

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. F. Keith Ball, Magistrate Judge

MOTION FOR APPROVAL OF SETTLEMENT

Alysson Mills, in her capacity as the court-appointed receiver (the “Receiver”) for Arthur Lamar Adams and Madison Timber Properties, LLC, through undersigned counsel, respectfully moves the Court to enter the attached proposed Order Approving Settlement,¹ which approves the Receiver’s Settlement Agreement with the University of Mississippi’s Ole Miss Athletic Foundation (the “Foundation”) [**Exhibit A**]. In support, she states as follows:

1.

The Foundation received cash contributions from Lamar Adams. Upon information and belief, the amount of those contributions, net of the value of goods and services provided by or at the direction of the Foundation, is approximately \$343,269.

¹ Pursuant to the Court’s Administrative Procedures for Electronic Case Filing, Sec.5.B, the proposed Order Approving Settlement is being transmitted via e-mail to Judge Reeve’s chambers simultaneous with the filing of this motion.

2.

The Receiver and the Foundation have agreed to resolve the Receivership Estate's claims to the net amount of cash contributions by Mr. Adams, and to do so without filing suit. The Foundation has already returned to the Receivership Estate funds in the amount of \$33,100 reflecting donations made by Mr. Adams for future sports tickets rights. The Foundation shall return to the Receivership Estate funds in the amount of \$310,169, reflecting the remaining amount of cash contributions the Foundation received net of the value of tangible benefits received by Mr. Adams, and in turn the Receiver shall release all claims the Receivership Estate has or may have against the Foundation for contributions by Mr. Adams to the Foundation.

3.

The proposed settlement reflects the full amount of cash contributions to the Foundation net of the value of tangible benefits that Mr. Adams received. The Receiver believes this is fair and reasonable consideration for the avoidance of the time and expense that would have accompanied any litigation.

4.

This proposed settlement follows meaningful, informed, arm's length negotiations between the Receiver and the Foundation, both represented by highly capable counsel.

5.

The Receiver greatly appreciates the Foundation's offer to return the full amount of contributions that it received from Mr. Adams net of tangible benefits received by him, and she hopes that its example may encourage others in the same position to do the same.

6.

The Receiver believes settlement on the proposed terms without litigation unquestionably is in the Receivership Estate's best interests. The Receiver thus recommends that the Court approve the Settlement Agreement by entering the proposed Order Approving Settlement.

WHEREFORE the Receiver asks that after due consideration the Court enter the proposed Order Approving Settlement.

January 09, 2019

Respectfully submitted,

/s/ Lilli Evans Bass

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Receiver's counsel

/s/ Brent B. Barriere

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Admitted pro hac vice
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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:

Erica McKinley
mckinley@olemiss.edu

Counsel for the Foundation

Date: January 09, 2019

/s/ Brent B. Barriere

SETTLEMENT AGREEMENT

THIS SETTLEMENT AGREEMENT (“Agreement”) is entered into on this 9 day of January, 2019, by and between the University of Mississippi’s Ole Miss Athletic Foundation (the “Foundation”) and Alysson L. Mills in her capacity as the Receiver for Arthur Lamar Adams and Madison Timber Properties, LLC (the “Receiver”). The Receiver and the Foundation are sometimes collectively referred to as the “Parties.”

RECITALS

- A. **WHEREAS**, on June 22, 2018, United States District Judge Carlton W. Reeves appointed Ms. Mills to serve as Receiver of the estate of Arthur Lamar Adams and Madison Timber Properties, LLC (the “Receivership Estate”). Among the Receiver’s powers and duties is the power to sue for and collect, recover, receive or take into possession from third parties any assets traceable to assets of the Receivership Estate; and
- B. **WHEREAS**, the Foundation received certain cash contributions from Arthur Lamar Adams;
- C. **WHEREAS**, the Receiver has not alleged any wrongdoing on behalf of the Foundation related to the Ponzi scheme operated by Madison Timber Properties, LLC or Arthur Lamar Adams, but has determined the Foundation received certain cash contributions and/or payments from Arthur Lamar Adams which may be recoverable by the Receiver; and
- D. **WHEREAS**, in order to avoid the expense, burden, and delay of litigation and without admitting or acknowledging any liability, and subject to the entry of an order of the District Court approving this Agreement, and authorizing and directing the Parties’ performance of their obligations hereunder, as more fully described below, the Parties now wish to effect a full and complete resolution and settlement of all potential claims and defenses, and freely and voluntarily enter into this Agreement for that purpose.

NOW, THEREFORE, in consideration of the mutual covenants contained herein, the receipt and sufficiency of which are acknowledged, the Parties hereby agree as follows:

DEFINITIONS

- 1. The “Approval Order” shall mean an order of the United States District Court for the Southern District of Mississippi (the “District Court”) entered in that certain case styled *Securities & Exchange Commission v. Lamar Adams & Madison Timber Properties, LLC*, Case No. 3:18-cv-00252 (the “SEC Litigation”) approving the settlement by and between the Receiver and the Foundation and the Receiver’s execution of this Agreement and performances of her obligation hereunder.

2. The "Effective Date" shall mean the date on which the Court enters the Approval Order.
3. The "Settlement Payment" shall mean the sum of Three Hundred and Ten Thousand, One Hundred and Sixty-Nine and no/100 (\$310,169.00) Dollars.

AGREEMENT

1. **Settlement Payment.** Within 30 days of the Effective Date, the Foundation shall deliver to the Receiver or her designee, payment in immediately available in the amount of One Hundred and Fifty-Five Thousand, Eight-Four and 50/100 (\$155,084.50) Dollars, representing fifty-percent of the Settlement Payment. Within 90 days of the date of Effective Date, the Foundation shall deliver to the Receiver or her designee the remaining balance of the Settlement Payment, or an additional One Hundred and Fifty-Five Thousand, Eight-Four and 50/100 (\$155,084.50) Dollars.

2. **Filing and prosecution of motion.** Immediately upon execution of this Agreement, the Parties shall file such pleadings and, thereafter, shall take such action as may be necessary or appropriate to obtain the entry of the Approval Order.

3. **Release of the Foundation.** Effective upon the Receiver's receipt of the Settlement Payment (the "Release Date"), the Receiver individually and on behalf of the Receivership Estate, releases, acquits and forever discharges the Foundation, its heirs, successors and assigns, insurers, agents, counsel and all persons for whom it may be liable or responsible (hereinafter "Foundation Released Parties") from any and all claims, demands, causes of action and obligations of any type or description, whether known or unknown, existing or contingent, whether arising in tort or contract which the Receiver has or may have against any one or more of the Foundation Released Parties. The Receiver specifically reserves any and all claims, demands and causes of action she has asserted or could assert against Arthur Lamar Adams or any persons or entities other than the Foundation who received any transfer of any cash or other property of any type or description, directly or indirectly, from Arthur Lamar Adams or Madison Timber Properties, LLC.

4. **Release by the Foundation.** Effective upon the Release Date, the Foundation shall release, acquit and forever discharge the Receiver, the Receivership Estate, their attorneys, accountants, representatives, members, employees, affiliates, and all other persons for whom it might be liable (collectively the "Receiver Released Persons") of any and all claims, demands, causes of action and obligations arising out of or in any manner relating to any act or omission by or attributable to the Receiver Released Persons, or any one of them, related to or arising out of the administration of the Estate or the exercise or performance of any obligation, duty, power, or act authorized by and/or undertaken pursuant to the Court's Orders appointing the Receiver and authorizing administration of the Estate.

5. **Event of Default by the Foundation:** Any of the following shall constitute an event of default by the Foundation:

- a. The Foundation fails to timely deliver the Settlement Payment to the Receiver.
- b. The Foundation breaches or otherwise fails perform any of the covenants, representations and warranties made by them in or other obligations imposed upon them by this Agreement.

6. **Remedies Upon Occurrence of an Event of Default.** Upon the occurrence of an Event of Default, the Receiver shall give not less than seven (7) days written notice to the Foundation. The Foundation shall have seven (7) days from the date of issuance of such notice to cure the Event of Default. Should the Foundation fail to cure timely, the Receiver may either (i) employ all remedies and procedures to collect the balance due on the Settlement Payment, including attorneys' fees and interest in the amount of five (5%) percent from the Effective Date or (ii) declare the Agreement terminated and pursue any and all claims, demands and causes of action the Receiver may have against the Foundation.

7. **Approval of the District Court.** The Parties recognize that the Receiver's performance of the Receiver's obligations hereunder is contingent upon the District Court entering the Approval Order. This Agreement shall automatically terminate, without further act by either of the Parties, upon the Court entering an order denying entry of the Approval Order.

8. **Entire Agreement; Amendments; Waivers.** This Agreement, including all agreements referenced herein, constitutes the entire agreement of the Parties solely with regard to the subject matter hereof. This Agreement may only be modified or amended by an instrument in writing signed by all Parties. No waiver of any condition hereunder shall be effective unless effected by an instrument in writing signed by all Parties. No Party to this Agreement has relied upon any representations of any other Party not expressly contained in this Agreement.

9. **Governing Law.** This Agreement, as well as all matters in dispute between the Parties, whether arising from or relating to this Agreement or arising from or relating to alleged extra-contractual facts prior to, during or subsequent to this Agreement, including fraud, misrepresentation, negligence, or any other alleged tort or violation of this Agreement, regardless of the legal theory upon which such matter is asserted, is to be governed by, construed under, and enforced in accordance with the laws of the United States and the State of Mississippi without regard to any conflicts of laws principles that would require the application of any other laws. The Parties consent to the District Court to be the sole venue to enforce the terms of this Agreement and to adjudicate any disputes arising in relation thereto.

10. **Binding Effect.** This Agreement shall inure to the benefit of the Parties hereto and shall be binding upon each of them, and their heirs, estates, assigns, representatives and successors.

11. **Further Assurances.** Each of the Parties, without further consideration, agrees to execute and deliver such other documents and take such other action as may be necessary to consummate more effectively the subject matter hereof.

12. **Rules of Construction.** The Parties have participated jointly in the negotiation and drafting of this Agreement. In the event an ambiguity or question of intent or interpretation arises, this Agreement is to be construed as if drafted jointly by the Parties and no presumption or burden

of proof is to arise favoring or disfavoring any Party by virtue of the authorship of any of the provisions of this Agreement.

13. Counterparts; Execution of Agreement. The Parties are permitted to execute this Agreement in one or more counterparts, each of such counterparts is to be deemed to be an original copy of this Agreement, and all of which, when taken together, are to be deemed to constitute one and the same instrument. The exchange of copies of this Agreement and of signature pages by facsimile, electronic mail, or other electronic transmission constitutes effective execution and delivery of this Agreement as to the Parties. Signatures of the Parties transmitted by facsimile, electronic mail, or other electronic transmission are to be deemed to be their original signatures for all purposes.

14. Notices. Notices hereunder or in connection with the Agreement shall be sent by electronic mail or overnight courier and addressed as follows:

a. If to the Receiver:

Alysson L. Mills, Esq.
Fishman Haygood, LLP
201 St. Charles Avenue, 46th Floor
New Orleans, LA 70170
amills@fishmanhaygood.com

With a copy to:

Brent B. Barriere, Esq.
Fishman Haygood, LLP
201 St. Charles Avenue, 46th Floor
New Orleans, LA 70170
bbarriere@fishmanhaygood.com

b. If to Ole Miss Athletics Foundation:

Keith Carter
Executive Director
Ole Miss Athletics Foundation
P.O. Box 1519
Oxford, MS 38655
jkcarter@olemiss.edu


With a copy to:

Erica McKinley, Esq.
The University of Mississippi
Office of General Counsel
PO Box 1848
209 Lyceum Circle
University, MS 38677
mckinley@olemiss.edu

[Signatures on Following Page]

Dated the day first above written.

Alysson L. Mills, in her capacity as
Receiver for the estate of Arthur Lamar
Adams and Madison Timber Properties, LLC.



Keith Carter, Executive Director,
Ole Miss Athletics Foundation

Dated the day first above written.



Alysson L. Mills, in her capacity as
Receiver for the estate of Arthur Lamar
Adams and Madison Timber Properties, LLC.



Keith Carter, Executive Director,
Ole Miss Athletics Foundation

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF MISSISSIPPI
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Defendants.

Case No. 3:18-cv-252

Hon. Carlton W. Reeves, District Judge

Hon. F. Keith Ball, Magistrate Judge

**MEMORANDUM IN SUPPORT OF
MOTION FOR APPROVAL OF SETTLEMENT**

Alysson Mills, in her capacity as the court-appointed receiver (the “Receiver”) for Arthur Lamar Adams and Madison Timber Properties, LLC, through undersigned counsel, respectfully moves the Court to enter the attached proposed Order Approving Settlement,¹ which approves the Receiver’s Settlement Agreement with the University of Mississippi’s Ole Miss Athletic Foundation (the “Foundation”) [**Exhibit A**]. In support, she states as follows:

SUMMARY

The Foundation, which is the fundraising arm of Ole Miss Athletics, received certain cash contributions from Lamar Adams amounting to \$402,100 over the last ten years. It is the Foundation’s position that Mr. Adams received goods and services such as football tickets for a

¹ Pursuant to the Court’s Administrative Procedures for Electronic Case Filing, Sec.5.B, the proposed Order Approving Settlement is being transmitted via e-mail to Judge Reeve’s chambers simultaneous with the filing of this motion.

certain portion of those contributions. Based on the Foundation's tax records, which the Receiver reviewed, she understands the Foundation values those goods and services at around \$58,831. The Receiver and the Foundation have agreed to resolve the Receivership Estate's claims to the money the Foundation received from Mr. Adams without litigation. The Foundation shall return to the Receivership Estate \$310,169, which reflects the total value of contributions from Mr. Adams less the valuation of goods and services received and less a \$33,100 credit for funds already returned to the Receivership Estate. In turn, the Receiver shall release all claims the Receivership Estate has or may have against the Foundation.

This proposed settlement follows meaningful, informed, arm's length negotiations between the Receiver and the Foundation, both represented by highly capable counsel.

The Receiver greatly appreciates the Foundation's offer to return the full amount of contributions that it received from Mr. Adams net of tangible benefits received by him, and she hopes that its example may encourage others in the same position to do the same.

The Receiver believes settlement on the proposed terms without litigation unquestionably is in the Receivership Estate's best interests. The Receiver thus recommends that the Court approve the Settlement Agreement by entering the proposed Order Approving Settlement.

BACKGROUND

The Receiver's duties

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"² and to investigate and "bring such legal actions based on law or equity in any state, federal

² Docket No. 33, Securities & Exchange Commission vs. Adams, et al., No. 3:18-cv-00252 (S.D. Miss).

or foreign court as the Receiver deems necessary or appropriate in discharging her duties as Receiver.”³

Immediately following her appointment, the Receiver and her counsel began investigating claims against potential defendants who may be in possession of assets of the Receivership Estate, including against individuals and entities who received cash contributions for no consideration from Mr. Adams or Madison Timber. After an accounting, the Receiver determined that the Foundation had received cash donations from Mr. Adams totaling \$402,100.

The Foundation’s contributions from Lamar Adams

The Foundation is the fundraising arm of Ole Miss Athletics. The Receiver does not allege that the Foundation was involved in any wrongdoing associated with the Madison Timber Ponzi scheme; the Foundation only received donations from Mr. Adams. The Foundation asserts that Mr. Adams received tangible benefits including goods and services such as football tickets for certain amounts of his donations. The Receiver has reviewed tax statements from the Foundation and understands that the Foundation valued those tangible benefits at around \$58,831.

The Receiver’s potential claims

It is the Receiver’s position that the donations the Foundation received for which it did not provide any tangible benefits to Mr. Adams are voidable fraudulent transfers because no reasonably equivalent value was provided for the transfers. *See Janvey v. Democratic Senatorial Campaign Committee*, 793 F. Supp. 2d 825, 857-58 (N.D. Tex. 2011) (granting summary judgment on fraudulent transfer claims to recover contributions to political campaigns).

³ 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).

PROPOSED SETTLEMENT

The Settlement Agreement reflects that the Receiver and the Foundation have agreed to the following terms and conditions:

1. The Foundation shall deliver to the Receiver or her designee a "Settlement Payment" in the amount of \$310,169.00, with one-half due within 30 days of this Court's entry of the Order Approving Settlement and one-half due within 90 days of this Court's entry of the Order Approving Settlement.
2. Upon receipt of the Settlement Payment, the Receiver and the Foundation 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.
3. The Receiver retains her claims against Arthur Lamar Adams or any persons or entities other than the Foundation who received any transfer of any cash or other property of any type or description, directly or indirectly, from Arthur Lamar Adams or Madison Timber Properties, LLC.
4. The Receiver and the Foundation shall take all actions as may be necessary or appropriate to obtain entry of the proposed Order Approving Settlement.

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 shall control.

The Receiver is satisfied that \$310,169 exceeds the net amount the Receivership Estate would actually receive if she litigated her potential claims against the Foundation to final judgment. The Receiver would spend considerable time and money litigating her potential claims against the Foundation. The Foundation also would spend considerable time and money defending against the Receiver's claims. The time and money spent on litigation, which would be funded on an hourly basis, is time and money the Receivership Estate would never recover and would almost certainly exceed any discount given in consideration for the avoidance of litigation.

CONCLUSION

The Receiver recommends that the Court enter the proposed Order Approving Settlement because she believes settlement with the Foundation on the proposed terms without litigation unquestionably is in the Receivership Estate's best interests

January 09, 2019

Respectfully submitted,

/s/ Lilli Evans Bass

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/s/ Brent B. Barriere

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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:

Erica McKinley
mckinley@olemiss.edu

Counsel for the Foundation

Date: January 09, 2019

/s/ Brent B. Barriere