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

SECURITIES AND EXCHANGE COMMISSION, Plaintiff, v. STANFORD INTERNATIONAL BANK, LTD., et al., Defendants.	§ § § § § § § § § § §	Civil Action No. 3:09-cv-0298-N
RALPH S. JANVEY, et al. Plaintiffs, v. WILLIS OF COLORADO INC., et al. Defendants.	§ § § § § § § § § §	Civil Action No. 3:13-cv-03980-N

PLAINTIFFS' MEMORANDUM OF LAW IN SUPPORT OF MOTION FOR AWARD OF ATTORNEYS' FEES AND EXPENSES IN CONNECTION WITH THE SETTLEMENT WITH THE WILLIS AND BMB DEFENDANTS

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I. INTRODUCTION

Plaintiffs, by their counsel, submit this memorandum of law in support of their motion for an award of attorneys' fees and reimbursement of costs and expenses upon the successful conclusion of the litigation in which Plaintiffs and their Counsel have now recovered $120,000,000 from the Willis Defendants and $12,850,000 from the BMB Defendants for a total of $132,850,000 (the "Settlement Amount").

The requested total fee award of $30,000,000 which is 22.582% of the Settlement Amount is well within the range of appropriate awards, particularly given the over $100,000,000 that will be available for distribution to Stanford Investors from these settlements.

II. BACKGROUND

A. The Authority of the Receiver and the Committee

1. On February 16, 2009, the Securities & Exchange Commission ("SEC") filed the SEC Action,[1] and the Court appointed Ralph S. Janvey as Receiver "to immediately take and have complete and exclusive control, possession, and custody of the Receivership Estate and to any assets traceable to assets owned by the Receivership Estate." See Order Appointing Receiver ¶ 4 [SEC Action, ECF No. 10].

2. The Second Amended Order Appointing Receiver, entered on July 19, 2010, is the current order setting forth the Receiver's rights and duties (the "Second Order"). [SEC Action, ECF No. 1130]. The Receiver's primary duty is to marshal and preserve the assets of the Receivership Estate, and minimize expenses, "in furtherance of maximum and timely disbursement thereof to claimants." Second Order ¶ 5.

[1] The "SEC Action" is the primary receivership proceeding before the Court, *SEC v. Stanford International Bank, Ltd., et al.*, Civil Action No. 3:09-CV-0298-N.

3. The Receiver is not only authorized but required to pursue outstanding liabilities and claims for the Estate. *Id*. ¶¶ 3, 5(b)-(c). The Court vested Ralph S. Janvey with "the full power of an equity receiver under common law as well as such powers as are enumerated" by the Court. *Id*. ¶ 2. The Receiver can assert claims against third parties and "recover judgment with respect to persons or entities who received assets or records traceable to the Receivership Estate." *SEC v. Stanford Int'l Bank, Ltd*., 776 F. Supp. 2d 323, 326 (N.D. Tex. 2011). The Court has directed the Receiver to institute, prosecute, defend, and compromise actions that the Receiver deems necessary and advisable to carry out his mandate. Second Order ¶ 5(i).

4. On April 20, 2009, the Court appointed John J. Little as Examiner, to advocate on behalf of "investors in any financial products, accounts, vehicles or ventures sponsored, promoted or sold by any Defendant in this action." [SEC Action, ECF No. 322]. Although he is not a party to the Janvey Litigation or the Troice Litigation[2], the Examiner signed the Willis and BMB Settlement Agreements[3] as chair of the Committee, and as Examiner solely to evidence his support and approval of the Willis and BMB Settlements and the obligation to post Notice of the Willis and BMB Settlements on his website.

5. On August 10, 2010, this Court entered its order (the "Committee Order") creating the Committee and appointing the Committee to "represent[] in [the SEC Action] and related matters" the Stanford Investors. [SEC Action, ECF No. 1149]. The Committee Order confers upon the Committee the right to investigate and pursue claims on behalf of the Stanford Investors and for the Receivership Estate (by assignment from the Receiver). *Id.* ¶ 8(d). This

[2] The "Janvey Litigation" and the "Troice Litigation" are defined in Plaintiffs' Expedited Request for Entry of Scheduling Order and Motion to Approve Proposed Settlement with the Willis Defendants, to Enter the Bar Order, to Enter the Final Judgment and Bar Orders, and to Enter the Notices of Bar Order, SEC Action, ECF No. 2369, and Plaintiffs' Expedited Request for Entry of Scheduling Order and Motion to Approve Proposed Settlement with the BMB Defendants, to Enter to Bar Order, and to Enter the Final Judgment and Bar Orders, SEC Action, ECF No. 2383 (the "Settlement Approval Motions").

[3] Willis Settlement Agreement," "Willis Settlement, "BMB Settlement Agreement" and "BMB Settlement" are each defined in the Settlement Approval Motions.

Court has recognized the Committee's standing to pursue litigation claims such as the claims against the Willis and BMB Defendants[4] that are the subject of the Willis and BMB Settlements. *See* Order 4–6, *Janvey v. IMG Worldwide Inc.*, Civ. Action No. 3:11-CV-0117-N (Sept. 24, 2012 (N.D. Tex.), ECF No. 33 (the Committee has standing to pursue claims based on the Court's grant of such authority to the Committee as an unincorporated association representing the interests of the Stanford Investors).

B. The Investigation of Claims Against Willis and BMB

6. Plaintiffs' counsel have spent almost seven years and thousands of hours investigating and pursuing claims against the Willis and BMB Defendants on behalf of the Stanford Receivership Estate and Stanford Investors. Those claims are based on the Willis and BMB Defendants' involvement in providing certain insurance letters to Stanford which Stanford used as part of its marketing schemes to convince investors to purchase and retain the SIBL CDs. As part of their investigation of the claims against the Willis and BMB Defendants, Plaintiffs' Counsel have reviewed voluminous documents, emails, and depositions and trial testimony obtained in multiple collateral lawsuits and the criminal prosecution of Allen Stanford, James Davis, Laura Pendergest-Holt, and other former Stanford insiders. The materials reviewed by Plaintiffs' Counsel included, among other materials, thousands of pages of the SEC and other investigation materials, thousands of pages of deposition and trial testimony, thousands of emails of Stanford and Willis and BMB Defendants' personnel, and literally hundreds of boxes of documents including Willis and BMB documents that Plaintiffs received from the Willis and BMB Defendants or that the Receiver secured from Stanford's various offices.

7. Counsel also researched all relevant case law to support liability and damages claims belonging to the Receiver and Committee—including the Texas Securities Act ("TSA")

[4] The "Willis Defendants" and the "BMB Defendants" are defined in the Approval Motions.

and other claims belonging to the Stanford Investors—to determine how the facts surrounding the Willis and BMB Defendants' conduct supported those claims. The investigation further required formulation of viable damage models and causation theories for both the Receivership Estate and Stanford Investor claims.

8. Investigation and prosecution of the Receivership Estate and Stanford Investor claims against the Willis and BMB Defendants also necessarily required thousands of hours to review and understand the background and history of the complex web of Stanford companies, the financial transactions, interrelationships and dealings between and among the various Stanford entities, and the complex facts relating to the Ponzi scheme and how it was perpetrated through the various Stanford entities. Without a comprehensive investigation and understanding of this background, it would not have been possible to formulate viable claims against the Willis and BMB Defendants. The Committee's counsel have also spent thousands of hours since the Committee's formation in 2010 in support of the joint effort with the Receiver to investigate and prosecute numerous third party claims, including the claims against the Willis and BMB Defendants, pursuant to an agreement between the Receiver and the Committee.

C. The Troice Litigation

9. On July 2, 2009, counsel for the Stanford Investors filed the Troice Litigation as a putative class action. [Troice Litigation, ECF No. 1]. The Willis and BMB Defendants filed motions to dismiss the Troice Litigation on May 2, 2011. [Troice Litigation, ECF No. 127]. On October 27, 2011, this Court granted the motions to dismiss, finding that the Securities Litigation Uniform Standards Act of 1998 ("SLUSA") precluded the action. [Troice Litigation, ECF Nos. 155, 156]. The Investor Plaintiffs appealed that decision to the Fifth Circuit. On March 19, 2012, the Fifth Circuit issued its opinion reversing this Court's order of dismissal. *Roland v. Green*, 675 F.3d 503 (5th Cir. 2012). The Defendants then petitioned for *certiorari* to the United States

Supreme Court, which granted the petition. On February 26, 2014, the Supreme Court issued its opinion affirming the Fifth Circuit and concluding that SLUSA did not preclude the state law class action claims brought against Defendants in the Troice Litigation. *Chadbourne & Parke, LLP v. Troice*, 134 S. Ct. 1058 (2014).

10. Defendants Amy Baranoucky and Willis Group PLC ("Willis Group") challenged the court's personal jurisdiction over them, requiring the parties to engage in substantial jurisdictional discovery, including extensive document production and depositions in Bermuda and London. After extensive briefing, the Court denied Baranoucky's motion to dismiss for lack of personal jurisdiction. When Plaintiffs filed a response with substantial evidence to counter Willis Group's motion to dismiss for lack of jurisdiction [Troice Litigation, ECF 268], Willis Group withdrew its motion [Troice Litigation, ECF 269].

11. On September 16, 2014 the Court denied the Investor Plaintiffs' request for entry of a scheduling order to permit merits discovery and granted Defendants' request to permit additional briefing on their motions to dismiss. [Troice Litigation, ECF No. 193]. On the same day the Court issued its Class Certification Scheduling Order. The parties then engaged in extensive class certification discovery and fact and expert witness depositions. [Troice Litigation, ECF No. 192]. Plaintiffs' Counsel defended the depositions of class representatives Samuel Troice, Manuel Canabal, and Daniel Gomez Ferreiro. Plaintiffs retained expert witnesses on class certification issues including proof of foreign law and the appropriateness of certification and presented one of those experts—Alejandro Garro—for deposition. The parties filed their class certification evidence and briefing on April 20, 2015. [Troice Litigation, ECF Nos. 226-48].

12. On December 15, 2014, the Court dismissed claims against the Willis and BMB Defendants for primary violations of the TSA, co-conspirator liability under the TSA, and for civil conspiracy, but refused to dismiss claims for aiding and abetting TSA violations, aiding and abetting/participation in a fraudulent scheme, and individual claims for insurance code violations, common law fraud, negligent misrepresentation, gross negligence, negligent retention and negligent supervision. [Troice Litigation, ECF No. 208]. The Court rejected BMB's defense based on Stanford disclosure statements and BMB's timing arguments and denied BMB's motion to stay. *Id.*

D. The Janvey Litigation

13. On October 1, 2013, the Receiver and Committee, Troice and Canabal, individually and behalf of the class, commenced the Janvey Litigation against the Willis and BMB Defendants and others. [Janvey Litigation, ECF No. 1].

14. The Willis and BMB Defendants moved to dismiss the Janvey Litigation. [Janvey Litigation, ECF No. 19-27, 30] and Plaintiffs responded. [Janvey Litigation, ECF No. 47].

15. On December 5, 2014, the Court dismissed claims for civil conspiracy and primary liability under the TSA, but declined to dismiss the other claims against the Willis and BMB Defendants. [Janvey Litigation, ECF No. 64]. The Willis and BMB Defendants answered on January 16, 2015. [Janvey Litigation, ECF No. 73, 74].

E. The Settlement Negotiations and Mediation

16. The terms of the Settlement Agreements with the Defendants were extensively negotiated over several months. The Willis parties participated in two mediations with the assistance of the Honorable Layn Phillips, an experienced mediator, in October 2015 and March 2016. During this period, there were numerous in-person meetings, telephone calls and email

exchanges regarding the settlement terms, including mediation sessions and written briefing with Judge Phillips.

17. Pursuant to the Settlement Agreements the Willis Defendants have agreed to pay $120 million. The BMB Defendants have agreed to pay $12,850,000, which sum represents virtually all of the insurance coverage for BMB.

III. ARGUMENT

A. The Court May Award Attorneys' Fees and Expenses under the Common Fund Doctrine

18. In *Boeing Co. v. Van Gemert*, 444 U.S. 472, 478 (1980), the Supreme Court recognized that "a lawyer who recovers a common fund for the benefit of persons other than himself or his client is entitled to a reasonable attorney's fee from the fund as a whole." *See also In re Harmon,* No. 10-33789, 2011 WL 1457236 at *7 (Bankr. S.D. Tex. April 14, 2011). Having achieved a settlement in the total amount of $132,850,000, Plaintiffs' Counsel respectfully submit that a total fee award of 25% of the total amount recovered, less expenses, is reasonable and consistent with what is regularly approved in this District.

19. To evaluate the reasonableness of fee requests in common fund cases, the Fifth Circuit has endorsed the "continued use of the percentage method cross-checked with the *Johnson* factors." *Union Asset Mgmt. Holding A.G. v. Dell, Inc*., 669 F.3d 632, 643–44 (5th Cir.) *cert. denied by Schuleman v. Union Asset Mgmt.*, 2012 U.S. LEXIS 5971 (2012) ("We join the majority of circuits in allowing our district courts the flexibility to choose between the percentage and lodestar methods in common fund cases, with their analyses under either approach informed by the *Johnson* considerations."); *see also Schwartz v. TXU Corp.,* No. 3:02–CV–2243–K, 2005 U.S. Dist. LEXIS 27077 (N.D. Tex. Nov. 8, 2005) (collecting cases). Both the Fifth Circuit and other courts in this Circuit regularly use the percentage method blended

with a *Johnson* reasonableness check. *In re Heartland Payment Sys. Inc.*, 851 F.Supp.2d 1040, 1072 (S.D. Tex. 2012); *Klein v. O'Neal*, 705 F.Supp.2d, 632 (N.D. Tex. 2010); *Turner v. Murphy Oil USA, Inc.*, 472 F.Supp.2d 830, 860 (E.D. La. 2007); *Newby v. Enron Corp.*, 586 F.Supp.2d 732, 751 (S.D. Tex. 2008). In *Schwartz*, the court observed that the percentage method is "vastly superior to the lodestar method for a variety of reasons, including the incentive for counsel to 'run up the bill' and the heavy burden that calculation under the lodestar method places upon the court." U.S. Dist. LEXIS 27077. The court also observed that, because it is calculated based on the number of attorney hours spent on the case, the lodestar method deters early settlement of disputes. *Id*. Thus, there is a "strong consensus in favor of awarding attorneys' fees in common fund cases as a percentage of the recovery." *Id*.

20. Under the common fund approach and the *Johnson* framework, the 25% fee sought by Plaintiffs' Counsel pursuant to their fee agreements is reasonable and should be approved by the Court.

21. The Court's ultimate task is to ensure that the fees awarded are "reasonable" under the circumstances. The Fifth Circuit has instructed that district courts should be guided by the factors set forth in *Johnson v. Georgia Hwy Express, Inc.,* 448 F.2d 714, 717-19 (5th Cir. 1974), *overruled on other grds*, *Blanchard v. Bergeron*, 489 U.S. 87 (1989).

22. The *Johnson* factors include: (1) time and labor required; (2) novelty and difficulty of the issues; (3) required skill; (4) whether other employment is precluded; (5) the customary fee; (6) whether the fee is fixed or contingent; (7) time limitations; (8) the amount involved and the results obtained; (9) the attorneys' experience, reputation and ability; (10) the "undesirability" of the case; (11) the nature and length of the professional relationship with the

client; and (12) awards in similar cases. *Id.* At 717-19. A review of these factors also reveals that the proposed 25% fee is reasonable and should be approved.

23. Plaintiffs' Counsel submit that the requested award of fees and expenses is reasonable under the percentage method and when viewed in light of the *Johnson* factors.

B. Under a Percentage of the Fund Approach, the Requested Fees are Fair and Reasonable

24. The total settlement amount is $132,850,000. Plaintiffs' Counsel's request approval of attorneys' fees of 22.582% for a total fee of $30,000,000.

25. Courts in this District routinely award attorneys' fees amounting to 30% of the common fund created. The proposed 22.582% amount is, therefore, a reasonable percentage of the common fund (i.e., the $132,850,000 settlement). "The vast majority of Texas federal courts and courts in this District have awarded fees of 25%–33% in securities class actions." *Schwartz*, 2005 WL 3148350, at *31 (collecting cases). "Indeed, courts throughout this Circuit regularly award fees of 25% and more often 30% or more of the total recovery under the percentage-of-the recovery method." *Id.; Shaw v. Toshiba Am. Info. Sys.*, 91 F.Supp.2d 942, 972 (E.D. Tex. 2000) ("based on the opinions of other courts and the available studies of class action attorneys' fees awards (such as the NERA study), this Court concludes that attorneys' fees in the range from twenty-five percent (25%) to [33-1/3%] have been routinely awarded in class actions"); *In re Prudential-Bache Energy Income P'ships Sec. Litig.*, MDL 888, 1994 U.S. Dist. LEXIS 4786 (E.D. La. 1994) (same); *Di Giacomo v. Plains All Am. Pipeline*, No. H-99-4137, 2001 U.S. Dist. LEXIS 25532 at *28 (S.D. Tex. 2000) (approving 30% fee); *In re Combustion, Inc.*, 968 F.Supp. 1116 (W.D. La. 1997) (approving 36%).

26. Courts in the Northern District of Texas have routinely approved such awards. *Klein v. O'Neal, Inc.*, 705 F.Supp.2d 632, 680 (N.D. Tex. 2010) (J. Fitzwater) (approving

percentage award of 30% of $110 million settlement); *Billitteri v. Sec. Am., Inc.*, No. 3:11-CV-00191-F, 2011 U.S. Dist. LEXIS 93907 (N.D. Tex. 2011) (awarding 25% of $80 million settlement fund); *Southland Secs. Corp. v. INSpire Ins. Solutions, Inc*., No. 4:00–CV–355y (N.D. Tex. Mar. 9, 2005) (Judge Means) (approving fee of 30% fee in securities class action); *Scheiner v. i2 Techs., Inc*., Civil Action No. 3:01–CV–418–H (N.D. Tex. Oct. 1, 2004) (Judge Sanders) (approving fee of 25% of $80 million settlement in securities class action); *Hoeck v. Compusa, Inc*., No. 3:98–CV–0998–M (N.D. Tex. Oct. 14, 2003) (Judge Lynn) (awarding 30% fee); *In re Firstplus Fin. Group, Inc. Sec. Litig*., Master File No. 3:98–CV–2551–M (N.D. Tex. Oct. 14, 2003) (Judge Lynn) (awarding 30% fee in securities class action); *Warstadt v. Hastings Entm't, Inc*., Civil Action No. 2:00–CV–089–J (N.D. Tex. Mar. 10, 2003) (Judge Robinson) (awarding 30% fee in securities class action); *Silver v. UICI*, No. 3:99CV2860–L (N.D. Tex. Mar 3, 2003) (Judge Lindsay) (awarding 30% fee in securities class action); *In re Unistar Fin. Serv. Corp. Sec. Litig*., No. 3:99–CV–1857–D (N.D. Tex. Aug. 17, 2001) (approving 30% fee in a securities class action); *Kisilenko v. STB Sys., Inc.*, No. 3:99–CV–2872–M (N.D. Tex. Nov. 3, 2000) (approving 30% fee in a securities class action). A 22.582% award is particularly warranted here given the result obtained, and the risks incurred by Plaintiffs' Counsel over seven years of work.

C. The Request Is Reasonable under the *Johnson* Criteria

27. As noted above, the Fifth Circuit has stated that the Court should consider the following *Johnson* criteria: (1) time and labor required; (2) novelty and difficulty of the issues; (3) required skill; (4) whether other employment is precluded; (5) the customary fee; (6) whether the fee is fixed or contingent; (7) time limitations; (8) the amount involved and the results obtained; (9) the attorneys' experience, reputation and ability; (10) the "undesirability" of the case; (11) the nature and length of the professional relationship with the client; and (12) awards

in similar cases. An analysis of these factors further demonstrates that the proposed 22.582% fee is reasonable and should be approved.

1. The Time and Labor Expended by Class Counsel in this Case Support the Fee Award Requested

28. The 9,886.34 hours expended by Plaintiffs' Counsel, which resulted in a substantial Settlement, are plainly reasonable in view of the work performed in this complex securities action. *See* Valdespino, Blakeway, Snyder and Buncher Decl. Counsel's efforts included, among other things:

- Researching, compiling evidence for, and filing the Complaint, and Amended Complaints, which survived Defendants' motions to dismiss;
- Contacting and interviewing witnesses in the United States, Mexico, Venezuela, and Antigua;
- Negotiating and obtaining the production of discovery from multiple Defendants;
- Reviewing thousands of documents produced by Defendants, the Department of Justice, the Receiver, the Joint Liquidators in Antigua and others;
- Briefing and defeating 12(b)(6) motions to dismiss for failure to state claims under the Texas Securities Act and other causes of action;
- Taking the depositions of Amy Baranoucky and Willis Group Holdings' chief operating officer in Bermuda and London;
- Defending depositions of class representatives and experts in Dallas and New York;
- Briefing and arguing in the Fifth Circuit the appeal of the dismissal of the action under the Securities Litigation Uniform Standards Act of 1998 (SLUSA), resulting in reversal of the dismissal;
- Participating in briefing and preparation for oral argument in the United States Supreme Court, resulting in an opinion affirming the Fifth Circuit's decision that SLUSA did not bar the Investor Plaintiffs' claims;
- Working with consultants and experts, including in support of a motion for class certification;

- Briefing and submitting evidence in support of a motion for class certification, including complex choice of law issues;
- Conducting numerous in-person meetings, telephone calls and email exchanges with experienced counsel on both sides regarding the settlement terms over the course of several months;
- Undertaking many steps to ensure that they had all necessary information to advocate for a fair settlement that serves the best interests of the Investors;
- Analyzing all of the contested legal and factual issues posed by the litigation to make accurate demands and evaluations of the settling Defendants' positions;
- Preparing multiple written mediation submissions;
- Engaging in extended arm's-length negotiations, often with the participation of a well- respected former federal judge serving as mediator that led to these settlements;
- Responding to inquiries from class members and potential class members regarding class settlement and issues and the status of the litigation;

See Valdespino, Blakeway, Snyder and Buncher Decl. (detailing the work completed by Plaintiffs' Counsel).

29. Furthermore, Plaintiffs' Counsel retained Washington-based U.S. Supreme Court appellate counsel Tom Goldstein to assist and serve as lead Supreme Court appellate counsel with respect to the SLUSA appeal before the U.S. Supreme Court, and is contractually obligated to pay Mr. Goldstein's firm, Goldstein & Russell P.C., the sum of $334,000.00 in compensation for the work he performed on said appeal. Mr. Goldstein's fee will be paid pro rata from both settlements: 10.71% of his fee will come from the BMB funds, or $35,571.40, and the remainder of his fee will be paid from the Willis settlement.

30. The significant time and effort devoted to this case by Plaintiffs' Counsel, and their commitment to the efficient management of the litigation, support approval of the requested award.

2. The Novelty and Difficulty of the Issues Support the Fee Award Requested

31. The factual and legal issues presented in these lawsuits are difficult and complex.

32. Plaintiffs' Counsel conducted a thorough analysis of the potential claims against the Willis and BMB Defendants in aiding and abetting Stanford's fraudulent scheme via the insurance letters, considering: claims available under both state and federal law; the viability of those claims considering the facts underlying the Willis and BMB Defendants' business dealings with Stanford and this Court's previous rulings; the success of similar claims in other Ponzi scheme cases, in the Fifth Circuit and elsewhere; and defenses raised by the Willis and BMB Defendants.

33. When the Investor Plaintiffs commenced their action, they were immediately confronted by motions to dismiss raising complex and novel issues concerning (1) SLUSA, (2) securities and dealer registration liability under the TSA, (3) limitations, and (4) joint and several liability. The SLUSA issue was litigated all the way to the Supreme Court. The Investor Plaintiffs then fully litigated and briefed the question of class certification, involving difficult issues of res judicata under the foreign laws of multiple countries [Troice Litigation, ECF 226-42]. Plaintiffs' counsel also briefed and submitted evidence in support of alter ego theories in response to Willis Group's motion to dismiss for lack of personal jurisdiction, resulting in Willis Group's withdrawal of the motion, [Troice Litigation, ECF 267-68, 269], which was important because of concern that Willis-Colorado might not be able to satisfy a judgment. The Janvey Litigation similarly involves complex issues of liability and damages for the Estate claims against the BMB Defendants.

3. The Skill Required and the Quality of the Representation Support the Fee Award Requested

34. Given the complexity of the factual and legal issues presented in this case, the preparation, prosecution, and settlement of this case required significant skill and effort on the part of Plaintiffs' Counsel. Plaintiffs' Counsel have represented investor classes as well as receivership and bankruptcy estates on numerous occasions, and are currently serving as counsel for the Receiver, the Committee, and other investor plaintiffs, both individually and as representatives of putative classes of Stanford Investors, in multiple other lawsuits pending before the Court. Snyder Decl., ¶¶ 6-15; Valdespino Decl., at ¶¶ 11-13; Buncher Decl., at ¶¶ 6-11. Plaintiffs submit that the favorable result in this case is indicative of Plaintiffs' Counsel's skill and expertise in matters of this nature.

35. This skill and experience is extremely important because the Stanford cases are not "typical" cases where a client comes to a lawyer with an injury and a readily identifiable defendant that caused the injury. Here the Investor Plaintiffs only knew in 2009 that they had invested money with Stanford, Stanford had been shut down and an SEC Receiver had been appointed. Plaintiffs' Counsel then had to perform an extensive investigation to locate and identify potential responsible litigation targets, identify what they did wrong or how they contributed to Stanford's fraud, and then file and prosecute lawsuits against them. Thus it was only through these diligent efforts that these cases even came into existence. These are not the type of cases that many lawyers have the experience or capacity (or desire) to take on, particularly on a contingent fee basis.

36. The quality of representation is further evidenced by the work product that was filed before the Court, as well as in the results achieved, including the victories in the Fifth Circuit and U.S. Supreme Court.

37. The high quality of the opposition that Plaintiffs' Counsel faced is a further testament to the quality of Plaintiffs' Counsel's representation. The Defendants were represented by skilled and highly regarded counsel from prestigious firms with well-deserved reputations for vigorous advocacy in the defense of complex civil cases. Courts have repeatedly recognized that the caliber of the opposition faced by plaintiffs' counsel should be taken into consideration in assessing the quality of the plaintiffs' counsel's performance, and in this case it supports approval of the requested fee. *See, e.g., Anwar v. Fairfield Greenwich Ltd.*, No. 09-CV-118(VM) 2012 WL 1981505 (S.D.N.Y. Jun. 1, 2012) (considering "the quality and vigor of opposing counsel"); *In re Marsh & McLennan*, 2009 U.S. Dist. LEXIS 120953 (S.D.N.Y. Dec. 23, 2009) (reasonableness of fee was supported by fact that defendants "were represented by first-rate attorneys who vigorously contested Lead Plaintiffs' claims and allegations"); *In re Marsh ERISA Litig.*, 265 F.R.D. 128, 148 (S.D.N.Y. 2010) ("The high quality of defense counsel opposing Plaintiffs' efforts further proves the caliber of representation that was necessary to achieve the Settlement.").

4. Preclusion of Time to Work on Other Matters Supports the Fee Award Requested

38. The sheer amount of time and resources required to investigate, prepare, and prosecute the Janvey Litigation and the Troice Litigation, as reflected by the hours invested, significantly reduced Plaintiffs' Counsel's ability to devote time and effort to other matters, including work to be performed on an hourly basis. Counsel lost several clients and had to turn away other work due to the Willis and BMB lawsuit and other Stanford litigation. Snyder Decl. at ¶ 50.

5. The Customary Fee Supports the Fee and Expense Award Requested

39. The 22.582% fee requested is substantially below the typical market rate contingency fee percentage of 33% to 40% that most law firms would demand to handle cases of this complexity and magnitude. *See Schwartz*, 2005 WL 3148350, at *31 (collecting cases and noting that 30% fee is standard in complex securities cases). "Attorney fees awarded under the percentage method are often between 25% and 30% of the fund." *Klein*, 705 F. Supp. 2d at 675 (citing *Manual for Complex Litig. (Fourth)* § 14.121 (2010)); *see, e.g., SEC v. Temme*, No.4:11-cv-00655-ALM, at *4–5 (E.D. Tex. Nov. 21, 2012), ECF No. 162 (25% contingent fee for a $1,335,000 receivership settlement); *Billitteri v. Sec. Am., Inc.*, No. 3:09–cv–01568–F (lead case), 2011 U.S. Dist. LEXIS 93907, *4–9 (N.D. Tex. 2011) (25% fee for a $80 million settlement); *Klein*, 705 F. Supp. 2d at 675–81 (30% fee for a $110 million settlement).

40. The Janvey Litigation and the Troice Litigation are extraordinarily large and complex, involving voluminous records and electronic data and requiring many years of investigation, discovery, and dispositive motions to get to trial. Indeed, the Troice Litigation was filed almost seven years ago and still has not reached merits discovery. The lawsuits have involved significant financial outlay and risk by Plaintiffs' Counsel of either an almost certain appeal following any victory at trial or loss at trial after years of work for no compensation. Plaintiffs' Counsel submit that these factors would support a contingency fee of more than 25%. Nonetheless, Plaintiffs' Counsel agreed to handle the Janvey Litigation and the Troice Litigation on a 25% contingency fee basis which this Court previously approved. Moreover, Plaintiffs' Counsel later agreed to a reduced fee equivalent to 22.582% of the recovery instead of 25%. Snyder Decl. at ¶ 35. That percentage is reasonable given the time and effort required to litigate these cases, their complexity and the risks involved. By agreeing to a reduced fee of $30,000,000, Plaintiffs' counsel will receive 22.582% of the $132,850,000 settlement amount

instead of their contractual 25% fee, and add an additional $3,212,500 to the funds to be distributed to the Stanford investors.

6. The Fact that the Fee Is Contingent Supports the Fee Award Requested.

41. The contingency fee arrangement was reached voluntarily with the Receiver, the Committee, and the Investor Plaintiffs before the fact. The Receiver determined that this litigation was too risky for the Receiver to undertake on an hourly basis. Because Plaintiffs' counsel assumed considerable risks of the litigation, Receivership assets were not dissipated in pursuing litigation that might not be successful or cost-effective. Plaintiffs' counsel have gone for years without being paid, while the Receiver has not expended Receivership funds in a risky attempt to recover additional assets for investors. And investors will receive an enormous benefit – a net of over $100,000,000 – that they would not have received Plaintiffs' counsel had not agreed to – the 22.582% contingency fee agreement.

42. An evaluation of the risks undertaken by Plaintiffs' Counsel in prosecuting this action also supports the reasonableness of their fee request. "Courts have consistently recognized that the risk of receiving little or no recovery is a major factor in considering an award of attorneys' fees." *Schwartz*, 2005 U.S. Dist. LEXIS 27077 *102.

43. Despite the most vigorous and competent of efforts, success is never guaranteed. If Plaintiffs' Counsel were not successful, they risked losing everything. They invested enormous numbers of hours of service and advanced large sums for expenses "up front."

44. This case presented risks and uncertainties beyond those typically encountered, which made it uncertain that any recovery, let alone the settlement eventually obtained, would be achieved. For example, Defendants twice moved to dismiss the complaint, achieving complete success the first time, requiring appeals all the way to the United States Supreme Court.

45. Plaintiffs' Counsel undertook this case on a wholly contingent fee basis, knowing the litigation could last for many years and would (and did) require the expenditure of thousands of attorney hours and thousands of dollars in expenses, with no guarantee of compensation, let alone when there might be any recovery. Indeed, even though Willis settled in March, 2016 and BMB in May, 2016 the settlement payment will likely not be made until March, 2017 or even later. This request is inherently reasonable when considered in light of the risks undertaken.

7. The Time Limitations Support the Fee Award Requested

46. At the time of the Willis and BMB Settlements, Plaintiffs were not subject to significant time limitations in the Janvey Litigation and the Troice Litigation, as the Janvey Litigation has been essentially stayed while the parties awaited this Court's ruling on class certification. However, Plaintiffs' Counsel has been consistently under deadlines and time pressure throughout the Troice Litigation and the Janvey Litigation given extensive briefing and motion practice, including class certification discovery and briefing, an appeal to the Fifth Circuit and an appeal to the Supreme Court. Moreover the activity in these cases must be measured in the context of the wider Stanford case as a whole, as Plaintiffs' Counsel were litigating multiple cases at the same time. As just an example, this Court issued its Class Certification Scheduling Order in the *Troice v. Proskauer* case[5] on the same day it issued its Class Certification Scheduling Order in the Troice Litigation [Troice Litigation, ECF No. 192]. Thus, Plaintiffs' Counsel was under extreme time pressures to conduct class discovery, compile and submit evidence and brief class issues in two massive cases at the same time. Such significant effort deserves recognition and just compensation.

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[5] *Troice v. Proskauer Rose et al.*, Case No. 3:09-cv-01600, ECF No. 142, September 16, 2014.

8. The Amount Involved and Results Obtained Support the Fee Award Requested

47. The $132,850,000 settlement represents a significant value to the Receivership Estate. This factor also supports approval of the requested fee and expense. As discussed above, the proposed award represents 22.582% of the value of the total settlement after expenses, an amount well within the range of fees awarded by courts in similarly-sized class actions.

9. The Attorneys' Experience, Reputation, and Ability Support the Fee Award Requested

48. Plaintiffs' Counsel have represented numerous investor classes, receivers, bankruptcy trustees, and other parties in complex litigation matters related to equity receiverships and bankruptcy proceedings similar to the Stanford receivership proceeding. See Snyder Decl., at ¶¶ 6-10; Valdespino Decl., at ¶¶ 11-13; Buncher Decl., at ¶¶ 3-11. Plaintiffs' Counsel have been actively engaged in the Stanford proceeding since its inception. Given the complexity of the issues in the Janvey Litigation and the Troice Litigation, Plaintiffs submit that the Willis and BMB Settlements are indicative of Plaintiffs' Counsel's ability to obtain favorable results in such proceedings.

10. The Undesirability of the Case Supports the Fee Award Requested

49. Cases such as the present litigation carry with them elevated risks, require lengthy investigation, and may result in no recovery, making them undesirable. *Di Giacomo v. Plains All Am. Pipeline*, 2001 U.S. Dist. LEXIS 25532, at *35 (S.D. Tex. Sept. 18, 2001). The issues presented in this litigation rendered the case inherently risky, if not "undesirable" from the start. The case involved a panoply of difficult issues of law and fact. The case was risky when Counsel accepted this engagement. The risks Plaintiffs' Counsel faced must be assessed as they existed at the time counsel undertook the litigation and not in light of the settlement ultimately achieved. *See, e.g., Harmon v. Lymphomed, Inc.*, 945 F.2d 969, 974 (7th Cir. 1991) (the riskiness of a case

must be judged *ex ante* not *ex post*); *Goldberger v. Integrated Res. Inc.,* 209 F.3d 43, 55 (2d Cir. 2000) ("It is well-established that litigation risk be measured as of when the case is filed," not when the fee application is adjudicated."); *Johnson*, 488 F.2d at 718. The "undesirability" of the litigation supports the requested percentage.

11. The Nature and Length of Professional Relationship with the Client Support the Fee Award Requested

50. As the Court is aware, Plaintiffs' Counsel have represented the Receiver, the Committee, and Investor Plaintiffs in numerous actions pending before the Court since 2009. This factor also weighs in favor of approval of the requested fee.

12. Awards in Similar Cases Support the Fee Award Requested

51. As noted above, a 25% contingency fee has previously been approved as reasonable by this Court in its order approving the Receiver's agreement with the Committee regarding the joint prosecution of fraudulent transfer and other claims by the Receiver and the Committee (the "OSIC-Receiver Agreement"). *See* SEC Action [ECF No. 1267, p. 2] ("The Court finds that the fee arrangement set forth in the Agreement is reasonable."); *see also* OSIC-Receiver Agreement, [SEC Action, ECF No. 1208, Ex. A, p. 3] (providing a "contingency fee" of 25% of any Net Recovery in actions prosecuted by the Committee's designated professionals). The Court's order approving the OSIC-Receiver Agreement also provided that the Committee need not submit a fee application seeking an award of fees consistent with the percentage authorized under the Court's previous order unless required by Rule 23. [*See* SEC Action, ECF No. 1267, p. 2.]

52. The OSIC-Receiver Agreement further provided that the Committee "would prosecute certain fraudulent transfer claims and other actions for the benefit of Stanford investors/creditors in cooperation with Ralph S. Janvey, as receiver." *See* OSIC-Receiver

Agreement, [SEC Action, ECF No. 1208, Ex. A, p. 1]. The Agreement further provided that "this proposal will apply to the litigation of all fraudulent transfer and similar claims that may be brought under common law, statute . . . or otherwise . . ." and "unless otherwise agreed, the terms of this agreement will likewise apply to the pursuit of any other claims and causes of action that the Receiver and the Committee determine to jointly pursue." *Id.* at pp. 1-2.

53. The contingency fee agreements with Plaintiffs in the Janvey Litigation and the Troice Litigation similarly provided for a fee of 25% of the Net Recovery (defined as the total recovery after deducting allowable expenses and disbursements), and were modeled after the OSIC-Receiver Agreement since the parties knew that the Court had already approved a 25% contingency fee agreement.

54. The 25% contingency fee arrangement that was approved by the Court in the context of the OSIC-Receiver Agreement became the framework for the 25% contingency fee agreements that the Receiver and Committee entered into with Plaintiffs' Counsel in the Janvey Litigation as well as in other third party lawsuits.

55. Further, this Court has approved a 25% contingency fee in the BDO, Adams & Reese, Kroll and Chadbourne cases. *See Official Stanford Inv'rs Comm. v. BDO USA, LLP*, No. 3:12-cv-01447-N-BG (N.D. Tex. Sep. 23, 2015), ECF No. 80; and Order Approving Attorneys' Fees in *Janvey v. Adams & Reese, LLP*, Civil Action No. 3:12-CV-00495-B [SEC Action, ECF. No. 2231]; *Kroll*, No. 3:09-cv-0298-N (N.D. Tex. Aug. 30, 2016) ECF No. 2364.

56. For the same reasons the Court previously found the 25% contingency fee OSIC-Receiver Agreement to be reasonable, *see* [SEC Action ECF No. 1267, p. 2]; *Official Stanford Inv'rs Comm. v. BDO USA, LLP*, No. 3:12-cv-01447-N-BG (N.D. Tex. Sep. 23, 2015), [ECF No. 80]; Order Approving Attorneys' Fees in *Janvey v. Adams & Reese, LLP*, Civil Action No.

3:12-CV-00495-B [SEC Action, ECF No. 2231], *Kroll*, No. 3:09-cv-0298-N (N.D. Tex. Aug. 30, 2016) [SEC Action ECF No. 2364]; the Court should find the 22.582% contingency fee in the Janvey Litigation and the Troice Litigation to be reasonable and approve it for payment. Here, there is even more reason to find the fee to be reasonable given the vast amount of work and risk undertaken by Plaintiffs' Counsel over the last almost seven years. The settlement of the Janvey Litigation and the Troice Litigation has yielded an enormous benefit to the Stanford Receivership Estate and the Stanford Investors. It is in fact the largest settlement of a third-party lawsuit in the over seven-year history of the Stanford Receivership. Thus, Plaintiffs submit that an award of attorneys' fees equal to 22.582% of the recovery from the Willis and BMB settlements as requested, is reasonable and appropriate and should be approved under applicable Fifth Circuit law, whether using a common fund approach, the *Johnson* factor approach, or a blended approach.

D. The Examiner's Recommendation Supports the Fee Award Requested

57. John J. Little in his capacity as Court-appointed Examiner also supports the award of Plaintiffs' attorneys' fees, and requests that the Court approve them. See Declaration of Examiner John J. Little, attached as Exhibit 5 to the Appendix to this Motion.

E. Plaintiffs' Counsel's Expenses Should Be Reimbursed

58. Plaintiffs' Counsel also request reimbursement of all unreimbursed litigation costs and expenses incurred during this litigation, which currently total $126,741.92. *See* Valdespino, Blakeway, Snyder, Buncher and Powers Decl. Expenses and administrative costs expended by class counsel are recoverable in a common fund class action. *Billitteri,* 2011 U.S. Dist. LEXIS 93907 *42; *Klein*, 705 F.Supp.2d at 682; *Schwartz*, 2005 U.S. Dist. LEXIS 27077 *109. These expenses are typically billed by attorneys to paying clients in the marketplace and include such costs as fees paid to experts, mediation fees, notice costs, computer research,

document processing and travel in connection with this litigation. *Schwartz*, 2005 U.S. Dist. LEXIS 27077 *109 (N.D. Tex. 2005) (reimbursing expenses such as "expert fees, transportation, meals and lodging, in-house and outsourced photocopying, computerized and on-line research, court reporting fees and deposition transcripts, telephone and facsimile, overnight courier service, statutory notice publication, postage"); *see also DeHoyos v. Allstate Corp.*, 240 F.R.D. 269, 334-35 (W.D. Tex. 2007) (costs typically billed to fee-paying clients are compensable in a class action, including "cost for filing fees, expert witnesses and consultants, photocopies, mailing and travel" as well as "costs for computerized factual and legal research"); *Billitteri v. Sec. Am., Inc.*, No. 3:11-CV-00191-F (N.D. Tex. 2011) (same). The fact that Plaintiffs' Counsel were willing to expend their own money, where reimbursement was entirely contingent on the success of this litigation, evidences that the expenditures were reasonable and necessary.

IV. CONCLUSION

59. For the reasons set forth herein, Plaintiffs' Counsel respectfully requests that this Court award its requested fees as follows:

a. attorney's fees to Plaintiffs' Counsel from the BMB settlement in the total amount of $3,212,500;

b. attorney's fees to Plaintiffs' Counsel in the Willis settlement in the amount of $26,787,500;

c. the reimbursement of expenses to the Plaintiffs' Counsel in the total amount of $126,741.92 from the BMB settlement; and

d. grant Plaintiffs all other relief to which they are entitled.

Dated: October 5, 2016

Respectfully submitted,

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COUNSEL FOR THE PLAINTIFFS

CERTIFICATE OF SERVICE

I hereby certify that on this 5th day of October, 2016, I electronically filed the foregoing document with the Clerk of the Court, using the CM/ECF system, which will send notification of such filing to all counsel of record.

I further certify that on this 5th day of October, 2016, I served a true and correct copy of the foregoing document via United States Postal Certified Mail, Return Receipt required to the persons noticed below who are non-CM/ECF participants:

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Certified Mail Return Receipt Req.

By: /s/ Judith R. Blakeway
Judith R. Blakeway