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 & 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-00298-N

JOINT REPLY BRIEF OF APPELLANTS RALPH S. JANVEY, RECEIVER; BAKER BOTTS L.L.P.; FTI CONSULTING, INCORPORATED; HOLLAND & KNIGHT, LLP; FINANCIAL INDUSTRY TECHNICAL SERVICES, INCORPORATED; BDO USA, L.L.P.; KRAGE & JANVEY, LLP; OSLER, HOSKIN & HARCOURT, LLP; AND H. MALCOLM LOVETT, JR.

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TABLE OF CONTENTS

TABLE OF AUTHORITIES

Page(s)

CASES

OTHER AUTHORITIES

INTRODUCTION

As demonstrated in the district court and the Receiver's opening brief, the Receiver's and his professionals' request for payment is grounded in the undisputed record evidence and this Court's precedent. In response, the SEC dodges the evidence in the record and the applicable precedent, instead relying on unsupported opinions and assertions that are unconnected from the evidence and proper legal standards.

The SEC does not, and cannot, dispute that over fifteen-plus years, the district court approved every single one of the more than 540,000 hours worked by each of the Receivership's professionals and approved the rates at which those hours were worked. Nor can it dispute that the district court never sustained any objection by the SEC or Examiner to any of those hours or billing rates. Therefore, the record before this Court conclusively establishes that the product of the Receivership professionals' rates and hours became the presumptively reasonable lodestar, which the district court was required to award in the absence of any basis for a downward departure. Over the life of the Receivership, a substantial portion of that lodestar was not paid to, and was instead held back from, the Receivership's professionals.

The evidence in the record also conclusively shows that the "results obtained"—the only justification for instituting the holdback—by the professionals' more than half million hours of work justified payment of the entire amount held

back, rather than the arbitrary one-half awarded by the district court. Under this Court's precedents and the undisputed evidence, the district court's duty to award a reasonable fee required those held-back amounts to not only be paid in full but also adjusted to their present value owing to the years-long delay in payment. The only evidence before the district court likewise showed that all of Baker Botts's work preparing the Receivership's dozens of fee applications was a reasonable and necessary service to the Estate. Under this Court's precedents, that work was compensable; it was an abuse of discretion to award no compensation for that required work.

The SEC's brief is noteworthy for what it fails to address and fails to dispute. The SEC does not dispute that the district court approved the Receiver's and his professionals' rates and hours more than eighty times under the *Johnson* factors.[1] The SEC does not dispute that the holdback was provisionally imposed because the "results obtained" *Johnson* factor was not ascertainable in 2009. The SEC does not dispute that the Receivership recovered $2.8 billion, more than $2.1 billion payable to investors—an extraordinary result given the bleak financial status of the Stanford Financial empire when the Receivership began. The SEC does not dispute that the district court ordered a downward departure from the lodestar. The SEC does not

[1] *See Johnson v. Ga. Highway Express, Inc.*, 488 F.2d 714, 717-19 (5th Cir. 1974).

dispute that the district court's 50% across-the-board cut to the withheld fees was not tied to any specific deficiency in the hours worked or rates charged by any of the forty-four professional firms. The SEC does not dispute that the professionals were harmed by delayed payment and that the withheld amounts required adjustment to present value. And the SEC does not dispute that Baker Botts's work preparing the fee applications was a reasonable and necessary service to the Estate.

Ultimately, the SEC asks this Court to affirm a substantial fee reduction based on nothing more than freewheeling discretion that was anything but "equitable" and that finds no basis in the applicable law or the evidentiary record.

ARGUMENT

I. The district court had no basis to depart from the lodestar.

A. The district court's order was untethered to any legal standard or evidence.

This Court has repeatedly admonished that a district court's discretion when awarding fees is not unbounded; rather, it is carefully circumscribed by the lodestar amount and the *Johnson* factors. *See, e.g.*, *U.S. Leather, Inc. v. H & W P'ship*, 60 F.3d 222, 229 (5th Cir. 1995) ("The court is limited in its discretion only by the considerations espoused in *Johnson*."); *Saizan v. Delta Concrete Prods. Co.*, 448 F.3d 795, 800 (5th Cir. 2006) (per curiam) ("After calculating the lodestar, the court may decrease or enhance the amount based on the relative weights of the twelve factors set forth in *Johnson*."). The district court's order abandoned these principles

in favor of standardless discretion, at the express invitation of the SEC and Examiner. *See* ROA.107649:8-9 ("SEC's position is essentially it's an equitable determination."); ROA.107650:23-24 (Examiner arguing that "the focus on the *Johnson* factors is a little off the mark").[2] That was error.

Consider first whether "the record clearly indicates that the district court utilized the *Johnson* framework as the basis of its analysis." *Cobb v. Miller*, 818 F.2d 1227, 1232 (5th Cir. 1987). The SEC asserts that the district 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." Resp. Br. 30. Yet the SEC never explains *how* the district

[2] The SEC suggests in a footnote that "courts often exercise their discretion to award only moderate compensation" in receivership cases, Resp. Br. 31 n.10, harkening back to a few district court cases that apparently apply a "rule of moderation," *id.* 29 (citing *SEC v. Goren*, 272 F. Supp. 2d 202, 206 (E.D.N.Y. 2003); *SEC v. Byers*, 590 F. Supp. 2d 637, 645 (S.D.N.Y. 2008); *SEC v. Harris*, No. 09-CV-1809, 2016 WL 1555773, at *9 (N.D. Tex. Apr. 18, 2016)). The Examiner echoes the view with other district court citations. *See* Examiner Br. 10. None are binding and none stand for the proposition that a district court can override *Johnson* by invoking "moderation" as a freestanding principle divorced from the twelve established factors. The emphasis of both the SEC and Examiner on moderation is particularly inapt in this case since the Receiver and his professionals have performed their work at deeply discounted rates for the entire life of the Receivership, charging rates that were sometimes as little as half their standard hourly rates. *See* ROA.89936, 104294-95, 107646. The holdback imposed by the district court was in addition to these discounts. For the same reason, the Examiner's realization statistics are misleading at best—93% of 70% is 65%, not 93%. Examiner Br. 27; *see* ROA.104294-95.

court's analysis "centered on the eighth *Johnson* factor," a difficult task to be sure given that the SEC—like the district court—sweeps aside or ignores that the "results obtained" includes every kind of work, not just litigation, that was necessary to obtain and administer billions in recovered funds. Appellants' Br. 9-13. Instead, after grudgingly conceding that the results obtained were "commendable," the SEC parrots the district court's superficial conclusion that cutting the holdback amount in half was warranted because the investors have "waited fifteen years to recover any significant part of their losses" and "the Receiver and his professionals have collected about 80% of their fees and costs through regular interim payments." Resp. Br. 30.

But neither justification is supported by *Johnson* or any of this Court's other precedents. Nor are they reasonable on their own terms. The record shows that from 2013 to the date of the Order that is the subject of this appeal, the Receiver made multiple distributions to Stanford claimants. *See, e.g.*, ROA.50077, 103637. There is zero evidence or argument that the Receiver or his professionals failed to do something they could have done to cause distributions to be made in greater amounts or with greater frequency. To the extent the timing and amounts of distributions were related to the Receiver's litigation activities, there is no evidence that the Receiver or his professionals did anything to delay resolution of that litigation.

Similarly, it defies logic for the SEC to suggest that the fact "the Receiver and his professionals have collected about 80% of their fees and costs through regular interim payments" is a justification for a substantial downward departure from the lodestar, particularly in light of the "commendable" results obtained. *See* Resp. Br. 3, 30;[3] *see also United States v. Petters*, No. 08-5348, 2021 WL 3883392, at *3 (D. Minn. July 29, 2021) (noting that a recovery of something "north of a 30 percent recovery" for victims placed the receivership "among the very top outcomes achieved in large fraud cases"), *aff'd sub nom.*, *United States v. Kelley*, 70 F.4th 482 (8th Cir. 2023). The SEC's implicit concession that the Receiver and his professionals have not been paid for 20% of their work—or, framed another way, *more than three years of time* in this decade-and-a-half plus Receivership—cannot constitute a basis for refusing to pay them for the remaining 20% of their efforts.

The SEC next tries to locate the district court's order in the *Johnson* framework by suggesting there is some larger "context" that the district court considered. Resp. Br. 35.[4] But this "context" remains elusive, as the district court's order contains no explanation of such "context," and the SEC cites no authority to

[3] The SEC does not include any evidence or authority to support this argument, and none exists.

[4] This argument follows the SEC's implicit concessions that the district court did grant a downward departure from the lodestar, Resp. Br. 34 (noting this case is in the "context of downward adjustments"), and that the district court did not have "specific record evidence and detailed findings," *id.*

show that unarticulated context allows the district court to ignore the record evidence of the actual results obtained. The "context" supplied by the record evidence reveals that 1) the Stanford Ponzi scheme ran unchecked for over a decade before the Receivership began, ROA.34175; 2) the Receivership started with minimal cash and assets and billions of dollars in liabilities to thousands of investors, ROA.103646-47; and 3) hundreds of thousands of hours of work performed by the Receiver and his professionals were required to unravel one of the largest and most complex Ponzi schemes in history, marshal over $2.8 billion, and distribute more than $2.1 billion to Stanford claimants, ROA.103646-47, 104293, 104295.

B. The SEC's "equitable role" argument is arbitrary and untethered from any legal standard or evidence.

Unable to defend the primary basis on which the district court departed from the lodestar, the SEC claims the fee cut for all professionals for all work was justified because Baker Botts played an "equitable role" in litigation against the banks. Resp. Br. 30 (quoting ROA.105521). But Baker Botts did not play an "equitable role" (whatever that means), and the SEC makes no attempt to engage with the Receiver and his professionals on the law or record evidence regarding Baker Botts's role. The SEC wholly fails to respond to the undisputed facts that: 1) in addition to serving as the Receiver's lead counsel on all Receivership matters, Baker Botts served as the Official Stanford Investors Committee's ("OSIC") lead trial counsel and sole settlement negotiator in the bank litigation; 2) Baker Botts, the Receiver, and the

Receiver's professionals spent more than 50,000 hours in support of OSIC across all of OSIC's cases; and 3) all of the professionals' work supporting and/or representing OSIC was found to be reasonable and necessary over dozens of fee applications. Appellants' Br. 10-11. The SEC's bare opinion (unsupported by evidence) of the quality of Baker Botts's contributions to nearly $2 billion in litigation recoveries is not a substitute for the record and authority the district court was required to follow.

The SEC's argument that the Receivership's professionals should not be paid because firms other than Baker Botts contributed to the Receivership's recoveries completely ignores that the professionals are only requesting payment for their own already-approved time, not work performed by any other firm who also represented OSIC. It also makes no sense because the district court's arbitrary 50% fee cut applied to *all* the professionals, not just Baker Botts, and cut fees for work that had no direct connection to litigation recoveries (like unraveling Stanford's fraud and getting recoveries into the hands of investors) and thus cannot be evaluated solely by the metric of dollars recovered. *See id.* That the district court applied the 50% fee cut to *all* the Receiver's professionals due to the involvement of OSIC in some cases (who, it bears repeating, was provided "critical"[5] support by the professionals

[5] ROA.107652:3-8.

during its "prosecution efforts"[6]) only underscores how untethered the district court's fee cut was from the evidentiary record.[7]

C. The SEC's unarticulated objections to early fee applications do not support the district court's order.

Faced with the sparse and erroneous reasons the district court offered to justify its across-the-board fee cut, the SEC moves beyond the district court's stated rationale to assert that its judgment can alternatively be affirmed because the SEC and Examiner raised unspecified "numerous issues" to some of the work reflected in "the Receiver's first few fee applications." Resp. Br. 31-32. Like the Order that is the subject of this appeal, though, the district court's imposition of the holdback was never based on the SEC's (or Examiner's) alleged concerns with time entries contained in the first few fee applications. The district court expressly stated otherwise:

> Many of the *Johnson* factors suggest that the Receiver's . . . fees are reasonable. These include the substantial time and labor involved with unraveling such a complex scheme; the novelty and difficulty of many of the legal

[6] *See* Examiner Br. 16 (noting how various professionals assisted OSIC's efforts in the bank litigation, including the work FTI conducted in data management and analysis and Karyl Van Tassel's forensic accounting work).

[7] The Examiner's argument that OSIC achieved the results obtained, Examiner Br. 13-17, misses the mark given that Baker Botts represented OSIC, and that other professionals directly supported OSIC's litigation efforts. One example is Karyl Van Tassel, who was a foundational expert witness in all of OSIC's cases and whose critically necessary work established that the Stanford entities were operating as a Ponzi scheme from their inception. Appellants' Br. 11, 41.

> questions to be addressed; the skill requisite to perform the services in question; and the experience, reputation, and ability of the attorneys and other professionals involved.

ROA.19232. Instead, the holdback arose because the district court was concerned "the eventual size of the receivership estate will be smaller than initially hoped or expected." *Id.*

Moreover, the SEC did not articulate any of these objections in response to the Receiver's holdback request, and the SEC includes no precedent, record evidence, or logic to connect these unarticulated objections to the district court's actual decision—a decision that cut fees for every single hour worked in the first fifteen years of the Receivership, ROA.105519-21, not just those in the "first few fee applications."[8] And despite raising these objections over a decade ago, the SEC never requested or secured any ruling on them when it came time to decide the Receiver's holdback request in 2025, *see* ROA.104842 (SEC incorporating by reference its prior response); ROA.100455-71 (SEC's response failing to re-urge its prior objection to the first few fee applications in its opposition to the Receiver's request for the holdback); *see also* Examiner Br. 9 (stating that the district court

[8] Nor does the SEC explain how those objections could justify the district court's 50% reduction of the holdback concerning hundreds of thousands of hours of work performed in the decade and a half after the SEC complained about the Receiver's "first few fee applications." Resp. Br. 32. Those objections had nothing to do with, for example, the work of other professionals in different decades, in different countries, or in the seventy-five-plus other fee applications.

"never ruled on those objections" to the first four fee applications); ROA.105519-23 (holdback Order not mentioning prior objections or criticizing any time spent).

Because the SEC never properly raised these objections, and because the district court never even addressed them, they cannot possibly support the district court's arbitrary downward departure from the lodestar. *United States v. Jackson*, 27 F.4th 1088, 1091 (5th Cir. 2022) (affirmance on alternate ground permissible only if the record supports the judgment and the ground was actually "advanced below"); *see also Netsphere, Inc. v. Gardere Wynne Sewell, L.L.P.*, 657 F. App'x 320, 323 (5th Cir. 2016) ("Quantec levels a host of challenges to the fee awards . . . . What these challenges have in common is that Quantec has waived them by not raising them in the district court . . . . Quantec also did not challenge any specific fee award in this filing. Because we do not consider arguments not raised to the district court, these objections are also waived.").[9]

[9] The Examiner suggests that the SEC and Examiner harbored objections to additional applications that they never raised before the district court. Examiner Br. 8. It should go without saying that these secret objections are similarly waived and could not form a basis upon which to affirm the district court's order. *See id.* The SEC and Examiner's arguments about the district court reserving rulings on objections for a "later date" misses Appellants' point—there were no objections to any of the professionals' time for the district court to rule on at that later date. *See* Resp. Br. 14; Examiner Br. 8.

D. The Examiner's hindsight arguments about "less than successful efforts" do not support the district court's order and contravene this court's precedent.

The Examiner discusses at length a cherry-picked handful of what he describes as "less than successful efforts," which he claims justify the district court's order. Examiner Br. 21. This rationale is nowhere to be found in the district court's order, and the Examiner's hyper-focus on fees incurred by Baker Botts could not logically support an arbitrary 50% cut for all of the work performed by every professional in every year of the Receivership, the overwhelming majority of which was not connected to any of the few cases mentioned by the Examiner. *See id.* at 22-25.

The Examiner's hindsight argument is also inconsistent with this Court's precedent, which holds in the bankruptcy context that hindsight review of litigation outcomes is not an appropriate way to determine the reasonableness of professional fees incurred for litigation activity. *See, e.g.*, *In re Cmty. Home Fin. Servs., Inc.*, 990 F.3d 422, 427 (5th Cir. 2021) ("In awarding fees, hindsight is irrelevant; retrospect is irrelevant; 'material benefit to the bankruptcy estate' is irrelevant. 'What matters is that, prospectively, the choice to pursue a course of action was reasonable.'" (quoting *In re Woerner*, 783 F.3d 266, 273-74 (5th Cir. 2015))). Accordingly, the Examiner's argument is not a permissible basis to affirm the district court's order.

Suffice it to say, stale, unspecified, or never-made objections are not a proper alternative ground on which to paper over the district court's errors. This Court should reverse the district court's order and render an award of $29,833,810.90, the full amount of the held-back payments. ROA.104298.

II. The district court erred by failing to adjust the held-back amounts for delay in payment.

The SEC makes no attempt to grapple with whether an adjustment for the sixteen-plus years' delay in payment—delay the SEC asked the district court to impose—is part of a reasonable fee. Instead, the SEC essentially asserts that a district court is allowed to skip the reasonable-fee analysis unless there is a 100% recovery for creditors and the estate's creditors are similarly receiving a time-value adjustment. These arguments find no basis in the law. The district court erred in refusing to adjust the held-back amounts for delay in payment, and this Court should reverse and adjust the requested fees to account for the sixteen-plus years' delay.

It is settled law that an adjustment for delay in payment is part of a reasonable attorney's fee. *Missouri v. Jenkins ex rel. Agyei*, 491 U.S. 274, 282 (1989). It is also undisputedly true, and the SEC does not contest, that "payment today for services rendered long in the past deprives the eventual recipient of the value of the use of the money in the meantime, which use, particularly in an inflationary era, is valuable." *Graves v. Barnes*, 700 F.2d 220, 223 (5th Cir. 1983) (citation modified) (quoting *Copeland v. Marshall*, 641 F.2d 880, 893 (D.C. Cir. 1980) (en banc)). And

it is also true—despite the SEC's attempts to characterize the amount as "small" or "minimal" (but at the same time also apparently a "windfall"), Resp. Br. 3, 37—that the value of the total held-back amounts, individually tailored to account for the amount of time each balance has gone unpaid, was $40,890,050.76 at the time of the Receiver's request, ROA.104279-80.

The SEC does not contest that the professionals remained unpaid for services rendered long in the past, that the professionals lost valuable use of payment for those fees in the intervening years, or that a delay adjustment is necessary to put the professionals in the position they would have occupied had the holdback not been imposed. The only evidence and precedent before the district court, then, dictated that a delay adjustment was necessary to award a reasonable fee for outstanding amounts owed to the professionals. ROA.104298, 104657.

Instead of awarding that reasonable fee, however, the district court—at the SEC and Examiner's urging—erroneously concluded that precedent governing delay adjustments does not apply here. First, the district court held that time-delay adjustments are not relevant outside of fee-shifting cases. ROA.105521. That is wrong, and the SEC makes no effort to defend the district court's error on this point. *See In re Lawler*, 807 F.2d 1207, 1211-12 (5th Cir. 1987) (applying a delay adjustment in a bankruptcy-turned-receivership).

Second, the district court said *Lawler* does not apply because counsel for the receiver-turned-trustee in *Lawler* were owed "*considerably* more." ROA.105522. That, too, is wrong. Appellants' Br. 52 (professionals here owed more than $29 million, while the unmultiplied lodestar in *Lawler* was $843,401.75). Now, the SEC says what the district court really meant was that *Lawler* "depended in part on the fact that counsel was owed considerably more than they had already received." Resp. Br. 39. If that is what the district court meant, that would be just as wrong.

In *Lawler*, at the time of the fee request, counsel had already been paid $750,865 in interim compensation, $92,536.75 less than the $843,401.75 lodestar (calculated using current rates as a delay adjustment). 807 F.2d at 1210-11.[10] So, counsel in *Lawler* were not, in fact, "owed considerably more than they had already received." Resp. Br. 39. And the "80%" of the lodestar interim compensation figure claimed by the SEC in this case—even if it were accurate[11]—is materially less than the 89% of the unmultiplied lodestar that the attorneys in *Lawler* had been paid

[10] This Court approved a multiplier adjustment of that final lodestar figure based on the *Johnson* factors and ultimately awarded fees "in the total amount of $1,400,000 plus expenses and less fees already paid." *Lawler*, 807 F.2d at 1214. Even if the SEC was using the final awarded total, rather than the unmultiplied lodestar, as its basis for comparison, its statement that the attorneys were "owed considerably more than they had already received" would still not be accurate. $750,865>$649,135.

[11] The professionals collected only 65% of the substantial third and fourth fee applications, for example. ROA.19233.

before their application. 807 F.2d at 1210-11. By the SEC's logic, a delay adjustment is *more* justified here.

While the SEC and district court's purported distinctions are wrong, those distinctions are also irrelevant. Nothing in any of the cases cited in the briefing suggests that the principle of compensation for delay is limited to amounts of a certain magnitude, or to fee-shifting cases. To the contrary, delay adjustments are appropriate in receiverships/bankruptcies, and where lesser amounts (both in total and as a percentage of the lodestar) remained outstanding. *Id.* at 1212 (applying delay adjustment to lesser amounts in receivership turned bankruptcy).

Third, the district court erroneously characterized governing caselaw as holding that time-delay adjustments are appropriate "only when creditors had been paid *in full*." ROA.105522 (emphasis in original). The SEC does not defend this rationale. And, indeed, the only case cited by the district court on this point supports a delay adjustment here: "Where, 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." *SEC v. W. L. Moody & Co., Bankers (Unincorporated)*, 374 F. Supp. 465, 487 (S.D. Tex. 1974), *aff'd sub nom. by*, *SEC v. W. L. Moody & Co.*, 519 F.2d 1087 (5th Cir. 1975) (unpublished table decision). The Estate here contains sufficient resources to pay a reasonable fee, and it was error for the district court to do otherwise.

ROA.103649 (showing the Receivership held $437.7 million in cash at the time of the holdback request).

Fourth, the district court erroneously believed that a time-delay adjustment was unwarranted because—as urged by the SEC below and in its appellate brief—there was no time-delay adjustment "to the CD claimants." ROA.105521. Once again, no authority, evidence, or even logic is offered to support this apples and oranges comparison. The SEC concedes that payment of compensation to Ponzi scheme victims and payment to professionals whose work is necessary to generate victims' compensation are governed by entirely different legal standards. Resp. Br. 38. Conflating those distinct payment regimes in the pursuit of "equity" is arbitrary, serves no purpose, and is ultimately nonsensical. The district court's reasoning presumes that the Receiver's professionals would have received a time-delay adjustment if the Stanford claimants had received one. But the claimants are already paid every dollar available on a pro rata basis, so increasing the nominal amount of payable claims would not have resulted in a greater pool of available funds. It simply would have led to a different allocation of distributions among investors. The law does not require such meaningless gestures. If the SEC's point is that professionals should only be awarded a time-delay adjustment if claimants receive more than 100% of their principal losses, then that proposition is plainly unsupported by the law, as discussed above. Despite everything the SEC has to say

about the nature and amounts of the investors' claims, it cannot dispute that the district court replaced the binding *Johnson* and delay-adjustment frameworks with the type of freewheeling and standardless discretion foreclosed by this Court's precedent. Appellants' Br. 26-41; *see also* ROA.107649:8-9 ("SEC's position is essentially it's an equitable determination.").[12]

The SEC's remaining, scattershot arguments fare no better. Among those, the SEC suggests that a delay adjustment is not justified because such an adjustment is not mentioned in the Receivership Order. But that order says that the professionals are entitled to "compensat[ion] . . . from the Receivership Assets," ROA.652, for "reasonable fees," ROA.653, and reasonable compensation in this Circuit has long included an adjustment to account for delay in payment, Appellants' Br. 46-48. In any case, the concept of a "holdback" is wholly absent from the Receivership Orders. If absence from the Receivership Order were as dispositive as the SEC suggests, the district court should have never indulged the SEC's request for a holdback in the first place.

[12] The district court's denial of reasonable administrative fees for the express purpose of increasing money available to creditors also directly contradicts the mountain of authority discussing and explaining the rationale behind administrative priority in bankruptcies and receiverships, *see* Appellants' Br. 36-41, 50-51, authority the SEC refuses to even acknowledge, let alone address.

The SEC also argues against a time-delay adjustment because some of the professionals' rates periodically increased with court approval. Resp. Br. 39. But ensuring that hourly rates remain reasonable over the years is no substitute for ensuring that the fees are ultimately paid, rather than held back with no compensation for the delay. The Receiver's calculated delay adjustment—a calculation the SEC does not dispute—reflects the present value of held-back amounts. ROA.104298. Prospective periodic rate increases, amounts the professionals still have not been paid, do not change the math.

Finally, the SEC includes throwaway references to principles of moderation and windfall avoidance but makes no attempt to explain why awarding the professionals a time-delay adjustment—which could only ever put the professionals in the position of having been paid their fees reasonably contemporaneously—amounts to a windfall or results in an immoderate award. The SEC does not appear to grasp the commonly understood definition of the word "windfall."[13] The only evidence before the district court reflected that even if the district court awarded the full amount of the holdback with a time-delay adjustment, the Receiver's professionals would still have been paid less for the Receivership work than if they

[13] A "windfall" is "an unexpected, unearned or sudden gain or advantage." *Windfall*, Merriam-Webster's Dictionary, https://www.merriam-webster.com/dictionary/windfall (last visited June 11, 2026)

had performed similar work for private clients. ROA.104298-99. The SEC identifies no contrary evidence. Present-value payment of reasonable court-approved rates for reasonable court-approved hours is a reasonable fee, not a windfall.

The evidence and authority before the district court lead to only one conclusion: a time-delay adjustment was necessary for a reasonable fee. At the SEC's urging, the district court abandoned that evidence and authority in favor of unchecked and unprincipled equitable considerations that contravene decades of authority. This Court should reverse the district court's order and render an award adjusting the held-back amounts to $40,890,050.76 to account for delay in payment.[14] ROA.104298.

III. The district court erred in refusing to compensate Baker Botts for preparing the Receivership's numerous and detailed fee applications.

It is settled law that a "professional's preparation of a fee application is best understood as a 'service rendered' to the estate," *Baker Botts L.L.P. v. ASARCO LLC*, 576 U.S. 121, 132 (2015) (citation modified), and that a "district court abuse[s] its discretion in awarding no compensation" for that work, *Rose Pass Mines, Inc. v. Howard*, 615 F.2d 1088, 1093 (5th Cir. 1980) (per curiam). The SEC argues the

[14] The district court's failure to adjust the withheld fees for delay in payment is an independent basis to reverse the district court's order. Even if the Court were to affirm the district court's 50% cut, the Court should still adjust the amount awarded by the district court to account for the delay in payment.

district court was right to ignore that authority and instead rely on a "publicly available" form on the SEC's website, which is a form agreement that the SEC never claims was presented to or accepted by the Receiver or his counsel. Resp. Br. 42. Perhaps sensing the weakness of its lead argument, the SEC tacks on arguments about the timing of the Receiver's request and the burden of reviewing the Receiver's undisputed evidence. Yet again the SEC offers *no authority* in any context supporting the district court's decision to award $0 for this work.

A. The SEC 2008 Billing Instructions are not a substitute for this Court's precedent.

The SEC's lead argument echoes the district court's: the SEC 2008 Billing Instructions "expressly provide that receivers may not bill for time spent preparing fee applications," and the Receiver therefore "could not have reasonably expected compensation for this work." Resp. Br. 41. That argument fails at the threshold.

It goes without saying that it is the law set forth by this Court—not a form buried on an agency's website that the agency never claims it presented or secured agreement to—that controls and should thus govern a party's expectations. The SEC admits as much, stating that it does not "claim[] that the billing instructions are entitled to deference." Resp. Br. 41-42. That concession should be dispositive. Particularly so where this Court has said that the position espoused by the SEC is "unduly penurious" and that a "district court abuse[s] its discretion in awarding no

compensation" for preparing an estate's fee applications. *Rose Pass Mines*, 615 F.2d at 1093.

The SEC responds, without explicitly mentioning *Rose Pass Mines*, that this precedent is inapplicable because it involved bankruptcy, not an equity receivership. But the SEC makes no effort to explain *why* that distinction without a difference should become the law in this circuit. The district court has written repeatedly, and correctly, that this Receivership is quite similar to a bankruptcy proceeding. *See, e.g.*, *SEC v. Stanford Int'l Bank, Ltd.* ("*SIBL*"), Nos. 09-CV-0298, 09-CV-0721, 2009 WL 10704900, at *1 (N.D. Tex. May 15, 2009) (Godbey, J.). This Court likewise has recognized (in a case involving this Receivership, no less) that "[c]ourts often look to the related context of bankruptcy when deciding cases involving receivership estates." *SEC v. SIBL*, 927 F.3d 830, 840-41 (5th Cir. 2019).[15] Neither precedent nor logic supports the SEC's argument that court-mandated work on fee applications in a multi-year, multi-billion-dollar bankruptcy is compensable, but similar court-mandated work in a multi-year, multi-billion-dollar equity receivership is not.

The SEC's reliance on its own policy is especially untenable because the record contains no evidence that the instructions were ever applied to this

[15] Appellants noted this well-known maxim in their opening brief, Appellants' Br. 38 n.16, but the SEC simply ignores it.

Receivership. As the professionals made clear, there is no evidence "that the Receiver or Baker Botts, his counsel, ever saw—let alone agreed—to those 'instructions,'" and numerous other provisions of the same document were concededly never followed here. Appellants' Br. 55-56. The SEC says nothing to refute that point, instead stating that the instructions "are publicly available," and that "[i]f he failed to check them before accepting the position, that is on him." Resp. Br. 42. But, logically, even if the SEC's conclusory arguments about the mere existence of these instructions could substitute for the appropriate legal standard, they would cut the other way. That the SEC promulgated these form "Billing Instructions" but purposefully failed to present them to the Receiver or his counsel, or to include them in either the original or amended Receivership Orders, is a strong indication that the SEC did not expect, or desire, that they apply in this lengthy and complex receivership proceeding.

Finally, *ASARCO* confirms Baker Botts's entitlement to compensation for preparing fee applications. *ASARCO* drew a careful line: the preparation of a fee application is a compensable "service rendered to the estate," while the litigation of a contested fee application in court is not. 576 U.S. at 132 (citation modified). Baker Botts seeks compensation only for the former—the actual work preparing the Receivership's fifth through eighty-second fee applications. ROA.104296. That fee request does not include the substantial time spent negotiating and conferring with

the SEC and Examiner over the details of nearly eighty fee applications. ROA.104295 n.2. For these reasons, the SEC's reference to a footnote contained in the second fee application which stated that the Receiver was not charging for fees incurred preparing that particular fee application similarly fails to justify the district court's decision to award *no* compensation for any fee application. *See* Resp. Br. 42. The Receiver is still not requesting payment for preparing that fee application and, as the SEC itself admits, the Receiver has consistently maintained "that Baker Botts was entitled to be compensated for such work." *Id.*

B. The SEC's timing argument does not save the district court's order.

The SEC's final argument for denying compensation—that the Receiver's timing in seeking compensation for fee applications meant review "would have been burdensome," *id.* at 43—is meritless and was not relied upon by the district court, ROA.105521-22.

The SEC's complaint about the Receiver making one single request instead of seventy-plus smaller requests is not a good-faith objection. The SEC objected to Baker Botts being paid for this work at all, and it never suggests that it would have dropped that objection if Baker Botts had submitted numerous requests over the years. Resp. Br. 41-44. Unsurprisingly, no caselaw supports the SEC's invented proposition that payment for compensable services can be rejected out of hand where

a party makes one final fee request instead of seventy interim requests. *See id.* at 42-43.[16]

Rather than contesting the amount, reasonableness, or value of Baker Botts's fee application efforts, the SEC claims it "would have been burdensome" for the court to review Baker Botts's *uncontroverted* evidence showing its fee application work was compensable. Resp. Br. 43. The notion that a district court has authority to deny compensation the *more* evidence a party places in the record—especially uncontroverted evidence—is a peculiar one to say the least. This Court instead demands that "in ruling on motions for costs and attorney's fees, the district court cannot act arbitrarily." *Schwarz v. Folloder*, 767 F.2d 125, 127 (5th Cir. 1985). Ignoring undisputed evidence of compensable work would be the epitome of arbitrariness.

The work preparing the Receivership's fee applications was required by the district court, undisputedly reasonable in hours and rate, and of concrete benefit to

[16] Nor is the SEC's argument consistent with how practitioners request fees for preparing an estate's fee applications. For example, Baker Botts requested fees for its work preparing an estate's fee applications as part of a final fee application, *see In re ASARCO LLC*, 477 B.R. 661, 666 (S.D. Tex. 2012) ("In its final fee application . . . Baker Botts asked the Court to approve . . . [previously] unapproved amounts," including "fees and . . . expenses incurred by the firm in preparing . . . the fee application"), in the case that led the Supreme Court to remark that preparation of a fee application is a compensable "service rendered to the estate," *ASARCO*, 576 U.S. at 132 (citation modified).

the Estate and the district court. The district court's denial of any compensation for Baker Botts's preparation of the Receivership's fifth through eighty-second fee applications should be reversed, and judgment rendered for the reasonable fee of $1,650,207.60, adjusted for delay to $2,123,520.20. ROA.104296-97, 104652.

CONCLUSION

The Court should reverse each of the district court's erroneous rulings and render judgment for the full amount of the withheld fees, adjusted for delay, along with compensation for preparing the fee applications.

Dated: June 12, 2026

Respectfully submitted,

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CERTIFICATE OF SERVICE

I certify that on June 12, 2026, the foregoing was electronically filed through this Court's CM/ECF system, which will send a notice of filing to all registered users.

/s/ Kevin M. Sadler
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CERTIFICATE OF COMPLIANCE

1. This reply brief complies with the type-volume limitation of Fed. R. App. P. 32(a)(7)(B)(ii) because this brief contains 6,325 words, excluding the parts of the brief exempted by Fed. R. App. P. 32(f).

2. This reply 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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