

R. Allen Stanford
Case No.: 3:09-cv-0298-N
Exhibit: D

District of Texas.¹ The Receivership Order empowers the Receiver with “full control” over the Receivership Estate and renders the Receiver “owner” of the Stanford Entities’ attorney-client privilege. Stanford’s request and this Court’s order would have Underwriters and their counsel bypass the broad authority vested in the Receiver by the Northern District of Texas, for it is no longer Mr. Stanford who “owns” the privilege for any Stanford Entity files Akin Gump maintains; rather, that privilege belongs to the Receiver.

Because compliance with this Court’s Order is impossible without violating the Receivership Order and because this Court granted Stanford’s motion without being informed by Mr. Bennett about the Receivership Order and before Underwriters could bring it to this Court’s attention, Underwriters file this Emergency Motion for Reconsideration, or, Alternatively, Motion for a Protective Order pursuant to Federal Rule of Civil Procedure 26(c)(1).

I. FACTUAL BACKGROUND

A. Stanford’s Motion to Compel

We feel it is important that the Court be informed of the events leading up to Mr. Stanford’s Emergency Motion in order to fully consider this Motion; therefore, Underwriters set forth the events that preceded the Motion. In a June 9, 2010 email laced

¹ App. “A,” Amended Order Appointing Receiver ¶ 1, *Secs. & Exch. Comm’n v. Stanford Int’l Bank*, No. 3:09-cv-0298 (N.D. Tex. Mar. 12, 2009) (hereinafter “Receivership Order”). The Order Appointing Receiver was entered on February 17, 2009 and amended on March 12, 2009. The Amended Order Appointing Receiver defines Defendants as “Stanford International Bank, Ltd., Stanford Group Company, Stanford Capital Management, LLC, Robert Allen Stanford, James M. Davis, Laura Pendergest-Holt, Stanford Financial Group, and the Stanford Financial Group Bldg. Inc.” *Id.*

with harassing comments and implicit threats, Bennett demanded, for the first time, the production of all “files and information” related to any Akin Gump representation of Stanford Financial Group, its affiliates, or Mr. Stanford by Friday, June 11, 2010 at noon.² Although Bennett had raised Akin Gump’s alleged conflict of interest in prior communications and during the June 3, 2010 hearing before the Court, no request for documents had been set forth and no live motion concerned this issue.³ Upon receipt of Bennett’s email, Akin Gump immediately began the process of re-reviewing firm records for any representation of Allen Stanford personally or any of the numerous Stanford Entities. Although Akin Gump performed a conflicts check prior to Underwriters’ engagement with the firm, which concluded that there was no conflict, Akin Gump began the process of again reviewing records for potential prior engagement by either Mr. Stanford or any of the nearly 130 Stanford Entities listed as insureds under the Policy.⁴

The next day, June 10, the Court set a one week period for Mr. Stanford to move to disqualify Akin Gump. Counsel from Akin Gump informed the Court during its telephonic hearing that the firm had initiated the process of retrieving files pertaining to engagements with any Stanford Entities. In a telephone conversation with Mr. Bennett, the undersigned reiterated that we were making an all-out effort to gather the files and would report the results to him as we progressed.

² Exhibit A to Stanford’s Emergency Motion to Compel Akin Gump Hauer & Feld LLP to Furnish Any and All Attorney-Client Files and/or Records of R. Allen Stanford, Stanford Financial Group and Its Affiliates Under Expedited Conditions Within Two Days or a Reasonable Period Not to Exceed Five (5) Days to Robert D. Bennett, email from Bob Bennett to Barry Chasnoff and Neel Lane, dated June 9, 2010. Mr. Bennett’s email concluded, “get me my client’s complete file and have it to me by Friday.” *Id.*

³ See Docket No. 136.

⁴ D&O Policy, Addendum Number 1.

Late on Friday, June 11, Mr. Bennett contacted associate McLean Peña regarding Akin Gump's production of the documents. Ms. Peña explained that Akin Gump expected to provide Mr. Bennett correspondence regarding firm records of representation over the weekend or, at latest, Monday. When advised that Mr. Bennett planned to file a request for the Court to require production of firm files within two days, Ms. Peña stated that Underwriters would likely oppose that motion, but advised Bennett she would discuss the request with Mr. Chasnoff, who was then returning by plane from a hearing before Judge Fitzwater in the Northern District of Texas.⁵ Bennett filed this Motion, seeking emergency intervention by the Court, within minutes of that phone call.⁶

Shortly thereafter, Bennett emailed counsel for Underwriters complaining that Underwriters had failed to meet his unilaterally imposed deadline and that the documents demanded were now necessary for Mr. Stanford's *criminal* defense based on the patently absurd and wholly unfounded "hypothetical" that Akin Gump "may have been participants with R. Allen Stanford in the Ponzi scheme" or that "Akin Gump ... was really the mastermind behind it all." None of the government agencies investigating these crimes has ever made such an outrageous claim. With good reason—it is pure slander.

Later that day, and before Underwriters had the opportunity to respond, this Court granted the Motion and ordered Akin Gump to "produce to Stanford all attorney-client

⁵ As Mr. Bennett is aware, Mr. Lane has been in China.

⁶ Docket No. 141. As with prior motions, Bennett did not meaningfully confer.

files and records related to Akin Gump's representation of Stanford, Stanford Financial Group, and its affiliates by June 15, 2010, at 12:00 p.m.”⁷

B. Akin Gump Has Never Represented Mr. Stanford in his Individual Capacity.

Akin Gump has never represented Mr. Stanford individually—Akin Gump's prior representations only concern various Stanford Entities. The firm's prior engagements were with Stanford Financial Group, Caribbean Sun Airlines, Inc. and Stanford 20/20 LLC, and consisted of:

Stanford Financial Group:

Intellectual property, patent and trademark matters:

- “Eagle Design” trademark owned by Stanford Financial Group. Last billed October 2006.
- “Stanford Financial Group” trademark owned by Stanford Financial Group. Last billed October 2006.

Mergers and acquisitions representation in connection with Stanford Financial Group's investments in four telecommunications companies:

- Blue Sky Communications, Inc. Last billed March 2003.
- OPM Auction Company. Last billed December 2003.
- Telecom Wireless Solutions, Inc. Last billed February 2004.
- America Samoa Telecom, LLC. Last billed February 2004.

Caribbean Sun Airlines:

Trademark owned by Caribbean Sun Airlines, Inc. Last billed July 2004.

⁷ Docket No. 142.

Stanford 20/20 LLC

Regulatory and compliance engagement. Assist Stanford 20/20 LLC in safeguarding compliance with U.S. sanctions and other trade controls associated with Stanford 20/20's effort to have Cuba participate in the Stanford 20/20 Cricket Tournament held in Antigua. Last billed October 2008.

II. ARGUMENT AND AUTHORITIES

A. Compliance with this Court's Order Will Violate the Receivership Order.

Although Stanford may have once held an ownership interest in some or all of the Stanford Entities, the Receiver presently controls these Entities, including their attorney-client privilege. Stanford's motion at best ignored, and at worst concealed, the Receiver's sweeping control, beginning February 17, 2009, over these companies. In the Amended Order Appointing Receiver, the Northern District of Texas assumed:

Exclusive jurisdiction and takes possession of the assets, monies, properties, real and personal, tangible and intangible, of whatever kinds and description, wherever located, *and the legally recognized privileges (with regard to the entities) of the Defendants and all the entities they own or control* ("Receivership Assets"), and the books and records, client lists, account statements, financial and accounting documents, computers, computer hard drives, computer disks, internet exchange servers, telephones, personal digital devices or other information sources of or in possession of the Defendants, or issued by Defendants and in possession of any agent or employee of the Defendants ("Receivership Records").⁸

The Receivership Order grants Receiver Ralph Janvey "complete and exclusive control, possession, and custody of the Receivership Estate"⁹ and "the sole and exclusive power and authority to manage and direct the business and financial affairs of the Defendants,"¹⁰ including the right to remove "any officer, director, agent, employee, or independent

⁸ Receivership Order ¶ 1.

⁹ *Id.* ¶ 4.

¹⁰ *Id.* ¶ 6.

contractor of the Receivership Estate.”¹¹ Upon presentment of the Receivership Order, “all persons ... shall provide ... all account records and any other Receivership Records to the Receiver or his agents, in the same manner as they would be provided were the Receiver the signatory on the account.”¹² Moreover, the Receivership Order prevents any person who has notice of the order from:

Transferring ... any contracts, accounting data, correspondence, advertising, computer tapes, disks or other computerized records, books, written or printed records, handwritten notes ... and *other documents or records of any kind that relate in any way to the Receivership Estate* or are relevant to this action.¹³

The language of the Receivership Order prevents Akin Gump from producing to Mr. Bennett or Mr. Stanford any files regarding former representation of any of the Stanford Entities. *See also United States v. Shapiro*, No. 06-cr-357, 2007 WL 2914218, at *6 (S.D.N.Y. Oct. 1, 2007) (holding that the receiver controlled attorney-client and work product privileges of a corporation because the receiver’s “duties most closely resemble those previously exercised by [corporation in receivership]’s management group”). Akin Gump cannot, therefore, produce the files requested by Mr. Stanford on behalf of companies now under the control of the Receiver without the Receiver’s express permission. Yet if we fail to do so, we will be in violation of this Court’s Order.

The undersigned alerted Mr. Bennett to this situation, and urged Mr. Bennett to contact the Receiver to get his approval. Mr. Bennett’s Emergency Motion makes no

¹¹ *Id.* ¶ 5(a).

¹² *Id.* ¶ 12.

¹³ *Id.* ¶ 16 (emphasis added).

mention to this Court of the limitations on Akin Gump's ability to produce the requested documents. However, as Mr. Stanford and his attorneys were previously held in contempt for violating the Receivership Order,¹⁴ Mr. Stanford and Mr. Bennett were without question aware of it when they filed the Motion to Compel. This Court's Order is based on this concealment and the Court for that reason should grant Underwriters' Motion for Reconsideration and deny Mr. Stanford's Motion to Compel.

III. Compliance with the Court's Order by 12:00 p.m. on June 15, 2010, Even if the Receiver Consents to Stanford's Request, is Impossible.

As explained above, Mr. Bennett made his first request for documents related to Underwriters' representation of Mr. Stanford and any Stanford Entities on June 9, 2010. Stanford's Motion to Compel demands that Akin Gump produce all "documents, emails, communication, attorney work product, and attorney notes in connection with the representation of R. Allen Stanford, Stanford Financial Group and its affiliates."¹⁵

Although we probably will have gathered much of the written documentation relating to the matters which were handled for Stanford Entities, Akin Gump cannot provide all of the requested information on such a short notice. In fact, some files already were turned over to the Receiver long before Mr. Stanford's request for documents was sent to Akin Gump. Trademarks are subject to certain renewal obligations and the firm contacted the Receiver and transferred certain intellectual property files so that these renewal obligations, should the Receiver chose to renew the trademark, would not be

¹⁴ Docket No. 926, *Secs. & Exch. Comm'n v. Stanford Int'l Bank*, No. 3:09-cv-0298 (N.D. Tex. Dec. 16, 2009).

¹⁵ Docket No. 141 at 1.

neglected. Certain of the limited engagements with the Stanford Entities are up to ten years old, and reviewing firm electronic archives for electronic records pertaining to these engagements will take many days, if not weeks.

As is clearly evident, the breadth of Stanford's request imposes on Underwriters and Akin Gump a significant burden, both in time and in expense. Given Stanford's delay in requesting these documents, Underwriters should not be forced to comply with this broad request in the period set forth by the Court's order. Underwriters reserved their right to deny coverage to Mr. Stanford on May 1, 2009.¹⁶ Mr. Stanford has been aware—for more than one year—that a potential conflict existed between his interests and those of Underwriters, represented by Akin Gump. *See Rhodes v. Chi. Ins. Co.*, 719 F.2d 116, 121 n.6 (5th Cir. 1983) (“The reservation of rights letter serves as notice to the insured of the potential conflict of interest.”); *State Farm Lloyds v. C.M.W.*, 53 S.W.3d 877, 886 (Tex. App.—Dallas 2001, pet. denied) (insurers issuance of reservation of rights letter creates conflict with insured). Moreover, Stanford filed *this* suit against Underwriters over seven months ago. Akin Gump cannot meet the burdensome request for electronic discovery set forth in Stanford's motion in the six day window between Akin Gump's receipt of the request and the deadline ordered for production required by the Court's order.

¹⁶ App. “B,” Letter from Barry Chasnoff and Neel Lane to Dick DeGuerin and Paul Flack, dated May 1, 2009.

CONCLUSION

For the foregoing reasons, Underwriters and their counsel, Akin Gump Strauss Hauer & Feld, LLP, respectfully request that this Court grant this Motion to Reconsider and deny Mr. Stanford's Motion to Compel. Alternatively, Underwriters request that this Court issue a protective order preventing Mr. Stanford from demanding these documents until he receives written consent from the Receiver.

Respectfully submitted,

AKIN GUMP STRAUSS HAUER & FELD
LLP

By: /s/ Barry A. Chasnoff
Barry A. Chasnoff (SBN 04153500)
bchasnoff@akingump.com
Daniel McNeel Lane, Jr. (SBN
00784441)
nlane@akingump.com
300 Convent Street, Suite 1600
San Antonio, Texas 78205
Phone: (210) 281-7000
Fax: (210) 224-2035

Attorneys for Certain Underwriters at
Lloyd's of London and Arch Specialty
Insurance Company

CERTIFICATE OF SERVICE

The undersigned hereby certifies that all parties listed on this certificate of service will receive a copy of the foregoing document filed electronically with the United States District Court for the Southern District of Texas, Houston Division, on this 13th day of June 2010, via email and/or with notice of case activity to be generated and ECF notice to be sent electronically by the Clerk of Court.

Lee H. Shidlofsky
Visser Shidlofsky LLP
Greystone Plaza
7200 North Mopac Expressway Suite 430
Austin, Texas 78731

Robert S. Bennett
Bennett Nguyen Joint Venture
515 Louisiana St. Suite 200
Houston, Texas 77009

/s/ Barry A. Chasnoff
BARRY A. CHASNOFF

CERTIFICATE OF CONFERENCE

The undersigned hereby certifies that he conferred with Mr. Robert S. Bennett on June 13, 2010 at 8:15 pm regarding this Motion. The undersigned counsel stated the documents Stanford seeks are subject to the Receivership Order and compliance with this Court's Order would violate the Receivership Order. The undersigned asked Bennett whether he opposed this motion. Mr. Bennett replied at 8:32 pm, stating "this will have a direct impact on the criminal case for my client and will need to back at FDC tomorrow and discuss it with him." The undersigned responded at 8:36 pm and stated he considered Mr. Bennett's failure to address the topic of consent to the motion as Bennett's opposition. Bennett replied at 8:48 and stated it would be an "untruth" to tell the Court Mr. Stanford opposes the Motion without his client reviewing a draft at the FDC. In light of the urgency of this Court's Order granting Stanford's Motion to Compel and the unusual nature of Bennett's request to provide a draft of the opposition, the undersigned has filed this Motion and considers it opposed.

/s/ Barry A. Chasnoff
BARRY A. CHASNOFF