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

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

RECEIVER'S CONSOLIDATED REPLY TO OBJECTIONS TO MOTION FOR APPROVAL OF INTERIM FEE APPLICATION AND PROCEDURES FOR FUTURE COMPENSATION

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I. Introduction

Robert Allen Stanford, the SEC, the Examiner, and the Antiguan Liquidators all agree on two things: the Stanford Financial Group was a very large, complex network of companies, and they do not want the Court to approve appropriate payment to those tasked with cleaning up the financial mess that was created. Their objections scarcely touch on the quality of the services provided but rest largely on facts that are beyond the Receiver's control – relatively little appears to be left of the billions in funds that investors placed with Stanford, skilled professional services are inherently costly, and significant resources are needed to untangle and resolve a large, complex fraud scheme that operated unchecked on three continents for over ten years.

None of these facts justifies postponing or reducing payments to the Receiver and his team of professionals, who are now more than four months into this engagement, have received no compensation – and who daily continue to render valuable professional services to the Estate. Furthermore, although the SEC and the Examiner argue that the limited cash currently under the Receiver's control requires a 40% reduction in professional fees, they also oppose the Receiver's efforts to take steps authorized by the Court's orders and the case law that would increase the amount of cash and other assets available to the Receiver for ultimate equitable distribution to injured investors and other claimants. Such contradictory positioning by the SEC and the Examiner likewise does not justify reducing or postponing payment of the professionals' fees or expenses.

When it filed suit, the SEC apparently expected that the Estate would consist of at least $1 billion in fairly liquid and accessible assets. The SEC petitioned this Court for the appointment of an equity receiver who could retain the professionals necessary to gain exclusive

control and possession of all assets and records, worldwide, of the Defendants and all entities they own or control.

The SEC proposed to the Court that Ralph Janvey be named as Receiver and at the outset, the SEC strongly suggested that the Receiver's team would need to include one or more large international law firms with significant infrastructure, personnel, and other resources in several countries, multi-disciplinary skill sets, and substantial expertise in areas such as finance, brokerage, bankruptcy, receivership, tax, fraud and complex litigation. Furthermore, based on discussions with the SEC and the experience of the Receiver and his lawyers, it was obvious that the Receiver's team especially needed sophisticated electronic forensics and accounting assistance, among other skill sets.

The Receiver selected a team of additional professionals with the skills and resources required to investigate an international fraud and to locate and marshal assets on three continents. None of the professionals was retained with the understanding that they would be subjected to deep discounts if the recoverable Estate assets were less than the SEC expected. The nature and volume of the work required within the first several weeks by the orders that the Court entered at the SEC's request – to secure assets and records worldwide, close offices, evaluate and then terminate non-essential operations, enforce the litigation stay – were necessary and unavoidable regardless of whether the Estate was found to be flush with cash or hopelessly insolvent.

Only after the Receiver and his team had expended significant resources did it become apparent that the shutdown of the fraud scheme would be even more complex and challenging than anticipated, that the entire group of Stanford Financial entities would have to be wound-up, and how little of the billions in funds invested with Stanford were readily available to

the Receiver. In response to the SEC's concerns over this newly discovered state of affairs, the Receiver and his professional firms discounted their fees by more than 20% in the aggregate (representing an overall reduction of more than $5 million). They continued to carry out the broad mandate prescribed by the Amended Order Appointing the Receiver, all the while keeping the SEC fully informed of the significant volume of work underway and the limited amount of cash immediately available. These firms have now worked on this Receivership for almost eighteen weeks in most cases, and they are being asked to continue to provide substantial services and incur significant expenses under circumstances which call into question whether and when they will receive appropriate payment of their fees and reimbursement of expenses they have incurred and paid.

Because the professional services rendered have been required by the Court's orders and the factual realities of this case, and the fees and expenses for the first 8 weeks of the Receivership are supported by substantial evidence, the objections should be overruled and the Receiver and his professionals should be awarded the requested reimbursement.

II. Background

The reasons for some objections to the Receiver's fee motion are obvious. For example, Allen Stanford objects because he wants to shift the focus of investor anger and law enforcement scrutiny from himself to the Receiver. The Antiguan Liquidators want to delay any payment in the hope that they will be able to seize all the available cash for the proceedings in Antigua. The Examiner's objections, although disappointing, were expected. Feeling pressure from investors who are understandably concerned they will recover very little, the Examiner apparently felt he had no alternative but to object to the entire fee application.

Less apparent are the reasons for the opposition of the SEC. For that reason, the background facts concerning the establishment and administration of the Receivership are

relevant. The SEC never suggested to the Receiver or any of his professional team that this was a contingent fee project, or that their compensation depended on how much money they could find. And they were not warned that some steep discount was expected or would be extracted from them until well after the engagement was underway. On the contrary, when the SEC asked him to serve, presumably because of his broad experience in securities law generally and his having served before as a receiver in SEC cases, nothing was said to the Receiver about any discount. Later, after the hard work had begun and resources had been committed, the Receiver was told that a ten percent discount would be expected.

The SEC, not the Receiver, first contacted Baker Botts about representing the Receiver. In the initial conversations with Baker Botts before the lawsuit was filed, the SEC inquired about the firm's willingness and ability to commit the substantial resources that this enormous international project obviously would require as well at the firm's expertise and experience in dealing with brokerage and financial advisory firms. After Baker Botts agreed to make the full and diverse resources of the firm available when and as needed, the SEC told Baker Botts that they would like to see a five to ten percent discount, but no discount was agreed to. With that, the subject of a Baker Botts discount was dropped until late March.

At the end of March, however, once it became clear that Stanford Financial had dissipated or otherwise hidden most of its liquid assets, the SEC proposed that all the professionals accept substantial discounts. When the Receiver suggested that such discounts were unfair, the SEC agreed that it was not fair but explained that they had expected there would be more money readily available to the Estate.

Presented with an Estate with less funds than were expected, the SEC, the Receiver, and his lawyers began exploring mutually acceptable solutions, and reached an

agreement in mid-April. The Receiver and the professional firms agreed to discount their fees by more than 20% in the aggregate (representing an overall reduction of more than $5 million) to bring the total amount of the first fee application, as requested by the SEC, below $20 million.[1] In return, the SEC said that it would support the Receiver's fee application before the Court.

III. Argument & Authorities

A. The amount of fees and expenses that are reasonable and necessary is not dependent on the amount of cash currently available in the Receivership Estate.

The SEC acknowledges the complexity of this Receivership and commends the work performed and the Receivership team's dedication to preserving and maximizing the Receivership Estate. Plaintiff's Response to Receiver's Fee Motion, Doc. 437, at 1. The SEC makes it clear that it does not question the quality of the Receiver's work or his commitment to investors. *Id*. at 4. But, in light of the Estate's current financial condition – as of June 17th, the Receiver's bank account held a little over $75,000,000 – the SEC argues that the Court should avoid "even the appearance of a windfall." *See id*. at 3. To the contrary, because the Receiver and his team faithfully followed the Court's orders and delivered valuable services to the Estate, they have earned the fees and expenses requested and there is no windfall.

First, the SEC would have this Court focus on the "results obtained" factor, and measured only by current cash in the bank, to the exclusion of the twelve other factors that are relevant to a determination of fees in the Fifth Circuit. *See Johnson v. Ga. Hwy. Express, Inc*.,

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[1] Although the total fees and expenses for all professionals were discounted by more than 20% in the aggregate, not every firm agreed to a 20% discount. Altenburger discounted its professional fees by 12% for the first 8 weeks and has agreed to a discount of 20% thereafter.

Pierpont Communications, Inc. discounted its professional fees by 10% for the first 8 weeks and has agreed to a discount of 20% thereafter.

Other firms (for example, E&Y, FTI, Thompson & Knight, and Baker Botts) agreed to discounts in excess of 20% for the first 8 weeks of the Receivership.

488 F.2d 714, 717-19 (5th Cir. 1974).[2] Even the SEC's objections acknowledge other factors in this case – such as the time and labor required, novelty and difficulty of the issues, and skill required to perform services competently, to name only a few – that fully support the Receiver's motion. Indeed, one of the *Johnson* factors which immediately stands out as supporting an award of the professionals' full fees, without even the initial 20% discount, is whether the fee is fixed or contingent. *See id.* at 718. None of the professionals was recruited by the SEC or hired by the Receiver on a contingent fee basis. As the case law makes clear, no one factor, including the size of the Estate, is dispositive.

Second, it appears that no one, including the SEC, expected the entire Stanford empire to collapse so quickly because no one knew that CD money was the life blood of the entire enterprise. Even though the original complaint alleged that CD sales were a violation of the securities laws, it was believed at that time that the CDs were just one aspect of an otherwise legitimate and viable collection of financial services companies. Before the Receivership, no one understood that absent CD revenue, the entire collection of companies was hopelessly insolvent. The Receiver was forced to terminate most Stanford employees in early March, after realizing there was no legitimate and viable business to be rehabilitated.

Third, the fees and expenses in this case are comparable to those requested in large, recent bankruptcy cases, even though the legal and practical issues related to unwinding a fraud scheme are significantly more complex than the failure of a legitimate company. Moreover, since 1980 the Bankruptcy Code has commanded the payment of reasonable

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[2] In receivership cases, such as *Moody*, the courts enumerate at least seven other factors besides the "value of the property in controversy" that are germane to a determination of the fees that are reasonable and necessary. *See SEC v. W.L. Moody & Co., Bankers (Unincorporated)*, 374 F. Supp. 465, 480 (S.D. Tex. 1974), *aff'd*, 519 F.2d 1087 (5th Cir. 1975); R. Allen Stanford's Response to Receiver's Fee Motion, Doc. 439, at 14, n.44. Courts awarding fees in receivership cases often recite the 12 *Johnson* factors, in addition to analyzing circumstances that are unique to receiverships.

professional fees without regard to the size of the debtor's estate, unless the estate's assets are actually less than the compensation due ("administrative insolvency"). 11 U.S.C. §§ 327, 330 (2004 & Supp. 2009). It is improper to tie the award of fees for essential services that must be performed in any case to the amount of assets, which is beyond the control of the parties involved. Regrettably, investors are never made whole following the collapse of a Ponzi scheme. But that is the doing of the perpetrators of the scheme. The professionals tasked with helping to halt the scheme, recover assets and otherwise sort out the financial mess should not be penalized.

Fourth, the amount of work performed by the Receiver and the professionals serving the Estate is wholly consistent with the scope of the Receivership Order directing their actions. Neither the SEC nor the Examiner can credibly object that the work performed was unnecessary or excessive, since neither has moved to modify or curtail the Receiver's expansive duties. Moreover, in complicated fraud cases such as this, a Receiver is essential because that is how the Court makes effective its in rem jurisdiction over the fraudulent enterprise's remaining assets. In this case, the Receiver was ordered to take control, on behalf of the Court, of all assets and records of all entities owned or controlled by Stanford, SIB, Davis or Pendergest-Holt, wherever located. Given the complexity and wide geographic dispersion of the Stanford businesses, that necessarily took a great deal of professional resources. Even if there had been even fewer liquid assets in the Estate, the SEC's case would nonetheless have been filed and a Receiver would still have been appointed and required to quickly shut-down and take control of many widely-dispersed offices, gather extensive records, interview numerous current and former employees, perform forensic accounting to construct an accurate financial picture of the Estate,

evaluate individual Estate businesses, pursue foreign litigation to recover assets, and attend to numerous ad hoc issues that arose in each of the various Stanford locations.

Fifth, while opining that there are limited assets from which the Receiver and professionals must be compensated, the SEC and Examiner have taken a position on claw-back claims and the account freeze that would, if adopted, exacerbate this very problem.[3] The Examiner is correct that a portion of the fees and expenses incurred relate to the freeze and release of customer accounts. Those actions were required by the Court's order, and confirmed in the order denying interventions. Moreover, maintaining the freeze on accounts with CD-related proceeds will greatly facilitate claw-back claims on behalf of the Estate.[4] Yet the Examiner has recommended that the accounts be released and that claw-back claims not be pursued – recommendations that, if accepted, would deprive the Estate of substantial additional assets.[5] It is ironic, to say the least, that the Examiner now says there are not enough assets to pay for the work that has been done.

The Examiner goes on to note that the fees and expenses related to the account freeze will be paid from assets that would otherwise have been available to CD investors. Examiner's Response to Receiver's Fee Motion, Doc. 452, at 6. That is of course true – but it is

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[3] *See* Examiner's Report and Recommendation No. 1, Doc. 393 at 7-11; Examiner's Reply Brief in Support of his Report and Recommendation , Doc. 470 at 3-12.

[4] This issue has been fully briefed. The Receiver incorporates herein by reference his response to the Examiner's Report. *See* Receiver's Response to Examiner's Report and Recommendation No. 1, Doc. 431, at 1-22.

[5] The Receiver has identified more than $200 million in U.S. and foreign customer accounts located in the U.S. Those funds are subject to claw-back claims and would be available for distribution to CD holders and other claimants if claw-back claims are permitted and are successful.

On March 27th the Court approved procedures for the Receiver, in his discretion, to release customers' Pershing accounts. Order Granting Receiver's Unopposed Motion to Approve Procedures for Review and Potential Release of Accounts, Doc. 239. As of June 18th, the Receiver has retained $16,800,000 in CD interest and redemptions as a result of agreed stipulations with Stanford customers. Another $149,435,000 in CD interest and redemptions, and $42,300,000 in front-end loans and CD commissions paid to financial advisors remains in customer accounts in the U.S.

true in virtually every receivership that the expenses of administering the Estate are paid from funds which would otherwise be available to those with claims against the Estate. The CD investors who were left with nothing to show for their investments in Stanford, and there appear to be thousands of such persons, will benefit from the recovery of CD-related proceeds from those brokerage accounts (among other sources) if the claw-back claims are allowed to be pursued.[6]

Finally, to support its argument for an additional 20% discount, the SEC cites to the *Byers* case regarding fees requested by a receiver, his law firm, and an accounting firm. *SEC v. Byers*, 590 F. Supp. 2d 637, 638-39 (S.D.N.Y. 2008). In *Byers*, the court held that some lawyers billed excessive hours, some legal work was duplicative, and some rates were unreasonably high (*i.e.*, $605 per hour for associates) before reducing the law firm's fee award by 20%. But the Court did not reduce the receiver's or accountant's fees at all. *Id*. at 647-48. Neither this case nor any other supports the proposition that arbitrary and across-the-board penalties are to be applied to the Receiver and his professionals based on the amount of cash recovered in just the first three or four months of a Receivership. To the contrary, the *Byers* court noted that "[w]hile the results obtained by a receiver clearly are important, the benefits to a receivership estate may take 'more subtle forms than a bare increase in monetary value.'" *Id*. at 644 (citations omitted).

[6] Although the Examiner's charge is to consider the interests of *all* Stanford investors, he recommends in his Report against the account freeze and against claw-back claims – because of the hardship they impose on brokerage account holders – without ever even mentioning that both the freeze and claw-backs are to the benefit of all CD holders, including the vast majority who have nothing to show for their CD investments.

B. The actions taken have all been authorized, and indeed required, by the Order Appointing the Receiver.

Allen Stanford and the Examiner raise various objections to actions that they assert are outside the scope of the Receiver's authority. Among other things, one or both of them claim the Receiver should not have responded to requests for records and information from the SEC, FBI, DOJ, and other governmental agencies; hired a communications firm; terminated employees; closed offices; or delegated duties to other professionals. Stanford goes so far as to state that the Receiver has the "limited" duty to preserve Estate assets and is "preclude[d]" from investigating the Estate. R. Allen Stanford's Response to Receiver's Fee Motion, Doc. 439 at 10, 11. The objectors plainly ignore the Receivership Order that commands the Receiver to take all the actions of which they now complain. They also fail to cite any case law which would show that the Court lacked the equitable power to enter the Order, to assert jurisdiction over all of the Defendants or the Estate, or to authorize the Receiver's conduct.

The SEC requested the appointment of a receiver, specifically Ralph Janvey, with the "full power of an equity receiver under common law" and this Court granted that appointment. Amended Order Appointing Receiver, Doc. 157, at ¶ 2. The Court found that it was "necessary and appropriate" to appoint a receiver and assumed exclusive jurisdiction of the assets and records "wherever located" of the Defendants and "*all entities they own or control*." *Id*. at ¶ 1. The Court instructed the Receiver to perform the following duties (in regard to the entire Estate, including Stanford International Bank Ltd.), which are supported by over 100 years of case law on equity receiverships, especially when fraud has been alleged:

- To account for all monies, securities, and other properties which come into the Receiver's control. Amended Order Appointing Receiver, Doc. 157, at ¶ 2.

- To "immediately take and have complete and exclusive control, possession, and custody of the Receivership Estate and to any assets traceable to assets owned by the Receivership Estate." *Id*. at ¶ 4.

- "Maintain full control of the Receivership Estate with the power to retain or remove" any employees or agents of the Estate. *Id*. at ¶ 5(a).

- "Collect, marshal, and take custody, control, and possession of all the" funds, accounts, mail, goods, chattel, rights, credits, monies, effects, lands, leases, books, records, work papers, records of account, computer information, contracts, financial records, documents, and assets of, or traceable to, the Estate. *Id*. at ¶ 5(b).

- Institute proceedings to "impose a constructive trust, obtain possession, and/or recover judgment with respect to persons or entities who received assets or records traceable to" the Estate. *Id*. at ¶ 5(c).

- Obtain documents, books, records, accounts, deposits, testimony, or other information sufficient to identify properties, liabilities, causes of actions, or employees of the Estate. *Id*. at ¶ 5(d).

- "[E]nter and secure any premises . . . in order to take possession, custody, or control of, or to identify the location or existence of" Estate assets or records. *Id*. at ¶ 5(e).

- "Perform all acts necessary to conserve, hold, manage, and preserve the value" of the Estate. *Id*. at ¶ 5(g).

- Employ investigators, attorneys, and accountants necessary to perform the duties set forth in the Order. *Id*. at ¶ 5(h).

- Institute or become a party to any state, federal, or foreign court proceedings necessary to preserve the value of the Estate or to defend the Estate. *Id*. at ¶ 5(i).

- "Promptly provide the United States Securities and Exchange Commission and other governmental agencies with all information and documentation they may seek in connection with" regulatory or investigatory activities. *Id*. at ¶ 5(k).

Moreover, the Receiver's investigation was necessitated by Stanford's purposeful concealment of the true financial state of the Stanford Entities. The Receiver, charged with marshalling Estate assets, must examine transactions leading up to the collapse of the fraud scheme, to determine which transfers should be set aside. The Amended Order Appointing

Receiver contemplates such a review when it extends the Receiver's authority to transactions executed before suit was filed and the Receiver was appointed. *Id*. at ¶ 3.

All of the work undertaken by the Receiver and professionals was ordered by this Court based on its finding that the SEC was likely to prevail on its claims that the Defendants had committed numerous violations of the securities laws, and were likely to continue doing so if not stopped. Arguments based on Defendants' motive to avoid liability, the Antiguan Liquidators' motive to gain control over valuable Estate assets, or some investors' motive to minimize personal losses do not provide any basis for reducing, delaying, or denying the reasonable and necessary fees and expenses incurred by the Receiver and his professionals. Because all services provided were required and authorized by the Order that this Court had equitable authority to enter, the Receiver's motion should be granted.

C. Regardless of the outcome of the Antiguan Liquidators' petition for recognition, Stanford International Bank Ltd. was properly included in the Receivership Estate to which the professional services have been rendered.

The Antiguan Liquidators assert that the Receiver has impermissibly "aggregated" the assets and liabilities of the Stanford International Bank Ltd. ("SIB") with those of other Stanford entities. Liquidators' Response to Receiver's Fee Motion, Doc. 433 at 4. The Antiguan Liquidators object to the fee motion based exclusively on the assertion that the Receiver mistakenly "assumes that the assets of the Stanford entities will be commingled and aggregated to pay his costs." *Id*. at 1. The Antiguan Liquidators have conflated the issues related to their petition for recognition under Chapter 15 with the factors that are relevant to a determination of the reasonable and necessary fees and expenses incurred to carry out the Court's valid Order Appointing Receiver and Amended Order Appointing Receiver.

The Receiver has previously presented the legal authority and evidence (which he incorporates herein by reference) that this Court possesses subject matter jurisdiction over the

SEC's claims against SIB, in personam jurisdiction of SIB, and in rem jurisdiction of SIB's assets. *See* Receiver's Reply, Doc. 315, at 2-10 & Appx. in Support, Doc. 316. This Court clearly possessed the equitable authority to enter the orders, which expressly apply to SIB as a named defendant. *See* Receiver's Response to Examiner's Report, Doc. 441 at 13-20; Receiver's Response to Petition for Recognition in 3:09-cv-0721-N, Doc. 20 at 32-36. Because the Receiver and professionals acted pursuant to those orders, they are entitled to compensation. The issue of compensation for services already rendered to the Estate is unrelated to the question presented by the Antiguan Liquidators' petition for recognition of the Antiguan proceeding as a foreign main proceeding. Even if such recognition were granted in the future, it would not retroactively alter this Court's jurisdiction over SIB, its authority to enter orders applicable to SIB, or the fact that SIB was properly included in the Estate to which professional services were rendered.

D. The significant resources devoted to this case were required by the circumstances.

Objections were made to the number of professionals and hours devoted to this case. The objectors argue as though the numbers – of firms, professionals, hours, fees, or expenses – are large in an absolute sense and thus can be evaluated without regard to their context. To the contrary, such objections to the amount of resources devoted to this case are meaningless because they are presented in the abstract, divorced from facts on which virtually everyone agrees: the Estate is complex, large, and geographically far-flung.[7] No one maintains that the Stanford Financial Group of companies was simple, modest, or centralized or that it should have been a relatively quick and easy task to assert control over the Estate, collect and

[7] For example, due solely to the Receiver's efforts, we now know that Stanford is the sole owner, directly or indirectly, of more than 130 companies, which operated in more than 100 discrete locations, and had more than 3,000 employees. Detailed information regarding the size and complexity of the Stanford network is in the Receiver's Report. *See* Report of the Receiver Dated April 23, 2009, Doc. 336, at 5-8.

preserve the integrity of evidence that will be used in both the civil and possible criminal trials, and evaluate the financial viability of the companies.

Furthermore, upon being ordered to take control of a worldwide network that included many previously unidentified entities, the Receiver and his team were charged with identifying and securing assets before others could do so.[8] And others were trying. In fact, others had been trying even prior to the appointment of the Receiver. The Receiver and his team were plunged into an ongoing fight for assets among the Defendants, Stanford executives with authority to transfer funds worldwide, receivers/liquidators appointed by the Government of Antigua (itself a claimant of, and debtor to, the Stanford entities), governments and financial regulators of multiple countries, and creditors/investors of over 130 entities with knowledge of collateral and/or possession of Estate assets. Allen Stanford kept his operations purposefully segregated so that none but a select few were capable of understanding them. Thus, the Stanford employees who were available to help the Receiver (1) did not have complete or reliable information, (2) were not forthcoming with information they possessed, or (3) in some cases, affirmatively lied about what they knew. Finally, these events occurred in a highly regulated environment where legal knowledge was essential to determining which issues required action, what actions were appropriate, and how solutions were impacted by the exigent facts.

It is, of course, easy in hindsight to say which entities are part of the Estate, where the bank accounts are located, and who can be trusted. Today, four months into the project, the Receiver can assign individuals to various tasks at a more deliberate pace without jeopardizing assets and compromising claims. But initially there were many times and circumstances in which a task needed to be addressed immediately, and there was not time to find the perfectly

[8] The actions required to locate, secure and monetize assets are described in detail in the Receiver's Report. *See* Doc. 336, at 32-40.

suited person. In a project of this nature – filled with multiple and competing first priorities and exigent circumstances – some "inefficiencies" were inevitable, but they were created by the circumstances of the project, not the Receiver and his team. The Receiver and his team should not be penalized for these circumstances. Drinking from a fire hose cannot be accomplished with perfect manners.

Additionally, time spent in meetings or on administrative matters was necessary to the task and thus billing for it was proper. The Receiver was and is charged with coordinating the efforts of a large team of lawyers, accountants, and other professionals world-wide as well as continuing to operate and wind down a multi-billion dollar network of entities that had over 3,000 employees. Of course the Receiver and the lead personnel from each of his various teams had to coordinate the activities of the personnel charged with fulfilling their proper roles. Had there been no such coordination, the Receiver would no doubt have been roundly criticized for that as well.

Before the Receivership, the SEC did not know the other circumstances the professionals would encounter. The reasons this Receivership has been especially challenging and costly include the following factors:

- The confusing and complex corporate structure of the individual companies and the relationships among them, un known even to most high level executives.
- The sheer volume of data; the Estate holds over 500 electronic devices (personal computers, network drives, USB storage devices, etc.) that have been imaged, and the professionals have processed over 2.5 million documents with many millions remaining untouched.
- Worldwide logistical challenges to gathering corporate data.
- Difficulties in locating financial records for the various Stanford companies.

- Suspect quality of the financial information available in the companies' records.

- Of the billions of dollars in funds that investors placed with Stanford, only a small fraction of that value is left.

- The need to take control of the far-flung Stanford operations so as to halt the sale of SIB CDs, secure assets and preserve records required quick action on many fronts. This could only be accomplished by dispatching several multi-disciplinary groups of professionals, to work in parallel, closing offices in scores of locations in the U.S. and Latin America. Each team had to identify the business functions performed in the locations it was assigned to close; identify and interview key employees as to the location of assets and records; secure electronic and hard-copy data; put security in place to prevent break-ins and sabotage; and deal with numerous pressing issues unique to each location.

- The fact that most higher-level Stanford executives in a position to provide meaningful insight into the overall Stanford operations retained counsel and declined to debrief (at least to the Receiver). The Receiver and his team of professionals therefore had to expend large amounts of time and effort reviewing records and interviewing less knowledgeable employees.

- The absence of a reliable balance sheet required extensive analysis of the gathered financial data in order to arrive at a realistic financial picture of the Stanford entities.

- Most of the remaining known Stanford assets (approximately $350 million) are located in Switzerland, the United Kingdom, and Canada. The Receiver's ability to gain control of those assets has been made difficult by the fact that, after this Court appointed the Receiver, the Antiguan court appointed the Antiguan Liquidators. The Antiguan Liquidators have instituted court proceedings in all three jurisdictions to gain exclusive control over the assets located there. Their stated purpose is to "repatriate" those assets to Antigua for liquidation through the Antiguan liquidation proceeding. The Receiver has had no choice but to retain qualified foreign counsel. Contested litigation, especially in Switzerland and the United Kingdom, is costly.

- In England, the Receiver has been opposed by both the Antiguan Liquidators and Allen Stanford. At a recent two-and-a-half day hearing on the Antiguan Liquidators' and the Receiver's competing applications for "main proceeding" recognition, Stanford, through his UK barrister,

> opposed the Receiver's application *and actively supported the Antiguan Liquidators' application*.[9]

The volume of data involved in this case required a large team to devote significant time in order to secure the data, safeguard customers' personal information, preserve chains of custody, release customer accounts, and respond to governmental inquiries. In criticizing the number of professionals, the objectors speculate either that the work should not have been done or that if it had been performed at a slower rate, over a longer period of time, it would have cost less and there would have been less risk of duplication of effort. In reality, the Receiver and his team had no choice but to complete many tasks very quickly and on parallel tracks in order to secure assets before others, such as Defendants or those acting in concert with them, did. This is a case of massive fraud where thousands of employees had access to sensitive personal information and authority to move assets from one continent to another. There was a very real threat of spoliation of evidence and diminution of assets; many actions were done with urgency in order to preserve Estate assets.[10]

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[9] The English court took the matter under advisement and has not yet issued its decision.

[10] The objectors focus on the total number of timekeepers to argue that too many people worked too hard on this case during the first 8 weeks covered by the Receiver's fee motion. To the extent that the number of time keepers is relevant, further analysis shows that at each firm a much smaller core group of professionals had primary responsibility for this matter, and utilized other professionals as needed for discrete tasks.

For example, 101 Baker Botts attorneys rendered services to the Estate. However, only 18 attorneys accounted for 50% of the total hours for Baker Botts lawyers; and 58 attorneys accounted for 90% of the total.

A total of 108 FTI professionals rendered services to the Estate. Only 22 of them accounted for 50% of the total hours for FTI; and 57 accounted for 90% of the total.

A total of 70 E&Y professionals rendered services to the Estate. Only 18 of them accounted for 50% of the total hours for E&Y; and 40 accounted for 90 % of the total. Nine professionals were related to E&Y's forensic technology and discovery services practice. Their skills were needed to obtain electronic accounting information and provide that data to the core forensic accounting team in a usable format. Using these individuals and their skill sets actually reduced the amount of time the team needed to spend overall by providing the forensic team with electronic data to work from.

The difficulties encountered by the Receiver's team were not caused by the Receiver's team and were well known to the SEC in early March. At the March meeting, the SEC endorsed the Receiver's work plan and team structure, and complimented the team on the amount of work completed. The resources devoted to this case were necessary and appropriate. Each of the professional firms retained by the Receiver has rendered valuable services in a manner that is appropriate under the circumstances. The case law directs this Court to consider *all* the circumstances of the Receivership in assessing fees and expenses, not merely those that could warrant a reduction in the award.

E. The reasonableness and necessity of the services rendered, fees, and expenses are well documented.

Each of the objectors complain that the Receiver's request for fees and expenses is not supported by sufficient evidence. They insist on receiving more information regarding the extent to which the Receiver has benefited the Estate in general or SIB in particular, or the number of hours devoted to specific tasks, such as enforcing the Court-ordered account freeze. It is quite clear that the objectors would be happy to delay indefinitely consideration of the fee motion on the merits, under the guise of requiring even more, and more detailed, information. But it is equally clear that there is no amount or quality of evidence that will satisfy the objectors.

Although the SEC appears willing to support an award that constitutes only 60% of the firms' customary charges, it too makes the complaint that the fee motion lacks sufficient detail. Such an assertion cannot be taken seriously when the SEC contends that due to the large volume of material "it is not only unrealistic but *impossible* to evaluate" the fee motion and 257 pages of evidence already submitted. Plaintiff's Response to Receiver's Fee Motion, Doc. 437 at 8. And the SEC should know, because the SEC and the Examiner received – prior to the filing

of the Receiver's fee application – more than 1,100 pages of back-up documentation supporting the filed invoices that contain detailed, daily time entries for every professional who rendered services to the Receivership during the first 8 weeks. Thus, the SEC is left to make the argument that the Receiver should be compelled to produce even more detailed information, and that once the Receiver does so, the Court should not even consider it, but should instead default to an arbitrary, additional 20% reduction in the requested fees.

In short, the objectors ask this Court to require the professional firms, which have received no compensation thus far, to engage in a colossal waste of time to produce the same information regarding services, fees and expenses in a different format. But whatever the professionals might produce at the end of this futile exercise would not alter the fundamental disagreements about whether the SEC should have filed this suit, whether the Receiver should have control over SIB, whether the account freeze was appropriate, and whether there are sufficient assets to justify the payment of professional fees. And of course it goes without saying that no one thinks the Receiver should be compensated for the time it would take to add up every minute spent on each discrete task so that the objectors can assert their opinions that evaluating an application for release of an account could have been done more quickly or drafting a motion should have taken only ten hours rather than thirteen.

The professional firms engaged by the Receiver provided to the SEC and the Examiner detailed descriptions of the hours devoted to the matter daily and the tasks completed daily by each timekeeper.[11] As the SEC has implied, reading about the myriad, complex tasks

[11] All services rendered by Strategic Capital Corporation ("SCC") were performed by Malcolm Lovett. The Examiner's response describes Mr. Lovett as a "competent and responsive professional" but objects to the fixed fee arrangement for SCC. Examiner's Response to Receiver's Fee Motion, Doc. 452 at 9 & n.11. For the first 4 weeks, SCC billed on an hourly basis. Near the end of the fourth week, the Receiver asked Mr. Lovett to assume a broader role in connection with the winding down of U.S. financial services and activities, which would involve a greater time commitment to the Estate for the

accomplished in this case (much less actually doing those tasks) proves challenging, even for lawyers. Therefore, the professional firms with the largest bills created narrative invoices that describe each task or project in a more cohesive, comprehensible, and succinct manner – for example, it is easier to understand how the account freeze was accomplished by reading about it from the perspective of one person who summarized it retrospectively than by reading the daily contemporaneous entries of multiple persons responsible for pieces of the process. The documentary evidence filed of record consists of a 45 page motion and 257 pages of invoices. Prior to filing the fee application, the Receiver offered to the Court, and is still willing to provide for the Court's review, the 1,100+ pages of individual daily time records that contain support for the invoices filed, and that were reviewed by the SEC and Examiner.

Moreover, it is unreasonable for the SEC in particular to contend that it lacks sufficient evidence or information regarding the services rendered to the Estate. During the period for which these fees are sought, the SEC was in almost daily contact with the Receiver and was frequently present in the Stanford offices where the work was being performed. The SEC was consulted on the necessity of the tasks undertaken and became aware of the array of professionals hired.[12] Indeed, the SEC itself was the source of the requests for much of the work

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next four weeks. They agreed to a fixed fee arrangement for weeks 5 through 8, to be followed by a return to hourly billing thereafter. There is no basis for the Examiner to suggest that the Receiver did not have the authority in his discretion to implement a fixed fee arrangement. Nothing in the Receivership order requires hourly billing. In fact, the fixed fee amount charged for the second four weeks was slightly less than the total hourly billing amount for the first four weeks, even though Mr. Lovett devoted more time to the Estate during the second four weeks.

[12] For example, although the Examiner questions the Receiver's hiring of Pierpont Communications, Inc., the SEC was well aware of this fact. As set forth in the Receiver's fee application, Pierpont's fee statements and the Receiver's Report, Pierpont has provided benefit to the Estate by numerous communications activities, including monitoring and sorting the now more than 13,000 inbound emails to the Receiver, answering or forwarding to others for answering many of those emails, assisting with materials posted on the Receiver's website, handling media inquiries and assisting with media communications.

done; the Receiver is charged with providing information to the SEC, DOJ, and other state and federal government agencies, and has responded promptly to every request.

The SEC advises that the Court should avoid awarding the Receiver and his team a "windfall." Plaintiff's Response to Receiver's Fee Motion, Doc. 437 at 3. A windfall is getting something for nothing. Doing high-quality, highly responsive, professional legal, accounting, forensic, and consulting work for a 20% discount is not receiving a "windfall." The discount of 20% in the aggregate (representing an overall reduction of more than $5 million) to which the professionals agreed already accounts for the current size of the Estate, and removes any theoretical appearance of a "windfall."

F. Allen Stanford's objections reflect basic misunderstandings regarding the facts.

Allen Stanford's response includes a wild and often incoherent spray of inaccurate, irrelevant and/or unsupported allegations about how the Receiver has managed the Estate. Many of these confuse assets in customer brokerage accounts with assets of the Stanford entities. Here is a mere sampling of those to which Stanford attached large dollar amounts.

Stanford claims the Receiver "disposed of assets of a liquid and profitable group of companies," alleging that the Receiver "claims to be in possession or control of approximately $2 billion in readily available liquid assets and approximately $4.7 billion in brokerage assets."

The Examiner's criticism seems to be that Pierpont did not do enough to communicate with investors. First, the Examiner's statements about the Receiver's website are incorrect. He claims that the website had only 11 sets of Frequently Asked Questions ("FAQs") as of June 8, 2009, rather than having FAQs on more than 24 topics, as stated in the Receiver's application. The Receiver's statement is and was accurate. The Examiner apparently counted only the sets of FAQs posted under the general "Frequently Asked Questions" tab on the website. He did not count those posted under the "Customer Accounts," "Claims" and "Employees" tabs, some of which had been updated as recently as the prior business day. Nor did he refer to the substantial amount of regularly updated content posted on the homepage or other portions of the website regarding a range of other developments. Second, Pierpont has done the work the Receiver asked it to do. The fact that Pierpont did not perform additional services (which of course would generate additional fees) is obviously not a basis to reduce the fees payable for the services it did perform.

R. Allen Stanford's Response to Receiver's Fee Motion, Doc. 439 at 4 (citing Receiver's Fee Motion, Doc. 384 at 6-8). Yet the Estate certainly does not have $2 billion of liquid assets and nowhere (including at the cited pages of Doc. 384) has the Receiver claimed that he does. And the $4.6 billion of brokerage account assets referenced by the Receiver is, of course, customer money except to the extent the Receiver pursues and succeeds on claw-back claims.

Stanford claims that a portion of the brokerage business was "given away" to Oppenheimer. He claims that Oppenheimer attempted to purchase the business for $700 million last year, but offers no evidence to support that claim. Nor is the Receiver aware of any such indication of interest or discussions. In any event, the Receiver had discussions with several firms, including Oppenheimer, soon after the Receivership was instituted to determine if any of them were interested in acquiring portions of Stanford Group Company's brokerage business. None of these discussions produced an offer. After preliminary discussions, the other firms discontinued discussions when they learned that their concerns could not be satisfied about certain issues, including concerns about the amount of SIB CDs marketed by the brokers or held in the customer accounts they sought, and/or when the Receiver indicated that the Estate would not be able to provide representations, warranties and indemnities as requested on certain issues, including those regarding claims that might be brought by Stanford customers. Accordingly, based on the unproductiveness of these discussions and other factors, the Receiver concluded that the best available alternative was to proceed with individual account releases and transfers rather than a bulk transfer. The Oppenheimer press release that Stanford quotes contains nothing indicating that Oppenheimer was willing to pay consideration to acquire anything from the Estate; it appears merely to be a statement from Oppenheimer that it had become comfortable with the particular brokers it had hired.

Stanford claims that the Receiver has sold Stanford banks in Venezuela and Panama in a "fire sale." Stanford offers no support for his conclusory assertions and in fact the Receiver has never had control of those entities. Rather, Stanford Bank of Venezuela was appropriated and sold by Venezuelan government fiat. Stanford Bank (Panama) S.A. has not been sold, but is under the control and supervision of Panamanian government regulators.

Similarly, Stanford claims that the office building previously owned by the Stanford Swiss entity was sold at a price below its value to the "first and only bidder on the property," citing an attached email from an employee. Yet (1) the email supports only the fact that the building was sold, (2) the Receiver did not control the sale, (3) the price exceeded the appraised value, (4) several bids were obtained, and (5) the directors and management of the entity initiated the sale to avoid an immediate forced liquidation of the entity, which would have likely resulted in less value to the Estate. *See* http://stanfordfinancialreceivership.com/ (link to "Sale of Building by Swiss Entity"), last updated 06/17/2009.

Stanford also contends that representatives of the Receivership were "disorganized, inefficiently duplicating work, and wasting resources." *See* Doc. 439 at 7. Stanford offers no support for this allegation other than the affidavit of Linda Wingfield, former director of Stanford's Expense Review Department located in Orlando, Florida.[13]

Ms. Wingfield's affidavit fails to support Mr. Stanford's criticism of the Receiver's team for several reasons. First, it is factually inaccurate. Ms. Wingfield states that on February 17, 2009, two "individuals who identified themselves as consultants working for the law firm of Thompson & Knight" appeared at the Stanford Orlando office "for the stated purpose

[13] Mr. Stanford also argues that "several former employees" of Stanford have "revealed their experiences with the Receivership as being poorly organized, unprofessional, and unethical." Mr. Stanford offers no support whatsoever for this assertion, and therefore the Court should ignore Mr. Stanford's baseless attack on those representing the Receiver.

of taking inventory." Doc. 439-9 at ¶ 6. But no Thompson & Knight employee or consultant was in Orlando at that time, and, consequently, Thompson & Knight has not billed the Receivership for any work in Orlando on that date. Ms. Wingfield also states that three Thompson & Knight attorneys appeared at her office in Orlando on February 26, 2008 and cleared out the office. *See* Doc. 439-9 at ¶ 7. Notwithstanding Ms. Wingfield's misstating the date that Thompson & Knight attorneys arrived (it was 2009 instead of 2008), only two Thompson & Knight associates performed the initial closing and inventory of the Orlando office, not three. Finally, Ms. Wingfield mischaracterizes the work of FTI Consulting, who she says "appeared to repeat an identical inventory" as the attorneys who inventoried the Orlando office. Doc. 439-9 at ¶ 6. FTI specializes in computer forensics, and thus its personnel were in Orlando to inventory and inspect CPUs, laptops, and portable media for transfer to Houston. The Thompson & Knight attorneys in Orlando were there to inventory furniture and documents, preserve chain of custody of documents, supervise employee removal of personal items, and negotiate leases and vending contracts. Consequently, Thompson & Knight and FTI's duties were not duplicative or wasteful as Ms. Wingfield and Mr. Stanford contend.

Ms. Wingfield's affidavit is also clearly deficient because it contains facts that are not based on her personal knowledge.[14] For example, she states that FTI "appeared" to perform the same inventory as had Thompson & Knight and contends that "according to [her] staff," a "third inventory" was taken of her office. Doc. 439-3 at ¶ 6. Ms. Wingfield does not have personal knowledge of these facts. Furthermore, as Ms. Wingfield acknowledges, much of the work was done by Thompson & Knight and FTI after she and her staff left the premises, and thus Ms. Wingfield could not know what was done during this time. *See* Doc. 439-9 at ¶ 6, 7, 10(e).

[14] *See, e.g., Thomas v. Atmos Energy Corp.*, No. 06-30514, 2007 WL 866709, *4 (5th Cir. March 21, 2007) ("Affidavits asserting personal knowledge must include enough factual support to show that the affiant possesses that knowledge.").

Moreover, because Ms. Wingfield does not know the details of the Receiver's strategy and operational plan for inventorying and closing Stanford offices, she has nothing upon which to base her opinion that the tasks performed by Thompson & Knight were disorganized. Consequently, her affidavit does not support Mr. Stanford's arguments against the Receiver's team.

G. Thompson & Knight's attorneys and non-attorney staff rendered valuable professional services to the Receiver and Receivership Estate.

Much of the time spent by Thompson & Knight attorneys on this matter related to the initial and then final closure of Stanford's domestic offices spread across the United States. Closing these offices was necessary to stem the further loss of cash from the Receivership Estate. The number of Thompson & Knight attorneys involved was a function of needing attorneys physically present in twenty-eight offices in twenty-six U.S. cities and six foreign countries on an almost simultaneous basis, and is in no way an indication that the matter was overstaffed or inefficiently organized.

In the twenty-eight domestic Stanford offices, Thompson & Knight attorneys secured for the Receivership Estate real and personal property including office equipment and technology, artwork, electronics, coin and bullion inventory, several vehicles and a residential condominium. In addition, through April 12, 2009, Thompson & Knight attorneys personally participated in the final closure of fourteen offices in fourteen U.S. cities and Stanford's private airplane hangar in Miami, oversaw the liquidation and monetization of the physical assets associated with those premises and reduced ongoing cash expenditures by facilitating the termination of nonviable businesses, the termination or rejection of leases, as well as the elimination of ongoing expenses associated with the operation of those offices.

Thompson & Knight has also shouldered a large part of preserving the Receivership Estate in Mexico, Colombia, Ecuador, Guatemala, Peru, and Venezuela. Whenever possible, Thompson & Knight used its team of attorneys and non-attorney staff in Mexico and South America to facilitate maximum effectiveness and efficiency of these efforts.

Thompson & Knight also managed all litigation pending against Stanford entities before appointment of the Receiver, including research and preparation of pleadings geared toward preserving the Receivership Estate. Again, this legal work was necessary to stem the further loss of cash from the Receivership Estate.

H. Approval of procedures for future payments.

Allen Stanford, the Examiner, and the Antiguan Liquidators seek denial of the Receiver's request that the Court approve procedures by which the Receiver may evaluate and pay future invoices submitted by the professional firms on a monthly basis. These procedures are reasonable and necessary. It is especially ironic that the objectors have argued that the "public interest" requires that the professionals' fees be deferred indefinitely or reduced drastically. The Receiver and fourteen firms rendering services to the Estate (and thus to all those who ultimately receive any distribution of Estate assets) have been footing the entire bill for this Receivership for four months now.

The procedures that the Receiver has proposed for future payment are not novel and should not be controversial.[15] They will not supplant the need for the Receiver to file a motion and seek Court approval of fees and expenses; they will merely provide regular cash flow for the professional firms that must pay their own expenses, salaries, and overhead on an

[15] Such procedures have been authorized in complex Chapter 11 cases in this district. *See, e.g., In re Renaissance Hosp. – Grand Prairie, Inc., d/b/a Renaissance Hosp. – Grand Prairie*, Case No. 08-43775 (DML) (Bankr. N.D. Tex. Oct. 27, 2008) (Doc. 390); *In re Home Interiors & Gifts, Inc.*, Case No. 08-31961 (BJH) (Bankr. N.D. Tex. June 25, 2008) (Doc. 344).

ongoing basis.[16] The current situation, in which the firms have received no compensation for fulfilling the Court's orders and more significantly, have no assurance that they will be

[16] As previously noted, the bulk of the Estate's liquid assets are located in the United Kingdom (approximately $150 million), Switzerland (at least $160 million) and Canada (approximately $20 million). The Receiver has engaged qualified, experienced counsel in each jurisdiction to counter the Antiguan Liquidators' efforts to remove assets to Antigua. After agreeing to substantial discounts, the foreign professionals are especially bewildered by what is happening in regard to the Receiver's fee application.

United Kingdom -- Stuart Isaacs, QC and Felicity Toube represent the Receiver in a competing recognition proceeding under the Cross-Border Insolvency Regulation, 2006, the English equivalent of Chapter 15 of the United States Bankruptcy Code. Mr. Isaacs, a barrister since 1975 and a Queen's Counsel since 1991, is an expert in commercial law and insolvency law. He is a co-author of the recently published treatise, "The EC Regulation on Insolvency Proceedings." Ms. Toube has been a barrister since 1995 and is a specialist in insolvency law and commercial law. Particularly relevant is her expertise in cross-border insolvency and the UK Proceeds of Crime Act. She was also a member of the UNCITRAL Committee on implementation of the Cross-Border Insolvency Model Law in the UK.

Mr. Isaacs and Ms. Toube are members of the 3-4 South Square chambers, which is not a law firm strictly speaking, but an arrangement for sharing office space and administrative staff. The need for predictable and steady cash flow is particularly acute for solo professionals.

Switzerland -- Altenburger, a well-respected Swiss firm with offices in Geneva and Zurich, represents the Receiver in litigation to recover funds located in Switzerland. The Receiver appeared in a Geneva court proceeding instituted by the Antiguan Liquidators. In addition, the Receiver instituted an administrative proceeding in Berne before FINMA, a Swiss regulatory agency. The Antiguan Liquidators dismissed the Geneva court proceeding and have filed their own application with FINMA.

Canada -- The Osler firm, a national Canadian firm, represents the Receiver in litigation in three provinces. The Receiver and the Antiguan Liquidators oppose each other in competing recognition applications in Montreal, Quebec. This action will be heard by the court in August 2009. The Receiver is also a party to an action in Toronto, Ontario, brought by the Ontario Attorney General, to require Toronto Dominion Bank to pay Stanford funds into the registry of the court. That proceeding has been stayed until the completion of the Quebec recognition proceedings. Lastly, investors have filed suit in Calgary, Alberta, to obtain SIB account records from Toronto Dominion and to impress a constructive trust on funds that (until recently) were held by Toronto Dominion. The Calgary court has taken the issue of the discoverability of the account records under advisement.

Antigua -- The Receiver opposed applications in Antigua to place SIB in an Antiguan liquidation proceeding and, in addition, filed his own conditional application to have Ernst & Young and himself appointed liquidators in a liquidation proceeding that would recognize the dominance of the U.S. Receivership and operate in support of the U.S. Receivership. The Antiguan court never reached the merits of the Receiver's filings because it held that the U.S. Receivership Order was not entitled to recognition in Antigua and, therefore, the Receiver was not an "interested person" with standing. The Receiver was represented by Sir Clare Roberts, Q.C., a former Antiguan attorney general, and Stuart Isaacs, Q.C., one of the Receiver's English barristers. The Receiver understands it is typical in the Eastern Caribbean for UK or Canadian attorneys to be brought in on complicated commercial matters. Further, Mr. Isaacs has previous litigation experience in Antigua, as well as in other commonwealth jurisdictions around the world.

compensated at all, while continuing to be under Court order to perform such services, is simply untenable.

The Receiver is an officer of this Court and is experienced in managing receiverships. As such, he should be considered competent and qualified to evaluate and pay, on an ongoing basis, the reasonable and necessary fees and expenses incurred to carry out the tasks he assigns to the professionals on the Court's behalf. The suggestion that any of the firms would be unable or unwilling to disgorge compensation pursuant to this Court's subsequent orders is unfounded.[17] These firms have demonstrated their professionalism and commitment, even under extremely trying circumstances, and have earned the Receiver's trust and respect.

IV. Conclusion & Prayer

For these reasons, the objections should be overruled and the Receiver's Motion for Approval of Interim Fee Application and Procedures for Future Compensation should be granted.

[17] The Receiver accepts the Examiner's suggestion that each firm be required to sign an agreement confirming it would disgorge any interim compensation that is paid but not subsequently approved by the Court.

Dated: June 19, 2009

Respectfully submitted,

BAKER BOTTS L.L.P.

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CERTIFICATE OF SERVICE

On June 19, 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 Examiner, 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
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