IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

SECURITIES AND EXCHANGE COMMISSION,	§	
	§	
Plaintiff,	§	
	§	
v.	§	Case No.: 3:09-cv-0298-N
	§	
STANFORD INTERNATIONAL BANK, LTD., STANFORD GROUP COMPANY, STANFORD CAPITAL MANAGEMENT, LLC, R. ALLEN STANFORD, JAMES M. DAVIS, and LAURA PENDERGEST-HOLT,	§	
	§	
Defendants,	§	
and	§	
	§	
STANFORD FINANCIAL GROUP, and THE STANFORD FINANCIAL GROUP BLDG INC.,	§	
	§	
Relief Defendants.	§	
	§	

PLAINTIFF'S RESPONSE TO RECEIVER'S MOTION TO AMEND FEE STRUCTURE AND HOLDBACK

I. PRELIMINARY STATEMENT

The Commission does not believe that the Receiver has demonstrated that it is appropriate to raise the rates charged to the receivership or reduce the discount that has been applied to the current base rates. As things stand, the professionals working on behalf of the receivership seek compensation at rates that, even taking into account a pre-bill discount of 20%, frequently exceed $350 an hour, and much work has been billed and compensated at rates closer

to or at $555 per hour. The Receiver has not demonstrated that these rates are unreasonably low, particularly where to date recovered assets are significantly lower than likely investor claims.[1]

As the Receiver noted in his motion, the Receiver, the Commission and the Examiner engaged in extensive discussions related to the Receiver's request. And, as noted in the motion, based on those discussions, and after considering a variety of applicable factors, the Commission does not oppose the Receiver's request to reduce the hold back percentage to 10% on a going-forward basis beginning for work performed in 2012. The Commission believes such an approach would take into account many of the changed circumstances the Receiver notes, but also recognize that the rates being charged are not unreasonable under the circumstances of this particular receivership.[2]

II.
ARGUMENT

A. RECEIVERSHIP FEES, INCLUDING HOURLY RATES CHARGED, ARE CLOSELY SCRUTINIZED.

Courts scrutinize fee applications to ensure they are reasonable. *Hensley v. Eckerhart*, 461 U.S. 424, 433 (1983). Even in the absence of an objection, courts must carefully examine the fee application to determine whether the time spent, services performed, hourly rates charged, and expenses incurred by the Receiver are justified. *SEC v. Megafund Corp.*, 2008 WL

[1] Even though these rates reflected a 20% discount from what the firms reported as their normal commercial rates, they were generally higher than the median rates charged by Texas lawyers. They certainly cannot be said to have been unreasonably low. According to the State Bar of Texas, the median hourly rate for full-time attorneys in Texas in 2009 was $240, and the median hourly rate in 2009 for lawyers in Texas with over 25 years experience was $262. Likewise, the median hourly rate for lawyers in the Dallas-Fort Worth area was $246 and in Austin and Houston, the median hourly rate in 2009 was $248. Even if you consider only large firms, the median rate in 2009 for firms with between 201 to 400 lawyers was $368 and $373 for firms with over 400 attorneys. Likewise, it appears that in Dallas-Fort Worth, Austin and Houston, the median hourly rates for firms with over 400 lawyers ranged from $349-$376. See 2009 Hourly Rate Fact Sheet, State Bar of Texas, Department of Research & Analysis, a copy of which is attached as pages APP. 0001 through APP. 00030 of the Appendix In Support of Plaintiff's Response to Receiver's Motion to Amend Fee Structure and Holdback.

[2] At a minimum, the Commission notes that, if the base rates are to be changed, the Examiner's proposal to maintain the currently-applied 20% discount should be maintained. Such a discount is not uncommon in receivership cases and properly reflects the circumstances of this case.

2839998, *2 (N.D. Tex. June 24, 2008). In conducting this analysis, courts frequently look to the factors set forth in *Johnson v. Georgia Highway Express, Inc.*, 488 F.2d 714 (5th Cir. 1974).[3] The amount of the award, and any reduction of the sought-for award, is within the discretion of the trial court. *See, e.g., United States Football League v. National Football League*, 887 F.2d 408, 415 (2nd Cir. 1989). However, in a securities receivership, opposition or acquiescence by the Commission to the fee application will be given great weight. *See, e.g., SEC v. Striker Petroleum*, LLC, 2012 WL 685333, *2 n. 10 and at *3 (N.D. Tex. March 2, 2012), citing *SEC v. Byers*, 590 F. Supp. 2d 637, 644 (S.D.N.Y. 2008) and *SEC v. Fifth Ave. Coach Lines, Inc.*, 364 F. Supp. 1220, 1222 (S.D.N.Y. 1973). Likewise, "[i]n considering applications for compensation by receivers and their attorneys, the courts have long applied a rule of moderation, recognizing that 'receivers and their attorneys engaged in the administration of estates in the courts of the United States … should be awarded only moderate compensation.'" *See Byers*, 590 F. Supp. 2d at 645 (quotation omitted).

The factors set forth in *Johnson* include (1) the time and labor required, (2) the novelty and difficulty of the questions, (3) the skill requisite to perform the legal service properly, (4) the preclusion of other employment by the attorney due to acceptance of the case, (5) the customary fee, (6) whether the fee is fixed or contingent, (7) time limitations imposed by the client or the circumstances, (8) the amount involved and the results obtained, (9) the experience, reputation, and ability of the attorneys, (10) the "undesirability" of the case, (11) the nature and length of the

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[3] Courts in this district have also looked to *SEC v. W.L. Moody & co. Bankers (Unincorporated)*, 374 F.Supp. 465, 480 (S.D. Tex. 1974), *aff'd* 519 F.2d 1087 (5th Cir. 1975) in evaluating receivership fee applications. *See, e.g., SEC v. Striker Petroleum*, LLC, 2012 WL 685333, *2 n. 10 and at *3 (N.D. Tex. March 2, 2012). While there are some differences between the two standards, they look to many of the same factors. For example, under *Moody*, courts look to a variety of factors that are significant under the facts of the particular case, including the complexity of the problems faced by the receivership, the ability, reputation and professional qualities of the receiver and assisting professionals, the time and value of the labor expended, the results achieved, and the ability of the receivership to afford the requested fees and expenses. *Id.*

professional relationship with the client, and (12) awards in similar cases. *Johnson*, 488 F.2d 714, 716-717. This approach is consistent with the way in which other circuits analyze receivership fee applications. *See, e.g.*, *SEC v. Byers*, 590 F. Supp. 2d at 645 (factors to be considered in scrutinizing fee applications include, *inter alia*, the complexity of the problems faced, the benefits to the receivership estate, the quality of the work performed, and the time records presented.) *Id*. (citations omitted).

In light of this guidance, it is not surprising that the amount recovered is a factor that should be considered in determining a "reasonable" fee. *See SEC v. Goren*, 272 F. Supp. 2d 202, 207 (E.D.N.Y. 2003). The dire financial straits of the receivership are well documented. The Receiver has already been paid a significant portion of available assets, providing even stronger grounds to closely safeguard the assets available for eventual distribution. *Cf. Byers*, 590 F. Supp. 2d at 648 ("[w]hile [receiver's counsel] has worked hard, it is simply too early to tell the extent to which its efforts will benefit the receivership estate. This is all the more reason to apply a rule of moderation now.")

B. THERE IS NO BASIS TO INCREASE THE RATES CHARGED OR LOWER THE DISCOUNT APPLIED TO CHARGED RATES.

1. Professionals working on this receivership have been adequately compensated to date.

In little over three years, the Receiver and his assisting professionals have received more than $51 million in payment for fees and expenses associated with receivership work. The Commission does not dispute that much of this work has been, in many cases, necessary or, in other cases, unavoidable due to the actions of other parties.[4] Moreover, the Receiver and the professionals working for him have, as the Court has noted, frequently been required to perform

[4] As the Court is aware, the Commission did not agree with all the work performed. But that disagreement is not at issue here. The point here is simply that the Receiver and those working for him have received, at a minimum, reasonable compensation for the work they have performed.

difficult work. At the same time, however, there is little doubt that the individual firms have been reasonably compensated. For example:

- Baker Botts, one of the primary law firms assisting the Receiver, has been paid roughly $18 million in fees and expenses during the approximately three years of the receivership;
- FTI has been paid almost $19 million;
- Ernst & Young has been paid over $5 million; and
- Thompson & Knight, another law firm assisting the Receiver, has been paid roughly $3 million.[5]

As one court has noted, "the presence of a consistently paying client for four years, even at a reduced hourly rate, would warm the heart, let alone the pocketbook, of even the most successful securities litigator." *SEC v. Mutual Benefits Corp.*, 2009 WL 4640654, *3 (S.D. Fla. Dec. 7, 2009), *quoting Walco Investments, Inc. v. Thenen*, 975 F. Supp. 1468, 1472 (S.D. Fla. 1997).

2. The rates charged currently are reasonable going forward.

The Commission recognizes that many of the professional firms working on the receivership have raised the rates they seek to charge customary commercial clients. However, while the rates those firms can charge other clients may be something to consider, they are not the only, or controlling, factor. Instead, it is important to consider whether, under the facts of this particular receivership, the rates at which the professionals are being compensated are unreasonably low. *Cf. SEC v. Mutual Benefits Corp.*, 2009 WL 4640654, *2 (S.D. Fla. Dec. 7, 2009) (in the receivership context, the court considered "the good results obtained as a result of the attorney' great work," but recognized that compensation should be at a rate less than the rates being paid by clients in the free market in the region). In this case, the Court should also take into account the reality that it appears that assets available to distribute to investors are dwarfed

[5] These are only representative examples. As the Court is aware, the receivership has required work from a variety of additional firms.

by likely claims. Considering the situation particular to this receivership, it does not appear that maintaining the base rate charged and applying a 20% discount is unreasonable.[6]

According to the Receiver's most recent fee application, twenty Baker Botts attorneys working on behalf of the receivership in December 2011 charged discounted rates ranging from $212 to $555 per hour, resulting in an average blended attorney billing rate of approximately $385 per hour. [See Doc. 1541-1 at p. 196].[7] Rates for other professionals working on the matter are similar. For example, Thompson & Knight's recent invoices reflect work from at least six lawyers charging discounted rates ranging from $240 to $432 per hour, resulting in an approximate blended hourly rate of $386 per hour. [Id. at 208-239]. Likewise, FTI's invoice for work performed in October 2011 reflects base rates ranging from $188 per hour to $504 per hour, resulting in average blended rate of approximately $338 per hour. Moreover, 119 hours of the 366.7 hours FTI billed for that month were billed by a single person at $468 per hour, at the high end of that spectrum, at $468 per hour. [Id. at 249].

The Receiver has not demonstrated that these rates are unreasonably low for work going forward. First, these are significant rates of compensation, even in 2012. Moreover, while the Court has rightly noted in some contexts the difficulty of the work performed by the professionals working in this receivership, other tasks in the receivership do not call for the same premium. For example, a significant portion of work going forward relates to general

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[6] The Receiver seeks to rely on two other situations, the SIPC trusteeship in the *Madoff* matter and the trustee in the *MF Global* matter, to support his request. However, those two cases do not provide good models. For example, the *Madoff* matter is a SIPC-funded trusteeship and *MF Global* is centered in an entirely separate geographic region than this receivership. In addition, in *Madoff*, for example, the reality is that there are simply more assets available to take into account. Moreover, as the Court is aware, in myriad other cases, courts have imposed even more stringent restrictions and limitations on receivership compensation than is currently applied in this case. As the Court has noted in other contexts, it is important to consider compensation paid to professionals working on this receivership on the facts pertinent to this particular case.

[7] As noted above, the Commission does not oppose lowering the hold back percentage to 10%. The holdback, however, is separate from the base rate being charged and any applicable discount to that rate.

receivership matters and administration, not complex litigation or time-sensitive asset recovery. *Cf. Goren*, 272 F. Supp. 2d 202, at 208 (noting that while attorneys practicing in specialized fields frequently bill at higher rates, activities such as marketing real estate and other assets, answering investor questions, performing title searches, and preparing sales agreements did not require the type of legal expertise which would justify a premium rate).

Likewise, there has been no showing to justify, under the circumstances of this case, substantial increases to the base rate. Two examples from the Receiver's motion provide useful illustrations. Leaving aside the holdback, under the Receiver's proposal, Mr. Sadler's charged rate would increase from $555 per hour to $675 per hour (current commercial rate discounted 10%), an increase of approximately 21%. Likewise, using the same comparisons, Mr. Power's rate would increase from $364 an hour to $540 per hour, an increase of roughly 43%. These are substantial increases in a receivership with little available assets compared to likely claims and in the context of a general legal market typically not viewed as sustaining significant rate increases. *Cf.* Karen Sloan, *Billing Blues; Continued Pricing Pressure from Clients Means Firms are Limited to Modest Yearly Rate Increases*, NATIONAL LAW JOURNAL, Vo. 33; Issue 14, December 6, 2010 (noting that nationwide firm-wide billing rates increased by only 2.7% in 2009) and Karen Sloan, *It's a Buyer's Market; Firms Charging Modestly More as Clients Exert Control Over Rates*, the National Law Journal, Vol. 34, Issue 16, December 19, 2011 (noting a similar increase of only 4.4% in 2011).[8]

Moreover, these increases reflect commercial rates being paid by clients in the free market. They do not take into account that this receivership has limited funds available. To put

[8] Copies of these articles are attached at pages APP. 00022 - 30 of the contemporaneously-filed Appendix in Support of Plaintiff's Response to Receiver's Motion to Alter Fee Structure and Holdback.

it bluntly, this receivership cannot afford to increase the rates at which professionals working in it are compensated.

In sum, the limited assets available, the nature of work likely to occur going forward, the general market conditions and the other circumstances of this receivership do not warrant the steep increases sought by the Receiver. The base rate of compensation charged and the existing 20% discount should continue.

III.
CONCLUSION

The Commission recognizes the difficult work performed by the professionals working in this receivership. At the same time, however, the Commission believes it is important to take into account the particular facts of this receivership, especially the fact that there are insufficient funds available to satisfy probable investor claims. Taking all these factors into account, the current rates charged by the professionals in this case (including the current 20% discount) should be maintained. If the Court believes it appropriate to recognize changed circumstances in this receivership, reducing the holdback percentage to 10% will provide such recognition while also taking into account the importance of preserving assets for distribution to investors.

March 30, 2012

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on March 30, 2012, I electronically filed the foregoing document with the Clerk of the court for the Northern District of Texas, Dallas Division, by using the CM/ECF system which will send notification of such filing to all CM/ECF participants and counsel of record.

s/ David B. Reece
David B. Reece