

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

SECURITIES AND EXCHANGE COMMISSION	§	
	§	
Plaintiff,	§	
	§	
v.	§	Case No. 3:09-CV-0298-N
	§	
STANFORD INTERNATIONAL BANK, LTD.,	§	
STANFORD GROUP COMPANY,	§	
STANFORD CAPITAL MANAGEMENT, LLC,	§	
R. ALLEN STANFORD, JAMES M. DAVIS, and	§	
LAURA PENDERGEST-HOLT,	§	
	§	
Defendants.	§	

**RECEIVER'S MOTION TO APPROVE SALE OF  
INVESTMENT INTEREST IN HSS**

**I. INTRODUCTION**

Ralph S. Janvey, as Receiver for the assets of Defendants and all Stanford-controlled entities, respectfully moves the Court for an order approving the sale of certain private equity interests held by Stanford International Bank, Ltd. (“SIBL”). As explained in detail below, the Receiver has obtained an offer from a prospective buyer who wishes to purchase SIBL’s investment in Health Systems Solutions, Inc. (“HSS”). The Receiver has reviewed and analyzed this offer, and has sought a recommendation from Park Hill Group (“PHG”) concerning it.<sup>1</sup> Based upon his independent evaluation and PHG’s recommendation, the Receiver believes that the liquidation of this investment pursuant to the pending offer will achieve the maximum benefit from the holding and is in the best interest of the Receivership Estate.

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<sup>1</sup> On July 16, 2009, the Receiver filed his Motion to Appoint Private Equity Advisor and requested the approval of the Court to retain PHG to manage the Investment Portfolio (as defined below). Due to the time sensitivity surrounding this potential divestment, PHG agreed to review this holding and provide a recommendation to the Receiver regarding its disposition. PHG will receive a 3% commission for its work on HSS, for a total value of \$21,000.

## II. FACTUAL BACKGROUND

On February 16, 2009, the Securities and Exchange Commission (the “Commission”) commenced a lawsuit in this Court against R. Allen Stanford, two associates, James M. Davis and Laura Pendergest-Holt, and three of Mr. Stanford’s companies, Stanford International Bank, Ltd., Stanford Group Company, and Stanford Capital Management, LLC (collectively “Defendants”). The Commission alleges, in its First Amended Complaint filed on February 27, 2009, that Defendants perpetrated a multi-billion-dollar fraudulent scheme by (1) promising high return rates on “certificates of deposit” that exceeded those available through true certificates of deposit offered by traditional banks and (2) selling a proprietary mutual fund wrap program known as Stanford Allocation Strategy using materially false and misleading historical performance data. Am. Comp. (Doc. 48) ¶¶ 3, 6.

The Court found good cause to believe that Defendants violated federal securities laws. Accordingly, on February 17, 2009, the Court entered an order appointing Ralph S. Janvey Receiver over all the assets of Defendants and all the entities they own or control. Order Appointing Receiver (Doc. 10). On March 12, 2009, the Court entered an Amended Order Appointing Receiver that contained changes not material to this motion (the “Receivership Order”). Amended Order Appointing Receiver (Doc. 157).

The Receivership Order charged the Receiver with marshaling and preserving the assets of the Receivership Estate. In conducting his duties, the Receiver identified numerous debt and equity investments made in nearly 40 different companies (the “Investment Portfolio”). While the Receivership Estate’s records reflect that approximately \$650,000,000 was initially invested in the Investment Portfolio, these figures have not been audited and the Receiver and PHG expect that the Receivership Estate will realize far less for these investments. Many of these investments are in entities with negative equity, market conditions or adverse events have

reduced the value of others, and a number include contractual commitments that would require the Receivership Estate to contribute additional millions of dollars or face significant dilution or total loss of the investment.

Included in the Investment Portfolio is a direct investment by SIBL in HSS. The SIBL holding is a part of the Receivership Estate, and the Receiver now seeks Court authority to liquidate the investment.

### III. ARGUMENT AND AUTHORITIES

A common-law equity receiver has the power to dispose of property of the receivership estate when it appears that a receivership is continuing an enterprise that does not show evident signs of working out for the benefit of the creditors. *See Jones v. Village of Proctorville*, 290 F.2d 49, 50 (6th Cir. 1961). Courts appointing a receiver “should see that the business is liquidated as economically and speedily as possible, unless its continuance is demonstrably beneficial to creditors.” *Id.* (citing *Kingsport Press, Inc. v. Brief English Systems*, 54 F.2d 497, 501 (2d Cir. 1931)).

The liquidation of the HSS investment is in the best interest of the Receivership Estate. The offer, as described below, and related agreement are the product of significant negotiations between the Receiver and the prospective buyer. The Receiver and PHG have analyzed the offer and have determined that it is fair and equitable given the totality of the circumstances surrounding the investment. While the offer does not rise to the level of the initial investment, it represents a fair market cash price when accounting for liquidity discounts and the economic uncertainties inherent in today’s market. The Receiver and PHG also took into consideration financing initiatives that would require the Receivership Estate to choose between investing additional funds or facing the possibility of having its investment interest diluted. Given the current market conditions, the negative performance and uncertain outlook of the

investment, HSS's risk of insolvency, and the inadvisability of the Receivership Estate making large capital contributions to avoid having its investment interest diluted, this offer represents the best opportunity for the Receiver to maximize the actual cash value of this investment for the Receivership Estate.

**A. HSS Investment.**

**1. SIBL's Holdings in HSS.**

HSS, successor-in-interest to Provider Solutions Corp. ("Providus"), is a technology and services company doing business in the health care sector. HSS and its subsidiaries attempt to utilize next-generation technologies to offer value-added products and services to its customers in the health care industry. HSS's client base is limited, generally comprised of companies specializing in discrete areas such as home health care, medical staffing, telehealth/telemedicine, and acute and post-acute services. Its operations are divided into three segments: (1) Technology Solutions; (2) Software; and (3) Consulting. Through these three segments, HSS provides various services to its clients, including operational support, customized software applications, and performance improvement consultation.

SIBL holds a substantial majority ownership interest in HSS. Since December 1998, SIBL has invested approximately \$40 million in HSS and its predecessor company Providus. Today, on a fully-diluted basis, SIBL owns 11,217,923 equivalent shares of common stock, representing 82.1% of the total shares of common stock that are outstanding.

Historically, SIBL's investment in HSS and its predecessor company Providus has performed poorly. As a result of Providus's Chapter 13 bankruptcy in 2002, SIBL's initial \$10.6 million investment in Providus was reduced to a \$5.4 million lien on certain assets that were purchased by Provider Acquisition, LLC. In October 2002, SIBL's \$5.4 million lien was converted into HSS common stock as a result of a merger between Silver Key Mining Company,

Inc., Healthcare Quality Systems, Inc. and Provider Acquisition, LLC. Additionally, in February 2009, HSS was supposed to close a transaction to purchase Emageon, Inc. (“Emageon”), a company that develops and markets medical imaging management systems. However, due to funding issues, the transaction was not consummated and Emageon was ultimately purchased by another entity. As a result, HSS lost a substantial amount of money that was being held in escrow pending the closing of the transaction. Since the failed purchase of Emageon, SIBL’s investment has continued to decline in value. Based upon the trailing 10-trading-day share price on the last reported trade date on the Over-the-Counter Bulletin Boards (“OTC”), May 29, 2009, SIBL’s remaining equity value had declined to approximately \$2.2 million, which is a price no longer realizable given current market conditions.

HSS continues to experience significant operational and financial difficulties, and substantial uncertainty now exists concerning its continued viability. Over recent months, HSS has seen an unprecedented number of key customer defections. One key customer, Phillips Healthcare, which alone accounts for more than half of HSS’s revenue, has already provided notice to HSS that it will not renew its contract in 2010. Six other top customers have indicated that they will either terminate or severely reduce their relationships with HSS. In anticipation of this loss of revenue, HSS has implemented four workforce reductions over the last six months. Because of these drastic reductions in force, HSS is having trouble timely performing pre-launch quality assurance checks and meeting other deadlines for its few remaining customers.

HSS’s challenges are further compounded by ongoing changes in the health care industry, including potential modifications to the Medicare reimbursement requirements as part of the current efforts to reform the American health care system. Changes to the Medicare reimbursement requirements will require significant and costly alterations and updates to keep

HSS's software in compliance with new requirements. HSS also anticipates incurring further costs in connection with the hiring and retention of additional clinical and regulatory experts, developers, quality assurance analysts, and customer service personnel necessary to adhere to the new Medicare requirements.

According to its management team, HSS will require a significant capital infusion before October 2009 in order to remain solvent. Based upon the number of shares that HSS would have to issue in order to raise adequate capital, SIBL's majority stake would be considerably diluted if it does not participate in HSS's attempts to raise capital. However, at this point, the adverse reputational impact of SIBL's large percentage of ownership is inhibiting HSS's efforts to raise the requisite capital. In an initial attempt to bolster liquidity, HSS management approached a targeted group of 20 potential investors, including high-net worth investors, the largest HSS customers, strategic investors, and private equity firms. These potential investors uniformly expressed an unwillingness to invest capital into HSS alongside SIBL. Consequently, HSS management determined that further attempts to raise the requisite funding would be futile as long as SIBL remain a stockholder. Put simply, SIBL's presence as the majority investor in HSS only serves to increase HSS's ongoing risk of insolvency.

## **2. The HSS Management Offer.**

Due to HSS's troubled financial condition and the increasing risk of insolvency, the Receiver engaged PHG to actively market SIBL's holdings in HSS. However, SIBL's exit opportunities are limited, in large part due to the recent delisting of its stock in the public marketplace. In the past, HSS was publicly traded via the OTC. In March 2009, however, HSS deregistered with the SEC in an effort to save costs and expenses associated with its SEC filings. Consequently, HSS is no longer publicly traded on the OTC, and no public market exists by which a stockholder such as SIBL can liquidate its investment. PHG also determined that a

broad auction process was not a viable alternative given the rapidly deteriorating financial position and potential liabilities of HSS. Thus, PHG focused on a targeted group of potential investors within the secondary market in an attempt to locate potential buyers.

With the assistance of HSS management, PHG solicited interest from 25 potential investors, including high-net worth investors, existing HSS customers, and direct secondary buyers. PHG identified potential buyers' due diligence requirements, and maintained an electronic data room to provide further information regarding HSS's products, financial condition, and capitalization. In addition, HSS management met with several third-party brokers to explore marketing SIBL's investment or the entire company. Based upon the aforementioned risk factors, all of the potential investors that were contacted declined to bid on SIBL's interest.<sup>2</sup>

Faced with SIBL's lack of exit opportunities and with HSS's inability to generate additional funding while SIBL remained the majority stockholder, PHG and HSS management began to negotiate the terms of a buyout in which HSS management would purchase the total amount of SIBL's remaining interest. After a series of negotiations, HSS management proposed an offer with a total value of \$700,000 to the Receivership Estate. The offer consists of \$350,000 cash at closing and a non-interest bearing, non-recourse secured note for \$350,000. Payment on the note would be due in two separate installments, culminating one year from the date of closing.

After conducting an analysis of the offer received from HSS management, PHG recommended that the Receiver accept the offer because (i) HSS's risk of insolvency remains high; and (ii) HSS's ongoing financial troubles and other identified risk factors make it highly unlikely that the Receiver can obtain a more attractive offer from another suitable buyer. As a

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<sup>2</sup> Many potential buyers also stated that the majority of value attributed to HSS relates to its management team. Without a commitment from HSS management to stay on in the event of a sale, the value of HSS would be de minimis.

result, PHG concluded that the pending offer represented the highest dollar value available for the Receivership Estate.

Based upon the recommendation of PHG, attached as Exhibit 1 (Appendix at 3-4), the Receiver believes that the Receivership Estate will realize the maximum benefit of this investment by accepting the pending offer from HSS management and liquidating SIBL's holding in HSS. Consequently, the Receiver seeks the Court's approval to complete this sale of stock held by SIBL in HSS for the total value of \$700,000 to the Receivership Estate. The terms of the sale and assignment are reflected in material attached as Exhibit 2 (Appendix at 5-15).

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

After significant consultation with his team and PHG, the Receiver believes that the liquidation and sale of the aforementioned investment interest in HSS would inure maximum benefit to the Receivership Estate. As a result, the Receiver respectfully requests that the Court approve the respective sale of this holding pursuant to the terms contained in Exhibit 2 (Appendix at 5-15), and grant such other relief that the Court may deem just and equitable.

Dated: September 17, 2009

Respectfully submitted,

Baker Botts L.L.P.

By: /s/ Kevin Sadler

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**ATTORNEYS FOR RECEIVER  
RALPH S. JANVEY**

**CERTIFICATE OF CONFERENCE**

Counsel for the Receiver conferred with David B. Reece, counsel for the SEC, who stated that the SEC does not oppose the motion and the relief sought herein. Counsel for the Receiver conferred with John Little, Court-appointed Examiner, who stated that he is not opposed to this motion and the relief sought herein. Counsel for the Receiver conferred with Manuel P. Lena, Jr. counsel for U.S.D.O.J. (IRS) who stated that the IRS has no position on the relief sought herein. Counsel for the Receiver attempted to confer with David Finn, counsel for James Davis, but received no response. Counsel for the Receiver conferred with Ruth Schuster, counsel for R. Allen Stanford, who stated that her client opposes the motion and the relief sought herein. Counsel for the Receiver attempted to confer with Jeff Tillotson, counsel for Laura Pendergest-Holt, who stated that his client has no position on the relief sought herein. Therefore, this motion is opposed.

/s/ Kevin M. Sadler

Kevin M. Sadler

**CERTIFICATE OF SERVICE**

On September 17, 2009 I electronically submitted the foregoing document with the clerk of the court of the U.S. District Court, Northern District of Texas, using the electronic case filing system of the court. I hereby certify that I have served 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 Sadler

Kevin Sadler