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 *IN LIMINE* ON SPECIFIC MATTERS PERTAINING TO DAMAGES

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 *in Limine* on Specific Matters Pertaining to Damages [228] and in reply to Baker Donleson's opposition to it [256].

REPLY ARGUMENT

Baker Donelson opposes the Receiver's motion *in limine*, but from the parties' briefing, the Court may take away the following:

1. Ingram cannot tell the jury "related" investors must be treated as one investor for net loss purposes, because the matter is a question of law for this Court to decide.

The Receiver showed that Ingram reduced combined total net losses by $1,533,096.83 by "aggregating" certain investors.[1] Ingram presumed "economic relationships" between husbands and wives, LLCs and their members, and IRA accounts and their owners. For these "related" investors, she disregarded the investors' separateness.

The Receiver showed that Mississippi law does not support Ingram's "aggregation." Under Mississippi law, business entities such as LLCs are separate and distinct from their owners. *Edmonson v. State*, 301 So. 3d 108, 113–14 (Miss. Ct. App. 2020). Baker Donelson does not address this Mississippi law.

Baker Donelson observes the Receiver did not respect Alexander Seawright Timber Fund LLC's separateness. But Alexander Seawright Timber Fund LLC was used in "a scheme or artifice to defraud."[2] *See Edmonson*, 301 So. 3d at 114 ("[P]iercing the corporate veil is appropriate where the corporation exists to perpetuate a fraud.") (citation omitted). By request and court order, the Receiver treats Alexander Seawright Timber Fund's investors the same as every other investor in Madison Timber.[3]

Baker Donelson argues "the economic relationship between noteholders is a jury question,"

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[1] 229 at 5.

[2] 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.).

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

but it does not cite any legal authority for that proposition. It cites two unpublished opinions in which district courts approved distribution plans that consolidated "multiple 'accounts' associated with the same person." *See Sec. & Exch. Comm'n v. Aequitas Mgmt., LLC*, No. 3:16-CV-00438-JR, 2020 WL 1528249, at *8 (D. Or. Mar. 31, 2020) (citing *CFTC v. Equity Fin. Grp., LLC*, No. 04-1512-RBK-AMD, 2005 WL 2143975, at *26, (D.N.J. Sep. 2, 2005)). No one disputes that a receiver might reasonably recommend "consolidation" or "aggregation" in any given case. The question is whether the Receiver was required to do so here. Every Ponzi scheme, every receivership, and every distribution plan is different. There is no universal rule.

A jury did not decide the issue in either of the two cases Baker Donelson cites; a judge did. The two cases make the Receiver's point: whether any investor must be treated as something other than an investor in their own right is a matter for this Court, not Ingram or even a jury, to decide.

2. Ingram cannot tell the jury the Receiver would have recovered $14 million from net winners, because she has no factual basis.

The Receiver showed there is no factual basis for the proposition that the Receiver would have recovered $15,612,160.71 (Baker Donelson now says $14 million) from net winners. "Where an expert's opinion is based on insufficient information, the analysis is unreliable." *Elliot v. Amadas Indus., Inc.*, 796 F. Supp. 2d 796, 808 (S.D. Miss. 2011) (quoting *Paz v. Brush Eng'red Materials Inc.*, 555 F.3d 383, 388 (5th Cir. 2009)).

Baker Donelson does not contend that Ingram has information to support the proposition.

Baker Donelson contends, instead, that Ingram "merely calculated" net winnings, not for the purpose of opining on likely recoveries.[4] But that is not a fair reading of Ingram's report or Baker Donelson's use of it: Ingram compiled a spreadsheet that purports to itemize 158 "Net

[4] 260 at 5.

Winners From Which The Receiver Did Not Pursue Clawbacks of Interest Paid."[5] Ingram's spreadsheet represents there are $15,612,160.71 (Baker Donelson now says $14 million) in unrecovered alleged net winnings.[6] Ingram opines the Receiver's accountings omit these alleged net winnings.[7] Relying on Ingram, Baker Donelson argues the Receiver "elect[ed] to abandon $14 million of estate assets" by failing to sue net winners.[8] Ingram is the only source for Baker Donelson's argument. Her testimony is the argument's foundation, but it has no factual basis.

Baker Donelson has no response to the fact that the Receiver already received approximately *$9,410,628.90* in value from alleged net winners on Ingram's list. The argument that the Receiver "abandon[ed] $14 million of estate assets" not only lacks a factual basis, it is misleading.

Baker Donelson argues Ingram's testimony is relevant to mitigation. That does not solve the problem. Mitigation is an affirmative defense, and Baker Donelson bears the burden of proof. *Wall v. Swilley*, 562 So. 2d 1252, 1258 (Miss. 1990) ("Of course, mitigation is an affirmative defense and the Swilleys were burdened to charge and prove that the Walls had failed in their duty."). Baker Donelson cannot avoid scrutiny merely by asserting that mitigation is a "jury question." It is incumbent on Baker Donelson to prove that there is a genuine issue of material fact. *Holcomb, Dunbar, Watts, Best, Masters & Golmon, P.A. v. 400 S. Lamar Oxford Mad Hatter Partners, LLC*, 364 So. 3d 766, 779–80 (Miss. Ct. App. 2021), *aff'd*, 335 So. 3d 568 (Miss. 2022) ("Holcomb Dunbar … deemed mitigation to be an affirmative, 'fact based' defense for a jury to decide. However, it was incumbent on Holcomb Dunbar, as the party against whom a motion for

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[5] Ingram report at Ex. 8.

[6] 229 at 8.

[7] Ingram report at 15 ("My accounting also reports net winners of approximately $15.9 million."); Ingram report at 24 ("Mills accountings omit these net winners.").

[8] 261 at 10.

summary judgment had been filed, to prove that there was a genuine issue of material fact for trial."). Baker Donelson wants to tell the jury the Receiver "elect[ed] to abandon $14 million of estate assets,"[9] but it relies on Ingram for proof, and she has none.

3. Rhodes cannot tell the jury the Receiver should have sued net winners, both because whether there is a duty is a question of law for this Court to decide and because Rhodes does not know anything about the Receiver's performance.

The purpose of Rhodes's testimony is to tell the jury what the Receiver should have done differently.[10] He opines the Receiver had a "duty to investigate and pursue fraudulent transfer claims against net winners."[11] The Receiver showed that there is no legal authority for the proposition.[12] Baker Donelson does not point to any.

The Receiver showed that Rhodes's testimony would substitute Rhodes's judgment for the Court's. Baker Donelson does not explain how "Judge" Rhodes's testimony does anything else. Inasmuch as the question is whether the Receiver had a duty to do anything differently, the question is a question of law. *Doe ex rel. Doe v. Wright Sec. Servs., Inc.*, 950 So. 2d 1076, 1079 (Miss. Ct. App. 2007) ("Whether a duty is owed is a question of law.") (citing *Rein v. Benchmark Constr. Co.*, 865 So. 2d 1134, 1143 (Miss. 2004)). In this case especially, that question is for this Court to decide. *See Janvey v. GMAG, L.L.C*, 98 F.4th 127, 132–33 (5th Cir. 2024) ("A district court's actions in supervising an equity receivership are also reviewed for an abuse of discretion.") (quotation omitted).

Baker Donelson represents that the Receiver "admittedly never tried to identify net

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[9] 261 at 10.

[10] 229 at 13-15.

[11] Rhodes report at 10.

[12] 229 at 10.

winners, nor to quantify how much phony 'profit' they were holding."[13] But that misstates her deposition testimony. She testified that she did not recall making a list of "the biggest winners" specifically, but that "for any one of these investors, we had to look, first, to see whether interest received [] exceeded principal due."[14] The analysis necessarily was part of her accounting. She had to distinguish net winners from net losers to make a distribution.

The Receiver testified she believes her duty is to recover money and assets for the benefit of victims, as cost effectively as possible. She explained in her deposition "there's a lot of cost-benefit analysis to everything we do":

> Q. What—what do you understand your duties to be in terms of who to sue and who not to sue?
>
> A. To recover assets, monetize them, recover money as fast as I can, as cost effectively as I can, and to distribute it to victims.[15]

The Receiver did not file 158 lawsuits against 158 alleged net winners, but she did otherwise extract $9,410,628.90 in value from alleged net winners on Baker Donelson's list. Baker Donelson cannot credibly contend the Receiver's work has not been cost effective.

Often receivers must rely on what they can get from net winner lawsuits.[16] Rhodes's opinion was premised his assumption that the Receiver did not have other adequate alternative sources of recovery here.[17] The Receiver showed that Rhodes did not know anything about the

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[13] 260 at 7.

[14] 257-4, Mills depo. at 105-106.

[15] 257-4, Mills depo. at 106-07.

[16] Rhodes report at 14 ("Fraudulent transfer claims against net winners often can be the most (or among the most) sizable assets of a receivership estate.").

[17] 228-5, Rhodes depo. at 75:17-78:4:

> Q. So when you say that these [lawsuits] are not sufficient to make a recovery, it is based on what analysis?
>
> A. It is based on the fact that, a conclusion that these assets are sufficient to result in a full payment to the investors assumes that these lawsuits will be successful.
>
> Q. Okay.

Receiver's performance to date.[18] He also did not know that the Madison Ponzi scheme was unique in that it paid people back every month. ("I was actually not aware of that."[19]). Baker Donelson has no response to these facts.

The only thing Rhodes accounted for is Ingram's analysis.[20] He reproduced Ingram's "Net Winners From Which The Receiver Did Not Pursue Clawbacks of Interest Paid" spreadsheet in his own report.[21] He testified he relied, for his opinion, on "Miss Ingram."[22] Inasmuch as Ingram's analysis lacks a factual basis, Rhodes's does, too.

4. Hart is a forensic accountant, but he did not do any forensic accounting in this case. He is not in a better position than any juror to decide any issue in this case.

Hart is a forensic accountant, but he did not do any forensic accounting in this case. He relied solely on Ingram's accounting. Inasmuch as Ingram's analysis lacks a factual basis, Hart's does, too.

> A. And that is, has not yet been determined, and there are substantial risks associated with that assumption.
>
> Q. Okay. Are you able to identify those risks?
>
> A. I can't say I can do that specifically, other than my experience tells me that aiding and abetting claims are very complex claims. They are frequently not successful. The chief issue in the case is proving the knowledge, the actual knowledge, of a defendant or defendants. Constructive knowledge is not sufficient. Knowledge can only be proven by circumstantial evidence and is challenging to be successful on.
>
> Q. I take it these are observations as to the challenges posed by aiding and abetting litigation that are generic rather than specific to these cases. Correct?
>
> A. Yes. I have not reviewed the evidence regarding the knowledge of the defendants in this case.

[18] 228-5, Rhodes depo. at 53:17-21 (no knowledge of what recoveries have been obtained by the Receiver).

[19] 228-5, Rhodes depo. at 79. *See also id.* at 58:25-60:3 (does not know whether any alleged net winners are alive or can be found; no knowledge of any alleged net winner's ability to pay a demand of them; no knowledge of the collectability any judgment against any alleged net winner); *id.* at 73:10-14 (no knowledge of the collectability any judgment against any alleged net winner).

[20] 260 at 8 ("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.").

[21] Rhodes report at 16-20.

[22] Rhodes report at 56-60.

The Receiver showed that Hart's report is nothing more than a 54-page rehashing of Baker Donelson's theory of the case. He read 17 deposition transcripts and notes specially prepared by Baker Donelson's counsel for Baker Donelson's corporate representative's deposition and concluded, among other things, that "Baker Donelson did not know: (1) about the activities involving Mssrs. Alexander and Seawright related to ASTFI and ASTFII; (2) that ASTFI was loaning money to Madison Timber; or (3) that they allegedly used Baker Donelson's resources for ASTFI." He is not in a better position than any juror to make such determinations. Baker Donelson does not address the Receiver's numerous authorities which hold a party's expert must do more than narrate the party's version of the facts.

Baker Donelson defends only one "analysis" in Hart's report, which it says "showed that ASTFI made up only a tiny fraction—1.9 to 5.9 percent—of Madison Timber investments."[23] Baker Donelson does not need Hart to tell the jury "the amount of the ASTFI investments as a portion of the total Madison Timber Ponzi scheme was very small."[24] Seawright or Alexander (or Ingram) can do that. But to be clear: That analysis comprises only nine paragraphs of Hart's 107-paragraph, $480,000[25] report. Baker Donelson does not attempt to otherwise defend anything else Hart has to say.

Baker Donelson offers Hart as an expert on causation and damages. It wants Hart to tell the jury "[t]he economic evidence contradicts the causal claim."[26] That is not the law. The Receiver has shown that, for her civil conspiracy and aiding abetting claims specifically, the damages are "all the losses."[27] There are numerous authorities in support, and Baker Donelson

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[23] 260 at 10.
[24] Hart report at ¶ 64.
[25] Hart depo. at 34:9-10.
[26] Hart report at ¶ 65.
[27] 259 at 56-58.

does not address them. Baker Donelson contends *Zacarias* and *Rotstain*, two Fifth Circuit decisions addressing similar claims by the Stanford receiver, "do not discuss proximate causation at all." But they do discuss damages, and that discussion presumes causation.[28]

The Receiver trusts that, if Hart gets to testify at all, and he should not, the Court will not permit him to testify inconsistently with the law.

5. Baker Donelson may argue setoffs post-trial.

Ingram and Hart both account for the Receiver's distributions in their analyses.[29] Baker Donelson argues "the jury should hear evidence on the current debts of the estate,"[30] but it does not address Mississippi law: "It is well settled that 'a defendant tortfeasor is not entitled to have damages for which he is liable reduced by reason of the fact that the plaintiff has received compensation for his injury by and through a totally independent source, separate and apart from the defendant tortfeasor.'" *Wright v. Royal Carpet Servs.*, 29 So. 3d 109, 113 (Miss. Ct. App. 2010).

The Receiver does not contend that she is entitled to "recover twice." The Receiver does not dispute that Baker Donelson may be entitled to a setoff. But Baker Donelson may make that argument post-trial. It may offer its experts' accountings to the Court then.

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[28] The defendants in *Zacarias* "injured the Stanford entities" by "turn[ing] a blind eye to Stanford officers' misdeeds." *Zacarias v. Stanford Int'l Bank, Ltd.*, 945 F.3d 883, 905 (5th Cir. 2019) (Willett, J., dissenting from bar order only). The Fifth Circuit observed "[t]here is no dispute" that the Stanford receiver had standing to recover damages "including the unsustainable liabilities inflicted by the Ponzi scheme." *Id.* at 899. The question was whether it mattered, for purposes of determining who could recover what, that certain investors were differently situated because the defendants had communicated with them directly. The court held it did not. *Id.* at 902 ("Again, the receivership solves a collective-action problem among the Stanford entities' defrauded investors, all suffering losses from the same Ponzi scheme.").

The Fifth Circuit in *Rotstain* reaffirmed the Stanford receiver's standing to recover damages "for injury to the Stanford entities in the form of the entities' additional liability to investors due to Defendants' conduct." *Rotstain v. Mendez*, 986 F.3d 931, 941 (5th Cir. 2021) ("As in *Zacarias*, the Defendants here are alleged to be participants in the Ponzi scheme, even if unknowing ones . . ."). The court summarized the causation in *Zacarias* as follows: "had the Stanford entities not been injured, neither would the individuals who invested in them." *Id.* at 940 (citing *Zacarias*, 945 F.3d at 900). That is the Receiver's simple theory of causation and damages here.

[29] Ingram report at 22; Hart report at ¶ 52.

[30] 260 at 13.

6. The Receiver's counsel's fee arrangement and compensation is inadmissible under Rule 403.

Ingram and Hart both account for the Receiver's counsel's attorneys' fees in their analyses.[31] Baker Donelson argues the jury should hear evidence of the Receiver's counsel's fee arrangement and compensation. No one disputes the general proposition that a witness's financial interest can be evidence of bias. But that does not make the evidence admissible under Rule 403.

None of the cases that Baker Donelson cites are factually similar. *United States v. Abel*, 469 U.S. 45, 52 (1984) ("Mills' and respondent's membership in the Aryan Brotherhood supported the inference that Mills' testimony was slanted or perhaps fabricated in respondent's favor."); *Miller UK Ltd. v. Caterpillar, Inc*., 17 F. Supp. 3d 711, 724 (N.D. Ill. 2014) (allegation of "bias" did not make third-party litigation financing arrangement relevant); *Brown v. Ford Motor Co.*, 479 F.2d 521, 523 (5th Cir. 1973) (fact that witness's employer "had been doing a substantial amount of business with Ford Motor Company" did make witness un-credible; "Some decisions contain language to the effect that the testimony of an interested witness always creates a jury question as to credibility. We decline to adopt any such absolute rule."); *In re: DePuy Orthopaedics, Inc*., No. 3:11-MD-2244-K, 2016 WL 6271479, at *2 (N.D. Tex. Jan. 5, 2016) (whether medical expert had hip implant was discoverable); *Collins v. Wayne Corp*., 621 F.2d 777, 784 (5th Cir. 1980) (district court did not err by permitting cross-examination of expert about fees earned in prior cases); *United States v. Skelton*, 514 F.3d 433, 441 (5th Cir. 2008) (addressing "evidence relating to the allegations that Jacobs stole funds from Jolt and lied to the IRS is admissible"); *Clark v. Stat*e, 315 So. 3d 987, 1007 (Miss. 2021) (prosecutor's closing argument, which included the comment "[i]f you pay some expert $8500 to come up here for an hour's testimony, they'll say it," did not warrant

[31] Ingram report at 22; Hart report at ¶¶ 55, 57.

reversal).

In fact, *Skelton* specifically observes that bias evidence is subject to Rule 403: "The admissibility of bias evidence, however, is subject to Rule 403. Thus, the probative value of admitting such evidence must not be substantially outweighed by any prejudicial effect. In this respect, district courts retain wide discretion …." *Skelton*, 514 F.3d at 442 (citation omitted).

Baker Donelson does not address Rule 403. The Receiver's counsel's fee arrangement, or compensation, has minimal probative value: The Receiver filed this lawsuit before the Court approved the arrangement. It does not give the Receiver a motive to testify falsely against Seawright, Alexander, or Baker Donelson; the Receiver, if she is a witness, cannot testify to what they did or did not do, because she does not have that personal knowledge. *Contrast Skelton*, 514 F.3d at 442. *See also Carroll v. Trump*, 124 F.4th 140, 173 (2d Cir. 2024) ("The admissibility of evidence for this purpose depends on whether it is 'sufficiently probative of [the witness's asserted bias] to warrant its admission into evidence.'") (quoting *United States v. Abel*, 469 U.S. 45, 49 (1984)). The preexisting evidence of Seawright's and Alexander's fraud is also already conclusive. The Receiver's counsel's fee arrangement does not make any fact bearing on their or Baker Donelson's liability more or less likely to be true. Baker Donelson's only use for it is impermissible: to prejudice the jury. *Tights, Inc. v. Acme-McCrary Corp.*, 541 F.2d 1047, 1061–62 (4th Cir. 1976) ("While it is true that a witness may ordinarily be cross-examined as to his financial interest in a transaction, it is also recognized that the trial judge has broad powers to regulate the nature and extent of such cross-examination. Here, the evidence was all but conclusive as to the fraud issue, and against the defendants. As such, defendants' line of inquiry could easily be said to border on harassment of the witness which the trial judge, in his discretion, was entitled to limit.") (citing *Alford v. United States*, 282 U.S. 687, 694 (1931)).

CONCLUSION

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

Respectfully submitted,

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CERTIFICATE OF SERVICE

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

Date: November 24, 2025

/s/ Kaja S. Elmer