

Court File No: CV-12-9780-00CL

*ONTARIO*  
SUPERIOR COURT OF JUSTICE  
COMMERCIAL LIST

BETWEEN:

MARCUS WIDE of Grant Thornton (British Virgin Islands) Limited, and HUGH  
DICKSON, of Grant Thornton Specialist Services (Cayman) Ltd, acting together herein in  
their capacities as joint liquidators of Stanford International Bank Limited

Plaintiffs

- and -

THE TORONTO-DOMINION BANK

Defendant

AFFIDAVIT OF PETER R. WILTSHIRE  
(Sworn November 28, 2014)

I, **PETER R. WILTSHIRE**, of the City of London, in the United Kingdom, lawyer at  
the law offices of CMS Cameron McKenna LLP ("CMS"), MAKE OATH AND SAY:

1. I was counsel to the former joint liquidators of Stanford International Bank Limited (in liquidation) ("SIB"), Peter Wastell and Nigel Hamilton-Smith (the "Former Officeholders"), then of Vantis Business Recovery Services, a division of Vantis Group Limited, a subsidiary of Vantis PLC, the former U.K. accounting, tax and business advisory group ("Vantis"). As such I have knowledge of the information to which I hereinafter depose, except where my statements are of my information or belief, in which cases I have identified the source of that information or belief and I believe the statements to be true.

2. I am a partner at the firm of CMS Cameron McKenna LLP (London) and reside in Wokingham England. I graduated from Oxford University in 1987. My primary area of practice includes advising on all aspects of corporate insolvency and I have represented insolvency practitioners acting as receivers and administrators in multiple cases. In addition I have represented financial institutions and companies in the context of corporate insolvency.

3. I acted as lead counsel for the Former Officeholders from February 19, 2009 to approximately May, 2011 when they vacated office. In swearing this affidavit I am not and have no intention of waiving any privilege of any kind in relation to my representation of the Former Officeholders.

#### I. MY INVOLVEMENT

4. SIB was an international banking company or "offshore" bank based in Antigua. It was ultimately owned by Robert Allen Stanford ("Stanford"). As detailed in this affidavit, Stanford also appeared to own extensive other companies around the world, most of which had the purpose of facilitating or assisting the business of SIB.

5. On February 17, 2009, one of the Former Officeholders, Peter Wastell, received a call from the Antigua Financial Services Regulatory Commission ("FSRC") inquiring whether Vantis was willing to be appointed as receiver-managers of SIB should such an appointment be sought. The Former Officeholders agreed and, late in the evening on February 19, 2009, were appointed by the FSRC on an emergency basis as joint receiver-managers of SIB and another Stanford-owned company, Stanford Trust Company Ltd. ("STC") in Antigua. Attached hereto and marked as Exhibit "A" is a copy of the FSRC appointment of February 19, 2009.

6. Because the February 19, 2009 FSRC appointment was made on an emergency basis, on February 26, 2009, on the application of the FSRC, the High Court of Justice of Antigua issued a formal order defining the capacity of the Former Officeholders to act as receiver-managers of SIB and STC (the "Antiguan Receivership Order"). Attached hereto and marked as Exhibit "B" is a copy of the Antiguan Receivership Order.

7. On the day the Former Officeholders' were appointed as receiver-managers, I flew along with them to Antigua. On the following morning after our arrival, we attended at SIB's headquarters for the first time. On this initial visit, I stayed and worked on the matter with the Former Officeholders in Antigua for approximately 2.5 weeks following which I regularly visited Antigua over the following months and then less frequently until after September 2009.

8. As the Former Officeholders' lead counsel, I served as the "point man" in all of their efforts requiring legal input and was involved with or aware of all key and strategic steps throughout the period the Former Officeholders were in office. I was also partly involved in the process of preparing the earlier reports that the Former Officeholders were required to periodically provide to the Antiguan court and which provided a point-in-time summary of, among other things, the actions taken and impediments faced by the Former Officeholders. Having been an integral part of the team along with the Former Officeholders, I have no basis at all to expect that my information and belief would be different than that of the Former Officeholders, including in respect of the events and circumstances that they faced.

## II. OVERVIEW

9. This affidavit primarily concerns the circumstances faced by the Former Officeholders, and the steps they took in those circumstances, during the period commencing from their

appointment as receiver-managers in February 2009 until August 22, 2009 (the “**Limitations Timeframe**”). I am advised by Maureen Ward of Bennett Jones LLP that August 22, 2009 is two years prior to the date that the claim in the within action was issued by the current joint liquidators of SIB, Marcus A. Wide and Hugh Dickson of Grant Thornton (the “**Joint Liquidators**”), against the Toronto-Dominion Bank (“**TD Bank**”).

10. As summarized in this overview section, and detailed in the remaining sections of this affidavit, upon their appointment as receiver-managers of SIB and throughout the Limitations Timeframe, the Former Officeholders faced circumstances such that they did not discover the bases for or pursue third party liability claims, including against TD Bank.

**A. Time of Appointment**

11. At the time the Former Officeholders were appointed as receiver-managers of SIB, neither they nor any members of their team, including myself, had any prior experience with SIB and, as a result, we had no knowledge or information in respect of SIB and its affairs. We therefore "started from scratch" in our efforts on behalf of SIB. In particular, at the time of the appointment as receiver-managers the Former Officeholders and their team:

- a) had no knowledge of SIB's business or affairs and no knowledge of the personnel, information or records that they had been placed in charge of by virtue of their appointment as receiver-managers;
- b) had no knowledge that SIB had suffered an injury, loss or damage and, in particular, did not know that SIB had suffered a financial loss and was in fact insolvent. Instead, they knew only that SIB's accounts had been frozen by order of a U.S. court;

- c) had no knowledge of the fact that SIB's business and affairs were interconnected with approximately 130 other Stanford-owned companies (all but one of which were not controlled by the Former Officeholders) and therefore had no knowledge of the fact that understanding and unwinding the interconnectedness of the Stanford-owned companies was critical to understanding SIB's business and affairs;
- d) had no knowledge of or way to readily determine whether any fraud had occurred in connection with SIB and, importantly, therefore had also no knowledge of or way to determine whether SIB was the victim of any fraud, the way that fraud was perpetrated, or the extent and duration of that fraud; and
- e) had no knowledge whatsoever in respect of STC, an entity for which they also served as receiver-managers.

12. In addition, at the time of their appointment, and in fact throughout the Limitations Timeframe, neither the Former Officeholders nor their team, including myself, had any knowledge of facts indicating that any third parties may have caused or contributed to any losses or damages that were suffered by SIB. This included TD Bank. For instance, neither the Former Officeholders nor their team knew of information concerning what knowledge personnel internal to TD Bank obtained about SIB's affairs during the period that it provided correspondent banking services to SIB or any information concerning what TD Bank did or failed to do as a result of that knowledge.

**B. Capacity And Priorities**

13. Consistent with their roles as court-appointed receiver-managers and, later, liquidators, the Former Officeholders were required to take into account their legal capacity and pursue tasks in a prioritized manner in order to fulfill their mandate. This mandate and the resulting priorities included the requirement that the Former Officeholders act at all times in a manner that was most likely to result in recovery of SIB's assets, the vast majority of which were comprised of funds received from SIB's approximately 27,000 customers. Although the investigation, discovery and pursuit of third party liability claims may ultimately have become consistent with the Former Officeholders' mandate, these acts were not consistent with that mandate throughout the Limitations Timeframe.

14. In the early days of the appointment, including during the Limitations Timeframe, the Former Officeholders prioritized actions included, among other things:

- a) identifying and securing the assets of SIB in multiple jurisdictions around the world that faced the risk of immediate dissipation, a process that required the Former Officeholders to apply to the courts of various jurisdictions seeking recognition of their appointment as receiver-managers and liquidators and the approval to act in those jurisdictions;
- b) identifying and securing the funds that were available to the Former Officeholders to undertake the receivership and, later, the liquidation of SIB and, in turn, determining whether steps needed to be taken in order to secure further funds and, to the extent there was a shortage of funds, take steps in the course of the

- receivership and liquidation that accounted for that shortage, including by prioritizing and limiting steps and actions as necessary;
- c) taking extensive steps to determine the assets and liabilities of SIB including by corresponding with all of SIB's customers and financial institutions that were thought to potentially hold SIB's assets, all of which was necessary in order to determine the solvency of SIB and, later, understand and assess the extent of SIB's insolvency and ultimately pursue the appropriate means to attempt to remedy that insolvency;
  - d) minimizing to the greatest extent possible all past and ongoing expenses of SIB in order to ensure that the maximum amount of funds possible remained available for undertaking the receivership and liquidation and, ultimately, for repayment to SIB's creditors;
  - e) conducting employee interviews and seeking to understand SIB's affairs and its financial relationship with the multitude of other Stanford-owned companies;
  - f) handling all operational and practical issues resulting from the collapse of SIB, including dealing with the valid concerns and issues of various individuals and entities such as SIB's employees and third parties that provided services to SIB;
  - g) taking efforts to negotiate and obtain cooperation with the U.S. Receiver, Ralph Janvey, the individual who had been appointed as receiver by a Texas court over all Stanford-owned companies (the "U.S. Receiver"), a situation which created

two distinct SIB estates that were legally and practically incompatible throughout the Limitations Timeframe; and

- h) communicating in a regular and effective manner information in respect of the affairs of SIB and the circumstances faced by the Former Officeholders to interested parties and stakeholders including the Antiguan court, various regulatory bodies, SIB's creditors and the media.

### **C. Impediments Faced By The Former Officeholders**

15. Throughout the Limitations Timeframe, the Former Officeholders faced a multitude of significant impediments to their ability to pursue the prioritized actions in accordance with their mandate and, in fact, to pursue any actions whatsoever. These impediments in large part were a result of the extensive and long-running nature of SIB's affairs and what was ultimately discovered to be a massive and complex fraud committed on SIB, one that was so large that I now understand it to have been the second largest fraud in history. The impediments faced by the Former Officeholders include the examples set out summarily below and described in further detail later in this affidavit.

16. Upon their appointment, the Former Officeholders had been led to believe adequate funding would be available from cash balances held by Bank of Antigua. That bank was originally part of Allen Stanford's ("**Stanford**") empire but the Eastern Caribbean Central Bank took control of it on 20 February 2009, the day after the Former Officeholders were appointed as receiver-managers. Accordingly the cash balances were not made available to the Former Officeholders and indeed after a significant period of negotiations with the Bank of Antigua, with which I was personally involved, almost all cash balances were set off against amounts

claimed owing to Bank of Antigua primarily in connection with credit cards issued by Bank of Antigua on behalf of SIB. Accordingly, only extremely limited funds were available during the Limitations Timeframe.

17. The limited extent of the available funds was barely sufficient to cover even the short-term ongoing expenses of SIB and, as such, the Former Officeholders had no choice but to focus their efforts on obtaining funding, without which taking the necessary steps in the receivership and liquidation would have been impossible. Despite their diligent and time-consuming efforts around the world (all of which the Former Officeholders undertook without payment), additional funds were not obtained until after the Limitations Timeframe.

18. Due to the fact that they ultimately identified assets of SIB that were held by financial institutions in various jurisdictions around the world, the Former Officeholders sought during the Limitations Timeframe to be recognized and approved to act by the courts of those jurisdictions. This process necessitated the preparation and pursuit of complex legal actions, all of which were time-consuming and depleted the very limited funds available to the Former Officeholders.

19. The Former Officeholders attempts to be recognized and approved to act by the courts of relevant jurisdictions around the world, and their related attempts to secure assets and obtain funds in those jurisdictions, were strongly opposed by the U.S. Receiver. In fact, despite the efforts of the Former Officeholders, the U.S. Receiver at all times throughout the Limitations Timeframe not only refused to provide relevant information and records to the Former Officeholders, but actively resisted virtually all efforts of the Former Officeholders. For example, on April 1, 2009 I met with the U.S. Receiver in Miami along with the Former

Officeholders, the U.S. Receivers counsel and representatives of the Securities and Exchange Commission ("SEC") and no sharing of information was agreed upon.

20. In various jurisdictions, including Canada, the U.S. Receiver's appointment was recognized and his approval to act in that jurisdiction was approved, all of which occurred to the express exclusion of the Former Officeholders who were not legally entitled to act in such jurisdictions. Notably, the Former Officeholders never obtained the recognition and approval necessary to commence or pursue third party liability claims in Canada during the Limitations Timeframe.

21. Soon after their appointment, the Former Officeholders became aware of an entity known as the "Stanford Financial Group" ("SFG"). Exactly what that entity was and where it was located was initially unclear but it became apparent, mainly from media reports from the U.S. and SIB's employees, that SFG was the Texan-based entity which appeared responsible for SIB's relationships with third party financial institutions, including those holding investments on behalf of SIB and SIB's correspondent banks.

22. As a result, SFG appeared to have exclusive control over records in respect of SIB's assets and all records reflecting decision-making that was required in respect of SIB's correspondent bank accounts. The estate and records of SFG were controlled and held by the U.S. Receiver, who refused to provide the Former Officeholders with any meaningful information or documents regarding SFG during the Limitations Timeframe. In turn, the Former Officeholders had virtually no access to information regarding SIB's assets, a situation which almost completely restrained the Former Officeholders' ability to understand SIB's true financial

affairs, including details in respect of the solvency of SIB and whether a fraud had been committed on SIB.

23. Similarly, throughout the Limitations Timeframe, the Former Officeholders did not obtain or otherwise have access to any correspondence between those responsible for the relationship between SIB and its correspondent banks, namely Stanford, James Milton Davis (“Davis”) or Laura Pendergest-Holt (“Pendergest-Holt”) and the correspondent banks being TD Bank, HSBC Bank PLC (“HSBC”) and Trustmark National Bank (“Trustmark”) (other than writing to the financial institutions in an effort to locate SIB cash balances or other assets). In turn, the Former Officeholders had no means to access any information about the internal affairs of any of the correspondent banks, including whether those banks may have acted in a manner that caused or contributed to any losses or damages that may have been suffered by SIB.

24. The Former Officeholders did not have the financial means or time to gather up and make searchable all of the physical and electronic records available to them in Antigua. Further, doing so was not considered a priority in light of the various other prioritized actions that were being undertaken and the fact that such a task could only be completed by third party professionals that the Former Officeholders did not have the funds to pay. This meant that the Former Officeholders could not readily access substantial amounts of the information that was technically available to them in the records of SIB. In any event, due to the fact that such available records did not include SFG records, there were only very limited, if any, records available to the Former Officeholders that could have led to the discovery of third party liability claims against any correspondent financial institutions.

25. The SIB personnel that were available to the Joint Liquidators, which included various senior personnel who were the primary sources of information about SIB's affairs for the Former Officeholders, had only very limited information in respect of SIB's true financial affairs, including details in respect of the solvency of SIB and whether a fraud had been committed on SIB. In fact, those senior personnel indicated to the Former Officeholders and I that, based on their knowledge and information available to them throughout the course of their employment, they did not believe that SIB was insolvent or involved with any fraud.

26. Throughout the Limitations Timeframe, while it was suspected that a fraud had likely been committed in connection with SIB, there was no information available to the Former Officeholders that would allow them to prove this was true and, if so, to determine the nature, size and duration of the fraud, including how the fraud was committed and whether SIB was the perpetrator of the fraud or a victim. In turn, the Former Officeholders had no way to determine whether any (and if so which) third parties may have played some role or been involved with or complicit in the fraud.

27. It was only after the Limitations Timeframe that certain of these impediments could be addressed and overcome by the Former Officeholders. For instance, throughout the Limitations Timeframe, the Former Officeholders and their team, including myself, held and discussed our strong suspicion that a fraud had occurred in connection with SIB. However, given the Former Officeholders' limited access to information, the basis for this suspicion was largely media reports of matters arising in the U.S. that could not be verified by the Former Officeholders and, in any event, did not contain details about how the fraud was committed or the extent and duration of the fraud. Without such details, Former Officeholders could not understand the relevance and impact of the fraud to SIB's financial affairs, including which individuals or

entities may be liable for their role in the fraud. Further, as officers of the court, with duties to the court and creditors of SIB, the Former Officeholders could not and did not simply adopt media speculation as fact.

**D. Details Of The Fraud Were Not Known**

28. The first time that the Former Officeholders discovered the nature, extent and duration of the fraud was on or around August 27, 2009. On that date, Davis, who was one of the most senior SFG personnel, pleaded guilty to criminal charges that had been laid against him in the U.S. In his guilty plea, Davis detailed that he, along with others including Stanford, had committed a fraud and he also advised of the nature, extent and duration of the fraud. Attached hereto and marked as Exhibit "C" is a copy of the Davis Plea Agreement dated August 27, 2009 ("**Davis Plea Agreement**"). Although the Former Officeholders still did not hold information or records that could support the details in the Davis Plea Agreement, there was a general consensus in the month or so following the Davis Plea Agreement among the Former Officeholders and their team that such details were likely to be reliable and accurate.

29. This conclusion in respect of the Former Officeholders' discovery of the relevant details of the fraud reflects my own recollection of this timeline and is also evident from the various reports that the Former Officeholders were required to and did submit to the Antiguan court.

30. For instance, in the reports submitted in July 2009 (the "**July 2009 Report**") and September 2009 (the "**September 2009 Report**"), parts of which I was involved with preparing or approving, the Former Officeholders refer to the fact that they are continuing with their investigations into "the failure of SIB and the *alleged* fraudulent manner in which it operated ..." (page 7) [emphasis added]. It was not until the report submitted in October 2009 (the "**October**

2009 Report”) when the Former Officeholders’ first acknowledged with certainty the fraud on SIB: “We continue with our investigations into the failure of the bank *and the fraudulent manner in which its executive directors acted. A number of the former directors of the bank have been charged in the USA with offences relating to the fraud perpetrated upon the bank.*” [emphasis added] The July 2009 Report, the September 2009 Report and the October 2009 Report are attached hereto and marked as Exhibits “D”, “E” and “F” respectively.

**E. Third Party Liability Claims Not Discovered**

31. In all of the circumstances set out herein, including the fact that there was extensive work that required immediate attention and the highest priority and a significant lack of funding, throughout the Limitations Timeframe, neither the Former Officeholders nor their team, including myself, accessed or reviewed any information or records that indicated that any third parties, including TD Bank, had caused or contributed to any losses or damages that may have been suffered by SIB.

32. TD Bank was simply one of approximately 135 different entities that that the Former Officeholders and I believed may have held assets of SIB and with whom we communicated with during the Limitations Timeframe. These communications were undertaken only with a view to identifying and securing any assets held by those financial institutions. In fact, although the Former Officeholders learned that TD Bank provided correspondent banking services to SIB, there was limited focus placed specifically on TD Bank due to the fact that SIB’s assets at TD Bank (which totaled only US\$18.9 million, a small amount relative to the broader financial picture of SIB) had been promptly frozen around the time of the appointment of the Former

Officeholders as receiver-managers in February 2009, and were therefore not at risk of immediate dissipation.

33. As a result, the Former Officeholders also did not:

- a) identify or commence any third party claims, including against any financial institutions such as TD Bank;
- b) have the means to conduct any archival internet or news media searching in respect of any third parties, including in respect of any financial institutions such as TD Bank, and therefore did not do so;
- c) conduct searches of the extensive amounts of information and records that they controlled at SIB, all of which would have required collection and conversion to a searchable format in order to conduct any such searches; or
- d) conduct any interviews of individuals who had knowledge in respect of information that could give rise to claims against third parties, including any former employees of any financial institutions such as TD Bank.

34. In my opinion, in addition to the other circumstances set out herein, the size of the liquidation, the complex nature of the SIB operations, the unavailability of accurate information and the poor quality of and incomplete nature of information that was available, made discovery of the facts giving rise to any third party claims and, in particular, any claims against TD Bank during the Limitations Timeframe, effectively impossible. In any event, we would expect to

proceed with recognition applications in relevant jurisdictions before contemplating proceedings and we commenced those proceedings in Canada without success.

35. I can see why those looking at the SIB collapse with the benefit of hindsight may perhaps speculate that SIB was obviously the victim of a fraud and that TD Bank was used as a conduit for the scheme and or had amassed internally enough knowledge of SIB's business to support a claim. However, due to all of the circumstances set out herein, these assumptions or speculations were not at all obvious to the Former Officeholders or I while we were on the ground at SIB in Antigua during the Limitations Timeframe. In fact, at that time, nothing was as obvious and clear cut as one may now view with the benefit of hindsight.

### **III. BACKGROUND OF FORMER OFFICEHOLDERS**

36. The Former Officeholders were and are citizens of the United Kingdom and so far as I am aware were educated and trained in the United Kingdom in accordance with the practices and laws of the United Kingdom. So long as I have known them personally (at least 10 years), they have been based in the United Kingdom and I believe that the vast majority of their professional experience was obtained in the United Kingdom. While the Former Officeholders were not citizens of Antigua and were not trained in accordance with the practices and laws of Antigua, I am aware that they had undertaken one previous project in Antigua relating to an on-line gambling company in Antigua.

### **IV. AUTHORITY AND CAPACITY OF THE FORMER OFFICEHOLDERS**

37. It was my understanding that the Antiguan Receivership Order did not provide the Former Officeholders with the capacity required to investigate or pursue claims against third party individuals or entities with which SIB had done business. Indeed it is my belief that under

the terms of the *Antiguan International Business Corporations Act*, cap 222 (the “Act”) the primary function of receiver-managers is to “hold the line” - as paragraph 5 of the Antiguan Receivership Order stated “... to stabilize the operations of [SIB]”.

38. The Antiguan Receivership Order required that the Former Officeholders submit a report by March 16, 2009 to the Antiguan Court providing the Former Officeholders’ view on whether SIB should be placed into liquidation. Based on the information available to them, and after conducting work to determine whether SIB was insolvent, they determined that a liquidation was in order. Therefore, on the petition of Mr. Paul Ashe, Supervisor of International Banks and Trust Corporations of the FSRC, the Former Officeholders were appointed as joint liquidators of SIB by the Eastern Caribbean Supreme Court on April 15, 2009 (the “**Antiguan Liquidation Order**”). As of that date, the Former Officeholders were no longer receiver-managers of SIB, but rather joint liquidators. Attached hereto and marked as Exhibit “G” is a copy of the Antiguan Liquidation Order.

39. It is my understanding now, as it was then, that the Antiguan Liquidation Order provided the Former Officeholders with the capacity to investigate and pursue third party liability claims on behalf of SIB for the first time. In particular, it provided that the Former Officeholders “shall have the right to bring any proceeding or action in Antigua and Barbuda and/or in a foreign jurisdiction” and “shall have the authority to initiate, prosecute and continue the prosecution of any and all proceedings”.

40. However, I note that it was my understanding, and I believe the understanding of the Former Officeholders, that the Antiguan Liquidation Order did not and could not bind directly

the courts of other jurisdictions. If the Former Officeholders intended to pursue actions in any other jurisdiction, they required recognition and approval of a court from that jurisdiction.

#### V. PRIORITIES UPON APPOINTMENT

41. In the Former Officeholders' report to the Antiguan court dated March 16, 2009 (the "March 2009 Report"), they set out certain of their key priorities as receiver-managers. As referred to in the March 2009 Report, meetings were held with 87 personnel at SIB's headquarters in Antigua to advise of the Former Officeholders' appointment and to explain that the Former Officeholders' primary focus would be to:

- a) protect the position of investors who were located around the world;
- b) confirm the sums owed to investors;
- c) deal with staff concerns and seek funding for payment of staff salaries whilst they remained employed by SIB in receivership;
- d) seek to establish the position with the investment assets held by SIB;
- e) establish the position with the non investment assets held by SIB;
- f) engage with Mr. Janvey, the U.S. Receiver, and the U.S. Court; and
- g) ensure the preservation of the operating infrastructure and IT systems used by SIB. (*quoted from March 2009 Report, page 2*)

42. The March 2009 Report is attached as Exhibit "H".

43. These tasks continued to be priorities for the Former Officeholders when their role changed from receiver-managers to liquidators on April 15, 2009. In addition, upon being appointed as liquidators, the Former Officeholders' priorities also included the following:

- a) locate and secure assets;
- b) engage with the Antiguan FSRC;
- c) establish a "claims process" for approximately 27,000 investors;
- d) establish a website for reporting to SIB's investors and other interested parties;
- e) determine the best method of communications with each investor;
- f) determine which jurisdictions to seek recognition in and thereafter seek such recognition;
- g) seek to understand the interconnectedness of the Stanford-owned companies and the relevance of those companies to the financial affairs of SIB;
- h) engage in necessary and extensive media relations activities;
- i) determine where relevant documents were located and seek to gather such information;
- j) explore and investigate claims by SIB staff that Stanford had injected over \$500 million of funds into SIB in 2008;
- k) locate Antiguan land assets and determine the status of such holdings; and
- l) conduct interviews of SIB employees to, among other things, gain knowledge about SIB and related companies and learn information that it was hoped would (and did) assist in asset and liability identification.

44. These tasks were massive undertakings due to the sheer size of the liquidation of SIB, which had operated in many places around the world for almost 20 years and which had financial

relationships with several interconnected companies, all of which were under the control of the U.S. Receiver throughout the Limitations Timeframe (except STC).

45. I believe that the Former Officeholders rationally and properly prioritized their many competing priorities and responsibilities and did so in light of the restraints caused by multiple issues as outlined in this affidavit and as indicated in the reports to the Antiguan court, including, but not limited to, lack of funding, lack of information, the size and complexity of the liquidation, and the efforts by the U.S. Receiver to thwart any efforts of the Former Officeholders to become recognized in foreign jurisdictions.

**VI. CIRCUMSTANCES IN WHICH THE FORMER OFFICEHOLDERS FOUND THEMSELVES**

46. As they confirmed to me, although the Former Officeholders had experience undertaking receiverships and liquidations generally, they had never undertaken a project of the size, scale and nature of the receivership and liquidation of SIB. This was almost necessarily the case given that, with the benefit of hindsight, SIB was the victim of the second largest scheme ever perpetrated in the world. Therefore, but for those undertaking the largest ever Ponzi scheme (Madoff), there was no one with such experience. Regardless of their abilities, the circumstances faced by the Former Officeholders were monumental and extraordinarily complex and challenging.

47. At the time of their appointment as liquidators, the Former Officeholders were faced with extraordinary circumstances and hundreds of competing priorities. The circumstances and abilities of the Former Officeholders are discussed below.

**A. Reports to the Antiguan High Court and News Releases of the Former Officeholders**

48. The extraordinary circumstances faced by the Former Officeholders were documented in the Former Officeholders' reports to the Antiguan court (the "Reports"). The Reports listed in the chart below were created at the time they were facing such circumstances.

<u>Date of Report to Antiguan High Court by Former Officeholders</u>	<u>Defined Term</u>	<u>Exhibit Letter</u>
March 16, 2009	March 2009 Report	H
July 14, 2009	July 2009 Report	D
September 24, 2009	September 24 2009 Report	E
October 9, 2009	October 2009 Report	F
April 15, 2010	April 2010 Report	I
May 31, 2011	May 2011 Report	J

49. In addition to the Reports, which memorialized the extensive work being completed and prioritized, the Former Officeholders posted continuous updates on their website (the "SIB Postings").

<u>Date</u>	<u>Document Description/Title</u>	<u>Exhibit Letter</u>
February 23, 2009	Financial Services Regulatory Commission appoints receiver-managers to Stanford International Bank Limited and Stanford Trust Company Limited	K
Undated	SIB-in Receivership – Frequently Asked Questions	L
Undated	Stanford Frequently Asked Questions	M
Updated July 9, 2009	Stanford Frequently Asked Questions	N
February 23, 2009	Investor enquiries for Stanford International Bank Limited and Stanford Trust Company Limited	O

<u>Date</u>	<u>Document Description/Title</u>	<u>Exhibit Letter</u>
February 24, 2009	Stanford Investor Update	P
February 25, 2009	Statement from Receiver-Managers to Stanford International Bank Limited and Stanford Trust Company Limited	Q
Undated	Letter from Nigel Hamilton-Smith	R
March 5, 2009	Update from Receiver-Managers to Stanford International Bank Limited and Stanford Trust Company Limited	S
March 6, 2009	Stanford International Bank – update	T
March 24, 2009	Stanford International Bank – update	U
April 9, 2009	Further update from receiver-managers to Stanford International Bank Limited and Stanford Trust Company Limited	V
May 14, 2009	Stanford International Bank Investor Correspondence	W
May 29, 2009	Missing Statements – Stanford International Bank Limited and Stanford Trust Company Limited	X
July 3, 2009	Stanford International Bank Limited – in liquidation (SIB) Decision from High Court of Justice on control of assets held in U.K. and activation of Online Investor Claims Management System	Y
August 20, 2009	Stanford International Bank Limited – in liquidation (SIB) Decision from Court Appeal to release SIB funds to joint liquidators (“ <b>August 20, 2009 Posting</b> ”)	Z
September 14, 2009	Stanford International Bank Limited – in liquidation (SIB); Verbal decision from Montreal Superior Court in relation to control of assets in Canada (“ <b>September 14, 2009 Posting</b> ”)	AA
December 1, 2009	Update on recent appeal hearing following decision from U.K. Court of Appeal to release SIB funds to joint liquidators	BB

50. Both the Reports and the SIB Postings assist in identifying the circumstances faced by the Former Officeholders and also the steps that they took during the Limitations Timeframe. The following expands upon those circumstances and steps.

**B. Seeking Recognition in Foreign Jurisdictions and the U.S. Receivers' Active Opposition to the Former Officeholders**

51. On February 16, 2009, on a motion by the SEC, the U.S. Court in the District of Texas appointed the U.S. Receiver as receiver over the assets and records worldwide of SIB, Stanford Group Company, Stanford Capital Management, Stanford, Davis and Pendergest-Holt (the "SEC Stanford Defendants") and all entities owned or controlled by any of them (the "Receivership Estate"). Also on February 16, 2009, the U.S. Court also issued a temporary restraining order and order freezing all assets of the SEC Stanford Defendants.

52. The U.S. Receiver thereafter was legally entitled to take possession of all assets and records encompassed by the Receivership Estate, including all assets and records of SFG. The U.S. Receiver's mandate was therefore at odds with the mandate of the Former Officeholders, which similarly legally required them to take possession of all assets and records of SIB and STC (which also were part of the Receivership Estate). The U.S. Receiver continuously obstructed and opposed the Former Officeholders' attempts to have their appointment as liquidators recognized in jurisdictions around the world, as well as to obtain information and documents of SIB around the world.

53. To the extent that SIB's assets were held in foreign jurisdictions or the Former Officeholders were required to act in foreign jurisdictions in order to complete their mandate as receiver-managers or liquidators, they were required to obtain recognition from the courts of such jurisdictions prior to obtaining those assets or otherwise seeking to complete their mandate.

Obtaining such recognition was a complex process that required the Former Officeholders to identify, retain and extensively coordinate with counsel in those foreign jurisdictions.

54. In this regard, the following was stated by the Former Officeholders in the March 2009 Report:

As detailed in our report there is very significant concern from the Bank's investors to understand the true levels of the Bank's assets and therefore to understand the level of funds that may be returned to them in due course. *Work to resolve these key issues must be the ongoing primary focus of the liquidators.*

*At present the Receiver-Managers have encountered difficulties in both establishing and securing the Bank's assets many of which are held in foreign jurisdictions (Switzerland, Panama, United Kingdom, Canada, United States, Israel) due to the legal position of a receivership not being treated as a collective procedure that is recognized by Courts around the world as a bankruptcy procedure. Upon SIB being placed into liquidation it will be possible to seek formal recognition in each of the countries where assets are held that should then allow for the assets to be released into the control of the appointed liquidators and therefore for the ultimate benefit of SIB's creditors.*

Advice has been taken from the Receiver-Managers' lawyers in the United Kingdom, Switzerland, Canada and the United States and we are advised that early applications can be made to avoid any further delay in securing assets. Given that a number of the assets held are equities and with the current state of the world-wide equity markets it is considered imperative that pro-active action is taken to secure investment assets and manage with realization. [emphasis added] (page 13);

55. The Former Officeholders sought recognition in the U.K., Switzerland, the U.S. and Canada. In each of these jurisdictions, the Former Officeholders' efforts for recognition were challenged in each respective court by the U.S. Receiver. In fact, as detailed in each of the Reports, virtually all steps taken in foreign jurisdictions by the Former Officeholders during the

Limitations Timeframe were vehemently opposed by the U.S. Receiver, the SEC and the Asset Forfeiture and Money Laundering Section of the U.S. Department of Justice.

56. The U.S. Receiver's direct opposition to the Former Officeholders' foreign jurisdiction recognition efforts created a circumstance where efforts to locate and secure assets and funding, and also obtain information, became time-consuming and difficult. Those efforts are summarized in the Chronology Chart that begins at page 54 of this affidavit.

#### 1. Recognition in Canada

57. It was my and the Former Officeholders' understanding that, in order to commence proceedings in Canada, as a matter of Canadian law, they required an order of a Canadian court recognizing their appointment and providing them with the capacity to pursue third party liability claims in Canada.

58. On April 6, 2009, the Former Officeholders received an order of the Registrar of the Quebec Superior Court recognizing their appointment as receiver-managers in Antigua (the "First Québec Recognition Order"). Attached hereto and marked as Exhibit "CC", is a copy of the First Quebec Recognition Order.

59. The First Quebec Recognition Order did not provide the Former Officeholders with the capacity required to pursue third party liability claims in Canada and, in any event, the Former Officeholders did not have that capacity pursuant to the Antiguan order that appointed them as receiver-managers and fundamentally defined their core mandate and capacity. Further, the Former Officeholders were appointed as joint liquidators on April 15, 2009, by the Antiguan High Court of Justice, just 9 days after the First Quebec Recognition Order and, at that time, the First Quebec Recognition Order was rendered inapplicable because the Former Officeholders no

longer were receiver-managers, which was the capacity the First Quebec Recognition Order applied to.

60. On April 16, 2009, the U.S. Receiver delivered a motion to the Quebec court seeking for the first time recognition of his status as receiver of the assets of SIB and his appointment as a foreign representative. In particular, the U.S. Receiver sought approval to act in Canada through his Canadian representative, Ernst & Young Inc. (“E&Y”).

61. On April 22, 2009, given that the First Quebec Recognition Order was by then rendered inapplicable, the Former Officeholders delivered a motion to the Quebec Superior Court seeking the recognition of their Antigua appointment as liquidators and approval to act in Canada, including an express request for authorization “to institute or continue any present legal proceedings initiated by [SIB] in Quebec, and generally in Canada”.

62. The Former Officeholders and the U.S. Receiver argued their competing motions for recognition and approval to act in Canada on August 26-28, 2009 and September 2, 4 and 8, 2009.

63. It was not until September 11, 2009 that the Quebec Superior Court rendered two decisions and corresponding orders in respect of the competing motions by the Former Officeholders and the U.S. Receiver (the “**Second Quebec Recognition Order**”). The Second Quebec Recognition Order was rendered outside of the Limitations Timeframe. Attached hereto and marked as Exhibit “DD”.

64. Among other things, the Second Quebec Recognition Order appointed E&Y as interim receiver of the Canadian assets of SIB and authorized E&Y to initiate and pursue proceedings in

respect of SIB in Canada while expressly excluding the Former Officeholders from acting in Canada. In particular, it provided: “in each case where [E&Y] takes any such actions or steps [including initiating or pursuing proceedings in Canada], it shall be exclusively authorized and empowered to do so, to the exclusion of the Respondents and the [Former Officeholders].”

65. The Former Officeholders unsuccessfully appealed the Second Quebec Recognition Order. Leave to appeal to the Supreme Court of Canada was then sought by the Former Officeholders and, later, the Joint Liquidators. However, the leave to appeal application was not determined by the Supreme Court before the Former Officeholders were replaced by the Joint Liquidators.

## 2. Recognition in Switzerland

66. Both the Former Officeholders and the U.S. Receiver sought recognition in Switzerland by filing proceedings with the Swiss Financial Market Supervisory Authority, FINMA (“FINMA”). The U.S. Receiver sought recognition by application dated 19 May, 2009, that the Centre of Main Interest (“COMI”) of SIB was the U.S.

67. The Former Officeholders issued their application to FINMA on 28 May 2009 seeking Swiss recognition that Antigua was the COMI of SIB. The U.S. Receiver added to his application and filed new documents on 28 May, 4 and 11 June, 3 and 21 July, 28 September, 7, 11 and 22 December 2009, 7 January, 4 and 24 March, and 20 April 2010.

68. The Former Officeholders' application was added to and new documents were filed on 15 June, 27 July, 8 October, 3 December 2009, 28 January, 2 March, 14 April and 7 May, 2010. Judgment was given on 8 June 2010 in favour of the Former Officeholders. Separately funds in all Stanford related Swiss bank accounts had been subject to a request issued by the U.S.

Department of Justice to the Swiss Federal Office of Justice to freeze such funds and they were frozen pursuant to that request.

69. Accordingly, as at October 2009, the Former Officeholders were still awaiting the decision by Swiss Authorities on recognition in Switzerland.

### **3. Recognition in the U.S.**

70. As detailed in the Chronology Chart set out later in this affidavit at page 54, the Chapter 15 proceedings in the U.S. were protracted and extensive. Among other events and proceedings that the Former Officeholders were required to address in respect of the Chapter 15 proceedings, on April 20, 2009, the Former Officeholders brought a motion, in the District Court of Texas, which had control of the U.S. Receivership, to be formally recognized in the U.S. under Chapter 15 of the US Bankruptcy Code and to obtain a declaration that the COMI of SIB was Antigua. This was opposed vigorously by the U.S. Receiver and the SEC. Such proceedings continued unresolved during the Limitations Timeframe.

### **4. Recognition in the U.K.**

71. The Former Officeholders located approximately US\$100 million of assets in the U.K. To gain control of these assets, the Former Officeholders sought formal recognition of their appointment in the U.K. and the hearings were held in this regard from June 10 – 12, 2009. At that time, the U.S. Receiver also made an application for recognition contending that the COMI of SIB was the U.S. and not Antigua.

72. On July 3, 2009, the High Court of Justice of England & Wales issued a judgment in favour of the Former Officeholders that the COMI of SIB is Antigua. Separately the serious fraud office in the UK, at the request of the U.S. Department of Justice, sought and obtained a

restraint order in separate UK proceedings. Both sets of proceedings were subject to appeals and were heard by the Court of Appeal in the U.K. In addition, on August 18, 2009, the U.K. Court of Appeal granted the Former Officeholders access to U.S. \$889,000 from the assets held in the U.K. that otherwise remained subject to a restraint order. A condition of this release was that the Former Officeholders on behalf of the SIB estate would repay the funds received plus interest of 5.4% when funds became available from the realization of land assets in Antigua.

73. Judgment of the Court of Appeal was delivered on 25 February 2010. In summary COMI was recognized as located in Antigua but the restraint order was continued. In August 2009 by way of consent order, the UK Court of Appeal recorded an agreement that a total of U.S.\$889,000 should be released from U.K. cash balances to allow the liquidation of SIB to continue. The original budget was for 3 months although in the end the Former Officeholders managed to keep the liquidation running for a further 6 months before seeking a further allowance. This funding was needed to meet employee and associated tax costs, IT and security support, all public utilities in Antigua for two premises, postage, office supplies, accommodations, ransom payments for public utilities, travel costs, arrears of payroll and some public utility arrears, legal fees of Antiguan counsel to maintain representation in Antigua and legal fees for work preparing SIB assets for re-sale. No funds were available for the general professional fees of the Former Officeholders and their various advisors.

#### **C. U.S. Receiver Refusal to Cooperate Generally**

74. From the time the Former Officeholders were first appointed as receiver-managers of SIB, they actively sought to enter into a cooperation agreement with the U.S Receiver whereby the Former Officeholders and the U.S. Receiver would collaborate and share information as between the estate of SIB in Antigua and the Receivership Estate. The Former Officeholders'

attempts to cooperate continued even during the period that the Former Officeholders and the U.S. Receiver were engaged in the contentious recognition proceedings discussed above. This was done because the Former Officeholders and I believed that cooperating with the U.S. Receiver would ultimately assist in asset tracing and developing an understanding of SIB's affairs, as well as avoiding the duplication of costs as between the two estates, which were expected to be significant. For instance, following the appointment as liquidators on April 15, 2009, the Former Officeholders proposed a cooperation agreement to the U.S. Receiver. The key terms of that proposal were outlined on page 5 of the July 2009 Report as follows:

- a) assets located in the U.S. to continue to be dealt with by the U.S. Receiver;
- b) assets located in other jurisdictions to be dealt with by the Former Officeholders;
- c) assets for distribution to be remitted to the Former Officeholders for distribution to creditors;
- d) costs incurred by the Former Officeholders and the U.S. Receiver to be subject to the respective scrutiny of the Antiguan and U.S. Courts; and
- e) cooperation on asset tracing and legal claims to take place on an ongoing basis between the Joint Liquidators and the U.S. Receiver (July 2009 Report, page 5).

75. However, as further discussed in the July 2009 Report (page 5), the U.S. Receiver was not prepared to advance discussions on the proposals made as he considered that the U.S. Court must have the authority over the assets of SIB and that the U.S. proceedings must be the primary proceeding. Inevitably, this led to continued difficulties in administering the SIB liquidation.

#### **D. Estate Costs and Funding**

76. Immediately upon appointment, the Former Officeholders completely lacked the funds necessary to undertake the receivership of SIB. This lack of funds continued into the time the

Former Officeholders were liquidators of SIB and throughout the Limitations Timeframe. While considerable efforts were made to locate and secure funding from liquid assets held in various jurisdictions, such efforts were met with intense and time-consuming opposition by the U.S. Receiver in the courts in multiple jurisdictions around the world.

77. As previously noted, upon their appointment as receiver-managers, the Former Officeholders and I understood that SIB would be able to access funds held in a Bank of Antigua account in the name of SIB. At that time, SIB had combined credit balances with Bank of Antigua totaling US\$9,924,971. The Former Officeholders intended to use those funds to pay for the receivership.

78. However, over the following months, a total of US\$8,783,581 was deducted by Bank of Antigua from the SIB accounts. Bank of Antigua claimed that this deduction was justified by set-off rights in respect of amounts owed by SIB in connection with credit cards issued by Bank of Antigua on behalf of SIB. Bank of Antigua also claimed and made further deductions related to cheques issued by SIB from bank accounts held in the U.S. that were subsequently returned unpaid following the freezing order obtained by the SEC against SIB on February 16, 2009 (July 2009 Report, page 6 and September 2009 Report, page 6).

79. As a result, at the time the Former Officeholders embarked on the receivership of SIB, they had only approximately a few hundred thousand dollars available to them. At no point during the Limitations Timeframe were any additional funds of any note acquired by the Former Officeholders. The funds that were available to the Former Officeholders throughout the Limitations Timeframe were completely insufficient to undertake the normal steps in a

receivership or liquidation and therefore severely impeded the Former Officeholders ability to take such steps.

80. In particular, at the time the Former Officeholders were appointed, SIB was incurring various costs in connection with expenses and services necessary for its basic operations, including SIB staff salaries, security, amenities, IT and maintenance. These expenses and services were generally required to be maintained throughout the course of the receivership and liquidation of SIB in order for the Former Officeholders to undertake their mandate.

81. As identified in the March 2009 Report, the monthly salary costs of the then-current employees of SIB were in excess of US\$180,000 per month (page 13). The December 2010 Report indicated that, in February 2009, over US\$400,000 per month was required for salaries, security, amenities, IT and maintenance alone. As a result of various negotiations and cost-cutting measures, by April 2009, the Former Officeholders were able to reduce the average spend to less than US\$250,000 per month. However, this amount was still significant relative to SIB and the Former Officeholders' almost complete lack of necessary funds.

82. Also, as discussed previously, the Former Officeholders also went through considerable efforts in the courts in the U.K., with opposition from the U.S. Receiver, to ultimately obtain an order from the U.K. Court of Appeal on August 18, 2009 requiring the release of certain funds. These funds were limited to US \$889,000 and were not budgeted to run the liquidation for longer than 3 months although in the event the Former Officeholders were able to make them last nearer to 6 months. However, as noted previously above, these were limited to essential payments mainly relating to Antigua.

83. As the amount of cash available was insufficient, as indicated in the December 2010 Report, "it was imperative that monies were not wasted." (para 23). This financial picture of the estate of SIB necessitated working almost exclusively on the basic priority of locating and securing assets and the related effort of seeking recognition in the relevant jurisdictions, all of which impacted the ability of the Former Officeholders to engage third parties to assist them.

84. Needless to say, the lack of funding impacted the ability of the Former Officeholders to effectively pursue the basic priorities before, during and after the Limitations Timeframe. Securing funding to actually fulfill their duties as officeholders was therefore critical. I note that the Former Officeholders worked throughout their appointment without getting paid and my firm only received payment earlier this year.

#### **E. Logistics and Security**

85. Upon initially attending at SIB's headquarters in Antigua, the Former Officeholders and I were met with chaos. There were over 100 SIB customers in the lobby. Those customers had come to demand repayment of their investments and had travelled to SIB's offices from around the world, including the United States, Canada, Venezuela, Columbia, Mexico and Ecuador. They were extremely agitated and demanding, so much so that SIB personnel were required to seek the assistance of the Antiguan police.

86. For some time after the appointment of the Former Officeholders as receiver-managers, SIB's customers from around the world continued to travel to SIB's offices to demand repayment and to speak with the Former Officeholders or SIB personnel. Due to the fact that the volume of such customers was too large to meet with customers on an individual basis, the Former Officeholders implemented a system whereby they met twice daily with groups of

customers (at noon and 4 p.m. each day) (March Report page 4). The Former Officeholders also prepared detailed FAQ documents in both English and Spanish that were updated regularly and could be provided to any customers who attended at SIB's headquarters or otherwise requested information.

87. Within the initial months following the appointment of the Former Officeholders, they received more than 15,000 emails from SIB customers demanding information on the status of SIB and their investments. Large numbers of such emails from SIB customers continued to be received by the Former Officeholders throughout the period they acted as receiver-managers and liquidators of SIB, particularly during the Limitations Timeframe.

88. Also in such initial months, the Former Officeholders received thousands of telephone calls from SIB customers demanding information on the status of SIB and their investments. Large numbers of such telephone calls continued to be received by the Former Officeholders throughout the period they acted as receiver-managers and liquidators of SIB, particularly during the Limitations Timeframe.

#### **F. Employee Interviews - Understanding the Workings of SIB and Related Entities**

89. In order to commence and carry out even their most basic duties, the Former Officeholders were required to develop an understanding of SIB's operations, products and services. Doing so required investigative efforts and meetings with SIB employees. These meetings, at which I attended, revealed that SIB offered the following products and services, all of which required extensive and complex operations at SIB to manage and facilitate:

- (i) Fixed Certificates of Deposit;
- (ii) Flexible Certificates of Deposit;

- (iii) Index Linked Certificates of Deposit;
- (iv) Express call accounts;
- (v) Performance call accounts;
- (vi) Premium call accounts (client liability is matched to treasury bills); and
- (vii) Ancillary services including SIB credit cards and bill payment management.

90. Due to the complexity of SIB's operations, products and services, as well as the competing priorities of and demands placed on the Former Officeholders throughout the receivership and liquidation, it took many months to learn key information regarding SIB.

91. Eventually the Former Officeholders learned that there were distinct terms and conditions for each of the six different types of products available to SIB customers, all of which impacted the extent of the liabilities owed by SIB to individual customers. SIB appeared to have investment assets with at least 135 entities around the world totaling millions of dollars including equities, bonds, private equity investments and cash and held diverse real property assets in Antigua that gave rise to unique financial and legal issues. In addition, SIB had extensive other assets ranging from smaller items such as office furniture and vehicles to debts owing to SIB worth millions of dollars.

92. Upon their appointment as receiver-managers, the Former Officeholders also became responsible for the approximately 87 employees at SIB's offices in Antigua. Those employees were generally of limited assistance to the Former Officeholders due to their dismay over SIB's unexpected collapse and, more importantly, because information truly relevant to the Former Officeholders' efforts as receiver-managers and liquidators, including in respect of the true

financial picture of SIB, had been deliberately kept from them. This restricted the Former Officeholders' ability to investigate and uncover the true nature of SIB's affairs.

93. By March 16, 2009, the Former Officeholders had determined that at the time of SIB's collapse, SIB's records indicated that as of February 19, 2009, the Bank had 27,992 active clients and, including accrued interest, a total of USD \$7,2063,204,579 indicated as being invested (March 2009 Report, page 4). USD \$6.9 million was purportedly invested in "fixed" and "flex" Certificates of Deposit:

94. At the time of its collapse, SIB's President was Juan Rodriguez-Tolentino ("**Rodriguez-Tolentino**"). However, he had limited information that was truly useful to the Former Officeholders. For instance, Rodriguez-Tolentino (and SIB's staff generally) knew about SIB's front office operations and relationships between SIB and its customers, but knew very little about the actual inner workings of SIB, including the "investment" or "asset" side of SIB's business.

95. In February 2009, the Former Officeholders and I met with Omari Osbourne, who was employed as the Manager of SIB's Accounting Department situated in the Antiguan SIB office. As Manager of SIB's Accounting Department, Mr. Osbourne was the most senior employee at SIB responsible for SIB's accounting activities at the time of its collapse. The Former Officeholders and I met with Mr. Osbourne frequently over the months during the time that the Former Officeholders were acting as receiver-managers and thereafter when they acted as liquidators. Mr. Osbourne also assisted with tasks regarding the liquidation and his employment continued even as most other SIB staff were laid off.

96. In the course of various meetings with Mr. Osbourne, he explained his role at SIB and what the day-to-day operations were at that office. I have read the affidavit of Mr. Osbourne and it is consistent with my recollection of the information he provided to me and the Former Officeholders over the course of the engagement. Information Mr. Osbourne provided to us is set out in the paragraphs below.

97. SIB had the need for various banking services of third party financial institutions notwithstanding the fact that SIB was itself a bank. Such banking services included overseeing SIB's local bank accounts in Antigua and handling certain responsibilities in respect of SIB's correspondent bank accounts. These tasks were handled by SIB's Accounting Department.

98. Correspondent accounts at foreign banks were required because SIB was an "offshore" bank and as such it was prohibited from knowingly accepting deposits in the legal tender of Antigua or of other countries in the CARICOM region.

99. SIB did not have its own banking facilities in any jurisdictions outside of Antigua (although it had sales offices). Therefore, in order to undertake banking transactions, such as accepting deposits from customers, SIB required the services of foreign financial institutions, namely the provision of "correspondent bank" accounts.

100. SIB's correspondent bank accounts provided a mechanism that allowed SIB to complete transactions with individuals and entities around the world in the different currencies of the jurisdictions where they had correspondent accounts. Over the course of the SIB liquidation I became aware that SIB had correspondence accounts at three foreign banks:

- a) TD Bank in Toronto, Canada, which facilitated virtually all U.S. dollar and Canadian dollar wire transfers for SIB, as well as facilitated all payments to or from SIB by way of Canadian dollar cheques;
- b) HSBC in London, U.K., which facilitated all EURO and British Pound Sterling wire transfers for SIB and also provided a seldom-used U.S. dollar account, as well as facilitated payments to or from SIB by way of any cheques that were not in Canadian or U.S. dollars; and
- c) Trustmark in Texas, U.S., which facilitated all payments made to or from SIB by way of U.S. dollar cheques.

101. The nature of the activity in the accounts was such that they often transacted significant funds but, at any moment in time, did not necessarily hold significant funds. For instance, I was advised by Mr. Osbourne that from time to time, when there came to be a larger-than-usual amount of funds in a correspondent account, the Accounting Department was instructed by SFG to cause certain of those funds to be sent to SFG's bank account, at which point SFG could allocate the funds as it saw fit.

102. SIB's Accounting Department generally received only very limited records or information in respect of SIB's investment accounts. For principal investment amounts, the Accounting Department would exclusively rely on summary information provided by SFG, and did not have access to the source bank documents. Similarly, the Accounting Department would also prepare monthly financial statements to reflect the gains and losses on SIB's investments, but all information in respect of those gains and losses was again in a summary nature and

provided by SFG. Mr. Osbourne indicated that because of the large size of SIB's operation, he did not find this to be particularly peculiar but rather a simple division of duties.

103. Upon initial meetings with Mr. Osbourne, he indicated that he did not believe that the allegations that SIB was involved with a Ponzi scheme could be true and in fact believed that SIB was not insolvent as alleged by the SEC. Mr. Osbourne was one of the primary persons assisting us at the offices in Antigua and informing us about SIB and its history. In reviewing the little meaningful information available to SIB in Antigua with respect to the "investment side" of SIB, the basis for Mr. Osbourne's belief became apparent.

104. In particular, Mr. Osbourne confirmed that all information he received or was aware of in respect of SIB's investments was provided to SIB's Accounting Department by SFG. Further, that information was limited to summaries that had been prepared by SFG personnel and did not contain any detailed breakdowns or information concerning the underlying investments. Accordingly, those summaries (which proved to be fraudulent) hid the fact that a fraud was being perpetrated and how that perpetration was taking place. To the contrary, summaries indicated that SIB had extensive investments that were thriving and were sufficient to pay the returns promised by SIB. It was only these summaries that Mr. Osbourne (or anyone else from SIB) was able to provide me and the Former Officeholders.

105. Compounding the problem of lack of access to useful information was the fact that, during the Limitations Timeframe, the Former Officeholders and I did not have access to any SFG records or employees, all of whom I understood were reporting to the U.S. Receiver.

**G. Inability to Access to Relevant Information and Records**

106. SIB operated for more than 20 years and ultimately had approximately 27,000 customers in 113 countries that invested approximately USD\$7.2 to USD\$10 billion in SIB certificates of deposit. In turn, the investment of those funds was managed by SFG. The other Stanford-owned companies (of which there were approximately 130) also played some role in the selling of certificates of deposit or the management of funds resulting from those sales.

107. As a result of the size and diversity of SIB's operations, millions of records were created and maintained at SIB's headquarters. SIB had expansive rooms within its headquarters dedicated to storing physical records, namely client files and all transactional data. Those records were generally stored in boxes and cabinets. SIB also maintained millions of electronic records on its computer systems.

108. As a result, there were hundreds of millions of records relevant to the Former Officeholders' mandate as receiver-managers and liquidators, if not more. The relevant records were not centrally kept but instead were spread between the various Stanford-owned companies, the vast majority of which were not located in Antigua and therefore were not under the Former Officeholders' control.

109. Due to lack of funding and the Former Officeholders' priorities, the extensive physical and electronic records that were available to the Former Officeholders were not put in to any searchable centralized database during the Limitations Timeframe. For the same reasons, the Former Officeholders also did not conduct, or retain anyone to conduct, any archival internet searching of publicly available information in respect of any suspected fraud during the Limitations Timeframe. As a result, the Former Officeholders could not determine information

concerning what knowledge personnel internal to TD Bank obtained about SIB's affairs during the period that correspondent banking services were provided to SIB and the information concerning what TD Bank did or failed to do as a result of that knowledge.

110. The Former Officeholders had access only to the records of SIB that were accessible in Antigua (other than some information from SIB's small representative office in Canada). Unfortunately, these records were limited and only provided a very partial picture into the true nature of SIB's affairs. In particular, the records that were available to the Former Officeholders in Antigua almost exclusively concerned SIB's liabilities, namely "front of the house" records concerning the investments that had been made by SIB's customers.

111. On the other hand, the Former Officeholders had virtually no access to relevant records concerning SIB's assets, including any details concerning investments that had been made with the funds customers had provided to SIB.

112. The reason that the Former Officeholders did not have access to any records concerning SIB's assets was that such records were under the exclusive control of the U.S. Receiver. This was the case because, as the Former Officeholders and I learned from our interviews of SIB employees and review of the records available in Antigua, the U.S.-based SFG had complete control over all decision-making and management in respect of SIB's assets. In turn, it appeared that SFG held virtually all records in respect of SIB's assets and those records were generally not made available to SIB personnel. Accordingly, upon the collapse of SIB and the other Stanford-owned entities, virtually all records in respect of SIB's assets fell under the control of the U.S. Receiver.

113. It was in part due to the U.S. Receiver's control over records in respect of SIB's assets that the Former Officeholders repeatedly tried to reach an agreement with the U.S. Receiver concerning the sharing of information and records between the Antiguan and U.S. estates of SIB. These efforts to reach an agreement took place during the Limitations Timeframe and afterwards. However, they ultimately did not result in an agreement between the Former Officeholders and the U.S. Receiver and, as a result, the Former Officeholders never obtained any information or records from the U.S. Receiver, including those concerning SIB's assets.

#### **H. Communications With and Information From Financial Institutions**

114. Due to the fact that the Former Officeholders did not have access to any information or records concerning SIB's assets and could not acquire such information or records from the U.S. Receiver, the Former Officeholders were required to attempt to acquire such information or records from third party financial institutions. In particular, the Former Officeholders sought information or records concerning SIB's assets from financial institutions that were thought to potentially hold such assets.

115. The Former Officeholders' efforts to acquire information or records concerning SIB's assets was complicated by the fact that they held only limited information on what financial institutions may hold SIB's assets. For instance, the names of certain financial institution were listed on reports held by SIB's Accounting Department. However, it was initially unclear whether those names were in fact accurate or whether they had simply been provided to the Accounting Department by SFG as part of the fraudulent scheme. Moreover, the names of other financial institutions were also found on unopened mail addressed to SFG personnel (usually Davis) in a locked safe at SIB's headquarters.

116. Nonetheless, the Former Officeholders wrote to all financial institutions that they could identify using any records available to them. As a result, the Former Officeholders wrote to approximately 66 branches of various financial institutions around the world in respect of what was believe to be approximately 73 accounts. The Former Officeholders also wrote to various other financial institutions that were thought to potentially hold assets for SIB. With the inclusion of these various entities (corporations and investment funds), the Former Officeholders had correspondence with over 135 different entities by April 22, 2009.

117. In their correspondence with financial institutions, the Former Officeholders asked for a description of any assets the institution may have held and information about the relationship between SIB and the financial institution. Attached hereto and marked as Exhibit "EE" is a copy of a spreadsheet (as at April 22, 2009) that we continually updated and which identifies the correspondence we had with financial institutions and other entities we thought may have held assets.

118. However, many of the financial institutions did not readily respond, if they responded at all. Some institutions were formally contacted on over nine different occasions. Those that did respond often took weeks or months and most refused to provide helpful information.

119. As a result of the failure of various third party financial institutions to provide information, it was not possible for the Former Officeholders to accurately determine the value of SIB's investment assets. In this regard, for instance, the Former Officeholders indicated the following in their March 2009 Report (page 11):

At this time it is not possible for the Receiver-Managers to accurately advise the Court of the value of the investment assets identified for a number of reasons including:

1. SIB not being in receipt of current statements from financial institutions detailed as holding funds. We have however located significant paperwork detailing that SIB was providing high volumes of sell orders on their investment portfolios to these organizations during January and February 2009 which we understand was to generate cash to meet client redemption requests which had been increasing steadily since October 2008 when the worldwide financial institution crisis gathered momentum. It is likely that due to the withdrawals made and the continuing decline in worldwide equity markets, values have diminished since the date of the statements we have located which range from 2005 to January 2009.
2. Refusal by Swiss financial institutions (RBS Coutts and SG Private Banking) to release information without an order of the Swiss Court.
3. A number of the investments being made in privately held entities where it is not possible to access public data and for which responses are awaited.

120. Further, throughout the duration of the appointment of the Former Officeholders, the U.S. Receiver also refused to provide the Former Officeholders with the extensive financial information it had available to it, including information regarding SFG.

121. In addition, the Former Officeholders also attempted to get information from SIB's auditor, C.A.S. Hewlett & Co. However, the auditor completely refused to cooperate, thereby further complicating the Former Officeholders' tasks of understanding SIB's true affairs.

122. Further, the Former Officeholders were always suspicious that SIB's assets may have been intermingled with the assets of the other Stanford-entities. However, they had no way of verifying whether this was the case. This led the Former Officeholders to undertake the enormous task of attempting to understand the financial interconnectedness of all of Stanford's related companies, which task was not and could not be completed both during and after the Limitations Timeframe.

## I. Quality of the Information

123. In many instances, the information available to the Former Officeholders at the time of the Antiguan Liquidation Order served to frustrate the attempts of the Former Officeholders to understand the true nature of SIB's affairs, including the manner in which any possible fraud had occurred, the scope of any fraud, when it may have occurred and for how long. This is because information that had previously been provided to entities or SIB employees consisted of incomplete or incorrect data. This included documents available at SIB, documents filed with the Antiguan FSRC and documents created by SIB's external auditor, C.A.S. Hewlett & Co.

124. The employee interviews in many ways served to further delay confirming and understanding any fraud. Senior SIB staff based in Antigua, who were charged with the task of informing the Former Officeholders of all aspects of SIB's affairs, were all under the belief that SIB was not insolvent and did not know that any fraud had occurred. Naturally, the employees recited their honest belief on how SIB operated. However, we now know with the benefit of hindsight that such beliefs were based on misrepresentations stemming from Stanford and Davis.

125. A perfect example of this delay-causing reality is described in the March 2009 Report wherein the Former Officeholders indicated that they, at that time, were in the process of trying to determine whether reports from Rodriguez-Tolentino, the then-president of SIB, that Stanford had provided a US\$541,000,000 private cash injection into SIB in December 2008 were true. In this regard, the Former Officeholders wrote:

Mr. Rodriguez-Tolentino has further informed us that during November 2008 he was advised that Mr. Stanford had invested additional capital of US\$541,000,000 into SIB. The Receiver-Managers have located faxes and e-mails received on December 16, 2008 from Mr. Rolando D. Roca from Stanford Houston detailing the accounting entries that were required to be made by the accounts team based in Antigua to reflect the increased capital in SIB. Mr. Rodriguez-Tolentino is

unable to advise in what form the capital injection was made although he advised the Receiver-Managers that he had heard it related to property assets being injected into SIB by Mr. Stanford. A written request has been made of Mr. Stanford, Mr. Davis and Ms. Laura Pendergest-Holt via their lawyers *to confirm the exact nature of the purported capital injection so that the Receiver-Managers can seek to identify the assets for the benefit of the investors and creditors of SIB*. No response has been received to date. [emphasis added]

126. I recall this as one of many examples where a “red herring” served to further delay the ability of the Former Officeholders to accurately determine the true nature of SIB’s affairs, including the fact that a fraud had potentially been committed on SIB and, if that was the case, the nature, extent and duration of the fraud.

#### **J. Communications with Investors**

127. The Former Officeholders’ communications with investors consisted of identifying the investors of SIB, determining what the available records indicated each investor’s financial position was with SIB, determining an appropriate mode of communication for each investor and then communicating with each of the investors in respect of their financial position. Such communications were required with each of SIB’s approximately 27,000 investors and were required to be in various languages and in respect of the various products and services offered by SIB.

128. In the first month of their appointment as joint receiver managers, 8,700 emails were received from clients and over 800 change of address and mailing instructions were received for processing. By September 24, 2009, over 18,000 email enquiries and over 6,000 “change of address and hold mail requests” were dealt with (September 24 2009 Report, page 2).

129. However, logistical issues related to communications that would ordinarily not pose a problem seemed to arise continually. For example, the Former Officeholders had to deal with 12 postal and courier companies that initially refused to provide any services to SIB due to outstanding amounts being owed by SIB.

130. The Former Officeholders worked on producing statements of account for 27,000 investors. In determining who all of SIB's investors were and what their respective financial positions were, the Former Officeholders would normally have simply emailed account forms to the clients. However, there was no centralized email list of customers. Rather, some of SIB's clients required correspondence by regular mail and further complicating matters, some had "hold mail" accounts, meaning that SIB was not to correspond with them by regular mail. I subsequently discovered that the reason for this was the lack of trust a depositor might have in his own postal service or those who might open mail uninvited. Sorting out the manner of communication for each customer was time consuming process that was of high priority.

131. In order to deal with the extensive requests for information and other correspondence with investors, the Former Officeholders developed and maintained a website on which they regularly posted updates and information about the receivership and liquidation. Further, as of July 3, 2009, the Former Officeholders had implemented in multiple languages an "Online Claims Management System" (the "Online Claims System"). The Online Claims System resulted in extensive claims and other information being provided by investors to the Former Officeholders. For instance, as of August 20, 2009, the Former Officeholders continued to work to review and verify claims, by which time over 13,000 investors had accessed the Online Claims system (August Posting). By September 14, 2009, this number grew to 17,000

(September Posting) and by December 2009 the number of investors that had accessed the service was 22,000 (December Posting).

**K. Financial Services Regulatory Commission**

132. In the first days at SIB's premises in Antugua, being the day following the appointment of the Former Officeholders, the Former Officeholders and I were introduced to senior staff at SIB by Leroy King, the head of the Antiguan FSRC. However, thereafter he essentially disappeared and was later indicted in the U.S. for wire fraud in relation to the fraud on SIB. Mr. King was therefore of no assistance to the Former Officeholders. It appeared also that the FSRC had limited information of any assistance.

**L. Non-Investment Assets**

133. During the Limitations Timeframe, the Former Officeholders became generally aware that SIB held certain land assets. However, there were no title deeds in SIB's records. In order to get a sense of which parcels of land in Antigua SIB might own, the Former Officeholders had to rely on information from locals, who generally knew (or thought they knew) which land Stanford was involved with. Thereafter, the Former Officeholders eventually attended at the land registrar's office in Antigua to get assistance in locating land assets. This process was also complicated by the fact that many of SIB's land assets were ultimately held through offshore companies.

134. Eventually, the Former Officeholders determined that SIB had an interest in the following non-investment assets:

- a) the freehold property at 1000 Airport Boulevard, Coolidge, St. John's, Antigua which is occupied by Bank of Antigua;

- b) a further 3 small parcels of land in Antigua;
- c) office furniture and IT equipment within the Bank's head office at No. 11 Pavillion Drive, St. John's Antigua;
- d) a number of motor vehicles; and

*(March 2009 Report, Page 12)*

- e) land known as Pelican Island and an island known as Guiana Island and adjacent land on the main land amounting to around 1512 acres.

*(July 2009 Report, page 6).*

135. However, the lands included in the assets listed above were all subject to the terms of the decision made by the Cabinet of the Government of Antigua and Barbuda in February 2009 to compulsorily acquire the lands for a public purpose (other than the Guiana Island property and related land). In this respect, the Former Officeholders commenced a dialogue with the Office of the Attorney General to either release the lands from the decision so that their disposal may be dealt with by the Former Officeholders or to ensure that the appropriate compensation required to be paid under the *Land Acquisition Act* was obtained on behalf of SIB and therefore its creditors (July 2009 Report, page 6).

136. Aside from the Antiguan land assets, there was no obvious way to determine whether SIB may have held any land outside of Antigua. As a result, the Former Officeholders had to ask individuals such as SIB employees, former SIB lawyers and former SIB accountants to see if anyone had any information on SIB purchasing land outside of Antigua. However, no useful information was ultimately provided as a result of these inquiries.

**M. Stanford Trust Company**

137. At all times that the Former Officeholders acted as receiver-managers or liquidators of SIB, they also acted as receiver-managers of STC. The receivership of STC gave rise to an extensive number of unique issues that required attention and actions distinct from those taken in respect of SIB. Many of these issues arose due to the fact that STC was a distinct entity from SIB and, as such, had its own assets and liabilities. In particular, it was determined by the Former Officeholders that STC received investor funds into a trust account and, in turn, invested those funds into SIB CDs. As a result, STC's customers were creditors of STC and were not creditors of SIB, and amounts those customers had invested represented liabilities of STC. In turn, STC was itself a creditor of SIB due to its investments in SIB CDs and those investments represented assets of STC.

138. The foregoing arrangement meant that the legal rights of STC's customers were unique from those rights of SIB customers. The Former Officeholders were thus precluded from simply treating STC's customers as if they were customers of SIB. For instance, even once the Former Officeholders had setup SIB's Online Claims System, customers of STC were not able to directly utilize that system. Instead, those customers required separate attention and efforts.

139. In addition, the Former Officeholders were required to handle the receivership of STC. For instance, STC had its own employees and did not operate out of SIB's headquarters. Accordingly, the Former Officeholders were required to deal separately with the status of STC's employees. Also, in order to reduce costs as much as possible, the Former Officeholders opted to close down STC's offices and move all of STC's records and physical property to SIB's headquarters. This move took place in May 2009.

140. Ultimately, due to the various complicating factors, when the Former Officeholders were appointed as liquidators of SIB in April 2009, they remained receiver-managers of STC because the true state of STC's financial affairs had not yet been determined. It was not until after the Limitations Timeframe that the various issues arising from STC's affairs had been sufficiently investigated and comprehended and that the subsequent determination was made that STC should also be placed into liquidation.

**VII. CHRONOLOGY OF STEPS TAKEN DURING LIMITATIONS TIMEFRAME  
(APRIL 15, 2009 TO AUGUST 22, 2009)**

141. From April 15, 2009 to August 22, 2009 (i.e. during the Limitations Timeframe), the Former Liquidators coordinated and/or liaised with individuals to create a working team, including the following: a) multiple staff from Vantis, b) personnel from the communications firms of Gyro International and Buchanan Communications, c) Lawyers in London England (myself and CMS' internal team of lawyers), d) Lawyers in Canada, e) Lawyers in Switzerland, f) Lawyers in the United States, and g) SIB employees and STC employees (initially there were approximately 87 SIB employees but, by September 24, 2009 this number was approximately 20 (September 2009 Report, page 2)). Due to the limited funds available to the Former Officeholders, most legal members of this working team and the Former Officeholders themselves were required to work on reduced fee or deferred payment arrangements.

142. The events that occurred, which were either instigated by the Former Officeholders or which required their attention, and the steps taken by the Former Officeholders from April 15, 2009 to August 22, 2009, which consisted of approximately 130 business days, are listed in the chart below ("**Chronology Chart**"). The dates referred to in the Chronology Chart represent in most instances only the culminating event. It should therefore be noted that activities in the days,

weeks and months leading up to such key events obviously included necessary and often extensive preparation for the respective events which included, for example, in respect of any court processes, preparing and swearing affidavits and other related materials and responding to any opposing party materials.

143. The following summarizes the steps that are detailed in the Chronology Chart and were taken by the Former Officeholders:

- a) located and reviewed many of the available records that were relevant to their mandate as receiver-managers and liquidators, including those records held both at SIB in Antigua and, to the extent possible, with third parties around the world;
- b) determined that it appeared SIB was insolvent (*March Report, page 13*) after extensive efforts reviewing documents and obtaining information around the world;
- c) interviewed and worked with SIB employees and others in order to understand SIB's operations and, in turn, undertake the receivership and liquidation;
- d) investigated and confirmed the sums owed to SIB's customers and other creditors;
- e) to the extent possible, located and reviewed the investment assets held by SIB with financial institutions around the world, including by undertaking extensive correspondence with such financial institutions;

- f) to the extent possible, located and reviewed the various non-investment assets of SIB, including by undertaking any necessary correspondence and steps to engage personnel knowledgeable of or responsible for such assets;
- g) took steps to determine the funds available to the Former Officeholders to undertake the receivership and liquidation and, upon realizing that there were insufficient funds, took steps to locate further sources of funds and access those funds;
- h) to the extent possible in light of the very limited funds available, retained and utilized professionals around the world to take steps on behalf of SIB and the Former Officeholders in respect of securing assets;
- i) ensured the preservation of SIB's operating infrastructure and computer systems, including by securing and imaging SIB's extensive computer systems and records;
- j) ensured regular and responsive communications with SIB creditors, including by responding to extensive creditor inquiries, issuing regular press releases in both English and Spanish, and maintaining a website including information relevant to the receivership and liquidation;
- k) extensively corresponded and negotiated with the U.S. Receiver with a view to cooperating and coordinating the administration of the two estates of SIB;
- l) communicated with regulators in various jurisdictions about SIB and its relationship to other entities in Stanford's group of companies;

- m) implemented and maintained the Online Claims System;
- n) sought recognition of the appointment as receiver-managers and liquidators in jurisdictions around the world where it was determined that SIB had assets, including in Canada, the United States, the United Kingdom and Switzerland; and
- o) took steps further to their mandate as receiver-managers of STC, most of which were distinct from the steps required in respect of SIB.

**Date and Key Events and General Circumstances Faced by and Work Performed by the Former Officeholders from April 15, 2009 to August 22, 2009**

**APRIL 2009**

**15 – 16 April**

- Court hearing in Antigua regarding liquidation order.
- Attend at court regarding the finalized order.

**16 April**

- Review and consider response to US Receiver “Motion to Revoke and Rescind” (filed April 16) seeking to rescind previous Canadian decision to recognize the Former Officeholders’ appointment as receiver-managers and power to take custody of the assets of SIB in Canada and review and consider U.S. Receiver application for recognition of the U.S. Receivers’ appointment as liquidators.

**20 April (Monday)**

- Issue the following proceedings in the District Court of Texas, which had control of the U.S. Receivership:
  - 1) Motion to modify the order appointing the U.S. Receiver to allow their recognition action.
  - 2) Motion to be formally recognized in the U.S. under Chapter 15 of the US

Bankruptcy Code – which was opposed by the U.S. Receiver and the SEC.

**21 April**

- Meet with the Attorney General of Antigua and the Finance Minister of Antigua.

**22 April**

- Make application to the High Court of Justice in the U.K. for recognition of the Former Officeholders' appointment. Application documents as well as an affidavit had to be filed.

**22 April**

- File a motion seeking the "Appointment of a Foreign Representative, the Recognition of a Foreign Order and Judicial Assistance" in the Superior Court of Quebec.

**27 - 30 April**

- Prepare for, and attend, U.K. "directions" hearing, which took place on April 30.
- File draft skeleton on April 29.
- Review and respond to the L' Autorité des Marchés Financiers' ("AMF"), Quebec regulator, intervention in the Former Officeholders' attempt at recognition in Quebec.

**Matters Addressed Generally in April**

- Responding to inquiries from the press regarding the meeting in Miami and drafting press release.
- Corresponding about, and preparing for, "directions hearing" for U.K. recognition application, before Justice Henderson.
- Corresponding about, and preparing for, U.K. recognition proceeding.
- Corresponding about, and preparing for, Canadian recognition proceeding.
- Handling communications with, and demands from, U.S. Receiver, and attempting to cooperate with U.S. Receiver.
- Corresponding with colleagues/lawyers regarding liquidation proceedings, funding and operational matters.
- Meeting with the FRSC regarding the Antiguan Court's plan to hear the FSRC's petition to wind up SIB on April 6, 2009.
- Requesting information regarding Swiss, U.K., and Canadian Recognition proceedings.
- Communicating with counsel at Ogilvy's regarding a motion to revoke and rescind the Recognition Order rendered by the Superior Court of Quebec on April 6, 2009.
- Communicating on the issue of reciprocity between Antigua and Switzerland, ie. whether a liquidator appointed under Swiss law would be able to seek recognition in Antigua and what process a Swiss liquidator would need to follow to achieve such recognition.
- Meetings with Antiguan Attorney General and Antiguan Finance Minister.

- Strategizing about claims against the Bank of Antigua concerning a set off they applied post insolvency that amounts to US\$9 million dollars.
- Discussing the Bank of Antigua's US\$6.7 million deductions from SIB's account in relation to credit card debts for accounts issued to SIB customers.
- Determining what amount of SIB's assets were held by HSBC.
- Investigating claims against Stanford personally.
- Dealing with computer and technological issues, including maintenance of system, review operations and reviewing functions.
- Reviewing servers and network issues, fixing problems that arise.
- Confirming SIB's interest in Crayford, the sole shareholder of AVA (Asian Village Antigua), which won a judgment against the government of Antigua.
- Continuing to prepare and coordinate online claims process.
- Drafting and handling investor questions and queries.
- Dealing with SIB employee matters.
- Finalizing and publishing press release regarding online claims process.
- Dealing with and responding to correspondence, emails and calls from creditors and staff.
- Coordinating the logistical issues related to office spaces.

#### MAY 2009

##### 01 May

- Make application in Canadian Court for recognition of appointment as liquidators.

##### 01 May

- Court hearing regarding the liquidation fee schedule.

##### 01 - 07 May

- Engage in process of vacating physical offices of STC in Antigua and relocate all files of STC to the offices of SIB Antigua.

##### 8 May

- U.S. Receiver makes application to the High Court of Justice in the U.K. for recognition and contests the application made by Antiguan Joint Liquidators.

##### 11 May

- Examiner appointed by the U.S. District Court of Texas files a response opposing the Former Officeholders' motion related to Chapter 15.

##### 13 May

- By this date, over 5000 change of address and mail instructions have been processed (per May 13, 2009 Vantis reporting letter to creditors).

**14 May**

- Finalize and update investor website posting regarding full report and letter sent to all of approximately 27,000 investors.

**15 May**

- Finalize materials for the Chapter 15 motion filing in response to oppositions filed by the SEC, IRS and the U.S. Receiver.

**15 May**

- Review and consider the U.S. Receiver's interim fee application of \$19.9 million.

**15 May**

- Finalize materials for U.K. recognition proceedings.
- Review and consider multiple opposing affidavits.

**19 May**

- Finalize and send correspondence to all STC investors setting out initial findings and views on the financial position of STC. Post news posting regarding STC.

**07 - 28 May**

- Take various calls and attend meetings with FSRC.
- Collaborate with necessary parties on the "Joint Status Report" to be submitted to the Examiner and U.S. Receiver on May 29, 2009 as required by the U.S. District Court of Texas.

**29 May**

- Submit the "Joint Status Report" to the US District Court.
- Prepare and post news updates regarding missing investor statements.

**Matters Addressed Generally in May**

- Reviewing materials prepared by the Attorney General of Ontario with regards to funds contained in accounts belonging to Stanford-related entities.
- Discussing Ogilvy proposal regarding sale of office equipment to landlord of Canadian SIB premises.
- Filing Swiss recognition application in Geneva.
- Working on materials for UK proceedings, having discussions with Janvey's counsel regarding extension of time for Janvey's reply evidence.
- Drafting letters to the FSRC regarding several issues, including:

- The Fundora appeal (Fundora sought the removal of the Former Officeholders, discussions about whether FSRC and receivers should have separate counsel);
- The Janvey appeal (discussions about whether it should be heard with the Fundora appeal);
- Liquidation fee rates (discussions about hearing dates/adjournments);
- Antiguan legal representation

- engaged regarding judicial review issues related to the Antiguan Government's invocation of the Land Acquisition Act in relation to assets belonging to Stanford entities.
- Working on US motion regarding Chapter 15 proceedings.
- Preparing application to FINMA (Swiss banking regulator) for recognition of the liquidation in Switzerland.
- Reviewing materials related to Chapter 15 proceedings, to be filed by June 2, 2009.
- Working on Fundora appeal, in particular, evidence for the appeal had to be filed by May 22, 2009 and Receivers had until May 29, 2009 to file evidence in reply.
- Engaging new counsel to help with Fundora appeal.
- Discussing legal representation for the Janvey appeal of the receiver's appointment with the FSRC.
- Discussing Marshall & Co's application for Judicial Review on behalf of SIB, seeking a judicial review of the government's decision to invoke the *Land Acquisition Act* in relation to land assets related to Allen Stanford and other Stanford entities.
- Discussing the May 22, 2009 court hearing regarding the liquidation fees schedule.
- Meeting with Bank of Antigua representatives regarding SIB funds.
- Meetings with property consultants to assist with the disposal of property and land owned by SIB.
- Dealing with claims of employees, both in respect of the amounts owing to them as employees and as creditors of SIB.
- Investigating reports that investor statements were missing.
- Continuing to handle the logistics of updating creditor statements.
- Continuing to handle the logistics of the claims process.
- Responding to SIB creditor emails and queries, writing reporting letters to creditors.
- Holding investor meetings.
- Processing changes of address and mail instructions of creditors (By May 13, 2009 over 5000 change of address and mail instructions processed).

## JUNE 2009

### 9 June

- Correspond and deal with Chief Operating Officer of Stanford Development Company

Limited (“SDCL”) in Antigua, regarding land and lease assets of SIB.

- Attempt to re-coup lease payments incorrectly paid to SDCL.

**9 June**

- Consider and review the U.S. Receiver’s and the SEC’s material regarding COMI proceedings.

**10 June**

- Prepare for COMI proceedings.

**10 - 12 June**

- U.K. High Court of Justice hears arguments from both sides in the fight for recognition in the UK.

**18 June**

- FRSC meeting re legal proceedings.

**24 June**

- Finalize and submit to the U.S. District Court material in support of the petition for recognition and COMI.

**Matters Addressed Generally in June**

- Engaged regarding Chapter 15 Application
- Obtaining judgment in the UK recognition proceedings, which found, among other things, that SIB’s centre of main interest (“COMI”) was located in Antigua
- Corresponding with First Caribbean Financial Centre about retrieving assets pursuant to a court order
- Discussing strategy regarding various Antiguan land assets, including an offer for the purchase of the Bank of Antigua building by the Attorney General, as well as the sale or lease of the Athletic club
- Corresponding with Jones Day regarding U.S. Receiver’s status report on brokerage accounts (as part of the U.S. proceeding)
- Conducting press interviews
- Review and create cash-flow forecasts for liquidation

**JULY 2009**

**03 July**

- UK Court hands down its judgment: Antiguan Liquidators to be recognized in the UK and SIB's assets in the UK to come under their control.
- Prepare and finalize news posting on website regarding U.K. decision.

**03 July**

- Announce and first activate of Online Claims Management System for investors.

**07 July**

- Janvey filing of appeal of UK judgment.
- Attorney General in Parliament declares that the government has taken control of all SIB's land holdings.

**08 July**

- Receive and review materials in support of the position that SIB's COMI was the US, and in opposition to the Former Officeholders.
- Request information from Credit Suisse (U.K.) Limited a second time.

**09 July**

- Finalize and post updated extensive and detailed "frequently asked questions and answers" on to investor/estate website

**09 July - 13 July**

- prepare materials in support of the Former Officeholders' Petition for Recognition in the U.S. District Court.

**10 July**

- Review and consider response to new affidavit filed by U.S. Receiver in Canada.

**13 July**

- File materials in support of the Former Officeholders' Petition for Recognition in the U.S. District Court.

**14 July**

- Finalize and deliver official report to the Antiguan Court.

**15 July**

- Hearing in Québec Superior Court regarding U.S. Receiver's challenge to the Former

Officeholders' previous recognition.

**16 - 17 July**

- Application to UK Court regarding SEC and SFO injunction.

**20 July**

- Filing of evidence for FINMA, Swiss financial regulator, in respect of recognition and competing application by the US Receiver for recognition.
- Application to U.K. Court seeking an order discharging the freezing injunction.

**20 - 22 July**

- Leave to Appeal hearing in Antigua in respect of U.S. Receivers' attempt to stay the Antiguan liquidation.
- Leave for Appeal is granted, application for stay of the liquidation order of April 15, 2009 is denied.

**23 July**

- UK Court of Appeal acknowledges receipt of two letters from CMS.

**24 July**

- Application to the U.K. Court to have the civil freezing order obtained over the UK assets of SIB by SEC removed, judgment in their favor handed down.

**27 - 29 July**

- Old Bailey court hearing re SFO.
- File response to Janvey's Application for a stay with the Court of Appeal.

**29 July**

- AMF hearings in Canada.
- Judge rejects Former Officeholders' application for the removal of a criminal restraint order granted in favor of the SFO following a request from the U.S. Department of Justice.

**Matters Addressed Generally in July**

- Drafting and finalizing materials for UK hearings
- Reviewing criminal filings and bail applications of Stanford
- Corresponding regarding requested filings from FINMA in Swiss recognition proceedings
- Filing application to the High Court (Queen's Bench Division) in the UK regarding

the complete discharge of a freezing order against SIB assets, or in the alternative, a variation of the order to cover liquidation expenses

- Corresponding with consultant regarding the marketing of SIB Antiguan assets
- Corresponding about the Antiguan Court of Appeal's decision regarding the U.S. Receivers's application for leave to appeal regarding the US Receiver's attempt to stay the Antiguan liquidation
- Corresponding about the U.S. Receiver's application for a stay of the Antiguan liquidation order of April 15, 2009
- Corresponding with the UK Court of Appeal
- Examination of Antiguan property deeds

#### AUG 2009

##### 4 August

- Review and consider US Receiver "Motion for Approval of Second Interim Fee Application" requesting \$7.6 million, filed on August 4, 2009.

##### 12 August

- Prepare materials to be filed with FINMA in the Swiss Recognition proceedings.

##### 12 – 14 August

- Meet with employees and determine/consider employee redundancies and terminations.

##### 17 - 20 August

- Attend Court of Appeal hearings regarding the U.K. freezing order.

##### 19 August

- Meet with Swiss prosecutor in Switzerland.

##### 20 August

- Prepare and finalize press release regarding Court of Appeal decision to release SIB funds to Former Officeholders.
- According to the release, by this date, 13,000 investors access the Online Claims Management System.
- STC remains in receivership (rather than liquidation). Claims and creditors of STC and of SIB are still under review by this date.

##### 24 August

- Correspond with Stanford Development Company Limited, regarding privacy of bank data of SIB.

#### **25 August**

- Correspond with Canadian counsel regarding strategy in Quebec.
- Court hearing takes place on August 25-26.

#### **Matters Addressed Generally in August**

- Discussing strategy for hearing held in Montreal at the Superior Court of Quebec to decide between opposing applications for recognition as Joint Liquidators Counsel re: appeal court hearing
- Corresponding regarding proceedings in the 5th Circuit Appellate court, appealing the decision of the U.S. Receiver who sought and obtained an extension on an injunction freezing funds
- Managing the affairs of SIB businesses in Antigua
- Corresponding and meeting with creditors regarding the creation of a creditors' committee
- Drafting lease for Bank of Antigua land assets located at 1000 Airport Boulevard, Coolidge, St. John's Antigua
- Meetings to discuss redundancies, review staff requirements, advise staff of redundancies, and calculate employee liabilities

### **VIII. AFTER THE LIMITATIONS TIMEFRAME**

144. Hearings took place on March 2-3 2010 in the Eastern Caribbean Supreme Court in the High Court of Justice in Antigua and Barbuda. These hearings were in respect of an application made by an SIB creditor, Alexander Fundora, to replace the Former Officeholders with the Joint Liquidators. A decision in this regard was rendered on June 8, 2010 ("**Liquidator Replacement Decision**"). While the Liquidator Replacement Decision was determined in favour of the applicant, the Antiguan Court ordered that the Former Officeholders were to continue to conduct the liquidation until such time as the replacement was appointed by the court.



MARCUS A. WIDE, et al.  
Plaintiffs

v.

THE TORONTO-DOMINION BANK  
Defendant

Court File No. CV-12-9780-00CL

ONTARIO

SUPERIOR COURT OF JUSTICE

Proceeding commenced at Toronto

AFFIDAVIT OF PETER R. WILTSHIRE

(Sworn November 28, 2014)

**BENNETT JONES LLP**

Barristers and Solicitors  
One First Canadian Place  
Suite 3400, P.O. Box 130  
Toronto, Ontario  
M5X 1A4

Lincoln Caylor (LSUC # 37030L)  
Maureen M. Ward (LSUC #44065Q)  
Nathan J. Shaheen (LSUC #60280U)

Tel: 416.777.6121/4630/7306  
Fax: 416.863.1716

Lawyers for the plaintiffs