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

SECURITIES AND EXCHANGE COMMISSION,	§	
	§	
Plaintiff,	§	
	§	
v.	§	Case No.: 3-09-CV-0298-N
	§	
STANFORD INTERNATIONAL BANK, LTD., ET AL.,	§	
	§	
Defendants.	§	

RECEIVER'S RESPONSE TO THE ANTIGUAN LIQUIDATORS' MOTION TO AMEND, MODIFY OR VACATE CERTAIN PORTIONS OF THE COURT'S AMENDED RECEIVERSHIP ORDER

The Antiguan Liquidators[1] have asked this Court to amend its Receivership Order to permit them to file a petition for recognition as liquidators of the Stanford International Bank, Ltd. ("SIB") under chapter 15 of the Bankruptcy Code. They seek to fracture this Receivership by taking exclusive possession and control of all assets and records of SIB and all assets traceable to the sale of SIB certificates of deposit ("CDs"), which includes assets the Receiver has marshaled for the benefit of all Stanford claimants. In Antigua, these assets would be distributed to SIB claimants, but not any other Stanford claimants. When the Antiguan Liquidators devise a distribution plan, it will have to be approved by a court that refuses to recognize this Court's jurisdiction or the Receiver's authority. Moreover, the Antiguan liquidation proceedings may be hijacked by the Antiguan government, which is a major debtor of

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[1] Nigel Hamilton-Smith and Peter Wastell of the Vantis firm were appointed over the Stanford International Bank, Ltd. and Stanford Trust Corporation Ltd. as "joint receiver-managers" on February 19, 2009 and as liquidators of Stanford International Bank, Ltd. on April 15, 2009. For simplicity, the Receiver will refer to them as the "Antiguan Liquidators," regardless of the time-frame involved. Similarly, the nation of Antigua and Barbuda is referred to as "Antigua."

the Receivership Estate, and which has recently taken all but the final action necessary to expropriate real estate worth millions of dollars for a "public purpose" that is difficult or impossible to determine.

Unlike the Antiguan court, this Court possesses subject matter jurisdiction over all of the SEC's claims against *all* of the Defendants including SIB, personal jurisdiction over *all* of the Defendants including SIB, and in rem jurisdiction over *all* Receivership Estate assets including assets traceable to the sale of SIB CDs.[2] Thus, the Receiver can marshal the assets of *all* Defendants and Stanford-related entities, and devise a distribution plan for *all* Stanford claimants. This Court's equitable authority to enter the stay of all litigation, including bankruptcy proceedings, is well established in the law and warranted under these facts:

- This Court's equity power in an SEC receivership case includes the authority to enjoin a broad array of litigation to protect the Court's jurisdiction and to prevent interference with the court-ordered duties of the Receiver.
- The Antiguan Liquidators' authority derives from an order issued by a court that refused to even recognize this Court's appointed Receiver and has held this Court's orders are unenforceable.
- Carving out one, of 140, Stanford entities and excluding it from the U.S. Receivership as requested by the Antiguan Liquidators will result in conflicting, duplicative, and ineffective management of the assets of the other Stanford entities, all of which must be marshaled properly and efficiently in order to provide the greatest restitution to the victims of the Stanford fraud.
- The Antiguan Liquidators seek to obtain exclusive control over all assets traceable to SIB – in other words, almost all Estate assets, without allowing recognition of the claims associated with the other 139 entities that were utilized in the same fraudulent scheme.

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[2] The Receiver has fully briefed and submitted evidence of this Court's jurisdiction in his Response to Intervenors' Motions to Reconsider the Order Approving Procedures to Apply for Review and Potential Release of Accounts, Doc. 324 at 4-18. That briefing and evidence regarding jurisdiction are incorporated herein by reference.

- The Antiguan Liquidators have not expressed any interest in pursuing Stanford victims' rights to valuable Stanford real estate that the Antiguan parliament has declared the intent to expropriate in response to this Court's orders.

- Before filing their motion to amend or their chapter 15 petition, the Antiguan Liquidators erased all SIB electronic data from SIB servers in Montreal, removed data to Antigua, and attempted to seize over US$21 million in SIB funds through an ex parte legal proceeding in which they failed to disclose to the Canadian court the existence of this SEC lawsuit and the appointment of the U.S. Receiver.

- If SIB is removed from the Receivership, and the Antiguan Liquidators are granted control of SIB assets and records, U.S. government agencies' and the Receiver's access to information vital to the prosecution of this case and other ongoing investigations may be impaired significantly.

- The previous conduct of the Antiguan Liquidators, Antiguan court, Antiguan government, and Antiguan Financial Services Regulatory Commission ("FSRC") cast doubt on their ability to provide protection and equity to any claimants outside Antigua and to any claimants against the 139 Stanford entities that are not included in the Antiguan liquidation proceedings.

- Since chapter 15 was enacted in 2005, no court has held that a receivership court lacks the authority to enjoin the filing of a chapter 15 petition.

For these reasons, the Antiguan Liquidators' motion should be denied and the Amended Order Appointing Receiver should remain intact, including the injunction against filing petitions in bankruptcy and seeking relief from that injunction for 180 days.[3] Intervenor,

3 On April 20, 2009 Robert Allen Stanford filed a Notice of Appeal of the Amended Order Appointing Receiver as well as other orders. Notice of Appeal, Doc. 323. That appeal is now pending in the Fifth Circuit as case no. 09-10392. Stanford's filing conferred jurisdiction on the court of appeals and divested this Court of jurisdiction over "those aspects of the case involved in the appeal," specifically the Amended Order that the Antiguan Liquidators seek to have amended, modified, or vacated. *See Coastal Corp. v. Tex. E. Corp.*, 869 F.2d 817, 820 (5th Cir. 1989). *See id.* at 819 (*citing United States v. Hitchmon*, 587 F.2d 1357 (5th Cir 1979); *Henry v. Indep. Am. Savings Ass'n*, 857 F.2d 995 (5th Cir. 1988)); *Griggs v. Provident Consumer Discount Co.*, 459 U.S. 56, 58 (1982). Thus, while the appeal is pending, this Court's power over the Amended Order is limited to "maintaining the status quo." *Coastal Corp.*, 869 F.2d at 820; *see also Baum v. Blue Moon Ventures, LLC,* 513 F.3d 181, 190 n.2 (5th Cir. 2008); *Sierra Club v. Cedar Point Oil Co.*, 73 F.3d 546, 578 (5th Cir. 1996).

the United States Department of Justice, Tax Division, has advised the Receiver that it concurs with and supports this response and the denial of the Antiguan Liquidators' motion.[4]

I. Background

Three days before the Antiguan Liquidators were appointed receivers, the SEC had filed this case and this Court had signed the Temporary Restraining Order and the Order Appointing Receiver. *See* Temporary Restraining Order, Order Freezing Assets, Order Requiring an Accounting, Order Requiring Preservation of Documents, and Order Authorizing Expedited Discovery, Doc. 8; Order Appointing Receiver, Doc. 10. Yet, according to briefing by the Antiguan Liquidators, the Stanford receivership did not even begin until February 19, 2009 when the FSRC appointed the Antiguan Liquidators as receiver-managers for just two Stanford entities, Stanford International Bank Limited ("SIB") and the Stanford Trust Company Limited ("STC"). *See* Notice of Filing Petition for Recognition Pursuant to Chapter 15 of the U.S. Bankruptcy Code, Doc. 328 at 1. All the operations of these two entities, including sales of CDs, were controlled and managed from Stanford's offices in the U.S.; both are organized under Antiguan law.[5]

An Antiguan court later confirmed the appointment of the receiver-managers. The FRSC then, without notice to the Receiver, applied to the Antiguan court to place SIB into liquidation, with the same two receiver-managers as liquidators. The Receiver sought to intervene in that action to request that the liquidation be denied or, if granted, that he, together

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[4] Manuel P. Lena, Jr., Attorney for United States (IRS), has made an appearance in this case. *See* IRS Motion to Intervene, Doc. 170. Mr. Lena has advised the Receiver of the Tax Division's position on the Antiguan Liquidators' motion.

[5] STC is a different entity from the Stanford Trust Company, a Louisiana corporation.

with an Ernst & Young insolvency specialist,[6] be appointed liquidators for a liquidation proceeding that would be ancillary to the first-in-time U.S. Receivership. *See e.g., Dailey v. NHL*, 987 F.2d 172, 176 (3rd Cir. 1993) ("a 'mechanical rule' . . . requires that the court in which the second suit is brought yield its jurisdiction if the requisite 'property' showing is made."). The Antiguan court granted the FRSC's motion to place SIB into liquidation and to appoint the receiver-managers as liquidators, and stated that Antiguan law provides no mechanism for recognizing this Court's orders. The Antiguan court's order has been appealed to the Eastern Caribbean Supreme Court.[7]

II. Argument & Authorities

A. This Court's stay is supported by the law and warranted by the facts.

The Antiguan Liquidators state that there is "ample authority" for the proposition that this Court may not enjoin the filing of a chapter 15 petition, but they fail to cite a single case that involves a chapter 15 petition. They also fail to distinguish the *Byers* case, only a few months old, in which a receivership court enjoined the filing of bankruptcy petitions and held the injunction should not be lifted because to do so would interfere with the receiver's investigation. *SEC v. Byers*, 592 F. Supp. 2d 532, 536 (S.D.N.Y. 2008). The Antiguan Liquidators present no compelling reason for treating an injunction against filing a chapter 15 petition any differently from any other litigation stay. They do not discuss this Court's jurisdiction or the rules of comity that the Antiguan court ignored by declaring this Court's orders unenforceable.

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[6] The Receiver is advised that Antigua, like other commonwealth jurisdictions, appoints accountants or business consultants, not lawyers, as receivers.

[7] The appeal, filed April 29, 2009, with the Eastern Caribbean Supreme Court, was lodged by Alexander M. Fundora, who had filed a competing liquidation petition and proposed different liquidators. In addition, the Receiver has filed his application for leave to appeal the order of the Antiguan court that denied the Receiver the status of a party in that proceeding.

Because "[t]he receivership court has a valid interest in both the value of the claims themselves and the costs of defending *any* suit as a drain on receivership assets," the court "may issue a blanket injunction, staying litigation against the named receiver and the entities under his control unless leave of that court is first obtained." *Liberte Capital Group, LLC v. Capwill*, 462 F.3d 543, 551 (6th Cir. 2006) (emphasis added). This injunction can even bind all non-parties who have notice, far exceeding normal limits on the scope of injunctions. *See SEC v. Wencke*, 622 F.2d 1363, 1369 (9th Cir. 1980). Furthermore, the power to enjoin "extends to the institution of *any* suit." *Liberte Capital*, 462 F.3d at 551 (emphasis added).

Even where the receivership court entering the injunction was not the first in which suit was filed, the Fifth Circuit has enforced the stay, vacated a two-year-old judgment from litigation pending before the receiver was appointed, and ordered that funds disbursed pursuant to the judgment be paid back into the registry of the court for the benefit of the receivership estate. *Schauss v. Metals Depository Corp.*, 757 F.2d 649, 655 (5th Cir. 1985). In *Schauss*, a customer sued a metals dealer, MDC, in the Northern District of Texas and MDC's bank was joined as garnishee. *Id.* at 651. Soon thereafter, a fraud suit was filed in the Southern District of New York. The New York court entered judgment against MDC, appointed a receiver, and enjoined the commencement of new suits and continuation of pending suits. *Id.* A second Texas suit was filed and the two Texas suits were consolidated. Pursuant to 28 U.S.C. § 754, the New York receiver filed the New York order appointing him with the Texas court, but did not otherwise answer or enter an appearance in the Texas consolidated case. *Id.* at 652.

The Texas case then proceeded to bench trial and the court entered judgment disposing of the funds interpleaded by the bank as garnishee. *Id.* Two years later, the receiver moved to set aside the Texas judgment. The Fifth Circuit granted the motion in the interests of

justice and comity between federal courts, to discourage duplicative litigation, and in furtherance of the important goal of preserving assets in receivership:

> [S]everal courts have recognized the importance of preserving a receivership court's ability to issue orders preventing interference with its administration of the receivership property. In both securities fraud cases, and bankruptcy proceedings, Courts of Appeals have upheld orders enjoining broad classes of individuals from taking any action regarding receivership property. Such orders can serve as an important tool permitting a district court to prevent dissipation of property or assets subject to multiple claims in various locales, as well as preventing "piecemeal resolution of issues that call for a uniform result."

Id. at 654 (citations omitted).

The authority to enter a broad litigation stay flows from the district court's exclusive jurisdiction over a receivership. In *Liberte Capital*, the district court had entered an injunction against litigation, but carved out a very narrow exception for litigation against the Receiver for cases challenging the validity of life insurance policies prior to the insured's death. *Liberte Capital*, 462 F.3d at 549. Insurance companies initiated suits against the entities in receivership that did not fall within the narrow exception to the injunction, and the district court held them in contempt. The Sixth Circuit affirmed, emphasizing the district court's exclusive jurisdiction over the receivership. *Id*. at 552.

In December 2008, a district court relied on *Wencke* and *Liberte Capital* to hold that the equitable power to fashion an appropriate remedy for a securities law violation included the authority to enjoin the filing of a bankruptcy petition. *SEC v. Byers*, 592 F. Supp. 2d 532, 536 (S.D.N.Y. 2008). The SEC had filed a complaint alleging defendants participated in a Ponzi scheme that involved 240 affiliates on three continents. *Id*. at 534. The receivership order enjoined any person, except the receiver, from filing a bankruptcy petition. *Id*. at 534-35. The court observed that if the court lacked this authority, it would undermine the purpose of a

receivership and disrupt the receiver's efforts to discharge his duties. *Id*. at 535-36. Having concluded that it possessed the power to enter the stay, the court then considered whether movants had demonstrated that the stay should nonetheless be lifted. Applying the factors from *SEC v. Wencke*, *supra*, the court held that it should not because: (1) maintaining the stay would maintain the status quo; (2) it was early in the receivership and filing bankruptcy petitions would hinder the receiver's ongoing investigation; and (3) the court did not have enough information regarding the merits of the movants' underlying claim to outweigh the first two factors. *Id*. at 536-37.

The Antiguan Liquidators rely on *Jordan v. Indep. Energy Corp*., 446 F. Supp. 516 (N.D. Tex. 1978) for the proposition that a receivership court cannot enjoin the filing of a bankruptcy petition. But in *Jordan* the court actually stated that "[i]n the absence of specific Congressional guidance to the contrary, a federal district court may theoretically restrain voluntary or involuntary access to the bankruptcy court by issuing a blanket receivership injunction." *Id*. at 529. The court stated that a broad litigation stay in a receivership order should be evaluated in light of the following factors:

> (1) a substantial likelihood that the plaintiff will prevail on the merits, (2) a substantial threat that plaintiff will suffer irreparable injury if the injunction is not granted, (3) a threatened injury to plaintiff that outweighs the threatened harm the injunction may do to defendant, and (4) granting of the preliminary injunction will not disserve the public interest.

Id. at 529.

This Court has already found that the SEC has shown a substantial likelihood that it will prevail on the merits. In the absence of the litigation stay, including the injunction on filing a petition in bankruptcy, anyone could file a petition at any time of their choosing – even one day after the Receiver was appointed in any SEC fraud case. This would irreparably disrupt

the Receivership and fracture the SEC's case. The public interest is served much better, as discussed *infra*, by this Court and this Receiver than by segregating SIB, its assets, records, and claimants for the Antiguan Liquidators and Antiguan court to control.

Jordan is also distinguishable in at least two fundamental, factual respects. First, *Jordan* arose out of a suit by private investors, not an SEC civil enforcement action. Case law makes it clear that a receivership, such as this one, established in connection with an SEC civil enforcement action is subject to different policy considerations. "There is a strong federal interest in insuring effective relief in SEC actions brought to enforce the securities laws." *Wencke*, 622 F.2d at 1372. "The appointment of a receiver is a well-established equitable remedy available to the SEC in its civil enforcement proceedings for injunctive relief," and is often necessary "to insure complete enforcement of the federal securities laws." *SEC v. First Fin. Group of Tex.*, 645 F.2d 429, 438 (5th Cir. 1981).

Second, the scope of both the fraud and the receivership here are vastly different than in *Jordan*. *Jordan* involved the allegedly fraudulent sale of fractional interests in oil wells. A receiver was appointed to operate the oil leases until conclusion of the case. Here, the SEC filed suit to halt a more than $8 billion fraud spanning five continents and involving more than 100 separate entities. Continued operations depended upon the continued sale of the fraudulent CDs issued by SIB. When the Court enjoined the Stanford fraud, there was no longer a going concern to operate, as there had been in *Jordan*. Instead, the task was, and remains, shutting down massive, far-flung operations and identifying and taking control of assets for eventual liquidation and distribution to claimants under the Court's direction and supervision. Given the enormity of the task assigned to the Receiver and the difficulties posed by flawed and deceptive

record-keeping, a stay of litigation, including the Antiguan Liquidators' chapter 15 motion, is vital.

Moreover, when the court in *Jordan* stated that "[a]n injunction limiting access to the bankruptcy courts will never satisfy" the four-part test for the issuance of a preliminary injunction, it was not referring to a chapter 15 motion such as that filed by the Antiguan Liquidators. Chapter 15 had not even been enacted yet.[8] In addition, in making this statement, the *Jordan* court went far beyond what was necessary to address the specific issue before it. Because the analysis for determining whether a litigation stay should be issued is extremely fact-dependent, a court, in performing such an analysis, should avoid sweeping generalizations. The Receiver submits, therefore, that the Court should limit the applicability of this statement from *Jordan* to cases with truly similar facts.[9] This is not such a case.

B. Dual receiverships over different Stanford entities would be terribly inefficient and ineffective.

"It is especially appropriate in an action like this one that the federal courts have the power, if necessary, to take control over an entity and impose a receivership free from interference in other court proceedings." *Wencke*, 622 F.2d at 1372. The Ninth Circuit made this observation in a case that involved a relatively small motel holding company that was looted through a series of fraudulent transfers to dummy corporations. Judge (now Justice) Anthony Kennedy, writing for the court, explained some of the practical reasons why such an injunction can be necessary and reasonable. It protects the interests of the very persons enjoined from filing suit, and prevents the estate from becoming overwhelmed by the expenses of multiple lawsuits.

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[8] Indeed, the U.S. Bankruptcy Code had not been enacted yet.

[9] It should be noted that even though the *Jordan* court permitted the involuntary bankruptcy proceeding that had been filed to go forward, it suggested to the bankruptcy court that the receiver be appointed the bankruptcy trustee. *Jordan v. Indep. Energy Corp*., 446 F. Supp. 516, 530 n.29 (N.D. Tex. 1978).

> The ultimate goals of SEC intervention were protection of innocent shareholders and enhancement of investor confidence in the securities markets. Appointment of the receiver in this case furthered several subsidiary policies of the securities laws. The assets of the corporate entities were marshalled and preserved against further misappropriation and dissipation; the financial affairs of the entities needed to be clarified for the benefit of innocent shareholders; the receiver and his staff could conduct independent investigation of claims the entities might have against former management or other parties, prosecution of which would benefit investors and deter future violations; and defenses against possibly fraudulent or collusive actions brought against the entities could be discovered and asserted. . . .
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> . . . The receiver and the district court also felt it essential for the receiver to be given time to explore all the complex transactions and aspects of the receivership estate so that innocent shareholders suffered no further harm.
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> A receiver appointed by a court in the wake of a securities fraud scheme may encounter difficulties sorting out the financial status of the defrauded entity or entities. There may be a genuine danger that some litigation against receivership entities amounts to little more than a continuation of the original fraudulent scheme. Similarly, the securities fraud may have left the finances of the receivership entities so obscure or complex that the receiver is hampered in conducting litigation. Moreover, the expense involved in defending the many lawsuits which often are filed against an entity in the wake of a securities fraud scheme may be overwhelming unless some are temporarily deferred. A stay of proceeding against receivership entities except by leave of the court may be an appropriate response to the above concerns, and the district court did not abuse its discretion in this case by entering the blanket stay.

622 F.2d at 1372-73. This reasoning is equally valid here.

The Stanford companies were a complex, sprawling web of more than 100 companies, in more than 100 discrete locations spanning fifteen states in the United States and thirteen countries in Europe, the Caribbean, Canada, and Latin America. All of these entities were owned virtually 100% directly or indirectly by Allen Stanford. All had a core objective of either selling CDs issued by SIB or of presenting an appearance of financial legitimacy that

would disguise the overall objective of selling fraudulent CDs. The operations of all the major companies, particularly those engaged in the promotion and sale of CDs, and the investment and use of CD proceeds (including SIB), were controlled and managed in the United States.

Before the Antiguan Liquidators were even appointed as receiver-managers, the Receiver was already charged with, and was taking steps to carry out, the following duties over the Stanford network of companies: taking complete and exclusive control over the Estate and assets traceable to the Estate; instituting legal action to obtain possession of Estate assets; securing real and personal property, including Stanford offices; taking all acts necessary to preserve value and prevent loss of Estate assets; hiring professionals to assist with his duties; cooperating with government officials; and enforcing the injunction against other legal proceedings. *See* Doc. 10 at ¶¶ 2, 3, 5(a)-(m), 6-8.

For almost three months now, the Receiver has been analyzing and gathering necessary information from obscure and complex financial records, locating, securing and monetizing Estate assets, assessing real estate, private equity holdings, coin and bullion, and aircraft and developing plans for their most profitable disposition. The Receiver has already brought claims against sixty-six former financial advisors for commissions on CD sales and identified at least $300 million in claims against those who received proceeds from redemption of SIB CDs, or interest paid on SIB CDs. Excluding SIB from the Receivership would severely hamper the Receiver's asset tracing and recovery efforts, would increase rather than decrease complexity, and in a very real sense, limit the effectiveness of those actions, which would be centered in the United States. Severing SIB from other entities, SIB claimants from all other Stanford claimants, and SIB assets from all other Estate assets would also be an artificial division that would unnecessarily add to the administrative costs for all interested parties. *See Byers*, 592

F. Supp. 2d at 536-37 (litigation stay should not be lifted if it genuinely preserves the status quo or if receiver's investigation is still in early stages); *see also In re Michael S. Starbuck, Inc.*, 14 B.R. 134, 135 (S.D.N.Y. 1981) (chapter 11 petitions dismissed because SEC equity receivership was providing efficient and equitable distribution of assets; over 1,400 hours had already been expended by receiver and counsel in the administration of the estate).

This Court has jurisdiction over all of the principal participants in the alleged fraud, including Allen Stanford, who owned and/or controlled *all* of the Stanford entities involved in the fraud.[10] *See U.S. v. Ross*, 302 F.2d 831, 834 (2d Cir. 1962) (court ordered U.S. citizen, resident of Bahamas, to turn over to receiver stock certificates located in Bahamas for Bahamian corporation and Liberian corporation, neither of which conducted any business in U.S.). The evidence strongly suggests that the Stanford entities were operated, as a whole, principally for a fraudulent purpose. The Antiguan goal of isolating SIB from the rest of the entities subject to the U.S. Receivership is contrary to both the apparent unitary nature of the fraud scheme and the longstanding common law rule that the corporate form is disregarded where it has been used as an instrument of fraud.

The Texas Supreme Court recently restated the long-standing rule that a court will disregard corporate separateness where the corporate form has been used for a fraudulent purpose.

> We disregard the corporate fiction, even though corporate formalities have been observed and corporate and individual property have been kept separately, when the corporate form has been used as part of a basically unfair device to achieve an inequitable result. Specifically, we disregard the corporate fiction:

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[10] There are several bases for this Court's jurisdiction over the Defendants and all other Stanford-related entities – section 754, SIB's express consent, minimum contacts, and piercing the corporate veil – as fully briefed in the Receiver's Response to Intervenors' Motions to Reconsider the Order Approving Procedures to Apply for Review and Potential Release of Accounts, Doc. 324 at 4-18.

> . . . when the fiction is used as a means of perpetrating fraud; [and] . . . where the corporate fiction is relied upon as a protection of crime or to justify wrong.

SSP Partners v. Gladstrong Invs. (USA) Corp., 275 S.W.3d 444, 454 (Tex. 2008). The same rule is observed in England, whose common law Antigua purports to follow.[11]

To protect innocent claimants, enhance confidence in the markets, and maximize the Estate for ultimate distribution, this Court should deny the Antiguan Liquidators' motion. *See Wencke*, 622 F.2d at 1372-73.

C. The Antiguan Liquidators seek to assert control over most or all of the Estate assets that the Receiver has already located and obtained.

The SEC alleges in its Amended Complaint that the Stanford entities constitute "a massive Ponzi scheme" involving "the misappropriat[ion] of billions of dollars of investor funds." First Amended Complaint, Doc. 48 at ¶ 1. The combined Stanford entities were funded primarily by the sale of CDs issued by SIB. The money came in, for the most part, through SIB and then flowed throughout the large, geographically dispersed Stanford network.[12] Stanford broker dealer entities – in the U.S., principally the Stanford Group Company – marketed the CDs. CDs were sold to people from all over the world, although in terms of both dollar amount and number of investors, sales to citizens of the U.S. and Venezuela predominated. Few sales

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[11] The Court should pierce the corporate veil where a group has been structured in a dishonest manner and used for a scheme of concealment (*Kensington Int'l Ltd. v. Congo* [2006] 2 BCLC 296 per Cooke, J. at 341-50, ¶¶ 177-202, in particular ¶¶ 199 and 200).

[12] Amounts were also bled off to finance Allen Stanford's extravagant lifestyle. Planes, yachts, cars, residences, travel and American Express card accounts were all owned and/or paid for by Stanford companies. In addition, a large amount simply cannot be accounted for based on the records found and analyzed to date.

were to Antiguans. Indeed, corporations like SIB, formed under the Antiguan International Business Corporations Act, are authorized to serve only non-Antiguans.[13]

Sale proceeds largely bypassed Antigua and went directly to accounts in Canada, the United States and England, from which they were disbursed among many other Stanford entities and accounts. Only a small percentage of Stanford funds were kept on deposit in Antigua. SIB's principal operating account was at the Bank of Houston, in Houston. At the inception of the Receivership on February 17, 2009, the total principal amount of outstanding CDs was approximately $7.2 billion, according to SIB records. As best the Receiver has been able to determine to date, the assets of the entire Stanford empire have a total value significantly less than $1 billion, although an amount in the range of $1 billion has not been accounted for. *See* Doc. 336 at 28. CD sales continued almost until February 16, when the SEC and this Court intervened.

Thus, almost all Estate assets are assets of SIB or traceable to SIB because the sale of SIB CDs bankrolled the entire Stanford worldwide network. The vast majority of the assets the Receiver has located and marshaled, whether cash, equity holdings, real estate or

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[13] Antigua maintains strict separation between its offshore financial industry and its domestic banking system. SIB and STC, incorporated under Antigua's International Business Corporation Act (the IBCA), are only authorized to engage in "international trade or business." IBCA § 4, attached as Exhibit A. International trust companies such as STC are restricted to "the managing or administering of real property situated outside Antigua and Barbuda or the managing or administering of personal property of persons who are not resident within Antigua and Barbuda." *Id*. § 4(3). International banks such as SIB are restricted to "the carrying on from within Antigua and Barbuda of banking in any currency that is foreign in every country of the Caricom Region; but the keeping of external accounts for residents in any foreign currency under exchange control licence or regulation is not carrying on international banking by virtue of that activity alone." *Id*. § 4(2). The Caricom region refers to the small island nations of the East Caribbean, including Antigua, that are signatories to the 1973 Treaty of Chaguaramas. *Id*. § 2(2). Residents of Antigua may not hold foreign currency (such as U.S. dollars, which were the predominant currency in which SIB dealt) without obtaining the appropriate permit to do so. Antigua Exchange Control Act, §§ 4-6, attached as Exhibit B. Even then, as the preceding quote from the IBCA states, serving Antiguans with permits to hold external currency does not constitute "international business" in which an IBCA-chartered bank may engage. The laws of Antigua may be accessed through the website of the Government of Antigua and Barbuda at: http://www.laws.gov.ag/acts.

aircraft, are traceable to CD sales. If this Court cedes jurisdiction to the Antiguan Liquidators, they can be expected to demand that all of these assets be transferred to their exclusive possession and control.[14] *See Byers*, 592 F. Supp. 2d at 536-37 (stay should not be lifted if it preserves status quo). They would also claim entitlement to any additional assets that may be recovered from successful prosecution of claims the Receiver has already brought against former financial advisors and claims he has identified against the recipients of CD redemptions or interest.

The Receivership Estate would be small indeed were the Receiver to lose control over assets belonging, directly or by tracing, to SIB. In such event, the Receivership would be a mere conduit for assets to flow to the Antiguan Liquidators. Because Antiguan law prohibited SIB from serving Antiguans, neither the Antiguan court nor the Antiguan Liquidators can profess an interest in protecting the interests of Antiguan investors. If SIB is delivered to the Antiguan Liquidators, then U.S. investors, who have more money invested in Stanford CDs than any other constituency, may well have to look to Antigua for justice. Claims against the other 139 Stanford entities will not be recognized in Antigua at all.

D. Claimants' interests are best served by U.S. law, this Court, and the Receiver.

That the movants are "liquidators" and Janvey is a "receiver" makes no difference under U.S. law. Claimants are amply protected by U.S. receivership law and this Court's oversight authority.

An equity receivership often involves an insolvent receivership estate and the need for a receiver, under court supervision, to take control of assets for the benefit of claimants and ultimately to distribute them equitably pursuant to a court-approved distribution scheme.

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[14] Indeed, the Antiguan Liquidators have already begun processes to that effect in Canada, England, and Switzerland.

"The receiver's role, and the district court's purpose in the appointment, is to safeguard the disputed assets, administer the property as suitable, and to assist the district court in achieving a final, equitable distribution of the assets if necessary. . . . The district court may require all . . . claims to be brought before the receivership court for disposition pursuant to a summary process consistent with the equity purpose of the court. . . . The inability of a receivership estate to meet all of its obligations is typically the *sine qua non* of the receivership." *Liberte Capital*, 462 F.3d at 551-53. Where "rightful claims to assets exceed the assets available, the court, with the help of the receiver, must determine how to distribute the assets equitably. . . . [D]istributing . . . assets [of the entity placed in receivership] equitably is one of the central purposes of the receivership." *SEC v. Capital Consultants LLC*, 453 F.3d 1166, 1172 (9th Cir. 2006); *see SEC v. Infinity Group Co.*, 226 Fed. Appx. 217, 218 (3d Cir. 2007).

It also makes no difference that significant Estate assets are located outside U.S. borders. The Court, in its receivership order, "assume[d] exclusive jurisdiction [over] and t[ook] possession of the assets . . . of whatever kind and description, *wherever located*, . . . of the Defendants and all entities they own or control."[15] "[W]hen a district court has in personam jurisdiction over the defendant, . . . a duly appointed receiver may exercise authority over any assets located in foreign countries provided that his actions are taken in accord with or otherwise do not violate the law of that foreign nation." *Citronelle-Mobile Gathering, Inc. v. Watkins*, 934 F.2d 1180, 1187 (11th Cir. 1991). *See also United States v. Ross*, 302 F.2d 831, 834 (2d Cir. 1962); *United States v. Arizona Fuels Corp.*, 739 F.2d 455 (9th Cir. 1984); *Am. Freedom Train Found. v. Spurney*, 747 F.2d 1069, 1073-74 (1st Cir. 1984).

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[15] Doc. 10 at ¶ 1; Doc. 157 at ¶ 1. (emphasis added.)

Moreover, previous events in Antigua provide little assurance that Stanford claimants will be treated fairly and equitably:

1. The Antiguan court has not and will not recognize this Court's orders.

After this Court had appointed the Receiver, the FRSC, without notice to the Receiver, applied to the Antiguan court to place SIB into liquidation. The Receiver sought to intervene in that action and was rebuffed. The Antiguan court stated that (1) this Court's orders are "unenforceable" and have no force of law in Antigua; (2) Antigua does not recognize orders of U.S. courts; (3) the Receiver "has no legal entitlement to standing in Antigua"; and (4) the Receiver, whose authority derives from an "unenforceable" U.S. Court order, lacks standing as an "interested person" under Antigua's International Business Corporations Act.[16] Judgment of April 17, 2009 at ¶¶ 41-44, attached as Exhibit C. The Antiguan court, in its comments from the bench, went so far as to describe the Receiver as a "stranger" to the Antiguan proceedings.[17]

It is clear that the Antiguan Liquidators seek only one-way recognition. Antigua "has no reciprocal enforcement of Judgments or orders treaty with the U.S.A." *Id*. at ¶ 41. For the Antiguan court, SIB's Antiguan registration was dispositive; there was no analysis of SIB's presence, operations, sales, or effect in the U.S. In other words, this Court's subject matter, in personam, and in rem jurisdiction are irrelevant in Antigua.

2. The Antiguan government is a debtor of the Receivership Estate.

Antigua is a small island nation, where in 2008, the entire national gross domestic product was only US $1.126 billion.[18] Allen Stanford was an extremely prominent figure. He was the largest private employer on the Island and made huge loans to the government. Through

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[16] The Antiguan court did permit the Receiver's Antiguan counsel to address the court as Amicus Curiae. Amicus status, of course, is no substitute for party status.

[17] There is no transcript of the Antiguan hearing because there was no court reporter.

[18] http://www.economywatch.com/economic-statistics/country/Antigua-and-Barbuda/

some of his wholly-owned entities, he made one loan in the amount of $40 million and another in the amount of EC$300 million (about US$100 million).[19] The government has yet to repay either loan and the Antiguan Liquidators have not given any indication that they will pursue collection of these debts for the benefit of Stanford victims.

3. The Antiguan Liquidators have not challenged the Antiguan government's intended expropriation of valuable Estate assets that should be liquidated for the benefit of all Stanford victims.

The Antiguan Liquidators may be from the UK, but they are administering a liquidation proceeding in Antigua, and Antiguan politics, the Receiver submits, cannot help but seep into their administration of the liquidation. For example, the failure of the Stanford entities, collectively the largest private employer behind the government, sparked such a public outcry that the Antiguan parliament, evidently as a show of solidarity with the people, authorized the government's expropriation of Stanford real estate that had been valued at $150 million. The parliamentary resolution authorizing the expropriation cites *this Court's order as the reason for the taking*:

> . . . Whereas the appointment by the U.S. District court for the Northern District of Texas of a Receiver to take control of the assets of Stanford International Bank Ltd., the Stanford Group of Companies, and Sir Allen Stanford (among others) threatens the financial viability of the Bank of Antigua, the prompt payment by the Stanford Group of companies of the massive outstanding debt to local suppliers, and the continued employment of over eight hundred employees at a time of global financial crisis.[20]

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[19] *See* Loan Agreement between Stanford Financial Group Company and the Government of Antigua and Barbuda, attached as Exhibit D. Evidence of the EC $300 loan is attached as Exhibit E.

[20] *See* the "Resolution Authorising the Secretary to the Cabinet to Cause a Declaration to be Made for the Acquisition of the Lands Described in the Schedule for a Public Purpose," attached as Exhibit F.

The resolution mentions nothing about compensation to SIB or the Estate and none has been offered, even though such compensation is required by the nation's constitution.[21] These are assets that, but for the government's taking, would be available for liquidation for the benefit of defrauded claimants. The Antiguan Liquidators have not even spoken out against the intended expropriation, much less taken steps to challenge it in court.

4. The Antiguan Liquidators have erased computer records in Canada and obtained an order under pretense in Canada.

The Antiguan Liquidators' recent conduct in Canada is also relevant. On March 27, five weeks after this Court appointed the Receiver, employees of Vantis, the Antiguan Liquidators' firm, entered SIB's Montreal office and "wiped" all data from that office's servers. By coincidence, an employee of FTI Consulting, Inc., one of the professional firms engaged by the Receiver, arrived at the Montreal office as that activity was nearing completion.[22] The Receiver, through counsel, demanded an explanation. The Antiguan Liquidators' Canadian counsel replied with the assurance that the data that had been on the servers was safe because Vantis imaged it and *sent the images to Antigua*.[23] In other words, the Antiguan Liquidators moved all SIB electronic data that had existed in Canada out of Canada and to Antigua. There is no reason to believe that the Antiguan Liquidators would not do the same in the U.S. if given the chance.

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[21] According to the U.S. Secretary of State's website entry for Antigua, this is not Antigua's first expropriation. "In 2002 the government expropriated property of a private citizen, who filed an injunction that alleged abuse of power, harassment, and threats by the government to acquire the property. The Eastern Caribbean Court of Appeal upheld a lower court's decision that refused to bar the expropriation. In June, the Privy Council rejected the owner's appeal. At year's end the government had not provided prompt, adequate, and effective compensation to the claimant, as stipulated under law." U.S. Department of State, Antigua and Barbuda, March 11, 2008, http://www.state.gov/g/drl/rls/hrrpt/2007/100624.htm.

[22] *See* Affidavit of Dan Roffman, filed in the pending Canadian proceeding, attached as Exhibit G.

[23] The correspondence from Julie Himo, counsel to the Antiguan Liquidators, to William F. Stutts, counsel to the Receiver, is attached as Exhibit. H.

Only after gathering and sending relevant data outside of Canada did the Antiguan Liquidators bother to obtain an ex parte Canadian registrar's order recognizing the Antiguan receivership order. They did so without disclosing their previous data erasure, without giving notice to counsel for the Receiver, and without advising the Canadian registrar (whose jurisdiction, in the absence of consent, extends only to hearing uncontested matters) that a U.S. Receiver exists and claims rights in the Stanford Canadian assets.[24] The Receiver has challenged the Canadian ex parte recognition and has applied for recognition of this Court's receivership order.

SIB is, and will continue to be, a defendant in the SEC's case. If SIB is not part of the Receivership, and the Antiguan Liquidators take exclusive control of SIB records, then the Receiver will be unable to provide the government with information regarding SIB, as the current Receivership Order requires. *See* Doc. 157 at ¶ 5(k). The Antiguan Liquidators, appointed by a court that has refused to recognize this Court's jurisdiction, would be under no obligation to assist U.S. government agencies investigating SIB. In fact, the conduct of the Antiguan Liquidators, court, and parliament in connection with Stanford matters caution that U.S. government agencies should probably not expect any assistance from them. And there is every indication that the interests of Stanford's many victims, almost none of whom are Antiguans, will be secondary to domestic political concerns, if they are considered at all, in Antigua. *See Byers*, 592 F. Supp. 2d at 536-37 (merits of moving parties' underlying claim is a factor to consider in determining whether an injunction against litigation should be lifted).

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[24] The Antiguan Liquidators' application for recognition did not even mention the U.S. Receivership. One of the exhibits to the application, the Antiguan Liquidators' report to the Antiguan Court, did mention the existence of a U.S. Receivership, but the Receiver has been advised that a reference buried in the middle of one of multiple exhibits does not constitute adequate disclosure under Canada's requirement of candor that applies when a party is presenting an ex parte motion.

III. Conclusion & Prayer

The Antiguan Liquidators complain that the Receiver has refused to cooperate with them. The principal forms of cooperation that they have sought have been for the Receiver to cede control over most of the known assets of the Stanford empire and provide information regarding the location of other assets. This Court's Receivership order does not empower the Receiver to surrender the Court's jurisdiction via a "cooperation agreement" with the Antiguan Liquidators, nor does the Receiver believe "cooperation" toward the end of transferring assets to Antigua would be in the best interest of Stanford claimants. Moreover, notwithstanding the Antiguan Liquidators' professed desire to cooperate, their document destruction and ex parte conduct in Canada indicate that true cooperation is not foremost on their agenda.

Notwithstanding these circumstances, the Receiver stands ready to work with the Antiguan Liquidators to reduce expenses so long as this Court's jurisdiction is not compromised. The Receiver has offered to meet with the Antiguan Liquidators again (he met with them in April) and is evaluating a recent proposal from the Antiguan Liquidators. However, this proposal appears to be based on two assumptions that the Receiver cannot agree to: (1) separation of SIB from other Stanford entities; and (2) control of administration by the Antiguan Liquidators. The Receiver will continue to be open to methods of reducing costs so long as he can continue to meet the obligations of his order of appointment and does not compromise the Court's jurisdiction over this global fraud committed by, through, and against U.S. citizens and others.

For these reasons, the Antiguan Liquidators' Motion to Amend, Modify or Vacate Certain Portions of the Court's Amended Receivership Order should be denied. The Receiver also requests any further relief to which he is entitled.

Dated: May 11, 2009

Respectfully submitted,

BAKER BOTTS L.L.P.

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Certificate of Service

On May 11, 2009, I electronically submitted the foregoing document with the clerk of the court of the U.S. District Court, Northern District of Texas, using the electronic case filing system of the court. I hereby certify that I have served the Court-appointed Examiner, all counsel and/or pro se parties of record electronically or by another manner authorized by Federal Rule of Civil Procedure 5(b)(2).

/s/ Kevin M. Sadler
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