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'S REPLY SUPPORTING ITS MOTION
FOR A NO-RECOVERY JUDGMENT IN THE FORM OF AO 450

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To oppose a simple "recover nothing" judgment, the Receiver makes up law and makes up facts. The jury heard the real evidence and the Court's instructions, and found the Receiver should take nothing. Fifth Circuit and Mississippi law require the judgment to reflect reality.

I. THE FAILURE TO MITIGATE RESULTS IN A NO-RECOVERY JUDGMENT

The jury found the Receiver failed to mitigate, and she could have avoided ***all*** of her $1.4 million of damages (and then some) had she "taken reasonable steps to recover profits Madison Timber paid to investors who were 'net winners.'" ECF 402 (Jury Verdict) at 2. To dodge this verdict, the Receiver argues the ***reduction in damages*** for failure to mitigate now must be ***reduced*** in the amount of settlements paid by "bird dog" recruiters and others who happened also to be net winners. ECF 441 ("Opp'n") at 6-7.

No legal authority provides for ***reducing the reduction*** found by a jury for a failure to mitigate. The Receiver cites none. The Receiver's proposal defies the law holding "an injured party is not entitled to recover damages which he or she could have avoided through reasonable effort." *Rolison v. Fryar*, 204 So. 3d 725, 736 (Miss. 2016). Here, that is 100% of her damages.

Part of the Receiver's argument is the made-up fact she recovered $11,220,587.28 from net winners, but the jury "was not permitted to hear any values obtained from those pursuits." Opp'n 2. In reality, the $11,220,587.28 has nothing to do with net winnings: it refers to money the Receiver recovered from bird-dog recruiters and people who had other dealings with Lamar Adams, and the $11,220,587.28 ***excludes*** the net winnings she elected not to pursue. For instance, she testified about Pat Sands, from whom she obtained a recovery: "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." ECF 442-6 ("May 11 Tr.") at 224–25 (emphasis added). Another "example would be Randy Shell . . . 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***," not his net winnings. *Id.* The $11,220,587.28 is money the Receiver says she recovered from people who ***also*** happen to have net winnings—but she did not recover any of those net winnings. The $11,220,587.28 has no connection to the $15,235,089.25 in net winnings the jury considered, and of which the jury concluded the Receiver could have collected $10 million—the amount (according to CPA Donna Ingram's trial testimony) available from the 44 net winners who each held "more than $100,000 of net winnings." ECF 442-3 (May 15 Tr.) at 73. The Receiver agreed, during her trial testimony, "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." ECF 442-2 ("May 12 Tr.") at 75. The $11,220,587.28 is completely separate from the $10 million of claimed damages she failed to mitigate, and there is no basis for subtracting the one from the other.

The Receiver wrongly says the jury "was not permitted to hear any values obtained from those pursuits." Opp'n 2. The jury heard the Receiver recovered $300,000 in net winnings from Techwood LLC just by asking. May 12 Tr. at 68. And on direct examination, the Receiver told the jury she recovered "like $5.5 million" from Pat Sands (albeit not for his net winnings). May 11 Tr. at 224–25. If the Receiver believed she had other evidence proving efforts (successful or not) to recover net winnings, she could have presented that evidence. Defendants then would have rebutted it—because she made no such efforts.

Finally, the Receiver argues failure to mitigate "does not apply" in this case. Opp'n 8. The Receiver knows the Court already rejected this argument when it instructed the jury failure to mitigate ***does apply***, so the Receiver pivots, post-trial, to backhanded, untimely criticisms of the Court's jury instruction. She says failure-to-mitigate "only applies where a plaintiff ***aggravates*** an injury after-the-fact, with the result that she incurs additional loss," *id.*, and argues there should be a "'plaintiff-friendly' modification" to the mitigation instruction when the plaintiff alleges an intentional tort, *id.* at 12. The Receiver waived these objections to the Court's mitigation instruction by not making them at the proper time. Fed. R. Civ. P. 51(c)(1). Regardless, the criticisms are incorrect: the Court gave the Mississippi Judicial College model instruction "Mitigation of Damages," which reflects the law of Mississippi, and says nothing about "aggravat[ing] an injury after-the-fact" or about a "plaintiff-friendly modification" for intentional torts. *See* Miss. Model Jury Instruction (Civil) § 10.6 (2d ed.). Under Mississippi law, "***an injured party*** is not entitled to recover damages which he or she could have avoided through reasonable efforts." *Rolison*, 204 So. 3d at 736; *see also Buras v. Shell Oil Co.*, 666 F. Supp. 919, 924 (S.D. Miss. 1987) ("a person injured by a tort . . . is required to take reasonable steps to mitigate."); *Nat'l Dairy Prods. Corp. v. Jumper*, 130 So. 2d 922, 923 (Miss. 1961) (same). The Court was correct to instruct the jury on mitigation, and the jury's finding, based on the Court's instruction, results in a "recover nothing" judgment.[1]

II. PRIOR SETTLEMENTS RESULT IN A NO-RECOVERY JUDGMENT

After repeatedly telling the Court and the jury her prior settlements will reduce her recovery, the Receiver flip-flops to argue they "do not offset Baker Donelson's liability." Opp'n 14. She was right the first time. "All of the Mississippi authorities . . . clearly and unequivocally state that where a party settles with one defendant, any remaining defendant receives credit for the settlement" in cases (like this one) of joint and several liability, *Hunnicutt v. Wright*, 986 F.2d 119, 124–25 (5th Cir. 1993)—especially where, as here, the Court rejected instructing the jury on fault allocation under Miss. Code § 85-5-7. ECF 412-9 (May 18 Tr.) at 37, 45–46, 50.

[1] Baker Donelson incorporates by reference all its arguments at ECF No. 443, including its showing the $11,220,587.28 figure is incorrect math.

The Receiver says setoffs apply only if "her total recoveries exceed $53.4 million," Opp'n 15, ignoring the jury verdict Defendants caused only $1.4 million of damages. The Receiver says "the total damages to the Receivership Estate . . . are $53.4 million" and asserts "Baker Donelson conceded [this] at trial." Opp'n 17. That is not only disputed but irrelevant: the starting point for subtractions for prior settlements is the damages "the jury determines" as the plaintiff's loss, here, $1.4 million. *Medley v. Webb*, 288 So. 2d 846, 849 (Miss. 1974).

The Receiver says "[n]o other party paid a settlement to compensate the Receivership Estate for an injury caused by Seawright and Alexander or Baker Donelson," Opp'n 17, ignoring she sued other parties, expressly alleging their joint and several liability for negligent supervision and other torts, and accusing them of causing "the debts of the Receivership Estate," ***including the $1.4 million***, and those jointly and severally liable tortfeasors paid the Receiver to compensate for the injury. ECF 413 at 3-9. "When there is more than one tortfeasor, . . . *pro tanto* reduction is applied." *Krieser v. Hobbs*, 166 F.3d 736, 740 (5th Cir. 1999).

III. THE RECEIVER'S PROPOSED FORM DOUBLE-COUNTS DAMAGES

The Receiver urges the Court to give her $2.8 million because "[t]here are, in effect, two judgments for two claims for $1.4 million each." Opp'n 22. But where "the same damages awarded [are] under two separate theories of recovery," the plaintiff "is entitled to only one recovery." *City of Jackson v. Est. of Stewart ex rel.*, 908 So. 2d 703, 711–12 (Miss. 2005).

IV. BAKER DONELSON IS THE "PREVAILING PARTY"

To pretend she won, the Receiver says she "alleged two claims against Baker Donelson . . . , and the jury found it liable for both." Opp'n 4. That ignores what happened. The jury found ***the Receiver should take nothing*** because the effects of her negligence dwarfed the $1.4 million of proven damages. Not to mention the Receiver lost most of her claims outright, including claims for simple negligence, fraudulent transfer, conspiracy, scope of employment, joint venture, and RICO; and not to mention she lost her bid to recover $31.6 million of phony Ponzi scheme interest, $255 million with treble damages, and punitive damages. Mere liability without a damages award "will not suffice," as "[n]either 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).

V. THE RECEIVER'S PROPOSED JUDGMENT IS IMPROPER IN OTHER WAYS

The Receiver proposes a judgment that incorrectly assesses prejudgment interest, even though it is recoverable only if "the amount due is liquidated when the claim is originally made." *Indem. Ins. Co. of N. Am. v. Guidant Mut. Ins. Co.*, 99 So. 3d 142, 157 (Miss. 2012). "No award of prejudgment interest may rationally be made where the principal amount has not been fixed prior to judgment." *Id*. The Receiver ignores this controlling Supreme Court decision (quoted in Baker Donelson's opening brief), instead citing earlier cases reserving the question.

Consistent with her press-release strategy, the Receiver's proposed judgment ignores or minimizes the many claims she lost. This risks confusion. *See Transit Mgmt. of Se. Louisiana, Inc. v. Grp. Ins. Admin., Inc.,* 226 F.3d 376, 382 (5th Cir. 2000) ("failure to explicitly include those [dismissed] claims within the Rule 54(b) final judgment, even if accidental, operates to preclude a final appealable order"). The better approach is a one-sentence judgment "the plaintiff recover nothing, [and] the action be dismissed on the merits." Form AO 450.

Last, the Receiver says "Baker Donelson insists the Court has no choice but to enter Form AO 450." Opp'n 21. Not so. A judgment "should be as minimal as possible," *In re Cendant Corp. Sec. Litig.*, 454 F.3d 235, 245, 245 n.8 (3d Cir. 2006), and should set forth only "the relief to which each party is entitled," Fed. R. Civ. P. 54(c). Using the simple "recover nothing" check box on the official form is not the only means of complying with all legal requirements, but is a good (indeed, recommended) way. *See Cendant*, 454 F.3d at 243-44.

Respectfully submitted,

BAKER, DONELSON, BEARMAN, CALDWELL & BERKOWITZ PC

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CERTIFICATE OF SERVICE

I hereby certify that on Thursday, June 25, 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
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