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

OPPOSITION TO SEAWRIGHT AND ALEXANDER'S MOTION TO FOR ENTRY OF JUDGMENT

Alysson Mills, in her capacity as the court-appointed receiver for Arthur Lamar Adams and Madison Timber Properties, LLC respectfully opposes the motion for entry of judgment [417] filed by Jon Seawright; Brent Alexander; and Alexander Seawright, LLC ("Seawright and Alexander").

INTRODUCTION

Seawright and Alexander also move for the entry of a judgment, meaning the Court has before it three separate motions, all addressing various issues bearing on the judgment to-be-entered. The issues overlap. Broadly speaking, Defendants argue the Court is required, without further analysis, to enter a take-nothing judgment. The Receiver argues the Court is required, consistent with its own precedent, to conduct a post-trial accounting and, after, enter judgment in her favor.

There are other issues:

The Receiver argues she is entitled to judgment as a matter of law on Defendants' failure to mitigate defense. Defendants argue the issue is not properly before the Court.

Defendants argue any judgment in the Receiver's favor must be reduced by the Receiver's recoveries from other parties. The Receiver argues there is no risk of double-recovery.

The only issue that is unique to Seawright and Alexander is their argument that the Receiver's judgment against them must be reduced by their restitution payments. The Receiver shows herein that those restitution payments do not reduce the Receiver's judgment because they compensate a different victim and different injury.

The Receiver responds to Seawright and Alexander's motion below, mindful that most of the issues presented have been fully briefed elsewhere. To the extent warranted, the Receiver incorporates her prior briefing on the same issues here.

ARGUMENT

1. Nothing requires the Court to enter a particular form of judgment.

Defendants' primary argument is the Court is required, without further analysis, to enter a take-nothing judgment. Baker Donelson argues the Court is required to enter its Form AO 450. Seawright and Alexander argue the Court is required to enter "a simple, 'take-nothing' judgment."

The Receiver is not wedded to a particular form of judgment. The parties' principal disagreement, as the Court has seen, is whether the Court should conduct a post-trial accounting first. If the Court conducts a post-trial accounting first, it cannot enter a take-nothing judgment.

Defendants insist, without legal authority, that the Court has no choice in the matter. But the Court's precedent supports that it should conduct a post-trial accounting first, and no legal authority supports that it should not.

a. The Court should conduct a post-trial accounting first.

The Court conducted a post-trial accounting prior to entering judgment in *Pettway v. Asian Tire Factory Ltd.*, No. 3:20-cv-10-CWR-LGI, 2021 WL 5751793 (S.D. Miss. Dec. 2, 2021) (addressing offsets for prior settlements before entering judgment). The Court and the parties relied on *Pettway* throughout trial; it was the basis for the Court's instruction that it would account for the Receiver's prior settlements post-trial. There is no reason not to follow *Pettway* here.

Defendants themselves ask the Court to account for the Receiver's prior settlements for purposes of reducing their own liability. They necessarily concede that the Court must account for the Receiver's prior settlements' effect, if any, on the jury's verdict prior to entering a judgment.

The Court's post-trial accounting is a two-way street. If the Court accounts for the Receiver's prior settlements for purposes of determining their effect, if any, on the Receiver's $1.4 million judgment against Seawright and Alexander ($2.8 million judgment against Baker Donelson), it also must account for their effect, if any, on the jury's finding that, if the Receiver pursued net winners, she would have recovered an additional $10,000,000.

What Defendants ask the Court to do is look one way but not the other, but there is no legal authority that would permit the Court to do that. It would be patently unfair and, indeed, inconsistent with expectations set at trial. At trial, Baker Donelson's counsel asked the Court for a "definitive ruling" that the jury could not hear amounts 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 to confirm its rulings on prior settlements "applies to those amounts as well." [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. If the Court accounts for the Receiver's known pursuits of net winners, it must reduce the $10,000,000 in question to -$1,220,587.28. It cannot enter a take-nothing judgment.

b. No legal authority supports that the Court should not conduct a post-trial accounting or otherwise address any arguments before it.

Defendants argue federal rules "require" the Court to enter a take-nothing judgment before it does anything else. That is not true.

The Receiver has asked the Court to conduct a post-trial accounting, pursuant to *Pettway* and Rule 59, and to address unresolved questions of law, pursuant to Rule 50(b), before it enters a judgment. No rule requires the Court to wait. Defendants point to Rules 49 and 58, but those rules do not prevent a Court from conducting a post-trial accounting or addressing unresolved questions of law before entering a judgment. Rule 49 says a court must enter "an appropriate judgment on the verdict and answers." Rule 58 says any judgment "must be set out in a separate document." Neither rule says a court must enter a judgment without analysis.

Seawright and Alexander cite two cases in support of their argument: *Gaia Techs. Inc. v. Recycled Prods. Corp.*, 175 F.3d 365 (5th Cir. 1999), and *Robles v. Exxon Corp.*, 862 F.2d 1201 (5th Cir. 1989). Neither helps them.

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 a post-trial accounting, which Rule 59 authorizes, and for judgment as a matter of law, which Rule 50(b) authorizes.

Nothing in *Gaia Techs. Inc.* requires the Court to enter judgment before it considers the Receiver's arguments. To the contrary, *Gaia Techs. Inc.* expressly observes that, "[a]lthough 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." *Id.* at 374. *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 … As the Advisory Committee Notes for the 1995 amendments to Rule 50 state: 'The phrase 'no later than' is used—rather than 'within'—to include post-judgment motions that sometimes are filed before actual entry of the judgment by the clerk.'"); *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").

Robles was a "tale of two verdicts." 862 F.2d at 1201. The jury returned a special verdict, *i.e.*, one with special interrogatories, in favor of the defendant. After, the court, based solely on its questioning of the jury, determined that the jury had misunderstood its instructions and ordered it to re-deliberate. After it re-deliberated, the jury returned with a verdict in favor of the plaintiff. The question in *Robles* was whether the court had erred in failing to enter judgment on the first verdict. More specifically, the question was under what circumstances may a court re-submit special interrogatories to a jury after it returns a verdict.

The question in *Robles* was not whether a court may conduct a post-trial accounting or address unresolved questions of law before entering a judgment. Seawright and Alexander cite

Robles for the proposition that "[t]he federal rules and the Seventh Amendment 'command' that the Court enter the take-nothing verdict reflecting the jury verdict" [418 at 4] but *Robles* does not say that. To the contrary, *Robles* expressly observes that the "command" that judgment be entered is "subject, of course, to the usual motions under rules 50 and 59." *Robles*, 862 F.2d at 1204.

2. The Receiver is entitled to judgment as a matter of law on Defendants' failure to mitigate defense pursuant to Rule 50(b).

Seawright and Alexander insist the jury had sufficient evidence to find the Receiver failed to mitigate the Receivership Estate's damages. They say it is "undisputed" that if the Receiver had "requested, by letter or otherwise" that "44 investors who had more than $100,000 in net winnings" simply "pay back" the net winnings, she would have recovered an additional $10,000,000. [418 at 4] But that proposition *is* disputed. 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*.

No one disputes that a plaintiff has a duty to mitigate. But a defendant has the burden of proof. *In re Evans*, 492 B.R. 480, 503 (Bankr. S.D. Miss. 2013) ("In Mississippi, the burden of producing 'facts which will operate to bring the mitigation into effect' rests on the defendant.") (citing *Poteete v. City of Water Valley*, 207 Miss. 173, 42 So.2d 112, 113 (1949) (citations omitted)). *See also Wall v. Swilley*, 562 So. 2d 1252, 1258 (Miss. 1990) ("Of course, mitigation is an affirmative defense and the Swilleys were burdened to charge and prove that the Walls had failed in their duty."). For several reasons, Defendants did not carry their burden as a matter of law.

a. The Receiver did not have the specific duty to pursue all net winners by letter or otherwise.

For most of this litigation, Baker Donelson argued the Receiver had a duty to file clawback lawsuits against all net winners, but the Receiver showed that other receivers have been criticized for wasteful litigation. *E.g.*, *Sec. & Exch. Comm'n v. Stanford Int'l Bank, Ltd*., 927 F.3d 830, 845 (5th Cir. 2019) (observing query as to "the benefits to be reaped, other than in the Receiver's legal fees, from these time-consuming suits against relatively poor former employees targeted by the Receiver"). Furthermore, "[t]he general rule is that 'injured parties need not ... institute and prosecute [law] suits' in order to mitigate damages." *Stone v. Satriana*, 41 P.3d 705, 712 (Colo. 2002) (quoting *Robinson v. Carney*, 632 A.2d 106, 108 (D.C. 1993) (alterations in original) (citing 2 Marilyn Minzer et al., Damages in Tort Actions § 16.22, at 16–34 & 35 (1992))). *See also Branch Banking & Tr. Co. v. Saiid Forouzan Rad*, No. 2:14-cv-01947, 2016 WL 4591749, at *5 (D. Nev. Sept. 1, 2016), *aff'd sub nom. Branch Banking & Tr. Co. v. Est. of Forouzan*, 727 F. App'x 239 (9th Cir. 2018) (same); *Stadheim v. Becking*, 290 N.W.2d 273, 274 (S.D. 1980) ("The law does not require a person to take affirmative legal action to prevent [the tortfeasor] from suffering the result of the tortious act.").

Apparently acknowledging the flaw in its argument, for the first time at trial Baker Donelson instead argued the Receiver should have sent a blanket letter to all alleged unidentified net winners demanding they return their net winnings. There is no dispute that, yes, the Receiver could have sent a blanket letter to known net winners. But that does not mean she had a duty to pursue net winners under the facts and circumstances of this case. If the Receiver had sent a blanket letter to known net winners, Defendants would have said that sending a letter was not enough. They would have argued she had a duty to follow through with any threats of litigation, whatever the cost.

"Juries are not instructed in, nor do they engage in, consideration of the policy matters and the precedent which define the concept of duty." *Greer v. Key*, 428 So. 3d 333, 338 (Miss. 2026) (quoting *Donald v. Amoco Prod. Co.*, 735 So. 2d 161, 174 (Miss. 1999) (citing W. Page Keeton, Prosser and Keeton on Torts § 37 (5th ed. 1984)). "Whether a duty exists under a given set of facts and circumstances is essentially a question of law for the trial court." *Rodriguez v. Riddell Sports, Inc.*, 242 F.3d 567, 576 (5th Cir. 2001) (applying Texas law but Mississippi law is same). *See Doe ex rel. Doe v. Wright Sec. Servs., Inc.*, 950 So. 2d 1076, 1079 (Miss. Ct. App. 2007) ("Whether a duty is owed is a question of law.") (citing *Rein v. Benchmark Constr. Co.*, 865 So. 2d 1134, 1143 (Miss. 2004)).

In this case, especially, whether the Receiver had a duty to do anything is a question of law for this Court. *See Zacarias v. Stanford Int'l Bank, Ltd. (Zacarias)*, 945 F.3d 883, 896 (5th Cir. 2019) (a receiver "is an officer ... of the court") (quotations omitted). *See also Janvey v. GMAG, L.L.C*, 98 F.4th 127, 132–33 (5th Cir. 2024) ("A district court's actions in supervising an equity receivership are also reviewed for an abuse of discretion.") (quotation omitted).

Defendants never pointed to any legal authority for the proposition that the Receiver had a duty to indiscriminately pursue net winners, by blanket letter or otherwise. *E.g.*, *Archer v. Harlow's Casino Resort & Spa*, 395 So. 3d 71, 74 (Miss. Ct. App. 2024), *reh'g denied* (Oct. 15, 2024) ("Archer identified no statute, regulation, or other legal authority that would impose such a duty. …") (citing *Eli Invs. LLC v. Silver Slipper Casino Venture LLC*, 118 So. 3d 151, 154 (¶11) (Miss. 2013) ("The existence vel non of a legal duty is a question of law to be decided by the court.")).

In any event, any receiver's duty of care, like anyone's duty of care, requires careful consideration of policy matters, in the light of the attendant facts and circumstances. *E.g.*, *Fortner v. IMS Eng'rs, Inc.*, 422 So. 3d 22, 35 (Miss. Ct. App.), *reh'g denied* (Sept. 2, 2025), *cert. denied*, 421 So. 3d 1260 (Miss. 2025) (citations omitted) (whether there exists a specific duty of care "requires the consideration of public policy matters and is a question of law for the court").

Considering the attendant facts and circumstances here, the Receiver did not have the specific duty, as a matter of law, to indiscriminately pursue all net winners, by blanket letter or otherwise. The Receiver, like any receiver, had a duty to recover money and assets for the benefit of victims as cost effectively and neutrally as possible. The Court is independently aware that the Receiver successfully pursued claims against alleged "bird dogs" and aiders and abettors. The decision to focus on those claims, which likely will result in total recoveries that approximate total net losses, was cost effective and neutral. Any meaningful indiscriminate pursuit of net winners would have been time-consuming and expensive. *E.g.*, *Stanford Int'l Bank, Ltd.*, 927 F.3d at 845 (criticizing receiver for pursuit of time-consuming and expensive litigation).

The evidence at trial was that the Receiver did pursue persons who were 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.")]

The evidence at trial was that even pursuits of persons who were net winners resulted in judgments that have not been paid. [May 11, 2026 at p. 222-23 ("I've gotten judgments that no one's paid."); May 12, 2026 at p. 71 ("Randy Shell, we ended up settling with him. He's never paid a dime, by the way.")]

The evidence at trial was that many net winners are deceased. [May 11, 2026 at p. 221; May 12, 2026 at p. 68] Many were or are elderly and lived off the monthly checks that they received. [May 12, 2026 at p. 58-59] Many were "working folks," including "school teachers." [May 11, 2026 at p. 217, 221; May 12, 2026 at 60] Many "didn't actually keep the interest" from their investments because they reinvested it. [May 11, 2026 at p. 196]

The evidence at trial was that indiscriminately pursuing net winners would not have been a good use of resources. The Receiver explained that, if she had sent a blanket letter to all net winners, even assuming that some might have paid their net winnings back, those with means would have fought over it. [May 12, 2026 at p. 71; see also May 11, 2026 at p. 221 ("[You] would put them in a position where they would have to litigate that, and [then] you would have to litigate. …")] She would have had to pursue everyone evenhandedly, which is to say with equal force and follow-through. [May 11, 2026 at p. 221; May 11, 2026 at p. 217 (it was not "cost effective to chase everybody" and "in a lot of these instances, it just did not feel like the right thing to do")].

The evidence at trial was that even when the Receiver got money back from churches or the Ole Miss Athletic Foundation, "it wasn't as simple as asking." She threatened lawsuits; they hired lawyers; and "there was a lot of back and forth." [May 12, 2026 at p. 63] The Court's own record independently reflects that, even in these instances, the Receiver did not recover 100% of the amounts in question.

This is not to say a receiver may never have a duty to indiscriminately pursue all net winners in a Ponzi scheme case. It is simply to say that the facts and circumstances in each case are different, and the facts and circumstances in this case did not give rise to that specific duty here, as a matter of law. The Receiver is entitled to judgment as a matter of law on Defendants' failure to mitigate defense.

b. Defendants did not prove $10,000,000 with reasonable certainty.

Defendants argued only that the Receiver should have sent a blanket letter to all net winners. [May 15, 2026 at p. 155 ("Now, Your Honor, we're not saying she had to file a lawsuit ….")] The notion that if the Receiver had only sent a blanket letter to all net winners she would have recovered $10,000,000 is fanciful. No evidence at trial supports it. Mississippi law requires documentation and a clear methodology, but there is neither.

There is no accounting of net winners in evidence because Defendants chose not to offer Baker Donelson's expert's accounting as an exhibit at trial. Ms. Ingram testified she accounted for $15,235,089 in total net winnings over the entire life of the Madison Timber Ponzi scheme. She then testified that when she accounted solely for investors with net winnings over $100,000, the total net winnings were "about" $10,000,000. [May 15, 2026 at p. 73] From that alone, Defendants' counsel argued to the jury that the Receiver would have recovered an additional $10,000,000 if she had simply "asked."

Pretrial, the Court ordered that Ms. Ingram could not opine that the Receiver would have recovered any sum had she pursued net winners, because any such opinion was "unsupported, speculative." [342 at 5] That "unsupported, speculative" opinion did not become fact merely because Defendants' counsel argued it. The jury nevertheless necessarily relied solely on Ms. Ingram's testimony and Defendants' counsel's argument to conclude that the Receiver would have recovered an additional $10,000,000 if she had sent all net winners a blanket letter.

It was not the Receiver's burden to prove she would not have recovered net winnings. "[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 sub nom. Anderson v. City of McComb Mississippi*, 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); *In re Whelan*, 582 B.R. 157, 174 (Bankr. E.D. Tex. 2018) ("The party raising the failure to mitigate defense must prove lack of diligence as well as the amount by which the damages were increased as a result of the failure to mitigate."); *United Neurology, P.A. v. Hartford Lloyd's Ins. Co.*, 995 F. Supp. 2d 647, 651 (S.D. Tex. 2014) ("At trial, the defendant 'bears the burden of proving lack of diligence on the part of the Plaintiff, and the amount by which the damages were increased by a failure to mitigate.'") (citation omitted); *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"); *Glazer v. Glazer*, 278 F. Supp. 476, 485–86 (E.D. La. 1968) ("the burden is on the defendants to prove the amounts that should be offset in mitigation of damages").

The amounts here are net winnings, or fictitious profits. They are not the kind of amounts that are left to the discretion of the jury. *See ABL Mgmt., Inc. v. Rowell*, No. 2024-CA-01007-COA, 2026 WL 144095, at *14 (Miss. Ct. App. Jan. 20, 2026), *reh'g denied* (Apr. 14, 2026) ("[T]here are also some damages, such as pain and suffering, that are not susceptible of proof as to monetary value, and these items must be left to the discretion of the jury as long as the amount thereof, under all of the evidence, is just and reasonable.") (citations omitted).

They are the kinds of amounts for which courts require reasonably certain proof. *E.g.*, *J & B Ent. v. City of Jackson, Miss.*, 720 F. Supp. 2d 757, 764 (S.D. Miss. 2010) (for damages for civil rights violation, "opinions of estimated lost profits must, at a minimum, be based on objective facts, figures, or data from which the amount of lost profits can be ascertained"); *Warren v. Derivaux*, 996 So. 2d 729, 737 (Miss. 2008) (for violation of easement, lost profit "damages may be awarded if the evidence lays 'a foundation which will enable the trier of fact to make a fair and reasonable estimate of the amount of damage'") (citation omitted). *See also, e.g.*, *Matter of 3 Star Props., L.L.C.*, 6 F.4th 595, 612 (5th Cir. 2021) (lost profits for fraud and civil conspiracy were unsupported; "at a minimum, opinions or estimates of lost profits must be based on objective facts, figures, or data from which the amount of lost profits can be ascertained").

Under Mississippi law, a party has the burden to prove such amounts with "reasonable certainty." *Tupelo Redevelopment Agency v. Gray Corp*., 972 So. 2d 495, 516 (Miss. 2007). Whatever the measure, they must exist outside "the realm of speculation":

> 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.

Id. (quoting *Adams v. U.S. Homecrafters, Inc*., 744 So.2d 736, 740 (Miss. 1999)). *See also Emergency Medicine Associates of Jackson, PLLC v. Glover*, 189 So.3d 1247 (Miss. App. 2016) (quoting *Frierson v. Delta Outdoor, Inc*., 794 So.2d 220, 225 (¶ 14) (Miss. 2001) (quoting *Wall v. Swilley*, 562 So.2d 1252, 1256 (Miss. 1990))). "If the damage is certain, the fact that its extent is uncertain does not prevent a recovery." *Tupelo Redevelopment Agency*, 972 So. 2d at 516 (quoting *Adams*, 744 So. 2d at 740). Nevertheless, "[i]t is absolutely incumbent upon the party seeking to prove damages to offer into evidence the best evidence available on each and every item of damage." *Emergency Medicine Associates of Jackson, PLLC v. Glover*, 189 So.3d 1247 (Miss. App. 2016) (quoting *Strickland v. Rossini*, 589 So.2d 1268, 1274–75 (Miss. 1991) (quoting *Eastland v. Gregory*, 530 So.2d 172, 174 (Miss. 1988))). The Mississippi Supreme Court's admonition that damages "must be shown by something more than mere speculation" is oft cited and clear. *Silver Dollar Sales, Inc. v. Battah*, 391 So. 3d 845, 852 (Miss. Ct. App.), *reh'g denied* (May 7, 2024), *cert. denied*, 391 So. 3d 819 (Miss. 2024) ("The Mississippi Supreme Court has 'clearly h[eld] that damages must be shown by something more than mere speculation.'") (quoting *Sports Page Inc. v. Punzo*, 900 So. 2d 1193, 1200 (¶22) (Miss. Ct. App. 2004)).

In *Healy v. AT&T Services, Inc.*, 362 So.3d 14, 21 (Miss. 2023), the Mississippi Supreme Court explained that sufficient evidence for lost profits requires at least "two things": First, a "clear methodology" that explains how an alleged breach caused the alleged damages. Second, "documentation" that will establish and provide an underlying basis to support the award.

Here, even if Defendants purported to offer a clear methodology, they did not support it with any documentation, because Ms. Ingram's accounting is not in evidence. Defendants did not offer it as an exhibit, and no other exhibit at trial accounted for net winners.

But even if Ms. Ingram's accounting were in evidence, still Defendants offered no methodology at all to explain how the Receiver would have recovered an additional $10,000,000 simply by sending a blanket letter to all alleged but unidentified net winners.

Because Ms. Ingram's accounting is not in evidence, no one can determine who Ms. Ingram's alleged net winners are. But the evidence at trial was that many net winners are deceased [May 11, 2026 at p. 221; May 12, 2026 at p. 68]; many were or are elderly and lived off the monthly checks that they received. [May 12, 2026 at p. 58-59]; many were "working folks," including "school teachers." [May 11, 2026 at p. 217, 221; May 12, 2026 at p. 60]; and many "didn't actually keep the interest" from their investments because they reinvested it [May 11, 2026 at p. 196]. Ms. Ingram admitted that she merely counted total net winnings over the life of the Ponzi scheme; she did nothing to confirm 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. Nothing, not even Ms. Ingram's testimony, supports that the Receiver would have recovered an additional $10,000,000 from all alleged but unidentified net winners if only the Receiver had sent a blanket letter.

Defendants point to Techwood LLC, a net winner that repaid its net winnings because the Receiver asked. But the fact that Techwood LLC repaid its net winnings only proves that the Receiver did deal with some net winners separately. Ms. Ingram did not account for value the Receiver obtained from net winners with whom she dealt separately.

Defendants point to Baker Donelson shareholder Bill Reed, who said he would have repaid his net winnings if the Receiver would have asked. But Reed's testimony does not establish that any other, much less every other, net winner, dead or alive, would have agreed to or had the means to voluntarily repay 100% of any net winnings accounted to them. The evidence at trial was that the Receiver's pursuits of net winners resulted in judgments that have not been paid. [May 11, 2026 at 222-23 ("There are net winners who I sued or otherwise targeted. I mean, if I had a reason, I asked for something. ... I've gotten judgments that no one's paid."); May 12, 2026 at p. 71 ("Like Pinnacle Trust, you calculated their net winnings. Well, we settled with Pinnacle Trust. Randy Shell, we ended up settling with him. He's never paid a dime, by the way.")]. Even when the Receiver got money back from churches or the Ole Miss Athletic Foundation, "it wasn't as simple as asking." She threatened lawsuits; they hired lawyers; and "there was a lot of back and forth." [May 12, 2026 at 63] The Court's own record independently reflects that, even in these instances, the Receiver did not recover 100% of the amounts in question. Ms. Ingram did not account for the reality that no amount of effort would have resulted in a recovery of 100% of net winnings.

To summarize: Ms. Ingram merely counted total net winnings over the life of the Ponzi scheme, but there is no documentation of it, and 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.

There is no documentation or methodology to support that the Receiver would have recovered $10,000,000 from alleged but unidentified net winners if the Receiver had simply "asked." Defendants did not carry their burden to prove damages with reasonably certainty. For this additional reason the Receiver is entitled to judgment as a matter of law on Defendants' failure to mitigate defense.

c. The doctrine of avoidable consequences is limited to cases in which a plaintiff can avoid additional loss.

Seawright and Alexander are correct that under Mississippi law a plaintiff "is not allowed to recover for damages that he did not take reasonable efforts to avoid." [418 at 5] But the operative words are "*to avoid*." *See also Adams v. U.S. Homecrafters, Inc.*, 744 So. 2d 736, 740 (Miss. 1999) ("[T]he injured party is not precluded from recovery to the extent that he has made reasonable but unsuccessful efforts *to avoid loss*." (emphasis added)). The mitigation doctrine, also known as the doctrine of avoidable consequences, only applies where a plaintiff aggravates an injury after-the-fact, with the result that she incurs additional, *avoidable* loss.

Mississippi law only requires that a plaintiff take reasonable steps to "remedy the faulty situation and prevent subsequent damage." *R. McKnight & Son v. C & I Ent.*, 100 So. 3d 1022, 1028 (Miss. Ct. App. 2012) (quoting *Tri–State Transit Co. v. Martin*, 179 So. 349, 350 (Miss. 1938) and *Travelers Indem. Co. v. Rawson*, 222 So. 2d 131, 135 (Miss.1969)). Reasonable steps, as recognized by Mississippi courts, have included following a doctor's orders regarding a course of recovery, *see, e.g., Flight Line, Inc. v. Tanksley*, 608 So. 2d 1149, 1163 (Miss. 1992) (collecting cases), and repairing a roof to stop a leak, *see, e.g., Rawson*, 222 So. 2d at 135. Following a doctor's orders and repairing a roof avoid aggravating an injury and incurring additional, *avoidable* injury.

But those cases are not this case. There is no authority for the proposition that a plaintiff's duty to mitigate damages requires her to affirmatively pursue others, through litigation or otherwise. The Receivership Estate's damages are investors' total net losses, $53.4 million. Total net losses are what they are; they were fixed at the time of the Ponzi scheme's collapse. Defendants contend the Receiver should have pursued all unidentified net winners by blanket letter or otherwise, but any failure to pursue any net winner, or anyone for that matter, did not aggravate total net losses. Stated differently, total net losses are not greater because the Receiver did not pursue a net winner, or anyone.

d. The doctrine of avoidable consequences does not apply to intentional torts unless the defendant proves the plaintiff herself acted intentionally or recklessly.

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

Seawright and Alexander argue Mississippi courts require mitigation in "all kinds of cases." Baker Donelson made the same argument, relying on the Official Commentary to the Restatement (Third) of Torts: Remedies § 8, comment q. But comment q says, in full: "It [the doctrine of avoidable consequences] applies, with a plaintiff-friendly modification, to intentional torts as well as to negligence." The "plaintiff-friendly modification" is the balance of the rule: A defendant must prove not only that a plaintiff could have avoided consequence by reasonable effort or expenditure and without undue risk, difficulty, or embarrassment, but also that the plaintiff intentionally or recklessly failed to do so.[1] Defendants did not prove, and make no attempt to argue, that the Receiver was intentional or reckless in failing to mitigate damages. She filed this lawsuit and others and recovered tens of millions of dollars. Even by their own analysis, the Receiver has been so successful pursuing others she has nothing left to recover.

Seawright and Alexander argue the Receiver waived any argument the doctrine of avoidable consequences does not apply to intentional torts. [418 at 5] She did not. At the close of evidence, the Receiver moved for judgment as a matter of law on Defendants' failure to mitigate defense pursuant to Federal Rule of Civil Procedure 50(a), and the Court reserved ruling on it. [May 15, 2026 at p. 108 and p. 133] The Receiver later separately objected to the jury's failure to mitigate instruction and to the failure to mitigate question on the jury's verdict form. [May 18, 2026 at p. 26]

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

In any event, the question for the Court now is how to deal with the jury's verdict. Nothing prevents the Receiver from arguing the Court should deal with the jury's verdict one way or the

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

other. Before the jury rendered a verdict, the question of how the Court should deal with the jury's verdict did not arise. Defendants say the jury's failure to mitigate finding wipes out everything; the Receiver says it does not wipe out anything, but even if it wiped out Baker Donelson's direct liability for its own failure to supervise Seawright and Alexander, it would not wipe out Defendants' liability for Seawright and Alexander's intentional tort.

3. The Receiver is entitled to relief pursuant to Rule 59 because $10,000,000 is clearly excessive.

Seawright and Alexander's motion does not address the Receiver's entitlement to relief pursuant to Rule 59. The Receiver showed in her own motion she is entitled to relief pursuant to Rule 59 because $10,000,000 is clearly excessive. The Receiver does not repeat those arguments here but incorporates them by reference. Defendants are entitled to, at best, a nominal setoff for their failure to mitigate defense. Nothing "wipes out" the Receiver's judgment against them.

4. Nothing reduces the Receiver's judgment.

a. Seawright and Alexander's restitution payments do not reduce the Receiver's judgment.

Seawright and Alexander argue their restitution payments "result in a take-nothing judgment." [418 at 7] They do not. As a preliminarily matter, Seawright and Alexander's restitution payments do not total $1.4 million. They do not reduce $1.4 million to zero.

But more importantly, Seawright and Alexander's restitution payments do not offset their liability for aiding and abetting Lamar Adams at all because the two things do not compensate the "same loss by the [same] victim." 18 U.S.C. §3664(j)(2)(A).[2]

[2] Seawright and Alexander rely for their argument on 18 U.S.C. §3664(j)(2)(A), but that statute does not require an offset here. That statute states: "Any amount paid to a victim under an order of restitution shall be reduced by any amount later recovered as compensatory damages for the same loss by the victim in … any Federal civil proceeding." The statute contemplates that civil damages reduce an order of restitution, not the other way around.

Seawright and Alexander's restitution payments compensate investors in the Alexander Seawright Timber Fund (their distinct victims) for specific injuries to them (which throughout trial Seawright and Alexander contended are distinct). The civil damages that Seawright and Alexander must pay instead compensate the Receivership Estate for injuries to it caused by Seawright and Alexander's aiding and abetting Lamar Adams, different wrongful conduct.

Stated another way, the Government, through restitution, sought compensation for Seawright and Alexander's victims only, whereas the Receiver, through civil damages, sought compensation for the Receivership Estate. The Government proved Seawright and Alexander conspired with each other to commit wire fraud, something they admitted, whereas the Receiver proved Seawright and Alexander aided and abetted Lamar Adams, something they denied. The two things are not the same.

Alternatively, in Seawright, Alexander, and their counsel's own words: "Never, ever did Jon or Brent plead guilty to conspiring with Adams, to knowing he was stealing the money, to knowing about the Ponzi scheme at all. Please keep those separate." [Mr. Bailey, May 19, 2026 at p. 90] "They did plead guilty to conspiring with each other to get money in … but the bill [of information] did not mention any kind of act in connection with Lamar Adams on the other side. There is a wall between those two." [Mr. Bailey, April 21, 2006 at p. 16-17] "[Lamar Adams] was running a fraud on the Madison Timber side of the equation that Jon Seawright and Brent Alexander had no knowledge of." [Mr. Bailey, April 23, 2026 at p. 95] "We d[id]n't have anything to do with Madison Timber's operations or anything they do on that side of the equation." [Alexander, April 23, 2026 at p. 95] "Clearly we pled guilty … It just doesn't have anything to do with what we knew about Madison Timber Ponzi Scheme." [Seawright, April 29, 2026 at p. 200-201]

The fact that the civil damages are $1.4 million, without more, does not alter the analysis. The jury's verdict was general, not specific. The jury did not specifically find $1.4 million compensates the Receivership Estate for the "same loss" caused by Seawright and Alexander's conspiracy to commit wire fraud. Seawright and Alexander's restitution payments do not reduce the Receiver's judgment.

b. There is no risk of double recovery.

Seawright and Alexander argue the Court must reduce the Receiver's judgment by their restitution payments because "double recovery for the same harm is not permissible." [418 at 8]. They cite *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"). No one disputes the general proposition that the law does not permit a plaintiff to recover twice for "the same harm." But, as shown, Seawright and Alexander's restitution payments and the civil damages they must pay compensate for different harms. There also is no risk anyone will recover twice. No victim will be paid more than their net loss.

Seawright and Alexander argue the Court must reduce the Receiver's judgment "by the settlements the Receiver obtained from other alleged joint tortfeasors on her aiding and abetting claims." [418 at 7-8] The Receiver has addressed double recovery elsewhere. [416 at 20; 446 at 10] Double recovery only applies to recovery for the same claim, *see Cascio v. Cascio Invs., LLC*, 327 So. 3d 59, 74 (Miss. 2021) (damages "awarded for different claims" did not "constitute a double recovery"), and no settling party admitted to liability for aiding and abetting Lamar Adams. But indulging the argument, the Receivership Estate's total net losses were $53.4 million. The total recovered from defendants in the Receiver's four aiding and abetting lawsuits is only $28.7 million. There is no risk of double recovery by the Receivership Estate for the Receiver's aiding and abetting claims.

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

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

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

After years of disputing the Receiver's accounting of total net losses, Defendants conceded them at trial. There is no debate today that the total damages to the Receivership Estate caused by the Ponzi scheme are $53.4 million. The jury did not find something different. The jury did not find the total damages to the Receivership Estate caused by the Ponzi scheme are $1.4 million. The jury found that, of the total damages to the Receivership Estate, Seawright and Alexander proximately caused $1.4 million ("what amount of money, if any, will fairly compensate the receivership estate for injuries proximately caused by the liable Defendant(s)' wrongful conduct") and Baker Donelson proximately caused another $1.4 million ("what amount of money, if any, will fairly compensate the receivership estate for injuries proximately caused by Baker Donelson's negligent supervision").

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

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

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

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

Seawright and Alexander argue the Receiver is not entitled to attorneys' fees, interest, or costs. The Receiver addressed the same arguments made by Baker Donelson [441 at 19-20] and does not readdress them here. The Court need not address the issues now. If, after entry of a judgment, the Receiver is the prevailing party, she is entitled ask for such things. The Court may address the issues then.

CONCLUSION

The jury awarded the Receiver $1.4 million, and nothing reduces Seawright and Alexander's liability for it. The Receiver is entitled to a 1.4 million against Seawright and Alexander in her favor.

Respectfully submitted,

/s/ Lilli Evans Bass

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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 26, 2026 *   /s/ Margaret M. Daly*