

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

SECURITIES AND EXCHANGE
COMMISSION,

Plaintiff,

v.

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

Defendant.

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Civil Action No. 3:09-CV-298-N

**MAGNESS’S OMNIBUS OBJECTION TO (I) RECEIVER’S MOTION FOR
APPROVAL OF FINAL DISTRIBUTION PLAN AND REQUEST FOR HEARING AND
(II) RECEIVER’S MOTION FOR AUTHORIZATION TO DISPOSE OF RECORDS
AND EQUIPMENT AND BRIEF IN SUPPORT**

GMAG, LLC (“GMAG”), Magness Securities, LLC (“Magness Securities”), Gary D. Magness (“Gary Magness”), and Mango Five Family, Inc., in its Capacity as Trustee of The Gary D. Magness Irrevocable Trust (“GMIT”) (collectively, “Magness”), by and through their undersigned counsel, hereby file this omnibus objection (the “Objection”) to the:

- i. *Receiver’s Motion for Approval of Final Distribution Plan and Request for Hearing* [Dkt. No. 3522] and *Receiver’s Brief in Support of Supplemental Award of Professional Fees and Expenses* [Dkt. No. 3523] (collectively, the “Final Distribution Motion”); and
- ii. *Receiver’s Motion for Authorization to Dispose of Records and Equipment and Brief in Support* [D.I. 3525] (the “Disposal Motion”).

Each of these motions is premature and seek relief that will prejudice Magness, the largest victim of Stanford International Bank’s (“SIB”) Ponzi scheme. The requested relief must be denied unless reserves are established to satisfy Magness’s claims pro rata with amounts that have been, and will be, distributed to other victims. In support of this Objection, Magness has

concurrently filed the *Appendix of Magness in Support of Magness's Omnibus Objection To (I) Receiver's Motion for Approval of Final Distribution Plan and Request for Hearing and (II) Receiver's Motion for Authorization to Dispose of Records and Equipment and Brief In Support* ("App'x.") and respectfully states as follows:

I.
PRELIMINARY STATEMENT¹

In the Final Distribution Motion, the Receiver claims that "the work of the Receivership is complete but for the final distribution of funds and termination of Receivership functions." Final Distribution Motion, p. 5. That statement is false. The Receiver's notices of determination with respect to Magness's claims are pending, the adjudication of which will have—in the Receiver's own words—a "substantial" impact on distributions to creditors.² In the Motion to Uphold, the Receiver seeks to:

- a) reduce the allowed amount of Magness's claims from approximately \$143 million to approximately \$89 million; and
- b) subordinate Magness's claims and *only* provide Magness with pro rata distributions going forward (thus denying Magness any distributions under the prior first through eleventh interim distribution plans).

See Motion to Uphold, p. 5. The facts related to the Receiver's fraudulent transfer litigation against Magness are not relevant here. Magness has paid all amounts owed to the Receiver, including interest and attorneys' fees, and is now merely a victim who has lost over \$132 million.

¹ Capitalized terms used in the Preliminary Statement, but that are not defined, shall have the meanings ascribed them in this Objection.

² *See Receiver's Opposed Motion to Uphold Notices of Determination Regarding Magness Claims and Brief in Support* [Dkt. No. 3483] (the "Motion to Uphold"); *Magness's (I) Objection to Receiver's Opposed Motion to Uphold Notices Of Determination Regarding Magness Claims and Brief in Support and (II) Cross-Motion to Strike and Brief in Support* [Dkt. No. 3495] (the "Objection"); *Receiver's Reply in Support of Receiver's Motion to Uphold Notices of Determination Regarding Magness Claims* [Dkt. No. 3501] (the "Reply"); *Magness's Motion for Leave to File Sur-Reply In Response to Receiver's Reply in Support of Receiver's Motion to Uphold Notices of Determination Regarding Magness Claims* [Dkt. No. 3511].

Magness has filed claims in the receivership for that amount, and the Receiver admits that those claims will substantially impact distributions to creditors:

if the Magness Claim is not subordinated, and if he is allowed retroactive distributions under the first eleven plans, the substantial payment that would be due to Magness— approximately \$36 million—***would erode substantially the total amount of funds available to be distributed to SIB CD investors***

Id., p. 18 (emphasis added). Thus, by his own admission, the Receiver acknowledges that future distributions to SIB creditors depend on: (i) the final “allowed” amount of Magness’s claims; (ii) whether Magness is entitled to receive the interim distributions from which they were previously excluded; and (iii) whether the Receiver can meet his heavy burden and subordinate Magness’s claims. Because the adjudication of the Motion to Uphold may “substantially” affect distributions to creditors, the Final Distribution Motion should be denied.

While the prior orders of this Court established procedures for the determination of claim amounts, those court orders do not grant the Receiver unilateral power to subordinate claims. Only the Court can subordinate claims, and making a “final” distribution prior to the full adjudication of Magness’s claims will violate Magness’s due process rights. The Receiver has not yet met his burden to establish that Magness should be treated differently from other SIB victims or that subordination of Magness’s claims is appropriate. With the premature Final Distribution Motion and Disposal Motion, the Receiver seeks an impermissible back-door ruling on the Motion to Uphold, in violation of Magness’s due process rights, that would render payment of Magness’s claims (after adjudication) impossible. “The fundamental requirement of due process is the opportunity to be heard ‘at a meaningful time and in a meaningful manner.’” *Mathews v. Eldridge*, 424 U.S. 319, 333 (1976) (citations omitted). Here, the Receiver filed his Motion to Uphold in disregard of the claim objection procedures set forth by the Court in its prior *Order* [Dkt. No. 1584]. *See* Objection, pp. 11-12 (cross-motion to strike Motion to Uphold because it was filed in

violation of the *Order* [Dkt. No. 1584]). Now, with the premature Final Distribution Motion, the Receiver seeks to deny Magness a meaningful opportunity to be heard on, and substantively address, the merits of the Motion to Uphold by asking this Court to approve a “final” distribution even though the Motion to Uphold remains pending. Magness will be severely prejudiced and their due process rights violated if all estate cash has gone out the door as part of a final distribution, and the Court denies the Receiver’s Motion to Uphold and rules in favor of Magness. In that scenario, while Magness may have prevailed on the merits of their claims, they will be left without a remedy if there is no money left in the receivership to satisfy those claims.

Magness is not attempting to delay distribution to creditors; rather, Magness seeks to prevent the Receiver from rendering the Motion to Uphold (and Magness’s objection thereto) essentially moot by allowing final distributions to go out before this Court has determined (i) whether Magness’s claims should be subordinated, (ii) the allowed amount of Magness’s claims, and (iii) whether they are entitled to distribution under the prior interim distribution plans. To that end, Magness does not oppose the Final Distribution Motion if the Receiver establishes a sufficient reserve to provide for distributions to Magness when Magness prevails on their claims.

In addition, as part of the pending litigation over the allowance of Magness’s claims and consistent with paragraph 7.2 the *Order* [Dkt. No. 1584], Magness has served discovery on the Receiver seeking documents relevant to disputed facts in the Receiver’s Motion to Uphold, the allowance of which hinges on the Receiver meeting his burden and proving with admissible evidence that subordination of Magness’s claims is warranted. The Receiver has a duty to preserve documents relevant to pending litigation and for that reason the Court should similarly deny the Receiver’s Disposal Motion, at least with respect to documents and records that are relevant to the Magness claims.

II. RELEVANT BACKGROUND

A. The Receiver's Pending Notices of Determination Against Magness

1. *Receiver's Motion to Uphold*

On June 20, 2025, the Receiver filed—in violation of paragraphs 7.p and q of the *Order* [Dkt. No. 1584]—the Motion to Uphold in which the Receiver objected to the proofs of claim filed by Magness and sought to (i) subordinate those claims, and (ii) deny Magness interim distributions they were previously excluded from because they were defendants in litigation brought by the Receiver. For ease of reference, Magness uses the terms “Magness Claim,” “Knduson Claim,” and “St. Anne’s Claim” to refer to the respective claims listed in the chart below, which is taken from page 5 of the Motion to Uphold:

Claim Numbers	Claimant	Claimed Amount	Allowed Claim Amount	Explanation
103-5, 104-3, 105-1, 278-4, 280-6, 281-4	GMAG LLC, Magness Securities LLC, Gary D Magness Irrevoc Trust (the “Magness Claim”)	Original Claim: \$15,953,902 Amended <i>Brown</i> Claim: \$79,000,000 Amended Judgment Claim: \$131,642,967.13	\$79,761,311.00	Allowed claim based on money-in, money-out analysis; claim is subordinated to payment in full of all SIB CD investors; claim not allowed to participate in 1st-11th distribution plans
102-7, 279-2	Gary D Magness Irre Trust, Gary D Magness Irrevoc Trust (the “Knudson Claim”)	\$11,500,000.00	\$9,238,101.40	Allowed claim based on money-in, money-out analysis; claim not allowed to participate in 1st-11th distribution plans
445-5, 465-4	St. Anne's Episcopal School, STSA, LLC (the “St. Anne's Claim”)	\$668,885.00	\$668,885.00	Allowed claim in full; claim not allowed to participate in 1st-11th distribution plans

Motion to Uphold, p. 5.

The Receiver sought the relief requested in the Motion to Uphold because, among other things:

if the Magness Claim is not subordinated, and if he is allowed retroactive distributions under the first eleven plans, the substantial

payment that would be due to Magness—approximately \$36 million—***would erode substantially the total amount of funds available to be distributed to SIB CD investors***

Id., p. 18 (emphasis added). Of course, this argument is illogical and circular since Magness, having paid back all amounts owed, is now the Receivership’s largest victim/investor.

On July 15, 2025, Magness filed the Objection in which Magness argued that:

since Magness is similarly situated to other SIB investors and the Receiver has failed to meet his high burden to establish that equitable subordination is warranted, the Court should deny the Motion and (i) grant Magness an allowed claim in the amount of \$132,760,297.80 on account of the CD/Judgment Claims, an allowed claim in the amount of \$11,500,000 on account of the Knudson Claims, and an allowed claim in the amount of \$668,885 on account of the St. Anne’s Claims, and (ii) require the Receiver to make all past and future interim distribution payments to Magness on account of their allowed claims so that they receive a pro rata recovery equal to other SIB creditors.

Objection, p. 4.

On July 29, 2025, the Receiver filed his Reply, in which he admits that he has not reserved any amounts for distribution on account of Magness’s claims. Reply, p. 14 n. 10 (“Thus, the Receiver has not had any reason to reserve anything for Magness.”). On August 5, 2025, Magness filed *Magness’s Motion for Leave to File Sur-Reply in Response to Receiver’s Reply in Support of Receiver’s Motion to Uphold Notices of Determination Regarding Magness Claims* [Dkt. No. 3511].

2. ***Request for Oral Argument and Discovery***

On August 13, 2025, Magness requested oral argument on the Motion to Uphold due to the numerous disputed issues of fact raised by the Receiver. *See* Dkt. No. 3515. On August 5, 2025, Magness served the Receiver with *Magness’s First Set of Requests for Production of Documents*

Directed to Ralph S. Janvey In His Capacity as Receiver (the “First Document Request”),³ seeking, among other things, documents related to the contested issues of fact raised by the Receiver in the Motion to Uphold. By letter dated August 21, 2025, a copy of which is attached to the App’x as Exhibit 2, the Receiver objected to the First Document Request and stated that “the Receiver is not required to respond and will not respond to them.” The Receiver claims he is not required to respond to Magness’ discovery requests despite the fact that the *Order* [Dkt. No. 1584] allows for discovery upon the Receiver.

On September 6, 2025, Magness requested a meet-and-confer with the Receiver to discuss the discovery dispute. By email dated September 7, 2025, counsel for the Receiver stated that: “We decline your request for a meet and confer for the reasons stated in our August 21 letter.” Magness anticipates filing a motion to compel with the Court to address this discovery dispute.

3. ***“Final” Janvey Report***

On August 20, 2025, the Receiver filed the *Declaration and Report of Receiver Ralph S. Janvey Regarding Stanford Financial Receivership* [Dkt. No. 3521] (“Janvey Report”). In the Janvey Report, the Receiver states that “all litigation involving myself and my team of professionals has concluded.” *Id.* ¶ 2. The Receiver also states that:

With respect to the distribution process, eleven interim distribution plans have been approved and executed, and payments to claimants of over \$1.8 billion have been sent, or are in the process of being sent, based on schedules filed with the Court. Only the Final Distribution Plan and Motion to Dispose of Records and Equipment, which are being filed contemporaneously with this report, remain to be approved.

***Id.* ¶ 4. The Janvey Report makes no mention of the pending Magness’s claims, the Motion to Uphold, or how the Court’s ruling on that motion could affect distributions to creditors.**

³ A copy of the First Document Request is attached to the App’x as Exhibit 1.

4. ***Final Distribution Motion and Disposal Motion***

On August 20, 2025, the Receiver also filed the Disposal Motion and the Final Distribution Motion. In the Final Distribution Motion, the Receiver states that “the work of the Receivership is complete but for the final distribution of funds and termination of Receivership functions. However, the amount of the final distribution to claimants cannot be determined until this Court rules on the Receiver’s request for supplemental award of professional fees and expenses.” Final Distribution Motion, p. 5. Further, in the proposed order attached to the Final Distribution Motion, the Receiver attempts to have the Court approve the following provision:

Distributions under the First through Eleventh Interim Distribution Plans are now closed. The claims of every claimant eligible for distributions under those plans has appeared on a schedule on file with the Court. **No other Investor CD Claimants will receive payments under those plans.**

See [Proposed] Order Approving Receiver’s Final Distribution Plan, Dkt. No. 3522-1, ¶ C.1 (emphasis added). Nowhere in the Final Distribution Motion or the Janvey Report does the Receiver mention: (i) the pending litigation over Magness’s claims; (ii) the fact that he has not obtained any order subordinating Magness’s claims; (iii) that the Receiver has allowed Magness’s claims in the aggregate amount of \$89,668,397.40, *see* Motion to Uphold, p.5; (iv) the impact of allowance of Magness’s claims on creditor distributions; or (v) that Magness is claiming entitlement to distributions they were previously excluded from while defendants (i.e., the first through eleventh interim distributions).

OBJECTION

A. Objection to Final Distribution Motion and Receiver’s Request for Supplemental Award of Professional Fees and Expenses

In the Janvey Report and the Final Distribution Motion, the Receiver fails to inform the Court and parties-in-interest regarding the pending Motion to Uphold and the potential effect on

distributions to creditors if Magness's claims are not subordinated and allowed in their full amounts, and Magness is entitled to receive prior interim distributions. In the Motion to Uphold, the Receiver himself stated that:

if the Magness Claim is not subordinated, and if he is allowed retroactive distributions under the first eleven plans, the substantial payment that would be due to Magness— approximately \$36 million —would erode substantially the total amount of funds available to be distributed to SIB CD investors. . . .

Motion to Uphold, p. 18. Indeed, in the Objection, Magness asks the Court to allow their claims in the full filed amount and find that Magness, like another creditor—ATP Tour, Inc.—is entitled to receive distributions under prior interim distribution plans. *See* Objection, pp. 21-27. Thus, the Receiver himself admits that the Court's ruling on the Motion to Uphold will have a drastic and substantial effect on creditor distributions.

Since the Receiver admits that the adjudication of Magness's claims could have a "substantial" effect on distributions, this Court should not approve a final distribution unless and until there is a **final, non-appealable order** determining (i) the allowed amount of Magness's claims, (ii) whether Magness is entitled to prior interim distributions, and (iii) whether the Receiver has met his heavy burden to subordinate Magness's claims. Since the Motion to Uphold remains pending, the Final Distribution Motion should be denied.

The Final Distribution Motion should also be denied because the Receiver is attempting to use the Final Distribution Motion (and Disposal Motion) to (i) circumvent and cut-off the relief sought by Magness in connection with the pending litigation over the Motion to Uphold, and (ii) avoid needing to meet his heavy burden to establish that subordination of Magness's claims is warranted. Specifically, Magness will be severely prejudiced and their due process rights violated if the Court rules in their favor in connection with the Motion to Uphold but all funds available to satisfy creditor claims have gone out as part of a "final" distribution. The

fundamental requirement of due process is the opportunity to be heard “at a meaningful time and in a meaningful manner.” *Eldridge*, 424 U.S. at 333 (1976). Through the Final Distribution Motion, the Receiver is seeking to have this Court collaterally deny Magness any meaningful remedy even if they prevail on the Motion to Uphold. This inappropriate procedural machination is most apparent in the order proposed by the Receiver in which he seeks to have the Court rule that “Distributions under the First through Eleventh Interim Distribution Plans are now closed . . . No other Investor CD Claimants will receive payments under those plans.” *See [Proposed] Order Approving Receiver’s Final Distribution Plan*, Dkt. No. 3522-1, ¶ C.1. The Receiver proposed that language despite being involved in pending litigation where Magness has claimed an entitled to distributions under prior interim plans and despite the fact that the subordination of Magness’s claims sought by the Receiver has not been litigated or adjudicated. *See e.g.*, Objection, pp. 20-27 (“Magness Is Entitled to Distributions from which They Was Previously Excluded”). If the Court approves the Final Distribution Motion in its current form, Magness will be denied the opportunity to be heard on the Motion to Uphold in a “meaningful” manner because there will be no estate funds left to satisfy Magness’s allowed claims.

While Magness believes that the Final Distribution Motion is premature and should be denied, Magness requests two modifications to any order granting the motion. First, the Receiver should be required to establish a reserve that would provide pro rata distributions to Magness if (i) their claims were allowed (without subordination) in full, and (ii) Magness is entitled to distributions under prior interim distribution plans. The legitimate and practical issue is if no reserve is set aside to satisfy Magness’s claims, the Receiver cannot make Magness whole if Magness ultimately prevails on those claims.

The establishment of a reserve is common practice. *See SEC v. Kenwood Capital Mgmt.*, 630 F. App'x 89, 91 (2d Cir. 2015) (affirming district court's approval of a distribution plan and initial distribution when sufficient funds were "set aside . . . in a reserve fund" for disputed claims). A reserve for disputed claims is typically established to ensure that if a claim is disputed, funds will still be left to pay that claim if and when that claim is allowed. "Disputed claims against a receivership estate do not prevent a court from authorizing a distribution, provided the receiver sets aside funds sufficient to cover those claims." *SEC v. Complete Bus. Sols. Grp., Inc.*, No. 20-CV-81205-RAR, 2024 LX 199711, at *83 (S.D. Fla. Dec. 16, 2024)(citing *SEC v. TCA Fund Mgmt. Grp. Corp.*, No. 20-cv-21964, 2022 WL 3334488, at *17 (S.D. Fla. Aug. 4, 2022), *appeal dismissed*, No. 22-13412, 2024 WL 448385 (11th Cir. Feb. 6, 2024) (citing *Kenwood Cap. Mgmt.*, 630 F. App'x at 91 (affirming a district court's approval of a distribution plan that set aside funds equal to what the receiver concluded was the "maximum possible value" of the claims against the receivership entities)). Courts in this District (and others) have regularly approved such reserves as part of distribution plans. *See e.g., SEC v. AriseBank, et al.*, Case No. 3:18-cv-186 (N.D. Tex. Jan. 23, 2020) [Dkt. No. 116] (approving receiver's motion for approval of proposed distribution plan and disputed claim reserve); *SEC v. McGinn, Smith & Co.*, Case No. 1:10-cv-457 (N.D.N.Y. Oct. 31, 2016) [Dkt. No. 904] (approving receiver's plan of distribution of estate assets with reserve for disputed claims); *SEC v. Illarramendi*, Case No. 11-cv-78 (JBA) (D. Conn. Oct. 27, 2014) [Dkt. No. 941] (approving receiver's motion for approval of distribution plan with disputed claims reserve); *SEC v. KL Group, LLC, et al.*, Case No. 05-cv-80186 (M.D. Fla. Mar. 13, 2007) [Dkt. No. 276] (approving distribution plan and directing receiver to "hold in reserve the Interim Distribution of each Disputed Claim").

“The question of how much a receiver should set aside and reserve for disputed claims is fact dependent and may be subject to modification in the face of changing circumstances.”

Complete Bus. Sols., 2024 LX 199711, at *84 (citations omitted). Here, the Receiver admits that “the total authorized distributions under all plans will be 48.3% of total claim amounts”

Final Distribution Motion, p.4. In connection with the Motion to Uphold, Magness has requested that (i) their claims be allowed and paid in full in their filed amounts (without subordination), and (ii) Magness receive all prior interim distributions from which they were excluded. Accordingly, if Magness prevails in connection with the Motion to Uphold, they will be treated the same as other SIB creditors and be entitled to receive 48.3% of their claims. Accordingly, Magness requests that reserves be established to pay the following amounts pending final resolution of the Motion to Uphold:

Claim	Filed Amount	Reserve (48.3% of Filed Amount)
Magness Claims	Original Claim: \$15,593,902 Amended <i>Brown</i> Claim: \$79,000,000 Judgment Claim: \$132,760,297.83 ⁴	\$64,123,223.85 ⁵
Knudson Claim	\$11,500,000	\$5,554,500.00
St. Anne’s Claim	\$668,885	\$323,071.46

⁴ This amount is different than what was listed in the Amended Proofs of Claim filed by Magness because the Court’s *Order* [Dkt. No. 397] directing the Clerk to release \$1,117,330.70 in attorneys’ fees from the bond posted by Magness to the Receiver was entered after the Amended Proofs of Claim were filed. In footnote 3 of each Amended Proof of Claim, Magness explicitly stated: “The Magness Parties reserve the right to amend the amounts they have paid on account of the Judgment to include any additional attorney’s fees the Receiver may seek, including for any work done in connection with any further appeals.”

⁵ In the amended proofs of claim, Magness asserted (i) a claim based on the Judgment [Case No. 15-401 (the “TUFTA Proceeding”); Docket No. 331] that Magness satisfied to the Receiver, and, in the alternative, (ii) a claim for fraud under *Janvey v. Brown*, 84 F.3d 1286, 1290 (10th Cir. 1996) in the amount of Magness’s original investment with SIB (i.e., \$79 million). Magness is not seeking to recover on both claims; rather, Magness is cognizant that they are only entitled to recover under a single theory. Accordingly, the reserve amount set forth above is based on the Judgment that Magness has satisfied.

Claim	Filed Amount	Reserve (48.3% of Filed Amount)
TOTAL		\$70,000,795.31⁶

To the extent the Final Distribution Motion is granted, Magness proposes that the following language be included:

The Receiver shall reserve no less than \$80,000,000 on account of the Magness Claim, the Knudson Claim and the St. Anne's Claim. The funds in this reserve shall only be released upon further order of the Court.

Second, the Court should strike the provision in the proposed order attached to the Final Distribution Motion that states that distributions “under the First through Eleventh Interim Distribution Plans are now closed. . . . No other Investor CD Claimants will receive payments under those plans.” *See [Proposed] Order Approving Receiver’s Final Distribution Plan*, Dkt. No. 3522-1, ¶ C.1. The Court should also strike any provision that would limit Magness’s ability to receive pro rata distributions. The issue of whether Magness is entitled to distributions under prior interim distribution plans has yet to be adjudicated. Approving the proposed order in its current form would foreclose Magness from receiving interim distributions under the first through eleventh plans even if the Court finds that Magness is entitled to those prior interim distributions. Including that provision in any order approving the Final Distribution Motion would violate Magness’s due process rights.

B. Objection to Receiver’s Request for Supplemental Award of Professional Fees and Expenses

Magness also objects to the Receiver’s request for a supplemental award of professional fees and expenses, including held-back fees, on the grounds that the request is premature. *See*

⁶ The costs of administering the Receivership (i.e., professional fees) while final adjudication of Magness’s claims is pending must be added to this reserve amount.

e.g., Final Distribution Motion, p. 5. On January 1, 2025, the Court previously entered its *Order* [Dkt. No. 3454] denying the Receiver’s Motion for Supplemental Award of Professional Fees and Expenses [Dkt No. 3423], in which the Receiver requested the Court release the portion of the professional fees and expenses that have been held back and that the Court lift the holdback beginning with the 82nd fee application. In denying that prior motion, the Court stated that:

While much has happened since this Receivership began in 2009, it is still too soon to determine the full circumstances of the receivership because the Receiver anticipates that “distributions and wind-up activities may extend through 2029.” Receiver’s Mot. Br. 42. The Court therefore finds that a determination on the holdback is not yet timely and denies the motion; the Court will consider the questions of releasing the holdback and fee application compensation at the end of the receivership.

Order [Dkt. No. 3454], pp. 1-2.

If the Receiver is taken at his word, he was able to miraculously expedite the conclusion of “distributions and wind-up activities” by almost four years. The Receiver does not explain how he was able to achieve that feat. In fact, the Receiver was only able to “expedite” adjudication of Magness’s claims by completely disregarding the claim objection procedures set forth by the Court in its *Order* [Dkt. No. 1584]. *See* Objection, pp. 11-12 (cross-motion to strike Motion to Uphold because it was filed in violation of the *Order* [Dkt. No. 1584]).

More importantly, the Receivership is not at an end. The Receiver continues to object to Magness’s claims and he has not yet met his heavy burden to establish that subordination of Magness’s claims is appropriate. The Motion to Uphold remains pending and the determination of the allowed amount and treatment of Magness’s claims will have a substantial impact on distribution to creditors. Motion to Uphold, p. 18. That alone is sufficient to deny the Receiver’s request for supplemental fees. *See Order* [Dkt. No. 3454], pp. 1-2.

The Receiver has also admitted that he has not reserved for the allowance of Magness's claims. Reply, p. 14 n. 10 ("Thus, the Receiver has not had any reason to reserve anything for Magness."). Therefore, to the extent Magness's claims are allowed and there is no money left in the receivership estate, Magness should not be foreclosed from seeking redress from the Receiver, including seeking distributions from funds that have been reserved and/or heldback for professional fees and expenses. *See* 65 AM. JUR. 2D RECEIVERS § 191 (2025) ("Given the duty of a receiver to see to it that each creditor has opportunity to enforce claim, and to give them reasonable aid in doing so, a receiver who, with knowledge of claim, nonetheless pays out all receivership funds, may incur personal responsibility for payment of the claim.").⁷

C. Objection to Disposal Motion

In the Disposal Motion, the Receiver states that:

The Receiver requests that the Court order any party wishing to access or copy these records to make a request in writing no later than sixty days following entry of an order approving this motion and reimburse the Receivership Estate for any fees and expenses incurred in responding to and processing such a request. Any such request should (1) identify the specific documents and records for which access or copying is sought and (2) specifically explain why the request is reasonable and necessary.

Disposal Motion, p. 3.

As noted above, in connection with the Motion to Uphold, Magness served the Receiver with their First Document Request, to which the Receiver has refused to respond. While Magness anticipates filing a motion to compel in connection with the First Document Request, Magness also files this Objection to the Disposal Motion to ensure that any documents that may be responsive to Magness's First Document Request are preserved. As demonstrated by the First

⁷ Magness expressly reserves the right to claw back any payments made to professionals or other creditors if the Receiver fails to establish a sufficient reserve for Magness's claims.

Document Request itself, Magness is seeking documents related to facts and contested facts raised by the Receiver himself in connection with the Motion to Uphold. These documents are germane to the Motion to Uphold and the Receiver should not be permitted to dispose of documents that are relevant to pending litigation. *See Disedare v. Brumfield*, No. 22-2680,, at *6 (E.D. La. Sep. 1, 2023)(“The duty to preserve material evidence arises not only during litigation, but also during the period before litigation when a party knew or should have known that litigation was imminent.”)(citing *Condrey v. SunTrust Bank of Georgia*, 431 F.3d 191, 203 (5th Cir. 2005); *Consol. Alum. Corp. v. Alcoa, Inc.*, 244 F.R.D. 335, 339 (M.D. La. 2006) (noting that a party must preserve materials that it reasonably knows or can foresee would be material to a legal or potential legal action) (citing *Zubulake v. UBS Warburg, LLC*, 220 F.R.D. 212, 216 (S.D.N.Y. 2003)). “The duty to preserve material evidence arises not only during litigation, but also during the period before litigation when a party knew or should have known that litigation was imminent.” *Id.* (citing *Guzman v. Jones*, 804 F.3d 707, 713 (5th Cir. 2015) (citing *Rimkus*, 688 F. Supp. 2d at 612)). The Disposal Motion should be denied as to any material and documents relevant to the Motion to Uphold.

III. CONCLUSION

Magness respectfully requests that the Court enter an order (i) denying the Final Distribution Motion and Disposal Motion, and (ii) awarding such other and further relief as is just and proper.

Respectfully submitted,

Dated: September 10, 2025

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CERTIFICATE OF SERVICE

I do hereby certify that I served a copy of the Objection on all counsel and other entities receiving notice via this Court's ECF System at the time of filing of this motion on September 10, 2025.

By: /s/ Michael Summerhill