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

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

SUPPLEMENTAL BRIEF IN FURTHER SUPPORT OF MOTION FOR RELIEF FROM THE INJUNCTION CONTAINED IN PARAGRAPH 10(e) OF THE RECEIVERSHIP ORDER IN RESPONSE TO ISSUES RAISED BY THE EXAMINER

MORGENSTERN & BLUE, LLC

885 Third Avenue
New York, NY 10022
Telephone: (212) 750-6776
Facsimile: (212) 750-3128

LACKEY HERSHMAN, L.L.P.

3102 Oak Lawn Avenue, Suite 777
Dallas, Texas 75219
Telephone: (214) 560-2201
Facsimile: (214) 560-2203

Attorneys for the Movants

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Cases

Statutes

Treatises

PRELIMINARY STATEMENT

The Movants[1] respectfully submit this supplemental brief in further support of their Motion for Relief from the Injunction Contained in Paragraph 10(e) of the Receivership Order.[2] Specifically, the Movants submit this supplement in order to address the issues raised by the Examiner in the Examiner's Report No. 2 [docket no. 991].

This Motion presents an important policy issue for this Court: should the SEC be able to preempt Congressionally-granted creditor rights, and essentially bar liquidation under the Bankruptcy Code, by seeking and obtaining the appointment of an equity receiver? With defrauded investors clamoring to participate – to advocate for their own interests, and have a say in how their rights are adjudicated – can the SEC and its hand-picked Receiver essentially bar the *real* parties in interest from the court house? The answer must be a resounding "no."

This is especially so because the investor community has lost faith in *this* Receiver, and in this receivership process. Victims throughout the country and indeed throughout the world no longer see this as a process in which their rights are being protected and their interests are being vindicated.

Now that this receivership is at a pivot point between gathering assets and making distributions to creditors, it is high time for a change. The Stanford Financial Group is not an ongoing business; no particular expertise is necessary or preferable to run its operations. This is now a liquidation, and any number of professional trustees are capable of undertaking the job. To the extent that the Receiver or his team of professionals have particular knowledge, or are in

---

[1] All capitalized terms not otherwise defined herein are deemed to have the same meaning as in the Movants' BRIEF IN SUPPORT OF MOTION FOR RELIEF FROM THE INJUNCTION CONTAINED IN PARAGRAPH 10(E) OF THE RECEIVERSHIP ORDER AND REQUEST FOR EXPEDITED HEARING [Dkt. No. 773].

[2] Since the time that this Motion was fully briefed, the Receiver and the SEC filed a JOINT MOTION FOR ENTRY OF SECOND AMENDED ORDER APPOINTING RECEIVER [Dkt. No. 958], Movants' Supplemental Appendix at p. 7. The proposed Second Amended Order Appointing Receiver does not eliminate the injunction that is the subject of this Motion. The Movants object to the continuation of the injunction in the existing Amended Receivership Order, as well as in any subsequent amendment to that Order.

the midst of a transaction that would be difficult to hand over to a new team, a bankruptcy trustee has the option to retain those professionals to handle discrete tasks, and the bankruptcy court has the responsibility to monitor fees.

The Courts of Appeal that have considered the issue have always urged district courts not to let "creeping receiverships" outlive their usefulness, and warned against supplanting Bankruptcy Code and Rules with *ad hoc* procedures. *Now* is the time to end this receivership. *Now* is the time to grant the defrauded investors the ability to participate in this process. *Now* is the time to lift the injunction against filing an involuntary bankruptcy petition against any of the defendants or Stanford entities.

LEGAL ARGUMENT

I. The Receiver has *never* satisfied his burden for obtaining or continuing an injunction against the filing of a bankruptcy petition.

The broad injunction prohibiting all creditors from filing an involuntary bankruptcy petition against any of the defendants or Stanford entities was granted upon the Receiver's application.[3] In obtaining that injunction, the Receiver argued that he needed the authority to file a bankruptcy petition "to ensure that he has a full range of options available to administer the Receivership estate," to avoid "adding an additional layer of complexity to an already complex undertaking," and to "allow for a smooth and orderly transition into bankruptcy," should such a transition become necessary.[4]

None of the Receiver's arguments were – or are – sufficient to justify an indefinite and continuing injunction barring creditors from exercising their statutory rights to file an involuntary bankruptcy petition. Indeed, as explained in the moving papers, *Jordan v. Indep.*

---

[3] RECEIVER RALPH S. JANVEY'S MOTION TO AMEND ORDER APPOINTING RECEIVER, filed March 11, 2009 [Dkt. No. 146], Movants' Supplemental Appendix at p. 43.

[4] *Id.* at p. 2, Movants' Supplemental Appendix at p. 44.

Energy Corp., 446 F. Supp. 516 (N.D. Tex. 1978) stands for the proposition that a receivership order containing an injunction against a bankruptcy filing can *never* satisfy the standard for granting a preliminary injunction.

In fact, the Receiver's Motion to Amend Order Appointing Receiver[5] was completely devoid of *any* evidence to support the argument that the injunction was necessary at the time, and his opposition to this Motion is similarly devoid of any evidence that it is necessary now. *Cf. SEC v. Byers*, 592 F. Supp. 2d 532, 537 (S.D.N.Y. 2008) (receiver submitted declarations from the CEO of a real estate firm retained by the receiver, and a partner at the financial advisory firm retained by the receiver, concerning the likely deleterious effects that a bankruptcy filing would have on the receiver's investigation in that particular case). There is, therefore, no factual support for continuing this burdensome injunction.

While the Receiver averred that a bankruptcy filing would add "complexity" to this case, that argument is baseless. Far more complicated cases than this one have been administered in the bankruptcy courts, under the Bankruptcy Code, including Enron, Worldcom, Adelphia, and the largest liquidation case of all, Lehman Brothers. Indeed, the bankruptcy courts are better suited to handle complex liquidations. *See Gilchrist v. Gen. Elec. Capital Corp.*, 262 F.3d 295, 303-04 (4th Cir. 2001).

Even if it is arguably true that the injunction against a bankruptcy filing was justified at the time it was entered, there can be no legitimate argument that it is justified at this time, a year into this case. The Receiver has had almost a full year to gather estate assets and investigate potential claims. *Cf. Byers*, 592 F. Supp. 2d at 534-35 (court heard argument on lifting

[5] RECEIVER RALPH S. JANVEY'S MOTION TO AMEND ORDER APPOINTING RECEIVER, filed March 11, 2009 [Dkt. No. 146], Movants' Supplemental Appendix at p. 43.

injunction barely three months after appointment of receiver). The Receiver has not articulated any legitimate reason why more time in receivership is superior than a transition to bankruptcy.

Moreover, there is no reason to believe that a transition to bankruptcy will be unduly disruptive. As the Receiver himself has pointed out, there is authority for the proposition that a receiver *can* remain in control of the entities for which he was appointed receiver as debtor in possession upon the filing of a bankruptcy petition.[6] And, even if the Receiver does not remain in control of the entities after a bankruptcy filing, the creditors, the Receiver, the SEC, and the United States Trustee are more than capable of coordinating the transition in a way that is not disruptive, with this Court's assistance if necessary.

II. The Receiver has never shown that the costs of this Receivership are lower than the costs of liquidating the estates in bankruptcy.

While the Examiner raises questions about the comparative costs of this receivership and bankruptcy, there is ***nothing*** in the record to suggest that liquidating the estates under the provisions of the Bankruptcy Code would be any more expensive than the procedures now in place. The Receiver has not pointed to a single estate expense that would likely be higher in bankruptcy. *See SEC v. Madoff*, 2009 U.S. Dist. LEXIS 30712 (S.D.N.Y. Apr. 10, 2009) ("The concern that appointment of a Bankruptcy Trustee will increase administrative costs or delay recovery by victims is speculative, and outweighed by the benefits to Mr. Madoff's victims of a Bankruptcy Trustee's orderly and equitable administration of his individual estate.") In fact, the opposite is almost certainly true.

As the Movants have pointed out, the Bankruptcy Code requires the bankruptcy court to control costs (just as this Court oversees costs in this receivership). Professionals may only be

---

[6] *See* RECEIVER RALPH S. JANVEY'S MOTION TO AMEND ORDER APPOINTING RECEIVER, filed March 11, 2009 [Dkt. No. 146] at p. 6, Movants' Supplemental Appendix at p. 48. (arguing that "a pre-petition receiver who makes corporate governance decisions may act as debtor in possession upon the filing of a bankruptcy case") (citing *In re Bayou Group, L.L.C.*, 363 B.R. 674, 683 (S.D.N.Y. 2007)).

retained on "reasonable terms and conditions of employment." 11 U.S.C. § 328(a). Moreover, the bankruptcy court (like this Court) has the power to adjust those terms in light of developments in the case:

> Notwithstanding such terms and conditions [of employment of professionals], the court may allow compensation different from the compensation provided under such terms and conditions after the conclusion of such employment, if such terms and conditions prove to have been improvident in light of developments not capable of being anticipated at the time of the fixing of such terms and conditions. [*Id.*]

Thus, professional fees and expenses need not be higher in bankruptcy, and there is no reason to believe that they will be.

While the Receiver and the Examiner have pointed to their concerns that a creditors' committee (or committees) will be appointed, and that committee professionals will be entitled to be paid out of the estate, draining estate resources,[7] creditors' committees and their professionals are *not entitled to any compensation* in a chapter 7 case. *See* 6 COLLIER ON BANKRUPTCY, ¶ 705.03 ("Section 705 does not provide for compensation or reimbursement to counsel to a chapter 7 creditors' committee. Legislative history accompanying section 705 confirms that the absence of any such provision was intentional.")[8] In a chapter 11 case, the bankruptcy court can cap or otherwise control fees.

Proceeding under the Bankruptcy Code is also likely to reduce costs by eliminating the need to spend estate resources developing and litigating over *ad hoc* procedures for claims adjudications, determinations, and disbursements. The Bankruptcy Code and Rules provide a well-established system of laws and procedures and it makes no sense to build a new system

---

[7] *See* Receiver's Response Opposing Bukrinsky Motion for Relief From Injunction Against Involuntary Bankruptcy Filing [Dkt. No. 817], p. 15.

[8] Nevertheless, a number of defrauded investors, as well as the undersigned counsel and numerous other attorneys, have expressed a willingness to serve on any formal or informal committee or committees that may be formed, and to do so *without compensation*.

from scratch for this case. As Judge Garwood said during oral argument on the Receiver's "claw back" appeal, "Congress passed all these complicated bankruptcy laws and they set up the person who's to collect all this stuff and they've got United States trustees, and all this very sophisticated system with the whole centuries of law behind it[.] Why should we invent kind of a new system?"[9] Why, indeed. There is no reason to squander precious estate resources developing one-off procedures when Congress has done all the work to establish a sophisticated legal framework for liquidation of an insolvent business.

III. The Receiver has never shown that the defrauded investors will receive greater distributions in receivership than they would in bankruptcy.

In considering the competing priority schemes that might be employed to make distributions to creditors, this Court has a concrete answer from the Movants, and very little, if anything, to consider from the Receiver. On the one hand is the Congressionally-established bankruptcy scheme that assures parties will be paid according to their legal entitlement, not by an individual receiver's whim. The priority scheme embodied in the Bankruptcy Code is well-suited to ensure that investor recoveries are maximized in a case such as this one.

On the other hand is the mysterious, undisclosed priority scheme that the Receiver will, apparently, create out of whole cloth according to standards that he, in his sole discretion, will propose (subject to objection procedures that he will also develop, and court approval based upon some undetermined standard). The Receiver simply insists that we take his word that this priority scheme will be better for defrauded investors than the Bankruptcy Code's statutory protections for creditors' substantive and procedural rights. There is, however, nothing in the record to suggest that the scheme that the Receiver might propose is materially better for the defrauded investors.

---

[9] TRANSCRIPT OF ORAL ARGUMENT IN *JANVEY V. ALGUIRE, ET AL.*, Civil Action No. 09-10761 (5th Cir. Nov. 2, 2009), p. 51, Movants' Supplemental Appendix at p. 157.

Second, the Bankruptcy Code and Rules are well suited to protecting the priority of defrauded investors who purchased CDs issued by SIBL. Those investors will have claims directly against SIBL. To the extent that Stanford siphoned money from SIBL into other Stanford entities, and to other business ventures, the SIBL estate will have claims against those entities that can be efficiently determined in the context of a bankruptcy proceeding, and maximize recoveries to the holders of SIBL CDs.

Third, while the Bankruptcy Code sets out a priority scheme for payment of creditors' claims, it is also flexible enough to accommodate equitable reordering of those priorities in order to avoid injustice. *See* 11 U.S.C. 510(c) (permitting equitable subordination of claims).

Simply put, this Court cannot simply take the Receiver's word for the proposition that defrauded investors will fare better if he continues as Receiver than they would as a result of the filing of a bankruptcy petition.

IV. Bankruptcy provides the best chance for successfully pursuing claims to the benefit of the investors.

The filing of an involuntary bankruptcy petition undoubtedly and unequivocally provides the best chance for successfully pursuing claims to the benefit of the defrauded investors.

First, and most significantly, a bankruptcy filing will immediately toll the running of the statute of limitations on claims by the estates against third-parties. 11 U.S.C. § 108(a). It is perhaps one of the greatest failures of this Receiver that, by refusing to file a bankruptcy petition or petitions for almost a full year since the time he was appointed, the Receiver has caused the estates to forever and irrevocably lose the ability to assert fraudulent transfer, preference, and other claims for which the limitations period has expired during that time. Every day that goes

by without a bankruptcy filing more potential claims may be barred by the statute of limitations.[10]

Second, in a bankruptcy proceeding, creditors have the ability (subject to court approval and oversight) to pursue claims against third parties when the bankruptcy trustee cannot, or has not, done so. *See, e.g. Official Empl.-Related Issues Comm. of Enron Corp. v. Boots* (*In re Enron Corp.*), 2004 Bankr. LEXIS 2117 (Bankr. S.D. Tex. Dec. 1, 2004) ("In the Fifth Circuit, to be granted standing to act on behalf of the trustee, the committee must establish the existence of a colorable claim and an unjustifiable refusal by the trustee or debtor in possession to prosecute the claim. In addition, the committee must obtain leave of the bankruptcy court to sue on behalf of the estate. In its discretion, the court considers the benefit to the estate.") (citing *In re Louisiana World Exposition, Inc.*, 832 F.2d 1391, 1397 (5th Cir. 1987)). Enabling creditors to file otherwise meritorious, but unasserted claims on behalf of the estate will further maximize recoveries to defrauded investors.

Given the Receiver's pronouncements concerning likely recoveries, it appears that claims against third-parties that may have assisted or been complicit in the fraud will prove to be the best source of recoveries for defrauded investors. While the Receiver has asserted some claims against former Stanford Employees[11] and a limited number of other claims, he has yet to assert claims against the most obvious third-party targets, including the accounting firms, attorneys, and others who facilitated the Stanford fraud. It is essential that creditors, including the

---

[10] The extent to which such potential claims have been lost to the statute of limitations is unknown to the defrauded investors because they have been completely denied access to the records showing such transfers.

[11] *See* RECEIVER'S SECOND AMENDED COMPLAINT AGAINST FORMER STANFORD EMPLOYEES, FILED IN *JANVEY V. ALGUIRE, ET AL.*, Case no. 3:09-cv-0724-N, N.D. Tex. [Dkt. No. 156], Movants' Supplemental Appendix at p. 171. *See, e.g.*, DEFENDANT E. RANDOLPH ROBERTSON, JR.'S ORIGINAL ANSWER TO RECEIVER'S SECOND AMENDED COMPLAINT AGAINST FORMER STANFORD EMPLOYEES AFFIRMATIVE DEFENSES AND COUNTERCLAIMS, filed in *Janvey v. Alguire, et al.*, Case no. 3:09-cv-0724-N, N.D. Tex. [Dkt. No. 207], Movants' Supplemental Appendix at p. 197.

Movants, be afforded the opportunity to investigate such claims (preferably through coordination with the bankruptcy trustee, but through Bankruptcy Rule 2004 discovery if necessary) so that they can quickly file claims against third parties before the statute of limitations on *those* claims runs.[12]

Third, the Bankruptcy Code abrogates sovereign immunity for "governmental units"[13] for fraudulent transfer claims and certain other claims, 11 U.S.C. § 106, thus eliminating a significant defense that otherwise may limit investor recoveries from governmental defendants. That abrogation of sovereign immunity is particularly important in this case because of the allegations that Stanford made enormous illicit payments, loans, grants, and other monetary transfers to the government of the Commonwealth of Antigua and Barbuda ("Antigua").[14]

For at least these reasons, bankruptcy provides the better option for the pursuit of third-party claims.

V. Bankruptcy respects the defrauded investors' due process rights to participate in this process in ways that this receivership does not.

This Court cannot simply rely upon the Receiver and Examiner as stand-ins for the interests of the defrauded investors. Neither the Receiver nor the Examiner can represent the interests of all investors simultaneously. As but one example, some investors are "net winners,"

---

[12] The prosecution of these claims on behalf of the investors need not burden the estates. Many attorneys, including the undersigned counsel, have indicated a willingness to pursue such claims on a contingency-fee basis.

[13] "The term 'governmental unit' means United States; State; Commonwealth; District; Territory; municipality; foreign state; department, agency, or instrumentality of the United States (but not a United States trustee while serving as a trustee in a case under this title), a State, a Commonwealth, a District, a Territory, a municipality, or a foreign state; or other foreign or domestic government." 11 U.S.C. § 101(27).

[14] On or about July 13, 2009, certain Plaintiffs commenced an action against Antigua in the District Court for the Southern District of Texas, entitled *Frank, et al. v. The Commonwealth of Antigua and Barbuda*, which was subsequently transferred on or about November 13, 2009 to this Court (Case No. 3:09-cv-02165-N) seeking damages for Antigua's complicity in the Stanford fraud and to recover fraudulent transfers from Antigua related to its illegal expropriation of valuable and real property interests owned by Stanford on the island. Movants' Supplemental Appendix at p. 214. Antigua has not yet responded to the Complaint, but counsel expect that Antigua will assert sovereign immunity as a defense. One or more of the Stanford bankruptcy estates may be a proper co-plaintiff to that litigation.

and others "net losers," giving them divergent interests in "claw back" litigation.[15] The investors must be able to advocate their *own* interests, without being required to rely upon the Receiver or Examiner to speak for them.

Moreover, in the current process investors are often left entirely in the dark as to what actions are being taken purportedly on their behalf. Defrauded investors eagerly anticipated the scheduled January 21, 2010, hearing concerning the Antiguan Liquidators' chapter 15 petition. The hearing was simply cancelled, with no explanation given to the real parties in interest.[16] The defrauded investors are left with the distinct impression that the Receiver and his Antiguan counterparts are focused on their internecine legal warfare at the expense of a legal process that would involve the *true* parties in interest.

It is fundamental to a fair process – indeed to the American legal system – that the real individuals who have lost tremendous amounts of money, and who are suffering terribly, be given information about, and be able to participate in, a case that will grant and deny them rights. They *must* be afforded a say in who will represent their interests, and how. Bankruptcy would permit them to have that say.

If the case is filed as, or converted to, a case under chapter 7, the defrauded investors and other creditors would have the ability to elect a trustee to represent their interests. *They* are the

---

[15] *See* FIRST AMENDED COMPLAINT AGAINST CERTAIN STANFORD INVESTORS AND APPENDIX IN SUPPORT OF RECEIVER'S FIRST AMENDED COMPLAINT AGAINST CERTAIN STANFORD INVESTORS, filed in *Janvey v. Alguire, et al.*, Case no. 3:09-cv-0724-N, N.D. Tex. [Dkt. Nos. 128 & 129], Movants' Supplemental Appendix at p. 288; and see, e.g. ANSWER TO RECEIVER'S FIRST AMENDED COMPLAINT (INVESTOR DEFENDANTS), filed by investors Robert B. Crawford, et al., in Janvey v. Alguire, et al. Case no. 3:09-cv-0724-N, N.D. Tex. [Dkt. No. 242], Movants' Supplemental Appendix at p. 314. This Court already has recognized the conflict (or potential conflict) in connection with the "claw back" claims. *See* TRANSCRIPT OF PROCEEDINGS IN *JANVEY V. ALGUIRE, ET AL.*, July 31, 2009, at p. 11, Movants' Supplemental Appendix at p. 341 (this Court inquiring of the Examiner's view with respect to "the two subclasses of potential investors and their conflicting interests."). *See also id.* at pp. 13-14; Movants' Supplemental Appendix at p. 343-44 (Examiner advocating his view that the Receiver's "claw back" claims "are inequitable claims, even though they might….advantage some other [investors]").

[16] *See* Order of the Honorable David C. Godbey cancelling the January 21, 2010 hearing in *In re Stanford International Bank, Ltd.*, Case no. 3:09-cv-0721-N, N.D. Tex. [Dkt. No. 66], Movants' Supplemental Appendix at p. 382.

ones who will bear the benefits and burdens of this process, and they should be permitted to avail themselves of the mandatory creditor democracy that Congress embedded in the Bankruptcy Code.[17]

Moreover, contrary to what the Receiver and the Examiner suggest, increased creditor participation is a *positive* not a *negative.* The many defrauded investors who follow this case closely, and who have been advocating for victims' rights, will bring their own considerable knowledge and energies to bear in the effort to maximize recoveries, to seek out potential claims against third parties, and to sharpen the issues through vigorous advocacy. As reflected in the Declaration of Angela Shaw, Executive Director of the Stanford Victims Coalition, investors have lost confidence in the Receivership and strongly believe that their interests would be better protected in a bankruptcy proceeding. *See* Declaration of Angela Shaw, Movants' Supplemental Appendix at p. 1. With all due respect to the Examiner, the view of one man, appointed to represent the myriad interests of a varied and geographically diverse constituency, is not *and cannot be* a substitute for direct creditor participation in a case that determines their ability and right to recover enormous sums of money.

For these reasons, too, bankruptcy is superior to receivership.

CONCLUSION

The Movants respectfully request that this Court grant the Movants' motion for relief

---

[17] Under chapter 7 of the Bankruptcy Code, the United States Trustee may appoint an interim trustee. 11 U.S.C. § 701. Creditors in a chapter 7 case would then have the opportunity to elect a trustee of their choosing, 11 U.S.C. § 702, and creditors often choose to do so "where specific knowledge of a business is necessary to preserve assets or effectively administer the chapter 7 estate to maximize the return to creditors." *See* 6 COLLIER ON BANKRUPTCY ¶ 702.02. As previously noted, in a chapter 11 case, the Receiver could arguably continue to serve as the representative of the debtor in possession.

Nevertheless, while the Receiver is knowledgeable about Stanford's business, he does not always act in the victims' best interests. He has, for example, refused to cooperate with a Congressional panel investigating the matter, even though doing so could have helped the victims with their legislative efforts to obtain compensation. *See* Letter from Ralph S. Janvey to Sen. Christopher J. Dodd, dated August 12, 2009, Movants' Supplemental Appendix at p. 383. For this reason, too, the defrauded investors may conclude that the current Receiver is not the best person to represent their interests.

from the injunction contained in paragraph 10(e) of the Receivership Order. [18]

Dated: February 9, 2010

MORGENSTERN & BLUE, LLC

By: /s/ Gregory A. Blue
Peter D. Morgenstern (admitted *pro hac vice*)
Gregory A. Blue (admitted *pro hac vice*)
Rachel K. Marcoccia (admitted *pro hac vice*)
885 Third Avenue
New York, NY 10022
Telephone: (212) 750-6776
Facsimile: (212) 750-3128

LACKEY HERSHMAN, L.L.P
Paul Lackey
State Bar Number 00791061
3102 Oak Lawn Avenue, Suite 777
Dallas, Texas 75219
Telephone: (214) 560-2201
Facsimile: (214) 560-2203

Counsel for the Movants

[18] The Movants believe that, at a minimum, the injunction should be lifted with respect to a potential involuntary bankruptcy petition against SIBL and R. Allen Stanford. The SEC and the Receiver, however, have already moved to amend the Receivership Order to provide that the Receiver will *not* have exclusive authority to file an involuntary bankruptcy petition against Allen Stanford. JOINT MOTION OF THE SEC AND RECEIVER FOR ENTRY OF SECOND AMENDED ORDER APPOINTING RECEIVER AND APPENDIX IN SUPPORT OF JOINT MOTION OF THE SEC AND RECEIVER FOR ENTRY OF SECOND AMENDED ORDER APPOINTING RECEIVER [Dkt. Nos. 958 & 959], Movants' Supplemental Appendix at p. 7, and therefore do not appear to object to the filing of an involuntary bankruptcy petition against Mr. Stanford individually.

While the Examiner believes that the Movants should state at this time whether the various Stanford entities should be substantively consolidated, EXAMINER'S REPORT NO. 2, at p. 5, that determination cannot and should not be made at this time. "Whether the circumstances warrant substantive consolidation is a highly fact specific analysis that must be made on case-by-case basis." *In re E'Lite Eyewear Holding, Inc.*, 2009 Bankr. LEXIS 297, *8 (Bankr. E.D. Tex. Feb. 5, 2009). Because the Movants have thus far been denied access to the business records that contain information necessary to determine if substantive consolidation is warranted, the Movants are not in a position to make that determination at this time.

CERTIFICATE OF SERVICE

I hereby certify that on February 9, 2010, I caused the foregoing document to be electronically filed with the Clerk of the Court using the CM/ECF system, which will send notification of such filing to all counsel of record.

/s/ Gregory A. Blue
Gregory A. Blue