

CIRCUIT COURT OF JONES COUNTY, MISSISSIPPI
SECOND JUDICIAL DISTRICT

S. LAVON EVANS, JR.,
S. LAVON EVANS, JR. OPERATING
COMPANY, INC., S. LAVON EVANS
DRILLING VENTURES LLC, AND
E&D SERVICES, INC.

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PLAINTIFFS

VS.

CIVIL ACTION NO. 2008-979-CV11

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BAKER & MCKENZIE, LLP, JOEL
HELD, LAREDO ENERGY HOLDINGS
LLC, S. LAVON EVANS OPERATING
TEXAS, LLC, E&D DRILLING
SERVICES, LLC, AND JOHN DOES
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DEFENDANTS

LAREDO ENERGY HOLDINGS, LLC,
S. LAVON EVANS OPERATING EXAS,
LLC, AND E&D DRILLING
SERVICES, LLC

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CROSS-PLAINTIFFS

VS.

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BAKER & MCKENZIE, LLP, JOEL
HELD, AND JOHN DOES 26-50

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CROSS-DEFENDANTS

**BAKER DEFENDANTS' MOTION FOR JUDGMENT
NOTWITHSTANDING THE VERDICT AND MOTION FOR REMITTITUR**

November 12, 2010

FILED

NOV 12 2010

BART GAVIN
CIRCUIT CLERK
JONES COUNTY, MS

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**CIRCUIT COURT OF JONES COUNTY, MISSISSIPPI
SECOND JUDICIAL DISTRICT**

S. LAVON EVANS, JR., et al.

Plaintiffs

V.

BAKER & MCKENZIE, LLP, et al.

Defendants

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CIVIL ACTION NO. 2008-979-CV11

**BAKER DEFENDANTS' MOTION FOR JUDGMENT
NOTWITHSTANDING THE VERDICT AND MOTION FOR REMITTITUR**

Defendants Baker & McKenzie, LLP (“Baker”) and Joel Held (“Mr. Held”) (the “Baker Defendants”), move this Court, pursuant to Mississippi Rule of Civil Procedure 50, for a judgment notwithstanding the verdict (“JNOV”). As set forth below, as a matter of both law and fact, Plaintiffs and Cross-Plaintiffs did not prove that any alleged act or omission of the Baker Defendants caused them any loss. Hence, reasonable jurors could not have returned a verdict for the Plaintiffs or Cross-Plaintiffs on any of their claims. Further, even leaving aside questions of causation, Plaintiffs and Cross-Plaintiffs failed to prove any item of damages with reasonably certain evidence, such that reasonable jurors could not have awarded them any damages.

Only in the alternative to a JNOV, Defendants are entitled to a remittitur of the jury’s excessive and unsupported damage awards.

As further support, Defendants incorporate herein their Motion for New Trial, filed contemporaneously herewith. The Defendants hereby fully preserve their right to appeal from all aspects of the trial and the jury verdict rendered in this matter on October 22, 2010, and from the judgment entered on November 4, 2010.

FILED

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**BART GAVIN
CIRCUIT CLERK
JONES COUNTY, MS**

I. Standard for Granting a Motion for JNOV.

A motion for a JNOV “tests the legal sufficiency of the evidence supporting the verdict, not the weight of the evidence.” *White v. Yellow Freight Sys., Inc.*, 905 So. 2d 506, 510 (Miss. 2004). It asks the court to hold, as a matter of law, that the verdict may not stand. *Misso v. Oliver*, 666 So. 2d 1366, 1375 (Miss. 1996). When assessing a motion for JNOV, “[i]f the facts and inferences so considered point so overwhelmingly in favor of the movant that reasonable jurors could not have arrived at a contrary verdict, granting the motion is required.” *White*, 905 So. 2d at 510. As set forth below, the Baker Defendants are entitled to JNOV on all claims asserted against them.

II. Plaintiffs and Cross-Plaintiffs Were Unable to Prove Causation on Any Claims Relating to the LBK, Rig 12 and Laredo Transactions.

A. Under Principles of Collateral Estoppel, There was No Causation as a Matter of Law.

Defendants adopt and incorporate herein their previously filed Motion to Accord Collateral Estoppel Effect to Rulings on Identical Issues in Previous Cases and supporting Memorandum (“Motion to Accord Collateral Estoppel”), Supplement to the Record to Reflect Specification of Issues, and Rebuttal Memorandum. As set forth in those pleadings and briefs, plaintiffs and cross-plaintiffs are legally bound to, and collaterally estopped to deny, the following facts definitively and finally determined by Judge Vasquez in *Laredo Energy Holdings, LLC et al. v. E&D Services, Inc., et al.*, No. 07-CVQ-000903-D2 (111th Judicial District, Webb County, Texas) (“*Laredo Energy Holdings*”):

- E&D Services contributed the equipment for Rig 12 to Laredo and, therefore, Laredo owned Rig 12 at all relevant times. In return, S. Lavon Evans, Jr. [“Mr. Evans”, the Plaintiff here] received a capital contribution credit of \$5.6 million on equipment for which he had paid only \$925,000. (Judge Vasquez Letter Ruling, Defense Exh. 2 (“Letter Ruling”), pp. 1, 3);
- “At all times,” including the 6 months from February, 2006 (before the LBK loan),

through August, 2006 (when Mr. Evans signed the Laredo operating agreement), Mr. Evans and Laredo knew of, consented to, authorized and ratified Reed Petroleum's pledge of the equipment as collateral security for LBK's loan to Reed Petroleum to fund construction of Rig 12. In return, Reed Cagle bound himself personally to repay the \$7.07 million LBK loan in full, whereas Mr. Evans had no personal exposure on the loan. (Letter Ruling, pp. 1, 2, 4)

- Mr. Evans fully understood the provisions of the Laredo operating agreement when he signed it, and his contrary contention was "totally ludicrous and disingenuous." (Letter Ruling, pp. 2, 5);
- Reed Petroleum used the LBK loan proceeds to fund the construction of Rig 12, and in fact made over \$7.6 million of capital contributions to Laredo. Thus, Mr. Evans substantially benefitted from the use of all of the loan proceeds to fund the construction of the Rig, in which he held a 51% interest through Laredo. (Letter Ruling, p. 2);
- Mr. Evans wrongfully took dominion and control of Rig 12 and refused to permit it to drill wells for Laredo, in violation of the Laredo operating agreement (Letter Ruling, Exh. A, pp. 3-4);
- Mr. Evans's wrongful conduct caused over \$3.8 million in damages to Laredo (Letter Ruling, Exh. p. 4; *see also* Final Judgment dated February 23, 2010 and Modified Final Judgment dated March 29, 2010, Exh. B).

At trial, the Court acknowledged that the *Laredo Energy Holdings* rulings bound the parties in this case. Daily Transcript ("Tr.") at 862 ("You can't deny this Judge's finding. That's a legitimate, in the State of Texas, that is a finding by a Court, it's a matter of public record. There's no way he can deny it ... I would not have allowed it to come into Court if it hadn't been a part of a public record in another state. That's [what] we call comity."). Plaintiffs and Cross-Plaintiffs likewise acknowledged the binding effect of the *Laredo Energy Holdings* rulings at trial, by continually "cherry picking" from it the factual determinations they perceived to be favorable to them, and asserting that these were matters that had been conclusively determined. *E.g.*, Tr. 521, 574, 588-605; 840, 852, 1068-69, 1131-32, 1180, 1239-40, 1390, 1406, 1409, 1413. Plaintiffs and Cross-Plaintiffs, however, ignored and/or contested other findings that they did not like – for example, the finding that "at all times" they knew of and consented to the pledge of the Rig 12 equipment to LBK. Tr. 593, 840, 852. Obviously,

plaintiffs and cross-plaintiffs cannot have it “both ways.” They are legally bound to *all* of the findings made in the *Laredo Energy Holdings*.

Under *Laredo Energy Holdings*, as a matter of law, Plaintiffs and Cross-Plaintiffs knew of, consented to, and benefited from all relevant aspects of the LBK, Rig 12 and Laredo transactions. And, Mr. Evans, through his own deliberate wrongdoing, caused his own losses and the losses suffered by Laredo arising from those transactions. As set forth in their Motion for New Trial, it was error for the Court to refuse to afford *Laredo Energy Holdings* collateral estoppel effect in this case, and to dismiss all claims of plaintiffs and cross-plaintiffs in conflict with that ruling.

Plaintiffs also were collaterally bound to the prior definitive federal court rulings in *HEI Resources East OMG Joint Venture v. S. Lavon Evans, Jr. Operating Co., et al.*, No. 5:07-CV-62 (U.S. Dist. Ct., S.D. Tex. 2007) (“*HEI Resources*”). These rulings included a finding that Evans stole \$2.7 million from an HEI sponsored joint venture through acts of theft, fraud and conspiracy. The Court further held that Evans’ explanation for his theft of the money was a “visible fiction.” Those deliberate wrongful acts, and not any act or omission of the Defendants, caused Mr. Cagle to terminate his business relationship with Mr. Evans, leading to the collapse of Evans’ businesses, as Mr. Cagle testified at trial. As set forth in their Motion for New Trial, the Court erred in failing to accord *HEI Resources* collateral estoppel effect in this case; in excluding evidence about the rulings in *HEI Resources*; and in excluding Mr. Cagle’s related testimony in this case.

Plaintiffs and Cross-Plaintiffs had the burden at trial to prove proximate cause by showing that but for the Defendants’ acts or omissions, they would not have suffered loss. *E.g.*, *McLeod v. Jackson*, 829 So. 2d 722, 725 (Miss. Ct. App. 2002). When a plaintiff fails to prove

proximate cause, a JNOV should be granted. *See Double Quick, Inc. v. Lymas*, 2010 WL 3706443, *7-8 (Miss. Sept. 23, 2010) (slip op.). *HEI Resources* and *Laredo Energy Holdings* establish conclusively that Mr. Evans's own actions, rather than those of the Baker Defendants, caused the losses arising from the LBK, Rig 12 and Laredo transactions of which Plaintiffs and Cross-Plaintiffs complain. If the findings of *HEI Resources* and *Laredo Energy Holdings* are given effect under principles of collateral estoppel, then as a matter of law, Plaintiffs and Cross-Plaintiffs cannot prove that any act or omission of the Baker Defendants caused them harm. As a result, the Baker Defendants are entitled to JNOV on all claims relating to those transactions.

B. Alternatively, on the Evidence at Trial, There Was No Showing of Causation.

Alternatively, and even absent application of collateral estoppel principles, the evidence at trial was insufficient to enable reasonable jurors to find that any act or omission of the Defendants caused any loss relating to the LBK, Rig 12 and Laredo transactions. Mr. Evans admitted on both direct and cross examination that, well before the LBK loan closed, he received *and reviewed* multiple drafts of the LBK loan documents and security agreement, as well as e-mails and drafts of the Laredo operating agreement, all specifically providing for the pledge of the equipment to secure the LBK loan. Tr. 829; 830-834; 822-826. He assigned his own employees to secure the appraisal and insurance required by the LBK security agreement. Tr. 835-841. The day before the LBK loan closing, Baker associate Jon Carroll transmitted the relevant portions of the security agreement to Evans's staff so that they could ascertain the name of the secured party, LBK. The evidence likewise overwhelmingly proved Evans's knowledge of and consent to all other aspects of the LBK, Rig 12 and Laredo transactions, and that he and Laredo substantially benefited from the transactions. Tr. 818-822.

Under these facts, reasonable jurors could not have found that any act or omission of the Defendants caused Plaintiffs or Cross-Plaintiffs any loss in connection with the transactions.

Defendants are therefore entitled to a JNOV on all claims relating to those transactions.

C. In the Further Alternative, Cross-Plaintiffs' Judicial Admissions Make It Legally Impossible For Them To Prove That The Baker Defendants Caused Them Harm.

In the further alternative, if the *Laredo* ruling is not afforded collateral estoppel effect, Cross-Plaintiffs' judicial admission, in their January 20, 2009 Cross-Claim, that "[n]one of the Cross-Plaintiffs ever owned Rig 12," renders it legally impossible from them to prove causation. Cross-Claim, para. 7. Further, Mr. Evans testified that E&D, not Laredo, owned Rig 12. Cross-Plaintiffs presented no evidence, other than the *Laredo* ruling, to prove that they owned the Rig. The Court erred when it denied the Baker Defendants' motion for directed verdict on this issue at the close of the Cross-Plaintiffs' case. Tr. 1081-1087.

If, as they have judicially confessed, Cross-Plaintiffs never owned Rig 12, they could not have suffered the loss of that asset, making it impossible for them to have suffered any loss. Moreover, if the findings from *Laredo Energy Holdings* are binding on Cross-Plaintiffs, they are legally bound by Judge Vasquez's finding that Mr. Evans and Laredo knew of, consented to, and benefited from the pledge to LBK and the other aspects of LBK, Rig 12 and Laredo transactions. Either way, as a matter of law, Cross-Plaintiffs could not prove causation at trial, entitling Defendants to a JNOV on all of their claims.

D. Under Principles of *In Pari Delicto*, Equity, and Good Conscience, JNOV Should be Granted on All Claims of Plaintiffs and Cross-Plaintiffs.

Basic principles of *in pari delicto*, equity and good conscience bar all claims of the Plaintiffs and Cross-Plaintiffs as a matter of law. As Judge Vasquez ruled in *Laredo Energy Holdings*, the losses suffered by Laredo and its subsidiaries were caused by Mr. Evans' own deliberate wrongdoing, including (i) his false denials of having contributed the equipment to Laredo and having consented to the pledge thereof to fund the construction of the Rig, and (ii)

his taking wrongful possession of the Rig and refusal to permit it to drill for Laredo; and these actions (iii) damaged Laredo by over \$3.8 million. Letter Ruling, pp. 2-4.

Mr. Evans continued his wrongful and duplicitous conduct in this case, purporting to sue Laredo and its subsidiaries, but then hiring the lawyers to defend his own suit. He directed those lawyers to take positions directly adverse to Laredo's interests in this case, including denying that he had ever contributed the equipment to Laredo or had consented to the pledge of the equipment, and to assert false cross-claims against the Defendants. Cross-Plaintiffs thus are mere straw parties or shells for Mr. Evans, through which he seeks to profit from his own deliberate wrongdoing and "double dip" on recovery. The Cross-Plaintiffs should be barred as a matter of law. "Whenever a party, who, as actor, seeks to set the judicial machinery in motion and obtain some remedy, has violated conscience, or good faith, or other equitable principle, in his prior conduct, then the doors of the court will be shut against him in limine." *Collins v. Collins*, 625 So. 2d 786, 789-90 (Miss. 1993) (quoting *Patterson v. Koerner*, 71 So. 2d 464, 466 (Miss. 1954)). "It is one of the oldest maxims of the law that no man shall, in a court of justice, take an advantage which has his own wrong as a foundation for that advantage." *Crabb v. Comer*, 200 So. 133, 135 (Miss. 1941). JNOV should be granted dismissing all claims of the Cross-Plaintiffs. Further, Mr. Evans has attempted to evade and deceive by his shifting of work and income to companies nominally owned by his wife. See Motion for New Trial.

III. Plaintiffs Were Unable to Prove Causation on Any Claims Relating to the Draw Works Transaction.

The evidence at trial showed overwhelmingly that Mr. Evans understood, consented to, desired and benefited from the Draw Works transaction, and himself caused his company, E&D Services, Inc. ("E&D"), to lose Rig 11 as the result of his failure to repay the loan. Mr. Evans repeatedly affirmed on both direct and cross that he wanted the Draw Works loan, secured by

Rig 11, in order to satisfy prior debt, including debt to Mr. Cagle, to upgrade Rigs 11 and 12, and for working capital. He further acknowledged that he understood and consented to the terms of the loan. Tr. 862-63. Contrary to his original contention that he was forced to take out the Draw Works loan due to the large debt supposedly owed to him by HEI, Mr. Evans conceded on cross that, on the date of the Draw Works loan, HEI/Cagle only owed him a net amount of only \$77,000 on gross annual revenues of over \$12 million. Tr. at 866-867. The evidence and testimony at trial also confirmed that Mr. Evans had only himself to blame for the loss of Rig 11. It was Mr. Evans who repeatedly defaulted on the loan despite the lender's attempts to work out a solution with him.

Because the evidence showed overwhelmingly that the Defendants had nothing whatsoever to do with Evans's loss of Rig 11 or other problems associated with the Draw Works transaction, Defendants are entitled to JNOV on all claims arising of or relating to that transaction.

IV. Defendants are Entitled to JNOV on All Claims Related to A Supposed Servicing Agreement.

A. The Claims Were Not Pleaded in the Complaint and Are Barred by Statute of Limitations.

The Baker Defendants are entitled to a JNOV on all claims relating to an alleged servicing agreement because such claims were not pleaded in the Complaint. They are barred by the three-year statute of limitations set forth in Miss. Code § 15-1-49; *Channel v. Loyacono*, 954 So. 2d 415, 420 (Miss. 2007). In their Complaint, Plaintiffs failed to plead any claim related to the existence of a servicing agreement or any damage relating to any such agreement, as required by M.R.C.P. Rule 8. The Baker Defendants moved to bar and objected to the trial of any issues related to the alleged servicing agreement, Tr. 1083-84, and are entitled to JNOV for this

independent reason. The Plaintiffs should not be permitted to recover any damages arising from or related to the alleged existence of such a servicing agreement.

Additionally, as set forth in the Defendants' July 30, 2010 Motion for Partial Summary Judgment Based on Statute of Limitations and accompanying memorandum, which are incorporated herein, the three-year statute of limitations for any legal malpractice claim related to the supposed servicing agreement expired prior to the Plaintiffs' filing suit in November 2008. Mr. Evans testified at trial that Mr. Held supposedly advised him to sign the servicing agreement in February of 2004. Hence, any claims related to the servicing agreement expired in February of 2007.

B. Plaintiffs Failed to Prove Causation on Any Claim Relating to a Servicing Agreement.

The evidence further showed overwhelmingly that Mr. Evans was not harmed by any supposed servicing agreement, or by any advice from the Baker Defendants relating to it. Mr. Evans acknowledged on cross-examination that until 2007 (when the supposed servicing agreement expired by its own terms), Mr. Cagle's payment record was "excellent." Tr. 668. Mr. Evans elaborated that Mr. Cagle "had done a good job paying [his bills]" and that if Mr. Cagle and HEI had not paid their bills he "wouldn't have kept working with him." Tr. 668-69. Likewise, there is no evidence that HEI/Cagle refused or declined, or delayed, to make any payment of any amount owed to Mr. Evans or any of his companies based on the terms of any supposed servicing agreement.

Further, the servicing agreement contained a termination clause allowing Mr. Evans to withdraw from it at any time upon 30 days notice. Defense Ex. 204. Nonetheless, knowing full well the frequency and amount of payments he was receiving from HEI/Cagle, Mr. Evans chose to continue doing business with him for many years -- during which HEI/Cagle paid Evans and

his companies over \$80 million. Tr. 660-61. There simply was no evidence from which reasonable jurors could have found that any supposed advice given by the Baker Defendants relating to the supposed agreement caused Plaintiffs any harm or loss.

C. Plaintiffs Failed to Prove the Existence of a Supposed Servicing Agreement

More fundamentally, the evidence at trial failed to establish the existence of an executed or effective servicing agreement. No signed copy of the agreement was produced. Mr. Evans's testimony as to the existence of the agreement was contradicted by a contemporaneous memorandum drafted by his own "right hand man," Mr. Ronald Taylor, in early 2006 confirming that no such agreement ever existed. Defense Ex. 73. Moreover, Plaintiffs' own financial records presented at trial showed that HEI/Cagle made monthly payments far in excess of the \$200,000 maximum set forth in the unsigned, draft servicing agreement produced at trial. Pl. Exhs. 279, 284. Reasonable jurors could not have found that such an agreement ever was executed or implemented by the parties. Defendants are entitled to a JNOV on all claims relating to a supposed servicing agreement, the source of most of Plaintiffs' supposed damages.

V. Plaintiffs Failed to Prove Causation Relating to Any Other Supposed Advice Given by the Baker Defendants.

At trial, Plaintiffs failed to present any evidence that they were damaged or harmed by any other supposed advice given by the Baker Defendants.¹ Even if Mr. Held gave Mr. Evans advice on the myriad business and financial matters testified to by Mr. Evans (which Mr. Held adamantly denied), there was no evidence from which reasonable jurors could have found that the advice caused plaintiffs any harm or loss whatsoever. Hence, Defendants are entitled to a JNOV on all claims relating to any such supposed advice.

¹ Mr. Evans testified in several places that he sought and obtained "legal advice" from Defendants, but he could not describe any such legal advice with specificity, or identify any injury he or his companies suffered as a result of that supposed advice.

Further, as set forth in Defendants' August 16, 2010 Motion for Partial Summary Judgment Dismissing Claims Based Upon Supposed Financial, Investment or Business Advice and accompanying memorandum, which are incorporated herein, Defendants were lawyers, not accountants or financial advisors. Even assuming that Defendants represented Mr. Evans on discrete legal matters, as a matter of law that relationship did not entail a duty to him regarding the multiplicity of business and financial matters as to which he testified Mr. Held had supposedly advised him. Defendants are entitled to a JNOV on all such claims.

VI. Plaintiffs and Cross-Plaintiffs Failed to Prove Causation As To Any Other Claim or Theory

Absent any proof of causation of harm relating to the LBK, Rig 12, Laredo, Draw Works, or servicing agreement matters, Plaintiffs and Cross-Plaintiffs are left with nothing else to complain about. They failed to present any other evidence from which jurors could link any supposed act or omission of the Baker Defendants to any harm or loss claimed in this case. Mr. Turner, Plaintiffs' standard of care expert, failed to offer any testimony as to the cause of Plaintiffs' alleged damages. When asked whether, in his opinion, the Baker Defendants breached the standard of care and whether that breach caused plaintiffs' damages, he simply opined, "I believe they did," with no explanation whatsoever. Tr. 957-958; *cf. Miss. Transp. Comm'n v. McLemore*, 863 So. 2d 31, 38 (Miss. 2003) (error to admit opinion evidence that is connected to existing data only by the *ipse dixit* of the expert.").

Similarly, the Cross-Plaintiffs' standard of care expert (who also tried to turn into a speculative "causation" witness), Mr. Allen, failed to establish any causal link and offered nothing more than pure speculation. Testifying far beyond his area of expertise, Mr. Allen testified, over defense objections, on matters such as whether the proposed business plan between Mr. Evans and Mr. Cagle was a "sound business plan," what supposedly was going

through Mr. Carroll's mind when he drafted the LBK loan documents, and what Judge Vasquez meant by "at all times" in his ruling in the *Laredo Energy Holdings* case. Tr. 1133-1135; 1125-1126; 1161-1162. Mr. Allen also made credibility determinations, testifying that he had "to take choices" as to who he thought was "accurate about the facts" as between Mr. Evans and Mr. Cagle. Tr. 1177-1178. Mr. Allen's speculative testimony was grossly insufficient to establish proximate cause.

Plaintiffs' and Cross-Plaintiffs' damages expert, Mr. Koerber, likewise failed to establish causation. First, Mr. Koerber spent a significant amount of time testifying about the HEI/LEH Cash Position Estimate (P. Tr. Ex. 189), a document which he did not create and had no involvement with, and which merely provided a hypothetical financial scenario if, and only if, Rigs 11 and 12 were sold in 2007. Tr. 1042-1049. Rather than offering any opinion, Mr. Koerber simply read the document and guessed as to its meaning and the projected cash position of Mr. Evans and Mr. Cagle if the rigs were sold.

Mr. Koerber's testimony also utterly failed to support causation of injury to a reasonable degree of economic certainty. In testifying as to Evans' supposed negative \$30 million current net worth, Koerber did nothing to vet or verify the accuracy of his self-prepared balance sheet or to relate the supposed change in net worth to any act or omission of the Defendants. Koerber simply took Evans' word for such matters – essentially serving merely as a "spokesman" for Evans. Obviously, a mere "before and after" comparison of supposed net worth, without more, is insufficient to enable reasonable jurors to attribute the loss to the Defendants. The testimony was not a sufficient basis for a finding of causation. *E.g., Hill v. Mills*, 26 So. 3d 322, 329 (Miss. 2010) (expert testimony should not be admitted unless it proceeds from "what is known, and the expert must have knowledge that is more than subjective or unsupported speculation.").

When testifying regarding the amounts owed as between Mr. Evans and Mr. Cagle, Mr. Koerber's response was simply that the plaintiff himself "represented to me that they have been unpaid." Tr. 997. Mr. Koerber further opined that the sale of assets at the distressed sale was caused by Mr. Cagle's "slow pay or no pay," despite the fact that Mr. Evans testified earlier that Mr. Cagle paid very well until 2007. R. at 1052-1053. At best, however, this is evidence of loss caused by Mr. Cagle, not the Defendants. As discussed in the Baker Defendants' Motion for New Trial, the Court's verdict form erroneously failed to provide for *any* allocation of fault to Mr. Cagle.

In attempting to provide a causal explanation for the legal expenses incurred by Plaintiffs (and awarded by the jury), Mr. Koerber simply opined generically that the fees "were incurred because of all the—because of what led to all this." Tr. 1053. He offered no further explanation. Lastly, on examination by cross-plaintiffs, Mr. Koerber never opined, and certainly not to a reasonable degree of economic certainty, that any conduct of the Baker Defendants caused a lower sales price of Rig 12.

As the Mississippi Supreme Court has recently instructed, an expert's testimony based solely on speculation is insufficient as a matter of law to establish proximate cause. *Double Quick, Inc.*, 2010 WL 3706443, at *8. When an expert's testimony "result[s] in the jury's having been left to speculate and guess about causation," the jury's verdict should not stand. *Id.* Because Plaintiffs and Cross-Plaintiffs failed to present any evidence from which reasonable jurors could link any alleged act or omission of the Baker Defendants to any harm or damage claimed in this case, there was *no* factual basis for any damage award made by the jury in favor of any plaintiff or cross-plaintiff. Defendants are entitled to a JNOV dismissing all claims against them and all amounts awarded by the jury on all claims. In further support of this

Motion, Defendants incorporate herein as though copied in full all arguments set forth in their Motion for Summary Judgment Based on Lack of Causation and supporting Memorandum filed on July 19, 2010, and their Rebuttal Memorandum submitted on August 10, 2010.

VII. The Baker Defendants are Entitled to JNOV on Claims for Negligent Representation (or Misrepresentation) or Omissions as Well as On Other Claims.

The statements that Plaintiffs allege to be actionable under a theory of negligent misrepresentation or omission could not be characterized or seen as anything other than predictions or representations of future actions or events. Such statements (or the failure to correct them) may not be the basis of recovery under Mississippi law, for claims based on negligent representations (or misrepresentations) or omissions. *E.g.*, *Bank of Shaw v. Posey*, 573 So. 2d 1355, 1360 (Miss. 1990) (“The promise of future conduct is, as a matter of *law*, not such a representation as will support recovery under a theory of negligent misrepresentation.”); *Holland v. Peoples Bank & Trust Co.*, 3 So. 3d 94, 99 (Miss. 2008).

The Baker Defendants further are entitled to JNOV on all claims for supposed civil conspiracy, breach of contract, intentional or malicious interference with contract, breach of covenants or duties of good faith and fair dealing, legal malpractice, or breach of fiduciary duty, due to the absence of evidence from which reasonable jurors could find against them on those claims. Further, there was no evidence from which reasonable jurors could find causation of harm or loss relating to any such claims or theories.

VIII. Plaintiffs and Cross-Plaintiffs Failed to Prove Damages to a Reasonable Degree of Economic Certainty.

The Baker Defendants are entitled to JNOV on the Plaintiffs’ and Cross-Plaintiffs’ claims for the additional reason that they failed to prove damages to a reasonable degree of economic certainty. It is without question that the plaintiff bears the burden of proof as to the amount of damages. *Puckett Mach. Co. v. Edwards*, 641 So. 2d 29, 36 (Miss. 1994). Here, Plaintiffs and

Cross-Plaintiffs failed to meet that burden.

At trial, Mr. Koerber admitted that many of his opinions were formulated based solely on the representations of Mr. Evans. Yet, it is “absolutely incumbent upon the party seeking to prove damages to offer into evidence the best evidence available [for] each and every item of damage.” *Id.* at 37 (quoting *Eastland v. Gregory*, 530 So. 2d 172, 174 (Miss. 1988)). Mr. Evans’s representations far from qualify as the “best available evidence.”

Relying exclusively on an unverified personal balance sheet prepared by Mr. Evans himself (P. Tr. Ex. 276), and admitting that he did not examine or vet the underlying documents, Mr. Koerber suggested that Mr. Evans’ personal net worth today is a negative \$30 million. He ignored Evans’ history of millions of dollars of bad checks, tax liens, operating losses, and other evidence of bad business practices and financial distress extending back many years, which contradicted Evans’ claim that, in 2006, he supposedly was worth \$50 million. Tr. at 1021-1023. Koerber thus ignored overwhelming evidence that Evans’ own bad business practices, rather than any act or omission of the Defendants, caused Evans’ current financial problems.

When asked to opine on the propriety of Mr. Evans’s actions in withdrawing the \$2.7 million that was to be returned to HEI, Mr. Koerber blindly took Mr. Evans’ account as true, ignoring the testimony of all other witnesses (including Mr. Cagle, Ms. Guerra and Mr. Munsell) and documents that contradicted Mr. Evans’ story as to the intended purpose of the money. R. at 1036-1038. Further, Mr. Koerber simply accepted without verification Plaintiffs’ Schedule of Liabilities (P. Tr. Ex. 304) as an accurate summary of “what is owed by the Evans’ company as they accumulated it,” concluding that the total amount of liabilities equaled \$32 million. R. at 1019-1020. He failed to substantiate or review any of the underlying pending lawsuits, tax claims, settlement agreements or vendor claims listed on the Schedule. He likewise failed to

account for the fact that Mr. Evans has denied liability in the pending lawsuits listed on the Schedule, and thus the liabilities are speculative, contingent, disputed and not a basis for recovery.

In addition, many of Mr. Koerber's damage calculations are duplicative and, thus, not recoverable under Mississippi law. *See City of Jackson v. Estate of Stewart*, 908 So. 2d 703, 711-12 (Miss. 2005). First, and most egregious, Mr. Koerber opined that Mr. Evans, as owner of E&D, supposedly suffered a loss of \$11.220 million for the loss of Rig 12 based on his 51% ownership of Laredo. Tr. at 1052. He, likewise, attributed a loss of \$22 million to Laredo for the loss of Rig 12. Tr. at 1061. Since Mr. Evans claims to own 51% of Laredo, he then recovered a *second* \$11.2 million, resulting in an unlawful "double dipping" of damages. Mr. Evans and Laredo cannot both recover for the same loss.² Additionally, Mr. Koerber testified that Plaintiffs should recover damages for the distressed sale of their assets which are wholly duplicative of other damages alleged. Tr.. at 1024-1026.

Even if credence were given to the entirety of Mr. Koerber's testimony, Plaintiffs are entitled only to \$44 million. Mr. Koerber calculated the total amount of Plaintiffs' damages at \$44 million. Plaintiffs presented absolutely no evidence to support the jury's award of \$81 million to the Plaintiffs.

As further set forth in the Baker Defendants' Motion for New Trial, Mr. Koerber failed to present any evidence which would have enabled the jury to award damages to Evans and the two Plaintiff companies, E&D and Evans Operating. Given that the jury's damage award was essentially double the amount calculated by Mr. Koerber, it must be presumed that the jury arbitrarily awarded duplicative amounts to those companies.

² Additionally, for example, the jury's award of \$20 million to E&D Services is wholly unsubstantiated, as the only evidence presented at trial (including Mr. Koerber's testimony), shows Rig 11 to be valued at \$15.5 million.

As also set forth in the Motion for New Trial filed herewith, Plaintiffs and Cross-Plaintiffs produced no evidence to support differentiated awards against Mr. Held and Baker & McKenzie, leading to the presumption that the jury awarded duplicative amounts against the Baker Defendants based upon arbitrary speculation.

Because the record is devoid of any evidence to support the damages awarded in this case, the Defendants are entitled to JNOV on all damages awarded by the jury in this case.

IX. The Baker Defendants are Entitled to JNOV on all Claims for Damages Based on Liabilities Allegedly Owed to Non-Party Creditors as these Damages are Not Recoverable Under Mississippi Law.

The Baker Defendants are entitled to a JNOV on all of Plaintiffs' claims for damages based on the Plaintiffs' alleged unpaid liabilities to various non-party creditors. As demonstrated by the evidence presented by Plaintiffs at trial, and (*inter alia*) for the reasons set forth in the Baker Defendants' Motion for Partial Summary Judgment Dismissing Claims Based on Liabilities Allegedly Owed to Non-Party Creditors and accompanying memorandum (filed August 16, 2010), as well as the additional arguments of counsel that were made at trial, all of which are incorporated herein, any and all damage claims based on liabilities allegedly owed by the Plaintiffs to non-party creditors are barred under Mississippi law.

As an initial matter, Plaintiffs lack standing to even assert such claims. *See Humphries v. Humphries*, 904 So. 2d 192, 196 (Miss. App. 2005) (litigant must assert his own legal interests rather than those of third parties) (citing *Phillips Petroleum Co. v. Shutts*, 472 U.S. 797, 804, 105 S. Ct. 2965 (1985)). The claims are based upon supposed liabilities, including pending lawsuits, that are contingent, disputed by Evans, speculative, undetermined, premature, and not supported by the evidence. Further, the claims are duplicative of other damage claims: Plaintiffs seek to recover *both* the alleged unpaid liabilities *and* the supposed actual losses that rendered them unable to pay their creditors. Plaintiffs may not recover both, as such is an impermissible double

recovery. *City of Jackson*, 908 So. 2d at 703.

Moreover, Plaintiffs completely failed to prove these “damages” at trial. Mr. Evans failed to address any of his purported damages, and Mr. Koerber simply accepted Plaintiffs’ Schedule of Liabilities as an accurate summary of Mr. Evans’ liabilities without verifying or vetting any of the underlying documents or items. Because all of the amounts awarded to Plaintiffs in excess of the \$44 million in losses calculated by Koerber were, by definition, based upon the unsubstantiated Schedule of Liabilities, Defendants are entitled to a JNOV on those amounts, totaling \$37 million.

X. The Baker Defendants are Entitled to JNOV on Plaintiffs’ Claims for Damages Based on Unpaid Receivables.

The Baker Defendants are entitled to a JNOV on the Plaintiffs’ claims for damages based on unpaid receivables allegedly owed to the Plaintiffs, which are disputed and the subject of pending litigation. Such claims are not justiciable because they are premature and lack ripeness. Based upon the evidence presented by Plaintiffs at trial, and for the reasons set forth in the Baker Defendants’ Motion to Dismiss Premature Claims, or Alternatively, Supplemental Motion to Continue the Trial Date and accompanying memorandum (filed May 4, 2010), all of which are incorporated herein by reference, as well as the additional arguments of counsel at trial, the Plaintiffs’ claims for damages based on alleged unpaid accounts receivable owed to the Plaintiffs are premature, contingent on uncertain future events and, therefore, lack ripeness and are non-justiciable. Moreover, there was a complete failure of proof of these “damages” at trial. Hence, Defendants are entitled to a JNOV on those amounts, totaling \$11,404,699.

XI. The Baker Defendants are Entitled to JNOV on Plaintiffs’ and Cross-Plaintiffs’ Claims for Punitive Damages and Attorneys’ Fees

Section 11-1-65 of the Mississippi Code allows for the award of punitive damages only if the claimant proves by clear and convincing evidence that the defendant against whom punitive

damages are sought acted with actual malice, gross negligence which evidences a willful, wanton or reckless disregard for the safety of others, or committed actual fraud. Miss. Code Ann. § 11-1-65. Plaintiffs and Cross-Plaintiffs failed to present any evidence at trial that the Baker Defendants acted with actual malice, gross negligence or committed actual fraud. As there was not sufficient evidence to support or justify an award of punitive damages, Plaintiffs and Cross-Plaintiffs are not entitled to an award of attorneys' fees. *See Aqua-Culture Techs., Ltd. V. Holly*, 677 So. 2d 171 (Miss 1996). Thus, the Baker Defendants' JNOV should be granted on the issues of punitive damages and attorneys' fees.

XII. The Baker Defendants are Entitled to JNOV on Plaintiffs' and Cross-Plaintiffs' Claims Because the Baker Defendants are not Subject to Personal Jurisdiction in this Court.

As more fully set out in Defendants' motions to dismiss claims and crossclaims for lack of personal jurisdiction and memoranda in support, filed January 21 and February 18, 2009, the Baker Defendants are also entitled to JNOV because they were not properly subject to personal jurisdiction in this Court. In short, the claims and cross-claims do not arise out of the Baker Defendants' very limited contact with the State of Mississippi, these Defendants have not had the required "minimum contacts" with the state to satisfy due process, and Mississippi law and United States Constitutions constitutional law do not permit the assertion of jurisdiction over them in this action. *See* U.S. Const. amend. XIV; Miss. Const. art. 3, § 14; Miss. Code § 13-3-57. Specifically, the assertion of jurisdiction over these Defendants violates their due process rights under the Fourteenth Amendment of the United States Constitution. *See World-Wide Volkswagen Corp. v. Woodson*, 444 U.S. 286, 29--92 (1980).

XIII. Incorporation of Additional Grounds for JNOV

The Baker Defendants reassert their several substantive and evidentiary motions and responses—including without limitation motions to dismiss, motions to accord collateral

estoppel effect, motions for summary judgment or partial summary judgment, motions *in limine*, motions to limit or exclude evidence, motions to limit or exclude proof of damages, motions to admit evidence, and opposition to Plaintiffs' and Cross-Plaintiffs' substantive motions and motions *in limine* (or otherwise to exclude evidence). In addition to the grounds, claims, defenses and matters set forth above, the Baker Defendants are entitled to JNOV on the additional grounds, claims, defenses and matters raised *ore tenus* by counsel for the Baker Defendants in court at trial. Those additional grounds, claims, defenses and matters are incorporated herein by reference.

XIV. In the Alternative, the Baker Defendants are Entitled to Remittitur.

In the alternative only, the Baker Defendants are entitled to remittitur of the amount of damages awarded at trial. The Baker Defendants adopt, fully preserve, and incorporate all arguments presented in their Motion for New Trial and Motion for JNOV in support of this motion.

A. Standard for Granting Motion for Remittitur.

Section 11-1-55 of the Mississippi Code "gives the trial judge, being in a superior position to determine whether the jury has responded to reason with reference to damages, the authority to see that the award is reasonably within the bounds of the evidence." *Cade v. Walker*, 771 So. 2d 403, 407 (Miss. Ct. App. 2000) (citing *Houston v. Page*, 208 So. 2d 901, 905 (Miss. 1968)). A remittitur should be granted when either (1) the jury was influenced by bias, prejudice, or passion or (2) the damages were contrary to the overwhelming weight of the evidence. *Entergy v. Mississippi, Inc. v. Bolden*, 854 So. 2d 1051, 1058 (Miss. 2003). A remittitur is also proper when there is insufficient proof to support the damages award. *Cade*, 771 So. 2d at 406. Should the court find that the verdict is, upon the evidence, grossly excessive, the court has the authority to set it aside or award a new trial. *Id.* at 407.

B. The Court Should Grant the Motion for Remittitur.

Based upon the evidence presented at trial, a jury award of \$103 million is grossly excessive, unsupported by the evidence and amounts to impermissible duplicative recovery. Mr. Koerber, the parties' own damages expert, calculated the total amount of Plaintiffs' damages at \$44,047,473. Tr. 1053-54. Plaintiffs presented absolutely no evidence to support the jury's award of \$81 million. Additionally, the jury's award of \$20 million to E&D Services is wholly unsubstantiated by Mr. Koerber's testimony (or any other evidence), as he valued the loss of Rig 11 at \$15.5 million.

Likewise, the jury awarded duplicative awards to both Mr. Evans (through E&D Services) and to Laredo for the damages associated with the loss of Rig 12, awarding \$30,000,000 to Mr. Evans, and \$22,400,000 to Laredo, based on their ownership of the same rig. (Plaintiffs' damages expert, Mr. Koerber, testified that his \$44 million "total damages" to the Plaintiffs included Evans's 51% interest in Laredo and Rig 12.) The jury failed to take into account the fact that Mr. Evans will then receive a second \$11,220,000 award from Laredo based on Mr. Evans' ownership interest in Cross-Plaintiff. Mr. Evans and Laredo cannot "double dip" and both recover for the same loss. Further, as noted in the Motion for New Trial, Cross-Plaintiffs cannot recover for Mr. Cagle's/HEI's 49% interest in Laredo Holdings/Rig 12. Thus, the award to the Cross-Plaintiff should be further reduced.

As set forth in the Motion for New Trial, the Court erroneously excluded from the trial evidence proving that Plaintiffs have and are continuing to receive millions of dollars of revenues through entities nominally owned by Mrs. Evans, which should reduce plaintiffs' recovery in this case. Defendants proffered as evidence the 2008 and 2009 tax returns of the companies Mr. Evans is running for Mrs. Evans, Evans Energy and Mustang Drilling, showing total income for those two years of \$2,225,283 (based upon Gross Receipts of \$9,595,221).

(Proffered Exs. D-129, D-312, and D-313).

Also, the accounts receivable from HEI/Cagle, which Mr. Evans put at \$11,404,699, and Mr. Koerber used in his “total damages,” are (as noted) premature, not ripe, not justiciable, subject to ongoing litigation, and should not be recoverable.

Further, under the verdict form as submitted by the Plaintiffs and completed by the jury, the 10% allocation of responsibility to Mr. Evans must be applied to *all* of the Plaintiffs’ damages, not just Mr. Evans’s damages. (*See* Motion for Hearing on Determination of Judgment, *and see* arguments of counsel for the Baker Defendants during the November 4 hearing (Transcript to Motion for New Trial attached as Exhibit A and incorporated herein).)

Thus, for the Plaintiffs, the highest starting total award to Plaintiffs, their “total damages,” is \$44,047,473; less income earned through Mrs. Evans’s companies: (\$2,225,283); less the premature and undeterminable accounts receivables (\$11,404,699); less 10% of remaining total for L. Evans’s allocated responsibility for damages: (\$3,041,749). The highest possible verdict for the Plaintiffs (putting aside, but fully preserving and subject to, all error) is \$ 27,375,742.

For these reasons, even if one ignores all the error at trial and accepts the Plaintiffs’ “expert” testimony, the Court should remit the excessive \$81,000,000 jury award by at least \$53,624,258. Likewise, the highest possible award to Cross-Plaintiffs is \$11,200,000. The Cross-Plaintiffs’ award must be reduced by at least the \$11,220,000 already awarded to Plaintiffs, for Evans’s 51% interest in Laredo/Rig 12. Thus, even if one ignores all the error at trial and accepts the Cross-Plaintiffs’ “expert” testimony, the Court must still grant a remittitur to reduce the Cross-Plaintiffs’ excessive \$22,400,000 jury award to not more than \$11,220,000. (The foregoing arguments are made with full preservation of the Defendants’ arguments that

JNOV or a new trial should be granted on all amounts awarded by the jury.)


Further, since there is insufficient evidence for an award of punitive damages, the punitive awards of \$75,000 to Plaintiffs against Baker & McKenzie, and \$75,000 to Cross-Plaintiffs against Baker & McKenzie, should be eliminated and a remittitur of \$150,000 ordered. In addition, if the Court awards attorney's fees based upon the awards of punitive damages, any such award of attorney's fees should be remitted.

WHEREFORE, PREMISES CONSIDERED, for all of the above reasons and those presented and reserved during trial of this matter, the Baker Defendants respectfully request that this Court grant judgment notwithstanding the verdict dismissing all claims brought in this action by Plaintiffs and Cross-Plaintiffs and/or, in the alternative, an order of remittitur reducing damages awarded to Plaintiffs and Cross-Plaintiffs. The Baker Defendants incorporate their additional positions and requests from the contemporaneous Motion for New Trial.

Respectfully submitted, this the 12th day of November, 2010.

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CERTIFICATE OF SERVICE

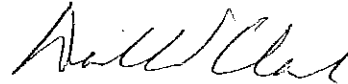
I HEREBY CERTIFY that a copy of the above and foregoing has been served upon the following by electronic and United States mail, postage prepaid, on the 12th day of November, 2010:

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DAVID W. CLARK

1 IN THE CIRCUIT COURT OF JONES COUNTY, MISSISSIPPI

2 SECOND JUDICIAL DISTRICT

3
4 S. LAVON EVANS, JR., ET AL

5 VERSUS

NO. 2008-979-CV11

6 BAKER & MCKENZIE, LLP, ET AL

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8
9
10 -----
11 THE FOLLOWING IS A TRUE AND CORRECT TRANSCRIPT OF
12 THE MOTION HEARING HELD IN THE ABOVE STYLED AND
13 NUMBERED CAUSE BEFORE THE HONORABLE BILLY JOE
14 LANDRUM, CIRCUIT JUDGE FOR THE EIGHTEENTH CIRCUIT
15 COURT DISTRICT OF THE STATE OF MISSISSIPPI, ON THE
16 4TH DAY OF NOVEMBER, 2010.



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1 MR. TIEBAUER: It is our position,
 2 Your Honor, that -- they have further
 3 objected to the hearing on entry of
 4 attorney fees set for the 22nd of this
 5 month.

6 And it's our position that the
 7 Mississippi Rules of Civil Procedure have
 8 a very simple procedure, that our entry of
 9 this judgment is timely. They have their
 10 time under Rule 59 or 60 to file any
 11 motions. And then we can take up the
 12 attorney fees.

13 And quite frankly, we just -- the
 14 Evans group would like our judgment
 15 entered in accordance with the Rules of
 16 Civil Procedure.

17 THE COURT: Well you're entitled to
 18 have your judgment entered, but they have
 19 an opportunity to make observations about
 20 whether there may be some kind of
 21 misunderstanding, mistake or whatever. So
 22 let's hear from them.

23 MR. TIEBAUER: Very well, sir.

24 MR. DUNBAR: Your Honor, I'd like to
 25 introduce to the Court, if you didn't know

1 THE COURT: All right. Whoever the
 2 movant is, I'm ready.

3 MR. TIEBAUER: Your Honor, if it
 4 please the Court, Eric Tiebauer on behalf
 5 of the Evans' plaintiffs. We're here
 6 today, about eight days after the entry of
 7 the jury verdict in this case. We have
 8 circulated a proposed judgment to which
 9 the defendants have objected to the entry
 10 of. Their objections aren't very clear.
 11 It's our position that our proposed
 12 judgment that's been handed to Kristen
 13 actually reflects the jury's verdict.

14 I'd like to point out very briefly to
 15 the Court, in the eight days since this
 16 jury verdict the Evans' companies have
 17 lost over \$100,000 interest on this
 18 judgment. And it's our position that the
 19 Mississippi Rules of --

20 THE COURT: Did you say you filed a
 21 proposed judgment?

22 MS. MARTIN: Jack has it.

23 THE COURT: I can't see very well if
 24 I don't have it front of me.

25 All right. Go ahead.

1 him, this is David Clark.

2 THE COURT: Hi, David. How are you
 3 doing?

4 MR. CLARK: How are you, Judge?

5 MR. DUNBAR: He'll make our arguments
 6 this morning. Thank you.

7 THE COURT: Okay. Go ahead, David.

8 MR. CLARK: May it please the Court,
 9 we have basically the two motions. We had
 10 raised the motion for determination of
 11 judgments and then we had a motion for
 12 continuance to conduct limited discovery
 13 with regard to the attorneys' fees.

14 Our question -- the only -- we're not
 15 raising the post-judgment objections at
 16 this point. Those will be raised by an
 17 appropriate post-judgment motion, Your
 18 Honor. But we did feel that there -- and
 19 we do have, you know, some objections that
 20 we will be raising at that time. This
 21 related to a question about the judgment
 22 that the plaintiffs had submitted and
 23 whether it followed the jury verdict form.

24 And in particular, the question there
 25 relates to the -- and if Your Honor has a

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1 copy or if I can hand Your Honor a copy of
2 the, if I could, of the jury verdict form.
3 THE COURT: I don't have anything. I
4 don't have anything. I sat down with
5 nothing and I still don't have anything.
6 THE DEPUTY CLERK: Here's the verdict
7 right there. That's the verdict.
8 THE COURT: I've got it now I guess.
9 THE DEPUTY CLERK: That is the
10 verdict.
11 THE COURT: All right. Go ahead.
12 MR. CLARK: Your Honor, on the --
13 they have the plaintiffs' claims and they
14 have the plaintiffs -- the amount awarded
15 to Lavon Evans, Jr., then the amount
16 awarded to Lavon Evans, Operating Company,
17 and then to plaintiff E&D Services. Then
18 there's an adjustment of damages on the
19 third page that the plaintiffs added by
20 there in P-6(a) in the verdict form.
21 And the question is this: In here it
22 talks about, if you find the plaintiffs'
23 damages were proximately caused by the
24 defendants, then you determine whether the
25 plaintiffs' conduct -- the plaintiffs,

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1 plural -- plaintiffs' conduct also
2 proximately caused or contributed to their
3 damages lumping them together.
4 In this it indicates it's assigning
5 10 percent responsibility to Lavon Evans.
6 And in their proposed verdict form -- I'm
7 sorry -- in their proposed judgment the
8 plaintiffs assign that reduced by 10
9 percent only the amount awarded to Mr.
10 Evans individually, the 31 --
11 THE COURT: Well, that's not hard
12 mathematically to cure.
13 MR. CLARK: I'm sorry, sir.
14 THE COURT: That's not mathematically
15 hard to cure, 10 percent off of that.
16 MR. CLARK: Well, what we're saying,
17 Your Honor, is we think by the wording it
18 is confusing, but we thought that this was
19 something -- as opposed to an objection
20 to the form as a whole, that this is
21 something we needed to raise at this time.
22 We think that it should be applied to all
23 of the plaintiffs' damages finding that S.
24 Lavon Evans was responsible, as this says,
25 for their damages.

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1 And the other way -- I guess if that
2 is not done, what that would be saying is
3 that form is allowing -- the verdict form
4 is allowing a particular plaintiff's
5 partial causation to be attributed only to
6 himself. In other words, individual
7 plaintiff Lavon Evans, 10 percent
8 negligent will only be applied to his
9 damages.
10 THE COURT: Well, there's plenty --
11 following the numbers or whatever they
12 wanted to do. I don't have any idea what
13 the jury's intention was. They said,
14 Plaintiff Lavon Evans, Jr., 10 percent.
15 They put zero and zero.
16 What can I do to cure any part of
17 that.
18 MR. CLARK: Well, Your Honor --
19 THE COURT: I can take 10 percent off
20 of the Lavon Evans' finding, and that's
21 all I know I can do. I don't know
22 anything else to do.
23 We told them that they didn't have to
24 add up to 100 percent. So they left it
25 open; they could find it.

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1 And that part where Lavon Evans had
2 his judgment rendered against him
3 individually, what area is that in so that
4 I'll know where you're.
5 MR. CLARK: What I was -- we were
6 looking at, Your Honor, is under the
7 adjustment of damages paragraph, we
8 believe that that should be read to being
9 that if Lavon Evans was 10 percent
10 responsible and contributed to their
11 damages, which are lumped together, and we
12 would submit in proof they're also lumped
13 together, all the damages, that that
14 should apply to the full 81,000,000 that
15 was returned for the three plaintiffs
16 rather than the 31,000,000 returned just
17 for the individual Mr. Evans.
18 THE COURT: All right. Let me hear
19 from you.
20 MR. CLARK: And LEH as well.
21 MR. LAND: Your Honor, for the
22 record, this is Jack Land. I appreciate
23 the opportunity to respond.
24 On page three of that jury verdict
25 form that Mr. Clark referred you to, Your

1 Honor, the predicate there is -- in the
2 second paragraph where it says, if you
3 find that plaintiff -- and as he pointed
4 out, it's plural -- damages were
5 proximately caused by Baker defendants.

6 That's a predicate to all that. Then
7 it goes forward and asks to assign for a
8 reduction to reduce your verdict.

9 And therefore, the only place they
10 reduced it was Lavon Evans. And they
11 specifically -- the jury specifically said
12 don't reduce as to operating company and
13 E&D. I think the Court has got it right
14 exactly, Your Honor.

15 The reason --

16 THE COURT: All right. If I've
17 already got it right, go on to something
18 else then.

19 MR. LAND: Yes, sir. The 10 percent
20 in the proposed judgment takes \$100,000
21 off of the judgment against Mr. Held, and
22 we give Mr. Evans a judgment for \$900,000.
23 It takes \$3,000,000 off the \$30,000,000
24 awarded to Mr. Evans against Baker &
25 McKenzie, which would give him a judgment

1 of \$27,000,000.

2 Now, there's \$75,000 that's added to
3 that 27,000,000 and that's from the
4 punitive damages.

5 Now, if I could advance a little bit
6 and say, the other -- there is no
7 reduction of the operating company and the
8 E&D because there is no reduction by the
9 jury.

10 And to make my point, Your Honor,
11 about there being something different,
12 when you get over to LEH, the LEH judgment
13 was against Held and Baker & McKenzie for
14 22,400,000. Then that punitive damage
15 award of \$75,000 was just against Baker &
16 McKenzie. So, that 75 could not be lumped
17 with anything else, thus we lumped the
18 75,000 punitive for Evans, Lavon Evans,
19 only as against Baker McKenzie, thus
20 \$27,075,000.

21 The form. When we say lumped it
22 together, in the form we're proposing for
23 the judgment, Your Honor.

24 THE COURT: Well, I understand that
25 the jury was confused and all this, but on

1 the whole of they -- they stayed in there
2 what, five hours.

3 MR. LAND: Something like that.

4 THE COURT: And I feel like that they
5 came to that point where they felt like
6 that they knew what they wanted to do.
7 And what they did may not be totally
8 understandable by all the legal minds that
9 were present, but I think that they were
10 satisfied that what they put down here is
11 what they wanted the Court to have. And
12 that's what they wanted the plaintiffs to
13 have in this case.

14 You're saying that you want to make
15 an adjustment of \$100,000 on the
16 \$1,000,000 verdict with --

17 MR. LAND: It's already done so in
18 our proposed judgment.

19 THE COURT: Okay. What else?

20 MR. LAND: And the same adjustments
21 against Baker & McKenzie.

22 THE COURT: Is it all made in this
23 judgment, the adjustments?

24 MR. LAND: Yes, sir, it is.

25 THE COURT: All right. What else?

1 MR. CLARK: Your Honor, if I may,
2 there was one other point that we had
3 asked about in this. We had filed a
4 motion with regard to seeking attorneys'
5 fees. And actually in both of these
6 motions we had suggested and requested
7 that the Court, that rather than enter two
8 separate judgments, judgment now and then
9 if attorneys' fees are awarded a separate
10 judgment at that time, in which case if
11 there were going to be an appeal there
12 would have to be two appeals, that it
13 might be more efficient for the Court if
14 we go ahead and when we do hear the
15 attorneys' fees motion, which we believe
16 we need some more time and a very limited
17 discovery to do, and that we
18 basically just -- Your Honor just enter
19 one judgment at that time and have the
20 attorneys' fees as part of it if the Court
21 is going to award attorneys' fees. And we
22 think this can be done expeditiously.
23 We're not seeking any kind of long delay.
24 We believe that in order properly to
25 respond to the motion for attorneys' fees

1 that we do need some time.
 2 And I should mention this, Your
 3 Honor, that in the, what we call the
 4 emergency motion for continuance and for
 5 permission to conduct limited discovery, I
 6 referred only to the plaintiffs' motion
 7 for attorneys' fees. I did not at the
 8 time have a copy. It was my fault. My
 9 co-counsel did have it. They had provided
 10 it to us. I did not mention the
 11 cross-plaintiffs' motion for the
 12 attorneys' fees, but I would adopt the
 13 same motion we filed as going to the
 14 plaintiffs' request.
 15 But we -- there are just certain
 16 basic things, Your Honor, that the
 17 Mississippi Supreme Court's cases require
 18 to be looked into, the McKee factors as
 19 detailed in that case and by several
 20 others. And we just need to know certain
 21 things and have certain time to do it.
 22 We're not talking about any type of
 23 extended response. The plaintiffs have
 24 responded that they are -- the plaintiffs
 25 and cross-plaintiffs that they are both

1 going to be providing some information
 2 soon, and I think that will be very
 3 helpful. But we are entitled to respond
 4 to the attorneys' fees motion, and we just
 5 need certain information in order to do
 6 it.
 7 THE COURT: All right. The Court
 8 sign will the judgment as presented this
 9 morning. And on attorneys' fees, it's my
 10 understanding it's set down to be heard on
 11 the 22nd of this month; is that right?
 12 MR. NELSON: Yes.
 13 THE COURT: I'll take that up at that
 14 time. They're entitled to have their
 15 judgment signed based on the fact that
 16 I've heard what I needed to hear. The
 17 adjustments have been made and everyone
 18 has been taking care of. And I didn't
 19 intend to be here today.
 20 MR. DUNBAR: These motions will be
 21 denied, Your Honor?
 22 THE COURT: The judgment will be
 23 signed and dated as I already signed it,
 24 just two seconds ago.
 25 On the 22nd we'll talk about attorney

1 fees.
 2 Here's your judgment.
 3 MR. NELSON: Thank you, Your Honor.
 4 MR. TIEBAUER: May we be excused?
 5 THE COURT: Unless you have something
 6 else.
 7 MR. TIEBAUER: Larry, did you have
 8 anything else.
 9 MR. NELSON: Your judgment.
 10 MR. BEST: I assume that my judgment
 11 was included in the one you submitted.
 12 MR. SEMPUR: It is. Paragraphs
 13 seven and eight respectively address the
 14 cross-plaintiffs judgments.
 15 MR. DUNBAR: I just want to be sure
 16 that the record reflects that we object to
 17 both of the forms of the judgment.
 18 MR. CLARK: Yes.
 19 (HEARING CONCLUDED)

1 COUNTY OF JONES
 2 STATE OF MISSISSIPPI
 3
 4
 5 CERTIFICATE
 6
 7 I, Elizabeth Barlow, Official Court
 8 Reporter for the Eighteenth Circuit Court District
 9 of the State of Mississippi, do hereby certify that
 10 I have reported the proceedings had and done in the
 11 foregoing styled cause to the best of my skill and
 12 ability and that the above pages contain a true,
 13 full and correct transcript of my stenographic notes
 14 taken in said proceedings.
 15 This the 8th day of November, 2010.
 16
 17
 18
 19 ELIZABETH BARLOW, CSR #1008
 20 Official Court Reporter
 21
 22
 23
 24
 25