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

SECURITIES AND EXCHANGE COMMISSION,	§	
Plaintiff,	§	
v.	§	Civil Action No.: 3:09-CV-0298-N
STANFORD INTERNATIONAL BANK, LTD., *et al.*,	§	
Defendants.	§	

PLAINTIFF'S RESPONSE TO RECEIVER'S MOTION FOR SUPPLEMENTAL AWARD OF PROFESSIONAL FEES AND EXPENSES

November 8, 2024.

Respectfully submitted,

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UNITED STATES SECURITIES AND EXCHANGE COMMISSION

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SUMMARY

The Receiver asks the Court to award the Receivership professionals: (1) $29.5 million of held-back fees and expenses; (2) a $10.3 million inflation adjustment to the holdback amount; (3) $1.6 million for preparing fee applications; and (4) a $400,000 inflation adjustment to the fee application work. The Receiver also seeks the removal of the holdback going forward, as well as contemporaneous compensation for the preparation of all future fee applications.

Plaintiff Securities and Exchange Commission ("SEC") opposes the Receiver's requests because: (1) he has failed to show that the professionals have been paid below-market compensation to date; (2) the professionals' current rates, in fact, significantly exceed those billed in other receiverships overseen by the U.S. District Court for the Northern District of Texas; (3) the anticipated investor recovery does not justify awarding additional compensation to the professionals; (4) equity supports awarding the held-back funds to investors rather than the professionals; and (5) the professionals will be more than adequately compensated going forward under the present fee and holdback structure.

BACKGROUND

Both the SEC and the Examiner have scrutinized the Receivership's fees and expenses since the Receiver's first fee application. Docs. 437, 452. On June 4, 2009, the SEC asked the court to impose a 20% holdback to the Receivership professionals' fees, citing their high billing rates. Doc. 437. The SEC also argued that such a discount was warranted due to the practical impossibility of evaluating the minutia of voluminous fee applications, like those submitted during the course of the Receivership. *Id.* The Examiner joined the SEC's request that the Court impose a percentage holdback until the Receivership's ultimate recovery had been determined. Doc. 452. On September 10, 2009, the Court held a hearing regarding the Receiver's first and

second fee applications and approved the requested fees, subject to a 20% holdback that the Court stated would continue during the course of the Receivership. Sept. 10, 2009 Hearing Tr. at 39:16-22, 46:6-21, 47:4-22.

On March 9, 2012, the Receiver moved the Court to allow the Receivership professionals to bill at 2012 rates less a 10% discount (a request opposed by the SEC and partially opposed by the Examiner) and to reduce the holdback to 10% (a request unopposed by both the SEC and the Examiner).[1] Docs. 1543, 1551, 1553. On April 4, 2012, the Court allowed the Receivership professionals to bill at 2012 rates, subject to a 20% discount, and reduced the holdback to 10% percent as requested. Doc. 1565.

On April 18, 2014, the Receiver asked the Court to release a portion of the held-back fees, which the SEC and the Examiner opposed. Docs. 1998, 2016, 2017. On July 2, 2014, the Court denied the Receiver's motion as being premature. Doc. 2033.

On July 16, 2015, the Receiver moved the Court to allow the Receivership professionals to bill at 2015 rates, less a 20% discount and subject to the 10% holdback. Doc. 2175. Neither the SEC nor the Examiner objected to this request and the Court granted the motion on September 1, 2015. Doc. 2238.

On June 22, 2021, the Receiver sought Court approval to permit the Receivership professionals to bill at 2021 rates, less a 30% discount and subject to the 10% holdback. Doc. 3088. The SEC opposed this request, but the Examiner did not object to it. Docs. 3094, 3095. On July 21, 2021, the Court granted the motion. Doc. 3099.

[1] The Court granted the Receiver's third and fourth fee applications, subject to a 35% holdback (Doc. 994); and held back 22% from the amount requested in the fifth fee application. Doc. 1069. The Court approved the Receiver's sixth through sixteenth fee applications, less a 20% holdback. Docs. 1111, 1151, 1175, 1203, 1302, 1339, 1410, 1455, 1478, 1500, 1560.

LEGAL STANDARD

The Court's February 16, 2009 Order Appointing Receiver directed the Receiver to file requests for approval of reasonable fees and expenses incurred by him and the Receivership professionals. Doc. 10. The Fifth Circuit uses the lodestar method to determine the reasonableness of fee awards. *Smith & Fuller, P.A. v. Cooper Tire & Rubber Co.*, 685 F.3d 486, 490 (5th Cir. 2012). This is true even in the context of awarding fees and expenses in SEC receiverships. *SEC v. Millennium Bank*, No. 7:09-CV-050-O, 2009 WL 10689052, at *2 (N.D. Tex. Dec. 31, 2009) ("The application for fees and expenses in this matter are governed by the lodestar method of calculation."); *see also SEC v. Narayan*, No. 3:16-CV-1417-M, 2019 WL 13074285, at *1 (N.D. Tex. Sept. 30, 2019).

The lodestar is calculated by multiplying the number of hours that an attorney reasonably spent on the case by a reasonable hourly rate. *Narayan*, 2019 WL 13074285, at *1 (citing *Smith & Fuller*, 685 F.3d at 490). The applicant bears the burden of establishing both the reasonableness of the hours billed and the prevailing market rate. *Millennium Bank*, 2009 WL 10689052, at *3.

"There is a 'strong presumption that the lodestar award is the reasonable fee[.]'" *Smith & Fuller*, 685 F.3d at 490 (quoting *Heidtman v. County of El Paso*, 171 F.3d 1038, 1044 (5th Cir. 1999)). But, after first determining the lodestar, courts may increase or decrease that amount considering twelve factors enumerated in *Johnson v. Georgia Highway Express, Inc.*, 488 F.2d 714, 718 (5th Cir. 1974). *Heidtman*, 171 F.3d at 1043. However, many of the *Johnson* factors "usually are subsumed within the initial calculation of hours reasonably expended at a reasonable hourly rate." *Hensley v. Eckerhart*, 461 U.S. 424, 434 n. 9 (1983).

ARGUMENT

A. The fees paid to the Receivership professionals exceed the prevailing market rate.

As discussed above, to calculate the lodestar the Court should multiply the number of hours reasonably worked by a "reasonable hourly rate." *Narayan*, 2019 WL 13074285, at *1. "A reasonable hourly rate is the prevailing market rate in the relevant legal community for similar services by lawyers of reasonably comparable skills, experience, and reputation." *Id*. The relevant legal community is the community in which the district court sits. *Tollett v. City of Kemah*, 285 F.3d 357, 368 (5th Cir. 2002). The applicant must submit evidence to establish the proposed rate, "typically through affidavits of other attorneys practicing in the community." *Millenium Bank*, 2009 WL 10689052, at *3. "Absent such evidence, the Court may rely upon its expertise and judgment to independently assess the valuation of the asserted rate." *Id*. (citing *Davis v. Board of Sch. Comm'rs of Mobile Cnty.*, 526 F.2d 865, 868 (5th Cir. 1976)).

As an initial matter, the SEC objects to the Receiver's motion because it does not cite evidence supporting the prevailing market rate. Due to this lack of evidence, the Receiver provides the Court no facts from which to calculate the lodestar.[2] Instead, the Receiver's motion focuses on the percentage of total Receivership fees and expenses versus the anticipated investor recovery. By doing so, the Receiver has failed to satisfy his burden.

The SEC further objects because the Receivership professionals' rates exceed the prevailing market rate.[3] The table below compares the current rates charged in this case to those

[2] The only support provided for a lodestar amount is a brief reference in the Declaration of Kevin M. Sadler relating to the Receiver's request for $2.1 million for the preparation of fee applications. Doc. 3423, at 35 ¶ 14.

[3] Because the Receiver does not attempt to demonstrate the prevailing market rate for any of the law firms, accounting firms, or other professionals he has retained, this response examines the rates charged by his primary counsel, Baker Botts L.L.P. The fees sought for Baker Botts are, by far, the largest of the 44 Receivership professionals subject to the holdback.

charged in 2023 and 2024 by receivers and their primary counsel in other SEC receiverships supervised by this Court.[4]

Case Name	Summary	Hourly Rates	Source
SEC v. Stanford International Bank, Ltd., et al.	Securities enforcement action in which the SEC alleged an approximately $8 billion fraudulent scheme to sell "certificates of deposit" issued by an offshore bank.	*Receiver*: $550 *Primary Counsel*: • Partners: $711-$973 • Special Counsel: $714 • Senior Associates: $616-$658 • Associates: $382-$567 • Staff Lawyers: $294-$472	Docs. 3088, 3089, 3099, 3406, 3407.
SEC v. Agridime, et al., Case No. 4:23-cv-1224-P (N.D. Tex.) (Pittman, J.)	Securities enforcement action in which the SEC alleged an approximately $191 million fraudulent scheme to sell unregistered securities in the form of "contracts" to buy and raise cattle.	*Receiver*: $450[5] *Primary Counsel*: • Partners: $475-$575 • Associates: $355-$375	*Agridime* Docs. 127, 129. APP. 0003-0004.[6]
SEC v. Timothy Barton, et al., Case No. 3:22-cv-2118-X (N.D. Tex.) (Starr, J.)	Securities enforcement action in which the SEC alleged an approximately $26 million offering fraud involving real estate investments.	*Receiver*: $385 *Primary Counsel*: • Partners: $385 • Associates: $200-$300	*Barton* Docs. 539, 553. APP. 0020, 0022.

[4] This list is a representative sample of receiverships and is not meant to be an exhaustive list of all comparable receiverships in the U.S. District Court for the Northern District of Texas.

[5] The *Agridime* receiver's initial rate, to which the SEC objected, was $1,395.

[6] All "APP." references refer to the Appendix in Support of Plaintiff's Response, filed herewith.

SEC v. Boron Capital, LLC, et al., Case No. 5:22-cv-0114-C (N.D. Tex.) (Cummings, J.)	Securities enforcement action in which the SEC alleged an approximately $18.7 million offering fraud scheme involving real estate backed investments.	*Receiver*: $360 *Primary Counsel*: • Shareholder: $500 • Senior Attorney: $289	*Boron Capital* Docs. 63, 64, 65. APP. 0046, 0088.
SEC v. Christopher A. Faulkner, et al., Case No. 3:16-cv-01735-D (N.D. Tex.) (Fitzwater, J.)	Securities enforcement action in which the SEC alleged an approximately $80 million scheme involving the sale of unregistered and fraudulent working interest investments in oil and gas prospects.	*Receiver*: $395 *Primary Counsel*: $210	*Faulkner* Docs. 712, 714. APP. 0146, 0169.
SEC v. William Neil "Doc" Gallagher, et al., Case No. 3:19-cv-575-C (N.D. Tex.) (Cummings, J.)	Securities enforcement action in which the SEC alleged an approximately $19.6 million offering fraud that targeted elderly investors' retirement funds.	*Receiver*: $350 *Primary Counsel*: • Partner: $340 • Associates: $250-$290	*Gallagher* Docs. 337, 340, 341, 342. APP. 0193, 0195, 0221, 0223.
SEC v. The Heartland Group Ventures, LLC, et al., Case No. 4:21-cv-1310-BP (N.D. Tex.) (O'Connor, J.)	Securities enforcement action in which the SEC alleged an approximately $122 million offering fraud involving unregistered oil and gas interests.	*Receiver*: $675 *Primary Counsel*: • Members: $350-$648 • Senior Counsel: $544.50-$553.50 • Associate: $330	*Heartland* Docs. 574, 583. APP. 0295.

As this table demonstrates, Baker Botts's rates significantly exceed the prevailing market rate. Baker Botts's highest rate ($973) is 44% more than the next highest rate ($675), which is charged in the ongoing *Heartland* matter. The firm's lowest partner rate ($711) also exceeds the next closest amount; and its senior associates bill up to at a rate ($658) that is only slightly less than *Heartland's* top rate. Even the highest rates charged by Baker Botts's associates ($567) and staff lawyers ($472) are comparable to, or higher than, the majority of the rates shown above.

The Receiver provides no evidence establishing why the services provided by his counsel and other professionals are not comparable to those rendered in other receiverships overseen by this Court. Admittedly, the size and scope of the Stanford fraud was significantly larger than the others cited above. However, that distinction is compensated for by the massive number of hours billed by the Receivership professionals—more than 540,000 to date. The Receiver fails to demonstrate which of those hours may have been spent on highly specialized tasks that could not have been performed at the lower rates cited above. Instead, the motion lumps together the work of 44 teams of professionals and compares that cumulative amount to the anticipated total recovery. And while the motion does describe several broad categories of work provided by a handful of the professionals, many of which are common to almost all SEC receiverships,[7] it does not attempt to assign a prevailing market rate to any of the services provided by those professionals.

B. The anticipated result of the Receivership does not justify releasing the holdback.

By comparing the total fees to the expected recovery, and by citing the contingency fees previously approved by the Court, the motion suggests that it would be appropriate for the Court to determine the fees' reasonableness through a percentage-of-recovery analysis. However, the Fifth Circuit uses the lodestar method to calculate fee awards. *Heidtman*, 171 F.3d at 1043.[8] "A lodestar is calculated by multiplying the number of hours reasonably expended by an appropriate

[7] For example: estate administration; litigation supervision; government production; preservation and liquidation of receivership estate assets; claims and distribution work; general receivership matters; and cash management and receivership accounting.

[8] In common fund cases involving contingency fee agreements, courts frequently grant percentage-of-recovery awards subject to "lodestar checks" to avoid windfall fees. *See, e.g.*, *In re Enron Corp. Sec., Derivative & ERISA Litig. (Newby v. Enron Corp.)*, 586 F. Supp. 2d 732, 745-753, 778-786 (S.D. Tex. 2008); *see also* Docs. 2231, 2364, 2366, 2567, 2702, 2820, 3279, 3305, 3333, 3334, 3335.

hourly rate in the community for such work. After making this calculation, the district court may decrease or enhance the lodestar based on the relative weights of the twelve factors set forth in *Johnson*." *Id.* (cleaned up). Enhancements to lodestar amounts are exceptional and require "specific record evidence and detailed findings" by the lower court, while reductions are not subject to these stringent requirements. *Rodney v. Elliott Sec. Sols., L.L.C.*, 853 F. App'x 922, 925 (5th Cir. 2021). And because the "lodestar calculation is the linchpin of the reasonable fee," the Fifth Circuit has rejected fee awards that failed to include them. *Hoenninger v. Leasing Enters., Ltd.*, No. 21-50301, 2022 WL 340593, at *4 (5th Cir. Feb. 4, 2022) (quoting *McClain v. Lufkin Indus., Inc.*, 649 F.3d 374, 381 (5th Cir. 2011)).[9]

Moreover, if any of the Receivership professionals whose fees were subject to the holdback had wished to be compensated on a percentage-of-recovery basis, or by any other alternative billing structure, they could have pursued such an arrangement long ago. In 2012, the Court, due to its concerns regarding the ratio of fees to recovery, even suggested that the Receiver explore an alternative fee arrangement with Baker Botts or bid its work out to obtain lower rates. Apr. 4, 2012 Hearing Tr. at 30:3-31:23. The Receiver and his primary counsel elected not to pursue either path.

However, the Official Stanford Investors Committee ("OSIC") *did* retain contingency fee counsel to pursue lawsuits for the investors' benefit. These lawsuits have accounted for the *bulk*

[9] The Receiver cites *Megafund* and *Funding Resources Group* to support his percentage-of-recovery analysis. Neither case states that courts may disregard the lodestar components. "Although no investors have objected to this request, the court nevertheless 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 under the factors set forth in *Johnson*…." *SEC v. Megafund Corp.*, No. 3:05-CV-1328-L, 2008 WL 2839998, at *2 (N.D. Tex. June 24, 2008); *see also SEC v. Funding Res. Grp.*, No. 3:98-CV-2689-M, 2003 WL 145411, at *1 (N.D. Tex. Jan. 15, 2003).

of the $2.6 billion dollars obtained by the Receivership. The SEC did not object to those fees because of the substantial investor recoveries achieved and the risk of non-payment undertaken by contingency fee counsel. Although some of the Receivership professionals assisted those efforts to various degrees, they did not assume the financial risk undertaken by OSIC's counsel. Moreover, the motion fails to specify which of the held-back fees relate to those lawsuits, or other successful litigation, versus the more day-to-day aspects of the Receivership. Accordingly, it would be inappropriate to award the Receivership professionals the held-back fees because, as previously demonstrated, they have already been compensated significantly above the prevailing market rate.

C. Equity supports not releasing the holdback.

Ultimately, the determination of the amount of a fee award is an equitable judgment within the court's discretion. *Hensley*, 461 U.S. at 437. But courts have recognized the need to closely scrutinize professional fees in situations analogous to the Receivership. "In 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.'" *SEC v. Byers*, 590 F. Supp. 2d 637, 645 (S.D.N.Y. 2008) (quoting *In re New York Invs., Inc.*, 79 F.2d 182, 185 (2d Cir. 1935)). "Courts are not to award receivers and their attorneys 'extravagant fees,' but only 'moderate ones.'" *Id.* "Courts should take particular care to scrutinize fee applications 'to avoid even the appearance of a windfall.'" *Id.* (quoting *SEC v. Goren*, 272 F. Supp. 2d 202, 206 (E.D.N.Y. 2003). "As a policy matter, the rule of moderation makes particular sense in circumstances such as those here, where hundreds of investors and creditors have been defrauded, and victims are likely to recover only a fraction of their losses." *Id.*; *see also SEC v.*

Lauer, No. 03-80612-CIV-MARRA/HOPKINS, 2016 WL 3225216, at *2-3 (S.D. Fla. Mar. 31, 2016) (applying the rule of moderation to deny a request for fees held-back during a 13-year receivership in which investors received a small fraction of their claims).

Not releasing the held-back fees is a pragmatic means to ensure that the Receivership professionals do not receive a windfall at the investors' expense. As the Court has previously acknowledged when imposing the holdback:[10] "In light of the voluminous nature of fee applications, 'courts have recognized that it is unrealistic to expect a trial judge to evaluate and rule on every entry in an application. These courts have endorsed percentage cuts as a practical means of trimming fat from a fee application.'" *Byers*, 590 F. Supp. 2d at 648 (quoting *New York State Ass'n for Retarded Children, Inc. v. Carey*, 711 F.2d 1136, 1146 (2d Cir. 1983)).[11] Accordingly, equity and the rule of moderation support awarding the holdback to the investors rather than the Receivership professionals.

D. The Court should deny the Receiver's other requests.

The Receiver asks the Court to apply the Consumer Price Index ("CPI") to the held-back fees to increase their fee award by more than *ten million* dollars. The Court should deny this request. At the outset, and for the reasons described above, the holdback should not be paid to the Receivership professionals. Accordingly, they are not entitled to an inflation adjustment to those fees. And if the Court were to award the holdback, or a portion of it, neither the receivership order nor the Court's numerous orders relating to the holdback provide for an "inflation adjustment" to the held-back fees.

[10] *See* Docs. 994, 1069, 1111.

[11] Beginning with the Receiver's sixth fee application, the Court has awarded the full amounts sought with the exception of the holdback.

Furthermore, the logic underlying the requested inflation adjustment erodes the investor recovery projections used by the Receiver to justify his requested fee awards. The motion notes that, according to the CPI, $1.00 in 2009 is equivalent to $1.46 in 2024. But the Receiver does not use that same analysis to assess the present value of the investors' claims, which also date back to 2009. Were he to do so, the anticipated recovery percentages cited in the motion to support his requests would be materially lower.[12]

The Court should also deny the Receiver's requests for fees related to the preparation of fee applications (and a CPI adjustment to that amount) dating back to January 2010. The Receiver failed to seek those fees when he submitted fee applications covering the applicable time periods. It is inappropriate to ask the Court, or the SEC and the Examiner, to evaluate almost 15 years of time entries that comprise 344 pages of the Receiver's appendix. As the Court and *Byers* have stated, it is unrealistic to expect trial judges to evaluate and rule on every entry in a fee application. *See* Docs. 994, 1069, 1111; *see also Byers*, 590 F. Supp. 2d at 648. The Receiver's delay in seeking these fees compounds this problem. Additionally, seeking compensation for the preparation of fee applications is contrary to SEC policy. The SEC's receivership billing instructions require receiver candidates to acknowledge that "[t]ime spent preparing fee applications, or any documentation in support thereof, may not be charged to the receivership estate."[13] For these reasons, the Court should not award the Receiver this compensation.

[12] Using this calculation—and assuming for the sake of simplicity that all prior and future distributions occurred in 2024—the $2.6 billion recovered by the Receivership to date equates to $1.78 billion in 2009 dollars.

[13] The billing instructions are posted online at https://www.sec.gov/files/billinginstructions.pdf.

Concerning the motion's request for the contemporaneous award of fees associated with preparing future fee applications, assuming the Court were to conclude that the Receivership is analogous to a bankruptcy proceeding for this purpose, the Court should, at most, approve such fees at substantially reduced rates. "Any compensation awarded for the preparation of a fee application shall be based on the level and skill reasonably required to prepare the application." *Baker Botts L.L.P. v. ASARCO LLC*, 576 U.S. 121, 131-32 (2015) (quoting 11 U.S.C. § 330(a)(6)). The preparation of fee applications is not a task demanding the above-market rates currently paid to the Receiver's primary counsel.

Finally, the Court should keep the holdback in place going forward because the Receivership professionals have received, and will continue to receive, more than reasonable compensation for their work. The Receiver estimates that his work will continue *through the end of 2029*, with no significant additional recoveries anticipated except for the inflow of the Société Générale Private Banking (Suisse) S.A. settlement funds. According to the Receiver, his work during the next five years will primarily consist of claims administration, distributions, wind-up activities, and the preparation of fee applications. These tasks are common to virtually all SEC receiverships and do not justify the current billing rates, let alone a de facto rate increase by eliminating the holdback.

CONCLUSION

For the foregoing reasons, the SEC respectfully requests that the Court deny the Receiver's motion.

November 8, 2024.

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UNITED STATES SECURITIES AND EXCHANGE COMMISSION

CERTIFICATE OF SERVICE

I certify that on November 8, 2024, I electronically filed the foregoing document with the Clerk of the Court for the Northern District of Texas, Dallas Division, using the CM/ECF system. The ECF system will send a "Notice of Electronic Filing" to all counsel of record who has consented in writing to accept service of this document by electronic means.

A paper copy of this motion has also been sent to Defendant Robert Allen Stanford at the address for him on the Bureau of Prisons "Inmate Locator" website, as follows:

R. Allen Stanford, Pro Se
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s/ Jason J. Rose
Jason J. Rose