UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF MISSISSIPPI
NORTHERN DIVISION

SECURITIES AND EXCHANGE COMMISSION, **Plaintiffs,** **v.** **ARTHUR LAMAR ADAMS AND MADISON TIMBER PROPERTIES, LLC,** **Defendants.**	**No: 3:18-cv-252** **Carlton W. Reeves, District Judge**

REPLY MEMORANDUM IN FURTHER SUPPORT OF MOTION FOR CONTEMPT

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 reply memorandum in further support of her Motion for Contempt.

The Receiver moved to hold Brent Alexander and Jon Seawright, doing business as Alexander Seawright Timber Fund I, in contempt because they disregarded this Court's order staying "all civil legal proceedings of any nature . . . or other actions involving . . . any Receivership Property," Doc. 33 at 13, by purporting to "release, acquit and forever discharge" three notaries, the UPS store that employed them, the UPS store's owners, and the UPS store's insurer from "any and all actions . . . in any way of [sic] growing out of . . . [specified] signed notarized documents" for the sum of $100,000.

Alexander and Seawright's response to the Receiver's motion for contempt argues the Court's order does not apply to them because 1) the Receiver has no standing to pursue "claims

that the victims, including [Alexander and Seawright], have against third parties," Doc. 62 at 2; and 2) Alexander and Seawright's settlement of claims against UPS "in no way affects any claims the Receiver has against the UPS Store," Doc. 62 at 2.

The Receiver addresses each argument in turn.

1. The question is not one of standing.

Alexander and Seawright argue the Court's order's stay only applies to claims by or against the Receiver, Adams, Madison Timber, and property owned by them. Alexander and Seawright argue only they, not the Receiver, own their claim against UPS, therefore the Court's order's stay does not apply to them. They cite case law holding that "a federal equity receiver has standing to assert only the claims of the entities in receivership, and not the claims of the entities' investor-creditors." Doc. 63 at 5 (quoting *Janvey v. Democratic Senatorial Campaign Commission*, 712 F.3d 185, 190 (5th Cir. 2013)).

The question, however, is not one of standing. This Court's order's stay applies not merely to claims by or against the Receiver, but also to claims that could diminish the value of the Receivership Estate's claims. The question is one of administration and equity.

The Receiver does not purport to assert claims that belong only to victims. The Receiver is charged, however, with marshaling, preserving, and conserving the Receivership Estate, for the benefit of victims. For this reason, district courts have broad authority to issue "blanket stays" that temporarily prevent victims from pursuing claims against third parties. *S.E.C. v. Stanford Intern. Bank Ltd.*, 424 Fed. App'x 338, 340 (5th Cir. 2011). By way of example, victims of the Stanford Ponzi scheme requested that the district court in that case lift its stay to permit them to pursue

claims against third-party financial advisors who had induced their investments. The district court denied their request, and the Fifth Circuit affirmed, observing:

> We are not insensitive to the Appellants' arguments that given their financial situations, their need to recover funds immediately is paramount. However, the Receiver's task to marshal, preserve and conserve the receivership estate is as much for their benefit as for the benefit of all of the other investors—investors who also lost amounts of money that changed their lives. Therefore, at this stage of the litigation, we agree with the District Court that the needs of the Receiver outweigh the substantial injury being suffered by the Appellants.

Stanford Intern. Bank Ltd., 424 Fed. App'x at 341.[1]

It is notable that, unlike the Stanford victims, Alexander and Seawright did not seek this Court's permission first before pursuing claims against UPS. It also notable that, unlike the Stanford victims, Alexander and Seawright have not argued that this Court's stay causes them substantial injury. To be clear, Alexander and Seawright invested in Madison Timber using other people's money—they are not the victims here.[2] Alexander and Seawright cannot credibly contend that, after Kim Breese's fees are paid, what remains of the $100,000 settlement, which they obtained in exchange for a release of valuable claims, will substantially repay the 30+ victims who they induced to invest many tens of millions of dollars in Madison Timber. Indeed, it appears that Alexander and Seawright did not even advise the 30+ victims of the settlement until after the Receiver filed her motion for contempt.[3]

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[1] *See also Rishmague v. Winter*, 616 Fed. App'x 138, 140 (5th Cir. 2015) ("[A]s the district court continues to receive itself as well as coordinate and oversee extensive litigation, relating to asset recovery, we cannot say that the district court abused its discretion in declining to lift the litigation stay."); *S.E.C. v. Kaleta*, 530 Fed. App'x 360, 362 (5th Cir. 2013) (A district court has "inherent equitable authority to issue a variety of 'ancillary relief' measures in actions brought by the SEC to enforce the federal securities laws," including "injunctions to stay proceedings by non-parties to the receivership.") (citations omitted).

[2] As they concede, they are not entitled to any portion of the proceeds of their purported settlement with UPS. Doc. 63 at 2 ("[T]he proceeds from the settlement are to be distributed to the investors of ASTFI. Neither Seawright nor Alexander will receive any portion of the proceeds.").

[3] See Exhibit A. These investors might like to know that Kim Breese, who is taking an undisclosed fee for his representation of their interests, was himself an investor in Madison Timber through Alexander Seawright Timber Fund I, and thus stands to recover twice through this settlement.

2. Alexander and Seawright's settlement affects the Receivership Estate.

Alexander and Seawright argue "the Receiver is [still] free to pursue [the Receivership Estate's] claims," and they "have done nothing to 'dissipate' or 'diminish' any such claims." Doc. 63 at 4. The Fifth Circuit rejected the same argument in the Stanford case. Logically, when an investor takes money for himself from a liable third party, he reduces the total amount of money available for equitable distribution to all investors. *Stanford Intern. Bank Ltd.*, 424 Fed. App'x at 341 ("Recovery against one of them could deplete possible assets coming into the estate."). That is why the stay is so important to the Receivership Estate. It prevents the proverbial "race to the courthouse," preserving assets that otherwise could be picked apart, and maximizing funds available for equitable distribution to all.

Here, Alexander and Seawright effectively skipped line, obtained from UPS's insurer a sum representing UPS's policy limits, and kept it for themselves. The Receivership Estate may still pursue its claims against UPS, but unquestionably the money and insurance coverage available to satisfy the Receivership Estate's claims has been reduced.

Alexander and Seawright's settlement affects the Receivership Estate in another way: It sends the signal that investors can and should disregard the Court's stay. The Receiver is aware that many investors would like right now to pursue identical claims against third parties—including UPS, Alexander and Seawright, and any other putative defendants closely related to Adams and Madison Timber. Thus far, however, these investors have understood that such claims are stayed. Acts such as those taken by Alexander and Seawright threaten to undermine investors' confidence in the orderly administration of the Receivership Estate.

December 10, 2018

Respectfully submitted,

/s/ Lilli Evans Bass

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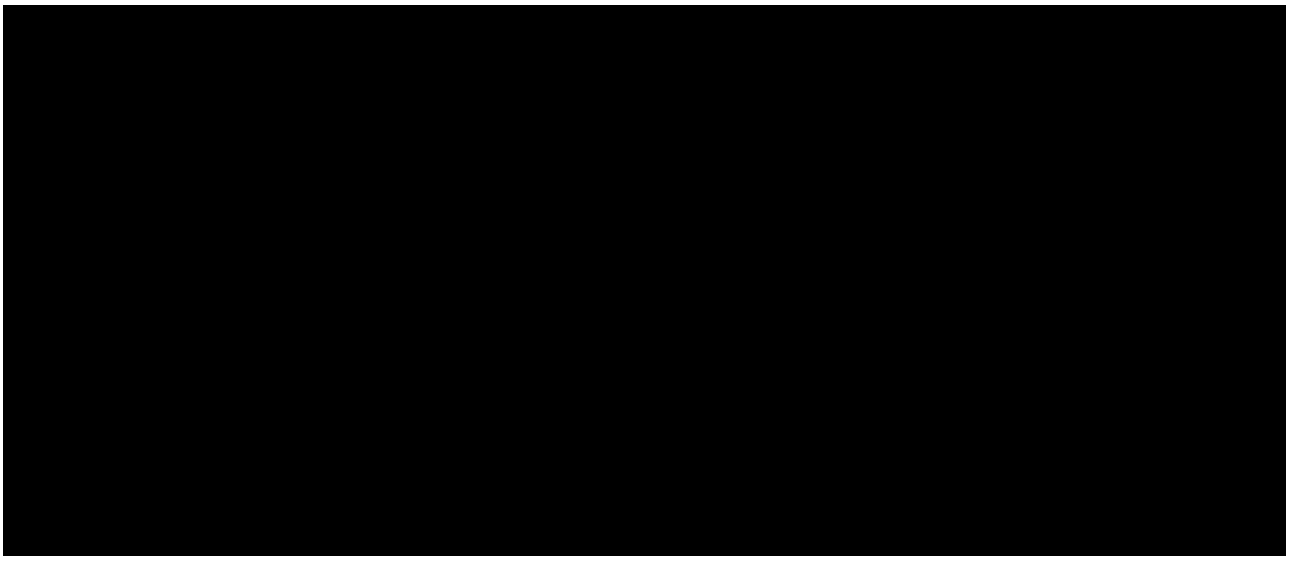
CERTIFICATE OF SERVICE

I certify that I electronically filed the foregoing with the Clerk of Court using the ECF system which sent notification of filing to all counsel of record.

Date: December 10, 2018 */s/ Lilli Evans Bass*



From: Jon Seawright <seawright@alexanderseawright.com>
Date: November 21, 2018 at 5:29:25 AM CST
Cc: Brent Alexander <alexander@alexanderseawright.com>
Subject: Timber Fund Update

All,

We wanted to update you on a couple of items. First, as you probably saw, Lamar was sentenced to 19.5 years in prison and was ordered to report for imprisonment the first week of January.

Second, if you have not already seen it, we wanted to let you know that the Receiver filed a "Motion for Contempt" and supporting Memorandum, in which the Receiver claims that Alexander Seawright Timber Fund I ("ASTFI"), Jon Seawright, and Brent Alexander violated the Court's June 22 "Order Appointing Receiver" by consummating a settlement with the UPS Store. Copies of the Receiver's Motion, Memorandum, and the Court's June 22 Order are attached. By way of background, several months ago, ASTFI hired attorney Kim Breese to evaluate ASTFI's potential claim for damages against the UPS Store in connection with the UPS store clerks' notarizations of certain fraudulent deeds. On behalf of ASTFI, we were able to obtain the $100,000 limits of the UPS store's commercial general liability insurance policy. Given UPS's defenses and the uncertainty of ASTFI's claims, KIm believed this settlement was the very best we would be able to do. Even if we had proceeded to take the claims to trial, we saw many challenges in being able to recover more than the insurance policy limits. With advice from Kim Breese as ASTFI's lawyer, we settled the claims and executed a Release on behalf of ASTFI. As you may already know, all of the proceeds, after the payment of Kim's attorneys fees, will distributed to ASTFI members - no portion will be distributed to Alexander Seawright, Jon or Brent or used for any other purpose. The settlement proceeds have been received by Kim and are currently in his trust account.

Exhibit A

Now, in short, the Receiver is claiming that our procurement of the UPS settlement for ASTFI somehow violated the Court's June 22 Order, a copy of which is attached. We strongly disagree with the Receiver's position and expect to contest it to preserve this recovery for ASTFI owners and our ability to continue pursuing any other recovery that is viable. The Receiver's authority from the Court to recover assets applies only to assets owned or controlled by Lamar Adams, Madison Timber Properties, or in which they have a beneficial interest. Counsel has advised that ASTFI's separate claims against the UPS store for its asserted negligence and the insurance proceeds from the settlement are not within the definition of "Receivership Property" as defined by the Court, and we will oppose the Receiver on this ground.

Please let us know if you have any questions about this. Again, we are truly sorry that we are all having to deal with this mess. We will update you as soon as we file a response to the Receiver's motion.

Sincerely,

Brent and Jon