

**IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF MISSISSIPPI  
NORTHERN DIVISION**

ALYSSON MILLS, IN HER CAPACITY  
AS RECEIVER FOR ARTHUR LAMAR  
ADAMS AND MADISON TIMBER  
PROPERTIES, LLC,

Plaintiff,

v.

BUTLER SNOW LLP et al.,

Defendants.

Case No. 3:18-cv-00866-CWR-FKB

**Hon. Carlton W. Reeves**

**ORAL ARGUMENT REQUESTED**

**BAKER, DONELSON, BEARMAN, CALDWELL & BERKOWITZ PC'S  
MOTION FOR RECONSIDERATION OR TO ALTER OR AMEND  
PURSUANT TO RULE 59(E)**

Baker, Donelson, Bearman, Caldwell & Berkowitz P.C. ("Baker Donelson") moves for reconsideration of or to alter or amend the Court's Order, ECF No. 70, denying Baker Donelson's motion to dismiss pursuant to Federal Rules of Civil Procedure 59(e). The bases for this motion are set forth in the Memorandum of Law filed herewith.

Dated this 28th day of May, 2021

Respectfully submitted,

**BAKER, DONELSON, BEARMAN,  
CALDWELL & BERKOWITZ PC**

*/s/ Craig D. Singer*

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**MEMORANDUM OF LAW IN SUPPORT OF BAKER, DONELSON, BEARMAN,  
CALDWELL & BERKOWITZ PC'S MOTION FOR RECONSIDERATION  
OR TO ALTER OR AMEND PURSUANT TO RULE 59(E)**

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## INTRODUCTION

Baker, Donelson, Bearman, Caldwell & Berkowitz P.C. (“Baker Donelson”) respectfully moves for reconsideration of or to alter or amend the portion of the Court’s May 5, 2021 Order denying its motion to dismiss with respect to vicarious liability. *See* Order, ECF No. 70, at 7.

The Receiver alleges that Baker Donelson is vicariously liable for the acts of Brent Alexander and Jon Seawright in connection with alleged investment activity they conducted through a separate LLC they owned, Alexander Seawright Timber Fund I, LLC. Under Mississippi law, an employer is not liable for employees’ actions outside the scope of their employment. Miss. Code § 79-10-67(2).

The Court’s May 5 Order held the Receiver sufficiently alleged that Alexander and Seawright were acting within the scope of their employment. Order at 8. In support of that conclusion, the Court cited three alleged facts: (1) Alexander and Seawright used “the firm’s escrow account”; (2) Alexander Seawright Timber Fund I, LLC was “part and parcel of a bundle of services Baker Donelson provided to its preferred transactional clients”; and (3) the timber fund “served Baker Donelson’s interests.” Order at 8.

None of those three things is alleged in the Amended Complaint. The Receiver never alleges a single dollar related to Alexander’s and Seawright’s timber fund ever touched any Baker Donelson account. The Receiver never alleges any client retained Baker Donelson to provide any investment services through Alexander Seawright Timber Fund I, LLC. And the Receiver never alleges the firm profited by a single penny or otherwise benefited from the timber fund. The Receiver does not allege these things because they did not happen.

Baker Donelson respectfully seeks reconsideration and requests the Court enter a revised order, holding that the facts alleged in the Amended Complaint do not state a claim that Baker Donelson is vicariously liable for the actions of Alexander and Seawright.

## LEGAL STANDARD

On an interlocutory order, such as a ruling on a motion to dismiss, “the trial court [is] free to reconsider and reverse its decision for any reason it deems sufficient[.]” *Zarnow v. City of Wichita Falls*, 614 F.3d 161, 171 (5th Cir. 2010); *see also* Fed. R. Civ. P. 54(b) (“any order . . . may be revised at any time before the entry of a judgment adjudicating all the claims and all the parties’ rights and liabilities). Although reconsideration is proper for any reason within “the trial court’s discretion,” *Wilson v. United States Dep’t of Com.*, 2021 WL 1083449, at \*1 (S.D. Miss. Mar. 18, 2021), reconsideration is particularly appropriate to “correct[] manifest errors of law or fact,” *Templet v. HydroChem Inc.*, 367 F.3d 473, 479 (5th Cir. 2004), or where the court has “misapprehended the facts,” *Barber ex rel. Barber v. Colorado Dep’t of Revenue*, 562 F.3d 1222, 1228 (10th Cir. 2009).

## ARGUMENT

### **I. The Amended Complaint Does Not Allege Alexander and Seawright Used Baker Donelson’s Escrow Account.**

The Order read the Amended Complaint to allege “Baker Donelson . . . let [Alexander and Seawright] move money through the firm’s escrow accounts, lending an air of authenticity and safety to the scheme.” Order at 3; *see also id.* at 9 (“Alexander and Seawright were using . . . its escrow account to sell securities”). The Amended Complaint does not make that allegation. To the contrary, the most it alleges is “Seawright told [a] client that ‘[r]unning funds through us or BD [Baker Donelson] escrow is not a problem[.]’” AC ¶ 74 (emphasis added). The Receiver has received and “reviewed records from Alexander Seawright, LLC.” Receiver’s Report (Dec. 21, 2018), ECF No. 70 at 8, *SEC v. Adams*, Case No. 3:18-cv-252 (S.D. Miss.). She knows how Alexander and Seawright collected money and which accounts those funds passed through. She

appears to have tracked those dollars in performing her loss calculations.<sup>1</sup> With the benefit of that knowledge, the Receiver stops short of alleging that even a single dollar ever touched Baker Donelson's escrow account.

The escrow account appears to have been central to the Court's denial of Baker Donelson's motion to dismiss. The Order references it four times and describes it as a "glaring" use of Baker Donelson's resources that was "of particular salience" to the Court's analysis in holding that Alexander Seawright Timber Fund I, LLC was not "an unaffiliated frolic[.]" Order at 8, 13. Reconsideration is warranted because the Amended Complaint does not (and could not) allege Baker Donelson's escrow account was used in this manner.

**II. The Amended Complaint Does Not Allege Alexander Seawright Timber Fund I, LLC Was a Service That Baker Donelson Provided to Clients.**

The Order read the Amended Complaint to allege "this investment scheme" was "part and parcel of a bundle of services Baker Donelson provided to its preferred transactional clients[.]" Order at 8. The Amended Complaint does not make that allegation. Alexander and Seawright worked as, respectively, a lobbyist and a lawyer at Baker Donelson. AC ¶ 72. The services Alexander and Seawright provided to clients of the firm were legal and public-policy advice. The Receiver does not allege the following: Baker Donelson's services include timber investments; Alexander or Seawright provided legal or public-policy advice to investors who lent money to Alexander Seawright Timber Fund I, LLC; or any client retained Baker Donelson to provide any services in connection with Madison Timber or Alexander Seawright Timber Fund I,

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<sup>1</sup> The Receiver calculates that the loss of investors' principal attributable to Alexander Seawright LLC was \$469,037.53. See Receiver's Response to Objections, ECF No. 281, *SEC v. Adams*, Case No. 3:18-cv-252 (S.D. Miss.) (stating that \$168,853.51 represents 36% of the net principal owed through Alexander Seawright LLC).

LLC. The most the Receiver alleges is Alexander and Seawright “pitched” the investment to “potential investors” among the firm’s clients. *See, e.g.*, AC ¶ 78.<sup>2</sup>

The Order states “[t]he receiver claims that ‘numerous’ other Baker Donelson employees worked with Adams ‘for the purpose of finalizing investments in Madison Timber.’” Order at 4. The Receiver does claim this, but all of her allegations are made “on information and belief.” “[W]here allegations are based on information and belief, the complaint must set forth a factual basis for such belief.” *U.S. ex rel. Thompson v. Columbia/HCA Healthcare Corp.*, 125 F.3d 899, 903 (5th Cir. 1997). The Receiver does not set forth the factual basis for the Receiver’s belief that “numerous” employees of Baker Donelson worked with Adams. To the contrary, the Amended Complaint recognizes that Baker Donelson never represented Adams or Madison Timber or performed legal work for them and that Alexander and Seawright managed their investments through their personal and separate LLC.

### **III. The Amended Complaint Does Not Allege Alexander Seawright Timber Fund I, LLC Served Baker Donelson’s Interests.**

The Order states the Madison Timber “investment scheme . . . served Baker Donelson’s interests.” Order at 8. But the Amended Complaint does not allege Baker Donelson profited from Madison Timber in any way. It does not allege the law firm shared in any profits Alexander and Seawright may have garnered from their LLC, or that the firm stood to do so. That allegation is missing because Baker Donelson did not profit or stand to profit from the Alexander Seawright LLC. Nor does the Amended Complaint allege any client retained Baker Donelson to provide services related to Madison Timber, or the firm generated any business in connection with Madison Timber.

<sup>2</sup> By contrast, the Amended Complaint alleges that Butler Snow employees actually secured an investment of \$1.5 million from one of the firm’s “high net-worth clients in New Orleans,” AC ¶ 49, along with investments from several other “individuals and institutional clients,” *id.* ¶ 57.

As the Mississippi Supreme Court held, a lawyer's conduct is not within his scope of employment if it was "not motivated by a desire to benefit" the firm. *Baker Donelson Bearman Caldwell & Berkowitz, P.C. v. Seay*, 42 So. 3d 474, 489 (Miss. 2010). The Order appears to conclude Alexander and Seawright were acting within the scope of their employment, in part, because the Court read the Amended Complaint to allege that Baker Donelson benefited from Alexander's and Seawright's work on the timber fund (with all of the records, including bank records, in the Receiver's possession, the Receiver could not allege Baker Donelson ever touched any moneys related to Madison Timber). Reconsideration is warranted because that is not what the Amended Complaint alleges.

#### CONCLUSION

For the foregoing reasons, the Court should reconsider its Order denying Baker Donelson's motion to dismiss and enter an amended Order, holding that the facts alleged in the Amended Complaint do not state a claim for vicarious liability against Baker Donelson because Alexander's and Seawright's personal business activities were outside the scope of their employment and not on behalf of the firm.

Dated this 28th day of May, 2021

Respectfully submitted,

**BAKER, DONELSON, BEARMAN,  
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*Counsel for Defendant Baker, Donelson,  
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**CERTIFICATE OF SERVICE**

I hereby certify that on May 28, 2021, I caused the foregoing to be electronically filed with the Clerk of the Court using CM/ECF, which will send notification of such filing to all registered participants.

/s/ Craig D. Singer  
Craig D. Singer

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