

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

SECURITIES AND EXCHANGE	§	
COMMISSION,	§	
	§	
Plaintiff,	§	
	§	
v.	§	CASE NO. 3-09-CV0298-N
	§	
STANFORD INTERNATIONAL BANK,	§	
LTD., STANFORD GROUP COMPANY,	§	
STANFORD CAPITAL MANAGEMENT,	§	
LLC, R. ALLEN STANFORD,	§	
JAMES M. DAVIS, and	§	
LAURA PENDERGEST-HOLT,	§	
	§	
Defendants.	§	

CERTAIN UNDERWRITERS AT LLOYD’S OF LONDON’S RESPONSE TO DEFENDANTS’ MOTION FOR RECONSIDERATION OF ORDER OF CONTEMPT

Certain Underwriters at Lloyd’s of London¹ (“Underwriters”) file this Response to Defendants’ Motion for Reconsideration of Order of Contempt (“Defendants’ Motion”). [Docket No. 980.] By Order dated December 16, 2009, this Court granted Underwriters’ Motion for Contempt, denied Underwriters’ Emergency Motion to Enforce Receivership Order and Injunction, and denied Underwriters’ Motion to Intervene in this proceeding as moot. [Docket No. 926.] Underwriters file this response, because Defendants’ Motion directly relates to the Court’s Order granting Underwriters’ Motion for Contempt.

¹ Underwriters include Lloyd’s of London Underwriting Members in Syndicates 2987, 2488, 1886, 2623, 1084, 4000, 1183, 1083, 1274 and 623, and Arch Specialty Insurance Company. Underwriters issued certain insurance policies to Stanford Financial Group Company and its affiliated entities, including the Directors’ and Officers’ Liability and Company Indemnity Policy No. 576/MNK558900 (the “D&O Policy”), the Financial Institutions Crime and Professional Indemnity Policy No. 576/MNA851300 (the “PI Policy”) and the Excess Blended “Wrap” Policy No. 576/MNA831400 (the “Excess Policy”) (collectively “the Policies”).

Preliminary Statement

In its December 16 Order, this Court found that certain Defendants and their attorneys (collectively, “Movants”) acted in violation of the “clear and forward-looking” terms of its prior injunctions by filing a civil action seeking access to insurance proceeds in the Southern District of Texas. Movants now seek an order vacating that finding on grounds that they received no formal demand to cease their contemptible conduct, that Underwriters had not sufficiently objected to their previous conduct in contempt of this Court’s Orders, and on grounds that the contempt finding causes inconvenience to their attorneys.

Underwriters take no position on whether the Court should vacate its December 16 Order. Rather, Underwriters file this brief to correct certain statements made by Movants, and to respond to certain arguments they make based on Underwriters’ purported inaction. Specifically, Underwriters will show that Underwriters made Movants and their attorneys aware of this Court’s “clear and forward-looking” Orders and that Movants had ample opportunity to comply with them prior to this Court’s contempt finding. Simply put, Movants have no basis to argue that Underwriters were somehow responsible, directly or indirectly, for Movants’ own contemptible conduct.

I. Factual Background

On February 17, 2009, this Court issued an Order (the “Receivership Order”) appointing Ralph S. Janvey (“Receiver”) as Receiver to manage the financial affairs of the Stanford corporate defendants.² [Docket No. 10.] The Receivership Order granted the Receiver the authority to “take and have complete and exclusive control, possession, and custody of the

² The Court amended its Order on March 12, 2009, but the provisions of the receivership Order relevant to this Motion remain unchanged. *See* Amended Order Appointing Receiver at 1, 8. [Docket No. 157.]

Receivership Estate” and further enjoined any parties from bringing any actions with respect to the Receivership Estate except in this Court. *Id.* ¶¶ 4, 9.³ By Order dated October 9, 2009, this Court assumed, without deciding, that the insurance proceeds are part of the Receivership Estate. [Docket No. 831.]

On September 28, 2009, this Court issued an Order addressing an emergency motion the Receiver filed in response to Allen Stanford’s attempts to seek relief under the Policies in the English High Court of Justice, Chancery Division, Companies Court. This Court stated that Stanford’s actions “both violate the terms of this Court’s prior Orders, as well as threaten to interfere with this Court’s jurisdiction over the Policies.”⁴ This Court furthered enjoined “Allen Stanford and anyone acting in concert with him, including his attorneys, from taking further steps to seek relief in any court other than this relating to the Policies.”⁵

Despite the Court’s clear and unequivocal Orders, Defendants Allen Stanford, Laura Pendergest-Holt, Gilbert Lopez Jr., and Mark Kuhrt (collectively “Defendants”) and their attorneys, Lee Shidlofsky, Gregg Anderson, Kent Schaffer, George Secrest, James Ardoin, Chris Flood, Dan Cogdell, Jim Lavine, Jack Zimmerman, and Cole Ramey (collectively, “Defendants’ Attorneys”), made several attempts to access the Policies’ proceeds in the United States District Court for the Southern District of Texas (collectively, the “Southern District Actions”).⁶

³ Citations to the Receivership Order are to the Amended Order Appointing Receiver entered on March 12, 2009. [Docket No. 157]

⁴ Order Regarding Receiver’s Emergency Motion. [Docket No. 810.]

⁵ *Id.*

⁶ Defendants’ various attempts to gain access to the Policies’ proceeds in the Southern District of Texas are discussed at length in Underwriters’ Emergency Motion to Enforce Receivership Order and Injunction and Motion for Contempt. [Docket No. 898.]

Underwriters notified Defendants' Attorneys on December 2, 2009 that the Southern District Actions violated this Court's prior Orders enjoining the Defendants from seeking relief relating to the Policies outside of this Court.⁷ Underwriters provided Defendants' Attorneys with copies of the Court's prior Orders and urged them to immediately drop the Southern District Actions.⁸ Underwriters also notified Defendants' Attorneys that they would be filing a Motion for Contempt the next day if Defendants did not withdraw the Southern District Actions. Thus, Defendants and Defendants' Attorneys had actual notice and an opportunity to cure their contemptible conduct before Underwriters ever filed a Motion for Contempt. Defendants' Attorneys, however, would not agree to drop the Southern District Actions.

Accordingly, on December 3, 2009, Underwriters filed an Emergency Motion to Enforce Receivership Order and Injunction and Motion for Contempt. [Docket No. 898.] Underwriters asked this Court to enjoin the Defendants from proceeding in the Southern District, and to find the Defendants in contempt of its prior Orders. Underwriters also asked the court to find Defendants' Attorneys in contempt if they did not withdraw or dismiss the Southern District Actions by December 7, 2009. Thus, Defendants' Attorneys undeniably had an opportunity to "purge themselves of their contempt," despite their assertion to the contrary. Defendants' Attorneys, however, choose not to avail themselves of that opportunity.

On December 16, 2009, this Court issued an Order denying Underwriters' motion for injunctive relief, but granting Underwriters' motion for contempt. The Court explained that by seeking relief related to the Policies in another forum, Defendants and Defendants' Attorneys

⁷ See December 2, 2009 Email from Rick Rosenblum to Chris Ramey, Kent Schaffer, Dan Cogdell, and Jim Lavine, App. at 1, and December 2, 2009 Email from McLean Pena to Lee Shidlofsky, App. at 2.

⁸ *Id.*

acted in contempt of this Court's direct Orders. The Court also noted that the "injunctive language" in its prior Orders was "clear and forward-looking," as was the conduct prohibited by those Orders.

II. Argument and Authorities

In arguing that they "did not believe they were acting in violation of any orders" by filing a civil action in the Southern District, Movants make several statements which Underwriters feel compelled to correct.

First, Movants suggest that Underwriters are somehow to blame for Movants' own violations of this Court's Orders because, they argue, Underwriters "consistently acted as though its coverage dispute with Defendants could be decided in other courts," and did not object to the Southern District Actions promptly. However, Movants themselves are responsible for complying with this Court's Orders and did not need Underwriters guidance in doing so. As this Court found, the Orders that Movants violated were clear on their face and not subject to misinterpretation.

In any event, Underwriters never acquiesced to Movants seeking access to the insurance proceeds outside of the Northern District, as Movants suggest. To the contrary, Underwriters joined in on the Receiver's emergency motion enjoining Stanford from seeking access to the proceeds in the English High Court. That emergency motion was the impetus for the Court's "clear and forward-looking" September 28 Order, which Movants violated.

Second, Movants argue that Underwriters sought an order of contempt "before ever making a formal demand on Defendants and Defendants' Attorneys," and that Movants had no opportunity to "purge themselves of contempt." In fact, prior to filing the Motion for Contempt, counsel for Underwriters contacted Movants, brought the September 28 Order to their attention,

and requested that Movants withdraw their Southern District civil action in light of that Order. App. at 1-2. Counsel for Underwriters also informed Movants that Underwriters would file a motion for contempt if they failed to withdraw the action as requested. *Id.* Thus, Movants had actual notice of this Court's September 28 Order and an opportunity to cure their contemptible conduct before Underwriters ever filed their contempt motion. Movants failed to cure during the 13 days between that notice and entry of this Court's December 16 Order.

Furthermore, Defendants' Attorneys had ample opportunity to comply with this Court's Orders even after Underwriters' filed a Motion for Contempt. Underwriters' motion asked that this Court find Defendants' Attorneys in contempt only if they failed to dismiss the Southern District Actions within four days of the filing of the contempt motion. Thus, even after Underwriters filed the contempt motion, Defendants' attorneys had four days to "purge themselves of contempt."

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the above and foregoing document, accompanying brief, and appendix have been served on all known counsel of record via the Court's electronic filing system this 16th day of February, 2009.

/s/ Barry A. Chasnoff
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