

**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.,     | § |                         |
| STANFORD GROUP COMPANY,                | § |                         |
| STANFORD CAPITAL MANAGEMENT, LLC,      | § |                         |
| R. ALLEN STANFORD, JAMES M. DAVIS, and | § |                         |
| LAURA PENDERGEST-HOLT,                 | § |                         |
|  | § |                         |
| Defendants.                            | § |                         |

**RECEIVER'S MOTION TO APPROVE SALE OF  
INVESTMENT INTERESTS IN INSOUND AND MBV**

BAKER BOTTS L.L.P.  
Kevin M. Sadler, Lead Attorney  
Texas Bar No. 17512450  
Robert I. Howell  
Texas Bar No. 10107300  
David T. Arlington  
Texas Bar No. 00790238  
98 San Jacinto Blvd., Suite 1500  
Austin, Texas 78701-4078  
Telephone: 512.322.2500  
Facsimile: 512.322.2501

Timothy S. Durst  
Texas Bar No. 00786924  
2001 Ross Avenue, Suite 600  
Dallas, Texas 75201-2980  
Telephone: 214.953.6500  
Facsimile: 214.953.6503

**ATTORNEYS FOR RECEIVER  
RALPH S. JANVEY**

**TABLE OF CONTENTS**

TABLE OF AUTHORITIES ..... ii

I. INTRODUCTION ..... 1

II. FACTUAL BACKGROUND..... 1

III. ARGUMENT AND AUTHORITIES..... 3

    A. InSound Investment. .... 5

        1. SVCH’s Holdings in InSound..... 5

        2. The PEI/Sightline Offer. .... 7

    B. MBV Investment..... 8

        1. SVCH’s Holdings and Capital Obligations to MBV. .... 8

        2. The Shelby County Offer..... 10

IV. CONCLUSION AND PRAYER FOR RELIEF ..... 12

**TABLE OF AUTHORITIES**

|   | <b>Page(s)</b> |
|---|----------------|
| <b>CASES</b>  |                |
| <i>Jones v. Village of Proctorville</i> ,<br>290 F.2d 49 (6th Cir. 1961) .....                  | 3              |
| <i>Kingsport Press, Inc. v. Brief English Systems</i> ,<br>54 F.2d 497, 501 (2d Cir. 1931)..... | 3              |

## I. INTRODUCTION

Ralph S. Janvey, as Receiver for the assets of the Defendants and all Stanford-controlled entities, respectfully moves the Court for an order approving the sale of certain private equity interests held by Stanford Venture Capital Holdings, Inc. (“SVCH”). As explained in detail below, the Receiver has obtained offers from prospective buyers who wish to purchase SVCH’s investments in both InSound Medical, Inc. (“InSound”) and Memphis Biomed Ventures II, L.P. (“MBV”). The Receiver has reviewed and analyzed the pending offers, and has sought a recommendation from Park Hill Group (“PHG”) concerning each.<sup>1</sup> Based upon his independent evaluation and PHG’s recommendations, the Receiver believes that the liquidation of these investments pursuant to the pending offers will achieve the maximum benefit from the holdings and is in the best interest of the Receivership Estate.

## II. FACTUAL BACKGROUND

On February 16, 2009, the Securities and Exchange Commission (the “Commission”) commenced a lawsuit in this Court against R. Allen Stanford, two associates, James M. Davis and Laura Pendergest-Holt, and three of Mr. Stanford’s companies, Stanford International Bank, Ltd., Stanford Group Company, and Stanford Capital Management, LLC (the “Stanford Defendants”). The Commission alleges, in its First Amended Complaint filed on February 27, 2009, that the Stanford Defendants perpetrated a multi-billion-dollar fraudulent scheme by (1) promising high return rates on “certificates of deposit” that exceeded those available through true certificates of deposit offered by traditional banks and (2) selling a

---

<sup>1</sup> On July 16, 2009, the Receiver filed his Motion to Appoint Private Equity Advisor and requested the approval of the Court to retain PHG to manage the Investment Portfolio (as defined below). Due to the time sensitivity surrounding these potential divestments, PHG agreed to review these holdings and provide recommendations to the Receiver regarding their disposition. Moreover, PHG has agreed to waive its proposed 3% fee in connection with the MBV transaction and instead receive a commission of 1% of the total purchase price due to the fact that the Receivership Estate received the offer prior to the proposed retention of PHG. PHG will receive a 3% commission for its work on InSound.

proprietary mutual fund wrap program known as Stanford Allocation Strategy using materially false and misleading historical performance data. Am. Comp. (Doc. 48) ¶¶ 3, 6.

The Court found good cause to believe that the Stanford Defendants violated federal securities laws. Accordingly, on February 17, 2009, the Court entered an order appointing Ralph S. Janvey Receiver over all the assets of the Stanford Defendants and all the entities they own or control. Order Appointing Receiver (Doc. 10). On March 12, 2009, the Court entered an Amended Order Appointing Receiver that contained changes not material to this motion (the “Receivership Order”). Amended Order Appointing Receiver (Doc. 157).

The Receivership Order charged the Receiver with marshaling and preserving the assets of the Receivership Estate. In conducting his duties, the Receiver identified numerous debt and equity investments made in nearly 40 different companies (the “Investment Portfolio”). While the Receivership Estate’s records reflect that \$650,000,000 was initially invested in the Investment Portfolio, these figures have not been audited and the Receiver and PHG expect that the Receivership Estate will realize far less for these investments. Many of these investments are in entities with negative equity, market conditions or adverse events have reduced the value of others, and a number include contractual commitments that would require the Receivership Estate to contribute additional millions of dollars or face significant dilution or total loss of the investment.

Included in the Investment Portfolio is a direct investment by SVCH in InSound and an indirect capital investment by SVCH in MBV. These SVCH holdings are part of the Receivership Estate. As such, the Receiver now seeks Court authority to liquidate these investments in InSound and MBV pursuant to the offers he has received from the prospective buyers.

### III. ARGUMENT AND AUTHORITIES

A common-law equity receiver has the power to dispose of property of the receivership estate when it appears that a receivership is continuing an enterprise that does not show evident signs of working out for the benefit of the creditors. *See Jones v. Village of Proctorville*, 290 F.2d 49, 50 (6th Cir. 1961). Courts appointing a receiver “should see that the business is liquidated as economically and speedily as possible, unless its continuance is demonstrably beneficial to creditors.” *Id.* (citing *Kingsport Press, Inc. v. Brief English Systems*, 54 F.2d 497, 501 (2d Cir. 1931)).

The liquidation of the InSound and MBV investments is in the best interest of the Receivership Estate. These offers and related agreements are the product of significant negotiations between the Receiver and the prospective buyers. The Receiver and PHG have analyzed both of these offers, as well as offers submitted by other potential buyers, and have determined that they are fair and equitable given the totality of the circumstances surrounding each investment. While these offers do not rise to the level of the initial investments, they represent a fair market price when accounting for liquidity discounts and the economic uncertainties inherent in today’s market. In both cases, the Receiver and PHG also took into consideration financing obligations that would require the Receivership Estate to choose between investing additional funds or facing the possibility of having its investment interest diluted. Given the current market conditions, the negative performance and uncertain outlook of the investments, the time horizon for any potential recovery, and the inadvisability of the Receivership Estate making large capital contributions, these offers represent the best opportunity for the Receiver to maximize the actual cash value of these investments for the Receivership Estate.

Additionally, PHG has marketed these investments to a number of potential bidders in an attempt to recover the highest dollar value for the Receivership Estate. Private equity assets are, by their nature, illiquid. In most instances, no active public market exists by which a holder can divest its interest. However, a limited secondary market is present wherein private equity holders like SVCH may attempt to liquidate their holdings through a sales process. The interest in this secondary market is driven by a variety of factors, including the (i) type and quality of the assets; (ii) industry and regional focus; (iii) track record of management; (iv) size of the investment; (v) size of the interest for sale, (vi) amount of unfunded capital; (vii) capital needs of the company; (viii) supply of similar interests in the market; and (ix) availability of financing and exit options available to the portfolio company. In the instant case, all of these factors combined to significantly limit the universe of interested, prospective buyers for the InSound and MBV investments. Nevertheless, the Receiver and PHG have worked within these constraints, as well as the constraints imposed on the Receiver and PHG due to current economic conditions and the negative public perception of Stanford-related assets, to market SVCH's interest in a manner that will recover maximum cash value to the Receivership Estate. In light of SVCH's limited avenues for liquidation, the offers from these two bidders constitute the highest available dollar value for the Receivership Estate.

Continuing to retain both of these holdings would require the Receivership Estate to make significant financial commitments into investments that carry high-levels of risk. SVCH initially invested \$1.5 million to purchase its investment in InSound, a company that now is facing serious commercial and financial risks. Under the terms of the proposed sale, the Receivership Estate would receive a cash payment of \$206,557.56. Should SVCH not divest this

asset, future exit opportunities likely will be limited and the Receivership Estate will be required to participate in multiple rounds of financing or face the potential dilution of its holdings.

In the case of MBV, a highly-speculative investment, SVCH has funded only \$2.45 million of its initial \$5.0 million commitment. SVCH's initial investment has already suffered devaluation of 20% due to setbacks faced by the companies in MBV's portfolio. The Receivership Estate will receive \$490,000 pursuant to the terms of this sale. However, if SVCH does not sell this investment, it will be required to meet additional funding obligations of over \$2.5 million—injecting additional capital into a high-risk investment—or face a dilution of its interest. Liquidation is, therefore, in the best interest of the Receivership Estate.

**A. InSound Investment.**

**1. SVCH's Holdings in InSound.**

InSound, formerly known as InSonus Medical Inc., was founded in 1998 and is a private company based in Newark, California. InSound develops and manufactures hearing devices, including its primary product, Lyric. Lyric is an extended-wear hearing device that InSound markets as a non-surgical solution to hearing loss. Lyric works within the ear's anatomy to provide natural sound quality. InSound currently is in the very early stages of commercialization of its Lyric product line.

On September 26, 2008, SVCH purchased 765,028 shares of InSound's Series E-3 Preferred Stock for \$1.5 million. SVCH's investment represents a 1.69% fully-diluted ownership interest in InSound, 1.95% of the total outstanding capital stock and 2.17% of its Preferred Stock.

InSound is experiencing significant financial difficulties. In 2008, InSound recognized that it would run out of cash in late 2009 or early 2010, depending on spending levels and the extent to which the economic downturn impacted its operations. As a result, InSound

explored the possibility of solving its liquidity problems by raising capital through an initial public offering (“IPO”). In 2009, however, it became clear that, based upon market conditions, an IPO could not be completed in the medical technology arena on terms that were advantageous to InSound. InSound then focused on other efforts to raise capital, including approaching strategic buyers in the hearing aid industry and outside venture capital firms to leverage additional financing.

Despite its efforts to raise capital, InSound anticipates that it will have only \$1.5 million cash on hand by the end of August 2009—the equivalent of InSound’s monthly burn rate. Because its initial financing initiatives cannot close quickly enough to avoid running out of cash, InSound decided to conduct a round of bridge financing to raise \$4.5 million to fund its immediate operations. In the bridge financing agreement, InSound opted to include a “pay-to-play” provision that requires InSound’s existing investors, including SVCH, to extend further funding in order to retain their respective equity ownership percentage. Exhibit 1 (Appendix at 3-7). SVCH’s share of the bridge financing is \$97,799. *Id.* Should SVCH not participate in the bridge financing, its preferred interest would be converted to common stock, severely diluting the value of its holdings.

Even if InSound is able to raise the \$4.5 million of additional capital through the bridge financing, a great deal of uncertainty surrounds the future performance of InSound. There are many competitors in this market and several are far more mature than InSound, which has a product in its infancy. At this time, it is unknown whether InSound’s technology will be proven to be both effective and commercially viable. Further, the hearing aid market generally is depressed, with numerous companies suffering from depressed valuations—in part because of

uncertainty over which products will ultimately secure acceptance in the market and concern stemming from the current efforts to reform the American health care system.

In total, InSound will need to raise approximately \$25 - \$30 million to get its business to the point where it could potentially break even. In addition to its current obligation, SVCH likely would be required to participate in future rounds of financing in order to prevent a dilution of its stake. SVCH also faces an additional risk that its exit opportunities will be further limited by the early-stage nature of InSound's product line. A delay in the transition from a limited launch to a full release of InSound's products could put even more financial pressure on InSound. This additional pressure would decrease—and possibly eliminate—SVCH's future opportunities to exit the investment.

**2. The PEI/Sightline Offer.**

Due to InSound's troubling financial condition and the prospect of having to inject additional financing, the Receiver engaged PHG to actively market SVCH's holdings in InSound. With the assistance of InSound's management, PHG conducted an extensive search for potential buyers for SVCH's investment. PHG identified potential buyers' due diligence requirements, and maintained an electronic data room to provide further information regarding InSound's products, financial condition, and capitalization. Because of the illiquid nature of the InSound investment, PHG's search focused on the secondary market for sales of private equity interests. Six potential strategic buyers familiar with the hearing aid industry were approached. InSound and PHG also contacted at least ten venture capital firms on the Receiver's behalf, including two existing InSound investors, and offered them the opportunity to purchase SVCH's interest. Finally, three secondary buyers were introduced to the investment and offered a chance to extend a bid.

Due to the aforementioned risk factors, almost all of the investors contacted by PHG and InSound declined to bid. Only one investor group, Private Equity Investors, Inc. (“PEI”) and Sightline Partners LLC (“Sightline,” and together with PEI, “PEI/Sightline”), indicated any interest in purchasing SVCH’s investment. Over the next several weeks, PHG negotiated with PEI/Sightline over the terms of a potential sale. On July 1, 2009, PEI/Sightline offered to purchase SVCH’s shares of stock for \$0.27 per share, for a total cash purchase price of \$206,557.56.

After conducting an analysis of PEI/Sightline’s offer, PHG recommended that the Receiver accept PEI/Sightline’s bid because (i) the aforementioned financing and commercialization risks make it highly unlikely that the Receivership Estate could secure a buyer that is willing to extend a higher offer; and (ii) additional financial pressures may further limit SVCH’s exit opportunities. As a result, PHG concluded that the offer from PEI/Sightline represented the highest dollar value for the Receivership Estate.

Based upon the recommendation of PHG, attached as Exhibit 2 (Appendix at 8), the Receiver believes that the Receivership Estate will realize the maximum benefit of this investment by accepting the pending offer from PEI/Sightline and liquidating SVCH’s holding in InSound. Consequently, the Receiver seeks Court approval to complete this sale of stock held by the Receivership Estate in InSound for a payment of \$206,557.56 to the Receivership Estate. The terms of the sale and assignment are reflected in material attached as Exhibit 3 (Appendix at 9-22).

**B. MBV Investment.**

**1. SVCH’s Holdings and Capital Obligations to MBV.**

MBV was founded in 2001 and is based in Memphis, Tennessee. It is a venture capital fund that was established to invest in a portfolio of high-growth health care companies,

particularly those interested in developing product solutions for musculoskeletal disease, products to alleviate human suffering, and molecular therapeutics. MBV's philosophy is to be the lead investor in seed or early stage financings for such companies. MBV currently is invested in ten different companies, most of which have products in the very early stages of development.

MBV is a highly speculative investment. Memphis is not well-known as a center for the type of investments the fund targets, meaning the MBV portfolio companies tend to be regional ones lacking significant track records. Many high-growth health care companies fail in any event, but the regional focus of MBV creates an especially high risk of investment loss.

Pursuant to a Subscription Agreement dated August 23, 2006—at the height of the investment bubble—SVCH committed to invest \$5.0 million into the partnership. Exhibit 4 (Appendix at 23-38). SVCH's commitment represents approximately 9.3% of MBV's outstanding and issued units. To date, SVCH has funded \$2.45 million of its \$5.0 million commitment.

On April 6, 2009, MBV's general partner (the "General Partner"), sent a letter to SVCH informing it that MBV was making a 4% capital call. Exhibit 5 (Appendix at 39-40). SVCH's portion—\$200,000—was due on or before April 20, 2009. In response, the Receiver contacted the General Partner and sent a letter requesting transaction documents related to SVCH's investment in MBV.

Over the next several months, the Receiver's representatives and PHG participated in several phone conferences with the General Partner to discuss the MBV investment and the outstanding capital call. These discussions confirmed that substantial uncertainty exists concerning the future success of the investments in the MBV portfolio. Over

the last quarter, several of the companies in MBV's portfolio have experienced problems, and SVCH's initial investment has devalued by almost 20% to under \$2 million. These problems include valuation writedowns, difficulties in securing financing, and product development setbacks. Taken together, these factors cast doubt on the outlook for the MBV portfolio and SVCH's investment.

Moreover, in addition to the current \$200,000 capital call, the General Partner stated that MBV will continue to draw additional capital from the unfunded portion of SVCH's commitment in order to invest in new companies and support existing investments beyond 2010. As a result, the Receiver expects to face ongoing future obligations to inject significant capital into MBV.

## **2. The Shelby County Offer.**

Faced with the performance of MBV combined with SVCH's future \$2.5 million capital commitment, the Receiver engaged both the General Partner and PHG to undertake extensive marketing efforts on his behalf in order to locate a potential buyer for SVCH's interest in MBV. First, the Receiver requested that the General Partner assist in marketing SVCH's investment. The General Partner approached several potential investors, including MBV's other limited partners, to determine whether they were interested in purchasing SVCH's limited partnership interest in MBV. Second, after PHG's proposed retention, PHG worked in conjunction with the General Partner to conduct preliminary discussions with other investor groups that might be interested in purchasing the investment. Working within the parameters of the private equity secondary market, PHG and the General Partner collectively reached out to 40 different investors and invited each to submit a bid to acquire SVCH's interest.<sup>2</sup>

---

<sup>2</sup> The 40 investors consisted of 30 existing Fund II investors, six prospective Fund III investors, and four dedicated secondary investors.

Despite these efforts, the Receiver obtained only two offers. On May 28, 2009, the Receiver received a \$490,000 offer from the Shelby County Retirement Board (the “Shelby County Offer”). Soon thereafter, the Receiver received a \$320,000 offer from another interested party. The remaining 38 potential investors declined to bid.

The Receiver’s team spent a significant amount of time analyzing MBV’s financial statements to determine whether the higher \$490,000 bid from Shelby County was fair and reasonable given market conditions, the long-term nature of the investment, and SVCH’s large capital obligations going forward. Based upon his concerns regarding the performance and outlook of the MBV fund, the Receiver made an initial determination that the Shelby County Offer presented the best opportunity to maximize value to the Receivership Estate. Additionally, accepting Shelby County’s offer would relieve the Receivership Estate of its obligation to inject \$2.5 million of additional capital into the partnership pursuant to its commitment or face a potential dilution of its interest pursuant to the default provisions of the Subscription Agreement and Partnership Agreement. Exhibits 4 and 6 (Appendix at 23-38, 41-82).

PHG’s evaluation further validates the Receiver’s conclusion. PHG conducted a thorough review of the circumstances surrounding the proposed sale of the Receivership Estate’s holdings in MBV. After doing so, PHG recommended to the Receiver that he accept the Shelby County Offer because (i) the Shelby County offer of \$490,000 represented the highest cash price the Receiver or PHG was able to obtain; (ii) the assets which comprise the MBV fund are early-stage and largely unknown among potentially-interested buyers; (iii) the recent setbacks and writedowns of the companies included in the MBV fund render SVCH’s interest less attractive to potential investors; and (iv) approximately 50% of SVCH’s capital commitment remains unfunded and would require a substantial capital contribution from any potential buyer.

Based upon his own analysis and PHG's recommendation, which is attached as Exhibit 7 (Appendix at 83-84), the Receiver believes that the Receivership Estate will recover maximum benefit by monetizing its investment in MBV by way of the proposed sale to Shelby County. As such, the Receiver requests that the Court approve the sale and assignment of SVCH's interest to Shelby County for a payment of \$490,000 and the assumption of SVCH's additional \$2.5 million funding commitment under the Subscription Agreement, including the \$200,000 capital call. The specific terms of the sale and assignment are reflected in Exhibit 8 (Appendix at 85-91).

#### **IV. CONCLUSION AND PRAYER FOR RELIEF**

After significant consultation with his team and PHG, the Receiver believes that the liquidation and sale of the aforementioned investment interests would inure maximum benefit to the Receivership Estate. As a result, the Receiver respectfully requests that the Court approve the respective sales of these holdings pursuant to the terms contained in Exhibits 3 and 8 (Appendix at 9-22, 85-91), and grant such other relief that the Court may deem just and equitable.

Dated: September 9, 2009

Respectfully submitted,

Baker Botts L.L.P.

By: /s/ Kevin Sadler

Kevin Sadler  
Texas Bar No. 17512450  
kevin.sadler@bakerbotts.com  
Robert I. Howell  
Texas Bar No. 10107300  
robert.howell@bakerbotts.com  
David T. Arlington  
Texas Bar No. 00790238  
david.arlington@bakerbotts.com  
1500 San Jacinto Center  
98 San Jacinto Blvd.  
Austin, Texas 78701-4039  
(512) 322-2500  
(512) 322-2501 (Facsimile)

Timothy S. Durst  
Texas Bar No. 00786924  
tim.durst@bakerbotts.com  
2001 Ross Avenue  
Dallas, Texas 75201  
(214) 953-6500  
(214) 953-6503 (Facsimile)

**ATTORNEYS FOR RECEIVER  
RALPH S. JANVEY**

**CERTIFICATE OF CONFERENCE**

Counsel for the Receiver conferred with David B. Reece, counsel for the SEC, who stated that the SEC has no position on the relief sought herein. Counsel for the Receiver conferred with John Little, Court-appointed Examiner, who stated that he has no position on this motion and the relief sought herein, but reserves the right to respond further. Counsel for the Receiver conferred with Manuel P. Lena, Jr. counsel for U.S.D.O.J. (IRS) who stated that the IRS has no position on the relief sought herein. Counsel for the Receiver attempted to confer with David Finn, counsel for James Davis, but received no response. Counsel for the Receiver conferred with Ruth Schuster, counsel for R. Allen Stanford, who stated that her client opposes the motion and the relief sought herein. Counsel for the Receiver attempted to confer with Jeff Tillotson, counsel for Laura Pendergest-Holt, who stated that his client has no position on the relief sought herein. Therefore, this motion is opposed.

/s/ Kevin M. Sadler

Kevin M. Sadler

**CERTIFICATE OF SERVICE**

On September 9, 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 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 Sadler

Kevin Sadler