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.	§	

EXAMINER'S RESPONSE IN OPPOSITION TO RECEIVER'S MOTION FOR APPROVAL TO RELEASE PORTION OF HOLDBACK

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COURT-APPOINTED EXAMINER

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SECURITIES AND EXCHANGE COMMISSION,	§	
Plaintiff,	§	
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EXAMINER'S RESPONSE IN OPPOSITION TO RECEIVER'S MOTION FOR APPROVAL TO RELEASE PORTION OF HOLDBACK

John J. Little, the Court-appointed Examiner, respectfully submits his Response in Opposition to the Receiver's Motion for Approval to Release Portion of Holdback (the "Holdback Release Motion")(Doc. No. 1998). For the reasons set forth below, the Examiner respectfully requests that this Court enter its Order denying the Holdback Release Motion in its entirety.

I. INTRODUCTION

This Court imposed the holdback upon the Receiver's professional fees and expenses at a hearing held on September 10, 2009, addressing the Receiver's first and second interim applications for fees and expenses (Docs. 384 and 669).[1] At the conclusion of that hearing, the Court responded to a question from the Receiver's counsel

[1] Unless otherwise specified, citations to Docket entries refer to Civil Action No. 3:09-CV-0298-N.

concerning when the Receiver might be able to apply for a release of some or all of the holdback amount:

> THE COURT: The 20 percent? I would assume that would be when all the dust settles. If you want to make a pitch at some point that some portion of that ought to be cut loose because enough time has elapsed that we ought to have some confidence with respect to certain billing items, then I would be open to considering that at some point.

App. at 17[2] (Transcript of September 10, 2009 hearing, at 47). No one involved in the Stanford Financial Receivership could coherently hold the view that "all the dust" has settled with respect to the Receivership. To the contrary, this Receivership will likely continue for many years as both the Receiver and the Official Stanford Investors Committee prosecute dozens of lawsuits seeking to recover assets and/or damages for the benefit of Stanford's investors and the Receivership's other creditors.

The Holdback Release Motion does not contend that "all the dust" has settled. Rather, the Receiver seemingly urges that a portion of the accumulated holdback should be released "because enough time has elapsed that we ought to have some confidence with respect to certain billing items."[3] The Holdback Release Motion attempts to paint a rosy picture of the "results" obtained by the Receiver and his various professionals to justify the requested release of some $5.8 million[4] to those professionals. To characterize that picture as one-sided is charitable; the Motion largely ignores (or, at best, glosses

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[2] The Examiner will use the term "App." to cite materials included in the Appendix in Support of this Response.

[3] Curiously, the Holdback Release Motion devotes no attention to any particular "billing items" as to which the Court should now have "some confidence."

[4] The Examiner calculates the amount sought in the Holdback Release Motion to be $5,768,236. Of that amount, $4,152,321, or almost 72%, would be paid to two of the Receiver's professional firms, Baker Botts and FTI.

over) any negative results obtained by the Receiver.

The Examiner and the SEC oppose the relief sought by the Holdback Release Motion. In this Response, the Examiner addresses three substantive points.

- First, the Examiner believes that the Motion is premature. While the holdback has been in place for five (5) years, it is still too soon to determine whether some, all or none of the holdback should be paid out to the Receiver and his professional firms. Additionally, the Holdback Release Motion makes no effort to address the objections to the Receiver's professional fees that gave rise to the holdback in the first place.
- Second, the results to date – viewed from the perspective of the investors and Stanford's other creditors – do not justify any release of the holdback. Through October 31, 2013, the Receiver's professionals had been paid over $64 million for receivership work,[5] while Stanford's investors had received no more than $25 million pursuant to the Receiver's Initial Distribution.[6]

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[5] There are some disparities with respect to the amounts paid to professionals. The Holdback Release Motion says that the Receiver's professionals have been paid $64.2 million for "general receivership work" through October 31, 2013. The Examiner's records put that number slightly higher – at $64,755,199. Moreover, the Receiver's number does not include professional fees incurred in connection with the Receiver's claim and distribution process. Through October 31, 2013, those professional fees are approximately $6 million. Pursuant to the Receiver's most recent status report, professional fees and expenses through December 31, 2013 were $72.5 million App. at 35 (Appendix to Receiver's 7th Interim Status Report, Doc. 1956).

[6] Through December 31, 2013, the Receiver had filed seven (7) distribution schedules reflecting total distributions to investors of just under $25 million ($24.54 million). *See* Doc. 1903 ($1.08 million); Doc. 1912 ($3.86 million); Doc. 1922 ($5.77 million); Doc. 1924 ($1.82 million); Doc. 1928 ($3.96 million); Doc. 1932 ($2.79 million); and Doc. 1942 ($5.26 million).

- Third, the release sought by the Holdback Release Motion will imperil the process through which the Receiver, the Examiner and the SEC have been able to process the Receiver's last twenty-four (24) fee applications without requiring the Court's involvement. The Holdback Release Motion intimates that neither the Examiner nor the SEC has had any objections to the Receiver's last twenty-four (24) fee applications. *See* Holdback Release Motion at 15. That is incorrect; both the SEC and the Examiner have raised significant issues relating to each of those applications. The Receiver, the SEC and the Examiner have relied upon the holdback mechanism to resolve those issues without involving the Court.

At the conclusion of this Response, the Examiner devotes some attention to each of the professional firms that would receive a portion of the holdback release sought by the Receiver. The Examiner offers some initial comments on a firm by firm basis to the extent the Court is inclined to address the Holdback Release Motion on that basis.[7]

II. A BRIEF HISTORY OF THE HOLDBACK

A. The Creation of the Holdback

As noted at the outset, the holdback was established by the Court during a hearing held on September 10, 2009. The fee applications then at issue, the Receiver's first and second, sought a total of some $27.5 million in professional fees and expenses for work

[7] The Examiner does not think it appropriate to analyze the holdback on a firm by firm basis at this juncture in these proceedings.

done over the first 104 days of the Receivership's existence.[8] The applications were opposed by both the SEC and the Examiner on the basis that the applications did not provide sufficient supporting materials, that the Receiver's professional headcount was excessive, that the expenses incurred by certain professionals were wholly unsupported, and on a number of other bases. *See* Docs. 436 (SEC response), 452 (Examiner's response). The SEC proposed that the Court impose a holdback of 20% on any fees and expenses. The SEC's view concerning when it might be appropriate to seek a release of any amounts that were held back was clear; the SEC would permit:

> the Receiver to resubmit at a later date (once the ultimate financial condition of the estate has been determined) an application for payment of a segment of the 20%.

Doc. 436 at 8. The Examiner joined the SEC's request, and similarly made clear that any amounts held back should be held:

> until such time as the Court can fully evaluate one of the key factors for ruling upon any fee application -- the amount involved and the results obtained. *Johnson v. Georgia Highway Express, Inc.*, 488 F.2d 714, 716-717 (5th Cir. 1974).

Doc. 452 at 3. In establishing the holdback and setting it at 20%, the Court said the following:

> I am going to impose a 20 percent holdback and will continue doing that through the life of the Receivership. Again, just to be clear, I'm not rejecting that 20 percent. I am just hanging on to it until we see how everything works out.

App. at 9 (Transcript of September 10, 2009 hearing, at 39).

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[8] The Receiver's first fee application (Doc. 384) covered the period from February 16 through April 12, 2009 (57 days). The Receiver's second fee application (Doc. 669) covered the period from April 13 through May 31, 2009 (47 days).

B. Negotiated Increases in the Holdback Percentage

The Holdback Release Motion does not address how the total holdback amount ($17,304,712 million through October 31, 2013) has accumulated. The holdback from the Receiver's first two fee applications totaled $5,513,424, which is almost 32% (31.86%) of the total holdback amount. Over the Receiver's next three fee applications, Docs. 820, 914, and 1033, covering the period from June 1 through December 31, 2009, an additional $6 million was added to the holdback amount, such that sixty-seven percent (67%) of the accumulated holdback dates to fee applications for professional services rendered in 2009.

Fee App. No.	Fees/Expenses Sought	Fees/Expenses Awarded	Hold Back
1 (Doc. 384)	$19,965,146	$15,972,116	$3,993,030
2 (Doc. 669)	$ 7,601,969	$ 6,081,575	$1,520,394
3 (Doc. 820)	$11,080,409	$ 7,202,266	$3,878,143
4 (Doc. 914)	$ 2,447,222	$ 1,590,694	$ 856,528
5 (Doc. 1033)	$ 6,111,220	$ 4,764,753	$1,346,367
Totals	**$47,205,966**	**$35,611,404**	**$11,594,462**

The Receiver's third (Doc. 820) and fourth (Doc. 914) fee applications were heavily disputed by both the SEC, Docs. 853, 946, and the Examiner. Docs. 860, 940. Ultimately, those disputes were resolved by an agreement reached among the Receiver, the SEC and the Examiner pursuant to which the holdback amount applied to the Receiver's third and fourth fee applications was increased from 20% to 35%. Doc. 994 (Order dated February 3, 2010). Neither the SEC nor the Examiner filed a formal opposition to the Receiver's fifth fee application, Doc. 1033, but both had issues with that application. Those issues were again resolved by an agreement among the Receiver, the SEC and the Examiner pursuant to which the holdback amount applied to the Receiver's

fifth fee application was increased from 20% to 22%. Doc. 1069[9] (Order dated April 16, 2010).

Third Application:	Holdback @ 35%	$3,878,143
	Holdback @ 20%	$2,216,082
	Increased Holdback	$1,662,061
Fourth Application	Holdback @ 35%	$ 856,528
	Holdback @ 20%	$ 489,444
	Increased Holdback	$ 367,084
Fifth Application	Holdback @ 22%	$1,346,367
	Holdback @ 20%	$1,222,244
	Increased Holdback	$ 124,123

The increased holdback amounts negotiated between and among the Receiver, the SEC and the Examiner for the Receiver's third, fourth and fifth fee applications total $2,153,268, or 18.57% of holdback amount that accumulated for work done during 2009. Those negotiated increases represent 12.44% of the accumulated holdback amount through October 31, 2013.

C. Modifications to the Holdback Mechanism

Over the life of the Receivership, both the SEC and the Examiner have been open to discussions with the Receiver, when warranted, concerning adjustments to the holdback mechanism. For the Receiver's sixth (Doc. 1084), seventh (Doc. 1132), eighth (Doc. 1163) and ninth (Doc. 1183) fee applications, covering the period from January 1 through August 31, 2010, the holdback percentage of 20% was applied to all fees and expenses of the Receiver and his professionals. Before filing his tenth fee application

[9] The Order (Doc. 1069) addressing the Receiver's fifth fee application requires an additional holdback amount of $124,222.71, which represents 2.03% of the total sought by the Receiver in that application ($6,111,219.92) for the period from October 1 through December 31, 2009.

(Doc. 1247), the Receiver sought, and ultimately obtained, the agreement of the SEC and the Examiner to modify the holdback by excluding out-of-pocket expenses from its application,[10] such that the holdback would apply only to professional fees and data processing and storage charges. *See* Doc. 1302 (Order dated March 29, 2011). In March 2012, the Receiver sought to amend the Court's fee structure in a number of ways, including an increase in the billable rates chargeable by his professionals, a reduction in the discount applied to his professionals' rates, and a reduction of the holdback percentage from 20% to 10%. While the parties did not agree on all of these issues, both the SEC (Doc. 1553) and the Examiner (Doc. 1551) agreed to reduce the holdback percentage to 10% for work done on or after January 1, 2012.

D. Holdback Accumulation on an Annual Basis

As previously noted, over two-thirds of the total holdback amount was accumulated during 2009, in the early days of the Receivership. On an annual basis, the total holdback amount through December 31, 2013 has been accumulated as follows:

Year	Holdback Amount
2009	$11,594,462[11]
2010	$ 3,046,370
2011	$ 1,587,182
2012	$ 656,369
2013	$ 522,573
Total (through Dec. 31, 2013)	**$17,406,956**[12]

[10] Counsel for the Receiver sought to exclude out-of-pocket expenses from the holdback in September, 2009. The Court rejected that request. App. at 14-16 (Transcript of September 10, 2009 hearing, at 44-46).

[11] As noted above, $2,153,268, or 18.57% of this amount, resulted from negotiated agreements to increase the holdback percentage above 20%.

[12] *See* App. at 38-39 for a more detailed presentation of the fees and expenses sought, awarded, and held back for each of the Receiver's 28 fee applications filed for the period from February 16, 2009 through December 31, 2013.

In his Holdback Release Motion, the Receiver seeks to release $5,768,236. That amount can be viewed in a number of ways. It is one-third of the total holdback amount accumulated through October 31, 2013. It is slightly more than the amount held back from the Receiver's first two fee applications. It also represents virtually all of the holdback amount that accumulated between January 1, 2010 and December 31, 2013 ($5,812,494 accumulated during that period vs. $5,768,236 requested). Finally, it represents 50% of the total holdback amount – including the $2.15 million that was added to the holdback by agreement – that was accumulated during 2009

III. PERTINENT CASE LAW

In considering the relief sought by the Receiver, this Court should be mindful of and apply the case law that governs fee applications in general; after all, what the Receiver and his professionals seek here is an additional payment of some $5.8 million in respect of their interim professional fees and expenses. 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 a 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 v. Georgia Highway Express, Inc.*, 488 F.2d 714 (5th Cir. 1974). *See SEC v. Megafund Corp.*, 2008 WL 2839998 at *2 (N.D. Tex. June 24, 2008). The amount of any award, and any reduction of the award sought, 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).

Because equity receiverships have a public service nature, courts awarding fees to

a Receiver and his professionals should avoid even the *appearance* of a windfall. *City of Detroit v. Grinnell Corp.*, 495 F.2d 448, 469 (2nd Cir. 1974) (emphasis added). "No receivership is intended to generously reward court-appointed officers." *SEC v. W.L. Moody & Co., Bankers (Unincorporated)*, 374 F.Supp. 465, 483 (S.D. Tex. 1974), *affirmed* 519 F.2d 1087 (5th Cir. 1975). "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.'" *See SEC v. Byers*, 590 F. Supp. 2d 637, 645 (S.D.N.Y. 2008)(quotation omitted). As the Fifth Circuit has explained: "to put these guidelines into perspective and as a caveat to their application, courts must remember that they do not have a mandate ... to make the prevailing counsel rich ... [c]ourts should take particular care to scrutinize fee applications 'to avoid even the appearance of a windfall.'" *Johnson*, 488 F.2d 714 at 719.[13]

As Judge Fish has observed, "courts have relied upon myriad factors in determining the reasonableness of a receivership fee." *SEC v. Striker Petroleum, LLC*, 2012 WL 685333 at *3 (N.D.Tex. March 2, 2012). The Receiver's Holdback Release Motion focuses almost entirely upon the "results" that the Receiver claims to have achieved. Results are certainly a "critical factor" for this Court to consider. *U.S. v. Code Products Corp.*, 362 F.2d 669, 673 (3rd Cir. 1966). As one court has observed, "results

[13] From the perspective of Stanford's investors, it is safe to say that any release of the holdback amount at this time will be perceived as a "windfall" to the Receiver and his professional firms.

are always relevant." *In re Alpha Telecom, Inc.*, 2006 WL 3085616 at *6 (D. Ore., Oct. 27, 2006). As this Court considers the "results" achieved to date by the Receiver and his professionals, it is appropriate that the Court also consider the "extent to which the investors and creditors have benefitted (or not) as a result of the Receiver's endeavors." *Alpha Telecom, Inc.*, 2006 WL 3085616 at *5. *See also Specialty Products Co. v. Universal Industrial Corp.*, 21 F. Supp. 92, 94 (M.D. Pa. 1937)("I do not think that I am required to fix fees in total disregard of the fact that this receivership produced a very lean harvest, that all interests involved suffered heavily, and that the whole enterprise was definitely not a success").

The Receiver argues that payment of the holdback amount cannot be opposed on "the bare wish that there would have been more money available to start with or that there would have been more money readily available to recover." Holdback Release Motion at 5. That argument is not supported by the case law – courts have long recognized that they must consider the availability of assets when considering requests for receivership fees and expenses. *See, e.g.*, *Specialty Products*, 21 F. Supp. at 94 ("I think it is proper to observe some remote relation between the fees to be paid and the resources available to pay them"); *Moody*, 374 F. Supp. at 481 (size of the estate and its ability to afford the expenses and fees are factors that "must be given considerable weight"); *Alpha Telecom*, 2006 WL 3085615 at *5 ("in fixing the amount of fees to be paid to the Receiver and his attorneys, an important consideration is the extent of the assets available to pay any such fees"); *Striker Petroleum*, 2012 WL 685333 at *3 (identifying as a factor "the ability of the receivership estate to afford the requested fees

and expenses").

IV. THE RECEIVER'S MOTION IS PREMATURE AND IGNORES UNRESOLVED OBJECTIONS TO HIS FEE APPLICATIONS

When the Court imposed the holdback on the Receiver's professional fees and expenses, it twice made clear that the accumulated holdback would be revisited at (or near) the conclusion of this Receivership:

> I am going to impose a 20 percent holdback *and will continue doing that through the life of the Receivership*. Again, just to be clear, I'm not rejecting that 20 percent. I am just hanging on to it *until we see how everything works out*.

App. at 9 (Transcript of September 10, 2009 hearing, at 39)(emphasis added).

> THE COURT: The 20 percent? I would assume *that would be when all the dust settles*.

App. at 17 (Transcript of September 10, 2009 hearing, at 47)(emphasis added).

It is obvious that this Receivership is not close to a conclusion – the "dust" has not settled, and likely will not for a number of years. Neither the Receiver, nor the Court, nor the Examiner can make any coherent prediction concerning "how everything will work out" for Stanford's investors and other creditors.

In seeking a partial release of the holdback at this time, the Receiver and his professionals apparently rely upon the Court's comment at the conclusion of the hearing held on September 10, 2009:

> If you want to make a pitch at some point that some portion of that ought to be cut loose because enough time has elapsed that we ought to have some confidence with respect to certain billing items, then I would be open to considering that at some point.

App. at 17 (Transcript of September 10, 2009 hearing, at 47). In its Orders approving the

Receiver's various fee applications, the Court has consistently reserved "ruling on objections" to the amounts held back on each application "until a later date." *See, e.g.*, Doc. 994 (Receiver's third and fourth applications) at 3; Doc. 1069 (Receiver's fifth application[14]) at 2; Doc. 1478 (Receiver's fourteenth application) at 2; Doc. 1749 (Receiver's twentieth application); Doc. 1996 (Receiver's twenty-eighth application) at 2.

The Holdback Release Motion does not address any of the formal objections that were made by the Examiner and/or the SEC to the Receiver's first four fee applications. Those objections gave rise to more than $10 million of the current holdback amount, *including over $2 million that was added to the holdback amount by agreement* among the Receiver, the Examiner and the SEC in order to secure approval of the Receiver's third and fourth fee applications. *See* Doc. 994. Similarly, the Receiver does not address any of the objections made by the Examiner and the SEC to the Receiver's fifth fee application, which also resulted in an increase in the holdback percentage (from 20% to 22%) to secure approval of that fee application. The Receiver similarly ignores the various issues that were raised by either the Examiner or the SEC with respect to the Receiver's last twenty-three fee applications (nos. 6 through 28). Those applications, covering services performed between January 1, 2010 and December 31, 2013, generated approximately one-third of the current holdback amount ($5,812,494).

As the party seeking a release of a portion of the holdback amount, the Receiver bears the burden of proof. *See Riley v. City of Jackson, Mississippi*, 99 F.3d 757, 760 (5th

[14] The Court's Order approving the Receiver's fifth fee application erroneously refers to that application as the Receiver's fourth application. *See* Doc. 1069 at 1.

Cir. 1996); *SEC v. EFS, LLC*, 2008 WL 5157851 at *2 (N.D. Tex., Dec. 5, 2008). In the context of the Holdback Release Motion, the Receiver's burden was to demonstrate that this Court should now have "some confidence with respect to certain billing items" that had previously been subject to objection by the SEC or the Examiner. The Receiver has neither addressed nor remedied the objections, both formal and informal, that gave rise to the holdback amount in the first place. Because the Receiver has failed to meet his burden, the Holdback Release Motion should be denied.

V. RESULTS MATTER – FOR THE INVESTORS

The Holdback Release Motion goes into considerable detail describing what the Receiver and his professionals perceive to be the successful results that have been achieved and that they urge should justify a partial release of the holdback. The problem with the Receiver's approach is that it does not consider success from the standpoint of Stanford's investors and other creditors.

A. What Has this Receiver Accomplished?

The Examiner appreciates and acknowledges that the challenges presented by the Stanford Financial receivership have been complex and substantial. In many respects, the Receiver and his professionals have done a fine job – and they have been well compensated for their efforts. How well the Receiver and his professionals have handled certain aspects of this Receivership is not really the question before the Court. Rather, it is whether the Court is now in a position to conclude that the performance of the Receiver and his professionals justifies a release of the additional compensation now sought by the

Receiver.[15]

What we know at present is that the Receiver and his professionals have not identified any significant Stanford assets or accounts that were not identified in the earliest days of the Receivership. With respect to those assets and accounts that were on hand when the Receivership commenced in February 2009, they have largely been gathered and liquidated. *See* App. at 23-29 (Receiver's 7th Interim Report Regarding Status of Receivership, Asset Collection, and Ongoing Activities, Docs. 1955 and 1966). As of December 31, 2013, the Receiver had secured total assets of $240.9 million, over one-quarter (1/4) of which was on hand on the day the Receivership commenced. App. at 35. Through December 31, 2013, the Receiver has brought an additional $177.8 million into the Receivership, has paid professional fees and expenses of $69.6 million,[16] and has paid other non-professional expenses of $54.7 million. The Receiver's professional fees have thus far consumed 28.89% of the total Receivership Estate. As of December 31, 2013, the Receiver had distributed $24.5 million to investors (out of an authorized initial distribution of $55 million) and had $89.2 million on hand (of which $30 million is, or at least should be, earmarked for distribution to investors as a part of the Receiver's initial distribution).

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[15] It is well recognized that interim fees, such as those awarded to the Receiver and his professionals on their prior twenty-eight (28) fee applications, are generally allowed at amounts well below any possible final fee award. *See In re Imperial "400" National, Inc.*, 432 F.2d 232, 235 (3rd Cir. 1970)(interim fee allowances should be "'well below any possible final allowances' . . . because it is only at the conclusion of a reorganization that the value of the services can be appropriately measured"); *Alpha Telecom*, 2006 WL 3085616 at *3 ("interim fees are generally allowed at less than the full amount requested in recognition of the fact that until the case is concluded the court may not be able to accurately determine the 'reasonable' value of the services").

[16] The Receiver has also paid professional fees and expenses to the Examiner of approximately $2.2 million and professional fees and expenses to the OSIC of $700,000.

With respect to Stanford funds held overseas, the Receiver and his professionals have long known that approximately $300 to $330 million was held in "non-US bank accounts." Doc. 336 (Report of the Receiver dated April 23, 2009) at 27. Those funds were held in Canada (approximately $23 million), the United Kingdom (approximately $100 million), and Switzerland (approximately $200 million). The funds in the United Kingdom were given over to the Antiguan Liquidators pursuant to the Settlement Agreement and Cross-Border Protocol entered into by the Receiver, the DOJ, the SEC, the Examiner, the OSIC and the Antiguan Liquidators. The Receiver has recently managed to recover approximately $18 million from Canada. The funds in Switzerland remain there, and likely will at least until such time as Allen Stanford's criminal conviction is affirmed. When those funds are finally released, the Receiver should receive approximately $140 million and the Antiguan Liquidators will receive approximately $60 million.[17] Neither the Receiver nor any other party can accurately predict when the Swiss funds might be released, nor at what cost to the Receivership in professional fees and expenses.

The Receiver has filed a number of lawsuits seeking to recover from certain Stanford investors, former Financial Advisors, insiders, and others. In his most recent interim status report, the Receiver notes that the total amount sought in these lawsuits is $686.4 million.[18] App. at 25. The Receiver acknowledges that "asset recovery is

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[17] The funds in Canada were assigned to the Receiver as a part of the Settlement Agreement and Cross-Border Protocol. The division of the funds held in Switzerland was also agreed upon in the Settlement Agreement and Cross-Border Protocol.

[18] The Receiver excludes from this amount various claims brought in litigation. *See* App. at 25 n.5.

difficult, protracted and expensive." *Id.* He also notes that "such claims are the single largest potential source of funds which may be recovered for the benefit of Stanford's victims." *Id.* Thus far, the Receiver has achieved only limited success through his litigation efforts – he has recovered (at December 31, 2013) a total of $20.8 million, most of which is attributable to settlements with "net winner" investors ($12.61 million), collection of the judgment entered in the political committees case ($2.25 million), and a settlement with former employees Aitken and Thacker ($4.4 million).[19] The Receiver has also acknowledged that the amount he will ultimately be able to recover from the pending litigation is "uncertain" and "very likely will be less than the amounts claimed." App. at 43 (Receiver's open letter dated February 14, 2014).

With the holdback in place, the Receiver's professional fees have consumed 28.89% of the total Receivership Estate through December 31, 2013.[20] While the Receiver's professionals obviously do not like the holdback, its application does not mean (and has never meant) that they are not being well compensated for their work. Through October 31, 2013, the Receiver's primary professional firms have billed and been paid the following amounts:

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[19] The political committees case was Civil Action No. 3:10-CV-0346-N. The Aitken/Thacker case was Civil Action No. 3:09-CV-1946-N.

[20] If the Holdback Release Motion is granted, that percentage will rise to 31.28%.

Firm	Billed	Total Paid	Holdback
Baker Botts	$32,943,010	$26,472,306	$ 6,470,704
FTI	$27,342,371	$21,356,111	$ 5,986,260[21]
Ernst & Young	$ 8,010,445	$ 6,298,346	$ 1,712,099
Thompson Knight	$ 4,331,494	$ 3,366,394	$ 965,100
FITS	$ 2,950,633	$ 2,223,339	$ 727,294
Krage & Janvey	$ 1,874,869	$ 1,510,194	$ 364,675
Altenburger	$ 505,621	$ 408,857	$ 96,764
Totals	**$77,958,443**	**$61,635,547**	**$16,322,896**

The Holdback Release Motion correctly notes that both the Receiver's operating expenses and professional fees have been greatly reduced. Motion at 11-13. That is commendable, but also anticipated five years into the Receivership. Moreover, the Receiver's most recent fee application – his 29th, Doc. 2008 – may signal a reversal of that trend, at least with respect to the Receiver's professional fees. In his 29th fee application, the Receiver seeks fees and expenses of $1,414,797, after application of the holdback, for work done on general estate matters during January and February 2014. Doc. 2008 at 3. That amount is not fare short of the total amount awarded to the Receiver and his professionals on his last two fee applications – covering the period from September through December 2013, combined. *See* Doc 1947 (27th fee application) at 3 n.2 (seeking a total, after holdback, of $878,200.15) and Doc. 1979 (28th fee application) at 3 n.2 (seeking a total, after holdback, of $723,986.01). This upward trend is likely to

[21] The amounts for Baker Botts and FTI do not include amounts for their work on the Receiver's claims and distribution process. Through October 31, 2013, Baker Botts had charged fees and expenses of $853,230.51 in connection with the Receiver's claim process and an additional $95,777.01 in connection with the Receiver's distribution process. For that same period, FTI had charged fees and expenses of $2,610,366.03 in connection with the Receiver's claim process and $50,340.80 in connection with the Receiver's distribution process.

continue. The Receiver and his lawyers at Baker Botts spent over a week in trial[22] during the period (March/April 2014) that likely will be covered by the Receiver's next fee application, and there are a half dozen or more additional Receivership lawsuits set for trial during the remainder of 2014.

In summary, through December 31, 2013, the Receiver collected $240.9 million and spent approximately $127.2 million on professional fees and other expenses, leaving $113.7 million in available cash. $24.5 million of that amount was distributed to Stanford investors, and an additional $30 million awaits distribution.[23] Assuming the Receiver's initial distribution of $55 million eventually gets distributed, the Receiver would be left with approximately $60 million (at December 31, 2013) that would be available to fund the Receivership and/or be distributed to investors. That amount represents a 1% distribution – a penny on the dollar. The funds recently received from Canada – just under $18 million – represent a distribution of 0.33%.

Put differently, the Receiver is currently in a position to make a total distribution to investors of no more than 2.33% -- 2 1/3 cents on the dollar. That figure includes the Receiver's initial 1% distribution ($55 million), the Canadian funds ($18 million) and the remaining funds on hand (approximately $60 million). Any further distributions will

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22 The Receiver was a party to *Pre War Art, Inc. v. Stanford Coins & Bullion, Inc., et al.*, Civil Action No. 3:09-CV-00559-N.

23 The Receiver distributed approximately $5 million to Stanford investors during the first quarter of 2014, and recently filed his 9th Distribution Schedule (Doc. 2011) pursuant to which he will distribute an additional $2.76 million. After distributing the amounts scheduled on the 9th schedule, he will still be approximately $20 million shy of completing his initial distribution.

depend entirely upon (a) the release of the funds held in Switzerland,[24] and (b) litigation success.

With all due respect to the Receiver and his professionals, their performance at this point merits a grade of "incomplete." *Alpha Telecom*, 2006 WL 3085615 at *6. The "dust" has not settled. While the Receiver acknowledges that this Receivership will "not likely ever" return 100 cents on the dollar, Motion at 3, it remains to be seen whether the Receiver can manage to return even 5 or 10 cents on the dollar. Neither the Receiver nor the Court can hope to now ascertain how this Receivership "will turn out" for the investors.

B. The Relationship of Professional Fees to Receivership Assets is Constant

The Holdback Release Motion suggests that circumstances today are far different than they were when the Court imposed the holdback in September 2009. The Receivership currently has somewhat more cash on hand. At December 31, 2013, the Receiver reported having "unrestricted cash" in the amount of $86.2 million.[25] Doc. 1956. In April 2009, the Receiver reported having cash on hand of $50.7 million. Doc. 336 at 26.[26] What has not much changed is the extent to which professional fees are consuming the Receivership Estate:

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[24] The Receiver's portion of the Swiss funds (approximately $140 million), if made available today and without any expense to the Receivership, would be sufficient to fund a distribution of just under 3% to the investors.

[25] That amount necessarily must be reduced by the $30 million that had been authorized for distribution to investors but not yet distributed.

[26] The Receiver's report at April 23, 2009 indicated that the Receiver had cash in the amount of $66.5 million, net of operating expenses of $15.8 million.

- In the Receiver's first fee application, he sought professional fees and expenses in the amount of $19.9 million, and indicated that he had cash on hand in the amount of $69.3 million. Doc. 384 at 6. The professional fees and expenses he sought would have consumed 28.7% of that cash.
- In the Receiver's second fee application, he sought an additional $7.6 million in professional fees and expenses, and indicated that he had cash on hand in the amount of $81.1 million. Doc. 669 at 1, 3. Had the Court approved both the first and second fee applications as submitted, the total fees ($27.5 million) would have consumed 33.9% of the available cash in the Receivership. By imposing the holdback, the Court reduced the fees awarded on those two applications to $22,053,691,[27] which represented 27.19% of the then available cash in the Receivership.
- In his latest status report, the Receiver reported that he had recovered a total of $240.9 million as of December 31, 2013. He further reported that his professional fees and expenses, after application of the holdback, were $69.6 million, or 28.89% of the total recoveries to date.[28] Docs. 1955, 1956.

In short, the Receiver's professional fees and expenses have consistently taken up

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[27] Certain of these fees and expenses were not awarded until after the Receiver resubmitted certain fee and expense information for FTI, Ernst & Young, and FITS.

[28] It is worth noting that the Receiver regularly mixes apples and oranges in his arguments to support his motion. The Holdback Release Motion addresses the Receiver's fees from the start of the Receivership through October 31, 2013. When talking about how much he has recovered, the Receiver is apparently using a date in 2014 because he claims to have recovered $263.4 million in cash – almost $23 million more than he reported in his status report as of December 31, 2013. *Compare* Motion at 8 and Doc. 1956, App at 35.

approximately 28% of the Receiver's total recovery. That was true when the holdback was instituted, and it is true today. By way of contrast, the Receiver had managed to pay investors approximately 10% of his total recovery as of December 31, 2013 ($24.5 million distributed out of $240.9 million gross recovery).

C. A Critical Look at the Receiver's Claimed "Results"

The Holdback Release Motion asserts that the Receiver has achieved "significant milestones" that justify a partial release of the holdback amount. While the Examiner recognizes that the Receiver and his professionals have accomplished a number of significant things in this Receivership, he respectfully submits that there are two sides to some of those claimed "milestones" that should be considered by the Court in determining the Receiver's motion.

1. Distribution of $30 million to Stanford investors. The Receiver's effort to distribute his first interim distribution is certainly a positive development for Stanford's investors. What is not so positive is that the Receiver has thus far managed to distribute only $30 million of the $55 million that the Court authorized, and has taken over a year to get that accomplished. This Court approved the Receiver's distribution plan on May 30, 2013, Doc. 1877, and the Receiver filed his first distribution schedule on August 20, 2013. Doc. 1903. Nine months later, 45% of the distribution authorized by the Court is still sitting in the Receiver's account, not the investors' accounts.

2. Litigation against Investors and Former Employees. The Receiver notes that he has recovered $20.8 million through his litigation efforts (including $12.6 million in settlements with net winner investors) and has secured an injunction against an

additional $27 million. Both are positive developments, but do not tell the whole story. The Receiver's injunction, entered in the *Alguire* case, must be balanced against the 5th Circuit's two reversals of this Court's decisions in that case. *See Janvey v. Alguire*, 647 F.3d 585 (5th Cir. 2011); *Janvey v. Alguire*, 539 Fed. Appx. 478 (5th Cir. 2013). As the Court (and the Receiver) well know, this Court must again consider the various defendants' motions to compel arbitration of the Receiver's claims in that matter.[29]

Similarly, the Receiver's "net winner" litigation – and this Court's order granting summary judgment to the Receiver in those cases – is currently on appeal to the 5th Circuit.[30] How that appeal is decided will certainly color one's view as to the Receiver's success in his "net winner" litigation.[31]

3. Settlement with the Antiguan Liquidators. The Receiver touts both his "significant victory" against the Antiguan Liquidators in this Court's Chapter 15 proceeding, and his subsequent settlement with the Antiguan Liquidators. Under the circumstances, both were positive developments for the Receivership – but those developments cannot be considered in a vacuum.

The Antiguan Liquidators were in a position to seek Chapter 15 recognition in this

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[29] Over two years ago, in April 2012, the Receiver's counsel told the Court that the Receiver had already spent "probably close to $4 million" on that litigation. App. at 49 (Transcript of April 4, 2012 hearing, at 14).

[30] The 5th Circuit heard argument in the "net winner" appeal on June 3, 2014, in Case Nos. 13-10266, 13-10272, 13-10276, 13-10278, and 13-10279.

[31] The Receiver also glosses over the failure of his effort to pursue recoveries from investors pursuant to a "relief defendant" theory, and the fees and expenses incurred in connection with that effort. Both the Examiner and the SEC opposed that effort before it was ever begun – because it was unsupported by the law – and ultimately prevailed before this Court and the 5th Circuit. *See Janvey v. Adams*, 588 F.3d 831 (5th Cir. 2009). Both the Examiner and the SEC have objected to the fees and expenses incurred by the Receiver in that effort, and to the failure of the Receiver to identify those fees and expenses in his first four fee applications.

Court, and to seek to recover funds in Canada, the United Kingdom and Switzerland, because they prevailed over the Receiver and his professionals in other proceedings. For example, the Receiver, his lead counsel, and his Antiguan counsel sought to participate in the Antiguan proceedings relating to SIB, and to be recognized in those proceedings. As the Court well knows, the Antiguan court rejected that effort.

Similarly, the Receiver and the Antiguan Liquidators both sought recognition in the United Kingdom, and the Antiguan Liquidators prevailed. The Antiguan Liquidators thereafter convinced the United Kingdom court to release $20 million to them (to fund operating expenses), and were actively litigating with the DOJ and its UK counterpart (the Serious Fraud Office) for control of all Stanford funds in the United Kingdom. The risk that the Antiguan Liquidators would prevail, and obtain unfettered access to all the funds in the United Kingdom, was a significant driver of the settlement that was ultimately reached.[32]

While the settlement agreement was a positive in that it brought an end to the worldwide, four-year battle between the Antiguan Liquidators and the Receiver, it did not come without a cost. The Antiguan Liquidators gained control of all the funds in the United Kingdom, and the right to spend at least $18 million (and possibly as much as $36 million) to fund the operations of their estate. The Antiguan Liquidators will also receive approximately $60 million from the funds held in Switzerland, when and if those funds

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[32] In his reply brief seeking this Court's approval of the settlement with the Antiguan Liquidators, the Receiver acknowledged that it had been "conclusively determined in a final, non-appealable judgment that the Receiver has no control over or access to any of the UK assets" and that the Antiguan Liquidators, if successful in the UK litigation with DOJ, would "have unfettered access to all of the UK assets." Civil Action No. 3:09-CV-0721-N, Doc. 201 at 5 n.5.

are released by the Swiss authorities.

4. Increasing Amount of Cash Available. The Holdback Release Motion contends that the "amount of cash available for distribution has grown substantially over time." Motion at 15. The Receiver provides a chart that, candidly, does not appear to support the Receiver's position. *Id.* at 16. That chart reflects that the cash available for distribution by the Receivership hit $80 million in approximately August 2011, dropped into the range between $70 and $80 million from that point until approximately December 2012, and then remained at approximately $85 million from December 2012 forward. As noted previously, the Receiver reported at December 31, 2013 that he had "unrestricted cash" of $86.2 million, which presumably includes the $25 to $30 million that is to be distributed to investors – but has not yet been distributed – as a part of the Receiver's initial distribution. Put differently, it appears to the Examiner that the Receiver's "available cash for distribution" has remained relatively flat from August 2011 through December 31, 2013.

5. Reduced Professional Fees and Expenses. The Receiver notes that he has reduced professional fees and expenses to approximately $400,000 to $500,000 per month,[33] and offers that he believes expenses will remain "relatively stable and consistent with recent experience." Motion at 14. The Examiner has previously noted that the Receiver's most recent fee application – his 29th – does not support the Receiver's belief. That fee application reflects fees and expenses of over $700,000 per month, after

[33] The Receiver offers the example of July 1 through October 31, 2013, during which professional fees and expenses were approximately $2 million.

application of the holdback. Doc. 2009 at 3. Moreover, the Examiner is concerned that the Receiver's professional fees and expenses will continue to increase given the number of trials that have been scheduled for the coming months in the Receiver's asset recovery cases.

D. "Distributed Cash" is the Only Result Relevant to Investors

For Stanford's victimized investors, the only relevant measure of this Receivership's success is the amount that has been recovered and distributed to those investors. At the moment, the Receiver is authorized to distribute $55 million – an amount that is significantly less than the amount ($69.6 million) that has been paid to the Receiver and his professionals through December 31, 2013. What has actually been distributed to Stanford's investors – approximately $30 million – is less than half what has already been paid to the Receiver's professionals.

It is fair to say that Stanford's investors will not view this Receivership as any sort of a "success" as long as the Receiver and his professionals have received more from the Receivership than Stanford's investors. In discussions with the Receiver's counsel concerning the Holdback Release Motion, both the Examiner and the SEC made it clear that they would oppose a release of the holdback amount, particularly for the Receiver's primary professional firms,[34] until such time as the amounts paid out to Stanford's investors/creditors **significantly exceeds** the amounts paid to the Receiver and his professionals. This Receivership is a long way from achieving that goal.

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[34] The Examiner places Baker Botts, FTI, Ernst & Young, Thompson & Knight, Altenburger and Krage & Janvey in this category.

VI. THE REQUESTED RELIEF WILL IMPAIR THE FEE APPROVAL PROCESS

The Holdback Release Motion implies that the SEC and the Examiner have not raised a single objection to any of the Receiver's last twenty-four fee applications. *See* Motion at 15. While it is true that the SEC and the Examiner have not filed formal objections or responses to the last twenty-four fee applications, it is wholly inaccurate to suggest, as the Receiver implicitly does, that neither the SEC nor the Examiner had any issues with those applications. As but one example, both the SEC and the Examiner raised significant objections to the Receiver's third, fourth and fifth fee applications. The result of those objections was an agreement among the Receiver, the SEC and the Examiner to increase the amount held back from those applications by over $2 million.[35]

The Receiver notes in the Holdback Release Motion that the SEC and the Examiner are typically provided with the Receiver's draft fee applications several weeks before those applications are filed. Motion at 14. Invariably, the Examiner and the SEC both review the draft fee application, and the supporting invoices, and raise issues concerning the fees sought. Some of those issues are relatively minor, others are not. It is fair to say that each draft fee application is met with questions concerning (a) whether staffing is appropriate as to certain matters and tasks, (b) whether work is being assigned to professionals at the appropriate billing levels, (c) whether certain tasks are justified on a cost/benefit basis, and (d) whether the Receiver's professionals are appropriately documenting their time entries to facilitate review by the SEC, the Examiner and the

[35] As noted earlier, a total of $6 million was held back from those three applications.

Court. The comments of the Examiner and the SEC are typically forwarded to the Receiver and his professionals via email, and the parties then attempt to address those comments via email, telephone conference, or face to face meetings, as necessary. As the Receiver notes, it is common for the Receiver to revise or supplement his draft fee application, and to reduce certain amounts sought, in response to the comments of the Examiner and/or the SEC. *Id.* At times, the Receiver has pulled certain invoices form one fee application and deferred them to a later application in order to obtain additional information sought by the SEC or the Examiner. Through this process, the Receiver, the Examiner and the SEC have managed to avoid involving the Court to resolve disputes arising from the Receiver's fee applications.[36]

The holdback mechanism created by the Court plays a crucial role in the ability of the Receiver, the Examiner and the SEC to process the Receiver's fee applications without taking up the Court's limited time. It is rare that the Examiner and the SEC are wholly satisfied with the Receiver's responses to all of the issues that are raised with respect to a given fee application. Because of the holdback, neither the Examiner nor the SEC needs to be "wholly satisfied." Instead, the Examiner and the SEC need only be comfortable that the billing matters that remain unresolved when a fee application is filed fall within the confines of the then applicable holdback percentage. If the Examiner and the SEC can achieve that level of comfort, there is no need to oppose the Receiver's fee application and require the Court's involvement to resolve a dispute. As noted earlier,

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[36] The Receiver agreed to extend the time for both the Examiner and the SEC to respond to the Holdback Release Motion in order to permit the parties to first devote their attention to the Receiver's recently filed 29th fee application. Doc. 2008.

each of the Court's orders approving the Receiver's fee applications has expressly reserved, for later ruling, all objections with respect to the amounts held back on each application. *See supra* at 13. The ability of the Examiner and the SEC to address unresolved issues "at a later date" is a key component to the process of approving the Receiver's fee applications.

The relief sought by the Receiver threatens to unravel this process. The Receiver seeks the release of one-third (1/3) of the accumulated holdback amount, but does not identify any particular objections (or categories of objections) that should be resolved in his favor. The Receiver does not assign the amount he seeks to have released to any particular group of his prior fee applications, such that the SEC and the Examiner could even attempt to identify which objections they had raised to those particular fee applications that remain unresolved. If portions of the holdback amount can be released to the Receiver and his professionals without reference to (a) the unresolved objections raised by the SEC and the Examiner, and (b) any particular fee applications, both the SEC and the Examiner will need to take a harder look at future fee applications and may be reluctant to rely upon their ability to address objections at a later date.

VII. FIRM BY FIRM COMMENTARY

As noted at the outset, the Examiner does not believe it is appropriate for the Court to engage in a firm by firm analysis in ruling on the Holdback Release Motion. Nevertheless, to the extent the Court decides to engage in such an analysis, the Examiner offers below some initial comments concerning each firm's claim to a portion of the holdback as sought in the Holdback Release Motion.

A. The Receiver's Primary Professional Firms

At this point in the Receivership, there are six professional firms that are providing the vast majority of the services being used by the Receivership. Those firms are Baker Botts, FTI, Ernst & Young, Thompson & Knight, Altenburger, and the Receiver's own law firm, Krage & Janvey. As a group, it is not appropriate to consider any release of the holdback amount at this time for these firms. Going forward, each of the firms will presumably play a significant role in determining how this Receivership "works out" for Stanford's investors and other creditors.

While these firms collectively represent the lion's share of the holdback amount (approximately $15.6 million of the total holdback of $17.3 million), it is worth noting that each of these firms has been well compensated for the work it has done to date. *See supra* at 18. Collectively, these firms have been paid $59.4 million for their work through October 31, 2013. Moreover, each of these firms will continue to perform considerable services for the Receivership and will continue to be well compensated through the Court's fee application process (including the reduced 10% holdback percentage).

For these primary professional firms, the Court should abide by the well-settled notion that "interim fees" should be allowed at amounts well below any possible final fee award. *See Imperial "400"*, 432 F.2d at 235 (interim fee allowances should be "'well below any possible final allowances' . . . because it is only at the conclusion of a reorganization that the value of the services can be appropriately measured"); *Alpha Telecom*, 2006 WL 3085616 at *3 ("interim fees are generally allowed at less than the

full amount requested in recognition of the fact that until the case is concluded the court may not be able to accurately determine the 'reasonable' value of the services").

A partial release of the holdback to these firms is also unwarranted for two additional reasons. First, the fees and expenses of each of these primary professional firms have been subject to a number of objections by the Examiner and the SEC over the course of the Receiver's 28 fee applications. Those objections have never been resolved; rather, the Court has reserved them for a "later date." Second, considerable uncertainties exist – and will likely exist for some time – regarding the extent to which each of these firms ultimately benefits Stanford's investors and other creditors through its work. The Examiner briefly reviews some of his primary objections and some of the more significant uncertainties for each firm below.

1. Baker Botts

Baker Botts serves as the Receiver's lead counsel in this Receivership. As a result, it has a hand in almost every activity of the Receivership. It has also been paid more than any other professional firm working for the Receiver, and will likely continue to be the most highly paid professional firm going forward.

The Examiner has regularly raised issues and objections to the fees and expenses charged by Baker Botts. As with all the objections raised in response to the Receiver's fee applications, those objections have been deferred by the Court, via the holdback mechanism, for resolution at a later date. In general, the Examiner's objections concerning Baker Botts' professional fees and expenses generally fall into the following categories:

a. overstaffing of particular matters or tasks;

b. billing at professional rates for administrative and clerical tasks;

c. billing time to matters that have been assigned to the OSIC for prosecution;

d. billing time to coordinate multiple professionals;

e. billing time to bring newly assigned lawyers "up to speed;" and

f. duplicating efforts of other professionals, including FTI and Thompson & Knight.

A second issue of concern with respect to Baker Botts is that the firm has encountered a number of conflicts that have prevented it from serving as the Receiver's counsel and caused the Receiver to retain other counsel, including certain counsel on a contingent fee basis. A recent example of this circumstance is the Receiver's motion to retain insurance coverage counsel. During the hearing on that motion, the Receiver's counsel explained that Baker Botts had discovered that it had a conflict with one of the insurance carriers that was participating in the Lloyds policy issued to the Stanford entities. App. at 55 (Transcript of February 24, 2014 hearing, at 4). Similarly, Baker Botts had a conflict with one or more of the Defendants in the Proskauer Rose lawsuit (Civil Action No. 3:12-CV-644) and the Greenberg Traurig lawsuit (Civil Action No. 3:12-CV-4641) that required the Receiver to retain the Neligan Foley firm as special counsel, on a contingent fee basis, to represent him.[37] The Examiner respectfully suggests that the Court can and should consider, in making a decision to release any part

[37] Baker Botts also had or has a conflict with the Tiger Woods Foundation, which the Receiver recently sued in Civil Action No. 3:14-CV-1567. For reasons that are not entirely clear to the Examiner, the Receiver opted to assign that matter to Thompson & Knight on an hourly basis, as opposed to permitting the OSIC to prosecute the matter pursuant to its agreement with the Receiver regarding the prosecution of fraudulent transfer actions.

of the holdback to Baker Botts, whether these conflicts ultimately cause the Receiver to pay out contingent fees that may exceed the fees that would have been charged by Baker Botts in the absence of those conflicts.

Finally, as lead counsel to the Receiver, Baker Botts will play a significant role in the ultimate success, or failure, of the Receivership. Baker Botts is the Receiver's primary strategist with respect to the Receiver's asset recovery and other litigation efforts. While Baker Botts and the Receiver have enjoyed some modest successes, they have also experienced significant, and costly, negative results. *See Janvey v. Alguire*, 539 Fed. Appx. 478 (5th Cir. 2013)(reversing this Court's order denying motions to compel arbitration); *Janvey v. Alguire*, 647 F.3d 585 (5th Cir. 2011)(remanding to this Court for consideration of motions to compel arbitration); *Janvey v. Adams*, 588 F.3d 831 (5th Cir. 2009)(holding that Receiver could not recover from CD investors on "relief defendant" theory). At this point, it is entirely too early to tell whether the Receiver's litigation efforts, quarterbacked by Baker Botts, will ultimately prove successful or not.

As noted earlier, for Stanford's investors, the Receivership's success is measured by the amount that has been returned to them by the Receiver. Baker Botts is the architect of the claims process and distribution system approved by the Court. Thus far, the Receivership has had only modest success in getting funds distributed to Stanford's investors, having successfully distributed only $30 million of the $55 million that this Court has authorized, and having taken over a year to get that much accomplished. Until distributions from the Receivership to Stanford's investors and other creditors significantly exceed the amounts that the Receiver has spent on professional fees and

expenses, the Examiner does not believe that any release of the holdback amount is warranted for Baker Botts.

2. FTI

FTI serves as the Receiver's primary accounting firm and his forensic accounting expert. The Examiner acknowledges that FTI has done a fine job in its service as an expert witness for the Receiver (and others), and anticipates that FTI will continue to serve in that role for both the Receiver and the OSIC.

Notwithstanding its work as an expert witness, the Examiner has regularly raised issues and objections to the fees and expenses charged by FTI. As with all the objections raised in response to the Receiver's fee applications, those objections have been deferred by the Court, via the holdback mechanism, for resolution at a later date. In general, the Examiner's objections concerning FTI's professional fees and expenses generally fall into the following categories:

a. overstaffing of particular matters or tasks and/or insisting upon redundant layers of review;

b. billing at professional rates for administrative and clerical tasks;

c. using professionals with high billing rates to accomplish tasks that could be done by lower billing personnel;

d. using professionals with high billing rates to conduct the business of the Receivership; and

e. duplicating efforts of other professionals, including FITS, Gilardi and Ernst & Young.

Before this Court considers releasing any of the holdback amount to FTI, the foregoing concerns need to be addressed and resolved.

3. Ernst & Young

From the beginning of the Receivership, the Receiver has used both FTI and Ernst & Young to provide accounting services. Generally speaking, the Examiner understands that Ernst & Young focuses more on the preparation of financial statements and tax returns, but the Receiver's retention of two large accounting firms has been a concern of the Examiner since his appointment. One of the earliest objections that the Examiner raised to the fees and expenses of Ernst & Young related to its preparation of historic financial statements for a large number of the Stanford entities. The Examiner did not then, and still does not, understand the need for historic financial statements for entities that were little more than components of a worldwide fraud.

The Examiner has regularly raised issues and objections to the fees and expenses charged by Ernst & Young. As with all the objections raised in response to the Receiver's fee applications, those objections have been deferred by the Court, via the holdback mechanism, for resolution at a later date. In general, the Examiner's objections concerning Ernst & Young's professional fees and expenses generally fall into the following categories:

a. overstaffing of particular matters or tasks and/or insisting upon redundant layers of review;

b. billing at professional rates for administrative and clerical tasks;

c. using professionals with high billing rates to accomplish tasks that could be done by lower billing personnel;

d. perpetuating the existence of, and therefore the need to account and prepare tax returns for, various Stanford entities; and

e. duplicating efforts of other professionals, including FITS and FTI.

Before this Court considers releasing any of the holdback amount to Ernst & Young, the foregoing concerns need to be addressed and resolved.

4. Thompson & Knight

As was true with the accounting firms, the Receivership has been represented by two significant law firms, Baker Botts and Thompson & Knight, since its inception. Originally, the Examiner understands that Thompson & Knight was brought in because it maintained offices in Mexico and had significant contacts in Latin America and South America. While there is a certain logic to that decision, it is also inevitable that the retention of two large law firms will necessarily lead to at least some duplication of effort and coordination costs that would not otherwise be incurred.

The Examiner has from time to time raised issues and objections to the fees and expenses charged by Thompson & Knight. As with all the objections raised in response to the Receiver's fee applications, those objections have been deferred by the Court, via the holdback mechanism, for resolution at a later date. In general, the Examiner's objections concerning Thompson & Knight's professional fees and expenses generally fall into the following categories:

a. overstaffing of particular matters or tasks;

b. billing time to coordinate multiple professionals;

c. lack of clarity in time entries; and

d. duplicating efforts of other professionals, including FTI and Baker Botts.

5. Krage & Janvey

Virtually all of the time billed by Krage & Janvey is the Receiver's time. While the Examiner has from time to time raised certain objections to fees charged by Mr. Janvey's colleagues in some of the Receiver's earlier fee applications, there generally are only limited issues with Mr. Janvey's time entries.

As the Receiver, Mr. Janvey is ultimately responsible for the success of the Receivership. As noted earlier, for Stanford's investors, that success is measured by the amount that has been returned to them by the Receiver. Thus far, Mr. Janvey has had only modest success in that regard, having successfully distributed only $30 million of the $55 million that this Court has authorized, and having taken over a year to get that much accomplished. Until distributions from the Receivership to Stanford's investors and other creditors significantly exceed the amounts that the Receiver has spent on professional fees and expenses, the Examiner does not believe that any release of the holdback amount is warranted for Krage & Janvey.

6. Altenburger

Apart from the manner in which the Altenburger firm charges for expenses (as a percentage of the billed fees), the Examiner has had relatively limited objections to its fees to date. The Examiner's primary concern with the Altenburger firm will be the extent to which it is successful at assisting the Receiver in his efforts to obtain the release of the funds that are still held in Switzerland. A secondary concern, though still a significant one, is the cost to the Receivership of securing the release of those funds.

As both the Receiver and this Court have recognized, the funds currently held in

Switzerland represent the single largest unrecovered asset of the Receivership. Those funds, and any recoveries obtained through litigation, are the two remaining sources that can fund further distributions to Stanford's investors and other creditors. The Court should not consider any release of the holdback to the Altenburger firm until such time as the Receiver can demonstrate that some or all of the funds held in Switzerland have been released, and at what cost to the Receivership.

B. Firms Whose Work Appears to be Complete

There are a number of professional firms whose work for the Receiver appears to be complete, or nearly so. The Holdback Release Motion seeks an across the board release of one-third of the holdback attributable to each of these firms, but offers precious little to justify that relief. The Examiner briefly addresses each of these firms below.

1. FITS

Financial Industry Technical Services, Inc. ("FITS") worked with the Receiver in connection with both Stanford Group Company and Stanford Trust Company. The Examiner has two primary concerns with respect to any holdback release to FITS at this time. First, the fees and expenses charged by FITS were the subject of considerable objections from the Examiner in response to the Receiver's first, second, and third fee applications. *See* Doc. 452 at 8, Doc. 739 at 3, 10-11, Doc. 860 at 24-25. As a result of those objections, the Court initially rejected FITS' fees and expenses sought in the Receiver's first and second fee applications. App. at 9 (Transcript of September 10, 2009 hearing, at 39). The Receiver subsequently filed a further application seeking those fees and expenses, Doc. 868, in response to which the Examiner lodged further objections.

Doc. 896.[38]

Among the objections raised with respect to the work of FITS were the following:

- Insufficient details concerning the work being done and the benefits obtained from that work.
- Apparent duplication of effort as between FITS and FTI.
- Apparent duplication of effort as between FITS and Strategic Capital.
- The payment of "per diem" charges as opposed to the reimbursement of actual expenses incurred.

None of these objections has ever been resolved in favor of FITS, and the Holdback Release Motion offers no argument addressing any of these objections.

Because there are unresolved issues relating to the work done by FITS and the objections that have previously been lodged concerning FITS billings, no release of the holdback attributable to FITS is warranted.

2. Osler

Osler, Hoskin & Harcourt, LLP, served as the Receiver's counsel in Canada. The Receiver indicates that Osler has been paid $1,365,340.97 for its work to date, and that the holdback attributable to Osler is $446,612.31. The Receiver seeks a release for Osler of $148,870.77.

As the Examiner has already made clear, he does not believe that it is appropriate at this time to consider a release of the holdback to any of the Receiver's professional

[38] With respect to FITS, over half ($378,051) of the total holdback amount attributable to it ($727,294) was accumulated through the Receiver's first three fee applications.

firms. If he was inclined to consider a partial release (which he does not think appropriate), Osler would likely be the prime candidate for such a release. Osler's work for the Receiver is largely complete – though Osler and the Receiver are apparently still working to recover certain funds still held in Canada – and Osler seemingly assisted the Receiver in achieving positive results in all of the matters where it was retained.

3. Strategic Capital

Strategic Capital is the business name used by Mr. Malcolm Lovett. The Holdback Release Motion reflects that he has been paid $356,458.00 for his work in this Receivership, and that $104,244.40 has been held back. Over half of Mr. Lovett's fees and expenses, and the corresponding holdback, were accumulated during the earliest days of the Receivership. See Doc. 384 (1st fee application) at 32 (seeking fees and expenses for Mr. Lovett of $161,508.00); Doc. 669 (2nd fee application) at 31 (seeking fees and expenses for Mr. Lovett of $101,975.20).[39]

The Examiner always found Mr. Lovett to be a competent professional, but that did not preclude the Examiner from asserting objections to his fees. The Examiner's primary objection with respect to Mr. Lovett's services was that it appeared Mr. Lovett was performing tasks that overlapped to a significant degree with the services also being provided by FITS, FTI and Ernst & Young. That apparent overlap has never been addressed by the Receiver, and is not addressed in the Holdback Release Motion. For that reason, no release of the holdback with respect to Strategic Capital is warranted.

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[39] Applying the holdback percentage of 20% to these first two fee requests, Mr. Lovett was paid $210,786.40 for the work reflected in those two requests, and $52,697 was held back.

4. Liskow & Lewis

The Holdback Release Motion describes Liskow & Lewis as a law firm that assisted the Receiver with respect to Stanford Trust Company. To the extent that the Motion describes the work done by Liskow & Lewis, much of the description overlaps with the work attributed to FITS and Strategic Capital.

Whatever work was done by Liskow & Lewis was limited; the Holdback Release Motion notes that Liskow & Lewis has been paid under $20,000.00 to date ($19,559.46) and that the holdback attributable to Liskow & Lewis is under $5,000.00 ($4,889.87). As is the case with many of the firms addressed in the Holdback Release Motion, the Examiner does not believe the Receiver has carried his burden to demonstrate why this Court should allow a partial release of the holdback to Liskow & Lewis.

5. Conyers Dill

The Holdback Release Motion says even less about the work done by Conyers, Dill & Pearman, a law firm in the British Virgin Islands that apparently assisted the Receiver with the sale of Stanford's Panamanian bank in 2010. The work done by Conyers Dill was apparently limited – the Examiner has located only one invoice from the firm, from June 2010. The Receiver's Motion indicates that Conyers Dill has been paid $14,515.35 for its services, and that $3,439.19 has been held back. As is the case with Liskow & Lewis, the Examiner does not believe the Receiver has carried his burden to demonstrate why this Court should allow a partial release of the holdback to Conyers Dill at this time.

6. Dudley Topper

The U.S. Virgin Islands firm of Dudley, Topper and Feuerzeig is in the same boat. The Holdback Release Motion says only that Dudley Topper assisted the Receiver with respect to certain labor matters in the U.S. Virgin Islands. It offers no information that attempts to quantify how Dudley Topper's services benefitted the Receivership, nor does the Motion explain why the Receiver required multiple lawyers (Dudley Topper and Gerald T. Groner) in St. Croix.

Dudley Topper has apparently been paid $13,670.35 for its work, and $3,704.33 has been held back. Once again, the Examiner does not believe the Receiver has carried his burden to demonstrate why this Court should allow a partial release of the holdback to Dudley Topper at this time.

7. Fowler White

The Holdback Release Motion describes Fowler White Burnett as a Florida law firm that assisted the Receiver with litigation that was pending at the inception of the Receivership in 2009. What the Motion does not tell the Court is that neither the Receiver nor Fowler White bothered to seek approval of Fowler White's fees until the Receiver filed his 27th fee application, Doc. 1947, on December 23, 2013. When the Receiver forwarded his draft of his 27th fee application to the Examiner, that delay was questioned. The Receiver's counsel explained that the Fowler White invoices simply "fell through the cracks" and agreed that those invoices would have to bear the 20% holdback percentage that would have applied had they been timely submitted.

The Motion says little to justify any release of the holdback to Fowler White, and

one has to question whether the Fowler White firm – having gone entirely unpaid for over three years – cares one way or the other about the holdback amount (which totals $1,348.59) imposed when the Court approved the Receiver's 27th fee application on January 29, 2014. Doc. 1963. The Examiner does not believe the Receiver has carried his burden to demonstrate why this Court should allow a partial release of the holdback to Fowler White at this time.

8. Mattlin & Wyman

The Holdback Release Motion describes Mattlin & Wyman as a South Florida law firm that served as local counsel (for Thompson & Knight) in connection with the federal prosecution of former Stanford employees T. Raffanello and B. Perraud. Mattlin & Wyman has apparently been paid $3,284.80 and some $821.20 has been held back. The Motion offers no information concerning what benefits to the Receivership, if any, were realized through the work of Mattlin & Wyman, nor does the Motion address why Thompson & Knight needed to be involved in what appears to have been a strictly Florida-based prosecution in which the Receiver's involvement was tangential, at best. The Receiver has not carried his burden to demonstrate why this Court should allow a partial release of the holdback to Mattlin & Wyman at this time.

C. Firms For Which No Holdback Release is Warranted

On the present record, the Examiner believes that no holdback release is (or will ever be) warranted for three of the Receiver's professional firms. Each is addressed below.

1. Stuart Isaacs, et al.,

The Receiver's counsel in the United Kingdom was typically referred to as 3-4 South Square in the Receiver's fee applications. As the Holdback Release Motion now points out, 3-4 South Square is not a law firm, per se, but an office sharing arrangement of Stuart Isaacs, Felicity Toube, Georgina Peters, and Jeremy Goldring. Collectively, the Receivership already has paid those four lawyers $772,790.39. The total holdback attributable to those lawyers is $250,507.94.

The Holdback Release Motion offers no real justification for why any portion of the holdback should be paid to these lawyers. The Motion acknowledges that the Receiver was unsuccessful in obtaining recognition in the United Kingdom. As previously discussed, the Receiver's failure to obtain recognition was a significant driver of the settlement ultimately reached with the Antiguan Liquidators – who were successful in obtaining recognition in the UK and who, absent an agreement, may well have received "unfettered access" to all the Stanford funds held in the UK.

The Examiner does not question the skill of the Receiver's UK counsel, nor the sincerity of their efforts in representing the Receiver. Nevertheless, those efforts have already been well compensated, and secured very little benefit for the Receivership or the investors. No further compensation to the Receiver's UK counsel is warranted.

2. Roberts & Co.

The Examiner's view of Roberts & Co. mirrors his view of the Receiver's UK counsel. Sir Clare K. Roberts was the Receiver's Antiguan counsel. While he unquestionably provided certain services to the Receiver, he ultimately was unable to

obtain recognition for the Receiver in the Antiguan courts, or even the right to participate in the Antiguan proceedings. Counsel for the Receiver has often referred to the Antiguan proceedings as "opaque" or as a "black hole" because of the inability of the Receiver, and presumably his Antiguan counsel, to obtain access to those proceedings.

As with the Receiver's UK counsel, the Examiner does not question the skill of the Receiver's Antiguan counsel, nor the sincerity of his efforts in representing the Receiver. Nevertheless, those efforts have already been well compensated, and secured very little benefit for the Receivership or the investors. No further compensation to the Receiver's Antiguan counsel is warranted.

3. Pierpont

Pierpont Communications, Inc. is the public relations firm that the Receiver retained at the outset of the Receivership. The Examiner objected to the Receiver's retention of that firm, and the Court agreed with the Examiner's position. App. at 42 (Transcript of September 10, 2009 hearing, at 42). In doing so, the Court made clear that, on a going forward basis, it was "not going to approve any PR firm expenses." *Id.* In response to a question from the Receiver's counsel, the Court indicated that it would be willing to approve fees and expenses incurred by Pierpont prior to the September 10, 2009 hearing. App. at 13 (Transcript of September 10, 2009 hearing, at 44). As a part of the Receiver's third fee application, he sought fees in the amount of $42,057.60 and expenses in the amount of $4,731.48 for Pierpont. Doc. 820 at 34. The Court ultimately approved the fees sought in the Receiver's third fee application, subject to an agreed upon 35% holdback.

Per the Holdback Release Motion, Pierpont has already been paid $220,727.27 for its work for the Receiver. The investors ought not be required to pay anything further to a firm that never should have been retained in the first place.

D. Firms For Which Any Contemplated Release Should be Deferred

1. Deloitte & Basham

The Receiver has included two professional firms in his Holdback Release Motion whose work is limited to the Receiver's efforts in Mexico. As set forth in the Motion, the Receiver's Mexican counsel, Basham, Ringe & Correa, represents the Receiver in defending against labor claims brought by former Stanford employees in Mexico. Deloitte apparently has assisted the Receiver in connection with his fraudulent transfer action against Wealth Management Services, Ltd. ("WMSL"), a company owned by former Stanford employee David Nanes.

The inclusion of these two firms in the Holdback Release Motion is curious given that both are relative newcomers to the Receiver's team of professionals (or at least relative newcomers to the Receiver's fee applications). The Basham firm first appears in the Receiver's 21st fee application, Doc. 1743, for work done in the first half of 2012. Deloitte does not appear in a fee application until the Receiver's 26th fee application, Doc. 1930, for work done in June and July, 2013.

The Holdback Release Motion says nothing about what the Receiver has accomplished, if anything, as a result of the retention of these two firms, nor does it offer any particular rationale for why a portion of the holdback attributable to these firms should be released. The labor claims being defended by Basham are, apparently, still

proceeding and unresolved. Similarly, the Receiver's lawsuit against WMSL is still pending such that no judgment can be made concerning the benefits, if any, derived from the work done by Deloitte in connection with that matter.

At this point in the Receivership, there is not enough information concerning the work of Basham and Deloitte to make a judgment as to whether any part of the holdback should be released to those firms.

2. Groner

Gerald T. Groner, Esq. has served as the Receiver's counsel in the U.S. Virgin Islands with respect to real estate and litigation matters. The Holdback Release Motion offers nothing to justify a holdback release to Mr. Groner, other than to say that he attended certain real estate auctions and closings.

The Examiner's primary concern with Mr. Groner is that the Receiver has apparently learned that Mr. Groner has a conflict that will prevent him from assisting the Receiver with the sale of certain remaining properties in St. Croix. Before any decision can be made with respect to Mr. Groner and the holdback, the Examiner believes that the Court requires additional information concerning that conflict, including whether it requires the Receiver to expend funds getting another lawyer up to speed, or to use Baker Botts lawyers in Mr. Groner's stead.

Accordingly, the Examiner believes it is premature to consider a holdback release to Mr. Groner.

VIII. CONCLUSION

The Receiver's Holdback Release Motion is premature, does not address the many objections that the Court has expressly reserved for later ruling, and should be denied in its entirety. When the Court imposed the holdback in September 2009, it did so with an eye toward revisiting it at (or nearly at) the end of this Receivership when the Court and the parties could accurately assess the results of the Receiver's efforts. That day is not here, and will not be for some time.

Dated: June 9, 2014

Respectfully submitted,

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COURT-APPOINTED EXAMINER

CERTIFICATE OF SERVICE

On June 9, 2014, I electronically submitted the foregoing document to 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 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/ John J. Little