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

SECURITIES AND EXCHANGE COMMISSION, Plaintiff, - against - STANFORD INTERNATIONAL BANK, LTD., *et al.*, Defendants.	:	Civil Action No. 3:09-CV-0298-N
IN RE: STANFORD INTERNATIONAL BANK, LTD., Debtor in a Foreign Proceeding	:	Civil Action No. 3:09-CV-0721-N

NONPARTY PROSKAUER ROSE LLP'S RESPONSE AND OBJECTION TO THE AMENDED JOINT MOTION OF THE SEC, RECEIVER, EXAMINER, AND OFFICIAL STANFORD INVESTORS' COMMITTEE TO APPROVE SETTLEMENT AGREEMENT AND CROSS-BORDER PROTOCOL

Non-party Proskauer Rose LLP ("Proskauer") respectfully submits this response and objection to the Amended Joint Motion of the SEC, Receiver, Examiner, and Official Stanford Investors Committee ("Investors Committee") to Approve Settlement Agreement and Cross-Border Protocol ("Joint Motion") filed in the above-captioned actions on March 12, 2013, pursuant to the Court's March 18, 2013 order.

PRELIMINARY STATEMENT

In the Joint Motion, this Court is being asked to sanction a settlement scheme that would permit the movants simultaneously to pursue the same lawsuit, asserting the same claims on behalf of the same party in two different jurisdictions. Such a scheme creates a real and substantial risk that Proskauer, along with certain other defendants or potential defendants, would be forced to defend an action against the Receiver in the U.S. District Court for the Northern District of Texas, and then defend essentially the same action against the Joint Liquidators ("JLs") in Antigua. Those two actions would assert the same causes of action on behalf of the same entity. This result creates the possibility of inconsistent judgments, and in any event would entail a waste of judicial resources and the resources of the parties. Accordingly, Proskauer respectfully requests that the Court deny the Joint Motion. In the alternative, the Court should strike section 3.1 of the proposed Settlement Agreement and Cross-Border Protocol (the "Settlement Agreement") and keep in force the terms of its July 30, 2012 Order enjoining the JLs from pursuing claims in foreign jurisdictions that duplicate claims already brought by the Receiver in the United States.

BACKGROUND

Subsequent to the collapse of the Stanford group of companies, in February 2009 this Court "assume[d] exclusive jurisdiction and [took] possession of the assets, monies, securities,

property . . . and the legally recognized privileges . . . of a number of people and entities," including Stanford International Bank, Ltd. ("SIB"), and appointed Ralph S. Janvey as Receiver for the property of the Stanford estate. (Order Appointing Receiver, No. 10,[1] amended March 12, 2009 and July 19, 2010.) That order provided that the Receiver has "exclusive" authority to "manage and direct the business and financial affairs" of the Stanford entities and to "recover judgment with respect to persons or entities who received assets or records traceable to the Receivership Estate." (Second Amended Order Appointing Receiver, No. 1130 at ¶¶ 5(c), 6.).

In May 2011, Hugh Dickson and Marcus Wide were appointed by the Eastern Caribbean Supreme Court in the High Court of Justice of Antigua and Barbuda ("Antigua Supreme Court") as Joint Receivers-Managers and Liquidators of all the undertaking, property and assets of SIB.[2] (Order, Appointment of New Liquidators, In the Matter of Stanford International Bank Ltd, Eastern Caribbean Supreme Court, The High Court of Justice, Antigua and Barbuda, May 12, 2011.) Pursuant to that appointment, the Antigua Supreme Court authorized the JLs to "administer SIB's assets and affairs wheresoever they may be found in the world" and "bring any proceeding or action…for the purpose of fulfilling their duties." (Id.) On July 30, 2012, this Court rejected the JLs' motion for recognition of the proceedings in Antigua as a foreign main proceeding and recognized the Antiguan proceedings as a foreign nonmain proceeding. (July 31, 2012 Order, In re Stanford International Bank, Ltd. 3:09-cv-00721-N, No. 76) ("July 31, 2012 Order"). The Court granted to the JLs limited relief, permitting them to examine witnesses and take evidence regarding SIB's assets, affairs, rights, obligations or liabilities. (Id. at 53.) The

[1] Unless otherwise indicated, docket entries refer to filings in S.E.C. v. Stanford Internat'l Bank, Ltd., 3:09-CV-0298-N.

[2] Nigel Hamilton-Smith and Peter Wastell were previously appointed by the Antiguan Supreme Court as receivers-managers and joint liquidators of SIB but were removed in June 2010 due to improper conduct with respect to recognition proceedings in Canada.

July 30, 2012 Order also precluded the JLs from "duplicating efforts by the Receiver, the Examiner, and the [Investors Committee]," including "playing any role…in the prosecution of claims or actions that the Receiver and/or [Investors Committee] have already commenced" unless consented to by all of the parties. (Id. at 57.) The Court noted the "peculiarly worrying history" of the JLs in disrupting the receivership proceeding, including by "filing motions to pursue claims the Receiver was already pursuing." (Order, In re Stanford International Bank, Ltd. 3:09-cv-00721-N, No. 176, at 54-55.)

On January 27, 2012, the Receiver and the Investors Committee filed an action in U.S. District Court for the District of Columbia against Proskauer and other defendants, Janvey v. Proskauer Rose LLP, 3:12-cv-00644-N, which asserted claims for (1) professional negligence; (2) aiding, abetting, or participation in a breach of fiduciary duties; (3) aiding, abetting or participation in a fraudulent scheme; (4) aiding, abetting, or participation in fraudulent transfers; (5) aiding, abetting, or participation in conversion; (6) civil conspiracy; and (7) negligent retention/negligent supervision. (Plaintiffs' First Am. Compl., Janvey v. Proskauer Rose LLP, 3:12-cv-00644-N, at ¶¶ 257-272.) Proskauer is alleged to be liable on a respondeat superior theory of liability for the conduct of Thomas V. Sjoblom, a former partner at Proskauer who is alleged to have done legal work for Stanford Financial and its affiliates, including SIB.[3] That action was transferred to this Court by the Judicial Panel on Multidistrict Litigation for coordinated pretrial proceedings as part of the Stanford MDL. On January 31, 2013, the same

[3] Proskauer was also previously named as a defendant in a putative class action brought by Stanford investors in Troice v. Proskauer Rose LLP, 3:09-cv-01600-N, also pending in this Court, which alleges many of the same claims as those asserted in the Receiver Actions. Plaintiffs in Troice are represented by the same counsel who represent the Investors Committee in the Receiver Actions. Those same counsel have also filed at least six copycat actions in Texas state courts in the event the U.S. Supreme Court reverses the order of the Fifth Circuit in Roland v. Green, 675 F. 3d 503 (5th Cir. 2012), that the Troice complaint is barred under the Securities Litigation Uniform Standards Act. (Advisory to the Court From Castilo Snyder P.C. Regarding Filing of Individual State Court Lawsuits, Troice, et al. v. Proskauer Rose LLP, et al., 3:09-cv-01600-F, No. 101.)

plaintiffs filed a substantially identical action, asserting the same claims against Proskauer and other defendants, in this Court. Janvey v. Proskauer Rose LLP, 3:13-cv-00477-M (collectively, the "Receiver Actions").

The JLs now seek the ability to file yet additional duplicative actions against Proskauer and other law firms on behalf of SIB in Antigua alleging professional negligence and breach of fiduciary duty—the same claims that have been asserted by the Receiver and the Investors Committee on behalf of SIB in the District of D.C. and in this Court.

On March 12, 2013, the Receiver, Investors Committee, SEC, and Examiner filed the Joint Motion for approval of the Settlement Agreement among the U.S. Department of Justice, the JLs, the Receiver, the SEC, the Examiner, and the Investors Committee. Section 3.1 of the Settlement Agreement provides:

> CLAIMS TO BE PURSUED INDEPENDENTLY. As to the Law Firm Claims[4] . . . except as otherwise may be agreed between or among the Parties, the Parties will continue to pursue and initiate claims in jurisdictions in which they are recognized . . . . Sharing of the proceeds of such claims between and among the JLs, the Receiver Parties, and any appropriate classes will be negotiated and determined on a case-by case basis as and if it becomes necessary and appropriate to do so.

RESPONSE AND OBJECTION

The Settlement Agreement—and Section 3.1 in particular—creates the substantial risk that Proskauer and others will be subject to additional duplicative litigation by the same parties-in-interest in different forums, and that Proskauer could face inconsistent judgments, and accordingly the Court should deny the Joint Motion. In the alternative, the Court should strike section 3.1 and continue in effect the provisions of its July 30, 2012 Order precluding the JLs from pursuing duplicative litigation.

[4] "Law Firm Claims" are defined to mean "damages claims, including but not limited to professional negligence, aiding and abetting, and conspiracy, asserted or filed against lawyers or law firms who formerly represented Stanford or any Stanford-controlled entity or individual." Settlement Agreement at 2.

1. The Settlement Agreement Will Result in Duplicative Litigation

The Receiver and the JLs both serve as successors-in-interest to the same entity, SIB, and as such they both can assert claims against Proskauer that could have been asserted by SIB. See Jones v. Wells Fargo Bank, 666 F.3d 955, 966 (5th Cir. 2012) ("[A] receiver generally has no greater powers than the corporation had."). Indeed, this Court has already recognized the threat of duplicative conduct between the Receiver and the JLs—the July 30, 2012 Order noted that the JLs had a "worrying history" of seeking to pursue claims the Receiver was already pursuing. (July 31, 2012 Order, In re Stanford International Bank, Ltd. 3:09-cv-00721-N, No. 76). For the movants now to come before the Court with a settlement agreement that formalizes their ability to pursue duplicative litigation, in different forums, on behalf of SIB, raises precisely the same concerns that led this Court to enjoin the JLs from pursuing duplicative litigation in the July 30, 2012 Order. Cf. Microsource, Inc. v. Superior Signs, Inc., 1998 U.S. Dist. LEXIS 3044 at *6 (N.D. Tex. Mar. 10, 1998) (citing Colorado River Water Conservation Dist. v. United States, 424 U.S. 800, 817 (1976) ("Within the federal justice system, 'the general principle is to avoid duplicative litigation.'").

The JLs have no independent interest in pursuing these identical claims in Antigua. The creditors of SIB in Antigua—the persons who will ultimately receive a recovery, if there is any—overlap the creditors of SIB in United States. The conduct allegedly giving rise to the identical claims by both the Receiver and by the JLs is the same: legal work allegedly performed by Sjoblom in the course of representing the Stanford companies in an investigation by the Fort Worth Regional Office of the U.S Securities and Exchange Commission. (Plaintiffs' First Am. Compl., Janvey v. Proskauer Rose LLP, 3:12-cv-00644-N). And Proskauer has no presence or assets in Antigua, so any recovery by the JLs would come from the same assets out of which the

Receiver and the Investors Committee would recover if they prevail on their claims already pending against Proskauer in this Court.

But even if the JLs did have some unique reason for pursuing these claims, there are far less burdensome and wasteful ways for them to do so than by initiating a new and duplicative lawsuit in Antigua. For example, Section 3.2 of the Settlement Agreement—which applies to many claims the Receiver and JLs may pursue but expressly carves out professional negligence claims against law firms such as Proskauer—specifies that only the Receiver or the JLs will pursue certain claims, but that they must cooperate with each other in all such cases to maximize recoveries. Settlement Agreement at 18. There is no reason why the Receiver should not similarly be required to cooperate with JLs in pursuing its existing actions against Proskauer, rather than allowing the JLs to burden two legal systems and force Proskauer to litigate the same claims brought on behalf of the same interest holders in two different countries. And to the extent that the JLs believe they need to participate more directly in the Receiver's action to vindicate SIB's rights, a remedy for that already exists under the Federal Rules of Civil Procedure—the Court may join the JLs as plaintiffs in the Receiver Actions. See Fed. R. Civ. P. 19(a)(1)(B)(ii) ("A person who is subject to service of process and whose joinder will not deprive the court of subject-matter jurisdiction must be joined as a party if that person claims an interest relating to the subject of the action and is so situated that disposing of the action in the person's absence may leave an existing party subject to a substantial risk of incurring double, multiple, or otherwise inconsistent obligations because of the interest.").

Because approval of the Settlement Agreement will lead to the commencement of duplicative proceedings against Proskauer that will waste judicial resources and the resources of the parties, the Court should reject the Settlement Agreement as proposed.

2. The Settlement Agreement Increases the Risk of Inconsistent Judgments

The duplicative litigation permitted by the Settlement Agreement also puts Proskauer at risk of inconsistent judgments, as the claims in the Receiver Actions would be substantially the same as in any action filed by the JLs. Although *res judicata* is a typical safeguard to protect parties from the risk of inconsistent judgments, see, e.g., Kelly Inv. v. Cont'l Common Corp., 315 F.3d 494, 498-99 (5th Cir. 2002) (noting that "the problem of inconsistent judgments can be obviated through a plea of res judicata should one court render judgment before the other"), in this case there is a substantial likelihood that Proskauer would obtain a judgment in the Receiver Actions, but the Antiguan court would decline to afford *res judicata* to that judgment. See Wilson v. The Canada Life Assurance Co., 2009 U.S. Dist. LEXIS 16714, at *13 (M.D.Penn. March, 3, 2009) (noting that there is a risk of inconsistent judgments between a United States action and a foreign action and explaining that even if the foreign court applies principles of comity that are similar to those applied in U.S. courts, the foreign court may not recognize the U.S. judgment and "may have a significant reason to not extend comity"). Such a result would be manifestly unfair, inconvenient, and inconsistent with the law of this Circuit. See Empresa Lineas Maritimas Argentinas, S.A. v. Schichau-Unterweser, 955 F.2d 368, 374 (5th Cir. 1992) (recognizing the risk of "inconvenience and [the] unfairness of inconsistent judgments" posed by recourse to a foreign action "which may disregard the United States judgment").

This risk is only heightened by the diverging interests of this Court and an Antiguan court. An Antiguan court could choose not to extend comity in accordance with its own interests and not recognize any judgment of this Court entered in the Receiver Actions. The JLs have a demonstrated history of challenging the U.S. proceedings, and the Antigua Supreme Court placed SIB into liquidation and appointed the Joint Liquidators as receivers-managers of SIB

notwithstanding this Court's earlier order appointing the Receiver for SIB and the other Stanford entities.

Not only does the Settlement Agreement ignore these risks, it exacerbates them by giving the real parties-in-interest—SIB CD purchasers—an additional bite at the apple in a foreign jurisdiction. Thus, even after expending considerable resources defending itself in the Receiver Actions, Proskauer would still face the prospect of further litigation on those same claims in Antigua.

CONCLUSION

For the reasons described above, the Joint Motion should be denied. In the alternative, the Court should strike Section 3.1 of the Settlement Agreement and continue in effect the provisions of its July 30, 2012 Order enjoining the JLs from pursuing duplicative litigation.

Dated: March 28, 2013

CARRINGTON, COLEMAN, SLOMAN & BLUMENTHAL, L.L.P.

By: /s/ Neil R. Burger

Bruce W. Collins
Texas Bar No. 04604700
bcollins@ccsb.com
Neil R. Burger
Texas Bar No. 24036289
nburger@ccsb.com
901 Main Street, Suite 5500
Dallas, Texas 75202
Telephone: (214) 855-3000
Facsimile: (214) 855-1333

– and –

DAVIS POLK & WARDWELL LLP
James P. Rouhandeh*
Daniel J. Schwartz*
Richard A. Cooper*
450 Lexington Avenue
New York, New York 10017
Telephone: (212) 450-4000
Facsimile: (212) 701-5800

Attorneys for Non-Party Proskauer Rose LLP

* Admitted *pro hac vice* in the related action *Janvey, et al. v. Proskauer Rose LLP, et al.*, 3:12-cv-00644-N (N.D. Tex.)

CERTIFICATE OF SERVICE

I hereby certify that on March 28, 2013, I electronically transmitted the foregoing document to all parties of record using the ECF system for filing.

/s/ Neil R. Burger