receivership Estate had legal claims against numerous professionals and professional institutions that provided services to Lamar Adams and Madison Timber. For months they researched causes of action under state and federal law and possible defenses for each possible defendant. They closely monitored lawsuits filed by other receivers, including the Stanford receiver, for developments in the law.

Their review and research led them to file four aiding-and-abetting lawsuits against dozens of defendants including, relevant here, the settling defendants.

2019: Filed complaints

The complaint against The UPS Store, Inc. and the notary defendants, filed May 23, 2019 and amended June 13, 2019, alleges the defendants are the notaries and their employers on whom Lamar Adams principally relied to notarize fake timber.

2019-2024: Fought motions to dismiss and other dispositive motions

The UPS Store, Inc. moved to dismiss the complaint not once but twice, and on both occasions the Court denied its motions. It moved to certify the Court's order for interlocutory appeal, and the Court denied that motion, too, on November 10, 2021.[8]

On December 21, 2023, the Receiver amended her complaint to name the notary defendants' insurer, American Casualty Company, a defendant, after its repeated denials of coverage. American Casualty Company filed a motion to dismiss, contending that it had already exhausted available insurance coverage. The Court denied that motion on September 26, 2024.[9]

On April 1, 2024, The UPS Store, Inc. filed a motion for summary judgment that argued it is not vicariously liable for the notary defendants. On May 20, 2024, it filed yet another motion for summary judgment that argued the Receiver does not have standing to sue. The Court denied both motions on October 2, 2024.[10]

These motions all generally argued an individual defendant was not liable to the Receivership Estate, either because the alleged facts did not support that individual defendant's liability or because a legal doctrine barred that individual defendant's liability. Such issues pertained to the Receivership Estate's standing to sue, the application of the doctrine of *in pari delicto*, and the elements of an aiding-and-abetting claim under Mississippi state law. Although the issues sometimes overlapped, each motion required a tailored response. For each, the

[8] Doc. 310, *Alysson Mills v. The UPS Store, Inc., et al.*, No. 3:19-cv-364 (S.D. Miss.).

[9] Doc. 434, *Alysson Mills v. The UPS Store, Inc., et al.*, No. 3:19-cv-364 (S.D. Miss.).

[10] Doc. 436, *Alysson Mills v. The UPS Store, Inc., et al.*, No. 3:19-cv-364 (S.D. Miss.).

Receiver's counsel researched the law and prepared and filed a brief explaining why an individual defendant's arguments failed.[11]

2021: Defended victims' privacy

A separate recurring issue was the extent of discovery each defendant could obtain from victims of Madison Timber and, relatedly, whether defendants could publish victims' names.

The Receiver's counsel spent many months defending victims' privacy in filings and in status conferences. In June 2021, the Receiver's counsel along with counsel from the S.E.C. filed a motion for protective order that asked the Court to order the defendants to maintain confidentiality of victims' names and other personal identifying information. [290] UPS fought that motion, but the Court granted it.

At around the same time, Judge Ball, aware that individual cases shared other common issues, invited the parties to address whether the cases should be consolidated for discovery purposes. For several months, between August and December 2021, the parties met separately and with the Court to discuss the parameters of consolidated discovery.

Alongside those discussions, the Receiver's counsel spent months establishing a single and secure virtual data room for the benefit of all parties. That virtual data room contained any and all materials the Receiver or her counsel ever obtained from any party, pre-lawsuit or in the course of discovery.

2022-2023: Consolidated discovery

In January 2022, the Court opened a new civil action, styled *In re Consolidated Discovery*, for the purpose of consolidating discovery in each of the individual cases.

[11] Docs. 54, 99, 115, *Alysson Mills v. BankPlus, et al.*, No. 3:19-cv-00196 (S.D. Miss.); Doc. 43, *Alysson Mills v. The UPS Store, Inc., et al.*, No. 3:19-cv-00364 (S.D. Miss.); Docs. 48, 49, 77, *Alysson Mills v. Trustmark, et al.*, No. 3:19-cv-00941 (S.D. Miss.).

Judge Ball's case management order authorized each party to serve 50 interrogatories, 50 requests for production, and 50 requests for admission,[12] meaning **each** individual defendant was permitted serve up to 150 discovery requests on the Receiver.

Over the next several months, the Receiver's counsel would respond to hundreds of interrogatories, requests for production, and requests for admission issued by all of the defendants, including the UPS defendants.

The Receiver's counsel also issued interrogatories, requests for production, and requests for admission to all defendants.

Each individual set of discovery requests, whether to or from a defendant, required tens of hours of the Receiver's counsel's time. The Receiver's counsel were required to review the Receiver's own materials to draft responses to requests of her. They were required to review materials produced by the defendants to confirm the adequacy of the defendants' responses to requests of them. They also were required to review materials produced by anyone, including subpoenaed third parties, for usefulness to the Receivership Estate's cases, including the UPS case. The materials exchanged were voluminous, and often special precautions had to be taken to maintain court-ordered confidentiality.

Inevitably, the parties' respective responses did not resolve the disputes between them, and they each requested of Magistrate Judge Ball status conferences to present their complaints to him for his informal advice. The Receiver's counsel prepared for and attended numerous such status conferences. But because those status conferences did not resolve the Receiver's concerns, she

[12] Doc. 7 at 2, *In re Consolidated Discovery in Cases Filed By Alysson Mills*, No. 3:22-cv-00036 (S.D. Miss).

had to formally move to compel on June 30, 2022.[13] Judge Ball decided that motion in March 2023.[14]

Throughout this time, the Receiver's counsel fought subpoenas and other efforts to obtain broad, invasive discovery into Madison Timber's victims' personal lives and finances.

In February 2022 the UPS defendants joined other defendants in issuing a notice of their intent to serve subpoenas on all 184 investors in Madison Timber, plus the additional 34 investors who invested through the Alexander Seawright Timber Fund, to whom Madison Timber owes money.[15] As just one example of the subpoenas' reach, they demanded all "invoices you received from any attorney from whom you sought advice" and all "documents that relate to any communications you had with any banker, accountant, financial advisor, intermediary, or other professional."

The Receiver's counsel spent many days reviewing the dockets of other receiver's aiding-and-abetting cases to confirm that no defendant had ever obtained discovery such as that sought by the subpoenas. The Receiver's counsel strenuously objected to the subpoenas specifically and to broad, invasive discovery from victims generally in numerous filings over the next year.[16]

The foregoing is not complete list of all tasks undertaken by the Receiver's counsel in the course of consolidated discovery. In addition to the foregoing, among other things, the Receiver's counsel attended numerous hearings both telephonically and in-person to discuss the conduct of consolidated discovery; monitored the consolidated defendants' issuance of subpoenas to third

[13] Doc. 342, *In re Consolidated Discovery in Cases Filed By Alysson Mills*, No. 3:22-cv-00036 (S.D. Miss).

[14] Doc. 584, *In re Consolidated Discovery in Cases Filed By Alysson Mills*, No. 3:22-cv-00036 (S.D. Miss).

[15] Doc. 79, *In re Consolidated Discovery in Cases Filed By Alysson Mills*, No. 3:22-cv-00036 (S.D. Miss).

[16] Docs. 83, 355, 643, *In re Consolidated Discovery in Cases Filed By Alysson Mills*, No. 3:22-cv-00036 (S.D. Miss). See in particular Doc. 643, wherein the Receiver's counsel explains that they had briefed the issue no less than 15 times.

parties and participated in that litigation as necessary to protect the Receivership Estate's interests; investigated each defendant's available insurance and reviewed insurance policies for coverage and limits; undertook a forensic examination of Lamar Adams's computer; responded to numerous and miscellaneous motions; and broadly researched pattern jury instructions for the Receivership Estate's claims and for joint and several liability and comparative fault for purposes of right-sizing the scope of discovery.

2024-2025: Deconsolidation and additional discovery

Following settlements with other defendants, the Receiver's individual cases were deconsolidated and assigned to Magistrate Judge Rath, who oversaw remaining discovery, which included depositions.

Ultimately, the UPS defendants were permitted to conduct depositions of approximately 50 victims across numerous states, at considerable cost in time and money. Other depositions in the UPS included: a multi-day deposition of Lamar Adams; depositions of each of the individual notary defendants; depositions of persons who performed inspections and evaluations for The UPS Store, Inc.; a deposition of The UPS Store, Inc.'s corporate representative; a deposition of Herring Ventures' corporate representative; depositions of employees and corporate representatives of American Casualty Company; and a multi-day deposition of the Receiver.

In addition, the Receiver and the UPS defendants all retained expert witnesses to address damages and liability issues. Each of these experts was deposed at length.

October 2025: Settlement conference

In late October 2025, Magistrate Judge Rath presided over a two-day settlement conference that resulted in a settlement, subject to the Court's approval, of all remaining claims against the UPS defendants. The details of the settlement are more fully set forth in the Motion to Approve

Proposed Settlements and Bar Orders [433] which the Court heard on October 26, 2026. As proposed and approved, in exchange for the release of claims against them, The UPS Store, Inc. shall pay to the Receivership Estate the sum of $5,000,000; Herring Ventures, LLC d/b/a The UPS Store; Austin Elsen; Tammie Elsen; Courtney Herring; Diane Lofton; and Chandler Westover (collectively, "the notary defendants") shall provide to the Receivership Estate consideration worth up to $1,500,000, consisting of (i) a cash payment of $150,000, (ii) a release of $100,000 previously paid by American Casualty Company to Alexander Seawright LLC, (iii) a cash payment of $50,000 by American Casualty Company to the Receivership Estate of $50,000, and (iv) a promissory note in the amount of $1,200,000.[17].

***JOHNSON* FACTOR 1:**

Time Investment

The considerable time and resources the Receiver's counsel devoted to the prosecution of claims against each of the settling defendants support the requested attorney's fee award. *See, e.g.*, *Jenkins*, 300 F.R.D. at 307 ("Prosecuting and settling these claims demanded considerable time and labor. Class Counsel spent a substantial amount of time investigating the claims of many potential plaintiffs against Trustmark."); *id.* at 308 ("Class Counsel also devoted extensive time and effort to researching and preparing various motions and responses, including a motion for class certification and opposition to Trustmark's motions to dismiss and for summary judgment."); and *id.* at 308 ("The multiple settlement conferences which ultimately led to the Agreement required substantial preparation and follow-up work. Moreover, after the Agreement was reached, several weeks of detailed discussions followed concerning the specific terms of the Settlement.").

[17] The promissory note may be prepaid at a discount. Receiver's counsel is seeking a contingency fee of one-third only of the amount actually paid by the notary defendants.

If the Receiver's counsel's recorded hours are less than recorded hours in other cases, that fact should not diminish the attorney's fee award. "To the contrary, such efficiency and effectiveness should be rewarded and the percentage method accomplishes this result." *Schwartz*, 2005 WL 3148350 at *29 ("[T]he fact that the time involved is less than if the cases had unnecessarily dragged on for years should not diminish the percentage to be awarded. To the contrary, such efficiency and effectiveness should be rewarded and the percentage method accomplishes this result.") (citing *In re Harrah's Entm't*, 1998 U.S. Dist. LEXIS 18774, at *15 (E.D. La. Nov. 25, 1998) ("Because counsel prosecuted this action on a contingent fee basis, the Court would rather focus on results obtained. To unduly emphasize the amount of hours spent on a contingency fee case would penalize counsel for obtaining an early settlement and would distort the value of the attorneys' services.")).

***JOHNSON* FACTOR 2:**

The novelty and difficulty of the questions

The Receiver's claims against the settling defendants were straightforward, but only because the Receiver and her counsel worked hard to make it so. The underlying facts were, in many ways, unprecedented, as evidenced in part by the public attention the cases received.[18] The Receiver's counsel carefully researched the law, in particular Mississippi law, both statutes and court opinions, in order to assert causes of action that would withstand scrutiny.[19] Highly skilled and aggressive counsel represented each settling defendant.[20] Their motions to dismiss and for summary judgment raised questions of federal and state law, which the Receiver's counsel

[18] Barriere Declaration at ¶ 58.

[19] *Id.*

[20] *Id.* at ¶¶ 58-59.

thoroughly briefed in this Court, in some cases numerous times. Given all the forgoing, the cases were both novel and difficult.

***JOHNSON* FACTOR 3:**

The skill required to perform the legal service properly

Counsel for both the Receiver and the settling defendants are highly skilled litigators from prominent firms with decades of experience prosecuting and defending high-stakes commercial cases. *Schwartz*, 2005 WL 3148350 at *30 ("In addition, defendants were represented by highly experienced lawyers from prominent and well-respected law firms: Hunton & Williams, Orrick, Herrington & Sutcliffe LLP, and Weil, Gotshal & Manges LLP. The standing of opposing counsel should be weighed in determining the fee, because such standing reflects the challenge faced by plaintiffs' attorneys. The ability of plaintiffs' counsel to obtain such a favorable settlement for the Class in the face of such formidable legal opposition confirms the superior quality of their representation." (citing *In re King Res. Co. Sec. Litig.*, 420 F. Supp. 610, 634 (D. Colo. 1976)).

Brent B. Barriere, the Receiver's primary counsel, has relevant and useful experience representing receivers and bankruptcy trustees.[21] The quality of the settling defendants' counsel's work made the work of Mr. Barriere and all the Receiver's counsel all the more daunting. *E.g.*, *Jenkins*, 300 F.R.D. at 308 ("The attorneys on both sides of this case displayed a high level of skill."); *Billitteri v. Secs. Am., Inc.*, 2011 WL 3585983, *7 (N.D.Tex. Aug. 4, 2011) ("[B]ecause of the extremely effective work of opposing counsel . . . The skill required here . . . certainly justifies the contemplated award")). They "performed diligently and skillfully, achieving a speedy and fair settlement, distinguished by the use of informal discovery and cooperative investigation to provide the information necessary to analyze the case and reach a resolution." *Schwartz*, 2005

[21] *Id.* at ¶ 60.

WL 3148350 at *30 ("As noted by the Court in *Di Giacomo*, this factor is evidenced where '[C]ounsel performed diligently and skillfully, achieving a speedy and fair settlement, distinguished by the use of informal discovery and cooperative investigation to provide the information necessary to analyze the case and reach a resolution.'" (citing *Di Giacomo v. Plains All Am. Pipeline*, 2001 U.S. Dist. LEXIS 25532, at *36 (S.D. Tex. Sep. 18, 2001)).

***JOHNSON* FACTOR 4:**

The preclusion of other employment by the attorneys due to acceptance of the case

The Receiver and her counsel are all lawyers in private practice, each having responsibilities to other clients and matters. The time that they devoted to the settling defendants' cases is time they could not devote to other clients and matters. They prioritized the cases (indeed, all of the Receivership Estate's cases) at the expense of other employment.[22]

***JOHNSON* FACTOR 5:**

The customary fee

As shown above, 33%, or one-third, is a typical percentage-of-recovery award in a common fund case in the Fifth Circuit. Indeed, contingency fees in ordinary cases often exceed 33%, *see, e.g.*, *Sec. & Exch. Comm'n v. Stanford Int'l Bank, Ltd.*, No. 3:09-cv-0298, 2019 WL 289370, at *3 (N.D. Tex. Jan. 18, 2019) ("[T]ypical market rate contingency fee percentage [is] 33% to 40%"); *Legros*, 2017 WL 925730 at *3 ("[C]ontingency fee arrangements in this legal community are generally in excess of 33%"); *Schwartz*, 2005 WL 3148350 at *31 ("In local, regional and national markets, complex commercial cases require a contingent fee between 30 and 40 percent of the gross recovery."), and many lawyers would demand more to handle high-profile cases such as these against well-funded defendants with numerous defenses.

[22] *Id.* at ¶ 61.

***JOHNSON* FACTOR 6:**

Whether the fee is fixed or contingent

The Receiver asked her counsel to represent the Receivership Estate in these cases on a contingency fee, or success-based, arrangement in the interest of conserving the Receivership Estate's funds. Vigorous litigation against well-resourced defendants is costly, and success is never guaranteed. Billing the Receivership Estate for the time spent on these cases risked depleting the Receivership Estate's funds. *See, e.g.*, *Jenkins*, 300 F.R.D. at 309 ("In '[r]ecognizing the contingent risk of nonpayment in [class action] cases, courts have found that class counsel ought to be compensated . . . for risk of loss or nonpayment assumed by carrying through with the case.'" (quoting *Turner v. Murphy Oil USA, Inc.*, 472 F. Supp. 2d 830, 859–60 (E.D. La. 2007) (citing *In re Combustion, Inc.*, 968 F. Supp. 1116, 1132 (W.D. La. 1997))); *Schwartz*, 2005 WL 3148350 at *31 ("Courts have consistently recognized that the risk of receiving little or no recovery is a major factor in considering an award of attorneys' fees."). The Court's order, which tentatively blessed the contingency fee arrangement subject to its later review, was intended to incentivize the Receiver's counsel to achieve the maximum result possible for the Receivership Estate.

***JOHNSON* FACTOR 7:**

Time limitations imposed by the client or circumstances

These circumstances are unique. The Receiver's job is to maximize the Receivership Estate for the purpose of making an equitable distribution to Madison Timber's victims, the 184 investors who hold Madison Timber promissory notes plus the 34 investors who invested in Madison Timber through the Alexander Seawright Timber Fund.

Many of Madison Timber's victims are elderly persons who entrusted substantially all of their savings to Madison Timber and relied on monthly checks from Madison Timber to pay for basic living expenses. For these persons, and others, distributions are urgent.

The Receiver and her counsel investigated the underlying facts immediately upon her appointment, promptly filed a complaint against the settling defendants, and timely responded to all deadlines in each case notwithstanding the demands of other clients and matters. In all the Receivership Estate's cases, the Receiver and her counsel have taken pains to avoid unnecessary delays and encourage the prompt resolution of dispositive legal issues.[23]

***JOHNSON* FACTOR 8:**

The amount involved and the results obtained

The settlements in question total up to $6,500,000, a meaningful sum that permits a meaningful distribution to Madison Timber's victims. The settlements also avoid drawn-out litigation with the settling defendants and the risk of adverse rulings. *Jenkins*, 300 F.R.D. at 310 ("The Court finds that this Settlement is meaningful. The common fund created by this Settlement is $4,000,000. Rather than facing more years of costly and uncertain litigation, the overwhelming majority of Settlement Class Members will receive an immediate cash benefit.").

***JOHNSON* FACTOR 9:**

The experience, reputation, and ability of the attorneys

Counsel for the Receiver and the settling defendants are highly skilled litigators from prominent firms with decades of experience prosecuting and defending high-stakes commercial cases. Brent B. Barriere, the Receiver's primary counsel, has relevant and useful experience representing receivers and bankruptcy trustees. Those particular skills, along with the skills of his co-counsel—which included, among other skills, sophisticated research and writing—allowed them to achieve a favorable result.[24] *Schwartz*, 2005 WL 3148350 at *33 ("Lead Plaintiffs'

[23] *Id.* at ¶ 66.

[24] *Id.* at ¶ 68.

counsel's efforts in efficiently bringing this litigation to a successful conclusion are the best indicator of the experience and ability of the attorneys involved. That Lead Plaintiffs' counsel have managed the litigation in a disciplined and pragmatic fashion confirms that this litigation was ably prosecuted for the benefit of the Class.").

***JOHNSON* FACTOR 10:**

The "undesirability" of the case

The Receiver and her counsel were proud to represent the Receivership Estate in these cases, but they are not cases that every lawyer could or would want to take.

The Receiver and her counsel have worked hard to make these cases straightforward. The underlying facts were, in many ways, unprecedented. UPS repetitively asserted that as a franchisor it had no liability for the acts and omissions of its franchisee and its franchisee's employees. All settling defendants had substantial resources to vigorously defend themselves and were represented by highly skilled and aggressive counsel. Madison Timber has many victims, and for many a distribution was an urgent need. The circumstances required careful investigation but prompt action, and the Receiver's counsel's commitment to the case precluded other employment. At the time that they committed to the case, its outcome was, of course, uncertain, yet they agreed to bear the entire risk of loss.[25] *See, e.g.*, *Jenkins*, 300 F.R.D. at 307 ("Class Counsel undertook a risky case against a well-funded foe on multiple fronts"); *id.* at 309 ("[T]he point at which plaintiffs settle with defendants . . . is simply not relevant to determining the risks incurred by their counsel in agreeing to represent them.") (quoting *Skelton v. Gen. Motors Corp.*, 860 F.2d 250, 258 (7th Cir.1988), *cert. denied*, 493 U.S. 810 (1989)); *Schwartz*, 2005 WL 3148350 at *33 ("Class Action cases that carry with them elevated risks, such as the present litigation and that also require lengthy

[25] *Id.* at ¶ 70.

investigation through informal discovery, not to mention a possibility of no recovery, certainly speaks to the undesirability of a case."). *See also Harman v. Lyphomed, Inc.*, 945 F.2d 969, 974 (7th Cir. 1991) (the riskiness of a case must be judged ex ante not ex post); *Hill v. Hill Bros. Constr. Co., Inc.*, No. 3:14-cv-213-SA-RP, 2018 WL 280537, at *3 (N.D. Miss. Jan. 3, 2018) ("Though this case would not be described as undesirable, this matter has been pending before the Court for over three years.").

***JOHNSON* FACTOR 11:**

The nature and length of the professional relationship with the client

The Receiver's counsel has represented the Receiver and by extension the Receivership Estate since the Receiver's appointment on June 22, 2018.[26]

JOHNSON FACTOR 12:

Awards in similar cases

This Court has awarded Receiver's counsel a 33% contingency on two previous occasions. As shown above, 33%, or one-third, is at the low end of percentage-of-recovery awards in a common fund case in the Fifth Circuit, and contingency fees in ordinary cases often exceed 33%.

CONCLUSION

In summary, the Receiver's counsel "undertook a risky case against a well-funded foe on multiple fronts and, through diligence, perseverance, and skill, obtained a satisfactory result. They should be compensated in accord with their request, which [they submit] is both warranted and reasonable given similar fee awards." *Jenkins*, 300 F.R.D. at 307. Receiver's counsel requests an award of $1,666,666 for the settlement with The UPS Store, Inc.; $500,000 for the settlement with

[26] *Id.* at ¶ 71.

the notary defendants, subject to adjustment should the notary defendants prepay the $1,200,000 promissory note they will deliver to the Receiver.[27]

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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.

November 11, 2026 */s/ Brent B. Barriere*

[27] Again, the promissory note may be prepaid at a discount. The Receiver's counsel is seeking a contingency fee of one-third only of the amount actually paid by the notary defendants.