



*Highway Express, Inc.*, 488 F.2d 714, 717-19(5th Cir.1974).<sup>1</sup> The Court in the Stanford Receivership observed that this particular receivership is essentially equivalent to a Chapter 7 bankruptcy. *See* Civ. Action No. 3;09-cv-072 4, Doc. 1093 at 39 ("Ultimately, this particular receivership is the essential equivalent of a Chapter 7 bankruptcy. While a different federal statutory scheme - one that is looser and more flexible than the Bankruptcy Code-is at work, the overall purposes and objectives of the Stanford receivership track the overall purposes and objectives present in the Bankruptcy Code and a Chapter 7 proceeding."). Therefore, the factors governing the analysis of requests for professional fees and expenses incurred in the bankruptcy context are also relevant to the Court's valuation of the Receiver's fee applications.

Under 11 U.S.C. § 330(a)(3), in examining a request for fees and expenses to be awarded to an examiner, trustee under chapter 11, or other professional in the context of a bankruptcy, a court considers, in addition to the amounts involved and results obtained, "the nature, the extent, and the value of such services, taking into account all relevant factors, including (A) the time spent on such services; (B) the rates charged for such services; (C) whether the services were necessary to the administration of, or beneficial at the time at which the service was rendered

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<sup>1</sup> Under *Johnson*, courts consider the following factors in determining whether the time spent, services performed, expenses incurred, and hourly rates charged are reasonable and necessary: (1) the time and labor required for the litigation; (2) the novelty and complication of the issues; (3) the skill required to properly litigate the issues; (4) whether the attorney was precluded from other employment by the acceptance of this case; (5) the attorney's customary fee; (6) whether the fee is fixed or contingent; (7) whether the client or the circumstances-imposed time limitations; (8) the amount involved and the results obtained; (9) the experience, reputation, and ability of the attorney; (10) the "undesirability" of the case; (11) the nature and length of the attorney-client relationship; and (12) awards in similar cases. *Id.* at 717-19. In applying these factors, "the district court must explain the findings and the reasons upon which the award is based. However, it is not required to address fully each of the 12 factors." *Curtis v. Bill Hanna Ford, Inc.*, 822 F.2d 549, 552 (5th Cir. 1987) (citation omitted); *see also SEC v. W.L. Moody & Co., Bankers (Unincorporated)*, 374 F. Supp. 465,480 (S.D. Tex. 1974), *aff'd*, *SEC v. W.L. Moody & Co.*, 519 F.2d 1087 (5th Cir. 1975); *SEC v. Mega. fund Corp.*, No. 3:05-CV-1328-L, 2008 WL 2839998, at \*2 (N.D. Tex. June 24, 2008); *SEC v. Fifth Ave. Coach Lines, Inc.*, 364 F. Supp. 1220, 1222 (S.D.N.Y. 1973).

toward the completion of, a case under [11 U.S.C. § 330(a)(3)]; (D) whether the services were performed within a reasonable amount of time commensurate with the complexity, importance, and nature of the problem, issue, or task addressed; (E) with respect to a professional person, whether the person is board certified or otherwise has demonstrated skill and experience in the bankruptcy field; and (F) whether the compensation is reasonable based on the customary compensation charged by comparably skilled practitioners in cases other than cases under [11 U.S.C. § 330(a)(3)]." 11 U.S.C. § 330(a)(3).

#### **A. ING BANK SETTLEMENT**

A telephonic hearing was held on all pending motions before the Court on March 22, 2023. On March 23, 2023, the Court entered an Order granting the Receiver's First Amended Motion to Approve Settlement, to Issue Ancillary Channeling and Bar Injunctions, and to Establish Distribution Procedures. The Order is final and is no longer appealable, the Receiver notified ING's counsel of such, and the distribution phase of the ING settlement has begun.<sup>2</sup> The ING settlement is being paid in EUROS to the Receivership. All distribution payments will be issued in USD. The ING settlement will result in a payment to investors of 33.87% of their approved claim amounts.

#### **B. MOTION FOR FIRST INTERIM DISTRIBUTION**

On March 23, 2023, the Court also entered an Order granting the Receiver's Unopposed Motion for Disbursement of Funds for Approval of First Interim Distribution Plan & Procedures.

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<sup>2</sup> FINAL ORDER APPROVING [Dkt.# 263]Settlement, Issuing Channeling and Bar Injunctions, and Establishing Distribution Procures

This Order is also final.<sup>3</sup> This distribution will be distributed from funds the Receiver has recovered and would represent a payment to investors of 20% of their approved claim amounts.<sup>4</sup>

### **C. RECEIVER'S ACTIVITIES FOR THIS FEE PERIOD**

Due to the ING Bank Settlement becoming final, and the anticipation of the upcoming distribution the Receiver continued to receive a significant number of direct emails and telephone calls from investor claimants requesting updates. Correspondingly, a significant amount of time during the Fee Period was spent communicating with investors.

The Receiver communicated with ING Bank's counsel regarding wire instructions and the Receiver has received the first tranch of funds.<sup>5</sup>

The Receiver continued to contact the DPPO regarding the timing of the \$7.3 million in Slovakian funds and when it is expected to be repatriated and continued to communicate with his foreign French and Moroccan counsel to assist in repatriating funds back to the United States. He requested a budget from both the French and Moroccan counsel and received budgets from both law firms.<sup>6</sup>

Lastly, as previously reported, the Receiver's paralegals attempted to contact approved investor claimants who have been unresponsive to postcards sent to their last known addresses, emails and telephone calls. They continued to attempt to reestablish contact via internet searches. After the ING Bank Settlement became final, their research discontinued. While most of the

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<sup>3</sup> ORDER GRANTING [Dkt.# 249] Receiver's Unopposed Motion for Approval of First Interim Distribution Plan and Procedures

<sup>4</sup> Due to ING Bank's time constraints, the ING distribution will be made first. Then, we will begin making the first interim distributions.

<sup>5</sup> As part of the ING Bank Settlement the settlement amount is confidential and filed under seal. [Dkt.# 206]

<sup>6</sup> On April 27, 2023, The Receiver submitted a Motion for Approval to Incur Travel Expenses to Morocco to Repatriate Funds to the United States with his budget [Dkt. #277]. On May 3, 2023, this Court granted the Order [Dkt. #279]

ensuing discussions and communications with these investors were handled by the paralegals, the Receiver did participate in a few of those discussions.

### **PARALEGALS' ACTIVITIES FOR THIS FEE PERIOD**

The majority of the paralegals' activities consisted of communicating with investors. They responded to approximately 50 investor claimants via email and telephone regarding responses to claim questions, provided status updates and responded to individual specific questions, as they pertained to their claims and the timing of anticipated distributions. They validated or updated their contact information where applicable and updated the investor spreadsheet. As previously stated above, they also attempted to locate approved investor claimants, that over the years, lost contact with the Receivership.

The senior paralegal spent time assisting the Receiver with preparing court papers. She also updated the IB Capital ProphetMax bookkeeping notebook to include all expense activity the Receiver was approved to issue.<sup>7</sup> Her total hours for the month of April were 20.90; her invoice totaled \$2,508.00. The Receiver's other paralegal's total hours for the month of April were 16.20; his invoice totaled \$1,296.00.<sup>8</sup>

### **RECEIVER'S COUNSELS' ACTIVITES FOR THIS FEE PERIOD**

#### **I. Munsch, Hardt**

The Munsch Hardt firm is the Receivers United States ("US"). His time in March and April related to communications on multiple subjects relating to activity in various jurisdictions. This included conferring with the Receiver on foreign recovery efforts in Morocco as well as

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<sup>7</sup> The IB Capital ProphetMax notebook includes all bank statements, invoices, court papers with corresponding orders and an Excel spreadsheet of account activity.

<sup>8</sup> The Receiver's senior paralegal invoiced 13.8 hours at \$50.00 per hour which is thirty-three percent of her normal hourly rate for a total of \$690.00 and 13.6 hours at \$120.00 per hour which is 20% of her normal hourly rate for a total of \$1,632.00. The Receiver's paralegal invoiced 4.9 hours at \$30.00 per hour which is 70% of his normal hourly rate for a total of \$147.00 and 7 hours at \$80.00 per hour which is 20% for a total of \$560.00. [Dkt. 265]

updates with the ING Settlement. Munsch Hardt also invoiced for communications with the Receiver and the SEC regarding the Pousa matter and correspondence with the government regarding the Gallagher and Dion matter. (Messrs. Gallagher and Dion were alleged United States co-conspirators with two of the Receivership defendants from Amsterdam, Emade Echade and Michel Geurkink.) The Receiver's US counsel also attended a call with the criminal defense counsel for Gallagher and Dion.

Total fees and expenses for their most recent invoice for their combined fee note for March was \$3,153.20 and April time amounts to \$1,487.50. Their combined invoices for March and April amounts to \$4,641.00.

## **II. Archipel (Paris, France)**

The Archipel firm's activities in March related to communications on assisting the Receiver with foreign recovery efforts in Morocco. The firm's time invoiced for analyzing documents, developing a strategy and budget with the Receiver's Moroccan counsel. The Receiver requested this information to provide a strategic and financial plan to establish a path forward. Total fees and expenses for their most recent invoice amounts to EUR €5,562.50 (USD 6,037.48).<sup>9</sup>

## **III. BRAHMA (Casablanca, Morocco)**

The Brahma firm's activities in March are related to communications on assisting the Receiver with foreign recovery efforts in Morocco. Their main activity was obtaining information regarding one parcel of unregistered land as well as working with the Archipel firm to develop the strategy and their component of the financial budget. Total fees and expenses for their most recent invoice amounts to \$3,600.00

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<sup>9</sup> XE: Convert EUR/USD (May 12, 2023). Retrieved from <https://www.xe.com/currencyconverter/convert/?Amount=5562.5&From=EUR&To=USD>

**CONCLUSION AND PRAYER FOR RELIEF**

The Receiver requests the Court to approve his Eighteenth Fee Application totaling \$3,425.52 for his invoice which includes time expended by the Receiver for the one-month time period between April 1, 2023, through April 30, 2023. Attached as Exhibit 1 to this Motion for Approval of Eighteenth Fee Application and Brief in Support is the redacted invoice detailing all the Receiver's time entries during the Fee Period.

The Receiver requests the Court enter the proposed Order filed with this Motion to approve the payment of interim expenses of \$3,804.00 for the invoices of his two paralegals and \$14,278.48 for the Receiver's counsel for their most recent invoices to the Receiver for the ProphetMax Receivership Estate and IB Capital Receivership Estate during the Eighteenth Fee Period, which were both reasonable and necessary for the Receiver to fulfill his Court-ordered duties.

Respectfully submitted,  
GUY HOHMANN

By: /s/ Guy Hohmann

Guy Hohmann  
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(512) 495-1438

**RECEIVER FOR THE PROPHETMAX AND  
IB CAPITAL RECEIVERSHIP ESTATES**

**CERTIFICATE OF CONFERENCE**

The Receiver conferred with Timothy Mulreany, counsel for the CFTC, who stated the CFTC does not take a position on the Motion nor the relief sought herein.

/s/ Guy Hohmann

Guy Hohmann

**CERTIFICATE OF SERVICE**

On May 14, 2023, I electronically submitted the foregoing document with the Clerk of the Court of the U.S. District Court, Western District of Texas, using the electronic case filing system of the court. I hereby certify that I have served 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/ Guy Hohmann

Guy Hohmann





## The Hohmann Law Firm

Norwood Tower  
 114 West 7th Street, Suite 1100  
 Austin, Texas, 78701  
 Guyh@hohmannlaw.com  
 www.hohmannlaw.com  
 O: 5125519808

## INVOICE

Number	1290
Issue Date	4/1/2023
Due Date	4/30/2023
Email	guyh@hohmannlaw.com

### Bill To:

Guy Hohmann Receiver for ProphetMax and IB Capital  
 114 West Seventh Street  
 Suite 1100  
 Austin, Texas 78701  
 O: 512-495-1438

### Time Entries

Time Entries	Rate	Hours	Sub
GMH-RCVR 4/3/2023 Review email from investor regarding his proof of claim and supporting documents, review of his information from ING wired spreadsheet and conference with Ryn Hohmann regarding same.	\$658.75	0.30	\$197.63
GMH-RCVR 4/4/2023 Multiple emails from / to investors regarding restitution obligation of Gallagher & Dione, telephone conference with DOJ representative regarding same, review and revise email to approved investor claimant the receivership lost contact with and Ryn Hohmann established contact via internet research with their Notice of Claim Determination.	\$658.75	0.80	\$527.00
GMH-RCVR 4/5/2023 Telephone conference [REDACTED] regarding resolution of dispute between counsel for estate of [REDACTED].	\$658.75	0.10	\$65.88
GMH-RCVR 4/7/2023 Review and revise motion for approval to Incur Travel Expensed to Morocco to repatriate funds to the United States and email to Tim Mulreany regarding same.	\$658.75	0.60	\$395.25
GMH-RCVR 4/9/2023 Prepare Seventeenth Fee Application and conference with Ryn Hohmann regarding same.	\$658.75	1.30	\$856.38
GMH-RCVR 4/27/2023 Emails with Judge Yeakel's clerk regarding reassignment of case and Motion to Incur Travel Expenses to Morocco, review and revise same before filing and conference with Ryn Hohmann regarding same.	\$658.75	0.80	\$527.00

Exhibit 1

Time Entries	Rate	Hours	Sub
GMH-RCVR 4/28/2023 Email from investor regard disputed claims to fund, review of previous email on the same subject, lengthy email to investor and counsel for the estate of Dzung Price regarding potential for partially resolving the dispute	\$658.75	1.30	\$856.38
<b>Time Entries Total</b>		<b>5.20</b>	<b>\$3,425.52</b>

Total (USD)	\$3,425.52
Paid	\$0.00
Balance	\$3,425.52

Terms & Conditions

Net 30

IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF TEXAS  
AUSTIN DIVISION

UNITED STATES COMMODITY	§
FUTURES TRADING COMMISSION,	§
	§
<i>Plaintiff,</i>	§
	§
v. § Civil Action No. A-12-CV-0862-LY	§
	§
SEKEN POUSA, INVESTMENT	§
INTELLIGENCE CORPORATION,	§
DBA PROPHETMAX MANAGED FX,	§
JOEL FRIANT, MICHAEL DILLARD, and	§
ELEVATION GROUP, INC.,	§
	§
<i>Defendants.</i>	§

**ORDER GRANTING RECEIVER'S  
MOTION FOR APPROVAL OF EIGHTEENTH FEE APPLICATION**

Before the Court is the Receiver's Motion for Approval of the Eighteenth Fee Application and Brief in Support ("Motion"), covering the one-month time period from April 1, 2023, through April 30, 2023.

Before the Court is the Receiver's Motion for Approval to Pay his Fees and Expenses of \$21,508.00 for the following:

1. Receiver's fees of \$3,425.52
2. Senior paralegal total expenses of \$2,508.00.
3. Paralegal total expenses of \$1,296.00
4. Munch Hardt Firm \$4,641.00
5. Archipel (Paris France) €5,562.50 (USD \$6,037.48)
6. Brahma (Casablanca, Morocco) \$3,600.00

Having considered the Motion, the evidence presented, and arguments of counsel, if any, the Court finds the time spent, services performed, hourly rates charged, and expenses incurred by the Receiver were reasonable and necessary for the Receiver to perform his Court-ordered duties. The Court concludes the Motion should be, and is hereby, GRANTED.

It is therefore ORDERED that payment for interim fees and expenses listed above totaling \$21,508.00 for the Receiver's invoice and for services rendered to the ProphetMax Receivership Estate and IB Capital Receivership Estate during the Eighteenth Fee Period is approved.

SIGNED this \_\_\_\_\_ day of \_\_\_\_\_, 2023.

\_\_\_\_\_  
DAVID A. EZRA  
SENIOR UNITED STATES DISTRICT JUDGE

IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF TEXAS  
AUSTIN DIVISION

UNITED STATES COMMODITY	§
FUTURES TRADING COMMISSION,	§
	§
<i>Plaintiff,</i>	§
	§
v. §	Civil Action No. A-12-CV-0862-LY
	§
SENEB POUSA, INVESTMENT	§
INTELLIGENCE CORPORATION,	§
DBA PROPHETMAX MANAGED FX,	§
JOEL FRIANT, MICHAEL DILLARD, and	§
ELEVATION GROUP, INC.,	§
	§
<i>Defendants.</i>	§

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4. Munch Hardt Firm \$4,641.00
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6. Brahma (Casablanca, Morocco) \$3,600.00

Having considered the Motion, the evidence presented, and arguments of counsel, if any, the Court finds the time spent, services performed, hourly rates charged, and expenses incurred by the Receiver were reasonable and necessary for the Receiver to perform his Court-ordered duties. The Court concludes the Motion should be, and is hereby, GRANTED.

It is therefore ORDERED that payment for interim fees and expenses listed above totaling \$21,508.00 for the Receiver's invoice and for services rendered to the ProphetMax Receivership Estate and IB Capital Receivership Estate during the Eighteenth Fee Period is approved.

SIGNED this 15<sup>th</sup> day of May, 2023.

  
\_\_\_\_\_  
DAVID A. EZRA  
SENIOR UNITED STATES DISTRICT JUDGE