

instruction, the Court should strike Stanford's motion to disqualify pursuant to S.D. Tex. Local Rule 11.4 and its inherent authority.

In the alternative, the Court should grant Certain Underwriters at Lloyd's of London and Arch Specialty Insurance Company (collectively, "Underwriters") at least an additional week to respond to Stanford's improper disqualification motion as well as leave to file in excess of the twenty-five page limit imposed by the Court's procedures. Additional time and pages are required to respond to Stanford's excessively lengthy motion, which contains numerous inaccurate or misleading statements that Underwriters must address. Underwriters would be prejudiced if required to answer within the seven-day period allocated by the Court or within the twenty-five page limitation set forth in the Court's procedures.

Underwriters also request at least a seven-day continuance to secure additional evidence that has been, and presently remains, unavailable to them, but has nevertheless been relied upon by Stanford in his motion to disqualify. This information relates to Stanford's filing of a similar motion to disqualify Baker Botts more than a year ago in the receivership action before Judge Godbey. The allegations in that motion largely parallel those found in the current motion—*i.e.*, that Stanford had a relationship with Tony Nunes, then an attorney with Baker Botts, and that Stanford believed Nunes was representing Stanford and his father individually. Stanford subsequently withdrew his motion to disqualify after Baker Botts filed a response that presumably challenged the truthfulness of Stanford's allegations. Baker Botts' response was sealed per the request of Stanford's counsel at the time, and has never been provided to Underwriters or Akin

Gump. However, because Stanford now makes the same allegations against Akin Gump and seeks to impute Mr. Nunes' (Baker Botts') knowledge to Akin Gump for disqualification purposes, Underwriters should be permitted to obtain the sealed information to refute Stanford's allegations in this case. Stanford should not be permitted to use this information as a sword, yet shield related information by claim of privilege.

ARGUMENT & AUTHORITY

A. Plaintiff's Motion To Disqualify Fails to Comply With The Court's Rules, Procedures, and Instructions And Should Be Stricken

On June 3, 2010, the Court directed its attention to Stanford's counsel and warned him that it expected all counsel to read and abide by the Court's procedures and local rules. *See* June 3, 2010 Hearing, Tr. at 134:13-20 ([Court to Mr. Bennett] "[Y]ou must, you and every lawyer who is going to do anything on this case, my coverage case, must read my procedures, [and] must read the local rules...."). Despite this warning just one month ago, Stanford has submitted a motion that violates several of the Court's procedures, rules, and instructions. Stanford's disregard for the Court's rules, procedures, and instructions makes this Court's seven-day deadline for Underwriters' response impossible for Underwriters to comply with. Because Stanford has disregarded the Court's rules, procedures, and instruction, and because Stanford has prejudiced Underwriters by doing so, the Court should strike Stanford's motion to disqualify.

First, Stanford's fifty-three page motion to disqualify more than doubles the Court's twenty-five page limitation. *See* Honorable Nancy F. Atlas, Court Procedures,

Section 7(A) (January 2010) (“Without leave of Court, any memorandum shall be limited to 25 pages”). Because Stanford did not seek leave of the Court, his fifty-three page motion is not compliant with the Court’s procedures and should be stricken. *See* S.D. Tex. Local Rule 11.4 (“**Sanctions.** A paper that does not conform to the local or federal rules or that is otherwise objectionable may be struck on the motion of a party or by the Court.”).

Second, despite the excessive length of Stanford’s motion, Stanford fails to provide a table of contents and table of authorities. The Court’s governing procedures require that any memorandum that has more than ten (10) pages of argument, as does Stanford’s motion, *must* contain these items. *See* Court Procedures, Section 7(A)(1)-(8). Because Stanford’s motion does not comply with these provisions, Stanford’s motion should be struck. *See* S.D. Tex. Local Rule 11.4.

Third, Stanford’s motion to disqualify runs afoul of the Court’s local rules and prior instruction requiring the parties to cite authority in support of their motions. *See* S.D. Tex. Local Rule 7.1B (Opposed motions shall include and be accompanied by authority); June 3, 2010 Hearing, Tr. at 134:13-20 ([Court to Mr. Bennett] “[Y]ou must, you and every lawyer who is going to do anything on this case, my coverage case, must read my procedures, [and] must read the local rules....”); June 16, 2010 Hearing, Tr. at 150:19-23 ([To Mr. Bennett] “I would also require that there be legal authority for any relief sought. That’s also required by the local rules. So until there’s legal authority, for relief, you, there’s no sense in filing a motion. Okay?”). Stanford’s fifty-three page brief is replete with material assertions that do not reference any supporting legal or factual

authority. *See, e.g.*, Stanford's Mot. to Disqualify at 7:5-12 ("All these attorneys from Akin Gump collectively represented Stanford and developed an attorney-client relationship for work performed regarding multi-million dollar, Tier 3 investments, which are the very class of assets alleged to have been the source of money laundering."); *id.* at 10:12 ("Akin Gump attorneys handled much of the entire [sic] the AST transaction."); *id.* at 15:15-16, 16:1 ("This unofficial deal to represent Stanford brokers resulted in release of confidential information regarding Stanford business and the D&O policy while an attorney-client relationship was established."); *id.* at 17:10-12 ("Both Akin Gump and Stanford along with Stanford Entities, and parties manifested intent, over many financial transactions, to create an attorney-client relationship.").

Because Stanford's motion does not comply with the Court's rules, procedures, and instructions, Stanford's motion should be struck in its entirety. *See* S.D. Tex. Local Rule 11.4.

B. In the Alternative, Underwriters Should Be Permitted A Continuance To Respond to Stanford's Motion To Disqualify And Leave To Exceed The Court's Twenty-Five Page Limit

In the alternative, Underwriters request at least a one-week continuance to respond to Stanford's motion to disqualify and leave of Court pursuant to Section 7(A) of the Court's procedures to file a response in excess of the Court's twenty-five page limit. The Court ordered a seven-day response period based on the presumption that Stanford's motion would comply with the Court's governing procedures and prior instructions. However, because Stanford has not complied with the Court's procedures, but has instead submitted a fifty-three page motion, Underwriters would be greatly prejudiced by having

to respond within the seven-day time allocated by the Court or within the twenty-five page limit imposed by the Court's procedures.

Underwriters also should be granted at least a seven-day continuance in order to obtain information related to Stanford's prior motion to disqualify Baker Botts. In his current motion to disqualify, Stanford asserts that Akin Gump should be disqualified in part based on Stanford's relationship with former Akin Gump attorney Tony Nunes. *See, e.g.,* Stanford's Mot. to Disqualify at 5-6, 22. This is not the first time that Stanford has raised this argument. Rather, Stanford raised this same issue when seeking to disqualify Baker Botts more than a year ago. Specifically, on June 16, 2009, Stanford moved to disqualify Baker Botts based on his purported relationship with Nunes. *See* N.D. of Tex., Case No. 3:09-cv-298, Dkt. No. 478-479; Stanford's Mot. to Disqualify Exh. D at 1-3 (Affidavit of James Stanford given in support of Stanford's motion to disqualify Baker Botts from representing Receiver Ralph Janvey). In his motion to disqualify Baker Botts, Stanford makes the same factual allegations about his relationship with Mr. Nunes. *See* N.D. of Tex., Case No. 3:09-cv-298, Dkt. No. 479, at 2-4. Stanford and his counsel apparently insisted that Baker Botts file its response and supporting evidence under seal. *See id.*, Dkt. No. 554, at 3 n.2. However, what Baker Botts said in response was apparently enough to cause Stanford to withdraw his motion to disqualify Baker Botts, and he did so on September 17, 2009. *See id.*, Dkt. No. 782.

Now, over a year later, Stanford is attempting to use that same relationship with Mr. Nunes and Baker Botts in an attempt to disqualify Akin Gump. Although Baker Botts' papers were filed under seal, there are snippets in pleadings that were not filed

under seal that suggest that what Stanford said about his relationship with Baker Botts and Mr. Nunes (which he is now trying to impute to Akin Gump) was inaccurate. For example, in his motion to disqualify Akin Gump, Stanford says Mr. Nunes and Baker Botts represented Stanford and his father James Stanford from 1985-87 in organizing Guardian International Bank Limited, which purportedly eventually became SIB. *See* Stanford's Mot. to Disqualify at 5. In an unsealed pleading Baker Botts filed on behalf of Receiver Ralph Janvey in response to Stanford's motion to disqualify Baker Botts, the Receiver says "[t]he facts of the matter are that none of the Defendants has ever been a Baker Botts' clients; and the firm's brief representation of Allen Stanford's father nearly 25 years ago bears no significant relationship to its representation of the Receiver in this case." N.D. of Tex., Case No. 3:09-cv-298, Dkt. No. 554, at 2-3. In that same pleading, the Receiver notes that the facts regarding Baker Botts' representation of James Stanford between October 1985 and February 1986 are set out in detail in Baker Botts' brief in opposition to the motion to disqualify, which "was filed under seal, as Allen Stanford's counsel requested." *Id.* at 3 n.2.

In another pleading Stanford filed related to the Baker Botts' motion to disqualify, not filed under seal, Stanford references Baker Botts' (apparently sealed) statement to the effect that the firm did not represent the individual Stanford defendants and that—even if it arguably did—that representation consisted of "less than 6 hours of work in less than one calendar year for a 'related party.'" *Id.*, Dkt. No. 628, at 3. Finally, there is a reference that Baker Botts asserted to Judge Godbey in a July 24, 2009 letter that is not available on the docket sheet relating to the Baker Botts' motion to disqualify that

Guardian International Bank Limited was first formed in 1990, after Baker Botts ceased representing Stanford. *Id.*, Dkt. No. 643, at 1. Thus, it appears Stanford—emboldened because the response to his prior motion is sealed—may have based his motion to disqualify Akin Gump on factual statements that are demonstrably false.

Underwriters have reason to believe that Stanford's allegations about Baker Botts and Nunes are completely baseless and inaccurate (which would be a basis for Underwriters to challenge Stanford's imputation theory against Akin Gump). However, Underwriters cannot challenge these factual assertions in their response to Stanford's motion to disqualify because they do not have access to Baker Botts' pleadings and evidence that were filed under seal in Judge Godbey's court at the request of Stanford. Thus, Underwriters respectfully request that the Court order Stanford immediately to file a motion before Judge Godbey to unseal those pleadings and evidence. Underwriters require this information to refute Stanford's argument that Tony Nunes' purported prior relationship with Stanford while Mr. Nunes was at Baker Botts even existed as he describes, much less that it can now be imputed to Akin Gump.

Underwriters also should have access to this information because Stanford relies on an affidavit from his father, James Stanford, that is from the prior proceeding to disqualify Baker Botts in support of his current motion to disqualify Akin Gump. *See* Stanford's Mot. to Disqualify, Exh. D (dated June 14, 2009). In that affidavit, James Stanford relies upon documents and other evidence sealed by Judge Godbey at the

request of Stanford's former attorneys.¹ None of this evidence that forms the basis for James Stanford's sworn statement against Akin Gump is available to Akin Gump. Because Stanford relies upon this sealed information, Stanford has opened the door for Underwriters now to obtain this information. *See Nguyen v. Excel Corp.*, 197 F.3d 200, 208 (5th Cir. 1999) (citation omitted) ("Disclosing of any significant portion of a confidential communication waives the privilege as a whole."). Stanford cannot use the privilege as a sword for purposes of imputation, and yet claim it as a shield protecting closely related information from disclosure to Underwriters. *See id.* The Court therefore should grant Underwriters' alternative request for a continuance in order to petition Judge Godbey to unseal this critical information. Barring such relief, Underwriters request that the Court strike, at a minimum, those portions of Stanford's brief and evidence relating to Nunes' alleged representation of Stanford while Nunes was with Baker Botts.

CONCLUSION

The Court should strike Stanford's fifty-three page motion to disqualify Akin Gump for failure to comply with the Court's local rules, procedures, and prior

¹ *See id.* at 4 ("As is reflected in Baker & Botts' own internal memorandum, the purpose of GIBL from the beginning was to aggregate the savings of individuals in certificates of deposit issued by the bank, and ultimately deposited in banks, obligations, and instruments located in the United States, as well as investing in real estate....") (emphasis added); *id.* at 6 ("As described in detail in Mr. Nunes' notes, Allen, in my presence, discussed with Mr. Nunes on more than one occasion, our family business' history, our business opportunities in Venezuela, Curacao, Aruba, the Netherlands Antilles, and other Caribbean locations stemming from oil refining strategy closings, ways to benefit from currency exchange laws of these countries, what our business strategy was with regard to monies deposited with GIBL, our arrangements with other banks located in the United States and other jurisdiction, how much profit we predicted we would make and under what terms, and what Baker & Botts' role was to be, and many other private, confidential details.") (emphasis added).

instructions given to counsel. Stanford's motion has prejudiced Underwriters by making it virtually impossible for Underwriters to respond on what was already an expedited basis. In the alternative, the Court should grant Akin Gump at least a one-week continuance to respond to Stanford's motion and grant Akin Gump leave to exceed the page count limitation imposed by the Court's rules so that Akin Gump is allowed an equal number of pages.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that the foregoing document was served on all known counsel of record by electronic delivery through the Court's electronic filing system on July 5, 2010.

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

CERTIFICATE OF CONFERENCE

In accordance with Local Rule 7.1(D) and this Court's procedures Rule 6, I hereby certify that we conferred with Robert S. Bennett, counsel for R. Allen Stanford, by email on July 4, 2010 regarding the contents of this motion to strike and/or for extension of time and page limits. Mr. Bennett advised us by email on July 5, 2010 that he opposes the motion to strike and "take[s] no position as to the continuance for the response and the increase in the brief size." Regarding our request concerning the documents that are sealed before Judge Godbey, Mr. Bennett advised that he "do[es] not understand [our] request to Judge Godbey since [we] have already had access to Tony Nunes as shown by Barry [Chasnoff's] declaration."

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