

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 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 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.

1. 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.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 further enjoined any parties from bringing any actions with respect to the Receivership Estate except in this Court. *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.

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.]

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

2. 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").⁵

3. On June 24, 2009, the Receiver notified Underwriters (through their agent for notice of claims) of his position that proceeds of the Policies are assets of the Receivership Estate, subject to the Receivership Order. This Court, in its October 9, 2009 Order, assumed, without deciding, that the insurance proceeds are part of the Receivership Estate.

4. On September 28, 2009, this Court issued an Order addressing the Receiver's emergency motion, which related to Allen Stanford's attempt to seek relief 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." This Court further 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."⁶

5. 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

⁵ Laura Pendergest-Holt included copies of the Policies in the Appendix to her Motion to Clarify. *See* Appendix in Support of Holt's Expedited Motion to Clarify (hereinafter "Holt App.") at 1-153. [Docket No. 538-2, 3.]

⁶ Order Regarding Receiver's Emergency Motion. [Docket No. 810].

as part of the criminal proceedings pending in the Southern District of Texas.⁷ By these motions, Holt and Lopez sought an order from Judge Hittner regarding Underwriters' obligations under the Policies.

6. Further, 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.⁸ 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.⁹ 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 commence immediate payment of insurance proceeds.¹⁰ 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.¹¹ 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 a potential asset of the Receivership Estate.

⁷ 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.

⁸ See Pendergest-Holt's Original Complaint, Underwriters' App. at 4.

⁹ See Pendergest-Holt's First Amended Complaint, Underwriters' App. at 24.

¹⁰ See Pendergest-Holt's Second Amended Complaint, Underwriters' App. at 39.

¹¹ See Order Setting December 17, 2009 Hearing, Underwriters' App. at 59.

7. The lawsuit and motion in the Southern District of Texas directly violate this Court's prior Orders enjoining the Criminal Defendants from seeking relief relating to the Policies outside of this Court.

8. This Court has previously acknowledged that it has exclusive jurisdiction over the Policies at issue.¹²

9. Underwriters seek to intervene in this action for the limited purpose of being heard with respect to the treatment of proceeds under the Policies described above.

10. Underwriters are not named in this action, nor were they served with process as an interested party.

11. An applicant shall be permitted to intervene as of right upon timely motion if the applicant claims an interest relating to the property or transaction which is the subject of the action and the applicant is so situated that the disposition of the action may as a practical matter impair or impede the applicant's ability to protect that interest, unless the existing parties can adequately protect the applicant's interest. FED. R. CIV. P. 24(a).

12. Underwriters, as issuers and underwriters of the Policies at issue in a lawsuit in another jurisdiction, have an interest in the Court's prior Orders in this case. Underwriters are so situated that violation of these Orders may as a practical matter impair or impede their ability to protect that interest. Underwriters moved to intervene in a timely manner, and current parties to this case cannot adequately protect Underwriters' interest.

13. Pursuant to Local Rule 7.1 and FED. R. CIV. P. 24(c), this Motion is accompanied by a Brief in Support.

¹² See Order Regarding Receiver's Emergency Motion. [Docket No. 810].

14. Underwriters pray that this Court grant their Motion to Intervene, and grant such other and further relief to which they may be justly entitled. Specifically, this Court should enjoin Laura Pendergest-Holt, Allen Stanford, Gilbert Lopez, Jr., and Mark Kuhrt, and their counsel from continuing to seek relief related to the Policies outside of this Court and order a show cause hearing as to why the Court should not sanction these individuals for this willful violation of the Court's explicit mandate.

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
Rick H. Rosenblum (SBN 17276100)
rosenblum@akingump.com
300 Convent Street, Suite 1600
San Antonio, Texas 78205
Phone: (210) 281-7000
Fax: (210) 224-2035

-and-

Eric Gambrell (SBN 00790735)
egambrell@akingump.com
1700 Pacific Avenue, Suite 4100
Dallas, Texas 75201
Phone: (214) 969-2800
Fax: (214) 969-4343

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

CERTIFICATE OF CONFERENCE

On December 2nd and 3rd, 2009, Rick Rosenblum, Daniel McNeel Lane, Jr., and/or Barry Chasnoff, counsel for Underwriters, attempted to confer with counsel for all parties regarding the substance of this Motion. Specifically, counsel for Underwriters attempted to confer with Michael King, who represents the SEC; Joseph Cialone, who represents the Receiver; Kent Schaffer, who represent Stanford in his criminal proceeding; Dan Cogdell, who represents Holt in her criminal proceeding; Jim Lavine and Cole Ramey, who represent Lopez in his criminal proceeding; Lee Shidlofsky, who represents Stanford, Holt, and Lopez with respect to the insurance coverage issues; and Gregg Anderson, who represents Kuhrt with respect the insurance coverage issues. The parties have reached no agreement as to the substance of this Motion. Mr. Shidlofsky, though unable to reach all of his clients to discuss the motion, opposes it. Mr. King has advised that the SEC is not joining this motion. No other counsel has responded to our efforts to confer. At this time, therefore, Underwriters believe this Motion is opposed.

/s/ Daniel McNeel Lane, Jr.
DANIEL McNEEL LANE, JR.

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 3rd day of December, 2009.

/s/ Barry A. Chasnoff
BARRY A. CHASNOFF