

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

SECURITIES AND EXCHANGE
COMMISSION,

Plaintiff,

v.

STANFORD INTERNATIONAL BANK,
LTD., *et al.*,

Defendants.

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Civil Action No. 3:09-CV-00298-N

ORDER APPROVING ATTORNEYS' FEES

Before the Court is the Application for Payment of Attorneys' Fees from Kroll Settlement (the "Fee Application") filed by the Receiver and the Official Stanford Investors Committee (the "OSIC") (collectively, "Movants"). [ECF No. 2282]. This Order addresses the request for approval of Movants' attorneys' fees contained within the Fee Application.

With respect to Movants' request for approval of Movants' attorneys' fees, the Court finds that the proposed 25% contingency fee is reasonable and consistent with the percentage charged and approved by courts in other cases of this magnitude and complexity. The Stanford Receivership and this dispute against Kroll¹ are extraordinarily complex and time-consuming and have involved a great deal of risk and capital investment by Movants' Counsel as evidenced by the Declarations of Movants' Counsel submitted in support of the request for approval of their fees. Both the Fee Application and the Declarations provide ample evidentiary support for the award of Movants' attorneys' fees set forth in this Order.

Trial courts can determine attorneys' fee awards in common fund cases such as this one using different methods. The common-fund doctrine applies when "a litigant or lawyer who

¹ Capitalized terms not defined herein shall have the meaning set forth in the Fee Application.

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." *In re Harmon*, No. 10-33789, 2011 WL 1457236, at *7 (Bankr. S.D. Tex. Apr. 14, 2011) (quoting *Boeing Co. v. Van Gemert*, 444 U.S. 472, 478 (1980)).

One method for analyzing an appropriate award for Movants' attorneys' fees is the percentage method, under which the court awards fees based on a percentage of the common fund. *Union Asset Management Holding A.G. v. Dell, Inc.*, 669 F.3d 632, 642–43 (5th Cir. 2012). The Fifth Circuit is "amenable to [the percentage method's] use, so long as the *Johnson* framework is utilized to ensure that the fee award is reasonable." *Id.* at 643 (citing *Johnson v. Georgia Hwy. Express, Inc.*, 488 F.2d 714 (5th Cir. 1974)). 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. *See Johnson*, 488 F.2d at 717-19.

Thus, when considering fee awards in class action cases "district courts in [the Fifth] Circuit regularly use the percentage method blended with a *Johnson* reasonableness check." *Id.* (internal citations omitted); *see Schwartz v. TXU Corp.*, No. 3:02–CV–2243–K (lead case), 2005 WL 3148350, at *25 (N.D. Tex. Nov. 8, 2005) (collecting cases). While the Fifth Circuit has also permitted analysis of fee awards under the lodestar method, both the Fifth Circuit and district courts in the Northern District have recognized that the percentage method is the preferred method of many courts. *Dell*, 669 F.3d at 643; *Schwartz*, 2005 WL 3148350, at *25.

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.” 2005 WL 3148350, at *25. 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, such as the settlement in this case. *Id.* Thus, there is a “strong consensus in favor of awarding attorneys’ fees in common fund cases as a percentage of the recovery.” *Id.* at *26.

While the Kroll settlement is not a class action settlement, because the settlement is structured as a settlement with a Bar Order, this Court has analyzed the award of attorneys’ fees to Movants’ Counsel under both the common fund and the *Johnson* approach. Whether analyzed under the common fund approach, the *Johnson* framework, or both, the 25% fee sought by Movants’ Counsel is reasonable and is hereby approved by the Court.

Having reviewed the Declarations of Movants’ Counsel and the billing records reflecting the investment of thousands of hours and millions of dollars of attorney time in the Stanford cases as a whole and in the litigation against Kroll specifically, the Court finds that the proposed 25% fee for Movants’ Counsel is a reasonable percentage of the common fund (*i.e.* the \$24 million 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.* The Court further finds that the fee is reasonable based upon the Court’s analysis of the *Johnson* factors.

A review of the *Johnson* factors that are discussed at length in the Fee Application and

supported by Movants' Counsels' Declarations and billing statements also demonstrates that the proposed 25% fee is reasonable and should be approved.

With respect to the time and labor required, Movants' Counsel invested a tremendous amount of time and labor in this case as reflected in the Murphy, Snyder, Valdespino, Buncher and Morgenstern Declarations. Movants' Counsel have spent over six years and thousands of hours investigating and pursuing claims against third parties, including Kroll, on behalf of the Stanford Receivership Estate and the Stanford Investors. Davis & Santos was lead counsel for Movants in the Kroll matter. Davis & Santos has more than 2,150 hours and approximately \$1 million of unpaid attorney and paralegal time invested in the Kroll matter. *See* ECF No. 2283 at Ex. 1; ECF No. 2327 at Ex. 1. Castillo Snyder has thousands of hours and millions of dollars of time invested in pursuing claims against third parties related to the Stanford Receivership, and over 1,070 hours of attorney and paralegal time worth over \$640,000 attributable to the Kroll matter. *See* ECF No. 2283 at Ex. 2; ECF No. 2327 at Ex. 2. Strasburger & Price has 330 hours and over \$180,000 in time invested in the Kroll matter. *See* ECF No. 2283 at Ex. 3. Neligan Foley has 150 hours and over \$81,100 of unpaid attorney and paralegal time invested in the Kroll matter. *See* ECF No. 2283 at Ex. 5. Butzel Long has devoted thousands of hours of time worth several million dollars to Stanford-related matters since 2009, and has 117 hours of time worth \$75,000 invested in the Kroll matter alone. *See* ECF No. 2283 at Ex. 4.

The issues presented in the Kroll matter were novel, difficult and complex. Several of the complex legal and factual issues are outlined in the Fee Application. Given the complexity of the factual and legal issues presented in this matter, the preparation, prosecution, and settlement of this matter required significant skill and effort on the part of Movants' Counsel. The Declarations reveal that the sheer amount of time and resources involved in investigating,

preparing, and prosecuting the Kroll matter, as reflected, significantly reduced Movants' Counsel's ability to devote time and effort to other matters.

The 25% fee requested is also 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% is standard fee in complex securities cases).

The \$24 million to be paid by Kroll represents a substantial settlement and value to the Receivership. This factor also supports approval of the requested fee. The Declarations further reflect that Movants' Counsel have represented numerous receivers, bankruptcy trustees, and other parties in complex litigation matters related to equity receiverships and bankruptcy proceedings similar to the Stanford receivership proceeding. Movants' Counsel, with the exception of Davis & Santos, have been actively engaged in the Stanford proceeding since its inception. Thus, the attorneys' experience, reputation and ability also support the fee award. The nature and length of the professional relationship between the law firms and the OSIC further support the fee award. Movants' attorneys, with the exception of Davis & Santos, have been working with the OSIC for more than six years on virtually all of the major Stanford third party lawsuits brought by the OSIC.

Finally, awards in similar cases, with which this Court is familiar, as well as those discussed in the *Schwarz* opinion, all support the fee award. The Court also notes that a 25% contingency fee has previously been approved as reasonable by this Court in its order approving the Receiver's agreement with the OSIC regarding the joint prosecution of fraudulent transfer and other claims by the Receiver and the OSIC (the "OSIC-Receiver Agreement"). *See* ECF No. 1267, p. 2 ("The Court finds that the fee arrangement set forth in the Agreement is reasonable.");

see also ECF No. 1208, Ex. A, p. 3 (providing a “contingency fee” of 25% of any Net Recovery in actions prosecuted by the OSIC’s designated professionals). Thus, the Court finds the same 25% fee is well within the range of reasonableness for cases of the magnitude and complexity of the Kroll matter.

For these reasons, the Court hereby approves the award of Movants’ attorneys’ fees in the amount of \$5,931,119.71 as requested in the Fee Application. The Receiver is, therefore,

ORDERED to pay Movants’ Counsel attorneys’ fees in the amount of \$5,931,119.71 upon receipt of the Settlement Amount in accordance with the terms of the Kroll Settlement Agreement.

SIGNED August 30, 2016.


DAVID C. GODBEY
UNITED STATES DISTRICT JUDGE