IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 17-11073

ANTONIO JUBIS ZACARIAS; ROBERTO BARBAR,

Plaintiffs-Appellants

v.

STANFORD INTERNATIONAL BANK, LIMITED

Defendant.

BARRY L. RUPERT; CAROL RUPERT;
MICHAEL RISHMAGUE; LIONEL ALESSIO;
DAN AULI PANOS, et al

Movants-Appellants

v.

OFFICIAL STANFORD INVESTORS' COMMITTEE;
MANUEL CANABAL; WILLIS, LIMITED;
WILLIS OF COLORADO, INCORPORATED,

Interested Parties-Appellees

WILLIS GROUP HOLDINGS LIMITED;
WILLIS NORTH AMERICA, INCORPORATED;
AMY S. BARANOUCKY; BOWEN MICLETTE;
BRITT, INCORPORATED; RALPH S. JANVEY;
SAMUEL TROICE,

Appellees

v.

EDNA ABLE,

Interested Party-Appellant

- -

CONSOLIDATED WITH 17-11114

THE OFFICIAL STANFORD INVESTORS' COMMITTEE; SAMUEL TROICE, on their own behalf and on behalf of a class of all others similarly situated; MANUEL CANABAL, on their own behalf and on behalf of a class of all others similarly situated,

Plaintiffs-Appellees

v.

CARLOS TISMINESKY; ROBERTO BARBAR; ANA LORENA NUILA DE GADALA-MARIA,

Plaintiffs-Appellants

v.

WILLIS OF COLORADO, INCORPORATED; WILLIS LIMITED; WILLIS GROUP HOLDINGS LIMITED; WILLIS NORTH AMERICA, INCORPORATED; AMY S. BARANOUCKY; BOWEN, MICLETTE; BRITT, INCORPORATED,

Defendants-Appellees

v.

BARRY L. RUPERT; CAROL RUPERT; MICHAEL RISHMAGUE; LIONEL ALESSIO; DAN AULI PANOS, EDNA ABLE; et al,

Appellants

v.

RALPH S. JANVEY, in his Capacity as Court-Appointed Receiver for Stanford Receivership Estate,

Appellee

- -

CONSOLIDATED WITH 17-11122

EDNA ABLE; ROBERT C. AHDERS; RODRIGO RIVERA ALCAYAGA; DAVID ARNTSEN; CARLIE ARNTSEN; ET AL,

Plaintiffs-Appellants

v.

WILLIS OF COLORADO, INCORPORATED; WGH HOLDINGS, LTD.; WILLIS LTD.,

Defendants-Appellees

- -

CONSOLIDATED WITH 17-11127

ANTONIO JUBIS ZACARIAS, Individual; ANA VIRGINIA GONZALEZ DE JUBIS, Individual; GLADIS JUBIS DE ACUNA, Individual; ERIC ACUNA JUBIS, Individual; TULIO CAPRILES, Individual; JORGE CASAUS HERRERO, Individual; MARTHA BLANCHET, Individual; LUIS ZABALA, Individual; EMMA LOPEZ, Individual; ELBA DE LA TORRE, Individual,

Plaintiffs-Appellants

v.

WILLIS LIMITED; WILLIS OF COLORADO, INCORPORATED,

Defendants-Appellees

- -

CONSOLIDATED WITH 17-11128

ANA LORENA NUILA DE GADALA-MARIA, Individual; JOSE NUILA, Individual; JOSE NUILA FUENTES, Individual; GLADYS BONILLA DE NUILA, Individual; GLADYS ELENA NUILA DE PONCE, Individual, et al

Plaintiffs-Appellants

v.

WILLIS LIMITED, a United Kingdom Company; WILLIS OF COLORADO, INCORPORATED, a Colorado Corporation

Defendants-Appellees

- -

CONSOLIDATED WITH 17-11129

CARLOS TISMINESKY, Individual; RACHEL TISMINESKY, Individual; FELIPE BRONSTEIN, Individual; ETHEL TISMINESKY DE BRONSTEIN, Individual; GUY GERBY, Individual; VICENTE JUARISTI SUAREZ, Individual; AMPARO MATEO LONGARELA, Individual; SALVADOR GAVILAN, Individual; LARRY FRANK, Individual; MERCEDES BITTAN, Individual; OMAIRA BERMUDEZ, Individual,

Plaintiffs-Appellants

v.

WILLIS LIMITED; WILLIS OF COLORADO, INCORPORATED, Defendants-Appellees.

No. 17-11073, c/w Nos. 17-11114, 17-11122,
17-11127, 17-11128, 17-11129

Appeals from the United States District Court
for the Northern District of Texas

PETITION FOR REHEARING

(Filed Dec. 19, 2019)

Before: HIGGINBOTHAM, GRAVES, and WILLETT, Circuit Judges.

PATRICK E. HIGGINBOTHAM, Circuit Judge:

Treating the Petition for Rehearing En Banc as a petition for panel rehearing, the petition is GRANTED. We withdraw the opinions of July 22, 2019,[1] and substitute the following opinions:

I.

The Securities and Exchange Commission filed a complaint in the Northern District of Texas against Robert Allen Stanford, the Stanford International Bank, and other Stanford entities, alleging "a massive, ongoing fraud." Invoking the court's long-held statutory authority, the Commission requested that the district court take custody of the troubled Stanford entities and delegate control to an appointed officer of the court. The court did so, appointing Ralph Janvey as

[1] 931 F.3d 382.

receiver to "collect" and "marshal" assets owed to the Stanford entities, and to distribute these funds to their defrauded investors to honor commitments to the extent the receiver's efforts recouped monies from the Ponzi-scheme players.

The receiver has pursued persons and entities allegedly complicit in Stanford's Ponzi scheme. Through settlements with these third parties, the receiver retrieved investment losses, which it then distributed pro rata to investors through a court-supervised distribution process. Four years into this ongoing process, the receiver sued two insurance brokers, not upon contracts of insurance, but for participating in the Ponzi scheme. As with the receiver's other suits, monies it recovered from this suit would be distributed by the receiver pro rata to investor claimants. After years of litigation, the two companies, negotiating for complete peace, agreed to settle conditioned on bar orders enjoining further Ponzi-scheme suits filed against them. The district court entered the bar orders and approved the settlements. Certain objectors bring this appeal challenging the district court's jurisdiction and discretion to enter the bar orders. We affirm.

II.

A.

The story is well known. Under the operation of Robert Allen Stanford, the Antigua-based Stanford International Bank issued certificates of deposit (SIB CDs) and marketed them throughout the United

States and Latin America.[2] Stanford's financial advisors promoted SIB CDs by blurring the line between the Antiguan bank and Stanford's United States-based financial advisors, creating the impression that SIB CDs were better protected than similar investments backed by the Federal Deposit Insurance Corporation. Stanford trained its brokers to assure potential investors that the Bank's investments were highly liquid and achieved consistent double-digit annual returns, all under the protection of extensive insurance coverage.

Here, the receiver alleges that, to support their marketing activities, the Stanford entities purchased insurance policies with the assistance of their insurance brokers, Bowen, Miclette & Britt, Inc. (BMB) from the 1990s and Willis from 2004. In their marketing materials, Stanford entities then touted insurance policies covering the Bank presenting the Bank's unique insurance coverage, describing a gauntlet of audits and risk analyses the Bank passed to satisfy its insurers, and perpetuating the impression that Bank deposits were fully insured. They were distributed widely and sent routinely to Stanford's client base.

BMB and Willis also provided letters for Stanford financial advisors. These letters described the Stanford International Bank's management as "first class business people" and claimed the brokers "placed" Lloyd's of London insurance policies for the Bank. The letters

[2] *United States v. Stanford*, 805 F.3d 557, 563–65 (5th Cir. 2015).

and promotional materials did not disclose the policies' true coverage. These were the joint product of Stanford and the insurance brokers. Stanford employees drafted the letters, which Willis and BMB then placed on their own letterhead. The connections between Stanford and the defendants ran deep: BMB's letters were signed by a BMB "financial specialist" who was also a Stanford board member.[3] Stanford brokers then sent these letters to current and prospective investors.

The letters were a key part of the successful marketing efforts that drove the Ponzi scheme, as insurance played a central role in the Bank's overall attractiveness to investors. Prospective investors who viewed the letters, as well as the Bank's client base more generally, were drawn to the combination of relatively high rates of return and purportedly comprehensive insurance coverage. Over two decades, the Bank issued more than $7 billion in SIB CDs to investors.

Maturing CDs were redeemed with the funds of new investors.[4] Deposits were meanwhile commingled and allocated to illiquid investments, primarily in Antiguan real estate—a portfolio monitored not by a team

---

[3] *See*, *e.g.*, BMB Letter at 7–8, *Sec. & Exch. Comm'n v. Stanford Int'l Bank Ltd.*, No. 3:09-CV-00298-N (N.D. Tex. Dec. 29, 2016), ECF No. 2465-6 (signed by Robert S. Winter); *see also Certain Underwriters at Lloyd's of London v. Winter*, No. 3:15-CV-01997-N, 2015 WL 12732628, at *1 (N.D. Tex. Nov. 4, 2015) ("Before his death in 2014, Robert S. Winter was a Director of Stanford International Bank, Ltd. ('SIBL') from 1998 to 2009.").

[4] *Stanford*, 805 F.3d at 564.

of professional analysts, but by only two individuals, Robert Allen Stanford and James Davis, the Bank's chief financial officer. BMB and Willis had performed insurance assessments on all aspects of Stanford's businesses, such that they enjoyed full understanding of operations. As a result, the brokers knew that SIB CDs financed an illiquid real-estate fund and that the quality and risk of the underlying investments had not been disclosed to investors. Moreover, on the Bank's behalf, the brokers had procured insurance policies that provided no meaningful coverage of deposits in the Bank. When the Ponzi scheme collapsed, $7 billion in deposits were protected by $50 million in insurance coverage. Presenting as a legitimate enterprise, it was nothing but a single, massive fraudulent scheme.

B.

The Stanford Ponzi scheme collapsed in the wake of the 2008 financial crisis, when the stream of new depositors ran dry.[5] 18,000 investors in SIB CDs lost around $5 billion. On February 17, 2009, the SEC filed a complaint against Robert Allen Stanford, the Bank, and other Stanford entities, alleging, inter alia, violations of the Securities Act of 1933, the Securities Exchange Act of 1934 and Rule 10b-5, and the Investment Company Act of 1940. The SEC sought an injunction against continued violations of the securities laws, disgorgement of illegal proceeds of the fraudulent scheme,

---

[5] *Id.*

a freeze of Stanford assets, and a federal court order placing the Stanford entities into a receivership.

The district court appointed Ralph Janvey as receiver, with authority to take immediate, complete, and exclusive control of the Stanford entities and to recover assets "in furtherance of maximum and timely disbursement . . . to claimants."[6] The district court's Receivership Order enjoined all persons from "[t]he commencement or continuation . . . of any judicial, administrative, or other proceeding against the Receiver, any of the defendants [in the SEC action, such as Robert Allen Stanford and the Bank], the Receivership Estate, or any agent, officer, or employee related to the Receivership Estate, arising from the subject matter of this civil action," as well as from "[a]ny act to collect, assess, or recover a claim against the Receiver or that would attach to or encumber the Receivership Estate." The district court appointed an examiner to investigate and "convey to the Court such information as . . . would be helpful to the Court in considering the interests of the investors in any financial products, accounts, vehicles or ventures sponsored, promoted or sold by" the Stanford entities, and to serve as chair of the Official Stanford Investors' Committee to represent investors in the Stanford International Bank and to prosecute claims against third parties as assigned by the receiver.

---

[6] The 2009 Receivership Order was subsequently amended in 2010 and remained identical in all relevant parts.

The district court approved a process by which Stanford investors could file claims against the Stanford entities with the receiver and, if approved, participate in distributions of the receivership's assets. The order set a deadline of 120 days for claimants to submit proofs of claim against the receivership entities. The receiver would evaluate the claims, subject to an appeal process and judicial review in the district court. Would-be claimants who failed to submit claims by the deadline were enjoined from later asserting claims against the receivership and its property. The court ordered the receiver to provide notice of the deadline to all "Stanford International Bank, Ltd. certificate of deposit account holders who had open accounts as of February 16, 2009 and for whom the Receiver has physical addresses from the books and records of Stanford International Bank, Ltd." The court also ordered the receiver to publish notice on its website and in the *New York Times, Wall Street Journal, Financial Times, Houston Chronicle*, and newspapers in the British Virgin Islands, Antigua, and Aruba.

Of the Plaintiffs-Objectors, 477 of 509—approximately 94 percent—have and will continue to recover as claimants in the receivership's distribution process.[7] While the record does not reflect why the remaining 32 Plaintiffs-Objectors did not timely submit claims, they

[7] Of the 509 Plaintiffs-Objectors, 455 are confirmed claimants; 22 are claimants with the Antiguan liquidators and by agreement are treated as claimants by the receiver.

constitute less than two-tenths of one percent of the total 18,000 defrauded SIB CD investors.[8]

C.

The receiver identified and pursued persons and entities as participants in the Ponzi scheme to recover funds for distribution to investor-claimants. Armed with a receiver's authority to provide total peace, it sued and settled with, among others, an accounting firm, BDO USA LLC, for $40 million; the Adams & Reese law firm and other individuals for around $4 million; and consultant Kroll LLC and its affiliate for $24 million. With each settlement, the district court entered a bar order requested by the parties, enjoining related claims against the defendants arising out of the Stanford Ponzi scheme. Receivership claimants, including Plaintiffs-Objectors, with approved claims recovered pro rata from the funds gathered in these receivership actions without challenge to the bar orders.

Five months after the appointment of the receiver, individual investor Samuel Troice and other investors sued in the district court seeking certification of a class of SIB CD investors against BMB and Willis of Colorado and related entities ("the Original Troice

[8] Many of these 32 could not be confirmed as SIB CD investors by the receiver.

Action").[9] The action sought recovery of their losses from the Ponzi scheme under the Texas Securities Act and theories of negligence and fraud. In 2011, the district court dismissed the case, holding that the claims were precluded by the Securities Litigation Uniform Standards Act (SLUSA). This Court reversed in a consolidated appeal,[10] and the Supreme Court affirmed in *Chadbourne & Parke LLP v. Troice.*[11] The Supreme Court held that SLUSA's prohibition on state-law class actions alleging fraud in "the purchase or sale of a covered security" did not preclude the claims regarding the purchase or sale of SIB CDs, which were not publicly traded and thus not "covered" for SLUSA purposes.[12] The case was remanded to district court for further proceedings.[13]

---

[9] In December 2009, the Troice Plaintiffs' case was consolidated with a similar action filed by SIB CD investor Manuel Canabal.

[10] *Roland v. Green*, 675 F.3d 503, 524 (5th Cir. 2012).

[11] 571 U.S. 377, 395–97 (2014).

[12] *Id.*

[13] In November 2012, Troice and two other individual investors joined the receiver and Investors' Committee in an action bringing investor class claims and receivership estate claims against Stanford's lawyers at the Greenberg Traurig firm. Complaint, *Janvey v. Greenberg Traurig, LLP*, No. 3:12-cv-04641-N-BQ (N.D. Tex. Nov. 15, 2012), ECF No. 1. On the defendants' motion for judgment on the pleadings, the district court held that under Texas's attorney-immunity doctrine it lacked jurisdiction over the investor-plaintiffs' class claims, since these plaintiffs were non-clients and the conduct at issue occurred within the scope of the attorney's representation of a client. *Official Stanford Investors Comm. v. Greenberg Traurig, LLP*, 2017 WL 6761765, at *3 (N.D. Tex. Dec. 5, 2017). The district court dismissed

In October 2013, Troice and another individual investor, Manuel Canabal, joined the receiver's prosecution of a case against the same insurance brokers. Together with these two individuals and the Investors' Committee, the receiver filed a complaint against Willis of Colorado and its affiliates[14] and a month later amended the complaint to add claims against BMB.[15] The receiver and the Investors' Committee sought to recover losses from the Ponzi-scheme on behalf of the estate under six theories:[16]

(1) that Willis and BMB knowingly or recklessly aided, abetted, or participated in the Stanford directors' and officers' breaches of fiduciary

---

Troice's and the other investor plaintiffs' claims against Greenberg Traurig, allowing the receiver and Investors' Committee to proceed on the estate claims. *Id.* Troice and the investor plaintiffs appealed, and this court affirmed. *Troice v. Greenberg Traurig, LLP*, 2019 WL 1648932, at *1 (5th Cir. Apr. 17, 2019). The receiver and Investors' Committee did not participate in the appeal.

[14] In a related case, the plaintiffs also brought and settled claims against Amy Baranoucky, the Stanford entities' Client Advocate within Willis. *Janvey v. Willis of Colo., Inc.*, No. 3:113-cv-03980-N-BQ (N.D. Tex. Aug. 23, 2017), ECF No. 134.

[15] They also brought and settled claims against Robert Winter, the BMB insurance specialist who served on the board of the Stanford International Bank. Notice of Settlement, *Janvey v. Greenberg Traurig, LLP*, No. 3:12-cv-04641-N-BQ (N.D. Tex. Nov. 7, 2016), ECF No. 220.

[16] The Troice Plaintiffs attacked the Ponzi scheme with claims for violations of the Texas Securities Act ("TSA"); aiding and abetting violations of the TSA; participation in a fraudulent scheme; civil conspiracy; violations of the Texas Insurance Code ("Insurance Code"); common law fraud; negligent misrepresentation; negligence/gross negligence; and negligent retention/negligent supervision.

duties towards the receivership entities, resulting in exponentially increased liabilities and the misappropriation of billions of dollars;

(2) that Willis and BMB violated their duty of care towards the receivership entities by enabling and participating in the Stanford directors' and officers' Ponzi scheme, resulting in exponentially increased liabilities and the misappropriation of billions of dollars;

(3) that Willis and BMB were unjustly enriched by proceeds of the Ponzi scheme paid out to them by Stanford's directors and officers—transfers made with the intent to hinder, delay, or defraud the receivership entities;[17]

(4) that Willis and BMB knowingly or recklessly aided, abetted, or participated in the Stanford directors' and officers' fraudulent transfers of receivership entities' assets to third parties, including Stanford's insurers, the recipients of Stanford's investments in ventures and real estate, and Allen Stanford himself, with the intent to hinder, delay, or defraud the receivership entities;

(5) that Willis and BMB breached their duties of care to the receivership entities in their hiring, supervision, and retention of employees who issued comfort letters in furtherance of the Stanford Ponzi scheme, causing

[17] This claim is asserted by the Investors' Committee.

exponentially increased liabilities and the misappropriation of billions of dollars;

(6) that Willis and BMB conspired with Stanford directors and officers to use insurance as a marketing tool to sell SIB CDs in furtherance of the Ponzi scheme, harming the receivership entities. The district court dismissed this civil conspiracy claim, however, holding that the receiver and the Investors' Committee failed to allege the requisite state of mind to sustain the claim.

In March 2014, the district court consolidated the Receivership Action and the Original Troice Action for purposes of discovery, keeping the cases on separate dockets.

D.

Individual investors filed three separate lawsuits against BMB and Willis, seeking to recover their Ponzi scheme losses. On February 14, 2013, five groups of individual investors (collectively "the Florida Plaintiffs-Objectors") filed lawsuits against Willis in a Florida state court, seeking compensation for their alleged Ponzi-scheme losses, in excess of $130 million, under common law theories of negligence and fraud. Willis removed these cases to federal court, where they were transferred to Judge Godbey in the Northern District of Texas. The district court remanded one of the cases to Florida state court for lack of diversity, subject to a stay, and kept the remaining cases.

In 2009 and 2011, two groups of individual investors ("the Texas Plaintiffs-Objectors" collectively) filed lawsuits against Willis and BMB in Texas state court,[18] seeking recovery of their alleged Ponzi-scheme losses, in excess of $88 million under the Securities Act of 1933, the Texas Insurance Code, the Texas Securities Act, the Colorado Consumer Protection Act, and common-law theories of negligence and fraud. Willis and BMB removed these cases to federal court, where they were transferred to Judge Godbey. In both cases, the district court granted plaintiffs' motions for remand based on procedural defects in removal,[19] but also held that the plaintiffs had violated the Receivership Order's injunction against suits encumbering receivership assets.[20] It held that the cases would remain stayed on remand under the terms of the Receivership Order because, "to the extent Defendants are ever held liable, any proceeds of the claim are potential receivership assets. . . . The Court will not condone or allow Stanford investors to race for Receivership assets as the Plaintiffs attempt to do here."[21] In the second of these cases, the plaintiffs appealed the district court's refusal to lift the litigation stay, and this Court

---

[18] *Rupert v. Winter*, 2012 WL 13102348, at *1 (N.D. Tex. Jan. 24, 2012); *Rishmague v. Winter*, 2014 WL 11633690, at *1 (N.D. Tex. Sept. 9, 2014), *aff'd*, 616 F. App'x 138 (5th Cir. 2015).

[19] *Rupert*, 2012 WL 13102348 at *3–4; *Rishmague*, 2014 WL 11633690 at *2.

[20] *Rupert*, 2012 WL 13102348 at *7; *Rishmague*, 2014 WL 11633690 at *3.

[21] *Rupert*, 2012 WL 13102348 at *9; *Rishmague*, 2014 WL 11633690 at *4.

affirmed, recognizing "[']the importance of preserving a receivership court's ability to issue orders preventing interference with its administration of the receivership property.' "[22]

Finally, in 2016, a group of Stanford investors ("the Able Plaintiffs-Objectors") filed a suit against Willis in the Northern District of Texas under common law and statutory theories, seeking recovery of their alleged Ponzi-scheme losses in excess of $135 million.[23]

E.

Meanwhile, the receiver and Investors' Committee continued prosecuting their claims against Willis and BMB. After years of litigation, thousands of hours of investigating the claims, and two mediations, the parties to the Receivership Action agreed to terms of settlement—a release of claims against BMB for $12.85 million and Willis for $120 million, all to be paid into the receivership and distributed to receivership claimants who held SIB CDs as of February 2009. Both BMB and Willis conditioned their agreement on global resolution of claims arising out of the Stanford Ponzi scheme. Specifically, they conditioned agreement on

---

[22] *Rishmague v. Winter*, 616 F. App'x 138, 139 (5th Cir. 2015) (unpublished) (quoting *Schauss v. Metals Depository Corp.*, 757 F.2d 649, 654 (5th Cir.1985)).

[23] The Able Plaintiffs-Objectors also included five individual investors who would have destroyed diversity in the litigation in the Northern District of Texas. Those five investors therefore joined an existing suit by Stanford investors against Willis in Harris County, Texas.

the district court entering bar orders enjoining Stanford-Ponzi-scheme-related claims against them. Troice and Canabal do not challenge the settlement, and release any claims except their right to participate in the distribution of the receivership.

In November 2016, the district court gave notice of the settlement to interested parties. In August 2017, the district court approved the settlements and entered the bar orders over the objections of the Florida, Texas, and Able Plaintiffs-Objectors. The Plaintiffs-Objectors appeal.

III.

A.

The Plaintiffs-Objectors argue that the district court lacked subject matter jurisdiction to bar claims not before the court. Alternatively, they argue the bar orders were an improper exercise of the district court's power over the receivership. We review the district court's subject matter jurisdiction de novo[24] and review the settlement for abuse of discretion.[25]

---

[24] *See Crane v. Johnson*, 783 F.3d 244, 250 (5th Cir. 2015).

[25] *SEC v. Safety Fin. Serv., Inc.*, 674 F.2d 368, 373 (5th Cir. 1982).

1.

a.

Equity receiverships are older than this country and were looked to in the aftermath of the 1929 financial crash, when Congress created the SEC to protect investors and financial markets. Drawing upon the explicit provisions of Article III, in turn drawn from England's Chancery Court, Congress conferred jurisdiction on the district courts over SEC enforcement actions, including both "suits in equity" and actions at law.[26] In so doing, it granted the SEC access to the courts' full powers, including use of the traditional equity receivership, to coordinate the interests in a troubled entity and to ensure that its assets are fairly distributed to investors.[27] These implicit authorizations of

[26] 15 U.S.C. § 77v(a) ("The district courts of the United States . . . shall have jurisdiction of offenses and violations under this subchapter and under the rules and regulations promulgated by the Commission in respect thereto. . . . of all suits in equity and actions at law brought to enforce any liability or duty created by this subchapter."); *Id.* § 78aa(a) ("The district courts of the United States . . . shall have exclusive jurisdiction of violations of this chapter or the rules and regulations thereunder, and of all suits in equity and actions at law brought to enforce any liability or duty created by this chapter or the rules and regulations thereunder."); *see also* James R. Farrand, *Ancillary Remedies in SEC Civil Enforcement Suits*, 89 HARV. L. REV. 1779, 1782 (1976) ("[T]he 1933 and 1934 Securities Acts[ ] have specifically conferred equity jurisdiction on the courts").

[27] *SEC v. Wencke*, 783 F.2d 829, 837 n.9 (9th Cir. 1986) ("Our court, like many others, has recognized that as part of courts' equitable powers under the Securities Acts of 1933 and 1934, it may impose receiverships in securities fraud actions to prevent further dissipation of defrauded investors' assets."); *cf. SEC v. Manor*

receiverships are consistent with the more general express authorization Congress provided in 28 U.S.C. § 3103. Otherwise stated, the deploy of "[f]ederal equity receiverships, despite the name," nests in "a federal statutory framework."[28]

Exercising their jurisdiction under the securities laws, federal district courts can utilize a receivership where a troubled entity, bedeviled by their violation, will be unable to satisfy all of its liabilities to similarly situated investors in its securities.[29] Without a receiver, investors encounter a collective-action problem: each has the incentive to bring its own claims against the entity, hoping for full recovery; but if all investors take this course of action, latecomers will be left empty-handed. A disorderly race to the courthouse ensues, resulting in inefficiency as assets are dissipated in piecemeal and duplicative litigation. The results are

---

Nursing Centers, Inc., 458 F.2d 1082, 1103 (2d Cir. 1972) ("It is now well established that Section 22(a) of the 1933 Act, 15 U.S.C. § 77v(a) (1970), and Section 27 of the 1934 Act, 15 U.S.C. § 78aa (1970), confer general equity powers upon the district courts."); *Janvey v. Alguire*, No. 3:09-CV-0724-N, 2014 WL 12654910, at *16 (N.D. Tex. July 30, 2014) (collecting cases); *id.* at *17 ("The purpose of federal equity receiverships is . . . to marshal assets, preserve value, equitably distribute to creditors, and, either reorganize, if possible, or orderly liquidate."); *see also* Farrand, *Ancillary Remedies, supra* note 25, at 1788 (observing that the equity receivership has been recognized "as one means to effectuate the purposes of a statutory scheme of regulation.").

[28] *Alguire*, 2014 WL 12654910 at *14.

[29] *Liberte Capital Grp., LLC v. Capwill*, 462 F.3d 543, 552–53 (6th Cir. 2006) ("The inability of a receivership estate to meet all of its obligations is typically the sine qua non of the receivership.").

also potentially iniquitous, with vastly divergent results for similarly situated investors.

So it is that at the behest of the SEC the district court may take possession of the entity and its assets and vest control in a receiver.[30] The receiver is not an agent of the parties, nor is he like any other party affected by the wrongdoing of the entity's leaders—in this case, by way of a classic Ponzi scheme. He is "an officer or arm of the court . . . appointed to assist the court in protecting and preserving, for the benefit of all parties concerned, the properties in the court's custody[.]"[31]

Once a receiver takes control of a corporation whose officers ran a Ponzi scheme, the corporation is liberated from the control of those wrongdoers. As Judge Posner put it, the corporation is no longer the "evil zombie[ ]" of the malefactors.[32] The corporation is now "[f]reed from [their] spell" and is under the receiver's control.[33] The receiver, standing in the shoes of the injured corporations,[34] is entitled to pursue the

---

[30] *Atl. Tr. Co. v. Chapman*, 208 U.S. 360, 370–71 (1908).

[31] *Crites, Inc. v. Prudential Ins. Co. of Am.*, 322 U.S. 408, 414 (1944); *see Certain Underwriters at Lloyds London v. Perraud*, 623 F. App'x 628, 637 (5th Cir. 2015) (unpublished) ("[A] receiver is `not an agent of the parties,' and is instead `considered to be an officer of the court.' " (quoting 12 CHARLES A. WRIGHT & ARTHUR R. MILLER, FEDERAL PRACTICE AND PROCEDURE § 2981 (2d ed. 2015)).

[32] *Scholes v. Lehmann*, 56 F.3d 750, 754 (7th Cir. 1995).

[33] *Id.*

[34] *Matter of Still*, 963 F.2d 75, 77 (5th Cir. 1992) (explaining that a receiver "stands in the shoes of the failed bank, marshals

corporation's claims "for the benefit not of [the wrongdoers] but of innocent investors."[35] The receiver is therefore allowed to curb investors' individual advantage-seeking in order to reach settlements for the aggregate benefit of investors under the court's supervision. As directed by the court, a receiver may systematically use ancillary litigation against third-party defendants to gather the entity's assets. Once gathered, these assets are distributed through a court-supervised administrative process.[36]

For this exercise, the federal district courts draw upon "the power . . . [to] impose a receivership free of interference in other court proceedings."[37] The receivership's role is undermined if investor-claimants jump the queue, circumventing the receivership in an attempt to recover beyond their pro rata share. The court's powers include "orders preventing interference

---

the assets, and administers a fund"). Here, the receiver asserts the Stanford entities' claims against BMB and Willis. Through their misrepresentations, the insurers actively participated in Robert Allen Stanford's scheme to unlawfully employ the Stanford entities in the Ponzi scheme. In so doing, BMB and Willis breached their fiduciary duties to the Stanford entities.

[35] *Scholes*, 56 F.3d at 754.

[36] *Liberte*, 462 F.3d at 551 ("The receiver's role, and the district court's purpose in the appointment, is to safeguard the disputed assets, administer the property as suitable, and to assist the district court in achieving a final, equitable distribution of the assets if necessary.").

[37] *SEC v. Wencke*, 622 F.2d 1363, 1372 (9th Cir. 1980).

with its administration of the receivership property."[38] As we have stated:

> Courts of Appeals have upheld orders enjoining broad classes of individuals from taking any action regarding receivership property. Such orders can serve as an important tool permitting a district court to prevent dissipation of property or assets subject to multiple claims in various locales, as well as preventing piecemeal resolution of issues that call for a uniform result.[39]

These can include both stays of claims in other courts against the receivership[40] and bar orders foreclosing suit against third-party defendants with whom the receiver is also engaged in litigation.[41] Accordingly, at an earlier stage in the litigation we affirmed the district court's order enjoining the Texas Plaintiffs-Objectors

---

[38] *Schauss v. Metals Depository Corp.*, 757 F.2d 649, 654 (5th Cir. 1985); *SEC v. Stanford Int'l Bank, Ltd.*, 424 F. App'x 338, 340 (5th Cir. 2011) (unpublished) ("It is axiomatic that a district court has broad authority to issue blanket stays of litigation to preserve the property placed in receivership pursuant to SEC action.").

[39] *Schauss*, 757 F.2d at 654 (internal quotation mark and citation omitted); *see also SEC v. Byers*, 609 F.3d 87, 92 (2d Cir. 2010) ("An anti-litigation injunction is simply one of the tools available to courts to help further the goals of the receivership.").

[40] *See Schauss*, 757 F.2d at 653; *Byers*, 609 F.3d at 93; *Liberte*, 462 F.3d at 551–52.

[41] *SEC v. Kaleta*, 530 F. App'x 360, 362 (5th Cir. 2013) (unpublished).

from prosecuting claims against Willis during the pendency of the receiver's action.[42]

b.

Of course, there are limits to a receivership court's power, here limits that inhere in the focused mission of the Securities Acts, and born of this reality—at its core—the receivership court cannot reach claims that are independent and non-derivative and that do not involve assets claimed by the receivership.[43] As we will explain, the bar orders here, as applied to the objecting investors, fall squarely within these limits: The objecting investors can participate in the receivership process, their claims are derivative of and dependent on the receiver's claims, and their suits directly affect the receiver's assets.

SEC v. Kaleta and *SEC v. DeYoung* are fact-bound cases that illustrate both the central role of the federal district court and the limits on that court's authority. In *Kaleta*, the SEC initiated an enforcement action against Kaleta Capital Management and related entities, alleging a fraudulent scheme.[44] As here, the district court appointed a receiver to take custody of and

---

[42] *Rishmague v. Winter*, 616 F. App'x 138 (5th Cir. 2015) (unpublished).

[43] *SEC v. Stanford Int'l Bank*, 927 F.3d 830 (5th Cir. 2019) (hereinafter *Lloyds*).

[44] *See* 530 F. App'x 360 (5th Cir. 2013) (unpublished); *SEC v. Kaleta*, 2012 WL 401069, at *1 (S.D. Tex. Feb. 7, 2012).

represent the troubled Kaleta entities.[45] Pursuant to its appointment order, the Kaleta receiver sued the third-party Wallace Bajjali Entities to recoup proceeds of Kaleta's alleged violation of the federal securities laws. After months of investigation and negotiation, the parties reached a proposed settlement, under which the defendants would exchange payment for the receiver's release of claims,[46] conditioned on a bar order enjoining all other claims against the Wallace Bajjali Entities by Kaleta's investors—non-parties—arising out of the fraudulent scheme.[47] A number of Kaleta investors objected to the settlement, arguing the district court lacked authority to bar claims not before the court.[48] When the district court approved the settlement and entered the bar order, the objectors appealed.

We upheld the bar order, explaining that it was necessary to guarantee settlement and to ensure that key members of the fraudulent scheme paid the receivership.[49] The bar order's scope was limited, reaching only those claims arising from the allegedly fraudulent

---

[45] *Id.*

[46] *Id.* at *2.

[47] *Id.* at *3.

[48] *Id.* at *7.

[49] *Kaleta*, 530 F. App'x at 362–63; *Lloyds*, 927 F.3d at 843 (noting that the bar order in *Kaleta* "protected the assets of the receivership estate" by "forestalling a race to judgment that would have diminished the recovery of all creditors against receivership assets").

notes issued by the settling parties.[50] That is, it was limited to duplicative claims arising from the same fraudulent scheme. And the settlement permitted the objecting investors to participate in the receiver's distribution process.[51]

In *SEC v. DeYoung*, the SEC sued retirement-account administrator APS, and, as here, the district court took custody of the troubled company and appointed a receiver.[52] The receiver then pursued a third party, First Utah Bank, seeking recovery for the Bank's failure to protect APS account holders.[53] The suit between the receiver and First Utah Bank settled,[54] conditioned on the district court's approval of a bar order that would enjoin suits by non-party APS account holders against First Utah Bank.[55] Individual APS account holders objected, arguing the district court exceeded its authority because it barred claims "belong[ing] exclusively to the individual Account Holders" not before the court; the receiver, they argued, lacked standing to assert these claims.[56] The Tenth Circuit disagreed, finding that the receiver had standing to sue First Utah Bank on behalf of the receivership entity and that the court had subject matter jurisdiction to enter the bar

---

[50] *Kaleta*, 530 F. App'x at 362–63.

[51] *Id.*

[52] 850 F.3d 1172, 1175 (10th Cir. 2017).

[53] *Id.* at 1176.

[54] *Id.* at 1175.

[55] *Id.* at 1178

[56] *Id.* at 1180–81.

order.[57] The court's equitable powers authorized it to bar claims "substantially identical" to those brought by the receiver.[58] The account holders' and receiver's claims were said to be "substantially identical" because they involved "the same loss, from the same entities, related to the same conduct, and arising out of the same transactions and occurrences by the same actors."[59]

c.

The case at hand is one of several ancillary suits under the primary SEC action to enforce the federal securities laws against Robert Allen Stanford and his Ponzi-scheme co-conspirators.[60] There is no dispute that the receiver and Investors' Committee had standing to bring their claims against Willis and BMB. They bring only the claims of the Stanford entities—not of

---

[57] *Id.* at 1181–82.

[58] *Id.* at 1176–83.

[59] *Id.* at 1176. As pointed out in *Lloyds*, the *DeYoung* Court also gave significant weight to First Utah's contractual right to indemnification from APS. *Id.* at 1183. This right meant that APS, now controlled by the receiver, could be required to indemnify First Utah for claims brought by the objecting account holders. This was significant because the barred claimants would have been paid by the Bank, draining the receiver's assets as a result of the indemnification. *Id.*

[60] *Janvey v. Reeves-Stanford*, 2010 WL 11463486, at *3 (N.D. Tex. Nov. 18, 2010) (quoting *Crawford v. Silette*, 608 F.3d 275, 278 (5th Cir. 2010) ("[T]he initial suit which results in the appointment of the receiver is the primary action and . . . any suit which the receiver thereafter brings in the appointment court in order to execute such duties is ancillary to the main suit. . . .").

their investors[61]—alleging injury to the Stanford entities, including the unsustainable liabilities inflicted by the Ponzi scheme. The receiver and Investors' Committee "allege that Defendants' participation in a fraudulent marketing scheme increased the sale of Stanford's CDs, ultimately resulting in greater liability for the Receivership Estate," and that defendants "harmed the Stanford Entities' ability to repay their investors." The receiver and Investors' Committee sought to recover for the Stanford entities' Ponzi-scheme harms, monies the receiver will distribute to investor-claimants. The district court had subject matter jurisdiction over these claims.

d.

The Plaintiffs-Objectors urge that their claims are independent and distinct from those asserted by the receiver and Investors' Committee. Some argue that the bar orders entail the district court's assertion of jurisdiction to settle their claims pending in other judicial proceedings and that their claims sound in tort or contract. They are mistaken. It is necessarily the case that where a district court appoints a receiver to

[61] *Janvey v. Democratic Senatorial Campaign Comm., Inc.*, 712 F.3d 185, 190 (5th Cir. 2013) ("[A] federal equity receiver has standing to assert only the claims of the entities in receivership, and not the claims of the entities' investor-creditors."); *Scholes*, 56 F.3d at 753 ("[A] receiver does not have standing to sue on behalf of the creditors of the entity in receivership. Like a trustee in bankruptcy or for that matter the plaintiff in a derivative suit, an equity receiver may sue only to redress injuries to the entity in receivership.").

coordinate interests in a troubled entity, that entity's investors will have hypothetical claims they could independently bring but for the receivership: the receivership exists precisely to gather such interests in the service of equity and aggregate recovery.

A few Plaintiffs-Objectors also assert that the bar orders cannot apply to their misrepresentation claims because the settling defendants had direct contact with them by way of letters misrepresenting Stanford's financial soundness. There are two problems with this argument. First, they do not cite, and we have not found, case law supporting this direct-versus indirect-contact distinction. Second, the unchallenged findings of the district court show that their contact—letters on the letterhead of the defendant companies—was mediated by Stanford executives:

> The Willis and BMB Defendants allegedly aided Stanford's fraud by misrepresenting the safety and security of the SIBL CDs. In particular, they allegedly allowed Stanford employees to draft insurance endorsement letters that the Willis and BMB Defendants then placed on their own letterhead. Prospective Stanford investors received these letters as marketing tools designed to generate more investments in SIBL CDs. The Willis and BMB Defendants provided these letters despite allegedly knowing that Stanford was defrauding.[62]

---

[62] *Zacarias*, No. 3:09-CV-00298-N, 2017 WL 9989250, at *1 (N.D. Tex. Aug. 23, 2017).

Indeed, the letters provided at the hearing on the objectors' claims were signed by either a Stanford board member or a Willis employee.[63] Both were named in the Receiver's suit as participants in the Ponzi scheme, and both settled with the Receiver.[64] Other Plaintiffs-Objectors attempt to distinguish themselves with different theories of liability for the Ponzi scheme. They say, "Well, our suit is for fraud under state law," or, "We had direct contact."

This is word play. The only contact the objectors had was with the scheme in operation—the Ponzi scheme is a tissue of myriad lies and misrepresentations; a "direct contact" by receipt of a letter framed by Bank employees and certified by either or both of the two defendant companies says nothing. The objectors were injured by the Ponzi scheme. These objecting investors rode the Receiver train until the end and then decided to hold up a settlement with a deep pocket.[65]

---

[63] *See* Defendants' Letters, *Zacarias*, No. 3:09-CV-00298-N, ECF Nos. 2465-2 to 4, 6, 14 to 16.

[64] *Janvey v. Willis*, 3:09-cv-01274-N-BQ (N.D. Tex. Nov. 7, 2016), ECF Nos. 279, 280.

[65] It has been argued that our case is analogous to the Sixth Circuit's unpublished opinion in *Liberte Capital Grp., LLC v. Capwill*, 248 F. App'x 650 (6th Cir. 2007) (unpublished). In *Liberte*, the district court appointed a receiver to marshal the assets of two companies that had invested and served as escrow agents for funds obtained through the sale of fraudulent insurance policies. *Id.* at 651–52. Later, individual purchasers of those policies filed arbitration claims against their broker-dealers for fraudulently inducing them to buy the policies. The Sixth Circuit held that the receiver could not swallow individual purchasers' claims as part of the receivership estate because the receivership entities did not

By entering the bar orders, the district court recognized the reality that, given the finite resources at issue in this litigation, Stanford's investors must recover Ponzi-scheme losses through the receivership distribution process. Stanford, Willis, and BMB are alleged to be co-conspirators in the Ponzi scheme. The receiver is suing them to recover for the additional liability Stanford incurred to its investors, allegedly by virtue of Willis's and BMB's participation in the scheme. In other words, Plaintiffs-Objectors' suits are derivative of and dependent on the receiver's claims and compete with the receiver for the dollars in Willis's and BMB's pockets. The Plaintiffs-Objectors' claims affect receivership assets because every dollar the Plaintiffs-Objectors recover from Willis and BMB is a dollar that the receiver cannot, frustrating the receiver's pro rata distribution to investors—a core element of its draw upon equity.

Willis and BMB negotiated for the bar orders as preconditions of their respective settlements. The brokers' incentives to settle are reduced—likely eliminated—if each SIB CD investor retains an option to pursue full recovery in individual satellite litigation. Such resolution is no resolution. And the costs of undermining this settlement are potentially large. The receivership—and thus qualifying investor

---

suffer any injury from the broker-dealers' conduct. *Id.* at 656. This is in stark contrast to our case, where the Stanford entities and individual investors were indisputably harmed by the insurers' misrepresentations of the Bank's financial soundness—they were part of the Ponzi scheme.

claimants—would be deprived of $132 million in settlement proceeds. Continued prosecution of the receiver and Investors' Committee's suit against Willis and BMB could result in the same if not greater recovery, but this is speculation. Further, any potential value of the receiver's ultimate recovery must be reduced by the costs of prolonged litigation over the same assets, not only in the receiver's own action but also in the Plaintiffs-Objectors' myriad satellite suits, into which the receivership is likely to be drawn. Supposing that Willis, an allegedly deep-pocketed defendant, remains able to satisfy any judgment against it, the same cannot be said of BMB: continued litigation would eat away at the limited funds available under its "wasting" insurance policy.[66]

e.

Zacarias and *Lloyds* do not conflict. Each responded to distinct, critical differences in fact. *Lloyds* reviewed bar orders entered by the same receivership court in connection with the Stanford receiver's $65 million settlement with Lloyds and Arch Specialty Insurance Co.[67] The *Lloyds* bar orders enjoined third-party litigation against the defendant underwriters who had settled with the receiver.[68] These underwriters, unlike BMB and Willis, did not participate in the

---

[66] A "wasting" insurance policy has coverage limits that are reduced as defense costs are incurred.

[67] *Lloyds*, 927 F.3d 830 (5th Cir. 2019).

[68] *Id.* at 838.

Ponzi scheme. And it was under those insurance policies that the receiver in *Lloyds* sued them. In response to the settlement, objectors challenged the bar orders. Two sets of objectors are relevant here: (1) former Stanford employees who were coinsured with Stanford by Lloyds and Arch; and (2) a group of Louisiana retirees—former investors defrauded by the Ponzi scheme—claiming a right to direct action under a state statute.

The first group, the former Stanford employees, sought coverage under the Lloyds and Arch policies to defend against the receiver's clawback suits.[69] They also brought state-law claims resulting from Lloyd's handling of their claims for coverage.[70] *Lloyds* held that the receivership court abused its discretion by barring the contractual claims without channeling them into the receivership trust's distribution process.[71]

Lloyds held that the extracontractual claims, on the other hand, could not properly be reached by the bar orders at all, as they were based on the insurers' conduct in denying the Stanford employees' claims for policy proceeds, a distinct tort injury not based on any conduct in furtherance of the Ponzi scheme. These claims were independent of the receiver's claims and belonged only to the officers.

[69] *See id.* at 845–47.

[70] *See id.* at 847–48.

[71] *Id.* at 847.

As to the Louisiana investors, *Lloyds* upheld the bar order, explaining that though styled as statutory claims under Louisiana's direct action law, their claims "amount[ed] to a redundant claim on receivership assets."[72] Further, because the investors had the opportunity to participate in the distribution of the receivership estate, their claims were adequately channeled.

Much of *Lloyds* dealt with issues not presented in this case. The defendants in *Lloyds* did not participate in the Ponzi scheme; they only insured the Stanford entities. But the defendants here were active co-conspirators in the Ponzi scheme. Likewise, many of the *Lloyds* objectors were former Stanford employees suing to enforce insurance policies.[73] By contrast, the objectors here are defrauded investors. Once these facts are understood, the compatibility of the opinions is plain, for where these cases addressed analogous claims, they reached the same conclusion for the same reasons: Both affirm the receivership court's power to bar investors' claims for injuries they suffered as a

---

[72] *Id.* at 850.

[73] The employees' claims could not be asserted by the receiver. Indeed, they arose only after the Ponzi scheme had been detected and the receiver had commenced clawback suits against the objecting Stanford employees.

direct result of the Ponzi scheme.[74] And we address only investors.[75]

*　　*　　*

In this appeal we address only the effect of the Willis and BMB bar orders enjoining third-party investors' claims. The receiver initiated the suit, negotiated, and settled with Willis and BMB while empowered to deal with potential investor holdouts like the Plaintiffs-Objectors. These holdouts have been content for the receiver to pursue litigation for their benefit, then to participate as receivership claimants, collecting pro rata. Now, however, they ask to jump the queue, come what may to their fellow claimants who remain within the receivership distribution process. At bottom, the Plaintiffs-Objectors seek special treatment: their efforts to escape pro rata distribution, if successful, would recreate the collective-action problem that Congress sought to eliminate. The bar orders enjoining these investors' third-party claims fall well within the broad jurisdiction of the district court to protect the receivership res. The exercise of jurisdiction over a receivership is not an exercise of jurisdiction over other judicial proceedings. Rather, it permits the barring of

---

[74] The Louisiana retirees in *Lloyds* and all objectors here are Stanford investors.

[75] *Lloyds* noted that the receiver may not bar investor claims that do not implicate the policy proceeds because such claims would not affect the receivership estate. *Id.* at 849. But this principle has no application here, where the objecting investors' claims have nothing to do with insurance policies but rather with the insurers' conduct as participants in the fraud and, as discussed above, would affect the receivership.

such proceedings where they would undermine the receivership's operation.

2.

Again, the receivership solves a collective-action problem among the Stanford entities' defrauded investors, all suffering losses from the same Ponzi scheme. It maximizes assets available to them and facilitates an orderly and equitable distribution of those assets. Allowing investors to circumvent the receivership would dissolve this orderly process—circumvention that must be foreclosed for the receivership to work. It was no abuse of discretion for the district court to enter the bar orders to effectuate and preserve the coordinating function of the receivership.

B.

Under the Anti-Injunction Act, "[a] court of the United States may not grant an injunction to stay proceedings in a State court except as expressly authorized by Act of Congress, or where necessary in aid of its jurisdiction, or to protect or effectuate its judgments."[76] That is, "federal injunctive relief may be necessary to prevent a state court from so interfering with a federal court's consideration or disposition of a case as to seriously impair the federal court's flexibility and

[76] 28 U.S.C. § 2283.

authority to decide that case."[77] Guided by principles of federalism, we "find[ ] a threat to the court's jurisdiction" where "a state proceeding threatens to dispose of property that forms the basis for federal in rem jurisdiction."[78]

The district court exercises jurisdiction over the receivership estate. The particular part of that res at issue here is $132 million receivable owed to the receivership, conditioned upon the BMB and Willis bar orders. When in 2009 the district court took the receivership estate into its custody, the res "[wa]s as much withdrawn from the judicial power of the other [courts], as if it had been carried physically into a different territorial sovereignty."[79] The Plaintiffs-Objectors' suits in state court implicate that same res. The formal distinction between the Plaintiffs-Objectors' and the receivers' claims against the brokers arises from the receivership's mediating role, interposed by the district court between the investors and the assets belonging to the Stanford entities. The receiver sues the two brokers, as participants in the Ponzi scheme, on behalf of the Stanford entities so that assets owed to investors can be distributed to them administratively, through the distribution process rather than through their own piecemeal satellite litigations: "any

---

[77] *Atl. Coast Line R. Co. v. Bhd. of Locomotive Engineers*, 398 U.S. 281, 295 (1970).

[78] *Texas v. United States*, 837 F.2d 184, 186 n.4 (5th Cir. 1988); *see Newby v. Enron Corp.*, 302 F.3d 295, 301 (5th Cir. 2002).

[79] *Covell v. Heyman*, 111 U.S. 176, 182 (1884).

proceeds of the [Plaintiffs-Objectors'] claim are potential receivership assets, falling squarely within the bounds of the Receivership Order."[80]

The bar orders here prevent Florida and Texas state-court proceedings from interfering with the res in custody of the federal district court. The bar orders aided the court's jurisdiction over the receivership entities, which remain in the custody of the court. The bar orders negotiated here were a legitimate exercises of the receiver's authority—indeed, the receiver's duty, all under the aegis of an Article III court.

C.

The Texas and Florida Plaintiffs-Objectors argue that the Willis bar order deprived them of their property (that is, their claims) without due process and without just compensation. This is a recasting of the jurisdictional argument we have rejected. The district court was empowered to bar judicial proceedings not before it to protect the receivership. In so doing, the court afforded the Plaintiffs-Objectors all the process due: notice and opportunity to be heard on the proposed settlement and bar orders—an opportunity they seized. They were not deprived of any entitlement to recovery: the bar orders channel investors' recovery associated with BMB and Willis through the receivership's distribution process. As SIB CD investors, Plaintiffs-Objectors were provided notice of the

---

[80] *Rupert*, 2012 WL 13102348 at *7; *see also Rishmague*, 2014 WL 11633690 at *3.

receivership's distribution process; they were afforded an opportunity to submit proofs of claim, and to dispute the receiver's disposition of their entitlements within the receivership's administrative distribution process, including judicial review. The district court's decision to channel the Texas and Florida Plaintiffs-Objectors' recovery into that receivership process does not deprive them of an entitlement to recover for Ponzi-scheme losses. All due process has been afforded.

D.

The Plaintiffs-Objectors challenge the settlement agreements and bar orders, inferring from the large settlement sums that these are "de facto class settlements" entered unlawfully without certification of a settlement class.[81] There is a kinship—at a high level—in function between the receivership and a hypothetical certified SIB CD investor class action: both offer means to pursue litigation in an aggregative form. In the former, the court channels recovery through its officer, the receiver, and retains power to bar parallel proceedings that would interfere. In the latter, investors pursue their entitlements via class representatives under the requirements of Rule 23. But, as Congress authorized in protection of its security markets, the district court appointed a receiver and did not certify an investor class. The Willis and

---

[81] The Able Plaintiffs-Objectors also argue that in entering the Willis settlement, the Troice Parties violated their fiduciary duties to members of the putative class of SIB CD investors. The claim fails for the same reason as the other Rule 23 challenges.

BMB settlements bring monies ultimately to be distributed to all SIB CD investor-claimants through the receivership. There was no illicit class settlement, and the bar orders do not offend Rule 23.

E.

The Texas Plaintiffs-Objectors argue that the bar orders deny their right to a jury trial, retreading the jurisdictional argument we have addressed. Their argument presumes the Objector-Plaintiffs were otherwise entitled to pursue their independent action in state court unconstrained by the receivership court's bar order. We have explained why they have no such entitlement. The right to a jury does not create a right to proceed outside the receivership proceeding.

F.

The district court did not abuse its discretion in approving the BMB and Willis settlement agreements. The Texas Plaintiffs-Objectors argue that a "far greater recovery was possible," that the settlement was premature, and that SIB CD investors could have recovered 100 percent of their investments. This is at best speculative. The settlement was reached after years of investigation and litigation. There was no certainty in the outcome of the Receivership Action. The defendant brokers contested liability and insist they would continue to do so if the settlements are terminated, including a defensive narrative that they, like so many other persons and businesses, were duped. It

remained for the plaintiffs to prove their claims at trial, including proving the brokers' role in the Ponzi scheme without the benefit of an aiding and abetting violation under Rule 10b-5. The potential benefits of continued litigation must be discounted by the risk of failing in that proof or in overcoming defenses, together with attendant costs, mindful that to succeed it would not be enough for these private litigants to prove that the brokers "aided and abetted."[82] The district court considered tradeoffs the parties faced with the prospect of settlement and found the settlements "consistent with interests of both the receivership and the investors." The district court found no evidence of fraud or collusion and did not abuse its discretion in approving the settlements.

IV.

The core difficulty with Plaintiffs-Objectors' efforts to go it alone is that it would frustrate the central purposes of the receivership and confound the SEC's mission to achieve maximum recovery from the malefactors for distribution pro rata to all investors. We affirm the district court's approval of the BMB and Willis

---

[82] The SEC has the unique authority to use aider-and-abettor liability under § 10(b) of the Securities Exchange Act of 1934. *See Cent. Bank of Denver, N.A. v. First Interstate Bank of Denver, N.A.*, 511 U.S. 164 (1994) (holding a private party may not maintain an aider-and-abettor suit under § 10(b)), *overridden in part by* Private Securities Litigation Reform Act of 1995, § 104, Pub. L. No. 104–67, 109 Stat. 737, 757 (reaffirming the SEC's authority to bring civil enforcement actions against aiders and abettors).

settlements and its entry of the corresponding bar orders enjoining the Plaintiffs-Objectors' third-party investor claims.

DON R. WILLETT, Circuit Judge, dissenting:

I share the majority's appreciation for this settlement's practical value. We agree too that for a receiver to have standing to resolve creditors' claims and for the district court to have subject-matter jurisdiction to issue a bar order, the creditors' claims must be "substantially identical" to the receiver's claims.[1] Our disagreement concerns a narrow issue: whether the Objectors' claims were the same as the Receiver's just because they both have origins in the same Ponzi scheme. In my judgment, the claims are distinct and thus beyond the district court's power.

* * *

Willis of Colorado, Inc., its affiliates, and Bowen, Miclette and Britt, Inc. injured the Stanford entities by

[1] *See SEC v. Stanford International Bank, Ltd.*, 927 F.3d 830, 835–36 (5th Cir. 2019) ("The prohibition on enjoining unrelated, third-party claims without the third parties' consent . . . is a maxim of law not abrogated by the district court's equitable power to fashion ancillary relief measures."); *SEC v. DeYoung*, 850 F.3d 1172, 1178–79 (10th Cir. 2017) (finding that receiver had standing to settle individual victims' claims through a bar order where their claims involved "the same parties, the same conduct, the same actors, the same transactions and occurrences, the same existence of indemnity claims[,] . . . and the claims [were] all from the same loss" (quoting district court findings)).

failing to thwart the Ponzi scheme.[2] They turned a blind eye to Stanford officers' misdeeds—*inaction.* So the Receiver asserted breach of fiduciary duty and negligence claims against them. But Willis and BMB separately injured the Objectors. They sent the Objectors letters misrepresenting Stanford's soundness and its insurance coverage—*action.* So the Objectors asserted fraud and negligent misrepresentation against them. The Objectors' injuries are separate from Stanford's, and they resulted from separate action—or inaction—by Willis and BMB.

The Receiver contends that the Objectors' claims are "factually intertwined" with its own. But having defendants in common (Willis and BMB) or having a common destination for the plunder (Stanford officers) does not make claims the same.[3] And the Objectors' right to participate in the receivership claims process does not change this. That process pays for *Stanford's* liability out of *Stanford's* assets. It will not and cannot cover *Willis and BMB*'s distinct liability to the Objector's for their separate, affirmative actions against the individual Objectors.

* * *

Federal courts cannot decide a claim's fate outside the "honest and actual antagonistic assertion of

[2] These facts are taken from the Receiver's and Objectors' pleadings. *See Lujan v. Defenders of Wildlife*, 504 U.S. 555, 561 (1992).

[3] *See*, *e.g.*, *N.Y. Life Ins. Co. v. Gillispie*, 203 F.3d 384, 387 (5th Cir. 2000) (requiring same "nucleus of operative fact" for claim identity).

rights."[4] For better or worse, the Objectors' claims are distinct from the Receiver's, meaning the district court lacked jurisdiction to adjudicate them, or to enjoin them. I would thus vacate the bar orders. As the majority does otherwise, I respectfully dissent.

---

[4] *United States v. Johnson*, 319 U.S. 302, 305 (1943) (quoting *Chi. & G.T. Ry. Co. v. Wellman*, 143 U.S. 339, 345 (1892)).

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

SECURITIES AND EXCHANGE COMMISSION, *et al.*, Plaintiffs, v. STANFORD INTERNATIONAL BANK LTD., *et al.*, Defendants.	§ § § § § § § § §	Civil Action No. 3:09-CV-00298-N

ORDER

(Filed Aug. 23, 2017)

This Order addresses the objections[1] to the settlement between Plaintiffs Ralph S. Janvey (the "Receiver"), the Official Stanford Investors Committee ("OSIC"), and Samuel Troice, Martha Diaz, Paula Gilly Flores, Punga Punga Financial, Ltd., Manuel Canabal, Daniel Gomez Ferreiro, and Promotora Villa Marina, CA (collectively, the "Investor Plaintiffs") and Defendants Willis Towers Watson Public Limited Company f/k/a Willis Group Holdings Limited ("WTW"), Willis Limited, Willis North America, Inc. ("Willis NA"), Willis of Colorado, Inc. ("Willis-Colorado"), Willis of Texas, Inc. ("Willis-Texas"), and Amy S. Baranoucky (collectively, the "Willis Defendants"), and Bowen, Miclette & Britt, Inc. ("BMB") and Paul D. Winter, Dependent

---

[1] Docs. 2464, 2466, 2467, 2468, 2469, 2470, and 2475.

Executor of the Estate of Robert S. Winter ("Winter") (collectively, the "BMB Defendants"). [2369], [2383]. The Court overrules the objections and, by separate documents, approves the Settlements and enters the Bar Orders.

I. THE INSURANCE LETTER LITIGATION AND SETTLEMENT

This Order arises from the long-running litigation between the Receiver, OSIC, and the Investor Plaintiffs, and the Willis and BMB Defendants. This litigation stems from the Willis Defendants' and BMB's business relationships with the entities R. Allen Stanford used to carry out his far-reaching Ponzi scheme. The facts of Stanford's scheme are well established, *see*, *e.g.*, *Janvey v. Democratic Senatorial Campaign Comm.*, 712 F.3d 185, 188–89 (5th Cir. 2013) ("*DSCC*"), and are not recounted in great depth here. Essentially, Stanford's scheme entailed the sale of fraudulent certificates of deposit ("CDs") by Stanford International Bank, Ltd. ("SIBL"), an offshore bank located in Antigua. Although Stanford represented to investors that the CD proceeds were invested only in low-risk, high-return funds, in reality they were funneled into speculative private equity investments and used to fund Stanford's extravagant lifestyle.

The Willis and BMB Defendants allegedly aided Stanford's fraud by misrepresenting the safety and security of the SIBL CDs. In particular, they allegedly allowed Stanford employees to draft insurance

endorsement letters that the Willis and BMB Defendants then placed on their own letterhead. Prospective Stanford investors received these letters as marketing tools designed to generate more investments in SIBL CDs. The Willis and BMB Defendants provided these letters despite allegedly knowing that Stanford was defrauding those investors. *Id.* at ¶ 117.

After Stanford's scheme came to light, the SEC brought a securities fraud action against SIBL. As part of that action, the Court appointed the Receiver to take control of the various entities Stanford used to carry out his scheme. Among other duties, the Court charged the Receiver with recovering assets and distributing them to Stanford's victims. To do so, the Receiver sued various individuals and entities for losses suffered by the Stanford entities and allegedly caused by those individuals or entities. The Court also appointed OSIC to represent the interests of Stanford investors and to bring claims on their behalf as assigned by the Receiver. The Receiver and OSIC sued the Willis and BMB Defendants for aiding, abetting, or participating in breaches of fiduciary duty; aiding, abetting, or participating in fraudulent transfers; negligence or gross negligence; negligent retention or supervision of personnel; and participation in a fraudulent scheme and a conspiracy.

Apart from the Receiver and OSIC, various Stanford investors sued numerous entities that they allege played a role in the success of Stanford's fraud. Among those lawsuits is the Investor Plaintiffs' action against the Willis and BMB Defendants. The Investor Plaintiffs

sued the Willis and BMB Defendants on behalf of a putative class of similarly situated Stanford investors, alleging that the Willis and BMB Defendants aided and abetted Stanford's violations of the Texas Securities Act, participated in a fraudulent scheme or conspiracy, were negligent or grossly negligent, and negligently retained or supervised personnel.

Not all of the Stanford investors chose to pursue their potential claims against the Willis and BMB Defendants through the Investor Plaintiffs' litigation. Instead, some opted to sue the Willis or BMB Defendants in different courts, asserting different claims. After extensive litigation over the proper forum for adjudicating those actions, this Court stayed the pending cases in other courts related to the Willis and BMB Defendants.

The settlements for which the Receiver, OSIC, the Investor Plaintiffs, and the Willis and BMB Defendants seek approval would provide a global resolution to all claims arising from the Willis and BMB Defendants' relationships with Stanford. In exchange for a $120 million payment from the Willis Defendants and a $12.5 million payment from the BMB Defendants – money that would be distributed through the Receiver's claims distribution process – the Receiver, OSIC, and Investor Plaintiffs would release all their claims against the Willis and BMB Defendants. More controversially, the Receiver also agreed to seek orders permanently enjoining any other pending or future claims against the Willis and BMB Defendants arising from their relationship with Stanford (the "Bar

Orders"). If the Court does not enter the Bar Orders, the Settlements allow the Willis and BMB Defendants to terminate the agreements. The court-appointed Examiner supports the Settlements, and the SEC does not object. However, parties who asserted their own claims against the Willis and BMB Defendants in other courts – claims that the Bar Orders would permanently enjoin – filed several objections arguing that the Bar Orders are improper.

II. THE LAW GOVERNING BAR ORDERS IN EQUITABLE RECEIVERSHIPS

"[N]o federal rules prescribe a particular standard for approving settlements in the context of an equity receivership." *SEC v. Kaleta*, 2012 WL 401069, at *4 (S.D. Tex. 2012) ("*Kaleta I*") (quoting *Gordon v. Dadante*, 336 F. App'x 338, 340 (6th Cir. 2009)). Instead, the Court "has broad powers and wide discretion to determine the appropriate relief." *SEC v. Kaleta*, 530 F. App'x 360, 362 (5th Cir. 2013) ("*Kaleta II*") (quoting *SEC v. Safety Fin. Serv.*, 674 F.2d 368, 372–73 (5th Cir. 1982)).

Among a district court's powers related to administering an equity receivership is the power to issue ancillary relief measures. *Id.* (quoting *SEC v. Wencke*, 622 F.2d 1363, 1369 (9th Cir. 1980)). Ancillary relief in SEC enforcement actions may include "injunctions to stay proceedings by nonparties against the receivership." *Id.* Courts use ancillary relief in the form of bar orders to secure settlements in receivership

proceedings and to "preserve the property placed in receivership pursuant to SEC actions." *Kaleta I*, 2012 WL 401069, at *3 (citing *SEC v. Byers*, 609 F.3d 87, 92 (2d Cir. 2010)). Courts have not limited the use of bar orders to barring claims against receiverships only; courts have also used bar orders to bar claims against third parties settling with receiverships. *See id.* at *8 (approving settlement and bar order prohibiting third-party claims against nonreceivership entities), *aff'd*, *Kaleta II*, 530 F. App'x at 362–63; *SEC v. Kaleta*, 2013 WL 2408017, at *6–8 (S.D. Tex. 2013) ("*Kaleta III*") (approving bar order prohibiting third-party claims by insureds against insurance company that issued policies to defendant in receivership proceeding).

Courts utilize bar orders if they are both necessary to effectuate a settlement and "fair, equitable, reasonable, and in the best interest of the Receivership Estate." *Kaleta III*, 2013 WL 2408017, at *6. To determine whether it is necessary to stay proceedings by nonparties to a receivership settlement, courts consider a variety of factors, including "the value of the proposed settlement, the value and merits of the Receiver's potential claims, the value and merits of any foreclosed parties' potential claims, the complexity and costs of future litigation, the risk that litigation costs would dissipate Receivership assets, the implications of any satisfaction of an award on other claimants, and any other equities attendant to the situation." *Kaleta I*, 2012 WL 401069, at *4 (citing *Liberté Capital Grp., LLP v. Capwill*, 462 F.3d 543, 553 (6th Cir. 2006); *Wencke*, 622 F.2d at 1371; *Gordon*, 336 F. App'x at 544, 549).

The power to bar nonsettling-party litigation against nonreceiver settling parties is not unlimited. Rather, "the exercise of this authority is always subject to other limitations, statutory and constitutional, which limit the jurisdiction of federal courts." *SEC v. Parish*, 2010 WL 8347143, at *5 (D.S.C. 2010). But the Court's jurisdiction does extend to all assets of the receivership estate, giving the Court "power under the All Writs Act to issue injunctions in order to protect the estate's choses of action . . . including any settlement reached in connection with those claims." *Id.*

The Tenth Circuit recently addressed objections to a claims bar order that was sought as part of a settlement between a receiver and a defendant. *SEC v. DeYoung*, 850 F.3d 1172 (10th Cir. 2017). There, the receiver settled with a third party and sought a bar order that would prohibit any claims against the settling defendant. *Id.* at 1175. The settling defendant allegedly played a part in the misappropriation of millions of dollars of investor money. *Id.* Some investors objected to the settlement and sought the right to pursue their own causes of action against the settling defendant. *Id.* The district court denied their objections, styled as motions to intervene, and approved the settlement. *Id.* Citing the Fifth Circuit's decision in *Kaleta II*, the Tenth Circuit affirmed the district court's ruling that the settlement maximized the potential recovery for the receivership and that the bar order was necessary to that settlement. *Id.* at 1182–83. Moreover, the Tenth Circuit rejected the argument that the claims bar was improper because the Receiver lacked

standing to assert investor claims that the bar order would enjoin. *Id.* at 1180–82. Noting that the Receiver had standing to bring his own claims, and that the bar order analysis was distinct from the standing question, the Tenth Circuit affirmed the district court's entry of the bar order. *Id.* at 1182.

III. THE OBJECTIONS TO THE WILLIS SETTLEMENT ARE UNAVAILING

Four groups of Stanford investors object to the Willis Settlement, arguing that the Court cannot or should not issue the Bar Orders that the Settlement requires. For the reasons explained below, the Court overrules the objections.

A. The Receiver and OSIC Can Settle Their Claims Against the Willis Defendants

The Objectors argue that the Receiver and OSIC have no standing to settle the universe of claims that the Bar Orders would enjoin. But the Receiver and OSIC need standing to assert and settle only the claims that they are releasing, not every possible barred claim arising out of the Willis Defendants' involvement in the Stanford scheme. In an equitable receivership, Courts have the power to bar those other claims in certain circumstances. By seeking a bar order the Receiver is not "settling" the barred claims but rather relying on the Court's equitable authority to reach an otherwise unobtainable settlement by enjoining other claims that would interfere with the

receivership's ability to achieve its purpose. Thus, the Receiver need not have standing to assert the universe of barred claims as long as he has standing to assert the claims he is settling and the settlement satisfies the requirements for barring other claims.

The Receiver and OSIC have standing to assert their claims against the Willis Defendants. The Receivership Estate has standing to bring only the claims of the entities in receivership. *DSCC*, 712 F.3d at 192. Here, the Stanford entities, through the Receiver, are asserting a variety of claims for losses allegedly caused by the Willis Defendants' participation in Stanford's scheme. OSIC is asserting Receivership Estate claims assigned to it by the Receiver, consistent with the Court's direction in the order forming OSIC and the Receiver's practice to date. The Investor Plaintiffs are settling their own individual claims based on losses they suffered from the same conduct. No party to the settlement lacks standing to assert and settle the claims that the settlement would release. Accordingly, the Objectors' standing argument presents no obstacle to settlement approval.

B. The Court Can Bar Individual Investor Claims as Part of This Settlement

The Objectors also raise several objections about the Court's authority to enter the Bar Orders as part of the Settlement based on the nature of the Objectors' claims and litigation posture. These objections do not affect the Court's power to bar claims where necessary

to secure a fair, reasonable, and adequate settlement for the receivership estate.

1. Objectors' Claims and the Settled Claims Are Similar. – The Objectors pose the question of whether, if the Court can bar their claims, there is any meaningful limit on the Court's ability to bar claims as part of a receivership settlement. Their claims, however, are sufficiently similar to the settled claims that it is not unfair to bar them assuming the settlement as a whole is fair and the Bar Orders are necessary to the Settlement. Analyzing the fairness of the settlement and bar order in *DeYoung*, the district court noted that "the complex claims and the rights and obligations of the parties . . . are so inextricably intertwined that resolution of the claims independently . . . would be difficult and inefficient, would substantially increase the costs to the Receivership Estate, and would likely reduce the ultimate recovery" to investors. *DeYoung*, 850 F.3d at 1178–79 (quoting *SEC v. Am. Pension Svcs., Inc.*, 2015 WL 12860498, at *9 (D. Utah 2015)). The Court went on to note that "the claims involve the same parties, the same conduct, the same actors, [and] the same transactions and occurrences, . . . and the claims are all from the same loss." *Id.* So too here.

The claims of the Objectors and those of the Receiver, OSIC, and the Investor Plaintiffs all involve "the same parties, the same conduct, the same actors, [and] the same transactions and occurrences, . . . and the claims are all from the same loss." *Id.* As the Receiver and the Willis Defendants note, even assuming that the Willis Defendants are liable, they will pursue

contribution claims against Stanford. This will embroil the Receiver in continued litigation at the expense of the Receivership Estate, which will expend resources that could otherwise go to investors. Accordingly, the Bar Orders here are not a blank check to run roughshod over any and all independent rights as the Objectors depict.

2. The Anti -Injunction Act Does Not Prohibit the Bar Orders. – The Anti-Injunction Act prohibits a federal court from staying proceedings in a state court unless certain exceptions apply. 28 U.S.C. § 2283. The Rupert Parties argue that the Bar Order would improperly enjoin their pending lawsuits in Texas state court without fitting into one of the statutory exceptions. The Movants dispute whether the Anti-Injunction Act applies at all. The Court need not determine whether the Anti-Injunction Act applies, however, because even if it does, so does one of its exceptions.

The Anti-Injunction Act allows federal courts to enter injunctions against pending state court proceedings if doing so is necessary to aid the court's jurisdiction or to protect or effectuate the court's judgments. 28 U.S.C. § 2283. Enjoining related state court litigation is an important part of the Court's ability to effectively manage complex nationwide cases like the Stanford matter. *See*, *e.g.*, *Three J Farms, Inc. v. Plaintiffs' Steering Comm.* (*In re Corrugated Container Antitrust Litig.*), 659 F.2d 1332, 1334–35 (5th Cir. 1981); *In re Diet Drugs*, 282 F.3d 220, 235 (3d Cir. 2002). In managing the Receivership, the Court has already enjoined state court litigants from using state court

proceedings to attempt to take control of assets of the Receivership Estate. The possibility of state court judgments in favor of individual litigants or adverse to the Receivership Estate has the potential to interfere with this Court's judgments about Receivership assets. Thus, the Bar Order is necessary to "preserve and aid this court's jurisdiction over the receivership estate." *Parish*, 2010 WL 8347143, at *7.

3. The Bar Orders Are Constitutional. – The Objectors argue that enjoining their claims amounts to an unconstitutional taking and a violation of their constitutional right to a jury trial. The Court disagrees on both counts. First, "the Fifth Amendment is triggered by governmental action, not the actions of a private receiver marshaling private assets to pay private parties." *SEC v. Nadel*, 2016 U.S. Dist. LEXIS 12240 (M.D. Fla. 2016), *rev'd on other grounds*, *SEC v. Wells Fargo Bank, NA*, 848 F.3d 1339 (11th Cir. 2017) (citing *United States v. Beszborn*, 21 F.3d 62, 68 (5th Cir. 1994)). Second, the Court is not adjudicating the foreclosed claims. Thus, no jury trial is necessary.

C. Rule 23 Does Not Apply

The Objectors also argue that because the Investor Plaintiffs, who were putative class representatives, asserted their claims on behalf of themselves and a putative class, the Court cannot bar claims of the absent class members without first certifying an opt-out class under Rule 23(b)(3). The Objectors further argue that because the Investor Plaintiffs cannot satisfy Rule

23(b)(3)'s certification requirements, the Court cannot certify such a class. The Objectors conclude that because class certification is impossible, barring claims by absent class members – including the Objectors – is also impossible. The Court disagrees.

1. OSIC and Investor Plaintiffs Can Settle Individually Without Rule 23. – It is uncontroversial that named plaintiffs bringing putative class action lawsuits can settle their claims individually without class certification. The question of whether the circumstances justify a claims bar is a distinct inquiry that turns on a standard unrelated to Rule 23. The value of foreclosed claims and fairness to nonsettling parties can be factors in that analysis, and Rule 23 can impact those factors; however, that does not require the Court to graft Rule 23's requirements onto the claims bar analysis.

2. Investor Plaintiffs' Settlement Does Not Breach Their Duty to the Class. – The Investor Plaintiffs' decision to settle their individual claims concurrent with the Receiver and OSIC in exchange for a claims bar does not render the settlement illegal. Objectors argue that doing so constitutes a breach of the Investor Plaintiffs' duty to act in the best interests of the class because some class members will lose the ability to pursue their claims individually. But the settlement obtains a final resolution and substantial payment for the class as they sought to define it, including most of the Objectors. That the Objectors are losing their ability to seek a greater payout for themselves through individual litigation does not render

improper the settling Investor Plaintiffs' decision to participate in a settlement that includes a bar order.

3. This is Not An Improper Aggregate Settlement. – The Able Parties urge the Court to reject this settlement as an improper aggregate settlement because it groups distinct claims into one settlement with no allocation between different groups. They argue that the Receiver is being paid for the Investor Plaintiffs' claims, claims for which they have no right to payment. This argument mischaracterizes the settlement based on an incorrect premise about the interests of the Receiver and the Investor Plaintiffs. As noted below, the Receiver and the Investor Plaintiffs are acting for the benefit of the same group of Stanford victims. There is no basis for the Court to conclude that this Settlement is an improper means to wrongfully capture value for the Receiver that belongs to the investors. The Receiver exists to maximize the value of the Receivership Estate and to distribute that value fairly among Stanford's defrauded investors.

D. The Settlement is Fair, Reasonable, and Adequate

Finally, the Objectors contend that the Court should reject the Settlement and Bar Orders because they do not satisfy the factors that would justify barring nonsettled claims. The Court's orders approving the Settlement and Bar Orders address the fairness of the Settlement in greater depth. The Court notes, however, that it finds no basis to conclude that the

Settlement is the product of fraud or collusion. The Court credits the declarations of the settling parties and its own experience regarding the hard-fought nature of this litigation. The Court also agrees with the Movants that the settlement they have reached is consistent with interests of both the Receivership and the investors. Each has acted to obtain the maximum recovery for the broadest class of injured Stanford victims in the most efficient way possible. Accordingly, the Court does not find any conflict that would hinder settlement approval.

CONCLUSION

The Court denies the objections and, by separate documents, approves the Settlements and enters the Bar Orders.

Signed August 23, 2017.

/s/ David C. Godbey
David C. Godbey
United States District Judge

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

SECURITIES AND EXCHANGE COMMISSION, *et al.*,	§	
Plaintiffs,	§	
v.	§	Civil Action No. 3:09-CV-0298-N
STANFORD INTERNATIONAL BANK LTD., *et al.*,	§	
Defendants.	§	

FINAL BAR ORDER

(Filed Aug. 23, 2017)

Before the Court is the Expedited Request for Entry of Scheduling Order and Motion to Approve Proposed Settlement of Claims Against the BMB Defendants,[1] to Enter the Bar Order, and to Enter the Final Judgments and Bar Orders (the "Motion") of Ralph S. Janvey, the Receiver for the Receivership Estate (the "Receiver") and a plaintiff in *Janvey, et al. v. Willis of Colorado Inc., et al.*, Civil Action No. 3:13-cv-03980-N-BG (the "Janvey Litigation"); the Court-appointed Official Stanford Investors Committee (the "Committee"), as a party to this action and a plaintiff in the Janvey Litigation; and Samuel Troice, Martha Diaz, Paula

[1] The "BMB Defendants" refers, collectively, to Bowen, Miclette & Britt, Inc. ("BMB") and Paul D. Winter, Dependent Executor of the Estate of Robert S. Winter, Deceased ("Winter").

Gilly-Flores, Punga Punga Financial, Ltd., Manuel Canabal, Daniel Gomez Ferreiro and Promotora Villa Marino, C.A. (collectively, the "Investor Plaintiffs"), plaintiffs in the Janvey Litigation (Messrs. Troice and Canabal only) and in *Troice, et al. v. Willis of Colorado Inc., et al.*, Civil Action No. 3:09-cv-01274-L (the "Troice Litigation") (collectively, the Receiver, the Committee and the Investor Plaintiffs are the "Plaintiffs"). [ECF No. 2383]. The Motion concerns a proposed settlement (the "BMB Settlement") involving the Plaintiffs and the BMB Defendants. The Court-appointed Examiner signed the BMB Settlement Agreement[2] as Chairperson of the Committee and as Examiner solely to evidence his support and approval of the BMB Settlement and to confirm his obligations to post the Notice on his website, but is not otherwise individually a party to the BMB Settlement, the Janvey Litigation, or the Troice Litigation.

Following notice and a hearing, and having considered the filings and heard the arguments of counsel, the Court hereby GRANTS the Motion.

I. INTRODUCTION

The Troice Litigation, the Janvey Litigation, and this case all arise from a series of events leading to the collapse of Stanford International Bank, Ltd. ("SIBL"). On February 16, 2009, this Court appointed Ralph S.

[2] The "BMB Settlement Agreement" refers to the Settlement Agreement that is attached as Exhibit 1 of the Appendix to the Motion.

Janvey to be the Receiver for SIBL and related parties (the "Stanford Entities"). [ECF No. 10]. After years of diligent investigation, the Plaintiffs believe that they have identified claims against a number of third parties, including the BMB Defendants, that Plaintiffs claim enabled the Stanford Ponzi scheme. In the Troice Litigation and the Janvey Litigation, the Investor Plaintiffs allege, *inter alia*, that the BMB Defendants aided and abetted violations of the Texas Securities Act and aided, abetted or participated in a fraudulent scheme and a conspiracy. In addition, in the Janvey Litigation, the Receiver and the Committee allege, *inter alia*, that the BMB Defendants aided, abetted or participated in breaches of fiduciary duty, aided, abetted or participated in a fraudulent scheme, and aided, abetted or participated in fraudulent transfers. The BMB Defendants have denied and continue to deny any and all allegations of wrongdoing.

Lengthy, multiparty negotiations led to the BMB Settlement. In these negotiations, potential victims of the Stanford Ponzi scheme were well-represented. The Investor Plaintiffs, the Committee—which the Court appointed to "represent[ ] in this case and related matters" the "customers of SIBL who, as of February 16, 2009, had funds on deposit at SIBL and/or were holding certificates of deposit issued by SIBL (the 'Stanford Investors')" [ECF No. 1149]—the Receiver, and the Examiner—who the Court appointed to advocate on behalf of "investors in any financial products, accounts, vehicles or ventures sponsored, promoted or sold by any Defendant in this action" [ECF No. 322]—all

participated in the extensive, arm's-length negotiations that ultimately resulted in the BMB Settlement and the BMB Settlement Agreement. The parties reached an agreement-in-principle in May 2016 and subsequently executed the BMB Settlement Agreement.

Under the terms of the BMB Settlement, BMB will pay or cause to be paid $12,850,000 to the Receivership Estate, which (less attorneys' fees and expenses) will be distributed to Stanford Investors. In return, the BMB Defendants seek global peace with respect to all claims that have been, could have been, or could be asserted against any of the BMB Defendants and any of the BMB Released Parties by any Person arising out of or related to the events leading to these proceedings, and with respect to all claims that have been, could have been, or could be asserted against any of the BMB Defendants and the BMB Released Parties by any Person arising from or related to any of the BMB Defendants' relationship with the Stanford Entities (subject to certain exceptions applicable to Winter as set forth in paragraphs 38 and 41 of the Settlement Agreement). Obtaining such global peace is a critical and material component of the Settlement. Accordingly, the BMB Settlement is conditioned, among other things, on the Court's approval and entry of this Final Bar Order enjoining any Person from asserting, maintaining or prosecuting claims against any of the BMB Defendants or any of the BMB Released Parties (subject to the aforementioned exceptions applicable to Winter), as set forth more fully herein.

On September 28, 2016, the Plaintiffs filed the Motion. [ECF No. 2383]. The Court thereafter entered a Scheduling Order on October 19, 2016 [ECF No. 2410], which, *inter alia*, authorized the Receiver to provide notice of the BMB Settlement, established a briefing schedule on the Motion, and set the date for a hearing. On January 20, 2017, the Court held the scheduled hearing. For the reasons set forth herein, the Court finds that the terms of the BMB Settlement Agreement are adequate, fair, reasonable, and equitable, and that the BMB Settlement should be and is hereby **APPROVED**. The Court further finds that entry of this Final Bar Order is appropriate.

II. ORDER

It is hereby **ORDERED, ADJUDGED, AND DECREED** as follows:

1. Terms used in this Final Bar Order that are defined in the BMB Settlement Agreement, unless expressly otherwise defined herein, have the same meaning as in the BMB Settlement Agreement.

2. The Court has "broad powers and wide discretion to determine the appropriate relief in [this] equity receivership," including the authority to enter the Final Bar Order. *SEC v. Kaleta*, 530 F. App'x 360, 362 (5th Cir. 2013) (internal quotations omitted); *see also SEC v. Parish*, No. 2:07-cv-00919-DCN, 2010 WL 8347143 (D.S.C. Feb. 10, 2010). Moreover, the Court has jurisdiction over the subject matter of this action, and the

Plaintiffs are proper parties to seek entry of this Final Bar Order.

3. The Court finds that the methodology, form, content and dissemination of the Notice: (i) were implemented in accordance with the requirements of the Scheduling Order; (ii) constituted the best practicable notice; (iii) were reasonably calculated, under the circumstances, to apprise all Interested Parties, including the plaintiffs in the Other BMB Litigation[3], of the BMB Settlement, the BMB Settlement Agreement, the releases therein, and the injunctions provided for in this Final Bar Order and in the Final Judgments and Bar Orders to be entered in the Janvey Litigation and the Casanova Litigation; (iv) were reasonably calculated, under the circumstances, to apprise all Interested Parties of the right to object to the BMB Settlement, this Final Bar Order, the Final Judgments and Bar Orders to be entered in the Janvey Litigation and the Casanova Litigation, and to appear at the Final Approval Hearing; (v) were reasonable and constituted due, adequate, and sufficient notice; (vi) met all applicable

---

[3] The "Other BMB Litigation" is defined in the BMB Settlement Agreement to include the following additional actions relating to the same subject matter as the Troice Litigation and the Janvey Litigation: (i) *Rupert v. Winter, et al.*, Case No. 20090C116137, filed on September 14, 2009 in Texas state court (Bexar County); (ii) *Casanova v. Willis of Colorado, Inc., et al.*, C.A. No. 3:10-CV-1862-O, filed on September 16, 2010 in the United States District Court for the Northern District of Texas (the "Casanova Litigation"); (iii) *Rishmague v. Winter, et al.*, Case No. 2011C12585, filed on March 11, 2011 in Texas state court (Bexar County); and (iv) *MacArthur v. Winter, et al.*, Case No. 2013-07840, filed on February 8, 2013 in Texas state court (Harris County).

requirements of law, including, without limitation, the Federal Rules of Civil Procedure, the United States Constitution (including Due Process), and the Rules of the Court; and (vii) provided to all Persons a full and fair opportunity to be heard on these matters.

4. The Court finds that the BMB Settlement was reached following an extensive investigation of the facts and resulted from vigorous, good faith, arm's-length negotiations involving experienced and competent counsel. The claims asserted against the BMB Defendants contain complex and novel issues of law and fact that would require a substantial amount of time and expense to litigate, with a significant risk that Plaintiffs may not ultimately prevail on their claims. By the same token, it is clear that the BMB Defendants would never agree to the terms of the BMB Settlement unless they were assured of global peace with respect to all claims that have been, could have been, or could be asserted against any of the BMB Defendants and any of the BMB Released Parties by any Person arising out of or related to the events leading to these proceedings, and with respect to all claims that have been, could have been, or could be asserted against any of the BMB Defendants and any of the BMB Released Parties by any Person arising from or related to the BMB Defendants' relationship with the Stanford Entities (subject only to the aforementioned exceptions applicable to Winter). The injunction against such claims is therefore a necessary and appropriate order ancillary to the relief obtained for victims of the Stanford Ponzi scheme pursuant to the

BMB Settlement. *See Kaleta*, 530 F. App'x at 362 (entering bar order and injunction against investor claims as "ancillary relief" to a settlement in an SEC receivership proceeding); *Parish*, 2010 WL 8347143 (similar).

5. Pursuant to the BMB Settlement Agreement and upon motion by the Receiver, this Court will approve a Distribution Plan that will fairly and reasonably distribute the net proceeds of the BMB Settlement to Stanford Investors who have Claims approved by the Receiver. The Court finds that the Receiver's claims process and the Distribution Plan contemplated in the BMB Settlement Agreement have been designed to ensure that all Stanford Investors have received an opportunity to pursue their claims through the Receiver's claims process previously approved by the Court. [ECF No. 1584].

6. The Court further finds that the Parties and their counsel have at all times complied with the requirements of Federal Rule of Civil Procedure 11.

7. Accordingly, the Court finds that the BMB Settlement is, in all respects, fair, reasonable, and adequate, and in the best interests of all Persons claiming an interest in, having authority over, or asserting a claim against any of the BMB Defendants and any of the BMB Released Parties, the Stanford Entities or the Receivership Estate, including but not limited to the Plaintiffs, the Claimants, and all other Interested Parties. The BMB Settlement, the terms of which are set forth in the BMB Settlement Agreement, is hereby fully and finally approved. The Parties are directed to

implement and consummate the BMB Settlement in accordance with the terms and provisions of the BMB Settlement Agreement and this Final Bar Order.

8. Pursuant to the provisions of Paragraph 38 of the BMB Settlement Agreement, as of the Settlement Effective Date, the BMB Defendants and the BMB Released Parties are hereby completely released, relinquished, acquitted, and forever discharged, with prejudice, from all Settled Claims by the Plaintiffs, including, without limitation, the Receiver on behalf of the Receivership Estate and each of the Plaintiffs' respective past and present, direct and indirect, parent entities, subsidiaries, affiliates, heirs, executors, administrators, predecessors, successors and assigns, in their capacities as such and anyone who can claim through any of them, except that this release does not extend to, shall not include, and shall not alter, limit, or otherwise affect, the final judgment entered in favor of the Receiver against Winter in *Janvey v. Hamric*, Case No. 3:13-cv-00775-N-BG, Doc. No. 257 (the "Winter Final Judgment"). Notwithstanding anything to the contrary in this Bar Order, the Receiver reserves all rights to pursue recovery of the Winter Final Judgment to the maximum extent permitted by the Order Granting Application for Turnover Order, *In re Robert S. Winter, deceased*, Case No. 435,100 in the Probate Court No. 4 of Harris County, Texas (the "Turnover Order"), and nothing in this Bar Order or the BMB Settlement Agreement or the BMB Settlement shall be construed to impair or limit the Receiver's rights to collect the full amount of the Winter Final Judgment

or make any recovery pursuant thereto in accordance with the terms of the Turnover Order.

9. As of the Settlement Effective Date, the Plaintiffs Released Parties are hereby completely released, acquitted, and forever discharged from all Settled Claims by the BMB Defendants, and each of the BMB Defendants' respective parent entities, subsidiaries, affiliates, heirs, executors, administrators, predecessors, successors and assigns, in their capacities as such.

10. Notwithstanding anything to the contrary in this Final Bar Order, the foregoing releases do not release the Parties' rights and obligations under the BMB Settlement or the BMB Settlement Agreement or bar the Parties from seeking to enforce or effectuate the terms of the BMB Settlement or the BMB Settlement Agreement.

11. The Court hereby permanently bars, restrains and enjoins the Receiver, the Plaintiffs, the Claimants, all other Interested Parties[4], and all other Persons or entities, whether acting in concert with the

[4] "Interested Parties," as defined herein and in the BMB Settlement Agreement, means "the Receiver, the Receivership Estate, the Committee, the members of the Committee, Plaintiffs, the plaintiffs in the Other BMB Litigation, the Stanford Investors, the Claimants, the Examiner, the Joint Liquidators, or any other Person or Persons who have or may have claims against the BMB Released Parties or the Receivership Estate, or who are alleged by the Receiver, the Committee, or any other Person or entity on behalf of the Receivership Estate to be liable to the Receivership Estate, whether or not a formal proceeding has been initiated."

foregoing or claiming by, through, or under the foregoing, or otherwise, all and individually, from directly, indirectly, or through a third party, instituting, reinstituting, intervening in, initiating, commencing, maintaining, continuing, proceeding, filing, encouraging, soliciting, supporting, participating in, collaborating in, or otherwise prosecuting, against any of the BMB Defendants or any of the BMB Released Parties, now or at any time in the future, any action, lawsuit, cause of action, claim, investigation, demand, complaint, or proceeding of any nature, including but not limited to litigation, arbitration, or other proceeding, in any Forum, whether individually, representatively, directly, derivatively, on behalf of a class or putative class, as a member of a class or putative class, or in any other capacity whatsoever, that, in whole or in part, in any way concerns, relates to, is based upon, arises from, or is in any manner connected with (i) the Stanford Entities, (ii) any certificate of deposit, depository account, or investment of any type with any one or more of the Stanford Entities, (iii) any one or more of the BMB Defendants' relationship(s) with any one of the Stanford Entities, (iv) the BMB Defendants' provision of services to any of the Stanford Entities, and any other acts, errors or omissions by the BMB Defendants for or related to the Stanford Entities, (v) any matter that was asserted in, could have been asserted in, or relates to the subject matter of this case, the Troice Litigation, the Janvey Litigation, the Other BMB Litigation, or any other proceeding concerning the Stanford Entities pending or commenced in any Forum, or (vi) any Settled Claim. The foregoing specifically includes, but is

not limited to, any claim, however denominated, seeking contribution, indemnity, damages, or other remedy where the alleged injury to such Person, entity, or Interested Party, or the claim asserted by such Person, entity, or Interested Party, is based upon such Person's, entity's, or Interested Party's liability to any Plaintiff, Claimant, or Interested Party arising out of, relating to, or based in whole or in part upon money owed, demanded, requested, offered, paid, agreed to be paid, or required to be paid to any Plaintiff, Claimant, Interested Party, or other Person or entity, whether pursuant to a demand, judgment, claim, agreement, settlement or otherwise. Notwithstanding the foregoing, this bar order does not extend to, shall not include, and shall not alter, limit, or otherwise affect the Receiver's right or ability to pursue and collect the full amount of the Winter Final Judgment or make any recovery pursuant thereto in accordance with and to the maximum extent permitted by the Turnover Order.

12. The BMB Defendants shall file motions to dismiss with prejudice, motions for summary judgment, or similar dispositive motions in all of the Other BMB Litigation not pending before this Court[5], which motions shall include this Final Bar Order as an exhibit. The plaintiffs in the Other BMB Litigation shall not oppose such dispositive motions, and are hereby

[5] *Rupert v. Winter, et al.*, Case No. 20090C116137, filed on September 14, 2009 in Texas state court (Bexar County); *Rishmague v. Winter, et al.*, Case No. 2011C12585, filed on March 11, 2011 in Texas state court (Bexar County); and *MacArthur v. Winter*, et al., Case No. 2013-07840, filed on February 8, 2013 in Texas state court (Harris County).

permanently enjoined and barred from continuing to prosecute the Other BMB Litigation.

13. Nothing in this Final Bar Order shall impair or affect or be construed to impair or affect in any way whatsoever, any right of any Person, entity, or Interested Party to (a) claim a credit or offset, however determined or quantified, if and to the extent provided by any applicable statute, code, or rule of law, against any judgment amount, based upon the BMB Settlement or payment of the Settlement Amount by or on behalf of the BMB Defendants and the BMB Released Parties; (b) designate a "responsible third party" or "settling person" under Chapter 33 of the Texas Civil Practice and Remedies Code; or (c) take discovery under applicable rules in other litigation; provided, however, for the avoidance of doubt that nothing in this paragraph shall be interpreted to permit or authorize (x) any action or claim seeking to recover any monetary or other relief from any of the BMB Defendants or the BMB Released Parties, or (y) the commencement, assertion or continuation of any action or claim against any of the BMB Defendants or the BMB Released Parties, including any action or claim seeking to impose any liability of any kind (including but not limited to liability for contribution, indemnification or otherwise) upon any of the BMB Defendants or BMB Released Parties.

14. The BMB Defendants and the BMB Released Parties have no responsibility, obligation, or liability whatsoever with respect to the cost associated with or the content of the Notice; the notice process; the Distribution Plan; the implementation of the Distribution

Plan; the administration of the BMB Settlement; the management, investment, disbursement, allocation, or other administration or oversight of the Settlement Amount, any other funds paid or received in connection with the BMB Settlement, or any portion thereof; the payment or withholding of Taxes; the determination, administration, calculation, review, or challenge of claims to the Settlement Amount, any portion of the Settlement Amount, or any other funds paid or received in connection with the BMB Settlement or the BMB Settlement Agreement; or any losses, attorneys' fees, expenses, vendor payments, expert payments, or other costs incurred in connection with any of the foregoing matters. No appeal, challenge, decision, or other matter concerning any subject set forth in this paragraph shall operate to terminate, cancel or modify the BMB Settlement, the BMB Settlement Agreement or this Final Bar Order.

15. Nothing in this Final Bar Order or the BMB Settlement Agreement and no aspect of the BMB Settlement or negotiation thereof is or shall be construed to be an admission or concession of any violation of any statute or law, of any fault, liability or wrongdoing, or of any infirmity in the claims or defenses of the Parties with regard to any of the complaints, claims, allegations or defenses in the Troice Litigation, the Janvey Litigation, the Other BMB Litigation, or any other proceeding. The BMB Defendants expressly deny any liability or wrongdoing with respect to the matters alleged in the complaints in the Troice Litigation, the

Janvey Litigation, the Other BMB Litigation and any other claims related to the Stanford Entities.

16. BMB is hereby ordered to deliver or cause to be delivered the Settlement Amount in accordance with the terms of Paragraphs 20 and 25 of the BMB Settlement Agreement. Further, the Parties are ordered to act in conformity with all other provisions of the BMB Settlement Agreement.

17. Without in any way affecting the finality of this Final Bar Order, the Court retains continuing and exclusive jurisdiction over the Parties for purposes of, among other things, the administration, interpretation, consummation, and enforcement of the BMB Settlement, the BMB Settlement Agreement, the Scheduling Order, and this Final Bar Order, including, without limitation, the injunctions, bar orders, and releases described herein, and to enter orders concerning implementation of the BMB Settlement, the BMB Settlement Agreement, the Distribution Plan, and any payment of attorneys' fees and expenses to Plaintiffs' counsel.

18. The Court expressly finds and determines, pursuant to Federal Rule of Civil Procedure 54(b), that there is no just reason for any delay in the entry of this Final Bar Order, which is both final and appealable, and immediate entry by the Clerk of the Court is expressly directed.

19. This Final Bar Order shall be served by counsel for the Plaintiffs, via email, first class mail or international delivery service, on any person or entity that

filed an objection to approval of the BMB Settlement, the BMB Settlement Agreement, or this Final Bar Order.

Signed on August 23, 2017.

/s/ David C. Godbey
David C. Godbey
United States District Judge

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

SECURITIES AND EXCHANGE COMMISSION, *et al.*, Plaintiffs, v. STANFORD INTERNATIONAL BANK, LTD., *et al.*, Defendants.	§ § § § § § § § § § § § §	Civil Action No. 3:09-CV-0298-N
RALPH S. JANVEY, *et al.*, Plaintiffs, v. WILLIS OF COLORADO INC., *et al.*, Defendants.	§ § § § § § § § § §	Civil Action No. 3:13-CV-03980-N

ORDER APPROVING ATTORNEYS' FEES IN CONNECTION WITH THE SETTLEMENT WITH THE BMB DEFENDANTS

(Filed Aug. 23, 2017)

Before the Court is the Plaintiffs' Motion for Award of Attorneys' Fees and Expenses in connection

with the settlement with the BMB Defendants. [*See SEC v. Stanford Int'l Bank, Ltd.*, No. 3:09-cv-0298-N (N.D. Tex.) (the "SEC Action") ECF No. 2398, and *Janvey v. Willis of Colorado Inc.*, No. 3:13-cv-03980-N (N.D. Tex.) (the "Janvey Litigation") ECF No. 109.]

Having considered the Motion, the Declarations submitted in support of the Motion, the arguments and the applicable legal authorities, the Court finds that the Plaintiffs' request for approval of attorneys' fees and expenses should be granted. The Court finds that the 25% contingency fee agreement between the Receiver and Plaintiffs' Counsel is reasonable and consistent with the percentage charged and approved by courts in other cases of this magnitude and complexity. The Stanford Receivership and the Janvey Litigation are extraordinarily complex and time-consuming and have involved a great deal of risk and capital investment by Plaintiffs' Counsel as evidenced by the Declarations of Plaintiffs' counsel submitted in support of the request for approval of their fees. Both the Motion and the declarations provide ample evidentiary support for the award of the Plaintiffs' attorneys' fees set forth in this Order.

"A litigant or lawyer who recovers a common fund for the benefit of persons other than himself or his client is entitled to a reasonable attorney's fee from the fund as a whole." *In re Harmon*, No. 10-33789, 2011 WL 1457236, at *7 (Bankr. S.D. Tex. Apr. 14, 2011) (quoting *Boeing Co. v. Van Gemert*, 444 U.S. 472, 478 (1980)).

One method for analyzing an appropriate award for Plaintiffs' attorneys' fees is the percentage method, under which the court awards fees based on a percentage of the common fund. *Union Asset Management Holding A. G. v. Dell, Inc.*, 669 F.3d 632, 642-43 (5th Cir. 2012). The Fifth Circuit is "amenable to [the percentage method's] use, so long as the *Johnson* framework is utilized to ensure that the fee award is reasonable." *Id.* at 643 (citing *Johnson v. Georgia Hwy. Express, Inc.*, 488 F.2d 714 (5th Cir. 1974)). The *Johnson* factors include: (1) time and labor required; (2) novelty and difficulty of the issues; (3) required skill; (4) whether other employment is precluded; (5) the customary fee; (6) whether the fee is fixed or contingent; (7) time limitations; (8) the amount involved and the results obtained; (9) the attorneys' experience, reputation and ability; (10) the "undesirability" of the case; (11) the nature and length of the professional relationship with the client; and (12) awards in similar cases. *See Johnson*, 488 F.2d at 717-19.

When considering fee awards in class action cases "district courts in [the Fifth] Circuit regularly use the percentage method blended with a *Johnson* reasonableness check." *Id.* (internal citations omitted); *see Schwartz v. TXU Corp.*, No. 3:02-CV-2243-K (lead case), 2005 WL 3148350, at *25 (N.D. Tex. Nov. 8, 2005) (collecting cases). Both the Fifth Circuit and district courts in the Northern District have recognized that the percentage method is the preferred method. *Dell*, 669 F.3d at 643; *Schwartz*, 2005 WL 3148350, at *25. In *Schwartz*, the court observed that the percentage

method is "vastly superior to the lodestar method for a variety of reasons, including the incentive for counsel to 'run up the bill' and the heavy burden that calculation under the lodestar method places upon the court." 2005 WL 3148350, at *25. The court also observed that, because it is calculated based on the number of attorney-hours spent on the case, the lodestar method deters early settlement of disputes. *Id.* Thus, there is a "strong consensus in favor of awarding attorneys' fees in common fund cases as a percentage of the recover." *Id.* at *26.

While the Willis and BMB Settlements are not class action settlements, because the settlements are structured as settlements with the Receiver and the Committee, and bar orders precluding other litigation against BMB arising from the Stanford Ponzi scheme, this Court has analyzed the award of attorneys' fees to Plaintiffs' Counsel under both the common fund and the *Johnson* approach. Whether analyzed under the common fund approach, the *Johnson* framework, or both, the 25% fee sought by Plaintiffs' Counsel pursuant to their fee agreements is reasonable and is hereby approved by the Court.

Having reviewed the Declarations of Plaintiffs' Counsel reflecting the investment of thousands of hours and millions of dollars of attorney time by Plaintiffs' Counsel in the Stanford Receivership as a whole and in the litigation against BMB specifically, the Court finds that the proposed 25% fee for Plaintiffs' Counsel is a reasonable percentage of the common fund (*i.e.* the $12,850,000 settlement). "The vast

majority of Texas federal courts and courts in this District have awarded fees of 25%–33% in securities class actions." *Schwartz*, 2005 WL 3148350, at *31 (collecting cases). "Indeed, courts throughout this Circuit regularly award fees of 25% and more often 30% or more of the total recovery under the percentage-of-the recovery method." *Id*. The Court further finds that the fee is reasonable based upon the Court's analysis of the *Johnson* factors.

A review of the *Johnson* factors that are discussed at length in the Motion and supported by Plaintiffs' Counsel's Declarations also demonstrates that the proposed 25% fee is reasonable and should be approved. With respect to the time and labor required, Plaintiffs' Counsel invested a tremendous amount of time and labor in this case as reflected in the Snyder, Valdespino, Blakeway and Buncher Declarations filed in support of the Motion. Castillo Snyder served as lead counsel among Plaintiffs' Counsel for the Committee in the Janvey Litigation and for the Stanford Investors in the Troice Litigation. Castillo Snyder has close to $7 million invested in the Stanford cases overall since 2009, and 3,972.93 hours of unpaid attorney and paralegal time worth $2,313,076.67 at Castillo Snyder's applicable hourly rates invested specifically in the Janvey Litigation and the Troice Litigation. *See* Snyder Decl., at ¶ 41. Strasburger & Price also has thousands of hours and millions of dollars of time invested in pursuing claims against third parties related to the Stanford Receivership, and 4,683 hours of unpaid attorney and paralegal time worth $2,924,920 attributable to the

Janvey Litigation and the Troice Litigation. *See* Valdespino Decl., at ¶41; Blakeway Decl. at ¶ 12. Neligan Foley served as lead counsel for the Receiver in the Janvey Litigation. Neligan Foley has nearly 7,000 hours and over $2.8 million worth of attorney and paralegal time invested in the Stanford lawsuits, including the Janvey Litigation and the Troice Litigation. Neligan Foley has over 1,167.4 hours of unpaid attorney and paralegal time worth $565,817.50 invested specifically in the Janvey Litigation and the Troice Litigation. *See* Buncher Decl., at ¶ 18. Finally, Plaintiffs' Counsel retained Washington-based U.S. Supreme Court appellate counsel Tom Goldstein to assist them and serve as lead Supreme Court appellate counsel with respect to the SLUSA appeal before the U.S. Supreme Court and are contractually obligated to pay Mr. Goldstein's firm, Goldstein & Russell P.C., the sum of $334,000 in compensation for the work he performed on said appeal.

The issues presented in the Janvey Litigation and the Troice Litigation were novel, difficult and complex. Several of the complex legal and factual issues are outlined in the Plaintiffs' Memorandum of Law in Support of Motion for an Award of Attorneys' Fees and Expense in Connection with the Settlement with the Willis and BMB Defendants. Given the complexity of the factual and legal issues presented in this case, the preparation, prosecution, and settlement of this case required significant skill and effort on the part of Plaintiffs' Counsel. Although participation in the Janvey Litigation and Troice Litigation did not necessarily preclude

Plaintiffs' Counsel from accepting other employment, the Declarations reveal that the sheer amount of time and resources involved in investigating, preparing, and prosecuting the Janvey Litigation and the Troice Litigation, as reflected by the hours invested by Plaintiffs' Counsel, significantly reduced Plaintiffs' Counsel's ability to devote time and effort to other matters.

The 25% fee requested is also substantially below the typical market rate contingency fee percentage of 33% to 40% that most law firms would demand to handle cases of this complexity and magnitude. *See Schwartz*, 2005 WL 3148350, at *31 (collecting cases and noting that 30% is standard fee in complex securities cases). "Attorney fees awarded under the percentage method are often between 25% and 30% of the fund." *Klein*, 705 F. Supp. 2d at 675 (citing *Manual for Complex Litig. (Fourth)* § 14.121 (2010)); *see*, *e.g.*, *SEC v. Temme*, No.4:11-cv-00655-ALM, at *4–5 (E.D. Tex. November 21, 2012), ECF No. 162 (25% contingent fee for a $1,335,000 receivership settlement); *Billitteri v. Sec. Am., Inc.*, No. 3:09–cv–01568–F (lead case), 2011 WL 3585983, *4–9 (N.D. Tex. 2011) (25% fee for a $80 million settlement); *Klein*, 705 F. Supp. 2d at 675–81 (30% fee for a $110 million settlement).

At the time of the Settlement, Plaintiffs were not subject to significant time limitations in the Janvey Litigation and the Troice Litigation, as the Janvey Litigation has been essentially stayed while the parties awaited this Court's ruling on class certification and litigated the issue of attorney immunity in the Troice Litigation. However, and given the breadth and scope

of activity in the Troice Litigation over the last 7 years, including almost non-stop heavy briefing and motion practice, including class certification discovery and briefing, an appeal to the Fifth Circuit, and an appeal to the U.S. Supreme Court, Plaintiffs' Counsel has been consistently under deadlines and time pressure for over 7 years. Had an investor class been certified, the Troice Litigation would have remained pending before the Court and would likely have taken years to resolve. Furthermore, given the magnitude and complexity of the cases, even if a trial in the Janvey Litigation was set a year in the future, Plaintiffs' Counsel would have been under significant time pressure to complete all the investigation and discovery to prepare the case for final hearing within a year.

The $132,850,000 to be paid by Willis and BMB represents a substantial settlement and value to the Receivership Estate. There will be approximately $100,000,000 available for distribution. Thus, the amount involved and results obtained also support approval of the requested fee. The Declarations of Plaintiffs' Counsel further reflect that Plaintiffs' Counsel have represented numerous receivers, bankruptcy trustees, and other parties in complex litigation matters related to equity receiverships and bankruptcy proceedings similar to the Stanford receivership proceeding. Plaintiffs' Counsel have been actively engaged in the Stanford proceeding since its inception. Thus, the attorneys' experience, reputation and ability also support the fee award. Given the complexity of the issues in the Janvey Litigation and the Troice Litigation,

the Settlement, as well as other settlements achieved by Plaintiffs' Counsel in the Stanford Receivership that have also been approved by this Court, are indicative of Plaintiffs' Counsel's abilities to obtain favorable results in these proceedings.

The nature and length of Plaintiffs' Counsel's professional relationship with the clients also supports the fee award. Plaintiffs' Counsel have represented the Receiver, the Committee, and Investor Plaintiffs in numerous actions pending before the Court in connection with the Stanford Receivership since 2009, all on the same 25% contingency fee arrangement.

Finally, awards in similar cases, with which this Court is familiar, as well as those discussed in the *Schwarz* opinion, all support the fee award. For example, a 25% contingency fee was previously approved as reasonable by this Court in its order approving the Receiver's agreement with the Committee regarding the joint prosecution of fraudulent transfer and other claims by the Receiver and the Committee (the "OSIC-Receiver Agreement"). *See* SEC Action ECF No. 1267, p. 2 ("The Court finds that the fee arrangement set forth in the Agreement is reasonable."); *see also* OSIC-Receiver Agreement, SEC Action ECF No. 1208, Ex. A, p. 3 (providing a "contingency fee" of 25% of any Net Recovery in actions prosecuted by the Committee's designated professionals). The Court also previously approved 25% contingency fee arrangements in connection with the BDO Settlement and the settlement with the Settling Defendants in the Adams & Reese and Kroll and Chadbourne cases. *See Official Stanford*

Inv'rs Comm. v. BDO USA, LLP, No. 3:12-cv-01447-N-BG (N.D. Tex. Sep. 23, 2015), ECF No. 80; Order Approving Attorneys' Fees in *Ralph S. Janvey v. Adams & Reese, LLP*, Civil Action No. 3:12-CV-00495-B [SEC Action ECF. No. 2231]; *Kroll*, No. 3:09-cv-0298-N (N.D. Tex. Aug. 30, 2016) [SEC Action ECF No. 2364].

For these reasons, the Court finds that the 25% contingency fee requested in connection with the BMB Settlement is well within the range of reasonableness for cases of the magnitude and complexity of the Janvey Litigation and the Troice Litigation, and the Court hereby approves the award of Plaintiffs' attorneys' fees in the amount of $3,212,500 as requested in the Motion.

The Court further finds that the request for reimbursement of the litigation expenses advanced by the Receiver and Plaintiffs' Counsel contained within the Motion is reasonable and should be approved.

The Receiver is, therefore,

ORDERED to pay Plaintiffs' counsel attorneys' fees in the amount of $3,212,500 upon receipt of the BMB Settlement Amount in accordance with the terms of the Settlement Agreement with BMB.

FURTHER ORDERED that reimbursement of the litigation expenses advanced by the Receiver and Plaintiffs' Counsel is approved. Expenses in the amount of $38,407.37 advanced by Castillo Snyder, $86,375.00 advanced by Strasburger & Price, and $1,959.55 advanced by Neligan Foley shall be

reimbursed by the Receiver to those firms from the first settlement proceeds received by the Receiver from either the Willis or the BMB Settlements.

Signed on August 23, 2017.

/s/ David C. Godbey
David C. Godbey
United States District Judge

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

SECURITIES AND EXCHANGE COMMISSION, *et al.*, Plaintiffs, v. STANFORD INTERNATIONAL BANK LTD., *et al.*, Defendants.	§ § § § § § § § §	Civil Action No. 3:09-CV-0298-N

FINAL BAR ORDER

(Filed Aug. 23, 2017)

Before the Court is the Expedited Request for Entry of Scheduling Order and Motion to Approve Proposed Settlement with the Willis Defendants,[1] to Enter the Bar Order, and to Enter the Final Judgment and Bar Orders (the "Motion") of Ralph S. Janvey, the Receiver for the Receivership Estate (the "Receiver") and a plaintiff in *Janvey, et al. v. Willis of Colorado Inc., et al.*, Civil Action No. 3:13-cv-03980-N-BG (the "Janvey Litigation"); the Court-appointed Official Stanford Investors Committee (the "Committee"), as a party to this action and a plaintiff in the Janvey Litigation; and Samuel Troice, Martha Diaz, Paula Gilly-Flores,

[1] The "Willis Defendants" refers, collectively, to Willis Towers Watson Public Limited Company (f/k/a Willis Group Holdings Limited), Willis Limited, Willis North America Inc. ("Willis NA"), Willis of Colorado, Inc., Willis of Texas, Inc., and Amy S. Baranoucky.

Punga Punga Financial, Ltd., Manuel Canabal, Daniel Gomez Ferreiro and Promotora Villa Marino, C.A. (collectively, the "Investor Plaintiffs"), plaintiffs in the Janvey Litigation (Messrs. Troice and Canabal only) and in *Troice, et al. v. Willis of Colorado Inc., et al.*, Civil Action No. 3:09-cv-01274-L (the "Troice Litigation") (collectively, the Receiver, Committee and the Investor Plaintiffs are the "Plaintiffs"). [ECF No. 2369]. The Motion concerns a proposed settlement (the "Willis Settlement") among and between the Plaintiffs and the Willis Defendants. The Court-appointed Examiner signed the Willis Settlement Agreement[2] as chair of the Committee, and as Examiner solely to evidence his support and approval of the Willis Settlement and to confirm his obligations to post the Notice on his website, but is not otherwise individually a party to the Willis Settlement, the Janvey Litigation, or the Troice Litigation.

Following notice and a hearing, and having considered the filings and heard the arguments of counsel, the Court hereby GRANTS the Motion.

I. INTRODUCTION

The Troice Litigation, the Janvey Litigation, and this case all arise from a series of events leading to the collapse of Stanford International Bank, Ltd. ("SIBL"). On February 16, 2009, this Court appointed Ralph S.

[2] The "Willis Settlement Agreement" refers to the Settlement Agreement that is attached as Exhibit 1 of the Appendix to the Motion.

Janvey to be the Receiver for SIBL and related parties (the "Stanford Entities"). [ECF No. 10]. After years of diligent investigation, the Plaintiffs believe that they have identified claims against a number of third parties, including the Willis Defendants, that Plaintiffs claim enabled the Stanford Ponzi scheme. In the Troice Litigation and the Janvey Litigation, the Investor Plaintiffs allege, *inter alia*, that the Willis Defendants aided and abetted violations of the Texas Securities Act and aided, abetted or participated in a fraudulent scheme and a conspiracy. In addition, in the Janvey Litigation, the Receiver and the Committee allege, *inter alia*, that the Willis Defendants aided, abetted or participated in breaches of fiduciary duty, aided, abetted or participated in a fraudulent scheme, and aided, abetted or participated in fraudulent transfers. The Willis Defendants have always denied and continue to expressly deny any and all allegations of wrongdoing.

Lengthy, multiparty negotiations led to the Willis Settlement. In these negotiations, potential victims of the Stanford Ponzi scheme were well-represented. The Investor Plaintiffs, the Committee—which the Court appointed to "represent[] in this case and related matters" the "customers of SIBL who, as of February 16, 2009, had funds on deposit at SIBL and/or were holding certificates of deposit issued by SIBL (the 'Stanford Investors')" [ECF No. 1149]—the Receiver, and the Examiner—who the Court appointed to advocate on behalf of "investors in any financial products, accounts, vehicles or ventures sponsored, promoted or sold by

any Defendant in this action" [ECF No. 322]—all participated in the extensive, arm's-length negotiations that ultimately resulted in the Willis Settlement and the Willis Settlement Agreement. The parties reached an agreement-in-principle at a mediation with the retired Honorable Layn R. Phillips on March 31, 2016, and the parties executed the Willis Settlement Agreement in August 2016.

Under the terms of the Willis Settlement, Willis NA will pay $120,000,000 to the Receivership Estate, which (less attorneys' fees and expenses) will be distributed to Stanford Investors. In return, the Willis Defendants seek global peace with respect to all claims that have been, could have been, or could be asserted against any of the Willis Defendants and any of the Willis Released Parties by any Person arising out of or related to the events leading to these proceedings, and with respect to all claims that have been, could have been, or could be asserted against any of the Willis Defendants and any of the Willis Released Parties by any Person arising from or related to the Willis Defendants' relationship with the Stanford Entities. Obtaining such global peace is a critical and material component of the Settlement. Accordingly, the Willis Settlement is conditioned on, among other things, the Court's approval and entry of this Final Bar Order enjoining any Person from asserting, maintaining or prosecuting claims against any of the Willis Defendants or any of the Willis Released Parties.

On September 28, 2016, Plaintiffs filed the Motion. [ECF No. 2369]. The Court thereafter entered a

Scheduling Order on October 10, 2016 [ECF No. 2409], which, *inter alia*, authorized the Receiver to provide notice of the Willis Settlement, established a briefing schedule on the Motion, and set the date for a hearing. On January 20, 2017, the Court held the scheduled hearing. For the reasons set forth herein, the Court finds that the terms of the Willis Settlement Agreement are adequate, fair, reasonable, and equitable, and that the Willis Settlement should be and is hereby **APPROVED**. The Court further finds that entry of this Final Bar Order is appropriate.

II. ORDER

It is hereby **ORDERED, ADJUDGED, AND DECREED** as follows:

1. Terms used in this Final Bar Order that are defined in the Willis Settlement Agreement, unless expressly otherwise defined herein, have the same meaning as in the Willis Settlement Agreement.

2. The Court has "broad powers and wide discretion to determine the appropriate relief in [this] equity receivership," including the authority to enter the Final Bar Order. *SEC v. Kaleta*, 530 F. App'x 360, 362 (5th Cir. 2013) (internal quotations omitted); *see also SEC v. Parish*, 2010 WL 8347143 (D. S.C. Feb. 10, 2010). Moreover, the Court has jurisdiction over the subject matter of this action, and Plaintiffs are proper parties to seek entry of this Final Bar Order.

3. The Court finds that the methodology, form, content and dissemination of the Notice: (i) were implemented in accordance with the requirements of the Scheduling Order; (ii) constituted the best practicable notice; (iii) were reasonably calculated, under the circumstances, to apprise all Interested Parties of the Willis Settlement, the Willis Settlement Agreement, the releases therein, and the injunctions provided for in this Final Bar Order and in the Final Judgment and Bar Orders to be entered in the Janvey Litigation and the Other Willis Litigation (to the extent pending before the Court);[3] (iv) were reasonably calculated, under

---

[3] The "Other Willis Litigation" is defined in the Willis Settlement Agreement to include the 11 additional actions relating to the same subject matter as the Troice Litigation and the Janvey Litigation: (i) *Ranni v. Willis of Colorado, Inc., et al.*, C.A. No. 9-22085, filed on July 17, 2009 in the United States District Court for the Southern District of Florida; (ii) *Rupert v. Winter, et al.*, Case No. 20090C116137, filed on September 14, 2009 in Texas state court (Bexar County) (the "Rupert Action"); (iii) *Casanova v. Willis of Colorado, Inc., et al.*, C.A. No. 3:10-CV-1862-O, filed on September 16, 2010 in the United States District Court for the Northern District of Texas; (iv) *Rishmague v. Winter, et al.*, Case No. 2011C12585, filed on March 11, 2011 in Texas state court (Bexar County) (the "*Rishmague* Action"); (v) *MacArthur v. Winter, et al.*, Case No. 2013-07840, filed on February 8, 2013 in Texas state court (Harris County) (the "*MacArthur* Action"); (vi) *Barbar v. Willis Group Holdings Public Limited Company, et al.*, Case No. 13-05666CA27, filed on February 14, 2013 in Florida state court (Miami-Dade County) (the "*Barbar* Action"); (vii) *de Gadala-Maria v. Willis Group Holdings Public Limited Company, et al.*, Case No. 13-05669CA30, filed on February 14, 2013 in Florida state court (Miami-Dade County); (viii) *Ranni v. Willis Group Holdings Public Limited Company, et al.*, Case No. 13-05673CA06, filed on February 14, 2013 in Florida state court (Miami-Dade County) (the "*Ranni* Action"); (ix) *Tisminesky v.*

the circumstances, to apprise all Interested Parties of the right to object to the Willis Settlement, the Willis Settlement Agreement, this Final Bar Order, and the Final Judgment and Bar Orders to be entered in the Janvey Litigation and the Other Willis Litigation (to the extent pending before the Court), and to appear at the Final Approval Hearing; (v) were reasonable and constituted due, adequate, and sufficient notice; (vi) met all applicable requirements of law, including, without limitation, the Federal Rules of Civil Procedure, the United States Constitution (including Due Process), and the Rules of the Court; and (vii) provided to all Persons a full and fair opportunity to be heard on these matters.

4. The Court finds that the Willis Settlement was reached following an extensive investigation of the facts and resulted from vigorous, good faith, arm's-length, mediated negotiations involving experienced and competent counsel. The claims asserted against the Willis Defendants contain complex and novel issues of law and fact that would require a substantial amount of time and expense to litigate, with a significant risk that Plaintiffs may not ultimately prevail on their claims. By the same token, it is clear that the Willis Defendants would never agree to the terms of

---

Willis Group Holdings Public Limited Company, et al., Case No. 13-05676CA09, filed on February 14, 2013 in Florida state court (Miami-Dade County); (x) *Zacarias v. Willis Group Holdings Public Limited Company, et al.*, Case No. 13-05678CA11, filed on February 14, 2013 in Florida state court (Miami-Dade County); and (xi) *Martin v. Willis of Colorado, Inc., et al.*, Case No. 2016-52115, filed on August 5, 2016 in Texas state court (Harris County).

the Willis Settlement unless they were assured of global peace with respect to all claims that have been, could have been, or could be asserted against any of the Willis Defendants and any of the Willis Released Parties by any Person arising out of or related to the events leading to these proceedings, and with respect to all claims that have been, could have been, or could be asserted against any of the Willis Defendants and any of the Willis Released Parties by any Person arising from or related to the Willis Defendants' relationship with the Stanford Entities. The injunction against such claims is therefore a necessary and appropriate order ancillary to the relief obtained for victims of the Stanford Ponzi scheme pursuant to the Willis Settlement. *See Kaleta*, 530 F. App'x at 362 (entering bar order and injunction against investor claims as "ancillary relief" to a settlement in an SEC receivership proceeding); *Parish*, 2010 WL 8347143 (similar).

5. Pursuant to the Willis Settlement Agreement and upon motion by the Receiver, this Court will approve a Distribution Plan that will fairly and reasonably distribute the net proceeds of the Willis Settlement to Stanford Investors who have claims approved by the Receiver. The Court finds that the Receiver's claims process and the Distribution Plan contemplated in the Willis Settlement Agreement have been designed to ensure that all Stanford Investors have received an opportunity to pursue their claims through the Receiver's claims process previously approved by the Court [ECF No. 1584].

6. The Court further finds that the Parties and their counsel have at all times complied with the requirements of Rule 11 of the Federal Rules of Civil Procedure.

7. Accordingly, the Court finds that the Willis Settlement is, in all respects, fair, reasonable, and adequate, and in the best interests of all Persons claiming an interest in, having authority over, or asserting a claim against any of the Willis Defendants and any of the Willis Released Parties, the Stanford Entities or the Receivership Estate, including but not limited to the Plaintiffs, the Claimants, the Stanford Investors, the Interested Parties, the Receiver, and the Committee. The Willis Settlement, the terms of which are set forth in the Willis Settlement Agreement, is hereby fully and finally approved. The Parties are directed to implement and consummate the Willis Settlement in accordance with the terms and provisions of the Willis Settlement Agreement and this Final Bar Order.

8. Pursuant to the provisions of Paragraph 38 of the Willis Settlement Agreement, as of the Settlement Effective Date, each of Plaintiffs, including, without limitation, the Receiver on behalf of the Receivership Estate and each of Plaintiffs' respective past and present, direct and indirect, parent entities, subsidiaries, affiliates, heirs, executors, administrators, predecessors, successors and assigns, in their capacities as such, and anyone who can claim through any of them, fully, finally, and forever release, relinquish, and discharge, with prejudice, all Settled Claims against the Willis Defendants and the Willis Released Parties.

Further pursuant to the provisions of Paragraph 38 of the Willis Settlement Agreement, as of the Settlement Effective Date, each of the Willis Defendants, including, without limitation, the Willis Defendants' respective past and present, direct and indirect, parent entities, subsidiaries, affiliates, heirs, executors, administrators, predecessors, successors and assigns, in their capacities as such, and anyone who can claim through any of them, fully, finally, and forever release, relinquish, and discharge, with prejudice, all Settled Claims against Plaintiffs, the Plaintiffs Released Parties, and each of the other Willis Defendants.

9. Notwithstanding anything to the contrary in this Final Bar Order, the foregoing releases do not release the Parties' rights and obligations under the Willis Settlement or the Willis Settlement Agreement or bar the Parties from seeking to enforce or effectuate the terms of the Willis Settlement or the Willis Settlement Agreement. Further, the foregoing releases do not bar or release any claims, including but not limited to the Settled Claims, that any of the Willis Defendants may have against any Willis Released Party (other than any of the other Willis Defendants), including but not limited to its insurers, reinsurers, employees and agents.

10. The Court hereby permanently bars, restrains and enjoins the Receiver, the Plaintiffs, the Claimants, the Interested Parties, and all other Persons or entities, whether acting in concert with the foregoing or claiming by, through, or under the foregoing, or otherwise, all and individually, from directly, indirectly, or

through a third party, instituting, reinstituting, intervening in, initiating, commencing, maintaining, continuing, filing, encouraging, soliciting, supporting, participating in, collaborating in, or otherwise prosecuting, against any of the Willis Defendants or any of the Willis Released Parties, now or at any time in the future, any action, lawsuit, cause of action, claim, investigation, demand, complaint, or proceeding of any nature, including but not limited to litigation, arbitration, or other proceeding, in any Forum, whether individually, derivatively, on behalf of a class, as a member of a class, or in any other capacity whatsoever, that in any way relates to, is based upon, arises from, or is connected with the Stanford Entities; this case; the Troice Litigation; the Janvey Litigation; the Other Willis Litigation; or the subject matter of this case, the Troice Litigation, the Janvey Litigation, the Other Willis Litigation or any Settled Claim. The foregoing specifically includes, but is not limited to, any claim, however denominated, seeking contribution, indemnity, damages, or other remedy where the alleged injury to such Person, entity, or Interested Party, or the claim asserted by such Person, entity, or Interested Party, is based upon such Person's, entity's, or Interested Party's liability to any Plaintiff, Claimant, or Interested Party arising out of, relating to, or based in whole or in part upon money owed, demanded, requested, offered, paid, agreed to be paid, or required to be paid to any Plaintiff, Claimant, Interested Party, or other Person or entity, whether pursuant to a demand, judgment, claim, agreement, settlement or otherwise. Notwithstanding the foregoing, there shall be no bar of any claims,

including but not limited to the Settled Claims, that any of the Willis Defendants may have against any Willis Released Party (other than any of the other Willis Defendants), including but not limited to its insurers, reinsurers, employees and agents. Further, the Parties retain the right to sue for alleged breaches of the Willis Settlement Agreement.

11. The Willis Defendants shall file motions to dismiss with prejudice all claims against all Willis Defendants in all of the Other Willis Litigation not pending before this Court,[4] which motions shall include this Final Bar Order as an exhibit. The plaintiffs in the Other Willis Litigation shall not oppose such motions to dismiss, and are hereby enjoined and barred from continuing to prosecute the Other Willis Litigation against any of the Willis Defendants.

12. Nothing in this Final Bar Order shall impair or affect or be construed to impair or affect in any way whatsoever, any right of any Person, entity, or Interested Party to (a) claim a credit or offset, however determined or quantified, if and to the extent provided by any applicable statute, code, or rule of law, against any judgment amount, based upon the Willis Settlement or payment of the Settlement Amount by or on behalf of the Willis Defendants and the Willis Released Parties; (b) designate a "responsible third party" or "settling

[4] This includes the *Rupert* Action, the *Rishmague* Action, the *MacArthur* Action, the *Barbar* Action, the *Ranni* Action, and the *Martin* action. *See* p. 5, n. 3, *supra*, for the full captions and case numbers of these actions and the courts in which they are pending.

person" under Chapter 33 of the Texas Civil Practice and Remedies Code; or (c) take discovery under applicable rules in other litigation; provided for the avoidance of doubt that nothing in this paragraph shall be interpreted to permit or authorize (x) any action or claim seeking to recover any monetary or other relief from any of the Willis Defendants or the Willis Released Parties, or (y) the commencement, assertion or continuation of any action or claim against any of the Willis Defendants or the Willis Released Parties, including any action or claim seeking to impose any liability of any kind (including but not limited to liability for contribution, indemnification or otherwise) upon any of the Willis Defendants or Willis Released Parties.

13. The Willis Defendants and the Willis Released Parties have no responsibility, obligation, or liability whatsoever with respect to the cost associated with or the content of the Notice; the notice process; the Distribution Plan; the implementation of the Distribution Plan; the administration of the Willis Settlement; the management, investment, disbursement, allocation, or other administration or oversight of the Settlement Amount, any other funds paid or received in connection with the Willis Settlement, or any portion thereof; the payment or withholding of Taxes; the determination, administration, calculation, review, or challenge of claims to the Settlement Amount, any portion of the Settlement Amount, or any other funds paid or received in connection with the Willis Settlement or the Willis Settlement Agreement; or any

losses, attorneys' fees, expenses, vendor payments, expert payments, or other costs incurred in connection with any of the foregoing matters. No appeal, challenge, decision, or other matter concerning any subject set forth in this paragraph shall operate to terminate, cancel or modify the Willis Settlement, the Willis Settlement Agreement or this Final Bar Order.

14. Nothing in this Final Bar Order or the Willis Settlement Agreement and no aspect of the Willis Settlement or negotiation thereof is or shall be construed to be an admission or concession of any violation of any statute or law, of any fault, liability or wrongdoing, or of any infirmity in the claims or defenses of the Parties with regard to any of the complaints, claims, allegations or defenses in the Troice Litigation, the Janvey Litigation, the Other Willis Litigation, or any other proceeding. The Willis Defendants have always denied and continue to expressly deny any liability or wrongdoing with respect to the matters alleged in the complaints in the Troice Litigation, the Janvey Litigation, the Other Willis Litigation and any other claims related to the Stanford Entities.

15. Willis NA is hereby ordered to deliver or cause to be delivered the Settlement Amount ($120 million) as described in Paragraph 25 of the Willis Settlement Agreement. Further, the Parties are ordered to act in conformity with all other provisions of the Willis Settlement Agreement.

16. Without in any way affecting the finality of this Final Bar Order, the Court retains continuing and

exclusive jurisdiction over the Parties for purposes of, among other things, the administration, interpretation, consummation, and enforcement of the Willis Settlement, the Willis Settlement Agreement, the Scheduling Order, and this Final Bar Order, including, without limitation, the injunctions, bar orders, and releases herein, and to enter orders concerning implementation of the Willis Settlement, the Willis Settlement Agreement, the Distribution Plan, and any payment of attorneys' fees and expenses to Plaintiffs' counsel.

17. The Court expressly finds and determines, pursuant to Federal Rule of Civil Procedure 54(b), that there is no just reason for any delay in the entry of this Final Bar Order, which is both final and appealable, and immediate entry by the Clerk of the Court is expressly directed.

18. This Final Bar Order shall be served by counsel for the Plaintiffs, via email, first class mail or international delivery service, on any person or entity that filed an objection to approval of the Willis Settlement, the Willis Settlement Agreement, or this Final Bar Order.

Signed on August 23, 2017.

/s/ David C. Godbey
David C. Godbey
United States District Judge

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

SECURITIES AND EXCHANGE COMMISSION, *et al.*, Plaintiffs, v. STANFORD INTERNATIONAL BANK, LTD., *et al.*, Defendants.	§ § § § § § § § § § § §	Civil Action No. 3:09-CV-0298-N
RALPH S. JANVEY, *et al.*, Plaintiffs, v. WILLIS OF COLORADO INC., *et al.*, Defendants.	§ § § § § § § § § §	Civil Action No. 3:13-CV-03980-N

ORDER APPROVING ATTORNEYS' FEES IN CONNECTION WITH THE SETTLEMENT WITH THE WILLIS DEFENDANTS

(Filed Aug. 23, 2017)

Before the Court is the Plaintiffs' Motion for Award of Attorneys' Fees and Expenses in connection

with the settlement with the Willis Defendants. [*See SEC v. Stanford Int'l Bank, Ltd.*, No. 3:09-cv-0298-N (N.D. Tex.) (the "SEC Action") ECF No. 2398, and *Janvey v. Willis of Colorado Inc.*, No. 3:13-cv-03980-N (N.D. Tex.) (the "Janvey Litigation") ECF No. 109].

Having considered the Motion, the Declarations submitted in support of the Motion, the arguments and the applicable legal authorities, the Court finds that the Plaintiffs' request for approval of attorneys' fees and expenses should be granted. The Court finds that the 25% contingency fee initially agreed to between the Receiver and Plaintiffs' Counsel is reasonable and consistent with the percentage charged and approved by courts in other cases of this magnitude and complexity. The Court further finds that Plaintiffs' Counsel have agreed to a reduced fee equivalent to 22.32% of the recovery from the Willis Settlement instead of 25%. The Stanford Receivership and the Janvey Litigation are extraordinarily complex and time-consuming and have involved a great deal of risk and capital investment by Plaintiffs' Counsel as evidenced by the Declarations of Plaintiffs' Counsel submitted in support of the request for approval of their fees. Both the Motion and the declarations provide ample evidentiary support for the award of the Plaintiffs' attorneys' fees set forth in this Order.

"A litigant or lawyer who recovers a common fund for the benefit of persons other than himself or his client is entitled to a reasonable attorney's fee from the fund as a whole." *In re Harmon*, No. 10-33789, 2011 WL

1457236, at *7 (Bankr. S.D. Tex. Apr. 14, 2011) (quoting *Boeing Co. v. Van Gemert*, 444 U.S. 472, 478 (1980)).

One method for analyzing an appropriate award for Plaintiffs' attorneys' fees is the percentage method, under which the court awards fees based on a percentage of the common fund. *Union Asset Management Holding A.G. v. Dell, Inc.*, 669 F.3d 632, 642-43 (5th Cir. 2012). The Fifth Circuit is "amenable to [the percentage method's] use, so long as the *Johnson* framework is utilized to ensure that the fee award is reasonable." *Id.* at 643 (citing *Johnson v. Georgia Hwy. Express, Inc.*, 488 F.2d 714 (5th Cir. 1974)). The *Johnson* factors include: (1) time and labor required; (2) novelty and difficulty of the issues; (3) required skill; (4) whether other employment is precluded; (5) the customary fee; (6) whether the fee is fixed or contingent; (7) time limitations; (8) the amount involved and the results obtained; (9) the attorneys' experience, reputation and ability; (10) the "undesirability" of the case; (11) the nature and length of the professional relationship with the client; and (12) awards in similar cases. *See Johnson*, 488 F.2d at 717-19.

When considering fee awards in class action cases "district courts in [the Fifth] Circuit regularly use the percentage method blended with a *Johnson* reasonableness check." *Id.* (internal citations omitted); *see Schwartz v. TXU Corp.*, No. 3:02-CV-2243-K (lead case), 2005 WL 3148350, at *25 (N.D. Tex. Nov. 8, 2005) (collecting cases). Both the Fifth Circuit and district courts in the Northern District have recognized that the percentage method is the preferred method. *Dell*, 669 F.3d

at 643; *Schwartz*, 2005 WL 3148350, at *25. In *Schwartz*, the court observed that the percentage method is "vastly superior to the lodestar method for a variety of reasons, including the incentive for counsel to 'run up the bill' and the heavy burden that calculation under the lodestar method places upon the court." 2005 WL 3148350, at *25. The court also observed that, because it is calculated based on the number of attorney-hours spent on the case, the lodestar method deters early settlement of disputes. *Id.* Thus, there is a "strong consensus in favor of awarding attorneys' fees in common fund cases as a percentage of the recover." *Id.* at *26.

While the Willis and BMB Settlements are not class action settlements, because the settlement is structured as a settlement with the Receiver and the Committee, and bar orders precluding other litigation against Willis arising from the Stanford Ponzi scheme, this Court has analyzed the award of attorneys' fees to Plaintiffs' Counsel under both the common fund and the *Johnson* approach. Whether analyzed under the common fund approach, the *Johnson* framework, or both, the 22.32% fee sought by Plaintiffs' Counsel pursuant to their fee agreements is reasonable and is hereby approved by the Court.

Having reviewed the Declarations of Plaintiffs' Counsel reflecting the investment of thousands of hours and millions of dollars of attorney time by Plaintiffs' Counsel in the Stanford Receivership as a whole and in the litigation against Willis and BMB specifically, the Court finds that the proposed 22.32% fee for

Plaintiffs' Counsel is a reasonable percentage of the common fund (*i.e.* the $120,000,000 settlement). "The vast majority of Texas federal courts and courts in this District have awarded fees of 25%–33% in securities class actions." *Schwartz*, 2005 WL 3148350, at *31 (collecting cases). "Indeed, courts throughout this Circuit regularly award fees of 25% and more often 30% or more of the total recovery under the percentage-of-the recovery method." *Id*. The Court further finds that the fee is reasonable based upon the Court's analysis of the *Johnson* factors.

A review of the *Johnson* factors that are discussed at length in the Motion and supported by Plaintiffs' Counsel's Declarations also demonstrates that the proposed 22.32% fee is reasonable and should be approved. With respect to the time and labor required, Plaintiffs' Counsel invested a tremendous amount of time and labor in this case as reflected in the Snyder, Valdespino, Blakeway and Buncher Declarations filed in support of the Motion. Castillo Snyder served as lead counsel among Plaintiffs' Counsel for the Committee in the Janvey Litigation and for the Stanford Investors in the Troice Litigation. Castillo Snyder has close to $7 million invested in the Stanford cases overall since 2009, and 3,972.93 hours of unpaid attorney and paralegal time worth $2,313,076.67 at Castillo Snyder's applicable hourly rates invested specifically in the Janvey Litigation and the Troice Litigation. *See* Snyder Decl., at ¶ 41. Strasburger & Price also has thousands of hours and millions of dollars of time invested in pursuing claims against third parties related

to the Stanford Receivership, and 4,683 hours of unpaid attorney and paralegal time worth $2,924,920 attributable to the Janvey Litigation and the Troice Litigation. *See* Valdespino Decl., at ¶ 41; Blakeway Decl. at ¶ 12. Neligan Foley served as lead counsel for the Receiver in the Janvey Litigation. Neligan Foley has nearly 7,000 hours and over $2.8 million worth of attorney and paralegal time invested in the Stanford lawsuits, including the Janvey Litigation and the Troice Litigation. Neligan Foley has over 1,167.4 hours of unpaid attorney and paralegal time worth $565,817.50 invested specifically in the Janvey Litigation and the Troice Litigation. *See* Buncher Decl., at ¶ 18. Finally, Plaintiffs' Counsel retained Washington-based U.S. Supreme Court appellate counsel Tom Goldstein to assist them and serve as lead Supreme Court appellate counsel with respect to the SLUSA appeal before the U.S. Supreme Court and are contractually obligated to pay Mr. Goldstein's firm, Goldstein & Russell P.C., the sum of $334,000 in compensation for the work he performed on said appeal.

The issues presented in the Janvey Litigation and the Troice Litigation were novel, difficult and complex. Several of the complex legal and factual issues are outlined in the Plaintiffs' Memorandum of Law in Support of Motion for an Award of Attorneys' Fees and Expense in Connection with the Settlement with the Willis and BMB Defendants. Given the complexity of the factual and legal issues presented in this case, the preparation, prosecution, and settlement of this case required significant skill and effort on the part of Plaintiffs'

Counsel. Although participation in the Janvey and Troice Litigation did not necessarily preclude Plaintiffs' Counsel from accepting other employment, the Declarations reveal that the sheer amount of time and resources involved in investigating, preparing, and prosecuting the Janvey Litigation and the Troice Litigation, as reflected by the hours invested by Plaintiffs' Counsel, significantly reduced Plaintiffs' Counsel's ability to devote time and effort to other matters.

The 22.32% fee requested is also substantially below the typical market rate contingency fee percentage of 33% to 40% that most law firms would demand to handle cases of this complexity and magnitude. *See Schwartz*, 2005 WL 3148350, at *31 (collecting cases and noting that 30% is standard fee in complex securities cases). "Attorney fees awarded under the percentage method are often between 25% and 30% of the fund." *Klein*, 705 F. Supp. 2d at 675 (citing *Manual for Complex Litig. (Fourth)* § 14.121 (2010)); *see*, *e.g.*, *SEC v. Temme*, No.4:11-cv-00655-ALM, at *4–5 (E.D. Tex. November 21, 2012), ECF No. 162 (25% contingent fee for a $1,335,000 receivership settlement); *Billitteri v. Sec. Am., Inc.*, No. 3:09–cv–01568–F (lead case), 2011 WL 3585983, *4–9 (N.D. Tex. 2011) (25% fee for a $80 million settlement); *Klein*, 705 F. Supp. 2d at 675–81 (30% fee for a $110 million settlement).

At the time of the Settlement, Plaintiffs were not subject to significant time limitations in the Janvey Litigation and the Troice Litigation, as the Janvey Litigation has been essentially stayed while the parties awaited this Court's ruling on class certification and

litigated the issue of attorney immunity in the Troice Litigation. However, and given the breadth and scope of activity in the Troice Litigation over the last 7 years, including almost non-stop heavy briefing and motion practice, including class certification discovery and briefing, an appeal to the Fifth Circuit, and an appeal to the U.S. Supreme Court, Plaintiffs' Counsel has been consistently under deadlines and time pressure for over 7 years. Had an investor class been certified, the Troice Litigation would have remained pending before the Court and would likely have taken years to resolve. Furthermore, given the magnitude and complexity of the cases, even if a trial in the Janvey Litigation was set a year in the future, Plaintiffs' Counsel would have been under significant time pressure to complete all the investigation and discovery to prepare the case for final hearing within a year.

The $132,850,000 to be paid by Willis and BMB represents a substantial settlement and value to the Receivership Estate. There will be approximately $100,000,000 available for distribution. Thus, the amount involved and results obtained also support approval of the requested fee. The Declarations of Plaintiffs' Counsel further reflect that Plaintiffs' Counsel have represented numerous receivers, bankruptcy trustees, and other parties in complex litigation matters related to equity receiverships and bankruptcy proceedings similar to the Stanford receivership proceeding. Plaintiffs' Counsel have been actively engaged in the Stanford proceeding since its inception. Thus, the attorneys' experience, reputation and ability also

support the fee award. Given the complexity of the issues in the Janvey Litigation and the Troice Litigation, the Settlement, as well as other settlements achieved by Plaintiffs' Counsel in the Stanford Receivership that have also been approved by this Court, are indicative of Plaintiffs' Counsel's abilities to obtain favorable results in these proceedings.

The nature and length of Plaintiffs' Counsel's professional relationship with the clients also supports the fee award. Plaintiffs' Counsel have represented the Receiver, the Committee, and Investor Plaintiffs in numerous actions pending before the Court in connection with the Stanford Receivership since 2009, all on the same 25% contingency fee arrangement.

Finally, awards in similar cases, with which this Court is familiar, as well as those discussed in the *Schwarz* opinion, all support the fee award. For example, a 25% contingency fee was previously approved as reasonable by this Court in its order approving the Receiver's agreement with the Committee regarding the joint prosecution of fraudulent transfer and other claims by the Receiver and the Committee (the "OSIC-Receiver Agreement"). *See* SEC Action ECF No. 1267, p. 2 ("The Court finds that the fee arrangement set forth in the Agreement is reasonable."); *see also* OSIC-Receiver Agreement SEC Action ECF No. 1208, Ex. A, p. 3 (providing a "contingency fee" of 25% of any Net Recovery in actions prosecuted by the Committee's designated professionals). The Court also previously approved 25% contingency fee arrangements in connection with the BDO Settlement and the settlement

with the Settling Defendants in the Adams & Reese and Kroll and Chadbourne cases. *See Official Stanford Inv'rs Comm. v. BDO USA, LLP*, No. 3:12-cv-01447-N-BG (N.D. Tex. Sep. 23, 2015), ECF No. 80; Order Approving Attorneys' Fees in *Ralph S. Janvey v. Adams & Reese, LLP*, Civil Action No. 3:12-CV-00495-B [SEC Action ECF. No. 2231]; *Kroll*, No. 3:09-cv-0298-N (N.D. Tex. Aug. 30, 2016) [SEC Action ECF No. 2364].

For these reasons, the Court finds that the 22.32% contingency fee requested in connection with the Willis Settlement is well within the range of reasonableness for cases of the magnitude and complexity of the Janvey Litigation and the Troice Litigation, and the Court hereby approves the award of Plaintiffs' attorneys' fees in the amount of $26,787,500 as requested in the Motion.

The Court further finds that the request for reimbursement of the litigation expenses advanced by the Receiver and Plaintiffs' Counsel contained within the Motion is reasonable and should be approved.

The Receiver is, therefore,

ORDERED to pay Plaintiffs' Counsel attorneys' fees in the amount of $26,787,500 upon receipt of the Willis Settlement Amount in accordance with the terms of the Settlement Agreements with the Willis Defendants

FURTHER ORDERED that reimbursement of the litigation expenses advanced by the Receiver and Plaintiffs' Counsel is approved. Expenses in the

amount of $38,407.37 advanced by Castillo Snyder, $86,375.00 advanced by Strasburger & Price, and $1,959.55 advanced by Neligan Foley shall be reimbursed by the Receiver to those firms from the first settlement proceeds received by the Receiver from either the Willis or the BMB Settlements.

Signed on August 23, 2017.

/s/ David C. Godbey
David C. Godbey
United States District Judge

THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

No. 17-11073

ANTONIO JUBIS ZACARIAS; ROBERTO BARBAR

Plaintiffs - Appellants

v.

STANFORD INTERNATIONAL BANK, LIMITED

Defendant

BARRY L. RUPERT; CAROL RUPERT; MICHAEL RISHMAGUE; LIONEL ALESSIO; DAN AULI PANOS, et al

Movants - Appellants

v.

OFFICIAL STANFORD INVESTORS COMMITTEE; MANUEL CANABAL; WILLIS, LIMITED; WILLIS OF COLORADO, INCORPORATED,

Interested Parties - Appellees

WILLIS GROUP HOLDINGS LIMITED; WILLIS NORTH AMERICA, INCORPORATED; AMY S. BARANOUCKY; BOWEN MICLETTE & BRITT, INCORPORATED; RALPH S. JANVEY; SAMUEL TROICE,

Appellees

v.

EDNA ABLE,

Interested Party - Appellant

CONSOLIDATED WITH 17-11114

THE OFFICIAL STANFORD INVESTORS COMMITTEE; SAMUEL TROICE, on their own behalf and on behalf of a class of all others similarly situated; MANUEL CANABAL, on their own behalf and on behalf of a class of all others similarly situated,

Plaintiffs - Appellees

v.

CARLOS TISMINESKY; ROBERTO BARBAR; ANA LORENA NUILA DE GADALA-MARIA,

Plaintiffs - Appellants

v.

WILLIS OF COLORADO, INCORPORATED; WILLIS LIMITED; WILLIS GROUP HOLDINGS LIMITED; WILLIS NORTH AMERICA, INCORPORATED; AMY S. BARANOUCKY; BOWEN, MICLETTE & BRITT, INCORPORATED,

Defendants - Appellees

v.

BARRY L. RUPERT; CAROL RUPERT; MICHAEL RISHMAGUE; LIONEL ALESSIO; DAN AULI PANOS, EDNA ABLE; et al,

Appellants

v.

RALPH S. JANVEY, in his Capacity as Court-Apointed Receiver for Stanford Receivership Estate,

Appellee

CONSOLIDATED WITH 17-11122

EDNA ABLE; ROBERT C. AHDERS; RODRIGO RIVERA ALCAYAGA; DAVID ARNTSEN; CARLIE ARNTSEN; ET AL,

Plaintiffs - Appellants

v.

WILLIS OF COLORADO, INCORPORATED; WGH HOLDINGS, LTD.; WILLIS LTD.,

Defendants - Appellees

CONSOLIDATED WITH 17-11127

ANTONIO JUBIS ZACARIAS, Individual; ANA VIRGINIA GONZALEZ DE JUBIS, Individual; GLADIS JUBIS DE ACUNA, Individual; ERIC ACUNA JUBIS, Individual; TULIO CAPRILES, Individual; JORGE CASAUS HERRERO, Individual; MARTHA BLANCHET, Individual; LUIS ZABALA, Individual; EMMA LOPEZ, Individual; ELBA DE LA TORRE, Individual,

Plaintiffs - Appellants

v.

WILLIS LIMITED; WILLIS OF COLORADO, INCORPORATED,

Defendants - Appellees

CONSOLIDATED WITH 17-11128

ANA LORENA NUILA DE GADALA-MARIA, Individual; JOSE NUILA, Individual; JOSE NUILA FUENTES, Individual; GLADYS BONILLA DE NUILA, Individual; GLADYS ELENA NUILA DE PONCE, Individual, et al

Plaintiffs - Appellants

v.

WILLIS LIMITED, a United Kingdom Company; WILLIS OF COLORADO, INCORPORATED, a Colorado Corporation

Defendants - Appellees

CONSOLIDATED WITH 17-11129

CARLOS TISMINESKY, Individual; RACHEL TISMINESKY, Individual; FELIPE BRONSTEIN, Individual; ETHEL TISMINESKY DE BRONSTEIN, Individual; GUY GERBY, Individual; VICENTE JUARISTI SUAREZ, Individual; AMPARO MATEO LONGARELA, Individual; SALVADOR GAVILAN, Individual; LARRY FRANK, Individual; MERCEDES BITTAN, Individual; OMAIRA BERMUDEZ, Individual,

Plaintiffs - Appellants

v.

WILLIS LIMITED; WILLIS OF COLORADO, INCORPORATED,

Defendants - Appellees

Appeal from the United States District Court
for the Northern District of Texas

ON PETITION FOR REHEARING EN BANC

(Filed Jan. 21, 2020)

(Opinion: December 19, 2019, 5 Cir., ___, ___ F.3d ___)

Before HIGGINBOTHAM, GRAVES, and WILLETT, Circuit Judges.

PER CURIAM:

(✓) Treating the Petition for Rehearing En Banc as a Petition for Panel Rehearing, the Petition for Panel Rehearing is DENIED. No member of the panel nor judge in regular active service of the court having requested that the court be polled on Rehearing En Banc (FED. R. APP. P. and 5TH CIR. R. 35), the Petition for Rehearing En Banc is DENIED.

( ) Treating the Petition for Rehearing En Banc as a Petition for Panel Rehearing, the Petition for Panel Rehearing is DENIED. The court having been polled at the request of one of the members of the court and a majority of the judges who are in regular active service and not disqualified not having voted in favor (FED. R. APP. P. and 5TH CIR.

R. 35), the Petition for Rehearing En Banc is DENIED.*

ENTERED FOR THE COURT:

/s/ Patrick Higginbotham
UNITED STATES
CIRCUIT JUDGE

* Judges James L. Dennis, Catharina Haynes, and Gregg J. Costa, did not participate in the consideration of the rehearing en banc.