

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

SECURITIES AND EXCHANGE  
COMMISSION,

Plaintiff,

v.

STANFORD INTERNATIONAL BANK,  
LTD., STANFORD GROUP COMPANY,  
STANFORD CAPITAL MANAGEMENT,  
LLC, R. ALLEN STANFORD,  
JAMES M. DAVIS, and  
LAURA PENDERGEST-HOLT,

Defendants.

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CASE NO. 3-09-CV0298-N

**REPLY IN SUPPORT OF EMERGENCY MOTION TO ENFORCE RECEIVERSHIP  
ORDER AND INJUNCTION AND MOTION FOR CONTEMPT**<sup>1</sup>

*Preliminary Statement*

This Court’s September 28 Order could not have been clearer: “This Court . . . 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.*” [Docket No. 810, at 1-2.] Allen Stanford and his attorneys have since thumbed their nose at this Court by violating the September 28 Order by taking further steps to seek relief in the Southern District of Texas relating to the Policies.

Defendant Laura Pendergest-Holt, Mark Kuhrt, and Gilberto Lopez are equally culpable. The same September 28 Order made clear that any attempt to obtain insurance proceeds under

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<sup>1</sup> Underwriters file this Reply subject to their pending Motion to Intervene in this case, which was filed on December 3, 2009.

the Policies in a court other than the Northern District of Texas would violate this Court's February 17 Order Appointing Receiver, as amended. Pendergest-Holt, Kuhrt, and Lopez flouted this Court's authority by filing their suit in the Southern District anyway, just as Stanford did.<sup>2</sup>

Defendants offer no explanation as to how their conduct can be squared with this Court's prior orders. Instead, they suggest they "may have misunderstood the intended scope of this Court's orders." The clarity of the September 28 Order belies this feigned confusion.

Defendants go on to assert that Underwriters are somehow to blame for their own inappropriate actions. Among Underwriters' supposed misconduct is Underwriters' offer to pay defense costs subject to a complete reservation of rights; Underwriters' alleged failure to vigorously police Defendants' other violations of this Court's orders; Underwriters' alleged failure to deny Defendants' claims quickly enough; and Underwriters' supposed unclean hands resulting from alleged discussion between lawyers about their policy exclusions during two telephone conversations occurring after Underwriters' issued a reservation of rights letter. None of these points negates or excuses Defendants' obligation to comply with the clear terms of this Court's orders.

This Court has repeatedly ordered that *all* litigation concerning assets and potential assets of the Receivership Estate, including the Policies, *must* be filed in this Court. Underwriters and most other litigants have complied with these orders. If Defendants are permitted to flout the Court's orders, other litigants are sure to follow their lead. This Court's orderly administration of the Receivership Estate necessarily requires that the hundreds of claimants and interested parties actually comply with the Court's orders, rather than treat compliance as merely an option.

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<sup>2</sup> Stanford, Pendergest-Holt, Kuhrt, and Lopez are referred hereinafter as "Defendants."

## I. ARGUMENT AND AUTHORITIES

### A. Underwriters Are Not Seeking a Preliminary Injunction, But Rather to Enforce an Existing Order

Defendants argue that Underwriters must prove a likelihood that they will prevail on the merits, or a threat of irreparable harm. However, Underwriters are not asking this Court to enter an injunction—the Court has already done that at least twice, in the February 17 Order, as amended, and in the September 28 Order.

### B. Compliance With This Court's Orders Would Not Cause Defendants to Violate an Order Entered by Judge Hittner

Defendants argue that this Court, by ordering them to comply with its prior orders, would somehow compel Defendants to violate a court order entered by Judge Hittner. To support this argument, Defendants represent to this Court that Judge Hittner has entered a show cause order compelling them to appear at a hearing scheduled on December 17. This statement is false.

In their Second Amended Complaint, Plaintiffs included a request for temporary injunction in the Southern District—in violation of this Court's September 28 Order—and requested a hearing on that request. As a result, Judge Hittner set a hearing on their request. (A copy of the order is attached as Exhibit A to this Reply Brief.) Judge Hittner did not issue a show-cause order. Defendants can and should withdraw their request for a temporary injunction, voluntarily dismiss their suit, and seek any relief in the Northern District, as the Court ordered them to do. Taking these steps will not violate any order issued in the Southern District of Texas.

### C. This Court is Not Prevented from Enforcing its Own Orders by the Doctrine of Unclean Hands

Caught red-handed violating this Court's orders, Defendants argue that this Court may not enforce its own prior orders because Underwriters somehow have unclean hands, based on two telephone calls between counsel for Underwriters and counsel for Allen Stanford.

**CERTAIN UNDERWRITERS AT LLOYD'S OF LONDON'S REPLY IN SUPPORT OF EMERGENCY MOTION TO ENFORCE RECEIVERSHIP ORDER AND INJUNCTION**

Defendants' obvious purpose is to attempt to distract the Court from Defendants' own egregious conduct, a tactic that should not succeed.<sup>3</sup>

First, the doctrine of unclean hands simply does not apply here because Underwriters are not seeking entry of an order providing equitable relief. Rather, Underwriters ask the Court to enforce orders that it has already entered, variously, at the request of the Securities Exchange Commission and the Receiver for the Stanford Entities.

Second, the statements described by Defendants' counsel do not constitute the sort of unconscionable, unjust, or inequitable conduct that would support a defense under the unclean hands doctrine. The doctrine of unclean hands requires inequitable conduct consisting of wrongful acts, or unconscionable acts, or fraud or deceit. *See Petro Franchise Sys., LLC v. All Am. Props., Inc.*, 607 F. Supp. 2d 781, 797 (W.D. Tex. 2009). The conversations between counsel described by Allen Stanford's counsel simply do not rise to the level of unconscionable acts that would support a defense of unclean hands.

Third, even if the telephone conversations at issue somehow did give rise to a defense of unclean hands—they do not—the conversations cannot bar equitable relief because they do not sufficiently relate to the subject matter of this Court's previous injunctions. "The equitable defense of unclean hands applies when a party seeking relief has committed an unconscionable act immediately related to the equity the party seeks in respect to the litigation." *Ellipse Commc'n, Inc. v. Caven*, No. 3-07-1922, 2009 WL 3398709, at \*8 (N.D. Tex. Oct. 16, 2009) (quotation marks and citation omitted); *see also Mitchell Bros. Film Group v. Cinema Adult Theater*, 604 F.2d 852, 863 (5th Cir. 1979) ("The maxim of unclean hands is not applied where

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<sup>3</sup> The Declaration of Daniel McNeel Lane, Jr. is attached as Exhibit B. In this declaration, Mr. Lane offers his recollection of the communications that transpired between counsel, which differs from the accounts provided by Mr. Schaffer and Mr. Sokolow.

[the] plaintiff's misconduct is not directly related to the merits of the controversy between the parties . . . .").

At most, Defendants assert that counsel for Underwriters provided assurances of payment that were different from or broader than the express written reservation of rights Underwriters provided Defendants in May and June 2009. Those alleged assurances, which Underwriters' counsel disputes and which would not expand the scope of coverage anyway, do not relate to Defendants refusal to comply with this Court's prior orders. Indeed, one cannot imagine what Underwriters' counsel could say in a telephone conversation that would give Defendants carte blanche to violate this Court's clear orders.

***Conclusion***

Underwriters' Emergency Motion To Enforce Receivership Order And Injunction should be granted.

Respectfully submitted,

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### **CERTIFICATE OF SERVICE**

I hereby certify that a true and correct copy of the above and foregoing document and appendix have been served on all known counsel of record via the Court's electronic filing system this 15th day of December, 2009.

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