

**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-BWR

Hon. Carlton W. Reeves

**BAKER, DONELSON, BEARMAN, CALDWELL & BERKOWITZ PC'S
MEMORANDUM OF LAW IN RESPONSE TO "MOTION IN LIMINE TO EXCLUDE
EXPERT OPINION RELATING TO BAKER DONELSON'S LIABILITY"**

The Receiver's Motion (ECF No. 234) rests on mischaracterizations of the opinions offered by John Houseal, Professor Benjamin Cooper, and Kurt Peterson. She says these experts rely on "impermissible credibility and factual determinations" and "ignore [] contradictory evidence." Mot. at 4, 7–8. That is not close to accurate. Indeed, the Receiver's Motion does not identify any "credibility [or] factual determinations" made by Messrs. Houseal, Cooper, or Peterson, nor does it identify any "contradictory evidence" they ignore. Their expert reports—which the Motion basically ignores—reflect their *actual* opinions, as opposed to the caricature the Motion attacks.

As to their qualifications, the Receiver does not dispute that Professor Cooper—a longtime professor of ethics at the University of Mississippi Law School—is qualified to render opinions on legal ethics, or that Mr. Peterson—a longtime manager of a firm of hundreds of lawyers—is qualified to render opinions on law firm management. But the Receiver argues Mr. Houseal is not qualified to offer opinions on law firm operation and management despite his *fifty*

years of experience as an attorney at a law firm, including serving as managing partner and on the management committee of a large regional law firm located in the same city where Baker Donelson is headquartered. The Motion should be denied in its entirety.

LEGAL STANDARD

“The admissibility of expert testimony is governed by Federal Rule of Evidence 702[.]” *Johnson v. Arkema, Inc.*, 685 F.3d 452, 459 (5th Cir. 2012). An expert is “permitted wide latitude to offer opinions, including those that are not based on firsthand knowledge or observation.” *Daubert v. Merrell Dow Pharms., Inc.*, 509 U.S. 579, 592 (1993). Expert testimony must be “based on sufficient facts or data,” Fed. R. Evid. 702(b), but that language “‘is not intended to authorize a trial court to exclude an expert’s testimony on the ground that the court believes one version of the facts and not the other.’” *Pipitone v. Biomatrix, Inc.*, 288 F.3d 239, 249 (5th Cir. 2002) (quoting Fed. R. Evid. 702 advisory committee’s note to 2000 amendment). “‘When facts are in dispute, experts sometimes reach different conclusions based on competing versions of the facts.’” *Id.*

“[W]hether the predicate facts on which [an expert] relied are accurate” is a question for the factfinder. *Id.* at 250. “As a general rule, questions relating to the bases and sources of an expert’s opinion affect the weight to be assigned that opinion rather than its admissibility and should be left for the jury’s consideration.” *United States v. 14.38 Acres of Land, More or Less Situated in Leflore Cnty., State of Miss.*, 80 F.3d 1074, 1077 (5th Cir. 1996) (citation omitted).

With respect to qualifications, Rule 702 “does not mandate that an expert be highly qualified in order to testify about a given issue.” *Huss v. Gayden*, 571 F.3d 442, 452 (5th Cir. 2009). “Differences in expertise bear chiefly on the weight to be assigned to the testimony by the trier of fact, not its admissibility.” *Id.* So long as “there is some ‘reasonable indication of qualifications,’ the expert’s qualifications become an issue for the trier of fact.” *Addison v. La.*

Reg'l Landfill Co., 2024 WL 3740596, at *7 (E.D. La. Aug. 10, 2024) (quoting *Prest v. BP Expl. & Prod. Inc.*, 640 F. Supp. 3d 542, 550 (E.D. La. 2022), *aff'd*, 2023 WL 6518116 (5th Cir. Oct. 5, 2023)).

ARGUMENT

I. THE COURT SHOULD DENY THE RECEIVER'S MOTION TO EXCLUDE JOHN HOUSEAL'S OPINIONS.

A. Mr. Houseal Is Qualified to Render His Opinions.

The Receiver argues Mr. Houseal's opinions are not admissible because "law firm management is not an area in which he purports to have any specialization." Mot. at 3. That is not correct, and Mr. Houseal is amply qualified through decades of experience to give the opinions in his report.

Mr. Houseal opines on the following issues: (1) "[w]hether Baker Donelson acted consistent with typical practice for law firms with respect to the employment of Brent Alexander and Jon Seawright;" (2) "[w]hether the facts and circumstances known to Baker Donelson would have led a typical law firm following standard law firm practices to investigate or take disciplinary or corrective action with respect to Alexander and Seawright's activities for the Alexander Seawright Timber Fund I, LLC [;]" and (3) the expert report submitted by the Receiver's expert in law firm management, Marta-Ann Schnabel (who has vastly less relevant experience than Mr. Houseal). Mot. Ex. 2 (Houseal Rpt.) at 1.

Mr. Houseal is qualified to opine on these issues based on, among other things, his *decades* of experience as an attorney at a law firm, and advising other law firms. Ex. 1 (Houseal Tr.) at 11:17–25, 44:12–25; Mot. Ex. 2 (Houseal Rpt.) at 1. He joined the law firm of Glankler Brown, PLLC as an associate in 1975, and has been a partner at the firm for over four decades. Ex. 1 (Houseal Tr.) at 11:17–25, 44:12–25; Mot. Ex. 2 (Houseal Rpt.) at 1. Glankler Brown is

based in Memphis—where Baker Donelson’s headquarters are—and employs approximately 44 attorneys and more than 30 staff members. Ex. 1 (Houseal Tr.) at 28:13–29:19; Mot. Ex. 2 (Houseal Rpt.) at 1.

While Mr. Houseal’s opinions relate to how law firms ordinarily operate, and are not limited to how their top managers behave, he has held multiple management roles throughout his fifty-year career at Glankler Brown. He served as managing partner of the firm. Ex. 1 (Houseal Tr.) at 39:17–40:14; Mot. Ex. 2 (Houseal Rpt.) at 1. He served on Glankler Brown’s management committee—which consists of approximately six attorneys—for multiple years. Ex. 1 (Houseal Tr.) at 39:17–42:11. Mr. Houseal also drafted the firm’s first partnership agreement and oversaw the firm’s hiring for a time. Ex. 1 (Houseal Tr.) at 39:17–40:14, 44:12–25. Although Mr. Houseal has not held any formal management roles in recent years, he has continued to be “involved in operational issues” as a long-standing, senior partner at the firm. Ex. 1 (Houseal Tr.) at 44:1–25. Further, he has advised at least two other law firms in matters relating to law firm management. Ex. 1 (Houseal Tr.) at 31:11–37:22.

Given his wealth of relevant experience throughout his 50-year career as an attorney at a law firm in the same city where Baker Donelson is headquartered, Mr. Houseal is more than qualified to render his opinions. The Receiver’s challenges to Mr. Houseal’s expertise speak to the “weight to be assigned to the testimony by the trier of fact, not its admissibility.” *Huss*, 571 F.3d at 452 (“Differences in expertise bear chiefly on the weight to be assigned to the testimony by the trier of fact, not its admissibility.”); *see, e.g., Madison Cnty. Nursing Home v. Broussard Grp., LLC*, 2019 WL 3782191, at *4 (S.D. Miss. Aug. 12, 2019) (declining to exclude expert as unqualified where the challenges raised “go to credibility, and not admissibility”).

B. Mr. Houseal's Opinions Are Not Based on Any Credibility or Factual Determinations.

The Receiver further argues the Court should exclude Mr. Houseal's opinions because he "relies for his opinions on impermissible credibility and factual determinations." Mot. at 4. She does not identify any "credibility [or] factual determinations" that Mr. Houseal makes, however, because there are none.

Mr. Houseal is not opining that any facts about Baker Donelson's conduct are true, much less that any witness to the facts is or is not credible. Like any expert witness acting consistent with Rule 702, he does not purport to have first-hand knowledge of the facts, but bases his opinions on the assumption that certain facts—which the jury may or may not find—are true. *See Daubert*, 509 U.S. 579 at 592 ("[A]n expert is permitted wide latitude to offer opinions, including those that are not based on firsthand knowledge or observation."); *Joseph v. Doe*, 2021 WL 2313475, at *6 (E.D. La. June 7, 2021) ("Plaintiffs may use cross-examination during the introduction of the factual testimony or during expert witness testimony to test the correctness of whatever facts the expert assumes as the basis for his opinions."). If the jury finds based on the evidence at trial that different facts are true, it will discount Mr. Houseal's opinions. (That is unlikely, however, because the facts on which he bases his opinions are uncontroverted.)

In a similar vein, the Receiver asserts Mr. Houseal "credit[s] Baker Donelson's fact witnesses entirely and, in doing so, ignore[s] any contradictory evidence." Mot. at 4. Again, the Receiver's Motion does not identify any "contradictory evidence" that Mr. Houseal ignores. Nor does it acknowledge that Mr. Houseal considers even the testimony the Receiver considers most supportive of her claims. *See, e.g.*, Mot. Ex. 2 (Houseal Rpt.) at 14 & n.46.

The Receiver's challenges to Mr. Houseal boil down to a disagreement over the weight his opinions should be given. That is an issue for the jury. *See, e.g., Haimur v. Allstate Prop. &*

Cas. Ins. Co., 605 F. Supp. 3d 887, 891 (S.D. Miss. 2022) (“[A]s a general rule, questions relating to the bases and sources of an expert’s opinion affect the weight to be assigned that opinion rather than its admissibility and should be left for the jury’s consideration.” (quoting *Viterbo v. Dow Chemical Co.*, 826 F.2d 420, 422 (5th Cir. 1987))); *Madison Cnty. Nursing Home*, 2019 WL 3782191, at *3 (“[T]he Court finds the arguments being made by [Plaintiff] challenge the facts (or alleged lack thereof) underlying the opinions of Murphy and Litolff . . . The Court finds these fact-based challenges go to the weight of evidence and not to its admissibility under Daubert.”) (collecting cases). The Receiver’s motion to exclude Mr. Houseal’s opinions should be denied.

II. THE COURT SHOULD DENY THE RECEIVER’S MOTION TO EXCLUDE BENJAMIN COOPER’S OPINIONS.

The Receiver specifically admits that Professor Cooper “is qualified to opine on whether an individual lawyer’s conduct violates a rule of professional conduct.” Mot. at 5–6. As she must: Prof. Cooper is a Professor of Legal Studies and Professionalism at the University of Mississippi Law School, is serving his third three-year term on the Mississippi Bar Ethics Committee, has served as the Chair of the Executive Committee of the Association of American Law Schools (AALS) Section on Professional Responsibility, and has published extensively in the field of legal ethics. *See* Mot. Ex. 4 (Cooper Rpt.) at 2–3. One would be hard-pressed to identify a more qualified expert in the State of Mississippi (or anywhere else) to testify about legal ethics.

And that is exactly what Professor Cooper has been designated to testify about. As his report begins: “I have been asked by Counsel for [Baker Donelson] to conduct an analysis of the firm’s compliance with the Mississippi Rules of Professional Conduct and related standard of practice, as well as to respond to the Expert Report of Marta-Ann Schnabel.” *Id.* at 1. The

Receiver cannot dispute the ethics rules are relevant: She designated her own expert, Ms. Schnabel, to opine about those rules. *See* Ex. 2 (Schnabel Rpt.) at 8–11. Professor Cooper specifically responds to her opinions and discusses the same ethics rules she cites. *See* Mot. Ex. 4 (Cooper Rpt.) at 15–18. Professor Cooper’s testimony is obviously admissible.

The Receiver pivots to arguing that “[Prof.] Cooper cannot testify to issues pertaining to law firm management.” Mot. at 2, 6. Professor Cooper does not purport to opine on “law-firm management,” except insofar as the rules of ethics speak to such issues. Again, these are the same ethics rules Ms. Schnabel cites, Mississippi Rules of Professional Conduct 5.1 and 5.3. *See* Mot. Ex. 4 (Cooper Rpt.) at 15–18; Ex. 2 (Schnabel Rpt.) at 8–11.

The Receiver points out the Mississippi Rules of Professional Conduct “do not apply to law firms.” Mot. at 6–7. It is true the Rules apply to lawyers, not directly to law firms, but that does not help the Receiver’s argument: Baker Donelson, like any organization, can only be liable if some individual acting on behalf of the law firm (i.e., within the scope of employment) did something wrong. Professor Cooper’s opinions will help the jury evaluate whether any lawyer acting for Baker Donelson did something wrong, such as breaching an alleged ethical duty to supervise Alexander and Seawright in the conduct of their outside investing activity. Again, the Receiver’s own putative expert opines on these ethics rules, presumably in an effort to establish the opposite proposition—that some lawyer at Baker Donelson (whom she admits she cannot name) violated those rules. *See* Ex. 2 (Schnabel Rpt.) at 8–11.

Last, the Receiver argues that, because Professor Cooper does not offer an “opinion on Baker Donelson’s liability, his sole use at trial would be to narrate Baker Donelson’s version of the record facts.” Mot. at 7. Professor Cooper does not opine on the facts. Like Mr. Houseal, he identifies the factual basis—most if not all of which is undisputed—that is necessary context for

his opinions about the ethics rules. He does not tell the jury what facts are true or what witnesses to believe. The jury will decide what the facts are, and it is free to discount or disregard Professor Cooper's opinions if it concludes they are based on inaccurate factual premises. *See supra*, pp. 5–6.

The Receiver also apparently criticizes Professor Cooper's report as one-sided. That is an issue of weight, not admissibility, *see supra* Part II.B, but in any event the Receiver's Motion provides no explanation for how his opinions rely on a "credibility determination" or "ignore any contradictory evidence." Mot. at 7. Nor could it: Professor Cooper copiously cited his report, and acknowledged the testimony of the Receiver's preferred witnesses. *See, e.g.*, Mot. Ex. 4 (Cooper Rpt.) at 9–10 (discussing investor testimony).

III. THE COURT SHOULD DENY THE RECEIVER'S MOTION TO LIMIT KURT PETERSON'S OPINIONS.

The Receiver does not dispute that Kurt Peterson is "qualified to opine on matters pertaining to law firm management." Mot. at 8. After all, he has managed a firm of hundreds of lawyers for decades.¹

Echoing her (incorrect) criticisms of Mr. Houseal and Professor Cooper, the Receiver asserts Mr. Peterson "cannot merely narrate Baker Donelson's version of the record facts" and asks the Court to exclude his opinion "[t]o the extent [it] depends on impermissible credibility and factual determinations." *Id.* Mr. Peterson does not "merely narrate Baker Donelson's version of the record facts." *Id.* Nor does he opine on any facts or tell the jury who or what to believe. Mr. Peterson offers opinions on law firm management—which the Receiver

¹ Mot. Ex. 5 (Peterson Rpt.) at 2–3 (summarizing his qualifications, including that he was the firmwide Managing Partner of Crosby, Heafey, Roach & May—which had approximately 250 attorneys across multiple offices—and, after the firm merged with Reed Smith in 2003, he served on Reed Smith's Executive Committee for approximately fifteen years).

acknowledges he is qualified to do—based on the facts set forth in his report. He opines Baker Donelson “acted reasonably, appropriately and responsibly in supervising and managing the legal practice of Jon Seawright and the public policy advising practice of non-lawyer Brent Alexander” and that the firm “instituted policies, procedures and a management structure consistent with industry standards to guide and manage the work of Mr. Seawright and Mr. Alexander and to encourage compliance with applicable ethical standards.” Mot. Ex. 5 (Peterson Rpt.) at 1. The Receiver’s assertion that Mr. Peterson “ignores any contradictory evidence,” Mot. at 8, is entirely unsupported and belied by Mr. Peterson’s report.

In short, Mr. Peterson does what every good expert witness is called on to do: He explains what record facts relate to his opinions. The jury will have to decide what facts are true based on witnesses with personal knowledge and admissible documents. The Court should deny the Receiver’s motion to limit Mr. Peterson’s testimony.

CONCLUSION

Baker Donelson respectfully requests the Court deny the Receiver’s motion.

Dated this 17th day of November, 2025

Respectfully submitted,

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

/s/ Craig D. Singer

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CERTIFICATE OF SERVICE

I hereby certify that on November 17, 2025, 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