

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

LEGAL STANDARD

The Receiver has previously briefed the legal standards for evaluating the reasonableness and necessity of professional fees and expenses. The Court has consistently evaluated the Receiver's fee applications using the factors set forth by the Sixth Circuit in *Johnson v. Georgia Highway Express, Inc.*, 488 F.2d 714, 717-19(5th Cir.1974).¹ 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

¹ 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. Sixth Ave. Coach Lines, Inc.*, 364 F. Supp. 1220, 1222 (S.D.N.Y. 1973).

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 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. FIRST INTERIM DISTRIBUTION

During this fee period, the Receiver continues to distribute funds for the First Interim Distribution. On March 23, 2023, this Court approved the Receiver's Unopposed Motion for Approval of First Interim Distribution Plan and Procedures.² As previously

² 2023.09.12 [Dkt. #295]. Signed Order [Dkt. #297]. Unopposed Motion Receiver's Motion to Amend Previously Issued Orders.

reported, due to the 180-day time constraint of the ING Bank Settlement, the Receiver sought this Court's permission to extend the distribution period of the First Interim Distribution period until February 28, 2023.³

B. RECEIVER'S ACTIVITIES FOR THIS FEE PERIOD

1. Slovakia - \$7.2 million

For this Court's convenience, the only update to report from the last status update, is the Receiver continued to send follow-up emails to the Dutch Public Prosecutor's Office ("the DPPO") requesting an update.

To date, the Receiver has not received a response. If and when the assets are released by Slovakia, the Receiver expects to be wire transferred approximately USD \$7.1 million.

2. Morocco – \$ 4.87 million

Since the Receiver's most recent update, the Receiver's communication has been focused on the efforts needed for the Moroccan Consultant to be successful in his efforts to assist the Receiver with repatriating the misappropriated funds back to the U.S.

On November 16, 2023, this Court granted the Receiver's Motion for Approval to Retain a Moroccan Consultant. Receiver has been in communication via email with his French and Moroccan counsel regarding the granted order.⁴

As to an update, on December 13, 2023, the Receiver received an email from the Dutch Public Prosecutor (the "DPPO") informing the Receiver the DPPO would

³ 2023.03.23 [Dkt. #262]. Signed Order [Dkt. # 249]. Receiver's Unopposed Motion for Approval of First Interim Distribution Plan and Procedures.

⁴ [Dkt. #303, Signed Order Dkt. #304].

drop all charges against Rabbia and Essadia Moutaouakkil on the condition of transferring the bank account balances to the receivership estate.

On December 15, 2023, the Receiver's Moroccan counsel outlined their concerns for the DPPO lifting the freeze. They requested the Receiver to communicate to the DPPO to await further instructions. The Receiver's counsel wanted to ensure the Consultant's recommended steps are completed and clear processes are set-up to ensure the pathway of released funds are secure and coordinated. This was a necessary step to ensure the funds are transferred to the Receivership bank account.

C. COMMUNICATIONS WITH INVESTOR CLAIMANTS

As previously stated, the First Interim Distribution is in process. During this fee period, the Investor Claimants were very engaged in their communications to the Receiver's two paralegals. The email traffic and telephone inquiries continued to be immense.

During this fee period, the Receiver was not required to spend a significant portion of his time communicating with Investor Claimants. The vast majority of approved Investor Claimants' claim questions regarding their approved claim amounts were satisfied during the ING Bank Settlement distribution period.

With oversight from the Receiver, it is more efficient and beneficial as an expense to the Receivership estate for the Receiver's paralegals to communicate with the investors regarding the distribution.

Those categories include: (1) reconfirm wire instructions previously received during the ING Bank Settlement (2) validate W-9 forms received for approved Investor Claimant's governed by U.S tax laws (3) wire funds and send via secure ShareFile the

lists of names, addresses and approved payment distribution amounts of the Approved Claimants to the distribution agent to issue and mail checks (4) respond to inquiries from approved Investor Claimants regarding the timing of their specific distributions and (5) continued to telephone and email regarding how much will their specific distribution amount and whether they will receive future distributions etc.⁵

D. PARALEGALS' ACTIVITIES FOR THIS FEE PERIOD

As previously outlined above, the senior paralegal's activities were and continue to be extremely active. In part it was due to the email communications to and from the international investors to reconfirm wire instructions.

Additional areas of heavier than usual correspondence was driven by slow U.S. mail service i.e. weather storms, holiday mail, etc. The approved Investor Claimants investors that receive their distributions checks from this Court's approved distribution agent emailed and telephoned due to the fact they did not receive their checks as expeditiously as their ING bank Settlement distribution check.

In regard to the First Interim Distribution, the senior paralegal's key responsibility was to execute the wires to the approved Investor Claimants that live outside the continental U.S. As previously reported, the execution of USD and Foreign Currency international wires tend to be complex, and the details are intricate. In many instances, depending on the country, prior to receiving the wire, the beneficiary bank requires the incoming wire details. This includes the exact day and dollar amount that the funds are to be received. Due to the various time zones, it is a difficult and tight

⁵ Due to vast financial fraud, reconfirming wire instructions and mailing instructions is critical.

coordinated effort.⁶ She also managed the communications with the distribution agent, Donlin Recano & Co. Inc.

The majority of the paralegal's activities consisted of handling a multitude of activities in connection with the First Interim Distribution. For several months the paralegal has worked on retrieving W-9's from DocuSign and ShareFile. Approximately, eighty percent were completed without error or ambiguity. The remaining twenty percent required further research and communication with the Investor Claimants' that submitted the forms. This included missing information, two names listed on the W-9 instead of an individual name associated with one social security number, smudged text, etc. He also managed general communications and updates as pertains to the receivership.

The senior paralegal's total hours during this fee period were 71.70; her invoice totaled \$8,604.00. The paralegal's total hours were 77.60 and his invoice totaled \$6,208.00.⁷

E. RECEIVER'S COUNSELS' ACTIVITIES FOR THIS FEE PERIOD

I. Archipel (Paris, France)

The Archipel's firm most recent invoices are for the months of September, October and November 2023; they include activities related to communications in assisting the Receiver with foreign recovery efforts in Morocco. The firm's time

⁶ Due to wire fraud, financial institutions in general have layered levels of scrutiny when sending and receiving funds inside and outside the United States.

⁷ The Receiver's paralegal invoiced 77.60 hours at \$80.00 per hour which is a 20% discount from his normal hourly rate for a total of \$6,208.00. The senior paralegal invoiced 71.70 hours at \$120.00 per hour which is a 20% discount of her normal hourly rate for a total of \$8,604.00 [Dkt. 265].

invoiced for activities relating to a consultant who they and their Moroccan co-counsel retained with the Receiver that specializes in making presentations to the Moroccan Office of Foreign Exchange and whom they believe can assist in repatriating funds back to the United States.⁸ They also translated documents, held conference calls and had numerous email exchanges as well as communicated with the Receiver regarding all of the above.

Total fees and expenses for their most recent invoices from September, October and November amounts to EUR €2,475.00, EUR €2,188.00 and EUR €2,580.00 (USD 8,195.88).⁹

II. BRAHMA (Casablanca, Morocco)

The Brahma's firm activities for their most recent invoice were related to communications in assisting the Receiver with foreign recovery efforts in Morocco. Their activities included exchanges with their co-counsel in France regarding the consultant who specializes in support of clients before the Moroccan Exchange Office and the instruction letter to the consultant. They also held several meetings and conference calls with their co-counsel, the Archipel law firm regarding the consultant who assists in repatriating funds back to the United States. Total fees and expenses for their most recent invoice from September, October (invoiced together) and November amounts to \$1,260.00 & \$1,440.00.¹⁰

⁸ On 11/6/2023 [Dkt. #304] this Court granted the Receiver's Motion for Approval to Retain a Moroccan Consultant

⁹ XE: Convert EUR/USD (December 11, 2023).

Retrieved from

<https://www.xe.com/currencyconverter/convert/?Amount=7513.34&From=EUR&To=USD>

¹⁰ The Brahma firm invoices in USD.

CONCLUSION AND PRAYER FOR RELIEF

The Receiver requests the Court approve his Twenty-Sixth Fee Application for his invoice which includes time expended by the Receiver for the one-month time period between December 1, 2023, through December 31, 2023, totaling \$9,486.01. Attached as Exhibit 1 to this Motion for Approval of Twenty-Sixth 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 (1) the payment of interim expenses of \$14,812.00 for the invoices of his two paralegals and (2) the payment of the Receiver's foreign counsel's invoices totaling \$10,898.88. The total fees and expenses for this fee period totaled \$37,896.89 for the Receivership Estate and IB Capital Receivership Estate during the Twenty-sixth Period, all of which were both reasonable and necessary for the Receiver to fulfill his Court-ordered duties.

Respectfully submitted,
GUY HOHMANN

By: /s/ Guy Hohmann

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**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

January 23, 2024, 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