

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

3 ) CIVIL ACTION NO.  
4 ) 3:09-CV-0298-N  
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9 TRANSCRIPT OF SETTLEMENT PROCEEDINGS  
10 BEFORE THE HONORABLE DAVID C. GODBEY  
11 UNITED STATES DISTRICT JUDGE

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13 EXCHANGE COMMISSION  
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23 Proceedings reported by mechanical stenography, transcript  
24 produced by computer.  
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1 P R O C E E D I N G S

2 AUGUST 12, 2016

3 THE COURT: Be seated.

4 We have Mr. Sparling by phone.

5 Mr. Sparling, can you hear us?

6 MR. SPARLING: I can, Your Honor, and thank you  
7 again for allowing me to participate by phone. I really  
8 appreciate it.

9 THE COURT: Glad to do that. Under the circum-  
10 stances, it's the best situation that we can do.

11 This settlement, from the papers that I've seen,  
12 involves three distinct issues, those being, first,  
13 approval of the settlement of the liability side of it;  
14 second being the distribution of the settlement proceeds;  
15 and third being attorneys' fees.

16 And as it happens, I think those are probably listed  
17 in increasing order of controversy. And I propose to go  
18 through those separately in that order.

19 As I said at the prior hearing today, I've read the  
20 written submissions. I don't particularly feel a need to  
21 hear you read to me your written submissions since I've  
22 already read them. But in some cases, if you want to add  
23 to them or summarize them verbally, I'll let you do that  
24 briefly.

25 So turning first to the issue of the settlement of the

1 liability, I don't think that that's particularly disputed.  
2 If anybody wants to be heard on that, I'm happy to listen  
3 to you. And I guess we should start with the proponents of  
4 the settlement.

5 MR. SADLER: Your Honor, Kevin Sadler, Baker  
6 Botts, for the Receiver.

7 Mr. Mark Murphy of the Davis Santos firm, acting as  
8 special counsel to the Receiver, is here and can address  
9 any questions Your Honor has. And I'll cede for him.

10 THE COURT: Okay. As it happens, I don't have  
11 any questions for you. If there's anything you want to  
12 tell me, I'm happy to listen to you.

13 MR. MURPHY: No, Your Honor. Thank you.

14 THE COURT: Anybody else wish to be heard on the  
15 approval of the settlement?

16 (No response.)

17 All right. Then based on the record that's in front  
18 of me, I'm approving the settlement. I find it to be fair  
19 and reasonable, in the best interests of the plaintiffs  
20 and the investors and the other claimants in the Stanford  
21 Estate.

22 Next, the issue that I described I think is -- I'm  
23 sorry. Mr. Sparling, did you want to be heard?

24 MR. SPARLING: No, Your Honor. Unless you have  
25 any questions for me in particular, we'd rest on the papers

1 and assert that we need to have the settlement approved.

2 THE COURT: Okay. Good.

3 Turning to the next issue, which relates to the  
4 distribution, there was the one objection that the language  
5 of the paperwork appears to exclude Stanford claimants  
6 other than investors from receiving any of the proceeds  
7 of the settlement.

8 And I guess I'd like to hear first from the Receiver  
9 on that subject. And I'm not sure which of you wants to  
10 address that.

11 MR. SADLER: Perhaps, Your Honor, let me just  
12 address that as a general matter, and then Mr. Murphy can  
13 follow up.

14 It's been -- since we've been doing distributions now  
15 for several years, it has been the stated practice and  
16 policy of the Receiver that distributions go first to  
17 the CD victims. And there's certainly nothing about this  
18 distribution that varies from that.

19 I know that there was an objection, for example, by  
20 some former Stanford employees who have filed claims in  
21 our process and they are complaining that they should be  
22 the recipient of some of this money.

23 And our response to that is twofold:

24 First, those happen to be former employees that we  
25 are suing in litigation that is ongoing.

1           And, second, that's really not an objection to the  
2 settlement itself. It goes to the distribution process.  
3 And Your Honor approved an entirely separate litigation  
4 mechanism for dealing with objections that people may have  
5 over the amount or the fact of distributions. And so we  
6 don't really see that as germane at this time.

7           But the main point is, this is just a continuation of  
8 what we've been doing for years, which is, CD victims get  
9 priority.

10           THE COURT: And to the extent the objectors  
11 want to preserve that position, what does the Receiver  
12 think they should be doing instead of objecting in this  
13 proceeding?

14           MR. SADLER: Well, for example, on -- on these  
15 employees, they don't have a ripe claim in our distribution  
16 process yet. There's a whole separate process for notices  
17 of determination which can then be objected to. And they  
18 are not at that process yet.

19           But that is the process, Your Honor, that we proposed,  
20 and Your Honor approved, for someone who wants to say, "I'm  
21 being excluded either at all, or I'm being excluded to this  
22 extent and I don't like that." There is a separate process  
23 that exists for people like that to pursue that remedy.

24           It has never, I don't think, been appropriate for  
25 people to attack individual settlements on the basis of

1 "I don't like the way the Receiver is treating me in the  
2 claims process" because Your Honor has a totally separate  
3 litigation track to deal with that.

4 THE COURT: Okay. And I certainly recall the  
5 portion of the claims process that dealt with allowance  
6 of claims or disallowance of claims and appeals of those  
7 rulings. I don't -- it's not top of mind for me, I must  
8 say, as to whether that procedure addresses distributions  
9 and priorities of claimant classes.

10 MR. SADLER: It does to this extent Your Honor:

11 When we issue a notice of determination, it is -- it  
12 is more than just telling the claimant the amount of the  
13 allowed claim but also, in certain circumstances, that the  
14 fact that we are allowing the claim at all doesn't mean  
15 that they are in line for any particular distribution.

16 So, again, I think that complaints about allowing the  
17 claim at all and when I'm going to get paid and how much I  
18 get paid, that's just in a separate process.

19 THE COURT: Okay. Thank you.

20 And does the objecting group want to be heard on that  
21 objection? Are they here today?

22 Okay. And, again, I read the written materials and I'm  
23 familiar with them and I think their position is preserved  
24 by the written filing.

25 I agree with the Receiver that that's something that's

1 more properly addressed in the claim process rather than in  
2 the approval of a potential settlement. And to the extent  
3 they are offering that position here today as an objection  
4 to the proposed settlement, I'm overruling that objection.

5 Let's turn now to attorneys' fees. I don't know  
6 what is the best way to go forward with this, whether the  
7 proponents of the settlement should go first or whether  
8 the objector should go first.

9 MR. MURPHY: Your Honor, Mark Murphy, Davis  
10 Santos, we're lead counsel for this settlement.

11 THE COURT: And is the objector here today?

12 MR. RICHMOND: Your Honor, I'm one of the  
13 objectors for the claimants, the Kachroo claimants.  
14 Bill Richmond.

15 THE COURT: Okay. Please go ahead.

16 MR. MURPHY: Your Honor, as I said, my name is  
17 Mark Murphy. I'm a partner with Davis & Santos, and our  
18 firm is lead counsel on this case.

19 One of the -- one of the things that the objection I  
20 think sort of gets wrong a little bit is a misunderstanding  
21 of the -- the fee structure in these cases.

22 The lead counsel on these third-party cases does the  
23 majority of the work, as we have done in this case, and  
24 receives the majority of the fee. Our firm is lead counsel  
25 on this case, and this is our only case. We are not

1 involved in any of the other Stanford third-party cases.

2 And one of the issues that's raised in the objection  
3 is, well, they are making a lot of money on these other  
4 cases so you should cut something on this case.

5 Really, Counsel, we've done the majority of the  
6 work, we will receive the majority of this fee, we're not  
7 involved in any of the other cases.

8 And, Your Honor, as far as the objection of -- the  
9 objection sort of says two different things. One is, "You  
10 did too much work." One of the objections says that or  
11 one of the parts of the objection is that "You engaged in  
12 needless discovery disputes."

13 Well, the only discovery dispute we had in this case,  
14 Judge, was a subpoena, when we filed a motion to compel,  
15 which was granted, which then provided us from Kroll with  
16 over 23,000 pages of documents which helped give rise to  
17 this settlement.

18 The biggest issue, Judge, is that the main issue in  
19 the objection, which I don't quite to understand, seems  
20 to imply that you have to file a class action in order to  
21 recover your fees.

22 First of all, there is no such requirement.

23 Second of all, this was a settlement involving a Bar  
24 Order that was the first settlement. And I don't want to  
25 spend too much time on the issue, but we spent the majority

1 of our firm's time negotiating, structuring, and coming up  
2 with, along with our co-counsel and obviously negotiating  
3 with counsel for Kroll, on the Bar Order settlement which  
4 has become on all the other third-party settlements,  
5 including Chadbourne, the template for these settlements.

6 And so, in a sense, this settlement helped -- even  
7 though it came later because it was interrupted by Kroll's  
8 bankruptcy, it helped set the stage for and paved the way  
9 for the other settlements. And so, Your Honor, the --  
10 the issue about having to file a class action in order  
11 to recover your fees, I don't quite understand that.

12 And, Your Honor, I think I've sort of addressed the  
13 main points as we understood them in the objection. I'm  
14 not sure if the Court has any particular questions for me.

15 THE COURT: Not at this time.

16 MR. MURPHY: Thank you, Your Honor.

17 MR. RICHMOND: Your Honor, Bill Richmond  
18 representing the claimants of Kachroo Legal Services.  
19 We filed an objection, docket number 2308, on May 18th.

20 Given that the Court has already reviewed the pleadings  
21 and the different replies, I'll only address a couple of  
22 issues that came from the Receiver and Committee's reply,  
23 specifically at paragraph 17.

24 In paragraph 17, the Receiver and Committee talk about  
25 the lodestar analysis and how this particular attorneys'

1 fee award is merely 3.02 times the actual amount. But  
2 when looking to the citations cited by the Receiver and  
3 Committee, we can see that those actually support a lower  
4 multiple in this particular case.

5 For example, the Receiver and Committee cite to the In  
6 Re: Combustion case from the Western District of Louisiana  
7 and cite to a number of 1 to 4 percent as a -- or, excuse  
8 me, 1 to 4 as a multiplier. The Receiver and Committee go  
9 on to quote Garza versus Sporting Goods, which talks about  
10 when there are large and complicated class actions, that  
11 the range of multipliers is 2.26 to 4.5.

12 Considering the early stage -- relatively early stage  
13 of this particular settlement, the work that's been done,  
14 which has been particularly detailed given the billings,  
15 currently the amount is, I believe, 3800 hours for an  
16 amount of about \$1.9 million, the objectors and these  
17 particular claimants would seek that the Court apply a  
18 multiplier in 1.5 to 2.5 range.

19 This both accounts for the novelty and complexity  
20 of the issues which were detailed in the hours actually  
21 billed, in addition to the risk that was borne by the  
22 attorneys taking on this particular case that no settle-  
23 ment would come at all.

24 But a multiplier in the 3 range would not be  
25 appropriate particularly given the facts of the settlement

1 and addresses those concerns of counsel that perhaps they  
2 would not have done this particular case or not have taken  
3 the steps that they did if they were to have been awarded  
4 a smaller amount.

5 It's for these reasons that the objectors ask that  
6 the Court conform the settlement to a lower multiple in the  
7 1.5 to 2.5 range as opposed to the current multiple of 3.

8 Thank you, Your Honor.

9 THE COURT: Thank you.

10 I have to say that there's an emotional appeal to the  
11 objection that, after great thought, I'm going to resist.  
12 And for reasons I can't articulate fully, it's very tempting  
13 for me to whack off a million just to show that I can do it.  
14 But, on reflection, I don't think that that would be an  
15 appropriate thing to do here.

16 I want to say a few things that I believe are probably  
17 obvious to everybody in the room, but may not be obvious  
18 to Stanford investors. And I don't know that any Stanford  
19 investors will ever see the transcript of the hearing, but  
20 I am very sensitive to, and cognizant of, their feeling  
21 that they were the source of all of the money and the only  
22 people who seem to be getting much money out of this are  
23 the lawyers. And I understand their frustration.

24 But there are some reasons here I think that the fee  
25 request is appropriate, and I just want to articulate them.

1 Even if nobody outside this room ever hears them, at least  
2 I've explained myself in public.

3 A lot of the jurisprudence on attorneys' fees comes  
4 from the context of fee shifting where under various, for  
5 example, federal statutes, the prevailing party can extract  
6 their attorneys' fees from the losing party. And in those  
7 circumstances, I think there's a strong view that the  
8 statutory shift of attorneys' fees contrary to the Ameri-  
9 can rule shouldn't exceed the lodestar amount, and the  
10 limitations on multiples are quite strict for good reason.

11 This is not one of those cases. This is not a case  
12 where Kroll's taxpayers are being asked to pay a multiple  
13 of the lodestar amount in addition to whatever amount they  
14 paid in liability. It's a very different circumstance.

15 The plaintiffs' attorneys have successfully obtained  
16 a pot of money for the plaintiffs. And the issue is how  
17 that's divided among the individual plaintiffs and their  
18 attorneys, which is very different from how much of those  
19 fees, how much of that multiplier, should we shift to the  
20 losing party.

21 And the policies I think are very distinct here.  
22 In this case, I am being asked to assess a voluntary  
23 contingency fee arrangement reached before the fact and  
24 which I, at least to some degree, blessed before the fact,  
25 which I think is very different from saying after the fact,

1 in view of the results achieved and the Johnson factors,  
2 how much should we stick the defendants with.

3 I certainly do think the Johnson factors are pertinent  
4 here if, for nothing else, I think they are a very common  
5 sense group of factors that anyone would consider in  
6 assessing attorneys' performance. I think here generally  
7 they speak in favor of compensation to the plaintiffs'  
8 lawyers here.

9 I have to say, and I don't mean any disrespect for  
10 Kroll, but I think this was an outstanding result. I think  
11 the settlement in the aggregate was a good settlement, as  
12 I've already indicated. I think the fact that the plain-  
13 tiffs hung on to it through bankruptcy is quite remarkable.

14 So, overall, I think the performance of the plaintiffs'  
15 lawyers is to be commended. I think if you look at a lot  
16 of the other Johnson factors, it does well there.

17 I'm not sure that this is the kind of litigation that  
18 you'd have plaintiffs' lawyers lining up around the block  
19 for the opportunity to take on the risk entailed in this.  
20 So, as I say, I think a lot of the Johnson factors in the  
21 traditional analysis support an appropriate award here.

22 Here, as I say, it's different from fee shifting.  
23 Here, to a large extent, this is risk shifting. And we had  
24 this conversation earlier on. The Receiver institutionally,  
25 I think, is a low risk operation. I suspect if we looked

1 at where the funds are, they are not in penny stocks. I  
2 don't want to belabor that, but I think institutionally  
3 the Receiver's job is to be conservative and careful and  
4 a good trustee of the funds that ultimately go to the  
5 investors and the other claimants.

6 Litigation is inherently risky, and I think here we've  
7 seen a good example of that. Some is less risky, and the  
8 Receiver has gone forward and paid on the clock for that  
9 and hired attorneys who work by the hour.

10 There is some litigation that the Receiver, in his  
11 good judgment, has determined is too risky for the Receiver  
12 to undertake on an hourly basis, and the Receiver, with the  
13 Court's blessing, has entered into agreements with lawyers  
14 who are perhaps less risk averse than other lawyers.

15 And I think most lawyers are inherently risk averse.  
16 Otherwise, they'd have gone to business school instead of  
17 law school. But there's a spectrum there and there are  
18 certain lawyers who are willing to undertake more risk  
19 than others.

20 And here the Receiver has found lawyers who are willing  
21 to undertake considerable risk in this lawsuit, not only  
22 just the inherent risk of litigation, but this was perhaps  
23 riskier than others and then had the added overlay of the  
24 risk of bankruptcy. They've gone for years without getting  
25 paid. And the Receiver, in the meantime, basically has

1     been out nothing.

2             As I recall, there may be some costs that the Receiver  
3     has fronted, but he hasn't paid anything in attorneys' fees.  
4     He has shifted the risk to third parties. If they came up  
5     empty-handed, the Receiver is not out. And, consequently,  
6     assets have been preserved for the investors and the other  
7     claimants of the Stanford entities.

8             I don't see anything wrong or bad about that. I think  
9     the willingness of attorneys to undertake litigation on a  
10    contingency basis lets the Receiver pursue claims that  
11    otherwise he couldn't. And as a consequence here, the  
12    Stanford investors and what other claimants are paid out  
13    of this have \$18 million that they would not otherwise  
14    have had.

15            So I don't think it's necessarily appropriate to look  
16    and say just what is the multiplier here. I think it's  
17    important to look at the benefit to the investors that  
18    simply otherwise wouldn't have been there if the Receiver  
19    had been prohibited from entering into contingent fee  
20    arrangements.

21            So if we start with the idea that a contingent fee  
22    arrangement is appropriate, let's look at the contingency  
23    fee that's involved. Here, it's 25 percent. My recollec-  
24    tion from back at the time when we first discussed this  
25    arrangement is, that's a pretty good deal. If you look

1 in terms of the marketplace for contingency fee lawyers  
2 to find lawyers who would be willing to take this on for  
3 just a 25 percent contingency fee was a pretty darn good  
4 deal for the Receiver.

5 I don't think, if we look at the lodestar, that would  
6 be a 10 percent fee. I don't think there's a lawyer in the  
7 world who would have taken this upfront for a 10 percent  
8 contingency fee. So I think a lot of the underlying  
9 premises of the objection simply don't fit this kind of  
10 circumstance.

11 I do think I retain the ability -- lest anyone in here  
12 was confused about my personal opinion, I do think I retain  
13 the ability to review and cut attorneys' fees requests even  
14 if they are just for the 25 percent agreed contingency.  
15 And in the appropriate case, I would certainly do that.

16 I don't think this is the appropriate case. I think,  
17 given the magnitude of the risk that was involved and the  
18 very good result that was achieved, that the full 25 percent  
19 is an appropriate contingency here.

20 So I understand it's a lot of money. I understand to  
21 the investors who have so far seen one or two cents on the  
22 dollar of their investment, the idea that a bunch of lawyers  
23 are getting \$6 million is distressing. But I think the  
24 point is not so much that lawyers are getting 6 million.  
25 It's that the investors are getting 18 that they wouldn't

1 have, had these lawyers not been willing to take up that  
2 risk and go for years pursuing this -- this case.

3 So I apologize for going at some length on matters  
4 that, as I said, I think everybody in this room probably  
5 understands, but I do appreciate the appeal of the objec-  
6 tion. I don't deny that. And in view of that, I simply  
7 felt it was necessary for me to explain at a little greater  
8 length than I normally would my ruling on the objection.

9 But for those reasons, as well as the reasons stated  
10 in the Receiver's briefing in support of the attorneys'  
11 fees, I'm respectfully overruling the objection, though  
12 as I say, I acknowledge the force of it. But I think  
13 here it's appropriate to award the fees as requested.

14 That said, anything else we need to take up this  
15 morning?

16 MR. SADLER: Not from the Receiver, Your Honor.

17 THE COURT: Anybody else?

18 All right. Again, sorry about for the delays in  
19 rescheduling. I hope it was helpful to do these both the  
20 same day. You-all have a good weekend.

21 The Court will stand in recess.

22 MR. SPARLING: Thank you, Your Honor.

23 THE COURT: Thank you, sir. Bye-bye.

24 MR. SPARLING: Bye.

25 (The proceedings were concluded.)

I N D E X

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CERTIFICATION

I certify that the foregoing is a true and correct transcript from the record of proceedings in the above-entitled matter. I further certify that the transcript fees format comply with those prescribed by the Court and the Judicial Conference of the United States.

s/Linda J. Langford                      Date: August 12, 2016