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.

Hon. Carlton W. Reeves, District Judge
Hon. Bradley W. Rath, Magistrate Judge

Case No. 3:18-cv-00866-CWR-BWR

BAKER, DONELSON, BEARMAN, CALDWELL & BERKOWITZ PC'S MEMORANDUM OF LAW IN RESPONSE TO THE RECEIVER'S MOTION FOR ENTRY OF JUDGMENT

Craig D. Singer (*pro hac vice*)
Charles Davant (*pro hac vice*)
Benjamin W. Graham (*pro hac vice*)
William M. Schmidt (*pro hac vice*)
Paloma Cipolla Moguilevsky (*pro hac vice*)
C. Mark Aneke (*pro hac vice*)
WILLIAMS & CONNOLLY LLP
680 Maine Avenue, S.W.
Washington, DC 20024
Tel.: (202) 434-5000
Fax: (202) 434-5029
Email: csinger@wc.com

James J. Crongeyer, Jr. (MSB #10536)
James M. Tyrone (MSB #102381)
WATKINS & EAGER PLLC
400 East Capitol Street, Suite 300 (39201)
Post Office Box 650
Jackson, MS 39205
Tel.: (601) 965-1900
Fax: (601) 965-1901
Email: jcrongeyer@watkinseager.com

Counsel for Defendant Baker, Donelson, Bearman, Caldwell & Berkowitz PC

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INTRODUCTION

After a four-week trial, "the jury wanted the plaintiff[] to walk away with" zero dollars. *Pettway v. Asian Tire Factory*, 2021 WL 5751793, at *1 (S.D. Miss. Dec. 2, 2021) (Reeves, J.). The jury found the damages proximately caused by Alexander or Seawright—or by Baker Donelson's alleged negligent supervision of them—were $1.4 million, precisely the amount of claimed losses to the investors in Alexander Seawright Timber Fund I, LLC. The jury found the Receiver, if she had exercised reasonable diligence to mitigate her damages, could have avoided several times that amount of losses: $10 million. The jury wanted the Receiver to take nothing. The Court should enter judgment consistent with the jury's verdict.

With her motion (ECF No. 415), the Receiver asks the Court to supplant the jury's zero-dollar verdict with a "judgment" of $2.8 million, plus interest and fees. She principally argues the jury had no basis for its mitigation finding, but these are Rule 50(b) arguments that should be taken up ***post***-judgment. They should not delay the Court's entry of judgment on the verdict the jury actually rendered. *See* **Part I**.

In any event, the Receiver's arguments are wrong on the merits. As the Court properly instructed the jury, the Receiver was required to take reasonable steps to mitigate her damages, just like every other plaintiff. The jury had ample evidence the Receiver acted unreasonably, including by failing even to learn the identities of the net winners, to quantify the net winners' phony profits, or to ask the net winners to return the money stolen from victims. The jury heard evidence the net winners' phony profits totaled more than $15 million, of which $10 million went to net winners with individual profits over $100,000. And the jury heard evidence individuals and entities who received phony profits from Madison Timber, including many charities and the lone net winner the Receiver chose to pursue, repaid 100% of that money to the Receiver when she requested it. The jury's finding the Receiver failed to mitigate $10 million of damages had more than sufficient basis in the trial record and the law. The Receiver's arguments to the contrary are waived because she failed to raise them under Rule 50(a), or are meritless, or both. The Court should not disturb the jury's finding. *See* **Part II**.

Nor is there any basis for the Court to reduce the $10 million the jury found. The Receiver seeks "remittitur," but that is a doctrine that reduces a jury's damages award. The Receiver cites no case—and Baker Donelson is aware of none—in which a court used remittitur to ***increase*** a jury's damages verdict or modify a jury's failure-to-mitigate finding. Doing so would violate the Seventh Amendment and settled precedent. *See* **Part III**.

The Receiver not only seeks to reduce improperly the jury's $10 million failure-to-mitigate finding, she also seeks to increase her damages to $2.8 million by double counting the $1.4 million. That was not the jury's verdict. *See* **Part IV**.

Finally, the Receiver is not entitled to costs or attorney fees against Baker Donelson because she is not the prevailing party and she obtained no punitive damages. Nor can she obtain prejudgment interest, both because there are no damages from which interest could run and because the Receiver's claim was not liquidated prior to judgment. *See* **Part V**.

* * *

Baker Donelson has multiple arguments (not yet ripe and not yet raised in the pending motions) that would necessitate judgment for defendants even if the Receiver could convince the Court to relieve her from the jury's finding that she failed to mitigate $10 million of damages. Baker Donelson will make those arguments at the appropriate time, if necessary. But to advise the Court now, those arguments include at least the following, any one of which would require a finding of zero liability against Baker Donelson:

(1) the jury's sole finding of liability against Alexander and Seawright was for aiding and abetting, a theory of liability that does not exist under Mississippi law, was

instructed under the wrong standard of proof (even in the jurisdictions that recognize the tort), and which the evidence did not support; and, absent a predicate finding of liability against Alexander and Seawright, there can be no liability against Baker Donelson;

(2) no evidence exists to support a finding Baker Donelson is vicariously liable on a theory of apparent authority, including because there is no evidence Lamar Adams or any investor ***relied*** on any misimpression Alexander Seawright Timber Fund I, LLC was authorized by Baker Donelson or was a Baker Donelson business;

(3) no evidence exists to support a finding of negligent supervision against the firm, including because, as the jury found, Alexander and Seawright were not acting within the scope of their employment with Baker Donelson when they ran their timber fund;

(4) the defense of *in pari delicto* barred the Receiver's claims because the evidence at trial confirmed Lamar Adams was the primary wrongdoer; and

(5) assuming liability, the evidence cannot support any finding of damages proximately caused by the firm's negligent supervision of intentional tortfeasors.

For purposes of the current motion practice, the Court need not consider these, or other Rule 50(b) arguments Defendants may make, or the Receiver's Rule 50(b) arguments. The only question for present purposes is what judgment should be entered on the jury's verdict, subject to any post-trial motions the parties may later choose to file. The answer is straightforward: The Court should enter a take-nothing judgment in the form Baker Donelson has proposed. *See* ECF No. 412-1.

ARGUMENT

I. THE COURT SHOULD ENTER JUDGMENT ON THE JURY'S VERDICT BEFORE ENTERTAINING THE RECEIVER'S RULE 50 ARGUMENTS.

The Court directed the parties to confer on the form of judgment. The parties were unable to reach agreement and notified the Court they "therefore w[ould] file competing motions for entry of judgment with their respective forms of judgment." Ex. A. Baker Donelson filed its motion the same day, addressing the form of judgment. *See* ECF No. 412. The Receiver's motion does not propose any form of judgment; instead, it asks the Court to set aside the jury's verdict on her failure to mitigate. That is a Rule 50 argument, seeking judgment as a matter of law because the jury's verdict allegedly lacked a "legally sufficient evidentiary basis." Fed. R. Civ. P. 50. Rule 50(b) "sets forth the procedural requirements for renewing a sufficiency of the evidence challenge ***after the jury verdict and entry of judgment***." *Unitherm Food Sys., Inc. v. Swift-Eckrich, Inc.*, 546 U.S. 394, 400 (2006) (emphasis added).

The Receiver's motion should be entertained after entry of judgment, not before. Baker Donelson also has arguments to make under Rule 50 and will do so "[n]o later than 28 days after the entry of judgment." Fed. R. Civ. P. 50(b). But at this stage the Federal Rules of Civil Procedure direct "the court must approve, for entry under Rule 58, an appropriate judgment on the verdict and answers." Fed. R. Civ. P. 49(b)(2); *see also Robles v. Exxon Corp.*, 862 F.2d 1201, 1204 (5th Cir. 1989). Rules 49 and 58 do not allow "a district court to reform a jury's decision" or "to make findings contrary to the jury verdict," as the Receiver requests. *Gaia Techs. Inc. v. Recycled Prods. Corp.*, 175 F.3d 365, 370–71 (5th Cir. 1999).

II. UNDER RULE 50, THE COURT SHOULD NOT SET ASIDE THE JURY'S FINDING THE RECEIVER FAILED TO MITIGATE

The Receiver moves for judgment as a matter of law pursuant to Rule 50(b). She asks the Court to set aside the jury's verdict she failed to mitigate her damages.

On such motions, the Court's "review of a jury's verdict is 'especially deferential.'" *OneBeacon Ins. Co. v. T. Wade Welch & Assocs.*, 841 F.3d 669, 675 (5th Cir. 2016) (quoting *SMI Owen Steel Co. v. Marsh U.S.A., Inc.*, 520 F.3d 432, 437 (5th Cir. 2008)). "A litigant cannot obtain judgment as a matter of law unless the facts and inferences point so strongly and overwhelmingly in the movant's favor that reasonable jurors could not reach a contrary conclusion." *Id.* (internal quotation marks omitted). The Court must "also draw all reasonable inferences in the light most favorable to the verdict and cannot substitute other inferences that we might regard as more reasonable." *Id.* (citing *Westlake Petrochems., L.L.C. v. United Polychem, Inc.*, 688 F.3d 232, 239 (5th Cir. 2012)). "[I]t is the function of the jury as the traditional finder of the facts, and not for the Court, to weigh conflicting evidence and inferences, and determine the credibility of witnesses." *Roman v. W. Mfg., Inc.*, 691 F.3d 686, 692 (5th Cir. 2012).

Under that standard, the Receiver's arguments cannot prevail. Not only was the jury's mitigation verdict not unreasonable, but it was also based on overwhelming evidence at trial.

A. The Court Correctly Permitted the Jury to Decide Mitigation

The Court did not err when it permitted the jury to consider the defense of mitigation. "When a trustee prosecutes a right of action derived from the debtor, the trustee stands in the shoes of the debtor" and "is subject to all defenses available against the debtor[.]" *In re Segerstrom*, 247 F.3d 218, 224 (5th Cir. 2001); *see also, e.g.*, *In re Texas Pig Stands, Inc.*, 610 F.3d 937, 943 (5th Cir. 2010) (the law is "fully consistent with holding [bankruptcy] trustees personally responsible for their professional conduct to the same extent as any other actors under the law"). "Under Mississippi law, an injured plaintiff may not recover for damages that he did not take reasonable efforts to avoid." *Munn v. Algee*, 924 F.2d 568, 574 n.9 (5th Cir. 1991).

The Receiver claimed as her damages "the debts of the Receivership Estate to investors." ECF No. 57 at 3. When appointing the Receiver, the Court ordered that she "pursue and preserve all of [the Receivership Estate's] claims" and granted her the "powers and duties" to "investigate" and "bring" those claims. ECF No. 33, Order Appointing Receiver (Case No. 3:18-cv-252) at 5, 6, 9. In its appointment order, this Court also specifically contemplated this process "may involve clawing back funds from the connected and powerful" as it assessed the suitability of applicants who applied to serve as Receiver. *Id.* at 3. The Receiver admittedly possessed and exercised claw-back power—she just neglected to exercise it against the net winners who were holding $15 million stolen from victims.

As the Fifth Circuit observed, "[t]he trustee of a bankrupt Ponzi scheme typically files fraudulent transfer claims against 'net winner' investors to claw back profits they have received." *In re Positive Health Mgmt.*, 769 F.3d 899, 908 (5th Cir. 2014). "A fraudulent transfer action against innocent 'winning' investors, commonly referred to as a 'claw-back' action, is the most well-defined claim a receiver possesses." J. Parrish, *Innocence Lost: Fraudulent Transfer Actions Against Innocent Investors of a Ponzi Scheme*, 27 UTAH B.J. 11, 11 (Jan./Feb. 2014); *see, also, e.g.*, *Wiand v. ATC Brokers Ltd.*, 96 F.4th 1303, 1309 (11th Cir. 2024) ("[R]eceivers may maintain fraudulent-transfer claims as a matter of course."); *Wiand v. Morgan*, 919 F. Supp. 2d 1342, 1348 (M.D. Fla. 2013) ("The role of the Receiver in this case, and similar cases, is to [] bring suits under [Uniform Fraudulent Transfer Act] against ponzi scheme investors to the extent that investors have received payments in excess of the amounts invested and those payments are avoidable as fraudulent transfers.").

Against the weight of that authority, the Receiver asks the Court to conclude she had no claw-back duty, so the jury could not find she breached such a duty. None of her arguments is persuasive.

First, the Receiver suggests she might not have "a duty to do anything" at all simply because she is an equity receiver appointed by this Court. Br. 6. That argument is utterly unsupported and, indeed, frivolous. The Receiver chose to bring a claim against Baker Donelson as a plaintiff, and like any other plaintiff she cannot recover for damages she—the Receiver—could have avoided through reasonable efforts. Like trustees, receivers are subject to all of the defenses available against the estate, including failure to mitigate. *See In re Segerstrom*, 247

F.3d at 224. Under Mississippi law, a plaintiff cannot recover damages she failed to mitigate. *Munn*, 924 F.2d at 574 n.9.

Second, the Receiver argues she had no "duty to file clawback suits against all net winners[.]" ECF No. 416, Receiver's Mem. in Support of Her Motion for Entry of Judgment ("Br.") at 5. That is a red herring the Receiver cannot let go. As Baker Donelson has explained many times, both before and during trial, "[t]he issue is not whether the Receiver 'had a duty to sue' to recover these phony profits"—much less to sue "all" net winners—"but whether it was reasonable of her to do nothing—no investigation, no request to return phony profits, no demand letters, no clawback claims—to mitigate her alleged damages." ECF No. 261 at 10; Ex. B, Trial Tr. (May 12) at 73; Ex. C, Trial Tr. (May 15) at 115.

Third, the Receiver argues she "did not have the specific duty" to engage in an "indiscriminate pursuit of up to 293 net winners." Br. 7.[1] Again, the Receiver misses the point. Defendants have never advocated for an "indiscriminate pursuit." Defendants persuaded the jury the Receiver failed to take "***reasonable steps*** to recover profits Madison Timber paid to investors who were net winners." Ex. D, Trial Tr. (May 19) at 176 (emphasis added). Among the reasonable steps she failed to take, the Receiver did not ask net winners to return their phony profits—or even try to figure out who the net winners were.

At trial, the Receiver agreed "the problem [she] mentioned" of pursuing people with minimal net winnings is "solved if you just only ask people who had $100,000 or more of net winnings to give back." Ex. B, Trial Tr. (May 12) at 75 ("A. Sure."). The jury then heard there

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[1] There were not 293 net winners; 293 is the total number of investors Ms. Ingram identified, including both winners and losers. This is a mistake the Receiver's counsel made and then corrected at trial. *See* Ex. C, Trial Tr. (May 15) at 74–76 (Mr. Barriere: "I'm sorry. I had thought you suggested those were net winners. Those were just the total number of investors at the time of collapse . . .").

were 44 investors who "had more than $100,000 of net winnings" and that "the total . . . was about 10 million[.]" Ex. C, Trial Tr. (May 15) at 73. Of the $15,235,089.25 in net winnings the Receiver did not recover, *id.*, the jury concluded she could have reduced her alleged damages by $10 million. As the Fifth Circuit has held, a "jury could . . . reasonably f[i]nd that [a plaintiff] failed to mitigate" where, as here, she "did not attempt" to reduce her damages through an available means. *West v. Nabors Drilling USA, Inc.*, 330 F.3d 379, 394 (5th Cir. 2003).

Finally, the Receiver contends that her "duty of care, like anyone's duty of care, requires careful consideration of policy matters." Br. 6. She does not specify what "policy matters" are at issue, nor make any argument based on them. If there were policy reasons for the Receiver not to ask investors for their net winnings back, she could have explained them to the jury. She did not because policy considerations cut against her. There are no real profits in a Ponzi scheme. All of the $15 million of "profits" enjoyed by the net winners the Receiver never contacted was money stolen from victims. When marshalling the assets of the estate, "[t]he trustee of a bankrupt Ponzi scheme typically files fraudulent transfer claims against 'net winner' investors to claw back profits they have received." *In re Positive Health Mgmt.*, 769 F.3d at 908; *see also* ECF No. 33, Order Appointing Receiver (Case No. 3:18-cv-252) at 3 (recognizing the receivership "may involve clawing back funds from the connected and powerful").

In sum, the Receiver—like any plaintiff pursuing Mississippi law claims—cannot recover damages she reasonably could have avoided. The Court correctly permitted the jury to consider whether the Receiver took reasonable steps to mitigate her damages.

B. The Evidence Was Sufficient for the Jury's Verdict

Mitigation is a quintessential fact issue for the jury. *Smith v. Huntington Ingalls Inc.*, 363 F. Supp. 3d 711, 721 (S.D. Miss. 2019) ("Whether [the plaintiff's] conduct in seeking employment and otherwise attempting to mitigate his damages was reasonable is a question for the finder of fact."). That is because "[w]hether an injured person has mitigated his damages requires a factual assessment of the reasonableness of his conduct." *Hill v. City of Pontotoc, Miss.*, 993 F.2d 422, 427 (5th Cir. 1993). On a motion under Rule 50(b), the movant must prove "there exists 'no legally sufficient evidentiary basis for a reasonable jury to find' as it did." *Gaia Techs. Inc.*, 175 F.3d at 371 (quoting Fed. R. Civ. P. 50(a)). "[I]t is the function of the jury as the traditional finder of the facts, and not for the Court, to weigh conflicting evidence and inferences, and determine the credibility of witnesses." *Roman*, 691 F.3d at 692. When looking back at the trial evidence, the Court must "draw all reasonable inferences in the light most favorable to the verdict and cannot substitute other inferences that [the court] might regard as more reasonable." *E.E.O.C. v. Boh Bros. Const. Co., L.L.C.*, 731 F.3d 444, 451 (5th Cir. 2013).

There was more than sufficient evidence to support the jury's conclusion the Receiver breached her duty to mitigate. The Receiver knew, from her own accounting, that at least "[a] few dozen" of the investors at the time of collapse had profits that exceeded their losses—i.e., that they were net winners. Ex. B, Trial Tr. (May 12) at 68. She admittedly could see that some of them received "[h]undreds of thousands of dollars of phony net profits." *Id.* at 69. But she elected not to calculate the amounts. *Id.* at 68–70 ("Q. But then you stopped the analysis when you realized he was a net winner, so you didn't need to know the amount of his net winnings . . . A. I never went to each net winner and said, you know, how much are they – I never did that, no."). Instead, her accounting simply reports "Priority 1" losses for each net winner as zero. *See* D-1540. The Receiver did not seek the return of phony profits held by the scores of net winners, and she never even "tried to make a list of all the net winners." Ex. B, Trial Tr. (May 12) at 72.

Defense expert Donna Ingram, a certified public accountant, determined and told the jury: (i) there were at least 293 investors in Madison Timber; (ii) there were "$15,235,089.25" in net winnings stolen from victims and held as purported profits by net winners whom the Receiver chose not to ask to return any money; (iii) of those, there were “about 10 million” in net winnings held by 44 investors who each individually “had more than $100,000 of net winnings”; and (iv) there were “just under $6 million” of net winnings easily calculable from the Receiver’s own partial accounting. Ex. C, Trial Tr. (May 15) at 70, 73. The jury concluded the Receiver failed to mitigate her damages in the amount of $10 million, consistent with the amount of stolen funds in the hands of the 44 net winners with more than $100,000 of phony profits.

The Receiver told the jury she “had the power to ask” “[p]eople who got money from Madison Timber” “to give it back.” Ex. B, Trial Tr. (May 12) at 64. She exercised that power against churches and charities, sending a “demand letter” to “anyone” who received a donation from Adams or Madison Timber. *Id.* at 64–65. The Receiver demanded money back from “Operation Grace World Missions,” the “Ole Miss Athletic Foundation,” “Philippi Freedom Ministries,” “Rick Hughes Evangelistic Ministries,” the “Jackson Country Club,” “Berachah Church,” and a “preacher named R.B. Thieme, Jr.” *Id.* at 65–66. She investigated and determined each of these had received donations, she demanded the money back, and she received 100% of the money from all of them without “hav[ing] to sue any of them.” *Id.* at 66. But with respect to net winners:

> Q. And then there are things you can do short of suing. Like, you can ask to give back the phony profits?
>
> A. I know you asked Bill Reed if he wanted to give back money [] the other day and I would have taken a check if he had sent it. But no, I never asked him.
>
> Q. You never asked anybody?
>
> A. I did not – you’re right, I did not – I would have asked all investors, and I did not.

Id. at 67. The Receiver also agreed there were steps she could have taken short of pursuing all investors "indiscriminately" (i.e., the strawman she attacks in her motion). *See, e.g.*, Br. 6, 7, 8, 9. For example:

> Q. . . . You could have decided, if an investor has more than $100,000 from net profits stolen from victims, I'm going to ask them to give money back. You could have done that?
>
> A. Yeah, I could have.
>
> Q. And you didn't do that?
>
> A. Well, but the vast majority did not. But yes, I could have.

Ex. B, Trial Tr. (May 12) at 71.

The jury also heard that asking for the return of net winnings was productive. One investor—an entity named Techwood LLC—came to the Receiver's attention "very early" in the receivership. Ex. B, Trial Tr. (May 12) at 67. The Receiver had articulated no claim against Techwood; she did not accuse the entity of conspiring with Lamar Adams or receiving commission payments as a "bird dog." Instead, the testimony was this:

> Q. For Techwood, that entity happened to come to your attention as a net winner?
>
> A. I can't remember. Maybe.
>
> Q. You asked and they gave back $300,000?
>
> A. They did. My recollection -- yes.

Ex. B, Trial Tr. (May 12) at 68. "Techwood LLC repaid its net winnings." Br. 13. Thus, the only net winner (apart from bird dogs and people with other dealings with Lamar Adams) whom Ms. Mills asked to return profits—Techwood—promptly returned its net winnings.

The jury also heard that other net winners could be expected to return their funds if asked:

> Q. Mr. Reed, did the Receiver ever ask you whether you personally would be willing to return your net winnings?
>
> A. No.
>
> Q. Did the Receiver ever ask you if you'd be willing to put those net winnings into one central pot?
>
> A. No.
>
> Q. Has the Receiver even so much as called you?
>
> A. Called me, no.
>
> Q. Mr. Reed, would you be willing to return your net winnings if other net winners were doing so?
>
> . . .
>
> A. Certainly. ***If I had been asked, I would have returned it***.

Ex. E, Trial Tr. (May 8) at 223–24 (emphasis added). Had the Receiver simply asked Mr. Reed, with all the formality of a phone call, he would have returned his net winnings, too.

In sum, the evidence at trial permitted the jury reasonably to conclude the Receiver could have avoided $10 million of damages, including because she "did not attempt" to reduce her damages, *West*, 330 F.3d at 394, by asking net winners to return stolen money. The Receiver knew there were net winners; she knew she could threaten or file fraudulent transfer claims against them; she knew she could simply ask for the money back; she knew other entities (including charities) returned 100% of the stolen funds when asked; and yet she chose not to ask any of the net winners to return the stolen money.[2]

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[2] Defendants were not permitted to introduce evidence of the Receiver's contingent fee arrangement. That evidence would have shown that the Receiver's decision to permit net winners to keep more than $15 million of phony profits enabled the Receiver to pursue an extra $5 million of contingent attorneys' fees for herself and her counsel. Had the Receiver properly mitigated the estate's damages by recovering from net winners, then the damages she hoped to recover from Defendants—and, therefore, her one-third contingent interest in any potential recovery—would have been reduced. Put differently, the Receiver had an opportunity to receive,

Against that evidence, the Receiver advances several post-verdict arguments. None works.

First, the Receiver argues "[t]he evidence at trial was that [she] did pursue persons who were net winners if she had a reason." Br. 8. The jury found otherwise, and correctly so. The Receiver pursued and received net winnings from one entity, Techwood LLC, which returned $300,000 when the Receiver simply asked. Ex. B, Trial Tr. (May 12) at 68. Otherwise, the Receiver sued a few individuals or entities that happened to be net winners—but she did not sue them because they were net winners or sue them for the return of their net winnings. The Receiver gave two examples at trial:

> I will say this, there were net winners who I sued or otherwise targeted. I mean, if I had a reason, I asked for something. I mean, there were -- well, one example is a guy named Pat Sands. He's a very wealthy man from Texas. He was a net winner. ***I did not sue him for his net winnings***, which I think were a couple hundred thousand dollars, maybe three hundred thousand dollars. I can't remember exactly.
> . . .
> There are others, I think. I don't know about this iteration but, you know, one example would be Randy Shell. He was a bird dog who was also an investor, who was a net winner. Well, I did sue him, you know, and I got a consent judgment against him, but it was ***for his commissions***.

Ex. F, Trial Tr. (May 11) at 224–25 (emphases added). The Receiver did not recover or seek to recover their net winnings.

Second, the Receiver argues she did not breach her duty to mitigate because pursuing net winners "would have been time-consuming and expensive" and "other receivers have been criticized for wasteful litigation." Br. 5, 7. This is a jury argument (indeed, she argued it to the

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as her attorneys' fees, $0.33 of every dollar of stolen money that she left in the hands of a net winner.

jury), and the jury rejected it. In her motion, the Receiver does not cite any ***evidence*** that was before the jury to support her contention. Instead, she cites a Fifth Circuit decision from the *Stanford* receivership, which observes in a footnote that "the Underwriters" adverse to the receiver "queried the benefits to be reaped . . . from these time-consuming" lawsuits. Br. 7 (citing *Sec. & Exch. Comm'n v. Stanford Int'l Bank, Ltd.*, 927 F.3d 830, 845 n.9 (5th Cir. 2019)). The Fifth Circuit did not endorse that position; rather, it held "the settlement and bar orders violated fundamental limits on the authority of the court and Receiver." *Stanford*, 927 F.3d at 848.

In any event, the Receiver must show "***the evidence presented at trial***" did not support the jury's finding. *Allied Bank-W., N.A. v. Stein*, 996 F.2d 111, 114 (5th Cir. 1993) (emphasis added). The Receiver did not "show," Br. 5, that pursuing net winnings would be time-consuming, expensive, or wasteful. With respect to the time it would consume, the Receiver testified that "[t]his lawsuit has taken eight years, and so, I mean, that speaks for itself." Ex. F, Trial Tr. (May 11) at 223. With respect to the cost, she said it was "not . . . very cost effective to chase everybody." *Id.* at 220. The jury heard no actual measure of the cost. The jury heard no estimate of the time such pursuit would take. And the jury was right to conclude that ***just asking*** net winners to return stolen money—something the Receiver admittedly did for Techwood and charities, resulting in 100% of the money being returned—would have been a low-cost and effective step. Although the Receiver elicited from her expert that a trustee has to "make a cost-benefit analysis . . . all the time" in deciding whether to pursue certain claims, *id.* at 17, the jury heard no testimony about the Receiver conducting any such cost-benefit analysis. That's because she did not perform such an analysis. Indeed, she admitted she did not know the number of net winners or the total amount of their net winnings because she elected not to figure it out.

Ex. B, Trial Tr. (May 12) at 72. There was ample evidence for the jury to conclude (indeed, the Receiver effectively admitted) she unreasonably elected not to perform the very cost-benefit analysis her expert says a trustee must make.

Third, the Receiver suggests "the evidence at trial . . . contradicts" Baker Donelson's failure-to-mitigate argument. Br. 8. Of course, it is "***[t]he jury's*** function as the traditional finder of facts" "to weigh conflicting evidence and inferences." *Olibas v. Barclay*, 838 F.3d 442, 450 (5th Cir. 2016) (emphasis added). In any event, the Receiver's motion takes great liberties with the trial record. For example:

The Receiver asserts "[t]he evidence is that many net winners are deceased." Br. 8. The sole basis for that assertion is Ms. Mills' testimony. "[T]he jury was free to consider" the Receiver's "interest in the outcome of the litigation and [her] credibility generally," and the Court should "not replace the jury's evaluation of the weight or credibility of [the Receiver's] testimony with [its] own." *Hiltgen v. Sumrall*, 47 F.3d 695, 700 (5th Cir. 1995). In any event, what she actually testified to was this: "I mean, a lot of these people don't -- I mean, I don't know for all of them, but I would assume, again, knowing a lot of them, in addition to being deceased, you know, these are working folks." Ex. F, Trial Tr. (May 11) at 224.[3] At most, Ms. Mills offered an unsubstantiated assumption. The jury was free to give that testimony what little weight it deserved.

The Receiver asserts "[m]any [investors] were or are elderly and lived off the monthly checks that they received." Br. 8. Again, the Receiver relies exclusively on her own testimony.

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[3] The Receiver cites "May 11, 2026 at p. 221; May 12, 2026 at p. 68" for the proposition that "many net winners are deceased." There is no testimony on that page of the May 11 transcript, which is a colloquy between counsel and the Court. That page of the May 12 transcript does not evidence anyone is deceased, let alone "many" people.

This time, what she actually testified to was this: "But the -- among the net winners, there were a handful -- I did not know how many, but I had seen some of them in court, a handful who were elderly, and I understood to be living off these checks." Ex. B, Trial Tr. (May 12) at 61. At most, Ms. Mills gave her second-hand understanding about a "handful" of investors without identifying whether they were net winners and, if so, by how much. Certainly she identified no such person who enjoyed net winnings in excess of $100,000.

The Receiver asserts, relying again on her own testimony, "[m]any were 'working folks,' including 'school teachers.'" Br. 8. Her testimony to the jury was this:

> I would assume, again, knowing a lot of them, in addition to being deceased, you know, these are working folks.

Ex. F, Trial Tr. (May 11) at 224. And:

> I don't know for this particular iteration, but when I've heard this before, it would have been like 150 lawsuits against a lot of people who are dead, who are school teachers, who as I explained earlier -- and this isn't true for everyone, but if you're going to treat everyone the same, it might matter. Some of these people, they didn't feel like they were winners.

Ex. F, Trial Tr. (May 11) at 219–20. Ms. Mills' assumptions, generalizations, and feelings are not evidence that would contradict, much less fatally undermine, the jury's finding of breach. There was no evidence at trial any net winner was a "school teacher," nor that any net winner was a "working folk," much less that all net winners were. The jury found Ms. Mills failed to mitigate her damages by $10 million, an amount consistent with the phony profits being held by the 44 investors with more than $100,000 in net winnings.

Fourth, the Receiver argues the jury could not properly have found the Receiver failed to mitigate $10 million because, according to her, "Mississippi law requires documentation and a clear methodology to show reasonably certain damages, but there is neither." Br. 9. She is wrong on both counts.

As to the method of calculating damages, the Receiver invokes a body of case law inapplicable here. For example, the Receiver cites *Tupelo Redevelopment Agency v. Gray Corp.*, for the standard of proof for damages a plaintiff failed to mitigate. But in *Tupelo*, the court observed "Ragland, as the plaintiff, still carries the burden of proving the amount of any damages with reasonable certainty. . . . Whatever the measure of damages, they may be recovered only where and to the extent that the evidence removes their quantum from the realm of speculation and conjecture and transports it through the twilight zone and into the daylight of reasonable certainty." 972 So. 2d 495, 516 (Miss. 2007) (internal quotation marks omitted). Defendants are not plaintiffs, and they will not "recover" the $10 million the Receiver failed to mitigate. The Receiver's other cited authorities are the same. *See, e.g.*, *Emergency Med. Assocs. of Jackson, PLLC v. Glover*, 189 So. 3d 1247, 1262 (Miss. Ct. App. 2016) (***plaintiff*** required to prove loss of "prospective earnings based on his permanent injury," which he sought to recover); *Strickland v. Rossini*, 589 So. 2d 1268, 1275 (Miss. 1991) (***plaintiff*** required to provide evidence of "payments for rent" she sought to recover); *Silver Dollar Sales, Inc. v. Battah,* 391 So. 3d 845, 852 (Miss. Ct. App. 2024) ("***plaintiff*** must prove that the defendant's conduct caused the plaintiff *actual* damages").

As to "documentation," the Receiver invokes that concept ten times in her brief. The only time she cites any legal authority to support it is a quotation from *Healy v. AT&T Servs., Inc.*, 362 So. 3d 14, 21 (Miss. 2023). Br. 16. But *Healy* deals with the evidence required for a plaintiff to prove "***lost profits***," a generally speculative category of claimed damages that is not at issue here. "[U]nder Mississippi law," a claim for "lost profits" is a forward-looking estimate of damages that reflects "the gross amount that would have been received pursuant to the business that was interrupted by a defendant's wrongful act, less the cost of running the business." *J & B Ent. v. City of Jackson*, 720 F. Supp. 2d 757, 765 (S.D. Miss. 2010). Lost profits are "uncertain," including because it is unclear "whether any such profits would have been derived at all," *Montgomery Ward & Co. v. Hutchinson*, 159 So. 862, 863 (1935), so Mississippi courts require the party to prove such "uncertain damages" "to a reasonable certainty," *Benchmark Health Care Ctr., Inc. v. Cain*, 912 So. 2d 175, 179 (Miss. Ct. App. 2005). Not only are Defendants not plaintiffs seeking to recover damages of any kind, the net winnings held by certain investors are not future "lost profits." They are calculable, past sums actually received by net winners. That Lamar Adams falsely characterized those sums as "profits" does not mean they are subject to the case law governing recovery of future "lost profits" as damages.

In any event, Defendants were not required to provide "documentation" of the damages the Receiver failed to mitigate. It was sufficient for Defendants to provide evidence of those amounts. And they did so. Ms. Ingram was qualified by this Court, without objection, as an expert "in the areas of accounting and related financial analysis." Ex. C, Trial Tr. (May 15) at 66. She testified to the documentary basis she reviewed and relied upon:

> Q. . . . What data did you rely upon to form those opinions and reach those conclusions?
>
> A. I looked at a lot of evidence. But being an accountant, the primary information that really was the foundation of the work that I performed would have been the QuickBooks files, and Madison Timber had two QuickBook files. QuickBooks is an accounting software program that is used to account for all of the activity, all of the financial activity, of an entity. And they had two QuickBooks files, one was from Madison Timber Company, and there was another one from Madison Timber Properties. So I looked at the data within those two files, and then I looked at the bank statements.

> Over the course of the Ponzi scheme, Madison Timber had numerous bank accounts, and the accounts that I would look at included Trustmark National Bank, RiverHills Bank, Southern Corp, and First National Bank of Clarksdale, and predominantly my emphasis was on deposits going into those accounts and checks to investors going out, and then any other activity that might be relevant to the Ponzi scheme.
>
> Q. And are those sources of information what you would typically rely on as an accountant in doing this kind of analysis?
>
> A. They are the foundation of what you would look at, yes, sir.
>
> Q. And did you have sufficient facts and data between those sources to reach the conclusions that you reached in this case?
>
> A. I did for the -- trying to determine the participants in the Ponzi scheme and their investments and their repayments. This was the foundation of that work.

Ex. C, Trial Tr. (May 15) at 67–68. Under Rule 702, "expert testimony was sufficient for a reasonable juror to conclude that [Defendants] had carried [their] burden of persuasion on the damages issue," and "[a]ny lack of detail as to the amount of damages could have been explored on cross examination and goes to the weight of the evidence, not the existence of evidence." *U.S. for Use & Benefit of Evergreen Pipeline Const. Co. v. Merritt Meridian Const. Corp.*, 95 F.3d 153, 169 (2d Cir. 1996); *see also Wellogix, Inc. v. Accenture, L.L.P.*, 716 F.3d 867, 879–81 (5th Cir. 2013) (finding the damages expert testimony "was sufficient evidence to support" the damages award).

From her analysis of the QuickBooks data and bank records, and based on her expertise, Ms. Ingram determined: (i) there were at least 293 investors in Madison Timber; (ii) there were "$15,235,089.25" in net winnings held by investors the Receiver did not pursue (i.e., excluding Techwood); (iii) of those, there were "about 10 million" in net winnings held by 44 investors who each individually "had more than $100,000 of net winnings"; and (iv) there were "just under

$6 million" of net winnings readily calculable just from the Receiver's own partial accounting. Ex. C, Trial Tr. (May 15, 2026) at 70, 73.

The jury declined to find the Receiver failed to mitigate her damages by the full amount of net winnings ($15.2 million). Instead, the jury adopted a lower figure less than two-thirds that amount, concluding the Receiver could have avoided $10 million of her alleged $53.4 million of damages. Because "the jury's original verdict was clearly within the universe of possible awards which are supported by the evidence," the Court should not disturb the verdict. *Bonura v. Sea Land Serv., Inc.*, 505 F.2d 665, 670 (5th Cir. 1974).

The jury had sufficient evidence to support its verdict, and the Court should deny the Receiver's motion under Rule 50(b) to supplant the jury's findings.

C. Failure-to-Mitigate Is a Defense in Intentional Tort Cases

The Receiver next argues "failure to mitigate is no defense" to the intentional tort of aiding and abetting. Br. 19. That is a novel argument unsupported by Mississippi law.

The Receiver agrees no Mississippi court has ever endorsed her position. *Id.* To the contrary, Mississippi decisions recognize mitigation in intentional tort cases. *See* ECF No. 413, Baker Donelson's Mot. for Judgment at 15. Mississippi model jury instructions do the same. *Id.* at 15–16. And the Fifth Circuit has held broadly "mitigation rules apply in all kinds of cases." *Energy Intel. Grp., Inc. v. Kayne Anderson Cap. Advisors, L.P.*, 948 F.3d 261, 275 (5th Cir. 2020) (quotation marks omitted); *see also* ECF No. 413 at 16.

In all events, the Receiver waived any objection to the application of a failure-to-mitigate defense to her intentional tort claims. Although she objected in general to the concept of instructing the jury on mitigation, she made no objection or argument that the Court's jury instruction should distinguish between negligence and non-negligence claims. *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.") (emphasis added); *see* ECF No. 413, Baker Donelson's Mot. for Judgment at 14–15 (collecting authority). Her decision not to make such an argument is fatal as a matter of law.

III. UNDER RULE 59, THE COURT SHOULD NOT REDUCE THE AMOUNT BY WHICH THE JURY FOUND THE RECEIVER FAILED TO MITIGATE.

The Receiver also seeks relief under Rule 59, Br. 14, which permits a court to "alter or amend a judgment" on a motion "filed no later than 28 days after entry of the judgment," Fed. R. Civ. P. 59(e). For the reasons discussed above, the Receiver's motion is properly considered after a judgment on the verdict is entered, not before. But Baker Donelson also responds to the substance of the motion here because it is wrong on the merits.

Both the legal basis and scope of the Receiver's request are vague at best. The Receiver appears to ask the Court (i) to apply the doctrine of "remittitur" to revise the jury's verdict to impose "nominal mitigation damages only" or (ii) to reduce the jury's finding as to the amount she failed to mitigate from $10 million to negative "$1,220,587.28." Br. 15–17. Neither request finds any basis in law, the trial record, or common sense.

A. There Is No Basis for Remittitur on the Issue of Mitigation

Remittitur is a judicial doctrine that permits a court to reduce a jury's award of damages. *See Caldarera v. E. Airlines, Inc.*, 705 F.2d 778, 784 (5th Cir. 1983). The Fifth Circuit applies this narrow doctrine only in the context of a "'maximum recovery rule,' which prescribes that the verdict must be reduced to the maximum amount the jury could properly have awarded" to the plaintiff. *Id.* at 784. "This judge-made rule essentially provides that we will decline to reduce damages where the amount awarded is not disproportionate to at least one factually similar case from the relevant jurisdiction." *Lebron v. United States*, 279 F.3d 321, 326 (5th Cir. 2002) (quoting *Douglass v. Delta Air Lines, Inc.*, 897 F.2d 1336, 1344 (5th Cir. 1990)).

Here, the Receiver does not actually seek remittitur. The Receiver is asking for ***additur***. She asks the Court to reduce the amount by which she failed to mitigate her damages, thereby ***increasing*** the damages she might recover from the verdict. Additur is unconstitutional; the Seventh Amendment prohibits the Court from increasing the damages a plaintiff may recover. *Hawkes v. Ayers*, 537 F.2d 836, 837 (5th Cir. 1976) ("It is well-settled, however, that the Seventh Amendment prohibits the utilization of additur, at least where the amount of damages is in dispute."); *Dimick v. Schiedt*, 293 U.S. 474, 486-88 (1935) ("where the verdict is too small, an increase by the court is a bald addition of something which in no sense can be said to be included in the verdict"); *Am. Tech. Ceramics Corp. v. Presidio Components, Inc.*, 490 F. Supp. 3d 593, 632 (E.D.N.Y. 2020) ("Absent defendants' consent, the court is not free to use additur because increasing a jury's award, handed down after it considered disputed evidence, would violate the Seventh Amendment right to a jury trial.").

Even assuming the doctrine of remittitur were applicable here (it is not), revision of the jury's verdict would be improper. The Fifth Circuit is extremely deferential to a jury's damages assessment:

> We do not reverse a jury verdict for excessiveness except on "the strongest of showings." The jury's award is not to be disturbed unless it is entirely disproportionate to the injury sustained. We have expressed the extent of distortion that warrants intervention by requiring such awards to be so large as to "shock the judicial conscience," "so gross or inordinately large as to be contrary to right reason," so exaggerated as to indicate "bias, passion, prejudice, corruption, or other improper motive," or as "clearly exceed[ing] that amount that *any* reasonable man could feel the claimant is entitled to."

Caldarera, 705 F.2d at 784. The jury heard the Receiver recovered 100% of victims' stolen money from each of numerous churches, charities, and one net winner simply by asking and without suing. The jury heard the unrecovered net winnings exceeded $15 million. And the jury concluded the amount of damages the Receiver failed to mitigate was the lower sum of $10 million, consistent with the net winnings held by investors who profited by more than $100,000. Nothing about that conclusion shocks the conscience or is so exaggerated as to indicate passion, prejudice, or corruption.

B. There Is No Basis for Other Revision of the Jury's Verdict on Mitigation

In a last-ditch effort to avoid the jury's take-nothing decision, the Receiver asks the Court to modify the verdict with non-trial evidence. *See* Br. 17–18. Specifically, she asks the Court to reduce the $10 million failure-to-mitigate figure based on "known pursuits of, or values obtained from, persons who were net winners with whom the Receiver dealt separately." *Id.* at 17. This argument is utterly insupportable, as a matter of law and fact.

First, the Receiver cites no legal authority to support this post-trial intervention in the jury's verdict by reducing the amount of mitigation the jury found. *Id.* Baker Donelson is unaware of any.

Second, the question of whether the Receiver pursued or obtained "value" from net winners was for the jury. The Receiver presented no such evidence—none. Defendants presented unrebutted evidence, through Ms. Ingram's accounting, that the Receiver ***did not recover*** $15,235,089.25 in net winnings, and that $10 million of that amount was held by investors with net winnings over $100,000 apiece. Baker Donelson also showed through the Receiver's own testimony that she took ***no steps whatsoever*** to recover those amounts. Baker Donelson elicited from the Receiver—without any objection—that she recovered $300,000—100% of the phony profits—from Techwood LLC just by asking. *See* Ex. B, Trial Tr. (May 12) at 67. The Receiver never attempted to introduce the values of any other net winnings recovered—because there were none. That was the evidence before the jury and on which it properly decided the mitigation issue.

Third, as discussed above, the Receiver pursued claims against some "bird dogs" and other individuals who happened to be net winners—but she did not pursue them for their net winnings. *See supra* p. 13. Whether the Receiver obtained any value from such pursuits does not undermine the jury's verdict, which found "the Receiver could have mitigated damages by taking reasonable steps to recover ***profits*** Madison Timber paid to investors who were 'net winners.'" ECF No. 402 at 2.

Fourth, the Receiver says "[n]o one can determine from the record at trial who Ms. Ingram's net winners are." Br. 17. That is not accurate as to the net winners listed in the Receiver's own partial accounting (which represented nearly $6 million in net winnings). But, in any event, ***the Receiver objected*** to that information being presented to the jury. *See* Ex. C, Trial Tr. (May 15) at 43–44. What the jury did know, because it was undisputed, was that any amounts the Receiver recovered did not include even a penny of the $15,235,089.25 in net winnings Ms. Ingram identified. It would be improper for the Court now to determine that amounts recovered from particular net winners (for amounts other than their net winnings) should reduce the $10 million the jury found the Receiver failed to mitigate.

Fifth, the Receiver's non-record evidence is inaccurate. In her motion, she cites (without any record evidence) the alleged net winnings of particular investors and the amounts she procured from some of them through settlement. For example, she claims Alexander Seawright Timber Fund I, LLC was a net winner, and that the amount of its net winnings should reduce the $10 million she failed to pursue. That entity was not a net winner. The Receiver is relying on the wrong version of Ms. Ingram's report; she amended Exhibit 8 before her deposition to remove commission payments. *See* Ex. G, Ingram Dep. Tr. at 65–66. In the operative version, Alexander Seawright Timber Fund I, LLC is properly accounted for as a net ***loser***. At trial, she did not offer the evidence she now urges the Court to use to undo the jury's verdict.

Next, the Receiver claims "Investor nos 168 and 168A are both Randy Shell," and thus the $10 million should be further reduced by her settlement with Mr. Shell. Br. 17. Not so. Investor No. 168 is Timbercreek Investments, LLC. As the Court ruled at the Receiver's request, the parties "may not offer calculations or testimony that simply ignore the law in Mississippi that corporate entities are separate from their owners and shareholders." ECF No. 342 at 4. As for her judgment against Randy Shell, it was "***for his commissions***" not his net winnings. Ex. F, Trial Tr. (May 11) at 225. The same is true for Pat Sands ("I did not sue him for his net winnings," *id.* at 224)[4] and each of Pinnacle Trust, Gee Gee Patridge, Frank Zito, and Wayne Kelly. *See* Br. 17–18. None of those pursuits returned a dime of net winnings.

Finally, even crediting the Receiver's arguments, the math does not work in her favor. The jury heard there were $15,235,089.25 of net winnings the Receiver did not pursue (i.e., excluding her recovery from Techwood LLC). Ex. C, Trial Tr. (May 15) at 73. Assuming all of the reductions the Receiver invokes were proper (they are not), there would still be $4,014,501.97 in net winnings remaining. That is more than sufficient to wipe out the $1.4 million (or even $2.8 million) in damages the Receiver might claim.

IV. THE RECEIVER IS NOT ENTITLED TO $2.8 MILLION

The Receiver argues she is entitled to $2.8 million on the jury's verdict, without any offset or reduction from other settlements. She is wrong.

First, the jury found her failure to mitigate reduces her damages to zero.

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[4] The Receiver's motion also makes the bizarre claim that she should receive credit for recovering "$239,416.64" in net winnings from Pat Sands in the amount of "$5,540,000." Br. 18. That argument makes no sense, even on its own terms. Mr. Sands only had $239,416.94 of net winnings to return.

Second, the Receiver arrives at $2.8 million by double-counting. The jury found the damages proximately caused by Alexander's and Seawright's aiding and abetting were $1.4 million. ECF No. 402 at 3. The jury also found the damages proximately caused by Baker Donelson's negligent supervision were $1.4 million. *Id.* Those are the same damages, reflecting the net losses of investors in Alexander Seawright Timber Fund I, LLC. *See* Ex. D, Trial Tr. (May 19) at 41 (Ms. Elmer: "they're about to get up here and tell you that they can't possibly be responsible for more than 1.4 million"); *id.* at 101 (Mr. Bailey: "The separate calculable discernible losses for Alexander Seawright Timber Fund I are $1.4 million."); *id.* at 172 (Mr. Singer: "And, obviously, they can't be liable for more than what the Alexander Seawright Timber Fund investors lost. And that amount, everybody agrees, is $1.4 million."). Where the evidence before the jury shows "these are the same damages awarded under two separate theories of recovery," the plaintiff "is entitled to only one." *City of Jackson v. Est. of Stewart ex rel. Womack*, 908 So. 2d 703, 711 (Miss. 2005). Reading the jury's verdict to award the Receiver $2.8 million (before a reduction for her failure to mitigate) would be classic impermissible double recovery—i.e., "a recovery of the same *damages* multiple times." *R.K. v. J.K.*, 946 So. 2d 764, 777 (Miss. 2007).

The Receiver contends the law barring double recovery "only applies to recovery for the same claim." Br. 21. That is wrong as a matter of law. *See Womack*, 908 So. 2d 703, 711 (Miss. 2005) (holding where "the same damages awarded [are] under two separate theories of recovery," the plaintiff "is entitled to only one recovery"). The Receiver's cited authority, *Cascio v. Cascio Invs., LLC*, holds that "a claimant cannot receive ***actual and nominal damages*** from the same claim." 327 So. 3d 59, 74 (Miss. 2021) (emphasis added). This is not a case of nominal damages.

Third, for the reasons explained in Baker Donelson's motion for entry of judgment, the Receiver's settlements with other defendants would reduce any damages award *pro tanto* (dollar-for-dollar) to zero. *See* ECF No. 413 at 18–25.

Unable to contend otherwise, the Receiver's response rests on mischaracterizations. She recasts Baker Donelson's request for a *pro tanto* reduction as a claim for "contribution" requiring a joint judgment. It is not. A *pro tanto* reduction simply reduces "the amount awarded by the jury by the amount of the settlement by the other defendants." *Pickering v. Industria Masina I Traktora (IMT)*, 740 So. 2d 836, 841 (Miss. 1999). Contribution is different. It is an affirmative claim that permits a joint tortfeasor to recover from another joint tortfeasor only for the "percentage of fault assessed to such defendant." *Narkeeta Timber Co. v. Jenkins*, 777 So. 2d 39, 41-42 (Miss. 2000) (citing Miss. Code Ann. § 85–5–7).

The Receiver then labels the settlements she recovered from the other defendants as "collateral" payments. The settlements she received from the other defendants are not collateral payments from independent sources (like insurers); they are settlements with other defendants she sued for the same loss. Mississippi law treats such settlements as ***credits*** against a plaintiff's recovery. Re-labeling those settlements as "collateral" payments does not change their legal effect.

V. THE RECEIVER IS NOT ENTITLED TO INTEREST, COSTS, OR FEES

The Receiver argues she "is a prevailing party . . . because, after almost eight years of litigation, during which Baker Donelson denied all liability, the Receiver proved her claims." Br. 22–24. On that putative basis, she seeks prejudgment interest, costs, and attorney fees. Those arguments do not pass the straight-face test.

First, the Receiver cannot recover attorney fees against Baker Donelson because the Court rejected the claim for punitive damages against the firm as a matter of law. Ex. D, Trial

Tr. (May 19) at 43–44; *United Servs. Auto. Ass'n v. Est. of Minor*, 418 So. 3d 1173, 1184 (Miss. 2024) ("Attorney's fees are a special remedy available only when expressly provided for in either a statute or contract, or when there is sufficient proof to award punitive damages.").

Second, the Receiver is not a prevailing party entitled to costs. The jury awarded the Receiver zero dollars. A "prevailing party is one that receives affirmative judicial relief. A zero on damages necessarily zeros out 'prevailing party' status." *Merritt Hawkins & Assocs., L.L.C. v. Gresham*, 861 F.3d 143, 155–56 (5th Cir. 2017) (citation modified). "Neither law nor logic favors a rule that bestows 'prevailing party' status on a party that receives only a take-nothing judgment." *Transverse, L.L.C. v. Iowa Wireless Servs., L.L.C.*, 992 F.3d 336, 349 (5th Cir. 2021) (quotation marks and alterations omitted). "While an empty judgment may provide some moral satisfaction, such a judgment carries no real relief and thus does not entitle the judgment winner to be treated as a prevailing party." *Tunison v. Cont'l Airlines Corp.*, 162 F.3d 1187, 1190 (D.C. Cir. 1998); *see also Franzen v. Ellis Corp.*, 543 F.3d 420, 430–31 (7th Cir. 2008) (a "jury verdict on the issue of liability alone . . . is insufficient to constitute a judgment awarded to the plaintiff"). The Receiver says it is "unnecessary" she "prevail on every issue in order to be entitled [to costs]." Br. 23. She misses the point. Baker Donelson does not contend the Receiver is required to prevail on all her claims; rather, it claims the Receiver is not a prevailing party, and thus not entitled to costs, because she received "only a take-nothing judgment" even on the few claims the jury found in her favor. *Transverse, L.L.C.*, 992 F.3d at 349. And the Court and jury rejected nearly all of her claims and theories.

Even a plaintiff who obtains a significant recovery may not be the prevailing party: the question is whether the plaintiff "as a practical matter, has prevailed." *Kaepa, Inc. v. Achilles Corp.*, 216 F.3d 1080, 2000 WL 729242, at *6 (5th Cir. 2000) (unpublished table decision). In that case, the court found that a plaintiff that proved one of its claims and recovered more than $560,000 "did not prevail in this litigation, at least not for practical purposes." *Burroughs Diesel, Inc. v. Baker Petrolite*, LLC, 2020 WL 2044961, at *2 (S.D. Miss. Apr. 28, 2020). Where the $560,000 award was "less than 15% of what [the plaintiff] initially sought," the plaintiff was not the "prevailing party." *Id.*

Third, the Receiver would never be entitled to prejudgment interest, even assuming the Court were to supplant the jury's zero-dollar verdict with another sum. The Receiver's suggestion prejudgment interest is available freely "in a court's discretion," Br. 22, is contrary to Mississippi law. Such discretion only exists "provided certain conditions are met." *Est. of McLemore v. McLemore*, 63 So. 3d 468, 492 (Miss. 2011); *Stockstill v. Gammill*, 943 So. 2d 35, 50 (Miss. 2006) (same). 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." *City of Moss Point v. Miller*, 608 So. 2d 1332, 1336 (Miss. 1992). None of these circumstances applies to Baker Donelson. More recently, the Mississippi Supreme Court clarified in *Upchurch Plumbing, Inc. v. Greenwood Utilities Comm'n* that prejudgment interest may be allowed only where (i) the amount due is liquidated when the claim is originally made or where (ii) the denial of a claim is frivolous or in bad faith. 964 So. 2d 1100, 1117 (Miss. 2007) (narrowing application of *Microtek Med., Inc. v. 3M Co.*, 942 So.2d 122, 132 (Miss.2006)).

Here, the $1.4 million was not "liquidated when the claim [wa]s originally made" in 2018, *id.*, at which time the Receiver was seeking damages "of more than $85 million" before trebling. ECF No. 1 at 2. As late as closing arguments in May 2026, the Receiver was claiming damages of $53.4 million. Ex. D, Trial Tr. (May 19) at 191. And there can be no serious suggestion Baker Donelson's defense of this case was frivolous or in bad faith. Under Mississippi law, the Court should not award prejudgment interest.

CONCLUSION

For these reasons, the Court should enter a take-nothing judgment on the jury's verdict.

Dated: June 18, 2026

Respectfully submitted,

BAKER, DONELSON, BEARMAN, CALDWELL & BERKOWITZ PC

/s/ Craig D. Singer
Craig D. Singer (pro hac vice)
Charles Davant (pro hac vice)
Benjamin W. Graham (pro hac vice)
William M. Schmidt (pro hac vice)
Paloma Cipolla Moguilevsky (pro hac vice)
C. Mark Aneke (pro hac vice)
WILLIAMS & CONNOLLY LLP
680 Maine Avenue, S.W.
Washington, DC 20024
Tel.: (202) 434-5000
Email: csinger@wc.com

/s/ James J. Crongeyer, Jr.
James J. Crongeyer, Jr. (MSB #10536)
James M. Tyrone (MSB #102381)
WATKINS & EAGER PLLC
400 East Capitol Street, Suite 300 (39201)
Post Office Box 650
Jackson, MS 39205
Tel.: (601) 965-1900
Email: jcrongeyer@watkinseager.com

Counsel for Defendant Baker, Donelson, Bearman, Caldwell & Berkowitz PC

CERTIFICATE OF SERVICE

I hereby certify that on June 18, 2026, I caused the foregoing to be electronically filed with the Clerk of the Court using CM/ECF, which will send notification of such filing to all registered participants.

/s/ Craig D. Singer
Craig D. Singer