

## ARCHIVED WEBSITE ENTRIES as of November 20, 2009

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### **The Receiver's "Claw Back" Claims:**

The Receiver filed two separate actions that assert claw back claims against investors in SIB CDs through which the Receiver seeks to recover any CD interest paid to Stanford investors and any CD principal that was redeemed by such investors. In one of these actions, the Receiver named approximately two hundred and sixty (260) (now approximately 330) former Stanford Financial Advisors and employees and approximately six hundred fifty (650) Stanford CD investors. In a separate action, the Receiver has asserted additional claw back claims against a small number of Stanford CD investors. The claw back claims against SIB investors were the subject of the Fifth Circuit appeal that was determined on November 13, 2009.

As has been widely reported, the Receiver pursued these claw back claims over the objection of the SEC and the Examiner. In conjunction with the filing of his most recent amended Complaint on July 28, 2009, the Receiver also filed a motion asking the Court to establish a summary procedure for adjudicating his claw back claims, and an Order asking the Court to extend the account freeze as to all investors who have been named as relief defendants in the claw back actions.

Shortly before the Receiver filed his amended claw back Complaint, the SEC on July 20, 2009, filed an Emergency Motion to Modify the Order appointing the Receiver. In the Motion, the SEC asked the Court to strip the Receiver of the authority to file lawsuits, including claw back actions, against investors in SIB CDs. On July 21, 2009, the Examiner filed a Response to the SEC's Emergency Motion supporting the modification urged by the SEC. On July 30, 2009, the Receiver filed his Response to the SEC's Motion.

The Court held a hearing on Friday, July 31, 2009 on the SEC's Motion to take away the Receiver's authority to file "claw back" claims and on the Receiver's motions relating to the asset freeze and the process through which his "claw back" claims will be determined. The Court heard argument from the SEC (through both Kevin Edmundson and Rose Romero, the SEC's Regional Director), the Examiner, the Receiver (through his counsel, Kevin Sadler, and from the Receiver himself) and from several counsel for "relief" defendants. The Court made the following decisions at the hearing:

- a. The Court denied the SEC's Motion to take away the Receiver's ability to file "claw back" claims;
- b. The Court indicated that he would deny the Receiver's Motion to extend the account freeze as to CD principal, but would extend it as to CD interest received by SIB CD investors;
- c. The Court extended the deadline for the termination of the account freeze, originally set to end on August 3, 2009, through August 13, 2009.

The Court made it clear that he was making these rulings in order to give the Receiver an opportunity to pursue an appeal to the 5th Circuit Court of Appeals. The Court indicated that he did not believe that the law supported "claw back" claims as to the principal invested in the SIB CDs, and that he thought such claims should be limited to interest only. It is this issue as to which the Court encouraged the Receiver to pursue an appeal.

The Receiver filed an appeal to the Fifth Circuit and obtained an extension of the account freeze pending that appeal. The appeal was determined on November 13, 2009 and the account freeze was vacated.

The Court's Order also provides that CD investors who had been sued as "relief" defendants need not respond to the Receiver's Amended Complaint until further order of the Court. Given the outcome of the Fifth Circuit appeal, the Examiner anticipates that no response will be required and that the Receiver's "claw back" claims will be dismissed.

On August 26, 2009, the Receiver filed a supplemental complaint asserting "claw back" claims against two hundred fifty three (253) former Stanford Financial Advisors seeking to recover in excess of \$133 million in alleged CD proceeds paid to the former Financial Advisors. The Receiver's Supplemental Complaint seeks to recover amounts paid to the former Financial Advisors as commissions, bonuses, loans, and otherwise. It is not clear from the Supplemental Complaint whether the Receiver also seeks to recover CD principal and/or interest, if any, paid to the former Financial Advisors.

On September 29, 2009, the Receiver filed a second supplemental complaint asserting "claw back" claims against four (4) additional former Financial Advisors and four (4) individuals identified as former "managing directors" of Stanford Group Company.

## **Proceedings relating to D&O ("Directors & Officers") Insurance Policies**

On October 9, 2009, the Court issued an Order ruling that Stanford's insurer, Lloyd's of London, was free to disburse the proceeds of Stanford's D&O insurance policies to fund the defense of, among others, Defendants Laura Pendergast-Holt, James Davis, and Allen Stanford. In rendering this decision, the Court declined to decide whether or not the policy proceeds were the property of the Receivership estate; moreover, the Court declined to determine whether any of the Defendants were entitled to have their defense funded by the insurance policies. The Court determined that it was appropriate to permit Lloyd's to disburse the policy proceeds to fund Defendants' defense costs. Information relating to the motions and other filings that resulted in the issuance of this Order is below.

On June 30, 2009, Laura Pendergast-Holt filed a Motion seeking to clarify that the proceeds of certain D&O policies owned by the Stanford entities should be made available to her to fund her defense both of the SEC's action against her and the criminal proceedings against her. The Motion indicates that the Receiver has asserted a claim to the proceeds of those policies. Ms. Pendergast-Holt seeks, and the Receiver has agreed to, expedited consideration of this Motion by the Court. On July 6, 2009, Jim Davis filed a motion to join Ms. Pendergast-Holt's Motion. Also on July 6, 2009, Allen Stanford filed a Notice of his joinder in Ms. Pendergast-Holt's Motion and an Appendix in support of that Notice.

On July 16, 2009, the Receiver filed his Response to the Motion filed by Laura Pendergast-Holt relating to the D&O policies owned by the Stanford entities.

On July 30, 2009, Ms. Pendergast-Holt filed a Reply in further support of her Motion. Additional replies were also filed by Mr. Davis and by Mr. Stanford. On August 4 and 6, 2009, groups of former Stanford Financial Advisors filed notices of their joinder in Ms. Pendergast-Holt's Motion.

Motion to Intervene Filed by Lloyd's of London On September 11, 2009, Certain Underwriters at Lloyd's of London filed a Motion to Intervene relating to the D&O Policies. The Lloyd's Underwriters also filed a Response relating to Ms. Pendergast-Holt's pending motion.

On October 6, 2009, the Receiver filed a response opposing the Motion to Intervene. Lloyd's of London filed its Reply brief in support of its Motion to Intervene on October 21, 2009.

Court enjoins Stanford efforts to litigate insurance coverage in England. In late September, 2009, Allen Stanford apparently filed a proceeding in England seeking to obtain an order pursuant to which he would have access to the proceeds of the D&O insurance policy issued by Lloyd's of London. On September 27, 2009, the Receiver filed a motion with the Court seeking to enjoin Stanford and his counsel from proceeding in that action. Lloyd's of London filed a response supporting the Receiver.

On Monday, September 28, 2009, the Court held an emergency hearing by telephone to address the Receiver's motion. At the conclusion of the hearing, the Court issued its Order enjoining Mr. Stanford and his counsel from proceeding in the English courts with respect to the D&O Policy.

## **Previously Decided Fee Applications**

### **Receiver's First and Second Applications for Payment of Fees and Expenses:**

On May 15, 2009, the Receiver filed his first application for the payment of fees and expenses. The Receiver's first fee application sought fees and expenses in the total amount of \$19,965,146.12. Responses to the Receiver's Fee Application were filed by the SEC, the Antiguan Liquidators, and the Stanford Defendants on June 4, 2009. The Examiner filed his Response to the Receiver's Fee Application on June 8, 2009. On June 19, 2009, the Receiver filed a consolidated Reply in further support of his Fee Application.

On August 4, 2009, the Receiver filed his Motion for Approval of his Second Interim Fee Application. The Second Interim Fee Application covered the period from April 13, 2009 through May 31, 2009, and sought Court approval of fees and expenses in the total amount of \$7,601,969.19 for the Receiver and the various professional firms assisting the Receiver. On August 14, 2009, the Antiguan Liquidators filed a Notice of their opposition to the Receiver's Second Interim Fee Application. Allen Stanford filed his Response to the Receiver's Second Interim Fee Application on August 24, 2009. The SEC and the Examiner filed their Responses to the Receiver's Second Interim Fee Application on August 27, 2009. The Receiver filed a Reply Brief in support of his Second Fee Application on September 1, 2009.

Judge Godbey held a hearing on September 10, 2009 to address the Receiver's two pending fee applications and the Examiner's pending fee application. The Court heard argument from the Receiver, the SEC, the Examiner, and counsel for Mr. Stanford. In his two pending fee applications, the Receiver sought a total of \$27.57 million in fees and expenses for himself and fourteen (14) different professional firms. At the conclusion of the hearing, Judge Godbey largely adopted the positions advocated by the SEC and the Examiner.

First, the Court disallowed approximately \$2.1 million in fees and expenses sought by the Receiver, as follows:

- a. the Court disallowed expenses charged by FTI (an accounting firm) in the amount of \$844,096 because those expenses were not supported by sufficient information.
- b. the Court disallowed expenses charged by Ernst & Young (an accounting firm) in the amount of \$352,217 because those expenses were not supported by sufficient information.
- c. the Court disallowed the fees (\$827,293) and expenses (\$116,262) charged by FITS (a financial industry firm) because those expenses were not supported by sufficient information.

The Receiver has recently reapplied for the payment of these amounts.

Second, the Court adopted the proposal made by the SEC and the Examiner and reduced the amount payable to the Receiver and his professionals by an additional 20%. That amount will be held back and the Receiver's claim to it will be addressed at a later date. The Court indicated

that he will impose a similar hold back on future fee applications by the Receiver, and that the Receiver's claim to all amounts held back will be addressed when the dust settles.

Third, the Court gave the Receiver instructions concerning his future fee applications, including a direction that the Receiver prepare a budget and confer with the SEC and the Examiner concerning that budget, that the Receiver direct his professionals to prepare more detailed billing statements and time records, and that the Receiver be more attentive to the costs of his activities as they relate to the assets he has under his control and the likely benefit of those activities to the Estate. Finally, Judge Godbey indicated that he did not think that he would approve any future expenses for the Receiver's public relations firm.

### **Examiner's First Application for Payment of Fees and Expenses:**

On July 15, 2009, the Examiner filed his Motion for Approval of First Interim Application for Payment of Attorneys' Fees and Expenses. The Examiner's Application covered the period from April 20 through June 30, 2009 and sought the payment of \$274,852 in attorney's fees and \$2,635.15 in expenses. No objections were filed to the Examiner's First Application.

At the hearing held on September 10, 2009, the Court approved the Examiner's First Application for payment of fees and expenses.

### **Motion to Disqualify Baker Botts, LLP**

On June 16, 2009, Allen Stanford, Stanford International Bank, Ltd., Stanford Financial Group Company and Stanford Group Company filed a Motion to Disqualify the Receiver's counsel, Baker Botts, LLP. They also filed a Motion to Stay the Receivership proceedings until the Court ruled on their Motion to Disqualify. The Examiner filed a Response opposing the Motion to Stay on June 17, 2009. Laura Pendergast-Holt filed a Response opposing the Motion to Stay on June 19, 2009. Baker Botts LLP filed its Response to the Motion to Disqualify on June 30, 2009. Because that Response was filed under seal, the Examiner was unable to make a copy available for review. On July 17, 2009, Allen Stanford filed his Reply Brief in support of his Motion to Disqualify Baker Botts LLP. Because that response was filed under seal, the Examiner similarly was unable to make a copy available for review.

On September 17, 2009, counsel for Allen Stanford filed a Motion to Withdraw their motion to disqualify Baker Botts LLP from its representation of the Receiver in this matter. On September 18, 2009, the Court entered its Order granting the motion to withdraw.

### **Examiner's Report and Recommendation No. 1:**

On May 21, 2009, the Examiner filed his Report and Recommendation No. 1. That Report addressed various issues relating to the freeze of Stanford brokerage accounts held at Pershing and the process through which the Receiver has been reviewing and releasing certain of those accounts. On May 26, 2009, the Examiner filed his First Supplement to Report and Recommendation No. 1. On May 27, 2009, the Court entered its Order setting deadlines for the Receiver and other parties to respond to the Examiner's Report and Recommendation No. 1, and also indicated that it would schedule a status conference to address the Examiner's recommendations. The Receiver filed his response to the Examiner's Report and Recommendation No. 1 on June 5, 2009. The SEC also filed its response to the Examiner's Report and Recommendation No. 1 on June 5, 2009. On June 12, 2009, the Examiner filed a Reply Brief in further support of Report and Recommendation No. 1. On June 17, 2009, the Court entered an agreed order adopting the recommendation made by the Examiner in his First Supplement to Report and Recommendation No. 1.

On June 29, 2009, the Court held a conference via telephone with the Examiner, counsel for the Receiver, counsel for the SEC, counsel for Mr. Stanford and his entities, and counsel for Ms. Pendergast-Holt. As a result of that conference, the Court issued its Order dated June 29, 2009 addressing certain of the recommendations made by the Examiner. The Court's Order provides that the existing account freeze orders will be vacated effective noon, August 3, 2009. The Court's Order further anticipates the Receiver should by that date assert any claims he may have against individual investors, together with any claims for prejudgment attachment of the assets of those investors. The Court's Order does not apply to frozen accounts that are owned by Stanford senior management, former financial advisors who appear to owe money to the Receivership Estate, or customers who have outstanding loans or debit balances owed to the Receivership Estate. On his website, the Receiver has made it clear that he will seek to continue the account freeze with respect to any investor against whom he has asserted a "claw back" claim on or prior to the August 3, 2009 deadline.

### **Allen Stanford Motion to Release \$10,000,000 for Defense Costs**

On May 4, 2009, the Examiner filed a Brief in response to R. Allen Stanford's Motion to Modify the Court's Preliminary Injunction. Through that Motion, Mr. Stanford sought the release of \$10,000,000 to his defense counsel for payment of his legal fees. The Receiver and the SEC also filed responses to that Motion on May 4, 2009. Mr. Stanford's counsel filed his reply brief on May 8, 2009. On July 1, 2009, the Court entered its Order denying Mr. Stanford's request but indicated that it would consider an "amended and modest" request for the limited purpose of permitting Mr. Stanford to comply with the Court's prior order requiring him to account for his assets.

### **Joint Motion to Return Stanford Aircraft to Lender**

On June 15, 2009, the Receiver and VFS Financing, Inc. filed a Joint Motion to return five Stanford owned aircraft to the lender who had financed the purchase of those aircraft. As a result of the transactions contemplated by the Joint Motion, the lender would take possession of the five aircraft, the loans secured by those aircraft would be resolved, and the Receiver would receive \$4.8 million in cash. The Stanford Defendants filed an opposition to the Joint Motion. On June 23, 2009, the Court entered a Stipulation and Agreed Order approving the agreement reached between the Receiver and VFS Financing, Inc.