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STATUTES

Fed. R. Civ. P. 24(a)8

Certain Underwriters at Lloyd's of London ("Underwriters") submit this Brief in Support of their Motion to Intervene in this case pursuant to Federal Rule of Civil Procedure 24 and Local Rule 7.1.¹

Preliminary Statement

Underwriters seek to intervene in this action as a matter of right to request that the Court enforce its prior orders enjoining any person from bringing lawsuits in other tribunals that could undermine this Court's jurisdiction over the administration of this Receivership Estate or Receivership Assets.² Underwriters' intervention has been necessitated by the actions of Allen Stanford, Laura Pendergest-Holt, Gilbert Lopez, Jr., and Mark Kuhrt (the "Criminal Defendants"), as well as their respective civil and criminal attorneys, who continue to bring actions in forums other than this Court in their efforts to collect proceeds of insurance policies issued by Underwriters.

Most recently, Stanford, Holt, Lopez, and Kuhrt, through their civil counsel, sued Underwriters in the United States District Court for the Southern District of Texas asking *that* Court to compel Underwriters to pay over proceeds from the insurance policies deemed by *this* Court to be potential assets of the Receivership Estate that is subject to *this* Court's supervisory administration. Separately, criminal defense counsel for Stanford, Holt, and Lopez filed motions with the Honorable David Hittner—the judge presiding over the Stanford criminal proceedings—asking him to order Underwriters to pay over insurance proceeds to them. Indeed, Judge Hittner

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.

² Underwriters file their Motion to Intervene in conjunction with their Emergency Motion to Enforce Receivership Order and Injunction and Motion for Contempt.

has now set a hearing for December 17, 2009, to consider a request made by these defendants for an emergency mandatory preliminary injunction relating to the payment of insurance proceeds.

Underwriters respectfully submit that their right to intervene in the instant case is absolute. Underwriters have an interest relating to property that is the subject of this case, and any disposition in this action as to those proceeds may, as a practical matter, impair or impede Underwriters' ability to protect their interests. There is a real risk that the Southern District of Texas may issue orders affecting insurance policies or proceeds under the exclusive jurisdiction of this Court, thereby interfering with this Court's administration of the Stanford Receivership Estate.

Moreover, no existing party to this action adequately represents Underwriters' interests. In fact, all current parties to this action have interests that may be or are adverse to Underwriters' interests. Alternatively, the Court should permit Underwriters to intervene because of the commonality of legal and/or factual questions shared between Underwriters' insurance coverage matters and this Court's exercise of jurisdiction over those same insurance policies and proceeds.

FACTUAL BACKGROUND

A. Receivership Order and Injunction

The Securities Exchange Commission ("SEC") sued Defendants Stanford International Bank, Ltd., Stanford Group Company, Stanford Capital Management LLC (the "Stanford Entities"), Stanford, Davis, and Holt for fraud related to an alleged massive Ponzi scheme and misappropriation of billions of dollars of investors' deposits. *See* First Amended Complaint ¶¶ 1, 2 [Docket No. 48].

On February 17, 2009, this Court issued an Order (the "Receivership Order") appointing Ralph S. Janvey as Receiver to manage the financial affairs of the Stanford Group corporate

defendants.³ [Docket No. 10.] By the same order, the Court granted the Receiver the authority to “take and have complete and exclusive control, possession, and custody of the Receivership Estate,” and enjoined any payment or expenditure from the “Receivership Estate.” *Id.* ¶¶ 4, 9.⁴ The Receivership Order defines the Receivership Estate to include, among other things, the assets, monies, securities, and other properties, real and personal, tangible and intangible, of the Defendants. *Id.* ¶¶ 1, 2. The Receivership Order also provides that:

Creditors and all other persons are hereby restrained and enjoined from the following actions, *except in this Court*, unless this Court, consistent with general equitable principles and in accordance with its ancillary equitable jurisdiction in this matter, orders that such actions may be conducted in another forum or jurisdiction:

- (a) The commencement or continuation . . . of any judicial, administrative, or other proceeding against the Receiver, any of the defendants, [or] *the Receivership Estate* . . . arising from the subject matter of this civil action

Receivership Order ¶ 9 (emphasis added). The Receivership Order further states that:

Defendants, and their respective agents, officers, and employees and all persons in active concert or participation with them are hereby enjoined from doing any act or thing whatsoever to interfere with the Receiver’s taking control, possession, or management of the Receivership Estate or to in any way interfere with the Receiver or to harass or interfere with the duties of the Receiver or to interfere in any manner with the *exclusive jurisdiction of this Court over the Receivership Estate*, including the filing or prosecuting any actions or proceedings which involve the Receiver or which affect the Receivership Assets or Receivership Records, specifically including any proceeding initiated pursuant to the United States Bankruptcy Code, except with the permission of this Court. *Any actions so authorized to determine disputes relating to Receivership Assets and Receivership Records shall be filed in this Court.*

Id. ¶ 13 (emphasis added). Therefore, from the very inception of these proceedings, this Court has made abundantly clear through its orders that any and all actions against assets or potential assets of the Receivership Estate must be brought here in the Northern District of Texas.

³ 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.]

B. The Insurance Policies

Underwriters issued certain insurance policies to the Stanford Financial Companies and their 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").⁵ The Receiver has described the Policies to be among the Receivership Estate's most significant assets.⁶

In previous orders, this Court recognized that the Policies are assets over which this Court has exclusive jurisdiction. For example, as discussed below, the Court in its September 28, 2009 Order noted that Allen Stanford's filing of an action regarding the Policies in another forum threatened the Court's jurisdiction over the Policies.⁷ Similarly, in its October 9, 2009 Order, the Court acknowledged its jurisdiction over the Policies by determining that it had the power to permit payment of defense costs under the Policies pursuant to its equitable discretion regardless of whether the Policies' proceeds are part of the Receivership Estate.⁸ Therefore, this Court has repeatedly reaffirmed through its orders that any and all actions against assets or potential assets of the Receivership Estate must be brought here in the Northern District of Texas.

⁴ Citations to the Receivership Order are to the Amended Order Appointing Receiver entered on March 12, 2009. [Docket No. 157.]

⁵ Copies of the Policies are available in the Appendix to Laura Pendergest-Holt's Motion to Clarify. *See* Appendix in Support of Holt's Expedited Motion to Clarify at 1-153. [Docket No. 538-2,3.]

⁶ Underwriters dispute that the Policies indemnify the Estate or the individual defendants, as has been communicated through correspondence and the Declaratory Judgment Action filed by Underwriters in this Court.

⁷ Order dated September 28, 2009. [Docket No. 810.]

⁸ Order dated October 9, 2009. [Docket No. 831.]

C. September 28, 2009 Order

On September 28, 2009, this Court issued an another injunctive Order against Stanford—this one addressing the Receiver’s emergency motion, which related to Stanford’s attempt to seek relief regarding his purported coverage under the Policies in the English High Court of Justice, Chancery Division, Companies Court (the “September 28, 2009 Order”). This Court found 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.” The court continued,

This Court therefore enjoins 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.

Id. By this same Order, the Court found that it had jurisdiction over the Policies and that actions in other tribunals seeking relief related to the Policies threatened to interfere with the Court’s jurisdiction.

D. The Criminal Defendants’ Multiple Violations of This Court’s Orders

On November 17, 2009, Holt filed an Original Complaint, Request for Declaratory Judgment, and Request for an Emergency Preliminary Injunction against Underwriters in the United States District Court for the Southern District of Texas.⁹ This suit alleges, *inter alia*, that Holt is entitled to receive immediate payment of proceeds under the Policies. On November 20, 2009, Stanford, Lopez, and Kuhrt joined the Southern District Complaint as plaintiffs.¹⁰ On December 1, 2009, these same four, acting through civil counsel Lee Shidlofsky and Gregg Anderson, amended the Southern District Complaint once again, adding a request for an emergency preliminary injunction seeking mandatory injunctive relief to order Underwriters to

⁹ See Pendergest-Holt’s Original Complaint, Underwriters’ App. at 4.

¹⁰ See Pendergest-Holt’s First Amended Complaint, Underwriters’ App. at 24.

commence immediate payment of insurance proceeds.¹¹ In essence, the Criminal Defendants seek a ruling from the Southern District of Texas that the insurance proceeds cover their defense costs in both their criminal and civil lawsuits. The Criminal Defendants further seek *immediate* payment pursuant to a motion for an emergency preliminary injunction. The Court has set a hearing for December 17, 2009, on the Criminal Defendants' request for an emergency preliminary injunction.¹² Thus, unless this Court acts to enforce its prior Orders within the next two weeks, the Southern District of Texas will issue a ruling affecting an asset of the Receivership Estate.

Further, on August 24, 2009, Holt and Lopez, through their respective criminal defense lawyers, separately filed motions for payment of fees addressed to the Honorable David Hittner as part of the criminal proceedings pending in the Southern District of Texas.¹³ By these motions, Holt and Lopez sought an order from Judge Hittner regarding Underwriters' obligations under the Policies. On November 17, 2009, the Southern District of Texas conducted a hearing regarding Holt's and Lopez's motions, at which counsel for Allen Stanford, Holt, and Lopez all argued that Judge Hittner should adjudicate the parties' rights to the Policies' proceeds. The lawyers representing Stanford, Holt, and Lopez during this hearing were Kent Schaffer, George Secrest, Dan Cogdell, James Ardoin, Chris Flood, Jim Lavine, Jack Zimmerman, and Cole Ramey. Judge Hittner has yet to issue an order regarding these motions. The Criminal Defendants have yet again sought to avoid proceeding in this Court with regard to the Policies despite repeated, clear orders from this Court barring the assertion of claims against potential

¹¹ See Pendergest-Holt's Second Amended Complaint, Underwriters' App. at 39.

¹² See Order Setting December 17, 2009 Hearing, Underwriters' App. at 59.

¹³ See Pendergest-Holt's Motion For Payment Of Fees, Underwriters' App. at 61, and Lopez's Request For A Court Order Requiring Payment Of Legal Fees, Underwriters' App. at 79.

Receivership Assets outside of the Northern District of Texas.

ARGUMENTS AND AUTHORITIES

A. The Criminal Defendants' Lawsuit Directly Contravenes this Court's Prior Orders

This Court has made it quite clear that it retains exclusive jurisdiction regarding all actions involving the Receivership Estate and the Policies. In its Receivership Order, the Court explicitly stated that the Criminal Defendants, investors, and any other persons may not bring any suit involving the Receivership Estate in any other Court without prior leave of this Court. The Receiver has taken the position that the Policies' proceeds are part of the Receivership Estate—a position with which the Court has not disagreed, meaning the Policies' proceeds remain at least potential assets of the Receivership Estate. The Criminal Defendants' lawsuit in the Southern District of Texas directly implicates the Policies' proceeds, *i.e.*, part of the actual or potential Receivership Estate. Moreover, even if the proceeds are not part of the Receivership Estate, this Court, in its September 28, 2009 Order, explicitly retained jurisdiction over the Policies and prohibited Allen Stanford “and anyone acting in concert with him” from seeking relief regarding the Policies in *any* court other than this Court. Accordingly, the Criminal Defendants have violated this Court's Orders by pursuing an action in the Southern District of Texas. Several of the Criminal Defendants have also violated this Court's Orders by pursuing relief against Underwriters in their criminal actions in the Southern District of Texas. This Court should find the Criminal Defendants in contempt and, once again, enjoin them from bringing any lawsuits involving the Policies in any other jurisdiction.

B. Underwriters May Intervene as a Matter of Right

Underwriters have an automatic right to intervene in this proceeding pursuant to Federal Rule of Civil Procedure 24(a). “On timely motion, the court *must* permit anyone to intervene

who . . . (2) claims an interest relating to the property or transaction that is the subject of the action, and is so situated that disposing of the action may as a practical matter impair or impede the movant's ability to protect its interest, unless existing parties adequately represent that interest." FED. R. CIV. P. 24(a) (emphasis added). As the Fifth Circuit has explained, an intervenor must satisfy the four-part test for intervention: "(1) timeliness, (2) an interest relating to the action, (3) that the interest would be impaired or impeded by the case, and (4) that the interest is not adequately represented by existing parties." *In re Lease Oil Antitrust Litig.*, 570 F.3d 244, 247 (5th Cir. 2009).

1. Underwriter's Motion to Intervene is Timely

Underwriters have timely filed this motion to intervene. The Fifth Circuit considers a number of factors in deciding whether a motion to intervene is timely: "(1) the length of time the intervenor knew or should have known of her interest in the case; (2) prejudice to the existing parties resulting from the intervenor's failure to apply for intervention sooner; (3) prejudice to the intervenor if her application for intervention is denied; and (4) the existence of unusual circumstances." *Trans Chem. Ltd. v. China Nat'l Mach. Imp. & Exp. Corp.*, 332 F.3d 815, 822 (5th Cir. 2003).

The Criminal Defendants filed their Second Amended Complaint in the United States District Court for the Southern District of Texas on December 1, 2009. The next day, the Court set a hearing for December 17, 2009, on the Criminal Defendants' emergency preliminary injunction request. Accordingly, Underwriters have not delayed at all in filing this motion—they did so as soon as they learned that a lawsuit in another jurisdiction implicates their rights and violates this Court's Orders.

Moreover, permitting Underwriters to intervene would not delay the proceedings in this case. There are no pending motions in this Court that this intervention would affect.

Underwriters' intervention in this matter would not conceivably prejudice any party. On the other hand, Underwriters will suffer severe prejudice if they are not permitted to intervene and the Southern District of Texas issues a ruling regarding the Policies that might contradict future rulings of this Court.

Finally, this situation is quite unusual: it involves allegations of a massive Ponzi scheme in which numerous people have made demands against the Policies' proceeds, many of which could possibly exhaust the Policies' coverage limits. If this Court does not allow intervention and act to consolidate these various matters, Underwriters will suffer severe prejudice by being made to pay insurance proceeds that they contend are not owed, with no realistic hope of ever recouping those payments. Moreover, this Court's orderly administration of the Receivership Estate will be significantly impacted if the proceeds or some substantial portion of them are paid outside of any ultimate payment plan this Court may approve. Underwriters' motion is thus timely and appropriate.

2. Underwriters Have an Interest in the Property that is the Subject of a Suit Pending in Another Jurisdiction

Underwriters have a substantial interest in the property subject to the Criminal Defendants' lawsuit in the Southern District of Texas, and thus an interest in ensuring that this Court enforces its prior Orders. The Criminal Defendants' suit seeks a declaration that the Policies cover their defense costs. Further, the Criminal Defendants seek an *immediate* ruling, via a request for an emergency preliminary injunction, that Underwriters must pay for their defense costs under the Policies.

At this time, there has been no final determination that the full proceeds of any of the Policies are or ever will be payable to Holt, Stanford, Lopez, Kuhrt, the Receiver, or any other claimant. The Policies specifically exclude coverage for, among other things, claims resulting

from dishonest, fraudulent, or criminal acts, which is precisely the nature of the allegations contained in the SEC's complaint against the defendants. *See* First Amended Complaint ¶¶ 1, 2 [Docket No. 48]. Further, this Court stated in its Preliminary Injunction Order that Stanford engaged in "fraudulent conduct, including misappropriating investor funds, and making material misrepresentations and omissions" Preliminary Injunction and Other Equitable Relief as to R. Allen Stanford ¶ 11 [Docket No. 159]. The Receiver's own Complaint against former Stanford financial advisors alleges that the Stanford entities engaged in a scheme to defraud investors. *See* Receiver's Complaint. [Docket No. 302, at 1.] Holt's own lawsuit against Stanford Financial Group and others alleges that the defendants' wrongful and *fraudulent* conduct resulted in Holt's arrest and criminal indictment. *See* Plaintiff's Original Petition, at 2, *Laura Pendergest-Holt v. Stanford Group Co., et. al.*, Cause No. 2009-22392 (11th District Court, Harris County, Texas). Moreover, former Stanford CFO, James Davis, has plead guilty in open court to three felony counts of mail fraud; conspiracy to violate the mail, wire, and securities fraud laws; and conspiracy to obstruct a proceeding before the SEC—act which Underwriters contend constitute Money Laundering as defined by the Policy. Because there has not yet been a coverage determination, and given that the Policies contain one or more potentially applicable coverage exclusions, Underwriters have a substantial interest in the subject of this action and the Southern District of Texas lawsuit.

Additionally, Underwriters filed a declaratory judgment action in this Court specifically seeking a ruling on their rights under the Policies. Thus, Underwriters are attempting to preserve their rights and defenses under the Policies in this Court. Accordingly, Underwriters have an interest in this Court protecting its jurisdiction over both the Policies and Underwriters'

declaratory judgment action, as well as an interest in stopping litigation involving the Policies in any other court.

3. Not Allowing Intervention Would Impair and Impede Underwriters' Ability to Protect Their Interests, and No Other Parties Represent Underwriters' Interests

Denying this motion will impair and impede Underwriters' ability to protect their interests in the Policies' proceeds. Any order another Court issues regarding the ownership or allocation of Policy proceeds will necessarily affect Underwriters' ability to preserve their rights and defenses under the Policies. Further, none of the parties presently before the Court have any reason to protect Underwriters' interest in the Policies. In fact, the opposite is true, as all of the parties before the Court claim that they have a right to the proceeds of Underwriters' Policies. Underwriters must be able to protect their contractual rights under the Policies. The only way to do so is to intervene in this action and ask this Court to enforce its prior Orders and stop the ongoing litigation in other jurisdictions, such as the Criminal Defendants' lawsuit in the Southern District of Texas.

Further, enjoining the litigation in other jurisdictions is necessary both to preserve this Court's exclusive jurisdiction over the Policies and the Court's ability to consider Underwriters' declaratory judgment action, which Underwriters filed specifically to protect their interests. No other parties share Underwriters' interest in this regard.

For these reasons, Underwriters have the right to intervene to protect their interest in the Policies.

Conclusion

Underwriters respectfully request that this Court permit them to intervene in this case so Underwriters may seek relief as to the potential Receivership Assets subject to this Court's exclusive jurisdiction. Underwriters further seek an award of fees and costs for having to file

this intervention. Underwriters also seek such other and further relief to which they may show themselves entitled.

Respectfully submitted,

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