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

SECURITIES AND EXCHANGE COMMISSION, Plaintiff, v. STANFORD INTERNATIONAL BANK, LTD., ET AL., Defendants.	§ § § § § § § § § §	Case No. 3:09-CV-00298-N

RECEIVER'S REPLY IN SUPPORT OF
MOTION FOR APPROVAL OF FINAL DISTRIBUTION PLAN [DKT. 3522]

SUMMARY OF ARGUMENT

Only Magness purports to object to the Receiver's proposed final distribution of 8.0% or approximately $375 million to *eligible* Investor CD Claimants. But Magness's "objection" is little more than a rehashing of meritless arguments contained in his opposition to the Receiver's Motion to Uphold. Magness has failed to establish that he is entitled to substantially reduce the proposed final distribution through his request for an inflated "reserve," while he relitigates legal and factual issues already conclusively determined through years of litigation. The Court should overrule Magness's objection and approve the Receiver's proposed 8.0% distribution.

As for the Receiver's proposed supplemental fee award, the Motion for Final Distribution establishes that the "results obtained" by the Receiver's professionals justify the payment of the held-back reasonable and necessary fees and expenses contained in the Receiver's request. None of the three objectors to the Receiver's supplemental request—the SEC, the Examiner, or Magness—offers admissible evidence or case law that calls into question the reasonableness of the rates charged or amounts requested in the Receiver's Motion for Final Distribution. Indeed, none of the objectors engages on the *Johnson* factors, other relevant authorities, or the evidence in the sixteen-year record. The Examiner offers nothing new of substance, other than one addition to his collection of methods by which he urges the Court to arbitrarily reduce substantially, or eliminate entirely, the Receiver's requested fees and expenses.[1] The SEC's two-paragraph response likewise adds nothing to its unmeritorious arguments asserted previously. Magness's objections to the supplemental request are not substantive. His assertions that the Receiver's request is premature and that no money should be paid out of the Receivership Estate have no basis in fact or law. And his threats to sue the Receiver, the Receiver's professionals, and the eligible Investor CD

[1] As noted by the Examiner, three of the four investor representatives of OSIC did not agree that OSIC should be objecting to the Receiver's request. Dkt. 3534 at 1 n.1.

Claimants if he does not get the result he wants with respect to the Receiver's notices of determination are both legally frivolous and irrelevant to the Motion for Final Distribution.

The objectors' inability to grapple with the merits is telling. More than fifteen years ago, the SEC and Examiner requested—and the Court imposed—a holdback based on the then-existing fact that the "eventual size of the Receivership"—i.e. the *results obtained*—were uncertain. Dkt. 994 at 2. Despite the fact that the results obtained are now certain, undisputed, and far greater than anyone anticipated in the early months of the Receivership, the SEC and Examiner seek to impose a significant and completely arbitrary retroactive reduction in the compensation for the Receiver and his professionals. The Court should look to the case law and the evidence in the record, not the objectors' whims, and approve the Receiver's request in full.[2]

ARGUMENT & AUTHORITIES

I. The Court should approve the Receiver's request to make a Final Distribution of 8.0%, or approximately $375 million, to eligible Investor CD Claimants, overruling Magness's "objections."

Only Magness objected to the Receiver's proposed Final Distribution, but he does not advance any meritorious reason for the Court to deny the proposed Final Distribution. Magness's "objection" is his vehicle to file yet another sur-reply in opposition to the Receiver's Motion to Uphold. That motion is fully briefed, and it is for the Court to decide what portion of the funds available for the proposed Final Distribution, if any, will be directed to Magness. *See* Dkts. 3483, 3501.[3]

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[2] No objector challenges the Receiver's request that the holdback be discontinued and not applied to the remaining fee applications.

[3] If the Receiver's determination is overruled, and if Magness's claims were allowed to participate in the First through Eleventh Interim Distribution Plans, then based on the Receiver's allowed claim amounts, Magness would receive approximately $36.15 million from the Receivership for those Plans. After that payment, only approximately $339 million would be available to distribute to all eligible Investor CD Claimants—Magness included—in the Final

For this reason, there is no merit to the request by Magness that a "reserve" be set aside for him. Magness's concern about a "reserve" likely reflects his insecurity about the merits of his opposition to the Receiver's Motion to Uphold and a concern that the final distribution will go forward while he pursues yet another unmeritorious appeal. But if the Receiver's determination is upheld and the Final Distribution approved, Magness's appropriate remedy lies with asking this Court and then the Fifth Circuit for a stay pending his appeal—he should not be allowed to avoid the heavy burden of obtaining a stay by getting the same relief, through a request for an unnecessary reserve. *See Nken v. Holder*, 556 U.S. 418, 427 (2009) (noting "a stay is an intrusion into the ordinary processes of administration and judicial review" and "not a matter of right, even if irreparable injury might otherwise result to the appellant." (citation modified)). To obtain a stay, Magness would have the burden to make "a strong showing that he is likely to succeed on the merits," *id.* at 434 (citation omitted), a burden he is unlikely to carry. He would also have to post adequate security to the Receiver and to the beneficiaries of the Final Distribution to ensure that they are compensated for any delay in payment that would be occasioned by his unsuccessful appeal. *See In re Texas Equip. Co., Inc.*, 283 B.R. 222, 230 (Bankr. N.D. Tex. 2002) (calculating bond for stay pending appeal of bankruptcy order to include the time value of the property and any other costs or expenses borne by the non-appellant as a result of the time delay caused by the appeal, among others).

Furthermore, Magness fails to offer any relevant authority to support his request for a reserve. None of the cases Magness cites addresses the situation here. *See* Dkt. 3537 at 11.

Distribution, which would result in an approximately 7% distribution rather than an 8.0% distribution. (The allowed claim amount total for the Final Distribution plan already includes allowed claim amounts for Magness's Knudson and St. Anne's Claims because the Receiver determined those claims would receive distributions under the Final Distribution plan. *See, e.g.*, Dkt. 3483 at 5.)

Instead, those cases[4] involve the establishment of a reserve at the *outset* of a receivership's distribution process when numerous disputed claims remain to be resolved. *See id.* As Magness's cited authorities indicate, a reserve is a tool that a receiver can elect to use, with a court's approval, to set aside funds where multiple parties assert competing rights to such funds and where the receiver fears that there is a possibility of the funds being used before the dispute is resolved. *See, e.g.*, *SEC v. GPB Cap. Holdings, LLC*, No. 21-CV-583 (MKB), 2025 WL 1043654, at *6 (E.D.N.Y. Apr. 8, 2025) (approving an initial disbursement plan in which receiver sought approval to establish cash reserves to "account for certain unresolved contingent liabilities arising from ongoing ancillary actions," "fund litigation," and "pay fees and expenses in respect of the wind-down and termination of the Receivership Entities" (citation omitted)); *see also SEC v. Schooler*, No. 3:12-cv-2164-GPC-JMA, 2019 WL 2501881, at *1–2 (S.D. Cal. June 17, 2019) (court approving second interim distribution on a pro-rata basis, while ordering the remaining cash to be held in reserve "to cover operating expenses, administrative expenses, and 'a reasonable contingency reserve'" (citation omitted)). This Receivership is not at its outset—it is at its end.

Parties with speculative or frivolous claims like Magness should not permitted to hold hostage tens of millions in Receivership funds. *See Gordon v. Dadante*, No. 1:05-CV-2726, 2010 WL 148131, at *6 (N.D. Ohio Jan. 11, 2010) (H & R Block's security interest in receivership funds was speculative because H & R Block's claim to the funds was still pending before FINRA). That is especially true here, because the entire premise of Magness's position is that he has a right to relitigate legal and factual issues already conclusively decided against him after years of litigation.

[4] The Receiver assumes that Magness miscited the *SEC v. KL Group* filing and that Magness intended to rely on *SEC v. KL Group, LLC*, No. 9:05-cv-80186-KLR (S.D. Fla Mar. 13, 2007), Dkt. 267.

II. The Court should approve the Receiver's supplemental request in full.

None of the objectors to the Receiver's supplemental request for professionals' fees and expenses provide a legal or factual basis for denying the Receiver's request. Instead of challenging the merits of the Receiver's request, the objectors resort to offering arbitrarily selected alternatives to essentially transform the holdback into a retroactive cut, or in the case of Magness, requesting that the Receivership grind to a halt in conjunction with frivolous threats to sue everyone—including the Investor CD Claimants—if he does not get his way. The Court should approve the Receiver's request in full.

A. Neither the law nor the facts support the Examiner's arbitrary proposed alternatives to the Receiver's requested relief.

Although the Court has discretion to determine a fee award, that discretion must be tied to the relevant legal standard and the evidence in the record. To state the obvious, discretion exercised without regard to the law or facts would be arbitrary. But the Examiner does not offer the Court any factual basis or legal standard that would support his proposed alternatives to full payment of the amounts requested.

The evidence in this case is that the results obtained are more than $2.8 billion of inflows, over $2.1 billion available for compensation to eligible Investor CD Claimants, all at a professional fee/expense to recovery ratio of barely 20%, even including the Receiver's request for supplemental award. The Examiner told this Court in September of 2009 that he was "not suggesting we cut the Receiver's fees by 20 percent," instead only that the Court "hold" fees "for a later date when we can take a harder look at the records, at the benefits and the results obtained." Dkt. 777 at 21:6–11. The Examiner's expectations at the time aligned with the Court's own that "the eventual size of the receivership estate will be smaller than initially hoped or expected." Dkt. 994 at 2. But now that the benefits are indisputable and the results have been obtained, the

Examiner has done a one-eighty. He is now arguing for a significant retroactive cut in the professionals' compensation, *despite* the results obtained. Neither the Examiner (or the SEC for that matter) has marshaled case law or evidence to show this Court that these undisputed results are insufficient under *Johnson* to pay for the work that obtained them. What these objectors have instead shown is that their standard has shifted from "too soon to pay" in 2009 and 2014, to simply "too much to pay" in 2025. But "too much" by what standard? If the undisputed results obtained are even now too meager to warrant payment for the work that created them, then what results would these objectors have deemed sufficient? We do not know, because in sixteen years, these objectors have never offered alternative numbers, much less a rationale for how such phantom numbers could be based on relevant case law or evidence, as opposed to their personal opinions.

The Examiner's shifting approach to the holdback is further illustrated by his current suggestion that the Court award the holdback only with respect to time spent on the Bank *and* Magness litigation. *See* Dkt. 3534 at 3–4 & n.4. The Examiner offers no case support for his argument that the professionals' other time spent on sixteen years of mandatory and appropriate work—time which this Court described as "spent gainfully and billed reasonably," Dkt. 1471 at 7—is undeserving of compensation at the approved and already heavily discounted rates. And further illustrating the arbitrariness of the Examiner's approach, the Examiner less than a year ago suggested that time spent *only* on the Bank litigation was worthy of consideration for payment of the holdback. *See* Dkt. 3434 at 11. Why the Magness litigation did not meet the Examiner's standard last year, but made the cut this year, is entirely unclear and unexplained by the Examiner.

The Examiner's perfunctorily re-urging of fifteen-year-old objections to the first five fee applications also illustrates that the Examiner's opposition is not tied to evidence or the *Johnson* factor of "results obtained" in light of the record as it stands in 2025. The evidence before the

Court—the detailed fee applications and the declaration under Rule 702 of Receiver's lead counsel—establishes that the professionals' work, including work accounted for in the first five fee applications, "was reasonable, appropriate, and necessary to the administration of the Receivership Estate." Dkt. 3524 at 7-8, Ex. A, Sadler Dec. at ¶ 6. The Examiner's arguments and personal opinions to the contrary are not evidence.

The Examiner's evidence-free objections, which were premised on arguments the Receiver was spending too much time and resources on work that had not yet paid off, do not provide any basis to deny the Receiver's motion, and his thin citations to case law in his 15-year old objections fare no better. For example, the Examiner's objection to the Receiver's fourth interim fee application compared the Stanford Receivership unfavorably to the case of *In re Bennett Funding Group, Inc.*, 213 B.R. 227 (Bankr. N.D.N.Y. 1997). *See* Dkt. 940 at 3–4. The Examiner argued the Receiver's requested fees should not be awarded because a similar recovery for the Stanford investors was *at that time* uncertain. *Id.* at 5–6. But in 2009, work in the *Bennett Funding* case was at an end, and the Stanford Receivership was just beginning, so comparing "results obtained" between the two cases in 2009 made very little sense. Re-urging that same comparison now, however, presents an entirely different picture, and one that does not support the Examiner's opposition. Setting aside the several significant differences in size, scope and complexity between the two cases, the court in *Bennett Funding* observed that the trustee had achieved a result—claimants recovering 40% of their losses—that "*few if any could* [*ever*] *have anticipated*." Dkt. 940 at 3 (emphasis added) (quoting Dkt. 941 at 53). Recoveries here are more than 48%, exceeding those in *Bennett*—results which are far beyond the Examiner's, and everyone else's, expectations at the beginning of the Receivership. The results obtained through the diligent work of the

Receiver and his professionals have rendered these recycled objections irrelevant in light of the evidence in the record.

The remainder of the Examiner's objection merely incorporates the Examiner's prior briefing, asking the Court to deny the Receiver's request for the reasons therein. Dkt. 3534 at 2 (citing Dkt. 3534-1, Exs. A–B). But the Receiver has already explained that the Examiner's swings-and-misses and who-gets-credit approach is untethered from reality and is inconsistent with the *Johnson* factors. Dkt. 3441 at 13–16. "Results obtained" means all of the results obtained, not just some of them cherry-picked at the whim of the Examiner.

The Examiner expressed the view that the Receiver's request that the professionals be compensated for the significant delay in payment of the amounts held back from their reasonable fees and expenses is "simply offensive". Dkt 3434 at 18. But like the Examiner's other arguments, "simply offensive" is not based on case law or the evidence in the record—it is simply an opinion. Nor has the Examiner in his most recent filing expanded on his previous argument that the reason professionals should receive no adjustment for delay in payment is because investor payments are not similarly enhanced. This argument has no basis in any legal authority. It bears repeating that compensation to victims of a Ponzi scheme, and compensation to the professionals whose work created the funds to compensate those victims are governed by entirely different legal standards.

Finally, the Examiner continues to insist that the Receiver's counsel receive no compensation for preparation of the 5th through 82nd fee applications, even though the law is clear that this work is a "service rendered to the estate." *Baker Botts L.L.P. v. ASARCO LLC*, 576 U.S. 121, 132 (2015) (citation modified). And he persists in this argument even though he has been paid over $750,000 to review those applications and would have been paid even more had the

Receiver's professional firms submitted hundreds of individual fee applications over the past sixteen years.

For the reasons stated, the Court should overrule the Examiner's objections to the Receiver's supplemental request.

B. The Court should reject the SEC's objections.

The SEC filed a response that only incorporates its prior briefing. Dkt. 3535 (citing Dkt. 3435). The Receiver has already addressed the SEC's previous arguments, explaining why they are arbitrary and do not comport with *Johnson*. Dkt. 3441. The SEC's objection provides no basis upon which the Court should reject the Receiver's request. Notably, although the SEC's prior objection included a cursory challenge to the Receiver's then-filed evidence, neither the SEC nor the Examiner has challenged the Receiver's evidence concerning the rates or fees of the Receiver's professionals filed in support of the Final Distribution Motion. The SEC and Examiner could have retained an insolvency proceedings or attorneys' fees expert to provide Rule 702 expert opinions on the quality of the professionals' work or the propriety of the rates, staffing, or hours, but they did not. The only evidence, including Rule 702 evidence, before the Court for consideration is the evidence filed by the Receiver, including the August 20, 2025 Declaration of Kevin M. Sadler. *See* Dkt. 3524. Neither the SEC nor the Examiner have objected to, or even mentioned, that evidence. The Court should overrule the SEC's objections and award the Receiver's requested relief in full.

C. Magness's desire to grind the Receivership to a halt and threats to sue everyone—investor victims included—are no reason to deny the supplemental request.

Magness's objection to the Receiver's supplemental request similarly does not address the merits of the request, but instead is yet another sur-reply in support of a different motion that is already fully briefed. *See* Dkts. 3483, 3501. His arguments over a "reserve" are meritless for the

reasons set forth above. *See supra* pp. 3–5. Magness's claim that the Receiver is somehow trying to rush the Court into granting the Final Distribution Motion before ruling on the Receiver's Motion to Uphold is pure nonsense. The Court, not the Receiver, decides when and in what sequence to take up fully briefed matters on the Court's docket. Magness also provides no authority for his argument that the held-back fees should be held in reserve for Magness. The Receiver will make whatever distribution is appropriate based on the Court's resolution of the Receiver's determination of Magness's claim, *see* supra note 3; that is an entirely separate question from payment of the Receivership's administrative expenses. Finally, the "right" that Magness claims to be reserving—to sue the Receiver, his professionals, and the eligible Investor CD claimants—does not exist. The Court should reject Magness's objection to the Receiver's supplemental request.

CONCLUSION & PRAYER

For the foregoing reasons, the Receiver respectfully requests that the Court overrule the objections of the SEC, the Examiner, and Magness and grant the Receiver's requested relief in his Motion for Approval of Final Distribution Plan. The Receiver also requests such other and further relief to which he may be justly entitled.

Dated: September 23, 2025

Respectfully submitted,

BAKER BOTTS L.L.P.

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CERTIFICATE OF SERVICE

I certify that on September 23, 2025, 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 "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 September 23, 2025, 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:

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