



## II. BACKGROUND AND SUMMARY

### A. Complaint and Entry of Receivership Order.

On February 17, 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) (collectively, the “Defendants”). *See* Compl. (Doc. 1). The Commission alleges, in its First Amended Complaint, that Defendants perpetrated a multi-billion-dollar fraudulent scheme by promising high returns on fraudulent “certificates of deposit” that exceeded those available through true certificates of deposit offered by traditional banks. *See* Am. Compl. (Doc. 48) at ¶¶ 3, 6.

On the same date, the Court entered an order appointing Ralph S. Janvey Receiver over all the assets of the Defendants and all the entities they own or control. *See* Order Appointing Receiver (Doc. 10); *see also* Amended Order Appointing Receiver dated March 12, 2009 (Doc. 157) (the “Receivership Order”).

The Court has authorized the Receiver to perform several duties relevant to the sale of the Aircraft:

As of the date of entry of this Order, the Receiver is specifically directed and authorized to perform the following acts and duties:

(a) Collect, marshal, and **take custody, control, and possession of** all the funds, accounts mail, and **other assets of**, or in the possession or under the control of, **the Receivership Estate**, or assets traceable to assets owned or controlled by the Receivership Estate . . . ;

...

(g) **Perform all acts necessary to conserve, hold, manage, and preserve the value of the Receivership Estate** in order to prevent any irreparable loss, damage, and injury to the Estate;

...

(j) **Preserve the Receivership Estate and minimize expenses** in furtherance of maximum and timely disbursement thereof to claimants[.]

Doc. 157 at ¶ 5 (emphasis added).

**B. The Proposed Sale Will Preserve the Value of the Estate and Minimize Expenses.**

The Aircraft is a 1976 Hawker Siddeley model HS-125-600A. Allen Stanford purchased the Aircraft in 1990 for \$2.6 million. Today's market for Hawker 600A's is a very static micro-market, with approximately one unit sold per year over the past 5 years, with most going to salvage at low values. *See* Driscoll Decl. and Appraisal, Appx. 1-4. The Aircraft's value has diminished substantially as it is now something of a "dinosaur"—it is 33 years old, its cockpit has not been updated for some time, and finding pilots and mechanics capable of flying and servicing it is often problematic.<sup>2</sup> *Id.* Its twin Rolls Royce Viper jet engines use antiquated turbojet technology, which means they consume much more fuel and operate at extremely high decibel levels when compared with modern turbofan jet engines. *Id.* Thus, the Aircraft cannot meet Stage I noise abatement requirements, which means it cannot land at any time at some U.S. airports, and cannot operate early in the morning or late at night at others, further limiting its value. *Id.* The Aircraft has been very well maintained, and Hawker 600A's are among the lowest priced available aircraft capable of carrying 8 passengers. *Id.*

The Receiver has contracted with Harry Driscoll, an aircraft broker with Harry Driscoll & Associates in Houston, Texas (the "Broker"), to assist in marketing the Aircraft. The Broker has estimated the current value of the Aircraft (excluding spare parts) at \$210,870, based upon the Broker's professional judgment and industry knowledge of the micro-market trends in the 600A market, as well as guidelines in the Aircraft Blue Book, an industry standard publication updated

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<sup>2</sup> The overall market for used jets has also declined substantially since peaking in the late 1990's. *See* Chart Depicting Average Prices of a Composite of the Used Jet Market, Aircraft Blue Book Price Digest, Fall 2009, Appx. 5-6.

quarterly, with dollar values based on their historic database, dealer data contributions, and some proprietary elements. *Id.* This valuation assumes that the Aircraft is current on its premiums for the Power by the Hour Program, a service plan for its Rolls Royce jet engines. *Id.* In fact, the premiums are past due by approximately \$20,000. *Id.*

Preserving the value of the Aircraft is an expensive proposition. The Aircraft is housed in leased hangar space, at a cost of \$1,500 per month. *See* Hangar Invoice, Appx. 7. The Aircraft requires weekly checkups and regular mechanic attention at a cost of \$2,400 per month.<sup>3</sup> *See* Weekly Mechanic Invoices, Appx. 8-9. In October, the Aircraft's main batteries were replaced at a cost of \$5,740. *See* Battery Invoice, Appx. 10-14. Between now and March 2010, the Aircraft will require approximately \$90,000 in maintenance, including a scheduled 48-month inspection required by both the FAA and the Aircraft's manufacturer to maintain airworthiness.<sup>4</sup> *See* Driscoll Decl. and Appraisal, Appx. 1-4. Further, there is a risk the March 2010 inspection will reveal other issues with the Aircraft requiring additional expenditure. *Id.* Given these costs (\$90,000 for March 2010 inspection and \$3,900 per month in recurring expenses), a sale for \$192,500 today will produce more net proceeds to the Estate than a sale for \$292,500 in March 2010. Thus, time is of the essence if the Receiver is to fulfill his mandate to preserve the value of the Estate and minimize Estate expenses.

The Receiver has obtained offers from prospective buyers for the Aircraft with the assistance of the Broker. Taking into account this buyer's experience and the need to close as soon as possible to avoid the expense of the March 2010 inspection and any additional

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<sup>3</sup> Two mechanics are responsible for the Aircraft's weekly maintenance checks—each charges \$300 per week.

<sup>4</sup> The Broker's Appraisal includes a \$65,000 reduction in value to account for the 48-month inspection scheduled for March 2010. That amount is an estimate based on industry norms and the known quality of the Aircraft, as well as the inspection being six months out at the time of the Appraisal. The actual cost of the inspection and repair of discrepancies that may be discovered is estimated at \$90,000, and may be considerably more.

downward impact of this on price, the best offer obtained by the Receiver is to purchase the Aircraft (together with the spare parts) on an “as-is, where-is” basis for a purchase price of \$192,500—based on a \$200,000 original purchase price less \$7,500 towards curing airworthiness discrepancies discovered at the prebuy inspection, which purchase price reduction Seller agreed to in exchange for Buyer taking on all remediation of airworthiness discrepancies after closing, which will likely exceed \$7,500. *Id.* The buyer has placed \$192,500 in escrow. *Id.* The buyer has further agreed to pay the past due Power by the Hour premiums of approximately \$20,000. *Id.* The proposed Used Aircraft Purchase and Sale Agreement and Amendment are attached as Appx. 15-35. The purchase price includes the Hawker 600A, its 2 Rolls Royce engines, and certain spare parts. The prompt sale of the Aircraft as proposed herein is the Receiver’s best way to fulfill his Court-ordered duty.

### III. ARGUMENT AND AUTHORITIES

#### A. The Aircraft is an Estate Asset.

Allen Stanford purchased the Aircraft in 1990, by which time Mr. Stanford’s fraudulent Ponzi scheme was well under way. Defendant James M. Davis has admitted that the Stanford fraud was a Ponzi scheme from the beginning. *See* Doc. 771 (Davis Plea Agreement) at ¶ 17(n) (Stanford, Davis, and other conspirators created a “massive Ponzi scheme”); *id.* at 41 (“Soon after [Mr. Davis] became Controller [of Allen Stanford’s Montserrat bank]... in at least 1998... Stanford requested that, in order to show fictitious quarterly and annual profits, [Mr. Davis] make false entries into the general ledger for the purpose of reporting false revenues, and false investment portfolio balances to the banking regulators.”); Doc. 807 (Davis Tr. of Rearraignment) at 19:18-21 (“As early as 1990, Mr. Davis... at the request of Allen Stanford, began... making false entries into the books and records of SIBL.”); *id.* at 16:16-17, 21:6-8,

21:15-17 (admitting the Stanford Ponzi fraud was a “massive Ponzi scheme ab initio”). The Aircraft was thus purchased with money generated by the Stanford Ponzi scheme.

The Aircraft’s repairs, maintenance, operating expenses, and upgrades were also paid for with the proceeds of Mr. Stanford’s fraudulent scheme. Between January 2005 and September 2008, Stanford’s expenses for aircraft repair and maintenance were \$12,407,486. *See* Pre-Receiver Aviation Expense Summary, Appx. 36. Stanford spent \$16,980,731 on aviation-related salaries and contract labor during the same period. *Id.* These amounts covered all 6 of the Stanford aircraft.<sup>5</sup> The Stanford accounting group tracked such expenses only in the aggregate; no plane-by-plane figures are available. It is not possible to allocate those dollars to a specific aircraft without an extensive historical vendor-by-vendor inquiry, which would be an unnecessary waste of Estate resources. Even if less than 1/6 of those funds were applied to the Aircraft, hundreds of thousands (if not millions) of fraudulently acquired dollars were spent on the Aircraft just since 2005, not to mention the first 15 years Mr. Stanford owned the Aircraft. The fraudulent proceeds Stanford poured into the Aircraft exceed its current market value by orders of magnitude. The Aircraft, therefore, is properly considered an Estate Asset.

**B. Receiver’s Power to Sell Property of the Receivership Estate.**

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). Stanford’s aviation department never generated any revenue, and its only possible benefit to creditors is the resale value of its aircraft. Courts appointing a receiver “should see that the business is liquidated as economically and speedily as possible, unless its

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<sup>5</sup> The Stanford aircraft include 3 Hawkers, 2 Gulfstreams, and a Bombardier Global Express.

continuance is demonstrably beneficial to creditors.” *Id.* (citing *Kingsport Press, Inc. v. Brief English Systems*, 54 F.2d 497, 501 (2d Cir. 1931)).

Section 2004 of the Judicial Code requires any personalty sold under an order of a federal court to be sold in accordance with section 2001 of the Judicial Code, unless the court orders otherwise. Section 2001 of the Judicial Code, which otherwise governs sales of real property by a receiver, provides for sale by public auction or private sale following an appraisal by a court-appointed appraiser. 28 U.S.C. § 2001. The Receiver asks that the Court authorize the sale as set forth above, without need for public auction or further appraisal. Further appraisal will merely deplete the Estate’s assets without creating any value for the Estate.

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

The Receiver requests that the Court grant this motion in all respects, and specifically authorize the Receiver to sell the Aircraft as proposed herein, without need for further Court order; and grant such other relief the Court may deem just and equitable.

Dated: December 11, 2009

Respectfully submitted,

BAKER BOTTS L.L.P.

By: /s/ Kevin M. Sadler

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**ATTORNEYS FOR RECEIVER  
RALPH S. JANVEY**

### CERTIFICATE OF CONFERENCE

On December 7, 2009, counsel for the Receiver sent a copy of this motion and supporting documents to counsel for the parties to this case. Counsel for the Receiver attempted to confer with counsel for R. Allen Stanford, but did not receive a response from counsel for R. Allen Stanford. Counsel for the Receiver conferred with David Reece, counsel for the SEC, who stated that the SEC is unopposed to this motion and the relief requested herein. Counsel for the Receiver conferred with Jeff Tillotson, counsel for Laura Pendergest-Holt, who stated that Ms. Pendergest-Holt is unopposed to this motion and the relief requested herein. Counsel for the Receiver conferred with David Finn, counsel for James Davis, who stated that Mr. Davis is unopposed to this motion and the relief requested herein. Counsel for the Receiver conferred with John Little, Court-appointed Examiner, who is unopposed to this motion and the relief requested herein. Counsel for the Receiver conferred with Manuel P. Lena, Jr. counsel for the United States (IRS) who is unopposed to this motion and the relief requested herein. The motion, therefore, is unopposed by all parties except R. Allen Stanford, who has not stated his position.

/s/ Kevin M. Sadler

Kevin M. Sadler

### CERTIFICATE OF SERVICE

On December 11, 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 the Court-appointed Examiner, 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 M. Sadler

Kevin M. Sadler