No. 25-11338

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; PIERPONT COMMUNICATIONS, INCORPORATED; H. MALCOLM LOVETT, JR.,

Appellants.

On Appeal from the U.S. District Court for the Northern District of Texas, Dallas Division, NO. 3:09-CV-298

BRIEF OF APPELLEE SECURITIES AND EXCHANGE COMMISSION

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CERTIFICATE OF INTERESTED PERSONS

SEC v. Stanford, No. 25-11338

The undersigned counsel of record certifies that the following listed persons and entities as described in the fourth sentence of Fifth Circuit 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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STATEMENT REGARDING ORAL ARGUMENT

The Securities and Exchange Commission does not believe that oral argument is necessary, but is ready to present argument if the Court determines that it would assist in the resolution of this appeal.

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BRIEF OF APPELLEE SECURITIES AND EXCHANGE COMMISSION

INTRODUCTION

This appeal arises from a receivership created in 2009 to marshal and distribute assets to investors injured by Robert Allen Stanford's massive Ponzi scheme. Throughout this long-running proceeding, the Receiver and his professionals have received regular payment of fees and costs, collecting

approximately 80% of the amounts they requested for a total of more than $170 million. ROA.100428. Early in the case, the district court determined that payment of a percentage of the requested amounts should be held back until the results of the receiver's efforts to marshal estate assets became apparent. As the case is coming to a close, investors have recovered just under 50% of their losses, and the district court determined to award payment of half of this "holdback" (approximately $15 million). The professionals appeal from that order, arguing that they were entitled to the entire holdback, an adjustment of $10.3 million for up to fifteen years of inflation, and almost $2.1 million in fees for the preparation of fee applications (including an inflation adjustment). But their arguments are premised on an unduly narrow view of the record and misconstrue applicable law.

Appellants' primary argument is that the presumptively reasonable amount of fees, or lodestar, was established earlier in the receivership and constrained the district court's discretion to deny the award of *any* of that amount. But that ignores the fact that the Commission and a court-appointed examiner repeatedly raised concerns about the amount and reasonableness of the fee requests early in the case. Only the existence of the holdback enabled the case to move forward without resolving those concerns. The district court reserved the question of whether it was reasonable to award the Receiver and his professionals the held-back fees until

this time, and it was therefore well within the court's discretion to take account of all of the unresolved questions and concerns in the order under review.

Appellants' unduly narrow view of the issues also dooms their arguments that the district court failed to conduct an appropriate analysis under this Court's caselaw, particularly the requirement that a court consider the "results obtained" in awarding fees. The Appellants focus solely on the top-line dollar amount recovered. But the district court also reasonably took account of the context in which that amount was recovered and its impact on the receivership as a whole. More than fifteen years after investors' losses occurred, the total amount recovered, while commendable, still represented only about 47% of those losses, and much of that amount was recovered by *different* professionals.

Appellants similarly fail to establish any abuse of discretion in the denial of an inflation adjustment to the amounts awarded to the Receiver and his professionals. The district court's order appointing the receiver does not require such an adjustment. And the bulk of the fees and costs requested by the Receiver were regularly paid during the course of the receivership, after the applications were approved. Thus, the district court reasonably determined that no inflation adjustment for the small portion held back was appropriate where investors received no such adjustment on the much larger portion of their claims that went unpaid for years. The district court also reasonably denied the Receiver's request

to recover the fees incurred from his counsel's preparation of fee applications—which he failed to press for over a decade—because such payment was inconsistent with procedures established before he was appointed.

The district court's order should be affirmed.

COUNTERSTATEMENT OF JURISDICTION

The district court had jurisdiction over this Securities and Exchange Commission civil law enforcement action pursuant to Section 22(a) of the Securities Act of 1933, 15 U.S.C. 77v(a), Section 27 of the Securities Exchange Act of 1934, 15 U.S.C. 78aa, Section 43 of the Investment Company Act of 1940, 15 U.S.C. 80a-43, and Section 214 of the Investment Advisers Act of 1940, 15 U.S.C. 80b-14. The court appointed a receiver on February 16, 2009. And on October 8, 2025, the court entered an order approving the Receiver's final distribution plan. That order granted in part and denied in part the Receiver's Request for Supplemental Award of Professional Fees and Expenses. ROA.105522-23. The Receiver and various professionals he employs (together, the "Appellants") filed a joint notice of appeal on December 5, 2025, appealing the denial of portions of their request. ROA.106548-49.

While the order here is neither final nor appealable under 28 U.S.C. 1292(a)(2),[1] the Commission agrees with the Receiver that the collateral order doctrine applies and this Court has jurisdiction. See *Netsphere, Inc. v. Baron*, 799 F.3d 327, 335-36 (5th Cir. 2015) (recognizing that the collateral order doctrine may support jurisdiction if a fee award would be effectively unrecoverable in the event of later reversal, such as where the award would be distributed to thousands of claimants).

COUNTERSTATEMENT OF THE ISSUES

1. Whether the district court reasonably concluded that a partial award of held back fees was appropriate where defrauded investors waited more than fifteen years for meaningful recoveries, those investors will almost certainly recover less than 50% of their losses, and the Appellants were not solely responsible for the results obtained in the receivership.

2. Whether the district court acted within its discretion in denying an adjustment to the amount awarded based on the Consumer Price Index where the defrauded investors received no such adjustment to their claims and there was no basis for the adjustment in the receivership order.

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[1] 28 U.S.C. 1291 provides appellate courts with jurisdiction of appeals from "final decisions of the district courts of the United States." 28 U.S.C. 1291. 28 U.S.C. 1292(a)(2) provides appellate courts with jurisdiction of appeals from certain interlocutory orders related to receivers. 28 U.S.C. 1292(a)(2).

3. Whether the district court acted within its discretion in denying Baker Botts compensation for the preparation of the receivership's fifth through eighty-second fee applications where such an award would be contrary to the procedures established in the Commission's Billing Instructions for Receivers in Civil Actions Commenced by the U.S. Securities and Exchange Commission ("SEC 2008 Billing Instructions"), which have been in effect since before the Receiver was appointed by the court.

COUNTERSTATEMENT OF THE CASE

A. Facts

Robert Allen Stanford perpetrated "a massive Ponzi scheme," *United States v. Stanford*, 805 F.3d 557, 564 (5th Cir. 2015), that defrauded thousands of investors out of billions of dollars through the offer and sale of "certificates of deposit" in Stanford International Bank, Ltd. Stanford claimed that the bank had a globally diversified portfolio that generated historical double-digit returns. But in reality, Stanford misappropriated investor funds, leaving very few liquid assets available when the Commission brought its case against him. *See generally Chadbourne & Parke L.L.P. v. Troice*, 571 U.S. 377 (2014); *Stanford*, 805 F.3d at 563-65.[2]

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[2] The Court has addressed the misconduct underlying the Stanford enforcement action in numerous other cases. *See, e.g.*, *Janvey v. Democratic*

(Footnote continued on next page…)

1. The Commission brought a civil enforcement action against Stanford and the district court subsequently appointed a receiver.

In February 2009, the Commission brought an action based on this scheme, alleging that Stanford violated several provisions of the securities laws. ROA.552-76. In 2012, Stanford was criminally convicted for the same misconduct that formed the basis of the Commission's civil action. In 2025, the district court entered final judgment against Stanford in the civil action, granting injunctive and monetary relief, and this Court recently affirmed. *See* ROA.101168-173; *SEC v. Stanford*, No. 25-10387, 2026 WL 897004, at *1 (5th Cir. Apr. 1, 2026).

At the time it filed its complaint, the Commission also moved the district court for an order appointing a receiver to preserve the Stanford entities' resources and marshal their assets for distribution to defrauded investors. The court granted the Commission's motion and appointed Ralph Janvey as receiver on February 16, 2009. ROA.648-658. The order appointing Janvey provided that the district court assumed exclusive jurisdiction of the receivership assets and that the Receiver was granted the full power of an equity receiver under common law, as well as the powers enumerated in the order. ROA.648-649. The order also provided that the

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Senatorial Campaign Comm., Inc., 712 F.3d 185 (5th Cir. 2013); *Roland v. Green*, 675 F.3d 503 (5th Cir. 2012), *aff'd sub nom. Chadbourne & Parke L.L.P. v. Troice*, 571 U.S. 377 (2014); *Janvey v. Alguire*, 647 F.3d 585 (5th Cir. 2011); *Janvey v. Adams*, 588 F.3d 831 (5th Cir. 2009).

Receiver was directed and authorized to "[f]ile with this Court requests for approval of reasonable fees to be paid to the Receiver and any person or entity retained by him and interim and final accountings for any reasonable expenses incurred and paid pursuant to order of this Court." ROA.653. On April 20, 2009, the district court appointed John J. Little to serve as Examiner, directing him to convey to the court such information as he determined would be helpful in considering the interests of the defrauded investors. ROA.5216-5219.

On September 10, 2009, certain Stanford investors moved to lift an injunction—entered as part of the order appointing the Receiver—to allow them to file an involuntary bankruptcy petition against one or more of the Stanford entities. ROA.12770-93. After briefing and a hearing, the movants, the Receiver, the Commission, and the Examiner agreed to resolve the issues in the motion through the establishment of the Official Stanford Investors Committee ("OSIC"). ROA.25018-27. Among other things, OSIC's mission was to establish cooperation and coordination between the Receiver and the Stanford investors with respect to efforts to identify and prosecute certain potential legal claims against third parties. The Examiner was appointed to serve as OSIC's chairperson.

2. The early results of the receivership were not promising, but, at significant cost and after years of little return to defrauded investors, the final results exceeded initial expectations.

Through the first fifteen years of the receivership, and ten interim distributions approved by the district court, the investors defrauded by Stanford recovered only about 15% of their losses. *See* ROA.96410-21; ROA.97860-69. Not until the eleventh distribution beginning in 2024 did that percentage increase to just over 40%. ROA.99485-95. Throughout that time, the Receiver and his professionals received periodic payment of a substantial portion of fees and expenses claimed. *See, e.g.*, ROA.99485-95.

The infusion of assets late in the receivership was primarily the result of recoveries obtained from litigation (the "Bank Litigation") against five banks—The Toronto-Dominion Bank, Societe Generale Private Banking (Suisse) S.A., Trustmark National Bank, Independent Bank f/k/a Bank of Houston, and HSBC Bank PLC—that was settled for a total of about $1.6 billion. *See* ROA.99394-410; ROA.97860-69. The Bank Litigation began as a putative class action filed by individual investors in Harris County state court. *See Rotstain et al. v. Trustmark National Bank et al.*, No. 09-2384 (N.D. Tex. Nov. 13, 2009), Dkt. 1. The case was later removed to the Southern District of Texas and then transferred to the court overseeing the Commission civil enforcement action in late 2009. *Rotstain,*

Dkt. 7. OSIC intervened in December 2012. *Rotstain*, Dkt. 129. The Receiver was not involved in the Bank Litigation at that time. Rather, the Receiver assigned his claims against the banks to OSIC, and OSIC pursued claims on behalf of the Receiver and all the Stanford investors, ROA.100430, engaging counsel to represent it in the Bank Litigation on a contingent fee basis.[3] ROA.100408.

After class certification was denied in November 2017, OSIC, along with the individual plaintiffs who had filed the original lawsuit, became the lead plaintiffs. ROA.100409. In this capacity, OSIC's lawyers conducted extensive factual and expert discovery. ROA.100409. It was not until 2020 that the Receiver, Baker Botts, and certain other receivership professionals began to participate in a meaningful way in the Bank Litigation by assisting in summary judgment, pre-trial proceedings, and settlement efforts. ROA. 100409-10; ROA.100431; Br. 11.

B. Procedural History

1. The Commission and the Examiner raised concerns about the Receiver's and his professionals' fees from the beginning of the case.

The Receiver filed his initial application for reimbursement of fees on May 15, 2009. ROA.6340-90. In it, he recognized that "the final results to be obtained for investors and other claimants [we]re still unknown" and represented that the

[3] The Commission did not object to the fees of this counsel both because of the substantial investor recoveries they achieved and the risk of non-payment undertaken by contingency fee counsel.

requested fees had been discounted "by more than 20% in the aggregate[.]" ROA.6344. Both the Commission and the Examiner filed responses to the Receiver's application.

The Commission acknowledged that the receivership presented complex challenges but observed that the fee application was not supported by the type of records necessary to analyze whether the requested amount was reasonable, such as sufficiently specific information about how many attorneys worked on certain tasks, the specific rate charged for performing those tasks, and how many hours were spent to accomplish them. ROA.7233-7242. As a result, the Commission explained that there was a significant risk that an excessive number of attorneys and other professionals were used to perform certain tasks, and that some tasks may have been performed at higher than necessary rates. ROA.7238-39. The Commission also emphasized that the receivership estate was "in dire financial straits." ROA.7233. As a result, the Commission argued that "an equitable way to balance the Receiver teams' diligence with the unfortunate reality of the size of the Receivership Estate is to permit the Receiver to resubmit at a later date (once the ultimate financial condition of the estate has been determined) an application for payment of a segment of the 20% reduced from the current application." ROA.7240.

Noting that the "uniform reaction of the Investors to the [fee application] has been shock and outrage[,]" ROA.7409, the Examiner agreed that the fee application did not provide the court with sufficient information to permit careful scrutiny. ROA.7409. And the Examiner supported the Commission's request for a holdback of fees until the results obtained were clear. ROA.7410.

Before the district court ruled on these objections, the Receiver filed a second interim fee application. ROA.10716-58. Again, the Commission and the Examiner raised concerns about the sufficiency of the information provided in the application. ROA.12154; ROA.12167-86. The Commission also explained that the application included improper billing practices like "lumping"[4] and objected to the $62,000 that was sought for preparing contested fee applications. ROA.12160-62. As a result, the Commission again requested that 20% of such fees be held back. ROA.12165-66. The Commission also objected to the Receiver's recovery of fees incurred in the pursuit of an ultimately unsuccessful effort to clawback funds from innocent investors. The Commission argued that the effort to recover

[4] Lumping, or block billing, is a billing practice in which an attorney might describe all the tasks worked on in a day by a particular timekeeper, without breaking the time into increments assignable to specific tasks. ROA.12160.

investors' principal, in particular, lacked a basis in law or equity and limited estate funds should not be expended litigating those claims.[5] ROA.12157-58.

On September 10, 2009, the court heard argument on the motions. The court granted in part and denied in part the Receiver's first and second fee applications, imposing a 20% holdback, ROA.106702, until "all the dust settles." ROA.106710. The court also directed the Receiver to submit additional evidence in support of fees and expenses for Financial Industry Technical Services, Inc. ("FITS"), and in support of travel expenses for Ernst & Young ("EY") and FTI Forensic and Litigation Consulting, Inc. ("FTI"). ROA.106702.

The Receiver filed his third (ROA.13317-60) and fourth (ROA.17180-221) interim fee applications, and the Commission (ROA.14739-48; ROA.18083-89) and the Examiner (ROA.14873-900; ROA.17839-59) again raised concerns that they lacked sufficient documentation, continued to seek recovery of fees for ill-advised litigation against investors, and inappropriately sought reimbursement for

[5] This Court ultimately agreed with the Commission. *Janvey v. Adams*, 588 F.3d 831, 835 (5th Cir. 2009). In June 2009, the Receiver filed claims against several hundred innocent Stanford investors who had proceeds from Stanford CDs in their customer accounts, characterizing these investors as "relief defendants" and seeking to continue the freeze of their accounts and to recover certain funds therein. This Court held that the investors had sufficient ownership interests in the CD proceeds to preclude their treatment as relief defendants. Therefore, the district court lacked authority to freeze the assets, and the Receiver's claims should have been denied in full. *Id.* at 835.

the cost of preparing fee applications. As directed by the court during the September 10, 2009 hearing, the Receiver also filed additional evidence in support of his request for fees and expenses of FITS, EY, and FTI. ROA.15029-56. But the Commission and the Examiner continued to object that this additional evidence was still deficient and that the requested fees and expenses remained excessive. ROA.16528-34; ROA.16545-59.

Despite these objections, the district court granted the Receiver's third and fourth fee applications in part, finding that "in light of the amount involved and the results obtained, a fee reduction is appropriate at this time." ROA.19231-34 (internal quotation marks omitted). The court imposed a holdback of 35% of the fees and expenses requested in the third and fourth fee applications and the court reserved "any ruling on objections to those amounts until a later date." ROA.19233. The court also authorized the Receiver to make payments to FITS, FTI, and EY in the amount of 80% of the requested fees and expenses, noting that the Receiver could apply for the remaining 20% at a later date. ROA.19233.

Neither the Commission nor the Examiner filed formal objections to the Receiver's fifth fee application (ROA.20654-701), but both expressed concerns about it. *See* ROA.20657 n.1 ("the SEC, Examiner, and Receiver have agreed to an additional hold back . . . in respect of certain objections to the work of FTI Consulting that will be reserved until the Receiver seeks an award of the amount

held back.") Those concerns were addressed by increasing the holdback percentage from 20% to 22% for that application. *See* ROA.22178 (increasing the holdback "in light of the S.E.C. and the Examiner's objections to some of [the Receiver's] professionals' fees").

Beginning with the fee application for September and October 2010, the court approved the Receiver's request for full payment of expenses without any holdback, but continued to impose a 20% holdback as to professional fees and FTI's costs for hosting the receivership data. *See* ROA.38233. The Receiver also began submitting detailed fee application drafts to the Commission and the Examiner for their review and comment before submission of such applications to the court. ROA.38237-38. Together with the continued holdback, this generally enabled the Commission and the Examiner to avoid having to file objections.[6] *See generally* ROA.38232-43. The continued existence of the holdback also allowed the Receiver and his professionals to be paid most of their fees despite the persistence of the Commission's and the Examiner's serious concerns. And it allowed the district court to ultimately evaluate these concerns with more complete

[6] Throughout the receivership, the Receiver periodically moved for and was granted increases in the hourly rates at which he and his professionals would be compensated, as well as certain changes to the amount of the holdback. *See* ROA.38232-43; ROA.38615; ROA.60235-43; ROA.61395; ROA.89935-43; ROA.90473.

information at the conclusion of the case. *See, e.g.*, ROA.22335-36 (proposed Agreed Order Regarding Receiver's [Sixth Interim] Fee Application noting that the "SEC and Examiner may file objections to any award of the hold back amounts when the Receiver requests that award from the Court.").

2. The district court deferred ruling on the propriety of the award of the held-back funds until the results of the receivership were clear.

On April 18, 2014, the Receiver moved to release a portion of the holdback, seeking one-third of the fees held back by the court for the period from February 17, 2009, through October 31, 2013. ROA.53657-730. The Commission and the Examiner opposed this request. The Commission argued that it was premature because it was not yet possible to evaluate the Receiver's overall success, and that, to the extent it was possible to evaluate results at the time, such results did not justify additional payments to the Receiver or his professionals. ROA.54477-85. The Examiner argued that the release of the holdback would put at risk the process by which the Receiver, the Examiner, and the Commission had processed the previous twenty-four fee applications—essentially, the existence of the holdback allowed the Commission and the Examiner to forgo formal objections to fee applications despite significant concerns. ROA.54375. On July 2, 2014, the court denied the Receiver's motion as premature. ROA.396.

On October 11, 2024, the Receiver again moved for a supplemental award of professional fees and expenses, seeking: (1) the release of the holdback in the amount of $29.5 million; (2) a Consumer Price Index-based upward adjustment on those fees and expenses held back in the amount of $10.3 million; and (3) fees to compensate Baker Botts for preparing fee applications for the past fifteen years, together with a CPI-based adjustment of those fees, in the amount of about $2.07 million. ROA.99542-91.

The Examiner and OSIC objected, observing that every dollar paid to professionals—here, $41.9 million in total—was a dollar that would be unavailable for distribution to Stanford investors. ROA.100397-423. Moreover, the Receiver's argument that the success of the receivership justified the award of the full holdback was undermined by the fact that the success primarily resulted from the settlements in the Bank Litigation. Citing the Receiver's limited role in that litigation, they argued that any award of the holdback related to the settlement funds should be limited to the Receiver's and his professionals' fees and expenses for work on that case. ROA.100408-10. They also urged the court to consider that, over the course of the case, the Receiver had incurred fees while pursuing litigation that ultimately recovered nothing for the receivership estate, including the Receiver's unsuccessful effort to characterize Stanford investors as relief defendants. ROA.100413-16. Finally, because the Receiver had proposed no

inflation adjustment for the investors, many of whom had waited at least 15 years for a significant return of their invested funds, OSIC and the Examiner criticized the Receiver's request for a $10 million CPI-based adjustment—$10 million that would otherwise be available for distribution to investors—as "simply offensive." ROA.100417.

The Commission also objected to the Receiver's motion, arguing that the anticipated investor recovery did not justify awarding additional compensation to the professionals and that equity supported awarding the held-back funds to investors rather than the professionals. ROA.100455-71. The Commission emphasized that a fee award reflects the court's equitable judgment and is within the court's discretion. ROA.100467. Directing the holdback to investors rather than to the Receiver and his professionals would represent a "pragmatic means to ensure that the Receivership professionals do not receive a windfall at the investors' expense." ROA.100468. The Commission also urged the court to deny the Receiver's other requests, noting that no court order provided for any inflation adjustment to the holdback upon its award. ROA.100468. And if the court were to apply a similar inflation adjustment to the investors' claims, the recovery percentages the Receiver touted to support his claim to the holdback would be less impressive. ROA.100469 (applying the Receiver's analysis of the CPI and assuming that all prior and future distributions occurred in 2024, the $2.6 billion

recovered by the receivership to date is the equivalent of $1.78 billion in 2009 dollars).

With respect to payment for preparation of the fee applications, the Commission argued that the Receiver failed to seek such payment at the time the work was performed, and it was inappropriate to ask the court to evaluate almost 15 years of voluminous time entries so long after the fact. In any event, seeking compensation for fee application preparation was contrary to the Commission's policy on receivers, as set forth in the SEC 2008 Billing Instructions. ROA.100469.

On January 28, 2025, the district entered an order denying the motion because it was still premature. ROA.101148-49.

3. The district court determined the appropriate disposition of the held-back funds once the results of the receivership were clear.

On August 20, 2025, the Receiver moved for approval of the final distribution plan, which included his request for payment of outstanding professional fees and expenses relating to the holdback and preparation of fee applications, in an amount totaling approximately $43 million. ROA.104246-54. The Examiner and OSIC opposed the Receiver's request with respect to the holdback and fees, incorporating and reiterating the positions they took in their previous opposition papers. ROA.104773-74. They emphasized that, while the

district court had the authority to award the fees sought by the Receiver, the district court also had the discretion to decline to do so and urged the court to deny the Receiver's request as to fees and expenses in its entirety or, alternatively, to consider only a partial award of the holdback. ROA.104774-76. The Commission also opposed the Receiver's request as to fees and expenses, incorporating by reference its previous opposition. ROA.104842-43.

Because "the ultimate financial condition of the Receivership has been ascertained," the district court found that it was no longer premature to address the holdback. ROA.105520. The court granted the Receiver's request in part, awarding fifty percent of the holdback from February 2009 to December 2024, in the amount of $14,916,905.45. ROA.105522-23. But the court denied the request for an award of the remainder of the holdback and denied both the CPI adjustment and the recovery of fees incurred in the preparation of fee applications. ROA.105522.

With respect to the holdback, the district court explained that the Fifth Circuit typically uses the lodestar method to determine the reasonableness of an attorney's fee award. ROA.105520. Under this method, a "lodestar" is established, consisting of the product of the number of hours that an attorney reasonably worked on the case and a reasonable hourly rate. ROA.105520 (citing *Smith & Fuller, P.A. v. Cooper Tire & Rubber Co.*, 685 F.3d 486, 490 (5th Cir.

2012)). The party seeking the fees has the burden of establishing the lodestar. ROA.105520 (citing *Watkins v. Fordice*, 7 F.3d 453, 457 (5th Cir. 1993)). The lodestar is presumed to be reasonable, but courts may adjust that amount based on the twelve factors set forth in *Johnson v. Ga. Highway Express, Inc.*, 488 F.2d 714, 717-19 (5th Cir. 1974). ROA.105520.

Noting that "results obtained" is one of the *Johnson* factors, the district court explained that the holdback was initially justified because the eventual size of the receivership estate was unknown (and the parties expected it would be small). ROA.105520. Now that the case was concluding, the known results included the total payment of $2.18 billion to Stanford investors. ROA.105520. But the court concluded that a reduced award was nonetheless equitable "based on the evidence[,]" including that "18,000 victims of a large and complex scheme have waited fifteen years to recover their losses[,]" while "[i]n the meantime, the Receiver and his professionals have collected on a significant percentage of the total amount recovered in the form of interim fees." ROA.105521. Thus, a reduction in the Receiver's fee award "will mitigate the harm the victims suffered" by preserving estate assets for distribution to investors. ROA.105521.

In addition, the court explained that a partial award of the holdback "would recognize the equitable role" the Receiver's counsel "played in achieving the various Stanford settlements that contributed to recovery." ROA.105521. While

Baker Botts did provide significant support in the Bank Litigation, "several other parties also must be given due credit[.]" ROA.105521. As the court concluded, awarding half of the holdback "accounts for the time spent, services performed, hourly rates charged, and expenses incurred by the Receiver and his professionals . . . that were reasonable and necessary for the Receiver to perform his Court-ordered duties and justified under the *Johnson* factors." ROA.105521.

The court also denied the Receiver's request for a CPI-based adjustment to the holdback, observing that while the Receiver sought a CPI-based adjustment for his own fees, no such adjustment was applied to the claims of the defrauded investors. ROA.105521. The court also found that many of the cases the Receiver cited in support of an adjustment were distinguishable because they involved the shifting of fees paid to prevailing counsel by the party that harmed the victims, as opposed to recovery shifting from the victims. ROA.105521-22. And the court distinguished additional cases the Receiver cited because counsel in those cases had received a lower percentage of their ultimate billings or creditors had been paid in full, whereas here "the Receiver and retained professionals received between eighty to ninety percent of their billings, whereas the [Stanford investors] have recovered less than half of their losses." ROA.105522. (citing *In re Lawler*, 807 F.2d 1207 (5th Cir. 1987) and *SEC v. W.L. Moody & Co., Bankers*

(Unincorporated), 374 F. Supp. 465 (S.D. Tex. 1974), *aff'd*, 519 F.2d 1087 (5th Cir. 1975) (unpublished table decision)).

Finally, the court rejected the Receiver's claim for compensation for preparing the fifth through eighty-second fee applications. ROA.105522. The court noted that the SEC 2008 Billing Instructions precluded billing for time spent preparing and submitting fee applications, and that such instructions were effective as of October 1, 2008, prior to the Receiver's initial appointment. ROA.105522.

This appeal followed. The following Appellants filed one joint brief: Ralph S. Janvey; Baker Botts L.L.P.; Krage & Janvey, L.L.P.; H. Malcolm Lovett, Jr.; BDO USA, P.C.; Financial Industry Technical Services, Inc.; FTI Consulting, Inc.; Holland and Knight LLP; Osler, Hoskin & Harcourt LLP; and Pierpont Communications, Inc.[7] FTI Consulting, Inc. filed separately, but also joined the Appellants' brief and raised very similar arguments.[8]

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[7] This joint brief is referred to as the Appellants' brief or "Br. []."

[8] FTI argues that the Commission's argument below about market rates for primary counsel is "inapposite insofar as it extends to any objection to the reasonableness of FTI's rates for the FTI Holdback." FTI Br. 19. As FTI notes, FTI is not a legal services firm. But the district court's decision did not focus on the rates of any of the professionals, and therefore the Court need not address these arguments.

STANDARD OF REVIEW

Decisions as to professional compensation are reviewed for abuse of discretion. *Cruz v. Maverick Cnty.*, 957 F.3d 563, 574 (5th Cir. 2020). The appellate court assesses the initial determination of reasonable hours and rates for clear error and the application of the *Johnson* factors for abuse of discretion. *Saizan v. Delta Concrete Prods. Co., Inc.*, 448 F.3d 795, 800 (5th Cir. 2006). In reviewing adjustments to the lodestar, the appellate court "need only consider whether the district court properly considered the appropriate criteria." *Cruz*, 957 F.3d at 575 (internal quotation marks omitted). "Due to the district court's superior knowledge of the facts and the desire to avoid appellate review of factual matters, the district court has broad discretion in setting the appropriate award of attorneys' fees." *Watkins*, 7 F.3d at 457.

SUMMARY OF ARGUMENT

The district court acted well within its discretion in determining that the award of only fifty percent of the holdback was appropriate in the circumstances of this case. The court focused on the eighth *Johnson* factor—the amount involved and the results obtained—and reasonably concluded that, while the distribution of $2.18 billion is significant, 18,000 Stanford victims waited fifteen years to ultimately recover less than 50% of their losses. ROA.105520-21. By contrast, the Receiver and his professionals have collected about 80% of their fees and costs

through regular interim payments. ROA.105522. Moreover, the Appellants were only partially responsible for the litigation that resulted in the bulk of the recovery for victims, with the Examiner and OSIC having played a meaningful role. Finally, the court would separately be justified in declining to award the full holdback because of the numerous issues raised by the Commission and the Examiner in response to the Receiver's first few fee applications, including poor billing practices and insufficient documentation.

The district court also reasonably rejected the Appellants' request for a CPI-based adjustment to the holdback because the Receiver and his professionals received interim payments throughout the receivership, but the defrauded investors—who received the vast majority of their approximately 47% recovery only after a fifteen-year delay—received no adjustment for the time-value of their lost money. And neither the order appointing the receiver nor the numerous orders addressing the holdback contemplated (much less required) such an adjustment.

Finally, the district court reasonably denied Baker Botts' request for compensation for preparing fee applications. In light of the SEC 2008 Billing Instructions, which were in place at the time of his appointment, the Receiver could not have reasonably expected compensation for this work.

ARGUMENT

I. The district court acted within its discretion in awarding half of the holdback.

The district court reasonably applied this Court's precedent in determining that an award of fifty percent of the holdback was appropriate. In arguing to the contrary, Appellants misconstrue applicable precedent and ignore the extensive history of this case.

A. In the Fifth Circuit, the award of professional fees is determined by the lodestar amount as reasonably adjusted under the twelve *Johnson* factors.

This Court's review of an award of professional fees is guided by the principles established in its decision in *Johnson*.[9] In that case, the Court remanded

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[9] The district court here expressly based its decision on the *Johnson* factors. ROA.105520. Other lower courts in this circuit have taken a different approach when making fee awards in receiverships (as opposed to awards under civil rights fee-shifting statutes). *See SEC v. Striker Petrol., L.L.C.*, No. 3:09-cv-2304, 2012 WL 685333, at *3 n.10 (N.D. Tex. March 2, 2012). For example, the court in *Striker Petroleum* stated that, "[w]hile recognizing that courts have relied upon myriad factors in determining the reasonableness of a receivership fee," this court will follow the *Moody* decision and consider the following factors: "(1) the complexity of the problem faced by the receivership; (2) the ability, reputation and professional qualities of the receiver and assisting professionals necessary for the job; (3) the time and value of the labor necessarily expended; (4) the results achieved; and (5) the ability of the receivership estate to afford the requested fees and expenses." *Striker Petrol., LLC*, 2012 WL 685333, at *3 (citing *Moody*, 374 F. Supp. at 480-83. More recent decisions suggest that a receiver's fee application should be analyzed by considering the lodestar method, billing judgment, and the *Johnson* factors, but the *Moody* commentary may continue to provide guidance specific to the receivership context. *FTC ex rel. Yost v. Educare Ctr. Servs., Inc.,*

(Footnote continued on next page…)

the award of attorneys' fees to plaintiffs' counsel in a Title VII class action because the district court's decision did not adequately explain the basis for the award. 488 F.2d at 717. While the Court made clear that it could not "reduce the calculation of a reasonable fee to mathematical precision[,]" and recognized that the law "consigns [this discretionary area] to the trial judge[,]" *id.* at 720, it listed twelve factors to be considered by district courts in an effort to "set appropriate standards to better enable District Courts to arrive at just compensation." *Id.* at 715. These twelve "*Johnson* factors" are: (1) the time and labor required; (2) the novelty and difficulty of the questions; (3) the skill requisite to perform the legal service properly; (4) the preclusion of other employment by the attorney due to acceptance of the case; (5) the customary fee; (6) whether the fee is fixed or contingent; (7) time limitations imposed by the client or the circumstances; (8) the amount involved and the results obtained; (9) the experience, reputation, and ability of the attorneys; (10) the "undesirability" of the case; (11) the nature and length of the professional relationship with the client; and (12) awards in similar cases. *Id.* at 717-19.

The Court held that it was an abuse of discretion not to consider such factors. *Id.* at 720. Subsequent decisions make clear that, even where a court does

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No. EP-19-CV-196-K, 2020 WL 4334958, at *2 (W.D. Tex. Apr. 17, 2020). The district court's decision was well within its discretion under either standard.

not discuss every factor, reversal is not required if "the record clearly indicates that the district court has utilized the *Johnson* framework as the basis of its analysis, has not proceeded in a summary fashion, and has arrived at an amount that can be said to be just compensation." *Cobb v. Miller*, 818 F.2d 1227, 1232 (5th Cir. 1987).

This Court has also explained that while there is "a strong presumption of the reasonableness of the lodestar amount[,]" established by multiplying the reasonable number of hours spent by a reasonable rate per hour, a court may "decrease or enhance the amount based on the relative weights of the twelve factors set forth in *Johnson*." *Saizan*, 448 F.3d at 800. And among the *Johnson* factors, this Court has suggested that the most critical factor in determining a fee award is the degree of success obtained. *Id.* at 799 (discussing fee awards under the Fair Labor Standards Act). But other considerations, like whether the professionals have demonstrated billing judgment, may also factor into the calculation of an award. *Id.* at 800 (finding no abuse of discretion where district court imposed a ten percent reduction in the lodestar after finding that plaintiffs' counsel failed to demonstrate billing judgment by including time records that were vague, duplicative, and did not specify that some time was written off as excessive or unproductive.).

Additional considerations are also relevant in cases involving fees awarded to receivers in Commission civil enforcement actions, and courts may look to such cases in analyzing the twelfth *Johnson* factor—awards in similar cases. A receiver is generally appointed by the court to marshal and recover assets for injured investors; his fees and costs are thus paid not by a defendant found liable, but rather from the funds in the receivership estate that would otherwise go to those investors. As a result, district court scrutiny to ensure the reasonableness of fees takes on added import. *See SEC v. Goren*, 272 F. Supp. 2d 202, 206 (E.D.N.Y. 2003) ("[I]t bears emphasis that whether calculated pursuant to the lodestar or the percentage method, the fees awarded in common fund cases may not exceed what is reasonable under the circumstances."). For this reason, "courts have long applied a rule of moderation" in receivership cases, acknowledging that "receivers and attorneys engaged in the administration of estates in the courts of the United States . . . should be awarded only moderate compensation." *SEC v. Byers*, 590 F. Supp. 2d 637, 645 (S.D.N.Y. 2008) (internal quotation marks omitted); *see, e.g., SEC v. Harris*, No. 09-cv-1809, 2016 WL 1555773, at *9 (N.D. Tex. Apr. 18, 2016) (in a receivership case, "[f]air compensation means moderate compensation, not complete compensation"); *Moody*, 374 F. Supp. at 480 (in a receivership case, results are always relevant, especially where many people were significantly affected by the receiver's results).

B. The district court acted within its discretion by awarding half of the holdback after considering the *Johnson* factors, particularly the results obtained.

The district court was well within its wide discretion in determining that it was appropriate in the circumstances of this case to award only fifty percent of the holdback. The court's analysis centered on the eighth *Johnson* factor—the amount involved and the results obtained—and reasonably assessed the nature of the results obtained in the particular context of this case. Specifically, while the distribution to investors of $2.18 billion is commendable, 18,000 Stanford victims waited fifteen years to recover any significant part of their losses. And that recovery still represents less than 50% of losses. ROA.105520-21. By contrast, the Receiver and his professionals have collected about 80% of their fees and costs through regular interim payments. Therefore, retaining half of the holdback for distribution to investors "will mitigate the harm the victims suffered[,]" ROA.105521, which the court recognized was still quite significant despite the results obtained here.

The district court also appropriately considered the "equitable role Baker Botts played in achieving the various Stanford settlements that contributed to recovery." ROA.105521. Unlike a case involving a suit by one set of attorneys securing a single judgment at its end, the Stanford receivership involved numerous cases and multiple sets of lawyers and experts providing different services under

different fee structures. And in assessing the results obtained for purposes of a fee award, it is surely reasonable to consider whether those results are attributable to the recipient of that award. *Contra* Br. 42. Here, more than half of the funds recovered and distributed to investors were derived from the settlement of the Bank Litigation. And, for much of that litigation, it was OSIC—not the Receiver and his counsel—that was primarily responsible. Appellants focus on Baker Botts' *later* participation in the Bank Litigation (Br. 41-42), but the district court both recognized that contribution and reasonably took account of the fact that Receiver's counsel was not solely responsible for the results in that litigation.[10] ROA.105521.

Finally, as the Examiner suggested to the district court, a reduction in the award of the holdback would be justified by the numerous issues raised by the

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[10] While the district court generally based its analysis on the *Johnson* factors, it did not specifically discuss the twelfth *Johnson* factor—awards in similar cases. To the extent that this Court may affirm on any ground that appears in the record, *see, e.g., Louisiana Power & Light Co. v. Kellstrom*, 50 F.3d 319, 325-26 (5th Cir. 1995) (declining to remand where the record contained sufficient information to allow the court to modify the fee award on its own), the district court's award of half of the holdback is consistent with this factor. As the Commission urged below, in receivership cases involving significant investor losses, courts often exercise their discretion to award only moderate compensation. The district court's consideration of the victims' delayed and partial recovery in determining to award half the holdback is consistent with other courts' approaches to fees in receivership cases.

Commission and the Examiner in response to the Receiver's first few fee applications. ROA.104776. And in its decision, the court noted that its adjustment to the holdback award "accounts for the time spent, services performed, hourly rates charged, and expenses incurred by the Receiver and his professionals" during the receivership, which "were reasonable and necessary for the Receiver to perform his Court-ordered duties and justified under the *Johnson* factors." ROA.105521. As the Commission and the Examiner argued at the start of the case, the initial fee applications, *inter alia*: (i) were not supported by the necessary records, such as sufficiently specific information about the number of attorneys working on a particular task, the specific rate charged for performing such tasks, and how many hours were spent to accomplish them; (ii) included improper lumping of fees; and (iii) sought fees incurred in the pursuit of an ultimately unsuccessful (and in fact damaging to the already injured investors) effort to claw back funds from innocent investors. *Supra*, at pp. 11-14. This Court has held that, even post-*Johnson*, a district court does not abuse its discretion by reducing the lodestar for time records that included "vagueness, duplicative work, and not indicating time written off as excessive or unproductive." *Saizan*, 448 F.3d at 800.

C. Appellants' contrary arguments are without merit.

Appellants contend that the district court's consideration of these circumstances was somehow improper, decrying what they characterize as the

exercise of "unrestrained equitable power[.]" Br. 27. In so arguing, they paradoxically assert both that the district court improperly departed from a pre-established lodestar that already subsumed the "results obtained" factor (Br. 32) and that the district court's analysis was untethered from the *Johnson* factors altogether (Br. 27). They are wrong on both counts.

First, Appellants assert that the lodestar in this case already accounts for the "results obtained" factor and therefore "any departure from [the lodestar] based on [results obtained] would be error." Br. 32. But this is contradicted by the record, including the district court's repeated statements that it was reserving decision as to the award of the holdback until the size of the estate became clear. *See, e.g.*, ROA.106710; ROA.19231-34; ROA.396. Indeed, Appellants themselves acknowledge that it was not possible in this case for the results obtained to be fully reflected in the lodestar, because the Appellants were paid on an ongoing basis. Br. 33 n.13.

Appellants next assert that it would be an abuse of discretion to reduce the award based on results obtained once a lodestar has been established. But the authority they cite for this proposition cannot withstand scrutiny. Br. 32. *Pilgrim's Pride* and *Heidtman* provide that upward adjustment to the lodestar based on "results obtained" is "proper only in certain rare and exceptional cases supported by both specific evidence on the record and detailed findings by the

lower courts." *In re Pilgrim's Pride Corp.*, 690 F.3d 650, 656 (5th Cir. 2012) (quoting *Shipes v. Trinity Indus.*, 987 F.2d 311, 320 (5th Cir. 1993)); *Heidtman v. Cnty. of El Paso*, 171 F.3d 1038, 1043 (5th Cir. 1999). But *Pilgrim's Pride*, *Heidtman* and *Shipes* all involved *enhancements* under the *Johnson* factors, not reductions. In that context, this Court has required specific record evidence and detailed findings by lower courts. *See Rodney v. Elliott Sec. Sols., L.L.C.*, 853 F. Appx. 922, 925 (5th Cir. 2021). But in reviewing a district court's decision declining to impose a downward adjustment, this Court stated that, "in reviewing adjustments to the lodestar, we need only consider whether the district court properly considered the appropriate criteria." *Cruz*, 957 F.3d at 575 (internal quotation marks omitted). And, to the extent that the requirement for rare and exceptional circumstances does apply in the context of downward adjustments, the difficulty faced by the 18,000 investors who lost billions of dollars surely satisfies it.

Here, the district court reasonably determined to award half of the holdback based on an analysis of the "results obtained" factor. Appellants' insistence—despite the plain language of the district court's order—that the court's analysis was unconnected to this factor, Br. 27, 31-34, appears to be premised on the notion that consideration of the results obtained must be myopically focused on the total dollar amount recovered, devoid of any context. But that is inconsistent with

Johnson itself. *Cf.* 488 F.2d at 718 (explaining that consideration of "the amount of damages, or back pay awarded" should not "obviate" consideration of the larger context). Here, it was reasonable for the district court to consider the impact of the payment of $2.18 billion on the totality of defrauded investors' losses and the speed of their recovery. As the Appellants make clear in their request for a CPI-based adjustment to held back fees, payment fifteen years later is not the same as payment at the time of loss. And because the investors spent years deprived of anything but a small percentage of their losses, they are ultimately being compensated in dollars effectively shrunken by inflation over time.

Nor can Appellants succeed in an argument, to the extent they make one, that the district court failed to sufficiently connect its conclusions to a discussion of the results obtained. As this Court has noted, a district court's *Johnson* analysis "need not be meticulously detailed to survive appellate review[.]" *Louisiana Power & Light Co. v. Kellstrom*, 50 F.3d 319, 331 (5th Cir. 1995); *see also Blanchard v. Bergeron*, 893 F.2d 87, 89 (5th Cir. 1990) (if the district court articulated and applied the relevant criteria, "we will not require the trial court's findings to be so excruciatingly explicit in this area of minutiae that decisions on fee awards consume more judicial paper than did the cases from which they arose").

And the district court did not act in a vacuum here. The docket below has more than 3500 entries and the district court has reviewed over eighty fee applications during the course of more than sixteen years. Several of these applications were highly contested and involved extensive briefing and argument, and the district court held a hearing with respect to this specific fee dispute. In the context of the district court's deep and extensive familiarity with the parties and the issues, any perceived brevity of explanation is insufficient to establish an abuse of discretion.

Finally, the Appellants' analogy to the bankruptcy context is also unavailing. As they acknowledge, the payment priorities outlined in the Bankruptcy Code are inapplicable here. Br. 38-39, 55. And the suggestion that an award of only half the holdback will disincentivize counsel from taking on receivership cases in the future is inconsistent with the facts of this case. Br. 39-40. Appellants were well compensated for their extensive work during a sixteen-plus-year case (having already received more than $170 million), and will now receive half of the funds reasonably held back at the beginning of the case until the ultimate financial status could be determined. Under these circumstances, the Receiver's argument that such work is unattractive is unconvincing.

II. The district court acted within its discretion in declining to adjust the holdback award for inflation.

The court reasonably rejected the Appellants' request for a CPI-based adjustment to the holdback. Nothing in the order appointing the receiver or the numerous orders addressing the holdback contemplates (much less requires) such an adjustment. And the Receiver and his professionals submitted more than 80 interim fee applications, resulting in payment of approximately 80% of their fees and costs with minimal loss in the time value of money. In contrast, as the district court explained, defrauded investors—who received the vast majority of their approximately 47% recovery only after a fifteen-year delay—received no adjustment for the time-value of their lost money.

Rejection of an inflation-based upward adjustment for only the professionals is also consistent with cases specific to the context of Commission receiverships, which encourage courts to be particularly wary of anything resembling a windfall for attorneys while the victims incur enormous losses. *See*, *e.g.*, *Byers*, 590 F. Supp. 2d at 645 (courts "should take particular care to scrutinize fee applications to avoid even the appearance of a windfall") (internal quotation marks omitted). In these circumstances, the district court reasonably declined to adjust for inflation the held back amounts to be awarded to the professionals. ROA.105521-22. Indeed, the contrast drawn by the district court between the Appellants' request

and the investors' recovery is highlighted by Appellants' arguments in this appeal. While Appellants trumpet the approximately 47% recovery for investors, that figure is not adjusted downward to reflect how much less valuable recovery in 2026 dollars is compared to losses incurred in 2009 dollars. *See* ROA.100469 (using the Receiver's CPI calculation and assuming that all distributions take place in 2024, the $2.6 billion recovered by the receivership to date is equivalent to $1.78 billion in 2009 dollars).

In arguing that this decision was an abuse of the district court's discretion, Appellants appear to misunderstand the district court's reference to the lack of "any adjustment to the CD claimants." ROA.105521. While the Appellants correctly note that the methods for determining compensation for professionals and for victims are different (Br. 50), that is beside the point; however calculated, the question is whether the claim should be adjusted for the time value of money. And, to the extent Appellants imply that investors are legally precluded from seeking such an adjustment by citing Fifth Circuit precedent for the proposition that Ponzi scheme victims have no claim for contractual interest (Br. 50), Appellants misunderstand the nature of investor recovery at issue. As the cited case recognizes, Ponzi victims have a claim for the amount of their original investment. *Janvey v. Brown*, 767 F.3d 430, 443 (5th Cir. 2014). That such victims generally do not have valid claims for *contractual* interest because their

investment was fraudulent has no bearing on whether their *tort*-based claims for the return of their principal may be adjusted for inflation. Nor do Appellants explain why inflation is only relevant to professional claims and not to the claims of victims who have waited longer to recover much less.

Appellants also err in criticizing the district court's distinction of caselaw approving a CPI-based adjustment as arising in the context of fees paid by a losing party, rather than a common recovery fund. Br. 51-53. They cite to *In re Lawler*, 807 F.2d 1207 (5th Cir. 1987), to show that this Court has approved a delay adjustment in a receivership-turned-bankruptcy. Br. 51. But the district court properly distinguished *Lawler*, noting that it depended in part on the fact that counsel was owed considerably more than they had already received. ROA.105522. By contrast, the Receiver and his professionals have already received payment of about 80% of their fees and costs with minimal delay. And throughout the receivership, the Receiver did periodically move for and was granted increases in the hourly rates at which he and his professionals would be compensated. *See* ROA.38232-43; ROA.38615; ROA.60235-43; ROA.61395-97; ROA.89935-43; ROA.90473. Nor does the *Lawler* Court's holding that the use of present rates was reasonable under the circumstances of that case establish that it was an abuse of discretion to deny an adjustment in the very different circumstances of this case. *See also Graves v. Barnes*, 700 F.2d 220, 224 (5th Cir.

1983) (finding that the district court did not abuse its discretion by both awarding fees based on present hourly rates and using a contingency multiplier). Merely because the district court could have decided to award the Appellants an inflation adjustment in this case does not mean it was an abuse of discretion not to do so.

Appellants' criticism, echoed by FTI in its brief, of the district court's reliance on *Moody* similarly fails. 374 F. Supp. at 487. The district court did not, as they claim, rely on *Moody* for the proposition that professionals can *only* be paid the lodestar where creditors received a full recovery. Br. 53. Instead, the district court simply noted that *Moody* was distinguishable from the situation here because the creditors in that case were paid in full. ROA.105522. In fact, that the unsecured depositors in *Moody* were paid in full was just one factor that the court considered in determining the appropriate compensation for the receiver in that case. As the *Moody* court explained, "a reasonable fee is based on all circumstances surrounding the receivership." 374 F. Supp. at 480. Thus, "although authorities provide convenient guidelines, the unique fact situation of each case renders direct reliance on precedent impossible." *Id.* The court considered the outcome of the case, the time spent by the receiver, and the quality of his work in determining the fee to award. *Id.* at 480-87. As part of its analysis, the court rejected the defendant's emphasis on the "principle of economy [which]. . . is justified by the usual absence of available resources in a bankruptcy

setting." *Id.* at 486. Thus, *Moody* is consistent with the district court's broad discretion to award appropriate compensation, including deciding whether an inflation adjustment is applicable, after considering a variety of factors, such as the results obtained for creditors and investors.

III. The district court reasonably denied Baker Botts' request for compensation for preparing fee applications.

Finally, Appellants cannot establish that the district court abused its discretion in denying Baker Botts' request to recover fees incurred in the preparation of the fifth through eighty-second fee applications. As the district court stated, the SEC 2008 Billing Instructions for receivers expressly provide that receivers may not bill for time spent preparing fee applications. These instructions were in effect before the Receiver's appointment in 2009 and the instructions remained consistent on this point through 2022. ROA.105522. The Receiver therefore could not have reasonably expected compensation for this work at the time of his appointment and throughout the duration of the receivership—and at the least, the district court did not abuse its discretion in so concluding.

Appellants nonetheless argue that the court's reliance on the SEC 2008 Billing Instructions was "error" (Br. 55), noting that the instructions are "not the law and deserve no deference from this Court." *Id.* But that is not the point—neither the district court nor the Commission claimed that the billing instructions

are entitled to deference.[11] Rather, the point is that the Receiver was on notice that the fees for this work would likely not be paid from the estate. And the record supports this. For example, in the Reply in Support of Receiver's Motion for Approval of Second Interim Fee application, the Receiver stated that "[w]hen the Receiver and his team agreed with the SEC to discount fees by 20%, they also agreed that they would not charge the Estate for the considerable professional time related to preparing the fee applications." ROA.12333 n.4. Appellants also assert that "there is no evidence, nor even an argument from the SEC, that the Receiver or Baker Botts, his counsel, ever saw—let alone agreed—to those 'instructions.'" Br. 55-56. But, regardless of whether there is specific evidence in the record that the Receiver's counsel saw the instructions, they are publicly available. *See* ROA.100427-28. If he failed to check them before accepting the position, that is on him.

Moreover, the Receiver's delay in seeking such fees is an independent basis on which to deny them. While he has claimed in previous filings that Baker Botts was entitled to be compensated for such work, he waited until now to request a

[11] While the Commission does not claim that its instructions are entitled to deference, courts in this circuit have found that, in the receivership context, "opposition or acquiescence by the SEC to the fee application [of a receiver] will be given great weight." *Striker Petrol., L.L.C.*, 2012 WL 685333, at *3 (internal quotation marks omitted).

large lump sum payment, long after most of the work was performed. Instead of seeking fees in small, contemporaneous chunks, the Receiver submitted "almost 15 years of time entries that comprised 344 pages of the Receiver's appendix" below. ROA.100469. Detailed review of this voluminous submission would have been burdensome and the district acted within its discretion in denying this request. Indeed, even when a party is seeking contemporaneous evaluation of fees, courts may reject the invitation to review voluminous fee records. *See, e.g.*, *Byers*, 590 F. Supp. 2d at 648 ("[i]n light of the voluminous nature of fee applications, courts have recognized that it is unrealistic to expect a trial judge to evaluate and rule on every entry in an application . . . [and] have endorsed percentage cuts as a practical means of trimming fat from a fee application") (internal quotation marks omitted). This is especially applicable where the records date back over a decade.

Finally, Appellants once again unconvincingly cite to inapplicable provisions of the Bankruptcy Code. Br. 53-55. The Code does provide for compensation for fee application preparation, but even in bankruptcy this principle has limits. For example, in *Baker Botts L.L.P. v. ASARCO LLC*, the Supreme Court strictly interpreted the relevant language to hold that, while a bankruptcy court may award reasonable compensation for actual, necessary services rendered by professionals, the Code does not permit a bankruptcy court to award attorneys' fees for work performed in defending a fee application in court. 576 U.S. 121, 124

(2015). And here, outside of bankruptcy, even that limited principle does not apply. The district court reasonably denied Baker Botts' request.

CONCLUSION

For the foregoing reasons, the judgment of the district court should be affirmed.

Respectfully submitted,

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May 2026

CERTIFICATE OF SERVICE

I certify that on May 22, 2026, I electronically filed the foregoing brief with the Clerk of the Court for the U.S. Court of Appeals for the Fifth Circuit through the Court's CM/ECF system. Service on counsel of record will be accomplished through the Court's CM/ECF system.

I further certify that any privacy redactions have been made and that this electronic filing was scanned for, and found to be free of, viruses.

/s/ Morgan Bradylyons

May 22, 2026 Morgan Bradylyons

CERTIFICATE OF COMPLIANCE

I certify that this brief complies with the type-volume limitation of Fed. R. App. P. 32(a)(7)(B) because it contains 9935 words, excluding the parts exempted by Fed. R. App. P. 32(f) and 5th Cir. R. 32.2.

I also certify that this brief complies with the typeface requirements of Fed. R. App. P. 32(a)(5)(A) and the type-style requirements of Fed. R. App. P. 32(a)(6) because it has been prepared in a proportionally spaced typeface—Times New Roman, 14 point—using Microsoft Word.

/s/ Morgan Bradylyons

May 22, 2026 Morgan Bradylyons