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.

BUTLER SNOW LLP; BUTLER SNOW ADVISORY SERVICES, LLC; MATT THORNTON; BAKER, DONELSON, BEARMAN, CALDWELL & BERKOWITZ, PC; ALEXANDER SEAWRIGHT, LLC; BRENT ALEXANDER; and JON SEAWRIGHT,

Defendants.

Case No. 3:18-cv-866-CWR-BWR

Arising out of Case No. 3:18-cv-252, *Securities and Exchange Commission v. Arthur Lamar Adams and Madison Timber Properties, LLC*

Carlton W. Reeves, District Judge
Bradley W. Rath, Magistrate Judge

OPPOSITION TO MOTIONS FOR SUMMARY JUDGMENT

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INTRODUCTION

Defendants are not entitled to summary judgment. When there are two versions of the facts, a jury decides who to believe. There are two versions of the facts here. Defendants say they did nothing wrong and did not know anything. The evidence is that they did.

The evidence includes Jon Seawright's and Brent Alexander's criminal convictions. Seawright and Alexander already pleaded guilty to a conspiracy to defraud. They are estopped from denying those facts here. A conspirator is jointly and severally liable for all the losses. Because their convictions are for wire fraud, Mississippi's civil RICO statute entitles the Receiver to treble damages and attorneys' fees.

The evidence of Baker Donelson's actual or constructive knowledge of Seawright's and Alexander's activities is compelling.

The evidence is Seawright disclosed his and Alexander's "outside business activity" to Baker Donelson in 2011,[1] and no one questioned it. Neither Seawright nor Alexander hid their activities over the next seven years. They testified they never withheld anything from Baker Donelson.[2] Baker Donelson's corporate representative testified he had no reason to disagree.[3]

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[1] Ex. 1, BAKER_MILLS_0030992. *See also* Ex. 2, Ben Adams, Baker Donelson CEO, Depo. at 43:1-5 ("Annually, we're asked to complete this form to give all of our various activities outside of the law firm, and this looks like Jon Seawright's completion of that form that he sent to Susan Clement in October of 2011."); Seawright response to interrogatory no. 10 ("Baker Donelson required him to disclose whether he wholly owned, controlled, or served as a director of any business enterprise, and he did so.")

[2] Ex. 3, Seawright admission no. 25 ("Admitted" that "you did not hide ASTF from Baker Donelson"); Ex. 4, Alexander admission no. 11 ("Admitted that "you did not hide ASTF from Baker Donelson"); Ex. 5, Seawright Depo. at 187 ("I didn't feel like there was anything to hide"); *see also* Ex. 6, Alexander Depo. at 76:23-78:5 (describing that the other Baker Donelson shareholders learned of the investment in "casual conversation over the course of, you know, the course of those six years. . . . In the same way – the same people – in the same way that people go into a room, and they start talking about golf. And one of them decides that they would like to buy a golf cart, and the other one says, 'Well, I will go in half with you.' You know, just very casual conversations that just sort of flow where people express interest or it's mentioned.").

[3] Ex. 7, John Hicks, Baker Donelson 30(b)(6), Depo. at 261:4-13 ("Q. And you're aware that [Alexander and Seawright] testified that they didn't withhold any information from Baker Donelson, right? A. I generally recall that. Q. Do you have any reason to disagree with that? A. No.").

Seawright's and Alexander's activities were also open and obvious. They conducted their business during Baker Donelson's office hours,[4] used Baker Donelson's offices for meetings and closings with Lamar Adams and investors,[5] used their @bakerdonelson accounts,[6] and used Baker Donelson employees to administer the business.[7] Seawright's assistant Kathy Acquilano prepared

[4] *E.g.*, Ex. 8, BAKER_MILLS_0002770-0002771 (2:07 p.m. email from Seawright to his assistant to book a Baker Donelson conference room for a meeting at 10 a.m. on a Friday and noting in prior email to Wayne Kelly that "other than having to meet one investor at 830 and get his funds and then run by the bank, I am clear."). The volume of emails during business hours suggests a significant portion of at least Seawright's working days was dedicated to the timber business.

[5] Ex. 6, Alexander Depo. at 70:20-71:4 (closings were "at Baker Donelson in one of the conference rooms"); *id.* at 96:3-18 (closings "took place in one of the empty conference rooms at Baker Donelson"); Ex. 3, Seawright admission no. 35 ("Seawright admits that he occasionally met ASTF investors at Baker Donelson's Jackson office, including for some closings"); Ex. 4, Alexander admission no. 18 ("Alexander admits that he occasionally met ASTF investors at Baker Donelson's Jackson office, including for some closings"); Ex. 8, BAKER_MILLS_0002770-2771 (booking conference room for closing).

[6] *E.g.*, Ex. 9, BAKER_MILLS_0014364-0014368 (Seawright directing his assistant, Kathy Acquilano, to prepare envelopes for letters to investors using @bakerdonelson.com email address); Ex. 10, BAKER_MILLS_0014390-0014393 (same); Ex. 8, BAKER_MILLS_0002770-2771 (Seawright, writing from @bakerdonelson.com address, directing Acquilano to book conference room for closing with Wayne Kelly); Ex. 11, BAKER_MILLS_0027221 (correspondence with Baker Donelson's client principal and investor from Brent's @bakerdonelson.com account); Ex. 12, BAKER_MILLS_0004182 (same); Ex. 13, BAKER_MILLS_0002708 (email from Brent Alexander to investors).

[7] It made no difference to these employees whether Seawright or Alexander emailed them from an @alexanderseawright.com address; they what they were asked to do. *E.g.*, Ex. 14, Acquilano Depo. at 148:1-24 ("Q. Did it make any difference to you that he asked you to do tasks sending it from [his @alexanderseawright.com] e-mail or his Baker Donelson e-mail? [objection] A. Any difference in what? Q. Whether or not you would perform the task. [objection] A. No.").

Baker Donelson's own representative confirmed that Acquilano routinely performed administrative tasks for the timber business. Ex. 7, John Hicks, Baker Donelson 30(b)(6), Depo. at 216:16-233:15 (testimony regarding Ms. Acquilano and others' routine performance of administrative tasks for Alexander and Seawright's outside business activities, including "Q. Would you agree that preparing envelopes or correspondence on letterhead at least twice a month for several years during the time period when Jon and Brent were running Alexander Seawright Timber Fund I would constitute routinely printing or preparing documents for Jon or Brent's outside activities? [objection] A. I would agree with that. Q. So, then, you would agree that Ms. Acquilano routinely performed that administrative task on behalf of Jon and Brent's outside business activity, Alexander Seawright Timber Fund, correct? [objection] A. Yes." *Id.* at 228:9-25; *see also id.* at 230:22-231:15 (confirming based on loose math that Acquilano would have performed certain tasks over 150 times if done twice a month for approximately 6.5 years).

Dawn Warrington, Baker Donelson's Jackson office receptionist from August 1995 until April 2024 testified that she knew Lamar Adams from the Jackson Country Club and met Wayne Kelly through Lamar Adams at Baker Donelson. Ex, 15, Warrington Depo. at 48:24-52:16. She acknowledged that Adams came to the office several times over the course of her employment. *Id.* at 69:17-70:1. Wayne Kelly and Lamar Adams picked up documents at Warrington's desk. *E.g.*, Ex. 16, BAKER_MILLS_0020664-0020676; Ex. 17, BAKER_MILLS_0016739; *see also* Ex. 18, Lamar Adams Depo. Vol. II at 369:25-370:17. Ms. Warrington also booked conference rooms for Seawright for meetings with Lamar Adams and Wayne Kelly. *See* Ex. 15, Warrington Depo. at 112:5-12.

Tanya Wasser, the sole transactional paralegal at Baker Donelson from 2011-2017, testified that she did "non-billable" (non-client) work for Seawright every few months, by filing corporate documents with the Mississippi Secretary of State. Ex. 19, Wasser Depo. at 56:12-57:6. By contrast, she did billable work for Seawright only every six months or

letters to investors twice a month for years.[8] She notarized timber deeds.[9] She "routinely" handled administrative tasks including writing and depositing checks.[10]

Seawright and Alexander offered the opportunity to invest to Baker Donelson shareholders, clients, and their spouses and affiliated entities.[11] They called it the Baker Donelson "friends and family fund."[12] Six Baker Donelson shareholders invested, including the firm's former President

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so. *Id.* at 55:21-56:9. She filed the formation documents for Alexander Seawright, LLC in 2011. *Id.* at 92:11-102:13 and Exhibits 2-5.

Alexander's assistants, Janie Jenkins and Patricia Cloer, also handled Alexander Seawright-related tasks on several occasions. Cloer, for example, assisted with an investor presentation. *E.g.*, Ex. 20, BAKER_MILLS_0025466-0025487; Ex. 21, BAKER_MILLS_0025589-0025603; Ex. 22, BAKER_MILLS0030665-0030666. Jenkins performed administrative tasks for Seawright and Alexander, including filling in a blank check, signed by Seawright, with the amount of $250,000 payable to Madison Timber Properties. *E.g.*, Ex. 23, Jenkins Depo. at 93:7-101:24 and Exhibits 7-9.

[8] Ex. 14, Acquilano Depo. at 159:19-162:5; 174:8-178:25. *See also* Ex. 7, John Hicks, Baker Donelson 30(b)(6), Depo. at 216:16-233:15 (testimony regarding Ms. Acquilano and others' routine performance of administrative tasks for Alexander and Seawright's outside business activities, including "Q. Would you agree that preparing envelopes or correspondence on letterhead at least twice a month for several years during the time period when Jon and Brent were running Alexander Seawright Timber Fund I would constitute routinely printing or preparing documents for Jon or Brent's outside activities? [objection] A. I would agree with that. Q. So, then, you would agree that Ms. Acquilano routinely performed that administrative task on behalf of Jon and Brent's outside business activity, Alexander Seawright Timber Fund, correct? [objection] A. Yes." *Id.* at 228:9-25; *see also id.* at 230:22-231:15 (confirming based on loose math that Acquilano would have performed certain tasks over 150 times for if done twice a month for approximately 6.5 years).

[9] *E.g.*, Ex. 24, BAKER_MILLS_0027069-0027085 and Ex. 14, Acquilano Depo. at 221:11-227:5 (confirming she notarized signatures of Seawright and Adams on documents). *See also* Ex. 18, Adams Depo. Vol II at 365:18-366:9 (confirming that at a closing at Baker Donelson Adams would sign the note and security agreement and Seawright would "have his secretary, whoever, notarize that.").

[10] See footnotes 7-8. *See also* Ex. 14, Acquilano Depo. at 198:4-202:11 and Ex. 25, BAKER_MILLS_003783 (referencing depositing investor checks at First Commercial Bank). Ex. 14, Acquilano Depo. at 234:19-244:4 (emails between Seawright and Acquilano regarding writing and handling checks, including one directing Acquilano to sign a $475,000 check to Madison Timber with his signature stamp and leave it for Lamar Adams to pick up) and Ex. 26, BAKER_MILLS_0003786; Ex. 27, BAKER_MILLS_0022422-0022425; Ex. 28, BAKER_MILLS_0025471.

[11] Six shareholders invested. See footnote 13. Alexander and Seawright also solicited clients and spouses to invest. *E.g.*, Ex. 13, BAKER_MILLS_0002708; Ex. 29, BAKER_MILLS_0011584; Ex. 12, BAKER_MILLS_0004182. *See also* Ex. 30, AS.03 Depo. at 29 ("Now, he wasn't your attorney when you started investing? A. Oh, yes, he was. Yes, he set up LLCs for me. He did other business for me, yes. … And he fully used his knowledge of – of my business and everything else to sell this crap to me"); *id.* at 70 ("That's like I was telling you, he handled business stuff for me and my brother-in-law [another investor]").

[12] Ex. 6, Alexander Depo. at 165:6-166:5 (when asked why he called the investment a "friends and family fund," he said "Well, in our minds, it was. I mean, Jon's family was invested. The – almost without exception, all of the people that invested that I knew were friends I had known for decades."); Ex. 31, Alexander Text 000016 (text in which Alexander refers to timber investment as "friends and family fund"). Ex. 32, ALEXANDER 000520 (email regarding friends and family fund); Ex. 33, Alexander Text 000002 (similar).

and COO and a firm practice group leader.[13] Other Baker Donelson colleagues helped recruit investors.[14]

Seawright's activities also were of the same general nature as the activities he otherwise performed as a lawyer at Baker Donelson. He drafted security agreements, promissory notes, and confidentiality agreements for Madison Timber and drafted the operating agreement, subscription agreements, term sheets, and investor questionnaires for Alexander Seawright Timber Fund.[15] He formed corporate entities for investors to facilitate their investments,[16] something he did for firm clients.[17] In his deposition, Alexander explained that, "as far as the – anything relating to the operational or transactional or legal side [of their timber business] . . . Jon basically… took that over, because it's easy for him to do as a lawyer[,]"[18] and "legal documents that we used to provide

[13] Ex. 7, John Hicks, Baker Donelson 30(b)(6), Depo. at 144:20-145:9 (noting six shareholder investors). Ex. 34, AS.21 Depo. at 10:17-20 (noting status as former president and COO); Doc. 223-73 (Declaration of John Hicks, Baker Donelson's 30(b)(6) Representative, confirming that investor and shareholder [AS.23] was a practice group leader at the firm, despite prior testimony denying the same). Ex. 5, Seawright Depo. at 186:19-22 ("Q. We do know that at least six shareholders knew about it, because they were investors, correct? A. Correct."); Ex. 6, Alexander Depo. at 76:23-77:1; Ex. 3, Seawright admission no. 32 ("Colleagues at Baker Donelson invested in ASTF"); Alexander admission no. 15 ("Colleagues at Baker Donelson invested in ASTF").

[14] *E.g.*, Ex. 35, BAKER_MILLS_0003779, Ex. 36, BAKER_MILLS_0005377; Ex. 37, BAKER_MILLS_0027199; Ex. 38, BAKER_MILLS_ 0030820; Ex. 39, BAKER_MILLS_0030824; Ex. 40, BAKER_MILLS_0009389; Ex. 41, BAKER_MILLS_0007588; Ex. 42, BAKER_MILLS_ 0006878.

[15] Ex. 3, Seawright admission nos. 7, 37; Ex. 4, Alexander admission nos. 6, 7. Ex. 5, Seawright Depo. at 55:5-59:15 (affirming that he prepared the operative documents including the promissory note, subscription agreement, equity term sheets, and security agreement, and that he "did not recall" if the origin of those documents came from Baker Donelson files); *id.* at 44:20-45:16 (similar testimony regarding operating agreement preparation). Ex. 6, Alexander Depo. at 53:16-55:9 (Seawright was responsible for preparing documents); *see also id.* at 125:14-126:1 (noting that "[w]e didn't pay any legal expenses. Jon did them. . . Those are – I mean he was a lawyer and a partner, so that was part of his operational responsibilities within Alexander Seawright.").

[16] *See* Ex. 3, Seawright admission no. 45 ("Mr. Seawright states, as an attorney employed by Baker Donelson, he formed an LLC for at least one member of Alexander Seawright Timber Fund I."); Ex. 43, BAKER_MILLS_0010766 (email from Seawright regarding certificate of formation for investor); Ex. 30, AS.03 Depo. at 29 ("Yes, he set up LLCs for me.").

[17] Ex. 7, John Hicks, Baker Donelson 30(b)(6), Depo. at 48:13-51:24; *id.* at 173:22-174:6.

[18] Ex. 6, Alexander Depo. at 63:16-22.

the legal structure of the – for the operation of the fund. . . all of that would have been done by Jon."[19] Seawright drafted all the legal documents for every investment between 2011 and 2018.[20]

In seven years, no one at Baker Donelson told Seawright or Alexander to stop using Baker Donelson's offices to conduct their business,[21] to stop using their @bakerdonelson accounts,[22] or to stop using Baker Donelson's employees.[23] No one discouraged their activities at all. During this time, Seawright was among the most prominent and influential lawyers at the firm, having been elected to Baker Donelson's governing board of directors and appointed to its exclusive finance committee.[24]

There are several bases for which a jury may hold Baker Donelson liable for Seawright and Alexander. The simplest is that Baker Donelson ratified their conduct after-the-fact. 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."[25] Neither Seawright nor

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[19] Ex. 6, Alexander Depo. at 53:19-22.

[20] See footnotes 15-19.

[21] Ex. 3, Seawright admission no. 38 ("admitted" "no one at Baker Donelson ever told you to stop using Baker Donelson's offices to conduct your business activities"); Ex. 4, Alexander admission no. 21 ("admitted" "no one at Baker Donelson ever told you to stop using Baker Donelson's offices to conduct your business activities").

[22] Ex. 3, Seawright admission no. 36 ("admitted" "no one at Baker Donelson ever told you to stop using your @bakerdonelson.com email account to conduct your business activities"); Ex. 4, Alexander admission no. 19 ("admitted" "no one at Baker Donelson ever told you to stop using your @bakerdonelson.com email account to conduct your business activities").

[23] Ex. 3, Seawright response to interrogatory no. 14 ("no conversation occurred in which anyone at Baker Donelson told him to stop asking employees of Baker Donelson to assist with activities related to his ASTF business"); Ex. 4, Alexander response to interrogatory no. 8 ("no conversation occurred in which anyone at Baker Donelson told him to stop asking employees of Baker Donelson to assist with activities related to his ASTF business"); Ex. 44, Baker Donelson response to request for production no. 16 ("Produce any and all Documents evidencing, referring, or relating to any instance in which You instructed Jon Seawright or Brent Alexander to cease using Baker Donelson's address, e-mail accounts, letterhead, firm name, staff, or offices (including conference rooms) for outside or Personal Business." "Baker Donelson responds no such documents exist.")

[24] Ex. 2, Ben Adams, Baker Donelson CEO, Depo. at 19:16-18 (Seawright's board membership); Ex. 7, John Hicks, Baker Donelson 30(b)(6), Depo. at 39:20-40:9 (finance committee was the sole subcommittee of the Board from 2011-2020); *id.* at 43:21-44:7 (describing finance committee selected upon recommendation of CEO and consent of board); Seawright response to interrogatory no. 1 (noting "he served on the Finance Committee of the Board of Directors.").

[25] Ex. 2, Ben Adams, Baker Donelson CEO, Depo. at 30:1-18.

Alexander withheld any information from Baker Donelson at that time.[26] Baker Donelson's corporate representative testified he had no reason to believe that they withheld any information from Baker Donelson.[27] Blair reported his findings to Baker Donelson's board of directors and, separately, to its shareholders.[28]

Baker Donelson had clear internal policies that prohibited Seawright and Alexander's activities.[29] Those policies notwithstanding, Baker Donelson took no corrective action against either Seawright or Alexander in April 2018.[30] Baker Donelson took no corrective action against either Seawright or Alexander at any time thereafter.[31] It evidently had no objection to what Seawright and Alexander did. Seawright remained a shareholder at least until May 2021.[32] "Where an employer learns of the past intentional conduct and does nothing to reprimand the employee, this acts as a ratification." *Jones v. B.L. Dev. Corp.*, 940 So. 2d 961, 966 (Miss. Ct. App. 2006).

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[26] Ex. 3, Seawright admission no. 25 ("Admitted" that "you did not hide ASTF from Baker Donelson"); Ex. 4, Alexander admission no. 11 ("Admitted" that "you did not hide ASTF from Baker Donelson"); Ex. 5, Seawright Depo. at 187:16-20 ("I didn't feel like there was anything to hide").

[27] Ex. 7, John Hicks, Baker Donelson 30(b)(6), Depo. at 261:4-13 ("Q. And you're aware that [Alexander and Seawright] testified that they didn't withhold any information from Baker Donelson, right? A. I generally recall that. Q. Do you have any reason to disagree with that? A. No.").

[28] Ex. 2, Ben Adams, Baker Donelson CEO, Depo. at 31:10-32:1.

[29] See footnotes 125-134 and accompanying text.

[30] 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'"); Ex. 5, Seawright Depo. at 17:22-18:6 ("Q. [w]ere you the subject of any sanctions or penalties of any sort at Baker Donelson following the collapse of the Ponzi scheme? A. Not that I'm aware of."); Ex. 6, Alexander Depo. at 212:14-18 ("Q. Following the disclosure of Madison Timber as a Ponzi scheme, were you the subject of any sort of disciplinary - - internal or in-house disciplinary proceeding at Baker Donelson? A: No."); Ex. 7, John Hicks, Baker Donelson 30(b)(6), Depo. at 261:21-264:2 (same).

[31] *Id.*

[32] Ex. 45, BAKER_MILLS_0028189-0028190 (email regarding leave of absence in May 2021).

The remainder of Defendants' arguments the Court has heard before. For the same reasons it already rejected them, it should reject them again.

The Receiver addresses all of Defendants' arguments below.

ARGUMENT

I. Seawright and Alexander's liability

The analysis necessarily begins with Seawright and Alexander. To the extent Baker Donelson's liability is vicarious only, it is liable only if Seawright and Alexander are liable.

Defendants argue the Receiver cannot prove essential elements of her claims against Seawright and Alexander. That is not true. The evidence is more than sufficient to prove Seawright and Alexander's liability for civil conspiracy, aiding and abetting, and violating Mississippi's civil RICO statute.

a. Civil conspiracy

Civil conspiracy has four elements: "(1) an agreement between two or more persons, (2) to accomplish an unlawful purpose or a lawful purpose unlawfully, (3) an overt act in furtherance of the conspiracy, (4) and damages to the plaintiff as a proximate result." *Rex Distrib. Co., Inc. v. Anheuser-Busch*, LLC, 271 So. 3d 445, 455 (Miss. 2019) (quotation marks and citation omitted). "The elements are quite similar to those required of a criminal conspiracy, with the distinguishing factor being that an agreement is the essence of a criminal conspiracy, while damages are the essence of a civil conspiracy." *Rex Distrib. Co., Inc.*, 271 So. 3d at 455 (quoting *Bradley v. Kelley Bros. Contractors*, 117 So. 3d 331, 339 (Miss. Ct. App. 2013)) (internal quotation marks omitted).

1. "an agreement between two or more persons"

There is ample evidence from which the jury may find an agreement between Lamar Adams, Seawright, and Alexander. There is, among other things, direct evidence of a criminal conspiracy: Seawright and Alexander both pleaded guilty to it. Their bills of information, which they affirmed in open court,[33] expressly stated that they "did knowingly and intentionally participate in a scheme and artifice to defraud":

> MANNER AND MEANS OF THE CONSPIRACY
>
> It was part of the agreement and conspiracy that JON DARRELL SEAWRIGHT and TED BRENT ALEXANDER, did knowingly and intentionally participate in a scheme and artifice to defraud investors by soliciting millions of dollars of funds under false pretenses and failing to use investors' funds as promised. Co-conspirators SEAWRIGHT and ALEXANDER represented to investors that ASTF was in the business of loaning funds to a "timber broker" to buy timber rights from landowners and then sell the timber rights to lumber mills at a higher price. . . .[34]

In his deposition, Alexander confirmed that the "timber broker" in the bill of information was Lamar Adams and Madison Timber,[35] and that the scheme, as described, was the same for seven years.[36]

Seawright and Alexander furthermore each admitted, in their responses to requests for admission in this case, that they and Lamar Adams "agreed" that Adams would pay them a fee or commission in exchange for their solicitation of investments in Madison Timber. Lamar Adams "offered" to pay them, and they "accepted" the payments.[37] Seawright and Alexander

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[33] Ex. 46, Seawright plea transcript at 31:6-38:13, *United States v. Seawright*, No. 3:22-cr-00084 (S.D. Miss.); Ex. 47, Alexander plea transcript at 31:1-35:7, *United States v. Alexander*, No. 3:23-cr-00027 (S.D. Miss.).

[34] Doc. 1, Seawright criminal bill of information at 2, *United States v. Seawright*, No. 3:22-cr-00084 (S.D. Miss.); Doc. 1, Alexander criminal bill of information at 2, *United States v. Alexander*, No. 3:23-cr-00027 (S.D. Miss.).

[35] Ex. 6, Alexander Depo. at 103:2-11.

[36] Ex. 6, Alexander Depo. at 103:2-106:12 (agreeing with accuracy of facts of superseding bill of information and that the admissions therein would be true with respect to all rounds of investments from 2011 to 2018).

[37] Ex. 3, Seawright admission no. 4 ("Adams voluntarily offered … [and] Seawright admits that he did accept on behalf of Alexander Seawright, LLC such payments."); Ex. 3, Seawright admission no. 15 ("Seawright admits … that such fees were accepted, and that he did not disclose the fact to all investors"); Ex. 4, Alexander admission no. 3

acknowledged those payments, which they did not disclose to their investors, in their respective plea agreements.[38]

These facts alone are more than sufficient to establish Seawright's and Alexander's agreement to participate in an unlawful course of conduct.

Defendants argue they are entitled to summary judgment on the Receiver's civil conspiracy claim because, they say, "it is undisputed that Alexander and Seawright were not actually aware of the Ponzi scheme."[39] There are at least four flaws with the argument.

One, Mississippi law does not require Seawright's or Alexander's actual knowledge of the Ponzi scheme for civil conspiracy liability. It is enough that they knew about, and agreed to, a course of conduct constituting an underlying wrong. They did not have to agree to all the details of the scheme. *Bradley*, 117 So. 3d at 339 (the agreement "need not extend to all the details of the scheme"). The analysis might end there.

But, two, Seawright's and Alexander's actual knowledge is not "undisputed." Defendants omit from their accounting of the facts Seawright's and Alexander's criminal convictions—but that fact is inescapable. Seawright and Alexander pleaded guilty to a course of conduct that included soliciting investors for Lamar Adams and Madison Timber. ("SEAWRIGHT and ALEXANDER solicited investors"[40]) Through repeated misrepresentations, they misled investors to believe that they had rights to real timber, that real mills wanted to buy the timber, and that the

("Adams voluntarily offered … [and] Alexander admits that he did accept on behalf of Alexander Seawright, LLC such payments").

[38] See footnote 33.

[39] 230, Baker Donelson memo, at 21 ("it is undisputed that Alexander and Seawright were not actually aware of the Ponzi scheme"); 236, Alexander Seawright memo, at 9 ("it is undisputed that Alexander and Seawright did not have actual knowledge of the Ponzi scheme").

[40] Doc. 1, Seawright criminal bill of information at 2, *United States v. Seawright*, No. 3:22-cr-00084 (S.D. Miss.); Doc. 1, Alexander criminal bill of information at 2, *United States v. Alexander*, No. 3:23-cr-00027 (S.D. Miss.).

accompanying deeds and contracts were real.[41] Investors paid Seawright and Alexander to do due diligence, and they did none. They "falsely and fraudulently promised and warranted … that [they] would inspect the property."[42] In fact, they "made few or no such inquiries."[43]

The evidence in this case is that, in seven years, Seawright and Alexander did not check a single document. Adams testified: "[I]f one document had been checked, they would have known it was a false, fake deal."[44] Lamar Adams was concerned that Seawright, a lawyer with one of the largest firms in the state of Mississippi, would check—but Seawright never did:

> Q. Now, you knew Mr. Seawright was a lawyer; correct?
>
> A. Yes.
>
> Q. Affiliated with one of the largest firms in the state of Mississippi; correct?
>
> A. Yes.
>
> Q. Weren't you concerned that he would check public records?
>
> A. Yes.
>
> Q. All right. Were you concerned someone else associated with the firm would do so?
>
> A. Yeah. I'm scared to death they would.[45]
>
> * * *
>
> Q. Is it also true, sir, that if Mr. Seawright, an attorney with one of the largest firms in the state, had checked the legal descriptions, he would recognize something was wrong about this deal? …

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[41] Doc. 1, Seawright criminal bill of information at 2-3, *United States v. Seawright*, No. 3:22-cr-00084 (S.D. Miss.); Doc. 1, Alexander criminal bill of information at 2-3, *United States v. Alexander*, No. 3:23-cr-00027 (S.D. Miss.).

[42] Doc. 1, Seawright criminal bill of information at 2, *United States v. Seawright*, No. 3:22-cr-00084 (S.D. Miss.); Doc. 1, Alexander criminal bill of information at 2, *United States v. Alexander*, No. 3:23-cr-00027 (S.D. Miss.).

[43] Doc. 1, Seawright criminal bill of information at 2, *United States v. Seawright*, No. 3:22-cr-00084 (S.D. Miss.); Doc. 1, Alexander criminal bill of information at 2, *United States v. Alexander*, No. 3:23-cr-00027 (S.D. Miss.).

[44] Ex. 18, Lamar Adams Depo. Vol. II at 371:7-9; *see also* Ex. 48, Lamar Adams Depo. Vol. I at 81:16-82:2 ("Because there was no timber deed from the landowner to me, so if they had gone to the courthouse one time, I would have been exposed. They would have known I had a Ponzi scheme and a fraud going, and they would have nailed me right then.").

[45] Ex. 18, Lamar Adams Depo. Vol. II at 371:10-21.

> [A.] Had they pulled an ownership map up on the computer, and looked at that name, they would not have seen that legal description that was on that deed.[46]
>
> * * *
>
> Q. [An] investigation, either at the courthouse or online, would have revealed that the person appearing as the owner, in fact, did not own the purported parcel that appeared in the dead; is that correct?
>
> A. That's correct. There would not be a filed timber deed, and there would be nothing there.[47]
>
> * * *
>
> Q. And had Mr. Seawright and Mr. Alexander made any contact to any mill, they would have recognized that was lie; correct? …
>
> [A.] Yes.[48]
>
> * * *
>
> Q. So you handed him an agreement that called for the sale of timber in an unknown amount and for an unknown price, and he raised no issue with you whatsoever? …
>
> [A.] No.[49]

To the extent civil conspiracy liability requires Seawright's and Alexander's actual knowledge of the Ponzi scheme, that fact is for the jury to decide, and a jury may reasonably conclude from Seawright's and Alexander's failure to check a single document in seven years that they did know and were indifferent to the fraud.

Three, to the extent Defendants suggest that Mississippi law requires direct evidence of anything, they are wrong. Indeed, in many civil conspiracy cases, the plaintiff relies for an agreement on circumstantial evidence only. *Midwest Feeders, Inc. v. Bank of Franklin*, 886 F.3d 507, 520 (5th Cir. 2018) ("civil conspiracy can be—and often is—established through circumstantial evidence"). The underlying agreement "may be express, implied, or based on

[46] Ex. 18, Lamar Adams Depo. Vol. II at 372:11-19.

[47] Ex. 18, Lamar Adams Depo. Vol. II at 373:13-19.

[48] Ex. 18, Lamar Adams Depo. Vol. II at 375:7-11.

[49] Ex. 18, Lamar Adams Depo. Vol. II at 381:4-9.

evidence of a course of conduct." *Bradley*, 117 So. 3d at 339 (Miss. Ct. App. 2013). *See also, e.g., Aetna Ins. Co. v. Robertson*, 94 So. 7, 22 (1922), modified on suggestion of error for other reasons, 95 So. 137 (1923) (a conspiracy can be formed by a "mere tacit understanding between the conspirators to work to a common purpose").

Finally, four, Defendants cite *Collier v. Trustmark National Bank*, 678 So. 2d 693 (Miss. 1996), for the proposition that red flags alone do not prove actual knowledge,[50] but *Collier* was not a civil conspiracy case. In *Collier*, a trustee misappropriated funds in a checking account, and the trust's beneficiaries sued the bank. They did not allege the bank conspired with the trustee; they alleged only that the bank should have known what the trustee was doing. Two statutes applied in the case: one governed a third party's duty when dealing with a trustee, and the other governed a bank's duty when a fiduciary signs a check to himself. The Mississippi Supreme Court concluded the two statutes shielded the bank from liability, absent its actual knowledge of the fraud. Defendants do not point to any statute which shields them from liability here.

In any event, the Receiver does not rely on red flags alone. Defendants direct their arguments to allegations in the Receiver's complaint, which she filed six years ago. A lot has transpired since then, including Seawright's and Alexander's indictments, criminal convictions, and exhaustive civil discovery. If the Receiver had to rely on red flags before, she does not have to rely on them today.

On the spectrum of cases, this case is on the far side of one end. It is not like *Midwest Feeders*, in which the plaintiff relied solely on evidence of a close personal relationship between two individuals to establish that they conspired. *Midwest Feeders, Inc.*, 886 F.3d at 520–21 (5th Cir. 2018) ("the evidence of the close personal relationship between Rawls and Magee does not

[50] 230, Baker Donelson memo, at 22; 236, Alexander Seawright memo, at 9.

rise to the level necessary to establish that a civil conspiracy existed"). The evidence in *Midwest Feeders* might have been insufficient to submit the question to a jury. The evidence in this case is not. A jury can easily find an agreement between Lamar Adams, Seawright, and Alexander.

2. "an unlawful purpose or a lawful purpose unlawfully"

Civil conspiracy liability requires some "underlying wrong." *Rex Distrib. Co., Inc.*, 271 So. 3d at 455 ("First, Mitchell contends there was no underlying tort and therefore no civil conspiracy. But there is an underlying wrong ….").

To the extent Defendants, citing the Receiver's amended complaint, reduce the underlying wrong to "a predicate tort of 'fraud'" only,[51] they undersell the amended complaint and the evidence. There are many underlying wrongs here, including but not limited to the solicitation of investors for Lamar Adams and Madison Timber. The amended complaint alleges that Seawright and Alexander conspired "to commit the tortious acts alleged in this complaint" generally, [57] at ¶ 125; "to assist Adams by recruiting new investors to Madison Timber" specifically, *id.* at ¶ 126; and to sell securities in violation of federal and state law, both because they were unlicensed and because they made material misstatements, *id.* at ¶ 128. The evidence is that all of these things are true. The evidence includes, in addition to the bills of information to which they pleaded guilty, orders from the Securities and Exchange Commission barring Seawright from the securities industry[52] and the Commodity Futures Trading Commission revoking Alexander's registration to

[51] 230, Baker Donelson memo, at 19 ("Here, the Receiver alleges a predicate tort of 'fraud'" but "Adams and Madison Timber have no claim for fraud"); 236, Alexander Seawright memo, at 12 ("Adams and Madison Timber cannot recover for tort claims predicated on fraud").

[52] Ex. 49, "Order Instituting Administrative Proceedings Pursuant to Section 203(f) of the Investment Advisers Act of 1940, Making Findings, and Imposing Remedial Sanctions," December 20, 2023, in the Securities and Exchange Commission administrative proceeding styled *In the Matter of Jon Darrell Seawright*, File No. 3-21814.

sell commodities.[53] In both orders, Seawright and Alexander admitted facts underlying the Receiver's complaint.

Defendants cannot dispute the underlying wrong, so they argue, from a different angle, that the Receiver stands in the shoes of Lamar Adams and Madison Timber, and Lamar Adams and Madison Timber cannot claim to have been defrauded.[54] Defendants' argument is the same argument they have made many times in the past six years: That the doctrine of *in pari delicto* bars the Receiver's claims. They first made the argument in February 2019. [28] They made variants of it, most recently, in May 2024. [129] There, relying on *Wiand v. ATC Brokers Ltd.*, 96 F. 4th 1303 (11th Cir. 2024), an Eleventh Circuit case applying Florida law, they argued both that "the Receiver lacks standing to sue alleged wrongdoers for tort claims" and that "the Receiver cannot establish the elements of her tort claims" because "a fraudster like [Lamar] Adams cannot sue others in tort." The Court has already rejected Defendants' *in pari delicto* argument and its variants [70, 136] and for the same reasons (more fully addressed later in this memorandum) should do so again.

3. "an overt act in furtherance of the conspiracy"

Civil conspiracy requires an overt act, but the defendant himself need not have committed it. It is enough that he participated in the course of conduct. "The tort of civil conspiracy 'exists as a cause of action to hold nonacting parties responsible.' Thus, each and every member of the conspiracy need not commit the unlawful overt act in order to be held liable." *Thompson as Next Friends of ACD v. Pass Christian Pub. Sch. Dist.*, No. 1:22-cv-125-LG-RPM, 2023 WL 2577232,

[53] Ex. 50, "Opinion and Order Accepting Offer of Settlement of Ted Brent Alexander," June 13, 2024, in the Commodity Futures Trading Commission administrative proceeding styled *In the Matter of Ted Brent Alexander*, CFTC Docket No. SD 24-01.

[54] 230, Baker Donelson memo, at 17-19; 236, Alexander Seawright memo, at 12.

at *8 (S.D. Miss. Mar. 20, 2023) (quoting *Rex Distrib. Co., Inc.*, 271 So. 3d at 455). *See also Rex Distrib. Co., Inc.*, 271 So. 3d at 455 ("Mitchell also erroneously contends that its liability for civil conspiracy depends on Mitchell's having committed an overt act that damaged Rex. This is a fundamental misstatement of the nature of civil conspiracy—it exists as a cause of action to hold nonacting parties responsible. Rex has to show an unlawful overt act and it has to show damages, but the overt act need not be by Mitchell."). *See also, e.g.*, *Rotstain v. Trustmark*, No. 09-cv-2384, 2015 WL 13034513, at *11 (N.D. Tex. Apr. 21, 2015) (even the provision of "routine services" is "sufficient to allege substantial assistance and an overt act in furtherance of a conspiracy" if those services "inherently facilitated the financial transactions and operations that formed the lifeblood of the [Ponzi] scheme").

No one disputes that the evidence is sufficient to establish an overt act.

For good measure, the evidence is that Seawright drafted security agreements, promissory notes, and confidentiality agreements for Madison Timber and drafted the operating agreement, subscription agreements, term sheets, and investor questionnaires for Alexander Seawright Timber Fund.[55] In his deposition, Alexander explained that, "as far as the – anything relating to the operational or transactional or legal side [of their timber business] . . . Jon basically… took that over, because it's easy for him to do as a lawyer[,]"[56] and "legal documents that we used to provide

[55] Ex. 3, Seawright admission nos. 7, 37; Ex. 4, Alexander admission nos. 6, 7. Ex. 5, Seawright Depo. at 55:5-59:15 (affirming that he prepared the operative documents including the promissory note, subscription agreement, equity term sheets, and security agreement, and that he "did not recall" if the origin of those documents came from Baker Donelson files); *id.* at 44:20-45:16 (similar testimony regarding operating agreement preparation). Ex. 6, Alexander Depo. at 53:16-55:9 (Seawright was responsible for preparing documents); *see also id.* at 125:14-126:1 (noting that "[w]e didn't pay any legal expenses. Jon did them. . . Those are – I mean he was a lawyer and a partner, so that was part of his operational responsibilities within Alexander Seawright.").

[56] Ex. 6, Alexander Depo. at 63:16-22.

the legal structure of the – for the operation of the fund. . . all of that would have been done by Jon."[57]

4. "damages to the plaintiff as a proximate result"

"[D]amages are the essence of a civil conspiracy." *Rex Distrib. Co., Inc.*, 271 So. 3d at 455 (quoting *Bradley v*, 117 So. 3d at 339 (quoting 15A C.J.S. Conspiracy § 7 (2012)).

"[T]he purpose of a civil conspiracy is to impute liability. A civil conspiracy is said to exist for only two purposes: to implicate others and to increase the measure of damages." 15A C.J.S. Conspiracy § 1 (2023). "The character and effect of a conspiracy are not to be judged by dissecting it and viewing its separate parts but only by examining as a whole." *Id.* (citing *Cont'l Ore Co. v. Union Carbide & Carbon Corp.*, 370 U.S. 690, 699 (1962) ("In cases such as this, plaintiffs should be given the full benefit of their proof without tightly compartmentalizing the various factual components and wiping the slate clean after scrutiny of each. The character and effect of a conspiracy are not to be judged by dismembering it and viewing its separate parts, but only by looking at it as a whole; and in a case like the one before us, the duty of the jury was to look at the whole picture and not merely at the individual figures in it." (cleaned up)). The law imputes the acts of one conspirator to another, such that he is liable for all damages that naturally result. "The person injured need not be the object of the conspiracy." *Id.* at § 7.

In Ponzi scheme cases, that means a coconspirator is liable for all the losses. The Fifth Circuit has held, in cases just such as this, that a receivership estate's damages include the "unsustainable liabilities inflicted by the Ponzi scheme," *Zacarias v. Stanford Int'l Bank, Ltd. (Zacarias)*, 945 F.3d 883, 899-90 (5th Cir. 2019), or, stated differently, the "additional liability

[57] Ex. 6, Alexander Depo. at 53:19-22.

incurred to its investors' due to [defendants'] participation in the Ponzi scheme," *Rotstain v. Mendez*, 986 F.3d 931, 941 (5th Cir. 2021). *See also Official Stanford Inv'rs Comm. v. Greenberg Traurig, LLP*, No. 3:12-cv-4641-N, 2014 WL 12572881, at *6 (N.D. Tex. Dec. 17, 2014) ("they contributed to the size and scope of the underlying scheme, which ultimately resulted in Stanford's financial ruin"). The theory is not novel; Defendants' own expert Steven Rhodes, a retired bankruptcy judge, readily agreed that an aider and abettor is liable for "all the losses" regardless of his particular participation.[58]

Mississippi law is consistent. Under Mississippi law, civil conspirators are jointly and severally liable for damages. *See* Miss. Code Ann. § 85-5-7 ("(4) Joint and several liability shall be imposed on all who consciously and deliberately pursue a common plan or design to commit a tortious act, or actively take part in it. Any person held jointly and severally liable under this section shall have a right of contribution from his fellow defendants acting in concert.").

It follows that, to the extent Seawright and Alexander participated in Adams's unlawful course of conduct, they are jointly and severally liable for the whole.

No one disputes that the Receiver has actual damages. To the extent Defendants dispute their amount, the Receiver addresses those arguments later in this memorandum.

The takeaway is every element of civil conspiracy is present. A reasonable jury may easily find that Seawright and Alexander civilly conspired with Lamar Adams. Seawright and Alexander are not entitled to summary judgment on the Receiver's civil conspiracy claim.

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[58] Ex. 51, Rhodes Depo. at 46:5-10 ("MR. BARRIERE: As aider and abettor, you are liable for all the losses regardless of your particular participation in the scheme. Correct? MR. DAVANT: Object to the form. THE WITNESS: Yes."); *id.* at 76:11-18 ("[MR. BARRIERE:] And you have testified that as aiders and abettors, if they are held liable, they would be liable for all losses associated with the Ponzi scheme. Correct? MR. DAVANT: Object to form. THE WITNESS: Yes.").

b. Aiding and abetting

Aiding and abetting has two elements: (1) knowledge that another's conduct constitutes a breach of duty and (2) substantial assistance or encouragement in that conduct. Restatement (Second) of Torts § 876(b) ("For harm resulting to a third person from the tortious conduct of another, one is subject to liability if he . . . knows that the other's conduct constitutes a breach of duty and gives substantial assistance or encouragement to the other so to conduct himself.").

1. knowledge that another's conduct constitutes a breach of duty

No one disputes that Seawright and Alexander knew that Lamar Adams was the manager of Madison Timber or that he owed Madison Timber duties of care. *See* Miss. Code Ann. § 79-29-123(6)(a). No one disputes that Lamar Adams breached those duties my misusing Madison Timber's corporate form to sustain a Ponzi scheme. *E.g.*, *Off. Stanford Invs. Comm. v. Greenberg Traurig, LLP*, No. 3:12-cv-4641-N, 2014 WL 12572881, at *8 (N.D. Tex. Dec. 17, 2014) ("the underlying fiduciary duties on which Plaintiffs' claims are based are those owed by directors and officers of the Stanford Financial Group to their respective Stanford entities").

Defendants argue they are entitled to summary judgment on the Receiver's aiding and abetting claim because, again, they say, "it is undisputed that Alexander and Seawright were not actually aware of the Ponzi scheme."[59] Again, there are flaws with their argument.

One, again, Defendants omit Seawright's and Alexander's criminal convictions from their accounting of the facts. Seawright and Alexander pleaded guilty to a course of conduct that included soliciting investors for Lamar Adams and Madison Timber. ("SEAWRIGHT and

[59] 230, Baker Donelson memo, at 21 ("it is undisputed that Alexander and Seawright were not actually aware of the Ponzi scheme"); 236, Alexander Seawright memo, at 9 ("it is undisputed that Alexander and Seawright did not have actual knowledge of the Ponzi scheme").

ALEXANDER solicited investors"[60]) The evidence in this case is that, in seven years, Seawright and Alexander did not check a single document. Adams testified: "[I]f one document had been checked, they would have known it was a false, fake deal."[61] Adams was concerned that Seawright, a lawyer with one of the largest firms in the state of Mississippi, would check—but Seawright never did. To the extent aiding and abetting liability requires Seawright's and Alexander's actual knowledge of the Ponzi scheme, that fact is for the jury to decide, and a jury may reasonably conclude from Seawright's and Alexander's failure to check a single document in seven years that they did know and were indifferent to the fraud.

Two, to the extent Defendants suggest that aiding and abetting liability requires direct evidence of actual knowledge, they are wrong. In Ponzi scheme cases decided in the Fifth Circuit, circumstantial evidence, including red flags, can establish knowledge for aiding and abetting purposes. *Janvey v. Proskauer Rose LLP*, No. 3:13-cv-0477-N, 2015 WL 11121540, at *5-7 (N.D. Tex. June 23, 2015) ("Sjoblom conducted substantial due diligence regarding Stanford . . .Plaintiffs have alleged facts suggesting Sjoblom was aware to a substantial degree of Allen Stanford's fraudulent conduct, which would also imply some awareness of Allen Stanford's misuse of the Stanford entities to accomplish his fraud. The Court finds these allegations sufficient to infer awareness on Sjoblom's part of breaches of fiduciary duties undertaken by Allen Stanford and his fellow officers and directors."). *See also Rotstain v. Trustmark Nat'l Bank*, No. 3:09-cv-2384-N, 2022 WL 179609, at *13 (N.D. Tex. Jan. 20, 2022) (denying summary judgment) ("Over the course of more than a decade, Watson nurtured a highly lucrative relationship with Stanford and the Stanford entities. . . . This context gives added weight to the circumstantial evidence identified by

[60] Doc. 1, Seawright criminal bill of information at 2, *United States v. Seawright*, No. 3:22-cr-00084 (S.D. Miss.); Doc. 1, Alexander criminal bill of information at 2, *United States v. Alexander*, No. 3:23-cr-00027 (S.D. Miss.).

[61] Ex. 18, Lamar Adams Depo. Vol. II at 371:7-9.

Plaintiffs that [defendants] saw numerous, ongoing signs of improper activity in the Stanford accounts . . . . All told, this evidence could support a reasonable finding that [defendants] were aware that Stanford and Davis consistently violated their fiduciary duties[.]"). Relatedly, "actual awareness," for aiding and abetting a securities fraud, "may be adduced from reckless conduct." *Sec. & Exch. Comm'n v. Verges*, 716 F. Supp. 3d 456, 475 (N.D. Tex. 2024) (citation omitted). "A plaintiff can demonstrate severe or reckless behavior through '[a]llegations that an aider or abettor encountered red flags or suspicious events creating reasons for doubt that should have alerted him to the improper conduct of the primary violators[.]'" *Id.* (citation omitted).

Three, to the extent Defendants rely on *Collier*, 678 So. 2d 693, for the proposition that red flags alone do not prove actual knowledge,[62] *Collier* was not an aiding and abetting case and, as shown above, it turned on two statutes that apply to trusts and banks only.

2. substantial assistance or encouragement in that conduct

Seawright and Alexander substantially assisted Lamar Adams by soliciting investors for Madison Timber. *E.g.*, *Official Stanford Inv'rs Comm. v. Breazeale Sachse & Wilson LLP*, No. 3:11-cv-0329-N, 2015 WL 13740747, at *9 (N.D. Tex. Mar. 24, 2015) (allegations that law firm referred clients to Ponzi scheme support "reasonable inference" of substantial assistance). The evidence is that Lamar Adams needed new investors' money, and Seawright and Alexander supplied it for seven years. ("Q. [W]hy did you seek out their business? [Lamar Adams:] Needed the money."[63]) No one disputes Seawright's and Alexander's substantial assistance.

[62] 230, Baker Donelson memo, at 22; 236, Alexander Seawright memo, at 9.

[63] Ex. 18, Lamar Adams Depo. Vol. II at 371:22-24.

Both aiding and abetting elements are present. Seawright and Alexander are not entitled to summary judgment on the Receiver's aiding and abetting claim.

c. Joint venture liability

"A joint venture might be characterized as a single shot partnership." *Hults v. Tillman*, 480 So. 2d 1134, 1143 (Miss. 1985). Mississippi courts use a three-pronged test to determine whether a joint venture existed: "(1) the intent of the parties, (2) the control question, and (3) profit sharing." *Smith v. Redd*, 593 So. 2d 989, 994 (Miss. 1993).

1. "the intent of the parties"

It is enough that the parties "expressed an intention" to form a joint venture. *Smith*, 593 So. 2d at 994. "An expressed agreement is not required; intent may be implied, or established from the surrounding circumstances." *Id.*

The evidence, as shown, is that Seawright and Alexander intended to solicit investors for Madison Timber. ("[I]f this works there could be a strong long term relationship. He has stated that volume is not a problem and indicates there are enough opportunities for him to soak up as much capital as we can raise."[64]) They formed Alexander Seawright Timber Fund for that sole purpose. They did not use Alexander Seawright Timber Fund for any other purpose. They did not purport to purchase timber from any other source. A reasonable jury could find Seawright and Alexander intended to form a joint venture with Lamar Adams and Madison Timber.

Defendants argue they are entitled to summary judgment on the Receiver's joint venture claim because, again, they say, "Alexander and Seawright did not know Adams was operating a

[64] Ex. 52, JDS 000609.

Ponzi scheme."[65] Again, that fact is for the jury to decide, and, in the light of the evidence already described, a jury may reasonably conclude Seawright and Alexander did know and were indifferent to the fraud.

2. "the control question"

"[P]artnership-like control varies by the circumstances of each particular partnership." *Peoples Bank v. Bryan Bros. Cattle Co.*, 504 F.3d 549, 556 (5th Cir. 2007). When "[a]ll parties ma[k]e business decisions," they all exercise partner-like control over the business, even if one partner alone "handle[s] the financial matters." *Smith*, 593 So. 2d at 995. "[L]ack of control is not enough by itself to disprove partnership." *Century 21 Deep S. Properties, Ltd. v. Keys*, 652 So. 2d 707, 715 (Miss. 1995).

The evidence is that Lamar Adams, Seawright, and Alexander each had a role in their joint venture. Lamar Adams supplied the timber deeds and mill agreements for investments. Seawright solicited investors, drafted security agreements, promissory notes, and confidentiality agreements for Madison Timber and drafted the operating agreement, subscription agreements, term sheets, and investor questionnaires for Alexander Seawright Timber Fund.[66] Alexander primarily was a

[65] 236, Alexander Seawright memo, at 13; 230, Baker Donelson memo, at 24 ("Alexander and Seawright did not knowingly join Adams in his fraud").

[66] Ex. 3, Seawright admission nos. 7, 37; Ex. 4, Alexander admission nos. 6, 7. Ex. 5, Seawright Depo. at 55:5-59:15 (affirming that he prepared the operative documents including the promissory note, subscription agreement, equity term sheets, and security agreement, and that he "did not recall" if the origin of those documents came from Baker Donelson files); *id.* at 44:20-45:16 (similar testimony regarding operating agreement preparation). Ex. 6, Alexander Depo. at 53:16-55:9 (Seawright was responsible for preparing documents); *see also id.* at 125:14-126:1 (noting that "[w]e didn't pay any legal expenses. Jon did them. . . Those are – I mean he was a lawyer and a partner, so that was part of his operational responsibilities within Alexander Seawright.").

salesman.[67] Neither employed the other, and each exercised autonomy in their respective roles. These facts support a finding that they shared control over their joint venture.

3. "profit sharing"

"The one factor which is the most important in determining the existence of a partnership is profit sharing." *Century 21 Deep S. Properties*, 652 So. 2d at 715.

However Defendants wish to characterize their arrangement today, the evidence is that when Lamar Adams, Seawright, and Alexander formed their joint venture in 2011 they characterized it as a "profit share."[68] In an indicative exchange, Adams proposed a "14% profit" and asked "how you guys want the split done":

> As far as this Yazoo tract is concerned, we have 14% profit in it. All I need to know is how you guys want the split done. Included in that 14% is the 2 points we discussed. 14% is the net to the Investor and we have a 2% "birddog fee" built into that.[69]

Seawright proposed instead a 13% profit, of which investors would receive 10% and Seawright and Alexander would keep 3%. He then negotiated an additional 3% commission for themselves. As a result, their share of each investment's return included the 3% they disclosed to investors, plus an extra undisclosed 3% that Adams paid them directly.[70] These facts support a finding that Adams, Seawright, and Alexander shared profits.

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[67] Ex. 6, Alexander Depo. at 41:19-42:18 (describing his skillset as "brainstorming and coming up with ideas and identifying opportunities. And I think I was pretty good with people" and adding that he knew people that "were in a position to maybe consider investments.").

[68] Ex. 52, JDS 000609.

[69] Ex. 53, BAKER_MILLS_000018.

[70] Ex. 53, BAKER_MILLS_000017.

All three elements of a joint venture are present. Seawright and Alexander are not entitled to summary judgment on the question of joint venture liability.

d. Alter ego liability

"[A] distinct corporate identity will not be maintained if 'to do so would subvert the ends of justice.'" *Edmonson v. State*, 301 So. 3d 108, 114 (Miss. Ct. App. 2020) (citations omitted). "In particular, 'piercing the corporate veil is appropriate where the corporation exists to perpetuate a fraud.'" *Id.* (citations omitted).

Seawright and Alexander contend they cannot be liable for Alexander Seawright, LLC because they "did not use it for fraudulent means."[71] Alexander Seawright, LLC was Alexander Seawright Timber Fund's predecessor and parent. Seawright and Alexander were its owners. They used the entity not only in their "a scheme or artifice to defraud" investors[72] but also in an unrelated bankruptcy fraud for which Seawright was separately charged, also while he was a shareholder at Baker Donelson.[73]

They are not entitled to summary judgment on the question of alter ego liability.

e. Violation of Mississippi's civil RICO statute

Mississippi's civil RICO statute, Miss. Code. Ann. § 97-43-9(6), entitles a plaintiff to treble damages, attorneys' fees, and punitive damages. It states:

> Any person who is injured by reason of any violation of the provisions of this chapter shall have a cause of action against any person or enterprise convicted of

[71] 236, Alexander Seawright memo, at 18.

[72] Doc. 1, Seawright criminal bill of information, *United States v. Seawright*, No. 3:22-cr-00084 (S.D. Miss.); Doc. 1, Alexander criminal bill of information, *United States v. Alexander*, No. 3:23-cr-00027 (S.D. Miss.).

[73] Doc. 3, *United States v. Seawright*, No. 21-cr-00007 (S.D. Miss. Jan. 26, 2021). *See also In re Alexander Seawright Transportation, LLC*, No. 19-00217-NPO, 2019 WL 1282951, at *1 (Bankr. S.D. Miss. Mar. 18, 2019)

> engaging in activity in violation of this chapter for threefold the actual damages sustained and, when appropriate, punitive damages. Such person shall also recover attorneys' fees in the trial and appellate courts and costs of investigation and litigation, reasonably incurred.

1. "any violation of the provisions of this chapter"

"It shall be unlawful for any person to conduct, organize, supervise or manage, directly or indirectly, an organized theft or fraud enterprise." Miss. Code Ann. § 97-43-3.1(1).

"Organized theft or fraud enterprise means any association of two or more persons who engage in the conduct of or are associated for the purpose of effectuating the transfer or sale of merchandise, services or information that has pecuniary value that causes a loss to the victim." Miss. Code Ann. § 97-43-3.1(3).

"Organized theft or fraud enterprise applies to conduct proscribed in. . . (e) Section 97-19-83, which relates to fraud by mail or other means of communication." Miss. Code Ann. § 97-43-3.1(1)(e).

Section § 97-19-83's prohibitions expressly include wire fraud:

> Whoever, having devised or intending to devise **any scheme or artifice to defraud**, or for obtaining money, property or services, or for unlawfully avoiding the payment or loss of money, property or services, or for securing business or personal advantage by means of false or fraudulent pretenses, representations or promises, or to sell, dispose of, loan, exchange, alter, give away, distribute, supply, or furnish or procure for unlawful use any counterfeit or spurious coin, obligation, security or other article, or anything represented to be or intimated or held out to be such counterfeit or spurious article, for the purpose of executing such scheme or artifice or attempting so to do, transmits or causes to be transmitted by mail, telephone, newspaper, radio, television, **wire**, electromagnetic waves, microwaves, or other means of communication or by person, any writings, signs, signals, pictures, sounds, data, or other matter across county or state jurisdictional lines, shall, upon conviction, be punished by a fine of not more than Ten Thousand Dollars ($10,000.00) or by imprisonment for not more than five (5) years, or by both such fine and imprisonment.

(Emphasis added). *See also Thompson v. State*, 157 So. 3d 844, 848 (Miss. App. Ct. 2015) ("Thompson was indicted for wire fraud in violation of Mississippi Code Annotated section 97-19-83.").

Seawright and Alexander were convicted of conspiracy to commit wire fraud.[74] Seawright and Alexander associated and committed specifically proscribed acts. They violated Mississippi's civil RICO statute.

Seawright and Alexander do not dispute that they violated Mississippi's civil RICO statute. They cannot. They are estopped. *E.g.*, *Breeland v. Security Ins. Co. of New Haven*, 421 F.2d 918, 922 (5th Cir. 1969) ("The number of jurisdictions holding that a criminal conviction precludes litigation of the same issue in a civil suit is ever increasing.") (citations omitted).

Only Baker Donelson disputes that Seawright and Alexander violated Mississippi's civil RICO statute.

To the extent that Baker Donelson argues Seawright and Alexander "have not been convicted of violating the Act,"[75] meaning they have not been convicted of violating Mississippi's civil RICO statute itself, that is more than the statute requires. The statute does not require a conviction for violating the statute itself; by its own terms, it only requires a conviction for crimes "proscribed in" the enumerated state laws. As shown, wire fraud is "proscribed in" § 97-19-83.

To the extent that Baker Donelson argues the statute does not reach Seawright's and Alexander's conduct because it intends to proscribe only "consumer fraud,"[76] Baker Donelson fails to give full effect to § 97-43-3.1(1)(e) and § 97-19-83. As shown, § 97-43-3.1(1)(e) states that the

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[74] Doc. 15, Seawright criminal judgment, *United States v. Seawright*, No. 3:22-cr-00084 (S.D. Miss.); Doc. 17, Alexander criminal judgment, *United States v. Alexander*, No. 3:23-cr-00027 (S.D. Miss.).

[75] 230, Baker Donelson memo, at 23.

[76] 230, Baker Donelson memo, at 23.

statute "applies to conduct proscribed in" § 97-19-83. As shown, § 97-19-83 straightforwardly proscribes the use of "wire" to conduct "any scheme or artifice to defraud." Seawright and Alexander pleaded guilty to conspiring to devise "a scheme or artifice to defraud . . . by means of wire."[77] The statute, through § 97-19-83, reaches Seawright's and Alexander's conduct.

2. Federal convictions serve as predicates for state civil RICO liability

That Seawright's and Alexander's convictions are federal and not state is of no moment.

Courts applying state civil RICO statutes do not distinguish between federal and state convictions so long as federal and state criminal statutes proscribe the same conduct. *E.g.*, *Aetna Cas. & Sur. Co. v. Dini*, 821 P.2d 216, 218–19 (Az. Ct. App. May 30, 1991) (federal convictions served as predicates for state civil RICO liability, and defendants were estopped from denying the conduct proscribed). Indeed, a bankruptcy judge in this district held federal convictions for criminal concealment of assets and false oaths and claims served as predicates for liability under the Mississippi civil RICO statute in *In re Comm. Home Fin. Servs., Inc.*, Adv. No. 14–00030, 2018 WL 1141759 (Bankr. S.D. Miss. Feb. 27, 2018). Mississippi's civil RICO statute requires a conviction, not a conviction by a state court.

No one disputes that federal convictions serve as predicate for state civil RICO liability.

3. There is no barrier to vicarious liability

Nothing in Mississippi's civil RICO statute or in any case applying it precludes vicarious liability for a violation. No one even makes that argument here.

State RICO statutes, including Mississippi's, typically mirror federal RICO law. *E.g.*, *State v. Roderic*k, 704 So. 2d 49, 54 (Miss. 1997) (Mississippi's RICO statute is "modeled after the

[77] Doc. 1, Seawright criminal bill of information, *United States v. Seawright*, No. 3:22-cr-00084 (S.D. Miss.); Doc. 1, Alexander criminal bill of information, *United States v. Alexander*, No. 3:23-cr-00027 (S.D. Miss.).

Federal RICO Act, 18 USCA § 1962"). State courts often consult federal RICO law when analyzing state RICO claims. *E.g.*, *Allstate Ins. Co. v. Michael Kent Plambeck, D.C.*, No. 3:08-cv-388-M, 2014 WL 1303000, at *2 (N.D. Tex. Mar. 31, 2014), *aff'd sub nom. Allstate Ins. Co. v. Plambeck*, 802 F.3d 665 (5th Cir. 2015) ("The Ohio Corrupt Practices Act 'is adopted directly from the [federal] RICO Act,' and '[a]s a result, Ohio courts look to federal case law applying the RICO Act when analyzing claims brought under the [Corrupt Practices Act].'").

Under federal RICO law, "there is no barrier to vicarious liability." *Tatum v. Smith*, 887 F. Supp. 918, 925 (N.D. Miss. 1995), *aff'd sub nom. Tatum v. Legg Mason Wood Walker, Inc.*, 83 F.3d 121 (5th Cir. 1996) (citing *Crowe v. Henry*, 43 F.3d 198, 206 (5th Cir. 1995) ("we find no barrier to vicarious liability")). The Fifth Circuit in *Crowe* rejected a law firm's argument that it could not be vicariously liable for its member's violation of federal RICO law, where the plaintiff alleged that the member entered a joint farming venture by which he engaged in a series of fraudulent acts, and the member's law firm, which assisted him, received $30,000 in legal fees. The law firm's vicarious liability turned simply on whether the law firm "derived some benefit" from its member's wrongful acts.

Baker Donelson does not dispute that vicarious liability exists but asserts, without analysis, that it cannot be vicariously liable here.[78] It does not address the evidence.

The evidence is that investors in Alexander Seawright Timber Fund became Baker Donelson clients:

> Seawright admission no. 33: "[S]ome investors in ASTF became clients of Baker Donelson after they first in invested in ASTF"
>
> Alexander admission no. 16: "[S]ome investors in ASTF became clients of Baker Donelson after they first in invested in ASTF"

[78] 230, Baker Donelson memo, at 23.

> Baker Donelson's response to interrogatory no. 14: "Baker Donelson further notes that some individuals who invested in Timber Fund I later became clients, or entities with which they served as employees, owners, members or directors later became clients, of Baker Donelson at a time after the individuals first invested in Timber Fund I." [79]

The Seawright-Alexander-Baker Donelson relationship was also mutually beneficial. Seawright and Alexander offered the investment opportunity to Baker Donelson's shareholders and Baker Donelson's existing clients and their spouses and affiliated entities. They marketed Alexander Seawright Timber Fund as an exclusive "friends and family fund."[80] Seawright, a healthcare lawyer, and Alexander, a healthcare lobbyist, marketed it to healthcare professionals specifically. ("Docs are eating it up."[81])

Whether Baker Donelson derived some benefit from Seawright's and Alexander's wrongful acts is a fact for the jury to decide, and a jury may reasonably conclude from the evidence that it did.

4. The Receiver was not required to "reurge" her claim

Finally, there is no support for the notion that the Receiver's claim is not properly before the Court today. Defendants argue the Receiver was required to "reurge" the claim after Seawright and Alexander were convicted.[82] Seawright and Alexander cite no legal authority for the argument. Baker Donelson cites *Jiminez v. Tuna Vessel Granada*, 652 F. 2d 415 (5th Cir. 1981), but that case

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[79] Ex. 3, Seawright admission no. 33 ("[S]ome investors in ASTF became clients of Baker Donelson after they first in invested in ASTF"); Alexander admission no. 16 ("[S]ome investors in ASTF became clients of Baker Donelson after they first in invested in ASTF"); Ex. 44, Baker Donelson response to interrogatory no. 14 ("Baker Donelson further notes that some individuals who invested in Timber Fund I later became clients, or entities with which they served as employees, owners, members or directors later became clients, of Baker Donelson at a time after the individuals first invested in Timber Fund I.")

[80] See footnote 12.

[81] Ex. 54, BAKER_MILLS_0002629-0002630.

[82] 236, Alexander Seawright memo, at 2 n.1; 230, Baker Donelson memo, at 23.

has no applicability here. There, two days after the close of evidence at trial, a judge entered judgment on grounds "neither pleaded by [the plaintiff] nor set out in the pretrial order." *Id.* at 418. The Fifth Circuit held "only that trial of unpled issues by implied consent is not lightly to be inferred under Rule 15(b), that such inferences are to be viewed on a case-by-case basis and in light of the notice demands of procedural due process, and that, so tested, fair notice [was] not present here." *Id.* at 422.

In this case, unlike in *Jiminez*, the Receiver specifically pleaded her claim in her original complaint [1], in her amended complaint [57], and, most recently, in her proposed second amended complaint [201]. Defendants cannot credibly contend that they did not have notice of the claim.

Nothing in the Court's order addressing the claim, and no independent legal authority, required the Receiver to reurge the claim after Seawright's and Alexander's convictions became final. The Court's order did not purport to dismiss the claim. Instead, it observed only that "[a]t present, none of today's defendants have been convicted of anything relating to this Ponzi scheme. It follows that the receiver's state RICO claim cannot proceed." [70 at 15]. That was on May 5, 2021. On May 20, 2021, Seawright's and Alexander's indictments were unsealed. Their judgments of conviction were entered November 13, 2023.

A plain reading of the Court's order is that on May 5, 2021, the claim was not viable, but as of November 13, 2023, it is. Defendants do not require any affirmative act of the Receiver to clarify anything. To the extent they need to hear the Receiver say it again: The Receiver alleges, in Count V, violations of Mississippi's civil RICO statute.

Seawright and Alexander violated Mississippi's civil RICO statute, there is no barrier to vicarious liability, and nothing prevents the Receiver from presenting her case to the jury.

II. Baker Donelson's liability for Seawright and Alexander

Baker Donelson's liability for Seawright and Alexander may be indirect or direct.

Baker Donelson is vicariously (indirectly) liable to the extent that it authorized Seawright's and Alexander's acts; it ratified Seawright and Alexander's acts after-the-fact; or Seawright and Alexander committed acts within the scope of their employment.

Baker Donelson is directly liable to the extent it failed, as a firm, to supervise Seawright and Alexander.

The evidence is more than sufficient to prove Baker Donelson's liability either way.

a. Vicarious liability

"For an employer to be [vicariously] liable for an employee's actions, 'the act must have been one authorized by the employer prior to its commission, ratified after its commission, or committed within the scope of the employment.'" *Franklin v. Turner*, 220 So. 3d 1003, 1008 (Miss. Ct. App. 2016) (citation omitted).[83]

1. Authority

"[W]hen it is asserted that the employee acted without the knowledge of the employer and without his approval, or in violation of his orders and instructions, the question of liability, as in other cases, is determined by whether the employee was in fact acting within the scope of his *implied* or *apparent* authority.'" *Jenkins v. Cogan*, 119 So. 2d 363, 368 (Miss. 1960) (quoting 35 Am.Jur., Master and Servant, at 994).

[83] Baker Donelson represents that "Mississippi law limits the vicarious liability of a professional corporation like Baker Donelson to acts of employees performed 'within the scope of employment' or 'of their apparent authority to act for the corporation." 230, Baker Donelson memo, at 6. The statute Baker Donelson cites, Miss. Code Ann. § 79-10-67(2), actually states: "A domestic or foreign professional corporation whose employees perform professional services within the scope of their employment or of their apparent authority to act for the corporation is liable to the same extent as its employees."

i. Implied authority

The evidence is that Seawright and Alexander had Baker Donelson's implied authority to conduct their outside business. Seawright disclosed Alexander Seawright, LLC, Alexander Seawright Timber Fund's predecessor and parent, as an "outside business activity" to Susan Clement, the firm's designee, in 2011,[84] and no one questioned it. Neither Seawright nor Alexander hid those activities over the next seven years. They testified they never withheld anything from Baker Donelson.[85] Baker Donelson's corporate representative testified he had no reason to disagree that they never withheld anything from Baker Donelson.[86]

Seawright's and Alexander's activities were also open and obvious. They conducted their business during Baker Donelson's office hours,[87] used Baker Donelson's offices for meetings and closings with Lamar Adams and investors,[88] used their @bakerdonelson accounts,[89] and used Baker Donelson employees.[90] Seawright's assistant Kathy Acquilano prepared letters to investors

[84] Ex. 1, BAKER_MILLS_0030992; *see also* Ex. 2, Ben Adams, Baker Donelson CEO, Depo. at 43:1-5 ("Annually, we're asked to complete this form to give all of our various activities outside of the law firm, and this looks like Jon Seawright's completion of that form that he sent to Susan Clement in October of 2011."); Seawright response to interrogatory no. 10 ("Baker Donelson required him to disclose whether he wholly owned, controlled, or served as a director of any business enterprise, and he did so.").

[85] Ex. 3, Seawright admission no. 25 ("Admitted" that "you did not hide ASTF from Baker Donelson"); Ex. 4, Alexander admission no. 11 ("Admitted that "you did not hide ASTF from Baker Donelson"); Ex. 5, Seawright Depo. at 187:16-20 ("I didn't feel like there was anything to hide").

[86] Ex. 7, John Hicks, Baker Donelson 30(b)(6), Depo. at 261:4-13 ("Q. And you're aware that [Alexander and Seawright] testified that they didn't withhold any information from Baker Donelson, right? A. I generally recall that. Q. Do you have any reason to disagree with that? A. No.").

[87] See footnote 4.

[88] See footnote 5.

[89] See footnote 6.

[90] See footnote 7.

twice a month for years.[91] She notarized timber deeds.[92] She "routinely" handled administrative tasks including writing and depositing checks.[93]

Seawright and Alexander offered the opportunity to invest to Baker Donelson shareholders, clients, and their spouses and affiliated entities.[94] They called it the Baker Donelson "friends and family fund."[95] Six Baker Donelson shareholders invested, including the firm's former President and COO and a firm practice group leader.[96] Other Baker Donelson colleagues helped recruit investors.[97]

In seven years, no one at Baker Donelson told Seawright or Alexander to stop using Baker Donelson's offices to conduct their business,[98] to stop using their @bakerdonelson accounts,[99] or to stop using Baker Donelson's employees.[100] No one discouraged their activities at all. During this time, Seawright was among the most prominent and influential lawyers at the firm, having been elected to Baker Donelson's governing board of directors (which had only seven to fifteen members) and appointed to its exclusive finance committee (which had only five).[101]

A jury may reasonably conclude from these facts that Baker Donelson impliedly authorized Seawright's and Alexander's activities. To the extent Baker Donelson points to evidence that it

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[91] See footnote 8.

[92] See footnote 9.

[93] See footnote 10.

[94] See footnote 11.

[95] See footnote 12.

[96] See footnote 13.

[97] See footnote 14.

[98] See footnote 21.

[99] See footnote 22.

[100] See footnote 23.

[101] See footnote 24.

says proves it did not, the evidence is conflicting, and the jury gets to decide who to believe. *E.g.*, *Sturkin v. Mississippi Ass'n of Supervisors, Inc.*, 315 So. 3d 521, 534 (Miss. Ct. App. 2020) (quoting *Jenkins v. Cogan*, 119 So. 2d 363, 368 (1960) ("We think that the conflicting testimony further raised an issue of fact as to whether or not the appellant knew or should have known that Willis was working on butane or propane propelled trucks and acquiesced therein, and whether or not the appellant thereby impliedly authorized the said Willis so to do, and, therefore, whether or not at the time of the explosion the said Willis was acting within the scope of his implied or apparent authority."). Under Mississippi law, if the question is an employer's liability for acts of an employee, "[w]here there is *any* doubt, the issue must be submitted to the jury." *Sturkin*, 315 So. 3d at 532 (emphasis added).

ii. Apparent authority

"Whether an agent has the apparent authority to bind the principal is a question of fact" that looks to "(1) acts or conduct of the principal indicating the agent's authority, (2) reasonable reliance upon those acts by a third person, and (3) a detrimental change in position by the third person as a result of that reliance." *Eaton v. Porter*, 645 So. 2d 1323, 1325 (Miss. 1994).

1) "acts or conduct of the principal indicating the agent's authority"

The first prong is "fulfilled merely by acts of the principal which clothed the agent with indicia of authority." *Id.* at 1326.

Baker Donelson argues "there is no evidence ***Baker Donelson*** indicated to investors Alexander or Seawright were acting for the firm in their timber activities."[102] But the Mississippi Supreme Court rejected the same argument in *Eaton*. There, the defendant, Eaton, also argued that

[102] 230, Baker Donelson memo, at 11.

he never the met the plaintiffs, was not involved in their transaction, and did not make any representations to them. The Mississippi Supreme Court responded that "Eaton misses the point and misconstrues our case law." *Id.* "As our previous decisions have indicated, the facts that Eaton, Jr., himself, made no representations to the Porters and advertised his business in a particular manner to the general public are of little consequence." *Id.* (citing *Christian Methodist Episcopal Church v. S & S Construction Co., Inc.*, 615 So. 2d 568 (Miss. 1993) ("Contrary to Eaton's argument, the Court in *CME Church* made no inquiry into how the church had held itself out to the general public and cared not whether anyone from the church but its agent, Peeples, had made any representations to the contractor."); *id.* (citing *Andrew Jackson Life Insurance Co. v. Williams*, 566 So. 2d 1172, 1180–1181 (Miss. 1990) ("[In *Andrew Jackson*,] the Court did not focus on whether the insurer held itself out to the general public as offering instantly effective coverage, but on the authority it appeared to have vested in its agent").

The focus instead is on how third parties perceived the agent's actions. *Id.* ("The key is how these particular third parties, the Porters, perceived the actions of the agent, Eaton, Sr."). "In Mississippi, agency and the scope thereof may be proved through the testimony of the agent alone." *Id.* (quoting *Hamilton v. Bradford*, 502 F. Supp. 822, 830 (S.D. Miss. 1980)).

Baker Donelson argues Seawright and Alexander "took steps to keep their timber activities from the firm."[103] The Receiver disputes that. The evidence is, again, Seawright and Alexander conducted their business during Baker Donelson's office hours,[104] used Baker Donelson's offices

[103] 230, Baker Donelson memo, at 12.

[104] See footnote 4.

for meetings,[105] used their @bakerdonelson accounts,[106] and used Baker Donelson employees.[107] They offered the opportunity to invest to Baker Donelson shareholders, clients, and their spouses and affiliated entities[108] and called it the Baker Donelson "friends and family fund."[109] Six Baker Donelson shareholders invested, and other Baker Donelson colleagues helped recruit investors.[110] During this time, Seawright, as a member of Baker Donelson' board of directors and its finance committee, was among the most powerful lawyers at the firm. [111]

Furthermore, Seawright was aided in his activities by his employment at Baker Donelson. *Franklin*, 220 So. 3d at 1008 (distinguishing cases in which the employee was "aided by his position as an agent of the employer"). Baker Donelson is a law firm. Seawright is a lawyer and he drafted security agreements, promissory notes, and confidentiality agreements for Madison Timber[112] and drafted the operating agreement, subscription agreements, term sheets, and investor questionnaires for Alexander Seawright Timber Fund.[113] In his deposition, Alexander explained that, "as far as the – anything relating to the operational or transactional or legal side [of their timber business] . . . Jon basically… took that over, because it's easy for him to do as a

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[105] See footnote 5. Ex. 6, Alexander Depo. at 70:20-71:4 (closings were "at Baker Donelson in one of the conference rooms"); *id.* at 96:3-18 (closings "took place in one of the empty conference rooms at Baker Donelson"); Ex. 3, Seawright admission no. 35 ("Seawright admits that he occasionally met ASTF investors at Baker Donelson's Jackson office, including for some closings"); Ex. 4, Alexander admission no. 18 ("Alexander admits that he occasionally met ASTF investors at Baker Donelson's Jackson office, including for some closings"); Ex. 8, BAKER_MILLS_0002770-2771 (booking conference room for closing).

[106] See footnote 6.

[107] See footnote 7.

[108] See footnote 11.

[109] See footnote 12.

[110] See footnotes 13, 14.

[111] See footnote 24.

[112] Ex. 48, Lamar Adams Depo. Vol. I at 142:24-143:10 (testimony describing closings including "I signed a security agreement that Jon Seawright did up and had me sign. I signed a promissory note that Jon Seawright did and had me sign."); *see also* Ex. 55, BAKER_MILLS_0009975-009979; Ex. 56, BAKER_MILLS_0000001-0000002.

[113] See footnote 15.

lawyer[,],"[114] and "legal documents that we used to provide the legal structure of the – for the operation of the fund. . . all of that would have been done by Jon."[115] Seawright drafted all documents for each investment between 2011 and 2018.[116]

A reasonable jury may find these facts clothed Seawright and Alexander with indicia of authority.

2) "reasonable reliance upon those acts by a third person"

The second prong asks whether the third party reasonably relied on the indicia of authority.

Baker Donelson argues investors' reliance is irrelevant because the Receiver stands in the shoes of Lamar Adams and Madison Timber only. It represents that "[t]he Receiver evidently is no longer pursuing assigned claims on behalf of investors.[117] But the Receiver never disclaimed the assigned claims. The Receiver obtained assignments because Defendants challenged her standing. [57 at ¶ 8 ("To remove any doubt, in aid of the Receivership Estate's recovery, investors have assigned their claims against Defendants to the Receivership Estate, whose purpose is to maximize assets for investors' benefit.")] The Court, when it ruled on Defendants' motions to dismiss, expressly declined to "consider whether the receiver also has standing via assignments from investor-victims." [70 at 7 n.5] The Receiver's position on matters pertaining to discovery has been consistent with that ruling, but Defendants nevertheless conducted uninhibited investor discovery, including of facts relating to the assignments. No one would seriously contend the assignments have no effect today.

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[114] Ex. 6, Alexander Depo. at 63:16-22.

[115] Ex. 6, Alexander Depo. at 53:19-22.

[116] See footnotes 15-19.

[117] 230, Baker Donelson memo, at 11.

Baker Donelson argues "there is no evidence a single [investor] believed Baker Donelson had authorized Alexander and Seawright to sell timber investments on its behalf."[118] But the question is not whether they believed Seawright and Alexander sold timber investments on Baker Donelson's behalf. The question is whether they believed Baker Donelson knew about and allowed, *i.e.*, authorized, Seawright's and Alexander's timber business. In the light of the evidence already described, a jury may reasonably conclude they did.

Baker Donelson contends the Receiver's claim "hinges on statements from three witnesses" whose testimony it characterizes as unreasonable.[119] More than three investor witnesses testified they believed Baker Donelson authorized Seawright and Alexander's timber business.[120] In any event, questions of credibility are questions for the jury. They do not entitle Baker Donelson to summary judgment.

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[118] 230, Baker Donelson memo, at 12.

[119] 230, Baker Donelson memo, at 12-13.

[120] *E.g.*, Ex. 57, AS.28 Depo. at 40:4-41:2 (stating that in her mind, she thought "Baker Donelson knew about what was going on" because she "went to [Seawright's] office, and he also sent [her] other emails saying that his secretary had his signature stamp and the checkbook and she could give me a check if he wasn't there. So why wouldn't I believe that Baker Donelson had anything to do with this?. . .he was under that veil. It wasn't like a backdoor deal."); Ex. 58, AS.30 Depo. at 100:15-19 (stating that someone told him that there were attorneys at Baker Donelson who invested in the fund); *id.* at 112:9-113:11 (explaining that he thought Seawright had an extra level of credibility because he was in good standing with Baker Donelson and that he had a comfort level with investing with because Seawright was associated with Baker Donelson); *id.* at 115:3-17 (stating that, in the dozens of times he visited the Baker Donelson office, he never got the impression that Baker Donelson disapproved of the timber business or that they operated it in secret and he "took some comfort that he was able to conduct business" at the law firm); Ex. 59, AS.25 Depo. at 98:2-15 (stating that he was comfortable with investing because Seawright was affiliated and working for Baker Donelson); Ex. 60, AS.11 Depo. at 8:5-8 ("I didn't know anything about Madison Timber. All our dealings had been with Baker Donelson."); *id.* at 28:1-4 (explaining that he had no reason to suspect foul play because Seawright was "on the board of Baker Donelson and a reputable--or we thought a reputable attorney that had represented" him before); *id.* at 37:17-21 (stating that he was led to believe that Baker Donelson employees and lawyers were investing); Ex. 60, AS.11 Depo. at 20:4-11 and 32:1-6 (explaining that her decision to invest was guided by the fact that she was told it was a retirement fund for everyone at Baker Donelson); Ex. 61, AS.06 Depo. at 88:13-20 (stating that he never felt that Alexander and Seawright were hiding anything from Baker Donelson).

3) "a detrimental change in position"

Baker Donelson does not dispute any party's "detrimental change in position" as a result of its reliance on any indicia of authority.

The takeaway is a reasonable jury certainly could find that Baker Donelson is vicariously liable for Seawright's and Alexander's acts either because it impliedly authorized them or, separately, because they had apparent authority. Baker Donelson is not entitled to summary judgment on the question of authority.

2. Ratification

"Ratification is another method for establishing employer liability." *Sturkin*, 315 So. 3d at 534. "Where an employer learns of the past intentional conduct and does nothing to reprimand the employee, this acts as a ratification." *Jones v. B.L. Dev. Corp.*, 940 So. 2d 961, 966 (Miss. Ct. App. 2006).

The evidence is that 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."[121] Neither Seawright nor Alexander withheld any information from Baker Donelson at that time.[122] Baker Donelson's corporate representative testified he had no reason to

[121] Ex. 2, Ben Adams, Baker Donelson CEO, Depo. at 30:1-18.

[122] Ex. 3, Seawright admission no. 25 ("Admitted" that "you did not hide ASTF from Baker Donelson"); Ex. 4, Alexander admission no. 11 ("Admitted that "you did not hide ASTF from Baker Donelson"); Ex. 5, Seawright depo at 187:16-20 ("I didn't feel like there was anything to hide").

believe that they withheld any information from Baker Donelson.[123] Blair reported his findings to Baker Donelson's board of directors and, separately, to its shareholders.[124]

Baker Donelson had clear internal 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[125]
>
> 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 …[126]
>
> 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[127]
>
> Any employee must never use or attempt to use his or her position at Baker Donelson to obtain any improper personal benefit for himself[128]
>
> Baker Donelson's assets are to be used for legitimate business purposes only.[129]
>
> The conference rooms … should not be used by individuals for personal work[130]

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[123] Ex. 7, John Hicks, Baker Donelson 30(b)(6), Depo. at 261:4-13 ("Q. And you're aware that [Alexander and Seawright] testified that they didn't withhold any information from Baker Donelson, right? A. I generally recall that. Q. Do you have any reason to disagree with that? A. No.").

[124] Ex. 2, Ben Adams, Baker Donelson CEO, Depo. at 31:10-32:1.

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

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

[127] Ex. 63, BAKER_MILLS_0027748 (Board Fiduciary etc Policy).

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

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

[130] Ex. 64, BAKER_MILLS_0027847 (Code of Conduct).

> [E]ach employee should devote his/her full energies and interest to this Firm. However, if part-time employment becomes necessary, a full conflict check must be run and a conflict committee member must clear such employment. Please contact your Office Administrator.[131]
>
> 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.[132]

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[133]
>
> 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[134]

The policies notwithstanding, Baker Donelson took no corrective action against either Seawright or Alexander in April 2018.[135] Baker Donelson took no corrective action against either Seawright or Alexander at any time thereafter. Seawright remained a shareholder at least until

[131] Ex. 64, BAKER_MILLS_0027865 (Code of Conduct).

[132] Ex. 64, BAKER_MILLS_0027866 (Code of Conduct).

[133] Ex. 64, BAKER_MILLS_0027830 (Code of Conduct).

[134] Ex. 64, BAKER_MILLS_0027830 (Code of Conduct)

[135] 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'"); Ex. 5, Seawright Depo. at 17:22-18:6 ("Q. [w]ere you the subject of any sanctions or penalties of any sort at Baker Donelson following the collapse of the Ponzi scheme? A. Not that I'm aware of."); Ex. 6, Alexander Depo. at 212:14-18 ("Q. Following the disclosure of Madison Timber as a Ponzi scheme, were you the subject of any sort of disciplinary - - internal or in-house disciplinary proceeding at Baker Donelson? A: No."); Ex. 7, John Hicks, Baker Donelson 30(b)(6), Depo. at 261:21-264:2 (same).

May 2021, when the criminal indictment against him was unsealed, at which time he took a personal leave of absence, of his own volition.[136]

A reasonable jury may conclude from these facts that Baker Donelson ratified Seawright's and Alexander's activities. Mississippi case law is instructive. In *Royal Oil Co. v. Wells*, 500 So. 2d 439 (Miss. 1986), a store manager filed false charges against a store employee, and their employer, upon learning about it, took no corrective action. The Mississippi Supreme Court held a reasonable jury could conclude the employer ratified the store manager's acts: "Royal Oil did not reprimand or fire either April or Curtis Miller because of their actions in filing charges against Pamela Wells, nor were they docked in pay or in any other manner disciplined. This evidence suggests ratification." *Id.* at 446. It added that "where the evidence [is] in conflict, questions pertaining to scope of employment and ratification by a master of his servant's act [are] questions not to be taken from the jury." *Id.* at 447 (citation omitted).

In *Jones v. B.L. Dev. Corp*., 940 So. 2d 961 (Miss. Ct. App. 2006), a casino supervisor sexually harassed a casino employee. The evidence was that three other supervisors knew about it but for a long time did nothing. The Mississippi Court of Appeals, summarizing the evidence, observed that "[w]here an employer learns of the past intentional conduct and does nothing to reprimand the employee, this acts as a ratification." *Id.* at 966 (citing *Royal Oil Co.*, 500 So. 2d 439).

Baker Donelson does not address this Mississippi case law. It argues only its "mere retention" of Seawright and Alexander cannot support ratification. It quotes *Franklin v. Turner*, 220 So. 3d 1003 (Miss. Ct. App. 2016), but only in part. The court in *Franklin* did observe that "the mere retention of the servant in the employment will not constitute such ratification as will

[136] Ex. 45, BAKER_MILLS_0028189.

render the master liable for the unauthorized act." *Id.* at 1009. But it also observed that "the fact of retention . . . may be admitted in evidence as bearing upon the ratification." *Id.* The employee in *Franklin* pleaded guilty to aggravated assault, and the employer retained him. The court observed that, unlike here and in other cases, the employee's offense was not "aided by his position as an agent of the employer." *Id.* at 1008.

Baker Donelson focuses on the timing of Seawright's and Alexander's guilty pleas ("During their employment, neither Alexander nor Seawright pled guilty to criminal conduct and both denied wrongdoing."[137]) but that misses the point. Baker Donelson did not need to know that Seawright and Alexander would be indicted in 2020 and plead guilty in 2022 and 2023. No later than April 2018, when it investigated, it 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 but took no corrective action at all. On these facts, one might reasonably conclude that Baker Donelson was okay with what Seawright and Alexander did. *See Northlake Dev. L.L.C. v. BankPlus*, 60 So. 3d 792, 797 (Miss. 2011) (quoting Restatement (Third) of Agency § 4.01(2) (2005) ("A person ratifies an act by (a) manifesting assent that the act shall affect that person's legal relations, or (b) *conduct that justifies a reasonable assumption that the person so consents*.") (emphasis added)); *Jones*, 940 So. 2d at 966 ("Where an employer learns of the past intentional conduct and does nothing to reprimand the employee, this acts as a ratification.").

Whether Baker Donelson ratified Seawright's and Alexander's acts is a question for the jury. *Royal Oil Co*, 500 So. 2d at 447 ("questions pertaining to scope of employment and

[137] 230, Baker Donelson memo, at 14.

ratification by a master of his servant's act [are] questions not to be taken from the jury"). Baker Donelson is not entitled to summary judgment on the question of ratification.

3. Scope of employment

"When a party establishes an employer-employee relationship, a rebuttable presumption arises that the employee was acting within the scope of his employment. The burden of proof then shifts to the employer to show that the employee had abandoned the duties of his employment and acted for some purpose exclusively his own." *Sturkin*, 315 So. 3d at 531.

"While articulated in different ways, conduct of an employee falls within the scope of his employment if (a) it is of the kind he is employed to perform; (b) it occurs substantially within the authorized time and space limits; (c) it is actuated, at least in part, by a purpose to serve the master, and (d) if intentionally used by the servant against another, the use of force is not unexpectable by the master." *Sturkin*, 315 So. 3d at 531.

"[U]nauthorized acts do not necessarily fall outside the scope of employment when they are of the same general nature as the conduct authorized or incidental to that conduct." *Sturkin*, 315 So. 3d at 532. *See also Royal Oil Co.*, 500 So. 2d at 447 ("A servant's unauthorized conduct does not place it beyond the scope of his employment provided it is of the same general nature as that authorized or is incidental to the employment.").

Baker Donelson argues it is "not in the investment business,"[138] but that does not answer the question. The question is whether Seawright and Alexander did for the timber business the kinds of things they otherwise were authorized to do.

[138] 230, Baker Donelson memo, at 7.

The evidence is Seawright's activities were of the same general nature as the activities he otherwise performed as a lawyer employed by Baker Donelson. Again, he drafted security agreements, promissory notes, and confidentiality agreements for Madison Timber and drafted the operating agreement, subscription agreements, term sheets, and investor questionnaires for Alexander Seawright Timber Fund.[139] Alexander explained that, ""as far as the – anything relating to the operational or transactional or legal side [of their timber business] . . . Jon basically… took that over, because it's easy for him to do as a lawyer[,],"[140] and "legal documents that we used to provide the legal structure of the – for the operation of the fund. . . all of that would have been done by Jon.""[141] Alexander himself relied on Seawright for his legal skills. ("I'm not a lawyer. Jon provided the SEC regulatory expertise for offerings and things like that."[142])

Baker Donelson's corporate representative acknowledged that Seawright's law practice included drafting transactional documents and forming corporate entities for clients.[143] The evidence is Seawright formed corporate entities for investors to facilitate their investments in Alexander Seawright Timber Fund.[144]

Alexander did for the timber business the kinds of things Baker Donelson's website said he could do. Baker Donelson's website promoted Alexander's "rapidly growing" practice in

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[139] See footnote 15.

[140] Ex. 6, Alexander Depo. at 63:16-22.

[141] Ex. 6, Alexander Depo. at 53:19-22.

[142] Ex. 6, Alexander Depo. at 150:21-23.

[143] Ex. 7, John Hicks, Baker Donelson 30(b)(6), Depo. at 48:13-51:24; *id.* at 173:22-174:6.

[144] Ex. 30, AS.03 Depo. at 29 ("Now, he wasn't your attorney when you started investing? A. Oh, yes, he was. Yes, he set up LLCs for me. He did other business for me, yes. … And he fully used his knowledge of – of my business and everything else to sell this crap to me"); *id.* at 70 ("That's like I was telling you, he handled business stuff for me and my brother-in-law [another investor]"). *See also, e.g.*, Ex. 43, BAKER_MILLS_0010766 (email from Seawright regarding certificate of formation for investor); *see also* Seawright admission no. 45 ("Mr. Seawright states, as an attorney employed by Baker Donelson, he formed an LLC for at least one member of Alexander Seawright Timber Fund I.").

"advising venture capital and related areas."[145] It represented that he held a "Registered Investment Advisor certification."[146] These are the same things Alexander leaned on in promotional materials he drafted for the timber business. He described himself as a "senior public policy advisor at [Baker Donelson,] one of the nation's largest law firms" and represented that he holds a "Registered Investment Advisor certification."[147]

Baker Donelson contends Seawright and Alexander "took concrete steps to ensure separateness from Baker Donelson."[148] The Receiver disputes that. The evidence is their activities occurred "substantially within [Baker Donelson's] authorized time and space limits." *Sturkin*, 315 So. 3d at 531. They conducted their business during Baker Donelson's office hours,[149] used Baker Donelson's offices for meetings,[150] used their @bakerdonelson accounts,[151] and used Baker Donelson employees.[152] They offered the opportunity to invest to Baker Donelson shareholders, clients, and their spouses and affiliated entities[153] and called it the Baker Donelson "friends and family fund."[154] Six Baker Donelson shareholders invested, and other Baker Donelson colleagues helped recruit investors.[155] During this time, Seawright, as a member of Baker Donelson' board of directors and its finance committee, was among the most powerful lawyers at the firm. [156]

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[145] Ex. 65, Alexander's Baker Donelson website bio.

[146] Ex. 65, Alexander's Baker Donelson website bio.

[147] Ex. 66, ASTF2 000095.

[148] 230, Baker Donelson memo, at 7.

[149] See footnote 4.

[150] See footnote 5.

[151] See footnote 6.

[152] See footnote 7.

[153] See footnote 11.

[154] See footnote 12.

[155] See footnotes 13, 14.

[156] See footnote 24.

Baker Donelson contends Seawright and Alexander were not "motivated by a desire to benefit" Baker Donelson.[157] But the evidence is the Seawright-Alexander-Baker Donelson relationship was mutually beneficial. Again, Seawright and Alexander offered the investment opportunity to Baker Donelson's shareholders and Baker Donelson's existing clients and their spouses and affiliated entities. They marketed Alexander Seawright Timber Fund as an exclusive "friends and family fund."[158] Seawright, a healthcare lawyer, and Alexander, a healthcare lobbyist, marketed it to healthcare professionals specifically. ("Docs are eating it up."[159]) Investors in Alexander Seawright Timber Fund became Baker Donelson clients.[160]

Baker Donelson relies for its arguments on *Gulledge v. Shaw*, 880 So. 2d 288 (Miss. 2004). That case is not like this one. There, a bank employee notarized a colleague's daughter's drivers license application on which the father's signature had been forged. The daughter later was in a fatal car accident, and the decedent's family sued the bank. The Mississippi Supreme Court observed that the bank employee had a personal relationship with her colleague and daughter and did not charge them for the notarization. The act was a one-off favor for a friend. The court concluded "it was a personal act." *Id.* at 296.

Baker Donelson also relies on *Baker Donelson Bearman Caldwell & Berkowitz, P.C. v. Seay*, 42 So. 3d 474 (Miss. 2010). That case also is not like this case. There, a Baker Donelson

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[157] 230, Baker Donelson memo, at 7.

[158] See footnote 12.

[159] Ex. 54, BAKER_MILLS_0002629-0002630.

[160] Ex. 3, Seawright admission no. 33 ("[S]ome investors in ASTF became clients of Baker Donelson after they first in invested in ASTF"); Ex. 4, Alexander admission no. 16 ("[S]ome investors in ASTF became clients of Baker Donelson after they first in invested in ASTF"); Ex. 44, Baker Donelson response to interrogatory no. 14 ("Baker Donelson further notes that some individuals who invested in Timber Fund I later became clients, or entities with which they served as employees, owners, members or directors later became clients, of Baker Donelson at a time after the individuals first invested in Timber Fund I.")

shareholder had a "secret and covert" affair with wife of a client. *Id.* at 489. That "frolic" was a personal act, too. *Id.*

Finally, Baker Donelson represents that "[t]o fall within the scope of employment, an employee's activity must be (1) 'of the kind he is employed to perform' and (2) 'in furtherance of the [employe's] interests'" and "[b]oth elements are required."[161] It purports to quote *RGH Enters., Inc. v. Ghafarianpoor*, 329 So. 3d 447 (Miss. 2021), and *Com. Bank v. Hearn*, 923 So. 2d 202 (Miss. 2006). Neither case frames the question that way. Both focus on the employee's act, not the employer's benefit. *RGH Enters., Inc.*, 329 So. 3d at 449 ("we perform an 'evaluation of the employee's act, itself, rather than a perceived, possible, indirect benefit to the employer'"); *Hearn*, 923 So. 2d at 208 ("we look to the act committed by the employee, rather than some indirect benefit the employer may have received from a specific act not part of the duties of employment"). Neither alters the forgoing analysis.

"[W]hen there are genuine issues of material fact on the question of scope of employment, the matter should be fully fleshed out in a trial, and not decided upon summary judgment." *Sturkin*, 315 So. 3d at 533. Baker Donelson is not entitled to summary judgment on the question of scope of employment.

For any one of the forgoing reasons—authority, ratification, or scope of employment—a jury may find that Baker Donelson is vicariously liable for Seawright and Alexander.

[161] 230, Baker Donelson memo, at 6.

b. Failure to supervise

"[A]n employer will be liable for negligent … retention … when an employee injures a third party if the employer knew or should have known of the employee's incompetence or unfitness." *Backstrom v. Briar Hill Baptist Church, Inc.*, 184 So. 3d 323, 327 (Miss. Ct. App. 2016) (citation omitted). "[A] plaintiff must prove the defendant had either actual or constructive knowledge." *Id.* (citation omitted). "'[C]onstructive notice' is … knowledge of a fact imputed by law to a person (although he may not actually have it), because he could have discovered the fact by proper diligence, and his situation was such as to cast upon him the duty of inquiring into it." *Id.* (citation omitted).

Baker Donelson argues it had no duty to inquire because Seawright and Alexander's timber business was "personal business" and "outside the scope of employment."[162] That fact, as shown, is disputed. Again, for seven years Seawright and Alexander were aided in their activities by their employment at Baker Donelson. Seawright's activities were of the same general nature as the activities he otherwise performed as a lawyer employed by Baker Donelson. Alexander did for the timber business the kinds of things Baker Donelson's website said he could do.

Baker Donelson contends "[d]iscovery has confirmed the firm did not know of Alexander's and Seawright's timber activities."[163] The evidence obtained in discovery is that Seawright disclosed his and Alexander's "outside business activity" to the firm in 2011,[164] and no one questioned it. Neither Seawright nor Alexander hid their activities over the next seven years. Their

[162] 230, Baker Donelson memo, at 15.

[163] 230, Baker Donelson memo, at 16.

[164] Ex. 1, BAKER_MILLS_0030992; *see also* Ex. 2, Ben Adams, Baker Donelson CEO, Depo. at 43:1-5 ("Annually, we're asked to complete this form to give all of our various activities outside of the law firm, and this looks like Jon Seawright's completion of that form that he sent to Susan Clement in October of 2011."); Ex. 3, Seawright response to interrogatory no. 10 ("Baker Donelson required him to disclose whether he wholly owned, controlled, or served as a director of any business enterprise, and he did so.").

activities were also open and obvious. They offered the opportunity to invest to Baker Donelson shareholders, clients, and their spouses and affiliated entities. Six Baker Donelson shareholders invested.[165]

"An employee's knowledge is imputed to his employer." *Glover ex rel. Glover v. Jackson State Univ*., 968 So. 2d 1267, 1276 (Miss. 2007) (citing 30 C.J.S. Employer–Employee § 211 (1992); Restatement (Third) of Agency § 5.03 (2006) (Illustration 5–7); *Southport Little League v. Vaughan*, 734 N.E. 2d 261, 275 (Ind. App. 2000) (employees of Little League had sufficient knowledge, imputed to the organization, to raise red flags about child molestation by volunteer); *Bourgois v. Montana–Dakota Utils. Co.*, 466 N.W. 2d 813, 817 (N.D. 1991) ("corporations know facts because those facts are in the minds of corporate officers or agents"); *Sulik v. Central Valley Farms*, 521 P.2d 144, 146 (1974) (if employee was in fact an agent of farm corporation, then his knowledge would be imputed to corporation)). Seawright was not merely an employee. As a member of Baker Donelson' board of directors and its finance committee, he was among the most prominent and influential lawyers at the firm. Baker Donelson shareholder investors included the firm's former President and COO and a firm practice group leader.[166]

There is ample evidence from which the jury may find Baker Donelson knew or should have known about Seawright and Alexander's timber business. Whatever Baker Donelson did not know, it could have discovered by proper diligence, and the situation required it to inquire. Seawright's and Alexander's activities violated numerous firm policies. A jury may reasonably conclude Baker Donelson failed to supervise them.

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[165] See footnote 13.

[166] *Id.*

Baker Donelson is not entitled to summary judgment on the Receiver's failure to supervise claim.

c. Punitive damages

Baker Donelson argues the Receiver cannot recover punitive damages from Baker Donelson, because its conduct "could never satisfy the applicable standard." But in the light of the evidence described in this memorandum, a jury may reasonably conclude that Baker Donelson was grossly negligent or reckless in its supervision of Seawright and Alexander. Baker Donelson is not entitled to summary judgment on punitive damages.

III. The *in pari delicto* doctrine does not bar the Receiver's claims.

Defendants argue the *in pari delicto* doctrine bars the Receiver's claims. The Court has already rejected Defendants' *in pari delicto* argument and its variants [70, 136] and for the same reasons should do so again.

a. *In pari delicto*

In federal equity receiverships, the Fifth Circuit has adopted what Baker Donelson calls the "innocent-successor exception" to the *in pari delicto* doctrine. The exception allows a receiver to assert tort claims even though she stepped into a wrongdoer's shoes. The rationale is straightforward: A receiver has a duty to maximize the value of a receivership estate for the benefit of victims, and "[a]pplication of *in pari delicto* would undermine one of the primary purposes of the receivership." *Jones v. Wells Fargo Bank, N.A.*, 666 F.3d 955, 966 (5th Cir. 2012). It would also "be inconsistent with the purposes of the doctrine," which is "not for the benefit of either party and not to punish either of them, but for the benefit of the public." *Id.* (citation omitted).

"It is [therefore] well established [in the Fifth Circuit] that when the receiver acts to protect innocent creditors . . . [s]he can maintain and defend actions done in fraud of creditors even though the corporation would not be permitted to do so." *Jones*, 666 F.3d at 966 (internal quotation marks and citation omitted).

Baker Donelson argues the exception to the *in pari delicto* doctrine does not apply to tort claims.[167] It does. *E.g., Off. Stanford Invs. Comm. v. Greenberg Traurig, LLP*, No. 3:12-cv-4641-N, 2014 WL 12572881, at *4 (N.D. Tex. Dec. 17, 2014) ("the Court finds *in pari delicto* no impediment to the Receiver's standing to assert his tort claims") (citing *Jones*, 666 F.3d at 966); *Janvey v. Willis of Colorado, Inc*., No. 3:13-cv-3980-N, 2014 WL 12670763, at *4 (N.D. Tex. Dec. 5, 2014) (same); *Janvey v. Adams & Reese, LLP*, No. 3:12-cv-0495-N, 2013 WL 12320921, at *3 (N.D. Tex. Sept. 11, 2013) (same).

Defendants argue Mississippi courts would not adopt the exception.[168] But Mississippi courts have long recognized "important limitations" to the *in pari delicto* doctrine. *Morrissey v. Bologna*, 123 So. 2d 537, 543 (Miss. 1960). "Even where the contracting parties are *in pari delicto*, the courts may interfere from motives of public policy. Whenever public policy is considered as advanced by allowing either party to sue for relief against the transaction, then relief is given to him." *Id*. *See also Thigpen v. Kennedy*, 238 So. 2d 744, 747 (Miss. 1970) ("The fact that the parties in this case are *in pari delicto* does not aid appellee. The maxim is not invoked for the benefit of the parties to a fraudulent transaction, but rests upon the proposition that society must be protected."); *Rideout v. Mars*, 54 So. 801, 802 (Miss. 1911) ("However, there is a well-defined

[167] 230, Baker Donelson memo, at 27.

[168] 230, Baker Donelson memo, at 26; 236, Alexander Seawright memo, at 7.

exception to that rule, which is that, where the paramount public interest demands it, the court will intervene in favor of one as against the other.").

This is an equity receivership, and Mississippi courts apply equity when "sound public policy" calls for it. *See Hall v. Bowman*, 749 So. 2d 182, 184 (Miss. Ct. App. 1999) ("A court of equity considers results rather than the means by which they are obtained." (quoting *Savage v. Dowd*, 54 Miss. 728, 732 (1877)); *Cole v. Hood*, 371 So. 2d 861, 864 (Miss. 1979) ("Courts of equity do not countenance iniquity nor give it sanctuary"). There is a public interest in the Receiver's recovery. There is no public interest in, and the purpose of the *in pari delicto* doctrine is not served by, barring the Receiver from pursuing claims against alleged aiders and abettors of a Ponzi scheme.

Excepting the Receiver from the *in pari delicto* doctrine is prudent and consistent with Fifth Circuit and Mississippi law.

b. *Wiand*

Defendants make the related argument that the Receiver lacks standing to sue alleged wrongdoers for tort claims because she stands in the shoes of Lamar Adams and Madison Timber, and "***they*** were not defrauded or targeted by fraud."[169]

Defendants rely for their argument on *Wiand v. ATC Brokers Ltd.*, 96 F. 4th 1303 (11th Cir. 2024), an Eleventh Circuit case applying Florida law. *See Wiand*, 96 F.4th at 1315 (Marcus, J., concurring, joined by entire panel) ("Sitting in diversity, we are *Erie*-bound to follow Florida law."). Florida law holds a receiver, to recover, must prove "the presence of innocent decision-makers within the corporation to whom fraudulent conduct could be reported." *Id.* at 1310-11.

[169] 230, Baker Donelson memo, at 17; 236, Alexander Seawright memo, at 12.

Although courts have characterized the matter as one of standing, it is not. It is a matter of substantive state law. *Wiand*, 96 F.4th at 1316 (Marcus, J., concurring, joined by entire panel) ("The receiver is without a cause of action precisely because the Florida courts have so ruled, not because the receiver lacks Article III standing, which is a different question the federal courts must answer.").

Wiand does not alter the Receiver's standing here. *Rotstain v. Mendez*, 986 F.3d 931 (5th Cir. 2021), and *Zacarias v. Stanford International Bank*, 945 F.3d 883 (5th Cir. 2019), presented the same essential facts, and in those cases there was no dispute the receiver had standing:

> The Court has rejected [the argument that the Receiver has no standing to bring tort claims] in the past and held that the Receiver has standing to assert tort claims based on the harm to the Receivership Estate's ability to repay its creditors.

Rotstain, 986 F.3d at 941.

> There is no dispute that the receiver and Investors' Committee had standing to bring their [aiding and abetting, breach of fiduciary duty, and other tort claims] against Willis and BMB. They bring only the claims of the Stanford entities—not of their investors—alleging injuries only to the Stanford entities, including the unsustainable liabilities inflicted by the Ponzi scheme.

Zacarias, 945 F.3d at 899.

The Fifth Circuit did not look to substantive state law for its holdings in either case. A plaintiff's Article III standing is a question of federal law. *E.g.*, *Wiand*, 96 F.4th at 1316 (Marcus, J., concurring, joined by entire panel) ("Article III standing … is a different question the federal courts must answer").

But if a court looked to Mississippi law, the result would be the same. Mississippi's courts are more permissive than federal courts in granting standing. Whereas federal courts must "adhere to a stringent definition of standing based on the United States Constitution, art. III, § II," and thereby "limit review to actual 'cases and controversies,'" Mississippi courts are not so restricted.

Van Slyke v. Bd. of Trustees of State Institutions of Higher Learning, 613 So. 2d 872, 875 (Miss. 1993) ("The Mississippi Constitution, however, contains no such restrictive language."). *See also* Miss. Const. art. III § 24 ("All courts shall be open; and every person for an injury done him in his lands, goods, person, or reputation, shall have remedy by due course of law, and right and justice shall be administered without sale, denial, or delay . . . ").

IV. The Receivership Estate's damages

a. The Receivership Estate's damages are its total debts to all investors.

This is a Ponzi scheme case. The Receiver's damages are the Receivership Estate's total debts to investors. By participating in Adams's unlawful course of conduct, a Defendant contributed to (was a proximate cause of) Madison Timber's injuries, therefore he is liable to the Receivership Estate. That is the law in cases like this. *See, e.g., Rotstain v. Mendez*, 986 F.3d 931 (5th Cir. 2021); *Zacarias v. Stanford Int'l Bank, Ltd. (Zacarias)*, 945 F.3d 883 (5th Cir. 2019); *Securities and Exchange Commission v. Stanford International Bank, Ltd. (Lloyds)*, 927 F.3d 830 (5th Cir. 2019).

Defendants contend the Receiver's theory of damages is the theory of "deepening insolvency," which courts reject.[170] But the cases Defendants cite are not like this one. The law in federal equity receivership Ponzi scheme cases is the damages are the receivership estate's total debts. Defendants do not acknowledge the governing Fifth Circuit precedent.

[170] 230, Baker Donelson memo, at 28; 236, Alexander Seawright memo, at 4 (citing *In re SI Restructuring, Inc.*, 532 F.3d 355 (5th Cir. 2008); *Ebert v. Dejoria*, 922 F. 3d 690 (5th Cir. 2019)).

b. The Receiver's damages are not limited to Alexander Seawright Timber Fund's investors' losses.

Defendants argue the Receiver's damages are limited to Alexander Seawright Timber Fund's investors' losses.[171] To the extent their argument depends on the assertion that Seawright and Alexander could not have proximately caused other losses, Fifth Circuit precedent forecloses it. *E.g.*, *Rotstain*, 986 F.3d at 941 ("the Defendants here are alleged to be participants in the Ponzi scheme, even if unknowing ones, and the investors' claims are based on conduct in furtherance of that scheme").

The theory that a conspirator may be liable for total losses is not novel. "[T]he purpose of a civil conspiracy is to impute liability. A civil conspiracy is said to exist for only two purposes: to implicate others and to increase the measure of damages." 15A C.J.S. Conspiracy § 1 (2023). "The character and effect of a conspiracy are not to be judged by dissecting it and viewing its separate parts but only by examining as a whole." *Id.* (citing *Cont'l Ore Co. v. Union Carbide & Carbon Corp.*, 370 U.S. 690, 699 (1962)). Defendants' own expert Steven Rhodes, a retired bankruptcy judge, readily agreed that an aider and abettor is liable for "all the losses" regardless of his particular participation.[172]

Mississippi law is consistent. Under Mississippi law, civil conspirators are jointly and severally liable for damages. *See* Miss. Code Ann. § 85-5-7 ("(4) Joint and several liability shall be imposed on all who consciously and deliberately pursue a common plan or design to commit a tortious act, or actively take part in it. Any person held jointly and severally liable under this

[171] 230, Baker Donelson memo, at 28; 236, Alexander Seawright memo, at 5.

[172] Ex. 51, Rhodes Depo. at 46:4-10 ("MR. BARRIERE: As aider and abettor, you are liable for all the losses regardless of your particular participation in the scheme. Correct? MR. DAVANT: Object to the form. THE WITNESS: Yes."); *id.* at 76:11-18 ("[MR. BARRIERE:] And you have testified that as aiders and abettors, if they are held liable, they would be liable for all losses associated with the Ponzi scheme. Correct? MR. DAVANT: Object to form. THE WITNESS: Yes.").

section shall have a right of contribution from his fellow defendants acting in concert."). To the extent a Defendant participated in Adams's unlawful course of conduct, he is jointly and severally liable with other tortfeasors for the Receivership Estate's total debts to investors.

To the extent Defendants argue the Receiver's damages are limited to the amounts the Court ordered Seawright and Alexander to pay in its restitution order, they cite no legal authority. The Government, Seawright, and Alexander agreed to the restitution order. The Receiver was not a party to those negotiations and is not bound by them. The effect of the restitution order here is it estops Seawright and Alexander from denying the essential allegations of their criminal offenses. 18 U.S.C.A. § 3664(l) ("A conviction of a defendant for an offense involving the act giving rise to an order of restitution shall estop the defendant from denying the essential allegations of that offense in any subsequent Federal civil proceeding"). It does not limit the Receiver's damages.

Indeed, under Mississippi law, the restitution order is not even admissible at trial. Miss. Code Ann. § 99-37-17 ("Nothing in this chapter limits or impairs the right of a person injured by a defendant's criminal activities to sue and recover damages from the defendant in a civil action. Evidence that the defendant has paid or been ordered to pay restitution pursuant to this chapter may not be introduced in any civil action arising out of the facts or events which were the basis for the restitution. However, the court shall credit any restitution paid by the defendant to a victim against any judgment in favor of the victim in such civil action.").

Defendants contend the Receiver must distribute Seawright's and Alexander's restitution to their investors only, and when she does "they will be made whole and [she] cannot recover further."[173] Defendants ignore how the Receivership Estate operates. The Receiver did not distribute proceeds from the Butler Snow settlement only to victims who had a relationship with

[173] 236, Alexander Seawright memo, at 7; 230, Baker Donelson memo, at 30.

Butler Snow. When the Receiver collects money from any source, she distributes it to all victims who have a net loss. By request and court order, the Receiver treats Alexander Seawright Timber Fund's investors the same as every other investor in Madison Timber,[174] and they all share equally in the Receivership Estate's assets.

CONCLUSION

Defendants have not stated a basis for summary judgment. Their motions must be denied.

[174] Doc. 335 at 5 ¶ 1, *S.E.C. v. Adams*, No. 18-cv-00252 (S.D. Miss.).

Respectfully submitted,

/s/ Lilli Evans Bass

BROWN BASS & JETER, PLLC
Lilli Evans Bass, Miss. Bar No. 102896
1755 Lelia Drive, Suite 400
Jackson, Mississippi 39216
Tel: 601-487-8448
Fax: 601-510-9934
bass@bbjlawyers.com

/s/ Kaja S. Elmer

FISHMAN HAYGOOD, LLP
Admitted pro hac vice
Brent B. Barriere
Kaja S. Elmer
Maggie Daly
201 St. Charles Avenue, Suite 4600
New Orleans, Louisiana 70170
Tel: 504-586-5253
Fax: 504-586-5250
bbarriere@fishmanhaygood.com
kelmer@fishmanhaygood.com
mdaly@fishmanhaygood.com

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