UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF MISSISSIPPI
NORTHERN DIVISION

ALYSSON MILLS, IN HER CAPACITY AS RECEIVER FOR ARTHUR LAMAR ADAMS AND MADISON TIMBER PROPERTIES, LLC, Plaintiff, v. JON DARRELL SEAWRIGHT, Defendant.	Case No. 3:20-cv-232 Hon. Carlton W. Reeves, District Judge Hon. Bradley W. Rath, Magistrate Judge

RECEIVER'S OPPOSITION TO MOTION TO EXCLUDE TESTIMONY OF MARTA-ANN SCHNABEL

Alysson Mills, in her capacity as the court-appointed receiver for Arthur Lamar Adams and Madison Timber Properties, LLC (the "Receiver"), opposes the *Motion to Exclude the Testimony of Marta-Ann Schnabel* filed by Baker, Donelson, Bearman, Caldwell, & Berkowitz PC ("Baker Donelson"). [231].[1]

BACKGROUND

Marta-Ann Schnabel is the managing director of O'Bryon & Schnabel, PLC and previously served as managing partner of Leake & Andersson, LLP for ten years.[2] In addition to serving as

[1] In this Opposition, the Receiver cites to several Exhibits to her Opposition to the Motions for Summary Judgment. *See, e.g.* FNs 13 – 24, 43, 44. In an effort to streamline the briefing and for the convenience of the Court, the Receiver has not re-filed those exhibits with this response and instead simply cites the numbered Exhibits to Opposition to the Motion for Summary Judgement, filed contemporaneously herewith. The Receiver also cites to certain deposition testimony by Schnabel, attached herewith as Exhibit A.
[2] 231-1, Schnabel CV, at 1.

the President of the Louisiana State Bar Association and of the New Orleans Bar Association, she has been a member of the LSBA's Rules of Professional Conduct Committee for 20 years and was a member of the LSBA's Ethics Advisory Service Committee for 15 years.[3] She has also been the chair and a member of the Law Practice Management Section of DRI (Association of Lawyers Defending Businesses) since 2012.[4]

The Receiver retained Schnabel to opine on three questions:

> (1) Whether the management and supervisory controls exercised by the Baker, Donelson, Bearman, Caldwell & Berkowitz, PC ("Baker Donelson") firm over Brent Alexander ("Alexander") and Jon Seawright ("Seawright") met the standards that the firm articulated for members and employees in its bylaws and handbook.
>
> (2) Whether the management and supervisory controls exercised by the Baker Donelson firm over Alexander and Seawright met the standards set forth by the Rules of Professional Conduct.
>
> (3) Considering the foregoing, as well as the open behaviors of Alexander and Seawright, whether Baker Donelson should have known that Alexander and Seawright were operating the Alexander Seawright Timber Fund 1 ("ASTF1") and developing the Alexander Seawright Timber Fund 2 ("ASTF2") through Baker Donelson connections and using Baker Donelson resources and personnel.[5]

Schnabel opined that:

1. Baker Donelson's managerial and supervisory controls did not match the standards set by Baker Donelson's Employee Handbook/Code of Business Conduct, By-laws, or good practice.[6] The firm took no steps to enforce its own rules to supervise or limit the work of Seawright and Alexander.[7]

2. Rule of Professional Conduct 1.8 prohibits lawyers from entering into business transactions with clients, but Baker Donelson did not inquire about potential conflicts of interest

[3] *Id.* at 2.
[4] *Id.*
[5] 231-3, Schnabel Report, at 1.
[6] *Id.* at 8.
[7] *Id.*

based on the open and obvious way Seawright and Alexander conducted their timber business at the Baker Donelson Jackson office.[8] Baker Donelson had a duty pursuant to Rules of Professional Conduct 5.1 and 5.3 to know about and supervise Alexander's business activities, and there should have been concern that the relationship between Seawright and Alexander brushed up against Rule 5.4(b).[9] Baker Donelson's managerial and supervisory controls did not match the standards intended by the Rules of Professional Conduct.[10]

3. Baker Donelson should have known that Alexander and Seawright were operating this investment enterprise out of the Baker Donelson Jackson office.[11] Baker Donelson did not take any adverse action, which demonstrates a lack of management and supervisory controls and falls below the standard of care required by Baker Donelson's internal policies, the Rules of Professional Conduct, and the standard of care for law firms.[12]

LAW GOVERNING EXPERTS

"Whether an individual is qualified to testify as an expert is a question of law." *Williams v. Manitowoc Cranes, L.L.C.*, 898 F.3d 607, 623–24 (5th Cir. 2018) (citation omitted). Federal Rule of Evidence 702 governs. "Experts qualified by 'knowledge, skill, experience, training or education' may present opinion testimony to the jury." *Williams*, 898 F.3d at 623–24 (quoting Fed. R. Evid. 702). An otherwise qualified expert may testify so long as:

> (a) the expert's scientific, technical, or other specialized knowledge will help the trier of fact to understand the evidence or to determine a fact in issue;
>
> (b) the testimony is based on sufficient facts or data;

[8] *Id.* at 10.
[9] *Id.* at 11.
[10] *Id.*
[11] *Id.* at 11-12.
[12] *Id.* at 12.

(c) the testimony is the product of reliable principles and methods; and

(d) the expert's opinion reflects a reliable application of the principles and methods to the facts of the case.

Fed. R. Evid. 702. "The district court has 'broad latitude in weighing the reliability of expert testimony for admissibility.'" *Id.* at 623–24 (citation omitted).

ARGUMENT

Baker Donelson does not dispute that Schnabel is qualified to opine on law firm management. Baker Donelson's management and supervision of Jon Seawright and Brent Alexander is an issue in this case. Among other things, the jury will decide whether Baker Donelson impliedly or otherwise authorized Seawright and Alexander's timber business and whether, after the fact, they ratified it by failing to take any adverse action. Schnabel has the kind of specialized knowledge of law firms that will help the jury decide these issues.

Baker Donelson attacks Schnabel's opinions to the extent they rely on Baker Donelson's own policies and rules of professional conduct. But Baker Donelson's arguments mischaracterize both the issues in this case and the bases for Schnabel's opinions.

Baker Donelson attacks Schnabel's assessment of the facts, including that it took no adverse action against Seawright and Alexander and that it "should have known" about their timber business. Baker Donelson complains that other of Schnabel's statements of fact are framed "pejorative[ly]." But experts necessarily apply their specialized knowledge and expertise to a set of facts, and they properly disclose that in their opinions. Every fact in Schnabel's report has a factual basis. Baker Donelson may cross examine Schnabel on the facts at trial, but it cannot exclude them.

The Receiver addresses the relevant evidence, Schnabel's opinions, and Baker Donelson's arguments below.

1. Baker Donelson's policies

Baker Donelson asks the Court to exclude Schnabel's opinion to the extent it accounts for Baker Donelson's failure to enforce its own policies.

The evidence is that Baker Donelson had written policies that prohibited Seawright and Alexander's activities. Among them:

> No shareholder or employee licensed to practice law for which the firm provides legal services shall serve as a director or executive officer of a corporation, or general partner of a partnership, for which the firm provides legal services without the prior approval of the Board of Directors[13]
>
> All attorneys in the Firm, before agreeing to serve on the board of directors of any business corporation, whether public or private and whether or not the Firm serves as counsel, should provide the Managing Shareholder (through the Practice Group Leader) with relevant information concerning the company to the extent such information is reasonably available including, without limitation …[14]
>
> No lawyer in the Firm may serve as registered agent for service of process of any client or potential client or any other entity without the express written approval of the Office of General Counsel[15]
>
> Any employee must never use or attempt to use his or her position at Baker Donelson to obtain any improper personal benefit for himself[16]
>
> Baker Donelson's assets are to be used for legitimate business purposes only.[17]
>
> The conference rooms … should not be used by individuals for personal work[18]
>
> [E]ach employee should devote his/her full energies and interest to this Firm. However, if part-time employment becomes necessary, a full conflict

[13] Ex. 62, BAKER_MILLS_0027697 (Bylaws).

[14] Ex. 63, BAKER_MILLS_0027746 (Board Fiduciary etc Policy).

[15] Ex. 63, BAKER_MILLS_0027746 (Board Fiduciary etc Policy).

[16] Ex. 64, BAKER_MILLS_0027833 (Code of Conduct).

[17] Ex. 64, BAKER_MILLS_0027841 (Code of Conduct).

[18] Ex. 64, BAKER_MILLS_0027841 (Code of Conduct).

> check must be run and a conflict committee member must clear such employment. Please contact your Office Administrator.[19]
> The Firm prohibits you from soliciting other employees for memberships in or subscription for any public or private enterprises as well as sales of productions during the employees' work time.[20]

The policies called for corrective action in the event of a violation:

> Violations of personal conduct rules will result in one of the following forms of disciplinary action—oral warning, written warning, probation, or termination of employment. In arriving at a decision for proper action, the following will be considered: (a) Seriousness of the infraction (b) Past record of the employee (c) Circumstances surrounding the matter[21]

> Violations of personal conduct rules will result in one of the following forms of disciplinary action—oral warning, written warning, probation, or termination of employment. In arriving at a decision for proper action, the following will be considered: (a) Seriousness of the infraction (b) Past record of the employee (c) Circumstances surrounding the matter[22]

The policies notwithstanding, Baker Donelson took no adverse action against either Seawright or Alexander ever.

The evidence is that Seawright disclosed his and Alexander's "outside business activity" to the firm in 2011, and no one at Baker Donelson questioned it. Neither Seawright nor Alexander hid their activities over the next seven years. Their activities were also open and obvious. In seven years, no one at Baker Donelson told them to stop using Baker Donelson's offices to conduct their business, to stop using their @bakerdonelson accounts, or to stop using Baker Donelson's employees. No one discouraged their activities at all. During this time, Seawright was among the

[19] Ex. 64, BAKER_MILLS_0027841 (Code of Conduct).
[20] Ex. 64, BAKER_MILLS_0027866 (Code of Conduct).
[21] Ex. 64, BAKER_MILLS_0027866 (Code of Conduct).
[22] Ex. 64, BAKER_MILLS_0027866 (Code of Conduct).

most powerful lawyers at the firm, having been elected to Baker Donelson's governing board of directors and appointed to its exclusive finance committee.

In April 2018, after Madison Timber collapsed, Baker Donelson's General Counsel Sam Blair conducted an internal investigation "of what was going on with the whole situation." Neither Seawright nor Alexander withheld any information from Baker Donelson at that time. Baker Donelson's corporate representative testified he had no reason to believe that they withheld any information from Baker Donelson. Blair reported his findings to Baker Donelson's board of directors and, separately, to its shareholders.

Baker Donelson took no corrective action against either Seawright or Alexander in April 2018.[23] Baker Donelson took no corrective action against either Seawright or Alexander at any time thereafter. Seawright remained a shareholder at least until May 2021.[24]

Schnabel does not opine that Baker Donelson's written policies were deficient but instead that Baker Donelson's managerial and supervisory controls did not match them. Baker Donelson makes four arguments for excluding that opinion.

First, Baker Donelson argues Schnabel's opinion does not "fit" this case because "the Receiver's complaint does not once mention either Baker Donelson's bylaws or its handbook" and "the Receiver does not accuse Baker Donelson of failing to enforce the firm's bylaws and handbook."[25] But the Receiver's complaint generally alleges Baker Donelson is vicariously liable for Seawright and Alexander's acts and specifically alleges it is directly liable for its own failure to supervise them. The jury will decide whether Baker Donelson impliedly or otherwise authorized

[23] Ex. 3, Seawright admission no. 40 ("Seawright admits no adverse action was taken against him" "for any reason related to ASTF and/or Madison Timber after Madison Timber collapsed in 2018"); Ex. 4, Alexander response to interrogatory no. 11 ("Alexander is unaware of actions taken in connections with his employment at Baker Donelson that could be deemed to be 'adverse'").

[24] Ex. 45, BAKER_MILLS_0028189.

[25] 232, Baker Donelson's memo, at 5.

Seawright and Alexander's timber business and whether, after the fact, they ratified it by failing to take any corrective action. Whether the firm enforced its own rules is relevant to Baker Donelson's liability, whether vicarious or supervisory. It "fits."[26]

Second, Baker Donelson argues Schnabel "is not an expert on Baker Donelson's policies."[27] But she does not have to be an expert on Baker Donelson's policies specifically. Baker Donelson does not dispute that she is qualified to opine on law firm management generally, or that law firm management includes written internal controls. Baker Donelson's argument would define expertise so narrowly that only an employee or former employee of Baker Donelson would have it. Such specific expertise would be impractical if not impossible, and Rule 702 does not require it. *See, e.g.*, *Williams v. Manitowoc Cranes, L.L.C.*, 898 F.3d 607, 623–24 (5th Cir. 2018) ("Manitowoc seeks to exclude a mechanical engineer with a background in warnings and small-crane design from testifying as an expert about warnings for a crawler crane. We decline to adopt this approach. As long as there are 'sufficient indicia' that an individual will 'provide a reliable opinion' on a subject, a district court may qualify that individual as an expert.").

In support of its argument, Baker Donelson cites two maritime personal injury cases: *Douglas v. Chem Carriers Towing, LLC*, 431 F. Supp. 3d 830, 838 (E.D. La. 2019), and *Oatis v. Diamond Offshore Mgmt. Co.*, 2010 WL 936449, at *2 (E.D. La. Mar. 12, 2010). Neither informs

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[26] Baker Donelson cites *El Aguila Food Prods., Inc. v. Gruma Corp*., 301 F. Supp. 2d 612 (S.D. Tex. 2003), for the proposition that expert testimony must "fit" the facts to be presented to the factfinder. But it omits that the *El Aguila* court explained that a "a difference in opinion as to the nature of the 'fit'" is not a basis for exclusion:

> The issue of relevancy requires the Court to find that the opinion offered "fits" the facts that are presented to the fact finder. *Moore v. Ashland Chem. Inc.*, 151 F.3d 269, 276 (5th Cir. 1998) (en banc). In other words, there must be a connection between the expert's opinion and the fact testimony. *Id.* **However, a difference of opinion as to the nature of the "fit," or the inferences to be drawn from an application of the "fit," is not a basis to exclude an expert's testimony.** *See Tanner v. Westbrook*, 174 F.3d 542 (5th Cir. 1999).

301 F. Supp. at 619 (emphasis added).

[27] 232, Baker Donelson's memo, at 6.

the Court's analysis here. Both cases involved expert testimony as to matters of common sense. In *Douglas*, the expert opined on whether smooth ceramic tiles are slippery. In *Oatis*, the expert opined on whether job safety violations led to the plaintiff's injuries (after a crane operator hit him with a load of pipe). "[J]urors are equipped to understand" these types of risks. *Douglas*, 431 F. Supp. 3d at 836.

Jurors cannot be expected to understand how law firms are managed. By way of analogy, courts in the Fifth Circuit have allowed experts to testify "on issues related to the quality or propriety of a defendant's employment practices." *Dickson v. Bosworth Co., Ltd.*, No. MO:21-CV-009-DC, 2022 WL 1523490, at *4 (W.D. Tex. May 13, 2022) (collecting cases) (admitting plaintiff's expert testimony as to defendant's policies, procedures, practices, and training received by employees compared to prevailing standards or best practices).

Third, Baker Donelson argues Schnabel has "no basis" for measuring the firm's conduct against a broader standard of care.[28]

Baker Donelson contends Schnabel's own firm does not have policies like Baker Donelson's. But Schnabel own firm's policies are not the sole basis for her opinion. Schnabel has broad, specialized knowledge in the field of law firm management. In addition to her 20 years on the LSBA's Rules of Professional Conduct Committee and 15 years on the LSBA's Ethics Committee, she has also been a member and chair of the DRI Law Practice Management Section and in that role edited a Law Firm Practice Management Guide.[29] She testified that "the vast body of knowledge that [she has] comes from [her] various experiences at all these levels"[30] and that

[28] 232, Baker Donelson's memo, at 6-7.

[29] 231-1, Schnabel CV, at 2-4.

[30] Schnabel depo at 37:16 – 38:3.

"the body of all the work that [she has] done in this area" informed her opinion.[31] Although counsel for Baker Donelson focused his deposition questions of Schnabel specifically on Schnabel's own firm's policies, her professional experience as a whole qualifies her to measure the firm's conduct against a broader standard of care. An expert may opine "based mainly on personal observations, professional experience, and training[.]" *Miciotto v. Hobby Lobby Stores, Inc.*, 2021 WL 219089, at *4–5 (W.D. La. Jan. 21, 2021); *see also Kumho Tire Co. v. Carmichael*, 526 U.S. 137, 156 (1999). "[N]o one denies that an expert might draw a conclusion from a set of observations based on extensive and specialized experience." *Young v. Am. Eagle Lines*, 2007 WL 9710791, at *3 (M.D. La. Feb. 14, 2007).

Baker Donelson contends Schnabel was unaware of any firm doing something differently from Baker Donelson. But Baker Donelson mis-frames the question. The question is not whether any firm, big or small, allows outside business activities. In certain circumstances, they may even encourage it. The question is whether, if the firm has a written policy, it enforces it. As Schnabel explains, having a written policy is only part of it. In addition, "hands-on supervision, management controls, and enforcement" are necessary to protect the firm and its clients.[32] Baker Donelson does not contend Seawright and Alexander did not violate its written policies. Baker Donelson does not contend that other firms, including firms with 700+ lawyers working in 20+ different offices, do not enforce their own written policies.

Regardless, Baker Donelson's argument merely attacks the basis or source of Schnabel's opinion. "As a general rule, questions relating to the bases and sources of an expert's opinion

[31] *Id.* at 52:2-7.

[32] 231-3, Schnabel report, at 5 ("Published rules and regulations notwithstanding, however, hands-on supervision, management controls, and enforcement of rules are necessary to conform with the Rules of Professional Conduct, assure insurance coverage protection, avoid intra office discord, and maintain good business practice. Such controls are most important because they protect clients and potential clients.")

affect the weight to be assigned that opinion rather than its admissibility." *Viterbo v. Dow Chem. Co.*, 826 F.2d 420, 422 (5th Cir. 1987) (citing *Dixon v. International Harvester Co.*, 754 F.2d 573, 580 (5th Cir. 1985)). *See also Om Sai Ram Hosp. LLC v. Amguard Ins. Co.*, No. 6:21-CV-02999, 2023 WL 5670647, at *2 (W.D. La. July 27, 2023) (collecting cases) ("Challenges to the inputs used by an expert rather than his methodology are fodder for cross-examination instead of grounds for exclusion."). Relatedly, to the extent Baker Donelson's complaint is that Schnabel's experience is "idiosyncratic,"[33] that is not a basis for exclusion. "[D]ifferences in expertise bear chiefly on the weight to be assigned to the testimony by the trier of fact, not its admissibility." *Williams*, 898 F.3d at 623–24 (citation omitted).

Finally, Baker Donelson attacks Schnabel's opinion for the reason that she misread the form by which Seawright disclosed his "outside business activity" to Baker Donelson in 2011.[34] Schnabel misread the form to indicate that Seawright was providing investment services for the Mississippi Symphony Orchestra, but the form actually indicated that he was providing director/trustee services.[35] If anything, that mistake goes to the opinion's underlying facts and therefore the weight and credibility of Schnabel's testimony—not admissibility.

2. Rules of professional conduct

Baker Donelson asks the Court to exclude Schnabel's opinion to the extent that rules of professional conduct informed it.

First, it contends Schnabel "concededly is not an expert on the Rules of Professional Conduct."[36] That is not a fair characterization of her testimony. Schnabel testified that she was

[33] 232, Baker Donelson's memo, at 7.
[34] 232, Baker Donelson's memo, at 8.
[35] Schnabel depo at 114-16.
[36] 232, Baker Donelson's memo, at 8.

retained to opine on law firm management, that "rules of professional conduct play into that," and that she does have specialized knowledge of and expertise in legal ethics:

> Q. All right. So the -- the Receiver is presenting you as an expert in this matter, correct?
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> A. That's my understanding, yes, sir.
>
> Q. How would you describe your expertise? What are you an expert in?
>
> A. I believe that they are offering me as an expert in law practice management.
>
> Q. And what about legal ethics? Are you an expert on legal ethics?
>
> A. I'm knowledgeable about legal ethics, certainly.
>
> Q. Okay. But you --
>
> A. But I -- but I -- but I don't believe that they've asked me to be an expert on legal ethics.
>
> Q. Okay. And it sounds like you would not consider yourself an expert on legal ethics?
>
> A. I believe I have some expertise in legal ethics, yes.
>
> Q. Well, are -- are you presenting yourself as an expert on the rules of professional conduct in any jurisdiction?
>
> A. I'm not presenting myself as anything. I was retained as a law practice management expert, and that's what I'm doing. But certainly, the rules of professional conduct play into that.[37]

Baker Donelson does not otherwise challenge Schnabel's qualification to opine on matters pertaining to rules of professional conduct. Based on her testimony and her specialized knowledge and experience, she is not unqualified give an opinion that is in part informed by rules of professional conduct.

[37] Schnabel depo at 38:17 – 39:16.

Baker Donelson next argues that Schnabel's opinion must be excluded because "[s]he repeatedly admitted to not having authority to support her analysis of the Rules of Professional Conduct, instead opining based merely on her 'common sense.'"[38] True, an expert cannot testify to matters that are within *a lay person's* common sense. *Vogler v. Blackmore*, 352 F.3d 150, 156 (5th Cir. 2003) (expert testimony may be excluded if it is "directed at an issue that is "well within the common sense understanding of jurors or requires no expert testimony"); *see also* Advisory Note to Federal Rule of Evidence 702 ("There is no more certain test for determining when experts may be used than the common sense inquiry whether the untrained layman would be qualified to determine intelligently and to the best degree the particular issue without enlightenment from those having a specialized understanding of the subject involved in the dispute). But the matters about which Schnabel opines are not based on a lay person's common sense, but instead the common sense of someone with Schnabel's specialized knowledge and experience.[39] That experience includes, *inter alia*, 34 years of membership on the LSBA Ethics Advisory Service Committee and Rules of Professional Conduct Committee, through which she has issued opinions for attorneys seeking counsel for questions related to rules of professional conduct.[40]

Baker Donelson does not contend a lay-person jury should be expected to be familiar with such rules, such that their application is common sense to them.

Finally, Baker Donelson argues Schnabel "cannot articulate any breach of which she accuses the firm." In support, it points to her testimony that "there is nothing in the[] rules [of professional conduct] that prohibits someone from engaging in an outside activity." Schnabel did

[38] 232, Baker Donelson's memo, at 9.

[39] Schnabel depo at 156:8-17.

[40] *Id.* at 31:6 – 32:11.

say that, but she also said the rules "put a supervisory obligation on the lawyers . . . to supervise what other lawyers are doing":

> Q. Would you agree that these rules, 5.1 and 5.3, do not prohibit law firm employees from engaging in business activities outside the law firm?
>
> A. Well, the rules don't prohibit employees who are nonlawyers in any regard. They put a supervisory obligation on the lawyers with regard to employees, and I believe that they put a supervisory obligation on a partner or a -- or a shareholder to supervise what other lawyers are doing. So no, there is nothing in these rules that prohibits someone from engaging in an outside activity. Let's say you have rental property. Let's say you sell Mary Kay. The rules of professional conduct don't necessarily apply to that.
>
> Q. Okay. And that's true even if the person selling the Mary Kay is a lawyer at the law firm, right?
>
> A. That is correct. On the other hand -- I know you hate this.
>
> Q. Well --
>
> A. I think there are circumstances where -- and I don't have -- I don't have a citation for this, but I think there are circumstances where generalized criminal conduct that's outside of the practice of law can form the basis for the disciplinary counsel to bring charges against a lawyer. I've certainly seen that before.[41]

Furthermore, while she did say "I don't know that any individual lawyer, other than Mr. Seawright, violated the ethics rules," she also said "I used the ethics rules as sort of a jumping-off point for what law practice management standards should be."[42] In other words, the rules informed her opinion, but her opinion does not depend on her concluding any lawyer other than Seawright breached a rule. Her opinion is that Baker Donelson's failure was a "systemic failure," *i.e.*, a failure on the part of the firm, not on any one individual lawyer.

[41] Schnabel depo at 151:2 – 152:3.

[42] *Id.* at 149:18-22.

3. Baker Donelson's failure to take adverse action

Baker Donelson asks the Court to exclude Schnabel's opinion to the extent it accounts for the fact that Baker Donelson took no adverse action against Seawright and Alexander.

Baker Donelson argues Schnabel's opinion, to the extent it relies on Baker Donelson's failure to take adverse action, has no factual basis. But that is not true. Baker Donelson points only to Schnabel's acknowledgment that "[t]he findings of [Baker Donelson's] investigation have been withheld as privileged," and the fact that Seawright's and Alexander's criminal indictments were unsealed much later.

True, Baker Donelson has withheld its internal investigation's findings from the Receiver. But the evidence remains that, when, in April 2018, Baker Donelson's General Counsel Sam Blair conducted the investigation, he undertook to find out "what was going on with the whole situation."[43] Neither Seawright nor Alexander withheld any information from Baker Donelson at that time. Baker Donelson's corporate representative testified he had no reason to believe that they withheld any information from Baker Donelson. Certainly, no later than April 2018, when Blair investigated, Baker Donelson knew that Seawright and Alexander had used firm resources and involved firm shareholders and clients in their timber business, and that the timber business had been a fraud. It knew that Seawright and Alexander had violated numerous firm policies. It is an undisputed fact that it took no adverse action against either.[44] Seawright remained a shareholder at least until May 2021.

[43] Ex. 2, Ben Adams, Baker Donelson CEO, Depo. at 30:1-18.
[44] Ex. 3, Seawright admission no. 40 ("Seawright admits no adverse action was taken against him" "for any reason related to ASTF and/or Madison Timber after Madison Timber collapsed in 2018"); Ex. 4, Alexander response to interrogatory no. 11 ("Alexander is unaware of actions taken in connections with his employment at Baker Donelson that could be deemed to be 'adverse'").

Schnabel's opinion, to the extent it relies on Baker Donelson's failure to take adverse action, does not lack a factual basis.

4. Baker Donelson "should have known"

Baker Donelson asks the Court to exclude Schnabel's opinion to the extent she concludes Baker Donelson "should have known that this investment enterprise was being operated out of its Jackson office."[45]

Baker Donelson contends Schnabel makes a "factual determination reserved for the trier of fact." But this is not a situation in which a designated expert did nothing more than read deposition transcripts and judge the fact witnesses' credibility. Experts are supposed to apply their specialized knowledge and expertise to a given set of facts. Schnabel applied her specialized knowledge and expertise in law firm management and rules of professional conduct to a set of facts here. For context, Schnabel explained her opinion as follows:

> In my opinion, Baker Donelson should have known that this investment enterprise was being operated out of its Jackson office by a prominent shareholder and a lobbyist employee. The failure to recognize and supervise the business activities of Alexander Seawright, LLC, and the failure to take any form of disciplinary or corrective action, demonstrates a lack of management and supervisory controls at Baker Donelson and falls below the standard of care required by Baker Donelson's internal rules/controls, the Rules of Professional Conduct and the standard of care ordinarily possessed by and exercised by law firms similarly situated.[46]

Furthermore, experts properly disclose the facts underlying their opinions. *Barnett v. City of Laurel*, No. 2:18-CV-92-KS-MTP, 2019 WL 5788312, at *5 (S.D. Miss. Nov. 6, 2019) (citing Fed. R. Evid. 703, 705). "Of course, when facts are in dispute, experts sometimes reach different conclusions based on competing versions of the facts." *Moore v. Int'l Paint, L.L.C.*, 547 F. App'x

[45] 232, Baker Donelson's memo, at 11 (citing Schnabel Report, at 12).

[46] 231-3, Schnabel's report, at 12.

513, 515 (5th Cir. 2013) (quoting Fed. R. Evid. 702 advisory committee's note) (quotation marks omitted).

Baker Donelson argues whether it knew or should have known about Seawright and Alexander's timber business is irrelevant. Baker Donelson's actual or constructive knowledge of Seawright and Alexander's activities is relevant to its vicarious and supervisor liability. The argument is without merit.

5. Other "factual characterizations"

Baker Donelson asks the Court to exclude certain of Schnabel's statements that it describes as "pejorative" or mere recitations of the Receiver's version of the facts.[47] These include that investors were "friends and family" of Baker Donelson; that Seawright and Alexander ran their timber business "openly;" that the "flow" of their timber business in Baker Donelson's office was "significant"; that Baker Donelson personnel devoted "significant" work and time to their timber business; and that "investors were led to believe" that Baker Donelson was aware of the investments.[48]

These "statements of fact" are not Schnabel's opinions; they are the factual bases for her opinions. The evidence is Seawright and Alexander conducted their business during Baker Donelson's office hours, used Baker Donelson's offices for meetings with Lamar Adams and investors, used their @bakerdonelson accounts, and used Baker Donelson employees.[49] Seawright's assistant Kathy Acquilano prepared letters to investors twice a month for years.[50] She

[47] 232, Baker Donelson's memo, at 12.

[48] *Id.*

[49] *See* Opposition to Motions for Summary Judgment and notes 4-10 therein.

[50] *Id.* at n.8.

notarized timber deeds.[51] She "routinely" handled administrative tasks including writing and depositing checks.[52]

The evidence is that Seawright and Alexander offered the opportunity to invest to Baker Donelson shareholders, clients, and their spouses and affiliated entities.[53] They called it the Baker Donelson "friends and family fund."[54] Six Baker Donelson shareholders invested, including the firm's former President and COO and a firm practice group leader.[55] Other Baker Donelson colleagues helped recruit investors.[56]

Schnabel's "statement of facts" have factual bases. But she is not there to testify to facts. As, shown she is there to apply her specialized knowledge and expertise in law firm management and rules of professional conduct to them. Contrary to Baker Donelson's contention, she "bring[s] to the jury more than the lawyers can offer in argument." *Thibodeaux v. Gulf Coast Tugs, Inc*., 668 F. Supp. 3d 486, 493 (E.D. La. 2023) (citation omitted).

Again, experts properly disclose the facts underlying their opinions. To the extent those facts are disputed here, Baker Donelson may challenge them through "[v]igorous cross-examination" and the "presentation of contrary evidence" at trial. *See Daubert*, 509 U.S. at 596. A factual dispute "affect[s] the weight to be assigned to that opinion rather than its admissibility" and should "be left for the [factfinder]'s consideration." *Viterbo*, 826 F.2d at 422.

CONCLUSION

Baker Donelson's motion to exclude Schnabel's testimony should be denied.

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[51] *Id.* at n.9.
[52] *Id.* at n.10.
[53] *Id.* at n.11.
[54] *Id.* at n.12.
[55] *Id.* at n.13.
[56] *Id.* at n.14.

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Respectfully submitted,

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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.

Date: November 17, 2025.

/s/ Kaja S. Elmer