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

SECURITIES AND EXCHANGE COMMISSION, Plaintiff, v. STANFORD INTERNATIONAL BANK, LTD., STANFORD GROUP COMPANY, STANFORD CAPITAL MANAGEMENT, LLC, R. ALLEN STANFORD, JAMES M. DAVIS, and LAURA PENDERGEST-HOLT, Defendants.	§ § § § § § § § § § § §	Case No.: 3-09-CV-0298-N

REPLY IN SUPPORT OF RECEIVER'S MOTION FOR APPROVAL OF THIRD INTERIM FEE APPLICATION

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Parties who are playing no role in the clean up of the 20-year long fraud perpetrated by Allen Stanford and his cronies persist in questioning how it can cost so much to investigate and wind up an $8 billion Ponzi scheme.[1] Yet none of the objectors has been able to point to another case in which a world-wide multi-billion dollar Ponzi scheme, operating behind the façade of a legitimate business for years, was shut down and wound up with only modest amounts of professional fees and expenses involved. No such example exists.

This case is unprecedented on many levels: the size, duration, and complexity of the scheme, the abysmal state of the Stanford information systems and records, and the scale and complexity of international and domestic litigation. All of these factors have contributed to the amount of fees and expenses incurred by the professionals. A great deal of the value of the Estate must be painstakingly pursued through investigation and asset-recovery litigation. The professional fees and expenses are an investment that must be made in order to maximize the Estate that will be available for ultimate distribution to claimants. This should not be, but apparently is, a controversial proposition.

Most of the objections to the third fee application are identical to those raised previously, and thus were overruled by the Court when it awarded the professionals' fees and expenses, subject to a 20% holdback in respect of the current value of the Estate. For example, the Examiner asserts that the Receiver has not submitted even "a shred" of evidence to support the current application, is indifferent to the "burn rate," has too many professionals working for the Estate, and has failed to explain how any of the professionals' services have benefitted the Estate.

[1] Ironically, the Examiner "joins Mr. Stanford" in objecting to the Receiver's current fee application. Doc. 860 at 6.

To the contrary, the Receiver's third application, like the first two, is supported by 1,000+ pages of evidence, and this reply demonstrates that the services and fees rendered have been required by the Amended Order Appointing the Receiver and have been necessary in order to secure the records and assets of the Estate. As forecasted months ago, the Receiver's team and the burn rate have been drastically reduced over time in a careful and deliberate manner. Most of the specific objections to particular line items or tasks reflect a basic failure to examine the evidence submitted. For example, the Examiner complains that Thompson & Knight ("TK") has charged the Receivership for time spent preparing the fee application. A cursory examination of TK's invoice demonstrates that TK professionals recorded the time devoted to the application, but the value of that time has been subtracted from the dollar amount that is invoiced. It is unfortunate that so much time must be devoted to such pointless objections, but the Receiver will respond to each such objection herein in detail.

A. The objectors have no law, evidence, or expertise to support the assertion that the Receiver's duties can be executed for less than the fees and expenses requested.

What does it cost to wind up a 20-year long, $8 billion dollar Ponzi scheme that operated through 149 entities on three continents? None of the objectors knows the answer to that question, has any particular expertise or experience in divining the answer, or has even been so brave as to hazard a guess. None of the parties making the generic objection that the Receivership is costing too much has cited to a single case involving a receivership that is remotely similar in size, scope, or factual or legal complexity to this one. They do not even cite to other receiverships or attempt to extrapolate what this one should cost by comparison. Rather, they invoke the *Johnson* case like a talisman, without any critical analysis. For example, to the objectors "results obtained" means only how much cash the Receiver has under his control. *Johnson*—a civil rights case—makes it clear that even when the plaintiff does not recover

damages, that fact "should not obviate court scrutiny" of other effects achieved for the client, such as injunctive relief. *Johnson v. Ga. Hwy. Express, Inc.*, 488 F.2d 714, 718 (5th Cir. 1974). But the objectors assign *no value* to the Receiver's activities that have been required by law (i.e. those attendant to terminating 3,000 employees at a cost to the Estate of nearly $20 million), that have reduced the operating expenses and carrying costs of the Estate, or that have laid the groundwork for recovery of assets in the future.

There is no evidence that any of the objectors have ever been involved in a receivership of similar size and complexity, let alone executed with fewer fees and expenses. In particular, the Examiner cites to no relevant cases or evidence. He does not even assert that he has ever participated, in any capacity, in a receivership of any size. He merely expresses his opinion that the Receiver's team could accomplish the same work with fewer resources. This is a sufficient basis for overruling the Examiner's objections to the Receiver's fee application.

However, aside from the on-going Madoff case, where the fees and expenses are larger than these, there is at least one comparable case that is instructive of what it should take to carry out the mandate this Court has given the Receiver. In 1996 the SEC filed *In re Bennett Funding Group, Inc.,* Case No. 96-61376 (U.S. Bankruptcy Court, Northern District of New York), a case involving what the SEC then described as the largest Ponzi scheme in history. In the six years preceding the bankruptcy filings, the Bennett Companies sold more than $2.13 billion in unregistered securities. As a result, more than 12,000 creditors were owed more than $1 billion.

What did it take to wind up a Ponzi scheme perhaps a third the size of this one? Significant resources, including legal and accounting expertise of high caliber. The trustee, Richard C. Breeden, was the former SEC chairman. His lead counsel, Simpson Thatcher &

Bartlett is a top tier New York law firm. Several other domestic and foreign law firms, as well as accounting firms and financial advisors, had to be engaged. *Bennett Funding* thus provides some relevant measuring stick for what it takes to unwind a multi-billion Ponzi scheme masquerading as a legitimate business. For the first twelve months of *Bennett Funding*, the trustee and top five professional firms were awarded more than $14.6 million in fees and more than $1.5 million in expenses (in 1997 dollars). They received more than $75.6 million in fees and more than $5.4 million in expenses during the lifetime of the case. These awards in a similar (*but much smaller*) Ponzi scheme case shed some proper light on the reasonableness of the Receiver's request under the *Johnson* test. How much more might it reasonably cost to unwind the Stanford Ponzi scheme? Compared to *Bennett Funding*, Stanford endured more than twice as long, involved four times the dollar amount in fraudulent sales of securities, and left in its wake more than twice as many claimants.

Because the objectors cite no comparable receivership cases, no evidence, and lack the relevant experience or expertise to justify their opinions that this Receivership simply costs "too much," such objections should be summarily overruled.

B. The Receiver has consistently increased efficiency and reduced "burn rate."

As the Receivership progresses, the Receiver is able to plan and execute his Court-ordered duties in a more deliberate and selective manner. The Receiver's enhanced control over the Estate has reduced the risk of sudden loss of assets, and thus fewer situations require emergency action. The Receiver can now proactively work to preserve and monetize the value of assets under his control for the benefit of the Estate, rather than constantly being forced to react. Some Estate assets remain subject to competing claims, but the identity of the claimants and the issues surrounding those claims have become much more clear, enabling the Receiver to

assert his claims to those assets in a calculated and more efficient way. All of this results in substantial reductions in fees and expenses over time.

The Receiver and his team continue to gather and synthesize more information of much higher quality and reliability. This increased working knowledge allows the Receiver to accomplish more work with fewer professionals working on a given issue. Fees and expenses have consequently been reduced, as expected, by more than 65% as compared to the initial fee application (measured by the weekly rate of expenditure) and 21% as compared to the second fee application, and the Receiver expects reductions to continue. The Receiver estimates that his application for September fees and expenses will show a further reduction in burn rate of at least 25% relative to the third application. These reductions are in addition to the Receiver's professionals' voluntary 20% discount from their customary rates at the outset of the Receivership, a discount granted in return for the promised support of the SEC. Many of the Receiver's skilled professionals will be devoted to the Receivership for some time, and thus precluded taking on work that pays their customary rates. Both of these facts counsel in favor of payment under the *Johnson* test.

C. The Receiver has submitted his work records in a reasonable and customary manner that allows the Court to evaluate the tasks performed.

The Examiner objects that the fee application "lacks sufficient supporting documentation" - yet the Examiner manages to fill 25 pages with very specific objections detailing which professional engaged in which task, for how long, and at what cost. Doc. 860 at 6. This is only possible because, as the Examiner concedes, the Receiver has actually submitted voluminous evidence in the form of 1,000+ pages of invoices that contain daily time entries for every professional. There is no better evidence of what services were rendered by a particular professional on a particular date than their contemporaneous time records.

The Examiner has invoked this complaint—that the Receiver has failed to submit evidence—repeatedly in this case. But in substance, this objection constitutes nothing more than the Examiner's unsupported personal opinions that (1) the Receiver and his professionals should be required to produce invoices reflecting the aggregate amount of fees and expenses devoted to particular issues or tasks (i.e. clawbacks), (2) that some entries are repetitive or lack sufficient detail, and (3) the professionals' invoices should not be redacted for privilege. These objections were presented to the first and second fee applications and thus have already been addressed by the Court.

Beginning June 1, the Receiver's professional firms instituted billing conventions designed to track the amount of time devoted to particular issues. The Court has also required that professional invoices identify the amount of time each professional spends on individual tasks each day, beginning September 1, 2009. In so doing, the Court overruled any objections to "lumped" billing as to pre-September 1 time. *See* Fee App. Tr. at 43. The Examiner is not fully satisfied by these billing conventions, in part because the billing categories are not identical across firms. *See* Doc. 860 at 5. But this is only natural—each firm developed conventions appropriate to their own work based on the specific matters to which their work applied. The Receiver and his professional firms will continue to evaluate and refine the billing conventions currently in place, and add new categories or modify existing ones as the circumstances warrant,[2] and will strictly adhere to the Court's admonition regarding how time is recorded.

The Examiner apparently objects that each time entry by a professional should fit discretely into one and only one category, but many meetings, communications, and other tasks are relevant to more than one category. Requiring the Receiver's professionals to subdivide and

[2] For example, Baker Botts has created new sub-matters for each foreign jurisdiction in which the Receivership is engaged in litigation.

subcategorize their time beyond the current level of detail, which now includes the time spent on individual tasks, would yield greatly diminishing returns and ultimately be counterproductive. If a 30-minute meeting covered 5 topics, does it really make any sense for the professionals to create 5 different time entries in their work records? Even if time were recorded this way, what is the point of such an exercise?

The Examiner cites no legal authority to support his demand that the Receivership team devote more time—for which it is not compensated—to add up the amount of resources a particular issue of interest to the Examiner required in a given period.

As for the Examiner's complaint that the professionals' time entries are repetitive or fail to supply sufficient detail, the fact is that some of the required work is, in fact, repetitive. For example, there are certain tasks related to discerning the character of assets in customers' accounts that had to be performed the same way hundreds, or even thousands, of times. Thus the same time entries are repeated many times. Moreover, the evidence has permitted the Examiner to lodge very specific complaints because the descriptions of the services rendered are likewise very specific. There could always be more detail—the professionals could have submitted 2,000 pages of invoices—but the Examiner cites to no authority and no comparable case to support the standard he would impose.

Finally, the Examiner objects to the redaction of privileged information from the invoices submitted with the fee application. Doc. 860 at 7. Unlike the Examiner, who has no clients and therefore no privileged communications to protect, the Receiver's communications with his counsel are privileged, and he has only redacted what was necessary to protect the Receiver's privileged attorney-client communications and attorney work product from

disclosure. The Receiver and his professionals have a legal duty to protect this privileged information.

D. The specific examples cited by the Examiner illustrate reasonable and necessary expenditure of time and effort by the Receiver and his professionals.

The Examiner cites a number of examples that he believes represent overstaffing, overbilling, or unnecessary work or expense by the Receiver's professionals—but those examples establish just the opposite, that the Receiver's billings are both reasonable and necessary. The Receiver will address each of the Examiner's examples in turn.

The Examiner notes in support of his overstaffing argument that 61 attorneys from Baker Botts billed time to the Stanford engagement in the period covered by this application, as if to imply that all 61 attorneys worked full time on this case. Doc 860 at 8. But this figure is misleading; 50% of the dollar amount billed by Baker Botts attorneys is for work by only 9 attorneys.[3] Similarly, the Receiver notes that 21 Thompson & Knight attorneys billed to the Stanford engagement in the same period. *Id*. Fifty per cent of that dollar amount is for work by only 3 attorneys.[4] This is but one example of the Examiner's creative use of numbers taken out of context to support his arguments.

(1) The July 31 Hearing

The Examiner cites the Receiver's preparation for the July 31 hearing as an example of work for which the Receiver's professionals should not be paid. At that hearing, the Court considered (1) the SEC's motion to modify the Receivership order by rescinding the Receiver's authority to pursue clawback claims, (2) the Receiver's request to extend the asset

[3] *See* Doc. 821-3 at 367-68. Those nine attorneys are Adams, Arlington, Ayers, Cialone, Day, Howell, Sadler, Stutts, and York.

[4] *See* Doc. 821-4 at 104. Those three attorneys are Roper, Uribe, and White.

freeze covering the investor relief defendants' accounts, and (3) whether the freeze should cover both principal and interest, or only interest.

The Receiver had less than three days to prepare for the hearing, at which claims worth nearly a billion dollars to the Receivership Estate, representing likely the biggest source of recovery available to defrauded investors, were on the line. Counsel for the Examiner, the SEC, and numerous relief defendants submitted opposing briefs and/or attended and argued against the Receiver. In light of the stakes, the substantial risk of losing a primary Receivership asset, the number of the Receiver's adversaries at the hearing and the resources available to them, and the limited time in which to prepare, the time and effort expended by the Receiver's counsel was both reasonable and necessary.

The Court denied the SEC's motion to modify the Receivership order, a "result obtained" not noted by the Examiner or SEC. The Court further ruled that the asset freeze would continue as to millions of dollars in fictitious interest payments, but not purported principal. The amount of fictitious interest alone amounts to at least $60 million. This "result obtained" is likewise overlooked by the Examiner and SEC. The Court extended the then-existing asset freeze on *both* principal and interest for ten days to allow the Receiver time to seek review by the Fifth Circuit. The Court noted that the Receiver had supported his request for a principal freeze with "decent, legitimate, colorable arguments," and that the dispute presented "a relatively crisp legal question . . . that's appropriate for disposition by the Circuit,"[5] and that if the Receiver was ultimately "correct about the law, then the Receiver is absolutely righteous in trying to pull the money into the Receivership to be passed out. He's doing just what he was appointed to do."

[5] A week after the hearing, the Receiver filed with the Fifth Circuit a Motion to Extend Injunction Pending Appeal, which the Fifth Circuit promptly granted (over the objections of numerous relief defendants and the SEC). *See* Aug. 7 Motion and Aug. 11 Order. Following extensive briefing, the Fifth Circuit heard oral arguments on November 2, 2009, and has yet to issue its decision on the substantive issues.

Tr. at 29, 47-48. The Court's comments illustrate that this hearing involved just the kind of complex issues and application of law to unprecedented facts that favors awarding fees under the *Johnson* factors. *Johnson*, 488 F.2d at 717-19.

Preparing for such an important hearing is inherently a team effort, including anticipating possible lines of questioning by the Court, and researching responses based on the case law. The Examiner apparently believes that only attorneys who speak at a hearing should be compensated for their time in preparing for or attending the hearing, but such a narrow opinion is not consistent with the reasonable or customary practice of lawyers in complex litigation. The Examiner's own invoice seeks payment for work by at least two attorneys other than the Examiner who helped him prepare for the hearing, including an entry for his partner Stephen Gleboff, who billed at a rate of $450 per hour to "[a]ttend hearing" (without speaking). *See* Doc. 850-2 at 14-16. Attorneys from Krage & Janvey, Baker Botts, and Thompson & Knight combined to bill $50,778 for 155.5 hours of work in less than three days of hearing preparation.[6] The Examiner asserts his opinion, without any credible basis, that "no private client would tolerate" this amount of effort. Doc. 860 at 2. The reality is quite the contrary; no client (of any description) would accept anything less when so much is on the line.

The work described on the invoices of Krage & Janvey, Baker Botts, and Thompson & Knight was not duplicative. The Receiver specifically requested separate but related research from each firm regarding the issues likely to arise at the hearing. Attorneys from each firm conducted this research and used it to brief and prepare the Receiver for the July 31 hearing. Each firm's research was integral in making decisions regarding the pursuit of

[6] Two Baker Botts paralegals and one paralegal clerk make up part of this 155.5 hours. Baker Botts paralegal Kevin Scanlan worked 11.5 hours on July 31st on various tasks related to the hearing, including driving to the courthouse and to the airport. The courthouse is .7 miles from Baker Botts' Dallas office and Love Field is 1.2 miles away. Mr. Scanlan thus devoted less than one hour of the day to driving, at a cost comparable to other means of transportation.

investor clawback claims and preparing the Receiver and Mr. Sadler for their presentations to the Court. William Banowsky of TK and David Arlington of Baker Botts attended the hearing on July 31 to provide assistance as needed. Several other TK attorneys who worked on this issue attended the July 31 hearing but did not bill for their time.

The SEC joins the Examiner's objection, arguing that the "effort the Receiver has taken to sue innocent investors [is] not necessary or appropriate in the first place," and that those claims, even if successful will not provide "meaningful relief to individual investors." Doc. 853 at 3. This is a political objection to the issue of clawbacks claims, claims on which the SEC takes markedly different positions in different cases; it is not a credible objection under the appropriate legal standards. The objectors continue to make this objection at every turn, despite the Receiver's prior responses which the Court has evidently found compelling. *See* Doc. 754 at 12-14. This Court's June 29 Order gave the Receiver five weeks in which to "assess whether he wants to assert claims against individual investors and to assert such claims," and the Receiver has followed that Order. Doc. 533. Moreover, the Receiver is "specifically directed" to institute and prosecute all actions that, like the investor clawback claims, "the Receiver deems necessary and advisable to preserve the value of the Receivership Estate, or that the Receiver deems necessary and advisable to carry out the Receiver's mandate under this Order." Doc. 157 at ¶ 5(i). The Receiver cannot ignore this duty simply because the law in this area is not entirely settled.

(2) Insurance Matters

The Examiner likewise cites the Receiver's work on insurance matters as an example of work for which the Receiver and his legal team should not be paid because of supposed overstaffing and duplicative work. One of the Receivership Estate's significant assets is its insurance coverage underwritten by Lloyd's of London. These policies include a Directors

and Officers ("D&O") liability insurance policy with limits of at least $50 million, and a Professional Liability policy with limits of at least $50 million.[7] Both of these policies provide coverage to a lengthy list of Stanford companies expressly named in the policy,[8] as well as to officers and directors of those entities.

The insurance policies present the Receiver and his counsel with numerous complex issues without obvious answers or a clear path to resolution. As the Court is aware, numerous parties claim an interest in the D&O policy and its proceeds.[9] It now appears certain that the policy limits will be insufficient to cover all the claims that will be asserted. Developing and executing a strategy with respect to the policies has required the coordinated efforts of the Receiver and his counsel at the highest levels. Much of the work in this area, particularly involving meetings and conferences, simply cannot be delegated to junior attorneys. Counsel for the Receiver engaged in numerous discussions with counsel for the criminal defendants and other claimants, as well as counsel for Lloyd's, in an unsuccessful effort to determine whether a compromise could be reached, subject to court approval. These negotiations necessarily involved consultation and discussion among senior members of the Receiver's legal team and discussions with the lead counsel for a number of the claimants.

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[7] The D&O policy consists of an underlying primary policy with a liability limit of $5 million, and an excess policy that provides up to $90 million in the annual aggregate over the Professional Indemnity, D&O, and Employment Practices Liability underlying policies. The underlying and excess Professional Indemnity and D&O policies are contained in the Appendix to the Pendergest-Holt motion (Doc. 538-2 at 1, 3, 137).

[8] The D&O policy lists more than 135 Stanford companies as named insureds. *See* Doc. 538-2 at 19-21.

[9] The Receiver has been informed by counsel for Lloyd's that more than 60 persons have requested payment or reimbursement for legal expenses under Stanford's insurance policies, based upon their status as a former director, officer, or employee of Stanford entities.

The Receiver has also been required to respond to numerous court filings relating to the D&O policy and perform research related to those court filings.[10] The Receiver's counsel delegated this work to junior attorneys where possible, but even seemingly straightforward tasks have proven complicated given the cast of characters and entities who stake a claim to the insurance policies and their proceeds, as well as issues unique to receivership cases. The novelty of the situation favors awarding fees under *Johnson*.

Aside from the D&O policy, some of the Receiver's work on insurance matters involved claims under Stanford's political risk policy in connection with the Venezuelan government's seizure of Stanford Bank SA Banco Comercial (Venezuela). These claims have a potential value to the Estate in the tens of millions of dollars. Thompson & Knight attorneys researched the legal and practical requirements for giving notice to the carriers and the prosecution of such claims, and corresponded with their Latin American contacts to develop evidence to support the claim relating the Venezuelan seizure.

Another portion of the work on insurance issues had to do with more common types of insurance, such as real property insurance for properties located throughout the world, and insurance for boats, aircraft, and other equipment. None of this work was duplicative.

Finally, the Examiner asserts—based solely on his review of online biographies—that some of the Receiver's counsel working on insurance matters have "no particular insurance expertise." Doc. 860 at 15. Based on this, he objects to all of the time spent by three Baker Botts partners—Tim Mountz, Joseph Cialone, and Tim Durst—on insurance matters for the Receiver. This "no expertise" criticism is a baseless and hypocritical personal opinion. It is also an unseemly personal attack on the professionals. It is no more justifiable than objecting to

[10] *See, e.g.,* Doc. Nos. 538, 567, 560, and 582, the Receiver's Response (Doc. 599), Lloyd's Response (Doc. 776), and the Court's Order (Doc. 831).

paying the Examiner's fees because he has no experience or expertise as an Examiner in an SEC fraud case.

The Examiner's assumption regarding a lack of experience is also wrong on the facts. Mr. Cialone's practice concentration is in areas that generally involve D&O insurance issues: securities litigation, internal investigations, corporate governance, M&A activity, and SEC and governmental investigations. Mr. Cialone has represented boards of directors, special litigation committees, and audit committees in conducting special investigations and in dealing with all manner of issues which have involved D&O policies. He has been practicing with Baker Botts for over 37 years.

Tim Mountz is head of Baker Botts' Professional Liability Practice Group and is a former President of the Dallas Bar Association. For many years, his practice has involved the representation of legal and accounting professionals as well as companies and their officers and directors, in securities litigation and governmental and administrative investigations. He is regularly involved in engagements that present issues relating to D&O insurance.

Tim Durst also has extensive experience in securities litigation, corporate investigations, and professional liability litigation, and his cases have also frequently involved D&O insurance coverage matters and issues.

Tim McCormick and William Banowsky of Thompson & Knight have extensive experience handling and litigating D&O issues. Corporate governance and D&O disputes are a substantial part of the practice of both and they have both lectured on the subject. Each time entry for Mr. McCormick and all but one time entry for Mr. Banowsky set out by the Examiner references work on behalf of the Receiver specifically relating to D&O issues, an area in which both Mr. McCormick and Mr. Banowsky have extensive experience. *See* Doc. 860-2 at 17-44.

Finally, it is only to be expected that the most experienced lawyers at the Receiver's law firms would coordinate and consult with each other regarding insurance matters, particularly given the importance of the issues and the need for experienced representation in this area. The fact that both firms have been involved in this highly complex area does not, as the Examiner summarily concludes, mean that the law firms were doing the exact same work or being inefficient. The facts show exactly the opposite—that experienced partners at Baker Botts and TK were not duplicating efforts or being inefficient, and that the Receiver supervised and monitored the work being done by his counsel who reported to him in this complex area.

(3) Account Review and Release Process

The Examiner similarly objects to Baker Botts' billings on the account review and release process, a process he opposed from the beginning. This is yet another example of the "I don't like it, therefore you shouldn't be paid for it" standard that both the Examiner and SEC apply to this case. Stanford Group Company brokerage accounts were frozen when the Receivership was instituted. For the first several months, releasing a frozen account required court approval. Following the Court's May 21 Order, the Receiver was able to release eligible accounts from the asset freeze without seeking court approval each time, by filing a joint stipulation in the form approved by the Court. *See* Doc. 394. Accordingly, each accountholder who might be eligible for a stipulated partial release was assigned to one of two junior associates, Brendan Day or Andrew York, who were supervised by David Arlington. Mr. Day and Mr. York evaluated relevant documents and data to determine whether an accountholder was eligible for release and in what amount, prepared proposed stipulations for eligible accountholders, and communicated the results of their analysis to the accountholders. The Examiner asserts that "there was a large amount of duplicative work being done by Baker Botts as to [the account review and release process]." Doc. 860 at 16. This is not correct. There was

no duplication of effort by Mr. Day and Mr. York and they never worked on the same accountholder's file. Nor was there any duplication of effort by Mr. Arlington, who was responsible for supervising the work of these two attorneys, and communicating with numerous investors' counsel.

The Examiner also objects to the billings of Jaime Huddleston. Ms. Huddleston devised and maintained Baker Botts' internal file management system in connection with the account review and release process. This involved acquiring, reviewing, organizing, and tracking documents generated by professionals from FTI and FITS, and SGC brokerage employees, as well as documents submitted by Stanford investors. Mr. Day and Mr. York's review and analysis of the accountholder files assigned to them relied on ready and efficient access to these documents, and Ms. Huddleston's work enabled them to work efficiently. Ms. Huddleston's work was not clerical—it required frequent contact and discussions with FTI, FITS, and SGC brokerage employees, and significant technological and organizational skill.

The significant time required was a consequence of (1) the large number of accounts and accountholders involved, many of which were related by family or other connections which often were not readily apparent, (2) the level of detail required by the Court-approved stipulation form, (3) the lack of any central source for the data necessary to determine the amount subject to release, (4) inconsistencies within the available data, (5) unique concerns of individual accountholders, which required time-consuming one-by-one discussions, (6) significant time spent responding to Examiner inquiries, and (7) the substantial effort necessary to accurately track the review and release process, in part to provide accurate reports to the Examiner, which he demanded at regular intervals. Baker Botts attorneys prepared and sent more than 110 stipulations to accountholders eligible for partial release. Baker Botts attorneys

also developed and implemented a protocol allowing for partial account releases without stipulations, by allowing qualifying accountholders to "draw down" the value of their accounts to match the amount of CD proceeds that would have been covered by the stipulation. This allowed former SGC brokerage employees, now part of the Receiver's staff, to play a much larger role in the account review and release process, at a reduced cost to the Receivership Estate.

The time billed by Baker Botts associate Mike Myers was distinct from the work of Mr. Arlington, Mr. Day, and Mr. York. Mr. Myers devoted substantial time to the proposed bulk transfer of 3,500 Stanford Group Company accounts to Dominick & Dominick, LLC. This involved researching and developing the protocol and framework for the bulk transfer, drafting the bulk transfer agreement, coordinating with counsel for Dominick & Dominick, FINRA, and Pershing, and drafting communications to be sent to customers affected by the bulk transfer. Mr. Myers also devoted time to the process of transferring or closing the IRA accounts held at Stanford Trust Company, including researching and developing the protocol, drafting communications to affected customers, and numerous related communications with regulators from Louisiana and other states.

(4) The "Sea Eagle" and the "Little Eagle"

The Examiner objects to the billings of Ben Krage in connection with two yachts in the Receiver's custody, the "Sea Eagle" and the "Little Eagle." Doc. 860 at 20-21. Mr. Krage ensured that the value of both vessels was preserved while in the Receiver's custody, reduced the expenses related to the Estate's ownership of the vessels, and attended to numerous legal and practical considerations involved in marketing the vessels and seeking court approval for their eventual sale.

Mr. Krage spent considerable time working on issues related to both vessels. But the Examiner disingenuously diminishes the value and necessity of Mr. Krage's work by comparing the dollar amount billed by Mr. Krage to the $150,000 potential sale price of the smaller of the two vessels, the Little Eagle. The Examiner neglects to mention that the larger vessel, the Sea Eagle, has an outstanding offer to purchase it for $2.5 million, which is subject to higher bids through a "stalking horse" procedure.

The Examiner objects that Mr. Krage "spen[t] days trying to 'locate' a form in order to document" the short-term lease of Little Eagle to its potential buyer. *Id*. This objection is equally disingenuous. The prospective purchaser of the Little Eagle was adamant regarding his need to have use of the vessel during the summer months. Two of Mr. Krage's time entries do mention his efforts to locate a suitable form lease, but only among a longer list of substantial tasks. Doc. 860-3 at 14. Mr. Krage expected that by consulting Baker Botts, TK, or a leading yacht broker he might find a suitable, standard fill-in-the-blank lease form. He very quickly learned that the proposed lease arrangement was a novel transaction—no one he contacted had ever heard of such thing—and that no such form existed. The broker provided a charter agreement as a courtesy, but Mr. Krage essentially drafted a unique 13-page long lease agreement in consultation with the lessee and the vessel's captain. Such drafting is a standard and customary practice for a lawyer. Drafting a 13-page lease contract was appropriate, necessary legal work and it was proper to have an attorney such as Mr. Krage handle this work for the Estate. Moreover this lease arrangement meant that the prospective purchaser did not walk away from negotiations in frustration over the delay in consummating the purchase and the Estate was relieved of all the carrying costs of ownership for the lease period. The *Johnson* case indicates that such creativity in legal problem solving should be rewarded. These are important

assets of the Estate, and the work relating to these required the attention of a seasoned, experienced legal professional with sound judgment and discretion.[11]

These valuable Estate assets merit substantial attention. Mr. Krage's work was necessary and is expected to yield tangible monetary benefits to the Estate in the near future.

(5) Wire Transfers

The Examiner objects to certain billings relating to outgoing wire transfers which require the Receiver's approval. Rather than addressing each wire personally, the Receiver delegated the task to Valerie Thomas, a Krage & Janvey associate. Ms. Thomas spends a few minutes each week managing these wire transfers and ensuring that they are properly executed. Over 3 months, Ms. Thomas billed 4.5 hours in connection with those wires, in increments of 0.1 to 0.5 hours, approximately once per week. This is necessary work that cannot be further delegated

(6) "Bundles"

The Examiner objects to the billings of professionals in Baker Botts' London office, which he erroneously believes involve "clerical" work. Doc. 860 at 21. In regard to the entries for Mr. Preston-Jones, the Examiner correctly notes that the entries are "clumped." *See* Doc. 860-3 at 22-23. The work undertaken by Mr. Preston-Jones was a small part of a number of tasks undertaken by him either related to management and supervision of staff members

[11] The Receiver's team has worked very hard for diminished and delayed compensation with continued fervor and dedication because they seek to provide the greatest relief possible to the victims of this scheme. For example, in the early days of the Receivership the SEC requested that Mr. Krage travel out of state to close one of the first Stanford offices on only one day's notice. Within 24 hours he was sent to close a second office in yet another state. He later traveled to the Caribbean to secure the vessels because Mr. Stanford was still at large, much admired in the region, and could have taken control of a yacht to go into hiding or to liquidate it. On some of these trips, Mr. Krage experienced significant delays caused by weather or mechanical problems. One trip that should have taken 8 hours took 14. Mr. Krage billed the Receivership only 8 hours because he felt that he—and not the Estate—should be the one to incur the cost of such a delay beyond anyone's control.

undertaking administrative functions (shown for example by use of the term "arranging"), or it represented a task requiring professional skill and judgment in determining the contents of court "bundles" which in English litigation represents a crucial part of the court process and over which it is normal to have direct involvement as well as supervision by a legal professional. Mr. Preston-Jones is the sole qualified lawyer who worked on this issue for the Receiver in the Baker Botts London office, and thus no accusation of duplication can be made with respect to this work.

The entries for Mr. Kontopoulos are for work of the type usually undertaken by paralegals in London. In particular, Mr. Kontopoulos was involved in updating detailed bundles lodged with the Court of Appeal, the second highest court in England (where precisely accurate and correctly prepared bundles are fundamentally important), and related communications with Baker Botts' domestic offices. In those circumstances, it is quite normal for paralegals, or even qualified lawyers, to perform these tasks.

(7) Thompson & Knight Pre-June 1 Time

The Examiner objects to Thompson & Knight's inclusion of certain time entries for work done prior to June 1st. The majority of this pre-June 1 time was for work by TK lawyers from its Latin American offices in Mexico City and Monterrey, who did not submit their work records in time to be included in the prior fee applications. Customarily, these lawyers do not bill at regular intervals, but rather at the conclusion of a matter or after substantial work has been completed. These lawyers now understand the need to bill for their time on the Stanford engagement at regular intervals and will do so. Another TK associate who was heavily involved in the closing of the Memphis and Dallas Stanford offices left the country shortly after closing those offices and her time inadvertently was not entered until she returned. The pre-June 1 time

correctly reflects valid and necessary work performed on behalf of the Receiver and thus should not be rejected.

(8) Thompson & Knight Travel

The Examiner asks the Court to reject $18,343.35 in "wholly unspecified travel" expenses submitted by Thompson & Knight. Doc. 860 at 23. This $18,343.35 represents 20% of the previous travel expenses billed that the Court ordered be held back. That amount is carried forward to keep the invoice current and accurate, and does not represent new travel expenses. This objection is another example of the Examiner's superficial review of the evidence available to him.

(9) Response to Senate Committee Inquiry

The SEC objects to certain billings related to "requested Congressional hearings and statements." Doc. 853 at 8. This work related to requests for information from the staff of members of the Senate Banking Committee. The Receiver also received and responded to a letter from the office of Senator Chris Dodd concerning Receivership issues. The Court has ordered the Receiver to respond promptly to such requests, and that is just what the Receiver did. *See* Doc. 157 at ¶ 5(k) (Receiver directed to promptly provide government agencies with all information and documentation they may seek). The Receiver's legal team engaged in numerous communications with Senate Committee staff, researched responses to their inquiries, and consulted with the Receiver. Responding to these requests was appropriate and required by the Receivership order.

(10) International Travel

The SEC also objects generally to international travel expenses. Doc. 853 at 8. But the Court has required the Receiver to secure foreign assets. *See* Doc. 157 at ¶ 5(b) (Receiver directed to take control of all Estate Assets, "wherever situated"). The Stanford fraud

was an international scheme, and the SEC picked Baker Botts, in part, because of their international presence. The Receiver relied on Baker Botts' London professionals and Thompson & Knight's Latin American professionals, as well as foreign local counsel, wherever possible, which minimized international travel costs. But nothing could completely eliminate the need for the Receiver's domestic attorneys to travel internationally.

With respect to travel by Robert Howell to London, that was in connection with a trial held there on June 10-12. The matter concerned competing applications by the Antiguan Liquidators and the Receiver regarding which should be recognized as foreign representative(s) of SIBL in the UK, where $150 million or more is on deposit. The Antiguan Liquidators were the first to file, thereby instituting the action. Mr. Howell was the attorney at Baker Botts principally involved in assembling evidence and drafting affidavits for use in that action. In addition, he and Bill Stutts worked closely with UK counsel (both Baker Botts solicitors and outside barristers) in drafting briefs filed on behalf of the Receiver. Mr. Howell's knowledge of the facts and familiarity with the Model Act that underlies both US and UK cross-border insolvency law was of assistance to UK counsel trying the case. In addition, his attendance was necessary in order to assure that the positions advanced on behalf of the Receiver were consistent with those the Receiver was taking in the US and elsewhere.

With respect to travel by Bill Stutts to Montreal, that too was in connection with a trial against the Antiguan Liquidators. Approximately $20 million in funds are on deposit in Canada. In addition, Montreal was the site of SIBL's backup computer servers, which may well contain information relevant to issues such as bribery of officials. Without seeking approval by any Canadian court, the Antiguan Liquidators (then, still Antiguan Receivers) entered SIBL's premises in Montreal and erased all data from the SIBL servers, after first copying the data and

sending it outside Canada, to Antigua and the UK. They then obtained ex parte recognition from a registrar (a judge empowered to hear only uncontested matters) without giving prior notice to the Receiver or disclosing to the registrar the existence of the competing US Receivership. Mr. Stutts, a cross-border insolvency specialist, was instrumental in crafting the Receiver's strategy for setting aside the registrar's order recognizing the Antiguan Liquidators and having the Receiver recognized as SIBL's foreign representative in Canada. Mr. Stutts' attendance at trial was necessary in order to assure that the positions advanced on behalf of the Receiver were consistent with those the Receiver was taking in the US and elsewhere. His knowledge of the facts and legal principles was also beneficial to trial counsel there. The Quebec court entered judgments vacating the previous registrar's order, recognizing the Receiver and his nominee, Ernst & Young, as SIBL's representatives in Canada, and requiring turnover of the deleted computer information. This result surely justifies the expense under the *Johnson* test.

As to international travel in Latin America, Thompson & Knight attorneys Richard Roper and Jorge De La Garza traveled in a single trip to Lima, Peru; Quito, Ecuador; and Panama City, Panama. This travel was necessary as a part of the Receiver's responsibility to marshal the assets of Stanford entities in those countries. Regulatory authorities in all three countries had taken control of all Stanford entities, and had threatened government-controlled liquidation of these entities. Such a liquidation would have greatly reduced the value of these assets for the Receivership Estate. Moreover, the regulatory authorities in these countries had requested face-to-face meetings with the Receiver's counsel. These meetings allowed the Receiver to effectively advocate for the release of Stanford assets in those countries and provided an opportunity to ensure that the Receiver and these foreign regulatory authorities could effectively cooperate with each other. In addition, the Receiver's representatives met with

remaining Stanford-entity employees and inspected Stanford facilities to ensure that Estate assets could be effectively marshaled.

(11) Ernst & Young Travel Expenses

The Examiner challenges $396.55 in travel expenses billed by Ernst & Young employees who reside in the Houston area. Ernst & Young does not compensate its employees for the expense of traveling to and from work. But when Ernst & Young professionals are required to travel distances beyond their normal daily commute to work at a client site, they are reimbursed for the additional expense of doing so. Even the IRS supports the notion that employees can be reimbursed for such expenses, which Ernst & Young reimburses at the IRS-prescribed rate.

(12) FTI Billings

The time spent by each FTI professional named by the Examiner was necessary, reasonable, and provided a benefit to the estate, as set forth in detail below. The Court should allow the fees attributable to the time entries of Mr. Wei, Ms. Donnelly, Mr. Sizemore, and Mr. Beeman.[12]

a) *Michael Wei*

One of the Receiver's responsibilities was to identify investor accounts eligible for a stipulated partial release of frozen funds at Pershing and JP Morgan. FTI worked with counsel to develop a protocol for identifying eligible investor accounts and releasing them. FTI identified relevant SIBL transactions by date and amount, and then identified those accounts for which the total dollar amount of money withdrawn from SIBL appeared to be less than the

[12] The Examiner complains of approximately $500 in dry cleaning charges by FTI. Doc. 860 at 26. FTI did not charge the Receivership for such expenses generally. But on those occasions when professionals were required, on short notice, to work for extended periods without returning home to perform tasks necessary to comply with a government request or Court order, they incurred these additional costs. Under those circumstances, such charges are reasonable and necessary.

market value of the related frozen SGC brokerage accounts. FTI relied on various sources of data including applications completed by investors as part of the self-certification process. This process enabled the Receiver to release substantial investor funds from the account freeze.

Mr. Wei developed the protocols for release, managed the process of gathering and analyzing data, and performed a quality control review of FTI's analysis of the investors' accounts and transactional history to ensure accuracy. The quality control procedures were critical to the stipulated partial release process, as the information provided by certain investors contradicted other sources of data available to the Receiver.

b) *Nicole Donnelly*

Ms. Donnelly's time entries relate to FTI's quality control procedures that ensure that the Receivership has properly collected, maintained, and preserved the electronic evidence gathered in this case. The preservation effort for this matter required the participation of 18 individuals from FTI offices located in Washington DC, New York, Chicago, and Miami. Data was collected from approximately 30 locations and consisted of at least a dozen different types of evidence, resulting in the collection of over 800 total items. Due to operational requirements, the Receivership had evidence stored in Houston, Annapolis, Washington DC, and Miami.

As part of its standard operating procedure, FTI exercised due care to maintain accurate records. In addition, an important part of the evidence handling procedure, particularly in light of the DOJ indictments, included the review of each record for accuracy and completeness. Such quality control procedures included a reconciliation of the indexes that were created during the collection efforts (bluesheets) to FTI's database and the subsets of collected data (SharePoint) to ensure that all evidence was consolidated in one location and the collection records were updated. Such procedures were necessary and have enabled the Receivership to respond properly and promptly to the numerous government requests for data, as required by the

AOAR. *See* Doc. 157 at ¶ 5(k). Additionally, such quality control procedures ensured that every piece of evidence was properly backed up and secured.

c) *Scott Sizemore*

Mr. Sizemore's time entries relate to the self-certification process. The self-certification process required the review of information provided to the Receivership by the investors or their representatives through the electronic application forms posted on the Receiver's website. Through the self-certification process, the Receivership was able to identify frozen investor accounts held at Pershing that could be either fully or partially released. FTI reviewed the information contained in the applications as well as other data sources and confirmed the accuracy and completeness of the investors' data using the SIBL system.

Mr. Sizemore's participation in the self-certification process included a quality control review of FTI's analysis of the investors' accounts and transactional history to ensure accuracy, and uploading the results of FTI's analysis into an Oracle database. This database housed the investors' account information gathered from disparate sources.

d) *Patrick Beeman*

The Examiner objects to Mr. Beeman's billings because they contain the identifier "Project Ebony," which is simply FTI's internal name for the Stanford engagement. Each of Mr. Beeman's time entries also includes detail of the work performed, which clearly relates to the Stanford engagement.

(13) FITS: Billings by Jose Santana

The Examiner correctly observes that Jose Santana of FITS on occasion performed work similar to the work of the FTI team reviewing Stanford brokerage and trust accounts for CD proceeds. Doc. 860 at 24. Mr. Santana joined FTI's team for a time due to increasing pressure to complete the proceeds review as quickly as possible. Mr. Santana did not

duplicate FTI's work. Rather he helped ensure that the proceeds review project was completed on time.[13]

The Examiner also calls attention to billings by Mr. Santana in connection with the imaging of SIBL CDs. Doc. 860 at 25. Although not immediately apparent from the narrative description, Mr. Santana did not literally scan the CDs; that was done by former SGC staff now employed by the Receiver. Mr. Santana's role was to supervise the scanning project, review the scanned images and add descriptive data, and organize and edit the imaged data files so they could be entered into an Access database developed by FITS.

(14) FITS: Per Diems

It is standard practice for FITS to charge clients a per diem for its professionals' meals and incidentals while on the road. The rate of $60 per day is based on guidelines set forth by the IRS and no other charges for meals or incidentals appear on the FITS invoices.

E. Travel Expenses for FTI and FITS

The Examiner objects to the Receiver's selection of accounting and other professionals who must travel to Houston to perform certain aspects of their work (as opposed to local firms). Doc. 860 at 4. This objection ignores the reality of the jobs these firms perform. The firms in question are each uniquely qualified to assist the Receiver in executing his Court-ordered duties, as set forth below. No adequate local alternatives existed which could have provided the full range of necessary skilled professionals needed. Had the Receiver hired multiple local and out of town firms, no doubt the Examiner would have objected that the Receiver should have hired a national firm with all the expertise in one firm.

[13] Mr. Santana's billing rate to the Receivership (after the 20% agreed upon discount) is $140 per hour, not $175 per hour as the Examiner suggests.

(1) FTI Consulting

FTI personnel have been required to travel from their home locations to the Stanford headquarters in Houston and to other Stanford locations to interview Stanford employees and to secure and review data. FTI has provided detailed records for expenses per professional per day, identifying the nature of the expenses incurred. FTI professionals are required to travel frequently, which permits FTI to negotiate the best possible rates for transportation and lodging.

FTI's services have been invaluable to the Receiver to carry out the Court's orders to (1) account for all Estate property that comes in the Receivership; (2) take complete and exclusive control over assets and records; (3) enter and secure any premises where assets or records were located; (4) prevent loss, damage and injury to the Estate; and (5) provide government agencies with information. FTI's team is comprised of the professionals within the firm who are the best suited to this particular engagement. They possess the forensic skill, expertise and knowledge required to conduct the investigation and resolve the problems presented by information kept in numerous, geographically dispersed locations in more than 200 accounting, finance, and operational systems that did not centrally report. Most of these individuals reside outside Texas, in San Francisco, Atlanta, Los Angeles, Chicago, and other locations, and thus the majority of expenses relate to airfare and hotel accommodations. All of the professionals' travel has been necessary to secure and preserve evidence and chain of custody at Stanford offices throughout the U.S., to analyze and process information housed at Stanford headquarters in Houston, and also to transport evidence to FTI labs where highly specialized equipment is available and the professionals completed some of their forensic investigation.

(2) FITS

The Receiver chose FITS to operate, and ultimately wind up, the Stanford brokerage and trust operations. Despite the fact that the FITS team of professionals was not local to Texas, the Receiver's choice was prudent and reasonable because FITS was able to provide a very small, highly skilled and experienced team of professionals with only 24 hours notice. The FITS team possessed the qualifications and professional licenses necessary to run a brokerage firm and were willing and able to supervise an ever decreasing number of Stanford employees, which provided significant cost savings to the Estate. FITS had a team of professionals with an average of 25 years experience in banking, brokerage, retirement, and trust firms, with expertise in winding down brokerage firms and working with regulators, who possessed the required securities licenses to manage the securities processing staff, and who were available immediately. The Receiver and his advisors were not aware of any other firm that could provide the requisite skill, expertise, and security, with a team of only six professionals, much less on one day's notice. The unique capabilities of the FITS team favor awarding fees under the *Johnson* test.

F. The Receiver and professionals seek reimbursement only for actual expenses incurred.

The Examiner objects to the payment of expenses that the Receiver's team has incurred and advanced to the Estate months ago, specifically costs incurred by Baker Botts for computer research, photocopying, and phone calls. Doc. 820 at 21. The Receiver has already responded to identical objections by the Examiner and the SEC. *See* Doc. 754 at 22-23. In any event, all costs incurred are billed to the Estate at the rates charged to the professionals by

vendors—minus 20%.[14] As a result of the temporary 20% holdback, which applies to expenses, the Receiver's professionals are now financing one fifth of many Receivership Estate expenses.

Because the expenses for which the Receiver seeks reimbursement are reasonable, adequately supported by the evidence, and have been actually incurred and paid by the professionals in furtherance of duties imposed by the Court's orders, the Receiver's Motion for Approval of Third Interim Fee Application should be granted.

G. The Receiver and his professionals do not seek reimbursement for work on matters related to seeking payment

The SEC and the Examiner object to reimbursement for time spent seeking payment, specifically mentioning certain billings by Thompson & Knight. Doc. 853 at 6, Doc. 860 at 22.[15] The objectors have misread TK's invoice. TK has already reduced its request on the submitted invoices by $29,962, which corresponds to the amount of time on the invoice related to fee applications. *See* Doc. 821-4 at 2, 81.

CONCLUSION AND PRAYER FOR RELIEF

The Receiver respectfully submits that he has executed the duties of his appointment faithfully and that the fees and expenses incurred are reasonable and necessary. The Receiver asks the Court to grant the Motion for Approval of Third Interim Fee Application.

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[14] Two of the firms, Pierpont and Altenburger, have a customary practice of charging a flat percentage of fees in lieu of expenses; they have charged that same rate to the Receivership under the terms of their engagement.

[15] The SEC argues it is "inappropriate and unjust" to charge for time spent preparing and defending a fee application. Doc. 853 at 6. Yet this "inappropriate and unjust" standard applies in bankruptcy cases, and virtually every other context under federal law where attorneys' fees are allowed; the attorney is allowed reasonable compensation for preparing and defending fee applications. *See In re NuCorp Energy, Inc.*, 764 F.2d 655, 659 (9th Cir. 1985). The Receiver committed not to request payment for such work in this case as part of his agreement to voluntarily discount professionals' fees by 20%, all of which was in return for the SEC's promised support of the Receiver's fee applications.

Dated: November 13, 2009

Respectfully submitted,

Baker Botts L.L.P.

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CERTIFICATE OF SERVICE

On November 13, 2009, I electronically submitted the foregoing document with the clerk of the court of the U.S. District Court, Northern District of Texas, using the electronic case filing system of the court. I hereby certify that I have served the Court-appointed Receiver, all counsel and/or pro se parties of record electronically or by another manner authorized by Federal Rule of Civil Procedure 5(b)(2).

/s/ Kevin M. Sadler
Kevin M. Sadler