

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

<b>SECURITIES AND EXCHANGE COMMISSION,</b>	§	
	§	
<b>Plaintiff,</b>	§	
	§	<b>CIV. ACTION NO.3-09CV0298-N</b>
	§	
<b>v.</b>	§	
	§	
<b>STANFORD INTERNATIONAL BANK, LTD., ET AL.,</b>	§	
	§	
<b>Defendants.</b>	§	

**DEFENDANT R. ALLEN STANFORD’S OPPOSITION TO RECEIVER’S MOTION TO APPROVE SALE OF INVESTMENT INTERESTS IN INSOUND AND MBV (DOC. 768)**

COMES NOW, Defendant R. Allen Stanford, individually, and in his capacity relative to defendants Stanford International Bank, Ltd., Stanford Capital Management, LLC, and Stanford Group Company and relief defendants Stanford Financial Group and Stanford Financial Group Building, Inc. (hereinafter collectively referred to as the “Estate”), who files this Opposition to Receiver’s Motion to Approve Sale of Investment Interests in InSound and MBV, and respectfully show the Court as follows:

**ARGUMENT**

Under the Order Appointing Receiver and the subsequent Amended Appointment Order, the Receiver Ralph Janvey is charged with preserving the assets of the Estate and protecting the value of the Estate from irreparable harm.<sup>1</sup> The Receiver’s instant motion is another attempt to exceed the authority granted in the Receivership Order and to circumvent his duty to preserve the assets of the Estate and continue his fire sale of Estate assets at a time when it is virtually impossible to maximize their value. Defendants oppose this motion on the same grounds they

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<sup>1</sup> See Rec. Doc. No. 157, Amended Order, at 5(g), p5.

have opposed similar attempts by the Receiver to dispose of Estate property – namely, that the liquidation of the Estate’s interests in InSound Medical, Inc. (“InSound”) and Memphis Biomed Ventures II, L.P. (“MBV”) constitutes a breach of the Receiver’s fiduciary duty, is not in the best interests of the Estate and should not occur until the case is resolved on its merits. Accordingly, the Receiver’s motion should be denied.

**1. Liquidation of the InSound and MBV Investments is Not in the Best Interest of the Estate**

Selling off the interests in InSound and MBV at severe discount is not in the best interest of the Estate. To date, the Estate has invested approximately \$1.5 million in InSound. Liquidating that investment for a \$206,557.56, as the Receiver recommends, would return less than 14% of the capital that the Estate has already invested in the company. Similarly, liquidating the Estate’s interest in MBV for \$490,000.00, as recommended by the Receiver, would return only 20% of the \$2.5 million in capital invested in the company. These startlingly low proposed returns alone reveal the absurdity of the Receiver’s assertion that liquidation at this price will achieve maximum benefit for the Estate.

Nevertheless, the Receiver attempts to justify liquidating the Estate’s investments at an enormous loss by pointing to liquidity discounts and the economic uncertainties in today’s market. Those factors are not compelling. The fact that the InSound and MBV investments are illiquid is merely illustrative of the strategy inherent in any private equity investment. While the sales of these investments are sometimes discounted because of their illiquid nature, a discount amounting to more than 86% of invested capital in InSound, and 80% in the case of MBV, is simply not justifiable.

More to the point, however, the illiquidity inherent in the InSound and MBV interests demonstrates the long-term investment strategy employed by private equity investors. This

strategy puts capital to work over a period of years, thereby allowing investments to mature before investors exit and realize gains. Thus, to the extent that InSound or MBV has negative performance today, as the Receiver claims, that is not surprising given the current economic climate. That the current economic market is uncertain only underscores the rationale for retaining the Estate's interests in InSound and MBV. Liquidating these investments now, during a downturn in the economy, is not financially prudent. The Estate should hold the interests, allowing time for the ventures to develop and benefit from a potential stabilization in the market. Indeed, the fact that the Receiver has found prospective buyers for the Estate's interests in InSound and MBV reveals that the buyers recognize the investments' long-term value. Instead, the Receiver would have you believe that the companies are doomed to failure.

The Receiver believes that the InSound and MBV investments must be liquidated immediately because of pending capital calls. This is not a sufficient reason to liquidate the Estate's interest. Not only does the Receiver offer no evidence as to why the Estate cannot comply with its capital commitments, but there is every reason to believe that the Estate can fund these commitments. Moreover, the Receiver is duty bound to ensure that they are funded to preserve the Estate's continuing interest in InSound and MBV. The forced and hurried sales of these interests bring little or no lasting value to the Estate compared to potential gain if these interests are allowed to recover from the current economic climate and maximize their benefit to the Estate. Further, the Receiver, in his rushed attempted sales of the Estate's interests in InSound and MBV, fails to comply with the requirements for the sale of property set forth in 28 U.S.C. § 2001, *et seq.* This failure to comply with the statute further evidences the Receiver's interest in disposing of Estate property in the most expedient manner rather than the most beneficial manner to the Estate.

Further, that the Receiver represents that the remarkably low offers received from prospective buyers were the best he could muster from his marketing of the interests only underscores the point that liquidating these Estate interests under the current economic climate is not in the best interests of the Estate. Retaining these Estate interests until the economy stabilizes and the Estate's investment in the interests can be returned or increased is far more beneficial to the Estate than selling it to the first buyer the Receiver can find. Furthermore, the Receiver's decision to liquidate the Estate's InSound and MBV investments is based largely on the recommendation of the Park Hill Group ("PHG"). PHG is not merely an advisor to this attempted transaction; it is also a broker who has an economic interest in the sale. This is a clear conflict of interest and it clouds the advice upon which the Receiver places so much reliance. What is more, PHG stands to profit from this sale before the Court has even ruled on the Receiver's motion to appoint PHG as his private equity advisor.<sup>2</sup> Given PHG's economic interest in the sale and the current economy, there is no basis to permit the Receiver to liquidate the Estate's InSound and MBV investments.

## **2. The Receiver Cannot Liquidate Estate Assets Until the Case is Resolved on the Merits**

Allowing the Receiver to continue to sell Estate assets will abrogate this Court's ability to render a meaningful judgment on the merits. A preliminary injunction preserves the status quo, prevents irreparable injury to the parties and preserves the court's ability to render a meaningful decision after a trial on the merits.<sup>3</sup> If the Receiver is able to sell many of the Estate's assets prior to adjudication on the merits, the Court's findings will have little or no value. If Defendants are victorious at a trial on the merits, that result will be diminished significantly if

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<sup>2</sup> See Rec. Doc. No. 596.

<sup>3</sup> See *Meis v. Sanitas Service Corp.*, 511 F.2d 655 (5th Cir. 1975).

the Receiver is permitted to continue to dispose of Estate assets. The Receiver should not be permitted to sell Estate assets without an adjudication of the merits of the underlying claims.<sup>4</sup>

**3. The Receiver's Liquidation Request Exceeds the Scope of the Appointment Order And is a Breach of his Fiduciary Obligation to Preserve the Estate for All Claimants**

It is well established that the purpose for a court to appoint an equity receiver is to take custody and manage property involved in litigation in order to **preserve** the property pending the court's final disposition of the suit.<sup>5</sup> A receiver has a duty to preserve the property for the benefits of the claimants, and that duty must be undertaken without bias to one side or the other.<sup>6</sup> The receiver is a fiduciary to the person who ultimately has rights in the property.<sup>7</sup> Indeed, the Amended Appointment Order explicitly instructs the Receiver on his fiduciary obligations, ordering him to "conserve, hold, manage, and preserve the value of the Receivership Estate, in order to prevent any irreparable loss, damage, and injury to the Estate."<sup>8</sup>

With respect to the instant motion, the Receiver attempts to justify the hasty sale of the InSound and MBV investments by pointing out that a receiver *may* dispose of receivership property "that does not show evident signs of working out for the benefit of the creditors." With

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<sup>4</sup> See *Securities Exchange Commission v. TLC Investments and Trade Co.*, 147 F. Supp. 2d 1031, 1036 (C.D. Ca. 2001) (holding, "[i]t is only in rare cases that it is appropriate for a receiver, rather than a bankruptcy court and particularly before judgment has been entered, to liquidate, rather than manage, the assets of a receivership."); *SEC v. Current Financial Services*, 783 F.Supp 1441, 1445-46 (D.D.C. 1992)(agreeing to appoint a receiver after TRO granted but refusing to grant receiver the right to liquidate assets; stating, "[s]uch drastic measures are [not] appropriate prior to the entry of final judgment. The SEC may renew its motion to encompass such relief if necessary in the future").

<sup>5</sup> See Wright & Miller, 12 *Fed. Prac. & Proc. Civ. 2d* §2981 (2005).

<sup>6</sup> See *Boothe v. Clarke*, 58 U.S. 322, 331 (1854) (holding, "[a] receiver is an indifferent person...he is appointed on behalf of all parties.").

<sup>7</sup> See *Citibank, N.A. v. Nyland Ltd.*, 839 F.2d 93, 98 (2d. Cir. 1988).

<sup>8</sup> See Rec. Doc. 157, Amended Order, at 5(g), p.5.

that in mind, the Receiver concludes that it is in the best interest of the Estate to liquidate these investments at once.

The Receiver's motion to liquidate the InSound and MBV investments once again disregards the significant admonition in *Jones* and *Kingsport* – the two cases on which the Receiver bases his authority to liquidate Estate property – that cautions that receivership property should not be liquidated if “its continuance is demonstrably beneficial to creditors.”<sup>9</sup> As discussed above, preserving the InSound and MBV investments (as opposed to liquidating them now in a rushed sale process) is in fact beneficial to all Estate claimants. By concluding otherwise, the Receiver not only demonstrates his unfamiliarity with private equity investing, but also illustrates once again his unwillingness to abide by his fiduciary duty. It is difficult to imagine how liquidating the Estate's interest in either investment at a fraction of the Estate's cost basis is consistent with the Receiver's duty to preserve the value of the Estate pending a final adjudication on the merits.<sup>10</sup> This course of action is short-sighted and only serves to propagate the fire sale being conducted by the Receiver. The requested liquidations do not benefit the Estate in the long run and are thus not in the Estate's best interest and must be denied.

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<sup>9</sup> *Jones v. Village of Proctorville*, 290 F.2d 49, 50 (6<sup>th</sup> Cir. 1961); *Kingsport Press, Inc. v. Brief English Systems*, 54 F.2d 497, 501 (2d. 1931).

<sup>10</sup> The Receiver's Motion to Approve Sale of InSound and MBV emulates his prior attempts to contravene the Court's intent to maintain the “status quo” pending a final adjudication on the merits. Most recently, the Receiver invoked similarly flawed assertions in an attempt to liquidate the Estate's IOF and Midway CC Hotel Partners investment interests. *See* Rec. Doc. No. 637 & 660, Defendants Opposition to Receiver's Motion for Approval of Sale of IOF Investment Interests and Request for Expedited Relief and Defendants Consolidated Opposition to Receiver's Motion to Approve Sale of Investment Interest in Midway CC Hotel Partners and Request for Expedited Relief, respectively. The Court granted both motions and the Defendants have appealed. Previously, the Receiver breached his duty to preserve the Estate's assets by, *inter alia*, allowing the Stanford Aviation Subsidiaries to default on its obligations to VFS Financing, Inc. (“VFS”) and then entering negotiations with VFS to surrender the aircraft at a fraction of their value. The Receiver has also already sold off numerous Estate assets at below-market valuations, thereby significantly diminishing the value of the Estate that he has been charged with “preserving.” *See* Rec. Doc. No. 439, Opposition to Receiver's Motion for Approval of Interim Fee Application and Procedures for Future Compensation of Fees and Expenses.

**CONCLUSION**

Based on the foregoing reasons, the Receiver's attempt to liquidate the Estate's investments in InSound and MBV contravenes the Receivership Order and constitutes a breach of his duty to preserve the Estate for the benefit of all claimants. Accordingly, the Estate respectfully requests that the Court deny the Receiver's Request to sell the InSound and MBV investment interests.

Dated: September 29, 2009

Respectfully submitted,

Michael D. Sydow  
Sydow & McDonald  
4900 Woodway, Ste. 900  
Houston, TX 77056  
(713) 622-9700

/s/ Ruth Brewer Schuster  
Ruth Brewer Schuster  
Texas Bar No. 24047346  
1201 Connecticut Ave, NW, Ste. 500  
Washington, DC 20036  
(202) 683-3160

**ATTORNEY IN CHARGE FOR ALL DEFENDANTS**

**CERTIFICATE OF SERVICE**

I hereby certify that this document filed through the ECF system will be sent electronically to the registered participants as identified on the Notice of Electronic Filing and paper copies will be sent those indicated as non-registered participants on September 29, 2009.

/s/Ruth Brewer Schuster