

1 IN THE UNITED STATES DISTRICT COURT
2 FOR THE NORTHERN DISTRICT OF TEXAS
3 DALLAS DIVISION
4) CIVIL ACTION NO.
5) 3:09-CV-0298-N
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TRANSCRIPT OF SETTLEMENT PROCEEDINGS
BEFORE THE HONORABLE DAVID C. GODBEY
UNITED STATES DISTRICT JUDGE

APPEARANCES:

For Plaintiff SEC:

UNITED STATES SECURITIES AND
EXCHANGE COMMISSION
BY: MR. DAVID B. REECE
Burnett Plaza, Suite 1900
801 Cherry Street, Unit #18
Fort Worth, Texas 76102-6882
(817) 978-6476

For the Receiver,
Ralph S. Janvey:

MR. KEVIN SADLER
Baker Botts, LLP
1600 San Jacinto Center
98 San Jacinto Boulevard
Austin, Texas 78701-4039
(512) 322-2589

MR. MARK MURPHY
Davis Santos
112 East Pecan Street, Suite 900
San Antonio, Texas 78205
(210) 853-5882

MR. DOUGLAS J. BUNCHER
Neligan Foley LLP
325 N. St. Paul, Suite 3600
Dallas, Texas 75201
(214) 840-5300

1 APPEARANCES CONTINUED:

2 For the Examiner, MR. JOHN J. LITTLE
John J. Little: Little Pedersen Fankhauser, LLP
3 901 Main Street, Suite 4110
Dallas, Texas 75202
4 (214) 573-2300
5 For Official Stanford MR. EDWARD C. SNYDER
Investor Committee: Castillo Snyder
6 300 Convent Street, Suite 1020
San Antonio, Texas 78205
7 (210) 630-4200
8 For Claimants of MR. BILL S. RICHMOND
Kachroo Legal Serv.: Platt Cheema + Richmond, PLLC
9 3906 Lemmon Avenue, Suite 212
Dallas, Texas 75219
10 (214) 559-2700

11 APPEARING TELEPHONICALLY:

12 For Kroll, Inc.: MR. STEVE SPARLING
Kramer Levin Naftalis & Frankel
13 1177 Avenue of the Americas
New York, New York 10036
14 (212) 715-7736

15 * * *

16 Court Reporter: Linda J. Langford, CSR, RDR, CRR
U.S. District Court Reporter
17 Chambers of Judge David C. Godbey
1100 Commerce Street, Rm. 1504
20 Dallas, Texas 75242
21 (214) 748-8068

22
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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 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.)

1	I N D E X	
2		PAGE
3	REMARKS OF COUNSEL:	
4		
5	MR. SADLER	4
6	MR. SPARLING	4
7		
8	COURT APPROVES THE SETTLEMENT	4
9		
10	REMARKS OF COUNSEL - MR. SADLER	5
11		
12	COURT OVERRULES OBJECTION TO DISTRIBUTION	8
13		
14	REMARKS OF COUNSEL:	
15		
16	MR. MURPHY	8
17	MR. RICHMOND	10
18		
19	REMARKS OF THE COURT	12
20		
21	COURT APPROVES ATTORNEYS' FEES	18
22		
23	REPORTER'S CERTIFICATION.....	20
24		
25		

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2 CERTIFICATION

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

9

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

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