
CERTAIN UNDERWRITERS AT LLOYD’S OF
LONDON, *et al.*,

Plaintiffs,

v.

PAUL D. WINTER, *et al.*,

Defendants.

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§ Civil Action No. 3:15-cv-1997
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CLAUDE F. REYNAUD, *et al.*,

Plaintiffs

v.

CERTAIN UNDERWRITERS AT LLOYD’S OF
LONDON, *et al.*,

Defendants.

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§ Civil Action No. 3:14-CV-3731
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**MOTION TO APPROVE PROPOSED AMENDED SETTLEMENT WITH CERTAIN
UNDERWRITERS AT LLOYD’S OF LONDON, LEXINGTON INSURANCE CO., AND
ARCH SPECIALTY INSURANCE CO., TO ENTER THE ACCOMPANYING BAR
ORDERS AND JUDGMENTS, AND TO CONFIRM PRIOR APPROVAL OF THE
MOVANTS’ ATTORNEYS’ FEES**

COMES NOW Ralph S. Janvey, in his capacity as the court-appointed receiver for Stanford International Bank, Ltd., et al. (the “Receiver”) and the Official Stanford Investors’ Committee (the “Committee”) (the Receiver and Committee are collectively the “Movants”), and move the Court to approve the amended settlement among and between the Movants and Certain Underwriters at Lloyd’s of London,¹ Lexington Insurance Company, and Arch Specialty Insurance

¹ Certain Underwriters at Lloyd’s of London refers to Lloyd’s of London Syndicates 2987, 2488, 1084, 1886, 4000, 1183, and 1274.

Co. (collectively “Underwriters”),² to enter the bar orders and judgments attached to and incorporated by reference into the Settlement Agreement as amended (the “Amended Agreement”), attached as Exhibits 1-3 respectively to the Appendix in Support of this Motion (“App.”), and to confirm the Court’s prior approval of payment of attorneys’ fees to the Receiver’s counsel, Kuckelman Torline Kirkland LLC (“Kuckelman Torline”) and to Movants’ counsel³ in Movants’ litigation against Claude Reynaud. In support of this Motion, Movants respectfully state the following:

I. INTRODUCTION AND BACKGROUND

1. After protracted litigation and settlement negotiations, which entailed many years and thousands of hours of work, Movants and Underwriters executed the original settlement agreement on June 3, 2016. Under the terms of the Agreement, Underwriters agreed to pay \$65 million to the Receiver for distribution to Stanford Investors who submitted Allowed Claims, in exchange for a global release of all Settled Claims against Underwriters and the Underwriters Released Parties.

2. On May 16, 2017, the Court granted Movants’ prior Motion to Approve Proposed Settlement with Underwriters [Doc. 2324], finding that the original agreement was, “in all respects, fair, reasonable, and adequate, and in the best interests of all Persons claiming an interest in, having authority over, or asserting a claim against Underwriters, Underwriters’ Insureds, the Stanford Entities, the Receiver, or the Receivership Estate.” [Doc. 2519 at 7.]

3. The Court’s approval of the original agreement was appealed to the United States

² Capitalized terms not otherwise defined herein shall have the meaning set forth in the Agreement. To the extent of any conflict between this Motion and the terms of the Agreement, the Agreement shall control.

³ Movants are represented by several different law firms with respect to the claims against Reynaud; those firms would split any fee awarded to them pursuant to an agreement among the firms.

Court of Appeals for the Fifth Circuit (the “Fifth Circuit Appeal”) by former Stanford managers and employees, former Stanford Trust Company director Cordell Haymon, and certain former Stanford investors. *Sec. & Exch. Comm'n v. Stanford Int'l Bank, Ltd.*, 927 F.3d 830, 839 (5th Cir. 2019) (the “Fifth Circuit Opinion”), cert. denied sub nom. *Becker v. Janvey*, 19-919, 2020 WL 1496642 (U.S. Mar. 30, 2020). With the exception of Cordell Haymon, all former Stanford employee and director appellants in the Fifth Circuit Appeal have withdrawn their objections to the original agreement.

4. The Fifth Circuit Opinion vacated the Court’s approval of the original agreement and remanded the case for further proceedings. Specifically, the Fifth Circuit held (1) that the Court erred by abrogating Individual Underwriters’ Insureds’ contractual claims to the policy proceeds without affording them an alternative compensation scheme similar, if not identical to, the Receiver’s claims process; (2) that the Court erred by extinguishing Individual Underwriters’ Insureds extra-contractual claims, if any, against Underwriters; and (3) that the Court should clarify whether the Bar Order enjoins investors from pursuing claims against their Stanford brokers. Fifth Circuit Opinion, 927 F.3d at 846-49.

5. To address the issues that led the Fifth Circuit to vacate the Court’s approval of the original agreement, Movants and Underwriters amended that agreement by: (1) permitting Individual Underwriters’ Insureds⁴ an opportunity to present a claim to the proceeds of the settlement through the Receiver’s claims process; (2) exempting from the anti-suit injunction extra-contractual claims, if any, by an Individual Underwriters’ Insured; and (3) clarifying that the Bar Order does not enjoin Stanford Investors from suing their Stanford brokers.

⁴ The term “Individual Underwriters’ Insureds” means Underwriters’ Insureds who are individual persons, and Underwriters’ Insureds that are an individual person’s estate, but the term does not include the Receiver.

6. Under the terms of the Amended Agreement, Underwriters will pay \$65 million to the Receivership Estate, which (less attorneys' fees and expenses) will be distributed to Stanford Investors with allowed claims or to Individual Underwriters' Insureds who have a non-released, non-waived contractual claim to the proceeds of the Policies and whose claims are allowed by the Receiver, subject to review by the Court. In return, Underwriters seek global peace with respect to all claims that have been asserted, or could have been asserted, against Underwriters arising out of, in connection with, or relating to: the events leading to this Receivership, the Coverage Action, the Third-Party Coverage Actions, the Indirect Claims, and the Stanford Investor Claims; all matters that were or could have been asserted in the Coverage Action, the Third-Party Coverage Actions, the Indirect Claims, and the Stanford Investor Claims; the Insurance Policies; Underwriters' relationship with the Stanford Entities; and any actual or potential claim of coverage under the Insurance Policies in connection with the SEC Action, the Receivership, the Indirect Claims, the Stanford Investor Claims, or any claim asserted against any person who has ever had any affiliation with any of the Stanford Entities, save and except the extra-contractual claims of Individual Underwriters' Insureds, if any.

7. As the Agreement now complies fully with the Fifth Circuit Opinion, Movants respectfully request that the Court approve the Amended Agreement and confirm the Court's prior approval of payment of attorneys' fees to Movants' counsel.

II. REQUEST FOR APPROVAL OF THE AMENDED AGREEMENT

A. The Amended Agreement fully complies with the Fifth Circuit Opinion and satisfies all equitable factors necessary for approval.

8. After extensive briefing and a hearing, the Court concluded that the original agreement was, "in all respects, fair, reasonable, and adequate." [Doc. 2519 at 7.] The Court's conclusion was based on multiple findings, including that the agreement "was reached following

substantial litigation and an extensive investigation of the facts,” “[t]he competing claims . . . involve complex legal and factual issues that would require a substantial amount of time and expense to litigate, with uncertainty as to the outcome,” and that “Underwriters would never agree to the terms of the Agreement unless they were assured of ‘total peace’” through the bar orders. [*Id.* at 6-8; *see also* 10-11 (listing considerations that make the “entry of the bar order in exchange for the payment of the Settlement Amount . . . fair and reasonable”).] These same considerations counsel in favor of approval of the Amended Agreement.

9. Further, the terms of the Amended Agreement resolve fully the issues of concern noted by the Fifth Circuit.

10. First, Individual Underwriters’ Insureds will have an opportunity to present a claim to the proceeds of the settlement through the Receiver’s claims process. App. at 118-123. Accordingly, the Distribution Plan encompasses both Stanford Investors and Individual Underwriters’ Insureds who have a non-released, non-waived contractual claim to the proceeds of the Policies and whose claims are allowed by the Receiver, subject to review by the Court. App. at 120. Any Individual Underwriters’ Insured who has not, as of the Agreement Date, submitted to the Receiver a claim related to the Policies (“Outstanding Insurance Claim”), may seek to participate in the Distribution Plan by submitting to the Receiver a proof of claim form within seventy-five (75) days of the Insurance Claim Notice Date (the “Outstanding Insurance Claim Deadline”). Outstanding Insurance Claims submitted on or before the Outstanding Insurance Claim Deadline shall be subject to review and determination by the Receiver, whose determination shall be subject to Court review pursuant to the procedures outlined in the Court’s May 4, 2012 Order establishing the Receiver’s claims process (Doc. 1584, SEC Action). App. at 120. Within thirty (30) days of the Settlement Effective Date (the “Outstanding Insurance Claim Notice Date”),

notice of the opportunity to submit a new claim shall be sent by the Receiver by first-class mail or electronic mail to all persons who have made a claim on the Policies on or before the Settlement Effective Date; (ii) posted by the Receiver and Examiner on their respective websites; and (iii) served via CM/ECF service to all counsel of record (who are deemed to have consented to electronic service) for any Person who is, at the time of the Notice, a party in any matter in (i) MDL No. 2099, *In re: Stanford Entities Securities Litigation* (N.D. Tex.) (the “MDL”); (ii) the SEC Action; (iii) the Indirect Claims; and (iv) the Third-Party Coverage Actions; and via facsimile transmission and/or first class mail to any other counsel of record for any other such Person. App. at 122-123. The content of the notice shall be substantially in the form of Exhibit L to the Insurance Settlement Agreement. App. at 186.

11. With respect to the universe of potential Individual Underwriters’ Insured claimants, Movants note that over 250 former Stanford employees have executed settlement agreements that fully release Underwriters from any and all claims arising from or relating to the former employees’ employment with one or more Stanford entities. Movants therefore do not expect a significant number of Individual Underwriters’ Insured claims.⁵ As to any Individual Underwriters’ Insured who does submit a claim that is allowed by the Receiver, or by the Court on review of the Receiver’s decision to deny the claim, the Court will have the opportunity to determine the appropriate level of distribution for such claims in connection with the Receiver’s motion to approve the Distribution Plan.

12. Second, any extra-contractual claim by an Individual Underwriters’ Insured is exempted from the anti-suit injunction. The Amended Agreement specifies that it is “a final,

⁵ Of the universe of former Stanford employees who have given Underwriters notice of a possible insurance claim at any point since February 2009, there are fewer than 20 who have not released their claims against Underwriters.

complete, and worldwide resolution of all matters and disputes between (1) the Interested Parties other than the Individual Underwriters' Insureds, on the one hand, and Underwriters, on the other and, and (2) Underwriters, on the one hand, and Individual Underwriters' Insureds, on the other hand, *with respect to any contractual commitments that Individual Underwriters' Insureds claim Underwriters have under the Policies.*" App. at 121 (emphasis added). The Bar Orders likewise state that the orders "shall not bar Individual Underwriters' Insureds, who have not previously released or waived such claims, from asserting against Underwriters extra-contractual claims arising out of the Policies, if any." App. at 147-148, 162, and 177.

13. Last, the Amended Agreement clarifies "that nothing in this Agreement or in the proposed Bar Orders . . . is intended to prohibit, nor shall it be construed to prohibit, any Stanford Investor from pursuing any claim against any former Stanford officer, director, or employee[.]" App. at 121.

B. Interested Parties Received Adequate and Sufficient Notice of the Amended Agreement.

14. In connection with Movants' prior Motion to Approve Proposed Settlement with Underwriters, notice was provided to Interested Parties via mail, CM/ECF notification, publication on the Examiner's and Receiver's websites, and newspaper publication. The Court held that the Notice was "reasonably calculated . . . to apprise all interested Persons of the Agreement" and accompanying judgments and bar orders. [Doc. 2519 at 5-6.] The Court further found that the Notice was "reasonable and constituted due, adequate, and sufficient notice," and "provided to all Persons a full and fair opportunity to be heard on these matters." [*Id.* at 6.] Multiple Interested Parties filed objections to the original agreement and the Court's approval of the Settlement was ultimately appealed to the Fifth Circuit.

15. Movants propose to provide notice of the Amended Agreement in the following

ways. First, Movants are filing the present Motion in the SEC Action, the Coverage Action, and the Third-Party Coverage Actions, thereby providing CM/ECF notification to all counsel of record for any Person who is a party in the aforementioned matters, including attorneys Phillip Preis, John Porter, Stephan Rogers, and Charles Babcock, who represent the objectors who appealed this Court's approval of the original agreement.

16. Second, Movants have prepared a notice, which is attached as Exhibit 4 to this Motion, which they hereby request that the Court serve via the CM/ECF system on all counsel of record for any Person who is a party in any matter in the MDL.

17. Third, concurrently with the filing of this Motion, Movants are sending a copy of the Notice by email, regular mail, or Federal Express (or similar third-party delivery service), to all persons who objected to the original settlement, whether or not they appealed the Court's approval of the original settlement.

18. Fourth, the Receiver and the Examiner will post to their websites complete copies of the Notice and the Amended Agreement, including all exhibits.

19. No additional or further notice is or should be required before the Court approves the Amended Agreement. The Amended Agreement is identical to the original agreement except in three respects: (1) it contemplates that some additional claimants, namely former Stanford employees, will be allowed to submit a claim to the settlement proceeds through the Receivership; (2) it limits the scope of the bar order by excluding from it Individual Underwriters Insureds' extra-contractual claims, if any; and (3) it clarifies that the bar order does not prevent Stanford investors from suing their brokers. Item 3 is a clarification, and not a change from the original settlement agreement, and therefore no further or additional notice is required. Item 2, permitting the pursuit of extra-contractual claims, if any, works only to the benefit of those former Stanford employees

who did object, or might have objected, to the original settlement agreement. As to item 1, it works to the benefit of those former Stanford employees who did object, or might have objected, to the original settlement agreement. And as for the impact of item 1 on Stanford investors, it is negligible. No individual investor was promised any particular distribution under the original settlement. In fact, the original settlement agreement expressly left to a future filing the proposal of a specific distribution plan for the settlement proceeds. And given the large number of Stanford investors with approved claims in the Receiver's process (approximately 18,000) as compared to the very small number of potential Stanford employee claimants (see note 5, *supra*), the impact on any individual investor of allowing the participation of former Stanford employee claimants is negligible and is not different in kind or effect from what happens routinely through new investor claims being allowed into the claims process. Accordingly, the notice outlined in paragraphs 15-18, in addition to the notice provided under the original agreement, is more than sufficient to permit the Court to consider and approve the Amended Agreement. *Cf. Harris v. Graddick*, 615 F. Supp. 239, 244 (M.D. Ala. 1985) (in class action context, "where the amendment is narrow and it is clearly apparent that the interests of the classes are not substantially impaired, the court is of the opinion that the notice already given is adequate and that additional notice is not required").

III. REQUEST TO CONFIRM THE COURT'S PRIOR APPROVAL OF THE RECEIVER'S AND OSIC'S ATTORNEYS' FEES

20. The Court previously found Movants' request for award of attorneys' fees reasonable and therefore approved an award of attorneys' fees in the amount of \$14 million to Kuckelman Torline and \$100,000 to Movants' counsel in the Reynaud litigation. [Doc. 2521 at 6-7.]

21. As the total settlement consideration remains unchanged, and the amount of work

that Movants' counsel have devoted to this matter has only increased since their original application for attorneys' fees, Movants request that the Court confirm its prior award of attorneys' fees to Kuckelman Torline and Movants' counsel in the Reynaud litigation.

IV. CONCLUSION & PRAYER

22. As the Court previously recognized, a \$65 million settlement with Underwriters represents a substantial and important recovery for the Receivership Estate and the Stanford Investors. The Amended Agreement provides for the same settlement previously approved by the Court, except to the limited extent necessary to address the guidance issued by the Fifth Circuit.

WHEREFORE, PREMISES CONSIDERED, Plaintiffs respectfully request this Court:

- a. Grant this Motion;
- b. Approve the Amended Agreement;
- c. Enter the Bar Order in the SEC Action;
- d. Enter the Final Judgment and Bar Order in the Coverage Action;
- e. Enter the Judgments and Bar Orders in the Third-Party Coverage Actions;
- f. Confirm the Court's prior approval of payment of attorneys' fees to Kuckelman Torline in the total amount of \$14 million;
- g. Confirm the Court's prior approval of payment of attorneys' fees to Movants' Counsel in the total amount of \$100,000.00; and
- h. Grant Movants all other relief to which they are entitled.

Date: July 7, 2020

Respectfully submitted,

/s/ Michael J. Kuckelman

Michael J. Kuckelman KS #14587
Stephen J. Torline KS #18292
KUCKELMAN TORLINE KIRKLAND, LLC
10740 Nall, STE 250
Overland Park, KS 66211
Phone: 913-948-8610
Fax: 913-948-8611
mkuckelman@ktk-law.com
storline@ktk-law.com

**ATTORNEYS FOR RECEIVER
RALPH S. JANVEY**

/s/ Scott D. Powers

Kevin M. Sadler, TX # 17512450
Scott D. Powers, TX # 24027746
BAKER BOTTS L.L.P
98 San Jacinto Center
Austin, Texas 78701-4078
Phone: 512-322-2500
Fax: 512-322-2501
Kevin.sadler@bakerbotts.com
Scott.powers@bakerbotts.com

**ATTORNEYS FOR RECEIVER
RALPH S. JANVEY**

/s/ Judith R. Blakeway

Judith R. Blakeway, TX #02434400
CLARK HILL STRASBURGER
2301 Broadway Street
San Antonio, Texas 78215-1157
Phone: 210-250-6004
Fax: 210-258-2706
Judith.blakeway@clarkhillstrasburger.com

**COUNSEL FOR THE OFFICIAL STANFORD
INVESTORS COMMITTEE**

CERTIFICATE OF SERVICE

I certify that on July 7, 2020, I electronically filed the foregoing document with the Clerk of the Court for the Northern District of Texas, Dallas Division, using the CM/ECF system. The ECF system will send a "Notice of Electronic Filing" to all counsel of record who have consented in writing to accept service of this document by electronic means.

I further certify that on July 7, 2020, I served a true and correct copy of the foregoing document and the notice of electronic filing by United States Postal Service Certified Mail, Return Receipt requested, to the persons noticed below who are non-CM/ECF participants:

R. Allen Stanford, Pro Se
Inmate #35017183
Coleman II USP
Post Office Box 1034
Coleman, FL 33521
Via Certified Mail, Return Receipt Requested

/s/ Scott D. Powers

Scott D. Powers