

Stephanie D. Curtis
 Texas State Bar No. 05286800
 Mark A. Castillo
 Texas State Bar No. 24027795
 Michelle MacLeod
 Texas State Bar No. 24060204
 THE CURTIS LAW FIRM, PC
 901 Main Street, Suite 6515
 Dallas, Texas 75202
 Telephone: 214.752.2222
 Facsimile: 214.752.0709

COUNSEL FOR INX, INC.

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

SECURITIES AND EXCHANGE COMMISSION,	§	
	§	
Plaintiff,	§	Case No.: 3-09-CV-0298-N
	§	
v.	§	
	§	
STANFORD INTERNATIONAL BANK, LTD., ET AL.,	§	
	§	
Defendants.	§	

MOTION FOR LEAVE TO INTERVENE BY INX, INC

TO THE HONORABLE UNITED STATES DISTRICT JUDGE:

COMES NOW, INX, Inc. (“INX”), and files this Motion for Leave to Intervene (“Motion”), and in support hereof, shows the Court as follows:

I. INTRODUCTION

INX is filing this Motion because it has not been paid for \$388,580.56 worth of information technology equipment it shipped to Stanford from December 31, 2008 through February 19, 2009. INX’s claims to its property are fully set forth in its Verified Motion Seeking Reclamation of Equipment by INX, Inc. or Payment in Lieu of Reclamation and Brief in Support Thereof (“Reclamation Motion”) [**Docket No. 459**]. On April 7, 2009, INX sent a reclamation

demand to the Receiver but received no response. *See* Reclamation Motion ¶15. INX sent subsequent correspondence to the Receiver on April 10 and April 17 and made final demand for reclamation to the Receiver on April 30, 2009. Despite numerous communications with the Receiver's attorneys regarding payment for or reclamation of the Equipment, the Receiver refused to return the Equipment. On June 9, 2009, INX filed its Reclamation Motion, requesting a hearing. On February 23, 2010, this Court entered an order [**Docket No. 1022**] denying INX's Reclamation Motion but on the basis that it had not filed a Motion to Intervene. INX, accordingly, seeks to intervene in this action because it has been directly affected by the lack of access to its property rights in the information technology equipment and requires a ruling on its Amended Motion for Reclamation, filed concurrently with this Motion.

II. FACTUAL BACKGROUND

1. INX relied on written misrepresentations of solvency provided by Stanford to INX when it delivered to Stanford the information technology equipment the Receiver is now using as its main server and computer hard drives, and has been using throughout this case, despite INX's repeated demands for payment or return of the equipment. It was only after these shipments were completed that INX learned, along with the rest of the world, of the massive Ponzi scheme carried out by Stanford and the other above-captioned Defendants and of Stanford's insolvency at all times during its relationship with INX. INX had not then, and has not since, received payment for any of the equipment shipped to Stanford despite its timely and repeated demands.

III. PROCEDURAL BACKGROUND

2. On February 16, 2009, the Securities and Exchange Commission (the "Commission") commenced a lawsuit in this Court against R. Allen Stanford, James J. Davis,

Laura Pendergest-Holt, Stanford International Bank, Ltd., Stanford Group Company, and Stanford Capital Management, LLC (together, the “Defendants”). In its First Amended Complaint filed February 27, 2009, the Commission alleges that the Defendants perpetrated a multi-billion-dollar fraudulent scheme on its creditors and investors by: (1) promising high return rates on “certificates of deposit” that exceeded those available through true certificates of deposit offered by traditional banks and (2) selling a proprietary mutual fund wrap program known as Stanford Allocation Strategy using materially false and misleading historical performance data. *See* First Amended Complaint, ¶¶ 3, 6.

3. This Court found good cause to believe that Defendants violated federal securities laws through their massive Ponzi scheme and fraudulent misrepresentations of solvency regarding their investments and investment strategies and, on February 17, 2009, entered an order appointing Ralph S. Janvey (the “Receiver”) as Receiver over all assets of the Defendants and all the entities they own or control [**Docket No. 10**]. On March 12, 2009, the Court entered an Amended Order Appointing Receiver (the “Receiver Order”) [**Docket No. 157**].

IV. RELIEF REQUESTED

4. INX hereby respectfully requests that this Court enter an order granting it leave to intervene in this suit to prosecute its claim against Stanford.

5. A proposed form of order granting the Motion is attached hereto, and is incorporated by reference herein.

V. ARGUMENTS AND AUTHORITIES

6. Pursuant to Federal Rule of Civil Procedure 24(a)(2), and in the alternative, 24(b)(1)(B), INX is a proper intervenor because it has been and continues to be denied its property rights in the Equipment and is thereby affected by the actions of the Receiver. Under

the Federal Rules of Civil Procedure, a court “must” allow a non-party to intervene in an action when the non-party “intervenor” timely:

Claims an interest relating to the property or transaction that is the subject of the action, and is so situated that disposing of the action may as a practical matter impair or impede the movant’s ability to protect its interest, unless existing parties represent that interest.

Fed. R. Civ. P. 24(a)(2). In the Fifth Circuit, non-parties have a right to intervene under Rule 24(a)(2) when the following requirements are met:

1. The non-party timely moves to intervene;
2. The non-party has “an interest relating to the property or transaction which is the subject of the action”;
3. “the disposition of the action may, as a practical matter, impair or impede [the non-party’s] ability to protect [its] interest”; and
4. The parties currently in the suit do not adequately represent the non-party’s interest.

Edwards v. City of Houston, 78 F.3d 983, 999 (5th Cir. 1996). INX meets all of these elements.

7. INX has timely moved to intervene. The timeliness of a motion to intervene in the Fifth Circuit is determined by examining (1) how long the intervenor knew of its interest in the case before moving to intervene; (2) any prejudice to the parties to the case caused by any delay in intervening once the intervenor knows of its interest in the case; (3) the prejudice to the Intervenor should its motion be denied; and (4) any “unusual” circumstances affecting the timeliness of the motion to intervene. *Id.* at 1000.

8. INX acted timely after learning of its interest in the case. INX sent the reclamation letter to the Receiver within a month of the time the Court entered the March 12, 2009 Receiver Order and continued asserting its rights in subsequent correspondence April 10 and April 17, 2009, with final demand for reclamation on April 30, 2009. When the Receiver refused to return the equipment, INX filed its June 9, 2009 Reclamation Motion, requested a hearing, and made calls to the court regularly to inquire as to the status of the Reclamation

Motion. INX is intervening in this action within 20 days of receiving the Court's February 23, 2010 order on INX's Reclamation Motion but allowing this Motion to Intervene. Thus, INX has timely and consistently pursued its interests since learning of its interest in the case.

9. Because no other party has an ownership interest in INX's equipment and because of the timeliness of INX's intervention, no other party would be prejudiced by INX's intervention. Prejudice to INX is certain if this Motion is denied because INX would lose its property interest in the equipment and INX's claims would be rendered worthless. Finally, there are no "unusual" circumstances making INX's intervention untimely; instead, INX zealously pursued its rights to the property or payment of its claim at all times in this proceeding and upon entry of the Court's order inviting it to intervene, it seeks to do so.

10. INX has an interest relating to the property which is the subject of the action in that its equipment is controlled by the Receiver and utilized by the Receiver in this case. INX's claims directly implicate assets under the exclusive jurisdiction of this Court.

11. INX may be impeded in protecting its interest by the disposition of the action. If the Receiver does not choose to return to INX its property, INX will be unjustly deprived of access to its equipment, and the value of the equipment will continue to depreciate. In addition, the Receiver has made clear via its website that "the total assets of the Estate are likely to be only a fraction of the amount needed to satisfy the total anticipated claims against the Estate." *See* http://www.stanfordfinancialreceivership.com/documents/Claims_Notification_and_Account_Release_Review_Procedures.pdf, at Question 21.

12. INX is not adequately represented by the Receiver, who is charged with protecting investors, not suppliers such as INX. The Receiver clearly is not protecting the interests of INX, as manifested by the Receiver's refusal to return to INX its property or pay its

claim. A “minimal” burden is imposed on an intervenor in showing that its interest “may be” insufficiently represented by parties to the suit.” *Trbovich v. United Mine Workers of Am.*, 404 U.S. 528, 538 n.10 (1972). A presumption that an intervenor’s interest is adequately represented arises in only one of two ways: “when the putative representative is a governmental body or officer charged by law with representing the interests of the” intervenor, or when the party has the “same ultimate objective” as the intervenor. *Edwards*, 78 F.3d at 1005. Neither presumption applies here because INX is not an investor, and because no other party to this action seeks to recompense INX for its injuries. The Receiver’s refusal to return to INX its equipment demonstrates that the Receiver does not adequately represent INX. In fact, the Receiver has an inherent conflict of interest because the Receiver is believed to be currently using INX’s equipment to retrieve documents, emails, spreadsheets, and financial and other information necessary for it to act in the role of Receiver. Without INX’s equipment, the Receiver would not be able to fulfill his duties or take necessary actions in the case. Yet, he refuses to respond to INX’s demands for payment of its claims. Accordingly, there is no presumption that the Receiver or any other party adequately represents INX in this suit.

13. If the Court finds that INX does not have a right to intervene under FED. R. CIV. P. 24(a)(2), INX requests that the Court allow it to intervene under Rule 24’s “permissive” intervention standard. This rule allows intervention when the intervenor’s claim shares a “common question of law or fact” with the pending suit. FED. R. CIV. P. 24(b)(1)(B). Because common questions of law and fact exist between this suit and the distribution of Receivership Assets, INX should be granted leave to permissively intervene.

VIII. REQUEST FOR HEARING

14. INX respectfully requests that the Court set this Motion for Hearing.

IX. PRAYER

WHEREFORE, PREMISES CONSIDERED, INX hereby respectfully requests that this Court enter an order:

1. allowing INX to intervene in this suit for the purposes described above;
2. taking such other and further relief as is necessary to allow INX to prosecute its Reclamation Motion, including the unrestricted access and possession of its equipment or payment as to the full amount of its claim;
3. and for such other and further relief, in law and equity, as this Court deems just and necessary.

Dated: March 15, 2010

Respectfully submitted,

/s/ Michelle MacLeod

Stephanie D. Curtis Texas State Bar No. 05286800
Mark A. Castillo Texas State Bar No. 24027795
Michelle MacLeod, Texas State Bar No. 24060204
The Curtis Law Firm, PC
901 Main Street, Suite 6515
Dallas, Texas 75202
Telephone: 214.752.2222
Facsimile: 214.752.0709
COUNSEL FOR INX, INC

CERTIFICATE OF CONFERENCE

The undersigned counsel certifies that, on March 12, 2010, I conferenced with Sue Ayers, counsel for the Receiver, regarding the relief requested in this motion, and that Ms. Ayers indicated that the Receiver was opposed.

/s/ Michelle MacLeod

Michelle MacLeod

CERTIFICATE OF SERVICE

I hereby certify that, on March 15, 2010, I electronically submitted the foregoing document with the clerk of the court of the U.S. District Court, Northern District of Texas, using the electronic case filing system of the court. Furthermore, I served a true and correct copy of the foregoing motion upon the parties listed below by first-class mail.

Ralph S. Janvey
Krage & Janvey, LLP
2100 Ross Avenue
Suite 2600
Dallas, TX 75201

Kevin Sadler
Robert I. Howell
David T. Arlington
Baker Botts LLP
1500 San Jacinto Center
98 San Jacinto Blvd.
Austin, Texas 78701-4039

/s/ Michelle MacLeod

Michelle MacLeod