No. 25-11338

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

SECURITIES AND EXCHANGE COMMISSION,
Plaintiff-Appellee

v.

STANFORD INTERNATIONAL BANK, LIMITED
Defendant

v.

RALPH S. JANVEY, RECEIVER; BAKER BOTTS, L.L.P.; FTI CONSULTING, INCORPORATED; HOLLAND AND KNIGHT, LLP; FINANCIAL INDUSTRY TECHNICAL SERVICES, INCORPORATED; BDO USA, L.L.P.; KRAGE & JANVEY, LLP; OSLER, HOSKIN & HARCOURT, LLP; PIERPOINT COMMUNICATIONS, INCORPORATED; H. MALCOM LOVETT, JR.,
Appellants

On Appeal from the United States District Court
for the Northern District of Texas, Dallas Division, No. 3:09-cv-00298-N

BRIEF ON THE MERITS OF APPELLANT, FTI CONSULTING, INC.

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CERTIFICATE OF INTERESTED PERSONS

The undersigned counsel of record certifies that the following listed persons and entities as described in the fourth sentence of Rule 28.2.1 have an interest in the outcome of this case. These representations are made in order that the Judges of this Court may evaluate possible disqualification or recusal:

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Dated: March 23, 2026

/s/ Kimberly A. Chojnacki
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STATEMENT REGARDING ORAL ARGUMENT

FTI Consulting, Inc. ("FTI") agrees with the statement regarding oral argument as set forth in Appellants' Opening Brief.

TABLE OF CONTENTS

Page

Certificate of Interested Persons i

Statement Regarding Oral Argument iii

Table of Contents iv

Table of Authorities vi

Jurisdictional Statement 1

Statement of Issues 2

Introduction 3

Statement of The Case 5

Summary of Argument 5

Standard of Review 9

Argument and Authorities 10

I. The Reasonableness of FTI's Fees and Expenses Is Undisputed, and the "Results Obtained" Did Not Warrant the District Court's Downward Adjustment of the FTI Holdback. 10

II. The District Court's Downward Adjustment of the FTI Holdback Was In Error. 12

A. The District Court's Downward Adjustment of the FTI Holdback Is a Punitive Measure with No Legally Defensible Basis. 12

B. Even if Equity Were a Proper Consideration, Which It Is Not, Equitable Considerations Do Not Favor a Downward Adjustment of the Held Back Fees. . 16

C. Even if Otherwise Sound, the District Court's Downward Adjustment of the Holdback Should Not Extend to the FTI Holdback. 17

III. The SEC, OSIC, and Examiner's Objections Fail to Articulate How the "Results Obtained" Warrant a Downward Adjustment or Refusal of an Upward, CPI-Based Adjustment. 18

Conclusion 22

Certificate of Compliance 23

Certificate of Service 23

TABLE OF AUTHORITIES

Page(s)

Cases

Cruz v. Maverick County,
957 F.3d 563 (5th Cir. 2020).....9

Latvian Shipping Co. v. Baltic Shipping Co.,
99 F.3d 690 (5th Cir. 1996).....9

NLRB v. Creative Vision Resources, LLC,
783 F.3d 293 (5th Cir. 2015).....9

Johnson v. Ga. Highway Express, Inc.,
488 F.2d 714 (5th Cir. 1974)..... 10, 20

Matter of H.L.S. Energy Co., Inc.,
151 F.3d 434 (5th Cir.1998).....15

People Who Care v. Rockford Bd. of Educ.,
90 F.3d 1307 (7th Cir. 1996).....20

SEC v. Funding Res. Grp.,
2004 WL 2583636 (N.D. Tex. Nov. 12, 2004) 13

SEC v. Goren,
272 F. Supp. 2d 202 (E.D.N.Y. 2003).....21

SEC v. W.L. Moody & Co., Bankers (Unincorporated),
374 F.Supp. 465 (S.D. Tex. 1974)..... 13, 14

Smith & Fuller, P.A. v. Cooper Tire & Rubber Co.,
685 F.3d 486 (5th Cir. 2012)..... 10, 20

United States v. Lipscomb,
299 F.3d 303 (5th Cir. 2002).....9

United States v. Petters,
No. 08-5348, 2021 WL 3883392 (D. Minn. 2021) 4, 6, 11

Rules

FED. R. APP. P. 32(a)(5) 26

FED. R. APP. P. 32(a)(6) 26

FED. R. APP. P. 32 (a)(7)(B) 26

FED. R. APP. P. 32(f).....26

JURISDICTIONAL STATEMENT

FTI agrees with the Jurisdictional Statement as set forth in Appellants' Opening Brief.

STATEMENT OF ISSUES

Whether the district court erred by failing to award reasonable fees and expenses to FTI for more than sixteen years' worth of work by:

1. Solely on the basis of arbitrary "equitable" considerations unmoored from the established *Johnson* factors, downward adjusting FTI's fees and expenses, despite (a) already having withheld a portion of FTI's fees and expenses pending ascertainment of the "results obtained;" (b) historically significant "results obtained;" (c) established precedent; and (d) undisputed record evidence.
2. Failing to approve a CPI-based adjustment to FTI's withheld fees and expenses in light of the multi-year delay in payment, contrary to established Fifth Circuit precedent.

INTRODUCTION

FTI agrees with the entirety of the Opening Brief filed on behalf of all Appellants, and it joins that Brief. Pursuant to Federal Rule of Appellate Procedure 28(i), it submits this separate Brief on the Merits to address nuanced issues that are particular to the role of FTI in the underlying Receivership proceedings.

The Receiver retained FTI as it possesses multidisciplinary skillsets and expertise in corporate finance and restructuring, forensic investigations, and financial and accounting consulting in litigation. Specifically, FTI was retained to help capture and safeguard electronic accounting and other records, and to conduct forensic accounting analyses (including cash tracing) to identify sources and uses of funds and asset flows across the Stanford Entities. ROA.6368–71. As part of those efforts, FTI performed unique and specialized services such as 1) identification and forensic extraction of data from a very large number of electronic systems; 2) building data linkages across internal accounting, treasury/payment, and other systems; 3) analytic support for identifying bank accounts and assets, valuation, and recovery litigation support; and 4) support for claims/distribution analytics where needed. ROA.6369–71, 77094–95, 99095. FTI's work supported the Receivership, counsel, and government entities (including the Department of Justice, SEC, and FBI) in understanding the enterprise data, tracing funds, and supporting enforcement/recovery efforts. ROA.6371.

There can be no dispute that FTI's role was critical to the identification and recovery of the $2.18 billion in aggregate being returned to the defrauded investors. For context as to the significance of the "results obtained" in this Receivership, despite early projections that potentially less than $100 million would be recovered, 47% of the initial $5 billion invested in the fraudulent scheme being returned to the investors. *See, e.g.*, *United States v. Petters*, No. 08-5348, 2021 WL 3883392, at *3 (D. Minn. 2021) (a recovery "north of [] 30 percent" placed the receivership "among the very top outcomes achieved in large fraud cases" and "far exceed[ed] the expectations that existed at the beginning of th[e] case.").

Of course, the ultimate recovery of over $2.82 billion in the Receivership is not the product of one piece of litigation or one firm's work. FTI's work, however, was critically important to the Receivership. FTI provided foundational data capture, forensic reconstruction, and cash tracing, which rendered ultimate recoveries and distributions feasible, efficient, and defensible. And yet, FTI's held-back fees and expenses—totaling approximately $8 million—is merely 0.14% of the entire corpus of funds recovered in the Receivership, an amount the district court nevertheless deprived it from recovering in full for its sixteen years of service to the Receivership and investors.

STATEMENT OF THE CASE

To avoid unnecessary duplication, FTI incorporates by reference—as if fully set forth in this Brief on the Merits—the Statement of the Case contained in Appellants' Opening Brief.

SUMMARY OF ARGUMENT

FTI Consulting, Inc. is a court-authorized Receivership professional retained by the Receiver to perform specialized forensic accounting, data analytics, and technology services central to the administration, recovery, and distribution work of the Receivership Estate. Significantly, by locating, tracing, and valuing assets available for recovery for the benefit of investors, FTI played a crucial role in the recovery of $2.18 billion in assets for redistribution to the investors.

It is undisputed by both the district court and the Parties that FTI's fees – which were already at discounted rates – were reasonable and its work was diligent. ROA.101829–30. The sole outstanding issue is, in light of the substantial recovery in this matter—that is, the "results obtained"—whether there is some other legally sound justification for a downward adjustment of FTI's otherwise reasonable fees. There is no such justification, and there is no evidence in the record to support one.

In reality, settled law warrants FTI being compensated in full for its work. In agreeing to its role in this Receivership, as opposed to other, paying engagements in the private sector, FTI risked its work going uncompensated. But not because the

district court might reduce FTI's recovery of funds held-back pending an arbitrary determination of whether "equity" warranted compensation to FTI. Rather, FTI risked its work going uncompensated *if* FTI was unable to successfully locate, trace, and account for assets available for recovery such that the "results obtained" warranted compensation in full. Such was not the case here.

Here, the "results obtained" are anomalous not for their dearth, but for their expanse. *See, e.g.*, *Petters*, No. 08-5348, 2021 WL 3883392, at *3 (a recovery "north of [] 30 percent" placed the receivership "among the very top outcomes achieved in large fraud cases" and "far exceed[ed] the expectations that existed at the beginning of th[e] case."). The Receiver, with FTI's critical assistance, was able to recover 47% of the defrauded funds. ROA.99588. Under the well-known and oft articulated *Johnson* factors, it strains reason to suggest such a significant "results obtained" warrants anything other than full compensation to FTI (alongside the Receiver and other professionals).

Yet that is precisely what the district court purported to determine by making a 50% downward adjustment of FTI's held back fees and expenses—representing sixteen years of difficult work, already at a discounted rate—despite the crucial role it played in achieving the significant favorable outcome. Perhaps forgetting FTI was already working at a significantly discounted rate in this Receivership, the district

court further discounted FTI's rates in making the 50% downward adjustment to the FTI Holdback.

Unmoored from any cognizable legal standards, the district court's order instead focuses on principles of equity. In fact, the district court conflates FTI's full recovery for its work as an afront to the potential recovery by the investors. But, the district court was precedent-bound to apply the *Johnson* factors to ascertain the propriety of release of the held-back funds. By instead relying on arbitrarily-imposed considerations of equity, the district court erred.

Significantly, neither the SEC nor the OSIC and Examiner provide any meaningful basis on which the district court could rely to support its downward adjustment of FTI's fees and expenses. For example, the SEC's effort to relitigate the reasonableness of the professionals' hourly rates misses the mark for two reasons. First, the district court already determined FTI's rates were reasonable, more than eighty times throughout the course of the Receivership. Second, the market rates SEC points to as a comparator are for legal counsel, with far simpler receiverships (in one instance involving a fraud run off of a single spreadsheet), using rates inapposite to the role FTI played in the Receivership or for the "results obtained." Likewise, SEC, OSIC, and the Examiner's separate focus on equitable considerations is as fatally flawed as the district court's ostensible reliance on it. Significantly, neither the SEC nor the OSIC or Examiner were able to articulate a

cogent reason why the historically significant "results obtained" warranted a 50% downward adjustment of the held-back fees. In reality, there is no legally sound rationale.

For the reasons articulated in Appellants' Primary Brief and for the additional reasons set forth below, therefore, FTI seeks release of FTI's held-back fees and expenses the district court already found reasonable in the its interim fee approvals (the "FTI Holdback") and a CPI-based adjustment of the FTI Holdback given the years long delay in their payment.

STANDARD OF REVIEW

While decisions regarding a professional's compensation are reviewed for abuse of discretion,. *Cruz v. Maverick County*, 957 F.3d 563, 574 (5th Cir. 2020), an abuse of discretion occurs when

- the district court applies incorrect legal standards, *Latvian Shipping Co. v. Baltic Shipping Co.*, 99 F.3d 690, 692 (5th Cir. 1996);
- considers the wrong factors when exercising discretion, *United States v. Lipscomb*, 299 F.3d 303, 339 (5th Cir. 2002); or
- makes decisions without reference to the evidence, *NLRB v. Creative Vision Resources, LLC*, 783 F.3d 293, 298 (5th Cir. 2015).

FTI submits that the district court committed an abuse of discretion in the rulings at issue on this appeal.

ARGUMENT AND AUTHORITIES

I. The Reasonableness of FTI's Fees and Expenses Is Undisputed, and the "Results Obtained" Did Not Warrant the District Court's Downward Adjustment of the FTI Holdback.

Neither the district court, nor the SEC, the OSIC, or the Examiner, have taken the position that the FTI Holdback represents an unreasonable fee. ROA.104853–61, 104773–779. To the contrary, the thrust of their objections (which will be addressed below) are that full payment of the FTI Holdback to FTI would be inequitable to the investors. *Id.* Such is an improper consideration when determining a reasonable fee due and owing to a professional in a receivership. *See generally Johnson v. Ga. Highway Express, Inc.*, 488 F.2d 714, 717–19 (5th Cir. 1974).

The process for determination of a reasonable fee is well known, and yet worth revisiting in this case. The initial calculation is the lodestar, *i.e.*, multiplication of the hours worked by the rate charged. *Smith & Fuller, P.A. v. Cooper Tire & Rubber Co.*, 685 F.3d 486, 490 (5th Cir. 2012). While a lodestar is **presumed reasonable**, *id.,* and it may only be adjusted upward or downward within the framework of the *Johnson* factors. Here, the district court erred in its analysis.

In this appeal, the "results obtained" factor is predominant in the district court's order because the district court made it the dispositive factor. Although the district court concluded in every single fee application involving FTI's fees and expenses that those fees were reasonable, *see, e.g.,* ROA.101829–30, 104292–95,

the district court nevertheless "held back" 10 to 35% of those fees until the "results obtained" by the Receivership were ascertained, *see, e.g.,* ROA.19231–34, 106552.

The "results obtained" are clear and decisive: of the $5 billion in invested funds, the Receiver, and his professionals—with FTI helming the asset location, tracing, and forensic analysis—recovered $2.82 billion, *i.e.*, 47% of the defrauded funds. ROA.99588. In the context of fraud schemes of similar size, this is a historically significant outcome. *See, e.g.*, *Petters*, No. 08-5348, 2021 WL 3883392, at *3 (a recovery "north of [] 30 percent" placed the receivership "among the very top outcomes achieved in large fraud cases" and "far exceed[ed] the expectations that existed at the beginning of th[e] case."). Significantly, despite its outsized role in the Receivership, the FTI Holdback accounts for merely 0.14% of the recovered funds.

Rather than simply release the FTI Holdback in light of the historically significant outcome, the district court made a *downward* adjustment to the FTI Holdback, releasing only 50% of the FTI Holdback as "equitable based on the evidence." ROA.105520–21. The result is unfounded under the facts or the applicable law.[1]

[1] To avoid duplicative briefing, FTI incorporates by reference the entirety of Appellants' Opening Brief and, specifically in this context, defers to the briefing in Appellants' Opening Brief at Section A, which bears on the legal standards for upward or downward adjustments of fee awards based on the *Johnson* factors.

II. The District Court's Downward Adjustment of the FTI Holdback Was In Error.

A. The District Court's Downward Adjustment of the FTI Holdback Is a Punitive Measure with No Legally Defensible Basis.

The FTI Holdback is not a "success fee." It is not a reward for a job well done. It is withheld compensation for work FTI completed over the course of sixteen years (at an already discounted rate) pending the outcome of the "results obtained."

Indeed, whereas the FTI Holdback should have been a mechanism to preserve Receivership assets pending the "results obtained" to ensure the work of the Receivership did not swallow its purpose, the district court's downward adjustment of the FTI Holdback *despite* historically significant "results obtained" amounts to a retroactive penalty on the basis of "equity." Despite its recognition of the *Johnson* factors, the district court nevertheless determined a downward "adjustment of the Receiver's fees . . . will mitigate the harm the victims suffered," whereas "the Receiver and his professionals have collected on a significant percentage of the total amount recovered in the form of interim fees." ROA. 105520–21.

In other words, because the investors would not be made whole (and had to wait "fifteen years to recover their losses"), the district court penalized the Receiver and his professionals. Even when extrapolated to account for the prior compensation paid to FTI (and others), that compensation reflects less than 8% of the investors' total recovery. *See* ROA.99554 & n.5. Courts in this Circuit have routinely held such

a percentage to be reasonable and supportable. *Megafund*, 2008 WL 2839998, at *2 (in granting fee application, noting that receiver recovered nearly $3.1 million in cash and other assets and requested fees represented 22.4% of total recovery); *Funding Res.*, 2004 WL 2583636, at *2 (highlighting that total requested fees and expenses amounted to less than 30% of total recovery of $5 million in cash and assets), *rec. adopted*, 2004 WL 2964992 (N.D. Tex. Dec. 20, 2004); *W.L. Moody*, 374 F.Supp. at 481 (holding that "[b]ecause of the efforts of Receiver, this estate can well afford to reasonably compensate Receiver and his attorney"), *aff'd*, 519 F.2d 1087 (5th Cir. 1975).

Yet the district court's basis for the downward adjustment also misses the reality of receiverships: a receiver is rarely (if ever) able to obtain a full recovery of every ill-begotten dollar. Even if a receiver were able to do so, investors still could not be made completely whole because a portion of the recovered dollars necessarily must be set aside to pay for the expenses of the receivership, *i.e.*, the cost of the work necessary to recover those dollars for the investors' benefit. Even then, investors must always wait for the receivership process to conclude.

Of course, not a single court in this circuit or elsewhere has held that either of these realities—the length of the receivership or balance of interests between the receiver, professionals, and investors—bear on whether a receiver and its professionals should be penalized with a downward adjustment of their otherwise

(concededly) reasonable fees. *See, e.g.*, ROA.105519–22 (citing no authority in support of its "equitable" downward adjustment of the holdback based on the time span of the receivership or "mitigat[ion] [of] the harm the victims suffered").

The district court also alludes to the notion that a receiver and its professionals should not be paid at commercial rates, nor should the holdback be subject to a CPI-adjustment, unless the investors are made whole, ROA.105522 ("*see also SEC v. W.L. Moody & Co.*, 374 F. Supp. 465 (S.D. Tex. 1974) (paying commercially acceptable rates only when creditors had been paid *in full*)."), but the authority it cites is inapposite.[2]

Simply stated, *W.L. Moody* does not stand for the proposition that paying a receiver or its professionals "commercially acceptable rates" is appropriate "only when creditors have been paid in full." *See* ROA.105522 (citing *W.L. Moody* with the parenthetical of "paying commercially acceptable rates only when creditors had been paid *in full*" (emphasis in original)). To the contrary, *W.L. Moody* reiterates the general rule that "[w]here, as here, the estate contains sufficient resources to compensate the Receiver and his attorney at commercially acceptable rates for services of considerable benefit to defendant, it would be unreasonable not to do so."

[2] Again, to avoid duplication, FTI defers to the briefing in Appellants' Opening Brief wherein *In re Lawler*, a case the district court relied on to deny a CPI-based adjustment to the holdback, is distinguished.

W.L. Moody, 374 F.Supp. at 487. In short, *W.L. Moody* is aligned with public policy considerations supporting the ***full*** compensation of receivership professionals at commercially acceptable rates, which further incentivizes those professionals to continue accepting receivership work, which—in this case—increased the recovered funds from less than $100 million to over $2.8 billion. *See H.L.S. Energy*, 151 F.3d at 437 (noting the "conceptual justification" for priority payments to trustees in the bankruptcy context—which is analogous to receiverships—is that "creditors must pay for those expenses necessary to produce the distribution to which they are entitled").

Likewise, here, the Receivership Estate contains sufficient resources ($2.82 billion) to compensate the Receiver and his professionals (including FTI) at commercially acceptable rates (which, here, were reduced rates) for services of considerable benefit (*i.e.*, FTI's asset location, tracing, and valuation) to the Receivership and investors. Accordingly, to the extent *W.L. Moody* supports any outcome at all, it supports both a full release of the FTI Holdback and an adjustment to ensure FTI is compensated at commercially acceptable rates.

B. Even if Equity Were a Proper Consideration, Which It Is Not, Equitable Considerations Do Not Favor a Downward Adjustment of the Held Back Fees.

Assuming *arguendo* that equity plays any part in application of the *Johnson* factors (which it does not), equity ultimately favors the Receiver and his professionals.

Indeed, FTI is a non-legal professional performing the work that cannot be done by judges, attorneys, or traditional officers of the court. Rather, FTI's work involves (among other nuanced tasks) the forensic analysis of accounting records, asset tracing, and asset valuation. ROA.6368–71, 77094–95, 99095. FTI's work was critical to the Receiver's ability to locate and recover the $2.82 billion that now comprises the Receivership Estate. The district court's conclusion that FTI is not entitled to full recompense for its work over the course of sixteen years—at an already discounted rate—disincentivizes other non-legal professional service firms (like FTI) from agreeing to perform this type of work in receiverships going forward. As this Court appreciates, receiverships are becoming more and more necessary in a world where assets are easily dispersed far and wide, making FTI's role ever more critical in these receiverships. Insofar as public policy supports the notion of a receivership structure with the purpose of recovering defrauded funds and returning them to defrauded investors, public policy also supports the full compensation of

non-legal professional service firms—like FTI—without which receiverships cannot have the success like this one obtained.

C. *Even if Otherwise Sound, the District Court's Downward Adjustment of the Holdback Should Not Extend to the FTI Holdback.*

The district court's order is devoid of any differentiation between the Receiver's fees or those of other professionals. *See generally* ROA.105519–23. As a result, the district court's downward adjustment of the holdback on the basis of "equity" also fails to differentiate between those professionals and the criticality of each's role in the "results obtained." When the "results obtained" are accounted for on a professional-by-professional basis, a downward adjustment is unwarranted for the FTI Holdback.

FTI served as the effective right hand of the Receiver. First, FTI operated in the forensic investigation, tracing, and analysis of funds. ROA6370–71. FTI also undertook the role of the treasury arm of the Receiver, managing Estate funds, reconciling accounts, reviewing, and approving critical payables, managing vendor relationships, providing cash forecasting for the Receivership, and overseeing the closure of the accounting books. ROA.6370. Simply put, it would have been impossible for money to be found by, flow into, be retained by, or effectively distributed by the Estate without the extensive works conducted by FTI. This case

relied entirely on the location and possession of financial assets, and FTI was charged with overseeing the management and movement of such assets.

Suffice to say, FTI's multidisciplinary expertise was critical to the "results obtained," in which case there is no reasonable basis under the *Johnson* factors (or equitable considerations) for a downward adjustment of the FTI Holdback. Under any analysis, whether properly tied to the *Johnson* factors or erroneously moored in principles of equity, the district court's order is in error. It should be reversed and rendered such that the FTI Holdback is released in full.[3]

III. The SEC, OSIC, and Examiner's Objections Fail to Articulate How the "Results Obtained" Warrant a Downward Adjustment or Refusal of a CPI-Based Adjustment.[4]

The SEC objects on four bases: (a) the Receiver and his professionals' fees "exceed the prevailing market rate;" (b) the "anticipated result" does not warrant release of the holdback; and (c) equity weighs against release of the holdback. ROA.104853–61. None of the SEC's objections support the district court's conclusion and order.

[3] FTI relies on the additional briefing in the Opening Brief relating to the propriety of a CPI-based adjustment.

[4] Insofar as the error complained of is the district court's error in the underlying order, ROA.105519–23, FTI's arguments focus on that Order. However, because the SEC is Appellee in this case, in an abundance of caution, FTI addresses its objections here.

The SEC's focus on market rates for "primary counsel" to attack the reasonableness of the lodestar is inapposite insofar as it extends to any objection to the reasonableness of FTI's rates for the FTI Holdback. First, in over eighty fee applications, the SEC never objected to FTI's rates or time spent on the basis of reasonableness. *See* ROA.104853–61. Unsurprisingly, therefore, the district court concluded FTI's fees (among others') were reasonable under the *Johnson* factors. *See, e.g.,* ROA.101829–30. Accordingly, the reasonableness of FTI's rates were subsumed in the district court's conclusion and ought no longer be subject to revisionist consideration.

Second, FTI is not a legal services firm; it is a subject matter expert on cash and asset tracing, forensic accounting, and data analytics, services that were critical to the "results obtained" in this Receivership. Accordingly, a comparison of FTI's rates to those of "primary counsel" for attorneys in other receiverships is not a like-for-like analysis. In fact, SEC's objection on this basis glosses over the fact, broadly stating "the Receivership professionals' rates exceed the prevailing market rate," before pointing to rates exclusively for legal services, while failing to cite or even infer a "market rate" for any specialist like FTI. ROA.104853–56. Again, the district court repeatedly found FTI's rates for the work performed in the FTI Holdback were reasonable under the *Johnson* factors, a conclusion the SEC never lodged an objection to over the course of more than eighty fee applications. *See, e.g.,*

ROA.95798–827, 95930–31, 96689–90. Accordingly, FTI's rates are presumed reasonable. *Smith & Fuller*, 685 F.3d at 490.

SEC's "results obtained" objection likewise lacks merit. Despite the Receiver and his professionals successfully recovering $2.8 billion of the defrauded funds, SEC implies (without legal authority) that release of the FTI Holdback based on the "results obtained" warrants allocating appropriate success credits by and between the various professionals based on the merit of their proposed fee structures. *See* ROA.104857–58 (arguing OSIC's retention of contingency fee counsel ought to be rewarded over more traditional hourly rate models because of "the risk of non-payment undertaken by contingency fee counsel).

As implicitly reflected by the dearth of legal authority in support, such an approach runs afoul of the *Johnson* factors. The SEC's proposed approach engenders the very kind of arbitrary fee determinations the *Johnson* factor framework was designed to avoid. As noted by the Seventh Circuit (referring to them as the *Hensly* factors), "[t]he record ought to assure us that the district court did not eyeball the fee request and cut it down by an arbitrary percentage because it seemed excessive to the court." *People Who Care v. Rockford Bd. of Educ.*, 90 F.3d 1307, 1314 (7th Cir. 1996) (internal quotations omitted).

Finally, SEC's focus on equity likewise is unsupported by the applicable standard of the *Johnson* factor framework. *See generally Johnson*, 488 F.2d at 717–

19.[5] For the reasons articulated in Section II(a-b), *supra*, considerations of equity have no bearing on whether an upward or downward adjustment of the FTI Holdback is warranted.[6]

In sum, though SEC's objections are narrowly focused on the Receiver's counsel's rates and fee structures, its objections—if relied on by the trial court in support of its order—inordinately impacts FTI. Indeed, SEC's objections are misplaced as they relate to FTI and the FTI Holdback and, to the extent this Court is inclined to credit them at all, they should not extend as support for affirmation of the district court's downward adjustment of the FTI Holdback.

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[5] Notably, release of the full FTI Holdback to FTI would not be a "windfall" to FTI. *See* ROA.104858 (quoting *SEC v. Goren*, 272 F. Supp. 2d 202, 206 (E.D.N.Y. 2003) for the proposition that "[c]ourts should take particular care to scrutinize fee applications 'to avoid even the appearance of a windfall'"). To the contrary, full release of the FTI Holdback would be release of funds for services rendered by FTI over the course of sixteen years, for work critical to the ability of the Receivership to recover $2.82 billion in investor funds.

[6] OSIC and the Examiner objected to full release of the holdback—including the FTI Holdback—on this same basis. ROA.104775 ("Given their respective charges from this Court, the Examiner and OSIC respectfully suggest – for the reasons set forth in their prior briefing – that the Court should exercise its broad discretion and decline to award the supplemental fees sought by the Receiver so that the amounts that would be used to pay those supplemental fees can instead be distributed by the Receiver to the Stanford investors who were the victims in this scheme."). FTI's response to the SEC's objection on this basis is equally applicable to OSIC's and the Examiner's objection as well.

CONCLUSION

Accordingly, for the foregoing reasons, this Court should reverse and render in favor of Appellant, FTI Consulting, Inc., effecting the release of the entirety of the FTI Holdback together with a CPI-based adjustment.

Respectfully submitted,

By: */s/ Kimberly A. Chojnacki*

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CERTIFICATE OF SERVICE

I hereby certify a true and correct copy of the foregoing document has been served on all counsel of record via the CM/ECF filing system pursuant to the Federal Rules of Civil Procedure on March 23, 2026.

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CERTIFICATE OF COMPLIANCE

1. This brief complies with the type-volume limitation of Fed. R. App. P. 32(a)(7)(B) because this brief contains 4,341 words, excluding the parts of the brief exempted by Fed. R. App. P. 32(f).

2. This brief complies with the typeface requirements of Fed. R. App. P. 32(a)(5) and the typestyle requirements of Fed. R. App. P. 32(a)(6) because this brief has been prepared in a proportionally spaced typeface using Microsoft Office Word in 14-point Times New Roman font. This brief was scanned for viruses and none were present.

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