

**IN THE UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF MISSISSIPPI
JACKSON DIVISION**

UNITED STATES OF AMERICA

VS.

CRIMINAL NO

**AMSOUTH BANCORPORATION and
AMSOUTH BANK**

DEFERRED PROSECUTION AGREEMENT

Defendants AMSOUTH BANCORPORATION and AMSOUTH BANK, a wholly-owned subsidiary of AMSOUTH BANCORPORATION (hereinafter collectively referred to as “AmSouth”), by their undersigned attorney, pursuant to authority granted by their Boards of Directors, and the United States enter into this Deferred Prosecution Agreement (hereinafter “the Agreement”).

1. AmSouth shall waive indictment and agree to the filing of a one count Information (hereinafter “the Information”) in the United States District Court for the Southern District of Mississippi charging it with failing to file suspicious activity reports in a timely, complete and accurate manner, in violation of 31 U.S.C. §§ 5318(g)(1) and 5322(b) and 31 C.F.R. § 103.18.

2. AmSouth accepts and acknowledges responsibility for its behavior as set forth in the Statement of Facts attached hereto and incorporated by reference herein as Appendix A (hereinafter “Statement of Facts”).

3. AmSouth expressly agrees that it shall not, through its attorneys, board of directors, agents, officers, employees, or any other representative make or adopt any public statement contradicting any statement contained in this Agreement or the Statement of Facts,

provided however, that AmSouth may avail itself of any legal or factual arguments available to it in defending litigation regarding any matter discussed therein. Any such contradictory statement by AmSouth, its attorneys, board of directors, agents, officers, employees, or any other representative shall constitute a breach pursuant to paragraph 11 of this Agreement, and AmSouth would thereafter be subject to prosecution pursuant to the terms of this Agreement. The decision whether AmSouth has breached this Agreement based upon any statement by any person described in this paragraph which contradicts any information contained in the Statement of Facts shall be in the sole discretion of the United States. If and when the United States notifies AmSouth of a public statement by any such person that in whole or in part contradicts any part of the Statement of Facts, AmSouth may avoid breach of this Agreement by publicly repudiating such statement within 48 hours after notification by the United States. Paragraph 11 sets forth the terms and conditions applicable to any breach of this Agreement by AmSouth.

4. AmSouth agrees that it shall provide to the United States, on request, any relevant document, electronic data, or other object in AmSouth's possession, custody and/or control concerning a Bank Secrecy Act matter and/or any matter charged in the Information subject to the Right to Financial Privacy Act and any other applicable laws and regulations. AmSouth further agrees that it will completely, fully and timely comply with all legal obligations, record keeping and reporting requirements imposed upon it by the Bank Secrecy Act, 31 U.S.C. §§ 5311 et seq., and implementing regulations thereunder, 31 C.F.R. Part 103, and the Federal Reserve's substantially similar regulations codified at 12 C.F.R. §§ 208.62 and 208.63.

5. As a result of AmSouth's conduct, as set forth in the Statement of Facts, pursuant to 18 U.S.C. § 981(a)(1)(A), AmSouth's interests in certain forfeitable real and personal property could be subject to a civil forfeiture action. The United States agrees that any civil forfeiture claims it has against AmSouth or its property will be satisfied and compromised by AmSouth's payment of the sum of \$40 million pursuant to this paragraph and forfeiture of that amount to the United States. Accordingly, the United States and AmSouth hereby expressly agree to settle, and do settle, any and all claims that each could have made in any such civil forfeiture action.

6. Because AmSouth agrees to

(a) acknowledge responsibility for its actions as set forth in the Statement of Facts;

(b) continue its cooperation with the United States;

(c) demonstrate its future good conduct and full compliance with the Bank Secrecy Act and all of its implementing regulations;

(d) demonstrate full compliance with any and all grand jury subpoenas issued to it by any state or federal grand jury; and

(e) pay the sum of \$40 million pursuant to paragraph 5 of this Agreement;

the United States shall recommend to the Court, pursuant to 18 U.S.C. § 3161(h)(2), that prosecution of AmSouth on the Information filed pursuant to paragraph 1 of this Agreement be deferred for a period of twelve (12) months. AmSouth shall consent to a motion, the contents to be agreed by the parties, to be filed by the United States with the Court, promptly upon execution of this Agreement, pursuant to 18 U.S.C. § 3161(h)(2), in which the United States will present this Agreement to the Court and move for a continuance of all further criminal

proceedings, including trial, for a period of twelve (12) months, for speedy trial exclusion of all time covered by such a continuance, and for approval by the Court of this deferred prosecution. AmSouth further agrees to waive and does hereby expressly waive any and all rights to a speedy trial pursuant to the Sixth Amendment of the United States Constitution, 18 U.S.C. § 3161, Federal Rule of Criminal Procedure 48(b), and any applicable Local Rules of the United States District Court for the Southern District of Mississippi for the time period that this Agreement is in effect.

7. AmSouth hereby further expressly agrees that any violations of the Bank Secrecy Act pursuant to 31 U.S.C. §§ 5318, 5321 and 5322, and any violations of 18 U.S.C. §§ 1503, 1512 and 1517, that were not time-barred by the applicable statute of limitations on September 1, 2004, may, in the sole discretion of the United States, be charged against AmSouth, notwithstanding the expiration of any applicable statute of limitations, if the United States determines that AmSouth is in material breach of this Agreement subject to the cure provisions herein.

8. The United States agrees that if AmSouth is in compliance with all of its obligations under this Agreement in all material respects, the United States, within thirty (30) days of the expiration of the time period set forth in paragraph 6 above, will seek dismissal with prejudice of the Information filed against AmSouth pursuant to paragraph 1 of this Agreement. Upon such dismissal of the Information, this Agreement shall expire. The expiration of this Agreement does not relieve AmSouth of the responsibility of complying with all applicable laws and regulations. The expiration of this Agreement does not alter or affect AmSouth's responsibility to its banking regulators, including but not limited to the Federal Reserve, the Federal Reserve Bank of Atlanta, the Alabama State Banking Department, and FinCEN.

9. AmSouth and the United States understand that the Agreement to defer prosecution of AmSouth must be approved by the Court, in accordance with 18 U.S.C. § 3161(h)(2). Should the Court decline to approve a deferred prosecution for any reason, both the United States and AmSouth are released from any obligation imposed upon them by this Agreement, and this Agreement shall be null and void.

10. Should the United States, in its sole discretion, determine during the term of this Agreement that AmSouth has committed any federal crime commenced subsequent to the date of this Agreement, AmSouth shall thereafter be subject to prosecution for any federal crimes of which the United States has knowledge. Except in the event of a willful and material breach of this Agreement, it is the intention of the parties to this Agreement that all criminal, civil and regulatory investigations arising from AmSouth's conduct or the facts contained in or involving the persons and/or accounts described in this Agreement and its exhibit, including the Statement of Facts, that have been or could have been conducted by the United States prior to the date of this Agreement shall not be pursued further against AmSouth.

11. Should the United States, in its sole discretion, determine that AmSouth has committed a willful and material breach of any provision of this Agreement, the United States shall provide written notice to AmSouth of the alleged breach and provide AmSouth with a two-week period in which to make a presentation to the United States Attorney for the Southern District of Mississippi to demonstrate that no breach has occurred or, to the extent applicable, that the breach is not willful or material or has been cured. The parties hereto expressly understand and agree that should AmSouth fail to make a presentation to the United States Attorney for the Southern District of Mississippi within the said two-week period, it shall be conclusively presumed that AmSouth is in willful and material breach of this Agreement. The

parties further understand and agree that the United States Attorney for the Southern District of Mississippi's exercise of discretion under this paragraph is not subject to review in any court or tribunal. In the event of a breach of this Agreement that results in a prosecution, such prosecution may be premised upon any information provided by or on behalf of AmSouth to the United States at any time. Further, in the event of a breach, the \$40 million payment by AmSouth pursuant to paragraph 5 will be returned to AmSouth.

12. AmSouth agrees that if it sells or merges all or substantially all of its business operations as they exist as of the date of this Agreement, it shall include in any contract for sale or merger a provision binding the purchaser/successor to the obligations described in this Agreement.

13. It is further understood that this Agreement is binding on AmSouth and the United States, but specifically does not bind any other federal agencies, or any state or local authorities, although the United States will bring the cooperation of AmSouth and its compliance with its other obligations under this Agreement to the attention of state or local prosecuting offices or any state or federal regulatory agencies, if requested by AmSouth or its attorneys.

14. It is further understood that this Agreement does not relate to or cover any civil or criminal conduct by AmSouth other than the conduct described in, or arising from the facts contained in or involving the persons and/or accounts described in, the Agreement and its exhibit, including the Statement of Facts.

15. AmSouth and the United States agree that, upon acceptance by the Court, this Agreement and a proposed Order deferring prosecution shall be filed in the United States District Court for the Southern District of Mississippi. AmSouth and the United States further agree that Exhibit 1 to Appendix A of this Agreement, which contains information concerning specific

accounts and reporting of suspicious activity, will be filed under seal and shall remain under seal. AmSouth and the United States further agree that the information contained in Exhibit 1 may be revealed at some point in time when and if AmSouth is finally determined to be in material breach of this Agreement.

16. AmSouth acknowledges that the unitary structure for its audit and compliance functions contributed to the absence of a system of independent checks and balances, and thereby contributed to the problems described in the Information, this Agreement, and the Statement of Facts.

17. AmSouth has revised its policies, procedures and practices with respect to responding to grand jury subpoenas to ensure that all responses are complete and timely.

18. The United States agrees that if AmSouth complies with all of the terms of this Agreement and agrees to accept responsibility for all of the conduct described in the Statement of Facts, then the United States will not prosecute any current or former AmSouth employee based upon any of the conduct described in this Agreement and its exhibit, including the Statement of Facts.

19. This Agreement sets forth all the terms of the Deferred Prosecution Agreement between AmSouth and the United States. No promises, agreements or conditions have been entered into other than those expressly set forth in this Agreement, and none shall be entered into and/or be binding upon AmSouth or the United States unless expressly set forth in writing, signed by the United States, AmSouth's attorneys, and a duly authorized representative of AmSouth and physically attached to this Agreement. This Agreement supersedes any prior promises, agreements or conditions between AmSouth and the United States.

ACKNOWLEDGEMENTS

I, T. Kurt Miller, the duly authorized representative of AmSouth Bank, hereby expressly acknowledges the following: (1) that I have read this entire Deferred Prosecution Agreement and all attachments hereto, and the other documents filed in the United States District Court for the Southern District of Mississippi in conjunction with this Agreement, including the Information; (2) that I have had an opportunity to discuss this Agreement fully and freely with AmSouth’s attorneys; (3) that AmSouth fully and completely understands each and every one of its terms; (4) that AmSouth is fully satisfied with the advice and representation provided to it by its attorneys; and (5) that AmSouth has signed this Agreement voluntarily.

T. KURT MILLER
General Counsel

DATE

COUNSEL FOR AMSOUTH BANCORPORATION AND AMSOUTH BANK

We, counsel for AmSouth Bancorporation and AmSouth Bank, hereby expressly acknowledge the following: (1) that we have discussed this Agreement with our clients; (2) that we have fully explained each one of its terms to our clients; (3) that we have fully answered each and every question put to us by our clients regarding the Agreement; and (4) we believe that our clients completely understand all of the Agreement’s terms.

SKADDEN, ARPS, SLATE, MEAGHER
& FLOM LLP
Robert S. Bennett, Esq.
Andrew L. Sandler, Esq.
Benjamin B. Klubes, Esq.

DATE

BUTLER, SNOW, O’MARA, STEVENS
& CANNADA, PLLC
James B. Tucker, Esq.

DATE

Attorneys for AmSouth Bancorporation and AmSouth Bank

ON BEHALF OF THE UNITED STATES

DUNN LAMPTON
United States Attorney
Southern District of Mississippi

DATE

CYNTHIA L. ELDRIDGE
Assistant United States Attorney
Criminal Division
United States Attorney's Office
Southern District of Mississippi

DATE