

**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

**ALEXANDER SEAWRIGHT DEFENDANTS' MEMORANDUM
IN SUPPORT OF MOTION FOR ENTRY OF PROPOSED JUDGMENT**

Alexander Seawright, LLC, Brent Alexander, and Jon Seawright (the "Alexander Seawright Defendants") submit this memorandum in support of their motion and proposed judgment. *See* Alexander Seawright Defendants' Proposed Judgment (Ex. 1).

INTRODUCTION

Alexander Seawright Defendants respectfully request and move the Court for entry of the straightforward judgment called for by the jury's verdict. After five weeks of trial, the jury found for Alexander Seawright Defendants on all claims other than aiding and abetting, found \$1.4 million would "fairly compensate the receivership estate for injuries proximately caused" by the aiding and abetting, but found the Defendants "proved that the Receiver could have recovered [\$10 million] if the Receiver had taken reasonable steps to recover profits Madison Timber paid to investors who were 'net winners.'" [Doc. 402]. There is no dispute that if this Court enters a judgment based on the jury's verdict, the Court would enter a take-nothing judgment. The

applicable Rules require that the Court enter a straightforward judgment that is consistent with the verdict. The judgment should state only that “A jury trial was held, and, pursuant to the verdict, the Court has ordered that the plaintiff recover nothing and the action be dismissed on the merits.” *See* Ex. 1. Nothing further is necessary or appropriate.

ARGUMENT

I. The Rules require the Court to enter a judgment consistent with the jury verdict.

The federal rules require that the Court should promptly enter a straightforward judgment that is consistent with the jury’s verdict, and then, after the judgment is entered, the non-prevailing party may move for judgment as a matter of law under the “high standard required to enter judgment as a matter of law contrary to a jury verdict.” *Gia Tech. Inc. v. Recycled Prods. Corp.*, 175 F.3d 365, 371 (5th Cir. 1999); *see* Fed. R. Civ. P. 50(b).

Under the Rules, when the jury’s verdict is not internally inconsistent, as here, “the court *must approve*, for entry under Rule 58, an appropriate judgment on the verdict and answers.” Fed. R. Civ. P. 49(b)(2) (emphasis added). “[R]ule 58(2) and the [S]eventh [A]mendment *command* that judgment be entered on the verdict if the jury’s answers are clear and consistent, subject, of course, to the usual motions under rules 50 and 59 for judgment notwithstanding the verdict or a new trial.” *Robles v. Exxon Corp.*, 862 F.2d 1201, 1204 (5th Cir. 1989) (emphasis added). The Rules do not permit a “court to reform a jury’s decision on issues submitted to the jury” or “make findings contrary to the jury verdict.” *Gia Tech.*, 175 F.3d at 371.¹

¹ The Receiver has filed her own motion for entry of judgment. The Receiver’s motion, however, raises arguments that are Rule 50(b) or Rule 59 arguments that have no relation to the Court’s entry of a judgment that reflects the jury’s verdict. The Receiver would have the Court rewrite history and have an entirely different verdict. That is not the purpose of the judgment. The judgment must reflect the verdict. The Receiver’s arguments should be made in Rule 50(b) and/or Rule 59 motions. The Alexander Seawright Defendants will file a separate response in opposition to the Receiver’s motion for judgment with full briefing showing all the evidence and law that refutes the Receiver’s arguments.

Here, the jury’s verdict is clear and not internally inconsistent, including as to Defendants’² mitigation-of-damages defense. There is no dispute the jury’s verdict was clear, straightforward, and not internally inconsistent. *See* [Doc. 402] at ¶¶10, 11; *see* [Doc. 416]. “Under rule 58, therefore, the district court should [enter] a judgment on the verdict in favor of [Defendants].” *Robles*, 862 F.2d at 1204 (holding the district court erred in not entering a judgment consistent with the verdict). The Court should reject the Receiver’s judgment-as-a-matter-of-law arguments and enter a simple judgment consistent with the verdict. The Alexander Seawright Defendants have proposed such a judgment for the Court’s consideration. *See* Ex. 1.

II. The Court should enter a simple, “take-nothing” judgment that is consistent with the jury’s verdict.

The jury entered a straightforward, take-nothing verdict, so the Court should enter a straightforward, take-nothing judgment. The only way the judgment could be anything other than a take-nothing judgment is if the Court disregards the jury’s finding on mitigation, which would be improper. Even if the Court ignores the jury’s mitigation finding, however, the Court must still reduce the \$1.4 million liability of the Alexander Seawright Defendants by the amounts that Alexander and Seawright already paid in restitution and must account for the fact that the Alexander Seawright Timber Fund I victims have been made whole by the restitution and previous distributions. Moreover, the Court should offset the \$1.4 million by the amounts that the Receiver has already received in settlements, again resulting in a take-nothing judgment.

² The mitigation defense is applicable to all torts including intentional torts, as discussed below, and it is applicable to the Receiver’s claims against all the Defendants. The Alexander Seawright Defendants raised the mitigation defense in their answer, as the Receiver admitted during trial. *See, e.g.*, Cert. Tr. Day 16, at 108:12-18 (“the receiver is moving for a judgment as a matter of law under Rule 50(a) on defendants’ defense of failure to mitigate damages In Doc. 33, which is Brent Alexander, Jon Seawright, and Alexander Seawright, LLC’s answer, it would be part of the eighth defense”).

a. The jury’s mitigation finding results in a take-nothing judgment.

Again, the jury rendered a simple verdict. It found the Receiver should take nothing. It found the Alexander Seawright Defendants proximately caused \$1.4 million as a result of aiding and abetting, but that the Receiver “could have recovered” \$10 million “if the Receiver had taken reasonable steps to recover profits Madison Timber paid to investors who were ‘net winners’.” [Doc. 402] at ¶¶10, 11.³ As the Receiver testified at trial, “[t]hat’s just math.” Cert. Tr. Day 14, at 13, 47. The federal rules and the Seventh Amendment “command” that the Court enter the take-nothing verdict reflecting the jury verdict. *Robles*, 862 F.2d at 1204.

As shown by the evidentiary record and the law, there was clearly a “‘legally sufficient evidentiary basis for a reasonable jury to find’ as it did” on mitigation, which is the appropriate standard. *See Gia Tech.*, 175 F.3d at 371. The evidence was undisputed that the total net winnings from the Madison Timber Ponzi scheme were over \$15 million, and \$10 million of those net winnings came from 44 investors who had more than \$100,000 in net winnings. *See* Cert. Tr. Day 16, at 73:4-12. The evidence was undisputed that the Receiver could have requested, by letter or otherwise, that these 44 investors pay back their \$10 million in ill-gotten gains, but she simply chose not to. Cert. Tr. Day 14, at 67:16-17. “But [she] did ask one investor called Techwood to return its net profits,” and for that one investor that the Receiver asked, “they gave back” all net winnings. *Id.* at 67:18-68:6. In addition to the Receiver’s undisputed 100% success rate in recovering net winnings that she chose to ask for, it is undisputed that the only investor

³ The Alexander Seawright Defendants reserve the right to assert and do not waive the right to file a Rule 50(b) or other motion as to aiding and abetting, including to argue that the jury found the Alexander Seawright Defendants liable for a cause of action that does not exist under Mississippi law. *See* [Doc. 392] at 8 (citing *In re DePuy Orthopaedics*, 888 F.3d 753, 781 (5th Cir. 2018)).

with net winnings who testified at trial stated he would have returned his net winnings had the Receiver asked. Cert. Tr. Day 12, at 224:21-22 (“If I had been asked, I would have returned it”).

Under Mississippi law, the Receiver is “not allowed to recover for damages that [s]he did not take reasonable efforts to avoid,” *Manhattan Nursing & Rehab. Ctr., LLC v. Pace*, 134 So. 3d 810, 818 (Miss. Ct. App. 2014), and the jury unambiguously found that the Receiver “could have mitigated damages by taking reasonable steps to recover profits Madison Timber paid to investors who were ‘net winners’,” [Doc. 402] at ¶¶10, 11. The Court should not enter a judgment that is inconsistent with the jury’s verdict. Here, the Receiver’s proposed judgment is not only inconsistent and contrary to the jury’s verdict, but it is also based on alleged facts and evidence that are simply not in the record. *See, e.g., Coffel v. Stryker Corp.*, 284 F.3d 625, 630-31 (5th Cir. 2002) (any post-trial motion must be decided by “the evidence in the record”).⁴

The Receiver’s primary position is that there is no duty to mitigate damages for an intentional tort. That is wrong. First, however, it must be noted that the Receiver has waived any such argument because it was not asserted in response to the Court’s clear jury instruction on mitigation of damages. *See* Fed. R. Civ. P. 51(c)(1) (“A party who objects to an instruction . . . must . . . stat[e] distinctly the matter objected to and the grounds for the objection.”); *Jimenez v.*

⁴ The Receiver argues that the jury’s finding on mitigation was excessive, but her argument, which we will fully address in our response brief, is based on alleged facts that *she chose not to put in the record*. Instead, based on the record evidence, the jury determined that the Receiver could have mitigated \$10 million if she had taken “reasonable steps to recover profits Madison Timber paid to investors who were net winners.” Cert. Tr. Day 19 at, 11-12. The Receiver’s reduction analysis involves parties that were not net winners, including Alexander Seawright and Wayne Kelly, which as her expert witness testified, qualified as net losers. Cert. Tr. Day 13, at 31:17-24 (Receiver’s expert testifying they were net losers).

Wood County, 660 F.3d 841, 845 (5th Cir. 2011) (en banc) (“The objection must have been made on the specific ground raised on appeal”) (quotation marks omitted)).⁵

Second, and most importantly, the Mississippi Supreme Court has never drawn any distinction between intentional torts and negligence when it comes to the duty to mitigate damages. Instead, the Court regularly sets out a bright line rule requiring mitigation of damages for *any* tort claim: “Without question, a person injured in tort is required to take reasonable steps to mitigate his damages.” *Flight Line, Inc. v. Tanksley*, 608 So.2d 1149, 1162–63 (Miss. 1992). The Receiver claimed in this lawsuit to have been “injured in tort,” so under Mississippi law, she “[w]ithout question . . . is required to take reasonable steps to mitigate h[er] damages.” *Id.*

Mississippi courts apply mitigation of damages to “all kinds of cases.” In addition to the many like cases cited by Baker Donelson, in *Wall v. Swilley*, the Mississippi Supreme Court sanctioned the mitigation of damages defense when the plaintiff home purchaser sued the defendant home seller for fraudulently misrepresenting the condition of a home (an intentional tort). *Wall v. Swilley*, 562 So. 2d 1252, 1254 (Miss. 1990). In *JK v. RK*, the Supreme Court sanctioned the defense to mitigate “damages in a conversion action,” which is an intentional tort. *J.K. v. R.K.*, 30 So. 3d 290, 300 (Miss. 2009); *see also Smith v. Huntington Ingalls*, 363 F. Supp. 3d 711, 721 (S.D. Miss. 2019) (holding duty to mitigate in intentional tort of wrongful termination); *Gilbert v. Crosby*, 135 So. 201, 203 (Miss. 1931) (trespass and conversation). There is simply no basis for the Court to disregard the jury’s verdict on mitigation of damages.

⁵ The Alexander Seawright Defendants further adopt and incorporate by reference all arguments and authorities raised in Baker Donelson’s memorandum in support of their motion for a take-nothing judgment, including the mitigation of damages arguments. *See* [Doc. 413].

- b. If the Court disregards the jury’s mitigation verdict, the \$1.4 million must be reduced, first, by the restitution Alexander Seawright Defendants already paid and, second, by settlements with others.**

If the Court disregards the jury’s finding on mitigation, which it should not, then the Court should still enter a take-nothing judgment against the Alexander Seawright Defendants because any damages assessed against the Alexander Seawright Defendants must be reduced and offset by the restitution that Alexander and Seawright already paid, and then also by the settlements the Receiver obtained from other alleged joint tortfeasors on her aiding and abetting claims.

First, the Court should apply the restitution that Alexander and Seawright already paid to make their victims whole, which should also result in a take-nothing judgment. The undisputed evidence is that Alexander and Seawright’s attorneys worked with the U.S. Attorney’s office and the Receiver to determine the amount of losses of the Alexander Seawright Timber Fund I investors for purposes of determining the amount of restitution under 18 U.S.C. § 3664.⁶ The amount of restitution was the full amount needed to compensate all Alexander Seawright Timber Fund I investors for their losses. Because the restitution would have fully compensated and made whole all Alexander Seawright Timber Fund victims had the Receiver chosen to distribute it to them, the Court should enter a take-nothing verdict even if the mitigation defense is disregarded.

Alternatively, there is no legitimate dispute that any award against the Alexander Seawright Defendants for damages to the Receiver should be reduced, at a minimum, by \$977,044.52 that Alexander and Seawright already paid in restitution, which is in the Receiver’s

⁶ See Cert. Tr. Day 5, at 116:6-22; Cert. Tr. Day 9, at 180:11-16 (“My understanding with respect to our restitution is that is [sic.] intended for the victims of our crime.... That’s how the restitution amount was calculated, based on their loss.... It was just the Timber Fund investors”); Cert. Tr. Day 14, at 190:12-20 (Receiver testifying that the “restitution amount was calculated based on the losses of the investors in Alexander Seawright Timber Fund I”); *id.* at 193:16-25 (Receiver did not object to calculation and was paid and is holding the restitution).

possession. *See* J. Seawright Judgment (Ex. 2); and B. Alexander Judgment (Ex. 3). Under binding Mississippi law, “double recovery for the same harm is not permissible.” *City of Jackson v. Estate of Stewart*, 908 So. 2d 703, 712 (Miss. 2003). Under federal law, “any amount paid to a victim under an order of restitution shall be reduced by any amount later recovered as compensatory damages for the same loss by the victim in ... any Federal civil proceeding.” 18 U.S.C. § 3664(j)(2)(A). Again, the evidence is undisputed that the Receiver was involved in calculating, or at least approving, the amount of restitution to be paid, and Alexander and Seawright paid the restitution to the Receiver to make investors in Alexander Seawright Timber Fund I, LLC whole. *See* Cert. Tr. Day 5, at 116:6-22; Cert. Tr. Day 9, at 180:11-16; Cert. Tr. Day 14, at 190:12-20; *id.* at 193:16-25. The jury found that \$1.4 million—the amount lost by investors in the Alexander Seawright Timber Fund—was the amount of money that would “fairly compensate the receivership estate for injuries proximately caused by” the Alexander Seawright Defendants. [Doc. 402]. Thus, under Mississippi and federal law, any award against the Alexander Seawright Defendants in favor of the Receiver must be reduced at least by the \$977,044.52 those Defendants paid to the Receiver and which she possesses.⁷

Next, for the reasons stated in Baker Donelson’s memorandum, which is incorporated by reference, *if* the mitigation finding is disregarded (which it should not be), and if the restitution is not applied to fully satisfy all liability of the Alexander Seawright Defendants (which it should be), then any remaining amounts allegedly owed by the Alexander Seawright Defendants should be fully offset by the settlements the Receiver obtained from others alleged to have aided and

⁷ And of course, the evidence shows that the difference between \$1,400,000 and \$977,044.52 was already distributed to the Alexander Seawright Timber I, LLC victims, and so once the Receiver distributes the restitution amount paid by Alexander and Seawright, all investors of ASTFI will be made whole.

abetted her losses. “It has long been the practice in Mississippi that, when there are multiple potential defendants liable on a claim and a settlement is reached with some, but not all, defendants, those defendants who proceed to trial and suffer a judgment against them are entitled to credit on that judgment for those amounts received in settlement from entities not party to the litigation.” *Brown v. N. Jackson Nissan*, 856 So. 2d 692, 697-98 (Miss. Ct. App. 2003).

As the Mississippi Court of Appeals explained in *Brown*, a defendant accused of an intentional tort *is* entitled to a setoff for settlements previously obtained by the plaintiff:

¶ 21. By legislative enactment, the procedure for apportioning out monetary responsibility has been modified in certain instances where the plaintiff alleges that “fault” for his injuries is attributable to multiple entities. Miss. Code Ann. § 85–5–7 (Rev. 1999). In such circumstance, the law now contemplates that the jury will apportion liability on a formula that includes consideration of the percentage of “fault” attributable to the various entities, whether or not some particular entity is a party to the litigation and without regard to the terms of any pretrial settlement. Miss. Code Ann. § 85–5–7(2) and (3) (Rev. 1999). *However, for purposes of Section 85–5–7, the term “fault” is a defined term that specifically excludes “any tort which results from an act ... committed with a specific wrongful intent.”* Miss. Code Ann. § 85–5–7(1) (Rev. 1999). Section 85–5–7(6) preserves the common law concept of joint and several liability “on all who consciously and deliberately pursue a common plan or design to commit a tortious act....” Miss. Code Ann. § 85–5–7(6) (Rev. 1999).

Brown, 856 So. 2d at 697-98 (emphasis added). In *Brown*, because the defendant was accused of intentional torts, the Court concluded the case was “governed by Section 85–5–7(6) and, thus, not one that requires consideration of an apportionment of liability among the various alleged tortfeasors.” *Id.* Because the apportionment rule did not apply, the Court held that the “trial court properly applied long-standing principles of law regarding credits against the judgment....” *Id.*

Thus, Mississippi law *requires* that a defendant receive credit for prior settlements when the plaintiff asserts intentional torts. Here, the Receiver sued the Alexander Seawright Defendants and dozens of others for allegedly aiding and abetting Lamar Adams’ Ponzi scheme,

the jury found the Receiver suffered \$1.4 million in damages as a result of the Alexander Seawright Defendants' aiding and abetting, but "those damages have been paid in full" by settlements from other jointly and severally liable tortfeasors, and therefore, the "law of the State of Mississippi dictates that [the Court] should extinguish the claim." *Medlin v. Hazlehurst Emergency Physicians*, 889 So. 2d 496, 501 (Miss. 2004).⁸ Even if the Court disregards the mitigation verdict, and even if the Court does not fully offset the verdict by the payment of Alexander and Seawright's restitution, then the Court should still enter a take-nothing judgment after accounting for amounts the Receiver has already recovered in settlements with others.

III. The judgment should not include attorneys' fees.

The Court would err in awarding the Receiver attorneys' fees because the jury found she should be awarded \$0 in compensatory damages and \$0 in punitive damages. *See* [Doc. 402, 404]. The Fifth Circuit holds: "Mississippi law does not allow the recovery of attorney's fees where the insured recovers neither actual nor punitive damages." *Greer v. Burkhardt*, 58 F.3d 1070, 1075 (5th Cir. 1995). The Receiver can cite no Mississippi (or other) case where a jury awarded a net \$0 in damages and the plaintiff was awarded attorneys' fees. For this reason alone, it would be an abuse of the Court's discretion to award attorneys' fees to the Receiver.

Next, the Receiver cannot be awarded attorneys' fees in lieu of punitive damages under the Constitution and the applicable Mississippi punitive statute. The sole basis the Receiver cites for her attorneys' fees argument is that "[w]here punitive damages are awarded by the jury,

⁸ The Receiver claims her total damages are \$53 million. Following trial, however, the Receiver's damages against the Alexander Seawright Defendants are capped at \$1.4 million. There is no \$53 million. Mississippi precedent unequivocally holds that a jury's damages-determination fixes the amount of damages that a plaintiff is entitled to recover. Here, the jury fixed the amount for aiding and abetting to \$1.4 million. *Medlin*, 889 So. 2d at 499 (holding "the jury determines the amount of damages due to the plaintiff" and "the amount due then becomes fixed"). No Defendant in any case filed by the Receiver has been adjudged by any jury or Court to be liable for \$53 million.

attorneys' fees are justified." *Miss. Power & Light Co. v. Cook*, 832 So. 2d 474, 486 (Miss. 2002). Mississippi appellate courts have held that under certain circumstances which do not exist here,⁹ a "chancellor did not err in awarding attorney's fees *in lieu of* punitive damages." *Cronier v. ALR Partners, L.P.*, 309 So. 3d 556, 560 (Miss. Ct. App. 2020). The Receiver is asking the Court to increase the jury's \$0 punitive damages award to some unknown amount of punitive attorneys' fees. Doing so would violate the Constitution and the Mississippi statute.

Assessing punitive attorneys' fees instead of punitive damages would "directly conflict[] with the jury's express finding that \$0 in punitive damages should be awarded," and would therefore violate Alexander Seawright Defendants' Seventh Amendment and Due Process rights. *See, e.g. Vista Marketing, LLC v. Burkett*, 812 F.3d 954, 977 (11th Cir. 2016). The Seventh Amendment provides that "no fact tried by a jury, shall be otherwise re-examined in any Court of the United States," U.S. CONST. amend. VII, and the United States Supreme Court has interpreted that provision to mean increasing the jury's verdict is unconstitutional, *see Gasperini v. Ctr. For Humanities, Inc.*, 518 U.S. 415, 433 (1996). "Where, as here, the imposition of punitive damages is entirely discretionary, the Seventh Amendment precludes a court from increasing the jury's award." *Id.* (holding district court properly refused to award punitive damages and attorneys' fees when the jury returned a \$0 punitive damages award). The Receiver's requested additur to the jury's \$0 punitive damages award would violate the Seventh Amendment and should be rejected.

⁹ In each of the reported cases discussing this rule, the Mississippi chancellor first awarded compensatory damages to the plaintiff, which is required by the statute but is not the case here. *See* [Doc. 416] at 24 (citing *Greenlee v. Mitchell*, 607 So. 2d 97, 111-12 (Miss. 1992) (chancellor awarding \$21,376 in compensatory damages before considering attorneys' fees in lieu of punitives); *Aqua-Culture Tech. v. Holly*, 677 So. 2d 171, 183 (Miss. 1996) (chancellor awarding \$175,000 in compensatory damages).

Moreover, punitive damages were not appropriate under Miss. Code Ann. § 11-1-65, so attorneys' fees should not be awarded. The statute states that punitive damages may be awarded: "[i]f, but only if, *an award of compensatory damages has been made against a party.*" Miss. Code Ann. 11-1-65(1)(c); *see award*, BLACK'S LAW DICTIONARY (2013) (An "Award" means "[a] final judgment or decision, esp. one by an arbitrator or by a jury assessing damages"). There was no "award of compensatory damages" against the Alexander Seawright Defendants in this case. The jury awarded the Receiver \$0 in compensatory damages. Therefore, punitive damages are not "proper" under the statute, and the Receiver cannot recover what amounts to punitive attorneys' fees in lieu of punitive damages. The Receiver can cite no case where a plaintiff was awarded \$0 in compensatory damages and was still awarded attorneys' fees. *See* [Doc. 416] at 23-24. And the Fifth Circuit holds that even when a defendant is held liable for fraud, if there is a "take-nothing" verdict on compensatory damages, then the plaintiff is not entitled to recover punitive damages. *Bohnsack v. Varco, L.P.*, 668 F.3d 262, 281 (5th Cir. 2012).

Moreover, it would be an abuse of discretion and a violation of Miss. Code Ann. § 11-1-65 for the Court to award attorneys' fees when the jury found that \$0 in punitive damages should be awarded. The Receiver can cite no reported case where the jury awarded \$0 in punitive damages and the Court awarded attorney's fees. In all the Mississippi cases discussing the attorneys' fees in lieu of punitive damages rule, the chancellor (who was the finder of fact) decided to award attorneys' fees instead of punitive damages. *See* FN 9, *supra*. The Mississippi Supreme Court has never approved of a trial court effectively reversing a jury's \$0 punitive damages verdict by awarding punitive attorneys' fees instead. To do so would subvert the need for a jury.

Mississippi Code Annotated § 11-1-65 sets forth a comprehensive scheme for awarding punitive damages such that it does not violate Constitutional rights, and awarding attorneys' fees

in this case where the jury returned a \$0 punitive damages verdict would violate the statute and the Alexander Seawright Defendants' Constitutional rights. Under the statute, the Court is required to hold an evidentiary hearing to determine whether to send the punitive damages issue to the jury, the jury is required to consider certain factors, and, if the jury awards punitive damages, "[b]efore entering judgment for an award of punitive damages," the Court is then required to consider still more factors to determine whether the punitive damages award is justified. *See* Miss. Code Ann. 11-1-65. The jury considered the facts and found that punitive damages should not be awarded. It would be a violation of the statute and the Alexander Seawright Defendants' Due Process and Seventh Amendment rights for the Court to effectively reverse the jury's findings that the Alexander Seawright Defendants should not be punished with punitive damages and instead punish them with what amounts to punitive attorneys' fees.

IV. The judgment should not include interest.

For the reasons stated by Baker Donelson, the judgment should not include pre-judgment interest or any other interest. Neither the verdict nor the law support pre-judgment interest.

First, the jury returned a take-nothing verdict. There cannot be any interest on the \$0 that the jury awarded the Receiver.

Second, even if the jury had not rendered a take-nothing verdict, Mississippi law allows pre-judgment interest where the "amount due is liquidated when the claim is originally made." *Indem. Ins. Co. of N. Am. v. Guidant Mut. Ins. Co.*, 99 So. 3d 142, 157 (Miss. 2012). "Damages being 'liquidated' refers to damages that are set or determined by a contract when a breach occurs." *Benchmark Health Care Center, Inc. v. Cain*, 912 So. 2d 175, 183 (Miss. Ct. App. 2005). The Receiver's alleged tort damages were not "set or determined by a contract," and the Receiver does not even attempt an argument that they were. Her claims were not previously liquidated.

Finally, the Alexander Seawright Defendants can find no case where a jury refused to award punitive damages and the Court awarded pre-judgment interest. It would be an abuse of discretion for the Court to assess any pre-judgment interest when the jury found a net zero of compensatory damages and found no punitive damages should be assessed.

V. The judgment should not award the Receiver costs.

Finally, the Alexander Seawright Defendants request that the judgment not include a provision assessing the Receiver's costs to them. For the reasons stated by Baker Donelson, [Doc. 413] at 26, the Court's judgment should not assess costs against Defendants because Rule 54(d) calls for the assessment of costs only to the "prevailing party." "A zero on damages necessarily zeros out 'prevailing party' status." *Merritt Hawkins & Assoc. v. Gresham*, 861 F.3d 143, 155-56 (5th Cir. 2017).

Even if the Court were to disregard the jury's finding on mitigation and render something other than a take-nothing judgment, the Receiver is still not the prevailing party because the Rule requires a practical assessment of the relief the plaintiff sought and the relief the plaintiff obtained. The Receiver sought at least¹⁰ \$53.4 million in compensatory damages plus \$10 million in punitive damages against the Alexander Seawright Defendants for a total of \$63.4 million. The jury awarded her \$0. If the Court disregards the mitigation verdict, which it should not, and then also disregards both the restitution paid by the Alexander Seawright Defendants and the settlements with other alleged aiders and abettors (including Butler Snow in this very lawsuit), which it should not, then the award to the Receiver would be \$1.4 million out of a total of \$63.4 million, which is

¹⁰ As correctly stated by Baker Donelson, the Receiver actually sought treble damages over and above the \$54 million, and the Court granted summary judgment to Defendants on that claim. [Doc. 335] at 23.

approximately 2.2% of the damages she sought at trial. Under a practical review of this case, which is required, it would be an abuse of discretion to find the Receiver was the “prevailing party.”

CONCLUSION

The jury rendered a straightforward, take-nothing verdict, and the Court should therefore issue a straightforward, take-nothing judgment. The judgment should state only the bottom-line, summary finding of the jury: A jury trial was held, and, pursuant to the verdict, the Court has ordered that the Receiver recover nothing and the action be dismissed on the merits. *See* Ex. 1. Stating anything else would be inconsistent with the jury’s verdict and inappropriate.

Dated: June 12, 2026.

Respectfully submitted,

**ALEXANDER SEAWRIGHT, LLC;
BRENT ALEXANDER; JON SEAWRIGHT**

By: *s/ Cody C. Bailey*
One of Their Attorneys

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CERTIFICATE OF SERVICE

I, Cody C. Bailey, do hereby certify that I electronically filed the above with the Clerk of the Court using the ECF system which sent notification of such filing to all registered users.

Date: June 12, 2026.

s/ Cody C. Bailey

Cody C. Bailey