

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

| | | |
|-----------------------------|---|---------------------------------|
| LAURA PENDERGEST-HOLT, | § | |
| R. ALLEN STANFORD, GILBERTO | § | |
| LOPEZ, JR. and MARK KUHRT, | § | |
| <i>Plaintiffs,</i> | § | CIVIL ACTION NO.: 4:09-cv-03712 |
| | § | |
| v. | § | |
| | § | |
| CERTAIN UNDERWRITERS AT | § | |
| LLOYD’S OF LONDON and ARCH | § | |
| SPECIALTY INSURANCE | § | |
| COMPANY, | § | |
| <i>Defendants.</i> | § | |

STANFORD’S MOTION FOR CONTINUANCE

R. Allen Stanford, Plaintiff herein (hereinafter “Movant”), files this Emergency Motion for Continuance for the timeline imposed to Reply to Akin Gump, Strauss, Hauer, & Feld LLP’s (Akin Gump”) Response to Plaintiff’s Motion to Akin Gump from “within three days” to a longer time and for additional time to supplement Movant’s Motion to Disqualify. Movant respectfully shows the Court as follows:

INTRODUCTION

1. The Court at a June 10, 2010 telephone conference held that any Motion to Disqualify Underwriters’ counsel must be filed by June 17, 2010. “Exhibit A”
2. Movant asked for production of documents which was denied but this Court during a telephone conference on June 15, 2010 ordered that Movant must

file his motion for production of documents before Judge Godbey. The Court then extended the time Movant had to file his Motion to Disqualify Underwriters' counsel to: "within seven days of receiving such documents." "Exhibit B"

3. Movant filed a Motion for Production before Judge Godbey and it was granted in part and denied in part. Judge Godbey Ordered that "Receiver Ralph S. Janvey is authorized to produce to Robert S. Bennett the paper files concerning Akin, Gump, Strauss, Hauer & Feld, LLP's representation of Stanford International Bank, Ltd. and its affiliated entities, that were at the time the Motion was filed, in the possession of Akin, Gump, Strauss, Hauer & Feld, LLP ("Akin Gump") and which are now in the Receiver's possession (the "Documents")." "Exhibit C"

4. Movant received some documents from Akin Gump on June 22, 2010. The documents constituted three bankers boxes. However, billing was not included as part of the documents delivered. "Exhibit D"

5. Akin Gump provided some but not all billing documents via email on June 24, 2010. McLean Pena from Akin Gump via email stated that "certain invoices for matter number 160035, ranging from 2001 to 2003 are stored in back-up system and are being retrieved." "Exhibit E"

6. Akin Gump provided the remaining billing statements on Friday June 25, 2010. "Exhibit F"

7. On June 29, 2010, Movant filed a Motion for expedited discovery that was denied. There are apparently thousands of emails that are probative of the

issues involving Akin Gump's representation of R. Allen Stanford. The Movant has, so far, been denied access to this treasure trove of evidence showing the attorney-client relationship that existed between R. Allen Stanford and Akin Gump.

8. Movant is aware the Court wants to have the Coverage hearing expeditiously as ordered by the Fifth Circuit, and that the Court has advised the parties that it will not adjust the deadlines for discovery, motions and trial announced in previous hearings in this case. However, in order to preserve Mr. Stanford's rights Mr. Stanford submits the following.

ARGUMENT

Mr. Stanford has not had sufficient time to review all the documents relevant to the disqualification of Akin Gump and would need more time to do so. More time is requested to supplement the Motion to Disqualify due to Mr. Stanford's condition, and the complexity of the transactions Akin Gump attorneys were involved in on behalf of Mr. Stanford. For those same reasons, more time is requested to Reply to Akin Gump's Response since Movant can reasonably expect that three days will not be sufficient time for Movant to assist in the construction of the Reply.

Stanford's Condition

Mr. Stanford, a man who is presumed to be innocent, is being, and has been, subjected to substantial and undeniable punishment long before the trial of his criminal case has even begun. The adverse conditions of his pretrial detention

not only impair his ability to assist his counsel in the criminal case, but also in the civil coverage case. Mr. Stanford has been physically assaulted; he has suffered significant medical injury and psychological debilitation; he was held in solitary confinement two separate times for a total of 40 days; he has been subjected to 335 days of pretrial incarceration as of May 18, 2010. Pivotaly, he has, and will continue to have his constitutional rights compromised, including his fundamental right to assist counsel in the preparation of not only his criminal defense, but also civil coverage defense. These injustices have materially affected Mr. Stanford's ability to personally review documents including those provided by Akin Gump. Mr. Stanford's core cognitive faculties have been diminished by unnecessary conditions of confinement in a high-security prison which, in a myriad of ways detailed, have prevented and will prevent him from preparing for both his criminal trial and civil trial before this Court, as well as his Motion to Disqualify and his anticipated Reply.

On June 18, 2009, when Mr. Stanford surrendered to authorities, he was a healthy 59 year-old man, with no substantial physical or mental health issues. Now, more than one year in detention later, Mr. Stanford's pretrial incarceration has reduced him to a wreck of a man. Of critical importance is the deterioration in Mr. Stanford's physical and mental health since his detention on June 18, 2009. To briefly summarize, a savage beating by another inmate left Mr. Stanford with right orbital fractures, fractures of the nose, and severe nerve trauma, which required reconstructive surgery under general anesthesia and has left him without normal

sight in one eye and without sensation in a portion of his face. [REDACTED]

[REDACTED]
[REDACTED] Mr. Stanford was taken into the operating room, for both surgeries, with handcuffs secured by a chain around his waist and his feet shackled. [REDACTED]

[REDACTED]
[REDACTED].
Since that time, Mr. Stanford's physical and mental health has continued to deteriorate markedly, as described in the Declaration of Victor R. Scarano,

[REDACTED] and is currently prescribed [REDACTED]

[REDACTED]
[REDACTED]
[REDACTED] He remains in the throes of a major depression, which is becoming progressively more debilitating, the symptoms of which include

1. Disheveled appearance and he had not shaved in several days.
2. Unable to sleep without the aid of the [REDACTED].
3. Energy level is low, does not want to get out of bed in the morning, feels like he has to drag himself around, and has not exercised.

¹ See Exhibit "G", Scarano Declaration at 3-4. (Filed Under Seal)

4. Unable to concentrate, short term memory is poor and is getting worse, and complains of memory gaps.
5. No appetite but forces himself to eat.
6. Exhibits psychomotor retardation with slow thinking and decreasing mental sharpness.
7. Denies suicidal thoughts but worries that when he falls into one of the black depressive holes he will be unable to come back.²

In addition, counsel have noted during their legal visits that Mr. Stanford “appeared physically and mentally exhausted, . . . slow in his speech and thoughts,” and “had difficulty with reading and near vision in his right eye, and he often had to pause while reading and writing due to described ‘splitting headaches’ over his right forehead.”³ Dr. Nguyen has also observed that Mr. Stanford “often repeated the same sentences and topics during the course of a single visit . . . forgot that he discussed the exact topics during prior visits,” has “continuing deterioration of his mental and emotional well-being . . . and his mental anxiety and depression have increased.”⁴ Additionally, Dr. Nguyen, who is also a licensed attorney, has “witnessed [mental black hole] episodes firsthand where in the middle of a discussion, Mr. Stanford will immediate[ly] cease speaking mid-conversation, appearing lost with a glazed look in his eyes staring at the wall

² See Exhibit “G”, Scarano Declaration at 6.

³ See Exhibit “H”, Nguyen Declaration at 2.

⁴ See Exhibit “H”, Nguyen Declaration at 2.

without focus, only to refocus seconds to minutes later asking what was being discussed.”⁵ In short, Mr. Stanford is far from the man he was in June 2009.⁶

Debilitated as he was then, Mr. Stanford’s cognitive functioning and mental health have markedly deteriorated since February 2010; his short, intermediate, and long-term memory has worsened and his mental anxiety and depression have

⁵ See Exhibit “H”, Nguyen Declaration at 3.

⁶ Other attorneys have also witnessed the similar experiences with Mr. Stanford. See Exhibit “I”, Tse Declaration at 2-3:

“I have personally witnessed Mr. Stanford begin speaking, then stop mid sentence to stare at a wall, then completely forget what we were discussing prior to his memory lapse. We will have a conversation one meeting, and hours later he completely forgets we ever had a conversation. It is noticeable that Mr. Stanford’s cognition has deteriorated, even to a non-physician, over the short duration I have been working with him. I believe Mr. Stanford’s deteriorating behavior is organic as I can see his frustration and conscious effort to fight back tears when trying to remember something he wanted to tell me, but is unable to recall the information.”

“Not only unable to recall names and recognize people he sees frequently, I have personally witnessed Mr. Stanford forget his inmate id number. During one visit, the officers called him out of the attorney-client room for counts; this happens daily and is standard protocol. The inmate is supposed to say his name, and repeat his inmate id number. Mr. Stanford was only able to say his name and could not remember his id number. After a minute, one of the officers told him, ‘your number starts with a three.’ Mr. Stanford was still unable to remember his number. After another two minutes, the other officer then stated, ‘there is a five in your number too.’ Mr. Stanford then guessed that his inmate number was ‘35183-381.’ The officers told Mr. Stanford it was ‘close enough, you better sit down.’ Mr. Stanford’s number is 35017-183. Mr. Stanford was barely able to speak and could not form a coherent sentence the entire meeting. Even one of the officers that day asked me if Mr. Stanford was okay, because it appeared as if he was being mentally worked ‘too-hard’.”

increased.⁷ Mr. Stanford experiences “mental black holes” which occur when he is awake and aware but cannot remember anything and is disoriented mentally and physically. Dr. Nguyen has witnessed a number of such episodes, which have been occurring with greater frequency and greater duration as time goes on.⁸ Other legal personnel, such as, attorney Ms. Ashley Tse and legal assistant Ms. Evelyn Saravia, have witnessed similar episodes.⁹ [REDACTED]

[REDACTED]

which have significantly affected Mr. Stanford’s mental acuity and responsiveness while doing little to alleviate his major depressive disorder and anxiety.¹⁰ Mr. Stanford’s ability to assist counsel is further exacerbated by his inability to sleep [REDACTED] if he does not take the medications, his lack of sleep will render him effectively nonfunctional

⁷ See Exhibit “G”, Scarano Declaration, attachment “C”, Dr. Ducker’s report; Exhibit “H”, Nguyen Declaration at 2; Exhibit “I”, Tse Declaration at 2; Exhibit “J”, Saravia Declaration at 3-6; Exhibit “K”, Hefele Declaration at 2; Exhibit “L”, Parish Declaration at 2.

⁸ See Exhibit “H”, Nguyen Declaration at 2.

⁹ See Exhibit “I”, Tse Declaration at 2; Exhibit “J”, Saravia Declaration at 3 stating:

“Although he is able to retain some information, he repeats himself constantly. He forgets too many things that are trivial; he simply forgets too much for a man who used to have a total recall of events and places. Although he almost always remembers my name and who I am, he has missed recalling some of my colleagues’ names, whom he meets with often. He could be in the middle of a sentence, making perfect sense, and all-of-a-sudden would pause, starring at the wall with a lost look on his face, and unable to continue with his statement because he had forgotten what he was trying to say. He would also forget setting up meetings with people even if set from one day to the next.”

¹⁰ See Exhibit “H”, Nguyen Declaration at 2.

and if he does take the medication, as he has chosen to do, he can sleep, but the medications “hinder mental function acuity causing problems with memory, concentration and mental sharpness.”¹¹ In other words, whichever choice Mr. Stanford makes – medication or no medication – will result in his sharply diminished ability to review the discovery documents and otherwise assist counsel in the preparation of his defense and clearly impair the ability to look through the documents recently delivered by Akin Gump within seven days. In Dr. Scarano’s opinion:

Mr. Stanford’s physical and mental health is continuing in a downhill course which will end in his complete collapse physically and mentally the longer he is kept incarcerated at the FDC. Thus, in my opinion to a reasonable degree of medical certainty, in his present mental and physical state, Mr. Stanford is not capable of properly preparing for trial either in September 2010 before Judge Atlas nor in January 2011 before Judge Hittner.¹²

Because Mr. Stanford is needed to assist Counsel in reviewing the documents delivered by Akin Gump in order to find the scope of the conflict of interest, and because Mr. Stanford’s condition is such that a fast turn around such as seven days was very difficult, Movant asks the Court for additional time to supplement his Motion to Disqualify Underwriter’s Counsel, Akin Gump, and for an additional time to reply to Akin Gump’s Response.

¹¹ See Exhibit “G”, Scarano Declaration, attachment “B”, Letter to Mr. Bennett and Mr. Essmyer dated April 25, 2010 at 2.

¹² See Exhibit “G”, Scarano Declaration at 6-7; Exhibit “G”, Scarano Declaration, attachment “B”, Letter to Mr. Bennett and Mr. Essmyer dated April 25, 2010 at 5.

Conditions at the FDC

Moreover, Mr. Stanford has been for the entire 335 days of his ongoing critical pretrial period deprived of the requisite confidentiality of his discussions with his attorneys by enforced institutional review of every document which his attorneys wished to discuss with him during their meetings.¹³ The lack of privacy at the Federal Detention Center (“FDC”), and many distractions at the FDC and other conditions of the FDC make it difficult for Movant to file a reply within three days. Therefore, Movant asks for more than three days to file its Reply and for the same reason Movant asks for additional time to supplement its Motion to Disqualify.

There is a lack of privacy at the FDC during Attorney-Client meetings and it hinders progress of document review and does not encourage discussion. On multiple occasions during attorney-client meetings, Mr. Stanford, his attorneys and legal staff were put in a room which was adjoining a library. The two rooms were separated by a wall which had an approximate one foot by three foot opening, “a hole in the wall,” leaving the meeting room entirely exposed. The opening allowed both Mr. Stanford and his attorneys to look and listen to activities/conversations in the library and for the persons in this library to look and listen into activities/conversations in the “attorney-client” meeting room. At one point a woman appeared in the other room and was going through books in the library. She was in the other room, but was only about eight feet away from the

¹³ See Exhibit “H”, Nguyen Declaration at 2-6.

table where Mr. Stanford and his legal team discussed private attorney-client information. She was clearly visible from the “attorney-client” room since she was standing right in front of the “hole in the wall/window opening.” Moreover, her walkie-talkie was audible from the attorney-client room. This is one example of the difficulty encountered in meeting with Mr. Stanford on a routine basis. Additionally, because of the health condition of Mr. Stanford, he has difficulty regaining focus and overcoming his frustration of constantly being observed even when he is in an attorney-client meeting.

Furthermore, Mr. Stanford should not be limited to only reviewing documents provided for by Akin Gump. He should be able to do his own independent research of Akin Gump’s conflict and his lack of internet connection is impairing him from doing so. Eric Hammonds a supervisory attorney at FDC has clarified that there is not a computer permanently assigned to Mr. Stanford, making it even more difficult for him to review documents. “Exhibit M”

Furthermore, Mr. Stanford’s pretrial detention is impeding Mr. Stanford’s ability to prepare effectively for this civil trial or the criminal trial. Before Congress enacted the nation's first pretrial preventive detention law in 1984, many congressmen and senators were concerned lest it deny defendants their Eighth Amendment right to bail. The nightmare scenario that worried many lawmakers was the spectre of a presumptively innocent defendant locked up for “months” while awaiting trial. Supporters of the Bail Reform Act assured such skeptics that this nightmare could never come to pass, so long as our courts sit.

That nightmare has become a reality for Mr. Stanford. Even the law's most vocal critics would never have imagined that the circumstances in which Mr. Stanford finds himself – denied his liberty for more than two years prior to verdict, subjected to physical brutality and mental erosion as documented herein, and largely deprived of any meaningful opportunity to review materials provided in discovery and to assist his counsel in the preparation of his defenses – could be reconciled with the statute Congress enacted and found to be consistent with the Constitution, the provisions of which ultimately govern the treatment of defendants awaiting trial for crimes of which they are presumed innocent.

Because of this lack of privacy, constant distractions, and restriction of freedom, the conditions of the FDC are not as productive as sought, and Mr. R. Allen Stanford asks this Court for a continuance on the time to Reply to Akin Gump's Response and for additional time to file a supplement to Movant's Motion to Disqualify. *See* Albert W. Alschuler, *Preventive Pretrial Detention and the Failure of Interest-Balancing Approaches to Due Process*, 85 Mich. L. Rev. 510, 516 (Dec. 1986) ("incarceration affects a defendant's appearance and impedes his ability to consult lawyers, locate witnesses, and otherwise prepare a defense. The available empirical studies of effects of detention may not be conclusive, for perfect controls are unattainable. Nevertheless, these studies strongly suggest that pretrial incarceration makes both conviction and a severe sentence more likely").

Simultaneously defending a criminal case

Because Mr. Stanford has to simultaneously defend himself in a criminal action, while also defending himself against claims of money laundering and review of documents for a Motion to Disqualify, more time is requested for Movant's Reply timeline and/or additional time to Supplement.

Mr. Stanford currently has a pending a bail release motion raising significant Constitutional issues regarding his continued detention which make it impossible to adequately review the immense volume of discovery – *one of the most voluminous in the history of federal criminal prosecutions* – in the very limited time available before trial, to educate his counsel regarding the meaning and significance of the documents provided in discovery, as well as other aspects of the government's case, to identify the documents that will advance his defenses, and to locate discovery documents that are exculpatory.

Because Mr. Stanford not only has to review documents for the Motion to Disqualify, coverage case money laundering allegations, and 21 counts alleged against him in the criminal case, Movant asks this Court for more time to file its Reply and/or supplement his Motion to Disqualify.

Complexity of Financial Analysis

Akin Gump was involved in complex financial transactions on behalf of Mr. Stanford, Stanford Financial Group, and/or related entities. Therefore, Mr. Stanford's personal review of the documents is crucial to counsel's understanding of the numerous financial and business records provided by Akin Gump and to

understand the scope of Akin Gump's conflict of interest. Moreover, the personal review of these documents by Mr. Stanford is essential in order to determine whether Akin Gump through its many transactions conducted on behalf of Stanford, Stanford Financial, and/or related entities gained knowledge to financial information relevant to the money laundering accusations it now makes. Because a complete review of all documents provided by Akin Gump by Movant was unable to occur within the Court's seven day period, more time is needed to supplement Movant's Motion and/or more time is needed to Reply to Akin Gump's response.

The documents delivered by Akin Gump are not self-explanatory and are difficult or even impossible to understand without the guidance of Mr. Stanford, with his detailed knowledge of the workings of the worldwide Stanford-related companies. Mr. Stanford can, for example, call counsel's attention to documents which are of significance to the Motion to Disqualify which counsel might otherwise overlooked. He can explain to counsel the context of the various documents and what they mean in that context, as well as the relationships between various transactions and businesses, which counsel may be unable to discern without Mr. Stanford's direct guidance and assistance. The same applies to the emails that should be provided.

Furthermore, in light of the new documents which need to be reviewed by Mr. Stanford and his legal team, more time is needed to complete a thorough analysis and determine the scope of the conflict between Akin Gump and

Stanford, Stanford Financial Group and related entities. For example, Akin Gump provided documentation of a transaction involving a “roll up” of several companies which dealt with FCC telecommunication licensing. The documentation that Movant had in its possession only showed records spanning from 2000 to 2002, however Akin Gump provided documents from 1998. Two additional year’s worth of documentation.

In order to review complex deals of significant magnitude that lasted over several years to determine if confidential financial information was given to Akin Gump or available to Akin Gump presenting a conflict of interest, more than seven days was needed, and therefore, Movant asks the Court for time to supplement its Motion to Disqualify. Additionally, because of the nature of the complexity, Movant asks the Court for additional time to Reply to Akin Gump’s Response.

CONCLUSION

Because of Mr. Stanford’s condition, the conditions at the FDC, the criminal case that Mr. Stanford has to prepare for, and the complexity of the documents that are being reviewed for the scope of conflict between Akin Gump and Stanford, Stanford Financial Group and affiliates, Movant respectfully asks this Court to extend the time for Movant to file his Reply from “within three days” of Akin Gump filing their Response, and to allow for time to supplement Movant’s Motion to Disqualify. The Movant also request that all relevant emails be provided.

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ORDER

Upon consideration of the Plaintiff’s Motion for Continuance, the responses and replies thereto, the evidence submitted by all parties, and the arguments of counsel, the Court is of the opinion that the Motion should be GRANTED in its entirety and Stanford is allowed _____ additional days to file its Reply to Akin Gump’s Response, is granted ____ time to supplement his Motion to Disqualify, and all emails between Akin Gump and R. Allen Stanford, Stanford Financial Group, Stanford International Bank, and related entities are ordered to be produced.

SIGNED at Houston, Texas, this _____ day of _____, **2010**.

Nancy F. Atlas
United States District Judge

CERTIFICATE OF CONFERENCE

I certify compliance with the Court's procedures regarding Certificate of Conference. Atlas J, S.D. Tex., (Houston) Loc. R. 6 (A)(2). On June 29, 2010, I sent Barry Chasnoff and Neel Lane a similar copy of this Motion for Continuance. "Exhibit N" A telephone conference regarding the document request was made on June 9, 2010 as well, but no response has been forthcoming.

July 3, 2010

Respectfully Submitted,

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