

I. FACTUAL AND PROCEDURAL BACKGROUND

The Court entered an original Order Appointing Receiver (ECF No. 10), Amended Order Appointing Receiver (ECF No. 47), and Order Reappointing Receiver (ECF No. 155), each of which directed and authorized the Receiver to enter into agreements with professionals that were necessary for the Receiver to execute his responsibilities. *See* Order Appointing Receiver, ECF No. 10, ¶ 5(h); Am. Order Appointing Receiver, ECF No. 47, ¶ 5(h); Order Reappointing Receiver, ECF No. 155, ¶ 5(h). Such professionals were to be compensated from the Receivership Assets, subject to the Court's approval. *Id.* In furtherance of his mandate to marshal assets for the Receivership, the Receiver enlisted the professional services of attorneys, forensic accountants, and others to locate and seize assets and real and tangible property of the Ponzi defendants, and to help in the liquidation thereof. *See generally* Receiver's 4th Mot. Approval Interim Fee Appl. ("Mot."), ECF No. 197; Status Report, ECF No. 196. Most recently, the Receiver has engaged in ancillary litigation with multiple parties, including the net winning investors under the Ponzi scheme, to "claw back" amounts that were transferred to perpetuate the Ponzi scheme. Mot. 9, ECF No. 197. The Receiver now seeks approval for interim payment of fees incurred as a result of these efforts.

The Receiver seeks approval of his total fees incurred in this case in the amount of \$12,714.32 (\$5,880.00 in fees and \$6,834.32 in costs) for the period from January 1, 2012, through September 30, 2012. *See* Mot. 17, ECF No. 197. The Receiver also seeks authorization for payment in the amount of \$212,135.01 (\$208,664.40 in fees and \$3,470.61 in expenses) to Thompson & Knight, LLP ("Thompson & Knight"), the law firm representing the Receiver during the same time period. *See id.* at 20. Finally, the Receiver seeks authorization for payment of \$7,813.07 (\$7,109.20 in fees and \$703.87 in out-of-pocket expenses) to Bingham Greenebaum Doll LLP ("BGD"), a

Kentucky law firm that represented the Receiver as local counsel in Kentucky bankruptcy litigation. *See id.* at 20; *see generally* Mot. Ex. D (BGD Invoice), ECF No. 197-4. Totaling these fees, the motion requests authority to disperse payment in the amount of \$232,662.40. *See* Mot. 21, ECF No. 197. The Receiver has presented billing records and invoices evidencing the services rendered to justify the claim for compensation. *See generally* Mot. Exs. B–D, ECF Nos. 197-2 to 197-4.

The tasks and challenges presented to the Receiver have been numerous and, in many instances, complex and time consuming. The primary work of the Receiver’s counsel, which comprises the bulk of fees sought in the Receiver’s Application, has been related to the prosecution of ancillary litigation. Mot. 10–11, ECF No. 197. The case against the net winning investors involved over 300 defendants, and the Receiver worked to obtain settlements and/or judgments with respect to each of those defendants. *Id.* at 11. The work included communications, negotiations, and correspondence with the defendants, as well as briefing motions for summary judgment or default judgments where appropriate. *Id.* The Receiver also prosecuted litigation against Atlanta Northside Aviation, which received a significant fraudulent transfer during the course of the Ponzi scheme, to success on a motion for summary judgment. *Id.* Additionally, the Receiver pursued litigation against the brokers who sold the fraudulent certificates of deposit (“CDs”). *Id.* It was necessary for the Receiver to work to lift a bankruptcy stay against one broker, to obtain specific discovery related to the commission structure provided to each broker, to attempt settlement with each defendant, and to interview witnesses with knowledge of the brokers’ association with the Millennium Entities. *Id.*

Thompson & Knight, the law firm representing the Receiver, has served as lead trial counsel to the Receiver and has represented the Receiver in all proceedings in this case. *Id.* at 19. The law

firm has also made reports to governmental and regulatory agencies and worked to make seized and subpoenaed records, data, information, and equipment available to them during the course of their ongoing investigations. *Id.* Additionally, the law firm prepared and maintains the Receiver's website and has distributed communications to investors, claimants, creditors, defendants, relief defendants, lien holders, and others. *Id.*

BGD served as the Receiver's local counsel in Kentucky bankruptcy court when David Jones ("Jones"), one of the primary brokers who sold Millennium CDs, filed for bankruptcy. *Id.* at 20. BGD assisted the Receiver in staying the Kentucky bankruptcy court's jurisdiction, if any, over the Receiver's claims against Jones, lifting the automatic bankruptcy stay against Jones, and ensuring the Receiver's ability to pursue his claims against Jones in this Court. *Id.*

II. LEGAL STANDARD

The application for fees and expenses in this matter is governed by the lodestar method of calculation. *See Sec. & Exch. Comm'n v. EFS, LLC*, No. 3:06-CV-1097-M, 2007 WL 649008, at *5 (N.D. Tex. Jan. 24, 2007) (citing *Hensley v. Eckerhart*, 461 U.S. 424 (1983); *La. Power & Light Co. v. Kellstrom*, 50 F.3d 319 (5th Cir. 1995); *Sec. & Exch. Comm'n v. Megafund Corp.*, No. 3:05-CV-1328-L, 2006 WL 42367 (N.D. Tex. Jan. 9, 2006); *Sec. & Exch. Comm'n v. Tyler*, No. 3:02-CV-282-P, 2003 WL 21517879 (N.D. Tex. June 30, 2003)). Under the lodestar method, "[a] party seeking an award of attorney's fees has the burden of proving the reasonableness of the hours expended and the rate charged, and the district court must be able to determine the reasonable number of hours expended and the reasonable hourly rate for each participating attorney." *Megafund*, 2006 WL 42367, at *1. Thus, the court must determine the reasonable number of hours expended, then determine the reasonable hourly rates of the applicants. *Kellstrom*, 50 F.3d at 324.

In evaluating the reasonableness of the number of hours expended, the court determines “whether the total hours claimed are reasonable [and] also whether particular hours claimed were reasonably expended.” *Id.* at 325 (quoting *Alberti v. Klevenhagen*, 896 F.2d 927, 932 (5th Cir. 1990)). The burden of proving reasonableness of the billed hours is on the applicant. *Mota v. Univ. of Tex. Hous. Health Sci. Ctr.*, 261 F.3d 512, 528 (5th Cir. 2001). Therefore, the applicant must prove he exercised billing judgment in calculating the hours expended. *Sec. & Exch. Comm’n v. AmeriFirst Funding, Inc.*, No. 3:07-CV-1188-D, 2008 WL 2185193, at *2 (N.D. Tex. May 27, 2008) (Fitzwater, C.J.) (citing *Saizan v. Delta Concrete Prods. Co.*, 448 F.3d 795, 799 (5th Cir. 2006)). “Billing judgment requires documentation of the hours charged and of the hours written off as unproductive, excessive, or redundant.” *Id.* (quoting *Saizan*, 448 F.3d at 799). Where no evidence of billing judgment has been submitted, it is appropriate to reduce the fee award by a percentage intended to substitute for the exercise of billing judgment. *Saizan*, 448 F.3d at 799; *see also Walker v. City of Mesquite, Tex.*, 313 F.3d 246, 251 (5th Cir. 2002).

Upon ascertaining the compensable time, the court determines the appropriate hourly rate based upon the prevailing community standards for attorneys of similar experience in similar cases. *Kellstrom*, 50 F.3d at 328. The party seeking payment of fees has the burden of establishing the market rate. *Riley v. City of Jackson, Miss.*, 99 F.3d 757, 760 (5th Cir. 1996). This requires evidence establishing the reasonableness of the proposed rate, typically through affidavits of other attorneys practicing in the community. *Id.*; *Tollett v. City of Kemah*, 285 F.3d 357, 368–69 (5th Cir. 2002). Absent such evidence, the court may rely upon its expertise and judgment to independently assess the valuation of the asserted rate. *Davis v. Bd. of Sch. Comm’rs of Mobile Cnty.*, 526 F.2d 865, 868 (5th Cir. 1976).

After the court determines the multiplied product of the reasonable compensable hours and reasonable hourly rate, the court may adjust the result—the lodestar—upward or downward as it sees fit based on consideration of the twelve factors enumerated in *Johnson v. Georgia Highway Express, Inc.*¹ See *Kellstrom*, 50 F.3d at 329. Additionally, although no responses were filed in opposition to the present motion, the court may nonetheless “adjust the fee requests *sua sponte*” to ensure that only reasonable attorney’s fees are awarded. *AmeriFirst Funding*, 2008 WL 2185193, at *1 (internal brackets omitted) (citing *Wright v. Blythe-Nelson*, No. 3:99-CV-2522-D, 2004 WL 2870082 (N.D. Tex. Dec. 13, 2004)); see also *Curtis v. Bill Hanna Ford, Inc.*, 822 F.2d 549, 551 (5th Cir. 1987) (permitting the court to adjust the fee where the requested amount was unopposed, because the court is obligated to award only “reasonable attorney’s fees”). With these operative standards in mind, the Court now considers the Receiver’s request for payment of fees and costs.

III. ANALYSIS

A. Receiver and Thompson & Knight Fees

The Court first determines the lodestar for the requested attorneys’ fees submitted by the Receiver for himself and the attorneys at Thompson & Knight.

1. Reasonable Hours Expended

A review of the Receiver and Thompson & Knight’s billing records demonstrate that the majority of the billing entries are adequately documented with a “short but thorough description of

¹ The *Johnson* factors are: (1) the time and labor required; (2) the novelty and difficulty of the questions; (3) the skill requisite to perform the legal service properly; (4) the preclusion of other employment by the attorney due to acceptance of the case; (5) the customary fee; (6) whether the fee is fixed or contingent; (7) time limitations imposed by the client or the circumstances; (8) the amount involved and the results obtained; (9) the experience, reputation, and ability of the attorneys; (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 v. Ga. Highway Express, Inc.*, 488 F.2d 714, 717–19 (5th Cir. 1974).

the services rendered.” *Walker*, 313 F.3d at 252. The Receiver submitted a summary of hours expended totaling 14 hours. *See* Mot. Ex. B (Receiver’s Invoice Summ.) 4, ECF No. 197-2. The total hours expended for attorneys and legal assistants with Thompson & Knight reached 1,005.30 hours. *See id.* Ex. C (Thompson & Knight Invoice Summ.), at 7, ECF No. 197-3.

After a thorough review, the Court finds that the Receiver’s and Thompson & Knight’s billing records reflect significant discounts with regard to work undertaken to seize and liquidate assets of the Estate, analyze documents and evidence seized from Defendants, analyze the figures and details provided by the forensic accountants, apply knowledge from other evidence to make sense of the accounting, and analyze, prepare, and prosecute “claw back” and third-party litigation matters. Mot. 2, ECF No. 197. The Court further finds that Thompson & Knight has demonstrated billing judgment by writing off unproductive, possibly excessive and/or redundant work, as well as by waiving significant fees related to the review and analysis required in the ongoing investor claims process. *See id.* The Receiver represents that the hours expended and identified as unproductive or redundant have been reduced from the total in calculating the final fees for which Receiver now seeks approval. *See id.* at 19–20 (citing *AmeriFirst Funding, Inc.*, 2008 WL 2185193, at *2; *Saizan*, 448 F.3d at 799). Therefore, the Court finds that, for purposes of the lodestar, the hours that the Receiver and Thompson & Knight billed from January 1, 2012, to September 30, 2012, are reasonable and reflect billing judgment.

2. Reasonable Hourly Rates

Next, the Court determines the reasonableness of the attorney billing rates. The Thompson & Knight attorneys assisted in seizing and liquidating assets of the Estate, analyzing documents and evidence seized from the Defendants, analyzing the figures and details provided by the forensic

accountants, communicating with investors, government agencies, and the media, and analyzing, preparing, and prosecuting “claw back” and third-party litigation matters. *See* Mot. 2, 18–19, ECF No. 197. These tasks required considerable effort. Six separate attorneys participated to varying degrees and at various stages of the effort during the relevant time period. *See* Mot. Ex. C (Thompson & Knight Invoice Summ.), at 6, ECF No. 197-3. Additionally, three legal assistants and information specialists were utilized in furtherance of the Receivership. *See id.* The attorneys who represented the Receiver billed at an hourly rate between \$215.00 and \$460.00.² *See id.* As previously stated, applicants for payment of fees typically submit evidence—through affidavits of other attorneys practicing in the community—establishing the reasonableness of the proposed rate. *Tollett*, 285 F.3d at 368–69. Here, the Receiver has not submitted such evidence. Nonetheless, the Court determines that, based on the background of the attorneys and the Court’s understanding of the legal market for this judicial district, these billing rates are reasonable. *See Davis*, 526 F.2d at 868.

3. Lodestar

After a thorough evaluation of the billing records, the obligations of the attorneys to prove the exercise of billing judgment, and the appropriateness of a lodestar reduction as a means of correcting for a lack of billing judgment, the Court finds that a reduction in the lodestar amount is not warranted. *See Kellstrom*, 50 F.3d at 329; *AmeriFirst Funding*, 2008 WL 2185193, at *1.

B. Professional Services Fees

The Court has additionally reviewed the Receiver’s request for the payment of work performed by BGD, a Kentucky law firm. BGD assisted the Receiver in staying the Kentucky

² The Receiver states that these billing rates reflect a 20% discount. *See* Mot. 20, ECF No. 197.

bankruptcy court's jurisdiction over the Receiver's claims against Jones and in lifting the automatic bankruptcy stay against Jones. *See* Mot. 20, ECF No. 197. These actions allowed Receiver to move forward with his claims against Jones in this Court. *See id.* BGD's bill reflects 33.2 hours of attorney and paralegal work performed, with billing rates ranging from \$168 to \$515 per hour, and \$703.87 in out-of-pocket expenses incurred.³ *See generally* Mot. Ex. D (BGD Invoice), ECF No. 197-4. BGD provided a summary sheet of tasks performed and requests payment in the amount of \$7,813.07. *See id.* The Court finds that these expenditures were essential to the obligations of the Receiver and should be paid.


C. Reasonable Costs

The Court has also reviewed the bill of expenses submitted by the Thompson & Knight attorneys and the Receiver. The Court finds that these expenses reflect the efforts of the various attorneys to marshal assets and to further the collection of funds for the Receivership. Given the essential nature of these costs, the Court finds payment in the requested amount to be appropriate.

IV. CONCLUSION

Based on the foregoing, the Receiver's Fourth Motion for Approval of Interim Fee Application (ECF No. 197) is hereby **GRANTED**. Accordingly, the Receiver is entitled to payment totaling \$12,714.32, and Thompson & Knight is entitled to payment totaling \$212,135.01. The Court further approves the payment of the professional service expenses of BGD totaling \$7,813.07.

SO ORDERED on this **30th** day of **January, 2013**.


Reed O'Connor
UNITED STATES DISTRICT JUDGE

³ These amounts were drawn from BGD's full bill, which was produced to the Court *in camera*.