

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

SECURITIES AND EXCHANGE COMMISSION,	§	
	§	
Plaintiff,	§	
	§	
v.	§	Case No.: 3-09-CV-0298-N
	§	
STANFORD INTERNATIONAL BANK, LTD.,	§	
STANFORD GROUP COMPANY,	§	
STANFORD CAPITAL MANAGEMENT, LLC,	§	
R. ALLEN STANFORD, JAMES M. DAVIS, and	§	
LAURA PENDERGEST-HOLT,	§	
	§	
Defendants.	§	

**JOINT MOTION OF THE SEC AND RECEIVER FOR ENTRY OF
SECOND AMENDED ORDER APPOINTING RECEIVER**

Plaintiff Securities and Exchange Commission and Receiver Ralph S. Janvey request that the Court enter the Second Amended Order Appointing Receiver.

Factual Background

On February 17, 2009 the Court entered the Order Appointing Receiver. (Doc. 10). Within 10 days, the Receiver complied with the requirements of 28 U.S.C. § 754 by filing the Complaint and Order Appointing Receiver in 29 districts, located in 16 states, the District of Columbia, the Virgin Islands, and Puerto Rico. On March 12, 2009 the Court entered the Amended Order Appointing Receiver. (Doc. 157).

As a result of his investigation of the books and records of the Receivership Estate, the Receiver has learned that Receivership Assets and Receivership Records exist in additional districts where § 754 filings have not been made. The Court’s reappointment of the Receiver will permit him to complete § 754 filings in additional districts in furtherance of his duty to “[p]erform all acts necessary to conserve, hold, manage, and preserve the value of the

Receivership Estate, in order to prevent any irreparable loss, damage, and injury to the Estate.” Doc. 157 at 5, ¶ 5(g); *See Warfield v. Arpe*, 2007 WL 549467, *12-13 (N.D. Tex. 2007); Order Reappointing Temporary Receiver in Civil Action No. 3:02-cv-0605-R, filed 10/04/2006, attached at Appdx. 1-9.

Additionally, the Receiver has determined that in order for him to carry out his duties as receiver, it is not necessary for him to have the authority to file bankruptcy petitions on behalf of any of the individual defendants. Accordingly, the proposed Second Amended Order Appointing Receiver clarifies that the Receiver’s exclusive authority to file bankruptcy petitions applies only to the corporate, and not the individual, defendants.

Finally, despite the litigation injunction contained in the Amended Order Appointing Receiver, a number of lawsuits have been filed in state and federal courts against the Receiver, Estate entities, and defendants. Many of these have been stayed or referred to the MDL panel. However, a second wave of related litigation is now demanding significant resources from the Receiver, his professionals, and the Estate. Plaintiffs have filed lawsuits against former Stanford financial advisors and are taking the position that the litigation injunction does not apply to terminated employees. Because the Estate is in possession of documents relating to Stanford client accounts, the plaintiffs and defendants in these suits seek discovery from the Receiver. Responding to these requests will consume more and more Estate resources as additional cases are filed and proceed to trial.

There have now been more than 50 cases filed in state and federal courts that somehow relate to the sale of Stanford CDs or the Receivership. Six cases have named Pershing LLC (which was the clearing bank for Stanford Group Company) and four have named SEI Investments Co. (which provided trust services to Stanford Trust Co.) as defendants in five

different jurisdictions. A number of arbitrations have also been initiated against Pershing at FINRA. The contracts between Pershing and SGC and SEI and STC require the Estate to indemnify Pershing and SEI in these lawsuits and arbitrations. Despite the Estate's pecuniary interest in these cases, none of the them have been stayed pursuant to this Court's litigation injunction, either by agreement or court order. The Estate has already incurred some defense costs pursuant to the indemnity provisions and if these cases continue, or multiply, they will further deplete Estate resources. For example, after being referred to the MDL panel, one group of plaintiffs simply filed a second, almost identical lawsuit against Pershing in another jurisdiction; they refuse to stay the case and maintain that it is not appropriate for referral to the MDL panel.

Argument and Authority

The Fifth Circuit, and other Circuit Courts, have upheld repeatedly a district court's authority to enjoin the commencement, or even the continuation of pre-existing litigation, in other venues in order to protect the receivership and the receivership court's exclusive jurisdiction:

The district court may require all such claims to be brought before the receivership court for disposition pursuant to summary process consistent with the equity purpose of the court. The district court may also authorize, to the extent that the court deems appropriate, "satellite" litigation in forums outside of the receivership court to address ancillary issues. However, the receivership court typically retains jurisdiction over any attempt at execution of a judgment in such situations.

Liberte Capital Group, LLC v. Capwill, 462 F.3d 543, 552 (6th Cir. 2006) (citations omitted); see e.g., *Schauss v. Metals Depository Corp.*, 757 F.2d 649 (5th Cir. 1985); *S.E.C. v. Wencke*, 622 F.2d 1363 (9th Cir. 1980).

Because “[t]he receivership court has a valid interest in both the value of the claims themselves and the costs of defending any suit as a drain on receivership assets,” the court “may issue a blanket injunction, staying litigation against the named receiver and the entities under his control unless leave of that court is first obtained.” *Liberte Capital Group, LLC v. Capwill*, 462 F.3d 543, 551 (6th Cir. 2006). This injunction can even bind all non-parties with notice, far exceeding normal limits on the scope of injunctions. *See S.E.C. v. Wencke*, 622 F.2d 1363, 1369 (9th Cir. 1980). Furthermore, the power to enjoin “extends to the institution of any suit.” *Liberte Capital*, 462 F.3d at 551.

If the injunction so provides, leave of the receivership court must be obtained before suit can be brought against the receiver. *See In re Crown Vantage, Inc.*, 421 F.3d 963, 970–71 (9th Cir. 2005); *Seaman Paper Co. of Mass., Inc. v. Polsky*, 537 F. Supp. 2d 233, 236 (D. Mass. 2007); *Fed. Home Loan Mortgage Corp. v. Spark Tarrytown, Inc.*, 829 F. Supp. 82, 88 (S.D.N.Y. 1993). Failure to obtain leave of the receivership court deprives the second court of subject matter jurisdiction. *See Le v. S.E.C.*, 542 F. Supp. 2d 1318, 1321 (N.D. Ga. 2008).

In *Liberte Capital*, the district court had entered an injunction on litigation, but carved out a very narrow exception for litigation against the Receiver for cases challenging the validity of life insurance policies prior to the insured’s death. *Liberte Capital*, 462 F.3d at 549. Insurance companies initiated suits against the entities in receivership that did not fall within the narrow exception to the injunction, and the district court held them in contempt. The Sixth Circuit affirmed, emphasizing the district court’s exclusive jurisdiction over the receivership. *Id.* at 552.

Justice Anthony Kennedy, writing for the Ninth Circuit, has explained the practical reasons that such an injunction can be necessary and reasonable. It protects the

interests of the very persons enjoined from filing suit, and prevents the estate from becoming overwhelmed by the expenses of multiple lawsuits:

The receiver and the district court also felt it essential for the receiver to be given time to explore all the complex transactions and aspects of the receivership estate so that innocent shareholders suffered no further harm.

A receiver appointed by a court in the wake of a securities fraud scheme may encounter difficulties sorting out the financial status of the defrauded entity or entities. There may be a genuine danger that some litigation against receivership entities amounts to little more than a continuation of the original fraudulent scheme. Similarly, the securities fraud may have left the finances of the receivership entities so obscure or complex that the receiver is hampered in conducting litigation. Moreover, the expense involved in defending the many lawsuits which often are filed against an entity in the wake of a securities fraud scheme may be overwhelming unless some are temporarily deferred. A stay of proceeding against receivership entities except by leave of the court may be an appropriate response to the above concerns, and the district court did not abuse its discretion in this case by entering the blanket stay.

Wencke, 622 F.2d at 1373.

Even where the court entering the injunction was not the first in which suit was filed, the Fifth Circuit has vacated a two-year-old judgment and ordered that funds disbursed to the parties be paid back into the registry of the court. *Schauss v. Metals Depository Corp.*, 757 F.2d 649, 655 (5th Cir. 1985). A customer filed suit against MDC in the Northern District of Texas and MDC's bank was joined as garnishee. *Id.* at 651. Soon thereafter, a fraud suit was filed in the Southern District of New York. The New York court entered judgment against MDC, appointed a receiver, and enjoined the commencement of new suits and continuation of pending suits. *Id.* A second Texas suit was filed and the two Texas suits consolidated. Pursuant to 28 U.S.C. § 754 the New York receiver filed the New York order appointing him, but did not otherwise answer or enter an appearance in the Texas consolidated case. *Id.* at 652.

The Texas case then proceeded to bench trial and the court entered judgment disposing of the funds interpleaded by the bank as garnishee. *Id.* Two years later, the receiver moved to set aside the Texas judgment. The Fifth Circuit granted the motion in the interests of justice and comity between federal courts, to discourage duplicative litigation, and in furtherance of the important goal of preserving assets in receivership:

[S]everal courts have recognized the importance of preserving a receivership court's ability to issue orders preventing interference with its administration of the receivership property. In both securities fraud cases, and bankruptcy proceedings, Courts of Appeals have upheld orders enjoining broad classes of individuals from taking any action regarding receivership property. Such orders can serve as an important tool permitting a district court to prevent dissipation of property or assets subject to multiple claims in various locales, as well as preventing "piecemeal resolution of issues that call for a uniform result."

Id. at 654 (citations omitted).

Conclusion

For these reasons, the SEC and the Receiver ask the Court to enter their proposed Second Amended Order Appointing Receiver. For the Court's convenience a red-line comparing the proposed Second Amended Order Appointing Receiver and Amended Order Appointing Receiver (Doc. 157) has been filed at Appendix 10-21.

Dated: January 14, 2010

Respectfully submitted,

BAKER BOTTS L.L.P.

By: /s/ Kevin M. Sadler

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**ATTORNEYS FOR RECEIVER
RALPH S. JANVEY**

CERTIFICATE OF CONFERENCE

Counsel for the Receiver conferred with attorneys who have made appearances on behalf of parties to this case.

Counsel for the Receiver conferred with David B. Reece, counsel for the SEC, who stated that the SEC does not oppose the filing of this motion and relief sought herein.

Counsel for the Receiver provided the motion to Jeffrey M. Tillotson, counsel for Laura Pendergest-Holt, who stated that Ms. Holt opposes the filing of this motion and relief sought herein.

Counsel for the Receiver conferred with Ruth Schuster, counsel for R. Allen Stanford, who stated that Mr. Stanford opposes the filing of this motion and relief sought herein.

Counsel for the Receiver conferred with Manuel Lena, counsel for the DOJ (Tax), who stated that he does not oppose the filing of this motion and relief sought herein.

Counsel for the Receiver provided the motion to David Finn, counsel for James Davis, but has not received a response to requests to confer on this motion and relief sought herein.

Counsel for the Receiver conferred with John Little, Court-appointed Examiner, , who stated that he does not oppose the filing of this motion and relief sought herein.

Counsel for the Receiver conferred with Joe Kendall, counsel for Susan Stanford, who stated that Mrs. Stanford takes no position on the filing of this motion and relief sought herein.

/s/ Kevin M. Sadler
Kevin M. Sadler

CERTIFICATE OF SERVICE

On January 14, 2010 I electronically submitted the foregoing motion and the proposed order with the clerk of court for 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 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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