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

SECURITIES AND EXCHANGE COMMISSION,	§	
	§	
Plaintiff,	§	
	§	
vs.	§	**CASE NO. 3:09-CV-0298-N**
	§	
STANFORD INTERNATIONAL BANK, LTD, ET AL.,	§	
	§	
Defendants,	§	
	§	
TRUSTMARK NATIONAL BANK,	§	
	§	
Intervenor	§	

TRUSTMARK'S RESPONSE AND LIMITED OBJECTION TO JOINT MOTION TO APPROVE SETTLEMENT AGREEMENT AND CROSS-BORDER PROTOCOL

Trustmark National Bank ("Trustmark") files this Response and Limited Objection ("Objection") to the Amended Joint Motion ("Joint Motion") of the SEC, Receiver, Examiner, and Official Stanford Investors Committee ("OSIC") to Approve Settlement Agreement and Cross-Border Protocol ("Settlement Agreement") and shows as follows:

I.
RELIEF REQUESTED

Trustmark objects to the Joint Motion to the extent that the proposed Settlement Agreement exposes parties such as Trustmark to potential double liability or to duplicative litigation in multiple jurisdictions concerning the same assets and claims. Accordingly, Trustmark asks the Court to (a) enjoin the JLs[1] and the Receiver from duplicating one another's efforts by filing lawsuits and pursing claims which are already the subject of pending litigation

[1] Terms not otherwise defined herein shall have the same meaning as in the Joint Motion [Doc. 1793] and Settlement Agreement [Doc. 1792].

or (b) condition its approval of the Settlement Agreement on modifications consistent with Trustmark's objections.

II.
BACKGROUND

A. THIS CASE INVOLVES COMPETING ESTATES AND THIS COURT'S GOAL OF ELIMINATING DUPLICATIVE EFFORTS

On February 16, 2009, this Court appointed Ralph S. Janvey as Receiver for certain Stanford Entities, including Stanford International Bank, Ltd. ("SIB"), Stanford Group Company, Stanford Capital Management, LLC, and others (collectively, the "Stanford Estate").[2] This Court empowered the Receiver to, among other things, maintain control of the Stanford Estate, marshal Stanford Estate assets, and institute proceedings as necessary to perform his duties under the Receivership Order.[3]

In a parallel foreign proceeding, on February 26, 2009, the Eastern Caribbean Supreme Court in the High Court of Justice of Antigua and Barbuda ("the Antiguan Court") appointed the Former JLs—and later the current JLs—as receivers-managers (and subsequently joint liquidators) of SIB and Stanford Trust Company Limited.[4]

This Court later recognized the JLs as representatives of a foreign nonmain proceeding, but, noting the JL's "repeated interference with the Receivership," the Court imposed several conditions on the JL's authority in the United States.[5] Among other things, those conditions

[2] [Doc. 10]; *see also* Amended Order Appointing Receiver dated March 12, 2009 [Doc. 157] (together, the "Receivership Order").

[3] Receivership Order at 3-4.

[4] *See In re: Stanford Int'l Bank, Ltd.*, No. 3:09-cv-721-N [Doc. 176 at 2-3] (Order dated July 30, 2012) (this Court's discussion of the proceedings before the Antiguan Court) (hereinafter the "Joint Liquidators Order").

[5] Joint Liquidators Order at 54.

prohibit the JLs from duplicating the litigation efforts of the Receiver, the Examiner, and the OSIC.[6]

B. LAW OF THE CASE PRECLUDES DUPLICATIVE CLAIMS AND LITIGATION

On January 5, 2010, Trustmark intervened in this case to protect certain property interests acquired in connection with Trustmark's provision of banking services to certain Stanford entities. Trustmark, at various times after intervening, expressed concern over the threat of double liability or inconsistent obligations given the cross-border nature of the Stanford Estate.[7] The Receiver, in response, dismissed any concern that other parties, such as the JLs, might pursue claims against Trustmark.[8] Addressing Trustmark's concerns, the Court previously noted its exclusive jurisdiction over the Stanford Estate[9] and, in two instances, foreclosed the possibility of multiple lawsuits and liabilities over the same assets.[10]

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[6] *Id.* at 57 ("The Court then conditions all relief on . . . (d) precluding the Joint Liquidators from duplicating efforts by the Receiver, the Examiner, and OSIC . . . .").

[7] *See, e.g.*, [Doc. 1589 at 3-4]; [Doc. 1619 at 11-13]; [Doc. 1628 at 10].

[8] *See, e.g.*, [Doc. 1600 at 9] ("the Receiver is the only recognized representative of Stanford International Bank, Ltd. in the United States, and no party is requesting any relief in the Chapter 15 proceeding that would alter the Receiver's status as a representative of Stanford International Bank, Ltd."); *Trustmark National Bank v. Janvey*, No. 3:12-cv-04169-N, [Doc. 7 at 8-9] ("the Receivership Order already gives the Receiver the exclusive rights to assert the rights of SIB[], a Stanford entity. In other words, the [JL's] ability to raise a claim to the accounts in its capacity as representative of SIB[] has already been foreclosed by an order of this Court, which recognizes the exclusive right of the Receiver to hold the property of SIB[]").

[9] *See* [Doc. 1655 at 3] ("Trustmark argues that the Court lacks subject matter jurisdiction because Stanford Venezuela is an indispensable party and the Antiguan Joint Liquidators might be the proper representative of Stanford Venezuela. Trustmark's arguments are erroneous. As per the Receivership Order, the Receiver is Trustmark Venezuela's representative and this Court has subject matter jurisdiction over all of the Stanford Entities' assets.").

[10] *See Trustmark National Bank v. Janvey*, 3:12-cv-04168-N, In the United States District Court for the Northern District of Texas, Dallas Division [Doc. 22 at 1] (Order and Final Judgment dated February 11, 2013) (enjoining Eastern Caribbean Amalgamated Bank from instituting any action against Trustmark related to certain interpleaded funds, the entitlement to which was adjudicated in that action); *Trustmark National Bank v. Janvey*, 3:12-cv-04169-N, In the United States District Court for the Northern District of Texas, Dallas Division [Doc. 24 at 1] (Order and Final Judgment dated February 11, 2013) (enjoining the JLs from instituting any action against Trustmark related to certain interpleaded funds, the entitlement to which was adjudicated in that action).

C. THE SETTLEMENT AGREEMENT DIVERGES FROM LAW OF THE CASE AND PROMOTES DUPLICATIVE CLAIMS AND LITIGATION

Despite the Receiver's repeated assertions that the JLs have no claim to SIB assets, on March 12, 2013, the SEC, the Receiver, the Examiner, and the OSIC filed the Joint Motion, urging this Court to approve the Settlement Agreement.[11] The Settlement Agreement provides for, among other things, the allocation of over $300 million in assets located in the UK, Switzerland, and Canada between the Receiver and the JLs; the disposition of the Chapter 15 Proceeding and proceedings in the UK, Switzerland, and Canada; and the establishment of cross-border protocol for the claims process and distribution, litigation, and discovery and other information sharing.

Notably, the Settlement Agreement does not resolve the lingering issue of the proper representative of SIB, but rather, acknowledges an overlap of uncertain scope between the authority of the Receiver and the JLs.

III. ARGUMENTS AND AUTHORITIES

While Trustmark supports a settlement between the Receiver and the JLs, the allocation of currently frozen assets, and the distribution of those assets to Stanford's creditors, Trustmark asks the Court to enjoin the JLs and the Receiver from duplicating one another's efforts by filing lawsuits and pursing claims that are already the subject of pending litigation.

A. THE SETTLEMENT AGREEMENT VIOLATES PRINCIPLES OF EQUITY AND DOES NOT ALLOW APPLICATION OF RES JUDICATA

Far from establishing an efficient cross-border litigation protocol—or even resolving the issue of the proper representative of SIB—the Settlement Agreement actually empowers both the "Receiver Parties"[12] and the JLs to pursue the same claims in their respective jurisdictions.

[11] [Doc. 1792].

[12] The Settlement Agreement defines "Receivership Parties" as the Receiver and the OSIC. [Doc. 1792 at 4].

Specifically, the Settlement Agreement establishes litigation protocol as follows:

> As to the Law Firm Claims, Bank Claims,[13] and all other claims not referenced in Sections 3.2 or 3.3 below, except as otherwise may be agreed between or among the Parties, the Parties will continue to pursue and initiate claims in jurisdictions in which they are recognized. . . . Sharing of the proceeds of such claims between and among the JLs, the Receiver Parties, and any appropriate classes will be negotiated and determined on a case-by-case basis as and if it becomes necessary and appropriate to do so.[14]

Thus, despite setting forth precise parameters for allocating Stanford Estate assets, pursuing clawback and breach of fiduciary duty claims, coordinating asset liquidation, sharing information, and even agreeing to "*avoid duplicating efforts* with respect to the recovery of [newly discovered Stanford Estate] assets,"[15] the Settlement Agreement fails to establish protocol for the efficient pursuit of "Bank Claims." This omission allows *both* the Receiver in the United States and the JLs in Antigua to assert *the exact same claims* on behalf of SIB. Essentially, the "Receiver Parties" and the JLs have agreed to independently pursue the same "Bank Claims" in different jurisdictions and decide later how to share the proceeds.

Such a result contravenes principles of equity and does not allow application of res judicata. A single party—in this case SIB—receives only one bite at the proverbial apple. Indeed, the doctrine of res judicata seeks to bring an end to litigation, prevent vexatious litigation, maintain stability of court decisions, promote judicial economy, and prevent double recovery.[16] Res judicata rules forbid the prosecution of multiple actions that involve the same

[13] The Settlement Agreement defines "Bank Claims" as "damage claims, including but not limited to negligence, aiding and abetting, dishonest assistance, and conspiracy, asserted or filed against banks or institutions providing banking services to Stanford or any Stanford-related entity or individual." [Doc. 1792 at 5].

[14] [Doc. 1792 at 20-21].

[15] [Doc. 1792 at 22] (emphasis added).

[16] *Hogue v. Royce City, Texas*, 939 F.2d 1249, 1254 (5th Cir. 1991).

parties (or parties in privity) and identical claims.[17] Moreover, forcing parties to defend themselves against the same claims in multiple forums "is, in itself, inequitable."[18]

SIB may only pursue a particular claim against banks such as Trustmark once. The fact that the Receiver and JLs have failed to agree on their respective roles in representing SIB should not enable them to simply ignore the issue and independently pursue the same claims and assets. The Settlement Agreement, as drafted, allows SIB several bites at the apple with respect to "Bank Claims" because it allows the JLs to file lawsuits that the Receiver has already filed and vice versa. This Court should not approve a Settlement Agreement that provides for such an inequitable result—a result that departs from this Court's previous actions in supporting one representative of the Stanford Estate and one recovery per claim.[19]

At least two parties have received notice that the JLs intend to pursue claims in Antigua identical to those currently being litigated in the United States by the Receiver.[20] Trustmark fears the same problem. The OSIC has already filed an Intervenor Complaint against Trustmark and several other banks, seeking avoidance and recovery of alleged fraudulent transfers and damages for allegedly aiding and abetting fraudulent conduct. ("Rotstain Action").[21] The Intervenor Complaint specifically states that the OSIC "is working with the Receiver to investigate and prosecute" the claims asserted "on behalf of the victims of the fraud at Stanford International Bank, Ltd. . . ."[22]

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[17] *Ellis v. Amex Life Ins. Co.*, 211 F.3d 935, 937 (5th Cir. 2000).

[18] *In re Henry*, 274 S.W.3d 185, 193 (Tex. App.—Houston [1st Dist.] 2008) (citing *Gonzalez v. Reliant Energy, Inc.*, 159 S.W.3d 615, 623 (Tex.2005)).

[19] *See supra* notes 9, 10.

[20] [Doc. 1800-1 at 3] (Chadbourne & Parke LLP); [Doc. 1805 at 4] (Greenberg Traurig, LLP).

[21] *Rotstain v. Trustmark National Bank*, Case No. 3:09-CV-02384-N, In the United States District Court for the Northern District of Texas, Dallas Division [Doc. 133] (Intervenor Complaint dated February 15, 2013).

[22] *Id.* at 2.

Thus, in the Rotstain Action, the "Receiver Parties" already pursue so-called "Bank Claims" against Trustmark. However, those same parties now ask this Court to ratify a Settlement Agreement that expressly allows the JLs—as separate and additional representatives of SIB—to pursue identical "Bank Claims" against Trustmark in another jurisdiction. This Court simply should not support such an inequitable result.

B. THE SETTLEMENT AGREEMENT SHOULD ESTABLISH AN EFFICIENT CROSS-BORDER LITIGATION PROTOCOL

The proponents of the Settlement Agreement provide no explanation for their failure to more fully develop litigation protocol. The Settlement Agreement misses an opportunity to establish an efficient litigation protocol that would lessen the cost of litigation, avoid duplicative efforts, and generally increase the efficiency of collection and distribution of Stanford Estate assets.

The Federal Judicial Center ("FJC") recently published a guide for judges in managing a cross-border insolvency case, which provides considerations for evaluating a cross-border agreement such as the Settlement Agreement.[23] The FJC notes that a cross-border protocol is "necessary to avoid potential conflicts and to promote efficient cross-border administration" of proceedings.[24] Likewise, a cross-border agreement avoids "the possibility of conflicting rulings on substantive issues."[25] The FJC notes that cross-border agreements typically contain provisions which, among other things, coordinate asset recovery and allocate responsibility for the

[23] Hon. Louise De Carl Adler, U.S. Bankruptcy Court for the Southern District of California, *Managing the Chapter 15 Cross-Border Insolvency Case: A Pocket Guide for Judges*, 2011 FEDERAL JUDICIAL CENTER 23-24.

[24] *Id*. at 23.

[25] *Id*. at 23-24.

resolution of substantive law issues.[26] Inexplicably, the Settlement Agreement accomplishes neither of these goals with respect to litigation protocol.

Instead of silence on the issue, the Settlement Agreement could allocate "Bank Claims" between the "Receiver Parties" and the JLs. Alternatively, the Settlement Agreement could expressly prohibit the duplication of efforts by the JLs and the Receiver with respect to "Bank Claims," as it did with respect to newly discovered Stanford Estate assets. Finally, the Settlement Agreement could bring the JLs before this Court as parties to the receivership, thereby ensuring res judicata with respect to "Bank Claims." Each of these solutions would increase administrative efficiency, decrease administrative costs, and avoid duplicative efforts and litigation.

Indeed, the Judicial Panel on Multidistrict Litigation ("JPML") has already determined that centralization of actions related to the Stanford Ponzi scheme best serves the interest of the parties, their counsel, and the judiciary.[27] Specifically, the JPML stated the following:

> [W]e find that the actions in [MDL 2099] involve common questions of fact. Centralization under Section 1407 in the Northern District of Texas will serve the convenience of the parties and witnesses and promote the just and efficient conduct of the litigation. . . Centralization under Section 1407 will eliminate duplicative discovery; avoid inconsistent pretrial rulings; and conserve the resources of the parties, their counsel and the judiciary. . . [T]ransfer to a single district under Section 1407 will permit one court to formulate a pretrial program that allows any non-common issues to proceed concurrently with common issues. . . thus ensuring streamlined, just and expeditious resolution of all actions.[28]

Surely "ensuring streamlined, just and expeditious resolution of all actions" remains the goal of the receivership. Moreover, the common questions of fact in this litigation remain

[26] *Id*. at 24.

[27] *In re Stanford Entities Securities Litigation*, Case 3:09-md-02099-N-BL, United States Judicial Panel on Multidistrict Litigation [Doc. 1] (Transfer Order dated October 6, 2009).

[28] *Id*. at 2.

unchanged. Accordingly, the Settlement Agreement should not allow the Receiver and the JLs to circumvent the decision of the JPML and create a fragmented litigation process, which would waste resources and lead to inconsistent and inequitable results.

IV.
CONCLUSION AND PRAYER

WHEREFORE, PREMISES CONSIDERED, Trustmark asks the Court to (a) enjoin the JLs and the Receiver from duplicating one another's efforts by filing lawsuits and pursing claims that are already the subject of pending litigation or (b) condition its approval of the Settlement Agreement on modifications consistent with Trustmark's objections, and for any other relief to which Trustmark may be justly entitled.

DATED: March 28, 2013

Respectfully submitted,

KANE RUSSELL COLEMAN & LOGAN PC

By: *s/ Kenneth C. Johnston*

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CERTIFICATE OF SERVICE

I hereby certify that on March 28, 2013, I caused the foregoing document to be electronically filed with the Clerk of the Court using the CM/ECF system, which will send notification of such filing to all counsel of record.

By: *s/ Kenneth C. Johnston*
Kenneth C. Johnston