

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

**REPLY TO BAKER DONELSON'S OPPOSITION TO
MOTION TO EXCLUDE THE TESTIMONY OF GIBBS**

Alysson Mills, in her capacity as Receiver for Arthur Lamar Adams ("Adams") and Madison Timber Properties, LLC ("Madison Timber"), respectfully submits this memorandum in further support of her Motion to Exclude the Testimony of Robert L. Gibbs [224] and in reply to Baker Donelson's opposition to it [247].

Because 1) Gibbs has no specialized knowledge, 2) his testimony would be an unnecessary and impermissible legal opinion, and 3) a jury does not need his help, his testimony is inadmissible and should be excluded. From the parties' briefing, the Court may take away the following:

1. Gibbs has no specialized knowledge.

The Receiver showed that Gibbs simply reproduced Mississippi rules and regulations governing notaries in the form of an expert opinion.¹ He has extensive experience as a lawyer and a judge, but he does not have specialized knowledge of Mississippi notaries.

Baker Donelson relies heavily on Gibbs's "legal and judicial career spanning 45 years."²

The Receiver does not minimize Gibbs's accomplishments as a man, lawyer, or jurist. But by his own account, his experience with notaries specifically does not distinguish him from an average lawyer. Baker Donelson has no response to Gibbs's deposition testimony that:

- He did not read the rules and regulations governing notaries before Baker Donelson hired him.³
- His knowledge arises simply from his use of affidavits in his own motion practice.

While parties often challenge an affiant, he could not recall a case in which the party challenged the notary.⁴

- Anyone could read and understand the requirements for Mississippi notaries.⁵

Baker Donelson points to the report of Luke Dove, one of the Receiver's proffered experts in the UPS case.⁶ It observes that Dove is an attorney, and he opined notaries acted negligently. It argues that by designating Dove, the Receiver concedes that any attorney is qualified to opine

¹ 225 at 6.

² 247 at 3.

³ 224-2, Gibbs Depo., 98:21 – 99:8 ("I had not sat down and read them verbatim until I started preparing this report").

⁴ *Id.* at 99:9 – 100:9. By contrast, in his report, Gibbs stated that he had many occasions to consider evidence of notarial acts, the requirements governing notaries' performance of notarial acts, and the significance of a notary's having signed a document. Gibbs Report, at 1.

⁵ 224-2, Gibbs Depo., at 44:23 – 45:4.

⁶ 247 at 3.

on notaries generally. Dove did opine that notaries acted negligently, but that was not the purpose of his report. The purpose of his report was to opine as to whether the insurer, CNA, had properly handled an insurance claim involving the notaries—specifically, whether CNA had applied its own policy language in determining that all notarial acts constituted “related wrongful acts” under the insurance policy. He opined that CNA should have looked at things from the perspective of its insureds (the notaries). For what it is worth, CNA moved to strike Dove’s testimony as inadmissible legal opinion that would not assist a jury.⁷ In any event, an expert’s qualifications are relative to the case and his opinions. That the Receiver designated Dove an expert for a different purpose in a different case is not a concession that Gibbs may testify here.

Issues as to qualifications do ordinarily go to the weight of an expert’s opinion. But that does not excuse a lack of specialized knowledge. Courts properly exercise their gatekeeping function when they disallow expert testimony that relies solely on generalized expertise. *See, e.g.*, *Smith as Trustee for Sanders v. Koch Foods, Inc.*, No. 3:19-CV-721-DPJ-FKB, 2022 WL 1817333 (S.D. Miss. June 2, 2022) (excluding Gibbs in part because he did not possess special knowledge or expertise on history and instead simply instructed the jury on the law); *Van Winkle v. Rogers*, 82 F.4th 370 (5th Cir. 2023) (affirming exclusion of expert because he did not have specialized expertise in causes of tire tread failure, despite extensive experience in the commercial trucking industry and general safety practices); *McKee v. Chubb Lloyds Ins. Co. of Texas*, No. SA-22-CV-01110-XR-ESC, 2024 WL 1055122, at *4 (W.D. Tex. Mar. 11, 2024), *aff’d*, No. SA-22-CV-01110-XR, 2024 WL 2720450 (W.D. Tex. May 28, 2024) (excluding as unqualified general

⁷ Doc. 510 at 15-23, *Mills v. The UPS Store*, 19-cv-463 (S.D. Miss. Oct. 28, 2025) (“Dove’s opinions constitute impermissible legal conclusions and would not assist the jury to understand a fact in issue.”).

contractor expert opinions on plumbing matters because she was not a plumber and only had experience in plumbing assisting a certified plumber with repairs).

2. Gibbs's testimony would be an unnecessary and impermissible legal opinion.

The Receiver showed that Gibbs proposes to summarize the law and evidence and, after, to tell the jury that notaries breached specific duties.⁸ Such testimony would be an unnecessary and impermissible legal opinion.

Baker Donelson contends Gibbs's opinions "tend to prove that, relative to the fault of the notaries and their employers, Baker Donelson's alleged negligence was not a substantial factor, and the notaries' and their employers' fault was remote, improbable, or extraordinary."⁹ But Gibbs does not opine on the relative fault of the notaries compared to Baker Donelson.¹⁰ He simply answers the questions that Baker Donelson asked him:

- (1) What is a Mississippi 'notary'?:
- (2) What does a Mississippi notary do in a 'signature witnessing'?:
- (3) Do people typically and reasonably rely on certifications and signature witnessings by Mississippi notaries?:
- (4) If the purported landowners/grantors whose purported signatures appear on notarized timber deeds did not sign the deeds in the physical presence of the notaries who signed and sealed those deeds, did those notaries fulfill their professional obligations and comply with standard notarial practices?:
- (5) Did the Mississippi notaries identified in the provided timber deeds fulfill their professional obligations and follow standard notarial practices if they did not keep a fair register of all their notarial acts?: and
- (6) What conclusion should recipients of the provided timber deeds have drawn about the notaries' and purported landowners' actions?"¹¹

⁸ 225 at 10-11.

⁹ 247 at 7 (internal quotation marks omitted).

¹⁰ And even if he did opine on this topic, his opinions would be inadmissible legal conclusions.

¹¹ See generally, Gibbs Report.

None of his answers to these questions “tend to prove” that Baker Donelson’s fault was greater or less than that of the notaries.

Baker Donelson contends that Gibbs testifies to “standard of care.”¹² But even allowing that characterization, it remains that, in that regard, Gibbs’s report still does only two things: (1) it states the law and (2) it answers the question of whether the notaries breached their professional obligations.¹³ These are things he cannot do at trial. *See Smith as Trustee for Sanders v. Koch Foods, Inc.*, No. 3:19-CV-721-DPJ-FKB, 2022 WL 1817333 (S.D. Miss. June 2, 2022) (excluding Gibbs in part because his opinions either tell the jury how to rule on discrimination claim or explain the applicable law on damages available); *Askanase v. Fatjo*, 130 F.3d 657, 672 (5th Cir. 1997) (affirming exclusion of attorney expert who sought to testify about whether officers and directors breached their fiduciary duties because the testimony offered a legal opinion).; but see *Cazorla v. Koch Foods of Mississippi, LLC*, No. 3:10CV135-DPJ-FKB, 2014 WL 11456088, at *3 (S.D. Miss. Sept. 22, 2014) (admitting analysis of legal landscape because it did not tell the trier of fact what to decide on an ultimate issue). There is only “one spokesman of the law, who of course is the judge,”¹⁴ not Gibbs.

Baker Donelson concedes that Gibbs’s report “cites” the law,¹⁵ but that does not fairly describe it. Half of Gibbs’s report, including sections that purport to describe what a notary “does,” read like a legal treatise: It reproduces, verbatim, portions of the Mississippi code, administrative code, and even constitution, and quotes case law and the *Corpus Juris Secundum*. The other half

¹² 247 at 4.

¹³ Gibbs Report at 7-25 (stating, based on his review of the timber deeds and other evidence, that the notaries did not fulfill their professional obligations or comply with standard notarial practices); *id.* at 24 (stating that, based on his review of the deposition testimony in this case, that the notaries did not fulfill their professional obligations because they did not maintain a fair register of their notarial acts).

¹⁴ *Askanase*, 130 F.3d at 673.

¹⁵ 247 at 6.

of Gibbs's report reads like a summary of the evidence: It includes pictures of timber deeds and quotes from depositions and the Receiver's complaint in the UPS case. Gibbs applies the law the facts to conclude that notaries breached their duties when they notarized Madison Timber timber deeds, something no one disputes or even needs him to say. He then asks "what conclusion should be drawn" and answers that recipients, who include Jon Seawright, "reasonably should have concluded" that signatures on timber deeds were real. Gibbs does not get to draw such conclusions for a jury.

Baker Donelson argues it is "entitled to prove its case by evidence of its own choice."¹⁶ No one is disputing that here. Baker Donelson will undoubtedly call fact witnesses who can testify to facts. Jon Seawright surely will testify he believed the signatures on the timber deeds were real. Gibbs cannot testify to facts because he does not have firsthand knowledge. No doubt he can summarize the law and apply it to the evidence, but that is the judge's and jury's jobs, respectively. He cannot do that as an expert on the stand.

3. A jury does not need Gibbs's help.

The Receiver showed that even Gibbs agrees that what he did (read rules and regulations) is something anyone can do,¹⁷ and what a notary does is something the average person knows.¹⁸ A jury does not require an expert to tell it that a notary who falsely attests to a signature breaches a duty any more than it requires an expert to tell it that a driver who signals a righthand turn before

¹⁶ 247 at 8 (citation omitted).

¹⁷ 225 at 7.

¹⁸ 225 at 14.

making a left turn breaches a duty.¹⁹ Baker Donelson does not address the numerous authorities the Receiver provided.

Baker Donelson argues lay jurors “cannot be expected to know” what Mississippi rules and regulations say.²⁰ But the jury does not have to know what Mississippi rules and regulations say. It will already know what a notary does, and it will hear a lot about them over the course of the trial. Gibbs admitted in his deposition:

Q. And again, even without reading those cases or knowing the ins and outs of the rules and regulations, the average person can be familiar with the notarial process from partaking in it, right?

A. I would agree with that.²¹

If the jury requires instruction on the law, the Court can give it.

Baker Donelson argues “if notarial practices were already known to all laymen, then there would have been no need to train people on them, and no claim by the Receiver against The UPS Store for failing to train them.”²² Notwithstanding that this statement distorts the facts and claims in the Receiver’s case against UPS, the argument does nothing to justify Gibbs’s testimony. Baker Donelson basically argues it needs Judge Gibbs to tell the jury someone else is responsible. The jury does not need Gibbs to understand there were multiple actors here, and Gibbs, in any event, cannot properly do what Baker Donelson asks.

¹⁹ 225 at 12-14 (citing, e.g., *Clark V. Lard Oil Co., Inc.*, No. 2:18-cv-00109-KS-MTP, 2019 WL 4346544, at *4 (S.D. Miss. Sept. 12, 2019)).

²⁰ 247 at 8 (citation omitted).

²¹ 224-2, Gibbs Depo., 44:8-13; *see also id.* at 35:22-24 (“I do not think an average person needs to read the rules and regulations to understand what a notary does”); *id.* at 42:2-6 (“A. I think you can be a notary without reading all the rules and regulations and still perform your duty without breaching any duty or violating any of the rules that have promulgated in Mississippi. Q. And conversely, if you wanted to become a notary but you weren’t yet a notary, you could become familiar with all the notary rules and regulations that govern a notary simply by reading them, correct? A. Yes. I agree with that.”).

²² 247 at 9.

CONCLUSION

For the reasons stated here and in the Receiver's opening memorandum, the motion to exclude Gibbs should be granted.

Respectfully submitted,

/s/ Lilli Evans Bass

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CERTIFICATE OF SERVICE

I certify that I electronically filed the foregoing with the Clerk of Court using the ECF system which sent notification of filing to all counsel of record.

Date: November 24, 2025

/s/ Kaja S. Elmer