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

U.S. SECURITIES AND EXCHANGE COMMISSION	§	
	§	
Plaintiff,	§	
	§	**CIV. ACTION NO.3-09CV0298-N**
v.	§	
	§	
STANFORD INTERNATIONAL BANK, LTD., ET AL.,	§	
	§	
Defendants.	§	

DEFENDANT R. ALLEN STANFORD'S RESPONSE IN OPPOSITION TO RECEIVER'S MOTION FOR APPROVAL OF SEVENTH INTERIM FEE APPLICATION (REC. DOC. 1132)

COMES NOW, through undersigned counsel, Defendant R. Allen Stanford ("Mr. Stanford") who files this Response in Opposition to the Receiver's Motion for Approval of Seventh Interim Fee Application, and respectfully states the following:

INTRODUCTION

The Receiver files his Motion for Approval of Seventh Interim Fee Application ("Fee Application") seeking over $3.2 million in fees and expenses for only 61 calendar days of work from March 1, 2010 through April 30, 2010. The Receiver files this Fee Application on the heels of his first six interim fee applications,[1] which collectively sought over $46 million in fees and expenses, one-third of the reported alleged value of the Receivership Estate (the "Estate"), for approximately twelve months of work.

[1] See Rec. Doc. 384, *Receiver's Motion for Approval of Interim Fee Application and Procedures for Future Compensation of Fees and Expenses and Brief in Support*, Rec. Doc. 669, *Receiver's Motion for Approval of Second Interim Fee Application and Brief in Support*, Rec. Doc. 820, *Receiver's Motion for Approval of Third Interim Fee Application and Brief in Support*, Rec. Doc. 914, *Receiver's Motion for Approval of Fourth Interim Fee Application and Brief in Support*, Rec. Doc. 1033, *Receiver's Motion for Approval of Fifth Interim Fee Application and Brief in Support*, and Rec. Doc. 1084, *Receiver's Motion for Approval of Sixth Interim Fee Application and Brief in Support.*

In his initial interim fee application, the Receiver sought fees and expenses of nearly $20 million and reported that "[t]he Estate ha[d] $69.3 million of cash on hand as of May 14, 2009."[2] In his second interim fee application, the Receiver requested fees and expenses of $7.6 million and claimed that his team's efforts during the seven-week period of April 14 through May 31, 2009 "permitted the Receiver to secure $81.1 million of cash on hand as of July 30, 2009."[3] Thus, the Receiver essentially reported that it has cost the Receivership Estate ("Estate") over $27 million to recover or preserve just $69.3 million of cash on hand, as of May 14, 2009. Further, it is presumed that a significant portion of the $8.9 million sought in the third application was expended in efforts to recover the additional $11.8 million recovered between May 14 and July 30, 2009.[4] No such accounting was made in the fourth, fifth or sixth fee applications for the Receiver's expenditures, nor has an accounting been made in the instant Fee Application as to the exact amount of Estate assets, if any, that have been recovered as a result of the Receiver's expenditures through April 2010, other than general declarations of amounts recovered from the Receiver's haphazard and rushed sales of Estate properties and what he hopes to recover from suing third parties.

It is unclear from the Receiver's instant Fee Application what exact benefit to the Estate has resulted from his March 2010 through April 2010 fees and expenses. Furthermore, the expenditures do not account for amounts, if any, he has paid out of the Estate – to depositors, creditors or anyone else.[5]

[2] See Rec. Doc. 384, Receiver's Motion for Approval of Interim Fee Application and Procedures for Future Compensation of Fees and Expenses, at p. 6.

[3] Rec. Doc. 669 at p. 3.

[4] See Rec. Doc. 820.

[5] It is unknown whether the Receiver is meeting all Estate obligations.

Like his previous fee applications, the amounts sought in the instant application are again unreasonable. To break down the amount requested in this Fee Application, the Receiver seeks approval for payment of fees and expenses totaling over **$52,000 per day**. Indeed, even were the Receiver and his team of thirteen law, accounting and consulting firms working 24 hours a day, the requested amount equates to approximately **$2,192 per hour.** Under no analysis can this amount be deemed reasonable. In fact, application of the factored analysis utilized by the courts in the Receiver's own cited cases militates against approval of his application.

The Receiver provides no real explanation to support the excessive fees and expenses incurred, and his declarations that the fees sought are reduced by 20% serve only to reinforce the excessiveness nature of the alleged work performed by the Receiver.

As such, the Receiver has not shown that the fees and expenses he has incurred from March 2010 through April 2010 is a productive use of the Estate's assets. Therefore, the Receiver's Fee Application should be denied in its current form, and the fees requested should be substantially discounted to an amount reasonable in relation to the services rendered and the results achieved. Additionally, the Receiver should be required to provide an updated accounting of the Estate.

ARGUMENT AND AUTHORITIES

The instant Fee Application for fees and expenses incurred for 61 calendar days of work (March 1, 2010 to April 30, 2010) seeks payment of over $3.2 million as follows:

Krage & Janvey (the Receiver and his firm):	$ 43,307.25
Baker Botts L.L.P.:	1,135,022.95
Thompson & Knight LLP:	103,148.10
FTI Forensic and Litigation Consulting, Inc.:	1,491,645.46
Ernst & Young:	117,876.80
Financial Industry Technical Services, Inc.:	197,047.82
Strategic Capital Corporation:	8,737.92
3-4 South Square:	2,777.18
Roberts & Co.:	1,288.00
Altenburger:	7,952.07
Osler, Hoskin & Harcourts LLP:	84,161.39
Liskow & Lewis PLC:	582.38
Conyers Dill & Pearman	13,194.75
Gerald T. Groner:	1,684.80
	$3,208,426.87

As the cases relied upon by the Receiver establish, in awarding a Receiver his attorneys' fees and expenses, courts will "(1) determine the nature and extent of the services rendered; (2) determine the value of those services; and (3) consider the factors set forth in *Johnson v. Georgia Highway Express, Inc.*, 488 F.2d 714 (5th Cir. 1974)."[6] 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 under the [*Johnson*] factors."[7]

A. The Requested Fees and Expenses are Not Reasonable

Because "[n]o receivership is intended to generously reward court-appointed officers,"[8] the receiver and his hired professionals "must exercise proper billing judgment in seeking fees

[6] *SEC v. Aquacell Batteries, Inc.*, No. 6:07-cv-608-Orl-22DAB, 2008 WL 276026, at *2 (M.D. Fla. Jan. 31, 2008); *SEC v. Megafund Corp.*, No. 3:05-CV-1328-L, 2008 WL 2839998, at *2 (N.D. Tex. June 24, 2008).

[7] *Megafund Corp.*, 2008 WL 2839998, at *2.

[8] *SEC v. W.L. Moody & Co.*, 374 F. Supp. 465, 483 (S.D. Tex. 1974).

from the receivership estate, and should limit their work to that which is reasonable and necessary."[9]

As in the previous interim fee applications, the Receiver's supporting documentation once again shows multiple law firms billing for the same tasks, and the use of lawyers with hourly rates well over $500 to accomplish such duplicative tasks. Likewise, duplicative tasks appear to be once again undertaken by the multiple accounting professionals and other consultants hired by the Receiver to assist him with the management of the Estate. The billing and expense documentation provided in the Appendix to the Receiver's Fee Application continues to illustrate the lack of efficiency employed by the Receiver and his hired professionals in managing the Estate. The results of the hired professionals' work is simply not commensurate with the amounts they are charging the Estate. It should be noted that Receiver's expert FTI Consulting continues to bill excessive and unreasonable amounts, nearly $1.5 million in fees for 61 calendar days of work in the instant Fee Application, for work whose exact nature and content has been largely inaccessible to Mr. Stanford and the other parties to this suit.

As pointed out not only by Mr. Stanford, but the SEC and Examiner as well in prior pleadings with this Court regarding previous fee applications, the Receiver's fees and expenses were excessive and unreasonable. The fees and expenses sought in the instant Fee Application are still excessive and unreasonable.

The Receiver has the paramount duty to manage its affairs in a manner most beneficial and cost effective to the Estate. As the Court noted at the September 10, 2009 oral hearing regarding the Receiver's first two interim fee applications, "the Receiver and the professionals for the Receiver have got to be cognizant of the overall size of the Receivership Estate as it now

[9] *Aquacell Batteries*, 2008 WL 276026, at *2. ("Part of 'determining the nature and extent of the services rendered' … includes an analysis as to the *reasonableness* of the services rendered," and the expenses for which reimbursement is sought must have been "actual and [ ] necessarily incurred.").

exists."[10] The Court further noted the Receiver, "…ha[d] to start looking differently at the operation of the Receivership and the amount of resources that are going to professionals. And of course, every dollar that goes to the professionals is not available to ultimately be distributed to investors or, in the event the defendants prevail, to be returned back to the defendants."[11]

As noted in the first two fee applications, the Receiver expended $27.5 million dollars of Estate assets to preserve $69.3 million of cash on hand. Essentially, the Receiver expended one-third (1/3) of the Estate at that time to preserve the other two-thirds. Moreover, the majority of the $8.9 million sought by the Receiver in his third fee application appears to have been spent trying to recover $11.8 million. In the instant Fee Application, like in his fourth, fifth and sixth fee applications, the Receiver's provides no such accounting of what amount or portion of recovery of Estate assets, if any, were obtained through his expenditures, nor has he provided a recent accounting of the fruits of his expenditures or that of the other professionals he has retained. Thus, the Receiver has not shown that the fees and expenses he incurred from March 2010 through April 2010 are a productive use of the Estate's assets, or that they were cost-efficient and ultimately beneficial the Estate. As we have seen so far in this litigation, the Receiver's model and method for recovery of Estate assets has not been in keeping with the best interests of the Estate in light of its size. With his additional request for disbursement Estate assets in the instant Fee Application, it appears that the Receiver once again fails to comprehend the effect that his excessive fees and expenses have on the Estate. As such, the Receiver's instant Fee Application must be denied in its current form.

[10] 9/10/09 hearing transcript at p. 40, l. 9-12.

[11] *Id.* at p. 40, l. 15-21.

B. Consideration of the *Johnson* Factors

In the Receiver's prior fee applications, the Receiver listed the twelve *Johnson* factors to be considered by the Court, noted there was no requirement that a court "address fully each of the 12 factors,"[12] and then failed to provide any discussion or application of *any* of those factors to this case, reducing the discussion to a single sentence in which he summarily concluded that "[a]ll of the factors considered in [cited] cases weigh heavily in favor of approving the request for fees and expenses in this case."[13]

Despite the Receiver's failure to discuss the *Johnson* factors, some of these factors merit discussion – the first of which is the customary fees charged by him and his hired professionals. As with his prior fee applications, missing from the Receiver's instant Fee Application is any evidence that the fees charged by his hired professionals are the "usual and customary fees" charged by others for similar work. And while the Receiver continues to claim that the fee discounts applied by his hired firms "reflect substantial reductions of the rates the firms understood they would receive at the outset of this engagement," there is no evidence proffered of those "understood" rates or, for that matter, the rates customarily charged by those firms and discounted here.

Further, the *Johnson* factor of "the amount involved and the results obtained" should also be considered.[14] Whether a receiver merits a fee is based on the circumstances surrounding the receivership, and results are always relevant.[15] In this case, the Receiver has expended an unreasonable amount of fees and expenses in his efforts to recover Estate assets. The amount recovered by the Receiver does not warrant the fees and expenses incurred. As discussed above,

[12] Rec. Doc. 820 at p. 3, footnote 2.

[13] *Id.* at pp. 3-4 (citing *Johnson v. Georgia Highway Express, Inc.*, 488 F.2d 714 (5th Cir. 1974)).

[14] *Aquacell Batteries*, 2008 WL 276026, at *3

[15] *Id.* (quoting *SEC v. Elliott*, 953 F.2d 1560, 1577 (11th Cir. 1992)); *SEC v. W.L. Moody & Co.*, 374 F. Supp. 465, 480 (S.D. Tex. 1974).

the Receiver's initial interim fee application reported that he had secured cash on hand in the Estate's account in the amount of $69.3 million as of May 14, 2009. The second interim fee application revealed that it cost the Estate more than $27 million (over 1/3 of the cash on hand secured by the Receiver) to achieve that balance.[16] The third fee application sought $8.9 million in fees and expenses incurred through August 31, 2009, which appeared to secure only an additional $11.8 million in cash.[17] In the fourth, fifth and sixth fee applications, the Receiver provided no such accounting of Estate assets recovered, if any, as a result of his work during that period, yet sought over $9 million in fees and expenses from the Estate. Likewise in the instant Fee Application, the Receiver also fails to apprise the Court of the actual results of its expenditures, other than general declarations championing the amounts purportedly recovered by the Receiver from the sale of Estate assets (most at fire sale prices). No specific details of these recoveries are given, nor is documentation provided by the Receiver substantiating these claims. As such, it is impossible to properly evaluate what benefit to the Estate, if any, has been obtained through the Receiver's work. Further, as in previous interim fee applications, the Receiver does not report any amounts he has paid out of the Estate – to depositors, creditors or anyone else – and it can not be disputed that the realization ratio achieved by the Receiver is likely very far off from those achieved by the receivers in the cases his Motion relies upon.[18] Moreover, that the Receiver reserves his right to pursue the 20% hold back instituted by this Court, which the Receiver estimated in sixth fee application to total over $11 million dollars of Estate assets and will approach $12 million dollars after the addition of over $800,000.00 in the instant Fee

[16] See Rec. Doc. 669.

[17] See Rec. Doc. 820. The Receiver reported recovery of an additional $11.8 million in cash on hand between May 15, 2009 and July 30, 2009.

[18] *See Moody*, 374 F.Supp. at 482 (concluding that Receiver's efficient recovery and disbursements to depositors and creditors totaling $24,216,629.51; *Aquacell*, 2008 WL 276026 (where best potential total recovery was approximately $1.5–2 million, court further discounted receiver's fees to total approximately $250,000)).

Application, further illuminates the unreasonable and inefficient use of Estate assets by the Receiver over the past seventeen (17) months since his appointment by this Court.

CONCLUSION

For the foregoing reasons, Defendant R. Allen Stanford respectfully requests that the Receiver's Motion for Approval of Seventh Interim Fee Application be denied in its current form, and that the fees requested be substantially discounted to an amount reasonable in relation to the services rendered and the results achieved. Mr. Stanford also requests the Receiver be required to submit an accounting of Estate assets.

Dated: August 10, 2010

Respectfully submitted,

/s/ Ruth Brewer Schuster

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CERTIFICATE OF SERVICE

I hereby certify that this document filed through the ECF system will be sent electronically to the registered participants as identified on the Notice of Electronic Filing and paper copies will be sent those indicated as non-registered participants on August 10, 2010.

/s/Ruth Brewer Schuster