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

REPLY TO BAKER DONELSON'S OPPOSITION TO MOTION TO FOR ENTRY OF JUDGMENT

In reply to Baker Donelson's opposition to her motion for entry of judgment, the Receiver wishes to make the following points:

1. The Receiver's Rule 50(b) arguments are not out-of-turn.

Baker Donelson suggests the Receiver's Rule 50(b) arguments are out-of-turn and asks the Court to consider them only after it enters judgment. [443 at 5-6] But nothing in Rule 50(b) requires a party to wait until judgment to renew a motion for judgment as a matter of law. *E.g.*, *Gaia Techs. Inc. v. Recycled Prods. Corp.*, 175 F.3d 365, 374 (5th Cir. 1999) ("Although Rule 50(b) permits a party to renew its motion as late as ten days after the judgment is entered, it does not proscribe filing a renewed motion before judgment is entered."). *See also, e.g.*, *Presutti v. F.D.I.C.*, 24 F. App'x 92, 94 (2d Cir. 2001) ("Rule 50(b) does not require that a motion be made after the entry of judgment …"); *Sunburst Prods., Inc. v. Cyrk Int'l*, 98 F.3d 1358 (Fed. Cir. 1996) ("we conclude that a renewed Rule 50(b) motion may be made prior to entry of the final judgment").

Baker Donelson argues "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." But the Receiver does not ask the Court to reform the jury's verdict pursuant to Rules 49 or 58. Baker Donelson cites *Gaia Techs. Inc.*, 175 F.3d at 371, in support, but a plain reading reveals the flaw in Baker Donelson's argument. In *Gaia Techs. Inc.*, the jury found the defendants were not liable for any state-law torts. After, the district court, purporting to rely on Rule 49(a), found that they were. The Fifth Circuit observed that "Rule 49(a) allows the district court to make its own findings only as to issues not submitted to the jury," *id.* at 370, and, because the issue in question had been submitted to the jury, the district court could not, under Rule 49(a), make a contrary finding. The Receiver does not ask the Court to make a finding contrary to the jury's verdict here. The Receiver asks for judgment as a matter of law, which Rule 50(b) expressly authorizes.

2. If Baker Donelson is correct, a receiver has a legal duty to pursue net winners but no one else.

Baker Donelson argues there is no basis for judgment as a matter of law, but it mischaracterizes her arguments. The Receiver has never contended that she had no duty to do anything. She has only ever argued that whether she had a duty to do something is a question of law for the Court. Here, the Court reserved ruling on that issue. It is now properly before it.

The question is whether the Receiver had a duty to indiscriminately pursue all net winners (or all net winners with net winnings of at least $100,000). Baker Donelson cites no legal authority for the proposition that she had such a duty. It cites cases which observe that trustees and receivers often file lawsuits against net winners [443 at 8] but no one disputes that here. That trustees and receivers often do file such lawsuits does not mean that in every case they must.

Baker Donelson says it does not contend the Receiver should have "indiscriminately" pursued everyone, but how else can one characterize its argument at trial? The Receiver testified that she did pursue net winners if she had a reason to. She testified that other net winners were deceased, or school teachers, or qualified for an equitable advance because they had a hardship. But these facts were irrelevant to Baker Donelson then and are irrelevant to it even now (it says the Receiver's testimony deserves "little weight" [443 at 17]). Baker Donelson's argument is that the Receiver had a duty to pursue everyone whatever the circumstances.

If Baker Donelson is correct, a receiver has a duty to pursue innocent net winners but not culpable aiders and abettors, in every case. The result is absurd. A receiver's duty is to recover money for a receivership estate. The facts and circumstances might be that she can do that best by pursuing aiders and abettors, but, if Baker Donelson is correct, the law requires her to prioritize chasing net winners instead, whatever the cost-benefit analysis.[1] That cannot be the law.

3. If Baker Donelson is correct, its mitigation case was never subject to ordinary burdens of proof.

Baker Donelson summarizes a lot of testimony [443 at 8-13] that the Receiver lacks the space to address line-by-line here. At bottom, however, Baker Donelson does not dispute that Ms. Ingram merely counted total net winnings over the life of the Ponzi scheme, or that there is no

[1] Baker Donelson's side remark about the Receiver's counsel's contingency fee arrangement [443 at 14 n.2] does not warrant a response, but it also makes no sense. Baker Donelson focuses on the Receiver's counsel's contingency fee arrangement for her four aiding and abetting cases to the exclusion of all else. There is nothing uncommon or wrong about a contingency fee arrangement. But the fact is the Receiver's counsel did not have permission to pursue other cases on a contingency fee basis. They would have pursued such cases on an hourly fee basis, at great expense to the Receivership Estate. Perhaps Baker Donelson's counsel would have investigated and prosecuted relatively small claims against all net winners (or all net winners with net winnings of at least $100,000) notwithstanding the cost and notwithstanding other substantial recoveries from the very same persons. The Receiver did not and does not believe that would have been a good use of resources.

documentation of her accounting in evidence, or that in any event she did not account for whether a net winner was dead or alive or bankrupt or judgment proof or otherwise had any means to repay net winnings to the Receivership Estate; did not account for any value the Receiver obtained from net winners with whom she dealt separately; and did not account for the reality that no amount of effort would have resulted in a recovery of 100% of the amounts in question.

Baker Donelson's position is that it did not have to prove its mitigation case with reasonable certainty. It contends the Receiver "invokes a body of case law inapplicable" to Baker Donelson. [443 at 19] The reality is the Receiver invoked a body of case law to which Baker Donelson has no response. That body of case law required it to prove the amounts it says the Receiver could have recovered from net winners by providing both "documentation" and a "clear methodology." Baker Donelson all but concedes it provided neither.

Baker Donelson cites no legal authority for the proposition that a defendant's mitigation case is not subject to ordinary burdens of proof, and there is none. "[T]he affirmative defense of failure to mitigate lies entirely with the defendant, ***including the burden to establish the amount*** …" *E.g.*, *Jackson v. Host Int'l, Inc.*, 426 F. App'x 215, 224 (5th Cir. 2011) (emphasis added); *Anderson v. City of McComb*, No. 5:13-cv-263-TSL-MTP, 2015 WL 11439050, at *3 (S.D. Miss. Jan. 5, 2015), *aff'd*, 623 F. App'x 705 (5th Cir. 2015) (same). *See also, e.g.*, *Bank One, Texas, N.A. v. Taylor*, 970 F.2d 16, 30 (5th Cir. 1992) ("Because MBank offered no evidence that Taylor failed to make reasonable efforts to minimize her losses *and because MBank failed to prove the amount by which damages were increased*, the trial court properly refused to instruct the jury on this issue.") (emphasis added); *Metro Nat. Corp. v. Dunham-Bush, Inc.*, 984 F. Supp. 538, 565 (S.D. Tex. 1997) ("Dunham–Bush failed to meet its burden of proving that Metro failed to mitigate its damages" with "'guesstimates' [that] were unsupported by documentation"). The amounts here are net winnings, or fictitious profits. They are the kinds of damages for which courts require reasonably certain proof, and Baker Donelson struggles to argue otherwise.

4. Failure to mitigate is not a defense to an intentional tort.

The Receiver addressed Baker Donelson's arguments regarding whether the failure to mitigate is a defense to an intentional tort in her response to Baker Donelson's motion for entry of judgment. [441 at 11-13] Baker Donelson did not prove, and makes no attempt to argue here, that the Receiver was intentional or reckless in failing to mitigate damages, as required by the Restatement (Third) of Torts (on which it relied in its own motion).

5. The Receiver's Rule 59 arguments are not out-of-turn.

Baker Donelson suggests the Receiver's Rule 59 arguments are also out-of-turn [443 at 23] but Baker Donelson itself asks the Court to account for the Receiver's prior settlements for purposes of reducing its liability. [413] It says the Receiver has been so successful pursuing others she has nothing left to recover and so cannot recover from Baker Donelson. By asking the Court to account for the Receiver's prior settlements for purposes of reducing its liability, it 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, and prior settlements with, persons who were net winners. The Court's post-trial accounting is a two-way street.

6. The Receiver has not asked for an additur.

The Receiver, in her motion, asks the Court to *reduce* $10,000,000 because it is clearly excessive in the light of her known pursuits of, and amounts obtained from, persons who were net winners. Baker Donelson argues the Seventh Amendment prohibits what the Receiver asks for but it mischaracterizes what the Receiver asks for as an additur. [443 at 24] Even if the Seventh Amendment prohibited an additur (in fact Mississippi courts grant them pursuant to Miss. Code Ann. § 11-1-55 all the time), the Receiver does not ask the Court to increase the $2.8 million judgment against Baker Donelson. *That* would be an additur. The Receiver does not ask for that here.

What the Receiver asks for is only fair. 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. The jury found that, if the Receiver had pursued net winners, she would have recovered an additional $10,000,000. The Receiver's pursuits of persons who were net winners necessarily reduces any amounts she could have recovered from them.

7. The law and the facts require that the Court reduce $10,000,000.

The Receiver showed that when the Court accounts for her pursuits of persons who were net winners, the $10,000,000 becomes -$1,220,587.28. [416 at 8-18] Baker Donelson has no compelling argument why the Court is not required to account for such pursuits.

1. Baker Donelson says "the Receiver cites no legal authority" for what it calls a "post-trial intervention." [443 at 25] But that is wrong: The Receiver showed that Fifth Circuit and

Mississippi law require relief when a jury's finding is "contrary to right reason" and "entirely disproportionate." [416 at 15-16] Baker Donelson does not address any of those legal authorities.

2. Baker Donelson says "the question of whether the Receiver pursued or obtained 'value' from net winners was for the jury" and "[t]he Receiver presented no such evidence." [443 at 25] But that also is wrong: The Receiver repeatedly testified she pursued net winners if she had a reason. [May 11, 2026 at p. 222-223 ("There are net winners who I sued or otherwise targeted. I mean, if I had a reason, I asked for something."); May 12, 2026 at p. 71 ("Like Pinnacle Trust, you calculated their net winnings. Well, we settled with Pinnacle Trust.")] After she explained that she obtained real estate from a net winner and sold it for millions, counsel for Baker Donelson obtained a "definitive ruling" that the jury could not hear such amounts. [May 12, 2026 at p. 142-143]. That single referenced real estate transaction, which Baker Donelson does not acknowledge, was worth $5,540,000.

3. Baker Donelson says the Receiver's pursuits of "'bird dogs' and other individuals" do not count because "she did not pursue them for their net winnings." [443 at 26] Tellingly it does not address any such pursuit specifically. It was not part of any negotiations and has no basis to conclude that any settlement did not contemplate the net winnings in question. (The Receiver's motion to approve her settlement with Pinnacle Trust, for instance, referred broadly to unspecified "legal claims.") It conveniently overlooks that in each instance the value the Receiver got far exceeded the net winnings in question. (Pinnacle Trust, for instance, had net winnings of $274.350; the Receiver settled with Pinnacle Trust for $500,000.) Baker Donelson's position, taken at face value, is the Receiver should have foregone more lucrative settlements for settlements for net winnings only. How is that reasonable mitigation?

4. Baker Donelson says it is not true that no one can determine from the record at trial who the net winners are. It points to what it calls "the Receiver's own partial accounting," which is D-1540. [443 at 26] D-1540 was and is the source of a lot of confusion.[2]

When the Receiver's counsel objected to the jury's failure to mitigate instruction at trial, he told the Court: "Your Honor, there's absolutely no proof … There's a lump sum that represents the aggregate of all net winnings. … [T]here's nothing here at all other than a gross number, without even the names of any net winners to guide the jury." [May 18, 2026 at p. 26] In response, Baker Donelson's counsel pointed to D-1540, which he said "lists all the net winners in it." [May 18, 2026 at p. 26]

That representation at trial was wrong: D-1540 is the Receiver's distribution spreadsheet. It only accounts for investors who were invested in Madison Timber in April 2018. It does not purport to account for net winners at all much less "all the net winners." It necessarily does not account for net winners, such as Pinnacle Trust, who were not invested in Madison Timber in April 2018.

The additional representation today that D-1540 "represent[s] nearly $6 million in net winnings" [443 at 26] also is wrong: If the Court looks at D-1540, it will see that it merely calculates distributions "as of 2/26/2025." If an investor did not qualify for a distribution because he was a net winner, his distribution is "$0.00." D-1540 does not purport to calculate "nearly $6 million in net winnings." It does not calculate net winnings at all.

5. Baker Donelson calls the Receiver's "non-record evidence" of net winners inaccurate [443 at 26] but the Receiver merely relies on Baker Donelson's own expert's reports. Baker Donelson does not dispute that previously Ms. Ingram identified Alexander Seawright Timber

[2] The Court may recall that D-1540 is the exhibit that was the subject of jury note C-13. The jury reported that it had been provided to them in unredacted form. [May 19, 2026 at p. 209]

Fund LLC as a net winner. It does not dispute that Ms. Ingram identified as net winners numerous persons the Receiver pursued. It disputes that the Receiver pursued those persons' net winnings, but, as shown above, it has no basis to conclude that net winnings were not contemplated by any settlement, and it overlooks that in each instance the value the Receiver got far exceeded the net winnings in question.

The point is, the story Baker Donelson tells about net winners is not a straightforward one, but, in any event, there must be a post-trial accounting, and Baker Donelson cannot avoid that post-trial accounting by pretending that the Receiver never pursued persons who were net winners. Baker Donelson's position—that there should be no post-trial accounting—is contrary to the law and the facts and, if the Court accepts it, would be patently unfair. The Receiver recovered far more in value from her pursuits of net winners than she would have recovered had she pursued net winnings alone. To ignore that here is contrary to reason and wrong.

6. Finally, Baker Donelson attempts to argue any post-trial accounting should reduce $15,235,089.25, not $10,000,000, with the effect that $4,014,501.97 remains. [443 at 27] The jury found that, if the Receiver had pursued net winners, she would have recovered an additional $10,000,000. It did not find that she would have recovered an additional $15,235,089.25. The reduction is from $10,000,000. Accounting solely for known pursuits of, or values obtained from, net winners identified solely in the Receiver's motion, the result is **-$1,220,587.28.**

A post-trial accounting wipes out the $10,000,000, but the fact remains that the notion that if the Receiver had only sent a blanket letter to all net winners she would have recovered an additional $10,000,000 is fanciful. Baker Donelson does not address Mississippi case law that holds that in such circumstances a party is entitled to nominal damages only. Whether because a post-trial accounting wipes out the $10,000,000 or because $10,000,000 is fanciful, the Receiver is entitled to relief pursuant to Rule 59.

8. The Receiver has not double-counted damages.

Baker Donelson argues "the Receiver arrives at $2.8 million by double-counting." [443 at 28] That is not true: 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 addressed the same arguments in her response to Baker Donelson's motion for entry of judgment. [441 at 14-19] The two new cases that Baker Donelson cites to argue the two judgments for $1.4 million are "the same damages" are not on point.

Baker Donelson cites *City of Jackson v. Est. of Stewart ex rel. Womack*, 908 So. 2d 703 (Miss. 2005), but there the plaintiff's breach of contract and negligence claims arose "from the same set of operative facts" alleged against the same defendant. *See id.* at 711 ("plaintiff claims when Mrs. Spiller left Mrs. Stewart unattended, the City breached its contract with CMPDD and it was also negligent"). By contrast, here, the Receiver alleged Seawright and Alexander aided and abetted Lamar Adams and, separately, that Baker Donelson failed 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 *R.K. v. J.K.*, 946 So. 2d 764 (Miss. 2007), but the Mississippi Supreme Court expressly disapproved of that opinion in a later appeal, 30 So. 3d 290 (Miss. 2009). Baker Donelson cites it for the proposition that a plaintiff cannot recover "the same damages multiple times" [443 at 28] but that is not what happened here. Here, 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, separately, 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").

9. The Receiver is entitled to ask for interest, costs, and attorneys' fees.

The Receiver addressed Baker Donelson's arguments regarding interest, costs, and attorneys' fees in her response to Baker Donelson's motion for entry of judgment. [441 at 19-20] The Court need not address the issue now, but after entry of a judgment, if the Receiver is the prevailing party, she is entitled ask for such things.

The Court and the parties invested a lot of time in this trial, and these post-trial matters are important. The Receiver has attempted to adequately address the issues before the Court within the space allotted. She respectfully requests oral argument to the extent she may personally answer any questions the Court may have.

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 25, 2026 *(/s/ Kaja S. Elmer*