

**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**

**BAKER DONELSON’S RESPONSE TO THE UPS STORE’S MOTIONS TO  
CONSOLIDATE, STAY, OR AMEND ITS DISCOVERY SCHEDULE**

Baker, Donelson, Bearman, Caldwell & Berkowitz, P.C. (“Baker Donelson”) submits this Response to The UPS Store’s Motion to Consolidate [ECF No. 87], Motion to Stay Proceedings [ECF No. 90], and Motion to Modify the Scheduling Order [ECF No. 93].

The UPS Store seeks to consolidate for discovery and to stay proceedings in four pending cases (which it describes as the “Investor Loss Cases”), including this case. This case is already stayed pending resolution of criminal proceedings against Defendants Brent Alexander and Jon Seawright. *See* Docket Text Order (June 30, 2021), *Mills v. Butler Snow*, Case No. 3:18-cv-866. Baker Donelson is not a party to any of the other three Investor Loss Cases.

Baker Donelson’s positions with regard to The UPS Store’s motions are as follows:

(1) Baker Donelson opposes any consolidation of this case *for trial*, though we do not understand any party to be requesting such consolidation.

(2) Baker Donelson takes no position on whether the three Investor Loss Cases other than this action should be stayed, or whether the scheduling order in the Receiver's separate action against The UPS Store should be amended.

(3) If the three Investor Loss Cases other than this action are stayed, there will be no need to address consolidation for discovery purposes at this time.

(4) If the three Investor Loss Cases other than this action are *not* stayed, then this stayed action should not be consolidated for discovery purposes with the other (unstayed) actions, at least during the pendency of the stay.

We explain each of these positions in greater detail below.

1. Baker Donelson understands The UPS Store's motion to seek consolidation only for purposes of discovery—and not for purposes of trial. *See* The UPS Store's Mem. of Law ("Mem."), ECF No. 88, at 9. For the avoidance of doubt, Baker Donelson opposes any consolidation of the Investor Loss Cases for trial. Baker Donelson is not alleged to have had any interaction with the many defendants in the other Investor Loss Cases, and consolidation of those disparate parties at trial would produce unnecessary confusion and would make the trial unworkable. *See, e.g., Taylor v. Buckner*, 2016 WL 11612544, at \*1 (S.D. Miss. Sept. 8, 2016) (denying consolidation because of the risk for confusion where they "involve different defendants, and Plaintiffs are traveling under distinct liability theories"); *Touchstone Grp., LLC v. Rink*, 2012 WL 2921223, at \*2–3 (D. Colo. July 16, 2012) (declining to consolidate two cases arising from an alleged Ponzi scheme because "[g]iven the different legal claims and different interests represented in the two cases, the potential for prejudice and jury confusion is high").

2. Regarding The UPS Store's motion for a stay, no such motion was necessary in this action, which is already stayed. Baker Donelson takes no position on whether any of the

other three Investor Loss Cases should be stayed.<sup>1</sup> That said, the Court's determination of the stay question affects Baker Donelson's position with respect to consolidation of the cases for discovery purposes, as discussed below.

3. If the Court decides to stay the three other Investor Loss Cases, then the motion for consolidation should be deferred until after the stay is lifted. There is no need to consolidate discovery when no discovery is occurring, and circumstances in some or all of the cases could change materially in the intervening months in ways that could impact the scope or desirability of consolidation. For example, Baker Donelson has moved for reconsideration of the Court's Order denying its motion to dismiss with respect to vicarious liability. *See* Mot. for Reconsideration, *Mills v. Butler Snow*, ECF No. 78. (May 28, 2021). BankPlus too has filed a motion to reconsider the Court's ruling on its motion to dismiss. *See* Mot. for Reconsideration, *Mills v. BankPlus*, ECF No. 130 (Aug. 9, 2021) (under seal). The UPS Store has moved to certify the issue of the Receiver's standing for interlocutory appeal. *See* Mot. to Certify, *Mills v. The UPS Store*, ECF No. 183 (Mar. 29, 2021). In short, the scope of the legal and factual issues in each case remains in flux. While a stay is in place, the Court should defer the question of consolidation.

4. If the Court does not stay the three other Investor Loss Cases, then Baker Donelson opposes any consolidation while proceedings in this action are stayed. Baker Donelson would be prejudiced by having to participate in discovery during the stay or, alternatively, by any discovery occurring in Baker Donelson's absence that could impact the claims against Baker Donelson.

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<sup>1</sup> Similarly, Baker Donelson takes no position on The UPS Store's motion to amend the discovery schedule in *Mills v. The UPS Store*, Case No. 3:19-cv-364, which, while filed on the docket in this action, does not request any relief concerning this action.

As Baker Donelson explained when it joined Alexander’s and Seawright’s motion to stay this action, *see* ECF No. 81 (June 10, 2021), the Receiver’s claims against Baker Donelson center on the conduct of Alexander and Seawright. Alexander and Seawright are the only Baker Donelson personnel named in the Amended Complaint, and their alleged conduct—which ran through their independent LLC—is the sole alleged connection between Madison Timber and the law firm. Any litigation of the Receiver’s claims against Baker Donelson will require discovery, testimony, and participation from Alexander and Seawright. Requiring Baker Donelson to participate in discovery when Alexander and Seawright are unavailable would prejudice the firm’s development of its defense. *See Corcoran L. Grp., L.L.C. v. Posner*, 2009 WL 1739702, at \*2 (S.D.N.Y. June 10, 2009) (staying civil action against law firm pending resolution of criminal proceedings against individual attorney who was a “central figure” in the action). Baker Donelson also would be unfairly prejudiced if the cases are consolidated and discovery proceeds in Baker Donelson’s absence. *See Johnson v. DeRose*, 2010 WL 3218595, at \*1 (M.D. Pa. Aug. 12, 2010) (stating that it is “relatively obvious” that “defendants to an action in federal court have a right to prepare their defense against a plaintiff’s claims by taking discovery”) (citing *Hickman v. Taylor*, 329 U.S. 495, 507 (1947) (“Mutual knowledge of all the relevant facts gathered by both parties is essential to proper litigation.”)); *Thompson v. Wexford Health Sources Inc.*, 2020 WL 2526944, at \*2 (S.D. Ill. May 18, 2020) (declining to consolidate two cases, when one was in discovery and the other was stayed); *see also* Fed. R. Civ. P. 32(a)(1) (providing that a deposition may be used against a party who “was present or represented at the taking of the deposition or had reasonable notice of it”).

Dated this 23rd day of August, 2021

Respectfully submitted,

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

/s/ Craig D. Singer

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**CERTIFICATE OF SERVICE**

I hereby certify that on August 23, 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