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 MEMORANDUM IN OPPOSITION TO BAKER DONELSON'S MOTION FOR ENTRY OF JUDGMENT

Alysson Mills, in her capacity as the court-appointed receiver for Arthur Lamar Adams and Madison Timber Properties, LLC respectfully opposes the motion for entry of judgment filed by Baker Donelson. [412]

INTRODUCTION

Baker Donelson's motion oversells its side of the story: Baker Donelson represents that the Receiver "sought $300 million and obtained $0." The reality is the Receiver asked the jury for $53.4 million but acknowledged that the Court would reduce $53.4 million to account for prior settlements as permitted by law. The jury found Baker Donelson liable two ways and awarded the Receiver a total of $2.8 million. $53.4 million-reduced-by-prior-settlements-as-permitted-by-law is not $300 million, and $2.8 million is not $0.

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There also are contradictions in Baker Donelson motion's arguments: Baker Donelson asks the Court to account for the Receiver's prior settlements for purposes of reducing Baker Donelson's liability; it says the Receiver has been so successful pursuing others she has nothing left to recover and so cannot recover from Baker Donelson. But it refuses to acknowledge that the Receiver's pursuits of and prior settlements with net winners reduces any amounts she could have recovered from net winners. In other words, on the one hand, Baker Donelson says the Receiver cannot possibly do more, and at the same time, on the other, it says she did not do enough.

By asking the Court to account for the Receiver's prior settlements for purposes of reducing Baker Donelson's liability, Baker Donelson necessarily concedes that the Court must account for prior settlements' effects, if any, on the jury's verdict prior to entering a judgment. This means that the Court must account for the Receiver's pursuits of persons who were net winners. The Court's post-trial accounting is a two-way street.

The jury heard the Receiver pursued net winners if she had a reason, but it was not permitted to hear any values obtained from those pursuits, because under Mississippi law a court accounts for such things post-trial. The jury found that if the Receiver pursued net winners, she would have recovered an additional $10,000,000. As the Receiver showed in her own motion, when the Court accounts for the Receiver's pursuits of persons who were net winners, as it must, $10,000,000 becomes -$1,220,587.28.

Baker Donelson says "Defendants, not the Receiver, are the prevailing party." But Baker Donelson represents itself as a prevailing party only by ignoring that the jury found it liable two ways and by refusing to account for the Receiver's pursuits of net winners.

Baker Donelson insists the Court has no choice but to enter Form AO 450 and check a box indicating a "recover nothing" judgment. But nothing requires this Court to enter Form AO 450.

This Court typically enters its own judgments, not Form AO 450. (The clerk's office is permitted to enter Form AO 450 when a court itself fails to enter a judgment.) The Receiver is not attached to any form of judgment, but it remains that any judgment, whatever its form, necessarily must account for the realities of a case. Baker Donelson's Form AO 450 does not account for the realities here.

RESPONSE TO BAKER DONELSON'S "FACTS"

Baker Donelson's motion includes a statement of "Facts" that is approximately 10-pages long. The Court knows this case as well as anyone; it does not require the Receiver to address Baker Donelson's version of events. Because, however, certain of Baker Donelson's alleged facts are, from the Receiver's perspective, selective or one-sided, she offers the following brief but specific responses.

1. Response to: "The Receiver Sought $300 Million and Obtained $0."

Baker Donelson represents that the Receiver "Sought $300 Million and Obtained $0." It then selectively recounts every stage of litigation to conclude "the Receiver forced these Defendants to incur nearly eight years of attorneys' fees and costs" for nothing.

The reality is, when the Receiver filed her complaint in December 2018, Seawright, Alexander, and Baker Donelson all denied any wrongdoing. Baker Donelson even called the Receiver's allegations meritless. Eventually the U.S. Attorney's Office indicted Seawright and Alexander for lying to their own investors, and they pleaded guilty to conspiracy to commit wire fraud. Baker Donelson nonetheless forcefully denied (indeed, forcefully denies) any responsibility for what it called (calls) Seawright and Alexander's "separate" business activities.

The reality is, at trial, the jury heard that for over seven years Seawright held up to 78 phony loan closings within the physical walls of Baker Donelson's Jackson office, and Baker

Donelson staff assisted him, including by notarizing timber deeds with phony legal descriptions that Seawright, a lawyer, never checked out. The jury found that Seawright and Alexander aided and abetted Lamar Adams; that Seawright and Alexander acted with Baker Donelson's apparent authority, such that Baker Donelson is vicariously liable for them; and that Baker Donelson is separately directly liable for its own negligent supervision.

The reality is the Receiver asked the jury for $53.4 million but acknowledged that the Court could reduce $53.4 million to account for prior settlements as permitted by law. The jury awarded the Receiver a total of $2.8 million. $53.4 million-reduced-by-prior-settlements-as-permitted-by-law is not $300 million, and $2.8 million is not $0.

The Receiver did not force Baker Donelson "to incur nearly eight years of attorneys' fees and costs" for nothing. The jury's liability findings and $2.8 million award are not nothing.

The Receiver does not doubt that Baker Donelson incurred substantial attorneys' fees and costs. Baker Donelson retained the most impressive counsel it could find, and over the years they filed multiple dispositive motions; retained seven experts, including three lawyers Baker Donelson paid to opine Baker Donelson did nothing wrong; and generally monitored and opposed most things the Receiver herself did, including in other cases. Together with UPS, it caused approximately one hundred depositions to be taken. Eight lawyers from two law firms appeared on Baker Donelson's behalf at trial alone.

The Receiver will never know what Baker Donelson paid for its defense, but whatever it is, she did not force it on Baker Donelson. The Receiver alleged two claims against Baker Donelson, for vicarious liability and negligent supervision, and the jury found it liable for both. It makes no sense to say the Receiver forced Baker Donelson to defend itself against claims that proved to be not only meritorious but winning.

2. Response to: "The Receiver's Other Settlements & Recoveries"

Baker Donelson summarizes the Receiver's recoveries from other third parties as if they are revelatory, but those amounts are not unknown. The Receiver itemizes them in her Receiver's report which she files in the Court's record every 90 days.

Baker Donelson summarizes testimony and argument at trial as if it is somehow inconsistent with anything the Receiver has said elsewhere, but it is not. The Receiver testified the Receivership Estate's damages are investors' total net losses, $53.4 million. She testified she filed numerous lawsuits against persons and entities who she believes share responsibility. Her counsel argued Seawright, Alexander, and Baker Donelson share responsibility, too. They asked the jury to award $53.4 million but acknowledged that the Court could reduce $53.4 million to account for settlements with third parties as permitted by law.

Baker Donelson observes that the Receiver separately has stated that, "[i]n the end, our total collections likely will be approximately $53 million, or 100% of total net losses." But that statement presumes future collections in the UPS case and this case.

Baker Donelson's apparent purpose is to argue the Receiver has been so successful pursuing others she has nothing left to recover and so cannot recover from Baker Donelson. Whatever any party makes of the Receiver's success, the law governs the Court's post-trial accounting. As shown below, nothing reduces Baker Donelson's $2.8 million liability because there is no risk of double recovery.

3. Response to: "The Parties' Competing Forms of Judgment"

The Court asked the parties to jointly propose a judgment, and the parties conferred but could not agree. Before the Receiver could even inform the Court of the impasse, Baker Donelson filed its motion, which it evidently had already drafted. It attached both its own proposed judgment, which is Form AO 450 indicating a "recover nothing" judgment, and a judgment that the Receiver's counsel drafted for discussion in response to Baker Donelson's proposed Form AO 450.

The Receiver is not wedded to the judgment her counsel drafted for discussion, but Baker Donelson's proposed Form AO 450 does not account for the realities here.

The parties' principal disagreement, as the Court can now see, is whether the Court's post-trial accounting is a two-way street. Baker Donelson itself asks the Court to account for the Receiver's prior settlements for purposes of reducing Baker Donelson's liability—but it refuses to acknowledge that the Receiver's pursuits of and prior settlements with net winners reduces any amounts she could have recovered from net winners. Given the necessity of a post-trial accounting, among other reasons, the Receiver cannot agree to Baker Donleson's proposed Form AO 450 indicating a "recover nothing" judgment.[1]

RESPONSE TO BAKER DONELSON'S "DISCUSSION"

After its statement of "Facts," Baker Donelson's motion "discusses" seven different items. The Receiver addresses each in turn.

[1] Baker Donelson also attacks the Receiver's website's post-trial update. The Receiver's website's post-trial update ought to have no bearing here: It is merely a statement, for the benefit of interested parties, on the Receiver's assessment of things; it is not legal argument for the Court's consideration. The Receiver has a duty to share information with interested parties, who include primarily victims, and she does that via her website. That Baker Donelson disagrees with something the Receiver says is nothing new. Baker Donelson says the Receiver "gratuitously encourages" others to sue Baker Donelson. She does not. The reality is that victims' claims against Baker Donelson were stayed by this litigation. When this litigation ends, nothing prevents those victims from pursuing their claims. Whether any assignment of claims to the Receiver affects the same or different claims by someone else is irrelevant to Baker Donelson's motion.

1. Response to: "The Failure to Mitigate Results in a No-Recovery Judgment."

a. Nothing "wipes out" the Receiver's $2.8 million judgment.

The jury found that, if the Receiver had pursued net winners, she would have recovered an additional $10,000,000. Baker Donelson argues the jury's finding results in a "take-nothing" or "no-recovery" judgment for the Receiver, but the argument ignores that there must be a post-trial accounting. The Receiver's pursuits of persons who were net winners necessarily reduces any amounts she could have recovered from them. As the Receiver showed in her own motion for entry of judgment, when the Court accounts for those pursuits, the $10,000,000 becomes -$1,220,587.28. [416 at 8-18]

At trial, Baker Donelson's counsel made sure that the jury would not hear the values the Receiver obtained from her pursuits of net winners. After the Receiver explained that she obtained real estate from a net winner and sold it for millions, counsel for Baker Donelson asked the Court for a "definitive ruling" that the jury could not hear such amounts. [May 12, 2026 at p. 142 ("Judge, I just wanted to make sure we have a definitive ruling that the amounts of settlement payments will be inadmissible in this case. … [F]or sales of property and whatnot. … I want to make sure that Your Honor's ruling applies to those amounts as well.")] The Court agreed. [May 12, 2026 at p. 143 ("Yes, it does.")] The jury heard the Receiver pursued net winners if she had a reason, but it was not permitted to hear any values she obtained from those pursuits.

By asking the Court to account for the Receiver's prior settlements prior to entering a judgment for purposes of reducing its own liability, Baker Donelson necessarily concedes that the Court must account for the Receiver's pursuits of net winners, too. The Court's post-trial accounting is a two-way street.

Because the Receiver's pursuits of net winners reduce $10,000,000 to -$1,220,587.28, among other reasons the Receiver's own motion explains, the jury's finding that the Receiver would have recovered an additional $10,000,000 if she pursued net winners does not result in a "take nothing" or "no recovery" judgment for the Receiver.

b. The doctrine of avoidable consequences does not apply here.

The Court's post-trial accounting ought to resolve the issue, but it warrants mention that the doctrine of avoidable consequences does not apply here.

Baker Donelson cites cases including *Pennzoil Producing Co. v. Offshore Exploration, Inc.*, 943 F.2d 1465 (5th Cir. 1991), for the proposition that the doctrine of avoidable consequences operates to limit what the Receiver can recover from Baker Donelson, but those cases make clear that the doctrine only applies where a plaintiff aggravates an injury after-the-fact, with the result that she incurs additional loss.[2]

The Fifth Circuit explained in *Pennzoil* that "[i]n order to successfully invoke the doctrine of avoidable consequences to limit a plaintiff's recovery, the defendant must show both 1) that the plaintiff has acted unreasonably after the injury has occurred, and 2) that the plaintiff's unreasonable actions aggravated his damage." *Id.* (citing *Tennessee Valley Sand & Gravel*, 598 F.2d 930, 933 (5th Cir. 1979)). Pennzoil's well was injured in an allision. *Id.* at 1468. Because it did not flare the well after the allision, the well continued to leak, and it lost $1.1 million; if it

[2] Baker Donelson properly acknowledges the distinction between the defense of comparative fault (which looks at whether a plaintiff's negligence contributed to an injury) and the doctrine of avoidable consequences (which looks at whether a plaintiff aggravated an injury after-the-fact). Baker Donelson thus acknowledges that a plaintiff have been in a position to avoid additional loss for the doctrine of avoidable consequences to apply. [412 at 19 ("The doctrine of avoidable consequences [mitigation] comes into play at a later stage. Where the defendant has already committed an actionable wrong, whether tort or breach of contract, then this doctrine limit's plaintiff's recovery by disallowing only those items of damages which *could reasonably have been averted*." (citing *Southport Transit Co.*, 234 F.2d at 952; emphasis added)]

had flared the well after the allision, its losses would have been $150,000 instead. *Id.* at 1468-69. The district court "properly refused to allow Pennzoil to recover for [a] portion of its loss" because "Pennzoil's *post-injury* conduct was unreasonable" in that "it caused [an additional] loss that could have been averted." *Id.* at 1475.

Here, by contrast, nothing the Receiver did or did not do caused the Receivership Estate an additional loss. The Receivership Estate's damages are investors' total net losses, $53.4 million. Total net losses are what they are; they were fixed at the time of the Ponzi scheme's collapse. Baker Donelson contends the Receiver should have pursued 293 unidentified net winners by blanket letter or otherwise, but any failure to pursue any net winner, or anyone for that matter, did not aggravate total net losses. Stated differently, total net losses are not greater because the Receiver did not pursue a net winner, or anyone. The doctrine of avoidable consequences, as articulated in *Pennzoil*, does not apply here.[3]

Baker Donelson also cites *Franzen v. Ellis Corp.*, 543 F.3d 420, 430–31 (7th Cir. 2008), and *Johnson v. Sw. Rsch. Inst.*, 384 F. Supp. 3d 722, 729 (W.D. Tex. 2019), but *Franzen* and *Johnson* are employment cases, and employment law has a specific statutory and common law framework that requires a wrongful termination plaintiff to attempt to obtain alternative employment.[4] That requirement is consistent with *Pennzoil*: When a plaintiff obtains alternative

[3] Applying the doctrine of avoidable consequences here also would lead to absurd results. Under both the Second and Third Restatements, when a plaintiff incurs expenses to avoid consequences of a tort, she may recover those expenses "whether or not the attempted mitigation is successful." Restatement (Third) of Torts: Remedies § 8, cmt n ("But so long as plaintiff does not act unreasonably, defendant is responsible for the costs and cannot complain that the choice turned out to be unsuccessful."). *See also id.* cmt. o (when a "plaintiff fails to mitigate damages, damages are limited to those that would have been suffered if the plaintiff had properly mitigated. It follows that these damages should include whatever amount the unattempted mitigation efforts would have cost, because those costs would have been part of the damages if plaintiff had mitigated"). This means the $10,000,000 in question would be further reduced by the Receiver's attorney fees and costs for all of the Receiver's cases for the last eight years, plus any hypothetical attorney fees and costs for any hypothetical pursuits.

[4] *E.g.*, *Sellers v. Delgado Coll.*, 902 F.2d 1189, 1191 (5th Cir. 1990) ("Although a successful Title VII plaintiff has a statutory duty to mitigate damages, the employer must prove that the plaintiff has failed to mitigate; to do so, the employer must demonstrate that comparable work was available and the plaintiff failed to use reasonable diligence to

employment, she avoids additional damages in the form of unpaid wages. When a plaintiff does not attempt to obtain alternative employment, her damages continue to grow. Here, by contrast, nothing the Receiver did or did not do affected investors' total net losses. Total net losses are what they are. The Receivership Estate's damages did not grow because the Receiver did or did not do something.

Whether the cases Baker Donelson cites speak to this case, it remains that to the extent any plaintiff has a duty to mitigate damages, Mississippi law only requires that she take reasonable steps to "remedy the faulty situation and prevent subsequent damage." *R. McKnight & Son v. C & I Ent.*, 100 So. 3d 1022, 1028 (Miss. Ct. App. 2012) (quoting *Tri–State Transit Co. v. Martin*, 179 So. 349, 350 (Miss. 1938) and *Travelers Indem. Co. v. Rawson*, 222 So. 2d 131, 135 (Miss.1969)). *See also Adams v. U.S. Homecrafters, Inc.*, 744 So. 2d 736, 740 (Miss. 1999) ("[T]he injured party is not precluded from recovery to the extent that he has made reasonable but unsuccessful efforts to avoid loss."). Reasonable steps, as recognized by Mississippi courts, have included following a doctor's orders regarding a course of recovery, *see, e.g., Flight Line, Inc. v. Tanksley*, 608 So. 2d 1149, 1163 (Miss. 1992) (collecting cases), and repairing a roof to stop a leak, *see, e.g., Rawson*, 222 So. 2d at 135. Plainly, following a doctor's orders and repairing a roof avoid aggravating an injury and incurring additional loss.

But those cases are not this case. There is no authority for the proposition that a plaintiff's duty to mitigate damages requires her to affirmatively pursue others, through litigation or otherwise.

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obtain it."); *Leland Sch. Dist. v. Brown*, 342 So. 3d 508, 519 (Miss. Ct. App. 2022) (relying on "general rule that an employee entitled to back pay has a duty to mitigate damages").

The Receiver showed in her own motion that "[t]he general rule is that 'injured parties need not ... institute and prosecute [law] suits' in order to mitigate damages." *Stone v. Satriana*, 41 P.3d 705, 712 (Colo. 2002) (quoting *Robinson v. Carney*, 632 A.2d 106, 108 (D.C. 1993) (alterations in original) (citing 2 Marilyn Minzer et al., Damages in Tort Actions § 16.22, at 16–34 & 35 (1992))). *See also Branch Banking & Tr. Co. v. Saiid Forouzan Rad*, No. 2:14-cv-01947, 2016 WL 4591749, at *5 (D. Nev. Sept. 1, 2016), *aff'd sub nom. Branch Banking & Tr. Co. v. Est. of Forouzan*, 727 F. App'x 239 (9th Cir. 2018) (same); *Stadheim v. Becking*, 290 N.W.2d 273, 274 (S.D. 1980) ("The law does not require a person to take affirmative legal action to prevent [the tortfeasor] from suffering the result of the tortious act.").

The Receiver furthermore showed that, in this case especially, whether the Receiver had a duty to do anything is a question of law for this Court. [416 at 6] A receiver's duty of care, like anyone's duty of care, requires careful consideration of policy matters. [416 at 6-7] "Juries are not instructed in, nor do they engage in, consideration of policy matters and the precedent which define the concept of duty." *Greer v. Key*, 428 So. 3d 333, 338 (Miss. 2026) (quoting *Donald v. Amoco Prod. Co.*, 735 So. 2d 161, 174 (Miss. 1999) (citing W. Page Keeton, Prosser and Keeton on Torts § 37 (5th ed. 1984)). Under the given set of facts and circumstances, the Receiver did not have the specific duty, as a matter of law, to indiscriminately pursue all net winners, by blanket letter or otherwise. [416 at 4-14]

c. The Receiver's arguments are not untimely.

At the close of evidence, the Receiver moved for judgment as a matter of law on Baker Donelson's failure to mitigate defense pursuant to Federal Rule of Civil Procedure 50(a), and the Court reserved ruling on it. [May 15, 2026 at p. 108 and p. 133] The Receiver later separately

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objected to the jury's failure to mitigate instruction and to the failure to mitigate question on the jury's verdict form. [May 18, 2026 at p. 26]

Baker Donelson complains that the Receiver did not specifically argue that failure to mitigate is not a defense to intentional torts, but neither the jury's failure to mitigate instruction nor its verdict form specifically addressed intentional torts. If they had, and if the Receiver had failed to object, the situation would be different. The fact is the Receiver forcefully argued failure to mitigate was not a defense to anything in this case. The Receiver did not waive her right to respond to Baker Donelson's argument that the jury's failure to mitigate finding "wipes out" Baker Donelson's liability for everything.

In any event, the question for the Court now is how to deal with the jury's verdict. Nothing prevents the Receiver from arguing the Court should deal with the jury's verdict one way or the other. Before the jury rendered a verdict, the question of how the Court should deal with the jury's verdict did not arise. Baker Donelson says the jury's failure to mitigate finding wipes out everything; the Receiver says it does not wipe out anything, but even if it wiped out Baker Donelson's direct liability for its own failure to supervise Seawright and Alexander, it would not wipe out Baker Donelson's vicarious liability for Seawright and Alexander's intentional tort.

The Receiver showed in her own motion that, although Mississippi courts have not addressed whether failure to mitigate is a defense to intentional torts, other states' courts have held it is not. [416 at 19] Consistent with those other states' courts' holdings, the Mississippi Supreme Court has held another's contributory or comparative negligence has no application in intentional tort cases. [416 at 19-20] Applying the same principles here, to the extent anything remains of the $10,000,000 in question, it has no effect on Baker Donelson's vicarious liability for Seawright and Alexander's aiding and abetting, which is an intentional tort. [416 at 20]

Baker Donelson contends the failure to mitigate defense applies in "all cases," but it misquotes the Official Commentary to the Restatement (Third) of Torts: Remedies § 8. Baker Donelson represents comment q to say the doctrine of avoidable consequences "applies . . . to intentional torts as well as to negligence."[5] In fact, comment q says, in full: "It applies, with a plaintiff-friendly modification, to intentional torts as well as to negligence." The "plaintiff-friendly modification" is the balance of the rule: a defendant must prove a plaintiff could have avoided the harm by reasonable effort or expenditure and without undue risk, difficulty, or embarrassment, and that the plaintiff intentionally or recklessly failed to do so.[6] The Receiver was not intentional or reckless in failing to mitigate damages. She filed this lawsuit and others and recovered tens of millions of dollars. Even by Baker Donelson's own analysis, the Receiver has been so successful pursuing others she has nothing left to recover.

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[5] Mississippi relies on the Restatement (Second) of Torts § 918. *See Yazoo & M. V. R. Co. v. Fields*, 195 So. 489, 490 (Miss. 1940); *Meridian Star v. Kay*, 41 So. 2d 746, 747 (Miss. 1949). The Restatement (Third) of Torts suggests minor alterations.

The Restatement (Second) of Torts § 918 Avoidable Consequences states:

> One is not prevented from recovering damages for a particular harm resulting from a tort if the tortfeasor intended the harm or was aware of it and was recklessly disregardful of it, unless the injured person with knowledge if the danger of the harm intentionally or heedlessly failed to protect his own interests.

The Restatement (Third) of Torts: Remedies § 8(b) Avoidable Consequences states:

> A plaintiff cannot recover damages for any item or increment of harm caused by defendant's intentional or reckless tort if defendant proves that, after the commission of the tort and after the plaintiff became aware of the tort and of that item or increment of harm (incurred or impending), the plaintiff could have avoided that item or increment of harm by reasonable effort or expenditure and without undue risk, difficulty, or embarrassment, and the plaintiff intentionally or recklessly failed to do so.

[6] The Official Commentary also clarifies that this is a carryover rule for intentional torts stated in the Restatement, Second: "that damages are reduced only if plaintiff is also intentional or reckless in failing to mitigate damages." *See* Restatement (Third) of Torts: Remedies § 8, cmt. l.

2. Response to: "Prior Settlements Result in a No-Recovery Judgment."

a. Nothing reduces the Receiver's $2.8 million judgment.

Baker Donelson asks the Court to account for the Receiver's prior settlements for purposes of reducing Baker Donelson's liability; it says the Receiver has been so successful pursuing others she has nothing left to recover and so cannot recover from Baker Donelson.

The Court properly instructed the jury: "You should not consider [prior] settlements or distributions or wonder at their amounts. The Court will prepare the judgment to be entered and will reduce Mills's damages by such amounts as permitted by law." Jury Instruction C-36. The question for the Court now is: Does the law permit the Court to reduce the $2.8 million judgment? The answer is it does not.

The Receiver's prior settlements do not offset Baker Donelson's liability because there is no risk of double recovery. "Double recovery is a tort doctrine that prevents unjust enrichment by precluding a recovery of the same damages multiple times or beyond 100% of the judgment." *R.K. v. J.K.*, 946 So. 2d 764, 777 (Miss. 2007). But double recovery only applies to recovery for the same claim. *Cascio v. Cascio Invs., LLC*, 327 So. 3d 59, 74 (Miss. 2021) (addressing argument that damages constitute double recovery: "a claimant cannot receive actual and nominal damages from the same claim"). All other recoveries are collateral. *Wright v. Royal Carpet Servs.*, 29 So. 3d 109, 113 (Miss. Ct. App. 2010) ("[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.").

The unrebutted evidence is that the Receivership Estate's total net losses were $53.4 million. If Baker Donelson is entitled to an offset, it only to the extent that the Receiver pursued the same claims against other third parties and her total recoveries exceed $53.4 million. The Receiver pursued the same claims in this case against Butler Snow, but she recovered only $9.5 million. The Receiver pursued similar claims against defendants in other of the Receiver's four aiding and abetting lawsuits, but her total recoveries from all defendants, including Butler Snow and UPS, which is not final, still is only $28.7 million.

Plainly there is no risk of double recovery by the Receivership Estate for the same claims. To the extent the Receiver recovered anything from other sources, those recoveries are collateral and so do not count, but, in any event, accounting for them the Receiver's total recoveries from any source still do not yet exceed $53.4 million.

Furthermore, even if there were a risk of double recovery, there is no offset to liability for negligent supervision because liability for negligent supervision is not joint and several. *See Krieser v. Hobbs*, 166 F.3d 736, 743 (5th Cir. 1999) (under Mississippi law "where liability is not joint-and-several, and each defendant instead bears liability for damages only proportionate to his own fault, there is no assessment of liability for damages common to the settling and non-settling defendants"); *see also id.* (observing that a settlement from one defendant and a judgment against another each "flows from a distinct source and is footed on a distinct basis"). Nothing reduces Baker Donelson's $1.4 million direct liability for its negligent supervision.

There also is no offset to liability for intentional torts. For intentional torts, a defendant is entitled to contribution from a joint tortfeasor, but even contribution requires a judgment. *Coleman Powermate, Inc. v. Rheem Mfg. Co.*, 880 So. 2d 329, 336 (Miss. 2004) ("Mississippi law now explicitly confers a right of contribution in tort to a defendant that is jointly liable with another party. This is contingent on there being a joint judgment against the defendants.") (quoting *Estate of Hunter v. General Motors Corp.*, 729 So.2d 1264, 1275–76 (Miss. 1999) ("At first blush, § 85–

5–7(4) appears to permit contribution... However, a closer reading of § 85–5–7 indicates that the Legislature did not intend to alter the old law set forth in § 85–5–5 (repealed) which provided for no contribution absent a joint judgment.”)).

Seawright and Alexander’s restitution payments (which in any event do not total $1.4 million) also do not otherwise offset Baker Donelson’s vicarious liability for Seawright and Alexander’s aiding and abetting Lamar Adams. The two things do not compensate the “same loss by the [same] victim.” [413 at 26 (quoting 18 U.S.C. §3664(j)(2)(A))] Seawright and Alexander’s restitution payments compensate investors in the Alexander Seawright Timber Fund (their distinct victims) for specific injuries to them (which throughout trial Seawright and Alexander contended are distinct). The $1.4 million the jury awarded the Receivership Estate instead compensates the Receivership Estate for separate injuries to it caused by Seawright and Alexander’s aiding and abetting Lamar Adams, different wrongful conduct.

Nothing, therefore, reduces Baker Donelson’s separate $1.4 million vicarious liability for Seawright and Alexander.

Finally, Baker Donelson’s direct liability for its own negligent supervision and its vicarious liability for Seawright and Alexander’s aiding and abetting Lamar Adams do not offset each other. For each claim, the jury separately was asked “what amount of money, if any, will fairly compensate the receivership estate for injuries proximately caused by” Baker Donelson and Seawright and Alexander, respectively. The two claims are not the same, and the jury awarded separate damages, $1.4 million, for each.

It follows that nothing reduces the Receiver’s $2.8 judgment against Baker Donelson.

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b. The jury did not "fix" the Receivership Estate's total damages for the entire Ponzi scheme at $1.4 million.

Baker Donelson contends the jury essentially "fixed" the Receiver's total damages for the entire Ponzi scheme at $1.4 million, therefore the starting point, for any reductions, is $1.4 million not $53.4 million.

There is no factual support or legal authority for the proposition.

Again, the unrebutted evidence is that the Receivership Estate's total net losses are $53.4 million. After years of disputing the Receiver's accounting of total net losses, Baker Donelson conceded them at trial. There is no debate today that the total damages to the Receivership Estate caused by the Ponzi scheme are $53.4 million.

The jury did not find something different. The jury did not find the total damages to the Receivership Estate caused by the Ponzi scheme are $1.4 million. The jury found that, of the total damages to the Receivership Estate, Seawright and Alexander proximately caused $1.4 million ("what amount of money, if any, will fairly compensate the receivership estate for injuries proximately caused by the liable Defendant(s)' wrongful conduct") and Baker Donelson proximately caused another $1.4 million ("what amount of money, if any, will fairly compensate the receivership estate for injuries proximately caused by Baker Donelson's negligent supervision").

It makes no sense to reduce either the $1.4 million caused by Seawright and Alexander or the $1.4 caused by Baker Donelson by a prior settlement paid by any other party. No other party paid a settlement to compensate the Receivership Estate for an injury caused by Seawright and Alexander or Baker Donelson.

The two cases on which Baker Donelson relies to argue the jury "fixed" the Receiver's total damages for the entire Ponzi scheme at $1.4 million do not at all support its argument.

Medley v. Webb, 288 So. 2d 846 (Miss. 1974), involved a multi-car accident. Another driver had already sued the plaintiff for the same multi-car accident but in a different case. The plaintiff filed a cross-claim against that driver and obtained a jury verdict in his favor. The plaintiff then sued a different driver, seeking additional damages. The court held that the prior jury verdict fixed the total damages for the accident and precluded the plaintiff's recovery of something more. The court noted that "no doubt that a plaintiff may sue one joint tort-feasor and settle his claim and reserve the right to sue another joint tort-feasor," *id.* at 848–49, but it distinguished the ordinary case (such as here) from the unusual case (such as before it) in which a jury verdict already fixed the total amount of damages possible. No prior jury verdict fixed the total amount of damages possible here.

Medlin v. Hazlehurst Emergency Physicians, 889 So. 2d 496 (Miss. 2004), also involved a car accident. There the plaintiff sued two drivers and their employers. The plaintiff settled with one driver and his employer for $300,000 and tried his claims against the remaining driver and his employer to a jury. The verdict form asked the jury: "What is the total amount of damages incurred by the plaintiff, Robin Medlin, as a result of the accident in question?" *Id.* The jury answered: "$300,000." Because the jury verdict fixed "the total amount of damages" "as a result of the accident in question" at $300,000, and because the plaintiff already recovered $300,000, there was nothing left for him to recover.

The verdict form in this case did not ask the jury: "What is the total amount damages to the Receivership Estate caused by the Ponzi scheme?" The verdict form asked: "What amount of money, if any, will fairly compensate the receivership estate for injuries proximately caused by Seawright and Alexander's intentional tort?" and, separately, "What amount of money, if any, will fairly compensate the receivership estate for injuries proximately caused by Baker Donelson's negligent supervision?" The jury's answers, its awards, are specific to the Defendants, based on their specific conduct. *Medley* and *Medlin* are inapplicable here.

3. Response to: "The Receiver Is Not a Prevailing Party."

Baker Donelson contends "Defendants, not the Receiver, are the prevailing party." But Baker Donelson can represent itself as a prevailing party only by ignoring that the jury found it liable two ways and refusing to account for the Receiver's pursuits of net winners.

The Receiver is the prevailing party because at the end of almost eight years of litigation she proved her claims. When she filed her complaint in December 2018, Baker Donelson called the Receiver's allegations meritless. Even after Seawright and Alexander were convicted of conspiracy to defraud, Baker Donelson continued to deny any responsibility. It retained the most impressive counsel it could find, and over the years they filed multiple dispositive motions; retained seven experts, including three lawyers Baker Donelson paid to opine Baker Donelson did nothing wrong; and generally monitored and opposed most things the Receiver herself did, including in other cases. Together with UPS, it caused approximately one hundred depositions to be taken. Eight lawyers from two law firms appeared on Baker Donelson's behalf at trial alone. But, at the end of the day, the Receiver alleged two claims against Baker Donelson, for vicarious liability and negligent supervision, and the jury found it liable for both and awarded the Receiver $2.8 million.

As already shown, nothing reduces the Receiver's $2.8 million judgment. The jury's finding that the Receiver would have recovered an additional $10,000,000 if she pursued net winners does not result in a "take nothing" or "no recovery" judgment. Among other reasons, the Receiver's pursuits of net winners reduce $10,000,000 to -$1,220,587.28.

The Court need not address the issue now, but after entry of a judgment, the Receiver is entitled to ask for costs. Rule 54(d) provides that "costs other than attorneys' fees shall be allowed as of course to the prevailing party," and "it is unnecessary for a party to prevail on every issue in order to be entitled," *DHI Grp., Inc. v. Kent*, No. 21-20274, 2022 WL 3755782, at *6 (5th Cir. Aug. 30, 2022) (quoting *Studiengesellschaft Kohle mbH v. Eastman Kodak Co.*, 713 F.2d 128, 131 (5th Cir. 1983) and *Fogleman v. ARAMCO*, 920 F.2d 278, 285 (5th Cir. 1991) (cleaned up)); *see also* Black's Law Dictionary (12th ed. 2024) (defining "prevailing party" as the party in whose favor a judgment is rendered, regardless of the amount of damages awarded); *Tempest Publ'g, Inc. v. Hacienda Recs. & Recording Studio, Inc.*, 141 F. Supp. 3d 712, 718 (S.D. Tex. 2015) ("Cases from this and other circuits consistently support shifting costs if the prevailing party obtains judgment on even a fraction of the claims advanced."); *Farrar v. Hobby*, 506 U.S. 103, 113 (1992) (plaintiff was prevailing party because even nominal damages award modified defendant's behavior for plaintiff's benefit).

There are no circumstances in which Baker Donelson would be entitled to costs. Baker Donelson does not cite any authority for the proposition. It cites *Burroughs Diesel, Inc. v. Baker Petrolite, LLC*, No. 2:18-CV-26-KS-MTP, 2020 WL 2044961 (S.D. Miss. Apr. 28, 2020), to suggest that it is a prevailing party because the jury did not award the Receiver $300 million. As already shown, Baker Donelson oversells its side of the damages story; it says the Receiver "sought $300 million and obtained $0," but $53.4 million-reduced-by-other-settlements-as-permitted-by-law is not $300 million, and $2.8 million is not $0. In any event, the court in *Burroughs* did not declare the defendant a prevailing party merely because the jury awarded the plaintiff less than asked. The court determined, under the unique circumstances of that case, that each side prevailed in part and called it a draw.

4. Response to: "A Form of Judgment Must be 'As Minimal As Possible.'"

Baker Donelson insists the Court has no choice but to enter Form AO 450 and check a box indicating a "recover nothing" judgment.

Setting aside that, for the reasons explained, the judgment is not a "recover nothing" judgment, nothing requires this Court to enter Form AO 450. The purpose of Form AO 450 is to ensure that at some point a judgment is entered—even if only by the clerk's office—so that the case may become appealable. *See Brown v. Fifth Third Bank*, 730 F.3d 698, 699 (7th Cir. 2013) (citing Charles A. Wright et al., Federal Practice and Procedure § 2785, p. 32 (3d ed. 2012) ("In some cases this document is prepared and entered by the clerk, while in others the court must approve the form of the judgment.")). *See also Burnley v. City of San Antonio*, 470 F.3d 189, 194 (5th Cir. 2006) (in "the case of certain more complicated verdicts, judgment is deemed entered by the court when the earlier of two events occurs: (1) when it is set forth on a separate document approved by the court and entered under FRCP 79(a); or (2) when 150 days have run from the clerk's entry of its nature and substance under Rule 79(a)").

This Court typically enters its own judgments, not Form AO 450, after a jury trial. *See, e.g.*, *Brown v. Miss. Dep't of Health*, No. 11-146 [54] (S.D. Miss. Oct. 31, 2012) (Reeves, J.); *Smith v. Tower Auto. Op. USA 1, LLC*, No. 13-967 [102] (S.D. Miss. Oct. 31, 2012) (Reeves, J.); *Mercator Health Adv. v. Monsour*, No. 13-28 [66] (S.D. Miss. June 11, 2014) (Reeves, J.); *James v. Shakur*, No. 17-641 [57] (S.D. Miss. Feb. 13, 2019) (Reeves, J.); *Pettway v. Asian Tire Factory Ltd*, No. 20-10 [168] (S.D. Miss. Dec. 2, 2021) (Reeves, J.). It should enter its own judgment here.

The Receiver is not attached to any form of judgment. She agrees that a judgment generally should be minimal. But it remains that any judgment, whatever its form, necessarily must account for the realities of a case. Baker Donelson's Form AO 450 does not account for the realities here.

The jury's verdict cannot be reduced to judgment without a post-trial accounting, which in turn requires the Court to apply the law to specific findings.

5. Response to: "The Receiver's Proposed Form Double-Counts Damages."

Baker Donelson argues a $2.8 million judgment "double counts" damages. There is no basis for the argument.

There are, in effect, two judgments for two claims for $1.4 million each. Together, the two judgments are $2.8 million. No one is double counting the same damages for the same claims. The Receiver alleged Baker Donelson was liable two different ways: She alleged it was vicariously liable for Seawright and Alexander and, separately, she alleged it was directly liable for its own failure to supervise Seawright and Alexander. The conduct underlying each claim is different, and the jury was instructed to separately award damages for each.

Baker Donelson cites no legal authority for the proposition that the damages for the two claims offset each other. They do not and cannot. Seawright and Alexander are jointly and severally liable for their intentional tort, and Baker Donelson is vicariously liable for Seawright and Alexander. Separately, Baker Donelson, by itself, is directly liable for its own negligent supervision.

6. Response to: "The Receiver's Proposed Form Incorrectly Assesses Interest."

The Court need not address the issue now, but after entry of a judgment, the Receiver is entitled to ask for interest.

The Receiver addressed the issue in her own motion. [416 at 22-24] Mississippi statutory law authorizes prejudgment interest, in a court's discretion. Miss. Code § 75–17–7 ("All other judgments or decrees shall bear interest at a per annum rate set by the judge. . ."); *Aetna Casualty & Surety Co. v. Doleac Elec. Co.*, 471 So. 2d 325, 331 (Miss. 1985); *Dunn v. Koehring Co.*, *Dunn* *v. Koehring Co.*, 546 F.2d 1193, 1201 (5th Cir. 1977) ("[U]nder Mississippi law the award of prejudgment interest rest[s] in the discretion of the awarding judge"); *see also In re Guardianship of Duckett*, 991 So. 2d 1165, 1182 (Miss. 2008) (affirming trial court's award of compound prejudgment interest, because compound interest fully compensates a party for the time value of overdue money).

Mississippi case law additionally authorizes prejudgment interest in this case because of the availability of punitive damages. *Aetna Cas. & Sur. Co. v. Hood*, 68 F.3d 467 (5th Cir. 1995) (citing *Moss Point v. Miller*, 608 So. 2d 1332, 1336 n. 4 (Miss. 1992) ("Prejudgment interest may be granted (1) pursuant to a statute, (2) if a provision in a contract provides or (3) where the proof is sufficient to support an award of punitive damages")). The jury did not award monetary punitive damages, but it did find the Receiver proved her punitive damages claims. [404]

Contrary to Baker Donelson's argument, the fact that a claim is unliquidated does not foreclose interest on it. *Microtek Med., Inc. v. 3M Co.*, 942 So. 2d 122, 132 (Miss. 2006) ("[W]e can envision cases where, in the discretion of the trial court interest should be allowed although the amount of the loss is in dispute and for this reason we do not foreclose the allowance of interest in every case where the claim is unliquidated.") (quoting *Simpson v. State Farm Fire & Casualty Co.*, 564 So. 2d 1374, 1381 (Miss. 1990)).[7]

7. Response to: "The Receiver's Proposed Form Omits Dismissed Claims."

Baker Donelson contends the judgment the Receiver's counsel drafted for discussion was flawed because it omits dismiss claims, but it cites no legal authority for the proposition that any

[7] The plain language of the statute ("All other judgments or decrees. . ." following "All judgments or decrees founded on any sale or contract. . .") means that prejudgment interest can be applied to both contract claims (i.e. claims with liquidated damages) and non-contract claims (i.e. claims without liquidated damages). A reading of the statute foreclosing all tort claims from prejudgment interest simply because the damages are not determined by contract would read the second sentence out of the statute and lead to an absurd result.

claims not submitted to the jury should be a part of the judgment in question. To the extent the Court already dismissed a claim, a separate ruling or order already accounts for it. Accounting for rulings or orders that preceded the jury's verdict undermines Baker Donelson's own argument that any judgment must be minimal, something it acknowledges.

CONCLUSION

The jury awarded the Receiver a total of $2.8 million, and nothing reduces Baker Donelson's liability for it. The Receiver is entitled to a $2.8 judgment in her favor.

Respectfully submitted,

/s/ Lilli Evans Bass

BROWN BASS & JETER, PLLC
Lilli Evans Bass, Miss. Bar No. 102896
1755 Lelia Drive, Suite 400
Jackson, Mississippi 39216
Tel: 601-487-8448
Fax: 601-510-9934
bass@bbjlawyers.com

/s/ Kaja S. Elmer

FISHMAN HAYGOOD, LLP
Admitted pro hac vice
Brent B. Barriere
Kaja S. Elmer
Maggie Daly
201 St. Charles Avenue, Suite 4600
New Orleans, Louisiana 70170
Tel: 504-586-5253
Fax: 504-586-5250
bbarriere@fishmanhaygood.com
kelmer@fishmanhaygood.com
mdaly@fishmanhaygood.com

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.

June 18, 2026 */s/ Kaja S. Elmer*