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

SECURITIES AND EXCHANGE COMMISSION,	§	
	§	
Plaintiff,	§	
	§	
v.	§	Civil Action No. 3:09-CV-0298-N
	§	
STANFORD INTERNATIONAL BANK, LTD., ET AL.,	§	
	§	
	§	
Defendants.	§	

In re:	§	
	§	
STANFORD INTERNATIONAL BANK, LTD.,	§	Civil Action No. 3:09-CV-0721-N
	§	
Debtor in a Foreign Proceeding.	§	
	§	

RECEIVER'S REPLY IN SUPPORT OF AMENDED JOINT MOTION OF THE SEC, RECEIVER, EXAMINER, AND OFFICIAL STANFORD INVESTORS COMMITTEE TO APPROVE SETTLEMENT AGREEMENT AND CROSS-BORDER PROTOCOL

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SUMMARY

No one court has jurisdiction to clean up the mess left behind by the international Stanford debacle. It is for that reason that this Court has repeatedly encouraged the U.S. Receiver and the Antiguan Joint Liquidators to agree on a framework for cooperation, rather than continuing to pursue protracted and expensive litigation against one another. The Receiver, the Joint Liquidators, and the other settling parties have done precisely that. In the Receiver's considered judgment, the Settlement Agreement that is before the Court presents the only realistic path to avoid prolonging the already lengthy and expensive delays in the distribution of the international Stanford assets. The Settlement Agreement also dramatically improves cooperation among the Receiver, the Official Stanford Investors Committee, and the Joint Liquidators in the performance of their duties to their respective appointing courts. As a result, the Settlement Agreement will ensure that administrative costs are reduced, that consistency of action between this Receivership and the Antiguan liquidation is enhanced, and that outcomes for the beneficiaries of the Receivership and the Antiguan liquidation estates are improved.

Weighed against all of these benefits are the objections of Allen Stanford's former lawyers and bankers, who profess to be concerned that the Settlement Agreement will "create" duplication of litigation or discovery and discard the benefits (to which they claim entitlement) of this Court's Chapter 15 orders. These objections are premature, and reflect a fundamental misunderstanding of the Chapter 15 Orders, the circumstances that gave rise to the Settlement Agreement, and the legal effects of that Agreement. As of today, the Antiguan Joint Liquidators have appealed the Chapter 15 Order and declined to take advantage of the conditional recognition it offers. As a result, nothing currently prevents the Antiguan Joint Liquidators from suing any and every one of the objecting parties on any cause of action they choose in Antigua, the United Kingdom, Switzerland, or anywhere else the Antiguan Joint Liquidators are recognized. The Settlement Agreement did not create this circumstance. And it does not — *sub silentio* or otherwise — ask this Court to approve any allegedly duplicative lawsuit that might be filed in the future, or to rule in advance on any argument that might be made by the defendants in any such future lawsuit.

Mr. Stanford's law firms and bankers may wish that the Receiver had been able to reach an agreement that was more favorable to their interests. They may also wish for the power to revise the Agreement in a way that suits their own desires and self-interests. But these are just wishes. The Settlement Agreement represents the best compromise that the Receiver was able to negotiate under extraordinarily complex and difficult circumstances. These objecting parties were not part of the negotiation of the Settlement Agreement, and they should not be heard to complain that the Receiver did too little to advance their interests. Nor can they credibly tell this Court that the Settlement Agreement would survive the modifications that the defendants demand. The settling parties have negotiated and agreed to just one Settlement Agreement, and that is the Agreement before the Court.

The only other objection to the Settlement Agreement comes from another set of Stanford's former lawyers, who complain that they should be paid ahead of Stanford's victims. That objection is not well-taken. It would be inequitable to use money misappropriated from Stanford's victims to pay professionals hired by Stanford to help him defend one of the artifices of his fraud — that is, Stanford's effort to deceptively associate himself with Stanford University. Further, as a practical matter, the assets subject to the Settlement Agreement will not be distributed to general creditors regardless of whether the Settlement Agreement is approved. Almost all of the assets at issue are subject to a criminal forfeiture judgment entitling the Department of Justice to recovery. The DOJ, in turn, is required to distribute these assets solely to the victims of Stanford's crimes. Similarly, if the JLs recover the assets, Stanford's victims will also be given preference over general creditors in any distribution. Therefore, Stanford's general creditors will be excluded from any distribution of the international assets regardless of whether the Settlement Agreement is approved by the Court. The difference is that, with the Settlement Agreement, the JLs will stop battling the DOJ and the Receiver for control of the assets, thus ensuring that the assets will be distributed sooner and at substantially reduced costs. Accordingly, the Settlement Agreement's proposed distribution should be approved.

Because none of the objectors has presented a compelling reason to reject the Settlement Agreement, the Receiver respectfully requests that the Court approve the Settlement Agreement and enter the proposed order attached thereto.

ARGUMENT

I. The Settlement Agreement should be approved because of its many benefits to this Court's receivership and to those harmed by the Stanford Ponzi scheme.

On March 12, 2013, the Receiver, the Examiner, the Official Stanford Investors Committee ("OSIC") and the Securities and Exchange Commission ("SEC") jointly moved this court to approve the Settlement Agreement and Cross-Border Protocol ("Settlement Agreement"). *See* Docs. 1792, 1793.[1] The agreement was the result of these parties' and the U.S. Department of Justice's ("DOJ") year-long negotiations with the Antiguan Joint Liquidators ("JLs"). Shortly thereafter, this Court issued an Order setting a hearing on the Motion, and directing parties and nonparties to file any comments and objections related to the Motion with the Court by March 28. *See* Doc. 1801 at 2.

Since filing the motion to approve, the settling parties have made substantial efforts to ensure that anyone who might be affected by the Settlement Agreement is aware of the

[1] Unless otherwise stated, citations to court records herein reference the docket numbers from *SEC v. Stanford Int'l Bank, et al.*, No. 3:09-CV-298-N (N.D. Tex., filed Feb. 17, 2009).

Agreement and of the opportunity to file their objections with the Court. The Receiver, Examiner and JLs provided information about the proposed settlement, the motion, and this Court's hearing on their respective websites.[2] The Settlement Agreement and motion were also reported by major news organizations,[3] and on March 21, 2013, the Receiver sent e-mail notices of these developments to the more than 20,000 claimants who have provided e-mail addresses to the Receiver. *See* Appendix A at 5-8. The JLs also distributed this information via e-mail to claimants.

Of the tens of thousands of individuals and entities who received notice of the proposed settlement, only *eight* filed objections with this Court — six of whom are law firms and banks currently defending lawsuits based on their roles in aiding and abetting the Stanford Ponzi scheme, and one of whom is a law firm that represented the Stanford entities in a lawsuit filed less than four months before the beginning of the Receivership.[4] Elsewhere, the Settlement Agreement has received vocal praise. The DOJ sent a letter to the Court expressing its support for the Settlement Agreement. *See* Appendix B at 10. A group of 2,300 victim claimants filed a Statement in Support of the Joint Motion on the grounds that it "is in the best interest of all Stanford creditors." Doc. 1820 at 3. And eighty-four individual investors signed a letter to the

[2] *See* www.stanfordfinancialreceivership.com; www.lpf-law.com/sub/stanford.jsp; www.sibliquidation.com/homepage/antiguan-court-hearing-scheduled-for-april-8th/.

[3] *See, e.g.*, http://blogs.wsj.com/bankruptcy/2013/03/19/stanford-victims-will-benefit-from-300m-settlement/; http://www.bloomberg.com/news/2013-03-12/allen-stanford-s-receivers-reach-deal-to-repay-investors.html; http://www.americanlawyer.com/digestFriendlyTAL.jsp?id=1202592029306; http://www.law360.com/articles/422959/print?section=banking; http://www.law360.com/articles/428562/print?section=banking; http://www.cnbc.com/id/100546443; http://www.ft.com/intl/cms/s/0/e6870092-8b53-11e2-b1a4-00144feabdc0.html.

[4] *See* Docs. 1805, 1811, 1813, 1814, 1815, 1816, 1817, and 1819. In addition, one attorney representing certain plaintiffs in Stanford class action suits filed a "Statement, Reservation of Rights and Request to be Heard at Hearing." *See* Doc. 1812.

Receiver expressing hope that the Settlement Agreement will be implemented "as soon as possible." *See* Appendix C at 12-14.[5]

The obvious benefits of the Settlement Agreement over the status quo explain why it has elicited so little opposition, and why even the objectors concede that their opposition to the Settlement Agreement is only on narrow grounds.[6] The proposed settlement resolves pending lawsuits in four countries, facilitates the distribution of a substantial majority of the $300 million in international Stanford assets directly to the Stanford victims, and establishes a cross-border protocol that will help the moving parties and the Antiguan Joint Liquidators ("JLs") avoid protracted and expensive future litigation and to more efficiently and effectively administer their respective estates.

These benefits are even more apparent when the consequences of the Settlement Agreement's rejection are contemplated. Without the Settlement Agreement, the settling parties will continue to expend substantial time and resources litigating over Stanford assets around the world, draining the funds of the Stanford Estate with no guarantee of a successful outcome. They will also continue to compete against one another for the assets, instead of reaping the

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[5] The Receiver is aware of at least two purported investors who are opposed to the Settlement Agreement because of the funds that the agreement allocates to the efforts of the Antiguan Joint Liquidators. Neither investor has formally filed an objection with the Court. The Receiver is not critical of these investors for having a concern in this regard. However, the Receiver notes that the funds allocated to the JLs come entirely from the U.K. Assets, and it has been conclusively determined in a final, non-appealable judgment that the Receiver has no control over or access to any of the U.K. Assets. If the Settlement Agreement is not approved and the JLs are successful in their litigation with the DOJ, then the JLs will have unfettered access to *all* of the U.K. Assets, and neither the Receiver nor the Department of Justice will have any say in how those assets are used or distributed. The Settlement Agreement ensures that a substantial portion of the U.K. Assets are distributed only to victims of the Stanford fraud, and further ensures that the portion of the U.K. Assets used to fund administrative expenses will be minimized and subject to a hard cap.

[6] *See*, *e.g.*, Doc. 1805 at 1 ("Those portions of the agreement that will free up disputed bank accounts for distribution to victims are commendable and should be approved."); Doc. 1815 at 4 ("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."); Doc. 1816 at 3 ("Chadbourne does not oppose the Proposed Settlement insofar as it addresses how the parties to the Proposed Settlement should coordinate their efforts and share information."); Doc. 1817 at 2 ("Hunton generally takes no position with respect to the bulk of the proposed settlement agreement, including its provisions addressing the distribution of Stanford-related monetary assets between the Receiver and the Joint Liquidators.").

benefits of cooperation and coordination. As a result, restitution to the Stanford victims will be both diminished and delayed.

Given the Agreement's substantial benefits and the strong presumption in favor of settlements as a method of dispute resolution, the Court should approve the Settlement Agreement.[7]

II. The few objections to the Settlement Agreement are not well-taken and do not justify rejection of the Agreement.

There are no meritorious objections to the Settlement Agreement. Taken together, the objections raise three challenges to the Settlement Agreement. These criticisms stem from a basic misunderstanding of the circumstances giving rise to the Settlement Agreement, and of the legal effects of the Settlement Agreement. Furthermore, most of the objections criticize the Settlement Agreement not for what it does, but for what the objectors believe the Settlement Agreement could have done — a complaint that is not grounds for rejection. *See Davis v. J.P. Morgan Chase & Co.*, 827 F. Supp. 2d 172, 176-77 (W.D.N.Y. 2011). None of the objections justify discarding the Settlement Agreement and its benefits.

A. The Settlement Agreement does not create the risk of duplicative litigation.

Six of the objectors complain that the Settlement Agreement does not do enough to prevent the Receiver and JLs from filing allegedly duplicative lawsuits in different jurisdictions, with some going so far as to erroneously claim that the Settlement Agreement actually empowers the Receiver and the JLs to file duplicative lawsuits. These objectors are all law firms and banks that have been sued in the United States for their roles in aiding and abetting the Stanford Ponzi scheme. Because of their involvement with Stanford, they fear similar

[7] *See Smith v. Crystian*, 91 Fed. Appx. 952, 955 (5th Cir. 2004) (noting a "strong judicial policy favoring the resolution of disputes through settlement") (internal quotation marks omitted).

lawsuits will be filed against them in Antigua by the JLs. At present, there are no such "duplicative lawsuits" involving any of the six objectors on file anywhere.[8]

The objectors' duplicative litigation argument is meritless. The JLs already have all the authority they need to file lawsuits against every one of the objectors in Antigua or in any other jurisdiction where they are recognized. The Settlement Agreement did not create that circumstance, and the fact that the Settlement Agreement does not protect the objectors from lawsuits that would hold them accountable for their contributions to the Stanford Ponzi scheme is no reason to decline to approve the Agreement.

1. The Settlement Agreement is not required to protect the objectors from the risk of duplicative litigation.

The six objectors allege that Section 3.1 of the Settlement Agreement "authorize[es]" and "empowers" the Receiver and the JLs to file duplicative claims against banks and law firms. *See* Docs. 1805 at 7; 1815 at 4. The objectors are wrong. First, the Settlement Agreement prevents the JLs from filing litigation of any kind in the United States. Second, the JLs have been authorized since their appointment to file lawsuits in Antigua, including lawsuits that duplicate claims filed by the Receiver against law firms and banks. *See* Case. No. 3:09-cv-00721-N, Doc. 76-6 at 102-03. The Settlement Agreement therefore does nothing more than recognize the status quo: that the Receiver has authority to file lawsuits against law firms and banks in the United States, and that the JLs have authority to do the same in Antigua,[9] regardless of whether those lawsuits are duplicative of one another. *See* Doc. 1792 at 20 ("[T]he Parties *will continue* to pursue and initiate [Law Firm and Bank] claims in jurisdictions in which they

[8] The six objectors are: Greenberg Traurig LLP ("Greenberg Traurig") (Doc. 1805); Proskauer Rose LLP ("Proskauer") (Doc. 1814); Trustmark National Bank ("Trustmark") (Doc. 1815); Chadbourne & Parke LLP ("Chadbourne") (Doc. 1816); Hunton & Williams LLP ("Hunton") (Doc 1817); and Thomas V. Sjoblom ("Sjoblom") (Doc. 1819).

[9] The objectors may be surprised to learn that Allen Stanford employed bankers and lawyers outside the United States.

are recognized.") (Section 3.1) (emphasis added). The Settlement Agreement does not create new authority for the Receiver and JLs to file duplicative lawsuits, nor does it encourage them to do so. If anything, the Settlement Agreement creates a new incentive for the Receiver and JLs *not* to duplicate claims, as it encourages them to share the proceeds from successfully prosecuted Law Firm and Bank claims. *See* Doc. 1792 at 20-21 (Section 3.1) ("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.").

Properly construed, then, the objectors' actual complaint is that the Settlement Agreement fails to *remove* the existing risk that allegedly duplicative litigation could be filed against the objectors for their actions in connection with the Stanford Ponzi scheme. *See* Doc. 1815 at 4 ("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."). The objectors are not entitled, however, to demand immunity from duplicative litigation, or to dictate the terms of other parties' agreements. *See infra*, at 8-10, 14-15. Further, approval or rejection of a settlement agreement must be based on what it actually does, and not on what it *might* or *could* have achieved. *See True v. Am. Honda Motor Co.*, 749 F. Supp. 2d 1052, 1063 (C.D. Cal. 2010) ("The question is not whether the settlement could be prettier, smarter, or snazzier, but solely whether it is fair, adequate, and free from collusion.") (internal quotation marks omitted); *Davis*, 827 F. Supp.2d at 177 ("The court's task, then, is simply to decide whether the settlement agreement *as written* is fair, reasonable, and adequate, not whether the parties or the court could conceivably have come up with a "better" agreement.").

The rationale for this rule is obvious. If a settlement agreement was required to resolve every issue related to the parties' dispute, or could be rejected on the grounds that the parties might have resolved additional or different disagreements, then few settlements would be successfully negotiated and fewer still approved. *See DeHoyos v. Allstate Corp.*, 240 F.R.D. 269, 286 (W.D. Tex. 2007) (a settlement agreement is not required to "achieve some hypothetical standard constructed by imagining every benefit that might someday be obtained in contested litigation.") (internal quotation marks omitted). Nor would it be productive to invalidate the parties' progress in negotiations on the basis that the negotiations could have achieved even more. Consequently, so long as what the parties *have* agreed to is fair and reasonable, a proposed settlement should be approved. *See Ball v. AMC Entertainment, Inc.*, 315 F. Supp. 2d 120, 129 (D.D.C. 2004). Because the six objectors' duplicative litigation claim challenges the Settlement Agreement on the grounds of an alleged omission and not based on its actual provisions, their objection cannot be sustained.[10]

2. The objectors have no standing to comment on the Chapter 15 proceeding, but in any event, the Settlement Agreement furthers the goals of the Chapter 15 Order.

The objectors argue that this Court's July 30, 2012 Chapter 15 Order eliminated the possibility of duplicative litigation by the Receiver and JLs and that modification of the Chapter 15 Order is impermissible. The objection fails for numerous reasons.

[10] This same infirmity infects a secondary objection raised by Trustmark, which complains that the "Settlement Agreement misses an opportunity to establish an efficient litigation protocol." Doc. 1815 at 7. Trustmark does not claim that any actual provisions of the Settlement Agreement are impermissible or harmful. Instead, Trustmark provides a list of things that the Settlement Agreement *could* have done. *Id.* at 8 ("the Settlement Agreement *could* allocate "Bank Claims"" . . . "the Settlement Agreement *could* expressly prohibit " . . . "the Settlement Agreement *could* bring the JLs before this Court.") (emphases added). This criticism is not grounds for rejection of the agreement. *See, e.g.*, *DeHoyos*, 240 F.R.D. at 286; *Davis*, 827 F. Supp. 2d at 177. Furthermore, the Receiver notes that the Cross-Border Protocol established in the Settlement Agreement already creates a thorough system of cooperation and coordination of efforts between the parties with respect to litigation, asset recovery efforts, and monetization of assets, none of which would be improved by Trustmark's haphazard suggestions. Trustmark's meritless objection should be dismissed.

First, the settling parties are not bound by the Chapter 15 Order in negotiating a settlement, and any inconsistency between the Settlement Agreement and the Order is not grounds for rejection. The Chapter 15 Order was issued by this Court to adjudicate a legal dispute between the settling parties, and has been appealed to the Fifth Circuit.[11] *See Marcus Wide, et al. v. John Little, et al.*, No. 12-10836 (5th Cir., filed Aug. 7, 2012). Rather than pursuing the appeal, the parties are entitled to resolve their dispute by agreement. *See Sansom Comm. by Cook v. Lynn*, 735 F.2d 1535, 1538 (3d Cir. 1984) ("[P]arties to a suit have the right to agree to any thing they please in reference to the subject matter of their litigation, and the court, when applied to, will ordinarily give effect to their agreement, if it comes within the general scope of the case made by the pleadings.") (quoting *Pac. R.R. v. Ketchum*, 101 U.S. 289, 297 (1879)). Indeed, if parties could not negotiate a settlement that differed from a trial court's order, then pre-appeal settlements would be impossible, as there would be no room for compromise. The Court's Chapter 15 Order was not issued for the objectors' benefit, and they are not entitled to use it to defeat the settling parties' agreement.

Settlement was a particularly favorable option for the parties to the Chapter 15 proceedings, given that the final results of these proceedings remain uncertain. In addition to appealing the Chapter 15 Order, the JLs have publicly asserted that they do not intend to take advantage of the Order's conditional recognition, and are therefore not bound by the Order's provisions. *See* Appendix D at 21, ¶ 5. In accordance with that position, the JLs have, for example, litigated adversely to the Receiver in Canada, even though such conduct violates the conditions imposed by the Chapter 15 Order on the JLs for recognition in the United States.

[11] This appeal has been dismissed without prejudice, and may be reinstated by the JLs. If the Settlement Agreement is approved, the JLs will not reinstate this appeal. In addition, they will dismiss the pending appeal of the first Chapter 15 Order issued by this Court in Case No. 3:09-cv-00721-N . *See Marcus Wide, et al. v. John Little, et al.*, No. 12-10157 (5th Cir., filed 9, 2012); Case No. 3:09-cv-00721-N, Doc. 1792 at 32-33.

Under these circumstances, the parties determined that it was in their best interests to exercise their right to settle, rather than prolonging the litigation. Because none of the objectors were party to these proceedings, they may not object to a settlement resolving it.

Second, Section 3.1 of the Settlement Agreement is consistent with the Chapter 15 Order. In that Order, this Court granted limited relief to the JLs under 11 U.S.C. § 1521. Case No. 3:09-cv-00721-N, Doc. 176 at 53-58. One of the conditions on that relief was that the JLs were precluded "from duplicating efforts by the Receiver, the Examiner, and OSIC, including playing any role — *unless consented to by the Receiver, Examiner, and OSIC* — in the prosecution of claims or actions that the Receiver and/or OSIC have already commenced prior to the date of this Order." *Id.* at 57 (emphasis added). The Receiver, Examiner and OSIC are parties to the Settlement Agreement, and have consented to all of its provisions. To the extent that the Settlement Agreement "allows" the JLs to pursue whatever litigation they choose to file in jurisdictions in which they have been recognized (or, more accurately, recognizes the reality that they are entitled to do so), it does so in accordance with the Chapter 15 Order.

Further, the Court has consistently refused to attempt to enjoin the JLs' actions in Antigua, which is where the alleged threatened duplicative litigation will occur. In its first Chapter 15 Order, the Court held that the JLs could not pursue Law Firm claims in the United States, in part because doing so would duplicate the Receiver's efforts. The Court specified, however, that this holding "should in no way be interpreted as discouraging the Joint Liquidators in their advocacy on behalf of Stanford creditors and investors in territories in which they are recognized around the world." *See* Case No. 3:09-cv-00721-N, Doc. 141 at 5 & n.1. Thus, the objectors' contention that the Court has previously imposed an absolute prohibition against duplicative litigation by the JLs acting in Antigua, or in other jurisdictions where they have been recognized, is simply incorrect.

The Settlement Agreement also fulfills the goals articulated by this Court in the Chapter 15 Order, and uses many of the same methods in doing so. In its Chapter 15 Order, the Court imposed nine conditions on the conditional relief it granted to the JLs, including requiring discovery sharing and cooperation in creating a common claims process, limiting the JLs' discretion to duplicate the Receiver parties' efforts, and circumscribing the JLs' ability to act in the United States by requiring them to first obtain the Court or the Receiver parties' consent. Case No. 3:09-cv-00721-N, Doc. 176 at 57-58. The Court explained the purposes of these conditions as follows: "the Court seeks to instill reciprocal cooperation between the Antiguan and U.S. parties and parties in interest, as well as provide for checks on the Joint Liquidators' activity similar to the way that this Court oversees the Receiver, Examiner, and OSIC's activities." *Id.* at 58. It also observed that duplicated efforts by the Receiver and JLs were undesirable, as they result in a "diminution of funds for Stanford investor-victims and creditors." *Id.* at 56. These statements echoed those made by this Court in its first Chapter 15 Order, in which it stated: "it behooves the parties, in pursuit of their joint goal, to work together so as to increase the funds available to Stanford victims, rather than to deplete funds via continued litigation. . . . In that vein, the Court notes that the only way to move forward without substantially setting the Stanford victims back is to work together." Case No. 3:09-cv-00721-N, Doc. 141 at 5 n.1.

In the absence of the Settlement Agreement, the JLs will abide by none of the important conditions outlined above. They will continue to litigate adversely to the Receiver and the DOJ. They will to continue to file whatever lawsuits they choose in jurisdictions where they are recognized. They will not freely share information with the Receiver. *See* Appendix D at 21.

In contrast, the Settlement Agreement does precisely what the Court urged in both of its Chapter 15 Orders. Just as the Court recommended, the settling parties have ended years of costly litigation, and established extensive protocols to promote cooperation and coordination. The Settlement Agreement also ensures that the majority of the conditions listed in the Chapter 15 Order will be observed to the letter, and beyond. It directs the parties to share discovery and other information, to coordinate their claims processes, and to cooperate in prosecuting various legal actions, and it requires the JLs to obtain the consent of the Court, or of both the Receiver and the Examiner, when pursuing discovery in the United States. The Settlement Agreement preserves the judgment of the Court's first Chapter 15 Order as well, including its ban against the JLs' prosecution of Law Firm claims in the United States — an achievement the objectors undoubtedly, albeit silently, appreciate. *See* Case No. 3:09-cv-00721-N, Doc. 141.

The Settlement Agreement is clearly in harmony with the Court's Chapter 15 orders, even though it is not required to be. As this Court predicted in those orders, by agreeing to settle their legal disputes, the parties were able to obtain greater benefits for the receivership than they could have accomplished through adversarial litigation. If the six objectors truly believe that the real world benefits sought to be obtained through entry of the Chapter 15 Order should be the standard by which the Settlement Agreement is measured, it is difficult to understand why they are working so diligently for the Agreement's defeat.

3. The Settlement Agreement does not violate the public policy against duplicative litigation.

The objectors also contend that the Settlement Agreement violates public policy because it allows the Receiver and the JLs to "split" their claims and thereby subject the objectors to duplicative litigation. This argument, like the others, is based on a misunderstanding of the circumstances giving rise to the Settlement. That the objectors might be sued by two different parties claiming through the same entity is merely a reflection of the fact that there are two different insolvency-related proceedings associated with that entity. Pursuant to the Settlement Agreement, the law firms and banks will not be sued in any one jurisdiction by more than one party claiming through SIB, and that is the most to which they can legitimately claim they are entitled. Indeed, every one of the cases they cite refers to the same plaintiff and defendant filing multiple suits against one another. Whether the objectors like it or not, the Receiver and the Joint Liquidators are not the same party, and they derive their authority from different sources.

Further, the objectors do not have an absolute right to be immunized from the possibility of litigation that might arguably be considered duplicative — especially not through the vehicle of a settlement agreement to which they are not a party, and which does not purport to affect their rights to defend against the allegedly duplicative litigation.[12] The objectors are correct that duplicative litigation is disfavored on public policy grounds. However, litigants are not automatically entitled to protection from duplicative lawsuits in foreign jurisdictions. Instead, federal courts will only enjoin such litigation if it determines an injunction is necessary under the particular circumstances of the case. *See Kapea, Inc. v. Achilles Corp.*, 76 F.3d 624, 627-28 (5th Cir. 1996); *see also Laker Airways Ltd. v. Sabena, Belgian World Airlines*, 731 F.2d

[12] Trustmark argues that any duplicative litigation against it is barred by the law-of-the-case because of orders issued in two related cases, *Trustmark National Bank v. Janvey*, 3:12-cv-04168-N and *Trustmark National Bank v. Janvey*, 3:12-cv-04169-N. *See* Doc. 1815 at 3. Trustmark implies that through these orders this Court has already held that Trustmark may not be subjected to duplicative litigation. If Trustmark faces allegedly duplicative litigation in the future, it will be able to raise this argument. The Receiver notes, however, that Trustmark's argument misrepresents the orders in question. These orders awarded default judgment solely on the grounds that the foreign nationals in question — ECAB and the JLs — had failed to answer or appear, and enjoined ECAB and JLs from instituting any further actions related to the assets at issue in those cases only. *See* No. 3:12-cv-04168-N, Doc. 22; No. 3:12-cv-04169, Doc. 24.

909, 926-931 (D.C. Cir. 1984). In the particular circumstances of this case, the Court declined in both of its Chapter 15 Orders to immunize the objectors from duplicative litigation by the JLs in Antigua, even though it could have imposed that condition. *See* Case No. 3:09-cv-00721-N, Doc. 141 at 5 & n.1 (specifying that the prohibition against the JLs pursuing duplicative Law Firm claims in the United States did not apply to the JLs pursuing such claims in Antigua); Case No. 3:09-cv-00721-N, Doc. 176 at 57 (providing that the receiving parties may consent to the JLs pursuing duplicative actions).

Finally, the objectors' complaint that the Settlement Agreement will subject them to allegedly duplicative litigation is premature. None of the objectors claims that it is the target of duplicative lawsuits in the United States and Antigua. Although several objectors allege a belief that the JLs intend to file a lawsuit against the objectors in Antigua, this contention is at best speculative. The only entity facing Stanford-related litigation in multiple countries is Toronto-Dominion Bank ("TD"), which is currently defending lawsuits in the United States and Canada. Tellingly, TD did not object to the Settlement Agreement, and the Settlement Agreement did not cause TD to become the subject of litigation in two countries. Instead, TD alerted the settling parties that it did "not intend to file objections because its concerns at this stage are premature," and specified that "TD's non-objection should not be deemed a waiver of any of TD's rights in connection with the litigations." *See* Appendix E at 35.

If the objectors ever face actual litigation by the Receiver and JLs that the objectors believe is duplicative, then they will have the opportunity to raise all of the arguments that they have made in their objections, regardless of whether the Settlement Agreement is approved. In those proceedings, the objectors will be able to present their views on duplicative litigation, claim splitting, the first to file rule, inconsistent judgments, and res judicata. The

Settlement Agreement does not prejudice the objectors' ability to raise any of these arguments or claims for affirmative relief such as injunctions or joinder in those future proceedings.[13] The settling parties, whose agreement neither encourages nor requires the Receiver and JLs to file duplicative claims, are not charged with obtaining these protections for the objectors.

4. The objectors are not permitted to ask the Court to modify the Settlement Agreement.

Perhaps cognizant that this Court may be hesitant to reject a Settlement Agreement that the objectors themselves recognize will help the victims of the Stanford Ponzi scheme, several objectors suggest that the Court can change part of the Agreement without sacrificing the entire Settlement Agreement. They request that the Court modify the Settlement Agreement, strike the complained-of sections, or insert some other relief such as injunction or joinder. This relief is not available, however. A settlement is a private agreement made between the parties, and neither the objectors nor the Court may modify it. "[A]lthough the Court has the power to approve or reject a settlement negotiated by the parties, the Court may not require the parties to accept a settlement or a consent order to which they have not agreed." *Dandridge v. Jefferson Parish Sch. Bd.*, No. 64-14801, 2009 WL 24461, at *3 (E.D. La. Jan. 5, 2009); *see also Cotton v. Hinton*, 559 F.2d 1326, 1332 (5th Cir. 1977) ("The settlement must stand or fall as a

[13] Similarly, counsel to Certain Plaintiffs in pending putative class action suits "objects to Section 11.10 of the Agreement to the extent that it purports to limit (by agreement) this Court's jurisdiction over the JL's [sic] in any way." Doc. 1812 at 3-4. The Receiver's counsel has conferred with counsel for the putative class, and the concern of the putative class counsel has been resolved. The provision regarding jurisdiction simply clarifies that it is not the intent of either the Receiver of the JLs to submit to the general jurisdiction of the other party's appointing court through entry of the Settlement Agreement. *See* Doc. 1792 at 40 ("[T]he appearance before the Antiguan Court and the US Court by the Receiver and the JLs respectively, shall not, in and of itself, subject the Receiver or the JLs to the general jurisdiction of that court for any purpose other than any relief that the Receiver or the JLs may be seeking from such court at such hearing or in such proceeding. The JLs are subjecting themselves to the jurisdiction of the US Court only as pertains to the Chapter 15 proceeding, as provided for in 11 U.S.C. § 1510 of the Bankruptcy Code and, to the extent they seek discovery relief from the US Court, with the consents foreseen herein, such expressed or implied submission to the jurisdiction of the US Court shall be limited to the corresponding discovery that is the subject of that submission."). Further, by asking for approval of the Settlement Agreement, the moving parties are not asking the Court to make a finding regarding the status of its jurisdiction over the JLs.

whole.”); *Hanlon v. Chrysler Corp.*, 150 F.3d 1011, 1026 (9th Cir. 1998) (“Neither the district court nor this court have the ability to delete, modify, or substitute certain provisions” of the settlement agreement.) (internal quotation marks omitted).

Nor should the Court condition its approval of the Settlement Agreement on modifications to the Agreement by the parties, as Trustmark, Greenberg Traurig, and Hunton suggest. *See* Docs. 1805 at 14, 1815 at 9, 1817 at 5. The Settlement Agreement must be approved as a whole, or the parties are returned to the status quo as it existed before the Settlement Agreement was signed. *See* Doc. 1792 at 17-18 (Section 1.4). That path leads to nothing but the continuation of expensive litigation and delay for the beneficiaries of the Receivership. It should not lightly be assumed that all six of the parties to the Settlement Agreement will have the appetite for re-starting negotiations that required more than a year of effort and considerable expense. Nor should it be assumed that the parties could or would reach an alternative agreement that addresses the objectors’ concerns in a way that would be satisfactory to them. Compromise is the nature of settlement, and each provision in the Agreement was extensively negotiated. In the judgment of the Receiver, the chances are too great that a second round of negotiations would result in a deal much less favorable to the U.S. Receivership, or no deal at all.

5. The six law firm and bank objectors lack standing to oppose the Settlement Agreement.

Finally, the duplicative litigation objection should be dismissed because none of the six objectors has standing to challenge the Settlement Agreement.

A non-party or non-settling party does not have standing to object to a court’s approval of a settlement agreement, unless the objector can show that “it will sustain some formal legal prejudice as a result of the settlement.” *Alumax Mill Prods., Inc. v. Cong. Fin.*

Corp., 912 F.2d 996, 1002 (8th Cir. 1990) (citing *In re Beef Industry Antitrust Litigation*, 607 F.2d 167, 172 (5th Cir. 1979)); *see also Waller v. Fin. Corp. of Am.*, 828 F.2d 579, 582-84 (9th Cir. 1987) (noting that the bar against objections by non-settling parties applies to partial settlements). A settlement is considered a private contract with which outsiders are not entitled to interfere. *See Sullivan v. DB Investments, Inc.*, 667 F.3d 273, 312 (3d Cir. 2011). The "formal legal prejudice" showing is a high standard that is not met by "[m]ere allegations of injury in fact or tactical disadvantage," or by claims that the settlement is illegal or violates public policy. *Agretti v. ANR Freight Sys., Inc.*, 982 F.2d 242, 247-48 (7th Cir. 1992). Instead, the objector must prove that the settlement will directly impact the objector's financial interest, invalidate the objector's contractual rights, or strip the objector of a legal claim or cause of action. *See, e.g.*, *Alumax Mill Prods.*, 912 F.2d at 1002; *Quad/Graphics, Inc. v. Fass*, 724 F.2d 1230, 1233 (7th Cir. 1983); *In re Pittsburgh and Lake Erie R.R. Co. Sec. Litigation*, 543 F.2d 1058, 1064-67 (3d Cir. 1976).

None of the six law firm and bank objectors are parties to the Settlement Agreement, and, with the exception of Trustmark, which has intervened in the SEC lawsuit for a limited, unrelated purpose, they are not even parties to this litigation. They therefore must show that the Agreement will cause them some "formal legal prejudice." *Quad/Graphics*, 724 F.2d at 1233-34. This the objectors cannot do. As explained above, the Settlement Agreement does not increase the likelihood that the objectors will be the targets of duplicative litigation, or eliminate any of the legal defenses that will be available to the objectors if they choose to challenge the duplicative lawsuits. At most, the Settlement Agreement fails to shield the six objectors from the inconvenience and expense of possibly responding to multiple lawsuits (if any are ever actually filed). The objectors are not entitled to this protection, however, and the Settlement Agreement's failure to provide it does not constitute "formal legal prejudice." *See Agretti*, 982 F.2d at 548-748 (a tactical disadvantage is not "plain legal prejudice"); *Quad/Graphics*, 724 F.2d at 1233 ("factual injury to a non-settling party . . . is bound to occur and may, in fact, be the motivation behind the settlement.").

Because the six objectors lack standing to challenge the Settlement Agreement and because their duplicative litigation objection is meritless, it must be dismissed.

B. The Settlement Agreement does not create the risk of duplicate discovery or give the JLs unfettered access to discovery in the United States.

Two objectors, Greenberg Traurig and Whitney Bank, challenge the Settlement Agreement on the grounds that it allegedly violates the Chapter 15 Order's prohibition against duplicative discovery requests, and removes the Order's conditions on the JLs' access to discovery in the United States. *See* Docs. 1805 at 12-14, 1811 at 2-3. These objections suffer from the same infirmities as the duplicative litigation objection discussed above, and must also be overruled.

The Chapter 15 Order does not impose a blanket prohibition against duplicative efforts. To the contrary, it permits duplication if consented to by the Receiver, the Examiner, and OSIC. *See* Case No. 3:09-cv-00721-N, Doc. 176 at 57. Further, the Settlement Agreement provides for a virtually identical protection. If the JLs wish to take discovery in the United States, they are required to seek the consent of the Receiver and the Examiner. If consent is withheld, the JLs are required to seek court approval before seeking discovery. Further, the Receiver, OSIC, and the JLs are required to share discovery and other materials with one another. *See* Doc. 1792 at 22-23. As a result of these two provisions, it is highly unlikely that the JLs would attempt to issue duplicative discovery requests or that such requests would actually be approved. And if duplicative discovery requests are issued despite these protections, the parties who would receive such requests would be able to oppose those requests on whatever grounds they might deem appropriate, including that the requests are duplicative. *See, e.g.*, Fed. R. Fed. P. 26(b)(2)(C).

Further, the discovery provisions of the Settlement Agreement further the broad purposes of the Court's Chapter 15 Order. The Court explained that it was imposing conditions on the JLs' discovery access in order to "instill reciprocal cooperation" between the parties, and to "provide for checks on the Joint Liquidators' activity." Case No. 3:09-cv-00721-N, Doc. 176 at 58. By creating a framework for extensive cooperation between the JLs and Receiver in conducting discovery, *see* Doc. 1792 at 22-23, the Settlement Agreement reduces the expenses incurred by the Estate as a result of discovery efforts, preserving the funds for distribution to the Stanford investor-victims and creditors.

For these reasons, Greenberg Traurig's and Whitney Bank's discovery objections should be overruled.

C. The Settlement Agreement appropriately provides that Stanford's former law firm Curtis will not receive a distribution from the Stanford international assets.

The law firm of Curtis, Mallet-Prevost, Colt & Mosle LLP ("Curtis") objects to the distribution scheme envisioned by the Settlement Agreement because the settlement provides that the international assets will be distributed only to SIB depositors. *See* Doc. 1813. Curtis provided legal services to Stanford, for which it has not received payment.[14] As a purported

[14] In November 2008, Curtis entered an appearance for multiple Stanford entities in a trademark infringement lawsuit filed by Stanford University. Prior to collapse of the Ponzi scheme and the institution of this Receivership, Curtis had sent approximately $120,000 in invoices to Stanford for legal services rendered. On the day the Receivership was instituted, Curtis sent Stanford another invoice for its purported services rendered. Curtis then followed that invoice with several additional invoices. Curtis is now claiming that it is owed more than $1.4 million in legal fees incurred in the brief time it represented Stanford prior to institution of the Receivership. Had Curtis been paid prior to Stanford's collapse, it would find itself as a defendant in a fraudulent transfer lawsuit. Curtis now seeks payment on its invoices as an alleged creditor of the Stanford estate.

general creditor of the Stanford estate, Curtis challenges the Settlement Agreement on the grounds that the proposed distribution plan impermissibly favors one group of claimants over another.[15] Curtis's objection should be overruled because the distribution of these international assets is appropriately limited to the victims of Allen Stanford's crimes both as a matter of equity and pursuant to DOJ regulations concerning the distribution of forfeited assets.

1. Distribution of funds to the creditor-victims in an interim distribution is fair and reasonable.

Distribution of funds in an equity receivership must be fair and reasonable. *See U.S. v. Durham*, 86 F.3d 70, 73 (5th Cir. 1996). The Receiver may make interim and preliminary distributions of funds as they become available. *See, e.g., Norwest Bank Wis., N.A. Malachi Corp.*, 245 Fed. Appx. 488, 495 (6th Cir. 2007); *SEC v. Black*, 163 F.3d 188, 193 (3d Cir. 1998). Furthermore, the distribution of funds does not need to be identical across claimant classes. To the contrary, victims of the fraud may be preferred over general creditors. *See, e.g., CFTC v. PrivateFX Global One*, 778 F.Supp. 2d 775, 786 (S.D. Tex. 2011) ("The Receiver notes that courts regularly grant defrauded investors a higher priority than defrauded creditors, and it cites persuasive authority supporting this view."); *SEC v. HKW Trading LLC*, 2009 WL 2499146 *3 (M.D. Fla. Aug. 14, 2009) ("Payment to claimants whose property was unlawfully taken from them is given a higher priority than payment to the general creditors."); *Quilling v. Trade Partners, Inc.*, No. 1:03-CV-236, 2006 WL 3694629 *1 (W.D. Mich. Dec. 14, 2006) ("As an equitable matter in receivership proceedings arising out of a securities fraud, the class of fraud victims takes priority over the class of general creditors with respect to proceeds traceable to the

[15] Curtis's objection echoes the arguments it made in opposition to the Receiver's Motion for Approval of the Interim Distribution Plan, which is scheduled for a hearing on the same day as the Joint Motion to Approve the Settlement Agreement. *See* Docs. 1766 (Rec's Motion); 1769 (Curtis's Opposition); 1801 (Court's Scheduling Order).

fraud" because "[t]he funds available for distribution are the result of investments by the investors.").

As explained in the Receiver's prior briefing, the proposed distribution of the substantial majority of $300 million in frozen assets to the creditor-victims of the Stanford Ponzi scheme meets the above requirements, and should therefore be approved. The Curtis law firm is, at most, a general creditor of the Stanford estate whose financial losses were the result of the Ponzi scheme's collapse and not the fraud itself. The creditor-victims, on the other hand, were defrauded into giving their money to Stanford, and many lost their life savings as a result. Providing immediate relief to these victims is fair and reasonable, especially given that the distributed funds came from those victims' investments. Furthermore, the $300 million does not represent the entirety of the estate. While this preliminary distribution will only benefit some of the claimants, money remains available for future distributions and for proceedings geared towards gathering more Stanford assets. If Curtis's claim is allowed and if it is eligible[16] to receive a distribution in the future, Curtis will have an opportunity to participate in those later distributions.

The approximately $300 million that will be distributed under the Settlement Agreement come from frozen assets located in Canada, Switzerland and the United Kingdom.[17] Litigation is currently pending in these three countries, rendering all of the assets unavailable. By settling this litigation, the Settlement Agreement will expedite the funds' availability and maximize the amount of money available for distribution. If the Settlement Agreement is

[16] Curtis has filed a claim with the Receiver, which has not yet been determined. The Receiver notes that concerns surround the validity of Curtis's claim for $1.4 million in legal fees allegedly incurred in the first three months of what appears to have been a relatively simple trademark infringement lawsuit.

[17] Approximately $100 million is located in the United Kingdom, $23.5 million in Canada, and $208 million in Switzerland. *See* Doc. 1792 at 8-14.

rejected, the Receiver and the DOJ, on the one hand, and the JLs, on the other, will be forced to continue these expensive legal battles, some of which have been on-going for four years, and it is uncertain how many of the assets will ultimately be recovered and distributed. With or without the Settlement Agreement, Curtis and other general creditors will not receive any distribution from these assets. Sustaining Curtis's objection to the Settlement Agreement will therefore not benefit Curtis, but will significantly diminish the creditor-victims' recovery.

2. Rejecting the Settlement Agreement will not result in Curtis receiving a distribution of the Stanford international assets, but will ensure that the creditor-victims are harmed.

Further, there is no scenario in which Curtis will receive a distribution from the international assets in the absence of the Settlement Agreement. Instead, the funds will either be subject to the control of DOJ pursuant to a June 14, 2012 forfeiture judgment against Allen Stanford, s*ee* Case No. H-09-342-01-S, Docs. 862, 878 (S.D. Tex., filed June 18, 2009), or they will be recovered by the JLs as the recognized representative of SIB in the U.K. and Switzerland.[18] If the assets are recovered by DOJ, federal regulations will require that the funds be distributed to creditor-victims, to the exclusion of general creditors like Curtis. *See* 18 U.S.C. § 981(e)(6); 28 C.F.R. § 9.8(b)(2). If the assets are recovered by the JLs, Curtis will be excluded both because Curtis is not a creditor of SIB and because the Antiguan liquidation statute provides that depositors have preference over general creditors. *See* Case No. 3:09-cv-00721-N, Doc. 76-6 at 5.

[18] The only assets covered by the Settlement Agreement that are not within the scope of the criminal forfeiture order are assets in two bank accounts in Switzerland in the name of Bank of Antigua, which the JLs are currently pursuing. The Receiver is not presently recognized as the representative of Bank of Antigua in Switzerland, and in the Receiver's judgment, it is unlikely that he has a cost-effective path (if any path) to recovering the Bank of Antigua's Swiss assets.

For the foregoing reasons, distribution of the substantial majority of $300 million in frozen assets to the creditor-victims is fair and reasonable. Curtis's objection to the distribution should be overruled.

CONCLUSION

In its first Chapter 15 Order, the Court advised: "it behooves the [U.S. receiving parties and JLs], in pursuit of their joint goal, to work together so as to increase the funds available to Stanford victims, rather than to deplete funds via continued litigation. . . . In that vein, the Court notes that the only way to move forward without substantially setting the Stanford victims back is to work together."[19] The settling parties have taken that advice, and negotiated a Settlement Agreement that will benefit the Stanford receivership enormously. If the Agreement is rejected or its approval conditioned on modification, then its benefits will be lost, and a new agreement is unlikely. The Receiver therefore prays that the Court will approve the Settlement Agreement unconditionally.

[19] Case No. 3:09-cv-00721-N, Doc. 141 at 5 n.1.

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Respectfully submitted,

BAKER BOTTS L.L.P.

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CERTIFICATE OF SERVICE

On April 5, 2013, 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
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