

(I) Establishing Bar Date for Claims; (ii) Approving Form and Manner of Notice Thereof; and (iii) Approving Proof of Claim and Related Forms and Procedures for Submitting Proofs of Claim (“Amended Motion re Claim Process”).

II. INTRODUCTION¹

A. The U.S. Receivership

This case arises out of a multibillion-dollar Ponzi scheme perpetrated by the Stanford companies (“Stanford”), a network of some 130 entities in 14 countries controlled by R. Allen Stanford. According to the SEC, the companies’ core objective was to sell certificates of deposit (“CD’s”) issued by Stanford International Bank Limited in Antigua (“Stanford Bank”). Stanford achieved and maintained a high volume of CD sales by promising above-market returns and falsely assuring investors that the CDs were backed by safe, liquid investments. For almost 15 years, the Bank represented that it consistently earned high returns on its investment of CD sales proceeds, ranging from 13.93% in 1994 to 12.7% in 2007. In fact, however, the Bank had to use new CD sale proceeds to make interest and redemption payments on pre-existing CDs because it did not have sufficient assets, reserves, and investments to cover its liabilities.

The SEC filed suit against R. Allen Stanford, Stanford Bank, and related companies on February 16, 2009. At the SEC’s request, this Court issued a temporary order restraining the payment or expenditure of funds belonging to the Stanford parties. This Court also appointed Ralph S. Janvey as Receiver (“the U.S. Receiver”) for the Stanford interests and granted him the power to conserve, hold, manage, and preserve the value of the receivership estate. On March 2, 2009, this

¹ The “U.S. Receivership” portion of this “Introduction” is taken largely verbatim from the Fifth Circuit’s opinion in *Janvey v. Adams*, 588 F.3d 831, 833 (5th Cir. 2009).

Court issued a preliminary injunction prohibiting any disbursement of funds or securities in the name, on behalf of, or for the benefit of the Stanford entities. As a result of the receivership order and the preliminary injunction, Movants' investment accounts were frozen.

B. The Antiguan Liquidation

On February 19, 2009, the banking regulatory authorities in Antigua, where Stanford Bank is domiciled, appointed joint receivers-managers for Stanford Bank.²

On April 17, 2009, The Eastern Caribbean Supreme Court in the High Court of Justice, Antigua and Barbuda (the "Antiguan Supreme Court") instituted a liquidation proceeding for Stanford Bank under Antiguan law on, and appointed the joint receivers-managers as Liquidators ("the Antiguan Liquidators").³

On April 20, 2009 the Antiguan Liquidators filed their (ECF No. 4) *Petition for Recognition of Foreign Main Proceeding Pursuant to Chapter 15 of the Bankruptcy Code* ("Petition for Recognition") in *Case 00721* seeking "entry of an order recognizing the Antiguan Proceeding as a foreign main proceeding pursuant to section 1517 of the Bankruptcy Code."⁴

Since the filing of the Petition for Recognition, the U.S. Receiver and the Antiguan Liquidators have been locked in a pitched battle over which of them would control management and disposition of the Receivership Estate, duplicating efforts, and together expending tens of millions of dollars of the Receivership Estates assets pursuing parallel but crushingly territorial agendas—openly challenging the other's authority in courts around the world, all to the detriment of

² ECF No. 4, *Petition for Recognition of Foreign main Proceeding Pursuant to Chapter 15 of the Bankruptcy Code* at 2 in *In re: Stanford International Bank, Ltd.*, Case No. 3:09-cv-00721-N (N.D. Tex.) (Hereinafter "Case 00721").

³ *Id.*

⁴ *Id.* at 1.

Movants and the Receivership Estate. The most recent iteration of this battle is pending before this Honorable Court in the form of the Receiver's (ECF No. 1546) Amended Motion re Claim filed in this action and the Antiguan Liquidators' (ECF No. 158) *Joint Liquidators' Advisory of Objections to Receiver's Amended Motion for Entry of an Order (I) Establishing Bar Date for Claims; (II) Approving Form and Manner of Notice Thereof; and (III) Approving Proof of Claim and Related Forms and Procedures for Submitting Proofs of Claim* ("Advisory of Objections") in Case 00721. Movants respectfully request (beg) the Court to end the logjam.

III. ARGUMENT AND AUTHORITIES

A. Introduction

To begin with, it should be noted that the Receiver did consult with Movants' counsel regarding the issues raised in Movants (ECF No. 1486) objections to the Receiver's (ECF No. 1473) *Motion for Entry of an Order (I) Establishing Bar Date for Claims, (II) Approving Form and Manner of Notice Thereof, and (III) Approving Proof of Claim Form and Procedure for Submitting Proofs of Claim*. The Receiver was advised that the Receiver's (ECF No. 1546) Amended Motion re Claim Process addressed Movants' concerns. Nevertheless, Movants now believe that a single claims process is the best approach.

B. Jurisdiction

The U.S. Receiver is clearly subject to this Court's jurisdiction insofar as the U.S. Receiver is "working in effect for the court that appointed or approved him."⁵ The Antiguan Liquidators have invoked the jurisdiction of this Court by filing their Petition for Recognition as well as their

⁵ *In re Linton*, 136 F.3d 544, 546 (7th Cir. 1998); see *Carter v. Rodgers*, 220 F.3d 1249, 1252-53 (11th Cir. 2000).

Advisory of Objections. And even if the Court is without jurisdiction to order the Antiguan Liquidators to agree upon a claims process, the Court is clearly empowered to order the Receiver to do so. Movants believe that an order directing the parties to sit down and develop a single claims process would result in single claims process.

This Honorable Court has “has broad powers and wide discretion to determine the appropriate relief in an equity receivership.”⁶ Therefore, “[a]ny action by a trial court in supervising an equity receivership is committed to his sound discretion and will not be disturbed unless there is a clear showing of abuse.”⁷

It is undeniable that the Receivership Estate would realize significant cost savings from a single claims process. Almost more importantly, however, thousands of claimants would avoid the unnecessary duplication of claim submissions.

As noted above, the Receiver is acting as an officer of the Court in managing the Receivership Estate. Nevertheless, Movants are unaware of any effort by the Receiver or his counsel, ever, to sit down with the Court and the Antiguan Liquidators and work in a collaborative manner towards a single claims process for the benefit of the Stanford Bank depositors who have lost billions of dollars, notwithstanding that the two combined actions (the Receivership and the Liquidation) have consumed in excess of \$150,000,000 of the assets of the Receivership Estate. Movants respectfully submit that something is terribly wrong here—this simply should not have been that hard. Unfortunately, it appears that it will take firm and unambiguous action by the Court to right this ship.

⁶ *SEC v. Safety Fin. Serv.*, 674 F.2d 368, 372-73 (5th Cir. 1982) (quoting *SEC v. Lincoln Thrift Assoc.*, 577 F.2d 600, 606 (9th Cir. 1978) with approval).

⁷ *SEC v. Arkansas Loan & Thrift Corp.*, 427 F.2d 1171, 1172 (8th Cir. 1970).

**IV.
CONCLUSION**

Movants respectfully move the Court to order the Receiver, the Antiguan Liquidators, the Examiner, the Investors Committee, and the Movants to appear at the courthouse for a day-long meeting and for the purpose of reaching an agreement on a single claims process. In the event an agreement is not reached, Movants respectfully move the Court fashion a single claims process.

Respectfully submitted

/s/ Stephen F. Malouf

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CERTIFICATE OF SERVICE

The undersigned does hereby certify that on April 26, 2012, the foregoing document was electronically transmitted to the clerk of the court and all counsel of record using the ECF system for filing and service in accordance with this court's ECF order.

/s/ Sarah Shulkin

Sarah Shulkin

CERTIFICATE OF CONFERENCE

The undersigned hereby certifies that on April 26, 2012 he sought the agreement of the Receiver and the Antiguan Liquidators on the relief requested herein. The Receiver did not respond. The Antiguan Liquidators advised that they are not parties to this action and suggested that this same motion be filed in *In re: Stanford International Bank, Ltd.*, Case No. 3:09-cv-00721-N (N.D. Tex.), to which they are parties, so that they may formally respond.

/s/ Stephen F. Malouf

Stephen F. Malouf

Position of other interested parties:

Counsel for Movants have consulted with counsel for several thousand other investors on the relief requested herein. Every attorney who has responded has advised that he/she do not oppose the relief requested. As of 4:00 p.m. on April 26, 2012, those attorneys are:

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Counsel for Movants believe that other attorneys will step forward in support of this motion and counsel will advise the Court as soon as such support is received.