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

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

Plaintiff,

v.

BUTLER SNOW LLP et al.,

Defendants.

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

Hon. Carlton W. Reeves

BAKER, DONELSON, BEARMAN, CALDWELL & BERKOWITZ PC'S MEMORANDUM OF LAW IN RESPONSE TO MOTION IN LIMINE ON SPECIFIC MATTERS PERTAINING TO DAMAGES

With the time for motions in limine months away, the Receiver seeks an early ruling excluding at trial the evidence that contradicts her preferred (and incorrect) damages calculation. The Receiver's motion, ECF No. 228; ECF No. 229 (the "Motion"), is mostly duplicative of her "motion for partial summary judgment on specific matters pertaining to damages" (which is itself largely a disguised motion in limine), ECF No. 227, and both motions should be denied for the same reasons. Like her summary judgment motion, this motion in limine seeks to prevent the jury from hearing highly relevant and probative evidence the Receiver finds inconvenient—including her indefensible decision to abandon $14 million in estate assets held by those who profited from the Ponzi scheme at the expense of the victims. Each of the Receiver's proposed "in limine" rulings should be denied.

LEGAL STANDARD

The purpose of a motion in limine is to exclude "evidence on matters so highly prejudicial to the moving party that a timely motion to strike or an instruction by the court to the

jury to disregard the offending matter cannot overcome its prejudicial influence on the jurors' minds." *Univ. of Mississippi Med. Ctr. v. Sullivan*, 2024 WL 4123794, at *1 (S.D. Miss. Sept. 9, 2024) (quoting *O'Rear v. Fruehauf Corp.*, 554 F.2d 1304, 1306 n.1 (5th Cir. 1977)). "Evidence should not be excluded in limine unless it is clearly inadmissible on all potential grounds." *Jones v. Singh*, 2020 WL 4738367, at *1 (S.D. Miss. Aug. 15, 2020) (citation omitted).

ARGUMENT

I. The Economic Relationship Between Noteholders Is a Jury Question.

The Receiver argues that Baker Donelson's damages expert, CPA Donna Ingram, should be precluded from testifying that "related investors must be treated as one investor for net loss purposes." Mot. at 3. Leaving aside that Ms. Ingram offers no such opinion, the Receiver is trying to shield herself and her damages expert from criticism for their choice to ignore economic reality and (for example) treat a person who invested both from a bank account and an individual retirement account as two investors; treat a person who invested both individually and through an LLC as two investors; and treat married couples who invested together (from the same joint bank account) as two investors—a choice that allows them to inflate their alleged damages by ignoring profits that would reduce investors' "net losses."

The accounting of investors' losses is a jury question, and Ms. Ingram's analysis of LLCs' ownership, joint bank accounts, and related matters "will help the trier of fact to understand the evidence or to determine a fact in issue," Fed. R. Evid. 702(a), and should not be excluded.

To be clear, Ms. Ingram does not testify that "related investors *must* be treated as one investor for net loss purposes." Mot. at 3 (emphasis added). She is not giving a legal opinion; she is doing accounting. Ms. Ingram observed that the Receiver and her damages expert, Ken Lefoldt, "rarely considered [economic] relationships in their accountings," and noted that

"[c]onsideration of these relationships may impact the status of an investor as net winner or net loser." Mot. Ex. 1 (Ingram Rpt.) at 15–16. Thus, "[f]or purposes of [Ms. Ingram's] accounting, [she] tried to use economic reality (i.e., whether multiple 'investors' . . . actually were a single economic unit)." *Id.* at 16. "For example, if a person invested money both from his Individual Retirement Account and his savings account, . . . if a husband and wife jointly invested from a single account, [o]r if a person invested both individually and through a single-member LLC, then [she] treated them as a single investor." *Id.* Her opinion thus does not attempt to instruct the finders of fact as to what they must do, as a matter of law. She is giving an opinion on how, as an accounting matter, net losses should be calculated. That is what experts do.

The Receiver is wrong that "no authority" supports Ms. Ingram's approach. Rather, in the context of equity receiverships, "courts have recognized that—to prevent disparate outcomes between a Defrauded Investor with a single account and similarly situated Defrauded Investors who may hold multiple accounts . . . —consolidating multiple 'accounts' associated with the same person is equitable." *SEC v. Aequitas Mgmt., LLC*, 2020 WL 1528249, at *8 (D. Or. Mar. 31, 2020). Failing "to consolidate would permit an investor who used different investment vehicles and received funds in one account to obtain a disproportionately large distribution when compared to other single account investors." *Commodity Futures Trading Comm'n v. Equity Fin. Grp., Inc.*, 2005 WL 2143975, at *26 (D.N.J. Sept. 2, 2005), *report and recommendation adopted*, 2005 WL 2864783 (D.N.J. Oct. 26, 2005). Thus, for instance, "if an investor invested by way of an individual retirement account and also directly, the withdrawals in one account should be considered in determining the amount of total distribution to the investor." *Id.* The Receiver's references to Alexander and Seawright's accounting, Mot. at 7 & n.3, or Mississippi law on LLCs, *id.* at 6, thus are inapposite. The question here is not how to report these

investments on tax forms like the Schedule K-1s issued by Alexander and Seawright. *See id.* at 7 n.3. Rather, the question is how best to quantify investors' net losses.

Indeed, the Receiver has looked to the beneficiaries of an entity when it suits her. In the case of the Alexander Seawright Timber Fund I, LLC ("ASTFI"), for instance, the Receiver looked to the beneficial owners behind the noteholder—that is, she did *not* "for her accounting purposes, look[] at the noteholder," which in all cases was ASTFI. Mot. at 9; *see* Ex. 1 (Receiver's Madison Timber Accounting) at 1. And the Receiver also chooses to include in her accounting non-investors who are spouses of investors when she considers the non-investor spouses' testimony helpful to her claims. *See* Ex. 2 (Receiver's ASTFI Accounting), at 1–2 (listing non-investor spouses as investors for AS.05 and AS.11). The Receiver asserts that further efforts on her part to understand the pertinent economic relationships would have been "costly" for her. Mot. at 6 n.2. But that hardly makes the evidence that refutes her less "costly" approach inadmissible.

The Receiver goes on to claim she did not "mak[e] a personal judgment about [investors'] private relationships, economic or otherwise," Mot. at 6, and criticizes Ms. "Ingram's 'aggregation' [as] reflect[ing] nothing more than [Baker Donelson's] personal judgment that two 'related' investors ought to be treated as one," *id.* at 6 n.2. Even if this criticism went to admissibility rather than weight, there is nothing "personal" in looking to what investor owned an IRA, what percentage interest individuals held in LLCs, and whether spouses invested through joint bank accounts.

The Receiver's legally and factually flawed choice to ignore economic reality (and thereby inflate her claimed damages) presents a jury question, and she should not be able to insulate that choice from criticism by excluding the facts that debunk it.

II. The Court Should Not Exclude Ms. Ingram's Calculations of "Profits" Held by Net Winners.

The Receiver asserts Ms. Ingram "opines the Receiver would have recovered $15,612,160.71 if she had sued alleged net winners" and spends paragraphs attacking the "numerous problems with [that] testimony." Mot. at 8. In fact, Ms. Ingram offers no such opinion.

Ms. Ingram is an accountant with over forty years of experience. She merely calculated "individual and aggregate amounts of net losses and net winnings" across all investors in Madison Timber. She shows each investor's net loss or new gain, and for the net winners, states the (irrefutable) truth that, "***had*** Mills obtained reimbursement from net winners she would have more cash available to distribute to net losers." Ex. 3 (Ingram Tr.) at 66:3–8, 76:2–12 (emphasis added); Mot. Ex. 1 (Ingram Rpt.) at 23–24. She does not make any presumption—"preposterous" or otherwise—about the Receiver's ability to recover from net winners. Mot. at 8. Nor does she offer an "analysis of what the Receiver might recover." *Id*. at 9. The Receiver's expert, Mr. Lefoldt, does not disagree with Ms. Ingram's calculations; in fact, he commended Ms. Ingram's calculations during his deposition, testifying, "[S]he did a lot of good work. She really did." Ex. 4 (Lefoldt Tr.) at 89:17–90:3, 91:11–91:22.

The Receiver asserts that Ms. Ingram's analysis is "flawed because it ignores the fact that the Receiver did sue or otherwise settle with many of the alleged net winners." Mot. at 9. But Ms. Ingram's accounting recognizes the Receiver's recovery of funds from one net winner. *See* Mot. Ex. 1 (Ingram Rpt.) at 20. The Receiver's claim that Ms. Ingram's accounting does not reflect settlements with ***two*** other net winners (of the more than ***150*** total) is precisely the sort of attack that goes to the "weight of the evidence and not its admissibility." *Tavas v. State Farm*

Fire & Cas. Co., 776 F. Supp. 3d 508, 517 (S.D. Miss. 2025) ("Miscalculations and inaccuracies go to the weight of the evidence and not its admissibility.").

The above suffices to deny the Receiver's misguided motion. To the extent the Receiver is seeking more broadly to exclude evidence about investors' profits, however, we note that Ms. Ingram's calculation of the total amounts the net winners "won" on their investments is relevant in at least two different respects. First, the evidence will assist the jury in assessing the reasonableness of relying on representations about Madison Timber notwithstanding the Receiver's contention that the scheme was transparent. Second, the evidence is also relevant to Baker Donelson's defense that the Receiver failed to mitigate the damages she now seeks to recover against the firm. That is an issue for the jury. *See, e.g.*, *Smith v. Huntington Ingalls Inc.*, 363 F. Supp. 3d 711, 721 (S.D. Miss. 2019) ("Whether Smith's conduct in seeking employment and otherwise attempting to mitigate his damages was reasonable is a question for the finder of fact."); *Hill v. City of Pontotoc, Miss.*, 993 F.2d 422, 427 (5th Cir. 1993) ("Whether an injured person has mitigated his damages requires a factual assessment of the reasonableness of his conduct."); *see also* Baker Donelson's Resp. Mot. Part. Summary Judgment Specific Damages Matters at 10–13.

There is no basis for the Court to exclude this evidence in limine or otherwise.

III. The Receiver Mischaracterizes Judge Rhodes's Opinions.

The Receiver's Motion attacks a fantasy *caricature* of the expert report of Baker Donelson's expert witness Steven Rhodes, a retired bankruptcy judge and the author of *The Ponzi Book*. Judge Rhodes does not say who "the Receiver should have sued." Mot. at 10. Nor does he "tell this Court how to do its job." *Id.* at 15. Rather, as detailed in his report, he opines on whether the Receiver has "acted with the skill, diligence, and care that a federal equity receiver ordinarily employs with regard to investigating and pursuing fraudulent transfer claims

against persons and entities that profited from a Ponzi scheme[.]" Mot. Ex. 7 (Rhodes Rpt.) at 2. His opinions will assist the jury in assessing whether the Receiver failed to mitigate damages in deciding to abandon $14 million in estate assets held by net winners who profited from the Ponzi scheme at the expense of the victims.

Judge Rhodes served as a United States Bankruptcy Judge in the Eastern District of Michigan for fourteen years, where he oversaw the bankruptcy of the City of Detroit and "regularly presided over fraudulent transfer litigation," including dealing "with issues relating to the trustee's duty to maximize the estate to benefit creditors." Mot. Ex. 7 (Rhodes Rpt.) at 2–3. He co-authored *The Ponzi Book: A Legal Resource for Unraveling Ponzi Schemes* (2012), which specifically addresses federal receiverships. *Id*. at 3–4. He opines the Receiver did not act "with the usual and expected level of care and diligence" in not investigating, requesting that net winners return their phony profits, sending demand letters, and, if necessary, filing fraudulent transfer claims. *Id*. at 14–24.

The Receiver admittedly never even tried to *identify* net winners or to ascertain their losses, much less quantify how much phony profits the net winners were holding. *See, e.g.*, Ex. 5 (Mills Tr.) at 112:17–21 ("Q. Are you able to name any investors who were in the top 20 net winners? A. Sitting right here today, no. Q. You can't name one? A. No. I haven't thought about it."). The jury must decide Baker Donelson's failure-to-mitigate defense, and Judge Rhodes's testimony is plainly helpful. *See, e.g.*, *Smith*, 363 F. Supp. 3d at 721; *Hill*, 993 F.2d at 427.

The Receiver suggests that her choice not to investigate or pursue clawbacks is irrelevant—even though this Court began the Receivership by stating that the process "may involve clawing back funds from the connected and powerful." ECF No. 33 at 3 (Case No. 3:28-

cv-252). In her view, this matter is unlike "the Madoff case" because no investor got a "big chunk" of the earnings. *Id.* That is untrue. For example, one wealthy investor (whom the Receiver never contacted) is holding more than $800,000 of phony profits, and the Receiver never even phoned him, let alone sent a demand letter. *See, e.g.*, Mot. Ex. 7 (Rhodes Rpt.) at 16–20. *Dozens* of net winners are holding more than $100,000 each of phony profits. *See id.* The Receiver's (incorrect) suggestion there was no "big chunk" available to mitigate her claimed damages merely illustrates that this dispute presents issues of weight, not admissibility.

In any event, there is no need to rely on the Madoff Ponzi scheme for analogies. The Fifth Circuit specifically affirmed the Stanford Receiver's "fil[ing] numerous fraudulent transfer claims against investors who profited from the Stanford Ponzi scheme," that is "net winners." *Janvey v. Brown*, 767 F.3d 430, 433–34 (5th Cir. 2014). "[T]hese are fictitious profits that are in fact funds taken from other investors." *Id.* at 434. The Receiver has repeatedly cited the Stanford receivership as an analogy for the rulings she has requested in this case. *See, e.g.*, ECF No. 35 at 15, 22; ECF No. 65 at 14–15, 40.

Contrary to the Receiver's criticism, Judge Rhodes *did* account for specific characteristics of the Madison Timber Ponzi scheme. For instance—unlike the Receiver—he took into account the number of net winners and each of their total profits. *See* Mot. Ex. 7 (Rhodes Rpt.) at 14. His opinions do not derive from "assumptions based entirely on the commentary of [Baker Donelson's] counsel." Mot. at 12 (internal quotation marks omitted). They are his own opinions, which he is fully qualified to give.

Nor is there any merit to the Receiver's criticism of Judge Rhodes on the ground that he has been excluded from testifying as an expert in certain past cases. Mot. at 15. The Receiver readily admits that "[i]n those cases[ ] the defendants wished Rhodes to testify to the law" and

his opinions consisted only of "legal analysis" and "critique[s]." *Id*. Judge Rhodes's opinions in this case are different: he does not "critique [the] Court's legal determinations," *id*., or "tell this Court how to do its job." Mot. at 10. Rather, he opines on whether this Receiver acted consistent with the practice of other federal equity receivers with regard to investigating and pursuing net winners. Mot. Ex. 7 (Rhodes Rpt.) at 2. Those opinions are admissible and comfortably within the scope of Judge Rhodes's expertise.

At bottom, the Receiver's criticisms boil down to the "weight to be assigned" to Judge Rhodes's testimony by the jurors when they assess whether she acted reasonably by failing to pursue fraudulent transfer claims against net winners. *See Huss v. Gayden*, 571 F.3d 442, 452 (5th Cir. 2009).

IV. The Receiver Mischaracterizes Mr. Hart's Opinions.

The Receiver asserts Baker Donelson cannot use Mr. Hart "to narrate [its] version of record evidence," but that is not what Mr. Hart does or what Baker Donelson proposes to do. Mot. at 16. Mr. Hart is a forensic accountant who will give relevant opinions within the scope of his expertise.

At the outset, the Receiver acknowledges Mr. Hart possesses "scientific, technical, or other specialized knowledge" in forensic accounting. Mot at 16. He has served as an expert in "over 100 disputes," and his opinions have included analyses of damages related to "investment, lost profits, wasted costs, and valuation." Mot. Ex. 6 (Hart Rpt.) ¶¶ 1,3; Ex. 6 (Hart Tr.) at 12:17–24. He is also a Certified Public Accountant and a Certified Fraud Examiner. Mot. Ex. 6 (Hart Rpt.) ¶ 1. His "opinions in this matter are based on [his] expertise in finance, valuation, and forensic accounting." Mot. Ex. 6 (Hart Rpt.) ¶ 7; *see also* Ex. 6 (Hart Tr.) at 43:24–44:8.

Baker Donelson offers Mr. Hart to perform economic analyses and opine on the Receiver's calculations of alleged damages, not to narrate facts. Mot. at 16; Mot. Ex. 6 (Hart

Rpt.) ¶¶ 33, 58. He opines: (i) the Receiver's and her expert's calculations "do not establish any causal link between the alleged damages and the alleged actions of Baker Donelson or any Defendant," Mot. Ex. 6 (Hart Rpt.) ¶¶ 33–41; (ii) the Receiver's allegation that Baker Donelson "allowed Madison Timber to continuously grow" has no support in the economic data showing how the scheme grew, *id.* ¶¶ 58–60; and (iii) the Madison Timber financial information available to Alexander, Seawright, and Baker Donelson did not include "information or detail on Madison Timber and its operations" to raise suspicion it might be a Ponzi scheme, *id.* ¶¶ 74–75.

As for the economic data concerning the Receiver's claim that Baker Donelson proximately caused investors' net losses, Mr. Hart performed a cash flow analysis of the investment-related inflows and outflows for Madison Timber investments (excluding all ASTFI investment flows) in conjunction with a float analysis, which accounted for time delays in investment flow. *Id*. ¶¶ 60–69. His analysis showed that ASTFI made up only a tiny fraction—1.9 to 5.6 percent—of Madison Timber investments, from which he concluded that the "ASTFI investments were not essential as a matter of simple economics to the Ponzi scheme's growth." *Id*. ¶¶ 61–64.

The Receiver does not challenge the reliability of Mr. Hart's analysis. Any such challenge would be meritless because the "reasoning" and "methodology underlying the testimony is scientifically valid." *McGuire v. Allstate Prop. & Cas. Ins. Co.*, 2021 WL 3232888, at *2 (S.D. Miss. July 29, 2021).

The Receiver argues, "Hart's conclusions as to causation are contrary to the law in aiding and abetting cases such as this." Mot. at 17. Mr. Hart, however, does not offer "opinions on matters of law," but instead an economic analysis which led to his conclusion that there is no causal link, as an economic matter, between the Receiver's alleged damages and the alleged

actions of Baker Donelson. Mot. Ex. 6 (Hart Rpt.) ¶¶ 7, 34–41. That analysis is relevant to Baker Donelson's defenses that it did not proximately cause the Receiver's alleged damages and that fault should be apportioned comparatively among all responsible parties and nonparties. And experts, like Mr. Hart, routinely offer economic testimony relevant to issues of causation. *See, e.g.*, *Chandler Gas & Store Inc. v. Treasure Franchise Co. LLC*, 2025 WL 3018829, at *5 (D. Ariz. Oct. 29, 2025) (admitting economic expert testimony because it "is relevant to causation and damages"); *All Star Carts & Vehicles, Inc. v. BFI Canada Income Fund*, 280 F.R.D. 78, 82–83 (E.D.N.Y. 2012) (admitting economic expert testimony whose testimony "analyze[s] causation" and "quantif[ies] the damages" for a proposed class); *City of Ann Arbor Employees' Ret. Sys. v. Sonoco Prods. Co.*, 827 F. Supp. 2d 559, 572 (D.S.C. 2011) (admitting economic expert testimony "on the subjects of loss causation and damages").

The Receiver also wrongly suggests Mr. Hart's opinions are irrelevant to causation because, according to the Receiver, a defendant's actions in an aiding and abetting case automatically are "a proximate cause" of the injuries whenever the defendant "participat[es] in an unlawful course of conduct." Mot. at 17. That is emphatically not the law, nor does it support exclusion. First, the Receiver is asserting negligence claims, not just aiding and abetting claims. Under Mississippi law, proximate cause requires that "the injuries suffered by plaintiff must result from a chain of natural and unbroken sequence from defendant's wrongful act," and the "defendant is not liable for all injuries that flow from [that] wrongful act." Miss. Prac. Model Jury Instr. Civil § 14:2 (2d ed.). Second, the Receiver is wrong about aiding and abetting claims: A plaintiff seeking damages for aiding and abetting must show that the particular torts that the defendant aided and abetted proximately caused the plaintiff's injury. Miss. Code § 85-5-7(1); ECF No. 135 at 15 ("claims for . . . aiding and abetting . . . have [a] proximate cause

requirement"); *Otto Candies, LLC v. Citigroup Inc.*, 137 F.4th 1158, 1183 (11th Cir. 2025) ("[A]n aiding-and-abetting claim . . . requires . . . that the actions of the aider/abettor proximately caused the harm on which the primary liability is predicated[.]"). The Receiver cites *Rotstain v. Mendez*, 986 F.3d 931 (5th Cir. 2021); *Zacarias v. Stanford Int'l Bank, Ltd.*, 945 F.3d 883 (5th Cir. 2019); and *Securities and Exchange Commission v. Stanford International Bank, Ltd.*, 927 F.3d 830 (5th Cir. 2019), but those cases do not discuss proximate causation at all.

The Receiver also asserts Mr. Hart "ignores any contradictory evidence" and makes "credibility determinations." Mot. at 16–17. But the Receiver fails to identify the "contradictory evidence" Mr. Hart supposedly ignored, and Mr. Hart offers no opinions about witness credibility. Like any expert, Mr. Hart explains the basis for his opinion, but, if the jury concludes the facts are different than Mr. Hart assumed, it will discount Mr. Hart's opinions. *See Daubert v. Merrell Dow Pharms., Inc.*, 509 U.S. 579, 592 (1993) ("[A]n expert is permitted wide latitude to offer opinions, including those that are not based on firsthand knowledge or observation."); *Joseph v. Doe*, 2021 WL 2313475, at *6 (E.D. La. June 7, 2021) ("Plaintiffs may use cross-examination during the introduction of the factual testimony or during expert witness testimony to test the correctness of whatever facts the expert assumes as the basis for his opinions.").

In any event, to the extent the Receiver worries about any particular testimony Mr. Hart may give, the Court "can protect against the possibility of objectionable expert testimony at trial without resorting to a blanket ban on all testimony." *Jones v. L.F. Grp., Inc.*, 559 F. Supp. 3d 550, 554 (N.D. Miss. 2021). The "appropriate antidotes" to the Receiver's purported concerns are the "capabilities of the jury and of the adversary system generally," which includes "vigorous cross-examination, presentation of contrary evidence, and careful instruction on the burden of

proof." *Williams v. Manitowoc Cranes, L.L.C.*, 898 F.3d 607, 624 (5th Cir. 2018) (citation omitted).

V. The Jury Should Hear Evidence on the Current Debts of the Estate.

The Receiver argues that neither Ms. Ingram nor Mr. Hart "gets to opine" that "the Receiver's recoveries from other parties reduce the Receivership Estate's damages." Mot. at 3. As an initial matter, the Receiver is wrong as a matter of law that her recoveries do not reduce her damages. A fundamental principle of remedies is that a plaintiff cannot "recover[] twice from the same assessment of liability." *Krieser v. Hobbs*, 166 F.3d 736, 743 (5th Cir. 1999) (applying Mississippi law). Thus, insofar as the Receiver seeks to hold Baker Donelson jointly and severally liable for the Ponzi scheme damages, Baker Donelson is entitled to a pro tanto reduction for recoveries from any others whom the Receiver blamed for causing the same damages the Receiver alleges here—i.e., those alleged to Ponzi scheme investors. *Id.* at 740. The Receiver cannot fix her damages at a point in time of her choosing, ignoring subsequent events that reduced them. *See, e.g.*, *Lovett v. E.L. Garner, Inc.*, 511 So. 2d 1346, 1353 (Miss. 1987) (reversing damages award including because "[v]ariables . . . were not considered in the damages calculation . . . [and the] present value [of the contract] should have been determined accordingly"); *In re Bankston*, 749 F.3d 399, 406 (5th Cir. 2014) (observing under Louisiana law that "damages are not set in stone, and [ ] post-breach events may effect the amount of damages awarded").

In any event, Ms. Ingram and Mr. Hart do not opine on how to apply this principle of law.[1] Ms. Ingram simply provides calculations of investor net losses, *see* Ingram Rpt. at 11–16,

[1] Nor, contrary to the Receiver's suggestion, *see* Mot. at 19 n.23, does Judge Rhodes. Indeed, as the Receiver herself argues in her motion, as an expert, Judge Rhodes's role is not to provide legal opinions. *See* Mot. at 14–15.

and the amounts the Receiver has distributed, *id.* at 18–20. Similarly, Mr. Hart observes that Mr. Lefoldt does not consider these recovery amounts in his calculations, and provides figures for what the remaining losses would be to Madison Timber, Mot. Ex. 6 (Hart Rpt.) at 21, and ASTFI investors, *id.* at 22, accounting for past and pending distributions. Such opinions are relevant to the jury's calculation of damages, as a factual matter; they do not instruct the jury on the law. *See, e.g.*, *Hydro Invs., Inc. v. Trafalgar Power Inc.*, 227 F.3d 8, 18 (2d Cir. 2000) ("The proper measure of damages is a factual question that was properly submitted for resolution by the jury."). And such calculations undoubtedly aid triers of fact. *See, e.g.*, *Sudo Props., Inc. v. Terrebonne Par. Consol. Gov't*, 2008 WL 2623000, at *10 (E.D. La. July 2, 2008) ("In this case, [the expert CPA's] specialized knowledge, regardless of whether his calculations involve complex methodology, will assist the trier of fact in determining the extent of [the plaintiff's] claimed damages. Any issues regarding [the] expert report should be addressed through 'vigorous cross examination, presentation of contrary evidence, and careful instruction on the burden of proof.' (quoting *Daubert* 509 U.S. at 596)).

There can be no dispute that these distributions based on the Receiver's recoveries have reduced the current debts of the estate (assuming the Receiver's damages were measured by the Receivership Estate's debts to investors—which they are not). Of the approximately $53 million in net losses the Receiver calculates the estate as owing investors as of April 2018, approximately $32 million was repaid to investors after April 2018, reducing their outstanding net losses and, on the Receiver's damages theory, the amount of her alleged damages. Ex. 7 (Receiver's Distributions) at 5, 7; Ex. 5 (Mills Tr.) at 73:8–77:21. Indeed, both the Receiver and her damages expert agreed under oath that the debts now owed to investors are approximately $21 million, not $53 million. Ex. 5 (Mills Tr.) at 80:5–81:5; Ex. 7 (Receiver's Distributions) at

5, 7; Ex. 4 (Lefoldt Tr.) at 76:18–77:15 ("Q: And [the distributions] reduced the total damages outstanding to about $20,970,000? A: That's correct.").[2]

The Receiver seeks to recover from Baker Donelson the total debts owed to investors. The Receiver should not be permitted to tell the jury that those debts total $53 million, and conceal from them the truth that they total $21 million.

VI. The Court Should Not Exclude Evidence Concerning the Receiver's Compensation.

The Receiver concludes her motion by asking the Court to "exclude evidence of or reference to the Receiver's or her counsel's compensation," presumably to include the fact she—a fact witness—stands to be paid, personally, a contingency payment if she prevails. Mot. at 19–20; *see also* ECF No. 154 (Case No. 3:18-cv-252) at 1 ("In the event of recovery, the Receiver and her counsel will be compensated with 33% of the gross recovery."). She argues: "Those facts are not relevant to any issues to be decided by the jury, and their presentation risks prejudice. Under Rule 403, they are not admissible." *Id.* at 20. This request should fail for inadequate briefing alone. *See United States v. Martinez*, 131 F.4th 294, 316 (5th Cir. 2025) ("When a party inadequately briefs an issue, [a] court need not review the issue.").

But regardless, it is wrong. The credibility of the Receiver's testimony, and the massive, contingent financial interest that may bias her testimony, is supremely probative. *See, e.g.*, *United States v. Abel*, 469 U.S. 45, 52 (1984) ("Proof of bias is almost always relevant because the jury, as finder of fact and weigher of credibility, has historically been entitled to assess all evidence which might bear on the accuracy and truth of a witness' testimony."). Her personal

[2] The $21 million debt to investors also does not account for amounts the Receiver has recovered in settlements from other defendants paid out to the Receiver and her lawyers instead of to investors. *See, e.g.*, *Marre v. United States*, 117 F.3d 297, 305 (5th Cir. 1997) (holding that when attorneys' "fees [a]re awarded under a contingency fee contract" rather than "pursuant to a statute," a defendant may "set off the attorney's fees").

financial stake in this litigation, through her contingent fee arrangement, goes directly to her bias. *See, e.g.*, *Miller UK Ltd. v. Caterpillar, Inc.*, 17 F. Supp. 3d 711, 723 (N.D. Ill. 2014) ("Financial interest in a case is always relevant to the question of bias[.]"); *Brown v. Ford Motor Co.*, 479 F.2d 521, 523 (5th Cir. 1973) ("Where the interest of the testifying witness in a particular outcome of the pending litigation is substantial, his possible bias may be sufficient in itself to create a jury question as to credibility."); *In re: DePuy Orthopaedics, Inc.*, 2016 WL 6271479, at *2 (N.D. Tex. Jan. 5, 2016) ("[A]n expert's financial interest and expected compensation is a commonly permitted area of inquiry, as a pecuniary interest in the outcome of a case may bias a witness.").

Not only is this evidence relevant, it is critical for fair cross-examination. "No one questions that cross-examination to show the bias of a witness or his interest in a case is entirely proper," as "[a] pecuniary interest in the outcome of a case may, of course, bias a witness." *Collins v. Wayne Corp.*, 621 F.2d 777, 784 (5th Cir. 1980). The Fifth Circuit has held "cross-examination into any motivation or incentive a witness may have for falsifying his testimony *must* be permitted." *United States v. Skelton*, 514 F.3d 433, 442 (5th Cir. 2008) (internal quotation marks omitted)); *see also Clark v. State*, 315 So. 3d 987, 1008 (Miss. 2021) ("Evidence of a witness's bias, prejudice, or interest—for or against any party—is admissible to attack the witness's credibility," and thus "possible financial economic bias is relevant and admissible." (cleaned up)).

The Court thus should deny the Receiver's request to exclude evidence of her compensation, and in particular her contingent fee arrangement.

CONCLUSION

Baker Donelson respectfully requests that the Court deny the Receiver's motion.

Dated this 17th day of November, 2025

Respectfully submitted,

BAKER, DONELSON, BEARMAN, CALDWELL & BERKOWITZ PC

/s/ Craig D. Singer

James J. Crongeyer, Jr. (MSB #10536)
James M. Tyrone (MSB #102381)
WATKINS & EAGER PLLC
400 East Capitol Street, Suite 300 (39201)
Post Office Box 650
Jackson, MS 39205
Tel.: (601) 965-1900
Fax: (601) 965-1901
Email: jcrongeyer@watkinseager.com

Craig D. Singer (*pro hac vice*)
Charles Davant (*pro hac vice*)
Benjamin W. Graham (*pro hac vice*)
Hope E. Daily (*pro hac vice*)
William M. Schmidt (*pro hac vice*)
C. Mark Aneke (*pro hac vice*)
WILLIAMS & CONNOLLY LLP
680 Maine Avenue, S.W.
Washington, DC 20024
Tel.: (202) 434-5000
Fax: (202) 434-5029
Email: csinger@wc.com

Counsel for Defendant Baker, Donelson, Bearman, Caldwell & Berkowitz PC

CERTIFICATE OF SERVICE

I hereby certify that on November 17, 2025, I caused the foregoing to be electronically filed with the Clerk of the Court using CM/ECF, which will send notification of such filing to all registered participants.

/s/ Craig D. Singer
Craig D. Singer