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

SECURITIES AND EXCHANGE
COMMISSION,

Plaintiff,

V.

CIVIL ACTION NO. 3-09-CV-0298-N

STANFORD INTERNATIONAL
BANK, LTD., et al.,

Defendants.

# EXAMINER'S AND OSIC'S RESPONSE IN OPPOSITION TO THE RECEIVER'S APPLICATION FOR SUPPLEMENTAL AWARD OF ATTORNEYS' FEES AND EXPENSES

November 8, 2024

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COURT-APPOINTED EXAMINER and CHAIR, OFFICIAL STANFORD INVESTORS COMMITTEE

### TABLE OF CONTENTS

	Page
TABLE OF CONTENTS	ii
TABLE OF AUTHORITIES	iii
SUMMARY	1
RELEVANT FACTS	3
GOVERNING LAW	6
THE COURT SHOULD PREFER THE DEFRAUDED INVESTORS OVER THE RECEIVER AND HIS PROFESSIONALS	7
THE RECOVERIES TO DATE DO NOT JUSTIFY THE RELIEF SOUGHT	8
The Bank Settlements Do Not Support the Full Relief Sought	9
Many of the Other Recoveries Cited in the Application are Attributable to OSIC	12
The Court Should Also Consider the Receiver's Less than Successful Efforts	14
THERE IS NO REASON TO AWARD AN UPWARD ADJUSTMENT	17
NO FEES SHOULD BE AWARDED FOR PREPARING FEE APPLICATIONS	20
NO HOLDBACK AMOUNT SHOULD BE AWARDED TO CERTAIN FIRMS	21
THE EXAMINER AND OSIC SUPPORT CERTAIN RELIEF SOUGHT BY THE APPLICATION	22
CONCLUSION	23
CERTIFICATE OF SERVICE	24

# TABLE OF AUTHORITIES

	Page
CASES	
Commodity Futures Trading Comm'n v. Am. Metals Exch. Corp., 991 F.2d 71 (3 <sup>rd</sup> Cir. 1993)	6
Graves v. Barnes, 700 F.2d 220 (5th Cir. 1983)	18
In Matter of Lawler, 807 F.2d 1207 (5th Cir. 1987)	19
Janvey v. Alguire, 2009 WL 3791623 (5th Cir. 2009)	17
Lopez v. Fun Eats & Drinks, LLC, No. 18-cv-1091-X-BN (N.D. Tex., June 28, 2023)	19
Nkenglefac v. Garland, 64 F.4 <sup>th</sup> 251 (5 <sup>th</sup> Cir. 2023)	18
Perdue v Kenny A., 559 U.S. 542 (2010)	18
SEC v. Byers, 590 F.Supp. 637 (S.D.N.Y. 2008)	7
SEC v. Capital Counsellors, Inc., 512 F.2d 654 (2 <sup>nd</sup> Cir. 1975)	6
SEC v. Harris, No. 3:09-cv-1809-B (N.D. Tex., April 18, 2016)	7, 14, 17
SEC v. Striker Petroleum, No. 3:09-cv-2304-D (N.D.Tex. March 2, 2012)	20
SEC v. W.L. Moody & Co. Bankers (Unincorporated), 374 F.Supp. 465 (S.D. Tex. 1974), aff'd, 519 F.2d 1087 (5 <sup>th</sup> Cir. 1975)	7, 19
Soler v. G U, Inc., 801 F.Supp. 1056 (S.D.N.Y. 1992)	18
OTHER AUTHORITIES	
Billing Instructions for Receivers in Civil Actions Commenced by the U.S. Securities and Exchange Commission, October 1, 2008	3, 4

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SECURITIES AND EXCHANGE	§
COMMISSION,	§
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Plaintiff,	<b>§</b>
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<b>v.</b>	§ CIVIL ACTION NO. 3-09-CV-0298-N
	§
STANFORD INTERNATIONAL	§
BANK, LTD., et al.,	§
	§
Defendants.	§

# EXAMINER'S AND OSIC'S RESPONSE IN OPPOSITION TO THE RECEIVER'S APPLICATION FOR SUPPLEMENTAL AWARD OF PROFESSIONAL FEES AND EXPENSES

John J. Little, Court-Appointed Examiner ("Examiner"), and the Official Stanford Investors Committee ("OSIC"), respectfully submit this their Response, and supporting Appendix ("App."), in Opposition to the Receiver's Application for Supplemental Award of Professional Fees and Expenses (the "Application"), ECF No. 3423.

#### **SUMMARY**

This Court has often recognized that, in this Receivership, every dollar paid to the Receiver, his professionals, OSIC's counsel, or the Examiner is a dollar that is not available for distribution to Stanford's defrauded investors. The Application seeks authority to pay approximately \$41.87\text{\text{million}} million to the Receiver and his various professional firms, of which approximately \$20.79 million would be paid to the Receiver's lead counsel, Baker Botts. The \$41.87 million has three components: (1) the approximately \$29.50 million that has been "held"

**EXAMINER'S AND OSIC'S** 

RESPONSE IN OPPOSITION TO THE RECEIVER'S APPLICATION FOR SUPPLEMENTAL AWARD OF PROFESSIONAL FEES AND EXPENSES

The Application suggests that the total amount sought is \$41.83 million. Application at 39. The Application seeks \$39.76 million for the CPI-adjusted holdback, *id.* at 36, plus \$2.1 million for Baker Botts' work preparing fee applications. Application at 37. Those numbers total \$41.87 million.

Page 5 of 27

back" from the Receiver's 81 fee applications filed to date; (2) approximately \$1.64 million in fees to compensate Baker Botts for preparing and submitting 77 of the Receiver's fee

applications; and (3) a CPI-based adjustment of those two amounts totaling approximately

\$10.73 million.<sup>2</sup>

The Examiner and OSIC largely oppose the relief sought in the Application. That is so for the following reasons:

a. Payment of the \$41.87 million sought by the Application would result in the Receiver and his professionals being compensated with more than 100% of the fees and expenses they have billed in this matter, while Stanford's investors are likely to recover no more than 50% of their losses. Application at 31, n.16.<sup>3</sup> Instead of adding to the already impressive amounts that have been paid to the Receiver and his professionals, that \$41.87 million could and should

fund another distribution to all 18,000 of Stanford's defrauded investor-victims.

b. The Application is largely justified by the settlements reached with the Bank defendants (TD Bank, SG Suisse, Trustmark, Independent and HSBC). What the Application ignores is that the Receiver did not prosecute the lawsuit that led to those settlements – OSIC did. While the Receiver and certain of his professionals absolutely contributed to the very favorable result achieved in that lawsuit, the fact remains that the lawsuit would not have existed – and there would have been no settlements – had OSIC not intervened in it, preserved the claims asserted in it, and prosecuted those claims for many years. Moreover, to the extent that the

Approximately \$10.3 million of the proposed CPI-based adjustment is based upon the holdback amount, while \$432,458.95 is based upon the claim for fees attributable to the preparation of the Receiver's fee applications.

To date, the Court has authorized 11 interim distributions that will result in a distribution of approximately 40.32% of investor losses. Receiver's 24<sup>th</sup> Interim Status Report Regarding Status of Receivership, Asset Collection, and Ongoing Activities, ECF No. 3419, at 9.

recoveries from the Bank settlements support some release of the holdback amounts, that release should be modest and limited to fees and expenses that were held back with respect to work done on the Bank litigation. <sup>4</sup>

- c. The Application's request that any holdback amounts paid to the Receiver and his professionals be increased by a CPI-based adjustment is wholly without merit. The Receiver and his professionals have, by definition, received between 80% and 90% of their billed fees and expenses over the course of this Receivership. The adjustment sought by the Application would result in the Receiver and his professionals receiving more than 100% of their billings. And it would do so with funds that could otherwise be distributed to Stanford's victims.
- d. The Application's request that the Court approve attorneys' fees for the work Baker Botts did in preparing and submitting the Receiver's fee applications is equally without merit. It is contrary to the billing guidelines issued by the Securities & Exchange Commission ("SEC") for receivers in civil actions commenced by the SEC. Those billing guidelines make it clear that "time spent preparing fee applications, or any documentation in support thereof, may not be charged to the receivership estate."

#### RELEVANT FACTS

The Application recounts the history of the holdback that has been imposed upon all 81 fee applications filed by the Receiver and approved by the Court. The holdback was initially set at 20% and applied to all fees and expenses billed by the Receiver and his professionals in his 1st

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As detailed further below, the Examiner and OSIC do not oppose releasing a portion of the holdback to the Receiver, Baker Botts and certain other professionals in recognition of the role those professionals played in achieving the Bank settlements.

Billing Instructions for Receivers in Civil Actions Commenced by the U.S. Securities and Exchange Commission, at 8 ("SEC 2008 Billing Instructions"), October 1, 2008. <a href="http://www.sec.gov/oiea/Article/billinginstructions.pdf">http://www.sec.gov/oiea/Article/billinginstructions.pdf</a> App. at 4; Little Declaration ¶3.

and 2<sup>nd</sup> fee applications. The holdback was increased to 35% for the Receiver's 3<sup>rd</sup> and 4<sup>th</sup> fee applications. ECF No. 994. A holdback of approximately 22% was imposed for the Receiver's 5<sup>th</sup> fee application. ECF No. 1069. Subsequently, the holdback reverted to the original 20% amount for a time, and has been subject to adjustments that first removed the holdback on out-of-pocket expenses and later reduced the holdback from 20% to 10%.<sup>6</sup>

The Application asks the Court to release the entire amount of the holdback – approximately \$29.50 million – to 44 different professional firms and individuals who have provided services to the Receiver over the course of the Receivership. Of those 44 different firms and individuals, 25 would receive less than \$25,000 if the full \$29.5 million holdback amount is released; 20 of those would receive less than \$10,000.7 *See* Application at 36. By way of comparison, the fees held back from the Examiner's fee applications total \$39,377.83.8 App. at 11, Little Declaration ¶17.

The Receiver's firm and eight of his professional firms would most benefit from the relief sought by the Application: Baker Botts, FTI Consulting, Ernst & Young, Thompson & Knight (n/k/a/ Holland & Knight), BDO, Financial Industry & Technical Services, Inc. ("FITS"), Krage & Janvey, Gilardi (n/k/a Verita), and Osler, Hoskin & Harcourt, LLP ("Osler"). *Id.* To date,

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The SEC 2008 Billing Instructions make it clear that a receiver's fee applications may be subject to a holdback of 20% of the amount of fees and expenses in each application. App. at 4; Little Declaration ¶3.

Those amounts don't change appreciably if the Court were to award the CPI-based adjustment sought by the Application. In that event, those 25 firms and individuals would each receive less than \$30,000, with 18 of them receiving less than \$10,000.

Two of the Examiner's fee applications have been subject to a holdback. A 15% holdback was imposed upon the Examiner's 2<sup>nd</sup> fee application. ECF No. 994. A 2% holdback was imposed upon the Examiner's 3<sup>rd</sup> fee application. ECF No. 1069.

Page 8 of 27 PageID 102437

those nine firms have already been paid over \$172 million, with Baker Botts and FTI receiving approximately \$140 million of that amount, as follows:

Baker Botts	\$100,999,806.39
FTI	\$ 39,168,011.56
Ernst & Young	\$ 7,633,754.04
Thompson Knight	\$ 3,475,917.11
BDO	\$ 7,115,447.78
FITS	\$ 2,225,056.40
Krage & Janvey	\$ 4,546,575.27
Gilardi	\$ 6,164,265.04
Osler	\$ 1,409,381.44
TOTAL FEES PAID	\$172,738,215.03

App. at 5, Little Declaration ¶4. As these numbers make clear, the Receivership has been a strong source of business for these various firms over the years.

These nine (9) firms would receive the lion's share of the money sought in the Application:

FIRM	Holdback Amount	<b>Total Sought</b>
Baker Botts	\$14,276,415.85	\$20,786,883.199

Baker Botts reported total revenue for 2023 was \$733,836,000. http://www.law.com/law-firmprofile/?id=21&name=Baker-Botts.

FTI	\$ 7,945,356.00	\$11,070,652.6810
Ernst & Young	\$ 1,860,181.01	\$ 2,657,954.3311
Thompson Knight	\$ 976,774.22	\$ 1,413,276.40
BDO	\$ 785,137.37	\$ 948,811.74 <sup>12</sup>
FITS	\$ 727,484.52	\$ 1,054,475.06
Krage & Janvey	\$ 696,902.13	\$ 931,644.56
Gilardi	\$ 600,194.80	\$ 759,677.75
Osler	\$ 455,984.08	\$ 655,547.02
Totals	\$28,324,429.98	\$40,278,922.73

Application at 36. It is worth noting that the Application says absolutely nothing about how the other 35 professional firms and individuals that would benefit from the relief sought contributed to the Receiver's efforts.

#### **GOVERNING LAW**

"The award of fees in a receivership is entrusted to the discretion of the district court." *Commodity Futures Trading Comm'n v. Am. Metals Exch. Corp.*, 991 F.2d 71, 79 (3<sup>rd</sup> Cir. 1993) (citing *SEC v. Capital Counsellors, Inc.*, 512 F.2d 654, 658 (2<sup>nd</sup> Cir. 1975)). A receiver who

FTI's reported total revenue for 2023 was \$3.5 billion. <a href="http://www.fticonsulting.com/about/newroom/press-releases/fti-consulting-reports-record-fourth-quarter-and-full-year-2023-financial-results">http://www.fticonsulting.com/about/newroom/press-releases/fti-consulting-reports-record-fourth-quarter-and-full-year-2023-financial-results</a>.

Ernst & Young reported global revenue of \$49.4 billion for the year ending June 2023. <a href="http://www.ey.com/en\_cy/newsroom/2023/09/news-release-ey-reports-record-global-revenue-results-of-just-under-us-dollars-50b">http://www.ey.com/en\_cy/newsroom/2023/09/news-release-ey-reports-record-global-revenue-results-of-just-under-us-dollars-50b</a>.

BDO reported global revenue of \$14 billion for the fiscal year ending September 30, 2023. <a href="http://www.bdo.com/insights/press-releases/bdo-global-announces-robuts-2023-financial-results-worldwide-revenues-top-14-billion">http://www.bdo.com/insights/press-releases/bdo-global-announces-robuts-2023-financial-results-worldwide-revenues-top-14-billion</a>.

reasonably and diligently discharges his duties is entitled to be "fairly compensated for services rendered and expenses incurred." *SEC v. Byers*, 590 F.Supp. 637, 644 (S.D.N.Y. 2008). Generally, a reasonable fee in a receivership is based "upon all circumstances surrounding the receivership." *SEC v. W.L. Moody & Co. Bankers (Unincorporated)*, 374 F.Supp. 465, 480 (S.D. Tex. 1974), aff'd, 519 F.2d 1087 (5<sup>th</sup> Cir. 1975). Importantly, "fair compensation means moderate compensation, not complete compensation." *SEC v. Harris*, No. 3:09-cv-1809-B (N.D. Tex., April 18, 2016) at 18.

# THE COURT SHOULD PREFER THE DEFRAUDED INVESTORS OVER THE RECEIVER AND HIS PROFESSIONALS

The Application seeks to pay the Receiver and all the Receiver's professionals 100% of the fees and expenses they have billed over the history of the Receivership, and then considerably more by adding in a "CPI-adjustment." If paid to the Receiver and his professionals, the \$41.87 million the Application seeks will obviously not be available for distribution to Stanford's 18,000 victims who are participating in the Receiver's claims & distribution process.

Those victims have been waiting over 15 years to recover their losses. Unlike the Receiver and his professionals, those victims have not already collected 80-90% of their losses – nor will they ever collect that high a percentage. Rather, through the first 10 interim distributions approved by the Court, the Stanford victims have recovered approximately 15.33% of their losses. The recently-approved 11<sup>th</sup> distribution will bring that percentage up to 40.32%, <sup>13</sup> but those funds are just now beginning to be distributed. *See* ECF No. 3430 (Receiver's First Set of Schedules under the 11<sup>th</sup> Distribution), filed November 1, 2024. The

**EXAMINER'S AND OSIC'S** 

Receiver's 24<sup>th</sup> Interim Status Report Regarding Status of Receivership, Asset Collection, and Ongoing Activities, ECF No. 3419, at 9.

\$41.87 million, if distributed to the Stanford victims, instead of the Receiver and his professionals, would increase their recovery by approximately another 1%.

The Application gives the Court a stark choice – grant the Application and bring the Receiver and his professionals up to 100% of their billings, and then some, or deny the Application and direct the Receiver to distribute the \$41.87 million to Stanford's victims. <sup>14</sup> The Receiver and his professionals have been well compensated, on a regular basis, throughout the Receivership. Moreover, the Stanford victims will likely never recoup even 50% of their losses, but they can get closer to that number if the Court directs the Receiver to distribute the \$41.87 million to the victims.

A distribution of \$41.87 million to the Stanford investors will be far more meaningful to those investors than a distribution of the holdback amount will be to the Receiver and his professionals. On this issue, the Court should favor the investors over the professionals.

#### THE RECOVERIES TO DATE DO NOT JUSTIFY THE RELIEF SOUGHT

The thrust of the Application is that the Receiver and his professionals have managed to generate approximately \$2 billion in net recoveries that will redound to the benefit of the Stanford investors. *See* ECF No. 3419, Receiver's 24<sup>th</sup> Interim Report Regarding Status of Receivership, Asset Collection, and Ongoing Activities (reflecting net cash inflows of \$2.0505 billion). Those recoveries are certainly vital to Stanford's victims, but they do not justify a wholesale release of the amounts held back from the Receiver's billings.

EXAMINER'S AND OSIC'S
RESPONSE IN OPPOSITION TO THE RECEIVER'S APPLICATION FOR
SUPPLEMENTAL AWARD OF PROFESSIONAL FEES AND EXPENSES

The \$41.87 million at issue in the Application could be combined in a single distribution with the approximately \$51.9 million the Receiver recently collected from the GMAG parties, which together would increase the victims' recovery by approximately 2%.

# The Bank Settlements Do Not Support the Full Relief Sought

Much of the Application focuses upon the recoveries obtained in the Bank litigation against TD Bank, SG Suisse, Trustmark, Independent and HSBC. In total, those five Banks agreed to pay \$1.602 Billion to settle that litigation. Of that amount, \$1.445 billion has been collected; the \$157 million settlement with SG Suisse is still working its way through the appellate courts but will eventually be paid without regard to the pending appeals. *See* Application at 18. Absent the Bank settlements, Stanford's investors would have recovered approximately 13.81% of their losses to date. <sup>15</sup>

As the Application notes, the Bank litigation, *Rotstain v. Trustmark Nat'l Bank, Civil Action No.* 3:09-cv-2384 ("*Rotstain*"), began as a putative class action filed in Harris County state court that was removed to the Southern District of Texas and transferred to this Court in late 2009. Application at 16. At no point did the Receiver make an effort to intervene in *Rotstain*, nor did the Receiver make any effort to bring his own claims against any of the Banks. After OSIC was formed, it moved to intervene in *Rotstain* in December 2011. *Rotstain*, ECF No. 96. The Court granted that motion in December 2012. *Rotstain*, ECF No. 129. The Receiver assigned his claims against the Banks to OSIC. App. at 7, Little Declaration ¶7.

OSIC engaged counsel to represent it in *Rotstain* on a contingent fee basis.<sup>16</sup> OSIC filed its Intervenor Complaint, *Rotstain*, ECF No. 133, and each of the Banks predictably filed

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<sup>13.81%</sup> is the total percentage distributed pursuant to the 1<sup>st</sup> through 9<sup>th</sup> Distributions. The 10<sup>th</sup> distribution, funded by the Trustmark settlement, represented a 1.52% distribution, ECF No. 3367, and the 11<sup>th</sup> distribution, funded by the settlements with TD Bank, HSBC and Independent Bank, represents a 24.99% distribution. ECF No. 3412.

Ultimately, OSIC was represented by four law firms in Rotstain. Butzel Long and Friedman, Kaplan, Seiler, Adelman & Robbins were primarily responsible for the claims asserted against TD Bank, HSBC and SG Suisse. Castillo Snyder and Fishman Haygood were primarily responsible for the claims asserted against Trustmark and Independent Bank.

motions to dismiss that Complaint. *Rotstain* ECF Nos. 154 (Independent), 155 (HSBC), 157 (SG Suisse), TD Bank (159), and 162 (Trustmark). After full briefing, the Court denied the motions to dismiss for lack of personal jurisdiction filed by HSBC and SG Suisse, *Rotstain* ECF No. 194, and thereafter largely denied the Rule 12(b)(6) motions to dismiss filed by all the Bank defendants by an Order entered in April 2015. *Rotstain* ECF No. 234.<sup>17</sup>

In November 2017, the Court entered its Order denying class certification and lifted its stay as to merits discovery. *Rotstain* ECF No. 428. As a result of that decision, OSIC became the lead plaintiff in the *Rotstain* action, along with the individual plaintiffs who had filed the lawsuit. OSIC's various lawyers conducted extensive factual and expert discovery, including depositions in the United States, Canada and the United Kingdom and SG Suisse-focused discovery via the Hague Convention in Switzerland.

In May 2019, a group of Stanford investors sought to intervene in *Rotstain*. *Rotstain* ECF Nos. 492-493. OSIC responded to that motion and the Court denied it in September 2019. *Rotstain* ECF No. 562. The putative intervenors appealed the Court's decision to the 5<sup>th</sup> Circuit, which affirmed in a decision issued February 3, 2021. *Mendez v. Trustmark Nat'l Bank*, Cause No. 19-11131 (5<sup>th</sup> Cir., Feb. 3, 2021).

Baker Botts, the Receiver, and certain of the Receiver's other professionals began to play important roles in OSIC's prosecution of the *Rotstain* action in or about 2020. *See* App. at 7-8, Little Declaration, ¶¶8-9. Baker Botts helped to coordinate the efforts of OSIC's various law firms as *Rotstain* proceeded through extensive summary judgment practice, *Daubert* challenges to every expert designated by any party, a remand to the Southern District of Texas, pre-trial

EXAMINER'S AND OSIC'S
RESPONSE IN OPPOSITION TO THE RECEIVER'S APPLICATION FOR
SUPPLEMENTAL AWARD OF PROFESSIONAL FEES AND EXPENSES

Between 2015 and 2017, the OSIC also engaged in extensive summary judgment practice with respect to certain of its claims against SG Suisse.

proceedings, trial preparation, and settlement efforts. Id. at 8, ¶9. FTI assisted OSIC in data management and analysis. Id. at 8, ¶12. Karyl Van Tassel, the Receiver's forensic accounting expert, served as OSIC's forensic expert in *Rotstain*. Id. at 9, ¶13. The Receiver prepared for and gave a deposition, participated in trial preparation efforts and pretrial hearings, and participated in mediation and all settlement negotiations. Id. at 8, ¶11.

The Examiner and OSIC would not be opposed to a partial release of the holdback to acknowledge the roles played by Baker Botts, the Receiver, FTI and Ms. Van Tassel in achieving the Bank settlements. With respect to Baker Botts, its total fees (before holdback) in the Bank litigation were approximately \$14.98 million, and its expenses (before holdback) were approximately \$3.76 million, for a pre-holdback total of approximately \$18.74 million. App. at 8, Little Declaration, ¶10. That would suggest that Baker Botts' likely holdback amount relating to the Bank litigation is approximately \$1.87 million, but that number requires further information and refinement. *Id.* With respect to the Receiver, FTI and Ms. Van Tassel, <sup>18</sup> the Examiner and OSIC do not have sufficient information available to ascertain how much each billed in fees and expenses for their roles in the *Rotstain* action, nor to calculate what the Bank case holdback amounts would be for each of them. App. at 8-9, Little Declaration, ¶11-13.

The Examiner and OSIC respectfully suggest that the Court direct the Receiver, the Examiner, OSIC and the SEC to attempt to agree upon the amounts that should be released from the holdback to recognize the contributions of the Receiver, Baker Botts, FTI and Ms. Van Tassel to the recoveries realized from the Bank litigation.

Ms. Van Tassel has been associated with a number of different professional firms during the 15.5 year history of the Receivership.

EXAMINER'S AND OSIC'S RESPONSE IN OPPOSITION TO THE RECEIVER'S APPLICATION FOR SUPPLEMENTAL AWARD OF PROFESSIONAL FEES AND EXPENSES

# Many of the Other Recoveries Cited in the Application are Attributable to OSIC

Apart from the recoveries realized through the Bank settlements, many of the other recoveries identified in the Application were the result of lawsuits brought, prosecuted and settled by OSIC, with only limited participation by the Receiver and his professionals. For example, OSIC prosecuted – on a contingent fee basis – a number of fraudulent transfer actions. Ultimately, thirteen (13) of those actions resulted in settlements of approximately \$11 million for the benefit of the Receivership Estate:

Defendant	Settlement Amount
Ben Barnes	\$2,750,000.00 <sup>19</sup>
10-cv-0527	
Leland Stanford Mansion	\$ 400,000.00
10-cv-1002	
Susan Stanford	\$1,813,643.15
10-cv-2322	
Lena Stinson	\$ 75,000.00
10-cv-2586	
Center for Strategic Int'l Studies	\$ 65,000.00
11-cv-00292	
Cort & Cort	\$ 525,000.00
11-cv-00298	
Castaneda	\$ 100,000.00
11-cv-00299	
Lee Brown	\$ 200,000.00
11-cv-00301	
Courtney Blackman	\$ 45,000.00
11-cv-00302	
St. Jude	\$4,300,000.00
11-cv-00303	
Le Bonheur	\$ 550,000.00
11-cv-00303	
Chamberlain Hrdlicka	\$ 250,000
11-cv-01025	
Totals	\$11,073,643.15

1.

Ultimately, \$2,550,000 of this settlement amount was collected.

App. at 9-10, Little Declaration ¶14.

More importantly, OSIC prosecuted various lawsuits against law firms, accounting firms, and insurance brokers that helped facilitate the Stanford scheme. While the Receiver was a nominal party to certain of those actions, they were prosecuted by OSIC's counsel. App. at 10, Little Declaration, ¶15. As set forth below, those actions resulted in the recovery of just over \$400 million (before the payment of attorneys' fees and expenses): ¶

Defendant	Settlement Amount
Kroll	\$ 24,000,000.00
(no action filed)	
BDO	\$ 40,000,000.00
11-cv-01115; 12-cv-01447	
Adams & Reece	\$ 1,000,000.00
11-cv 00329; 12-cv-00495	
Breazeale, Sachse & Wilson	\$ 1,725,498.49 <sup>20</sup>
11-cv 00329; 12-cv-00495	
Cordell Haymon	\$ 2,000,000.00
11-cv 00329; 12-cv-00495	
Lynnette Frazier	\$ 175,000.00
11-cv 00329; 12-cv-00495	
Michael Contorno	\$ 150,000.00
11-cv 00329; 12-cv-00495	
Antigua & Barbuda	\$ 5,500,000.00
13-cv-00760	
Chadbourne & Parke, LLP	\$ 35,000,000.00
09-cv-01600; 13-cv-00477	
Hunton & Williams, LLP	\$ 34,000,000.00
12-cv-04641	
Greenberg Traurig, LLP	\$ 65,000,000.00
12-cv-04641	
Proskauer Rose, LLP	\$ 63,000,000.00
09-cv-01600; 13-cv-00477	
Willis	\$120,000,000.00
09-cv-01247; 09-cv-01474; 13-cv-03980	
Bowen Miclitte & Britt	\$ 12,850,000.00
09-cv-01247; 09-cv-01474; 13-cv-03980	

<sup>20</sup> \_\_\_\_

The settlement amount includes a return of \$198,165.49 that was held in the defendant's escrow account.

Totals	\$404,403,165.49

App. at 10-11, Little Declaration ¶15.

The Receiver and certain of his professionals played only limited roles in the prosecution and settlement of these actions. Most of Baker Botts' involvement related to the actions against Chadbourne Parke, LLP, Proskauer Rose, LLP, Greenberg Traurig, LLP, and Hunton & Williams, LLP, where, among other things, Baker Botts served as settlement counsel with respect to the settlements with Proskauer Rose, LLP and Greenberg Traurig, LLP. The Receiver sat for depositions in certain of the actions, Ms. Van Tassel served as OSIC's forensic expert in certain of the actions, and FTI assisted with data storage and analysis in certain of the actions. App. at 11, Little Declaration ¶16.

In summary, cases filed and prosecuted by OSIC accounted for recoveries of over \$2 billion (\$1.602 from the Bank cases, \$404 million from the cases listed above). Absent the efforts of OSIC, the recoveries in this Receivership would be considerably more modest.

#### The Court Should Also Consider the Receiver's Less than Successful Efforts

In assessing the merits of the Application, the Court can and should also consider those instances where the Receiver pursued litigation that did not produce any benefit for the Receivership Estate. *See SEC v. Harris*, No. 3:09-cv-1809-B (N.D. Tex., April 18, 2016) at 28-29 (considering receiver's unsuccessful prosecution of a fraudulent transfer claim in determining what fee was appropriate for the receiver). This Receivership has had a few swings and misses where there was little or no recovery for the Receivership Estate. Some examples are detailed below:

a. The Receiver engaged in protracted litigation with Pre-War Art, Inc. d/b/a Gagosian Gallery, Inc. (the "Gallery"), and Dillon Gage Inc. of Dallas ("Dillon Gage"),

relating to Stanford's coin & bullion business. That litigation involved two lawsuits, the *Gallery* action, Civil Action No. 09-cv-0559 (where Stanford entities were defendants) and the *Dillon Gage* action, Civil Action No. 10-cv-01973 (where the Receiver was the plaintiff). The *Gallery* action was tried to a verdict in April 2014 and the Gallery was awarded a claim against Stanford Coins & Bullion, Inc. in the amount of \$2,998,630.00. Civil Action No. 09-cv-0559, ECF No. 282. The Court's judgment was affirmed by the 5<sup>th</sup> Circuit. *Id.*, ECF No. 297. The *Dillon Gage* action was tried to a verdict in July 2015 and a take nothing judgment was entered against the Receiver. Civil Action No. 09-cv-01973, ECF No. 237. That judgment was affirmed by the 5<sup>th</sup> Circuit. *Id.*, ECF No. 262.

Baker Botts billed a total of \$3,137,652.10 in fees, and \$205,009.14 in expenses, to its work on the *Gallery* action and the *Dillon Gage* action. Both of those figures are before application of the holdback.<sup>21</sup> App. at 7, Little Declaration ¶6.

b. The Receiver brought a fraudulent transfer action against the Libyan Investment Authority and the Libyan Foreign Investment Company, Civil Action No. 11-cv-01177. That action was dismissed as to the Libyan Investment Authority. Civil Action No. 11-cv-01177, ECF No. 191. Appeals to the 5<sup>th</sup> Circuit followed, and the 5<sup>th</sup> Circuit affirmed this Court's decision that it lacked jurisdiction over the Libyan Investment Authority, vacated this Court's holding that it had jurisdiction over claims against the Libyan Foreign Investment Company, and remanded the case to this Court. *Id.* ECF No. 206. On remand, the Receiver decided to dismiss the action with prejudice. *Id.* ECF Nos. 208, 209.

This Response focuses upon Baker Botts' billings because it is the only one of the Receiver's professionals that provides sufficient information to identify those billings that relate to these particular matters.

Baker Botts billed \$1,223,042.40 in fees and \$38,700.39 in expenses to this litigation. Both numbers are before application of the holdback. App. at 7, Little Declaration ¶6.

c. The Receiver long pursued recoveries against Wealth Management Services, Ltd. ("WMSL") and its principal, David Nanes ("Nanes"). The Receiver sued WMSL in 2010, Civil Action No. 10-cv-00477, and obtained a summary judgment against WMSL in the total amount of approximately \$12.33 million. Civil Action No. 10-cv-00477, ECF No. 88. The Receiver then sued Nanes, Civil Action No. 15-cv-03171, seeking to collect that judgment and additional amounts. The Receiver again obtained a summary judgment; this time against Nanes in the amount of \$14,568,341.90. *Id.*, ECF No. 24. Unfortunately, the Receiver has not been able to collect even a dollar of these judgments.<sup>22</sup>

Baker Botts billed \$1,147,162.20 in fees and \$77,108.79 in expenses to the pursuit of WMSL and Nanes. Both numbers are before application of the holdback. App. at 7, Little Declaration ¶6.

d. OSIC and the Receiver originally filed a fraudulent transfer action against Peter Romero in 2011, Civil Action No. 11-cv-00297, and OSIC was responsible for prosecuting that action. After an unsuccessful mediation, the Receiver exercised his authority to assume responsibility for prosecuting the action against Romero. The action was tried to a verdict in 2015 and judgment was entered in favor of the Receiver in the total amount of \$952,976.14. Civil Action No. 11-cv-00297, ECF No. 176. The

Nanes has long been on the run from authorities both in the United States and abroad. He was once apprehended in Belize but managed to buy his way out of the country before U.S. and Mexican authorities could take him into custody.

Receiver also received an award of \$320,000.00 in attorneys' fees. *Id.* ECF No. 205. Romero filed a bankruptcy petition in Maryland and ultimately received a discharge of the Receiver's claim. *In re Peter Romero*, Case No. 15-23570-TJC, U.S. Bankruptcy Court, District of Maryland, ECF No. 133. The Receiver appealed, but the discharge was upheld by the District Court, *id.* ECF No. 176, and by the 4<sup>th</sup> Circuit. *Janvey v. Romero*, 817 F.3d 184 (4<sup>th</sup> Cir. 2016). The Receiver was unable to collect anything from Romero.

Baker Botts billed \$1,937,133.60 in fees and \$144,666.67 in expenses to the Romero litigation. Both numbers are before application of the holdback. App. at 7, Little Declaration ¶6.

Another swing and miss was the Receiver's 2009 effort to characterize Stanford investors as "relief defendants" in order to claw back funds from those investors, without regard to whether they were "net winners" or whether the funds being clawed back were the investors' principal. That effort was ultimately rejected by the 5<sup>th</sup> Circuit. *Janvey v. Alguire*, 2009 WL 3791623 (5<sup>th</sup> Cir. 2009). Because that effort came early in the Receivership, the fees and expenses charged by the Receiver and Baker Botts attributable to it cannot be easily parsed out of the Receiver's early fee applications.

To be clear, the Examiner and OSIC do not raise these examples as a criticism of the Receiver and his professionals, but to acknowledge that this Receivership has had its ups and downs. The Court necessarily should consider both the ups and the downs in deciding the Application. *SEC v. Harris*, No. 3:09-cv-1809-B (N.D. Tex., April 18, 2016) at 28-29

#### THERE IS NO REASON TO AWARD AN UPWARD ADJUSTMENT

In addition to seeking a full release of the \$29.5 million holdback amount, the Application seeks to increase that amount by 35%, to \$39,760,828.03, based upon a CPI-related

EXAMINER'S AND OSIC'S
RESPONSE IN OPPOSITION TO THE RECEIVER'S APPLICATION FOR
SUPPLEMENTAL AWARD OF PROFESSIONAL FEES AND EXPENSES

adjustment to account for the delay in payments to the Receiver and his various professionals.

The Court should reject that effort in its entirety.

Over the life of this Receivership, no group has been waiting longer for payment than Stanford's victims. Those victims get no compensation for the time they have been waiting, whether CPI-related or otherwise. To suggest that over \$10 million dollars should be paid – not to Stanford's victims – but to the Receiver and his professionals to compensate them for "delay" is simply offensive.

Moreover, the case law relied upon in the Application to support this relief completely misses the point. Many of the cases relied upon in the Application are fee-shifting cases, where a prevailing party is recovering fees from a losing party:

- Perdue v Kenny A., 559 U.S. 542 (2010). Perdue addresses fee-shifting in a federal civil rights case; specifically, the fees that should be payable to counsel for children in the Georgia foster-care system in an action against the State of Georgia.
- Graves v. Barnes, 700 F.2d 220 (5<sup>th</sup> Cir. 1983). Graves also involves fee-shifting, this time in a voting rights case. In Graves, the court addresses the fees that should be paid to prevailing plaintiffs' counsel by the State of Texas.
- *Nkenglefac v. Garland*, 64 F.4<sup>th</sup> 251 (5<sup>th</sup> Cir. 2023). *Nkenglefac* is another feeshifting case, this time under the Equal Access to Justice Act. It addresses the fees that should be paid by the U.S. government to prevailing plaintiff's counsel.
- Soler v. G U, Inc., 801 F.Supp. 1056 (S.D.N.Y. 1992). Soler is another fee-shifting case under the Fair Labor Standards Act. It addresses the fees that should be paid to prevailing plaintiffs' counsel by the losing defendants.

• Lopez v. Fun Eats & Drinks, LLC, No. 18-cv-1091-X-BN (N.D. Tex., June 28, 2023). Lopez is another fee-shifting case that addresses the attorneys' fees that should be paid to prevailing plaintiffs' counsel by the losing defendant.

These fee-shifting cases offer no support for the upward adjustment sought in the Application. Here, the only "fee-shifting" involved would be shifting \$10 million that could be distributed to Stanford's victims to the Receiver and his professionals.

The other authorities relied upon in the Application offer little support. *In Matter of Lawler*, 807 F.2d 1207 (5<sup>th</sup> Cir. 1987), the court addressed the fees that should be payable to counsel for a receiver/trustee for services rendered over the course of almost 11 years.<sup>23</sup> Counsel had received some interim compensation, but was owed considerably more. The *Lawler* court determined that it was appropriate to compensate counsel for the delay in payment by applying counsel's present billing rates to the hours for which counsel had not been compensated. 807 F.2d at 1212. Lawler does not address a situation like this one, where the Receiver and his professionals have been paid between 80% and 90% of their billings throughout the life of the Receivership.

In SEC v. W.L. Moody Co., Bankers (Unincorporated), 374 F.Supp. 465 (S.D. Tex. 1974), the court addressed the fees that should be paid to a receiver and his counsel at the conclusion of a fairly short-lived receivership.<sup>24</sup> Of particular note is that the receiver in Moody managed to pay all of the receivership's creditors in full, and had funds remaining on hand after

EXAMINER'S AND OSIC'S RESPONSE IN OPPOSITION TO THE RECEIVER'S APPLICATION FOR SUPPLEMENTAL AWARD OF PROFESSIONAL FEES AND EXPENSES

Lawler involves a receiver who was later appointed to serve as trustee in a bankruptcy proceeding. Lawler, 807 F.2d at 1209.

The receivership in Moody lasted approximately 16 months.

doing so. 374 F.Supp. at 483. Here, Stanford's victims will be lucky if they ultimately recover close to 50% of their losses.

Put simply, there is no justification for shifting \$10 million from Stanford's victims to the Receiver and his professionals. Delay is a fact of life in any receivership, and both the Receiver and his various professionals were certainly aware that it was when they undertook their engagements.

#### NO FEES SHOULD BE AWARDED FOR PREPARING FEE APPLICATIONS

The Application seeks an award to Baker Botts of \$2,073,469.15 for its work in assembling and filing 77 of the Receiver's 81 fee applications.<sup>25</sup> That number represents \$1,641,010.20 in fees and a CPI adjustment of \$432,458.95. The Court should deny that relief in its entirety.

The SEC 2008 Billing Instructions make clear that receivers are not entitled to payment for time spent preparing and submitting fee applications. App. at Ex. A-1, p.8. The Application does not address those Billing Instructions nor even acknowledge their existence, but they were clearly in effect at the time the Receiver was appointed. Moreover, the Receiver was and is an experienced securities lawyer and receiver and certainly had to know of these instructions at the time of his appointment.

The "opposition or acquiescence by the SEC" to a receiver's fee application will be "given great weight." *SEC v. Striker Petroleum*, No. 3:09-cv-2304-D (N.D.Tex. March 2, 2012), citing *SEC v. Byers*, 590 F.Supp.2d 637, 644 (S.D.N.Y. 2008). Here, that the SEC has long had billing instructions that do not permit receivers to bill for preparing and submitting fee

No fees are sought for the first four fee applications. Application at 38 n. 25.

applications should also be given "great weight." The Court should deny the request for fees relating to fee application preparation in its entirety.

#### NO HOLDBACK AMOUNT SHOULD BE AWARDED TO CERTAIN FIRMS

To the extent that the Court considers releasing some or all of the holdback amount on a firm-by-firm basis, there are certain firms that should not receive any holdback amount for the additional reasons set forth below.

One of those firms – Pierpont Communications, Inc. – is the public relations firm that the Court determined early on was not a necessary or appropriate expense for the Receiver to incur. Transcript of Proceedings, Civil Action No. 3:09-cv-0298-N, N.D. Tex. September 10, 2009, at 42. Pierpont should never have been engaged by the Receiver, and it certainly should not receive any additional funds from the Receivership. For that additional reason, the Examiner and OSIC would object to any further payments to Pierpont Communications, Inc.

Gilardi, n/k/a Verita, is the firm that handles the Receiver's claims and distribution process. Both the Examiner and OSIC regularly receive complaints from Stanford investors concerning their dealings with Gilardi. Those complaints include, but are not limited to, failures to respond to telephone calls and emails, failures to follow-up on investor requests, and failures to process seemingly routine items like changes in mailing addresses, email addresses and phone number. Issues with Gilardi have also caused Baker Botts and FTI to devote time – and bill fees – to matters that ought to be wholly handled by Gilardi. The Examiner and OSIC respectfully submit that no holdback amount should be released to Gilardi.

In the early years of the Receivership, the Receiver was engaged in litigation in the United Kingdom with the Antiguan Joint Liquidators, with both the Receiver and the Joint Liquidators seeking recognition by the courts of the United Kingdom. The Antiguan Joint

EXAMINER'S AND OSIC'S
RESPONSE IN OPPOSITION TO THE RECEIVER'S APPLICATION FOR
SUPPLEMENTAL AWARD OF PROFESSIONAL FEES AND EXPENSES

Liquidators prevailed and were recognized in the United Kingdom; the Receiver was not. Two different professionals served as counsel to the Receiver in those proceedings: Stuart Isaacs and Felicity Toube. Both were paid during their engagement pursuant to this Court's orders approving fee applications; neither has performed any services for many years. The United Kingdom litigation was, on the whole, a negative for the Receivership and Stanford's investors. Neither of these professionals is entitled to any further compensation.

### THE EXAMINER AND OSIC SUPPORT CERTAIN RELIEF SOUGHT BY THE APPLICATION

As noted above, the Examiner and OSIC are not opposed to a partial release of the holdback amount – without any upward adjustments – to the Receiver, Baker Botts, FTI and Ms. Van Tassel's firm(s) to recognize their contributions to the Bank litigation and settlements. The Examiner and OSIC cannot calculate the precise amounts of such partial releases with the information available to them, but are confident that they can reach an agreement with the Receiver and the SEC as to those amounts if directed to do so.

The Application also requests that the Court eliminate the holdback from all future fee applications, beginning with the Receiver's anticipated 82<sup>nd</sup> fee application for the months of June through September 2024. Application at 2, 33. To the extent that the Court's disposition of the Application eliminates the current holdback amount – either by paying it, in whole or in part, to the Receiver's professionals or by directing that it be paid, in whole or in part, to Stanford's victims – the Examiner and OSIC are unopposed. To the extent that the Court determines that some or all of the holdback amount should remain as is, the Examiner and OSIC would urge the Court to continue to apply the holdback to future fee applications.

#### **CONCLUSION**

In deciding the Application, the Examiner and OSIC urge the Court to favor the interests of Stanford's defrauded investors, who have waited over 15 years to recover even a fraction of their losses, over the interests of the Receiver and his professionals, all of whom have been paid regularly, and handsomely, over the course of this Receivership. The Examiner and OSIC are not opposed to a partial release of the holdback, in an amount to be determined, to recognize the contributions of the Receiver, Baker Botts, FTI and Ms. Van Tassel's firms to the resolution and settlement of the Bank litigation. The Court should direct that all other holdback funds be promptly distributed to the investors who are participating in the Receiver's claims process.

The Examiner and OSIC also are not opposed to discontinuing the holdback if the Court is inclined to now distribute the holdback amount either to the Receiver and his professionals or to the Stanford investors.

November 8, 2024

Respectfully submitted,

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COURT-APPOINTED EXAMINER and CHAIR, OFFICIAL STANFORD INVESTORS COMMITTEE

#### **CERTIFICATE OF SERVICE**

On November 8, 2024, I electronically submitted the foregoing document with the clerk of the court of the U.S. District Court, Northern District of Texas, using the electronic case filing system of the court. I hereby certify that I have served all counsel and/or pro se parties of record electronically or by another manner authorized by Federal Rule of Civil Procedure 5(b)(2).

I further certify that on November 8, 2024, 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:

R. Allen Stanford, Pro Se Inmate #35017183 Coleman II USP Post Office Box 1034 Coleman, FL 33521

Certified Mail Return Receipt Req.

/s/ John J. Little