

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.

MICHAEL D. BILLINGS and
MDB GROUP, LLC;
TERRY WAYNE KELLY, JR. and
KELLY MANAGEMENT, LLC;
and WILLIAM B. MCHENRY, JR. and
FIRST SOUTH INVESTMENTS, LLC,

Defendants.

Case No. 3:18-cv-679

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

**MEMORANDUM IN SUPPORT OF
MOTION FOR ENTRY OF CONSENT JUDGMENT
AND APPROVAL OF PROPOSED SETTLEMENT WITH KELLY**

Plaintiff Alysson Mills, in her capacity as the court-appointed receiver (the “Receiver”) for Arthur Lamar Adams (“Adams”) and Madison Timber Properties, LLC (“Madison Timber”), through undersigned counsel, respectfully submits this memorandum in support of her Motion for Entry of Consent Judgment and Approval of Proposed Settlement.

SUMMARY

The Receiver’s complaint

On October 1, 2018, the Receiver filed a complaint against Michael D. Billings and MDB Group, LLC; Terry Wayne Kelly, Jr. and Kelly Management, LLC; and William B. McHenry, Jr.

and First South Investments, LLC. The complaint alleges the defendants received more than \$16,000,000 in Madison Timber “commissions.” The complaint seeks to return that money to the Receivership Estate, to maximize funds available for distribution to victims.

The Receiver wishes to resolve the Receivership Estate’s claims against each of the defendants efficiently, to minimize time and expense to the Receivership Estate. The Receiver offered to suspend further litigation against a defendant if the defendant agreed to 1) make a full and complete financial disclosure, 2) commit to attempt to negotiate a settlement in good faith, and 3) preserve assets pending negotiations. Terry Wayne Kelly, Jr. and Kelly Management, LLC (“Kelly”) agreed.

The Receiver and Kelly have now agreed to a proposed settlement, summarized herein, that the Receiver recommends that the Court approve following appropriate notice and hearing.

Kelly’s finances

The Receiver’s complaint alleges Kelly received net “commissions,” before taxes, of \$8,217,804 between 2010 and April 2018. When she filed her complaint, the Receiver did not know whether Kelly would be capable of returning any of that money to the Receivership Estate. The Receiver insisted on a full and complete financial disclosure by Kelly so that she could assess whether settlement with Kelly is viable and prudent.

The Receiver obtained from Kelly sworn financial disclosures and supporting documentation, including federal and state income tax returns and supporting schedules and work papers for the years in question; operating agreements for limited liability companies of which Kelly is a member; documentation pertaining to assets and liabilities for limited liability companies of which Kelly is a member; documentation pertaining to life insurance policies of which Kelly is a beneficiary or in which Kelly has an interest; and records for Kelly’s bank and retirement

accounts. The Receiver's counsel also separately examined Kelly under oath regarding his finances.

The Receiver's proposed settlement with Kelly

The Receiver and Kelly have undertaken extensive and thoughtful negotiations and the Receiver is now satisfied that settlement with Kelly is in the Receivership Estate's best interest.

As a precondition to settlement, Kelly consents to the entry of a Consent Judgment [**Exhibit A**] against him in the full amount of \$8,217,804, reflecting the net "commissions," before taxes, that he received between 2010 and April 2018. The Receiver agrees, however, that she will release Kelly from liability for the judgment if he complies with the proposed Settlement Agreement [**Exhibit B**].

The proposed Settlement Agreement provides that Kelly shall transfer the following assets currently in his possession to the Receivership Estate:

- \$836,000 in cash currently sitting bank accounts, subject to a tax escrow;
- \$500,000 in proceeds from retirement accounts in Kelly's wife's name;
- all proceeds from the liquidation of life insurance policies in Kelly's name or to which he is entitled to the cash value;
- all proceeds from the liquidation of Kelly's interest in 707, LLC;
- any proceeds Kelly receives for his interest in 315 Iona, LLC; and
- Kelly's interest in KAPA Breeze, LLC.

In addition to transferring the foregoing assets to the Receivership Estate, Kelly shall, among other things:

- execute a promissory note in the original principal amount of \$400,000 due and payable in two and a half years that may be prepaid in the amount of \$100,000 if paid in 365 days, \$200,000 if paid in 547 days, or \$300,000 if paid in 730 days;

- restate his federal and state income tax returns for the years in question, as permitted by law, and transfer 90% of any refunds received to the Receivership Estate; and
- cooperate with the Receiver's ongoing efforts to recover money for the Receivership Estate.

The Receiver believes the foregoing¹ represents a value of approximately \$2,000,000 to the Receivership Estate. The Receiver believes this amount exceeds any amount the Receiver could obtain if she litigated her claim against Kelly to final judgment.

If Kelly required the Receiver to litigate her claim against him to final judgment, Kelly would be unable to pay the final judgment and likely would file for bankruptcy. If Kelly filed for bankruptcy, the Receivership Estate would compete with other creditors for a share of Kelly's assets. The final judgment would be virtually uncollectable.

Furthermore, Mississippi law exempts qualified retirement plans and certain life insurance proceeds from bankruptcy proceedings or collection by judgment creditors,² meaning that Kelly's retirement accounts and life insurance policies would not be available to satisfy any final judgment if he filed for bankruptcy or if the Receiver attempted to collect on the final judgment. The Receiver can obtain these assets now only because Kelly has voluntarily agreed to transfer them to the Receivership Estate.

The Receiver would spend considerable time and money litigating her claim against Kelly to final judgment. Kelly also would spend considerable time and money defending against the Receiver's claim. The time and money spent on litigation, which currently is being funded on an hourly basis, is time and money the Receivership Estate would never recover.

¹ The foregoing is intended solely as a summary of the terms of the proposed Settlement Agreement. In all events, the specific terms of the proposed Settlement Agreement and Consent Judgment shall control.

² MISS. CODE ANN. §§ 85-3-1(e), 85-3-11.

For all these reasons, the Receiver recommends settlement with Kelly on the proposed terms now.

In exchange for the value Kelly promises to give to the Receivership Estate, the proposed Order Approving Settlement [**Exhibit C**] includes what is known as a “bar order” which would bar any person or non-regulatory entity³ from asserting claims against Kelly arising out of, in connection with, or relating to Madison Timber Properties, LLC. “Courts utilize bar orders if they are both necessary to effectuate a settlement and ‘fair, equitable, reasonable, and in the best interest of the Receivership Estate.’” *S.E.C. v. Stanford Int’l Bank, Ltd.*, No. 3:09-cv-00298, 2017 WL 9989250, at *2 (N.D. Tex. Aug. 23, 2017). The Receiver believes a bar order is an effective way to ensure maximum net recovery from Kelly that can be distributed equitably to investors through the Receivership Estate.

The public’s interest

The Receiver is mindful that victims of the Madison Timber Ponzi scheme have a substantial interest in the Receiver’s claim against Kelly and the proposed resolution of it. The Receiver believes it appropriate to allow interested parties an opportunity to be heard before the proposed settlement is approved. The Receiver thus proposes the following:

- The Court shall hold a hearing on the proposed settlement within 21 days, or as the Court’s calendar allows.
- The Court shall enter an Order Setting Hearing [**Exhibit D**] that shall be filed in the Court’s public record for the cases styled *Securities & Exchange Commission vs. Adams, et al.*, No. 3:18-cv-00252 (S.D. Miss), and *Alysson Mills vs. Michael D. Billings, et al.*, No. 3:18-cv-00679 (S.D. Miss).
- Victims or other interested parties who wish to submit comments or objections shall do so at least five days prior to the Court’s hearing, either by submitting the

³ To be clear, the U.S. Attorney’s Office, the F.B.I., the S.E.C., and the Mississippi Secretary of State, among other law enforcement bodies, are not affected by the proposed settlement. The Receiver does not purport to recommend any settlement that would interfere with their separate work.

comments or objections to the Court or to the Receiver, who shall submit them to the Court.

- Victims or other interested parties who wish to address the proposed settlement at the hearing shall be given an opportunity to be speak.
- The Receiver shall provide victims a copy of the Order Setting Hearing; the proposed Consent Judgment, Settlement Agreement, and Order Approving Settlement; and instructions for submitting comments or objections via her website and, separately, correspondence sent via U.S. Mail.

The proposed notice and hearing will give victims and interested parties a full and fair opportunity to be heard and will give the Court the benefit of their opinions as the Court assesses the proposed settlement's merits. The Receiver believes the proposed notice and hearing is efficient and desirable under the circumstances, given the particular interests at stake.⁴

BACKGROUND

The Madison Timber Ponzi scheme

Adams, through Madison Timber, operated a Ponzi scheme that defrauded hundreds of investors. Investors in Madison Timber 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 and promised interest with the proceeds of those sales. Investors received timber deeds and cutting agreements that purported to secure their investments—but the documents were fake.⁵ The money used to repay existing investors came from new investors.⁶

⁴ The Receiver takes no position at this time on whether notice or hearing is appropriate prior to the Court's approval of possible future settlement with other parties.

⁵ Docket No. 1, United States v. Adams, No. 3:18-cr-00088 (S.D. Miss), at ¶ 9. *See also* transcript of Adams's sentencing on October 29 and 30, 2018, forthcoming.

⁶ Docket No. 1, United States v. Adams, No. 3:18-cr-00088 (S.D. Miss), at ¶ 10.

In April 2018, on the heels of investigations of him by the F.B.I. and the U.S. Attorney's Office for the Southern District of Mississippi, Adams turned himself in. The U.S. Attorney's Office for the Southern District of Mississippi charged Adams with two counts of wire fraud and one count of bank fraud in connection with a broader scheme to defraud. Among other things, the bill of information states that as "part of the scheme and artifice to defraud" Adams "paid commissions to recruiters who referred investors to [him]":

The commissions were paid from investors' money. For example, ADAMS paid one recruiter approximately two million four hundred forty-five thousand four hundred and forty-nine dollars (\$2,445,449) in commissions in 2017 alone. ADAMS paid another recruiter approximately one million six hundred twenty-eight thousand one hundred dollars (\$1,628,100) in commissions in 2017⁷

On May 9, 2018, Adams pleaded guilty to the federal crime of wire fraud and admitted "all of the conduct of the entire scheme and artifice to defraud as set forth" in the bill of information.⁸ Most recently, during his sentencing hearing, Adams testified that Madison Timber operated as a classic Ponzi scheme. The fact that Madison Timber was a Ponzi scheme cannot credibly be disputed.

The Receiver

Separately, the Securities and Exchange Commission filed a complaint against Adams and Madison Timber. The complaint alleges that "[b]eginning in approximately 2004," Adams, through Madison Timber, "committed securities fraud by operating a Ponzi scheme."⁹ Among other things, the complaint asked that the Court immediately freeze the assets of Adams and

⁷ Docket No. 1, United States v. Adams, No. 3:18-cr-00088 (S.D. Miss), at ¶ 11.

⁸ Docket No. 11, United States v. Adams, No. 3:18-cr-00088 (S.D. Miss).

⁹ Docket No. 3, Securities & Exchange Commission vs. Adams, et al., No. 3:18-cv-00252 (S.D. Miss).

Madison Timber. An order freezing assets was entered on April 20, 2018.¹⁰ The Securities and Exchange Commission moved the Court to appoint a receiver for Adams and Madison Timber.

On June 22, 2018, the Court appointed Alysson Mills the Receiver of the estates of Adams and Madison Timber and Brent Barriere her primary counsel.¹¹ The Court's order of appointment stays, or freezes, all civil legal proceedings of any nature involving Adams, Madison Timber, their partners or agents, or any property that is the subject of the Receivership Estate. The purpose of the stay is to preserve assets that otherwise could be picked apart, to maximize funds available for distributions to victims.

The Receiver has a duty "to take custody, control, and possession of all Receivership Property, Receivership Property, and any assets traceable to assets owned by the Receivership Estate."¹² The Receiver also has a duty 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."¹³

Immediately following her appointment, the Receiver and her counsel began investigating claims against defendants who may be in possession of assets of the Receivership Estate, including against "recruiters" who received commissions for inducing investors to make investments in Madison Timber. After reviewing Madison Timber's bank records and the bank records of certain individuals the Receiver understood to be Madison Timber recruiters, the Receiver filed her

¹⁰ Docket No. 5, Securities & Exchange Commission vs. Adams, et al., No. 3:18-cv-00252 (S.D. Miss).

¹¹ Docket No. 33, Securities & Exchange Commission vs. Adams, et al., No. 3:18-cv-00252 (S.D. Miss).

¹² Docket No. 33, Securities & Exchange Commission vs. Adams, et al., No. 3:18-cv-00252 (S.D. Miss).

¹³ Docket No. 33, Securities & Exchange Commission vs. Adams, et al., No. 3:18-cv-00252 (S.D. Miss). By order dated August 22, 2018, the Court eliminated the requirement that the Receiver obtain "prior approval of this Court upon ex parte request" before bringing any legal action. Docket No. 38, Securities & Exchange Commission vs. Adams, et al., No. 3:18-cv-00252 (S.D. Miss).

complaint against Kelly, Michael D. Billings and MDB Group, LLC, and William B. McHenry, Jr. and First South Investments, LLC.

The Receiver hoped to resolve the Receivership Estate's claims against each of the defendants efficiently, to minimize time and expense to the Receivership Estate. The Receiver offered to suspend further litigation against a defendant if the defendant agreed to 1) make a full and complete financial disclosure, 2) commit to attempt to negotiate a settlement in good faith, and 3) preserve assets pending negotiations. Kelly agreed.

Negotiations with Kelly

The Receiver's complaint alleges Kelly received net "commissions," before taxes, of \$8,217,804 between 2010 and April 2018. When she filed her complaint, the Receiver did not know whether Kelly would be capable of returning any of that money to the Receivership Estate. The Receiver insisted on a full and complete financial disclosure by Kelly so that she could assess whether settlement with Kelly is viable and prudent.

Kelly consented to the Court's entry of an order that provided a timeline for financial disclosure and a procedure for the exchange of offers of settlement.¹⁴

Pursuant to the Court's order, Kelly provided timely financial disclosures to the Receiver and made an opening offer of settlement. The Receiver and her counsel reviewed the financial disclosures and considered Kelly's opening offer, which they deemed to be in good faith, and responded with a counter-offer and requests for additional financial information. Kelly provided the requested additional financial information and the parties continued to exchange offers.

During this time the Receiver reviewed extensive records relating to Kelly's income, expenses, assets, and liabilities. The records included federal and state income tax returns and

¹⁴ Docket No. 7, *Mills v. Billings, et al.*, No. 3:18-cv-00679 (S.D. Miss).

supporting schedules and work papers for the years in question; operating agreements for limited liability companies of which Kelly is a member; documentation pertaining to assets and liabilities for limited liability companies of which Kelly is a member; documentation pertaining to life insurance policies of which Kelly is a beneficiary or in which Kelly has an interest; and records for Kelly's bank and retirement accounts.

On October 31, 2018, the Receiver sent Kelly a draft Settlement Agreement. On November 1, 2018, the Receiver's counsel examined Kelly under oath, before a court reporter, about his assets and liabilities and the financial disclosures that he made. The Settlement Agreement was subsequently revised and signed.

Based on Kelly's disclosures in writing and under oath, the Receiver is satisfied that the Settlement Assets, as that term is defined in the Settlement Agreement, that Kelly has agreed to transfer to the Receivership Estate represent an amount that exceeds any amount the Receiver could obtain if she litigated her claim against Kelly to final judgment.

If Kelly required the Receiver to litigate her claim against him to final judgment, Kelly would be unable to pay the final judgment and likely would file for bankruptcy. If Kelly filed for bankruptcy, the Receivership Estate would compete with other creditors for a share of Kelly's assets. The final judgment would be virtually uncollectable. Furthermore, Mississippi law exempts qualified retirement plans and life insurance proceeds from bankruptcy proceedings or collection by judgment creditors,¹⁵ meaning that Kelly's retirement accounts and life insurance policies would not be available to satisfy any final judgment if Kelly filed for bankruptcy or if the Receiver attempted to collect on the final judgment. The Receiver can obtain these assets now only because Kelly has voluntarily agreed to transfer them to the Receivership Estate

¹⁵ MISS. CODE ANN. §§ 85-3-1(e), 85-3-11.

PROPOSED SETTLEMENT

In substance, the Receiver and Kelly have agreed to the following terms and conditions:

1. The Receiver and Kelly shall jointly move the Court for the entry of the Consent Judgment [**Exhibit A**] in the amount of \$8,217,804.
2. Kelly shall transfer certain assets defined as the “Settlement Assets” to the Receivership Estate:
 - a. A cash payment of \$836,000 subject to a tax escrow that shall be created in the amount of Kelly’s estimated tax liability for income earned by either Mr. Kelly or Kelly Management between January 1, 2018 and April 30, 2018 (the “Stub Period”) by a qualified accountant. The tax escrow shall be funded with an additional \$25,0000 from Kelly with the Receiver contributing the difference between the estimated liability and \$25,000. The tax escrow shall not be used to pay any taxes Kelly may owe on funds he receives from liquidation of any retirement accounts, nor to pay any taxes Kelly may owe on income not received directly or indirectly from Madison Timber during the Stub Period. If it is determined Kelly owes no taxes for the Stub Period, the amount in escrow shall be released to the parties who contributed it. If it is determined Kelly owes some taxes for income earned during the Stub Period, those taxes will be paid from the escrow with the remainder released to the parties in proportion to their respective contribution.
 - b. A payment of \$500,000 drawn from the proceeds of liquidation of any retirement account in Kelly’s name.
 - c. All proceeds from the liquidation of any life insurance policies in Kelly’s name or to which he is entitled the cash value.
 - d. An assignment of the membership interest held by Kelly in KAPA Breeze, LLC.
 - e. Transfer of the proceeds from the liquidation of Kelly’s membership interest in 707, LLC.
 - f. Assignment of 1) any promissory note or other evidence of indebtedness granted by 315 Iona, LLC; and (2) Kelly’s membership interest in 315 Iona, LLC.
 - g. A promissory note in the original principal amount of \$400,000 payable to the Receivership Estate and due and payable two and a half years from the date the Court enters the Consent Judgment (the “Effective Date”). The promissory note may be prepaid in the amount of \$100,000 if payment is within 365 days of the Effective Date; or in the amount of \$200,000 if payment is made during

the period commencing 365 days after the Effective Date and ending 547 days after the Effective Date; or in the amount of \$300,000 if payment is made during the period commencing 547 days after the Effective Date and ends 730 days after the Effective Date.

3. Kelly shall cooperate with the Receiver to:
 - a. Restate Kelly's income tax returns for all available years, and at a minimum 2015-2017, if allowed under applicable law, and transfer 90% of any refunds received to the Receivership Estate.
 - b. Provide to the Receiver copies of Mr. Kelly's and Kelly Management's respective federal and state tax returns for 2018 and all schedules, exhibits and work papers relating to these returns; such delivery to be made to the Receiver immediately following filing with the tax authority.
 - c. Confirm amounts paid by either of them to persons who recruited investors for Madison Timber, the identity of those persons, and any other information pertaining to transactions involving those persons and Madison Timber.
 - d. Provide any assistance as may be requested by the Receiver, including, without limitation, appearing for interviews, depositions, or trial testimony as may be requested by the Receiver upon reasonable notice.
 - e. Aid the Receiver in seeking to collect upon any applicable insurance policies, including providing documentation, executing claim forms, responding to requests for information, corresponding or speaking with agents, and any other steps that may be reasonably requested by the Receiver in connection with the submission of insurance claims.
4. If Kelly complies with the Settlement Agreement and timely delivers the Settlement Assets, the Receiver shall not seek to collect the Consent Judgment from any source other than in the Settlement Assets and any applicable insurance policies.
5. Upon receipt of the Settlement Assets the Receiver and Kelly shall exchange mutual and general releases of any and all claims, demands, and causes of action of any type or description, either has or may have against the other.
6. The Receiver shall retain her claims against any other defendants, and neither the Consent Judgment nor the Settlement Agreement shall constitute nor be deemed to be a release of any and all claims of any type or description the Receiver may have against any non-parties to the Settlement Agreement.

The foregoing is intended solely as a summary of the terms of the Settlement Agreement; in all events, the specific terms of the Settlement Agreement and Consent Judgment shall control.

PROPOSED BAR ORDER

The proposed Order Approving Settlement includes what is known as a “bar order” which would bar any person or non-regulatory entity¹⁶ from asserting claims against Kelly arising out of, in connection with, or relating to Madison Timber Properties, LLC (the “Bar Order”).

This Court has “broad powers and wide discretion to determine the appropriate relief in an equity receivership,” including the “inherent equitable authority to issue a variety of ‘ancillary relief’ measures in actions brought by the SEC to enforce the federal securities laws.” *S.E.C. v. Kaleta*, 530 Fed App’x 360, 362 (5th Cir. 2013) (*Kaleta I*) (quoting *SEC v. Wencke*, 622 F.2d 1363, 1369 (9th Cir. 1980)). These “ancillary relief” measures include “injunctions to stay proceedings by nonparties against the receivership” and “bar orders to secure settlements in receivership proceedings and to ‘preserve the property placed in receivership pursuant to SEC actions.’” *S.E.C. v. Stanford Int’l Bank, Ltd.*, No. 3:09-cv-00298-N, 2017 WL 9989250, at *2 (N.D. Tex. Aug. 23, 2017) (quoting *Kaleta I*, 530 Fed. App’x at 362).

The Fifth Circuit has expressly approved bar orders enjoining third parties to an equity receivership from commencing or continuing legal action arising “from the underlying fraud” of the settling defendant. *Kaleta I*, 530 Fed. App’x at 362-63 (reviewing the factors considered by a district court in entering a bar order, especially “the necessity of the bar order for securing [defendants’] personal guarantees to pay the Receivership Estate,” and holding the court’s reasoning was “sound” and not an abuse of discretion).

“Courts utilize bar orders if they are both necessary to effectuate a settlement and ‘fair, equitable, reasonable, and in the best interest of the Receivership Estate.’” *Stanford*, 2017 WL

¹⁶ Again, to be clear, the U.S. Attorney’s Office, the F.B.I., the S.E.C., and the Mississippi Secretary of State, among other law enforcement bodies, are not affected by the proposed settlement. The Receiver does not purport to recommend any settlement that would interfere with their separate work.

9989250, at *3 (quoting *S.E.C. v. Kaleta*, No. H-09-3674, 2013 WL 2408017, at *6 (S.D. Tex. May 31, 2013) (*Kaleta II*)). Bar orders are especially important when, as the Receiver believes is the case with Kelly, “protracted litigation may render [a defendant] unable to satisfy a judgment.” See *S.E.C. v. DeYoung*, 850 F.3d 1172, 1183 (10th Cir. 2017).

The Receiver believes the Bar Order is an effective way to ensure maximum net recovery from Kelly that can be distributed equitably to investors through the Receivership Estate. The Receiver therefore recommends that this Court enter the Bar Order barring future claims by any person or non-regulatory entity against Kelly arising out of, in connection with, or relating to Madison Timber Properties, LLC.

PROPOSED NOTICE AND HEARING

Victims of the Madison Timber Ponzi scheme have a substantial interest in the Receiver’s claim against Kelly and the proposed resolution of it. The Receiver believes that any proposed settlement should be transparent and that victims should have an opportunity to evaluate it and, if they choose, be heard by the Court before the Court makes any decision to approve it.

The Receiver thus proposes the following:

- The Court shall hold a hearing on the proposed settlement within 21 days, or as the Court’s calendar allows.
- The Court shall enter an Order Setting Hearing [**Exhibit D**] that shall be filed in the Court’s public record for the cases styled *Securities & Exchange Commission vs. Adams, et al.*, No. 3:18-cv-00252 (S.D. Miss), and *Alysson Mills vs. Michael D. Billings, et al.*, No. 3:18-cv-00679 (S.D. Miss).
- Victims or other interested parties who wish to submit comments or objections shall do so at least five days prior to the Court’s hearing, either by submitting the comments or objections to the Court or to the Receiver, who shall submit them to the Court.
- Victims or other interested parties who wish to address the proposed settlement at the hearing shall be given an opportunity to be speak.

- The Receiver shall provide victims a copy of the Order Setting Hearing; the proposed Consent Judgment, Settlement Agreement, and Order Approving Settlement; and instructions for submitting comments or objections via her website and, separately, correspondence sent via U.S. Mail.

The proposed notice and hearing will give victims and interested parties a full and fair opportunity to be heard and will give the Court the benefit of their opinions as the Court assesses the proposed settlement's merits. The Receiver believes the proposed notice and hearing is efficient and desirable under the circumstances, given the particular interests at stake.¹⁷

THE RECEIVER'S REPRESENTATIONS

In support of the proposed settlement, the Receiver represents:

1. The Receiver and Kelly's negotiations were extensive, thoughtful, and at arm's length.
2. The Receiver and Kelly were independently represented by highly competent counsel having experience with litigation of this type.
3. The Receiver and Kelly had more than adequate information to make an informed decision whether to settle. Kelly provided all financial information requested by the Receiver.
4. The Receiver's counsel researched the law applicable to the Receiver's claim against Kelly and made informed assessments of the strengths and weaknesses of her case.
5. The Receiver believes the proposed settlement is in the Receivership Estate's best interest. In recommending proposed settlement, the Receiver has weighed the following:
 - a. It is likely that a final judgment in the full amount of the commissions received by Kelly would force Kelly into bankruptcy, reducing the amount the Receiver could recover from Kelly, particularly in view of Mississippi bankruptcy exemptions for retirement accounts and life insurance proceeds. Through the proposed settlement, the Receivership Estate should receive in excess of \$550,000 from Kelly's retirement accounts and life insurance proceeds.
 - b. It is the Receiver's duty to recover assets for the Receivership Estate efficiently. The Receiver believes that the proposed settlement is the maximum possible

¹⁷ The Receiver takes no position at this time on whether notice or hearing is appropriate prior to the Court's approval of possible future settlement with other parties.

recovery from Kelly, and continued litigation would be an inefficient use of the Receivership Estate's resources.

- c. The proposed Bar Order incentivizes Kelly to settle and therefore makes the proposed settlement possible.

CONCLUSION

Based on the foregoing, the Receiver respectfully requests that the Court enter the proposed Order Setting Hearing so that the proposed settlement may be presented and, if the Court agrees after notice and hearing, approved.

November 12, 2018

Respectfully submitted,

/s/ Lilli Evans Bass

BROWN BASS & JETER, PLLC
Lilli Evans Bass, Miss. Bar No. 102896
LaToya T. Jeter, Miss. Bar No. 102213
1755 Lelia Drive, Suite 400
Jackson, Mississippi 39216
Tel: 601-487-8448
Fax: 601-510-9934
bass@bbjlawyers.com
Receiver's counsel

/s/ Brent B. Barriere

FISHMAN HAYGOOD, LLP
Admitted pro hac vice
Brent B. Barriere, *Primary Counsel*
Jason W. Burge
Kristen D. Amond
Rebekka C. Veith
201 St. Charles Avenue, Suite 4600
New Orleans, Louisiana 70170
Tel: 504-586-5253
Fax: 504-586-5250
bbarriere@fishmanhaygood.com
jburge@fishmanhaygood.com
kamond@fishmanhaygood.com
rveith@fishmanhaygood.com
Receiver's counsel

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.

In addition, I have separately emailed a copy of the foregoing to:

Andy Taggart
Taggart, Rimes & Graham, PLLC
andy@trglawyers.com

Counsel for Michael D. Billings and MDB Group, LLC

Joseph “Whit” Cooper
Farese, Farese & Farese PA
wcooper@fareselaw.com

Counsel for Terry Wayne Kelly, Jr. and Kelly Management, LLC

Frank W. Trapp
Phelps Dunbar LLP
frank.trapp@phelps.com

Counsel for William B. McHenry, Jr. and First South Investments, LLC

Date: November 12, 2018

/s/ Brent B. Barriere
Admitted *pro hac vice*