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

RECEIVER'S REPLY TO BAKER DONELSON'S OPPOSITION TO THE RECEIVER'S MOTION *IN LIMINE*

Alysson Mills, in her capacity as the court-appointed receiver for Arthur Lamar Adams and Madison Timber Properties, LLC (the "Receiver"), respectfully submits this brief in support of her motion in limine [292] and in reply to the opposition filed by Baker, Donelson, Bearman, Caldwell, & Berkowitz PC ("Baker Donelson") [319].

REPLY INTRODUCTION

No one is trying to "smear" Seawright and Alexander. Evidence of Seawright's and Alexander's convictions and bankruptcy fraud is affirmative evidence of essential elements in this case. It is highly probative of issues in dispute, which the jury will decide.

Most probative evidence is prejudicial. Evidence of the convictions and bankruptcy fraud, precisely because it is so probative, is likely prejudicial here. But that is not a basis to exclude it; its prejudice must outweigh its probity, and it does not. There is no reason to suggest the Receiver is 'going low' by using highly probative evidence fairly.

The Receiver did not establish the public policy against the use of evidence of criminal restitution in a civil trial. Baker Donelson must blame the state of Mississippi, whose substantive law governs the Receiver's claims.

The Receiver further responds to Baker Donelson's arguments below.

REPLY ARGUMENT

1. Evidence of Seawright's and Alexander's convictions and regulatory sanctions is admissible.

Seawright's and Alexander's convictions establish a predicate offense for the Receiver's state-law RICO claim. Baker Donelson has no response to this fact. The convictions are admissible for that purpose, and Baker Donelson does not attempt to argue otherwise.

In addition, the convictions and regulatory sanctions are evidence of essential elements of the Receiver's civil conspiracy and aiding and abetting claims. Baker Donelson, sidestepping this fact, says the Receiver "mischaracterizes" things. [319 at 4-5] It says the convictions are for a "different" conspiracy and underlying documents "do not mention Lamar Adams or Madison Timber." [319 at 3] But that is incorrect.

Again, respectfully, this Court knows better than anyone what Seawright and Alexander pleaded guilty to. If the Receiver misrepresents the guilty pleas, she welcomes the Court's correction. Baker Donelson tellingly omits the relevant portion of the underlying bills of

information. The bills of information, which Seawright and Alexander affirmed in open court,[1] expressly stated that they "did knowingly and intentionally participate in a scheme and artifice to defraud" by "loaning funds" to a "timber broker":

> 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. . . .[2]

In his deposition, Alexander confirmed that the "timber broker" in the bill of information was Lamar Adams and Madison Timber,[3] and that the scheme, as described, was the same for seven years.[4] The takeaway is that Seawright and Alexander pleaded guilty to conspiring with each other to do business with Lamar Adams and Madison Timber.

The order from the Securities and Exchange Commission barring Seawright from the securities industry is not "farther afield." [319 at 3] It also expressly refers to "the timber broker":

> [Seawright] knowingly solicited investors to invest in the Timber Fund through materially false and fraudulent pretenses, representations, or promises. Respondent, while being associated with an investment adviser, falsely promised that each property location, promissory note, timber contract, and timber deed would be vetted by him or others. In persuading investors to maintain their investments and to invest additional funds, Respondent told investors that he

[1] Ex. 46 to Opp. to MSJ, 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.).

[2] 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.).

[3] Ex. 6 to Opp. to MSJ, Alexander Depo. at 103:2-11.

[4] Ex. 6 to Opp. to MSJ, 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).

> would profit only if the investments performed as promised, failing to disclose that he received payments for recruiting investments to the scheme and received a predetermined percentage of investors' funds from **the timber broker** for each recruited investor.[5]

The order from the Commodity Futures Trading Commission revoking Alexander's registration to sell commodities expressly states that Alexander, "aided and abetted" "by others known and unknown," participated in a scheme to defraud, for Alexander's and Seawright's benefit "and the benefit of others":

> [Alexander,] **[a]ided and abetted** by each other and by others known and unknown, did knowingly and intentionally participate in a scheme and artifice to defraud investors by soliciting millions of dollars under false pretenses, failing to use investors' funds as promised, and misappropriation and converting investors' funds to Alexander's and [his co-defendant's] own benefit and **the benefit of others** without the knowledge or authorization of the investors.[6]

Baker Donelson wishes the world to believe that Seawright and Alexander have admitted nothing more than a discrete set of facts reflecting a discrete civil conspiracy having no relation to Lamar Adams and Madison Timber, but the underlying documents flatly contradict that notion. As shown, the documents evidence that Seawright and Alexander admitted to conspiring with each other to do business with Lamar Adams and Madison Timber, for the mutual benefit of all involved. The documents are relevant to this case.

Baker Donelson argues Seawright and Alexander did not plead guilty to knowing Madison Timber was a Ponzi scheme. The Receiver agrees that they have never admitted that fact. But

[5] Ex. 49 to Opp. to MSJ, at III(D), "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.

[6] Ex. 50 to Opp. to MSJ, at II(C), "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.

that does not prevent the Receiver from arguing the evidence nevertheless supports that Seawright and Alexander did know Madison Timber was a Ponzi scheme or were at least indifferent to what they knew to be a fraudulent enterprise. Seawright's and Alexander's convictions and regulatory sanctions are facts that the Receiver, without misrepresenting them, gets to argue to the jury like anything else.

Baker Donelson's argument seems to be that, if, in its estimation, the Receiver has no direct evidence that Seawright and Alexander knew that Madison Timber was a Ponzi scheme, then she cannot argue they knew that Madison Timber was a Ponzi scheme. But if that were the law, courts would rarely if ever try conspiracy cases. The reality is, in many cases, a plaintiff relies for knowledge 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 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"). The Receiver gets to argue the bills of information and regulatory orders, alongside other evidence, prove, among other things, Seawright's and Alexander's knowledge and intent to enter an "agreement between two or persons" to accomplish an "unlawful purpose"; their "overt act[s] in furtherance of a conspiracy"; their "substantial assistance" to Lamar Adams; an absence of mistake on their part; and a lack of accident on their part. These are all non-propensity purposes permissible under Rule 404(b).

Baker Donelson argues the Securities and Exchange Commission's order is not relevant to this case because the Receiver does not allege a claim for "securities fraud." [319 at 3] But the

Receiver does not intend to use the order to prove securities fraud. She intends to use the order to the extent it evidences that Seawright admitted facts that are relevant to issues in dispute.

Baker Donelson argues the evidence is being used for a "forbidden" propensity purpose. [319 at 3-4] Baker Donelson would have a better argument if Seawright's and Alexander's crimes were directly related to this case. Rule 404(b)'s prohibition on propensity evidence presumes two similar but unrelated acts; a party cannot use evidence of a similar but unrelated act to prove nothing more than that the defendant has a propensity to act in conformity (if he did it once he would do it again). But Seawright's and Alexander's crimes are part of the story; everything is related. The evidence is not propensity evidence, but even if it were, under Fifth Circuit law, Rule 404(b)(1)'s prohibition on propensity evidence would not apply because the evidence is "intrinsic." *United States v. Aleman*, 592 F.2d 881, 885 (5th Cir. 1979) (intrinsic evidence is excepted from Rule 404(b)(1)). "Intrinsic evidence is admissible to 'complete the story of the crime by proving the immediate context of events in time and place,'" *United States v. Carrillo*, 660 F.3d 914, 927 (5th Cir. 2011) (quoting *United States v. Coleman*, 78 F.3d 154, 156 (5th Cir. 1996), and to "evaluate all of the circumstances under which the defendant acted," *id.* (quoting *United States v. Randall*, 887 F.2d 1262, 1268 (5th Cir. 1989)).

The only rule that limits the evidence in question is Rule 403. Under Rule 403, a court may exclude even admissible evidence if its prejudice outweighs its probity, making its use unfair. Baker Donelson argues the evidence's use is unfair, but its argument pretends the evidence has nothing to do with this case, which, as shown, is incorrect. The evidence is highly probative of issues in dispute, which the jury will decide. There is nothing unfair about the Receiver's use of the evidence. She would be derelict in her duty to present her case if she did not.

2. Evidence or argument that Seawright and Alexander paid criminal restitution is inadmissible.

Baker Donelson does not point to any legal authority, no federal rule of evidence or law, which states that criminal restitution is admissible in a civil case.

Mississippi law expressly states that criminal restitution is not admissible in a civil case. Miss. Code Ann. § 99-37-17, "Civil actions by victims; evidence; damages," states:

> 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.

The statute reflects the state's public policy that the fact that a defendant paid criminal restitution shall have no bearing on the defendant's civil liability for his crime. The jury may not consider the fact in its determination of issues at trial, but post-trial a judge shall reduce any damages award by the amount of criminal restitution paid. There is no merit to Baker Donelson's suggestion that the Receiver is attempting to "recover twice." [319 at 6] The Receiver has always insisted that any credit for amounts already paid can be addressed post-trial.

The Receiver misstated that this is a diversity case. What the Receiver meant, which is true, is that Mississippi substantive law governs her claims. *See Retro Metro, LLC v. City of Jackson by & through City Council*, 147 F.4th 551, 557 (5th Cir. 2025) ("When adjudicating state law claims, we apply state substantive law and federal procedural law."). The Receiver's arguments are not simply her arguments; they are Mississippi substantive law. Baker Donelson complains the Receiver will "paint a distorted picture" [319 at 5] but Mississippi substantive law reflects the state's judgment that evidence of criminal restitution is distorting and must be excluded.

Baker Donelson contends Mississippi law does not apply because "the admissibility of evidence is procedural, not substantive." [319 at 6] But whether a state law is procedural or substantive does not turn on how it is labeled (*i.e.*, a rule of evidence or otherwise). "A law is determined to be procedural or substantive based on whether it 'concerns merely the manner and the means by which a right to recover . . . is enforced, or whether such statutory limitation is a matter of substance.'" *Franklin v. Apple Inc.*, 569 F. Supp. 3d 465, 482 (E.D. Tex. 2021) (quoting *Guar. Trust Co. of N.Y. v. York*, 326 U.S. 99, 109 (1945)). The intent is that the outcome "should be substantially the same as if it were tried in state court." *Boudreaux v. Axiall Corp.*, 528 F. Supp. 3d 462, 467 n.3 (W.D. La. 2021). Thus, even state laws requiring procedural process (*e.g.*, notice) have been treated as substantive. *E.g., Franklin,* 569 F. Supp. 3d at 482 ("Although providing sufficient notice is a procedural process, federal courts should apply the notice provision in the DTPA because its purpose is intertwined with Texas's substantive policy.").

Here, there is no conflict between § 99-37-17 and federal law, and the statute, however Baker Donelson might characterize it, is "bound up" with state-secured substantive rights. *Allen v. Sherman Operating Co., LLC*, 520 F. Supp. 3d 854, 860 (E.D. Tex. 2021) (courts ask whether a nominally procedural rule is "bound up" with a state's substantive rights and obligations). The statute applies here. Evidence or argument that Seawright and Alexander paid criminal restitution is inadmissible, but of course the Court may account for it post-trial.

3. Evidence of Seawright's bankruptcy fraud is admissible.

Seawright's bankruptcy fraud establishes Seawright and Alexander's alter ego liability for Alexander Seawright LLC. Seawright and Alexander deny that they are Alexander Seawright LLC's alter egos. Evidence that they used the company and its sub-companies, including Alexander Seawright Transportation Fund LLC, for fraud is fair game.

The evidence will not "confuse or mislead the jury." [319 at 7] Again, the jury may hear that Seawright and Alexander's outside business activities included up to nine companies, all under the "Alexander Seawright" umbrella. The jury will not be surprised, confused, or misled by the mention of Alexander Seawright Transportation, LLC, specifically. A jury is not incapable of understanding how Seawright and Alexander's companies relate to Seawright and Alexander and Alexander Seawright LLC which is simply a parent company. The Court may trust the parties to provide the jury proper context.

The evidence is not "irrelevant to any issue in this case." [319 at 8] Baker Donelson says alter ego liability turns on Seawright and Alexander's "control over" Alexander Seawright LLC. But Baker Donelson omits that it also may turn on whether Seawright and Alexander used Alexander Seawright LLC for fraud. *Edmonson v. State*, 301 So. 3d 108, 114 (Miss. Ct. App. 2020) ("In particular, 'piercing the corporate veil is appropriate where the corporation exists to perpetuate a fraud.'") (citations omitted). Because Seawright and Alexander say they "did not,"[7] the Receiver is entitled to show the jury that they did. The Receiver will show the jury how Seawright and Alexander used Alexander Seawright LLC's sub-companies, including but not limited to Alexander Seawright Timber Fund LLC and Alexander Seawright Transportation LLC, to defraud investors and even the court. Contrary to Baker Donelson's argument, these facts make Seawright and Alexander's alter ego liability more or less probable.

The evidence is also relevant to what Baker Donelson itself knew, and when. Again, Baker Donelson had clear internal policies that prohibited Seawright and Alexander's outside business activities. Those clear policies notwithstanding, it took no corrective action against either, and Seawright remained a shareholder at least until May 2021. Baker Donelson disputes its knowledge

[7] 236, Alexander Seawright memo, at 18.

of Seawright and Alexander's outside business activities. The order reported at *In re Alexander Seawright Transportation, LLC*, No. 19-00217-NPO, 2019 WL 1282951, (Bankr. S.D. Miss. Mar. 18, 2019), which was public, contradicts that claim and shows that Baker Donelson did not fail to take corrective action because it did not know, but instead because it was okay with what Seawright and Alexander did. That the order itself does not say "anything about Baker Donelson's knowledge about anything" [319 at 9] is beside the point. The point is that the order is a matter of public record concerning a shareholder's outside business activities. It is relevant to issues the jury will decide.

The Receiver does not propose to use the evidence merely to argue that Seawright, having used one company to defraud, must have used another the same way (i.e., if he did it once he would do it again). As shown, the evidence has obvious non-propensity uses. The only rule that limits the evidence, then, is Rule 403, and only inasmuch as its prejudice outweighs its probity, making its use unfair. Baker Donelson argues the evidence's use is unfair, but its argument pretends the evidence has nothing to do with this case, which, as shown, is incorrect. The evidence is highly probative of issues in dispute, in particular whether Seawright and Alexander used the umbrella company Alexander Seawright LLC for fraud. Indeed, given their denials, it would be unfair to prevent the Receiver from presenting contradictory evidence.

CONCLUSION

For the reasons stated here and in her foregoing filings, the Court should grant the Receiver's motion in limine.

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.

February 25, 2026.

/s/ Kaja S. Elmer