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

SECURITIES AND EXCHANGE COMMISSION, Plaintiff, v. STANFORD INTERNATIONAL BANK, LTD., ET AL., Defendants.	Case No. 3:09-CV-0298-N
IN RE: STANFORD INTERNATIONAL BANK, LTD., Debtor in a Foreign Proceeding.	Case No. 3:09-CV-0721-N

NONPARTY CHADBOURNE & PARKE LLP'S OBJECTION TO THE SEC, RECEIVER, EXAMINER, AND OFFICIAL STANFORD INVESTORS COMMITTEE'S AMENDED JOINT MOTION TO APPROVE SETTLEMENT AGREEMENT AND CROSS-BORDER PROTOCOL AND BRIEF IN SUPPORT THEREOF

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Pursuant to the Court's March 18, 2013 Order, nonparty Chadbourne & Parke LLP ("Chadbourne") respectfully submits this objection and brief in opposition to the Amended Joint Motion of the SEC, Receiver, Examiner, and Official Stanford Investors Committee to Approve Settlement Agreement and Cross-Border Protocol (the "Amended Motion" or "Am. Mot.").[1]

PRELIMINARY STATEMENT

There seem to be two different proposed settlement agreements at issue: the one that is described by the Movants in their Amended Motion, and the one that is actually drafted by the Receiver, the Antiguan Joint Liquidators (the "JLs") and others and presented to the Court for approval. Chadbourne objects to the latter.

As described in the Motion, the Proposed Settlement "will expedite the distribution of a substantial portion of $300 million in foreign Stanford assets to the creditor-victims of the Stanford Ponzi scheme" and "will also facilitate cooperation and coordination between the U.S. Receiver and the Antiguan Joint Liquidators . . . ." (Am. Mot. 1.) Yet the Amended Motion obscures a key detail: the Proposed Settlement also purports to authorize the JLs, contrary to this Court's existing injunction, to sue Chadbourne and others in courts outside the United States on the same claims—negligence, aiding and abetting, and breach of fiduciary duty—that are already being pursued against Chadbourne in the United States by the Receiver on behalf of the same party-in-interest, Stanford International Bank ("SIB"), in *Janvey* v. *Proskauer Rose LLP, et al.*, 3:12-cv-00644 (N.D. Tex.) ("*Proskauer I*") and *Janvey* v. *Proskauer Rose LLP, et al.*, 3:13-cv-00477 (N.D. Tex.) ("*Proskauer II*"). Under the Proposed Settlement—in a provision that goes unmentioned in the Amended Motion—actions in furtherance of such duplicative lawsuits would "not be deemed to be a violation of" this Court's July 30, 2012 Chapter 15 Order or "be

[1] Documents referred to as "Exhibits" are filed herewith in the accompanying Appendix in Support of Nonparty Chadbourne & Parke LLP's Objection to the SEC, Receiver, Examiner, and Official Stanford Investors Committee's Amended Joint Motion to Approve Settlement Agreement and Cross-Border Protocol.

construed as any act precluded by" that Order, "notwithstanding anything in the Chapter 15 Order to the contrary." (Appendix in Support of Joint Motion of the SEC, Receiver, Examiner, and Official Stanford Investors Committee to Approve Settlement Agreement and Cross-Border Protocol, *SEC* v. *Stanford Int'l Bank, Ltd.*, No. 3:09-cv-00298-N, at § 9.1 (N.D. Tex.) (Mar. 12, 2013) (Dkt. No. 1792) ("Settlement Agreement").)

Chadbourne objects to this aspect of the Settlement Agreement. Chadbourne should not be required to contend with multiple suits in multiple jurisdictions, asserting the same claims on behalf of the same Estate. To the extent that the Proposed Settlement permits the JLs to pursue such duplicative litigation against Chadbourne, the Amended Motion should be denied.

First, allowing duplicative litigation exposes Chadbourne to the risk of inconsistent judgments, the unreasonable and unnecessary cost of simultaneously defending against the same claims in two different fora in different countries, and a race to a final judgment in one forum in order to stop another costly trial pending in another. The Receiver and the JLs represent the same party-in-interest and seek to bring the same claims against Chadbourne in two fora. Their planned multiplication of lawsuits against Chadbourne and others will, if permitted, increase the burden and expense of pursuing and defending the claims. Fifth Circuit precedents warrant the prevention of multiple lawsuits in different fora over the same claims, even where one of the opposing parties thereby gains a forum advantage. That principle applies with special force where, as here, representatives of the *same* party-in-interest seek to pursue identical claims against the same defendants in multiple fora. Nor is there any legitimate justification for lifting the existing injunction that bars the duplicative litigation planned by the Receiver and the JLs, as multiple lawsuits will not increase the recovery of R. Allen Stanford's Ponzi Scheme victims, given the doctrine of *res judicata* and the legal bar against double recovery.

Second, Chadbourne objects to Sections 3.1 and 9.1 of the Proposed Settlement because these provisions are unnecessary to effect the stated purpose of the Proposed Settlement, which is purportedly to benefit SIB creditors by virtue of cooperation among the movants. As representatives of a foreign nonmain proceeding, the JLs are not entitled to pursue claims against Chadbourne in a different territory because the claims at issue are assets of the "Stanford Entities enterprise and estate," which, as this Court has found, has its "jurisdictional locus" in the United States. (Order, *In re Stanford Int'l Bank, Ltd.*, No. 3:09-cv-0721-N, at 50 (N.D. Tex.) (July 30, 2012) (Dkt. No. 176) ("Ch. 15 Order") **(Exhibit 1)**.) Accordingly, any legal claim that SIB might have against Chadbourne is an asset located in the territorial jurisdiction the United States. Moreover, the duplicative litigation authorized by the Proposed Settlement is not necessary to protect the interests of SIB creditors, since the JLs may simply join the Receiver's already-pending action against Chadbourne.

Chadbourne does not oppose the Proposed Settlement insofar as it addresses how the parties to the Proposed Settlement should coordinate their efforts and share information in connection with their preparation and prosecution of legal actions. What Chadbourne does object to is the proposal to lift this Court's injunction *sub silentio* and subject Chadbourne to duplicative lawsuits in multiple jurisdictions on behalf of the same party-in-interest.

STATEMENT OF FACTS

A. The Receiver And The JLs Were Appointed To Represent The Same Party-In-Interest

On February 17, 2009, this Court issued an Order in connection with the SEC's action against SIB and others arising from the Ponzi scheme perpetrated by R. Allen Stanford, in which the Court "assume[d] exclusive jurisdiction and [took] possession of the assets, monies, securities, properties, real and personal, tangible and intangible, of whatever kind and

description, wherever located, and the legally recognized privileges (with regard to the entities), of the Defendants and all entities they own or control . . . ." (Order Appointing Receiver, *SEC* v. *Stanford Int'l Bank, Ltd., et al.*, No. 3:09-cv-00298-N, at ¶ 1 (N.D. Tex.) (Feb. 17, 2009) (Dkt. No. 10) ("Receiver Appointment Order") **(Exhibit 2).**) As the Amended Motion acknowledges, this Order and subsequent amended orders also established the appointment of the Receiver of the Stanford Receivership Estate, "to take possession, custody and control of the Stanford Receivership estate, including all domestic and foreign assets of R. Allen Stanford, SIB, Stanford Group Company, and other Stanford entities." (Am. Mot. 2; *see also* Receiver Appointment Order ¶ 4 (authorizing the Receiver "to immediately take and have complete and exclusive control, possession, and custody of the Receivership Estate and to any assets traceable to assets owned by the Receivership Estate").) The Court "specifically directed and authorized" the Receiver to perform the following duty:

> Institute, prosecute, compromise, adjust, intervene in, or become party to such actions or proceedings in state, federal, or foreign courts that the Receiver deems necessary and advisable to preserve the value of the Receivership Estate, or that the Receiver deems necessary and advisable to carry out the Receiver's mandate under this Order . . . .

(Receiver Appointment Order ¶ 5(i).) To protect the Receiver's mandate, *the Order expressly "restrained and enjoined" "[c]reditors and all other persons" from, without prior approval of the Court, (i) commencing or continuing any other proceeding related to the Receivership Estate, arising from the subject matter of the SEC civil enforcement action (Civil Action No. 3:09-CV-0721-N) outside this Court, and (ii) performing "[a]ny act to obtain possession of the Receivership Estate assets . . . ."* (*Id.* at ¶¶ 7(a), 8(a) (emphasis added).)[2]

[2] The subsequent Amended Orders Appointing Receiver, dated March 12, 2009 and July 19, 2010, include the same provisions. (Amended Order Appointing Receiver, *SEC* v. *Stanford Int'l Bank, Ltd.*, No. 3:09-cv-00298-N, at ¶ 5(i) (N.D. Tex.) (Mar. 12, 2009) (Dkt. No. 157); Second Amended Order Appointing Receiver, *SEC* v. *Stanford Int'l Bank, Ltd.*, No. 3:09-cv-00298-N, at ¶ 5(i) (N.D. Tex.) (July 19, 2010) (Dkt. No. 1130).)

Similarly, the High Court of Antigua and Barbuda, a division of the Eastern Caribbean Supreme Court, appointed two Joint Liquidators to oversee SIB's liquidation on April 17, 2009. (*See* Order [Appointment of New Liquidator(s)], *In re Stanford Int'l Bank Ltd. (In Liquidation)*, Claim No. ANUHCV 2009/0149, at 2 (May 13, 2011) ("JLs Appointment Order") **(Exhibit 3)**.) These Liquidators were subsequently removed, and the current JLs were appointed on May 13, 2011. (*Id.* at 2.) Notably, the High Court stated that the JLs may be recognized as "having the equivalent powers of a liquidator or of an insolvency office holder within any foreign jurisdiction(s)" (*id.* at ¶ 27(b)(i)), and authorized the JLs to "take possession of, gather in, and realise all the present and future assets and property of [SIB], including without limitation, any real and personal property, cash, choses-in-action, . . . and rights, tangible or intangible, wheresoever situate . . ." (*id.* at ¶ 3).

B. The Receiver Is Already Pursuing SIB's Claims Against Chadbourne And Other Law Firm And Attorney Defendants That Are Identical To The Claims The JLs Plan To Pursue In Antigua

Nearly three years after the appointment of the Receiver, on January 13, 2012, the JLs moved in this Court in *In re Stanford International Bank, Ltd.*, No. 3:09-cv-0721-N—purportedly on an "emergency" basis—requesting the Court to lift the broad litigation injunction that it put in place in connection with the Receivership. The JLs specifically sought to pursue, on SIB's behalf, claims for "negligence, malpractice, breach of fiduciary duty, and/or similar claims against third-party professionals that facilitated Stanford's fraudulent scheme," including, allegedly, Chadbourne. (Joint Liquidators' Emergency Motion for Leave to Pursue Professional Negligence Claims, *In re Stanford Int'l Bank, Ltd.*, No. 3:09-cv-0721-N, at ¶ 1 (N.D. Tex.) (Jan. 13, 2012) (Dkt. No. 127) ("Prof'l Negligence Mot.") **(Exhibit 4)**.) The Receiver objected that this would "waste resources and duplicate effort" and characterized the JLs' motion as "little more than an exercise in gamesmanship." (Joint Response of the Receiver, the Examiner, the

Investors Committee, and the SEC to the Joint Liquidators' Emergency Motion for Leave to Pursue Professional Negligence Claims, *In re Stanford Int'l Bank, Ltd.*, No. 3:09-cv-0721-N, at 1, 3 (N.D. Tex.) (Jan. 24, 2012) (Dkt. No. 134) ("Receiver Objection to Prof'l Negligence Mot.") **(Exhibit 5)**.) The Receiver emphasized that it "already has the responsibility to analyze and assert claims on behalf of SIB and the other Receivership entities" and objected to the JLs' duplication of effort. (*Id*. at 2.)

On January 27, 2012, before the Court ruled on the JLs' motion, the Receiver and co-movant Official Stanford Investors Committee (the "OSIC") commenced *Proskauer I* against Chadbourne and others, asserting claims for negligence (professional malpractice) and a number of common law aiding and abetting claims in connection with R. Allen Stanford's misappropriation of funds from various Stanford entities. In *Proskauer I*, the Receiver stands in the shoes of the entities that constitute the Stanford Receivership Estate, including SIB, and asserts claims on its behalf. (Plaintiffs' First Amended Complaint, *Janvey, et al.* v. *Proskauer Rose LLP, et al.*, No. 3:12-cv-00644-N, at ¶ 2 (N.D. Tex.) (Aug. 8, 2012) (Dkt. No. 44) ("*Proskauer I* Complaint").) The OSIC was created by this Court to represent the investor-victims of the Ponzi scheme, including those who purchased CDs from SIB, and asserts claims against Chadbourne as the assignee of the Receiver and "for the benefit of the Stanford Receivership Estate." (*Id*. at ¶ 3.)

In an Order dated February 1, 2012, and in the light of the Receiver's and the OSIC's pending action against Chadbourne (and others), among other reasons, this Court denied the JLs' emergency motion to lift the litigation injunction, in part because of a concern that allowing the JLs to initiate legal action against Chadbourne and others on behalf of SIB, after the Receiver already had initiated *Proskauer I* and similar actions, would result "in a multiplicity of actions in

different forums and would increase litigation costs for all parties while diminishing the size of the receivership estate." (Order, *In re Stanford Int'l Bank, Ltd.*, No. 3:09-cv-0721-N, at 4 (N.D. Tex.) (Feb. 1, 2012) (Dkt. No. 141) (quoting *SEC* v. *Universal Fin.*, 760 F.2d 1034, 1038 (9th Cir. 1985)) (internal brackets omitted) ("Prof'l Negligence Order") **(Exhibit 6)**.) The Court further observed that the JLs' "proposed claims would duplicate the Receiver's efforts and thus deplete the overall monies available to Stanford victims." (*Id*. at 5.)

Chadbourne (and the other law firm and attorney defendants in *Proskauer I*) have moved to dismiss *Proskauer I* for lack of subject matter jurisdiction.[3] That motion is *sub judice*, and the Receiver and the OSIC subsequently filed *Proskauer II* in this Court on January 31, 2013 to preserve their claims in the event that this Court dismisses *Proskauer I*. (Plaintiffs' Original Complaint, *Janvey, et al.* v. *Proskauer Rose LLP, et al.*, No. 3:13-cv-00477-N (N.D. Tex.) (Jan. 31, 2013) (Dkt. No. 1).) *Proskauer II* involves the same parties and presents substantively identical claims against Chadbourne and other law firm defendants as *Proskauer I*—namely, negligence (professional malpractice) and number of common law aiding and abetting claims. In order to avoid exactly the same kind of duplicative litigation that is contemplated by the Proposed Settlement, the parties entered into a Joint Stipulation to stay *Proskauer II* until defendants' pending motions to dismiss (and related motions by plaintiffs) are decided in *Proskauer I*. (Joint Stipulation and Proposed Order to Stay Proceedings, *Janvey, et al.* v.

[3] *Proskauer I* was originally filed in the United States District Court for the District Court of Columbia before being transferred to this Court by the Judicial Panel on Multidistrict Litigation for consolidated pretrial proceedings with the *In re Stanford MDL*. (Plaintiffs' Original Complaint, *Janvey, et al.* v. *Proskauer Rose LLP, et al.*, No. 1:12-cv-00155-CKK (D.D.C.) (Jan. 27, 2012) (Dkt. No. 1).) On October 24, 2012, Chadbourne moved to dismiss that Complaint. (Defendant Chadbourne & Parke LLP's Motion to Dismiss Plaintiffs' First Amended Complaint and Brief In Support Thereof, *Janvey, et al.* v. *Proskauer Rose LLP, et al.*, No. 3:12-cv-00644-N (N.D. Tex.) (Oct. 24, 2012) (Dkt. No. 49).) The Receiver and the OSIC filed a counter-motion asking this Court to recommend to the MDL Panel that *Proskauer I* be remanded to the District of Columbia for subsequent transfer back to the Northern District of Texas under 28 U.S.C. § 1631. (Plaintiffs' Joint Response to Defendants' Motions to Dismiss Plaintiffs' First Amended Complaint, Motion for Recommendation of Remand and Motion to Stay Pending Remand and Transfer of this Action, *Janvey, et al.* v. *Proskauer Rose LLP, et al.*, No. 3:12-cv-00644-N (N.D. Tex.) (Dec. 12, 2012) (Dkt. No. 55).) This Court has not yet ruled on these motions.

Proskauer Rose LLP, et al., No. 3:13-cv-00477-N (N.D. Tex.) (Mar. 1, 2013) (Dkt. No. 12).) This Court granted the stipulated stay on March 8, 2013. Joint Stipulation and Order to Stay Proceedings, *Janvey, et al.* v. *Proskauer Rose LLP, et al.*, No. 3:13-cv-00477-N (N.D. Tex.) (Mar. 8, 2013) (Dkt. No. 13).)

C. The Chapter 15 Order Precludes The JLs, As Representatives Of A Foreign Nonmain Proceeding, From Bringing Duplicative Litigation

By Order dated July 30, 2012, this Court addressed, among other things, the JLs' petition for recognition of foreign main proceeding pursuant to Chapter 15 of the Bankruptcy Code. In its Order, the Court examined the relationship between SIB and R. Allen Stanford, his associates, and the "various entities under his control (the "Stanford Entities"), [through which] he perpetrated a massive Ponzi scheme." (Ch. 15 Order 2.) In the light of its prior finding "that Stanford and his affiliates operated as one" and the substantial evidence in the record in the SEC action to support that finding, this Court determined it would be inappropriate to "legitimiz[e] the corporate structure that Stanford utilized to perpetrate his fraud" by treating SIB as a separate entity for Chapter 15 purposes. (*Id*. at 27, 36.) Accordingly, the Court "pierce[d] SIB's corporate veil and aggregate[d] the Stanford Entities." (*Id*. at 36.)

Contrary to the JLs' claim that SIB's center of main interest ("COMI") was in Antigua, the Court found, after detailed analysis of the facts, that "it is manifestly clear . . . that the Stanford Entities' COMI was in the United States."[4] (*Id*. at 50.) Among other facts that the Court found particularly relevant were that "this Court is the jurisdictional locus of the entire Stanford Entities enterprise and estate" and that "the Stanford Entities' nerve center (center of direction, control, and coordination) is in the United States." (*Id*.) Thus, the Court denied the

[4] The Court also noted that "even if the Stanford Entities were not aggregated, it would still find that SIB's COMI is in the United States" given the factual findings described in the Order. (Ch. 15 Order 50 n. 57.)

JLs' petition to be recognized as a foreign main proceeding. However, because the Stanford Entities "conducted a measurable amount of local business in Antigua sufficient to have an establishment there," it granted the Antiguan Proceeding foreign nonmain recognition. (*Id.* at 53.)

Importantly, the Court noted the "peculiarly worrying history" of the JLs' actions, including that they "have proven to be extremely litigious and calculating in this Court, . . . filing motions to pursue claims the Receiver was already pursuing." (*Id.* at 54-55.) The Court also noted that "[t]he Joint Liquidators have admitted that they seek funds first and foremost to fund their current operations, . . . not to distribute to investor-victims and creditors." (*Id.* at 55.) "Given this history, the Court's findings of fact, and the potential for duplication of effort and resulting diminution of funds for Stanford investor-victims and creditors," the Court concluded "that only strictly limited, conditional relief is warranted under its holding of foreign nonmain recognition." (*Id.* at 56.) Therefore, the Court conditioned relief on "precluding the Joint Liquidators from duplicating efforts by the Receiver, the Examiner, and OSIC, including playing any role—unless consented to by the Receiver, Examiner, and OSIC—in the prosecution of claims or actions that the Receiver and/or OSIC have already commenced prior to the date of this Order . . . ." (*Id.* at 57.) Further, the Court precluded the JLs "from filing any litigation or other proceeding in the United States, unless approved by this Court" and required the JLs "to apply to this Court for the authority to take any action whatsoever in the United States except for the examination of witnesses and the taking of evidence or the delivery of information concerning SIB's assets, affairs, rights, obligations or liabilities." (*Id.* at 57-58 (internal quotation marks and brackets omitted).)

To date, the Court's Order in the Chapter 15 proceeding, as well as its denial of the JLs' motion to lift the litigation injunction to file professional negligence claims, have barred the JLs from moving forward with their plans to bring duplicative claims on behalf of SIB against Chadbourne. As described below, however, the Proposed Settlement specifically invites such duplicative litigation.

D. The Proposed Agreement Purports To Authorize The JLs To Pursue Duplicative Litigation Against Chadbourne

Conspicuously absent from the Amended Motion, in which the Movants describe the provisions and impact of the Proposed Settlement, is any mention of key terms that, in combination, have the effect of overturning this Court's prior orders on Chapter 15 issues and issues relating to the prevention of duplication of effort by the Receiver and the JLs, particularly duplicative legal proceedings. While the Movants describe the Proposed Settlement as an attempt by the SEC, the Receiver, the Examiner, and the OSIC to put an end to "difficult, complex, and costly litigation" with the JLs (Am. Mot. 1), they omit mention of the *additional* "difficult, complex, and costly litigation" that the Proposed Settlement purports to authorize.

Among the terms of the Proposed Settlement are protocols with respect to litigation against third parties, "to divide responsibility where possible for certain litigation and develop coordination mechanisms for certain other litigation" (Settlement Agreement Recital A), and to facilitate cooperation "in preparing and prosecuting legal actions on behalf of their respective estates and the victims . . ." (Am. Mot. 9). Specifically, Article III of the Proposed Settlement sets forth the agreed-upon "Litigation Protocol" for three primary types of claims: "claims to be pursued independently" (Settlement Agreement § 3.1), "claims to be pursued in coordination" (Settlement Agreement § 3.2), and "claw back net winner claims" (Settlement Agreement § 3.3). The responsibilities for prosecution of the "claims to be pursued in coordination" and the "claw

back net winner claims" are divided, with a set plan for how to allocate recovered funds. In contrast, for the "claims to be pursued independently," the Proposed Settlement provides that *"the Parties will continue to pursue and initiate claims in jurisdictions in which they are recognized" and will negotiate and determine how to share the proceeds of such claims when and if it becomes necessary to do so.* (Settlement Agreement § 3.1.) These claims include "Law Firm Claims" (*id.*), which are defined as "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-related entity or individual" (Settlement Agreement Definition D).

In sum, the Proposed Settlement, if approved, would authorize the JLs to proceed with a copycat lawsuit against Chadbourne in Antigua (or elsewhere), notwithstanding the fact that this Court's Orders currently enjoin such actions. This is not just speculation; a representative of the JLs has, in fact, advised Chadbourne that the JLs intend to commence litigation against the firm in Antigua and Barbuda (or the British Virgin Islands) for aiding and abetting and breach of duty on behalf of SIB—the same claims being pursued in *Proskauer I* and *Proskauer II*—once this Court approves the Proposed Settlement. To skirt the Court's outstanding prohibition against duplicative litigation by the JLs, Section 9.1 of the Proposed Settlement provides that "the actions that this Agreement authorizes the JLs to take shall not be deemed to be a violation of the Chapter 15 order or be construed as any act precluded by the Chapter 15 Order and the conditional relief granted therein, notwithstanding anything in the Chapter 15 Order to the contrary." (Settlement Agreement § 9.1.) In addition, the Proposed Order submitted by the Movants, if endorsed, would expressly "authorize[] [the parties to the Proposed Settlement] to perform in accordance with their rights and obligations as outlined in the Settlement Agreement

and Cross-Border Protocol." (Proposed Order Granting Amended Joint Motion of the SEC, Receiver, Examiner, and Official Stanford Investors Committee to Approve Settlement Agreement and Cross-Border Protocol, *SEC* v. *Stanford Int'l Bank, Ltd., et al.*, No. 3:09-cv-00298-N, at 2 (N.D. Tex.) (Mar. 12, 2013) (Dkt. No. 1793-1).)

In short, Sections 3.1 and 9.1 of the Proposed Settlement would eliminate all controls that this Court has previously put in place to prevent duplicative litigation, resulting in the exact situation this Court sought to avoid: "a multiplicity of actions in different forums [that] would increase litigation costs for all parties while diminishing the size of the receivership estate." (Prof'l Negligence Order 4 (internal brackets and citation omitted).)

ARGUMENT

I. THE PROPOSED SETTLEMENT SHOULD NOT BE APPROVED TO THE EXTENT IT AUTHORIZES THE JLS TO BRING A DUPLICATIVE LAWSUIT AGAINST CHADBOURNE

The Fifth Circuit has recognized that a defendant has "the right to be safe from needless multiple litigation and from incurring avoidable inconsistent obligations." *Schutten* v. *Shell Oil Co.*, 421 F.2d 869, 873 (5th Cir. 1970); *see also Provident Tradesmens Bank & Trust Co.* v. *Patterson*, 390 U.S. 102, 110 (1968) ("the defendant may properly wish to avoid multiple litigation, or inconsistent relief, or sole responsibility for a liability he shares with another"); *AT&T Commc'ns* v. *BellSouth Telecomms. Inc.*, 238 F.3d 636, 659 (5th Cir. 2001) (citing *Schutten* with approval). Although the plaintiff has the right to control its litigation and choose its own forum, this right is "defined" by and must be considered in conjunction with the rights of others, namely the rights of defendants. *Schutten*, 421 F.2d at 873.

The Amended Motion fails to mention that the combined effect of Sections 3.1 and 9.1 would be to lift this Court's prior injunction against duplicative effort and duplicative legal proceedings—much less offer any justification for that outcome, because there is no legitimate

justification. Insofar as the Proposed Settlement permits the Receiver and the JLs—both representing SIB and pursuing claims on its behalf—to pursue independently the same claims against Chadbourne in multiple fora, it improperly prejudices Chadbourne's rights and violates long-standing principles against duplicative litigation.

A. The Receiver And The JLs Represent The Same Party-In-Interest And Seek To Bring The Same Claims Against Chadbourne

The Receiver and the JLs are both acting on behalf of SIB. But the JLs plan to bring an abusive separate proceeding in Antigua (or possibly the British Virgin Islands) to pursue the same claims already asserted by the Receiver against Chadbourne in this Court.

For purposes of the asserted and threatened claims against Chadbourne, the Receiver and the JLs should be treated as representing the same party-in-interest. Both entities stand in the shoes of SIB when bringing legal claims to recover funds for the benefit of investor-creditors of SIB. *SEC* v. *Stanford Int'l Bank, Ltd.*, 776 F. Supp. 2d 323, 332 (N.D. Tex. 2011) (finding that "the Receiver stands in the shoes of the Stanford Defendants and related entities"); *FDIC* v. *Wheat*, 970 F.2d 124, 130 (5th Cir. 1992) (holding that when FDIC, as receiver, took over insolvent bank, it stepped "into the shoes" of the bank); *United States* v. *Mann*, 161 F.3d 840, 856 n.24 (5th Cir. 1998) (characterizing a liquidator as the "successor in interest" to a lender that simply ceases to exist). On February 17, 2009, the Receiver succeeded to the interests of SIB when this Court appointed him to "take and have complete and exclusive control, possession, and custody of the Receivership Estate and to any assets traceable to assets owned by the Receivership Estate." (Receiver Appointment Order ¶ 4.) Like the Receiver, the JLs succeeded to the interests of SIB when the High Court of Antigua and Barbuda appointed them to "take possession of, gather in, and realise all the present and future assets and property of [SIB],

including without limitation, any real and personal property, cash, choses-in-action, . . . and rights, tangible or intangible, wheresoever situated . . . ." (JLs Appointment Order ¶ 3.)

The Proposed Settlement confirms that the Receiver and the JLs seek to bring the *same* legal claims against Chadbourne on behalf of the *same* party-in-interest. Section 3.1 of the Proposed Settlement contemplates that the Receiver and the JLs will independently "pursue and initiate" claims against Chadbourne and other law firm and attorney defendants who "formerly represented Stanford or any Stanford-related entity or individual" for "professional negligence, aiding and abetting, and conspiracy." (Settlement Agreement § 3.1, Definition D.) Such an action has already been commenced against Chadbourne, as the Receiver initiated the *Proskauer I* action more than a year ago. In that case, the Receiver—on behalf of the Stanford Estate, including SIB (*Proskauer I* Complaint ¶ 2)—asserts claims against Chadbourne for negligence (professional malpractice) and a variety of common law aiding and abetting claims stemming from Thomas V. Sjoblom's and the firm's alleged representation of certain Stanford entities, including SIB (*Proskauer I* Complaint ¶ 117), before the SEC in 2005-06. *Proskauer II* is to the same effect. (*Proskauer II* Complaint ¶¶ 2, 115.)

The history of the Receiver's and the JLs' planned actions against Chadbourne also evidences the identity of the legal claims at issue. Just before the Receiver commenced *Proskauer I*, the JLs specifically sought (and were denied) leave of this Court to pursue, also on SIB's behalf, claims against "third-party professionals" that allegedly "facilitated Stanford's fraudulent scheme," including Chadbourne, for "negligence, malpractice, breach of fiduciary duty, and/or similar claims . . . ." (Prof'l Negligence Mot. 1.) A representative of the JLs has recently advised Chadbourne that, once this Court approves the Proposed Settlement, the JLs intend to commence a proceeding against the firm in Antigua (or the British Virgin Islands) for

aiding and abetting and breach of duty on behalf of SIB—the same claims the Receiver has asserted against Chadbourne on behalf SIB.

B. Under Fifth Circuit Precedents The Receiver And The JLs Should Be Prohibited From Pursuing Duplicative Litigation Against Chadbourne

Here, no new injunction is required to prevent the JLs from subjecting Chadbourne and others to duplicative and vexatious litigation, as Orders to that effect are already in place. The only issue is whether the proponents of the Proposed Settlement have offered sufficient reason to remove those restrictions. And the Movants have not offered any such reason; they have not even mentioned the issue. In fact, the existing prohibitions preventing the JLs from suing Chadbourne in a foreign court are well justified. Even if Chadbourne were required to establish the need for an injunction anew, the case is easily made.

Absent circumstances not present in this case, courts in the Circuit have not hesitated to enjoin the same parties from commencing multiple lawsuits to resolve the same claims against the same defendants in U.S. and foreign courts. Thus, in *Kaepa, Inc.* v. *Achilles Corp.*, the Fifth Circuit noted that it is "well settled among the circuit courts—including this one—which have reviewed the grant of an antisuit injunction that the federal courts have the power to enjoin persons subject to their jurisdiction from prosecuting foreign suits." 76 F.3d 624, 627 (5th Cir. 1996). Such an injunction is proper if "allowing simultaneous prosecution of the same action in a foreign forum thousands of miles away would result in inequitable hardship and tend to frustrate and delay the speedy and efficient determination of the cause." *Id.* at 627 (internal quotation marks and citations omitted).

In *Kaepa*, the Fifth Circuit upheld an injunction that enjoined a foreign national, which was the defendant in a U.S. litigation, from prosecuting a claim against the U.S. plaintiff in a foreign country. *Id.* Although the issue of international comity warrants consideration where a

foreign lawsuit is to be enjoined, the court in *Kaepa* rejected "a standard that elevates principles of international comity to the virtual exclusion of essentially all other considerations" and concluded that the concerns identified above outweighed any comity considerations. *Id.* at 627-28; *see also Commercializadora Portimex S.A. de CV* v. *Zeh-Noh Grain Corp.*, 373 F. Supp. 2d 645, 652 (E.D. La. 2005); *Home Healthcare Affiliates of Mississippi, Inc.* v. *N. Am. Indemnity N.V., et al.*, No. 1:01-cv-489-D-A, 2003 WL 22244382, at *3 (N.D. Miss Aug. 7, 2003).

The Fifth Circuit's standards applicable to injunctions barring a party over whom the court has jurisdiction from suit in a foreign jurisdiction are well summarized in *Commercializadora Portimex*. There the court stated that an injunction :

> against the prosecution of a foreign lawsuit may be appropriate when the foreign litigation would: (1) frustrate a policy of the forum issuing the injunction; (2) be vexatious or oppressive; (3) threaten the issuing court's in rem or quasi in rem jurisdiction; or (4) cause prejudice or offend other equitable principles. Before issuing an injunction against a foreign lawsuit, however, the Court must "balance domestic judicial interests against concerns of international comity." The Fifth Circuit has adopted a test that weighs "the need to 'prevent vexatious or oppressive litigation' and to 'protect the court's jurisdiction' against the need to defer to principles of international comity." In applying the test, the Fifth Circuit has rejected the approach taken by some other circuits, which "elevates principles of international comity to the virtual exclusion of essentially all other considerations." . . . To determine whether proceedings in another forum constitute vexatious or oppressive litigation that threatens the Court's jurisdiction, the Court considers whether the following interrelated factors are present: (1) inequitable hardship resulting from the foreign suit; (2) the foreign suit's ability to frustrate and delay the speedy and efficient determination of the cause; and (3) the extent to which the foreign suit is duplicitous of the litigation in the United States.

373 F. Supp. 2d at 649 (internal citations omitted).

Here, the JLs should not be permitted to sue Chadbourne on behalf of SIB because, among other reasons, such a lawsuit would be "vexatious or oppressive litigation that threatens the Court's jurisdiction." The hardship to Chadbourne from simultaneously defending two actions by representatives of the same entity in two countries—when Chadbourne has not taken or agreed to participate in any related legal action outside the United States—would plainly be

inequitable, as no justification for such a scenario has been offered. Moreover, a foreign suit against Chadbourne by the JLs would "frustrate and delay the speedy and efficient determination of the case," as the parties inevitably litigate over such issues as jurisdiction, possible stays and possible inconsistent judgments. Finally, the proposed lawsuit by the JLs is not merely "duplicitous of the litigation in the United States" being pursued by the Receiver—the claims and defendants are identical.

Under these circumstances—where there are no extraordinary facts such as a treaty requiring deference to foreign proceedings or a sovereign party, or where the party seeking protection has taken or agreed to take related legal action outside the United States—it would be hard to justify permitting parties to litigate the same claims in a U.S. court and a foreign court, even in the typical case where *opposing* parties each have their favored forum, *See Karaha Bodas Co.* v. *Perusahaan Pertambangan Minyak Dan Gas Bumi Negara*, 335 F.3d 357, 372-74 (5th Cir. 2003); *Home Healthcare*, 2003 WL 22244382, at *2 ("When considering inequitable hardship resulting from the foreign suit, if the party seeking to enjoin litigation abroad has already taken legal action(s) outside the United States, it would naturally be less of a hardship for that party to litigate one more foreign action."). But in the present case, where different representatives of *the same* party-in-interest seek to litigate against *the same defendants* on the *same claims* in different countries, such an outcome borders on incomprehensible. Especially where the Receiver, who seeks approval of the Proposed Settlement, has consistently argued in *Proskauer I* that U.S. law governs his claims on behalf of SIB, there is no good reason to permit another concurrent action on behalf of SIB against the same defendants in Antigua (or possibly the British Virgin Islands). And, in this case, extraordinary circumstances do not exist.

The same policies are reflected in the "first-to-file rule," which allows a court to dismiss, stay, or transfer an action where the issues presented can be resolved in an earlier-filed action pending in another court.[5] *See Save Power Ltd.* v. *Syntek Fin. Corp.*, 121 F.3d 947, 950 (5th Cir. 1997); *West Gulf Mar. Ass'n* v. *ILA Deep Sea Local 24, et al.*, 751 F.2d 721, 728-29 (5th Cir. 1985) ("The concern manifestly is to avoid the waste of duplication, to avoid rulings which may trench upon the authority of sister courts, and to avoid piecemeal resolution of issues that call for a uniform result."). The "rule against claim-splitting," an aspect of res judicata, reflects the same policy. *See Hayes* v. *Solomon*, 597 F.2d 958, 984 (5th Cir. 1979). When "the only explanation for the duplicative litigation in the pending consolidated action is to expand Plaintiffs' procedural rights, upset the trial schedule, harass Defendants, and avoid the requirements of amendment of Plaintiffs' claims," courts have applied the rule against claim-splitting to prevent plaintiffs from maintaining "two separate actions involving the same subject matter at the same time in the same court and against the same defendants." *S. Snow Mfg. Co.* v. *SnoWizard Holdings, Inc.*, --- F. Supp. 2d ----, 2013 WL 393486, at *9, *12 (E.D. La. Jan. 30, 2013) (internal quotation marks and citations omitted).[6]

Here, the combined effect of Sections 3.1 and 9.1 is not only to permit the filing of duplicative litigations, but to overturn this Court's specific efforts to *prevent* such actions. Insofar as these provisions would allow the Receiver and the JLs independently to pursue the same claims on behalf of SIB against Chadbourne in multiple actions, they raise the same

[5] Until 1999, the Fifth Circuit applied the first-to-file rule only to similar actions pending in the same or separate district courts, but because "the same policy concerns for avoiding duplicative litigation and comity exist when a similar matter is pending in a federal district court and a federal court of appeals in a different circuit," the court expanded the rule to apply to actions pending in different courts. *Burger* v. *Am. Mar. Officers Union*, Nos. 97-31099, et al., 1999 WL 46962, at *1 (5th Cir. Jan. 27, 1999).

[6] Courts also demonstrate their aversion to duplicative actions by awarding sanctions where this conduct is deemed vexatious and unreasonable. *See, e.g., Gilbreath* v. *Le Del Tore*, No. 2:98-cv-0058, 1998 WL 160871, at *1 (N.D. Tex. Apr. 1, 1998) (sanctioning plaintiff for filing duplicative litigation for an improper purpose under Fed. R. Civ. P. 11(b)(1)).

concerns that support the judicial policy against duplicative litigation—namely, proliferation of wasteful, costly, and time-consuming litigation that would unfairly expand the procedural rights of the Receiver and the JLs at the expense of Chadbourne's rights in a manner that would defy the principles of sound judicial administration.

C. Duplicative Actions By The Receiver And The JLs Would Multiply the Expense Of Pursuing And Defending The Claims Without Increasing The Ponzi Scheme Victims' Recovery

Permitting the Receiver and the JLs to proceed in independent, duplicative actions against Chadbourne is not to the benefit of the victims of Stanford's Ponzi scheme because multiple actions correspond only with multiplied litigation costs—not multiplied recovery. The claims that the JLs would assert against Chadbourne have already been recognized by this Court and by the Receiver as duplicative of the Receiver's efforts. (*See* Prof'l Negligence Order 5 (the JLs' "proposed claims would duplicate the Receiver's efforts"); Receiver Objection to Prof'l Negligence Mot. 2 (objecting to JLs' duplication of effort where Receiver "already has the responsibility to analyze and assert claims on behalf of SIB and the other Receivership entities").) Additionally, the JLs have offered no legitimate basis for distinguishing their purported claims from those already asserted in *Proskauer I* and *Proskauer II*. As such, the basic legal principle of *res judicata* prevents the JLs from recovering on "their" claims if the Receiver's action reaches judgment first, and vice versa.

The principles that support the doctrine of claim preclusion underscore the problematic nature of allowing different representatives of the same party-in-interest to independently pursue identical claims in multiple fora, as the Receiver and the JLs propose to do. Claim preclusion, a principle of *res judicata*, prevents a dissatisfied party from harassing defendants with repetitive actions based on the same claim, because "the federal courts have direct interests in ensuring that their resources are used efficiently and not as a means of harassing defendants with repetitive

lawsuits . . . ." *Marrese* v. *Am. Acad. of Orthopaedic Surgeons*, 470 U.S. 373, 376 n.1, 390 (1985) (Burger J., concurring). "Claim preclusion . . . bars the parties to a prior proceeding or those in privity with them from relitigating the same claims that were subject to a final judgment on the merits by a court of competent jurisdiction." *Lubrizol Corp.* v. *Exxon Corp.*, 871 F.2d 1279, 1287 (5th Cir. 1989); *see also Federated Dep't Stores, Inc.* v. *Moitie*, 452 U.S. 394, 398 (1981) ("A final judgment on the merits of an action precludes the parties or their privies from relitigating issues that were or could have been raised in that action."). Here, allowing duplicative litigation would lead to an inefficient race to the courthouse to win the battle for claim preclusion—even though practically any recovery in either proceeding would be allocated to the same pool of individuals and entities.[7]

Moreover, even if the Receiver and the JLs were able to proceed independently with multiple claims to the point of judgment and award of damages, they still have no right to double recovery against Chadbourne. *EEOC* v. *Waffle House, Inc.*, 534 U.S. 279, 297 (2002) ("[I]t goes without saying that the courts can and should preclude double recovery by an individual." (internal quotation marks and citation omitted)); *Black* v. *Pan Am. Labs., L.L.C.*, 646 F.3d 254, 261 (5th Cir. 2011) (noting "the Supreme Court's prohibition on double recovery"); *DIRECTV, Inc.* v. *Pepe*, 431 F.3d 162, 170 (3d Cir. 2005) (noting that "courts should generally disallow double recovery"). Given the general bar against double recovery, duplicative actions by the Receiver and the JL would bear no additional fruit for the victims of the Stanford Ponzi scheme.

[7] In conducting a claim preclusion analysis, the Fifth Circuit deems three categories of nonparties to be in privity with a party to a prior action: (1) a successor-in-interest to a prior party; (2) a nonparty who controls the original action; and (3) a nonparty whose interests were adequately represented by a party to the original action. *Benson & Ford, Inc.* v. *Wanda Petroleum Co.*, 833 F.2d 1172, 1174 (5th Cir. 1987). Adequate representation "refers to the concept of virtual representation, by which a nonparty may be bound because the party to the first suit is so closely aligned with . . . [the nonparty's] interests as to be his virtual representative." *Id*. at 1175 (internal quotation marks and citations omitted). Here, the Receiver and the JLs represent not only aligned parties-in-interest, but the same party-in-interest: SIB. Therefore, the Receiver is an adequate "virtual representative" of the JLs such that the JLs would be bound by the outcome in the *Proskauer* case.

Thus, any provisions in the Proposed Settlement that allow the Receiver and the JLs to pursue multiple litigations in different fora with respect to the law firm claims will needlessly contravene the goal expressed by this Court to "increase the funds available to Stanford victims, rather than to deplete funds via continued litigation." (Prof'l Negligence Order 5 n.1.) All such litigations would do is unfairly subject Chadbourne and other attorney defendants to vexatious and harassing litigation, something this Court should be particularly wary of given the acknowledged "peculiarly worrying history" of the JLs' actions. (Chap. 15 Order 54.)

II. PROPOSED SETTLEMENT SECTIONS 3.1 AND 9.1 ARE UNNECESSARY TO EFFECT THE PURPOSE OF THE PROPOSED SETTLEMENT

To the extent that the Proposed Settlement permits the JLs to pursue claims against Chadbourne and other attorney defendants outside of the territory of the United States, it is in direct violation of Chapter 15 of the Bankruptcy Code and this Court's Orders. Such an arrangement is not only inappropriate, but it is also unnecessary as Chadbourne does not oppose permissive joinder of the JLs in the *Proskauer* proceedings initiated by the Receiver in the United States.

A. As Representatives Of A Foreign Nonmain Proceeding, The JLs Are Not Entitled To Pursue Claims Against Chadbourne In That Foreign Territory, As These Claims Are Assets Located Within The Territorial Jurisdiction Of The United States

The JLs have been recognized by this Court as representatives of a foreign nonmain proceeding, pursuant to Chapter 15 of the Bankruptcy Code. (Chap. 15 Order 59.) A "foreign nonmain proceeding" is territorial and confined to assets *within its territory*. 8 COLLIER ON BANKRUPTCY ¶ 1521.04 (15th ed. 2011) ("Like a chapter 15 case, [a foreign nonmain proceeding] is territorial and confined to assets within its territory."); 11 U.S.C. § 1521(c) ("In granting relief under this section to a representative of a foreign nonmain proceeding, the court must be satisfied that the relief relates to assets that, under the law of the United States, should be

administered in the foreign nonmain proceeding or concerns information required in that proceeding."). Accordingly, the JLs—as representatives of the foreign nonmain Antiguan liquidation proceeding—are not entitled to pursue assets that are located "within the territorial jurisdiction of the United States," which refers to "intangible property deemed under applicable nonbankruptcy law to be located within [the United States] . . . ." 11 U.S.C. § 1502(8).

The subject legal claims against Chadbourne are assets of the Stanford Receivership Estate[8] that are located within the territorial jurisdiction of the United States. As this Court previously recognized, SIB—the entity on whose behalf the JLs act—is akin to a fictitious corporation and thus is not treated as a real entity for Chapter 15 purposes with separate assets from the Stanford Receivership Estate. (Ch. 15 Order 23.) Indeed, the Court declined to recognize the Antiguan proceeding as a foreign main proceeding largely because "Stanford and his affiliates operated as one" and therefore it would be inappropriate to "legitimiz[e] the corporate structure that Stanford utilized to perpetrate his fraud" by treating SIB as a real, separate entity for Chapter 15 purposes. (*Id*. at 27, 36.)[9] Based on this determination, the Court "pierce[d] SIB's corporate veil and aggregate[d] the Stanford Entities." (*Id*. at 36.) Thus, any legal claims against Chadbourne that might belong to SIB actually belong more generally to the Stanford Entities that comprise the Stanford Receivership Estate.

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[8] In *Comm'r* v. *Banks*, 543 U.S. 426 (2005), the Supreme Court noted: "In the case of a litigation recovery *the income-generating asset is the cause of action* that derives from the plaintiff's legal injury." *Id*. at 435 (emphasis added); *accord Hill* v. *Schaefer*, 221 F.2d 914, 915 (5th Cir. 1955) ("It is clear, therefore, that prior to the filing of his bankruptcy petition, Hill had a clear legal claim on the Tennessee Valley Authority for the amount of his payments into the retirement fund. This amount was, therefore, an asset in his hands which passed to his trustee in bankruptcy."). *See also In re Coastal Plains, Inc.*, 179 F.3d 197, 207-08 (5th Cir. 1999); *Davis* v. *AutoZone, Inc.*, No. 3:03-cv-740-W-S, 2011 WL 4625492, at *3 (S.D. Miss. Oct. 1, 2011).

[9] "[I]t would defy logic and run afoul of equity to treat a fictitious corporation as a real entity for Chapter 15 purposes. . . . Proliferating corporate fictions in the Chapter 15 context would also protect sinister characters such as Ponzi schemers who may target offshore jurisdictions to run their fraudulent empires." (Ch. 15 Order 23.)

Moreover, these assets are within the territorial jurisdiction of the United States. This Court held that "it is manifestly clear . . . that the Stanford Entities' COMI was in the United States" because, among other factors, "this Court is the jurisdictional locus of the entire Stanford Entities enterprise and estate" and that "the Stanford Entities' nerve center (center of direction, control, and coordination) is in the United States." (*Id*. at 50.) By locating the situs of the Stanford Entities in the United States, this Court allocated the *choses in action* (*i.e.*, legal claims) belonging to these entities to the United States as well:

> When we deal with intangible property, such as credits and *choses in action* generally, we encounter the difficulty that by reason of the absence of physical characteristics they have no situs in the physical sense, but have the situs attributable to them in legal conception. Accordingly we have held that a state may properly apply the rule mobilia sequuntur personam and treat them as localized at the owner's domicile . . . .

Wheeling Steel Corp. v. *Fox*, 298 U.S. 193, 209 (1936) (emphasis added). "*Choses in action* follow[] the persons of their owner . . . ." *Tappan* v. *Merchants' Nat'l Bank of Chicago*, 86 U.S. 490, 496 (1873) (emphasis in original). The legal situs of the Stanford Entities is the United States. The claims that belong to these Entities, over which this Court retains jurisdiction, are therefore also located in the United States.

Thus, the JLs are not entitled to pursue these claims in other territories. The Receiver and the JLs attempt to subvert the provisions of Chapter 15 (and this Court's Order interpreting Chapter 15) through the combined effect of Sections 3.1 and 9.1, which would allow the JLs to bring claims against Chadbourne and other attorney defendants outside of the United States. This Court, however, should not approve any Proposed Settlement that would violate the directives of Chapter 15 by allowing representatives of a foreign nonmain proceeding to pursue in a foreign forum claims that are legally located within the United States.

B. Duplicative Litigation In Another Forum Is Inappropriate Where The JLs May Simply Join The Receiver's Action Against Chadbourne

The JLs do not need the ability to bring independent, duplicative actions in order to litigate any claims they believe they have on behalf of SIB against Chadbourne in connection with the Stanford Ponzi scheme.[10] Rather, this Court can easily prevent multiple proceedings that will prejudice Chadbourne and further deplete the assets of the victims of the Stanford Ponzi scheme by allowing the JLs to join the Receiver's action against Chadbourne. Such joinder would save all parties from incurring the costs of needlessly duplicative litigation, which, incidentally, is the purpose of Federal Rule of Civil Procedure 20(a). *Guedry* v. *Marino*, 164 F.R.D. 181, 184 (E.D. La. 1995) ("The purpose of Rule 20(a) is to promote trial convenience and expedite the final determination of disputes, thereby preventing multiple lawsuits.").

Rule 20(a) allows third parties to join an action if they assert a cause of action arising out of the same series of transactions or occurrences and share at least one common question of law or fact. *See* WRIGHT & MILLER, 7 FED. PRAC. & PROC. CIV. § 1653 (3d ed., 2012). The claims that the JLs seek to bring in Antigua and Barbuda (or the British Virgin Islands) mirror those brought by the Receiver before this Court, and thus there can be no question that they arise out of the same transactions or occurrences and share common questions of law and fact. When these criteria are met, "joinder of claims, parties and remedies is strongly encouraged." *Mosley* v. *Gen. Motors Corp.*, 497 F.2d 1330, 1333 (8th Cir. 1974) (citing *United Mine Workers of Am.* v. *Gibbs*, 383 U.S. 715, 724 (1966)).

[10] Certainly, a duplicative foreign action cannot be justified by any claimed need to execute on assets of Chadbourne, if any, outside the United States. There is no reason to suppose that a judgment of a court in Antigua and Barbuda (or the British Virgin Islands) will provide any advantage over a U.S. judgment with respect to extraterritorial enforcement.

Chadbourne does not object to permissive joinder of the JLs in the *Proskauer* proceedings.[11] And joinder would not pose any hardship for the JLs or the Receiver. Indeed, their own papers make it plain that the Receiver and the JLs are capable of cooperation and coordination "in preparing and prosecuting legal actions on behalf of their respective estates and the victims . . . ." (Am. Mot. 9.) If the Receiver and the JLs are capable of cooperating with respect to certain legal claims, then they are capable of cooperating with respect to the legal claims brought against Chadbourne and other law firm and attorney defendants. The inconsistent approach taken by the Receiver and the JLs in the Proposed Settlement to different types of legal claims exposes the tactical motivations underlying Sections 3.1 and 9.1. Put simply, this Court should not approve a Proposed Settlement that would allow the JLs and the Receiver to separately pursue duplicative litigation against Chadbourne when an efficient and far simpler solution—joinder—is available.

CONCLUSION

For the foregoing reasons, Nonparty Chadbourne & Parke LLP respectfully requests that the Court deny the Amended Joint Motion to Approve Settlement Agreement and Cross-Border Protocol.

[11] Chadbourne expressly reserves the right to seek joinder of the JLs, including pursuant to Rule 19, in any proceedings initiated or pursued by the Receiver to which Chadbourne is a party. Nothing in this brief shall be construed as a waiver of any rights Chadbourne has in related proceedings.

Dated: March 28, 2013

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CERTIFICATE OF SERVICE

I hereby certify that the foregoing document was filed electronically via the ECF system and, in accordance with Local Rule 5.1(d), a notice of electronic filing was transmitted to all counsel of record.

/s/ Harry M. Reasoner
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