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., ET AL.,	§	
	§	
Defendants.	§	

MOTION FOR APPROVAL OF REQUEST TO AMEND FEE STRUCTURE and HOLDBACK

The Receiver hereby files this request for Court approval to amend the hourly rates at which he and his professionals are compensated for work on this Receivership to allow them to bill, beginning January 1, 2012, at their current customary rates, less a 10% discount, and to reduce from 20% to 10% the holdback that has heretofore been applied to his fee applications.

Conference with SEC and Examiner

Over the past several weeks, the Receiver has conferred with the SEC and the Examiner concerning this matter. The SEC and Examiner both advise that the Receiver's request concerning reducing the holdback to 10% of fees is not opposed. The SEC advises that it opposes any change concerning billing rates. The Examiner advises that he does not object to the Receiver's request to bill for work at current customary rates, but believes that the discount off those rates should be 20% and not 10% as the Receiver proposes.

Background

After this Receivership began, the Receiver and his professional firms agreed to discount their fees by 20% at the request of the SEC, and to date this discount has amounted to more than $16 million. Following the Receiver's first and second interim fee applications, at the hearing thereon, the SEC and Examiner asked and the Court agreed to impose a holdback of an additional 20% of the Receiver's fees and expenses. To date, the Receiver has not sought the release of any of the holdback amount, which over time has grown to $16 million.[1]

Beginning with the fee application for September and October 2010, the Court approved the Receiver's request for full payment of expenses without any holdback, but the 20% holdback has remained in place as to professional fees as well as FTI's costs for hosting Receivership data.

Since the Receivership began three years ago, it has been the policy of the Receivership not to raise the hourly rates the Receiver and his professional firms charge for professional services to the Receivership, even though such firms have generally raised their market rates for all professionals on an annual basis in order to account for increased costs and fixed expenses and changing market conditions. Likewise, Baker Botts, the primary law firm for the Receiver, has not increased rates for associate attorneys who have been working on Receivership matters over the past 3 years, even though it is reasonable and customary for firms to charge higher rates for its lawyers as they grow in experience and expertise. Thus, the effective discount that has applied to the work for the Receivership has steadily grown over time

[1] The approximate holdback amounts by firm (including invoices through September 2011) are as follows: Baker Botts — $5,548,000; FTI Consulting — $5,622,000; Ernst & Young — $1,651,000; Thompson & Knight — $935,000; FITS — $724,000; Osler — $422,000; Krage & Janvey — $316,000; Stuart Isaacs — $177,000; Strategic Capital Corporation — $102,000; Roberts & Co. — $86,000; Altenburger — $78,000; Pierpont — $67,000; Felicity Toube — $54,000; Jeremy Goldring — $15,000; Gerald Groner — $13,000; Liskow & Lewis — $4,900; Georgina Peters — $4,300; Dudley Topper & Feuerzeig — $3,700; Conyers Dill & Pearman — $3,300; Mattlin & Wyman — $800.

beyond 20%. The impact of the combination of the voluntary discount of 20%, applied to rates that have not changed in three years, and the continued 20% holdback are such that the Receiver and his professionals are not receiving compensation that is reasonable or customary under the applicable legal standards.

The Court should permit the Receiver to adjust the rates for service provided

The hourly rates charged by a Receiver and his professional firms must be reasonable under the factors set forth by the Fifth Circuit. *See Johnson v. Georgia Highway Express, Inc.*, 488 F.2d 714, 717-19 (5th Cir. 1974). The rates charged to date by the Receiver and his professional firms are now at a level that is less than reasonable. To illustrate, Mr. Janvey's current hourly rate for his services to other clients is $500. Yet his discounted rate currently charged for Stanford work is $340, which becomes $272 after application of the 20% holdback. The current rates for two of the primary partner lawyers working for the Receivership, Kevin Sadler and Scott Powers are $750 and $600 respectively, yet their discounted rates currently charged for Stanford work are $555 for Mr. Sadler, which becomes $444 after application of the 20% holdback, and $365 for Mr. Powers, which becomes $292 after application of a 20% holdback. The current hourly rate for Andrew York, one of the primary associate attorneys assisting the Receiver is $425, yet after discount, and holdback and no change in rate for three years, his time is compensated at a rate of only $170.

To place this in context of the Receiver's request, if the Receiver's primary law firm, Baker Botts, were to bill for its work in January and February 2012 at its current customary rates, less a 10% discount, the average hourly rate for all lawyers working on the matter would be $492/hour, and the total fee would still be subject to a 10% holdback. By way of comparison, the billable rate charged for Stanford work by the Court-appointed examiner, John Little, is

$450, and is not subject to any holdback. An average hourly rate of $492 for the Receiver's lawyers is reasonable in light of the scope, complexity and difficulty of the work being performed.

Under the applicable legal standard, 3 year old billing rates, discounted 20% is not a reasonable or customary rate. The Court has recognized that the work the Receiver continues to perform is extraordinarily difficult and often involves complex and novel legal issues. [*See* Doc. 1471 at 6.] Very little of the Receiver's work is routine, but is instead highly specialized and continues to require the Receiver to respond to novel and complex challenges and demands, many of which could not have been foreseen at the beginning of the Receivership. The Receiver submits that a 10% discount from current rates that the Receiver and his professional firms charge to other clients is a meaningful and sufficient discount, especially given the unique nature, size, challenges and complexity of this matter, as well as the other factors that are relevant under *Johnson.*

By way of comparison, the law firms representing the trustees in similarly complex fraud/insolvency matters—the Madoff and MF Global cases—are performing their work at only a 10% discount on rates that are significantly higher than the rates that are being charged for this matter. The hourly rates being charged for the work of the lead lawyers in the Madoff case range from $750 per hour to $850 per hour, and the trustee in the Madoff case is charging $765 per hour. (*See* Ex. A at App'x 78-81, 98-99, ¶¶ 210-16 and Exhibit D (trustee's fee application setting forth billing rates and stating "the Trustee's and [his firm's] fees in this case reflect a 10% public interest discount from their standard rates").) In the MF Global cases, the Court has approved the appointment of Skadden Arps to represent the Chapter 11 Trustee, based on the trustee's application proposing that Skadden Arps be compensated at a discount of

10%, with hourly rates ranging from $795 to $1095 for partners and counsel. (*See* Ex. B at App'x 111-13, ¶¶ 22, 27 (application for approval of retention of Skadden Arps, setting forth billing rates and stating that "[p]ursuant to an agreement with the Chapter 11 Trustee, Skadden, Arps has agreed to reduce the aggregate amount of compensation requested for professional services rendered on and after November 28, 2011 by 10%"), Ex. C at App'x 161-65 (order granting same).) Although there are some differences in rates charged in the localities of Dallas and New York, that difference does not explain or justify the disparity in rates for what is unquestionably similarly complex legal work. Further, the locality difference does not explain or justify any difference in the percentage discount that should be applied to the professionals' otherwise standard hourly rates. Under the Receiver's proposal, the rates for Stanford would still be significantly lower than those in the Madoff and MFG cases.

The Court should reduce the Holdback to 10% of the fees requested

Regardless of the original reasons for the holdback, those reasons have been rendered less relevant due to significantly changed circumstances. The amount of work required by the Receiver in the first three to four months was extraordinarily large, and it was unknown both what the overall scope of the work would be and what amounts would be available as a result of the Receiver's efforts. Additionally, there was some concern that some of the Receiver's work in those early months of the Receivership was discretionary. The Court stated its concern that the Receiver should ensure that the limited resources of the Receivership were considered carefully when deciding whether to perform discretionary work and when deciding the appropriate level of resources to apply to such work. [Sept. 10, 2009 Hrg. Tr. at 40-41.] Additionally, the Receiver did not have a cost estimate process in place to get the advance input

of the SEC or the Examiner before undertaking work, nor were the first two fee applications sufficiently detailed in the Court's view.

All of these circumstances have changed dramatically since the beginning of the Receivership.

First, the overall scope of the Receiver's work has been reduced substantially from the levels that prevailed at the time the Court imposed the holdback, and all work is examined and re-examined in light of the Receiver's core duties and in light of the cost-benefit effect of the undertaking. To illustrate the reduced scope of work, the fees and expenses for the first 100 days of the Receivership were approximately $22.1 million; for all of 2010 they were $12.3 million, and the total paid and pending request for 2011 is $6.6 million. The number of professionals who work for the Receiver is a small fraction of the number that were needed to assist him in the early months of the Receivership.

Second, for well over the past two years, the Receiver has submitted very detailed fee applications, which the SEC and the Examiner receive in draft form weeks before the applications are filed. Both the SEC and the Examiner have had the opportunity to review the work records and raise questions and concerns, and seek clarifications from the Receiver before the applications are presented to the Court.[2] The Receiver frequently makes changes to the fee application in response to comments from the Examiner or SEC.

Third, for well over two years, the Receiver has prepared periodic detailed cost estimates and projections for its work and shared those with the SEC and Examiner. Where the

[2] Although courts recognize that preparing detailed and lengthy fee applications is compensable work in this context, the Receiver and his professionals also have voluntarily deferred seeking reimbursement for the substantial amount of work (in excess of $1 million) that has been required to prepare fee applications in this case. *See re NuCorp Energy, Inc.*, 764 F.2d 655, 659 (9th Cir. 1985) ("We have long required an attorney to file a detailed account of the legal services he provided the bankrupt in order to recover any compensation at all for his services. It would be unduly penurious to require such an accounting without granting reasonable compensation." (quoting *Rose Pass Mines, Inc. v. Howard*, 615 F.2d 1088, 1093 (5th Cir. 1980)).

Receiver's estimates deviate from the amounts presented in the fee applications, the fee application includes the Receiver's explanation of the reasons for the difference.

Fourth, the overall resources of the Receivership have stabilized and become more certain. The overall cash position of the Receivership has grown from $71.5 million in October 2009 to $114.5 million as of November 2011. *See* Docs. 859, 1117, 1236, and 1469.

Fifth, the work that is being performed at this stage of the Receivership is not in any sense optional or "discretionary," and as the Court is aware there remains much work to be completed. Indeed, the remaining work is of critical importance to the Receivership, and it is required of Mr. Janvey given his duties both at common-law and under the order appointing him as Receiver. For example**,**

> (1) the preponderance of the Receiver's work related to the most recent fee application covering October to December 2011 is attributable to litigation with the Antiguan Liquidators. That work was conducted with the unanimous approval of the SEC, the Examiner, and the Investors Committee, and was unavoidable given the position of the Antiguan Liquidators.
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> (2) The Receiver is also performing litigation work in an attempt to recover CD proceeds that were paid to former Stanford brokers, insiders, net winners, and other investors who received CD proceeds under circumstances such that they should not be allowed to retain those proceeds. Only the Receiver has pursued such claims to recover the ill-gotten gains received by these Defendants. Such work is an important core function and legal duty of any receiver or trustee in similar circumstances.
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> (3) The Receiver is pursuing work related to a claims and distribution process. Such work is obviously necessary and appropriate, and indeed the Court directed the Receiver to proceed with this work, despite concerns expressed by the Examiner and Investor Committee.
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> (4) The Receiver has also performed and will continue to perform substantial work responding to requests and inquiries from government agencies, including SIPC, the SEC, and the U.S. Department of Justice. None of this work is discretionary or optional.

To date the Receiver has not requested a release of any of the $16 million in payments held back, even though the Court stated that it would consider a request to release

some portion of the holdback amount if enough time had passed "that we ought to have confidence with regard to certain billing items." [Sept. 10, 2009 Hrg. Tr. at 47.] The SEC and Examiner have advised that they would object to any request now by the Receiver for a release of even a portion of the holdback funds. Yet surely a sufficient amount of time has passed and circumstances have changed significantly such that a reduction in the amount of the holdback going forward is warranted. The Receiver agrees that a holdback of some amount is not unusual in receiverships or large bankruptcies, even though one was not discussed or requested of the Receiver before he agreed to serve in this case. In this case, however, the holdback has become a *de-facto* discount given that it has now been in place for three years and there is no timetable by which to determine when any portion of that holdback will be released to the Receiver and his professional firms.

In light of the circumstances that have changed dramatically since 2009, and given the substantial amount already allocated to the holdback, a holdback applicable to professional fees in the amount of 10% going forward is fair and reasonable. The continued application of a 10% holdback will ensure that a significant amount of funds will be set aside at the time the Court determines, in light of the status of the Receivership, whether to release any amounts from the holdback to the Receiver and his professionals. Until such time as any part of the holdback is released to the Receiver, however, reducing the amount of the holdback from 20% to 10% ensures that the Receiver and his professionals actually receive reasonable compensation for the challenging and necessary work that they continue to perform for the Receivership.

Conclusion

The Stanford Receivership continues to pose numerous, difficult and complex challenges for the Receiver as he works towards fulfilling his duties to marshal assets and make them available for distribution to victims of the Stanford fraud. The Court has recognized these challenges and found that heretofore "the Receiver has competently discharged his duties" (Doc. 1471 at p. 4). The Court can be assured that the Receiver will continue to do so. The Receiver and those assisting him must respond to these challenges with a high level of professionalism, skill, expertise and dedication. Therefore, it is reasonable that the Receiver and his team be compensated on a basis that is commensurate with the nature of the demands they face and the skill and effort required to meet those demands.

The Receiver respectfully submits that the Receivership has matured to a point where it is not reasonable for the Receiver and his team to perform their work at both steeply discounted, 3-year old rates and with a 20% holdback. The Receiver respectfully requests that, beginning with his fee application for work commencing in 2012, the Court permit the Receiver and his professionals to bill for their services at their current rates for professional services, less a discount of 10% and subject to a 10% holdback.

The Receiver will continue to prepare and submit detailed cost estimates to the SEC and Examiner and likewise will continue to submit to these parties detailed fee applications in draft form well before the applications are filed, and they continue to have the right to object to all or part of any the Receiver's fee applications.

For the reasons stated, the Receiver respectfully requests that the Court grant this request and that he be afforded all other appropriate relief to which he is entitled.

Dated: March 9, 2012

Respectfully submitted,

BAKER BOTTS L.L.P.

By: /s/ Kevin M. Sadler

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ATTORNEYS FOR RECEIVER RALPH S. JANVEY

CERTIFICATE OF CONFERENCE

The Receiver has conferred with the SEC and Examiner concerning the relief requested and each advises that the request concerning the reduction of the holdback is unopposed, but the remainder of the relief is opposed as described on page 1 of this Motion.

The Receiver conferred with other counsel of record in this case who advised as follows:

Counsel for the Receiver conferred with Stephen Cochell, counsel for R. Allen Stanford, who stated that Mr. Stanford opposes this motion.

Counsel for the Receiver conferred with Jeff Tillotson, counsel for Laura Pendergest-Holt, who did not provide a response regarding Ms. Pendergest-Holt's position on this motion or the relief requested herein.

Counsel for the Receiver conferred with Joseph Hummel, counsel for Trustmark National Bank, who stated that Trustmark does not oppose this motion or the relief requested herein.

Counsel for the Receiver conferred with Manuel P. Lena, Jr., counsel for the DOJ (Tax Division), who stated that the DOJ (Tax Division) takes no position on this motion or the relief requested herein.

Counsel for the Receiver conferred with David Finn, who is listed on the docket sheet as attorney to be noticed for James Davis, who did not provide a response regarding Mr. Davis's position on this motion or the relief requested herein.

Counsel for the Receiver conferred with J. Randy Burton, counsel for Susan Stanford, who did not provide a response regarding Mrs. Stanford's position on this motion or the relief requested herein.

Counsel for the Receiver conferred with Jason Brookner, counsel for HP Financial Services Venezuela C.C.A., who stated that HP takes no position on this motion or the relief requested herein.

Counsel for the Receiver conferred with Andrew Warren, counsel for the DOJ (Fraud Division), who did not provide a response regarding the DOJ (Fraud Division)'s position on this motion or the relief requested herein.

Counsel for the Receiver conferred with Stephanie Curtis, counsel for INX, Inc., who did not provide a response regarding INX's position on this motion or the relief requested herein.

Counsel for the Receiver conferred with John Helms, Jr., counsel for Mark Kuhrt, who did not provide a response regarding Mr. Kuhrt's position on this motion and the relief requested herein.

The motion, therefore, is opposed.

/s/ Kevin M. Sadler
Kevin M. Sadler

CERTIFICATE OF SERVICE

On March 9, 2012, I electronically submitted the foregoing document with the clerk of the court of the U.S. District Court, Northern District of Texas, using the electronic case filing system of the court. I hereby certify that I have served the Court-appointed Examiner, all counsel and/or pro se parties of record electronically or by another manner authorized by Federal Rule of Civil Procedure 5(b)(2).

/s/ Kevin M. Sadler
Kevin M. Sadler