



## II. ARGUMENT

### A. **Holding an evidentiary hearing now would be unnecessary, premature, and wasteful of the Court's time and the Estate's resources.**

There is no issue ripe at this time for an evidentiary hearing, or consideration by the Court at all. Indeed, Ms. Stanford has not even filed a motion or other pleading asserting a claim for relief, the absence of which makes it impossible to hold a hearing to evaluate any claim to a community interest she might have.

A party requesting an evidentiary hearing must convince the Court that such a hearing is necessary and desirable. *See General Contracting & Trading Co., LLC v. Interpole, Inc.*, 899 F.2d 109, 115 (1st Cir. 1990). Ms. Stanford has not carried this burden. She has not identified any fact relevant to her claim which she believes to be in dispute, nor explained why an evidentiary hearing, or any consideration of her claim by the Court for that matter, is necessary or appropriate at this time.

Ms. Stanford's status as Allen Stanford's wife or ex-wife is not in dispute,<sup>2</sup> nor is the presumption that she is entitled to a community property interest in whatever community assets remain after the resolution of this case. The only issues in dispute concern whether the Vessels were procured by proceeds of the Stanford fraud, and the extent of that fraud is subject to ongoing investigation by the SEC, the DOJ, and the Receiver. If the Vessels were procured by proceeds of fraud, Ms. Stanford admits that she has no property interest in the Vessels nor the proceeds from their sale. *See* Doc. 1021 (admitting that Susan Stanford is "not [] entitled [to] any property that R. Allen Stanford obtained through fraud").

The Receiver is still investigating the source of the funds to purchase the Vessels, including working with banks and others to gather and analyze account information necessary to

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<sup>2</sup> Ms. Stanford's divorce from Allen Stanford is not final.

trace the flow of the proceeds of the Stanford fraud. While much has been learned, the Receiver has not yet been able to obtain and review information about accounts that he believes directly relate to the purchase of the vessels. Ms. Stanford has offered no evidence regarding this issue, and likely cannot. Thus, a determination of Ms. Stanford's interest can only be made once the Receiver is able to procure and analyze the necessary records.

Moreover, Ms. Stanford's claim relating to the Vessels is inherently intertwined with the question of how long ago the Stanford fraud began. If, as James Davis admits in his guilty plea, it extended as far back as the late 1980s, then Ms. Stanford's claim has no merit whatsoever.<sup>3</sup> The Receiver and his team are continuing to review the hundreds of thousands of documents generated by the people who participated in the Stanford fraud, all of which may generate evidence relevant to Ms. Stanford's claim. The Receiver's investigation, however, is far from over. As the Court said in its Order on March 8 (Doc. 1030), "[t]he alleged Stanford Ponzi scheme was intricate and complex, involving many entities and billions of dollars. This receivership began approximately one year ago, and will in all likelihood continue for years to come." Likewise, the ongoing SEC civil enforcement action and the criminal trial of Allen Stanford, which is not even scheduled until January 2011, will further define the nature and extent of the Stanford fraud and the benefits that Allen Stanford and Susan Stanford (knowingly or not) reaped from the scheme. Given the status of these parallel investigations and

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<sup>3</sup> Defendant James M. Davis has admitted that the Stanford fraud was a Ponzi scheme from the beginning. *See* Doc. 771 (Davis Plea Agreement) at ¶ 17(n) (Stanford, Davis, and other conspirators created a "massive Ponzi scheme"); *id.* at 41 ("Soon after [Mr. Davis] became Controller [of Allen Stanford's Montserrat bank]... in at least 1989... Stanford requested that, in order to show fictitious quarterly and annual profits, [Mr. Davis] make false entries into the general ledger for the purpose of reporting false revenues, and false investment portfolio balances to the banking regulators."); Doc. 807 (Davis Tr. of Rearraignment) at 19:18-21 ("As early as 1990, Mr. Davis... at the request of Allen Stanford, began... making false entries into the books and records of SIBL."); *id.* at 16:16-17, 21:6-8, 21:15-17 (admitting the Stanford Ponzi fraud was a "massive Ponzi scheme ab initio").

proceedings, it is impossible for the parties to present the necessary evidence to the Court to decide Ms. Stanford's claim at this time.

The appropriate time and place for consideration of Ms. Stanford's community property interest claim in the proceeds of the Vessels is as a part of the Receiver's claims and distribution process, which is subject to review and approval by the Court. The thousands of other victims of the Stanford fraud, none of whom were married to the mastermind of the scheme like Ms. Stanford, are having to wait patiently, and there is nothing more compelling about Ms. Stanford's circumstances that require a different result for her. Indeed, Ms. Stanford is in a far better position than the other victims, as the Court has ordered that the proceeds from the sale of the Vessels necessary to cover her claim be sequestered until the issue is resolved. *See* Doc. 1023. Thus, Ms. Stanford will suffer no harm by waiting for the appropriate time to have her claim resolved.

### **III. CONCLUSION AND REQUEST FOR RELIEF**

The Receiver requests that the Court deny Susan Stanford's Motion for Evidentiary Hearing on Susan Stanford's Right to Proceeds from Sale of Vessels, and requests such other relief the Court may deem just and equitable.

Dated: April 16, 2010

Respectfully submitted,

BAKER BOTTS L.L.P.

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**ATTORNEYS FOR RECEIVER  
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**CERTIFICATE OF SERVICE**

On April 16, 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. I hereby certify that I have served the Court-appointed Examiner, all counsel and/or pro se parties of record electronically or by another manner authorized by Federal Rule of Civil Procedure 5(b)(2).

/s/ Kevin M. Sadler

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