

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

SECURITIES AND EXCHANGE COMMISSION,	§
Plaintiff,	§
v.	§ CIVIL # 3:09-CV-0298-N
STANFORD INTERNATIONAL BANK, LTD.,	§
ET AL.,	§
Defendants.	§

**UNITED STATES (IRS) RESPONSE IN OPPOSITION TO THE
ANTIGUAN LIQUIDATORS' MOTION TO AMEND, MODIFY OR VACATE
CERTAIN PORTIONS OF THE COURT'S AMENDED RECEIVERSHIP ORDER**

The United States on behalf of its agency the Internal Revenue Service, an intervening party in this case, responds in opposition to Messrs. Nigel Hamilton-Smith and Peter Wastell's (the "Antiguan Liquidators") Motion to Amend, Modify or Vacate Certain Portions of the Court's Amended Receivership Order and Brief in Support [Docket #329], and states as follows:

1. The United States (IRS) supports Ralph Janvey's ("Receiver") Response to the Antiguan Liquidators' motion to amend.

A. The relief sought by the Antiguan Liquidators would disrupt the IRS litigation related to R. Allen Stanford's personal income tax liabilities.

2. By agreed order and under 26 U.S.C. § 6871, this Court assumed jurisdiction to determine the U.S. Tax Court litigation and Mr. Stanford's tax liabilities for tax years 1999-2001. Mr. Stanford's tax liabilities stem in part from putative transactions with and by Stanford International Bank (SIB) and the flow of funds between SIB (and other Stanford entities) and Mr. Stanford. While Mr. Stanford carries the burden to prove the IRS determinations are incorrect, the documents and records of SIB are relevant to this tax litigation.¹ SIB and all

¹ Recall that a primary issue in the tax litigation is whether cash distributions from Stanford International Bank, Ltd., Mr. Stanford's wholly-owned foreign bank, to SFGC are capital gains to the taxpayers.

Stanford entities should remain under the jurisdiction of this Court so that discovery of SIB's records proceeds in an orderly and lawful fashion. The IRS highly doubts that the Antiguan Liquidators can insure that process.

3. First, the Antiguan Liquidators' spoliation of evidence—the original SIB computer records in Canada—blunts efforts by the Receiver, the SEC, the IRS and the United States government to gather SIB's critical data. Second, a tribunal in Antigua, with its reputation as a tax haven country that promotes financial secrecy, may not divulge the financial records of SIB sought by the IRS. IRS officials have stated that the United States has a Mutual Legal Assistance Treaty (MLAT) with Antigua which contains a mechanism for the exchange of information in certain circumstances. The MLAT, however, authorizes the exchange of information only in connection with a United States criminal investigation of specific charges against a specific person. Here, the IRS would be pursuing documents from SIB concerning SIB's transactions with Mr. Stanford and his other entities for this civil forum. By its terms, therefore, the MLAT is not available to the IRS here to obtain information for this civil investigation.

4. Moreover, the Tax Information Exchange Agreement (TIEA) between the United States and Antigua will not be helpful because that treaty allows the exchange of information only in connection with a United States civil investigation of a specific individual under specific factual allegations of fraud. Where the IRS must examine SIB, its records and activities for its impact upon Mr. Stanford's personal tax liabilities, the Antiguan TIEA may not be useful. Indeed, the IRS has greater confidence that its discovery requests served upon SIB in care of the Receiver will be honored under the watchful eye of this Court, not the tribunal preferred by the Antiguan Liquidators.

5. This Court has a demonstrated record of handling complex tax litigation; the Antiguan Liquidators cannot establish a similar track record for its preferred Antiguan tribunal to decipher, determine and apply U.S. federal tax law. Where the IRS expects to press its claim of greater than \$226 million in federal taxes owed, a court's appreciation and understanding of the Internal Revenue Code is critical. Consistent decisions concerning Mr. Stanford, SIB and all of his related entities in this receivership will aid the proper determination of U.S. federal taxes and ultimately, the amount of the IRS claim in this case. Those decisions must be made by this United States District Court or the U.S. Tax Court, not some foreign, Antiguan tribunal.

B. The Antiguan scheme for distribution of assets to claimants runs contrary to U.S. federal law.

6. The Antiguan Liquidators must make distributions of SIB assets in a manner at odds with that prescribed by U.S. law. According to Exhibit A to the "Notice of Filing of Petition for Recognition Pursuant to Chapter 15 of the U.S. Bankruptcy Code," the "funds in the Account and any other of the Bank's assets and property are to be held for the benefit of the depositors, creditors and investors of the Bank as their interests appear in accordance with the laws of Antigua and Barbuda."² The Antiguan scheme is ill-equipped to distribute funds pro-rata to certain classes of claimants in the event that funds are considerably less than amounts claimed. The Antiguan scheme is unlike the order of distribution found in the U.S. Bankruptcy Code, endorsed by Congress, that recognizes administrative claims, secured claims, priority claims and unsecured general claims. The Antiguan distribution scheme ignores the Internal Revenue Code and the IRS federal tax liens against Mr. Stanford that encumber all of his property and rights to

² See paragraphs 7, 7.1, 7.2, 7.3, 7.4 and 8, at pages 4-5 of Document 328-2.

property, whether real or personal.” 26 U.S.C. § 6321. The Antiguan scheme wrongly contemplates severance payments (undefined) to former SIB employees and distributions to the Bank’s shareholder, Mr. Stanford.

C. Antiguan Liquidators would ignore the SEC, the Receiver, and the IRS in an Antiguan insolvency tribunal.

7. Allowing Antiguan Liquidators to seize complete jurisdiction over SIB and escape to an Antiguan insolvency proceeding would upend the considerable efforts to date of the SEC and the Receiver to enforce the laws of the United States and to protect its citizens. The Antiguan Liquidators profess the number of U.S. citizens holding SIB accounts and the amounts in those accounts are small in comparison to the interests of other foreigners. The Antiguan Liquidators include a nice chart, but have not provided the documents needed to support this “evidence.” Even if their calculations were correct, by emphasizing that Antigua should control SIB’s affairs, the Antiguan Liquidators miss the point. U.S. citizens have been harmed and the United States through the SEC and this Receiver, not Antigua, will enforce and implement U.S. laws for the collective benefit of both U.S. citizens and all other “investors” similarly situated. The fractional number of Antiguan holding SIB funds or accounts will also get the benefit of this Court’s jurisdiction and scrutiny over SIB. The IRS can do its job as well, confident that an able interpretation and application of the Internal Revenue Code by this Court will be done. On the other hand, the Antiguan Liquidators have little interest or concern for the U.S. rule of law in this matter—as their destruction of computer evidence demonstrates. This Court should retain its jurisdiction over SIB and all of the Stanford entities involved in the “alleged” Stanford Ponzi scheme and deny the Antiguan Liquidators’ motion to amend the Receivership order.

WHEREFORE the United States requests that the Court deny the Antiguan Liquidators’

Motion to Amend, Modify or Vacate Certain Portions of the Court's Amended Receivership Order, and grant to the United States such other and further relief to which it is entitled.

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CERTIFICATE OF SERVICE

On May 11, 2009, I electronically submitted the foregoing document with the clerk of court for the U.S. District Court, Northern District of Texas, using the electronic case filing system of the court. IT IS HEREBY CERTIFIED that service of the foregoing document has been made on May 11, 2009, upon all persons and parties entitled to service, by electronic service and/or by another manner authorized by the Federal Rules of Civil Procedure.

/s/ Manuel P. Lena Jr.
Manuel P. Lena Jr.