

With respect to Movants' request for approval of their attorneys' fees, the Court finds that the \$14 million fee to Kuckelman Torline is reasonable and less than the percentage charged and approved by courts in other cases of this magnitude and complexity. The Stanford Receivership's insurance-related issues and claims are extraordinarily complex and time-consuming and have involved a great deal of risk and capital investment by Kuckelman Torline as evidenced by the Declaration of Michael J. Kuckelman, submitted in support of the request for approval of their fees. Both the Motion and the Declaration provide ample evidentiary support for the award of the Receiver's attorneys' fees set forth in this Order.

Trial courts can determine attorneys' fee awards in common fund cases such as this one using different methods. The common fund doctrine applies when a "litigant or lawyer who recovers a common fund for the benefit of persons other than himself or his client is entitled to a reasonable attorney's fee from the fund as a whole." *In re Harmon*, No. 10-33789, 2011 WL 1457236, at *7 (Bankr. S.D. Tex. Apr. 14, 2011) (quoting *Boeing Co. v. Van Gemert*, 444 U.S. 471, 478 (1980)).

One method for analyzing an appropriate award for attorneys' fees is the percentage method, under which the court awards fees based on a percentage of the common fund. *Union Asset Management Holding A.G. v. Dell, Inc.* 669 F.3d 632, 642-43 (5th Cir. 2012). The Fifth Circuit is "amenable to [the percentage method's] use, as long as the *Johnson* framework is utilized to ensure that the fee award is reasonable." *Id.* At 643 (citing *Johnson v. Georgia Hwy. Express, Inc.*, 488 F.2d 714 (5th Cir. 1974)). The *Johnson* factors include: (1) time and labor required; (2) novelty and difficulty of the issues; (3) required skill; (4) whether other employment is precluded; (5) the customary fee; (6) whether the fee is fixed or contingent; (7) time limitations; (8) the amount involved and the results obtained; (9) the attorneys' experience, reputation, and

ability; (10) the “undesirability” of the case; (11) the nature and length of the professional relationship with the client; and (12) awards in similar cases. See *Johnson*, 488 F.2d at 717-9.

Thus, when considering fee awards in class action cases “district courts in [the Fifth] Circuit regularly use the percentage method blended with a *Johnson* reasonableness check.” *Id.* (internal citations omitted); see *Schwartz v. TXU Corp.*, No. 3:02-CV-2243-K (lead case), 2005 WL 3148350, at *25 (N.D. Tex. Nov.8, -2005) (collecting cases). While the Fifth Circuit has also permitted analysis of fee awards under the lodestar method, both the Fifth Circuit and district courts in the Northern District have recognized that the percentage method is the preferred method of many courts. *Dell*, 669 F.3d at 643; *Schwartz*, 2005 WL 3148350, at *25. In *Schwartz*, the court observed that the percentage method is “vastly superior to the lodestar method for a variety of reasons, including the incentive for counsel to ‘run up the bill’ and the heavy burden that calculation under the lodestar method places upon the court.” 2005 WL 3148350, at *25. The court also observed that, because it is calculated based on the number of attorney-hours spent on the case, the lodestar method deters early settlement of disputes. *Id.* Thus, there is a “strong consensus in favor of awarding attorneys’ fees in common fund cases as a percentage of the recovery.” *Id.* At *26.

While the Insurance Settlement is not a class action settlement, because the settlement is structured as a settlement with the Receivership Estate, with Bar Orders, and dismissal of certain litigation and Judgments, this Court has analyzed the award of attorneys’ fees to Kuckelman Torline under both the common fund and the *Johnson* approach. Whether analyzed under the common fund approach, the *Johnson* framework, or both, the \$14 million fee sought by the Receiver’s counsel pursuant to their Agreement with the Receiver Movant is reasonable and is hereby approved by the Court.

Having reviewed the Declaration of Michael J. Kuckelman and the thousands of hours invested in the insurance-related issues and litigation, the Court finds that the proposed \$14 million fee for Kuckelman Torline is a reasonable percentage of the common fund (*i.e.* the \$65 million settlement). “The vast majority of Texas federal courts and courts in this District have awarded fees of 25%-33% in securities class action.” *Schwartz*, 2005 WL 3148350, at *31 (collecting cases). “Indeed, courts throughout this Circuit regularly award fees of 25% and more often 30% or more of the total recovery under the percentage-of-the-recovery method.” *Id.* The requested fee is 21.5% of the settlement, so it is less than the 25%-33% commonly awarded by this Circuit and it is reasonable.

A review of the *Johnson* factors that are discussed at length in the Motion and supported by the Declarations also demonstrates that the proposed \$14 million fee is reasonable and should be approved.

With respect to the time and labor required, Kuckelman Torline invested a tremendous amount of time and labor in this case, as reflected in the Kuckelman Declaration. Kuckelman Torline has spent over two years and thousands of hours investigating and pursuing claims against Underwriters on behalf of the Stanford Receivership Estate and the Stanford Investors.

The issues presented in the insurance litigation were novel, difficult, and complex. Several of the complex legal and factual issues are outlined in the Motion. Given the complexity of the factual and legal issues presented in this case, the preparation, prosecution, and settlement of this case required significant skill and effort on the part of Kuckelman Torline. Although participation in the insurance litigation did not necessarily preclude Kuckelman Torline from accepting other employment, the Declaration reveals that the sheer amount of time and resources involved in investigating, preparing, and prosecuting the coverage litigation, as reflected by the hours invested

by Kuckelman Torline, significantly reduced Kuckelman Torline's ability to devote time and effort to other matters.

The \$14 million fee requested is also well below the typical market rate contingency fee percentage of 33% to 40% that most law firms would demand to handle cases of this complexity and magnitude. *See Schwartz*, 2005 WL 3148350, at *31 (collecting cases and noting that 30% is standard fee in complex securities cases). It is also well below the 33 1/3% contracted for by the Receiver and Kuckelman Torline.

The \$65 million to be paid by Underwriters represents a substantial settlement and value to the Receivership. This factor also supports approval of the requested fee. The Declaration further reflects that Kuckelman Torline has represented numerous Lloyd's of London insurers in complex litigation matters. Thus, the attorneys' experience, reputation, and ability also supported the fee award. The nature and length of the professional relationship between the Receiver and his Counsel further supports the fee award, because Kuckelman Torline was retained to work on only insurance related issues and litigation. Unlike other counsel working for the Receivership on a contingency fee basis, this is Kuckelman Torline's only opportunity to recover its significant time investment.

Finally, awards in similar cases, with which this Court is familiar, as well as those discussed in the *Schwartz* opinion, all support the fee award. The Court also notes that a 25% contingency fee has previously been approved as reasonable by this Court for other counsel representing the Receiver. *See SEC Action ECF No. 2231*. Thus, the Court finds a fee of less than 25% is well within the range of reasonableness for cases of the magnitude and complexity of the insurance related issues and litigation.

For these reasons, the Court hereby approves the award of attorneys' fees in the amount of

\$14 million to Kuckelman Torline as requested in the Motion. The Receiver is, therefore, ORDERED to pay Kuckelman Torline Kirkland & Lewis attorneys' fees in the amount of \$14 million upon receipt of the Settlement Amount in accordance with the terms of the Insurance Settlement Agreement.

The Court also finds that the \$100,000 award of attorneys' fees to Movants' counsel in the Reynaud litigation is reasonable and approved for the reasons set forth in the Court's Order Approving Attorneys' Fees in the Breazeale, Sachse & Wilson, LLP litigation. [SEC Action, ECF. No. 2231]. The Receiver is, therefore, ORDERED to pay Movants' counsel in the Reynaud litigation attorneys' fees in the amount of \$100,000 upon receipt of the Settlement Amount.

SIGNED on May 16, 2017.


DAVID C. GODBEY
UNITED STATES DISTRICT JUDGE