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

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

JOINT LIQUIDATORS' SECOND ADVISORY RELATING TO A COLLABORATIVE CLAIMS PROCESS PROPOSAL AND RESPONDING TO COURT QUESTIONS

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Page(s)

CASES

STATUTES

COME NOW Hugh Dickson and Marcus Wide (together, the "JLs"), the duly-appointed joint liquidators of Stanford International Bank, Ltd. ("SIB") in SIB's liquidation proceeding pending before the High Court of Antigua and Barbuda in Antigua (the "SIB Liquidation"), and file this Second Advisory regarding a Collaborative Claims Process Proposal and in Response to Court Questions, respectfully stating as follows:

PROCEDURAL BACKGROUND

On April 25, 2012, this Court held a hearing (the "Hearing") on the Receiver's Amended Motion for Approval of Proof of Claim Process (the "Receiver's Claims Motion"). Docket No. 1546.[1] During the course of that hearing, the Court raised several issues, including inquiries regarding whether the JLs had filed claims against the Government of Antigua and Barbuda ("GOAB"), the advisability of converting the SEC Receivership into a bankruptcy, and the Department of Justice ("DOJ") forfeiture proceedings, among other things. Hearing Tr., pp. 9, 22-23, 26-27.

On April 26, 2012, Malouf & Nockels, LLP ("Malouf"), as counsel to certain SIB depositors and Stanford Group Company clients, filed a Motion to Compel the Receiver and Joint Antiguan Liquidators to Implement a Single Claims Process (the "Motion"). Docket No. 1578. Among other things, Malouf argued that the Court should order the JLs, as well as the Receiver, the Examiner, and the Official Stanford Investors' Committee ("OSIC") (collectively the "Receiver Parties") to meet at the courthouse for a daylong meeting, for the purpose of reaching an agreement on a single claims process to be imposed by the Court on the JLs and the Receiver Parties.[2]

[1] The Receiver's Claims Motion was filed and a hearing thereon was held in *Securities & Exchange Commission* ("SEC") *v. Stanford International Bank, Ltd., et. al.*, Case No.: 3-09-CV-0298-N, Docket No. 1470, at p. 4 ("SEC Receivership").

On May 12, 2012, this Court entered an Order approving the Receiver's Claims Motion, Docket No. 1584, and an Order denying Malouf's Motion. Docket No. 1585.

I. Collaborative Claims Process Between JLs and Receiver

While unable to respond prior to the Court's May 12, 2012 Order denying Malouf's Motion [Docket No. 1585], the JLs were in the process of preparing a response thereto, in the context of this Chapter 15 case, setting forth what, in their view, would be a fair and efficient manner of proceeding with a joint claims process that would avoid the duplication of expenses and unnecessary confusion for the SIB creditors/victims and addressing in additional detail, the other problems identified by the JLs in the Advisory of Objections to Receiver's Amended Motion for Entry of an Order (I) Establishing Bar Date for Claims; (II) Approving Form and Manner of Notice Thereof; and (III) Approving Proof of Claim and Related Forms and Procedures for Submitting Proofs of Claim. The JLs have developed a significantly less costly claims process,[3] as compared to what the Receiver has represented his claims process will cost - which the JLs believe has been underestimated.

For example, while the Receiver contends that there are an expected 30,000 claims in the SEC Receivership, the JLs have determined that there are approximately 21,000 potential claims against SIB. A sensible approach would be for the Receiver to administer the 9,000 non-SIB claims, and for the JLs to administer all SIB-related claims. Additionally, some of the same

[2] In his Motion, Malouf states that the Receiver and the JLs have been "locked in a pitched battle over which of them would control management and disposition of the Receivership Estate." Motion, p. 3. To be perfectly clear, and as the JLs have stated on numerous occasions, including in their proposed protocol on file with this Court, Docket No. 104, JL1, it is not, and has never been, the JLs' intent to "control" the "Receivership Estate," but rather, to work collaboratively with the Receiver as to optimize the recovery to SIB creditors/victims. This simply is a strawman the Receiver's counsel periodically sets up to justify the continuing deadlock while simultaneously bemoaning how "disappointed" they are that an agreement cannot be reached, while the consumption of the estate funds continues unabated.

[3] The JLs' estimated cost for their statutorily mandated claims process is approximately $950,000 versus the approximate $4 million initial estimate for the Receiver's claims process.

procedures for the administration of claims by the JLs set forth fully in the Protocol previously proposed by them to the Receiver Parties also would be included.

While the Court has approved the Receiver's Claims Motion, the JLs express their continued willingness to reach a compromise with the Receiver on running a single claims process as to SIB creditors/victims along the general lines set forth, which process is already well underway, in an effort to avoid the duplication, waste of resources and confusion that otherwise will imminently ensue.

Nevertheless, in light of the problems identified below, the JLs believe they simply cannot support, and indeed must continue to resist, efforts by the Receiver and the DOJ to implement a claims and distribution process that is not in the best interests of the creditors/victims.

II. No Cause of Action Currently Exists by the JLs Against the GOAB

At the Hearing, this Court asked counsel for the JLs[4] whether the JLs had filed suit against the GOAB. Hearing Tr., pp. 22-23. The JLs would like to respond to this Court's question. The only bases for filing any such claim raised in these proceedings have been the alleged "taking" of properties belonging to SIB or Stanford-related entities, purported loans to non-SIB Stanford-related entities, and the alleged failure of the Financial Services Regulatory Commission ("FSRC") of the GOAB to exercise appropriate oversight over SIB. While the JLs are prepared to bring any viable actions that may exist at the appropriate time(s), the JLs are advised that no viable cause of action exists that may be brought, and collected upon, against the GOAB.

[4] Counsel for the JLs appeared at the Hearing solely in their capacity within this Chapter 15 case.

As an initial matter, the procedure for bringing claims against the GOAB is strictly regulated by the Civil Procedure Rules ("CRP") of Antigua and Barbuda, which, in pertinent part, states that claims against GOAB must be brought in accordance with The Crown Proceedings Act, Cap. 121 (the "Crown Act"), of the laws of Antigua and Barbuda.[5] CRP Part 5. In turn, the Crown Act provides that the GOAB may be sued in tort only under certain circumstances for allowed claims, which currently are not available to the JLs. *See* Crown Act, Part 4(1)-(3). The Crown Act further provides, among other limitations, that no orders of injunction, attachment, or for the recovery or turnover of property shall issue against GOAB. *Id.*, Part 16(1), Part 21(4), Part 23(1), Part 25(1). Accordingly, any claims to be brought against the GOAB must fall within the foregoing Allowable Claims.[6]

As the Court knows, the JLs are the acting liquidators for SIB (and Stanford Trust Company Ltd. (Antigua)), not for Robert Allen Stanford ("Stanford") individually nor any other Stanford-related entity. In turn, as the JLs have stated repeatedly when the Receiver Parties have previously raised this issue, all of the property for which the GOAB issued a declaration under the Land Acquisition Act, Cap. 233, Laws of Antigua and Barbuda in the name of SIB, is already in the JLs' possession, as the GOAB has abandoned the declarations as to such properties. Docket Nos. 105-1, p. 27; 107-1, pgs. 23-24.[7] As to the non-SIB, Stanford-related entities, the

[5] The Crown Act provides for immunities along the same lines as those applicable to United States governmental entities under U.S. law, or what is otherwise provided for in the U.S. Foreign Sovereign Immunities Act.

[6] There is currently a class action pending against the GOAB, filed by a group of SIB investors, at least one of which is an OSIC member, based on, *inter alia*, the GOAB's supposed knowledge of and involvement in the Stanford fraud, including alleged funds received by GOAB and its alleged conduct with respect to the FSRC and Leroy King. *See Frank, et al. v. Commonwealth of Antigua and Barbuda*, Case No. 3:09-cv-02165, filed July 13, 2009. The GOAB has moved to dismiss that action on the basis of, *inter alia*, the Foreign Sovereign Immunities Act.

[7] There is no evidence that whatever corruption is alleged as against the GOAB extends to the High Court in Antigua before which the liquidation is pending. To the contrary, the only evidence is that the Antiguan Court has been diligent and conscientious in this matter. For example, the Antiguan Court replaced the former Joint Liquidators for cause based on misconduct committed in Canada, notwithstanding that such individuals had been endorsed by the FSRC; ordered the extradition of Leroy King, the former head of the FSRC, to the United States, which decision is on appeal; and entered a freezing order as to numerous Stanford and Stanford-related properties

JLs have obtained freeze orders or liens on all relevant properties, preventing their disposition without their knowledge and opportunity to object. Docket Nos. 116-11, pp. 22-23; 107-1, p. 24.

With respect to purported loans owed by GOAB, it is undisputed that no such loans were ever on SIB's books or due directly to SIB. Docket Nos. 107-1, p. 18; 115-1, pp. 42-43; Recog. Hearing Tr., pp. 241-42. Evidence exists that Stanford or Stanford-related entities other than SIB may have made loans or transferred funds to the GOAB. Docket No. 115-1, pp. 41-42; *cf.* Hearing Tr., p. 33. To the extent loans made by other Stanford-related entities or Stanford are traceable to SIB funds, the JLs will take action to recover these funds for the benefit of the estate. Docket No. 107-1, p. 18.[8] The tracing of such funds, to the extent records exist in SIB to do so, is underway. Unfortunately, since the JLs do not represent Stanford individually or these other entities, and the Receiver has not cooperated in the sharing of information to trace such loans (and assets), the process is taking longer than it otherwise should.

As a secondary matter, even if such claims were marginally viable, the JLs have learned that the GOAB is in default with respect to its International Monetary Fund ("IMF") obligations and had annual governmental revenue, in 2010, of approximately US$255 Million and expenses of US$259 Million.[9] Thus, even if claims were available against the GOAB, the collectability of such claims is questionable, at best. The JLs are not willing to spend any more of the Estate's funds on what appear at this time to be low probability actions solely for optics and in derogation of their fiduciary duty to spend estate funds wisely.

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preventing their sale without the previous authorization of the JLs. *See* Exhibits A and B attached to the Appendix filed contemporaneously with this Second Advisory.

[8] Though not registered on the books of SIB, evidence exists that at least $1.8 billion was transferred, perhaps as loans, to Stanford, which the JLs have pursued in a suit against him. Docket Nos. 115-1, 13; p. 107-1, p. 19; Recog. Hearing Tr., p. 166.

[9] *See* http://www.economywatch.com/economic-statistics/Antigua-and-Barbuda/General_Government_Revenue_National_Currency/; http://www.economywatch.com/economic-statistics/Antigua-and-Barbuda/General_Government_Total_Expenditure_National_Currency/ (data for fiscal year 2011 is not yet complete). Exchange rate utilized is EC$2.7 per US$1.

III. The Receivership Has Not Been Converted to a Bankruptcy Simply Because the Receiver Refuses to Relinquish his Administrative Powers

During the Hearing held on April 25, 2012, this Court asked counsel for the Receiver why the entities that comprise the SEC Receivership had not been placed into bankruptcy. Hearing, pp. 26-27. The Receiver's counsel did not provide an adequate response. Accordingly, and because of its importance to the creditors/victims, the JLs seek to answer that question for the Court.

At the beginning of the SEC Receivership, the SEC moved for a temporary restraining order, as well as orders freezing assets, requiring an accounting, preserving documents, and authorizing expedited discovery. SEC Receivership, Docket No. 5. On February 16, 2009, this Court entered an Order appointing Ralph S. Janvey as Receiver for the SEC Receivership Defendants[10] and all entities under their ownership or control (the "Receivership Order"). The Receivership Order, in pertinent part, includes the following injunctive provision:

> 10. *Defendants*, and their respective agents, officers, and employees and all persons in active concert or participation with them are hereby enjoined from doing any act or thing whatsoever to . . . interfere with the Receiver or to harass or interfere with the duties of the Receiver or to interfere in any manner with the exclusive jurisdiction of this Court over the Receivership Estate, *including the filing or prosecuting any actions or proceedings which involve the Receiver or which affect the Receivership Assets or Receivership Records, specifically including any proceeding initiated pursuant to the United States Bankruptcy Code, except with permission of this Court*.

See SEC Receivership, Docket No. 10, p. 8 (emphasis added).

Shortly thereafter, on March 11, 2009, the Receiver filed a Motion to Amend Order Appointing Receiver (the "Motion to Amend"). *Id.*, Docket No. 146. The Receiver argued that, to carry out the duties assigned to him by this Court, the Receivership Order should be amended, *inter alia*, to: (1) provide that the Receiver has the sole and exclusive authority to petition for

[10] The SEC Receivership Defendants include: Robert Allen Stanford, James M. Davis, Laura Pendergest-Holt, Stanford International Bank, Ltd., Stanford Group Company, and Stanford Capital Management, LLC.

relief under the United States Bankruptcy Code, 11 U.S.C. §§ 101 *et seq.* (the "Bankruptcy Code") for any and all Defendants; (2) clarify that under the original Receivership Order, all persons have been enjoined from filing involuntary bankruptcy petitions, or petitions for recognition of foreign proceeding under the Bankruptcy Code, and will continue to be so enjoined under the amended Order; and (3) enjoin all persons from seeking relief from the injunctions prohibiting bankruptcy-related filings for 180 days after entry of the amended Order. *Id*. at pp. 1-2. Ironically, in his Motion to Amend, the Receiver represented to this Court that "[b]ankruptcy may turn out to be the best option for one or more Defendants, but it is too early in the Receivership process for anyone to accurately assess the potential benefits a bankruptcy might provide for the Defendants." *Id.* at p. 2.

On March 12, 2009, this Court granted the Receiver's Motion to Amend and entered an Amended Order Appointing Receiver (the "Amended Receivership Order"). The Amended Receivership Order, included, among other things, the following provisions:

> 6. *The Receiver shall have* the sole and exclusive power and authority to manage and direct the business and financial affairs of the Defendants, including without limitation, *the sole and exclusive power and authority to petition for relief under the United States Bankruptcy Code, 11 U.S.C. §§ 101 et seq. (the "Bankruptcy Code"), for any and all Defendants*. Solely with respect to the authorization to file and execution of a petition for relief under the Bankruptcy Code; without limiting any powers of the Receiver under applicable law and this Order; and irrespective of provisions in any Defendants' corporate organizing documents, by-laws, partnership agreements, or the like, the Receiver shall be deemed to succeed to the position of and possess the authority of any party with power to authorize and execute the filing of a petition for relief under the Bankruptcy Code, including without limitation corporate directors, general and limited partners, and members of limited liability companies. . . .
>
> 10. *Creditors and all other persons are hereby restrained and enjoined, without prior approval of the Court, from*: . . .
> (e) *The filing of any case, complaint, petition, or motion under the Bankruptcy Code* (including, without limitation, the filing of an involuntary bankruptcy petition under chapter 7 or chapter 11 of the

> Bankruptcy Code, or a petition for recognition of foreign proceeding under chapter 15 of the Bankruptcy Code).

Id., Docket No. 157, pp. 6-8 (emphasis added).

On May 11, 2009 and September 9, 2012, a group of investors, represented primarily by OSIC member Peter Morgenstern, filed motions (Docket Nos. 367, 772) requesting that this Court modify the Amended Receivership Order (Docket No. 157) to enable the filing of an involuntary bankruptcy petition against the Stanford defendants (the "Bankruptcy Motions"). These Bankruptcy Motions were well founded, logical, timely, explained the benefits of a bankruptcy process, but were later vigorously opposed by the Receiver, the Examiner and the SEC. Docket Nos. 420, 422, and 817. On February 11, 2010, this Court held a hearing in connection with the Bankruptcy Motions. At that hearing, lead counsel for the Receiver represented to this Court that "to put literally all hundred-plus Stanford entities into one [bankruptcy] filing is in and of itself an enormous costly expense that would take many weeks simply to prepare the paperwork to be ready to go." Bankruptcy Mtn. Hearing, p. 21, lines 3-6. The Court indicated that, "one of the things that I'm thinking as a potential alternative is to tell Mr. Janvey, I'm going to give you a window to file a voluntary Chapter 11 here in the Northern District, and 90 days from now I'm going to delete the paragraph that enjoins other people from filing. So you've got a 90-day window to get yourself organized and file." *Id.* at p. 6. While it is obvious from the transcript of the hearing that the Court was struggling with what was being presented as difficult choices, had the Court followed this course, it seems without doubt that this case would have been in bankruptcy long ago. Ultimately, the injunction was not lifted and these Bankruptcy Motions were denied as moot by the Court after an agreement was reached between the parties (with the consent of the Examiner) allowing for the formation of the OSIC, by which

the OSIC was authorized to prosecute certain actions on behalf of the Receivership Estate on a contingency basis (25% success fee) in exchange for dropping the Bankruptcy Motions.

Subsequently, on January 14, 2010, the SEC and the Receiver filed a Joint Motion for Entry of Second Amended Order Appointing Receiver (the "Joint Motion"). *Id.*, Docket No. 958. The Joint Motion sought to amend the Amended Receivership Order to, among other things, provide that the Receiver's exclusive authority to file bankruptcy petitions applies only to the corporate, and not the individual, defendants. The Receiver argued that, as a result of his investigation, he had determined that it is not necessary for him to file bankruptcy petitions on behalf of any of the individual defendants. *Id.* On July 19, 2010, this Court granted the Joint Motion and entered the Second Amended Order Appointing Receiver (the "Second Amended Receivership Order").

As outlined above, at the insistence of the SEC and then the Receiver, this Court enjoined everyone, except the Receiver, from filing a voluntary or involuntary petition under the Bankruptcy Code. Accordingly, the answer to the Court's April 25, 2012 inquiry as to why the Receivership has not been converted into a bankruptcy is simple: the Receiver has the exclusive power to do so and, in the three plus years that this case has been pending, he has refused to do so.

The Receiver's reasoning is self-evident. During the April 4, 2012, hearing before this Court, in response to this Court's question why the Receivership should not be converted into a bankruptcy proceeding, the Receiver's lead counsel, Kevin Sadler, responded that doing so would not be advisable because, *inter alia*, "there would be probably a forced change in administration." Fee Hearing, p. 47, lines 4-20. Mr. Sadler's position, however, is uninformed. The JLs, and indeed the SEC, are aware of a recent SEC Receivership in the Northern District of Texas involving a sizable Ponzi scheme where the Receiver served in a dual capacity as both the

SEC Receiver and Chapter 11 Trustee for 28 separate debtors. The bankruptcy process resulted in a prompt and effective resolution of a large and complicated bankruptcy/receivership involving 35 separate entities and individuals. The Receiver and his retained professionals thus steadfastly cling to the "floundering estate," at the expense and to the detriment of all the victims/creditors, who would be better served by the efficient and effective procedural framework available under the Bankruptcy Code.

Tellingly, through December 31, 2011, the Receiver has spent approximately $62 million in fees and costs to professionals and an additional $50.3 million in "winding up" costs, which winding up costs have never been itemized or explained. Moreover, the Court-appointed Examiner has been paid $1.6 million through January 31, 2012. This might explain, in part, why the Receiver, his counsel, and the Examiner remain so steadfastly opposed to the conversion of the SEC Receivership to a bankruptcy. Their obvious lack of bankruptcy experience or expertise might also be a factor.

In fact, converting the Receivership into a bankruptcy proceeding (or at least some of the entities which have no assets) would be a relatively simple and inexpensive task. Indeed, no more than 10 of the 145 Stanford-related entities identified by the Receiver had assets at the time of the Receiver's February 16, 2009, appointment. Docket No. 1546-8. Contrary to the Receiver's prior representations to this Court, the overwhelming majority of the Receivership Entities have no assets, and therefore need not be administered at all, in bankruptcy or otherwise. To the extent Receivership Entities have distributable assets, then those entities should be placed into a Chapter 7 bankruptcy, whereby the creditors of each entity would be allowed to file proof of claims against the particular entity, and receive a distribution pursuant to the priorities set out in the Bankruptcy Code. Moreover, the bankruptcy process allows for joint administration of cases and has the established process of substantive consolidation that is

available in appropriate circumstances (although this is not such a case). Finally, the bankruptcy process has a mechanism for claim estimation and, through 11 U.S.C. § 505, the ability to challenge tax liability on an expedited basis. This case cries out for bankruptcy experience to work through these issues, most of which are self-evident to insolvency professionals.

As this Court seemed to recognize at the Hearing, as currently structured, and approved by this Court, "there is an attempt to distinguish which entity the claim is against. And so I assume that we have not yet crossed that bridge [of substantive consolidation], that the information is available to allocate separately if that's ultimately what happens." Hearing, pp. 24-25. With the deepest respect to the observations of the Court, the Receiver put the "cart before the horse." As argued by the JLs in their Advisory, Docket No. 158, aggregation makes no sense when as here, it would work to the substantial detriment of many victims/creditors, and the benefit of very few. Indeed, the Receiver has not set forth any argument in support of substantive consolidation, nor does any such argument exist.[11] As a result of the foregoing, the Receiver will spend millions of dollars reviewing claims for entities that have no assets and cannot pay claims in any event.

IV. The Status of the IRS Tax Claim is Undefined and May Subsume the Entirety of the Funds Available for Distribution by the SEC Receivership

On March 13, 2009, the United States Internal Revenue Service ("IRS") filed a Motion to Intervene, Motion for Relief From Temporary Restraining Order/Preliminary Injunction to Allow Tax Court and Administrative Proceedings, Motion to Assess, and Motion to Compel Tax Return (the "IRS Motion") . SEC Receivership, Docket No. 170. An Order Granting the IRS Motion was entered on April 17, 2009. SEC Receivership, Docket No. 310. It is without doubt

[11] Significantly, if the Receiver were to seek substantive consolidation (a concept he deployed extensively in the Chapter 15 hearing on December 21, 2011), the Receiver has yet to explain why Stanford, the admitted head of the alleged Ponzi scheme, would not be included in that consolidation and, in turn, why his creditors, including the IRS, would not have as much right as any other creditor to partake in any such distribution. *See infra*.

that the IRS is a creditor under the Internal Revenue Code with claims, statutory assessments and liens against Stanford, his property and his rights to property for $226,645,537.00 in unpaid federal income taxes for the years 1999 through 2003. In its Motion, the IRS indicated that it "shall file a fairly significant claim against R. Allen Stanford." SEC Receivership, Docket No. 170:7. The IRS represented that this tax liability may increase in light of Stanford's failure to file his income tax return for 2007. *Id.* In fact, the Order Granting the IRS Motion provides, in part, that "under 26 U.S.C. § 6871(a), the IRS, at its discretion and at any time, may immediately assess any deficiencies (together with all interest, additional amounts and statutory additions) determined by the Secretary against R. Allen Stanford relating to his liability for unpaid federal income (1040) taxes, if any, for tax years 1999-2008." *Id.* at ¶3.

At a hearing held on February 11, 2010, counsel for the Receiver stated:

> "[a]s a practical matter, you're absolutely right. If you decide this afternoon that however this is done, by whom, it doesn't matter, but at the end of the day the IRS bill gets paid first, yes, everybody gets wiped out. I mean, think about it. It's – it's $226 million, and we all know their penalties are double digit and all of that. A fraction of that, even if you concluded, despite our arguments, that their claim was off by 80 percent, it would still largely wipe out the entire estate."

Bankruptcy Motions Hearing Tr., pg. 30-31. Similarly, counsel for the SEC stated that, "if the [IRS] statutory lien is – is exercised, that wipes out the Estate." And, the Examiner likewise stated "I don't know what their [the IRS's] views of -- of their claim are. I know it is huge. I know it's about three or four times the size of the available cash today." *Id*. at 44. Putting aside whether that is even true, if so, it would mitigate against the so-called amalgamation. The Receiver Parties were quick to draw this "amalgamation" sword to try and defeat the Chapter 15 petition but seem to be cutting themselves to ribbons trying to get that sword back in the scabbard due to the IRS claim.

At the April 25, 2012, Hearing in connection with the Receiver's Claims Motion, this Court asked counsel for the Receiver whether the IRS would file a claim and assert a priority position in the Receiver's claim adjudication process, such that it would be meaningless to run a claims process because the IRS claims would entirely subsume any assets available for distribution. Hearing, p. 7. The Receiver's counsel stated that the IRS "has never expressed the view that [it] is going to come in and try to take all the money the Receiver has accumulated. And I've expressed the view on behalf of the Receiver to him that we would never allow that willingly. So I have no information whatsoever that the [IRS] intends to come in and -- and establish a priority position." Hearing, pp. 7-8. This Court should not, however, rely on counsel for the Receiver's subjective interpretation of the IRS's intent based on an admittedly dated discussion, and such statement should not be given any weight since the Receiver has neither authority nor standing to speak on behalf of the IRS. Indeed, the Receiver's proof of claim form has a designated checkbox for tax claims, evidencing the IRS's and other taxing authorities' right to assert such tax liability claims. SEC Receivership, Docket No. 1546-4. Thus, the IRS need not claim a priority, but can simply share *pro rata* in any distribution and they still would take approximately 10 times the amount of the next largest creditor.

The Receiver's counsel did indicate that he would challenge any IRS claim that could wipe out the estates' assets. Counsel also pointed out that, according to his research, the IRS can only assert such claim against Stanford's personal assets. However, if, as the Receiver asserted at the December 21, 2011,[12] evidentiary hearing, the estates should be aggregated because the fraud purportedly subsumed all the entities, such a position as to the IRS claims appears disingenuous and doomed to failure.

[12] The JLs now have written confirmation from the GOAB that it does not to intend to bring any claims in the SIB Liquidation as a claimant under the priority scheme contained in the International Business Corporation Act.

The ongoing uncertainty as to whether the IRS will seek to satisfy its tax liens and claims against Stanford out of the assets collected by the Receiver must be promptly adjudicated. As this Court properly noted (and as the Receiver and other stakeholders such as the Examiner and the SEC have conceded), if the IRS were to pursue its claims against the assets of the Receivership Estate, the Estate could be entirely depleted and a claims process would be unnecessary. The JLs, through their statutorily-mandated and ongoing claims process, do not have the risk of the IRS filing a claim that completely consumes or significantly depletes the estate. It is for this reason, among others, that the JLs simply cannot support, and feel they must oppose, the flawed claims process being pursued by the Receiver.

V. The "Administration" of Assets Frozen at the Direction of the Department of Justice Abroad by the SEC Receiver is Not an Established Fact

The DOJ, through its Asset Forfeiture and Money Laundering Section, is seeking to forfeit (the "Forfeiture") certain SIB assets (the "SIB Assets") in the UK, Switzerland and Canada that the JLs believe belong to the SIB liquidation estate (the "SIB Estate"). These Assets, however, are already the subject of the JLs' claims process in the SIB Liquidation and can be promptly distributed once the funds are turned over to the JLs. Should the DOJ and the JLs ultimately fail to come to an agreement, and should the DOJ fail to successfully forfeit the SIB Assets, the Receiver's claims process will have succeeded in further draining funds from the SIB Estate.[13]

Barring an agreement between the parties to resolve the outstanding issues regarding the SIB Assets, the DOJ's Forfeiture creates an unnecessary burden on the SIB Estate and may ultimately lead to further harm to the SIB creditors/victims. The DOJ's pursuit of SIB Assets, which are already the subject of the JLs' statutorily-mandated claims process in the SIB

[13] On May 4, 2012, the JLs sent a formal written proposal to the DOJ to expedite a resolution of these differences and a process for the distribution of the frozen funds as part of the JLs ongoing claims process.

Liquidation, is nothing more than a misguided effort that results in the continued victimization of the SIB creditors/victims. The JLs have been recognized around the world as the proper parties to handle the liquidation of SIB. The Receiver argued that he was the proper party to do so, and lost. The DOJ's efforts are a thinly disguised attempt to obtain the relief the courts of other countries refused to grant the Receiver. The SIB creditors/victims should not suffer merely because the DOJ refuses to recognize the legitimacy of the JLs and/or their statutorily-mandated claims process (which has been vetted and is well underway), and which other courts around the world have already recognized.

The Receiver's counsel is fond of saying that the reason that the JLs are opposing the DOJ with regard to the Forfeiture of the funds frozen overseas is to secure funding for the SIB Liquidation. This is particularly disingenuous when the Receiver Parties have spent over $112 million of estate assets to recover just over $34 million net in contested assets. In fact, it would not be surprising if the purported "deal" between the Receiver and the DOJ, SEC Receivership, Docket No. 1583, resulted from the intervention of the SEC with the DOJ to seek the latter's assistance to recover the overseas funds in an attempt to rescue its appointed Receiver through the infusion of these funds into the Receivership Estate to make its recoveries look bigger and mask what has been called a "floundering estate" in the press.

The Receiver and his counsel are wrong – "estate financing" is not the reason the JLs are opposing the DOJ's Forfeiture process. It is undisputed that the funds overseas came from SIB. The testimony in the criminal trial of Stanford and by the SEC Receiver's own expert witness before this Court bears this out. SIB has never been charged or convicted of any criminal activity. The bottom line is that these are SIB funds, not the property of Stanford. The funds should be returned to SIB (for the benefit of the SIB victims/creditors and not other

Stanford entities) and, as has been argued before, can be administered faster, cheaper, and more fairly by the JLs than by the Receiver or anyone else.[14]

And, that funding is required to run any successful liquidation is neither a secret nor a nefarious purpose underlying any conduct by the JLs here. The JLs have been upfront and transparent and do not deny that any successful liquidation requires funding to achieve the best results for the victims by pursuing properly investigated, pled, and financed third-party claims.[15] This is a fundamental pillar of insolvency practice.[16] In fact, it is beyond argument in this case that the successful prosecution of such claims is the only way to augment the approximately $500 million in known assets and to attempt to distribute more than pennies on the dollar to victims/creditors.

Indeed, it is unclear why the DOJ still is trying to forfeit these funds when it did nothing to forfeit funds of an identical nature in the United States. A potential explanation is that the idea to deliver the funds to the Receiver has always been at the heart of the DOJ process, by which means, it, in turn, may have seen the only avenue to ensure participation of all US non-victim creditors (including the IRS) in any potential distribution.

Certainly, the Receiver and the DOJ have been less than forthright with respect to their dealings. In response to direct questions from the JLs to both the Receiver and the DOJ as to

[14] It bears noting that the DOJ did not initially freeze the funds overseas. In fact, the Swiss government froze the funds overseas and only after the Swiss government asked the DOJ for information did the DOJ respond and ask for the funds to be given to it through forfeiture. This is also true of the funds in Canada, which were frozen by the government of the Province of Ontario, not at the request of the DOJ (in fact, to this day, there is no known Mutual Legal Assistance Treat ("MLAT") request from the DOJ to the Canadian government in Ottawa or the Provincial Government in Ontario to freeze these funds). Lastly, in this regard, the DOJ, by and through the SFO, did seek the forfeiture and repatriation of funds in the UK, but only after the former JLs had sought to take control over the funds in the SIB bank accounts from the banks in the UK directly.

[15] The JLs have received an offer for outside funding that could be revived if required and also have other funding opportunities that are being explored, but, as the JLs previously have stated, these alternative are at a substantial cost that may not be in the best interests of the victims/creditors.

[16] Until the Receiver filed claims against two law firms in reaction to pressure from the JLs, he had solely filed clawback claims, and no third-party professional liability claims.

whether there was any intent by the DOJ to give the frozen funds once obtained by the Receiver, both the Receiver and the DOJ originally denied any such intent existed. In fact, on December 20, 2011, the DOJ sent a letter to this Court in a very unorthodox manner for a non-party. The letter stated: "Because of the anticipated large number of victims, the Department intends to enlist the services of a private claims administrator who will be paid a flat-fee, which will ensure that the costs of administering the remission remain low." Docket No. 155. Conversely, the JLs also recently learned that the stated purposes of at least one of the MLATs and the letter of request by the DOJ to the Attorney General of Ontario, dating back to 2009, was to obtain the funds to give them to the SEC Receiver (although the MLAT's and Letters of Request are not available to the JLs).

And, as of April 27, 2012, all doubt has been dispelled that such a deal exists "in principle" exactly to that effect. SEC Receivership, Docket No. 1583. Thus, the Receiver and the DOJ have either misrepresented the existence of this deal to the JLs, and possibly to this Court in the DOJ's December 20 letter, or, to say the least, have been purposefully evasive. To this end, the Court should require the DOJ and/or the SEC to make available for inspection all of the MLAT requests to the United Kingdom and Switzerland and the Letter of Request to the office of the Attorney General of Ontario as it appears misrepresentations of a serious nature have been made to this Court and to the JLs.

Based on the foregoing, (and the specific items identified below), the JLs, in the exercise of their fiduciary duties, have no choice but to proceed with their efforts which are in the best interests of SIB's creditors/victims. The knowledge that the DOJ intends to give any funds it may receive through forfeiture to the Receiver only deepens the JLs' resolve to oppose the forfeiture of the funds. The reasons are straightforward:

- ***Avoiding Delay***: The DOJ still has to go through the criminal appeal of the conviction (although there is some discretion in this accorded to the Court) of Stanford and prevail there before it can even ask for the criminal forfeiture of the funds frozen overseas. If the DOJ were to drop its attempt to forfeit those funds, the JLs could distribute no less than 80% of the liquid portion of them no later than September 30, 2012. The Receiver has represented that he "thinks" he can make a distribution by year end, but as noted at the Hearing, the Receiver's claim process has no mechanism to deal with the unliquidated and contingent litigation claims. Fees Hearing Tr., p. 20;

- ***Avoiding Dilution of Distribution Fund by non-victim creditors***: If the DOJ gives the funds to the Receiver, they will be shared with other non-victim claimants advancing at least $252 million in other claims as identified in the Receiver's counsel's letter to the Court of April 27, 2012. In the SIB Liquidation, victims represent 99.916% of all potential claimants;

- ***Avoiding Dilution of Distribution Fund by IRS***: If the DOJ gives the funds to the Receiver, they will be shared at least *pro rata* with the IRS (*see* section V *supra*) and possibly the IRS will have a priority lien on at least the first $226 million recovered. The IRS would have no claim at all in the SIB Liquidation;

- ***Avoiding Alienation of Foreign Investors***: The claims process in the US is solely available in English despite the fact that over 70% of the victims live in Latin America. In the SIB Liquidation, all documents and communications are in English and Spanish;

    - ***Avoiding Unjustified Submission to Jurisdiction***. To file a claim in the US Receivership, claimants must submit themselves to the jurisdiction of the US Court. That is made clear in the claim form, which, as entered, provides: "If you submit a Proof of Claim Form in this case, you consent to the jurisdiction of the District Court for all purposes related to this claim and agree to be bound by its decisions, including, without limitation, a determination as to the validity and amount of any claims asserted against the Receivership Entities. In submitting a Proof of Claim Form, you agree to be bound by the actions of the District Court even if that means your claim is limited or denied." SEC Receivership Docket No. 166. The DOJ, the SEC and the SEC Receiver know that due to concerns about confidentiality and cultural mistrust of government in general, a high percentage of the Latin American victims will likely not file claims in the SEC Receivership, while this is not the case in Antigua which has a greater commitment to protecting the privacy of these bank depositor victims by virtue of its legal regime; and

- ***Avoiding Significant Unnecessary Fees***. If you read the fine print, the SEC Receiver is quoting in excess of $4 million to run its claim process. The JLs have now administered about 1/3 of all the victim claims (7,000) and found that by using the cheaper labor available to them and by using some prior practices which apply a pragmatic approach in reviewing claims (such as not spending too much

time on small claims), they can do the entire claims process for $950,000, which is less than ¼ of what the Receiver will spend.

The DOJ has done a great job in prosecuting and convicting Stanford and making sure the overseas funds were not lost. However, that work is done now. If the focus were on what is in the best interest of victims/creditors, the JLs strongly believe that the funds should be distributed through the SIB Liquidation.

VI. The Receiver Has Unnecessarily Obstructed the Joint Liquidators' Investigation to the Detriment of all Victim/Creditors

As alluded to, the Receiver has, at every opportunity, refused to cooperate with the JLs with respect to the production of documents necessary for the prosecution or investigation of actions. For example, in late September 2011, the JLs wrote five U.S.-based law firms known, or believed, to have provided legal services to SIB during the relevant pre-liquidation period. In those letters, the JLs, through their counsel, made a formal request "for documents belonging to SIBL or pertaining to the activities of SIBL or its agents." The JLs also requested "detailed trust account records for your representation of SIBL." The law firms responded, indicating that the Receiver had opposed production of such records to the former JLs and that he continued to oppose production of any such documents or records to the new replacement JLs, as a result of which they were not in a position to produce the documents requested. The basis given was that the Receiver had "exclusive jurisdiction and control" over all "Stanford records."[17]

This position by the Receiver, and his affirmative instructions to the law firms to deny cooperation to the JLs, prejudiced and continues to prejudice the JLs' investigation into the activities of SIB and its agents. Indeed, this obstructionist conduct by the Receiver, when coupled with the pending Chapter 15 ruling, has allowed the passage of time to endanger claims

[17] *See e.g.*, Exhibit C, attached to the Appendix filed contemporaneously with this Second Advisory.

that could benefit the creditor/victims. Notwithstanding the foregoing, the JLs sought leave to file distinct and different claims against two U.S. law firms before this Court on the eve of the running of the statute of limitations. Only after the JLs did so did the Receiver proceed to sue the law firms at issue in an action in Washington, D.C., later transferred to this Court, but, incredibly, not for the same claims that would have been pursued by the JLs.[18]

Respectfully submitted this 11th day of May, 2012.

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[18] The Receiver has expressed that tolling agreements with two other law firms exist.

CERTIFICATE OF SERVICE

The undersigned hereby certifies that, on this 11th day of May, 2012, he caused a true and correct copy of the foregoing document to be served on all parties requesting electronic notice via the Court's ECF system as well as on the following parties via electronic mail:

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

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

APPENDIX IN SUPPORT OF JOINT LIQUIDATORS' SECOND ADVISORY ON A COLLABORATIVE CLAIMS PROCESS PROPOSAL AND RESPONSE TO QUESTIONS FROM THE COURT

Pursuant to Local Rule 7.1(i), the Joint Liquidators hereby submit their appendix in support of their Second Advisory on a Collaborative Claims Process Proposal and Response to Questions From the Court in this action.

Exhibit	Description of Document	Appendix Nos.
A	February 5, 2012 Judgment	1-28
B	July 28, 2011 Order	29-48
C	October 20, 2011 Correspondence	49-50

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that, on this 11th day of May, 2012, he caused a true and correct copy of the foregoing document to be served on all parties requesting electronic notice via the Court's ECF system as well as on the following parties via electronic mail:

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THE EASTERN CARIBBEAN SUPREME COURT
IN THE HIGH COURT OF JUSTICE
ANTIGUA AND BARBUDA

CLAIM NO: ANUHCV 2010/0273

IN THE MATTER OF SECTION 13 OF THE EXTRADTION ACT NO. 12 OF 1993

and

IN THE MATTER OF AN APPLICATION BY LEROY KING FOR A WIRT OF HABEAS CORPUS AD SUBJICIENDUM

BETWEEN:

LEROY KING

Applicant

and

(1) THE DIRECTOR OF PUBLIC PROSECUTIONS

(2) THE ATTORNEY GENERAL

Respondents

Appearances:

Mr. Dane Hamilton, Q.C. and Mr. D. Raimon Hamilton for the Applicant
The Director of Public Prosecutions, Mr. Anthony Armstrong, for the Respondents

.....

2011: December 15, 21
2012: February 6

.....

JUDGMENT

[1] **MICHEL, J.:** Brevity, it is said, is the soul of wit. This case has generated volumes of facts and information spanning the decade from 1999 through to 2009 during which period it is alleged that

several acts of fraud and other kindred acts of dishonesty were perpetrated by Robert Allen Stanford and various other persons associated with the operations of Stanford International Bank Limited (SIBL) and affiliated entities. It has also led to over one hundred cases being referred to and relied upon by the parties to the present case in their submissions (both here and in the committal court) and by the Chief Magistrate who presided over the committal court at the first stage of the extradition proceedings against Leroy King. I shall however, in the course of this judgment, refrain from recounting, relating, reporting or regurgitating the facts and information generated in this case, except where necessary for the purpose of reaching a conclusion. So too I will avoid the references to and repetition of the contents of the cases relied on by the Applicant and the Respondents and those referred to by the Chief Magistrate, except where necessary in the course of reaching a conclusion. Instead, I will rely on the facts and information (recounted elsewhere) which constitute the evidence in this case, and the judicial and other authorities (referred to elsewhere) which are intended to illuminate the pathway to a judicial destination where Leroy King will be either discharged or detained. This way I hope to encounter the very soul of wit by being brief, relative though to the pages of writing and the hours of reading which a judgment in this case might otherwise entail.

[2] The Applicant, Leroy King, was the Director of the Financial Services Regulatory Commission of Antigua and Barbuda (FSRC) which made him the chief regulator of financial services providers in Antigua and Barbuda, including SIBL. On 18th June 2009, Leroy King was indicted - jointly with four other persons (including Robert Allen Stanford) - on 21 counts alleging violations of various sections of Title 18 of the United States Code (the aforesaid indictment will hereafter be referred to as "the Indictment"). The Indictment was preferred in the United States of America and was filed in the Houston Division of the Southern District of Texas of the United States District Court.

[3] On 24th June 2009, the United States of America, through its diplomatic representative, Mr. Clifton Johnson, made a request to the Government of Antigua and Barbuda, through the appropriate authority, the Minister for External Affairs of Antigua and Barbuda, for the extradition of Leroy King.

[4] On 25th June 2009, consequent on a provisional arrest warrant obtained by the Antigua and Barbuda authorities, Leroy King reported to law enforcement authorities in Antigua and Barbuda and was arrested and then released on bail.

[5] On 23rd September 2009, the Minister with responsibility for External Affairs of Antigua and Barbuda, Prime Minister Baldwin Spencer, issued an authority to proceed and commence extradition proceedings against Leroy King under section 9 (4) of the Extradition Act, 1993 of Antigua and Barbuda (hereafter referred to as "the Act").

[6] Following on the issue by the Minister for External Affairs of the authority to proceed, the matter came before the Chief Magistrate, Mr. Ivan Walters, presiding over the St. John's Magistrates Court, which was designated - for the purposes of the Act - as the committal court.

[7] On 26th April 2010, having heard and read oral and written submissions made by Mr. Dane Hamilton, Q.C. on behalf of Leroy King and by Mr. Anthony Armstrong, the Director of Public Prosecutions, and having no doubt perused the several affidavits and exhibits filed in the matter, the Chief Magistrate committed Leroy King to Her Majesty's Prison to await the decision of the Minister for External Affairs as to his return to the United States of America for trial. Upon application by his Counsel, Mr. King's bail was continued by the Chief Magistrate.

[8] On 5th May 2010, Leroy King made application to the High Court for discharge of the committal order, for leave to apply for the issue of a writ of habeas corpus ad subjiciendum and for an order of certiorari quashing the decision of the Chief Magistrate.

[9] On 7th September 2010, the case came before a Judge in Chambers, presumably for directions for trial, whereupon the Learned Judge ordered the Applicant to file written submissions on or before 7th October 2010 and ordered the Respondents to file written submissions in reply on or before 8th November 2010, with a hearing date to be set by the Court Office.

[10] The written submissions were filed on 19th October and 24th November 2010 by the Applicant and Respondents respectively and, on 19th September 2011, the Registrar of the High Court set the case down for hearing on 13th October 2011.

[11] On 13th October 2011, at the request of Counsel, the case was adjourned to 16th November 2011 and then further adjourned to 15th December 2011, when it was heard. The hearing continued on 21st December 2011. Judgment was then reserved.

[12] The grounds on which the Applicant, Leroy King challenged the decision of the Chief Magistrate are almost as many as the counts on the Indictment, although the grounds were presented in the application as five grounds divided into various sub grounds. It will be necessary to repeat them here verbatim so that they remain in the forefront of the Court's consideration of Mr. King's application. The grounds of Mr. King's challenge are the following:

"1. (i) Court one of the Indictment which charges a conspiracy to commit mail wire and securities fraud is not an offence under the Laws of Antigua and Barbuda as the substantive offence of mail and wire fraud are not offences punishable by the Laws of Antigua and Barbuda.

(ii) That the evidence before the Magistrate in support of Count 1 is entirely hearsay and accomplice evidence unsupported by any independent evidence of applicant participation in the conspiracy.

2. (i) Count 2 through 18 do not allege conduct (culpable) which if it occurs in Antigua and Barbuda would constitute an offence under the Laws of Antigua and Barbuda.

(ii) The Authority to Proceed dated August 25th 2009 failed to specify as mandated by Section 9 (5) of the Extradition Act the offences in respect of the said Count 2 to 18 which are the equivalent offences in Antigua and Barbuda and it is not lawfully opened to the Magistrate to commit the Applicant for extradition in respect of the offences set forth in the said counts.

(iii) No sufficient evidence was adduced before the Magistrate to justify the Applicant's committal.

(iv) The Magistrate failed to satisfy himself that Counts 2 – 18 of the Indictment constituted extraditable offences within Sections 4(1) (a) and (b).

(v) The Learned Magistrate failed to make a determination whether assuming such conduct constituted equivalent offences under the Laws of Antigua and Barbuda such local offences had extra territorial application.

3. Count 19 Conspiracy to obstruct S.E.C Investigation

(i) The Learned Magistrate could not lawfully commit the Applicant to be extradited as no sufficient evidence to justify his committal trail was adduced.

(ii) The offence specified in the Authority to Proceed that is "conspiracy to pervert the course of public justice" is of a different genus and is not the equivalent offence under the Laws of Antigua and Barbuda.

(iii) The conduct alleged as constituting this offence is not conduct rendered unlawful by the Laws of Antigua and Barbuda.

(iv) On the assumption that an equivalent offence existed in Antigua and Barbuda the Learned Magistrate failed to make a determination as to whether such offence had extraterritorial application.

(vi) The offence as defined by the relevant United States law Title 18 Section 371 does not give rise to any equivalent conduct or offence of obstruction under the laws of Antigua and Barbuda.

4. Obstruction of SEC Investigation Count 20

(i) There is no equivalent offence under the Laws of Antigua and Barbuda.

(ii) The conduct alleged as constituting the offence is not unlawful under the Laws of Antigua and Barbuda.

(iii) The Minister failed to specify in the Authority to proceed the equivalent offence under the Laws of Antigua and Barbuda.

(iv) No determination was made by the Learned Magistrate as to whether "perverting the course of public justice", if applicable or any equivalent offence had extra territorial effect, and if not, whether he had jurisdiction to commit the Applicant be extradited for this offence.

(v) There was no sufficient evidence before the Magistrate to justify the committal of the Applicant.

5. Count 21 of the Indictment charges Conspiracy to commit money laundering:

(i) That the evidence before the Learned Magistrate was entirely hearsay and accomplice evidence unsupported by any independent evidence of the Applicant's participation in the conspiracy.

(ii) The Learned Magistrate could not properly find that the evidence adduced was sufficient to warrant the Applicant's committal for trial."

[13] Before addressing the grounds of Mr. King's challenge of the Chief Magistrate's decision, it may be necessary, or at least useful, to lay the foundation on which this judgment will be built. I will start with the Extradition Act of Antigua and Barbuda, which both sides agree enables Antigua and Barbuda to extradite someone to another country to stand trial in that other country. It is also common ground between the parties that - by virtue of an extradition treaty entered into between Antigua and Barbuda and the United States of America - the United States of America can request the extradition of someone in Antigua and Barbuda to stand trial in the United States for what is referred to in the Act as an "extradition crime", and Antigua and Barbuda can extradite the person to the United States in accordance with the procedures laid down in the Act. The parties are also in agreement on the need for a committal court - which has to decide whether to commit a person

for extradition - to be satisfied that, among other things, there is on the evidence presented by the requesting country (in this case the United States of America) at least a prima facie case against the person sought to be extradited in respect of the offences for which his extradition is sought.

[14] Having constructed a foundation for the judgment on the solid rock of mutual agreement, I can proceed now to put up the building blocks in furtherance of the construction of the judgment.

[15] In terms of the first limb of the Applicant's first ground of challenge to the decision of the Chief Magistrate, I propose to address this issue when dealing with ground two, which directly focuses on the question of whether the conduct involved in the offences of mail and wire fraud constitute offences under the laws of Antigua and Barbuda.

[16] In terms of the second limb of the first count, I do not agree with Learned Queen's Counsel who represents the Applicant that the evidence before the Magistrate in support of Count 1 was entirely hearsay and accomplice evidence unsupported by any independent evidence of the Applicant's participation in the conspiracy. Truth be told, there was a lot of hearsay and accomplice evidence, some of which was unsupported by independent evidence of the Applicant's participation in the conspiracy, but I agree with the Learned Director of Public Prosecutions that there was in fact independent evidence of the Applicant's participation in the conspiracy, on the basis of which the Chief Magistrate could have and evidently did determine that a prima facie case had been made out of the Applicant's involvement in a conspiracy to commit mail, wire and securities fraud.

[17] find it unnecessary to itemize the several pieces of evidence which were before the Chief Magistrate pointing to the involvement of the Applicant in a conspiracy to commit mail, wire and

securities fraud, apart from the hearsay and accomplice evidence of James Davis; not only because they steer one straight in the face when one examines the evidence which was before the Chief Magistrate; but also because any one of these pieces of evidence by itself, when juxtaposed with the considerable and compelling evidence of James Davis, would suffice to establish a prima facie case against the Applicant. There are portions of the evidence of James Davis himself which are not hearsay - such as the conversations and other communications between him and the Applicant which can connect the Applicant to and can convict the Applicant of conspiracy to commit mail, wire and securities fraud; and there is also independent evidence derived from the words and actions of the Applicant himself and from the words and actions of others to and concerning him, including the evidence of the Applicant's favourable comments on and apparent defence of SIBL in the face of concerns about and investigations of its operations, which a jury might find to be indicative of his involvement in a conspiracy to commit mail, wire and securities fraud.

[18] The first limb of both grounds one and two of the Applicant's challenge of the decision of the Chief Magistrate are based on the Applicant's contention that the conduct involved in the offences of mail and wire fraud, as well as securities fraud in the case of Count 1, would not constitute criminal offences in Antigua and Barbuda.

[19] In the authority to proceed issued by the Minister for External Affairs, he specified the common law offence of conspiracy to defraud as the offence under the laws of Antigua and Barbuda prohibiting the conduct involved in Count 1 of the Indictment and the offence of obtaining money by false pretences, contrary to the Larceny Act of Antigua and Barbuda, as the offence under the laws of Antigua and Barbuda which prohibits the conduct for which the Applicant was indicted in Counts 2 to 18 of the Indictment

[20] The Indictment - which forms part of the evidence in this case - sets out the several counts with which the Applicant has been charged and the alleged conduct giving rise to each of these counts and, looking at the facts alleged in relation to Count 1, there is no doubt that this conduct would justify and satisfy the offence of conspiracy to defraud under the common law in force in Antigua and Barbuda. The fact that the conspiracy for which the Applicant was charged in the United States of America was specific to committing mail, wire and securities fraud does not take away from the fact that the same conduct in Antigua and Barbuda would constitute the offence of conspiracy to defraud.

[21] Similarly, looking again at the affidavit of Gregg Costa detailing the conduct of the Applicant giving rise to the seven counts of wire fraud and the ten counts of mail fraud, the same conduct would be sufficient to warrant the charging and trial of a person in Antigua and Barbuda for the offence of obtaining money by false pretences. Although it would appear that the Chief Magistrate thought otherwise, in terms of the equivalency of the conduct giving rise to the mail and wire fraud charges in the United States with the conduct which could in Antigua and Barbuda give rise to charges for the offence of obtaining money by false pretences, the fact is that the evidence was before him on the basis of which he could and should have found that there were equivalent offences in Antigua and Barbuda to the offences for which the Applicant was indicted in the United States of America.

[22] did not - like Learned Counsel for the parties and indeed like the Learned Chief Magistrate - refer to cases in support of the proposition on which the above conclusion was reached, because it cannot be gainsaid that both the enabling legislation and the applicable cases make it clear that it

is not the name of the offence but the conduct prohibited by it which is important in determining equivalency.

[23] I pause to add that I was not impressed by the argument of Learned Queen's Counsel, Mr. Hamilton, to the effect that mail fraud is an offence in the United States of America, the essential element of which is the use of the US postal services, and that there can therefore be no equivalent offence in Antigua and Barbuda. This, it would appear, is tantamount to arguing, for instance, that there is no equivalent offence in Antigua and Barbuda (or say in Dominica, whose republican status makes the issue clearer) to the offence of treason in the United Kingdom, because the offence in the UK involves breaches of allegiance to the British Monarch, and since there is no equivalent monarch in Dominica then there can be no equivalent offence in Dominica to the offence of treason in the United Kingdom. But there is an equivalent offence in Dominica to the offence of treason in the United Kingdom and it would be constituted by conduct manifesting breaches of allegiance to the State of Dominica.

[24] In terms of the second limb of ground two, it is contended on behalf of the Applicant that the authority to proceed failed to specify (as mandated by section 9 (5) of the Act) the offences in respect of Counts 2 to 18 which are the equivalent offences in Antigua and Barbuda and that it was not lawfully open to the Magistrate to commit the Applicant for extradition in respect of the offences set forth in the said counts.

[25] On this particular issue, the judgment of the Chief Magistrate appears to be quite confusing. On page 4 of his judgment the Chief Magistrate said, "The Minister in the authority to proceed (ATP) in compliance with section 9 (5) described the equivalent offences in Antigua and Barbuda relative to

those in the United Sates indictment." He then proceeded to reproduce the relevant portion of the authority to proceed. Then at the bottom of page 4 through to the top of page 6 of his judgment he sets out the extradition crimes with which the Applicant was charged in the United States of America and the alleged equivalent crimes in Antigua and Barbuda. Then at page 55 he said, with reference to the offences of conspiracy to commit and committing mail fraud "The offences appear not to have any equivalent offence in the jurisdiction of Antigua and Barbuda. In any case no equivalent offence was identified in the authority to proceed." Then he concludes his judgment at page 68 by stating that in the circumstances and on the evidence he is satisfied that the Applicant should be extradited to the United States to be tried for the offences, including conspiracy to commit wire fraud and mail fraud.

[26] The fact is that, notwithstanding the confusion created by the Chief Magistrate's apparent inconsistency and eventual inaccuracy on this issue, the authority to proceed did specify the offences under the laws of Antigua and Barbuda which it appeared to the Minister for External Affairs would be constituted by equivalent conduct in Antigua and Barbuda, as is mandated by section 9 (5) of the Act. When one examines the authority to proceed, it would be apparent that the Minister set out sequentially the six offences charged in the Indictment and similarly set out sequentially the six offences under the laws of Antigua and Barbuda which appear to him to be constituted by equivalent conduct. Of course, the fact that there were twenty one counts in the Indictment does not take away from the fact that there were six offences charged in the Indictment, because there were seven counts of one offence and ten counts of another.

[27] The Minister's authority to proceed is however defective in that - based on the sequential presentation of US offences and equivalent Antigua and Barbuda offences - the equivalent Antigua

and Barbuda offence to the US offence of mail fraud is conspiracy to defraud. There can however be no equivalency of conduct constituted by the US offence of mail fraud and the Antigua and Barbuda offence of conspiracy to defraud; one would have to match conspiracy with conspiracy to find equivalency. The suggested equivalency (of mail fraud and conspiracy to defraud) may well have been the result of a presentational error contained in the authority to proceed, but the statutory requirement of specifying the offence which would be constituted by equivalent conduct cannot be relaxed on the basis of an apparent error in the authority to proceed. The second limb of ground two of the Applicant's challenge to the decision of the committal court therefore succeeds with respect to Counts 9 to 18 of the Indictment.

[28] In terms of the third limb of ground two - that no sufficient evidence was adduced before the Magistrate to justify the Applicant's committal - it would appear from its wording that it is a general ground referring to all twenty one counts of the Indictment, but it is clear from the context however that it is referring only to the evidence adduced in support of Counts 2 to 18. Having already upheld the Applicant's challenge to his committal on Counts 9 to 18, the third limb of ground two will accordingly be examined relative to Counts 2 to 8 only.

[29] It could hardly be justified to devote too much time to this challenge to the committal order. The fact is that there was ample evidence presented to the Chief Magistrate (in the several affidavits and the documents exhibited with them) to establish at least a prima facie case against the Applicant for wire fraud. In particular, there is the detailed affidavit evidence of James Davis – the former Chief Financial Officer of SIBL and its parent company, Stanford Financial Group - who was himself indicted on charges arising from the same set of facts as led to the charges against the Applicant, there is also the equally detailed affidavit evidence of Gregg Costa, Assistant United

States Attorney for the Southern District of Texas, and several pieces of documentary evidence implicating the Applicant in the offences for which he is charged, including the offence of wire fraud.

[30] The fourth limb of ground two of the Applicant's challenge of the committal order is that the Magistrate failed to satisfy himself that Counts 2 to 18 of the Indictment constituted extraditable offences within section 4 (1) (a) and (b) of the Act. Having previously upheld the challenge to the Applicant's committal on Counts 9 to 18, the fourth limb of ground two will be examined relative to Counts 2 to 8 only.

[31] This particular challenge to the committal order was very forcefully and extensively argued by Learned Queen's Counsel appearing for the Applicant and was not responded to by the Learned Director of Public Prosecutions nearly as forcefully and extensively as was the challenge. I am not sure whether this is on account of the Learned DPP regarding the challenge as so weak in substance as not to merit forceful and extensive treatment or whether he was simply outmatched by the force and extent of the challenge. Whichever of these two factors motivated the uncharacteristically lacklustre response of the DPP on that particular challenge, it is nonetheless the responsibility of this Court to determine whether the Chief Magistrate could have been and was apparently satisfied that Counts 2 to 8 of the Indictment constituted extraditable offences within section 4 (1) (a) and (b) of the Act.

[32] Learned Queen's Counsel submitted that Counts 2 to 8 of the Indictment were not extraditable offences because they did not conform with the definition of "extradition crime" in section 4 of the Act. It is necessary to set out in full the provisions of section 4 of the Act, which reads as follows:

"4. (1) In this Act, "extradition crime" means –

(a) conduct in the territory of a foreign or designated Commonwealth country which, if it occurred in Antigua and Barbuda would constitute an offence punishable with imprisonment for a term of twelve months, or any greater punishment, and which, however described in the law of the foreign state or Commonwealth country, is so punishable under that law;

(b) an extra-territorial offence against the law of a foreign state or designated Commonwealth country which is punishable under that law with imprisonment for a term of twelve months, or any greater punishment, and which satisfies –

(i) the condition specified in subsection (2); or

(ii) all the conditions specified in subsection (3).

"(2) The condition mentioned in subsection (1) (b) (i) is that in corresponding circumstances equivalent conduct would constitute an extra-territorial offence against the law of Antigua and Barbuda punishable with imprisonment for a term of 12 months, or any greater punishment.

"(3) The conditions mentioned in subsection (1) (b) (ii) are-

(a) that the foreign state or Commonwealth country bases its jurisdiction on the nationality of the offender;

(b) that the conduct constituting the offence occurred outside Antigua and Barbuda; and

(c) that, if it occurred in Antigua and Barbuda, it would constitute an offence under the law of Antigua and Barbuda punishable with imprisonment for a term of twelve months, or any greater punishment.

"(4) For the purposes of subsections (1) to (3) –

(a) the law of a foreign state or designated Commonwealth country includes the law or any part of it; and

(b) Conduct in a colony or dependency of a foreign state or of a designated Commonwealth country, or a vessel, aircraft or hovercraft of a foreign state or of such a country, shall be treated as if it were conduct in the territory of that state or country."

[33] In construing section 4, subsection (4) can safely be disregarded as having no relevance to the present case, as can subsection (3), because there is no issue in this case of jurisdiction being based on the nationality of the Applicant. On the facts of the present case, therefore, it comes down then to Learned Queen's Counsel submitting that, for an offence to be an extraditable offence, it must involve conduct in the territory of the United States which, if it occurred in Antigua and Barbuda, would constitute an offence punishable with imprisonment for a term of 12 months or more and which, however described in US law, is so punishable under US law and, in addition, that it is an extraterritorial offence against the law of the US which is punishable under US law with imprisonment for a term of 12 months or more and that in corresponding circumstances equivalent conduct would constitute an extraterritorial offence against the law of Antigua and Barbuda punishable with imprisonment for a term of 12 months or more. Moreover - Learned Queen's Counsel submits - the offence charged in Counts 2 to 8 is not an extraterritorial offence.

[34] This submission is premised on Learned Queen's Counsel giving a conjunctive rather than a disjunctive construction to sub subsections 4 (1) (a) and 4 (1) (b) of the Act, so that not only must there be "an equivalent offence" in Antigua and Barbuda to the offence in the United States with which the Applicant has been charged, and that both the offence in the United States and its equivalent in Antigua and Barbuda must carry a sentence of at least 12 months imprisonment, but also, the offence must be an extraterritorial offence against the laws of both the United States and Antigua and Barbuda carrying a sentence of at least 12 months imprisonment.

[35] This Court considers that a close examination of section 4 of the Act leads to confusion rather than clarity. First of all, the conjunction which would normally be placed between two or more clauses to connect the provisions thereof is strangely absent, so that there is no "and" or "or" between clause (a) and clause (b) to connect them and to solve the mystery as to whether they are to be construed

conjunctively or disjunctively. Granted one has heard of the "conjunctive or" and "the disjunctive and", but these are really products of the creative confusion crafted from time to time by members of the legal profession, but in normal parlance "and" means additionally and "or" means alternatively. The absence of either "and" or "or" in section 4 (1) therefore has the effect of leaving it to conjecture or construction whether the provisions in clauses (a) and (b) of section 4 (1) are to be treated as additional or alternative, each to the other.

[36] The second factor which renders section 4 confusing is the fact that, when you consider that subsection (1) (a) provides for both the offence charged in the requesting country and the equivalent local offence to be punishable by at least 12 months imprisonment, then - if the two clauses are to be construed conjunctively - why would subsection (1) (b) also require the extraterritorial offence to be punishable in both countries by a minimum of 12 months in prison. The repetition of the requirement of the offences in both countries carrying a minimum of 12 months imprisonment would, if the clauses are conjunctive, be not only unnecessary but also unhelpful. If, on the other hand, the two clauses are construed as disjunctive then it would be unnecessary to have clause (a) at all, because satisfaction of the requirements of clause (b) would mean that the requirements of clause (a) would necessarily have been satisfied as well.

[37] I find it unnecessary though to resolve this conundrum, because whether the sub subsections are construed as conjunctive or disjunctive will make no difference in the present case, because I consider that the offence with which the Applicant was charged in Counts 2 to 8 of the Indictment, apart from prohibiting conduct which would constitute an offence in Antigua and Barbuda, is also an extraterritorial offence in both the United States of America and in Antigua and Barbuda.

[38] The issue of the conduct prohibited in the United States of America in the offence charged in Counts 2 to 8 being conduct which would also be prohibited under the laws of Antigua and Barbuda has already been addressed and need not be rehashed. The issue of the offence being extraterritorial in both in the United States of America and in Antigua and Barbuda needs however to be addressed.

[39] The term "extraterritorial" connotes application beyond the geographic limits of a particular territory, so that an extraterritorial offence is an offence which has reach beyond national borders. The offence charged in Counts 2 to 8 of the Indictment is wire fraud, which offence involves – according to the Indictment - making and causing to be made "false and misleading representations in promotional materials, periodic reports, newsletters, emails sent by mail and wire transmissions in interstate commerce to investors and others, and in conversations, presentations and meetings with investors and others, including the following: "False Statements Regarding the Value of SIBL's Finances ... False Statements Regarding SIBL s Investment Strategy and Use of Investor's' Funds ... False Statements Regarding the Management of Investors' Funds .. False Statements Regarding Oversight by Antiguan Regulators". It would no doubt be difficult, indeed well nigh impossible, for anyone to argue that this offence would not have reach beyond the national borders of the United States of America.

[40] As to the "equivalent offence" in Antigua and Barbuda of obtaining money by false pretences, the nature of this offence would also render it difficult to argue that it would not have reach beyond the borders of Antigua and Barbuda, and there is nothing in the Larceny Act of Antigua and Barbuda, or in section 27 of the Act in particular, which could lead one to conclude that the offence is strictly local in its application. In fact, looking at section 27 of the Larceny Act and looking at the meaning

of "valuable security" in section 2 (1) of the Act, it becomes clear that this particular section of the Act, if not the Act as a whole, has extraterritorial application.

[41] It may be useful to set out in full both section 27(a) of the Larceny Act and the definition of "valuable security" in section 2 (1) of that Act, so that one is left in no doubt as to their meaning and effect.

Section 27 of the Larceny Act reads: "Every person who, by any false pretence-

> (a) with intent to defraud, obtains from any other person any chattel, money, or valuable security, or causes or procures any money to be paid, or any chattel or valuable security to be delivered, to himself or to any person for the use or benefit or on account of himself or any other person; or
>
> (b) with intent to defraud or injure any other person, fraudulently causes or induces any other person-
>
> (i) to execute, make, accept, endorse, or destroy, the whole or any part of any valuable security; or
>
> (ii) to write, impress, or affix, his name or the name of any other person, or the seal of any body corporate or society, upon any paper or parchment in order that it may be afterwards made or converted into, or used or dealt with as, a valuable security.

shall be guilty of a misdemeanor, and on conviction thereof liable to imprisonment with or without hard labour for any term not exceeding five years."

[42] Section 2 (1) reads: "valuable security includes any writing entitling or evidencing the title of any person to any share or interest in any public stock, annuity, fund, or debt of any part of Her Majesty's dominions, or of any foreign state, or in any stock, annuity, fund or debt of any body corporate, company or society, whether within or without Her Majesty's dominions, or to any deposit in any bank, and also includes any scrip, debenture, bill, note, warrant, order, or other security for payment of money, or any accountable receipt, release, or discharge, or any receipt or

other instrument evidencing the payment of money, or the delivery of any chattel personal, and any document of title to lands or goods as hereinbefore defined."

[43] It is to be noted that Learned Queen's Counsel - in his oral submission at the hearing of the habeas corpus application - put forth the converse proposition, that there is nothing in the Larceny Act from which it could be construed that it was ever intended to have extraterritorial effect and that the Act doesn't say so expressly, as required. There is, however, nothing which requires the Larceny Act to say that the Act in general or the section in particular is intended to have extraterritorial effect. The reliance by Learned Queen's Counsel on the case of Somchi Liangsiriprasert v Government of the United States of America to support his position is - in the Court's view – misplaced, because the issue addressed by the Privy Council in that case centered on whether colonial legislation could have extraterritorial application given the limited status of both the colony and its legislature What's more significant in Somchi are the expressions from the Lords of Appeal of the Privy Council about the changing views on the territorial or extraterritorial application of criminal offences. A quotation taken from page 249 of the report of the case at [1990] 1 Appeal Cases is indicative of new judicial attitudes to the issue of the extraterritorial application of criminal offences: "In principle, however, we are not unsympathetic to the view, expressed in recent cases, that the territorial basis for jurisdiction is becoming outmoded"

[44] In our own region and, more particularly, in territories like Antigua and Barbuda whose economies are based on the services sector, including international financial services, the policy of the law has to be that crime, especially crime which might involve persons and entities from different territories operating in several jurisdictions simultaneously, cannot be restricted to conduct taking place solely within the geographical space of a single nation state (or otherwise limited territorially) and must be treated as having extraterritorial application. The comity of nations - the preservation of which is

the foundation of the territoriality of crime - is bound to be able to accommodate in this modern era the internationalization of commerce and the burgeoning of e-commerce and their natural offspring of extraterritorial crime.

45] It is the determination of this Court that the offence of wire fraud with which the Applicant was charged in the United States of America and the offence of obtaining money by false pretences, which is the "equivalent offence" in Antigua and Barbuda to the US offence of wire fraud, are both extraterritorial offences. The Chief Magistrate did not err therefore when he treated the offence charged in the US and its Antigua and Barbuda equivalent as extradition crimes.

[46] The determination made with respect to the fourth limb of ground two of the Applicant's challenge also disposes of the fifth and final limb of ground two, so that ground three can now be addressed.

[47] The first limb of ground three of the Applicant's challenge is that the Learned Magistrate could not lawfully commit the Applicant to be extradited as no sufficient evidence to justify his committal was adduced.

[48] This challenge by the Applicant to the Chief Magistrate's judgment collapses under the mountain of evidence revealed by the Chief Magistrate on pages 39 to 52 of his judgment. The Chief Magistrate presented a detailed summary of the evidence contained in affidavits and other documentary evidence which were before him and which contained sufficient evidence of the Applicant's involvement in a conspiracy to obstruct the Securities Exchange Commission (SEC) investigation to justify the Applicant's committal on Count 19 of the Indictment.

9] The second limb of ground three is that the offence specified in the authority to proceed, that is, "conspiracy to pervert the course of justice", is of a different genus and is not the equivalent offence under the Laws of Antigua and Barbuda. That ground three is headed Count 19 would indicate that the Applicant's contention is that the offences of conspiracy to obstruct SEC investigation and conspiracy to pervert the course of public justice are not of the same genus, or (in other words) that they are different types of offences.

50] When determining the equivalency of offences for extradition purposes, the issue is not the relatedness of the nomenclature of the offences but rather the relatedness of the conduct involved in the offences. A perusal of the Indictment would indicate that the conduct alleged with respect to the offence of conspiracy to obstruct SEC investigation is essentially corruptly influencing, obstructing and impeding and/or endeavouring to influence, obstruct and impede an investigation by a department or agency of the United States of America into the affairs of SIBL and the Stanford Financial Group (including the efforts to ascertain SIBL's true financial condition and the content and value of its investment portfolio) in an effort to, among other things, perpetuate an ongoing fraud, prevent the detection of it and continue to receive economic benefits from it.

[51] It is the view of this Court that if a person conspired with others to do the things just described, then that person could properly be charged in Antigua and Barbuda with the offence of conspiring to pervert the course of public justice. Indeed, I take the view that the US offence is not just of the same genus as the Antigua and Barbuda offence, but that the two offences are of the same species within that genus. This then disposes of the second limb of ground three of the Applicant's challenge, as well the third and fifth limbs of ground three which are kindred to the second limb.

[52] This leaves for the Court's determination the fourth and final limb of ground three of the Applicant's challenge in which the Applicant contends that, on the assumption that an equivalent offence existed in Antigua and Barbuda, the Learned Magistrate failed to make a determination as to whether such offence had extraterritorial application. Put into context, what is being contended here is that, assuming that an equivalent offence existed in Antigua and Barbuda to the offence charged in Count 19 of the Indictment of conspiracy to obstruct SEC investigation, then the Learned Magistrate failed to make a determination as to whether the equivalent offence has extraterritorial application.

[53] Of course, this Court has already determined that the Antigua and Barbuda offence of conspiracy to pervert the course of public justice prohibits the conduct alleged in Count 19 of the US Indictment and is therefore an "equivalent offence", so the question is whether the Chief Magistrate made a determination that the offence of conspiracy to pervert the course of public justice has extraterritorial application.

[54] It would be noted that the style and presentation of the judgment of the Chief Magistrate are not such as would ~~also~~ always enable one to locate exactly where the Chief Magistrate made a particular determination, but the fact is that – for the reasons given in paragraph 44 of the present judgment – the offence of conspiracy to pervert the course of public justice must be treated as having extraterritorial application and the committal order made against the Applicant by the Chief Magistrate can not therefore be faulted on this ground.

[55] This then takes us into ground four of the Applicant's challenge. In the first limb of this ground it is contended that there is no equivalent offence under the Laws of Antigua and Barbuda to the US offence of obstruction of SEC investigation.

[56] Much of what was said in paragraphs 50 and 51 of this judgment in addressing the second limb of ground three of the Applicant's challenge applies equally to this challenge by the Applicant. I do not find it necessary therefore to repeat the contents of these paragraphs but only to indicate that, for the reasons stated there, this Court determines that the Antigua and Barbuda offence of perverting the course of public justice would be constituted by equivalent conduct in Antigua and Barbuda to the conduct for which the Applicant was charged in Count 20 of the Indictment.

[57] As to the second limb of ground four, if it is that the conduct alleged as constituting the offence of obstruction of SEC investigation is equivalent conduct to the conduct which would constitute the Antigua and Barbuda offence of perverting the course of public justice, then the equivalent conduct must of necessity be unlawful under the Laws of Antigua and Barbuda. Nothing further needs to be said therefore on this challenge.

[58] The third limb of ground four is that the Minister failed to specify in the authority to proceed the equivalent offence under the Laws of Antigua and Barbuda. This is a rather curious submission in that in the second limb of ground three the Applicant contended that: "The offence specified in the Authority to Proceed that is 'conspiracy to pervert the course of public justice' is of a different genus and is not the equivalent offence under the Laws of Antigua and Barbuda". Of course, the Applicant's recognition of the offence which he placed in quotation marks of "conspiracy to pervert the course of public justice" as being the equivalent offence specified in the authority to proceed is

as a result of the Minister having sequentially set out the offences charged in the Indictment and then having set out in like sequence the equivalent offences in Antigua and Barbuda; conspiracy to pervert the course of public justice was fourth in the sequence of equivalent offences in Antigua and Barbuda, matching with the US offence of conspiracy to obstruct SEC investigation which was fourth in its sequence. In the same way, the Antigua and Barbuda offence of perverting the course of public justice was set out in sequence as the match to and therefore the equivalent of the US offence of obstruction of SEC investigation.

[59] I do not regard this as an issue meriting further consideration, except to say that the basis on which the Applicant's challenge with respect to Counts 9 to 18 of the Indictment has succeeded is that the equivalent offence specified in the authority to proceed - as determined by the sequential presentation of US offence and equivalent Antigua and Barbuda offence - was the offence of conspiracy to defraud which could not, in the Court's view, be regarded as an equivalent to the offence of mail fraud. The outcome would have been different if the offence of mail fraud had been matched with the second Antigua and Barbuda offence in the sequence, that is, the offence of obtaining money by false pretenses.

[60] In terms of the fourth limb of ground four, again I can do no better than to repeat once more the earlier-repeated paragraph 44 of this judgment and to conclude in a similar vein as I did in paragraph 54 of the judgment that the offence of perverting the course of public justice must be treated as having extraterritorial application and the committal order made against the Applicant by the Chief Magistrate cannot therefore be faulted on the basis of the challenge contained in the fourth limb of ground four.

[61] As to the final limb of ground four of the Applicant's challenge, that there was no sufficient evidence before the Magistrate to justify the committal of the Applicant, I repeat paragraph 48 hereof, only substituting the words "the obstruction of" for the words "a conspiracy to obstruct" and the number "20" for the number "19".

[62] The Applicant's challenge in the first limb of ground five is that the evidence before the Learned Magistrate was entirely hearsay and accomplice evidence unsupported by any independent evidence of the Applicant's participation in the conspiracy. This challenge is with respect to Count 21 of the Indictment which charges the Applicant with the offence of conspiracy to commit money laundering - an offence which is identical in name and nature under Title 18, United States Code, Section 1956 (h) and under the Money Laundering (Prevention) Act, 1996 of Antigua and Barbuda, Sections 2 and 5.

[63] According to page 45 of the Indictment, proof of Count 21 entails establishing at the trial of the matter that the Applicant and others did knowingly and intentionally conspire, combine, confederate and agree with each other, with James Davis, and with others, known and unknown, to transport, transmit or transfer a monetary instrument and funds from a place in the United States to or through a place outside the United States, or to a place in the United States from or through a place outside the United States, with the intent to promote the carrying on of specified unlawful activity, that is, wire fraud, mail fraud and securities fraud. Pages 47 and 48 of the Indictment set out the manner and means by which the conspirators sought to accomplish the objects of the conspiracy, which included (among other activities) the making of thousands of dollars of corrupt payments to the Applicant by Robert Allen Stanford and his affiliates and the transporting of the

funds by the Applicant into the United States and depositing them at bank accounts in the United States.

[64] In the affidavit of the Assistant United States Attorney earlier referred to, Mr. Costa swore at paragraphs 39 to 41 that the evidence at the trial will include the testimony of James Davis, the testimony of another executive of an SIBL-related entity, the testimony of SIBL investors, the testimony of custodians of records from domestic financial institutions and documentary evidence corroborating the testimony. All of this evidence was before the Chief Magistrate and it was not entirely hearsay and accomplice evidence but was supported by independent evidence of the Applicant's participation in the conspiracy. The independent supportive evidence before the Chief Magistrate included affidavit evidence of Special Agent Kalford Young and the bank records of the Applicant (and other documents) exhibited with Special Agent Young's affidavit.

[65] This also suffices to dispose of the second limb of ground five of the Applicant's challenge that the Learned Magistrate could not properly find that the evidence adduced was sufficient to warrant the Applicant's committal for trial. Regard must of course be had to the fact that the Magistrate only had to find that the evidence was sufficient to establish, not the guilt of the Applicant, but only a prima facie case against him.

[66] This then concludes the challenges by the Applicant to the judgment of the Chief Magistrate. The judicial destination having been reached, the Order of Certiorari applied for by the Applicant to quash the Committal Order of the Chief Magistrate is denied; the leave sought by the Applicant to apply for the issue of a Writ of Habeas Corpus ad subjiciendum is denied; the Committal Order made on 26th April 2010 by the then Chief Magistrate, Mr. Ivan Walters, is upheld with respect to

eleven of the twenty one counts on which the Applicant was indicted; and Mr. Leroy King - the Director of the Financial Services Regulatory Commission of Antigua and Barbuda from 2003 to 2009 - remains committed to Her Majesty's Prison to await the decision of the Minister with responsibility for External Affairs to return him to the United States of America to stand trial for one count of conspiracy to commit mail, wire and securities fraud, seven counts of wire fraud, one count of conspiracy to obstruct SEC investigation, one count of obstruction of SEC investigation and one count of conspiracy to commit money laundering.

[67] It remains only for me to thank Learned Queen's Counsel, Mr. Dane Hamilton, and the Learned Director of Prosecutions, Mr. Anthony Armstrong, along with the Chief Magistrate, Mr. Ivan Walters, whose industry and enterprise rendered it unnecessary for me to undertake afresh the task of researching the myriad of statutory and judicial authorities which did illuminate the pathway along which this judgment proceeded to its eventual destination.

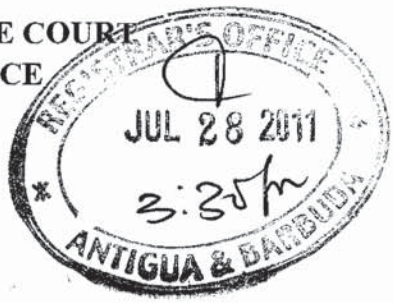
CERTIFIED TO BE A TRUE
COPY OF THE ORIGINAL

REGISTRAR
HIGH COURT
ANTIGUA & BARBUDA

DATE: 2/5/2012

Mario Michel
High Court Judge

THE EASTERN CARIBBEAN SUPREME COURT
IN THE HIGH COURT OF JUSTICE
ANTIGUA AND BARBUDA



Claim No. ANUHCV 2011/0478

BETWEEN:

STANFORD INTERNATIONAL BANK LIMITED (IN LIQUIDATION)
(Acting by and through its Joint Liquidators, Marcus A. Wide and Hugh Dickson)
Applicant/Claimant

and

(1) ROBERT ALLEN STANFORD
(2) ANDREA STOELKER
(3) STANFORD DEVELOPMENT COMPANY LIMITED
(4) MAIDEN ISLAND HOLDINGS LIMITED
(5) GILBERTS RESORT DEVELOPMENT HOLDINGS LIMITED
(6) STANFORD HOTEL PROPERTIES LIMITED

Respondents/Defendants

ORDER

BEFORE: **The Honourable Justice Jennifer Remy**

DATE: **The 28th day of July, 2011**

ENTERED: **The [28th] day of July, 2011**

UPON READING the Affidavits of Marcus A. Wide sworn on 15th July 2011 and 18th July, 2011 and the Affidavit of Brian D'Ornellas sworn on 25th July, 2011 and the Affidavits of Mark McDonald sworn on 25th July, 2011 and 27th July, 2011 and the Written Submissions in support filed on the 22nd July, 2011 day of July, 2011,

Exhibit B
29

UPON HEARING Mr Sydney Bennett QC, Ms Nicolette M. Doherty and Mr Craig Christopher as instructed by the firm of Martin Kenney & Co. of the British Virgin Islands, represented by Mr Jamie James, Mr Andrew Gilliland, acting for the Joint Liquidators represented by William Gunn.

IT IS ORDERED THAT the Application is hereby granted in the terms more particularly set out below as against the 1st – 6th Respondents.

PENAL NOTICE

IF YOU (a) ROBERT ALLEN STANFORD, (b) ANDREA STOELKER, (c) STANFORD DEVELOPMENT COMPANY LIMITED (d) MAIDEN ISLAND HOLDINGS LIMITED, (e) GILBERTS RESORT DEVELOPMENT HOLDINGS LIMITED, (f) STANFORD HOTEL PROPERTIES LIMITED OR YOUR AGENTS DISOBEY THESE ORDERS YOU MAY BE HELD TO BE IN CONTEMPT OF COURT AND MAY BE IMPRISONED, FINED OR HAVE YOUR ASSETS SEIZED.

ANY OTHER PERSON WHO KNOWS OF THIS ORDER AND DOES ANYTHING WHICH HELPS OR PERMITS EACH AND/OR ALL OF THE DEFENDANTS TO BREACH THE TERMS OF THIS ORDER MAY ALSO BE HELD TO BE IN CONTEMPT OF COURT AND MAY BE IMPRISONED, FINED OR HAVE THEIR ASSETS SEIZED.

THIS ORDER

1. This freezing order or, alternatively, this Subject Matter Preservation Order ("SMPO"), is made against

(i) **Robert Allen Stanford** of Barnacle Point, St George, Antigua (but held in pre-trial detention at the Federal Medical Center of the Butner Correctional Complex, Butner, North Carolina under Federal Bureau of Prisons No. 35017-183);

(ii) **Andrea Stoelker** of Cedar Valley Springs, St. John's, Antigua;

(iii) **Stanford Development Company Limited** of Ann Rebecca House, Factory Road, St. John's, Antigua;

(iv) **Maiden Island Holdings Limited** of Ann Rebecca House, Factory Road, St. John's, Antigua;

(v) **Gilberts Resort Development Holdings Limited** of Ann Rebecca House, Factory Road, St. John's, Antigua; and

(vi) **Stanford Hotel Properties Limited** of Cort and Cort Chambers, 44 Church Street, St John's, Antigua.

2. There will be a further hearing in respect of this Order on the 25th day of August, 2011.

3. Unless otherwise stated references in the Order to "Respondents" means all of them. This Order is effective against any Respondent on whom it is served, or who is given notice of it.

4. This Order shall expire at 9:00a.m. On the 25th day of August, 2011 unless the currency of this Order is continued by a further Order of this Court. The application underlying this Order shall be considered further at the hearing returnable on the 25th day of August, 2011.

5. **IT IS ORDERED** as follows:

i. That this matter be heard on an urgent basis.

ii. The First and Second Respondents be restrained, whether by themselves, their servants or agents or any of them or otherwise howsoever from taking,

transferring, leasing, selling or otherwise disposing of, or taking, any of the properties as set out in Schedules A – D attached to this Order.

iii. (1) The First and Second Respondents be restrained from removing from Antigua any of their assets which are in Antigua up to the value of US$1,302,711,942. This clause applies to all of the First and Second Respondents' assets — whether or not they are in their own names and whether they are solely or jointly owned, or whether held for them by nominees or in trust for them. For the purposes of this Order, the First and Second Respondents' assets include (but are not limited to) any asset in which they have a legal and/or beneficial interest; and/or the power — directly or indirectly — to dispose or deal with as if it were their own. The First and Second Respondents are to be regarded as having such power if a third party holds or controls the asset in accordance with either or both of the First and Second Respondents' direct or indirect instructions.

(2) If the total value free of charges or other securities of the First or Second Respondents' assets in Antigua and Barbuda exceeds US$1,302,711,942, the First or Second Respondent may remove any of those assets from Antigua and Barbuda or may dispose of or deal with them so long as the total unencumbered value of the First or Second Respondents' assets still in Antigua and Barbuda remains above US$1,302,711,942.

iv. The Third Respondent be restrained and injuncted by itself, its employees, servants or agents or howsoever otherwise from mortgaging, leasing, selling, assigning or otherwise alienating, encumbering, parting or dealing with all, or any part of, the properties listed at Schedule A to this Application, whether by sale, gift, conveyance, pledge, hypothecation or howsoever otherwise until the outcome of the trial of this action or further order, SAVE AND EXCEPT, that the Third Respondent may enter into the sale of any of the properties listed in Schedule A on the conditions that any

such sale(s) be (i) for fair market value to arm's length and *bona fide* purchasers, (ii) in the ordinary course of the Third Respondent's business; (iii) that the Applicant is provided with written notice of any such proposed sale and gives its written approval in the advance of any such sale; (iv) and that any proceeds from any such sales be paid by any purchaser directly into Court;

v. The Fourth Respondent be restrained and injuncted by itself, its employees, servants or agents or howsoever otherwise from mortgaging, leasing, selling, assigning or otherwise alienating, encumbering, parting or dealing with all or any part of the properties listed at Schedule B to this Application, whether by sale, gift, conveyance, pledge, hypothecation or howsoever otherwise until the outcome of the trial of this action or further order, SAVE AND EXCEPT, that the Fourth Respondent may enter into the sale of any of the properties listed in Schedule B on the conditions that any such sale(s) be (i) for fair market value to arm's length and *bona fide* purchasers, (ii) in the ordinary course of the Fourth Respondent's business; (iii) that the Applicant is provided with written notice of any such proposed sale and gives its written approval in advance of any such sale; (iv) and that any proceeds from any such sales be paid by any purchaser directly into Court.

vi. The Fifth Respondent be restrained and injuncted by itself, its employees, servants or agents or howsoever otherwise from mortgaging, leasing, selling, assigning or otherwise alienating, encumbering, parting or dealing with all or any part of the properties listed at Schedule C to this Application, whether by sale, gift, conveyance, pledge, hypothecation or howsoever otherwise until the outcome of the trial of this action or further order, SAVE AND EXCEPT, that the Fifth Respondent may enter into the sale of any of the properties listed in Schedule C on the conditions that any such sale(s) be (i) for fair market value to arm's length and *bona fide* purchasers, (ii) in the ordinary course of the Fifth Respondent's business; (iii) that the Applicant is

provided with written notice of any such proposed sale and gives its written approval in advance of any such sale; (iv) and that any proceeds from any such sales be paid by any purchaser directly into Court.

vii. The Sixth Respondent be restrained and injuncted by itself, its employees, servants or agents or howsoever otherwise from mortgaging, leasing, selling, assigning or otherwise alienating, encumbering, parting or dealing with all or any part of the properties listed at Schedule D to this Application, whether by sale, gift, conveyance, pledge, hypothecation or howsoever otherwise until the outcome of the trial of this action or further order, SAVE AND EXCEPT, that the Sixth Respondent may enter into the sale of any of the properties listed in Schedule D on the conditions that any such sale(s) be (i) for fair market value to arm's length and *bona fide* purchasers, (ii) in the ordinary course of the Sixth Respondent's business; (iii) that the Applicant is provided with notice of any such proposed sale and gives its written approval in advance of such sale; (iv) and that any proceeds from any such sales be paid by any purchaser into Court.

viii. That the Third to Sixth Respondents (the "Company Respondents") be restrained and injuncted by themselves, their its employees, servants or agents or howsoever otherwise from mortgaging, leasing, selling, assigning or otherwise alienating, encumbering, parting or dealing with any moveable assets found on any of the properties listed in Schedule A to D and that each of the Company Respondents shall prepare a detailed inventory of such moveable assets and provide the same to Applicant's Counsel verified by a director of each of the respective Company Respondent's by Affidavit (the "Inventory" or "Inventories") SAVE AND EXCEPT, that after the provision of the respective inventories any of the Company Respondents may enter into the sale of any moveable assets found on any of the properties listed in Schedules A - D on the conditions that any such sale(s) be (i) for fair market value to arm's length and *bona fide* purchasers, (ii) in the ordinary course of

the relevant Company Respondent's business; (iii) that the Applicant is provided with written notice of any such proposed sale and gives its written approval in advance of such sale; (iv) that any proceeds from any such sales be paid by the purchaser directly into Court; and (v) that the Inventories shall have been provided.

5. The prohibition against the transfer or diminution of assets as set forth above includes the assets listed at Schedule "A" to this Order.

6. The Applicant shall have permission to:

(a) serve this Order and associated Court Process outside the jurisdiction as against the First Respondent in the United States of America. The period in which the First Respondent must return the Acknowledgement of Service is 35 days after the date of service of the Statement of Claim and for the Defence 56 days after the service of the Statement of Claim; and

(b) If the Applicant is unable to effect service of this order and associated Court Process within Antigua and Barbuda, the Applicant shall have permission to serve this Order and associated Court Process outside the jurisdiction as against the Second Respondent in Jamaica. The period in which the Second Respondent must return the Acknowledgement of Service is 35 days after the date of service of the Statement of Claim and for the Defence 42 days after the service of the Statement of Claim.

7. The Applicant is permitted to serve its Statement of Claim in accordance with CPR Rule 8.2 within 14 days of the date of this Order.

PROVISION OF INFORMATION

7. Unless Clause [] herein applies, the Respondents must, within 72 hours of service of this Order, and to the best of their respective abilities, each inform the Applicant's lawyers in writing of all their assets within Antigua and Barbuda exceeding US$2,000 in value (the

"Minimum Value Figure"), whether in their own names or not, and whether solely or jointly owned, and give their value, location and details of all such assets. Where the assets include moveable assets and in particular building materials such as stone for building, marble, timber of fixtures and fitting such as taps, floor tiles, carpet or furniture, the Minimum Value Figure shall apply to the aggregate value of such moveable assets within a particular category.

8. If the provision of any of this information is likely to incriminate the Respondents, or any of them, they may be entitled to refuse to provide it, but it is recommended that the Respondents take legal advice before refusing to provide the information. Wrongful refusal to provide the information is contempt of court and may render the Respondents, or any of them, liable to be imprisoned, fined or have their assets seized. The information to be provided pursuant to this Clause [] of the Order includes:

(i) All correspondence, documentation, electronic funds transfer records, bank statements and like documentation relating to the transfer or receipt of assets or value of Stanford International Bank Limited, or assets of any company affiliated with Stanford International Bank Limited, or beneficially owned or controlled by the First Respondent within the custody and control of the Respondents to this Order, or capable of being procured by the Respondents to this Order;

(ii) Details of bank accounts of origin and the destination bank accounts from which, or to which consideration relating to the requisition or disposal of the assets identified in Schedules "A" to "D" of this Order were purchased and/or disposed of by the Respondents; and

(iii) Whether the Respondents' respective and purported interests in the assets defined in Schedule "A" to D of this Order have been assigned or otherwise transferred, loaned or charged to any third party. If so, full details of the terms of that assignment, transfer, loan or charge and:

(a) the value and nature of the consideration paid for that assignment;

(b) full details of the assignee including anti-money laundering and/or know your client due diligence conducted by any of the Respondents to this Order (including any such due diligence carried out by professional advisors on any of the Respondents' behalf); and

(c) full details regarding the identity and location of the beneficial owners of the assignee and of the directors of record of any such assignee, transferee, borrower or chargee if applicable.

9. Within 21 working days after being served with this Order, each of the Respondents must swear and serve on the Applicant's solicitors affidavits setting out and verifying the truth, accuracy and completeness of the above information (the "Disclosure Affidavit(s)"); and in the event that no information is available to the particular Respondent in certain of the information categories in respect of which disclosure has been ordered, a description of the reasons for its non-availability.

EXCEPTIONS TO THIS ORDER

10. This Order does not prohibit the Respondents from spending $2,500 a week each towards their ordinary living or commercial operations expenses and also a reasonable sum a week on legal advice and representation. But before spending any money the Respondents must tell the Applicant's legal representatives in writing where the money is to come from.

11. (1) The Respondents may agree with the Applicant's legal representatives that this Order should be varied in any respect, but any such agreement must be in writing.

(2) This Order does not prohibit the Respondents from dealing with or disposing of any of his assets in the ordinary and proper course of business.

(3) The Respondents may agree with the Applicant's legal representatives that the above spending limits should be increased or that this Order should be varied in any other respect, but any agreement must be in writing.

(4) This Order shall cease to have effect if the Respondents make provision for security in the approximate sum of US$1,302,711,942 or by an alternative method agreed upon with the Applicant's legal representatives.

COSTS

12. The costs of this Application are reserved to the judge hearing the Application at the hearing returnable on the date set out in clause 2 above.

VARIATION OR DISCHARGE OF THIS ORDER

13. Anyone served with, or notified of, this Order may apply to the Court at any time to vary or discharge the order (or so much of it as affects that person/company), but they must first serve all of their Affidavit evidence and Written Submissions in support of an application to vary or discharge this Order upon the Applicant's solicitors not less than three (3) clear days before the return date therefore.

INTERPRETATION OF THIS ORDER

14. A Respondent who is an individual and who is ordered not to do something must not do it himself, or in any other way. He must not do it through others acting on his behalf, or on his instructions, or with his encouragement.

15. A Respondent which is not an individual and which is ordered not to do something must not do itself or by its directors, officers, partners, employees or agents or in any other way.

PARTIES OTHER THAN THE APPLICANT AND THE RESPONDENTS

16. **Effect of this Order:** It is a contempt of Court for any person notified of this Order knowingly to assist in, or permit a breach of, this Order. Any person doing so may be imprisoned, fined or have their assets seized. In the case of third party companies, their directors may be imprisoned, fined or have their assets seized. If any third party over whom this Court has jurisdiction, and who is notified of the terms of this Order, pays value owed or held by it to any of the Respondents, such third party shall be in violation of the terms hereof. Notwithstanding the forgoing, any such third party obligor or holder of assets is at liberty to pay any value owed by it to any of the Respondents, into Court herein.

17. **Set off by banks:** This Order does not prevent any bank from exercising any right of set-off it may have in respect of any facility which it may have to the Respondents before it was notified of this Order.

18. **Withdrawals by the Respondents:** No bank need enquire as to the application or proposed application of any money withdrawn by the Respondents if the withdrawal appears to be permitted by this Order.

19. **Persons located outside Antigua and Barbuda:** Except as provided below, the terms of this Order do not affect or concern anyone outside the jurisdiction of this Court:

(i) the Respondents or any of their officers or agents appoint by power of attorney; or

(ii) any person who:

(a) is subject to the jurisdiction of this Court;

(b) has been given written notice of this Order at his residence or place of business within the jurisdiction of this Court and;

(c) is able to prevent acts or omissions outside the jurisdiction of this Court which constitute or assist in a breach of the terms of this Order; and

(iii) any person, only to the extent that his Order is declared enforceable by, or is enforced by, a Court in that country or state.

20. **Communications with the Court and with the Applicant's Counsel**

(i) All communications to the Court about this Order should be sent to: High Court Registry, Parliament Drive, Saint John's, Antigua, Tel: 268-462-3929, Fax: 268-462-3929; **and to**

(ii) Nicolette M. Doherty, P.O. Box W1161, Island House, Newgate Street, St John's, Antigua, Tel: 268-462-4468/9, Fax: 268-561-1056

DATED the 28th day of July 2011.

BY THE COURT

REGISTRAR

Schedule "A"

NO.	Registration Sec.	Block	Parcel	Proprietor
1	Cassada Gardens & New Winthropes	42 1894 A	1148	SDC
2	Cassada Gardens & New Winthropes	42 1894 A	1149	SDC
3	Cassada Gardens & New Winthropes	42 1894 A	1164	SDC
4	Cassada Gardens & New Winthropes	42 1894 A	1175	SDC
5	Cassada Gardens & New Winthropes	42 1894 A	1176	SDC
6	Cassada Gardens & New Winthropes	42 1894 A	1177	SDC
7	Cassada Gardens & New Winthropes	42 1894 A	1178	SDC
8	Cassada Gardens & New Winthropes	42 1894 A	1179	SDC
9	Cassada Gardens & New Winthropes	42 1894 A	1200	SDC
10	Cassada Gardens & New Winthropes	42 1894 A	1201	SDC
11	Cassada Gardens & New Winthropes	42 1894 A	1202	SDC
12	Cassada Gardens & New Winthropes	42 1894 A	1204	SDC
13	Barnes Hill & Coolidge	41 2294 A	118	SDC
14	Barnes Hill & Coolidge	41 2294 A	100	SDC
15	Barnes Hill &	41 2294 A	96	SDC

	Coolidge			
16	Barnes Hill & Coolidge	41 2294 A	74	SDC
17	Barnes Hill & Coolidge	41 2294 A	72	SDC
18	Barnes Hill & Coolidge	41 2294 A	71	SDC
19	Barnes Hill & Coolidge	41 2294 A	70	SDC
20	Barnes Hill & Coolidge	41 2294 A	69	SDC
21	Barnes Hill & Coolidge	41 2294 A	57	SDC
22	Barnes Hill & Coolidge	41 2294 A	45	SDC
23	Barnes Hill & Coolidge	41 2294 A	52	SDC
24	Barnes Hill & Coolidge	41 2294 A	54	SDC
25	Barnes Hill & Coolidge	41 2294 A	56	SDC
26	Barnes Hill & Coolidge	41 2195B	307	SDC
27	Barnes Hill & Coolidge	41 2195 B	287	SDC
28	Barnes Hill & Coolidge	41 2094 A	486	SDC
29	Barnes Hill & Coolidge	41 2094 A	487	SDC

Schedule B

NO.	Registration Sec.	Block	Parcel	Proprietor
1	Barnes Hill & Coolidge	41 2294 A	113	Maiden Island Holdings Ltd.
2	Crabbs Peninsula & neighbouring Islands	21 2692 A	8	Maiden Island Holdings Ltd.
3	Crabbs Peninsula & neighbouring Islands	21 2692 A	6	Maiden Island Holdings Ltd.
4	Barnes Hill & Coolidge	41 2595 A	2	Maiden Island Holdings Ltd.
5	Crabbs Peninsula & Neighbouring Islands	21 2692 A	5	Maiden Island Holdings Ltd.

Schedule C

NO.	Registration Sec.	Block	Parcel	Proprietor
1	Gilberts	22 2890 A	11	Gilberts Resort Dev. Holdings Ltd.

Schedule D

NO.	Registration Sec.	Block	Parcel	Proprietor
1	Barnes Hill & Coolidge	41 2195 B	286	Stanford Hotel Proprieties Ltd.

Schedule "E"

Undertakings given to the Court by the Applicant

1. If the Court later finds that this Order has caused loss to any of the Respondents, and decides that any of the Respondents should be compensated for that loss, the Applicant will comply with any Order the Court may make.

2. The Applicant will serve on the Respondents as soon as practicable:

   i. copies of the affidavits and exhibits containing any evidence relied upon by the Applicant, and any other documents provided to the court on t he making of this application;

   ii. a note of the hearing; and

   iii. an application notice for the continuation of the order.

3. Anyone notified of this order will be given a copy of it by the Applicant's legal representatives.

4. The Applicant will pay the reasonable costs of anyone other than the Respondent which have been incurred as a result of this Order including the costs of ascertaining whether that person holds any of the Respondent's assets and if the Court later finds that this Order has caused such person loss and decides that such person should be compensated for that loss; the Applicant will comply with any Order the Court may make.

5. If for any reason this Order ceases to have effect, the Applicant will forthwith take all reasonable steps to inform, in writing, any person or company to whom he has given notice of this Order, or who he has reasonable grounds for supposing may act upon this Order, that it has ceased to have effect.

6. The Applicant will not without the permission of the court seek to enforce this order in any country outside Antigua and Barbuda or seek an order of a similar nature including orders conferring a charge or other security against any of the Respondents or their assets.

THE EASTERN CARIBBEAN SUPREME COURT
IN THE HIGH COURT OF JUSTICE
ANTIGUA AND BARBUDA

Claim No. ANUHCV 2011/0478

BETWEEN:

STANFORD INTERNATIONAL BANK LIMITED (IN LIQUIDATION)
(Acting by and through its Joint Liquidators, Marcus A. Wide and Hugh Dickson)
Applicant/Claimant

and

(1) ROBERT ALLEN STANFORD
(2) ANDREA STOELKER
(3) STANFORD DEVELOPMENT COMPANY LIMITED
(4) MAIDEN ISLAND HOLDINGS LIMITED
(5) GILBERTS RESORT DEVELOPMENT HOLDINGS LIMITED
(6) STANFORD HOTEL PROPERTIES LIMITED

Respondents/Defendants

ORDER

Nicolette M. Doherty
Craig Christopher
Legal Practitioners for the Applicant
Attorney at Law and Notary Public
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October 20, 2011

Edward H. Davis, Jr.
Astigarraga Davis
701 Brickell Avenue, 16th Floor
Miami, FL 33131-2847

Re: Stanford International Bank, Ltd. (In Liquidation)

Dear Mr. Davis,

This letter is in response to your letter of September 30 to the law firm of Greenberg Traurig, LLP (the Firm) regarding a request from the Joint Liquidators of Stanford International Bank, Ltd. (SIBL) for records pertaining to SIBL.

As you know, a U.S. court appointed Mr. Ralph Janvey as the sole Receiver for SIBL. Earlier this year, at the Receiver's request, the Firm provided the Receiver records it had pertaining to its past representation of Stanford entities including SIBL.

A copy of your request was forwarded to the Receiver to inquire if there were any reason, or ruling, that would prevent the Firm from providing the requested documents to the Joint Liquidators. In response, the Receiver's attorney advised that the standing receivership order provides that the U.S. Receiver has "exclusive jurisdiction and control" over all Stanford records and that the Joint Liquidators have not been recognized in any U.S. Court.

In light of the U.S. court's order and the Receiver's objections, the Firm is unable to provide the Joint Liquidators with the requested records. The Firm expressly reserves all rights concerning this matter.

Sincerely,

Jim E. Cowles

Jim E. Cowles

cc:

Martin I. Kaminsky
General Counsel
Greenberg Traurig, LLP
MetLife Building
200 Park Avenue
New York, NY 10166

Roy Reardon
Mary E. McGarry
Simpson Thacher & Bartlett LLP
425 Lexington Avenue
New York, New York 10017

Sim Israeloff
Cowles & Thompson, P.C.
901 Main Street, Suite 3900
Dallas, TX 75202